

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and Judge

4 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 Hearing

8 Tuesday, 1 December 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 and please be seated.

13 Mr Ngudjolo and Mr Katanga are both in the courtroom and so, Madam Courtroom Officer, please

14 call the roll for today.

15 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Situation in the

16 Democratic Republic of the Congo, Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui,

17 ICC-01/04-01/07.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Kilenda, we lost the

19 afternoon of yesterday. Are you in a position to give us your observations regarding the

20 application from the legal representatives of the victims regarding their access to the table

21 of the Prosecutor?

22 MR KILENDA: (Interpretation) Thank you, your Honours. We do not see any objection

23 to that, because this is access that will contribute to the establishment of the truth.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We note that yesterday the

25 OTP, the Defence team of Mr Katanga and today the Defence team of Mr Ngudjolo do not have

1 any objection to the two legal representatives having access to the revised and simplified
2 version of the Prosecutor's table on the charges. So, Mr Prosecutor, you have to facilitate
3 that access and we grant the application of the two legal representatives.

4 MR MACDONALD: (Interpretation) I think, with your leave, it is simpler to reclassify
5 the annex to make it possible for the legal representatives to have access.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you for that suggestion. Madam
7 Courtroom Officer, please take note. Thank you.

8 We are going to resume our work from where we left off; that is the cross-examination
9 of the Defence team of Mr Germain Katanga. Madam Court Reporter, please let's go into closed
10 session.

11 MR MACDONALD: (Interpretation) I would like to raise two points, your Honour,
12 before we begin. We have two requests, or rather one request and one item of information
13 to provide to the Court. The first concerns the application submitted yesterday by the Defence
14 team of Mr Germain Katanga; that is number 1691. In that filing the Defence refers to a
15 decision 1443 confidential and *ex parte*, both the French and English versions, that is footnote
16 number 8. That is filing 1691, which refers to decision 443 confidential and *ex parte*. The
17 Prosecution does not have access to that decision and we would like to ask, if possible,
18 for the Chamber to review the level of confidentiality so that we can have access, maybe
19 in a redacted form if necessary, so that within the three days given to us we should be able
20 to respond to that application.

21 And the second point of information - and, in fact, it is actually a request - concerns
22 the order of appearances of the witnesses after Witness 233. The Chamber referred to Witness
23 28 yesterday. We are in open session. The Prosecution would like to call Witness 419, that
24 is switch places between Witness 28 and Witness 419, because right now the unit is reviewing
25 certain security aspects with the witness. I cannot tell you any more, because we are in

1 open session. So, taking into consideration those facts, we believe that it would be more
2 appropriate to proceed immediately with 419 before moving on to Witness 28.

3 There will possibly arise the issue of the number of days left to us before the
4 December recess and we will try to see whether the Prosecution will start the examination
5 of Witness 28, or postpone that examination. So we are going to see from the time that we
6 used with 233 that, even if we begin Witness 28, we are not going to conclude with him. So
7 we are wondering whether the witness should be called before the recess, or after the recess.
8 We will come back to the Chamber after we would have had additional discussions with VWU.

9 PRESIDING JUDGE COTTE: (Interpretation) This practical information will have an
10 influence on the work and schedules of all parties and it should be resolved immediately.

11 Now, with regard to Witness 419, how many -- how much time have you allocated to
12 him, Mr Prosecutor?

13 MR MACDONALD: (Interpretation) Given the length of examination of Witness 233
14 we are actually reviewing the time for the next witness, but I think one-and-a-half hours
15 to two hours maximum will be sufficient for the examination of Witness 419.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well. For the benefit of the Defence
17 and the legal representatives, the Chamber can sit this entire week right up to Friday afternoon,
18 as initially planned. However for next week, the third week of hearings, because of
19 administrative and not health constraints we will be able to sit only one day, which will
20 be on 10 December; that is if we actually have to sit.

21 So, Mr Prosecutor, that is why it is very important that you should tell us as
22 soon as possible whether Witness 28 is going to testify before Christmas, or after Christmas.
23 And if he has to testify only after the recess then it will be clear that we will end our
24 proceedings this week and each person -- each party will be free next week, but depending
25 on the additional information that the Prosecutor will give us this afternoon or tomorrow,

1 but as quickly as possible.

2 Was the translation fluid? Mr Hooper, did you understand all the information?

3 Perfect.

4 So now, Madam Courtroom Officer, we would like to ask you to go into Court session.

5 Mr Hooper?

6 MR HOOPER: *Bien compris*. It may be possible that the particular witness, who is
7 after all as I understand it merely going to show us some photographs and for whom for our
8 part we have possibly no questions at all, but it might be that that witness can give his
9 evidence and conclude his evidence today, subject to how long of course the present witness
10 will be.

11 But I am optimistic certainly from my part that's possible. I can't speak for Mr
12 Kilenda, of course, but we have four hours today and I think it's a viable proposition, which
13 will of course allow us to go on to the Witness 28 tomorrow and give us Wednesday, Thursday,
14 Friday and next week, a total of 16 hours.

15 PRESIDING JUDGE COTTE: (Interpretation) Yes, but apparently the problem at the
16 level of the OTP is the possibility of having Witness 28 testify as quickly as planned. So,
17 our problem is if Witness 28 cannot testify before Christmas and will be scheduled only for
18 after Christmas, then our proceedings will come to an early end and it is only Witness 419
19 who will be able to testify. So, these are the issues of scheduling that we are faced with,
20 and we will try to do what we can in light of the further information to be provided by the
21 Prosecutor so as to know how to proceed.

22 Your Honour, my colleague, the Judge.

23 We will ask the courtroom officer to go into closed session, to allow the witness
24 to come into the courtroom, and then we will revert to open session immediately after that.
25 (Closed session at 9.46 a.m.)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Open session at 9.47 a.m.)

7 THE COURT OFFICER: (Interpretation) We are in open session.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Before we give the floor to
9 the Defence of Mr Katanga, now, can the Defence teams tell us whether, with regard to Witness
10 419, a long cross-examination is expected, specifically for Mr Kilenda?

11 MR KILENDA: All will depend on his examination, your Honour. We cannot tell you
12 anything more precise.

13 PRESIDING JUDGE COTTE: (Interpretation) That is perfectly understandable.

14 Mr Hooper, if you wish, you can resume with your cross-examination where you left
15 off yesterday.

16 WITNESS: DRC-OTP-233.

17 (The witness answers through interpretation)

18 QUESTIONED BY MR HOOPER:

19 Q. Good morning, Mr Witness.

20 A. Good morning.

21 Q. Yesterday we were talking about these previous attacks that had taken place and
22 we discussed the attack in 2001; that's January 2001. I just want to return and ask you
23 a few questions about that attack. In the course of that attack, can you confirm that a
24 helicopter was used to fire on those who were attacking from Katonie?

25 A. I can no longer remember now.

1 Q. Let's go from January 2001 to August 2002 and, as I understand your evidence, by
2 August 2002 the camp at the Bogoro centre, the Institute Bogoro, that had been built by then;
3 is that correct?

4 A. Yes.

5 Q. Now, following the August 2002 attack, between then and February 2003 is a period
6 of six months. Now, is it right that in that period there were other attacks on Bogoro?

7 A. There were no attacks as such. There were just thieves who would come and steal
8 food here and there. When the soldiers arrived, there were UPDF soldiers, and those Ugandan
9 soldiers chased away the thieves who went -- who fled in another direction. So this was
10 not an attack as such -- as such. These were just cattle rustlers who came and -- to steal
11 cows and goats, who came and, while people were sleeping, they would try to steal property.

12 Q. Now, I am not talking about the time when the Ugandans were there, because we know
13 they left in August 2002. I am asking you about the time when the UPC were there; that is,
14 between August 2002 and February 2003. And is it right during that time there were attacks
15 on Bogoro?

16 A. As I have just told you, during that period there were soldiers of the UPDF there
17 and they were stealing. There were thieves coming from other villages and they would steal
18 cattle or food. These incidents were reported to the headquarters of the UPC or the UPDF,
19 and the soldiers will chase after those thieves for having stolen cattle or food.

20 Q. Just let me return to the military situation generally. In August 2002, the RCD-KML
21 and its military governor Lopond were chased out of Bunia, were they not, by the UPC, essentially.
22 Isn't that what happened?

23 A. Yes, this is what happened.

24 Q. And by February 2002, would you agree that there were no UPDF Ugandan troops in
25 Bogoro? Bogoro was occupied by the UPC; isn't that right?

1 MR MACDONALD: (Interpretation) There is maybe a mistake regarding the date
2 mentioned by my learned friend.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, are you referring to February
4 2002? Because that is what you said in your question, and the Prosecutor would like to know
5 whether that is the date.

6 MR HOOPER: Let me rephrase the question so it's clear.

7 Q. By February 2003, there were no Ugandan troops in Bogoro. By the time of the big
8 attack in February 2003, there were no Ugandan troops in Bogoro; is that correct?

9 A. It is true that there were no Ugandan soldiers in Bogoro at the time of that attack -- or,
10 rather, before the attack. I do not know whether you will allow me to describe exactly how
11 things happened.

12 Q. Well, no. Let me ask the questions. When did the Ugandan troops leave Bogoro?

13 A. The Ugandan soldiers left Bogoro in 2002.

14 Q. In which month?

15 A. I think the Ugandan soldiers left Bogoro in August, but the last contingent of
16 those soldiers left before the war of 2002.

17 Q. And after the Ugandans left, did the troops of the UPC take over?

18 A. Yes.

19 Q. And when the UPC were in that camp, is it right that whenever there was an attack
20 on Bogoro, that people fled to the camp for safety?

21 A. Yes.

22 Q. It became a habit for the civilian population of Bogoro to seek the safety of the
23 camp whenever there was an attack; is that right?

24 A. Yes. That became the usual practice. Every time there were disturbances in the
25 neighbouring villages, the inhabitants of those villages would rush to the camp. As for

1 us, we felt that it was not necessary to go to Bunia but to go to the camp.

2 MR HOOPER: Just drawing up the reference, because I think it's now in evidence.
3 It's the entry on the agenda. Does anyone have the reference? I don't have it at hand, I'm
4 sorry. Is that 16? Yes, it's 16. If that can be put on the witness's screen.

5 MR MACDONALD: (Interpretation) Just with reference to the confidential nature
6 of this exhibit --

7 THE COURT OFFICER: (Interpretation) The document is confidential. It will be
8 shown within the courtroom and not outside the courtroom.

9 PRESIDING JUDGE COTTE: (Interpretation) Yes, inside the courtroom and not outside.

10 MR HOOPER:

11 Q. Now, these two pages of your diary show that you've entered three attacks. Now,
12 is it right to say that there were more attacks on Bogoro itself than the three that you
13 show in your diary?

14 A. In this diary, I have written down the attacks during which people were killed.
15 With regard to your question as to whether there were further attacks, whether the enemy
16 came to steal and then retreat, well, there were interventions on the parts of soldiers trying
17 to recuperate the looted property. But what I wrote in the diary refers to large-scale attacks
18 which were perpetrated in Bogoro.

19 Q. Now, this diary, I see from your interview in 2007, when you produced this diary,
20 that you say that the first entry that's made there, which is on the top right-hand page
21 and reads, "the first" -- "*le première guerre*" and gives the dates, that you wrote that and
22 entered that entry on 20 February 2001. That is, what, ten days or so after the attack;
23 is that right?

