

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

10 (The hearing starts at 2.06 p.m.)

11 (Closed session)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

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22 (Expunged)

23 (Open session at 2.08 p.m.)

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

1 WITNESS: DRC-OTP-P-0030 (On former oath)

2 (The witness answers through interpreter)

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
4 Court officer. Good afternoon, witness.

5 THE WITNESS: Good afternoon.

6 PRESIDING JUDGE COTTE: (Interpretation) I can see
7 that you can hear me and the equipment is working properly.
8 That's essential.

9 Before I ask Professor Fofé to continue with his
10 cross-examination, I would just like to remind all that in ruling
11 16 -- decision 2325 of 26 August 2010, the Chamber set out the
12 conditions under which witness 323 could be brought back, either
13 in person or by way of video link, so as to obtain additional
14 information regarding the exact status of witness 288; whether
15 he's a civilian or a soldier.

16 The VWU filed on 2 September 2010 a report, 2635. In
17 the report the request was made, and I refer you to paragraph
18 6 of this ruling, which says that all measures should be taken
19 for this bringing back, or this reminder. And I think you've
20 understood that the information is really intended as a reminder.

21 Professor Fofé, you may now proceed. If I remember
22 correctly, and I do hope I do, we left off at the last hearing
23 after viewing extract 17. Now, I don't know whether you had
24 completed your cross-examination regarding that particular
25 video extract. Now, there was no EVD number assigned to that

1 extract, and I would suggest that we move on to extract 18,
2 if appropriate. Now, of course, it is up to you to make such
3 request but, in any event, we are all ears.

4 MR FOFÉ: (Interpretation) Thank you, your Honour.
5 Good afternoon, Honours. Indeed, at the last hearing we were
6 asking the witness some questions about extract 17,
7 DRC-D03-001-0398, and we will continue with this particular
8 exhibit for a few moments before moving on to the following
9 video extract; that is, extract 18.

10 QUESTIONED BY MR FOFÉ: (Continuing)

11 Q. Good afternoon, Witness.

12 A. Good afternoon.

13 Q. Witness, I think you'll recall, as was said before
14 this august Chamber, that during the last hearing, at the end
15 we had been discussing extract 17. And I would remind you that
16 this is an extract that has to do with the rally that was held
17 by Mr Thomas Lubanga on 11 July 2003, after his visit to Goma.
18 As you said, after the signing of the alliance between the UPC
19 and the RCD/Goma, as you stated. Do you remember that, Witness?

20 A. Yes, I do remember that.

21 Q. Thank you very much. I'd now like to ask you some
22 questions about this video extract.

23 MR FOFÉ: And I would like to ask the court officer
24 for her assistance. Could she display on the screen the image
25 at the following time stamp: 06 minutes, 46 seconds. And I

1 would like to ask the Presiding Judge's permission to be seated
2 for my cross-examination, for this part.

3 PRESIDING JUDGE COTTE: (Interpretation) That is
4 fine, Professor Fofé. The most important thing is for you to
5 be in the best circumstances so that we can proceed.

6 MR FOFÉ: (Interpretation) Thank you, your Honour.
7 If we could move to time stamps 6 minutes, 46 seconds,
8 6.46.

9 PRESIDING JUDGE COTTE: (Interpretation) we'll just
10 have to wait for a moment.

11 (Video extract played)

12 MR FOFÉ: Okay. Yes.

13 (Video extract played)

14 MR FOFÉ: Okay.

15 PRESIDING JUDGE COTTE: (Interpretation)
16 Apparently, the sound and the image are there; I do hope so
17 for everyone's sake. Apparently, Professor Fofé would like
18 us to back up a bit, to see the correct item of footage. Now,
19 I believe everything's been put in place. If we could move
20 to that particular sequence.

21 (Video extract played)

22 PRESIDING JUDGE COTTE: (Interpretation) would you
23 like interpretation?

24 MR FOFÉ: (Interpretation) No, your Honour. We
25 would just like the screen to be frozen so that we can halt

1 at that particular image.

2 Thank you, court officer.

3 Q. Witness, could you tell us what is this flag that is
4 being held by the lady? What is this flag?

5 A. This is the UPC's flag.

6 Q. It is the -- is it the only flag that was being flown
7 in Bunia at that time?

8 A. I think that that is the case, because I didn't see
9 other flags. I didn't see a second or a third flag; I just
10 saw this flag.

11 Q. Thank you, witness. So the witness -- correction,
12 the flag of the Democratic Republic of Congo was not being flown
13 over Bunia at that time?

14 A. I think that before, one could see the two flags in
15 some places; that is to say, the flag of the UPC and the DRC
16 flag in some places, but here at the stadium, if I remember
17 properly, I didn't see the RD -- the DRC flag.

18 Q. Thank you, witness.

19 Court officer, could we move on to the next image at
20 time stamp 17 minutes 49 seconds. Thank you.

21 (video extract played)

22 MR FOFÉ: (Interpretation) Thank you. Thank you
23 very much, ma'am.

24 Q. Witness, can you see the two people in the forefront
25 of this image?

1 A. Yes, I can see them.

2 Q. If you know, could you give us the name of the person
3 who is wearing glasses?

4 A. The person who is wearing glasses is called Lukute
5 (phon). Ndukute.

6 Q. And what was he doing?

7 A. He was the governor of the province of Ituri at a
8 particular point in time and he was the governor of the Ituri
9 region for the UPC.

10 Q. And what ethnic group was he from?

11 A. He belonged to the Lendu South ethnic group.

12 Q. And the person beside him who is wearing a suit and
13 a tie, do you know that person?

14 A. Yes.

15 Q. Could you give us his name, please?

16 A. That is Mr Cyprien Kitika.

17 Q. And what did he do? What role did he play.

18 A. He was the deputy minister of pacification at the time
19 of John Tinanzabo when he was in Bunia.

20 Q. And what ethnic group was he from?

21 A. He was from the Lese group, from the Mambasa territory.

22 Q. Thank you very much, witness.

23 Court officer, could we move on to the next piece of
24 footage 18 minutes and 6 seconds, please. Time stamp
25 18 minutes 6 seconds. Thank you very much.

1 Witness, can you see these three people in the
2 forefront, three people? We could begin with the person on
3 the right who is wearing a white shirt, a white short-sleeved
4 shirt. Do you know that person, this person who has his cheek
5 resting on his hand?

6 A. Could you show the image again from the previous minute,
7 because this image is blurry? If you could perhaps rewind and
8 show the image.

