

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 Wednesday, 7 September 2011
10 The hearing starts at 9.03 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, accused persons.
16 Before the witness is brought into the courtroom, as we agreed,
17 we would listen to the observations of those who wish to make such
18 observations on application number 3136 from -- or rather, filed by the
19 Defence of Mathieu Ngudjolo on the 5th of September, indicating that they
20 had difficulties with the proposal to call a witness, a rebuttal expert
21 witness. There had been contact with the Registry to find out who would
22 be responsible for paying the expenses related to that rebuttal expert,
23 but the time has not been well used to resolve the issues. So there is
24 the issue of prolonging the dead-line, extending the dead-line, for that
25 expert witness. And the second point is extending the dead-line of

1 24 hours, as provided for in one regulation of the Regulations of the
2 Registry that I no longer remember. And it stipulates that there should
3 be a time-limit of 24 hours to enable the Prosecutor to consult the
4 originals.

5 You have all looked at the application. Mr. Prosecutor, would
6 you have any specific observations to make about that application?

7 MR. MACDONALD: (Interpretation) Thank you. Good morning,
8 your Honour. Good morning, my learned colleagues.

9 My colleague, Mr. Dutertre, will address the Chamber and give the
10 position of the Prosecution. Thank you.

11 PRESIDING JUDGE COTTE: (Interpretation) Mr. Dutertre, please go
12 ahead.

13 MR. DUTERTRE: (Interpretation) Thank you, Mr. President,
14 your Honours. I will be quite brief. To begin with, the Prosecution
15 notes the delay in the filing of that report. The process started in
16 May/June 2010, when the Defence expressed the need to presented a
17 rebuttal expert witness. Now we are in September 2011 and we still do
18 not have that report. We do not want to apportion blame here, but we are
19 already halfway through the presentation of the case of Mathieu Ngudjolo
20 and practically at the end of the case.

21 We are wondering whether -- even if -- we are wondering whether
22 the report is ongoing or the expert is still about to start. So this
23 causes prejudice on the time necessary for the Prosecution to prepare.

24 Secondly, even though this has been discussed for a long time,
25 the Prosecution would -- the Defence wanted to file a Rule 35

1 application. They had said that the process had started, but that did
2 not waive their obligations.

3 Thirdly, the Prosecution would need time to prepare once we have
4 the report. The report deals with three witnesses, it is technical, and
5 it would be necessary for the Prosecution to digest the information from
6 the expert in order to be able to analyse it, even if at the end we do
7 not have any specific observations to make. It is, therefore,
8 regrettable that we do not yet have this report.

9 Fourth point, your Honours, the main concern is the schedule for
10 the hearings and for the appearances of witnesses. This report had to be
11 discussed before the testimony of the two accused persons.

12 Now, if the testimony of the expert is postponed, then it would
13 be necessary to postpone the testimony of the accused because that would
14 create a problem with regard to the right of the accused persons to have
15 a fair and expeditious trial. That being the case, the Prosecution would
16 like to make the following proposal: Given the rather limited scope of
17 the report which does not touch on the responsibility of the accused, it
18 would be possible - with the agreement of the Defence teams and the
19 Defence team and their client - to envisage the possibility of the
20 witness testifying after the testimony of the two accused persons. And
21 this, considering the possible responsibility of the accused persons in
22 the attack that is being discussed. So that would make it possible for
23 us not to have to postpone the testimonies and conclude the trial
24 procedure within a reasonable period of time.

25 Mr. President, I would also like to touch on the fact that it is

1 one expert and not two experts who is going to testify -- who are going
2 to testify. I believe you underscored that at one point, but in the
3 filing by the Defence of Mr. Ngudjolo mention is made of two experts.
4 And I would like to call on the Defence to contact the witness that they
5 intend to call. So they need to cross-check with that expert regarding
6 his schedule well in advance so that we do not have problems with this
7 witness making time to appear before this Court.

8 Incidentally, I would like to point out that only one of those
9 witnesses is a doctor, and I can see that in the Defence filing both of
10 them are referred to doctors. But only one of them is a doctor.

11 Regarding the documents that are to be dispatched, we have no
12 problem with that, but there -- it has to be done within a well-defined
13 period of time because I believe they do not need too much time to look
14 at X-rays, and so on and so forth. It is possible for the expert to even
15 come here to look at the documents, but obviously if the documents have
16 to go out we have to think of problems that have arisen in the past, such
17 as lost documents and so on. So they could be sent by messenger to
18 ensure security, pursuant to Regulation 16 of the Regulations of the
19 Registry. So we have to -- very clear about that to ensure that the
20 documents are out only for a very specific period of time. The expert
21 can examine the documents and the messenger will go and retrieve the
22 document.

23 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, I will
24 interrupt you. You would have realised that in the application there was
25 a proposal which seemed to be given priority; that is, they would allow a

1 Defence assistant to travel to Lyon and the period involved would be
2 48 hours.

3 MR. DUTERTRE: (Interpretation) Very well. The two
4 possibilities were envisaged by the Defence, that is, sending a messenger
5 and using the post office.

6 PRESIDING JUDGE COTTE: (Interpretation) That was point 6?

7 MR. DUTERTRE: (Interpretation) Yes, that was point 6. So to
8 conclude, your Honours, the Prosecution regrets this delay and would like
9 to make a proposal that would not disrupt the schedule of the proceedings
10 by -- and we propose that the expert should testify after the testimonies
11 of the accused persons. The documents should not be allowed to go out
12 except taken by a messenger. That is all, your Honour. Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much for
14 those brief and concise observations.

15 Mr. O'Shea or Mr. Hooper, if you would like to react to these
16 points, there are two issues: The application by Mr. Kilenda and the
17 possible observation that you might have regarding the proposal of Mr. --
18 of the Prosecutor to the effect that in case of need this rebuttal expert
19 witness should testify after the testimonies of the two accused persons.
20 Do you have an observation? Mr. Kilenda will make his own observation
21 later.

22 MR. O'SHEA: (Previous translation continues) ... your Honours.
23 The Defence for Germain Katanga has no comment on the first of the two
24 issues which your Honour raises. With regard to the observations of the
25 Prosecutor, one would have thought that the testimony of this witness

1 would not impact on the way in which Germain Katanga would give evidence,
2 but the problem is that one never knows before a witness comes in the
3 box, one never knows. You know, you say an expert and you can make
4 certain assumptions about it, but one never knows. I think in those
5 circumstances, I don't think we would be happy with the idea of having
6 any witness prior to the evidence of Germain Katanga, because of course
7 that would put him on a different footing to Mathieu Ngudjolo if -- if
8 the Defence for Mathieu Ngudjolo decided otherwise.

9 PRESIDING JUDGE COTTE: (Interpretation) The Chamber is not
10 taking sides at this point, but it appeared to me that the proposal of
11 the Prosecutor was to possibly have this rebuttal expert witness after
12 the testimonies of the two accused persons and not in between
13 Germain Katanga and Mathieu Ngudjolo. But I believe that will not change
14 your point of view.

15 MR. O'SHEA: (Previous translation continues) ... complicated,
16 and once you place it in the context of the two accused then it becomes a
17 matter of principle, I think, because you just never know what happens.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

19 Mr. Luvengika, Ms. Goffin, do you have any observations? Then
20 I'll give the floor to afterwards.

21 MR. LUVENGIKA: (Interpretation) Thank you, Mr. President,
22 your Honours. As far as I'm concerned, with regard to the six points
23 raised by the Prosecutor, I agree with them except two, and that is
24 point 3, when the Prosecutor proposed that the expert should testify
25 after the two accused persons. In this case, I subscribe to Mr. O'Shea's

1 position.

2 That is, I would like the expert to testify before the two
3 accused persons which would enable those two accused to make their
4 observations at the end. My second reservation concerns the proposal of
5 the Prosecutor regarding documents which are already in evidence that
6 have to be sent to Lyon without specific protection, and I'm wondering
7 whether the Registry might not make an effort to find a possibility, that
8 is, if the two Defence teams accept to make it possible for these
9 documents to be examined here at The Hague in the presence of
10 representatives of the Registry, so as to ensure that there is no problem
11 at all with the documents and X-rays. That is what I wanted to add to
12 what the Prosecutor has said.

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

15 Maître Goffin?

16 MS. GOFFIN: (Interpretation) Thank you, your Honours. Good
17 morning. Very briefly, I wanted to underscore the fact that we regret
18 the uncertainty in which we find ourselves at this late stage of the
19 proceedings regarding the appearance of a witness, and then there is the
20 use of documents that has to come under -- that has to be the subject of
21 a Rule 35 application. I would like this seize this opportunity of being
22 on my feet to inform you that Ms. -- Madam Claire Martin is present with
23 us this morning and she is a pro bono intern within the team of
24 Mr. Gilissen.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

1 Maître Goffin. I'm sorry, at the beginning of the hearing, I should have
2 given you the floor to introduce your new intern. I apologise and we
3 would like to welcome our new intern, and we wish you great success
4 during your internship.

5 Mr. Kilenda, very briefly, because you are the one who filed that
6 application and your points of view are already included therein.

7 MR. KILENDA: (Interpretation) Good morning, Mr. President.
8 Good morning, your Honours. Very briefly, the Prosecutor is well within
9 his rights to regret the delay, but I would like to point out that that
10 delay is not attributable to us. You have our filing. The Registry
11 pointed out to us that the experts could not start their work unless the
12 problem of their fees have been resolved, but the decision on this was
13 taken by the Registry on the 1st of August and notified to the Defence
14 team on the 3rd of August. And we immediately transmitted that decision
15 to Lyon.

16 I would like to point out that those two experts are university
17 professors and they were on holiday, but ever since their return, we have
18 been in contact with them to ensure that there is no delay in our work.
19 That was the first point.

20 The second point, your Honour, concerns the order of appearance
21 of our witnesses. We did -- we do not wish to disrupt that order. We
22 would like the experts to testify before the accused persons.

23 Lastly, regarding the possibility of sending documents in
24 evidence to Lyon, we would like to draw the attention of everyone to the
25 fact that the regulation that we quoted in our filing allows the

1 possibility of consulting exhibits outside of their Registry. We had a
2 concern of not -- unnecessarily taxing the finances of the Court. We
3 would have wanted the experts to travel here, but please bear in mind
4 that there are serious financial implications involved. So the proposal
5 that we made, that is, to send a legal assistant to Lyon, remains very
6 reasonable. And for all other issues, we refer you once again to our
7 application, which remains very relevant. Thank you.

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

9 Thank you to all the parties and participants for being brief.
10 We will deliberate and then we will hand down an oral decision as quickly
11 as possible because time is of the essence.

12 We also regret the fact that at the national and at the
13 international levels budgetary considerations should have such an impact
14 on judicial proceedings. So the cost of the expert witness testimony had
15 an effect on our deliberations, but we will try to make that effect as
16 insignificant as possible.

17 At the end of the session yesterday, Mr. O'Shea made a certain
18 number of legal arguments which were prompted by a question put to the
19 witness by the Prosecutor at 3.15 p.m. -- at 1.15 p.m.. Correction.

20 We re-read the transcript yesterday, and he had concluded his
21 demonstration, his objection, when we broke at 1.30. It is now up to the
22 Prosecutor to make his observations and we would like to ask him to make
23 them as briefly and as concisely as Mr. Dutertre did a short while ago.

24 Please proceed, Mr. Prosecutor, and afterwards we will resume our
25 proceedings under the best possible conditions, with a view to making it

1 possible to have the fairest possible proceedings. Please proceed.

2 MR. MACDONALD: (Interpretation) Thank you, Mr. President. I
3 will attempt to imitate my learned colleague, Mr. Dutertre, following the
4 pressure from your Chamber. As it was announced a few days or weeks ago,
5 this point is a very important point. This is the first case in the ICC
6 with co-accused persons and some other cases will follow. So I am sure
7 that Mr. Hooper is very attentively following the proceedings because he
8 is representing another accused person in another case.

9 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed,
10 Mr. Prosecutor, but please bear in mind that yesterday the Chamber
11 already expressed an opinion on the issue raised by Mr. O'Shea and which
12 you are going to comment on. We recommended what we thought could be the
13 mode of cross-examination that could be acceptable when we find ourselves
14 in a situation such as the one that we find ourselves in. So please do
15 not go back too far in time. We are listening to you.

16 MR. MACDONALD: (Interpretation) The Chamber pointed out that it
17 was an open question, and this is reflected in the transcript,
18 number 304, and I will re-read that again in order to be clear:

19 "Just to be clear, do you agree with me, Chief Manu, was his
20 authority limited to Aveba or did his powers extend beyond Aveba?"

21 This is an open question and that was my last question on Aveba.
22 The Chamber would have realised that I had moved on to the authority of
23 Germain Katanga. So this was the question that concluded that particular
24 line of questioning, but beyond knowing whether the Prosecution in those
25 circumstances - because we do not agree with that position -- we have to

1 limit ourselves to non-leading questions when we are cross-examining the
2 witness of the co-accused on issues that may touch on the liability of
3 the other co-accused. We do not agree with that principle.

4 I believe that the Defence right now is confusing between two
5 concepts. Forget the statement which the witness had made earlier.
6 Chief Manu says one thing in his main testimony, that he was with
7 Germain Katanga in Beni, that he came to Aveba and saw Germain Katanga,
8 that he received cartridges from Germain Katanga. The Prosecution,
9 independently of his statement, would have asked questions in
10 cross-examination on the subject of Germain Katanga's authority because
11 here the Prosecutor is alleging collusion, and this is nothing new. And
12 (Expunged) was also questioned on this matter. He gave the answers that
13 he gave. In the context of our cross-examination, I believe that it is
14 entirely legitimate to ask questions on this subject, independently or
15 not.

16 I will recall the points of law. First of all, there is a
17 decision when Trial Chamber joined the two files, there was a
18 decision 307 on this matter. And also on page 4 there is the decision of
19 the Chamber, which observed Mr. Hooper's arguments on this question. And
20 even the Katanga team did not see any difficulties with this. I'm
21 referring you to page 4 of decision number 307. You can also review
22 Mr. Hooper's position in filing number 203. In that filing, the Defence
23 in no way raised this potential prejudice that it is alleging.

24 We also have the decision to join the two cases, and there was
25 never any call by Mr. Hooper with regard to this point. And the decision

1 remains entire despite the fact that Mr. Ngudjolo's team may have made an
2 application along the lines that it has now made.

3 Decision 1665, paragraphs 69 and onwards, your Honour, are
4 references that I made yesterday. I want to avoid any confusion when I
5 make reference to the Bible --

6 PRESIDING JUDGE COTTE: (Interpretation) It is only a formula.

7 MR. MACDONALD: (Interpretation) Yes, it is only a formula. I
8 do understand that there are people of other religious denominations.
9 The reference to the Bible is merely a formula.

