

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert.
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Monday, 15 March 2010
10 The hearing starts at 9.35 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Court is in session.
15 You can now take your seats.
16 Before we bring in Witness 161 and continue with the
17 cross-examination of Professor Fofe from where we left off, the Chamber
18 would like to give you some information.
19 To begin with, an answer to a request made by the Defence of
20 Mr. Germain Katanga, who is present here. In late morning of Tuesday, at
21 the request of the Katanga Defence, we had an ex parte hearing bringing
22 together the Defence team of Mr. Katanga and the Registry.
23 Unfortunately, an error was made and the discussions were made accessible
24 to everyone who has access to the Transcend system. The Prosecutor
25 pointed out that the Defence team of Mr. Katanga was concerned, and we

1 contacted the Chamber and they provided the following -- or, rather, we
2 contacted the Registry and they gave us the following information:
3 Access to the restricted part of the hearings has been blocked and at
4 least rendered inaccessible to those who are not supposed to have access.
5 An extraordinary procedure for the preparing of hearings has been set up
6 until the detailed report is received from the provider of the
7 transcription system so that we can know precisely what happened. So for
8 the time being, we are awaiting supplementary information, but the
9 Chamber wished to provide available information to the Katanga Defence
10 team and to the other participants.

11 Furthermore, during the hearing of Tuesday, 9th of March, the
12 Germain Katanga Defence team also expressed the wish to better understand
13 the conditions in which the witnesses at The Hague were placed in such a
14 situation that they were not able to communicate between them. The
15 Defence team of Germain Katanga pointed out to the Chamber that they had
16 contacted the unit and the unit decided to contact the Chamber. The
17 Presiding Judge, therefore, contacted VWU and asked them to specify which
18 measures are being taken to avoid witnesses meeting each other,
19 exchanging ideas and even consulting each other before travelling or
20 boarding the plane to the Netherlands or discussing during their journey,
21 that is, from the Democratic Republic of Congo, if they are taking the
22 same flight.

23 We wish to know what measures are taken such that they should not
24 meet, exchange ideas or consult whilst in The Hague before their
25 testimony, during their testimony, or after their testimony and even

1 including the period preceding their return to the Democratic Republic of
2 Congo, be it at their place of residence, during the various activities
3 that they can carry out during their free time or even within the
4 premises of the court.

5 The Chamber asks that that information should be given to us
6 before the 23rd of March, instant, and once we have this information, we
7 will be able to forward it to you.

8 The third point concerns correspondence of the Prosecutor dated
9 the 11th of March, and in that correspondence the OTP requests
10 authorisation to vary the order of appearance of witnesses given the
11 recess of 15 days which will make it impossible to have hearings during
12 the first part of the month of April. You were copied in this mail, and
13 this mail was actually talked about by the Prosecutor during our last
14 hearing.

15 From that correspondence it turns out that after the testimony of
16 Witness 161, we are going to go to Witness 323, then Witness 159,
17 Witness 418, and lastly, Witness 373. Unless there are unforeseen
18 circumstances or specific difficulties, it will be with Witness 373 that
19 the substantive proceedings will end on the 1st of April, and then we
20 will resume on the 19th of April, and this is to be confirmed with
21 witnesses who if -- unless I'm mistaken are women, that is Witness 287
22 and Witness 249. You all received that correspondence and Regulation 43
23 of the Regulations of the Court gives the Presiding Judge of the Chamber,
24 in consultation with the members of the Chamber, the possibility to
25 decide on the order of appearance of witnesses, and the suggestions made

1 by the Prosecutor in that letter of the 11th of March seemed to us to be
2 reasonable insofar as they make it possible to integrate the witnesses
3 whose testimonies will be more or less long during the time period up
4 until the 1st of April, and also because it will be difficult to begin
5 the testimony of Witness 287 and then interrupt that witness, which will
6 not be consistent with the good administration of justice.

7 Let us now bring in the witness. Madam Court Officer, Court
8 Usher, please bring in Witness 161.

9 At the end of the cross-examination of the Defence team of
10 Mr. Ngudjolo and then the re-examination by the OTP, then the final
11 comments of the Defence teams, then we will make a decision on the
12 references to be assigned to the materials provided mainly by the
13 Katanga Defence team, including photographs, which so far are
14 MFI documents, but the Katanga Defence will have to tell us whether they
15 wish to tender those materials with EVD references. But now we are going
16 to continue with the cross-examination.

17 (The witness takes the stand)

18 WITNESS: WITNESS P-0161 (Resumed)

19 (Witness answered through interpreter)

20 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Mr.
21 Witness.

22 THE WITNESS: (Interpretation) Good morning, your Honour. Yes, I
23 can understand you.

24 PRESIDING JUDGE COTTE: (Interpretation) Are we in a position to
25 carry out a harmonious continuation of the proceedings?

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1 THE WITNESS: (Interpretation) There are no difficulties.