9 Q. Yes, with the assistance of the court officer, if she
10 could go from 18 minutes to 18 minutes 6 seconds.

11 Is it clearer like that?

12 A. I think it is Mr Denis Akobi.

13 Q. Indeed, Mr Denis Akobi. It is, indeed, Mr Denis Akobi.
14 Do you know what ethnic group he is from?

15 A. He is also from the South Lendu ethnic group.

16 Q. Indeed. Is he not an Ngiti person? It's up to you
17 to tell us that. And what was his role? What did he do?

18 A. To get back to the first question, when I refer to
19 "South Lendu," I mean Ngiti. The South Lendu people are the
20 Ngiti people. As for his role or title I no longer recall,
21 but I think he was the minister within the UPC. He was a
22 high-ranking person within that group.

23 Q. Thank you, witness. In the middle, do you see a person
24 who is wearing a white shirt and a tie in the middle of the
25 image? Do you recognise that person?

1 A. Yes, I will try to identify that person.

2 Q. Who is that person? Could you give us his name, please?

3 A. If I recall correctly, his name might be Mateso, but
4 I forget his post-name. I'm not sure, but it's Mateso.

5 Q. Indeed. Do you know what ethnic group he is from?

6 A. He belongs to the North Lendu group.

7 Q. And what was his position?

8 A. I no longer remember his occupation. He was a member
9 of the UPC. I believe he was either a minister or a
10 vice-minister.

11 Q. Thank you, Mr Witness. Lastly, the person on the left
12 with a beige suit and a tie, do you know him?

13 A. Yes.

14 Q. And what is his name?

15 A. I have just forgotten his name just now. Nevertheless,
16 I know him.

17 Q. Do you know his ethnicity?

18 A. He is a Hema Gegere.

19 Q. Very well. And what was his position at that time?

20 A. I have just remembered. The first one was a governor
21 and the other Ndukute was his vice, so he was the vice-governor.

22 Q. For purposes of clarity, this person wearing the beige
23 suit, what was his position?

24 A. He was the governor. The other one was the
25 vice-governor. His name was Ndukute.

1 Q. Mr Witness, so the person wearing the beige suit was
2 called Ndukute, or is it the other one?

3 A. Ndukute is the he person that I referred to before.
4 He was wearing glasses and I said that he had been a governor
5 before that.

6 Q. Yes, indeed, that was at time stamp 17 minutes 49
7 seconds, and you gave us that name Ndukute. So Ndukute was
8 the vice-governor while this person was the governor. Have
9 you now remembered the name of this person?

10 A. No.

11 Q. And if I put it to you that his name was Mateso Kiza,
12 what will you say to that? Is that correct? In other words,
13 his name is Mateso Kiza. Does that name ring a bell?

14 A. Yes, that is true.

15 Q. Thank you very much, Mr Witness.

16 Court officer, can we please move to the next image;
17 that is time stamp 18 minutes 24 seconds. Thank you.

18 Mr Witness, as you can see, there are two people in
19 military uniform on this image and one person in a suit and
20 an orange-coloured shirt and tie. Can you see this person
21 wearing a suit and a tie and a pinkish shirt?

22 A. Yes.

23 Q. Do you know that person? Can you tell us his name?

24 A. Despite the fact that this is a frozen image, I think
25 it is Mr Sachu Lilo.

1 Q. Yes, indeed. I think it is Mr Sachu Lilu. Can you
2 spell that name for us, that is Sachu?

3 A. S-A-C-H-U, Sachu.

4 Q. Thank you very much, Mr witness. And what is his
5 ethnic group?

6 A. He is a Lendu North.

7 Q. And what was his position at that time?

8 A. I believe he was the minister of culture and arts.

9 Q. Thank you very much, Mr witness. Lastly, the last
10 image, with the assistance of the court officer, time stamp
11 18 minutes 45 seconds. Thank you. Mr witness, can you see that
12 person on your screen?

13 A. Yes.

14 Q. Can you tell us his name; that is, if you know?

15 A. He is Captain Maguru of the UPDF.

16 Q. And UPDF is the Ugandan army, isn't it?

17 A. Yes.

18 Q. And what position did he occupy at that time?

19 A. This captain did not occupy any position in Congo.
20 He was working in his country. I believe he was an emissary
21 sent by his president to President Thomas Lubanga.

22 Q. And what is the name of the President of his own country?

23 A. President Yoweri Kaguta Museveni.

24 Q. President Yoweri Kaguta Museveni, who of course is
25 the President of Uganda, isn't it?

1 A. Yes.

2 Q. Thank you very much, Mr Witness.

3 Your Honour, I would like to request that an EVD number
4 be assigned to that extract number 17.

5 PRESIDING JUDGE COTTE: (Interpretation) Court
6 officer, can you assign an EVD number like for the previous
7 extracts?

8 THE COURT OFFICER: Your Honour, therefore extract
9 17, which is ERN number DRC-D03-0001-0398 shall be given an
10 evidence number, DRC -- I apologise. EVD-D03-00042, and it
11 is admitted as a public exhibit. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 court officer. Mr Fofé, please proceed, and you can sit or
14 stand as you wish.

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

16 Q. Mr Witness, on Friday, 27 August, in answer to a
17 question put to you by Mr O'Shea, you stated that the Ugandan
18 soldiers of the UPDF who were in Bunia had heavy weapons, armoured
19 vehicles and assault tanks, and I'm referring to transcript
20 number 179, page 41, lines 5 and 6. I will now show you a very,
21 very short video extract, just five seconds, and it is our last
22 extract, number 18, and that is DRC-D03-001-0399. I would like
23 to ask the court officer to project that extract which is just
24 five seconds and then to freeze the image at 1 second. Thank
25 you.

1 (Video extract played)

2 Thank you. Mr Witness, this vehicle that we can see,
3 that is the military vehicle, not the green pick-up, is that
4 an armoured vehicle of the UPDF; that is the Ugandan army?

5 A. Yes, this could be one of the armoured vehicles of
6 the Ugandans.

7 MR FOFÉ: (Interpretation) Thank you very much,
8 Mr Witness.

9 Your Honour, I have no further questions for this
10 extract and I would like to request an EVD number for this extract
11 18. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Court
13 officer, please.

14 THE COURT OFFICER: (Interpretation) Your Honours,
15 extract 18, bearing ERN number DRC-D03-0001-0399, shall be given
16 an EVD number EVD-D03-00043 and it will be admitted as a public
17 exhibit.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr Fofé,
19 please.

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

22 Mr witness, we would like to thank you very much for
23 your testimony and I would like to seize the opportunity to
24 wish you a safe journey home. Thank you for all the information
25 that you have provided to us.

1 Your Honour -- your Honours, this is the end of our
2 cross-examination of witness 30 and we thank you very much for
3 the time allocated to us.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Mr Fofé. Thank you, Mr Kilenda. Madam Prosecutor -- I'm
6 sorry, Mr O'Shea.

