

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra
4 and Judge Christine Van den Wyngaert
5 Situation: Democratic Republic of the
6 Congo - ICC-01/04-01/07
7 In the case of The Prosecutor v. Germain Katanga and
8 Mathieu Ngudjolo Chui
9 Trial Hearing
10 Monday, 30 August 2010
11 (The hearing starts at 2.00 p.m.)
12 (Open session)
13 THE COURT USHER: All rise. The International
14 Criminal Court is now in session.
15 PRESIDING JUDGE COTTE: (Interpretation) Our
16 hearing shall now proceed. Please be seated. The accused
17 persons are with us. Good afternoon, gentlemen. Good
18 afternoon, everyone.
19 It was agreed that the director of courtroom services
20 would appear before us today, along with some of his co-workers,
21 to present the Registry's position on a number of issues that
22 were raised by Mr David Hooper during the hearing of 15 July
23 last regarding fees, costs, that were incurred for witnesses
24 and/or intermediaries.
25 The Office of the Prosecutor was also advised of

1 this so that the Prosecution would be in a position to provide
2 information more specifically having to do with these
3 attributions insofar as either, be it the director of courtroom
4 services or the Prosecutor, be able to do so. And after the
5 presentation from Mr Dubuisson, Mr Hooper and Mr Kilenda will
6 have the opportunity to ask questions of him and, insofar
7 as he is able to give a reply, we do hope that we will be
8 able to take advantage of this opportunity to deal with these
9 issues that you've raised without the hearing going on too
10 long, because we do wish to conclude the testimony of Witness
11 30 with cross-examination that Mr Fofé will be conducting
12 soon.

13 Furthermore, after the presentation --

14 THE INTERPRETER: Correction.

15 PRESIDING JUDGE COTTE: (Interpretation) We do
16 find ourselves in the position to have to suspend for 30 minutes
17 to put the various voice distortion measures in place. So,
18 behind Mr Luvengika and Mr Gilissen, we have the director
19 of courtroom services and the other person working with him
20 at the very back, and thank you for agreeing to have these
21 two behind you, but not to worry. They will be looking ahead,
22 towards the very back of the courtroom.

23 MR NSITA: (Interpretation) We would have gladly
24 allowed them to sit here.

25 PRESIDING JUDGE COTTE: (Interpretation) No, no,

1 no, you are in the right spot, and Mr Dubuisson and the fellow
2 along with him are ready to respond from the two places that
3 they are seated at. You will forgive me for not knowing your
4 name, sir.

5 Now, I think we all know what the point of this hearing
6 is. Now, you reviewed the transcript of 15 July last and
7 Mr Hooper did raise some concerns and wanted further
8 information from the unit regarding the costs that may have
9 been incurred for a number of witnesses or intermediaries.

10 Now, Prosecutor, you're also aware of this, because
11 you were with us on 15 July last as well. I'd like to give
12 the floor to Mr Dubuisson now.

13 Mr Dubuisson, you may address the Court.

14 MR DUBUISSON: (Interpretation) Thank you, your
15 Honour, and indeed I'd like to thank the legal representatives
16 for their invitation to sit at the first row, but I think
17 that the role of the Registry is to work behind the scenes,
18 so I prefer to be seated --

19 PRESIDING JUDGE COTTE: (Interpretation) Yes,
20 indeed.

21 MR DUBUISSON: (Interpretation) We have been asked
22 for some figures, and nothing is more dangerous than figures
23 unless you're in a position to explain exactly what they
24 correspond to. So, to reply, I would like to give an
25 explanation of what the figures correspond to and the degree

1 of variability of these figures.

2 First of all, one must make reference to the rules
3 of the Registry which state that, through the Victims and
4 Witnesses unit, the Registry is responsible for covering
5 various matters having to do with the witnesses, the witnesses
6 who come to The Hague to give testimony here, and we work
7 for all witnesses: OTP witnesses one day, Defence witnesses
8 the next, and possibly victims that are called upon to give
9 testimony. So, we work with a particular mechanism which is
10 transparent and figures that can be found, as a general rule,
11 on an annual basis on the Website.

12 Primarily, in light of the questions that were asked
13 of us, we make reference to Regulation 81 and then 82 which
14 has to do with housing; 81 having to do with travel; then
15 number 84 for various additional costs. Then we have 85,
16 attendance allowance, Regulation 85; and under 86 there is
17 also the possibility for an extraordinary allowance for lost
18 earnings.

19 Furthermore, there are other regulations such as
20 89 which has to do with health care, and Regulation 90 which
21 deals with care provided to people who are being handled at
22 the Court, so to speak. So, this is among the various services
23 that we provide.

24 There's a second kind of service provided which is
25 the protection service, and that is covered by Regulations

1 92 to 96. In very practical terms, since figures have been
2 requested, how much have we allowed for per witness in the
3 budget? Because we have to draw up a budget each year. Well,
4 we allow for one witness who comes to appear before the Court
5 in The Hague a maximum of 6,556 euros, and that is a maximum.
6 We have to allow for a certain amount of money for documents;
7 that is to say passports, visas, or any other document that
8 is required, airport taxes, and that represents 120 Euros.
9 Then sometimes we have to allow for clothing: underwear, coats,
10 shoes, a travel bag, so we provide a maximum of 650 euros
11 for that.

12 We also have to cover health insurance for that period
13 of time during which we are responsible for the person, and
14 that is 60 euros because, on average, we allow 15 days during
15 which the person will be staying in The Hague. So four euros
16 per day for health insurance.

17 In turn, for the local travel within the country,
18 we are of the -- we allow 650 euros for an international trip.
19 For example, from the Congo to Schiphol, we allow 1,936 euros.
20 In turn, accommodations and meals, we allow 2,670 euros in
21 total for a 15-day stay. These are maximum amounts.

22 Then after that we have to provide for incidentals,
23 so various odds and ends of expenditures, pocket money, so
24 to speak. We allow 10 euros per day, so 150 euros for 15 days.
25 After that, we allow for -- and this depends on -- well, this

1 relates to the fact that the person would have been working
2 in the Congo, so that is 8 euros per day. And we also have
3 an allowance for weekend activities. And the grand total is
4 6,436 euros.

5 Of course, these expenditures vary. Some people
6 do not need clothing; they have enough clothing to travel
7 here. In other cases, the person may not have been able to
8 take a flight because the date of a hearing has changed or
9 there have been difficulties in the field and we have to buy
10 a last-minute ticket, and it may be 2500 or 2700 euros. These
11 parameters vary depending on the circumstances related to
12 each particular witness who appears.

13 So there may be a difference between 3,500 and 6,500.
14 So saying that a witness cost 4,000 another one 6,500, in
15 and of itself, that difference means nothing because there
16 are other factors. It's not just about the money that was
17 provided to the person in question.¹

18 With regard to the allowance or the expenditure,
19 rather - because this is really the crux of the
20 matter - protective measures. For protective measures, if
21 we have to relocate a person within the country in question,
22 on average we have an expense for re-establishment of
23 approximately 20,000 euros; 19,288 Euros exactly. And this
24 depends on the number of people in the family, the trip, the
25 amount of time that the person is -- are responsible - that

1 we're responsible for, we have to pay for school fees. So
2 there are various criteria. These criteria vary, depending
3 on the number of children, and they also depend on the number
4 of dependents that the person has. It may just be one person,
5 in which case the cost is much lower.

6 If we have to relocate a person or an entire family
7 outside of the country, the expenses rise dramatically. In
8 that case we have to offer to the seven people within the
9 family - and that's an average. These are budget figures - the
10 grand total may be 65,000 euros because we have to allow for
11 the travel not just within the Congo, but also between the
12 Congo and another country. So that's a maximum. We have to
13 consider education, health care and insurance. It also
14 depends on the country that receives the person. If it is
15 a neighbouring country, the costs are lower. If it's a country
16 on the other side of the world, well, of course, the costs
17 will be higher.

18 Now, people ask how much a witness costs and people
19 want to know, well, how much did Witness X receive? Well,
20 we have to go into details then, and we can look at the details
21 and determine -- well, let's say, if the person is relocated
22 nationally or internationally, what is the general size of
23 the family, but I don't think it would be particularly useful
24 to provide that information.

25 Now, with regard to the other kinds of information,

1 indeed, it does vary. It varies depending on a number of
2 criteria. The question was: How much does it cost the Court?
3 And my question is: Indeed, I see four questions within this
4 one. First of all, what does it cost the Court to take
5 responsibility for a witness, a witness who comes and gives
6 testimony here? How much costs the interaction between the
7 person and the Court? What is the cost of working with the
8 Court as an intermediary? What is the cost of working for
9 the Court, for example, if we bring in an expert witness?
10 So we have to be very specific.

11 If we take the case of an intermediary, in the case
12 of an intermediary there may be up to five different units
13 within the Court that use an intermediary. The same
14 intermediary may be used by five different units of the Court;
15 for example, by the trust fund for victims, the Victims
16 Participation and Reparations Unit, the Office of Public
17 Counsel for Victims, the legal representatives of victims,
18 the OTP, of course, and the VWU. All these various units may
19 use the same intermediary.

20 The OTP can -- and the texts allow for this -- may
21 enter into confidential agreements with an intermediary. The
22 trust fund for victims -- and this is also set out in the
23 regulations of the trust fund -- can also enter into agreements
24 with intermediaries. Others provide services depending on
25 the circumstances in the field. For example, an intermediary

1 may be able to facilitate a meeting with people in the field
2 without a prior agreement.

3 Now, whether there's an agreement or not, a certain
4 amount of money is provided. Nothing governs the amount that
5 is provided to these intermediaries. One might think that
6 it would be between 30 and 60 dollars per day, but nothing
7 would keep a unit from paying more or less. Furthermore, the
8 Registry is in no way able to determine what the OTP may have
9 paid an intermediary or what all the five various units have
10 paid to an intermediary.

11 There is no requirement through the agreements or
12 through the arrangements made to disclose. That can be
13 criticised, of course. Perhaps if one works for a particular
14 unit, it might be a good idea to make that known, to declare
15 that for reasons of -- for professional reasons, professional
16 ethics, but it is not up to the Registry to deal with that
17 conflict later.

18 The same thing holds true for an expert witness who
19 asks for the equivalent of a P4 position. That is a bench-mark.
20 In some cases an expert may be more at a D1 level and so,
21 there's a range from P5 to D1. The Registry is not in a position
22 to be the arbitrator or to determine how much is paid by the
23 OTP to an expert witness or by the Defence .

24 Now, very briefly - I know that your time is counted
25 closely - so you have a particular figure, but I don't think

1 it would be right to disclose specific figures for a particular
2 person because it varies on so many -- it depends on so many
3 parameters that -- these are parameters that we find ourselves
4 dealing with during the process of having a witness come in
5 to give testimony.