24 A. Yes.

25 Q. And you say in your interview that the next entry, the one below that reads, "*le*

1 *deuxième guerre*," that that was entered the week after the attack to which it relates, which
2 we understand was an attack in August 2002; is that right?

3 A. That is correct.

4 Q. And in respect of the third entry, that was written shortly after the attack to
5 which it relates, 24 February 2003; is that correct?

6 A. Yes.

7 Q. Or might it be your recollection here as to when you entered these notes is perhaps
8 not correct? You see, you have entered the first battle here as *le première guerre* but you
9 wouldn't have known, would you, when you entered that, that there was going to be a subsequent
10 attack to make that the *première guerre*. That's right, isn't it?

11 A. I did not know that this was the first war or the only war. When I wrote this in
12 the diary, I wrote it because it was an historic event. Subsequently, there was a second
13 war which was just as historic, and I had to note that down in the diary, too.

14 Q. And did you take this diary with you when you fled?

15 A. Yes. At the time of the first war I went to buy this diary in Bunia. And on the
16 occasion of the second war, I still had this notebook in my possession. When the third war
17 occurred, I had already moved quite a lot of my property out of my house; notably, my school
18 books and my school reports, (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 Q. This is in no way a criticism, sir, asking you these questions; it's just to get
11 a better picture of what you were doing, where you were during that period. And you told
12 us, I think, that all the schools in Bogoro, of course, had been closed down from 2001; is
13 that right?

14 A. Yes.

15 Q. Now, in this diary, these entries that we have seen, as you have said, what made
16 these particularly remarkable for you was that substantial numbers of these civil population
17 were killed on each of these attacks; is that right?

18 A. Yes.

19 Q. In the time while the UPC were occupying the camp in Bogoro - and I appreciate
20 you weren't there all the time - but is it right that there were attacks on the UPC while
21 they were present at the camp prior to the 24 February attack?

22 A. When the elements of the UPC were in Bogoro, I shall tell you that there were no
23 attacks upon Bogoro camp. There were looters who came to the villages surrounding Bogoro,
24 and the population gave information to the UPC, who tried to go and recuperate the looted
25 property and push back those looters, or chase them away.

1 Q. During the time the UPC were at Bogoro, did they launch attacks to the south?

2 A. Could you please repeat your question for me to understand it better?

3 Q. Certainly, sir. During the time that the UPC occupied the camp at Bogoro, while
4 they were there, did they mount attacks to the south; that is, on the areas largely occupied
5 by the Ngiti? Did they attack Kagaba, for example, and other places while they were there?

6 A. I cannot recall. I do not know whether the UPC launched attacks against the Ngitis;
7 I am not aware of such an event. I was merely aware of the events which unfolded in Bogoro;
8 I know nothing about the Ngiti.

9 Q. But while you were staying from time to time in Bogoro, (Expunged)
10 or whatever, didn't you meet with and discuss with UPC soldiers what was going on?

11 A. Some events were not of great importance to me, but if I return to your question,
12 it may be that the soldiers who attacked the Ngiti did not come from Bogoro. It may be that
13 they came from Kasenyi because it is rather Kasenyi that is located close to where the Ngiti
14 were to be found.

15 Q. Well, that's not right, is it, because Bogoro controls the road that leads up to
16 Aveba; Kasenyi is the other way?

17 A. Very well, yes; this was merely a supposition. I said that they might have come
18 from Kasenyi because there is a road that goes from Kasenyi to Kanyamavi (phon), Kapuru,
19 and continues on its way towards the Mont Ngitis. And this is where -- this is the road
20 that was used by the soldiers when there was the war.

21 Q. Did anyone ever try to recruit you into the UPC?

22 A. No.

23 Q. Why not?

24 MR MACDONALD: (Interpretation) Objection. Pardon.

25 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, you are on your feet.

1 MR MACDONALD: (Interpretation) I apologise. This is an old reflex that I need
2 to control. The Prosecution would like to object to this question which is merely speculative
3 in nature. The witness cannot know why it is that there were no attempts to recruit him.
4 He answered by saying no, and he cannot answer such a question.

5 PRESIDING JUDGE COTTE: (Interpretation) Objection accepted. Retained.
6 Mr Hooper, you may resume.

7 MR HOOPER:

8 Q. Did it surprise you that nobody tried to recruit you into the UPC, being a young
9 man living in Bogoro that necessarily needed to be defended? Did it surprise you that no
10 one approached you to join the soldiers there?

11 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, before you answer that
12 question, I would request of the Madam Courtroom Officer that we move into closed session
13 briefly, because we have a number of redactions that have already been made, and I would
14 request that we go into private session for a moment.

15 (Private session at 10.18 a.m.)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

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14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 10.22 a.m.)

21 MR HOOPER:

22 Q. I think we are now in public session, and just to recap in public session, you
23 have confirmed that there was (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 MR MACDONALD: (Interpretation) I have no objection to the question. I have an
3 objection, however, to the public nature of this hearing and the issues we are covering at
4 the moment. This might lead to the identification of information that might lead to the
5 identification of the witness, so I believe that this excerpt might lead to revealing the
6 identity of the witness.

7 MR HOOPER:

8 Q. How many people were members of this group? If the witness answers that, we may
9 find ourselves in safe waters, I hope.

10 MR MACDONALD: (No interpretation)

11 THE INTERPRETER: Overlapping of microphones. The witness is speaking at the same
12 time.

13 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, you know, since the
14 commencement of trial, you know just how attentive to the Trial Chamber is to the fact that
15 the public nature of this trial should be respected, but also to the fact that any identification
16 of an individual, who should not be identified, is going to be avoided.

17 So a moment ago, in view of the risk of going to and fro into public session, I
18 indicated to Counsel Hooper and to all other participants that we had to be attentive to
19 the formulation of questions, because we know that this is a very difficult exercise, of
20 course. It does not seem to me that the question just put, which is limited, if I have understood
21 correctly, to ascertaining the number of individuals approximately who were part of that
22 group, could lead to the identification of the witness, but I would call the attention of
23 Defence counsel once again to the necessity of being extremely vigilant so that we might
24 make our hearing as public as possible. Are we in agreement?

25 MR MACDONALD: (Interpretation) Indeed, Mr President. We do not know how many

1 there were. If the number was three, or five -- well, if there were a hundred of them, I
2 do not know. I do not know the number.

3 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. This intervention was
4 useful. So, Madam Courtroom Officer, I would request that in order to answer this question
5 we return to private session.

6 (Private session at 10.26 a.m.)

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 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 10.28 a.m.)

25 MR HOOPER:

1 Q. So, in closed session you have told us --

2 THE COURT OFFICER: (Interpretation) Excuse me, Mr Hooper. We are in open session.

3 Thank you.

4 MR HOOPER: Thank you very much, Court Officer.

5 Q. So, in closed session you have told us that this group -- you can't give its numbers,
6 but your understanding was that it comprised all the young people in Bogoro and that its
7 president was called Beiza Njwenge. Now, let me ask you again about the UPC presence in
8 Bogoro from August 2002 until February 2003. And again, looking at your statement, you say
9 that there were up to about 100 in the camp itself and there was also another position at
10 someone called Madam Giyma's, another hundred or so UPC troops there; is that correct?

11 A. I must specify that this was an estimate. I thought of a group and I thought -- I
12 estimated the number. It's true that Madam Giyma had soldiers from the UPC at her home and
13 they were camping. They camped out there for a number of days and I saw some Lendu come
14 out and attack the soldiers, who fled towards Bogoro. That's what I can tell you.

15 Q. Thank you. And is it right that just before the big attack against Bogoro on 24
16 February about another 100 UPC soldiers arrived, a sort of a surge, in February 2003?

17 A. Yes, they were reinforcements, but also it was an operation that consisted of relaying
18 the other soldiers. There were rotations. There was a rotation. In addition to this rotation,
19 a group came to strengthen the team.

20 Q. Now, you told us that there would often be some advanced notice of attacks. Is
21 it right that sometimes -- I am just going to go through the kinds of ways that you might
22 hear of an attack. Is it right that some information came through the women in the markets?

23 A. Before the attacks launched on Bogoro the message came from the women, but also
24 from the soldiers. How did the soldiers provide that information? Personally I didn't know
25 what the system was, the system whereby they sent that information, but I do know that the

1 enemy had Motorola radios and the UPC also had those radios. So, we wondered how can it
2 be that information from the Ngiti was being given and we were told that it was by these
3 Motorola radios. That's how they knew what was being planned. And within the group of UPC
4 soldiers there were young people from Bogoro who had lived with the Ngiti and they could
5 talk that language, the Ngiti language, and so those young people could listen to these Motorola
6 radios and hear these messages.

7 Q. And indeed (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 Q. If the Prosecution want to ask you about it, they can. I don't need to ask you
18 about it. At the time of the 24 February attack, the commander in fact was a man called
19 Germain, was he not; that is the commander of the UPC was called Germain?

20 A. (Microphone not activated)

21 Q. UPC?

22 A. Within the UPC?

23 Q. *Union Patriotique Congolaise*?

24 A. As I said, there was a sort of a rotation amongst the commanders. They would replace
25 one another. It's true that among the UPC commanders, there was a person whose first name

1 was Germain.

2 Q. Now, these attacks, the insecurity of Bogoro, the schools closed, the advance notice
3 of possible attacks, all this combined, did it not, to mean that by 24 February most people
4 had left Bogoro for the safety of other places?

5 A. Yes. When we received information about the attack, it's true that many people
6 fled, and the inhabitants of Bogoro fled to Kasenyi or Bunia. And the inhabitants of the
7 surrounding villages fled towards Bogoro. So that's how it worked. The people from Bogoro
8 fled towards Kasenyi and Bunia and other people fled towards Bogoro.

9 Q. Do you know how many people were present at Bogoro the day of the attack? Civilians,
10 that is. And if you don't know, then don't provide an answer. Or if you do know, or can
11 help us, please do.

12 A. In any event, it's very difficult for me to know how many people were in Bogoro.
13 I just saw people going back and forth. Others -- some were leaving, others were coming
14 in, so I couldn't tell you how many people were in Bogoro.

15 Q. Now, let's come to the day of the attack itself. The 24 February, what's the season
16 in Bogoro; is that a wet season or a dry season?

17 A. I have to think about that first. You are asking what season it was. At that time,
18 I don't know if it was a dry season or a rainy season, but what I do know is that Bogoro
19 is an area where there are forests that draw the rain. I know that as of December until
20 February, it's a dry season. It's sunny. But -- but as -- after a while, we saw that things
21 were changing, and in January and February we had strong rain.

22 Q. Because of its situation, is it right that in the mornings Bogoro is subject to
23 fog and mists?

24 A. Yes, that's what I just told you. Before the war, there were many trees in Bogoro,
25 and each morning, there was fog. But considering the fact that the soldiers from the FRDC

1 cut down the trees, there was no longer any fog, as was the case beforehand. There might
2 have been some fog for a little while, but then it would dissipate.

3 Q. Now, listen carefully to my next question, because I don't want it to lead to identifying
4 you. So I am going to phrase it in a particular way. You told us how you were woken up between
5 4 and 5 o'clock on the morning of 24 February by the sound of shooting. At that point how
6 far away were you from the Bogoro institute? I don't think that will identify you, because
7 we are going to have just a distance, and not a place; right? I am just asking you in -- in
8 yards or the length of football pitches, whatever comes to your mind that helps you, to give
9 us an estimate as to how far you were when you first heard that shooting from the Bogoro
10 institute?

