

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Fatoumata Dembele Diarra and
4 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 Monday, 15 February 2010
10 The hearing starts at 9.04 a.m.
11 (Closed session)
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2 (Open session at 9.05 a.m.)

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

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

7 Before giving the floor to Counsel Hooper to continue with his
8 cross-examination, the Chamber would like to give you some information,
9 and it would also like to issue an oral decision.

10 The information refers to our timetable for hearings. We still
11 don't have exact dates and precise times accorded to us for the period of
12 April, May, June, but from now it is possible to indicate to you or to
13 confirm to you that the Chamber will finish sitting on the 1st of April.
14 Thursday, 1st of April we will sit. The following week is a recess, and
15 then we will not sit in the week after that either.

16 The functions of the first vice-president Fatoumata Diarra will
17 lead her during this -- that week for the Court to go abroad, and that
18 means that this Chamber will not sit from the 1st of April in the evening
19 to the 19th of April in the morning. So we will have our court sessions
20 again from 19th of April onwards, morning or afternoon depending on what
21 is allocated by the Registry. So there will be a two-week break in
22 April.

23 That is the information that I wanted to provide you with. The
24 Prosecutor also wanted to have some precision with regards to this point.

25 Now an oral decision in relation to document * 1844 of the

1 Prosecutor.

2 On the 5th of February, 2010, the Prosecutor filed an urgent
3 request, number * 1844, requesting the Chamber for leave to immediately
4 disclose to the Defence a redacted version of certain notes taken by one
5 of its investigators during an interview with P296. This request is
6 based on Article 67(2) of the Statute.

7 The Prosecutor stressed that he did not realise that on the 4th
8 of February, 2010, these notes had not been disclosed to the Defence.
9 Aware of the link existing between P296 and Witness 268, the next witness
10 to be called by the Prosecutor, he therefore asked the immediate
11 disclosure to the Defence -- or, rather, he asked for the authorisation
12 to immediately disclose to the Defence.

13 The Prosecutor did consider the need to redact certain passages
14 of these notes based on Rules 81(2) and 81(4) of the Rules of Procedure
15 and Evidence. Furthermore, he also mentioned information falling under
16 Rule 81(1) of the Rules. The Prosecutor asked the Chamber for permission
17 to make these redactions for the length of the trial. He also stated
18 that the information which he does want to see the confirmed redaction of
19 are not necessary for the preparation of the defence and cause no
20 prejudice to the accused. He also provides three annexes, ex parte
21 confidential annexes, which the Chamber has noted in an oral decision of
22 the 8th of February, 2010, and upon which it will not go back to.

23 Taking into account the urgency of this request and the interest
24 attached to the fact that the Defence can have these notes expeditiously,
25 the Chamber, in an oral decision of the 8th of February, 2010, granted

1 the Prosecutor leave to disclose to the Defence the redacted version of
2 these notes. With a view to assessing whether or not these should be
3 maintained with -- as a whole or partially, these redactions which were
4 made by the Prosecutor, the Chamber asked the Defence teams on the 10th
5 February, 2010, to provide it with the comments which could -- or with
6 regards to the redactions carried out. The Registry reclassified Annex A
7 of the application, making it -- making it accessible to the Defence
8 teams. The Defence teams have not made any observation in this regard.

9 The Chamber therefore carried out an analysis of the request for
10 redaction in the light of the criteria stress by the Appeals Chamber,
11 criteria why which it has applied up to now and the decisions with a view
12 to redactions which has so far issued.

13 Any application with a view to redaction is subject to judicial
14 control carried out on a case-by-case basis. It is necessary to weigh up
15 the different interests such as reminded us in Rule 81 of the
16 Regulations, whilst ensuring that the procedure is such to ensure that
17 there are guarantees which will protect the interests of the accused and
18 to do so with a view to satisfying, as far as possible, the requirements
19 of an adversarial procedure and the principle of equality of arms. It is
20 therefore in this regard that the Chamber carried out with the
21 examination of the redactions made by the Prosecutor.

22 Firstly, the Chamber reminds everyone that with regards to the
23 information that it has available, there is an objectively justifiable
24 risk resulting from the insecurity that reigns in Ituri, and more
25 generally in the Democratic Republic of Congo, and this is the case both

1 for the investigations underway or in the future for the Prosecutor and
2 also for the safety of witnesses and members of their families. This
3 point in no way prejudices the existence of an objectively identifiable
4 risk which the Chamber must ensure during -- that it examines in -- on a
5 case-by-case basis when it comes to redactions.

6 The Chamber therefore notes that the Prosecutor requests, on the
7 basis of Rule 81(1) of the Regulations, a confirmation of the redaction
8 at the end of the document of a passage which in its view contains
9 internal comments of the Office of the Prosecutor, and it considers that
10 this is covered by Rule 81(1) above.

11 The Chamber notes this request whilst reminding that the
12 provisions of Rule 81(1) do not constitute a valid legal basis for the
13 presentation of redaction requests. It, however, does point out that the
14 information contained in the part of the document concerned do indeed
15 fall under Rule 81(1), and it can only remind everyone that even under
16 these provisions this type of information has not been disclosed.

17 Furthermore, the Prosecutor requests that the redaction of
18 information related to the practices that it uses in its investigations
19 be confirmed, as well as in the means of communication it uses to contact
20 its witnesses, Rule 81(2) and (4). These redactions, in its view, are
21 necessary to ensure the protection of its investigations as well as the
22 persons who collaborate with its office.

23 In previous decisions, the Chamber had already authorised the
24 redaction of points which would make it possible to identify working
25 methods which the Prosecutor use in place and which might lead to the

1 identification of witnesses or persons who collaborate with the court.
2 It considers that this is the case here. It does, however, note, that
3 the redactions requested constitute an adequate measure to reduce this
4 risk, that they do not harm the understanding of the document in the case
5 in point and that they do not jeopardise the fairness of the trial.

6 Finally, the Prosecutor requests on the basis of Rule 81(4) of
7 the Rules the confirmation of the redaction of information identifying
8 the children of P296. In its view these redactions are necessary with a
9 view to protecting members of the family of a witness who does not fall
10 within the protection programme of the court.

11 In accordance with the position that it adopted in previous
12 decisions, the Chamber considers that the communication of the -- or
13 disclosure of the identity of family members of the witness, as well as
14 any information making it possible to identify them, could compromise
15 their security, in -- in particular, when they are in Ituri. It
16 considers that the redactions which have been effected here constitute an
17 adequate measure to reduce this risk and that no lesser restrictive
18 measure would have made it possible to achieve the same result.

19 It considers that the redactions are limited to the names, ages,
20 and gender of the children of the person concerned. These redactions
21 are, therefore, very limited in scope and do not compromise the rights of
22 the accused as the document remains readable, understandable and can be
23 used by the Defence. It also considers that these redactions do not
24 compromise the right to an impartial and fair trial. As a consequence,
25 the Trial Chamber considers the proper foundation of the redactions made

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1 by the Prosecutor and during the phase of the trial, and it would remind
2 the Defence teams that they have the possibility during the substantive
3 debate to seize the Chamber with grounded requests if they consider that
4 some of the information which has been redacted should be made known to
5 them. It also reminds the Prosecutor that it is for the Prosecutor to --
6 to ensure the need to keep the redactions which have been made which
7 applies a constant regular re-evaluation of them and immediate
8 information to be provided to the Chamber should any -- should there be
9 any change to the present situation.

