

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 1

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Cotte, Judge Fatoumata Dembele Diarra, and

4 Judge Christine Van den Wyngaert

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

6 In the case of the Prosecutor versus Germain Katanga and

7 Mathieu Ngudjolo Chui

8 Trial Hearing

9 Wednesday, 10 February 2010

10 The hearing starts at 2.04 p.m.

11 (Open session)

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

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

15 Accused are with us. Everything is, therefore, in order.

16 Counsel O'Shea, you wanted to take the floor. We are listening
17 to you.

18 MR. O'SHEA: Yes. Thank you very much, your Honour. I'm acutely
19 conscious of the fact that we've spent a substantial amount of time not
20 with the witness in recent days, but it's just one of those things. One
21 can't predict when issues are going to arise, and I take specific note of
22 the fact that you, Mr. President, when you were delivering a ruling
23 yesterday requested that the parties be very diligent in raising issues
24 and not leave it too long before they raise them, and I think that now is
25 the time with respect to this particular issue, and it relates to the

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 2

1 evidence on the attack on Mandro.

2 The questions and answers that we've had from my learned friend
3 at the end of yesterday's hearing indicate very clearly the direction in
4 which my learned friend is going. I remind your Honours that the last
5 question was as follows:

6 "Q. Who were the fighters who were coming from the direct
7 route?

8 "A. It was Mathieu Ngudjolo and Germain Katanga. They took
9 the same direction."

10 And then the answer continues, but I read the relevant part of
11 the answer for the purposes of my submission.

12 Now, in terms of the Statutes and the Rules, we all know, for
13 example, that by virtue of Article 64(2), the Judges should ensure that
14 the trial is fair and also expeditious.

15 With regard to the expeditiousness of the trial, we are dealing
16 with charges relating to attack -- an attack on Bogoro in this case. We
17 have seen how the examination-in-chief on that issue has stretched over
18 the last two and a half weeks. We are, for our part, concerned that if
19 we go into this issue of Mandro, we are concerned, first of all, that the
20 examination-in-chief does not stretch out too long on that particular
21 issue. We are also concerned that it is not done in such a way which
22 forces us to deal with it far more extensively in cross-examination than
23 we would otherwise do.

24 Your Honours, of course, have a discretion in dealing with the
25 admissibility of evidence. Now, let me inform the Court and my learned

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 3

1 friend for the Prosecution what we do not have a problem with so that
2 we're clear about that. And I speak only for the team of Germain
3 Katanga. I do not speak for the team of Mr. Ngudjolo, and his counsel
4 may or may not take a different position. But insofar as the team for
5 Mr. Katanga is concerned and the attack on Mandro is concerned, we do not
6 have a difficulty with my learned friend talking about attack on Mandro
7 with this witness for our part. Neither do we have a problem with him
8 making reference to crimes committed at Mandro. Neither do we have a
9 difficulty with the plan to go to Mandro, which has already been
10 described in the evidence. And I say that in full recognition of the
11 fact that there is, of course, an element of context which goes to the
12 charge of a crime against humanity.

13 We are fully recognisant of the fact that the definition of
14 systematic, at least in terms of prior jurisprudence is concerned, looks
15 at the question of -- and plan and policy, and that seems to be the case
16 in terms of the document "Elements of Crimes" before the ICC as well. We
17 are also conscious of the fact that the word "widespread" deals with the
18 number of victims who were targeted by crimes, and in that sense there is
19 a contextual element to this case that we cannot deny. However, it is
20 clear from the last question and answer of my learned friend, or it seems
21 clear to us that it is likely that he wishes to go into the presence and
22 personal participation of Mr. Katanga in the attack at Mandro.

23 Now, if -- if he does so, apart from lengthening these
24 proceedings, he will be going into areas which in our respectful
25 submission have very minimal probative value to the charges before your

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 4

1 Honours. I think the significant point that we must keep in mind is that
2 the attack in Mandro is after the attack in Bogoro, and being after the
3 attack in Bogoro, that is significant because when we're dealing with the
4 alleged crimes of Mr. Katanga, we are addressing his actus reus and his
5 mens rea at the time of the attack of Bogoro. So when we're dealing with
6 questions of his conduct or we're dealing with questions of his mental
7 state, his intention or his knowledge, whatever legal element we may be
8 looking at, we are doing so at the time of the attack on Bogoro, and a
9 person's intentions or state of knowledge may develop with time. So
10 whatever his intentions and state of knowledge at the time of the attack
11 on Mandro, and it is not disputed that that attack follows Bogoro, has no
12 relevance for -- for the purposes of determining the mens rea of the
13 accused with respect to Bogoro.

14 Now, it might be said that there is a scintilla of probative
15 value, and I think I can accept that there is a scintilla of probative
16 value, but when managing a trial, one has to be careful as to where one
17 draws the line with regard to examination-in-chief and going into areas
18 which are not directly relevant to the charges, and there is a principle
19 which I would assert has become a general principle of law. It is a
20 principle which is contained in Rule 93 of the Statute for the former
21 Yugoslavia and also in the Statute of the International Criminal Tribunal
22 for Rwanda, and that is the principle that Judges may, as a matter of
23 discretion, refuse to admit evidence if its probative value is outweighed
24 by its prejudicial effects, and this is a principle which, for instance,
25 was stated by Judge Shahabuddeen in his separate opinion the case of

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 5

1 Nahimana et al. before the International Criminal Tribunal for Rwanda in
2 the Appeals Chamber, commonly known as the media case, the principle that
3 where the probative value of evidence is substantially outweighed by its
4 prejudicial effect the Judges may, as a matter of discretion, choose not
5 to go in such a direction.

6 Excuse me.

7 (Defence counsel confer)

8 MR. O'SHEA: Sorry, I've just been reminded that the relevant
9 provision of the ICTY and ICTR is in fact Rule 89(D): "A Chamber may
10 exclude evidence if its probative value is substantially outweighed by
11 the need to ensure a fair trial."

12 Now, of course we don't have a specific provision to that in the
13 ICC provisions, but as I've indicated, we do have provisions which allow
14 for your Honours to -- which allow for your Honours to address the
15 fairness of the trial in dealing with admissibility and use of evidence.

16 Now, I entirely accept that any evidence of incriminating conduct
17 on the part of an accused is by its very nature prejudicial to that
18 accused. So -- so in a sense where evidence is legitimate, is a
19 legitimate form of inquiry because of its probative value, the accused
20 can't complain, "Well, this is prejudicial to me." Obviously, if he's
21 accused of committing murders, that's prejudicial to him, but if those
22 are the charges before the court, that's what the accused has to face.
23 But here we're dealing with a situation where the prejudicial effect
24 outweighs the probative value, because if my learned friend goes into the
25 personal conduct of the accused at Mandro and his presence at Mandro,

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 6

1 those are matters which are not necessary for the purpose of the context
2 which he seeks to elicit, but they have a high prejudicial value --
3 prejudicial effect.

4 Naturally, your Honours are professional Judges, and that is
5 understood, but it's also incremental to the part of being a professional
6 Judge to try to the extent possible not to clutter or stain the evidence
7 before the Tribunal of fact with matters which have minimal relevance or
8 high prejudicial effect or which might unduly lengthen the proceedings.

9 Your Honours, have, yourselves, noted this problem in decision
10 1491 and in decision 1737. Both of these decisions deal with the
11 participation of victims, but they make clear the view of the Trial
12 Chamber that the issue that is being dealt with is the issue of Bogoro
13 and its immediate parameters, and let us be clear those are the charges
14 against the accused.

15 So if my learned friend goes into -- in his questioning to
16 activities of the FRPI or the FNI in Mandro, he's creating a context, and
17 we recognise that, a context which arguably is necessary for the purposes
18 of the contextual elements in the concept of a crime against humanity.
19 But the two aspects that we don't want him to go into, because they do
20 not contribute to that debate and because of the prejudicial effect on
21 the minds of the tribunal of fact is his presence and his personal
22 participation in that attack.

23 Your Honours, those are my submissions.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Counsel O'Shea.

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 7

1 Does the Defence of Mathieu Ngudjolo have something they would
2 like to add to what's been said given that Mr. O'Shea just said that he's
3 only speaking in his name, rather, in the name of Katanga. So ...

4 MR. KILENDA: (Interpretation) Yes, Your Honour. Thank you,
5 very much. We on the Defence of Mr. Mathieu Ngudjolo have already acted
6 during several Status Conferences, reading the decisions that have been
7 written in -- the ones that you refer to where it refers to Bogoro in
8 particular on the 24th of February of 2003. On the other hand, the
9 Prosecutor has already indicated the issues with regard to which he wants
10 to examine Witness 250, and we thought we were able to read that he would
11 go back to the points in Mandro and other facts, which I don't think it's
12 necessary to repeat here. It's his strategy, free to him if he thinks
13 that mentioning the facts related to Mandro he can prove Bogoro, then
14 that's free to him. Sincerely, we believe that he is carrying out his
15 examination-in-chief. He is the person who knows what direction he's
16 going in, and we just have to let him continue with his
17 examination-in-chief, and when the final submissions are to be made, then
18 we will draw all the conclusions from that which are necessary.

19 Thank you. That's all I had to say in this regard, your Honour.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
21 Counsel Kilenda.

22 Very well. Mr. O'Shea, you have been quite right to remind us
23 that the Chamber on several occasions expressed its wish to have the
24 proceedings conducted in complete compliance with Article 64, which
25 imposes on the Trial Chamber to ensure that the trial is conducted in a

1 fair and diligent way. You were right to remind us of that. You were
2 also right to remind us that we should all have in mind to go to the
3 heart of the matter. The requirement of that is to go to -- we have to
4 research the -- we have to find the essential elements without going
5 through -- getting off on a tangent. You were also right that the
6 time -- at the appropriate time it is up to the Chamber, given all the
7 information that has been made available to it during the proceedings and
8 at the end of the proceedings, to assess with the highest level of
9 knowledge with regards to the probative value and to see what could
10 possibly prejudice the Defence. This is a balance which we have to
11 ensure.

12 At the same time, Counsel Kilenda is not wrong in this when he
13 indicates that the seizure of the Chamber was clearly defined by the
14 Pre-Trial Chamber, but as you also said, Counsel O'Shea, the Prosecutor
15 isn't going to see it ruled out to define the contextual elements in this
16 case. The important fact is that he does it with rigor, with this
17 concern of going to the essential points which you have remind us of.
18 Mandro certainly did figure in Annex 4 which we spoke yesterday at the
19 end of the afternoon. The Prosecutor considered that it was worth
20 spending time on it after Bogoro.

21 Now, we don't know exactly the way in which today he will carry
22 out the end of his examination-in-chief, but if you intervened, it is
23 probably to alert us with regard to the fact that you accept the
24 contextual elements, but you don't accept just any type of contextual
25 element when through the definition of the contextual elements the

1 Prosecution finds that it has to focus too much on particular points.

2 Now, we'll have to assess that at the appropriate time. We've
3 taken good note of it. We're not going to take it as a call to order but
4 as a demonstration from the Defence which would like to express its point
5 of view. The Prosecutor has heard your point of view, and the Chamber
6 doesn't want us to become too vague. We want to say that the follow-up
7 to this examination-in-chief and -- that in the future this has to be
8 very focused with regards to what needs to be our search for the truth.
9 We are -- we are certain that this is what he has in mind, but we also
10 have reminded him of that.

