

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 the Congo - ICC-01/04-01/07
 6 In the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui
 7 Trial Proceedings
 8 Monday, 30 November 2009
 9 (The hearing starts at 9.33 a.m.)
 10 (Open session)

11 THE COURT USHER: All rise. The International Criminal Court is now in session.

12 PRESIDING JUDGE COTTE: (Interpretation) Court is in session. You may be seated.
 13 The two accused are in the courtroom with us. Madam Court Officer, please call the case.

14 THE COURT OFFICER: (Interpretation) Thank you, Mr. President. The Prosecutor
 15 versus Germain Katanga - ICC-01/04-01/07 - and Mathieu Ngudjolo Chui.

16 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you.

17 We would like, first and foremost, to call your attention to the fact that on
 18 2 December 2009, that is to say Wednesday morning, this court will be used at 9.00 a.m.
 19 by the Appeals Chamber which is due to hand down a decision. The reading of this decision
 20 should take approximately half-an-hour and it is necessary for us to let another half-an-hour
 21 go by in order to reconfigure the computers in the courtroom. We will only be able to
 22 start our own hearing at 10.00 a.m. which will then of course move our working time back
 23 from 11 to 12.30, and then we will be able to have lunch and we will work from 3 to 4.30
 24 in the afternoon. That is, therefore, on 2 December.

25 The Court would also like to answer an application presented by Counsel O'Shea

1 for the defence of Germain Katanga before calling the witness in. Now, this application
 2 was made on Wednesday, early afternoon. Now, counsel, you indicated to us that you hoped
 3 to know whether you would be able to benefit from an extension of time under Rule 155
 4 of the Rules of Procedure and Evidence in order, possibly, to enter into contact, which
 5 our oral decision of Monday, 21 November 2009, enabled you to enter into with the Prosecution,
 6 so as to better specify the charges that Mr. Katanga is facing through your intermediary.
 7 Were you able to make contact with them? Have you dealt with that?

8 MR MACDONALD: (Interpretation) With your leave, your Honour, the Prosecution
 9 and the Defence did not have an opportunity to meet, given our very busy schedules last
 10 week, and we expect to do so this week and this is what the Prosecution -- if you don't
 11 mind, could we return to that matter during the morning break? Some of my colleagues,
 12 unfortunately, on Friday, as you may know, we had to change -- move offices, which has
 13 caused some upheaval. And could we respond perhaps at the morning break? I will consult
 14 Ms Darques Lane, who is looking at a number of things and then I will contact Mr O'Shea,
 15 and that way we will be able to suggest a schedule of some kind to you, if that suits
 16 you.

17 PRESIDING JUDGE COTTE: (Interpretation) That is important but, Mr O'Shea, the
 18 Court wanted to indicate to you that, considering Regulation 35 of the Court, it is not
 19 possible to grant such an extension. The amendment, the amendments of deadlines authorised
 20 under Rule 35 of the Court only are applicable in the case of a deadline set by a Regulation
 21 of the Court or by the Chamber itself.

22 Now, this particular deadline was not set by the Chamber, nor by the Regulations
 23 of the Court but rather by the regulations having to do with procedure and evidence.
 24 Clearly, the deadline for filing an appeal expires today and no matter what contacts
 25 you may have with the Office of the Prosecutor, it is up to you and only you to determine

1 whether this -- you will let this deadline go by or not. So I wanted to make that point
2 very quickly this morning at the beginning of today's hearing.

3 Mr Gilissen, at the beginning of the afternoon sitting on Friday last, you too
4 drew the Chamber's attention to a matter of communications, and the Chamber took note
5 of the time elapsed between Friday last and today, and we have realised that your colleague,
6 Mr. Luvengika, who is -- who represents the vast majority of victims, had already access
7 to all the items of evidence of the preliminary phase pursuant to the decision
8 ICC-01/04-01/07-474, paragraph 132. And I believe you also have other items of evidence
9 from the preliminary phase, so it seems quite clear to the Chamber that the defence of
10 child soldiers does have the items of that evidence from the preliminary phase and is
11 on a -- and that the Defence is on a level playing field.

12 Now, on Friday, you expressed the wish of having access to the reformulated
13 and streamlined table from the Prosecution and, as the representative of the Prosecution
14 said, this would be a new application and the parties have not had an opportunity to
15 make their views known on this. Thus, the Chamber would like to draw the parties' attention
16 to the application made by Mr Gilissen and ask them if they could make their observations,
17 if any.

18 If they are in a position to do that immediately, saying that they do not object,
19 the Chamber will render a ruling during the second sitting today or early in the afternoon
20 today. If you would like to take some time to think about this, of course we could wait
21 'til the -- we would wait 'til the beginning of the afternoon to think about this and
22 then we could hear your opinions then.

23 To reiterate, Mr Gilissen wishes to have access to the table with the items
24 of evidence drafted and presented by the OTP. Would you like to intervene immediately
25 or would you rather wait until the early afternoon and have some time to think and then

1 give us your opinions?

2 THE INTERPRETER: Microphone please. Inaudible. Mr Gilissen's microphone was
3 not turned on.

4 PRESIDING JUDGE COTTE: (Interpretation) As far as you're concerned,
5 Mr Macdonald, did you have some opinion for us? Or would you prefer to take some time
6 and think about this?

7 MR MACDONALD: (Interpretation) We would like to take some time to think about
8 this.

9 PRESIDING JUDGE COTTE: (Interpretation) We will give you until the beginning
10 of the afternoon to think about this and then you will be able to get back to us on this
11 matter. Mr O'Shea, please go ahead.

12 MR O'SHEA: My sincere apologies. I understand you turned towards for an
13 observation but I was in consultation with a colleague and I didn't notice; I do apologise.

14 PRESIDING JUDGE COTTE: (Interpretation) Think nothing of it. The Chamber saw
15 that the Prosecution wanted to have some time to think about this, so you will have until
16 the beginning of the afternoon to tell us your thoughts regarding this request, this
17 application, from Mr Gilissen. So you have until the early afternoon to consider this.
18 Thank you.

19 Madam Courtroom Officer, could we please go into closed session so that the
20 witness can come in.

21 (Closed session at 9.44 a.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Open session at 9.45 a.m.)

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

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you. The Court wishes to greet
6 the witness for this third day of hearings, and the Court would like to tell the witness
7 that the Prosecution will continue questioning for 30 to 45 minutes. The Court would
8 also remind the legal representatives that, pursuant to Rule 91(3)(a) of the Rules of
9 Procedure and Evidence, that you do have the opportunity to ask questions, and the directive
10 that was set by the Court on 2 November 2009, paragraphs 89 to 91, reminds the legal
11 representatives that if they wish, they can submit questions to the Chamber, and the
12 Chamber will assess whether such questions will help improve understanding of earlier
13 questions asked of the witness. So Mr Gilissen may have some time.

14 So, sir, it's not out of the question; it is possible that the legal representatives
15 of victims may be asking you a few questions. After that, the lawyers for Mr Katanga
16 and then the lawyers for Mr Ngudjolo will be asking you questions. And the Prosecutor
17 will have the opportunity to ask a few additional questions after that, and then, finally,
18 the lawyers of the accused will have the last word, asking the last questions. I think
19 it's important for you to understand how things are going to proceed. You may already
20 know that, but the Court just wanted to remind you of these things at the beginning of
21 today's hearing.

22 Now, when the legal representatives or the counsel of the Defence ask their
23 questions of you, you will answer in the same way, in a very simple way, very clearly,
24 very specifically, as you endeavour to do so far. Now, before the counsel of the Defence
25 have the last word, the Court itself may ask some questions, but the Defence counsel

1 are always the last to speak.

2 Mr Macdonald, you may now address the Court.

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

4 WITNESS: DRC-OTP-233 (Continued)

5 (The witness answers through interpreter)

6 QUESTIONED BY MR MACDONALD: (Interpretation)

7 Q. Good morning, sir. Just a reminder for everyone: As we speak, we are in open
8 session and I would like to turn to the issue we were discussing last Friday afternoon.
9 We were talking about the list of victims of the attack on Bogoro of 24 February 2003
10 and you told us - correct me if I'm wrong - but you said that when you went back to Bogoro
11 in 2005 you had drawn up a list?

12 A. Yes.

13 Q. How did you prepare that list; without revealing the names of any people. We
14 are in open session. My question is merely: How did you go about correcting this list?

15 A. To draw up this list, each person tried to remember the family members who had
16 died, or who had disappeared, and that is when we were able to place names on the list,
17 the names of family members. Then we worked together and we said to ourselves we had
18 to draw up these lists and provide it to the chief. When I say that we worked together,
19 I mean that we, young people and some other people, we had drawn up these lists. The
20 chief himself did his own list and he received our lists, which he kept together.

21 Q. Did you have an opportunity to see the list that the chief himself prepared?
22 Have you already seen that list?

23 A. I didn't see the list that the chief drew up, but I heard that he had drawn
24 up his own list.

25 Q. And what did you know about this list that had been prepared by the chief?

1 A. Well, with regard to this list that the chief had drawn up, I remember that
2 at one point we called him in Bunia so that he could bring the list of people who had
3 died to Bogoro, in Bogoro, rather, and I think it was thanks to that list that he was
4 able to determine the number of victims in Bogoro.

5 Q. I'd like to go back to this list that you prepared. Are you able to tell the
6 Court how many people, how many people you were able to identify as having died during
7 the attack on Bogoro, on 23 February 2003?

8 A. Are you talking about the list that I drew up myself, or the list prepared by
9 the chief? I don't know much about the second list.

10 Q. Exactly. The first list, the one that you worked on personally.

11 A. Well, with regard to the list that I drew up, there was about 200 people on
12 that list, but I don't know the name of the people on the chief's list because, well,
13 he sent that about -- around all the localities and I couldn't tell you what names were
14 on the chief's list.

