

Witness: Witness DRC-D01-WWWW-0019 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

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1 International Criminal Court
2 Trial Chamber I - Courtroom I
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and
4 Judge René Blattmann
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
6 In the case of the Prosecutor versus Thomas Lubanga Dyilo
7 Trial hearing
8 Friday, 1 April 2011
9 The hearing starts at 9.32 a.m.
10 (Open session)
11 (The witness entered court)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session. Please be seated.
14 PRESIDING JUDGE FULFORD: Good morning.
15 Mr. Biju-Duval, I understand that when you said you'd finished,
16 you hadn't quite finished.
17 MR. BIJU-DUVAL: (Interpretation) Your Honour, I think it would
18 be useful to clear up a possible misunderstanding that might be the cause
19 of confusion in the future.
20 PRESIDING JUDGE FULFORD: Please do.
21 WITNESS: WITNESS DRC-D01-WWWW-0019 (Resumed)
22 (Witness answered through interpreter)
23 Questioned by Mr. Biju-Duval: (Continued)
24 Q. (Interpretation) Good day, sir.
25 A. Good day.

1 Q. Yesterday, you spoke about a person whose name was Lokana, who
2 had brought fuel to you when you were in Dhego.

3 A. Yes.

4 Q. Could you tell us the exact identity of this person. What are
5 his other names, if you know them?

6 A. Well, in fact, Lokana -- well, I only know that name for this
7 person, but he worked sufficiently -- for a sufficiently long time as
8 someone in charge of missions at the UPC/RP Presidency. He was in charge
9 of missions, chargé de mission.

10 Q. Another question: As far as you know, is he alive today or not?

11 A. He is deceased. Lokana died on the 21st of September or during
12 the period from the 21st of September, 2003 -- or, rather, on that date,
13 under certain circumstances, because on the 21st of September, that was
14 the day of the International Day of Peace in Bunia in the Ambia
15 neighbourhood, a member of * FNI "acquis à la paix", and the FPLC
16 were all together, and they organised a sort of caravan in this region
17 for the purpose of peace. Unfortunately, in the FNI group, those who
18 were against peace arrested him. He was on a motorbike, and they
19 arrested him, and we never saw him again.

20 Q. Thank you.

21 MR. BIJU-DUVAL: (Interpretation) That was the clarification I
22 was seeking, your Honour.

23 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.

24 Mr. Omofade.

25 MR. OMOFADE: Mr. President, a number of preliminary matters, if

1 I may, the first being that although I start the questions to this
2 witness, it may well be that either of my colleagues might also intend to
3 pose some questions after myself. I just thought I ought to put
4 your Honours on notice of that.

5 PRESIDING JUDGE FULFORD: No objection to the load being shared,
6 Mr. Omofade. Of course, that isn't a licence for repetition, but if you
7 want to divide up the areas, you, of course, may do so, but we don't want
8 one cross-examination followed by another which basically treads the same
9 territory.

10 MR. OMOFADE: Your Honour, that is something we've borne in mind.

11 The second issue that I raise --

12 PRESIDING JUDGE FULFORD: Yes.

13 MR. OMOFADE: -- your Honour, is the witness did touch upon a
14 number of areas, and I believe your Honour also pointed that out
15 yesterday, a number of areas that were not covered in the summary that
16 the witness -- that the Defence presented to us. I raise this only at
17 this time in -- in -- with the possibility that there might be a need to
18 require some more time to deliberate on the issues that have been raised,
19 in which case we'll probably go into Monday, but I don't see this going
20 beyond Monday, as I said previously.

21 PRESIDING JUDGE FULFORD: Entirely understood, Mr. Omofade.
22 You've had to digest a considerable amount of material in a very short
23 period of time. If you reach a point today when for good reasons you
24 need further time for reflection, raise the matter with us and I'm sure
25 we'll listen to what you have to say sympathetically.

1 MR. OMOFADE: Your Honour, the last issue that I raise is there
2 are a number of binders circulating the court. I don't know if one's
3 been placed in front of the witness. If it hasn't been, it might be an
4 idea to have that done now.

5 PRESIDING JUDGE FULFORD: I think we're about to receive them.

6 MR. OMOFADE: And I --

7 PRESIDING JUDGE FULFORD: At the moment, Mr. Omofade, we have, I
8 think, yesterday's binder, but we don't have any new binders.

9 MR. OMOFADE: There should be a Prosecution binder circulating,
10 and I -- if it hasn't circulated to your Honours, I can ensure that
11 that's --

12 PRESIDING JUDGE FULFORD: Can somebody in the Prosecution team
13 work out where the Judges' copies of the Prosecution binders have gone?

14 Could you help Mr. Sachdeva, please.

15 Have you received this, Mr. Biju-Duval? No.

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

17 PRESIDING JUDGE FULFORD: Right, Mr. Omofade. I think we're all
18 there.

19 MR. OMOFADE: Your Honour --

20 PRESIDING JUDGE FULFORD: The witness has got one.

21 Mr. Biju-Duval has got one. We've got one.

22 MR. OMOFADE: Your Honour, the final thing that I ask is that a
23 copy of the Defence binder also be placed in front of the witness if that
24 hasn't been done. It might save time later on.

25 PRESIDING JUDGE FULFORD: Sure. Does the witness have a copy of

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1 the Defence binder? Good. And, Usher, just when we begin, can you, as
2 it were, make sure that the witness for the first few questions is
3 looking at the right binder. But you needn't stay there permanently, but
4 if you could move backwards and forwards as and when necessary.

5 Anything else, Mr. Omofade?

6 MR. OMOFADE: Nothing else, your Honour.

7 PRESIDING JUDGE FULFORD: Good. Please start.

8 Questioned by Mr. Omofade:

9 Q. Good morning, Mr. Witness. We've met, albeit briefly --

10 A. Good day.

11 Q. My name's Adebowale Omofade. I'll be asking you some questions
12 this morning on behalf of the Prosecution.

13 Now, in the course of your testimony over the last two days,
14 you've been rather keen to distance the UPC, at least in the period of
15 2000/2001, from having any military objectives and having solely a
16 political objective. Why is that?

17 A. Yes. UPC, when it was created on the 15th of September, 2000,
18 had a purely political shape. At that point in time, it couldn't assume
19 a military character or have any military objectives given that it would
20 have been identified with an insurrection of enterprise. As soon as it
21 had established powers, that of the S -- RCD Kisangani under the
22 leadership of Professor Wamba dia Wamba. The UPC throughout that period
23 of time, up until 2002, until the end of August 2002, remained a movement
24 of a purely political kind, and thus it avoided creating a climate of
25 military opposition in respect of the powers that be, established power

1 structure.

2 Q. But even on your accounts, the motivating factor for setting up
3 the UPC was because of the massacres, as you put them, that were taking
4 place in Ituri at the time sponsored by the RCD/KIS. That's the case,
5 isn't it?

6 A. No. In fact, I didn't say that the UPC when it was created was
7 created because of massacres. The UPC as a political party was
8 established in order to denounce, to reveal the mismanagement that was
9 characteristic of the RCD Kisangani. It was there to show the incapacity
10 of the RCD Kisangani led by Wamba Dia Bani -- Wamba Dia Wamba. They
11 wanted to demonstrate this incapacity in order to resolve problems of
12 security and economic and social problems as well.

13 MR. OMOFADE: Your Honour, the only reason I hesitate is I
14 haven't been receiving any translation at all from my equipment. I don't
15 know what the matter is.

16 PRESIDING JUDGE FULFORD: I think it must be a problem with your
17 particular unit, Mr. Omofade, because I think everyone else - I look
18 quickly around the court - has been receiving it. Are you unplugged?

19 MR. OMOFADE: And I believe I've solved the problem, your Honour.

20 PRESIDING JUDGE FULFORD: Good. Well, I think you can see the
21 transcript on the screen front of you.

22 MR. OMOFADE: And that is how I managed just now. I'm good.

23 PRESIDING JUDGE FULFORD: Good. Well, take a moment to catch up
24 if you need.

25 MR. OMOFADE:

1 Q. Well, you did tell us, though, yesterday that as a result of the
2 unrest and the massacres that were taking place in Ituri at that time,
3 the idea was formulated to set up a movement that would counteract the
4 only movement that was predominant in Ituri at the time. That's true,
5 isn't it?

6 A. Could you please be a little more explicit, or could you
7 elaborate on that question?

8 Q. It's quite clear, Mr. Witness. The reason that the UPC was set
9 up in 2000 was because of the massacres that were going on in Ituri that
10 were being sponsored by the RCD-KIS. That's what you said?

11 A. In fact, I believe we should pay attention to the period of time
12 concerned. We're dealing with the year 2000. RCD Kisangani, led by
13 Professor Wamba dia Wamba, arrived at a time that Ituri was already in
14 flames. These murderous attacks were recorded in most parts if not in
15 all parts of the territory of Djugu and also in parts of the territory of
16 Irumu. The RCD that left Kisangani for Bunia, it was at the end of 1999,
17 they established themselves. They promised to resolve this security
18 problem. * They promised to do the contrary of what the AFDL had done, to
19 raise the living standard for the population. They promised to resolve
20 the economic and other problems in the region.

21 At the end of a certain period of time, intellectuals or some
22 intellectuals noticed that this wasn't happening and they said that they
23 had to react, and to react it was necessary to establish a political
24 movement, an opposition political movement in order to emphasise what was
25 not functioning in the country, and that's the reason for which they

1 gathered. They were former students of the Kisangani university, and
2 they were militants within the UDPS, because with the FDL, the promise of
3 democratisation had been broken. So perhaps there were persons who were
4 nostalgic and they assembled. They said, "No. We won't accept this.
5 Let's do something. Let's denounce what is not functioning, and perhaps
6 those who have power might resolve the problems," and that is the context
7 in which the UPC was born.

8 Q. Okay. What you say now -- what you said yesterday, and I'm
9 reading from your transcript, page 25, and I'm reading from line 12. In
10 response to a question from Mr. Biju-Duval, you said:

11 "To my mind, the UPC was established for the following reasons.
12 It was established because of the context in which the Ituri District was
13 going through at that period of time. If -- well, with your Honours'
14 leave, I could now specify what that context involved. It was the year
15 2000. Ituri was managed by a rebel movement dubbed the RCD-KIS which
16 meant the Congolese Assembly for Democracy and coming out of Kisangani
17 and it was chaired by Mr. Wamba Dia Wamba. In these circumstances, Ituri
18 was ravaged by deadly incursions. So there was a security issue in
19 Ituri. The rebel movement was taken out of Kisangani, went to Bunia and
20 its programme was the following: To establish order and security," and
21 you go on.

22 But you do agree that you said yesterday that what sponsored the
23 setting up of the UPC was the unrest that were caused by the RCD-KIS.

24 A. In fact, I can't find my bearings in that summary. I don't
25 recognise that, because given the tragic events that took place in

1 Ituri -- well, I never mentioned the RCD Kisangani as a subject. I
2 talked about RCD Kisangani, the movement of liberalisation of
3 Mbusa Nyamwisi. This was in the course of 2002, and subsequently the UPC
4 changed its political status and had a political and military status at
5 later date. That was in September 2002.

6 Q. If you -- as -- as a movement, to have any effect on a rebel
7 movement that was pursuing an agenda of violence, you would need violent
8 or at least equally aggressive means to counteract them, wouldn't you?

9 A. Once again, perhaps I haven't been clear enough. I'd like to go
10 back to something I said. RCD Kisangani led by Professor Wamba dia
11 Wamba, I'm not saying that it's that RCD that committed acts of violence
12 against the population, no. There's a difference we have to make, a
13 distinction we have to make. RCD Kisangani led by Wamba Dia Wamba
14 demonstrated an incapacity to resolve the security issue. That doesn't
15 mean that the RCD Kisangani committed acts of violence. I said that it
16 was the RCD Kisangani ML, liberation movement, led by Mbusa Nyamwisi. I
17 said that this was the political and military movement that was an agent
18 in Ituri and committed acts of murder. There is a distinction to be
19 made, so it is necessary to restructure the question, to put it in a
20 different framework. That would be a good thing.

