

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra, and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and Mathieu
7 Ngudjolo Chui
8 Trial Hearing
9 Wednesday, 30 March 2011
10 The hearing starts at 9.06 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
15 The accused are in the courtroom. Good morning, sirs.
16 Good morning to everyone.
17 This is how our hearing of this morning is going to be conducted.
18 To begin with, in the absence of the witness we are going to give the
19 floor to the Prosecutor, who wanted to make some observations on the
20 detention conditions of the witnesses in the prison premises. And still
21 in the absence of the witness, we will deal with the e-mail that was
22 addressed to us yesterday evening at 1801 hours on agreements on the
23 facts. We will briefly discuss that and then we'll bring in the witness,
24 after which we will hand down a decision in response to urgent
25 applications from Mr. Hooper and Mr. Kilenda relating to possible visits.

1 Then we will go into closed session, and in the presence of the witness
2 we will read out a decision on the observations made by Mr. Hooper
3 regarding possible protection measures for that witness. Then we will go
4 back to open session. We will then have the witness appear, introduce
5 himself under Articles 92 (as interpreted) and others before we proceed
6 with his testimony.

7 And now, Mr. Prosecutor, given the e-mail that you sent relating
8 to the detention conditions of the three witnesses in Scheveningen,
9 please, you now have the floor to make your observations.

10 MR. MACDONALD: (Interpretation) Thank you, Mr. President, your
11 Honours. Very briefly, we noted the filing of the Registry on this
12 issue, and the only thing that we would like to draw your attention to is
13 that when Witness D-236/D-11 would have completed his testimony, we
14 believe that it is advisable that he should not be in contact with D-228
15 or D-350. The reason why we are saying this is that we understand that
16 for the time being D-228 and D-350 are detained in the same wing of the
17 detention centre; but that is not the case with Witness D-236, who in
18 fact is being detained together with a witness in the Lubanga case.

19 In the filing of the Registry, it is mentioned that once D-228
20 has testified he will be separated from D-350. What we need to avoid,
21 Mr. President, is that once D-236 would have completed his testimony, he
22 should not be detained in the same place with either D-228 or D-350. And
23 so in the arrangements that have to be made if there are no available
24 cells for that reorganisation, it should be at least clear that the
25 witness who has already testified should not be in contact with the other

1 two witnesses.

2 And similarly, if Witness 228 completes his testimony he can be
3 detained together with 236, but not with D-350. But we are saying this
4 because this will avoid exchanges about the testimony in the courtroom.
5 I believe that the Chamber is aware of what happened in the past, but
6 regarding the future we cannot be sure about those possible exchanges
7 that might have an impact on the credibility of the witnesses.

8 Furthermore, there is an issue that might not have been raised in
9 the Registry report, but I believe the Chamber has thought about it.
10 Since the proceedings are transmitted through the internet -- well, I do
11 not know the capacity of access to information and computers, for
12 example, but I presume that they do not have access to the proceedings
13 and to the computers. So we wanted to draw the attention of the Chamber
14 to those possibilities for the future.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
16 Mr. Prosecutor.

17 Mr. Hooper, do you have any remarks regarding what the Prosecutor
18 has just said?

19 MR. HOOPER: Well, first of all, I don't know what the illusion
20 to "what happened in the past" was a reference to. That would be good to
21 know what that reference was about.

22 Now, in relation to the prisoners, three of them as you know --
23 as we all know are here, and one is about to step into the witness box to
24 commence his testimony. And I well understand that once that takes place
25 then that witness should not be in contact with the remaining two until

1 each of one of those, one by one, has completed his testimony; and then
2 indeed there would be no practicable objection to witnesses who have
3 concluded their testimony from association.

4 When Mr. -- when the next witness begins his evidence in a few
5 minutes, and that leaves, of course, two detained prisoners waiting to
6 give their evidence. For my part I submit there can be no real objection
7 to those two associating prior to giving their testimony, particularly if
8 they are dissociated from the witness who's about to commence his
9 evidence. I say that in the particular circumstances that they find
10 themselves because they landed late on Sunday here, as you know, from
11 Kinshasa, brought from prison there. These are men who have been
12 convicted of nothing. These aren't convicted men. They happen to have
13 been detained for six years, but they've never been convicted of anything
14 and, as we will hear, they've barely been charged with anything. So they
15 arrive here in unhappy circumstances.

16 The trouble is, as you know, is that there's very limited prison
17 accommodation, but aside the pressure that brings to bear on the
18 authorities there's very little opportunity for the remaining two
19 prisoners to have association with anyone other than Serbian prisoners in
20 the main who aren't necessarily known for their broad racial views. So
21 in those circumstances I would ask that the remaining two prisoners be
22 allowed to continue association with one another and any other prisoner
23 who is available in the particular quarters where they are until the next
24 one, as it were, shifts into the witness box, and then he goes into, as
25 it were, in *perdu* as well until he's concluded his testimony when he can

1 then commence or recommence association with the first witness. I hope
2 those are measures that would -- the Court would find suitable.

3 The only other matter that I'd wish to raise is quite a separate
4 matter, but as I'm on my feet can I raise it. Over the last four weeks
5 we've received over a hundred documents that have been disclosed by the
6 Prosecution. They're documents that relate specifically to the case.
7 They relate to Mr. Katanga. They relate to Mr. Ngudjolo, and we'd like a
8 full and thorough explanation why these documents have been disclosed so
9 late in the date. I don't ask for it now. I'd ask for a careful written
10 response from the Prosecution that we can subsequently react to, but I
11 ask for it to come quickly because I notice that one of these documents,
12 for example, it's proposed be shown to this witness. And we are very
13 concerned at what is either negligence or ineptitude on the part of the
14 Prosecution.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Kilenda, any brief
16 remarks you may have, please, and then we will come back to those -- that
17 issue of detention conditions.

18 MR. KILENDA: (Interpretation) Thank you, Mr. President. Good
19 morning, your Honours. Regarding the detention conditions of detained
20 witnesses, the Defence of Mathieu Ngudjolo does not have any remarks to
21 make. We would like to seize this opportunity to join ourselves in
22 expressing the same concerns expressed by Mr. Hooper regarding the
23 documents recently disclosed. So we would like to have an explanation
24 also.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

1 Mr. MacDonald, I will first of all deal with the issue of
2 detention conditions, and then you can make brief remarks.

3 Regarding the detention conditions of the three detained
4 witnesses, you would have noticed after reading the annexures to the
5 e-mail that was sent yesterday at 2006 that the Chamber wished to be
6 absolutely transparent. So you have in annex exchanges of
7 correspondences with the services of the Registry. The Chamber would
8 have preferred that the three detained witnesses should be housed
9 separately before their appearance in the courtroom. You would have
10 noticed that Witness 236 is currently isolated from 228 and 350, but for
11 purposes of or reasons of prison logistics that we do not understand
12 right now, it was not possible to separate 228 from 350, who are both in
13 the same wing and the same level. We therefore cannot do anything about
14 that right now. However, it is clear that for the time being 236 has no
15 contact with 228 and 350. And when 228 will start his testimony, he will
16 of course have no further contact with 350. I believe that this answers
17 your concern, Mr. Prosecutor. We will revisit this to ensure that
18 everything is moving smoothly. And if there is any further action to be
19 taken, then we will do so.

20 Now, please respond briefly to the surprise of the Defence teams
21 at the massive and belated disclosures that they have referred to.

22 MR. MACDONALD: (Interpretation) The adjectives used by the
23 Chamber, that is, "massive" and "belated," remain to be defined given the
24 lateness with which we received the lists of witnesses of the Defence.
25 However, your Honour, the Prosecution cannot respond without knowing the

1 documents referred to. Apart from 0650001 (as interpreted), the Defence
2 has to identify the other documents that they believe should have been
3 disclosed before and they should do that preferably in writing and we
4 will respond to that. But the Prosecution cannot deal with any other
5 documents except 0650011. Thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) I think that the OTP
7 and the Defence teams can also deal with this issue out of the courtroom
8 so that a maximum of -- maximum clarification can be provided to the
9 Defence teams and we can continue with our proceedings in the courtroom
10 without too much stress.

11 Now, Mr. Prosecutor, let us deal with your e-mail of yesterday
12 evening. You followed the decision of the Chamber to the effect that
13 before the testimony of each Defence teams we would like to know the
14 facts based on the summaries that you do not contest. We did that in
15 filing number 0239, pages 20 -- lines 20 to 23. You did that yesterday,
16 maybe at the last minute, but you did it.

17 The Defence is now aware of the nine-point list to the effect
18 that you do not dispute those points. We are going to ask the Defence
19 teams whether they agree with the proposals that you have made. Today we
20 are going to do so during this hearing, but in the future we would prefer
21 that the entire procedure should take place between you outside of the
22 hearings.

23 So, Mr. Hooper, you have the proposal made by the Prosecutor in
24 his e-mail of yesterday at 1801 hours and the annex includes a list of
25 nine facts that the OTP does not dispute. Can you tell us whether you

1 agree with that proposal by the Prosecutor?

2 MR. HOOPER: Yes. I first saw the list just a few minutes ago,
3 and I haven't had the opportunity of discussing it with members of the
4 team. There are specifics in it that I'm not in a position to confirm
5 one way or the other. The generality of it seems generally acceptable to
6 me, but, for example, I'm going to have to rely on witnesses to help us
7 as to when the FNI was first mentioned and I'm -- certainly in respect of
8 that will defer to the view of my colleagues representing Mr. Ngudjolo
9 who may very well be better advised than I as to some aspects of that. I
10 don't know.