6 Thank you very much.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank
8 you, Maître Dubuisson. Mr O'Shea, Mr Kilenda, would you like
9 to ask for additional information from Mr Dubuisson, the
10 Director of Courtroom Services, in light of the information
11 that he has just provided to us? Mr O'Shea?

12 MR O'SHEA: Yes, I will ask, Mr President, one
13 question of clarification. I won't at this point comment upon
14 the position of the Registry because I haven't yet been invited
15 to do so by your Honour. But with regard to clarifications
16 as to what has been already said, Mr Dubuisson, on behalf
17 of the Registry, has indicated that a maximum figure of 6,556
18 euros is applied for the various different categories, which
19 he's set out. He describes that figure as variable. I
20 understand when he says "variable" that's variable within
21 the maximum.

22 My question is this: The sub-maximum values which
23 he cited -- he cited, for example, 2,670 euro for food and
24 650 euros for internal voyage or internal travel. Are those
25 fixed maximums for those subcategories, or can the amounts

1 be moved between those subcategories as long as the maximum
2 reaches 6,556? So that's the question of clarification which
3 I am putting.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank
5 you, Mr O'Shea. Mr Dubuisson, are you in a position to answer
6 that question?

7 MR DUBUISSON: (Interpretation) Yes. No problem,
8 your Honour.

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

11 MR DUBUISSON: (Interpretation) We have
12 agreements with a number of hotels. To take that first figure,
13 2,670, we have an agreement with a particular hotel for rooms
14 and complete board in that particular hotel. We also have
15 transportation from the airport to the hotel, so there are
16 various factors that come into play, and that comes to a total
17 of 178 euros per day. That's because of a contract we have
18 with a hotel, a hotel that can provide other services than
19 just the normal services - for example, particular services
20 or additional services for witnesses - and we provide that
21 amount to the hotel.

22 If the person leaves the hotel, we do not pay for
23 a hotel room for a person who is not there. If the testimony
24 goes quickly and the person stays five days here in The Hague,
25 it's five times 178. If the process halts, for one reason

1 or another, and we are told that the person stopped giving
2 testimony on Tuesday and will resume next week, we may go
3 beyond the 15 days that are usually provided for, so the person
4 may stay several days. For your information, today the average
5 for a witness -- for all particular costs the average is 14.5
6 days. The maximum, the longest period of time, is 36 days.
7 So, indeed, it may be higher or it may be lower, but on average
8 it's 14.5 days. We did the calculations on the basis of 15
9 days.

10 The 650 euros for the domestic flight, that is the
11 domestic travel. We do not give 650 euros to the person and
12 the person gets his own ticket. We pay for the ticket. If
13 it is less expensive, it's less expensive and, in that
14 particular case, we pay less. If it is more expensive, well,
15 we pay more, but the person has no idea of that. The person
16 is the responsibility of the Court and basically gets on the
17 plane, gets off the plane and has nothing to pay, and there's
18 no surplus that goes into the pocket of the person in question.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank
20 you, Mr Dubuisson. Mr O'Shea, another remark at this
21 particular point?

22 MR O'SHEA: No. We're still on clarification, so
23 I won't say anything just yet.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank
25 you. Mr Kilenda.

1 MR KILENDA: (Interpretation) Thank you, your
2 Honours. Maître Dubuisson has come to give us some figures
3 this afternoon and the Ngudjolo Defence team has taken note
4 of these figures and has no questions to ask. We would merely
5 take this opportunity to thank Mr Dubuisson for his very clear
6 presentation.

7 Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank
9 you, Mr Kilenda. Mr Prosecutor, in turn, would you like, in
10 light of what you've heard, from -- what you heard on 15 July,
11 would you like to provide any particular information to the
12 Defence teams? Please proceed.

13 MR DUTERTRE: (Interpretation) Good afternoon,
14 your Honours. The Prosecution has taken note of the
15 information, the very useful information provided by
16 Mr Dubuisson. That's our first point.

17 Secondly, I am not aware of confidential agreements
18 between the Prosecution and witnesses. I am just repeating
19 a remark made by Mr Dubuisson and I would like to clarify
20 that particular point. As was said earlier by another
21 representative of the Prosecution, we have provided to the
22 two Defence teams the various expenses so far, expenses made
23 by the Prosecution for witnesses in an entirely transparent
24 manner; and as for the rest, we defer to the Chamber regarding
25 the request made by Mr O'Shea for the intention of the Registry.

1 Thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank
3 you, Mr Prosecutor. It goes without saying that when you say
4 that you are not aware of any confidential agreement as
5 mentioned for by the director of court services, you are
6 speaking on behalf of the OTP and not on your own personal
7 behalf.

8 MR DUTERTRE: (Interpretation) Yes.

9 PRESIDING JUDGE COTTE: (Interpretation)
10 Mr O'Shea, do you have any particular question to ask the
11 Prosecutor?

12 MR O'SHEA: No, not to the Prosecution. Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) And you,
14 Mr Kilenda?

15 MR KILENDA: (Interpretation) No question, your
16 Honours.

17 PRESIDING JUDGE COTTE: (Interpretation) The
18 legal representatives, well, I might have given them the floor
19 before, but even coming last, Mr Gilissen, Mr Luvengika, do
20 you need any clarifications from Mr Dubuisson or
21 Mr Pieter Vanaverbeke?

22 MR GILISSEN: (Interpretation) Thank you, your
23 Honours. None of us has any questions to ask. The
24 presentation was very clear.

25 PRESIDING JUDGE COTTE: (Interpretation) Judge

1 Van den Wyngaert, do you have any questions for Mr Dubuisson?

2 No. Mr O'Shea? Mr Kilenda?

3 MR O'SHEA: I think everything is reasonably clear,
4 Mr President. I would, however, like to make one comment,
5 if I may: At the beginning of the presentation of the Registry,
6 it was pointed out that this was meant to be a transparent
7 system and at least in one sense the actual figures were given
8 on an annual basis through the website I think was said.

9 Mr Dubuisson for the Registry has indicated that
10 he doesn't feel that there is a need or that it is useful
11 to provide precise figures in relation to individuals I think
12 on the basis he said that there were different reasons for
13 different expenses in relation to different individuals, if
14 I understood him correctly.

15 For our part, we don't see any reason in principle
16 in a transparent system why the figures -- and figures there
17 must be, because surely there must be an auditing process,
18 why the figures in relation to expenses on individual witnesses
19 cannot be provided.

20 The reasons given by the Registry appear to be more
21 in the nature of an analysis of the necessity of the situation,
22 but if there is a request from one of the parties for these
23 figures, whether it be to examine motive or whether it be
24 to potentially explore the credibility of the witness through
25 cross-examination, it would not appear to us that there should

1 be any obstacle in the way of providing the actual figures
2 in relation to individual witnesses.

3 As far as I'm aware, the Prosecution has done
4 that -- insofar as they are in charge of that process, has
5 done that voluntarily. It's just that the expenses in relation
6 to witnesses appear to be divided between the responsibilities
7 of the Prosecutor and the responsibilities of the Registry
8 necessarily and the Prosecution hasn't placed up any road
9 block to providing precise figures in relation to witnesses,
10 and we don't see any reason why the Registry should either.

11 So, we would ask the Registry to reconsider its
12 position in relation to that; and if it doesn't have cogent
13 reasons for a refusal to provide that information, then we
14 will consider what step needs to be taken after that.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank
16 you, Mr O'Shea. Mr Dubuisson, I will give you the floor once
17 again, but I would like to add a question to what Mr O'Shea
18 has said.

19 You have indicated that the requirement for
20 transparency cannot lead you to give figures for individuals.
21 What is the reason for it? Is it because too much individual
22 details would possibly identify or undermine protection
23 measures for certain individuals? Is that the reason? Well,
24 you have the floor for your own clarification, which is
25 extremely important.

1 MR DUBUISSON: (Interpretation) Thank you very much,
2 your Honour. I have two points to make. Let me come back to the
3 issue raised by the Prosecutor that there is no agreement with
4 witnesses.

5 I would like to point out that what I said is that
6 agreements might be signed. An intermediary can come as a
7 witness. For example, I was referring to intermediaries, and
8 even within the Court so far there is no specific definition
9 for "intermediary" who can be sometimes referred to as a
10 resource person, a source, or many other terms. So, we have
11 to be very careful when we use any of those terms.

12 Now, regarding the necessity to provide specific
13 information, it is true that given the nature of the information
14 which could be very variable, we can legitimately ask ourselves
15 whether it is actually necessary, but it is not up to the
16 Registry to determine what is necessary or not for a party
17 in a trial. We have three Judges here and we respect the
18 authority of the Judges. So we always try to know what is
19 the objective of a question before we provide an answer. That
20 is all.

21 Regarding the important point that you have raised
22 to the effect that there has to be protection, I would like
23 to say that if in a particular case a witness who is coming
24 to testify needs medical treatment - and this has already
25 happened - this raises the cost considerably and we cannot

1 disclose the cost of medical treatment to a specific witness
2 which is no concern of any other person unless the person
3 in question actually decides to disclose that information.
4 It is not up to the Registry to disclose the information.

5 Similarly, if we have to take responsibility for
6 a large family belonging to a protected witness, for example,
7 we have to deal with information related to the size of a
8 family and this can lead to the identification of the individual.
9 So, it is indeed preferable not to provide such information.

10 And the same applies for other parameters. If we
11 pay for travel inside the Congo or to another country because
12 the person was relocated, then this is information that is
13 identifiable. For example, if someone spends 10 or 30 days
14 in Kinshasa to obtain a passport, neither the person or the
15 Registry is responsible for the 20 additional days. So, this
16 information will not really add value to anything, so there
17 is the fact that certain elements and parameters are not
18 significant even though it is not up to me to determine which
19 ones.

20 And, secondly, other parameters are protected very
21 rigorously by the laws and this can undermine the protection
22 programme of the witnesses of the Court. Thank you.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank
24 you, Mr Dubuisson. Mr Kilenda, you were about to stand after
25 Mr O'Shea. Did you have anything to add?

1 MR KILENDA: (Interpretation) Thank you, your
2 Honour, I still have nothing to add to the presentation of
3 Mr Dubuisson.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank
5 you. Thank you very much, Mr Dubuisson and
6 Mr Pieter Vanaverbeke, who is the director's direct
7 collaborator. All of you are going to reflect on the
8 information that has been provided and try to see whether
9 it is satisfactory, and each of the parties will try to determine
10 the next measures to be taken. Thank you, Mr Dubuisson, for
11 having taken the time out to come and provide information
12 to the parties and participants and to the Bench. Thank you
13 to both of you and have a good afternoon.

