

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
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Tuesday, 14 June 2011
10 The hearing starts at 9.02 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 Good morning, everyone. Good morning to the accused. The
16 Chamber will begin by handing down an oral decision and then we will
17 continue with the testimony of D02-P-0148, which we should complete, and
18 at 11.30 when we resume, the Registrar will be present here with us
19 because the Chamber had asked to meet with her this morning to discuss
20 the filing number 3011 filed on the 13th of June, 2011. Mr. Hooper will
21 tell us about the situation of Witness 0047.
22 We will therefore begin by handing down an oral decision on the
23 motion of the Defence of Germain Katanga and duty counsel requesting the
24 lifting of separation measures currently in force between the detained
25 witnesses and the accused. The decision is a bit long, so please be

1 patient.

2 The Chamber was seized of a motion filed orally during the
3 hearing of the 1st of June, transcript T-273, from the Defence of
4 Germain Katanga, requesting the lifting of the separation measures
5 ordered by the Chamber between the detained witnesses who have just
6 testified and the accused. This motion follows the installation from the
7 31st of May of the three detained witnesses in the same wing as the
8 two accused, Mr. Katanga and Mr. Ngudjolo. In this context, the
9 implementation of the separation measures made it necessary to limit the
10 number of hours during which those detained witnesses on the one hand and
11 the other people detained by the Court can come out of their individual
12 cells and have a social life in the common areas.

13 During the same hearing of the 1st of June, 2011, the Defence of
14 Mathieu Ngudjolo supported that motion. The Prosecutor and the
15 Legal Representatives of the Victims were strongly opposed and challenged
16 the authority of the Defence of Germain Katanga to act in that particular
17 case. The Chamber decided to seek detailed information from the Registry
18 on the current detention conditions of the detained witnesses and asked
19 the Registry to submit a report on this aspect before the 6th of June,
20 2011, at 2.00 p.m. The Chamber also requested the parties and
21 participants to submit their written observations before the 7th of June,
22 2011, at midday, and asked that the relevant portion of the hearing
23 transcript should be communicated to duty counsel of the witnesses.

24 Lastly, the Chamber informed the parties and participants that
25 Trial Chamber I had lifted similar separation measures applicable to the

1 detained witness in the Lubanga case, given that the presentation of the
2 evidence had been concluded and this in conformity with the settled law
3 of the two Chambers.

4 On the 6th of June, 2011, the Registrar submitted a report on the
5 detention conditions of the three detained witnesses and these reports
6 are 2983-Conf-Exp and 2983-Conf-Red. The Registrar spells out the fact
7 that the detention centre has to manage two groups of detained persons
8 falling into two different categories; the three detained witnesses and
9 the other people detained by the Court. Contacts are allowed within each
10 group but prohibited between the groups.

11 In this particular case the three detained witnesses are
12 authorised, just like the other persons detained by the Court, to take
13 part in sporting activities for a maximum of one hour each day and to
14 carry out open-air exercises with the detained persons of the ICTY for a
15 maximum period of one hour and 45 minutes per day.

16 Furthermore, their cells are opened for three hours and 45
17 minutes maximum per day, which makes it possible for them to communicate
18 between themselves and to take their showers. And during this period the
19 other detained persons are either doing their exercises or locked up in
20 their cells.

21 The net result is that on average the detained persons can come
22 out of their cells for a maximum period of six hours, 20 minutes per day.
23 The report points out that the meals from the detention centre are served
24 in the cells and that the detainees have access to information and
25 television programmes.

1 The Registrar points out that the current conditions cannot be
2 extended beyond five to six weeks without undermining the welfare of the
3 three detained witnesses. The Registry underscores that any increase in
4 the periods that they can go out would mean a reduction on the same
5 period applicable to other detainees. The Registrar suggests that if the
6 Chamber decided to limit restriction of contacts to the accused persons
7 only without including the co-detainees, then the three detained
8 witnesses would also be able to come out of their cell during the periods
9 when Germain Katanga and Mathieu Ngudjolo are in court.

10 On the 7th of June, 2011, the parties and duty counsel submitted
11 their written filings. It is also necessary to give a brief summary of
12 their observations. The Defence for Germain Katanga, pointing out that
13 the detained witnesses are compelled to remain in the detention centre
14 for some time, given that their asylum applications have been filed,
15 orally submitted that in the interests of justice and for humanitarian
16 and practical reasons it would be preferable to lift their restrictions
17 in force which seem not to be either necessary or proportional.

18 In its written observations number 2988-Conf, they point out that
19 the possible re-call of these witnesses before the end of the
20 presentation of evidence is highly unlikely and the possibility that a
21 new trial will be ordered following an appeal would be exceptional.

22 The Defence points out that concerning the possible risk of
23 influence on the testimony of coming witnesses, these people in any case
24 assisted in the testimony of the three witnesses.

25 The Defence finally points out that it is possible to adopt less

1 restrictive measures by limiting the prohibition of contact only to the
2 accused persons.

3 Furthermore, regarding the challenge against their authority to
4 act, the Defence points out that they have a concern for the welfare of
5 the witnesses that they call, given that the probable difficulties in the
6 future to call Defence witnesses and the effect that this might have on
7 the situation of the rights of the Defence are important as well as the
8 impact on the detention conditions of the accused persons himself.

9 The Defence of Mathieu Ngudjolo after having submitted the -- or
10 supported the entire motion proposed the authorisation of contacts
11 between the detained witnesses and the accused persons under the
12 supervision of a guard who understands the language. In its filing
13 number 2987, the Defence pointed out that they attach great importance to
14 the integrity of the evidence and that this suggestion was meant to take
15 into account strict supervision of contact between the witnesses and the
16 accused persons.

17 Duty counsel for the detained witnesses submitted observations
18 2990-Conf requesting the lifting of the restrictions. He points out that
19 the Chamber should put in -- take into consideration the unlikely
20 probability of a re-call of the witnesses with the duty of the Court to
21 take measures to protect the physical and psychological welfare of the
22 witnesses, as stipulated by Article 68 of the Statute.

23 Lastly, the counsel points out that in application of Rule 140(3)
24 of the Rules of Procedure and Evidence, if a witness has not yet
25 testified -- who has not yet testified hears another testimony, the

1 testimony of that witness is not inadmissible.

2 The Prosecutor confirmed by filing number 2993-Conf his
3 opposition to this request, pointing out that in light of the report of
4 the Registry, the situation of the detained witnesses is not unacceptable
5 and then that the relative discomfort is not exceptional enough to
6 justify a waiver of the restrictions on contact. Pointing out that the
7 witnesses might be re-called and that the accused may testify, the
8 Prosecution feels that the integrity of the proceedings should be
9 preserved, and it seems that the Registry should find a satisfactory
10 solution in case the detention of those witnesses continues.

11 Regarding the interest to act by the Katanga Defence, the Chamber
12 considers that it is legitimate for the Defence to be concerned with the
13 detention conditions of the witnesses that they called and that they are
14 justified in asking for this lifting of restrictions.

15 Now, regarding the merits of the issue itself, the Chamber would
16 like to point out that the restriction measures were ordered in
17 accordance with the jurisprudence relating to contacts between a witness
18 and a party that called that witness, and this is to avoid any future
19 challenge regarding the integrity of the proceedings. To this end, the
20 Chamber is of the opinion that the implementation of the restrictions by
21 the Registry means that it is necessary to avoid any contact between the
22 two groups of detained persons given the objective sought, that is, to
23 prevent the exchange of information.

24 That said, the Chamber would like to point out that it is not
25 necessary to take measures to lock the witnesses up just in order to

1 prevent visual contact or to prevent the groups from meeting and from
2 seeing each other in the detention centre.

3 Furthermore, as already indicated, during a hearing of the
4 1st of June, 2011, the Chamber is sensitive to the humanitarian
5 considerations raised. To that end, the Chamber intends to ensure that
6 the detention of persons under the responsibility of the Court should
7 take place under the best possible conditions, particularly in the
8 instant case when this detention concerns a case of witnesses who have
9 filed for asylum and which may lead to an extension of the stay of those
10 witnesses in the detention centre of the Court. Under these exceptional
11 conditions, the Court is of the opinion that the implementation of less
12 restrictive measures authorising contacts with the co-detained persons of
13 the two accused while the accused are in the hearings would be the most
14 acceptable decision.

15 The Chamber would like to ask Mr. Mabanga, who is the counsel of
16 the detained witnesses, to remind the detained witnesses that they should
17 not in any -- whatever the circumstances discuss the case with the
18 detained persons who, from now on, will be authorised to meet them. The
19 Chamber, however, will not come back on its decision on the restrictions
20 relating to direct contacts between the accused and the detained
21 witnesses. The Chamber is of the opinion that the detention conditions
22 described by the Registry do not involve total isolation and they had
23 been initially announced and are not in any way and should not in any way
24 be used as justification to order a waiver.

25 The Chamber is aware that the arrangements that are being made

1 now, are being suggested now, are not a final decision. It is,
2 therefore, advisable that the Registry should find a sustainable solution
3 by exploring, in light of the clarifications made by the Chamber, all
4 measures that would make it possible to extend the periods of contact
5 between detained witnesses in the course of the day, particularly during
6 meal times, even if that means a reinforcement of supervision measures.

7 Lastly, in application of regulation 23 bis of the Rules of the
8 Court, the Chamber orders the re-classification of filings 2983-Conf-Red,
9 2988-Conf, 2990-Conf, and 2993-Conf as public documents. This decision
10 shall come into force with immediate effect. Thank you for your
11 attention.