11 But as to one, I don't know when EMOI was created. I've seen
12 some suggestion it was created before the fall of Lopondo. I don't know.
13 For my purposes, what is relevant is that it was in existence by the time
14 that the RCD-K/ML had moved from Bunia to Beni. So as to 1, I don't
15 know. As to 2, I don't know. It's probably that's the case. As to 3,
16 that seems consistent with what I know. 4, that seems correct. But I'm
17 not sure about the word "finalised" and what that means. 5, I don't
18 know. There's differences on dates as to when the FRPI came into
19 existence. I've had dates ranging from September through to early
20 December. These are events recollected some time ago and I've got no
21 basis here from the Prosecution or indicia from the Prosecution why
22 they've settled on these particular dates. It would help if the
23 Prosecution were, perhaps, to provide some basis for their proposed facts
24 in future. There may be a reference there which is sufficiently
25 convincing for us to settle on a particular date, but I'm certainly not

1 in the position now to state as a fact that the FRPI was founded in
2 December. I'm just not in that position. Certainly founded by December
3 and sometime between September and December. We think probably late
4 October or November. It's one of those situations. I don't know if
5 Baudouin Adirodu authored the document, he produced it, though. And
6 there's a difference. In relation to 7, 8, and 9, as we will hear from
7 this witness in a moment, those are the times when he met
8 President Kabila, I think all together four occasions. I think this is a
9 question of notice, largely, as you've already indicated, Mr. President,
10 so the earlier we can get agreements obviously the more specific we can
11 be. But as I say, and I hope I've indicated why, the general drift of
12 these admissions I don't stand in the way of. Their specificity is
13 something I'm just not in a position to admit, and we'll see that as
14 these witnesses come to give evidence. There are a number of
15 uncertainties.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
17 Your intervention shows to what point it is important for the
18 communication of facts not in dispute should be known well in advance
19 before each of the witnesses testifies.

20 We will now give the floor to Mr. Kilenda and then we will come
21 back to you, Mr. Hooper, because we need to know about the existence of
22 an agreement even before the witness begins to testify; otherwise, this
23 exercise would have been a failure.

24 So, Mr. Kilenda, what is your opinion on those nine points and
25 please tell us whether you agree or not.

1 MR. FOFÉ: (Interpretation) Good morning, your Honour, Judges.

2 Your Honour, we have just reviewed these proposals.

3 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we have
4 translation in the background. Could you please try and correct that
5 problem. We're having a technical issue with the interpreting. Could
6 you please remove that translation effect from the broadcasting system,
7 please.

8 Professor Fofé, you have the floor. We'll try again.

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

10 Your Honour, we're still having that problem with the translation
11 coming through the headset. I'm not sure if we can continue like that.
12 It will be a crash-course in Lingala for the courtroom.

13 PRESIDING JUDGE COTTE: (Interpretation) Could you please tell
14 us simply, first of all, are you in a position to give us precise answers
15 on these nine points? If you cannot at this point, we are prepared to
16 wait - even though that's not our normal policy - we can wait until the
17 beginning of the next series of hearings.

18 MR. FOFÉ: (Interpretation) We are in a position to answer,
19 your Honour, and we can give you a general answer. We cannot accept the
20 proposals which the Prosecution has submitted to this Court at this point
21 in time. We are waiting for the witness to give testimony. You know
22 this witness. This is a witness who has experienced the events which
23 have been referred to this Court. In the view of Mathieu Ngudjolo's
24 Defence team, it would be preferable to give this witness the opportunity
25 to give clarification and details concerning these various points which

1 are crucial for an understanding of the attack on Bogoro which is before
2 us. We are at the heart of the events, and the person who is about to
3 testify we hope, we believe, we are even certain is the person
4 best-placed to give the Chamber all necessary clarifications.

5 Your Honour, that is the general answer that we can give you. We
6 believe that it is complete and satisfactory.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Well, at
8 least as far as you're concerned it is complete and comprehensive. We
9 can only state, Prosecutor, that at this point Mathieu Ngudjolo's Defence
10 team is not in agreement with your proposals and Germain Katanga's
11 Defence team is only prepared to accept them under conditions which they
12 have requested. I think that the Chamber can state that it is not in a
13 position to take note of any agreement under Rule 69 of the Rules of
14 Procedure and Evidence. I can give you the floor, but I would ask you to
15 be brief and then we'll move on to our scheduled hearing.

16 MR. MACDONALD: (Interpretation) Well, thank you, your Honour.
17 First of all, the Prosecution apologises for sending the document late.
18 We haven't yet reached cruising speed, I must say. There are many
19 things, as I'm sure you are aware, that require preparation, disclosure,
20 and so on. You will understand how difficult it is to reach agreement
21 among three parties as to the facts. I think that there is perhaps
22 misunderstanding, a legitimate misunderstanding on the part of
23 Professor Fofe. It is not because the Prosecution recognises that there
24 was an encounter at Kinshasa that we discount the possibility of asking
25 the witnesses questions about this matter. For the Defence, we are just

1 asking for acknowledgement of the existence of EMOI in December and the
2 hierarchy of that organisation. For us in terms of cross-examination,
3 that is not at issue. That is not being contested. The Chamber can take
4 it as agreed.

5 There are other issues with regard to guilt, however, and that is
6 why we can only make proposals to the Defence; it is for the Defence to
7 accept those proposals or not. In the future, as far as we can, we will
8 try and make prior filings before witnesses testify to notify as to what
9 they might be to discuss.

10 Now, we are not contesting the fact that there was an encounter.
11 There may be things disputed concerning the president of the DRC.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Mr. MacDonald. Of course the Chamber cannot extort agreement from you.
14 It can only, once again, express its very strong desire for this ruling
15 of the 23rd of March to be respected, that these things be done ahead of
16 time with minimum of discussions so that everybody can -- with a minimum
17 of discussion provided for so that everybody can give their clearly
18 informed decision. We can only take note that a certain number of
19 alleged facts are not contested. That is a way of saving time. So we
20 will try and do better next time around, as they say, and it is essential
21 to do our best to do better with regard to the next witness. We also
22 would ask everybody to show understanding for this request.

23 I would like to ask the Court Officer and the usher to escort the
24 witness in. The witness will be there for certain oral discussions.

25 Mr. Hooper.

1 MR. HOOPER: I'm sorry, I omitted to mention one matter. Your
2 Honours will be aware of the submissions made by the *Conseil de*
3 *Permanence* Mr. Mabanga in his filing yesterday where he draws the
4 attention of the Court to the guarantees that the Court is in a position
5 to provide under Article 93.2 and request that that be done. The Court
6 will be, of course, aware that the Prosecution have already given their
7 undertaking, as it were, in that request, but the proper body to provide
8 the guarantee is the Court rather than the Prosecutor and Mr. Mabanga has
9 been alert in seeing that and has requested that the Court provide it.
10 That's the guarantee that the witness will not be prosecuted, detained,
11 or subjected to any restriction of personal freedom by the Court - this
12 Court - in respect of any act or omission that preceded the departure of
13 that person from the requested state.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
15 Perhaps you missed the very first words of the hearing, but that is
16 exactly what the Chamber had intended to do once it has read out two oral
17 discussions. It will read out to the witness that witness's identity and
18 give the assurances of Articles 93 and recall the rights under
19 Article 74. All of that has been provided for and we will do it.

20 Court Officer, could you please go and fetch the witness with the
21 Court Usher, rather. Thank you.

22 (The witness entered court)

23 PRESIDING JUDGE COTTE: (Interpretation) Witness, could you
24 please put on your headset. We will show you the headset in question.

25 Can you hear me well?

1 THE WITNESS: (Interpretation) Yes, your Honour, I can hear you
2 very well.

3 PRESIDING JUDGE COTTE: (Interpretation) That's very good.
4 Witness, I'm going to tell you how things will proceed in this courtroom.
5 First of all, on the behalf of the Court I am going to read out two oral
6 decisions which you might find interesting. You will listen to these
7 decisions, as will all of the parties and participants in this courtroom.
8 One of these documents will be read in open session, the other in closed
9 session, and then we will move back into open session and at that time I
10 will ask you to state your identity, I will give you a series of
11 assurances, and I will remind you of the rights you have. That relates
12 to a discussion that you had yesterday with the lawyer who was appointed
13 to you by the Registry. And then we will take your solemn oath to speak
14 the truth.

15 So for the next few minutes that is how this hearing is going to
16 proceed. For the time being I'm now simply going to read out two oral
17 decisions which are in relation to applications made by the Defence of
18 Germain Katanga and then after that it will be your turn.

19 The Chamber is therefore going to answer urgent application
20 number 2805 of the Defence of Germain Katanga dated 25 March 2011 and
21 number 2807 of the Defence of Mathieu Ngudjolo dated 28 March
22 2001 (as interpreted) urgent applications filed with a view to obtaining
23 authorisations for witnesses D02-P-236, 228, and 350 to meet
24 Germain Katanga and for witness D03-P-0011 to meet Mathieu Ngudjolo.

25 By urgent application number 2805 of 25 March 2011, the Defence

1 of Germain Katanga asks the Chamber to review decision number 2711 of
2 18 February 2011 relating to the Prosecutor's application with a view to
3 communicating with Witness 250 and authorising the three witnesses
4 D02-P-236, 228, and 350 referred to hereafter as the three detained
5 witnesses to meet with the accused person. After indicating that it had
6 not understood that the ban on meeting with a witness after that
7 witness's testimony decreed by the decision of 18th of February, 2011,
8 above mentioned, also concerned the accused person Germain Katanga, his
9 Defence team, first of all, stresses that the authorisation to meet with
10 this witness requested would mainly enable that accused person to thank
11 the witnesses who had come to The Hague to testify in his favour. By so
12 acting, according to the Defence team the Chamber would only follow the
13 usual practice of other international criminal tribunals.

14 Germain Katanga's Defence then recalls that a certain number of
15 international or regional instruments stress the need for the well being
16 of detained persons of fostering organisation of visits with family
17 members but also with friends. In this regard it notes that the European
18 Court of Human Rights insists on the fact that this right must be
19 exercised not merely theoretically but also in practice. As it happens,
20 the Defence points out that the three detained witnesses and
21 Germain Katanga are in the same situation, by recalling that they were
22 arrested at the same time. The Defence team mentions that this
23 encounter, which could take place under appropriate surveillance and
24 monitoring within the detention centre, would enable these witnesses and
25 the accused person to -- excuse me, would enable these witnesses to see

1 the moral and physical state of health of the accused person and it would
2 make it possible for the accused person to verify the situation of those
3 witnesses. It would also, according to the Defence team, be an
4 opportunity to have a more personal exchange of news concerning their
5 families and their well being. It would therefore appear that
6 Germain Katanga's Defence team, in reality, is asking the Chamber to
7 authorise on the first part the accused person to express his thanks to
8 the three detained witnesses who have come to testify in his favour and
9 this along the same lines as what is traditionally done by parties at
10 the -- or after testimony has been given by people who have been called
11 by the Defence, and on the other hand to receive in prison a visit of
12 these three detained witnesses.

