

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

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

4 Judge Christine Van den Wyngaert

5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07

6 In the case of the Prosecutor versus Germain Katanga and Mathieu

7 Ngudjolo Chui

8 Trial Hearing

9 Tuesday, 9 February 2010

10 The hearing starts at 2.05 a.m.

11 (Open session)

12 COURT USHER: All rise. The International Criminal Court is now
13 in session.

14 PRESIDING JUDGE COTTE: (Interpretation) The audience is now in
15 session. Please be seated.

16 The accused are with us. Good.

17 We left yesterday without the witness, who furthermore hasn't --
18 didn't stay very much with us during the day yesterday. That gave the
19 Prosecutor the possibility to state what his position was at the start of
20 this hearing, and we therefore give the floor immediately to him.

21 Prosecutor, you have the floor.

22 MR. MACDONALD: (Interpretation) Thank you, your Honour. The
23 Prosecution this afternoon would like to refer to paragraph 67 of your
24 decision 1665. We have prepared the documentation as required by the
25 Chamber, and we are going down this path established by the Chamber

1 limiting ourself to declaring the witness hostile if there is place to do
2 so after the declaration that I'm making. So limited hostility if
3 accepted by the Chamber to these points, and then the Prosecution will
4 therefore understand that it can come back to an examination-in-chief
5 with regards to other subjects which were not necessary dealt with up to
6 the present, but obviously in light of the way in which the witness shall
7 behave.

8 These five issues are points that I have already mentioned when
9 we presented our oral application. They cover the issues of the deaths
10 of civilians in Bogoro. It also goes into the issue of supply with
11 munition by the FRPI to the delegation of the FNI while -- when they
12 returned from Zombe, and also linked to this supply there is the trip of
13 Germain Katanga to Beni when he came in a plane, a small plane, which had
14 munitions on board. A third point is the issue of the destruction,
15 namely, if there was the destruction of houses or vehicles or lorries,
16 trucks. And the last point is the issue of songs before descending into
17 Bedu-Ezekere to attack Bogoro.

18 What I would propose, with your permission, is that we have the
19 copies - the required number of copies - I can go in detail into the
20 version given during the testimony here before you, and also the extracts
21 of previous statements in which the witness refers to the subject that I
22 have -- subjects that I have just mentioned, if you would allow me so to
23 do, your Honour.

24 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, the Chamber
25 has to be informed of what is making you think that the witness is

1 hostile. We also mustn't go into a two-hour demonstration. You just
2 have to indicate to us how you consider that the witness is hostile.
3 What are the essential elements that make you come to that conclusion so
4 that it makes it possible for us to assess where we are with that? The
5 context I think is useful in terms of how this hearing should take place.

6 MR. MACDONALD: (Interpretation) There's a last issue which I
7 forgot to mention and that is the question of children under 15, child
8 soldiers, and I'd like to apologise for that. Now, bearing in mind your
9 instructions, your Honour, you mentioned the following point. The
10 witness -- the witness previously -- out of his testimony we have precise
11 passages which I won't mention now, but I will distribute for the benefit
12 of everyone these extracts. The witness ignores any loss of human life
13 linked to the civil population -- he takes no account of that. I think
14 in accordance with what the Chamber mentioned yesterday, it would appear
15 that according to the testimony all the people who were dead, all the
16 people who died, all the bodies that were found were soldiers.

17 We would submit that in his first statement as well as in his
18 third statement, I would refer to the recording, audio and video, as
19 transcribed and disclosed and on our list of incriminating evidence. And
20 here -- and I'm referring to the first transcript which is relevant;
21 namely, DRC-OTP-0177-0262. There's also the transcript which ends with
22 the letters 0299 -- or, rather, the figures 0299. I'm referring to the
23 first page of each hour of the recording with the witness, where we also
24 have the issue of civilians is dealt with. Also transcript 0363, ending
25 in 0363, 0466. On this specific point, your Honour, I would also refer

1 the Chamber to the third witness statement, and if you allow me --
2 unfortunately I don't have the extract here, but I do have my case so I
3 can find it and I will come back with it.

4 MR. O'SHEA: While that's happening, Mr. President, I wonder if
5 it wouldn't be appropriate if these extracts could not be distributed so
6 that we can look at them while Mr. MacDonald is talking.

7 MR. MACDONALD: (Interpretation) So I would continue, your
8 Honour. You have the extracts, they can be distributed if you so wish.

9 PRESIDING JUDGE COTTE: (Interpretation) May they be distributed
10 because that is a request of the Defence.

11 Court Officer, please could you -- if there are a sufficient
12 number of photocopies, please could they be distributed.

13 (Trial Chamber and Court Officer confer)

14 MR. MACDONALD: (Interpretation) With regards to this issue of
15 civilians, your Honour, we have made 19 copies. What you have in this
16 small folder, you have essentially two different things: The previous
17 testimony before this Chamber, you have the previous testimony before
18 this Chamber; and also the extracts of previous statements as recorded by
19 the Office of the Prosecutor.

20 I just want to therefore go back to the third statement which
21 perhaps is not in the file that was distributed by the Chamber. My
22 version doesn't include it, but the -- it is in eCourt, however. And
23 what is interesting is the declarations of 2007 which was signed on the
24 16th of June, 2007, in paragraph 106, 107, and 108, more specifically --
25 and here I'm being careful with regard to what I'm saying, because there

1 were names that were mentioned afterwards in private session, such as
2 appear in paragraph 111.

3 So respectfully, your Honour, I would submit to you that in these
4 two previous declarations from December 2006 AV registration and this 3rd
5 of June, 2007, that the witness clearly indicated or stated that
6 civilians had died. He gives examples of that. He indicated precisely
7 at the Institute of Bogoro. He speaks about the number of them. He
8 speaks of rooms. He gives the name of this "maison de chambre." He
9 gives a name of it, as mentioned by Witness 233. He also mentions these
10 two lorries were carrying fish and what happened to the people who were
11 in those lorries. He also mentioned the hunt that there was after the
12 attack in the days that followed it. He also mentions Waka Mountain as
13 well, the bodies of civilians which were also found in that area, people
14 who were -- had been found, had been killed.

15 So if you take the first and the third statement among the
16 extracts that we have provided you with, then it would seem clear that
17 the witness here, for one reason which we do not know, is not giving the
18 same version. We would therefore ask for permission to be able to
19 cross-examine or if you would like to ask leading or closed questions
20 with regards to these specific points with regards to the death of
21 civilians. This, therefore, completes my remarks with regard to the
22 deaths of civilians.

23 The other issue which we could also immediately deal with - and
24 here I'm not necessarily talking about -- we're not putting them in order
25 of importance or priority here, but there's the question of child

1 soldiers of -- under the age of 15.

2 We also submit that the witness said certain things before the
3 Chamber which are in contradiction with what he mentioned previously to
4 the Office of the Prosecutor when he gave these statements. With regard
5 to this precise point, I also have documents to submit to the Bench. I
6 can provide the usher with them.

7 Before this Chamber, your Honour, if we go back to what the
8 witness mentioned on this subject, we therefore will provide you with the
9 extracts of these statements before the Chamber referring to previous
10 statements as well. The witness gave a definition of what a kadogo was,
11 which we will submit and contrary to what he said previously. Previously
12 he also mentioned even the age of these kadogo, the youngest, what age
13 they might be. He gave precisions, at least with regards to the FNI in
14 each of the camp of -- Bedu-Ezekere, how many there were per camp, if
15 there were any; and if they did, what age they were; what their
16 responsibilities were; and also the age they might have in certain cases.

17 The witness also mentioned the existence -- the fact that child
18 soldiers were within the FRPI, and the Prosecution would like permission
19 to ask leading questions with regards to that, with regards to the
20 definition of kadogo, and also with regard to the age that the youngest
21 person might have had, as well as with regard to the issue of their
22 presence, their responsibilities, and their use as well.

23 Previously the witness mentioned - and you will notice this - in
24 his first declaration -- statement, rather, as well as in the third
25 statement of June 2007, this issue of child soldiers, also called kadogo,

1 came up. He gave a name to one of them in paragraph 67 -- 65 of his
2 third declaration, and in his third declaration he also gave additional
3 clarifications with regards to the use that was made of them on the -- in
4 the attack on Bogoro. This completes my explanations with regard to the
5 issue of children under the age of 15.

6 The third point, the third issue, your Honour, is that -- is --
7 refers to the songs. Here I also have the necessary documentation with
8 regards to this point and will provide this to the Chamber. I see that
9 the usher has temporarily left us, so with your permission, your Honour,
10 I would like to approach the Court Officer, obviously with your
11 permission.

12 PRESIDING JUDGE COTTE: (Interpretation) Please -- does the
13 Court Officer authorise this? Yes, she does.

14 MR. MACDONALD: (Interpretation) So I would like to go back to
15 the issue of songs, your Honour. We have the transcript of the audience
16 of the 1st of February, 2010, and you also have extracts of the third --
17 third statement of June 2007, more specifically the issue of paragraph
18 121, specifically the witness mentions the -- on this subject - and I
19 submit that it is clear that the witness didn't want to go into other --
20 the issue of other songs that could -- he might have been -- that he
21 might have heard, just saying that they might have been noises. You will
22 see that in paragraph 121 he does mention much more precise information
23 and certainly additional information which go beyond the description that
24 he testified to before you.

25 I think it's preferable for the usher to be able to stay with us

1 because perhaps I could immediately provide him with the two last ones,
2 then that would be to kill two birds with one stone, as it were.