11 Do you want to take the floor with regards to this general point?
12 Please take the floor, and then we will continue with our proceedings.

13 MR. MACDONALD: (Interpretation) Certainly, your Honour. The
14 Defence wants to object. Certainly it also raises this argumentation
15 without submitting case law to the opposing party, without notifying the
16 opposing party. I note the response of the Chamber. I would also like
17 to draw the attention of the Chamber to other documents, and the issue of
18 the intention or the knowledge of the accused is at the heart of these
19 proceedings. I would like to remind you that in the document summarising
20 the charges, namely 1588 of 3rd of November, the issue of Nyankunde,
21 Mandro, Bunia, Tchomia, Kasenyi, and other attacks had been retained by
22 the Pre-Trial Chamber I.

23 I would like to also remind you that our table of Prosecution
24 evidence, whether it is the first or the second part in these different
25 tables -- different chapters, rather, whether it's in terms of the

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 10

1 criminal responsibility in Annex N or whether it is a matter of the
2 Annex F in terms of war crimes, or Annex B for crimes against humanity,
3 we refer to the previous attacks and subsequent attacks.

4 I would also like to remind you that these same points were
5 addressed before the Pre-Trial Chamber -- the Trial Chamber I on the 22nd
6 of July, 2008.

7 The Prosecutor provided its answer to that in its submission 692,
8 and in the paragraphs 38 and 39 of them. In the decision of the
9 Confirmation Hearing, the Pre-Trial Chamber I in its decision 716, the
10 confidential version is the one I'm referring to, unfortunately it
11 mentioned and referred to the admissibility of the probative value of
12 previous and subsequent attacks.

13 We have in our document 1642, consolidated -- 1645, consolidated
14 response to the arguments of the Katanga and Ngudjolo teams on this
15 point, we replied to this, and we submitted our arguments referring to
16 the decision of the Pre-Trial Chamber I in this case but also in the
17 Lubanga case as well. We have also referred to the Pre-Trial Chamber and
18 its decision -- the Trial Chamber and its decision on this point. And
19 here I would like to quote the decision of the Trial Chamber I, 1981.

20 Since the very start, everybody was notified that the Prosecution
21 for the previous or subsequent attacks was going to refer to them whether
22 it was with this witness or another witness where, amongst other issues,
23 it concerned knowledge and intention that the accused might have had at
24 the time of the attack on Bogoro.

25 I have noted what the Chamber has said. We do not want to go

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 11

1 into the details like we did in the Bogoro attack, but we fully
2 understand. We agree with you, Mr. President. We do not intend to spend
3 a day of hearing on each of the attacks. And as I said at the close of
4 hearing yesterday, we estimate that we need about one hour more depending
5 on the answers of the witness. So with the witness, we want to come back
6 to Nyankunde for a point of clarification regarding the date and also the
7 issue concerning Mathieu Ngudjolo, because we need clarification
8 following an answer he gave as it appears in the transcripts. Then we
9 are going to go back to Mandro, conclude with Mandro, then move on to
10 Bunia, Tchomia, and then we come back with some closing questions to
11 conclude our direct examination.

12 That is what I wanted to point out with regard to the position of
13 the Prosecution given -- taking into consideration the fact that there
14 was no notification that this issue would be discussed.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea, you want to
16 reply?

17 MR. O'SHEA: (Previous translation continues)... ways. Either
18 your Honours can deliberate on the issue that I've raised now to set out
19 the limits, as Mr. MacDonald has made his intention quite clear that he
20 is, in fact, going to the issue of presence and the personal
21 participation of Germain Katanga. The other way we can deal with this is
22 that we can allow Mr. MacDonald to proceed, and we have forewarned the
23 Court and Mr. MacDonald that if he goes into those two areas, one of
24 those two areas, we will object, and then the deliberations in relation
25 to that can be dealt with at the time he -- he asks that particular

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 12

1 question, whatever it is. And for the part for the Defence, it doesn't
2 really affect us how we proceed. But this is not a question of notice.
3 This is a question of how the questioning of Mr. MacDonald has developed.
4 The document containing the charges and the decision of the Pre-Trial
5 Chamber, of course, make reference to Mandro and the attacks by the FRPI
6 and the FNI, but the emphasis, so far as we can see, is not on the
7 personal conduct of the accused at the attack of Mandro but that -- the
8 emphasis is that that should be the context. The emphasis of your
9 Honours' decision is that that should be the context. Even Mr. MacDonald
10 accepts that that is the context.

11 We do not accept that the presence of Mr. Katanga and the
12 personal participation in crimes at Mandro is context, or as
13 Mr. MacDonald puts it, goes to knowledge or intention. How can it
14 possibly go to knowledge or intention at the time of the Bogoro attack?
15 But I'm quite happy for us to proceed with the examination-in-chief and
16 come back to this issue as and when it arises.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.
18 I will simply ask for about three minutes to deliberate with Judge Diarra
19 and Judge Van den Wyngaert.

20 (The Trial Chamber confers)

21 PRESIDING JUDGE COTTE: (Interpretation) All of us, even though
22 we have different missions, wish to establish the truth and to do so at
23 the end of a fair and expeditious trial.

24 Witness 250 has already taken up a lot of our time, but it is
25 also true that he made it possible for us to deal with certain major

1 legal issues whose solution would be useful for the rest of our
2 proceedings. The other day, I said that we should not regret the time
3 that we spent dealing with legal issues that we will no longer have to
4 deal with in the future.

5 The Prosecutor has understood, at least we feel that he has
6 understood, that the two Defence teams are not opposed to his referring
7 to events that are different from those that happened in Bogoro on the
8 23rd of February, 2003. The Prosecutor has admitted that you will not
9 oppose his reference to previous or subsequent events to what the Chamber
10 is seized of, and this will be done to set out the context of this case.
11 And as Mr. O'Shea said a short while ago, to lay the foundation for the
12 crimes against humanity and the war crimes, because if they are
13 established, these elements could constitute crimes against humanity and
14 war crimes. And at the end of this definition of context, Mr. O'Shea
15 felt that there should not be questions that are too specific to the
16 extent that this would attribute responsibility for certain events to any
17 one of the accused. This is the view of the Chamber. For the Prosecutor
18 it is difficult, because in order to define a context it is necessary to
19 involve the protagonists and all those who were stakeholders in the
20 events that he wishes to discuss with the witness.

21 So the Chamber simply wishes to remind the Prosecutor, generally
22 speaking, that the necessity for expeditiousness makes it necessary now
23 to move forward, because if the contextual issues raise issues, then the
24 Defence will have to take those issues up, and therefore we are going to
25 have lengthy proceedings.

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 14

1 So, Mr. Prosecutor, you should not limit yourself mechanically
2 and automatically in the way that you are conducting your direct
3 examination, but I think this is not a call to order but an expression of
4 concern by the Defence teams so that you should not be taken by surprise,
5 and maybe you should sort out this issue after the hearing as gentlemen,
6 and then you continue your direct examination with the purpose of setting
7 out a context that will be useful to us.

8 Am I clear enough, Mr. MacDonald?

9 MR. MACDONALD: (Interpretation) Yes, Mr. President, and in
10 light of what you have said, I am not prepared to continue immediately.
11 I need to consult with my colleagues, because this is very important at
12 this particular time given the jurisprudence and given the comments made
13 by the Chamber. I think that two heads are better than one, and we would
14 like to consult to see whether, if necessary, the Chamber has to make a
15 ruling, because this is an issue that is at the heart of the proceedings
16 right now and for the other witnesses.

17 I understand fully well that Witness 250 has been here for
18 several days, but unfortunately, that is the way our proceedings have to
19 take place, and sometimes we have to take a decision on a case-by-case
20 basis.

21 PRESIDING JUDGE COTTE: (Interpretation) We have understood you,
22 as you pointed out, that this issue is not limited to Witness 250, and
23 during the testimony of the other witnesses, you may refer to this other
24 previous or subsequent elements or events so as to set out the context of
25 the case. We have fully understood you. You have, of course, the

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 15

1 possibility of reflecting on the manner on which you are going to
2 continue your direct examination, but we have to be very clear. Putting
3 the events for which the Chamber is seized in a context is legitimate and
4 even necessary, but while defining this context, any attempt to attribute
5 events to any one of the accused, that is events for which the Chamber is
6 not seized, it is possible that the Chamber may -- will assess everything
7 that comes before it, but this may not be a factor that will help us save
8 time.

9 How much time do you wish, ten minutes?

10 MR. MACDONALD: (Interpretation) Yes.

11 PRESIDING JUDGE COTTE: (Interpretation) We will suspend and
12 resume at 3.00 p.m.

13 Recess taken at 2.47 p.m.

14 On resuming at 3.02 p.m.

15 COURT USHER: All rise.

16 PRESIDING JUDGE COTTE: (Interpretation) The session is now
17 starting. Please be seated. The accused are with us.

18 Prosecutor, you have the floor.

19 MR. MACDONALD: (Interpretation) Thank you, your Honour, for
20 these ten minutes that you gave us to reflect on matters. We would ask
21 the witness to be brought in, and we'll continue with our questioning,
22 and we will see as we go along where this takes us, but obviously the
23 Prosecution has noted the Chamber's point of view, and the Chamber is
24 able to assess our previous submissions, and if it is appropriate, we
25 could come back to another moment to this debate, but for the time being

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 16

1 we can continue.

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

3 I won't repeat a third time what I already indicated on two occasions, so
4 just before this adjournment I think we are currently -- we have
5 understood this well. I would just like to draw your attention to one
6 particular matter and that is that it's important for these proceedings
7 to progress in the respect of the missions of everyone, yes, but now we
8 have to make progress.

9 So, Court Officer, we're therefore going to ask the accused and
10 the security officers to briefly leave the courtroom, the time in which
11 we can implement the closed session such that the witness can come in,
12 and then we will go into open session afterwards.

13 (The accused withdrew)

14 (Closed session at 3.04 p.m.)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 17

1 (Expunged)

2 (Open session at 3.12 p.m.)

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

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Court
6 Officer.

7 Good afternoon, Witness. Is your microphone working? Do your
8 headphones work?

9 THE WITNESS: (Interpretation) Yes, everything is working well.

10 PRESIDING JUDGE COTTE: (Interpretation) That's perfect. So
11 before the Prosecutor asks you the questions that he has envisaged asking
12 you today, the Court Officer, for the proper functioning of our
13 proceedings, should indicate to us what the -- what numbers have been
14 given to the documents that the Prosecutor produced 24 hours ago when we
15 were dealing with issues related to certain witness statements. You can
16 therefore, Court Officer, read out to us these numbers so that they may
17 figure in the transcript.

18 COURT OFFICER: (Interpretation) Thank you, your Honour. The
19 extracts of the transcripts 82 of the 28th of January, 2010, entitled by
20 the Office of the Prosecutor "Child Soldiers" and registered to the file,
21 MFI-OTP-00026.

22 The extract of the document DRC-OTP-00177-0327 containing the
23 page 327 and 3 -- 4142, is registered with an FA 9
24 number (as interpreted) OTP-000-27.