10 Paragraph 69 of the directives is very clear. You also have
11 paragraph 71, the search for the truth; you have paragraph 73 also; as
12 well as paragraph 76. Once again, your Honour, the parties can make --
13 appeal to these directives and they have not done so. Paragraph 69
14 finally says -- paragraph -- that -- 69 says that the Court has a
15 discretion. The rules that my learned friends are referring to
16 essentially refer to *national trials before a jury to ensure that
17 the jury should not be influenced or contaminated and rendered incapable
18 of making a distinction between an incriminating piece of evidence that
19 may be revealed in the testimony of a witness. But in the absence of a
20 jury then we can rely on the professionalism of the Bench to accord
21 appropriate weight to incriminating facts that may be revealed by a
22 witness called in defence of one co-accused with regard to the other
23 co-accused. Now here with regard to Mathieu Ngudjolo and
24 Germain Katanga, it has been announced that they will testify. It has
25 not yet been specified whether it will be a simple statement or whether

1 they will be given testimony under oath. If it is under oath,
2 your Honour, inevitability the Prosecution -- that is, inevitability one
3 of the co-accused may find itself testifying against the interests of the
4 other co-accused. The Prosecutor ought to be able to ask questions in
5 this regard.

6 Essentially, the position is one in which prejudice or an
7 inequitable character of the questioning is being raised.

8 Leaving that to one side, it is entirely appropriate that one
9 co-accused should be questioned with regard to the other co-accused.
10 There's nothing new here. We have seen this on a number of occasions. A
11 witness for Mr. Katanga has been questioned about it Mr. Ngudjolo in the
12 course of the hearing already. We are in a context of cross-examination
13 here. The theme of the case, the common thread, logically leads us to
14 question witnesses about the other co-accused, particularly in the
15 presence of a well-informed witness such as Chief Manu. There is no
16 prejudice. I would submit that the Defence cannot raise such prejudice,
17 despite the fact that the statement of Chief Manu may have been revealed
18 in the context of evidence in favour of a co-accused, exculpatory
19 evidence.

20 The Defence of Germain Katanga knew perfectly well what
21 Chief Manu was going to say. There is no surprise even with regard to
22 Germain Katanga in his testimony. The interviews with Chief Manu
23 conducted by the OTP are on the list of documents in evidence of -- that
24 has been submitted to Mr. Kilenda since the 4th of March, 2011, so
25 Mr. Kilenda's Defence team was well aware of their existence.

1 In decision 1667 -- 1665, excuse me, the Defence teams are aware
2 of the evidence that we intended to rely on. This matter of
3 Germain Katanga's authority, which we would like to address with
4 Chief Manu, is an element which is right at the centre of our debates.
5 It is also nothing new to the proceedings. So if we take all of this
6 into account, it is clear that Germain Katanga's Defence team has had the
7 possibility to prepare itself. But what is even more important,
8 your Honour, is that in the terms of your decision 1665 and the practice
9 that is -- has been very well established to date, Mr. Hooper's team will
10 have the possibility of coming back after our cross-examination and
11 asking questions. I would submit that if we limit ourselves to the
12 strict terms of your decision 1665 and its paragraph 76, in anticipation
13 that after the cross-examination of Professor Fofé, the Defence should
14 already have asked questions or could ask questions on all of these
15 questions and could apply for the right to cross-examine, given that this
16 witness was likely to be hostile in nature.

17 Paragraph 69 of your decision 1665, your Honour, is nothing new,
18 I'm convinced, because it takes up the terms of Rule 90(H) - if I'm not
19 mistaken, it is Rule 90(H) - in the Rules of the Court for the former
20 Yugoslavia, in its spirit, certainly. And I would like to look at how
21 that has been interpreted by the Court for the former Yugoslavia. Now, I
22 apologise, I do not have any copies of this on paper because these are
23 very voluminous decisions, but I did send through internet links and a
24 PDF document by e-mail to everybody. I also sent on an earlier e-mail
25 which was sent to us by Mr. Kilenda by way of reply document and I did

1 this at the last minute, I apologise for that. But essentially, in the
2 decision of Kvočka could I draw your attention to paragraph 794 --
3 Kvočka, I asked my colleagues for the correct pronunciation of this
4 because it is a Croatian name. I have colleagues who are familiar with
5 that language.

6 Essentially, I'm going to cite paragraph 794 of that decision.

7 (In English) "An issue as to the cross-examination of Defence
8 witnesses was also raised. Kvočka requested that the Trial Chamber limit
9 the Prosecution's cross-examination of an accused witness to issues
10 concerning that particular accused."

11 (No interpretation)

12 "The Trial Chamber, however, decided that Rule 90(H) meant that
13 the Prosecution was authorised to cross-examine a Defence witness on all
14 matters relevant to the Prosecution's case within a reasonable time-limit
15 set by the Trial Chamber."

16 (Interpretation) Your Honour, for your benefit and analysis, you
17 also have the decision of the ICTR, that is, the Tribunal for Rwanda, the
18 International Criminal Tribunal for Rwanda, that is the decision of
19 Bagosora, also sent by e-mail, and I would refer you here to paragraph 5,
20 6, and 7.

21 MR. FOFÉ: (Interpretation) Bagosora.

22 MR. MACDONALD: (Interpretation) Bagosora, I apologise. I have
23 mispronounced the name. I refer you to paragraphs 5, 6, and 7.

24 Essentially, this is the same thing. It takes up what the
25 Chamber said in its decision 1667 (* as interpreted). The authority of

1 Germain Katanga is not a new fact. It is a fact that is at the centre of
2 the debates.

3 Your Honour, there are two stages and I think the Defence is
4 confusing them. I will finish on this point. Independently of the
5 statement, Chief Manu is being questioned and he gives an answer. Now,
6 effectively in this case, he did give a prior statement. If he directly
7 answers, his answer will be part of the file and it will be part of the
8 reality of the debates. If the Defence feels that it is contradictory
9 with an earlier statement that he has made, then we can confront him, and
10 it is the answer that he gives to that question that will then go on
11 file. It is the answer that he gives under oath. All that the Chamber
12 will have is the fact that previously on this exact point of the
13 authority of Germain Katanga, the witness has made another statement,
14 something that goes beyond our debate. Earlier, he has said something
15 different to what he is saying today under oath. But what he said
16 formerly is not part of the file as an incriminating fact. It is simply
17 a fact that has been -- that demonstrates, perhaps, a difficulty with
18 regard to credibility.

19 So there is a first stage. If the Chamber permits us to ask the
20 question and the witness says under oath that Germain Katanga was the
21 chief of all the Walendu-Bindi, then that answer is on the file and at
22 the end of the hearing it will be for the Chamber with regard to all of
23 the evidence to assess what weight it gives to this answer provided by a
24 witness, which, as you are no doubt aware, your Honour, will be the
25 subject of a challenge with regard to credibility by the Prosecution

1 which doesn't feel that that level of credibility is very high.

2 The witness may give details which corroborate the testimony
3 given by the Defence and by the co-accused or even by the witness
4 himself. That may happen.

5 Now, I apologise, your Honour, I have perhaps taken a little too
6 much time, but we believe - rightly or wrongly - that this is an
7 important point and that it is part of the development of this decision.
8 Thank you for your attention.

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

10 Mr. O'Shea, I was intending to give the floor, first of all, to
11 Mathieu Ngudjolo's Defence team and to give you the floor afterwards, if
12 you agree, just in case Mathieu Ngudjolo's Defence team would like to
13 make a contribution. They are not obliged to do so and then you will
14 have the floor immediately after them.

15 MR. O'SHEA: (Previous translation continues) ... I just would
16 like to note that I agree with the Prosecutor, that even though this
17 might deal with one question, an objection to one question, it is a
18 matter of great importance and significance in this trial.

19 PRESIDING JUDGE COTTE: (Interpretation) Yes, we're entirely
20 aware of this. Since the beginning of your intervention yesterday, you
21 have stated the desire to set a limit because you felt that with the
22 question that we've been discussing, which is at page 66, line 4, of
23 transcript 304, it was your impression that indeed a limit had been
24 exceeded, and that is why at the end of the hearing I noted that it was
25 at that time that you stood up in order to make an objection and call for

1 a limit to be set. So the Chamber did feel that it was from that moment
2 on it had been asked to deal with this question.

3 Mr. Kilenda, you have the floor.

4 MR. KILENDA: (Interpretation) Thank you very much, your Honour,
5 for giving me the floor. Your Honours, the Defence of Mathieu Ngudjolo
6 is in your capable hands.

7 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea, would you
8 like to take the floor for a moment? We will listen to you. Please be
9 as quick as you can, if possible, because we believe we have understood
10 your respective positions, that of Germain Katanga's Defence team and the
11 Prosecutor.

12 MR. O'SHEA: (Previous translation continues) ... Mr. President,
13 that of course I was a little bit under the cosh yesterday at the end of
14 the day, and I do get the sense that the Bench might need a little bit of
15 persuasion that we're not dealing with areas which have been dealt with
16 before. This issue has its own uniqueness, and that uniqueness -- for
17 instance, when earlier in the day we had the issue of delivery of weapons
18 to Mr. Katanga's house, the reasoning of your Honours in relation to that
19 was based upon the fact that it was part of the story which had been led
20 in chief is expressly what your Honour said. And in our submission, that
21 is not the case here. When you're dealing with the authority of
22 Mr. Katanga, that is an issue which has its own uniqueness and its own
23 compartmentalisation, and that compartmentalisation exists also because
24 of the importance of the question. And in my submission, the more
25 important the question to the accused the greater the notice that has to

1 be given. In this particular instance, the Prosecution has a duty to
2 point a red hand at its intention to employ an area, in other words,
3 Germain Katanga's authority, which was not expressly dealt with either in
4 the themes provided or in the chief.

5 And it's also a unique issue as compared to other questions and
6 answers for this witness or other witnesses for another reason as well,
7 and that is the conduct of the Prosecutor with regard to notice. It
8 might be innocent conduct, but it is conduct nonetheless. The
9 Prosecution has made a representation to the Defence and to the Court as
10 to how it intends to rely on this evidence. The moment that the Defence
11 for Mr. Ngudjolo decided to rely on this witness as their witness, not as
12 a common witness, but as their witness, it was then incumbent on the
13 Prosecutor to clarify and modify its previous representation and to say:
14 We are no longer only relying on this as exculpatory evidence; we are now
15 relying on this to prove the case against Germain Katanga, the
16 co-accused. In my submission, that was incumbent on the Prosecutor.

17 And this has nothing to do with juries. It has everything to do
18 with notice and the serious disadvantage that the Defence is put at. And
19 in this respect -- so the point is not lost on the public record.
20 Yesterday, I mentioned two authorities. I will refer to certain specific
21 parts of those authorities to illustrate my point, that this is nothing
22 to do with juries. This is everything to do with international
23 tribunals, international justice, and fairness in an international
24 criminal trial.

25 The case of Prosecutor versus Taylor, and I didn't give the

1 reference yesterday so I'll give it today. It's a decision of the 30th
2 of November, 2009, and its title is: "Decision on Prosecution motion in
3 relation to the applicable legal standards governing the use and
4 admission of documents by the Prosecution during cross-examination."

5 This is a case of the Special Court for Sierra Leone and it is a
6 case which deals with how, can, and should the Prosecutor use documents
7 during the course of its cross-examination. How should the Prosecutor
8 use documents during the course of its cross-examination of a co-accused.
9 And that is what we are dealing with here. My learned friend attempts to
10 draw a distinction between the document and the questions; it is a false
11 distinction. Paragraph 24 of that decision on page 10 notes that:

12 "... the general principle applicable in international criminal
13 tribunals and common-law domestic courts is that the Prosecution has a
14 duty to adduce during its case in chief all the evidence on which," and I
15 emphasise, "it intends to rely ..."

16 And remember, our point is that the Prosecution has not given
17 notice that it intends to rely on this document.

18 "... to prove its case before the start of the Defence case in
19 order to enable the accused to know the nature of the case against him
20 and consequently to adequately prepare his defence."

21 The stage of the proceedings that we are at now is that not only
22 is the Prosecution case closed and this interview did not form part of
23 the listed Prosecution evidence against Mr. Katanga, but also the defence
24 case for Mr. Katanga is, except for Mr. Katanga himself, finished.

25 When we make decisions about calling witnesses, we have to comply

1 with directions of the Court with regard to keeping the number of
2 witnesses within reasonable limits. It is fundamental for us that we --
3 if the Prosecutor intends to rely on evidence to incriminate Mr. Katanga,
4 that we know about it so that we have the choice, if necessary, to call
5 witnesses to counter Chef Manu in this instance. So there is the
6 prejudice. There is the serious disadvantage. And the Prosecutor has
7 rightly set out his intention. My intention is to ask the question, and
8 the question he's asking is the question that he has already asked in the
9 past, he already knows the answer because of the interview he has
10 conducted. He asked the question, he gets the answer. If the answer
11 corresponds to what the witness has said in his previous interview with
12 the Prosecution, then the Prosecution will rest and not use the document.
13 But if the witness diverges from his previous answer, then the Prosecutor
14 will go on and put the document to the witness and put his previous
15 statement to him. How does that differ from any other type of document
16 which constitutes evidence? In my submission, it does not differ at all
17 because the document itself is being used as tool for the questions, and
18 the Prosecution has put himself at an advantage and at the same time told
19 us that he is not going to rely on that advantage.

20 Again in the case of Taylor, I refer your Honours to
21 paragraph 26, where it deals with what is called "fresh evidence." And
22 in my submission, this is fresh evidence because it is evidence based
23 upon an interview which was not adduced during examination-in-chief and
24 which the Prosecution has not told us it has the intention to use, as it
25 is obliged to do in terms of your Honours' decisions.

1 Paragraph 26 of that decision in Taylor reads as follows:

2 "The Trial Chamber has a broad discretion in determining the
3 admission of evidence. The Prosecution asserts in its Motion in the
4 bundle or bundles of documents that the Prosecution intends to use during
5 cross-examination that contained 'fresh evidence.' There is an important
6 distinction between fresh evidence which is intended solely," I
7 emphasise, "solely for the purpose of impeaching the Accused's
8 credibility, and fresh evidence which is probative of the guilt of the
9 Accused."

10 So whatever this witness, Chef Manu, says today, the Prosecutor
11 does not intend to use this evidence solely for impeaching the
12 credibility of the witness. He intends also to use it for the purpose of
13 proving his case against Germain Katanga.

14 Then if I may also refer you to the case of Norman, Fofana, and
15 Kondewa which I mentioned yesterday, but I did not cite the reference so
16 I'll put that in the public record. That is a decision of the 10th of
17 November, 2006, and again before the Special Court for Sierra Leone and
18 it is entitled: "Decision on the impermissibility of eliciting evidence
19 involving the second accused through cross-examination of witnesses
20 called by the third accused."