7 MR O'SHEA: It's for me to give the excuses,
8 Mr President. I wouldn't normally get up at this point in time.
9 However, it would appear to me to be appropriate to raise an
10 issue now before my learned friend embarks upon her
11 re-examination, because in fairness to the Prosecution and also
12 to the Defence it may be appropriate - and of course it will
13 be in the hands of the Prosecution to decide - to incorporate
14 what I'm about to raise within the parameters of their questions
15 to this witness. Unfortunately it's a matter which I have to
16 deal with in the absence of the witness, but it's an important
17 matter which I wish to raise.

18 PRESIDING JUDGE COTTE: (Interpretation) If I
19 understand you well, we are going to ask the witness to leave
20 the courtroom directly; is that correct?

21 MR O'SHEA: Yes, Mr President.

22 PRESIDING JUDGE COTTE: (Interpretation)
23 Mr witness, we are going to ask you to be patient once again
24 and leave the courtroom for a short while, because the issue
25 that one of the lawyers for Mr Katanga wishes to raise will

1 be raised in your absence, and so we are going to ask the court
2 officer to go into closed session so that you can leave the
3 room.

4 Court officer, please.

5 (Closed session at 2.49 p.m.)

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14 (Open session at 2.50 p.m.)

15 THE COURT OFFICER: We are in open session, your
16 Honours.

17 PRESIDING JUDGE COTTE: (Interpretation) We are
18 back in open session. What do you have to say, Mr O'Shea?

19 MR O'SHEA: Yes, Mr President. Now, before I proceed
20 with this brief point, as a matter of procedure, just for the
21 benefit of the public, I would indicate that there are certain
22 matters of procedure that sometimes need to be in closed session.

23 This particular matter of procedure I need your
24 Honours' guidance and the reason I say that is this. In the
25 announcement I'm about to make, I am going to be referring to

1 an intermediary. I will not refer to the intermediary's name.
2 I will refer to the intermediary's pseudonym. I will also not
3 refer to the witness's name. I will refer to the witness's
4 pseudonym. So, in principle, one would have thought that I
5 ought to be able to make this application in public.

6 The only reason why I hesitate is because all the
7 filings in relation to this issue have been made confidentially,
8 and so that is the reason why I seek your Honours' guidance
9 as to whether, if I'm raising an issue over an intermediary
10 and this witness, I can discuss it in public using pseudonyms,
11 or whether because of the nature -- because the filings have
12 been made confidentially I should deal with this in private
13 session.

14 It's a question on which I'm not sure. Perhaps the
15 Prosecution can help, but I seek your Honours' guidance as to
16 how to proceed.

17 PRESIDING JUDGE COTTE: (Interpretation) Ms Luping,
18 despite the coded nature of Mr O'Shea's submission, do you have
19 a feeling of what we are talking about? Do you think we should
20 stay in open session, or would it be preferable to go into private
21 session?

22 MS LUPING: (Interpretation) Good afternoon, your
23 Honours.

24 (Speaks English) Even in coded form I'm afraid we're
25 not any clearer as to exactly what Mr O'Shea's application will

1 be but, out of an abundance of caution, we do believe we should
2 go into private session. We want to avoid anything of an
3 identifying nature for either an intermediary, or this witness.

4 PRESIDING JUDGE COTTE: (Interpretation) For the
5 members of the public, let me inform you that, if there is anything
6 that can risk the identification of a witness or an intermediary,
7 then we need to avoid it. We have to now go into private session,
8 and if at the end of Mr O'Shea's intervention and the other
9 reactions we may need to reclassify it in open session.

10 So, court officer, we will go into private session.
11 And Mr O'Shea, as you yourself have indicated, you have to be
12 very brief so that this private session does not take up too
13 much of our time today.

14 (Private session at 2.54 p.m.)

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2 (Closed session at 3.53 p.m.)

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18 (Open session at 3.55 p.m.)

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

20 Honours.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

22 court officer. Madam Prosecutor, the Chamber has taken note

23 of your earlier remarks after we went into private session.

24 The Chamber also notes that the Katanga Defence team, according

25 to Mr O'Shea in his own words, did not mean to cast doubt on

1 the behaviour of your team in this particular regard. I'm saying
2 this just so that it is completely clear.

3 Now, normally we would suspend in three minutes. It
4 would be quite frustrating since we wish to continue. Now,
5 since we suspended for about 20 minutes, we will go on until
6 4.20 and then we will suspend at 4.20. Madam Prosecutor, please
7 proceed for your re-direct.

8 Witness, can you hear me?

9 THE WITNESS: Yes, I can hear you.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well.
11 Madam Prosecutor, please proceed.

12 MS LUPING: Thank you, Mr President.

13 QUESTIONED BY MS LUPING:

14 Q. Mr Witness, you stated that during the Ituri
15 Pacification Commission meetings, which took place in
16 April 2003, that you temporarily left and went to Drodro in
17 the aftermath of a massacre. I have one brief question,
18 Mr President, I'd like to ask in private session and the rest
19 are in public session, with your leave.

20 PRESIDING JUDGE COTTE: (Interpretation) Madam
21 Court Officer.

22 (Private session at 3.58 p.m.)

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13 (Open session at 3.59 p.m.)

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

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
17 Ms Luping, please go ahead.

18 MS LUPING:

19 Q. Mr witness, can you explain what you saw or heard
20 yourself when you went to Drodro?

21 A. When we went to Drodro two days after the massacres,
22 (Expunged) what I saw, specifically, the massacres of the
23 inhabitants of Drodro who were Hemas, for the most part. So
24 these were massacres that had been organised by their long-time
25 enemies, that is, the Lendus. We brought them medicines, and

1 this was a gift from MONUC. We visited all the rooms in which
2 the injured were being treated and we also visited the mass
3 graves, the various mass graves. And after having distributed
4 the medicines, we returned to Bunia.

5 Q. You said that you visited the hospital where there
6 were injured people. My question is: Do you recall the types
7 of injuries that you saw that they had suffered?

8 A. There were serious injuries and the victims had been
9 hurt with machetes and also attacked with knives. These were
10 serious injuries, and most of them had been injured with machetes,
11 knives, and clubs.

12 Q. And these victims that you've described, can you
13 confirm the gender and the age of the victims that you saw at
14 the hospital?

15 A. There were all age groups amongst the victims: You
16 had four-year-old children, adults, adolescents, and you even
17 had old people. So there were both male and female victims.
18 So you had young people, mothers, old people, and (Expunged)
19 children. I still remember that.