21 Q. Okay we'll move on. What role did you play in the setting up of
22 the UPC?

23 A. As I said, I was amongst those who drafted the basic texts, the
24 statutes, the social projects. I was one of those who drafted those
25 documents. That is the role that I played at the time.

1 Q. And can you help us, Mr. Witness. Which statutes precisely did
2 you participate in drafting?

3 A. There was the first statute, the original statute, the very first
4 one in the year 2000, which supported the birth of the UPC on the
5 15th of September, 2000, and there were other statutes that were
6 subsequently compiled when the UPC was to become a political party again.
7 In 2004 we assumed the form of a political party in that year.

8 Q. Why aren't you -- or why is your signature not appended to the
9 first statute then?

10 A. My signature couldn't be appended to the first statute because I
11 was a civil servant and a civil servant has to be apolitical. That's how
12 things work in our country.

13 Q. When -- you were engaging in political activities overtly while
14 you were a civil servant, weren't you?

15 A. Yes.

16 Q. In fact, the -- the documents that you were shown by
17 Mr. Biju-Duval yesterday, which was the protocol agreement, you appended
18 your name to that without any difficulty, didn't you? It's in tab 1 of
19 the Defence binder.

20 A. Yes. Please go ahead.

21 PRESIDING JUDGE FULFORD: Sorry to interrupt, Mr. Omofade. Can
22 you follow the excellent lead of Mr. Biju-Duval yesterday that whenever
23 we refer to a document, you read its number so that the stenographers and
24 interpreters can get it up on their screens.

25 MR. OMOFADE: Indeed, your Honour, I will. I hadn't actually

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1 referred the witness to the binder before he started looking for it. I
2 did propose to do so in any event.

3 PRESIDING JUDGE FULFORD: (* Microphone not activated)

4 MR. OMOFADE: And just for the sake of the record, this is the
5 document contained in tab 1 of the Defence binder, ERN number
6 DRC-OTP-0107-0013. I believe an EVD number might have been assigned to
7 it yesterday. Unfortunately, I don't have it to hand.

8 PRESIDING JUDGE FULFORD: Can you remind us of the EVD number,
9 please.

10 COURT OFFICER: Your Honour, the document was assigned
11 EVD-D01-01088. Thank you, your Honours.

12 PRESIDING JUDGE FULFORD: Thank you.

13 MR. OMOFADE:

14 Q. Mr. Witness, do you have the documents open in front of you?

15 A. Yes.

16 Q. And if we look at the final, the last page, you're listed as one
17 of the notables in the community, aren't you? Number 1.

18 A. That is quite right.

19 Q. And to be fair to you, this document was signed or is dated the
20 17th of February, 2001, just a few months after you well could have
21 appended your signature to the founding statute of the UPC. Isn't that
22 the case?

23 A. Yes.

24 Q. Were you -- were you still working as a residence officer in
25 2001, in February 2001?

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1 A. Yes, I was.

2 Q. So I ask you the question again. Why did you append your name to
3 this statute without fearing any reprisals as a result of political
4 activity and not append your name to the UPC statute?

5 A. The answer is quite simple. The document we have before us here,
6 the protocol agreement on the resolution of an inter-ethnic conflict
7 between the Hema and Lendu in the province of Ituri, is not a political
8 document. This document is an agreement that was signed between the two
9 parties and us, those of us who drafted the document. It's a document
10 which is more of a social kind of document, not so much a political
11 document. And even amongst the participants we have here, there are the
12 administrators. Leku-Apuobo, for example, Emmanuel. He was the
13 administrator of the Irumu territory. He signed this document on behalf
14 of the lesser prominent individual. There was Besikumoingwe Mwambia,
15 number 6. He is another prominent person of residence from Ituri. He
16 was the administrator, an assistant administrator of Irumu. He signed on
17 behalf of the community Nyali/Tchabi. So nothing prevented anyone who
18 held an administrative position from supporting the establishment of
19 peace in Ituri. One could even say that these prominent individuals only
20 supported the tasks of the administration and of politicians. This
21 organisation -- this has more to do with the sociology of politics. It's
22 not politics itself that we are dealing with here.

23 Q. All right. Let's turn to the UPC statute that you helped draft.
24 Could we turn, please, to tab 46 -- I beg your pardon. Tab 42 of the
25 Prosecution binder. For the record, the ERN number is DRC-OTP-0091-0039.

1 Do you have the document open in front of you, Mr. Witness?

2 A. Yes, I do.

3 Q. And let's look at this document for a minute, please. If we turn
4 to the last page, page 9, do we see some signatures and names at the
5 bottom of that page? Do you see those, Mr. Witness?

6 A. Yes.

7 Q. And is the first name on that list, although the writing is not
8 terribly legible, is the first name on that list Thomas Lubanga?

9 A. Yes.

10 Q. And I believe there are a number of other names, some of which
11 you mentioned yesterday, as being the signatories to the founding
12 document; is that correct?

13 A. Yes.

14 Q. Okay. Let's turn back to the front page of that document,
15 please. Somewhat halfway down the page do you see term "Article 5"? Do
16 you see that, Mr. Witness?

17 A. Yes, I do.

18 Q. Could you read out the line underneath Article 5, please.

19 A. Are you talking about the first line?

20 Q. First line which starts "L'UPC."

21 A. "The UPC shall pursue the following objectives:

22 "1. Sensitise the Congolese people on their destiny."

23 Q. I believe there are a number of other objectives listed, all the
24 way to 12. Do you see that?

25 A. Yes.

1 Q. Well, could you read number 12 out loud, please.

2 A. Yes.

3 "Create a national army capable of protecting and defending the
4 integrity of the territory."

5 Q. You helped draft this statute. What territory were you referring
6 to?

7 A. Well, the UPC never had a sectoral or regional perspective. The
8 UPC, as a political party or movement worthy of the name, had a national
9 vision, a national vision. When the UPC refers to the territory, it is
10 referring to the entire territory of the Democratic Republic of the
11 Congo. Of course, you know very well that a party aspires to managing
12 the entire territory, and naturally the party, therefore, has to look at
13 the instruments, the mechanisms at its disposal.

14 With respect to the army, the UPC could not imagine creating a
15 local army. That is unthinkable. It's absolutely unthinkable. And you
16 have to understand that the UPC MP, that is UPC political movement, in
17 2000 took the risk to defy rebel movement. You should understand that
18 the elements of Wamba Dia Wamba could have imagined that UPC was acting
19 in collusion with the authorities in Kinshasa, and that is why I'm saying
20 that the UPC had a national vision and not a subregional, regional, or
21 provincial vision, no.

22 Q. Well, leaving aside the territory issue for the time being, you
23 would agree with me, won't you, that the UPC intended to set up an army
24 from the very outset?

25 A. I do not agree with you. I do not agree with you at all, because

1 looking at the intentions of the UPC, there was never any idea of
2 creating any army at all. We're not talking about creating. We're
3 talking about -- the word in French is "former," which means "train" or
4 "to form."

5 I don't know how I can make this any clearer. You should
6 understand that the UPC is constituted of former militants or members of
7 the IDPS. You probably don't know much about the history of the Congo.
8 The IDPS was and still remains a major opposition force, and those who
9 had been under that movement usually came together, and under the UPC
10 they felt that could create a party, a political party, and that
11 political party had to embody the values which they were going to
12 implement once they come to power, to build a Congolese state worthy of
13 the name. So to have mechanisms which are well trained, composed of
14 well-trained soldiers. And this was from the perspective with the hope
15 that the UPC was going to come to power one day, and that was the
16 objective, to have an army composed of soldiers who were going to be the
17 pride of the republic, soldiers who would be well trained in order to
18 address the aspirations of all the people of the Congo in order to
19 guarantee safety, the security of the republic.

20 I would not like you, therefore, on this point to -- to have a
21 parochial or a narrow vision of things here. We are talking about the
22 national vision of things, and you should not find that strange. That is
23 how political parties view things and organise themselves and conceive of
24 the state as it should be or as it would be when they come to power.

25 So they viewed themselves as people who might have to manage the

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1 republic in future.

2 Q. And indeed, Mr. Witness, that would be all well and good if you,
3 as one of the drafters of this statute, had included the word "the
4 Democratic Republic of Congo" rather than the "territory" in
5 Article 12 -- in Article 5, sub-12?

6 A. When we talk about forming or training a national army, the
7 qualifier is "national." That adjective "national," what does that mean
8 to you? It means the nation, the nation of the Congo, and there's only
9 one Congo. It's another way of saying the state of the Congo. Of
10 course, when we talk about a nation, we are looking at the sociological
11 aspect or that concept, but here we're talking about training or forming
12 a national army for the protection of the integrity of the territory. We
13 are talking about the national territory here.

14 You know, would you want us to go repeating the territory of the
15 republic again? We have to use our words more carefully.

16 Q. Can we turn, please, to tab 43. For the benefit of the record,
17 the ERN number is OTP-DRC-0106-0169.

18 Do you have the document in front of you, Mr. Witness?

19 A. I need more clarification. Oh, fine. I have seen the document.

20 Q. Are you familiar with this document?

21 A. Yes.

22 Q. And is it also a document that you helped draft?

23 A. Yes.

24 Q. On the first page, on the cover page, do you see the word
25 "programme"? It's just at the top of the document.

1 A. Yes.

2 Q. Then we have the alphabet, A. Could you read the title out loud?

3 A. "The Political and Security Domain."

4 Q. And could you read the first sub-heading, please.

5 A. "Domestic Policy."

6 Q. And if we work our way down to what appears to be the fourth
7 paragraph. I think I'm counting -- I'm counting nine lines, and it's the
8 paragraph that starts "La guerre." Could you read out the first sentence
9 to us, please.

10 A. "Since war is only one means of struggle, the UPC subscribes to
11 the current armed conflict or struggle against the dictatorship in
12 Kinshasa while supporting frank dialogue with credible interlocutors.
13 The UPC feels, however, that --"

14 Q. (Microphone not activated) ... to interrupt you. That will
15 suffice for now. Thank you.

16 Why would the UPC support an armed struggle against a nation that
17 it is intending to defend, if that's what you say was the aim?

18 A. Well, I think we should make things clear here. The UPC does not
19 support a struggle against the nation. It is a struggle against the
20 regime of the AFDL of Laurent-Desire Kabila, a regime that was not
21 democratic. It was a regime that did not get power through elections.
22 That -- I think you are -- you are aware of that.

23 Today in the world, efforts are being made to ensure that regimes
24 are democratic. In 1992/1993, after the national sovereign conference
25 which was held in Kinshasa, the constitution of the transition government

1 of the time stated clearly that citizens had to use every means possible,
2 they had to use every means possible to bar the way to any regime that
3 comes to power -- seeks to come to power through nondemocratic means. So
4 that is constitutional.

5 The regime of Laurent-Desire Kabila was one that came to power
6 through the use of arms. Mobutu Sese Seko was chased out of power
7 through an armed conflict, and when this regime came into power, it was
8 not different from the Mobutu regime. And against such a regime,
9 democrats like the creators of the UPC had to support any struggle, an
10 armed struggle against such a regime, and since that struggle had already
11 been started by the RCD, which was united at the time, although it split
12 up later on, the UPC supported such an armed struggle. And later on, a
13 dialogue was organised, and that dialogue was supposed to lead to the
14 establishment of mechanisms that would lead to the handing back of power
15 to Congolese citizens.

16 There you have it.

17 Q. So I come back to my initial question. The UPC was set up with
18 both a political and a military objective. That's the case, isn't it?