11 A. When I heard the gunfire -- I think you said to me that you had been to Bogoro
12 once, so you know when you are there -- I don't know whether you were at the primary school.

13 Q. I am going to talk over you, I am sorry. We don't want a place, because a place
14 will help identify who you are, and that is what we are trying not to do. I am trying to -- can
15 you give us a distance? If you can't, if you say "I can't measure it in yards" say so but -- or
16 in metres. How far were you from the Bogoro institute? 100 metres, 200 metres, 400 metres,
17 or what?

18 A. I can only give you an estimate. About one kilometre away, perhaps a bit less than
19 one kilometres. It's an estimate.

20 Q. Because we had no idea when you gave your evidence how far you were away, but you
21 say it's about a thousand metres.

22 A. I just told you that the distance is about one kilometre. You, yourself, can compare
23 1.000 metres and one kilometre.

24 Q. Well, we may have to return to this in a closed session at some point, but I bear
25 in mind where you marked your "X" on the sketch. We can't see that now. Let's -- let's move

1 on and we can come back to that -- that issue.

2 But you -- you left there in order to get to the camp and you had to then go and
3 hide in the bushes, and you told us that was at 6 o'clock in the morning. So, can I ask
4 you this: What were you doing between 4 or 5 o'clock in the morning, when you first heard
5 the shooting, and 6 o'clock, when someone fired at you and you went and hid in the bush?

6 A. I told you that the time I gave you was an estimate. I made an estimate in comparison
7 to the time that I got up -- woke up and the time that I went to hide. So, between the time
8 that you wake up and the time that you hide, there were moments of hesitation. You go on
9 one side to look for a hiding spot, you go to another place to look for another hiding spot,
10 so you spend some time hesitating.

11 Q. Why didn't you just go straight to the camp?

12 A. I think I said that I didn't go to the camp immediately. Why? Because, when I
13 heard the gunfire, it was in the direction of the camp. So I avoided the road and I took
14 some paths in the bush and, when I got close to the camp, the soldiers had encircled the
15 camp and so I turned around and went into the bush to find a hiding spot.

16 Q. And so by the time you got near the camp, it was already encircled; is that right?

17 A. Yes. The camp had already been surrounded. I couldn't get in. So, that's why
18 I found myself a hiding spot.

19 Q. Now, among the people that you hid with, you told us (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged), you didn't carry any weapons

3 to protect yourselves?

4 A. Only soldiers can have weapons, firearms. We had bladed weapons. Some people had
5 arrows. Some people had spears or machetes. It was a way of ensuring our own protection
6 so that the enemy would not take us by surprise. So, if, for example, we intercepted a movement,
7 we would be able to inform the leader or the soldiers so that they could take necessary measures.

8 Q. But a spear or machete is little protection against an AK-47, is it?

9 A. You are talking about Kalashnikovs or AK-17s. I don't know what they are.

10 Q. You really don't know what they are?

11 A. It's a name, a foreign name, Kalashnikov. I don't understand that term. Is it
12 a term -- it's a term that you are saying in a foreign language.

13 Q. Do you understand what an AK-47 is?

14 A. No, I couldn't understand those figures that you are telling me. For example, if
15 you could give me the name of a firearm like SMGs or those other names; I don't know them.

16 Q. Now, when you left the place where you had been when you first heard the shooting
17 and you went out, were you armed? By that, were you in possession of any weapon, a bladed
18 weapon, a spear, a bow and arrow, a gun? Did you have anything with you?

19 A. I could have a bladed weapon, but I told you that I heard the shooting and I didn't
20 have time to pick up anything, not clothing, no -- not any shoes, not anything, or not a
21 bladed weapon. I didn't have time to get anything. I woke up very suddenly and I left as
22 I was.

23 Q. Well, both in your evidence and in your interview, you say that you woke up between
24 4 and 5 o'clock. It was dark. And when you went to the camp, it was 6 o'clock and light.
25 And on your estimate, that would give you an hour between waking up and moving towards the

1 camp. So, were you really in the rush that you describe or did you, in fact, have time to
2 arm yourself before you left? And no criticism of you, if you did. I'd want to be armed
3 if I was leaving a house and there were people outside who were shooting. So, were you armed?

4 A. I will answer your question. If you have a bladed weapon, you can use it within
5 a distance of about a metre or so, or two metres. If you hear shooting coming from the town,
6 can you take your bladed weapon? Because with your bladed weapon you can't do anything against
7 someone who has a firearm who can shoot at you from far away.

8 Q. Now, let me come to another subject, and that is that, very shortly after you go
9 to hide in the bushes - and that's about 6 o'clock in the morning, you tell us - you say
10 in your statement this: "I saw other attackers arrive from the Bira *collectivité*. This was
11 around 6.00 a.m., more or less the time I hid in the reeds." Is that correct, did you see
12 attackers arrive from the Bira *collectivité*?

13 A. Your Honour, my brothers, you know, you respect the time that you have, and I,
14 too, I have my time. I answered some questions and I think that, when I answered those questions,
15 the lawyer was taking note, and I don't see why he is going back to these questions that
16 I have answered.

17 Q. Well, very well. I am not concerned with the time. I am merely asking you this:
18 Is it right that you saw Bira people coming from the Bira *collectivité*? Is that right?

19 A. Yes.

20 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, I think we are going to have
21 to suspend our sitting very soon, unless you have one last question that would elicit a very
22 short answer.

23 MR HOOPER:

24 Q. One short question, Mr Witness, and it is simply this: And is it right that you
25 are able to identify those people as Bira because you heard them speaking Bira, the language

1 Bira?

2 A. I'll answer your question. Even if they were talking the Bira language, or another
3 language, someone who comes from that area can speak no language other than Bira. I thought -- I
4 thought they were Bira people because they were coming from that direction. That's all -- that's
5 all I could think.

6 Q. Our last question. I'm looking at your statement at paragraph 74, and you say,
7 "My view, the attackers, who consisted of many women and children, were Bira. I say that
8 because they came from that direction and also because, from the place I was hiding, I heard
9 them speak the Bira language. Other survivors also told me they had seen Bira attackers."
10 Now, is that right?

11 A. Yes, that's right. And I already told you, even before 2003, if I tell you the -- about
12 the events that occurred, the Bira came from other localities to loot.

13 MR HOOPER: Yes, thank you. I have no other questions at this moment. Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. Thank you, witness,
15 as well as the court usher, for making sure that the witness has access to some water during
16 his testimony.

17 We are going to break now. It is 11.02. We are going to resume at 11.32. And
18 the courtroom officer has nodded; she agrees. So, we are going to ask her to go into closed
19 session for the witness to go into the room allocated to him before we come back to open
20 session and suspend the hearing.

21 (Closed session at 11.02 a.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Open session at 11.03 a.m.)

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

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We are going to suspend now
4 and resume at 11.33.

5 (Recess taken at 11.04 a.m.)

6 (Upon resuming at 11.32 a.m.)

7 THE COURT USHER: All rise.

8 PRESIDING JUDGE COTTE: (Interpretation) Court is in session. Please be seated.

9 Madam Courtroom Officer, before I ask you to go into closed session to allow our witness
10 to come in, we will want to respond to the application made by the Prosecutor at the beginning
11 of our hearing and point out to him that the reclassification that he was requesting is granted.
12 Can we now go into closed session for the witness to come in, Madam Court Officer.

13 MR HOOPER: Mr President, just while the witness is coming in.

14 THE COURT OFFICER: (No interpretation)

15 MR HOOPER: In closed or open, it doesn't really matter.

16 (Closed session at 11.35 a.m.)

17 (Expunged)

18 (Expunged)

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Page 25 expunged – Closed session.

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Page 26 expunged – Closed session.

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4 (Expunged)

5 (Open session at 11.42 a.m.)

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

7 PRESIDING JUDGE COTTE: (Interpretation) We are once again in open session.

8 Mr Hooper, the floor is yours.

9 MR HOOPER: Thank you.

10 Q. Mr Witness, just dealing with the Bira that you saw that day, is it right that
11 you saw them armed with SMGs?

12 A. The Biras and the others were bearing those weapons, but I saw them from afar.
13 These were the enemies, and I didn't go close to them. I went into hiding. I told myself
14 the Biras are coming and I have to hide.

15 Q. And is it right that the Biras that you saw and heard speaking Bira, that among
16 them were women and children who you saw later carrying away pillaged goods?

17 A. Yes. During the war, there were people who pillaged property, and those were the
18 Biras. I heard gunshots, and some of the houses had been destroyed. Women and children were
19 carrying away property.

20 Q. Thank you. And did you later learn that the Bira had ambushed people fleeing Bogoro,
21 had ambushed them at the Mbogu river? That's M-B-O-G-U, Mbogu.

22 A. Yes.

23 Q. And the battle which started at 4 or 5 in the morning, to what time did that battle
24 continue as far as you could tell?

25 A. I believe that you are referring to my written statement, and I will therefore

1 like to ask you to look for the answer in that statement.

2 Q. Well, I have the statement, but I am asking you your recollection today. If you
3 have a difficulty with that, you can say so. And may I say, I understand the circumstances
4 that you were under at the time. It must have seemed a very long time that you were in that
5 bush. I can well understand that. But as far as you can tell and recall, when did the battle
6 end that day?

7 A. I heard explosions. And I should say, that this fighting ended at about 12 o'clock.
8 However, I no longer remember the specific time mentioned in my written statement.

9 Q. And over those seven or eight hours of fighting, it would be right to say that
10 there was very fierce fighting, indeed. This was a big battle, wasn't it?

11 A. Yes.

12 Q. Were you or others in Bogoro at all concerned that this camp had been built in
13 the middle of the civilian area?

14 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor.

15 MR MACDONALD: (Interpretation) The witness can only answer for himself and not
16 for the others.

17 PRESIDING JUDGE COTTE: (Interpretation) If he can at least give an answer, then
18 the Court will be able to find some benefit in that.

19 THE WITNESS: (Interpretation) As far as I am concerned, the location of that
20 military camp was actually beneficial to the population, because anyone who wanted to go
21 there quickly could do so; but generally speaking, it is not a good thing to locate a military
22 camp in a populated area, because whenever there is fighting between belligerents, the civilians
23 could become victims.

24 MR HOOPER:

25 Q. Now, on your visits to the camp, can you give us some idea how many families were

1 living there; families of UPC? For example, how many little huts were there, manyatas or
2 *paillotte*?

3 A. I am sorry, but it would be difficult for me to know the number of soldiers who
4 were living in that camp or the number of huts. Everyone was going into the camp to hide,
5 and they would come out of that camp again when security was restored. At that time, you
6 wouldn't be able to know where the prison was or where the armouries were. You simply found
7 a little hiding place for yourself under those circumstances.

8 Q. But it is right to say that there were wives and children of the soldiers in that
9 camp, too, were there not?

10 A. Yes.

11 Q. Now, again, I see from your statement that you say that the first time you ever
12 heard mention of the FNI or the FRPI was later when you had left DRC and gone to another
13 country; is that right?

14 A. That is correct.

15 Q. One question which various parties would like you to answer - I will ask the
16 question - how far was your hiding place, that place where you were with the other four people,
17 how far was that from the Bogoro institute?