13 By urgent request 2807 of the 28th of March, 2011, the Defence of
14 Mathieu Ngudjolo asks the Chamber to grant that accused person
15 authorisation to meet Witness D-03-P-0011, a witness who has been called
16 by both Defence teams, in order "to greet him and to thank him personally
17 for having made the trip to come and testify for the Defence." This
18 Defence team points out that the accused person has to date not received
19 visits from any friends as only members of his family have come to The
20 Hague, and it stresses the fact that an absence of visits could have a
21 negative effect on the detained person's morale.

22 The Defence specifies finally that the accused person would
23 undertake not to address the facts of the case with the witness during an
24 encounter that would take place between them in French or Swahili in the
25 presence of a qualified member of the Registry. It would appear,

1 therefore, that this request as presented by -- like the application
2 presented by the Defence team of Germain Katanga, can be analysed both as
3 a request for authorisation in order to address thanks to the witness and
4 also as a request for authorisation for Mathieu Ngudjolo to receive visit
5 from that witness.

6 With regard to the second application common to both Defence
7 teams concerning granting a right of visit for one of the accused persons
8 by the three detained witnesses and for the other a visit only from the
9 witness D03-P-011, the Chamber can do nothing other than recalling the
10 very clear terms of the oral decision that it issued publicly on the 23rd
11 of March, 2011. On that occasion, the Chamber, and without a need to go
12 over that decision in detail, made an effort to make clear that it could
13 not grant exceptions to the ban imposed by its decision of the 18th of
14 February, 2011, mentioned above; that such exemptions could only be
15 granted on a case-by-case basis and with evidence of the existence of
16 "exceptional situations"; that if it were to grant such an exemption, the
17 Defence teams would then have to apply to the Registry for authorisation
18 on the basis of Rule 179 of the Regulations of the Registry unless it
19 turned out to be possible to organise the encounter at the headquarters
20 of the Court, as was the case on Friday, the 25th of March, 2011.

21 In the case in point, the Chamber does not feel that it is in the
22 presence of "exceptional situations" that would justify the granting of
23 an exemption to the ban in principle that it had decreed. It notes that
24 the mere fact that there is a common situation, a shared situation, that
25 has been mentioned by the Defence team of Germain Katanga, the fact of

1 belonging to the same Lendu community, and the fact of knowing each other
2 mentioned by the Defence team of Mathieu Ngudjolo, is not sufficient
3 in -- or these facts are not sufficient in and of themselves in the
4 absence of a demonstration of the existence of family ties even taken in
5 the broadest sense or of ties of friendship that are sufficiently close
6 to authorise an exemption.

7 It also stresses that the three detained witnesses appearing
8 before the Court in the context of an application for co-operation
9 authorising their transfer with a view to testifying before it for the
10 three witnesses in favour of Germain Katanga and for Witness D03-P-0011
11 in favour of Mathieu Ngudjolo and not with a view to meeting those
12 accused persons on the occasion of a visit. The Chamber therefore, with
13 regard to the three detained witnesses, does not authorise the visits
14 requested.

15 With regard to the first application, which is also common to
16 both Defence teams concerning the possibility for the accused persons of
17 thanking the witnesses, the Chamber notes that this is a commonly
18 admitted practice even though usually it is the legal counsel who
19 expresses such thanks. To the extent that Germain Katanga and
20 Mathieu Ngudjolo are parties, however, the Chamber does not see any
21 obstacle to their expressing themselves their gratitude to the witnesses
22 and expressing their wish that they have a safe trip home if they do so
23 with their legal counsel and therefore in the presence of their legal
24 counsel and after the testimony given by the witnesses.

25 Of course it goes without saying that the witnesses must consent

1 to these brief exchanges. These brief interviews will take place in a
2 pre-determined location -- excuse me, in a location pre-determined by the
3 Registry and under the supervision of security agents of the Court, who
4 will be authorised to end the interviews after five minutes. They must
5 take place in French or in Swahili in the presence of a member of the
6 Victims Protection Unit and the -- victims and witnesses protection unit
7 and under the responsibility of the lead legal counsel, the assistant
8 legal counsel and any -- or of one member of their teams who will be
9 responsible for ensuring that nothing is said concerning the facts of the
10 case.

11 The Chamber therefore authorises the accused persons,
12 Germain Katanga and Mathieu Ngudjolo, if they so apply to expresses their
13 thanks to all of the witnesses who have come to testify for the Defence,
14 beginning for Germain Katanga with the three detained witnesses and for
15 Mathieu Ngudjolo with Witness D03-P-0011, recalling that the first of
16 those is a witness who is common to both Defence teams. The Chamber
17 orders the Registry to organise these interviews in accordance with the
18 conditions stated above and rejects the requests for the granting of
19 exemptions to the provisions of the decision of the 18th of February,
20 2011, mentioned above formulated by the Defence teams of Germain Katanga
21 and Mathieu Ngudjolo with a view to organising a visit between
22 Germain Katanga and the three detained witnesses, Mathieu Ngudjolo, and
23 the Witness D03-P-0011.

24 Court Officer, we are now going to move into private session for
25 the reading of a much shorter oral decision concerning protection

1 measures for Witnesses DRC-D02-P-350, P-236, and P-0228.

2 Could we go into private session, please.

3 (Private session at 9.56 a.m.)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1

2

3

4

5

6

7

8

9

10

11

12 Page 21 expunged – Private session.

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 22 expunged – Private session.

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Open session at 10.04 a.m.)

15 COURT OFFICER: (Interpretation) We are in open session,

16 Mr. President.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

18 Court Officer.

19 Witness, I am now going to speak to you, first of all to say that

20 the Chamber is happy to welcome you here because the testimony that you

21 are willing to give in favour of Mr. Katanga on the one hand and on the

22 other hand in favour of Mr. Ngudjolo should be of a nature that the

23 Chamber will better understand what happened at the time of the events,

24 the events about which Mr. Katanga and Mr. Ngudjolo are accused. So you

25 will be giving us your information about the situation that you were

1 acquainted with directly during the period concerned. So your presence
2 is very important indeed and we are very grateful that you were willing
3 to come here and testify.

4 Before you begin to testify, the Chamber will be asking you, as
5 set down by the Rules, to give your identity. Could you, first of all,
6 please give us your name, Christian name, and surname.

7 THE WITNESS: (Interpretation) My name, Mr. President, is
8 Ndjabu Ngabu Floribert.

9 PRESIDING JUDGE COTTE: (Interpretation) Could you please give
10 us the date and place of your birth.

11 THE WITNESS: (Interpretation) Mr. President, I was born at Buba
12 the 23rd of May, 1971.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you. And before
14 you were taken prisoner, because you are presently a prisoner, could you
15 tell us what your profession was, what your professional activity was?

16 THE WITNESS: (Interpretation) Before I was arrested in the DRC,
17 of course, I was involved in the political activities of the FNI.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much for
19 those precise answers, Witness. Before we listen to you making the
20 solemn oath, the Chamber would like to assure you that the Defence
21 counsel has requested in your favour, as set out by Article 93.2 of the
22 Statute of this Court, applying Rule 181 of the Rules of Procedure and
23 Evidence the Prosecutor informed us that he did not object that --
24 against these assurances being given to you. In addition to this, by
25 application of the same rule, the attorney that has been appointed to

1 assist you was able to get your observations in conformity with the same
2 rule and the Chamber notes that you do indeed wish to gain the benefit of
3 those assurances.

4 So in conformity with the terms of Article 93.2 of the Statute,
5 the Chamber assures you that you will not be prosecuted or detained or
6 subjected by the Court to any restriction on your personal freedom for
7 any of the deeds or omissions that are prior to the date that you left
8 the Democratic Republic of the Congo. Those are the reassurances that
9 you wished to gain and that we are giving you.

10 Presently, the Chamber would like to remind you about the rights
11 under Rule 74 of the Rules of Procedure and Evidence. Your attorney,
12 your lawyer, who you met with yesterday, or rather, correction, on the
13 23rd of March, here in The Hague, your lawyer told you about Rule 74 of
14 the Rules of Procedure and Evidence and explained the conditions under
15 which the Chamber can give assurances and told you about the nature of
16 those guarantees as well as the other useful explanations about the
17 content of the other provisions in the Statute or the Rules of Procedure
18 and Evidence that are mentioned in Rule 94. Your lawyer gave you an
19 independent legal opinion on any other question that you may have raised
20 with him, and yesterday he handed over to the Chamber submission 2808
21 dated 29th of March, 2011, reporting on this conversation what your
22 decisions are as well as the explanations he provided with you.

23 Rule 74, Mr. Witness, mentions in very clear terms that you are
24 entitled to not answer questions that you are asked if what your answer
25 contains may be liable to incriminate you and the Chamber would like to

1 stress that you can use that right at any moment in time and in respect
2 of any question whatsoever. The same rule, Rule 74, also sets out that
3 if that were to be the case the Chamber can give you a certain number of
4 guarantees that I'm going to remind you of now. The evidence in your
5 statement will remain confidential and will not be made public or to any
6 state, that will not be used directly or indirectly against you under any
7 subsequent prosecutions before the Court unless the prosecution in
8 question is exercised -- in conformity with Rule 70 and 71 of the Rules
9 of Procedure and Evidence. In very specific cases, the implementation of
10 those guarantees, if you ask to be granted them during your testimony,
11 will lead the Chamber to order that that particular part of your
12 testimony takes place in closed session and to order that the content of
13 your testimony not be released and any infringement of that is liable to
14 penalties under particular rules.