3 So if we just stay with the issue of munitions, supply of
4 munitions, essentially in his testimony, your Honour, the witness had
5 perhaps a selective memory, I would call it, with regard to the issue of
6 the supply of munitions, indicating the way in which he managed to obtain
7 either munitions or types of weapons and how these weapons had been
8 acquired by the troops of Bedu-Ezekere; that is to say, the FNI troops.
9 It would -- it came out, your Honour, as I mentioned by way of
10 introduction in his previous statements, either of December 2006 and also
11 June 2007. He speaks about three waves who returned, the three groups
12 who returned to Zombe. In his testimony he mentions that only the last
13 group had some munitions, and we would submit that in his previous
14 statements he says that each of the groups who returned towards Zombe
15 transported munitions, not only for the weapons -- or the Belgian weapons
16 that were called FAL which -- and they also had ammunition for SMGs. So
17 the three groups returned with munitions and also with regard to the last
18 group he minimised the number of bullets such as appears -- as opposed to
19 what appears in his previous statements.

20 And the importance in his previous statements that is accorded
21 to -- or certainly in his third declaration he speaks about
22 Germain Katanga's trip to Beni in paragraph 72 of this third declaration
23 where he refers to Germain Katanga coming back from Beni with munitions.
24 And the witness can explain to us his knowledge of it because he
25 participated in the unloading and stocking of these weapons. And he also

1 refers to -- he also refers to the fact that equipment brought back
2 included Motorola radios. He said that there were also small carriers
3 that came back, but with medicines. And when a question was asked to him
4 about supplies of weapons, he mentioned Uganda and enemies and others.

5 This is the end of our presentation on the issue of supplies of
6 ammunition and Germain Katanga's trip to Beni.

7 And now the last point: Destruction. I would like to hand over
8 the last bundle of documents to the Court Usher, and it deals with
9 destruction because the issue of pillaging or looting was not dealt with
10 with the witness, and the reason is because of the way he answered the
11 questions related to destruction. He testified to this issue. We asked
12 him questions about the state of the houses and other property in Bogoro,
13 and this is on the 1st of February, 2010. It is in the documents being
14 distributed to you.

15 In his previous statement of December 2006, the witness mentioned
16 certain things, certain facts, inter alia, that many people had been
17 killed, they had been burnt in their houses, and this relates to the
18 issue of the destruction of houses. In the centre many civilians had
19 been killed and many vehicles belonging to traders had been burned. And
20 the two answers are linked. The witness states that because he was
21 present. And he comes back again to the issue of vehicles that were
22 burnt in his other statement and how he came to learn about it. He
23 provided details, so the Prosecutor submits that the witness mentioned
24 that civilians had been burned in their houses and that two lorries had
25 been burned. And this relates to the issue of destruction, maybe in a

1 limited manner, but also to the consequences of the attack on the
2 civilian population.

3 The Prosecution - and this is the last point that we would like
4 to talk about - is this issue of hostility. That was our brief
5 presentation. We did not go into all the details, but you have the
6 written documents that we have distributed to you about contradictions.
7 Sometimes we have provided more pages than necessary to give you the
8 context so that the Chamber should be able to assess all the answers of
9 the witness's on these issues, particularly the problem of the civilians.
10 And this comes under Article 67(2) of the Statute. So those are all the
11 answers in the documents so that the Chamber should be fully enlightened.
12 And as the Chamber mentioned several times, there is not just a single
13 truth, but the truth; and that is what the Prosecutor would like to
14 explore with the witness through questions that are leading or closed.
15 Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
17 Mr. Prosecutor. The Chamber will suspend for 30 minutes to enable us to
18 assess whether there are grounds in light of the information provided by
19 the professor -- by the Prosecutor to declare this witness hostile. So
20 the resumption of our proceedings, what will follow will depend on that
21 decision.

22 Mr. Kilenda.

23 MR. KILENDA: (Interpretation) Thank you, Mr. President. I will
24 not like to come back to what Professor Fofe brilliantly discussed last
25 week and yesterday. If I would have a brief contribution to make in

1 light of the Prosecutor's presentation, the Defence of Mathieu Ngudjolo
2 does not see any reason that is plausible for this witness to be declared
3 hostile, (Expunged)

4 MR. MACDONALD: (Interpretation) Be careful, we are in public
5 session.

6 MR. KILENDA: (Interpretation) I did not mention the name,
7 Mr. President.

8 PRESIDING JUDGE COTTE: (Interpretation) Yes, the reminder is
9 important.

10 MR. KILENDA: (Interpretation) Thank you, Mr. President.

11 The witness also declared certain things to the Prosecutor that
12 he did not repeat here, and the witness answered clearly to all your
13 questions. He is not suffering from amnesia, so we do not see why this
14 witness should be declared hostile. We think that the Prosecutor should
15 continue with his direct examination because your Chamber has all the
16 powers to examine the witness on the other issues. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) We would like to end
18 here, but Mr. O'Shea, very briefly. I do not want us to re-open the
19 discussions that took place yesterday and last Thursday. So we will
20 listen to you very briefly before we retire to deliberate.

21 MR. O'SHEA: With respect, your Honour, this is the first time
22 that we've heard the details of why it is specifically that Mr. MacDonald
23 feels that this witness is a hostile witness -- in fact, before he didn't
24 even consider the witness to be a hostile witness. So I apologise if
25 this intervention is untimely in a sense, but I feel it's important that

1 the Defence comment on the specific issues that he's raised supporting
2 his position that this is a hostile witness. This is not a matter that
3 we have specifically dealt with before. So with your Honours'
4 permission, I would like to deal with this in more than just 60 seconds
5 of speech.

6 PRESIDING JUDGE COTTE: (Microphone not activated)

7 (Interpretation) Last Thursday morning and yesterday we had the
8 interventions of all the parties and participants on the legal issues
9 related to the description or definition of a hostile witness, the
10 conditions under which a witness might be declared hostile, and the
11 consequences of a statement based on which a witness can be considered as
12 hostile. The Prosecutor did not take the floor yesterday. At the end of
13 the hearing he was asked to clarify to the Chamber and to all the
14 participants what were the points on which he thought this witness could
15 or could not be considered as hostile. And just now and very briefly he
16 has spelled out the five points that seemed to him to be of a nature to
17 convince the Chamber that that witness had become hostile to the
18 Prosecution.

19 Except I'm mistaken and if I remember correctly, this issue was
20 already dealt with or raised last week when the issue of hostility or
21 non-hostility of the witness was discussed. Mr. Kilenda has just said
22 briefly that we have just heard the Prosecutor, and in his opinion there
23 is no reason to declare the witness hostile. Now you wish to take the
24 floor, but the Chamber would like you to do so but very briefly and 60
25 seconds would be totally insufficient, but please do not go beyond ten

1 minutes to give us your point of view. After that we will suspend and
2 based on what we have heard from everyone, we will come back to tell you
3 what we think.

4 MR. O'SHEA: That is sufficient. I don't need to go into the
5 legal principles again, but I do want to contextualise what Mr. MacDonald
6 has just brought to the attention of the Court. I didn't go into all of
7 the specifics before because the application hadn't been clarified; now
8 it has.

9 Let me first as an opening remark make this submission. The
10 question before your Honours is: Is this witness hostile to the
11 Prosecution? In our submission, in deciding that issue it is
12 insufficient just to look only at the extracts which have been provided
13 by Mr. MacDonald without considering them in the context of the entirety
14 of the examination-in-chief. The question as to whether the witness is
15 hostile must be determined, in our submission, on the basis of the
16 entirety of his demeanour, his delivery, and the questions and answers
17 which have been put. That's a general remark which I would make.

18 Let me come to the specific topics. It's been pointed out by my
19 learned friend Mr. Gilissen the other day -- or yesterday, sorry, I'm
20 losing scope of time here. Yesterday by Mr. Gilissen it was pointed out
21 that what we're dealing with here are contradictions. Now, some of --
22 some of the statements of the -- of the witness that your Honours will
23 find in these documents can be interpreted as contradictions, but
24 contradictions by itself is not the issue. The issue -- if it were the
25 issue, then we'd find ourselves in this position with all our witnesses.

1 The issue is: Are these contradictions in the context of the entirety of
2 the testimony so fundamental, so profound, that they demonstrate an
3 intent on the part of the witness of going against the interests of the
4 Prosecution. If we take -- let me take the simple one first.

5 If we take the songs, your Honours will note that in the extract
6 of the witness statement which Mr. MacDonald has provided, the answer
7 which was given by the witness during the course of his testimony when he
8 spoke about the song about the angel flying in the air, I can't remember
9 the exact words he used, but you'll find that repeated in his witness
10 statement. And it's interesting to note in the witness statement it
11 says -- the follows -- it says:

12 (Interpretation) "When that song was sung, the result was that
13 the enemy was shooting in the air. This song was sung in Lendu and it
14 says amongst other things 'I had wings like angels.'"

15 (In English) He has that song firmly in the front of his mind as
16 being the song. He then goes on to say:

17 "There were other songs to may not morale," this is in his
18 witness statement, "songs which we sang at Lagura, not Bogoro, Lagura.
19 So in the context, if one looks at this statement on the songs carefully
20 and matches up with the testimony of the witness, it's arguably a
21 contradiction. But it's not a stark contradiction. It's simply that one
22 song was being mentioned in the statement and other songs have been made
23 reference to; whereas, in his testimony only one song is being made
24 reference to. And that song in both versions of his testimony is
25 essential song in his mind.

1 If we go to -- and I'm aware of the time, but if we go to
2 destruction, you will note that on the first page at line 18 the question
3 put to the witness is:

4 (Interpretation) "Can you describe to us the state of the houses
5 in Bogoro once Bogoro fell?"

6 (In English) Nothing special going on, and he talks about the
7 presence of the military, military occupation. That answer must be
8 looked at in the context of the question put to the witness.