2 PRESIDING JUDGE COTTE: (Interpretation) Let us continue from
3 where we left off last Tuesday. We are listening to you.

4 MR. FOFE: (Interpretation) Thank you very much, your Honour.
5 Mr. President, your Honours, good morning.

6 Questioned by Mr. Fofe: (Continued)

7 Q. Good morning, Mr. Witness.

8 A. Good morning, Counsel.

9 Q. We are going to continue with our exchanges, and we will be
10 talking about the Bogoro Institute during the war of the
11 24th of February, 2003. I will refer to transcript number 111, the
12 hearing of Wednesday, 3rd of March, 2010, page 17, lines 20 to 22.

13 Mr. Witness, in answer to one of the questions put to you by the
14 Prosecutor on the 3rd of March, 2010, you stated that you saw with your
15 own eyes what was happening in the Bogoro Institute, which was the
16 military camp of the UPC. You said that the distance from the place
17 where you were hiding to the UPC military camp was 1 kilometre. Was that
18 your testimony?

19 A. Yes, that is correct.

20 Q. Witness, is it possible that because you were 1 kilometre away,
21 from 1 kilometre away you could see what was happening in the UPC camp?

22 A. Yes, it is possible, because at that time the bushes that were
23 there had been burnt down. So it was possible.

24 Q. You are fully aware that 1 kilometre is the equivalent of a
25 thousand metres. Isn't that so?

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1 A. Yes, I know that. Even if someone goes there today to measure
2 that distance between my home and the river, the distance will turn out
3 to be 1 kilometre.

4 Q. Are you saying that the distance is from your home or from your
5 hiding-place, because I was referring to the distance between your
6 hiding-place and the UPC military camp. That was the distance that you
7 estimated to be 1 kilometre or 1.000 metres; is that correct?

8 A. That is correct, Counsel.

9 Q. Let's me now refer to the same transcript, 111, still during the
10 hearing of Wednesday, the 3rd of March, 2010, page 18, lines 17 to 24.

11 Before referring to that excerpt in the transcript, I would like
12 to come back briefly to what you have just said. You confirmed that the
13 distance between your hiding-place and the UPC military camp is indeed
14 1.000 metres or 1 kilometre, and you also say that it was possible for
15 you to see from that distance because the vegetation had been burnt down;
16 is that correct?

17 A. Yes.

18 Q. If the vegetation had been burnt down, wouldn't it have been
19 possible for you yourself to be seen in your hiding-place?

20 A. No. I said that I was hiding very close to the river, and the
21 river was located below my house, and I was hiding 25 metres away from my
22 house.

23 Q. Thank you. Let me now refer to transcript 111, hearing of
24 Wednesday, 3 March 2010, page 10, lines -- page 18, lines 17 to 24.
25 Witness, you testified that in that military camp, that is belonging to

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1 the UPC, the Biras also sought refuge, including a certain Mululu who had
2 succeeded in fleeing through the window.

3 I have not yet asked the question. Now, Witness, does that mean
4 that the attackers who had come there were also killing the Biras?

5 A. Yes. They were also killing Biras. There were Biras who were
6 killed.

7 Q. I will now referring to document DRC-OTP-164-0488, paragraph 31.

8 Witness, this is what you declared before the investigators of
9 the OTP, and I quote you:

10 "Before that attack," and that is, of course, the attack of
11 February 2003. "Before that attack, the UPDF was based in Bogoro and was
12 carrying out attacks against the militiamen based in the neighbouring
13 hills."

14 This is indeed what you stated. Isn't that so?

15 A. I cannot say anything that I did not see. I cannot tell lies. I
16 do not know what you have just mentioned.

17 Q. I believe that I quoted an excerpt from paragraph 31 of your
18 statement to the investigators of the OTP. Mr. Witness, this is what you
19 said in that paragraph 31, and I am quoting you:

20 "Before that attack, the UPDF," and we know that the UPDF is the
21 Ugandan army, "was based in Bogoro and was carrying out attacks against
22 the militiamen who were based in the neighbouring hills."

23 That is the only sentence which is of interest to me for the time
24 being. That is indeed your statement, Mr. Witness. Isn't that correct?

25 A. At that time there were Ngitis who had seen Lendus and Ugandans

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1 who had arrived Bogoro. They arrived to attack the population of Bogoro,
2 and that is how come the Ugandans started driving them out. They came to
3 attack them and to drive them back.

4 Q. Talking about those hills being attacked by the UPDF, were there
5 no civilian inhabitants in that area?

6 A. Which hills are you referring to?

7 Q. I am referring to the neighbouring hills that you mentioned in
8 paragraph 31 of your statements to the Office of the Prosecutor. You
9 said that the UPDF, which was based in Bogoro, was carrying out attacks
10 against militiamen based on the neighbouring hills. And my question to
11 you is as follows --

12 THE INTERPRETER: The counsel's question was cut off.

13 THE WITNESS: (Interpretation) I know the Bogoro hill which is
14 on Waka, the hills of the Lendus and the Ngitis. All I know is what
15 happened in Bogoro. When they came to fight they found the UPDF, and the
16 UPDF drove them back. This is what I saw with my own eyes.