15 Q. So, you just mentioned that the chief went about to the various localities.
16 Why?

17 A. When we called him in Bunia, he needed to know the exact number of victims who
18 lived in the region; the people that he was responsible for.

19 Q. I'll now move on to another matter, the attacks on the village of Bogoro. Other
20 than the attack of 24 February 2003, had there been previously attacks on the village
21 of Bogoro? Major attacks?

22 A. Before the attack of 24 February there had been others, but they were not very
23 intense attacks. Sometimes they attacked, but they didn't get to the camp. Sometimes
24 they got to the camp. Sometimes the assailants came and stole some cows and went away,
25 without getting to the centre of Bogoro. Occasionally other attackers would get as far

1 as the centre of Bogoro, kill people and hit a few.

2 Q. Talking about these attacks and the times that these attackers got to the centre
3 of Bogoro, how many such attacks occurred? How many attacks of this nature occurred?
4 Could you just give us a figure?

5 A. Before the 24th, there had been two attacks: one attack in 2001 and another
6 in 2002.

7 Q. Let's begin with the 2001 attack. Could you give us the date on which that
8 attack occurred? If you don't know the specific date, could you tell us which month it
9 occurred in?

10 A. I forget the day and the month, but I remember that the attacks were in 2001
11 and 2002. If I could look at my notebook, I could perhaps answer that question.

12 Q. You make mention of a notebook. What do you mean exactly by a notebook? Could
13 you explain to the Court what this notebook is?

14 A. I jotted down important dates having to do with these events that occurred in
15 Bogoro in my notebook.

16 Q. And whose notebook was this?

17 A. It was my notebook.

18 Q. And when did you jot down this information?

19 A. I took note of these dates after I returned, after the troubles. When safety
20 was re-established, I took note of the important dates in my notebook which I kept.

21 Q. Why did you jot down these dates in a notebook?

22 A. They were historic events. Perhaps someone might come and ask me when the events
23 occurred and you need to always remember these events.

24 MR MACDONALD: (Interpretation) At this stage, your Honour, I'd like to ask
25 another question about the 2002 attack.

1 Q. Do you remember the date on which the 2002 attack occurred?

2 A. The 2002 attack occurred on the 9th and lasted three days. The attackers came.
3 The first time they had to retreat, and the second time they came back and then they
4 came back a third time.

5 Q. I am referring solely to the attack of 2002 at this juncture. You were talking
6 also about the fact that there was one in 2001 for which you do not remember the date.
7 There was one in 2002, therefore, and you say the 9th. The 9th of which month in 2002?

8 A. I forget. I do not know whether it was the month of February, or --

9 MRMACDONALD: (Interpretation) At this juncture, Mr President, I would request
10 your permission to show to the witness the notebook in which he collated all this information,
11 and he did so with a view to recalling matters for a day such as today.

12 PRESIDING JUDGE COTTE: (Interpretation) Well, the Court is wondering,
13 Mr Macdonald, on the one hand the questions put to the witness as to the existence of
14 this notebook are relevant to the degree that they allow him, or they allow the Court,
15 to ascertain the quality of the memory of the witness, in the sense that he said that
16 he noted down a number of events that he qualified as historic.

17 Now, the Court understands that, with a view to putting things into perspective,
18 you would like to obtain a number of answers with reference to previous attacks that
19 Bogoro came under. You obtained specifications in terms of dates within a year. Now,
20 with regard to dates in terms of months, would it be very necessary for you to obtain
21 an answer with regard to dates and months specifically? This is the question the Court
22 is wondering about.

23 One moment, please.

24 (The Trial Chamber confers)

25 PRESIDING JUDGE COTTE: (Interpretation) I would allow you time to respond to

1 me, even though we believe that the situation has not yet been fully ascertained.

2 MR MACDONALD: (Interpretation) I am going to say a number of things,
3 Mr President. I don't know whether it would be preferable for the witness to be shown
4 out, or maybe were he to remove his headset? I do not know.

5 PRESIDING JUDGE COTTE: (Interpretation) Madam Courtroom Officer -- were the
6 witness to remove his headset he will hear you talk, however. The difficulty of this
7 exercise and the gymnastics involved with going in and out of closed session, well, it
8 is preferable that at the commencement of trial that we learn how to work together here.
9 I believe, therefore, that the witness be shown out -- that it be preferable that the
10 witness be shown out for a moment. So, Madam Courtroom Officer, I would request that
11 you therefore announce a closed session for the witness to be shown out for a brief moment
12 and we shall resume in a moment.

13 (Closed session at 10.04 a.m.)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 10.05 a.m.)

19 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Courtroom Officer.
21 You may address the Court.

22 MR MACDONALD: (Interpretation) Well I would like to adduce this exhibit,
23 DRC-OTP-1007/0581, were we all to move to PC1 on our screen.

24 THE COURT OFFICER: (Interpretation) What is the level of confidentiality of
25 the exhibit, please, Mr Prosecutor?

1 MR MACDONALD: (Interpretation) One moment, please. I would not like this to
2 be shown to the public, please. I believe that we should be in private session with regard
3 to the exhibit. Let's not take any risks here.

4 PRESIDING JUDGE COTTE: (Interpretation) You heard the request by the Prosecutor,
5 notably that the public do not have access to this exhibit.

6 MR MACDONALD: (Interpretation) Mr President, this is a notebook bearing notes
7 taken down by the witness. He noted down dates and he did so precisely for the purposes
8 of the exercise he is going through today. He refers to the years 2002, 2001, and here
9 in testimony he no longer recalls the date in 2001, whereas he noted the date of 14 August 2002
10 in his notebook. I believe that he is confused as to the dates in 2001 and 2002. I believe
11 that we should allow the witness to consult this.

12 I believe we should be fair to the witness. These dates were corrected on the
13 occasion of his return to Bogoro. I believe that now four years later these dates were
14 corrected. These are dates that I do not believe are contested at this moment in time.
15 They have been noted in other documents and at this juncture we should establish the
16 dates with certainty, with a view to proceeding. And not allowing the Prosecution to
17 refresh the witness's memory at this stage and we will ask him to produce the notebook,
18 because he produced this piece of evidence himself without the intervention of the
19 Prosecution. We took this photograph of the notebook in 2006 for it to be produced as
20 an exhibit.

21 PRESIDING JUDGE COTTE: (Interpretation) We thank you, Mr Prosecutor.

22 Yes, Mr Hooper.

23 MR HOOPER: Yes, we have no objection to the production of this page. We ask
24 the Prosecution to arrange for the witness to produce the notebook, physically produce
25 it as well. We haven't had the opportunity of seeing the notebook. I don't know if this

1 witness did in fact bring it with him. But, as I say, we have no objection to his production
2 of this notebook. He purports to have made these entries within a week or two of the
3 events to which they relate. We may not necessarily accept that, but we've got no objection.
4 We don't feel we're prejudiced in any way by the introduction of this documentary evidence.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. The witness
6 has the notebook himself? It seemed to us that he wanted to be able to produce it himself.
7 Yes, I will give the floor to Mr Kilenda. One moment. Maybe you could take the floor
8 initially. Yes, Mr Kilenda.

9 MR KILENDA: (Interpretation) Yes, Mr President, your Honours, we do not have
10 any particular issue with this notebook, of which we have copies incidentally.

11 Now, with regard to the other side of the issue raised by Mr Hooper, if my memory
12 serves me correctly I believe that I had an exchange with Mr Macdonald a while back,
13 before the commencement of trial, with regard to this notebook, and I was led to understand
14 that this notebook was to be brought by the witness and it should be in the hands of
15 the VWU in order to follow proceedings correctly.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda.
17 Mr Macdonald.

18 MR MACDONALD: (Interpretation) Mr President, we are still in closed session.

19 PRESIDING JUDGE COTTE: (Interpretation) I would remind you of that.

20 MR MACDONALD: (Interpretation) The witness has indeed brought pages from his
21 notebook, I believe, and they are in the possession of the unit, but I believe that for
22 our immediate purposes we shall quite simply show to him the page that you have seen
23 just now and then produce this as an exhibit and, before cross-examination is undertaken
24 by my learned colleagues, they will have the opportunity to look at these pages. It is
25 a shame that they did not have the opportunity to see this before, because this is part

1 of the familiarisation process that they also have a right to take part in and the witness
2 has no objection to this.

3 PRESIDING JUDGE COTTE: (Interpretation) Verywell. Thank you, Mr Prosecutor.
4 So, courtroom officer, we will have to make sure where precisely this notebook is to
5 be found. This is the first point. And secondly, we would like to thank the Prosecutor
6 for his explanations and the two Defence teams for their observations.

7 It would like to hark back to the brief conferral, referring to paragraph 109
8 of the directive of 20 November 2009, directive on the suggestion of Counsel O'Shea has
9 already been substantiated with an initial commentary last Friday and today will be
10 substantiated with a second commentary; notably, that it is possible -- even if the principle
11 is contradictory, it is possible for the witness to authorise a witness to consult certain
12 documents with a view to refreshing their memory, but only if - under small (a) - the
13 document contains the personal memories of the witness.

14 So we are not, as was the case on Friday, in the position of an authorisation
15 to come back to a statement produced by the witness, but this authorisation would enable
16 the witness to revisit personal memories in a notebook that he wrote himself. So you
17 will be able to produce this item of evidence, Mr Prosecutor.

18 Courtroom officer, we shall therefore go back into closed session briefly in
19 order to enable the witness to rejoin us, and then we shall move back into open session.

20 (Closed session at 10.15 a.m.)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 10.16 a.m.)

25 THE COURT OFFICER: (Interpretation) We are in open session, Mr President.

1 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, you may resume your
2 examination.