12 Mr. Luvengika, you can now continue with our questions to the
13 witness and conclude your examination.

14 MR. LUVENGIKA: (Interpretation) Your Honour, the witness is not
15 present.

16 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. That was
17 an oversight. We are going to go into closed session to allow the
18 witness to come into the courtroom. Thank you.

19 (Closed session at 9.22 a.m.)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Open session at 9.25 a.m.)

3 COURT OFFICER: (Interpretation) We are in open session,
4 your Honour.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

6 Good morning, Mr. Witness.

7 THE WITNESS: (* No interpretation)

8 PRESIDING JUDGE COTTE: (Interpretation) Are you doing all right
9 this morning?

10 THE WITNESS: (Interpretation) Yes, I'm doing fine.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well.

12 Mr. Luvengika, please proceed.

13 MR. LUVENGIKA: (Interpretation) Thank you, your Honours.

14 WITNESS: WITNESS DRC-D02-P-0148 (Resumed)

15 (Witness answered through interpreter)

16 Questioned by Mr. Luvengika: (Continued)

17 Q. (Interpretation) Good morning, Mr. Witness.

18 A. Good morning.

19 Q. I will ask you a few questions on two issues to conclude my
20 questioning.

21 Mr. Witness, when you talked about the person that you described
22 as Dr. Raymond, do you know whether he is a doctor in modern medicine or
23 is he instead a *féticheur* or traditional healer?

24 A. I do not know whether Dr. Raymond actually had any training in
25 medicine or not. When we arrived in Kagaba, people referred to him as

1 Dr. Raymond and we also started calling him that, but I do not know
2 whether he has received any medical training or not. All I know is that
3 he prescribed traditional medicines.

4 Q. Thank you. What about the idea of the fear of the community and
5 the respectability, that is, *vis-à-vis* this person? What do you have to
6 say about that?

7 A. Yes, people respected him because of the work that he did. He
8 himself respected himself and respected his work. It is for that reason
9 that people respected him very much. That is what I was able to observe.
10 He was respected because of the work he did. He healed people and his
11 products had an important effect on people who were ill, and he was
12 respected everywhere.

13 Q. Thank you for that. Would I be correct to say that he was also
14 feared by the community --

15 MR. O'SHEA: (Previous translation continues) ... I'm not sure
16 where that comes from, what the foundation for that assertion is, an
17 assertion which is made in a leading nature as well. My learned friend
18 can ask this witness certainly about the perspectives or the views of the
19 community on this gentleman, but I'm not sure he can just make an
20 assertion out of nowhere in that manner.

21 PRESIDING JUDGE COTTE: (Interpretation) Mr. Luvengika, it is
22 indeed necessary for you to rephrase your question. I will leave it up
23 to you.

24 MR. LUVENGIKA: (Interpretation)

25 Q. Mr. Witness, isn't it a fact that all the *féticheurs* who

1 accompanied the combatants were feared by those combatants?

2 MR. O'SHEA: Well, again, that's a lead -- a very, very leading
3 question and -- and -- and again, I don't know whether these are
4 instructions which my learned friend has from person X or where he gets
5 them from. But for my part, I don't know what the foundation of that
6 question is.

7 MR. LUVENGIKA: (Interpretation) Your Honour, I would like to
8 tell my learned colleague that other witnesses have given testimony
9 before this Chamber and they have talked about the respect and the fear
10 that these *féticheurs* who accompanied the combatants instilled in the
11 combatants. So this is not something I am inventing or information I
12 obtained from elsewhere. This is what has been said here before this
13 Court very often.

14 PRESIDING JUDGE COTTE: (Interpretation) Mr. Luvengika, I think
15 it would be proper to address this topic by asking the witness about the
16 type of relationship that existed between the various individuals
17 concerned or ask about the types of punishment that were meted out if
18 they did not comply. But the question, given the way you put it, may
19 appear as leading. We would leave it up to you to proceed, but please
20 strive to rephrase the questions. Thank you. You may go ahead.

21 MR. LUVENGIKA: (Interpretation) Thank you, your Honour. I will
22 try to put the question differently.

23 Q. Mr. Witness, in transcript 279, page 21, line 17 to line 19, when
24 you say that Dr. Raymond asked in marriage the Nande woman, do you know
25 whether the normal custom was observed? Do you know the person whom

1 Dr. Raymond contacted in order to ask for this woman's hand in marriage?

2 A. I do not know the name of the person whom he contacted before
3 marrying this woman. I know that Mr. Raymond married this woman in
4 Kagaba; however, I do not know the person he contacted before marrying
5 the woman. I have no further information about this matter, apart from
6 the fact that Mr. Raymond got married to this woman who was of Nande
7 ethnicity.

8 Q. Mr. Witness, do you know whether these two persons really loved
9 each other prior to what you term their marriage, prior to that event
10 taking place?

11 A. Here is what I know and what everyone noticed. The woman was
12 undergoing treatment. This gentleman was treating her and they loved
13 each other at the time when this gentleman was treating the woman. It
14 was at that time, therefore, that they fell in love. And after the woman
15 was treated, the man married her, and I think that the love they have for
16 each other started at that time.

17 Q. Yes, Mr. Witness, I do understand that at that point in time you
18 were not there, you were in Bogoro. So how did you come to know about
19 this?

20 A. It was not my habit to stay in Bogoro for a long time. My family
21 was in Kagaba so I would shuttle between Kagaba and Bogoro, and sometimes
22 I would spend three days in Bogoro. That is how I got to obtain
23 information. I was shuttling between Bogoro and Kagaba.

24 Q. Mr. Witness, with respect to your presence in Bogoro, in
25 transcript 279, page 21, line 23 to 28, and page 23, lines 17 to 28, you

1 explained to us that Dark and other combatants remained to occupy Bogoro
2 after the attack of 24th of February, 2003. Do you know where these
3 combatants lived, in which houses did they live in in that village?

4 A. Yes. After the battle of Bogoro, the combatants lived in the
5 houses that were in Bogoro. You know, the houses were not pillaged, they
6 were not destroyed, and the combatants lived in them.

7 Q. Are you saying some of the houses or all the houses that were not
8 pillaged or destroyed? Which do you mean?

9 A. I am referring to the houses that were not destroyed, houses that
10 were not pillaged. It was in those houses that the combatants were
11 living.

12 Q. And do you know what these combatants were living on? How did
13 they feed themselves during that occupation period?

14 A. Yes. You know, in Kagaba there was a market and the food sold in
15 that market -- well, part of it was sent to combatants. Even in Bogoro
16 there was food in the farms, there was food in the farms because at that
17 point in time the harvest was ready in the farms. So they also received
18 food that was coming from Kagaba. Also, a few days later, the Kasenyi
19 road was opened and the people who were coming from Bunia to go to
20 Kasenyi would give food to the combatants.

21 Q. Thank you. Apart from the combatants of the four companies you
22 mentioned, were there other persons in the village?

23 A. Could you please repeat that question.

24 Q. Yes, Mr. Witness. In the course of your testimony, you stated
25 that there were four companies of Ngiti fighters who stayed behind to

1 occupy Bogoro. And my question to you is: Apart from those four
2 companies, were there other persons who were living in Bogoro during that
3 occupation period?

4 A. No. At that point in time there were only the four companies
5 living there. There was no other person. After the battle, only the
6 four companies lived in Bogoro and no other individual.

7 You know, in a locality which has just experienced war, civilians
8 do not like to live in such places. So only combatants lived there at
9 that point in time.

10 Q. Mr. Witness, I'm going to conclude this series of questions here.
11 I did not fully understand your answer to a question put to you by the
12 Prosecutor. You will find this in the transcript 279, page 33, you
13 answered saying:

14 "No. On the day of the operation I did not stay behind. You
15 know, after the operation I lost my younger brother who died. I returned
16 to Kagaba to bury him. After that I went to Aveba to visit Yuda. I
17 returned to Aveba after three days to (* as interpreted) Bogoro."

18 I think there is a stenographic problem there. My question to
19 you is: After the attack, you said you went away on the same day of the
20 operation. How much time did you spend out of Bogoro before you return
21 to your position? How much time did you spend in Kagaba and Aveba before
22 returning to Bogoro?

23 A. This is what I said: After the battle of Bogoro, on the same day
24 I returned to Kagaba for the burial of my younger brother. I spent the
25 night in Kagaba and the next day I went to Aveba. I spent the night in

1 Aveba and I returned to Kagaba and I spent another night, and after that
2 I returned to Bogoro, so that makes a total of three days.

3 Q. Mr. Witness, I just want to get some clarification from you. You
4 did this trip on foot, I suppose. Could you please tell the Chamber
5 whether it's possible to go from Bogoro to Aveba in one day.

6 A. Yes, that is possible. However, let me inform you that I did not
7 go on foot. I had my motorbike which I used. However, you can also take
8 a day to go from one place to the other on foot. I used my motorcycle
9 which I had even before the battle, that is what I used.

10 Q. Mr. Witness, with respect to the burial of dead bodies, you
11 explained that the bodies found at the school, at the UPC camp,
12 therefore, were buried. And those bodies were buried three days later,
13 that is, after you returned -- or were they buried before you travelled?
14 And could you please tell the Chamber when and where these bodies were
15 buried.

16 A. It will be difficult for me to answer that question. If I had
17 spent the night in Bogoro on the day of the battle, I would know what to
18 say. You know, I left Bogoro on the same day of the battle and when I
19 left there was still bodies which had not been buried. And when I
20 returned, I found that the bodies had already been buried. It's only
21 someone who was there on the spot who can provide an adequate answer to
22 your question and tell you about how the bodies were buried. You know,
23 it's not good to remain in a locality with rotting corpses. It's best to
24 bury them in order to live more conveniently within the locality.

