

1 INTERNATIONAL CRIMINAL COURT  
2 SITUATION DEMOCRATIC REPUBLIC OF CONGO  
3 Case No: ICC-01/04-01/06  
4 Transcription No: ICC-01/04-01/06-T-33-EN  
5 Monday, 13 November 2006 at 9.42 a.m.  
6 OPEN SESSION  
7  
8 Before: His Honour Judge Claude Jorda (Presiding Judge)  
9 Her Honour Judge Sylvia Steiner  
10 Her Honour Judge Akua Kuenyehia  
11 PRE-TRIAL CHAMBER I  
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1 [9:42 a.m.]

ICC-01-04-01-06-T-33-EN

09:22:40 2 OPEN SESSION

09:42:00 3 THE USHER: All rise. The International Criminal Court is  
09:42:23 4 now in session.

09:42:30 5 PRESIDING JUDGE JORDA (interpretation): Please take your  
09:42:31 6 seats. I would like the security service -- please be seated.  
09:42:35 7 I would like the security service to bring in Mr Lubanga  
09:42:43 8 Dyilo.

09:42:43 9 [9:42 a.m.]

09:42:46 10 [Mr Thomas Lubanga Dyilo entered the courtroom]

09:42:54 11 PRESIDING JUDGE JORDA (interpretation): Please be seated,  
09:43:11 12 Mr Lubanga Dyilo. I think that it is perhaps not necessary to  
09:43:17 13 introduce ourselves, but if you could call the case,  
09:43:24 14 Mr Registrar, for the public, where there might be some new  
09:43:28 15 people among the public.

09:43:30 16 COURT OFFICER (interpretation): Thank you, your Honour.  
09:43:31 17 Situation in the Democratic Republic of the Congo in the case  
09:43:33 18 of the Prosecutor versus Thomas Lubanga Dyilo,  
09:43:40 19 ICC-01/04-01/06.

09:43:43 20 PRESIDING JUDGE JORDA (interpretation): Thank you. We are  
09:43:44 21 not going to say it again. We now take up the hearing again.  
09:43:48 22 I would like to turn to the Prosecutor now. Is there anybody  
09:43:50 23 new in your team, Mr Withopf?

09:43:53 24 MR WITHOPF: Good morning, Mr President. Good morning, your  
09:43:57 25 Honours and good morning to the Defence and the legal

09:43:58 1 representatives of the victims, and I extend my greetings as  
09:44:04 2 usual to everybody in and around the courtroom.  
09:44:07 3 For the Prosecutor appear today, Ms Fatou Bensouda; she's the  
09:44:10 4 Deputy Prosecutor, Prosecutions. The Associate Trial Lawyers:  
09:44:13 5 Ms Julieta Solano; Ms Olivia Struyven, and Ms Nicole Samson.  
09:44:22 6 The Associate Legal Officer, Sangkul Kim. Miss Ramu Bittaye  
09:44:24 7 is our Case Manager as you do know, and I'm Ekkehard Withopf,  
09:44:26 8 the Senior Trial Attorney.  
09:44:26 9 PRESIDENT JUDGE JORDA (interpretation): The Defence side;  
09:44:37 10 would you like to identify your team?  
09:44:37 11 ME FLAMME: There's just one small change, Mr President. We  
09:44:40 12 are today also assisted by Madame Catherine Dobson.  
09:44:40 13 PRESIDING JUDGE JORDA (interpretation): So Catherine Dobson.  
09:44:49 14 I know turn to Mr Thomas Lubanga Dyilo. Have you managed to  
09:44:51 15 rest this weekend, and you've worked as well, I suppose? Are  
09:44:54 16 your detention conditions still satisfactory?  
09:44:58 17 MR LUBANGA DYILO: Thank you.  
09:45:05 18 PRESIDING JUDGE JORDA (interpretation): The guards can please  
09:45:07 19 remain seated. It's not because - it's not when he's standing  
09:45:08 20 that you have to stand up, as well. Mr Lubanga Dyilo, did you  
09:45:09 21 have a good weekend?  
09:45:10 22 MR LUBANGA DYILO: Yes, the weekend made it possible for me  
09:45:13 23 to rest.  
09:45:15 24 PRESIDING JUDGE JORDA (interpretation): Good. I now turn to  
09:45:16 25 the legal representative of victims. I know that Mr Walley

09:45:21 1 and Mr Mulenda haven't been able to get to The Hague yet. I  
09:45:21 2 would like to remind all participants that when a time is  
09:45:21 3 fixed, it has to be respected. Perhaps between Belgium and  
09:45:30 4 The Hague, perhaps there are traffic jams, but the Chamber and  
09:45:32 5 myself have decided to start, and to authorise Mr Walley and  
09:45:37 6 Mulenda to come as soon as they are here.  
09:45:37 7 [9:45 a.m.]  
09:45:41 8 Any other persons who want to identify themselves?  
09:45:41 9 Ms Massidda?  
09:45:44 10 MS MASSIDDA (interpretation): Yes. Good morning, President.  
09:45:49 11 Just to say -- just to give you some information that  
09:45:53 12 Mr Walley and Mulenda have had a problem with the train  
09:45:58 13 and -- which is coming from Brussels, and so they will be a  
09:46:01 14 bit delayed this morning. I will represent them until they  
09:46:04 15 arrive.  
09:46:06 16 PRESIDING JUDGE JORDA (interpretation): Thank you. And for  
09:46:07 17 victim 105?  
09:46:09 18 MS BAPITA: Yes, I am representing also the victims. Bapita  
09:46:19 19 is my name.  
09:46:20 20 PRESIDING JUDGE JORDA (interpretation): So we've now fixed  
09:46:22 21 the schedule. I am now going to turn to Mr Withopf. It is  
09:46:25 22 now 9.45. You may start. Yes, Mr Flamme?  
09:46:28 23 ME FLAMME (interpretation): Your Honour, if you would allow  
09:46:30 24 me very briefly. I haven't yet been able to consult your  
09:46:35 25 decision, because it is not yet published, I think. So,

09:46:44 1 relying on the transcript from the hearing, I have a couple of  
09:46:47 2 questions which seem to be sufficiently important, because  
09:46:51 3 here we're talking about preliminary matters, and so I'd like  
09:46:57 4 to present them to you.

09:46:58 5 Firstly, I read in the transcript on page 23, where it  
09:47:03 6 concerns a problem of resources and investigations in the  
09:47:10 7 field, which concerns, on the one hand, the lack of  
09:47:15 8 possibilities to work in Kinshasa due to the lack of the  
09:47:20 9 office of the Court, and on the other hand through the lack of  
09:47:29 10 protection measures for the witnesses, or potential witnesses  
09:47:34 11 to be interviewed.

09:47:34 12 [9:47 a.m.]

09:47:37 13 That if the transcript is exact -- I don't know the -- you  
09:47:42 14 mentioned the decision of the Single Judge of 15 October, in  
09:47:45 15 which this issue has already been addressed.

09:47:50 16 So I would like to remind the Chamber that the departure for  
09:47:58 17 this trip was later to this decision -- subsequent to this  
09:48:01 18 decision, because I left on 17 October and the decision for  
09:48:06 19 this trip was taken the day before, on 16 of October, and  
09:48:10 20 therefore it's not possible that the decision of 5 October can  
09:48:15 21 solve this problem because the problem was not known at the  
09:48:19 22 time. So I don't see how the Chamber can respond to this  
09:48:26 23 preliminary matter, which is -- are essential because, on the  
09:48:30 24 one hand, we are talking about the possibilities of having  
09:48:33 25 resources available to the Defence to be able to do its work

09:48:36 1 in the field and, secondly, it is about the crucial problem,  
09:48:41 2 within this Court, of protection measures for the witness.  
09:48:41 3 [9:48 a.m.]  
09:48:45 4 The second point is that the Chamber -- and here following the  
09:48:52 5 transcript, again, where it concerns the crucial problem of  
09:48:57 6 the exact language spoken in the videos which are presented by  
09:49:02 7 the Prosecutor -- the Chamber on page 26 says -- where it  
09:49:12 8 concerns the videos, concerning the videos which the Defence  
09:49:17 9 has asked to be excluded -- the Chamber has asked the Registry  
09:49:21 10 if the language used in one or all of these videos is  
09:49:26 11 different to that used by Thomas Lubanga Dyilo in one of these  
09:49:32 12 videos. According to the information that should be  
09:49:37 13 communicated by the Registry before Monday at 9.30, the  
09:49:40 14 Chamber will decide if there are exceptional circumstances  
09:49:44 15 justifying that it reconsiders its decision.  
09:49:47 16 [9:49 a.m.]  
09:49:48 17 I would just like to remark to the Chamber, firstly, here,  
09:49:51 18 that, first of all, I didn't have this information  
09:49:55 19 communicated by the Registrar before 9.30, which is 20 minutes  
09:49:59 20 ago now. But, secondly, with all respect, the problem as  
09:50:08 21 presented in your decision is based on perhaps a  
09:50:11 22 misunderstanding, and I will explain this.  
09:50:14 23 The Prosecutor clearly said that the language spoken on this  
09:50:20 24 video is Swahili. So we can suppose that the translation  
09:50:28 25 services of the Office of the Prosecutor -- who I don't have

09:50:32 1 confidence in I have to say at the moment -- have translated  
09:50:35 2 thinking that it was Swahili when I said clearly that it  
09:50:38 3 wasn't Swahili, but it was Kingwana -- K-I-N-G-W-A-N-A.  
09:50:38 4 [9:50 a.m.]  
09:50:51 5 And, therefore, we have a problem -- a significant problem  
09:50:58 6 before even starting to view these videos. My personal  
09:51:01 7 position is very simple in this regard before -- well, before  
09:51:08 8 the Court of the smallest country where you have a technical  
09:51:11 9 problem that the -- can't be solved, then you bring in an  
09:51:15 10 expert and when it is about a foreign language, then you name  
09:51:19 11 a sworn translator to do so. So I have said, and I repeat,  
09:51:24 12 that I can't have confidence in the translations that are made  
09:51:28 13 by the Office of the Prosecutor.  
09:51:30 14 So these are the remarks that I wanted to say today. Thank  
09:51:34 15 you.  
09:51:36 16 PRESIDING JUDGE JORDA (interpretation): Thank you,  
09:51:38 17 Mr Flamme. With regards to the resources, we will verify what  
09:51:45 18 we've said. I don't think that it's going to change the  
09:51:50 19 chronology of our debate, whatever you think, but of course we  
09:51:53 20 will verify this.  
09:51:54 21 With regard to the second point, I would like to speak to the  
09:51:57 22 Prosecutor to see -- see what language the videos were filed  
09:52:02 23 in for the record.  
09:52:03 24 MR WITHOPF: Mr President, your Honours, there are a number of  
09:52:08 25 videos and some of the videos contain French language, some of

09:52:14 1 the video contain English language, and some of the videos  
09:52:18 2 contain a language which the Office of the Prosecutor believes  
09:52:22 3 is Swahili, and a number of these videos contain speeches by  
09:52:29 4 Thomas Lubanga Dyilo, what makes me conclude that Mr Thomas  
09:52:35 5 Lubanga Dyilo is actually in a position to understand what is  
09:52:38 6 said at the time.

09:52:38 7 [9:52 a.m.]

09:52:40 8 We have made inquiries in respect to Kingwana. It appears  
09:52:47 9 that Kingwana is a dialect of Swahili and the Office of the  
09:52:52 10 Prosecutor's language section is confident that it has  
09:52:55 11 properly translated the respective portions in the videos.

09:53:02 12 PRESIDING JUDGE JORDA (interpretation): So, we have just  
09:53:05 13 received a report from the Registry, in fact, and it is  
09:53:09 14 pointed out here that Kingwana is one of the three variants of  
09:53:15 15 Swahili and it seems that this language and this Swahili are  
09:53:17 16 inter-comprehensible, if you like. So, I just wanted to --  
09:53:26 17 I'm sorry, Mr Flamme -- I just wanted to speak here. But  
09:53:27 18 perhaps he doesn't want to respond. But I'd just like to ask  
09:53:28 19 Mr Thomas Lubanga Dyilo what he thinks of this language  
09:53:30 20 variation. But I can see that you're shaking your head.

09:53:36 21 Mr Flamme, I would like to ask Mr Lubanga Dyilo with regards  
09:53:39 22 to this question -- it's a technical question, quite simply.

09:53:44 23 ME FLAMME (interpretation): Yes, Mr Thomas Lubanga Dyilo --  
09:53:47 24 I would like to make it -- say straightaway, he can't be  
09:53:51 25 surprised in a hearing; and he shouldn't have to be examined

09:53:57 1 or asked a question. He has a right to silence and I would  
09:54:00 2 like to be able to speak to him before answering this  
09:54:03 3 question.  
09:54:04 4 PRESIDING JUDGE JORDA (interpretation): Yes, he has the right  
09:54:05 5 to refuse.  
09:54:06 6 ME FLAMME (interpretation): Yes, but I would like to discuss  
09:54:09 7 the fact with him, if he agrees to respond to your question.  
09:54:12 8 PRESIDING JUDGE JORDA (interpretation): Yes, I agree. I  
09:54:14 9 certainly accord you this right. You can meet in the room  
09:54:18 10 here; the microphones are off, and I would just like -- ask  
09:54:23 11 you to do it as shortly as possible, because the question  
09:54:26 12 can't be very complex.  
09:54:27 13 Now, I can assure you straightaway that Mr Lubanga Dyilo can  
09:54:32 14 certainly not respond to it, and, of course, no account will  
09:54:34 15 be taken of that on the part of the judges who have a fair  
09:54:39 16 position with regards both to the Prosecution, victims and the  
09:54:42 17 Defence. That's what I have been saying since Thursday. You  
09:54:46 18 have the possibility to be able to speak to your client now.  
09:54:46 19 [9:54 a.m.]  
09:55:14 20 [Mr Thomas Lubanga Dyilo and Me Flamme left the courtroom]  
09:59:02 21 [9:59 a.m.]  
09:59:04 22 [Mr Thomas Lubanga Dyilo and Me Flamme returned to the  
09:59:07 23 courtroom]  
09:59:21 24 PRESIDING JUDGE JORDA (interpretation): First of all, I  
09:59:24 25 would like to thank you all. I'd also like to thank Thomas

09:59:29 1 Lubanga Dyilo. I'm not sure what his decision has been, but  
09:59:31 2 in any case I would like to thank him.  
09:59:31 3 [9:59 a.m.]  
09:59:34 4 Mr Flamme, could you give us some clarification on your  
09:59:38 5 position -- on your client's position?  
09:59:40 6 ME FLAMME (interpretation): Judge Jorda, Mr Lubanga Dyilo  
09:59:45 7 accepts to answer the question -- the one question you put to  
09:59:48 8 him.  
09:59:50 9 PRESIDING JUDGE JORDA (interpretation): Mr Lubanga, could  
09:59:51 10 you tell us, would you -- do you believe that this Swahili  
09:59:55 11 variant is mutually intelligible amongst Swahili speakers in  
09:59:59 12 the region? Please go ahead.  
10:00:02 13 MR LUBANGA DYILO (interpretation): Mr President, your  
10:00:06 14 Honours --  
10:00:07 15 PRESIDING JUDGE JORDA (interpretation): Please speak a  
10:00:10 16 little louder or closer to the microphone.  
10:00:11 17 MR LUBANGA DYILO (interpretation): Thank you. Mr President,  
10:00:16 18 the answer to your question is simple: the answer to the  
10:00:22 19 question is simple. The Prosecutor's videos include  
10:00:35 20 dialogues, discussions or messages with -- which are largely  
10:00:39 21 in Kingwana.  
10:00:43 22 PRESIDING JUDGE JORDA (interpretation): Kingwana?  
10:00:45 23 MR LUBANGA DYILO (interpretation): Kingwana, but also  
10:00:50 24 interviews in Swahili/Kingwana.  
10:00:54 25 [10:00 a.m.]

10:00:57 1 I would like to express the opinion that there are not two or  
10:01:04 2 three variants of Swahili, as the Prosecutor asserts, but  
10:01:09 3 hundreds of variants of Swahili in the Congo. And I would  
10:01:16 4 like to say straightaway that when I began viewing some of  
10:01:25 5 these videos over the weekend, I found serious errors in the  
10:01:33 6 translation.

10:01:43 7 PRESIDING JUDGE JORDA (interpretation): Thank you very much  
10:01:50 8 for having agreed to answer with the agreement of the Defence.

10:01:50 9 [10:01 a.m.]

10:01:54 10 I would just like to deliberate briefly with my colleagues.

10:01:54 11 [10:01 a.m.]

10:02:07 12 [Pause -- Bench confers]

10:05:06 13 [10:05 a.m.]

10:05:06 14 PRESIDING JUDGE JORDA (interpretation): Mr Prosecutor, how  
10:05:12 15 many videos are you planning to present at the hearing?

10:05:16 16 MR WITHOPF: Thank you, Mr President, your Honours, for giving  
10:05:21 17 us an opportunity to explain the number of videos and to give  
10:05:25 18 more information in respect to the languages being used, since  
10:05:30 19 I believe, and we believe, that the problem raised by our  
10:05:33 20 learned friends from the Defence is sort of a moot problem.

10:05:33 21 [10:05 a.m.]

10:05:39 22 We intend to play 12 videos, meaning excerpts of videos, and  
10:05:51 23 most of these videos contain English or French. There are  
10:05:57 24 quite a number of videos in which Mr Thomas Lubanga Dyilo  
10:06:01 25 speaks himself, and there are two or three videos where other

10:06:07 1 people than Thomas Lubanga Dyilo speak in Swahili or in  
10:06:12 2 Kingwana.  
10:06:12 3 [10:06 a.m.]  
10:06:14 4 I would suggest, Mr President, your Honours -- I would  
10:06:17 5 respectfully suggest that the Pre-Trial Chamber decides on a  
10:06:22 6 case-by-case basis, and preferably after the video has been  
10:06:26 7 shown to the Pre-Trial Chamber.  
10:06:26 8 [10:06 a.m.]  
10:06:42 9 [Pause -- Bench confers]  
10:07:29 10 [10:07 a.m.]  
10:07:31 11 PRESIDING JUDGE JORDA (interpretation): The decision of the  
10:07:32 12 Chamber: the cassettes shall be viewed. When there is a  
10:07:38 13 conflict, Mr Flamme, you will put forward your arguments. You  
10:07:41 14 will not put forward general allegations, but you will put  
10:07:44 15 forward, in specific terms, your concern. I would like to  
10:07:49 16 give you the floor again, but you have the habit of taking the  
10:07:52 17 floor each time we speak.  
10:07:55 18 ME FLAMME (interpretation): Not at all, but you know the  
10:07:57 19 Defence has the right to express its views. How are we to  
10:08:01 20 make comments if we do not understand the language?  
10:08:04 21 PRESIDING JUDGE JORDA (interpretation): You have  
10:08:07 22 demonstrated that you understand both the French and Swahili.  
10:08:12 23 ME FLAMME (interpretation): I do not understand Swahili at  
10:08:15 24 all; I'm not African.  
10:08:17 25 PRESIDING JUDGE JORDA (interpretation): No, but your client

10:08:18 1 understands.

10:08:20 2 ME FLAMME (interpretation): No, but I do not understand and  
10:08:22 3 I should not be dependent upon my client to understand.

10:08:26 4 PRESIDING JUDGE JORDA (interpretation): The Registry  
10:08:27 5 services shall view any cassette which is the object of a  
10:08:33 6 conflict. The judges of this Chamber do not understand the  
10:08:35 7 Swahili any more than you do. Mr Flamme, may I continue, or  
10:08:41 8 shall there be another incident? Do you not feel that there  
10:08:44 9 were enough on Thursday or Friday? You are in the presence of  
10:08:47 10 judges and I would like you to act accordingly.

10:08:47 11 [10:08 a.m.]

10:08:51 12 A decision has been taken and that is that the videos shall be  
10:08:56 13 viewed. There are 12 of them. When there is a conflict  
10:08:59 14 regarding a specific passage, in Swahili or Kingwana, it is  
10:09:04 15 the Registry, which is an objective service of this Court,  
10:09:08 16 which has the task of revising language translation. Based on  
10:09:17 17 reports from the Registry, the judges shall take a decision on  
10:09:20 18 whether a decision needs to be taken.

10:09:23 19 Now, I would like to move on and I would ask you, Mr Flamme,  
10:09:27 20 in future to please try to be respectful of the Chamber. The  
10:09:33 21 incident is over.

10:09:33 22 [10:09 a.m.]

10:09:37 23 Mr Withopf, you may continue. Please begin to present the  
10:09:41 24 charges being put forward by the Prosecution.

10:09:43 25 MR WITHOPF: Thank you very much, Mr President and your

10:09:46 1 Honours.

10:09:46 2 [10:09 a.m.]

10:09:48 3 Mr President, your Honours, I wish to first use this  
10:09:51 4 opportunity to inform the honourable Chamber about the  
10:09:56 5 compliance of the Prosecution with your Honours' orders of  
10:10:00 6 Friday, as they form part of your oral decision on Friday.

10:10:00 7 [10:10 a.m.]

10:10:07 8 First, in respect of the documents that stem from the search  
10:10:10 9 in the DRC, conducted by national authorities in April 2005,  
10:10:16 10 the Prosecution today, immediately prior to the Court session,  
10:10:21 11 has filed the requested list.

10:10:21 12 [10:10 a.m.]

10:10:25 13 If you so wish, Mr President, your Honours, we can hand over  
10:10:28 14 the list now -- having anticipated that you had not yet access  
10:10:34 15 to the list following the filing, the list may be of some use  
10:10:38 16 later on today.

10:10:38 17 [10:10 a.m.]

10:10:42 18 In that context, we wish to add that the Defence has received  
10:10:45 19 the very same list orally on last Sunday -- meaning  
10:10:50 20 5 November. I have five copies of the list with me. It may  
10:10:53 21 be of some use later on today.

10:11:00 22 [10:10 a.m.]

10:11:00 23 PRESIDING JUDGE JORDA (interpretation): Please hand over  
10:11:05 24 this list.

10:11:05 25 [10:11 a.m.]

10:11:08 1 [Document handed to the Court]

10:11:14 2 PRESIDING JUDGE JORDA (interpretation): Registrar, is all  
10:11:17 3 well? Thank you.

10:11:34 4 COURT OFFICER (interpretation): Thank you, President. This  
10:11:36 5 report will bear the number ICC-01/04-01/06-HLE9, with the  
10:11:45 6 confidentiality level "confidential".

10:12:02 7 MR WITHOPF: Mr President, your Honours, with your  
10:12:05 8 permission, I extend very briefly the information, and I'm  
10:12:10 9 going to address the second aspect -- that's the information  
10:12:13 10 in respect of Article 53(3) (e).

10:12:18 11 The Prosecution can advise that it has, acknowledging the  
10:12:21 12 urgency of the matter, that it has sent the respective letters  
10:12:25 13 to the information providers on Friday night. All the letters  
10:12:31 14 concerning the six documents as mentioned in your Honours'  
10:12:34 15 decision have been sent out on Friday night. And the  
10:12:37 16 Prosecution is awaiting the responses of the information  
10:12:40 17 providers.

10:12:40 18 [10:12 a.m.]

10:12:47 19 If you allow so, Mr President, I will give you an outline what  
10:12:56 20 the Prosecution will present over the next two days and we  
10:13:00 21 will present it obviously in line with the Bench's scheduling  
10:13:06 22 order of 7 November.

10:13:06 23 [10:13 a.m.]

10:13:10 24 For your Honours, the Defence's and the legal representatives  
10:13:14 25 of the victims' information, we today intend to cover the

10:13:18 1 following four distinct aspects, in the order as I will  
10:13:23 2 outline it now.  
10:13:26 3 I will start, Mr President, your Honours, with the evidence  
10:13:30 4 related to the background information on Thomas Lubanga Dyilo.  
10:13:36 5 I will then continue with the evidence related to the  
10:13:40 6 existence and the characterisation of the armed conflict and  
10:13:45 7 related contextual elements. Subsequently, my colleague  
10:13:54 8 Ms Samson, will present the evidence related to the UPC, and I  
10:14:00 9 will conclude today's presentation of the Prosecution's  
10:14:04 10 evidence with a discussion of the evidence related to the  
10:14:10 11 FPLC.

10:14:10 12 [10:14 a.m.]

10:14:15 13 Tomorrow, Mr President, your Honours, the Prosecution team  
10:14:19 14 will present the evidence as follows: I will discuss the  
10:14:25 15 evidence on the policy and the pattern of the UPC and the FPLC  
10:14:31 16 to recruit children under the age of 15 years and to use them  
10:14:36 17 actively in hostilities; my colleague, Ms Darques Lae, will  
10:14:46 18 continue with the presentation of the evidence related to the  
10:14:48 19 alleged roll of Mr Thomas Lubanga Dyilo and the modes of  
10:14:51 20 criminal liability; and my colleagues, Ms Solano and  
10:15:01 21 Ms Struyven will detail the Prosecutor's evidence on the  
10:15:03 22 individual cases.

10:15:03 23 [10:15 a.m.]

10:15:07 24 Mr President, your Honours, we are confident, obviously  
10:15:13 25 subject to questions your Honours may have and/or

10:15:18 1 contributions, interventions of the other participants to  
10:15:21 2 these proceedings -- we are confident that we can complete our  
10:15:27 3 presentation within the timeframe allocated to us, meaning by  
10:15:31 4 Tuesday evening.

10:15:31 5 [10:15 a.m.]

10:15:34 6 As foreseen in the 7 November schedule, Mr President, your  
10:15:39 7 Honours, we may need -- and I add "possibly" a slight  
10:15:44 8 extension of the court days beyond 1600 hours each day for  
10:15:47 9 about one additional hour -- for one additional hour,  
10:15:54 10 Mr President, you have anticipated such a situation; we may or  
10:15:58 11 may not need it.

10:16:12 12 PRESIDING JUDGE JORDA (interpretation): Yes, but I would  
10:16:13 13 like to ask you as far as possible to remain within the time  
10:16:15 14 allotted. Thank you.

10:16:18 15 MR WITHOPF: Again, Mr President, your Honours, we are  
10:16:21 16 confident that we can present the evidence within the time  
10:16:23 17 allotted. And if you permit me to do so, I would like to  
10:16:28 18 start with the evidence related to the background of Mr Thomas  
10:16:35 19 Lubanga Dyilo.

10:16:35 20 [10:16 a.m.]

10:16:41 21 The evidence the Prosecution is going to present,  
10:16:47 22 Mr President, your Honours, is related to the first three  
10:16:51 23 paragraphs in the document containing the charges.

10:16:57 24 Paragraphs 4 and 5 will be addressed in the context of the  
10:17:00 25 presentation on the UPC -- obviously paragraph 4 -- and

10:17:06 1 paragraph 5 will be addressed in the context of the  
10:17:11 2 presentation on the evidence on the FPLC.  
10:17:11 3 [10:17 a.m.]  
10:17:17 4 The presentation of the evidence in respect of paragraphs 1 to  
10:17:24 5 3 of the document containing the charges can be short and we  
10:17:27 6 will keep it short in order to allow us to focus more  
10:17:31 7 extensively on the crucial portions of the document containing  
10:17:35 8 the charges. And I can keep this portion short, Mr President,  
10:17:43 9 your Honours, because Thomas Lubanga Dyilo -- Mr Thomas  
10:17:47 10 Lubanga Dyilo himself -- has confirmed various elements of the  
10:17:52 11 information contained in the document containing the charges  
10:17:56 12 and he has done so in the context of the present proceedings.  
10:18:01 13 I make reference now to the transcript of his initial  
10:18:06 14 appearance of 20 March 2006.  
10:18:14 15 At the occasion of the initial appearance Mr Thomas Lubanga  
10:18:19 16 Dyilo responded to questions of your Honour, the Presiding  
10:18:23 17 Judge, to questions related to his identity, and I refer to  
10:18:30 18 page 3, lines 2 and 3 of the transcript.  
10:18:30 19 [10:18 a.m.]  
10:18:39 20 And Thomas Lubanga Dyilo has responded to your question,  
10:18:44 21 Mr President, that his name is indeed "Thomas Lubanga Dyilo".  
10:18:51 22 And I quote -- Mr Thomas Lubanga Dyilo speaking -- "I was born  
10:18:57 23 on 29 December 1960 in Jiba in the Democratic Republic of the  
10:19:04 24 Congo." And Mr Thomas Lubanga Dyilo continued to say, "I am a  
10:19:09 25 politician by profession."

