

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 Monday, 12 September 2011
10 The hearing starts at 2.02 p.m.
11 (Open session)
12 COURT USHER: All rise.
13 PRESIDING JUDGE COTTE: (Interpretation) You may be seated.
14 Good afternoon, everyone. Good afternoon, accused persons.
15 We are going to continue with our work, and in particular
16 conclude the testimony of Chief Manu. We will then start the testimony
17 of D03-P-0100. However, we will be compelled to break for 30 minutes so
18 as to change witnesses, because the next witness is in our -- in the
19 court's protection programme. We are going to talk about that because we
20 talked about it on the 15th.
21 Mr. Prosecutor, you informed us that you would like to raise a
22 few points regarding the schedule, and our internal organisation. We are
23 not going to do that this afternoon because we have to conclude
24 Chief Manu's testimony. However, tomorrow, at 9.00 a.m., we are going to
25 allow you to raise those issues and the parties and participants may make

1 their initial remarks if they so do wish, and if necessary, we will
2 schedule a status conference to discuss the issue, but tomorrow morning,
3 you will be allowed to raise those concerns.

4 MR. MACDONALD: (Interpretation) Yes, indeed, your Honour. Good
5 afternoon, your Honours. Our concern relates to the schedule of
6 proceedings. We would like to discuss that with the Chamber, as well as
7 with the parties and participants. And with your leave, your Honour, it
8 is possible that I might not be available tomorrow morning at 9.00 a.m.,
9 but I think I should be back after the 11.00 break. As I indicated in my
10 e-mail, we can also do this on Wednesday.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. We are at
12 your disposal, and this happens quite frequently. Either tomorrow
13 morning or Wednesday morning, you will be allowed to make your
14 observations. The idea is not to decide anything on Wednesday morning.
15 You are going to make your presentation and we are going to listen to
16 possible observations, and we received your filing, Mr. Kilenda.

17 Mr. Prosecutor, at the end of your cross-examination on Friday,
18 Chief Manu answered a few questions from the Chamber, and you informed us
19 that you may have further questions to put to the witness in light of the
20 answers given to the Bench's questions. So you said that you had one
21 question, and as soon as the witness comes in, you will ask that
22 question, and then Mr. O'Shea or Mr. Hooper could also intervene.

23 Court Usher, can you please have the witness brought into the
24 courtroom.

25 And so it is Wednesday at 9.00 a.m.?

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1 (The witness takes the stand)

2 WITNESS: WITNESS DRC-D03-P-0088 (Resumed)

3 (Witness answered through interpreter)

4 PRESIDING JUDGE COTTE: (Interpretation) Good afternoon,

5 Mr. Witness.

6 THE WITNESS: (Interpretation) Good afternoon.

7 PRESIDING JUDGE COTTE: (Interpretation) Is everything all right?

8 THE WITNESS: (Interpretation) I'm more or less fine. I have
9 been taking some medication which has made me weak. But generally
10 speaking, I'm fine.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. This should
12 be the last hearing or session in which you are present, and we hope you
13 will be in fine form. It is the Prosecutor who is going to put questions
14 to you in light of the answers that you gave last Friday. Then it will
15 be the turn of the two defence teams to conclude your testimony.

16 Mr. Prosecutor, you can now proceed.

17 Questioned by Mr. MacDonald: (Continued)

18 Q. (Interpretation) Mr. Witness, my question is a question that
19 concerns language. I would like to come back to a question that was put
20 to the Chamber regarding a statement or a word mentioned by the Chamber;
21 that is, *londjini*. Now, in the language of the Lendus, what does mean?
22 It is spelled l-o-n-d-j-i-n-i. Apparently, that word can also be spelled
23 *lonjini*, l-o-n-j-i-n-i; that is, with or without a D.

24 Now, Chief Manu, in your language, what is the meaning of that
25 word?

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1 A. Thank you, Mr. Prosecutor. The presiding judge did not pronounce
2 that word correctly. *Londjini* is not a name. It is an expression. *Lo*
3 is a word which can be used in the phrase *londjini ji*. This means, "That
4 is true. This actually happened." That is, it is an exclamation of
5 surprise; that is, something important that happens. It might be
6 referred to as *londjini*. *Ndjini* is what happens, what is happening. And
7 *lo* is a prefix, so *ndjini* is used to refer to words, not names. You can
8 say, for example, my brother, something happened, someone died, and the
9 other person would answer, yes, it is a death. So you can refer to that
10 as a *ndjini*. You could also use a name Dramani Dragule (* phon). In
11 other words, you can add the word *ndjini* to a name. But the word
12 *londjini* is an expression used to express surprise, for example, oh, yes,
13 it has really happened.

14 I believe I have given you an explanation.

15 Q. Chief Manu, just to be clear, and I don't want to be leading, so
16 *lo* in Lendu means "something"? Is that what it means in Lendu?

17 A. Yes, *lo* means "something." Or it is also a way of expressing
18 something.

19 Q. *Ndjine*, n-d-j-i-n-e (* as interpreted), could it also be
20 translated as will be done, or will happen; is that correct?

21 A. I'm sorry, I need to comply with the five-second rule between
22 answer and question. *Ndjini* means, "This will be done." There are two
23 words there, *lo* and *ndjini*, but the meaning depends on the intonation,
24 you can say *londjini* or *lonjini*. *Lonjini* means something was done and
25 *londjini* means those things will be done. So it is an expression that

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1 changes meaning based on intonation, but it is not someone's name. It is
2 an expression.

3 Q. Yes, we agree that it is not a name, it is an expression. That
4 is all, Chief Manu. Thank you. That was the only point that I wanted to
5 clarify with you. Thank you once again and I wish you a safe return to
6 the Democratic Republic of Congo.