25 Q. Thank you very much. Should I understand, therefore, that you do

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1 not have any information about where these bodies were buried; is that
2 the case?

3 A. Yes, you know, I was not there. If I had been present, I would
4 have information to give you.

5 Q. Thank you, Mr. Witness.

6 MR. LUVENGIKA: (Interpretation) Your Honour, that concludes my
7 questioning.

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

10 Witness, the Chamber would also like to ask you a few questions
11 and these questions are simply aimed at getting clarifications from you,
12 additional information relating to answers you have already given in
13 response to questions put to you by the various parties and participants.
14 This will require you to delve deep down to your memory and we please
15 urge you to do your level best.

16 Questioned by the Court:

17 PRESIDING JUDGE COTTE: (Interpretation) Page 15,
18 transcript 279, you said that Bayonga had invited Yuda to Tchev in order
19 to appoint FRPI members. Let me read the transcript, page 15, line 2:

20 "Later on, our commanders, such as Dark and Yuda, were invited by
21 Bayonga to Tchev. They went there, and when they returned, they informed
22 us that Bayonga had invited them in order to appoint the personalities
23 who were supposed to lead the FRPI."

24 Could you please, Mr. Witness, tell us if you do remember the
25 names of the persons who were appointed and the positions to which these

1 persons were appointed.

2 A. From the information provided by Dark when he returned from
3 Tchev, well, Dark told us the following. They had been invited to Tchev
4 to discuss a plan of the military authorities whereby Yuda became a
5 colonel of the *garnison* battalion. Dark became lieutenant-colonel, the
6 assistant to Yuda. And Oudo became the commander of the Medhu Battalion,
7 and Adibale became his assistant. Alpha Bebi became the commander of the
8 Bukiringi Battalion and I have forgotten the name of his assistant. That
9 is why Dark was invited or summoned by Bayonga, in order to give them
10 these ranks. Anguluma as well was also appointed colonel. Each one of
11 them had a position and a rank and that is why they were summoned by
12 Bayonga. The information I'm providing to you here was given to me by
13 Dark when he returned from Tchev.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you. You do not
15 remember whether or not appointments were made for Gety and Aveba, do
16 you?

17 A. With respect to Aveba, he said that Germain Katanga was appointed
18 president of the FRPI. As concerns Gety, I obtained no information.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
20 Now, to the best of your recollection, this appointment happened -- did
21 it happen before or after the battle of Bogoro?

22 A. I have forgotten. I have no information on that.

23 PRESIDING JUDGE COTTE: (Interpretation) Do you think you have
24 forgotten or you are certain that you have forgotten?

25 A. I am certain that I have forgotten. You know, these events

1 happened a long time ago. It is possible for a human being to forget
2 things of that nature.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, on page 24
4 of this same transcript, 279, you said, and you mentioned this a short
5 while ago as well, that Germain Katanga was appointed president of the
6 FRPI. Could you please tell us whether this appointment as president of
7 the FRPI took place before or after the attack on Bogoro? This might
8 sound like a question which was put to you by Mr. Hooper but which
9 apparently did not get any answer from you.

10 A. If my memory serves me correctly, I would say that this was after
11 the battle in Bogoro, the attack on Bogoro.

12 PRESIDING JUDGE COTTE: (Interpretation) Very well. On page 20
13 of this transcript, 279, you answered a question on what we term "child
14 soldiers," a question put to you by Mr. Hooper. And you stated that you
15 had information about the Kagaba camp but you did not provide any further
16 information. Page 20 of that transcript, line 24, or line 22 to be
17 precise. The question was the following:

18 "Let me ask you a more general question. Let's forget about
19 Bogoro for now. In general in Kagaba, or elsewhere, do you know whether
20 there was child soldiers there?"

21 And your answer at line 26 is:

22 "I have information only on Kagaba. I have no information about
23 other localities."

24 Now, to the best of your recollection, were there child soldiers
25 in the Kagaba camp? Because we did not obtain that information from you.

1 A. As concerned the presence of child soldiers in Kagaba, I would
2 say that there were about five of them there, but it was not their habit
3 to go into battle. If you read the Statutes of the FRPI, you'll find
4 that there were a large number of soldiers at the *garnison*, adult
5 soldiers, and Yuda objected to children going to battle. I would say
6 yes, there were children there, but these children did not participate in
7 fighting. They lived in the families of their older brothers. I would
8 say that they were living with their families in the camps, especially
9 when a member of their family was a combatant. I would say that these
10 children were not involved in any activities within the army.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Page 30 of
12 transcript 279, you told us that Commander Move held the position of
13 Kaswara when he launched the first attack on Bogoro. Could you please
14 tell us, even approximately, the distance between Kaswara and Aveba?

15 A. The distance between Kaswara and Aveba is about 5 kilometres. I
16 would like to add that there is a distance of 1 kilometre between
17 two camps, between the two camps. But, you know, when someone plans an
18 operation, he can do it without even informing you. So between Aveba and
19 Kaswara there is the distance of 5 kilometres.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Page 14 of
21 transcript 279, you told us that Commander Kisoro was the cause of the
22 disorder in Aveba, that is, acting from Kaswara. Just to make sure I
23 understood you correctly, could you please tell us whether or not Move
24 was chased out of Kaswara? Did Kisoro chase Move out of Kaswara?

25 A. According to the information which I obtained, it is true that

1 Kisoro came to Kaswara as a visitor, because he was based in Tchei, and
2 from Tchei he would go to Kaswara. However, Kisoro's objective was to
3 cause disorder in Aveba and his objective was not to cause trouble at
4 Kaswara. The aim was not to cause trouble there because that was his
5 village of origin. Where he wanted to cause trouble was Aveba, only
6 Aveba.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness. We
8 shall now stop for a moment, or rather, look at Bogoro. Page 28, 279, of
9 the transcript, you said that the combatants would go to the fetish
10 priest or to the *féticheur* before each battle and that they were kept
11 informed of the conditions whereby the *fétiches* could be used. I think
12 we have understood you properly in this respect. But could you just tell
13 us whether *fétiches* were handed out to your group before the fifth attack
14 against Bogoro. Or perhaps repeat it, because you may have already said
15 this, but we would like to hear you say that again. Did your group
16 receive *fétiches* before the fifth attack against Bogoro?

17 A. Yes. This was more or less the rule before going out to battle.
18 One would always go to see the *féticheur* to get the *fétiches*.

19 PRESIDING JUDGE COTTE: (Interpretation) And even if you get the
20 impression that you're repeating yourself once again, Witness, could you
21 just tell us or remind us what the conditions for using those *fétiches*
22 were, since the *fétiches* were handed over to you along with conditions.
23 So it's very important for us to know about them.

24 A. The conditions connected with the *fétiches*, not stealing, not
25 raping, not having sexual intercourse before going out to battle. There

1 were conditions connected with the *fétiches*.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you. And could
3 you tell us whether those conditions were always and every time the same,
4 whatever the battle, or did those conditions vary depending on the battle
5 concerned?

6 A. Generally speaking, the conditions were always the same.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness. So
8 generally speaking, the conditions were always the same. Now, page 16 of
9 transcript 279, you say on line 70 (* as interpreted):

10 "Hence Yuda said that instead of letting the people of Bogoro do
11 this, he created a coalition. He called up all those people, and the
12 objective of attacking Bogoro actually came from Yuda and Dark."

13 So you're saying that Yuda and Dark were the ones to call on
14 everybody to attack Bogoro. Can you tell us, if you remember, whether
15 Yuda made a speech on the eve of the attack to encourage the combatants?

16 A. Yes. Yuda called together the combatants and when they were
17 gathered they agreed on launching an attack against Bogoro, and so they
18 encouraged people to take part. In fact, he said that on his side there
19 was no security at Bogoro and so he wanted people to bring in
20 reinforcements to drive away the UPC, which was the source of insecurity
21 to the civilian population. And that is how Yuda was asked to attack
22 Bogoro.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you. But apart
24 from encouragement, apart from the desire to get reinforcements, did Yuda
25 set out objectives for the attack? So my question is more precise and I

1 think the combatant that you are should understand that. On the eve of
2 the attack did Yuda set out objectives?

3 A. No. The only objective was to attack Bogoro, and once it had
4 fallen -- well, Bogoro was a stronghold, a major stronghold, of the UPC
5 and the people who went to Bogoro to attack it were always discouraged
6 because they would fail. That happened on four separate occasions, and
7 on the fifth occasion there was not much hope. So Yuda did not set out
8 particular objectives, but the main objective was to attack Bogoro, and
9 after the attack, then plans would be made for the sequel to that attack.
10 During that attack he was injured and as a result he went to hospital and
11 was treated but did nothing more subsequently.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Still on
13 page 16, you stated that you had taken part in that attack against
14 Bogoro. Could you tell us the route your group took to reach Bogoro?
15 What was the itinerary that you followed to get to Bogoro on the day of
16 the attack?

17 A. We all took the same route, we left the Kagaba camp. But first
18 of all, people had all spent the night at Kagaba and from Kagaba we went
19 to (* indiscernible). We were given *fétiches* under certain conditions,
20 and then we took the road that took me to the Nombe, and then we took the
21 footpath that went to Lakpa, and then we took the main road that took us
22 to Bogoro.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
24 Page 23 of the same transcript, 279, you told us that Bahati Zumbe had --
25 came to reinforce the troops that were already at Bogoro. Do you know

1 to -- which camp Bahati de Zumbe was commanding when he came to attack
2 Bogoro? Was he commanding a camp, first of all? And if the answer is
3 yes, which camp was that?

