

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele
4 Diarra and Judge Christine Van den Wyngaert
5 Situation: Democratic Republic of the Congo -
6 ICC-01/04-01/07

7 In the case of The Prosecutor v. Germain Katanga and
8 Mathieu Ngudjolo Chui
9 Trial Hearing
10 Wednesday, 22 September 2010
11 (The hearing starts at 9.49 a.m.)

12 (Open session)

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

15 PRESIDING JUDGE COTTE: (Interpretation) Court
16 is in session. Please be seated. Before bringing in the
17 witness, who will be with us as from 10 a.m. and who
18 apparently would like to know for how long he will have to
19 stay in The Hague, I think we can hope to conclude by the
20 end of the week, with some luck. Well, we will see about
21 that.

22 The Chamber will hand down an oral decision on
23 the application of Mr Mathieu Ngudjolo, who is present, to
24 initiate legal proceedings against witness P279 for
25 impeding the administration of justice, Articles

1 70(1)(a)(b), 64(2) and 64(6)(f) of the Statute as well as
2 Rule 165 of the Rules of Procedure and Evidence.

3 The Chamber would like to begin with a brief
4 procedural review.

5 Prosecution witness P279 testified from 20 May to
6 11 June 2010 in the instant case. On 20 May 2010 this
7 witness solemnly undertook to tell the truth before the
8 Court and pursuant to Article 69(1) of the Statute and the
9 provisions of Rule 66(1) and (3) of the Rules of Procedure
10 and Evidence, the Chamber informed him that in case of
11 false testimony he could be prosecuted. (Transcript 144,
12 pages 14-15).

13 On 14 June 2010, the Defence of Mathieu Ngudjolo
14 filed a confidential application, (Filing 2195-Conf) to
15 ask for the initiation of legal proceedings against the
16 said witness, P279, for obstruction of justice on the
17 basis of Article 70(1)(a)(b) of the Statute. The Defence
18 alleges that by telling lies on several occasions about
19 his age, and with relation to several aspects of his
20 testimony in order to pass himself off as a child soldier,
21 P279 provided false testimony. The Defence further
22 alleges that P279 produced false or forged evidence by
23 producing identity documents bearing different dates and
24 places of birth, thereby causing intentional prejudice to
25 the accused. The Defence therefore asked for the lifting

1 of the protection measures granted to Witness P279, as
2 well as the initiation of legal action against him.

3 On 6 July 2010, the Prosecutor submitted his
4 confidential response, asking the Chamber to reject that
5 application, (Filing 2243-Conf) on the grounds that not
6 only was it founded on a fact in dispute, that is, the age
7 of the witness, but that it was also frivolous and without
8 any legal basis.

9 On 12 July 2010, by oral decision, the Chamber
10 rejected the applications for replies respectively
11 submitted by the two different teams. Seized by an
12 application asking for the initiation of legal proceedings
13 against Prosecution Witness P279, pursuant to Article
14 70(1)(a)(b) of the Statute, the Chamber recalls that Rule
15 165 of the Rules of Procedure and Evidence, which excludes
16 amongst other things the application of Article 53 of the
17 Statute relating to the initiation of an investigation,
18 gives only the Prosecutor the authority to begin an
19 investigation on the offences defined in Article 70 of the
20 Statute, whether he acts proprio motu or on the basis of
21 information communicated to him by the Chamber or any
22 other reliable source.

23 In the instant case, the Chamber is of the
24 opinion, for reasons that we will give later, that there
25 is no reason to make such a communication. In this case,

1 the Chamber points out that any possible false testimony
2 attributable to a Prosecution witness is likely to create
3 a situation of conflict of interests, which could
4 influence the authority given to him to initiate such an
5 investigation.

6 The Chamber therefore is of the opinion that, a
7 fortiori, in such a situation it is incumbent on the
8 Chamber, pursuant to Articles 64(2) and 64(6) of the
9 Statute, and because it is the guarantor of the fair
10 conduct of the trial, to remind the Prosecutor of the
11 authority that he has under Rule 165 of the Rules and
12 communicate to him if necessary the information that the
13 Chamber may have.

14 However, in the instant case, the Chamber notes
15 that the application is founded on allegations of
16 incoherence in the testimony of the witness, particularly
17 with regard to his age, as well as his attitude or
18 demeanour in the courtroom.

19 Regarding the allegation for the production of
20 false or forged testimony, the Chamber notes that witness
21 P279, as many other witnesses in this case, produced in
22 the courtroom explanations about the various different
23 dates of birth on various identity documents, including
24 his electoral card.

25 We therefore are of the opinion that all the

1 inconsistencies pointed out by the Defence in the
2 testimony of witness P279 are related before everything
3 else on the credibility of his testimony, rather than on a
4 belief that he intentionally lied to the Court.

5 If there is a doubt on the reliability of
6 testimony, whether it relates to uncertainty about age of
7 the witness cannot, in any way, be sufficient to
8 constitute false testimony, and the inconsistencies that
9 could be identified in a testimony cannot also constitute
10 false testimony.

11 In the opinion of the Chamber, factors such as
12 the personality of the witness, his demeanour in the
13 courtroom, the manner in which he testified and gave an
14 account of the events that he experienced or the
15 consistency of his testimonies are all factors to be taken
16 into consideration in the evaluation of the credibility of
17 his testimony.

18 The Chamber is therefore not convinced that
19 witness P279 intentionally tried to mislead it. The
20 Chamber therefore rejects the application in its entirety,
21 without prejudice to the credibility of the witness or the
22 probative value that will be given to his testimony, and
23 this in light of the full body of evidence that would have
24 been produced during the course of the trial.

25 We will now bring the witness into the courtroom,

1 and this means that the two accused, Mr Ngudjolo and
2 Mr Katanga, will leave the courtroom for a short while.
3 So, security officers, please escort them out of the room,
4 and court officer, please let us go into closed session in
5 order for the witness to come into the courtroom.

6 (Closed session at 9.59 a.m.)

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9 (Open session at 10.06 a.m.)

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

12 PRESIDING JUDGE COTTE: (Interpretation) Thank
13 you, Madam Court Officer.

14 (The accused enter the courtroom)

15 PRESIDING JUDGE COTTE: (Interpretation)
16 Mr Katanga and Mr Ngudjolo are now in the courtroom.

17 You are once again back here, Mr witness. Good
18 morning.

19 WITNESS: DRC-OTP-P-002 (On former oath)

20 (The witness answers through interpreter)

21 THE WITNESS: Good morning.

22 PRESIDING JUDGE COTTE: (Interpretation) You can
23 hear me well and everything is functioning perfectly.

24 Mr witness, we hope that your testimony can be concluded
25 by the end of this week. We will have a hearing today,

1 tomorrow and Friday. At the very latest your testimony
2 will conclude early next week, that is in case we are not
3 able to complete your testimony today.

4 At the end of the last hearing Mr Gilissen, who
5 was representing, or rather who is representing victims
6 who are child soldiers, was asking you questions related
7 to child soldiers because that is his mission in this
8 case.

9 Before giving the floor to Mr O'Shea, who will
10 begin his cross-examination, the Chamber would like to ask
11 you an additional question on that same subject. During
12 the direct examination of the Prosecutor we saw a certain
13 number of video extracts on which there were several
14 people that you referred to as commanders - and in fact
15 their names were actually given - so these were soldiers
16 who had responsibilities at the head of the various
17 militia groups.

18 The Chamber would like to ask you the following
19 question: while you were present in the various meetings,
20 gatherings or conferences in which -- or rather which were
21 also attended by those commanders, were you able to see
22 whether those commanders were accompanied by very young
23 fighters; that is, child soldiers or kadogos? So when
24 these commanders arrived at the conference rooms, were
25 they accompanied by child soldiers? That is the question

1 we are asking you. If you are able to, then please answer
2 before we hand over to the Defence to begin their
3 cross-examination.

4 THE WITNESS: Yes, I think that during those
5 meetings and conferences some of the commanders of the
6 military groups brought along their escorts, but the
7 members of those escorts stayed outside of the conference
8 rooms given that they were not authorised to be present in
9 the conference rooms. Sometimes it was not possible to go
10 near them to look at them closely but, when one had the
11 opportunity to approach them, it was possible to see that
12 some commanders were accompanied by child soldiers.

13 PRESIDING JUDGE COTTE: (Interpretation) One
14 point of clarification. You said some of them, or was it
15 all that you were able to see during these commanders?
16 Are you in a position to give us the names of the
17 commanders who were accompanied by members of their
18 escorts; that is, guard units who were compelled to stay
19 outside of the meeting rooms?

20 THE WITNESS: In some of the military groups
21 which were based in Ituri there were soldiers who amongst
22 their escorts had adults, so these were commanders whose
23 bodyguards were not child soldiers.

24 with regard to the combatants some of them had
25 bodyguards and, to tell you the truth, I didn't pay too

1 much attention to those details. However, if you look at
2 the programmes that were broadcast over the television,
3 you will realise that there were child soldiers amongst
4 the bodyguards of the combatants. For example, within the
5 FAPC there were no child soldiers in the -- or rather
6 amongst the bodyguards of the commanders. They were not
7 represented in all the meetings. This means that in Ituri
8 there were several combatants and many militia groups, and
9 within the FAPC I did not see child soldiers amongst the
10 members of the escorts.

11 PRESIDING JUDGE COTTE: (Interpretation) You
12 have been extremely clear, Mr witness. Can -- or rather
13 can you not be more precise?

14 THE WITNESS: I think that you can review the
15 footage - the videos - and that may give you a better
16 idea. You see, it was a long time ago. Those events
17 occurred a long time ago, so it's difficult for me to
18 remember.

19 PRESIDING JUDGE COTTE: (Interpretation)
20 Mr O'Shea, you have the floor now for your
21 cross-examination. Please proceed.

22 MR O'SHEA: Good morning, Mr President, your
23 Honours. Thank you very much.

24 QUESTIONED BY MR O'SHEA:

25 Q. Good morning, Mr witness. I hope you're well.

1 This is the second time that I'm questioning you during
2 the course of these proceedings and, just so that you
3 understand, that was for -- that was divided up for a
4 procedural reason, because we were dealing before with
5 five video extracts and then we were dealing with other
6 video extracts and that explains why I'm on my feet twice,
7 just so that you understand.

8 Now, I'm going to try to finish my questions with
9 you as speedily as I can, but of course covering the areas
10 that I feel that I need to cover, but it will assist the
11 exercise of course if, when I ask a question, if you
12 listen to that question carefully and only answer the
13 question which I'm asking you.

14 Now, during the course of your testimony, you
15 indicated -- and I'm referring to transcript 187, page 73,
16 lines 11 to 13, and this is the English transcript, and
17 the reason I was pausing is because I was thinking
18 carefully about whether I need to put this in closed
19 session, and I think I will. I'll just go into closed
20 session for a moment, just to read this one part of the
21 transcript, if I may.

22 PRESIDING JUDGE COTTE: (Interpretation) Court
23 officer. Apparently this question could make it possible
24 to identify the witness so we shall go into private
25 session.

1 (Private session at 10.17 a.m.)

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19 (Open session at 10.18 a.m.)

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

22 PRESIDING JUDGE COTTE: (Interpretation) Thank
23 you. Mr O'Shea.

24 MR O'SHEA:

25 Q. So I just want to ask you a little bit about

1 that pacification commission, if I may. Is it right that
2 the big conference in relation to that commission was held
3 between 4 and 14 April 2003, if you remember?

4 A. No. No. It wasn't 4 April. The work of the
5 pacification commission began in March, 18 March, not on
6 4 April; it was 18 March 2003. That was the beginning of
7 the work done by that commission, not 4 April 2003.