25 And the extract of the document DRC-OTP-1013-0002 containing

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 18

1 pages 2, 12, and 21 is registered to the file with the number
2 MFI-OTP-00028.

3 The extract of the transcripts number 92 of the 1st of February
4 2010 entitled by the Office of the Prosecutor "Destruction" is registered
5 to the file with the number MFI-OTP-00029.

6 The extract of the document DRC-OTP-0177-0299 containing page 299
7 and 320 to 322 is registered to the folder with the number MFI-OTP-00030.

8 The extract of the document DRC-OTP-00 -- 0177-0363, containing
9 page 363 and page 376 to 378 is registered to the file with the
10 OTP-00031.

11 The extract of the transcript 14 of the 1st of February, 2010,
12 entitled by the Prosecutor "Chants" is registered with the number
13 MFI-OTP-00032.

14 The extract of the document DRC-OTP-1013-0002 containing pages 2
15 and 21 is registered with the number MFI-OTP-00033.

16 The extract of the transcript number 92 of the 28th of January,
17 2010, entitled by the Office of the Prosecutor "Civilians in Bogoro," is
18 registered with the number MFI-OTP-00034.

19 The exact of the document DRC-OTP-0177-0262 containing page 262
20 and pages 295 to 298, is registered with the number MFI-OTP-00035.

21 The extract of the document DRC-OTP-0177-0299 containing pages
22 299, 305, and 319 to 324, is registered with the number MFI-OTP-00036.

23 The extract of the document DRC-OTP-0177-0327 containing page 327
24 and pages 359 to 362, is registered with the number MFI-OTP-00037.

25 The extract of the document DRC-OTP-0177-0363 containing page

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 19

1 363, pages 366 to 368 and 373 to 376 is registered with the number
2 MFI-OTP-00038.

3 The extract of the document DRC-OTP-0177-0466 containing page 466
4 and pages 485 to 488 is registered with the number MFI-OTP-00039.

5 The extract of the transcript 91 of the 27th of January, 2010,
6 entitled by the Office of the Prosecutor "Munition/Weapons" is registered
7 with the number MFI-OTP-00040.

8 The extract of the document DRC-OTP-0177-0230 containing pages
9 230 and pages 243 to 248 is registered with the number MFI-OTP-00041.

10 I'm just going to make a correction with regards to the page.
11 This extract contains pages 230 and 243 to 248.

12 The extract of the document DRC-OTP-1013-0002 containing pages 2
13 and pages 11 to 14, is registered with the number MFI-OTP-00042.

14 I would also like to add the following points:

15 The Office of the Prosecutor has indicated to the Registry that
16 all these documents are confidential.

17 The documents mentioned above are registered in the Ringtail
18 system or shall be after the audience -- after the hearing.

19 PRESIDING JUDGE COTTE: (Interpretation) We would like to thank
20 you for this very important work. Certainly difficult, but it will make
21 it possible for everybody at the appropriate time to be able to find --
22 find themselves in the debates that took place yesterday.

23 Now, the floor is over to you, Mr. Prosecutor.

24 MR. MACDONALD: (Interpretation) Thank you.

25 Questioned by Mr. MacDonald: (Continued)

1 Q. (Interpretation) Witness, I would like to go back to an issue, a
2 clarification, with regard to Nyankunde and the APC delegation when it
3 left the region of Bedu-Ezekere to go in the direction of Nyankunde. I
4 would like to draw your -- or draw the attention of everybody to this,
5 obviously that of the witness as well, to the answer that given yesterday
6 in the transcript 98, and its EVD version -- and its edited version,
7 rather, on page 41, line 9.

8 My question was basically how many young people accompanied the
9 APC. So how many young people from Zumbe accompanied the APC, and you
10 answered there was a section that Mathieu Ngudjolo knew which was led by
11 Major Bahati, and there you continued to give your answer.

12 I'm not going to read it all out, because I just want to stop on
13 the issue of the section that Mathieu Ngudjolo knew.

14 At the time that this delegation, APC delegation, and these young
15 people left, who commanded the fighters who were in Bedu-Ezekere?

16 A. In Bedu-Ezekere there were commanders such as Boba Boba, Pascal
17 Kute, Nyunye, and they were the commanders.

18 Q. At this time, who -- was there a leader among the commanders that
19 you've just mentioned?

20 A. It was a village which was part of a groupement, and at the head
21 of that groupement there was a head called Manu. I don't know the other
22 name. He was known by his surname, Manu.

23 Q. I'll go back to the extract that I've just read to you. The
24 question was: How many young people did he accompany, and you said there
25 was a section that Mathieu Ngudjolo knew that was led by Major Bahati.

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 21

1 What -- do you want to -- what do you mean when you say Mathieu
2 Ngudjolo -- there was a section that Mathieu Ngudjolo knew? What do you
3 mean by that with regard to Mathieu Ngudjolo?

4 A. I want to say that the -- that the staff knew -- the chief staff
5 knew where these soldiers come from. There were also -- there were also
6 people who were taking -- he knew where people were in the forest when an
7 order was given. Somebody went with a company, and that's how there was
8 a -- there were 12 soldiers, and leading these soldiers was the leader,
9 namely Bahati.

10 MR. MACDONALD: (Interpretation) If you would allow me, I would
11 just like to look at the answer.

12 Q. When you say that the staff knew from where these soldiers came,
13 when you refer to the staff, who were you referring to exactly there?

14 A. When -- I'm talking about the general staff, because there is a
15 chief of that general staff. There were soldiers in the groupement of
16 Bedu-Ezekere where a certain population was living.

17 Q. Who was the chief of this general staff?

18 A. There was the chief of general staff, Tatsi, of the Walendu
19 collectivite who stayed in Ezekere, if it's Mathieu Ngudjolo.

20 Q. Very well. Now if we go back to Mandro -- excuse me. I'm sorry,
21 I forgot a last question. Do you know or -- the date on which the attack
22 on Nyankunde took place?

23 A. At this time, I didn't have access to a calendar, so I can't
24 confirm the date. If I had had a calendar, I would have been able to
25 give more detail with regards to different dates.

1 Q. Very well. You didn't have a calendar, but we know that you
2 arrived in the region of Zumbe after the fall of Lopondo's government in
3 Bunia, and we know that this happened in the month of August, and there
4 was an admission on the part of the Defence lawyers on this subject. So
5 my question is: How much time after your arrival in Zumbe or in the
6 region of Bedu-Ezekere did the attack on Nyankunde take place, if you
7 know?

8 A. It was one month and a half later, but that's an estimation.

9 Q. Very well. So one -- one month and a half afterwards the attack
10 took place.

11 A. Yes, in one month and a half. We drove the APC out of the
12 district. That's to say the people who -- they were next to the lake,
13 and they were trying to run away, and they went through Zumbe, but in
14 reality they were trying to flee, and that happened in a space of one
15 month and a half.

16 Q. Very well. If we go back to Mandro, and to start on the subject,
17 I would like to go back to and to clarify if we can -- if you can clarify
18 an answer that you gave yesterday when we left, and here I would refer to
19 the same transcript, 98, namely page 59 of it. Line 2, the end of the
20 question was as follows:

21 "Who planned this attack?"

22 Referring to the attack on Mandro at the time. Your answer is
23 that -- you mentioned that it was the same people who planned the attack
24 on Bogoro, including the people who knew the position of Mandro very
25 well.

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 23

1 So then you mention after my question, which was as follows, you
2 said (as interpreted):

3 "Could you give us the names of people who planned the attack on
4 Mandro?"

5 You answered on line 9:

6 "It was the operational commander who I knew while in the FNI,
7 and he was called Major Bahati. He had his military colleagues, and they
8 were numerous. There were other people who had been sent to different
9 positions."

10 So I would like us to focus on this subject more precisely. Who
11 was -- who ordered the attack on Mandro?

12 A. The -- there was weapons that went to Mandro. There was an
13 acquirement, and we used these -- or we used these weapons to attack
14 Bogoro and Kasenyi. So there were -- weapons were dropped, and they
15 were -- they had to neutralise the forces in order to do so.

16 Q. I'm sorry to ask you this question, but I just want to make sure
17 that there isn't a problem with the translation. Do you remember the
18 actual question that I asked you, that I just asked to you? Are you able
19 to repeat it?

20 A. We (as interpreted) asked who took the decision to attack Mandro.

21 Q. So could you please answer my question.

22 A. There were rifles that had been brought to Mandro, and because of
23 those guns, people were not at ease, so the place where those weapons had
24 arrived had to be taken care of. We were able to pick up some weapons
25 that were slightly damaged.

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 24

1 MR. MACDONALD: (Interpretation) Just a moment, Mr. President.
2 (Prosecution counsel confer)

3 MR. MACDONALD: (Interpretation) At this point, Mr. President, I
4 would like to request that you direct the witness to answer the question
5 that I put to him, that is, who ordered the attack, that is, the name or
6 names of the person or persons who ordered that attack on Mandro.

7 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, for
8 several days now the Prosecutor has been asking you questions. There are
9 questions to which you give very precise answers. There are others to
10 which you cannot give precise answers because you no longer remember or
11 simply because you do not know the answers, and from time to time there
12 are questions that you understand but that you don't answer and yet you
13 are probably able to answer those questions.

14 The Prosecutor has twice asked you the following question: Who
15 ordered the attack on Mandro? You can answer that you do not know. You
16 can say that you do but that you cannot tell or you don't want to say.
17 You can also answer that you know the answer and you are going to tell
18 us.

19 So please, let me remind you that on the first day you said that
20 you will speak the truth, and after each question that is put to you, the
21 Chamber feels that you remember your pledge to this Court. So please,
22 there is a question. Answer the question.

23 THE WITNESS: (Interpretation) Apart from the Lendus, there was
24 the FNI and the FRPI that ordered the attack on Mandro.

25 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, this is an

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 25

1 answer to a precise question.

2 Can you proceed, Mr. Prosecutor.

3 MR. MACDONALD: (Interpretation)

4 Q. Do you know who within the FNI or the FRPI?

5 A. FRPI or FNI, these were not parties that belonged to a single
6 person. People were suffering, and to put an end to that suffering they
7 would request something or other to meet their needs.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, in
9 light of the discussion that we had a short while ago, I think that the
10 answer just given by the witness to the question that you wanted the
11 Chamber to rephrase is something that makes it possible for you to place
12 the facts before the Chamber within a more general context. We do not
13 think that you have to go any further to specifically have a name. You
14 have had an answer pointing to the FNI and FRPI. We believe that the
15 context has been established, at least as we think that you wished, and
16 we think you should proceed with your examination.

17 MR. MACDONALD: (Interpretation) Mr. President, pursuant to
18 Article 69(4), the Prosecutor submits the Court can rule on the relevance
19 and admissibility of any fact relating to evidence taking into account
20 the probative value of that evidence and the testimony of the witness. I
21 wanted that article read out for the record.

22 I would like to submit, Mr. President, that this issue is
23 important, that the people who are responsible fall within this context.

24 The witness is present. Maybe he should leave the courtroom so
25 not to be influenced.

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 26

1 He referred to people who were responsible in Bogoro, and he
2 referred to people who were responsible in Mandro, and we are submitting
3 that Mandro was within the continuum of what had started in Bogoro. And
4 when we look --

5 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, please let
6 Mr. MacDonald finish and then you will have the floor.