21 And there the argument was put that it is inappropriate for the
22 Prosecutor to put questions to a co-accused to incriminate that
23 co-accused when the matter was not dealt with in examination-in-chief and
24 it puts the Defence at a disadvantage because they have not had notice
25 and it affects how they conduct their cross-examination. Don't forget

1 that in this instance we have already cross-examined this witness and we
2 have done so in a particular way. Even if we cross-examine the witness
3 again, we have already cross-examined the witness and put our cards on
4 the table to some extent. And we have a limited opportunity to -- to
5 call further witnesses in this case.

6 Now, in this case at paragraph 20, the International Criminal
7 Tribunal for the former Yugoslavia, which is the tribunal my learned
8 friend relies upon, was cited and the case of Prosecutor and Naletilic
9 was cited in that paragraph and in dealing with the accused's right to
10 adequate time and facilities, it was stated that:

11 "In international criminal law jurisprudence, the 'real issue' of
12 what constitutes adequate time and facilities to prepare a defence has
13 been characterised as 'not whether the parties have equal time and
14 facilities but rather if either party, and in particular the accused, is
15 put at a disadvantage when presenting their case.'"

16 And that is undoubtedly the case here because this is not a
17 situation where the Prosecution is facing this witness of the Defence of
18 Mathieu Ngudjolo blind. Even if it is not a common witness, it is
19 analogous to a common witness with the Prosecutor because the Prosecutor
20 has known about the witness for a long time, interviewed the witness at
21 the commencement of the trial, considered his position with respect to
22 the witness, the witness was even given a P number, fully interviewed the
23 witness, and obtained all the information adequate for his case, and made
24 a choice not to call the witness, then disclosed that material to us,
25 describing it as exculpatory. That is where the prejudice and the

1 serious disadvantage lies for us.

2 And at paragraph 23 of the decision in the Special Court, it is
3 stated:

4 "We therefore hold that in the present case, fairness dictates
5 that the absence of notice to the Second Accused of the areas to be
6 canvassed through cross-examination by the Prosecution constitutes a
7 serious disadvantage to the Second Accused, who has not been afforded the
8 opportunity to conduct investigations in relation to this witness or to
9 prepare effective cross-examination in respect of any evidence which may
10 be elicited with respect to the Second Accused. The Chamber rules that
11 under the circumstances of the present Objection, eliciting evidence that
12 may potentially incriminate the Second Accused is not an acceptable
13 purpose of cross-examination."

14 It is not sufficient, your Honours, for us to have documents in
15 our possession. We have thousands of documents in our possession. It is
16 incumbent upon the Prosecutor to point his red hand at the most important
17 parts of the incriminating evidence which he intends to rely on. That is
18 our point.

19 And the last paragraph of that decision before the Special Court
20 for Sierra Leone balances the question of prejudice against potential
21 probative value. And this is yet another distinction which your Honours
22 can draw with other questions and answers, because on the Prosecutor's
23 own admission this evidence will not have great probative value because
24 in the Prosecutor's view this witness is not credible. In the witness's
25 own opinion, he is not in a position to say much about areas other than

1 his own geographical area. He has made that admission on one or two
2 occasions. So balancing the probative value of this evidence against how
3 it goes to the core of this case with respect to Germain Katanga and the
4 prejudice which it causes us by virtue of how we have been misled, in
5 those circumstances, your Honour, I submit it is inappropriate to allow
6 this line of questioning.

7 MR. MACDONALD: (Interpretation) Your Honour, just very, very
8 briefly.

9 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, are you
10 aware that if you -- if I give you the floor, then I will have to give
11 the floor again to Mr. O'Shea? And the Chamber would like to be able to
12 continue its debates before the end of the morning. You will have to
13 speak very quickly. We have all understood that this is an important
14 matter, but please don't bombard us with decisions of jurisprudence and
15 so on. We have understood that it is important. We will listen to you.

16 MR. MACDONALD: (Interpretation) Your Honour, I would like to
17 draw your attention to a distinction in the decision of Charles Taylor.
18 The Chamber needs to look at what the definition of fresh evidence is in
19 this context, new evidence, or evidence not formerly available. Here, as
20 we've mentioned, this information has been disclosed for a great deal of
21 time now. We were obliged to disclose it under Rule 67 by way of
22 evidence for or against the accused. It was also available to
23 Mr. Kilenda's team, but as we said in our disclosure letter, it has been
24 disclosed under Rule 67. Here the witness is present to answer the
25 questions of the Chamber in its mission to seek the truth.

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

2 MR. O'SHEA: Simply, a definition of fresh evidence has been
3 provided by the International Criminal Tribunal for the former Yugoslavia
4 Appeals Chamber, and it is in the case of Prlic on the 26th of February,
5 2009, and it is as follows:

6 "... 'fresh evidence.' For the purposes of the present decision,
7 this term refers to material that was not included in the Prosecution
8 Rule 65 ter list," which in this case is in the corresponding decisions
9 relating to disclosure by the Prosecution prior to trial, "and not
10 admitted during the Prosecution's case-in-chief, but that is tendered by
11 the Prosecution when cross-examining Defence witnesses."

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.
13 The Chamber, or at least the French-speaking part of this Chamber, would
14 particularly like to thank the interpreters working from English into
15 French who have made it possible for us to clearly understand
16 Mr. O'Shea's intervention at a time when the transcript was not working
17 in French. As he was speaking, we did not have the French transcript,
18 but please be assured, Mr. O'Shea, that the interpretation was perfect
19 because you were speaking slowly. So thank you sincerely for that.

20 Electronics make it possible for Judges to communicate between
21 each other while listening to what is being said, and that is a precious
22 resource. So in this same manner, Mr. O'Shea, we were able to read
23 quietly the intervention that you made at the end of the hearing.
24 Re-transcribed that also is of impeccable clarity.

25 As I have just said, we have clearly understood that for each of

1 you this is a question that is of great importance. We have also
2 understood that this Chamber must ensure that the trial is held within a
3 reasonable time-frame but also in an equitable manner. It's a matter of
4 fairness, and that is why you have all made your respective points.

5 First comment, we are dealing with a unique situation, namely, a
6 witness has been called by a co-accused, Mathieu Ngudjolo, and during
7 examination-in-chief this witness did not say anything that would
8 incriminate the other accused person, Germain Katanga.

9 Our second observation is as follows: During yesterday's
10 hearing, Prosecutor, we noticed that your way of questioning the witness
11 had changed, and this was at about 1.00 in the afternoon, towards the end
12 of the hearing. And this change in your way of questioning the witness
13 led to -- led Mr. O'Shea to react and he has made a number of points
14 consequently. So Mr. O'Shea did not rise before, he rose at that
15 particular point in the hearing, because the question that you asked led
16 him to ask for a limit to be set. And so -- now what was this change?
17 Well, at the beginning of the hearing and throughout the course of the
18 hearing, in accordance with the oral recommendations that the Chamber has
19 made, you, Mr. Prosecutor, asked some neutral and open-ended questions of
20 the witness which allowed you - when you thought relevant -- which
21 allowed you to compare his replies to the statement that he made when he
22 appeared before you or other members of your office when he was
23 interviewed.

24 Then, at the end of the hearing, you changed tactics and you
25 based yourself directly on the statement taken, DRC-OTP-1043-0304.

1 Basing yourself on that interview, you asked a number of leading
2 questions, such as: You agree with me that ...? And so on and so forth.
3 And then you repeated the words uttered by Mr. Manu, Chief Manu, in his
4 statement. These leading questions went beyond what the Chamber had
5 allowed you to do, and I make reference to yesterday's transcript,
6 transcript 304, pages 18, 19, and 60. So you changed tactics, sir.

7 At this time I believe that -- well, it is important to conclude
8 Chief Manu's testimony. At this point in time, Mr. Prosecutor, we would
9 like to say that the questions that you intend to ask during
10 cross-examination regarding the role that Germain Katanga may have
11 played, these questions must be put as if you were conducting an
12 examination-in-chief. The questions you are planning to ask about the
13 role that Germain Katanga may have played, these questions must be
14 open-ended with a preamble or an introduction. This is something you are
15 very familiar with, and I will not describe that technique.

16 Now, if you go back to your initial tactic or practice, you will
17 be able to confront the witness with the statements that he made in 2009,
18 if you believe that he has contradicted himself. And I think that the
19 Chamber is being very clear about this, and Mr. O'Shea, in turn, in his
20 final observations - and this was pointed out yesterday - he will be able
21 to try to get any additional elements of information or any
22 clarifications that he believes are necessary and he will be able to
23 cross-examine, particularly if the statements made by the witness were to
24 be new or incriminatory. And in this way, the trial shall be conducted
25 fairly.

1 One final observation, and actually reference was made to this
2 yesterday, reference was made to ruling 1665, which has been our Bible,
3 so to speak, ever since the beginning of the trial. That ruling was
4 drafted in November 2009, before the trial began. This rule is supposed
5 to provide a certain safety or security to parties and participants. It
6 should not be deviated from, it should not be altered, or as little as
7 possible, and once again I reiterate, we are dealing with an extremely
8 unusual situation. So, Prosecutor, please revert to your earlier
9 technique at the beginning of yesterday's hearing, that is, if you wish
10 to obtain additional information from Chief Manu regarding the role
11 played by Germain Katanga. Please behave as if you were in
12 examination-in-chief; that is to say, please set the stage, then ask
13 open-ended questions. If you think the witness has contradicted himself
14 in relation to the statement taken in 2009, then - and only then - you
15 may ask him about the contents of that statement. But do not make this
16 statement the very heart of your cross-examination. So please refrain
17 from asking the sort of questions that you were asking at the end of
18 yesterday's hearing. That is the Chamber's position in this regard.

19 Court Officer, we would like to ask you to now bring in the
20 witness.

21 Court Usher, could you please bring the witness into the
22 courtroom.

23 And, Mr. O'Shea, you will have your opportunity to make final
24 comments even though the Chamber is very much aware of the need for a
25 reasonable time-frame, a reasonable time, to conclude the trial.

1 MR. MACDONALD: (Interpretation) I thank you, your Honour. I'd
2 just like to point out that sometimes it goes against my very nature to
3 ask questions that are not leading during cross-examination because, as
4 the Chamber can appreciate and as my learned friends across the way must
5 realise, since I come from a common-law tradition this is very much
6 against my nature. I will try to follow your instructions. The
7 Prosecution has certainly understood the nuance that the Chamber has
8 brought out, and I thank you.

9 MR. O'SHEA: (Previous translation continues)... point of
10 protocol, your Honours. This is not the -- this is not the team of
11 Mr. Hooper. This is the team of Mr. Katanga.

12 PRESIDING JUDGE COTTE: (Interpretation) I beg your pardon. I
13 often make that mistake and I hope that Mr. Katanga's Defence team will
14 not be too offended. It is true that -- it is true that we tend to see
15 each group as a team and sometimes we get a bit mixed up and we refer to
16 the team incorrectly. But yes, yes, we should be referring to the
17 Defence team of Mr. Katanga.

18 Prosecutor, given this extremely unusual situation, once again I
19 reiterate, we count on you to be prudent because we must move ahead, we
20 must make progress.

21 Court Officer, I'm not so sure that the next witness will be able
22 to give testimony today. If you could cross-check with the VWU, please.

23 (The witness takes the stand)

24 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Witness.
25 Good morning, Chief Manu. How are you?

1 THE WITNESS: (Interpretation) Good morning. I am fine.

2 PRESIDING JUDGE COTTE: (Interpretation) Well, you say you are
3 feeling fine. That's very important. Now, we have had a procedural
4 discussion this morning that took up all this particular amount of time,
5 and now the Prosecutor will resume his cross-examination.

6 Prosecutor, you now have the floor.

7 MR. MACDONALD: (Interpretation) Thank you.

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

9 (Witness answered through interpreter)

10 Questioned by Mr. MacDonald: (Continued)

11 Q. (Interpretation) Good morning, Chief Manu.

12 A. Good morning.

13 Q. Chief Manu, yesterday, at the end of the hearing, we were talking
14 about Germain Katanga. You mentioned that Mr. Katanga was in charge of
15 the combatants in Aveba. Now, to follow-up on that answer, you also
16 mention that there were other combatants, such as Yuda, Dark, Safco, who
17 were also there, and they were waiting for the aircraft. And then the
18 combatants divvied up some goods in Aveba, so that was the context. My
19 question is as follows: Could you describe the territories over which
20 Germain Katanga had authority, the regions of Walendu-Bindi where he had
21 authority? There is my question.

22 A. Germain Katanga is from Irumu in the collectivity of Walendu, and
23 we are the Walendu of Djugu. So we are from different territories. He
24 didn't have power over Djugu. His power was restricted to Irumu. So I
25 really don't know what happened in Irumu.

1 Q. To your knowledge, Germain Katanga, you say, had authority over
2 the Irumu territory. To your knowledge, was he reporting to someone
3 else? Was there someone above him who was his superior, a military
4 superior?

5 A. I don't know.

6 Q. Witness, now, do you remember when the Office of the Prosecutor
7 asked you about this, do you remember the reply that you gave when you
8 were asked questions about the authority of Germain Katanga? Namely,
9 whether there was a person that he reported to if military --

10 MR. O'SHEA: (Previous translation continues) ... because the
11 witness is being asked to recall the contents of his interview, so he's
12 being led directly to something he said before. If he remembers it, then
13 he's going to say it.

14 MR. MACDONALD: (Interpretation) I'm trying not to be leading,
15 your Honour, and the witness could very well say: I don't know. So I
16 think this is a matter of refreshing his memory, that's all.

17 PRESIDING JUDGE COTTE: (Interpretation) Please be extremely
18 careful, Prosecutor, as you move ahead with your questioning. We've all
19 understood that the questions you're putting to the witness are very
20 similar or lead towards along the lines of: Do you have knowledge
21 of ...? So please continue, Prosecutor.

22 MR. MACDONALD: (Interpretation) Thank you. I will leave it at
23 that, your Honour. I will now move on to something else. We'll have an
24 opportunity to come back to Germain Katanga but in a different context.

25 Q. Witness, this trip to Zumbe that you took and then you went to

1 Aveba, you said in earlier testimony that you came back with 1.200
2 cartridges and these were weapons -- for the AK-47s and the SMGs. Now,
3 just to remind you of what you said -- well, you provided the ammunitions
4 to whom exactly? It was combatants who had escorted you who you gave
5 cartridges to, these members of the self-defence groups from -- who were
6 carrying these 1.200 cartridges on the way back?