8 Q. Yes, thank you for that clarification. The work
9 of the commission began from 18 March 2003, which we know
10 is the date of the ceasefire. But that work was divided
11 into parts, if I can put it that way, and part of that
12 work of that commission involved a conference, a very big
13 conference which people attended in Bunia, which I'm
14 suggesting took place between 4 April and 14 April. Not
15 that that was the start of the work of the commission, but
16 that those were the dates of a conference relating to that
17 commission. Does that clarify things for you or --

18 A. With regard to the date that you've mentioned,
19 4 April 2003, well, that date is not very far from
20 18 March 2003. From 18 March, as of that date, all the
21 belligerents signed a cessation of hostilities --
22 ceasefire agreement and then after that there were
23 meetings. But I didn't attend all these meetings or
24 conferences. In actual fact, people started to move
25 around, and people would go into their various vehicles,

1 and the peace process began on the 18th. But you are
2 saying that there was a conference on 4 April. That may
3 be so, but if you start as of 18 March, you will get to
4 4 April and between the two dates there was about two
5 weeks, and I believe that the process had already begun
6 whereby the people involved were speaking to each other
7 and engaging in dialogue. It was a process.

8 Q. Yes, I accept that. And I would suggest that
9 the conference which I am referring to ended on 14 April,
10 but that that was not the end of the work of the
11 commission; that the work of the commission continued
12 after 14 April. Is that correct?

13 A. Yes. After 14 April, to the best of my
14 knowledge, the work of the commission continued. Even
15 after the fighting in May, after the departure of the
16 Ugandan army, the work of the commission went on and the
17 goal was to attempt to bring peace back to Ituri until the
18 situation went on to evolve and change, right up until the
19 present time.

20 Q. And I know this is a long time ago, but since
21 you were there I'm going to see if I can help clarify to
22 the Chamber a little bit how things proceeded through you.

23 You stated that you don't contest that there was
24 a conference, but it's not something you've given any
25 specific detail on, and I've given you the date of

1 14 April as the end date of that conference. And I
2 suggest what happened was that there was a conference
3 between 4 and 14 April and then, after the end of that
4 conference, there were working groups that continued up to
5 25 April, and on 25 April there was a final plenary
6 meeting of those working groups.

7 Now, I'm not suggesting that that was the end of
8 the work of the commission. I entirely accept what you're
9 saying, that the work of the commission continued even
10 after that. But I'm suggesting to you that there was a
11 plenary meeting on 25 April 2003 which followed several
12 small meetings which took place after this big conference
13 I referred to. Now, if I explain things in that way, does
14 that help you to recollect how things proceeded?

15 A. Yes, I remember somewhat. I know that there was
16 the official opening of the commission and, after that,
17 there was the official closing ceremony of the
18 Pacification Commission for Ituri. So there was an
19 opening day and a closing day in terms of the actual work
20 of the commission; I remember that very well. But after
21 the opening -- well, there were many meetings amongst the
22 various groups and also with the MONUC. I remember quite
23 well that at the opening ceremony all the groups were
24 represented, and I remember the closing ceremony that
25 marked the end of the work done by the commission. I

1 remember that. And after that there was -- there were
2 other meetings, various other meetings at which Angola,
3 Uganda, MONUC, and the government of Kinshasa were
4 involved with. I remember that quite well. I remember
5 all those meetings.

6 Q. And the closing ceremony that you're referring
7 to which, from what you've just said, was an official
8 ceremony but not necessarily the end of the work of the
9 commission, the closing ceremony that you are referring
10 to, are you referring - if you can help us - are you
11 referring to 14 April, which I say is the last day of a
12 conference, or are you referring to 25 April, which I say
13 was a final plenary meeting, or are you referring to some
14 other date?

15 A. I'm talking about the day on which we finished
16 the work of the commission; it was 14 April. And the
17 opening ceremony was on another date, an earlier date.
18 But after all those dates the work of the commission went
19 on. The work was not finished.

20 Q. And if I say to you that 11 days later after the
21 14th, there was another big meeting relating to the work
22 of the commission, does that ring any bells for you?

23 A. I don't really remember. All this was quite a
24 long time ago. I may remember certain dates; I may have
25 forgotten others. We're talking about 2005, and it's

1 difficult to remember the events that go back to 2005. I
2 think I would have to look at the calendar with all the
3 various events that occurred to remember things more
4 specifically. I must say that a great deal of work was
5 done; many meetings were held.

6 Q. Yes, and if I am to understand your testimony,
7 many meetings were held including after 14 April?

8 MR DUTERTRE: (Interpretation) Your Honour, the
9 witness has said that he does not recall. I'm not
10 fundamentally opposed to this question, but I really don't
11 quite see the purpose of this question. Now, mention was
12 made of the year 2005 on the transcript. Perhaps a
13 clarification is needed with regard to the last answer to
14 this last question.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank
16 you, Prosecutor. Indeed, twice the witness spoke of the
17 year 2005. Apparently, we were speaking of other dates
18 that were such in March and April 2003. I believe you've
19 seen, Mr O'Shea, that the Prosecutor does not have any
20 fundamental objection to the question, but he is basically
21 saying that the witness seems to be saying that he cannot
22 be more specific about these dates. So really it's up to
23 you to determine whether you wish to continue
24 cross-examination on this point, or whether you'd like to
25 ask for more clarification regarding these dates.

1 MR O'SHEA:

2 Q. Yes, there's a date of 2005 that came on to the
3 transcript, but of course we're talking about 2003, aren't
4 we, Mr Witness?

5 A. Yes, I said 2005 because -- well, we're speaking
6 about the year 2003, that is true, March and April 2003.
7 Your questions deal with those months in 2003. Yes, you
8 are correct.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank
10 you, witness, for making that clear for us.

11 Mr O'Shea, please proceed.

12 MR O'SHEA:

13 Q. Sir, you've explained to us that the work of the
14 commission continued after 14 April and you made the
15 statement that there were many meetings of the commission
16 and, if I'm to understand the tenor of your testimony,
17 there were many meetings even after the 14th and not only
18 before the 14th?

19 A. Yes, there were various meetings, but that
20 doesn't mean just that it was 14 April or 18 March. It
21 doesn't mean that the fighting ended in Ituri, because
22 ceasefire agreements had been signed. Even in May after
23 the departure of the Ugandan army fighting continued and I
24 think that the work of the commission was still going on,
25 but I wasn't everywhere as of May 2003. I was not able to

1 take part in some of the meetings, but starting as of
2 March 2003 instead of April, well, there were many
3 meetings and I'm not saying that I was present at all
4 those meetings, but I tried, along with other people, to
5 keep abreast of these changes to see these changes as they
6 were occurring during this period of time.

7 Q. Now, I'm going to ask you some questions about
8 the video extracts which were shown to you and I'm going
9 to confine myself to only certain specific video extracts.
10 The first video extract which I want to talk about is
11 found in 4.18 of the Prosecution binder, and it has been
12 given the evidence number EVD-OTP-00179 and has been
13 admitted as a public document and the English transcript
14 of your evidence in relation to that is T-187 of
15 14 September 2010 and the extract in question was
16 time-stamped by the Prosecution as 15 minutes 46 seconds
17 to 19 minutes 54 seconds, lines 172 to 246 of the French
18 translation.

19 And this video extract, if you will remember, is
20 the one where various people are sitting in a hut-type
21 structure and Kale Kayihura of the UPDF is there
22 essentially leading the meeting and there are various
23 people in that room, including my client. Does that help
24 you recall which video extract we are referring to?

25 A. Yes.

1 MR DUTERTRE: (Interpretation) Could my learned
2 friend be so kind as to give us the line number --

3 THE INTERPRETER: Correction, the page number.

4 MR DUTERTRE: (Interpretation) -- from transcript
5 187?

6 PRESIDING JUDGE COTTE: (Interpretation) And
7 since we're dealing with a number of details here, it is
8 tab 4.18, not tab 4.8.

9 MR O'SHEA: I'll provide that later, but my
10 friend might be in a position to find it faster than me.

11 Q. Now, at line 182 to 183 of the French
12 translation Mr Kayihura says the following, and I'll read
13 in French since we have the translation here in French.
14 (Interpretation) "And that fellow there, I call him my
15 PC, my political commissioner. Let him tell you his
16 name."

17 And then at line 184 another gentleman states
18 "Lobho Gokpa Justin", and Lobho Gokpa is spelled
19 L-O-H-B-O, new word G-O-K-P-A.

20 Now, I notice that the acronym which is used
21 there is "PC" and not "CP". Does that suggest to you that
22 that acronym was an acronym of an English expression, as
23 opposed to a French expression?

24 A. It's from English. It is English and it stands
25 for political commissioner, commissaire politique in

1 French.

2 Q. Yes, thank you very much. And we notice there
3 that Kale Kayihura describes Lobho Gokpa as his PC, his
4 commissaire politique. Now, is it right that Lobho Gokpa
5 was in fact assisting Kale Kayihura in that capacity
6 before joining the FRPI?

7 A. No, no, that was not what happened. I believe
8 that he said that, he called him his PC, because there was
9 a relationship, or there were dealings between the two.
10 That young man would go speak to his friends on behalf of
11 General Kale Kayihura, and the general trusted him and
12 that is why he would give him messages to pass on to his
13 group. So, he would call him his political commissioner
14 in that sense of the word. I really don't know more about
15 that, but I don't think it meant that he really was his
16 political commissioner. There was someone from the FRPI
17 who was a liaison officer and that person would facilitate
18 contacts between the Ugandan general and the FRPI, and I
19 think that is what -- that is why he called that gentleman
20 his political commissioner.

21 MR O'SHEA: May I go into closed session for one
22 moment, your Honour?

23 PRESIDING JUDGE COTTE: (Interpretation) Court
24 officer, if we could go into private session because I
25 believe this may be an identifying question.

1 (Private session at 10.45 a.m.)

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22 (Open session at 10.47 a.m.)

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

24 Honours.

25 PRESIDING JUDGE COTTE: (Interpretation) Counsel

1 O'Shea, please continue.

2 MR O'SHEA:

3 Q. would it be right that you do not know what
4 Lobho Gokpa was doing prior to March 2003?

5 A. I don't know anything. I don't know what he was
6 doing prior to March 2003.

7 Q. And is it also correct that Kale Kayihura was
8 already in Bunia in February 2003?

9 A. Yes, I think that Kale Kayihura was in Bunia in
10 February 2003. That's something he says in his speech.
11 He says that before arriving in the town of Bunia, he had
12 to carry out negotiations with the UPC before the
13 pacification campaign.

14 Q. So it would be fair to say, wouldn't it, that
15 you would not know if Lobho Gokpa assisted Kale Kayihura
16 in any way in February 2003?

17 PRESIDING JUDGE COTTE: (Interpretation)
18 Prosecutor, please go ahead.

19 MR DUTERTRE: (Interpretation) I object to this
20 question. The witness has already answered that he didn't
21 know what Lobho was doing before he met him at the start
22 of March and, furthermore, with regards to this question,
23 with regards to the relation between the general and
24 Lobho, he clearly indicated that Lobho was the officer,
25 liaison officer, between his own group and also with the

1 FRPI, so I don't think there's any need to go back over
2 something that the witness has already gone into in full.

3 PRESIDING JUDGE COTTE: (Interpretation)
4 Certainly. The witness did explain, as far as his memory
5 allowed him to do so. Please continue with another
6 question, Counsel O'Shea.