7 MR. MACDONALD: (Interpretation) With your leave, Mr. President,
8 please let me have a moment.

9 If you look at the elements --

10 PRESIDING JUDGE COTTE: (Interpretation) The usher, please, can
11 you go to the witness box and take off his headset for the duration of
12 this discussion, please.

13 MR. MACDONALD: (Interpretation) I'm sorry, the witness
14 understands, French, Mr. President. I prefer to use French rather than
15 English.

16 PRESIDING JUDGE COTTE: (Interpretation) Do you wish the witness
17 to leave the courtroom.

18 MR. MACDONALD: (Interpretation) Yes. But before that, there
19 was no objection from the Defence at the time that the Chamber
20 intervened, so I think it would be preferable for the witness to leave
21 the courtroom for us to discuss this issue.

22 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer,
23 let us go into closed session, but before that, the accused should be
24 escorted out of the courtroom before the witness leaves the room.

25 (The accused withdrew)

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 27

1 (Closed session at 3.37 p.m.)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Open session at 3.38 p.m.)

12 COURT OFFICER: (Interpretation) We are in open session,

13 Mr. President.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

15 Prosecutor, please briefly state your point of view, and then

16 Mr. Hooper will follow next. We are listening to you.

17 MR. HOOPER: (Previous translation continues) ... to follow at

18 the moment. It was merely the concern with the witness's earphones. I

19 wasn't proposing to say anything serious.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.

21 I had interrupted you quite briskly, because I thought the Prosecutor

22 should conclude. Thank you.

23 MR. MACDONALD: (Interpretation) Mr. President, obviously my

24 observation is not intended to bother the Chamber or to delay the

25 proceedings. I understand the concerns of the Chamber, but you have

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 28

1 obviously observed that at times the witness does not answer certain
2 questions, and since the beginning of his testimony this has been
3 happening, and this has extended the duration of the examination because
4 some questions have to be asked two, three, four times. But this is
5 something that is very important, and it has to be argued in full
6 knowledge of the facts. The Chamber has to fully appreciate the
7 importance of this issue and take the time necessary to assess the points
8 for and against.

9 I think justice obviously is represented by a scale. There is
10 the interests of the Defence and the -- the prejudice that may be done to
11 the Defence, but it is not because there are loud objections from one
12 party that we should not discuss certain issues, and the Defence will not
13 necessarily suffer a prejudice if we consider certain issues in light of
14 the jurisprudence of the ICTY, for example.

15 I would like to refer you, Mr. President, to the facts in this
16 case and to the answers of the witness. In this case, and I'm thinking
17 of the English expression, there is a pattern --

18 MR. HOOPER: (Microphone not activated) ... the accused.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

20 MR. HOOPER: There's no -- (Microphone not activated)

21 PRESIDING JUDGE COTTE: (Interpretation) But you know how much
22 the Chamber deplores the sitting arrangement in this courtroom, whereas
23 the accused are sitting very far back there, and they are supposed to be
24 at the heart of the proceedings. This is why from time to time I address
25 them, so that they should know that we are not forgetting them, but we

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 29

1 have just forgotten them.

2 Thank you.

3 (The accused entered court)

4 JUDGE DIARRA: (Interpretation) Mr. Kilenda, your vigilance
5 failed us this time around.

6 PRESIDING JUDGE COTTE: (Interpretation) The accused, please, we
7 resumed a short while ago, and we forgot to bring you back into the
8 courtroom. We are sorry for that, and the Prosecutor will go back to the
9 beginning of his observations so that you should not miss anything of
10 what was said during your absence.

11 Mr. Prosecutor, please repeat in summary what you said in the
12 absence of the accused who are now present thanks to the vigilance of
13 Mr. Hooper.

14 MR. MACDONALD: (Interpretation) My observations in the absence
15 of the two accused for the time being were limited to the time that we
16 are supposed to devote to certain discussions, taking into account the
17 importance of the allegations against the two accused. But despite the
18 seriousness of these charges and in spite of the fact that the Defence
19 may object sometimes more strenuously than at other times, it does not
20 necessarily mean that they are correct. It is up to the Chamber to
21 assess the admissibility and probative value in relation to a possibly
22 prejudicial issue.

23 We have Article 69(4) in which the civil law system is mentioned
24 and the adversarial system is mentioned, but more is derived from the
25 civil law system than from the common law system, and I believe that my

1 learned colleagues will agree with me on that.

2 This issue is not trivial, that is, when it comes to previous and
3 subsequent accounts -- or, rather, attacks. You have Article 7 under the
4 section "Elements of Crime." There are three paragraphs there, and the
5 second paragraph refers to the issue of participation and knowledge
6 required.

7 You have in the record a summary made by Pre-Trial Chamber I
8 which deals with an attack on Bogoro that later spreads to Mandro and
9 subsequently to Bunia. On the 24th of February, 2003, Bogoro was
10 attacked. On the 4th of March, 2003, Mandro was attacked, and I will
11 seize the opportunity of the door opened by Mr. O'Shea. The parties
12 agreed that there was an attack on Mandro on the 4th of March, and
13 subsequently, on the 6th of March in Bunia. So this pattern is a
14 demonstration of both the material and intentional element of the crimes
15 before us. They fall into a contextual foundation, of course, but
16 insofar as the two accused participate, there is continuity, and this
17 speaks to the mens rea of these crimes before you.

18 So once more, Mr. President, all of this arose from the fact that
19 Mr. O'Shea raised the issue without giving notice to the parties despite
20 the fact that there are filings before the Chamber on which no rulings
21 have been made yet. So would it be useful to come back and debate the
22 legal issues even if it is after 4.00 p.m.?

23 But there is another alternative which Mr. O'Shea had proposed to
24 a certain extent before. You are professional Judges. You are in a
25 position to admit the evidence, to allow everyone to comment on that

1 evidence, and then to assess the prejudicial effect at the end of the
2 trial. All the parties have the opportunity to plead before the Chamber
3 as to whether those elements should be admissible or not depending on
4 their effect and probative value, and your Honours will have the
5 opportunity to determine whether you can rely on that evidence.

6 In common law there's also the principle of similar facts which
7 speak to the mens rea. In other words, the same exercises or the same
8 crimes are perpetrated in the same manner in various locations which
9 establish that pattern of intention. So there is jurisprudence from the
10 ICTY on this issue, and there is the judgement -- there is a judgement.
11 There is also the judgement on Kucetic (as interpreted), but beyond that
12 I submit that there is -- there are two ways to allow all the parties to
13 express themselves on this issue or to admit this evidence, and at the
14 end of everything the Chamber will be able to assess the prejudicial
15 effects.

16 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, before
17 we suspend our hearing once again for reasons that are linked to the
18 legitimate requirements of the Registry, the Chamber would like to tell
19 you the following: We are perfectly calm. Our requirement for
20 expeditiousness does not lead us to rush in any way. Justice can -- can
21 only be rendered serenely, after sorting out all the legal issues that
22 may arise during the proceedings. So you can be assured that in no case
23 are we going to confuse speed and expeditiousness, and speed has no place
24 in law. It is expeditiousness that inspires us.

25 There is a second observation. The Chamber is fully aware, as

1 you know, of the hybrid nature of the texts that govern our action.
2 We -- in fact, the Chamber is also composed of Judges that are more
3 familiar with civil law but who have fully understood the common law
4 texts, particularly the texts that we are supposed to implement are
5 included, but we try not to ensure balance as such, but to the extent
6 possible to implement what is good in common law and which some of us
7 implement on a daily basis as well as everything that is good in civil
8 law, and this makes us possible to have proper proceedings.

9 On the issue that we have been discussing ever since the
10 beginning of this hearing, the Chamber understood that the debate was
11 closed, and you wanted to re-open it a short while ago.

12 And this is our third observation: The Chamber would like to
13 recall if that is necessary, that we do not intend to give priority to
14 any one of the parties or participants. We have to ensure the necessary
15 balance, and we make every effort not to allow ourselves to be impressed
16 by the sudden expressions of any participants. We do not wish to be
17 impressed by any loud objections from any one of the parties.

18 The Chamber tries to play its role of arbitrator and of Judges,
19 because that is the reason why we are here.

20 You mentioned Article 69(4) of the Statute. The Chamber can rule
21 on the relevance and admissibility of any evidence in accordance with the
22 Rules of Procedure and Evidence taking into consideration the probative
23 value of that evidence and the possibility that it could be prejudicial
24 to the fairness of the trial or the testimony of a witness. This is a
25 very important provision, and this is the provision that inspired us to

1 take our position at the beginning of this hearing.

2 It appeared to us that when with regard to facts not included in
3 the case before the Chamber you obtain answers such as, "It was the FNI
4 and FRPI," it seems to us that such information as part of contextual
5 information constitute a sufficient answer. Such information constitutes
6 a sufficient answer. There is no need to recall that when mention is
7 made of the FNI or the FRPI based on what this witness has said and based
8 on what other witnesses will say, it seems to us that when mention is
9 made of the FNI or the FRPI it is not difficult to guess who is at the
10 head of those two groups. So when you are laying down the context, when
11 you have answers such as those that have been given to you, we believe
12 that those answers are useful for the context but are not included in the
13 facts of which we are seized.

14 Of course we can delay the assessment of certain elements to the
15 end of the trial before determining whether they are prejudicial or not
16 to the Defence. You are perfectly correct about that. Mr. O'Shea even
17 mentioned this as one of the possible solutions, and the Chamber agreed,
18 particularly because we were sensitive to the argument according to which
19 questions that are too long or too many or which are not indispensable
20 will also lead necessarily to a cross-examination that is also long and
21 made up of many questions. Maybe the procedure can change along the way,
22 but we think such a procedure can only be prejudicial to the duration of
23 the proceedings.

24 Mr. Prosecutor, there is no animosity on the part of the Chamber.
25 We would be failing in our duties if we expressed any animosity against

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 34

1 any one of the parties. There is no question about that. Sometimes you
2 may observe gestures that seem to indicate a certain mood, but we do our
3 best to remain as calm as possible. We all know where we are going, and
4 we all wish to arrive there in a timely manner.

5 I believe that this debate is now closed. We are not going to
6 come back to it. You are going to proceed with your
7 examination-in-chief, which unquestionably it is very difficult. All the
8 witnesses are not going to be the same. It is also possible that some
9 Defence witnesses might also act in a similar manner. So we proceed, but
10 we are going to suspend, and we resume at 4.30 p.m. You will complete
11 your direct examination at that time, after which the Chamber will tell
12 Mr. Luvengika what we think about the questions that they wish to ask,
13 and at that time based on the civil law we may ask the witness questions
14 to have certain clarifications.

15 Court is suspended.

16 Recess taken at 3.59 p.m.

17 On resuming at 4.32 p.m.

18 (Closed session at 4.32 p.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 35

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Open session at 4.34 p.m.)

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

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

10 Witness, we are now taking up our session again. The Prosecutor
11 will therefore continue with his examination, and you can turn towards
12 him.