10:19:11 1 [10:19 a.m.]

10:19:17 2 Thus, Mr President, your Honours, Mr Thomas Lubanga has  
10:19:20 3 confirmed the information as detailed in the first sentence of  
10:19:25 4 the document containing the charges.

10:19:25 5 [10:19 a.m.]

10:19:31 6 And at the occasion of the same Court hearing, Thomas Lubanga,  
10:19:36 7 as I mentioned, has confirmed that he is a politician by  
10:19:40 8 profession. In making this statement, Mr Thomas Lubanga Dyilo  
10:19:46 9 confirmed further elements in paragraph 3 of the document  
10:19:52 10 containing the charges.

10:19:52 11 [10:19 a.m.]

10:19:56 12 And Mr Thomas Lubanga Dyilo has repeatedly, in the context of  
10:20:00 13 the present proceedings before this Pre-Trial Chamber  
10:20:04 14 confirmed, that he was, until recently, the President of the  
10:20:10 15 Union des Patriotes Congolais, which we do know is the UPC.

10:20:10 16 [10:20 a.m.]

10:20:22 17 And, finally, the Prosecution's information on his name, his  
10:20:28 18 date of birth, and his place of birth and his position as  
10:20:35 19 President of the UPC were also confirmed by Mr Thomas Lubanga  
10:20:38 20 Dyilo himself in a document he signed in the context of his  
10:20:42 21 arrest and surrender proceedings, and I refer to a document he  
10:20:47 22 signed on 16 March 2006.

10:20:47 23 [10:20 a.m.]

10:20:52 24 Mr President, your Honours, more concretely, I make reference  
10:20:55 25 to the respective report from the Registrar of 23 March 2006,

10:21:02 1 Annex 5.2, and this document forms part of the case file  
10:21:09 2 against Mr Thomas Lubanga Dyilo.  
10:21:09 3 [10:21 a.m.]  
10:21:17 4 In addition, the Prosecution will now present a number of  
10:21:21 5 documents -- and I haste to add that the number of documents  
10:21:25 6 will be very limited for the reasons outlined earlier on --  
10:21:32 7 and I would like now kindly ask the court officer to please  
10:21:39 8 display the first document, the document with the ERN number  
10:21:46 9 <#DRC-OTP-0092-0378#>.  
10:21:55 10 Mr President, your Honours, this document is the curriculum  
10:21:58 11 vitae of Thomas Lubanga Dyilo. It is dated 1 June 2004.  
10:22:08 12 PRESIDING JUDGE JORDA (interpretation): Excuse us, Mr Flamme  
10:22:10 13 would like to take the floor.  
10:22:16 14 ME FLAMME (interpretation): Mr President, I would just like  
10:22:23 15 some clarification. I had understood that these were  
10:22:26 16 confidential documents. I thought that the rule was that  
10:22:28 17 representatives of the victims, if I've understood rightly,  
10:22:31 18 are not allowed to have knowledge of such documents.  
10:22:37 19 PRESIDING JUDGE JORDA (interpretation): Thank you,  
10:22:38 20 Mr Flamme. This is the document of the Prosecutor. It is  
10:23:47 21 therefore not a confidential document. Mr Withopf, you do not  
10:23:49 22 consider it to be confidential?  
10:23:52 23 MR WITHOPF: The document I am going to ask the court officer  
10:23:55 24 to please display, I do not consider of being confidential  
10:24:00 25 nature.

10:24:10 1 PRESIDING JUDGE JORDA (interpretation): Very good.  
10:24:11 2 Mr Registrar?  
10:24:12 3 COURT OFFICER (interpretation): The number of this document  
10:24:16 4 will be <#EVD-OTP-0001#>.  
10:24:59 5 PRESIDING JUDGE JORDA (interpretation): Very good. We are  
10:25:00 6 viewing the document. You may continue.  
10:25:04 7 MR WITHOPF: Thank you, Mr President, your Honours.  
10:25:07 8 The document, as I mentioned, is a curriculum vitae of  
10:25:12 9 Mr Thomas Lubanga Dyilo. And if I may please ask the court  
10:25:17 10 officer to now turn to page 2 of that document, because I want  
10:25:24 11 to show the date of the document and I want to show the  
10:25:28 12 signature of the document. Here it is, Mr President, your  
10:25:36 13 Honours. I draw your attention to the very last three lines  
10:25:38 14 of the document. Here we have the date of the document, which  
10:25:44 15 is 1 June 2004, and we also have in the signature line the  
10:25:52 16 name of Thomas Lubanga Dyilo, and we have a signature and the  
10:25:59 17 Prosecution's view is that the signature is Mr Thomas Lubanga  
10:26:03 18 Dyilo's signature.  
10:26:03 19 [10:26 a.m.]  
10:26:09 20 Can I now please kindly ask the court officer to go back -- to  
10:26:14 21 turn back to page 1 of the document.  
10:26:27 22 PRESIDING JUDGE JORDA (interpretation): Mr Prosecutor, would  
10:26:29 23 you be so kind, each time as you present a document, could you  
10:26:33 24 state whether it should be treated as confidential and whether  
10:26:37 25 we can proceed in the same fashion.

10:26:42 1 MR WITHOPF: Mr President, your Honours, I'm very happy to do  
10:26:45 2 so and I can already announce that today we won't have such  
10:26:49 3 documents. We will have one particular document, which will  
10:26:53 4 be the second document I'm going to show, and I will suggest  
10:26:57 5 to the honourable Bench a solution which would allow us to not  
10:27:02 6 have to go into closed session.

10:27:02 7 [10:27 a.m.]

10:27:12 8 With your permission, Mr President, I would now continue with  
10:27:16 9 my explanation on the curriculum vitae of Mr Thomas Lubanga  
10:27:19 10 Dyilo.

10:27:24 11 It is, as it says at the very top, a "curriculum vitae" and  
10:27:29 12 you already know that it is the curriculum vitae of Thomas  
10:27:34 13 Lubanga Dyilo. It is also confirmed by the very first few  
10:27:43 14 lines, as can be seen under "I", which says, "Identite" and  
10:27:51 15 then it says, "Nom: Lubanga; Post-Nom: Dyilo; Prenom: Thomas;  
10:27:51 16 Lieu et date de naissance: Jiba, Le 29 Decembre 1960."

10:28:15 17 Mr President, your Honours, that's Thomas Lubanga Dyilo and it  
10:28:15 18 confirms the information provided by the Prosecution on his  
10:28:20 19 name, his date of birth and his place of birth.

10:28:20 20 [10:28 a.m.]

10:28:26 21 Under the header "II", "Etudes Faites", the document as signed  
10:28:35 22 by Thomas Lubanga Dyilo reveals, and it consequently confirms,  
10:28:39 23 the respective Prosecution statement that Thomas Lubanga Dyilo  
10:28:42 24 has a university degree in psychology, which he obtained, as  
10:28:49 25 he confirms, following his studies at the Kisangani

10:28:56 1 University.

10:28:56 2 [10:28 a.m.]

10:28:57 3 Of particular interest, Mr President, your Honours, are the  
10:29:01 4 details Thomas Lubanga Dyilo provides in section IV of his CV,  
10:29:07 5 and I refer to "IV", "Activites Politiques". Here the  
10:29:18 6 Prosecution's statement that he became involved in politics in  
10:29:21 7 1999 is confirmed by him.

10:29:21 8 [10:29 a.m.]

10:29:27 9 The same observation, Mr President, your Honours, applies to  
10:29:31 10 the Prosecution's statement that Thomas Lubanga Dyilo was an  
10:29:34 11 elected member of the Assembly of the Province of Ituri at  
10:29:38 12 around that time. And in this context, can I please ask the  
10:29:48 13 court officer to now turn to page 2, since I want to draw the  
10:29:52 14 attention of the honourable Chamber to the first two lines of  
10:29:56 15 page 2, where it says that 1999 and 2000 -- that Thomas  
10:30:05 16 Lubanga Dyilo was a "Membre Elu de L'Assemblee Provinciale  
10:30:10 17 Ituri".

10:30:10 18 [10:30 a.m.]

10:30:14 19 Without going into further detail, Mr President, your Honours  
10:30:17 20 now, since this will be covered later on today by my  
10:30:21 21 colleague, as I have here informed the Court, by my colleague  
10:30:27 22 Ms Samson; Thomas Lubanga Dyilo in his CV, as signed by him,  
10:30:31 23 is also confirming that he founded the UPC in 2000, and that  
10:30:36 24 he became its President. And in this context, I refer to the  
10:30:43 25 third line from the bottom at page 2 -- where it says -- that

10:30:50 1 indicates for the year 2000: "Creation de L'UPC Et  
10:30:58 2 President".  
10:30:59 3 [10:30 a.m.]  
10:30:59 4 Finally, the curriculum vitae of Thomas Lubanga Dyilo also  
10:31:03 5 confirms the Prosecution's further statement in paragraph 3 of  
10:31:08 6 the document containing the charges. Namely, first, that  
10:31:13 7 Thomas Lubanga Dyilo, in 2001, was the Deputy National  
10:31:19 8 Secretary for Youth and Sports of the Front de Liberation du  
10:31:27 9 Congo (FLC), and, second, that he was appointed Defence  
10:31:33 10 Minister -- the CV says, "Commissaire a La Defense" of the  
10:31:33 11 Rassemblement Congolais Pour la Democratie Kisangani Movement  
10:31:44 12 de Liberation, known as the RCD-K/ML.  
10:31:44 13 [10:31 a.m.]  
10:31:51 14 Mr President, your Honours, this is what Thomas Lubanga  
10:31:55 15 Dyilo -- what Mr Thomas Lubanga Dyilo states in his CV, and he  
10:32:00 16 adds -- and I draw the particular attention of you,  
10:32:03 17 Mr President, and your Honours, Judge Steiner and  
10:32:07 18 Judge Kuenyehia, to the very last line of, at page 2, just  
10:32:15 19 above his signature, where Thomas Lubanga Dyilo says "Je jure  
10:32:23 20 que ces renseignements sont veridiques".  
10:32:30 21 [10:32 a.m.]  
10:32:31 22 The court officer, Mr President, your Honours, if you so  
10:32:34 23 permit, can now please remove the document.  
10:32:34 24 [10:32 a.m.]  
10:32:45 25 Mr President, your Honours, the Prosecution submits that this

10:32:49 1 document -- Thomas Lubanga Dyilo's CV -- signed by him  
10:32:55 2 confirms the majority of the statements the Prosecution has  
10:32:58 3 made in paragraphs 1 to 3 of the document containing the  
10:33:05 4 charges. The Prosecution will, however, add further materials  
10:33:09 5 that confirm what is said in Thomas Lubanga Dyilo's CV.

10:33:09 6 [10:33 a.m.]

10:33:17 7 Initially, Mr President, your Honours, and now I'm touching on  
10:33:21 8 the matter I have already foreshadowed some minutes ago --  
10:33:29 9 initially I thought that I would have asked the court officer  
10:33:31 10 to now display for the benefit of the Bench and for the  
10:33:34 11 benefit of the participants to the proceedings, document  
10:33:41 12 <#DRC-OTP-0105-0085#>, which is the statement of the witness  
10:33:50 13 <#DRC-OTP-WWWW-0012#>.

10:34:00 14 [10:34 a.m.]

10:34:00 15 This statement, Mr President, your Honours, contains on the  
10:34:05 16 top of each page the name of the witness concerned, and  
10:34:12 17 Mr President, your Honours, this is in line with the standard  
10:34:15 18 operating procedures the Office of the Prosecutor applies in  
10:34:19 19 respect of taking witness statements.

10:34:19 20 [10:34 a.m.]

10:34:22 21 The Prosecution realises that the identity of this particular  
10:34:31 22 witness is known to the Defence. That's not the issue.

10:34:39 23 However, the Prosecution has taken note, and it has carefully  
10:34:44 24 taken note of the advice of the Registry's Victims and  
10:34:50 25 Witnesses Unit -- VWU -- to, in public court sessions, not

10:34:55 1 disclose the identities of Prosecution witnesses or any  
10:34:59 2 witnesses, irrespective whether the identities of the  
10:35:03 3 witnesses are known to the other party.  
10:35:03 4 [10:35 a.m.]  
10:35:09 5 And the Prosecution does indeed share the concerns of the  
10:35:13 6 Victims and Witness Unit in respect of both the security, but  
10:35:19 7 also the privacy of witnesses.  
10:35:19 8 [10:35 a.m.]  
10:35:24 9 Against this background, Mr President, your Honours, the  
10:35:28 10 Prosecution respectfully -- respectfully suggests to the  
10:35:33 11 Chamber that instead of displaying the statement publicly, and  
10:35:38 12 thus revealing the name of the witness concerned to the  
10:35:42 13 public, the Prosecution reads out the respective portions of  
10:35:46 14 the statement, and I can assure you, Mr President, your  
10:35:52 15 Honours, that the respective portions will be short. And, in  
10:35:58 16 doing so, the Prosecution would safeguard the principle of  
10:36:01 17 open court hearings, open to the public, and the Prosecution  
10:36:05 18 would avoid to ask for closed session hearing which, as we  
10:36:11 19 have been informed about recently, would cause a significant  
10:36:15 20 delay -- would have a significant delaying impact on the  
10:36:20 21 schedule.  
10:36:20 22 [10:36 a.m.]  
10:36:23 23 For your Honours and the Defence, and for ease of reference,  
10:36:28 24 we have prepared extra copies of the statement concerned. If  
10:36:33 25 you, Mr President, would allow me to proceed in the way as

10:36:36 1 suggested, I would hand over the copies, and I add that the  
10:36:47 2 Defence is in possession of that statement.

10:36:56 3 COURT OFFICER (interpretation): The document will be  
10:37:00 4 tendered into evidence as <#EVD-OTP-0002#>.

10:37:33 5 MR WALLEYN (interpretation): Mr President, excuse me, I  
10:37:38 6 understand that this is a public document. Will the legal  
10:37:43 7 representative of the victims be able to receive a copy of the  
10:37:46 8 document, or -- for the public part?

10:37:53 9 PRESIDING JUDGE JORDA (interpretation): No, no; as the  
10:37:57 10 Prosecutor has explained the procedure, which we agree with,  
10:38:03 11 it is public, but you cannot have the document, I'm sorry.

10:38:18 12 Mr Withopf, please proceed.

10:38:22 13 MR WITHOPF: The first short portion I wish to refer to is at  
10:38:25 14 page 16, and the last four digits of the ERN are 0100. And I  
10:38:38 15 make particular reference to paragraph 81 of the statement,  
10:38:44 16 lines 3 and 4, and in paragraph 81, lines 3 and 4 of the  
10:38:53 17 statement, the witness states the following, and I read it  
10:38:59 18 out: [French -- not interpreted]

10:39:14 19 And in paragraph 83 of the same statement, Mr President, your  
10:39:21 20 Honours, the witness states the following, and I read it out:  
10:39:31 21 [French -- not interpreted]

10:39:48 22 PRESIDING JUDGE JORDA (interpretation): Is there a problem,  
10:39:50 23 Mr Flamme? I thought had you this statement?

10:39:57 24 ME FLAMME (interpretation): I was not given a copy as the  
10:39:58 25 Prosecutor announced, so I shall ask him to start again.

10:40:04 1 PRESIDING JUDGE JORDA (interpretation): Of course,  
10:40:04 2 Mr Flamme, he can start again. Was there no copy for the  
10:40:09 3 Defence as you announced?  
10:40:12 4 ME FLAMME (interpretation): If possible, a copy for the  
10:40:14 5 client -- if possible.  
10:40:16 6 PRESIDING JUDGE JORDA (interpretation): And a copy for  
10:40:17 7 Mr Flamme and Mr Lubanga. I would like to make this clear: I  
10:40:22 8 do not wish us to spend time on that. There are incidents  
10:40:25 9 which must be dealt with, and I must tell both the Prosecution  
10:40:32 10 and the Defence and the victims' representatives that the  
10:40:36 11 Chamber will decide on this later. Mr Withopf, you said  
10:40:39 12 something; is it true or not? Did the Defence have the  
10:40:44 13 statement, yes or no?  
10:40:45 14 MR WITHOPF: Thank you, your Honours. The Prosecution  
10:40:48 15 yesterday afternoon, as a matter of professional courtesy --  
10:40:53 16 and I repeat and emphasise "as a matter of professional  
10:40:57 17 courtesy" -- has provided my learned friends from the Defence  
10:41:01 18 with a list detailing all documents by their ERN, which the  
10:41:08 19 Prosecution intends to present today.  
10:41:08 20 [10:41 a.m.]  
10:41:11 21 Against this background the Prosecution was working on the  
10:41:14 22 basis the Defence would have these materials with them.  
10:41:18 23 However, in order to solve the problem, the Prosecution has a  
10:41:23 24 spare copy and I'm very happy to hand over this spare copy to  
10:41:26 25 my learned friend from the Defence right now.

10:41:32 1 PRESIDING JUDGE JORDA (interpretation): Was it a list or the  
10:41:34 2 document itself? Because if -- Mr Flamme cannot do his work  
10:41:39 3 if he has just the list. Was it a list or a document? You  
10:41:43 4 said that this document was disclosed, so I'm asking you this.  
10:41:48 5 MR WITHOPF: It was the list detailing the ERN of the  
10:41:52 6 documents we are discussing today, and the document itself has  
10:41:54 7 been disclosed many weeks ago to the Defence. But again in  
10:41:58 8 order to accelerate proceedings, the Prosecution has a spare  
10:42:00 9 copy of the document concerned and will hand it over right now  
10:42:04 10 to the Defence.  
10:42:07 11 PRESIDING JUDGE JORDA (interpretation): So you did not have  
10:42:08 12 the document, Mr Flamme?  
10:42:09 13 ME FLAMME (interpretation): I will need to check this, but  
10:42:13 14 Mr Withopf had announced that he would give me a copy here,  
10:42:18 15 which is the custom, and I would like to point out to  
10:42:21 16 Mr Withopf also that if he tells me something on Sunday  
10:42:24 17 afternoon, that is, the number of the document that he intends  
10:42:28 18 to use on Monday morning, as he announced it at night, it is  
10:42:32 19 not possible. I sleep nights, and Sunday afternoon I'm with  
10:42:37 20 my children. So there it is.  
10:42:37 21 [10:42 a.m.]  
10:42:42 22 He didn't say either that this document will not be shown on  
10:42:45 23 the screen. If it could be shown on the screen then the  
10:42:49 24 problem would be solved.  
10:42:52 25 PRESIDING JUDGE JORDA (interpretation): Listen, I am not

10:42:53 1 going to speak on behalf of Mr Withopf. He said that he was  
10:42:56 2 going to try -- he was going to - not to show it on the screen  
10:43:00 3 because -- in order to respect the confidentiality and to not  
10:43:05 4 reveal the details of the victims I think it is reasonable.  
10:43:11 5 We have a reasonable Chamber and I ask you all to be  
10:43:14 6 reasonable. So you have the document now, don't you? Yes.  
10:43:19 7 Mr Withopf, please ensure that these documents are disclosed  
10:43:21 8 in due time and find out if you don't have them, and next  
10:43:27 9 Sunday is in six days, so I think that you have time to get  
10:43:34 10 yourself organised. So this incident is over. I hope we will  
10:43:37 11 not have many similar incidents. It will be the break in  
10:43:42 12 15 minutes and it will do everyone good. Mr Withopf, please  
10:43:45 13 proceed.

10:43:47 14 MR WITHOPF: Thank you very much, Mr President. My learned  
10:43:50 15 friend from the Defence will certainly realise that he has  
10:43:52 16 been disclosed the document many weeks ago, but I will  
10:43:55 17 certainly continue with the presentation and not waste the  
10:43:57 18 honourable Chamber's time on such matters.

10:43:57 19 [10:44 a.m.]

10:44:02 20 If my learned friend from the Defence wishes me to do so, I'm  
10:44:05 21 very happy to comment at the beginning of my presentation of  
10:44:09 22 this document again.

10:44:09 23 [10:44 a.m.]

10:44:16 24 I draw the attention of my learned friend from the Defence --  
10:44:21 25 and, in doing so, I repeat what I said five minutes ago -- to

10:44:26 1 paragraph 81 of the statement. Paragraph 81, my learned  
10:44:32 2 friend from the Defence, will find at page 16 of the document.  
10:44:37 3 And I refer to lines 3 and 4 of paragraph 81, and I quote them  
10:44:44 4 as follows, "Thomas Lubanga Dyilo..." [French -- not  
10:44:49 5 interpreted].  
10:45:02 6 ENGLISH INTERPRETER: Mr President, your Honours, these are  
10:45:02 7 the interpreters. We request that counsel pause at the end of  
10:45:05 8 every portion in French so that we can read out an  
10:45:08 9 interpretation in English for the benefit of the Chamber.  
10:45:14 10 MR WITHOPF: Thank you very much for the advice and I will  
10:45:16 11 certainly comply with the advice given.  
10:45:23 12 PRESIDING JUDGE JORDA (interpretation): Mr Flamme, all  
10:45:24 13 right? Proceed, Mr Withopf.  
10:45:28 14 MR WITHOPF: I now refer to paragraph 83 of the same document,  
10:45:35 15 and I again quote a very short portion -- the first two lines  
10:45:40 16 of paragraph 83, which read as follows: "Being his relative,  
10:46:00 17 lots of the interested Lubanga -- involved Lubanga in  
10:46:03 18 politics, and had him participate in RCDK/ML. It was in  
10:46:10 19 2000."  
10:46:11 20 [10:46 a.m.]  
10:46:12 21 And in paragraph 84, Mr President, your Honours, the witness  
10:46:16 22 confirms both the Prosecution's statement and the details  
10:46:21 23 contained in Thomas Lubanga Dyilo's CV in saying, and I refer  
10:46:26 24 to the second line of paragraph 84 "Lubanga" -- and that's now  
10:46:33 25 the quote -- "Lubanga was very much involved in politics."

10:46:49 1 If you, Mr President and your Honours and my learned friends  
10:46:53 2 from the Defence, would now like to turn to the next page,  
10:46:57 3 please, which is page 17 of the same document, and I'm going  
10:47:05 4 to make reference to portions in paragraph 91 of the  
10:47:12 5 statement. And I refer to lines 9 to 11 of paragraph 91. And  
10:47:21 6 I read the relevant portion out as follows (french): "This  
10:47:44 7 platform took the name of Front de Liberation du Congo, FLC.  
10:47:51 8 Thomas Lubanga was part of this platform and I think that he  
10:47:55 9 had an official position as vice-minister."

10:48:00 10 [10:48 a.m.]

10:48:00 11 This portion of the statement, Mr President, your Honours,  
10:48:03 12 confirms that Thomas Lubanga Dyilo, as stated in the document  
10:48:07 13 containing the charges, was a member of the FLC and that he  
10:48:11 14 held the position of a deputy minister, and this is all in  
10:48:17 15 line with the Prosecution's document containing the charges  
10:48:21 16 and also in line with Mr Thomas Lubanga Dyilo's own CV.

10:48:21 17 [10:48 a.m.]

10:48:30 18 And if the honourable Bench and my learned friends from the  
10:48:35 19 Defence would now please turn to page 18 of the statement, and  
10:48:42 20 I will make reference to paragraph 93 of the statement, to  
10:48:51 21 lines 3 and 4 where it says (French): "For that reason, Mbusa  
10:49:09 22 appointed Thomas Lubanga as Minister of Defence of RCD-K/ML in  
10:49:15 23 Bunia."

10:49:20 24 [10:49 a.m.]

10:49:20 25 Mr President, your Honours, this again confirms that Mr Thomas

10:49:24 1 Lubanga Dyilo was Defence minister of the RCD-K/ML in Bunia,  
10:49:28 2 as it is stated in the Prosecution's document containing the  
10:49:32 3 charges.

10:49:32 4 [10:49 a.m.]

10:49:35 5 Mr President, your Honours -- and I'm not going into further  
10:49:39 6 detail now -- the Prosecution notes the overlap and it notes  
10:49:44 7 the high -- the very high overlap between the CV signed by  
10:49:49 8 Mr Thomas Lubanga Dyilo and the evidence provided in the  
10:49:53 9 statement of the witness OTP-WWWW-0012.

10:49:53 10 [10:49 a.m.]

10:50:04 11 These were the portions, Mr President, I wanted to refer to in  
10:50:12 12 relation to the statement of the witness I just mentioned, and  
10:50:18 13 we may come back to that particular witness at a later stage  
10:50:21 14 today or tomorrow.

10:50:21 15 [10:50 a.m.]

10:50:27 16 If the presiding judge agrees, I would like now to move on and  
10:50:32 17 I would ask -- and I would kindly ask the court officer to  
10:50:36 18 show document <#DRC-OTP-0003-0424#>. Document

10:51:02 19 <#DRC-OTP-0003-0424#> is the Africa Report number 64 of the  
10:51:09 20 International Crisis Group, ICG, of 13 June 2003. And can I  
10:51:19 21 now please ask the court officer to first display pages 26  
10:51:25 22 and 27, which detail the board members of the International  
10:51:35 23 Crisis Group. And without detracting the attention from the  
10:51:44 24 other board members, I want to highlight a number of names --  
10:51:48 25 namely, and I quote from page 26 of the document -- the

10:51:55 1 Chamber is obviously Martti Ahtisaari, the Former President of  
10:52:00 2 Finland -- can I please advise the court officer that the last  
10:52:14 3 four digits of the document, page 26, are 0455. It is  
10:52:21 4 appendix D.

10:52:34 5 PRESIDING JUDGE JORDA (interpretation): Could we have a  
10:52:36 6 number so that the Registry can do its work?

10:52:43 7 COURT OFFICER (interpretation): Thank you, Mr President.  
10:52:44 8 The report will be entered into evidence as <#EVD-OTP-0003#>.

10:52:54 9 MR WITHOPF: Thank you very much. As I mentioned, I want to  
10:52:58 10 draw the attention of the Chamber and, of course, also of my  
10:53:02 11 learned friends from the Defence, to a number of individuals  
10:53:10 12 who comprise the ICG -- comprise the board members of the ICG.  
10:53:17 13 The first one I want to put emphasis on is the Chairman of the  
10:53:21 14 ICG, namely the former President of Finland, as can be seen at  
10:53:27 15 the very top in the left column, Mr Martti Ahtisaari.

10:53:34 16 [10:53 a.m.]

10:53:35 17 A member of the ICG is also Ms Louise Arbour, as we all know,  
10:53:42 18 the former Chief Prosecutor of the International Criminal  
10:53:48 19 Tribunal for the former Yugoslavia; right beneath her name the  
10:53:55 20 Chamber of Mr Oscar Arias Sanchez, the Former President of  
10:54:04 21 Costa Rica and Nobel Peace Prize winner in 1987 is mentioned,  
10:54:05 22 as is mentioned in the same column, the name of Mr Jorge  
10:54:10 23 Castaneda, the Former Foreign Minister of Mexico.

10:54:10 24 [10:54 a.m.]

10:54:15 25 In the right column, close to the bottom, it is revealed that

10:54:23 1 also Mr Wim Kok, the former Prime Minister of the Netherlands,  
10:54:34 2 forms part of the Board of the ICG, and if the court officer  
10:54:35 3 now would please turn to page 27.

10:54:45 4 [10:54 a.m.]

10:54:51 5 To page 27, where we have in the right column mentioned the  
10:54:56 6 name of the Former Minister of Foreign Affairs of Norway,  
10:55:00 7 Mr Thorvald Stoltenberg. And in the same column the name of  
10:55:07 8 Madame Simone Veil, the Former President of the European  
10:55:13 9 parliament, the Former Minister of Health of France.

