

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor v. Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Tuesday, 2 February 2010
10 The hearing starts at 9.35 a.m.
11 (Closed session)
12 (Expunged)
13 (Expunged)
14 (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged)
18 (Expunged)
19 (Expunged)
20 (Open session at 9.36 a.m.)
21 COURT OFFICER: (Interpretation) We are in open session.
22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court
23 Reporter (as interpreted).
24 Could the security officers please escort the two accused into
25 the room.

1 (The accused entered court)

2 PRESIDING JUDGE COTTE: (Interpretation) The Chamber greets the
3 accused. And good morning, Witness. And before we resume the direct
4 examination by the Prosecutor, Madam Court Reporter (as interpreted), can
5 you please tell us the duration of the examination so far.

6 COURT OFFICER: (Interpretation) The Prosecutor has used
7 17 hours, 17 minutes for the direct examinations of the witnesses so far.
8 The examination of DRC-OTP-250 has so far lasted ten hours, four minutes.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

10 Mr. O'Shea, please --

11 MR. O'SHEA: Mr. President, your Honours. I have a very simple
12 application. There's no difficulty with the witness being present. We
13 were notified yesterday of certain questions which may be asked by the
14 Legal Representatives of the Victims of this witness, and my application
15 is this: That we be afforded until the end of the Prosecution questions
16 to indicate to the Court our position on those questions. The reason I
17 say that is two-fold. First of all, we assume that these are
18 unanticipated questions, given their timing and the timing of the notice
19 of the Defence, and by the looks of them, at least some of them are
20 questions which arise out of questions which have been put by
21 Mr. MacDonald.

22 That being the case, it's possible that our attitude towards the
23 questions may be affected by other questions put by Mr. MacDonald in his
24 examination-in-chief. So in other words, the Defence attitude towards
25 those questions is at the moment fluid until the end of the

1 examination-in-chief of the Prosecution. That's the first reason.

2 And the second reason -- and here I have in mind Article 68(3) of
3 the Statute and the fact that measures for victims should not be
4 inconsistent with a fair trial. We wish to avoid that such unanticipated
5 questions might inadvertently or otherwise influence the direction of the
6 Prosecution questions. So the simple application is that our response to
7 those questions be deferred until the Prosecution has finished their
8 questions. Thank you.

9 PRESIDING JUDGE COTTE: (Interpretation) The Chamber wanted to
10 comment on this issue later, but before I answer you, Professor Fofe
11 wanted to take the floor if I'm not mistaken.

12 MR. FOFE: (Interpretation) Thank you, Mr. President. We did
13 indeed receive those questions late yesterday evening, just before going
14 to bed, but we took the time to analyse them and come up with an initial
15 opinion. It is for that reason that we sent an e-mail to the Chamber
16 this morning, to notify the Chamber that we will have objections to
17 raise. In a nutshell, therefore, I believe that Mr. O'Shea's application
18 is justified. We would like to subscribe also to that application and
19 ask for time to study the questions in greater detail. Thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) To begin with, the
21 Chamber would like to refer the parties to paragraph 87 of decision 1665
22 related to Rule 140 of the Rules of Procedure and Evidence, and I'll read
23 paragraph 87.

24 "In the event that the Legal Representatives of the Victims know
25 in advance that they are going to ask questions to a given witness, an

1 expert, or the accused, specific questions not related to reparation,
2 they have to notify the Chamber and the Prosecution by written
3 application to be submitted at least seven days prior to the initial
4 appearance of the witness. The application indicates the questions that
5 the Legal Representatives are going to ask and explain how related they
6 are to the victims represented. If the Chamber feels that the
7 application has to be disclosed to the Defence for possible observations,
8 as provided for in Rule 91(a), it can modify the level of confidentiality
9 so as to enable notification to the Defence. The Defence will then have
10 three days to submit its observations."

11 Except I'm mistaken, at the very beginning of our hearings last
12 week, one of the two representatives of the victims stood up - and I
13 repeat, unless I am mistaken - that the respect of the dead-line provided
14 for in paragraph 87 will be difficult for the resuming -- resumption of
15 the proceedings, as it happened last week. The Legal Representative
16 asked the Chamber to be more flexible and the Chamber heeded that
17 request.

18 Since then we received yesterday a document from Mr. Fidel
19 Luvengika, one of the Legal Representatives of the Victims, and that
20 document leads us to clarify and specify the meaning and ins and outs of
21 that paragraph 87. That application was presented as public, accessible
22 to the Prosecutor and to the two Defence teams, whereas paragraph 87 of
23 the decision on Rule 140 specifies that the Legal Representatives of the
24 Victims must notify the Chamber and the Prosecutor by written letter at
25 least seven days before the proceedings. And if the Chamber deems that

1 it is necessary to disclose such a document to the Defence, it might
2 modify its level of confidentiality. So in the future, in order to be
3 consistent with paragraph 87 of our decision, the application, such as
4 the one submitted by Mr. Luvengika yesterday, must be submitted ex parte
5 and reserved to the Prosecutor, the Legal Representatives, and of course
6 to the Chamber.

7 The Chamber, as stated in paragraph 87 of its decision, will
8 determine whether it will modify the confidentiality level of that
9 application and whether it will disclose it to the Defence according to
10 paragraph 3(a).

11 "If a Legal Representative who participates in a hearing in
12 compliance with this Rule wishes to answer -- to question a witness will
13 then apply to the Chamber. The Chamber can request them to phrase their
14 questions which will be communicated to the Prosecutor and, if necessary,
15 to the Defence. They can make comments within the dead-line fixed by the
16 Chamber."

17 We agree, therefore, that a Legal Representative who participates
18 in a hearing and who wishes to question a witness applies to the Chamber.
19 So it is only a possibility, and that application has to be done in
20 writing. And this should be a document disclosed to the Prosecutor.
21 This is why I said "ex parte," Prosecutor, Legal Representatives, and, if
22 necessary, to the Defence; and the Defence can make observations within
23 the dead-line fixed by the Chamber and the Chamber will make its
24 determination based on that written application, whether it is
25 appropriate.

1 It seems like I am going too fast, so the Chamber will determine
2 whether it is appropriate to disclose the application to the Defence and
3 whether the Defence should make its comments. The Statute of the ICC
4 provided for the representation of the victims and their rights have to
5 be respected, as stated by the decision of 11 July 2008.

6 Let me point out once again that while anticipating and in order
7 to comply with the dead-line of paragraph 87, another Legal
8 Representative, Mr. Gilissen, sent an e-mail to the Chamber requesting
9 authorisation to ask questions to Witness 268, who will follow Witness
10 250. When the time comes, Mr. Gilissen will be called upon to transform
11 this e-mail into a written application which will be ex parte and reserve
12 to the Prosecutor, the Legal Representatives of the Victims, and of
13 course to the Chamber. In light of that application as well as of the
14 questions that will be submitted, the Chamber will determine whether it
15 is necessary to disclose the document to the Defence and have their
16 observation within a dead-line of three days.

17 For Witness 268, everything will be done in accordance with the
18 Rules, because we have the necessary time. It was not possible to do
19 this for Witness 250 because we were not exactly sure which were the
20 witnesses that would be called at the beginning of the proceedings, given
21 that the order of appearance had been varied.

22 So, Mr. O'Shea, Mr. Fofe, these are the observations that I
23 wanted to make this morning, even before you made your comments. So at
24 the end of the examination-in-chief of the Prosecutor, as it happened
25 with Witness 233 when the counsel wanted to ask questions, the Legal

1 Representatives of the Victims, if they do so wish, may ask questions,
2 but they are simply asked to comply with the provisions of paragraph 87
3 of our decision on Rule 140. And given that there was a slight
4 variation, the Chamber simply wanted to ask one of the representatives to
5 transform their e-mail into an application and for the other Legal
6 Representative to write down the exact questions that they wish to ask
7 the witness and the Chamber will determine.

8 Mr. O'Shea.

9 MR. GILISSEN: (Interpretation) With your leave, Mr. President.
10 Yesterday we submitted an application consistent with paragraph 87. The
11 questions are spelled out there. And the question that I was wondering
12 was: Whether, based on the observations of the colleagues in the
13 Defence, whether there will be a possibility to answer yes or no, but I
14 simply want to introduce that to that application now.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
16 Mr. Gilissen, but the Chamber draws the attention of all the participants
17 to the exact wording of Rule 87(3)(a) on the possibilities provided for
18 and not the rights.

19 Mr. Luvengika.

20 MR. LUVENGIKA: (Interpretation) Yes, Mr. President, your
21 Honours, thank you for authorising me to address the Court. And thank
22 you also for those rectifications concerning the modalities of the Legal
23 Representatives asking questions to the experts, witnesses, and accused
24 whenever necessary. I wanted simply to make a pointed of clarification
25 to the Chamber. As underscored by the Chamber itself, the fact that

1 there was a variation in the order of appearances of the witnesses and
2 also the fact that the current witness is quite far into his testimony,
3 we felt it necessary to refer to paragraph 89 of the directives of the
4 Chamber with regard to the implementation of Rule 140. And this
5 paragraph 89, except an error or misinterpretation on our part, it seems
6 to me that during the examination when the Legal Representatives -- and
7 in fact I would like to read out the paragraph:

8 "When the Legal Representatives of the Victims did not plan to
9 question a specific witness and that unforeseen circumstances related to
10 the interests of the victims are dealt with during the direct examination
11 of one of the parties, the Legal Representatives may submit a question to
12 the Chamber, which may decide to put that question to the witness if they
13 deem it necessary for the purpose of the establishment of the truth or
14 the clarification of the testimony of the witness."

15 It is after reference to this paragraph that we submitted an
16 application. Of course we submitted it initially in the form of the
17 themes that we wanted to deal with, following our experience during the
18 examination of Witness 233. So we were expecting a request for
19 clarification from the Chamber regarding the questions that we wanted to
20 ask, but we based ourselves on the idea that it may not be the Legal
21 Representatives themselves but the Chamber that would put those questions
22 to the witness. That is the clarification I wanted to make in respect to
23 the directives relating to Rule 140.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Mr. Luvengika. Your intervention is similar to that made by Mr. O'Shea a

1 short while ago, that deals with questions that were unforeseen.
2 Clearly, we are going to have longer breaks, but before we separate we
3 have to fully agree with the Prosecutor to know which witness will start
4 after an adjournment, so as to apply the provisions of paragraph 87,
5 which gives the Chamber the possibility of taking the observations of the
6 Defence teams; whereas paragraph -- subparagraph (c), unforeseen
7 questions, is applicable based on the developments in the proceedings and
8 concern issues that are not imposed by paragraph 87. I believe we have
9 concluded this issue right now.

10 So, Mr. Prosecutor, you will resume your examination. And before
11 I forget, you must have received from the Registrar information to the
12 effect that on the 12th of February - which is a Friday - I'm sorry, I'm
13 speaking a bit too fast and I apologise to the court reporters, who must
14 be cursing me. I have to obey the court reporters and Judge Diarra, who
15 is desperately trying to slow me down but realises that she has no
16 authority over me but which does not affect her good humour.

17 So I simply wanted to point out that on Friday, 12th of February,
18 instead of sitting in the afternoon as provided for, we will sit from
19 9.30 to 4.00 p.m. and not 8.30, which would be quite appreciated for a
20 Friday.

21 Mr. Prosecutor, please proceed.

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

23 WITNESS: WITNESS P-0250 (Resumed)

24 (Witness answered through interpreter)

25 Questioned by Mr. MacDonald: (Continued)

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

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1 Q. Witness, good morning.