15 Now, concerning your identity, you expressed a wish that you do
16 not want to make use of Rule 74, paragraph 7(b); i.e., that you do not
17 wish that your identity be hidden. You said that you were willing to
18 testify publicly and that there was no obstacle to your identity being
19 released. And this is indeed what you recalled yesterday in submission
20 2808 of 29th of March, 2001 (as interpreted) that your lawyer handed over
21 to us. As such, we will not be using a pseudonym when we will be talking
22 with you. We will not be distorting your voice or your face on the
23 monitors that will be broadcasting the sessions during which you will be
24 testifying. Since the hearings by application of Article 64.7 of the
25 Statute have to be public, we will be enforcing your wish.

1 The implementation of the provisions under Rule 74, if we were to
2 apply them, would mean that the Registrar would put the report of the
3 hearing under seal, that part of the report. This is for the information
4 of all the various representatives, Prosecution, Defence, Legal Victims,
5 and all the other persons who in a professional capacity are following
6 these proceedings. So we call the attention of all these people about
7 the possible consequences of any infringement of such a potential ban on
8 the dissemination.

9 Paragraph 4 of Rule 74 (as interpreted), according to that the
10 Prosecution said that he had no objection against these assurances being
11 granted to you. The same applies to the authorities of the Democratic
12 Republic of Congo who submitted their opinion on the 7th of March, 2011,
13 in particular mentioning a letter of the 30th January, 2009, sent to the
14 Prosecution by the minister of justice for that country, and this letter
15 was in fact referred to specifically by the Chamber in decision 2748 of
16 the 28th of February, 2011, paragraph 28. On that same date, the 7th of
17 March, 2011, the authorities of the DRC also refer to Article 19 of
18 paragraph 1(c) of the agreement on the privileges, immunities of the
19 International Criminal Court of which it is a signatory party, setting
20 out that "witnesses are able to avail themselves of absolute
21 jurisdictional immunity for their words and written during their
22 testimony and that that immunity continues to be valid even once they
23 have finished testifying before the Court."

24 Witness, of course all this is no doubt very complex but it was
25 the duty of the Court to give you the assurances under Article 93.2 and

1 to remind you of the various guarantees that are granted by means of
2 Rule 74 of the RPE. The Chamber is doing this once these two provisions
3 were explained to you by the lawyer that was -- who has been appointed to
4 assist you. The Judges and myself would like to be perfectly sure that
5 all this is clear to you.

6 Is that the case?

7 THE WITNESS: (Interpretation) Mr. President, some of these
8 things are very clear to me but others I'm afraid I didn't really fully
9 understand.

10 Now, if you are willing I might be able to ask the lawyer that
11 has been appointed to assist me.

12 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course. The
13 lawyer is precisely here to play that role, so at the break that will be
14 possible. I think he will be following our discussions, our hearing
15 here, and will no doubt be able to provide you with the clarifications
16 that you are seeking. Is that all right?

17 THE WITNESS: (Interpretation) Yes, Mr. President.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness. If
19 that is the case, we shall now listen to you making the solemn oath
20 before we begin with your testimony.

21 So before beginning to testify you know that you must undertake
22 to tell the truth. This is a very important undertaking. I am going to
23 very slowly read out the oath so that you can fully grasp its scope and
24 meaning. Here it is: I declare -- I solemnly declare that I will say --
25 tell the truth, the whole truth, and nothing but the truth. Have you --

1 did you hear me?

2 THE WITNESS: (Interpretation) Yes, Mr. President.

3 PRESIDING JUDGE COTTE: (Interpretation) Witness, can you
4 undertake to tell the truth, the whole truth, and nothing but the truth?

5 THE WITNESS: (Interpretation) Yes, I can, Mr. President.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
7 The Court would like you to listen to it carefully once again. You have
8 just undertaken to tell the truth, the whole truth, and nothing but the
9 truth. If during your testimony or when answering the questions that are
10 going to be raised you do not tell the truth, you could be prosecuted by
11 the International Criminal Court for false testimony. And if the facts
12 were demonstrated, you might be punished. Do you fully understand what I
13 am saying?

14 THE WITNESS: (Interpretation) Yes, I have fully understood.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
16 The Court, therefore, takes note of the fact that the provisions of
17 Article 69.1 of the Statute and Rule 66, paragraphs 1 and 3 of the Rules
18 of Procedure and Evidence have been abided by.

19 Mr. Witness, since we have had exchanges here, you have shown
20 that there is no point in me giving you any advice about your diction.
21 We usually ask people, witnesses, to talk loudly and clearly and you do
22 so. We would like also to ask you not to switch languages during the
23 testimony because that would make matters difficult for the interpreters.
24 You have accepted to speak French, so please remain with the French.

25 Now, what you will have to be very careful about, and this is a

1 rule that applies to all of us here, not just you, that is to allow, let
2 us say, five seconds to go by between the end of the sentence -- or,
3 rather, the question that is being asked and your answer and that makes
4 the work of the interpreters and the court reporters much easier. The
5 interpreters must translate into English and the court reporters have to
6 write down everything that we are saying. So please be very careful not
7 to answer immediately and certainly not to interrupt. We need all of us
8 to be very disciplined so that the discussions are perfectly clear.

9 In addition, you have water there, please make use of it.
10 Unfortunately, there is no natural air in this room so one tends to get
11 rather dry. And please feel perfectly comfortable about drinking water
12 during the whole hearing; we do in any case as well. If you need to blow
13 your nose, the same applies. We all need to feel at ease here so that we
14 can make our respective contributions.

15 Mr. Hooper, I believe that you could perhaps begin your
16 examination -- oh, sorry, Mr. Prosecutor, I didn't see you were standing.

17 MR. MACDONALD: (Interpretation) I'm sorry, Mr. President, about
18 my interruption. Well, I don't want to make trouble at the very
19 beginning of this testimony, but in view of the fact that the witness did
20 express the wish to have a discussion with his lawyer to discuss the
21 assurances being granted by the Court, perhaps it might be wiser before
22 we actually enter into the first part of the testimony with the first
23 question to give him this opportunity to speak to his lawyer so as to be
24 sure that what he did not understand is clear so that we start out with a
25 very firm foundation. I submit this very respectfully, Mr. President. I

1 have no intention of slowing our business down.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.

3 I think the witness will have plenty of time to do that during the break,

4 plenty of time to ask his lawyer about additional information. I think

5 what the witness needs to understand at this stage - and I think that is

6 the case - is that at any moment in time he has understood that he is

7 entitled not to answer the question, particularly if he feels that this

8 could be self-incriminatory. Well, if the beginning of Mr. Hooper's

9 examination, as is usually the case, will relate to very general

10 information about his identity, his professional career, et cetera, I

11 don't think there will be much risk here of self-incriminating evidence.

12 Mr. Hooper, tell us what you think about this. You even in the

13 context of the Defence of Germain Katanga, you -- there is no interest of

14 you in having the witness self-incriminate himself. So tell us what you

15 will be talking about during the next 20 minutes.

16 MR. HOOPER: Well, I'll start with some general matters relating

17 to the witness and his detention in DRC and then move on to events

18 basically following the movement of the RCD-K to Beni and this witness's

19 participation in certain events that followed after that. There's

20 nothing that I anticipate this witness is going to say that will

21 incriminate him. It's not our suggestion for one moment this man has

22 ever done anything wrong, but it's good to see -- for him to see that

23 he's among friends to the extent that even the Prosecution obviously have

24 a care for him.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 32

1 During the break, Mr. Witness, you will be meeting with your
2 lawyer because it is very important that everything be perfectly clear in
3 your mind. For the time being, Mr. Hooper will be asking you questions
4 which I believe are riskless for you. Through the questions that are
5 going to be asked, it is a matter of getting better acquainted with you
6 and knowing a little bit more about your lawyer, who is probably
7 listening to us from somewhere in one of the offices here. And if he
8 wishes to through the Court Officer -- if he wishes to have the testimony
9 interrupted, he will be able to do so.

10 Now, this is the beginning of your testimony. We can tell you
11 this is no trap. We are interested in what you're going to be saying.

12 Mr. Hooper, go ahead.

13 WITNESS: WITNESS DRC-D02-P-0236.

14 (Witness answered through interpreter)

15 Questioned by Mr. Hooper:

16 Q. Well, good morning, Mr. Witness.

17 A. Good morning.

18 Q. Our understanding is that you were flown here in a long flight
19 from Kinshasa to Rotterdam and then transferred to the Detention Unit, a
20 Detention Unit of the ICTY here in The Hague. You've been detained there
21 since Sunday night and produced here today, Wednesday. Now, obviously we
22 all know that's not an easy transition, particularly given the contrast
23 between where you've come from and here. So, can I ask you this against
24 that background: Are you comfortable and are you sufficiently
25 comfortable to answer our questions over the next several days?

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 33

1 A. Yes, Mr. Hooper.

2 Q. Thank you. And as His Honour's already said, if there's ever
3 moment when for any reason you're not comfortable, please let us know and
4 you can be assured we will react appropriately and quickly.

5 Now, which -- you're Congolese. Of which ethnic group are you
6 from?

7 A. I belong to the Lendu community.

8 Q. Now, you told us where you were born. Can I ask you to repeat
9 that name because it may be that the spelling that I've been using does
10 not reflect the way you pronounced it. Perhaps you can spell it for us.
11 Repeat where you were born and spell it for us, please.

12 A. I was born in Bula, it is spelled B-u-b-a, actually, it is Buba.

13 Q. Now, where do we find Buba in Ituri? Where is it?

14 A. My village, Buba, is located in the north-east of Ituri district.

15 Q. And by that we would understand that you are referring to a place
16 north of a place we know, Bunia. How far in kilometres do you know
17 separates Bunia from Buba?

18 A. My village, Buba, is located at a distance of about 143
19 kilometres from Bunia.

20 Q. Now, you've told us you were born in May of 1971 and we can
21 easily calculate that you're therefore coming up to your 40th birthday
22 next month. You are --

23 A. Yes, that is correct. I'll be 40 years old soon.

24 Q. Your mother tongue is Kilendu and you're assisting us by speaking
25 in the French language today. And are you fully at ease speaking in the

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 34

1 French language or not?

2 A. I am in a position to explain whatever I know in French.

3 Q. Now, at the back of the Court and behind me if you look -- in
4 fact, I'll ask him if he doesn't mind doing so to stand up because there
5 are so many bodies in this courtroom and you won't see him otherwise.
6 And the gentleman standing there, do you know him?