7 MR O'SHEA: well, your Honour, if I may, the
8 witness expressed an opinion about the sentence which I
9 read out with regard to Kale Kayihura expressing that he
10 was referring to my PC. So the purpose of my questions
11 have been to highlight the gaps in this witness's
12 knowledge. It's not only important to establish what the
13 witness knows, but also what the witness does not know, in
14 order to evaluate that answer from the witness. So that
15 was the purpose of my last question.

16 PRESIDING JUDGE COTTE: (Interpretation) That's
17 certainly what we understood. We did understand that all
18 these questions had the objective that you have just
19 mentioned. However, there comes a time when you have to
20 stop, to the extent that the witness has already provided,
21 as it would seem, the most information that he has. If
22 you wish to reformulate your question, but in a much more
23 precise way in order to allow the witness to find himself
24 where he -- with regards to the meanderings of your
25 arguments that's not pejorative in any way. But perhaps

1 if that was done, that would be a possibility but
2 otherwise, we have to progress with other questions. And
3 I just want you to say that these meanderings I referred
4 to, I don't mean that in a pejorative way. Thank you.
5 The floor is over to you.

6 MR O'SHEA: Yes, not taken in that way, your
7 Honour.

8 Q. All right, then. Well, a moment ago you
9 expressed the opinion that when Kale Kayihura was stating
10 that -- was referring to Lobho Gokpa as his political
11 commissioner, that that didn't mean that he actually was
12 his political commissioner. So what I'm suggesting to you
13 is that if there had been an official relationship between
14 Kale Kayihura and Lobho Gokpa, in the month of
15 February 2003, you would not know that?

16 A. I'm going to answer the following to you:
17 Before the arrival of Lobho and his group in this meeting,
18 firstly, there were negotiations but, as far as I am
19 concerned, I didn't know anything about it. I arrived to
20 this place on that day and that is the reason why you
21 said -- when he said that he was his PC, that is because
22 he had just said it in that way.

23 But if you look at the relationship between this
24 general and this officer, this was a relationship that
25 consisted of this officer establishing a liaison between

1 his group and this general. It was that. And that is the
2 reason why he said that he was his PC. There could be an
3 officer in a group who explains things, how they happen.
4 He can say, for example, he can go and say to the group to
5 open the road towards Bogoro, and this officer is going to
6 say this to his group.

7 I think that at a certain time the general asked
8 this officer, or told him, that he mustn't treat the
9 population badly, so there were these two different
10 persons. They got on very well. I explained everything
11 that I know with regards to their relationship. But
12 before this date, I know nothing. But after March, from
13 the month of March, the month in which I got to know him,
14 I said what I know. But with regards to February, I don't
15 know anything. I think that you've understood my
16 explanations.

17 Q. Yes, thank you. That clarifies things quite
18 nicely. Now, at this meeting there were various people
19 present and certain people were described as visitors.
20 And on -- at line 235 to 236 of the French translation of
21 the video extract, we see the following sentence:
22 (Interpretation) "Please receive these visitors. There
23 are visitors as well as persons from the Zumbe mountains
24 such as the colonel who is permanently here."

25 Now, the reason why I'm reading you that sentence

1 is to suggest that --

2 MR DUTERTRE: (Interpretation) Your Honour, I
3 just wanted to ask, just to be fair towards the witness, I
4 suggest that we play this passage so that he knows what
5 comes before, what comes afterwards, so that he can see
6 the context in which these words are said. Here we are
7 talking about memory. This is something that was played
8 last week, among 30 other ones. To me, it seems quite
9 complicated for the witness with regards to reacting to
10 that, if he can't see the whole sequence.

11 MR O'SHEA: I think that my learned friend
12 really should allow me to decide how I proceed because I'm
13 targeting very specific points and it's really not
14 necessary for me to waste the Court's time by playing
15 every video extract which my learned friend has played or
16 even a substantial number of them. I've pointed out at
17 very beginning that I only intend to play very specific
18 video extracts and I'd like to keep to that because I
19 would like to keep to the Court's promise to finish these
20 cross-examinations by the end of this week.

21 PRESIDING JUDGE COTTE: (Interpretation) Yes,
22 please go ahead.

23 MR DUTERTRE: (Interpretation) I'm very
24 sensitive to the time issue, and you will have noticed
25 that I haven't objected with regards to the lack of

1 passing on -- with regards to the first question of the
2 liaison officer, but now this is a question that has to be
3 put in its context. There are different persons who are
4 presented, and some were presented before this extract,
5 some afterwards, and it would appear important to me
6 that -- well, this is a matter of fairness towards the
7 witness, being able to see this extract. Time is one
8 thing, but also you have to be fair. He has to be able to
9 answer in a useful way for the Chamber so that he can form
10 an opinion.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank
12 you. When Counsel O'Shea started asking questions with
13 regards to this video extract 4.18, he asked the witness
14 if the witness remembered what the sequence was concerned.
15 To the surprise of the Chamber, the witness said that he
16 did remember it. That is the reason why Counsel O'Shea
17 started his cross-examination. The first question was
18 put. This was asked without the extract being played.

19 Now, with regards to 4.18, you're going to finish
20 your question without it being played unless, witness, you
21 think, given the experience that you've had over the last
22 ten minutes, that it is necessary for you to see this
23 extract. Is it important for you to see this extract, or
24 do you think that you are able to answer Counsel O'Shea?

25 where it comes to coming extracts it would

1 perhaps be wise certainly to play the extracts about which
2 the cross-examination shall be to the extent that we've
3 had a break, which means that the witness needs to be able
4 to answer the questions knowing what the matter at hand
5 is. But with regards to 4.18, witness, would you like to
6 see that again, or are you able to answer as you have just
7 done Counsel O'Shea given what you remember from last
8 week? I am listening to you.

9 THE WITNESS: I remember these extracts and I
10 think that we are speaking about the extracts which were
11 shown, but it is better if we can see the pictures about
12 which question should be asked. In this way I will better
13 understand the questions and I will be able to answer
14 without any problems.

15 PRESIDING JUDGE COTTE: (Interpretation) So the
16 Chamber really would like to thank you for the concern
17 that you have shown such that the trial functions in the
18 most diligent way possible and our objective of not
19 playing videos which were shown last week without any
20 point, but it is important that the witness is able to
21 answer you in the most enlightened way possible and as
22 such help the Chamber with answers that are as precise as
23 possible.

24 The Chamber would just like there to be no
25 technical difficulty causing us a problem when it comes to

1 showing these videos, or video 4.18, particularly the
2 extract which corresponds with the question that you want
3 to ask and goes from 235 and thereon from the French
4 translation of the transcript.

5 So who would show this? Would it be the
6 Registry? I think so. You will understand that this is
7 video 4.18. This is a video which is relatively short, if
8 my memory serves me well. No, it's relatively long, so we
9 have to find the appropriate passage where you have this
10 issue of "Please welcome these visitors."

11 MR O'SHEA: Your Honours, it's a shame my learned
12 friend didn't wait for my question before he raised to his
13 feet. He simply -- he raised to his feet simply on the
14 basis that I had read out a sentence and not on -- with
15 absolutely no knowledge of the question I was going to
16 ask.

17 But if it's the wish of the Court that we play
18 this specific extract, I don't want for the purpose of my
19 cross-examination to play the entire extract, with
20 respect. If that's going to be done, it's being done as
21 part of the examination-in-chief of the Prosecution. It's
22 not my wish, but I can certainly play those words that I
23 just read out for the witness, but it will require me a
24 few minutes to work out the time-stamps.

25 PRESIDING JUDGE COTTE: (Interpretation) Counsel

1 O'Shea, please do not misunderstand. The Chamber is
2 perfectly aware of the concern that you were showing of
3 not making the proceedings last longer for no point.
4 However, the words that the witness has just expressed
5 show that there is no point of trying to make him find
6 these sentences without the visual input.

7 So we're going to take the small amount of time
8 that is necessary in order to find on video 4.18 the
9 passage during which the words were spoken about which you
10 wish to ask questions. I would just ask the
11 technicians -- well, I'll ask them to carry out this
12 research in this regard. Well, I don't know if it's the
13 technicians or who. Court officer, who is going to show
14 this video during the cross-examination? Is it you, or is
15 it Counsel O'Shea?

16 Prosecutor.

17 MR DUTERTRE: (Interpretation) Your Honour, a
18 couple of points. I think that the court officer can show
19 it from eCourt, but currently in eCourt you have the
20 non-improved Prosecution version. However, I spoke with
21 Counsel O'Shea before the start of the hearing to ensure
22 that he did have the CD with the extract - the improved
23 extracts - I think this is correct, if they have to be
24 shown.

25 Then the next point, this refers to the third

1 minute I think. I think it's around 3 minutes in the
2 time-stamp. It's important to play a bit before and a bit
3 afterwards to have the context.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank
5 you very much for this clarification. Let's take the
6 necessary time. There's no point in having imprecise
7 answers from the witness.

8 MR O'SHEA: I think if we're going to go this
9 route, Mr President, with your permission I will play -- I
10 will play an extract which is slightly larger than that
11 sentence and allow the witness to listen to a point from
12 slightly earlier, but I'll just find the appropriate point
13 and I'll have to play the laptop aloud in order to
14 identify with my ears where it starts.

15 PRESIDING JUDGE COTTE: (Interpretation) Please
16 go ahead, Counsel O'Shea. Take your time.

17 MR O'SHEA: I'll do this bit with the translation
18 just so that we know where to start and to stop, so this
19 one will be played and I'm going to play from -- on the
20 French transcript the translation would run from, I think
21 this is an estimation, 206 on page 5 to 236 on page 6, so
22 we'll just allow that section to play with translation and
23 then I will then ask my question to the witness.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank
25 you, Counsel O'Shea. So now the screens have to work for

1 the witness, the accused and ourselves. They have to be
2 able to show this excerpt usefully. I would like to take
3 this opportunity to remind you that we have -- in this day
4 today we have a particular organisation for the hearing.
5 11.45 we're finishing and then it's 1.15 to 3.15, so we
6 have around half-an-hour left.

7 MR O'SHEA: We'll play that now.

8 (Video extract played)

9 THE INTERPRETER: (Interpretation) "There's
10 another who comes after him - another officer who comes
11 after him - and he's the one who is over there. He's
12 going to present -- introduce himself. 'I'm called Pascal
13 Khalezo and I assist (indiscernible) Germain in the field
14 of information. I'm from Geti.' 'Do you work for the
15 intelligence service?' 'Yes.'

16 'Okay, there's another one who came with him with
17 that one there, so he can give you his name as well as the
18 function which he holds.' 'Yes, my name is Lobo Kawa.'
19 'Lobo?' 'Lobo Kawa Serge.' 'And which function do you
20 hold within your group?' 'I am the commander of
21 operations.'

22 'Please welcome these visitors. There are
23 visitors as well as persons from the Zumbe mountains, such
24 as the colonel who is permanently here. He is over there.
25 He can introduce himself, once again, as well as his

1 function."

2 MR O'SHEA:

3 Q. Okay, finally here's my question. Is it right
4 that when the expression "visitors" is being used, the
5 people who are being referred to are Germain Katanga,
6 Pascal Khalezo and Lobo Kawa Serge? And I'll just give
7 spellings for the sake of the transcript: Pascal Khalezo,
8 Khalezo is K-H-A-L-E-Z-O; and Lobo Kawa is L-O-B-O, new
9 word K-A-W-A; and Serge is S-E-R-G-E.

10 So when we have Mr Katanga and then these two
11 other people introduced, followed by the sentence (French
12 spoken with no interpretation). So would it be correct to
13 say that the visitors being referred to in this context
14 are Mr Katanga, Mr Pascal Khalezo and Mr Lobo Kawa Serge?