20 Q. Mr witness, just a reminder that we are in open session
21 and the public can hear what we're saying.

22 Do you recall learning the numbers of people who were
23 killed and injured at Drodro?

24 MR FOFÉ: (Interpretation) Mr President.

25 PRESIDING JUDGE COTTE: (Interpretation) Yes,

1 Mr Fofé.

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

3 I'm sorry for interrupting the Prosecutor, but I have the feeling
4 that Madam Prosecutor is reopening her direct examination. She
5 is asking questions on a theme that was not elaborated on by
6 the Defence teams in the cross-examinations. I do not know
7 whether Mr O'Shea went into the details of the Drodro attack
8 or not, but it is my feeling that the Prosecutor is reopening
9 her direct examination, and that is not what a re-examination
10 has to be. In re-examination, the Prosecutor has to put the
11 witness -- put questions that were dealt with in
12 cross-examination.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
14 Mr Fofé.

15 Madam Prosecutor, it is true that in the binder that
16 you produced there were extracts on Drodro, but it is also true
17 that that Drodro attack was mentioned only very briefly during
18 your examination. So, given that we are in re-examination now,
19 you have to refocus your direct examination. Please proceed.

20 MS LUPING: Thank you, Mr President. Just to clarify,
21 in response to Mr Fofé's submissions, it was simply a question
22 of seeking to clarify with the witness and support his account
23 in relation to Drodro, in which he mentioned that he had traveled
24 to during the Ituri pacification mission.

25 We have only one further question, Mr President, which

1 relates to another matter, but we would suggest that it would
2 be wiser to go into private session for this one question for
3 this witness. It was a matter we had discussed previously.

4 PRESIDING JUDGE COTTE: (Interpretation) Let us go
5 back briefly to private session.

6 The members of the public have to understand that this
7 frequent shifting from private session to open session is
8 dictated by the necessity to protect that witness.

9 (Private session at 4.08 p.m.)

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13 Page 36 expunged. Private Session.

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23 (Open session at 4.16 p.m.)

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

25 Honours.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 Madam Court Officer.

3 For those who are following our proceedings either
4 in court or outside of the court, the Prosecutor has concluded
5 her re-direct, and the last questions that she had to ask were
6 asked in private session because of witness protection issues.

7 Mr O'Shea, in light of the answers that the witness
8 has just given, do you have any final comments?

9 MR O'SHEA: Thank you, Mr President, just a few minor
10 observations.

11 QUESTIONED BY MR O'SHEA:

12 Q. Sir, I won't be very long with you at all. I know
13 we've had quite a long time together already, so this is not
14 going to be a long exercise.

15 Today you were asked by my learned friend representing
16 Mr Ngudjolo, you were asked -- and this is at page 7 of today's
17 transcript, lines 10 to 18, you were asked to identify an
18 individual on a video extract, and your response to that
19 identification was Denis Akobi, and you explained that this
20 gentleman was a South Lendu. Do you remember that?

21 A. Yes, I do remember.

22 Q. And then at line 17 to 18 of page 7 of the transcript
23 today you said, "when I say South Lendu, I mean Ngiti." Now,
24 my question is this: would it be correct to say that when one
25 is talking about the collectivity of Walendu Bindi, it is common

1 to refer to people coming from that region as Ngitì, whatever
2 their actual ethnicity?

3 A. The Ngitìs are the Lendus of the south. That is the
4 way that they're generally known. But do you think that someone
5 from another ethnic group, even if he lives in your collectivity,
6 will belong to your ethnic group? The Lendus of the south are
7 Ngitìs.

8 Q. Let me put it to you this way: Is it right that it
9 is common to assume that the people who come from Walendu Bindi
10 are Ngitì?

11 A. Yes, a Lendu Bindi is Ngitì. They're generally known
12 as Lendus South because they live in the Irumu territory, as
13 against the Lendus -- the other Lendus of the north who live
14 in the Djugu Territory. And the Lendus of the north are simply
15 known as Lendus in short, whereas the Lendus in the Irumu
16 territory are known as the Lendu Bindis and they are Ngitìs.
17 They can also be referred to as Lendus South because they live
18 in the Irumu territory, whereas the Lendus live in the Djugu
19 Territory. I believe that is the difference.

20 Q. Now, can you please confirm this: Is it right that
21 you have personally no medical training or experience; is that
22 correct?

23 MS LUPING: Mr President.

24 PRESIDING JUDGE COTTE: (Interpretation) Madam
25 Luping, please.

1 MS LUPING: We have two concerns in relation to this
2 question. The first relates to the relevance. The second is
3 the fact that there is nothing in either -- in my re-examination
4 that raises such an issue to warrant this question being asked.
5 If any such question was to be asked, it should have been asked
6 at the relevant time in cross-examination. This is not the
7 right time to ask this question. The opportunity was before.

8 MRO'SHEA: Well, this question is being asked because
9 of the questions of my learned friend and the answers which
10 she elicited, and I'm not going to alert the witness as to the
11 exact parameters of that. I think the Chamber is aware of it
12 and so is my learned friend.

13 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea,
14 unless we are mistaken, the Chamber does not remember any
15 discussions in the previous days on any possible medical or
16 paramedical training of this witness, so please move on to the
17 next question.

18 MR O'SHEA: The question which was put in
19 re-examination did not relate to the competence of this witness
20 in the medical field, but questions were put which required
21 competence in the medical field, and that is why I'm seeking
22 this clarification.

23 PRESIDING JUDGE COTTE: (Interpretation) So you
24 have to be very, very specific. If you're talking about the
25 description of dead bodies and injuries, which, in your opinion,

1 might require medical competence, in that case, ask your question
2 but in such a way that we understand because we really did not
3 understand. So please rephrase your question.

4 MR O'SHEA: Yes. Well, if your Honour understands,
5 then I'll put the question to the witness as to his competence
6 in the medical field.

7 Q. Mr Witness, is it right that you have no training or
8 experience in the medical field; yes or no?

9 A. I have no medical training.

10 PRESIDING JUDGE COTTE: (Interpretation)
11 Mr O'Shea.

12 JUDGE DIARRA: (Interpretation) Mr President, with
13 your leave, do you really need to graduate from the faculty
14 of medicine to know whether a dead body was shot in the head
15 or was stabbed in the back or whether the person was hit with
16 a hammer?

17 PRESIDING JUDGE COTTE: (Interpretation) Madam
18 Judge, you have shown a lot of common sense, and Mr O'Shea is
19 proceeding with his comments.

20 Please proceed.

21 MR O'SHEA:

22 (Expunged)

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3 MS LUPING: Objection, Mr President.