7 A. Yes, counsel, I can recognise him.

8 Q. And who do you know him to be?

9 A. He is General Germain Katanga, Simba.

10 Q. And can you recall when you first met him?

11 A. Yes, counsel, I remember the first time I met him in Bunia.

12 Q. Can you help us even approximately as to when that was?

13 A. That would have been in August 2003, in Bunia.

14 Q. May I ask you this: Are you any relation, that is, any blood or
15 family relation to Germain Katanga?

16 A. No, I do not have any family relationship with Germain Katanga.

17 Q. Now, we're all aware that you were interviewed by the Prosecutor
18 over two days on the 18th of June, 2007, and on the 19th of June, 2007.
19 And I've been provided transcripts of that interview which extends over
20 ten hours of tape recorded interview. Have you been provided with those
21 transcripts or with copies, print-outs of those transcripts? So let me
22 repeat the question. Have you been provided with the tapes of those
23 interviews or with transcripts taken from the tapes of those interviews
24 while you've -- since you've been here in The Hague? Have you had the
25 opportunity to review that material?

1 A. Yes, counsel, I read them on Monday and yesterday I saw them.

2 Q. All right. Thank you. Thank you very much.

3 Now, I'd like to come now, if I may -- do you mind if I refer to
4 you or call you Mr. Ndjabu, rather than the full name, Ndjabu Ngabu, can
5 I just call you "Mr. Ndjabu," are you comfortable with that?

6 A. Yes, counsel, I don't have any problem with that.

7 Q. Now, what level of -- just tell us a little about yourself. You
8 were born in Buba. Where were you brought up? Where did you grow up and
9 go to school? Just tell us a little about yourself.

10 A. I was born in my village, Buba, and that was where I attended
11 primary school, and that is in my village. I then went to the
12 Fataki Minor Seminary. Or, rather the Fatak Minor Seminary. After that
13 I continued with my secondary education in Bunia, specifically at the ISP
14 application institute. It is known as IDAP/ISP Bunia, and that is where
15 I obtained my state certificate.

16 Q. Now, you've told us how at the time of your arrest in 2005 you
17 were involved in politics for the FNI. Can you just briefly sketch for
18 us what you did after you left high school and how it was that you first
19 became involved in politics.

20 A. Yes, counsel. After having obtained my state diploma, I became
21 involved in small jobs or businesses such as being a salesperson at a
22 bookshop, after which I went to the Higher Pedagogic Technical Institute
23 known in abbreviation as ISPT. I attended the preparatory year in the
24 department of languages and English literature. After that with the
25 outbreak of the rebellion I became a member of the Rassemblement

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 36

1 Congolais pour la Democratie, KML so that is the full abbreviation is
2 RCD-K/ML. In a nutshell, that is the information that you asked of me,
3 counsel.

4 PRESIDING JUDGE COTTE: (Interpretation) Just one moment, it
5 seems that the French transcript is frozen. I believe it is becoming
6 operational again.

7 Witness, please drink some water if you wish.

8 Mr. Hooper, please proceed.

9 MR. HOOPER:

10 Q. Now, at the time that you joined the RCD-K/ML and became a member
11 of the RCD-K/ML, where was the RCD-K/ML based, do you know?

12 A. I joined the RCD-K/ML when that organisation was based in Bunia.

13 Q. Did you have any position at all within the RCD-K/ML or were you
14 just a member? What was your status in the organisation?

15 A. Within the RCD I started as a mere floor member and afterwards I
16 worked in the cabinet of the commissioner for transport and communication
17 as the public relations officer. At that time a commission was
18 approximately the equivalent of a ministry.

19 Q. And at that time who was the leader of that party, the RCD-K/ML?

20 A. It was -- in 2000 the president was Professor Ernest
21 Wamba dia Wamba.

22 Q. Did he remain the president; and if not, why not or what happened
23 in brief?

24 A. He was overthrown by Mr. Mbusa Nyamwisi Atipas (as interpreted)
25 who subsequently became the president of RCD-K/ML.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 37

1 Q. Now, I'm next going to come to events in 2002, but before I do so
2 I want to shoot forward several years and I want to ask you about what
3 led to your arrest and your present incarceration in Kinshasa. So let's
4 just deal with that. First of all, when and where were you arrested?

5 A. I was arrested on the 27th of February, 2005, in Kinshasa and the
6 Limeté commune at about 4.00 p.m. local time.

7 Q. And at the time you were arrested, did you have any political
8 function; and if so, what was it?

9 A. I was still the national president of the FNI.

10 Q. Was there any official explanation given to you as to why you
11 were arrested; and if so, what was it?

12 A. As is the usual practice in our countries, someone is first of
13 all arrested and the reasons come afterwards. I was arrested. They
14 never told me why I had been arrested, except to say that it was in
15 connection with the murder of nine UN blue helmets. After that we were
16 told that we were being prosecuted for offences against state security.
17 And since this was still not enough, they changed once again and started
18 talking about crimes against humanity. These are therefore the charges
19 and accusations being made at one time or the other against us. This
20 means that I do not know with any certainty the crimes for which I am
21 being charged, and this has been going on for almost six years and 20
22 days so far.

23 Q. Now, we've all had the opportunity of seeing letters that have
24 been written from you and others in -- held in these circumstances in
25 Kinshasa to the authorities in the Congo, and I'm not going to go into

1 those now. We're aware of those. Can I just ask you this, though: To
2 what extent have you been subject to due process brought before the
3 courts? When was the last time that you were brought before the court?
4 What's the general position in respect of that?

5 A. If I remember correctly, the last time was in April 2007 when I
6 was brought before the chamber of the high military court.

7 Q. And over the past four years that you've been in prison, has
8 there been any other process or have you been taken to the Court? Has
9 anyone told you what your position is? What's been going on over the
10 past four years, if anything?

11 A. During those four years, absolutely nothing has been done even
12 though we have informed all the Congolese judicial authorities about our
13 situation. And so far nothing has been done. And unfortunately we were
14 surprised on Sunday by the Congolese minister of justice who came before
15 our departure and traumatised us, he intimidated us, given that he
16 insisted on our departure being filmed including our pictures being
17 taken. As you can see, having spent so many years in prison, they did
18 not say or do anything meaningful until the time we were about to leave
19 to go and tell the truth and he came to intimidate us. And so for those
20 six years and 20 days that we have been in prison, our country has never
21 shown the will to administer justice in our case.

22 Q. Now, you've spoken that you've been told, as I understand what
23 you've said, that your arrest was in respect of the murder of nine United
24 Nations officers. By that we all understand that you refer to the UN
25 officers or soldiers who were killed in Ituri in 2005, that there were

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 39

1 also offences against state security and at sometime a reference to
2 crimes against humanity. Have you ever been charged with any of those
3 offences is my first question? The second limb of it is this: To your
4 knowledge has any investigation been done in respect of you, I'm talking
5 about you, in respect to any of those offences?

6 A. I have never been convicted of any of those charges and to date
7 no investigation has been carried out relating to me. And this is
8 something we have learned from those who work in the area of military
9 justice. Once again, so far no investigation has been carried out in
10 relation to me.

11 PRESIDING JUDGE COTTE: (Interpretation) One last question
12 before the break, Mr. Hooper?

13 MR. HOOPER: Those are all my questions relating to this topic,
14 and if this is a convenient moment to break it's convenient certainly for
15 me. Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) We are going to take
17 the break now.

18 Mr. Witness, Mr. Ndjabu, we are going to break for 30 minutes.
19 You will have the possibility of meeting with your lawyer during those 30
20 minutes, and you can ask him the questions that you wanted to ask him
21 about what the Court read out a short while ago. We will reconvene here
22 at 11.30. Thank you for your collaboration and for the answers that you
23 have given to the questions asked.

24 Court Usher, with the security officers please can you accompany
25 Mr. Ndjabu out of the courtroom and we will meet again at 11.30.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 40

1 (The witness stands down)
2 PRESIDING JUDGE COTTE: (Interpretation) See you shortly.
3 Court is suspended. We will resume at 11.30.
4 Recess taken at 10.59 a.m.
5 On resuming at 11.33 a.m.
6 COURT USHER: All rise.
7 PRESIDING JUDGE COTTE: (No interpretation)
8 Court Officer, Usher, if you would, could you bring the witness
9 in.
10 (The witness takes the stand)
11 PRESIDING JUDGE COTTE: (Interpretation) Hello, Witness,
12 Mr. Ndjabu. Can you hear me well?
13 THE WITNESS: (Interpretation) Yes, your Honour, I hear you
14 well.
15 PRESIDING JUDGE COTTE: (Interpretation) During the break did
16 you have a chance to talk with your lawyer and did he give you the
17 clarifications you sought?
18 THE WITNESS: (Interpretation) Yes, your Honour.
19 PRESIDING JUDGE COTTE: (Interpretation) Can we therefore take
20 it that the link between Article 93.2 and Rule 74 is clear in your mind
21 now, bearing in mind that at any time you can ask your lawyer to give you
22 clarification on any point?
23 THE WITNESS: (Interpretation) Yes, your Honour.
24 PRESIDING JUDGE COTTE: (Interpretation) All right. We will
25 continue. Thank you very much.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 41

1 Mr. Hooper.

2 MR. HOOPER: Yes, thank you.

3 Q. So, Mr. Ndjabu, let's come to events in 2002 and I was indicating
4 earlier there's an event well-known to all of us here which we describe
5 as the fall of Lopondo when he was chased out of Bunia in 2002, in
6 August. Where were you at that time when he was dislodged and had to
7 flee from Bunia?

8 A. When Colonel Molondo Lopondo fell I was at his home.

9 Q. And what happened?

10 A. The RCD-K/ML had Mbusa Nyamwisi as the president at that time and
11 it was being constantly harassed by the UPC of Thomas Lubanga to withdraw
12 from the district of Ituri. That is why the UPC had intensified its
13 attacks on Molondo Lopondo's house. He was the military governor
14 appointed by President Mbusa and that is how we came to be chased out of
15 the residence. And Molondo and one of the vice-presidents of the RCD,
16 that was Mr. Uringi Padolo, had to flee to Beni. That is what happened.