10 Counsel David Hooper, you have the floor to continue with your
11 cross-examination.

12 MR. HOOPER: Much obliged, Mr. President. Thank you, and good
13 morning.

14 Questioned by Mr. Hooper: (Continued)

15 Q. Good morning, Mr. Witness.

16 A. (No interpretation)

17 Q. Now, on Friday we got as far as Lakpa on your mission to Aveba.
18 Now, as I understand your evidence, the object of this mission was to
19 find the solution. Is that right?

20 A. Yes. The objective was to implement a system of relays beginning
21 Walendu-Bindi and Walendu-Tatsi because there were Walendu-Tatsi who were
22 next to Bindi, and the forces of the Walendu should stay in -- and there
23 were few of them who stay in -- there were few of them, and that's why
24 they had to stay together.

25 Q. Yes. Can you explain that to us, please? I didn't quite follow.

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1 Can you explain what you're saying there?

2 A. When the Lendu were driven out and massacred from the
3 collectivite of Tatsi, there were a certain number of people who left
4 Tatsi to go to Bindi.

5 THE INTERPRETER: The witness is speaking very fast, says the
6 Swahili interpreter.

7 PRESIDING JUDGE COTTE: (Interpretation) Witness, please speak
8 slowly. Please speak slowly so the interpreter can follow you. So if
9 you could answer again to Counsel Hooper. Thank you.

10 THE WITNESS: (Interpretation) There weren't enough Lendu in
11 their own territory because they had fled from Tatsi to Bindi. So it was
12 important to set up a relay or a system that would make it possible for
13 those people to be able to go home, to be able to go back to their
14 villages of origin.

15 MR. HOOPER:

16 Q. So the objective of this mission, was it, was to get a safe
17 passageway back from Bindi to Tatsi; is that right? Have I understood
18 that correctly?

19 A. The first objective was to visit all these people who had fled.
20 And one -- since they had been chased out of Tatsi. So the first
21 objective was to do that, and the next objective was to open the road
22 between the two collectivites, because the person who went back to
23 Tatsi -- or the number of them was quite small, and that's why we went
24 there, so that they could have a -- they could go back to their
25 collectivite of origin in large numbers.

1 Q. Now, you've told us how Bahati was a necessary member of this
2 mission because he knew the way, and there was also Boba Boba. Now,
3 between those two, who was the superior, Boba Boba or Bahati?

4 A. Boba Boba was a colonel in Tatsi. Bahati was an operator in
5 Tatsi, and he had to speak a lot more. When we had to go into mission,
6 he had to speak a lot more than Boba Boba, because he could speak Ngiti
7 and he was familiar with it. So all the people who were on the other
8 side, he knew them. He knew them very well.

9 Q. Now, having got to Lakpa, as you told us, you spent the night
10 with Lobo Tchamangere, and then in your earlier evidence, a week or so
11 ago, you told us how you then went to Kagaba, is that right? After
12 spending time with Lobo Tchamangere, you went on to Kagaba where you
13 again spent a night. Have we understood that correctly?

14 A. We went slowly, because when you're in Bindi there were Lendu who
15 had fled and who were in that area. We had to see them too. We spent
16 the night in Lakpa, and the next important we left and we went to Kagaba.
17 In Kagaba we spent one night. The military authorities had a discussion
18 between them in Kagaba, and then they gave us a place in Opama (phoen).
19 That's a place which is after Kagaba. And we spent a night there. The
20 civil officers who were in our delegation had the possibility to speak
21 with the person -- the persons who were already in that collectivite.

22 Q. Now, again I asked you a simple question, and you gave us more
23 information than perhaps was needed. So please listen to the question,
24 and if you can answer it concisely it helps in terms of our moving on.

25 I understood from your evidence, though, of a week or two ago

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1 that you said that it took you a day and a half to go from Lakpa to
2 Kagaba. Is that not right?

3 A. We left Lakpa at 10.00, and around 1500 hours, 1600 hours, we
4 arrived. We arrived in Kagaba.

5 Q. Well, that's not a day and a half, is it. It's just a few hours.
6 Why is there the difference between what you're saying today and what you
7 said last week at T92, page 64, line 17, if that's why Mr. MacDonald has
8 got up to interrupt me.

9 MR. MACDONALD: Yes, that's why I interrupted my colleague. And
10 if he could quote the passage to the witness so the witness can remember
11 what he previously said and adopt and recognises if he remembers saying
12 that in the courtroom before then moving on and trying to contradict him
13 with it.

14 MR. HOOPER:

15 Q. Let me say this to save time. Have you ever said on a previous
16 occasion that it took you a day and a half to get from Lakpa to Kagaba?

17 A. To tell the truth, between Lakpa and Kagaba, it's two hours
18 approximately. But in the delegation we went from 10.00 and arrived at
19 1500 hours. It wasn't a day and a half, no.

20 Q. All right. Well, I rest with the transcript.

21 So at Kagaba, did you meet the commanders there?

22 A. We did everything that we had to do in Kagaba. The civil
23 officers were with the delegation of the war displaced, and the soldiers,
24 Boba Boba, Major Boba Boba, and they came from the Kagaba garrison and
25 met there. Major Bahati.

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1 THE INTERPRETER: The interpreter corrects: It was Major Bahati.

2 THE WITNESS: (Interpretation) Even the place where we spent the
3 night these were -- that's where they told us to go.

4 MR. HOOPER:

5 Q. So did you meet, that's you when I say "you," not the delegation,
6 you, did you meet the commanders at Kagaba on your trip south?

7 A. Yes. We went to the garrison of Kagaba.

8 Q. And who did you meet there?

9 A. In this garrison of Kagaba, there were authorities that were
10 responsible for this place. There was the commander of the battalion, as
11 well as other persons.

12 THE INTERPRETER: The interpreter didn't get the name.

13 THE WITNESS: (Interpretation) There were other persons as well.

14 MR. HOOPER:

15 Q. I'm sorry, can you repeat the name, please, the name of the
16 commander, because the interpreter didn't catch what you were saying.
17 Can you just repeat it for us, please.

18 A. There was the battalion commander there, Yuda, and his assistant,
19 Dark, the second -- his second in command.

20 Q. Had you ever met them before? That's you personally.

21 A. Yes. I had already met them before that time in civilian
22 activities.

23 Q. Sorry, I overlapped. I'll repeat the question. And when was
24 that and in what circumstances?

25 A. Are you talking about the time when there was a movement, a

1 convoy, or are you talking about civilian activities or religious
2 activities?

3 Q. All right. Well, here you are on your way to Aveba, and you meet
4 Yuda, for example, and my question is: Had you met him before? You say
5 yes. So I'm asking you when and where. Can you tell us, please?

6 A. When we went to Walendu-Bindi, we entered the camp that he
7 headed. We introduced ourselves, and we said that we were not rebels who
8 were coming in from -- who were coming from Bindi. So we went in the
9 normal way, and that is why we went and introduced ourselves to him.