4 PRESIDING JUDGE COTTE: (Interpretation) Madam
5 Prosecutor, you will raise your objection after the break because
6 we no longer have any space on the tape. So we will resume
7 at 5.00 p.m. with witness P30, and apparently we are going to
8 stay with him for a while before laying the foundation for the
9 next witness. Maybe we'll simply take his solemn undertaking
10 so as not to waste the time.

11 So we are going to go into closed session now to allow
12 the witness to leave, and we will break as soon as he has left
13 the room.

14 So, Mr Witness, we will meet you again in 30 minutes'
15 time, and that will most probably be the end of your testimony.

16 (Closed session at 4.29 p.m.)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 4.30 p.m.)

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

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 court officer. We will reconvene at 5.00 p.m. 'til 6.30 p.m.
25 Court is suspended.

1 (Recess taken at 4.31 p.m.)

2 (Upon resuming at 5.07 p.m.)

3 (Closed session)

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1 (Expunged)

2 (Open session at 5.13 p.m.)

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

5 PRESIDING JUDGE COTTE: (Interpretation) Perfect.
6 Counsel, O'Shea.

7 MR O'SHEA: Yes. If I -- if the Bench disagrees with
8 my classification as "public," your Honours can put me on the
9 right line, but for my part these are matters which can be
10 discussed in public.

11 The document which was referred to is a formal, not
12 an informal document. I can describe it as package 164, Rule
13 77 disclosure of 22 June 2010. And the relevant page number
14 as page 11, and I think 26.

15 Now, I think with respect to my learned friend, she
16 misunderstands the purpose of the exercise that the Defence
17 is undertaking. If my learned friend defines the term
18 "intermediary" to mean the person who puts a witness in contact
19 with the Prosecution, then my learned friend in the Prosecutor's
20 office is entitled to that definition; it's their definition.
21 But it's not the definition of the term "intermediary" which
22 is of concern to us. It's the contact between this person,
23 whoever he may be, or she may be, and the witnesses, whoever
24 they might be, and the nature of that contact.

25 One form of that contact would be to put the Prosecution

1 in contact with the witness, and that would appear to be the
2 principal function of the intermediary that we are discussing.
3 But it's not necessarily the whole story as to the contact between
4 that person and witnesses, and this is revealed by the
5 information which we have been discussing this morning.

6 The information which has been provided does not say
7 anything about putting the witness in contact with the
8 Prosecution.

9 Now, I understand that my learned friend does not want
10 me to attempt to attain the identity of an intermediary and,
11 as I've explained, that's not my purpose. Of course, there
12 are risks when one goes down any form of road of discussion
13 of these issues but, your Honours, that risk surely has to be
14 balanced against the interests of justice.

15 We are going to finish with this witness and, in the
16 interests of justice and in the interests of an expeditious
17 trial, we don't need this witness to come back. So we would
18 submit that, insofar as these issues can be dealt with in an
19 appropriate manner, we should try to do so, and not simply sweep
20 them under the carpet because I'm not entitled to the identity
21 of 143.

22 Given that, as I explained, there may have been contact
23 which did not necessarily involve an introduction to the
24 Prosecution as such, I would make the following suggestion:
25 Even if I'm the one that's putting the questions to the witness,

1 my learned friend can write down the name of the intermediary.
2 The Registry can put that name in front of the witness, and
3 I can ask the witness, without stating the name in public, and
4 clarifying to the witness that I don't know the name and I'm
5 not entitled to the name, but ask the witness to confirm whether
6 or not he knows that person.

7 That will then establish if there has been - or at
8 least in the mind of this witness - any contact at all between
9 the intermediary and this witness which, of course, goes beyond
10 the very tight parameters of my learned friend, which are the
11 parameters of who introduced you to the Prosecution.

12 That's my suggestion. That would avoid -- that takes
13 the power out of my hands, to a great extent, if it's felt that
14 I'm trying to do something improper, and then we get a resolute
15 answer to that question.

16 The next point is this, your Honours: If your Honours
17 refer to paragraph 99 of the statement of P30, your Honours
18 will see -- yes, 99 and 101.

19 MS LUPING: Mr President, just a reminder we're in
20 public session.

21 MRO'SHEA: Yes. Well, I'm only mentioning paragraph
22 numbers.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes. You
24 will not mention any names.

25 MRO'SHEA: And if your Honours read those paragraphs,

1 there is an indication there that this witness has, at least
2 on one occasion, received footage from a person who is not a
3 professional cameraman. A name is mentioned there in
4 paragraph 99. There's no indication as to who that person is.
5 That person may or may not be the intermediary in question;
6 I don't know. But that paragraph 99 can be read to the witness
7 and the witness can explain in more detail the contact that
8 he's referring to there without clarifying who that person is.

9 He can refer to -- he can be asked to explain in more
10 detail what he said in his statement there without clarifying
11 who that person is in the sense of -- in the sense of whether
12 he's classified as an intermediary or not.

13 It would appear that, in any event, he's not an
14 intermediary in terms of the definition given by my learned
15 friend because the witness has --

16 PRESIDING JUDGE COTTE: (Interpretation) Counsel
17 O'Shea, I'm going to interrupt you. We've given you two minutes
18 and now the Chamber would like to express its position.
19 Ms Luping, please be seated. I'm just asking for a couple of
20 minutes.

21 (Trial Chamber confers)

22 PRESIDING JUDGE COTTE: (Interpretation) Very well.
23 This debate seems somewhat surrealist or at least be less
24 philosophical in this regard. It seems like a game of cat and
25 mouse; perhaps more that. That's more the metaphor that I'm

1 looking for. Counsel O'Shea, you have indicated to us that
2 the word "intermediary" can have several different meanings.
3 In the language, the common language of this Court, unless I'm
4 not wrong, intermediary is the person who puts in contact with
5 the Office of the Prosecutor somebody who is going to become
6 a witness for the Prosecutor, because we are currently at the
7 Prosecution case stage, but you tell us that the intermediary
8 could also be defined differently, as somebody who, at a
9 particular time, was able to contact one of the witnesses without
10 having put that person into contact with the Office of the
11 Prosecutor.

12 This is no longer a go-between. This is just somebody
13 who takes up contact with a witness. Why not? During the
14 re-examination by Madam Luping, in answer to one of your
15 legitimate requests, the question was put to the witness as
16 to whether he had been put into contact with the Office of the
17 Prosecutor via an intermediary, and he said it was by somebody
18 from Bunia. So I'm not going to say -- I'm not saying the name
19 because it was never known. I never knew it.

20 You mentioned a question which was basically to say
21 could you indicate to us if some of the videos, page 47 of the
22 transcript in French, I don't want to misquote you. "Have you
23 at a particular time received video footage from other persons?"

