

Trial Hearing  
Witness: DRC-D02-P-0228

(Open Session)

ICC-01/04-01/07

1 International Criminal Court  
2 Trial Chamber II - Courtroom 1  
3 Situation: Democratic Republic of the Congo  
4 In the case of The Prosecutor v. Germain Katanga and  
5 Mathieu Ngudjolo Chui - ICC-01/04-01/07  
6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra  
7 and Judge Christine Van den Wyngaert  
8 Trial Hearing  
9 Monday, 2 May 2011  
10 (The hearing starts in open session at 2.38 p.m.)  
11 THE COURT USHER: All rise. The International Criminal Court is now in session.  
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Good afternoon,  
13 everyone. Good afternoon the accused. Before the witness is brought into the  
14 courtroom, Mr Dutertre had asked to address the Court and then Mr Kilenda.  
15 I think we will listen to them in that order. Mr Dutertre, please.  
16 MR DUTERTRE: (Interpretation) Good afternoon, Mr President. Good afternoon,  
17 your Honours. Thank you. I will be very brief and there is nothing contentious in  
18 what I'm going to say. I simply wish to provide some information to all the parties  
19 and participants.  
20 Regarding the agreements between the parties, the Prosecution is going to submit a  
21 filing this afternoon. Unfortunately, we did not have the time to send our proposed  
22 points of agreement to the two Defence teams before, but we are going to do that in  
23 our annex to the filing.  
24 Secondly -- let me slow down a little bit because of the transcript. Secondly,  
25 regarding the application of the duty counsel bearing number 24 -- 2848, and that

1 response is due on 4 May - that is in a few days - we are preparing our reaction, but I  
2 would like to say from the outset that we do not have any objection subject to any  
3 further developments.

4 PRESIDING JUDGE COTTE: (Interpretation) For everyone to understand, because  
5 we are in open session, this is an application from the counsel of the detained  
6 witnesses which have already been commented upon by the Registrar and the  
7 Defence teams.

8 MR DUTERTRE: (Interpretation) Yes, that is the application to obtain a certain  
9 amount of information on the reports.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well. I believe we understand  
11 each other.

12 MR DUTERTRE: (Interpretation) Let me go now to my third point. There is  
13 another filing that we have to respond to, and there were already the observations of  
14 the Registry and on this issue the Prosecution is reflecting on our position. It is quite  
15 possible that we will not respond to that filing, and I believe that is what you had in  
16 mind, Mr President, in your previous comment.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Prosecutor, but I  
18 have difficulties understanding the issue in your second point; that is, filing 2848.

19 MR DUTERTRE: (Interpretation) It was the newspaper article.

20 PRESIDING JUDGE COTTE: (Interpretation) And the deadline was 4 May.

21 MR DUTERTRE: (Interpretation) Regarding the Millénaire article a priori there is  
22 no objection, and regarding the report that was commented by the Registry it is  
23 possible that we will not submit anything.

24 And my last point concerns the Defence of Germain Katanga and it deals with the  
25 witness statements. We have received the unsigned version of the statement of

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1 Witness 0501 and, unless I am mistaken, we have not yet received the signed  
2 statement. I do not know whether this is something they intend to do and we would  
3 appreciate it.

4 Regarding 2360, 240 and 0261, we have not received any statements yet. I do not  
5 know what is the intention of the Defence of Mr Katanga on this issue, but we would  
6 appreciate it because those statements are important and useful for our preparation.  
7 That is what I had to say.

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

9 Regarding the last point, we have understood your wish and we would like to point  
10 out that we considered that the Defence team of Germain Katanga had complied with  
11 its obligation of disclosure, because it was either a summary or a statement, but this  
12 does not prevent any of the Defence teams from providing both and, if they think  
13 they can do that and you have already done it before, Mr Hooper, and you have now  
14 heard what the Prosecutor said in his last point and it will be up to you to determine  
15 whether to disclose statements or not, but once again the Chamber considers that you  
16 have already complied with your obligations and this would simply be something in  
17 addition if you give a statement.

18 MR HOOPER: Good afternoon, Mr President. Yes, indeed, we are serving  
19 statements as we get them signed. I think the 501 statement was served on 17 March  
20 as a signed document, so I would invite Mr Dutertre to have a look for that. I think  
21 we have got it as having been served on 17 March but, if there is a difficulty, we will  
22 re-serve. So if he could let us know if there has been a difficulty, we will re-serve  
23 that.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Kilenda, you also  
25 wish to address the Court. Please go ahead.

1 MR KILENDA: (Interpretation) Thank you, Mr President, your Honours. I  
2 deeply regret to announce the death of our witness DRC-D03-P-0033 which happened  
3 last Saturday in Ituri. He was buried yesterday and we wanted to inform you of this  
4 development, which greatly saddens us in our team for reasons that you are well  
5 aware of. Thank you very much, Mr President, your Honours.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda. I was  
7 going through the table that you submitted to us in order to find details about that  
8 witness, P-0033. Yes, I can see it now. This would have been your second witness.  
9 Very well. Was it a natural death?

10 MR KILENDA: (Interpretation) Yes, that witness died of natural causes.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda. We can  
12 now call in Witness 228, but before he comes in I would like to remind you that we  
13 adjourned on 21 April, that was a Thursday, at the end of questions put to the witness  
14 by the Chamber, and in a previous hearing I had told you that these questions were  
15 asked after the cross-examination of the Prosecutor, as was the case with Witness 236.  
16 When Witness 236 was with us, we had a discussion and it was agreed that the  
17 Prosecutor could briefly take the floor again after the questions of the Chamber, not to  
18 recommence or continue his cross-examination, which has been concluded, but if  
19 necessary to ask neutral and objective questions designed to seek clarifications on  
20 answers to questions put by the Chamber which were not raised in the course of our  
21 previous hearings. So I am saying this, Mr Dutertre, Mr Garcia, so that there should  
22 not be any ambiguity regarding the questions that you have to ask, and in that way  
23 we will avoid any pointless interruptions.

24 Then we will move on to Mr Kilenda and then Mr Hooper and lastly to Witness 228  
25 who has expressed the desire several times to make a statement to the Chamber. I

1 also want us to note the conditions under which Witness 228 was detained  
2 throughout this entire week. For the record, we had all hoped that his testimony  
3 could be completed before the recess. That was not the case, and this means that this  
4 witness could not meet with Witness 236 who has completed his own testimony. So  
5 during that week that passed many of us were concerned about the situation of that  
6 witness, including Mr Hooper, the Registry and the Chamber.

7 We tried to implement any measures necessary, or called for, regarding  
8 communication by telephone, or visits, or allowing him to go out of his cell so as to  
9 use the sports room, if possible, without participating in the activities at the same time  
10 as the other witnesses, or rather the other prisoners. Everything could have been  
11 better, but everyone tried to do the best possible things.

12 Now, court officer, court usher, please have Witness 228 brought into the courtroom.

13 At the end of the testimony of Witness 228, we will break for 20 minutes which will  
14 allow the witness to greet the accused, Germain Katanga, and will also enable the  
15 Prosecution team to change their team in order for us to reconvene under the best  
16 possible conditions with Witness 350.

17 (The witness enters the courtroom)

18 WITNESS: DRC-D02-P-0228 (On former oath)

19 (The witness speaks French)

20 PRESIDING JUDGE COTTE: (Interpretation) Good afternoon, Mr Mbodina.

21 THE WITNESS: (Interpretation) Good afternoon.

22 PRESIDING JUDGE COTTE: (Interpretation) You can hear me well?

23 THE WITNESS: (Interpretation) Yes, I can hear you perfectly well.

24 PRESIDING JUDGE COTTE: (Interpretation) In principle we are meeting in this  
25 hearing for the last time. If the Prosecutor so wishes, he will seek from you

1 clarifications on the answers that you gave in answer to the Chamber's questions last  
2 Thursday, 21 April. Then it will be the turn of Mr Kilenda for his final remarks and  
3 then Mr Hooper, and as planned you will have a few minutes to tell us what you  
4 asked us you wished to tell the Chamber. That is how this hearing is going to  
5 proceed.

6 Mr Prosecutor.

7 MR GARCIA: (Interpretation) Good afternoon, Mr President, your Honours. The  
8 Prosecution has no further questions after the Chamber's questions.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Kilenda.

10 MR KILENDA: (Interpretation) Thank you, your Honour. After the questions  
11 put to the witness by the Chamber, the Defence for Mathieu Ngudjolo has two  
12 questions.

13 QUESTIONED BY MR KILENDA: (Interpretation)

14 Q. Good afternoon, Mr Witness.

15 A. Good afternoon.

16 Q. I have two points of clarification that I will need from you to better enlighten  
17 the Chamber. The first question is as follows: Did you personally see  
18 Mr Mathieu Ngudjolo in Beni?

19 A. Thank you for the question. Maybe it is necessary to specify the time period?

20 Q. Did you see him in Beni?

21 A. Thank you. I saw Ngudjolo in Beni, I no longer remember precisely when, but  
22 it was either at the end of 2003, or early 2004, but this would have been after the  
23 Bogoro and Bunia events.

24 MR KILENDA: (Interpretation) Thank you, Mr Witness. Thank you very much,  
25 Mr President. I have no further questions.

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

2 Mr Hooper, please, you can proceed.

3 MR HOOPER: I have no questions arising from your Honour's questions of last  
4 week. Your Honour may recall that on the second day that Mr Pichou was  
5 providing -- Mr Mbodina was providing his assistance to the Court that I said I hadn't  
6 received the transcript and that I would with the Court's leave forego any questions  
7 or clarification until this point in time and I have just got one matter of clarification  
8 that may not be needed, but I notice looking at that transcript that there does appear  
9 to be what could be considered an ambiguity in his responses.