18 A. I believe that the distance was about one kilometre.

19 Q. Now, again, looking at your statement at paragraph 107, is it correct that you
20 learned later that during the battle the UPC had asked for recruitments to come from Kasenyi
21 and Bunia, but that those reinforcements got blocked and weren't available to -- weren't
22 able to come to Bogoro to support the UPC fighting there; is that right?

23 A. That is true.

24 Q. Now, not very far from Bogoro, a kilometre or so away, is the place called Diguna,
25 which is a collection of churches and hospitals and buildings - substantial buildings - that

1 now is very dilapidated having been pillaged. Now, is it right that in fact a substantial
2 amount of the pillaging was done later by the DRC army, the FARDC, who arrived with a lorry
3 or lorries and took away the roof tiles; is that right?

4 A. I do not have any precise information about that. What I am sure of is, that when
5 the FARDC soldiers arrived in Bogoro -- well, I am supposing that the FARDC collaborated
6 with the people who were working in Diguna, and the FARDC or those people working in Diguna
7 took a container and sold it. I do not know whether they had authorisation to do so. However,
8 I cannot tell you whether it was the FARDC or the workers in Diguna who took away that container.
9 Certain other containers stayed there.

10 Q. Thank you. On the road south, you eventually get to a village called Aveba. Have
11 you ever been to Aveba?

12 A. I never went to Aveba. I only went to Nombe; that is, when it comes to the Ngitis'
13 territory.

14 Q. Do you know how far Aveba is from Bogoro? How many kilometres it is?

15 A. When you leave the roundabout, you go up to Gety and then there is a road that
16 goes to Dakuna (phon). Some white people have already measured the distance up to Aveba,
17 and from the roundabout to Aveba the distance is about 39 kilometres.

18 Q. Now, along that road, when you leave Bogoro, one of the first places you reach
19 is Lakpa. What ethnic group lives there predominantly?

20 A. It is the Ngitis.

21 Q. Or is it the Lendu?

22 A. A Lendu can live with the Ngitis and an Ngiti can live with the Lendus. You asked
23 me who lived in that area, and I said that it was the Ngitis, because the chief himself is
24 Ngiti; and it is based on that that I told you that it was Ngiti territory, because a Lendu
25 cannot be a chief where there are many Ngitis living.

1 Q. Now, scattered about Bogoro, if we visit it today, we find skulls and bones, don't
2 we?

3 A. Yes, but those bones have already been buried.

4 Q. And when were they buried?

5 A. Some bones were buried when the population went back to Bogoro. In order to answer
6 your question, most bones were buried, and this was after the ICC employees came to the area.
7 After they conducted their investigation, authorisation was then granted for those bones
8 to be buried, any bones that might be discovered subsequently, that is.

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor.

13 MR MACDONALD: (Interpretation) The Prosecution has specifically broached this
14 subject in an *ex parte* hearing - I apologise, in private session - and here I understand
15 that what was said at the time was in closed session and the objective was to discuss this
16 chapter in closed session. Now, here my learned friend is putting the question to him directly,
17 knowing only too well that this was discussed in closed session and without even asking the
18 Chamber or the parties to discuss this matter.

19 PRESIDING JUDGE COTTE: (Interpretation) An answer to Mr Macdonald, and in order
20 for things to be done in parallel fashion, well, I think that we should go into private session
21 immediately in order for you to be able to answer him.

22 Madam Courtroom Officer, would you please be so kind as to implement private session.

23 (Private session at 12.03 p.m is reclassified Public)

24 THE COURT OFFICER: (Interpretation) We are in private session, Mr President.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Courtroom Officer.

1 Mr Hooper, please answer Mr Macdonald, first and foremost, who got to his feet rather vividly,
2 and then you will rephrase the question for the witness, please.

3 MR HOOPER: Very well. I must say I had overlooked that that was in private session
4 but, for the life of me, what possible interest is being served - what possible interest
5 is being protected - in mentioning the name of a deceased party whose bones have apparently
6 been identified? How can that -- why should that not be part of open trial? What possible
7 interest is the Prosecution protecting in seeking to retain an *ex parte* gloss over that?

8 PRESIDING JUDGE COTTE: (Interpretation) Now, without entering a lengthy
9 discussion on this subject, Mr Macdonald will give you an answer and then we shall pursue
10 with our discussions in order for us to not accumulate any delay.

11 MR MACDONALD: (Interpretation) Very briefly, Mr President, there is a distinction
12 between the disclosure of evidence which is done with the most limited number of redactions
13 and the information with reference to the public. The person whom we are protected -- we
14 are protecting here from the public (expunged).

15 PRESIDING JUDGE COTTE: (Interpretation) An explanation has been provided. So,
16 Mr Hooper, please continue with your cross-examination.

17 MR HOOPER: I don't understand how the existence of the husband prevents open discussion
18 of the finding (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

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4 A. In this regard, I can say the following.

5 PRESIDING JUDGE COTTE: (Interpretation) We are going to interrupt you. We are
6 sorry. Mr Macdonald would like to say something.

7 MR MACDONALD: (Interpretation) We would like to express a doubly-pronged objection
8 here. This is no certainty and he cannot attempt to introduce evidence via questions. The
9 witness might then say that the information is true and, secondly, and we are trying to -- well,
10 an attempt is being made as presenting this as a true fact. Now, I would like to contend
11 that Counsel Hooper cannot proceed in this manner. I believe that he has to rephrase his
12 question. He could say, "Is it not true to say that Ngiti women were not buried" without
13 going around the houses and saying -- well, this really slows up discussions and is not
14 inadmissible, whatever the case may be.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, it is imperative that
16 everyone calms down, to the extent that getting hot under the collar might have an effect
17 on the testimony of the witness. We, as you do, have one sole objective, which is to obtain
18 useful, detailed testimony which is specific in nature, in order to better understand how
19 things unfolded. So, the opportunity has been provided here for us to remind all and sundry
20 that questions have to be as brief as possible, as specific as possible, and the Court would
21 request, Mr Hooper, that you rephrase your question. And were you able to rephrase it in
22 a more concise manner, we would be very grateful.

23 MR HOOPER:

24 Q. Is it right that bodies of those believed to be Ngiti were left to rot, unburied?

25 A. The bodies of Ngiti and Lendus who had been killed on 24 February were rotting

1 when we returned. Your question is attempting to ascertain whether this lady had been buried
2 or not. I believe that you came before the investigators from the ICC. It is true that some
3 bodies remained without being buried and some members of their family, when they returned,
4 would bury them and subsequently, when the ICC requested that all these bones be buried,
5 it was done. For the time being, or today, there are no bones that remain unburied.

6 PRESIDING JUDGE COTTE: (Interpretation) I would like to interrupt you for a moment,
7 and I am sorry about that. It would seem to me that what has just been said from the phrasing
8 of your question via the intervention of Mr Macdonald, my own intervention and that of the
9 witness, are things that could have been said in open session. However, we are still, unless
10 I am mistaken, in private session.

11 So, Madam Courtroom Officer, I would request that we move out of private session
12 unless Mr Hooper has a question in mind that requires it, and I would request that in the
13 transcript you make sure that the exchanges that I have just referred to be public, if this
14 were possible.

15 Mr Hooper, now, your next question, should it be put in private session, or can
16 we move back into public session? Thank you.

17 Madam courtroom officer, we may move back into public session, please.
18 (Open session at 12.13 p.m.)

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

20 PRESIDING JUDGE COTTE: (Interpretation) You have the floor, Mr Hooper.

21 MR HOOPER:

22 Q. Is it right that in the course of attacks prior to 24 February 2003, if it happened
23 that an attacker was killed, that attacker's body would not be buried but would be left to
24 rot?

25 A. No, that is not true. I believe that in view of health practices or health standards,

1 it is imperative for bodies to be buried, so we would bury the corpses of those individuals
2 who had been killed. We could not leave them to decompose and to rot.

3 Q. Did you participate in burying the bodies of assailants?

4 A. I might take part in this operation, as I might not, but whatever the case may
5 be it was necessary for these bodies to be -- or these bones to be buried, but previously
6 it was not possible because there were UPC soldiers present. Subsequently, however, it was
7 necessary, after having identified the bodies, to bury them. No bones remained in the open
8 air. We did bury them.

9 Q. But at the time the UPC were there, was it their policy not to bury their assailants'
10 bodies?

11 A. I have just told you that all bodies, whether they be bodied of enemies or bodies
12 of members of the civilian population, were buried. I do not know where you get this information
13 from.

14 MR HOOPER: Thank you. Those are all my questions, thank you.

15 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you,
16 Mr Hooper.

17 So it would be Professor Fofé who is going to address the Court. Professor Fofé,
18 please.

19 MR FOFÉ: (Interpretation) Thank you, Mr President. May I have a moment to search
20 through my paperwork?

21 PRESIDING JUDGE COTTE: (Interpretation) Well, in order for you to find your
22 paperwork, then maybe we would give the witness the opportunity to drink something.

23 QUESTIONED BY MR FOFÉ: (Interpretation)

24 Q. Good morning, Mr Witness. I would like firstly to reassure you and to say that
25 you have come to testify before the Honourable Judges, with a view to providing them with

1 information as to what happened in Ituri. We do not intend to hound you, but we want to
2 put questions to you with a view to shedding light on the matter and assisting the Judges
3 in better understanding what happened.

4 A. (No interpretation)

5 THE INTERPRETER: Overlapping of microphones with the witness who replied.

6 MR FOFÉ: (Interpretation)

7 Q. Now, Witness, in view of your knowledge, I am going to put a number of questions
8 to you, firstly, with regard to the Lendu language. Now, during your testimony on the Thursday,
9 26 November 2009, you talked about the Swahili, Kihema and Kilendu languages, did you not?

10 I cannot hear the translation.

11 A. Yes.

12 Q. To your knowledge, which ethnic groups from Ituri speak Kilendu, to your knowledge?

13 A. The Kilendu language is spoken by the Lendu from the north and also by the Gegere.
14 I would say that the Gegeres' language closely resembles that of the Lendu, with a few differences.
15 They, themselves, can establish the difference between the language spoken by the Lendu and
16 the Gegere, but I would say that the Lendu and the Gegere speak one and the same language.

17 Q. Thank you very much. And the Gegere are the Hema from the north; is that not true?

18 A. Yes.

19 Q. Thank you. Do you know Mbisa, which is spelt "M" for Mike, "B" for Bravo, "I" for
20 Italy, "S" for Santos, "A" for Alpha? Do you know the Mbisa?

21 A. No, I do not know them. Is this another ethnic group? I do not know them.

22 THE INTERPRETER: Overlapping of microphones.

23 MR FOFÉ: (Interpretation)

24 Q. This is another ethnic group from the Ituri region that also speaks Kilendu. Thank
25 you very much. Do you know the Lendo (phon) or the Ndo, spelt N-D-O? Do you know the Ndo?

1 A. I do know this ethnic group, but I do not know which language they speak. I have
2 never heard the language they speak. I have never heard them speaking.

3 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, this is a technical
4 question. You are speaking slowly, that is perfect, but you must leave a little bit more
5 time between the question and the time for the witness to answer and then, when you have
6 finished answering your question, time must be left. This is a difficult thing to do. You
7 need to turn your microphone off and then put it on again. This will facilitate work for
8 our interpreters and as you are at the beginning of your questioning then this is the time
9 to do it.