10 Q. Now, can you tell us when you'd met him before?

11 A. Before that I met Yuda. You know, if you read the Bible, you
12 will understand.

13 Q. Now, that was a straight question. Can you give us a straight
14 answer, please. When had you previously met Yuda?

15 A. You want to know when I met Yuda, at what time during that
16 particular trip, sir?

17 Q. No. I think you know what I want to know. I'd like to know when
18 you met Yuda before that trip. What circumstances had you met him,
19 whether that's in a civil or religious situation. What were the
20 circumstances? And if you don't want to tell us, I'll move on.

21 A. Well, if it was that trip, it was not during a religious
22 activity. And we had to go because there was a camp, a military camp
23 there in the Walendu-Bindi collectivite, and it was during a military
24 activity.

25 Q. All right. Now, from Kagaba you go via Mandro, you told us, to

1 Tchekele -- or Tchekele. And again, how long did that take, that trip?

2 A. *We went we did not go by Mandro, it was in Mandro. And the trip did
3 not take an entire day. And furthermore, that is where we found a stamp,
4 the stamp that people have talked about so much here.

5 Q. So what time did you leave Kagaba, and what time did you get to
6 Mandro?

7 A. We left Kagaba at 3.00 in the afternoon or perhaps 4.00 in the
8 afternoon, and we got to Mandre at 7.00 p.m. or 8.00 p.m.

9 Q. You see, on the 28th of January, which is some time ago now, I
10 know, but transcript 92 at page 64 which I referred to, you said:

11 "When we left the Bedu-Ezekere groupement to arrive at Lakpa, it
12 was one and a half days, and from there to Kagaba another day and a half,
13 and from there to Tchekele also one and a half days."

14 Why is there that difference in this simple aspect of your
15 account as to your journey? Why the difference?

16 A. I told you that we left Kagaba at around 3.00 or 4.00 in the
17 afternoon, and we got to Mandre at about 7.00 or 8.00 p.m. We spent the
18 night there, and there was a position of Commander Samuel, and that is
19 where we spent the night.

20 Q. You see, I would suggest you went on no such trip to Aveba with
21 Boba Boba and Bahati as you've described.

22 A. We all left together at the normal pace. We didn't run, and we
23 were not fighting either.

24 Q. And further than that, I suggest that you were not a combatant
25 and you were never at Bogoro fighting either. We'll come to that

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1 shortly.

2 MR. HOOPER: And that is called putting my case, so we're all
3 clear, but Mr. MacDonald is on his feet, so let me sit down.

4 MR. MACDONALD: (Interpretation) I certainly understand that
5 Mr. Hooper is putting his possible defence to this witness as he has to
6 do in an adversarial system, and that was a comment that I was going to
7 make at the end of the cross-examination of this witness, but that is not
8 a question. He is not asking a question. He is making a statement, and
9 he has provided -- made two statements. I think he should be asking
10 questions of the witness so that he can show his lines of defence, but he
11 should be asking questions. He was engaging in oral arguments with the
12 witness. They were not questions.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you. These are
14 suggestions that were put to the witness and responses were anticipated,
15 but, yes, perhaps it would be better to do this by way of questions.

16 Please resume, Mr. Hooper.

17 MR. HOOPER: Thank you. And I do that so that the Chamber itself
18 and all the parties understands where I'm coming from.

19 Q. So let's go back to your position. Eventually you get to Aveba,
20 and you tell us you spent one month, one week, and four days on this
21 mission. How do you know that? Did you have a diary or a calendar with
22 you? How do you know that that was the specific length of time?

23 A. When we left Zombe, it was at the normal sort of time or rate.
24 It was calm at the time. There was no fighting. We lived in a
25 collectivite in a quiet way.

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1 Q. Well, that wasn't the 36 attacks we heard a little while ago.
2 When you say a quiet way, the question was why or how are you so able to
3 be so specific about this one month, one week, and four days? What led
4 you to say that that was the time that you spent? And I've said, did you
5 have a diary? Did you refer to the calendar? Can you help us, please?

6 A. At a particular point I had the chance to have a document from an
7 authority, and what's more, I know that a week is seven days and a month
8 is made up of four weeks.

9 Q. When you were at Kagaba, before you went to Zumbe, you remember?
10 I'm not going to detail why you were there because we heard about that in
11 closed session, but while you were there, did Yuda already have a camp
12 there or not?

13 A. I'm talking about the time when there was a garrison at Kagaba
14 and a Protestant church. There was a military camp there.

15 Q. And when you told us later when you were doing business and
16 acting as a transporter and a courier in Aveba, did -- did you -- was
17 Germain Katanga there, and what was his position? What was he doing when
18 you were there?

19 A. He was the president of the FRPI. You know that a president only
20 is the president. That's all he does.

21 Q. May I say I accept that. I accept there was a time when he was
22 president of the FRPI. And is it right when you were there, not on this
23 mission -- I'm not talking about this mission. I'm talking about later,
24 after the UPC had been kicked out of Bunia. You remember you were
25 telling us you were moving about and you had various functions and you

1 visited Aveba, and, indeed, you've told us you were there later for
2 another reason. I don't go into that. During that time is it right
3 there was a camp called the BCA?

4 A. Yes, there was the BCA camp. It was a camp occupied by the
5 body-guards, those who guarded the residence of the president. And that
6 camp was called the BCA, and I'm speaking of the president of the FRPI.

7 Q. Indeed, and that's accepted. Now, let's come back to the
8 mission.

9 You told us that when you arrived, at some short time after you
10 arrived there was a parade, and you told us you were presented, you to
11 them, your mission to them, and them to you. As I understand it, among
12 those presented to you was Yuda, his assistant Dark, and Cobra Matata.
13 Is that right?

14 A. When someone travels, he shows his passport to the proper
15 authorities. I wasn't the one who was there alone. We were within a
16 convoy. Would you -- you always want me to talk about myself, but, you
17 see, I was part of a group.

18 Q. Well, again a simple question: At the parade were you
19 introduced -- or do you still say, as you said a week or so ago, that you
20 were introduced to Yuda and Dark and Cobra Matata; is that right?

21 A. I must tell you that I wasn't introduced. I was part of a convoy
22 that arrived to the main camp that was located there.

23 Q. All right. Were you, as part of the mission from Zumbé, as a
24 group introduced to Yuda and Dark and Cobra Matata?

25 A. I saw Cobra Matata when we already were at the residence of the

1 president. I noticed that Colonel Matata was there and then we went to
2 Bavi Olongba to his home and we spent the night there.

3 Q. I'm not asking you Bavi Olongba. I'm asking you about Aveba and
4 you told us there was a parade, and you were all formally introduced to
5 one another; is that right? There was a parade where you were formally
6 introduced?

7 A. Yes, that's right. If the ICC wants to go and work in the DRC,
8 the officials of the ICC absolutely have to introduce themselves to the
9 authorities of the DRC.

10 Q. Now, why, then, if you were introduced to Cobra Matata were you
11 then sent to meet him, as you've told us? You were sent to Bavi Olongba
12 because there was someone else, as you put it, that you had to discuss
13 things with. Why was that if you had already met him?

14 A. Those people represented the FRPI. When we left Tatsi, we went
15 there and we went to the home of the president. Our superior had to meet
16 with the other superior who was there, and our role was to accompany our
17 superior even though you insist on myself and my own activities.