14 Court officer, let us go into closed session to allow
15 the witness to be brought in to the Court. And court usher,
16 please -- Mr Kilenda?

17 MR KILENDA: (Interpretation) I think, your
18 Honour, that we had to have a discussion on the Prosecutor's
19 objection to certain issues in our cross-examination. In fact,
20 according to the Prosecutor there were certain documents that
21 should not be dealt with.

22 PRESIDING JUDGE COTTE: (Interpretation) Indeed,
23 Mr Kilenda, we need to have that brief discussion before we
24 bring in Witness 30.

25 At the end of our hearing last Friday, I pointed

1 out that in light of the documents that you disclosed to us,
2 the cross-examination of the Defence team of Mr Ngudjolo will
3 be based on statements given by the witness as well as video
4 extracts produced by the Prosecutor and the other extracts
5 that you are going to produce yourself, as well as documents
6 that you mentioned in an email of 24 August at 6.02 p.m.

7 The following day - that is, 25 August - in an email
8 the OTP pointed out that they were objecting to 13 documents
9 from the UPC website as well as two other documents,
10 DRC-OTP-0014-0391 as well as DRC-OTP-0037-0301.

11 At the time that we adjourned the Chamber drew your
12 attention, Professor Fofé and Mr Kilenda, on the necessity
13 to ensure that the witness is cross-examined only on issues
14 to which he is able to speak and this should be based on his
15 CV and his experiences, and you should try to refrain from
16 asking him speculative questions on issues that are not
17 directly linked to his own activities and we simply called
18 on you to be cautious.

19 The Prosecutor is going to state his point of view
20 and you will tell me about your reflection over the weekend
21 which was supposed to enable you to refocus your
22 cross-examination in light of the cross-examination carried
23 out by Mr O'Shea.

24 Madam Prosecutor.

25 MS LUPING: Thank you, Mr President. Obviously the

1 comments that I have to make are all dependant upon which
2 of the 13 plus two documents you referred to that Defence for
3 Mr Ngudjolo are proposing to use, but I would just simply
4 reiterate the objections in relation to all 15 documents.

5 Our key submission in relation to all 15 documents
6 is quite simply that Witness 30 is not the appropriate witness
7 to comment on them and I would refer your Honours to paragraph
8 97 of your decision 1665.

9 There simply is no inherent correlation between any
10 of this documentary evidence and Witness 30. As all the
11 parties are aware, Witness 30 is not and has never been a
12 member of the UPC. He is neither a political or historical
13 analyst. Quite simply he is a witness to comment on video
14 footage. His occupation and the range of persons he has
15 provided his services to are well-known to all of us.

16 As for the specific documents, the 13 documents from
17 the UPC website, none of them are signed. They come from a
18 website that no longer exists. They could be viewed as
19 propaganda or biased documents from the UPC. So bearing in
20 mind the lack of any link between Witness 30 and these documents
21 he is not in any position to comment or authenticate these
22 documents.

23 As for the other two documents which relate to FIPI
24 and UPC as movements, he has no connection to either the FIPI
25 or UPC movements so is again not in a position to comment

1 on them.

2 The Prosecution would submit that the Defence is
3 free to call a UPC or other appropriate witness during its
4 part of the case to introduce these documents or, alternatively,
5 to make a Bar table motion to produce these documents as the
6 Prosecution has done recently. Those are my submissions,
7 Mr President, your Honours.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank
9 you, Madam Prosecutor. On this legal matter, before the
10 witness is brought in, Mr Kilenda or Mr Fofé? Well, Professor
11 Fofé.

12 MR FOFÉ: (Interpretation) Thank you very much,
13 your Honours. Good afternoon. Just one moment.

14 PRESIDING JUDGE COTTE: (Interpretation) Very
15 well.

16 MR FOFÉ: (Interpretation) Mr President, your
17 Honours. The objective that we have to pursue here - all of
18 us - is the search for the truth to enable you to administer
19 justice as expected by all.

20 All the documents that we want to produce and to
21 tender into evidence, including documents downloaded from
22 the UPC site and the other documents grievances of FIPI would
23 make it possible for you to better understand the
24 socio-political context within which the attack on Bogoro
25 of 24 February 2003 took place, and this attack involved

1 powerful state organs and the Defence for Mathieu Ngudjolo
2 does not understand why the Prosecutor is opposed to the use
3 of these documents.

4 All the documents from the UPC website that we wish
5 to use today were received from the Prosecutor as indicated
6 by the chain of custody that features on a table distributed
7 to the parties and participants. These documents corroborate
8 the video extracts filmed by Mr X, and we all know who Mr X
9 is; that is, if you allow me to use the terminology produced
10 or, rather, proposed by Mr O'Shea.

11 In light of the statements made by P30 to the OTP
12 in April 2006, it appears that Mr X, whom we all know, did
13 a lot of work for the UPC and it is document DRC-OTP-0151-0583,
14 particularly paragraph 44 of the statement of P30.

15 Most of the footage filmed by Mr X was broadcast
16 by the UPC over the local television network RTNC, Radio Candip
17 and the UPC site, so the Defence should be given the opportunity
18 to provide this corroboration of the video extracts of Mr X
19 by the relevant documents downloaded from the UPC site. These
20 video extracts and the documents from the UPC site are very
21 important for the Defence case. It would not be fair to
22 prevent the Defence from producing these materials in defence
23 of their client during the testimony of Witness P30.

24 Your Honours, to enlighten you, I would like to
25 mention certain elements that illustrate that corroboration.

1 (1) Meeting of Thomas Lubanga with the Ugandan
2 delegation led by General Salim Saleh, that is a Ugandan
3 General, on 23 January 2003; reference video
4 DRC-OTP-0127-0061. Our extracts, numbers 9 and 11 on the one
5 hand, and on the other hand the UPC site, Daily Life in Ituri,
6 communiqué number 23 January 2003.

7 (2) Meeting between MONUC and the UPC on
8 24 February 2003 which is the same day as the day on which
9 the Bogoro attack took place; reference video
10 DRC-OTP-0127-0061. Our extract, number 15 on the one hand,
11 and on the other hand UPC site communiqué of 24 February 2003
12 at 11 a.m.

13 (3) On 6 February 2003 the delegation of RCD-Goma
14 led by Mr Adolphe Onusumba arrived in Bunia. That delegation
15 left again on 9 February 2003 and on the same day Thomas Lubanga
16 flew out to Dar es-Salaam via Kampala; reference video
17 DRC-OTP-0127-0061 and I will spare you the details, your
18 Honours.

19 There is also the UPC site, Daily Life in Ituri
20 communiqué of 6 February 2003 and of 10 February 2003, which
21 is quite close to the day of the events of which you are seized.

22 (4) On 11 February in Kampala, Thomas Lubanga gave
23 a report of the Dar es-Salaam meeting. On the one hand, he
24 confirmed the existence of a coalition between the government
25 of Kinshasa, Uganda and RCD-KML of Mbusa Nyamusi, and wondered

1 why the government of Kinshasa was gathering troops in Beni
2 and why Rwanda and Uganda had to fight each other in Ituri,
3 whereas none of their enemies were Iturian. In fact, he
4 confirmed that he had asked President Kabila to withdraw his
5 troops based in Beni; reference video DRC-OTP-0127-0058, as
6 well as our extract number 6 on the one hand, and on the other
7 hand communiqué number 1 of the UPC of 1 February 2003 on
8 the UPC site.

9 (5) UPC announces the preparation of an offensive
10 from Kinshasa on three fronts. On 19 February 2003 the UPC
11 announced the movement of troops from Kinshasa which was
12 stationed in Beni, four battalions towards Ituri. See video
13 DRC-OTP-0127-0058, extract 8, on the one hand, and, on the
14 other, UPC site communiqué 2 of 1 February 2003 and press
15 communiqué of 19 February 2003.

16 (6) In relation to the same video DRC-OTP-0127-0058,
17 in a communiqué of 1 February 2003, the UPC cite the words
18 of Vital Kamerhe on Radio France Internationale according
19 to which the Ugandan troops are advancing towards Mahagi in
20 order to clash with the Ugandan troops in Ituri. At the same
21 time, the RCD-Goma troops were going to attack Kanyabayonga
22 where the RCD troops were positioned. See communique of
23 1 February 2003 entitled "A plot ordered by Kinshasa and Beni
24 to attack Ituri" and press communiqué number 2 of
25 1 February 2003. We are in February 2003.

1 PRESIDING JUDGE COTTE: (Interpretation) Professor
2 Fofé, could I interrupt you for a moment. Would you allow me to
3 interrupt you?

4 MR FOFÉ: (Interpretation) Yes, indeed.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank
6 you. In order to obtain some clarification from you, there
7 is firstly a question that I would like to put to you. Would
8 you have envisaged continuing as Counsel O'Shea did last week,
9 not to say that it is a model that has to be followed but
10 just because it is a good method, in asking questions to the
11 witness with regard to the content of these documents and
12 through the cross-examination that you're going to carry out,
13 without necessarily filing these documents so necessarily
14 the probative value can be asked in questions. No, you didn't
15 envisage this? You want to file these documents. You want
16 to tender these documents.

17 MR FOFÉ: (Interpretation) Yes, your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation) Would
19 you like to tender them and for after them to be tendered
20 into evidence? Or would you like rather to use them as a basis
21 for your cross-examination?

22 MR FOFÉ: (Interpretation) Your Honour, as I was
23 going to highlight after my comments, we don't have a lot
24 of questions to put to this witness even where it concerns
25 the video extracts. The witness won't be tired. We know that

1 this witness is not a political analyst. What we would like
2 to demonstrate is the link that there is between these documents
3 received by the Prosecutor and the extracts, the video extracts,
4 which were made by Mr X. We are not going to ask substantive
5 questions with regards to these documents even with regards
6 to the extracts, but what we would like to do quite simply
7 is to make these link and to tender these documents into evidence
8 as exculpatory evidence.

9 PRESIDING JUDGE COTTE: (Interpretation) Very
10 well. Firstly, if you intend to tender any of these extracts
11 into evidence, we will give them an MFI number firstly.

12 Prosecutor, if you would be so kind as to wait. We
13 will attribute these documents with an MFI number firstly.
14 Please do not forget that this witness cannot be used, if
15 I may put it like that, to introduce documents which are not
16 sufficiently directly related with that person's activity,
17 with what that person has seen or heard himself.

18 Now, you consider that the link is sufficiently
19 established, it's directly linked, and that is why you are
20 trying to explaining this to us. Please just bear in mind
21 that this is the concern of the Chamber.

22 Prosecutor, on the other hand, during your
23 examination-in-chief the Chamber was welcoming when it came
24 to admitting the different supports, if you like, of what
25 constituted your examination-in-chief.