7 A. Thank you, Mr. Prosecutor.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
9 Mr. Prosecutor. Mr. O'Shea or Mr. Hooper, which one of you is going to
10 ask the questions?

11 Mr. Hooper, please.

12 MR. HOOPER: Yes.

13 Questioned by Mr. Hopper:

14 Q. Good afternoon, Chief Manu. I've only got one matter to ask you
15 and it's in reference to your -- the questions and answers that -- the
16 answers you made on Thursday last week, and that's in transcript T 306
17 and starting at page 21, when you were asked about the events of the 24th
18 of February, and we come to page 25, and I'm just going to read out
19 slowly two lines that we find on page 25 of transcript 306. And then ask
20 you a question about them.

21 And it's at page 25, line 9. And you say this:

22 "I've already said that we did not hear the first gun shots on
23 the 24th."

24 I'll read that again:

25 "I've already said that we did not hear the first gun shots on

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1 the 24th."

2 And then a little few lines later, at line 14 you say this:

3 "All of this took place over three days."

4 I'll repeat that:

5 "All of this took place over three days."

6 Can you just help us as to what you mean by that, please? What
7 took place over three days?

8 A. Good afternoon, counsel. If I have correctly understood your
9 question, based on what you have read out, I am going to give you the
10 explanation that you are seeking.

11 Counsel, at that time, there was intense fighting, and that
12 fighting was continuing all the time. The fact is that before that day,
13 we were hearing gun shots. What I'm telling you is true, and I would
14 like you to understand. When we heard explosions or gun-fire, we were
15 afraid because we were being attacked from various directions. We had
16 already been attacked and we thought that the combatants were going in a
17 direction of Geti. That there was fighting -- but in the area of Geti,
18 but on the first day and the second day, and ...

19 THE INTERPRETER: The Swahili interpreter says the witness did
20 not complete his answer.

21 MR. HOOPER:

22 Q. When you were in Zumbe, is your position this, therefore, that
23 the fighting started on the 22nd of March -- sorry, 22nd of February,
24 continued through 23rd of February, and then on the 24th of February, the
25 fighting stopped?

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1 A. Yes. That is what I'm trying to explain to you. In Zumbe, we
2 had been attacked well before that, and at that time we thought that the
3 combatants were moving towards Geti, that is during the first two days of
4 the fighting. And then on the third day, there was fog. I hope you do
5 understand me.

6 Q. All right. Now, can I come to the battle of Mandro. You at that
7 time, as I understand it, as you told us, you had left Zumbe in order to
8 visit the chief. Now, how long, according to you, did the battle of
9 Mandro take? Listen to the question before you answer it. How long,
10 according to you, did the battle of Mandro take?

11 A. I was not present there, but I heard about it. The fighting
12 lasted for one day, one day only, and not two.

13 Q. All right. Thank you very much.

14 MR. HOOPER: Those are my questions.

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

16 Professor Fofé, it is your turn now to make your final
17 observations. Please proceed.

18 MR. FOFÉ: (Interpretation) Good afternoon, your Honours. Just
19 one moment for me to set up, please.

20 Questioned by Mr. Fofé:

21 Q. (Interpretation) Good afternoon, Chief Manu.

22 A. Good afternoon, Professor.

23 Q. I do realise that you are a bit tired and that is quite normal
24 after having testified for several days. It is not easy to have to speak
25 for so long. I will therefore try to be brief so that we should conclude

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1 your testimony today.

2 MR. FOFÉ: (Interpretation) Your Honours, before I begin my
3 re-examination, I would like to answer the question that you asked us on
4 Wednesday, the 7th of September, relating to Exhibit EVD-D03-00093. And
5 that question is reflected in transcript number 305, French version,
6 page 64, lines 13 to 16.

7 You wanted to have our answer on the same day but we all sort of
8 forgot about the question. And after deliberating with the other members
9 of our team, it is our opinion, your Honour, that this exhibit can be
10 reclassified as public.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
12 Professor Fofé. And Court Officer, please take note. Professor Fofé, we
13 can now move on to your re-examination. Please go ahead.

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

15 Q. Chief Manu, I have a few simple questions for you. I would like
16 you to clarify for us certain issues raised by the Prosecutor in his
17 cross-examination, but which were not clear enough. Please try to answer
18 clearly, and please speak out loud and make sure you speak slowly.

19 My first question is as follows: Chief Manu, what is the
20 headquarters of the Bedu-Ezekere groupement?

21 A. The headquarters of the Bedu-Ezekere groupement is called
22 Ezekere, and it is specifically the locality known as Kabaya 1.

23 MR. FOFÉ: (Interpretation) Your Honours, learned colleagues,
24 I would like to refer you now to transcript number 306, the hearing of
25 the 8th of September, 2011, French version, page 5, lines 13 to 17, and

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1 page 7, lines 24 to 26.

2 In this excerpt, the Prosecutor refers us to exhibits
3 EVD-D03-00087, and 00090.

4 Q. Chief Manu, on Thursday, the 8th of September, 2011, the
5 Prosecutor asked you the following question. Transcript 306, page 5,
6 lines 13 and 14. And I quote:

7 "And this same Mbulo was involved in the management of the
8 Kambutso health centre or health post; isn't that correct?"

9 And Chief Manu your answer was as follows, on line 15:

10 "That is not what I said, or I did not say that."

11 My first question on this point is as follows, Chief Manu: Was
12 Mbulo a nurse?

13 A. No. He had not done any study. He did not know how to write.

14 Q. In your structure at the base committee was Mbulo a member of the
15 management and health committee?

16 A. No.

17 Q. Was Mbulo involved in the management of the health centre or of
18 the Kambutso health post?

19 A. My answer is no. I have never heard the name of Mbulo in
20 connection with the health centre. Mbulo is somebody who had not done
21 any studies. What would he have been doing at the health centre?