24 We're in open session so I'm being a bit evasive in
25 this regard. You asked this question, which surprises the

1 Chamber, is that you didn't ask this question during your
2 cross-examination in the first place, because paragraph 99 of
3 the declaration that you are referring to, or the statement
4 you are referring to, does very clearly indicate that the witness
5 had already answered in March 2006, in April 2006, to the Office
6 of the Prosecutor, saying that "I received videos from other
7 persons."

8 All that is coming now at this stage of our proceedings.
9 It's a bit surreal because there's a table that we all know
10 nothing about. We don't have this table which apparently has
11 come from the Lubanga case, unless I am wrong here.

12 So one thing is certain: The identity of 143, which
13 you would like to have, and we understand that, can only be
14 given if protection measures are implemented that Chamber I
15 has expressly attributed to that person.

16 Now, we will make an effort to accelerate the
17 implementations of these protection measures. It is, therefore,
18 totally ruled out that in any way during this hearing that the
19 identity of this intermediary 143 can be revealed. It is totally
20 ruled out that through questioning the witness can be led, even
21 against his own will, to reveal the identity of 143. That is
22 a reminder that I'd like to make in the most solemn way. We
23 have (sic) all subject to Regulation 42 and the decision of
24 Trial Chamber I, and we would ask you to believe that we are
25 doing everything we can, even if we think it's slow and we suffer

1 from that, such that the identity of 143 can be disclosed.

2 Mr O'Shea, you have asked your question as you phrased
3 it in paragraph 47, so please ask the question. Ask it in private
4 session, because it will certainly lead to the profession of
5 the witness and that in turn will lead to identifying him. But
6 please ask your question in a very general way, for example,
7 "Have you received videos from any other people?"

8 You also have an opportunity to our mind to say to
9 him, "The person who gave you the videos, if you were given
10 videos, might that person be the same one as the person who
11 put you in touch with the OTP?", but once again without providing
12 any indications as to identity. We do have to ensure equality
13 of arms and the Chamber wants to proceed generally, but we do
14 not want to violate Regulation 42.

15 We will now go into private session so that the witness
16 can go -- come in and then we will have a private session for
17 these questions; agreed?

18 (Closed session at 5.32 p.m.)

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24 (Private session at 5.33 p.m.)

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18 (Open session at 5.53 PM)

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

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Madam Court Officer.

23 For the general public, we are going back into open
24 session. Mr O'Shea has finished his final questions and
25 remarks that the Katanga Defence team wish to ask of the witness

1 after the re-direct by the Prosecution.

2 The Chamber would just like to make two observations;
3 one very specific one, and this follows up on your last remarks,
4 and this has to do with paragraph 99 of the witness's statement
5 to the investigators in April 2006. The Chamber is of the view
6 that the content of this paragraph, paragraph 99, independently
7 of the information that you may have received over the weekend,
8 allowed you, if you thought it was absolutely necessary, to
9 ask any useful question during your cross-examination. That
10 is our first observation. We just want to make our viewpoint
11 very clear.

12 The second observation is - and this is very much
13 generally speaking - the exchanges between you and the Prosecutor
14 were very courteous. They were sharp and the Chamber realises
15 that a Defence team, since -- must use legal means and the
16 objective to reach its objective. Each team plays its role,
17 you on your side and Ms Luping on her side. We, Chamber, noticed
18 the word -- or an expression I have been accused of, but I don't
19 think there were any accusations. I think it was more just
20 a matter of each side playing their role, fulfilling their
21 responsibilities to the fullest possible extent. Are we in
22 agreement?

23 MR O'SHEA: Yes, I understand that, and I'm grateful
24 for those observations and comments, your Honour, thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) Professor

1 Fofé or Mr Kilenda, or both.

2 MR FOFÉ: (Interpretation) Thank you very much, your
3 Honour. The Defence of Mr Ngudjolo has no further questions
4 for this witness. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) The Chamber
6 wishes to thank the Ngudjolo Defence team.

7 Witness, your testimony is now concluded. The Court
8 thanks you. Once again, we thank you for being so patient,
9 because you have seen that we met with a great many technical
10 difficulties at the beginning of your testimony which made things
11 complicated for us and for you and led to frequent interruptions,
12 which must have taken you by surprise, and we apologise for
13 that.

14 We also thank you for your answers which will help
15 us, we hope, find the path towards the demonstration of the
16 truth, and we thank you for your last remarks when you said
17 that you wanted to provide some additional information because
18 you were troubled, thinking that perhaps you had not answered
19 exactly and not given an exact account of you what you had
20 experienced in the past.

21 Now, this has been a long time here in the Hague. This
22 is your second trip to the Hague and, in your way, you have
23 made a contribution to the workings of the international justice
24 system, and we wish you a safe journey home. Goodbye, witness.

25 Court officer, we will now go into closed session so

1 the witness can leave the courtroom.

2 (Closed session at 5.57 p.m.)

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8 (Open session at 5.58 p.m.)

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

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

13 Before we call witness 2 - I'm not entirely sure we
14 will be able to hear from him this afternoon - before that we
15 have to deal with some organisational matters relating to his
16 testimony so that we do not find ourselves facing the
17 difficulties that we had with witness 30.

18 During the testimony of witness 30, we expressed
19 the wish for videos of better sound quality so we could better
20 understand the exhibits.

21 I'm sure you've been advised by the Registry at the
22 weekend of the possibility which they were able to implement.
23 They have prepared new media, new versions of the videos. We
24 have the old recordings and we have new recordings that, from
25 a technical point of view, are much better because, among other

1 things - if I've understood correctly - for certain footage
2 with background noise it has been possible to reduce the
3 background noise.

4 And so we would like to suggest -- now, there may be
5 some possible objections. We would suggest the use of these
6 new recordings. And similarly, during your cross-examination,
7 you, too, will use the new recordings. They were done by the
8 Registry, under the oversight of the Registry, a neutral organ
9 of the Court.

10 If you are in agreement to use these new versions,
11 these new versions which will receive EVD numbers, be it
12 Prosecution EVD numbers or Defence EVD numbers -- are you agreed
13 that the new versions be the ones shown?

14 MR O'SHEA: We're in -- obviously, in absolute
15 agreement that the new version, with the better sound quality,
16 should be used during the proceedings.

17 Can I add, your Honour, if I may, because I think it's
18 important that I say this early, my understanding is that the
19 translation section has undertaken an exercise to provide a
20 corrected version, if corrections need be, of the original
21 transcripts provided by the Office of the Prosecutor. As far
22 as I know, we haven't -- oh, we have. I'm not up-to-date, but
23 we've received some information. I don't know what that
24 information is yet without consulting with Ms Menegon, but just
25 in terms of your planning of the proceedings, I think it will

1 be necessary for us to at least have an opportunity to look
2 at this exercise which has been done.