3 MR MACDONALD: (Interpretation) Madam Courtroom Officer, in -- if we could call
4 DRC-OTP-1007-0581; confidentially, that is. And if the witness could please consult this
5 exhibit. No markings will be necessary. It is just with a view to recognising the exhibit.

6 Q. Mr Witness, we are in open session; I would remind you of that. Do you recognize
7 this page or this photograph?

8 A. Yes.

9 Q. Is this a page from the notebook, your notebook that you were referring to at
10 an earlier stage?

11 A. Yes.

12 Q. Could you indicate to us the information that was collated by you on the right-hand
13 page?

14 THE INTERPRETER: Correction from the interpreter. The information that was
15 corrected by you on the right-hand page.

16 THE WITNESS: This is a date which I had written on the page, on the first page;
17 and when I had a new notebook, I then reutilized this date. The date written here is
18 the 29th.

19 THE INTERPRETER: The interpreter would like to point out that the witness is
20 speaking without his microphone on. Judge Cotte is also speaking without his microphone
21 on.

22 MR MACDONALD: (Interpretation)

23 Q. It is indicated here the first war. Could you please indicate the date to us
24 that you have noted down in your notebook with reference to the first war?

25 A. Yes. This was, indeed, the date of the 9th of the 11th. That was the date that

1 I had forgotten. That was the date I made mention of with reference to the second war.

2 The 9th of the 11th is the first war and 14 August is the second war.

3 Q. Now, the 9th of the 11th of which month?

4 A. The second month.

5 Q. That is year 2001. So the second war, you say that the date was 14 August 2002;
6 is that correct?

7 A. Yes, that was the date of the second war.

8 Q. Could you indicate to us the number of people who died on the occasion of the
9 first war?

10 A. The number of people who died on the occasion of the first war was 110.

11 Q. Does this number refer to civilians or to soldiers, or to both?

12 A. This was only civilians.

13 Q. Now, on the second attack, 14 August 2002, how many people died?

14 A. In 2002, on the 14th, there were 32 deaths.

15 Q. Now, were these civilians or soldiers, or both?

16 A. These were only civilians, because soldiers would bury their own dead in secret,
17 without knowing how many people had died. The figure I provided here was the number of
18 civilians. We were in the habit of counting the number of civilian corpses after fighting.

19 Q. We shall remain with the year 2002. Now, with regard to those soldiers who
20 were posted at the camp on the occasion of the attack of 14 August 2002, those soldiers
21 who were at the camp, at the institute, which military group did they belong to?

22 A. The soldiers who were present and posted at that location on the occasion of
23 the second war were Ugandans. They were Ugandan soldiers. This is 14 August 2002. And
24 there were also a few soldiers from the UPC. Now, all those Ugandan soldiers who came
25 from Irumu came to Bunia; and at this date, they believe that all the Ugandan soldiers

1 had left Bogoro and that Bogoro remained in the hands of the UPC, and the UPC were lower
2 in numbers in terms of presence.

3 However, there were also Ugandan soldiers who were tired at the time and who
4 had remained *in situ*. The attack -- the enemy attacked in the morning, and they started
5 firing in all directions. We fled. And upon fleeing the camp, this is when we discovered
6 that there were Ugandan soldiers who started dropping bombs and fighting and firing against
7 the enemy. When the enemy noted that there was heavy artillery, they fled. This is how
8 the event unfolded on 14 August 2002.

9 Q. When you refer to the Ugandans, we are talking about the UPDF, are we not?

10 A. Indeed, we are talking about the UPDF.

11 Q. You talked about the enemy, the enemy which attacked on 14 August 2002. Who
12 was this enemy?

13 A. These were our Ngiti and Lendu brothers. They were the enemy, because when
14 the attack occurred, there were Lendu who came from one direction and Ngitis who came
15 from the other direction. 2001, that is.

16 Q. 2001. Was there a camp at that moment in time at the Bogoro institute in 2001?

17 A. There was no camp at the Bogoro institute in 2001. At that location, there
18 was an APC camp, and you will recall that when I showed you the photograph of Bogoro,
19 the APC was located there. There were not many elements of the APC present, but at the
20 beginning of the fighting in -- well, the soldiers were positioned around the *groupement*
21 office, and the soldiers asked all civilians to go to the camp, and that's what we did.
22 We followed them to the camp.

23 Personally, I was a long way away from the camp, at home. I fled, but I was
24 tired. And we hid in a house with women and children. We shut ourselves up in this house.
25 The fighting continued. The soldiers fled, and other civilians also fled behind the

1 soldiers.

2 They went in the direction of Diguna. When they went to Diguna, they left us
3 with a small number of enemy soldiers who broke down the door of the house where we were,
4 and they said as follows: "Pray to your Hema god that he come to your aid today." And
5 a group of enemy soldiers were pursuing soldiers, our soldiers. Others were going to
6 Kasenyi, and there were others who had hid at the Diguna mission. The enemy found them
7 at that location.

8 At the beginning of the fighting, I was in the company of my mother; when she
9 heard that the enemy had gained entry, (Expunged)
10 (Expunged)
11 (Expunged) to go and see how the children were
12 doing, and they saw that the children had already fled. She then continued to Bunia,
13 and the other soldiers came back.

14 Upon returning, those three soldiers then found that the soldiers had broken
15 the house down, and they started firing at the enemy. And they were shouting, "Mai-mai,"
16 which means they could not be hit by any gunfire. One of them said as follows; this was
17 one -- he said, "When we fight towards the ground, dust will rise, and then we will be
18 able to shoot at the enemy."

19 One of the soldiers died at that moment in time, and the soldiers managed to
20 get us out of the house and on to the road to Bunia. We went towards Bunia through the
21 bush by way of a path way. And once we got to Numbe --

22 PRESIDING JUDGE COTTE: (Interpretation) Maître O'Shea, please.

23 MR O'SHEA: I'm sorry, Mr Witness, to interrupt you. Could Mr Macdonald just
24 ask the witness to pause from time to time, because I'm trying to follow this evidence
25 and it's -- because there's no pauses, it's difficult to keep a note, and I suspect it's

1 difficult for the stenographers and translators as well.

2 MR MACDONALD: The Prosecution objects to the comment of Mr. O'Shea and the
3 interruption of the witness while he's testifying and giving an account. We've discussed
4 this procedure. (Interpretation) I could see that I was speaking in French.

5 Last week, Mr President, we -- well, I referred to this. Sometimes it is
6 unfortunate that I put a question and the witness comes back with a lengthy answer. Now,
7 of course, our learned colleagues are going to have the same opportunity to have an edited
8 transcript on the occasion of their cross-examination, and they will be able to come
9 back and put questions themselves. This is the witness answering, and he is choosing
10 to give the answers that he wants, and he will not be testifying in the manner that of
11 the Defence wishes.

12 PRESIDING JUDGE COTTE: (Interpretation) It was important for us to have an
13 exchange of this ilk. The Court would like to remind the witness that it is a good idea
14 not to interrupt him when he is talking; however, it would remind the witness that it
15 requested that the witness express himself slowly. You will never talk slowly enough,
16 sir.

17 In talking slowly, even if the answers you provide are lengthy, you will allow
18 the Defence teams and those working in the court to be able to calmly take notes. You
19 will allow the interpreters and the court reporters to interpret you correctly and also
20 to note down what you have said.

21 You will be able to judge whether it is necessary for you to provide brief answers
22 or more lengthy answers. You will have understood that the Prosecutor and the Defence
23 teams, at a later stage, will be able to ask you for clarification with regard to what
24 you said, or with regard to what you might not have said and which they would like to
25 have you say.

1 So, we shall move forward, and you will take up where you left off, if you have
2 not lost your line of thought. Yes, Mr Prosecutor.

3 THE WITNESS: I apologise, because my story is somewhat lengthy, but I shall
4 go slowly.

5 When we arrived in Yambe (phon), we came across vehicles that were arriving
6 from Bogoro. They had been transporting soldiers. We asked them to take us with them,
7 and they refused by saying that these were military vehicles. We, therefore, left for
8 Bunia. In the morning, they came back once again. The soldiers that had transported
9 them were Ugandans. There was fighting. And the following day, they returned. That
10 was on the third day. This was the 9th to 11th of 2002, which I have in my notebook.

11 Q. You just said 2002?

12 A. I'm sorry. 2001.

13 Q. Just a point of clarification. You say that the APC camp was not in the Bogoro
14 institute; but during the visual presentation, you referred to Atenyi that is on the
15 road to Kasenyi, if I'm not mistaken.

16 A. Yes.

17 Q. Very well. There is a question that I forgot to ask you concerning the attack
18 of 14 August 2002. Did you recognise any members of the enemy force on 14 August 2002?

19 A. I was able to recognise some people on 14 August 2002 and these were people
20 who had lived in Bogoro.

21 Q. And to which group did they belong?

22 A. They were from Lendu north.

23 Q. Even if we are in open session, can you give us their names please?

24 A. No, I do not know whether the Chamber will authorise me to do so. I can mention
25 them because those people are no longer alive. They are dead.

1 Q. Can you give us their names, please?

2 A. Yes, there was the person known as Kute. I do not know his other name. There
3 was also Bahati, as well as others whose names I no longer remember.

4 MR MACDONALD: (Interpretation) Let me move on to another line of questioning.
5 For that purpose, your Honour, I would like to ask that we go into private session because
6 we are going to refer to certain victims.

7 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, can we go into
8 private session please.

9 MR MACDONALD: (Interpretation) With your leave, just one question before we
10 go into private session, a question that I forgot.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well, the last question and then
12 we go into private session.