17 MR. FOFE: (Interpretation)

18 Q. You are saying that the soldiers of the UPDF were attacking
19 people on the Waka hill?

20 A. No they, didn't go to fight in Waka. They -- well, when they
21 were with the Lendus and with the Ngiti, they had a common front to fight
22 in 2003.

23 Q. When you refer in this paragraph -- when you refer to the period
24 before the attack in 2003, the UPDF bombed the hills. I'm referring to
25 the period before 2003, before February 2003. Which hills did the UPDF

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1 bomb before 2003?

2 A. No.

3 MS. DARQUES-LANE: (Interpretation) I am looking at
4 paragraph 31, and I do not see the word "bombing." There's the
5 expression "carrying out attacks," but there is no use of the word
6 "bombing." Perhaps the Defence could explain that.

7 MR. FOFE: (Interpretation) Yes, I see you're interested in
8 minor details, but I do understand. I'm going to quote verbatim
9 paragraph 31. Paragraph 31 is part of the topic on the fourth attack on
10 the village of Bogoro in 2003, and this fourth attack began -- well, the
11 description starts in paragraph 28, 29, 30, and 31. The witness says the
12 following to the investigators of the OTP:

13 "Before that attack" -- well, when he says "before that attack,"
14 we understand that as meaning the attack that took place in 2003. So:

15 "Before that attack, before that attack, (2003), the UPDF was
16 based in Bogoro and carried out attacks against the militiamen based on
17 the neighbouring hills. When the UPDF left Bogoro, it was the UPC that
18 came to protect the population of the village."

19 I will stop there. End of quote. So I can, of course,
20 reformulate my question if you prefer, and therefore I will ask the
21 witness.

22 Q. Regarding those attacks, the attacks carried out by the UPDF
23 against the neighbouring hills, which hills are you referring to?

24 A. Well, I can answer that question. The person who wrote down the
25 statement didn't write it correctly. We're talking about the initial

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1 fighting. The Ugandans were there on site, and there were APC members in
2 Bogoro, and when they left, when they had massacred the population, when
3 the APC then fled, the very same day the Ugandans from Bunia came to
4 settle in -- in Bogoro. Afterwards, the Lendu and Ngiti came and
5 attacked them. They fought and they were killed. And then the Ugandans
6 settled there and we went back to Bogoro. Later, the UPC came to help us
7 because when the Ugandans left, Bogoro was empty.

8 That's what I saw. The first attack was when the APC members
9 were present. The Ugandans killed the Lendus and the Ngiti in the
10 fighting. That was in Bogoro.

11 Q. So if I understand correctly, you're changing your statement, and
12 you're stating that the UPDF soldiers did not carry out attacks against
13 the militia on the neighbouring hills of Bogoro.

14 A. They chased them away. It was a process of chasing them away.
15 It was the militia who came to attack Bogoro, and they chased them away.
16 The Ugandans chased them away into the hills, because it was the
17 militiamen who had come to attack. And as a reaction, the Ugandans
18 fought back and chased them away.

19 Q. What kind of weapons did the Ugandans use to chase away the
20 militia?

21 A. Well, no, I can't tell you what kind of weapons they used because
22 I was in Waka. I didn't go into their camp. We were afraid of them. I
23 was not able to go into their camp.

24 Q. Did the Ugandans use combat helicopters to bomb the attackers?
25 Didn't Ugandans use helicopters, fighter helicopters?

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1 A. No, I'm -- I'm afraid I can't tell a lie. I had run away. I was
2 near Bunia. I can't answer you as regards that topic.

3 Q. You state, therefore, that the Ugandans launched attacks against
4 the Lendu and the Ngiti in Bogoro and chased them. Is that correct?

5 A. Yes. They chased them out of Bogoro, far, far away, toward the
6 hills.

7 Q. Do you know whether the Ugandans at that time had killed Lendus
8 and Ngitis? While they were chasing them away, did they kill Lendus and
9 Ngitis?

10 A. When they got to Bogoro, yes. When they got to Bogoro, they
11 killed people, and they killed people from Lakpa and even Zumbe.

12 Q. The people who were killed by the Ugandans, were they buried?

13 A. Their men took the corpses, and they had a sort of -- a sort of
14 stretcher, and when there were victims, they would carry them away on
15 stretchers. They ran away with the dead bodies. That's what we saw.

16 Q. Witness, as I follow you carefully, it is -- it is clear that
17 around 2000, 2001, the soldiers from the UPDF, that is the Ugandan army,
18 and the soldiers from the UPC were allied forces in Bogoro. Is that
19 correct?

20 A. No. When the Ugandans were in Bogoro, the UPC was not there.
21 When the Ugandans left, one week after that day, the UPC came to help us
22 in Bogoro, but meanwhile Bogoro was empty. No, they were not together.