10 QUESTIONED BY MR HOOPER:

11 Q. And may I ask you this, Mr Mbodina. When the FRPI was established -- and  
12 I know you have told us about this before, but I'm asking you again. When it was  
13 established, was a president appointed and, if not, did a president at any time come to  
14 be appointed in the FRPI and, if so, when was that? Now, I ask that, because on  
15 transcript 249, at page 53 in both the English and the French, you provided this  
16 answer, which was in contrast to other things that you had clearly said, so I want to  
17 make sure that we are quite clear what the position is.

18 Your answer was, and I'm reading from the English transcript at page 53 of transcript  
19 249 at line 1; the reference in the French transcript is transcript 249 at page 47, at page  
20 25 -- I'm sorry, at line 25, and the answer you gave was, "Thank you for your question.  
21 No, as far as I know, that's not the case." Now here's the significant bit, "We didn't  
22 have a president of the FRPI when it set up and the structure we built was a  
23 coordination with a president and his deputy and two advisers. Thank you." So  
24 into your answer - let me read it again - "We didn't have a president of the FRPI when  
25 it was set up and the structure we built was a coordination with a president and his

1 deputy and two advisers."

2 Now, you'd otherwise made it clear that the presidency didn't exist at the beginning.

3 I'm just asking you if you can clarify what the position was. When the FRPI was set  
4 up, what was its structure?

5 PRESIDING JUDGE COTTE: (Interpretation) Prosecution.

6 MR GARCIA: (Interpretation) I'm wondering where Mr Hooper is going with this  
7 question. First of all, when Mr Hooper initially asked about coming back with  
8 re-examination, this question was not raised, but the Prosecution has always objected  
9 to coming back to questions which should have been covered in the  
10 inter -- examination-in-chief. This is a question which should have been asked by  
11 Mr Hooper previously.

12 There is, in fact, a real transcript in which you can read the testimony of the witness  
13 after the first and second days. I did this and the members of the -- of my team have  
14 done the same. Things should be fair for all parties before this Court and, therefore,  
15 we've always been very clear-cut. Re-examination is purely for questions which  
16 have already -- or are on points which have already been raised, and here in this case  
17 this kind of question is not in that category. Mr Hooper is coming back to a question  
18 which he should have asked in examination-in-chief. This is a very important point.  
19 If we let Mr Hooper do this, then we should let other parties, including the  
20 Prosecution, do this as well. I simply would like things to be fair for everybody.  
21 We should -- I would like to see Mr Hooper simply asking the questions in terms of  
22 clarifications. In fact, your Honour, what Mr Hooper is asking is completely out  
23 with what is asked for, or allowed, in re-examination.

24 PRESIDING JUDGE COTTE: (Interpretation) We'll put aside whether the  
25 transcript was available or not. On the point of asking clarifications before the



1 witness leaves us, you really have to ask questions about -- questions of detail and  
2 clarification, whether or not you wanted to know whether or not the FRPI had a  
3 leader at this time. This is something which the witness has already talked about.  
4 We are in the phase of the final clarifications.

5 So, Mr Witness, if you could ask -- answer this question of Mr Hooper's, then we  
6 would be very grateful to you. Thank you.

7 THE WITNESS: (Interpretation) Thank you. I think that I have in fact covered  
8 this point already and, therefore, I will repeat what I've said.

9 When the FRPI was set up, there was no structure called the presidency with a  
10 president or one or two vice-presidents. The FRPI was set up as a coordination  
11 movement, and at the head of that movement there was one coordinator, Floribert  
12 Ndjabu, and he was seconded by Mr Sambidhu, his assistant. Beyond these two  
13 people, there were also two advisers, including myself and Mr Sharif Ndadza. This  
14 is really all I can say about this question.

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

16 Mr Hooper, as part of your final questions, do you have any further questions to ask?

17 MR HOOPER: Can I refer both the Chamber and my learned friend to transcript 250  
18 at page 2, where I stated the difficulty the Defence had been placed in by a lack of  
19 transcript and where I said that "If I don't reach the point, or if I conclude before I  
20 have a reasonable opportunity to examine the transcript, then perhaps these are  
21 matters I can, if necessary, pick up on in re-examination in due course."

22 Now, if the Prosecution had an objection, they should have made that objection then.

23 In any event, I didn't want to give the opportunity to the Prosecution to make a bad  
24 point, when in fact the whole thrust of this witness's testimony has been quite clear,  
25 and he's clarified it further now that there was no presidency established when the

1 FRPI was established. I've got no other questions of this witness.

2 Before I sit down, Mr President, before the witness came in, you were good enough to  
3 announce some of the difficulties that this witness had been confronted with over the  
4 past week, effectively having been placed in solitary confinement for the entire Easter  
5 period, and I know, because I've been in contact with both the Court and the Registry,  
6 that efforts were made, particularly by the Chamber, to alleviate those conditions, to  
7 permit him, for example, to telephone on a daily basis home. I know that may have  
8 been just a little mitigation for anyone who finds themselves in a solitary confined  
9 condition.

10 I express my sincere regrets to him for having brought him here and had him  
11 subjected to that kind of condition. It wasn't my fault, it wasn't the Chamber's fault,  
12 and it wasn't strictly the Registry's fault, though I sincerely hope that anyone else  
13 who's brought to The Hague to give evidence in the conditions that these witnesses  
14 have been, that a lesson would have been learnt by the Registry and that conditions in  
15 future will never, ever lead to a witness during his testimony being subjected to a  
16 period of solitary confinement for nine or ten days. It's most regrettable. I know,  
17 Mr President, you share those anxieties and I express them and my regrets to  
18 Mr Mbodina in public.

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

20 Mr Mbodina, it is quite clear that if the Chamber had known on Thursday, 21 April at  
21 13.30 that the Prosecutor would not be asking you any questions, that Mr Kilenda had  
22 few questions to ask of you and that Mr Hooper too had few questions to ask, then  
23 I think we would have found a way to extend the hearing by an extra 30 minutes so as  
24 to allow you during the week's recess of the Court to get in touch with Witness 236.  
25 Perhaps I had misunderstood things. I thought that certain questions might be

1 asked, but it's true that the parties at that time were not clear about the -- what  
2 questions they may ask at that point. We, on Thursday 21 April, were worried about  
3 the situation which you found yourself in which Mr Hooper indicated to us. For the  
4 transcription, it is important to point out that you were not placed in isolation. In all  
5 countries in the world, in criminal systems, this is a criminal sanction. This was not  
6 the case at all. However, you did for all practical purposes find yourself in isolation  
7 and, therefore, the Witness 236 had finished his testimony, and if you had finished  
8 yours, you would have been able to be in touch or put in contact with Witness 236.  
9 However, you couldn't.

10 We all, depending on our circumstances and levels of authority, managed to obtain  
11 you the right to telephone calls and we are pleased to note that you were able to  
12 contact your wife and members of your family, perhaps your parents too. You  
13 indicated to the assistant director of the detention centre that your situation was  
14 difficult, but for the moment you considered it was not essential to receive visits.  
15 However, the Chamber insisted that you could receive visits from members of the  
16 Court office. However, you were entitled to say, as you did, that you did not want  
17 to have such visits. You stated your wish, but we wished that somebody should  
18 knock on your prison door at least once a day. We also wished to give you the  
19 opportunity to take part in open air activities with the other detainees in the Tribunal  
20 for ex-Yugoslavia.

21 Now, for reasons we do not understand and over which we have no control, this was  
22 not possible. However, I do hope that you were able to get outside, get some fresh  
23 air in reasonable circumstances and that you were able to take advantage of the sports  
24 facilities.

25 Mr Hooper wishes that such situations should not repeat themselves, because for one

1 week you lived in particularly difficult circumstances. We regret this. We wish to  
2 express to you the fact that we did our utmost so that this week should be as painless  
3 for you as possible.

4 Now, before we leave each other, Mr Witness, you wished to take the floor and say a  
5 few words. The Chamber, therefore, gives you ten minutes to listen to what you  
6 have to say.

7 THE WITNESS: (Interpretation) Thank you. Thank you very much, your Honour.  
8 I would like to thank you for giving me this opportunity to speak and for having let  
9 me express my worries to this Court.

10 First of all, let me say that I am very touched by the expressions of generosity of the  
11 Court vis-à-vis my personal situation; you and the Defence, in fact, and this is also  
12 true of the Prosecution. I am very much touched by what you have said. Let me  
13 say that the period I spent in the detention centre was difficult, but we were able to  
14 overcome a lot of things. We have been through circumstances far more difficult  
15 than that, and I am not angry with anybody who imposed such restrictions,  
16 particularly as they were justified.

17 I fully understand this and, personally, there are no negative consequences to this. I  
18 am well. You gave me the possibility of getting in touch with my wife and I was  
19 able to contact my family. All this has been very beneficial to me.

20 Nevertheless, as Mr Hooper has said, it would be good I think if in the future things  
21 were arranged so that such circumstances were not imposed on future witnesses.

22 Our status as a prisoner prevailed over our status as a witness, but a witness also  
23 needs to be put in a certain psychological and moral state of mind which will allow  
24 him or her to present their testimony.

25 When a witness is psychologically harmed or affected, it is difficult to have all his

1 wits about him to give proper testimony. I, therefore, think that it would be good if  
2 such things did not happen again, and I'm sure that in the future such decisions will  
3 not be taken again. Thank you.

4 Since no further questions were asked of me, I will try to be as brief as possible as well.

5 Your Honour, I asked for this opportunity to express my thoughts. Thank you for  
6 giving me these few minutes. I would like to also apologise for perhaps an attitude  
7 or manners which I've had which some people have found displeasing. I hope that  
8 nobody will hold this against me.

9 This has been a very new experience which I have just gone through and I think it's  
10 understandable that sometimes I have found things difficult. I would like to  
11 apologise, therefore, your Honour, because sometimes there were moments when I  
12 did not get on very well with some of the questions. My apologies for that.