10 MR FOFÉ: (Interpretation) Yes, thank you very much, Mr President. I shall do
11 so.

12 Q. Mr Witness, do you know the Ndo? You were just about to answer that question.

13 A. Yes, I do know this ethnic group, but I do not know which language they speak.

14 Q. Thank you. I would also put it to you that the Ndo speak Kilendu as well?

15 A. Thank you for that piece of information.

16 Q. Very well. I would now like to put a number of questions to you with a view to
17 shedding light on the matter for the Judges with regard to the *groupement* where the Lendu
18 lived in Ituri, or where they live in Ituri, and you can answer to the extent of your knowledge,
19 please?

20 A. Thank you.

21 Q. I am going to put very specific questions to you. Witness, could you tell the Court
22 which territories of the Ituri region are inhabited by the Lendu?

23 A. We are talking about the Lendu from the north? They occupy the Djugu territory.

24 Q. Thank you. In addition to the Djugu territory, or the territory of Djugu, do you
25 know any other territories within the Ituri region inhabited by Lendu?

1 A. No. Nevertheless, I did hear that a group of Lendu, which came from Djugu, went
2 via the Ngiti collectivities and set up there, which means that there are some Lendu in territory
3 occupied by Ngiti, notably in Irumu territory.

4 Q. And Irumu territory is also inhabited by the Walendu Bindi, is it not?

5 A. Yes.

6 Q. Thank you, Mr Witness. And with regard to the Djugu territory, if possible, in
7 order to shed light on the matter, do you know the Walendu collectivities within the Djugu
8 territory?

9 A. I would say that I only know one *collectivité* within this territory, which is to
10 be found close to ours, that is to say the Ezekere. I do not know whether Ezekere is a *collectivité*
11 or a *groupement*.

12 Q. Thank you very much. I believe that it is a Walendu Tatsi *collectivité* ?

13 A. Ah, yes, thank you.

14 Q. And in addition to this *collectivité* I would put it to you that there are two other
15 *collectivité* within the Djugu territory, notably Walendu Pitsi?

16 A. Yes, I have already heard this name, notably Walendu Piti (phon), I have already
17 heard this name.

18 Q. Thank you very much. And Walendu Djatsi *collectivité*?

19 A. Are we talking about Walendu Djatsi, or Walendu Tatsi? I do not know really anything
20 about this.

21 Q. Yes, this is Walendu Djatsi, which is spelt D-J-A-T-S-I, Djatsi?

22 A. Thank you.

23 Q. Thank you, Witness. Now, I would like to come a little closer to Bogoro whilst
24 remaining in this context. We just broached the subject of Lakpa *collectivité* which is located
25 south of Bogoro, is it not?

1 A. Yes.

2 Q. And if my memory serves me correctly, we also talked about the Nombe locality which
3 is located to the immediate south of Bogoro, is it not?

4 A. Yes.

5 Q. To the south of Bogoro, are you aware of a third locality called Lagabo?

6 A. Yes.

7 Q. In these three localities the population also speaks Kilendu, do they not?

8 A. Yes. Some speak Kilendu; also some speak Kingiti.

9 Q. Thank you. Of course when we talk of the Kilendu, we are talking about the Lendu
10 language as we sometimes talk about Kiswahili, in order to designate the Swahili language,
11 is that not correct?

12 A. Yes.

13 Q. Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) I am sorry I have to interrupt you once
15 again, but we are all getting used to the courtroom and the utilisation of the microphone.
16 The Court would request of the witness that, upon answering a question put to him by counsel,
17 that he let a small moment pass between the end of the question and the time when he responds.
18 This is not easy, but it is important for the interpreters to be able to interpret the first
19 words of your answer which, on a number of occasions, have not been interpreted.

20 MR FOFÉ: (Interpretation) I am sorry.

21 PRESIDING JUDGE COTTE: (Interpretation) You may resume your cross-examination,
22 and thank you to the witness.

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

24 Q. Sir, I am going to have to - and you will have to excuse me, but I will have to
25 go back to a question that was asked by my learned friend, but my friend did not quote your

1 written statement in its entirety, and I will quote it so that it is properly recorded in
2 the transcription and understood. Now, sir, on page 22, paragraph 141 of your statement,
3 do you remember this statement?

4 A. Yes.

5 Q. This is what you said, and I am quoting: "It was only after I fled from the Democratic
6 Republic of the Congo, (Expunged), that I heard people talking for the first time
7 about the FNI and the FRPI. I knew that the FNI was the military force of the Lendu, whereas
8 the FRPI was the military force of the Ngiti. I didn't realise the significance of these
9 two acronyms. The first time that I heard about the FNI and the FRPI was at the time of
10 the reconciliation amongst the Hema, the Lendu and the Ngiti. It was even after the attack
11 on Tchomia in 2003."

12 Can you confirm this statement?

13 A. Yes.

14 Q. Thank you very much. Now we will turn to the attack of 2001. Sir, you said that
15 the Bogoro attack of 2001, 9 January 2001, is that not the date, occurred after an incident
16 that had occurred at Katonie? Is that not so?

17 A. Yes, that is right.

18 Q. What was that incident?

19 A. Yes, I can explain it. The attack occurred on the 9th, and on the 8th in the evening.
20 If you know Bogoro, when you go from Kasenyi there is one place called Barrera (phon) or -- it
21 has another name in the middle of a hill, Mogo (phon), and at that place there was a marketplace
22 where ladies used to sell various goods, and on the evening of the 8th -- pardon me. Is
23 this an open session, because I have to give some names?

24 Q. Yes, we are in open session, and I believe that for greater clarity it would be
25 better to ask specific questions, and that way we can move along quicker, because we are

1 in open session and we must avoid taking risks. So I will ask you specific questions.

2 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead, Mr Prosecutor.

3 MR MACDONALD: (Interpretation) The witness was interrupted while responding. I
4 think it is important, before we turn to another question, I think we should give the witness
5 an opportunity to answer and then, after that, we can move on to other questions. I understand
6 why Mr Fofé interrupted. He did not want the witness to give names in public but, after
7 all, he did not conclude his reply.

8 PRESIDING JUDGE COTTE: (Interpretation) It is true that he hadn't finished
9 answering and it is also true that we all wish to ask specific questions that lead to short
10 and specific answers. Now, Professor Fofé, the questions that you are intending to ask,
11 will they lead the witness to giving particular names, because if that were the case we would
12 have to go into private session, as necessary? If your questions should not lead to the
13 giving of names, we can remain in open session.

14 MR FOFÉ: (Interpretation) Yes, your Honour. I just have two questions to ask
15 with a name that is not a problem. The names are not a problem.

16 PRESIDING JUDGE COTTE: (Interpretation) You are sure?

17 MR FOFÉ: (Interpretation) Yes.

18 PRESIDING JUDGE COTTE: (Interpretation) We will remain in open session and the
19 witness may continue with his responses.

20 THE WITNESS: (Interpretation) Thank you. So, I was saying that there, at Magwa
21 there were people, but there were no toilets. People relieved themselves in the bush, and
22 that time we saw something that looked like a bomb, and they reported that to the chief of
23 the *groupement*. The chief of the *groupement* told the UPC soldiers and asked them to go see
24 whether it was actually a bomb and to defuse it so that there would not be any problems.

25 In the morning, the soldiers left and they came back, and they told the chief,

1 they asked them, they asked him to give them someone to show them the way and he said that
2 there already was, and that there was someone who could show them where the bomb was, and
3 the soldiers insisted and they said "We need to leave with someone." And the chief gave
4 them a young person who went with them and, once they got there, they asked the people who
5 were there where the bomb was and they saw the place.

6 At one point the soldier said that the Lendu had probably placed that bomb there
7 and they said that they had to go with me, with the chief of the Lendu, and so they left
8 to see the chief of the Lendu. They didn't know where he was. At least that's what I was
9 told.

10 These soldiers didn't know where the chief of the Lendu lived. They made enquiries
11 and they were told that he was not there. They left again. And Katonie is just on the road.
12 Once at Katonie, at the marketplace, they heard gunfire. People had started shooting right
13 there, and the soldiers started to run and go back to Bogoro. I am telling you this very
14 briefly. This is what I heard.

15 MR FOFÉ: (Interpretation)

16 Q. Thank you very much, sir. Do you know the Ugandan commander called Obote?

17 A. I heard of that name, but I don't know that person.

18 Q. Might you have heard that he was the commander of the UPDF, of the Ugandan army
19 who had attacked Katonie on 9 January 2000 -- pardon me, 9 January 2001 coming from Bogoro?

20 A. I can't give you specific information about that. I am sorry. Not to my knowledge.
21 There were APC soldiers in 2001, but they didn't even have a military camp. They stayed
22 at a building that I showed you on the sketch, the sketch of Bogoro, the workshop, and there
23 was another building as well that was called Unega. And the -- at that time, the Ugandan
24 soldiers hadn't arrived in Bogoro.

25 Q. In 2001 there were no Ugandan soldiers there, but there were APC soldiers there?

1 A. Yes. To the best of my knowledge, yes.

2 Q. Thank you very much. We will now specifically speak about the force that was built
3 in Bogoro first of all in 2001 and then in 2003. My first question has to do with page 5,
4 paragraph 25 of your statement - your written statement - and you said the following, and
5 I am quoting you: "Three armed groups set up operations in Bogoro between 2001 and 2003.
6 In 2001, there were about 20 APC soldiers in a house on the Kasenyi road. The APC soldiers
7 were belonging to the group of the Ituri governor. After the 2001 attack --"

8 MR MACDONALD: (Interpretation) I would draw the Court's -- the Chamber's attention
9 to the fact that if we are going to quote a paragraph, we must do so in its entirety, not
10 bits and pieces. You can't quote part of a sentence, draw up some elements and then move
11 on to another sentence. Either you read out the entire paragraph -- but you really can't
12 juxtapose, with all due respect. This could lead the witness to make a mistake. This is
13 not a written language. We can't point -- we can't put "dot-dot-dot." We could paraphrase,
14 but when you quote you have to quote the entire passage.

15 PRESIDING JUDGE COTTE: (Interpretation) The Defence knows whether or not it will
16 have to give these quotations or not. It will all depend on witnesses, and answers provided
17 earlier by witnesses, during examination and cross-examination. And that could lead the
18 second Defence team into repeating the reading out of passages.

19 It is true, that in terms of our on internal discipline, it is important. If a
20 paragraph is not quoted in its entirety, you should pause after the first passage and ask
21 the question -- or at the very least, warn by saying "And I quote," and then "End of quote,"
22 and then "Resuming," so that we know that material was dropped. I am trying to find the
23 right way of saying this. I don't want to offend anyone at all. I want everyone to be quite
24 clear that these interruptions are not calculated in nature, which of course is not the case.
25 At least that is what we think.

1 Professor Fofé, the witness has asked us if he can leave the courtroom for a few
2 moments; and of course, we will allow him to do so. Madam Courtroom Officer, could we go
3 into closed session briefly. Indeed.

4 Perhaps -- Professor Fofé, I hope this won't interrupt the order of your
5 questioning - questions too much. Oh, pardon me.

6 MR FOFÉ: (Interpretation) I believe I see where you are going, your Honour. That
7 is no problem, but just before -- I am sorry that I interrupted you, but just before, I wanted
8 to respond quickly to the objection from my learned friend.