18 Q. Now, I understand that you were there. You told us last week you
19 were there as a spare tire. Am I right in saying that you yourself,
20 that's you personally, didn't sit in or attend any of these meetings that
21 took place between people on the mission and people in Aveba or
22 elsewhere; is that right?

23 A. I gave the names of the superiors like Bahati de Zumbe,
24 Cobra Matata, Martin, Cobra, Boba Boba, Bukpa Kalongo. You should ask me
25 whether those people took part in that meeting, because the people -- the

1 ordinary people were not allowed to attend a meeting of authorities like
2 those people.

3 Q. Now, when you say you saw Germain Katanga at the parade when you
4 arrived at Aveba, you say he was a colonel. How did you know he was a
5 colonel? You said it was through his uniform. Did he have a colonel's
6 uniform?

7 A. It wasn't just because of the uniform. He was the president, and
8 he had that rank of colonel. He was -- he fought for his region. When I
9 went to take part in military training, I was somewhat in front of him.

10 Q. And what military training was this?

11 A. It was decided that we had to go to do some military training,
12 but after that it was not possible.

13 Q. All right. Well, let's take that bit of information again. It
14 was decided to go for military training. Did you go on military
15 training?

16 A. That's what I just said. It was not possible to do that military
17 training. It was thought that we would send young people because the UPC
18 was threatening, but then we became discouraged and we stayed where we
19 were.

20 Q. So --

21 THE INTERPRETER: Correction by interpreter: "We were
22 discouraged."

23 MR. HOOPER:

24 Q. So there was no military training; is that right?

25 A. We did not go. If there had been training, we would have gone,

1 and we would have changed.

2 Q. Why do you refer to Germain Katanga as Germain Katanga Nduru?
3 Why "Nduru"?

4 A. At the level of Bindi, when you say "Germain," well, it's a first
5 name, but "Katanga Nduru" is a family name. That's how I see it, as a
6 family name.

7 Q. Well, you may see it like that, but is that how you say he was
8 called?

9 A. Some people have a name or a first name plus a name -- a surname
10 and then a post name.

11 Q. Now, you tell us that you go off to see Cobra Matata and,
12 consequently, Oudo, and both of these gentlemen, am I right, had their
13 positions, their camps, in the groupement or area of Bavi; is that right?

14 A. The camp didn't belong to them. It was an FRPI camp, and that is
15 where they worked.

16 Q. Did you go there?

17 A. I went to the residence of Cobra Matata, and I even went to the
18 place where operational commander Oudo worked. I went to the place.

19 Q. And you said in evidence you went there because you were told
20 there was somebody else you must say. That was Cobra Matata. And you
21 were sent there by Germain Katanga to go and see. Is that right?

22 A. In order to see them, we needed to have a travel authorisation,
23 and once that authorisation was approved by the FRPI, we could go
24 anywhere. That is how we travelled. It was to achieve the purpose, what
25 they wanted. It is for that reason that we went there.

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1 Q. Now, we've seen the letter, EVD-25, and you will remember that,
2 I'm sure, which is addressed to Monsieur operateur Oudo at Olongba.

3 If you had been sent down there, why was it necessary for anyone
4 to send a letter? Do you know?

5 MR. MACDONALD: I object, your Honour. (Interpretation) I
6 object to the phrasing of the question. The witness is talking about a
7 travel document, and then counsel is inserting document EVD-25 into the
8 question and linking it up with the travel document; whereas, they are
9 not similar as the letter itself specifies. This can confuse the
10 witness. It is certainly confusing to me. It can be confusing to the
11 witness.

12 PRESIDING JUDGE COTTE: (Interpretation) Please proceed,
13 Mr. Hooper.

14 MR. HOOPER:

15 Q. Let me ask you this: On the letter EVD-25, as you've seen,
16 there's a stamp on it which has the words "Bureau d'etat-major siege
17 Tatsi Zumbe," with a bow and arrow and an AK-47. And then 'round it,
18 Forces de Resistance Patriotique en Ituri."

19 Why are you calling yourself FRPI? Can you just help us on that?

20 A. These were orphans of Ituri.

21 Q. And you told us how you decided to make a stamp on the way. I
22 mean, how did you make this stamp?

23 A. Stamps in Ituri, in -- in order to fabricate them one can use
24 razor blades and other materials. I can say that that stamp was produced
25 on which FRPI was inscribed, as well as other signs that you can see

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1 there, but generally speaking, it was the orphans of Ituri who were
2 fighting.

3 Q. Yes, I quite accept that it's not uncommon to find such stamps,
4 FRPI, but stamps generally may be by the roadside or whichever, but who made
5 the stamp?

6 A. I do not know the name of the person who made the stamp, but I
7 know that the stamp came from the authorities who were there. As you and
8 I can see, there are -- it is written on that stamp. I can give you a
9 name of the person who made that stamp today, and later on you're going
10 to ask me the same question, and you're going to ask me who produced the
11 seals, the stamp.

12 Q. Did you take soap back with you to Zumbe?

13 A. Some people bought beans, beans to plant.

14 Q. Did people take soap back with them?

15 A. Soap was used to wash the clothes of the authorities, that is,
16 the dirty clothes, but this was not soap used to help the members of the
17 population who were in the locality or in the collectivite.

18 Q. Did you take soap back with you to Zumbe?

19 A. There were some people who had soap, but personally, I did not
20 have any. There were some people who, because they did not have soap,
21 produced some sort of local soap known as pledikuba (as interpreted).

22 Q. All right. Now, let's come then to your going back -- back to
23 Zumbe. And you've told us that your group that had arrived went back in
24 three stages.

25 Are you all right, Witness?

Witness: Witness P-0250 (Resumed) (Open Session)
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1 That your group went -- thank you.

2 A. Yes, I am fine.

3 Q. Your group went back in three stages. First group of -- you told
4 us was Lone Nyunye. Now, why didn't you go back with him? Given his
5 position in relation to you, why didn't you go back when he went back?

6 A. At that time there were people -- well, Lone Nyunye was a
7 soldier, and Zombe was being attacked at that time, and that is how come
8 he, as a commander, and other people who were authorities had to issue
9 the orders. The orders did not come from him but from the authorities
10 and others such as Nyunye and other authorities who were there.

11 Q. I don't know if that was what you said. I'm not going to go back
12 over it. Let me ask you again. Nyunye was your superior. Why didn't
13 you go back with him?

14 A. When we went on mission, there was Colonel Boba Boba on the way.
15 There was also operator Bahati. Nyunye, who was a battalion commander at
16 that time, had to respect the authority who was above him.

17 Q. And then another group left you told us about, and you said that
18 they could take beans and nuts and flour. And then there was the third
19 group, the group you went with, you say was led by Boba Boba. And you
20 say that Germain Katanga personally gave you some FALO -- ammunition; is
21 that right?

22 A. The flour and the beans were not from the FRPI to the population.
23 It was the members of the families who sent those things to the other
24 displaced persons on the other side. That is why beans and flour were
25 distributed to people.