13 As for the representatives of the victims who are defending the cause of victims and  
14 child soldiers, let me say on this point that when I leave this Court that anybody  
15 would think that I was involved in any way in the use of child soldiers, let me say  
16 that personally the use of child soldiers - that is to say, children, youngsters aged  
17 under 18 - is totally unacceptable. I would like this to be stated very clearly to the  
18 victims' representatives so that there is no misunderstanding on this point.

19 I have two issues, in fact two requests: The first one is I would like to ask for justice  
20 for me personally. I do not want to come back here -- correction, I do not want to go  
21 back over the situation what I went through in Makala. This was six years ago.

22 Everybody here has the documents in hand and correspondence which bear witness  
23 to the irregularities of the trial against me organised by the Congolese authorities.

24 It's six, almost seven years now that I have been waiting for justice to be done, but still  
25 nothing has happened. Why is that? Well, I don't know and yet the law is very

1 clear. I, therefore, ask that justice should be done so that this situation should be  
2 resolved. I have been in prison for a long time and I am making this request  
3 specifically to the Court.

4 I know with the guarantees which you have given that the Prosecution cannot  
5 prosecute me. However, you can work so that justice is done for me. I have so  
6 many doubts in my mind. I am not sure at all that the Congolese authorities will  
7 give me true justice, will give me a fair trial, and this is for the simple reason that for  
8 the past six or seven years no justice has been done.

9 There is a vacuum in terms of the substance and the facts which I am accused of. We  
10 have talked here about Ituri, what happened there. Now, unless I interpreted things  
11 wrongly, the facts have been established and I see no reason to prosecute me.

12 Perhaps the situation of the UN troops could be considered, but I think we have  
13 awaited for many years for justice to be done thereto.

14 The MONUC, the UN troops, died, but I think there is a lot of -- there is a very lax  
15 attitude in trying to bring to justice those who were responsible for the death of the  
16 UN troops. And, therefore, what I am asking the Court is that they should do  
17 something so that justice should be done for me; and here I would like to ask for  
18 protection.

19 This is the second thing I would like to ask: After everything that has happened here,  
20 my life is in danger. First of all, in the intelligence services, somebody who betrays  
21 the organisation or who provides information to somebody who is not part of the  
22 organisation, this person is liable to die, could be condemned to death. That is the  
23 way things are. You pay, or these people pay, a very heavy price.

24 Today I am truly on the edge of death for what happened in the past, and I would ask  
25 the Court to protect me. The Court has already considered this. The Court took

1 certain protective measures and asked the court office to do this but, unless there are  
2 to measures taken, that will not be enough because in its mission these measures in  
3 fact are not sufficient to protect me properly.

4 If you -- whilst you have a lot of respect for this organisation, we do not. We know  
5 the problems they are having in investigating and managing things at Makala. They  
6 are finding things very difficult and in terms of their doing the work they're  
7 practically invisible. If you look at the difficult situation of the prisoners in Makala,  
8 what can be done for such difficult and sensitive cases such as my own?

9 So I would request more effective protective measures taken for me to protect myself  
10 and my family. There is a very complicated situation here. The battle which is at  
11 the heart of things, which is the question here, is an asymmetrical battle because we  
12 are fighting against an opponent which is everywhere but invisible. So how can the  
13 ICRC (sic) do anything in such circumstances?

14 This is why with my counsel I asked for political asylum. I do not want to hide  
15 behind justice. What I want is that the international community or a community of  
16 States judge me for what I'm accused of and that I should be protected. That is what  
17 I am asking for. I would like to thank you, I would like to thank all the parties here  
18 and thank you once again.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, the Chamber has  
20 listened to you most attentively. There are several different points which you have  
21 raised and there are different solutions which are possible.

22 You have expressed and you have already done this through your counsel expressed  
23 your hesitation and reservations about the protective measures which the Court  
24 believed it could provide you and your family with. You are, of course, entitled to  
25 be skeptical about these measures. In any case, the Court will implement these

1 protective measures as it has undertaken to do.

2 At the beginning of your testimony, you were given assurances by Article 93 of the  
3 stated Rule 74 of the Rules of Procedure and Evidence and I also stated the position of  
4 the Witness Protection Unit.

5 We have the particular case here of a witness who is being held prisoner in his  
6 country of origin.

7 You also mentioned the fact that it would be important for a European country to  
8 provide judgment in order to bring an end to the procedure - the legal  
9 procedure - which is underway in RDC. I do not think that this is legally possible

10 and you know this. However, you also just now expressed the wish to obtain  
11 political asylum. As you know better than anybody, your counsel, which was  
12 appointed for you, has filed a motion on this point to the Court. This is currently  
13 being examined. It is very important to obtain the comments and reactions of the  
14 parties, participants, of the court office as well, in order to rule on this, and we will be  
15 doing this as swiftly as possible. This is all I can say to you for the moment, but we  
16 have listened most attentively to your messages.

17 You believe that too much time has gone by since you have been held in your country  
18 without any judgment being passed on you and we have heard this.

19 Before we leave each other, Mr Witness, the Chamber would like to thank you for  
20 your contribution throughout these days of hearing. Thank you for your answers to  
21 the different parties. We would like to remind you that what you have said here  
22 should not be repeated outside of this Court. What you have said here is for the  
23 Court. Although it is true that 99 per cent of the hearing was held in open session,  
24 this is what you asked for and you stated this at the beginning of your testimony.

25 We would like to thank you for this. The more open the hearing, the better it is.



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1 Therefore, we will now take leave of each other. Before you leave the Chamber itself,  
2 we will suspend the hearing so that the Defence of Mr Germain Katanga can thank  
3 you and this will take place straightaway. Madam Court Officer, it is now 3.34. We  
4 will suspend the hearing for 20 minutes, so we will start back at 5 minutes to 4. Mr  
5 Witness, I am listening to you.

6 THE WITNESS: (Interpretation) I sent one or two letters to you and obviously to  
7 the Chamber and to the Prosecutor, and please forgive me to broach this question  
8 here, but I don't know why it wasn't accepted.

9 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, everything needs to be  
10 open and above board. The parties and the participants need to know if -- well, if  
11 the Chamber was late in reconvening, it was because one of the security agents gave  
12 the Bench three letters penned by Mr Mbodina: One of these letters sent to the  
13 President of the International Criminal Court, in other words to the President of this  
14 Chamber; the second to the Prosecutor of the Court; and third to the Dutch authorities.  
15 The Bench deemed that it couldn't receive in a confidential fashion, in a bilateral  
16 fashion, such letters that Mr Mbodina penned himself, because these are written  
17 letters and Mr Mbodina asked the Registry office and the security agent to give them  
18 to you again, so that you can hand them to your counsel; to the counsel that has  
19 been -- that the Registry has appointed to you and this is your therefore -- your  
20 counsel who will be responsible to sending these letters to the three authorities to  
21 which you are intending them.

22 With regard to the Dutch authorities, they will rule on whether it should act, or  
23 whether it deems it is incumbent upon it to act, and if so it will go to the Chamber.

24 With regard to the Prosecutor, I would imagine that the counsel appointed by the  
25 Registry will say that he will be responsible for making that letter reach his -- reaching

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1 the recipient and, with regard to this Bench, I would imagine the Registry will think  
2 that, yes, it is fully incumbent upon it to give the letter to us, so this confidential and  
3 unilateral sending of the letters on your part, of course you couldn't be familiar with  
4 all our proceedings, we deemed it was too clandestine, if you will.  
5 You have counsel that was appointed to you. It is therefore important that it is this  
6 person to be responsible for sending these letters. That is it in a nutshell, Mr Witness.  
7 So once again thank you very much, Mr Witness.

8 Court officer, we are going to be adjourning and we will resume at 5-to-4. The  
9 audience is suspended.

10 THE INTERPRETER: Microphone.

11 PRESIDING JUDGE COTTE: (Interpretation) You are part and parcel of our  
12 community, Mr Witness, for a number of days. I should have had you brought out  
13 of the courtroom before we actually rose. So you are going to leave the courtroom  
14 and then following that we will leave ourselves.

15 (The witness is excused)

16 PRESIDING JUDGE COTTE: (Interpretation) So I reiterate the fact that we have  
17 now suspended our proceedings and we will resume at 5-to-4. Thank you.

18 (Recess taken at 3.36 p.m.)

19 (Upon resuming in open session at 4.02 p.m.)

20 THE COURT USHER: All rise.

21 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. So, court officer,  
22 court usher, if you wouldn't mind introducing into the courtroom Witness P-0350.

23 (The witness enters the courtroom)

24 WITNESS: DRC-D02-P-0350

25 (The witness speaks Lingala)

- 1 PRESIDING JUDGE COTTE: (Interpretation) Good afternoon, sir.
- 2 THE WITNESS: (Interpretation) Good afternoon.
- 3 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me well?
- 4 THE WITNESS: (Interpretation) I can hear you very well.
- 5 PRESIDING JUDGE COTTE: (Interpretation) You are going to testify in Lingala?
- 6 THE WITNESS: (Interpretation) Yes, I'm going to testify in Lingala.
- 7 PRESIDING JUDGE COTTE: (Interpretation) Very well. You have accepted to
- 8 come and testify before this Court, and we thank you for that.
- 9 THE WITNESS: (Interpretation) Yes, I have agreed to testify before this Chamber.
- 10 PRESIDING JUDGE COTTE: (Interpretation) During our exchanges, Mr Witness,
- 11 either you and the Chamber, you and the Prosecutor who is there to my left, or the
- 12 legal representatives of the victims, or even the lawyers of the two Defence teams, all
- 13 of us have to comply with the five-second rule before answering the questions put to
- 14 you. That short time lapse will make it possible for the interpreters to better
- 15 interpret and for the court reporters to do their job properly, so you, the participants
- 16 and parties and myself, we will try to pause for five seconds before speaking.
- 17 For the time being, Mr Witness, I would like to ask you to identify yourself, beginning
- 18 with your name, and please pronounce your name slowly.
- 19 THE WITNESS: (Interpretation) My name is Manda Ndadza Dz'Na Sharif.
- 20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Your given name is
- 21 Sharif. Now, can you give us your date and place of birth?
- 22 THE WITNESS: (Interpretation) I was born in Aru on 6 June 1974.
- 23 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Witness, what was
- 24 your occupation prior to your imprisonment in Kinshasa? What was your
- 25 professional activity?