9 PRESIDING JUDGE COTTE: (Interpretation) I do not want to put the witness into
10 a difficult spot. I will reply at the beginning of the next sitting. So, we will now suspend.
11 It is 12.50 -- 12.48. And we will resume -- please help me. We will resume, Madam Courtroom
12 Officer, at what time? At 2.20 in the afternoon we will resume. Professor Fofé will respond
13 to Mr Macdonald at that point, and then cross-examination will conclude.

14 Before we allow the witness to leave the courtroom, I think that witness -- Witness
15 419 can only come tomorrow. Now, Madam Courtroom Officer, if you could -- if we could please
16 go into closed session. If we could move into closed session. Thank you, Madam Justice Diarra.
17 We will suspend officially once we are back in public session.

18 (Closed session at 12.50 p.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Upon resuming at 2.23 p.m. in open session.)

5 THE COURT USHER: All rise.

6 PRESIDING JUDGE COTTE: (Interpretation) Court is in session. Please be seated.

7 We shall now ask the courtroom officer to go into closed session. I'm sorry, I
8 had forgotten, Mr Fofé wanted to respond to Mr Macdonald. Please address the Court.

9 MR FOFÉ: (Interpretation) Thank you, your Honour. Mr President, your Honours,
10 before I respond directly to the Prosecutor's objection, I will read out to you the short
11 excerpt that I forgot to quote so that you can see what it is all about.

12 The first excerpt that I skipped is the following: Annex (1).

13 The second bit that I did not mention is as follows: Jean-Pierre Bemba, during
14 the presidency of late Kabila at the time. I would like to reassure the Prosecutor that
15 the concerns of the Defence team of Mathieu Ngudjolo is to make it possible for the Court
16 to know the truth, the whole truth and nothing but the truth, and we are inspired by the
17 spirit of honesty.

18 In this case, we have nothing to hide. If I skipped those excerpts, it was simply
19 to save time. But when we resume, Mr President, your Honours, you will allow me to quote
20 all the excerpts that I am referring to, in whole or in full, or our questions are well thought
21 out and reflected upon. There is no gratuitous question, and we have reflected on everything.
22 And since we have the time, with your leave, we are going to ask our questions and quote
23 the excerpts that I will be referring to fully. Thank you, your Honours.

24 PRESIDING JUDGE COTTE: (Interpretation) The Court will answer Professor Fofé after
25 your intervention if it is on the same subject; I think not. So, Professor Fofé, we have

1 listened to you. I believe that from the Prosecutor's point of view, and from our point
2 of view, no one thought that there was any ill will or intention to manipulate on your part.
3 This is something that you simply have to do at the beginning of your intervention.

4 With regarding to phrasing your questions, you have to phrase them as you wish,
5 but within the limits of the directives that we handed down last November 20th. If you prepared
6 your questions mainly based on paragraphs of the witness's statement, it is quite logical
7 for you to quote those passages, but it is essential for you to go directly to those excerpts
8 for -- or, rather, to enable the witness to also answer in context, but I know you have been
9 aware of that for longer than myself.

10 Mr Prosecutor.

11 MR MACDONALD: (Interpretation) Thank you, Mr President. I would like to come
12 back to what I said at the beginning of the hearing this morning regarding the switching
13 of witnesses 28 and 419, and the Prosecutor would like to apply for the postponement of the
14 testimony of Witness 28 to the month of January. And that is because if we begin with Witness
15 28, it is clear that we cannot conclude with him before the recess on 11 December, given
16 the days that we have left, and I'm talking about the direct examination, cross-examination
17 from my learned colleagues. So this is an oral application for the postponement of the testimony
18 of Witness 28.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper.

20 MR HOOPER: The security issue concerning Witness 28, which seemed to be the reason
21 with which, or for which the Prosecution this morning were saying there was a particular
22 difficulty with Witness 28, but we don't know what that difficulty might be.

23 Our expectation, as you know, was that the next witness was to be Witness 28 and
24 we'd submit that there seems no particular reason why he still cannot follow in the ordinary
25 order, or the order that the Court's established. If we can't conclude him in the four days

1 or so that would be available, then of course he'd have to come back in January; we see that.

2 But our understanding is that he's here now in any event, so he's going to have
3 to come back in any event. And so our position is that, given that our expectation has been
4 that we would be dealing with that witness this side of the adjournment, the long adjournment,
5 and the more that we do this side of the adjournment, the less we do the other side of the
6 adjournment, our position is that unless there are compelling reasons why Witness 28 can't
7 start and then come back, then we can start him.

8 MR KILENDA: (Interpretation) Thank you, Mr President, your Honours. Today I am
9 in the hands of the Court and I would like to defer to the wisdom of the Chamber.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Prosecutor, for that
11 clarification. And now, Mr Hooper, the fact is that we had indeed initially planned for
12 three weeks of hearings. The first week is already passed; we are in the second week; and
13 we thought we would be able to sit practically every day of the third court. But, as you
14 are aware, the Judges of this court sometimes have simultaneous responsibilities.

15 As I told you yesterday, the Court wishes to be transparent. To my right, you have
16 Judge Fatoumata Demele Diarra, who is first Vice-President of the Court and in that capacity
17 is supposed to travel to Africa for three or four days of next week. This leaves us only
18 with one day of hearings; that is, Thursday 10 December.

19 It is clear that we would have tried, if possible, to postpone that trip, but it
20 turned out that it is not possible. The President is aware, and the Court is aware, that
21 judicial activities have priority but we should not overly disturb the schedule of the various
22 parties. Your professional activities are not only concentrated on the defence of Mr Katanga
23 or Mr Ngudjolo but any variation of the schedule was not possible. You can be sure that
24 for the first part of 2010 everyone will try to ensure that any trips take into consideration
25 our judicial activities. We were not even sure whether we would begin on 24 November but

1 we did begin on 24 November.

2 As far as the Prosecutor is concerned, we understand that it is difficult to split
3 the testimony of Witness 28. To start the direct examination in December, and allow what
4 we did for the team of Mr Kilenda, and postpone the cross-examination to January, it is not
5 very appropriate, so the next best solution would be to allow for the examination,
6 cross-examination, rebuttal and so on at the same time, during the same judicial session.

7 That is why, as we continue with Witness 233, we would like to hear the testimony
8 of Witness 419 as from tomorrow and then we adjourn. Madam Hooper will be with her husband
9 for Christmas, as you indicated to us a short while ago, and we will return here on 23 January.
10 For this initial period of hearings, it has made us possible to work with each other, and
11 we have heard the three first witnesses, and that has enabled us to really go into the case
12 files of Mr Katanga and Mr Ngudjolo, who are the principals concerned in this case. This
13 is the time for me to address myself to them. We know they are here but we have not had
14 many exchanges with them.

15 MR HOOPER: Thank you very much, Mr President. I must say I am not known for my
16 opposition to adjournments generally, and certainly now that the position has been made clear,
17 it's time that we can well use, and we indicated that I think several weeks ago, and our
18 situation certainly will be, to some extent, assisted by the view that the Court's taken.
19 And I'm very grateful to the Court for sharing -- for sharing, as it were, part -- the picture,
20 the total picture, with us. And we fully understand now and, indeed, we don't stand in the
21 way of that adjournment at all.

22 I was merely stating a very specific preference in terms of the ordering of witnesses,
23 but I fully understand, and I'm sure Mr Katanga fully understands the reasons for this particular
24 development. And I can well understand the common sense of having the witness dealt with,
25 as it were, in one session, rather than dividing his evidence by a period of five or six

1 weeks. We see that makes perfectly good sense. So, thank you very much, Mr President.

2 PRESIDING JUDGE COTTE: (Interpretation) It is the Court that thanks you, Mr Hooper,
3 for your understanding, as well as Mr Kilenda for explaining this clearly to their clients.

4 Mr Gilissen, please.

5 MR GILISSEN: (Interpretation) Thank you. I'm sorry but I saw on the transcript
6 that the resumption was 23 January and I had thought that it was the 25th or, rather, the
7 26th of January. I wanted to be sure, otherwise I would be taking different measures.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr Gilissen, you realise that memory
9 becomes faulty when you attain a certain age. It is not the 23rd, it is the 26th.

10 MR GILISSEN: (Interpretation) I can see that we share the same problem, your Honour.

11 PRESIDING JUDGE COTTE: (Interpretation) Madam Courtroom Officer, let us please
12 move into closed session to allow the witness in, and then we will go back directly to open
13 session.

14 (Closed session at 2.39 p.m.)

15 (Expunged)

16 (Expunged)

17 (Open session at 2.40 p.m.)

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

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

20 Good afternoon, Witness. You are back in the courtroom and I would like to point
21 out that you can take a drink of water whenever you wish.

22 THE WITNESS: Thank you.

23 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, you have the floor.

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

25 Q. Good afternoon, Witness.

1 A. Good afternoon.

2 Q. I would like to ask you to, once again, make an effort to answer our questions,
3 which are aimed at enlightening the Judges with regard to the events in Ituri, so thank you
4 in advance for making that effort.

5 A. Thank you.

6 Q. I will now repeat my last question. I will quote a paragraph of your written statement
7 and I will read slowly to enable you to fully understand, after which I will put to you a
8 series of questions. I'm referring to paragraph 25 of your written statement, in which you
9 stated, "Three armed groups took up positions in Bogoro between 2001 and 2003. In 2001 there
10 were about 20 APC soldiers positioned in a house on the road to Kasenyi. APC were the soldiers
11 of the group belonging to the governor of Ituri ... after the attack of 2001 the APC was
12 replaced by the Ugandans of the UPDF." Do you confirm that statement?

13 A. Yes.

14 Q. Thank you very much. Now, to which political military group did the APC soldiers
15 that you have mentioned belong?

16 A. I no longer remember to which particular movement they belonged. I know that it
17 was the governor who was there, but I do not know the movement concerned.

18 Q. Thank you very much. Still in reference to this paragraph, you stated that after
19 the attack of 2001, the APC was replaced by the Ugandans in Bogoro. Can you tell this Court
20 for approximately how long the Ugandan soldiers of the UPDF stayed in Bogoro?

21 A. The UPDF replaced the APC in Bogoro after the first war, and the UPDF left Bogoro
22 at the time of the second war; that is, the war that took place on 14 August. It was after
23 that war that the UPDF left Bogoro. It was then that the UPDF was replaced by the UPC. And
24 when you make the calculation from February 2001 right up to August 2002, you can have an
25 estimate of the period.

1 Q. I'm sorry, I forgot to switch off my microphone. Thank you very much, Witness.

2 You testified that during that period of war it was Mr Lopondo who was the governor of Ituri
3 and stationed at Bunia; is that correct?

4 A. Yes.

5 Q. Can you tell this Court to which political military movement Mr Lopondo belonged?

6 A. It is similar to the other question that you just asked me. I do not know, because
7 Lopondo arrived Bunia after Jean-Pierre Bemba. I do not know to which movement he belonged.
8 There had been changes in the movements and as well as for the government. We had the APC,
9 FARDC. The names always changed, so I do not know to which movement he belonged.

10 Q. Thank you very much. I put it to you that Mr Lopondo belonged to the RCD-KLM movement
11 of Mr Nyamwisi - Mbusa Nyamwisi. Does that name mean anything to you?