19 A. The UPC was not set up with those two objectives. From the very
20 start, it was set up with solely political objectives, political
21 objectives, because the UPC had no space where it was going to develop or
22 implement such military objectives.

23 Q. Let's look at another document, then.

24 PRESIDING JUDGE FULFORD: Mr. Omofade, I think we'll do that
25 after the first short break this morning. It's necessary to break up the

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1 proceedings a little bit for various reasons I needn't go into. We're
2 going to take a short break now, absolutely no more than ten minutes, and
3 we'll sit again at 25 to. Thank you very much.

4 COURT USHER: All rise.

5 Recess taken at 10.22 a.m.

6 On resuming at 10.39 a.m.

7 (Open session)

8 COURT USHER: All rise. Please seated.

9 PRESIDING JUDGE FULFORD: Mr. Omofade, having said no more than
10 ten minutes, I then got detained by something, which meant that we're
11 sitting five minutes late. My apologies for that. Please continue.

12 MR. OMOFADE: I'm obliged, your Honour. Your Honour, might I
13 mention the Prosecution have considered your Honour's offer of
14 deliberating on the issues raised by this witness's evidence and rising
15 rather earlier today than we otherwise would have done.

16 PRESIDING JUDGE FULFORD: I hope you're not suggesting now, are
17 you, Mr. Omofade?

18 MR. OMOFADE: Certainly not, your Honour.

19 PRESIDING JUDGE FULFORD: No. Well, let's carry on, and as and
20 when we reach the point when this may arise as an issue, let us know.

21 MR. OMOFADE: Indeed, your Honour.

22 Your Honour, more of a housekeeping matter, I believe there are
23 some EVD numbers that ought to be assigned. I don't know if they have
24 been.

25 PRESIDING JUDGE FULFORD: No. Could you go back over the

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1 relevant documents, perhaps with Mr. Sachdeva's help, and identify which
2 ones need EVD numbers.

3 MR. OMOFADE: My colleague has kindly volunteered to send an
4 e-mail to the Court Officer.

5 Q. Mr. Witness, could you turn to tab 46 in the binder in front of
6 you, please. And the EVD number is DRC-OTP-0133-0133 -- I beg your
7 pardon, 0113-0133. Do you see that document, Mr. Witness?

8 A. Yes.

9 Q. And are you familiar with this document? Have you seen it
10 before?

11 A. No.

12 Q. Well, could you turn to the last page, please. Do you see a
13 number of names listed, six in total? Do you see that?

14 A. Yes.

15 Q. And is the first of those names Thomas Lubanga?

16 A. Yes.

17 Q. And I don't propose to read out all of the names there, but do
18 you recognise those names, Mr. Witness?

19 A. Yes.

20 Q. And do we see appended in front of those names a number of
21 signatures?

22 A. Yes.

23 Q. Could you read out the title of that document, please, for the
24 record.

25 A. "Political Statement by the Front for Reconciliation and Peace."

1 Q. And I'll take you back to the last page again. Do you see the
2 date of 11 August 2002?

3 A. Yes.

4 Q. In the body of the document, Mr. Witness, could you read out,
5 please, the first paragraph.

6 A. "Dissident armed elements of RCD/ML aligned behind the former
7 minister of defence of RCD/ML, Mr. Thomas Lubanga took effective control
8 of Bunia and its surroundings, and this following the clash on the 9th of
9 August, 2002, which saw -- having -- having observed the defection and
10 routing of the troops of the RCD/ML and their allies."

11 Q. And if we go to the bottom of the page, could you read the last
12 paragraph before the line starting "C'est pourquoi"?

13 A. "That exacerbated by this behaviour, the FRP supported by the APC
14 dissidents aligned behind Mr. Lubanga took control of the city of Bunia."

15 Q. And then finally, please, could you read on the last page --
16 we've got numbers 1 to 4. Could you just read item number 2 on that
17 page, please.

18 A. "This is why taking into consideration everything that precedes,
19 we therefore state:

20 "The political management, economic, and military management of
21 Ituri by the FRP."

22 Q. This is again, I suggest to you, outlining what the original
23 goals of this movement were, isn't it?

24 A. Please forgive me. Would you mind -- would you please reiterate
25 the conclusion you have just made.

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1 Q. The last statement you've just read declares the political,
2 economic, and military objectives, doesn't it?

3 A. "Political, economic, and military management of Ituri by the
4 FRP." That's right, isn't it? Yes.

5 Q. Could you turn to tab 41, please. Do you recognise -- for the
6 record, the EVD number is OTP-DRC-0037-0278.

7 Mr. Witness, do you recognise the logo on the top of that
8 document?

9 A. Yes.

10 Q. Could you tell us which organisation it belongs to?

11 A. This logo belongs to the Union of Congolese Patriots for
12 Reconciliation and Peace.

13 Q. Thank you. And indeed if we look at the back page - it's a
14 two-page document - we see a stamp there. Is that the stamp of the UPC
15 as well?

16 A. Yes.

17 Q. And we see next to the stamp to the right, the date
18 1st October 2002. Is that correct?

19 A. Yes.

20 Q. And is it signed by Mr. Thomas Lubanga?

21 A. Yes.

22 Q. Could you read out the heading of that document, please.

23 A. "Clarification for the Government of Kinshasa."

24 Q. And then, please, Mr. Witness, the opening paragraph underneath
25 that heading.

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1 A. "Since our movement has taken the effective control, namely
2 political and military, of public affairs in this territory, significant
3 events has retained our attention and has prompted us to express our
4 indignation."

5 Q. Again, Mr. Witness, this document is confirming, is it not, that
6 there was a military objective to the foundation of the UPC? Isn't it?

7 A. No, because UPC became military by accident. I've already
8 reiterated this point, by happenstance. And it was because the
9 circumstances dictated that we had -- that this had to be undertaken.
10 And if you need more clarifications, I can furnish you with them.

11 Q. That will suffice, Mr. Witness.

12 MR. OMOFADE: Your Honour, just for the record, an EVD number's
13 required for the last two documents, please.

14 PRESIDING JUDGE FULFORD: Certainly. Court Officer, could you do
15 so, please.

16 COURT OFFICER: Your Honours, there are some -- certain
17 procedural issues that I need to clear with the Chamber concerning this
18 issue, because these two documents already have OTP EVD numbers assigned
19 to them at the pre-trial stage, and for purposes of uniformity, I was
20 wondering if your Honours would like to have another number at this stage
21 for these two documents.

22 PRESIDING JUDGE FULFORD: Well, I think, as we made clear either
23 yesterday or the day before, we have been assigning separate and new EVD
24 numbers for the purposes of the trial to -- have we not?

25 MR. OMOFADE: We certainly have.

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1 PRESIDING JUDGE FULFORD: Somebody remind me of the practice. I
2 thought we'd been given documents, as and when they were admitted without
3 objection, EVD numbers.

4 MR. SACHDEVA: Mr. President, yesterday we did, it's true.
5 However, my recollection is that in the past there perhaps have been two
6 systems where the document that has already got an EVD number, the record
7 is that it's been admitted in the trial and it's indicated as such, and
8 in some circumstances the same document has been given a new EVD number.

9 PRESIDING JUDGE FULFORD: Well, what I'm going to say now is the
10 system seems to have worked very well up until now without difficulty.
11 We're going to adjourn the issue of assigning EVD numbers until the
12 longer break this morning. I want counsel and the Court Officer to put
13 their heads together, if necessary to talk to other Court Officers who
14 have been with us, and ensure that for documents that already have a
15 pre-trial EVD number, we have a sensible system that can be utilised for
16 the documents that have been introduced this morning and those that are
17 to come.

18 So we will adjourn this. Thank you, Mr. Sachdeva.

19 Please carry on, Mr. Omofade.

20 MR. OMOFADE: Your Honours, tab number 50 in the Prosecution
21 binder. The ERN number is DRC-OTP-0164-0452.

22 THE WITNESS: (Interpretation) Yes.

23 MR. OMOFADE:

24 Q. Again, that is the logo of the UPC on the first -- on the first
25 page?

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1 PRESIDING JUDGE FULFORD: (* Microphone not activated) ...

2 MR. OMOFADE: Fifty, your Honour.

3 PRESIDING JUDGE FULFORD: Five, zero. So tab 50. Usher, can you
4 please.

5 MR. OMOFADE:

6 Q. I will repeat my question, Mr. Witness. Do we see the logo of
7 the UPC on the first page of that document? Do you see it?

8 A. Yes.

9 Q. And again if we turn to the second and last page, just at the
10 bottom of the page, is it dated the 22nd of October, 2002?

11 A. Yes.

12 Q. And is there the name "Thomas Lubanga, President," printed there?

13 A. Yes.

14 Q. And do you see what appears to be a signature over that name and
15 title?

16 A. Yes.

17 Q. Incidentally, do you recognise the signature of Mr. Lubanga?

18 A. Yes.

19 Q. Is that his signature?

20 A. Yes.

21 Q. Could you turn to the front page again, please, and read out the
22 first two lines.

23 A. "Official statements of the UPC/RP, number UPC-RP/05/2002,
24 regarding the holding of overall and inclusive inter-Congolese dialogue.
25 The Union of Congolese Patriots for Reconciliation and Peace, UPC/RP as

1 an acronym, is a political military movement that saw its inception since
2 the 15th of September, 2000, on the initiative of the young people in
3 Ituri who were -- who were behind us in the dynamic for re-organising
4 politically and administratively the Democratic Republic of Congo in
5 general and in particular Ituri."

6 Q. Is this document also not declaring the political military
7 movement or nature of the UPC?

8 A. Well, in fact, it's -- it's a sketch, a -- it's an outline. It's
9 an outline, in fact, or it's -- it's a minor error that has been
10 introduced here.

11 Q. What do you mean, Mr. Witness?

12 A. Well, I'd like to say the following: This document, in its
13 introduction, doesn't precisely reflect the nature of the UPC when it was
14 created. I believe that this error doesn't, in fact, reveal the original
15 nature of the UPC, which was a purely political movement.

16 You'll remember what I said yesterday. I said that it was
17 necessary to situate the life of the UPC in the context at the time.
18 Sometimes one had to capitalise on the situation given the interests one
19 had, the interests in Sun City, for example. The sharing of
20 responsibilities was also at stake at the national level, at the level of
21 managing the country, and so on and so forth. So given that context, it
22 was necessary to face up to those who had power. It was necessary to try
23 and bring together the various political and military groups at the time.
24 They played an important role in the situation, and it's necessary to
25 understand this. This is something that I stated yesterday. If you want

1 me to provide you with further details that will sufficiently demonstrate
2 that men bearing arms were purely autonomous, I can do so, because when
3 this mutiny broke out -- when this mutiny broke out, on no occasion was
4 the UPC indicated or taken as an interlocutor. On no occasion was that
5 done.

6 Yesterday, I said, if I'm correct, the first time was in July, it
7 was then that a delegation arrived from Kinshasa led by
8 Colonel Anecho (* phon) and Colonel Aguru. They came to meet the
9 mutineers. This meeting took place and no official from the UPC was
10 involved. They agreed on the integration of these mutineers within the
11 national army.

12 A second occasion also occurred. The minister Ntumba Luaba came
13 in person with other prominent individuals from Kinshasa. Obviously
14 prominent individuals from Ituri but who lived in Kinshasa. They came
15 and they were accompanied by Commissioner Kambale Bahigwa, who was the
16 commissioner for security in the RCD-K/ML. They arrived in Bunia, and I
17 saw them in Kisuki's office. It's important because I would like us to
18 clarify this military aspect once and for all, this military aspect that
19 you are insisting on. It's fundamental, of fundamental importance. When
20 they were there for this mission, well, I was there, why? Because I
21 wanted my administrative status to be regulated. So this delegation
22 arrived, and they were going to go to Mandro to meet Chef Kahwa. No one
23 from the UPC was involved. I'd go even further, because when they had
24 problems on the way, they didn't contact the UPC but prominent
25 individuals from Ituri. So that was the second operation.