17 Q. Just pausing there. We're familiar with the name Lopondo but you
18 just mentioned a name that we're not familiar with. And what I'm going
19 to be ask be done is you be provided with a piece of paper and a pen and
20 what I suggest, and this is a matter for you if you wish to follow it, is
21 when you mention a name just jot down the spelling and tell us what it
22 is. It's sometimes easier to do that if you've written it out. If you
23 don't need to write the name out and you can still spell it, as it were,
24 freehand, then please do that. So as you come to a name, if you can just
25 jot it down and then when you've finished your sentence we can go back

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 42

1 and you can spell it for us.

2 A. All right. So Uringi is spelled as follows: U-r-i-n-g, Uringi;
3 hyphen P-a-d-o-l-o. In other words, Uringi Padolo.

4 Q. All right. Now, can you be provided with that piece of paper and
5 a pen if that's possible if you do want it.

6 While that's being done let me ask you what happened. So
7 after --

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, when the
9 witness is in a position to spell the name out loud do you still want him
10 to write it on a piece of paper - is that right? - that we will then
11 admit into evidence? Is that what you're asking for?

12 MR. HOOPER: Yes, it's that sometimes when any of us think of a
13 name, if you've jotted it down it's easier to read out the spelling than
14 doing it letter by letter. I don't need the document necessarily to be
15 exhibited eventually, it's just as an aid for the witness so that when he
16 comes to a name we haven't mentioned if he can jot it down and then we
17 can -- we can have it spelled if we need it. So if he can have the paper
18 and a piece of -- and a pen. Thank you very much. I'm sure the Registry
19 are up to that.

20 PRESIDING JUDGE COTTE: (Interpretation) All right. That is
21 fine.

22 Court Officer, could you ensure that the witness has blank paper
23 and something to write with next to him so that he can write things down
24 when necessary, particularly when names are long and difficult to spell
25 out loud from memory.

1 THE WITNESS: (Interpretation) Thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, usher.

3 We will continue.

4 MR. HOOPER:

5 Q. So -- now, you say you were present in the house when it was --
6 when he fell. What did you experience?

7 A. When the attack occurred we stayed in hiding at the house of
8 another neighbour, and governor Molondo and his immediate guard fled and
9 we remained in Bunia waiting for a plane to be sent, a plane which was to
10 transport us from Bunia to Beni to the headquarters which was at that
11 point set up in Beni.

12 Q. And did you manage to get a flight or not?

13 A. I was not able to get a seat because women were to be given
14 priority as well as children, among others Uringi Padolo's wife and
15 children and Dr. Adirodu's wife as well.

16 Q. And so how did you get out of Bunia?

17 A. A few days later I disguised myself as a child and we managed to
18 board as children, and it was only once I was on the plane that I dressed
19 myself as an adult and that is how I arrived in Beni.

20 Q. Now, when you say you disguised yourself as a child, what kind of
21 disguise would that be?

22 A. At the time I was carrying a satchel. I was wearing short pants
23 with a babouche (* phon) and I had also completely shaved my beard, and
24 when we arrived at the airport we had to lie down on the ground and roll
25 around like the children were doing. I did all of that.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 44

1 Q. So getting aboard the flight, the flight took you to where?

2 A. The plane took us from Bunia to Beni.

3 Q. Now, Lopondo and the RCD-K/ML, having been chased out of Bunia,
4 where did it set up its headquarters after that?

5 A. When Molondo was governor in Bunia there was already a
6 headquarters at Beni. Molondo and Uringi went to Beni, all of them, and
7 we too were asked to go to the headquarters. And that is why we too went
8 to Beni.

9 Q. Now, following the fall of Lopondo - and we know something about
10 what happened in Bunia after that with the UPC there and the Ugandans
11 there - to your knowledge what was the objective of the RCD-K/ML or the
12 Kinshasa government in respect of Ituri?

13 A. At the time the RCD-K/ML of Mbusa Nyamwisi had already become
14 close to the Kinshasa government. And that is why, notwithstanding the
15 fall of Bunia, the RCD-K/ML and the former government of Kinshasa
16 recovered controlled of the district of Ituri.

17 THE INTERPRETER: Interpreter correction: Wanted at all costs to
18 recover control of the district of Ituri.

19 MR. HOOPER:

20 Q. Now, when you got to Beni, what was going on, what groups of
21 people did you find there and generally what was the position there at
22 Beni?

23 A. Once we'd arrived at Beni, sometime later when I was already at
24 Beni I found an operational integrated staff headquarters, the acronym
25 was E-M-O-I, EMOI, and I will spell that, E-M-O-I, EMOI.

1 Q. Thank you. And I'll come back to that organisation later this
2 morning. I want to ask you about the FRPI and what you know of how it
3 came into existence. So can you tell us about that and about any
4 meetings you may have attended in respect of that organisation?

5 A. In Beni on our arrival, given that many people had already fled
6 Bunia, we met up and that meeting occurred at the Casino Hotel in Beni.
7 At that time, the FRPI had not yet come into existence. It was only two
8 days later after that meeting that Dr. Adirodu Mawazo, and I'll repeat,
9 Dr. Adirodu Mawazo Baudouin came to talk to us about the FRPI.

10 Q. Now, when you met at the Hotel Casino, what was the purpose of
11 that meeting and what was discussed at the meeting?

12 A. During the meeting our returning to Bunia was discussed because
13 the RCD-K/ML of Mbusa and the former government wanted at all costs to
14 regain control of the territory of Ituri.

15 Q. Was anything decided at the meeting?

16 A. Of course. I was elected as co-ordinator of all of those
17 activities and another person called Sambidhu, and I will spell his name.
18 S-a-m-b-i-d-h-u. I repeat, S-a-m-b-i-d-h-u. He was elected as my
19 deputy, so he was the deputy co-ordinator. Apart from him, there were
20 also other members. We had Pichou, P-i-c-h-o-u. His name was Pichou
21 Iribi, that is spelled I-r-i-b-i. So Pichou Iribi was also a member if I
22 remember correctly. He was to look after security at the time. And
23 there was also a fourth person that was Charif, and you spell Charif
24 C-h-a-r-i-f. So there was also Charif who I think joined us two or three
25 days later. There you are.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 46

1 Q. Thank you. And when you say "co-ordinator" and co-ordinating
2 these things, what things were you co-ordinating?

3 A. Well, as I said earlier on, the former government, the former
4 Kinshasa government and the RCD-K/ML of Mbusa Nyamwisi absolutely wanted
5 to recover Ituri and we were there alongside them to make some small
6 contributions because indeed we were from Ituri.

7 Q. Was Germain Katanga present at the meeting or not?

8 A. Germain Katanga was not there at that meeting.

9 Q. Now, what happened after that?

10 A. Dr. Adirodu challenged my capacity as co-ordinator and indicated
11 to us that he had been sent by Kinshasa together with --

12 THE INTERPRETER: Correction:

13 THE WITNESS: (Interpretation) -- as regards organisation
14 together with the FRPI. And that nobody, apart from himself, should
15 co-operate with EMOI, RCD, or the former government of Kinshasa.

16 MR. HOOPER:

17 Q. All right. Now, just so we're clear about some aspects, when you
18 say "the former government of Kinshasa," which government are you talking
19 about when you say "former"? Former in respect of which date, now or
20 then? Can you just help us as to what you mean when you use the word
21 "the former government of Kinshasa."

22 A. This is what I mean. During the rebellion our country was
23 divided into several territories. The former government which was led by
24 His Excellency the current president of the republic Joseph Kabila
25 Kabange. I am talking about that particular component. When I refer to

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 47

1 the former government, I am talking about that government.

2 Q. Thank you. And when you refer to someone called Adirodu
3 Baudouin, who was he at the time and do you know what he's doing now?

4 A. Dr. Adirodu at the time of the RCD-K/ML was advisor to the
5 presidency for Mr. Mbusa Nyamwisi. And after that, he was co-opted
6 during the transition to be the national representative for the RCD-K/ML.
7 And currently he is still acting as the national representative.

8 Q. Now, you've told us that the FRPI did not at that time exist.
9 How did it come into existence to your knowledge?

10 A. Personally I am not familiar with the exact date that the FRPI
11 was established, was formed, but what I do know is that Dr. Adirodu is
12 the person who came to Beni to talk to us about the FRPI. At the time he
13 had said that the FRPI had been formed in Kinshasa and that the general
14 staff of the FAC at the time, the *Forces Armees Congolaises*, FAC you all
15 are familiar with that, in short it is through Adirodu that I heard
16 about -- or rather, Adirodu was the first one to tell me or speak to me
17 about the FRPI.

18 Q. And just so that we're clear, when did he first mention that to
19 you?

20 A. It was during our meeting at the Hotel Casino when he challenged
21 my capacity as co-ordinator. It was then that he said that the FRPI's
22 well-known and he was the only one entitled to represent it and the only
23 one entitled to co-operate with the former government.

24 Q. And was it -- in your opinion was the FRPI at that time
25 well-known? What did he mean by that?

1 A. At the time he was familiar with what the FRPI was, but for us it
2 was an entirely new concept. We found ourselves in Beni. For us it was
3 something absolutely new. It wasn't something known.

4 Q. And what did you understand the FRPI was going to be? Was it
5 going to be a political party? A co-ordinating party? What was it to
6 be?

7 A. First of all, the FRPI did not want to be a political party
8 precisely because Dr. Adirodu had prohibited anyone from being able to
9 interfere in political matters and that he was the only one accredited to
10 do so. Therefore, according to him - and this is what we
11 understood - what he wanted to do was to form a sort of armed group
12 perhaps. But he was the only one to know the ins and outs of that.

13 Q. And this armed group, what was your understanding as to who it
14 was to be composed of? By that, what -- was there any particular ethnic
15 group that it was to be made up of? What was your understanding?