10:55:13 10 [10.55 a.m.]

10:55:29 11 If you allow me a second, Mr President, the Deputy Prosecutor,  
10:55:32 12 Prosecutions, is drawing my attention to a further particular  
10:55:37 13 name -- namely, the name of Elaine Sirleaf. She is now the  
10:55:45 14 President of Liberia. I believe that the names of the  
10:55:56 15 individuals we just read out -- that these individuals  
10:56:03 16 guarantee the accurateness and the reliability of the  
10:56:08 17 information contained in the report, and that these names do  
10:56:13 18 also stand for objective and unprejudiced information.

10:56:13 19 [10:56 a.m.]

10:56:23 20 We make this sort of longer introduction, Mr President, your  
10:56:27 21 Honours, and now I ask the court officer to please turn to  
10:56:31 22 page 5 of the document, the last four digits of the ERN are  
10:56:42 23 0434. We make this longer introduction against the background  
10:56:49 24 of the Defence's remark that describing Thomas Lubanga Dyilo's  
10:56:54 25 ethnicity as -- and I quote from the document containing the

10:56:58 1 charges -- "Hema-Gegere", and I refer to paragraph 1 of the  
10:57:03 2 document containing the charges, is allegedly problematic.  
10:57:03 3 [10:57 a.m.]  
10:57:09 4 At page 5, in the last paragraph in the left column -- and I  
10:57:21 5 refer to the second line from the bottom, Mr President, your  
10:57:24 6 Honours -- Thomas Lubanga Dyilo is described as, and I quote,  
10:57:29 7 "a Hema-Gegere".  
10:57:37 8 [10:57 a.m.]  
10:57:38 9 Mr President, your Honours, furthermore, in the same  
10:57:42 10 report -- and I add again the International Crisis Group has  
10:57:46 11 an outstanding reputation -- in the same report it is said on  
10:57:49 12 the same page, and now I draw the attention of the Bench and  
10:57:54 13 my learned friends from the Defence to the right column of  
10:57:57 14 page 5, and I'm going to quote three lines following the  
10:58:05 15 indication of footnote 12, and the quote is as follows:  
10:58:10 16 "In February 2002, Lubanga was demoted from RCD-ML, Minister  
10:58:16 17 for Defence."  
10:58:21 18 This statement is in line -- is very much in line and supports  
10:58:25 19 the Prosecution's factual statement in paragraph 3 of the  
10:58:30 20 document containing the charges, and I refer to the end of  
10:58:36 21 paragraph 3 of the document containing the charges.  
10:58:36 22 [10:58 a.m.]  
10:58:41 23 Mr President, your Honours, I do realise that we are very  
10:58:46 24 close to the first break, but I do also realise that I am very  
10:58:51 25 close to completing my submission on this -- on the evidence

10:58:57 1 on the background of Thomas Lubanga Dyilo, and it will not  
10:58:59 2 take me longer than two minutes to really complete it. So if  
10:59:03 3 you allow me to do so, I will just add a few sentences.  
10:59:03 4 [10:59 a.m.]  
10:59:13 5 Without displaying the further documents that do also support  
10:59:20 6 the Prosecution's statements in the document containing the  
10:59:23 7 charges, I refer you, Mr President, and your Honours, to a  
10:59:31 8 number -- and again it is a very limited number of documents  
10:59:36 9 as follows.  
10:59:36 10 [10:59 a.m.]  
10:59:40 11 The summary of the statement of the witness DRC-OTP-WWWW-0004,  
10:59:51 12 and the statement is <#DRC-OTP-0164-0246#>, and I refer to  
11:00:04 13 page 1 of the summary, the witness confirms that  
11:00:10 14 Thomas Lubanga Dyilo was the National Secretary for Youth and  
11:00:14 15 Sport.  
11:00:14 16 [11:00 a.m.]  
11:00:17 17 The second document I am making reference to is the Amnesty  
11:00:25 18 International March 2003 report.  
11:00:31 19 PRESIDING JUDGE JORDA (interpretation): Mr Flamme?  
11:00:34 20 ME FLAMME (interpretation): I do not have the documents here  
11:00:36 21 with me -- that is, the documents that Mr Withopf is referring  
11:00:40 22 to.  
11:00:43 23 PRESIDING JUDGE JORDA (interpretation): Have you never had  
11:00:43 24 the documents, Mr Flamme?  
11:00:46 25 ME FLAMME (interpretation): I beg your pardon? I cannot

11:00:48 1 tell you, Mr President. I do not have them here on paper or  
11:00:54 2 on the screen.

11:00:55 3 PRESIDING JUDGE JORDA (interpretation): Have you had them at  
11:00:56 4 some point?

11:00:58 5 ME FLAMME (interpretation): I couldn't tell you -- probably.

11:01:03 6 PRESIDING JUDGE JORDA (interpretation): We shall take  
11:01:04 7 advantage of a break to find out which documents you have had  
11:01:07 8 and which you haven't.

11:01:09 9 ME FLAMME (interpretation): I think that it is patently  
11:01:12 10 clear that when the Prosecutor mentions a document, he should  
11:01:17 11 produce it on the screen, because this is the e-Court.

11:01:43 12 PRESIDING JUDGE JORDA (interpretation): The judge who  
11:01:45 13 presided over the disclosures maintains that you had all the  
11:01:48 14 documents that were disclosed. So you have to get yourself  
11:01:51 15 organised. Mr Withopf, can you tell us anything about this;  
11:01:58 16 were these documents disclosed? I take it that they were,  
11:02:01 17 Mr Withopf?

11:02:01 18 MR WITHOPF: The recollection of the Honourable Judge Steiner  
11:02:06 19 is absolutely correct. All of these three documents have been  
11:02:10 20 disclosed to the Defence, and I wish to hand over now -- I  
11:02:15 21 wish to hand over now the e-mails I sent to my learned friend  
11:02:18 22 from the Defence yesterday, and I wish to add that I have done  
11:02:22 23 so as a professional courtesy for the sole purpose to avoid  
11:02:28 24 such situations, and I wish to hand these e-mails over for the  
11:02:33 25 information of the Honourable Bench.

11:02:39 1 ME FLAMME (interpretation): Mr President, with your leave, I  
11:02:42 2 think it is a common law problem, and I would like Mr Roberts  
11:02:47 3 to address the issue.  
11:02:49 4 PRESIDING JUDGE JORDA (interpretation): I am afraid I didn't  
11:02:50 5 understand you. You used the word "address".  
11:02:57 6 ME FLAMME (interpretation): I was using an English word.  
11:03:00 7 PRESIDING JUDGE JORDA (interpretation): So what did you wish  
11:03:01 8 Mr Roberts to do?  
11:03:04 9 ME FLAMME (interpretation): Expose it.  
11:03:07 10 PRESIDING JUDGE JORDA (interpretation): Well, you could  
11:03:08 11 expose the common law issue, but I am not going to spend the  
11:03:12 12 Chamber's time to determine matters pertaining to disclosures  
11:03:16 13 which have been covering several months since the initial  
11:03:20 14 appearance.  
11:03:20 15 [11:03 a.m.]  
11:03:21 16 So the judge will decide: These documents were already  
11:03:26 17 disclosed.  
11:03:26 18 ME FLAMME (interpretation): Mr Withopf cannot just refer to  
11:03:30 19 a document; he has to explain.  
11:03:34 20 PRESIDING JUDGE JORDA (interpretation): Mr Withopf has his  
11:03:35 21 strategy. Mr Withopf, could you explain and respond?  
11:03:43 22 Mr Withopf has a strategy to present these documents. The  
11:03:47 23 documents were disclosed to you and yesterday afternoon the  
11:03:49 24 documents were further disclosed to you, so there are probably  
11:03:53 25 issues with organisations -- your organisation here. We are

11:03:56 1 not going to get into a discussion between common law and  
11:03:59 2 civil law.

11:04:00 3 Mr Withopf, you have not yet decided to present this document  
11:04:09 4 yet, Mr Withopf? I think you decided to present some excerpts  
11:04:16 5 or to comment on them.

11:04:21 6 In your part of these proceedings next week you will be able  
11:04:23 7 to challenge the passages that were -- passages that are  
11:04:26 8 presented to the -- by the Prosecutor, this is your strategy,  
11:04:30 9 you can choose it, but you must allow for exchange. For two  
11:04:33 10 and a half hours we have had a certain number of incidents. I  
11:04:36 11 am prepared to arbitrate them fairly.

11:04:40 12 Mr Withopf, would you like to make a comment before the break  
11:04:43 13 so that everybody can calm down, of course with exception of  
11:04:47 14 the judges, who are always calm. Mr Withopf, you have the  
11:04:51 15 floor.

11:04:51 16 [11:04 a.m.]

11:04:52 17 MR WITHOPF: Mr President, your Honours, I very much  
11:04:56 18 appreciate to be given the opportunity to explain, and I wish  
11:05:04 19 to say that the Prosecution has made an enhanced effort to  
11:05:09 20 allow for the smooth running of the today's proceedings by  
11:05:15 21 drawing, as a professional courtesy, the attention of my  
11:05:19 22 learned colleagues to the documents -- by drawing the  
11:05:23 23 attention of my learned colleagues to the documents we are  
11:05:27 24 going to refer to, and I wish also to add -- and I have said  
11:05:33 25 so previously -- that the recollection of the Honourable Judge

11:05:37 1 Steiner is absolutely correct; that the documents I am going  
11:05:40 2 to refer to are on the Prosecution's amended list of evidence  
11:05:45 3 and that they have been disclosed to my learned friends from  
11:05:48 4 the Defence.

11:05:48 5 [11:05 a.m.]

11:05:57 6 And as your Honour, Mr President, has suggested, I also will  
11:06:00 7 not enter into any discussion about civil law and common law  
11:06:05 8 approaches; I don't think it's necessary at all.

11:06:08 9 So if your Honour, Mr President, would allow me for two  
11:06:12 10 minutes to complete my submissions.

11:06:24 11 PRESIDING JUDGE JORDA (interpretation): Conclude. I am  
11:06:27 12 perhaps not more qualified than you at the technical level,  
11:06:29 13 but is it correct that you can have these documents yourself  
11:06:32 14 on your screen, Mr Flamme? Yes or no? You cannot?

11:06:38 15 ME FLAMME (interpretation): I do not have them,  
11:06:40 16 Mr President. There is another problem -- that is, my client  
11:06:42 17 cannot follow. It would be very easy for the Prosecutor to  
11:06:46 18 provide a photocopy, if you cannot call the document up on the  
11:06:53 19 screen. It is the fact of having disclosed these documents to  
11:06:56 20 us. I think that it must be true that he did, but there are  
11:07:00 21 such a large number of documents, Mr President, that even if  
11:07:03 22 on Sunday afternoon I read Mr Withopf's letter and I find the  
11:07:08 23 document, I can't even go to the prison because it's closed.  
11:07:13 24 So, Mr Withopf, who is always very voluble on the way he does  
11:07:22 25 things -- well, I don't agree here -- he does things as a

11:07:27 1 matter of form; that's all.

11:07:31 2 PRESIDING JUDGE JORDA (interpretation): Mr Withopf, we have  
11:07:33 3 registered your statement. For the time being I would like to  
11:07:35 4 continue with the presentation of the Prosecution evidence,  
11:07:37 5 because that is what we are here for. You will have the  
11:07:41 6 opportunity to respond, but I would like to take a break now.  
11:07:47 7 In any case, we have given Mr Withopf two minutes to quote the  
11:07:50 8 passages. If at any point when Mr Withopf presents a  
11:07:58 9 document, it is his responsibility and it is his initiative if  
11:08:02 10 he decides that he is going to provide a photocopy of your --  
11:08:07 11 of a document to you. It is not an obligation. I shall not  
11:08:10 12 force him to do so. Mr Withopf, please proceed.

11:08:14 13 MR WITHOPF: Thank you very much, Mr President, and I'm  
11:08:17 14 especially grateful for your last remark that there's no  
11:08:21 15 obligation on the side of the Prosecution to provide the  
11:08:24 16 Defence with such information.

11:08:24 17 [11:08 a.m.]

11:08:26 18 I was referring to the summary of the statement of the witness  
11:08:31 19 <#DRC-OTP-WWWW-0004#> and <#DRC-OTP-01640246#>. And at  
11:08:49 20 page 1, the witness confirms that Thomas Lubanga Dyilo was the  
11:08:54 21 National Secretary for Youth and Sport.

11:08:57 22 [11:08 a.m.]

11:08:58 23 I think we can avoid the confusion if I ask the court officer  
11:09:01 24 to please display that document. I tried to keep the  
11:09:06 25 proceedings short, but based on the intervention of my learned

11:09:11 1 friend, I obviously have no way around. So could the court  
11:09:15 2 officer please display --  
11:09:18 3 PRESIDING JUDGE JORDA (interpretation): Are you satisfied,  
11:09:20 4 Mr Flamme?  
11:09:21 5 ME FLAMME (interpretation): Absolutely, Mr President; that's  
11:09:24 6 what the e-Court is there for.  
11:09:27 7 PRESIDING JUDGE JORDA (interpretation): That's very well.  
11:09:28 8 Okay, Mr Flamme is satisfied. So everything is fine till the  
11:09:31 9 break. Please take -- go quickly, Mr Withopf. You know you  
11:09:37 10 have to finish tomorrow evening. The time is not only for the  
11:09:41 11 Defence; it is for the Prosecution, as well. Please proceed.  
11:09:45 12 MR WITHOPF: That's very much understood, Mr President, your  
11:09:49 13 Honours. So if the document could please now be displayed?  
11:10:05 14 PRESIDING JUDGE JORDA (interpretation): The document has been  
11:10:06 15 displayed. Please proceed.  
11:10:10 16 COURT OFFICER (interpretation): Excuse me, Mr Withopf, the  
11:10:12 17 document will be entered into evidence as <#EVD-OTP-0004#>.  
11:10:24 18 Thank you.  
11:10:25 19 MR WITHOPF: And can the court officer please also display the  
11:10:29 20 document <#DRC-OTP-0154-1301#> and I refer to page 9 of the  
11:10:40 21 same document.  
11:10:40 22 [11:10 a.m.]  
11:10:45 23 The document, for the information of Mr President and your  
11:10:50 24 Honours, is the Amnesty International March 2003 Report. At  
11:11:00 25 page 9, there is stated that Thomas Lubanga Dyilo was a former

11:11:04 1 Minister for Defence for the RCD-ML.

11:11:12 2 COURT OFFICER (interpretation): This document will be  
11:11:14 3 tendered into evidence as <#EVD -- will be entered into  
11:11:16 4 evidence as <#EVD-OTP-0005#>. Thank you.

11:11:22 5 MR WITHOPF: This statement is also reflected in the report of  
11:11:25 6 the Pole Institute of 13 March 2003, and I kindly ask the  
11:11:32 7 court officer to display the document <#DRC-OTP-0043-0013#>,  
11:11:42 8 and I refer to page 21 of the document. Thank you very much.  
11:11:42 9 [11:12 a.m.]

11:12:06 10 Now that all the documents concerned have been displayed,  
11:12:11 11 Mr President, your Honours, and subject to any questions your  
11:12:16 12 Honours may have, I conclude our submission on the background  
11:12:21 13 information of Thomas Lubanga Dyilo. Thank you very much.

11:12:26 14 COURT OFFICER (interpretation): The last document tendered  
11:12:30 15 will be entered into evidence as <#EVD-OTP-0006#>. Thank you.

11:12:39 16 PRESIDING JUDGE JORDA (interpretation): Court is adjourned.  
11:12:40 17 It will resume at 11.45 a.m.

11:12:40 18 USHER: All rise.

11:12:46 19 [Short adjournment].  
11:12:46 20 [11:50 a.m.]

11:50:19 21 THE USHER: All rise.

11:50:29 22 PRESIDING JUDGE JORDA (interpretation): Could security  
11:50:31 23 please bring in Mr Lubanga Dyilo.  
11:50:37 24 [11:50 a.m.]  
11:50:38 25 [Mr Thomas Lubanga Dyilo entered the courtroom]

11:50:50 1 PRESIDING JUDGE JORDA (interpretation): So I would like,  
11:50:55 2 first of all, for the Registrar -- you're the representative  
11:50:59 3 of the Registry, you explain that the Defence kind of access  
11:51:04 4 to all the documents and firstly the documents are on the  
11:51:06 5 screen. I don't want there to be any contestation in that  
11:51:10 6 regard. Secondly, the Chamber has decided that when there  
11:51:13 7 will be a video extracts, that they -- that the Defence --  
11:51:22 8 that they be -- that the Defence -- that a translator -- a  
11:51:25 9 Swahili-French translator be made available to the Defence.  
11:51:31 10 So the -- we will now continue. Mr Withopf, the floor is  
11:51:34 11 yours.

11:51:34 12 MR WITHOPF: Mr President, your Honours, thank you very much.  
11:51:41 13 We will now present our evidence in relation to the existence  
11:51:47 14 of an armed conflict in Ituri during the time frame relevant  
11:51:53 15 for the charges against Mr Thomas Lubanga Dyilo.

11:51:56 16 [11:51 a.m.]

11:52:01 17 The presentation will, Mr President, your Honours -- will  
11:52:04 18 include United Nations Security Council General reports --  
11:52:14 19 sorry, United Nations Security-General Reports and Security  
11:52:15 20 Council's Resolutions. The presentation will also include  
11:52:19 21 documents of the parties to the armed conflict and related to  
11:52:24 22 them. The presentation will include a time line of  
11:52:30 23 engagements, attacks and key group events from July 2002  
11:52:36 24 to December 2003 as a visual aid for the benefit of the  
11:52:43 25 honourable Chamber and, as foreshadowed, the presentation will

11:52:49 1 include video materials. And the Prosecution intends to -- in  
11:52:55 2 the context of this portion of the presentation, intends to  
11:53:00 3 show three excerpts of video materials. All these  
11:53:05 4 materials --

11:53:06 5 PRESIDING JUDGE JORDA (interpretation): Excuse me,  
11:53:07 6 Mr Withopf. In these videos, are there passages in Swahili?  
11:53:11 7 If not, I will already ask that an interpreter be made  
11:53:15 8 available.

11:53:17 9 MR WITHOPF: The first video is containing English and French  
11:53:24 10 as languages, and the other video excerpts will show Mr Thomas  
11:53:29 11 Lubanga speaking himself. And this language is in the  
11:53:34 12 viewpoint -- or in the view of the Prosecution Swahili, but  
11:53:38 13 the main point we want to make Mr Thomas Lubanga is speaking  
11:53:42 14 himself so he understands what he says.

11:53:49 15 PRESIDING JUDGE JORDA (interpretation): So we will wait for  
11:53:51 16 the videos and, if not, we will postpone the examination of  
11:53:55 17 these videos until this afternoon.

11:53:55 18 [11:54 a.m.]

11:54:04 19 The interpreters also have a problem with these videos which  
11:54:09 20 we will present now. If they were to be presented now, this  
11:54:13 21 would be a problem for the interpreters.

11:54:21 22 MR WITHOPF: Mr President, your Honours, we will present  
11:54:23 23 these videos at the very end of the presentation, and I want  
11:54:27 24 to draw your attention to the fact that the videos are  
11:54:30 25 subtitled, so whatever appears in Swahili language will appear

11:54:36 1 in French. Based on this information --

11:54:43 2 PRESIDING JUDGE JORDA (interpretation): Sorry, I have a  
11:54:44 3 translation problem, but it's just a matter of the French  
11:54:47 4 translation. I have a problem which can't be very  
11:54:50 5 complicated, I think, to resolve.

11:55:26 6 [11:55 a.m.]

11:55:27 7 So we can now go further.

11:55:44 8 MR WITHOPF: Thank you, Mr President, your Honours. In the  
11:55:50 9 view of the Prosecution, Mr President, your Honours, the  
11:55:54 10 United Nations Secretary-General reports and the Security  
11:55:59 11 Council's resolutions will show that the international  
11:56:02 12 community, during the timeframe relevant, concluded that there  
11:56:08 13 was an armed conflict in Ituri, and the timeframe relevant is  
11:56:13 14 obviously the time relevant to the charges against Mr Thomas  
11:56:19 15 Lubanga Dyilo.

11:56:19 16 [11:56 a.m.]

11:56:22 17 The documents of the parties to the armed conflict or related  
11:56:26 18 to them will show that the armed groups involved in the armed  
11:56:32 19 conflict -- that they themselves shared the view of the  
11:56:36 20 international community. They will also show that Mr Thomas  
11:56:44 21 Lubanga Dyilo shared this view, and they, as well as the video  
11:56:48 22 materials, will in particular show that Mr Thomas Lubanga  
11:56:53 23 Dyilo was aware -- was very well aware of the existence of the  
11:56:59 24 armed conflict.

11:57:00 25 [11:57 a.m.]

11:57:03 1 Mr President, your Honours, the Prosecution will commence its  
11:57:07 2 presentation of the evidence with the UN Secretary-General  
11:57:12 3 reports and the Security Council resolutions.  
11:57:16 4 [11:57 a.m.]  
11:57:18 5 And I kindly ask the court officer to please display as the  
11:57:22 6 first document the 12th report of the Secretary-General on the  
11:57:27 7 United Nations Organisation Mission in the Democratic Republic  
11:57:32 8 of the Congo, which we know is MONUC. And the report is dated  
11:57:37 9 18 October 2002. The ERN of the document is  
11:57:50 10 <#DRC-OTP-0131-0389#>, and for your reference the  
11:57:55 11 corresponding French version is <#DRC-OTP-0131-0242#> --  
11:58:11 12 sorry, I'm getting corrected, and rightly so -- the last digit  
11:58:14 13 of the French version is 40.  
11:58:21 14 COURT OFFICER (interpretation): The code of the document  
11:58:24 15 will be <#EVD-0TP-0005#>.  
11:58:36 16 MR WITHOPF: Thank you very much. I make particular  
11:58:38 17 reference to page 4, and I refer to paragraph 15 at page 4,  
11:58:48 18 and can the court officer please display page 4 of the  
11:58:53 19 document.  
11:58:59 20 PRESIDING JUDGE JORDA (interpretation): Do you have it,  
11:59:00 21 Me Flamme? Okay. I'll take advantage to say -- this  
11:59:37 22 opportunity to say it's a very perfectionist justice -- it's  
11:59:41 23 the -- about future justice and we're explaining that there's  
11:59:45 24 still certain improvements that need to be made, but  
11:59:49 25 nevertheless we hope it's going to be efficient, so we're

11:59:52 1 trying to accelerate the proceedings, so you've got until  
11:59:58 2 1.30. Please go ahead -- 15.

12:00:02 3 MR WITHOPF: Thank you very much, Mr President. In respect  
12:00:06 4 of the document that's currently being displayed, I make  
12:00:11 5 reference to paragraph 15, and I'm going to read out  
12:00:18 6 paragraph 15 as follows, drawing the attention of your Honours  
12:00:24 7 that the report covers the timeframe between June and October  
12:00:30 8 2002. Paragraph 15 reads as follows, "During the last three  
12:00:36 9 months the overall security conditions in the north-eastern  
12:00:41 10 town of Bunia and the entire Ituri region have continued to  
12:00:45 11 deteriorate. There have been recurrent ethnic clashes  
12:00:49 12 since June" -- and again this is June 2002 -- "when the Union  
12:00:56 13 des Patriotes Congolais, the UPC, a primarily Hema militia,  
12:01:02 14 was reinforced and resupplied. On 10 July 2002, following  
12:01:06 15 intense fighting between UPC and RCD-ML troops in the centre  
12:01:11 16 of the city, the Governor and RCD-ML authorities fled to Beni,  
12:01:18 17 leaving Bunia in the hands of the militia. In mid-August UPC  
12:01:23 18 continued its offensive and succeeded in capturing some of the  
12:01:27 19 district's important towns, such as Irumu, 80 kilometres from  
12:01:32 20 Bunia on the road to Beni. The violence and the resulting  
12:01:37 21 displacement of the population have deepened the mistrust  
12:01:42 22 among the communities of Ituri, which is also related to the  
12:01:46 23 distribution of resources, as well as manipulation by both  
12:01:49 24 internal and external actors."  
12:01:54 25 [12:01 p.m.]

12:01:55 1 In our view, Mr President, your Honours, the report clearly  
12:01:58 2 spells out, and I repeat it -- and I quote again -- "there  
12:02:04 3 have been recurrent ethnic clashes since June" -- meaning June  
12:02:09 4 2002, and already at this point in time reference is made to,  
12:02:14 5 and I again quote from the report "displacement of the  
12:02:18 6 population caused by inter alia" and I quote "intense fighting  
12:02:25 7 involving the UPC".

12:02:30 8 [12:02 p.m.]

12:02:31 9 Mr President, your Honours, the situation did not become any  
12:02:36 10 better. This is proven by the 13th report of the  
12:02:43 11 Secretary-General on MONUC of 21 February 2003, and this  
12:02:51 12 report covers the time between October 2002 and February 2003.  
12:02:59 13 Can I please ask the court officer to show for the benefit --  
12:03:04 14 to the benefit of the honourable Bench and the other  
12:03:07 15 participants document number <#DRC-OTP-0131-0045#>, and again  
12:03:20 16 for reference purposes the corresponding French version is  
12:03:25 17 <#DRC-OTP-0131-0023#>.

12:03:36 18 [12:03 p.m.]

12:03:36 19 In respect of the document currently being displayed I refer  
12:03:40 20 in particular to paragraphs 9 to 12, and can I please ask the  
12:03:47 21 court officer to first display page 3, and then page 4 of the  
12:03:55 22 document and please in accordance with the references I'm  
12:03:58 23 going to make.

12:04:04 24 COURT OFFICER (interpretation): The code will be

12:04:09 25 <#EVD-OTP-0008#>.