2 A. Good morning.

3 Q. Once again - and I apologise to the Court - but it is possible
4 that from time to time some details may escape from us and I would like
5 to hark back to the moment when you were in Aveba, more specifically,
6 Bolo. And I would like to discuss with you the welcome that was received
7 by the FNI delegation, the delegation led by Boba Boba. What kind of
8 welcome? How were you welcomed by the FRPI troops --

9 MR. HOOPER: I'm sorry, Mr. MacDonald, I apologise for
10 interrupting him. There's a technical problem with the screens of
11 Mr. Katanga and possibly Mr. Ngudjolo as well. Yes, they have no image,
12 no in-court image.

13 PRESIDING JUDGE COTTE: (No interpretation).

14 (Interpretation) If I could make a personal comment. It is
15 important that when we calculate the reasonable delay, that the supreme
16 jurisdiction may have over lower levels of Court, we still must think of
17 such technical difficulties.

18 MR. HOOPER: Mr. Katanga is content that we carry on until
19 it's -- until it's -- oh, it has been sorted.

20 PRESIDING JUDGE COTTE: (Interpretation) The Chamber thanks
21 Mr. Katanga and Mr. Hooper for their goodwill.

22 Madam Courtroom Officer, once again, you are not at all the
23 person in question, but I think it would be a good thing for future work
24 of the Court to have the Registry services, perhaps over the course of
25 one or several hearings, calculate the amount of time that was lost owing

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1 to these technical difficulties. Just as we take account of the time
2 used by the Prosecution and the Defence, I think we really should keep
3 track of the moments left to technical difficulties. Perhaps we could
4 start that next week or perhaps someone further away, perhaps someone
5 at -- in broadcasting. I think just -- if I ask this question, I'm sure
6 everything will go swimmingly next week, but in any event, I think we
7 really need to keep track of the actual time lost to these technical
8 issues.

9 Mr. Prosecutor.

10 MR. MACDONALD: (Interpretation) I think the next time before I
11 begin I will ask if the accused do indeed have the transcript on screen
12 before them so that we do not have these interruptions. Now, that being
13 said ...

14 Q. Witness, could you specify to the Court how the delegation was
15 welcomed in Aveba. Please describe to the Chamber what happened at that
16 time when you arrived.

17 A. It was a delegation of people who arrived from another chief's
18 location and they were welcomed. We felt like we were at home.

19 Q. You were welcomed properly. Could you explain exactly how you
20 were welcomed? Were there presentations? What kind of warm welcome did
21 you receive?

22 A. Well, in terms of presentation, there was a presentation in the
23 market to the people of Walendu-Bindi, and generally speaking, I would
24 say that the mood was good. Some people wanted to stay there because
25 they felt quite at ease.

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1 Q. Were the members of the delegation introduced?

2 A. These people were taken to the market-place so they could speak
3 to the local people, and everything was done in a friendly way. There
4 was a good mood, so to speak.

5 Q. Who was at the market-place? Who was at the market-place from
6 the FRPI to welcome you?

7 A. There were guards of the market and the FRPI had sent guards who
8 had left the residence of Ngudjolo, and we sent guards to escort the FNI
9 troops who were in the Bindi territory from that place.

10 Q. The interpreter just said that guards were sent from Ngudjolo's
11 residence. Is that correct or was there a mistake in the interpretation
12 or perhaps in your reply?

13 A. No one sent the guards -- the persons who sent the guards were at
14 the residence of the FRPI. They were the guards who were with Germain,
15 and the officers assigned guards who were to escort him.

16 Q. So Germain, I would put it to you that you're speaking of
17 Germain Katanga?

18 A. That's correct. It was Germain Katanga.

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 A. We received a warm welcome. If you -- we were -- slept -- the
23 mood was good. We were well welcomed.

24 (Expunged)

25 (Expunged)

1 A. There were many soldiers and there was a parade and people
2 gathered and people were introduced according to their rank, their
3 military rank. The people responsible tried to mobilise and motivate
4 their troops.

5 Q. So you said that there was a military parade. Did
6 Germain Katanga speak to the fighters who were there at that parade?

7 A. He as the leader introduced his men and he introduced the various
8 people, and he was -- he had to do that. Then he sent people to the
9 market-place where they ensured security. There was a meeting on site to
10 speak to the local people.

11 Q. Did Germain Katanga go to the market-place at that time?

12 A. He sent an officer from his camp, as well as his wife.

13 Q. (Expunged) and the
14 time of the military parade. How were you named or identified, the
15 soldiers who were present during the introductions?

16 A. When we found him there he was a colonel, and we were all with
17 him and we saw his uniform and we knew that he was a colonel.

18 Q. But you, how were you identified since you were not one of the --
19 you were not from the greater Aveba area. How were you introduced?

20 A. We rose before the leaders. We were visitors and we were
21 introduced as FNI troops.

22 (Prosecution counsel confer)

23 MR. MACDONALD: (Interpretation) I apologise, your Honour.

24 Q. Witness, I would like to hark back to your earlier answer, and
25 I'm referring to the question at line -- well, page 14, line 22. And my

1 question was:

2 (Expunged)

3 (Expunged)

4 And you replied saying: There were many soldiers. There was a
5 military parade. People gathered together and people were introduced
6 according to their military rank. And the officers tried to mobilise and
7 motivate their troops.

8 So my question is: When you said that the officers tried to
9 mobilise and motivate their troops, what did you mean exactly?

10 A. We arrived. We were all together. And we had to introduce
11 ourselves and we needed to know who was who. Sometimes in a camp you
12 need to know who the officers are and what their ranks are. And so the
13 officers introduced their counterparts and the people they worked with,
14 and Boba Boba did the same. He presented his company and he explained
15 who did what within his group. As for us, we were part of the rank and
16 file. We were listening to the various speakers.

17 Q. Just a question of clarification. Now, within -- with regard to
18 the FRPI, each member or each combatant present or each member of the
19 delegation introduced himself; is that correct?

20 A. With regard to the FRPI members, there was Boba Boba and two
21 other people who spoke. They were officers within the group, they were
22 in charge.

23 Q. Within this delegation, who introduced himself or identified
24 himself?

25 A. There was Boba Boba first, and Martin Cobra, and Bukpa Kalongo.

1 They rose and they spoke in turn.

2 Q. Other than introducing themselves and saying their names, did
3 they say anything else? Did they make any particular remarks?

4 A. As the people in charge, they went and went through the
5 buildings, and the commander took advantage of the opportunity to try to
6 raise the morale of the combatants. After the presentations and the pep
7 talk, the people -- the combatants went into a -- pardon me, the people
8 in charge went into a building. But the commanders were there. They
9 began a mobilisation session.

10 Q. So there was one person who took advantage of the opportunity to
11 boost the morale of the fighters. How did he try to motivate the
12 combatants?

13 A. Well, that's what's done within the army. It's normal to give
14 fighters a pep talk, and some people were responsible for that sort of
15 thing. You know an athlete runs a road race, and so similarly you have
16 to motivate the combatants. You can't just give up. You have to hold
17 steady, you have to be mobilised.

18 Q. And how do you motivate troops? How were they motivated? What
19 was done to motivate the troops?

20 A. We were encouraged to leave Aveba and Gety and we were running,
21 Kiringi (phoen), and we did some physical exercises every morning and
22 sometimes in the evening too.

23 Q. Witness, let's focus on the welcome received (Expunged)
24 (Expunged)

25 MR. HOOPER: (Previous translation continues) ... focused several

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1 times on this particular question to this particular witness this
2 morning. Is this not merely, again, repetition for the fourth time?

3 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, could
4 you move on?

5 MR. MACDONALD: (Interpretation) Your Honour, of course the
6 Chamber can see how the witness is replying to certain questions, and
7 sometimes it is necessary to rephrase questions with a view to obtaining
8 answers, clearer answers, from the witness. But I will refocus.

9 Q. When you arrived in Aveba, what kind of weapons did you see when
10 you arrived? What weapons did the soldiers have in their possession?

11 A. We were given food and there was SMGs, machine-guns, that the
12 guards used.

13 Q. What sort of state were these weapons in?

14 A. There were new rockets and others, but some of the rockets didn't
15 have all the parts -- pardon me, certain rifles did not have all their
16 parts.

17 Q. You just mentioned that there were new rifles.

18 MR. HOOPER: No, he didn't.

19 MR. MACDONALD: Yes, he did.

20 MR. HOOPER: Well, I'm sorry, I'm addressing --

21 THE INTERPRETER: Interpreter's correction: The word used was
22 "fusil" which is rifle.

23 MR. HOOPER: So is this a correction in replace of "rockets,"
24 Mr. Interpreter? Because my note was that: "There were new rockets and
25 others, but some of the rifles did not have all their parts." That's how

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1 it came across on the English translation. So are we to replace the word
2 "rocket" with "rifle"?

3 THE INTERPRETER: The interpreter wishes to confirm that he said
4 "rocket" but should have said "rifle."

5 PRESIDING JUDGE COTTE: (Interpretation) The French transcript
6 says that there were new "fusil" and some -- the French transcript does
7 have the word "fusil," and I think this shows just how important -- well,
8 how difficult it can be when we are dealing with three languages all at
9 once. But the word "fusil" was indeed in the French transcript.

10 MR. HOOPER: Thank you very much. And just for clarification, is
11 the translation going Swahili-French-English? It is. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) We shall continue.

13 MR. MACDONALD: (Interpretation)

14 Q. So you saw that the combatants had new rifles in their
15 possession?

16 A. Yes, they had new rifles, but there were also old ones. Some of
17 the rifles could be used, but other people had tried to make weapons
18 similar to rifles with branches from trees to give the impression that
19 they too had actual rifles.

20 Q. Mr. Witness, to the best of your knowledge, where did these new
21 weapons come from, these new rifles?

22 A. The Ugandan soldiers had been in Gety for a long time, and they
23 had made the members of the local population suffer. And when they
24 withdrew, some people had been able to get some of these weapons.

25 Q. Witness, I would like to draw your attention to the town of Beni.

1 You mentioned the town of Beni earlier in your testimony. And in
2 relation to Aveba, where is this town?

3 A. Beni is located in the province of North Kivu.

4 Q. So if I would suggest to you that it might be in the south of
5 Ituri, is that where north Ituri is, south of Aveba?

6 A. I really couldn't say. I couldn't confirm that it is in -- that
7 is south of Aveba.

8 Q. Can one travel from Aveba to Beni?

9 A. Yes. Some people from Beni even came to Aveba. It was a trading
10 route. When it was impossible to get to Uganda, you could go through the
11 forest to get to Beni and buy products such as salt. Other people bought
12 cows in Aveba. The Aveba people went to Beni to buy medicines, for
13 example, which they would take back home to the Bindi.

14 Q. Between Aveba and Beni, what means of transport can be used to
15 get from -- to Aveba or Beni, to travel in either direction?

16 A. From Aveba we went by foot, and it took a whole week; and people
17 who had money paid for the transportation costs. There was a road that
18 led to that place.

19 Q. So you mentioned that one could go on foot. Was there -- well,
20 you also mentioned that there was a road. Was it possible to use -- for
21 vehicles to use this road?

22 A. There was a route from Aveba to Nyankunde, and from there you
23 could go to Beni. But as there were rebels in Nyankunde, people couldn't
24 go through there. So they went on foot to where there was a road, or
25 other people took a taxi to go there.

1 Q. So you mentioned that there was a road to go to Beni?

2 A. There was a road which the Belgians had built from Bindi (as
3 interpreted) to Nyankunde, which goes to Kivu, to the Kivus, but because
4 there were rebels who were in the region, people took another road. It
5 took them a week on foot to go to the place where there was a vehicle
6 which they could take.