7 A. Prosecutor, there was a box and there was, you see, packages.
8 And in --

9 Q. I'm interrupting you because this is a very simple question and I
10 want to finish the cross-examination today, and you're going to have to
11 help us. Now, the people who were carrying the cartridges, did they come
12 from Kagaba, as you said, to help you? Were they young people belonging
13 to the self-defence groups of Zumbe? It's a simple question. That's the
14 question.

15 A. Yes. However, they weren't young Kagaba, they were young people
16 from Zumbe who came to get food. They were the ones who ...

17 Q. I totally understand. You said they were young combatants, young
18 members of the self-defence groups, and you would call them -- you called
19 them on the -- on the Cobra devices and they came to get the ammunition.

20 Now, when you arrived in Zumbe --

21 MR. KILENDA: (No Interpretation)

22 THE INTERPRETER: Overlapping speakers.

23 PRESIDING JUDGE COTTE: (Interpretation) Witness, I see that you
24 put up your hand. Please tell us what you have to say, witness.

25 THE WITNESS: (Interpretation) We weren't with Cobra. I arrived

1 alone from Beni. Martin stayed, Adolphe stayed, Bahati stayed. I wasn't
2 with Cobra. I did not give the name of Cobra, please.

3 MR. MACDONALD: (Interpretation)

4 Q. No, that was an interpretation mistake. I didn't say "Cobra"
5 either. You got to Zumbe. When you got there -- where were you going
6 with these cartridges? Exactly where were you going, physically? What
7 actual place did you go to first and what were you doing with the
8 cartridges?

9 A. Well, we went up a hill and then we got to Lagura. From Lagura,
10 we went to Zumbe.

11 Once we got to our locality, we distributed the cartridges to the
12 people who had weapons, and each person kept his weapon and we gave them
13 cartridges, but I want to specify that we did not fight with those
14 weapons because there was no fighting.

15 Q. Chief Manu, you said earlier that there were seven weapons,
16 fire-arms, and that there was a *shigun*, that you had a *shigun* at home.
17 So I think we can agree that an AK-47, an AK-47 - and I'm going to make a
18 gesture - the magazine and a *shigun* doesn't have a magazine, but, rather,
19 it has a -- it has bullets in a sort of a belt. Sometimes we see people
20 in the movies who have these belts of ammunition slung around them. So
21 I'm talking about the differences here.

22 A. No, that's not right.

23 Q. Explain to us. What is an AK-47? How do you put the bullets
24 into it in Zumbe? And what is a *shigun*? And how do you load the bullets
25 into a *shigun*?

1 A. An SMG - you referred to it as an AK-47 - has a magazine, and the
2 magazine has the capacity to take a certain 30 bullets. As for the
3 *shigun*, well, it has a magazine and that magazine can take 30 bullets.
4 The weapon you're referring to - I've forgotten the name - is a weapon
5 that can have ten bullets loaded into it. And each time you do a
6 rotation, each time you shoot a bullet, you have to reload to shoot
7 another bullet. We have such weapons, there was one such weapon.
8 However, we had seven SMGs and one *shigun* and another weapon that only
9 shot one bullet at a time. I believe you've understood me.

10 Q. Chief Manu, now the cartridges were given to the people who had
11 these weapons in their hands when you arrived. Isn't that so?

12 A. Yes.

13 Q. You also stated that those weapons changed hands. For example,
14 if there were people playing football, they handed over their weapons to
15 other young people. Was that your testimony?

16 A. Yes, that is what I said. If you are tired you could go and play
17 or go to war --

18 THE INTERPRETER: From the Swahili booth: Your Honour, can the
19 witness be asked to slow down.

20 THE WITNESS: (Interpretation) The weapons were not registered
21 to any single individual. They were there to help the entire village,
22 and anyone could use them. So when someone using a weapon was tired, he
23 could hand in -- it over to someone else --

24 THE INTERPRETER: From the Swahili booth: The interpreter did
25 not interpret the part where the witness was speaking very fast.

1 PRESIDING JUDGE COTTE: (Interpretation) Chief Manu, our
2 interpreter had a problem interpreting the beginning of your answer
3 because you were speaking too fast. Can you, therefore, repeat your
4 entire answer and please speak slowly so that we should have a complete
5 transcript because there are a lot of gaps in the transcript right now.
6 Thank you for repeating the answer.

7 MR. MACDONALD: (Interpretation)

8 Q. So all those young people knew how to handle a weapon?

9 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, please
10 allow the witness to repeat the answer, as requested by the interpreters
11 so that we should have a more complete transcript. Please wait before
12 you can ask your question.

13 THE WITNESS: (Interpretation) Very well.

14 There were a few weapons, and the combatants of the village were
15 many. When the person who had a weapon and who had gone to war with that
16 weapon was tired, the weapon was immediately handed over to someone else
17 who was able to use it, given that that person would be ready for combat.
18 This means that the weapons were not registered to any single
19 individuals. They were there to assist the members of the community, and
20 everyone could use them.

21 MR. MACDONALD: (Interpretation)

22 Q. You have said that there were many combatants in the village and
23 that they used the weapons in turn. Let me now ask you my question:
24 Does it mean that all of you knew how to handle the weapons, that is, the
25 combatants and the young people belonging to the self-defence groups?

1 A. Each person had learned to handle the weapons. Whenever there
2 was a period of calm, the person who wished to would learn to use the
3 weapons. Those who did not have fire-arms could use arrows. There were
4 craftsmen who produced arrows and there were people who could use them
5 expertly as if they were fire-arms. In order to clarify matters for
6 you --

7 Q. I would like to interrupt you. I asked you a question. There
8 were people who showed the young people how to handle weapons. I will
9 focus on the fire-arms, the SMGs, *shiguns*, and the others that you
10 mentioned. Who were those people who taught the young people how to
11 handle weapons? Who were the instructors who taught them how to fire
12 weapons.

13 A. I've already told you, Mr. Prosecutor, that there were two young
14 people who had gone to Nyaleke, Kute and Milu, they had been in the army,
15 there was also Ngabu, Ngabu Boba Boba. When he left the Red Cross, he
16 went to Rumangabo. He had been a soldier in the army also, so those were
17 the three people. Everything was not done in an entire day. The youths
18 were simply shown how to load a gun and fire. It did not take an entire
19 day.

20 Q. Thank you, Chief Manu, for that clarification. But it is also
21 clear that they were taught how to clean the weapons because they didn't
22 want any dirt in the mechanisms in the weapons, so these young people
23 were taught how to clean the weapons, weren't they?

24 A. That does not require a lot of time.

25 Q. So you agree with me that they were taught how to dismantle a

1 weapon and clean it?

2 A. You are the one saying that. We did not talk about this issue
3 before, and that is not something that I was responsible for.

4 Q. This is the sixth, or rather, the seventh day of your testimony
5 and is that your answer to that question? Chief Manu, were the weapons
6 disassembled in order to be cleaned, yes or no? You were present. You
7 have described the types of weapons that were there. You gave details.
8 You have talked about the cartridges, the type of cartridges that were
9 used for each of the weapons. So, Chief Manu, clearly you know that the
10 young people were taught how to dismantle the weapons and to clean them.

11 A. Mr. Prosecutor, if someone teaches you how to drive a car, he
12 will also teach you a few mechanical tips. So the person who taught
13 those young people how to handle weapons would also teach them how to
14 dismantle the weapons and put them back together and also how to clean
15 them. It was not my duty to go and ask them whether they knew how to
16 clean the weapons or whether that was easy or difficult. That was not my
17 job.

18 Q. Chief Manu, you mentioned Boba Boba, Kute, and someone known as
19 Milu. What is the full name of that person, Milu? What is his other
20 name?

21 A. I'm sorry, but I do not know his other name.

22 Q. Very well. You talked about Boba Boba. You say that he was a
23 former soldier who had been trained in Nyaleke. Would I be correct to
24 say that he was also in Mobutu's army, that is, the Zairian armed forces
25 or the FAZ, are you aware of that?

1 A. Yes. I talked about the period when he went to Rumangabo. There
2 was a base of the ex-FAZ army, that is, Mobutu's army.

3 Q. Chief Manu, you are also aware that Mathieu Ngudjolo was also an
4 ex-FAZ? He was also in Mobutu's army with Boba Boba, wasn't he? You are
5 also aware of that, Chief Manu, aren't you?

6 A. I know that he worked for the Red Cross. When the Egyptians were
7 training the civil guard, he worked there as a member of the Red Cross.
8 He was called to go to Goma, but he did not go there. It was Boba Boba
9 who went there. Boba Boba was also working for the Red Cross at the
10 time. Later on, he joined the ex-FAZ. Ngudjolo did not go there, and so
11 if he went there then my informer must have lied to me. He did not join
12 the FAZ. He joined the Red Cross. So if he, himself, says that he
13 joined the FAZ, then the person who gave me the information lied to me.

14 Q. Chief Manu, who is your informer? Who is the person who gave you
15 that information about Mathieu Ngudjolo? Please give us his name.

16 A. I do not have a name to give you. We are talking about something
17 that happened a very long time ago, before the conflict in question.

18 Q. Yes. But I believe this is of great interest to the Chamber,
19 talking about Mathieu Ngudjolo. You have just said that there was an
20 informer, someone who gave you information about the professional
21 background of Mathieu Ngudjolo. I'm asking you to identify this person
22 to the Chamber. Who is your informer?

23 A. Less than five minutes ago, I told you that I no longer remember
24 the name of my informer because this is something that happened a very,
25 very long time ago.

1 Q. Very well. You have talked about the Red Cross. Please explain
2 to us what you understood to be the Red Cross within the civil guard of
3 President Mobutu. Please explain to us what that was. Were those
4 soldiers who were there to take care of injured people? Were they people
5 from the *maison mère*? Or were these people who were wearing the Red
6 Cross jackets or who were travelling in jeeps? What is this precisely,
7 the Red Cross in Mobutu's civil guard?

8 MR. FOFÉ: (Interpretation) Mr. President, the Prosecutor has
9 to be very careful with the notions that he is using. It is my
10 impression that the Prosecutor does not have in-depth knowledge of some
11 of the institutions of the Mobutu era.

12 MR. MACDONALD: (Interpretation) Counsel is trying to testify in
13 place of the witness.

14 PRESIDING JUDGE COTTE: (Interpretation) Yes indeed,
15 Professor Fofé. If you want to provide clarification, if you feel that a
16 question needs to be rephrased or that a term has to be changed in order
17 for the witness to be better placed to answer, then you can proceed. But
18 even though details about Mobutu's institutions could be interesting, you
19 have to bear in mind that it is the witness who has to answer. You have
20 all understood that the problem is, so please proceed.

21 MR. FOFÉ: (Interpretation) Your Honour, the Prosecutor is
22 putting questions to the witness, and those questions have to be simple.
23 They do not have to be complex. He should not be confusing and mixing up
24 army, Red Cross, civil guard. That is why I'm saying, your Honour, that
25 when the Prosecutor is asking his questions, he has to fully master the

1 details. I have the impression that following the answer of the witness,
2 the Prosecutor is not able to distinguish between the civil guard and the
3 army. He has continued mixing things up and this can complicate the
4 situation of the witness. That is what I wanted to say, your Honour.
5 Thank you.

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

8 Mr. Prosecutor, we know that you know that it is important to ask
9 simple questions if you hope to have clear answers, and therefore in
10 order to progress quickly on page 37 line 6 of the French realtime
11 transcript, there is information there that you need to rephrase. The
12 witness said that he no longer remembered the name of his informer
13 because it was a very, very long time ago. So you can try to seek
14 further clarification by rephrasing this question in a much simpler way.
15 Please proceed.

16 MR. MACDONALD: (Interpretation)

17 Q. Chief Manu, you were there when Mobutu was in power. You had the
18 tradition of the notables even before you were appointed as traditional
19 chief. Now, explain to us what was President Mobutu's civil guard?

20 A. Yes, you have asked me to address the Bench, and that is what I'm
21 going to do. The situation is as follows. I will start with your first
22 question. The Red Cross had a higher institute in Nyaya 2 (* phon) in
23 Bunia town. The Red Cross trained young people to provide emergency
24 treatment to people who needed it. For example, in cases of road
25 accidents, the young people would transport the injured persons and

1 bandage their wounds before taking them to the hospital. This is
2 something that was done quickly, within a very short period of time. It
3 was training that was similar to the training that was given to scouts.
4 After that they were taught how to provide treatment, for example, give
5 injections and prescribe drugs. That is what the Red Cross did.

6 Now, moving on to the civil guard, this was an initiative of the
7 government. The government had created the national gendarmerie and the
8 gendarmerie was corrupt and was trying to extort people's property. The
9 government set up another corps to be responsible for peace, and this
10 group of people was trained by instructors from Egypt. The training took
11 place in Bunia. At that time I was an entertainer in what was known as
12 Mobutu. I was a dancer in that entertainment group. And when the
13 authorities came to inspect the civil guard, we staged some performances.
14 That is when people came to visit Mobutu's civil guard. That is how I
15 understood what the civil guard was. If I had stayed in Zombe, I would
16 not have understood what the civil guard was.

17 So to begin with, there was the gendarmerie, but later on another
18 group was created to assist in the work of the gendarmerie. That is how
19 come some of those who received training from the Red Cross were
20 selected. I do not know whether the others came from Geneva or from the
21 USA. I do not know. But there was a higher training institute in Bunia,
22 and young people were selected to undergo that training. So young people
23 who had been trained by the Red Cross were chosen to help those who were
24 being trained by the instructors from Egypt.

25 Ngudjolo, who had been born in the Bedu-Ezekere groupement found

1 himself in this group. My informer told me that Ngudjolo was known as
2 Kimbi at the time. My informer also told me that Ngudjolo had been
3 chosen by the Red Cross to assist in the training of the civil guard.
4 There was a conflict between the Rwandans and Mobutu's army in Goma. At
5 that time it became necessary for the civil guard and the gendarmerie as
6 well as the army to intervene. They had to go to the front.

7 The young people who had been trained by the Red Cross also went
8 there, that is, some of them, including Ngabu. Ngabu was happy and he
9 stayed there. That is how come he subsequently went to Rumangabo. I do
10 not know whether Ngudjolo went there or not. I was told that he had not
11 gone. So if I'm telling a lie about him, then he can correct the
12 information himself. He has a mouth, just like me, so he can speak for
13 himself. I do not know whether someone said Ngudjolo did one thing or
14 the other, but I know that I was a dancer, an entertainer, in a group in
15 Mobutu's time and that is how I was able to receive some information
16 about the civil guard.

17 Q. Chief Manu, while following your answer in Swahili I understood
18 something because you mentioned a name. There were young people who were
19 receiving training. You mentioned Mathieu Ngudjolo and Boba Boba, but
20 did I understand you correctly that Bahati also received that training?