23 Q. Can you explain to us or tell us, if you know, why the UPDF
24 soldiers left Bogoro at that point in time? I understand that it's in
25 2001. Is that correct? Was it 2001?

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1 A. Well, yes, that's possible. I didn't write it down anywhere.

2 Q. Well, to refresh your memory, you stated the following to the OTP
3 investigators, and I'm going to quote from paragraph 18 of the document
4 DRC-OTP-064-0488 (as interpreted). Paragraph 18. I am not going to
5 state the name of your family member that is mentioned because we are in
6 public session here. You stated the following:

7 "In 2001, the UPDF," which is the Ugandan army, "had already left
8 Bogoro."

9 This is paragraph 18 of your statement. And then in paragraph 29
10 you state, and I'm quoting your statement, an extract:

11 "My older sister," and I purposely do not mention her name, "was
12 killed on January 9, 2001. I remember that date because it was when the
13 Ugandans were in the midst of leaving Bogoro. I remember that date
14 because it was a few days after that the Ugandans left Bogoro."

15 My question is: Therefore, the Ugandans had left Bogoro in 2001;
16 is that correct?

17 A. Yes. When my sister was killed, it was the same day that they
18 left. The Ugandans left and the town of Bogoro was empty. The civilian
19 population had fled, and my sister was killed along the road that leads
20 to Bogoro.

21 Q. Can you tell us why the soldiers from the UPDF had left Bogoro in
22 2001?

23 A. They had arrived -- as they arrived, we don't know why, and they
24 left in the same way. Bogoro was empty. They came and they went the
25 same way. I had no way of knowing. I couldn't ask them the question.

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1 How could I?

2 Q. Well, according to your knowledge since you lived in Bogoro at
3 that time, what kind of relations existed between the UPDF, that is the
4 Ugandan army, and the UPC?

5 A. I have no way of knowing what kind of relationship existed
6 between them. I was at home. I wasn't amongst them. A person can only
7 testify as to what they know, what they've heard, or what they've seen.

8 Q. At that time -- and now I'm making a suggestion because I believe
9 that this was common knowledge, at that time wasn't there an alliance
10 between the UPDF, the Ugandan army, and the UPC? And I'm referring to
11 2001, at that time.

12 A. At that time when the Ugandans were in Bogoro, the UPC was not in
13 Bogoro. I repeat: When the Ugandans were in Bogoro, the UPC was not
14 there. The UPC arrived in Bogoro one or two weeks after the Ugandans
15 left.

16 Q. Thank you. I would now like to refer to transcript 109, dated
17 February 26, 2010, page 45, line 3 to 6.

18 You stated the following, and I quote from your statement:

19 "The day when the Ugandans left, that's when problems started.
20 We saw the arrival of APC members. After the departure of the Ugandans,
21 it was the members of the APC who arrived."

22 So is that what occurred, Witness?

23 A. No, it did not occur like that. Before there were members of the
24 APC, and after the departure of the APC, the Ugandans arrived from Bunia.
25 That was in Bogoro. And shortly after, the Ugandans left, and then

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1 afterwards the UPC arrived. The UPC arrived after the Ugandans. So the
2 APC arrived first, to summarise.

3 Q. I would like to continue referring to the same transcript, 109,
4 of the hearing of February 26, 2010, on page 34, line 21 to 23. And here
5 we're referring to the attack in Bogoro in February of 2003.

6 Witness, here before the Honourable Judges, you stated that the
7 attackers came from several directions, from Songolo, from Gety, from
8 Lengabo, and you stated, in particular, that the Bira came from Lengabo.
9 Can you confirm that the Bira were amongst the attackers? Is that
10 correct?

11 A. Yes, that's correct. Tonda was the commander of the Bira. At
12 that time, I was in Mandro, and I heard everything.

13 Q. I'm still referring to transcript 109, page 37, line 11 to --
14 sorry, page 35, line 9 to 11, the same date, February 26, 2010.

15 Witness, you mentioned more than ten vehicles were burned with
16 passengers from -- coming from Kasenyi. Can you tell us when those
17 vehicles arrived in the military camp in Bogoro, if you know?

18 A. Well, I'm going to answer your question. When the vehicles came
19 from Kasenyi, they didn't go through Bunia. The fighters from Zumbe
20 stopped the vehicles. They killed the people, and they looted them. So
21 they couldn't take that road.

22 Now, they couldn't leave Bunia for Kasenyi. So it was important
23 that they drive in a convoy with several vehicles to Kasenyi.

24 Q. You've already described those circumstances. I would like you
25 to simply answer my precise question, if you know the answer.

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1 Do you know when those vehicles -- you referred to more than
2 ten vehicles. Do you know when, approximately, those vehicles arrived at
3 the military camp in Bogoro?