1 The third time, as I said, was at Dr. Dhejju Maruka's. There was
2 meeting there, and Chef Kahwa wanted to make things clear with regard to
3 the operation that soldiers were carrying out with the UPDF in order to
4 drive Lopondo Molondo away and his criminal men.

5 On that occasion -- because the problem was who would take over
6 management of the territory. Naturally, all these mutineers weren't
7 capable of doing that, so Tibasima was mentioned as a possible person. I
8 said that. And on that occasion, Kahwa showed that Tibasima wasn't
9 credible because he was from the RCM/KML (* as interpreted) and he had
10 e-mail messages with Mbusa and with Lopondo who was in Bunia. So this is
11 important.

12 To conclude this, if the UPC could really claim this victory when
13 Kinshasa a few days later - it was on the 23rd if I'm not mistaken, the
14 23rd of August, 2002, that they arrived - I'll conclude on this
15 note - when they arrived they came to look for prominent individuals from
16 Bunia and there was supposed to be a meeting in Kinshasa with regard to
17 the pacification of the entire territory of Ituri. I was a candidate for
18 one of those who was to go to Kinshasa, because we could no longer see
19 any issue to the problem since the UPC was stifled. Its president was in
20 prison. All the other officials were living in fear, but on that
21 occasion we went to Kinshasa. Many officials went within that framework.
22 Do you believe with the military victory conscious of what we had
23 experienced that we would come back? Did you think the officials were
24 going to commit themselves to respond to the appeal of the former
25 government? No. If we're all acting in good faith, I think we should

1 understand this, because certain things happened, but there was a
2 political capitalisation that was justified by the context at the time.
3 Thank you.

4 PRESIDING JUDGE FULFORD: Mr. Omofade, if it's convenient for
5 you, we'll take the longer mid-morning break now. Is that agreeable?

6 MR. OMOFADE: It's agreeable, your Honour.

7 PRESIDING JUDGE FULFORD: Thank you. We'll sit again at
8 20 to 12.00, in half an hour's time. Thank you very much.

9 COURT USHER: All rise.

10 Recess taken at 11.09 a.m.

11 On resuming at 11.41 a.m.

12 (Open session)

13 COURT USHER: All rise. Please be seated.

14 PRESIDING JUDGE FULFORD: Now, Mr. Omofade, having discussed the
15 matter over the adjournment with our original Court Officer, I'm told
16 that what happened was that right at the beginning of the trial, back in
17 the beginning of 2009, I lament to say, there were a few documents
18 admitted carrying their pre-trial EVD numbers, but very early on in the
19 case it was indicated that all documents when they were admitted in
20 evidence should be given a fresh EVD number for the purposes of this
21 trial. In April of either 2009 or 2010, I forget which, that system
22 slipped for a very short period of time when there was a change of
23 Court Officers, but since then the system has been, certainly should have
24 been, that a new EVD number is given so that it's clear that the document
25 has been admitted in these proceedings rather than the pre-trial

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1 proceedings.

2 I have -- we have given an instruction that all documents
3 admitted in evidence that are currently only carrying a pre-trial EVD
4 number are to be issued a trial EVD number and that will happen. So for
5 the documents introduced hereafter during the course of your questioning,
6 they are, please, to receive a new EVD number. Thank you.

7 Now, before we carry on, we'd understood that Mr. Sachdeva wished
8 to make a submission. Do you wish to make that now, Mr. Sachdeva?

9 MR. SACHDEVA: Mr. President, perhaps before we close today, if
10 that's amenable to the Chamber.

11 PRESIDING JUDGE FULFORD: Good. The Court Officer is now going
12 to assign EVD numbers. Thank you very much.

13 COURT OFFICER: Your Honours, the document DRC-OTP-0091-0039
14 shall be assigned EVD-OTP-00661. Document DRC-OTP-0106-0169 shall be
15 assigned EVD-OTP-00662. Document DRC-OTP-0113-0133 shall be assigned
16 EVD-OTP-00663. Document DRC-OTP-0037-0278 shall be assigned
17 EVD-OTP-00664. And finally, document DRC-OTP-0164-0452 shall be assigned
18 EVD-OTP-00665. Thank you, your Honours.

19 PRESIDING JUDGE FULFORD: Excellent.

20 Please carry on, Mr. Omofade.

21 MR. OMOFADE:

22 Q. Mr. Witness, I suggested to you earlier that the motivation for
23 setting up of the UPC was -- concerns the concerns that you'd expressed
24 about the ongoing massacres in Ituri at the time back in 2000, 2001. You
25 denied this, didn't you?

1 A. Yes. In fact, I said that the UPC wasn't established in relation
2 to certain precise individual events. The massacres -- well, the
3 massacres started earlier on. In Ituri, they started as of the
4 19th of June, 1999. The massacres -- the UPC was established on the
5 15th of September, 2000, which is more than a year later. The context
6 within which the UPC was born is one that I have quite clearly described.
7 I believe that what I said was quite clear, that UPC was born to face up
8 to a rebellious power structure that was unable to find solutions to the
9 problem of the Congolese people in general and of the people of Ituri in
10 particular. There was insecurity, and it wasn't just a matter of
11 massacres that contributed to the insecurity.

12 It wasn't just that. One has to add to that the problem of the
13 well-being of the Congolese people, problems related to their social
14 well-being, problems related to their economic situation. The system
15 introduced by the RCD Kisangani of pre-financing the powers of the RCD
16 Kisangani would take in advance certain sums of money from economic
17 agents. That's how I define "pre-financing." It was a Mafia system that
18 was in place. It was a system according to which money was taken from
19 tradesmen, and they subsequently had to bring in goods, in kind of
20 compensation for nothing, through customs.

21 So the UPC wasn't only against the situation of insecurity that
22 the massacres demonstrated or -- or the inability -- they weren't just
23 against the RCD's incapacity to solve the problem of insecurity. There
24 were other problems that related to this mismanagement of
25 Wamba Dia Wamba's RCD Kisangani movement.

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1 Q. Because if you admit that it was because of this -- these
2 massacres and this violence that was going on, you would have to -- you
3 would find it difficult not to justify the need to resort to military
4 force, wouldn't you?

5 A. Could you please rephrase that?

6 PRESIDING JUDGE FULFORD: Just think about the question for a
7 minute, Mr. Omofade. (A) it was quite complicated; (B) is it really a
8 question or is it a comment by you, a submission that you would wish to
9 make in due course as part of your closing submissions? And if you wish
10 to, have a word with Mr. Sachdeva.

11 MR. OMOFADE: Your Honour, I'll take the witness somewhere else.

12 Q. Mr. Witness, look at the same document you have open in front of
13 you, if you still have, at tab 50 of the Prosecution binder. You kindly
14 read out the first paragraph earlier on. Could you continue reading from
15 the second paragraph. I believe it starts "L'UPC/RP" and continues.

16 PRESIDING JUDGE FULFORD: Just pause a moment, sir.

17 Mr. Biju-Duval.

18 MR. BIJU-DUVAL: (Interpretation) Your Honour, it's a matter of
19 method. I don't think it is appropriate to use the witness as a reader
20 of a document. If the OTP would like to read out a part of the document
21 that can be done, but what is important is for the witness to be familiar
22 with the text. It's important that he has the time to read through it
23 beforehand, to familiarise himself with it. But as a general rule, I
24 don't think it's appropriate for the witness to read out a text shown to
25 him, a document shown to him given that he is not person who drafted the

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1 text and on occasion he's not familiar with the text either.

2 PRESIDING JUDGE FULFORD: Thank you, Mr. Biju-Duval. I don't
3 think, as it's unfolding before us at the moment, there's any harm done
4 in the witness becoming familiar with the text by being asked to read out
5 short sections. If in due course it becomes onerous or unfair on the
6 witness for this course to be taken, we will of course intervene, but as
7 one of the ways of informing him what's in the document, I don't think at
8 the moment it's inappropriate. But thank you for raising the question.

9 Can you put the question again, Mr. Omofade.

10 MR. OMOFADE:

11 Q. Mr. Witness, do you have the binder open at tab 50 now, please?

12 A. Yes.

13 Q. And the portion I asked you to read, it's the three-line portion,
14 starting with the acronym "L'UPC/RP."

15 A. "The UPC/RP has taken up arms against the RCD/ML because of the
16 mismanagement and the mediocrity that characterise it as well as the
17 irrefutable and proven involvement of that body in a targeted and
18 prepared massacre on a large scale that it knowingly organised in Ituri."

19 Q. Do you agree with what you've read as a member -- or former
20 member of the UPC?

21 A. Yes, I do.

22 MR. OMOFADE: Your Honour, I don't recall if I asked for an
23 EVD number for this particular document. If I didn't, I respectfully do
24 so if I --

25 PRESIDING JUDGE FULFORD: Thank you, Mr. Omofade.

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1 Court Officer.

2 COURT OFFICER: Your Honour, the document has already been
3 assigned EVD-OTP-00665.

4 PRESIDING JUDGE FULFORD: Thank you.

5 MR. OMOFADE:

6 Q. Mr. Witness, could you turn to tab 40 in the Prosecution binder
7 in front of you, please. It has an EVD number of DRC-OTP-0037-0271.

8 Do you see that document, Mr. Witness?

9 A. Yes, I do.

10 Q. And if we go to the last page we see the signatory to this
11 document as a Professor Dr. Dhetchuvi Mathieu Jean-Baptiste. Do you see
12 that name?

13 A. Yes, I do.

14 Q. Is this a name you're familiar with?

15 A. Yes.

16 Q. Who is he?

17 A. It's an official from the UPC. He's an honourable deputy in the
18 UPC now.

19 Q. And do you see the date 22nd October 2002 on this document?

20 A. Yes.

21 Q. If we look at the first page, you'll see the first sub-heading
22 numbered 1. Could you read the sub-heading and just up to the word -- or
23 the year, rather, 2000. Could you read that out loud, please.

24 A. Yes.

25 "The appellation and creation of the UPC/RP.

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1 "Union of the Congolese Patriots for Reconciliation and Peace,
2 the acronym of which is the UPC/RP, under the direction of
3 Mr. Thomas Lubanga, is a political and military movement that was created
4 on the 15th of September, 2000."

5 Q. Again, this signatory -- rather, the author of this document is
6 asserting that the UPC was set up as a politico-military movement, isn't
7 he, in September 2000?

8 A. I apologise? Sorry --

9 Q. The author of this document is again confirming that the UPC was
10 set up as a politico-military movement on the 15th of September, 2000, is
11 he not?

12 A. No, not the UPC. He's speaking about the UPC/RP. I think that
13 this is an issue we have to agree on, because there is much confusion
14 now. What are we discussing now, the UPC or the UPC/RP?

15 Q. When was -- when was the RP added to UPC?

16 A. In September 2002.

17 Q. Could you turn the page of that document, please, to the fifth
18 sub-heading, sub-heading 5. Do you see that on the document in front of
19 you, Mr. Witness?

20 A. Yes.

21 Q. And kindly read out the sub-heading, please.

22 A. "Reasons for the military overthrow of RCD-ML/KIS of
23 Mbusa Nyamwisi in Ituri by the UPC/RP."

24 Q. Mr. Witness, do you still insist that the UPC or the UPC/RP did
25 not have a military objective?

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1 A. Yes, I still insist on that.

2 Q. I --

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

4 MR. BIJU-DUVAL: (Interpretation) The last question asked by the
5 Prosecutor is confusing because it cuts both ways. The question was:
6 "Do you still insist that the UPC or the UPC/RP did not have a military
7 objective?" I think that such a question which has a dual nature could
8 lead to confusion, because the two bodies are different, the one from the
9 other. I think that the question should be put again as two separate
10 questions.