21 A. I have no idea what you are talking about. I got to know Bahati
22 when he arrived in our place as a nurse. I did not speak about Bahati.
23 He is not someone from our territory. When he arrived -- our region as a
24 nurse, he was there thanks to the intervention of someone who was *chef de*
25 *zone*.

1 Q. I simply wanted to know whether you mentioned the name Bahati.

2 Chief Manu, you have given us all these details and I'm coming
3 back to this issue because it intrigues me. You know someone who told
4 you all those details about Mathieu Ngudjolo and today you claim that you
5 no longer remember his name because it was a long time ago. Chief Manu,
6 is it possible that you are protecting this person, you are afraid to
7 mention his name, or do you have another reason which could quite --
8 which could be quite reasonable? But the fact is you do remember the
9 name of that informer, isn't that correct?

10 A. I would like to reassure you once again, Mr. Prosecutor, that we
11 are talking about something that happened in 1998. I cannot remember it.
12 When you were a young man you learned how to write down everything, but
13 in our region we do not have that tradition. You can ask my father -- my
14 son: Where is your father? And he will tell you: He has gone to the
15 farm. And he will tell you that another day, but your child who is a
16 white person who has the intelligence of white people will say: But my
17 father is at the Court. You have a written tradition. We do not have
18 that tradition. We have an oral tradition. And once something is said,
19 it is not noted down.

20 THE INTERPRETER: From the Swahili booth: The witness spoke a
21 language that the interpreters did not understand.

22 MR. MACDONALD: (Interpretation)

23 Q. Mr. Witness, you have to speak in Swahili so that you can be
24 interpreted.

25 PRESIDING JUDGE COTTE: (Interpretation) If you wish,

1 Mr. Prosecutor, we will continue after the break, and we have to take our
2 break now after two hours.

3 Court Usher, can you please lead the witness out of the
4 courtroom. Thank you.

5 (The witness stands down)

6 MR. FOFÉ: (Interpretation) Your Honour, for purposes of the
7 transcript, the witness did not change language. He was speaking in
8 Swahili. What he said at the last minute was in Swahili. I'm saying
9 this in the presence of the interpreter. He may have had difficulties
10 interpreting, but the witness spoke in Swahili.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. Our
12 interpreters are going to re-listen to the audio recording so that we can
13 have a complete transcript. The hearing is suspended. We will reconvene
14 at 11.30.

15 Recess taken at 11.01 a.m.

16 On resuming at 11.32 a.m.

17 (Open session)

18 COURT USHER: All rise.

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

20 Usher, could you please bring Chef Manu back into the chamber.

21 (The witness takes the stand)

22 PRESIDING JUDGE COTTE: (Interpretation) Witness, Chief Manu, we
23 will resume our work and if you would be so kind to ensure that the
24 interpretation is complete and faithful, would you repeat the answer that
25 you gave us when we suspended the hearing, an answer that you gave to the

1 Prosecutor. Do you remember the question that he had asked you?

2 THE WITNESS: (Interpretation) This is what I said before we
3 took the break. The Prosecutor was saying that I had spoken in a
4 language other than the language I speak. I didn't speak a different
5 language. I could use a term from French. For example, I had used the
6 French term *insister* that we were focusing on, we were stressing on
7 events that had taken place a long time in the past rather than events
8 that are current. What I was getting at is that we were focusing on
9 events that took place in the 1990s rather than on what was taking place
10 at the time in question.

11 And the interpreter did not understand what I was saying and so
12 stated that I had spoken a language other than Swahili. Perhaps he
13 didn't understand. But what I said was not poorly expressed. I spoke
14 Swahili to say the Prosecutor was stressing events that were from the
15 past history, from the 1990s. So that is the last statement that I made.
16 I am ready to answer the remaining questions.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
18 Chef Manu. Please just bear in mind that it was not the Prosecutor who
19 under his own initiative felt that you were speaking a language other
20 than Swahili. He simply heard what we too heard, and it would seem
21 simply that there was just a difficulty in the interpreting booth. In
22 any event, thank you very much for the answer that you have now
23 reformulated for us.

24 Prosecutor, you may continue.

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

1 Q. Chef Manu still on the subject or coming back to the subject,
2 perhaps, of Boba Boba and Kute. You say that these young people from the
3 self-defence were there. In one of the earlier answers you gave this
4 morning you indicated -- in fact, you made reference to combatants. Now,
5 I understand that this term is perhaps slightly contentious, but it
6 doesn't matter. Let's talk about the self-defence and the young people
7 present. Who was their chief? Who was the leader of the combatants?
8 I'm not talking about the person who was responsible within the youth
9 committee, the young people's committee --

10 PRESIDING JUDGE COTTE: (Interpretation) Yes, Professor Fofé.

11 MR. FOFÉ: (Interpretation) Yes, your Honour, I think that it
12 would be better if we used the term that the witness himself is using.
13 In examination-in-chief, I had asked him what they called the young
14 people who were providing security and surveillance services. I asked
15 him that question and he answered it clearly. I even went as far as to
16 ask him an additional question which was: Did you call them combatants
17 at the time? Did you call them militiamen? And the witness answered:
18 No. So there, too, we need to avoid mixing things up. I think it would
19 be better to talk about young people who were providing security or
20 defence services for the groupement. In that way, things would be
21 clearer. There you have it, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Would the term members
23 of the self-defence committee or members of the self-defence group suit
24 you?

25 MR. FOFÉ: (Interpretation) Your Honour, I think it would be

1 better to use the vocabulary employed by the witness because he is the
2 person giving testimony. From the beginning, he has been talking about
3 young people providing a defence services. He's the one who expressed it
4 that way. I think it would be better to use that term.

5 PRESIDING JUDGE COTTE: (Interpretation) All right.

6 Prosecutor, I believe that you can rephrase the question without
7 difficulty. I give you the floor.

8 MR. MACDONALD: (Interpretation)

9 Q. Witness, who was in charge of the young combat -- excuse me, the
10 young self-defence people? This is an entirely open question and I'm
11 asking you for a name or two names or three names. But who was the
12 person in charge of the young people providing self-defence? Who is this
13 person?

14 A. There was no chief of these young people who were fighting within
15 the local community because the war arose very suddenly. This was not a
16 war for which we had prepared. We did not have leaders or commanders who
17 were to organise troops and allocate tasks to them. I, myself, and the
18 elders of the village decided to set up committees or to set up a
19 committee, and within that committee there were leaders among the young
20 people. But there was not a leader of young people for the war. There
21 was no commander. I'm talking to you about what took place from 2001 to
22 2002 and even in 2003 when Bunia fell into the hands of the UPDF forces.
23 There was no leader or chief, somebody whom the others could listen to.

24 Q. All right.

25 MR. MACDONALD: (Interpretation) Without fragmenting the debate

1 too much, could I say I understand Professor Fofé's point, but could I
2 draw the Chamber's attention to provisional transcript 32, line 23, the
3 term "combatant" appears in the transcript there. That is just an aside.
4 Perhaps this is for the attention of the interpreters, but provisional
5 32, line 23. Page 32, line 23.

6 MR. FOFÉ: (Interpretation) Yes, I fully agree because I noted
7 this line page 32, line 23, and I noted the Swahili expression that the
8 witness used.

9 MR. MACDONALD: (Interpretation) Very well.

10 Q. Chief Manu, do you recall that on the occasion of your meeting
11 with the Office of the Prosecutor, you were obviously asked this
12 question: Who was the chief? And at that time, at that time of our
13 interview with you, we used the term combatant. Do you recall that we
14 questioned you on this very subject, Chief Manu?

15 A. I don't know if you were the one who asked me the question or
16 your colleague because there were two of you asking me questions. I
17 don't know what your interpreter said to you.

18 Q. Well, Chef Manu, I would like to draw your attention to document
19 DRC-OTP-1043-0304, and more specifically I would like to draw your
20 attention to page 0321, line 559 and following. I will read it to you.

21 MR. FOFÉ: (Interpretation) Excuse me, we haven't yet found the
22 document. What was the number of that document on your list?

23 MR. MACDONALD: (Interpretation) It's one of the transcripts of
24 the interview of Chief Manu.

25 PRESIDING JUDGE COTTE: (Interpretation) Apparently it is number

1 21, Professor Fofé.

2 MR. MACDONALD: (Interpretation) When I referred to documents
3 which begin with 1043, that is always with regard to the interview of
4 Chef Manu. The first page that I am citing is the first page of the
5 transcript if that helps you to find it more quickly on eCourt and then I
6 give a more specific reference to the page and the line number.

7 PRESIDING JUDGE COTTE: (Interpretation) Here we are, it is
8 document 21 on the list, reference is 1043-0304. And this is the
9 document, in fact, that we referred to this morning during our procedural
10 debate. Prosecutor, you may continue.

11 MR. MACDONALD: (Interpretation)

12 Q. Chef Manu, I'm going to read 559 to you:

13 "If you were not a military chief yourself, who was the military
14 chief?

15 "I pay close attention to the questions you ask me. If I go
16 backwards I would say this to you, Boba Boba named himself military
17 chief. It was not through the council of elders, and Kute placed himself
18 below him and Kute had killed his father."

19 All right. Do you recall having said that to us during your
20 meeting with us? And I remind you there was an audio and a video
21 recording made. This is a transcript of that interview that you had with
22 us. Do you recall having said that, Chief Manu?

23 A. I did indeed say what you said. I said Kute was not under the
24 orders of Boba Boba, as the interpreter has just said to me. I said that
25 the young people gave themselves names. Boba Boba, himself, did this, as

1 did Kute. They rebelled, if I could put it that way, and they were no
2 longer obeying the instructions of the elders, and that brought them bad
3 luck. This is something that they decided themselves.

4 Now, when you asked me who was the chief of these combatants, I
5 cannot tell you that it was Kute, even though Kute proclaimed himself
6 chief. I couldn't say that it was Boba Boba either because these people
7 were not under the orders of the elders. The older wisemen did not
8 appoint anyone as commander. I can't tell you that it was Boba Boba or
9 Kute because it was not we, the elders, the old wisemen who decided who
10 was going to be the chiefs. They decided that they were going to be
11 chief. And I would like to say something else, if I may, your Honour.

12 For my part, your Honour, I would like to say that there is
13 something that is bothering me here. I am willing to answer all of the
14 Prosecutor's questions. It is not my intention to enter into conflict
15 with the Prosecutor. I'm not here to fight with him. I am here to give
16 you clarification with regard to the events that took place in our area.
17 But I do have a little problem. It is as though I was arguing or having
18 a dispute with the Prosecutor. That is not my intention. I'm trying to
19 interpret the situation for you. I'm trying to show you what happened
20 from 2001 up till the end of the war in our region, where the young
21 people got involved on the 6th of March -- up to the 6th of March, 2003,
22 when we went back home and we no longer talked about the FNI and the
23 others. This is what I wanted to say to you, your Honour. I am
24 answering his questions and I'm giving you details because I do not want
25 to keep silent. If I keep silent, you will say that I'm refusing to

1 answer. I'm trying to explain to you what happened because you weren't
2 there. I was there. I was present. And I do apologise if I haven't
3 expressed myself well.

4 We can continue.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Chef Manu.
6 We have, I think, understood perfectly well that you wanted to enlighten
7 us. We have also understood that you did not intend to enter into
8 conflict or confrontation, to use your term, with the Prosecutor. We
9 would remind you that the Prosecutor is acting legitimately. After
10 having asked you a certain number of questions, he is able to -- he is
11 entitled to confront you with answers that you gave in 19 -- in 2009,
12 excuse me. But one thing is certain, and it is this, it is very
13 important for the Court today to hear your current words, what you are
14 telling us here in this Chamber under an oath to speak the truth, the
15 whole truth, and nothing but the truth. So we have heard very clearly
16 what you have to say and we will continue.

17 Mr. Prosecutor.

18 MR. MACDONALD: (Interpretation)

19 Q. Chef Manu, is it not correct - and I'm making a suggestion here
20 to you, I am putting it to you - that the traditional chiefs had no
21 control during the period from 2001, 2002, and 2003 over the young people
22 who formed that corps which was defending the groupement of Bedu-Ezekere?
23 In the answer that you have just mentioned, you made reference to
24 Boba Boba and Kute who were disobeying the orders of the wisemen. Is it
25 not true, Chief Manu, that you or the old wisemen, the notables, had no

1 control over these young people?

2 A. We and the council of wisemen of the village had total authority
3 over the young people. But they say that there is no lack of evil events
4 or in -- that's what we say in our language. But in French you can say
5 there is an exception to every rule. You might tell your child not to go
6 outside your property, but the child will go and do that, whether we're
7 talking about a boy or a girl.

8 So we had authority over all of the young people and the council
9 of wisemen also had that authority. It is true that I mentioned Kute and
10 Boba Boba, but I did so because these two people were not listening to
11 the old wisemen. We were trying to maintain the security of the
12 community, of the population, but they were challenging us in our task.

13 Q. Chief Manu, and with your permission I will now make reference to
14 a public document, which is document number 6, a document with regard to
15 which I believe my learned friend, or, my learned friends, excuse me, of
16 Mr. Ngudjolo's Defence team have an objection on a time basis. This is
17 the document which is called: "Memorandum of understanding with regard
18 to inter-ethnic conflict resolution between the Hema and the Bira in
19 Lendu territory." In the light of answers given by the witness since the
20 very beginning, your Honour, even Professor Fofé when he was conducting
21 his examination-in-chief was making reference to this period of 2001, the
22 witness has made reference, himself, to this period of 2001. And so I
23 would like to question the witness in this regard. I will not speak the
24 name out loud, but the name does appear here. This is at line 63 on the
25 page which ends 0211.

1 Now, I would prefer us not to conduct the debate in front of the
2 witness on this point, so if my learned friends do have a debate on this
3 point we should bear that in mind. I would also like to make reference
4 to page 0207 and below point 2 when you see the second entry where you
5 see the word "restoration." I don't know if you have the --

6 MR. O'SHEA: (Previous translation continues) ... document.

7 MR. MACDONALD: (Interpretation) Yes, I do apologise to my
8 learned friends. It's number 6 on our list, but if you don't have that,
9 it is document DRC-OTP-0136-0205, therefore on page 0207. Indicated as
10 207 under our old numbering, you have a heading concerning policy and
11 administration, and at the second point, you have the item with regard to
12 which I want to question the witness. I would draw your attention here
13 to the signatories and, among other things, entry 63 also entry 61
14 because this is a person who has been mentioned previously by the
15 witness. It is with regard to this that the Prosecution would like to
16 ask questions. We had an answer given with regard to entry 61 to the
17 effect that the witness was not able to meet this person. We also have a
18 question with regard to 63; the entry, restoration.