4 A. Well, it was a Saturday. I went to see my son who was
5 hospitalised at the dispensary, and when I left that place, I saw the
6 vehicles. I saw them coming from Kasenyi, and they were carrying fish
7 and passengers. There were approximately 12 vehicles that came into
8 town, and the goal was that the next day UPC was to accompany them to
9 Bunia, that is, the vehicles and the passengers and all the goods were
10 there on site, and everyone was killed and the goods were looted and the
11 vehicles were burned.

12 Q. Did you yourself see the vehicles being burned and the passengers
13 being killed? Did you see it yourself?

14 A. There was a vehicle that was burned at the institute, and the
15 people who were killed were there. They had spent the night at the
16 Bogoro Institute, and we found them there on site in Bogoro.

17 Q. But did you see those events or did someone tell you about them
18 afterwards?

19 A. Well, those who were on site told me what happened.

20 Q. Witness, before the attack on Bogoro in February of 2003, which
21 different ethnic groups were living together in Bogoro?

22 A. There were Hemas.

23 Q. You're stating that before the 2003 attack, in February of 2003,
24 there were only Hemas?

25 A. Well, there was a mixture of several ethnic groups.

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1 Q. Exactly. Can you tell me what ethnic groups were present in
2 Bogoro?

3 A. There were Hemas, Biras, Lulus, the Ndos. There were several
4 ethnic groups. Do you want me to give you the full list? How many do
5 you want?

6 Q. There were no Lendus in Bogoro before February 2003?

7 A. There were none. There was not a single Lendu. All of the
8 Lendus had already left. They had abandoned Bogoro. They had gone back
9 to their homes, to where they came from.

10 Q. And you stated -- and here I'm referring to transcript 109,
11 page 45, line 22 to 23. You stated that there were a lot of people
12 killed during the fighting in February of 2003.

13 Were you able to know which ethnic groups these victims belonged
14 to?

15 A. Well, when someone dies, we call them a Hema regardless of their
16 ethnic group. Even if they're a Bira, they're called Hemas since they
17 were -- since they died in the village of the Hemas, they're identified
18 as a Hema. Even the people who were in those vehicles who were burned,
19 it was said that they were Hemas. So personally, I can't give you a
20 better answer to that question.

21 Q. Witness, you stated before the OTP investigators -- and here I'm
22 referring to paragraph 46 of your statement, document DRC-OTP-0164-0488.
23 This is your statement before the OTP investigators. You stated that
24 inside the UPC military camp there was a school with six classrooms and
25 that many civilians took refuge in those classrooms.

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1 Can you confirm that, Witness?

2 A. Yes, I can confirm that because it's the truth. That's the
3 truth. There were several people at that place, many people at that
4 place.

5 Q. When the UPC soldiers began to flee, some of them ran away into
6 the bush. Is that correct, that some of the UPC soldiers ran into the
7 bush?

8 A. Well, there was a point in time when war broke out, and the
9 militiamen took control compared to the UPC, and the UPC members told the
10 civilians that they had lost, and they suggested that they run away.
11 Some people were home and didn't understand what was going on, they heard
12 gunshots, and others began to run away. Some people closed the doors of
13 the classrooms so that people not hear the warnings. Some civilians ran
14 away with UPC members. Some of the members of the UPC died, and
15 civilians as well were killed.

16 The doors of three classrooms were closed and a bomb was -- and
17 it was bombed in order to burn the premises.

18 Q. Thank you very much. To your knowledge, the deaths that there
19 were of the UPC soldiers, the civilian population that there were, to
20 your knowledge, these people who died, were they buried?

21 A. Nobody buried these bodies. Their bodies were left outside. It
22 was only very recently that white people organised the burial of their
23 remains. Until the last -- until very recently, you could see their
24 remains. There's also a mass grave which is very close to there.

25 Q. Do you know where the people of the white race, the whites, do

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1 you know where they buried the bodies recently?

2 A. They didn't go far. They put these remains next to the
3 roundabout of the road towards Kasenyi and Bunia. And this was done
4 during the day. Everybody had seen it. We went into the village to --
5 people went into the village to gather together the remains, and the
6 remains were taken from the -- or to -- they were taken to the mass
7 grave. Were taken from the mass grave.

8 Q. I am now going to refer to document DRC-OTP-0164-0488,
9 paragraph 28, lines 1 to 3.

10 Witness, still speaking about this attack in February 2003, you
11 stated before the investigators of the Prosecutor, and here I will quote
12 you, you said the following:

13 "At this time, it was still the UPC who was defending Bogoro.
14 The UPC soldiers were commanded by the same officers as those who were
15 present in 2002."

16 My question is as follows: Who are these officers who were
17 commanding the UPC forces in 2003 in Bogoro?

18 A. I know them very well, because it was those who came to buy milk
19 from me at home. I know them. There was the commander, Germain, who was
20 killed on Mount Waka. When he was killed, I saw this. They picked up
21 his jacket, red and white colour. They also took his rifle, and I could
22 see that when he was killed, he was trying to go to the summit of the
23 mountain. There was also the commander, Kisémbó. He was killed in
24 Shari. He was Hema. Those are the two who were commanding the forces in
25 Bogoro. There was also a certain Kagoro, who was killed as well, a

1 commander.