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1 Now, concerning the ammunition, when Boba was leaving, he was
2 receiving something from his friend, just like the members of the
3 population were receiving food. So that is how come Boba Boba received
4 the --

5 THE INTERPRETER: The Swahili interpreter says he did not hear
6 the last part of the witness's answer.

7 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, the
8 interpreter did for the hear your last answer while you were talking
9 about ammunition, not the flour and the beans. So if you can repeat,
10 please. Thank you.

11 THE WITNESS: (Interpretation) I was saying that the civilians
12 were receiving flour from the members of their families. That is how
13 come Germain, as an authority, saw that there was another military
14 authority near him, and so he gave Boba Boba what he had. Boba Boba was
15 there. He had given it for the collectivite of Walendu-Tatsi.

16 MR. HOOPER:

17 Q. Now, you told us you had AK-47's. So why would you be getting
18 FALO ammunition?

19 A. We found the FALO ammunition in Aveba. There were four or five
20 of them in Zumbe. The authorities saw that those weapons could be
21 useful, and it is for that reason that they took them. When we met him,
22 he told us, "These are the weapons that I have," and that as it is
23 usually said, war loot or war booty doesn't have any owners.

24 Q. All right. Now, Bahati, or operator Bahati, or Major Bahati as
25 you've called him, was, you tell us, a significant member of the mission

1 that left Zumbe as he knew the way. And you've told us this morning that
2 he spoke Ngiti. And you told us on Friday that you waited for him to
3 come back from Nyankunde before you left the mission to Aveba.

4 A. He is from Walendu-Bindi by origin. That is why his presence was
5 necessary. In Zumbe he was working as the operations officer in the
6 general staff, and as the operational commander he was leader of various
7 operations. That is how we went with him, and he helped us to attack
8 Bogoro.

9 Q. Yes. We'll come back to Bogoro. You were telling us Friday how
10 he comes back from Nyankunde, and you had to wait for him before you left
11 on the mission to Aveba.

12 A. What is true is the following: We knew that the APC was aware
13 that we had already settled and occupied the region. And since Bindi was
14 nearby, it was possible for us to meet, and we achieved that objective.
15 If the soldiers of the APC wanted to govern the region, the population
16 would not be able to go to Bindi.

17 Q. Just give me a moment. When you met Mr. MacDonald, you met him
18 on many occasions, and I'm looking at a meeting you had at the beginning
19 over several days back in December of 2006, and I'm looking at the fifth
20 transcript of that at line 415, and in that transcript you don't have
21 Major Bahati as part of the mission. You have him as one of the FRPI men
22 who you're introduced to at Aveba. Why is that?

23 MR. MACDONALD: (Interpretation) I'm sorry, Mr. President,
24 because we missed the reference. It is an ERN that was read quickly. It
25 did not appear on the transcript, and we missed it also. Can we have the

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1 specific reference?

2 PRESIDING JUDGE COTTE: (Interpretation) Can we have the
3 reference? I think I heard myself transcript -- transcript, line 415.
4 Can you give the precise reference, please.

5 MR. MACDONALD: What is the ERN of the page?

6 MR. HOOPER: (Microphone not activated) ...

7 THE INTERPRETER: Microphone, Counsel.

8 MR. HOOPER: The total reference is DRC-OTP-0177-0230, which is
9 the -- one of those many transcripts, and the line I've indicated is line
10 960 on that transcript.

11 Q. And the question you're asked is, and this is by Mr. MacDonald:

12 "Q. (No interpretation)."

13 I've only got my own translation.

14 "Q. (Interpretation) When you arrived --"

15 I'll start again. I'm going to be reading it in French.

16 "Q. (Interpretation) And so when you arrived Katanga's
17 house, are you able to tell us with whom Katanga was? Who from the FRPI,
18 that is the group of Katanga, was present there?

19 "A. We found many soldiers."

20 (In English) And among those you say Bahati.

21 "A. (Interpretation) He is now a soldier, a colonel of the
22 6th Brigade."

23 MR. MACDONALD: (Interpretation) For the record, Mr. President,
24 we have the exact ERN and it moves much faster with the ERN. That is
25 DRC-OTP-0177-0258. And the beginning of the question is line 963 of that

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1 transcript.

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

4 Mr. Hooper, please proceed.

5 MR. HOOPER:

6 Q. So there you're putting Bahati amongst those Katanga introduces
7 you to, not as part of your mission. Can you explain that difference?

8 A. Bahati had come from Zombe. He was a member of the mission in
9 which I participated. He was the one who was the representative. He was
10 the one who was called when there were major difficulties. At the same
11 time, he was operator.

12 Q. Yes, I appreciate you repeating your position today. What I'm
13 saying is that you're clearly putting him amongst those you're introduced
14 to by Germain Katanga as being part of the FRPI group.

15 A. He introduced the people when they assembled in the residence.
16 As president, he was the one who made a speech and introduced the
17 military authorities. Later on, each of those authorities took the
18 floor.

19 Q. Neither do you have Bahati as a member of the group going from
20 Zombe to Aveba. You mention two other Bahatis who are body-guards, so
21 not this man.

22 A. Bahati de Zombe was there as the operator, Bahati de Zombe.
23 There were many people bearing the name "Bahati." You can see two or
24 three people with the same name.

25 Q. (Microphone not activated) Accept that. What I'm saying is you

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1 don't put Bahati in the mission from Zumbe to Aveba. On the contrary.
2 You first introduce Bahati as a member of the FRPI delegation that you
3 meet for the first time in Aveba. Now, that's a big difference. Because
4 Bahati is the core of your story, so why is there this difference?

5 A. When we left Zumbe, at that time he accompanied the soldiers of
6 the APC. It was Mathieu Ngudjolo who authorised him to accompany the APC
7 soldiers towards Walendu-Tatsi.

8 Q. Now I'm going to look at the next transcript that day when you're
9 being questioned by Mr. MacDonald. Again it's the 5th December, and the
10 deference is DRC-OTP-0177-0199, and -- I have to go to the original. Do
11 forgive me. Line 377, which is on OTP-0177-0273, or possibly 72. One of
12 the two.

13 Again, I'm going to have to try in French. And it's
14 Mr. MacDonald:

15 "Q. (Interpretation) Okay. When you went back to Zumbe
16 having spent a month, a week, and four days, were there FRPI fighters who
17 accompanied you to Zumbe?

18 "A. Yes. Some of them came, almost 12 a section. It was
19 just soldiers who were sent to see the position of Zumbe."

20 (In English) Line 424:

21 "Q. (Interpretation) Was there a commander of this section?

22 (In English) Response:

23 "A. (Interpretation) The person who had -- misleading them
24 was a person who lived a long time in Zumbe and he came back,
25 Colonel Bahati. He is now the Colonel of the 6th Brigade of the FARDC."

1 (In English) So now in your responses you have Bahati coming
2 back with 12 soldiers, a section, coming back with you to Zumbe. Not
3 waiting about, not hanging about as you told us, and coming later, but
4 coming back with you. Can you explain that difference?

5 A. When I spoke about Bahati, what I said was as follows: From
6 Tatsi to accompany the APC, it was him I was talking about. He was the
7 one who was walking with 12 soldiers. It was he -- there's the name of a
8 person who was his -- who was his guard at Bindi.