12:04:18 1 MR WITHOPF: Mr President, your Honours, in paragraph 9 the  
12:04:23 2 following is spelled out: "The situation" -- and this is a  
12:04:30 3 quote -- "The situation in other parts of the Ituri region  
12:04:33 4 continued to be characterised by widespread insecurity,  
12:04:36 5 massive displacement and severely restricted humanitarian  
12:04:42 6 access." And in paragraph 11 the UN Security -- the UN  
12:04:55 7 Secretary-General report stated that, and I'm going to quote  
12:05:03 8 paragraph 11 as follows: " Throughout the period, my Special  
12:05:09 9 Representative engaged the parties to end hostilities and  
12:05:14 10 establish the Ituri Pacification Commission, as envisaged in  
12:05:17 11 the Luanda Accord of 6 September 2002. Following several  
12:05:21 12 meetings in Kampala, Kinshasa, Pretoria and Bunia, President  
12:05:29 13 Yoweri Museveni of Uganda offered to organise the first Ituri  
12:05:37 14 Pacification Commission Conference in Kampala. President  
12:05:41 15 Kabila and UPC separately agreed on the holding of the first  
12:05:45 16 meeting outside Bunia (Kampala or Kinshasa) without  
12:05:51 17 preconditions. On 13 January, my Special Representative held  
12:05:54 18 further talks with President Kabila, who indicated that he  
12:05:58 19 intended to discuss the matter with President Jose Eduardo dos  
12:06:07 20 Santos of Angola. Despite those efforts, it has not yet been  
12:06:12 21 possible to launch the Ituri Pacification Commission.  
12:06:16 22 Nevertheless, MONUC dispatched an exploratory mission to Ituri  
12:06:19 23 from 22 to 26 January to secure local cease-fire and to start  
12:06:27 24 building confidence in preparation for the Commission. The  
12:06:31 25 team met all the Congolese players in the Ituri crisis,

12:06:36 1 including at the border locations of Mahagi (controlled by  
12:06:41 2 UPC) and Kpandroma-Rethy (held by Lendu combatants). All  
12:06:51 3 players agreed in principle to sign a truce in Bunia.  
12:06:54 4 However, UPC remains reluctant to support the Ituri  
12:06:57 5 Pacification Commission and has sought to pursue its own  
12:07:00 6 pacification initiatives."  
12:07:04 7 [12:07 p.m.]  
12:07:05 8 Mr President, your Honours, this was the end of the quote, and  
12:07:08 9 the Prosecution believes that this statement clearly  
12:07:13 10 presupposes the existence of an armed conflict by using the  
12:07:18 11 terms -- and I quote -- "Pacification Commission" -- and  
12:07:22 12 I quote again -- "to sign a truce".  
12:07:27 13 [12:07 p.m.]  
12:07:27 14 And, finally, I draw your particular attention to paragraph  
12:07:32 15 12. In lines 1 and 2 of paragraph 12, there is reference  
12:07:41 16 made, and I'm going to quote it to "almost continuous  
12:07:49 17 fighting" and the "almost continuous fighting" is obviously  
12:07:53 18 taking place at the time in the area -- in the area of Ituri.  
12:07:59 19 [12:07 p.m.]  
12:08:00 20 This is another statement of the United Nations that supports  
12:08:05 21 the existence of the armed conflict.  
12:08:14 22 [12:08 p.m.]  
12:08:15 23 Mr President, your Honours, the UN efforts  
12:08:20 24 appeared -- appeared to have success, as it is shown by  
12:08:28 25 document <#DRC-OTP-0045-0020#>, and I ask the court officer

12:08:41 1 and I kindly ask him to show this document as an indexed  
12:08:46 2 document.  
12:08:48 3 COURT OFFICER (interpretation): The reference of the  
12:08:53 4 document will be <#EVD-OTP-0009#>.  
12:09:00 5 MR WITHOPF: This document, as your Honours will realise, is  
12:09:06 6 the "Acte d'Engagement pour la relance du processus de  
12:09:13 7 pacification de l'Ituri" -- Commitment Document for the  
12:09:15 8 Relaunch of the Ituri Pacification Process, which at page 1,  
12:09:21 9 and for the court officer the last four digits of the ERN are  
12:09:26 10 0021, shows all details in the Prosecution's view allowing the  
12:09:34 11 conclusion that there was an armed conflict.  
12:09:38 12 [12:09 p.m.]  
12:09:39 13 Paragraph 1 talks about "cessation des hostilites" --  
12:09:47 14 "cessation of hostilities" -- and paragraph 2 is headed "Du  
12:09:57 15 cantonnement des troupes" -- "Troop Stationing". These  
12:10:00 16 portions, Mr President, your Honours, in the Prosecution's  
12:10:04 17 view do also indicate that the armed groups concerned had a  
12:10:10 18 hierarchical structure with the responsible command and with  
12:10:13 19 operational and disciplinary powers, and in this context,  
12:10:21 20 Mr President, your Honours, it's obviously worth to have a  
12:10:25 21 closer look at page 3 of the document, and if the court  
12:10:34 22 officer could please display page 3, page 3 of the document  
12:10:39 23 details all signatories to this peace agreement, and  
12:10:47 24 Mr President, your Honours, you will realise that amongst the  
12:10:50 25 parties concerned are the UPC represented by Thomas Lubanga

12:11:01 1 Dyilo, and its direct opponent, the FNI. And I advise the  
12:11:06 2 court officer to please show the next page -- the signatures  
12:11:10 3 are on the next page of the document.  
12:11:16 4 [12:11 p.m.]  
12:11:28 5 The last four digits are 0023. Here we are, thank you very  
12:11:42 6 much. And now, Mr President, your Honours, you can see what  
12:11:46 7 I just stated -- amongst many others you have the signature of  
12:11:52 8 Thomas Lubanga Dyilo representing the UPC, and you obviously  
12:11:59 9 have also the signature of the direct opponent of the UPC or  
12:12:03 10 the FPLC at the time, the FNI.  
12:12:08 11 [12:12 p.m.]  
12:12:17 12 As it became very obvious -- and it became very obvious very  
12:12:22 13 quickly, Mr President, your Honours -- the peace agreement had  
12:12:27 14 no success -- had no success at all, and the armed conflict  
12:12:33 15 continued.  
12:12:38 16 [12:12 p.m.]  
12:12:39 17 In late May 2003 the UN Security Council took measures, and  
12:12:45 18 the UN Security Council took measures under Chapter VII of the  
12:12:52 19 UN charter, including authorising the use of force and they  
12:12:58 20 did so in light of the continued deterioration of the  
12:13:01 21 situation.  
12:13:04 22 [12:13 p.m.]  
12:13:04 23 Can the court officer now please display document  
12:13:12 24 <#DRC-OTP-0154-0671#>, and for your reference the French  
12:13:21 25 version of the same document is <#DRC-OTP-0154-0668#>.

12:13:30 1 COURT OFFICER (interpretation): The reference of the  
12:13:32 2 document is <#EVD-OTP-00010#>.

12:13:39 3 MR WITHOPF: Thank you very much. This document, as can be  
12:13:44 4 seen immediately -- this document is the UN Security Council  
12:13:48 5 Resolution 1484 of 2003. And in this resolution the Security  
12:13:59 6 Council determined -- and I am making reference to the fourth  
12:14:06 7 last paragraph from the bottom -- the UN Security Council  
12:14:13 8 determined the following, namely: "That the situation in the  
12:14:17 9 Ituri region and in Bunia in particular constitutes a threat  
12:14:22 10 to the peace process in the Democratic Republic of the Congo  
12:14:27 11 and to the peace and security in the Great Lakes region."  
12:14:36 12 [12:14 p.m.]

12:14:38 13 The UN Security Council -- and I repeat the UN Security  
12:14:44 14 Council was acting under Chapter VII of the UN Charter,  
12:14:49 15 authorised the deployment of an interim emergency  
12:14:54 16 multinational force in Bunia entitled to use, and I quote,  
12:15:01 17 once the court officer has a chance to please turn to page 2  
12:15:05 18 of the document, and I quote from the third paragraph, the UN  
12:15:23 19 Security Council authorised "the Member States participating  
12:15:28 20 in the Interim Emergency Multinational Force in Bunia to take  
12:15:32 21 all necessary measures to fulfil its mandate."  
12:15:40 22 [12:15 p.m.]

12:15:40 23 Mr President, your Honours, we all know -- we all know that  
12:15:45 24 this is the authorisation of the UN Security Council to use  
12:15:48 25 force, if necessary -- an authorisation which is given when

12:15:54 1 the council finds that a situation has deteriorated to the  
12:15:59 2 point where such measures are likely to become necessary.  
12:16:08 3 [12:16 p.m.]  
12:16:09 4 Mr President, your Honours, the armed conflict continued to  
12:16:13 5 give rise to the concern of the international community. In  
12:16:21 6 late July 2003 -- in late July 2003 the UN Security Council  
12:16:31 7 again authorised the use of -- and now I'm going to quote  
12:16:38 8 again -- "all necessary means". If the court officer, please,  
12:16:43 9 in this context could please show page 1 of the document  
12:16:50 10 <#DRC-OTP-0131-0167#>, and again for reference the French  
12:16:59 11 version of the document is <#DRC-OTP-0131-0161#>.  
12:17:08 12 COURT OFFICER (interpretation): The reference number will be  
12:17:12 13 <#EVD-OTP-00011#>.  
12:17:16 14 MR WITHOPF: Mr President, your Honours, this document is the  
12:17:24 15 UN Security Council Resolution 1493 again of 2003, in which  
12:17:33 16 the Council expressed -- and I make reference to page 1 of the  
12:17:37 17 document, the third paragraph from the bottom of the document,  
12:17:44 18 and I quote it: "Deeply concerned by the continuation of  
12:17:53 19 hostilities in the eastern part of the Democratic Republic of  
12:17:56 20 the Congo, particularly in North and South Kivu and in Ituri,  
12:18:00 21 and by the grave violations of human rights and of  
12:18:04 22 international humanitarian law that accompany them."  
12:18:10 23 [12:18 p.m.]  
12:18:12 24 In the very same resolution, Mr President, your Honours, and  
12:18:16 25 I kindly ask the court officer to now turn to page 3 of the

12:18:23 1 document, and I will quote paragraph 13 at the beginning. In  
12:18:36 2 the same document the Council, and the quote starts now:  
12:18:44 3 "Strongly condemns the continued recruitment and use of  
12:18:47 4 children in the hostilities in the Democratic Republic of the  
12:18:50 5 Congo, especially in North and South Kivu and in Ituri..."  
12:19:01 6 And, very importantly, Mr President, your Honours, in this  
12:19:05 7 resolution the Security Council deemed the situation to be so  
12:19:08 8 grave that it requested the Secretary-General -- and I'm now  
12:19:16 9 quoting from paragraph 27 of the document which can be found  
12:19:25 10 at page 5 of the document, and I ask kindly the court officer  
12:19:31 11 to turn to page 5 -- the Security Council, and I quote:  
12:19:46 12 "Requests the Secretary-General to deploy in the Ituri  
12:19:49 13 district as soon as possible the tactical brigade-size force  
12:19:54 14 whose concept of operation is set out in paragraphs 48 to 54  
12:19:59 15 of the second special report, including the reinforced MONUC  
12:20:02 16 presence in Bunia by mid-August 2003 as requested in  
12:20:06 17 Resolution 1484 (2003), particularly with a view to helping to  
12:20:14 18 stabilise the security conditions and improving the  
12:20:16 19 humanitarian situation, ensuring the protection of airfields  
12:20:20 20 and displaced persons living in camps and, if the  
12:20:25 21 circumstances warrant it, helping to ensure the security of  
12:20:28 22 the civilian population and the personnel of the United  
12:20:32 23 Nations and the humanitarian organisations in Bunia and its  
12:20:36 24 environs and eventually, as the situation permits, in other  
12:20:41 25 parts of Ituri."

12:20:45 1 [12:20 p.m.]

12:20:50 2 And, as I said, Mr President, your Honours, this resolution

12:20:55 3 was adopted under Chapter VII of the UN Charter, and in it the

12:21:01 4 Security Council authorised MONUC to use -- and I quote from

12:21:09 5 paragraph 26 of the document -- "Authorises MONUC to use all

12:21:15 6 necessary means to fulfil its mandate in the Ituri district."

12:21:20 7 [12:21 p.m.]

12:21:23 8 Obviously, Mr President, your Honours, the armed conflict in

12:21:26 9 Ituri continued.

12:21:29 10 [12:21 p.m.]

12:21:29 11 The 14th Report of the Secretary-General on MONUC of

12:21:34 12 17 November 2003 -- and can I now please ask the court officer

12:21:40 13 to display the document number <#DRC-OTP-0074-0215#>, and

12:21:50 14 again for reference the French version of this report is

12:21:54 15 <#DRC-OTP-0130-0409#>.

12:22:06 16 COURT OFFICER (interpretation): The reference number of the

12:22:09 17 document is <#EVD-OTP-00012#>.

12:22:15 18 MR WITHOPF: And I draw your attention, Mr President, your

12:22:17 19 Honours, that this report covers the period May to November

12:22:22 20 2003. This report states in paragraph 3 at page 1 the

12:22:33 21 following -- and the Prosecution believes, Mr President, its

12:22:39 22 worth reading it out in its entirety, because this portion

12:22:42 23 gives a very clear impression of the intensity of the armed

12:22:46 24 conflict, and I quote it as follows: "The situation in Ituri

12:22:53 25 has been particularly serious. Approximately 420 civilians

12:22:58 1 have been killed in Bunia in fighting between Lendu and Hema  
12:23:04 2 militias since the departure of Ugandan troops in May 2003.  
12:23:09 3 While most were targeted because of their ethnicity, others  
12:23:13 4 were caught in the crossfire. Widespread rape and looting  
12:23:17 5 also occurred. A significant number of the victims of the  
12:23:21 6 abuses have been minors. In border areas between Uganda and  
12:23:27 7 Ituri, 380 cases of human rights abuses were reported,  
12:23:33 8 included killing, forced disappearances, mutilations, rape and  
12:23:39 9 systematic looting and destruction of property. Visits by  
12:23:44 10 MONUC to the Ntokoro area in Uganda, and to Aru, Aruwara and  
12:23:53 11 Mahagi in the Democratic Republic of the Congo confirmed  
12:23:56 12 attacks by Ngiti and Lendu militias on Tchomia (30 May and  
12:24:04 13 15 July), Kasenyi (11 June and 23 July), Nioka (10 June), and  
12:24:11 14 Ambe and its surroundings (6 and 7 July). On 19 July" -- and  
12:24:22 15 again it's the year 2003 -- "On 19 July fighting in Fataki  
12:24:27 16 resulted in the loss of scores of civilian lives. There was a  
12:24:32 17 Lendu attack on that same locality on 31 July, with a  
12:24:37 18 significant number of civilian casualties. During a MONUC  
12:24:42 19 visit to Komanda on 11 September 2003, it came to light that  
12:24:48 20 at least 65 people had died from February to March as a result  
12:24:52 21 of clashes between Ngiti and Hema North forces. In the most  
12:25:00 22 recent spate of killings, on 6 October, Lendu militia from  
12:25:05 23 Petro and Laudju attacked Kachele and surrounding villages  
12:25:14 24 killing 65 civilians in the process, 42 of whom were children.  
12:25:19 25 There was also systematic looting."

12:25:23 1 [12:25 p.m.]

12:25:23 2 Mr President, your Honours, this situation -- and this

12:25:26 3 situation can only be described as a very serious situation,

12:25:31 4 and as a very brutal armed conflict in the region of Ituri --

12:25:35 5 the situation did not improve. And the armed conflict

12:25:40 6 continued as it is reflected in the 15th report of the

12:25:45 7 Secretary-General on MONUC, dated 25 March 2004. Whilst the

12:25:55 8 court officer please displays the document

12:26:04 9 <#DRC-OTP-0130-0434#>, and I ask the court officer to please

12:26:09 10 display paragraph 24 of that document, which is at page 6 --

12:26:17 11 whilst the court officer is displaying the document I can

12:26:21 12 inform the honourable Bench that this report covers the time

12:26:25 13 period between November 2003 and March 2004.

12:26:29 14 [12:26 p.m.]

12:26:31 15 Again for your reference, Mr President, your Honours, the

12:26:34 16 French version of this report is <#DRC-OTP-0130-0454#>.

12:26:47 17 COURT OFFICER (interpretation): The reference number of the

12:26:50 18 document is <#EVD-OTP-00014#> - sorry, 13, excuse me.

12:27:06 19 MR WITHOPF: I'm just made aware that in the transcript the

12:27:09 20 ERN of the French version of the document is not entirely

12:27:15 21 displayed correctly. The last digits should be 456 instead of

12:27:24 22 454, if this could please be corrected. I am making

12:27:34 23 reference, as I said, to paragraph 24 of that document, and

12:27:42 24 paragraph 24 at the beginning states: "Nevertheless,

12:27:49 25 volatility in Ituri has increased..."

12:27:58 1 [12:27 p.m.]

12:27:59 2 Obviously, meaning, Mr President, your Honours, that the armed  
12:28:02 3 conflict has continued until the end of 2003.

12:28:12 4 [12:28 p.m.]

12:28:13 5 Mr President, your Honours, could the court officer please now  
12:28:18 6 show document <#DRC-OTP-0074-0422#>. This document,  
12:28:36 7 Mr President, your Honours, is the United Nations Organisation  
12:28:41 8 Mission in the Democratic Republic of the Congo's Special  
12:28:44 9 Report on the events in Ituri, January 2002 to December 2003,  
12:28:54 10 and obviously covering the time period relevant to the  
12:29:00 11 document containing the charges.

12:29:01 12 [12:29 p.m.]

12:29:04 13 For reference again, the French version of the report is  
12:29:09 14 <#DRC-OTP-0129-0329#>.

12:29:19 15 COURT OFFICER (interpretation): The reference number shall  
12:29:22 16 be <#EVD-OTP-00014#>.

12:29:28 17 MR WITHOPF: Thank you. Mr President, your Honours, this  
12:29:31 18 report is an extended summary of the various reports as  
12:29:36 19 mentioned earlier on, and the Prosecution will show, by the  
12:29:42 20 detail the report provides, that it is very clear that there  
12:29:48 21 was an armed conflict in Ituri during the time frame relevant  
12:29:53 22 to the charges against Mr Thomas Lubanga Dyilo, meaning  
12:29:57 23 from July 2002 to end of December 2003.

12:30:01 24 [12:30 p.m.]

12:30:04 25 Could the court officer now please display page 5 of the

12:30:09 1 document? I draw the particular attention of your Honours to  
12:30:22 2 paragraph 5 at page 5, and I read it out as follows: "The  
12:30:31 3 conflict entered a new phase of violence at the end of 2001  
12:30:36 4 with the intensification of ethnically targeted attacks on  
12:30:42 5 villages, including killings, torture, rape of civilians,  
12:30:47 6 looting of homes and destruction of social infrastructure.  
12:30:51 7 When the Hema militia UPC took over Bunia, first in August  
12:30:59 8 2002 and again in May 2003, they adopted an ethnic cleansing  
12:31:04 9 policy to empty the town of its Lendu and Bira populations, as  
12:31:13 10 well as the 'non-Iturian' Nande community, which was a  
12:31:18 11 commercial rival to the Hema businessmen. Hundreds of Lendu  
12:31:23 12 villages were completely destroyed during attacks by Ugandan  
12:31:27 13 army helicopters together with Hema militia on the ground."  
12:31:37 14 [12:31 p.m.]  
12:31:39 15 If the court officer could now please display, and I add that  
12:31:48 16 he please displays slowly, pages 56 to 62 of the document.  
12:32:03 17 These pages, Mr President, your Honours, give an overview of  
12:32:06 18 the various attacks of the opposing organised armed groups,  
12:32:12 19 and this overview shows that there are substantial grounds to  
12:32:16 20 believe that the armed violence had a certain intensity during  
12:32:21 21 a prolonged period of time.  
12:32:27 22 [12:32 p.m.]  
12:32:28 23 I draw the particular attention of your Honours to the  
12:32:30 24 following entries in the list, and I would appreciate if the  
12:32:34 25 court officer please could display these entries as I mention

12:32:39 1 them. I start at page 57, and in relation of beginning  
12:32:52 2 of August 2002 there is mentioned, and I quote "deployment of  
12:33:00 3 UPC in Nyankunde." For the 9 to 28 August 2002, the following  
12:33:09 4 statement is made: "Several military operations carried out  
12:33:14 5 by UPC against Lendu localities of Lipri, Zumbe, Penyi, Loga,  
12:33:22 6 Za, and Ezekere. Villages are burned down and a large number  
12:33:29 7 of civilians killed, including Chief Pilo of Ezekele [as per  
12:33:36 8 document]." At the very bottom of the page, in relation to  
12:33:41 9 23 August 2002, the following is stated: "Fighting between  
12:33:48 10 Ngiti and UPC in Komanda. High numbers of civilians are  
12:33:54 11 reportedly killed."  
12:33:58 12 [12:33 p.m.]  
12:33:59 13 When we turn to the next page, page 58 of the document, we  
12:34:07 14 will find under 31 August 2002 the following entry: "Military  
12:34:14 15 operation of UPC, from Nyankunde, against the Lendu locality  
12:34:20 16 of Songolo." For August 2002 the following statement is made:  
12:34:29 17 "In Boga, a Hema militia is organised in the city with a  
12:34:34 18 majority of youths, including minors."  
12:34:43 19 [12:34 p.m.]  
12:34:44 20 For 5 September 2002, the following statement is made: "The  
12:34:50 21 coalition of APC, Lendu, Ngiti and Mai-Mai militias attack  
12:34:59 22 Nyankunde, target Hema and Bira ethnic groups, and allegedly  
12:35:06 23 kill more than 1,000 people in the town and neighbouring  
12:35:09 24 villages." For 16 September 2002, the respective entry reads  
12:35:14 25 as follows: "APC and Lendu militia from Kpandroma,

12:35:23 1 collectivity of Djugu, launch an attack against Mamagi,  
12:35:31 2 53 kilometres from Bunia." Turning to the next page, page 59,  
12:35:36 3 I refer to two entries only, namely, first, 20 October to  
12:35:44 4 10 November 2002: "UPC launches several military operations  
12:35:49 5 against the Lendu localities of Nombe, Kagabe, Songolo,  
12:36:00 6 Androzo, Pinga, Singo, Mongbwalu and Tseletsele. Hundreds of  
12:36:13 7 localities are burned down and an unknown number of civilians  
12:36:18 8 massacred."  
12:36:18 9 [12.36 p.m.]  
12:36:19 10 For December 2002 we can read the following: "UPC reportedly  
12:36:23 11 organises a sizeable military operation in Mongbwalu with the  
12:36:27 12 assistance of MLC and finally succeeds in seizing Mongbwalu."  
12:36:33 13 [12:36 p.m.]  
12:36:34 14 Turning to the next page, which is page 60, we can see the  
12:36:43 15 first entries for the year 2003, and for 21 February 2003 the  
12:36:51 16 following is mentioned: "The Secretary-General, in his  
12:36:57 17 thirteenth report on the Democratic Republic of the Congo,  
12:37:00 18 notes widespread insecurity, massive displacement and severely  
12:37:04 19 restricted humanitarian access in Ituri; displacement of  
12:37:11 20 100,000 persons in the north-east since October 2002, ongoing  
12:37:17 21 human rights violations; ongoing fighting between Hema and  
12:37:24 22 Lendu aligned groups; and difficulties in monitoring by MONUC  
12:37:30 23 due to security conditions."  
12:37:34 24 [12:37 p.m.]  
12:37:35 25 And only three days afterwards, on 24 February 2003, there was

12:37:42 1 a Ngiti attack on Bogoro, the collectivity of Bahema Sud. And  
12:37:53 2 the respective entry in the report continues to say:  
12:37:56 3 "Execution of around 350 civilians". For 3 April 2003 the  
12:38:05 4 entry reads as follows: "Lendu attack on Drodro results in  
12:38:11 5 killing of some 400 civilians."  
12:38:15 6 [12:38 p.m.]  
12:38:17 7 And not much did change in the course of the year 2003. Since  
12:38:26 8 already on 24 May 2003, and as your Honours -- Mr President,  
12:38:31 9 your Honours have noticed, I'm obviously skipping a whole  
12:38:36 10 series of the entries, but already on 24 May 2003, there was a  
12:38:42 11 signature of a cease-fire agreement between the FNI and UPC  
12:38:46 12 under the patronage of Joseph Kabila and Amos Namanga Ngongi,  
12:38:58 13 the Special Representative of the Secretary-General", which  
12:39:00 14 was obviously fairly unsuccessful because on 27 May 2003 the  
12:39:04 15 entry reads as follows: "UPC drives FNI troops out of Bunia."  
12:39:04 16 [12.30 p.m.]  
12:39:14 17 It may appear to be a very significant month in terms of the  
12:39:22 18 hostilities, since for 31 May 2003 the following is stated:  
12:39:30 19 "Attack against Tchomia by Lendu and Ngiti militias with the  
12:39:39 20 alleged support of APC and FAC. Some 90 civilians are  
12:39:44 21 killed." On 11 June 2003 there were Lendu and Ngiti militias  
12:39:50 22 and Kasenyi and killing at least 80 civilians. On 19 July  
12:39:57 23 2003 there was the attack on Fataki by FNI and FAPC where  
12:40:02 24 20 [sic] civilians were allegedly killed. And skipping a  
12:40:06 25 whole series of further entries, Mr President, your Honours,

12:40:09 1 I draw your attention to 6 October 2003, and the respective  
12:40:15 2 statement reads as follows: "Lendu forces attack Kachele,  
12:40:25 3 near Bule, in the collectivitie of Bahema Badjere leaving 65  
12:40:34 4 people dead."

12:40:34 5 [12.40 p.m.]

12:40:37 6 Mr President, your Honours, the Prosecution is of the view  
12:40:40 7 that by the way -- or by way of the documents presented it has  
12:40:45 8 shown that the international community came to the conclusion  
12:40:50 9 that in 2002 and 2003, and obviously throughout the period of  
12:40:58 10 time relevant to the charges against Mr Thomas Lubanga Dyilo,  
12:41:03 11 that there was an armed conflict in Ituri -- an armed conflict  
12:41:08 12 with organised armed groups participating in it.

12:41:13 13 [12:41 p.m.]

12:41:14 14 In respect of the FPLC, Mr President, your Honours, the  
12:41:18 15 Prosecution will address the level of organisation in detail  
12:41:21 16 later on today in the context of its presentation on the  
12:41:25 17 evidence of the FPLC.

12:41:27 18 [12:41 p.m.]

12:41:30 19 In respect of the other armed groups, the Prosecution focuses  
12:41:35 20 its evidence on the APC, which is the Armee du Peuple  
12:41:42 21 Congolais, which was the armed wing of the RCD-ML, and the FNI  
12:41:51 22 which we know as the Front Nationaliste Integrationniste,  
12:41:54 23 which were the principal -- the principal but not the only  
12:41:58 24 adversaries of the UPC. Like the FPLC, the APC and the FNI  
12:42:09 25 had a hierarchical structure -- a hierarchical structure that

12:42:15 1 allowed them to act under responsible command with operational  
12:42:22 2 and disciplinary powers.

12:42:26 3 [12:42 p.m.]

12:42:26 4 This, Mr President, your Honours, in the view of the  
12:42:29 5 Prosecution is evidenced by the continuing ability of the APC  
12:42:33 6 and the FNI, over longer periods of time, to conduct  
12:42:39 7 large-scale military actions, as they have been detailed in  
12:42:43 8 the report I was just quoting from, and as they are  
12:42:48 9 furthermore referred to in the various UN Secretary-General  
12:42:52 10 reports.

12:42:54 11 [12:42 p.m.]

12:42:55 12 These large-scale military actions also include the following  
12:43:00 13 attacks attributed to the FNI: the attack on Bogoro in  
12:43:07 14 February 2003; the attack on Mandro in early March 2003; and  
12:43:19 15 in May the FNI attack on Kilo; and in late May of the same  
12:43:30 16 year, namely in 2003, the FNI attack on Tchomia, as well as  
12:43:39 17 Kasenyi and Katoto which were attacked in June 2003, and in  
12:43:46 18 Kachele in around October 2003.

12:43:50 19 [12:43 p.m.]

12:43:52 20 These APC and FNI attacks are, inter alia, in detail  
12:43:57 21 referenced to in the Special Report on the events in  
12:44:00 22 Ituri, January 2002 to December 2003 -- that's a document that  
12:44:06 23 has been displayed earlier on -- and in other UN reports that  
12:44:11 24 form part of the Prosecution's list of evidence.

12:44:15 25 [12:44 p.m.]

12:44:24 1 The fact, Mr President, your Honours -- the fact that the APC  
12:44:31 2 and the FNI had hierarchically structured -- or had  
12:44:39 3 hierarchical structures and responsible commands is also  
12:44:43 4 evidenced by the documents the Prosecution will present  
12:44:47 5 showing that also the APC and the FNI understood the situation  
12:44:53 6 in Ituri as being an armed conflict, and that they had the  
12:45:00 7 ability to react in the midst of that conflict, both in a  
12:45:05 8 military and in a political sense.

12:45:09 9 [12:45 p.m.]

12:45:12 10 Mr President, your Honours, these documents will show that not  
12:45:17 11 only the international community came to that conclusion that  
12:45:23 12 there was an armed conflict in Ituri during the relevant time  
12:45:28 13 period, but that also the actors in Ituri themselves -- that  
12:45:33 14 they themselves had a clear understanding of the conflict  
12:45:36 15 being an armed conflict.

12:45:39 16 [12:45 p.m.]