2 I am telling you the events which I was a witness to.

3 Q. Witness, to your knowledge is there no commander -- perhaps you
4 wouldn't know a commander, one of these commanders of the UPC of Bogoro
5 at the time who would still be alive today?

6 A. I know that their supreme commander was called Thomas. I didn't
7 see Thomas. I just heard people speak about him.

8 Q. It was Thomas Lubanga, was it not?

9 A. Yes, but I never saw him.

10 Q. At that time before this attack in 2003, can you remind us of
11 where the UPC soldiers were stationed in Bogoro?

12 A. There was just one post which the Ugandans had left. That was at
13 the institute. I can't mention other positions to you. They were there
14 in Bogoro. If other soldiers went to position themselves elsewhere, I
15 don't know that. I just know what happened in Bogoro. And I didn't see
16 Thomas Lubanga in Bogoro. He wasn't there. I didn't see him with my own
17 eyes. I saw the three who died, which I spoke about. Afterwards, I
18 heard people speak about Thomas Lubanga when the fighters from Bunia were
19 driven out.

20 Q. Witness, because you said to us and you repeated that the UPC
21 soldiers were in Bogoro to defend the population, the civilian
22 population, could you tell us what the instructions were given by the UPC
23 to the population in the case of an attack?

24 A. I can't lie. I was somewhat higher. I didn't go in their
25 direction. Sometimes I led my cows into the bush. I didn't know what

Witness: Witness P-161 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 20

1 they were saying. I was afraid.

2 I went to the Hema Sud. I went to Bogoro, but I didn't go to the
3 centre. I don't know what they discussed.

4 Q. Witness, I'm going to read to you paragraph 66 of the document
5 DRC-OTP-0164-0488. This is your statement to the investigators,
6 Prosecution investigators.

7 You stated the following, and here I quote you:

8 "I don't know what the name of the commander, the combatants --
9 the commander of the combatants who attacked us in 2003. I do know,
10 however, that the Lendu belonged to the FNI and that the Ngiti belonged
11 to the FRPI. I do not know what that signifies. What I do know is that
12 they were called that on the radio. I think that the leader of the FNI
13 at the time was Ndjabu. I heard people say that their leader had this
14 name. I didn't know him, and I've never seen him."

15 My first question is as follows: On which radio did you hear
16 that the Lendu fighters were called the FNI?

17 A. I didn't really understand. Please could you ask the question
18 again so that I can understand it better.

19 Q. My question is as follows: On which radio did you hear that the
20 Lendu fighters were called the FNI?

21 A. I had a receiver, and I heard people speak about the FNI, the
22 FRPI, even the UPC. I could hear that on my radio. Every citizen has a
23 radio receiver.

24 Q. I understand. Perhaps the question is not -- I wanted to know
25 the name of the radio which broadcast the radio station. Was it BBC,

Witness: Witness P-161 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 21

1 RFI, Radio Okapi? What radio broadcaster was it?

2 A. It was Radio Candip which spoke about this, and we followed this
3 radio station.

4 Q. When you heard this information on the Radio Candip on the case
5 in point, when was that? Approximately when was that, without precisions
6 as regard to the date, but at least what year was it in?

7 A. Towards 2004, 2005, they spoke about it.

8 Q. Were you able to follow on the radio precisions with regards to
9 the people who created the FNI? Who was it that created the FNI? Were
10 you able to hear such information on the radio?

11 A. You want to disorient me, Counsel. Please.

12 Q. No, Mr. Witness. I don't know. Say you don't know if you don't
13 know. I don't want to disorient you. It's so that we can give us -- so
14 you can give us information. If you don't know, you don't know. There
15 is no problem.

16 A. In 2004, the UN blue helmets were still in Bogoro. They called
17 us and said that we should leave. Well, they said to everybody to go
18 back to Bogoro, and they called the Ngiti, the Lendu. And we came from
19 Bunia, the Hema. I was present when they addressed us. And it was at
20 that time that the FNI and the FRPI said that the Hema should not come
21 back to Bogoro, and there was almost fighting because we had come back to
22 Bogoro.

23 Q. Thank you very much, Witness.

24 MR. FOFE: (Interpretation) Your Honour, at this point I think
25 we can go into closed session.

Witness: Witness P-161 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

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1 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
2 could you take us into private session.
3 (Public session at 10.47 a.m.)
4 (Expunged)
5 (Expunged)
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Witness: Witness P-161 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

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Witness: Witness P-161 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

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Page 24 Expunged - Private Session

Witness: Witness P-161 (Resumed) (Private Session)
Procedural Matters

Page 25

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5 (Expunged)

6 (Open session at 10.57 a.m.)

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

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Witness, we
10 will be back soon.