9 With regard to the issue of weapons, it seems to me that there
10 are matters which have not been mentioned by the witness in his testimony
11 which have been mentioned in his statements. It's not that he's refused
12 to answer the questions of the Prosecutor; he's answered the questions of
13 the Prosecutor. He spoke about weapons to a degree. He's provided the
14 answers to the Prosecution's questions. It's just that he hasn't gone
15 down certain story lines that the Prosecution wanted to go down. That,
16 again, is not a line of necessarily stark contradictions, but perhaps
17 partly -- partly due to, as I said yesterday, the way in which the
18 questioning was put or at least the jumping around in -- during the
19 course of the examination-in-chief.

20 I won't speak about child soldiers again because I think I said
21 sufficient on that yesterday. And -- but with regard to civilians, I can
22 understand -- I can fully understand Mr. MacDonald's position with regard
23 to civilians. There's clearly a degree of discomfort about the
24 divergence between what the witness has been saying in the box and what
25 the witness has been saying in his statements. But a degree of

1 discomfort is not enough. The contradictions which are here, if they are
2 contradictions, again must be contextualised. The witness has said in
3 answer to a question:

4 "Who were the members, the persons who were at Bogoro, of a
5 party?"

6 Well, if that question was put to me, I wouldn't be terribly
7 clear as to what Mr. MacDonald was wanting from me. And then the answer
8 was:

9 (Interpretation) "Those who were in Bogoro were soldiers."

10 (In English) (Previous translation continues) ... in that see a
11 straight contradiction. If one takes all the bits together, it does look
12 a little bit contradictory to what's in the statements, but again one has
13 to have regard to the manner of questioning of the Prosecutor. And at
14 line 7 and 8 on the following page:

15 (Interpretation) "All the people who were in Bogoro, if they're
16 referred to as civilians, that they are wearing civilian clothing?"

17 (In English) (Previous translation continues) ... of civilians in
18 his mind, but then when -- as I pointed out yesterday, if one goes on to
19 read it, one gets the sense as to whether this witness is saying that the
20 civilians who were there were somehow engaging themselves in combat,
21 although he doesn't say it. So if there are contradictions here, they're
22 strange contradictions. They're not clear, stark contradictions to show
23 that this witness is necessarily deliberately going against the
24 Prosecution.

25 And moreover at one point, which is not under my eyes at the

1 moment, the witness also talks about the fact that the people who stayed
2 in Bogoro were the ones with money. So that is a sort of an admission
3 that there were some category of civilians in Bogoro.

4 So if these are contradictions, they're not really as stark as
5 what the Prosecution is making out. They relate to specific questions
6 and answers during the course of two weeks of testimony and
7 contextualised in the whole of the testimony, in particular having regard
8 to the incriminating evidence that this witness has come out with against
9 the Defence. In our submission, this does not reach the level of a
10 hostile witness. Just because there are inconsistencies does not mean
11 it's a hostile witness.

12 Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, I was
14 going to thank Mr. O'Shea for the way he complied with the dead-line
15 given to him. Are you going to ask me for a time-line too?

16 MR. FOFE: (Interpretation) Thank you, Mr. President, I'll be
17 very brief. Thank you very much, your Honour. Before you retire to
18 deliberate, I would like to ask one question and I believe that that
19 question is relevant, otherwise I would not be asking it. And the
20 question is as follows: Can a witness be declared partially hostile?
21 Can a witness be declared partially hostile? In other words, can a
22 witness be declared hostile to the Prosecutor on certain points only and
23 not hostile on other issues? The same question rephrased in another way
24 in order to be clarified: Now, when a witness is declared hostile to the
25 Prosecutor and the Prosecutor cross-examines that witness, after that

1 cross-examination can the Prosecutor resume his direct examination of the
2 same witness? This was the same question rephrased in several ways in
3 order to have clarification.

4 The second thing that I would like to tell you, Mr. President,
5 your Honours, is this: The Prosecutor is not the only party who is
6 responsible for determining the truth in this case. The Prosecutor is
7 doing his job which he started many years ago. It would be appropriate
8 for the Prosecutor to allow the other parties to do their jobs also. He
9 should not do everything. The Defence is there and if there are points
10 to be clarified, the Defence is there to do that during the
11 cross-examination. But the honourable Judges are also there. Thank you,
12 Mr. President.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor
14 Fofe. The Prosecutor, very briefly, please.

15 MR. MACDONALD: (Interpretation) In answer to the first
16 question, the Chamber answered that question yesterday because the
17 Prosecutor asked for that clarification, and I refer you to page 65, line
18 15, of the edited transcript.

19 PRESIDING JUDGE COTTE: (Interpretation) Very well. It is for
20 1455. We will suspend for 30 minutes. In principle, do not go too far
21 away because if it is possible for us to resume before 30 minutes, we
22 will do so. So about 20 minutes. So please come back to the courtroom,
23 and if by chance we are able to provide you an answer within 20 minutes,
24 then we will resume our proceedings immediately. Court is suspended.

25 Recess taken at 2.55 p.m.

1 On resuming at 3.38 p.m.

2 PRESIDING JUDGE COTTE: (Interpretation) The hearing is now
3 starting. Please be seated. Are the accused with us? They are.

4 Prosecutor, yesterday evening, at the end of the hearing, the
5 Chamber asked you to make a choice and to tell us whether you considered
6 either that Witness 250 was hostile to you or not hostile to you, in
7 which case you would continue with your examination-in-chief, either you
8 would consider that he is hostile to you - that would mean that you would
9 state in what manner he was hostile to you and then leave it to the
10 Chamber to assess whether in its view this characterisation could be
11 ascribed to the witness. You have just told us that you consider this
12 witness to be hostile due to the statements that he made or did not make
13 with regards to the following points: The presence of civilians in
14 Bogoro, the presence of child soldiers under the age of 15, the existence
15 and the content of songs, the existence of munitions and supply of
16 munitions and arms, destruction. And you indicated to us that you wanted
17 to freely cross-examine the witness with regard to these different
18 points.

19 Having deliberated, the Chamber would firstly like to indicate
20 that it intends to rule on a case-by-case basis with regards to -- with
21 regards to applications to have a witness declared hostile by the
22 appellant party. In this regard and in the case in question it considers
23 that with a view to all of the answers that Witness 250 has provided to
24 the questions that were put by the Prosecution since the start of his
25 testimony, that this witness cannot be described as hostile. It notes

1 that the witness has to date come up with precise answers to a great
2 majority of questions that were put to the witness, certain of which were
3 reiterated. It also notes that the answers which were more evasive or
4 which didn't totally concord with other questions, that the answers
5 minimising previous declarations or statements with regards to previous
6 subjects or answers which weren't as complete as previous statements that
7 were given cannot in themselves make it possible for Witness 250 to be
8 declared as hostile. And this fortiori given regard to the behaviour
9 that this witness has shown with regard to the Prosecutor up to now
10 throughout the debate.

11 The Chamber would like to stress that the simple fact of
12 sometimes having unfavourable answers is not in itself enough to mean
13 that a witness is declared hostile. The Chamber notes that it is late,
14 after several days of examination-in-chief, that the Prosecutor has
15 mentioned the possible hostility of the witness; and at this level in a
16 general way it asks each and all of the participants to be extremely
17 attentive in the future to the need to be much quicker if any of them
18 consider that it -- that it is right to submit to the Chamber the
19 possible hostility of a witness.

20 The Chamber would therefore ask the Prosecutor to continue with
21 his examination-in-chief and to address the question which he has not yet
22 asked. It considers, however, that it is necessary to clarify certain
23 points which could remain obscure or could be insufficiently precise
24 which are at least subjects which need clarification. Wanting to come to
25 the truth, it therefore reserves the possibility to ask questions itself

1 which for some might be revealing of the domains in which the Prosecutor
2 intended to go back to himself within the framework of the approach he
3 requested from the Chamber.

4 I am now coming to the last intervention of Professor Fofe before
5 adjourning the session, the last intervention on the part of the
6 Prosecutor that gave rise to a remark according to which the question
7 which was asked at the end of the day, yesterday, 1829, was subject to a
8 response from the Chamber or, to be more precise, myself. You remember
9 what it was a matter of: Is it possible after a witness has been
10 declared as hostile to continue the cross-examination with regards to the
11 facts and to continue the examination-in-chief on other points which have
12 not yet been entered into up to this point. During the break the Chamber
13 considered that it was necessary to re-deliberate with regards to this
14 point, a point which yesterday was decided on by myself at the end of the
15 hearing. It considers that once the hostility of a witness has been
16 declared, this hostility is indivisible and this witness is hostile - if
17 one can use this expression - hostile as a whole. And this does not make
18 it possible to continue with the examination-in-chief with the witness
19 being, if you like, cloaked in this hostility.

20 Therefore, Prosecutor, this is an answer which goes back to the
21 one which was given yesterday evening and which comes out of our
22 deliberations of today. It is, therefore, a precision that I would --
23 that we have wanted to give you as quickly as possible after the first
24 answer that you were given and which has the merit of guiding our future
25 proceedings such that for things are as clear as possible for all and

1 every one of us. The Chamber would like to state that the documentation
2 that the Prosecutor has provided a moment ago and which it has used in
3 support for its intervention will be recorded in a case file under MFI
4 and not as EVD, MFI. Where it concerns -- it concerns quite voluminous
5 amount of documentation in terms of extracts of different statements or
6 transcripts, we therefore leave it to the Court Officer and leave her the
7 sufficient time to be able to prepare in the most complete way as
8 possible the recording of this evidence and the numbers that will be
9 given to these different items, and you will be given notice of the
10 numbers of these different items at the start of the hearing tomorrow.

11 It is now 1545. The two-hour sequences cannot be extended beyond
12 two hours for very material reasons, given in mind the length of the
13 tapes. We therefore propose to suspend the hearing to -- for half an
14 hour -- excuse me, I said 2.15, but I mean 4.15, for half an hour. And
15 we will therefore come back at 4.15 and we will finish at 6.15. Yes, we
16 could perhaps go to 20 past so that we can respect the proper running of
17 our proceedings.