7 Q. So on foot -- it was possible on foot and also by vehicle. You
8 mentioned, amongst others, by taxi?

9 A. Yes. From North Kivu there were taxis.

10 Q. From Aveba, was there or were there other means of transport to
11 go to Beni or from Beni to go to Aveba?

12 A. You could have such a situation if you speak about a witch or a
13 magician, but as far as we're concerned, the route to Nyankunde was
14 blocked.

15 Q. But apart from by land, was it possible to go to Bogoro by air?
16 Or Beni, rather, sorry.

17 A. There were politicians who had landed or in -- on small carriers
18 in Aveba.

19 Q. When you say "petit porteur," these little airplanes which --

20 A. These are small airplanes which can take between six and eight
21 people, and it is on board these planes that they landed in Aveba.

22 Q. What did they transport?

23 A. I couldn't tell you if it was medicine for the hospital of Aveba.
24 I don't know if it was for the hospital of Aveba, but I know that there
25 were -- was medicine. There were people who had managed to escape who

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1 were there. When they had been hit by cholera, they had asked for
2 medicine.

3 (Prosecution counsel confer)

4 MR. MACDONALD: (Interpretation)

5 Q. If we go back to the soldiers or to the fighters of the FRPI, to
6 your knowledge, where were -- where was the ammunition of the FRPI
7 soldiers stocked when you were in Bolo (Expunged)
8 (Expunged) to your knowledge, where did they stock
9 the ammunition?

10 A. 80 per cent of the ammunition was kept by the enemies.

11 Q. What do you mean by that, the ammunition was guarded by the
12 enemy, or is there a problem in the translation?

13 A. When there was provocation, they had weapons and other weapons
14 were collected when they went through that area.

15 Q. I would just like to go back to these ammunitions of the enemy.
16 The FRPI, where did they get their ammunition from, other than getting it
17 from the enemy?

18 A. From the prison in Gety there were Ugandans and there were some
19 who thought that the Ugandans could leave something there, and that is
20 how they find weapons and ammunition which help them.

21 Q. Witness, I would like to rephrase the question once again. When
22 there were no enemy fighters, so it was no possible -- no possible to get
23 weapons from the enemy or to get ammunition from them, to your knowledge,
24 how did the FRPI get munitions, weapons or ammunition?

25 A. I couldn't tell you anymore. When I arrived there, the war had

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1 already started. The Ugandans had already left Gety, and there were arms
2 that were left there, that were recuperated.

3 Q. Thank you. I'm sorry.

4 THE WITNESS: (Interpretation) Your Honour, I would like to go
5 to the bathroom, if I may.

6 PRESIDING JUDGE COTTE: (Interpretation) Okay. We're going to
7 go into closed session to briefly allow the witness to leave the
8 courtroom.

9 Security officers, please could you provisionally escort
10 Mr. Katanga and Mr. Ngudjolo from the courtroom.

11 (The accused withdrew)

12 (Closed session at 10.41 a.m.)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

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25 (Expunged)

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

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1 (Expunged)

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7 (Expunged)

8 (Open session at 10.49 a.m.)

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

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Court
12 Officer.

13 Oh, the accused are there. Perfect. They have come in.

14 Prosecutor, the floor is over to you once again.

15 MR. MACDONALD: (Interpretation)

16 Q. Witness, on Friday, towards the end of the morning, we were
17 talking about the return of the delegation, the FNI delegation, towards
18 Zumbe, and you mentioned that this delegation returned in three waves and
19 that --

20 THE INTERPRETER: Could the interpreter state that Judge Cotte's
21 microphone is still on.

22 MR. MACDONALD: (Interpretation)

23 Q. -- and with regards to the situation in Aveba, the last person
24 was Bahati de Zumbe who came from Bogoro. So the first group, who was
25 the first group? Who was among the first group that returned to

1 Bedu-Ezekere?

2 A. The first to come back -- when we were there, Zumbe was attacked
3 and this is how Nyunye -- Lone Nyunye and some men went back to increase
4 the forces which had been reduced.

5 Q. So Zumbe was under attack. Nyunye came back with a group?

6 A. Yes, Nyunye was sent. He was sent and he was followed by men.

7 Q. And how did the FNI delegation find out that Nyunye was under
8 attack? Or in other terms, what were the means of communication between
9 groupement Bedu-Ezekere and Aveba?

10 A. There were the Kabinda, which we listened to from Aveba. People
11 from Medhu, they had heard what was happening in Lakpa and from -- those
12 from Lakpa knew that something was happening in Zumbe. And these people
13 got back -- these people, they had managed to get part of -- or to get
14 back part of Zumbe.

15 Q. Did you say Kabinda? What are you referring to there?

16 A. This was a detonation of mortars which they called Kabinda.

17 Q. Witness, you described to us that Lakpa, Medhu heard the mortar
18 sounds. But my question was: Your delegation in Aveba, how did they
19 learn that Zumbe had been under attack?

20 A. There was mutual aid. If there was something that happened in
21 one particular place, in less than one hour people would be informed.

22 Q. So Lone Nyunye went back to Zumbe. What transport was used by
23 the -- or what did they -- the delegation and his group transport with
24 them? The first group I'm talking about here.

25 A. When things are complicated --

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

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1 MR. HOOPER: (Previous translation continues) ... on my feet
2 again, interrupt my friend. That was -- had the appearance of a very
3 suggestive question or, perhaps, it was the way it came over in the
4 English, one of the two. There are other ways of asking questions that
5 don't raise the -- certainly don't raise my hackles.

6 PRESIDING JUDGE COTTE: (Interpretation) Could you reformulate
7 the question. I think that what Mr. Hooper is pointing to is what did
8 they -- what were they transporting.

9 MR. MACDONALD: (Interpretation) This isn't leading. We have
10 the right to introduce a subject, as it is clear that whatever happens,
11 they were transporting something, by logic.

12 PRESIDING JUDGE COTTE: (Interpretation) You could also ask a
13 question. This is (indiscernible) personal, but did they transport
14 something? That's one way you could ask the question. There's a
15 response to that and from there you could try and get clarification.

16 MR. MACDONALD: (Interpretation)

17 Q. Did they transport something, Witness? Lone Nyunye and his
18 group, did they transport something when they were going back to Zumbe?

19 A. What I can say is that their presence brought affection and
20 courage to those who had remained behind.

21 Q. Did they have -- other than affection and courage, what else did
22 they have? In terms of -- did they have things with them?

23 A. It was a confirmation that the FNI and FRPI were assembled, but
24 even if they did so, there were people who were left behind so that
25 people shouldn't worry. That's what the objective of the return was.

1 JUDGE DIARRA: (Interpretation) Counsel, I hope that the Defence
2 isn't going to go against me for helping the Prosecution, but there is a
3 confusion between "porter" as in "why" and "apporter" as in "bring."
4 "Transport," "transporter"; "apporter," "bring"; "porter" -- these verbs
5 in French you have to be clear. This is -- the difficulty has come from
6 that. "Porter," "apporter," "transporter" in French. These words have
7 created difficulty.

8 MR. MACDONALD: (Interpretation) I am referring to "transport."
9 "Transporter" in French.

10 Q. Did the group transport something?

11 A. There was nothing that was transported in particular, but it was
12 taken on -- basically in terms of Zumbe, what I had seen, I saw them
13 grouped together, and when they learned that there were lot of troubles,
14 they put up a white flag and -- well, there was a white flag which was a
15 sign that they were waiting.

16 MR. MACDONALD: (Interpretation) If the Chamber would allow me
17 to ask a few more questions, taking into account that we did take a break
18 waiting for the witness, I'm in your hands.

19 (Trial Chamber and Court Officer confer)

20 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, we have two
21 minutes or we will stop immediately and then come back at 11.28, or you
22 have two minutes, but these two minutes might be extremely brief to be
23 able to ask a useful question, get a useful answer. So I think it would
24 be wise now to suspend our hearing and obviously the time that's been
25 used by the witness will be added to your speaking time. That is totally

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

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1 independent of the conduct of your examination.

2 Court Officer, we are now going to go into closed session to
3 allow the witness to leave the courtroom, and before the witness leaves
4 the courtroom the security officers are once again to ask Germain Katanga
5 and Mathieu Ngudjolo to leave the courtroom and the accused. We will be
6 back in half an hour.

7 (Closed session at 10.59 a.m.)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 11.00 a.m.)

19 COURT OFFICER: (Interpretation) We are now in open session.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

21 Court Officer. We will therefore be back at 11.30. The hearing is now
22 suspended.

23 Recess taken at 11.00 a.m.

24 On resuming at 11.31 a.m.

25 (Closed session at 11.31 a.m.)

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

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11 (Open session at 11.33 a.m.)

12 COURT OFFICER: (Interpretation) We are in open session, your
13 Honour.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam
15 Court Officer.

16 Mr. Prosecutor, please proceed.

17 MR. MACDONALD: (Interpretation) Thank you.

18 Q. Let us come back to the three waves of people returning to the
19 Bedu-Ezekere groupement. The second group, who were those who made up
20 that second group?

21 A. The second group was made up of Adolphe amongst the civilian
22 authorities.

23 Q. Did they have an escort?

24 A. There were many people. In fact, the number was sufficient.

25 Q. When you say "there were many people," what do you mean

1 precisely? Who?

2 A. The people who made up that group, so as -- such as the security
3 guards, Bebe -- or rather, Besto was also present.

4 Q. So there were security guards and there was Bebe Besto
5 accompanying the people that you described as civilian authorities,
6 including Adolphe?

7 A. Yes, the security -- the administrative authority that was in the
8 group was Adolphe, and Besto was a soldier.

9 Q. Did they carry any property with them?

10 A. I cannot confirm that there was an FNI government, but every time
11 that they were travelling they had the opportunity to buy beans, ground
12 nuts, or even flour.

13 Q. And now to the third group.

14 A. That was the last group. It was like students returning from
15 school. This was the group of Boba Boba.

16 Q. Were there also security guards accompanying Boba Boba?

17 A. Amongst the military officers with whom we left Zumbe, I think he
18 was the leader, but obviously he had people accompanying him.

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 Q. Did you transport any property? Were you carrying any property
24 back to Zumbe?

25 A. No, we did not carry anything. We had three plastic bags of

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

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1 ammunition that Germain had given to Boba Boba. (Expunged)

2 (Expunged)

3 MR. FOFE: (Interpretation) Mr. President, it is simply a small
4 issue of interpretation, but I think it is important. The witness talked
5 about "sachets of ammunition," which was translated as "plastic bags of
6 ammunition." I hope you have noted that. Thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor
8 Fofe.

9 Mr. Prosecutor.

10 MR. MACDONALD: (Interpretation) I will revisit that point of
11 sachets of ammunition.

12 Q. It was ammunition for what type of weapons?

13 A. It was ammunition for a weapon known as FALO.

14 Q. If you compare a FALO to an SMG, are there differences?

15 A. Anybody who prefers the looks of the weapon would choose a FALO.

16 THE INTERPRETER: And the interpreter did not understand the
17 complete answer.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, can you
19 please repeat your answer because the interpreter did not fully
20 understand the second part. Please repeat slowly and speak into your
21 microphone.

22 THE WITNESS (interpretation): I was saying that a FALO is a very
23 long weapon with many metallic parts, but a person who prefers the looks
24 of a gun would prefer the SMG. It is smaller, but the FALO is longer and
25 much heavier. That is what I think.

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

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1 MR. MACDONALD: (Interpretation)

2 Q. Mr. Witness, do you know who manufactured -- well, let me
3 rephrase. Do you have any details regarding where this type of weapon,
4 that is the FALO, came from?

5 A. All those weapons came from the war. In fact, anyone who came
6 across that weapon for the first time was the one who gave it a name; and
7 everyone accepted that name. Sometimes it would come from somewhere but
8 we were not aware of it. To my knowledge, if I saw somebody recover a
9 weapon, this would be weapons that were captured during fighting.