9 Q. And we hear what you say. Now, let me go back to June 2007,
10 another time when you meet Mr. MacDonald. You meet him on the 8th of
11 June, the 9th of June, and the 10th of June, and we have a statement
12 that's a product of that, and that statement is reference -- after the
13 usual numbers is OTP-1013-0002, and I'm going to look and refer to
14 paragraph 65 on that and refer you to that and ask you a question about
15 it. It's paragraph 65. And again this document's in French. I'll just
16 get to my own version of it in a moment, because I think I've got the
17 wrong reference, hold on. Yes.

18 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, you are
19 carrying out an exercise which is intellectually and practically
20 difficult, but you have to be able to put your microphone nearer to your
21 mouth. The microphone, for the interpreters.

22 MR. HOOPER: Sorry. Last week I was told it was too close and I
23 was distorting my own voice, so I've moved it away. They're obviously
24 very directional. Thank you, Mr. Interpreter. And if you could let me
25 if I'm too loud or not loud enough, I would be very grateful.

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1 PRESIDING JUDGE COTTE: (Interpretation) Perfection is difficult
2 in this world.

3 MR. HOOPER: Indeed.

4 Q. And the part, in fact, I've got at 65 is you talk about Bahati
5 coming back to Zumbe, and you say this:

6 "(Interpretation) He came back with the group with which he
7 was -- he had gone with to go and fight in Nyankunde.

8 MR. MACDONALD: (Interpretation) I'm -- I'm going to ask a
9 procedural question with regards to the step that's just been taken. I
10 think that it is important when we use these previous statements that we
11 feel are incompatible that when we just take quotes that the -- I think
12 the witness needs to be able to re-read it for himself, I would submit to
13 you. So have the context. Here we have a complete paragraph, so that
14 the witness can, one, refresh his memory whether it's really what he did
15 say previously, and then the question can be put taking into account if
16 we're being fair to the witness, because there are three or four
17 statements in the file.

18 PRESIDING JUDGE COTTE: (Interpretation) It would seem that --
19 and this is not an appearance. It's a certainty.

20 Counsel Hooper, before asking this question as re -- re-quoting
21 the statement in French made by the witness before the Office of the
22 Prosecutor in 2006 or in 2007, there is always the possibility for you in
23 your new examination to go back to that point, but I don't think that we
24 can chop it -- up the debate, and too commonly, as it's happening at the
25 moment, I think we have to make a useful reference as Counsel Hooper was

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1 asked to do so that you could check the transcript on your side and the
2 answers given by the witness are quoted. I think these are events which
3 the witness has in mind. We can't go beyond that.

4 Counsel Hooper please continue.

5 MR. HOOPER: Yes, thank you. Because I don't have the transcript
6 of is this statement. It's a summary of part of three days of interview,
7 and so they're compacted in these paragraphs. So it would be not much
8 help to approach it in the way that Mr. MacDonald has suggested. And I
9 entirely accept that any matters that I'm wrong about I can stand
10 corrected in re-examination.

11 Q. So -- yes. So paragraph 65, let me just read that again, the
12 relevant factual matter that I draw on from this document.

13 "(Interpretation) Bahati de Zumbe also came back to Zumbe. He
14 came back with the group with which he had gone with to go and fight in
15 Nyankunde. He had a section with him. I know that he had to go to Aveba
16 after the attack on Nyankunde, because the small Kabule had said that
17 Bahati de Zumbe would go there to visit his wife. I call him small
18 Kabule because he was younger than myself."

19 (In English) So here we have Bahati arriving back with the 12
20 men he took to Nyankunde, and in circumstances where you suggest that he
21 had gone over to Aveba after Nyankunde, not returned to Zumbe.

22 Now, can you explain this difference?

23 A. We left Zumbe to go to Aveba, and when we arrived in the
24 Bogo (as interpreted) area we were with Bahati. (Expunged)
25 (Expunged)

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1 (Expunged).

2 Now, before going to Lagabo (as interpreted), I was with
3 Bahati de Zumba. This is a phrase that I could say two or three times if
4 that would help. Furthermore, I am tired (as interpreted) of replying to
5 these answers. I'm always talking about I'm tired of answering this
6 question.

7 PRESIDING JUDGE COTTE: (Interpretation) Witness, you have the
8 right to be irritated by the questions that are put to you, but you have
9 come before the Court for longer than you had thought. That's true. We
10 have borne that in mind. And you have come to the court to answer the
11 questions that the Prosecutor, the Defence counsel, and the Legal
12 Representatives consider useful to ask you, and if certain questions are
13 repeated to you, it's most likely because the questions that are asked
14 that person considers it necessary to repeat those questions. We,
15 therefore, have 15 minutes for this first part of the hearing, then there
16 will be an adjournment which will make it possible to rest, but in -- now
17 Counsel Hooper will continue with his questions, and you will reply to
18 them as best as you can, and if you don't know, just say you don't know.
19 Counsel Hooper.

20 MR. HOOPER:

21 Q. Now, I want to come back to your evidence of Tuesday, the 2nd of
22 February. It is T95 in the transcripts, at page 34. And you were -- you
23 were asked this by Mr. MacDonald, that -- this is the 2nd of February,
24 just a week ago.

25 "Q. With regards to the three groups --"

1 This is a question from the transcript I'm reading from.

2 "Q. With regard to the three groups, when did Bahati return
3 to Zumbe?

4 "A. After our arrival in Zumbe, I think it was two days
5 later. In fact, when I arrived, I rested for a while, and I was told
6 that Bahati had already arrived. So I think it was two days.

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

9 "A. We -- when he arrived after one day, that is, he rested
10 for one day, and on the third day we went to Bogoro, that means three
11 days after his arrival in Aveba, we arrived in Bogoro.

12 "Q. Let's be clear. Maybe there are translation problems.
13 You said that you arrived in Zumbe. While you were resting, you heard
14 that Bahati had arrived in Zumbe. Let's begin with that. Is that your
15 testimony?

16 "A. To summarise, I would say we spent four days without
17 Bahati after leaving Zumbe, and on the fifth day after leaving Aveba, we
18 attacked Bogoro.

19 "Q. So you left Aveba, and on the fifth day after leaving
20 Aveba, you attacked Bogoro; is that correct?

21 "A. Four days. On the fifth day, we attacked Bogoro."

22 Now, that's your -- your reply, and so here in your evidence we
23 have you getting back to Zumbe, and then two days go by and Bahati
24 arrives and then you attack Bogoro. Is that your evidence? Is that
25 correct?

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1 A. We went back -- we came back, there were the first convoy from
2 Bindi. When we arrived, we fought Bogoro, and that happened within a
3 week. We can say that concretely four to five * days.

4 The last convoy which was led by Boba Boba.

5 Q. I'm sorry, my translation may very well have been correct, but I
6 don't understand what you've just said, and I don't need Mr. MacDonald to
7 help me. I really don't.

8 It might be easier, Mr. Witness, if you repeat what you just
9 said, if you can, if that's all right.

10 MR. MACDONALD: Objection, your Honour. My -- there are two
11 transcripts here. My colleague reads French. He can look. The French
12 transcript also is clear on what the witness said, or he can listen to
13 the translation. The answer is provided, and we're not talking about
14 years but days.