1 Now, we have seen that with regards to certain points
2 the witness is able to answer; in others, not. What we are
3 trying to do here is find at the end of his testimony, which
4 started with difficult technical conditions, is to try and
5 get to the truth, not "one" truth, but "the" truth.

6 I would like to give you the floor in a minute,
7 Prosecutor, but the Chamber would like this witness to come
8 to be able to answer the questions that Professor Fofé will
9 put and then, if the documents which are contentious, should
10 be tendered into evidence, first of all, they will be attributed
11 an MFI number and we will see with regards to the quality
12 of the answers that are given to the questions that you will
13 ask whether they have to be tendered into evidence. This is
14 something that we will determine in a moment.

15 Prosecutor?

16 MS LUPING: Thank you, Mr President. I think first,
17 as a point of clarification, obviously, the Prosecution is
18 not against the manifestation of the truth, as has been
19 suggested, but our concern, as we have stated before, primarily
20 is the issue as to whom the questions should be put regarding
21 these documents. The concern is not only as to the
22 admissibility of the documents and the assignment of EVD
23 numbers, or otherwise. Our concern is that this witness is
24 also not in an appropriate position to make comments on these
25 documents bearing in mind his background, his occupation,

1 the lack of any correlation between him and the documents
2 and as to the probative value of these documents as was indicated
3 before.

4 Some of these documents have no signature, sometimes
5 no names mentioned as to who wrote the documents, no stamps
6 even as to which organisation they came from, no official
7 stamp. In these circumstances, even with an MFI, with respect,
8 the Prosecution would submit he's not in a position to
9 appropriately comment on them. Another witness perhaps may
10 be and, as we already stated, a Bar table motion may also
11 be able to be sought to which obviously the Prosecution would
12 seek to make comments on and be given the opportunity to reply.

13 There is clearly a difference between the
14 Prosecution's disclosure obligations - basically, what
15 documents it has to disclose to the Defence - and what documents
16 can be introduced by way of evidence by Defence and through
17 which witnesses, and which witnesses are in a position to
18 appropriately comment on them.

19 And finally, we would observe that before any
20 question at all, if that was your Honour's decision, any comment
21 at all could be made by this witness in relation to these
22 documents, he must first be asked the question whether he
23 has in fact seen the documents or not, because if he has not
24 seen the documents before, that should be the end of the matter.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank

1 you very much, Prosecutor. Once again, the Chamber would like
2 to remind everyone where it concerns the presentation during
3 the examination-in-chief of the Prosecutor of a certain number
4 of evidentiary items, the Chamber has shown that it is very
5 understanding.

6 It would like the quality or the fairness of the
7 proceedings -- and Professor Fofé, we will see the extent
8 to which the witness can answer the questions. If, Professor,
9 with regards to certain documents, you find that the witness
10 is unable to answer the question, then you will have understood
11 that you shouldn't insist on that without any use. You know
12 that there's time with regards to the parties and participants
13 and the Chamber as well, and of course it is the case that
14 you will be presenting these documents in such conditions
15 that the answers that you wish to receive from the witness
16 are ones which are enlightened. If the witness really does
17 not know the document at all and has no idea of what it contains,
18 then it would not be useful to continue.

19 So, having said that, we can have the witness come
20 in, or would you like to say something first? You look so
21 sad that the -- we didn't let you finish.

22 MR FOFÉ: (Interpretation) I would just like to say
23 something subsequent to what has just been stated by the
24 Prosecutor, just to stress that at the current moment the
25 issue is to asking the Chamber for the admission of these

1 documents. Where it concerns their probative value, we know
2 that at the appropriate juncture, you will have the opportunity
3 to decide thereon.

4 Secondly, I would like to stress that all these
5 documents, whether they are from the UPC site that we've
6 received from the Prosecutor that comes from him, is not going
7 to contest the authenticity of these documents. Some of them
8 are signed, unlike what the Prosecutor has said.

9 Now, where it concerns the claims with regards to
10 the document DRC-OTP-0014-3091, the Prosecutor communicated
11 it as PEXO material, potentially exculpatory material, so
12 how today is it possible for the Prosecutor to not use this
13 potentially exculpatory evidence?

14 Furthermore, with regards to the other document,
15 the speech DRC-OTP-003-7301, the Prosecutor disclosed it to
16 it under R77, and how can they prevent us from using it? We
17 would also like to stress that this document -- these documents
18 are very important for the Defence because they show the issues
19 really at stake that there were and the key figures who were
20 present; the key figures.

21 Now, where it concerns the time, we would like to
22 draw the Chamber's attention to the fact that our team does
23 feel somewhat frustrated, because every time that we have
24 its turn to cross-examine the Prosecution witness, the
25 Prosecution often mentions arguments like tiredness of the

1 witness.

2 PRESIDING JUDGE COTTE: (Interpretation)

3 Professor Fofé, the witness is really in good form. He has
4 just spent a wonderful weekend in The Hague, as we all have,
5 under wonderful sky so, of course, I don't think he can have
6 got more tired over this weekend. So you will
7 cross-examination him and you will use the documents which
8 you have to under the conditions which we have stated. I don't
9 want to stop you. You will take the time that you need. You
10 are coming last in the order that we have set right at the
11 start of opening our substantive proceedings, but the fact
12 of being last does not give you no fewer rights or less speaking
13 time than anyone else.

14 So if you -- so please, we can have the witness enter
15 so that we can have them there for the next 45 minutes, and
16 then the following two hours, under which you can continue
17 with your cross-examination and, if necessary, continue
18 tomorrow morning. There is no problem with that.

19 Madam Luping, you will please try to put an end to
20 this discussion so that we can go on to the next part. Thank
21 you.

22 MS LUPING: Yes, indeed, Mr President. It's just
23 in the interests of trying to be helpful, I just simply wanted
24 to comment that bearing in mind the parameters that you have
25 indicated, Mr President, the Prosecution simply wants to

1 clarify that, based on those parameters, it would have no
2 objection to MFI numbers then being assigned.

3 PRESIDING JUDGE COTTE: (Interpretation) Well,
4 that's good. We are making progress.

5 Court officer, please, could you take us into closed
6 session to have the witness come in. The usher will escort
7 in the witness. The witness must be waiting impatiently for
8 us, and we will have 40 minutes of discussions with the witness
9 before the first break.

10 (Closed session at 3.17 p.m.)

11 (expunged)

12 (expunged)

13 (expunged)

14 (expunged)

15 (expunged)

16 (expunged)

17 (expunged)

18 (expunged)

19 (expunged)

20 (Open session at 3.19 p.m.)

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

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

25 Good afternoon, Witness.

1 THE WITNESS: (Interpretation) Good afternoon. I am
2 well.

3 PRESIDING JUDGE COTTE: (Interpretation) You are
4 well and you can hear me well, so we can start. Perfect.

5 Professor Fofé, I would like to leave it to you.
6 If you haven't introduced yourself, please go ahead, and then
7 you will continue with your cross-examination.

8 MR FOFÉ: (Interpretation) Thank you very much,
9 your Honour.

10 QUESTIONED BY MR FOFÉ:

11 Q. Good afternoon, Witness.

12 A. Good afternoon.

13 Q. I am called Jean-Pierre Fofé. I am the co-counsel
14 within the Defence team of Mathieu Ngudjolo, so we are going
15 to put certain questions to you in order to make it possible
16 for you to shed light on or shed light for the Honourable
17 Judges on what happened in Ituri during the period of the
18 facts which the Chamber's dealing with, January/February 2003.
19 We will ask certain questions to you with regards to the extracts
20 that the Prosecutor showed you during her
21 examination-in-chief and then we will present certain other
22 sequences to you. And we would like to thank you in advance
23 for your availability, and we assure you that our objective
24 is not to cause complications for you or to tire you out.
25 It is to make it possible for us to understand what happened.

1 So we are going to start with certain extracts which
2 the Prosecutor presented to you. Before calling the first
3 extract, if we could have some clarification questions.

4 Witness, on Tuesday 24 August, in answer to the
5 question of the Prosecutor, you spoke about armed groups in
6 the UPC, PUSIC was another one, and the FNI. What is of interest
7 to us, obviously, is the FNI.

8 Witness, do you know when the FNI was created? Do
9 you know that?

10 A. No, I do not know the date of the creation of the
11 FNI.

12 Q. Do you know who created it?

13 A. No, I do not know the person who created the FNI.

14 Q. Do you know Mr Ndjabu Floribert?

15 A. Yes, I do know him.

16 Q. As far as you can remember, Mr Ndjabu Floribert,
17 was this person not present on the day of the ceremony of
18 4 April 2003, when Mr X had filmed -- that Mr X filmed?

19 A. In this conference room of the ICC, (expunged)
20 (expunged).

21 PRESIDING JUDGE COTTE: (Interpretation) It would
22 be useful to facilitate the reading of the transcript
23 subsequently if the mention of this first reference to the
24 ICC is the Commission of Pacification in Ituri, in fact, so
25 that there's no mistake, because "CPI" is also the

1 International Criminal Court acronym in French. So
2 afterwards we can use the word or the acronym "CPI", but the
3 first time in this transcript it would be good to say that
4 it's the Pacification in Ituri because otherwise it will be
5 mistaken for the ICC.

6 MR FOFÉ: (Interpretation) Indeed, we are talking
7 about the Commission for the Pacification of Ituri, the CPI,
8 in French in this case. I would also like to state and have
9 it noted that we have taken up the terminology "Mr X" which
10 was proposed by counsel O'Shea. This is something that we
11 all know.

12 Q. Witness, Mr X, was he not able to see Mr Ndjabu next
13 to the FNI sign on 4 April 2003? And Mr Ndjabu, was he seated
14 next to Mr Pitchu and Mr Logo that Mr -- who Mr X knew? Was
15 Mr X not able to note or see Mr Ndjabu there on that day next
16 to the FNI sign?

17 PRESIDING JUDGE COTTE: (Interpretation)
18 Prosecutor, I am guessing what you're going to say, and I
19 think I'm slightly responsible for the difficulty in which
20 we are in, because I didn't give the witness the chance to
21 answer the first question which was put by Professor Fofé.
22 I made an intervention with regards to the acronym "CPI",
23 and there was a first question which appeared on line 8, page
24 37, of the transcript, which was: "In this conference room
25 of the CPI, (expunged)

1 (expunged) " And you didn't have the
2 time to answer the question, so he has to answer the question.

3 Is that what you wanted, Prosecutor? Please go
4 ahead.

5 MS LUPING: No. The concern, Mr President, is
6 instead that perhaps -- this is a concern we've been expressing
7 from the start with the use of various acronyms. It's the
8 question -- it's the way the question is put, we believe,
9 is identifying. Our concern is that if these types of specific
10 questions, which in and of themselves are identifying, are
11 put that they are asked in private session, because we believe
12 that the use of an acronym is simply not sufficient when this
13 type of very direct question is being put.