15 A. Yes.

16 Q. Yes, thank you.

17 And just a procedural -- well, not quite a
18 procedural matter, but I'm being informed by Mr Katanga
19 that what's written as Khalezo should read Alezo, spelt
20 A-L-E-Z-O. Could you help us with that, so that we have
21 the correct name on the transcript?

22 A. We all listened to the video extract, but I
23 think that your client knows him very well because he
24 worked with him. He collaborated with him. He was with
25 him, so he knows him better than me.

1 PRESIDING JUDGE COTTE: (Interpretation)
2 Mr witness, on a different issue, the usher thought you
3 were indicating that the hearing should be briefly
4 interrupted because you wanted to excuse yourself for a
5 short while. Is that the case, or can we continue sitting
6 for the half hour -- the next half hour?

7 THE WITNESS: I believe that, if it is possible,
8 I can go out briefly before returning.

9 PRESIDING JUDGE COTTE: (Interpretation) Very
10 well. Security agents, please kindly escort out
11 Mr Katanga and Mr Ngudjolo so that the witness can leave
12 the courtroom for a brief moment.

13 (The accused exit the courtroom)

14 PRESIDING JUDGE COTTE: (Interpretation) Court
15 officer, let us go into closed session for that purpose.

16 (Closed session at 11.17 a.m.)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Open session at 11.26 a.m.)

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

13 PRESIDING JUDGE COTTE: (Interpretation) Thank
14 you, court officer.

15 (The accused enter the courtroom)

16 PRESIDING JUDGE COTTE: (Interpretation) The
17 accused persons are back in the courtroom. Mr O'Shea,
18 please continue with your cross-examination. The witness
19 still remembers the video extract that you played and he
20 remembers also the question that you asked him about the
21 visitors. That is where we broke off.

22 MR O'SHEA: Yes. Thank you very much. And the
23 witness gave an answer to that question. I don't know if
24 it's reflected in the French transcript.

25 MR DUTERTRE: (Interpretation) It is page 37,

1 line 4.

2 PRESIDING JUDGE COTTE: (Interpretation) Yes.
3 The answer is "Yes" on page 36, that is line 16. Is it
4 correct that then the witness answered "Yes"? Then you
5 asked another question linked to a statement by
6 Mr Katanga, talking about Alezo rather than Khalezo, and
7 you asked the witness whether he could assist us. And on
8 line 10 the witness answered, "Yes, we have all viewed the
9 video footage but I think that your client knows him very
10 well because he worked with him and he collaborated with
11 him." This is on lines 10, 11, 12 on page 37 of the
12 provisional French transcript. That is where we are at.
13 In other words, the witness indicated to us that if
14 Mr Katanga knows that it is Alezo, he is in the best
15 position to give us the spelling of the name.

16 I think that is the interpretation of the answer;
17 is that correct, Mr Witness?

18 THE WITNESS: Yes.

19 MR O'SHEA:

20 Q. Now, this was a long time ago, and this is not a
21 memory exercise and so don't think that I draw any
22 particular conclusions from you not remembering specific
23 details. But I'd like to ask you, if I may, for some
24 clarification, to the extent that you're able to remember,
25 and if you're not able to remember, that's fine.

1 Now, we have a video extract which shows certain
2 people sitting around having a discussion, including Kale
3 Kayihura, including Mr Katanga and others. Now, do you
4 remember if, when Mr Katanga entered the room, you were
5 already in the room, or if, when you came in the room,
6 Mr Katanga was already in the room? So I'm going back now
7 to the very beginning of the meeting, before the meeting
8 starts, and I'm just wondering if you come into the room
9 when Mr Katanga is already seated, or if Mr Katanga comes
10 in when you're already inside waiting for him. You may
11 not remember or you may remember. Can you help us with
12 that?

13 A. Thank you for that question. I think Mr Katanga
14 arrived later. I was already inside at the venue of the
15 meeting. There were other people there. Mr Katanga
16 arrived later, at which point the general said, "These are
17 my visitors." If you replay the video extract, you will
18 hear the general say, "These are my visitors. You have to
19 welcome them." It was at that point that Katanga had
20 arrived. After that he said, "Mr PC, you can introduce
21 the others." And if you replay the video footage, you
22 will see those people.

23 Q. Yes, thank you very much. And did you get the
24 impression that Mr Kale Kayihura and Mr Katanga were
25 meeting for the first time?

1 MR DUTERTRE: (Interpretation) Your Honour, this
2 is a speculative question because he is seeking the
3 opinion of the witness, and the -- my colleague knows it
4 better.

5 PRESIDING JUDGE COTTE: (Interpretation) The
6 word "sensational" or something is a bit too much. But,
7 Mr O'Shea, you can rephrase the question.

8 We have been told that I should speak more
9 slowly. But there was a word "sensation," "sensation" in
10 French that was used, and Mr O'Shea is being asked to
11 rephrase now by using the word "know."

12 MR O'SHEA: I'll deal with it in a different way,
13 your Honour, if I may. Can we play an extract?

14 PRESIDING JUDGE COTTE: (Interpretation) Very
15 well. Which extract would that be?

16 MR O'SHEA: I'm going to stay on the same
17 extract.

18 PRESIDING JUDGE COTTE: (Interpretation) In
19 other words, what is the particular segment?

20 MR O'SHEA: We're going to go to 0 -- sorry, to
21 0 seconds to 15 seconds on the extract itself.

22 (Video extract played)

23 THE INTERPRETER: (Interpretation) "Today I was
24 lucky to have high-ranking visitors."

25 MR O'SHEA:

1 Q. Before I play this, Mr Witness, I want you to
2 listen to the video in its original version. So, may I
3 just ask you, are you listening in the Swahili? Or are
4 you listening in the French?

5 A. Swahili.

6 MR O'SHEA: Okay. So if that extract could be
7 played, just the first 15 seconds please, with
8 translation, just for the assistance of the Judges and the
9 Prosecution and so forth.

10 (Video extract played)

11 THE INTERPRETER: (Interpretation)

12 "Furthermore, today I was lucky enough to receive
13 high-ranking officers coming from the region of
14 Songolo-Geti, and we had not been able to meet with them
15 so far. I think there was a problem."

16 MR O'SHEA:

17 Q. Now, when you heard those words being spoken,
18 did that -- what was your impression, having heard those
19 words? Was it your impression that Mr Kale Kayihura was
20 meeting Mr Katanga for the first time, or not?

21 MR DUTERTRE: (Interpretation) Your Honour, I'm
22 sorry to insist, but counsel is still talking about an
23 impression. The witness is being asked to give his
24 opinion, to express an opinion, and I am objecting to
25 that. He cannot be asked to give his impression or his

1 opinion.

2 PRESIDING JUDGE COTTE: (Interpretation)

3 Mr Prosecutor.

4 MR O'SHEA: Can I answer this?

5 PRESIDING JUDGE COTTE: Maître O'Shea.

6 MR O'SHEA: Yes.

7 PRESIDING JUDGE COTTE: Maître O'Shea.

8 (Interpretation) Mr witness, I'm the one who will put
9 that question to you. To your knowledge, had Mr Kale
10 Kayihura met with Mr Katanga before that?

11 THE WITNESS: Your Honour, thank you for that
12 question. If you follow the video extract attentively,
13 well, it is not a photograph; it is someone who is
14 speaking and he said, "we were lucky enough to receive
15 visitors." I believe that is clear. This would seem to
16 mean that they had never met each other before and that
17 was the first opportunity for them to meet. I believe
18 that what we see in the video footage reflects the
19 reality. It is not up to me to give an opinion on what he
20 says, because he says, "we had the luck to meet those
21 people." It is clear and, in my opinion, it means that
22 those people had never met each other before and so they
23 were lucky enough to be meeting each other for the first
24 time on that occasion.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank

1 you, Mr witness.

2 Mr O'Shea, from the witness's answer, you have to
3 understand that according to him, that was the first time.
4 You can continue.

5 MR O'SHEA: Yes, indeed. And one can see from
6 the witness's answer that a person who's there, who
7 understands the language, who understand the culture, will
8 have an impression of what's being said at the time. And
9 my learned friend has consistently, when I've objected to
10 video extracts, pointed out that I will have the
11 opportunity to cross-examine on words which are not words
12 of the witness. So it's not fair for my learned friend to
13 then come now and accuse me of speculation when I ask the
14 witness to give his impressions of the words of others.
15 If that's the case, then we have to have these people come
16 to court, Mr Kale Kayihura, whatever. But if it is deemed
17 fair that this witness can come and give testimony on what
18 other people are saying, then, in my respectful
19 submission, I'm entitled to ask his impressions of the
20 words that are being spoken. And I only raise that
21 because I think I'm going to have to do it again.

22 PRESIDING JUDGE COTTE: (Interpretation)
23 Mr O'Shea, the important thing was for you to have an
24 answer and that beyond you - and that is even more
25 important - the Chamber should have an answer. Please

1 continue.

2 MR O'SHEA: Thank you very much, Mr President.
3 That was very helpful.

4 PRESIDING JUDGE COTTE: (Interpretation)
5 Mr O'Shea, we have three minutes left of recording time.

6 MR O'SHEA: well, I'm about to play an extract,
7 so we'd better break.

8 PRESIDING JUDGE COTTE: (Interpretation) I think
9 that would be wise. Thank you, Mr O'Shea.

10 Considering that Mr O'Shea and the team of
11 Mr Ngudjolo will project video extracts, they should
12 ensure that the technical aspects are well taken care of.
13 And, court officer, I believe that -- I think something
14 should be done about my microphone because, usually, I
15 speak directly into the microphone, but on the transcript
16 I am seeing that "occupied channel" and my words cannot be
17 transcribed.

18 So, we are going to resume at 1.15 to 3.15, and I
19 will ask the security officers now to escort Mr Ngudjolo
20 and Mr Katanga out of the room for lunch. And, court
21 officer, let us go into closed session so that the witness
22 should leave the courtroom.

23 Mr witness, we will see you again at 1.15 p.m.

24 (The accused exit the courtroom)

25 (Closed session at 11.43 a.m.)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Open session at 11.44 a.m.)

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

12 PRESIDING JUDGE COTTE: (Interpretation) The
13 hearing is suspended. We will meet again at 1.15.

14 (Recess taken at 11.45 a.m.)

15 (Upon resuming at 1.09 p.m.)

16 (Closed session)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Open session at 1.19 a.m.)

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

4 (The accused enter the courtroom)

5 PRESIDING JUDGE COTTE: (Interpretation) Thank
6 you, court officer. The two accused persons are with you
7 us. The witness is with us.

8 Prosecutor, I believe that you wish to inform the
9 Chamber of something, that apparently you have come -- you
10 are in agreement with the Defence regarding the fate of
11 the various versions of the videos, the improved videos
12 which were enhanced by the Registry.

13 MR DUTERTRE: (Interpretation) Yes, your Honour.
14 This will be a very brief set of remarks, five points.

15 My first point is as follows. I said that there
16 might be a problem with version 1.5, but that problem has
17 been dealt with.

18 My second point is as follows. Everyone received
19 the CDs of extract 8.2, extract 8.2. The Defence of
20 Mr Katanga told me that they had no problem with that
21 particular extract, which had been shortened slightly, and
22 I think that the Defence team of Mr Ngudjolo will be in a
23 position to respond quickly to this point. Once we have
24 that answer, we can replay the extract, 8.2, and in the
25 metadata field we can make one change and we can indicate

1 until the time-stamp that was modified, as well as the new
2 date, the new date that the extract was downloaded into
3 eCourt.