22 MR. FOFÉ: (Interpretation) Presiding Judge, your Honours, I would
23 have it noted in the transcript for today that contrary to what the
24 Prosecutor said on Thursday, the 8th of September, 2011, see the
25 transcript T 306, page 5, lines 16 and 17, and page 7, lines 24 to 26,

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1 the documents EVD-D03-00087 and document 00090, do not contain any
2 mention of Mbulo's involvement in the management of the health centre or
3 the Kambutso health post. I would have this recorded in the transcript.
4 Thank you, your Honour.

5 MR. MACDONALD: (Interpretation) Your Honour, just to clarify
6 something. Do I understand that we are talking about this term of
7 management but I believe that the exhibit makes reference rather to an
8 invitation -- excuse me, the only thing is that Mbulo's name appears in
9 the list of participants at that gathering. The name is in the document
10 with regard to contributing to the construction, if I'm not mistaken.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
12 For the time being, we do not have those two exhibits. We do remember
13 them, not in detail but we do not have them before us at the moment. In
14 any event, we have clearly understood what Professor Fofé would like the
15 witness to clarify. All of this appears on the transcript. When the
16 time comes, the Chamber will examine the statement of the witness and the
17 contents of transcript 306, where reference has been made, as has been
18 noted in the transcript just now. We will take the documents in question
19 and review them and see what the position is at that stage. Thank you.

20 Professor Fofé, you may now continue.

21 MR. FOFÉ: (Interpretation) Yes, your Honour. Before continuing,
22 I would like to say that it is not because Mbulo's name appears on the
23 list of people invited, or the list of people who have contributed, and
24 in -- as it happens, he contributed some wood. It is not because his
25 name appears there that he should be considered to have been involved in

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1 the management of the health post.

2 PRESIDING JUDGE COTTE: (Interpretation) We have understood that
3 clearly. Everybody is adding their own qualifications to this. You may
4 continue.

5 MR. FOFÉ: (Interpretation)

6 Q. Chief Manu, the Prosecutor asked you a lot of questions, making
7 reference to your interview with him in Entebbe. We know that that
8 interview took place from the 19th to the 21st of March, 2009, and the
9 transcript of that interview reaches 312 pages in length. That
10 interview, therefore, took place before the Prosecutor's visit to Zombe
11 the visit of the Prosecutor of the ICC to Zombe took place on the
12 10th of July, 2009.

13 Chief Manu, let us refocus on the context of that interview that
14 you had with the Prosecutor in person in Entebbe, from the 19th to
15 21st of March, 2009. This is my first question: Did the Prosecutor ask
16 you questions about the attacks on your -- of which your groupement was a
17 victim, between 2001 and the end of 2002?

18 A. Counsel, would you please ask your question again?

19 Q. I will repeat the question. When you had your interview in
20 Entebbe with the Prosecutor from the 19th to 21st of March, 2003
21 (* as interpreted), did the Prosecutor ask you questions about the
22 attacks on your groupement between 2001 and the end of 2002?

23 A. Yes. He asked me questions on that matter, and I gave
24 explanations concerning the way in which we were attacked from all sides.
25 I remember that I was asked such questions.

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1 Q. Without going into detail, what did you tell him about this?

2 A. I told the Prosecutor that we had been attacked from all sides,
3 and I gave those explanations to the Prosecutor of the court. I gave him
4 those explanations also.

5 Q. Still during the course of this long interview, did the
6 Prosecutor ask you questions about the absence of the Congolese state in
7 Ituri in general and in Bedu-Ezekere in particular during that period,
8 2001 to the end of 2002?

9 A. I no longer recall. I no longer remember whether such a question
10 was asked of me or not.

11 Q. Chief Manu, we are still in Entebbe, so we are talking about your
12 interview you with the Prosecutor in Entebbe in March 2009. During those
13 interviews, did the Prosecutor ask you questions concerning
14 Mathieu Ngudjolo's involvement in the attack on Bogoro of the
15 24th of February, 2003?

16 A. Yes. He asked me a question about this.

17 Q. And what was your answer on that matter?

18 A. To that question, I gave the answer that that was false and that,
19 under no circumstances could I accept such an allegation. The Prosecutor
20 retorted, "You are saying that because Mathieu Ngudjolo is your brother."
21 And he left it at that.

22 MR. FOFÉ: (Interpretation) Could I please ask the interpreter to
23 switch the microphone off when he has finished interpreting so that I
24 know that he has finished?

25 THE INTERPRETER: The Swahili interpreter says yes, thank you.

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1 MR. FOFÉ: (Interpretation) Presiding Judge, learned friends,
2 I would like to make reference to the document DRC-OTP-1043-0536. This
3 is, your Honour, the interview with Chief Manu in Entebbe.

4 PRESIDING JUDGE COTTE: (Interpretation) This is Exhibit 28?

5 MR. FOFÉ: (Interpretation) I don't have the number on the list.

6 PRESIDING JUDGE COTTE: (Interpretation) I believe it is item 28
7 on the list disclosed by the Prosecutor, 1043, 0536. It is that
8 document; 21st of March, 2009, is the date of the document.

9 Professor Fofé, you may continue.

10 MR. FOFÉ: (Interpretation) I would invite you, Presiding Judge,
11 your Honours, learned friends, to look at the page ending with the figure
12 0563. In other words, that is page 27, line 486 to 902.

13 MR. MACDONALD: (Interpretation) Your Honour, my learned friend
14 is going to formulate the Prosecutor's objection to the use that my
15 learned friend on the Defence team could make of such a document in his
16 re-examination, a statement that is a prior statement. So I'm standing
17 to say that it is going to be my colleague who will make the objection at
18 the appropriate time, if necessary, to the question which my learned
19 friend is making.