14 PRESIDING JUDGE COTTE: (Interpretation) So for
15 the answer to this question, to avoid any difficulty, we're
16 going to go into closed session or, rather, private session.
17 If you have any questions that you would like to ask which
18 are also worth asking in private session in the short-term,
19 you can approach them now. If not, then we will go from open
20 to private session, as the needs be. But the important point
21 is to ensure that the protection obligations incumbent upon
22 us are met.

23 Court officer, could you take us into private session,
24 please.

25 (Private session at 3.28 p.m.)

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 A. (expunged). *However, I remember that one earlier
17 question I said that I had confused -- I'd mixed up the people
18 and now I remember that the person in question was indeed
19 Lobo. I can confirm that it was Lobo. It was him.

20 (expunged)

21 (expunged)

22 *A. As far as I'm concerned, it's difficult for me to
23 distinguish between the FNI and the other group. I know - I
24 just know - that they were higher-ranked officials; well,
25 the leaders of the other combatants.

1 (expunged)

2 (expunged)

3 (expunged)

4 (expunged)

5 (expunged)

6 (expunged)

7 (expunged)

8 (expunged)

9 (expunged)

10 (expunged)

11 (expunged)

12 (Open session at 3.32 p.m.)

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

15 PRESIDING JUDGE COTTE: (Interpretation) Thank
16 you, court officer. Professor Fofé, please proceed with your
17 cross-examination.

18 MR FOFÉ: (Interpretation) Thank you, your Honour.
19 With leave, could the court officer show the video, and this
20 is a public document, EVD-OTP-00133. This is extract number
21 6 from the OTP. This extract can be shown with sound, without
22 interpretation, as the Prosecutor did with stopping at a
23 particular image at the time -- at the time stamp 2.22, 2
24 minutes 22 seconds, and this is a public document.

25 PRESIDING JUDGE COTTE: (Interpretation) Now, do

1 all the screens work properly? I seem to have an image on
2 my own screen. Mr Ngudjolo, can you see? Very well.
3 Mr Katanga has nodded to indicate that he can see the image.
4 And so now all we have to do is continue with the showing
5 of this video and move to 2 minutes 22 seconds.

6 THE COURT OFFICER: Thank you, your Honour. I would
7 like to confirm with the participants that everyone is
8 following on the PC1 channel. Thank you.

9 (Video extract played)

10 MR FOFÉ: (Interpretation) Thank you very much,
11 Madam Court Officer.

12 Q. Witness, do you recognise this person, the person
13 in the middle of the image who is wearing glasses?

14 A. Yes, I recognise this person.

15 Q. Who is this person?

16 A. This is Mr Floribert Ndjabu. At one particular
17 point, I had mixed him up with Commander Lobo.

18 Q. Thank you, Witness.

19 MR FOFÉ: I beg your pardon, your Honour, I took
20 the liberty of remaining seated while I was showing that image.

21 PRESIDING JUDGE COTTE: (Interpretation) When we
22 have to resort to certain technological measures, and
23 obviously for reasons quite different than the differences
24 why Ms Luping remained seated, there is no problem with that.

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

1 Q. Witness, can you confirm that Mr Ndjabu and the
2 two other gentlemen are seated beside the sign that reads "FNI"?
3 Is that not so?

4 A. Yes, I confirm that they are seated on the same bench.

5 JUDGE DIARRA: (Interpretation) Thank you.

6 MR FOFÉ: (Interpretation).

7 Q. Thank you for that answer, because indeed they are
8 seated beside the same sign and if we continue with the video,
9 we will see the sign just beside them. Now, Witness, could
10 you tell us why Mathieu Ngudjolo - you say he is from the
11 FNI - was not seated beside these gentlemen, these
12 representatives of the FNI?

13 A. Professor Fofé, up until now I don't believe I said
14 that Mathieu Ngudjolo was a member of the FNI. I've said
15 earlier, however, that he was the leader or one of the leaders
16 of the Lendu fighters. I've said that.

17 Q. Thank you very much, Witness.

18 MR FOFÉ: With the leave of the Presiding Judge,
19 could the court officer now show EVD-OTP-00131. This is tab
20 2 in the Prosecution's binder, the entire video extract, which
21 lasts for 1 minute and 5 seconds. This extract --

22 (Video extract played)

23 Thank you very much, Madam Court Officer.

24 Q. Witness, in this particular video we saw the FNI
25 delegation. Well, in any event, we saw the sign with the FNI,

1 the FRPI, the PUSIC, the north Lendu group, the Hema group.
2 Could you confirm for us that in the hall there was also a
3 delegation from the south Lendu community?

4 A. Well, when I look at the image, I can't confirm that
5 there was a delegation from the south Lendu community. You
6 are reminding me of the events and you are showing me this
7 video footage. (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged), and I didn't have any information about
12 the south Lendu community being at that meeting.

13 PRESIDING JUDGE COTTE: (Interpretation) Very
14 well. We will continue, Professor Fofé, while ensuring that
15 we go into private session as necessary even though it does
16 make the proceedings a bit choppy. Ms Luping, I hope we don't
17 spend now too much time on this issue.

18 MS LUPING: Not at all, Mr President. It was
19 perhaps that it would be opportune also to give the necessary
20 reminders to the witness as to when we are in public session.

21 PRESIDING JUDGE COTTE: (Interpretation) Quite so.
22 I am just looking at the transcript. Yes, the witness just
23 responded. Professor Fofé, please go ahead and ask a question.
24 Witness, don't forget that we are in open session and if for
25 one reason or another the answer you'd like to give should

1 be given in private session please tell us so and the Chamber
2 will assess the situation.

3 Professor.

4 MR FOFÉ: (Interpretation) Thank you, your Honour.
5 Just one moment, if you don't mind. I would like to check
6 one particular item.

7 PRESIDING JUDGE COTTE: (Interpretation) Take
8 your time.

9 MR FOFÉ: (Interpretation) Thank you very much,
10 your Honour. We would like to ask the court officer to show
11 video - and this is a public exhibit - EVD-OTP-00136 and I
12 would like to stress that we are playing this extract without
13 sound as the Prosecution did earlier, thus without sound as
14 the Prosecution did earlier, and this is a public exhibit.

15 (Video extract played)

16 I beg your pardon, court officer, if you could just
17 halt the video for a moment. Thank you. I would like to give
18 you the following item of information: When you play this
19 video to save some time, if you could stop at the image at
20 the following time stamp: One hour 38 -- no, no, I beg your
21 pardon. One minute 38 seconds, 1 minute 38 seconds, if you
22 could stop at that point and then 3 minutes 20 seconds to
23 25 seconds, if you could stop there, and then 4 minutes 3
24 seconds to 17 seconds and then halt there, and then 4 minutes
25 48 seconds to 50 seconds and stop there and, finally, 5 minutes

1 8 seconds to 5 minutes 24 seconds and then stop there. Now,
2 I don't know whether the court officer was able to jot down
3 all those time stamps.

4 PRESIDING JUDGE COTTE: (Interpretation) I
5 believe that this is exhibit 17 in the binder, for those of
6 you who'd like to make reference to the binder.

7 (Video extract played)

8 MR FOFÉ: (Interpretation) Thank you.

9 Q. Witness, I think I can ask you my question at this
10 particular stage in the proceedings. Now, otherwise, we can
11 move on. Here is my question, Witness: Do you know this
12 person?

13 A. No.

14 Q. I put it to you that this person goes by the name
15 of Muchabu (phon) and he is from the APC; what would you say
16 to this assertion?

17 A. That does not have anything to do with me. I am
18 not obliged to know that that person is a member of the APC.

19 Q. Thank you. Thank you very much for your reply,
20 Witness.

21 Madam Court Officer, could we move on to 3 minutes
22 and 20 seconds and play the video up until 25 seconds.

23 (Video extract played)

24 MR FOFÉ: (Interpretation) Thank you, Court
25 Officer.

1 Q. Witness, do you know this person who is in the middle
2 of the screen here, wearing a white T-shirt and likely military
3 uniform carrying a weapon? Do you know this person?

4 A. No, I don't know this person.

5 Q. I would put it to you that this person goes by the
6 name of Pascal. He is from the APC and he is from the Équateur
7 province. What would you say in response to that?

8 PRESIDING JUDGE COTTE: (Interpretation) Madam
9 Luping, I see that you have risen. Ms Luping?

10 MS LUPING: Yes, Mr President. We let the previous
11 question go, but our concern with this question is that the
12 witness was asked a question whether he knew this person and
13 gave a very clear answer. It has been asked and answered.
14 The subsequent question we believe is calling for him to simply
15 speculate. If he's already said he does not know, he is being
16 asked to speculate as to the identity of this individual.

17 PRESIDING JUDGE COTTE: (Interpretation) Madam
18 Prosecutor, the witness himself has already told us twice
19 that between a previous hearing and another hearing he was
20 able to better identify people by reviewing footage. I think
21 that the question deserves to be put and the witness will
22 answer and then we will have our half-hour break.

23 Witness, please respond to the question as you did
24 a few moments ago. I'm not speaking of the content of the
25 question, but I am speaking of the manner in which we were

1 conducting our proceedings. Mr Fofé has made a suggestion
2 to you. Does this suggestion meet with your approval, or would
3 you give the same answer as previously? Please go ahead. We
4 are listening.

5 THE WITNESS: The Professor asked me if I knew this
6 person and I said that I didn't know him.

7 MR FOFÉ: (Interpretation)

8 Q. I suggested to you that this person - this
9 gentleman - goes by the name of Pascal and he is an APC soldier
10 from the province of Équateur. What would you say in response
11 to this statement?

12 A. Very well. That is a piece of information that you
13 have just given me and I have heard it and I thank you.

14 MR FOFÉ: (Interpretation) Thank you very much,
15 Witness. Your Honour, I believe this is the time for taking
16 our break.

17 PRESIDING JUDGE COTTE: (Interpretation) Yes, we
18 will suspend, take a 30-minute break and resume at 4.30.

19 Witness, please take advantage of the break to rest.
20 Court officer, if we could go into private session so that
21 the witness can quietly leave the courtroom accompanied by
22 the usher.

23 (Closed session at 3.58 p.m.)

24 (expunged)

25 (expunged)

1 (expunged)

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4 (expunged)

5 (expunged)

6 (expunged)

7 (Open session at 3.59 p.m.)

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

10 PRESIDING JUDGE COTTE: (Interpretation) We are in
11 open session. We now shall suspend the hearing and resume
12 at 4.30.

13 (Recess taken at 4.00 p.m.)

14 (Upon resuming at 4.31 p.m.)