15 MR. HOOPER: "We can say that concretely, four to five years."
16 That's what it reads. Now I'm not having a cross-court discussion with
17 my friend. I'm addressing the Bench. I have a difficulty with the
18 translation. The witness may have said four or five years, and I see
19 Mr. MacDonald shaking his head, and this is why I ask for clarification.
20 Maybe the easiest way is in respect to the witness --

21 Q. Can you just tell us, if you can, again, what you said, and speak
22 slowly, please, so the interpreters can understand you and translate you
23 accurately.

24 PRESIDING JUDGE COTTE: (Interpretation) Good. Counsel Hooper
25 asked the witness to repeat his answer.

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1 So, Witness, please could you repeat the answer which you
2 provided to the last question which was put so that the interpretation
3 can be complete and understood by all of us. Thank you, Witness.

4 THE WITNESS: (Interpretation) You are speaking about the end
5 Bahati -- or the wife of Bahati. When Bahati accompanied the agents or
6 the officers of the APC, he wanted to take advantage of (indiscernible)
7 other side. He wanted to see his wife. We were sure that Bahati had to
8 come and we had to go together to Aveba.

9 MR. HOOPER:

10 Q. So again we hear what you say, but your evidence -- is this your
11 evidence, that Bahati arrives -- Bahati leaves with you on mission -- let
12 me start again.

13 Bahati leaves with you on mission from Zumbe to Aveba. There
14 comes a time when you and Boba Boba go back to Zumbe. And as you said a
15 week or so ago, about two days after that Bahati arrives, and then the
16 day after that or so you attack Bogoro. All I want to know is do you
17 stand behind that account that you gave us just a week ago?

18 A. When the last convoy or the last delegation came back, it was
19 after four days, and after this event there was not only the presence of
20 Bahati but also the attack on Bogoro.

21 Q. I need you to be clear. You get back with Boba. Yes or no?

22 A. I said -- what I said was the return of Boba Boba after he came
23 back to Zumbe, it was after two or three days that -- when we had seen
24 Bahati and the attack on Zumbe. I can say in a general way a week from
25 the arrival of Bahati and the fall of Bogoro. That happened within one

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1 week after our return there.

2 Q. I'm not trying to trap you. I'm trying to clarify your -- your
3 evidence. So let's -- I'll keep my questions very, very simple, so much
4 so, sir, you'll be able to answer them yes or no, and fairly.

5 Did you travel back to Zumbe with Boba? Yes or no?

6 A. Boba went back with the people from his delegation. They all
7 went back with the members of his delegation. However, Bahati stayed,
8 and he had to plan the attack which we had to carry out. Two or three
9 days afterwards he came back and we did attack Bogoro. So Bahati stayed
10 to plan the attack on Bogoro.

11 Q. Fine.

12 PRESIDING JUDGE COTTE: (Interpretation) Last question. Last
13 question before the adjournment.

14 MR. HOOPER:

15 Q. I think I've understood the position, but I'm going to ask the
16 same question again, and it only requires a yes or no. Did you go back
17 to Zumbe with Boba Boba? Yes or no?

18 A. When we left Bindi, Boba Boba went back to Tatsi.

19 MR. HOOPER: Well, I think perhaps we can all do with a break,
20 and we'll pick that up again.

21 Thank you very much, Mr. Witness.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
23 Counsel Hooper.

24 Thank you, Witness, for these two hours of answers.

25 Court Officer, we are now going to closed session so that the

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1 witness can leave the courtroom. The two accused will also leave the
2 courtroom, and we will be back in a half hour, 11.30.

3 (The accused withdrew)

4 (Closed session at 10.57 a.m.)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Open session at 10.58 a.m.)

15 COURT OFFICER: (Interpretation) We are now in open
16 certification your Honour.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Court
18 Officer.

19 The hearing is now adjourned, and now we will be back now at
20 11.30.

21 Recess taken at 10.58 a.m.

22 On resuming at 11.32 a.m.

23 (Closed session)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Open session at 11.34 a.m.)

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

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

13 The two accused are with us. That's excellent.

14 Mr. Hooper, you may resume your cross-examination.

15 MR. HOOPER:

16 Q. And so you agree that you went back with Boba Boba to Zumbe and
17 that two days later, having been away on the mission, Boba Boba arrives,
18 and a day or two after that -- I'm sorry, Bahati arrives. Let me start
19 again. I obviously didn't have enough coffee at the break.

20 You -- you go back with Boba Boba to Zumbe, and after a couple of
21 days Bahati arrives, and very shortly after that you attack Bogoro.

22 So now I want to take you, if I may, to another extract from a
23 transcript. Again, this one when you met Mr. MacDonald on the 5th of
24 December, 2006, and it's the fifth transcript of that day, which is
25 DRC-OTP-0177-0262, at line 624, which is at page 0177-0280. And as with

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1 those previous sections, I'm going to read into our transcript what
2 appears in the transcript of your interview concerning the relevant
3 subject that I want to refer to. And you're talking about the plan, and
4 Mr. MacDonald says, and again I read from the French, at line 624:

5 "Q. (Interpretation) Was designated where?"

6 Answer, line 627:

7 "A. The plan, Bahati arrived with 12 soldiers, and when he
8 arrived they agreed with Ngudjolo and they prepared a plan, and that is
9 how it came to be that they went back to FRPI, and they gave the plan to
10 the other side. And after, he came back again to where we were, and he
11 waged war starting from Zumbe.

12 "Q. Okay. If I've understood properly, you spent a month,
13 one day, and a few days with Katanga. We went back to Zumbe with
14 Mr. Bahati, and so Bahati from FRPI agreed with Ngudjolo.

15 "A. Ngudjolo. Yes, Ngudjolo."

16 (In English) And then at line 672 I pick it up, and this is
17 (Microphone not activated) ...

18 "But I just want to stay with Bahati. You say that Bahati, he
19 went back to Zumbe, to the residence of Mr. Katanga, is that not so?

20 "Interpreter: When we arrived with them in Zumbe, they made a
21 compromise, and they prepared a war plan, and that is how they went back
22 to the place, to give the plan to those soldiers, and after, once again
23 he came back again, and so that is how it came to be that we attacked at
24 Bogoro."

25 (In English) Now, again a -- I suggest a strikingly different

1 account to the one you're giving to this Tribunal. Can you explain the
2 difference, please?

3 A. What you're saying is different from what I know and what I said.
4 First of all, ever since the beginning of the rebellion in Ituri, Bahati
5 was in our group, the group Bedu-Ezekere, and then we took on the name.
6 Bahati went to Bindi, and then he came back, but he wasn't from there.
7 So you want to expand on this -- on this story.

8 Q. I'm just giving you an opportunity to explain this striking
9 difference of account as I've done with the previous examples. So you
10 can take this opportunity or not to explain these differences.

11 A. Bahati de Zumbe left Zumbe to accompany them with 12 soldiers.
12 You said they left Aveba with 12 soldiers. You are making my task more
13 complicated giving another account.

14 Q. Well, I'm reading from a transcript taken from an interview that
15 was recorded as you spoke to Mr. MacDonald back in December of 2006.
16 That's the matter I put to you, as I think you understand. And there you
17 have Bahati coming back with you to Zumbe, leaving again with a plan and
18 going to the FRPI, and then coming back again, none of which features in
19 your current testimony, and I'm asking you why is there this difference?