4 A. I don't know whether he commanded a camp at Zumbe, but in any
5 case, after Yuda was injured, I took the weapon used by Yuda. Well, we
6 found ourselves on a round-about, and that round-about, I saw people
7 coming from Zumbe and I saw Bahati from Zumbe with those people coming
8 from Zumbe, and they came to provide us with reinforcements for the
9 purpose of attacking Bogoro. We connected up with them and attacked
10 Bogoro and Bogoro fell. We were with those people who had come from
11 Zumbe; however, I don't know whether Bahati of Zumbe was the actual
12 commander of a camp in Zumbe. That I don't know.

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

14 Now for the needs of the transcript I have made a mistake.

15 Actually the reference in transcript 279 is wrong. It is instead
16 transcript 280, page 23 of the interim script, and 20 of the final
17 version.

18 Professor Fofé, you can make your last observations if you wish.

19 MR. FOFÉ: (Interpretation) Good morning, your Honours. Thank
20 you for giving me this stand. Your Honour, before beginning with just a
21 few additional questions, before I begin addressing them to the witness,
22 I would like to ask for three minutes from the Chamber to very quickly
23 consult with our client.

24 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead. You
25 can consult with Mr. Ngudjolo.

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1 (Ngudjolo Defence counsel and Mr. Ngudjolo confer)

2 PRESIDING JUDGE COTTE: (Interpretation) I would like to ask the
3 Prosecutor, as we had agreed previously in relation to other witnesses,
4 is there this need to ask for neutral questions on the basis of the
5 answers provided by the witness, which, as you no doubt noticed, was
6 simply generally just additional data and information?

7 (Prosecution counsel confer)

8 MR. MACDONALD: (Interpretation) Thank you, your Honour. We
9 don't have any additional questions.

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

11 And thank you, Mrs. Luping, I can see you were going to stand.

12 MR. FOFÉ: (Interpretation) Thank you, your Honour,
13 your Honours.

14 Further Questioned by Mr. Fofé:

15 Q. (Interpretation) Good morning, Witness.

16 A. Good morning.

17 Q. I won't be asking you many questions. I have a very short series
18 of questions that relate to the passage which has just been referred to
19 by the President. I'm talking about transcript 280, yesterday's hearing,
20 13th of June, 2011, page 23, lines 2 to 7.

21 Witness, to give you the background, let me just read out
22 lines 2 to 6. The Prosecutor asked you this question yesterday:

23 "Witness," she said, "Commanders Bahati from Zumbe and
24 Commander Kute also commanded a group that took part in the attack, is
25 that not the case?"

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1 Your answer is this, and I'm quoting you:

2 "They were the ones that came from Zumbe as reinforcements for
3 the troops that were in Bogoro."

4 My question involves being more specific, Witness. As you know,
5 we are here dealing with what is called a criminal case and every single
6 word has its own importance. My question is as follows: Bahati and Kute
7 came from which hills? Which were the hills exactly?

8 A. Thank you for the question. I saw Bahati and Kute who had come
9 as reinforcements for the troops in Bogoro. Kute lived on a hill called
10 Lagura and Bahati had come from Zumbe. I saw them. Bahati lived in
11 Zumbe and Kute lived in Lagura and they both -- both of them, I saw them
12 leading troops that had come as reinforcements for the people who were
13 fighting in Bogoro on the day of the attack.

14 Q. Thank you, Witness.

15 MR. FOFÉ: (Interpretation) Your Honour, so that everything is
16 perfectly clear, I would like to read out the penultimate paragraph of
17 the statement, the written statement, of the witness, the penultimate
18 paragraph on page 14. I'm referring here to document DRC-D02-0001-0750,
19 page 14, penultimate paragraph.

20 Q. I quote --

21 MS. LUPING: (Previous translation continues) ... I would just
22 simply say that at this stage, it's not appropriate for Professor Fofé to
23 seek to refresh the witness's memory on this issue. He can ask
24 open-ended questions to elicit the information he needs without referring
25 the witness or citing from the witness's statement. He need to be asking

1 open, neutral questions.

2 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, I
3 believe we already had this discussion with the previous witness. What
4 do you have to say?

5 MR. FOFÉ: (Interpretation) Thank you, your Honour. We, in the
6 Defence team, wish to clarify matters for the benefit of the Chamber as a
7 whole. Your Honour, every time there is a situation around which there
8 are shadows, as it were, our concern is to clarify matters.
9 Madam Prosecutor introduced this question during her cross-examination.
10 I have just asked an introductory question and you have followed the
11 witness's answer, so I believe, your Honour, that for your own purposes
12 it is important that I should be able to read out this paragraph which
13 simply confirms what the witness has just said before this Chamber. I
14 believe it's very important, your Honour, for considerations of clarity.

15 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

16 MS. LUPING: Mr. President, it's just simply a reminder of the
17 stage that we are at. This is not the cross-examination. This is the
18 re-examination. And at this stage it's for Professor Fofé to ask open,
19 neutral questions.

20 MR. FOFÉ: (Interpretation) Your Honour, I would like to draw
21 the Prosecutor's attention to the fact that this witness is not one of
22 our witnesses. This witness is acting for the Defence of
23 Germain Katanga. So we are not talking about the same situation here in
24 my respect as Mr. Hooper's situation. In our particular situation, I
25 believe that every time, every time something is somewhat obscure,

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1 particularly in relation to our client, it is important for us to be sure
2 that we can elucidate it as far as it is possible for the Chamber.

3 I am, in fact, your Honour, rather surprised by the Prosecutor's
4 attitude -- I'm sorry. I'm rather surprised by this attitude which
5 consists in obstructing the truth from coming out, from being brought out
6 into the open. It seems to me a rather curious attitude.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes. Well,
8 Professor Fofé, the witness we have before us is not one that you
9 yourself called and it is indeed important as long as a witness is still
10 before the Chamber to get as much information as possible from him so
11 that the Chamber can try and grasp what is happening, not about
12 theoretical issues but about the actual or supposed participation by the
13 two accused in relation to the facts that the Chamber is examining. So
14 you can ask your question, but please do not read out lengthy passages at
15 this stage. Ask your questions.

16 MR. FOFÉ: (Interpretation) Thank you, your Honour. So, your
17 Honour, I would, therefore, like to read out the penultimate paragraph of
18 page 14 so as to -- well, to be perfectly clear, the reference here is
19 DRC-D02 --

20 MS. LUPING: (Previous translation continues) ...

21 PRESIDING JUDGE COTTE: (Interpretation) We will remember that
22 yesterday Mathieu Ngudjolo's Defence stood on his feet because
23 Mathieu Ngudjolo was being discussed and we had said at the time that we
24 simply could not get rid of Ngudjolo's name because obviously he is an
25 important player in this courtroom even though he says nothing. So it is

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1 not unreasonable that at this particular stage or at one stage that
2 Mr. Ngudjolo's Defence will take the floor to understand what that
3 accused's role was precisely. Is that not the case?

4 MS. LUPING: Mr. President, the objection is not to questions
5 being put in relation to Professor Fofé's client. That is not the
6 objection. The issue is a question of procedure and the manner in which
7 the questions are going to be put to this witness. The questions can be
8 put using open-ended, neutral questions. We're not in the
9 cross-examination part of the proceedings. Professor Fofé had an
10 opportunity to put leading types of questions earlier on. We're now in
11 the re-examination part of the proceedings, and at this stage, at this
12 phase, we would submit he must only ask open-ended, neutral questions.
13 It is not appropriate, we would submit, that he be reading out a passage
14 from the witness's statement so as to seek to refresh the witness's
15 memory. This is the procedure we have adopted for other witnesses and we
16 would submit it is appropriate that the same procedure be adopted in
17 relation to this witness. We see no reason to depart from an agreed
18 procedure and a prior decision of the Chamber on this aspect.

19 Professor Fofé is not prevented from asking his questions related
20 to his witness (* sic), it's just the manner in which he is asking the
21 questions and we would submit it's not appropriate then to read the
22 statement.

23 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé,
24 Ms. Luping ...

25 (Trial Chamber confers)

1 PRESIDING JUDGE COTTE: (Interpretation) The Chamber is of the
2 opinion that the witness's memory has been refreshed for a long time.
3 You have all referred to the statement that he gave to the Defence of
4 Germain Katanga on the 11th of March, 2011. These are the final
5 observations. The name of Ngudjolo was mentioned during your
6 cross-examination, Madam Prosecutor. The Defence from -- for
7 Mr. Ngudjolo wishes to seek information from this witness before he goes
8 back to where he comes from. So, Professor Fofé, try not to read out
9 entire passages. Just focus on any relevant parts that may serve as a
10 foundation for your questions. So please allow us to advance and
11 conclude the testimony of Witness 148.

12 MR. FOFÉ: (Interpretation) Thank you, your Honour. I will read
13 just an excerpt of that paragraph, and I quote:

14 "The people on the hill opposite Bogoro, that is, from
15 Mount Lagura, came down and reached the Kasenyi road before arriving at
16 the centre. They were commanded by Bahati de Zumbe and Kute, deceased.
17 These people from the Lagura hill arrived late, at around 9.00 a.m.,
18 after having heard gun-shots. I did not see Ngudjolo in Bogoro."