11 PRESIDING JUDGE FULFORD: I think that's fair, isn't it,
12 Mr. Omofade.

13 MR. OMOFADE: Your Honour, I'm glad to do so.

14 PRESIDING JUDGE FULFORD: Yes. I think we need to -- can you ask
15 two questions.

16 MR. OMOFADE: Indeed.

17 PRESIDING JUDGE FULFORD: Thank you.

18 MR. OMOFADE:

19 Q. For the sake of clarity, Mr. Witness, do you still insist that
20 the UPC, before the acronym RP was added to it in September 2002, was set
21 up without a military objective?

22 A. Yes.

23 Q. And we look at this -- with the acronym RP added to it, and
24 you've told us this was added in September 2002, did that organisation
25 have a military objective?

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1 A. Yes. UPC/RP is a political and military organisation.

2 MR. OMOFADE: Would your Honours forgive me a moment, please.

3 (Prosecution counsel confer)

4 MR. OMOFADE:

5 Q. When was the RCD successfully chased out of Bunia?

6 A. RCD-K/ML, I am sure that is the RCD you're talking about. Which
7 RCD are you talking about? I just want to be clear about this.

8 Q. When was the RCD-ML chased out of Bunia, Mr. Witness?

9 A. Thank you. RCD-K/ML was chased out of Bunia on the 9th of
10 August, 2002.

11 Q. And as of the 9th of August, 2002, the UPC had not added the
12 acronym RP, had it?

13 A. The UPC had not yet added those letters, yeah.

14 Q. Well, go further up the page, please, Mr. Witness. Do you see
15 the sub-heading 4? Do you see that, Mr. Witness?

16 A. Yes, yes.

17 Q. Could you read out the first two lines, please?

18 A. "From the 9th of August, 2002, UPC/RP has the political,
19 administrative and military control of Ituri, which has a population of
20 more than 5 million inhabitants, representing about 15 per cent of the
21 population of the Democratic Republic of the Congo. UPC/RP restored or
22 ensured the safety of persons and of property."

23 Q. So I ask you again, Mr. Witness: Did the UPC, prior to
24 September 2002, have a military objective?

25 A. Not at all.

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1 MR. OMOFADE: Your Honour, I ask that an EVD number be assigned
2 to this document, please.

3 PRESIDING JUDGE FULFORD: Certainly.

4 COURT OFFICER: Your Honour, the document already has
5 EVD-D01-00078 assigned to it.

6 MR. OMOFADE:

7 Q. Mr. Witness, could you turn to tab 44 on the binder in front of
8 you, please? The assigned ERN number is DRC-OTP-0109-0122.

9 Do you have the document in front of you, Mr. Witness?

10 A. Yes.

11 Q. It's signed -- or, rather, a name is appended to the bottom,
12 Idris Bobale Rajab. Do you see that? It's a single-page document, and
13 it's at the bottom right-hand corner, Mr. Witness.

14 A. Yes. I can see the document.

15 Q. I'm grateful, Mr. Witness. Do you see the name I just read out
16 at the bottom right-hand corner, please?

17 A. Yes, I do see the name.

18 Q. Do you know this name? Do you recognise it?

19 A. No.

20 Q. Do you see just underneath the name the letters "Comd"? Do you
21 see that, Mr. Witness?

22 A. Which letters?

23 Q. "Comd," just underneath the line.

24 A. Yes.

25 Q. And we manage to make out just underneath that "Chef G2 FPLC."

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1 Do you see that?

2 A. Yes, I do see it.

3 Q. Do you know what G2 would stand for in this context?

4 A. In the army staff or in the army staff of armies, the G2 is the
5 officer in charge of intelligence.

6 Q. And if we look at the top left-hand corner of this document, can
7 you read out the title starting with "Republic Democratic du Congo."

8 A. "Democratic Republic of Congo, Patriotic Forces for the
9 Liberation of the Congo. Military intelligence and security service.
10 Army staff. G2."

11 THE INTERPRETER: Interpreter corrects: Not "Army staff," "Army
12 headquarters. G2."

13 MR. OMOFADE:

14 Q. Would you agree with me that this letter is purporting to come
15 from a G2 intelligence officer in the FRPC? Would you agree with that?
16 I beg your pardon. In the FPLC.

17 A. No. No. A document which is not dated, a document which is not
18 signed, a document which hasn't got a reference number, I will have
19 difficulties accepting it as authentic. And the G2 I knew was called
20 Lobo Kamuhanda. I have never heard of this name, the name Bobale. The
21 letter is here. It's not signed. It's not referenced. It's not
22 stamped. I don't believe it is authentic.

23 Q. Leaving aside for the time being the date or the stamp, have you
24 heard of the name Idris Bobale Rajab before?

25 A. No.

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1 Q. Very well. Could you turn to tab 47 in the binder in front of
2 you, Mr. Witness.

3 MR. OMOFADE: Your Honours, for the record, the EVD number is
4 DRC-OTP-0113-0161.

5 PRESIDING JUDGE FULFORD: Just before you carry on, Mr. Omofade,
6 the previous document had a pre-trial Chamber EVD number. It needs a new
7 one which I'm going to ask the Court Officer to read out so we don't get
8 behind.

9 COURT OFFICER: Yes, your Honour. Document DRC-OTP-0109-0122
10 shall be assigned EVD-OTP-00666.

11 MR. OMOFADE:

12 Q. Do you see the logo, Mr. Witness, at the top of this document?
13 Is that a UPC logo?

14 A. Yes.

15 Q. And on the last page, the bottom right-hand corner, do you see
16 the date 8th January 2003?

17 A. Yes.

18 Q. And beneath that the name Thomas Lubanga, and the title
19 "President." Do you see that?

20 A. Yes.

21 Q. Well, to start with, have you seen this document before?

22 A. No.

23 Q. The first sub-heading is "Introduction." Could you read out,
24 please, the -- just the first paragraph, Mr. Witness.

25 A. "The Union of Congolese Patriots for Reconciliation and Peace

1 under the leadership of its president, the Patriot Thomas Lubanga Dyilo,
2 is a politico-military movement created two years ago in order to
3 renovate and combat the anti-values that have been instituted and which
4 characterise the various movements which preceded RCD/ML."

5 Q. Again, this document is pointing, is it not, to the UPC having
6 been formed as a political and military movement? Isn't it?

7 A. Well, if I have to give you an opinion on that, an opinion on a
8 document which I think is a draft because it has not been signed - this
9 must be a draft - the impression which you'd like to give or have of the
10 military nature of the UPC from the 15th of September, 2000, well, I
11 don't share that viewpoint, because I have just described to you the
12 context and the steps that UPC took.

13 If we look these documents at this time, fine, you can make any
14 interpretation you like, but if we look at the context that prevailed at
15 the time, a context where the national cake had to be shared, so to
16 speak, in South Africa, you understand what I'm saying, the cake, that is
17 the power had to be shared in South Africa, and the UPC had to make sure
18 that it was present at this major event, and that was the political
19 language that UPC used. That's what you have to bear in mind here.

20 I said this yesterday. I cannot be ashamed or I cannot be afraid
21 to state it here that the UPC was simply trying to make political capital
22 of the situation, yes.

23 Q. Well, you also said something else yesterday, didn't you? You
24 said, "He who has military power has power." Do you remember saying
25 that?

1 A. Well, I don't think you understood me well. I was referring to
2 the mutineers, who were strong. The mutineers said they did not want
3 Tibasima. They wanted someone else. And Mr. Biju-Duval wanted to
4 understand whether it was within that framework that the prominent
5 figures of the area had to appoint someone who was going to manage the
6 area. And I said no. The prominent figures who were attending that
7 meeting could not propose anything to these individuals who were armed,
8 and since they were armed, they had power. That's what I meant. And the
9 UPC did not or could not do anything because it was only a political
10 movement. It was not a military movement. And so the mutineers could
11 entrust the power to anyone they wanted or anyone they liked. And do not
12 lose sight of the fact that I said Thomas's return to Bunia was
13 accidental. Try to ask why he -- or how he came to Bunia, and you will
14 understand. And the person who was managing the proceedings was not even
15 Thomas. It was someone else.

16 Q. Well, we'll come to that in due course. Do you have the Defence
17 binder next to you, please, the binder that Mr. Biju-Duval handed to you
18 yesterday.

19 MR. OMOFADE: Your Honour, the last document, I don't know if an
20 EVD number has been assigned. If it hasn't, I apply so to do.

21 COURT OFFICER: Your Honour, the document already had
22 EVD-OTP-00046 assigned at the pre-trial stage. I shall now proceed to
23 assign a new number for this stage. It shall receive EVD-OTP-00667.
24 Thank you.

25 MR. OMOFADE:

Witness: Witness DRC-D01-WWWW-0019 (Resumed) (Open Session)
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1 Q. Mr. Witness, could you turn to tab 12 of this binder.

2 MR. OMOFADE: Your Honour, this was a document that was -- that
3 formed part of the documents disclosed by the Defence. I don't believe
4 it was shown to the witness yesterday. It might have been.

5 PRESIDING JUDGE FULFORD: Thank you, Mr. Omofade.

6 MR. OMOFADE:

7 Q. Are you familiar with this document? Have you seen it before?

8 PRESIDING JUDGE FULFORD: Can you give the document's number,
9 Mr. Omofade.

10 MR. OMOFADE: I do apologise, your Honour. DRC-OTP-0091-0888.

11 PRESIDING JUDGE FULFORD: Yes. Please carry on.

12 MR. OMOFADE:

13 Q. Mr. Witness, the question I believe I posed was: Have you seen
14 this document before?

15 A. No.

16 Q. Do you recognise the handwriting?

17 A. It looks like the handwriting of Floribert Kisembo, who was the
18 Chief of Staff.

19 Q. If indeed it is, he was the Chief of Staff of the FPLC, wasn't
20 he?

21 A. General Chief of Staff of the FPLC.

22 Q. I asked you because it formed part of the documents that Defence
23 counsel proposed to show you. That's why I asked if you had any views on
24 it.

25 PRESIDING JUDGE FULFORD: Just pause for a moment, sir.

Witness: Witness DRC-D01-WWWW-0019 (Resumed) (Open Session)
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1 Mr. Biju-Duval.

2 MR. BIJU-DUVAL: (Interpretation) I do not fully understand this
3 observation that has been made by the Prosecutor. For the information of
4 the Chamber, this is a document that comes from the OTP. It was
5 disclosed by the OTP. It was mentioned on the list of documents that the
6 Defence could rely on if need be. So I don't understand the purpose of
7 the comment that has been made by the Prosecutor.

8 PRESIDING JUDGE FULFORD: Mr. Omofade, I don't want to be
9 difficult, but I don't think we should be putting documents to the
10 witness for him simply to comment on them just because they were put into
11 a folder. There must be a better reason than that for asking a witness
12 either to comment on or putting questions to him about documents which
13 are in the Defence folder. The fact that they're in the folder of itself
14 doesn't create a justification for asking questions about them.

15 Now, if you've got any particular matters you want to raise in
16 relation to this document, please now turn to them.

17 MR. OMOFADE: There was a question to follow, your Honour, that I
18 propose to ask.

19 PRESIDING JUDGE FULFORD: Well, let's leave the general comment,
20 then, and go to the specific question. Thank you very much.

21 MR. OMOFADE:

22 Q. Mr. Witness, if you can scroll sort of a quarter the way down, do
23 you see what appears to be a sub-heading, "Ideologie"? Do you see it
24 underlined, the "Ideology"?

25 A. Yes. Yes.

1 Q. And if you can, could you read -- I mean, if you can read the
2 handwriting -- if you can't, I fully understand. If you can read the
3 handwriting, could you read the first paragraph under -- the first
4 subparagraph under "Ideology."