20 A. You find that there's a difference because you have the floor
21 right now. You say that there is a difference between what I said the
22 other time and today. I know that we left Zumbe to go to Aveba. Three
23 or four days later, Bogoro fell. We went back with Boba Boba. Bahati
24 remained behind with Kabule. So perhaps someone else could tell what
25 happened after that.

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

Page 40

1 Q. Again, we hear what you say. Let me ask you this: At line 588,
2 just shortly before that, it's on 0177-0279, and you're asked by
3 Mr. MacDonald this:

4 "Q. Okay. (Interpretation) When you arrived in Zumbe, you
5 stayed how much time there before you left to attack the village of
6 Bogoro?

7 (In English) Your response:

8 "A. (Interpretation) Well, it was many days. One week and
9 a half."

10 (In English) So why is it now a week and a half and not just a
11 few days? Can you explain, please?

12 A. It was a matter of providing additional information. They were
13 talking about fighting Bogoro and the return of people to Bindi, and the
14 return of Boba Boba from the collectivite of Walendu-Bindi. So there was
15 an interval of one week between the arrival of Bahati and the fall of
16 Bogoro.

17 Q. You see, I suggest you've made these matters up, and that's why
18 you don't have a grip on the facts, on the basic facts. Have you made
19 these matters up?

20 A. I said nothing. I have nothing to say.

21 THE INTERPRETER: The Swahili booth did not understand what the
22 witness said.

23 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, you'll
24 have to repeat your answer, the answer you just provided, so that the
25 Swahili interpreters can interpret what you're saying. So in response to

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

Page 41

1 the question from Mr. Hooper, could you repeat your answer, please.

2 THE WITNESS: (Interpretation) I beg your pardon. I was asked
3 to testify about crimes in Bogoro, and now we're talking about my
4 departure from Zumbe to Bindi. That is not the reason why I'm present
5 here.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, the Court
7 has told you on several occasions that the need to ask questions is that
8 of those who are asking you questions, and that is reviewed and
9 supervised by the Judges, and the various representatives, the various
10 counsel, may ask you questions that do not appear to be directly related
11 to the facts -- the events, rather, that occurred on the day of the
12 attack, but yet are very important so that we can understand everything
13 going on. That is what the Prosecutor did a few days ago, asking a
14 number of questions, and I think you understood those things in context,
15 and, you see, Mr. Hooper is doing the same thing today, and most likely
16 Mr. Kilenda and Mr. Fofe will be doing the same tomorrow.

17 So answer the questions, but don't be surprised by the nature of
18 the questions. You just answer the questions as specifically as you can.

19 Mr. Hooper, if you could ask your question again.

20 MR. HOOPER: Yes. I'm going to move on, and I want to go into
21 closed session. I apologise to the members of the public with an
22 interest in the case, but I'm going to ask questions that would naturally
23 reveal the identity of the witness, and that is a protected measure, and
24 I estimate that I'll be up to half an hour with these matters, maybe
25 less.

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

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1 (Trial Chamber and Court Officer confer)

2 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr. Hooper. Very
3 kind of you to give us an approximate length of time that you'll need for
4 private session. You said half an hour.

5 Now, Courtroom Officer, could we go into private session.

6 (Private session at 11.50 a.m.)

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

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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Closed Session)
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- 7 (Closed session at 12.36 p.m.)
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Witness: Witness P-0250 (Resumed) (Closed Session)
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9 (Open session at 12.38 p.m.)

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

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

14 (The Trial Chamber confers)

15 JUDGE DIARRA: (Interpretation) Excuse me. With regard to the
16 cross-examination of Counsel Hooper, I am in agreement that the
17 credibility of the witness is affected, but in our previous decision we
18 said that it is permissible to put to the test the credibility of a
19 witness by asking provoking questions, but the cross-examination should
20 at all times be courteous and respectful of the witness. The Chamber
21 would not authorise the party to harm the dignity of the witness, to
22 exploit their vulnerability during a cross-examination.

23 So, Counsel, I am certainly in agreement with you when you say
24 that, "You have -- haven't said the truth," or "it was a lie," but when
25 you start to talk about a terrible lie or whatever. Personally, that

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

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1 is -- or a shameful lie -- shameless lie, I think that's too much. So I
2 would like to draw your attention to the need to be courteous whilst you
3 can also examine the credibility of the witness. And I didn't want to
4 say that before the witness, but this -- as he gave me the opportunity to
5 do so, I would like to take this opportunity to express that to you.

6 MR. HOOPER: Thank you very much.

7 PRESIDING JUDGE COTTE: (Interpretation) The Chamber is very
8 much aware that this exchange between Judge Diarra and Counsel Hooper
9 happened outside the presence of the accused. We are now in a suspension
10 period which can also favour more informal contacts of this nature.

11 MR. HOOPER: Can I just say there may have been translation
12 problem, because I didn't use the word "shameful" or "shameless" in
13 English. The word I used was bare-faced, which is merely a clear -- it
14 was a clear lie, and I was seeking to get the witness to admit that on
15 these issues he had made a -- he had distinctly told a lie and not the
16 truth, and as you know, the witness has not been willing to accept that,
17 but I certainly bear in mind what you say, Judge, and I'll temper my
18 future questions accordingly. Thank you.

19 JUDGE DIARRA: (Interpretation) The comments and the
20 observations, more than the questions, in fact. You have the right to
21 ask the all the questions that you wish, but when you qualify or
22 characterize the attitude of the witness, that is where we are very
23 sensitive, that's the sensitive point. In my language, they say that to
24 tell somebody that you're not recognising that is to say that you're
25 ungrateful, but the first formula is better accepted than the second.

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

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1 PRESIDING JUDGE COTTE: (Interpretation) So we are going back
2 into the closed session to allow the witness to come back into the
3 courtroom.

4 (Closed session at 12.46 p.m.)

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16 (Open session at 12.47 p.m.)

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

19 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Thank you,
20 Court Officer.

21 Counsel Hooper, please, we're going to stay in open session? I
22 can't remember. I think that we were in private session. Do you want us
23 to continue in private session?

24 MR. HOOPER: Yes, please.

25 PRESIDING JUDGE COTTE: (Interpretation) Understood.

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

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1 Okay. Court Officer, if you would like to implement the private
2 session, please.
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24 (Open session at 1.27 p.m.)
25 COURT OFFICER: (Interpretation) We are in open session, your

1 Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Court
3 Officer.

4 The hearing is adjourned for today, and we will resume tomorrow
5 at 9.00 a.m.

6 The hearing ends at 1.28 p.m.

7 CORRECTIONS REPORT

8 * Page 2 line 25 and page 3 line 3 :

9 "1884" is corrected by "1844"

10 * Page 13 lines 2 to 4

11 "A. We went by Mandro, and it was in Mandre, and the trip did not take an
12 entire day. And furthermore, that is where we found a hiding place."

13 is corrected by "A. *We went we did not go by Mandro, it was in Mandro.
14 And the trip did not take an entire day. And furthermore, that is where we
15 found a stamp, the stamp that people have talked about so much here."

16 * Page 33 line 3

17 "five years (as interpreted)" is .corrected by "five days"

18 * Page 43 lines 9 to 11

19 (Expunged)

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21 (Expunged)

22 (Expunged).

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