4 My third point is as follows. The Prosecution
5 has received consent from the two teams to replace all the
6 extracts that were shown, 1 to 8, without any changes to
7 the metadata - that's my personal addition - and this has
8 to do with all the various extracts from videos 1 to 8,
9 with the exception of 2.3 - extract 2.3 - extract 2.4,
10 extract 2.9, extract 5.1, extract 5.2, extract 5.3 and
11 extract 5.4. With regard to those extracts, it is the
12 Prosecution version that's currently in eCourt that shall
13 remain.

14 Certain video extracts between 1 and 8 were not
15 shown at all so we need not concern ourselves with them.
16 That was my fourth point. And we need not concern
17 ourselves with the extracts that had been admitted by the
18 Chamber.

19 PRESIDING JUDGE COTTE: (Interpretation) There
20 was that second point, the matter of extract 8.2. The
21 beginning had been changed slightly. The beginning had
22 been cut off so as to avoid revealing identifying
23 information.

24 MR KILENDA: (Interpretation) Once again, we do
25 have a problem with that particular matter.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank
2 you for that. Now, the Chamber can take note of the
3 agreement from the Defence teams regarding the proposals
4 from the Prosecution and we can ensure that the fate of
5 these various video extracts are in keeping with what --
6 well, with the manner that we used them during our
7 previous hearing.

8 Now, Mr O'Shea, you may resume. We have two
9 hours with the witness now.

10 MR O'SHEA: Thank you very much, Mr President.

11 Q. Good afternoon again, Mr witness.

12 A. Good afternoon.

13 Q. Now, before the break, we were discussing the
14 relationship of the visitors, the relationship between the
15 visitors and Mr Kayihura. I'm now going to come to the
16 relationship between the visitors and Mr Lobho Gokpa. So
17 I'm going to play you two extracts which I'd like you to
18 listen to and then I will put my question. When I say two
19 extracts, it's in fact one extract but it's two passages
20 in the extract, and it's the same extract which is found
21 at 4.18 of the Prosecution binder, EVD-OTP-00179, public,
22 and it's the points in the extracts which are, on the
23 extract itself, 36 seconds to 54 seconds, and then 40
24 seconds and 1 minute 34 seconds.

25 Since the witness will be listening to this in

1 Swahili in any event, we can have translation, and then
2 I'll put my question.

3 THE INTERPRETER: Message from the Swahili booth.
4 References, please.

5 PRESIDING JUDGE COTTE: (Interpretation) Sir,
6 could you provide us with the various line references in
7 the translation so -- and the transcripts so that the
8 interpreters can find their spots.

9 MR O'SHEA: Mr Interpreter, the parts that I'm
10 going to play effectively run from line 184 to lines 190
11 of page 4 of the French translation, and lines 191 and 192
12 of page 5 of the same translation.

13 PRESIDING JUDGE COTTE: (Interpretation) Very
14 well. Just a correction to the transcript: "lines 194"
15 and not "page 190."

16 (Video extract played)

17 THE INTERPRETER: (Interpretation) "I call him
18 my PC."

19 PRESIDING JUDGE COTTE: (Interpretation) Just a
20 moment, please. Yes, Mr witness. You raised your hand.
21 What do you wish to tell us?

22 THE WITNESS: This has to do with this particular
23 video extract. Mr O'Shea said that it would start at the
24 33rd second or the 36th? I just wanted to ask about that.

25 PRESIDING JUDGE COTTE: (Interpretation)

1 Mr O'Shea, please give us that detail. Now, I think it
2 would be more easier if you were to give us that
3 particular detail.

4 MR O'SHEA: Yes, I'm glad to see you are
5 following so attentively. It's second 36 we're starting
6 at.

7 PRESIDING JUDGE COTTE: (Interpretation) So,
8 second 36. We can now view the video. Thank you.

9 (Video extract played)

10 THE INTERPRETER: (Interpretation) "Mathieu, and
11 that person there I call him my PC, my political
12 commissioner. Let him identify himself. Lobho Gokpa
13 Justin. Please, I'm asking him to introduce the visitors.
14 He was my liaison officer. Let us begin with the
15 higher-ranking people.

16 Thank you, commander. We have a great deal of
17 luck to be able to meet today. This is a lucky stroke for
18 us. God has done miracles. We are pleased to meet with
19 the people from the UPC and we, we are part of the Forces
20 de Résistance Patriotique en Ituri, but we are in our
21 respective villages. And today we have a good opportunity
22 to come here and meet with this person and talk about
23 these various problems, but these people are not from the
24 UPC. They left the UPC. Yes."

25 MR O'SHEA:

1 Q. Now, when you listened to those words, on the
2 basis of your knowledge of this particular meeting, did
3 you have the impression, or were you aware, that this was
4 the first time that Mr Lobho Gokpa and Mr Germain Katanga
5 were meeting?

6 A. Thank you for the question. I think that Lobho
7 Gokpa said that those people lived in the villages located
8 around Bunia and, to my knowledge, Lobho Gokpa and Germain
9 knew each other. I will say that he was his superior,
10 because sometimes he would say or he would introduce him
11 as a colonel, as a superior. I knew that the two people
12 knew each other.

13 Q. Do you know from which village Lobho Gokpa was
14 based, or came?

15 A. He was living in Zumba, I believe.

16 Q. And do you know in which village Mr Katanga was
17 living?

18 A. I never went to his village. I heard that he
19 was based in Geti.

20 Q. And do you know where in Geti he was based?

21 A. Thank you for the question. I believe that I
22 answered. I heard that he lived in Geti and I've never
23 been to Geti. According to Lobho, he said that their
24 commander lived in that place. I have never set foot in
25 Geti, so I only received that information secondhand.

1 Q. Can you confirm that the -- you previously
2 confirmed that the place where this meeting was taking
3 place was at the airport at Bunia. Can you confirm that
4 the UPDF had a position at the airport at Bunia since
5 1999?

6 A. That meeting was held at the airport in Bunia,
7 as you just said, and the UPDF had set up operations in
8 Bunia and that had been for a while.

9 Q. And can you confirm that, even when the UPC
10 occupied Bunia, the UPDF occupied the airport?

11 A. That's right. The UPDF was at the airport and
12 controlled the airport, and no one drove them away from
13 that place. When the time came, the UPDF left the airport
14 and other people came to take control of that place and
15 ensure safety there.

16 Q. Now, you've placed the UPDF withdrawal as being
17 6 May. Now it's accepted that that was the official date
18 upon which the Ugandans withdrew, but if I suggest to you
19 that the withdrawal of the Ugandan troop was a gradual
20 process which took place between 24 April and 14 May, even
21 though the official withdrawal was on 6 May, is that
22 something you can accept?

23 A. I agree with your suggestion, which is correct.
24 From the 6th there was no one responsible for safety of
25 people, so they left the 6th. I agree with your

1 suggestion.

2 Q. Now, I'm going to play another video -- short
3 video excerpt to you, which is part of the same extract,
4 EVD-OTP-00179, public, and I'm going to play from 1 minute
5 34 seconds to 2 minutes 20 seconds of that extract. And
6 it can be -- as I said before, as the witness is listening
7 in Swahili it can be translated just so that we can place
8 ourselves. And the line numbers for the interpreters
9 would be line 198, or 199, to 205 on page 5 of the French
10 translation, but I think the extract will finish at line
11 201.

12 (Video extract played)

13 THE INTERPRETER: (Interpretation) "For the time
14 being, we are in a period of pacification. That is why
15 they have come to see what they can do to ensure
16 pacification. Otherwise, the ceasefire won't be signed
17 and all the problems have to be prepared properly. The
18 person who has arrived today is an authority. He is the
19 commander-in-chief of the force that is called Forces de
20 Résistance Patriotique en Ituri. He has a name and he
21 will identify himself and tell us where he is from. 'My
22 name is Katanga, Germain.' 'Where do you come from?'
23 'Geti.'"

24 MR O'SHEA:

25 Q. Now, when one listens to the original extract,

1 as you have just done, the following expression is used,
2 "Kamanda Mukuu." And I will spell that: K-A-M-A-N-D-A
3 and Mukuu is spelt on the Swahili transcript provided by
4 the interpreters -- provided by the Prosecution, excuse
5 me, as M-U-K-U-U. Now, can you confirm that the word
6 "Mukuu" is used as an expression of respect?

7 A. They said "Kamanda Mukuu," that is to say, the
8 commander of all those people. They were speaking of the
9 commander-in-chief of the group, of the entire group.

10 Q. Can I suggest to you that if the intention was
11 to refer to the entire -- the commander-in-chief of the
12 entire group, that the expression "Kiongozi" would have
13 been used, which is spelt K-I-O-N-G-O-Z-I.

14 A. I think that the question isn't in the fact
15 that -- it isn't -- it's not important what I think or
16 not. The words are said in the video and that's what
17 needs to be followed. When somebody says "Kamanda Mukuu,"
18 that means "chief commander," that is to say the
19 commander-in-chief of the FRPI. I think that that is the
20 meaning, the commander-in-chief of the FRPI.

21 Q. Now, is it within your knowledge that on 3
22 April 2003 there was an attack by the UPDF on the UPC at
23 Dodro, D-O-D-R-O?

24 A. I received this information, yes.

25 Q. And the UPC had retreated there after leaving

1 Bunia and going through a place called Bule; is that
2 correct?

3 A. As you followed the general himself saying, he
4 said that the UPC army went through Bule. They fought in
5 Drodro. I think that it's clear. I also heard it from
6 Afande himself, the commander who was speaking himself.

7 Q. And at the time that the UPC retreated to Bule,
8 the UPDF was not yet there; is that right?

9 A. I have no confirmation of that. But I think
10 that was the case. When the UPC left Bunia, they left,
11 and there was fighting with different armed groups.

12 Q. I'm going to make reference to the video extract
13 which is 4.17 in the Prosecution's binder, and it's
14 EVD-OTP-00178, public. And, Mr Witness, this extract
15 which I'm referring to is the extract which was shown to
16 you immediately before the extract where Mr Katanga
17 appears, and is essentially an earlier part of the same
18 meeting. And I'll tell you the bit that I'm interested in
19 and you can tell me if you remember or you don't remember
20 this particular part of the speech of Kale Kayihura. And
21 if you do remember, then I can ask you a question about
22 it. If you don't, then we may have to go on and play the
23 video extract.

24 And if my learned friend wants me to play the
25 video extract anyway, I hope it will count against the

1 Prosecution time and not the Defence time.

2 MR DUTERTRE: (Interpretation) No. It's the
3 time of the Defence because the Defence also has to ask
4 questions but, above all, I think that there was the
5 decision which was made this morning, and I just want to
6 express a wish on my part. There was a ruling in this
7 regard and that's something we're going back on now. So
8 what I would like to do is just state that.

9 PRESIDING JUDGE COTTE: (Interpretation) First
10 of all, we were reminded that we're not respecting the
11 five-second rule here after each intervention.

12 Counsel O'Shea, if I see the duration of the
13 video is a short video, let's show it. It's a very short
14 duration and that will avoid us having to -- enable us to
15 avoid having to go into sub-discussions. So, let's show
16 this video 4.17 which goes from 12 minutes 48 to 13
17 minutes 42. So that's something we can show and you can
18 ask your questions.

19 (Video extract played)

20 MR O'SHEA: Yes, I think the interpreters are
21 waiting for line reference. Mr Interpreter, we are
22 looking at pages 3 and 4 of the French translation, and I
23 think it begins to run from line 112 on page 3, but my
24 learned friend from the Prosecution might be able to
25 confirm that, or not. In fact -- in fact, I can confirm

1 it. No, I can't. But I think it runs from about line
2 112.

3 PRESIDING JUDGE COTTE: (Interpretation) Please
4 go ahead.

5 MR DUTERTRE: (Interpretation) Always wanting to
6 help my colleague, for the extract in question, it is from
7 line 142, if I'm not wrong.