18 So, Prosecutor, you have the time of the break in order to take
19 up your examination-in-chief. Please.

20 MR. MACDONALD: (Interpretation) With your permission, I would
21 like to thank you for this break because certainly the Prosecution will
22 review these issues because in light of the comments of the Bench
23 yesterday and also the decision of the Chamber which you've just given,
24 it is clear that without going back on your decision I understand that
25 the Prosecution -- it's not permitted under paragraph 109 of your

1 decision 1665 or under paragraph 67 that the Chamber does not allow the
2 Prosecution to be able to ask questions with a view to either draw the
3 attention of the witness to his previous statements which could be
4 incompatible. I understand that your decision, 1665, despite the fact
5 that it could be amended as done in the past or the fact that you mention
6 in 14 and paragraphs 55 (as interpreted), the Chamber -- the Chamber
7 isn't giving a possibility to have rescissions in this regard, where it
8 concerns paragraph 58 or 57.

9 PRESIDING JUDGE COTTE: (Interpretation) You have understood
10 perfectly. Yesterday, before leaving us, the Chamber through myself
11 summarised the three phases that you mentioned and which also entered
12 into a collective reflection of all the different participants here.
13 Now, the first one concerned a possible refamiliarisation of this witness
14 in the light of paragraph 109 of our decision, and certainly the Chamber
15 excluded such a possibility. Your second stage proposed a clarification
16 of paragraph 67, which in fact added to this paragraph a type of
17 intermediary step inspired from Article 9(2) of the Canadian Law on
18 Evidence, and the Chamber indicated yesterday that it did not intend to
19 go to this intermediate step that you suggested because in its view
20 paragraph 67 of its decision, however brief it may be, was sufficiently
21 clear.

22 Today the debate is, therefore, with regards to whether you
23 consider that the witness is hostile on whatever point. The question was
24 if the Chamber would follow you in that. It has just said that it does
25 not consider because it ruled on a case-by-case basis that this witness

1 here can be considered as hostile. It therefore has not permitted you to
2 examine him on these points in a leading way or in an open way; it just
3 asks you to continue with your examination-in-chief with regard to the
4 points which up to now have not been addressed. The Chamber is reminding
5 you once again that it can, such as any of the participants can, wish to
6 obtain from the witness certain clarifications which it needs or to get
7 explanations that it needs. Then at that time it can ask the question
8 which it considers to be useful and appropriate which could clarify the
9 debate, and all that with a view to searching for the truth. And as I
10 said, it is highly possible that a certain number of questions that the
11 Chamber will ask will go into certain points which you would have liked
12 to have been able to address within the framework of a cross-examination
13 which we currently or at the moment refuse. I think that everything is
14 clear.

15 So it is now 3.55. We are therefore back at 4.25 until 18.25.
16 There are some people who from -- they were very young, have found --
17 find it difficult with figures. The session is now adjourned.

18 Recess taken at 3.54 p.m.

19 On resuming at 4.25 p.m.

20 (Closed session)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Open session at 4.27 p.m.)

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

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam
9 Court Officer.

10 Good afternoon, Mr. Witness.

11 THE WITNESS: (Interpretation) Good afternoon, your Honour.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, we are
13 fully aware that yesterday was very long for you. We thought that you
14 would testify before the Court, just like you had done the other days,
15 but there were some procedural and legal matters that we had to deal with
16 and this made it impossible for us to have you with us.

17 At the start of your testimony we told you that the task of a
18 witness is a difficult one and that sometimes there may be interruptions
19 which may appear to be rather long. But we are together again today and
20 the Prosecutor is going to continue with his direct examination and ask
21 you the questions that he wishes to ask you.

22 You will recall, as I told you that -- at the beginning of each
23 hearing, that it is important for you to speak slowly, in a loud voice,
24 and into the microphone so that the interpreters can hear you correctly,
25 understand you, and interpret you.

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 26

1 Mr. Prosecutor, you can proceed.

2 MR. MACDONALD: (Interpretation) Thank you.

3 THE WITNESS: WITNESS P-0250 (Resumed)

4 (The witness answered through interpretation)

5 Questioned by Mr. MacDonald: (Continued)

6 Q. (Interpretation) Good afternoon, Mr. Witness. I'm going to go
7 back to some of the issues that we had been discussing last week. I
8 would like us to talk about the attacks in Bogoro, and specifically,
9 Witness, you mentioned that there was this attack of the FNI and the FRPI
10 at Bogoro. But prior to that attack, as far as you can remember, how
11 many significant attacks took place in Bogoro?

12 A. The attack that we carried out during which we took over Bogoro,
13 according to me, was the most important.

14 Q. Before that had there been attempts to take over Bogoro?

15 A. No. What I can tell you is that there were minor interventions
16 that were carried out in Lagura or in other groupements. When they tried
17 to attack, we would chase them back to where they had come from.

18 Q. Apart from repulsing attacks that could have been coming from
19 Bogoro towards Bedu-Ezekere, were there any attacks carried out against
20 Bogoro?

21 A. These were individual revolts. There were people who would act
22 as individuals and go and attack others, but talking about an attack as
23 such, the only attack we carried out was the one that led to the fall of
24 Bogoro.

25 Q. Apart from the attacks from Zombe, do you know whether Bogoro was

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 27

1 attacked by other groups than those from Zumbe?

2 A. In answer to your question, to say that Bogoro had been attacked,
3 that is, apart from the most important attack that we carried out, I will
4 answer as follows. We only intervened against attacks, that is, people
5 who were attacking Bogoro. We intervened to repulse them. There were no
6 other attacks.

7 Q. Very well. More specifically, were there any fighters from Ngiti
8 or Walendu-Bindi who attacked Bogoro, that is, prior to the attack that
9 you have already talked about?

10 A. There is -- there are some -- my headset has problems. I do not
11 know whether this can be resolved by reducing the volume.

12 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, is
13 it simply a matter of reducing the volume? Maybe the witness does not
14 know where the button is that he can use to reduce or increase the sound.

15 THE WITNESS: (Interpretation) I could have resolved the issue
16 myself, but that is not my job.

17 PRESIDING JUDGE COTTE: (Interpretation) So please repeat your
18 exchange to ensure that the witness can hear you properly.

19 Can you hear me well, Mr. Witness? Is it pleasant? Is there
20 still interference in your ears?

21 THE WITNESS: (Interpretation) Yes, I can hear you well.

22 PRESIDING JUDGE COTTE: (Interpretation) You can proceed,
23 Mr. Prosecutor.

24 MR. MACDONALD: (Interpretation)

25 Q. Witness, let us go back to the combatants coming from the

1 Walendu-Bindi collectivite. To your knowledge, did these combatants
2 carry out any attack against Bogoro, that is, prior to the major attack
3 that you have mentioned?

4 A. Ever since the Ugandans had been driven out of the Walendu-Bindi
5 collectivite, they had been trying to come back. But we carried out
6 actions to repulse them. It was then that we attacked Bogoro, and they
7 realised that the fighting was going to take on another dimension.

8 Q. When you say that ever since the Ugandans had been driven out of
9 the Walendu-Bindi collectivite, you said the others, they were trying to
10 come back. Who are you referring to?

11 A. The Ugandans had been driven out, and their base had been Bogoro.
12 And after they had been driven out, they tried to carry out attacks in
13 Zumbe and other localities of Bindi. This means that there was a lot of
14 fighting. When they tried to attack, we would counter-attack so that
15 they should not be able to take over Bogoro.

16 Q. Mr. Witness, if I mention to you Matusela or Matu, does that ring
17 a bell?

18 A. Yes, that reminds me of something.

19 Q. Does that remind you of a person?

20 (Expunged)

21 (Expunged)

22 Q. Very well.

23 MR. MACDONALD: (Interpretation) At this point, Mr. President,
24 and with your leave I will present the 360-degree presentation and a
25 specific image. It is an exhibit. I do not remember the EVD number, but

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 29

1 it already has a reference, Mr. President.

2 PRESIDING JUDGE COTTE: (Interpretation) Was it one of the
3 exhibits produced by Witness 416, that is the 360-degree presentation
4 presented on the 26th of January?

5 MR. MACDONALD: (Interpretation) And commented by Witness 233.
6 If you can give me some time, Mr. President, I will have the image put
7 on.

8 (Prosecution counsel confer)

9 MR. MACDONALD: (Interpretation) With your leave, Mr. President,
10 it is EVD-OTP-07 and -- in fact it is 0007, and this can be mentioned in
11 open session.

12 Would it be possible to show that exhibit so that it can be
13 viewed by everyone, including the witness?

14 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer,
15 maybe it would be necessary for the Court Usher to go to the witness box.

16 COURT OFFICER: (Interpretation) Just to confirm, it is a public
17 document?

18 PRESIDING JUDGE COTTE: (Interpretation) Yes, that is what the
19 Prosecutor just told us.

20 COURT OFFICER: (Interpretation) In order to see that
21 photograph, please press the button "PC 1" next to your computer.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

23 Court Officer, can the witness see correctly? Thank you,
24 Mr. Usher.

25 Mr. Prosecutor, please proceed.

1 MR. MACDONALD: (Interpretation) Thank you, Mr. President.

2 Q. When I place the cursor on the red question mark on the bottom it
3 shows that it is photograph number 10.

4 Witness, do you recognise what you are seeing on the screen? And
5 more specifically, the white building?

6 A. In Ituri, this building could be a school or a building belonging
7 to the veterinary offices.

8 Q. Let me now move to photograph number 42. For the record, it is
9 the 360-degree presentation.

10 Do you recognise this building? Do you know what it was and to
11 whom it belonged?

12 A. There was a house similar to this one which was in Berunda, and
13 there was an assistant there known as Chanda. I believe there was a
14 house similar to this one at the home of that person, (Expunged)
15 (Expunged)

16 MR. MACDONALD: (Interpretation) With your permission, I will
17 rotate the image.

18 Q. Now that we have rotated this image, does it enlighten you? This
19 is rotating to the left, that is, in that direction. The house that I
20 showed you a short while ago, and I will rotate back to that house, are
21 you in a better position to comment?