12:45:41 17 For example, Mr President, your Honours, Thomas Lubanga  
12:45:49 18 Dyilo -- Mr Thomas Lubanga Dyilo, in a declaration of  
12:45:52 19 13 August 2002, talked about a war, and he talked about a war  
12:46:01 20 along ethnic lines. Can the court officer now please display  
12:46:06 21 the document <#DRC-OTP-0113-0135#>. I refer to page 1 of the  
12:46:23 22 document, the second paragraph from the bottom where  
12:46:35 23 Thomas Lubanga states the following, and I quote [in French]:  
12:46:58 24 "Major crimes were committed, in particular the arming and  
12:47:03 25 support of combatants, war combatants from tribal circles, the

12:47:11 1 fostering of hate and the division in different Iturian  
12:47:17 2 communities."  
12:47:21 3 [12.47 p.m.]  
12:47:21 4 COURT OFFICER (interpretation): The document number will be  
12:47:22 5 <#EVD-OTP-0015#>.  
12:47:30 6 MR WITHOPF: And in the same -- and in the same document, and  
12:47:40 7 I draw your attention, Mr President, your Honours, that the  
12:47:43 8 document is signed by Thomas Lubanga Dyilo -- in the same  
12:47:49 9 document at page 2 -- for the court officer please to turn to  
12:47:54 10 page 2 -- at the beginning of the second paragraph Thomas  
12:48:03 11 Lubanga Dyilo continues to state the following [in French]:  
12:48:21 12 "The Iturians, not wanting to remain in the infernal cycle of  
12:48:26 13 violence, signed several accords or agreements to cease  
12:48:33 14 hostilities."  
12:48:33 15 [12.48 p.m.]  
12:48:36 16 And at page 5 -- and can the court officer please turn to  
12:48:39 17 page 5 of the document -- and again I emphasise the document  
12:48:45 18 is signed by Thomas Lubanga Dyilo, Mr Thomas Lubanga Dyilo  
12:48:50 19 states the following, and I quote [in French]: "The sons and  
12:49:14 20 daughters -- the FRP asks all the sons and daughters of Ituri  
12:49:18 21 to stop the massacres and all acts of destruction and each of  
12:49:22 22 them must work for peace."  
12:49:25 23 [12:49 p.m.]  
12:49:25 24 And I continue to quote [in French]: "To stop to entertain  
12:49:39 25 and to display all acts of violence and hate." Mr Thomas

12:49:44 1 Lubanga Dyilo continues to state, and I quote [in French]:  
12:49:49 2 "To support all actions for pacification made by the  
12:49:55 3 government".  
12:49:55 4 [12:49 p.m.]  
12:49:56 5 And finally in that paragraph Thomas Lubanga states the  
12:50:00 6 following, and I quote [in French]: "The FRP asks all  
12:50:16 7 significant personalities in Ituri to support the pacification  
12:50:20 8 plan for the entire region."  
12:50:22 9 [12:50 p.m.]  
12:50:22 10 If the court officer now could please turn to page 6 of the  
12:50:26 11 document, and I want to draw the attention as I mentioned a  
12:50:33 12 number of times that the document is signed by Thomas Lubanga.  
12:50:46 13 On 15 November 2002, Mr President, your Honour, Thomas Lubanga  
12:50:53 14 signs -- Thomas Lubanga Dyilo signs what is called, and  
12:50:59 15 I quote from the document <#DRC-OTP-0106-0187#>, and I kindly  
12:51:11 16 ask the court officer to display that document. In this  
12:51:24 17 document the following is stated at page 1, and I quote as  
12:51:29 18 follows: "The Congolese government was represented by  
12:51:38 19 Col. Etumba as an observer. After a review of the security  
12:51:43 20 situation in Eastern Congo and intensive discussions on the  
12:51:47 21 need for peace in Ituri in accordance with Lusaka and Luanda  
12:51:52 22 agreements and, in order to put an end to senseless killings  
12:51:56 23 and forestall a humanitarian crisis in Ituri, the Congolese  
12:52:00 24 leaders of RCD-ML and UPC agree as follows: 1. RCD-ML and  
12:52:09 25 UPC shall cease hostilities at all fronts in Ituri immediately

12:52:15 1 and; 2. In order to promote pacification of Ituri, RCD-ML  
12:52:20 2 agrees to immediately cease all military and political  
12:52:24 3 activities in Ituri which may affect the pacification  
12:52:29 4 process."  
12:52:32 5 [12:52 p.m.]  
12:52:33 6 Can the court officer now please display page 2 of the same  
12:52:37 7 document. At page 2 of the document one can obviously see  
12:52:48 8 again the signature of Thomas Lubanga Dyilo, signing for the  
12:52:55 9 UPC, and one also can identify the signature of Mbusa Nyamwisi  
12:53:05 10 signing for the RCD-ML.  
12:53:07 11 COURT OFFICER (interpretation): The document shall be  
12:53:12 12 numbered <#EVD-OTP-0016#>.  
12:53:24 13 MR WITHOPF: In January 2003, Mr President, your Honours,  
12:53:27 14 more concretely on 4 January 2004 [sic], Thomas Lubanga Dyilo  
12:53:35 15 sends a message to the people in Ituri, and the message is  
12:53:40 16 called, and I quote the title: [in French -- not interpreted]  
12:54:15 17 and in this document, <#DRC-OTP-0113-0145#>, in this document  
12:54:24 18 Mr Thomas Lubanga Dyilo makes numerous -- makes multiple  
12:54:29 19 references to the conflict.  
12:54:32 20 [12:54 p.m.]  
12:54:33 21 Mr President, your Honours, whilst there are more relevant  
12:54:37 22 portions, I wish to draw your particular attention to pages 1  
12:54:44 23 and 3 of the document. At page 1, in the last two paragraphs  
12:54:52 24 from the bottom, Thomas Lubanga Dyilo states the following  
12:55:00 25 [in French]: "The year 2002, which has just ended, has seen

12:55:34 1 events which will have marked forever the history and the  
12:55:40 2 socio-political life of Ituri, this region of the north-east  
12:55:44 3 of the Democratic Republic of the Congo, which has been prey  
12:55:50 4 for four years to a rebellion and an ethnic war of the most  
12:55:55 5 atrocious and inhumane kind." And Mr Thomas Lubanga Dyilo  
12:56:00 6 continues to state, and I quote [in French]: "So in  
12:56:17 7 remembrance of the victims of this conflict and all those who  
12:56:21 8 lost their lives in it, I ask you to stand up and to observe a  
12:56:25 9 minute of silence."

12:56:28 10 [12:56 p.m.]

12:56:28 11 Can the court officer please now turn to page 3 of the same  
12:56:31 12 document. And I quote the second portion -- the second  
12:56:41 13 paragraph from the top as follows [in French]: "Everyone  
12:57:37 14 knows that in defining the trend of this new movement we  
12:57:41 15 fought several enemies of peace, including the APC of  
12:57:48 16 Mr Mbusu Nyamwisi and other forces which are difficult to  
12:57:53 17 identify who are encouraging our own Iturian brothers,  
12:58:00 18 brothers who unfortunately have gone astray for selfish  
12:58:05 19 reasons to sacrifice their compatriots for  
12:58:13 20 objective -- ambiguous objectives thus fostering the culture  
12:58:17 21 of killings, divisions and hatred within the Ituri  
12:58:21 22 population."

12:58:25 23 [12:58 p.m.]

12:58:26 24 From that document you will find at the bottom of page 3, and  
12:58:32 25 I quote as follows [in French]: "The determination of our

12:59:00 1 fighters in the Forces Patriotique pour la Liberation du  
12:59:06 2 Congo, FPLC for short, to which we pay vibrant homage has  
12:59:13 3 enabled us to master the situation to the tune of about  
12:59:17 4 80 per cent."  
12:59:20 5 [12:59 p.m.]  
12:59:20 6 And, finally, Thomas Lubanga continues to say the following,  
12:59:29 7 and I quote [in French]: "For your information, we control  
12:59:53 8 practically all of Ituri Province, Irumu, Djugo, Mahagi, Aru  
13:00:03 9 and a good part of Mambasa territory."  
13:00:07 10 My colleague has just drawn my attention to the following,  
13:00:11 11 that at page 24 of the transcript at line 7 there's mentioning  
13:00:17 12 that the year of the document is 2004.  
13:00:23 13 If this could please be changed to the year "2003", since the  
13:00:30 14 document is signed by Thomas Lubanga Dyilo on 4 January 2003,  
13:00:41 15 and again I make reference to page 27, line 7 of the  
13:00:48 16 transcript [LiveNote].  
13:00:57 17 PRESIDING JUDGE JORDA (interpretation): Registrar, that will  
13:01:00 18 be done.  
13:01:01 19 MR WITHOPF: Thank you very much, Mr President, your Honours.  
13:01:05 20 The Prosecution submits that the statements made by Thomas  
13:01:10 21 Lubanga Dyilo are obviously -- are very obviously a clear  
13:01:13 22 indication that he, Thomas Lubanga Dyilo, being one of the key  
13:01:17 23 actors in Ituri, acknowledged that there was an armed conflict  
13:01:23 24 ongoing in Ituri, and that he knew about it.  
13:01:28 25 [1:01 p.m.]

13:01:28 1 On 14 August 2003, in a document, which is a draft  
13:01:39 2 "Declaration Politique", the political and military  
13:01:46 3 responsible persons in Ituri, amongst them Thomas Lubanga  
13:01:50 4 Dyilo for the UPC, and Floribert Ngabu for the FNI declare,  
13:01:57 5 and I ask the court officer to now display document  
13:02:02 6 <#DRC-OTP-0093-0814#>.  
13:02:07 7 Thomas Lubanga Dyilo for the UPC and Floribert Ngabu for the  
13:02:13 8 FNI declare the following, and I refer to page 1 of the  
13:02:17 9 document, to the top, at the very beginning and I quote [in  
13:02:21 10 French]: "Noting the tragedies and atrocities which beggar  
13:02:43 11 description that have been experienced by the population of  
13:02:46 12 Congo in Ituri for almost five long years now", and the two  
13:02:53 13 individuals, including Thomas Lubanga Dyilo, continue to  
13:02:57 14 state, and I make reference to page 2 of the same document,  
13:03:01 15 the second-last paragraph from the bottom and I quote [in  
13:03:04 16 French]: "That we make a firm commitment to put an end to the  
13:03:24 17 massacres, looting, crimes and any other form of human rights  
13:03:30 18 violations of which we are accused."  
13:03:38 19 COURT OFFICER (interpretation): Document number is  
13:03:46 20 <#EVD-OTP-00016 -- 17 -- 18#>, I beg your pardon.  
13:03:56 21 MR WITHOPF: Mr President, your Honours, finally, on  
13:04:11 22 14 May 2004 the parties to the armed conflict sign a treaty  
13:04:17 23 that indicates the continuation of the armed conflict. And  
13:04:21 24 I ask the court officer, and I ask him kindly to display  
13:04:25 25 document <#DRC-OTP-0098-0298#>[sic]. Sorry, the ERN, the last

13:04:42 1 four digits are 0291, please.

13:04:49 2 In this document, and can we please get displayed page 2 of  
13:04:55 3 the document first, in order to show "les Signataires" of the  
13:05:09 4 treaty, namely as one can see amongst others, the UPC, and for  
13:05:16 5 the UPC again Thomas Lubanga Dyilo, and the FNI. And the  
13:05:29 6 parties -- and there are other parties as your Honours can see  
13:05:33 7 as well on page 2 -- and the parties declare the following,  
13:05:39 8 and I'm going to quote very limited portions of that document  
13:05:43 9 as follows: first, at page 1, the third and the fourth  
13:05:49 10 paragraphs quote [in French]: "Desirous of participating in  
13:06:06 11 peace and in restoring the State's authority all over the  
13:06:11 12 national territory; considering the urgency and priority of  
13:06:31 13 the implementation of the disarmament and reintegration  
13:06:35 14 programme at community level for Ituri, which was drafted by  
13:06:39 15 the transition government". And the last quote at the very  
13:06:46 16 bottom of page 1, continuing at the very top of page 2, and  
13:06:52 17 I read it out as follows, [in French].

13:06:55 18 THE INTERPRETER: Would the court officer please go back to  
13:07:29 19 the previous page for the benefit of the interpreter?

13:07:36 20 "Further express our thanks to the international community for  
13:07:39 21 its support in the Ituri pacification process and" -- could  
13:07:49 22 you please turn the page now -- "and express the hope that  
13:07:53 23 this involvement will be constant at all phases of the  
13:07:56 24 implementation of the programme for the disarmament and  
13:08:00 25 reintegration at community level in Ituri."

13:08:06 1 COURT OFFICER (interpretation): The document number is  
13:08:17 2 <#EVD-OTP-0019#>.

13:08:23 3 MR WITHOPF: Mr President, your Honours, these statements  
13:08:28 4 made by, inter alia, the UPC and its main opponent the NFI  
13:08:35 5 [sic], the main parties to the armed conflict. These  
13:08:42 6 statements show that there was an armed conflict throughout  
13:08:52 7 the period of time relevant to the document containing the  
13:08:55 8 charges, and these statements are a clear indication that they  
13:09:01 9 saw the situation in Ituri through the relevant time period as  
13:09:07 10 being an armed conflict.

13:09:09 11 [1:09 p.m.]

13:09:09 12 My attention is drawn to the fact that the FNI is misquoted in  
13:09:19 13 the transcript -- instead NFI -- I believe there's written NFI  
13:09:27 14 [sic] which obviously is, as we know, something different  
13:09:31 15 [sic], if this could please be corrected.

13:09:41 16 [1:09 p.m.]

13:09:42 17 Mr President, your Honours, Thomas Lubanga Dyilo -- Mr Thomas  
13:09:47 18 Lubanga Dyilo, he was aware of the existence of the armed  
13:09:50 19 conflict in Ituri. And to further prove this fact, beyond the  
13:10:00 20 documents we have shown and we have discussed, the Prosecution  
13:10:08 21 intends to show three videos, as we have announced at the  
13:10:12 22 beginning of this presentation.

13:10:17 23 [1:10 p.m.]

13:10:18 24 The videos will be short. However, it's 10 past 1, and I'm  
13:10:27 25 not quite sure whether your Honour, the Presiding Judge, wants

13:10:30 1 me to continue at this stage, or prefers that I make the  
13:10:33 2 further presentation after the break.

13:10:36 3 PRESIDING JUDGE JORDA (interpretation): I think I'm going to  
13:10:43 4 speak to -- for everyone in the courtroom. I think we'll take  
13:10:48 5 a break so that the Defence and the translation services will  
13:10:57 6 be able to study the video beforehand and enable the Defence  
13:11:02 7 to perform its duty. We shall resume at 2.30.

13:11:08 8 ME FLAMME (interpretation): Just a question. I just want to  
13:11:12 9 avoid interrupting in the afternoon. I want to know  
13:11:14 10 beforehand whether this is a sworn translator who will be  
13:11:20 11 involved in the translation of this video.

13:11:23 12 PRESIDING JUDGE JORDA (interpretation): There may be a  
13:11:26 13 translator, but there will be other translators as we have in  
13:11:31 14 the booths and you will have at your disposal a translator who  
13:11:36 15 comes from the Registry, and who will help you from  
13:11:39 16 Swahili/French and from French into Swahili.

13:11:47 17 ME FLAMME (interpretation): But my question is: Is this a  
13:11:48 18 sworn translator?

13:11:50 19 PRESIDING JUDGE JORDA (interpretation): What is a "sworn  
13:11:51 20 translator"? He's a translator.

13:11:54 21 ME FLAMME (interpretation): There are translators and sworn  
13:11:55 22 translators; that is people who have the authority, who have  
13:11:58 23 in a way taken a solemn declaration, who are recognised as  
13:12:06 24 sworn translators as you have in France and Belgium.

13:12:09 25 PRESIDING JUDGE JORDA (interpretation): I shall ask the

13:12:10 1 Registry whether this is a translator that has taken an oath,  
13:12:16 2 that is, according to the distinction made by Me Flamme.  
13:12:20 3 I thought that you provide translation services under your  
13:12:26 4 responsibility, that is, objective responsibility, and which  
13:12:31 5 will avoid -- will prevent you from having the problem that  
13:12:34 6 you expressed in the morning, that is, that you did not have  
13:12:39 7 any trust in the Prosecution's translation. In any case we'll  
13:12:44 8 take the break now and by afternoon we shall have all the  
13:12:47 9 necessary answers.

13:12:50 10 [1:12 p.m.]

13:12:50 11 Registry, please communicate with Defence and communicate to  
13:12:54 12 us what the position will be in regard to this sworn  
13:12:59 13 translator. I imagine that, in any case, translators are  
13:13:03 14 required to take an oath.

13:13:04 15 COURT OFFICER (interpretation): That's right, Mr President.

13:13:07 16 PRESIDING JUDGE JORDA (interpretation): Thank you for your  
13:13:08 17 answer. The Court will resume at 2.30.

13:13:08 18 [1:13 p.m.]

13:13:15 19 [Luncheon adjournment]

13:13:15 20 [2:40 p.m.]

14:40:10 21 THE USHER: All rise.

14:40:46 22 PRESIDING JUDGE JORDA (interpretation): So the hearing is  
14:40:47 23 starting again. Please, could you bring in Mr Lubanga Dyilo.

14:40:47 24 [2:40 p.m.]

14:40:54 25 [Mr Thomas Lubanga Dyilo entered the courtroom]

14:41:22 1 [2:41 p.m.]

14:41:22 2 PRESIDING JUDGE JORDA (interpretation): So the hearing is  
14:41:24 3 starting again. Before giving the floor to the Prosecutor, I  
14:41:27 4 would now, indicating a decision of the Chamber relating to  
14:41:33 5 the request of the representative of victims, having heard the  
14:41:36 6 Prosecutor and the Defence on Friday last on this question,  
14:41:39 7 and giving Article 68(3) of the Statute, the decision with  
14:41:43 8 regards to the participation modalities, the Chamber gives the  
14:41:48 9 Prosecutor to identify before Tuesday at 9.30, and to the  
14:41:55 10 Defence before Friday the 17th at 1600 hours, the material  
14:42:00 11 documents including the list of -- respective lists of  
14:42:06 12 evidence which they consider that they shouldn't be  
14:42:10 13 confidential.

14:42:10 14 [2:42 p.m.]

14:42:12 15 The Chamber orders the Registrar to make it possible for the  
14:42:17 16 legal representative of victims to have access to these  
14:42:19 17 documents and materials via Ringtail. Furthermore, I would  
14:42:25 18 like to ask the representative of the Prosecutor if he has, in  
14:42:29 19 accordance with what we've asked him to do, been able to  
14:42:32 20 contact all these different witnesses with a view to informing  
14:42:35 21 them of the use of their testimony.

14:42:35 22 [2:42 p.m.]

14:42:38 23 You will remember this question, Mr Withopf?

14:42:41 24 MR WITHOPF: Mr President, your Honours, of course I do  
14:42:45 25 remember the question. The Prosecution was of the view that

14:42:51 1 the answers given on Friday afternoon have provided the  
14:42:56 2 respective information.  
14:42:56 3 [2:42 p.m.]  
14:43:00 4 I recall that the Prosecution has informed your Honours that,  
14:43:05 5 with the exception of three witnesses -- and in respect of  
14:43:11 6 these three witnesses reasons have been provided to the  
14:43:13 7 Pre-Trial Chamber -- all other witnesses have been duly  
14:43:16 8 informed.  
14:43:16 9 [2:43 p.m.]  
14:43:19 10 If your Honours have difficulties to appreciate the reasons  
14:43:25 11 provided by the Office of the Prosecutor, why it has not  
14:43:29 12 contacted three witnesses, the Office of the Prosecutor would  
14:43:32 13 be very much prepared to elaborate on these reasons given,  
14:43:40 14 preferably in writing.  
14:43:43 15 PRESIDING JUDGE JORDA (interpretation): Okay. Well, you  
14:43:44 16 could put that in writing, please. So, I think we can start  
14:43:49 17 again. Mr Withopf, you had the floor. Yes. Oh, just a last  
14:43:53 18 point. I'm now turning here towards Mr Jean Flamme. The  
14:43:58 19 interpreters will be, of course, in the booth. It seems  
14:44:02 20 technically we can't do it differently, but it will be an  
14:44:05 21 interpreter/translator who has sworn an oath and who can  
14:44:10 22 interpret from Swahili into French.  
14:44:12 23 ME FLAMME (interpretation): Your Honour, I asked a  
14:44:14 24 representative of the Registry if these translators were sworn  
14:44:19 25 in Kingwana. As we asked the question to my client, it is a

14:44:23 1 matter of Kingwana. Swahili in general does not exist, as I  
14:44:33 2 explained to you.

14:44:35 3 PRESIDING JUDGE JORDA (interpretation): Mr Registrar?

14:44:36 4 COURT OFFICER (interpretation): The interpreters interpret  
14:44:41 5 from Swahili into French.

14:44:47 6 PRESIDING JUDGE JORDA (interpretation): Okay. I think this  
14:44:49 7 question shall be closed. And of course it is clear. To be  
14:44:52 8 able to reassure you, Mr Flamme, that if the judges consider  
14:44:56 9 that there was the slightest ambiguity following your  
14:44:59 10 interventions, that you will have the opportunity, yourself,  
14:45:03 11 to be able to reinterpret, as you wish to do, the testimony or  
14:45:07 12 the videos -- and it's, of course -- the judges, of course,  
14:45:13 13 will take into account of this in their final decision and, of  
14:45:16 14 course, they will proceed, if necessary, to a request for a  
14:45:20 15 written expertise during their deliberations.

14:45:24 16 So, all this has been noted, Mr Flamme, that should reassure  
14:45:30 17 you, I think, and I would now wish us to take up again with  
14:45:33 18 Mr Withopf.

14:45:41 19 If you could indicate to us the reference of the three  
14:45:44 20 testimonies that you are speaking about -- could you mention  
14:45:48 21 their registration number, please?

14:45:50 22 MR WITHOPF: I understand you are referring to the video  
14:45:53 23 registration numbers.

14:45:56 24 PRESIDING JUDGE JORDA (interpretation): That's right, yes.  
14:45:58 25 Okay, now we are making progress. No, what you just said with

14:46:04 1 regards to the testimony. You said, in a written note, it's  
14:46:09 2 this number that you should indicate, not the video number.  
14:46:13 3 Okay. Okay, let's go.  
14:46:14 4 MR WITHOPF: Well understood, Mr President.  
14:46:22 5 PRESIDING JUDGE JORDA (interpretation): Good.  
14:46:23 6 MR WITHOPF: As I have mentioned, Mr President, your Honours,  
14:46:26 7 the Prosecution will show three videos in order to -- in  
14:46:33 8 addition to the documents we have shown earlier on today -- in  
14:46:39 9 order to, in addition to these documents, provide for proof  
14:46:46 10 that there was an armed conflict in Ituri throughout the time  
14:46:50 11 period relevant to the charges against Mr Thomas Lubanga  
14:46:55 12 Dyilo, and, in addition, the Prosecution's view is that these  
14:46:58 13 videos will also show, and it will show substantial grounds to  
14:47:08 14 believe that Thomas Lubanga Dyilo was aware of the armed  
14:47:12 15 conflict in Ituri.  
14:47:12 16 [2:47 p.m.]  
14:47:14 17 As I mentioned, these are three videos. The first video is an  
14:47:20 18 excerpt, Mr President, your Honours -- it is an excerpt of  
14:47:25 19 about four minutes of the video [in French -- not  
14:47:31 20 interpreted] "Guerre et Paix en Ituri" -- that's part 1 -- of  
14:47:36 21 2003. Mr President, your Honours, the source of this video is  
14:47:40 22 MONUC. The video is publicly available and it has been  
14:47:47 23 produced by MONUC's video production team.  
14:47:47 24 [2:47 p.m.]  
14:47:53 25 The video has been disclosed to the Defence in its entirety

14:48:00 1 and it has been disclosed on 28 July 2006.

14:48:07 2 The languages spoken on the video -- or the languages spoken  
14:48:13 3 by the people appearing on the video are English and French.

14:48:20 4 The video shows a pacification meeting held at the, [in  
14:48:20 5 French -- not interpreted], "Commissione de Pacification  
14:48:29 6 d'Ituri" in April 2003, attended by the various armed groups  
14:48:33 7 in Ituri. It will also show, Mr President, your Honours, that  
14:48:39 8 in May 2003, the UPC and the FNI signed a cease fire  
14:48:49 9 agreement, what in itself shows that the main armed groups  
14:48:52 10 were aware of the armed conflict, and the video will show  
14:48:57 11 that, for the FPLC, it is Floribert Kisembo who actually signs  
14:49:05 12 the truce, and I recall that Floribert Kisembo was Thomas  
14:49:11 13 Lubanga Dyilo's Chief of the General Staff at the relevant  
14:49:15 14 time period.

14:49:15 15 [2:49 p.m.]

14:49:18 16 With this introduction, Mr President, your Honours, I would  
14:49:22 17 like now to kindly ask the court officer to play video  
14:49:29 18 <#DRC-OTP-0035-0074#> excerpt 1.

14:49:29 19 [2:49 p.m.]

14:49:47 20 COURT OFFICER (interpretation): The reference will be  
14:49:52 21 <#EVD-OTP-00020#>.

14:50:03 22 [2:50 p.m.]

14:50:04 23 [Video played]

14:50:30 24 [Video interpreted]: There has been considerable suffering  
14:50:32 25 during this war for -- there have been different ethnic

14:50:36 1 groups, et cetera.

14:50:36 2 [2:50 p.m.]

14:50:41 3 This mother is part of an association of women which is part  
14:50:44 4 of the pacification process taking place in 2003.

14:50:52 5 [2:50 p.m.]

14:50:57 6 It is Nyali Kilo. This is the beginning of the political  
14:51:12 7 process of pacification of Ituri, with the support of MONUC.

14:51:17 8 A number of representatives of different ethnic groups and  
14:51:20 9 social and military groups are here to set up a transitional  
14:51:24 10 administration in Ituri. During this process, the CCGA, the  
14:51:31 11 consultative body is being set up. On 5 May, that is to say  
14:51:36 12 some weeks later, it shall be sitting to deal with troops in  
14:51:40 13 Bunia.

14:51:45 14 [2:51 p.m.]

14:51:51 15 At the Head of the Executive there is a special coordinator  
14:51:54 16 who has been appointed on the basis of consensus with four  
14:51:58 17 other coordinators. He represents the five territories of  
14:52:02 18 Ituri.

14:52:04 19 [2:52 p.m.]

14:52:07 20 You are no longer part of Mambasa; you are part of the  
14:52:10 21 Assembly of Ituri. That is to say, you must act in the  
14:52:16 22 general interest at all times. Thank you. Thank you.

14:52:20 23 [2:52 p.m.]

14:52:32 24 Furthermore, 44 members of the Commission will make up the  
14:52:38 25 interim Assembly.

14:52:45 1 My role is to raise awareness of the problems in Ituri; first  
14:52:49 2 of all, to say to the world that there have been atrocities,  
14:52:55 3 but that the atrocities shall not hold for, but with the  
14:53:07 4 support of the MONUC, armed groups and others, we will  
14:53:12 5 overcome.

14:53:18 6 [2:53 p.m.]

14:53:18 7 During the May struggles, agreements were signed with the  
14:53:26 8 Lendu and Hema leaders, who are fighting over control of  
14:53:30 9 Bunia.

14:53:31 10 [2:53 p.m.]

14:53:33 11 We want to initiate a new period. The more we meet and talk,  
14:53:38 12 the more we will be able to harmonise our ideas and see how we  
14:53:43 13 can tackle the issue of security of the people.

14:53:53 14 [2:53 p.m.]

14:53:56 15 August 2001, the CCGA meets for the first time under the  
14:54:01 16 leadership of MONUC. It is made up of representatives of all  
14:54:04 17 of the armed groups in Ituri. The objective is to regroup and  
14:54:10 18 to demobilise and disarm the groups.

14:54:16 19 [2:54 p.m.]

14:54:21 20 [End of video]

14:54:25 21 MR WITHOPF: Thank you. The following remark -- the  
14:54:29 22 translation was indicating that the meeting in August was  
14:54:34 23 in August 2001. It was actually in August 2003, and I would  
14:54:39 24 like to have this please corrected in the transcript.

14:54:39 25 [2:54 p.m.]