8 PRESIDING JUDGE COTTE: (Interpretation) Very
9 well. Line 142. Interpreters, page 3 of the French
10 translation of the transcription. We are therefore going
11 to show, once again, the extract concerned, and with some
12 luck this will all correspond.

13 MR O'SHEA: well, in fact, the part that I was
14 going to refer to the witness actually falls before the
15 start of where the Prosecution played it. But, given the
16 purpose of the exercise is to remind the witness - and
17 maybe everyone else - I think we can allow the witness to
18 listen to the extracts played by the Prosecution, and
19 then, with your Honour's leave, I can ask him if he
20 remembers -- I can put to him what was said just before
21 then, and he can tell me if he remembers, or not. And if
22 he does, then we can move forward without me going to the
23 full video. If he doesn't, then I will go to the full
24 video, in order to save time. Because I think the purpose
25 of the exercise is to remind the witness of the extract.

1 So, once he's reminded, perhaps he may be able to assist
2 without me playing other parts.

3 So, with your Honour's leave, we can proceed to
4 play what we were intending to play and this will remind
5 the witness, and then I will ask my question from then.

6 PRESIDING JUDGE COTTE: (Interpretation) The
7 important point is to play the excerpt, which is going to
8 be the basis of the question that's put. If that's the
9 case, go ahead, Counsel O'Shea.

10 (Video extract played)

11 THE INTERPRETER: (Interpretation) "We came to
12 an agreement with the commander with regards to certain
13 forces. We had a meeting here in Kpandroma, Irumu and
14 with those from Kasenyi as well, with all the commanders
15 who are here, and we came to an agreement with regard to
16 the principle of supporting the ceasefire. That's what I
17 wanted to say. Our plan is that after the implementation
18 of the CPI we will leave here, but we would ask that, when
19 we go to leave this place, that inevitably there be an
20 arrangement; let us say an arrangement with regards to
21 security."

22 MR O'SHEA:

23 Q. Right. So this is the extract that we are
24 talking about, which is, Mr witness, is it not, simply a
25 section which precedes what we have already seen in the

1 prior extract? In other words, it's the same meeting?

2 A. I think it's the same thing because the other
3 excerpt followed on from this video, so if you continue to
4 play this video you will see it's the same series.

5 Q. Yes. Now, there is something which Mr Kale
6 Kayihura says shortly before the extract that you've just
7 heard, and if it's necessary we will come to the video,
8 but I'm going to -- it's not in dispute between the
9 Prosecution and the Defence that this is said by Kale
10 Kayihura on the video, so I'm just going to tell you what
11 he says, according to the Prosecution translation into
12 French, and then you can tell me if you remember him
13 saying that or not, all right? And he says as follows --

14 MR DUTERTRE: (Interpretation) Your Honour, I
15 don't want to cut off my friend, but it's important to
16 play the excerpt which is going to lead to the question
17 which was put. Now, he is asking a question with regards
18 to something that comes before the excerpt that was shown.
19 There's no difficulty in showing this previous excerpt.
20 It's in eCourt, because the whole video was uploaded into
21 eCourt. I would, therefore, invite my honourable
22 colleague to show the excerpts directly with the voices of
23 the persons in their context.

24 PRESIDING JUDGE COTTE: (Interpretation) Counsel
25 O'Shea, your concern is to obtain the most clear answer

1 and the most complete answer and the most precise answer
2 from the witness and so, if you show a video excerpt which
3 is a support for a video just before, then we risk having
4 a situation where we are lost in exchanges which are
5 somewhat sterile. So either your question is so simple
6 that it can be put and the witness will answer, but once
7 again our objective is to have a precise answer. If you
8 think that you will not obtain a precise answer, then
9 let's really go from the basis point that we have to show
10 the right bit.

11 MR O'SHEA: Yes, indeed, Mr President, and I
12 think your Honour needs to understand that in order to
13 play this sentence before I have to go to the full video,
14 because this sentence was not played by the Prosecution.
15 So it will save considerable time if I just put the very
16 simple question to the witness and he either remembers
17 that Mr Kayihura said this or he didn't. If he does, then
18 we have avoided a lot of potential technical problems.

19 Q. So, Mr Witness --

20 PRESIDING JUDGE COTTE: (Interpretation) Ask
21 your question now and, witness, make an effort to answer
22 it, but really in future do not hesitate. It will take
23 the time that's necessary to take. Do not hesitate to
24 show the video which is the one that supports a question.
25 Now ask your question, Counsel O'Shea.

1 MR O'SHEA: Yes.

2 Q. Now, Mr Witness, we have a transcript of a
3 translation into the French language of the video which
4 has been provided by the Prosecution, and in the
5 conversation that you just heard, where Mr Kale Kayihura
6 was just speaking, just a few sentences earlier he says
7 the following: (Interpretation) "It was our first
8 objective that we had achieved and, secondly, it was a
9 matter of taking the airports of Irumu, of Mongbwalu and
10 of Bule."

11 And then further down he said: (Interpretation)
12 "We have taken control of several airports and now, having
13 taken the control of Bule, we do not have other
14 objectives."

15 So do you remember Mr Kayihura expressing the
16 fact that they had the objective of taking the airport of
17 Bule and that that was an objective that they had
18 achieved?

19 A. I think that what we are speaking about here
20 should be supported by the video elements. I think that
21 you should ask your questions on the basis of the video
22 that I can see, because that would remind me of the
23 events. You've just said that Mr Kale had said this, this
24 and that, you said that they took the airport and at the
25 end that they didn't have another objective. What does

1 that -- what's that meant to mean? That means that they
2 drove the UPC out. I think that was the subject of the
3 conversation. I don't know if you've understood me. Have
4 you understood my answer?

5 Q. Yes, you would like the video extract played?

6 PRESIDING JUDGE COTTE: (Interpretation) We are
7 going to play this video extract and so much for the time
8 it takes. Basically, in future we will say you will have
9 to play the video excerpt about which there is a question
10 so that the witness is able to answer in the most clear
11 way as possible. So, Counsel O'Shea, please show the
12 excerpt which concerns this statement which you read a
13 moment ago, and for the interpreters please tell them what
14 the exact lines are. I think we are still on 4.17.

15 MR O'SHEA: Yes. If you could give me a moment,
16 your Honour?

17 PRESIDING JUDGE COTTE: (Interpretation) Of
18 course.

19 MR O'SHEA:

20 Q. Yes, all right. Well, we will play that extract
21 to you so that you can listen to it and then I will put my
22 questions to you. So we are going to start at time-stamp
23 10.46, and I'm relying on the accuracy of the time-stamp
24 of the Prosecution in the French translation because I
25 don't understand Swahili, and for the interpreters it's at

1 line 123 onwards on page 3 of the French translation.

2 PRESIDING JUDGE COTTE: (Interpretation)

3 Perfect. So.

4 (Video extract played)

5 THE INTERPRETER: (Interpretation) "Until today
6 they are approaching from Bule, and they are continuing to
7 approach us and we can finish with these people who do not
8 want peace here. Yesterday I received instructions from
9 the President asking me to announce that we, the UPDF,
10 have suspended military operations -- military operations.
11 There is a declaration which I've written, and I think
12 that I will read it to you because we have realised our
13 objectives.

14 First of all, we have managed to put out the fire
15 which was set by these awful people, such as Kisenbo, who
16 started here, here in Bunia, and we have really put an end
17 to it. That was our first objective and we have realised
18 it.

19 In second place, we had to take the airports of
20 Irumu, Mongbwalu and Bule and, from what we have learnt,
21 certain people abroad wanted to use them to provide
22 assistance. And this is something we have achieved
23 because we have taken the control of several airports and
24 now, having taken control of Bule, we do not have other
25 objectives because the work that we are carrying out at

1 the moment is that of the police. It is the work of the
2 police, and that only of the police, to protect Bunia and
3 to protect the villages, as well as the inhabitants."

4 MR O'SHEA:

5 Q. Now, you heard there Kayihura saying, "... now,
6 having taken control of Bule, we have no other
7 objectives," so my question to you is this: Bearing in
8 mind that Drodro was attacked on 3 April, are you able, on
9 the basis of your knowledge, to help us with the date when
10 Bule was taken by the UPDF?

11 A. The question that you're asking me is something
12 you've already asked me before. I think it's the second
13 or the third time that you're asking me this. This is a
14 testimony here. This is a statement here. The Commander
15 Kale, he made a statement that they'd taken control of the
16 airport, Drodro, and he said the following, that there
17 were people who had given a report. When he spoke about
18 the report, he asked the question as to who wrote this
19 report. Well, these were the people who were attacked.
20 It was they who gave the report to the UPDF. That made
21 the UPDF forces attack and take possession of this area
22 under their control. And I think that it is that that
23 he's speaking about. He is explaining how they took the
24 airport, how they took the people hostage after the
25 fighting.

1 Q. Yes, thank you, Mr Witness. But just to try, if
2 you can -- if you can't, it doesn't -- it's fine. But to
3 try, if you can, to help us with when Bule was taken.
4 Would it be right that Bule was taken shortly before 3
5 April?

6 A. If you listen to the original tape, or if you
7 see that footage, you can see the date on which that event
8 happened. It is difficult for me to remember at this
9 particular moment because I will need a lot of time to
10 remember the facts. The best thing would be to review
11 that segment and we will be able to see what happened by
12 viewing it.

13 Q. All right. Fair enough. Now, before I leave
14 this excerpt which we've just played, Kale Kayihura states
15 the following in the piece that you've just heard:
16 (Interpretation) "First of all, we have put out the fire
17 which had been started by those scoundrels such as Kitembo
18 and which had started here."

19 Who is the Kitembo that Kale Kayihura is
20 referring to?

21 A. I believe that here Kale Kayihura is talking
22 about the fighting that started from 6 March 2003 between
23 the UPDF and the UPC. Kitembo was the commander-in-chief
24 of the UPC, and that is what Kayihura was referring to.
25 He said they had been able to put an end, or to put out

1 that fire, which means the fighting that had started on
2 6 March.

3 Q. And is that Kisémbó Bitámara?

4 A. No, that is not the one. It is not Kisémbó
5 Bitámara. This was Kisémbó, the commander-in-chief of the
6 UPC, Union Patriotique du Congo.

7 Q. And what was his other name?

8 A. I believe his name is Floribert Kisémbó, that
9 is, if my memory serves me correctly.

10 Q. Kisémbó Bahémuka Floribert?

11 A. I believe you are correct.

12 Q. Right. Well, I'll move away from this meeting
13 now. And I'm now going to talk to you about an extract
14 which was shown to you by the Prosecution with the tab
15 number 6.3, and its evidence number is EVD-OTP-00186,
16 public, and -- well, in line with what your Honour said
17 before, the extract can be played. I don't need to play
18 it for the purpose of my questions, but it can be played.

19 Your Honour will remember that it was -- it's
20 something that's very close -- let me put that
21 differently. Your Honour will remember that it's
22 something which this witness knows very well. But if your
23 Honour wishes, we can play the extract anyway.

24 PRESIDING JUDGE COTTE: (Interpretation) Unless
25 I am mistaken, Mr O'Shea, that extract is 4 minutes long,

1 so it is better to show the extract. It is 4 minutes, and
2 that will avoid any delays, and the witness can answer
3 your question, bearing in mind what he has just seen.

4 If I show, or rather, if we show the entire
5 extract, the interpreters, I believe, would not have any
6 difficulty locating the corresponding excerpts in the
7 transcript.