13 MR. MACDONALD: (Interpretation)

14 Q. Witness, yesterday you mentioned that Germain Katanga had lived
15 with Mathieu Ngudjolo. My question --

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you. The
17 interpretation booth in French indicates to us, and here I'm turning to
18 Mr. Hooper's team who perhaps didn't hear this, they have indicated to us
19 that the Swahili interpreters are confronted with a technical difficulty
20 which makes it impossible for them to fulfil their duties.

21 So, Court Officer, we are now going to hurry the technicians so
22 that they can come and sort out this technical difficulty.

23 Thank you, sir. So it has been indicated to us that the Swahili
24 booth can now do the work.

25 So the Prosecutor, you were interrupted. Please come back to

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 36

1 where you were.

2 MR. MACDONALD: (Interpretation)

3 Q. Okay. I will repeat my question. I will reformulate it.

4 Witness, when Germain Katanga was in the residence of Mathieu Ngudjolo,
5 you personally -- where were you personally?

6 A. I was in our company camp in the centre of Zombe.

7 Q. Did you go at any time to the residence or near the residence
8 when Germain Katanga was with Mathieu Ngudjolo?

9 A. To go to Ladile, yes, I went to Ladile, but I didn't have a long
10 stay there. When we went to fight in Mandro, we were there three -- it
11 took three to four days, and then he went back home because he was an
12 authority.

13 Q. So you say that Germain Katanga spent three to four days in the
14 residence of Mathieu Ngudjolo? Is that what you've just said?

15 A. Yes. Yes. Where it concerns Mathieu Ngudjolo, yes. We had
16 three to four days to fight in Mandro, and that's what justified his
17 presence.

18 Q. Were you witness, were you -- or was it brought to your
19 attention -- were the discussions that there could have been between
20 Germain Katanga and Mathieu Ngudjolo brought to your attention at this
21 time?

22 A. No. I didn't know. I was in Zombe. Between Zombe and the
23 residence of Mathieu Ngudjolo there is a real distance, which I would
24 estimate at 45 minutes or an hour.

25 Q. Where were you at the time of the attack on Mandro?

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 37

1 A. I was in Mandro. I also left for Mandro.

2 Q. And how much time did the fighting last in Mandro?

3 A. The fighting started at 5.30, and at 13.30 all the people who had
4 left for Mandro had already come back home.

5 Q. Yesterday, you mentioned that there were three groups of fighters
6 that left the groupement of Bedu-Ezekere, and those, they went towards
7 Mandro, and in the centre you mentioned that Germain Katanga and Mathieu
8 Ngudjolo were there. Do you remember what -- or do you know what they
9 did when they went to Mandro?

10 A. There was nothing special during the journey. All of these
11 people just had one objective, and that was to fight in Mandro.

12 Q. So all the groups, including Mathieu Ngudjolo and Germain
13 Katanga, had an objective of fighting in Mandro?

14 A. You can't call that a group. We called it a group, just because
15 it was an attack plan, but there was a plan of attack to attack Mandro,
16 and that is the reason why the people attacked Mandro from different
17 directions.

18 MR. MACDONALD: (Interpretation) I with now like to turn to my
19 colleagues. Is there an admission with regards to the date of the attack
20 as suggested by Counsel O'Shea?

21 MR. HOOPER: Not insofar as this witness is concerned, no, but
22 there is a general admission, but not insofar as this witness's evidence
23 is concerned.

24 MR. MACDONALD: (Interpretation) With your leave, your Honour.

25 MR. FOFE: (Interpretation) No, there has been no admission

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 38

1 concerning the date.

2 MR. MACDONALD: (Interpretation)

3 Q. Witness, are you able to tell us how much time after the date --
4 the attack on Bogoro, how much time after did you attack Mandro?

5 A. The second or the third day after the fall of Bogoro we attacked
6 Mandro.

7 Q. And you attacked Mandro how many times during this period with
8 FNI/FRPI soldiers combined together?

9 A. We -- it was when we left that we attacked Mandro. That's to say
10 that this happened just once, and beyond the former attacks which
11 happened there were other attacks which had happened previously.

12 Q. Okay. And so following the attack, which started at 5.30, and
13 you had an attack at -- well, at 1.30 you were already back at
14 Bedu-Ezekere. Who took possession of Mandro following the attack?

15 A. Mandro was an area of the state.

16 Q. I'll reformulate my question. You attacked Bogoro. You
17 established yourselves there according to your testimony, but did you do
18 the same thing in Mandro?

19 A. Nobody stayed in Mandro. We fought in Mandro, and we left it.
20 There were conflicts coming from there, and then when we had beaten the
21 enemy we left it. Perhaps afterwards the government reoccupied Mandro.

22 Q. And in what state did you leave Mandro?

23 A. We left Mandro beaten.

24 Q. What does that mean, "left Mandro beaten"?

25 A. Mandro isn't a person. Mandro is an army which was present

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 39

1 there. When we defeated them, there was nothing else to do there.

2 Q. Now, following the attack on Mandro, did you go elsewhere?

3 A. After the attack on Mandro, we didn't go anywhere else, but we
4 had learnt that Ugandans were fighting the UPC in Bunia. That was after
5 the fall of Mandro and Bogoro. The Ugandans and UPC forces were fighting
6 in Bunia.

7 Q. Do you know how this fighting --

8 JUDGE DIARRA: (Interpretation) A confusion has come in. Mandro
9 is a village. Is it a town or an armed group? I have problems to
10 understand this.

11 MR. MACDONALD: (Interpretation) With your leave, I can ask the
12 question.

13 Q. Can you describe Mandro? What was there at Mandro?

14 JUDGE DIARRA: (Interpretation) I understood that it was a
15 locality, but through the last remark I don't know if it's a group, a
16 person, or a locality.

17 MR. MACDONALD: (Interpretation) Pardon.

18 Q. Witness, can you explain, please?

19 A. Mandro is part of the groupement of Bahema Banywagi. This is a
20 groupement which massacred all the population.

21 THE INTERPRETER: And the interpreter didn't understand the last
22 word of the sentence.

23 MR. MACDONALD: (Interpretation)

24 Q. Could you repeat the end of your answer. You said that Mandro
25 was a place that had attacked -- massacred, rather?

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 40

1 A. They massacred the collectivite of Walendu-Tatu from --
2 Walendu-Tatsi, that is to say the force was in Mandro massacred the
3 people of the collectivite of Walendu-Tatsi.

4 JUDGE DIARRA: (Interpretation) Thank you.

5 MR. MACDONALD: (Interpretation)

6 Q. Now, coming back, with your permission, to Bunia, my question is
7 as follows: To your knowledge, do you know how the fighting between the
8 Ugandans and the UPC started in Bunia following the attack on Mandro?

9 A. I don't know how this conflict started. However, there were
10 Ugandans who were on the side of the Yambi in the space between Yambi and
11 Dele. There was a camp, a military camp. There were mountains, and we
12 have heard gunfire. The Ugandans were fighting UPC forces who were in
13 this camp, and the fighting was close to the aeroport, pretty much
14 everywhere. It was a fight between the UPC and the UPDF.

15 Q. So just going back to certain information which you've just
16 mentioned, you said that there was a Ugandan camp which was situated
17 between Dele and -- Dele is on the road to Bogoro leaving from Bunia; is
18 that correct?

19 A. Yes. There was an UPDF camp. If you go through this camp, you
20 will regret it. There were holes of riflemen there.

21 Q. So you said that you heard gunfire coming from this camp. Is
22 that the answer that you gave us previously?

23 A. Yes, gunfire which we had heard meant the start of clashes. He
24 would thought that they were attacking Zumbe, and that's why we went down
25 the mountain to be able to have a look and see, and we saw that it was a

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 41

1 fight between the UPC and the UPDF.

2 Q. When you noted that there was fighting between the UPC and the
3 UPDF, what did you do?

4 THE INTERPRETER: The interpreter didn't hear the witness's
5 answer, who is speaking very quickly.

6 MR. MACDONALD: (Interpretation)

7 Q. I would please -- excuse me, Witness. I will have to make a sign
8 to stop because the interpreters didn't understand your answer. So I'm
9 going to repeat my question.

10 When you were situated on that mountain and you observed what
11 happened, what did you do?

12 A. We were aware of the fact that if these people were fighting with
13 the Ugandans, they were going to attack us as well given that the
14 Ugandans were trapped. We had driven out the UPC, and the Ugandans came
15 out and they continued the fighting.

16 Q. So you left and you -- where did you go?

17 A. All the Ugandans took positions in the holes, the snipers' nests,
18 and the UPC forces had just come. So we were aware that if UPC forces
19 came to beat the Ugandans they were going to attack us, and that is why
20 we fought to help the Ugandans, to come out and to get -- out of these
21 snipers' nests, and we had to continue fighting.

22 Q. So you went to fight in the Ugandan camp; is that correct?

23 A. We didn't fight, but we drove the UPC out. That made it possible
24 for the UPDF to continue fighting the UPC.

25 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, just a

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 42

1 problem of interpretation.

2 Please don't forget, Witness, to speak slowly.

3 Prosecutor, this is a rule that which we have to apply to all of
4 us. Please don't forget that the translation is done for the team in
5 English on a relay, and the speed, which is very legitimate of the
6 discussion, does have an effect with regards to a delay on the
7 translation in English. So please.

8 MR. MACDONALD: (Interpretation) I'm sorry. Things progress
9 well, and then I have a tendency to bring the questions forward quickly
10 and to take advantage of it.

11 Q. Witness, when you say "we," which group are you referring to?

12 A. It was the FRPI and the FNI had already met at that time. There
13 were forces of the FRPI who were with the FNI and vice versa. They lived
14 with them. We just were one group. We experienced a strange event when
15 we were told that if the UPC managed to beat the Ugandans, they were
16 going to attack us as well, and that's the reason why we went to help the
17 Ugandans, and they continued fighting UPC forces.

18 Q. Who decided that the FNI/FRPI forces were to push back the UPC?

19 A. There were our authorities, our authorities with whom we observed
20 what was happening. When we saw the Ugandans get back into the holes, we
21 had to help them to get them out because they couldn't fight down in
22 these trenched areas.

23 Q. When you referred to the authorities, could you name them,
24 please?

25 A. At that time there wasn't a chef de groupement in that place

1 because we didn't think that we could be attacked.

2 Q. I'm sorry. My question was that you mentioned that there were
3 FNI/FRPI forces who went to drive back the UPC. Now, my question is who,
4 therefore, decided among the FRPI/FNI fighters to drive back the UPC?
5 Who took the decision?

6 A. When the Ugandans found that they were trapped, there were
7 certain Ugandan forces who tried to fly -- flee and come towards us.
8 They asked for help. They said, "Come and help us." And when some
9 forces drew back or fled, they came to ask for help from us. And when we
10 noted that they were coming to us to ask for help, we helped them, and we
11 really did help them. They came out of the trenches, and they advanced.

12 Q. At that time, where was Mathieu Ngudjolo?

13 A. The people who were on the mount blue, on the Blue Mountain chain
14 came to the office of the region below. It was on a plain near Teko, and
15 they occupied the entire plain.

16 THE INTERPRETER: The Swahili interpreter says he did not hear
17 the whole answer.

18 THE WITNESS: (Interpretation) But I must tell you that there
19 was a village known as Fichama, but in fact it was not Fichama. It was
20 near Fichama.