13 MR MACDONALD: (Interpretation)

14 Q. Witness, in 2001 who were the attackers? That is those who attacked, where
15 did they come from?

16 A. In 2001 the assailants who attacked that day were Lendus; that is from Lendu
17 north. They came to Bogoro and they chased people towards the mission. In the evening
18 we learned that the Ngitis had also arrived. Those were soldiers who came on board a
19 vehicle to intervene and they faced up to the Ngitis who had come to attack.

20 MR MACDONALD: (Interpretation) We go into private session, please.

21 PRESIDING JUDGE COTTE: (Interpretation) Madam Courtroom Officer, we are asking
22 you now to enable us to go into private session.

23 (Private session at 10.37 a.m.)

24 (Expunged)

25 (Expunged)

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

Page 21 - Expunged - Private session.

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

Page 22 - Expunged - Private session.

1 (Expunged)
2 (Expunged)
3 (Expunged)
4 (Expunged)
5 (Expunged)
6 (Expunged)
7 (Expunged)
8 (Expunged)
9 (Expunged)
10 (Expunged)
11 (Expunged)
12 (Expunged)
13 (Expunged)
14 (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged)
18 (Expunged)

19 (Open session at 10.48 a.m.)

20 THE COURT OFFICER: (Interpretation) Your Honour, we are in open session.

21 MR MACDONALD: (Interpretation) I would like to tender two exhibits linked to
22 this witness. The first is DRC-OTP-1012-0011. It is a photograph, not a newspaper article,
23 and if we can call that up on the screen.

24 Q. Do you recognise this photograph? And I should point out that this photograph
25 was taken on 1 March 2007. What is on the photograph?

1 A. This is a building which was in the camp and this building was rehabilitated,
 2 as we have seen. You can see bullet marks on the walls and this is the state in which
 3 the building was immediately after the war.

4 Q. So this is the Bogoro institute?

5 A. Yes, this is the Bogoro institute.

6 MR MACDONALD: (Interpretation) One last photograph.

7 THE COURT OFFICER: (Interpretation) I'm sorry, Mr Prosecutor. This document
 8 will be number EVD-OTP-00017.

9 PRESIDING JUDGE COTTE: (Interpretation) That is perfect, Madam Courtroom
 10 Officer.

11 MR MACDONALD: (Interpretation) My last question, your Honour, and I will use
 12 Swahili. I will use my best Swahili.

13 Q. Witness, can you tell us what this expression means, "*Tushike wao na Mikono*"?

14 A. "*Tushike wao na Mikono*" is an expression that soldiers like to use. It means,
 15 "Let us not shoot them with the bullets. Let us grab them with our bare hands."

16 Q. Does this mean to kill people with hands?

17 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr Hooper.

18 MR HOOPER: (Overlapping speakers) ... series of questions, names presented
 19 to the witness. Now I don't know whether the rules change when we get to the end, or
 20 my learned friend thinks the rules change as you get to the end of your examination-in-chief,
 21 but they don't. But we let those names pass. Now we have this phenomena where the witness
 22 is effectively being led. I can see the purpose of it. It's quite clearly being led.
 23 It's an irregular way - an irregular practice - to approach a witness in-chief and I'd
 24 invite my friend to withdraw the question.

25 MR MACDONALD: (Interpretation) Mr President, with your leave, you said that

1 the Chamber handed down a decision with regard to paragraph 109. You said that there
2 are other possibilities of asking questions. You did not allow the Prosecution to refresh
3 the memory of the witness as such, so we are taking another route. We asked what an expression
4 means and, after that, we can put other questions.

5 The Prosecution was not able to refresh the witness's memory. We asked questions,
6 for example whether they remember the names of people, and then we ask other questions.
7 I'm sorry, I'm going to slow down, but the witness is still master of the truth. He is
8 the one who is in a position to provide information to the Chamber with regard to names,
9 or expressions, and if the Chamber wishes I would -- I'm referring once again to paragraph
10 77 of the witness's statement.

11 PRESIDING JUDGE COTTE: (Interpretation) The Court has heard you, Mr Hooper.
12 We do not feel that in the conduct of this examination, which is the first witness's
13 examination - that is, if we set aside the head of investigators - I do not think that
14 there is non-compliance with the decision of the Court of last 20 November. You have
15 to know that we are very attentive and we are monitoring the procedures very closely
16 because this first examination is setting the tone with regard to what will be the conduct
17 of our proceedings. So, each person plays their role, and we have to be very vigilant.
18 The Court thanks you for getting on your feet and expressing yourself, because we -- it
19 is important for us to know what are your observations and, in a short while, when you
20 are going to be asking your own questions, perhaps the Prosecutor will feel that we are -- you
21 are going beyond the accepted scope.

22 But, Mr Prosecutor, you said this was your last question. Did you complete
23 the question? Or is there one last part that you would like to add?

24 MR MACDONALD: (Interpretation) It was the last question. The witness
25 recognised the expression and he described what it means.

1 Q. Now, when did you hear that expression?

2 A. I heard them utter this expression during the war in Bogoro, that is on the
3 24th of February 2003. They said, "*Tushike wao na Kimono*."

4 Q. And who said that, the soldiers of which group?

5 A. The enemy soldiers were the ones who were uttering those words.

6 MR MACDONALD: (Interpretation) Thank you, Mr Witness. And we have no further
7 questions for this witness.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Prosecutor. And before
9 we break for half an hour, in accordance with our schedule, we would like to ask Mr Gilissen
10 and Mr Luvengika whether they intend to submit any questions that they would like to
11 put to the witness.

12 MR FIDEL: (Interpretation) Yes, Mr President, the legal representatives would
13 like to put a few questions to the witness, but these questions concern only the geographical
14 layout of the site of the attack.

15 PRESIDING JUDGE COTTE: (Interpretation) These are brief questions, and these
16 will be asked with the understanding that these questions were not answered by the witness
17 in the direct examination of the Prosecutor. We are at the beginning of the trial on
18 the merits, and there was a directive regarding the modalities of the participation of
19 the legal representatives. We wanted to define the scope of your intervention and it
20 is important that you fully understood that, but we would like to remind you that you
21 are not coming here to reinforce the Prosecution team, and you have fully understood
22 that. You are there, and if you would like to ask questions to continue to improve the
23 understanding of the Court regarding certain witness answers or add questions that were
24 not actually put by the Prosecutor, so they have to be limited and really focused on
25 our proceedings. So, this should be one or two questions on the geographical layout.

1 Very well, Mr Gilissen.

2 MR GILISSEN: (Interpretation) Yes, Mr President, I'll have only one very brief
3 question.

4 PRESIDING JUDGE COTTE: (Interpretation) And which is consistent with what I
5 have described?

6 MR GILISSEN: (Interpretation) Yes.

7 MR HOOPER: Would it be possible, given that there is now a break, for the victims
8 representatives to inform us what those questions are by email over the next 20 minutes?
9 Thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) With regard to the two Defence teams,
11 you will ask your questions and, indeed, it would be preferable in the next ten minutes,
12 if these questions are brief and concise and few in number, you could send them to them
13 and to us. Perhaps now these emails from Mr Hooper -- or perhaps you could email each
14 other. You can contact each other. As for the courtroom officer, I think it would be
15 a good idea if perhaps these emails could be sent to you as well and Mr Luvengika and
16 Mr Gilissen, to the three legal officers of the officer, Mr. Simon De Smet and Madam ...
17 And I think the Prosecution would appreciate receiving that email as well. It's 11 o'clock.
18 We will suspend now and we will be resuming at 11.30.

19 I beg your pardon. I beg your pardon. I did not ask for a closed session so
20 that the witness can leave the courtroom.

21 Courtroom officer, could we go into closed session, please.

22 (Closed session at 11.01 a.m.)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Recess taken at 11.02 a.m.)

5 (Upon resuming at 11.37 a.m. in open session)

6 THE COURT USHER: All rise.

7 PRESIDING JUDGE COTTE: (Interpretation) Our hearing is now resuming. You may
8 be seated. Mr Macdonald, we see that you are standing. What is going on?

9 MR MACDONALD: (Interpretation) Good news. First of all, regarding the table
10 with the items of evidence, we would like to inform you - the Chamber - that we have
11 no objection to the legal representatives having access to the table. They already have
12 access to the list of the Prosecution evidence, and we have no objection to the table;
13 nor do we have an objection to the questions that have been communicated to us -- disclosed
14 to us, rather, regarding this witness.

15 And furthermore, Your Honour, I was in contact with the Katanga Defence team;
16 and it's true that the seven-day deadline cannot be altered. However, there is a solution,
17 a possible solution, given that last week we were all very busy preparing for last week's
18 proceedings; it was a very important week, and also in light of a practice that had
19 developed -- been developed by the Pre-Trial Chamber, Pre-Trial Chamber I, and this may
20 have led to some confusion.

21 Pre-Trial Chamber I said that for certain decisions, it was possible to postpone;
22 and they had said that some deadlines could be altered in light of the decision confirming
23 charges, and this allowed for the possibility of appeals. One solution -- and the Chamber
24 could specify today with regard to the decision rendered Monday, so that decision could
25 be handed down today. And technically, the appeal period would be as of today. This

1 is a proposal that I am making to the Chamber. There you have it.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, sir. You will
3 have to help me by reminding me of something, and it seems to me that a ruling of such
4 a nature was issued, but wasn't it with relation to a period of time during which the
5 Court was -- during -- wasn't it during judicial recess? Was that the reason why a deadline
6 had been extended?

7 Ideally, if your office could, despite the current difficulties of just having
8 changed offices, perhaps by the beginning of this afternoon's session, you could give
9 us some references, some examples of such a ruling? That would be very useful. It has
10 to be dealt with before 2.00 p.m. so as not to interfere with this deadline for the Katanga
11 team.