22 A. This is in Bogoro. If it is not in Berunda it is Diguna, but I'm
23 convinced it is Berunda.

24 Q. And to whom did this house belong if you know or, in other words,
25 what was the name by which this house was known?

1 A. There were people who upon their arrival were homeless and they
2 were lodged here. (Expunged)
3 (Expunged)
4 (Expunged)
5 (Expunged)
6 (Expunged)

7 Q. I'm sorry, I did not hear the answer, but it is okay, I'm going
8 to continue with my questions. We can take the image off the screen.
9 Mr. Witness, let me come back to what you said on the 29th of January,
10 2010, and that is transcript number 93, page 37, line 1. And I will
11 read. The question was as follows:

12 "Were there any other places around Bogoro where UPC soldiers
13 were stationed?"

14 And your answer:

15 "These people upon their arrival in Bogoro arrived through the
16 slopes of Zumbe hill, and they built houses in compounds that did not
17 belong to them. This means that they took over that entire area."

18 When you are referring to those people who arrived Bogoro at --
19 through the foot of the Zumbe hill, who are you referring to?

20 A. We were on mission in Aveba when those Hemas, members of the UPC
21 and their allies, arrived. They came from Bogoro and they were going to
22 Bunia. They came face-to-face with a hill, and they built a camp at that
23 place.

24 Q. I will ask -- I asked you the following question. You are
25 referring to the civilian population, not so, and your answer was:

1 Everyone who was living in Bogoro that could be called civilian was in
2 civilian dress, and it even happened that if there was a provocation if
3 you attacked you would be massacred. There is no way of saying that in
4 Bogoro there were civilians. Maybe a passer-by could identify himself or
5 herself as a civilian.

6 My question to you is as follows: Apart from the soldiers who
7 were in Bogoro, why are you not referring to the fact that there were no
8 civilians in Bogoro? Why is it that according to you there were no
9 civilians in Bogoro? Explain to the Chamber so that they should
10 understand clearly. What was the distinction that you made between
11 soldiers, civilians, or others?

12 A. In Bogoro there were no war-displaced persons. The people who
13 were there were in sufficient numbers to live there. If there were
14 civilians in Bogoro, they could have been the wives of soldiers or PMFs,
15 and maybe other civilians in Bogoro could be children who were born
16 there.

17 Q. And the children that you are referring to, how old were they,
18 those children?

19 A. I said maybe if there were civilians -- among the civilians, it
20 could have been children who were born there. I did not confirm that
21 these were children who had gone there. There was no way of knowing
22 whether there was a child or not.

23 Q. What does PMF mean, to clarify the Chamber?

24 A. PMF is anyone who has breasts, to breast-feed and who is
25 following military orders, all those people are PMFs.

1 Q. If I suggest to you that these are female military personnel,
2 would that be correct?

3 A. Yes, that is correct, if you have to make the gender difference.

4 Q. Were there any old people living in Bogoro?

5 A. At that time an old person could not have had the strength to
6 live in Bogoro. It was the rebels who were there.

7 Q. Why is it that an old person would not have had the strength to
8 live there?

9 A. This area was attacked at least three times a week. A real
10 elderly person could not send his children to go and attack.

11 Q. During your previous testimony you mentioned that the people who
12 were there were from which ethnic group again, whether it was the old
13 persons, children, women, the PMFs, what was their ethnicity?

14 A. Those who were living in Bogoro were soldiers. I did not know
15 their tribal origin. I know that there were Hemas, there were even
16 Ugandans, and even Rwandans amongst the population that was living there.

17 Q. Mr. Witness, you also referred to the fact that there were rich
18 Hema people who had stayed there, that was said during your testimony of
19 last week or the week before.

20 A. Yes. These were the people who were responsible for all those
21 operations, for everything that was happening there.

22 Q. So the rich Hemas were also considered as soldiers even if they
23 were civilians; is that your testimony?

24 A. There was no one who could have been considered as rich. Anyone
25 who had sufficient weapons, we referred to them as rich.

1 Q. At that time was there fraternity between the Lendus and the
2 Hemas?

3 A. Maybe, because they referred to themselves as Iturians, but the
4 Lendus could not declare that the other one, that is, a Hema, was his
5 brother.

6 Q. Why?

7 A. If you crossed into the other camp, that is, the opposing camp,
8 that would mean that you were committing suicide. That means you would
9 be killed.

10 Q. So a Lendu could not cross into the camp of the Hemas; is that
11 what you have just explained?

12 A. It was not possible.

13 Q. Why was this not possible, for Lendus and Hemas to be brothers?

14 A. I don't know what to say. They killed each other. It wasn't
15 possible for a Hema to fraternise with a Lendu because they killed each
16 other. Some of them sent people to seek out people from the other ethnic
17 group by force.

18 Q. Was it possible for a Lendu to be a brother of a Hema?

19 A. The Lendu and the Hema considered as brothers when they have a
20 common interest; other than that, I've never been a witness to such
21 fraternity. And some considered the others as dogs.

22 Q. Who considered the others as dogs in the example that you've just
23 given?

24 A. When somebody wanted to grow something in a field and you didn't
25 give him the right to grow in that field, then he was considered like a

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 35

1 dog.

2 MR. MACDONALD: (Interpretation) If you would allow me a moment,
3 your Honour.

4 (Prosecution counsel confer)

5 MR. MACDONALD: (Interpretation)

6 Q. You speak about cultivating the fields. Was there also cattle in
7 Bogoro, to your knowledge?

8 A. There were Munzakwa who was one of the first farmers, and it was
9 at this time that I learned that I found out there was a place -- well,
10 there was a market where they sold cattle in Bogoro, but that was a long
11 time ago.

12 Q. During the attack on Bogoro, what happened with the cattle?

13 A. I don't know. There weren't any cows in that place. In Bogoro
14 there weren't any cows.

15 Q. After the attack when the FNI and the FRPI took control of
16 Bogoro, in the hours and days following the attack how did the civil
17 population -- civilian population of Bedu-Ezekere react to the fact that
18 Bogoro had just fallen?

19 A. After the attack the FRPI and the FNI established themselves for
20 a month and opened up the market, and this -- and they installed
21 themselves in -- the people who installed themselves in Bogoro were the
22 blue helmets. And then you had the ARTEMIS force who came in, and so
23 people took -- they went to Mbele (phoen).

24 Q. Witness, who was the commander responsible for Bogoro once Bogoro
25 fell, what was his name?

1 A. It was the person who was acting as a commander, that was
2 Lobo Chamangere, and he was there as the leader because there was
3 soldiers there who he had to motivate.

4 Q. Other than Lobo Chamangere, were there other commanders at a
5 higher level than Lobo Chamangere who were responsible or had a high
6 level in Bogoro? You mentioned that Lobo Chamangere, he was the
7 commander of the FRPI and he was billeted in Lakpa Golgotha, but other
8 than Lobo Chamangere, was Bogoro commanded by a higher commander?

9 A. Bogoro is situated in a neutral position. Lobo Chamangere knew
10 very well that in the FRPI there was Mathieu Ngudjolo, and the FNI had
11 Germain Cobra Mantan -- Cobra Matata, but his -- Cobra Matata Oudo, but
12 his work was to go and see the soldiers to motivate them, and the market
13 that had been re-opened was one of the projects but there was no law.
14 But he knew that these soldiers were there and he had to be present. But
15 as far as when the authorities came, everybody took their luggage and
16 went back to their village.

17 Q. Before the market were opened, before trade re-established itself
18 normally in Bogoro, the population -- what happened with the goods of the
19 population that lived in Bogoro before the attack?

20 A. The population of Bogoro didn't have -- didn't own goods, but it
21 was soldiers who were there. If there were soldiers' goods -- there
22 weren't walls between Bogoro. I remember that after the war there were
23 walls which remained. That's all I can say with regard to the goods or
24 the patrimony which was -- remained in Bogoro.

25 Q. When Bogoro was taken by the FRPI/FNI, so the Lendu and the

1 Ngiti, did the civil Hema -- was the civil Hema population able to live
2 there in the weeks and months immediately following that?

3 A. To live there in a fixed way, no; but from Kasenyi there were
4 Hema, Bira, Ngiti who arrived who came to the market who were there.

5 Q. Why couldn't the Hema live in Bogoro at that time?

6 A. I can say that there was a doubt because there was -- it was war,
7 if I can put it like that.

8 Q. War, Lendu against Hema?

9 A. The force which was in Bogoro was against the fighters.

10 Q. Why do you say there is a doubt because it was a war, if I can
11 say, to explain that a Hema couldn't live in Bogoro?

12 A. It's not just a matter of Hema. Even the Lendu and Ngiti were in
13 the same situation, and that shows very well that the Lendu, Hema, and
14 Ngiti were at war, they were just finished fighting.

15 Q. I'm sorry to go back to this expression just for clarification,
16 but treat somebody like a dog, what does that mean as far as you're
17 concerned?

18 A. When somebody inherits something and he has the power which gives
19 value to some and they -- he can give value to some and deny it to
20 others, this fact of denying them their rights, this means that they are
21 dogs. That's what I can say.

22 Q. Changing register. Which ethnic group were the fighters or
23 soldiers from the APC, Commander Faustin when they arrived in Zumbe?