1 THE WITNESS: (Interpretation) Before I was arrested in Kinshasa, I was  
2 coordinator of the political military movement fighting against injustice in Ituri.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Witness, before you  
4 take the solemn undertaking and testify, the Chamber would like to reassure you -- or,  
5 rather, give you the assurances under Article 93(2) of the Statute of the International  
6 Criminal Court as requested by your counsel. Rule 191 of the Rules of Procedure  
7 stipulate that the Prosecutor has to be consulted, and the Prosecutor indicated on  
8 4 March 2011 that he did not have any objection to such assurances being given to you.  
9 And pursuant to the same provisions, at the request of the Chamber, the Registry  
10 designated a lawyer for you, and as requested by him from the Chamber, he sought to  
11 have your observations in application of Rule 191 of the Rules.

12 In a filing to of 11 April 2011, number 2825, your counsel indicated to the Chamber  
13 that you wished to have the assurances under Article 93(2) of the Statute. In  
14 accordance with the provisions of that Article, the Chamber would like to give you  
15 the assurance that you will neither be prosecuted nor detained, nor subjected by the  
16 Court to any restriction whatsoever of your personal freedom for any act or omission  
17 committed prior to your departure for -- from the Democratic Republic of the Congo.  
18 There is also Rule 74 of the Rules, and we would like to give you assurances on that.  
19 You met with your lawyer on 6 April 2011 in The Hague and he explained to you  
20 Rule 74 of the Rules, as well as the conditions under which the Chamber can give you  
21 guarantees. He specified the nature of those guarantees and provided you with all  
22 useful explanations on the contents of all the other provisions of the Statute or Rules  
23 mentioned under that Rule 74. This was done in filing 2825 submitted on  
24 11 April 2011. Your lawyer also give you legal opinion on any other questions that  
25 you might have asked him, and we know that you had a discussion with him.

1 Rule 74 states very clearly that you may decide not to answer any questions put to  
2 you if your answer could be self-incriminating, and the Chamber would like to stress  
3 that you may use that possibility at any time. That same Rule 47 also stipulates that  
4 in such a case, and exclusively in such a case, the Chamber can provide you with a  
5 certain number of guarantees, and I will remind you of those even if your lawyer has  
6 already told you about it.

7 The evidence provided in your testimony will then remain confidential and will not  
8 be revealed to the public or to a State. That information will not be used directly or  
9 indirectly against you as part of future proceedings before the Court, unless these are  
10 proceedings under Articles 70 and 71 of the Statute, which are very specific Rules.

11 In application of paragraph 4 of Rule 74, the Prosecutor was consulted and made it  
12 known on 4 March 2011 that he did not have any objection to your being given those  
13 guarantees. The same applies to the Democratic Republic of Congo authorities who  
14 made their position known on 7 March 2011 and referred specifically to a letter  
15 addressed on 30 January 2009 to the Prosecutor of the Court by the Minister of Justice  
16 of the DRC, and in that letter the Chamber specifically referred to its decision 2548 of  
17 2011, paragraph 28.

18 On that same date, the same authorities - and I'm referring here to the authorities of  
19 the Democratic Republic of Congo - referred to Article 19(1)(c) on the agreement on  
20 privileges and immunities of the International Criminal Court which they signed and  
21 which states that witnesses will have absolute immunity for their written -- for their  
22 written and oral statements and whatever they do during their testimony and that  
23 this immunity will continue to apply even after their appearance and testimony  
24 before the Court.

25 From a strictly procedural point of view, the implementation of those guarantees

1 under Rule 74, if you were to ask for them, will lead the Chamber to order that certain  
2 parts of your testimony should take place in closed session.

3 Under that same Rule, the Chamber will order that the contents of the relevant parts  
4 of your testimony should not be disclosed and any failure to comply with that order  
5 will be liable to the sanctions provided for in Rule 71. Furthermore, the  
6 implementation of those guarantees will mean that the Court has to order that the  
7 transcripts related to those parts of your testimony be placed under seal by the  
8 Registry.

9 It should be stressed on the Prosecutor, the counsel, legal representatives of the  
10 victims and all staff members who are present in the courtroom or who are following  
11 these proceedings that there are consequences for any failure to comply with this  
12 order not to divulge the information referred to.

13 Mr Witness, I would like to remind you that you decided to waive the rights given to  
14 you under paragraph 7(b) of Rule 74. Mr Hooper, counsel for Germain Katanga,  
15 informed us that you were willing to testify publicly and that you did not have any  
16 objection to your identity being known. You have, indeed, identified yourself  
17 publicly. Your lawyer reiterated this point in paragraph 8 of his filing number 2825.

18 It will therefore not be necessary to use a pseudonym to address you and we can refer  
19 to you as Mr Dz'Na, and there will also be no need for voice or face distortion on the  
20 screens during your testimony and, given that the publicity of the hearings is the rule,  
21 under Article 70 of the Rules the Chamber notes your decision.

22 Mr Witness, this was a little bit complex, but you have talked with your lawyer and I  
23 wanted simply to be sure that all this is clear. Is that understood?

24 THE WITNESS: (Interpretation) Yes, I followed you well.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Apart from the

1 assurances and guarantees that the Chamber can give you, there are also procedural  
2 or operational protection measures which may be taken to ensure your security or  
3 welfare.

4 The Chamber would like to remind you that we handed down an oral decision on  
5 30 March 2011 instructing the Registry to continue the discussions initiated with the  
6 authorities of the DRC for the adequate protection of your family. The Chamber also  
7 ordered the Registry to report to it on the protection measures that it may be  
8 necessary to take for the benefit of your family.

9 The contents of that order can be read in the transcript number 242, page 1612 -- line  
10 12 to page 19, line 22. Furthermore, the lawyer designated by the Registry is in  
11 possession of all this information and so he can re-explain to you at any time if the  
12 necessity arises. Is it clear to you so far, Mr Witness?

13 THE WITNESS: (Interpretation) Yes, it is very clear.

14 PRESIDING JUDGE COTTE: (Interpretation) Now, Mr Witness, we are going to  
15 take your solemn undertaking now. When you arrived at The Hague, the Registry  
16 must have explained to you that you have to make a solemn undertaking before your  
17 testimony to tell the truth. I'm going to read that oath out slowly so that you should  
18 fully understand its importance. It reads as follows: "I solemnly declare that I will  
19 speak the truth, the whole truth and nothing but the truth." Did you hear me well?

20 THE WITNESS: (Interpretation) Yes, I have heard you.

21 PRESIDING JUDGE COTTE: (Interpretation) Now, Mr Witness, do you pledge to  
22 speak the truth, the whole truth and nothing but the truth?

23 THE WITNESS: (Interpretation) Yes.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you. The Chamber would  
25 like to ask you to listen once again very attentively. You have just pledged to speak

1 the truth, the whole truth and nothing but the truth. If in the course of your  
2 testimony, or in answer to the questions that will be put to you, you do not tell the  
3 truth you can be prosecuted before the International Criminal Court for perjury and,  
4 if the facts are proven, you could be convicted. Have you understood me?

5 THE WITNESS: (Interpretation) Yes, I have.

6 PRESIDING JUDGE COTTE: (Interpretation) Very well. Mr Dz'Na, the Court  
7 notes that the provisions of Article 69(1) of the Statute and Rule 66(1) and (3) of the  
8 Rules of Procedure and Evidence have been complied with.

9 Mr Witness, during the entire course of your testimony, we would like you to speak  
10 loudly and speak directly into the microphones in front of you so that the interpreters  
11 should be able to hear and understand you. You have chosen to speak in Lingala.  
12 The interpreters are there to assist us. They will interpret into French and then from  
13 French into English. This will require some time. Please do not change languages.  
14 You have to stay with Lingala and do not change in the course of your testimony so  
15 as not to complicate the work of our interpreters and I thank you for that. Whatever  
16 you say in this courtroom remains with you and you should not disclose that outside  
17 of this courtroom.

18 You would have realised, Mr Witness, that it is almost hot here in Holland and it is  
19 always hot inside this courtroom, so do not hesitate to have a drink of water because  
20 you are going to speak a lot. The Court has no problem at all with your taking a few  
21 moments to have a drink of water. And because of the weather conditions here in  
22 The Hague, if you are suffering from a cold you can blow your nose. You have a box  
23 of tissues next to you, and you can use it because the Court has no problem with your  
24 using that box of tissues. It is there for you.

25 We simply would like you to be in a good physical condition in order to give us your



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1 testimony and assist all of us to better understand the facts with which we are seized.

2 Have you fully understood me, Mr Witness?

3 THE WITNESS: (Interpretation) Yes, I have understood you well.

4 PRESIDING JUDGE COTTE: (Interpretation) Does this mean that you are fully  
5 prepared to begin your testimony?

6 THE WITNESS: (Interpretation) Yes, I am ready.

7 PRESIDING JUDGE COTTE: (Interpretation) The Prosecutor will introduce  
8 himself -- no, it will be Mr Hooper because he is the one beginning his direct  
9 examination. After that we will break for 30 minutes because of the tape before  
10 Mr Hooper begins his direct examination.

11 QUESTIONED BY MR HOOPER:

12 Q. Good afternoon.

13 A. (No interpretation)

14 Q. Just help me -- just help me with -- your name we know is Sharif Manda  
15 Ndadza Dz'Na. Can you just help me with how you'd like us to address you in  
16 court, so I get the pronunciation correct?