12 Now, we are lawyers, and we are supposed to apply legal statutes as they are.
13 Playing, so to speak -- playing with deadlines is something - is not a simple matter.
14 Thank you for your suggestion in advance. I thank you for the references that you will
15 be providing us with. And the Court will take this matter under advisement, and at 2.30
16 will issue a ruling in light of this need to have the best possible *approchement*, but
17 it may not be possible to extend this deadline as easily as we might.

18 Now, the Prosecution has just spoke to this issue. Has either Defence team
19 the wish to speak to disclosure of Prosecution's evidence, or should we wait until 2.30?

20 MR KILENDA: (Interpretation) Thank you, your Honour. We were mentally
21 prepared for 2.30 in the afternoon.

22 PRESIDING JUDGE COTTE: (Interpretation) So we will stick with 2.30 in the
23 afternoon.

24 MR KILENDA: (Interpretation) Regarding the list of questions, we have no
25 objection.

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

2 MR O'SHEA: As far as the table is concerned, the table of incriminating evidence,
3 we think it might be in the interests of justice that counsel act with vision, as opposed
4 to blindly; and, therefore, we don't oppose that table going to the legal representatives
5 of victims. Mr Hooper will deal with the other matter. All right. I will deal with
6 the other matter.

7 PRESIDING JUDGE COTTE: (Interpretation) Now, if I've understood, I believe
8 there was a little bit of a problem with interpretation. So, you are saying you wouldn't
9 have any objection to that being disclosed to the legal representative of victims for
10 a better knowledge of all participants of this matter?

11 MR O'SHEA: Yes, that's right, Mr President. We -- we think it would be, in
12 fact, more helpful from our point of view if counsel, you know, works within the context
13 of full knowledge of -- of the charges against the accused. That way they know properly
14 within what parameters they should be operating. So we don't object to the table going
15 to the legal representatives of victims. And with regard to the matter of the questions,
16 that is a matter which Mr Hooper is going to address now.

17 PRESIDING JUDGE COTTE: (Interpretation) Fine. So, for the table of charges,
18 we will wait 'til 2.30 and the position of the Ngudjolo Defence team.

19 Mr Hooper, regarding the possible questions from the legal representatives that
20 were disclosed to you.

21 MR HOOPER: Thank you, Mr President. First of all, may I thank Mr Gilissen and
22 Mr Nsita for taking up some of their time just a moment ago to compose the e-mail that
23 they sent and which we received. I am very grateful to them for doing that. On behalf
24 of Germain Katanga, we object to this form of intervention with these particular subjects
25 being raised, and we do so for the following reasons:

1 The general regime within which the victims' representatives now have to relate
 2 to is, of course, contained in decision 1662. As a general rule, that requires questions
 3 to be in writing, and for the parties -- other parties to be given seven days' notice.
 4 We appreciate that that is a rule which will attract a degree of flexibility, and we
 5 appreciate that today is an example of that flexibility.

6 But the emphasis on the rule - and indeed, the project that was sent to the
 7 victims' representatives at 11.00 - was to pose questions and to notify us of what those
 8 questions were to be.

9 Now, I assume, Mr President, that you and your fellow Judges have received the
 10 questions; and I say "questions," because our first concern here is that they are not
 11 questions, but topics or subjects. And we have there four areas or categories from which
 12 questions, we assume, are to be formed.

13 PRESIDING JUDGE COTTE: (Interpretation) Pardon me, Mr Hooper. Please
 14 continue.

15 MR HOOPER: Translate them and read them in English and they will be retranslated
 16 for your benefit by our helpful interpreters. But the first one is to obtain details
 17 on the Babiase *groupement*.

18 The second category is details on the composition of the population of Bogoro.
 19 Just pausing there, we make the observation that that's a rather more general area than
 20 perhaps the first one, which is presumably purely a geographic and wholly noncontentious
 21 area.

22 The third category concerns details of neighbouring localities and, again, we
 23 are not on any notice as to quite where that will lead us, or its objective. And the
 24 final one is to obtain details on the distance between the place where the witness was
 25 hiding and the UPC camp; a perfectly good question but one that we feel is not appropriate

1 for the victims' representatives to ask. Indeed, we make the general observation that
2 each of these categories of people are categories that should have been addressed by
3 the Prosecution. And the victims' representatives should not be viewed, as it were, as
4 performing the same function as the man who follows the Lord Mayor's show and comes behind
5 with the brush to sweep up after the horses and everyone else has passed; in other words,
6 they are not there as a substitute and ancillary prosecutor. And we submit that, if there
7 are questions such as this that are in the minds of the victims' representatives, then
8 why is it that they can't discuss these with the Prosecutor so that it forms, as it does,
9 and properly should, part of the context and content of the case that he's presenting
10 against an accused?

11 It's very easy, we submit, for the victims' representatives to depart from an
12 observable focus on the interests of their victims that they represent and appropriately,
13 as we know, and to drift, rather, as appearing as prosecutors, and that appearance, just
14 the mere appearance of it, provides us on this side of the courtroom with great apprehension.
15 And we submit that, for any onlooker in the public gallery or elsewhere looking into
16 this courtroom seeing that process would be concerned to see a sole accused the subject
17 of the mass forces of Prosecutor and victims' representative. It's not an attractive
18 sight. We would submit that these are questions that should be posed by the Prosecutor,
19 and we have no objection if that is done.

20 The last matter -- the last category deals directly with issues of credibility
21 of the witness, and that certainly is not an area, in our submission, that should be
22 approached by the victims' representatives, and it's not clear because it's dealt with
23 by way of categories and not by specific questions, the perhaps justificatory interface
24 between the question and its object and the interests of a particular victim, class of
25 victim, or victims generally. Now, the Defence will also, of course, be handicapped - perhaps

1 less so today but perhaps in terms of future questions - if we don't have specific questions
 2 because it sometimes, of course, is a subsidiary question that can - how can I put it - perhaps
 3 take a party by surprise or lead the Court into an area that was unexpected and, for
 4 that reason and so that we are on full and proper notice, in the interests of the accused,
 5 in order to strike this balance, which is a difficult one, we submit that we are justified
 6 in insisting that we have specific questions that you, the Judges, can then determine
 7 as appropriate, or inappropriate, to be asked.

8 Thank you, Mr President.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. Your remarks
 10 have been very useful, coming after the other remarks, to getting our trial off to a
 11 good start, these clarifications of the Rules that have been -- that were set on 20 November
 12 past. As I was saying a few moments ago, speaking on behalf of the Chamber - and I think
 13 it's a good point to remind everyone of this - it's very clear, we have written this
 14 down and now I am saying that the legal representatives of the victims are not supplemental
 15 prosecutors or part two of the Prosecution. As I also said, they are not here to be -- they
 16 are not like the car that comes behind the squad of cyclists. They are not to gather
 17 up all the various questions and bring them all together at the very end. If that role
 18 is to be played by anyone, it will be played by the Chamber.

19 You are correct but, you know, we are getting underway, and I think it would
 20 be preferable and actually necessary in the future for questions from the legal
 21 representatives of victims be formulated officially. I think that would be best for all.
 22 We have moved rather quickly today.

23 Now, the seven-day deadline that you referred to, you yourself said, Mr Hooper,
 24 that we have to be flexible with regard to implementation of these rules and, indeed,
 25 in this decision of 20 November, we have set out a number of points regarding unexpected

1 questions that might come from the legal representatives. It would be difficult to speak
2 too early because often you have to wait until the end of testimony to see whether or
3 not questions prepared in advance have been answered.

4 He will reply -- pardon me, he will inform us of the questions quickly, and
5 this will be very useful and, indeed, we will attempt to strike the right balance that
6 you have mentioned, that we mentioned in our ruling of 20 November. Yes, the legal
7 representatives are present here. They have the opportunity to speak, as long as it is
8 not prejudicial to the Defence. So, the only objective being pursued is, as I was saying
9 earlier, finding additional -- or providing additional clarifications for the benefit
10 of all, we, who are here to try Mr Katanga and Mr Ngudjolo.

11 The reference to the appearance that you made earlier is an important one and
12 we have indeed taken note of it and it is within our concerns.

13 With regard to the points that were disclosed while the hearing was suspended,
14 it is true that they are too much all focused on one particular theme, and we asked for
15 very specific questions. However, the Chamber would like some of these themes, even though
16 they really haven't been formalised sufficiently, are in keeping with the Chamber's concerns.
17 We would have liked to have received this additional information. And so, if the additional
18 information is not provided during your cross-examination, the Chamber reserves the right
19 to ask these questions itself and, furthermore, some of these points may be taken up
20 in the questions today. It would be a good idea if one of these questions is asked today
21 so that we can better understand the framework within which the events occurred on 24
22 February 2003. In a few moments I will be asking some questions, and I think this will
23 be satisfactory to the legal representatives of the victims.

24 The Court understands your reaction to the fourth matter. We agree with you.
25 This is a matter or a theme that, when raised by a legal representative of victims, it

1 seems to be somewhat borderline, getting more information about the difference -- distance
2 between the hiding spot of the witness and the UPC camp. We thought that perhaps during
3 one of the two cross-examinations a question would be asked of the witness and this information
4 would come to light. But we will hold off on such a question until the end of your
5 cross-examination.

6 If you don't ask for that additional information, the Chamber will ask because
7 it seems to be an important point. I think you can see, gentlemen, that we are not trying
8 to dismiss you but we are just trying to help find the right role for you to play when
9 it comes to the asking of questions of witnesses.

10 Perhaps my explanations were a bit excessive, but I thought that it was important
11 to set the parameters for the trial. I think it would be a good idea to ask the following
12 question of the witness, and I will say it in advance so you are not taken by surprise:
13 Can you confirm that the Babiase *collectivité* is divided into four localities, Dodoy,
14 Nyakeru, Bagaya and Talyeba? I won't spell out the names of these localities because
15 they are becoming familiar to us and most likely they will become increasingly familiar
16 to us.