10 Q. Witness, do you know in which country the FALO weapons are
11 manufactured?

12 A. I never learned about that in school, so I do not know where
13 weapons are manufactured in general.

14 Q. Very well. What were the contents of the sachets? You have said
15 it was ammunition, but how many rounds of ammunition?

16 A. There were small crates of 750 bullets, so you had sachets of
17 120 bullets. These are what we had to carry in our hands. We did not
18 want to lose them. We did not want them to fall down, as had happened
19 with the Ugandans.

20 Q. So you said there were 120 rounds of ammunition per sachet; is
21 that correct?

22 A. Yes, maybe 200 or perhaps 120.

23 Q. And for the entire group, how many sachets did you have in total?

24 A. I had one, but these were three crates that had been split up.

25 THE INTERPRETER: The Swahili interpreter did not quite

1 understand.

2 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, once
3 again, please speak very slowly in a loud voice and speak into your
4 microphone so that the interpreters can interpret properly and enable all
5 of us to understand what have you said. So please repeat your answer
6 because we have been told that the interpreters did not quite understand.
7 Thank you.

8 MR. MACDONALD: (Interpretation) I will repeat what is on my
9 screen.

10 Q. My question was as follows: How many sachets did you have in
11 total for the entire group? And you said that you had one but there were
12 three crates that had been split up. How many rounds of ammunition were
13 there in each crate?

14 A. Each crate was made up of 250 bullets, so the sachets contained
15 120 or 200 rounds according to my approximation.

16 Q. Do you know how many sachets were there in each crate?

17 A. I do not have any estimate for that.

18 Q. Apart from the ammunition for the FALOs, did you carry any other
19 type of ammunition?

20 A. That is what we were given, but since other soldiers were
21 carrying SMGs, after several days there was a friendship that developed
22 between them to an extent that the FRPI soldiers stole their weapons. So
23 each group shared amongst themselves.

24 Q. Regarding the three crates of FALO ammunition, do you know where
25 they were stored before they were handed over to you?

1 A. That was an issue that concerned other people. Maybe they
2 thought that if we had that information we could steal the ammunition.

3 Q. You have said that this was something that concerned orders, that
4 means you do not know where those three crates had been stored; is that
5 your testimony?

6 A. Yes. What we knew was only the three crates that we were given
7 before our return.

8 MR. HOOPER: Sorry, can I go back with the interpreters to the
9 last answer -- the penultimate answer. There are two answers back, where
10 according to the English version: "... a friendship developed between
11 them to the extent that the FRPI soldiers stole their weapons." Was the
12 word "stole" used?

13 MR. MACDONALD: (Interpretation) Yes, it is noted, the
14 transcript has everything in it and my learned friend can come back in
15 cross-examination. The Prosecution intends to continue.

16 PRESIDING JUDGE COTTE: (Interpretation) But does that word
17 "stole" or "voler" in French exist? It would be good to answer
18 Mr. Hooper's question so that we should be much clearer.

19 MR. MACDONALD: (Interpretation) Yes, that is what was mentioned
20 in French, the word "v oler."

21 PRESIDING JUDGE COTTE: (Interpretation) Perfect. I had a
22 problem scrolling up the transcript because the technology has a problem
23 with those who do not know how to use it.

24 MR. HOOPER: I only intervened because I understood that the word
25 "stole" hadn't been used in French. If it has been, then I don't

1 obviously need a clarification on the interpretation. Thank you very
2 much.

3 PRESIDING JUDGE COTTE: (Interpretation) We have fully
4 understood. We simply were trying to cross-check in the transcript.
5 Everything is fine.

6 Mr. Prosecutor, you can proceed.

7 MR. MACDONALD: (Interpretation) Very well.

8 Q. So there were three waves. Apart from Boba Boba, were there any
9 other commanders who were members of this third delegation returning to
10 Zumbe?

11 A. Because of the rank of Boba Boba, the others were like his
12 bodyguards. They were the people accompanying or escorting Boba Boba.

13 Q. This ammunition for the FALO weapons, why was it given to you?

14 A. I would say that it was a sort of diploma or certificate that we
15 were being given to use in Bogoro.

16 Q. My answer -- that is, the interpretation, it is: "It was like a
17 diploma that we were being given to use in Bogoro." What do you mean by
18 "diploma" or "certificate" to use in Bogoro? Can you clarify because
19 there might be a problem of interpretation.

20 A. The solution was to find ways and means of liberating Bogoro. We
21 were not only going to sing. We needed to have something to resist with,
22 that is why we were given that. It is for that reason that we received
23 the ammunition.

24 Q. And who gave you that ammunition?

25 A. It was the FRPI that gave us the ammunition.

1 Q. And where were you when you received the ammunition?

2 A. We were in Aveba, but it was Germain himself who brought that
3 ammunition. That is why I'm saying that it was the FRPI that had given
4 their agreement. It was like aid that they were giving to us.

5 Q. Did Germain Katanga give you anything else or ammunition for
6 other types of weapons?

7 A. He did not give us weapons.

8 Q. But did he give you other types of ammunition other than the
9 ammunition for the FALOs?

10 A. Apart from that, they did not give us anything else. Maybe they
11 give us some advice.

12 Q. With regard to the three groups, when did Bahati return to Zumbe?

13 A. After our arrival in Zumbe, I think it was two days later -- in
14 fact, when I arrived I rested for a while and I was told that Bahati had
15 already arrived. So I think it was two days.

16 Q. And how long after the arrival of Bahati did you go to Bogoro?

17 A. When he arrived, after one day - that is, he rested for one
18 day - and on the third day we went to Bogoro. That means three days
19 after his arrival to Aveba we -- in Aveba we arrived Bogoro.

20 Q. Let us be clear. Maybe there are translation problems. You said
21 that you arrived Zumbe and while you were resting, you heard that Bahati
22 had arrived Zumbe. Let us begin with that. Was that your testimony?

23 A. To summarise, I will say that we spent four days without Bahati
24 after leaving Zumbe. On the seventh day we attacked Bogoro --

25 THE INTERPRETER: No, the fifth day after leaving Aveba, corrects

1 the interpreter.

2 MR. MACDONALD: (Interpretation)

3 Q. So we left -- you left Aveba, and on the fifth day after leaving
4 Aveba, you attacked Bogoro; is that correct?

5 A. Four days. On the fifth day we attacked Bogoro.

6 Q. Do you know exactly what date on which Bogoro was attacked, if
7 you know?

8 A. No, I don't have that date.

9 Q. Could you tell us, have you ever heard of the Jerusalem Camp?

10 A. I beg your pardon?

11 Q. The Jerusalem Camp, have you ever heard of that camp?

12 A. I knew the Golgota camp.

13 Q. You know the Golgota camp?

14 A. Yes, the camp that was located in Lakpa.

15 Q. And the Jerusalem Camp, have you ever heard of that camp,
16 Jerusalem Camp?

17 A. No, I don't know of any Jerusalem camp.

18 Q. A person by the name of (Expunged) do you know of
19 that person?

20 A. I don't know that person, but the person I knew of my generation
21 was called (Expunged)

22 Q. Do you know whether this person named (Expunged) was a fighter?

23 A. It's possible that the person was a fighter, (Expunged)
24 (Expunged)

25 Q. Very well --

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

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1 MR. HOOPER: We don't have the names on the spell-check list
2 so -- and we don't know the origin of these names. Could they be spelled
3 at least, please. Thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) Entirely so.

5 MR. MACDONALD: (Interpretation) Entirely so, but for the
6 benefit of all, I am referring to Exhibit DRC-OTP-0029-0092 and this is
7 part of the various exhibits that we said -- and we sent a message
8 regarding this in the days prior to the testimony of this witness. So
9 the original is with Ms. -- with the Courtroom Officer and my colleagues
10 will be able to view the original during a suspension, but they did
11 receive a copy of this document. If you look at the bottom, at the left
12 of this exhibit, you will see a person and the name of a person. I will
13 now continue with my questions.

14 Q. Witness, I would like to return to Bogoro itself. Yesterday I
15 asked you some questions about the people -- or the dead bodies, rather,
16 that you recognised. I would like to give you a name on the list for my
17 colleagues and for the Chamber. (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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

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1 (Expunged)

2 MR. MACDONALD: (Interpretation) With your leave, your Honour,
3 I'd just like to consult my colleagues for a few moments to determine
4 whether we need to go into private session or not.

5 (Prosecution counsel confer)

6 MR. MACDONALD: (Interpretation) I'm very sorry for the members
7 of the public, but I believe we will have to go into private session
8 given the questions with the names of certain people, people that may be
9 mentioned by the witness or even by the Prosecution.

10 PRESIDING JUDGE COTTE: (Interpretation) Madam Courtroom
11 Officer, if we could go into private session.

12 (Private session at 12.07 p.m.)

13 (Expunged)

14 (Expunged)

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

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Page 38 Expunged - Private Session

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

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Page 39 Expunged - Private Session

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

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Page 40 Expunged - Private Session

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

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- 25 (Closed session at 12.21 p.m.)

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16 (Open session at 12.22 p.m.)

17 COURT OFFICER: (Interpretation) We are in public session.

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

20 So we are looking at DRC-OTP-0029-0092. Is that not so?

21 Mr. MacDonald, we are all ears, and I believe each party will be speaking
22 to this matter because we did receive written notice that there would be
23 objections to this exhibit.

24 MR. MACDONALD: (Interpretation) So that we better understand
25 this matter, I would like to ask you to turn to the original which the

1 Courtroom Officer has in her possession so that you can see this exhibit
2 and deal with this matter because the original version is with us, and
3 it's easier to read the original.

4 MR. HOOPER: I rise to my feet because it's quite a different
5 matter. And as one can see from the transcript, it's not quite out of
6 sight, and perhaps this is the moment properly to raise it. It's to do
7 with the interpretation of an answer the witness gave shortly after he'd
8 been talking about playing football, where in the English it reads:
9 "During the attack on Bogoro I was far from Bogoro," and that's also the
10 situation in the French. But I understand in the Swahili he said that --
11 or may have said that it was "she" who was far from Bogoro.

12 So perhaps that's a matter that could be checked and addressed so
13 that we're not wrong-footed.

14 PRESIDING JUDGE COTTE: (Interpretation) It might have been
15 preferable to have made that remark when the witness was present because
16 we could have clarified the answers to those questions having to do with
17 (Expunged)
18 (Expunged)
19 Now, I believe we need to scroll up very quickly to the remarks that were
20 referred to by Mr. Hooper and we will try to ascertain exactly what was
21 said.

22 MR. MACDONALD: (Interpretation) Yes, we can clarify with the
23 witness whether there was a mistake with the Swahili, and I suppose we
24 can ask for everything to be checked and the edited transcript can be
25 corrected. And we can check that point and, if necessary, we can return

1 to the matter with the witness. The Prosecution would be pleased to deal
2 with that.

3 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, did you
4 have the impression that there was some meaning lost, any difficulty with
5 the Swahili-French interpretation?

6 MR. FOFE: (Interpretation) I must admit, I did not pay close
7 attention to that, but out of prudence I think the Prosecution's
8 suggestion should be upheld.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you
10 all. Let us proceed with this exhibit, and I have the original right
11 here and I think each one of you had a copy.

12 MR. MACDONALD: (Interpretation) Well, initially I would like
13 the witness, and still in light of the -- all the information that was
14 mentioned by the witness up to this point in his testimony, namely, the
15 members of the delegation, the places they went to, and so on and so
16 forth, initially I would like to show this seal, this seal in the centre
17 to see if the witness can make a comment on it, just on the seal.