17 A. It would be better to refer to me as Sharif. That is the name that is known.

18 Q. Very well, thank you. Thank you very much and, if you're comfortable with  
19 that, we can use that. So, Mr Sharif, you've met me before in rather different  
20 circumstances in the Makala Prison in Kinshasa and, if you look around this  
21 courtroom I know there'll be very few if any faces that you recognise, perhaps other  
22 than my own and Ms Buisman who sits there to my right who I think you've met on a  
23 previous occasion, and there's a gentleman at the back of the Court who I am going to  
24 ask to stand up - and if he can stand up just for a moment - and I'm going to ask you  
25 do you know that man and, if so, can you give us his name, please?

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1 A. Yes, I know him very well. His name is Germain Katanga.

2 Q. And are you related to him in any way; that is, do you have any blood ties with  
3 him?

4 A. No, we are not from the same family. We met each other during our various  
5 professional activities.

6 MR HOOPER: I see the time and we are coming up to it, so I hope with those brief  
7 introductions we can break off now and I will come back to you at the end of our  
8 adjournment this afternoon. Thank you.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well. Mr Witness, we are  
10 going to have two sessions of two hours each. You arrived when we had only  
11 half-an-hour left, but we were able to have your solemn undertaking. Mr Hooper  
12 introduced himself and you recognised Mr Germain Katanga. We are going to break  
13 for 30 minutes and if the parties agree that we meet earlier we will meet in 15 minutes  
14 and then stop earlier? No? Well, okay, that is not possible, so we will reconvene in  
15 30 minutes' time at 5 p.m. and we will adjourn at 9 -- at 7 p.m.

16 Now, we will try for the Monday hearings, if there is no hearing in this courtroom, we  
17 will go back to our past practice of beginning at 2 p.m. and ending at 6.30 p.m. That  
18 would be preferable for all of us.

19 Let us ask the witness first to go out. Court usher, please accompany Mr Sharif out.  
20 We are going to refer to him as "Mr Sharif," which is simpler. We will see you again  
21 in half-an-hour.

22 (The witness stands down)

23 PRESIDING JUDGE COTTE: (Interpretation) The hearing is suspended.

24 (Recess taken at 4.29 p.m.)

25 (Upon resuming in open session at 5.02 p.m.)

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1 THE COURT USHER: All rise.

2 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Madam Court

3 Officer, Mr Court Usher, could you bring the witness in, please.

4 (The witness enters the courtroom)

5 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me, Mr Sharif?

6 THE WITNESS: (Interpretation) Yes.

7 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Mr Hooper, you may start  
8 your examination of the witness.

9 MR HOOPER: Thank you, Mr President.

10 Q. Mr Sharif, let me start with just learning a little bit more about you. You were  
11 born in Aru, we understand, on 6 June 1974, so you're coming up to your 37th  
12 birthday next month. Where did you grow up? Did you -- you were born in Aru.  
13 Where did you grow up?

14 A. I was born in Aru, as I said. I studied in Aru, I went to primary school and  
15 secondary school in Aru. This is where I finished my secondary studies, and it was  
16 then that the Kabila war broke out and at that point I returned to Bunia.

17 Q. Now, just very briefly, I want to produce a map that we've seen before - not you,  
18 Mr Sharif, but those of us in this courtroom - and it's EVD-D02-0118, and it's just so  
19 we can orientate ourselves to your story and where it starts, and in a moment you'll  
20 see it come up on the screen in front of you.

21 THE COURT OFFICER: (Interpretation) To see the map, you press the button  
22 "PC1," please.

23 PRESIDING JUDGE COTTE: (Interpretation) Can you see this map properly,  
24 Mr Sharif?

1 THE WITNESS: (Interpretation) Yes, I can see it very well. Thank you.

2 MR HOOPER:

3 Q. And looking at the map, if we look towards the top right of the screen of the  
4 map, we can see Aru there and we can see, obviously, its relationship to Bunia there  
5 down in the middle of the map. Now, thank you.

6 Now, can I ask you about your marital state? Are you married; do you have  
7 children?

8 A. Yes, I have two wives and five children.

9 Q. And what level of education did you attain?

10 A. I did the premier graduat for my studies, but I had to stop at that level because I  
11 had suffered bullet wounds.

12 Q. Now, you've mentioned the -- now, you've referred to the Kabila war breaking  
13 out, and as a consequence your going to Bunia. Can you help us to what year that  
14 was?

15 A. I think that this was in 1996. This is when the war started. And then in 1997 I  
16 joined Mr Kabila's rebellion.

17 Q. (Microphone not activated) ... Mr Kabila, is that Mr Kabila père, or fils?

18 A. I'm talking about Kabila father, senior.

19 Q. And please help us and treat us, frankly, as if we know absolutely nothing  
20 about your country's history. Don't make any assumptions that we do. Did you  
21 ever become a soldier?

22 A. At that time saying I was a soldier was perhaps a little exaggerated. It was a  
23 time of the liberation. All youngsters wanted to join Kabila's revolution and liberate  
24 the country. It was really a question of joining the rebellion. We learnt how to use  
25 weapons and then simply I joined the rebellion.

1 Q. And who were you rebelling against?

2 A. Well, the rebellion of the AFDL was aimed at driving Mobutu from power.

3 Q. And how long were you a member of the AFDL?

4 A. I was a long time in the AFDL when we left Bunia to liberate Wacha (phon).  
5 When we arrived in Welnu (phon), people were trying to kill me. I managed to  
6 escape. So, in total, in fact, I was there for one or two months.

7 Q. And what did you do after that? And if you can, can you specify the years that  
8 you're talking about?

9 A. All of this happened at the end of 1997, going into 1998. When I escaped from  
10 the Rwandans, I went to another village; I set up small businesses.

11 THE INTERPRETER: Your Honour, the interpreter is asking for the witness to  
12 speak more slowly.

13 PRESIDING JUDGE COTTE: (Interpretation) Could you please, Mr Witness, speak  
14 more slowly, if that is possible. Thank you very much. And then, of course, you  
15 answer Mr Hooper's questions but do, please, speak more slowly.

16 MR HOOPER:

17 Q. You spoke earlier of having at least started a university course. Had you  
18 started that course by then, or what?

19 A. When I went home, I started a small business. This was in 2001, 2001, so these  
20 were the years when I started my studies at the business school at Bunia.

21 Q. And what were you studying there?

22 A. At university, I studied fiduciary tax.

23 Q. Now, you've mentioned that you did your first year there and then you didn't  
24 continue, you told us, because something happened to you. What was that?

25 A. Whilst I was studying, the war broke out in Ituri. The Ugandans and other

1 Rwandan mercenaries were there and they were financing the Hema so they could  
2 kill all the Lendu who were studying and who had some money, some means. I was  
3 in that situation, I was studying, so I had money, I had motor bike, so I had property,  
4 so I was a target.

5 Q. And what happened to you, sir?

6 A. We had some practical work to do. I was working with my friends at school  
7 and I was shot, the Ugandans shot me. I was hit in the right leg. I collapsed. A  
8 passerby picked me up and took me to Nyankunde Hospital.

9 Q. How many bullets did your -- hit you and with what effect to your general  
10 physical ability? Not just then, but continuing abilities?

11 A. When I was shot, I was shot twice in the leg; one bullet went also straight  
12 through my leg and hit the bone. When I went to hospital, the damaged bone finally  
13 healed and in Nyankunde I was transferred -- I stayed in Nyankunde Hospital.

14 Q. I'll come back to your stay in Nyankunde Hospital and what happened  
15 afterwards to you, but I want to jump ahead in time to your present position, and you  
16 come here to assist us with your evidence, and my understanding is that of course  
17 you come as a detained prisoner brought here from the Central Prison of Makala in  
18 Kinshasa. Now, is that correct, that you are presently a detained prisoner in  
19 Kinshasa?

20 A. Yes, I am currently being detained in Makala, in Kinshasa.

21 Q. And can you tell the Judges how you came to be in prison? Can you give us  
22 details of your arrest, where and by whom and for what?

23 A. I was arrested in Arua in Uganda. I had gone there for medical care because I  
24 suffer from diabetes. Since I usually live in the bush and countryside, I go to Arua  
25 from time to time, and when I was in Arua I realised that Kabila had given money to

1 some people so that I could be arrested. The security people in Arua arrested me,  
2 transferred me to Bunia and then to Kisangani and then on to Kinshasa.

3 Q. At the time of your arrest, did you hold any political position?

4 A. As I said at the beginning, when I was arrested I was a coordinator for the FPJC  
5 movement. This is the Popular Front for Justice in Congo, the FPJC. I was one of  
6 the coordinators for this. This movement is based in Ituri.

7 Q. And what kind of movement is that? Is it a political movement, a military  
8 movement, a mixture? What's the status of this FPJC?

9 A. The FPJC was a political/military movement.

10 Q. And who was the leader of that movement?

11 A. This movement included all the people of Ituri; that is to say, all the Congolese  
12 who suffer from injustice. I was chosen as a coordinator for this movement. There  
13 had been no president up until then; I was simply the coordinator for this movement.

14 Q. Did this movement represent or favour any particular ethnic group? What  
15 was the position?

16 A. This movement fights injustice. When Kabila swore oath as President, he  
17 swore to protect all the people, but our people realised that it was the same Kabila  
18 who had promised to protect the population in fact protected people who were doing  
19 harm to the people. These people stole things from the people of the Congo. This  
20 was the reason why our movement was founded; the aim was to combat corruption,  
21 injustice, all forms of injustice and harm which were happening in the east of the  
22 Congo.

23 Q. Now, since your arrest and transfer to Kinshasa and to the prison, have you  
24 ever been to court? Have you ever been taken before a judge?

25 A. Since I was transferred to Kinshasa, up until now I have never appeared before

1 a court. It's only when people learnt that I was going to testify here at The Hague  
2 that a letter was sent telling me I would be appearing before the Court.