8 MR O'SHEA: Yes, because if we play the entire
9 extract, then the interpreters can simply go to tab 6.3.
10 And it's been played before in its entirety during
11 examination-in-chief of the Prosecution. But could
12 Mr Duterte kindly indicate whether it's 25 or 25(A), to
13 assist Ms Menegon. The improved version is which one?

14 MR DUTERTRE: (Interpretation) I believe it is
15 the "A" that's the improved version.

16 (Video extract played)

17 THE INTERPRETER: The Swahili interpreter says
18 the booth is not yet ready.

19 PRESIDING JUDGE COTTE: (Interpretation)
20 Ms Menegon, let us stop for now, to be sure that the
21 Swahili booth is ready. They will indicate to us when
22 they are. In tab 6.3, the French translation begins on
23 page 2. I do not think it begins on line 42, but it is
24 somewhere around there. So, can we begin?

25 THE INTERPRETER: Yes, your Honour, we can see

1 line 42.

2 PRESIDING JUDGE COTTE: (No interpretation)

3 MR DUTERTRE: (Interpretation) Line 62. I
4 believe I provided that information.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank
6 you for your assistance. Line 62. Let us begin.

7 (Video extract played)

8 THE INTERPRETER: (Interpretation) "Colonel, can
9 you tell us about this issue because you have said that it
10 was this night that you arrived here. Yes. I arrived
11 here. All I heard was a gunshot. I heard a gunshot and I
12 tried to get closer to see where that gunshot was coming
13 from. To begin with, we heard a gunshot from that
14 direction, from Mudzipela. Mudzipela. There was another
15 one in Saio, then another one from the direction of the
16 airport. Then another one from there, on the road to
17 Hoho. When that gunshot rang out, we remained silent. We
18 continued waiting to hear from which direction another
19 gunshot was going to come. And we did not have to wait
20 for long. We heard another gunshot which was not very
21 loud. The gunshot was coming from very close by. We were
22 near here. Can you tell us what time it was? It was
23 11.30 p.m. We heard the gunshot and then we deployed
24 ourselves. But Etienne told me that there was nothing,
25 and that a police guard post was close by. We could not

1 go in just like that. Probably they made an error, and a
2 gunshot had been fired, because there was a single gunshot
3 but we said there is no problem. Let us go there anyway,
4 and try to find out what caused the gunshot.

5 We went out on the road and we tried to disperse,
6 to deploy ourselves so as to take over control of the
7 entire area, but that was very difficult because there was
8 some confusion amongst ourselves. We approached slowly,
9 but he was in a hurry because he knew the layout of the
10 area from where the gunshot had come. So he went
11 hurriedly. He saw the night watchman, he saw soldiers and
12 saw someone; a slender person with a light complexion.

13 'Is that the night watchman? How was he killed?'
14 'Yes, this is indeed the night watch. This is the night
15 watch. He is the one who had shouted 'who goes there?
16 who goes there?', and instead of going back they stayed
17 here and this person probably shot when he saw the night
18 watchman.

19 So we dispersed with the purpose of catching up
20 with them and arresting them, but the wall was quite close
21 and they escaped. So we arrived here, we carried out a
22 check and we saw this dead body.

23 After leaving here, we went there to the police
24 guard post to call them to come and protect this house
25 against any further attacks during the night, because we

1 felt that they were not very occupied. Very well. When
2 we arrived there, there was no way to the police. He
3 stayed there and so far we have been the ones protecting
4 this house throughout the night.

5 'And you took out the family?' 'And we took out
6 the family and took them to the police post so that they
7 should be able to rest, because we had taken the night
8 watchman and put him behind our position. So far the
9 family is still in the police post. Very well. That must
10 have ended, because their objective was to abduct the
11 woman; the woman living in this house.

12 'What is the ethnicity of this man?' 'Well,
13 because his sisters -- his sisters are there crying. The
14 boy standing there, the person who shot him fled this way.
15 It was only in the morning. Well, the others passed by
16 here and they all escaped. Very well, yes, for which
17 reason.

18 'Can you introduce yourself once again? What is
19 your name?' 'My name is Germain Katanga bin Simba.'

20 'Thank you.'"

21 PRESIDING JUDGE COTTE: (Interpretation) Very
22 well, Mr O'Shea.

23 MR O'SHEA: Thank you, Mr President.

24 Q. Now, you heard during the course of that extract
25 reference to the fact that they had taken the family to

1 the police station and they had asked people from the
2 police station to come over, but that they were busy. Did
3 you yourself -- can I go into closed session?

4 PRESIDING JUDGE COTTE: (Interpretation) Court
5 officer, let us go into private session very briefly for
6 an identifying question.

7 (Private session at 2.33 p.m.)

8 (Expunged)

9 (Expunged)

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24 (Open session at 2.35 p.m.)

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

1 Honours.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank
3 you. Please proceed, Mr O'Shea.

4 MR O'SHEA:

5 Q. Is it right that the police had been stationed
6 there in Bunia for some time at the time of this event?

7 A. The police station referred to is a police
8 station which was manned by visitors. Otherwise there was
9 a police station not very far away from that house, about
10 200 or 150 metres away.

11 THE INTERPRETER: By "visitors", the Swahili
12 booth thinks the witness was referring to foreigners.

13 PRESIDING JUDGE COTTE: (Interpretation)
14 Mr O'Shea, can you ask the witness what he means
15 specifically, because in the French transcript they used
16 the word "visitors"; that is the police station was manned
17 by visitors. Can you specify -- try to clarify that
18 notion.

19 MR O'SHEA:

20 Q. Are you referring to visiting police officers?

21 A. When I talked about visitors, it is because
22 these are people who came from Kinshasa and who did not
23 know the area. They were not familiar with this town.
24 When you arrive somewhere for the first time, you're
25 considered a stranger.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank
2 you, Mr Witness.

3 Thank you, Mr O'Shea. Please proceed.

4 MR O'SHEA:

5 Q. But these visitors were police officers?

6 A. Yes, they were policemen.

7 Q. Now, do you remember an incident when a man by
8 the name of Ntumba Luaba - and I will spell that,
9 N-T-U-M-B-A new word L-U-A-B-A - who was the minister of
10 human rights of the time, do you remember an incident
11 where that man was in an aeroplane and his aeroplane was
12 shot at and he had to have a forced landing as a result of
13 that attack on his aircraft? Do you remember hearing that
14 in the news, or --

15 A. Which period was that? I do remember that
16 Ntumba Luaba was the minister for human rights, I was
17 aware of that, but I would like you to specify the time
18 frame. When was that plane shot at?

19 Q. This was in May 2003.

20 A. I do not remember. All I know is that in 2002
21 Minister Ntumba Luaba was in Bunia town, I remember this
22 very well, but I do not know whether shots were fired at
23 his plane, or not. I know that his plane landed in the
24 town, so I'm not aware of the incident you are referring
25 to.

1 Q. All right. Well, at T-185 of the English
2 transcript, page 16, lines 6 to 11, you stated the
3 following. You said, and this is in relation to this
4 current video extract which is being played -- you said
5 the following. You said, "I think it was 1 April. 1
6 April 2003. I think it was on that date."

7 MR DUTERTRE: (Interpretation) Your Honour.

8 PRESIDING JUDGE COTTE: (Interpretation)
9 Mr Prosecutor.

10 MR DUTERTRE: (Interpretation) I object to that
11 question. This extract follows the extract mentioned in
12 pages 15, 16 and onwards in transcript number 185. The
13 Defence had the opportunity at that time to explore issues
14 related to the date, and the objective of this exercise is
15 not to come back to questions that have already been asked
16 by the Defence during the first part of their
17 cross-examination. I even remember that the Chamber had
18 pointed out that the questions put to the witness during
19 the first part of the cross-examination would not be
20 repeated afterwards.

21 So the procedure was adopted to expedite the
22 five -- the first five extracts and to save time, so I'm
23 realising now that we are dealing here with two
24 cross-examinations in reality. The issue of the dates was
25 explored, the witness provided answers and so I am

1 objecting to us coming back to this issue.

2 PRESIDING JUDGE COTTE: (Interpretation) Very
3 briefly, Mr O'Shea, and explain to us what is the precise
4 objective that you are pursuing.

5 MR O'SHEA: I am being told on a regular basis
6 that the purpose of these proceedings is to explore the
7 truth. The Prosecution chose to artificially divide up
8 two video extracts. We had the first video extract where
9 Mr Lobo was talking about the dead man, which was shown at
10 the beginning, which was admitted by your Honours into
11 evidence, and then we have the second video extract with
12 Mr Katanga, the accused in this case, speaking, and it's
13 exactly the same footage which has simply been
14 artificially split into two.

15 It would be grossly unfair, in my submission, to
16 prevent the Defence from exploring the date of the second
17 video extract with Mr Katanga - the accused in this case -
18 speaking, on the basis that there was another video
19 extract which involved the same footage.

20 Now, this witness didn't need to be asked by the
21 Prosecution about the date of the video extract with
22 Mr Katanga in it. It wasn't necessary for them because
23 they had already asked the question in relation to the
24 first video extract.

25 Now, surely I am entitled, once I have heard both

1 video extracts which relate to the same footage and the
2 same incident, I am entitled to, having heard what
3 questions are put about my client, to then explore the
4 dating of the video which shows my client.

5 PRESIDING JUDGE COTTE: (Interpretation)

6 Prosecutor, Mr O'Shea, I don't know whether this division
7 was artificial in nature or whether it was an attempt to
8 better organise the examination-in-chief, thereby allowing
9 the Chambers and other parties and participants to better
10 understand the objective that the Prosecutor was pursuing.

11 I have the impression that our current
12 discussions are complicating matters for our witness. He
13 is here to help us better understand what occurred. The
14 Prosecutor has asked his questions; you are asking your
15 questions. You are wondering, quite legitimately, about
16 these memory matters, and even his credibility, but let us
17 not attempt to destabilise him and have him lose his
18 footing, because that is not the goal that we are
19 pursuing. So, please ask your question about the dates
20 and attempt, as much as possible, to help the witness by
21 way of your questioning; help him help us better
22 understand what happened in Bogoro on the day the events
23 are before us. Please ask your question, Mr O'Shea. Let
24 us move ahead. Above all, let us move ahead. Let us make
25 some progress.

1 MR O'SHEA: It is our case that 1 April is a
2 mistaken date, and that's the basis upon which I'm
3 proceeding.

4 Q. Mr witness, just to clarify for you, and I've
5 just stated to their Honours that it's my position that
6 you're mistaken about the date. Now, there's nothing
7 wrong with being mistaken about the date. I'm not
8 suggesting that you are lying. I want to make that clear,
9 all right? I'm simply suggesting that you may be mistaken
10 about the date. And when you were asked about the date of
11 an extract where Mr Lobo was speaking, and it was the same
12 incident, you provided the following answer: "I think it
13 was 1 April. 1 April 2003. I think it was on that date."
14 Now -- sorry, just bear with me one second.

15 PRESIDING JUDGE COTTE: (Interpretation) Please
16 take your time. This will allow me to find my spot in my
17 transcript.

18 MR O'SHEA:

19 Q. Yes. You also said on that occasion the
20 following. You said: "I believe that this image was not
21 filmed in November because I wasn't there in November.
22 Even people who are here before us can confirm this. We
23 saw each other in May and since that time have not seen me
24 further." And you, when you made that statement, you were
25 looking in the direction of Mr Katanga. So, what I'm

1 suggesting to you is that when you said that you saw
2 Mr Katanga in May, you were correct, you did in fact see
3 him in May, and that when you say you think it was 1
4 April, you were mistaken. So, is it possible that this
5 incident with the discussion over the dead body took place
6 in May? Obviously, before the Ugandans left, but in May.