17 They will also be putting a question that the Court had intended to put, which
18 will be phrased as follows: Has the village of Bogoro been inhabited for a long time,
19 to your knowledge? Because this is a young man. Has this village be inhabited for a
20 long time by a number of different ethnic groups?

21 Mr Luvengika, please, you may address the Court.

22 MR FIDEL: (Interpretation) I thank you, Mr President, for allowing me to
23 address the Court and I would also like to thank you very respectfully for the observations
24 you have just made subsequent to the exchanges made at an earlier stage, and I'm also
25 very happy to say that the Office of the Prosecutor and the Defence team for Mr Katanga

1 are not opposed to the disclosure to us of the table of Prosecution evidence.

2 But I would like to hark back to the position of the legal representatives for
3 victims before the Chamber. Unless we are mistaken on the subject, we deem that we are
4 here not as observers, as Mr Hooper would like to have understood, but we are here to
5 represent the concerns and lives of the victims whom we represent. And in the phrasings
6 of the questions that we intend to put to the witness, I believe that all these questions
7 are in keeping with the interests that we represent. It was not our intention, but of
8 course we are very happy that the Chamber also takes these questions on and puts them
9 to the witness, because of course what we were seeking is clarification with reference
10 to the rather extensive group of victims I am representing. Without such clarification,
11 if I go into the field and the victims approach me, well, I do not know what territory
12 I am to cover.

13 Now, these are questions of clarification which have a bearing upon the testimony
14 from the witness, so it is not our intention at all to make up for the questions that
15 the Prosecution did or did not put, and we have limited ourselves merely to this geographical
16 aspect.

17 But I would like to avail myself of this opportunity, Mr President, to make
18 another request. In addition to the table that the Prosecution will be disclosing to
19 us, in order to represent the victims in this trial, we would like to obtain from the
20 Defence teams their lines of defence and the documents that they intend to use during
21 their cross-examinations or when they call their witnesses to testify. I believe this
22 is quite a legitimate right for those representing victims and for the victims, as
23 participants, to know which documents have been disclosed between the various parties.
24 And we would also formulate the request for those documents which were exchanged between
25 the Office of the Prosecutor and the Defence with regard to facts that the parties to

1 the trial have agreed upon, that these be also brought to our attention.

2 Now, in order to return to the first question that we wanted to put, I wanted
3 to indicate to the Chamber what our concern was. When the witness testified, we felt
4 that there was a certain element of confusion because we could not quite distinguish
5 the difference between the Babiase *groupement* and the Bogoro *groupement*. These were
6 different localities; there are four localities within Babiase, and Bogoro was not actually
7 cited so we were wondering what the place of Bogoro was in this configuration. It is
8 clarification of this type that we were seeking and, of course, this goes without saying
9 that it is in the interests of those victims we are representing, and I thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) We thank you for your contribution
11 to a better understanding of what you also deem to be your role.

12 Mr Gilissen.

13 MR GILISSEN: (Interpretation) Yes, I thank you, Mr President and your Honours.
14 I believe that this is an important moment we are living here because we are realising
15 that whatever the decision taken by the Bench with regard to our situation and this arbitration
16 might leave a certain of numbers -- of elements open here. I believe that we need to
17 go forward step-by-step in order -- step-by-step, in the language of my learned friend.

18 I cannot hide from the Bench that I had the impression that the legitimate
19 defence -- or legitimate concerns on the part of the Defence have pushed us into a position
20 where we do not believe that we exist or we exist sufficiently. I believe that we are
21 all in agreement that it would be useless to make of us glorified spectators and it would
22 be very costly to the ICC to have our participation, in view of emoluments - and I'm
23 not going to comment on this here - but in order to pay us as glorified spectators, I
24 believe that it would be quite costly, and Mr. Luvengika and myself might then quite
25 simply move to the public gallery. I am rather sorry to see that these questions were

1 not formulated in writing within the time lapse of seven days, but I think everyone will
2 understand that the conditions were not right for us to be able to do this. It was materially
3 impossible. And also I would add to that the nonaccess to the documents, that we were
4 up against questions that we could not anticipate, even if this category of questions
5 was not actually covered in its decision by the Chamber of 20 November.

6 Now, I might be mistaken, your Honours, because I might very much be misled
7 here, but neither did Maître Luvengika nor myself play the role of the person following
8 and brushing up the -- what is left behind by the Lord Mayor's trail, but what we are
9 aiming to do is to contribute to the establishment of the truth and, of course, this
10 is all in the detail. And the wishes raised by Mr Luvengika, notably, that we obtain
11 geographical information, has also been my concern. I understand, and I would like to
12 say this, and I do understand, of course, the concern of my learned colleague in terms
13 of the distance from the camp, the UPC camp.

14 Now, this would bring me to suggest, your Honours, that a question might be
15 rephrased with reference to the scale of this plan or map. It seems to us that it's much
16 more of a sketch here, and I believe that were we able to discover the reality of Bogoro
17 on a map, the scale of this plan or map would then be reliable.

18 So it's not that we are looking here at the reliability of the witness, because
19 I believe that it's legitimately the concern raised by the Defence here. You were very
20 explicit on the subject. Your Honours, this is not our field; it is, rather, the reliability
21 of the document that we are looking at.

22 And I do not believe that we are stepping outside of the scope of our role here,
23 because what we are attempting to do is to ascertain the quality of the document here.
24 I shall not be any lengthier on the subject, but you will have understood what I am getting
25 at. I believe that we are here at a crucial juncture with reference to our existence;

1 it's a difficult balance to strike.

2 And I do understand the insistence of the Defence, because we do want to exist;
3 and in order to exist, we have to move, as *Spinoza* said. And without any movement, there
4 is no existence. There is no life. But, of course, it goes without saying - and I would
5 like to emphasise this heavily - that this would not be possible, nor could it be done
6 to the detriment of the Defence teams.

7 We may not confuse the roles of people here, and I believe that since the
8 commencement of trial we have tried to find a *sui generis* place here for the legal
9 representatives of victims. And I thank you, Mr President, your Honours.

10 PRESIDING JUDGE COTTE: (Interpretation) Maître Kilenda.

11 MR KILENDA: Thank you, Mr President, your Honours. Very briefly, Defence for
12 Mathieu Ngudjolo is also opposed to the idea that the legal representatives for victims
13 are here as glorified spectators. Yes, we need to move, but we need to move within the
14 scope, the legal scope defined by our legal instruments. And it is up to you to determine
15 whether this way of moving forward is in keeping with this scope.

16 I would also like to hark back briefly to the application made by my learned
17 friend Mr Luvengika requesting notably that we -- Luvengika, that we provide our lines
18 of Defence and that we also submit all the documents that we intend to use in our
19 cross-examination. We are not here in an assembly of plotters in order to try and rid
20 others of their rights. Everything has been done in a transparent manner
21 respective -- respectful of procedure from the outset. And if we have documents to disclose,
22 we shall do so, and it behoves the Court to then determine.

23 As for the lines of Defence, we would like quite merely to refer our learned
24 friend to our opening statement made last week, which I believe he can find in the transcripts,
25 and he will understand our roles. This has also been said clearly, and it has been said

1 in the press, in audio and visual forms.

2 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you,
3 Maître Kilenda.

4 MR KILENDA: I did not provide you with the references. Now, the application
5 made by our learned friend was already made by the Prosecutor. I need only to refer you
6 to 1529, the application 1529 and we -- to which we responded in our response 1560.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Maître Kilenda. With
8 reference to the applications made at the outset of this session by Mr Luvengika, I suggest
9 that we leave you until tomorrow morning to make your observations. Mr Kilenda has already
10 done so. He might like to address the Court again tomorrow morning, and Mr Hooper might
11 address the Court tomorrow morning as well, unless you would like to have a minimum deadline
12 to do so.

13 MR HOOPER: Yes. Well, that application appears to be a subspecies of an
14 application that was made by the Prosecution and to which we've responded. And it's merely
15 a question then of -- well, we'll await one decision. And I think then, in the light
16 of that, we would like to discuss whether there should be further modalities addressed;
17 the point being, that we've addressed the issue in relation to the Prosecution request.

18 Now, we can -- we'll await on a decision in respect to that. And as I say,
19 this appears to us to be something of a subspecies of that matter. So perhaps it might
20 be appropriate to wait and see what the first decision is, and then to see whether we
21 need to progress it or to argue in respect of that in respect to victims.

22 While on my feet, can I pick up something that has clearly emerged from the
23 victim participants, and Mr Nsita and both Mr Gilissen have touched on a concern which
24 is plainly also shared by the Court; and that is, that we started this case, as far as
25 a plan or map is concerned, with a sketch map that was drawn by this witness in the course

1 of an interview in 2007, not to scale and barely readable.

2 And we find it of concern that at this stage we do not have an appropriate map
3 or plan. For months, we have been asking the Prosecution to provide a map or plan, and
4 it's essential for a case like this, right from the very start of the case, that we have
5 a reliable, clear plan. I don't mean a highly-detailed plan; I don't mean an ordinance
6 survey map; I don't mean a satellite photograph. I mean a simple plan with all the place
7 names that we're likely to meet on it, whether that's Bukiringi, Songolo, Singo, Nuakindi
8 (phon). And I am sure I've lost the interpreters already.

9 None of us have the advantage in this Court today of a plan that we can relate
10 to, that we can print out and have to one side, and perhaps it can be to scale, and contains
11 all the names of the places that we are going to meet over the coming weeks and months.
12 And we feel that's an essential step. It's not appropriate to deal with it now with this
13 witness, in our submission, except in generalities; and we doubt whether the witness
14 to follow will really be the party to deal with it, but we are quite happy and content
15 on our part that a plan is produced today or tomorrow and put into our hands and we can
16 then criticise it or comment on it, whatever.