3 Q. And do you know on what charge you are being held?

4 A. The Congolese government accuses me of wanting to overthrow the existing  
5 regime at the time and they accuse me of having stolen from the Congolese people.

6 Q. Have you ever engaged in combat?

7 A. No, I have never been involved in any fighting because when we were given  
8 weapons to fight at the time of Kabila, at the time of the AFDL, when we arrived at  
9 Tumongala (phon) we found that the Mbuti people had already left so there was no  
10 fighting. After that, I went back to my village and then I was hit by bullets and I  
11 couldn't fight any more.

12 Q. Now, let's go back to the time when you were hit by bullets and you were taken,  
13 you told us, to Nyankunde, to the hospital there. How long were you there and in  
14 what circumstances did you come to leave the hospital?

15 A. I think I arrived in Nyankunde Hospital one week before Lopondo was chased  
16 out. When I arrived there, I saw that all the Lendu who were there were being  
17 chased out by the Ugandans and UPC people. When they realised -- well, they  
18 thought I was born in Aru; they didn't know I was Lendu. I stayed in Nyankunde  
19 Hospital for a few weeks. The Songolo war happened when I was in hospital.  
20 There was the battle at Nyankunde. The Nyankunde battle meant that we had to  
21 flee with all the population. We all left to hide in Akwadesa (phon) and after that  
22 we went to Beni.

23 Q. Now, when you speak of the Nyankunde battle, can you tell us who attacked  
24 Nyankunde in that battle or, more particularly, who led the attack against  
25 Nyankunde in that battle?



1 A. In Nyankunde I was in hospital, and I learnt that Nyankunde was being  
2 controlled by the UPC and the Ugandans. They had a few soldiers there, but most  
3 of the soldiers were in Komanda. The UPC military were in Komanda. They came  
4 to -- they wanted to take back Komanda. The UPC military came from Gety, from  
5 Kasenyi, and came and surprised the UPC who were in Nyankunde. I think that the  
6 APC was in Gety, headed by the Commander Faustin, and Kandro -- they came from  
7 Gety. They came to take back Gety before the Nyankunde men prepared to take  
8 back Komanda, and I think it was Komanda who was commanding the troops in  
9 Nyankunde.

10 Q. Can you just slow up a little bit, because what's happening is of course you're  
11 speaking in Lingala, Lingala is then translated I think into French and the French is  
12 then translated into English so that I can understand it. So it needs to be done  
13 slowly so that everyone can follow what you say. I'm sorry about that. It's -- I  
14 know it's not an easy exercise. We all know that. So forgive me if from time to  
15 time I interrupt you, or slow you up. Just try and bear it in mind as much as you can.  
16 So following this attack on Kpandroma -- I'm sorry, on Nyankunde, I'm sorry, where  
17 did you go?

18 A. After the attack and the Nyankunde was controlled by APC/UPC, we went to  
19 Codeza.

20 Q. And where eventually did you end up?

21 A. After Codeza we wanted to go to Nyankunde, but out of fear we heard that the  
22 Ugandans were going to come and that they were going to take back Nyankunde.  
23 So we went to Ruyu (phon) -- to Moi, because that was on the road to Beni.

24 Q. And after Ruyu, what happened?

25 A. After Moi, we took the direction of Beni and we took a week to get to Beni.

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1 Q. So you get to Beni. Can you help us as to approximately how long that was  
2 after the attack on Nyankunde?

3 A. I think from Nyankunde to Beni it took us a week, because we stopped and  
4 started. The group included women and children, and so this took us a week to get  
5 to our final destination and the UPC (sic) was all along the road and it was very  
6 difficult to get from one -- from A to B. They were asking of us a number of things,  
7 including money.

8 Q. And once you arrived in Beni, how long did you stay in Beni for?

9 A. I believe I spent one year/one-year and-a-half at Beni.

10 THE INTERPRETER: The interpreter would like to clarify, from the English booth,  
11 that it is the APC that was mentioned and not the UPC.

12 MR HOOPER: Yes, thank you. That clears up that matter.

13 Q. Now, I want to ask you about the FRPI. What can you tell us about the FRPI;  
14 when it was founded, for example, and its structure and its objectives? What do you  
15 know about it?

16 A. I think that the FRPI was established after the battle between Bemba and the  
17 UPC, its ally, and the APC and its government -- and its ally, the government, and the  
18 Mai-Mai. Mbusa, when he went to Équateur, he decided to set up the FRPI.

19 Q. Do you know anything about when it was founded, or where it was founded?

20 A. I believe that it was around the 20th or the 25th that there was the conflict  
21 and -- with soldiers that had come from Komanda and the others from Mombasa, and  
22 they were to take Beni on the 25th and then Thomas -- this is what Thomas Lubanga  
23 said; that he would be taking Beni on the 25th. This is what he said over the radio.  
24 At that particular time, during that conflict, it was very difficult. The government  
25 was in chaos. They withdrew. There was a Colonel called Aguru sent from

1 Kinshasa, and he decided to bring together people from Ituri to Casino and he  
2 brought them to his residence and he gave them weapons. I was at home at that  
3 particular point in time, and there was a young boy who was born in Ituri and he said  
4 to me -- he said that they are all at the casino. The members of the government took  
5 them and said, "Well, we need to go to war," and Sambidhu and myself therefore  
6 went. Sambidhu is Dr Adirodu's little brother. So we went together to the  
7 residence of the member - of the particular member - of the government, and there we  
8 saw that they were dressed in green-coloured clothing and they were equipped with  
9 weapons and there were children from Ituri that were bearing weapons and we were  
10 also given weapons. This was about 4 p.m. This was on Christmas Eve.  
11 And because Bemba's soldiers had already taken Gety and because the Mai-Mai were  
12 almost defeated and that they were at Beni and they were causing a lot of upheaval,  
13 they took control of the airport and they had forbidden all aircraft leaving the ground  
14 because everything belonged -- belonging to the government went back to Kinshasa.  
15 Mai-Mai had laid siege to the airport and everybody was forbidden to travel, and so  
16 colonel -- the colonel took the decision, because he was from Ituri he took everybody  
17 who was from Ituri who was there. And this Colonel Aguru decided that they  
18 would go off to war and others would remain to guard his residence, and some went  
19 to war and Sambidhu and myself we remained in the residence, or at our offices.  
20 And so they went and they went with the members of the government, and they went  
21 to fight in Moi-Moyo (phon) and then they pushed back Bemba's forces.  
22 On Christmas Day, Vita Katambo (phon), which belonged to the Mai-Mai, he in the  
23 morning brought the news, because when we were there we were asked to stay and  
24 he thought that those in the battle would run away. And so we stayed where we  
25 were and in the morning the (indiscernible), and there was also -- on the road to

1 Mombasa, when people learned that their own had been defeated, they stopped the  
2 conflict and they called to negotiate and that's why it was -- a decision was made to  
3 go to the Equator.

4 MR HOOPER: I notice in the transcript - the English transcript - there's quite a bit  
5 that's missing.

6 Q. You don't have to stop there. I mean -- I'm sorry, I meant just pause there,  
7 because there's quite a bit that's missing from the transcript. So let's just go back to  
8 the problem. You are speaking of a conflict at that stage and of people who were  
9 coming to attack, or try to attack, Beni. Who were the people who were trying to  
10 attack Beni at that time?

11 A. It was the people from the MLC who had allied with the UPC.

12 Q. And then you spoke of someone called Aguru. Who was he?

13 A. Aguru is a commander in the government. He was made colonel, and it was  
14 to him that was entrusted the mission to set up the EMOI to deal with the hostilities  
15 in the east of the Congo.

16 Q. All right. Thank you. And you've mentioned Mbusa. Who was Mbusa?

17 A. Mbusa was the President of the RCD-K/ML.

18 Q. Did you have any function, or job, to do in opposing those who were attacking  
19 or not?

20 A. No, I had no particular function, but I lived with groups of people, and people  
21 who worked with Mbusa. There was Ndjabu, Pichou. Ndjabu was a high-ranking  
22 official, a political official, and Pichou --

23 THE INTERPRETER: The interpreter apologises, but he didn't hear the end of the  
24 sentence of the individual.

25 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, would you mind retaking

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1 the end of your sentence that wasn't heard by the interpreter, if you wouldn't mind  
2 doing so. You spoke of Ndjabu, Pichou, and the end of the sentence wasn't heard by  
3 the interpreters. If you wouldn't mind just resuming at that particular point, please.

4 THE WITNESS: (Interpretation) As I said, I don't work with Mbusa. I lived with  
5 Pichou, who worked with the national intelligence agency, the RCD-K/ML. He was  
6 like a high-ranking official at the RCD-K/ML, and we lived together.

7 MR HOOPER:

8 Q. Now, you've mentioned the structure called the E-M-O-I, EMOI. Where did  
9 that come from and what was it doing?

10 A. EMOI is an organisation which came from Kinshasa. It was established to  
11 liberate the east of the Congo occupied by the rebels, and then the government  
12 wanted to recoup that area so they set up the EMOI that had its headquarters in Beni,  
13 to do that, to combat and liberate the east of the country. This came from the  
14 General Chief of Staff at Kinshasa.

15 Q. All right. Did you, yourself, ever attend any EMOI meetings or not?

16 A. Yes, several EMOI meetings I attended. And from time to time, commanders  
17 who were in Ituri came and commanders of small groups came to meetings, to EMOI  
18 meetings. And from time to time, Aguru came from Kinshasa and he came to give  
19 new instructions, and he called upon us and we came and he told us what the next  
20 operations would involve.

21 Q. Now, I'd like to show you a document which is a document that we've all seen  
22 in this courtroom several times and is the manifest, and if there's no objection I'll call  
23 that up on the screen, and its reference is EVD-D02-0063. And just before we go on,  
24 I see someone on their feet.

25 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor.