19 Q. Mr. Witness, do you know the distance from Lagura hill to Zumbe?

20 MR. MACDONALD: (Interpretation) Your Honour, I think your
21 microphone is switched on. I just wanted to point that out.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I think I
23 have to spare you the sounds of my typing.

24 Mr. Fofé, you can continue.

25 MR. FOFÉ: (Interpretation)

1 Q. I will repeat my question, Mr. Witness. Do you know the
2 difference between Lagura hill and Zumbe?

3 A. I do not hail from either Zumbe or Lagura and I don't know that
4 area well enough to be able to tell you the distance in kilometres
5 between Zumbe and Lagura. That is very difficult for me because I'm not
6 very familiar with that region. Nevertheless, given that the battle of
7 Bogoro lasted from the morning up until 9.30, I saw --

8 THE INTERPRETER: From the Kiswahili booth: The witness did not
9 complete his answer.

10 PRESIDING JUDGE COTTE: (Interpretation) You said that you saw
11 something, Mr. Witness, and that is where you stopped. Can you complete
12 your sentence?

13 THE WITNESS: (Interpretation) I saw troops commanded by
14 Bahati de Zumbe and Commander Zumbe -- or rather, Commander Kute, who is
15 now deceased. The troops were coming from the direction of the hill, but
16 I do not have any details about the distance between Zumbe and Lagura.
17 These are hills, and I think that only the inhabitants of that region can
18 tell you the difference between Zumbe and Lagura. Since I do not come
19 from that region, it would be difficult for me to do so. However, I saw
20 Kute and Bahati de Zumbe in Bogoro.

21 MR. FOFÉ: (Interpretation)

22 Q. Thank you, Mr. Witness. At what time during the battle, given
23 that you were already in Bogoro, precisely when in the course of the
24 battle did Bahati de Zumbe and Kute arrive Bogoro?

25 A. The Bogoro attack started in the morning. Yuda was injured and

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1 he left. I was left behind with a weapon that Yuda had been using. It
2 was around 9.00 a.m. in the morning that Bahati and Kute arrived with
3 their troops to reinforce us.

4 Q. I will now refer to the same transcript, 280, of the hearing of
5 the 13th of June, 2011, page 67, lines 7 to 21. I will try to situate
6 you in context.

7 MR. FOFÉ: (Interpretation) Your Honour, I have the feeling that
8 the witness would like to say something. I have not yet asked my
9 question.

10 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, do you
11 have a problem?

12 THE WITNESS: (Interpretation) Yes. Before other questions are
13 put to me, I would like to go and ease myself.

14 PRESIDING JUDGE COTTE: (Interpretation) That is your right,
15 absolutely, Mr. Witness.

16 Court Officer, let us go into closed session.

17 And, Court Usher, please accompany our witness to where he wishes
18 to go and then he will come back later.

19 (Closed session at 10.40 a.m.)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Open session at 10.45 a.m.)

2 COURT OFFICER: (Interpretation) We are in open session,
3 your Honour.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
5 Professor Fofé.

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

7 Q. Mr. Witness, I'm referring to transcript number 280/FRA, hearing
8 of the 13th of June, 2011, page 67, lines 7 to 21. Mr. Witness, my
9 learned friend Mr. Luvengika asked you the following question yesterday,
10 and I quote:

11 "Mr. Witness, are we to understand that when the combatants
12 arrived in Bogoro they went directly to the UPC camp and that that is
13 where all the fighting took place? There was no fighting or action in
14 the other parts of Bogoro village?"

15 And, Mr. Witness, this is your answer, and I quote:

16 "You have said that you know Bogoro well. Look at Bogoro. If
17 you leave from the area of the Ngitis, how many residential houses do you
18 see before you reach the camp?"

19 Let me repeat.

20 "You have said that you know Bogoro well. Look at Bogoro. If
21 you come from the area of the Ngitis, how many residential houses do you
22 see before you reach the camp? What is there between Lakpa and Bogoro?
23 There is Mandjikala (* phon) and Diguna. The UPC was in the camp
24 during the -- but during the third and the fourth attacks, all the
25 civilians at the point of entry into Bogoro left, and during the

1 fifth attack there were no civilians in that area."

2 My question is simple, Mr. Witness, and it is as follows: What
3 is the approximate distance between Lakpa and Bogoro?

4 A. The clarification that you are seeking is difficult for me. It
5 would have been necessary for me to actually measure that distance
6 between Lakpa and Bogoro. The distance between Lakpa and Bogoro is
7 approximately 8 kilometres, and that is an estimate that I'm giving you.

8 Q. Thank you very much, Mr. Witness.

9 MR. FOFÉ: (Interpretation) Mr. Witness, your Honours, we have
10 no further questions for this witness, but before we end, our team would
11 like to file an oral motion. I believe that the ten remaining minutes
12 are sufficient.

13 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, is this
14 related to the testimony of this witness?

15 MR. FOFÉ: (Interpretation) Yes indeed, your Honour.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well, so as not to
17 confuse things. Please go ahead.

18 MR. FOFÉ: (Interpretation) Thank you, Mr. President,
19 your Honours. Your Honours, this witness is an important witness. He
20 was present on the day of the attack on Bogoro on the 24th of February,
21 2003. In his written statement, he provides a detailed description of
22 the planning and execution or carrying out of the Bogoro attack. We
23 respectfully request that the following excerpts be tendered into
24 evidence --

25 MR. MACDONALD: (Interpretation) We are objecting. I believe

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1 that the witness is present here now. I believe we should come back at
2 11.30 and do this after the witness has left.

3 PRESIDING JUDGE COTTE: (Interpretation) In any case,
4 Professor Fofé, please submit a written filing and tomorrow, 15th, by
5 4.00 p.m., and the observations of the other parties should submit their
6 own observations on the 21st of June, that is, on Tuesday, by 4.00 p.m.
7 I think this would be much simpler and it is important to take a calm and
8 serene look at this.

9 MR. FOFÉ: (Interpretation) Yes, thank you, your Honour, and
10 this will be an opportunity for us to remind the Court of the precedent
11 created by the Prosecution in a similar case.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

13 Mr. Hooper.

14 MR. HOOPER: Yes, thank you.

15 Further Questioned by Mr. Hooper:

16 Q. Mr. Witness, I've just got two brief matters to raise, if I may,
17 with you. The first is this: In the transcript of yesterday, when you
18 were being asked questions by my learned friend from the Prosecution, and
19 that's page 19, line 16 in the English, transcript 280, it was suggested
20 to you by Ms. Luping that with the UPC in occupation of Bogoro, having
21 their camp there, that "the UPC were blocking the Ngiti to Bunia." I'll
22 repeat "the UPC were blocking the Ngiti from going to Bunia."

23 Now, your reply was:

24 "No. At that time that was not the road to Bunia."

25 And my question is this: If at that time, when the UPC were

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1 blocking the road via Bogoro, if at that time you were in Kagaba and you
2 needed for some reason to go to Bunia, could you go to Bunia; and if so,
3 which route could you take? Do you understand my question; and if so,
4 can you provide an answer, please?

5 A. Can you please kindly repeat the last sentence of your question
6 before I can answer. Thank you.

7 Q. At the time when the UPC had their camp at Bogoro, we can
8 understand that you couldn't travel from Kagaba to Bunia passing through
9 Bogoro because the UPC were there. My question is this: At that time if
10 you wanted to go to Bunia, was there any other route you could take? Was
11 there another way of getting to Bunia?

12 A. It was difficult to go to Bunia because there was no road from
13 Kagaba. There is only one road from Kagaba through Nombe, Lakpa,
14 Mandjikala, then Bogoro, and Katoni (* phon) before going to Bogoro.
15 There is no other road from Kagaba to Bogoro except that one. At that
16 time one couldn't move around just anyhow because there were
17 difficulties. There was no good road between the two localities.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, I think we
19 will have to break because we have only two minutes left.

20 Mr. Witness, we will meet in a short while after a break which
21 will be longer than the one you took this morning.

22 Court Officer, let us go into closed session to allow the witness
23 to leave the courtroom.

24 And, Mr. Witness, we'll meet again at midday, maybe before.

25 (Closed session at 10.58 a.m.)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Open session at 11.00 a.m.)

10 COURT OFFICER: (Interpretation) We are in open session,
11 your Honour.

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

14 The Bench would like to thank the collaborators of Mr. Luvengika
15 and the representatives of Mr. Gilissen, and when the Registrar comes in,
16 please we are asking you to shift back so that they can sit where you are
17 sitting. It will not take very long but it is necessary.

18 MR. LUVENGIKA: (Interpretation) Yes, I understood that we would
19 sit behind.

20 PRESIDING JUDGE COTTE: (Interpretation) Very well. I think --
21 I had thought that the Registrar will sit behind you, but please switch
22 off your computers for now. The Court will reconvene at 11.30.

23 Recess taken at 11.01 a.m.

24 On resuming at 11.33 a.m.

25 (Open session)

1 COURT USHER: All rise.

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

3 Madam Registrar, thank you for joining us although you were
4 informed of this hearing on short notice last evening. In actual fact,
5 the Chamber has noted with some astonishment filing number 3011,
6 deposited yesterday on the 13th of June, 2011, and which is entitled:
7 "Implementation of decision ICC-01/04-01/07-3003." Upon reading this
8 document, the Chamber understood, Madam Registrar, that you are not in a
9 position "to date, to give a positive response to the Chamber's
10 consideration that the Registry ought to authorise contact between
11 detained witnesses and Mr. Göran Sluiter and Mr. Flip Schüller within the
12 detention centre."