21 THE INTERPRETER: Points out the witness.

22 MR. MACDONALD: (Interpretation)

23 Q. And so you're saying that there were FRPI and FNI soldiers who
24 went and took up a position on that plain? Was that your testimony?

25 A. We still had a position in Bogoro. There were members from the

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 44

1 FNI and FRPI who had come from Bogoro and who had assembled. They
2 thought that they were going to lose Bogoro to the enemy, and it was at
3 that time that the UPC and the UPDF were fighting.

4 PRESIDING JUDGE COTTE: (Interpretation) I'm sorry, but a short
5 while ago the Swahili interpreter pointed out that he had not heard the
6 last part of the answer to the last-but-one question that you asked. I'm
7 going to try to locate it, unless the court reporter -- or, rather, the
8 Court Officer has found it. She should read it out to us for the record.

9 COURT OFFICER: (Interpretation) Mr. Prosecutor, in the English
10 transcript -- (Previous translation continues) ... (In English) Did not
11 hear the whole answer. (French spoken) "At that time, where was Mathieu
12 Ngudjolo?"

13 MR. MACDONALD: (Interpretation) I'm sorry, Mr. President. I
14 was not looking at the transcript in English but in French, so I will
15 rephrase the question, or I will actually ask it.

16 Q. Where was Mathieu Ngudjolo? That is the question I had asked.

17 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, the
18 question was asked. You did not stand up. The witness answered. The
19 only problem is that the end of the answer was not understood,
20 apparently, by the two interpreters, French and English, because I can
21 see on the transcript in French the interpreter did not hear the last
22 part of the answer. So we should allow the witness to conclude. But
23 tell us, even though I do not wish you to come back to something that was
24 already -- an answer that was given.

25 MR. FOFE: (Interpretation) Well, it is okay, but I think you

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 45

1 understand why I am standing up. Thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) The point is to end an
3 answer, to complete an answer that was already given. I think his memory
4 is still serving him correctly.

5 MR. MACDONALD: (Interpretation)

6 Q. Mr. Witness, when I asked you the question, "Where was Mathieu
7 Ngudjolo when you were positioning yourself on the mountain," you
8 answered, but unfortunately you were speaking too quickly and the
9 interpreter was not able to complete your answer.

10 Are you able to repeat the answer that you gave to my question?

11 A. Mathieu Ngudjolo and his men of the FRPI and the FNI, because
12 they were united in the Bedu-Ezekere groupement. We went below that to
13 the slope of that mountain. I think it was an opportunity for us to be
14 united together at that location.

15 PRESIDING JUDGE COTTE: (Interpretation) Please proceed,
16 Mr. Prosecutor.

17 MR. MACDONALD: (Interpretation)

18 Q. Who asked the troops in Bogoro to take the road towards Bunia?

19 A. There was an intense gunfire, and each person was wondering what
20 was going on. The people who came from Bogoro arrived at Dele, and then
21 they continued on to Lenghabo. They left their positions.

22 Q. Are you able to able to tell us where Germain Katanga was at that
23 time?

24 A. I left the mountain, and I did not know where Germain Katanga was
25 at that particular point. I do not know where he was, but I knew that

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 46

1 there were soldiers occupying positions in Bogoro and Lagura who met up
2 somewhere. They occupied positions in Lenghabo and in Dele, and they
3 assisted at the front, that is, during the fighting between the UPC and
4 the UPDF.

5 Q. Mr. Witness, with regard to the attack in Mandro, can you tell us
6 when the fighting in Bunia took place, that is, the fighting between the
7 UPC and the UPDF? How long after the attack in Mandro?

8 A. It was about one week afterwards or more -- or, rather, at the
9 most.

10 Q. Can you describe to us how the various troops of the FRPI and the
11 FNI were communicating amongst themselves at that time, that is, in order
12 for them to unite and become a single group?

13 A. For the purposes of communication, they were using some radio
14 communication equipment belonging to a health centre and which was in
15 Ezekere.

16 Q. You mentioned a hospital. Where was that hospital?

17 A. It was radio communication equipment that was being used at the
18 hospital, and in the groupement Bedu-Ezekere, the people using that
19 equipment was -- placed it at the top of a mountain for better reception.
20 This was mobile equipment. Sometimes it was in Kambutso and sometimes in
21 Masu.

22 MR. MACDONALD: (Interpretation) Just a moment, please.

23 (Prosecution counsel confer)

24 MR. MACDONALD: (Interpretation)

25 Q. Mr. Witness, can you tell us who communicated with who to bring

1 those troops together? That is, who in the FNI was communicating with
2 who in the FRPI?

3 A. I do not know who amongst the soldiers communicated with whom.
4 At my level, I knew that a certain Jacques Benge (phoen), Martin Cobra
5 and sometimes even Adolphe were able to use that radio communication
6 equipment, but I do not know whether they were using that equipment to
7 call the other soldiers to assemble.

8 Q. Without dwelling too long on this issue, following the attack on
9 Mandro you say that everybody had returned to the Bedu-Ezekere groupement
10 at around 1.30 p.m. Now, after the attack on Mandro, what did Germain
11 Katanga do? Did he stay put or what did he do?

12 A. After the Mandro attack, I believe that on the same day he
13 returned to Bindi, that is in the Greater Aveba area. If it was not the
14 same day, then he must have spent the night on the way to the
15 Greater Aveba area.

16 Q. Do you know what means of transport he was using at that time to
17 move about?

18 A. There was a motorbike, a Suzuki that he found at the Kagaba
19 barracks. So in answer to your question, there was a motorbike that was
20 used to transport soldiers, but I do not know whether he was the one
21 using it. But when I was in Aveba, I saw him using that motorbike, a
22 Motersport 250.

23 Q. And later on you say that you saw him return. At the time when
24 the UPC and the UPDF were fighting and the FRPI and FNI forces had joined
25 together, what did those troops do during the attack against the UPC?

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 48

1 A. We helped the Ugandans, and they were able to repulse the
2 soldiers of the UPC. We went downhill at one point. After the Ugandans
3 pushed back the UPC, we took over control of Yambi. Later on, the
4 Ugandans went to the aeroport on their way back to Uganda.

5 Q. I'm talking about Yambi, Y-a-m-b-i. Where is Yambi located, for
6 the benefit of all?

7 A. Yambi is the very first neighbourhood that you reach when you
8 leave the Sidlie (phoen) in Bunia. When you leave North Kivu, you arrive
9 Sidlie, and after Sidlie you come to Yambi.

10 Q. So Yambi or Ya-Ya, Y-a-Y-a, is a neighbourhood in Bunia; is that
11 correct?

12 A. From what I heard, it was known as the Lumumba neighbourhood or
13 Quartier Lumumba, but it is often referred to as Yambi Ya-Ya even though
14 it is also known as quartier Lumumba.

15 Q. And at the time when the FRPI and FNI troops were in Yambi, to
16 your knowledge where was Germain Katanga?

17 A. The FNI could for the leave the Walendu-Bindi area, because there
18 were places where forest in which they could hide. There were also --
19 there was also the region of Similiki that the Ugandans could take over.
20 This means that they could continue performing their activities.

21 MR. MACDONALD: (Interpretation) With your leave, Mr. President,
22 I would just like to cross-check the answer.

23 Q. Let me repeat my question for purposes of clarification.
24 Mr. Witness, my question is as follows: When the FRPI and FNI troops
25 were in the Bunia neighbourhood known as Yambi, to your knowledge where

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 49

1 was Germain Katanga? Where was he physically located?

2 A. Germain Katanga had not taken over any location, and that was the
3 same as Ngudjolo. The Ugandans could help them, and we could go back to
4 the neighbourhood from which we had been chased out. As a president, he
5 could go back to his territory, but certain soldiers had decided to go
6 and settle. We saw the Uruguayans.

7 Q. For how long did the FNI and the FRPI control the Yambi
8 neighbourhood? You have mentioned the Uruguayans. We can establish the
9 date from one of the documents, but to your knowledge, Mr. Witness, how
10 long did the FNI/FRPI control the Yambi neighbourhood?

11 A. They stayed there up to the time when there was a demobilisation.
12 Certain soldiers were subject to that demobilisation and the merging that
13 took place.

14 Q. And that was in what year?

15 A. In Ituri, the demobilisation started in 2005.

16 Q. We are going to move on now. Following the fighting in Bunia and
17 in the Yambi neighbourhood, Mr. Witness, did you yourself take part in
18 any other fighting subsequently?

19 (Expunged)

20 (Expunged)

21 Q. While you were still a soldier, that is in the aftermath of the
22 fighting in Bunia, did you go out of the Bedu-Ezekere groupement to
23 fight, and if yes, where?

24 A. I did not take part in any other fighting, but while I was in
25 Yambi, people were rising up against each other, but calm returned and

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 50

1 there were even women who come back and settled there.

2 Q. After the fighting in Yambi, where did you go to? That is,
3 immediately after the fighting. In other words, where did you live?

4 Where were you living after the fighting in Yambi?

5 (Expunged)

6 (Expunged)

7 Q. Following the fighting in Bunia, can you tell us whether the FNI
8 took part in other battles?

9 A. At one point the Rwandans were trying to take over the North Kivu
10 region, and the soldiers of the FNI and the FRPI came together to try and
11 go and assist the soldiers of that region.

12 Q. Where were you at that time?

13 (Expunged). That is

14 in the collectivite of the Walendu-Bindi and in the Bedu-Ezekere
15 groupement.

16 Q. And where precisely did the forces of the FNI and the FRPI go to
17 fight when they came together?

18 A. It was in Lubero. I would say that is from Oicha right up to the
19 place where they went to assist the APC, I believe.

20 Q. Can you spell Oicha for us, please?

21 A. The way it is pronounced, O-i-c-h-a.

22 Q. And the other location that you mentioned, Lubero, how is that
23 spelled?

24 A. I will try to spell it. Luberwa or Lubero. Someone from
25 North Kivu may refer to it as such. I do not want to attempt the

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 51

1 spelling. It is better to pronounce it Lubero or Luberwa.

2 MR. MACDONALD: (Interpretation) At this point, Mr. President,
3 pursuant to paragraph 109, I would like to apply to the Chamber regarding
4 refreshing the memory. I would like to draw the attention of the Chamber
5 to the specific transcript without showing it to the witness for the time
6 being. ERN of the first page is 0177-0433, and more specifically
7 lines -- and I just want to be sure, Mr. President -- I'm sorry.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, what is
9 of concern to us is that you would like to possibly resort to paragraph
10 109 of decision 140. We do not know which question you want to ask. We
11 don't know whether the witness needs that we go back to paragraph 109,
12 and particularly because 48 hours ago, the Chamber clearly indicated that
13 paragraph 109 a priori would not be applied in the presence of a witness
14 who seems to have his full memory and who also masters the language. So
15 is there any new element that inspires you to make better observation?

16 MR. MACDONALD: (Interpretation) In light of this,
17 Mr. President, I will use the procedure that was used previously with
18 Witness 133, particularly with regard to the names of people and places.
19 Let me ask that question again.