18 PRESIDING JUDGE COTTE: (Interpretation) I think everyone has a
19 photocopy of this exhibit with the seal.

20 Madam Courtroom Officer, could you just give us the original.
21 Now, this original is much more visible and could that be put on the
22 projector for all participants.

23 MR. MACDONALD: (Interpretation) A very good suggestion. It
24 could be done publicly.

25 PRESIDING JUDGE COTTE: (Interpretation) For all of us. We will

1 put the original on the screen so that everyone can see the same document
2 as we speak.

3 MR. MACDONALD: (Interpretation) And this is a public document.

4 COURT OFFICER: (Interpretation) To view this document, please
5 press the button that says "Docu Cam Witness."

6 MR. MACDONALD: (Interpretation) We are going to have to zoom in
7 to see this document properly.

8 PRESIDING JUDGE COTTE: (Interpretation) Indeed. And this is
9 far less legible than on the original, so we'll try to clarify matters.

10 MR. MACDONALD: (Interpretation) And we will try and adjust the
11 contrast or perhaps everyone can adjust the contrast on their individual
12 screens.

13 If possible perhaps -- because I believe -- I think what's
14 important at the very beginning is the seal itself, and obviously if we
15 could zoom in to that seal itself, with your leave.

16 PRESIDING JUDGE COTTE: (Interpretation) Indeed.

17 Mr. Usher, could you try to make this seal even more visible, you
18 could perhaps --

19 MR. MACDONALD: (Interpretation) You could move up the exhibit a
20 bit.

21 PRESIDING JUDGE COTTE: (Interpretation) You've moved it up a
22 little bit too much.

23 Stop right there. I think now we have what we need and with the
24 Prosecution's comments we will be able to look at this seal as it appears
25 here.

1 Mr. MacDonald, can we reduce the size of this a bit?

2 MR. MACDONALD: (Interpretation) I think it's the technology
3 that is -- (indiscernible) this document is now on the screen.

4 PRESIDING JUDGE COTTE: (Interpretation) So we now have the seal
5 on the screen before us.

6 Prosecutor, it is over to you.

7 MR. MACDONALD: (Interpretation) So I would now like to show
8 this seal to the witness as we can see it on the screen and see if he
9 recognises what he sees, just in terms of the seal itself for the moment.
10 And thereafter I would also like, if possible, for the witness to see the
11 content of the letter, if he can read it, and thereafter we can ask
12 questions, namely, whether to his knowledge he remembers that -- what was
13 mentioned with regard to the content therein.

14 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, why do you
15 want to disassociate this seal from the content of the letter itself to
16 the extent that the seal identifies the content of this letter and it
17 would appear that the two cannot be separated. So couldn't you envisage
18 having given all the participants a reading of this letter, to the extent
19 that this writing is difficult to read, couldn't you try to regroup both
20 the -- the points you want to get from the witness and the questions that
21 you want to ask at the same time. Why do you want to split these two?

22 MR. MACDONALD: (Interpretation) I propose starting with the
23 seal obviously to be able discuss the content with regard to the names
24 that are mentioned because they are names that have already been
25 mentioned. But what the Prosecution would ask for is that during -- is

1 that this document indicates to us certain dates, and this document, we
2 submitted and we will have pleadings in that regard, it was done at the
3 time when there was a mission towards Aveba and they went towards Olombo.

4 Now, this is where the direction in which the Prosecution is
5 going, and within the framework of the testimony, the witness spoke about
6 Martin Banga, this is Martin Cobra Kamini (phoen), and that there was
7 also Bukpa Kalongo. And he also mentioned Efeta Deliu (phoen). He also
8 mentioned where Cobra Matata was, and he also mentioned the Cobra Matata
9 operation. And they came to river Tinda or Medhu. In Tinda they pushed
10 back the enemy, drove them back, and they came to a position which had
11 been established in this place. And you had Oudo who, according to the
12 evidence EVD-22 -- I'm going to slow down here.

13 PRESIDING JUDGE COTTE: (Interpretation) Please, Prosecutor, the
14 Chamber has perfectly in mind the words that the witness mentioned, the
15 possible relation between his words and these items. Just don't forget
16 that the two Defence teams did object to the presentation of this
17 document. We are going to give them the floor, but it appeared to me
18 that due to the existence of these objections, there could be an interest
19 in not splitting the seal from the content itself of the document, and
20 having heard the objections and once they've been replied to, then
21 carrying out the examination of your witness in the most overall way.
22 Having said this, the two Defence teams have expressed written objections
23 to the presentation of this document.

24 Can they quickly present on what basis they ground these
25 objections. Does the Germain Katanga team like to start in this regard?

1 MR. HOOPER: Yes, Mr. O'Shea, will take the --

2 PRESIDING JUDGE COTTE: (Interpretation) Counsel O'Shea, the
3 floor is --

4 MR. O'SHEA: All right. I don't mind who starts, but,
5 Mr. President, your Honours, let me say at the outset that we're not as
6 troubled by the effect of this letter as might appear from me being on my
7 feet. And I'm going to stop listening to myself in French because it's
8 very distracting. But there seems to me to be an important matter of
9 principle at stake here. We on the side of the Defence feel that we've
10 been treated a little unfairly with regard to how this letter is being
11 introduced, and let me elaborate upon that.

12 We were notified by the Prosecution before this witness
13 testified -- shortly before this witness testified, after the Christmas
14 break, that this was one of the documents which the Prosecution would
15 refer to. At the time that we were notified that this document would be
16 referred to by this witness, in our evaluation of the 50 or so hours or
17 700 or so pages of documentation relating to this witness, there was
18 actually nothing in any of that material which connected this witness to
19 that document. So in terms of what we were notified about what this
20 witness was going to say, there was nothing which connected this witness
21 to this document.

22 And there is the nub of the issue because I would remind your
23 Honours of the section on documentary evidence in the now-famous decision
24 of your Honours at paragraph 97, where it is stated that:

25 "If there is an inherent correlation between an item of

1 documentary evidence and a particular witness, the party calling that
2 witness should introduce that item through that witness."

3 Now, the words "inherent correlation" in English - I don't know
4 what the original French was - but there is good reason for the Chamber
5 expressing itself in that way. And this will become clear from the
6 nature of my submission. My learned friend has said during the course of
7 his examination of this witness - I think on two or three occasions when
8 we've been inviting him not to be suggestive - that: "Nous ne sommes pas
9 mettres des reponses." And of course we accept that as a basic
10 assertion, that the Prosecution cannot, of course, as a general matter be
11 "mettres des reponses." He cannot govern completely what comes out in
12 the witness box, of course, but he has to take care.

13 The Prosecutor is an independent institution, and even before it
14 becomes a question for your Honours, the Prosecutor himself must in every
15 action he takes consider whether he is acting fairly towards the accused.
16 And while Mr. MacDonald can't foresee everything that comes out in the
17 witness box, he can take care not to make certain statements. And he can
18 take care to ensure that the Defence is not ambushed. And the
19 introduction of this letter has the effect of ambushing the Defence, and
20 that is why this is a matter of importance and principle.

21 On the papers there was no connection to the witness. On the
22 first day of the witness's testimony, the witness came out with a
23 statement which took everybody by surprise. Before the witness went in
24 the box we thought we were dealing (Expunged)
25 (Expunged)

1 (Expunged)

2 (Expunged) And Mr. Hooper has been on his feet

3 twice early on during the course of this testimony, providing that as an

4 example of somehow leading the witness somewhere where we had not

5 anticipated, and that it was somehow strange to use the word (Expunged) in

6 the context of what we knew about this witness before the witness went in

7 the box.

8 Mr. MacDonald explained that he didn't anticipate that answer,

9 and I take him at face value, I take him on good faith, that he didn't

10 anticipate that answer, as strange as the question may have been. But

11 then on day two, Mr. MacDonald comes back to the question of (Expunged)

12 (Expunged)

13 (Expunged) At that point the

14 Prosecution can no longer say: It's not my fault what the witness says,

15 because in the papers which were used to give us notice of what this

16 witness was going to talk about there was no discussion of this witness

17 dealing with correspondence.

18 So Mr. MacDonald's question on the second day was a deliberate

19 follow-up on the unanticipated answer of the previous day, but one of

20 which the Defence had no notice. And then Mr. MacDonald followed up

21 further, and he said: (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged) Again, a deliberate course of questioning, the Defence having no

25 notice that this was an area that this witness was going to deal with.

1 Now, in terms of the Rules, Article 67 -- maybe --
2 Article 67(1)(b) provides that "the Defence shall have adequate time and
3 facilities for the preparation of their Defence," and then (c) provides
4 that the trial shall be "without undue delay."

5 So those are two sides of a silver coin for the Defence which
6 must be respected at all times. During the Christmas break and after the
7 Christmas break, before we were -- while we were preparing for this
8 trial, the Defence for Mr. Katanga was on mission in Congo,
9 investigating, inter alia, and preparing for, inter alia, the
10 cross-examination of this witness. (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged) And we would

17 have been better able to deal with the direction that the Prosecution is
18 going into now.

19 That is why the principle in Article 67(1)(b) is of importance.
20 We don't want to be taken by surprise.

21 One option, I suppose, would be to say, well, we can defer the
22 further testimony of this witness to another date, but then comes the
23 other side of the coin: Trial without undue delay. And the Chamber will
24 have to evaluate whether the Prosecution has had a reasonable opportunity
25 to address these matters at an earlier stage with the witness. The

1 Chamber can consider how long has the Prosecution had access to this
2 witness. Was this letter placed in front of the witness during the
3 interviews? (Expunged)

4 (Expunged) Is it reasonable for this matter to come
5 up at this stage in a manner which takes the Defence by surprise?

6 In terms of the Rules of Evidence, this Chamber has a discretion,
7 but, of course, a discretion which must be exercised judiciously. And it
8 is part of the consideration of that question when dealing with the
9 admissibility of evidence - and we're not exactly at the stage of
10 admissibility yet, but this is a question relevant to admissibility - the
11 question is not so much whether this document can go in as evidence at
12 this stage, your Honours, because a document can -- this document could
13 go into evidence in a number of ways. There are three principal ways:
14 One is through this witness; a second is through another witness; and a
15 third is as a bar table motion.

16 So at this stage I stop short of asking your Honours to rule
17 definitively on the admissibility of this document, but we say that this
18 document cannot be admitted through this witness. And we say that the
19 discretion in relation to the question of admissibility also includes the
20 manner in which evidence is admitted. Because the manner in which
21 evidence is admitted is sometimes just as important, if not as important,
22 as its final admission, if that be the case.

23 I refer your Honours also to Article 69, subparagraph 7(b):

24 "Evidence obtained by means of a violation of this Statute or
25 internationally recognised human rights shall not be admissible if, (b),

1 the admission of the evidence would be antithetical to and would
2 seriously damage the integrity of the proceedings."

3 Whatever the weight to be accorded to this particular document,
4 that's a separate question. But in my submission, it is antithetical to
5 the integrity of these proceedings for a document to come into evidence
6 or to go in front of the witness in this manner. The Prosecution has had
7 ample time and ample opportunity to deal with -- if they thought there
8 was a connection between this letter and the witness, to deal with this
9 during the interviews with the witness, or at least before the Katanga
10 team went on mission.

11 And one has to note that before these answers came out from the
12 witness, just on the basis of the papers, the Prosecution knew they were
13 going to put this letter in front of this witness. We couldn't
14 understand it. We were thinking: Well, what is the possible connection
15 between this letter and this witness? We couldn't understand it. But
16 the Prosecution obviously understood something.