7 A. Very well. Give me some time to explain it to
8 you. I think that your question is important, but you are
9 getting several facts mixed up. I'll give you some
10 explanations, clear explanations, and I will go back to
11 what I said earlier. I told you this. I remember that
12 this footage had been taken on 1 April 2003, and it is
13 true, that footage was filmed that day. I had said that
14 and I had said that -- I had said that, from the fifth
15 month on, I was no longer in the field. I no longer went
16 out into the field. I was no longer in Bunia since
17 May 2005. I was -- correction, 2003. I was no longer in
18 Bunia. I confirmed that the footage that we were looking
19 at is the footage of 1 April. Do you understand me?

20 Q. Thank you. Now, during that exchange,
21 Mr Katanga mentions the fact that he heard a shot fired
22 from the direction of Mudzipela. Now, is it right that at
23 Mudzipela there was a front where fighting was going on
24 with the UPC?

25 A. No. The UPC had been driven out. They were

1 driven out on the 6th. As of the 6th, the UPC was no
2 longer in Bunia. We had followed, according to what was
3 said. We had just listened to this, you and I, but, in
4 all truth, the UPC was not in Bunia around that time, nor
5 in the surrounding area, because the UPDF soldiers were
6 present. They were at the boundary, the -- with
7 Mudzipela. That is my version of the facts. However, it
8 could be true that there was some gunfire, as usual, as it
9 was said, but it is difficult to determine who shot. Were
10 there perhaps some children? Perhaps there really was
11 some gunfire.

12 Q. So, do you accept from your last answer, do you
13 accept that there was a boundary at Mudzipela, on the
14 other side of which were the UPC?

15 A. I didn't say that there were UPC soldiers in
16 Mudzipela; I never said that. When I was talking about
17 the boundary I was referring to the Lipri area, where
18 there were fighters. There's a bridge that separates
19 Lipri from Mudzipela, and the Ugandan army set up a
20 position there to keep an eye on things and make sure that
21 the combatants could not come in. It was not UPC soldiers
22 who were in that zone.

23 Q. But can I suggest to you that UPC soldiers were
24 infiltrating into that zone, even if they didn't occupy
25 it?

1 A. I believe that the armed soldiers that came to
2 Mudzipela gave a report to the UPDF because they reported
3 to them. Any person who was moving about in that zone and
4 who was armed had to report to the Ugandan army and hand
5 over his weapon to that army. However, it might be
6 difficult to determine who was a civilian and who was a
7 soldier, who was armed, who was not; all of that could be
8 possible but, officially speaking, the UPDF army was
9 outside of that zone.

10 Q. Yes. Thank you. Now, when the Prosecution was
11 questioning you, they asked you -- or they drew to your
12 attention the person being interviewed in the footage had
13 given his name and said that he was Germain Katanga bin
14 Simba, and this is in the English transcript at page 71,
15 lines 7 to 9.

16 And the Prosecution asked you: "what does that
17 mean, bin Simba?" And your answer, which is to be found
18 at lines 10 to 11, was as follows: "Do you think that I
19 know what that means? I don't know what that means." Let
20 me ask you this: Let me ask you not about the full
21 expression "bin Simba" but let me ask you about the word
22 "bin." Is it correct that the word "bin" is used in
23 Swahili and is a word of Arabic origin which conveys the
24 meaning of "the son of." Is that something that you're
25 aware of?

1 A. I believe that I've already answered that
2 question, the question that was asked by the Prosecutor,
3 and the answer remains the same. Even if one is not of
4 the same ethnic group. If you are of the same ethnic
5 group you would -- you might know the name, the meaning,
6 rather, of the name but, for me, it is difficult to know
7 the meaning of the name. I don't know the meaning of his
8 name. He is your client. You can ask him what his name
9 means.

10 PRESIDING JUDGE COTTE: (Interpretation)
11 Witness, Mr O'Shea has a job to do. He is the Defence
12 counsel of one of the two accused, and he asked you a
13 question that was different, different from the
14 Prosecutor's question. Now, the Prosecutor asked whether
15 you knew the meaning of bin Simba and you said no.
16 Mr O'Shea is just asking you whether, to your knowledge,
17 "bin" means "son of." It is a question quite different.
18 You can reply saying yes or no, but you do have to give an
19 answer. You can't say that you've already given an answer
20 because that was another question. So, please, answer
21 this question that Mr O'Shea has put to you.

22 THE WITNESS: Thank you for that clarification.
23 I don't know the meaning of that word, that name, and I'm
24 not able to answer that question.

25 PRESIDING JUDGE COTTE: (Interpretation)

1 Mr O'Shea, please proceed.

2 MR O'SHEA: Yes, that's all right. You are not
3 expected to know everything, Mr Witness. I just thought
4 that you might.

5 PRESIDING JUDGE COTTE: (Interpretation) We have
6 15 minutes left. Today's schedule is a bit different so I
7 will remind all we have 15 minutes left. Please continue,
8 Mr O'Shea.

9 MR O'SHEA: All right. Well, it will be a dream
10 come true if I can finish in these 15 minutes but it's
11 looking less and less likely, but I will do my best.

12 Q. Now, I'm going to come briefly to the extracts,
13 or the first extracts which the Prosecution drew to your
14 attention, the first video extracts which the Prosecution
15 drew to your attention, which started with 1.1. And 1.1
16 was given the EVD number EVD-OTP-001163, and it was
17 classified as public, and in that video extract Mr Kale
18 Kayihura makes reference to a confrontation between the
19 UPDF and the UPC at Dele, and I think Mr President, that's
20 a very uncontroversial point that doesn't require us to go
21 into the video. I just want to ask the witness, would it
22 be right that this conflict of Dele, and the conflict of
23 Bunia, of 6 March, basically all took place on one day,
24 and took half a day; is that right?

25 A. Could you please repeat your question? You're

1 referring to fighting on 6 March 2003, 6 April 2003?
2 6 March?

3 THE INTERPRETER: Correction from the Swahili
4 interpreter; 6 March 2003.

5 MR O'SHEA: Yes.

6 Q. We've discussed this, or you've discussed this
7 with the Prosecution, that on 6 March 2003 the UPC was
8 effectively ejected from Bunia, and this was, this
9 incident was instigated when the UPC attacked the UPDF at
10 Dele, and what I'm suggesting to you is that the fight
11 between the UPC and the UPDF at Dele and Bunia took a half
12 day in total?

13 A. I believe it was fighting that occurred on
14 6 March, and it lasted a few hours. I believe three
15 hours. There was gunfire for about three hours. It
16 wasn't half a day. It was heavy fighting but it only
17 lasted three hours.

18 Q. Yes. Thank you. And are you in a position to
19 confirm that the distance between Geti, and Dele, is
20 between 55 and 75 kilometres, depending upon your point of
21 departure in Geti?

22 A. I don't have a reply to that question.

23 Q. That's all right. And you will remember that
24 reference is made to attacks on Lipri and Songolo, and I
25 would like to ask you this: Is it right that at Lipri,

1 this is where Lendus were living?

2 A. Yes. Lipri is a place inhabited by the Lendu.

3 Q. And again, only if it's within your knowledge,
4 if it's not, that's fair enough; would it be right that
5 the distance between Lipri and Bunia would be some 20 to
6 25 kilometres?

7 A. No, it's not 25 kilometres. I would say
8 between 20 -- perhaps 15 to 20 kilometres. It is not a
9 great distance.

10 Q. Yes. Thank you. And can you confirm that the
11 people who live at Songolo were Ngiti?

12 A. I believe if we refer to what Commander Kale had
13 said, he said this: "The Ngiti who live in Songolo, I
14 think that the people who live there are Ngiti."

15 Q. Yes, thank you. And would it be right that the
16 people who live at Tchai, which is spelt T-C-H-A-I, are
17 the Bira, spelt B-I-R-A?

18 A. Yes. The Bira people live in Tchai. The Bira
19 people live in Tchai, Bunia. It's an area that belongs to
20 them but, in Bunia, there is a mixture of people.

21 Q. Now, Mr Kayihura also referred to armed groups,
22 armed rebel groups of Ugandans using Congo as a base to
23 attack Uganda, and he referred, for instance, to the ADF.
24 Do you recall that?

25 MR DUTERTRE: (Interpretation) Your Honour, I

1 have the impression that I'm always harking back to the
2 same thing. I let many questions go by, but please, if
3 questions could be asked about these extracts so that we
4 know what extracts we are speaking of, so we know what we
5 are talking about, so the witness can refer to the sound
6 recording, or the video. I'm sorry to interrupt but --

7 PRESIDING JUDGE COTTE: (Interpretation)

8 Prosecutor, I understand. This is a particular problem,
9 but the three or four previous questions could go by.
10 Now, they were not particularly connected to the long
11 video that we heard, that allowed us -- that meant we lost
12 a lot of time.

13 Now, tomorrow, Mr O'Shea, you shall resume your
14 cross-examination, but let us attempt to recalibrate, so
15 to speak. I am not sure whether we are dealing with video
16 1 or video 1.1 but we will try to recalibrate. It is true
17 that each time that the video can allow the witness to
18 provide a better answer, let us not hesitate to show it,
19 and let us try to be very specific, which means difficult
20 preparatory work.

21 I would like to ask the Court security officers
22 to escort the accused out of the courtroom because our
23 time is nearly up. Because of our time restrictions, it
24 is quite difficult. Sometimes we would like to go on for
25 another 30 or 40 minutes, but unfortunately we cannot.

1 (The accused exit the courtroom)

2 PRESIDING JUDGE COTTE: (Interpretation) Court
3 officer, we are going to go into private session so that
4 the witness can quietly leave the courtroom.

5 witness, this was a difficult hearing not so much
6 because of the questions asked but, rather, the
7 difficulties for you, your difficulties in remembering
8 questions that were asked of you several days ago, and
9 that is the counterpart, so to speak, of our somewhat
10 choppy proceedings.

11 We will see you again tomorrow at 9 a.m, once
12 again for a four-hour hearing. Thank you once again,
13 witness. We will see you tomorrow.

14 THE COURT OFFICER: We are in closed session,
15 your Honours.

16 (Closed session at 3.16 p.m.)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 3.17 p.m.)

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

1 Honours.

2 PRESIDING JUDGE COTTE: (Interpretation)

3 Mr O'Shea, you had a brief remark. Please be brief
4 because we are nearly running out of tape, so to speak,
5 and remember that the accused have left the room.

6 MR O'SHEA: Yes, I think it's all right. I just
7 wanted to say that my learned friend, Mr Duterte, always
8 acts with the greatest of politeness, but sometimes when
9 it comes to this issue of whether I should show a video
10 extract or not, he doesn't wait until he's heard what my
11 question is. And, you see, sometimes my question is so
12 simple and uncontroversial that it really doesn't make
13 sense to go into the video. So if he could just wait
14 until I've completed my question before he objects, then
15 he will see perhaps that it may be a waste of time to go
16 to the video. Because we all have the translations, we
17 all have the videos, and these things are all going to be
18 reviewed afterwards. And I understand, of course, that
19 your Honours and the Prosecution also want to follow my
20 cross-examination, but if I'm making a very, very simple
21 point, then it might not always be necessary just to play
22 a video extract to precede it.

23 PRESIDING JUDGE COTTE: (Interpretation) well,
24 that is why I wanted to stress a few moments ago that four
25 of the questions you asked just before the final one were

1 questions that did not require the video to be played. We
2 agree on that.

3 We do not have -- we were short for time. We did
4 not say goodbye to the accused. They were ushered out of
5 the room rather unceremoniously, so please pass on our
6 apologies. The hearing is adjourned and we will see you
7 all tomorrow at 9 a.m.

8 (The hearing ends at 3.19 p.m.)