3 The idea, if your Honours will remember, that -- was
4 that the translations would not provide a new translation,
5 because that would be a too difficult exercise to undertake,
6 but of course, if we've in a way taken a sort of a shortcut,
7 but not a shortcut which would prejudice the Defence, but in
8 order to preserve that position, we would of course need to
9 have a look at what's been done before the examination in-chief
10 of witness P2 commences.

11 I'm not sure what to say how much time we would need.
12 Perhaps -- it depends, of course, on what the translators have
13 done. If they've confirmed all the translations of the
14 Prosecution as being correct, then we would be in a -- we would
15 obviously be in a simple position. But it all depends on what
16 has come back from the translators. Sorry, I think I need some
17 further information before I proceed. If your Honour will just
18 give me one moment.

19 (Defence counsel confer)

20 MS LUPING: Mr President.

21 PRESIDING JUDGE COTTE: (Interpretation) Madam
22 Prosecutor, after you, then we will express ourselves. Please
23 proceed.

24 MS LUPING: Thank you, Mr President. Just a couple
25 of points for clarification. First in relation to the actual

1 video recordings, obviously, it is the position of the
2 Prosecution that we, too, would prefer that the
3 Registry-enhanced versions of the original footage be used but
4 we did want to bring to the attention of the Chamber the fact
5 that three of the extracts for video 2 do not contain all of
6 the entire footage that the Prosecution had wanted to use. We
7 did provide the Registry with the precise time-stamps and extent
8 of the footage we wanted to use but, for technical reasons,
9 I understand that not all of this was captured in three of the
10 extracts, and that relates to the second video,
11 DRC-OTP-1017-1482.

12 Also, the ten extracts from prior footage that has
13 already been shown to witness 30, that's relating to two of
14 the videos, this is the video footage for which voice distortions
15 were necessary. When the Registry prepared better versions
16 for the interpreters for the translation-checking exercise,
17 they were provided without voice distortions. So we would not
18 be able to use the Registry versions for those two videos, and
19 that relates to ten of the extracts. That's DRC-OTP-0155-0004
20 and DRC-OTP-1042-0006. So, certainly whilst the Registry audio
21 and visual footage will be extremely useful, it will also be
22 important, we believe, to have the Registry-checked
23 translations or transcripts available, and we do observe that
24 there were only a few corrections.

25 We've had an opportunity to check what was done and

1 compare it with what was originally provided by the Prosecution
2 and there are only a few lines in question, about approximately
3 14 lines, that have been corrected. In many instances, they
4 simply confirmed that the original Prosecution transcripts as
5 provided were accurate.

6 So, in those circumstances, we do believe that they
7 could be used, in addition to having the Registry-improved audio
8 video footage.

9 We would also like to say we do thank the Registry
10 for all the work that was done. We appreciate the exercise
11 that was conducted, as we do believe it will be extremely helpful
12 in expediting the testimony for Witness P2.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
14 Ms Luping.

15 Just one moment, Mr O'Shea. I would like to come back
16 to what I was saying.

17 Thanks to the work done by the Registry, we have new
18 video recordings that should make it possible for the
19 interpreters to work in good conditions, and even excellent
20 conditions, and that would also enable us to have high-quality
21 transcripts.

22 The Prosecutor has just said that it was necessary
23 to have voice distortion on two extracts and it is not possible
24 to impose that distortion on the tapes before putting questions
25 to the witness. Is that technically possible? Because if that

1 were possible, then we could have this new high-quality version
2 with the necessary distortion and then facilitate the work of
3 the interpreters. But if that is not the case, like for witness
4 30, the interpreters should be able to make a maximum effort,
5 as well as the court reporters; that is, for the provisional
6 transcripts. But for the final transcripts we should be able
7 to insert the translations that have been reviewed and corrected
8 by the Registry; that is a neutral organ of the Court.

9 The only thing that I'm surprised about, Madam Court
10 Officer, is that for this hearing everyone was supposed to have
11 the translation of the Prosecutor reviewed and corrected by
12 the Registry, and the information that I have received indicates
13 that the changes were very minimal and the review made by the
14 Registry made it possible to authenticate the translations of
15 the Prosecutor, which should facilitate our testimony with
16 Witness P2.

17 So, court officer, I believe that tomorrow the new
18 versions, or at least the remarks of the Registry, should be
19 communicated to all, because I believe in that case it is only
20 the remarks that will be provided to us, given that the
21 translations made have been authenticated.

22 Now, each time there is a major difficulty in the
23 interpretation, it would be possible to insert that authenticated
24 translation in the final transcripts, and this would not only
25 be the translation from the Prosecutor which was the issue that

1 we stumbled against last week. Are we agreed?

2 So, reflect on the technical possibilities of actually
3 showing the improved video recordings with the distortion.

4 Mr O'Shea, please.

5 MR O'SHEA: In light of the clarifications of
6 Ms Luping, I have nothing further to add. It doesn't look as
7 if the exercise is going to be complicated from our side. If
8 there are any difficulties, I'll draw them to your Honour's
9 attention tomorrow morning, but I think we should be able to
10 be in a position to proceed tomorrow morning.

11 There is another matter which I wish to raise, but
12 I'll let your Honour conclude on this issue first, but just
13 so your Honour's aware.

14 PRESIDING JUDGE COTTE: (Interpretation) Please
15 keep in mind what you want to raise, but the Chamber simply
16 wanted to remind you of the working modalities in our decision
17 2289 of 16 July 2010, which decision granted the request for
18 admission made by the Prosecutor, but only partially. A few
19 excerpts of statements 1 and 2 of the witness were admitted,
20 and all that is in the small file that you have received. The
21 annexes of the second statement were also admitted, as well
22 as five video extracts bearing 0080-0006, 0081-0006, 0082-0004,
23 as well as two extracts of 0087-0014. So, let me repeat there
24 were excerpts of statements 1 and 2 of the witness, the excerpts
25 for annexes of statement 2 and the video extracts that I have

1 just mentioned.

2 So since they were provisionally admitted, the
3 documents received an MFI code, so in the decision 2368 of the
4 Chamber, there are the MFI references that were assigned to
5 these documents provisionally admitted. If witness 002 is in
6 agreement, then EVD numbers will be assigned to the documents
7 in question and, as in the decision of 16 July 2010, the Defence
8 will carry out its cross-examination on those five extracts
9 that have been admitted.

10 The Defence team of Germain Katanga on Friday and this
11 morning made known some objections to annexes O and OH, small
12 H, and letter O, small G. Small O, small GO, small H and O,
13 small J. So extracts, the questions can only deal with their
14 authenticity because the Chamber has already admitted those
15 various extracts and we are aware that (Expunged)
16 You can refer to his second statement, paragraphs 19, 39 and
17 93.