17 Of course, if one starts pacing around the 700-odd pages of what
18 the witness talks about, one can attempt to formulate some kind of
19 indirect connection between the witness and the letter. You could do
20 that with any piece of evidence. You could make a -- probably make a
21 connection to any piece of evidence which has been disclosed to the
22 Defence and any of the witnesses on the list if you use your imagination.
23 But the -- but the point here is notice. The point here is the Defence
24 not being taken by surprise. When we're going through volumes of
25 evidence in preparation for a witness, if there is a significant part of

1 that witness's evidence, we're entitled to know it. And certainly, a
2 (Expunged)
3 particularly in -- having regard to what the Prosecution is trying to do
4 now.

5 The Prosecution may have acted deliberately; they may have acted
6 innocently. But whether they have acted deliberately or innocently is
7 not really the question. The question is: How is the Defence
8 prejudiced? And we say we are prejudiced because we would have been in a
9 position to make appropriate investigations relating to this witness and
10 correspondence. Because at the end of the day, that's the only
11 connection between this letter and this witness, which is more than just
12 a tenuous connection.

13 So that sums up the problem of surprise to the Defence. I leave
14 it up to your Honours if you accept this argument whether it's a question
15 of deferring the testimony of this witness or whether it's, in the
16 alternative, a question of -- such that we can go back to Congo. Or if
17 it's rather a question of not allowing this witness to deal with this
18 letter. I suggest that the more appropriate course is not to allow this
19 witness to deal with this letter because the Prosecution has had ample
20 opportunity to deal with this in other ways.

21 Then we come -- once we've dealt with the question of notice, we
22 then come to another problem: Time. The other problem -- yes.

23 PRESIDING JUDGE COTTE: (Interpretation) Quite simply,
24 Counsel O'Shea, how much longer do you need for your intervention?
25 Because if I'm not wrong, we've only got until 1.00. I don't think you

1 can do it in three minutes, so I would suggest that the wise thing to do
2 would be to continue your intervention at the start of the afternoon,
3 2.30, followed by the team of Mathieu Ngudjolo, with the response that
4 the Prosecutor will give to us. But unfortunately, we have
5 administrative constraints which, as you know, cannot be changed. So the
6 Chamber would like to thank you for what you've just said. It regrets
7 having to interrupt you, but you will be able to take the floor again at
8 2.30.

9 I think, Court Officer, that at 2.30 the most simple thing to do
10 is to go back in the presence of the accused but without the witness
11 because we are in a discussion which he doesn't have to hear. So we are
12 going to now suspend and we will start again at -- it's now 12.58, so we
13 will start again at 2.30. The hearing is now suspended.

14 Luncheon recess taken at 12.59 p.m.

15 On resuming at 2.33 p.m.

16 PRESIDING JUDGE COTTE: (Interpretation) Our session has now
17 resumed. Please be seated.

18 We are in open session. Mr. Katanga and Mr. Ngudjolo are here
19 with us.

20 Mr. O'Shea is already on his feet and we will listen to the
21 continuation of his intervention. Mr. O'Shea, please.

22 MR. O'SHEA: Mr. President, your Honours, thank you very much.
23 Before the luncheon adjournment, I had outlined difficulties with notice
24 to the Defence, which make it, in our submission, antithetical to the
25 integrity of the proceedings or otherwise contrary to the fairness of

1 this trial to allow the Prosecution to go ahead in the manner in which he
2 is planning to do so.

3 Now, having those issues of notice in mind, the other task for
4 your Honours is to weigh in to the balance the extent to which this
5 witness can in fact assist with this document. We would say, well,
6 there's not really a balance to be made once there's a significant issue
7 of notice. But insofar as issues of balance come into play, we say that
8 there's not a sufficient foundation in fact, contrary to what my learned
9 friend says, to actually put this letter in front of this witness.

10 Is there a reasonable basis upon which this witness can talk
11 about this letter? Well, I trust your Honours have a letter in front of
12 you, either the original or copies of it -- yes, good. And I'd invite
13 your Honours to now turn attention to the letter itself. The first thing
14 one notes is that this witness is not the recipient of this letter,
15 neither is the witness either of the individuals who have put signatures
16 to this letter.

17 I trust that your Honours have had an opportunity to read the
18 letter, or would it be of assistance if I attempted to read it into the
19 record? If one looks at the content of the letter, your Honours will
20 notice that it is referring to the fact of having insufficient resources,
21 and it's effectively a request for supplies, as expressed in the letter
22 soap, and it is addressed to a person who is based at Olongba, which I
23 don't think the Prosecution would dispute would be in the groupement of
24 Aveba -- they do dispute it. All right. It's not significant anyway.

25 In any event, we would say that having regard to the testimony of

1 this witness, the witness has not testified about any request of supplies
2 as outlined in this letter.

3 (Expunged) Your Honours will find --
4 your Honours don't necessarily need to go to it right now, but your
5 Honours will find the relevant part of the transcript where Mr. MacDonald
6 asks his kick-off question: (Expunged) At page 39 of the
7 transcript of Wednesday, the 27th of January, 2010: (Expunged)
8 (Expunged) This is line 3, then line 4: (Expunged)
9 (Expunged)

10 Mr. MacDonald comes back to that issue the following day and
11 Mr. MacDonald's characterisation - not the characterisation of the
12 witness - at page 19, on the 28th of January, 2010, Mr. MacDonald says:
13 (Expunged)
14 (Expunged) In fact, it's not what the witness
15 said, which again highlights the difficulty when one tries to summarise
16 the evidence of a witness in one's questions.

17 The witness said "in a company," and at the moment on the basis
18 of the answer that the witness gave to Mr. MacDonald's mis-characterised
19 question, the -- one can say, well, "in the camp" means nothing more than
20 geographically in the camp if you put it together with what the witness's
21 actual answer was, which was "in the company."

22 Mr. MacDonald went on, as I said, without the Defence knowing
23 that he would do so, to talk about the (Expunged)
24 (Expunged) And he put the question
25 to the witness - and this is on page 22, on the 28th of January, 2010 -

1 (Expunged)

2 (Expunged)

3 Witness's -- "or the writing if you can remember that?"

4 Witness's answer at line 13 of the same page:

5 (Expunged) and then if I

6 invite your Honours to go to the seal, which we find on the letter in
7 front of your Honours, the sign of the party on the seal of this letter
8 appears to say "Forces des Resistance Patriotique en Ituri," not the
9 party which this witness would appear to be the group of, as using the
10 word "group," FNI. Secondly, the witness spoke about the fact that it
11 would say "the office of such and such a company." So: "There was
12 firstly the sign of the party and it was -- it was written office of such
13 and such a company. Zumbe Company. It was written 'Office of the Zumbe
14 Company.'"

15 So on the basis of the answers of the witness as we have them,
16 answers which we say would not be taken fairly against the Defence in any
17 event, given the history of the notice, but having regard to those
18 specific answers it would appear unlikely that this witness would have
19 knowledge of this letter or would be able to assist the Chamber with this
20 specific letter. Because the seal itself has the name of a different
21 party and it has not "Office of the Company of Zumbe," but office of the
22 "Etat Major-Siege."

23 The fact that names that appear in the letter have been touched
24 upon during the course of the witness's evidence is neither here nor
25 there, because the names are well-known names in the context of the

1 conflict. So that is not a sufficient connection to the letter. And I
2 haven't had time to do any analysis of this, but I did notice during the
3 course of Mr. MacDonald's questions that he had the tendency - and I
4 don't know if that tendency applied to these specific names - but he did
5 have the tendency of saying a name and then asking the witness whether
6 the witness recognised the name. I don't know if that applies
7 specifically to these names.

8 So with a background of insufficient notice that this witness was
9 going to talk about correspondence or movement of soap or anything of
10 that nature, and given the fact that on the face of the letter and given
11 the witness's answers it seems unlikely that the witness is going to be
12 able to assist much on the letter in any event, we submit that's a
13 sufficient basis for not allowing the Prosecution to put this letter
14 before the witness.

15 And of course the fact that I have disconnected this letter from
16 this witness creates another problem, your Honours. Your Honours will
17 have noticed that in the testimony of this witness we don't have
18 time-frames. Now, the other thing we don't have from the witness is
19 specificity about the role of Martin Banga as president of any
20 delegation. We, in fact, have at the moment Boba Boba as president of
21 the delegation that we've been talking about - is that right? - may I
22 just have one moment, your Honour?

23 (Defence counsel confer)

24 MR. O'SHEA: I may be -- I may be wrong about my reference to
25 Boba Boba being president, but in any event, we don't have that specific

1 detail as to Martin Banga being a president of a delegation from this
2 witness. And neither do we have from this witness any of the details in
3 the contents of the letter, most importantly.

4 So what is the effect of putting the letter in front of the
5 witness? Your Honours, in your Honours' decision 1665 have made it plain
6 that during the examination-in-chief the person examining the witness
7 must avoid being suggestive in their questions. If Mr. MacDonald were to
8 say to the witness: Witness, can you tell us anything about a request
9 for supplies of soap? That would be exactly the kind of question that
10 your Honours would not allow. If Mr. MacDonald was to say to the
11 witness: Now, Mr. Witness, does the 4th of January, 2009, ring any bell
12 with regard to a request for a supply of soap? It would be a question
13 which would not be allowed. If the witness was asked: Was the president
14 of the delegation Martin Banga? It would be a question which would not
15 be allowed. And now the Prosecution wants to put this letter in front of
16 the witness with contents in it, none of which the witness has spoken
17 object, and allow the witness to read the letter and comment on it.
18 What's the difference between that and simply asking leading questions?
19 Effectively my learned friend would be leading the witness as to the
20 content of this letter. So if it is the content of this letter that
21 Mr. MacDonald wishes to bring before your Honours, he may not do so in
22 that manner.

23 And even if he wants something else in relation to the stamp on
24 the letter, he may not do so in that manner because he's asked about
25 stamps, (Expunged)

1 (Expunged)

2 (Expunged) So those are the three bases upon which we
3 say that this is not a proper exercise.

4 I don't know if your Honours have any questions of clarification
5 on that.

6 PRESIDING JUDGE COTTE: (Interpretation) We will give the floor
7 to your colleagues to continue with the discussion. Professor Fofe.

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

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

10 Mr. President, your Honours, the Defence of Mathieu Ngudjolo
11 subscribes to all the submissions that have just been made by our
12 colleague Mr. O'Shea on DRC-OTP-0029-0092.

13 This document indeed does not have any link with Witness 250
14 because Witness 250 is neither the author or the addressee of this
15 letter. The Defence is wondering why the Prosecutor, who had a lot of
16 time to analyse this issue, was not able to interview the signatories of
17 this letter, who are mentioned clearly in the letter, Mr. Bukpa Kalongo
18 and Mr. Martin Banga. The Defence is fully aware that those two persons
19 are very much alive. Why is this so?

20 As far as the Defence is concerned, there is no link between this
21 letter and the facts being considered by this Chamber. I do not want to
22 repeat what our learned friend Mr. O'Shea has said, but I simply want to
23 stress the fact that all that there is in this letter is a request for
24 soap.

25 Mr. President, your Honours, the Defence submits that by using

1 this procedure, the Prosecutor is seeking to influence Witness 250 by
2 presenting to him these stamps, amongst other things. The Defence of
3 Mathieu Ngudjolo draws the attention of the august Chamber to the fact
4 that this letter bears two stamps. The Prosecutor was referring to the
5 stamp which is much clearer, whereas further down there is another stamp
6 which, curiously enough, is barely legible. We saw the original a short
7 while ago before the lunch break, and we were able to see that the second
8 stamp which is further down the page is not clear. We therefore can
9 legitimately and without any hidden agenda ask questions about the
10 difference of level of clarity between the stamp referred to by the
11 Prosecutor a short while ago and the second stamp further down the page.