20 PRESIDING JUDGE COTTE: (Interpretation) I give you the floor,
21 Madam.

22 MS. FROLICH: (* Microphone not activated) Thank you,
23 your Honours. I'm sorry, I wasn't -- my mike was not on.

24 Mr. President, the Professor Fofé is now trying to use a prior
25 statement of the witness which is, well, whether inconsistent or not,

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1 he's at this point trying to refresh the witness's memory with the
2 statement, and I understand that at this point that he's trying to make
3 an application to refresh the witness's memory on this issue. Now, to
4 the extent that that application is being made, let me say that the
5 Prosecution is opposed to that application, if it is indeed being made,
6 because the way the witness has been responding to questions so far and
7 clearly being able to remember issues that were -- that were broached
8 during his direct examination and cross-examination. So, Mr. President,
9 we are opposed to that application and it is an inappropriate use of the
10 statement of the witness at this stage of the proceedings. Thank you.

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

12 Professor Fofé, we would like to respect the context of those
13 last comments. The witness, Madam Prosecutor, is actually answering a
14 question concerning the answer he may have given to a question put by
15 Mr. Moreno Ocampo in July 2009. The witness has just told us that for
16 him those were not his exact words. I don't have the transcript before
17 me but the challenge to Mathieu Ngudjolo is something he felt could not
18 be envisaged.

19 The Prosecutor continued along the same lines for a short period
20 in the document which is identified as number 28 on your list. That
21 appears to go along the same lines as what the witness has told us.
22 Professor Fofé, please go ahead, ask your question but please be brief.

23 MR. FOFÉ: (Interpretation) Yes, thank you very much. Thank you,
24 your Honour. Your Honour, I would like to draw your attention to the
25 fact that the Prosecutor made serious allegations when he was

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1 cross-examining Chief Manu. I do not want to go into detail but please
2 remember that he used the term "collusion."

3 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, let us
4 remember that that is a term that cropped up in isolation, with no words
5 before it or after it, when the Chamber was asking the Prosecutor exactly
6 what the Prosecution's strategy and line of questioning was. All of us
7 were trying to orient ourselves. And the Prosecutor used that word.
8 I think that in the immediate term what is important is that you should
9 conduct your re-examination according to the standard rules. You should
10 avoid leading questions. You should obtain from the witness the points
11 of clarification that you would like, only with regard to the subjects
12 raised in cross-examination or in the context of the questions put by the
13 Bench. Let us not go back too far over the contents of the earlier
14 hearings of this witness. We are reaching the end of his testimony. We
15 would like to ask you to continue your questioning. Please go ahead.

16 MR. FOFÉ: (Interpretation) Thank you very much, your Honour, and
17 I would like to acquiesce respectfully. In my final questioning, I would
18 like to highlight the demonstrations made by the Prosecutor. Let us
19 remember that in the meetings or the visit of the Prosecutor -- actually,
20 could I rephrase that in order to be clear? Presiding Judge,
21 your Honours, please remember that in talking about the Prosecutor's --
22 the visit of the Prosecutor of the ICC to Zumbe, the Prosecutor who is
23 here in this Chamber alluded to meetings which allegedly took place
24 earlier. What I am aiming to do is demonstrate to the Chamber that even
25 before the Prosecutor's visit, the witness had given all of this

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1 information to the Prosecutor. That is what I am demonstrating. And in
2 order to do so, I am making reference to passages from the interview that
3 the Prosecutor conducted in the month of March in Entebbe. That is my
4 demonstration, your Honour.

5 PRESIDING JUDGE COTTE: (Interpretation) Quite, Professor Fofé.
6 This is a point that we three on the Bench will debate at the appropriate
7 time but what we believe we have understood from the debates is that on
8 the one hand, the statements taken in March 2009 by the Office of the
9 Prosecutor, acting in its investigatory capacity, both for and against
10 the accused persons, in one of those statements in March 2009, you are --
11 there is content that you're exploring at the moment. And then there was
12 the visit from the Prosecutor of the ICC in office, Mr. Moreno Ocampo, in
13 July 2009. We will have to reread all of the debates to make certain,
14 but we believe we have understood that that visit was not conducted in
15 the specific context of an investigation but was, rather, conducted in
16 the context of what we would call outreach or perhaps in the course of
17 that visit, Mr. Moreno Ocampo had the opportunity of engaging in
18 discussions with given individuals and, in particular, with Chief Manu,
19 who is here with us today. But I believe, and for the moment I say that
20 provisionally, I believe that we should not consider these two visits as
21 having an equal status. There was the investigatory visit in March 2009.
22 Chief Manu and his interview with the Prosecutor on the one hand, and on
23 the other hand, the visit of Mr. Moreno Ocampo, the ICC Prosecutor, in
24 July 2009. Now, we don't intend to stop you from drawing connections
25 between the two visits but we need to be quite clear in understanding the

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1 precise context of these two visits to the DRC. You may continue.

2 MR. FOFÉ: (Interpretation) Thank you very much, your Honour. I
3 have clearly followed what you have said, but if I may, I would like to
4 highlight one point. I am not trying to compare the interview with the
5 Prosecutor in March 2009 and the visit of Mr. Moreno Ocampo, the ICC
6 Prosecutor, in July 2009. It is rather what the Prosecutor has stated
7 here in this Chamber before the Court to the tune that there may have
8 been an earlier visit to deal with there question, an earlier visit on
9 the parts of Mr. Moreno Ocampo before that interview. What I'm trying to
10 do is demonstrate to the Chamber that Chief Manu's testimony has never
11 varied from March 2009 onwards. That what is I'm aiming to show.

12 PRESIDING JUDGE COTTE: (Interpretation) I believe we have
13 understood that but it was important to specify. You may continue.