16 MR. MACDONALD: (Interpretation) Mr. President, if I may.

17 PRESIDING JUDGE COTTE: (Interpretation) Go ahead.

18 MR. MACDONALD: (Interpretation) Defence -- well, the
19 Prosecution intervenes because we are entering into a field that the
20 Chamber's no doubt acquainted with, but this is central to the whole
21 case, and Mr. Hooper when he asks his questions, well, I would suggest
22 that he be less suggestive and ask one question rather than three at the
23 same time. When he suggests the -- who -- what was the make-up of this
24 group? Which ethnic groups? And he mentions the ethnic group. So
25 perhaps he should be less leading, asks these questions separately,

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 49

1 who -- what was the make-up of this group? What were the ethnic groups?
2 Et cetera. Rather than suggesting the answers or at least giving a
3 general slant to the answer.

4 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, just one
5 second.

6 Prosecutor, we have understand -- we understood what you were
7 saying. Indeed, the question could have been formulated differently,
8 specifically whether or not the witness had understood if this FRPI was
9 going to be a political party or not.

10 Mr. Hooper, perhaps you should be a little bit more clear in your
11 questions, but that being said the witness is in a position to answer
12 several questions at once. So, Mr. Hooper, you can go on.

13 Mr. Prosecutor, we have taken note of your remarks.

14 Let's go on.

15 MR. HOOPER: Yes, I don't know if there was perhaps a translation
16 matter there, but the English certainly represents my question and there
17 was nothing leading in it. So I don't know whether it may have come out
18 in French somewhat differently. So let me pose the question again.

19 Q. What was your understanding of how this group was going to be
20 composed? And I'm asking that question on an ethnic understanding.

21 PRESIDING JUDGE COTTE: (Interpretation) Concerning your last
22 question, the Chamber had absolutely no observations to make. It was
23 perfectly clear.

24 Witness, what was the make-up of that armed group? We'll listen
25 to your answer now.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 50

1 THE WITNESS: (Interpretation) Well, I believe the group
2 included several ethnic groups.

3 MR. HOOPER:

4 Q. And generally what was your understanding as to what they were?

5 A. If we're talking about the composition of the co-ordination, well
6 most of us felt very strongly about returning to Ituri and indeed the
7 composition reflected that, i.e., there was a tendency to belong to a
8 group, a single group, but in actual fact everybody was concerned and
9 among them I would say most of those who were in Beni when Molondo was
10 forced out.

11 Q. All right. Can I ask you in terms of ethnic groups - and we've
12 heard the names of various ethnicities in the area - was the FRPI to your
13 knowledge to be representative of just one group or was it to be
14 representative of more than one group; and if so, in either case what
15 group or groups was it your understanding were to be represented by it?

16 A. As I've already mentioned, when Dr. Adirodu arrived I didn't know
17 what the group was going to be made up of after me because I had left
18 Beni. But what I do know as regards the co-ordination before I left is
19 that Sambidhu had stayed there as co-ordinator.

20 Q. Do you know why it was that Dr. Adirodu didn't accept you as a
21 co-ordinator or the co-ordinator I should say?

22 A. I myself am not familiar with the reasons that he based himself
23 on to at the time reject me as a co-ordinator. What I do know is that
24 Dr. Adirodu gave me the impression that he didn't allow political matters
25 to be handled by others.

1 Q. Now, I don't know if you touched on this but if so forgive the
2 question. But Sambidhu who you've mentioned, what relationship, if any,
3 did he have with Adirodu?

4 A. All I know is that he is Dr. Adirodu's younger brother.

5 Q. To your knowledge, at that time this new organisation, the FRPI,
6 did it have a president?

7 A. No.

8 Q. To your knowledge, did it ever have a president?

9 A. The president -- well, perhaps later but before that there was a
10 national spokesperson who was Dr. Adirodu Mawazo.

11 Q. And when you say "perhaps later," what do you mean by "later"?

12 A. Later on the FRPI decided to have its own political structures,
13 and I will be speaking about this later on because as far as I know this
14 was officially declared in 2004. There we are.

15 Q. Thank you, and thank you for seeking to maintain a chronology of
16 these matters.

17 Now, can I come back to the organisation that you mentioned
18 earlier under its acronym of EMOI. Did you yourself ever participate in
19 any meeting with EMOI?

20 A. When I was co-ordinator I did indeed receive a call from EMOI to
21 attend a meeting, and that is the only one I took part in.

22 Q. All right. Now, we'll come to that meeting in a moment, but just
23 tell us if you can, what EMOI was and what it was composed of.

24 A. I indicated this earlier on. EMOI means operational integrated
25 general staff, and the EMOI structure, well, its task was to regain

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 52

1 control of the territory of Ituri, and EMOI was also expected to
2 structure the various armed groups so as to integrate them into the
3 *Forces Armees Congolaises*, the FAC. Now, if this should be mentioned
4 now, it's a proposal or rather --

5 THE INTERPRETER: Interpreter's correction:

6 THE WITNESS: (Interpretation) -- its composition, this is what
7 it was like. The senior chiefs, the commanders-in-chief were officers,
8 officers of the FAC. They were the ones that were sent by Kinshasa to
9 Beni. Apart from them as regards the composition there was also the
10 people in charge of the RCD-K/ML in military matters. In other words,
11 the representatives of the *Armees du Populaire Congolaise* the
12 representatives thereof of the *Armee du Populaire Congolaise*, APC. And
13 thirdly there were also the Mayi-Mayi group. The third group were the
14 Mayi-Mayi groups. Mayi-Mayi is written as it is pronounced,
15 M-a-i - M-a-i, Mai-Mai. That was the third category of groups that also
16 were part of the EMOI.

17 Now, the fourth group was the following. There were, first of
18 all, the FRPI. Before the FRPI the co-ordination that I led for one day
19 did not survive, and subsequently hence the FRPI was to become a member
20 of this overall structure, the EMOI. There we are.

21 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, unless you
22 had intended to do so, the Chamber would like to seek some clarification
23 about the Mayi-Mayi groups. If you had intended to do so, then I will
24 allow you to continue. But if you didn't plan to do so, then it would be
25 interesting for us to have some clarification on the Mayi-Mayi groups.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 53

1 MR. HOOPER: Yes.

2 Q. Can you tell us relatively briefly what you know of the
3 Mayi-Mayi, where they come from, where were they -- geographically where
4 were they, and such-like? Can you help us as to that, please.

5 A. Yes, of course. The Mayi-Mayi are fighters who are generally
6 from Kivu, that is, in the east of the Democratic Republic of the Congo.
7 And according to them they are fighting against all strangers or
8 foreigners who want to grab our country. And those Mayi-Mayi groups are
9 also to be found in the Orientale province, and that is because those who
10 were there were also part of EMOI. This group of Mayi-Mayi is from the
11 province Orientale, were based in Opieng. That is what I can say at the
12 Mayi-Mayi groups.

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

14 MR. HOOPER:

15 Q. And can you just spell Opieng for us, please.

16 A. The spelling is O-p-i-e-n-g, Opieng.

17 Q. And just so we can orientate ourselves to that place, how far is
18 that -- do you know how far that is from Beni, approximately, Opieng, how
19 far was that from Beni, where you were at that time?

20 A. With regard to Beni -- well, I have never been to Opieng and I do
21 not know the distance. However, all I know is that there were Mayi-Mayi
22 fighters in Opieng. And that is because they were also resupplied by
23 EMOI.

24 Q. Now, EMOI, can I just ask you about the Kinshasa offices that you
25 referred to. Do you know -- can you provide any names?

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 54

1 A. Yes, of course. For example, I know Colonel Aguru. He was the
2 first EMOI Chief of Staff. There were many of them, and if you want me
3 to continue I can give you two or three more names.

4 Q. Yes, please. We'll spell them at the -- did you give us the
5 spelling? You did. Oh, yes, just give us a couple more names, please.
6 So Aguru is the first Chief of Staff. What other Kinshasa officers were
7 there?

8 A. I have mentioned Colonel Aguru. There was also Colonel
9 Kibelebele as well as Colonel Duku. And later on after me I heard that
10 there was also Colonel Ekuba and of course many others that I cannot
11 mention all here.

12 Q. All right. And can you just give us the spellings, please.
13 Thank you.

14 A. Colonel Aguru is spelled A-g-u-r-u, Aguru. The second name is
15 spelled K-i-b-e-l-e-b-e-l-e, Kibelebele. The third person is
16 Colonel Duku, spelled D-u-k-u, Duku. And the last one is Ekuba, and that
17 is E-k-u-b-a. And there are many others.

18 Q. Now, you've mentioned that these officers came from Kinshasa with
19 Kinshasa's interests. How do you know that?

20 A. I know that because I saw Colonel Aguru for the first time in
21 Bunia, I saw him a second time in Beni, and he was the one who told me
22 about everything that they were doing in Beni. So it was through
23 Colonel Aguru that I got to know this and he explained everything to me.

24 Q. Do you know what, if any, control EMOI had over any military
25 operations in Ituri?

1 A. Yes, indeed. This was one of their principal missions, that is,
2 to reconquer Ituri.

3 Q. Now, aside from officers on EMOI, was there any other form of
4 liaison between military at Beni and Kinshasa to your knowledge?

5 A. Colonel Aguru had told me that EMOI was directly answerable to
6 the general staff of the head of state known as *maison militaire*. And
7 before the logistics were made available for the operations in Ituri,
8 Aguru had to always make a request from Kinshasa.

9 Q. And you may have told us but just so that we're clear, what
10 exactly is the *maison militaire*? What's your understanding of what it
11 is?

12 A. All I know about the *maison militaire* is that it is an organ
13 which exists within the presidency of the republic in the same way as the
14 *maison civile*. And this organ is responsible for certain aspects related
15 to the army, and that is what is known as the *maison militaire* of the
16 presidency of the republic.

17 Q. To your knowledge, did any representatives of the *maison*
18 *militaire* ever come to Ituri or not?

19 A. As far as I'm concerned, all Aguru told us was that it was the
20 *maison militaire* which had sent them. I did not have the opportunity to
21 inquire from him who specifically amongst them actually came from the
22 *maison militaire*. All I know is that all of them were officers who had
23 been sent by Kinshasa.

24 Q. Now, I want to ask you about arms, ammunitions, and their
25 distribution and what, if anything, you know directly yourself about

1 that, about any such distribution. Are you yourself personally aware of
2 any distribution of arms that took place?