12 We're wondering whether that stamp which is clearer might not be
13 more recent. This is simply a question.

14 The Defence would also like to draw the attention of this august
15 Chamber to the contrast existing between the stamp and the letter-head.
16 In the letter-head it is indicated Democratic Republic of the Congo,
17 Province of Ituri, territory of Irumu - I believe that is it -
18 collectivite of Walendu-Bindi, Aveba Mukubwa, or Greater Aveba. When it
19 comes to administrative practice, generally speaking whatever appears on
20 the stamp is consistent with the -- what appears at the top of the page.
21 So we are wondering about the differences between the two.

22 In any case, the Defence submits that this stamp is not from the
23 staff headquarters at Zumbe, which is still to be established, because in
24 January 2003, the FRPI did not exist in Zumbe.

25 Your Honours, when you analyse the words written on the second

1 stamp which is further down, you will realise that the letter had been
2 received and - if I'm reading correctly - the letter was received at
3 Tatu, and if I am reading correctly the letter had been received --

4 MR. MACDONALD: (Interpretation) I'm sorry, maybe we should put
5 the original because my colleague is working with a copy that might not
6 be very good. We should zoom in to the seal, and that will clarify
7 things.

8 PRESIDING JUDGE COTTE: (Interpretation) The letter was on the
9 projector when we broke and we should have placed it back there again.

10 Mr. Usher, perhaps you should stay not very far away from the
11 document. Whether we are talking about the seal or the other stamp, we
12 should be able to zoom in to the item being discussed.

13 MR. FOFE: (Interpretation) If you could zoom in to the stamp
14 that is found further -- lower -- that is found lower down, at the
15 bottom. We can see that the letter was received in Tatu, received, and
16 seen in Tatu on the 5th of February, 2003. And the letter was received
17 by the S1 Camp Jerusalem.

18 If we could pause for a moment and discuss the camp, this
19 Camp Jerusalem. Before the break the Prosecutor asked a question of the
20 witness. He asked whether he knew of Camp Jerusalem. The witness said,
21 "No." He said he did not know of Camp Jerusalem. And if the Prosecutor
22 presents this exhibit to the witness, there is a clear risk that the
23 witness may see this indication here. And his answer was quite clear. I
24 also think we should point out -- I beg your pardon. It should be noted
25 that this letter was written in Bolo on the 4th of January, 2003;

1 4th of January, 2003. And it was received in Tatu on the 5th of
2 February, 2003, that is, one month later, whereas the distance between
3 Bolo and Tatu can be covered in three hours of walking. It is three --
4 the two places are three hours away by foot.

5 Also with respect to this question of the place where the letter
6 was signed and the place where the letter was received, I think it is
7 important to note, your Honours, that this letter was addressed to
8 Operational Commander Oudo, who was in Olongba. Oddly enough, instead of
9 being received in Olongba, it was received at Camp Jerusalem in Tatu.

10 Now, when we speak of Aveba, we go down towards Tatu and we get
11 to Olongba -- so from Aveba to Olongba, and then one gets to Tatu. I
12 think it's odd to see here that a letter that was drafted in Aveba and
13 was intended for Olongba, which is closer, was received further away, in
14 Tatu. This just doesn't make sense.

15 Another observation. In this letter - and Mr. O'Shea stressed
16 this point in particular, a very relevant point - the president of the
17 delegation is Martin Banga, whereas up until now, ever since the
18 beginning of the testimony, this witness has said and still says that
19 Boba Boba was the leader of the delegation. And once again I wish to
20 stress that both Boba Boba and Martin Banga are alive; they are alive.
21 And so why did the Prosecutor not question them about this letter?

22 Just a moment, if you don't mind, your Honour.

23 (Defence counsel confer)

24 MR. FOFE: (Interpretation) Your Honours, we will quickly return
25 to the matter of the two stamps. If one looks closely at the second

1 stamp or seal, which is not very clear, one sees that this stamp too is
2 from the FRPI. So one wonders why are the two stamps of the person who
3 signed the letter and the one who was supposed to receive the letter, why
4 are these the same?

5 Finally, your Honours, the Defence wishes to stress that in the
6 incriminating chart that the Prosecutor addressed and provided to the
7 Defence, the Prosecutor established or set no link between these
8 documents and Witness 250.

9 There you have it, your Honours. These are our observations
10 which we wish to add to what our learned friend Mr. O'Shea was saying a
11 few moments ago. Thank you.

12 (Trial Chamber confers)

13 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea,
14 Professor Fofe, thank you for your observations. I will certainly not
15 attempt to summarise those observations because they were long, dense,
16 and very fully fleshed out. In turn, we will listen to the Prosecution.
17 They will respond and in their response, perhaps, rather than providing
18 exactly their own observations, perhaps they could indicate what kind of
19 questions they intend to ask of the witness so we have that necessary
20 information.

21 Mr. MacDonald, please proceed.

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

23 I would like to hark back to the time-frame, the chronology of
24 the disclosure of this exhibit because I think that's an important point.
25 We have been accused and we are not offended - it's been more than

1 20 years now that we have been the target of accusations regarding
2 disclosure - but I can see that Mr. O'Shea when he rose - and he spoke
3 for half an hour - and apparently his objection did not necessarily
4 reflect the Defence team's attitude to the importance of the exhibit and
5 then after the Prosecution was accused. And I myself said -- indicated
6 on the file that we disclosed everything.

7 And once again we return to the matter of the title. I asked the
8 witness: What is your title or rank? A private, well, that is a
9 particular rank. But it really doesn't matter how the question is asked.
10 We were not expecting the witness's answer, but when he did give his
11 answer we had this document and we said that there was the possibility of
12 showing it to the witness. We did indeed open a door, and when I swore
13 my oath of office, I stress, your Honour, the Prosecution never knew that
14 the witness might have had a possible rank. We are in open session and I
15 will not mention the actual rank of the witness once again.

16 The Prosecution is being accused with a view to distracting the
17 Chamber, throwing up a smoke-screen, and not focusing on what's essential
18 here. And what's more, they are even saying that this is an abuse of
19 power that the Prosecution has, that this is an abuse of justice, and
20 mention is made of Section 69 and the exclusion of various items of
21 evidence. This is such a violation -- just one moment. The evidence was
22 disclosed in January 2009, more specifically the 29th of January, 2009,
23 in the package, package number 25 of the incriminating evidence.

24 On the 27th of May, 2009, in filing 1174, in response to an
25 express request from the Chamber to set out the detailed aspects of all

1 the incriminating evidence in a chart, the Prosecution did so. And this
2 exhibit bears a reference number in two appendices; namely, annex F which
3 refers to war crimes and annex -- the annex that has to do with criminal
4 responsibility.

5 It is true, Mr. Fofe, that we did not identify a link with
6 Witness 250 because that was not what the Chamber asked us to do. It is
7 easy to say that the Prosecution in its chart did not create a link
8 between the evidence and the witness, but that was not what the
9 instructions from the Chamber were. Once again, in the chart of
10 incriminating evidence we identified this exhibit right from the very
11 beginning as the evidence to be added to our table. On the 16th of
12 November, 2009, in filing 1643, and once again in annex F, with regard to
13 crimes of war, and once again in the annex that deals with criminal
14 responsibility.

15 Mr. Ngudjolo's Defence team challenged for the first time in its
16 filing 1375 the document in question.

17 And then the Prosecution replied. There also was a hearing on
18 the 2nd of October, and the document was discussed. And finally, on the
19 12th of October, after the request from the Chamber, the Defence once
20 again produced a new filing. And in that filing - and I
21 quote - paragraph 31:

22 "The relevant fact that the Prosecution must prove in this case,
23 for example, the alleged meeting, the Defence cannot oppose to the
24 Prosecution attempting to prove the alleged planning by showing
25 DRC-OTP-0029-0092. The Defence consents to discussion of this evidence

1 at the time of the presentation by the Prosecution during the trial."

2 So the Defence had a different -- something different to say in
3 writing, but there seems -- there seem to be a link between the letter --
4 rather, the exhibit in question and the alleged planning that took place
5 in Aveba. And then they sent us an e-mail in which the same words
6 repeated, namely, that there was no objection to the admissibility of the
7 evidence during the questioning of Witness 250, invoking the fact that
8 this document has no bearing with the question that is before
9 Trial Chamber II.

10 Your Honour, in the chart, annex F, page 84, indeed we did
11 establish -- or we made a link between the letter and the existence of
12 alliance between the FNI and the FRPI, in addition to providing a
13 reference in other places in that same annex and in annex N in support of
14 other allegations.

15 To respond to your question, your Honour, your Honour, I think
16 you have been able to see how witness -- how the witness is answering
17 certain questions. Of course, we wish to ask him questions about the
18 seal, first of all, and the content of the letter, secondly -- or perhaps
19 concurrently, so as to get some clues as to additional reliability in
20 addition to the information that the witness has already mentioned with a
21 view to possibly establishing this link between the delegation that went
22 to Aveba and the people who were identified in the document. And I would
23 put it to you that in transcript 92, page 44, line 9, the witness
24 indicated that he was able - and I refer you to the facts that he used
25 the example of the CPI, an acronym, and I believe that was a reference --

1 a reference to what? To the FNI and the FRPI. He said the FRNI (as
2 interpreted). So he was able to recognise that seal, possibly, by
3 reading the letter and reading the content to the witness, the witness
4 will be in a position to confirm or invalidate whether this is familiar
5 to him.

6 Up until now the witness has mentioned that there were civilian
7 authorities amongst the group that were liaising with the civilians,
8 Bukpa Kalongo and Martin Cobra, or Kamini, and I would argue that it is
9 the same person indicated here. He also said later that Adolphe was a
10 politician whom he had accompanied. And he mentioned Cobra Matata, and
11 he said that Cobra Matata had a camp in the region of Olongba Bavi. He
12 mentioned that Commander Oudo was in Medhu. So I think we can out and
13 out ask him where was Tatu, and I think he will answer that it was close
14 to Medhu. But I don't know whether he will give those replies. I do not
15 know because, no, we have not asked him about this document and for
16 various reasons. All the same, we could do so here in this very
17 courtroom and -- and the truth shall in this manner be revealed before
18 the Chamber itself. And at that point the Chamber will be able to see
19 the reaction of the witness, his answers, and his body language.

20 Similarly, insofar as the witness -- as he remembers the content,
21 this will add to the guarantee or the reliability, the authenticity of
22 this document. And yes, the Prosecution does intend -- one possibility
23 is to try to introduce this evidence by way of this witness, who is one
24 of the witnesses who is in the best position to comment on this document
25 since he was part of this delegation. So not only did he go to Aveba,

1 but also he went to Olongba Bavi. He went further, he went to Medhu. He
2 went to fight in Tinda. So all these various elements are such that
3 Witness 250 is a witness in a very good position. I would put it to you,
4 with all due respect, to answer the questions that the Chamber itself may
5 have regarding the content of this document. That is one possibility.

6 Another possibility - and this was mentioned in filing 1645
7 regarding the admissibility of certain documents, including statements or
8 briefs from Witness *258 and 167, people who are deceased, as well as the
9 interview statement by Mr. Katanga before the Congolese authorities, and
10 finally, the positions or the arguments regarding what we called the bar
11 table motions, namely, eligibility here from the Office of the
12 Prosecutor.

13 And to this end, I put it to you this second possibility. The
14 people who wrote these documents in domestic or international
15 jurisdiction, the presence of the authors is not necessary. Therefore,
16 we have been told that Mr. Kalongo, Mr. Banga, and Mr. Matata are still
17 alive, and I don't really want to have ex parte discussions about the
18 identity of these gentlemen and what they are doing with the discussions
19 with the Defence teams. So this is what -- what we wish to do, your
20 Honour, we wish to ask questions regarding the content of this exhibit
21 and determine whether the witness can comment or not so that the Chamber
22 can assess the nature of this document.