20 Q. To your knowledge, after the attack on Bunia, was there an attack
21 on Tchomia?

22 MR. HOOPER: I'm sorry, I appreciate my friend's difficulty, but
23 that's a clearly leading -- leading question in these circumstances. He
24 can pursue his questions in other ways, I suggest, in order to try and
25 obtain, perhaps, some further information, but not lead the witness, as

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 52

1 it were, to -- as you said before, by the nose to the issue.

2 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead,
3 Professor Fofe.

4 MR. FOFE: (Interpretation) Thank you, your Honour. We have
5 made efforts not to interrupt the Prosecutor, but there he was going into
6 an issue which we cannot speak about without risk of influencing the
7 witness.

8 It's now 5.30. I don't know if it would be good if the witness
9 could withdraw such that we could debate this.

10 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, in reality,
11 Counsel Hooper is right. To get out of the difficulty that you've
12 mentioned and which could lead you to using paragraph 109, does not
13 authorise you to give them -- give you the name of the place that you
14 want him to speak about at present.

15 Now, there's certainly another possibility to try to obtain from
16 the witness that he gives you a clarification with regards to his
17 participation in other events, whether they were warfare or not, but to
18 use the actual name is to go too far.

19 Now, so please try to answer your question -- ask your question
20 differently to get the answers you would like obtain. And we still have
21 an hour of hearing. I think that it's just in the formulation of the
22 questions that the problem is, and at the same time the solution to the
23 problem, so we are listening to you.

24 Yes, Professor Fofe.

25 MR. FOFE: (Interpretation) Thank you very much, your Honour. I

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 53

1 don't want to go into details, but if you read the transcript, you will
2 see that the Prosecutor -- that the Prosecutor asked a precise question
3 to the witness, "Did you participant in other fighting," and the witness
4 answered clearly to this question. He did respond clearly. The question
5 was asked around 5.20, and the witness gave a clear answer to it. "I
6 didn't participate in other fighting."

7 So I won't go any further, but the question was clear, and just
8 as clear was the answer given by the witness.

9 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, one
10 thing is to try and find out if the witness participated in a particular
11 fighting. Another thing is to try and see if there were outside of his
12 presence other battles, and in which case the question that the
13 Prosecutor wanted to ask, perhaps he went a bit too far already giving
14 the name of the place of the battle, and perhaps this is what led
15 Counsel Hooper to complain in this regard.

16 Now, he was asked about his presence in other places and he said
17 no, but, on the other hand, if the Prosecutor wants to know if there were
18 other battles that took place, that is legitimate. Now, what's less
19 legitimate is to mention name of the place where this fighting occurred.

20 Now, Prosecutor, please continue.

21 MR. MACDONALD: (Interpretation)

22 Q. So witness, in Ituri, if we take -- south of Bunia. So if I take
23 geography, if you look at a map of Bunia and you have a line, you draw a
24 line south of Bunia in the Ituri territory following the attack on Bunia,
25 were there other battles? And here I'm only speaking about Bedu -- with

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 54

1 fighters from Bedu-Ezekere.

2 A. I don't know if I meant to speak about Bunia or Shari, but I can
3 speak about the position of Lake Albert, but this region is on the east
4 of the DRC.

5 Q. Okay. So let's talk about the fighting in Lake Albert. Was
6 there fighting which involved forces from Bedu-Ezekere in the region of
7 Lake Albert after the attack on Bunia?

8 A. There were roads which lead to Bedu-Ezekere from the mountain,
9 whether Bogoro or Bunia, and they had -- there were seven different roads
10 from the mountains, but you just talk about fighting. I would say that
11 they were beaten and they fled, and when we were in Aveba, they did so.

12 Q. The time, witness. I want us to -- after the attack on Bunia and
13 in Yambi, you will understand the time or the period in which we're
14 talking about. So after this period on Lake Albert or Lake Albert area,
15 was there fighting between Bedu-Ezekere forces and other forces, no
16 matter which?

17 A. There was the ARTEMIS force which went to fight. These were the
18 French.

19 MR. MACDONALD: (Interpretation) So, your Honour, I would come
20 back with my request. I would like the -- I would like to say that the
21 Prosecutor should have the right to refresh his memory with regards to
22 point -- these points containing information that he has given
23 previously, because I do not think that it is -- that we're going into
24 paragraph 67. It could occur that there are times when he just doesn't
25 simply remember, and I think that we are in this situation, and it is an

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 55

1 important element for the Chamber to -- in the same way as it is for the
2 other fighting that we've referred to previously.

3 I do understand your decision, but a witness can, in certain
4 case, as you've said when he was there reply in a particular way. He can
5 reply deliberately and in other cases not.

6 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, when on the
7 27th of November, I think it was, we had clarified or actually
8 interpreted paragraph 109 of the decision issued a few days earlier
9 relating to Rule 140, we mentioned a certain number of criteria which
10 constituted a rule which is currently applied to all of the parties and
11 participants. We indicated, furthermore, that we would rule on the
12 application of Article 109 and to refresh memory on a case-by-case basis.
13 This does not mean that it will be question by question in regards to the
14 same witness but witness by witness. The criteria were based on the
15 personality of the witness.

16 I'm not going to go back into all of them, but you will remember
17 that -- that it was to do with the way in which the witness expressed
18 himself, his capacity to remember the events that took place, his ability
19 to give precise answers to questions, and we considered a few days ago
20 that the witness that was facing us today was a witness whose memory was
21 intact, that he only rarely indicated that he didn't remember. So then
22 it's certainly not simple, and the Chamber would also find the same
23 difficulty when it also asked questions. You have to formulate questions
24 in such a way that he can reply. But what we can't do, to use a familiar
25 term, basically say that the decision of the 1st of December with the

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 56

1 Rule 140 cannot be extended unless there are in strictly
2 defined condition -- or it can only be in strictly defined conditions.

3 MR. MACDONALD: (Interpretation) If you would allow me to
4 consult my colleagues.

5 (Prosecution counsel confer)

6 PRESIDING JUDGE COTTE: (Interpretation) Yes, Prosecutor.
7 Sorry.

8 MR. MACDONALD: (Interpretation) So I'm going to reformulate my
9 question. My question can be -- well, it's not a leading question. He
10 can say yes or no, because he's able to say yes, he knows, or no, he
11 doesn't know, and if he does, why. And that's the only way, other than
12 the fact that it's quite leading, to say through a closed question why is
13 it not the case.

14 PRESIDING JUDGE COTTE: (Interpretation) Please be prudent,
15 Prosecutor.

16 MR. MACDONALD: (Interpretation) I will try.

17 Q. To your knowledge, was there fighting in Tchomia, if you know,
18 after the attack on Bunia which you referred to?

19 A. After the war in Bunia -- perhaps I was wrong to speak about the
20 FNI and FRPI who were going to fight. No. There were Uruguayans who
21 came, and when the French arrived there was no longer a war. There were
22 people who went to provoke the FRPI people from Medhu, around Medhu, so
23 the people had already gone back to their normal lives.

24 Q. I'm going to repeat my question, Witness. To your knowledge, do
25 you know if there was fighting in Tchomia after you had taken over the --

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 57

1 the area, the neighbourhood of Yambi?

2 A. After life came back at Bunia, (Expunged)

3 (Expunged). I didn't think of anything relating to war or

4 fighting.

5 Q. Very well.

6 MR. MACDONALD: (Interpretation) So before going into closed

7 session, I would like to address myself to the Chamber, colleagues via

8 you, your Honour. I have referred to Germain Katanga, Mathieu Ngudjolo.

9 Is the Defence prepared to admit that these are the people who are in the
10 courtroom?

11 MR. KILENDA: (Interpretation) Your Honour, we don't understand
12 the sense of this question.

13 PRESIDING JUDGE COTTE: (Interpretation) Please reformulate so
14 understands and is able to understand.

15 MR. MACDONALD: (Interpretation) I don't think that this will be
16 subject to major debate, because we have come up with lines of debate --
17 lines of (indiscernible) in terms of Article 38, but during this --
18 during his testimony, the witness referred to Mr. Mathieu Ngudjolo and
19 Germain Katanga. So bearing in mind that these aren't things that are
20 challenged in the file, is the Defence prepared to admit that the persons
21 who are in the courtroom are indeed the persons to whom the witness is --
22 referred to during his testimony?

23 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, you --
24 the floor is with you. You got up the first.

25 MR. FOFE: (Interpretation) Your Honour, I'm surprised, very

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 58

1 surprised by this question by the Prosecutor. It is not the Defence
2 which is currently in the dock. It is the witness who is testifying.
3 And it is not the time for conclusions, so I think that the Prosecutor
4 can continue his examination-in-chief, and if he finishes it, he can tell
5 us and we will go on to other phases in the proceedings before the
6 Chamber.

7 It is the first time that I have been -- that I have seen such a
8 sight that a Prosecutor can ask us such a question.

9 Thank you.

10 MR. KILENDA: (Interpretation) If you would allow me, your
11 Honour. Without wishing to take away from your time, I would just like
12 to add that you, Judges, and on the part of the Defence, we haven't
13 experienced the facts, and the Prosecutor has had several years to study
14 the case. He thought he would bring before the Court somebody who would
15 shed light on events. This person is here amongst us, and it is to that
16 person that the Prosecutor has to ask the questions. We are not the
17 witnesses for Mathieu Ngudjolo. We are not the witnesses of the
18 Prosecutor. We are the counsel of Mathieu Ngudjolo, and given what we
19 have heard and learned, the time has come as -- the time will come when
20 we will submit our submissions to you so that you can assess them. We
21 would like to know if the person who is referred to -- well, I think that
22 the question which was put, it's poorly directed. This question should
23 be put to the witness and only to the witness, and it's the Prosecutor's
24 witness. I think that is the sense of Professor Fofe's intervention.
25 And we are very surprised. The question surprises us.

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 59

1 PRESIDING JUDGE COTTE: (Interpretation) As the question was put
2 to both Defence team, Counsel Hooper is going to give us his point of
3 view.

4 MR. HOOPER: It's an unnecessary question, and it shouldn't be
5 asked.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, you
7 wanted to have answers to a question that you asked, and you have two
8 answers, one which was relatively long and another which was extremely
9 brief. You can then continue with your examination.

10 MR. MACDONALD: (Interpretation) So I would ask you if we can go
11 into a closed session, a complete closed session.

12 PRESIDING JUDGE COTTE: (Interpretation) So, Court Officer,
13 we're now going into closed session.

14 (Closed session at 5.50 p.m.)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 60

1

2

3

4

5

6

7

8

9

10

11

12

13 Page 60 - Expunged - Closed session.

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 61

1

2

3

4

5

6

7

8

9

10

11

12

13 Page 61 - Expunged - Closed session.

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 62

1

2

3

4

5

6

7

8

9

10

11

12

13 Page 62 - Expunged - Closed session.

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 63

1

2

3

4

5

6

7

8

9

10

11

12

13 Page 63 - Expunged - Closed session.

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 64

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

19 (Open session at 6.04 p.m.)

20 COURT OFFICER: (Interpretation) We are in open session, your
21 Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, madam Court
23 Officer.

24 Mr. Witness, we have barely 25 minutes left that we are going to
25 spend calmly before resuming tomorrow. You have said that you thought

1 you would spend only four days at The Hague and that you did not realise
2 that your testimony would be this long. You are perfectly correct in
3 being surprised and disappointed because you have stayed so long, whereas
4 your plans could have been totally different.