5 A. It's written here:

6 "We are a political and military movement of national character
7 to restore a new moral order in -- political order, rather, in Congo,
8 aiming for the top."

9 Q. Would you say that that ideology as expressed coincides with the
10 ideology of the -- the professed ideology of the UPC?

11 A. Would you please be more explicit in your question.

12 Q. The ideology expressed there is very similar to the ideology that
13 we've been reading in the few documents I've taken you to this morning,
14 doesn't it?

15 A. In fact, the ideology of the UPC was not driven by military ends.
16 Here, this is a document which has been drawn up by a high-ranking
17 military official. Here I can see the 16th of June, 2003, and this is
18 how, quite obviously, this high-ranking official is expressing something.
19 He wishes to express his ideological thinking, because in the
20 understanding of the UPC, conquest of power should be done through
21 democratic means. But given that those who are holding on to power
22 are -- have been established in a military grouping, and if it is
23 therefore important to dislodge that group by weapons, if that proves
24 necessary, well, then weapons need to be used to that end. Having said
25 that, it's dialogue which should be broached first and foremost.

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1 MR. OMOFADE: Your Honour, I wonder if an EVD number could be
2 assigned to this document as well, please.

3 PRESIDING JUDGE FULFORD: If it doesn't have one, please do so,
4 Court Officer.

5 COURT OFFICER: Indeed, your Honour. The document shall be
6 assigned EVD-OTP-00667. Thank you, your Honours.

7 Sorry, Counsel. If I can just make a minor correction for the
8 record. The document I just assigned an EVD number should actually be
9 assigned EVD-OTP-00668.

10 Thank you, your Honours.

11 MR. OMOFADE:

12 Q. Mr. Witness, how did you come to be a witness for Mr. Lubanga?

13 A. How I became a witness? It's -- I find that question rather
14 irksome. I don't know whether there's a particular process by which you
15 become a witness for -- for somebody.

16 PRESIDING JUDGE FULFORD: Sir, I think -- Mr. Omofade, you'll
17 tell me if I'm wrong.

18 I think the question really that is being asked is whether you
19 were approached by someone and asked to give evidence, or whether you
20 volunteered to appear as a witness for Mr. Lubanga.

21 Now, before you answer, is that right, Mr. Omofade?

22 MR. OMOFADE: It is right, your Honour.

23 PRESIDING JUDGE FULFORD: Thank you.

24 THE WITNESS: (Interpretation) Well, if that is the substance of
25 the question, then I can answer very clearly.

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1 I undertook no method to become a witness. The lawyers of
2 Mr. Thomas Lubanga, in the various contacts that they struck up with
3 people who could help them in order to understand the -- the accusations
4 made against their client, they came to me with that in mind. First,
5 they wanted to gather information about what had occurred in Ituri, about
6 the UPC and what have you. We dialogued with (* as interpreted) Makala
7 there, and I think in light of what I told them, he would have understood
8 that I could prove useful as a witness, an exculpatory witness, for their
9 client.

10 MR. OMOFADE:

11 Q. Makala is the prison you are currently detained in; is that
12 correct?

13 A. That is correct.

14 Q. And you were arrested and detained together with Mr. Lubanga,
15 weren't you?

16 A. Yes.

17 Q. When was this?

18 A. Our detention, 19th of March, 2005. That was the beginning of
19 our detention.

20 Q. When did you last speak to Mr. Lubanga?

21 A. The 17th -- the 16th of March. The 16th of March, 2006.

22 Q. Have you spoken with any former UPC members or current UPC
23 members about your testimony here?

24 A. No, to nobody.

25 Q. Are you in touch with former or current members of the UPC?

1 A. No.

2 Q. Well, when is the last time you spoke to any member of the UPC?

3 A. I received a visit from -- I received a visit from -- from two
4 honourable people who are members of parliament, national members of
5 parliament representing the UPC. This was in -- this was in the Makala
6 central prison just before the -- before they went on holiday, before the
7 parliamentary recess, rather. This is right at the beginning of January
8 of this year, right at the beginning, because there was to be the
9 parliamentary recess. And then they went to MONUSCO with regards to our
10 dossier. They came to talk about that particular case. This was in --
11 this was the beginning of January, towards the 5th of January of this
12 year.

13 Q. Are they aware that you're testifying for Mr. Thomas Lubanga
14 here?

15 A. I couldn't tell you. I couldn't tell you, because I didn't speak
16 to them about this, but you need to remember that national television,
17 the RTNC, broadcast, on the Sunday evening and Monday throughout the day,
18 our -- our leaving with other witnesses, people that we went together
19 with. Those pictures were broadcast, and it was the entire republic,
20 even in the surrounding areas, that followed that such and such a person
21 were to make a deposition, because these remarks were made by the
22 Minister of Justice, Mr. Mumbalambe Desa (* phon). Okapi Radio also
23 announced our departure, and more than that, the RFI talked about it. So
24 this is something which is by no means a secret. If one of -- if anybody
25 wants to have information about this, well, I think -- well, that's how

1 things unfolded.

2 Q. So the point you've made is that you haven't spoken to anyone
3 about your testifying here, but that they might have gathered it from the
4 media; is that correct?

5 A. Yes.

6 Q. Could you give us the names of the MPs you've referred to,
7 Mr. Witness, that visited you at Makala prison.

8 A. Jean-Baptiste Dhetchuvi, D-h-e-c-h-u-v-i (* as interpreted).
9 Pele Kaswara, P-e-l-e K-a-s-w-a-r-a.

10 Q. Is this this -- is this the same Professor Dr. Dhetchuvi that I
11 referred you to when you looked at the document under tab 4?

12 A. That is exactly right, so yes.

13 Q. And how long have you known him?

14 A. How long have I known him? Well, we operated with the UPC and
15 UPC/RP. We held certain responsibilities in that context.

16 Q. Well, the question is: How long have you known him? Could you
17 give us a year, a date? Five years, ten years?

18 THE INTERPRETER: Correction from the English booth: "We
19 operated with those people."

20 THE WITNESS: (Interpretation) Well, first and foremost,
21 Professor Dhetchuvi, this is a gentleman that I have been -- that I had
22 known when I was in the humanities faculty, since the 1980s, because he
23 was at the ESP. It's since the 1980s that I know that particular
24 gentleman, Kaswara. Well, I knew him when he came from Arusha, where he
25 was studying law, and I met him in, what, the 19 -- I think it was 1999.

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1 Yes, that's right, 1998/1999.

2 MR. OMOFADE:

3 Q. And is this the first visit that you received from either of them
4 since 2005?

5 A. No. It wasn't the first time.

6 Q. Well, how many times over that period of time have they been to
7 see you? Let's start with Professor Dhetchuvi first.

8 A. I don't know whether today I can tote up all the visits off the
9 cuff. I think it would be very difficult to answer your question. They
10 come when they have time, but they've got their parliamentary
11 responsibilities at Kinshasa. Sometimes they -- they come every half
12 year. Let's say they come to see me to provide me comfort, and we talk
13 with them, talk about the life of the party and what's happening in
14 society. How many times, I don't know. If I have to invent the number
15 of times -- well, I tell you, they came. They come when they have time
16 or whenever they are in Kinshasa.

17 Q. Well, are you talking about Professor Dhetchuvi or Kaswara or
18 both of them?

19 A. Both of them. Because it's not only those who come to see me.
20 There are others. Perhaps we need to draw up a more exhaustive list.
21 There are others who come to see me. My parents are there as well on
22 the -- well, they come and see me.

23 Q. (* Microphone not activated) ... with the two MPs for the time
24 being, let's narrow it down to the last year. How many times in the last
25 12 months have they been to see you?

1 A. Last year. Three times, I believe. Three times, I believe.

2 Q. And the last time they visited you, what was the nature of this

3 visit? Was it social? Was it official? What was the nature of it?

4 You're still a -- you're still a member of the UPC, aren't you?

5 A. That is right, even in prison.

6 Q. So I ask again: Was it social or was it official?

7 A. Well, in fact, you should remember that a visit -- the visits

8 were on a social basis, but also upon those occasions I have said that

9 they came to tell me about approaches that they have done with regard

10 to -- with regard to my legal situation, because this is an opportunity

11 for me to talk about them, this incarceration, about MONUSCO. This

12 detention is very strange. MONUSCO and president of the republic, this

13 is why they went to the General Secretary of UN at Landos (* phon).

14 Because they weren't able to meet with him personally, they interacted

15 with the -- his immediate office and then they came to see me to tell me

16 about what they were able to discuss about at that particular level, so

17 the social basis, but also approaches and undertakings with regard to my

18 legal predicament. The -- the official character I don't know, because I

19 have no official responsibilities currently within the UPC, and with

20 these people, you can't -- you can't deal with issues pertaining to the

21 management of the UPC because I hold no current responsibilities with

22 that body. I'm a simple activist who is -- who is suffering arbitrary

23 incarceration.

24 Q. What was the last -- what was the last position you held in the

25 UPC before your incarceration?

1 A. A spokesman of the UPC as a political party.

2 Q. And prior to that what position did you hold?

3 A. I was interim president of the UPC/RP.

4 Q. You held the interim Presidency in Thomas Lubanga's absence,
5 didn't you?

6 A. Yes, while he was at Kinshasa. I would like to make this clear.

7 When he went from Bunia in October, in August 2003, it was at that point
8 in time that I took up that position as an interim president until I
9 arrived at Kinshasa, in fact. That was the time-frame.

10 Q. And as spokesman for the UPC, what were your responsibilities?

11 A. As spokesman of the party, the political party of the UPC, right?
12 As a spokesman, of course I was responsible in fact for -- well, I was a
13 kind of a microphone, a loudspeaker, for the party. I could go on
14 television. I could go -- I could also go to third parties and sensitise
15 them and impart to these third parties what the president wished to get
16 across to them, or even I could get across party messages. That's how I
17 saw the duties that were made incumbent upon me. That's it.

18 Q. Well, put simply, you -- you espoused the party's doctrines,
19 didn't you, publicly?

20 A. The doctrine I think you're familiar with, because if you are
21 familiar with it, then I would say yes. It's that particular doctrine,
22 the doctrine of the UPC. I did adopt it.

23 PRESIDING JUDGE FULFORD: Shall we break for lunch, Mr. Omofade?

24 MR. OMOFADE: Indeed, your Honour.

25 PRESIDING JUDGE FULFORD: Very much.

1 MR. OMOFADE: There might be a matter afterwards, your Honour. I
2 believe Mr. Sachdeva has --

3 PRESIDING JUDGE FULFORD: Mr. Sachdeva, can you obviously discuss
4 over lunch with Mr. Omofade where we're going, and at 2.30 we'll hear
5 from one or both of you.

6 MR. SACHDEVA: Certainly, Mr. President.

7 PRESIDING JUDGE FULFORD: Thank you very much indeed.

8 Finally before we rise, while you're on your feet, Mr. Sachdeva,
9 I may have been misinterpreting the body language, but when we returned
10 to court after the longer break this morning, and I indicated my
11 understanding of the history in relation to EVD numbers and what is in
12 our view appropriate hereon, I thought I detected a degree of
13 restlessness amongst the ranks of the Prosecution. If there is any
14 disagreement, the issue having been discussed over lunch, could you
15 please return to it this afternoon but only after discussing the matter
16 with our original Court Officer.

17 MR. SACHDEVA: Thank you, Mr. President, we can certainly do
18 that.

19 PRESIDING JUDGE FULFORD: Thank you very much indeed. As I say,
20 I may have misinterpreted the body language, Mr. Sachdeva, but that's how
21 it seemed to me.