17 May we say that we've made every effort to get a plan of this area, and it's
18 proved very difficult; by that, I mean a plan that contains the names Singo, Songolo,
19 all the various places that we are going to meet. Even our visits to MONUC in Ituri failed
20 to produce a plan; and we even found one plan that MONUC is using, which is on the wall
21 of their -- one of their units, which, in fact, proved to be wholly inaccurate.

22 So I can see that there might be problems with this, but things like distances
23 and the relationship geographically between places in Bogoro and one another are absolutely
24 central to this case. And so we would ask that the Prosecution produce a map that we
25 can, perhaps, share some discussion with them about, all the parties here, and perhaps

1 even the victims representatives as well, so that as far as it can it reflects what we
2 feel should be on the plan to assist you, the Judges.

3 That, I submit, is quite a necessary step, and it's clearly a concern of you,
4 the Judges, from the questions you are now concerned to put to the witness, and certainly
5 reflects, I think, the concerns of Mr Nsita and Mr Gilissen. Thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper, for this further
7 contribution. And it would like to avail itself of this opportunity, after having heard
8 Mr Luvengika, Mr Kilenda and yourself, how much it appreciates the manner in which you
9 are all expressing yourself and the spirit and the degree to which you are seeking for
10 us to establish the best possible condition for our proceedings.

11 Now, with regards to your last intervention, you expressed a concern which the
12 Court has felt itself for quite some time now. We are -- I have understood that there
13 are many facts that will be discovered during the hearing, during your examination-in-chief,
14 your cross-examination, your re-examination, et cetera, but of course we are preparing
15 the proceedings here and circumstances of time and location are very important.

16 So, for us to be able to have access to geographical or topographical documents
17 that are simple and as precise as possible, well, we share your concerns and wishes;
18 and I am sure, Mr Prosecutor, that you will be able to come to our assistance. And relying
19 on Article 64(6)(d), authorising us to produce evidence in addition to that produced
20 prior to the trial or during the trial by the parties, the Court would request that you
21 provide and put at the disposal of all those participants and parties a -- and the Bench,
22 a map so that our proceedings can be as useful as possible.

23 It might be that this is somewhat difficult for you to do, and it might be that
24 you will not be able to do so by the end of December, but before we resume on 26 January,
25 we must be able to have something precise to work with, independently of the positions

1 or various submissions or comments that a witness might make on the subject.

2 MR MACDONALD: (Interpretation) Yes. Indeed, we will be able to produce maps;
3 but as Mr Hooper so well emphasised, there are a number of maps, and not all of them
4 are to scale or show precisely where such-and-such a village is to be found, but it is
5 possible for the Prosecution - even before the end of December or before this afternoon's
6 session - to come up with a product that might be agreeable to everybody. Then we will
7 be able to move forward.

8 So, we shall come up with a map of this type, and I believe we will be concentrating
9 on the region of Bunia, Walendu Bindi. The north of Ituri being something else. Now,
10 this is -- though we did have a sort of skeleton map that was presented during the opening
11 statements, but we will come up with something more precise. But a map with distances,
12 et cetera, well, we will have to wait for that; but if we have something else, we will
13 produce it.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you. You are doing your best,
15 of course.

16 MR KILENDA: (Interpretation) Could the Chamber please request of the Prosecutor
17 that whether the maps that he intends to submit to us are the same ones that he produced
18 when we were supposed to reach agreements as to evidence?

19 MR MACDONALD: (Interpretation) It is impossible for me to answer this question,
20 because I do not have in my mind the maps that we provided. They are certainly similar,
21 but it might be that we have some that are more detailed than others.

22 Of course, these are products of the OTP. These are not independent documents,
23 and so the search for an independent map produced by -- to scale by an army, well, we
24 don't necessarily see the villages, and it is difficult for us to use, but we shall see
25 what we can do and we shall come back with some maps for this afternoon's session.

1 PRESIDING JUDGE COTTE: (Interpretation) So you shall do your research, you
2 shall disclose these things and you shall try and come to an agreement so that we can
3 make the most of your common work.

4 Now, generally speaking, we are spending some time on this, but Mr Gilissen
5 was correct in saying that this is important to establish the place of the victims. And
6 I shall not repeat myself, but as I have the opportunity I would like to say again that
7 the victims are not mere spectators. We all know that it is provided in the Statute for
8 the place of the victims in the International Criminal Court. We shall not be doing away
9 with any of the provisions of the Statute.

10 And as regards the Rules of Procedure and Evidence, we need to enable them to
11 take part whilst respecting the equity of the proceedings, in order for there to be no
12 prejudice to the Defence. And in order to use a French formulation here, the Court would
13 say to you, Mr Luvengika and Mr Gilissen, the victims do have their place and their place
14 in full to occupy in these proceedings. Things have to be fully clear on this count.

15 Now, with regard to what Mr Hooper had to say, this shows quite how important
16 it is for certain geographical indications to be made, and this is with regard to the
17 themes that you submitted to us, which you did not have the time to put into question
18 format. And the questions -- when the witness comes back into the Court, the Chamber
19 will put such questions; and when it does so, it will not necessarily submit these questions
20 to you beforehand, because it is entitled to put the questions that it wants to.

21 We will request of the witness that he confirm to us that the collectivity of
22 Babiase is divided in four localities; notably, Dodoy, Bakeru (phon), Bagaya and Talyeba.
23 And we shall ask him whether he can tell us in which locality the village of Bogoro is
24 to be found. Is Bogoro to be found in Bagava (phon), to -- in Dodoy, in Nyakeru or in
25 Talyeba, because we were not really under the impression that we had received a precise

1 answer on this question or maybe we did not understand what he said to us the other day.
2 And we will ask him the third question, whether the village of Bogoro, to his knowledge,
3 has been inhabited by various ethnic groups for quite some time now.

4 Now, with regard to clarification as to the hiding place of the witness and
5 the distance between his hiding place and the UPC camp, well, this is left to the discretion
6 of the Defence teams; and if they do not choose to put this question, then they should
7 know that after their cross-examination, the Chamber will be putting this question to
8 the witness.

9 Madam Courtroom Officer, we would request now that we go into closed session
10 to let the witness into the room, and then we will move back into open session.

11 (Closed session at 12.29 p.m.)

12 (Expunged)

13 (Expunged)

14 (Open session at 12.31 p.m.)

15 THE COURT OFFICER: Mr President, we are in open session.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Court Officer,
17 before I address myself to the witness, please be reminded that you should keep track
18 of the time taken by the various participants so that we should be flexible in our proceedings,
19 but still have them done in a disciplined manner.

20 Mr Witness, before the Defence teams are allowed to question you, the Court
21 itself would like to ask you three questions. I will speak slowly and you will answer
22 briefly, but as precisely as possible to the extent possible.

23 The first question is as follows. Can you confirm to us that the *collectivité*
24 of Babiase is divided into four localities known as Dodoy, Nyakeru, Bagaya and Talyeba?
25 Is that correct?

1 THE WITNESS: (Interpretation) Yes, Bogoro is not a *collectivité*. It is a
 2 *groupement*. It is this *groupement* that is made up of the four localities that you have
 3 just mentioned.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you for distinguishing between
 5 the *collectivité* and the *groupement*.

6 Secondly, in which locality is Bogoro village itself located? Is it in Bagava
 7 (phon), Dodoy, Nyakeru, or Talyeba?

8 THE WITNESS: (Interpretation) Bogoro village is located between two localities;
 9 that is Dodoy and Bagaya.

10 PRESIDING JUDGE COTTE: (Interpretation) Between Dodoy and Bagaya?

11 THE WITNESS: (Interpretation) Correct.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you. The third question: as
 13 far as you know, has the Bogoro village been inhabited for a long time by several ethnic
 14 groups?

15 THE WITNESS: Yes, before the interethnic conflict there were people from several
 16 ethnic groups living in Bogoro: Lendu, Tema (phon), Bira and Nandes. There were many
 17 ethnic groups living there.

18 PRESIDING JUDGE COTTE: (Interpretation) Do you know up to when those various
 19 ethnic groups were cohabiting in Bogoro?

20 THE WITNESS: To my knowledge, when the interethnic conflicts began that would
 21 have been in 1992. There were certain ethnic groups that disappeared from Bogoro. The
 22 other ethnic groups started disappearing from Bogoro around 1992.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

24 The Defence team of Mr Germain Katanga will now rise for its cross-examination.
 25 I will leave it up to you to decide who amongst the team will cross-examine the witness.

1 You have the floor, Mr Hooper.

2 Just one second before you address the Court. Madam Court Reporter, do you
3 have an idea of the time that the Prosecutor used for his direct examination and how
4 much time the two Defence teams will have?

5 Mr Hooper, the courtroom officer is computing her figures and she will communicate
6 them to us shortly.

7 MR HOOPER: Well, maybe I can start and I will get those figures in due course.

8 QUESTIONED BY MR HOOPER:

9 Q. Good afternoon, Mr Witness. As you've heard, I'm asking questions on behalf
10 of Germain Katanga and I would like to start by picking up where we just left off, on
11 the geography of the area and perhaps you can help me with that. And before I ask my
12 first question, can I tell you this. That I hope that all my questions can be asked in
13 open session for everybody to hear but, if you feel that any of my questions might reveal
14 your identity, you let everybody know and we can go into closed session. All right?

15 A. Thank you.

16 Q. Now, from what you said (Overlapping speakers) administrative unit is a locality;
17 is that correct?

18 A. Yes.

19 Q. And then after locality we get the *groupement*; is that correct?

20 A. Yes.

21 Q. And after the *groupement*, what do we get then? What is the next step up in
22 size?

23 A. There is the *collectivité*, and above that we have the *territoires* and then above
24 that there is the district.