15 (Closed session)

16 (expunged)

17 (expunged)

18 (expunged)

19 (expunged)

20 (expunged)

21 (expunged)

22 (expunged)

23 (expunged)

24 (Open session at 4.32 p.m.)

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

1 Honours.

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

4 Mr O'Shea?

5 MR O'SHEA: No difficulty with the presence of the
6 witness. I just wanted to take this opportunity to mention
7 that we've observed a technical problem with the internet
8 transmission of the proceedings. It is one of those rare
9 occasions when counsel is actually watching the proceedings
10 on the internet, and it would appear that the internet is
11 cutting off and a sign saying "No broadcast" periodically
12 and with no correlation with closed or open sessions.

13 So I bring that to the attention of the Registry,
14 and I do it in public because it's a matter of public interest.
15 These proceedings being -- are of course supposed to be public
16 and we have this wonderful technology which brings the
17 proceedings all around the world, but it doesn't seem to be
18 working very well. And for those who are not involved in the
19 proceedings they may think that when it says "No transmission"
20 or "No broadcast" it's because in fact we're in closed session,
21 but it would appear that that's not the case.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank
23 you, Mr O'Shea. It is indeed important.

24 Court officer, could you please notify the competent
25 authorities in the Registry about what Mr O'Shea has just

1 said and give them the relevant references, page 51, lines
2 1 to 22 of the French, and you could also suggest to them
3 to try to follow the proceedings on the internet so as to
4 familiarise themselves with the difficulties that might be
5 encountered.

6 Thank you. So it would be interesting perhaps not
7 to look at the next two hours of broadcast, but to try to
8 carry out a survey to see where the difficulties are and to
9 try to resolve them so that those following the proceedings
10 from afar should be able to do so.

11 Good afternoon once again, Mr Witness. Can you hear
12 me?

13 THE WITNESS: Yes.

14 PRESIDING JUDGE COTTE: (Interpretation) Very
15 well. Professor Fofé, please continue with your
16 cross-examination. We were in the middle of the presentation
17 of 0136. Please proceed.

18 MR FOFÉ: (Interpretation) Thank you very much,
19 your Honour.

20 Q. Good afternoon once again, Mr Witness.

21 A. Good afternoon.

22 MR FOFÉ: (Interpretation) Court officer, can we
23 continue with extract 17 and please stop at 04.13 seconds
24 to 17 seconds.

25 (Video extract played)

1 Thank you, court officer.

2 Q. Witness, please look at that image carefully. There
3 are two people and the person in front is wearing a pink T-shirt.
4 Now, look at the second person who is behind. Do you recognise
5 him?

6 A. Yes, I know that person.

7 Q. And I am referring to the second person; that is
8 the person wearing a uniform. What is the name of this person?

9 A. He is Mr Okalo.

10 Q. And do you know to which group this person belongs?

11 A. In this video extract he is amongst the Lendu
12 combatants but, as far as I know, he is a member of the PNC;
13 that is the National Congolese Police Force.

14 Q. Thank you very much, Mr Witness. He is indeed a
15 member of the Congolese National Police.

16 MR FOFÉ: (Interpretation) Court officer, can we
17 continue with the extract right up to time stamp 04.48 to
18 50?

19 (Video extract played)

20 Thank you, court officer.

21 Q. Witness, do you know this person wearing a white
22 cap?

23 A. No, I do not know that person.

24 Q. Let me put it to you that this person is called Thierry
25 and he's a member of the APC. What do you say to that?

1 A. I have duly noted this information.

2 MR FOFÉ: (Interpretation) Thank you, Witness.

3 Court officer, let us continue with the extract right
4 up to 5.08 to 5.24.

5 (Video extract played)

6 Can you go on to 5 minutes 24 so as to see the person
7 more closely? Very well, right there. Thank you.

8 Q. Mr Witness, you have already identified this person.
9 He is known as Gorille. His names are Masudi George. I believe
10 that is what you told us and you even pointed out that he
11 is a Mukusu from Mayema; is that correct?

12 MS LUPING: Mr President --

13 PRESIDING JUDGE COTTE: (Interpretation) Madam
14 Luping?

15 MS LUPING: -- just a point of clarification. It
16 was put to this witness that his names were Masudi George.
17 He has not confirmed that that was his name. His confirmation
18 was as to the name Gorille.

19 MR FOFÉ: (Interpretation) Your Honour, I would
20 like to refer the Prosecutor to transcript number 179 of the
21 hearing of Friday, 27 August 2010, pages 37 to 38. I believe
22 that the witness did indeed identify this person known as
23 Gorille. His name is Masudi. I believe he did not give the
24 first name, but he gave the name Masudi and he pointed out
25 that he is a Mukusu.

1 PRESIDING JUDGE COTTE: (Interpretation) Yes,
2 indeed, Professor Fofé. In the French transcript, line 13,
3 there was a question: "Do you know any other name for this
4 person?" Answer: "Yesterday I told the Prosecutor that I
5 knew his other name but that I have forgotten it. It is possible
6 that it is the name that you have mentioned here, Masudi,
7 but this name is not really well known. That is his surname.
8 He is only known as Gorille. Only people who are close to
9 him know this other name that you have mentioned."

10 So the transcript shows that the witness himself
11 did not identify that name, Masudi, but he simply agreed that
12 it might be possible that that is his name. It is also true
13 that the name George was not mentioned. I believe we have
14 now clarified things. He never had any hesitation regarding
15 the name Gorille, but he agreed with the name Masudi
16 conditionally. So maybe, Professor Fofé, you should rephrase
17 your question.

18 MR FOFÉ: (Interpretation) Thank you, your Honour.
19 We can, of course, limit ourselves to the name Gorille on
20 which we are all agreed.

21 Q. Witness, this person known as Gorille, are you aware
22 that he is a member of the APC?

23 A. In my capacity as a witness I am not aware of any
24 link between this person and the APC. I know this witness
25 in another capacity.

1 Q. Thank you, Witness. Are you aware that this person is
2 currently in a prison in Kinshasa because he was sentenced to death?

3 A. Yes, I have heard that Mr Gorille is in prison in
4 Kinshasa, but I do not know why he was imprisoned. I am not
5 aware that he was sentenced to death, but I know that he was
6 arrested and put in the Makala prison in Kinshasa.

7 Q. Thank you, Witness. One last thing: Are you aware
8 that this person Gorille had already become a member of the
9 FAC, which later became the FARDC, that is, the DRC national
10 army?

11 A. I do not have any such information. I do not know
12 whether Gorille continued being a member of the FARDC. I have
13 no idea.

14 Q. Thank you very much, Witness.

15 MR FOFÉ: (Interpretation) Court officer, please,
16 can we now view the public video, extract EVD-OTP-00137. It
17 is extract number 18 of the Prosecutor's videos. And we would
18 like to have this footage shown with sound and interpretation,
19 the entire extract. Thank you.

20 (Video extract played)

21 MR FOFÉ: (Interpretation) Court officer, can we
22 view that extract again, please.

23 (Video extract played)

24 THE INTERPRETER: Let us go back up. Let's go back
25 up.

1 MR FOFÉ: (Interpretation) Thank you very much.

2 Maybe we should stop there because I can still hear some sound.

3 Q. Witness, you did identify that person who can be
4 seen on that footage and who was giving the order. You
5 identified him as Commander Unega; would that be correct?

6 A. No. From the very beginning of my testimony I never
7 mentioned the name of Commander Unega and I have not identified
8 anyone as being Unega.

9 Q. Thank you. Very well. But in the extracts you did
10 hear the word "Unega." When you listened to the extract with
11 the sound you heard the word "Unega;" is that correct?

12 A. This is how I can answer you: If you followed closely,
13 there is someone speaking in Lingala, but what is being said
14 has nothing to do with what is being done. The person is talking
15 about having interviewed Unega, but the order being given
16 has nothing to do with what the camera was filming.

17 Q. Very well. Maybe we should show that brief extract
18 again. My question is as follows: While viewing that extract
19 did you hear the name Unega, Commander Unega?

20 A. Yes, I heard someone say, "We are going to interview
21 Unega," or rather, "You have just interviewed Unega," and
22 that person was speaking in French. However, the other speaker
23 shouted out an order to the troops which had nothing to do
24 with what the first speaker said.

25 Q. Are we to understand that since you do not know

1 Mr Unega, you are therefore not aware of his ethnicity?

2 A. You know, the various tribes have names that can
3 identify the bearer of a name as belonging to such-and-such
4 a tribe. But it is also possible for someone from one ethnic
5 group to get married to a person from a different ethnic group
6 and their child may be given a name belonging to a different
7 group altogether.

8 Q. Yes. Thank you for your explanation, Mr Witness.
9 But I'm putting it to you that this person is known as Commander
10 Unega and he is an Alur. What do you have to say to that?

11 A. I can confirm that the name Unega is a typical Alur
12 name.

13 Q. Thank you very much. And we are putting it to you
14 that this Commander Unega was an APC commander and that he
15 is currently a member of the FARDC, the Congolese government
16 army. What do you have to say to that?

17 A. This is information that you are giving me and I
18 thank you for it.

19 Q. Did you pay attention to the T-shirt worn by this
20 person; that is, Commander Unega? Did you look at it closely?

21 A. Yes.

22 Q. Do you know that this T-shirt was brought to Bunia
23 by the APC? This was the uniform of the APC. Are you aware
24 of that?

25 A. No.

1 Q. Thank you very much, Witness.

2 MR FOFÉ: (Interpretation) Your Honour, if I'm not
3 mistaken, this extract was shown by the Prosecutor without
4 sound. We have just viewed it with sound, so I believe it
5 would be appropriate to assign an EVD reference number to
6 the extract with sound.

7 PRESIDING JUDGE COTTE: (Interpretation) Very
8 well. Court officer, this is the manner in which we proceeded
9 during Mr O'Shea's cross-examination when there was a
10 difference between what he produced and what the Prosecutor
11 produced, so you can give it an EVD number with sound.

12 THE COURT OFFICER: Your Honour, therefore, extract
13 18 of DRC-OTP-1042-0006, played with sound, will receive
14 evidence number EVD-D03-00026 and is admitted as a public
15 exhibit.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank
17 you, court officer. It would seem to me that it's extract
18 18 and not 17. Yes, that's pointed out, that that is the case.
19 This is just for the transcript that I mention that. So it's
20 extract 18, which was just given the number that you have
21 just read, but we are still in DRC-OTP-1042-0006. Professor
22 Fofé, please continue.

23 MR FOFÉ: (Interpretation) Thank you, Your Honour.
24 Court officer, please could you show to us exhibit
25 video -- public video number EVD-1002 -- D02, rather, 00058.

1 EVD-D02-0058. This is the extract 21 of the Prosecutor with
2 sound, and we would like for that to be interpreted, for the
3 words of the song to be interpreted.