14 MR. FOFÉ: (Interpretation) Thank you very much. So, your Honour,
15 to demonstrate to you that Chief Manu had already given this answer, may
16 I make reference to this document DRC-OTP-1043-0536, on the page which
17 ends 0563, in other words page 27, line 886 to 902. I will just read out
18 the questions and answers quickly.

19 Question from the Prosecutor, Eric MacDonald. Question:

20 "And that Mathieu Ngudjolo had absolutely nothing to do with that
21 attack."

22 Answer:

23 "Before God, Mathieu Ngudjolo was not in that attack."

24 That is line 889. So I read out like 886 and then line 889.

25 And then line 893, the Prosecutor, and I quote:

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1 "So, you must consider that the accusations made against
2 Mathieu Ngudjolo now are an incredible injustice. Is that not true?"

3 Chief Manu's answer, line 901 to 902:

4 "If it is being said that Mathieu Ngudjolo attacked Bogoro,
5 I refuse to accept that and I hold to that regardless."

6 Q. Chief Manu, that is your answer, the answer that you gave in
7 Entebbe, is it not so?

8 A. That is correct, and furthermore, in this Chamber, I said the
9 same thing. I said that and I say this before God and before the Judges,
10 I am stating what I know. If somebody else is saying something else in
11 their own interests, that is their problem but I say this before God and
12 before everybody. It is the truth.

13 PRESIDING JUDGE COTTE: (Interpretation) All right.

14 Professor Fofé, we realise now that Chief Manu has been very consistent,
15 said the same thing in March 2009, in July 2009, and in September 2011.
16 So it would appear to the Chamber that the use of this statement must now
17 come to an end. We have understood that Chief Manu is maintaining a
18 position that he has already stated, and I think that it is clear for
19 him. It perhaps was not clear for everybody. Perhaps some other have a
20 different point of view, but, in any case, he has quite clearly indicated
21 to us what his position is. I think that we can leave it at that, as far
22 as his feeling concerning any possible participation of Mathieu Ngudjolo
23 goes. That is his point of view. That is his truth. He has just stated
24 that once again. So Professor Fofé, let us continue.

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

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1 I bow to your decision, your Honour, but I had the same sort of
2 question concerning the people from Zumbe, but I might leave it at that.

3 PRESIDING JUDGE COTTE: (Interpretation) Excuse me, Professor, our
4 concern is that at this stage, you do not need to rely on earlier
5 statements of the witness to the OTP in order to corroborate, in a way,
6 things that he has said here in the Chamber. What is important is what
7 he stated here in the Chamber. If you require clarification concerning
8 something that he has said here because you need those clarifications to
9 be on the record, then, of course, you may ask those questions. The
10 procedure might seem a little unorthodox, to -- if I can put it this way,
11 to grasp at statements that were made before the OTP in order to
12 reinforce something that the witness has already said here in Chamber.
13 That is what we are getting at and what we want you to focus on. So you
14 may continue your questioning.

15 MR. FOFÉ: (Interpretation)

16 Q. Chief Manu, from your testimony, it transpires that in Entebbe,
17 the Prosecutor put some questions to you as regards your journey to Beni
18 in November 2002. Did the Prosecutor put any questions to you on the
19 structure to which you referred and which is known as EMOI, E-M-O-I?

20 THE INTERPRETER: We did not get the answer.

21 MS. FROLICH: This is really the same issue as before and
22 Professor Fofé is really doing the same thing that he was now already
23 broached two times before. And I believe it is inappropriate considering
24 also what your Honours have stated before on the record on this issue.
25 So this is inappropriate and we should not proceed on these terms,

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1 Mr. President.

2 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, in fact,
3 you would have to refresh my own memory now. In the course of the
4 cross-examination, did we broach the issue of the role that may have been
5 played by what is known as the EMOI, E-M-O-I? If we did broach that
6 through the Prosecutor, that particular role played by EMOI in the course
7 of the cross-examination -- my memory may not be serving me right now
8 because, in fact, if the witness or EMOI were never the subject of any
9 questions in the course of the cross-examination, you would have to
10 proceed to another line of questioning because here really within the
11 framework of something that was broached for more than ten hours by the
12 Prosecutor in the course of his cross-examination.

13 MR. FOFÉ: (Interpretation) Thank you very much, indeed,
14 your Honour. This was an introductory question to allow us to lead to
15 that person known as Baraka. I could go perhaps right to the point and
16 straight to Mr. Baraka, the person known as Baraka. And in which case
17 very respectfully, sir, I would refer you to transcript 306, French
18 version, page 27, lines 20 to 28. The whole of the page 28, and page 31,
19 lines 24 and 25.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor.
21 Madam Prosecutor, you stood up. Do you wish to proceed, Madam? You have
22 a reference now to this transcript, 306.

23 MS. FROLICH: The point was merely to point out that again just
24 to indicate if the -- if -- we are going on questions whether or not the
25 witness stated something in his prior statement which is consistent with

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1 what he's talking about at this point, that is something that should not
2 be allowed. Simply for the fact that if something was said 10,000 times
3 before already, it does not add any more value to what the witness is
4 saying now under oath before this Chamber. And therefore like
5 your Honours have stated, I did not wish to maybe repeat myself but
6 perhaps thought that I should restate the point that this is not an
7 appropriate use of the statement, this reference to his prior statements,
8 where same or similar words were used by the witness or a similar
9 statements were made by the witness. That is simply something that has
10 no use in this -- in these proceedings. Thank you, Mr. President.

11 PRESIDING JUDGE COTTE: (Interpretation) Well, Professor Fofé, I'm
12 sure you have understood. I'm sure you're going to say that you have
13 understood that this -- the very final chance at conducting an
14 examination and you have understood what our concern is, to make sure
15 that in this transcript only appear such points as to you appear to be
16 important, indeed, essential. However, let us not repeat things over and
17 over. If in the transcript, already do appear very clear answers from
18 the witness to clear questions, let us not ask the witness to reconfirm
19 all of that now because this could take us very far. However, if you
20 wish to obtain, and I will go back to this and you know quite well that
21 would I agree with that, if you wish to obtain some -- something by way
22 of a supplement, something else that you would like to hear, that you
23 would have wanted to hear a few days ago and you had not heard, in that
24 case, indeed you could proceed but only along those lines.