3 A. In Beni I personally took part in one of the operations to supply
4 weapons and ammunition.

5 Q. And where were those weapons taken?

6 A. I remember that shortly after having been elected as a
7 co-ordinator in Beni, that is, after I had been elected, Colonel Aguru of
8 EMOI asked me to come to the EMOI headquarters which was located within
9 the premises of the NRA airport, that is in fact the Beni airport, that
10 is the N-R-A airport. There he asked me to take some weapons and
11 ammunition to Mongbwalu and Rethy. That is an operation in which I was
12 involved.

13 Q. I would like you if possible to give us some more detail about
14 that, and before you do can you just help us where Mongbwalu is and
15 Rethy -- perhaps, first of all, can you spell Rethy for us.

16 A. Rethy is spelled R-e-t-h-y, Rethy.

17 Q. And where are those places in relation to Bunia that we know?

18 A. Rethy is located a few kilometres away from my village of origin,
19 Buba, so it is also in the north-east of the Democratic Republic of
20 Congo. For its part, Mongbwalu, which is spelled M-o-n-g-w-a-l-o,
21 Mongbwalu is located in the mining region, that is, between 75 to 80
22 kilometres away from Bunia but rather in the direction of the
23 north-east -- or rather, north-west from Bunia.

24 Q. Now, do you know where these arms came from?

25 A. Colonel Aguru told me that those weapons had come from Kinshasa.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 57

1 They had a weapons depot or an armoury specifically for EMOI.

2 Q. And where was that armoury?

3 A. Initially it was located in an area known as OZACAF. Later on, I
4 do not know whether they changed the location or not, but before that it
5 was in OZACAF.

6 Q. And is OZACAF a place or is it an acronym, and whatever it is can
7 you spell it for us, please.

8 A. It is O-Z-A-C-A-F, OZACAF. Officially at the time this meant
9 Zairean authority, Office Zaireois, something responsible for coffee. I
10 think right now it is known as ONC. This was a building that belonged to
11 this institution and that building was used as the EMOI armory or weapons
12 depot.

13 Q. And do you know how those weapons came -- were brought from
14 Kinshasa to Beni? How were they got there, do you know?

15 A. The general practice was that they used a large transport or
16 cargo plane from an air transport company known as Air Uhuru. That is
17 Air and then U-h-u-r-u, Air Uhuru.

18 Q. Now, did Colonel Aguru, did he say anything to you at all about
19 what the arms were for? Did you learn anything at all about that?

20 A. Of course he did. Before boarding the aircraft he told me the
21 following, "Take these weapons and go with them and this is for the
22 commanders in Kpandroma to go and use and reconquer the Mahagi and Aru
23 territories."

24 Q. And can you tell us anything about what this arms shipment was
25 composed of, what weapons it was composed of, what ammunitions, and in

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 58

1 what quantity. Can you help us as to that at all?

2 A. If memory serves, I saw bombs, 82-millimetre mortars as well as
3 60-millimetre mortar shells. I also saw rocket shells. And there were
4 two to three boxes of ammunition. There was another case containing
5 weapons. The entire shipment made up a weight of 2 tonnes, and this is
6 because it was a small aircraft which had to transport all those items to
7 the intended destination.

8 Q. And do you know the name of the carrier that took it from Beni to
9 northern Ituri?

10 A. If I am not mistaken, it must have been Air Across. I think
11 that's right.

12 Q. Now, just so we're clear when those weapons were flown to
13 northern Ituri were you present on the flight or not?

14 A. I was on board the plane.

15 Q. Now, I know it's a long time ago now, but can you help us as to
16 the date as to at least what month you recall that that flight took
17 place?

18 A. If I remember rightly, this took place between September and
19 October.

20 Q. And how long, if you can recall, how long was it that you made
21 that flight after the meetings at the Casino Hotel that you've spoken
22 about?

23 A. Between the casino meeting and that flight, it must be two
24 days --

25 THE INTERPRETER: Interpreter correction: It was virtually two

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 59

1 days.

2 MR. HOOPER:

3 Q. Were you alone on that flight or was anybody else with you as a
4 passenger?

5 A. Yes, on the plane we were accompanied by the commissioner for the
6 interior of the RCD-K/ML. His name is Mr. Bovic. Mr. Bovic Bolanga. I
7 will spell that. Bovic is B-o-v-i-c. Bolanga, B-o-l-n-g-a, Bovic
8 Bolanga. He was the commissioner for the interior in Mbusa Nyamwisi's
9 government in the RCD-K/ML. And there was yet another person I remember
10 and that was Mateso Nyinga Kodeza (* phon) and I will spell that. He was
11 generally known as Kung Fu. Mateso, M-a-t-e-s-o, Nyinga, N-y-i-n-g-a, he
12 was also with us on the plane.

13 Q. Where did you go in that plane? What happened?

14 A. From Beni we went to Mongbwalu. We left behind Mateso Nyinga
15 with a few -- with some arms and ammunition. And from there we went to
16 Rethy with Mr. Bovic Bolanga.

17 Q. And at Rethy what happened?

18 A. When we arrived in Rethy, we found Major Richard Moi there,
19 Richard Moi. Moi is spelled M-o-i. In Rethy we found Major Richard Moi.
20 He was the commander of the APC in that place.

21 Q. And what, if anything, happened to the arms?

22 A. We gave the arms which remained to Commander Richard Moi.

23 Q. And you, after you've arrived at Rethy, what do you do?

24 A. I stayed in Rethy while the plane went back to Beni.

25 Q. And how long did you stay in Rethy for?

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 60

1 A. I remember that I spent at least one or two weeks in Rethy.

2 Q. Did you ever return to Beni?

3 MR. MACDONALD: Objection. (Interpretation) I apologise, your
4 Honour. I have an objection. That last question was very much a leading
5 question.

6 PRESIDING JUDGE COTTE: (Interpretation) If you ask the witness:
7 Did you go back to Beni? Then yes, the witness should answer.

8 Witness, please answer the question.

9 THE WITNESS: (Interpretation) Yes, I went back to Beni.

10 MR. HOOPER:

11 Q. And do you know when that was, can you recall?

12 A. I went back to Beni pretty much at the beginning of November.

13 Q. And briefly, what did you do there at that time?

14 A. We went back to Beni with Commander Richard Moi because the EMOI
15 needed to further increase its logistics to the extent that the previous
16 day the soldiers of Commander Moi were panicking. They had wasted a
17 considerable quantity of ammunition shooting into the air. That is why
18 we went back to Beni with him.

19 Q. And so when you got to Beni, what happened there?

20 A. When we arrived in Beni we were met by the vice-president of the
21 RCD-K/ML, Mr. Uringi Padolo who was quite impatient because Richard Moi
22 and others had not managed to regain Mahagi and Aru because Mahagi was
23 his village, and he had told us he would do everything in his power to
24 make sure that we could go back to Rethy quickly.

25 Q. And who was in his village at that time that he wanted to get out

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 61

1 of his village? Who was there?

2 A. Yes, at the time Mahagi, which was his territory, and Aru were
3 occupied by the UPC of Thomas Lubanga.

4 Q. And again, in respect of this augmentation of logistics as you
5 describe it, what happened? What do you know about that?

6 A. We did not spend many days in Beni. EMOI gave ammunition and a
7 certain amount of pocket money for Commander Moi, and we left again with
8 Commander Moi. That time we went directly back to Rethy without going
9 through Mongbwalu.

10 Q. And that second trip you made, how long was that approximately
11 after your first trip of delivering or being present when weapons were
12 being delivered?

13 A. After the first trip, Beni-Mongbwalu-Rethy, I spent a little bit
14 of time in Rethy. I remember coming with Moi at the beginning of the
15 month of November because I carried out another mission elsewhere, and
16 that was why I spent a little bit of time so that the second time I could
17 go directly back to Beni.

18 THE INTERPRETER: Interpreter's correction: Immediately back to
19 Beni.

20 MR. HOOPER:

21 Q. And just to have the context, what was the other mission that you
22 refer to?

23 A. That mission concerned travel to Uganda. There I met in
24 Kpandroma officials from our community who had been invited by the
25 Ugandan president, Yoweri Museveni. On my arrival, he said that he was

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 62

1 afraid to go and he asked us to go and meet the Ugandan president, who
2 said he was in Agulu (* phon), and that is the mission that I married out
3 during that period of time.

4 Q. Did you meet President Museveni on that occasion or not?

5 A. I did meet him.

6 Q. Now, I want to ask you about the FNI. At that time did the FNI
7 exist or not?

8 A. At that time the FNI did not yet exist.

9 Q. Now, I'm going to move on to the FNI. I see there's a few
10 minutes left this morning, but it's its own distinct subject.

11 MR. HOOPER: And, Mr. President, I hope you'd agree it might be
12 better to pick that up tomorrow.

13 PRESIDING JUDGE COTTE: (Interpretation) You're right,
14 Mr. Hooper. We only have five minutes remaining -- six minutes according
15 to the Court clock. The witness has given lengthy testimony this
16 morning.

17 Witness, we thank you for your contribution throughout the
18 morning's proceedings. You have answered many, many questions. You have
19 spoken clearly. You have made the work easier for everybody. You will
20 be able to rest this afternoon, ready to come back here tomorrow morning
21 and answer more questions. Mr. Ndjabu, tomorrow's hearing will begin at
22 9.00. It will run from 9.00 to 11.00 and then 11.30 to 1.30 p.m. as it
23 did today.

24 Thank you very much.

25 THE WITNESS: (Interpretation) Thank you, your Honour.

Witness: Witness DRC-D02-P-0236 (Open Session)
Questioned by Mr. Hooper

Page 63

1 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, usher,
2 could you please accompany the witness out of the courtroom.

3 Mr. Ndjabu, we will see you again tomorrow.

4 THE WITNESS: (Interpretation) Thank you, your Honour.

5 (The witness stands down)

6 PRESIDING JUDGE COTTE: (Interpretation) Accused persons, have
7 you followed all of the morning's hearing? Did your microphones work
8 well? Did your headsets work well? You followed everything. Very good.
9 All right. We will see you all tomorrow morning. The hearing is
10 adjourned.

11 The hearing ends at 1.24 p.m.

12

13

14

15

16

17

18

19

20

21

22

23

24

25