25 Q. And then above the district we have the province, do we?

1 A. That is correct.

2 Q. And the *groupement* was known as Babiase; is that right?

3 A. Yes.

4 Q. Now, I've been to your village, I've seen Bogoro and it may be in due course
5 the Judges will come to see it too. And when I think of Bogoro, I think of the place
6 where all the houses are, the village itself, around the crossroads. That part of the
7 area, is that in Dodoy?

8 A. I would like to give you a small description - a brief description - of the
9 roundabout. At that level, there is a road that goes to Gety. That is when you are coming
10 from Bunia. To the right you have Bagaya and to the left you have Dodoy. In Bogoro centre,
11 this is a road that splits into two roads going to two different directions.

12 Q. Well, all right. I won't take you up any more with that. We will probably be
13 able to get a plan, or a sketch, that might explain the differences here. Now, let's
14 move to yourself a bit here. I think it's right that you were questioned on behalf of
15 the Prosecution over the course of three days in February 2007, almost getting on for
16 three years ago now; is that right?

17 A. Yes, from February 2007 to today it is about three years. There was 2008 and
18 now 2009.

19 Q. And you were questioned on 21 February - I have the dates here - 22 February
20 and 23 February. For almost 20 hours of questioning, you were asked questions and you
21 gave answers. Do you remember that?

22 A. If you ask me specific questions, I will remember the answers that I gave them
23 at the time.

24 Q. Well, let me ask you some questions, and I'm not concerned so much with what
25 you may have said then. I'm interested to know what you remember now. And can I start

1 with the attacks that took place before the attack of 24 February 2003. And you've told
2 us, by reference to your notebook, that the first attack took place in January -- I am
3 sorry February, was it? Let me just check my note. The first attack I understand was
4 in January, wasn't it, of 2001? The first time there was a substantial attack on the
5 village of Bogoro; is that correct?

6 A. Please kindly repeat your question.

7 PRESIDING JUDGE COTTE: (Interpretation) Let him rephrase and then you will
8 intervene later, Mr Prosecutor.

9 MR HOOPER:

10 Q. Was the first attack on Bogoro on 9 January 2001?

11 A. Yes, it was on 9 January 2001.

12 Q. And that attack lasted three days and caused about 110 deaths, deaths of civilians;
13 is that right?

14 A. Yes.

15 Q. And the next attack, the second attack, took place a year-and-a-half later in
16 August of 2002; is that correct?

17 A. Yes.

18 Q. Now, let me go back to that first attack, the one in January 2001. Now, you
19 produced a diary - an agenda - in which you wrote the date of the attacks. That's right,
20 is it not?

21 A. Yes.

22 Q. But can you remember the dates of these attacks without referring to your diary?

23 A. If I concentrate for a while I can remember them, but here I can only remember
24 the years and not the precise dates. I can remember the years without giving you further
25 information. The reason why I noted down those dates in a diary was to have confirmation

1 regarding the day and the month.

2 Q. Well, I, for my part, well understand because, of course, 2001 and 2002 are
3 many years ago now; but let me ask you about this first attack. Is it right that at the
4 time of that attack the military, who were in Bogoro at that stage, were, in fact, the
5 UPDF, the Ugandan military; isn't that right?

6 A. At the time of the first attack the UPDF came as reinforcements. It was the
7 APC that was initially present. The soldiers of the UPDF only arrived in the evening
8 to assist, and it was from that time on that the UPDF soldiers stayed in Bogoro.

9 Q. Can you remember: Is it right that that attack started as a result of an incident
10 in the village of Kantonie (phon)?

11 A. Are you referring to an incident? Yes, it is true. The first attack took place
12 as a result of an incident that had occurred in Bogoro.

13 Q. I am sorry, I missed your last answer; can I just catch up? Sorry, I got distracted
14 for a moment. The question I put, can you answer it again for me? I am sorry to trouble
15 you, Mr Witness. Is it right that the attack on Bogoro in 2001 started with an incident
16 at the village of Kantonie (phon)?

17 A. Yes, that is correct.

18 Q. And is it right that at that stage no camp had been built in Bogoro; no military
19 camp had been built in Bogoro?

20 A. There were soldiers in Bogoro.

21 Q. When was the camp, that was later attacked in 2003, when was that built?

22 A. The camp which was attacked in 2003 was built by the UPDF soldiers. They were
23 the ones who were living in that camp. After the departure of the UPDF the UPC soldiers
24 took over the camp.

25 Q. In August 2002 there was an attack on Bogoro, you've told us. At that time,

1 was the camp already built or was it built after the 2002 attack?

2 A. At the time of the attack in 2002, the camp had already been built.

3 Q. The attack in 2002 led to, you tell us, 32 deaths; is this right?

4 A. Yes.

5 Q. On that occasion, is it right that you saw attackers arrive from the village
6 of Kantonie (phon)?

7 A. Are you referring to the attack of 2002?

8 Q. No, we've discussed the attack in 2001, and now I'm asking you about the attack
9 in August 2002. Is it right that you saw the Lendu attackers arrive from the village
10 of Kantonie (phon)?

11 A. Yes. At the beginning, from our vantage point, when we started hearing gunshots,
12 we were close to Katonie; they were around the area of Katonie which is the first village
13 at the entrance into Bogoro.

14 Q. Now, that attack did that include soldiers of the APC?

15 A. Which attack are you referring to; the first or the second?

16 Q. Well, let me help you and put it in its context. In early August of 2002, you
17 may recall that Lopondo, the RCD-KML governor, was ejected from Bunia by the UPC; do
18 you remember that?

19 A. Yes.

20 Q. Thank you. And after that, after he had been ejected, is it right that there
21 was then an attack on your village of Bogoro?

22 A. Yes.

23 Q. I am sorry --

24 MR MACDONALD: (Interpretation) There is a technical problem. I believe we
25 couldn't hear the interpretation but it seems as if the witness was speaking. Am I alone

1 in that?

2 PRESIDING JUDGE COTTE: (Interpretation) Were there any other difficulties in
3 the courtroom? Well, we have very little time left. Do you want to have the question
4 rephrased? No. Mr Hooper, we will have to break.

5 MR HOOPER: I question whether the August attack followed Lopondo's ejection
6 from Bunia; he answered that yes.

7 Q. And is it right that when Bogoro was attacked amongst its attackers, in August
8 of 2002, were elements of the APC, specifically the APC 12th Battalion; is that right?

9 A. I couldn't tell you; I couldn't tell you which battalion it was. The soldiers
10 that allowed us to know that the UPC was in that attack in 2002 was when we saw the deaths,
11 the corpses of people in their group. We recognised that they were wearing APC military
12 uniforms, and we also recognised them by their faces. They didn't look like Nguto (phon)
13 or Lendu people. So that's when we came to the conclusion.

14 MR HOOPER: Thank you very much. I think that is all. Can I just correct the
15 translation. I appreciate the interpreters probably don't have a helpful list, we will
16 try and provide one, but I think the witness was speaking of the attackers being APC
17 and not UPC; is that right?

18 THE WITNESS: The enemies who entered that day were Ngiti and Lendu, and among
19 them we discovered that there were some people from the APC and that was seen by the
20 military uniforms because the military uniforms that they had were that of the APC and
21 the soldier was from the APC, not from the UPC.

22 MR HOOPER: Thank you very much.

23 PRESIDING JUDGE COTTE: (Interpretation) I will ask the courtroom officer to
24 order the -- a closed session, so that the witness can leave the courtroom and then we
25 will go back into open session to deal with a few matters before suspending.

1 (Closed session at 1.03 p.m.)

2 (Expunged)

3 (Expunged)

4 (Open session at 1.04 p.m.)

5 THE COURT OFFICER: We are now in closed (sic) session.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, ma'am. I would
7 just like to take these few moments of open session to tell Mr Kilenda and Mr Hooper
8 that we have been taking account of the minutes used for questioning, and we have allowed
9 for 10 or 15 minutes this morning because of general considerations and this means that
10 each one of you will have, for cross-examination, four hours and 28 minutes, which I
11 think is a proper amount of time, and I don't think you will necessarily need all that
12 time.

13 And in light of what we've heard from this first witness, we will have a better
14 idea of what sort of time we need to allow for upcoming witnesses, particularly considering
15 the general framework that was set in our ruling of 20 November last. With a view to
16 ensuring total transparency I will provide a second item of information, general information,
17 but first, Mr Hooper, Mr Kilenda, do you know whether you will be using those four hours
18 and 28 minutes? It will all depend most likely on the answers that you receive.

19 MR HOOPER: It's a slower business than one always thinks. I would have thought
20 I am good for another hour to an hour-and-a-half.

21 MR KILENDA: Thank you, Your Honour. We don't know yet but we are taking into
22 account that everything will be taken account of. Professor Fofé may have some answers,
23 questions rather, and we do hope to gain some time.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Now, Mr Macdonald,
25 regarding Witness 28, can you give us any information upon his arrival or would you prefer

1 to wait until tomorrow before giving us that information?

2 MR MACDONALD: (Interpretation) I can't answer that question for the time being,
3 and I will tell the Chamber as soon as I have that information, at the latest by tomorrow
4 morning.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I was saying that with
6 a view to ensuring total transparency, the Presiding Judge, namely myself, I have been
7 having some breathing difficulties, and he was told to go see a doctor and it was really
8 quite an annoyance, because this will hold up our work, but I will suspend the hearing.
9 We will not be having a hearing this afternoon. I would imagine you all have a great
10 deal of work to do, and in any event it won't be a lost afternoon, so we will be resuming,
11 in principle, tomorrow at 9.30, as scheduled.

12 The hearing is now concluded. Thank you very much for being so understanding.
13 (The hearing ends at 1.08 p.m.)

14