19 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

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

21 First of all, I would like to point out that the Prosecutor
22 disclosed this document to us under Rule 77. Is that not correct? Well,
23 we are somewhat surprised that at the time when we presented our
24 evidence, our exculpatory evidence, the Prosecutor is seeking to use this
25 document against the accused person, a document that was disclosed under

1 Rule 77. And furthermore, if you go to the final page, you will see that
2 this document dates from June 2002. So essentially, your Honour, it is
3 our impression that the Prosecutor is seeking by somewhat roundabout
4 methods, if I could use it that way, to use documents disclosed under
5 Rule 77 in order to try and strengthen the Prosecutor's case. And this
6 does not appear to us entirely Orthodox, your Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, we are
8 not going to impune the Prosecutor. This is a document from 2002 signed
9 by the witness. It is not entirely unreasonable from the Prosecutor's
10 point of view to use this document in cross-examination. He will be
11 allowed to do so.

12 Prosecutor, you may continue.

13 MR. MACDONALD: (Interpretation) Thank you, your Honour.

14 All right. I would like to refer now to the first page.

15 Court Officer, would you be able to put this on the screen for us,
16 please. I'm going to ask a few questions on that page. And after that,
17 we will go to page 0211.

18 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could
19 you please put the first screen up on our screen -- first page up on our
20 screens.

21 COURT OFFICER: (Interpretation) The document is visible on
22 PC 1.

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

24 The Court Usher will ensure that the witness has the document
25 clearly on screen before him. Can the accused persons see the page also?

1 Apparently so.

2 Mr. MacDonald, you may continue.

3 MR. MACDONALD: (Interpretation)

4 Q. Chief Manu, this is a document produced subsequent to a meeting,
5 as we can see, at the beginning of the document. We, chiefs and notables
6 of the territory of Irumu, chief of Witatsi and Widjatsi in the territory
7 of Djugu gathered with His Excellency Mr. Jean-Pierre Molondo Lopondo,
8 the governor of the province of Ituri and other associations and
9 communities resident in Ituri from the 28th of May, 2002, to the 5th of
10 June, 2002, meeting here with finding sustainable peace in the face of
11 the hostilities, massacres and evil destruction of infrastructure in the
12 territory of Irumu.

13 Chef Manu, do you recall having participated in a meeting in
14 Bunia and also perhaps at this stage we could put up the page at which we
15 see your name and signature which is the page which ends 0211.

16 Chief Manu, we're showing this page to you. I'm looking at my
17 own screen at the same time, and if you rook at number 63 you see the
18 name Ngabu Emmanu el, chief of the Bedu-Ezekere groupement, and
19 unfortunately -- thank you for zooming in. We can see a signature now.
20 Do you recognise your signature there, even though it is somewhat
21 difficult to make out? Do you recognise your signature there?

22 A. Yes, I can see the signature.

23 Q. Do you remember attending that meeting in Bunia late May/early
24 June 2002 before the fall of Governor Lopondo?

25 A. I'm thinking about that, about the location where the meeting was

1 held.

2 Q. While you're thinking about that, look at entry 61, the chief of
3 the Walendu-Tatsi collectivity, Schats Ngabile. You made reference to
4 that person on the first day of your testimony, unless I'm mistaken, and
5 as well -- could we call up page 0213, could that be placed on the
6 screen, with your leave. Page 0213, 0213. If we could scroll down and
7 look at the signature, Mr. Émile Muhito the notable for the
8 Walendu-Bindi. And lower, you see the mention Bunia, the 5th of June,
9 2002, and then the signature of Jean-Pierre Molondo Loponde. Does this
10 allow you to remember that meeting, Chief Manu?

11 A. I believe that the meeting was held at the Anglican church in
12 Yambi Yaya.

13 Q. Chief Manu, we are now going to display page 0207 of the same
14 document. And I think you will see at the top there is a paragraph
15 entitled 2. Policy and administration. And the first point is:

16 "Respect for the territorial limits of each entity."

17 And furthermore, the second bullet point is:

18 "Restoring the authority of traditional chiefs and respect and
19 submission to the authority of the base in the location, the chief of the
20 collectivity, the groupement, or the particular locality."

21 I'd like to focus on this. Chief Manu, is it not true that
22 during the period of time between 2001 and 2003, the traditional chiefs,
23 be they chiefs of collectivities or groupement or localities, within the
24 Irumu collectivity of Walendu-Bindi and Walendu-Tatsi had no --
25 correction Walendu-Djatsi (* phon), that these leaders had no authority

1 over the young people who belonged to the self-defence group? That's my
2 question in light of this document that we looked at and in light of your
3 signature on this document.

4 A. It is their own territory, but I must say something about this.
5 Here we see that it says restoring the traditional authority. When the
6 war broke out, people living in other localities thought that it was a
7 joke and they didn't take things seriously. The Hema --

8 THE INTERPRETER: Inaudible.

9 THE WITNESS: (Interpretation) -- because of their young
10 people -- suffered a great deal because of their young people and their
11 situation was quite different. Our power was well established. We did
12 have authority over the young people because the council of wisemen of
13 the village did its work. In our community people did respect the
14 notables. And -- well, if the situation was quite different elsewhere,
15 that is why such a resolution was adopted.

16 MR. MACDONALD: (Interpretation)

17 Q. Chief Manu, I showed you the signature under number 61,
18 Schats Ngabile, and you mentioned that during the period of time in the
19 war when you -- you could not meet with him because it was difficult to
20 travel about. But, Chief Manu, in June 2002, you were with him, weren't
21 you, the chief -- your chief of the collectivity, he was in Bunia? You
22 met with him, you spoke to him, you discussed matters with him, is that
23 not so?

24 A. That's right. When Lopondo arrived in Bunia, the Lendu could not
25 go into Bunia town. If they were able to get in it was because of

1 Lopondo. It was thanks to Lopondo's efforts that people were able to
2 meet within this counsel. Look at the first point. Mention is made of
3 the fact that the territorial limits of each entity were supposed to be
4 respected. The Hema left their territory and they attacked the Hema
5 without any reason.

6 THE INTERPRETER: Overlapping speakers.

7 THE WITNESS: (Interpretation) After --

8 THE INTERPRETER: The witness continues.

9 THE WITNESS: (Interpretation) After Lopondo's intervention, the
10 situation evolved.

11 MR. MACDONALD: (Interpretation)

12 Q. Very well. Chief Manu, let us go back to this base committee in
13 Zumbe to which you made a report of your trip to Beni. And I would like
14 to ask if another document could be displayed. There's an EVD number for
15 it. The number escapes me for the time being, but it is the document
16 entitled: "Structure of the groupement *de Base*." EVD-D03-00093.

17 PRESIDING JUDGE COTTE: (Interpretation) That is number 2 on the
18 list, number 2 on our list.

19 MR. MACDONALD: (Interpretation) We've also asked the
20 Court Officer to bring the original copy. I would like to ask, and this
21 is on an exceptional basis, could we use the overhead projector to show
22 the first page, the entire first page, please, because the number
23 DRC-D03, et cetera, hides some information at the bottom of the first
24 page. And also, you Honour, I would like to ask, when we review the
25 signatures if we could please try to clearly distinguish the various

1 colours of the pens that were used to sign the document.

2 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, if you
3 could, could you please display the first page and ensure that the last
4 line is visible.

5 (Trial Chamber and Court Officer confer)

6 PRESIDING JUDGE COTTE: (Interpretation) I've been reminded that
7 this is a confidential document, so we're going to have the blinds
8 lowered behind the witness while we look at this document.

9 MR. MACDONALD: (Interpretation) Your Honour, this also leads
10 me - and I'll leave it up to you -- this leads me to the question of an
11 EVD number for the previous document.

12 PRESIDING JUDGE COTTE: (Interpretation) You plan to make no
13 further use of it? You're finished with it?

14 MR. MACDONALD: (Interpretation) Yes, I finished.

15 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
16 assign an EVD number to that document right away so we don't forget,
17 DRC-OTP-0136-0205. We've just been using that document, it was just
18 mentioned.

19 COURT OFFICER: (Interpretation) Thank you, your Honour. This
20 document shall bear the number EVD-OTP-00275 and shall be recorded as a
21 public document. Thank you --

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, ma'am. We
23 will now turn to the other document.

24 COURT OFFICER: (Interpretation) That document can be viewed by
25 pressing the button marked "Docu Cam Witness."

1 MR. MACDONALD: (Interpretation)

2 Q. Chief Manu, I think you can see the document. We can also give
3 you a hard copy, but first of all structure of the base committee
4 Bedu-Ezekere groupement/Zumbe. We see that the document states the
5 structure of the base committee was made up of five councils. Each
6 council or committee had a role to play, and we hereby provide the role
7 of -- and then it goes on to describe each committee, the council of old
8 wisemen, the administration committee, and so on and so forth. And then
9 there is one particular entry, the very, very last line, if you could
10 shift the -- move the document up a bit. And this is -- well, there's an
11 abbreviation, you see, and what we see here is CFR information provided
12 to the Defence teams. And there's also something stating that this is
13 the first page. Now, this first -- you've already seen this document,
14 haven't you? We will show you the entire document and you could even
15 look at the last page with the figures ending in 0331. That could be
16 placed under the overhead projector as well, and I think you will see
17 your name and your signature and the date as well, namely, the 21st of
18 day of October, 2009.

19 A. Yes, I can see that.

20 Q. Chief Manu, now let us avoid any possible ambiguity. Let us
21 dispel any doubts or ambiguity. Now, this document, is it true that it
22 was drafted in October 2009? Is that so?

23 A. I'm sorry, I beg your pardon. I'll answer in a different way.
24 I've already told you before --

25 THE INTERPRETER: Overlapping speakers.

1 MR. MACDONALD: (Interpretation)

2 Q. My question is very simple: Isn't it true that this document was
3 written and signed in October 2009? That's what the question was. I'm
4 not asking for any details. I'm asking you to tell me whether, yes or
5 no, the document was signed in October 2009.

6 A. Yes, but let me explain why we placed that date on the document
7 and I shall repeat. Yes, but let me give you an explanation.

8 MR. FOFÉ: (Interpretation) Your Honour, please, please, no,
9 your Honour.

10 PRESIDING JUDGE COTTE: (Interpretation) Professor.

11 MR. FOFÉ: (Interpretation) The witness has answered and wants
12 to provide some explanations. He is the one who is giving testimony.
13 The Prosecutor can't forbid the witness to provide an explanation. He
14 has said yes, but he wants to give an explanation.

15 PRESIDING JUDGE COTTE: (Interpretation) We shall ask Chief Manu
16 to provide some explanations, not too lengthy ones, but you wanted to
17 make a particular point.

18 THE WITNESS: (Interpretation) This is Safari Ngabu's document,
19 our drafter. He was the one who wrote all of our documents. When your
20 office agreed to take a document, we took it out from all the documents
21 and we told him to write it properly, to record the information that you
22 needed, and that was done.

23 Now, in that month -- that was 2009. But, when I was present and
24 we had a meeting, I said to him to find those things, those elements,
25 that information, and he did. And then I signed it. Jacques was not

1 present, Ngudjolo was not there, and the person who provided the document
2 to the Defence team -- well, I don't know that person. Otherwise --
3 well, you see, I was present. This is an extract of the document that we
4 had drawn up. We only withdrew the page that was of interest to you.
5 You wanted that, and so we took out that particular extract and the date
6 was recorded.

7 MR. MACDONALD: (Interpretation)

8 Q. Chief Manu, now when you say that someone wanted, is it correct
9 to say that this document was drafted at the request of Mathieu Ngudjolo?
10 And when I say "Mathieu Ngudjolo," I include his Defence team, if you
11 wish. But this document was drawn up for the needs of the accused, is
12 that not so, and it was done in October 2009?

13 A. I have -- I know nothing about what you're asking me.

14 Q. Let me repeat my question. Now, you gave an answer. You said
15 page 6, line 6, page 61 of the realtime transcript:

16 "But when I was present when we had a meeting I said to him, Find
17 that information in question."

18 Chief Manu, isn't it a fact that this document was prepared with
19 the people who signed and whose names appear on the last page? And
20 obviously Ngudjolo was in detention in October 2009, he couldn't sign;
21 and Jacques Mande had died, so he couldn't sign. Is it not true that you
22 met the people who signed this document and the signatures appear, Toko,
23 Ngabu Mandro, Ngabu Safari, Bukpa Kalongo, Zulo Vili. You met to write
24 this document.

25 A. We did not meet to draft this document. We met to talk about how

1 we were going to withdraw that extract from the original document, and I
2 wrote in the place that it is marked organigram, structure chart,
3 organisational chart, that is where we see the various committees. Now,
4 if we put Ngudjolo's name and Jacques's name there, it is because we
5 meant that they were part of that structure. We realise that Ngudjolo
6 wasn't there and that Jacques was dead. I put this org chart down on
7 paper. The place where there is a box, well that is my writing. Other
8 than that, it's Ngabu Safari who wrote the document. We put Ngudjolo's
9 name and Banga Mande even though he was already dead to make it clear
10 that those two people were part of that structure. That's all I have to
11 say.

12 Q. Chief Manu, what part did you draft yourself? Could you tell us,
13 perhaps page 0330 could be put on the screen. I believe that is the page
14 that the witness --

15 PRESIDING JUDGE COTTE: (Interpretation) I think the easiest
16 thing would be to display the second-last page.

17 THE INTERPRETER: Message from the interpreters: Many
18 overlapping speakers.

19 THE WITNESS: (Interpretation) Prosecutor, that is my writing.

20 MR. MACDONALD: (Interpretation)

21 Q. So you, yourself, wrote this; is that right? Is that what you're
22 saying?

23 A. Even now I can write something and you will see that it is my
24 writing. I was the one who put the name of Banda Mande who is dead as
25 well as Ngudjolo so that those people would know that those people were

1 part of the structure in question. And Kitoko sent --

2 THE INTERPRETER: Inaudible.

3 MR. MACDONALD: (Interpretation)

4 Q. What reference on the original document, could you please show us
5 the large numbers at the bottom on the right it starts DRC-D03-0001 and
6 then there's four more figures after that. Could you tell us which page
7 you're referring to, Chief Manu?

8 A. Page 3. I wrote it myself, DRC-D03-0001-0330.

9 Q. And on the other side. Now you said that you added some
10 information about Jacques Mande, among other people, but that doesn't
11 appear on that page.

12 A. Jacques Mande and Ngudjolo -- we wrote chewy (* as interpreted)
13 on that paper and Ngudjolo is found at page 4, which bears a number
14 DRC-D03-0001-0331.