13 The Chamber, as you are aware, has read with the utmost attention
14 the reasons which in your opinion hamper the implementation of its
15 decision. Yet it is obvious to the Chamber that this decision is quite
16 clear. In paragraph 76 the Chamber recalls that, and I quote:

17 "Under the circumstances and in keeping with the provisions of
18 the co-operation agreement, the witnesses, right from the time they
19 arrived in the Netherlands, have not been able to communicate by
20 telephone with the outside world from the detention centre without the
21 prior authorisation of the Congolese authorities. As far as the Chamber
22 is concerned, this situation cannot continue within the framework of the
23 asylum proceedings which have been henceforth instituted before the Dutch
24 authorities."

25 Furthermore, in paragraph 77 the Chamber underscores, and I

1 quote:

2 "... that access to the asylum judge, which is clearly an
3 internationally recognised human right, is certainly not possible if the
4 applicants cannot discuss or contact the lawyers they have chosen."

5 The Chamber adds, and I quote:

6 "... that furthermore, the mere fact that the three witnesses are
7 detained does not of itself justify any prohibition of contact which have
8 had the consequence of depriving them of the right to have recourse to a
9 Dutch asylum judge like any other person or witness."

10 Madam Registrar, it appears to us that this decision of
11 9 June 2011 is sufficiently clear on the merits. It should be recalled
12 that the Chamber had to determine whether or not prohibition of contact
13 between detained witnesses and their lawyers, their Dutch lawyers I mean,
14 was compatible with internationally recognised human rights. Since the
15 answer to that question for the Chamber can only be negative, and that is
16 what the Chamber set out in writing, it is up to you at this moment to
17 authorise such contact and to do so precisely for the reasons which are
18 set out in the decision.

19 To look at some of the arguments which have been developed in
20 filing 3003, the fact that the two procedures challenging decisions you
21 took to reject applications for visit authorisations, that these two
22 procedures have been closed should not have any impact on the
23 authorisation which the Chamber is requesting you to give. And there
24 shouldn't be any need to seek the approval of Congolese authorities to
25 that end. The co-operation agreement signed with Congolese authorities

1 cannot prevail over the application of Article 93(7) of the Statute which
2 is compatible with internationally recognised human rights.

3 Accordingly, Madam Registrar, the Chamber as a whole urgently
4 requests you to implement, within the shortest time possible and with no
5 further obstruction, the instructions contained in this decision of
6 9 June. It is in the interests of each and everyone, it is in the
7 interests of all, that a decision on the asylum applications be handed
8 down as soon or as rapidly as possible. But then, obtaining that
9 objective presupposes, obviously, that the applicants should be able to
10 discuss with the counsel appointed for them.

11 There you have it, Madam Registrar, the opinion of the Chamber
12 with respect to the filing received yesterday. That is the urgent and
13 insistent request of the Chamber to you, that you should implement the
14 provisions of the decision of 9 June relating to the authorisation that
15 should be given to the Dutch lawyers to communicate with their clients
16 within the specific framework of the asylum applications, applications
17 which were unexpected but which have been submitted. A situation which
18 has to be addressed within the shortest time possible.

19 Thank you, Madam, for listening to us. Please, if you wish to
20 take the floor to make any observations, please do so. But bear in mind
21 that any Chamber - and especially this Chamber - cannot make any further
22 observations on the decision which was sufficiently clear and which has
23 to be implemented. I'm listening to you.

24 MS. ARBIA: (Interpretation) Thank you, your Honours, for this
25 opportunity. The clarification I was seeking was obtained today. You

1 have clearly explained what you expect, that we should authorise counsel
2 to meet with their clients.

3 I would like to state that hitherto, these two individuals were
4 not appointed as the lawyers or counsel for the detained persons, and
5 that was the missing element hitherto. There was no mandate to that
6 effect, but I received a confirmation that the two detained persons have
7 not expressly designated these two individuals. However, I have taken
8 note of your clarification. And so regardless of the fact that there is
9 no mandate, I have to authorise these two gentlemen, who are referred to
10 as the Dutch lawyers, to meet the detained persons under the conditions
11 which you have stipulated.

12 Your Honours, I would like to tell you, however, that there is
13 absolutely no doubt that a decision of the Chamber should be implemented.
14 When we received the decision of the 9th of June, we took all the
15 necessary measures. Mr. Mabanga, the duty counsel, was authorised to
16 visit the detained persons with no restrictions whatsoever. However,
17 with respect to the other two individuals who in the opinion of the
18 Registry were not appointed, they were considered as visitors. But now
19 that the Chamber has requested us to grant them the authorisation, we are
20 going to do that with no further problem.

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

23 With respect to a precise mandate for the Dutch lawyers, this
24 should have been mentioned in the filing which we received yesterday. A
25 letter was received last 11th of May from the law firm and the Registry

1 provided a negative response to that letter. We are not going to dwell
2 needlessly on that point, but it is important that the three applicants
3 and Counsel Mabanga should receive a transcript of these proceedings and
4 that will clarify things. But we have taken note of the fact that you
5 have stated that you are going to implement this decision and the Chamber
6 would like to thank you for that.

7 We are going to rise in order to enable the Registrar and her
8 colleague to leave the courtroom.

9 COURT USHER: All rise.

10 PRESIDING JUDGE COTTE: (Interpretation) We are going to resume
11 our proceedings now.

12 Well, I think we got a bit mixed up in our procedure, but it's
13 always best to err on the side of caution and be polite. I think we
14 should go to closed session in order to enable the witness to return to
15 the courtroom.

16 Court Officer, can we go into closed session.

17 (Trial Chamber confers)

18 (Closed session at 11.48 a.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-D02-P-0148 (Resumed) (Open Session)
Further Questioned by Mr. Hooper

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1 (Expunged)

2 (Expunged)

3 (Open session at 11.50 a.m.)

4 COURT OFFICER: (Interpretation) Your Honour, we are in
5 open session.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
7 Court Officer.

8 Mr. Witness, can you hear me?

9 THE WITNESS: (Interpretation) Yes, I hear you clearly.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well.

11 Mr. Hooper, you may proceed, sir.

12 MR. HOOPER: Thank you, your Honour.

13 Q. Yesterday you were being asked questions by the Prosecution about
14 the delivery of arms from Beni to Aveba, and you said at page 17 that
15 you'd heard mention of that, of that delivery or deliveries, "... but I
16 did not personally witness that."

17 Can you remember when you first learnt that arms had been
18 delivered to Aveba from Beni?

19 A. I cannot give you the date, but I did hear that weapons had been
20 transported from Beni to Aveba.

21 Q. All right. Those are all my questions, and it just remains for
22 me, Mr. Witness, to thank you for coming all this way at so much obvious
23 trouble to yourself in order to assist the Judges in this case and also
24 to appear for the Defence of Germain Katanga. And I hope that both he
25 and I will have an opportunity later today to say our thanks to you

1 rather more informally than I do now. Thank you very much.

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

3 Mr. Witness, your testimony has come to an end. You have spent a
4 few hours with us and you have answered the questions put to you by the
5 various parties and participants, Mr. Hooper, Mr. Fofé, Ms. Luping,
6 Mr. Luvengika, and the Chamber. We thank you for your contribution. I
7 would like to remind you that the testimony you have given before this
8 Chamber should be kept to yourself. You should not discuss it with
9 anybody else and please strive to respect that. We would like to thank
10 you for coming this far to share your testimony with us, what you saw,
11 what you heard, and sometimes information that you obtained. We would
12 like to wish you a safe trip back to where you live. Thank you very
13 much, Mr. Witness.

14 Court Officer, we should go into closed session to enable the
15 witness to leave the courtroom, but before we do that and if it's no
16 inconvenience to you, Mr. Witness, and if Mr. Germain Katanga and his
17 team accept, the Registry would like to have -- organise a small
18 discussion during which Mr. Katanga and his Defence team would thank you.
19 This should take place at the end of this hearing, that is, before the
20 end of this morning period.

21 Court Officer, yes?

22 (Trial Chamber and Court Officer confer)

23 PRESIDING JUDGE COTTE: (Interpretation) Witness, you wish to
24 say something? I did not notice that you had indicated.

25 THE WITNESS: (Interpretation) Yes. Your Honour, I have one

1 final thing to say. I would also like to thank you for the job you are
2 doing. You touched on a subject which is of importance to me. With your
3 leave I would like to take a few minutes to say good morning to
4 Germain Katanga. That's the request I wish to bring to your attention.

5 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, you heard
6 that this is possible, you -- except you do not wish for this to happen,
7 but that's what you want and Germain Katanga would like to meet you as
8 well, so the Registry is going to organise a meeting for you in a short
9 while.

10 Court Officer, we are going to closed session so that the witness
11 will leave the courtroom discreetly.

12 (Closed session at 11.56 a.m.)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 11.57 a.m.)

22 COURT OFFICER: (Interpretation) Your Honour, we are in open
23 session.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

25 Since we have a few minutes before we give the floor to

1 Mr. Hooper for him to talk about Witness 147, the Chamber is going to
2 seize this opportunity to make an oral decision on filing number 2848 of
3 20th of April, 2011, to seek disclosure of the results of the
4 investigations conducted by the OTP on the interview of Witness
5 DRC-D02-P-0350 to the newspaper "*Le Millénaire Info Plus*." On the
6 20th of April, 2011, the duty counsel of the detained counsel (* as
7 interpreted) D02-P-0350 submitted filing number 2848-Conf, seeking
8 disclosure of the findings of an investigation conducted by the OTP about
9 an interview allegedly given by that witness to the newspaper
10 "*Le Millénaire Info Plus*." That article was mentioned by the VWU in a
11 report which it filed on the 14th of April, 2011, within the framework of
12 the asylum proceedings and about which a decision was handed down by the
13 Chamber on the 9th of June, 2011, under the reference 3003.