23 MR. KILENDA: (No interpretation).

24 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead.

25 MR. KILENDA: (Interpretation) Thank you, your Honours. I

1 believe it is the Chamber -- this Chamber that established the rule that
2 each time a party or participant speaks of jurisprudence that the corpus
3 thereof should be provided. We would be very pleased to receive the
4 jurisprudence that our learned friend has mentioned, be it national or
5 international in nature, with your leave, of course.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.
7 That is a rule that the Chamber did set.

8 Mr. O'Shea, please go ahead.

9 MR. O'SHEA: Yes, I'll be very brief, you'll be glad to hear,
10 your Honour. On the subject of smoke-screens, I think my learned friend
11 has kind of slipped down the slope, down the side, into the trees because
12 the complaint of notice is not notice of the letter itself; the complaint
13 of notice is notice as to what the witness is going to talk about. It's
14 a very, very important distinction there. (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged) So it's not about notice of the
19 letter; it's about notice of what the witness is telling us in court.

20 And 69(7) is something that I referred to, but I'm not -- let me
21 assure my learned friend, I'm not, you know, gung-ho for the Prosecution
22 asking for any kind of sanction or anything like that. I was just
23 indicating that, whether innocent or deliberate, there's prejudice to the
24 accused; it might be innocent. And I'm not relying on 69(7) as a basis
25 for saying: Well, exclude the evidence under 69(7); but what I'm saying

1 is that the spirit of the Article is that if something is antithetical to
2 integrity of the proceedings, then it shouldn't be allowed. But without
3 relying on that provision as a basis for excluding the evidence because
4 the Prosecution is being naughty, and I'm not in a position to go that
5 far, quite, there's 64(2) and 69(4), which are both provisions which
6 invite your Honours to consider the fairness of introducing documents in
7 a particular manner.

8 And the second and last point that I'd like to make is this: I
9 was hoping Mr. MacDonald might enlighten us during the course of his
10 response as to the chain of custody of this document. He hasn't done so.
11 May I just underline that this document shouldn't go in front of this
12 particular witness but shouldn't go in front of any witness unless and
13 until the chain of custody is established, and at the moment it's not.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
15 Counsel O'Shea.

16 Prosecutor, are you able to respond to the end of Mr. O'Shea's
17 intervention with regards to the modalities by which these documents are
18 concerned?

19 MR. MACDONALD: (Interpretation) Certainly, your Honour. The
20 chain of custody is given to the Defence, they received disclosure, but
21 there I can give further detail. This evidence was seized by the
22 tribunal de grande instance in Bunia, in Medhu, in the FRPI camp of
23 Medhu, and at this time, this search that was carried out was carried out
24 with the assistance of the United Nations, MONUC, on the 23rd of
25 September, 2004. The originals are in the possession of MONUC, and we

1 took possession of this MONUC evidence on the 21st of October, 2004, the
2 date on which -- excuse me, we took possession of these originals on the
3 5th of October, 2004, the date on which and following which they were
4 recorded into the case file, in our date -- Ringtail database.

5 And why did disclosure not take place prior to the 29th of
6 January, 2009, well there had to be co-ordination between the Office of
7 the Prosecutor, the United Nations, and the tribunal de grande instance
8 of Bunia, because the United Nations considered that this document came
9 underneath -- fell within the framework of Article or document 54(3)(e).
10 And as such, in the previous weeks the date to declare Prosecution
11 evidence, which was the 30th of January, if I am not wrong, the Chamber
12 imposed that date on us. And it is in this context that we were able to
13 disclose the evidence. And this also explains the reason why we did not
14 go back to Witness 250 because he had already given three statements, the
15 fourth in July, but on a precise subject which I have no reason to
16 publicly mention here.

17 So that is the chain of custody, and the chain of custody was
18 disclosed to the Defence teams, not necessarily the precise dates, but
19 certainly from which hand to which hand. I could file with redactions or
20 with a new redaction thereto, because it's a specific member of the
21 United Nations personnel who provide us with seized evidence, but we can
22 produce it should the Chamber so wish. But if we have to show it to our
23 Defence colleagues, we would have to redact the name of a person and we
24 would do this in accordance with the previous decision of the Chamber on
25 the redaction of metadata of specific employees in the metadata of the

1 exhibits on the list of Prosecution evidence.

2 If you would allow me just a moment, your Honour.

3 (Prosecution counsel confer)

4 MR. MACDONALD: (Interpretation) Your Honour, just to finish,
5 the Prosecution cannot be penalised because the witness gave a title.
6 The suspension -- well, we shouldn't have to announce our questions.
7 We've said the subjects on which we're going to ask the witness questions
8 about the issues, but to go from there to the questions -- we're
9 expecting such and such a reply and we're going to go in such and such a
10 direction, this is not the objective. And Counsel O'Shea, coming from
11 the common-law system, knows very well inevitably a witness only
12 testifies -- well, when they testify in chamber - and this is something
13 we will come back to, I think, tomorrow - the witness voluntarily
14 provided details, but there are other who don't reveal to -- things to
15 the Court. So this is how this functions on both sides.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
17 Just one minute, Professor Fofe.

18 Counsel O'Shea, with regards to the answer that you've had with
19 regards to the chain of custody, are you satisfied with this?

20 MR. O'SHEA: (Previous translation continues) ... satisfied that
21 Mr. MacDonald has answered the question, but it forces me to say this:
22 That chain of custody which has been put to us just now, we want to
23 investigate it. Tribunal de grand instance de Medhu FRPI, that's the
24 original source of this document -- or as far as the Prosecution knows.
25 Bunia, sorry, tribunal de Bunia. We -- now -- I think he said FRPI,

1 didn't he?

2 MR. MACDONALD: Yes, I did say -- I'll speak in English. I did
3 say the camp -- or the FRPI camp based in Medhu. That's where the
4 tribunal de grande instance executed a search with the assistance of
5 MONUC.

6 MR. O'SHEA: That's what I thought.

7 So the local authority, as it were, that was holding custody of
8 this document originally was FRPI, which comes back to the point: This
9 witness is FNI. FRPI document found in FRPI resource with a FRPI stamp.
10 And we would like to investigate the chain of custody. If Mr. MacDonald
11 is going to go into questions about what this witness knows about the
12 contents of this letter, we want to investigate this witness's background
13 with regard to that. And we also want to investigate the chain from the
14 tribunal de grande instance to l'ONU because we think we might find other
15 documents to assist us, and we need time to do that and we've been
16 deprived of it.

17 MR. MACDONALD: (Interpretation) With your permission.

18 PRESIDING JUDGE COTTE: (Interpretation) Yes, Prosecutor.

19 MR. MACDONALD: (Interpretation) Nothing prevents -- I mean, we
20 have a witness. The witness can be asked questions. We can ask the
21 witness questions with regards to this exhibit, and afterwards, there can
22 be investigations subsequent to this, as the Defence so wishes. We can
23 give an MFI number to it in the meantime, and the Chamber can decide
24 subsequently on this because -- and we can ask the witness if there's any
25 relationship with this documentation. But once again, this has been in

1 their possession since the 29th of January.

2 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe.

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

4 I would like to mention certain points highlighted by the
5 Prosecutor in his answer. I would like to start by saying that certainly
6 the Defence of Mathieu Ngudjolo had written on the subject of this
7 exhibit and had announced that when this exhibit was presented before the
8 Chamber, there would be a debate. The Defence did announce this. We had
9 mentioned this debate and here we are; we are there. So I don't think
10 any reproach can be made; quite the contrary. I think that there is room
11 for congratulating the Defence in this regard.

12 Now, where it concerns the answer of the Prosecutor, I would like
13 to stress, your Honour, honourable Judges, that in his response the
14 Prosecutor did not meet the essential concerns that we had raised,
15 namely, firstly, the risks that there are in having leading questions
16 being made to the witness while presenting this exhibit. We mentioned
17 to -- or we reminded ourselves of the answer of the witness with regards
18 to the Camp Jerusalem, for example. In presenting this exhibit, there is
19 a risk. Prosecutor has not met this concern of the Defence.

20 Second concern is related to the second seal or stamp, the one at
21 the bottom which is not clear. It apparently is the same as the seal
22 above, which curiously is more clear. The Prosecutor hasn't given us
23 explanations with regards to this concern.

24 Finally, where it concerns the argument that he presents
25 according to which the presence of the authors of this letter isn't

1 necessary, Counsel Kilenda reminded you of the requirements of the
2 indications in jurisprudence, to which the Prosecutor referred. And in
3 addition to that I would add that in the case in point it is not
4 impossible to hear from the authors of this exhibit, they are alive. The
5 Prosecutor hasn't given us convincing explanations with regard to the
6 fact that he hasn't examined the writers or authors of this letter who
7 are alive. In this case, it is not impossible, absolutely impossible, to
8 hear from them.

9 Thank you, your Honour.

10 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, an ultimate
11 response. Do the Legal Representatives want to intervene, albeit
12 briefly, in this debate?

13 MR. GILISSEN: (Interpretation) Thank you, Mr. President, I do
14 not want to.

15 MR. LUVENGIKA: (Interpretation) The same goes for myself. We
16 refer to the wisdom of the Court in this matter.

17 PRESIDING JUDGE COTTE: (Interpretation) Okay. This debate was
18 not un-useful. I don't know if you're satisfied, but the Chamber is
19 ready to take the time that's necessary to listen to the legal arguments,
20 which are legitimate and which do merit discussion. Quite simply, before
21 leaving here, because it's not at this time that we're going to introduce
22 the witness for any diverse questions, given that we need a minimum
23 amount of time to respond to the discussions that there have been since
24 the first of our -- part of our hearing today, but the Chamber has taken
25 note that there was a moment where you had a proposal of the Prosecutor

1 and in a solemn way indicated that when he had tried to -- or having
2 tried to understand who the staff of Zumbe was, (Expunged)
3 (Expunged)
4 (Expunged)
5 (Expunged)
6 (Expunged)
7 (Expunged)
8 (Expunged)
9 (Expunged) If we had known,
10 perhaps we would have gone into this subject before or in a different
11 manner.

12 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, let's go
13 into private session before we leave, please.

14 (Private session at 3.49 p.m.)

15 (Expunged)
16 (Expunged)
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12 (Expunged)

13 (Open session at 3.51 p.m.)

14 COURT OFFICER: (Interpretation) We're now in open session.

15 MR. MACDONALD: (Interpretation) An administrative question.

16 PRESIDING JUDGE COTTE: (Interpretation) Yes.

17 MR. MACDONALD: (Interpretation) With your permission, I would
18 like to go back to the issue of the order of witnesses. I had already
19 indicated last week to the Chamber and to the participants that it was
20 possible that we would reverse 15 -- 161 and 323, which we have to do.
21 So the next witness will be 268, followed by 161. And we hope then
22 Witness 323. It is clear that in light of the discussions that we have,
23 that Witness 268 will not testify this week.

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

25 So we've all taken note of that. Witness 268 will follow 250, that 268

1 will be followed by 161, and that you hope to be able to then present
2 Witness 323 to the Chamber.

3 So we therefore finish this hearing. The hearing is adjourned
4 and we will be back on Thursday morning.

5 COURT OFFICER: (Interpretation) All rise.

6 The hearing ends at 3.53 p.m.

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1 CORRECTION REPORT

2 The following modification has been made into the transcript:

3 * Page 70 line 8:

4 "Witness 250" is replaced by "Witness 258"