25 MR. FOFÉ: (Interpretation) May I please be allowed to answer

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1 first.

2 PRESIDING JUDGE COTTE: (Interpretation) By all means.

3 MR. FOFÉ: (Interpretation) I'm obliged, sir. I know what a
4 supplementary examination is. And at this particular point, what I'm
5 seeking is some clarification of some points that remained obscure.

6 PRESIDING JUDGE COTTE: (Interpretation) Then by all means.

7 MR. FOFÉ: (Interpretation) I wanted to ask a few questions on
8 Baraka, but, beforehand, I shall give Mr. O'Shea the possibility of
9 intervening. But with your indulgence, your Honour, I should like to
10 humbly draw the attention of this Bench to the fact that our concern is
11 to address the allegations from the Prosecutor, and we have noticed that
12 the Prosecutor does not want us to address these allegations. And may
13 I already announce to you, sir, that I would have a question to ask as
14 regards the word "confidential." I will have a question to ask on that
15 particular point. I'm speaking about confidential matters. A discussion
16 took place between the Prosecutor and the witness, so it behoves us to
17 shed light on that type of discussion in order to clarify matters. So to
18 be brief, on the question of Baraka, I'd like to put forward some
19 clarification questions and then I shall conclude this examination with
20 some questions on the term confidential. But before I do so, sir,
21 Mr. O'Shea wishes to speak.

22 PRESIDING JUDGE COTTE: (Interpretation) Yes. I will call on
23 Mr. O'Shea, but, please, Professor Fofé, let there be not any
24 misunderstanding amongst us, but Mr. Baraka obviously is mentioned in the
25 transcript and you can ask some supplementary questions on him, on

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1 Beni, et cetera.

2 Mr. O'Shea, you wish to speak, sir. Please proceed.

3 MR. O'SHEA: Yes, Mr. President, you will understand that we
4 represent distinct interests in this trial, and we would prefer that the
5 issue of Baraka is not broached in terms of what the witness said in his
6 interview to the Prosecutor. If I have to go into further detail on
7 this, I would prefer to do so in the absence of the witness.

8 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé,
9 Prosecutor.

10 MR. MACDONALD: (Interpretation) Very briefly, sir, with your
11 leave, in order to solve this question, my colleague said that he wanted
12 to ask some further questions of clarification in reference to the fact
13 that the witness actually himself in a way brought up the whole matter of
14 about Baraka or perhaps other questions surrounding that, but my
15 colleague, Mr. O'Shea, had said something in respect of the way in which
16 perhaps what was said earlier by the witness may be used in a leading
17 manner, in order to have this question being raised, and on behalf of
18 Mr. Katanga, he raised an objection. It seems to me, indeed, sir, that
19 questions may be asked of the witness but without it being a leading
20 question because the statement is not there in order to refresh the
21 memory of the witness, first of all; and in the second place, as you,
22 yourself, said, your Honours, with regards the question of responsibility
23 of Mr. Mathieu Ngudjolo, as far as that witness is concerned, and his own
24 truth is concerned, the same principle applies to Mr. Baraka and it's not
25 just because before this subject or any other subject for that matter was

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1 the subject of a testimony here in this room, and he may have been
2 broached also in the interview with the Prosecutor, that we should take
3 that for granted, all of these statements made to the Prosecutor, because
4 that would simply be a repetition of something that has already been said
5 and the probative value of this, certainly when you come from a common
6 law system, is indeed very low, not to say totally inexistent.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
8 Mr. Prosecutor. Thank you, Mr. O'Shea. Professor Fofé, right now, sir,
9 I would have you refer to paragraph -- or, page 27 of transcript 306.
10 You have understood the comments made by Mr. O'Shea. We are now in the
11 very ultimate phase of your re-examination to obtain some additional
12 clarifications from our witness. The objective of which will not be,
13 obviously, I'm quite sure that this is not the objective you're pursuing
14 in this ultimate observations, which do not have as an objective the fact
15 that he should make any statement that may be incriminating to another
16 accused person. So you will enable this Bench to be even better informed
17 through your questions, in your ultimate questions of this witness but
18 within a very strict framework, i.e., once again, non-leading questions,
19 analogous to those that are asked in the course of an
20 examination-in-chief. Professor, please carry on, sir.

21 MR. FOFÉ: (Interpretation) Thank you very much, your Honour. In
22 preparing these ultimate questions, my concern was trying to shed further
23 light for the benefit of the Bench on these matters. But account taken
24 of the various objections raised, I drop this matter.

25 Q. Chief Manu, you have this lengthy interview with the Prosecutor

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1 at Entebbe between the 19th and the 29th of March, 2009. To your
2 knowledge, what happened? What is it that led the Prosecutor to take the
3 decision not to call you to bear witness in this Chamber? I should like
4 to ask a very simple question of you. You had a very lengthy interview
5 with the Prosecutor between the 19th and the 29th of March. To your
6 knowledge, sir, simply to your knowledge, why is it that the Prosecutor
7 in the end did not call you here to bear witness before this Bench.

8 THE INTERPRETER: We cannot hear the Swahili interpreter into
9 French. The English interpreter should like to point out we are not
10 getting the Swahili interpreter. Now we are. Now we are. Chief Manu's
11 answer is the following one:

12 THE WITNESS: (Interpretation) The Prosecutor told me after that
13 lengthy interview that I was Ngudjolo's brother. I gave him very clear
14 explanations showing that Ngudjolo never took place in that fighting. He
15 understood that and this is the reason why he didn't invite me. He
16 understood what my answer was and this is why he decided not call me as a
17 witness. This being said, he did invite me to Entebbe to a conversation
18 with him. I went to Bunia where we met for three days and then
19 I returned to my own place. I went back home. And at that time I had no
20 idea what his position was going to be on that subject. It was very
21 difficult to know.