24 A. APC were made up of government soldiers. There were different
25 ethnic groups mixed together.

1 THE INTERPRETER: The interpreter did not hear the last words of
2 the witness.

3 MR. MACDONALD: (Interpretation) I'm going to clarify that, your
4 Honour.

5 Q. So you say there were different ethnic groups mixed up together.
6 Is that what you said in your previous answer?

7 A. That is correct. In the APC there were several different ethnic
8 groups. Perhaps there just weren't any pygmies.

9 Q. What happened with the Hema fighters who were in the APC?

10 A. It was Commander Faustin who can answer that question.

11 Q. Were you there? Did you see the fighters arrive? If I
12 understand from Commander Faustin, did you see them arrive in Zumbe? You
13 also said that you saw them left. Between the moment when they arrived
14 and the moment when they left, what happened with the Hema -- ethnic
15 group Hema fighters or soldiers, the Hema soldiers who were part of the
16 group of Commander Faustin?

17 A. They were beaten by the UPC-UPDF from Lake Albert where they had
18 installed their government. They took the road towards Zumbe to flee.
19 There was no government in Zumbe. They looked for the road to go to
20 North Kivu. There was at that time the government and Faustin. It
21 was -- it is they that know.

22 Q. I'm going to repeat my question. What happened with the Hema
23 soldiers who were within Commander Faustin's group when they were in
24 Zumbe?

25 A. There were not Hema -- there were no Hema combatants. There was

1 the APC army. When this army arrived in Zumbe, which wasn't their own
2 place, they looked for the road to get to their government of Lopondo.
3 We had learned that they had left for North Kivu, but I don't know where.

4 Q. Excuse me, Hema soldiers, are you now telling us that they
5 followed Commander Faustin to Beni?

6 A. It was not Hema soldiers. These were APC soldiers. There
7 weren't tribes. You can't say that there were tribes, this person is
8 Hema, Ngiti, Lendu. They put together, they followed their government,
9 they were there as they escaped.

10 Q. But you've just said that the Lendu and the Hema could not be
11 brothers?

12 A. Within the government there weren't Lendu and Hemas. The APC
13 didn't belong to a particular ethnic group or particular groups didn't
14 belong to that. I didn't know any soldiers within the army of the APC
15 who came from one particular ethnic group. Perhaps there were only
16 pygmies who were the only people who were not in this army, as I said
17 before.

18 Q. How many attacks -- when you were in Zumbe, did you know if there
19 was an attack on the village called Nyankunde, to your knowledge?

20 A. In Nyankunde, there was a time when Lopondo was beaten from Ituri
21 UPC -- that was at the time when Faustin on the road towards -- well, he
22 followed Lopondo and he went threw Nyankunde, and it was at that time
23 that we helped the people from the APC to help them continue on their
24 way.

25 (Prosecution counsel confer)

1 MR. MACDONALD: (Interpretation)

2 Q. So you're saying that the APC went through Nyankunde at the time
3 when they left Zombe?

4 A. They left Lake Albert first where they had a position, and they
5 went via Nyankunde to follow their journey. And they didn't take a
6 train -- they didn't take a plane, they didn't take any vehicles. They
7 found a vehicle.

8 Q. You said that you helped them. You helped this group to go to
9 Nyankunde?

10 A. They didn't know where the road to Nyankunde was, and there
11 weren't -- didn't have enough means to occupy Bunia. And that's why they
12 wanted to cross to join the other soldiers of the government, so there we
13 helped them.

14 Q. And what happened in Nyankunde, well when the APC were there and
15 as you said the UPC forces were there?

16 A. The APC were looking for a road to go to North Kivu. There were
17 government officials or soldiers of the government. They tried two or
18 three times to go through Nyankunde. They were beaten and one day we
19 learned that Faustin and his men had already arrived. I don't know
20 where, Lubero, something like that.

21 Q. So there was a battle in Nyankunde?

22 A. So that they could get through Nyankunde and go to North Kivu,
23 they had to fight. They didn't arrive in a peaceful situation. They
24 arrived, they beat them, and when they won a third time we noted that the
25 APC went towards North Kivu. Since we chased (as interpreted) them

1 through Lake Albert going through Bunia and going to North Kivu where
2 there was the position of the government.

3 Q. What help was provided? What is the help that you provided to
4 the APC combatants?

5 A. We accompanied them from Monts Bleus and we said to them, "This
6 is Nyankunde, and if you have to fight here, you have to take this road."
7 They didn't know the road. They were foreign to that area. So we helped
8 them from -- we accompanied them from Monts Bleus. There was no
9 instrument to see where they had to go. That's why they need young
10 people to accompany them.

11 Q. How many young people accompanied them?

12 A. There was a section that Mathieu Ngudjolo knew that was direct by
13 Major Bahati. In addition to that, there was one -- some had nothing to
14 do so he joined them. These were people from the region. These were
15 people from the region who accompanied them. They accompanied them to a
16 place, and in Nyankunde -- they went to a place called Singo and in
17 Nyankunde they went -- they went through --

18 Q. In Nyankunde they helped them to go through, does that mean they
19 helped them to fight?

20 A. They helped them during their -- on their way. There were a
21 position to take to fight, they showed them that position, and when the
22 war arrived they needed the others in order to help them.

23 Q. Who are the others who helped them in Nyankunde? Who helped the
24 APC to fight in Nyankunde other than Commander Bahati de Zombe and the
25 few soldiers that were with him, who else? Who else supported the APC in

1 Nyankunde?

2 A. There was Colonel Kandro who had received the ex-governor
3 Lopondo. At that time they were helping the APC without asking for
4 anything. And for --

5 Q. Well, can you explain to the Chamber, Colonel Kandro was from
6 what ethnic group?

7 A. He was from the collectivite of Walendu-Bindi. It was or he was
8 one of the FRPI leaders.

9 Q. (No interpretation)

10 A. It was the deputy of Cobra Matata, Colonel Kandro.

11 Q. Was there an incident between Kandro and Cobra Matata following
12 the attack on Nyankunde?

13 A. They had a dispute with regard to a house, but their conflict
14 didn't -- it wasn't for the politics. It was an FRPI problem.

15 Q. Colonel Kandro, is he still alive?

16 A. If you ask me if he's still alive, it's because you know.

17 Q. Can you indicate it to the Chamber. Perhaps the Chamber does not
18 know.

19 A. I don't know because he's a colonel.

20 Q. You don't know if Kandro is still alive today?

21 A. I learned that he is no longer.

22 Q. Do you know how he died?

23 A. The people from the FRPI can better answer that question.

24 Q. Other than Kandro of the FRPI or the Ngiti who were supporting
25 the APC, were there other commanders of the FRPI or fighters, Ngiti

1 fighters, who were present in this attack?

2 A. The FRPI helped soldiers of the APC to cross because they tried
3 the first time, the second time they were pushed back, and on the third
4 occasion the FRPI and FNI led the people through Nyankunde and they were
5 able to cross.

6 Q. Kandro is no longer alive. You said that Kandro was there. Were
7 there any other FRPI commanders who were present to support the attack?

8 MR. HOOPER: There's been a stream of leading questions in
9 respect of this witness. I'm not getting up on my feet all the time to
10 interrupt the Prosecutor. One of the difficulties, though, is that we
11 have a witness talking certain facts, and we just haven't learned yet
12 what the basis for his speaking of these facts are, whether he was there,
13 whether these are things he's heard, and the history of it. We have no
14 idea. And if the Prosecution seek to develop this evidence, surely the
15 prerequisite of that is that we are informed as to what the position of
16 the witness is in respect of the facts to which he's being asked to
17 relate.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
19 For the clarity of the proceedings, is it possible to define the position
20 of that witness? It is true that some of the questions were leading, it
21 is true that the Chamber did not intervene and this was also because the
22 Defence was not intervening. So there was a sort of modus vivendi that
23 was established allowing you to continue with your examination. But I
24 think it is important to provide the clarification that Mr. Hooper wishes
25 to have and that the Chamber wishes to have also, and you will continue

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 44

1 with your questions by trying to phrase them in the simplest manner
2 possible.

3 Proceed, Mr. Prosecutor.

4 MR. MACDONALD: (Interpretation)

5 Q. To your knowledge, apart from Kandro, were there other commanders
6 of the FRPI --

7 MR. HOOPER: I'm sorry, I sought to make a rather belated but
8 pointed submission that the Prosecutor must surely let us know whether
9 this witness is talking from things that he's observed himself because of
10 his presence or whether these are hearsay statements that are being
11 referred to and the basis for them.

12 PRESIDING JUDGE COTTE: (Interpretation) We agree.

13 Mr. Prosecutor, with regard to all this episode concerning
14 Nyankunde and the movement of the APC to Nyankunde, maybe you should ask
15 him to clarify. What was the exact situation of the witness, even his
16 precise physical position.

17 MR. MACDONALD: (Interpretation) I can ask that question,
18 Mr. President. I was going to do that at some point. I can see that the
19 Defence is objecting, so I will ask that question now.

20 (Expunged)

21 (Expunged)

22 Q. How did you learn that an attack had taken place at Nyankunde?

23 A. The attack was in order to accompany the people of the APC who
24 were going to look for the governor that was being protected in Ituri.
25 When they were unable to do that, they had to go and meet him where he

1 had gone to.

2 Q. But the question that is being asked by the Judges is: How do
3 you know about all this? How did you learn about the attack in Nyankunde
4 and that Kandro came to support the APC forces which fought at that
5 location?

6 A. Kandro did not assist the members of the UPC (as interpreted).
7 He welcomed the governor who had come from Songolo and who was with this
8 other person.

9 Q. Point of clarification: There was a battle in Nyankunde; isn't
10 that so?

11 A. Yes. There was a battle as from Singo, and Singo was quite close
12 to Nyankunde via Talolo. The APC was not aware of anything and it was
13 necessary to show them the road. It was necessary to have someone who
14 knew the area to assist them to travel through there.

15 Q. And how do you know about all this?

16 A. When Bahati left Zumbe accompanied by 12 people, he left
17 Bedu-Ezekere. There were people -- these were people who were known by
18 those who were there. They were known as combatants, and their training
19 had been followed up from the beginning to the end.