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1 MR DUTERTRE: (Interpretation) Thank you, your Honour. My objection is not  
2 directed at the Chamber or Mr Hooper; it is directed at nobody in particular, but  
3 Mr Hooper even though this document could have -- may have been shown a  
4 number of times in these hearings, needs to establish the grounds upon which he is  
5 showing this to the witness. And I don't need to add this, the  
6 approach -- procedural approach needs to be adopted. I only reiterate this point.

7 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, we're not going to go over  
8 the lengthy discussions that led us with 228, Witness 228, about the conditions  
9 pertaining to the introduction of documents. Documents can be introduced very  
10 briefly. Now, if you wish to adhere to this brief preamble in such a way that  
11 Mr Prosecutor wouldn't have to stand up again and that the witness can, therefore,  
12 say very briefly about the document, then I would suggest that you submit the  
13 document.

14 MR HOOPER:

15 Q. You've spoken about the FRPI. Do you know, did the FRPI have a manifesto,  
16 or not?

17 A. I heard talk of a manifesto but I've never seen it. I heard said that there,  
18 indeed, was an FRPI manifesto but I have never seen it with my own eyes.

19 Q. Good. Now, I want to show you a copy of a document called a manifesto and I  
20 want to draw your attention to one part of it for your comment. And the document  
21 is EVD-D02-0063, and I have a hard copy which it might be easier for you to look at,  
22 and I want to draw your attention to the annex of names in that document.

23 THE COURT OFFICER: (No interpretation)

24 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr Prosecutor.

25 MR DUTERTRE: (Interpretation) Just an observation, the witness indicated clearly

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1 that he'd never seen the manifesto so what we're doing now, therefore, is what, a  
2 refresher, just to refresh his memory? To my mind, at least, particularly when we  
3 think about what disclosure procedures were looked at -- I won't say any more.

4 PRESIDING JUDGE COTTE: (Interpretation) So if you look at page 49 on the French  
5 version of the transcript, we can see that the witness says, "I heard talk of this  
6 manifesto but I've never seen it. I've heard talk that there was indeed a manifesto  
7 FRPI, but I've never seen it with my own eyes."

8 What's important is to establish whether -- Mr Hooper, whether the witness is talking  
9 about the same thing, and when you think about point 10 on the document entitled  
10 "annex," perhaps its preferable that the witness has it before his very eyes and  
11 answers questions. So you may proceed, Mr Hooper.

12 MR HOOPER:

13 Q. And if you look at the annex there and if you look down the list of names,  
14 there's a name there "Sharif Ndadza." Can you find that? Can you see that name  
15 on the index?

16 A. Yes, I can see that. The name is there. And as I said, I was informed that  
17 there did indeed exist an FRPI manifesto. However, this is the first time that I've  
18 ever seen the manifesto. I've heard of it, but I've never seen it.

19 Q. Now, of course, that name could be someone with a similar name to your own.  
20 Do you know anybody else with a name like yours, or can you give us any  
21 explanation, or not, as to why that name is there?

22 A. I think it's my name, and as I've said, when the FRPI was established, we didn't  
23 have any choice. It was Mbusa that set up the FRPI to replace the APC on the  
24 ground. So we had to accept what Mbusa was doing and saying at Bunia because  
25 we were almost taken hostage at Bunia. We were told that there was a manifesto.

1 And with regard to the name, well, it is my name, and we were told that our names  
2 were on the manifesto but we didn't see that.

3 Q. Thank you very much. You can put that document aside because those are all  
4 the questions I want to ask you about the document. Now I want to ask you about  
5 another organisation. And if that document can be taken from the witness so it's not  
6 a distraction to you. And while that's being done, let me ask you my next question,  
7 which is, have you ever heard of an organisation - thank you very much - called the  
8 FNI and, if so, what was that?

9 A. The FNI was a political party set up at Kpandroma. It was set up at Arua but  
10 the initiative stemmed from Kpandroma. The wise people in Kpandroma and  
11 intellectuals set it up, but in theory at least, it saw its inception at Arua.

12 Q. Do you know which of the two organisations was created first? And by  
13 "organisations," I mean the FRPI, FNI. Do you know which of those two was created  
14 first in time?

15 A. The first movement was established, that was the FRPI, because it was a  
16 military movement set up to replace the APC in Ituri. The FNI was created later on  
17 in Arua.

18 Q. Now, you've recognised Germain Katanga, who I represent in this Court, as you  
19 know. Can you recall when you first met him?

20 A. Yes, I remember.

21 Q. And can you just help us briefly what the circumstances were in which you met  
22 him and, if you can, when that was?

23 A. I think the first time that we met, Germain and myself, it was at Beni, I believe  
24 and when he arrived at Beni, because as all commanders who were in Ituri arrived at  
25 Beni to seek reprovisioning, it was at that point that we met at Beni and subsequent to



1 that Aveba, when we went to provide ammunition at Kpandroma.

2 Q. At that time, do you know what power, if any, Germain Katanga had amongst  
3 the combatants?

4 A. I can say that at that time Germain and the others arrived Bunia. There were  
5 APC soldiers in Mongbwalu, Gety and the other places. There were also fighters,  
6 other fighters there, but they were autonomous. Germain was in Aveba. He was  
7 the one responsible there. In Kagaba there was Yuda and then there was Cobra in  
8 Bavi. Kisoro was near Codeza. This means that each fighter was autonomous,  
9 depending on the village in which they found themselves.

10 Q. What do you know of the attack on Bogoro? What do you know or what have  
11 you learned about those who were responsible or participated in that attack? Can  
12 you help us?

13 A. Regarding Bogoro, I can say that when the battle took place there I was in Beni  
14 and in Beni I met Mbusa. He was coming back from Équateur Province. He had  
15 promised to give us 200 weapons to be sent to the field. He had already given  
16 commanders, soldiers to the commanders to go to the sites in Kagaba, Gety and the  
17 others to train the fighters and conduct the operations. It was then that I heard that  
18 there was a battle being prepared for Bogoro.

19 Q. When you refer to Mbusa having sent soldiers to the sites, what soldiers were  
20 these? Do you know any names?

21 MR DUTERTRE: (Interpretation) I don't remember hearing that, that there  
22 was -- there were soldiers sent.

23 PRESIDING JUDGE COTTE: (Interpretation) That is what I was looking for on the  
24 transcript. Page 53 of the French transcript, line 9. "With regard to Bogoro, I can  
25 say that when the battle that took place I was in Beni and in Beni I met Mbusa and

1 this -- he was coming from Équateur. He had promised to give 200 weapons. He  
2 had already asked the commanders and the soldiers to go to the field in Beni, Gety  
3 and others to train people and direct operations. That is when I learnt that there was  
4 a battle being prepared for Bogoro." So subject to interpretation issues, because we  
5 have a Lingala, English and French, there was Mbusa, did he give soldiers to the  
6 commanders to go to Kagaba, Gety and Bavi? So there is a problem of ambiguity  
7 there and, Mr Hooper, please simply rephrase your question because several  
8 interpretations are possible. That is if you want to ask that question again.

9 MR HOOPER: Well, it's been translated for me as he had already -- hold on, it's  
10 gone off screen now. It's quite clear he said -- oh, it's glossed again. "He had  
11 already given commanders, soldiers to the commanders, to go to the sites in Kagaba,  
12 Gety and the others to train the fighters and conduct the operations." And that's my  
13 question.

14 Q. Who did he send to train and to conduct the operations? Do you know any  
15 names?

16 A. There was Mutombo, a commander. There was another commander known as  
17 Kasereka. There was Demuto, who was also another commander. Then Koka.  
18 Those are the names of the commanders who were sent. There were troops on the  
19 field, but there were also other commanders there.

20 THE INTERPRETER: The Lingala interpreter did not hear the last sentence of the  
21 witness, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Mr Sharif, let me bother you once  
23 again. As you can realise it is a difficult task for you testifying before the Court.  
24 You have been asked to speak slowly, to comply with the five-second rule, and  
25 sometimes you are also asked to repeat because the end of your sentence was not

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1 heard. So, please, do not be surprised if you are called upon to repeat. In this  
2 particular case, the interpreters did not understand the end of your sentence. You  
3 said there was Mutombo, there was another commander Kasereka, as well as others,  
4 Koka, and so on. These were the names of the commanders who were sent. On the  
5 field, there were troops and other commanders. It would seem that the last sentence  
6 that you made was not well-understood by the interpreters. Could you kindly  
7 repeat?

8 THE WITNESS: (Interpretation) This is what I said: I do not have details about the  
9 Bogoro battle. What I know is this: In Beni, they were preparing themselves to go  
10 and fight in Bunia and not in Bogoro, but they had to pass through Bogoro to arrive  
11 where they were going. That is what I said. The preparation of the battle done in  
12 Beni was to attack Bunia and not Bogoro.

13 MR HOOPER:

14 Q. Do you know who actually participated in the attack on Bogoro?

15 A. Regarding the Bogoro battle, that is -- this is what I know. The people who  
16 had to fight in Bogoro were those who were around the area, such as those who were  
17 in Kagaba. Each person was called upon to resist. Yuda was the person  
18 responsible in Kagaba. He was the one who was supposed to prepare the resistance  
19 efforts. In Aveba, it was Germain.

20 Each person had to carry out resistance operations wherever they were, but in Bunia,  
21 I do not know who was in charge of the resistance operations, but I know that it was  
22 the commander who was in Bogoro who was supposed to carry out those operations.

23 Q. Now, in your time of knowing Germain Katanga, did you ever hear him  
24 addressed as "President"?

25 A. Germain? President? When he came to Beni, I know Germain as the Chief of

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1 Staff. When he came to Bunia, I was in Bunia at that time. It was when the general  
2 staff of the FRPI was set up. I heard about Germain referred to as president only  
3 subsequently through Radio Okapi at the time of his arrest.