4 I'm sorry. Excuse me, court officer. We would like
5 a freeze to be made on the following picture, on the following
6 minutes: 0.39 seconds and 1 minute and 5 seconds. This is
7 a public exhibit.

8 (Video extract played)

9 MR FOFÉ: (Interpretation) Court officer, can we
10 continue to 1 minute and 5 seconds? I'm sorry.

11 Q. Witness, do you recognise these troops on the screen?

12 A. I do not know these soldiers. I see their backs.
13 However, I can recognise them by their uniform. These are
14 police; it's a police uniform.

15 Q. These are police of the Congolese National Police,
16 are they not?

17 A. Yes.

18 Q. Witness, do you know that on 3 May 2003, the date
19 which is indicating the day of these events, the events that
20 are filmed here, if I am correct, on 3 May 2003, General
21 Kinsempia, K-I-N-S-E-M-P-I-A, the Chief of Staff of the FAC,
22 was in Bunia leading FAC forces?

23 A. I do not have this information.

24 Q. Do you know that on the same day, 3 May 2003, Colonel
25 Lusembo - and I will spell it, L-U-S-E-M-B-O, Colonel

1 Lusembo - of the Rapid Intervention Police was also in Bunia
2 leading the National Congolese Police?

3 A. The only thing that I know is that it's Colonel
4 Luzembo (phon) and not Colonel Lusembo. He was based at the
5 airport, just at the airport.

6 Q. Thank you very much. Do you know that before this
7 date of 3 May 2003 the UPC had captured 12 FAC troops and
8 also members of the Rapid Intervention Police in Bunia?

9 A. I do not have any precisions with regards to the
10 date. I also did not receive information with regards to the
11 APC. The only information that I had was that police had been
12 stopped in Mudzipela. Others had been killed, and there was
13 a number of police who had been taken to the UPC -- the APC
14 positions.

15 THE INTERPRETER: I didn't hear the word "UPC."

16 MR FOFÉ: Thank you, Witness. Court officer, could
17 we now show the film up until 0 minutes 42 seconds? I think
18 we are there, so we're just going to 1 minute and 5 seconds.

19 (Video extract played)

20 THE INTERPRETER: Kabila does not want this
21 situation. This is an unhappy situation.

22 MR FOFÉ: (Interpretation)

23 Q. Witness, have you heard the words of this song?

24 A. Yes, a bit.

25 Q. What name of what authority is mentioned in this

1 song?

2 A. It is as if I heard the name of our president of
3 the Republic of Congo.

4 Q. You can give this name, Witness, for the transcript.

5 A. I didn't hear it well, but I said it was as if it
6 seemed they were speaking about Kabila, but I didn't hear
7 the name. I didn't hear the name well.

8 Q. Thank you very much, Witness.

9 Your Honour, we would like an EVD number to be given
10 to this extract with interpretation of the words of the song.

11 PRESIDING JUDGE COTTE: (Interpretation) It has
12 been indicated to me, Professor Fofé, that we already have
13 an EVD number or that this EVD number already includes the
14 sound. It's not just an EVD number for the visual presentation
15 thereof, so perhaps we can just use this existing EVD number.

16 MR FOFÉ: (Interpretation) Certainly, your Honour.
17 Thank you.

18 PRESIDING JUDGE COTTE: (Interpretation) Please
19 continue.

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

22 Court officer, please could you now show video public
23 exhibit EVD-OTP-0039. This is extract 22 of the Prosecutor
24 without sound, with -- or stopping -- stopping on the picture
25 0.29 seconds to 0.34 seconds. So 0.29 seconds to 0.34 seconds.

1 This is a public exhibit.

2 (Video extract played)

3 Thank you very much.

4 Q. Witness, do you know this person who is on the right,
5 the slimmest person on the right-hand side? The tallest person,
6 do you know this person?

7 A. No, I do not know this person. I cannot identify
8 the person. This image is blurred.

9 MR FOFÉ: (Interpretation) Can we go to 34 seconds?
10 Can we try it? Thank you.

11 Q. This person on the right, the tallest person, I think
12 we can see this person better; do you know this person?

13 A. No.

14 Q. I put it to you that this is Commander Alpha from
15 the APC and he is of the Alur ethnic group, Commander Alpha
16 of the APC of the Alur ethnic group. What do you have to say
17 to that?

18 A. I have nothing to say. You're the one who knows
19 the person.

20 Q. Thank you very much, Witness. It's true that you
21 cannot know all these people. Thank you very much. Witness,
22 we are now going to go to other extracts.

23 MR FOFÉ: (Interpretation) Court officer, I would
24 point out that all our extracts are public. They will be viewed
25 with sound and interpretation. We ask our dear interpreters

1 to do the most that they can. We know that these extracts
2 are difficult to hear, but we ask them to try. Obviously,
3 what can't be interpreted can't be, but what can be, we would
4 ask them to do that and we do so with our thanks. We are going
5 to start with the extracts of video DRC-OTP-0127-0058.

6 Q. In order, Witness, to make it possible for you to
7 understand what it is about, I shall read paragraph 130131
8 to 146. So 13013946 of DRC-OTP-0151-0153, which -- or
9 0 -- 0151-01583, which is from your statement given to the
10 Prosecutor in April 2006.

11 Your Honour, could we go into private session for
12 some minutes, please?

13 PRESIDING JUDGE COTTE: (Interpretation) Court
14 officer, please, could you take us into closed session for
15 some minutes.

16 THE INTERPRETER: Private session, the interpreter
17 corrects.

18 (Private session at 5.19 p.m.)

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Page 62 expunged – Private session

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10 (Open session at 5.33 p.m.)

11 THE COURT OFFICER: My apologies for interrupting
12 you. Counsel, we are in open session.

13 MR FOFÉ: (Interpretation) Your Honour, I just
14 wanted to provide some directives to the witness.

15 PRESIDING JUDGE COTTE: (Interpretation) We'll go
16 into private session. Court officer, we're very sorry.
17 We'll go back into private session and then very quickly we
18 will revert to open session.

19 (Private session at 5.33 p.m.)

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17 (Open session at 5.41 p.m.)

18 THE COURT OFFICER: Thank you, your Honour. We are
19 in open session.

20 PRESIDING JUDGE COTTE: (Interpretation) If the
21 Ngudjolo Defence team could continue.

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

23 Q. We shall continue reading paragraph 141, which you
24 have before you, and you can follow along as I read out this
25 paragraph. And I quote -- yes, so far so good. I'm quoting

1 from your statement:

2 "With Thomas Lubanga left Dhetchuvi John Tinanzabo
3 and his private secretary Ngiyika (phon). They left with
4 Lubanga, as well as two bodyguards of Thomas Lubanga, Mike
5 Harerenge, a Ugandan journalist, Mr X and a number of Ugandan
6 soldiers. Mike Harerenge had worked for the UPC as an
7 announcer on Radio Candip, because he spoke Swahili very well.
8 He was also very familiar with the operations of the Thuraya
9 satellite telephones, which he had explained to the UPC members
10 when they took them."

11 Paragraph 142, and I quote from your statement -- one
12 moment, please, your Honour. Your Honour, for paragraph 142
13 I believe we can go into closed session.

14 PRESIDING JUDGE COTTE: (Interpretation) Court
15 officer, if we could.

16 (Private session at 5.44 p.m.)

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Page 73 expunged – Private session

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4 (Open session at 5.52 p.m.)

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

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

9 Professor Fofé, if you could ask your questions based
10 on the reading out of a number of excerpts from the witness's
11 statement, please proceed.

12 MR FOFÉ: (Interpretation) Thank you. I am
13 looking at the amount of time that we have remaining, and
14 we will view with sound and with the image the extracts from
15 video DRC-OTP-0127-0058. And to save some time we will view
16 one extract after another all in one go, the seven -- the
17 first seven extracts that we have chosen. These are the
18 following extracts: Number 1, DRC-D03-001-0382. Then we
19 have number 2, DRC-D03-001-383. Extract number 3,
20 DRC-D001-001038, DRC-D01-001-0385. Number 5, DRC-386.
21 Extract number 6, DRC-D01-0001-387. And extract number 7,
22 DRC-D03-0001, and that is 0388, 29 minutes. So if we could
23 view these extracts all in one go. Thank you, Madam Court
24 Officer.

25 PRESIDING JUDGE COTTE: (Interpretation) So we

1 will be viewing 29 minutes?

2 MR FOFÉ: (Interpretation) Yes.

3 PRESIDING JUDGE COTTE: (Interpretation)

4 Afterwards you'll have to explain exactly what objective you
5 are pursuing with these -- after reading out these paragraphs.

6 I'm not entirely saying that you're creating some suspense,
7 but we are somewhat wondering the objective you are pursuing.
8 Now, once we have viewed these 29 minutes relating to the
9 remarks that you've just made --

10 MR FOFÉ: (Interpretation) Yes, your Honour, with
11 sound and interpretation, please.

12 (Video extract played)

13 THE INTERPRETER: (Inaudible). The Swahili
14 interpreter reports that two people are speaking at the same
15 time and the two are speaking Swahili, and there's quite a
16 bit of background noise as well and, thus, the Swahili booth
17 is not able to provide interpretation.

18 MR FOFÉ: (Interpretation) Madam Court Officer, if
19 we could just suspend for a moment.

20 (Video extract played)

21 PRESIDING JUDGE COTTE: (Interpretation)

22 Professor Fofé, would you like us to halt the video for a
23 moment?

24 Court officer, if we could halt the video. We still
25 have sound. The sound is -- the audio is still continuing,

1 and now we no longer have sound nor image, which is what
2 Professor Fofé wanted.

3 Professor Fofé.

4 MR FOFÉ: (Interpretation) This is a technical
5 complication, Madam Court Officer. Now, to allow our
6 interpreters to attempt, as much as possible, to interpret,
7 perhaps we could start, listen to one extract, halt for a
8 moment. The interpreter would attempt to interpret what he's
9 understood, as much as possible, and then we would move on
10 to the following extract with breaks at the end of each extract
11 so the interpreter could try to render what he has heard,
12 as much as is possible.

13 PRESIDING JUDGE COTTE: (Interpretation) What
14 sort of time did you have in mind, a certain number of seconds?

15 MR FOFÉ: (Interpretation) Yes. The court
16 officer has the extracts, is that not so, with the time stamps?

17 PRESIDING JUDGE COTTE: (Interpretation) We will
18 view the first extract and we will try our very best, and
19 if interpretation is too incomplete, we will have to just
20 do with the image, as we did for a number of earlier video
21 extracts from the Prosecution, but we will make the attempt.

22 Madam Court Officer, if we could rewind.

23 We should show the first extract.

24 (Video extract played)

25 Professor Fofé, when do you want the video to be

1 stopped? There seems to be a misunderstanding. Maybe you
2 should indicate when you want to have the video stopped.