20 Q. How did you learn about the details of the attack itself in
21 Nyankunde, the attack itself, not the trip of Faustin from Aveba and
22 those who were accompanying him?

23 A. When they left Zumbe, travelling through Nyankunde, they decided
24 to launch an attack. And if they were victorious then they would
25 continue on their way. I do not know whether they stayed there. I heard

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 46

1 that they had even arrived at Wicha (phoen) which means that they had
2 been able to continue on their way.

3 Q. And how did you come about hearing those things?

4 A. There were soldiers who had come from Zumbe who were there and
5 who were able to talk about what had happened there. There was also a
6 BCA operator who was in Aveba and in Zumbe and he was closely following
7 up the information. He said that it Etienne Lona.

8 Q. An operator, what was the name of that operator?

9 A. His name was Etienne, and, in fact, his name was Etienne Lona.

10 Q. Do you know his full name, the full name of that person?

11 A. I have talked about Etienne Lona, and when I say Etienne Lona I'm
12 giving you the full name because he was known by the short name Etie.

13 Q. So that operator gave you details regarding what had happened in
14 Nyankunde; is that what happened?

15 A. He did not give me the complete information. He was there and
16 there were other more senior people. And when he had information he
17 transmitted it to his superiors. And while he was transmitting that
18 information, it was possible for us to hear something by chance.

19 Q. And how was this information relayed, through what object? How
20 was the information transmitted?

21 A. He had a Kenwood in his hands.

22 Q. So that is how come you learned about information regarding the
23 Nyankunde attack, a Kenwood radio and from people who came back to Zumbe
24 after the attack?

25 A. There was radio transmission equipment that belonged to a

1 hospital, I believe, and this equipment was used to receive information
2 in Zumbe.

3 Q. Let me come back to the question I asked to you -- I asked you a
4 short while ago. I have not forgotten it. Apart from Kandro, were there
5 other FRPI commanders who were present as far as you know?

6 A. There was Colonel Cobra Matata who was living in Bavi. It was a
7 motel known as Olongba. Kandro was moving about and supervising the
8 military positions. He was a high-ranking officer and he was guarded.

9 Q. So Cobra Matata was also in Nyankunde?

10 A. I do not know. You can suddenly see someone arrive without
11 knowing where he is coming from, so I cannot confirm whether Cobra Matata
12 was in Nyankunde or not. However, there were people there.

13 Q. And what happened with the members of the population living in
14 Nyankunde, do you know anything about that? Did you hear anything about
15 that?

16 A. I think that it is the members of the UPC and the APC who know
17 about that, because they were helping each other to find a way to where
18 they were going.

19 Q. Before the attack at Nyankunde, do you know how many people were
20 living in Nyankunde, that is, before the attack, if you know?

21 A. I knew the head of the groupement -- in fact, it is the head of
22 the groupement who can answer that question. He is the one who is in a
23 position to do so. Maybe a student can tell you how many students are in
24 a school, but as far as I'm concerned I am not able to answer that
25 question. I have forgotten.

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 48

1 Q. But what did you hear precisely relating to what had happened --
2 what had happened in Nyankunde?

3 A. I heard that Faustin had already arrived in North Kivu --

4 MR. HOOPER: (Previous translation continues) ... in respect of
5 Nyankunde as an issue.

6 PRESIDING JUDGE COTTE: (Interpretation) If I understand
7 Mr. Hooper correctly, you would like to know whether it is useful for the
8 Prosecutor to ask questions on that episode in Nyankunde; is that
9 correct?

10 MR. HOOPER: Well, I'm looking at annex 4 which is attached to
11 filing 1514, and I'm just wading through the French a little bit. But as
12 far as I can see, I don't think it's ever been suggested -- my friend can
13 correct me and save me standing on my feet, but I don't think Nyankunde
14 appears in the document. So we're not on notice. It's not an area --
15 well, need I say more. It's not an area he should go to.

16 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, can you
17 clarify Mr. Hooper on that and also tell him as well as the other Defence
18 team not what your strategy is, but if you would wish to clarify the
19 context. In brief, are you in a position to provide information that
20 will make it possible to continue with proceedings that are clearer for
21 all the parties?

22 MR. MACDONALD: (No interpretation).

23 PRESIDING JUDGE COTTE: (Interpretation) Do you have a problem?

24 MR. MACDONALD: (Interpretation) Yeah, I have a problem with the
25 hearing but at the same time I have a problem with the transcript, the

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 49

1 live transcript. Is my learned colleague referring to the table on
2 incriminating evidence, or is he asking me whether anything was disclosed
3 on Nyankunde?

4 PRESIDING JUDGE COTTE: (Interpretation) I think it was the
5 spirit of the observation made by Mr. Hooper, but I did not note the
6 document that he was looking at and which he used to say that I do not
7 have the feeling that it has been referred -- that Nyankunde has been
8 referred to. Maybe Mr. Hooper should himself repeat.

9 Please go ahead, Mr. Hooper, repeat what you said a short while
10 ago.

11 MR. HOOPER: Very well. The Prosecution have served the Court
12 and parties and participants, as far as I know the participants too, with
13 a document attached to their filing 1514, annex 4, on the 7th of October,
14 and it's a three-page document, and it contains all the matters --
15 (French spoken), excuse me putting it like that. And as I said, I'm
16 glancing through it now, I don't see Nyankunde here, and this is a
17 principal Prosecution document. And I'm just -- so that's my concern,
18 otherwise what's the purpose of the document? And obviously we prepare
19 ourselves on the basis of this document, which is presumably the reason
20 it was brought into existence.

21 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, has
22 that document been sufficiently identified, annex 4 of document 1514?
23 This is a document that the Chamber had asked you to produce witness by
24 witness to tell us which would be the major themes, that is, annex 4 of
25 1514, Witness 250, background of the witness and the main themes on which

1 Witness 250 will testify. There is indeed -- there are indeed three
2 pages and that is what Mr. Hooper said. And he feels that at the time
3 that you prepared the document which has been distributed to everyone,
4 you did not mention any possible issues on Nyankunde. I believe we have
5 all understood the concern of Mr. Hooper. So please provide an answer
6 and proceed with your examination after having assessed whether you have
7 to stay with Nyankunde or to move on to another line of questioning.

8 MR. MACDONALD: (Interpretation) Mr. President, these are
9 contextual elements which of course go beyond what was indicated on the
10 principal themes, regarding the elements constituting the crimes. And
11 this applies to all of the witnesses that will be called, and more so for
12 this witness. Beyond all that is indicated in the table, I have to point
13 out to you that I was actually about to move on. I was going to conclude
14 on Nyankunde and move on to the contextual elements, including Mandro,
15 and then continue to Bunia and Tchomia.

16 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, so this is
17 contextual issues, and these are not expressly mentioned in annex 4.

18 MR. HOOPER: Well, it's not expressly mentioned, and we're
19 entitled to proper notice. It's not expressly mentioned, and it's not
20 sufficient just to throw the cloak of "it's contextual." I mean,
21 everything's contextual. And I hear Mr. O'Shea that, you know, a lot of
22 what we've heard is not contextual at all. And as far as I can see, this
23 witness has made very little reference in his multitude of statements on
24 this issue. So it now boils down to this: This is an issue of basic
25 notice, and we're entitled to rely and do rely on annex 4 dealing with

1 this witness, and on that basis the Prosecution should relent to move on
2 to another subject.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, it is true
4 that the Prosecutor disclosed to the Chamber under number 1514, and this
5 was the 7th October 2009, annex 4 just as an annex was given for Witness
6 233 and for each of the other witnesses. It is also true that the title
7 is: Principal themes on which Witness 250 will testify. I do not think
8 that the Prosecutor should be a complete prisoner of the three pages of
9 that annex. If he had to be a prisoner, he -- we would not have three
10 pages, but we would have 300 or 350 pages because he would want to go out
11 of this scope. This is a document for information, that is, to inform
12 the Chamber of the main themes of the direct examination of the
13 Prosecutor so that we can have an idea of the duration of each of the
14 direct examinations. And at the foot of the page we have an indication
15 of those durations. And the second objective was to inform those who
16 would contradict the Prosecutor so that they should better follow-up.

17 So in that respect, I do not think that the Prosecutor is
18 compelled to follow exactly what is in that document. That said, you are
19 correct when you raised a concern that you have to be better informed in
20 order to better understand, that is, regarding the themes that the
21 Prosecutor is going to raise. So I'm asking Mr. MacDonald in the rest of
22 his examination-in-chief and in the other examinations-in chief that will
23 come to make sure that when he changes lines of questioning, particularly
24 with regard to issues that are not contained in annex 4, he should simply
25 point it out, to give us a very brief introduction as to which issue he's

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 52

1 moving to and why he's going to deal with that issue so that the Defence
2 can know where you are and where you are trying to go. And then you can
3 ask your questions.

4 Do we agree? I do not think that there are any real difficulties
5 here. Your own time is passing, but you have your own strategy. You
6 have your own tactics. But you have to make sure that everything has to
7 be as useful as possible. The issue here is for you to accomplish your
8 mission, to ensure that the participants and the Defence are able to
9 follow, and also to ensure that the witness also understands, given that
10 he is within a two-hour period of examination.

11 You have the floor.

12 MR. MACDONALD: (Interpretation)

13 Q. One last question on this issue. To your knowledge, where was
14 Germain Katanga during the attack at Nyankunde --

15 MR. HOOPER: (Previous translation continues) ... totally
16 inappropriate question, and the witness should not in fact even now
17 answer it. It was a thoroughly leading question of the worst calibre,
18 and in the context of context what's contextual about that question? You
19 see, if we look at the annex - and I accept entirely, Mr. President, what
20 you've said in respect of the questions being capable of falling within
21 the general contextual context that's referred to here - this is not --
22 one's talking here of incriminating evidence and that falls outside
23 contextual relevance. Contextual relevance and that question are
24 thoroughly distinct and separate. That was a most improper question.