22 MR. MACDONALD: (Interpretation) Just for your information, but
23 it seems to be that the witness said that there were three days in Bunia,
24 but it was three days in Entebbe, probably it is a *lapsus linguae* on the
25 part of the witness. It is Entebbe, that is quite clear. I'm saying

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1 this for the transcript says Mr. Macdonald.

2 THE WITNESS: (Interpretation) Yes, yes, yes, Mr. Prosecutor, we
3 spent three days in Entebbe. It was a three-day interview in Entebbe and
4 not in Bunia.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you to both of you.
6 Professor Fofé, please.

7 MR. FOFÉ: (Interpretation) Presiding Judge, your Honours,
8 I should also like to refer to the same transcript, 306, the hearing of
9 the 8th of September, 2010, page 50, lines 3 to 28, as well as page 51,
10 lines 1 and 2. There, there was a discussion between the Prosecutor and
11 our witness, Chief Manu, on the term "confidential." On page 50, lines 3
12 to 7, this is the question from the Prosecutor. I'd like to take an
13 excerpt of that question. Lines 3 to 7. I'm quoting.

14 Q. Chief Manu, I'm simply going to go back over your last answer.
15 When you said on page 17, no, when you said on line 17 of page 62:

16 "Who could have made that statement to me, when in fact you said
17 that these things were confidential? I shall stop here. Did I say that
18 those things were confidential? I never said that. Why is it that
19 you're saying that that statement was confidential?"

20 End of quote, and I shall stop there.

21 The answer by Chief Manu, same page. I'm just taking lines 12
22 and 13, but I could go down to line 16. However I'll stop after line 13,
23 only lines 12 and 13, and I quote, and it's Chief Manu answering:

24 "Mr. Prosecutor, you personally, in Entebbe, you said that you
25 would not show me a tape because it was confidential."

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1 And lower down, lines 24, 25, Chief Manu added, and I quote:

2 "Tell me if you never said that that videotape was confidential.

3 These are the words I'm waiting for you to say."

4 And then on page 51, the Prosecutor carries on, lines 1 and 2:

5 "Chief Manu, on these documents, the transcripts -- a reference
6 to the word 'restricted.' The word 'confidential' does not appear."

7 Now, my question to you, Chief Manu, is this.

8 A. Please, sir, before you ask any questions of me, there is
9 something that I should like to emphasise. When you say "show" or
10 "bring," there is a difference. I saw -- I don't want you to say "show."
11 When you read that out, you said that something was shown to me but you
12 shouldn't say "shown" but something was brought to me, because I am
13 trying to remember what happened, and I can tell you nothing was shown to
14 me. I would like you to say "brought" instead of "shown." Now,
15 obviously your free to ask your question.

16 Q. My question is this, Chief Manu: In the course of your interview
17 with the Prosecutor at Entebbe, did the Prosecutor clearly tell you that
18 your interview, that the information you were providing him with, was
19 confidential?

20 A. I have already answered that question, and I say yes. You know,
21 before I left Bunia, I was asked not to tell anyone whether I was going
22 to go to Bunia. So the term you are using, "confidential," does that
23 mean secret or not? When you're told not reveal to anyone where you're
24 going, I told my wife that I was going to Kasenyi and that I was going to
25 spend four days in Kasenyi and I didn't tell the truth to my wife before

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1 God, I told her I was going to Kasenyi for four days and I even gave her
2 money to buy food with, so that is a secret. This is a word I believe
3 that means secret or confidential. So I even had to lie to my own wife.
4 I told her that I was going to Kasenyi when, in fact, I was in Kinshasa.
5 It is the word confidential or secret. This is a term that was used in
6 my interview with the Prosecutor. And I do confirm that I was told to
7 keep that as a secret.

8 Q. Thank you, sir.

9 MR. FOFÉ: (Interpretation) Your Honour, these are the questions
10 that I had foreseen. My very final question was just a question of
11 justice vis-à-vis the witness. I crave your indulgence. May I give you
12 the reference to the screening notes where Manu and the Prosecutor do
13 refer to confidential? I'm saying this, sir --

14 PRESIDING JUDGE COTTE: (Interpretation) There is a nuance. Let
15 us speak slowly and let us respect the five-second rule because
16 otherwise, we simply cannot carry on in this manner.

17 MR. MACDONALD: (Interpretation) Your Honour, my colleague is
18 quite right. My colleague couldn't have been told exactly the same thing
19 in Bunia as he was told in Entebbe, orally, verbally. The nuance is
20 probably a difficult nuance. But the witness himself says the document
21 is marked as confidential. And as a matter of fact, the witness himself
22 was not able even to see that document which was marked as confidential,
23 or as we call it, restricted. This is the point that has been raised by
24 the accusation. That's all. And nothing more than that.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much

1 indeed, sir.

2 Professor Fofé, carry on.

3 MR. FOFÉ: (Interpretation) Thank you, sir. To be thorough in the
4 role that devolves upon us, it's better to be excessive than not to go
5 far enough. So, your Honour, I would ask you, please, to refer to
6 document DRC-OTP-1043-0158, page 0173 at the end, that is to say page 15.

7 PRESIDING JUDGE COTTE: (Interpretation) That is Exhibit 16 on the
8 Prosecutor's list. You spoke of which page, Professor?