4 MR HOOPER: All right. Thank you. Those are all my questions. Thank you,  
5 sir.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. Mr Kilenda  
7 or Professor Fofé? Professor Fofé, you are the one. Very well, you have the floor.

8 MR FOFÉ: (Interpretation) Thank you, your Honour. Mr President, your Honours,  
9 at this particular point in the testimony of Mr Sharif the Defence of Mr Mathieu  
10 Ngudjolo does not have any questions.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé.

12 Mr Prosecutor, are you in a position to begin your cross-examination right now? I  
13 will give you a few moments to decide.

14 MR DUTERTRE: (Interpretation) Just a moment, your Honour. The Prosecution  
15 would like to request to be allowed to begin our cross-examination tomorrow. We  
16 were expecting the examination-in-chief to be longer than this, and I believe that in  
17 order to be more effective it will be more beneficial, in the sense that we will have the  
18 time to streamline our examination, to the briefest possible and everyone will be able  
19 to save time tomorrow.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Prosecutor. I do not  
21 think that the legal representatives of the witness submitted any questions.

22 MR NSITA: (Interpretation) No, your Honour. On the basis of the documents  
23 that we had about this witness, we did not feel that it would be necessary to ask any  
24 questions. But in light of his testimony so far, it still seems to us that we will not  
25 have any questions, subject to the cross-examination of the Prosecutor.

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1 PRESIDING JUDGE COTTE: (Interpretation) Does Madam Goffin think the same  
2 thing?

3 MS GOFFIN: (Interpretation) Yes, your Honour, except that we really have to  
4 decide later on if we did, indeed, adjourn today.

5 PRESIDING JUDGE COTTE: (Interpretation) Well, if you had had questions, we  
6 would have used the remaining time but maybe you will prefer to wait for the  
7 Prosecutor to do his cross-examination as usual.

8 The Prosecutor, you made a commitment for tomorrow. If we accept to reduce this  
9 hearing by 45 minutes, which is always a difficult decision for us to take, it means  
10 tomorrow you will go faster after having scaled down your question to the very  
11 essential ones. So we are going to adjourn now. We will resume tomorrow at  
12 9 a.m. and, considering the time that Mr Hooper took for his examination-in-chief, we  
13 should be able to move very fast during the four hours of tomorrow.

14 MR DUTERTRE: (Interpretation) Yes, I believe so.

15 PRESIDING JUDGE COTTE: (Interpretation) Now, Mr Witness, we will allow you  
16 to leave the courtroom. We will meet here again tomorrow at 9 a.m. to 1.30 p.m.  
17 Court officer and court usher, can you please kindly accompany the witness out of  
18 the courtroom? Thank you, Mr Witness, and thank you for your contribution in the  
19 course of this afternoon.

20 (The witness stands down)

21 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper?

22 MR HOOPER: I'm a bit unclear who the next witness -- the next witness I believe is  
23 by --

24 PRESIDING JUDGE COTTE: (Interpretation) Witness 176? Is he here, court  
25 officer?

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1 MR HOOPER: 176, I'm sorry. Perhaps that could be expunged because I think he's  
2 about the only one who is in a protective state, I'm sorry. He's here but he's due to  
3 have his familiarisation process tomorrow. Of course, I don't know what  
4 time that -- we're sitting in the morning so it doesn't leave a lot of room, but I don't  
5 anticipate myself having very much longer with the -- well, with the witness  
6 tomorrow. So I'm just wondering about the mechanics of how we're going.  
7 We've --

8 MR DUTERTRE: (Interpretation) If I can tell the Chamber, the familiarisation  
9 procedure is planned for Thursday, not tomorrow. If there are arrangements to be  
10 made that can be done.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. Madam Court Officer,  
12 given that in all probability the testimony of Witness 350 will end much sooner than  
13 expected, and contrary to what we thought we can sit throughout this week, we  
14 should not deprive ourselves of that possibility. So it is crucial that the  
15 familiarisation of Witness 176 should take place tomorrow, according to modalities  
16 that I cannot determine here, but the Registry has to show proof of flexibility now  
17 because Witness 176 is one of a few group -- a few witnesses in a group to be called  
18 by the Defence of Germain Katanga and they are subject to protective measures in  
19 accordance to a decision that was handed down earlier.  
20 It is not excluded that this witness may have to meet with special officers of the VWU  
21 and tomorrow, if there is a room available - because I believe in the familiarisation  
22 process the witness also has to get to know the courtroom - this can, therefore,  
23 happen tomorrow afternoon such that the witness should be in a position to begin his  
24 testimony on Wednesday.  
25 So, Mr Prosecutor, we will accept your request to start tomorrow.

1 Normally, I would have asked you to begin your cross-examination immediately and  
2 it is because you have told us that you are going to streamline your questions that we  
3 have accepted to allow you to do that so that we should be able to save time.

4 I believe that everything is clear now.

5 Mr Luvengika?

6 MR NSITA: (Interpretation) Thank you. I wanted to say that, with regard to  
7 Witness 276 and the changes that have happened, in fact we were not expecting this  
8 witness to be called so soon. We have not yet finished with our preparations  
9 regarding questions to be submitted to the Chamber and the Defence team for his  
10 questioning by legal representatives, so we are asking to be able to submit that list of  
11 questions at the beginning of his testimony, or even during his testimony.

12 PRESIDING JUDGE COTTE: (Interpretation) Well, we have to strike a balance there  
13 between the obligation to be expeditious, as well as the provisions that we adopted in  
14 Decision 1665 to the effect that the questions be submitted to the Chamber and to the  
15 Defence team early enough. So we have to adopt the necessity for expeditiousness  
16 and so we are not going to postpone the testimony which could begin on Wednesday.  
17 So we can waive the normal deadline to which you are subjected, because of the  
18 special circumstances, but as soon as you are able to submit your anticipated  
19 questions you can do that both to the Chamber and to the two Defence teams. And  
20 if this is done even on the same day that the witness is to appear, then we will accept  
21 it because the circumstances are beyond our control and we are doing everything to  
22 adapt ourselves.

23 MR NSITA: (Interpretation) Once again, your Honour, thank you. We are  
24 preparing to make a filing tomorrow morning requesting the lifting of certain  
25 redactions in the Registry report. We are of the opinion that these redactions

1 probably concerned victims that we represent and this makes it impossible for us to  
2 prepare in case the redacted parts of that report relate to victims who appeared  
3 because they were invited by the legal representatives, or other victims who were  
4 Prosecution witnesses.

5 PRESIDING JUDGE COTTE: (Interpretation) Mr Luvengika, you are referring to the  
6 Registry report relating to Witness 176; is that correct?

7 MR NSITA: (Interpretation) Yes.

8 PRESIDING JUDGE COTTE: (Interpretation) You remember that you recently  
9 received a redacted version?

10 MR NSITA: (Interpretation) Yes, and I have made an oral submission on that.

11 PRESIDING JUDGE COTTE: (Interpretation) You will remember that at one point  
12 the Defence of Germain Katanga wanted that report to remain between the Defence,  
13 the Registry and the Chamber, but the Chamber was of the opinion that it was  
14 important for that report to be disclosed to the others on condition that it was  
15 redacted. The proposed redactions made by the Registry were approved by the  
16 Chamber.

17 We will read your filing, but I seriously doubt that we will go beyond what was  
18 decided last 21 April, except I am mistaken that redacted version was sent on 26 April.  
19 We will, of course, receive your filing if it is ready, but I do not think that you should  
20 expect anything more. I believe that we did everything that was in our power to do.  
21 I am looking here at a document. This was in the oral decision of 8 April 2011,  
22 transcript 245, which authorised the bringing forward of the testimony of Witness 176.  
23 The Chamber indicated that they would hand down a ruling on the classification of  
24 report 2821; however, given the various categories of information, we made decisions  
25 on various stages in the decision of 21 April 2011 granting protection measures to the



1 three witnesses at the request of Mr Hooper, and this was D02-17, D02-92 and  
2 D02-176.

3 So decision 2851 of 21 April included an ex parte redacted -- a version had been  
4 submitted on 11 April 2011 and that an unredacted version had been submitted but  
5 that unredacted version will be submitted later.

6 Secondly, after the submission of the Unit's report on 6 April 2011 - that is report  
7 number 2821 - the Chamber instructed the Unit to submit a confidential ex parte  
8 version reserved for the Chamber and the Defence of Mr Katanga after having  
9 redacted protected information and this arrived at 12.15 on 11 April. So it is number  
10 2821-Conf-Exp-Red. This report includes information provided by the Defence of  
11 Germain Katanga on a strictly confidential basis within the framework of its work  
12 with the Unit, so the Chamber consulted the Unit regarding this issue on  
13 12 April 2011.

14 The Chamber considers communication between a party and a participant and the  
15 VWU, even if such communication is included in reports addressed to the Chamber,  
16 have to remain ex parte in order to preserve the confidentiality of their working  
17 relationship which is necessary for the protection of victims and witnesses.

18 My microphone doesn't seem to be functioning, court officer. I can hear  
19 interpretation in my ears. Very well, it is working now.

20 Now, after having examined the proposed redactions made by the Defence of  
21 Germain Katanga 2840 of 18 April the Chamber decided that a redacted version  
22 should be disclosed, and this was done during the recess on 26 April, document  
23 2821-Conf-Red2.

24 So, Mr Luvengika, I have refreshed my memory and it is consistent with what I said a  
25 short time ago, the redacted version transmitted on 26 April 2011 has already been

Trial Hearing  
Witness: DRC-D02-P-0350

(Open Session)

ICC-01/04-01/07

- 1 examined by the Chamber in light of the proposals made by the Defence of Germain
- 2 Katanga and the Registry.
- 3 We are going to examine your filing, but I do not think that we'll go beyond what was
- 4 disclosed on 26 April 2011.
- 5 Court is adjourned. We will reconvene tomorrow morning at 9 a.m.
- 6 (The hearing ends at 6.32 p.m.)