15 Q. And were you the one who wrote that page as well?

16 A. It was the secretary Ngabu Safari who wrote that.

17 Q. Chief Manu, Chief Manu, is it not correct to say that during this
18 meeting that you had, inevitability you discussed the case with
19 Bukpa Kalongo, with Martin Banga, with Zulo Vili, with Chief Kitoko, the
20 same people who were there when the Prosecutor visited and you made
21 arguments to defend --

22 MR. FOFÉ: (Interpretation) What is the factual foundation?

23 MR. MACDONALD: (Interpretation)

24 Q. Chief Manu, is it not correct to say that you talked and you
25 drafted this document to exonerate Mathieu Ngudjolo to ensure that he

1 would be never found guilty by the International Criminal Court?

2 A. Prosecutor, I don't share your opinion. You're going very far
3 with your own opinions. That is an opinion, your opinion. You,
4 yourself, received the document. We could have refused to have given a
5 document. Furthermore, this document was not drafted -- an entire month.
6 The secretary was asked to extract the part that was of interest from the
7 original document, and when I signed it the document that -- well, the
8 hard copy -- the -- you see, I had to write it out by hand to include it
9 with the materials to be provided. I signed and then I went away. So it
10 wasn't a group of people who met for a long period of time to agree on
11 what to write down. We just decided to extract the relevant part, but I
12 don't know about the person who forwarded the document on.

13 Q. Chief Manu, Chief Manu, let us go back to Mr. Zulo Vili. Let us
14 go back to Mr. Zulo Vili. You remember giving testimony before the Court
15 saying that he was a member of the drafting committee? And I make
16 reference to page 28 of transcript 300. Now, Chief Manu, his name is to
17 be found, he signed the document, his own signature is to be seen here,
18 member of the management and health committee. So why did you say here
19 under oath that he was a member of the drafting committee?

20 A. Yes, I said that. But remember, Mr. Prosecutor, I told you that
21 in our area people had specific duties. I told you that Zulo Vili was a
22 member of the management committee. He was responsible for the
23 management of certain things. When Safari Ngabu was not there, Zulo Vili
24 could be responsible for drafting. So if someone was absent, there was
25 no reason to wait. It is possible for me to leave here and go to the

1 hotel. I would be given a driver. What I'm saying is that he was also a
2 member of the management committee. You can refer back to that part of
3 my testimony. He was a part of that drafting committee. Boba Kalongo
4 and Safari. I testified to that right here. I have said it both in my
5 statement and in my testimony.

6 Q. Chief Manu, isn't it correct, as you have mentioned, that there
7 was a meeting to prepare this document? Isn't it true that there was a
8 meeting also to prepare the arrival of the Prosecutor and a message to be
9 given to him? Isn't it correct that in the Bedu-Ezekere groupement
10 information was exchanged between the people who are coming to testify
11 here for Mathieu Ngudjolo and that the evidence adduced before this Court
12 is discussed?

13 A. This document is different from the Zumbe meeting, and the reason
14 is that in Zumbe we discussed three points related to what we were going
15 to tell the Prosecutor. But we did not discuss the document that we were
16 going to send here. The document was prepared at your request. But
17 regarding what we were going to tell the Prosecutor, we discussed that in
18 Zumbe but we did not discuss this document in Zumbe.

19 As far as this document is concerned, we discussed it during a
20 meeting in Masu. As to the meeting with the Prosecutor, it concerned
21 Ngudjolo.

22 MR. MACDONALD: (Interpretation) He should not assist the
23 witness.

24 MR. FOFÉ: (Interpretation) Your Honour, we are dealing here,
25 as usual, with hypothetical issues. I'm not assisting the witness. I'm

1 simply appealing to all of us to use Orthodox methods. I'm going to
2 address the Presiding Judge here.

3 Your Honour, the Prosecutor is putting questions on the basis of
4 hypothesis. I allowed the witness to answer the last question, but if
5 you look at that last question, what is the foundation for that question?
6 Look at the last question, your Honour. What is the basis for that
7 allegation that is being made by the Prosecutor? If he has a factual
8 element, he should have disclosed it to us. It is for this reason that I
9 am on my feet. It is a matter of principle, because if we resort to
10 hypothetical questions, then we will never conclude because the
11 imagination has no limits. That is what I wanted to say, your Honour.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Professor Fofé. We have heard you.

14 Mr. Prosecutor, please continue, but you should bear in mind that
15 you have to obtain clarification from the witness regarding the
16 conditions in which that document was prepared. But please, do not rely
17 too much on suppositions because you may not have the answers that you
18 wish. You need to have clear, brief, and concise answers. Please
19 proceed.

20 MR. MACDONALD: (Interpretation) I'm simply repeating the
21 answers that the witness gave previously and I'm putting that to him.

22 PRESIDING JUDGE COTTE: (Interpretation) Very well.

23 So, Mr. Prosecutor, please split your questions into little bits
24 so that they should not be too complex. You can now continue.

25 MR. MACDONALD: (Interpretation)

1 Q. Mr. Witness, I will read from transcript 299, page 25, line 4,
2 and I read -- the answer begins on the previous page, but, believe me,
3 I'm not quoting you out of context and this is what you said:

4 "I explained to the Prosecutor, I told him the people who are
5 here in front of you can confirm to you that Mathieu Ngudjolo was not in
6 Bogoro and I'm telling you this before God."

7 Do you remember saying this in answer to Professor Fofé's
8 questions on the first day of your testimony?

9 A. Yes. And let me repeat what I said to the Judges.

10 Q. Do you remember saying that? That was the simple question.
11 Please allow me to ask the questions. Isn't it correct, Chief Manu?

12 A. My answer was "yes."

13 Q. Chief Manu, isn't it correct that in Bedu-Ezekere the entire
14 population is behind Mathieu Ngudjolo because he's not only an important
15 personality but these are also the instructions of the traditional
16 leaders?

17 A. Mr. Prosecutor, this is my answer to you. If you are with your
18 child and you are told that your child went and stole somewhere, you will
19 not believe that. I am saying this before this Chamber and before God,
20 that Mathieu Ngudjolo was not in Bogoro. He was not in Bogoro. He was
21 not in Bogoro. I swear before God. This does not mean that everyone was
22 behind Mathieu Ngudjolo. Who is Mathieu Ngudjolo in the eyes of the
23 inhabitants of Zombe? Who is Mathieu Ngudjolo to me? I'm telling you
24 clearly and I'm telling you the truth as I took the oath to do. I am
25 saying that he was not there and I can repeat this all day long.

1 Q. And I believe that when you were interviewed, you even went
2 further. You said until you die you are there to defend
3 Mathieu Ngudjolo. Do you remember that that is what you said during your
4 interview with the OTP?

5 A. This is what I said: Mathieu Ngudjolo did not go to Bogoro.
6 You, yourself, were not there, Mr. Prosecutor, so why would you want me
7 to tell a lie to the Judges by saying that he was in Bogoro? Let me
8 repeat, he did not go to Bogoro. He was not in Bogoro.

9 Q. Chief Manu, isn't it correct that you know Mathieu Ngudjolo well?
10 I would even say that you know him very well; isn't that correct?

11 A. I know both of them and I cannot deny that. I know both of them.

12 MR. FOFÉ: (Interpretation) I'm sorry, your Honour.

13 MR. MACDONALD: (Interpretation) If it is a translation problem,
14 he should do it at the end.

15 PRESIDING JUDGE COTTE: (Interpretation) What is the problem,
16 Professor Fofé?

17 MR. FOFÉ: (Interpretation) I do not understand why he is
18 irritated. I simply wanted to point out that the answer given by the
19 witness on page 70, lines 1 to 4, is not complete. The witness referred
20 to the interview that he had with the Prosecutor in Entebbe. This is an
21 important element and it should be reflected in the transcript. That is,
22 page 70, lines 1 to 4, the answer of the witness is not complete. He
23 referred to his interview with the Prosecutor in Entebbe.

24 PRESIDING JUDGE COTTE: (Interpretation) The Prosecutor's
25 questions are very precise and the witness is answering clearly. So let

1 us try to interpret as precisely as possible so as to avoid Mr. Fofé
2 rising to his feet and disrupting the proceedings.

3 Mr. Witness, even if you are anxious to share the information
4 with us, please be very slow.

5 Mr. O'Shea.

6 MR. O'SHEA: (Previous translation continues) ...

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.
8 I was intending to ask the Prosecutor whether he wanted that document
9 that we have been discussing to be kept on the overhead projector and
10 whether that document should be maintained as confidential. We believe
11 that the document was filed as confidential because the name of a
12 previous protected witness appears on the last page, but it would be
13 probably preferable to reclassify that document.

14 Mr. Prosecutor.

15 MR. MACDONALD: (Interpretation) I am already very far ahead.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well. We did not
17 want to interrupt you.

18 Court Officer, Court Usher, please pull the curtains back up.

19 And please continue, Mr. Prosecutor.

20 Before the end of the session, Professor Fofé, Mr. Kilenda,
21 please, you will inform us whether you wish that document to remain
22 confidential.

23 For the time being, Mr. MacDonald, you can continue.

24 MR. MACDONALD: (Interpretation)

25 Q. Chief Manu, I will repeat my question and then repeat your

1 answer. Page 70, line 5, question: Chief Manu, isn't it correct that
2 you know Mathieu Ngudjolo well? I would even say that you know him very
3 well. That is correct, isn't it?

4 A. I know him. I know them. I know both of them. I cannot deny
5 that here in front of you. I know both of them.

6 Q. You are referring to Germain Katanga there also, aren't you?

7 A. You mentioned Germain Katanga's name and I said that I know those
8 two people.

9 Q. Chief Manu, not only do you know Mathieu Ngudjolo well, but he is
10 also a member of your extended family, isn't it, the respective families
11 of your grandfather's intermarried, which means that today your family
12 and Mathieu Ngudjolo's family members cannot intermarry; isn't that
13 correct? Do you have an answer?

14 A. I have answered your question. I answered your question a long
15 time ago. I do not know how I should answer a question several times.
16 What do you want me to do to understand what I said in my answer to you?

17 Q. Chief Manu, isn't it correct that not only is he a member of your
18 family, but within the Bedu-Ezekere groupement Ngudjolo is an important
19 personality who is recognised as such by the entire population?

20 A. Why would he be someone who is respected? Would it be because he
21 is a notable, because he was a combatant, or because he is a nurse?
22 Please tell me why he would be a respectable or respected person.
23 Personally, I handed over my status as notable to my son, but today I am
24 still respected. Why would Ngudjolo be a respected personality?

25 Q. Chief Manu, do you recall that this particular question was put

1 to you, that is, the way Mr. Ngudjolo was perceived in Bedu-Ezekere? Do
2 you remember that you said that he was an important person in the
3 Bedu-Ezekere groupement?

4 A. There are not many people in my village who have studied or who
5 have gone far in their studies. There are not more than 15 of them. And
6 if someone is educated, it is possible for him to be respected. And in
7 our area, a person who has done nursing studies is an important person.
8 We have a doctor in our groupement, and that is Mr. Lobho. We respect
9 that gentleman because he provides drugs or medicines in our health
10 centre. Ngudjolo is someone who studied nursing. I believe that it is
11 for that reason that he is liked and appreciated. Students like their
12 teacher. Why wouldn't they like a nurse or a doctor? For my part as a
13 notable, I am saying that he was not at that place.

14 Q. Chief Manu, isn't it correct that he was venerated, not only
15 because he was a nurse and that is not in dispute. But isn't it correct
16 that he was also venerated because he took over Bunia on the 6th of
17 March, 2003, because he had become a leader in the groupement and then he
18 also became a leader of a party known as the MLC? For all those reasons,
19 isn't it correct, Mr. Witness, that Mathieu Ngudjolo was venerated by the
20 entire population of Bedu-Ezekere?

21 A. I do not agree with that. That is not true. If that had been
22 the case, all the young people would have been behind him because he
23 would have been considered as a head of state and as an authority. Ask
24 him how many young people of Zumbe was behind him. Let me tell you the
25 truth.

1 THE INTERPRETER: Correction: The Prosecutor had said that
2 Ngudjolo was Chief of Staff of FNI/FRPI.

3 MR. MACDONALD: (Interpretation) I will refer to document
4 DRC-OTP-1043-0536, and I would like to draw your attention to page 0557,
5 line 662 and I'll read that out to you, Chief Manu, and listen carefully
6 because it is a lengthy extract:

7 "Mathieu Ngudjolo was an important person in the Bedu-Ezekere
8 groupement; isn't that correct?"

9 That was my question. And your answer there is "*ndiyo*." The
10 French answer does not appear but "*ndiyo*" means "yes."

11 "Do you recognise that?"

12 And you say:

13 "Yes, I recognise that. He is an important military leader for
14 the entire Ituri in the FNI and in the MRC."

15 And the interviewee:

16 "Did you say MRC?"

17 And then the answer:

18 "Yes."

19 And then I tell you:

20 "He is a very, very important personality in Bedu-Ezekere."

21 And your answer:

22 "That, I know."

23 Chief Manu, do you remember saying that -- admitting that in the
24 Bedu-Ezekere groupement Mathieu Ngudjolo is an important personality?

25 A. Who, or rather, where is your interpreter? This is what I said.

1 Mathieu Ngudjolo was the leader of the FNI. I mentioned the names of
2 Mathieu Ngudjolo, Germain Katanga, and Goda. He was the leader of the
3 FNI but not in our area in Zumbé. He was also a member of the MLC. Ask
4 him whether what I am saying is incorrect.

5 Q. Regarding what I have read, do you remember during your interview
6 with the OTP that you said that Mathieu Ngudjolo was a major or important
7 personality in the Bedu-Ezekere groupement? Do you remember saying that?
8 Because today you are saying the contrary. That is what I want to
9 underline here, nothing more.

10 A. Mr. Prosecutor, even today he is an important personality. The
11 entire world recognises that. Considering his training as a nurse, he is
12 someone who is important. I cannot deny what you are saying, but,
13 however, he is not important because he was a member of the army. It is
14 not because he was a soldier that he would be an important personality.
15 And let me repeat, it was not because he was in the army that he is
16 considered in Zumbé as being someone important. It is because he is a
17 nurse.

18 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

19 MR. FOFÉ: (Interpretation) Thank you very much, your Honour.
20 For purposes of fairness to the witness --

21 MR. MACDONALD: (Interpretation) I object, Mr. President. The
22 witness is present and I do not want this to take place when he is
23 present.

24 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, what do
25 you have in mind? You understood the legitimate concern of the

1 Prosecutor.

2 MR. FOFÉ: (Interpretation) He has got it completely wrong. I
3 would like to ask him to be calm and to wait and to learn to listen to
4 the colleagues.

5 What I wanted to say, your Honour, is the following: When the
6 Prosecutor read an extract from his interview in Entebbe, he was the one
7 in his question who talked about a very, very important personality.
8 That was a leading question.

9 THE INTERPRETER: From the interpreter: Too many overlapping
10 speakers.

11 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, what
12 you have just said, please, you have to bear in mind that we are able to
13 realise it ourselves without needing you to tell us about it and let us
14 leave it at that. Correct?