14:54:48 1 If you permit me, Mr President, your Honours, the Prosecution  
14:54:52 2 would like to show the second video, and the second video  
14:54:59 3 shows Thomas Lubanga Dyilo giving a speech. He himself,  
14:55:05 4 Mr Thomas Lubanga Dyilo, is speaking in early summer 2003 and  
14:55:13 5 your Honours will see and you will hear him say, inter alia  
14:55:22 6 [in French]: "Once again, we are faced with a war. If we do  
14:55:31 7 not take up arms, I don't mean to say that I like war, but  
14:55:42 8 we -- if we do not take up arms, we will be exterminated."  
14:55:49 9 And your Honours will see and hear Mr Thomas Lubanga Dyilo say  
14:55:53 10 [in French]: "There is no other way. Therefore, I would ask  
14:56:01 11 of you -- ask of all young people, to not stay inactive.  
14:56:15 12 Don't fall asleep."  
14:56:18 13 Mr President, your Honours, this video is an excerpt of about  
14:56:22 14 two and a half minutes. The source of the video is the Bunia  
14:56:28 15 Tribunal and the video was disclosed to the Defence in its  
14:56:32 16 entirety on 10 August 2006. The translation of the audio --  
14:56:41 17 of the audio on the video was provided to Defence on  
14:56:47 18 1 November 2006, and the transcript on 3 November 2006.  
14:56:52 19 I, in addition, draw the attention of your Honours to the fact  
14:56:56 20 that the video is subtitled -- subtitled in French, and the  
14:57:00 21 subtitles were provided by the OTP's technical staff based on  
14:57:04 22 translations of the OTP's language unit.  
14:57:04 23 [2:57 p.m.]  
14:57:10 24 I would like -- now like to ask the court officer to please  
14:57:14 25 play video <#DRC-OTP-0102-0003#>, excerpt number 2.

14:57:27 1 COURT OFFICER (interpretation): The reference number of this  
14:57:29 2 video shall be <#EVD-OTP-00021#>.  
14:57:29 3 [2:57 p.m.]  
14:58:05 4 [Video played]  
14:58:12 5 [2:58 p.m.]  
14:58:15 6 [Video interpreted]: Dear brother, I think for more it is a  
14:58:18 7 joy, even if we have been through difficult times, this is a  
14:58:24 8 joy for me because we are able to meet, and now let's look at  
14:58:29 9 our future. Let's see what we can do to better our future,  
14:58:40 10 because we are faced with war, and to give us force and to  
14:58:54 11 restore our dignity and our sense of humanity, we can pray,  
14:59:07 12 but if we do not take up arms -- and this is not to say that I  
14:59:11 13 like war -- but if we do not take up arms, we'll be  
14:59:14 14 exterminated.  
14:59:14 15 [2:59 p.m.]  
14:59:22 16 Others have been through the situation that we are going  
14:59:25 17 through. What have they done to overcome such a situation?  
14:59:32 18 They have taken up arms. We have no other alternative. I  
14:59:44 19 would, therefore, ask of our young people to not fall asleep.  
14:59:53 20 I would ask them not to fall asleep and other young people,  
15:00:04 21 they too feel threatened. Sometimes those young people don't  
15:00:10 22 know, but we are faced with people who have plans -- bestial  
15:00:19 23 plans. They can kill without choosing. So let us continue to  
15:00:28 24 develop. This is the time for us to develop. Don't think  
15:00:34 25 that the Kinshasa government, if it is a real government, is

15:00:38 1 going to help us. If we don't have forces, this government  
15:00:43 2 will not help us and, furthermore, when the members of that  
15:00:48 3 government were here, they threatened us with the Lendu."  
15:00:54 4 PRESIDING JUDGE JORDA (interpretation): Yes, Mr Flamme?  
15:00:57 5 ME FLAMME (interpretation): Your Honour, I would like to put  
15:01:01 6 a question. When you say that the source is the court in  
15:01:06 7 Bunia, am I to understand that this is one of the objects  
15:01:10 8 which was seized and, furthermore, I would point out that we  
15:01:15 9 do not yet have the list, as far as I know.  
15:01:18 10 PRESIDING JUDGE JORDA (interpretation): Mr Withopf, would  
15:01:19 11 you like to respond? I would like to point out that this is a  
15:01:22 12 very poor quality video -- very poor quality video being used  
15:01:29 13 to support what you assert, and could you please reconfirm  
15:01:36 14 that the subtitles were produced by an office of the Office of  
15:01:40 15 the Prosecutor. Am I right on that?  
15:01:42 16 MR WITHOPF: If I may address your last question first: yes,  
15:01:45 17 the subtitles have been produced by the Office of the  
15:01:48 18 Prosecutor. We are aware -- the Office of the Prosecutor is  
15:01:54 19 aware of the technical quality, or non-quality of these  
15:01:58 20 materials. That's the best we can show in this context.  
15:02:03 21 Other video materials I can already promise you, Mr President,  
15:02:07 22 your Honours, will be of better quality, but this particular  
15:02:09 23 one, that's the quality in which we have received it.  
15:02:09 24 [3:02 p.m.]  
15:02:14 25 And, finally, to respond to the question asked by my learned

15:02:17 1 colleague from the Defence, yes, it is correct that this video  
15:02:22 2 stems from the search we were talking about earlier on  
15:02:27 3 today -- from the search of the DRC authorities in April 2005,  
15:02:33 4 and the Defence has received the list already on last Sunday,  
15:02:38 5 5 November.

15:02:45 6 PRESIDING JUDGE JORDA (interpretation): Well, you have had  
15:02:46 7 your answer. We take note of it. This is what you've asked  
15:02:56 8 on Thursday and Friday. The judges take note of the answer.

15:03:00 9 Mr Withopf, please proceed.

15:03:03 10 MR WITHOPF: Thank you very much, Mr President. As indicated,  
15:03:06 11 there is a third video and the third video forms part of the  
15:03:14 12 same -- or the third excerpt forms part of the same video we  
15:03:20 13 have displayed just now. Therefore, I do apologise for the  
15:03:28 14 potential poor technical quality.

15:03:28 15 [3:03 p.m.]

15:03:31 16 Nevertheless, this video, Mr President, your Honours, will  
15:03:34 17 again show Mr Thomas Lubanga Dyilo, around the same time --  
15:03:40 18 obviously early in summer 2003 -- and your Honours will hear  
15:03:45 19 and you will see him say, inter alia [in French]: "We have  
15:03:55 20 been going through the situation of massacres since the  
15:03:58 21 beginning of the rebellion, the rebellion in which we find  
15:04:03 22 ourselves currently. It has been about three years, four  
15:04:12 23 years that massacres have been planned against us, and other  
15:04:23 24 persons who may have been on the same side as us."

15:04:26 25 [3:04 p.m.]

15:04:27 1 Can I now please ask the court officer to play excerpt 4 of  
15:04:32 2 the video <#DRC-OTP-0102-0003#>.

15:04:44 3 PRESIDING JUDGE JORDA (interpretation): Is this the same  
15:04:46 4 search and seizure -- the same origin, therefore?

15:04:51 5 MR WITHOPF: Absolutely correct, Mr President.

15:04:55 6 PRESIDING JUDGE JORDA (interpretation): Very good. Well,  
15:04:56 7 when you do have the same source, please do indicate it; that  
15:05:00 8 will assist the Court.

15:05:02 9 MR WITHOPF: Certainly, Mr President. Can the court officer  
15:05:06 10 now please play the video?

15:05:07 11 [3:05 p.m.]

15:05:08 12 [Video played]

15:05:15 13 [3:05 p.m.]

15:05:15 14 [Video interpreted]: 6 March. You all have been able to see  
15:05:25 15 that the situation is deteriorating. You have heard bombs  
15:05:38 16 exploding throughout the town of Bunia. It's not because we  
15:05:47 17 in the UPC prefer war; it's not because we have wanted to --  
15:05:58 18 we have wanted anyone to suffer but, rather, we are faced with  
15:06:07 19 a plot which I would say is an international plot with the  
15:06:11 20 objective of exterminating us. We have not been able to tell  
15:06:25 21 you this because we only discovered the existence of this plot  
15:06:29 22 one month ago, and so we have thought we're not going to be  
15:06:41 23 able to get out of this, because it's a plot from that side.

15:06:41 24 [3:06 p.m.]

15:06:56 25 But from that side they have wanted to provide us with aid.

15:07:01 1 The village of Bule has received two carts and two young buffalo  
15:07:16 2 which targeted our attack. They thought they were going to have us,  
15:07:20 3 but they didn't succeed. Why this anger? It's a pointless anger. Why  
15:07:37 4 has this situation come about? Let me tell you about it.  
15:07:37 5 [3:07 p.m.]  
15:07:48 6 We have been going through this situation since the beginning  
15:07:51 7 of the rebellion. It is now three, four years that this  
15:07:57 8 situation has existed -- planned massacres against us and  
15:08:03 9 against other persons who may assist us. Why the situation?  
15:08:15 10 To date we have had -- we have no answer. Those who committed  
15:08:20 11 these massacres have not claimed them. They have said  
15:08:33 12 nothing. Their joy, their diploma; it is the number of  
15:08:43 13 persons whose head they have decapitated and whose homes they  
15:08:53 14 have burnt."  
15:08:56 15 PRESIDING JUDGE JORDA (interpretation): Excuse me for this  
15:08:58 16 perhaps naive question. You are identifying Mr Thomas Lubanga  
15:09:04 17 Dyilo as being the person dressed in blue who is speaking?  
15:09:09 18 MR WITHOPF: That's correct, Mr President, the person who was  
15:09:13 19 speaking dressed in blue is Thomas Lubanga Dyilo.  
15:09:17 20 PRESIDING JUDGE JORDA (interpretation): That is to say, you  
15:09:18 21 are sure of that?  
15:09:22 22 MR WITHOPF: Yes, Mr President, we are sure of it.  
15:09:31 23 PRESIDING JUDGE JORDA (interpretation): Thank you.  
15:09:31 24 MR WITHOPF: Mr President, your Honours, it's our view that  
15:09:36 25 this video materials compliment the documentary evidence the

15:09:43 1 Prosecution has shown early on today, and the videos, as the  
15:09:51 2 documentary evidence, clearly show, in our submission, that  
15:09:54 3 the parties to the conflict in Ituri during the relevant time  
15:09:59 4 were aware of the armed conflict. And they provide for  
15:10:05 5 substantial grounds to believe that Thomas Lubanga Dyilo, the  
15:10:09 6 person charged, was aware of the armed conflict.

15:10:09 7 [3:10 p.m.]

15:10:18 8 Mr President, your Honours, there are only a few things  
15:10:23 9 left -- a few matters left we wish to address in the context  
15:10:27 10 of the armed conflict.

15:10:34 11 We have prepared a chart, and I haste to add this is a visual  
15:10:41 12 aid and I emphasise that it's not evidence; it's a visual aid  
15:10:47 13 only -- a visual aid to visualise the development of the armed  
15:10:53 14 conflict. The visual aid has been produced by an analyst  
15:11:02 15 within the Office of the Prosecutor and I ask the court  
15:11:07 16 officer to now please display document <#DRC-OTP-0165-0779#>,  
15:11:17 17 and I repeat and emphasise, as a visual aid.

15:11:17 18 [3:11 p.m.]

15:11:43 19 Mr President, your Honours, this visual aid very much reflects  
15:11:50 20 the development of the armed conflict in Ituri throughout the  
15:11:55 21 relevant time period and it very much reflects and repeats the  
15:12:02 22 various military operations the Office of the Prosecutor, the  
15:12:09 23 Prosecution, has elaborated upon earlier on today, and as one  
15:12:16 24 can see there were continuous hostilities between the main  
15:12:21 25 actors in Ituri, meaning the APC, the FNI and the UPC/FPLC,

15:12:33 1 between summer of 2002 and the end of the year 2003.

15:12:39 2 In our view, Mr President, your Honours, this visual aid

15:12:49 3 clearly shows the intensity of the armed conflict.

15:12:55 4 PRESIDING JUDGE JORDA (interpretation): Would you like to

15:12:56 5 take the floor, Mr Flamme?

15:12:58 6 ME FLAMME (interpretation): I'm sorry, we have not succeeded

15:12:59 7 in finding the document.

15:13:03 8 PRESIDING JUDGE JORDA (interpretation): Registrar, could you

15:13:04 9 please assist the Defence? Do you have the documents,

15:14:12 10 Dr Flamme?

15:14:13 11 ME FLAMME (interpretation): Yes, we have it, but it is

15:14:15 12 difficult to read.

15:14:15 13 PRESIDING JUDGE JORDA: Well, we all have the same situation,

15:14:18 14 I'm afraid. Perhaps this time you have it in photocopy form.

15:14:31 15 MR FLAMME (interpretation): I do not have it with me in

15:14:33 16 photocopy form.

15:14:35 17 PRESIDING JUDGE JORDA (interpretation): Mr Withopf, please

15:14:36 18 note that this is difficult to read, and we would all like to

15:14:40 19 have a copy of it in photocopy and perhaps not immediately.

15:14:46 20 If the Defence requests a photocopy, I would ask the court

15:14:50 21 officer to make a photocopy immediately but, in the interim,

15:14:52 22 please do talk us through it, as this is your document.

15:14:57 23 MR WITHOPF: Mr President, your Honours, it is actually well

15:15:01 24 understood. I have the same problem, I admit, and I'm happy

15:15:04 25 to admit that, and the Court and the Defence will be

15:15:06 1 provided --

15:15:07 2 PRESIDING JUDGE JORDA (interpretation): Well, that's rather  
15:15:10 3 worrying, isn't it, Mr Withopf? If you are presenting  
15:15:14 4 documents that you yourself can't read, well, that is a bit  
15:15:17 5 disquieting, isn't it? Anyway, go ahead, please.

15:15:23 6 MR WITHOPF: Mr President, I was not saying that I cannot read  
15:15:26 7 it; I was only saying that I have difficulties to read it.  
15:15:29 8 Despite the fact that I'm having glasses, I'm still in a  
15:15:33 9 position to read it and lead your Honours through the  
15:15:35 10 document. But, again, the Prosecution will make an enhanced  
15:15:42 11 effort to provide today to the honourable Bench and to my  
15:15:45 12 learned friend from the Defence the same document and the  
15:15:49 13 document will be provided in A3 format to avoid any  
15:15:53 14 difficulties.

15:15:53 15 [3:15 p.m.]

15:15:59 16 As I mentioned, Mr President, your Honours, this document  
15:16:05 17 shows the intensity -- the intensity of the armed conflict  
15:16:11 18 over a prolonged period of time, and the period of time is  
15:16:16 19 obviously the period of time between summer 2002 and end of  
15:16:21 20 2003.

15:16:21 21 [3:16 p.m.]

15:16:22 22 And as I mentioned, the document reflects very much the  
15:16:27 23 various military operations and key events in Ituri at the  
15:16:32 24 relevant period of time, and I wish to add, for the Court's  
15:16:37 25 information, that this chart is based entirely on information

15:16:43 1 contained in the documents that form part of the Prosecution's  
15:16:48 2 list of evidence.

15:16:48 3 [3:16 p.m.]

15:16:53 4 Mr President, your Honours, with your permission I'm now going  
15:16:58 5 to address the nature of the armed conflict -- namely, the  
15:17:03 6 question whether the conflict was of international or  
15:17:08 7 non-international nature.

15:17:08 8 [3:17 p.m.]

15:17:14 9 In this context, we first recall the Prosecution's 28 August  
15:17:20 10 2006 filing. This is a public document and I refer to page 5  
15:17:29 11 of the document, paragraph 12, and for the ease of reference I  
15:17:38 12 read it out: "The Prosecution in the document containing the  
15:17:43 13 charges has, in line with this characterisation in its  
15:17:47 14 application for warrant of arrest, Article 58, concluded that  
15:17:51 15 the crimes for which Thomas Lubanga Dyilo is criminally  
15:17:54 16 responsible occurred at a minimum in the context of an armed  
15:17:59 17 conflict not of an international character.

15:18:03 18 The evidence collected in the course of the investigation  
15:18:06 19 against Mr Thomas Lubanga Dyilo shows that both the UPC and  
15:18:10 20 the FPLC were supported by foreign States and it is the  
15:18:14 21 Prosecution's position at this time" --

15:18:17 22 ENGLISH INTERPRETER: Please slow down.

15:18:18 23 MR WITHOPF: -- "it is the Prosecution's position at this time  
15:18:21 24 that the evidence of the involvement of those States does not  
15:18:28 25 suffice to enable the Prosecution to meet its burden of

15:18:32 1 establishing an international armed conflict as the term is  
15:18:33 2 defined by international criminal jurisprudence.

15:18:33 3 [3:18 p.m.]

15:18:39 4 This conclusion is confined to the instant case against Thomas  
15:18:44 5 Lubanga Dyilo. The Prosecution continues to collect evidence  
15:18:47 6 in the situation of the Democratic Republic of the Congo, and  
15:18:52 7 may revise its assessment following the confirmation hearing  
15:18:56 8 based on further collection of evidence and further analysis."

15:19:04 9 That is the end of the quote of the 28 August 2006 filing of  
15:19:07 10 the Prosecution.

15:19:07 11 [3:19 p.m.]

15:19:11 12 Mr President, your Honours, since then, since 28 August 2006,  
15:19:15 13 the assessment of the Prosecution has not changed. Whilst  
15:19:22 14 there is substantial -- and I add whilst there is very  
15:19:29 15 substantial information and evidence that both Uganda and  
15:19:34 16 Rwanda supported -- and I also add here "significantly  
15:19:40 17 supported" the UPC and the FPLC with weapons, ammunition, and  
15:19:50 18 uniforms and that both Uganda and Rwanda provided training,  
15:20:00 19 including in Uganda and Rwanda, in the view of the Prosecution  
15:20:05 20 the evidence is not sufficient to establish that the Ugandan  
15:20:11 21 or the Rwandan support meets the criteria of the Tadic Appeals  
15:20:19 22 Chamber Decision of 15 July 1999, and we all know that the  
15:20:24 23 test is the overall control test.

15:20:24 24 [3:20 p.m.]

15:20:31 25 In this context, the Prosecution draws the attention of the

15:20:35 1 Pre-Trial Chamber respectfully to documents  
15:20:44 2 <#DRC-OTP-0152-0256#> -- that's a document the court officer  
15:20:51 3 please displays.  
15:20:51 4 [3:20 p.m.]  
15:21:05 5 The document is the Child Protection Report -- and in its  
15:21:11 6 title it says "Draft" of February 2004, and I make reference  
15:21:22 7 to page 15 of that report, the last four digits of the ERN  
15:21:29 8 being 0270.  
15:21:29 9 [3:21 p.m.]  
15:21:39 10 And I draw the attention of the Pre-Trial Chamber in  
15:21:43 11 particular to the second and the third paragraphs of this page  
15:21:55 12 -- the second paragraph dealing with support by the Ugandan  
15:21:57 13 government, in particular in relation to military weaponry,  
15:22:03 14 and the third paragraph addresses the Rwandan support, the  
15:22:10 15 Rwandan support to the UPC, and it says, and I quote from the  
15:22:15 16 third paragraph: "Rwandan arms shipments to the UPC seem to  
15:22:20 17 have been most intense from August 2002 to January 2003, and  
15:22:26 18 the weapons were parachuted from unmarked planes into and  
15:22:34 19 around Mandro camp to UPC commanders on the ground. These  
15:22:37 20 large weapons drops at Mandro camp often involved or were  
15:22:43 21 witnessed by children from the camp. One UPC child recruit at  
15:22:48 22 Mandro, aged 14 years, stated that he had witnessed eight  
15:22:55 23 parachute drops of weapons in a six-month period from July  
15:23:00 24 to December 2002. According to the boy, child soldiers were  
15:23:07 25 detailed to help collect the boxes of ammunition and weapons

15:23:11 1 once they reached the ground. These weapons were received by  
15:23:16 2 a certain Commander Lokpari, a Hema UPC officer. Other  
15:23:22 3 weapons shipments allegedly originating from Kigali were  
15:23:31 4 dropped to UPC forces at Mongbwalu via Antunov airplanes.  
15:23:39 5 These deliveries included grenade launchers, mortars and  
15:23:44 6 ammunition."

15:23:45 7 [3:23 p.m.]

15:23:46 8 Mr President, your Honours, this document very much confirms  
15:23:51 9 that there was heavy support -- very substantial support of  
15:23:56 10 Uganda and, as this quote in particularly shows, of Rwanda.

15:23:56 11 [3:24 p.m.]

15:24:08 12 Further documents --

15:24:11 13 COURT OFFICER (interpretation): The reference number shall  
15:24:15 14 be <#EVD-OTP-00022#>.

15:24:23 15 MR WITHOPF: Mr President, your Honours, further documents in  
15:24:28 16 the view of the Prosecution support that observation.

15:24:36 17 I now making reference to the report of Human Rights Watch  
15:24:44 18 of July 2003 and the evidence registration number is  
15:24:55 19 <#DRC-OTP-0074-0797#>, and I will kindly ask the court officer  
15:25:05 20 to display that document and I would kindly ask him to show  
15:25:11 21 page 19 of the document, the last four digits of the ERN being  
15:25:22 22 0823.

15:25:22 23 [3:25 p.m.]

15:25:32 24 Under the heading "V. Massacres and Other Human Rights  
15:25:36 25 Abuses", I draw the attention of the honourable Chamber to the

15:25:39 1 first paragraph, which describes the attack on Bunia and I  
15:25:46 2 read it out: "In early August 2002, the UPC combatants then  
15:25:52 3 in control of part of Bunia worked together with the Ugandan  
15:25:55 4 army to dislodge the RCD-ML forces and take control of the  
15:26:00 5 town and some of its outlying areas. In the process, they  
15:26:07 6 committed the abuses detailed below. The taking of Bunia was  
15:26:11 7 the prelude to the establishment of the UPC government later  
15:26:17 8 the same month."

15:26:22 9 Mr President, your Honours, of course, again, it shows that  
15:26:27 10 Uganda and Rwanda played a role in the region, but they played  
15:26:33 11 in line with the evidence the Office of the Prosecutor has  
15:26:37 12 collected, only a supportive role.

15:26:37 13 [3:26 p.m.]

15:26:49 14 The Office of the Prosecutor will show further materials that  
15:26:55 15 confirm this information.

15:27:03 16 COURT OFFICER: Added to the case file under the number  
15:27:11 17 <#EVD-OTP-00023#>.

15:27:23 18 MR WITHOPF: Mr President, your Honours, the Prosecution will  
15:27:25 19 now ask the court officer to please display the summary of the  
15:27:33 20 witness <#DRC-OTP-WWWW-0044#>, and the ERN number of the  
15:27:45 21 document concerned is <#DRC-OTP-0164-0281#>.

15:27:45 22 [3:27 p.m.]

15:28:15 23 Whilst the document is being displayed, I'm going to read out  
15:28:19 24 the relevant portion, which is at the very bottom of page 1  
15:28:23 25 and the very top of page 2, and it reads as follows: [In

15:28:30 1 French]: "Witness AB received information from a former  
15:28:40 2 member of the Executive of the UPC to the effect that the  
15:28:54 3 military requirement of the UPC were fulfilled since 2001 by  
15:28:58 4 Rwanda -- Rwanda, which provided in particular ammunitions,  
15:29:19 5 weapons such as mines, and heavy calibre weapons and uniforms  
15:29:27 6 for UPC soldiers."  
15:29:30 7 I continue to quote [in French]: "Military training was also  
15:29:41 8 made available in Rwanda."  
15:29:47 9 And the paragraph finishes with the following statement [in  
15:29:52 10 French]: "Witness AB indicates that the UPC was also an ally  
15:30:01 11 of Uganda."  
15:30:04 12 Mr President, your Honours, the last document I'm going to  
15:30:07 13 show in this context is a further summary of a witness  
15:30:16 14 statement, and it's the summary of the witness  
15:30:30 15 <#DRC-OTP-WWWW-0003#>.  
15:30:32 16 COURT OFFICER (interpretation): With your leave, Mr Withopf,  
15:30:35 17 the number for the previous document was <#EVD-OTP-00024#>.  
15:30:49 18 MR WITHOPF: Thank you very much. The summary of the witness  
15:30:52 19 concerned, and I repeat, the code number for the witness  
15:30:56 20 <#DRC-OTP-WWWW-0003#>, and the document concerned is  
15:31:09 21 <#DRC-OTP-0164-0286#>, and I kindly ask the court officer to  
15:31:17 22 display that document and I will make reference to the very  
15:31:26 23 bottom of page 1 and the very top of page 2 of that document.  
15:31:39 24 And I read it out -- I read the relevant portion out as  
15:31:41 25 follows [in French]: "Air dropping in Mandro of weapons coming

15:31:56 1 from Rwanda. After Lubanga signed the agreement pertaining to  
15:32:09 2 the provision of arms by the Rwandan authorities, arms,  
15:32:24 3 ammunitions from Rwanda were regularly parachuted to the  
15:32:32 4 UPC/FPLC. The weapons were dropped most often in the same  
15:32:40 5 area. When the weapons were dropped, soldiers from the  
15:32:56 6 training centre were sent to recover the weapons and take them  
15:33:00 7 on each occasion to the Mandro depot."

15:33:05 8 And I note, Mr President, your Honours, that this statement of  
15:33:09 9 the witness confirms, and confirms very much, what was said in  
15:33:16 10 the report of Human Rights Watch as mentioned earlier on.

15:33:16 11 [3:33 p.m.]

15:33:22 12 Mr President, your Honours, we come to an end and, in  
15:33:28 13 conclusion, we summarise and we submit that the Prosecution  
15:33:34 14 has proved that there is sufficient evidence -- or has  
15:33:40 15 provided sufficient evidence of the existence of an armed  
15:33:43 16 conflict in Ituri between July 2002 and end of 2003, and we  
15:33:52 17 are of the view, and we submit, Mr President, your Honours,  
15:33:56 18 that the evidence does also prove that Thomas Lubanga Dyilo  
15:33:59 19 was aware of the existence of the armed conflict.

15:33:59 20 [3:34 p.m.]

15:34:04 21 Mr President, your Honours, this concludes our submission on  
15:34:10 22 the armed conflict and the contextual elements in the document  
15:34:14 23 containing the charges. Thank you very much.

15:34:18 24 COURT OFFICER (interpretation): Mr President, the document  
15:34:25 25 with the number <#DRC-OTP-0164-0286#> will be entered into

15:34:34 1 evidence as <#EVD-OTP-00025#>.

15:34:48 2 MR WITHOPF: Mr President, your Honours, if you so permit, I  
15:34:51 3 would now invite my colleague, Ms Samson, to give the  
15:34:58 4 presentation on the evidence on the UPC.

15:35:11 5 PRESIDING JUDGE JORDA (interpretation): Ms Samson,  
15:35:13 6 representative of the Office of the Prosecutor, you may now  
15:35:16 7 address the Court.

15:35:20 8 [3:35 p.m.]

15:36:23 9 MS SAMSON: Good afternoon, Mr President, your Honours. As  
15:36:25 10 Mr Withopf has rightly indicated, in this section of the  
15:36:31 11 Prosecution's evidence I will be covering matters relating to  
15:36:33 12 the UPC, to its creation, structure and to the role that  
15:36:39 13 Thomas Lubanga Dyilo played within the UPC.

15:36:39 14 [3:36 p.m.]

15:36:45 15 The matters that I will be addressing cover paragraphs 4 and 9  
15:36:51 16 to 12 of the document containing the charges. As ever,  
15:36:58 17 Mr President, your Honours, I will endeavour to be as brief as  
15:37:01 18 possible in this section, in particular passing as quickly as  
15:37:05 19 possible through matters that appear to be uncontroversial.

15:37:05 20 [3:37 p.m.]

15:37:13 21 The Prosecution's submissions in this portion of its evidence  
15:37:17 22 relate largely to two principal propositions. The first  
15:37:22 23 proposition is that at all times, relevant to the present  
15:37:28 24 charges, Thomas Lubanga Dyilo was not only the UPC's leader;  
15:37:35 25 he was also its directing mind and, through that, he furthered

15:37:40 1 his and the UPC objectives.

15:37:40 2 [3:37 p.m.]