5 It is true you came here to assist this Chamber to better
6 understand the facts with which it is seized, and overall in your life
7 the time that you would have spent with us would be comparatively very
8 short, but it would have been very important for us. That is why all of
9 us are happy to have you with us.

10 The Prosecutor has concluded his direct examination, but before
11 the two Defence teams begin their cross-examination, the Legal
12 Representatives of the -- of the Victims, with leave of the Chamber, have
13 the possibility of putting certain questions to you.

14 Mr. Fidel Luvengika had intended to ask you some questions. You
15 came to testify before this Chamber immediately after our work resumed,
16 and this meant that it was not possible for the team of Mr. Luvengika to
17 confirm with our directives of the 1st of December. We have already
18 talked about that a few days ago.

19 The principle of questions being put to you by the Legal
20 Representatives is not in question, but in the instant case, with regard
21 to the procedure, there were certain issues, but we have discussed them
22 and corrected what happened with Witness 268. And Mr. Gilissen had
23 contacted the Chamber within the deadline, and we have certain modalities
24 to follow.

25 Mr. Luvengika, the Chamber has realised that certain questions

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 66

1 that you wished to ask are not phrased in an appropriate manner. You
2 also are limited to questions that are not leading, to questions that are
3 brief and neutral such that the witness should be able to know precisely
4 what is being asked of him.

5 The Chamber realised that the first list of the questions that
6 you wanted to ask prompted the Defence team of Mathieu Ngudjolo to
7 indicate that there could be possible objections.

8 Before the hearing of this afternoon, you submitted to us a new
9 list of questions, and to our knowledge, contrary to the first list which
10 you thought you were doing well by sending to all the Defence teams, we
11 feel that this second list was not accessible to the Defence teams, and
12 since one of the Defence teams was able to object to the first list, they
13 are now not in a position to object to the second list because they did
14 not have access to that.

15 And now, Mr. Luvengika, the Chamber realises that one of the
16 questions -- that many of the questions that you wish to ask are
17 precisely the questions that the Chamber intended to ask. So the Chamber
18 would like to reassure you that a certain number of themes that you
19 wanted to raise will be raised by the Chamber. And with regard to the
20 witnesses that will appear later, will have to comply with the provisions
21 of paragraphs 87 and afterwards of our decision, decision 140. And if
22 the Chamber allows certain questions, it is because we feel that such
23 questions can be put before the Defence proceeds with the
24 cross-examination. The Chamber has the powers to put any questions to
25 the witness and at any time that they wish, but they have to do so in a

1 way that will enable the Defence to integrate those answers in the
2 preparation of their cross-examination.

3 Mr. Witness, please look at us. It is the three of us that you
4 have to look and no longer the Prosecutor. You have to look at
5 Judge Diarra, Judge Van den Wyngaert, and myself. My name is Bruno
6 Cotte. So you have our three names now.

7 The Prosecutor asked you a certain number of questions. You
8 answered those questions. The Chamber would like you to clarify some of
9 your answers, either because we did not understand you well. You were
10 talking about events that we did not, of course, witness, and sometimes
11 you speak in a very lively manner, because for you these are memories
12 that stream through your mind. So some references were not understood by
13 us, and that is why we think that maybe you can complete some of your
14 answers and assist the three of us, and probably all the participants, to
15 better understand how the events that we are supposed to judge happened.
16 And so do not be surprised if we revisit topics that you have already
17 discussed. In principle, your questions that we are all asking you
18 relate to events that in principle you experienced.

19 So do not be surprised if we ask you to repeat certain things,
20 and do not be irritated. That is the procedure here. And you have heard
21 from the Chamber and from many of the parties that our only concern is to
22 establish the truth, and that is why you have to assist us. So we are
23 going to begin with these questions for 15 minutes this evening, and then
24 we are going to continue tomorrow.

25 Are we agreed on that? Are we agreed on that, Mr. Witness?

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 68

1 THE WITNESS: (Interpretation) Yes. I can follow you very well,
2 Mr. President.

3 Questioned by the Court:

4 PRESIDING JUDGE COTTE: (Interpretation) Let us now go back
5 briefly to an issue that you have already discussed and which concerns
6 weapons and ammunition.

7 When Commander Faustin of the APC left Zumbe, do you know whether
8 he left weapons and ammunition at that place?

9 A. Faustin was part of the government. He was a member of the
10 government. There was nothing special that he could leave with the
11 Lendus. He left as he had come, with his uniform and weapons. He did
12 leave anything.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you. That was a
14 precise answer.

15 Now, the members of the FRPI that you met in Aveba when you went
16 there with the delegation, according to you were they more and better
17 armed than your own troops? Did they have more weapons and were those
18 weapons of better quality than those in your possession? That is not you
19 alone, but you and the members of the delegation to which you belonged.

20 A. The FRPI was an army of the collectivite of Walendu-Bindi. There
21 were civilians and soldiers in that collectivite. There were also nurses
22 and traders. They were lucky to be better armed than us, because they
23 had chased out the Ugandans who had been there, because there were many
24 Ugandans in that area, and their number was almost half of the
25 population. So I can say that they were slightly more -- or, rather,

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 69

1 better armed than us, but I cannot say that they were overarmed.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.

3 You say they are slightly better armed but not too better armed.

4 Apparently you know weapons very well. Were there -- were they
5 better armed than you? That is, did they have weapons of a better
6 quality, that performed better?

7 A. They had recovered weapons in Songolo after they had defeated the
8 Ugandans who had come from Chai. We envied those weapons. They were
9 MAGs, but there were not many of them. They had five or seven heavy
10 weapons, three MAGs, the RPGs, and mortars. Those were weapons that they
11 had seized from the Ugandans. They seized those heavy weapons in
12 Songolo.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
14 In your answer to questions by the Prosecutor a few days ago, you said
15 that in Aveba ammunition had been handed over by the FRPI to the FNI
16 delegation of which you were a member. To your knowledge, what was the
17 provenance of those weapons? And you have talked about the reception
18 that you had. How did Germain Katanga and his collaborators procure
19 those weapons?

20 MR. MACDONALD: (Interpretation) I'm sorry, Mr. President, but
21 you mentioned ammunition and then you later mentioned weapons. I do not
22 know what you were referring to.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
24 I was referring to ammunition. So let me repeat.

25 You said that ammunition in sachet or boxes had been handed over

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 70

1 by the FRIP to the FNI delegation of which you were a member, and the
2 Chamber would like to know: Do you know where those weapons came from,
3 and do you know how Germain Katanga had procured them.

4 MR. KILENDA: (Interpretation) You have talked about arms again.

5 PRESIDING JUDGE COTTE: (Interpretation) Yes, it was ammunition.
6 I'm sorry.

7 Mr. Witness, we are talking about ammunition. You talked about
8 sachet or boxes or cases of ammunition. Can you tell us how the
9 ammunition that was given to your delegation in Aveba, and -- was
10 procured by the FRPI and particularly Germain Katanga? And I'm talking
11 here about the ammunition.

12 A. I cannot say that there was a specific place where they went and
13 took or procured that ammunition. Firstly, when the Ugandans took over
14 Bindi, they spread themselves all over, Bavi, Kagaba, Gety. There were
15 Ugandans in those places. The civilian population was living in the
16 bush, and so they decided to go and fight with arrows, and it was
17 possible for them to recover a weapon or weapons. There were 15 rounds
18 of ammunition in each weapon, so it was in that way that they recovered
19 the ammunition, because for us when we were pursuing the enemy, we would
20 pick up the munitions from the weapons that had fallen down.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
22 A very different question, and indeed several questions. If we do not
23 conclude this morning -- today, we will continue tomorrow morning. And
24 the questions relate to the battles in which you took part.

25 During the preparation of the battles in which you participated,

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 71

1 did the general staff give instruction to the soldiers that you were
2 concerning the manner in which you should treat the noncombatants that
3 you might come across on your way or in the houses? Did the general
4 staff give instructions to soldiers such of yourself regarding the way in
5 which you had to treat the noncombatants that you came across on your way
6 or that you might find in the houses?

7 A. Apart from the fighting in Bogoro, Tchomia, and Mandro, there
8 were no other battles as such. A member of the FNI could go and fight
9 against others, but these were just reactions against attacks. We could
10 be attacked and then we would counter-attack, but that was a way of
11 recovering ammunition. These are things that happened regularly.

12 PRESIDING JUDGE COTTE: (Interpretation) Now let us leave the
13 plural aside. Let us not talk about battles in plural. Let us focus on
14 Bogoro.

15 Prior to the launching of the attack on Bogoro, did the general
16 staff issue instructions to soldiers such as yourself regarding the
17 manner in which you were supposed to behave towards the noncombatants
18 that you could come across on your way or that you could find in the
19 various houses? Mr. Witness, my question is very precise.

20 A. We were living a life that was like school life. We were locked
21 up in places, and we only left when there was a report to the effect that
22 a group was harassing people. We would have to go and attack them.

23 All these events were provoked by the rich people. There were no
24 civilians at that place during that time. Only soldiers were there. Do
25 you think that the UPDF were civilians? The UPDF are not civilians.

1 PRESIDING JUDGE COTTE: (Interpretation) Very well. The other
2 day, in answer to questions put to you by the Prosecutor, you mentioned
3 songs that the fighters were singing together before and during the
4 fighting. This might be a repetition, but can you remember the lyrics of
5 those songs? You certainly remember some of those lyrics. Can you tell
6 us about them?

7 A. The songs said as follows:

8 "If I had wings like an angel, I would fly. I would fly to go
9 and look for the village of Sion."

10 PRESIDING JUDGE COTTE: (Interpretation) This is indeed the
11 answer that you gave us a few days ago. Now, one last question, and you
12 partially answered that question the other day.

13 All the fighters, including the youngest one, did they all carry
14 firearms, or in other words, did the youngest fighters carry firearms.

15 A. The small fighters -- there was a company -- there was a section
16 of 12 people with three weapons only. The others had only arrows and
17 catapults. You could see someone without a weapon with three bullets or
18 the horn of a cow or pieces of wood.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
20 It is almost 18.30. We are not going to ask you any further questions
21 now. We will resume tomorrow at 2.00 p.m. We thank you, Mr. Witness,
22 for your contribution.

23 We also thank the interpreters and all the technicians, and
24 particularly the Swahili interpreters who sometimes have more or greater
25 difficulties. We would like to apologise to the interpreters, because

Witness: Witness P-0250 (Resumed) (Closed Session)
Questioned by the Court

Page 73

1 today we did not all respect the five-second rule. We are fully aware of
2 that rule, but sometimes we forget. So accept our apologies. We will
3 resume tomorrow at 2.00 p.m.

4 Yes, Court Officer, you are here for that reason. Thank you.
5 The security officers will now escort the two accused out the courtroom;
6 that is, Mr. Ngudjolo and Mr. Katanga. We are going to meet again
7 tomorrow. Good-bye.

8 (The accused withdrew)

9 PRESIDING JUDGE COTTE: (Interpretation) And we are now going to
10 move into close session.

11 (Closed session at 6.29 p.m.)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 The hearing ends at 6.30 p.m.

21

22

23

24

25