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

16 PRESIDING JUDGE COTTE: (Interpretation) We have heard from the
17 Prosecutor the manner in which that interview was conducted in 2009. It
18 is possible for the Bench to remain quiet while still making its own
19 inferences and deductions, and this is provisional. Because the day will
20 come when a summary analysis would have to be made. We understand,
21 Mr. Prosecutor, that you would like to avoid any interruptions that might
22 disrupt your cross-examination, but we need to carry on in a more visual
23 than oral manner because this creates problems for our interpreters and
24 court reporters. Even if it is difficult to comply with the five-second
25 rule, let us do everything to make an effort.

1 MR. MACDONALD: (Interpretation) Thank you, your Honour. I will
2 try to do this.

3 PRESIDING JUDGE COTTE: (Interpretation) We do appreciate the
4 efforts you're making and we're grateful for that.

5 MR. MACDONALD: (Interpretation)

6 Q. Chief Manu, is it not correct that not only Mathieu Ngudjolo was
7 a great -- even a very great personality in Bedu-Ezekere, but that he was
8 a more important personality than you, yourself. Isn't that true, you
9 the traditional chief next to Mathieu Ngudjolo would have to admit that
10 Mathieu Ngudjolo was more important than you were?

11 A. Who gave him the role of nurse to take care of the sick? It was
12 I who did so. I was the one who appointed him to that role. How,
13 therefore, could he be more important than me?

14 Q. Still, in the same transcript at the page 0557 when I put it to
15 you that he is indeed a very great figure in the groupement of
16 Bedu-Ezekere, you answered:

17 "I know that."

18 And following that, I put to you another proposition. I say:

19 "Even more important than you ultimately, even greater than you."

20 And then I say to you again, I put it to you:

21 "That is true, isn't it?"

22 And there you answer:

23 "Because he is a colonel."

24 And I say:

25 "Yes, in the region of Zumbe."

1 And then I continue.

2 So, Chief Manu, Chief Manu, is it not correct that you said
3 previously when you met the Office of the Prosecutor with regard to a
4 leading or a suggestive question, you answered, "because he is a
5 colonel," when you were asked -- when it was suggested to you that he was
6 a greater personality than you. Do you recall that, Chief Manu?

7 A. Yesterday, you asked me why I signed the documents prepared in
8 Bolo without reading them, and I would say this to you --

9 PRESIDING JUDGE COTTE: (Interpretation) Please allow the
10 witness to answer.

11 Witness, we -- you have understood that we do not want you to
12 give answers that are too long. As far as possible, we would like you to
13 answer the Prosecutor as directly as possible, but, but, you are there to
14 express yourself, so please do so. Please answer us.

15 THE WITNESS: (Interpretation) If I moved away from the point,
16 it is because I remembered that at the time when the Prosecutor drew up
17 his document I was not there and I did not read it. Because they could
18 write anything they liked in that document, and that is why I asked him
19 where his interpreter was. All right.

20 Coming back to the question, Ngabu Mandro Emmanuel said that
21 Ngudjolo Kimbi is not a colonel of Zombe. He was a colonel of the FNI.
22 How many times am I going to say it, your Honour? He was a colonel of
23 the FNI and a colonel of the FNI is not necessarily a colonel of Zombe.
24 Where is your interpreter, Mr. Prosecutor? How many times am I going to
25 have to say this? Everybody knows that he was a colonel with the FNI.

1 He was not a colonel of Zumbe. Zumbe did not have a colonel.

2 MR. MACDONALD: (Interpretation)

3 Q. What is it that you find funny?

4 A. Because you are coming back to a question that I have already
5 answered. That made me laugh. And I can express that amusement through
6 laughter.

7 Q. Chief Manu.

8 A. Yes.

9 Q. Is it not correct that any person who dared to defy
10 Colonel Ngudjolo in Bedu-Ezekere groupement would be considered a
11 traitor?

12 A. If you want to talk about traitors, allow me to say something.
13 Let me say this to the Chamber. I am the one who brought Ngudjolo out of
14 the bush to bring him into the army. Ngudjolo arrived with a lot of Hema
15 people in Zumbe where we were, and they began -- where we were in Likoni.
16 He began to ask the population to provide goats and I told him to go to
17 Bunia. I said to him if the Lendu start to -- if there start to be
18 misunderstandings between you and the Lendu, you will be called traitor.
19 It was a question of explanations that I was giving. I did not say that
20 the population had called Ngudjolo a traitor.

21 Q. Chef Manu.

22 A. Yes.

23 Q. Is it not correct that in the groupement of Bedu-Ezekere, anyone
24 who might collaborate with the Office of the Prosecutor in the course of
25 its investigation is perceived as being a traitor?

1 A. That is false. We even received a journalist who came to see us.

2 We also received a visit of the Prosecutor. Zumbe received everybody.

3 Q. Chief Manu, is it not correct --

4 A. Yes.

5 Q. -- that everybody who -- or any person who came to testify in

6 this Court against Mathieu Ngudjolo is perceived as a traitor?

7 A. Nobody, nobody in Zumbe would say that Ngudjolo was in Bogoro.

8 So how could you call anybody a traitor?

9 Q. Chief Manu --

10 A. Yes.

11 Q. -- you will recall that yesterday I asked you a question

12 concerning the Cobra devices, those Cobra devices with which you

13 communicated or people communicated with the young combatants or the

14 young self-defence persons who were in Kagaba to collect the cartridges.

15 This is what you said when I asked you questions, the question whether

16 those devices had been stolen in Nyankunde. You answered at line 18 of

17 page 65 of yesterday's transcript:

18 "This matter of theft in Nyankunde is not something that we

19 talked about. I cannot say anything about a theft. If I talked about a

20 theft in Nyankunde, they could kill me over there, even if I am a Lendu,

21 their brother."

22 Chief Manu, what do they do to somebody who comes to testify in

23 this courtroom against Mathieu Ngudjolo if you can be killed for talking

24 about a matter of a theft of Cobra devices or Motorolas with combatants

25 in Aveba?

1 A. My trip from Beni to Bolo and my trip to Bolo to my home, what
2 does that have to do with Cobra? What is the relationship between the
3 two facts? What do you want me to say concerning what theft? There is
4 no relationship between these two events. These are events that took
5 place in Irumu not in Djugu. There is no relationship between the two
6 facts.

7 Q. Chief Manu --

8 A. Yes.

9 Q. -- there was an attack on Mandro, wasn't there, before the 6th of
10 March, 2003. Did you know that?

11 A. Yes, I know that but I was not there.

12 Q. Who participated? That is an open question. Who participated in
13 the Mandro attack?

14 A. I have answered you as follows: I did know that but I was not
15 there.

16 Q. Chief Manu, who attacked Mandro, to your knowledge?

17 A. I knew it but I was not there. How do you want me to designate
18 someone who was responsible for that?

19 Q. Chief Manu, you are under oath. What did you find out concerning
20 the attack on Mandro? I am putting it to you that you are playing cat
21 and mouse with us here now. Who attacked Mandro?

22 A. I wanted to say something. If I say to you that I knew that, it
23 is because I went to collect the chiefs of the locality and we were
24 unable to return because of the war. I would like to ask you the
25 following question: Who informed you? I was not there at that -- those

1 days. I was blocked. I was with the chiefs. I don't know anything
2 about this subject, but you are asking me to give you the name of a
3 person.

4 MR. MACDONALD: (Interpretation) Your Honour.

5 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness,
6 Mr. Witness, no quite simply, we have understood that you want to specify
7 very clearly and draw to the attention of all three members of the Bench
8 that you were not there in Mandro, and that therefore you could not give
9 testimony as to -- in the nature of an eye-witness account by somebody
10 who has seen and heard what happened. But the Prosecutor is asking you
11 whether you had knowledge, whether you heard any account - for us, this
12 is what we call hearsay evidence, which has the weight that we decide to
13 accord it or not - and could you answer this question if you are in a
14 position to do so. We might be in a position to believe that you had
15 heard something about the attack on Mandro. The Prosecutor is asking you
16 what you heard about that attack. We have understood, however, that you
17 did want to bring to our attention the fact that you were not there
18 yourself and that therefore it is not direct eye-witness testimony.
19 Please be reassured. We have understood that point. And now could you
20 understand the Prosecutor's question. Thank you.

21 THE WITNESS: (Interpretation) All right. When I arrived at my
22 home, I was accompanied by the chiefs of the community -- the chief of
23 the community. Excuse me. A report was made to me. There was a
24 misunderstanding between Mbulo and somebody else on the subject of
25 weapons because in Mandro Germain Katanga and the groups who -- which had

1 come out of Bogoro and another group that wanted to go and attack Mandro
2 had taken weapons and ammunition. So there was a misunderstanding
3 between these different groups. Given that I was next to the great
4 traditional chief, I was not in a position to say anything, to make any
5 contributions to this discussion. I stood next to the traditional chief
6 and I did not say anything in this discussion.

7 So, Mr. Prosecutor, I wanted to say that I was not there on the
8 day of those -- that combat. And Mbulo acted under his own initiative.
9 I don't know why he did it. If you ask me why I did not condemn Mbulo, I
10 was not able to do so because I was standing next to the great chief. I
11 confirm that there was fighting in Mandro, I did hear an account of that
12 fighting in Mandro, but I was not there, I was not in Zumbe, I was not in
13 Mandro, I was with the great traditional chief who, by the way, is
14 deceased, and I succeeded him in Ezekere. I do not have a lot of
15 information to give you -- excuse me, and I buried him in Ez ekere.

16 THE INTERPRETER: (Interpreter) Line 21 of the transcript in
17 French.

18 THE WITNESS: (Interpretation) So I do not have anything to
19 tell you further than that about this fighting. I have explanations to
20 give you about the subjects I know about. We're talking here about an
21 event that took place in my absence. I don't know what to do. I don't
22 know what to say to give you explanations about that matter. I do not
23 want to invent facts that I do not know before you here,
24 Mr. Presiding Judge, so I would reject this question, given that I was
25 not there.

1 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor.

2 MR. MACDONALD: (Interpretation)

3 Q. Chief Manu, is it not correct -- I apologise. I will rephrase
4 that question. We have ten minutes remaining.

5 MR. MACDONALD: (Interpretation) I will not finish today,
6 your Honour, so let us go perhaps more slowly.

7 Q. This man who is now deceased who was the great traditional chief
8 of the community, are you referring to Mr. Ngabile Jacques, Ngabile. I
9 do apologise for my pronunciation of his name -- of his surname, but is
10 that correct?

11 A. Schats Ngabile.

12 Q. Well, in Bogoro there is fog, and now in Mandro you were in Loga.
13 When you arrived in Zumbe, had the attack just concluded or was it still
14 underway?

15 A. I spent two days in the groupement of Penyi which is different
16 from the groupement of Bedu-Ezekere. And in the groupement of Penyi, I
17 did not go through Mandro, I went via the hill.

18 Q. Chief Manu, is it not correct that when you were on the return
19 trip towards Zumbe you heard that there was an attack that was taking
20 place in the Mandro region? Am I right in putting that to you?

21 A. When I left the groupement of Penyi, the locality of Malhabo, I
22 could see the waterway and Zumbe. So you can see where the Judge is
23 sitting, let us say that that is Zumbe and Mandro is where you are
24 standing. So from where I am, I am in the groupement Penyi, locality
25 Malhabo, and you can hear gun-fire in your direction. Opposite me there

1 is a road descending to Tchomia. So you can understand from that that I
2 was not able to walk with the old traditional chief who was ill. I
3 stayed where I was, based at the groupement Penyi.

4 Q. Chief Manu, is it not correct that you went there, you told us
5 this formerly, on the 6th of March. You participated in the fall or in
6 the taking of Bunia. Chief Manu, it is not contested on this file that
7 on the 4th of March, 2003, the Mandro attack took place. That is the
8 date when it occurred. Chief Manu, is it not correct that you arrived at
9 the moment when the attack was taking place, either during the course of
10 the 4th of March?

11 A. I would refer you to your document where it states in my
12 declaration that I arrived at midnight and my wife told me about a
13 letter. And the following day there was fighting in Bunia and I left. I
14 think that you will find that in your document.

15 Q. Chief Manu, you remember very well what you told the Office of
16 the Prosecutor on this subject, do you know? In that case, why do you
17 not answer questions directly when I ask them of you, particularly when
18 those questions are quite simple. Why did you not give that answer
19 immediately when I asked you the question? Is there any reason for that?
20 Is there anything bothering you?

21 A. Nothing is bothering me. Nothing is causing me irritation. Even
22 a teacher in a primary school, if he asks a question of a pupil, he will
23 not assert that that question was an easy question. What is important is
24 for the student to answer the question correctly once he or she has
25 understood it.

1 MR. MACDONALD: (Interpretation) Your Honour, with your
2 permission, unless you insist on my continuing, could I ask that we
3 suspend here until tomorrow morning? Thank you very much.

4 PRESIDING JUDGE COTTE: (Interpretation) Approximately speaking,
5 Mr. Prosecutor, I'm thinking about the arrival of the next witness,
6 subject, of course, to the final observations of the Defence and any
7 questions which the two Legal Representatives may wish to ask. The
8 Chamber only has a few questions of clarification to ask of the witness.
9 Roughly how long do you think you will be?

10 MR. MACDONALD: (Interpretation) As you know, sometimes things
11 take longer than anticipated, but we feel that it will be one hour at
12 most. I would prefer to say one hour because that is perhaps the longest
13 it will take. It should be shorter perhaps.

14 PRESIDING JUDGE COTTE: (Interpretation) No, no, that's fine.

15 Court Officer, could you plan for the next witness to join us
16 after the morning break tomorrow? Let's be clear. We will need to take
17 a 30-minute break in order to reinstall the chamber because this is a
18 witness who has requested protective measures. Let us aim to finish with
19 this witness by 11.00 tomorrow morning so that we can begin with the new
20 witness from 11.30 onwards. I would urge everybody to do their utmost to
21 achieve that aim, subject, of course, to the vagaries of the hearing.

22 Mr. Usher, could I ask you to escort Chief Manu, our witness, out
23 of the chamber.

24 We will see you tomorrow, sir.

25 THE WITNESS: (Interpretation) Thank you very much.

1 (The witness stands down)

2 PRESIDING JUDGE COTTE: (Interpretation) Have a good afternoon,
3 fruitful and productive work, and we will see you all tomorrow morning.

4 The hearing is suspended.

5 The hearing ends at 1.26 p.m.

6 CORRECTION REPORT

7 The Court Interpretation and Translation Section has made the following correction in
8 the transcript:

9 *Page 12 line 16

10 "...essentially refer to international trials..." Is corrected by "...essentially refer to
11 national trials..."

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