15:37:44 3 The second principal proposition is that Thomas Lubanga Dyilo  
15:37:51 4 exercised complete and exclusive control over the UPC and its  
15:37:57 5 members and operated with full knowledge of UPC activities and  
15:38:02 6 mandates, both large and small.

15:38:02 7 [3:38 p.m.]

15:38:11 8 The Prosecution will lead the Court through a series of  
15:38:14 9 documents and witness statements to support these primary  
15:38:17 10 assertions touching, of course, on matters related to  
15:38:21 11 structure and creation of the UPC.

15:38:21 12 [3:38 p.m.]

15:38:26 13 The Prosecution will begin to briefly canvass the creation of  
15:38:32 14 the UPC and, in this section, Mr President and your Honours, I  
15:38:35 15 will refer to three documents all emanating directly from the  
15:38:40 16 UPC.

15:38:42 17 The first document I will briefly introduce, and it will show  
15:38:49 18 that the UPC was created in Bunia on 15 September 2000 by  
15:38:54 19 Thomas Lubanga Dyilo as a founding member, and with other  
15:38:58 20 founding and co-founding members. And in that vein I would  
15:39:03 21 kindly ask the court officer to please display the document  
15:39:06 22 that is at <#DRC-OTP-0091-0039#>.

15:39:06 23 [3:39 p.m.]

15:39:21 24 I can indicate already, Mr President and your Honours, that  
15:39:25 25 this document is a copy of a UPC Statute and the title of the

15:39:47 1 document bears reference to the fact that it is a Statute of  
15:39:52 2 the UPC and I draw your Honours' attention to, in particular,  
15:39:59 3 Chapter 1, and I will read [in French -- not interpreted] and,  
15:40:08 4 in particular, Article 1, which reads [in French]: "On  
15:40:23 5 15 September 2000, a political movement called Union des  
15:40:29 6 Patriotes Congolais, with the acronym 'UPC', was created in  
15:40:37 7 Bunia."

15:40:39 8 [3:40 p.m.]

15:40:40 9 In Article 2, on the same page, in which the Statute reads [in  
15:40:45 10 French]: "The headquarters of the UPC will be in Bunia."

15:40:55 11 [Inaudible] uncontroversial matters, but this document clearly  
15:40:56 12 indicates the date of creation of the UPC and the seat of the  
15:41:01 13 UPC.

15:41:01 14 [3:41 p.m.]

15:41:03 15 I would ask the court officer to kindly move to the last  
15:41:07 16 page of this document, which is at -- the four last digits are  
15:41:11 17 0047.

15:41:22 18 At the bottom of the page I would refer your Honours'  
15:41:25 19 attention simply to, once again, the date, the place of  
15:41:31 20 creation and the first signature under "Founding Members",  
15:41:37 21 which is Thomas Lubanga, and the Prosecution submits that  
15:41:44 22 Mr Lubanga is the leading founding member of the UPC, as his  
15:41:48 23 name figures prominently at the top of the page.

15:41:48 24 [3:41 p.m.]

15:41:56 25 Passing now to the second document that I wish to present in

15:41:59 1 this section --

15:42:06 2 PRESIDING JUDGE JORDA (interpretation): Yes, Mr Flamme?

15:42:08 3 ME FLAMME (interpretation): Mr President, you asked the

15:42:11 4 Prosecutor to indicate whether it was a result of the seizure.

15:42:16 5 PRESIDING JUDGE JORDA (interpretation): Yes, I did ask

15:42:17 6 Mr Withopf to do so before. It is true that this is an

15:42:20 7 important point for the Defence. So it is -- I would like you

15:42:26 8 at any point in time to indicate that this document was part

15:42:33 9 of those seized.

15:42:36 10 MS SAMSON: I can advise that this Statute does form part of

15:42:41 11 the documents that were - part of a search and seizure

15:42:41 12 operation from the national authorities, and in future I will

15:42:43 13 certainly refer to that.

15:42:52 14 COURT OFFICER (interpretation): The document number will be

15:42:57 15 <#EVD-OTP-00026#>.

15:43:11 16 MS SAMSON: The second document that the Prosecution refers

15:43:29 17 to is a document that will show that Thomas Lubanga Dyilo

15:43:34 18 assumed the Presidency of the UPC contemporaneously with its

15:43:37 19 creation, and if I could kindly ask the court officer to turn

15:43:41 20 to document <#DRC-OTP-0106-0169#>. This document, again a UPC

15:44:09 21 document, entitled "Programme" purports to be a document

15:44:17 22 revealing the political platform of the UPC, and in it,

15:44:21 23 scanning briefly, one can observe that the policies of the UPC

15:44:28 24 are listed.

15:44:30 25 PRESIDING JUDGE JORDA (interpretation): Would you please

15:44:33 1 answer the question pertaining to the seizure at each point?  
15:44:36 2 Is this one of the seized documents?  
15:44:39 3 MS SAMSON: It is not one of the seized documents. And  
15:44:44 4 perhaps if you --  
15:44:45 5 PRESIDING JUDGE JORDA (interpretation): Yes, okay. Then we  
15:44:48 6 can all understand. Thank you.  
15:44:49 7 MS SAMSON: Yes, I had intended to only refer to the ones  
15:44:53 8 that did form part of the search and seizure, but I'm equally  
15:44:57 9 content to advise you on a document per document basis.  
15:45:05 10 PRESIDING JUDGE JORDA (interpretation): No, no, no; we just  
15:45:07 11 asked you to mention the document as being seized or not.  
15:45:11 12 This is what Mr Flamme asked for. Thank you.  
15:45:14 13 MS SAMSON: Thank you, I will do that. And on this political  
15:45:17 14 programme of the UPC that I did not want to spend much time on  
15:45:22 15 except to refer to the very last page, which is at 0177, to  
15:45:37 16 indicate that on the date of creation of the UPC,  
15:45:42 17 15 September 2000, in Bunia, Thomas Lubanga Dyilo signs the  
15:45:49 18 document as "The President", the document bears the UPC stamp  
15:45:56 19 and, equally, the signature of the General Secretary.  
15:45:56 20 [3:46 p.m.]  
15:46:03 21 On the issue of the Presidency of the UPC, I also refer to  
15:46:07 22 Thomas Lubanga Dyilo's CV, which was referred to earlier this  
15:46:12 23 morning.  
15:46:16 24 COURT OFFICER (interpretation): The document number is  
15:46:22 25 <#EVD-OTP-00027#>.

15:46:31 1 MS SAMSON: And the last document to which I intend to make  
15:46:38 2 reference, yet another UPC document, which shows that the UPC  
15:46:43 3 was created as a political military movement.  
15:46:47 4 If the court officer could please display document  
15:46:54 5 <#DRC-OTP-0037-0317#>. This document is a declaration of the  
15:47:21 6 UPC. It's dated May 15, 2003 and, as the title indicates, it  
15:47:30 7 was a UPC declaration at the occasion of a conference  
15:47:34 8 organised by the President of Tanzania, Monsieur Mkapa. I  
15:47:44 9 would ask the Court to focus on the first paragraph of this  
15:47:49 10 document, in which it is written -- and I quote [in French]:  
15:48:15 11 "L'Union des Patriotes Congolais pour la Reconciliation et la  
15:48:20 12 Paix, which is UPC/RP in acronym, is a political and military  
15:48:24 13 movement which was created at the initiative of the Congolese  
15:48:28 14 people of Ituri on 15 September 2000, and its headquarters is  
15:48:34 15 in Bunia."  
15:48:40 16 And I reference again that within the first paragraph the  
15:48:43 17 declaration states that the UPC is a political military  
15:48:47 18 movement.  
15:48:47 19 [3:48 p.m.]  
15:48:50 20 I would ask the court officer to move to the last page of this  
15:48:52 21 document, which is at 0320, to indicate that the document is  
15:49:01 22 purportedly from Thomas Lubanga Dyilo himself as President of  
15:49:05 23 the UPC/RP. The Prosecution does note that the document is  
15:49:10 24 unsigned. Having reviewed the creation of the UPC in the  
15:49:22 25 context of the control and direction that Thomas Lubanga Dyilo

15:49:27 1 held over it, I would now like to pass to the UPC objectives.  
15:49:34 2 The Prosecution asserts that, contrary to public statements of  
15:49:38 3 the UPC and publicly written documents that it aimed to  
15:49:44 4 establish peace in Ituri and that it included members of all  
15:49:48 5 ethnic groups in Ituri; the Prosecution submits that the  
15:49:55 6 primary objectives of the UPC included the control of Ituri  
15:49:58 7 and Hema dominance to the detriment of other ethnic groups.  
15:50:06 8 In support of these assertions, the Prosecution will turn to  
15:50:09 9 seven witness statements who, the Prosecution asserts, are  
15:50:14 10 better placed to explain the reality on the ground.  
15:50:14 11 [3:50 p.m.]  
15:50:22 12 If the court officer could kindly display the document at  
15:50:27 13 <#DRC-OTP-0164-0281#>. It is a summary of the statement of  
15:50:35 14 witness <#DRC-OTP-WWWW-0044#>.  
15:50:50 15 [3:50 p.m.]  
15:51:04 16 COURT OFFICER (interpretation): With your leave, Ms Samson,  
15:51:09 17 the last document that you referred to is registered as  
15:51:17 18 <#EVD-OTP-00028 #>. This document, the present document, will  
15:51:21 19 be <#EVD-OTP-00029#>. Thank you.  
15:51:27 20 MS SAMSON: Thank you. The Prosecution relies on this  
15:51:32 21 statement for its assertion that the UPC was created even at  
15:51:37 22 that early stage as a movement that protected the interests of  
15:51:40 23 the Hema. And I would draw your attention, Mr President and  
15:51:45 24 your Honours, to the second part under "Elements soutenant  
15:51:53 25 l'Accusation", and the first sentence.

15:52:01 1 COURT OFFICER (interpretation): There's a correction. The  
15:52:06 2 document was already registered in the record as  
15:52:13 3 <#EVD-OTP-00024#>.

15:52:17 4 PRESIDING JUDGE JORDA (interpretation): Thank you for that  
15:52:17 5 clarification.

15:52:18 6 MS SAMSON: Thank you. And so referring your attention to  
15:52:21 7 Part II, and the first sentence, and I quote [in French]:  
15:52:43 8 "Witness AB knows the fact that the UPC led by Thomas Lubanga  
15:52:49 9 Dyilo was created as a political movement of the Hema-Gegere  
15:52:53 10 in September or October 2000."

15:53:01 11 ENGLISH INTERPRETER: Correction, "2002".

15:53:11 12 MS SAMSON: Mr President and your Honours, I would like now  
15:53:13 13 to move on to the second witness statement. It is a statement  
15:53:16 14 that the Prosecution has already handed out this morning in  
15:53:20 15 hard copy, for reasons that have been elaborated this morning,  
15:53:27 16 and if all the participants and your Honours have copies of  
15:53:33 17 this statement, it is for your reference  
15:53:44 18 <#DRC-OTP-0105-0085#>, which I confirm that I do not need to  
15:53:47 19 have displayed.

15:53:47 20 [3:53 p.m.]

15:53:51 21 I draw your attention to several paragraphs in this statement  
15:53:55 22 dealing with the true objectives of the UPC and the true  
15:54:00 23 policy of inclusion of the UPC, vis-a-vis other ethnic groups.  
15:54:07 24 If I could ask you to turn to page 30 of the document,  
15:54:18 25 paragraph 161. I will read out certain portions of paragraph

15:54:33 1 161 and 162, starting with 161, the very last sentence which  
15:54:40 2 reads, and I quote, [in French]: "Apart from controlling the  
15:55:02 3 administration of Ituri, another of the UPC's objectives was  
15:55:07 4 to protect the trade of Hema, mainly by banning Nande traders  
15:55:13 5 from working in Ituri."  
15:55:16 6 [3:55 p.m.]  
15:55:17 7 Continuing on into paragraph 162, also with the UPC  
15:55:22 8 objectives, the witness states, and I quote [in French]: "I  
15:55:32 9 have read the objectives of the UPC as described in Article 5  
15:55:37 10 of the Statute. Personally, I think the UPC never tried to  
15:55:50 11 bring about the objectives that are indicated in its Statute.  
15:56:08 12 You can write whatever you like on paper, but I never had the  
15:56:11 13 feeling that the UPC took any measures whatsoever to comply  
15:56:16 14 with the objectives that the movement had set for itself."  
15:56:24 15 And using the UPC membership as an example of the UPC policies  
15:56:31 16 against ethnic inclusion and in favour of Hema dominance, I  
15:56:35 17 refer your Honours to page 32 of the same statement,  
15:56:40 18 paragraphs 169 and 171.  
15:56:47 19 In paragraph 169, in the centre of the paragraph, I will quote  
15:56:54 20 from the witness's statement as follows [in French]: "The UPC  
15:57:06 21 is an exclusively Hema movement, just like PUSIC. Mainly UPC  
15:57:21 22 brings together the Gegere, whereas PUSIC brings together the  
15:57:26 23 Hema South. The UPC has always been known as a Hema movement.  
15:57:44 24 It is true, however, that the UPC had representatives from  
15:57:48 25 other ethnic groups in its executive, but I can say without

15:58:01 1 any fear or favour that these people did not represent their  
15:58:06 2 original communities. They had become involved at a personal  
15:58:10 3 level."  
15:58:12 4 And the last point that I would like to draw your Honours to  
15:58:14 5 with respect to this witness's assertions is at paragraph  
15:58:20 6 171 -- always on the same topic of the UPC inclusion of other  
15:58:28 7 ethnic groups -- where the witness states, and I quote [in  
15:58:32 8 French]: "Neither the UPC nor PUSIC succeeded in attracting  
15:58:45 9 people from other tribes into their movements. Furthermore,  
15:59:00 10 the open policy of the UPC against people who were  
15:59:06 11 non-indigents was well known and did not encourage people to  
15:59:09 12 join the movement. To support this statement, I can just  
15:59:27 13 recall, because I experienced it, that when the Lendu entered  
15:59:31 14 Bunia in March 2003, only the Hema left the town; whereas when  
15:59:55 15 the UPC took over the town in May 2003, the Lendu, the Ngiti,  
16:00:03 16 members of other tribes of Ituri, and all non-indigents fled  
16:00:11 17 the town for fear of the UPC."  
16:00:20 18 PRESIDING JUDGE JORDA (interpretation): It is 4 o'clock,  
16:00:23 19 Mr Withopf. I'd like to know where we are in regard to our  
16:00:26 20 schedule. I would very much like you to finish your  
16:00:31 21 presentation before the witness is interviewed on Wednesday.  
16:00:37 22 I would like you to finish tomorrow, late afternoon. Normally  
16:00:43 23 on Monday and Tuesday we should be concluding at 4 o'clock, so  
16:00:46 24 I'm going -- I'm asking you whether you need an extra hour  
16:00:49 25 this evening, and whether one hour will be enough for you

16:00:56 1 tomorrow, because we need to have a break now till 4.30. How  
16:00:59 2 do you feel about this, Mr Withopf?  
16:01:02 3 MR WITHOPF: Thank you, Mr President. The Prosecution will  
16:01:05 4 certainly very much appreciate if it could be given the extra  
16:01:08 5 hour today and tomorrow. This would enable us, and this would  
16:01:13 6 enable Ms Samson, to certainly finish her part on the UPC and  
16:01:17 7 it would enable me to, at the very least, start the  
16:01:21 8 presentation on the FPLC today and to conclude it tomorrow  
16:01:25 9 morning.  
16:01:32 10 PRESIDING JUDGE JORDA (interpretation): Okay, we shall do as  
16:01:34 11 you ask, and so we shall resume at 4.30 for one hour, no  
16:01:40 12 more -- just one hour. Court is adjourned till 4.30.  
16:01:44 13 [4:01 p.m.]  
16:01:46 14 [Short adjournment]  
16:33:19 15 [4:33 p.m.]  
16:33:19 16 THE USHER: All rise.  
16:33:24 17 PRESIDING JUDGE JORDA (interpretation): So the Court is now  
16:33:37 18 in session again. Please could the detained person be brought  
16:33:42 19 in?  
16:33:44 20 [Mr Thomas Lubanga Dyilo entered the courtroom]  
16:34:01 21 [4:33 p.m.]  
16:34:01 22 MR WITHOPF: Mr President, your Honours, thank you very much.  
16:34:03 23 Prior to Ms Samson continuing her presentation, I wish at the  
16:34:09 24 request of your Honours and at the request of the Defence to  
16:34:12 25 hand over A3 copies of the visual aid, which will enable all

16:34:18 1 participants to properly read it. I understand based on the  
16:34:23 2 decision of the Chamber that also the legal representatives of  
16:34:27 3 the victims can get one of these copies.

16:34:34 4 PRESIDING JUDGE JORDA (interpretation): We are very grateful  
16:34:37 5 for that. Ms Samson, please?

16:34:50 6 MS SAMSON: Thank you, Mr President. Mr President, your  
16:35:05 7 Honours, at the moment of the break the Prosecution was in its  
16:35:12 8 submissions related to the objectives of the UPC and, in  
16:35:18 9 particular, to the objectives of control of Ituri and Hema  
16:35:26 10 dominance to the detriment of other ethnic groups. And the  
16:35:33 11 Prosecution was going through a number of witness statements  
16:35:35 12 in support of these propositions. There are seven witness  
16:35:39 13 statements in this section, your Honour, we have already seen  
16:35:41 14 two, and the Prosecution would now like to move to the third  
16:35:45 15 statement from witness DRC-OTP-WWWW-0002. I will not ask the  
16:35:57 16 court officer to display this particular witness statement, as  
16:36:00 17 it falls under the same category as the statement just viewed,  
16:36:04 18 in that, although it is disclosed to the Defence -- the  
16:36:08 19 identity of the witness has been disclosed to the Defence for  
16:36:11 20 public consumption we will hand out copies to the necessary  
16:36:16 21 participants, if your Honour so directs.

16:36:20 22 [4:36 p.m.]

16:36:47 23 COURT OFFICER (interpretation): The reference of this  
16:37:00 24 document, ERN, <#DRC-0046 will be <#EVD-OTP-00029#>.

16:37:18 25 MS SAMSON: Thank you. Your Honours, the Prosecutor relies

16:37:23 1 on this witness statement for the first-hand account from the  
16:37:27 2 witness of the UPC objectives and the threats against  
16:37:34 3 non-Hema, and I refer the Court to the very first page of the  
16:37:37 4 statement, and in particular very briefly to the ethnic origin  
16:37:42 5 of the witness, which is Nande.

16:37:52 6 Now I would ask the Chamber to please move to paragraph 22,  
16:38:00 7 which is at 00087050 of the document in which the witness  
16:38:13 8 describes his particular situation with the UPC, and he states  
16:38:19 9 as follows, and I quote [in French]: "As an Nande I was in a  
16:38:26 10 difficult situation. There were Lendu, and other ethnic  
16:38:33 11 groups within the UPC, but they hardly had anything to say.  
16:38:42 12 In my opinion, the UPC was an mono-ethnic groups in which the  
16:38:50 13 Hema ethnic group played the most important role. Once I had  
16:38:57 14 done a job once, persons in the UPC thought that I should do  
16:39:04 15 it all the time, even without paying me. For example, Lobo,  
16:39:16 16 who was responsible for public relations in the UPC, called me  
16:39:20 17 all the time. He said to me -- Lobo said to me, 'Be careful,  
16:39:30 18 Nande. You have to come and work every time you're called on.  
16:39:35 19 If you don't do it, you will see what's going to happen with  
16:39:39 20 your life.'"

16:39:51 21 [4:39 p.m.]

16:39:57 22 The fourth witness statement that the Prosecution would like  
16:39:59 23 to direct your Honours' attention to is a statement on which  
16:40:03 24 the Prosecution relies for the information related to, once  
16:40:15 25 again, ethnic inclusion and the fact that members of non-Hema

16:40:16 1 origin were effectively forced to participate in the UPC.

16:40:25 2 If I could kindly ask the court officer to publish document

16:40:29 3 <#DRC-OTP-0126-0086#> and to communicate the evidence number.

16:40:44 4 For the benefit as well of the Court, this is a witness

16:40:47 5 statement of witness <#DRC-OTP-WWWW-0043#>.

16:41:07 6 COURT OFFICER (interpretation): Thank you, Ms Samson. The

16:41:16 7 reference of the document will be <#EVD-OTP-00030#>.

16:41:21 8 MS SAMSON: I refer the Court's attention to the witness's

16:41:24 9 statement at page 5 of the document paragraph 26, and I note

16:41:40 10 that this document does contain redactions, in particular as

16:41:44 11 well in the particular to which I intend to make reference.

16:41:49 12 In that case, I propose to skip over the redacted versions and

16:41:55 13 read it pausing where the redaction appears.

16:42:00 14 In paragraph 26 the witness states [in French]: " The

16:42:06 15 Minister of the UPC was former of Bunia. It was a way of

16:42:19 16 showing that the non-indigenous population was part of their

16:42:27 17 government. In reality they didn't have any power. Decisions

16:42:35 18 were taken elsewhere. Didn't have a choice about accepting

16:42:43 19 this post. At the time he was currently -- he was -- we

16:43:04 20 hadn't been consulted when he was appointed and he couldn't

16:43:11 21 refuse because that would mean that he was against the UPC."

16:43:16 22 [4:43 p.m.]

16:43:20 23 For additional confirmation of the UPC's policies against

16:43:25 24 non-Hema, I refer the Chamber to the next page, page 7, which

16:43:30 25 is DRC number 0092. At paragraphs 34 and 35 -- and I will

16:43:43 1 simply read the first sentences of both paragraphs, commencing  
16:43:46 2 with paragraph 34, and I quote [in French]: "Non-indigenous  
16:43:57 3 population most targeted were the Nande. The UPC blamed them  
16:44:09 4 for providing them with machetes and other bladed weapons."  
16:44:14 5 In paragraph 35 the first sentence reads [in French]: "The  
16:44:18 6 Hema wanted to dominate the other ethnic groups."  
16:44:30 7 [4:44 p.m.]  
16:44:33 8 The fifth statement on which the Prosecution relies on this  
16:44:37 9 point explains further the perception that people in Ituri  
16:44:42 10 held that the UPC was pro-Hema and was an organisation to be  
16:44:46 11 feared if you were not part of that ethnic group.  
16:44:49 12 I refer the Court's attention to the summary of the statement  
16:44:53 13 of witness <#DRC-OTP-WWWW-0030#> and I would ask the court  
16:45:02 14 officer to display the summary, which in the DRC-OTP number is  
16:45:08 15 <#DRC-OTP-0164-0262#> and I'll await the evidence number.  
16:45:27 16 COURT OFFICER (interpretation): The reference of the  
16:45:37 17 document will be <#EVD-OTP-00031#>.  
16:45:48 18 MS SAMSON: Thank you. The Prosecution refers your Honours  
16:45:55 19 to the four paragraphs, under Part II of this witness summary,  
16:46:01 20 entitled "Ethnic Composition of the UPC" in which this witness  
16:46:09 21 stated, and it is now provided in summary form, and I will  
16:46:14 22 read quote [in French]: "The witness explained that even if  
16:46:22 23 the representatives of the UPC had stated on several occasions  
16:46:29 24 that they didn't favour one ethnic group over another, and  
16:46:36 25 that the UPC was a grouping composed of several ethnic groups,

16:46:43 1 he thinks personally that it's not true and that they said  
16:46:51 2 that to satisfy public opinion. He says that in reality -- in  
16:47:01 3 reality some of them were rather pro-Hema."

16:47:01 4 [4.47 p.m.]

16:47:11 5 And in the next paragraph, I quote, [in French]: "The witness  
16:47:14 6 adds that the man in the street also thought that, and that  
16:47:20 7 even if the Hema population respected the UPC, and Thomas  
16:47:25 8 Lubanga Dyilo, the non-Hemas did not respect him much. In the  
16:47:36 9 opinion of the witness the UPC was 85 per cent Hema. He added  
16:47:44 10 that among the national secretaries there were also  
16:47:50 11 non-Hema -- among them were Lendu, but the population Lendu  
16:47:58 12 renounced these national secretaries, who had joined the UPC,  
16:48:04 13 and interpreted that -- interpreted this as treason."

16:48:13 14 The last sentence I'll read, [in French]: "The witness said  
16:48:15 15 that it was dangerous to be considered opposed to the UPC. He  
16:48:22 16 confirmed that at the time of the UPC there had been  
16:48:27 17 abductions of persons who were hostile to this movement."

16:48:34 18 [4:48 p.m.]

16:49:00 19 The sixth statement the Prosecution would like to turn your  
16:49:03 20 attention to, your Honours, and Mr President, can be found at  
16:49:08 21 <#DRC-OTP-0164-0301#>. It is the summary of the statement of  
16:49:15 22 witness <#DRC-OTP-WWWW-0040#> and I would kindly ask the court  
16:49:23 23 officer to publish the document and as well to advise the  
16:49:26 24 Court of the evidence number.

16:49:38 25 COURT OFFICER (interpretation): The reference for the

16:50:06 1 document is <#EVD-OTP-00032#>.

16:50:15 2 MS SAMSON: Thank you. The statement in question of interest  
16:50:19 3 to the Prosecution, and of relevance to the present  
16:50:24 4 submission, is contained in Part 2 in the second paragraph,  
16:50:31 5 and again it relates to the limited control of non-Hema who  
16:50:37 6 happened to be part of the UPC, and I will just briefly read  
16:50:44 7 in the fourth line of this second paragraph, first page, the  
16:50:51 8 witness states, and I quote [in French]: "Indeed the witness  
16:51:10 9 AC considers that the appointment of non-Hema to certain posts  
16:51:14 10 within the UPC did not have a major impact on the direction an  
16:51:18 11 decisions of the movement on the points or on the agenda items  
16:51:23 12 of meetings. In line with this facade during public meetings  
16:51:31 13 or diplomatic meetings Lubanga gave the impression that his  
16:51:40 14 Executive was multi-ethnic, because he presented himself with  
16:51:47 15 all the national secretaries, and including the non-Hema  
16:51:57 16 ones."

16:52:03 17 The UPC Objectives. The Prosecution would now like to move on  
16:52:06 18 to the UPC control of Ituri, an objective that it actually did  
16:52:10 19 meet in August of 2002, such that the Prosecution asserts by  
16:52:18 20 the end of -- by the end of 2002 the UPC and Thomas Lubanga  
16:52:24 21 Dyilo, as its President, effectively controlled the region of  
16:52:28 22 Ituri.

16:52:30 23 [4:52 p.m.]

16:52:31 24 In support of this assertion, the Prosecution wishes to alert  
16:52:35 25 the Chamber to three documents, all emanating from the UPC.

16:52:48 1 ME FLAMME (interpretation): It sometimes goes a bit too fast  
16:52:51 2 for the numbers. I'm afraid that I missed the number of  
16:52:56 3 number 4.  
16:52:58 4 PRESIDING JUDGE JORDA (interpretation): Registrar, could you  
16:53:00 5 try and find that again?  
16:53:02 6 COURT OFFICER (interpretation): Of 4 this morning -- number  
16:53:18 7 4 this morning?  
16:53:18 8 PRESIDING JUDGE JORDA (interpretation): It's 32 -- was it  
16:53:20 9 number 32 -- 32 or -- 31 is witness AD. The summary was OTP's  
16:53:30 10 -- was it 32 -- was that it, Mr Registrar?  
16:53:39 11 MS SAMSON: Thirty-two was indeed the last summary that we  
16:53:42 12 referred to, the summary of witness AC.  
16:53:48 13 COURT OFFICER (interpretation): Thirty-one --  
16:53:56 14 <#EVD-OTP-00031#> is the -- is the summary of the hearing of  
16:54:00 15 the testimony of AD -- witness AD.  
16:54:06 16 PRESIDING JUDGE JORDA (interpretation): Yes. Me Flamme,  
16:54:07 17 does that provide you with a response to your questions?  
16:54:10 18 ME FLAMME (interpretation): I must have made a mistake  
16:54:12 19 somewhere. I will have to see that with Mr Roberts -- I must  
16:54:17 20 have missed that, quite simply.  
16:54:19 21 PRESIDING JUDGE JORDA (interpretation): Well, if there's a  
16:54:20 22 problem, then you can also speak to the Registry.  
16:54:25 23 ME FLAMME (interpretation): Yes, but I'd also like to ask if  
16:54:26 24 they could go slower when they refer to these different  
16:54:30 25 numbers, because you have to think of a lot of different

16:54:32 1 things at the same time.