22 Half past 2.00.

23 COURT USHER: All rise.

24 Luncheon recess taken at 12.59 p.m.

25 On resuming at 2.31 p.m.

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1 (Open session)

2 COURT USHER: All rise. Please be seated.

3 PRESIDING JUDGE FULFORD: Good afternoon.

4 Yes, Mr. Omofade.

5 MR. OMOFADE:

6 Q. Mr. Witness, before the luncheon adjournment you were telling us
7 about the visits you've received from the two MPs in the last year.

8 Aside from them, have any other senior officials of the UPC visited you
9 in the last 12 months?

10 A. No.

11 Q. And have any former members of the UPC visited you in the last
12 12 months?

13 A. No.

14 Q. Do you know Mr. Dieudonné Mbuna? I might be pronouncing it
15 wrong, so I'll spell the name. I believe the name has come up properly
16 on the screen. If you look at the screen in front of you, you might see
17 the right spelling.

18 A. No.

19 PRESIDING JUDGE FULFORD: It's M-b-u-n-a, Mbuna.

20 THE WITNESS: (Interpretation) Yes.

21 MR. OMOFADE:

22 Q. So is that yes to the fact that he has visited you or yes to the
23 fact that you now see it on the screen?

24 A. Mbuna never visited me last year.

25 Q. Have you spoken to him about testifying here?

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1 A. No, I haven't.

2 Q. It might be that the transcript has not recorded you accurately,
3 but your response to my question is: "Mbuna never visited me last year."
4 Is that what you meant?

5 A. Exactly. I said Mbuna did not visit me last year.

6 Q. Well, has he visited you this year?

7 A. No, he hasn't.

8 MR. OMOFADE: Your Honour, forgive me a moment, please.

9 (Prosecution counsel confer)

10 MR. OMOFADE:

11 Q. Makala prison, it's a pretty open prison, isn't it?

12 A. I don't really know what you mean when you say an "open prison."
13 Perhaps it would be good to be a little more clear.

14 Q. Well, do visitors have to book visits in advance to see you as an
15 inmate?

16 A. No, but there are days for visits that are known, and on such
17 days they can visit unless they are other kinds of visitors. In such
18 cases, there are restrictions, if they are visitors of a sensitive kind.

19 Q. And are you, as inmates -- or detainees, I should say, are you
20 allowed to leave the premises?

21 A. To leave the premises in order to go where, for example?

22 Q. Well, you tell us. Are you allowed to leave or aren't you?

23 A. You can't leave prison. I can't leave prison. I am in prison.

24 Q. Are you allowed to interact with members of the local community,
25 for instance, to go out on home leave?

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1 A. Could you please elaborate on what you want to ask me. I don't
2 really understand what you're asking me.

3 Q. Well, the question is: Are you allowed to leave the premises of
4 the prison, having sought permission from the authorities?

5 A. No. That sort of a system does not exist in Makala. It's
6 unthinkable.

7 Q. Are you allowed to trade in prison?

8 A. Such a right does not exist.

9 Q. I'm going to ask you again. Do you have a trade in Makala
10 prison?

11 A. No. No.

12 Q. Do you not sell fish to fellow prisoners?

13 A. No, I don't.

14 Q. Did you have contacts with the fishing community before you went
15 into Makala prison? Did you have a fish business?

16 A. No. I didn't.

17 PRESIDING JUDGE FULFORD: Are you wondering about the relevance?

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

19 PRESIDING JUDGE FULFORD: Mr. Omofade, I hope this is going
20 somewhere.

21 MR. OMOFADE: Incidentally, it's my last question on that issue.

22 Q. You spoke extensively about your detention and the reasons for
23 your detention when you were being asked questions by Mr. Biju-Duval. Do
24 you remember that?

25 A. Yes, I do.

1 Q. Why were you detained?

2 A. It's the same question I keep putting to myself to this day, why
3 was I detained. That's the question, and I have no answer. The state of
4 Congo can't answer at that question or doesn't want to answer the
5 question either. And I'd go even further. If I said that it's a case
6 that is managed at the level of the Presidency of the republic, this will
7 seem very strange to you, and given that situation, what is the role that
8 the Minister of Justice plays? It's very sad, the Minister of Justice
9 can only act under the head of state. That's our republic. That's what
10 we call a state where there is the rule of law. You can detain someone
11 without a warrant, without any grounds, for years and years. That is the
12 question.

13 You, as a representative of the Prosecution, the prosecutor --
14 general prosecutor addressed a letter to you asking for elements, asking
15 for information to establish my guilt so that I could go before a
16 tribunal. I think you know what I'm talking about. You still don't have
17 such elements, or you haven't sent such elements to the general auditor
18 within the framework of cooperation that links the state of Congo that
19 isn't respecting human rights, and your august and Honourable Court. So
20 that is the problem that hurts me.

21 The very first time you'll remember that we requested with our
22 friends, their friends who were involved in the same case, the first time
23 we made a request for the Prosecutor of the ICC to deal with the case,
24 that was in 2007. That's when we sent to the Minister of the Justice
25 this request at the time. You know that Congolese justice cannot mete

1 out justice as is fit.

2 Moreover, we reiterated this request when the Minister of Justice
3 found himself in front of Chamber II of this court in the case on the
4 admissibility of the Katanga case. On that day, the minister wanted to
5 make the Judges believe on that day that we were detained not for war
6 crimes, not for war crimes, but for having assassinated or killed
7 six Bangladeshi Blue Helmets. If that had been the case, however, if
8 that had been the case, how is it that to date this case has never been
9 completed? We were never presented to the Tribunal, brought before the
10 Tribunal, but on the radio, there are two subjects from the Darfur that
11 are being prosecuted by this very same court here for killing two
12 Blue Helmets. * But if nine of them were killed in our country, and it is alleged that we
13 are the perpetrators, then why is it that the International Criminal Court, which I
14 believe has a lot of credibility, has not taken up a case such as that one?

15 I, myself, would be happy if my status changed while I'm here at
16 The Hague to deal with all these questions that the Congo can't solve.
17 I'd like to be judged. This is hard for me, especially when the court
18 has to cooperate with the DRC. That is a state that does not respect
19 human rights.

20 So I appeal to everyone who cares about human rights to
21 understand why I'm so emotional about this, so affected about this. This
22 is why I raised this issue. You could see how you can help me and others
23 who have come as witnesses here. Others who are in the prison in Makala
24 want to see how they could get out of the chains of the Congolese
25 injustice.

1 Q. Yesterday in response to questions, you said that at some
2 point - I believe you mentioned in 2006 - you eventually stumbled upon on
3 a document that gave some information on why you had been detained. Do
4 you remember telling us that?

5 A. Yes.

6 Q. And what did the document tell you?

7 A. It was a request to extend the detention. It was established by
8 the general auditor, and it was in that document that it was stipulated,
9 it was stated that I had been charged with crimes against humanity for
10 having carried out systematic or generalised attacks against the civilian
11 population in the District of Ituri in May 2003, up until December 2005,
12 up until December 2005. So I was already arrested on the 19th of March
13 and imprisoned in 2005, and up until December, I was accused of
14 attacking -- of organising attacks against the population, the civilian
15 population. What a -- what an aberration.

16 Q. Have you appeared before any tribunal since you've been detained?

17 A. No, I haven't.

18 Q. But are you aware that the offences for which you've been
19 detained, they're under the military code? Are you aware of that?

20 A. Yes, I am.

21 Q. (* Microphone not activated) ... that you had raised --

22 THE INTERPRETER: Microphone, please.

23 MR. OMOFADE:

24 Q. I start again. You mentioned in response to my earlier question
25 that you had raised the issue of your detention before. What do you mean

1 you have raised it before? Do you mean before this court?

2 A. When I say that in a memorandum that I signed, as well as others
3 that were involved in the same case, well, this was in January 2007. A
4 memorandum was addressed to our Minister of Justice at the time,
5 Georges Minsay. That's the name. We had a copy for the ICC Prosecutor,
6 and at that time we understood that Congolese justice wouldn't be useful
7 for us, and that if it was true that the acts described as war crimes
8 were acts we were to be charged with, were crimes we were to be charged
9 with, at the time we thought that the ICC should have jurisdiction to
10 deal with the matter, because generally speaking, in March 2004, the head
11 of the Congo state, Joseph Kabila Kabange had deferred to your august
12 court all issues that concerned serious crimes committed in the Congo and
13 in particular in Ituri. And that is why, in January 2007, in this
14 memorandum, we expected that we would see the Prosecutor of the ICC take
15 charge of the case, manage the case, and we thought that we would be
16 referred finally to this court and be judged.

17 And I'll add when the Minister of Justice on the 1st of June,
18 2009, appeared before Chamber II, the sister Chamber of this one here,
19 and presented the case for the Congo, and he denied that the state of
20 Congo was prosecuting us for war crimes, he said that there was such an
21 attempt as a result of charges made by NGO. He said that it was the
22 matter -- the matter concerned the death of nine Blue Helmets. But if
23 that was the case, because that would be a war crime -- well, there were
24 nine Blue Helmets. They were killed on the 25th of January, 2005.
25 During this period, where was I? I was in Kinshasa. I can't prove my

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1 innocence in this case here, but I appeal to you, as Prosecutors of the
2 ICC, to take charge of the case so that justice can be done, because it's
3 very hard for me to see that a case presented in this manner is suffering
4 to this day, because if I remember the Statute of Rome, in Article 17 of
5 the Statute of Rome -- of the Rome Statute, it says when a State shows
6 that it is incapable of meting out justice with regards to such serious
7 crimes, when there is such an incapacity, when there are such failures,
8 then the court can take charge of such cases, unless there is something
9 that I failed to understand in the Statute. I studied political science.
10 I'm not lawyer.

11 PRESIDING JUDGE FULFORD: Mr. Omofade, maybe this is going
12 somewhere, but at the moment I can't detect the relevance of this in
13 relation to the matters that are properly before us. Maybe I'm missing
14 something, but it's not readily apparent. The question you asked quite a
15 long time ago was: "You mentioned in your response to my earlier
16 question that you'd raised the issue of your detention before." Maybe
17 that has relevance, the issue of this witness's detention, but -- well,
18 it's a matter for you.

19 MR. OMOFADE: Would your Honours forgive me a moment.
20 (Prosecution counsel confer)

21 MR. OMOFADE: Your Honours, at this time the Prosecution has
22 nothing further to proceed with. I wonder if it's a convenient moment.

23 PRESIDING JUDGE FULFORD: There are two possibilities,
24 Mr. Omofade. Either you've finished, or you want to adjourn your
25 questioning until Monday. Which of the two?

1 MR. OMOFADE: We want to adjourn it to Monday. That's the case,
2 your Honour.

3 PRESIDING JUDGE FULFORD: Well, you haven't set out the reasons,
4 but we can readily anticipate them, namely, following a short witness
5 summary, you've been provided with a lot detail from this witness which
6 you want to have time to reflect on and consider before you conclude your
7 questioning. We discussed this before coming into court. We're
8 sympathetic to the application, and unless there is any positive
9 opposition from the Defence, we will adjourn your questioning until 9.30
10 on Monday.

11 MR. OMOFADE: I'm grateful, your Honour.

12 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, you wanted to raise,
13 I think, the issue of the timetable for closing submissions. Is that
14 correct?

15 THE INTERPRETER: The French booth kindly asks Judge Fulford
16 whether it would be possible to speak directly into the microphone.

17 MR. SACHDEVA: (* Overlapping speakers) ... jumping the gun
18 but -- but not simply a timetable but also the procedures that might be
19 envisaged by your Honours in terms of a written brief or perhaps oral
20 arguments.

21 PRESIDING JUDGE FULFORD: Let me tell you what we've got in mind,
22 Mr. Sachdeva. On the timetable that's been given to us by the Registry
23 which, as we understand it, is not contradicted by anyone in court, on
24 the basis of the witnesses we've been told about and the days when it's
25 envisaged they will testify, the evidence in the case should be concluded

1 by the 15th of April.