11 (The witness stands down)

12 PRESIDING JUDGE COTTE: (Interpretation) The hearing is now
13 adjourned. We'll be back at 11.30.

14 Recess taken at 10.58 a.m.

15 On resuming at 11.31 a.m.

16 (Open session)

17 COURT USHER: All rise.

18 PRESIDING JUDGE COTTE: (Interpretation) Court is reconvened.
19 Please be seated.

20 The accused are with us. We are in open session.

21 Madam Court Officer, Court Usher, please bring in the witness to
22 the courtroom.

23 (The witness takes the stand)

24 PRESIDING JUDGE COTTE: (Interpretation) Good morning,
25 Mr. Witness.

Witness: Witness P-161 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

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1 THE WITNESS: (Interpretation) Good morning, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me well?

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

4 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

5 Professor Fofe, please proceed with your cross-examination.

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

7 I would like to apologise to the public, because in light of the
8 questions that I'm going to put to the witness, it would be necessary for
9 his own protection for us to continue in closed session.

10 PRESIDING JUDGE COTTE: (Interpretation) We are therefore going
11 to go into private session.

12 Madam Court Officer, please.

13 (Private session at 11.34 a.m.)

14 (Expunged)

15 (Expunged)

16 (Expunged)

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Witness: Witness P-161 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

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Witness: Witness P-161 (Resumed) (Private Session)
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Witness: Witness P-161 (Resumed) (Private Session)
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Witness: Witness P-161 (Resumed) (Private Session)
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Witness: Witness P-161 (Resumed) (Private Session)
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Witness: Witness P-161 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

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9 (Open session at 12.42 p.m.)

10 MR. MACDONALD: (Interpretation) I don't know how much time the
11 Defence --

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

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

15 MR. MACDONALD: (Interpretation) I would just like to remind the
16 total number of hours. I think it's around four hours and four hours for
17 Counsel Hooper, and we have now gone way beyond four hours for the team
18 of my colleague, Counsel Kilenda. So it's just by way of a reminder of
19 ICC 5, paragraph 10, that the estimations -- or obviously it's a
20 difficult exercise, but we indicated 60 per cent of the time used by the
21 Prosecution.

22 MR. FOFE: (Interpretation) I'm sorry, your Honour. Just to
23 facilitate this task, I'm almost sure that we have not yet used up all
24 the our time, but I would like to save the Chamber time because we are
25 arriving at the end, and it would be of no use to lose time on this issue

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Questioned by Mr. Fofe (Continued)

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1 if you would allow me to continue and finish.

2 PRESIDING JUDGE COTTE: (Interpretation) Just having stated that
3 the Court Officer will, of course, give the time used by the team of
4 Mr. Ngudjolo for the cross-examination. So please continue. We still
5 have a quarter of an hour.

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

7 Q. Witness, when you arrived here in The Hague to testify, you know
8 that you enjoyed protective measures as a witness, measures that are
9 envisaged by the court in order to protect the witness. Could you tell
10 us why you decided to testify with your face open for people to view?

11 A. Everything that happened happened in the day. I want everybody
12 to know that I've come from Bogoro, that I am from Bogoro.

13 Q. Thank you very much, Witness. We would like to thank you very
14 much for the efforts that you have made in order to reply to our
15 questions. We have finished with our cross-examination.

16 MR. FOFE: (Interpretation) Your Honours, we have finished.
17 Thank you.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
19 Professor Fofe.

20 So, Prosecutor, the Katanga Defence team has used 3 hours
21 54 minutes for its cross-examination, and Mathieu Ngudjolo's team went
22 shortly over, but we'll have the precision with regards to this, have
23 just gone over just over four hours. You are right, Prosecutor.

24 Madam Prosecutor, it is up to you to take the floor for the
25 re-examination.

1 Witness, the Prosecutor, if she so wishes, will now ask you
2 certain questions which are -- come to mind due to the questions which
3 were raised by the two Defence teams, and as you did on the other days,
4 you will answer the questions slowly and precisely.

5 Madam Prosecutor, you now have leave to address the Court.

6 MS. DARQUES-LANE: (Interpretation) I would like to consult my
7 colleague for two minutes with your leave.

8 PRESIDING JUDGE COTTE: (Interpretation) You may.

9 (Prosecution counsel confer)

10 PRESIDING JUDGE COTTE: (Interpretation) Where it concerns the
11 Defence team of Mathieu Ngudjolo - no, no, you can stay there - it's
12 4 hours and 10 minutes. So the time of the examination-in-chief and the
13 re-examination will constitute a block from which we will calculate the
14 60 per cent. The 60 per cent can be put to other witnesses. During our
15 proceedings, we will also try and make things as balanced as possible,
16 given the decision of the 1st of December, 2009.

17 Prosecutor, you therefore have the floor.

18 MS. DARQUES-LANE: (Interpretation) Your Honours, we have no
19 more questions for this witness in re-examination. Thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) So, Witness, Prosecutor
21 has no new questions to ask you. So I now turn towards the Defence team
22 of Katanga. The Bench would like to know if you would like to take the
23 floor once again and ask any final questions to the witness. The Defence
24 always has the final word.