18 Therefore, the cross-examinations, if the witness
19 accepts, will deal with those five extracts and, after that,
20 the Prosecutor will start the examination-in-chief on the other
21 extracts that they would like to produce and then the objections
22 that you wish to make, the Defence team for Katanga has already
23 made some objections, so those objections will be made as we
24 go on. Depending also on the decisions taken by the Chamber,
25 they will apply to both Defence teams. I believe everything

1 is clear now. And thank you for listening to me.

2 We are going to go briefly now into private session
3 to talk about something that could be identifying. So Madam
4 Prosecutor, you can address the Court.

5 MS LUPING: Thank you, Mr President. I shall be brief.
6 Before we move into private session, I think this can be said in
7 public session, just three quick points.

8 First, just on the issue of applying voice distortions
9 to the Registry created or Registry-enhanced extracts, I should
10 say, the Prosecution will endeavour to apply distortions, if
11 possible. We'll certainly do our best. That would then leave
12 only three extracts which would need to be shown from the OTP
13 DVD, the OTP extracts from the same footage because this still
14 doesn't deal with that issue. That's number one.

15 Secondly, just to clarify our understanding --

16 PRESIDING JUDGE COTTE: (Interpretation) And why
17 would those three extracts be presented in their original form?
18 Please remind us.

19 MS LUPING: Simply because certain aspects of speech,
20 which is very important for the Prosecution, at times has been
21 cut off. We had provided the precise footage that needed to
22 be enhanced, both the DVD and the lines and time stamps and
23 so forth, but I believe, and I understand that simply for
24 technical reasons, important aspects of speech that we would,
25 and we would want entered into the record, cannot be heard.

1 It's simply cut off. That's the reason why those three extracts
2 would still need to be played, unfortunately.

3 The second point is just simply an issue of
4 clarification. Our understanding is that the
5 Registry-corrected transcripts have been available to all the
6 parties since noon of today.

7 Finally, this is really a question of clarification
8 of procedure. We understand that the decision is that the
9 transcripts or translations, as corrected by the Registry, where
10 there is any need to rely on those translations or transcripts,
11 will be read into the record where it's necessary, and the only
12 question we'd like to clarify is that if that would be in realtime
13 because, obviously, having the precise information as contained
14 in those translations would be needed for certain questions
15 to be put to the witness. So we just simply wanted to ensure
16 that, or to be clear that that would all be made or read into
17 the record by the interpreters in realtime.

18 Thank you. Those were my only three points.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
20 Madam Prosecutor. The most important point is that the
21 translations of the transcriptions authenticated by the
22 Registry were communicated at noon. But since we were all in
23 the courtroom, we were not all aware of it.

24 We have one concern, that is not to have the same
25 difficulties as last week, and we have involved the Registry,

1 which is a neutral organ, providing technical, neutral and
2 objective services. Obviously, the Registry services have made
3 great efforts, and these includes interpreters, translators
4 and others, so we have to be able to work better, and this is
5 not a criticism, but we had a feeling that we were too dependent
6 on translation from the OTP last week. We have overcome this
7 obstacle. We are not going to go into private session, but

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged) but there is uncertainty about the other four,
14 and these videos two, DRC-OTP-1017-1482, video number 7,
15 DRC-OTP-0083-0002; video number 9, DRC-OTP-0155-0004; and
16 video number 10, DRC-OTP-1042-0006.

17 Prosecutor, you simply have to be ready to give us
18 further information at the time that you intend to produce those
19 videos (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 Apparently, we do not have enough time and I would
25 have wanted to read out the oral decision on the protection

1 measures for the witness.

2 Court officer, do we have five minutes or more? Do
3 we have an additional five minutes to read the oral decision
4 on the protection of the witness, which would mean that tomorrow
5 we will bring him in directly to the courtroom? We will read
6 out that decision and then adjourn after.

7 Witness 2 will be with us tomorrow morning. By its
8 decision 1667 of 23 November 2009, on the protection measures
9 for certain witnesses, the Chamber decided to grant the following
10 measures to the witness: Use of a pseudonym, voice and face
11 distortion.

12 During a meeting with VWU on 2 September, the witness,
13 amongst other things, expressed the wish to be granted such
14 measures. The Chamber notes that the witness is in the Court's
15 protection programme and we feel that his anonymity should be
16 absolutely safeguarded and these measures will make it possible
17 to do so.

18 Witness 2 also expressed the desire to have curtains
19 installed isolating him from the two accused persons and
20 preventing any visual contact, and these are measures that he's
21 supposed to have been granted in Trial Chamber I.

22 The Chamber is aware of the apprehension that may be
23 caused with regard to a witness in the presence of the accused
24 persons. However, it seems to us that in this particular case,
25 given the profile of this witness and the information at our

1 disposal, the application of all those radical special measures
2 is not necessary.

3 We have, therefore, decided to limit those measures
4 to when the witness comes into the courtroom and when he leaves
5 the courtroom. The witness will, therefore, enter the
6 courtroom before the accused persons and will leave the courtroom
7 after them. This will make it possible for him never to come
8 up face-to-face with them and, therefore, will not run the risk
9 of having visual contact from them.

10 On the other hand, there will be no curtain concealing
11 him from the two accused persons who can only see him from profile
12 and only three-quarters of him. It will be up to the witness
13 to address the Court, which means he will have to look directly
14 in front of him without being compelled to turn towards the
15 accused persons.

16 It goes without saying that these measures that have
17 been taken can be revised if there is an indication of fear
18 which makes it possible for the witness not to be able to testify
19 under the conditions that are conducive to the ascertainment
20 of the truth, which is our common objective.

21 So this decision will lead the Chamber to order a closed
22 session when the witness enters or leaves the courtroom. It
23 also means that the witness will be able to come into the courtroom
24 and leave the courtroom in the absence of the two accused persons,
25 who have to come in after him and leave the courtroom before

1 him, but Mr Katanga and Mr Ngudjolo will use, or rather will
2 have their usual seats and will not move as they have done for
3 other witnesses.

4 The Chamber also notes that, even though the witness
5 is able to speak French and English, he has decided to testify
6 in Swahili.

7 We will therefore reconvene tomorrow morning at
8 9.00 a.m. The witness will be the first to come into the
9 courtroom, Mr Katanga and Mr Ngudjolo will come in after that
10 and I hope that all the technical problems that we came up against
11 will be resolved this time around.

12 This hearing is adjourned. We'll meet again tomorrow
13 at 9.00 a.m.

14 (The hearing ends at 6.31 p.m.)