14 During the hearing of 19th April 2011, the Prosecutor challenged
15 the authenticity of the article in question, stating that given the
16 findings of a preliminary investigation conducted, the content of the
17 article did not reflect the interview that the witness gave to the
18 journalists of "*Millénaire Info Plus*," transcript 250, page 67 and 68,
19 English version.

20 On the 20th of April, 2011, the witness told duty counsel that he
21 was not aware of the existence of that interview and considered that the
22 article in the newspaper was a matter of manipulation and, for this
23 reason, he asked for the disclosure of the final upshot of the
24 investigations conducted by the Prosecutor.

25 On the 4th of May, 2011, the Prosecutor answered in a submission,

1 2860, that he saw no objection to the disclosure of the investigator's
2 report, on condition that the Chamber orders the redaction *vis-à-vis* the
3 general public and parties outside the proceeding the names of the
4 journalists and the editor of the web site for the "*Millénaire*"
5 newspaper.

6 The Defence teams of the accused did not file any observations on
7 the duty counsel's application.

8 Relating to the principle of disclosure of the results of the
9 investigation, the Chamber has taken on record the position of the
10 Prosecution and considers that the relevant document should be made
11 accessible to the witness, DRC-D02-P-0350, as well as to the duty
12 counsel. This is the investigation report that is DRC-OTP-1062-0092 as
13 reproduced in appendix A of document 2860-Conf-Exp.

14 As for the requested redactions, the Chamber considers that the
15 requests made on the basis of 81(4) of the Rules are justified *vis-à-vis*
16 the general public and parties outside the proceedings. The disclosure
17 of that document must therefore be performed taking into account the
18 suggested redactions. Consequently, it is the Prosecutor's duty to
19 prepare a redacted, public version of document 2860-Conf and including
20 appendix A.

21 Finally, the Chamber asks the Registry to reclassify the
22 application 2848-Conf by the duty counsel and make it into a public
23 document.

24 Thank you for your attention.

25 Mr. Hooper, what about Witness D02-P-0047, with whom we were

1 anticipating to meet in a few seconds?

2 MR. HOOPER: Yes indeed. Last night, the early evening of last
3 night, the Defence attempted to forewarn both you, the Judges, and the
4 parties in the case by e-mail that the Defence had taken a certain view
5 and that the Defence felt it was no longer necessary in the light of that
6 view to call D-0047. And it's unfortunate that that decision was taken
7 literally very late in the day. Sometimes decisions evolve in perhaps
8 unseen ways.

9 I appreciate that D-47, having made the effort to be brought
10 here, may well feel disappointed at my decision, or our decision, and
11 I've noticed this morning that the VWU have sent a short e-mail
12 containing some comments. I'll limit myself because we're in public
13 session to just addressing what I feel is appropriate to a public
14 hearing. If there is to be a more general debate, it may be more
15 appropriate to go into private session, but at the moment, limiting
16 myself as I do, I'm quite happy to remain in public session.

17 So the Defence has taken that decision. The Chamber doubtless
18 will be aware of the confidential filing by the duty counsel,
19 Mr. Mabanga, filing 3013, which was received late yesterday, and I will
20 say no more about that. But in the light of various matters, the
21 Defence, as I say, has decided to take what it considers after, as you
22 would expect, very careful thought to what is the most appropriate way
23 forward in all the circumstances.

24 Now, one matter, of course, that inevitably leads to particular
25 regret is that the decision that I've taken at this stage will mean that

1 the Chamber will not have another witness this week and we will be in the
2 unfortunate position of at least losing as far as court days are
3 concerned tomorrow and Thursday, two -- two days. That doesn't mean, I
4 know, that there isn't quite a lot of work that can be done in that time,
5 but it's still unfortunate and I do regret that. As I say, I found
6 myself in particular circumstances and the decision which was taken which
7 was a decision by the Defence, may I say with the full consent and indeed
8 concern of Mr. Katanga himself, is one that's, as I say, is appropriate
9 to the circumstances.

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

11 Would any of the parties and participants wish to say something?

12 Mr. Prosecutor.

13 MR. MACDONALD: (Interpretation) Thank you, your Honour. Of
14 course we are in public session, but initially Mr. Hooper referred to a
15 letter, now he's talking about the VWU -- now, we have not received copy
16 of those so I cannot comment on those aspects. It is clear that this is
17 a very exceptional situation. The Prosecution has no objection in
18 principle, but we would like to make sure before the witness is allowed
19 to go home that we are all agreed on the implications that this may have.
20 In particular, when Mr. Logo will come to testify --

21 MR. HOOPER: (Previous translation continues) ... my friend
22 because if my friend's drifting into this highly contentious area, then
23 in fairness to not least of all the gentleman whose name is just uttered,
24 it should be done in private session. I was concerned that my friend
25 might -- might say what some would consider and certainly those from

1 these benches would consider were perhaps inappropriate comments in the
2 particular circumstances that we find ourselves. And I'm particularly
3 minded, may I say, at this stage of the Prosecution's reaction to what
4 seemed at the time -- well, to our request at the time in respect of
5 Witness 159 that you may recall.

6 So in all the circumstances, may I ask if my friend is going to
7 go into this matter or seek to go into this matter further by way of
8 comment or demand, that perhaps it would be more appropriate that the
9 remarks of which I have no notice - and that's the point, no
10 notice - should be uttered perhaps in closed session -- private session.
11 It won't prejudice the general conduct of this trial, and without notice
12 it's difficult for me to formulate, of course, a full argument. But one
13 can tell from the texture of the last sentence my friend entered into
14 that there are some grounds for our concern.

15 MR. MACDONALD: (Interpretation) Your Honour, I would like to
16 reassure my friend I have no intention -- I don't see why there is this
17 reaction. I named an individual who is already known -- well, we know
18 he's going to come to testify. I'm not going to enter into the content
19 or attack or whatever. I just wanted to mention the fears or at least
20 the impact that the withdrawal of this witness will have on the strategy
21 of the Prosecution *vis-à-vis* the witnesses here. And I think we should
22 all be agreed that by withdrawing this witness, there should be no impact
23 on the cross-examination of Prosecution or the questions that Prosecution
24 might address to Witness Logo. And let me explain why.

25 D-0048, this witness's statement was disclosed to us and it's on

1 the eCourt, so we already have that statement. It was signed and dated
2 at the date involved, the place is not indicated but it can be assumed,
3 in view of the testimony that we have just heard, in a context that was
4 made clear by the last witness. And let me also recall, your Honour, the
5 protocol on the issue of familiarisation.

6 What the Prosecution is seeking is that there should be
7 confirmation and that there should be absolutely no doubt that when
8 Mr. Logo comes to testify, the statement made by D-0047 is indeed
9 operative in spite of the fact that the witness did not come to testify.
10 There are expressions in the last -- in the last witness's statement,
11 effective control, for instance, that also appear in the statement by the
12 witness that won't be testifying and there a series of questions need to
13 be asked about why a legal term is found in a testimony. Now, that's one
14 of the ideas.

15 Now, we don't want to hide anything on the part of the
16 Prosecution, in any case we're in a public hearing, but the place, how a
17 statement was made, who was there, et cetera, now this affects a
18 credibility of not only that witness who won't be testifying but also
19 Mr. Logo. And I think we have been sufficiently clear on this matter.
20 I -- its approach in cross-examining several witnesses, and I would like
21 to point out, your Honour, and I am sure the Chamber will take this on
22 board. The fact that witnesses come along here to The Hague with their
23 statements and travel with their statements before testifying, whereas we
24 have a decision on protocol, 842, and its appendix in particular -- now
25 if we had proceeded in the same manner, there would have been very strong

1 objections about procedural defects.

2 Now, we, as you mentioned, don't have any objection against the
3 withdrawal of this witness -- and, Mr. Hooper, please don't interrupt.

4 Let me just finish. Thank you. And I almost have finished, actually.

5 So at the last meeting, after courtesy calls, as it were, with
6 the witness, the latter was withdrawn. I can understand that there is a
7 statement by the duty counsel and I understand that the last witness said
8 some significant things about the behaviour of Mr. Logo, but I don't
9 think --

10 MR. HOOPER: (Previous translation continues) ... now, my friend,
11 please, please --

12 MR. MACDONALD: (No interpretation) --

13 MR. HOOPER: -- no, it will be too late. I -- I -- I've already
14 forewarned --

15 MR. MACDONALD: (No interpretation) --

16 PRESIDING JUDGE COTTE: (Interpretation) You cannot speak. Even
17 though we would much like to be able to have you speak both at the same
18 time, but that's just not possible for obvious technical reasons. So do
19 we need to go into private session, Mr. MacDonald, so that you can
20 continue with your comments that you are entitled to develop? Because
21 apparently that is Mr. Hooper's concern. Or do you believe that that
22 particular aspect of your comments is actually about to end without it
23 being useful to proceed to private session?

24 MR. MACDONALD: (Interpretation) We can continue in open
25 session, your Honour. I think that the Prosecution has been sufficiently

1 clear on this topic.