2 We have in mind giving you and the victims approximately
3 six weeks to prepare written submissions, which takes us to the
4 1st of June. We've borne in mind on the one hand there is a huge amount
5 of evidence that you have got to consider and a large number of legal
6 issues, but balanced against that, a not insignificant part of the case
7 has already been addressed in the Defence most recent abuse of process
8 motion. Of course, that was only a part of the case, but it was an
9 important element of it.

10 We then have in mind, subject to the filing of your brief on the
11 1st of June, affording the Defence until the 15th of July, which is again
12 some six weeks later, to file the Defence closing submissions.

13 We consider that in a case in which so much oral and written
14 evidence has been provided, the overwhelming burden of your submissions
15 should be in written form. We do not think it will be helpful for
16 substantive submissions to be made orally. However, there is a necessary
17 important public element to closing your respective cases, and we have in
18 mind affording the participants, the Prosecution, and the Defence half a
19 day each for oral -- for an oral summary of your arguments to assist us
20 and so that they are explained publicly to the world at large.

21 As an initial suggestion, we have in mind extending the page
22 limit to 200 pages for the Prosecution and Defence. We're not going to
23 give each of the victims 200 pages, but in due course we will, having
24 received submissions, decide on an appropriate length of the document for
25 each participating team.

1 Now, to assist you as to whether or not 200 pages is sufficient,
2 over-generous or too mean, we want to make it clear that we do not intend
3 to guess at the points that you seek to make from your respective points
4 of view or that you would wish to make. And let me explain what we mean
5 by that.

6 So far as the bar-table documents are concerned, it is likely
7 that we will only consider them to the extent that they are referred to
8 in your written closing submissions. So if there are bar-table documents
9 which at the end of the case you consider to have relevance and
10 importance, you must identify the part of the document that you rely on,
11 and you must set out a short explanation of the point or points that you
12 make in relation to that document and the section of it that you have
13 identified. If you fail to refer to a bar-table document or you fail to
14 refer to parts of a bar-table document, you should work on the basis that
15 there is a very real risk that we will simply not take it into
16 consideration. We do not intend to read each and every one of the
17 documents that you have respectively submitted, guessing at what might be
18 the unexplained relevance of the particular piece of paper. These
19 proceedings should not be conducted on the basis of judicial guesswork.

20 Similarly, we have heard a great deal of oral evidence. Some of
21 it, on analysis, may well prove to have greater relevance than other
22 parts of the evidence that we have heard, and there is a duty on you all
23 to indicate the principal facts, the principal parts of the oral evidence
24 that we have heard that you rely on, coupled with a sufficient
25 explanation as to why you say the particular piece of evidence or section

1 of evidence has relevance to your case, either in support of the case
2 that you are making or by way of criticism of the case for the other
3 side.

4 Now, it may be that the Bench will consider some of the evidence
5 that you have not identified. That, of course, is a matter entirely for
6 us if we choose to do so. But for those parts that you consider to be
7 relevant, you must flag it up, and I hope that's clear.

8 Now, Mr. Sachdeva, that's our very preliminary view in terms of
9 timetable. We're more than happy for you to reflect on this over the
10 weekend or longer and come back to us in due course, but I hope I have
11 dealt with the area that, generally speaking, you're interested in.

12 MR. SACHDEVA: Indeed, Mr. President. It's very helpful. I do
13 have at this time maybe three points I could raise for further reflection
14 for your Honours, with respect. The first is the filing of the closing
15 written submissions. Because the Defence knows its case that it has to
16 meet and following practice in other international tribunals, of course I
17 recognise that this is a different court, the Defence and Prosecution
18 would file closing submissions simultaneously. Thereby, I would suggest
19 expediting the process, and if indeed there were to be rights of
20 responses that could be done orally, during oral arguments.

21 Secondly, I believe the Prosecution will at this stage seek leave
22 to ask for a page limit of 250 pages for its closing written submissions.

23 The third point we would like to ask is whether during oral --
24 presentation of oral submissions the Chamber is minded or will attempt to
25 ask questions of the parties on certain issues that may have arisen

1 during the written submissions.

2 And fourthly, of course, the timetable is dependent upon the
3 Prosecution's right to seek leave to call rebuttal evidence, with your
4 leave.

5 PRESIDING JUDGE FULFORD: Yes. The word "right" and "by your
6 leave" don't necessarily sit happily together, Mr. Sachdeva. Well, if
7 you have an application to call evidence by way of rebuttal, we'll look
8 forward to receiving it in due course.

9 Right. Thank you very much. That's clear.

10 Maitre Mabilie, anything at this stage, or do you want time to
11 think about it?

12 MS. MABILLE: (Interpretation) Yes. The Defence also reflected
13 on the problem. I am speaking general to the Chamber, not to
14 Mr. Sachdeva.

15 It is difficult for us now, and as we saw in the abuse of process
16 proceedings, we would like to bring to the attention of the Chamber
17 two problems.

18 The first problem is the number of pages. Before the ICC, and I
19 must say this clearly, we have the Prosecutor, we have the
20 Legal Representatives who have the same position as the Prosecutor, and
21 so we have been responding to 100 pages from the OTP. We have been
22 responding to the observations of the Legal Representatives. And so we
23 had 160 pages more. That is the -- more than double what the Prosecutor
24 himself wrote.

25 When, therefore, you propose that we should have 200 -- well, a

1 page limit of 200 like the Prosecutor, I believe that the page limit of
2 the Defence team should be extended, because we respond to the
3 observations of the Prosecutor and the observations of the
4 Legal Representatives. They are like the assistants of the Prosecutor,
5 and so we have to address the observations of both parties. And this
6 means, therefore, that in terms of deadline, we are going to have
7 six weeks. The Prosecutor also has six weeks. But we will have to be
8 addressing two part -- both -- well, two parties, so our workload is
9 going to be enormous.

10 I would therefore like to raise this difficulty before the
11 Chamber.

12 The second difficulty, which is more pragmatic and -- well, also
13 has to do with translation. Would I like to draw the Chamber's attention
14 to this problem.

15 As the Chamber knows, the Defence team does not have a
16 translation service. When the Prosecutor receives documents, the --
17 well, the OTP can translate the document very quickly because they have a
18 language team. Our team is French-speaking. Two of our members speak
19 English fairly well, and the accused person speaks only French. When we
20 receive the translation, it was on a day when we had to hand in our
21 response to the observations of the Prosecutor. It is important for us,
22 therefore, to have this document of the Prosecutor sent as early as
23 possible, and it is also important for us to work with a relative degree
24 of comfort in terms of translation.

25 Again, as I said, two of our members speak English, but even so,

1 it is difficult for us to work to the best of our ability, because we do
2 not have translation services, as I said, and sometimes we may
3 misinterpret things because our two members do not have native knowledge
4 of -- native-speaker knowledge of English.

5 I am now responding to what the Prosecutor said, to his
6 suggestion which I found strange, and he proposed that we should submit
7 documents on the same day. I think that is going to be difficult. At
8 least that's what I understood from you said. Maybe it was not well
9 interpreted.

10 PRESIDING JUDGE FULFORD: Anything else, Mr. Sachdeva?

11 MR. SACHDEVA: Nothing further, Mr. President.

12 PRESIDING JUDGE FULFORD: This obviously isn't a marketplace,
13 Maitre Mabilie, but we made a tentative suggestion as to length of
14 document and date of delivery. Do you have counteroffers to propose, or
15 do you leave it to us?

16 MS. MABILLE: (Interpretation) To be honest, your Honour, we
17 would have liked that the Chamber should set a page limit for
18 Legal Representatives. Then we'll know how many pages we'll have to
19 respond to. If the Chamber decides that each team of
20 Legal Representatives has a page limit of 100 pages -- well, I think the
21 Chamber has understood what I'm trying to say. I think we should start
22 with that first stage. That will then enable us to subsequently come
23 back to the Chamber with a proposal.

24 PRESIDING JUDGE FULFORD: This has been a very tentative
25 proposal. We will come back with a much firmer proposal during the

1 course of next week, but the door will not be closed on further
2 submissions if the firmer proposal is extremely unpopular with one party
3 or the other or the participants.

4 Thank you all for your attendance. We sit again at 9.30 on
5 Monday morning in Courtroom II.

6 Yes, Mr. Biju-Duval.

7 MR. BIJU-DUVAL: (Interpretation) I apologise, your Honour. I
8 wish to talk on some other point.

9 The Defence team would like to seek the leave of the Chamber that
10 Mr. Djokaba and the next witness, D0011, should be able at the end of
11 their testimony meet Mr. Thomas Lubanga briefly. This is due to the ties
12 that they have between them and given the character, the precise
13 character of the situation.

14 The Chamber has already made use of such an arrangement by
15 Trial Chamber II. The same practice has been carried out at the ICTR.
16 And that is our application today with respect to Mr. Djokaba and the
17 next witness, Witness D0011.

18 PRESIDING JUDGE FULFORD: So to be clear, once the two witnesses
19 who will be testifying in The Hague have completed their evidence, so
20 once their evidence is finally concluded, before they return to the
21 Democratic Republic of Congo, they should be entitled socially to meet
22 with the accused. Fine.

23 Anything, Mr. Omofade?

24 MR. OMOFADE: Your Honours, we have discussed this with the
25 Defence. We -- we're quite amenable to this arrangement within, of

1 course, the parameters that have been laid down by the other
2 Trial Chamber that my friend refers to, and I believe we discussed those,
3 but I can actually air them here if your Honour would like me to.

4 PRESIDING JUDGE FULFORD: Thank you. Well, Mr. Biju-Duval, in
5 principle the Chamber has no objection to the proposal that you make. We
6 see, from a humanitarian point of view, the good sense of it.
7 Mr. Omofade has just referred to parameters laid down by another
8 Trial Chamber. I'm not sure immediately what he has in mind. If there
9 are any technical issues, procedural issues, as regards the
10 Detention Unit that we need to consider, well, perhaps we ought to have
11 those brought to our attention next week, but in principle we are content
12 for this to happen, and the Registry will no doubt bring to our attention
13 any difficulties which we ought to bear in mind before this actually
14 takes place.

15 MR. BIJU-DUVAL: (Interpretation) As concerns Mr. Djokaba, it's
16 very simple. The accused and Mr. Djokaba are living close to each
17 other -- or, rather, they are in separate rooms close to the courtroom,
18 and so they can meet under the best possible security conditions.

19 PRESIDING JUDGE FULFORD: It may well be there are no
20 difficulties, Mr. Biju-Duval, but in principle, yes, and if the -- those
21 responsible for the -- for the detention of the accused and the witness
22 want to bring any particular matters to our attention, they're of course
23 free to do so, particularly bearing in mind that this isn't going to
24 happen for a number of days because the evidence of Witness 0019 and
25 Witness 0011 have got to be completed.

1 Good. Anything else?

2 Sir, we thank you very much for your attendance, we thank you for
3 your assistance, and we look forward to seeing you again on Monday
4 morning.

5 We rise.

6 THE WITNESS: (Interpretation) Thank you.

7 The hearing ends at 3.17 p.m.

8 CORRECTIONS REPORT

9 The following corrections have been brought by the Court Interpretation and
10 Translation Section:

11 * Page 2 line 15

12 "FNI ACLAP (* as interpreted)" is corrected by "FNI "acquis à la paix"

13 * Page 7 line 18

14 "They promised to do the opposite of what had been done" is corrected by

15 "They promised to do the contrary of what the AFDL had done"

16 * Page 58 lines 12 to 14

17 "But if we were taken as perpetrators of a crime, why would the ICC, that has a lot of
18 credibility, not be able to deal with such a case?" is corrected by

19 "But if nine of them were killed in our country, and it is alleged that we are the
20 perpetrators, then why is it that the International Criminal Court, which I believe has
21 a lot of credibility, has not taken up a case such as that one? "

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