12 A. It is possible. It was Mbusa Nyamwisi who was the leader of that movement that
13 you have just mentioned.

14 Q. If I put it to you that the APC, that is *Armée du Peuple Congolaise*, or Cameroon
15 People - or rather Congolese People's Army, was the armed wing of the RCD-KML (sic) of Mbusa
16 Nyamwisi. Would you agree to that?

17 A. Yes, I agree, because I do remember that Mbusa Nyamwisi's movement arrived during
18 the time of Kabila father and after that it was -- this was after the APC.

19 Q. Thank you very much, Witness. Let us move on now to paragraph 42 of your statement,
20 and I'll read the paragraph in full to enable you remember what you said in your statement,
21 and I quote:

22 "After the attack of 2001, the UPDF, that is the Ugandan army, took up position
23 in Bogoro and stayed there up to August of 2002. During that period there were frequent
24 attacks on Bogoro, but they were really not very serious. In August 2002, a major attack
25 took place while the Ugandan soldiers were preparing to withdraw from Bogoro."

1 Let me stop here. Was this what you said in your statement?

2 A. Yes.

3 Q. Thank you very much. I continue with that paragraph 42:

4 "At that time the UPC was already in control of Bunia, but I do not know for how
5 long that had been the case. In fact, the UPC soldiers were supposed to come and replace
6 the UPDF soldiers. Only one group of UPDF soldiers remained in Bogoro at the time of the
7 attack. I do not know the precise reason why the Ugandans left Bogoro."

8 Let me stop there. Was this your statement?

9 A. Yes.

10 Q. Now, before the UPC took control of Bunia, do you know which political military
11 movement controlled the town of Bunia; that is before the UPC?

12 A. Before the UPC, you had the APC and they were the ones that controlled Bunia town.
13 The Ugandans held a position at the airport. When the UPC drove out the APC, the APC left
14 and then the UPC took over Bunia. It was from that moment on that the UPC controlled Bunia.

15 Q. Thank you. So, you now remember that it was the APC which was in Bunia before the
16 arrival of the UPC?

17 A. Yes.

18 Q. Thank you. And so this confirms what you have said, that Governor Lopondo, who
19 was there before, was indeed a member of the APC; is that correct?

20 A. Yes.

21 Q. Can you tell this Trial Chamber when Governor Lopondo fled Bunia town, where did
22 he go to?

23 A. I do not know. I do not know the full story of Lopondo, but to my knowledge, according
24 to the information we received when we went to Bunia, we were told that Lopondo fled on foot.
25 He did not board a vehicle. And according to the people we got this information from he

1 went in the direction of the territory of the Ngitis, but I do not know whether that is the
2 case or whether he went in another direction.

3 Q. Thank you, Mr Witness. I will ask you the question, because we have to enlighten
4 the Judges. Now, the governor who was there, that is Governor Lopondo of the APC, when they
5 were chased away from Bunia, do you know where they went to?

6 A. No. Maybe they followed the governor, or maybe each of them went their own way,
7 but I do not have the answer to your question.

8 Q. Thank you very much, Mr Witness. During your testimony you mentioned a certain
9 Commander Kute, who is now deceased.

10 A. Yes.

11 Q. You say that you saw Kute amongst the assailants of 14 August 2002; is that correct?

12 A. Yes.

13 Q. Do you know that Kute was an APC commander?

14 A. No, I do not know that. I knew Kute as an inhabitant of Bogoro, who worked in Bogoro.
15 He was someone who was quite well known, but I do not know whether he was an APC commander
16 or not.

17 Q. Thank you very much, Witness. And still to enlighten the Judges I will ask a few
18 more questions, but do not feel that we are targeting you. That is not our objective. On
19 page 3 of your written statement, (Expunged)

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11 A. Yes.

12 Q. Thank you very much, Witness.

13 Mr President, we have one last line of questioning, but in view of the fact that
14 it concerns sensitive individuals we would like to request that we go into private session
15 for purposes of protection.

16 PRESIDING JUDGE COTTE: (Interpretation) The Court would request that you have
17 the reflex to tell the witness, as your line of questioning develops, whether it is possible
18 to return to open session or not.

19 MR FOFÉ: (Interpretation) Yes, Mr President.

20 PRESIDING JUDGE COTTE: (Interpretation) In view of the fact that there are a number
21 of people in the public gallery, I would just like to indicate that we are going to go into
22 private session now, which means that you will not be able to follow our discussions, but
23 this is with a view to protecting certain individuals and so please do not be surprised.

24 Madam Courtroom Officer, could we please go into private session.

25 (Private session at 3.04 p.m.)

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Page 56 expunged – Private session

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10 (Open session at 3.13 p.m.)

11 THE COURT OFFICER: (Interpretation) We are in public session, Mr President.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Courtroom Officer. Professor,
13 please, you may resume.

14 MR FOFÉ: (Interpretation) Thank you, Mr President. Witness, I thank you very
15 much for having answered all our questions. We have no further questions to put to you,
16 and we thank you very much for your efforts. Mr President, your Honours, we have finished
17 or completed the cross-examination of this witness, and we thank you.

18 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to thank you.
19 Mr Prosecutor, would you like us to adjourn briefly or would you like to re-examine the witness?

20 MR MACDONALD: (Interpretation) The Prosecution is ready to pursue, Mr President.

21 PRESIDING JUDGE COTTE: (Interpretation) Well, you may address the Court.

22 MR MACDONALD: (Interpretation)

23 Q. There are two subjects that I would like to return to which were broached by Mr Hooper
24 when he put questions to you. Now, in order to position ourselves, I am going to be referring
25 into the transcript; and notably, to page 41 thereof, line 14.

1 And at that moment in time, Mr Hooper was referring to paragraph 107 of your statement,
2 and I shall read: Question, is it true to say that you subsequently learned that during
3 the battle the UPC had requested reinforcements for Kasenyi and Bunia, but that reinforcements
4 were blocked; that they were not available or were not able to reach Bogoro in order to provide
5 their support to the UPC that was fighting at the time? And then you asked Mr Hooper whether
6 this was correct. And you, Witness, answered, yes.

7 Now, the questions I'm going to ask are in relation to the questions raised by
8 Mr Hooper. Now, why is it that the UPC reinforcements were not able to gain access to Bogoro,
9 to your knowledge?

10 A. When we left Bogoro to go to Bunia and then Kasenyi, we received information. And
11 when reinforcement was requested in Bunia, they were not ready; but reinforcements requested
12 in Kasenyi, however, did arrive. And according to the information we received from the soldiers,
13 the reinforcements arrived a few kilometres away from Bogoro, and they met an individual
14 who said to them, "Bogoro has already fallen."

15 When they continued on their way, they saw that there were some people on the hillside,
16 and they understood that it was no longer an easy feat to enter Bogoro, Bogoro which had
17 fallen into the hands of the enemy, and they then referred back to their chief in Bunia with
18 a view to gleaning information and finding out whether the enemy was still in Bogoro or not.
19 And when they noted that Bogoro had fallen into the hands of the enemy, then they turned
20 back.

21 Q. And this information, when did you obtain it with regard to the attack on Bogoro?

22 A. This precise information, well, I received it when I was in Kasenyi. I had -- there
23 was -- I had soldiers in Kasenyi, and I put the question to them, and I said to them, well,
24 Bunia is a long way, and Bogoro is halfway, so why do you not go and lend a hand in Bogoro?
25 And this is how I was privy to all these explanations.

1 Q. I would now like to put questions to you regarding distance. And I do apologise
2 if this question seems somewhat silly, but it is important to mention this fact to the Trial
3 Chamber. Do you know what 10 metres or 1 metre, or a hundred metres represents? Do you feel
4 in control when talking about distance?

5 A. I do not know what to say, because to my knowledge I know what a metre represents.
6 I know what 10 metres represents. I know that a hundred metres represents one kilometre.

7 Q. So, according to you, 100 metres equals one kilometre?

8 A. Yes.

9 Q. Very well. I thank you, Witness. These are the questions that I had to put to
10 you.

11 A. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, before the Defence addresses
13 the Court last, we are going to adjourn for 10 minutes, the time for the Trial Chamber to
14 review a number of questions that it had intended to put to you, but which now will probably
15 not all be necessary in view of the large number of questions that both the Prosecutor, the
16 legal representatives, and Mr Hooper and just now Mr Fofé have put to you. So, we shall
17 request that you make a little extra effort whilst we adjourn for now.

18 Madam Courtroom Officer, could we go into closed session and allow the witness
19 to leave the room? Then we shall go back into public session for an adjournment, which will
20 last for 10 minutes.

21 (Closed session at 3.21 p.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Open session at 3.22 p.m.)

1 THE COURT OFFICER: (Interpretation) We are in public session, Mr President.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Courtroom Officer. I
3 will merely indicate that we shall adjourn for 10 minutes and that we shall reconvene at
4 15.33 but for the first five minutes we shall be remaining before our computer screens, so
5 do not be surprised that we remain in your presence. But, of course, you may leave the room,
6 yes, indeed, of course.

7 So, our technical issues have been solved and we can now adjourn and leave the
8 courtroom.

9 (Recess taken at 3.23 p.m.)

10 (Upon resuming at 3.41 p.m.)

11 THE COURT USHER: All rise.

12 PRESIDING JUDGE COTTE: (Interpretation) We'll now resume our hearing. Please
13 be seated. Now, the two accused are with us and the Court would like to inform all participants,
14 considering the time that we suspended at this morning and the brief suspension that we just
15 had, we can continue until 4.15. Our witness is not with us. Now, Madam Courtroom Officer,
16 could we please go into closed session.

17 (Closed session at 3.42 p.m.)

18 (Expunged)

19 (Expunged)

20 (Open session at 3.43 p.m.)

21 THE COURT OFFICER: (Interpretation) Open session now, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Courtroom Officer.

23 Sir, we will ask you to cast your memory back to remarks that you made on the first
24 day of giving testimony because we want to be quite sure that we have properly understood
25 what you said. At the beginning of the answers that you provided to the Prosecution, unless

1 we are mistaken, you said that you hid in two different places, one place after another,
2 and we would like to know approximately how much time did you spend in each one of these
3 two hiding spots? To be a bit more specific, was it after the death of Mateseo (phon) that
4 you left the first hiding place? Was that on 24 February 2003? And what did you see after
5 leaving that first hiding place? Could you repeat what you said, without going into all
6 your previous testimony, but could you tell us what you saw after leaving the first hiding
7 spot? Was it on the 24th of February or was it after the death of Mateo (phon) that you
8 left, and then we will talk about the second hiding spot.

9 THE WITNESS: My first hiding place, well, I left it when I heard the shots. When
10 I heard the shots, that was when Mateos (phon) had just left and I thought he had been killed,
11 and I was thinking that perhaps I would follow and it was then that I left the first hiding
12 spot.

13 PRESIDING JUDGE COTTE: (Interpretation) Was that on 24 February that you were
14 in that first hiding place?

15 THE WITNESS: Yes,

16 PRESIDING JUDGE COTTE: (Interpretation) (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

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21 (Expunged) was calling to us to leave our hiding places and the bush had been put on fire.
22 That is why I said to myself perhaps since the bush had just been burnt it would be easy
23 for them to find us, so that's why I left the second hiding place, but I spent the night
24 of the 24th in the second hiding place.