16:54:33 2 PRESIDING JUDGE JORDA (interpretation): Mr Withopf, the  
16:54:38 3 President asks you to go fast and you're asking to go slower.  
16:54:42 4 So we'll have to find some kind of balance there. But, yes,  
16:54:44 5 we have to be able to follow the whole debate.

16:54:48 6 Well, Ms Samson, so you had a second point, if I followed you  
16:54:51 7 well, within the UPC materials -- that was the effective  
16:54:56 8 control which you wanted to deal with; is that right? Okay.

16:55:04 9 MS SAMSON: The areas that the Prosecution will be dealing  
16:55:06 10 with now will be the control that the UPC held over the  
16:55:11 11 District of Ituri in the 2002 period, commencing August 2002  
16:55:19 12 and with the assumption of full control by the end of that  
16:55:22 13 year.

16:55:25 14 The Prosecution will review and lead the Chamber through  
16:55:29 15 evidence from three documents, which are all UPC documents.  
16:55:36 16 The first document is one from Thomas Lubanga Dyilo himself as  
16:55:42 17 President of the UPC, where he confirms that the UPC controls  
16:55:46 18 Ituri and wherein he writes to the government of Kinshasa that  
16:55:52 19 he wants to be recognised as a leader of Ituri.

16:55:56 20 I would kindly ask the court officer to display the document  
16:55:59 21 at <#DRC-OTP-0037-0278#> and to advise of the evidence number.

16:56:14 22 COURT OFFICER (interpretation): The reference will be  
16:56:39 23 <#EVD-OTP-00033#>.

16:56:44 24 MS SAMSON: Thank you. Your Honours, as you can see, this is  
16:56:51 25 a document on UPC letterhead emanating from the Cabinet of the

16:56:59 1 President entitled "Mise au point au Gouvernement de  
16:57:06 2 Kinshasa" and just to touch upon a few of the items that  
16:57:10 3 Mr Lubanga refers to in this letter, I will read from the  
16:57:15 4 opening paragraph, which states, and I quote [in French]: "So  
16:57:40 5 we have since our movement took effective political military  
16:57:45 6 control of the nation in this territory significant facts have  
16:57:48 7 been drawn to our attention and we would like to express our  
16:57:51 8 indignation."

16:57:53 9 [4:57 p.m.]

16:57:53 10 As I alluded to your Honours, this letter was written by  
16:57:56 11 Mr Thomas Lubanga Dyilo to the Governor of Kinshasa, and he  
16:58:01 12 develops in point 3 that [in French -- not interpreted] refers  
16:58:07 13 to Ituri and that he, as President of the UPC, would like to  
16:58:12 14 have the UPC recognised as the controlling group of Ituri.

16:58:17 15 [4:58 p.m.]

16:58:17 16 In paragraph 3, and I quote, "We are also indignant because  
16:58:30 17 the peace conference in Kinshasa is being organised regarding  
16:58:36 18 Ituri without first giving us a stake."

16:59:02 19 [4:59 p.m.]

16:59:03 20 At point 5, Thomas Lubanga Dyilo explains again, and I quote  
16:59:12 21 [in French]: "Hence any agreement regarding the territory  
16:59:17 22 under our control signed by the central government and third  
16:59:25 23 parties, without including our movement, does not bind us in  
16:59:29 24 any way." And I note that this document was signed by Thomas  
16:59:36 25 Lubanga as President of the UPC in Bunia on 1 October 2002,

16:59:42 1 with the UPC presidential seal some month, month and a half,  
16:59:48 2 after the UPC took control of Bunia.  
16:59:51 3 [4:59 p.m.]  
17:00:01 4 The next document that I would refer to your Honours is a  
17:00:03 5 document from an UPC executive member reaffirming the control  
17:00:09 6 that the UPC held over Ituri in the fall of 2002.  
17:00:17 7 I would ask kindly for the court officer to display the  
17:00:21 8 document at <#DRC-OTP-0037-0271#>. This document on UPC  
17:00:48 9 letterhead of the particular national secretary, in this case  
17:01:02 10 Aux Affaires En Etrangeres, is a letter written to the neutral  
17:01:03 11 facilitator of the inter-Congolese dialogue, which in the  
17:01:11 12 subject line of the letter indicates that the UPC seeks  
17:01:18 13 participation in the inter-Congolese dialogue. In this letter  
17:01:33 14 the UPC National Secretary, Aux Affaires En Etrangeres, sets  
17:01:42 15 out the background of the UPC and some pertinent facts to  
17:01:45 16 allow the neutral facilitator to permit the UPC to participate  
17:01:51 17 as an active political group controlling Ituri, and I refer  
17:01:58 18 your Honours' attention to the paragraph under point 1 [in  
17:02:12 19 French] -- "Title and Creation of the UPC" -- in which the  
17:02:17 20 National Secretary states [in French]: "The Union des  
17:02:33 21 Patriotes Congolais Pour la Reconciliation et la Paix --  
17:02:33 22 acronym UPC/RP -- under the leadership of Thomas Lubanga is a  
17:02:42 23 political military movement established on 15 September 2000  
17:02:51 24 in the north-east of the Democratic Republic of the Congo,  
17:02:55 25 more specifically in the province of Ituri, which it controls

17:03:03 1 to this day."

17:03:05 2 [5:03 p.m.]

17:03:05 3 The last portion to which I would refer your Honours'

17:03:08 4 attention in particular, that the UPC self-declared its

17:03:14 5 control over the Ituri region. This fact is repeated on the

17:03:18 6 second page under the fourth point that the UPC,

17:03:33 7 since August 9, 2002, has the political administrative and

17:03:37 8 military control of Ituri. It is repeated again under point

17:03:45 9 6, that the UPC controls the entire province of Ituri.

17:03:53 10 [5:03 p.m.]

17:03:54 11 I note that on the last page of this document that it is

17:04:00 12 signed by the National Secretary, aux Affaires Etrangeres

17:04:08 13 Professor Dhetchuvi, that it is made in Bunia and dated

17:04:12 14 22 October 2002, some 20 days after Mr Thomas Lubanga Dyilo

17:04:17 15 initially wrote to the Governor of Kinshasa seeking

17:04:22 16 participation in this conference and some two months after the

17:04:26 17 UPC took control of Bunia.

17:04:34 18 COURT OFFICER (interpretation): The reference number of the

17:04:37 19 document we have just seen is <#EVD-OTP-00034#>.

17:04:54 20 MS SAMSON: In an effort, Mr President, your Honours, to move

17:04:58 21 through this presentation in the time allotted I will not

17:05:02 22 include the reference to the third document, as the

17:05:06 23 Prosecution is sufficiently comfortable with the two documents

17:05:12 24 that it's presented on this issue of control of the UPC over

17:05:16 25 Ituri.

17:05:17 1 [5:05 p.m.]

17:05:17 2 I will move now into the next segment of the Prosecution's

17:05:20 3 evidence --

17:05:32 4 ME FLAMME (interpretation): Mr President, thank you

17:05:36 5 for -- I would like you to clarify this matter. This is not

17:05:38 6 part of one of the objects which were seized?

17:05:40 7 PRESIDING JUDGE JORDA (interpretation): I think that

17:05:42 8 decision was taken very clearly earlier. Ms Samson said she

17:05:47 9 would stipulate if a document had been seized.

17:05:51 10 ME FLAMME (interpretation): Yes, I just wanted that to be

17:05:53 11 clear and to remind Ms Samson if necessary.

17:05:56 12 PRESIDING JUDGE JORDA (interpretation): Ms Samson, we agree,

17:05:58 13 this is part [as interpreted] of the seized objects.

17:06:00 14 MS SAMSON: The last document to which I referred, for the

17:06:03 15 sake of clarity, did not form part of the seized objects.

17:06:14 16 ME FLAMME (interpretation): (Microphone not activated).

17:06:16 17 MS SAMSON: I'm sorry? The document that I just referred to,

17:06:18 18 which is at <#DRC-OTP-0037-0271#>, does not form part of the

17:06:25 19 search and seizure operation. I believe it is exhibit

17:06:36 20 number 34.

17:06:41 21 ME FLAMME (interpretation): And number 33?

17:06:42 22 MS SAMSON: 33 does not form part of the search and seizure

17:06:46 23 operation.

17:06:52 24 [5:06 p.m.]

17:06:52 25 Mr President, your Honours, with your permission I will now

17:06:57 1 move to the next issue, and I will as well endeavour to alert  
17:07:00 2 the Court wherever there are search and seizure documents.  
17:07:05 3 The Prosecution's initial submission that Thomas Lubanga Dyilo  
17:07:10 4 was a leader of the UPC and exerted full control of the UPC  
17:07:15 5 and acted as its directing mind is further developed once  
17:07:21 6 Mr Thomas Lubanga Dyilo formed his government in Ituri in 2002  
17:07:25 7 and commenced the formation of the formal UPC structure.  
17:07:30 8 [5:07 p.m.]  
17:07:32 9 Thomas Lubanga Dyilo organised, nominated, and expelled  
17:07:39 10 individuals from the UPC executive and the documents through  
17:07:47 11 which I will lead the Court at this time will show that Thomas  
17:07:54 12 Lubanga Dyilo kept a tight rein on the UPC executive, that he  
17:08:01 13 did not share authority or control, and that elements who were  
17:08:11 14 insubordinate or otherwise threatening were either expelled or  
17:08:21 15 suspended from the UPC.  
17:08:24 16 [5:08 p.m.]  
17:08:31 17 There are, in relation to the structure of the UPC, three  
17:08:37 18 documents to which I would like to refer. These documents are  
17:08:42 19 UPC documents and they are three presidential decrees in which  
17:08:49 20 Thomas Lubanga Dyilo nominated his executive and reorganised  
17:08:55 21 it as and when he felt it was appropriate.  
17:08:58 22 [5:08 p.m.]  
17:08:58 23 The first document that I would ask the court officer to  
17:09:02 24 display is <#DRC-OTP-0113-0055#>.  
17:09:42 25 COURT OFFICER (interpretation): The reference number of the

17:09:45 1 document shall be <#EVD-OTP-00035#>.

17:09:57 2 MS SAMSON: As your Honours are able to note, this

17:10:01 3 presidential decree emanates from the President's cabinet. It

17:10:06 4 is on UPC letterhead, and as we will see in a few moments when

17:10:10 5 we turn to second page it is signed by Thomas Lubanga Dyilo

17:10:14 6 on September 3, 2002, shortly after the UPC takes control of

17:10:20 7 Bunia and Ituri.

17:10:24 8 [5:10 p.m.]

17:10:25 9 The Prosecution notes that the title of the document at the

17:10:31 10 top of the first page states that it's a decree relating to

17:10:37 11 the nomination of executive members of the UPC, and that it is

17:10:42 12 the President of the UPC who decrees, specifically in

17:10:50 13 Article 2, that the following national secretaries are named,

17:10:56 14 and there are various positions outlined, and on page 2,

17:11:03 15 Article 3, that the President equally names deputy national

17:11:12 16 secretaries.

17:11:12 17 [5:11 p.m.]

17:11:14 18 This document serves to illustrate that Thomas Lubanga Dyilo,

17:11:17 19 as President of the UPC, was organising its structure and

17:11:23 20 exercising the functions of President.

17:11:27 21 [5:11 p.m.]

17:11:27 22 The second document to which the Prosecution refers on this

17:11:30 23 point is a document that does emanate from the national

17:11:36 24 authority search and seizure operation. I would ask, please,

17:11:41 25 the court officer to display the document at

17:11:45 1 <#DRC-OTP-0091-0016#>.

17:12:05 2 COURT OFFICER (interpretation): The reference number shall  
17:12:13 3 be <#EVD-OTP-00036#>.

17:12:19 4 MS SAMSON: Thank you. Mr President, your Honours, this is  
17:12:24 5 the second presidential decree on UPC letterhead dated  
17:12:31 6 11 December 2002, as can be seen from the title on the shuffle  
17:12:39 7 or rearranging of the executive of the UPC, and the decree  
17:12:47 8 clearly states that the President of the UPC decrees, and  
17:12:53 9 further down in Article 2 that sometimes the same and  
17:13:01 10 sometimes different individuals are nominated to various  
17:13:06 11 positions as national secretaries.

17:13:06 12 [5.13 p.m.]

17:13:14 13 I draw the Court's attention to the last page of the document,  
17:13:24 14 which bears the signature of Thomas Lubanga as President of  
17:13:28 15 the UPC, stamped with the UPC's stamp of the Presidency,  
17:13:34 16 dated, as indicated on the first page, 11 December 2002, and  
17:13:39 17 I draw the Court's particular attention to Article 4 in which  
17:13:47 18 Thomas Lubanga Dyilo, as President of the UPC, requests that  
17:13:51 19 each national secretary take up their position and form a  
17:13:56 20 Cabinet following their notification.

17:14:02 21 [5:14 p.m.]

17:14:06 22 The Prosecution submits that the document clearly shows again  
17:14:10 23 a structure to the UPC, effective functioning by the President  
17:14:16 24 of the UPC, rearranging of the executive as required, and the  
17:14:25 25 directing of certain national secretaries to prepare their

17:14:31 1 Cabinet.

17:14:32 2 [5:14 p.m.]

17:14:32 3 As we will see in several documents to come, the national  
17:14:38 4 secretaries responded to the instructions of Thomas Lubanga  
17:14:44 5 Dyilo and respected the hierarchy that he required them to  
17:14:48 6 uphold.

17:14:51 7 [5:14 p.m.]

17:14:55 8 The next document, your Honours, that I would refer to and ask  
17:14:59 9 the court officer to kindly display is document  
17:15:07 10 <#DRC-OTP-0089-0093#>. I note that this document does emanate  
17:15:15 11 from the search and seizure operation in the DRC.

17:15:22 12 COURT OFFICER (interpretation): The reference number shall  
17:15:27 13 be <#EVD-OTP-00037#>.

17:15:34 14 MS SAMSON: And without your Honours spending too much time  
17:15:36 15 on the document the Prosecution simply draws your attention to  
17:15:39 16 the fact that in June 2003 Thomas Lubanga Dyilo, as President  
17:15:44 17 of the UPC, continued to exercise the functions of President  
17:15:48 18 and continued to nominate executive members.

17:15:57 19 [5:15 p.m.]

17:15:58 20 On the second page of the document the Court will note that  
17:16:02 21 the document has been signed by the UPC President, Thomas  
17:16:07 22 Lubanga Dyilo, with the UPC stamp.

17:16:27 23 [5:16 p.m.]

17:16:34 24 Throughout the November -- the October, November, December  
17:16:38 25 time period and later, Thomas Lubanga Dyilo requested that a

17:16:45 1 certain hierarchy be respected, requested that his national  
17:16:49 2 secretaries send him reports, and insisted that their role in  
17:16:57 3 the organisation be limited to advisers for him in the final  
17:17:05 4 decision-making process with which he held the ultimate and  
17:17:10 5 final decision.

17:17:15 6 [5:17 p.m.]

17:17:15 7 On the reporting structure, I refer the Court to the document  
17:17:18 8 at <#DRC-OTP-0091-0773#> and I would ask if the court reporter  
17:17:31 9 could kindly display the document and provide us with the  
17:17:36 10 appropriate evidence number.

17:17:38 11 COURT OFFICER (interpretation): The reference number shall  
17:17:46 12 be <#EVD-OTP-00038#>.

17:17:52 13 MS SAMSON: Thank you. And if I had not already made  
17:17:54 14 reference, your Honours, this document forms part of the  
17:17:56 15 documents retrieved during the search and seizure operation in  
17:18:00 16 the DRC. The Prosecution relies on this document for the  
17:18:10 17 reporting system that is in place. The document is dated  
17:18:15 18 11 November 2002. Scrolling down to the bottom of the  
17:18:25 19 document we can see that it's been signed and sent by the UPC  
17:18:29 20 National Secretary for Culture, Arts and Tourism with the  
17:18:32 21 appropriate and corresponding UPC stamp. The document is  
17:18:36 22 written to [in French], Monsieur Le President de l'UCP [in  
17:18:42 23 French] in Bunia, and the national secretary transmits to the  
17:18:50 24 UPC President an annex of an activities report from his  
17:18:56 25 national secretariat for activities that took place between

17:19:01 1 3 September to 10 November 2002.

17:19:06 2 [5:19 p.m.]

17:19:26 3 In response to the President of the UPC's specific direction,  
17:19:31 4 when nominating Cabinets, to have the national secretaries  
17:19:38 5 nominate their own members and provide the President with that  
17:19:42 6 list, the UPC national secretaries did as they were  
17:19:50 7 instructed. The Prosecution refers your Honours to a letter  
17:19:58 8 from one of these national secretaries, and I would ask the  
17:20:04 9 court officer to display this document -- it's at  
17:20:11 10 <#DRC-OTP-0089-0060#> and I refer -- 0060 for the last four  
17:20:23 11 digits, and I would like to indicate to the Court that this  
17:20:29 12 document forms part of the documents seized during the search  
17:20:34 13 and seizure operation in the DRC. The document is on UPC  
17:20:41 14 letterhead dated 14 January 2003.

17:20:41 15 [5.20 p.m.]

17:20:45 16 It's written to His Excellency, the President of the UPC in  
17:20:50 17 Bunia, and in it the national secretary attaches to the letter  
17:20:56 18 the list of his Cabinet members, specifically further to the  
17:21:01 19 decree which we just looked at together moments ago, decree  
17:21:08 20 number 18, dealing with the new executive appointments. The  
17:21:20 21 letter is signed and it affixes the UPC seal of the  
17:21:31 22 corresponding national secretariat. And the Prosecution  
17:21:35 23 relies on this document, as stated earlier, for the assertion  
17:21:38 24 that when the UPC President gave a direction, the UPC national  
17:21:42 25 secretaries respected the direction and followed it.

17:21:53 1 COURT OFFICER (interpretation): The reference number of  
17:21:59 2 this document shall be <#EVD-OTP-00039#>.

17:22:12 3 MS SAMSON: Your indulgence, your Honours. The Prosecution,  
17:23:03 4 in furtherance of its submission that Thomas Lubanga Dyilo  
17:23:06 5 held the full control and authority within the UPC, refers to  
17:23:10 6 a document written by the President of the UPC, Mr Thomas  
17:23:14 7 Lubanga Dyilo, in which he reminds his executive members of a  
17:23:21 8 principle that they already know well, that he will be the  
17:23:27 9 ultimate decision maker and that they are essentially  
17:23:29 10 technical advisers to him in reaching these decisions.

17:23:34 11 [5:23 p.m.]

17:23:34 12 The document, which I would kindly ask the court officer to  
17:23:37 13 display, can be found at <#DRC-OTP-0089-0069#>.

17:23:55 14 COURT OFFICER (interpretation): The reference number of the  
17:23:58 15 document shall be <#EVD-OTP-00040#>.

17:24:04 16 MS SAMSON: I note that this document does form part of the  
17:24:08 17 search and seizure operation in the DRC. This document, your  
17:24:48 18 Honours, which I will briefly take your Honours to, is dated  
17:24:55 19 30 November 2002 -- all in the time period of the UPC control  
17:25:01 20 over Ituri. Thomas Lubanga Dyilo as President signs this  
17:25:08 21 letter.

17:25:08 22 [5.25 p.m.]

17:25:10 23 It's stamped with the UPC stamp. It's addressed to  
17:25:26 24 [in French -- not interpreted] and, as President, Mr Thomas  
17:25:32 25 Lubanga Dyilo writes, and I quote [ in French]: "I wish to

17:25:37 1 remind you that the executive of the movement is a body of  
17:25:44 2 technical advisers of the President of the  
17:25:51 3 movement -- technical advisers. On this account, the latter  
17:26:01 4 is entitled to be informed of all your correspondence,  
17:26:06 5 furthermore, to be consulted beforehand on any important  
17:26:14 6 decisions committing the movement. Please ensure that this  
17:26:19 7 measure be heeded, this principle already being well known to  
17:26:28 8 you."

17:26:28 9 [5.26 p.m.]

17:26:34 10 The Prosecution asserts this is but one example of the way in  
17:26:37 11 which Thomas Lubanga ensured a tight and strict control over  
17:26:39 12 the UPC, its members, in all decisions.

17:26:46 13 [5:26 p.m.]

17:26:50 14 The Prosecution would like to take your Honours now to a  
17:26:54 15 document that is an example of the UPC President exercising  
17:27:03 16 his powers to expel members who were insubordinate and with  
17:27:12 17 whom Thomas Lubanga Dyilo certainly did not wish to share  
17:27:15 18 power.

17:27:15 19 [5.27 p.m.]

17:27:19 20 I would ask the court officer to display the document at  
17:27:22 21 <#DRC-OTP-0089-0057#> and I note that this document emanates  
17:27:35 22 from the search and seizure in the DRC.

17:27:42 23 COURT OFFICER (interpretation): The reference number shall  
17:27:47 24 be <#EVD-OTP-00041#>.

17:28:24 25 PRESIDING JUDGE JORDA (interpretation): Are you planning on

17:28:27 1 completing your submissions on the UPC in the coming moments?

17:28:32 2 It will be preferable if that were possible, Ms Samson.

17:28:35 3 MS SAMSON: Thank you, your Honour. I believe I have

17:28:39 4 approximately 10 minutes more -- no more than 10 minutes.

17:28:41 5 I leave it to your Honours to determine whether or not

17:28:43 6 I should proceed.

17:28:44 7 PRESIDING JUDGE JORDA (interpretation): No, I would prefer

17:28:49 8 that you finish within -- in less than 10 minutes as regards

17:28:54 9 the context of the UPC. You have presented a large number of

17:28:56 10 documents. We see -- at least I think we see the points you

17:29:02 11 were trying to make, so I would like you to be as disciplined

17:29:05 12 as possible. Please try to complete within the next five or

17:29:08 13 six minutes. That should not be too difficult. Go ahead.

17:29:11 14 [5.29 p.m.]

17:29:11 15 MS SAMSON: Thank you, your Honour. The document to which

17:29:14 16 I had made reference has now been displayed. It is a copy of

17:29:19 17 a UPC decree on UPC letterhead emanating from the Cabinet du

17:29:27 18 President. It is dated, as we will see on the second page of

17:29:32 19 the -- 2 December 2002, and it deals with the expulsion of one

17:29:41 20 UPC member from the UPC. The President of the UPC/RP decrees

17:29:52 21 at the bottom of page -- the first page that Mr Kahwa Panga

17:30:01 22 Yves-Zety, [in French], Deputy National Secretary of the

17:30:07 23 Defence, is dismissed, removed from his functions, and

17:30:11 24 excluded from the Union des Patriotes Congolais pour la

17:30:19 25 Reconciliation et la Paix, acronym UPC/RP". And the reasons

17:30:23 1 given by the UPC President Mr Thomas Lubanga Dyilo for the  
17:30:26 2 expulsion can be found midway through this page, and I focus  
17:30:35 3 on certain aspects in points 1 through 4. In point 1, the  
17:30:46 4 Prosecution focuses on the fact that the UPC President  
17:30:51 5 indicates that Mr Kahwa Panga [in French], disconcerting  
17:31:02 6 megalomania, [in French], remarkable insubordination vis-a-vis  
17:31:08 7 his superiors. The Prosecution asserts that this document  
17:31:12 8 clearly indicates that if there were individuals within the  
17:31:16 9 UPC who did not respect the hierarchy, the chain of command,  
17:31:21 10 and the fact that he was the ultimate leader, then they were  
17:31:24 11 expelled from the movement.

17:31:26 12 [5:31 p.m.]

17:31:43 13 And the document -- the Prosecution in the last few moments  
17:31:46 14 would like to refer the Court to one witness statement. The  
17:32:06 15 witness statement is at <#DRC-OTP-0104-0107#> which I would  
17:32:15 16 kindly ask the court officer to display. It's the statement  
17:32:18 17 of witness at <#DRC-OTP-WWWW-0025#>.

17:32:40 18 COURT OFFICER (interpretation): The document will be  
17:32:45 19 numbered <#EVD-OTP-00042#>.

17:32:51 20 MS SAMSON: I refer your Honours to paragraph 38, which is  
17:32:54 21 contained at page 0114, and, in particular, to the second  
17:33:25 22 sentence of that paragraph in which the witness states, and  
17:33:32 23 I quote [in French]: "There is no doubt in my mind that  
17:33:43 24 Thomas Lubanga had control, both de iure and de facto, on the  
17:33:51 25 Council of Ministers and the UPC movement. Furthermore, this

17:34:05 1 was obvious through the disciplinary measures that were taken  
17:34:08 2 against any member who did not perform his functions  
17:34:11 3 correctly."  
17:34:12 4 [5:34 p.m.]  
17:34:18 5 Thank you, Mr President, your Honours, for the extra time.  
17:34:21 6 The Prosecution submits that the documents and witness  
17:34:23 7 statements which it has referred to in this part of its  
17:34:26 8 submission clearly demonstrate that there are substantial  
17:34:30 9 grounds to believe that Thomas Lubanga Dyilo exercised  
17:34:33 10 effective control over the UPC and its members during all  
17:34:37 11 relevant periods, and over all of the decisions of the UPC.  
17:34:45 12 The Prosecution further asserts that this control over the  
17:34:50 13 political arm of the UPC was mirrored in the control that  
17:34:54 14 Thomas Lubanga Dyilo, as President, asserted over the military  
17:34:58 15 wing, the FPLC, and this point will be developed a bit more  
17:35:02 16 tomorrow. Subject to any questions, your Honours, those are  
17:35:08 17 my submissions on this section.  
17:35:15 18 PRESIDING JUDGE JORDA (interpretation): For the time being I  
17:35:20 19 do not believe that we of the Bench have any questions so I'll  
17:35:26 20 adjourn. Registrar, do you have a question? Please proceed.  
17:35:29 21 COURT OFFICER (interpretation): Thank you, Mr President.  
17:35:32 22 This is to make a correction -- a minor correction. We  
17:35:36 23 entered into evidence under HNE9, that is the list of seized  
17:35:45 24 documents, the document was registered in the Registry, but it  
17:35:50 25 was under ICC-01/04-01/06 confidential.

17:35:57 1 PRESIDING JUDGE JORDA (interpretation): I want this to be  
17:36:01 2 very clear for the Defence because all of these numbers are  
17:36:04 3 going very fast so please approach the Defence later,  
17:36:08 4 Mr Registrar, so that we can speak the same language. This is  
17:36:14 5 the least we can do in a courtroom.

17:36:14 6 [5.36 p.m.]

17:36:18 7 Mr Withopf, you will have tomorrow, plus an extra hour, like  
17:36:22 8 we have done today until 5.30 so that you can conclude your  
17:36:27 9 presentations, and then on Wednesday we shall begin with the  
17:36:30 10 witness. That said, Mr Flamme, I am listening to you.

17:36:38 11 ME FLAMME (interpretation): I would just like Mr Withopf to  
17:36:40 12 provide me with an extra copy of this for my client.

17:36:43 13 PRESIDING JUDGE JORDA (interpretation): I am -- it proves  
17:36:46 14 that you are satisfied with the photocopy.

17:36:49 15 ME FLAMME (interpretation): It is excellent.

17:36:50 16 PRESIDING JUDGE JORDA (interpretation): Mr Withopf, be so  
17:36:55 17 kind as to do this for Me Flamme.

17:37:00 18 ME FLAMME (interpretation): It's already done.

17:37:01 19 PRESIDING JUDGE JORDA (interpretation): Court is adjourned  
17:37:02 20 and it will resume at 9.30 tomorrow morning.

17:37:02 21 [5:37 p.m.]

17:37:08 22 [At 5.37 p.m. the Court adjourned accordingly]

17:37:08 23

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