3 (Video extract played)

4 Court officer, We are going to stop the video now,
5 both the audio and the video, and I will like to ask the
6 interpreters a question now:

7 Is it possible for you to give an interpretation
8 of what you have just seen or heard, or is the background
9 noise so strong that you cannot make an effort to interpret?
10 Interpreters, please give us an answer so that we should not
11 continue pointlessly, because I can see from the transcript
12 that there is no interpretation so far. Is that the case?

13 THE INTERPRETER: From the Swahili booth, yes, your
14 Honour, the quality of the sound and the number of speakers,
15 together with the background noise does not make it possible
16 to provide interpretation.

17 PRESIDING JUDGE COTTE: (Interpretation)
18 Professor Fofé, I am sorry, but so far during the past videos
19 we had received some interpretation from the Swahili, but
20 in this case it is obvious that there is a difficulty. Can
21 you comment on that?

22 MR FOFÉ: (Interpretation) Yes, Your Honour, we
23 realise that there are two extracts that are not clear. What
24 we are asking the court officer to do is to show the extracts
25 as we provided them; that is, extract number 1 and then we

1 stop.

2 If the extract is not audible, then the interpreters
3 should not interpret - we do not have any problem with
4 that - but there are extracts that are quite audible and those
5 should be interpreted. So we should not stop; we simply show
6 one extract after another, and we stop at the end of one extract,
7 the interpreters can tell us whether it's possible to interpret
8 or not.

9 PRESIDING JUDGE COTTE: (Interpretation) Very
10 well. Now, court officer, if you have in your possession the
11 various extracts as provided to you, then you should show
12 them one after the other.

13 And interpreters, if you're unable to interpret,
14 do not interpret, but if there is a segment that is audible
15 enough for you to interpret, then go ahead, and that is the
16 procedure that we will follow.

17 Court officer, let us begin with the first extract.
18 If it turns out that all the extracts are complicated, then
19 we'll ask Professor Fofé to make a new solution -- or, rather,
20 a new selection.

21 (Video extract played)

22 "(Inaudible) this President of Democratic Republic
23 of Congo Thomas Lubanga. He's right there; he's on black suits.
24 Then on the other side is the Minister in charge of Pacification
25 of Ituri here in Kampala, Commander Justin. Just straightaway,

1 you can question in English. I will interpret in Swahili.
2 For those who can afford to speak Swahili, you're most welcome.
3 So, questions straightaway, and ask only one question.

4 THE INTERPRETER: If the UPDF were to leave this
5 area - that is, the area that you control - will that solve
6 the problem? If that is the case, how are you going to find
7 a solution to this disorder?

8 The rest is inaudible.

9 (Video extract played)

10 THE INTERPRETER: It is true, when the UPDF officers
11 came to Ituri, to Bunia, the population agreed that the UPDF
12 troops should leave the area. The population thought that
13 it was more important for the UPDF to stay in the area because
14 the UPC soldiers could very well provide security in Ituri.

15 "It's true, but UPDF soldiers are in Bunia only
16 controlling --"

17 The population decided that the UPDF soldiers should
18 leave.

19 "UPC thought it twice for them to pull out."

20 Regarding whether there are enemies of Uganda in
21 the area that we control, I believe that is not true.

22 "That's not true (inaudible) UPC."

23 There is no enemy of Uganda in that area. Even when
24 we spoke with President Museveni, we agreed on one point:
25 If there are problems, if there are enemies of Uganda in our

1 area, we can hand them over to the Ugandan Intelligence
2 Services --

3 " -- so that they can get to know what is taking
4 place there."

5 (Inaudible)

6 "Second question."

7 Those were my answers.

8 MR FOFÉ: (Interpretation) Thank you, Your Honour.
9 We are quite satisfied. And we have this excerpt that we would
10 wish to tender into evidence so we can move on to the second
11 extract.

12 (Video extract played)

13 "When we -- when we used to have organisation of
14 African Unity, which is now African Union, their role has
15 been to try to mediating the problems of Africa. What has
16 been the role of African Union in the problems of Congo now?"

17 THE INTERPRETER: What is the Organisation of
18 African Union doing to put an end to the conflict in Congo?

19 Answer: Right now we have the United Nations, which
20 is trying to find a solution to the Congolese problem through
21 dialogue amongst the Congolese. For the time being, the
22 African Union has not yet become involved in this process.
23 It is the United Nations that is working.

24 (Video extract played)

25 "The UN is trying to assist, and that's why the

1 inter -- inter-Congolese dialogue. And at the same time, UN
2 is trying its level best to assist the Congolese through that
3 inter -- inter-Congolese dialogue."

4 THE INTERPRETER: And if that organisation can
5 provide any assistance, this can be seen through the -- what
6 the President of South Africa is doing.

7 MR FOFÉ: (Interpretation) Your Honour, I am
8 looking at the time. I think we have enough time to show the
9 third extract.

10 (Video extract played)

11 "I understand according to today's press quotes,
12 the UPDF is supposed to pull out of Congo by early next month.
13 I want to know, since the withdrawal started sometime back,
14 does he have a rough estimate of how many troops are still
15 in Congo of UPDF?"

16 THE INTERPRETER: His question is as follows: He
17 heard that the Ugandan soldiers had to leave Congo. How many
18 soldiers are going to stay in Congo?

19 Answer: I'm just coming back from a meeting. In
20 Dar es-Salaam yesterday, the Ugandan President Museveni
21 stated that the Ugandan troops in Congo are (inaudible).

22 "When they met in the (inaudible) yesterday. He
23 said, he confirmed that there are 2000 soldiers remaining
24 in the Congo. Yes, I just wanted a clarification on the UPC's
25 position on the UPD. (Inaudible) and what was the (inaudible)

1 what agreement did they reach with the president this afternoon?

2 What's the position? (Inaudible)."

3 THE INTERPRETER: The question is as follows: Do

4 you want the Ugandan troops to leave the area under your control?

5 Answer: If the Ugandan army stayed in our area, it was for
6 specific reasons. We have realised that the situation is
7 improving. We are entering the process for the pacification
8 of Ituri, and that process is intended to restore peace in
9 the area and then, in that case, it will not be possible to
10 justify the presence of Ugandan troops.

11 "The forces of the UPD will not be required at the
12 moment. That's what he said. So --"

13 MR FOFÉ: (Interpretation) Thank you very much,
14 court officer.

15 Your Honour, can we briefly go into private session,
16 please?

17 PRESIDING JUDGE COTTE: (Interpretation) Court
18 officer, let us go into private session, please.

19 (Private session at 6.16 p.m.)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Open session at 6.17 p.m.)

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

8 PRESIDING JUDGE COTTE: (Interpretation) Thank
9 you. Professor Fofé, you can now continue with your questions.

10 MR FOFÉ: (Interpretation) Your Honour, I have no
11 further questions for the witness on these extracts. I would
12 like to ask for EVD numbers to be assigned to these first
13 three extracts that we have just seen.

14 PRESIDING JUDGE COTTE: (Interpretation)
15 Ms Luping, please.

16 MS LUPING: Mr President, it's just a question of
17 procedure. The usual questions that we would expect before
18 a EVD number is assigned, such as: Where is this footage filmed?
19 When? These are the types of questions we would assume would
20 be asked before EVD numbers are assigned.

21 PRESIDING JUDGE COTTE: (Interpretation) Yes,
22 indeed. Professor Fofé, the Court is a bit surprised because
23 a short while ago you read out extracts from the witness's
24 statement, and then you asked for video extracts to be shown
25 which corresponded to the excerpts that you read out, and

1 you asked for the interpreters to make an effort, and they
2 did, but so far we really have not seen where you are going.
3 And personally, I would have thought that questions would
4 be put to our witness as indicated by the Prosecution, and
5 we also have questions about the objective of reading out
6 those excerpts and showing these video extracts. I do not
7 know whether you were going to explain to us later, but you
8 have to comment before we give EVD numbers.

9 MR FOFÉ: (Interpretation) Thank you very much,
10 your Honour. I believe that the Court will understand the
11 link between these various extracts and the paragraphs of
12 the written statement of the witness after we would have shown
13 the first seven extracts. And now, in reaction to the comment
14 made by the Prosecutor, we can ask the witness questions about
15 the date and other details related to this footage. We thought
16 we were shortening our questionnaire. But if required, we
17 can ask the type of questions that the Prosecutor wants us
18 to ask. Maybe regarding EVD numbers we can wait 'til tomorrow.

19 PRESIDING JUDGE COTTE: (Interpretation) Yes,
20 indeed, we will have to wait for all the extracts to be shown.
21 I believe you know what you are doing, but I believe we need
22 to have everything that you wish us to know shown to us.

23 Mr Witness, you want to ask me a question? Well,
24 we are in open session, so please bear that in mind. We have
25 a few minutes left so you can ask your question.

1 THE WITNESS: It is not really a question; it is just
2 a concern. For health reasons, I simply wanted to ask for leave
3 to leave the courtroom just for five minutes.

4 PRESIDING JUDGE COTTE: (Interpretation)
5 Mr Witness, in any case, we are going to adjourn right now,
6 so we will comply with your request immediately. We will meet
7 again tomorrow morning at 9 a.m. Professor Fofé will ask
8 certain questions as suggested by Ms Luping, and then there
9 will be other video extracts shown. But just for our
10 information, Professor Fofé, can you give us an indication
11 of how much time you will require to conclude your
12 cross-examination? The entire day of tomorrow, or more?

13 MR FOFÉ: (Interpretation) Your Honour, I think we
14 will need the entire hearing of tomorrow, and even more.

15 PRESIDING JUDGE COTTE: (Interpretation) It is
16 important to know that the cross-examination will spill over
17 to Wednesday morning, but not beyond.

18 MR FOFÉ: (Interpretation) We hope to end, or to
19 conclude, on Wednesday morning.

20 PRESIDING JUDGE COTTE: (Interpretation) Yes,
21 with the understanding that the Prosecutor will have time
22 to make her re-examination.

23 Court officer, can we go into closed session, to
24 allow the witness to leave the courtroom.

25 (Closed session at 6.24 p.m.)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Open session at 6.25 p.m.)

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

12 PRESIDING JUDGE COTTE: (Interpretation) Thank
13 you, court officer. We would like to thank all our support
14 staff. Court is adjourned. We will reconvene tomorrow
15 morning at 9 a.m.

16 (The hearing ends at 6.25 p.m.)

17 RECLASSIFICATION REPORT

18 *Pursuant to Trial Chamber II's email instructions dated 10
19 July 2012, the excerpts of the transcript Page 38 lines 16
20 to 19 and lines 22 to 25 are reclassified as public, as ordered
21 by the Chamber.

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