25 PRESIDING JUDGE COTTE: (Interpretation) So, you left it on the 25th?

1 THE WITNESS: It was the night of the 24th to the 25th. That's when I left my second
2 hiding place.

3 PRESIDING JUDGE COTTE: (Interpretation) Is the Court to understand that you stayed
4 in the second hiding spot from the 24th to the 25th?

5 THE WITNESS: No, let's say until the night of the 25th, because I left my second
6 hiding place around midnight. Around midnight.

7 PRESIDING JUDGE COTTE: (Interpretation) Fine. Now, from this second hiding place,
8 what did you see? What do you remember having seen?

9 THE WITNESS: From my second hiding place, I saw that the house of the minister
10 had been burnt down and I saw enemies leaving that place to go down towards the camp.

11 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks you for that specific
12 information, which is important, and now would like to ask you some different questions that
13 will allow us to better understand the context of that day, 24 February 2003.

14 Now, could we say -- could you confirm, or tell us, that the village of Bogoro
15 had a population that was made up of solely Hema people on the day of the attack, 24 February
16 2003? Were the Hema people more numerous? By far the more numerous group?

17 THE WITNESS: Yes, during the attack of 2003 the Hema were in the majority, but
18 there were other ethnic groups living there. But I must point out that some ethnic groups
19 had already left Bogoro and the Hema were in the majority.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Another question: amongst
21 the UPC soldiers who were living in the camp, do you know whether there were many former
22 civilians from the Bogoro village, or were they basically soldiers who had come from elsewhere,
23 other than Bogoro, who were not -- who were not civilians of Bogoro?

24 THE WITNESS: Among the UPC soldiers, some were inhabitants of Bogoro and others
25 came from elsewhere, because when people get enrolled in the army they are sent everywhere

1 and sometimes there were rotations. Sometimes we would see a native of Bogoro amongst the
2 soldiers.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you. One final, last question that
4 may surprise you and perhaps you will not be able to answer, but we will ask this question
5 all the same. Now, is a person a Hema because of inheritance from the father, or from the
6 mother, or from both the mother and the father together?

7 THE WITNESS: Well, where I'm from in Africa, often the belonging -- belonging to
8 an ethnic group is passed down from the father. The mother may come from another ethnic
9 group. Myself, for example, my mother came from another ethnic group, but I belong to the
10 ethnic group of my father.

11 PRESIDING JUDGE COTTE: (Interpretation) That's a specific answer and we thank
12 you. Do you know if that holds the same for the Lendu and the Ngiti? Is the transmission
13 of one's ethnic -- ethnic group is by the paternal line?

14 THE WITNESS: Yes.

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

16 Mr Hooper, would you like to address the Court, because the Defence has the last
17 word, or -- and then after that Professor Fofé will have that same opportunity?

18 MR HOOPER: Thank you very much, Mr President. I don't know whether I need deal
19 with it, or whether it's a matter perhaps the Court could clarify, but it's merely this issue
20 of distance. Now that we've heard the distances, the kilometre and the hundred yards, or
21 ten yards, as a result of the Prosecution's question, as to the distance perhaps that this
22 witness was at various times perhaps in relation to the length of this courtroom, or some
23 such. It's a bit unclear, he said he was a kilometre away, exactly what distance that might
24 represent. Do you wish me to deal with it? I am quite happy to do so. Very well.

25 JUDGE DIARRA: (Interpretation) The witness was honest enough to tell us that he's

1 not very good when it comes to assessing distance and he was much younger during the events.
2 You're free to ask your question, but bear in mind that he was much younger at the time and
3 we see that he doesn't necessarily understand.

4 PRESIDING JUDGE COTTE: (Interpretation) Perhaps merely, just to be quite sure
5 that the answer that was provided a few moments ago to a question from the Prosecution was
6 properly understood, perhaps I will ask it again.

7 Please don't be offended, sir. We are asking you some questions that may seem to
8 be a bit ridiculous, but they are very important to us. Now, a few moments ago the Prosecutor
9 was asking you what or how many metres were to be found in a kilometre and you answered.
10 Could you answer that question again? A kilometre is how many metres? And this is what Mr Hooper
11 was driving at and I think it's important for us to be quite clear and we want to make sure
12 that the question had been properly understood the first time.

13 THE WITNESS: A kilometre is the equivalent 100 metres. It's a kilometre. No,
14 it is not a hundred metres. It's a thousand metres.

15 PRESIDING JUDGE COTTE: (Interpretation) Fine, fine. We see that you are answering
16 these very important questions with a great deal of goodwill. Mr Hooper may be -- well,
17 perhaps we'll ask you how broad is this courtroom? Now, just approximately. We realise that
18 you're not a surveyor by trade.

19 THE WITNESS: About 25 metres. Perhaps a bit more than 25 metres.

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

21 Mr Hooper, any other questions?

22 MR HOOPER: No, that seems about spot on, I'd say. I don't know if we've got a
23 formal measurement here, but we thought 25 to 30 metres and so we agree with the witness
24 on his surveying skills. Thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, Mr Kilenda, do you have

1 any other additional questions?

2 MR FOFÉ: (Interpretation) Thank you very much, Mr President, your Honours. The
3 witness has provided the Chamber with a great deal of information and we have no further
4 questions to put to him.

5 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor.

6 MR MACDONALD: (Interpretation) In light of the questions that were asked about
7 distance by the Chamber for a second time, I think we have to be fair to the witness and
8 perhaps come back with one or two questions, depending on the answers, about the time. There
9 were two questions about the distances. One had to do with the place where he was at the
10 time of the attack at 4 or 5 in the morning when he heard the shooting. We asked him the
11 distance between that place and the UPC camp. The second question had to do with his first
12 hiding spot; unless I'm mistaken the distance between that place and the UPC camp. I believe
13 that perhaps the Court could ask the question again so that we can get further information.

14 Now, this room is approximately 25 metres wide. Is that distance -- was that distance
15 greater? Since the witness is here I really don't want to suggest anything, but I would
16 have some ideas about asking the question.

17 PRESIDING JUDGE COTTE: (Interpretation) Well, asking the first and second question
18 again, in light of his efforts to be specific, ask them very quickly, briefly, and then he
19 will do so and then the Defence will proceed.

20 QUESTIONED MR MACDONALD: (Interpretation)

21 Q. Witness, in the morning when you woke up you were in a house. What was the distance
22 between that house and the UPC camp? If this courtroom represents a distance of 25 metres
23 and a kilometre is actually 1,000 metres, that is 40 times the length of this room.

24 A. This is what I told you. When you measure a distance on the road, or when you make
25 an estimate, it is very different. I said that it was an approximate distance; that is one

1 kilometre or more, or maybe less. This was really an approximation. I do not know whether
2 the measurement that I gave for this room is correct or not.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, second question.

4 MR MACDONALD: (Interpretation)

5 Q. Would this be the same answer for the distance between your hiding place and the
6 UPC camp, or would you have a different answer for that?

7 A. I think it is similar, because my hiding place was sort of like close to the house
8 in which I had been.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well. Before we ask the Defence
10 teams to address the Court once again, Madam Courtroom Officer, tomorrow please try to give
11 us the precise length of this courtroom so that the standard in the minds of the parties
12 should be correct, whether it is 25 metres, 30 metres, 35 metres.

13 Witness, we are not in a better position than you to approximate the measures of
14 the courtroom, but the measurements asked about Bogoro's size you are the only one who can
15 give us.

16 MR GILISSEN: (Interpretation) This is probably inappropriate, but I assume the
17 responsibility. I did not feel that I had a clear answer from the witness. I would have
18 liked to suggest that the Court ask the witness a question as to how many times that distance,
19 or rather this courtroom would fit into that distance, and forget about kilometres or metres.
20 So, can the witness tell us his evaluation of the two distances now? I read the transcript
21 once again and I have the feeling that I did not quite understand. Maybe I'm the one who
22 is not clear about this.

23 PRESIDING JUDGE COTTE: (Interpretation) The clarification is important. The
24 witness knew that his task was difficult. Now, when you look at the length of this courtroom,
25 can you tell us how many times would the length of this courtroom fit into the distance separating

1 you from that UPC camp? I am not going to ask you how long it would take you to run there,
2 but if you can answer Mr Gilissen's questions in that way then do so. If not, we will understand
3 you.

4 THE WITNESS: Based on the answer that I gave you I agree when the Prosecutor said
5 that it is 40 times the length of this courtroom and so it is up to you to make the computation;
6 that is if the distance of this courtroom is 25 metres. If the courtroom officer gives you
7 the exact distance, then you will know whether I was mistaken or whether I told you the truth.
8 So maybe that total distance is about 1,000 metres, or close to that. I don't know whether
9 my point is clear.

10 PRESIDING JUDGE COTTE: (Interpretation) The Court feels that you have done
11 everything possible to clarify this issue. Mr Gilissen was right in trying to seek further
12 clarification. I don't know whether he is satisfied now, but in any case the witness has
13 given his contribution and I do not think it is fair to ask him for any more now.

14 Now, Mr Hooper, you have the chance to take the floor to address the Court last
15 and I'm giving you that chance now.

16 MR HOOPER: Yes, I have no other questions. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, counsel. Professor Fofé, or
18 Mr Kilenda, do you have any last questions?

19 MR FOFÉ: (Interpretation) Mr President, we do not have any further questions to
20 put to the witness, but we would simply wish to point out that the witness indicated the
21 place where he was hiding and that place is still there. I believe it has not moved. It
22 is a bush of reeds near a river, so if the Trial Chamber at one point feels that it was really
23 necessary to have the measurement of that distance with mathematical precision, then they
24 can visit the site and carry out the measurements. Thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé, I can look

1 at -- I'm looking at all the participants. The witness has come to the end of his testimony.
2 None of the parties have any regrets. You have examined him, cross-examined him, re-examined
3 him and re-re-examined him, so the witness gave us a lot of his time, so Mr Witness, we thank
4 you for your testimony. You can stay with us for a short while but, before you leave the
5 courtroom, the Court would like to point out that our hearing tomorrow will begin at 10 a.m.
6 because there will be a decision of the Appeals Court tomorrow at 9, after which there will
7 be 30 minutes break for a reconfiguration of the courtroom.

8 Madam Courtroom Officer, may we go into closed session to allow the witness to
9 leave the courtroom.

10 JUDGE DIARRA: (Interpretation) Have a good trip, and we hope you meet your family
11 in good health. Thank you for your collaboration.

12 THE WITNESS: Thank you, and we hope your work is successful.

13 (Closed session at 4.09 p.m.)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 4.10 p.m.)

19 At my request the courtroom officer has just confirmed that Witness 419 will indeed
20 be present here tomorrow at 10 a.m., and there is reason to believe -- there is probably
21 reason to believe that the testimony of Witness 419 could be completed by tomorrow afternoon,
22 so this will make it possible for you to make your plans. No more housekeeping matters,
23 Madam Courtroom Officer?

24 THE COURT OFFICER: (Interpretation) No.

25 PRESIDING JUDGE COTTE: (Interpretation) The hearing is adjourned. We will resume

1 tomorrow at 10.00 a.m.

2 (The hearing ends at 4.10 p.m.)

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1 REPORT

2 Pursuant to Trial Chamber II's Oral Decision dated 3 December 2009, the private session hearing
3 starting on page 31 line 23 and finishing page 34 line 18 is reclassified Public excepted
4 the page 32 line 14 and page 32 line 18 to page 33 line 3.

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