2 So by way of conclusion, your Honour, we have no objection to the
3 withdrawal of the witness. The Chamber is the guardian of the procedure.
4 If I respectfully submit that the Prosecution may refer to the context of
5 statement during Mr. Logo's testimony, I believe that it would be
6 preferable for the Chamber to call D-0047 as a witness of the Court and
7 then all the parties will have an opportunity to question the witness.
8 If it were to occur that the Chamber thought that Prosecution cannot
9 refer to that statement during Mr. Logo's testimony - and I think this is
10 the situation we are facing - Mr. Logo's statement is -- sorry, the
11 statement made by D-0047 is evidence that was disclosed by the Defence to
12 Prosecution and disclosure cannot be withdrawn. The statement is not in
13 the file and it won't be tendered, but its content, its context, are in
14 our possession and we should be able - as it is the case with any other
15 document received from the Defence - we should be able to refer to it
16 during Mr. Logo's testimony. That's our position.

17 I don't know whether the Chamber has questions, and I -- of
18 course I am willing to answer them before we give the floor to my
19 colleague or the other parties and participants.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
21 Mr. MacDonald.

22 The Chamber does indeed need some details from you to fully
23 determine what you really want. Do you want the statement made by
24 D02-P-0047 to be tendered into evidence, this witness who is actually not
25 going to be coming? Is what you want to have the possibility of

1 cross-examining the person whose name was widely referred to in respect
2 of the testimony -- of the statement of D02-P-0047? What exactly do you
3 want? We want to know what your intention is and then the Chamber will
4 be able to respond when the time comes, perhaps when the person that we
5 quoted on many occasions in the last few minutes comes to testify. Could
6 you perhaps clarify that for us.

7 MR. MACDONALD: (Interpretation) Yes, indeed, your Honour. To
8 answer your first question, the answer is no. We are not asking for that
9 statement to be tendered because the rule is - and I'm referring to your
10 own decision - we are consistent with our own objection plus the decision
11 that was made by the Chamber three weeks ago plus the Appeals Chamber's
12 decision, statements cannot be tendered into evidence in the stead of --
13 unless Rule 68 is applied because a statement does not have the guarantee
14 of reliability that cross-examination and examination-in-chief afford. A
15 statement is not a document like the report of the United Nations. A
16 statement is not something that can be tendered.

17 That being said, regarding your second question, the answer is
18 yes. The Prosecution would like to be able to use the statement during
19 the cross-examination of Mr. Logo, but right now, with reference to your
20 last observation, your Honour, that you might be ruling on this before
21 Mr. Logo witnesses, I must submit to you that unfortunately if we do
22 release the witness, it will be very difficult to call him back. And
23 D-0047 is here. He is under the jurisdiction of this Court and of its
24 orders.

25 That being said, if the Chamber reached the conclusion that we

1 cannot use the statement for the purposes of cross-examining Mr. Logo,
2 then in that case I would ask you to reject Mr. Hooper's request to
3 release the witness, because he is here and he is before this Chamber,
4 and that he should be called up as a witness for the Court. And then
5 Mr. Hooper might not wish to ask him questions but the other parties
6 might be able to if they so wish.

7 So very respectfully, I am submitting to you the position we are
8 advancing today. There is a witness here ready to testify. For
9 strategic reasons the Defence doesn't want to call him. That is its
10 right, but nonetheless, you have the statement, you have information.
11 Does the Chamber in its search for truth wish to hear the witness, which
12 goes beyond simply Mr. Hooper's or the Prosecution's wishes since that
13 witness is under your jurisdiction.

14 Now, we have no objection to the witness being withdrawn. That
15 is, of course, something that speeds things up in spite of us losing two
16 hearings. In some respects it can be useful, but there has to be a
17 guarantee that Prosecution can refer to the statement involvement when
18 Mr. Logo testifies as the search for truth about how these statements
19 were built up. Witnesses who have already been here, for instance, and
20 how were these witnesses influenced or otherwise, all this relates to the
21 search for truth and the credibility of witnesses, which is of course
22 within your remit.

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

25 Does any other party or does a participant wish to take the floor

1 now?

2 Mr. Kilenda.

3 MR. KILENDA: (Interpretation) Thank you, your Honours. What is
4 being said here, both on Mr. Hooper's side and the Prosecutor's side, is
5 no doubt very interesting from a legal standpoint. This witness is a
6 witness that was called by the other Defence team, who decided for its
7 own reasons that he should no longer be called. We can only refer to the
8 wisdom of the Chamber for the decision that it will take.

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

10 Let me look at the representatives, Legal Representatives, would
11 you like to say anything?

12 Mr. Luvengika.

13 MR. LUVENGIKA: (Interpretation) Your Honours, I too bow down to
14 the wisdom of the Chamber.

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

17 Mr. Prosecutor, the Chamber notes that you will not be forming or
18 formulating any objection to the withdrawal of that -- this witness,
19 although there are a number of provisos or observations --

20 THE INTERPRETER: Interpreter's correction.

21 PRESIDING JUDGE COTTE: (Interpretation) -- that relate to the
22 possibility of questioning the investigator for the Defence team
23 concerned when he testifies before this Court.

24 The Chamber notes that the Defence team for Germain Katanga does
25 not intend to call D02-P-0047. Contrary to what you might believe, the

1 Chamber does not think that this is an opportunity to save time. The
2 hearings will, no doubt, not be held, but nonetheless, the Chamber
3 believes it is unfortunate, although it is perfectly aware - and
4 Mr. Hooper pointed this out earlier - that this decision was a last
5 minute one once the team had discussed this, and the Chamber believes it
6 is unfortunate that this decision should take place at such a very late
7 stage in spite of the fact that a lot of expense has been incurred to get
8 the witness here to The Hague and of course he will have to be taken
9 back.

10 Many of us have done some serious work and committed themselves
11 to preparing for the testimony of this witness. Additionally, there is a
12 collateral effect, a very minor collateral effect which will deprive of
13 its effect the decision taken this morning about the measures for
14 separating the various categories of detainees. Because the detainees
15 involved won't be coming to the hearing until the 27th. This has
16 implications for they themselves.

17 So we take note, Mr. Hooper, of your decision. We are aware of
18 the fact that you certainly didn't take it lightly. I simply wanted to
19 present to you these management considerations rather than legal
20 considerations.

21 And, Prosecutor, we have taken note of your more legally minded
22 remarks.

23 Ladies and gentlemen, parties and participants, gentlemen, the
24 accused, we are going to stop for a short time. That won't prevent us,
25 of course, from doing work. We won't be here for a hearing tomorrow or

1 Thursday morning, and as you already know and have known for a while, we
2 will not be sitting next week either. That means that we will meet again
3 on Monday, 27th of June. Madam Registrar will tell us whether the time
4 is 2.00 p.m. or 2.30. We would prefer 2.00 p.m. because that means that
5 the hearing ends a little bit earlier and our minds are still more alert.

6 If we look at the table for the teams of the Germain Katanga
7 team, D02-P-0196 should be attending, followed by D02-0259 and D02-0258,
8 if I'm not mistaken. I just want us to make sure that this is the right
9 order. I might -- my order might have been changed in the meantime, but
10 I think that that is indeed the case. We have only three witnesses left,
11 subject of the pending decision relating to possible testimony by
12 Germain Katanga, which would take place at a different stage -- stages.
13 It's very important for the Defence team for Mathieu Ngudjolo, who need
14 to know before the recess whether to expect one or two witnesses. And
15 the Chamber in any case would very much like to have -- to have that team
16 enter into the picture.

17 MR. HOOPER: Just on one matter. I don't know if the Chamber had
18 the opportunity of seeing the VWU's e-mail of this morning, but basically
19 discussing Witness 047, it's their proposal that he go back tonight with
20 two other witnesses. So from their management point of view, that
21 that's -- that's what they'd seek to do.

22 Secondly, they refer to perhaps that it would be appropriate for
23 him to be given an apology, and it's plain to me that if there is to be
24 an apology, it should come really perhaps from me rather than the Chamber
25 because it is after all me who -- or our decision, I should say, that's

1 caused this potential upset, which is referred to by VWU.

2 So with the Chamber's leave, may I, in fact, ask that I be
3 allowed, together with other members of the team, to see this witness as
4 if he'd given his evidence. I have no intention of calling him. I make
5 that plain. And also, if possible, because I would think that he's
6 probably in the building, if it is possible for him also to have a
7 few minutes with Germain Katanga. And I hope in that way that we resolve
8 some perhaps of the frustrations that may presently be in his mind as
9 noted by VWU. Thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, I think we
11 can proceed in two stages. First of all, and in the presence of members
12 of the VWU, who, right from the start of the week, have been working with
13 this witness, you can indeed extend to him your apologies for the time
14 and other resources he has invested in this exercise and for the trip he
15 has undertaken.

16 Secondly, and although he has not given any testimony, the
17 Chamber does not see any problem, as has been our practice at the end of
18 every testimony, that this witness should meet Germain Katanga and your
19 Defence team for a short while just so that you can thank him for this
20 trip, pointless trip. And for that -- on that event you are going to
21 renew to him the apologies which you would have tendered in the presence
22 of members of the VWU. I think that's how we are going to proceed. And
23 if the witness has to leave this evening, well, that would be preferable
24 so that the Court will not incur any additional expense by keeping him
25 here in The Hague.

1 As I said a short while ago we are going to rise and it would be
2 useful, Mr. Hooper, that you should send to us by e-mail the order of
3 witnesses who are going to appear. Ms. Menegon could send to all of us a
4 short mail stating the order of the witnesses who have to give evidence
5 in defence of Germain Katanga.

6 MR. HOOPER: It will be done by 2.00, certainly.

7 PRESIDING JUDGE COTTE: (Interpretation) Very well.

8 We are adjourned.

9 And, accused gentlemen, we will meet again in about ten days.

10 The hearing ends at 12.35 p.m.

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