9 MR. FOFÉ: (Interpretation) The page that ends with 0173, page 15,
10 lines 506 to 523.

11 PRESIDING JUDGE COTTE: (Interpretation) You're not going to read
12 everything? You'll get down to brass tacks.

13 MR. FOFÉ: (Interpretation) No, I was not going to read it. And
14 then the following page, 0174, line 524 to line 527.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well, then. What is
16 this concern for equity that you wish to uphold?

17 MR. FOFÉ: (Interpretation) It was simply to show, sir, that in
18 the course of that interview, the Prosecutor did use the term
19 "confidential," did, in fact, refer to matters which were confidential,
20 and that is precisely what our witness, Chief Manu, said here to this
21 bench. That is it, Presiding Judge, your Honours.

22 Chief Manu, there remains for me now to convey to you my thanks,
23 my heartfelt thanks, for having accepted to undertake this lengthy
24 journey, in order to come here and testify in front of the
25 Honourable Judges, and you have done this publicly, as a good servant of

1 the truth and of justice and I thank you, sir.

2 Thank you very much, your Honour. Thank you, members of the
3 Bench, in keeping with the decision of this Chamber, Mr. Mathieu Ngudjolo
4 should like to greet Chief Manu and bid him fare well, as all of us
5 members of the Defence team of Mathieu Ngudjolo. Thank you very much,
6 your Honour, and Honourable Judges.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
8 Professor Fofé. Chief Manu, you have been with us since the
9 29th of August, I believe. Lengthy period. And you have made your
10 contribution to the work of this Chamber, providing answers to all the
11 questions put to you. And indeed there have been very many of these
12 questions, and before that in a very short period of time, you had to
13 reread the very many documents involved. So coming to testify in The
14 Hague is no pleasure trip, as you may have seen for yourself.

15 We should like to thank you, sir, for having come all the way
16 here in order to give to this Chamber your contribution and share with us
17 your own view of things and your own understanding of the facts. You
18 have answered very, varied questions including even the question of
19 knowing what is Bongoro (* phon) to which you referred last Friday, and
20 which was extremely interesting. What you had to say about that, I must
21 say, was very instructive. You will now return to your country, sir. We
22 wish you a safe return home. We shall suspend this hearing -- I'm sorry,
23 Mr. O'Shea, please.

24 MR. O'SHEA: I should excuse myself for interrupting at an
25 inappropriate moment but it's just to inform the Chamber that it's our

1 understanding that this witness would like to see Mr. Germain Katanga,
2 and if the Chamber is happy with that, Mr. Katanga would be ingratiated
3 to receive him.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea,
5 and, in fact, I was coming to that. Court Officer, we are going to break
6 earlier than usual.

7 MR. KILENDA: (Interpretation) I'm sorry for disturbing but I'd
8 like to ask the Chamber to remind Chief Manu that whatever was said here
9 should not be repeated outside of the courtroom.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.
11 I have a check-list in my mind, that is after the testimony of each
12 witness.

13 Mr. MacDonald.

14 MR. MACDONALD: (Interpretation) Yes, your Honour, I believe I
15 have to make my intervention on Wednesday at 9 a.m. about the schedule,
16 but given that our break is at 4 p.m., if we break now we will come back
17 at 6.30.

18 PRESIDING JUDGE COTTE: (Interpretation) No, no, no. What we
19 intended to do was to break at 25 to 4 p.m., and we reconvene at 4.10
20 p.m. to finish at 18.10 p.m.

21 MR. FOFÉ: (Interpretation) I support that schedule and you
22 understand what I mean.

23 MR. MACDONALD: (Interpretation) Wednesday, 9 a.m.?

24 PRESIDING JUDGE COTTE: (Interpretation) Yes, Wednesday, at 9 a.m.
25 Now, Mr. Witness, everything that has been said in this courtroom should

1 be kept to yourself. Please do not discuss it with anyone after your
2 return to the DRC. This is something that is between us. And thank you
3 once again. Everyone has thanked you for your contribution and I would
4 like to repeat that.

5 Last week, we were informed that you wanted to meet not only with
6 Mr. Ngudjolo and his team, for them to thank you, but that you also
7 wished to be given the opportunity to greet Mr. Katanga. We tried to
8 find out whether Mr. Katanga wanted to meet with you and the answer was
9 yes. The Chamber deliberated and we have no objection to you, as a
10 witness, who has spent so much time with us, should be able to briefly
11 meet with Mr. Ngudjolo and then his team, as well as with Mr. Katanga and
12 his team. Court Officer, this should happen during the break, that is
13 during the next 30 minutes. It is now 24 minutes to 4. We are going to
14 break. And to be practical, we will reconvene at quarter past 4 p.m., to
15 conclude at 6.15 p.m. And we will begin the testimony of Witness P-0100.
16 In the time being, Court Officer, please have the Court Usher lead the
17 witness out of the courtroom. And I wish you a safe trip back home,
18 Mr. Witness.

19 THE WITNESS: (Interpretation) Thank you. I want to inform you
20 that I am still at your disposal, and all that is thanks to God.

21 (The witness withdrew)

22 PRESIDING JUDGE COTTE: (Interpretation) A few words before we
23 break. The testimony of Chief Manu was important to Mathieu Ngudjolo's
24 Defence, and also for the Prosecutor, we believe. It was of course very
25 long. We are not saying that it was too long, but we believe that in the

1 conduct of our proceedings, it should be possible to make progress more
2 expeditiously. The witnesses who will be coming next are different. It
3 does not mean that their testimonies would be simpler but we are
4 appealing to all the parties and participants to cut to the chase, to go
5 directly to the heart of the matter, so that we should make progress
6 rapidly. I believe this is part of what the Prosecutor wants to talk
7 about on Wednesday morning. We want the proceedings to be fair, but also
8 expeditious. That is what I wanted to say.

9 This hearing is suspended. We will reconvene at 4.15 prompt.

10 Recess taken at 3.36 p.m.

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