25 MR. MACDONALD: (Interpretation) I totally disagree with my

1 learned colleague.

2 PRESIDING JUDGE COTTE: (Interpretation) It is up to the Chamber
3 to arbitrate.

4 MR. MACDONALD: (Interpretation) My question was: Where was
5 Germain Katanga during the attack on Nyankunde, where? Why? How? That
6 is in relation to time, space, and place. I did not refer to any link at
7 all. I'm simply asking where he was in terms of place. So I
8 respectfully submit that it is not a leading question, just like when I
9 asked who were the other commanders who might have been present.

10 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, the
11 Chamber accepts that within the context of your examination you have the
12 ability to seek certain contextual answers so as to lay the factual
13 foundation and which maybe in your mind makes it possible to better grasp
14 the possible responsibilities of the various individuals concerned and
15 which you think may make it possible to better grasp the conditions under
16 which a plan may have possibly -- well -- but also talking about
17 contextual reasons does not mean that specific questions can be asked on
18 events that are different from those that we are dealing with. So there
19 is a difference between context and very specific questions on issues
20 that the Court is not seized of.

21 So the Chamber sustains the objection of Mr. Hooper, and please
22 proceed, Mr. Prosecutor.

23 MR. MACDONALD: (Interpretation)

24 Q. If we go back, Witness, to Mandro, you mentioned on last Thursday
25 that there were or that there was an attack on Mandro. So my question

1 will go into that subject. Where were you when you learned for the first
2 time that there could have been an attack on Mandro? Where were you at
3 the time?

4 A. At the time when Bogoro fell -- it was at the time that Bogoro
5 fell, there were rumours according to which something was going to happen
6 in Mandro and the people who were going to flee Mandro were going to
7 attack Zumbe. So it was important to know the developments of the
8 situation on that side.

9 Q. The people who were in Mandro, what ethnic group were they, the
10 people who lived there?

11 A. At a certain time there was the Gegere and the Hema. The Gegere
12 were in the majority. Then it was the soldiers who were the majority in
13 Mandro.

14 Q. So the soldiers were in the majority but they were civilians?

15 A. I said at a certain time there were the Gegere. When I speak
16 about the Gegere, I speak about civilians. There they lived there
17 before. Then there were only soldiers who were living there.

18 Q. So where were you when you heard these rumours on the subject of
19 an attack on Mandro?

20 A. When I learned that we had to attack Mandro, it was when Bogoro
21 had fallen. The person leading the FNI and the FRPI went to rest, and
22 there were rumours according to which there was a plane which was
23 parachuting arms, weapons, at Mandro; and we went to see and we saw that
24 there was something that had to make us leave Zumbe.

25 Q. Leaders of the FNI and the FRPI went to rest. Could you tell me

1 where they went to rest?

2 A. There were -- this was a possibility for the -- for them to go
3 there and also to meet Mathieu Ngudjolo so that when they went to Aveba
4 they didn't meet. Before it was the residence of Mathieu Ngudjolo, his
5 camp, and the staff headquarters. When he arrived there, he had the
6 opportunity of being able to inspecting and see that place.

7 Q. I'm sorry, Witness, but the translation is unfortunately not
8 complete. So the Prosecution would ask for this passage which has just
9 been mentioned be completely re-transcribed so that we have it tomorrow
10 at the beginning of the session, because a lot of things are mentioned
11 which haven't been translated orally and which don't appear in the
12 transcript.

13 PRESIDING JUDGE COTTE: (Interpretation) It is understood.

14 So, Court Officer, if we could have a faithful re-transcription
15 of the answer that's just been given to the question if -- ah, it's
16 just -- the words have just disappeared from my screen. Anyway, you
17 repeat the question, Prosecutor, so that we can understand what the
18 answer which we want to have written as a whole.

19 MR. MACDONALD: (Interpretation)

20 Q. When you said Mukupwa (phoen) what is that?

21 A. (No interpretation)

22 Q. I'll reformulate it. You spoke -- you said that there were
23 leaders of the FRPI who went to meet Mathieu Ngudjolo. If I summarise
24 what you said preceding -- previously.

25 A. I say as follows: There was the Chief of Staff of the FNI,

1 Mathieu Ngudjolo; there was the president of the FRPI, and when they
2 arrived to the groupement of Bedu-Ezekere --

3 Q. And the president of the FRPI was Germain Katanga; is that
4 correct?

5 A. Germain Katanga Nduru.

6 Q. Germain Katanga and Mathieu Ngudjolo met in the groupement of
7 Bedu-Ezekere before the attack on Mandro?

8 A. It happened coming from Bogoro -- or he arrived from Bogoro. He
9 came to see the position where his colleagues were placed.

10 Q. When you say that he left Bogoro, who were you referring to? You
11 have to name the people; if not, then I have to ask you that every time.
12 He left Bogoro to go and meet ... ?

13 A. When Bogoro fell, Mathieu Ngudjolo and Germain Katanga met after
14 the fall of Bogoro. They were the people responsible. They weren't
15 going to spend -- they were the leaders, they weren't going to spend the
16 night in the bush. It was preferable for them to spend the night at
17 another authority, because this person has the security -- has
18 security -- or it is safe where that person is. So it was at that place
19 where Mathieu Ngudjolo was living. There was no question of him spending
20 the night when Bogoro had just fallen because it could be attacked again,
21 and that is the reason why as an authority he was put into a safe place.

22 Q. So Germain Katanga went and slept in the house of
23 Mathieu Ngudjolo; is that correct?

24 A. Yes, it was there that he was received. There was no question of
25 him spending the night in the forest.

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 57

1 Q. How was it decided that Mandro was to be attacked?

2 A. As there was a road from Bogoro to Bindi, it was a matter of
3 neutralising this position because the population was concerned at that
4 place.

5 Q. Can you describe to us what happened?

6 A. (No interpretation)

7 THE INTERPRETER: The interpreter didn't hear the answer.

8 MR. MACDONALD: (Interpretation)

9 Q. We didn't understand your answer. So how -- or could you
10 describe to us from the start until the end how Mandro was attacked?
11 Slowly so that the interpretation can be understood, please.

12 A. When we ended the conflict that there was in Bogoro, it was a
13 matter of also finishing the conflict that was in Mandro because Zombe
14 was in the middle of the collectivite next to the Jesus Christ on the
15 cross.

16 Q. And then?

17 A. Bogoro fell and Mandro also fell.

18 Q. How did Mandro fall?

19 A. The force that was there -- well, there was no longer a force in
20 the place and that's how it was confirmed that Mandro fell. There was no
21 conflict. There were no attacks being carried out.

22 Q. Could you explain how Mandro fell?

23 A. We entered Mandro in three directions: The open way through the
24 mountains, there was another road with reinforcements from Bunia, and
25 there was another one by Linga and that's how Mandro fell.

Witness: Witness P-0250 (Resumed)(Open Session)
Questioned by Mr. MacDonald (Continued)

Page 58

1 Q. From what group were the fighters who attacked from these three
2 directions?

3 A. It was the force that had attacked Bogoro, the same force
4 attacked Mandro.

5 Q. How did the enemy react that was in Mandro?

6 A. I don't know the way in which they reacted, but the intensity of
7 the fighting was massive. The reaction or the consequences was that they
8 didn't attack us anymore, they didn't bother us anymore.

9 Q. As in Bogoro; is that correct?

10 A. Yes.

11 MR. MACDONALD: (Interpretation) It's noted that there's five
12 minutes left.

13 Q. Witness, we have five minutes. I'm just simply going to ask you
14 who planned that the fighters who were in Bogoro, who had attacked
15 Bogoro, attacked from three different directions. Who had planned that
16 attack?

17 A. It was the same person who had planned the attack on Bogoro, and
18 including the people who knew the positions in Mandro.

19 Q. Can you give us the names, please, of the persons who planned the
20 attack on Mandro?

21 A. It was the commander operator that I knew well in the FNI called
22 Major Bahati. He had his military colleagues. There were many of them.
23 There were other people who were posted to other positions.

24 Q. Who are the other commanders? Who were the other commanders who
25 participated in the drawing up of the plan of attack?

1 A. There was a group of leaders who were preparing the direct path.
2 On the other side there was Agoshi Shavi Lilo (as interpreted) and on the
3 right there was -- there was Pascal Kute.

4 Q. Who were the fighters who were coming from the direct route?

5 A. It was Mathieu Ngudjolo and Germain Katanga, they took the same
6 direction. On the left there was Pascal Kute, Boba Boba; and on the
7 right Nyunye and Malondra.

8 MR. MACDONALD: (Interpretation) On this answer I will stop,
9 your Honour, and we will inform the Chamber that we were going to finish
10 in the first two hours, possibly in the first hour.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you. That was a
12 question that we were going to ask you. The episode of Mandro figured --
13 will figure then in annex 4, number 1514.

14 Court Officer, we are therefore going to finish today's hearing.

15 Security officers, please could you have Mr. Katanga and
16 Mathieu Ngudjolo, could you escort them from the courtroom? After we
17 will go into closed session, such that the witness can leave the
18 courtroom. And we will adjourn the hearing until tomorrow, which means
19 that it shouldn't be necessary for Mr. Katanga or Mr. Ngudjolo to return.

20 (The accused withdrew)

21 (Closed session at 6.21 p.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0250 (Resumed)(Closed Session)
Questioned by Mr. MacDonald (Continued)

Page 60

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Open session at 6.22 p.m.)

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

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Thank you,
11 Registrar -- thank you, Court Officer. The session is adjourned. We
12 will be back tomorrow.

13 The hearing ends at 6.23 p.m.

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