25 MR. HOOPER: It's not so much a question as an observation, and

Witness: Witness P-161 (Resumed) (Open Session)
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1 that is that it's apparent to all of us that this witness may have
2 difficulties in terms of distance, and even at this stage, we have no
3 clear indication where he was living or where his hiding-place were,
4 which are really the two crucial aspects of his evidence.

5 In terms of distance, I noticed that in response to Mr. Fofe a
6 little while ago, he -- the witness helpfully assisted us by saying that
7 he thought he was 25 metres away from his home. That is the distance
8 between the river and at least one hiding-place was 25 metres.

9 Now, we know that this courtroom in terms of its length was
10 measured and that it's about 18.5 metres, so I was going to ask -- or
11 perhaps invite the Court to ask the witness whether his distance from his
12 home to his hiding-place by the river was approximately just a little
13 longer, five or six steps longer, than the length of this courtroom.

14 It may not be appropriate for me to ask any further questions,
15 because there's nothing that arises, other than that, from Mr. Fofe, and
16 the Prosecution, of course, have asked no questions. I can ask it if the
17 Court wants to place it in my hands to ask that question.

18 PRESIDING JUDGE COTTE: (Interpretation) Ask this question,
19 Counsel Hooper.

20 Questioned by Mr. Hooper:

21 Q. So, Mr. Witness, you've heard the short discussion we've just
22 had, and you may remember earlier this morning that you were -- or you
23 stated that the distance between your house, the house where you were
24 living on the 24th of February, and the hiding-place by the river Waka
25 that you went to was 25 metres. That is between the river and your

Witness: Witness P-161 (Resumed) (Open Session)
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1 house.

2 Now, this courtroom, from that end to that end, we know is just a
3 little less than 20 metres. So 25 metres is another five or six paces
4 further than the length of this courtroom.

5 Now, looking at that distance today, from that wall to that wall
6 and just a bit further, how does that approximate to the distance from
7 your house to your hiding-place by the Waka River? Is it about the same
8 or not? And if you don't understand my question, I'll put it again; but
9 if you understand my question, can you -- can you help us? So the
10 question is -- I'll put it more simply perhaps. This is almost 20 metres
11 long, this courtroom. Your hiding-place, you said, was 25 metres from
12 your house. Have you any comment to make?

13 A. Twenty-five metres is not a long distance. It's just very close
14 to the house. I was next to the river. I could wash myself there. I
15 think that it's you who asked the question relating to this path which
16 went not far from Waka, and I went to wash myself next to this stream.
17 You find stones there, and there is a stream which is there, and the
18 inhabitants go and wash clothes there. It's therefore not far.

19 A distance of 25 metres is not far. I couldn't say that it's
20 30 metres or 40 metres. It was 25 metres. Why wouldn't I have been able
21 to know everything that happened there?

22 Q. Thank you, but I'm sure if any of us, lawyers or Judges, come to
23 Bogoro, I'm sure you'll be able to perhaps help us as to where these
24 places are. Would I be right in saying that? If we come to -- if we
25 come to your house, you'll be able to show us where these places are?

1 A. You asked me a question of where the Ngiti woman was killed,
2 Regine, and I showed you where I was hiding. There was a cow shed, a
3 banana tree. I wanted to show you when you came.

4 Can we change the state of affairs? You have already seen my
5 land, my cow shed. I wanted to show you. Why do I have to go back to
6 what I've already said to you?

7 MR. HOOPER: Well, I'll just make it plain for the record that
8 I've not been shown any cow shed or home, but I'm quite sure from the
9 witness's general demeanour before us that he'll be extremely helpful if
10 we ever want to go and ask him in Bogoro, and perhaps we might.

11 Thank you very much, Mr. Witness.

12 THE WITNESS: (Interpretation) Let's go even today. I can show
13 you. I will show you my cow shed and my house.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
15 Before we separate and the Witness 161 leaves this courtroom,
16 Counsel Hooper, you produced a certain number of photographs during your
17 cross-examination. These photographs were accorded a number --

18 THE INTERPRETER: The Defence states that they haven't been given
19 the final word.

20 PRESIDING JUDGE COTTE: (Interpretation) Do you have any final
21 observations that you would like to make?

22 MR. FOFE: (Interpretation) Thank you, your Honour. Just to
23 respect the form and the procedure, we have no questions, and we would
24 like to thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, where

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1 it concerns the photographs that you produced during your
2 cross-examination, they received MFI numbers. Do you intend -- do you
3 wish that they be tendered into evidence with an EVD number? If this is
4 the case, are there any objections from the Prosecutor or from anyone
5 else?

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

7 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, the
8 interpreters did not hear you.

9 MR. HOOPER: Sorry. Yes, the request is to -- the request is to
10 have the -- I think in all nine items. I may be wrong in my addition.
11 Five. Sorry, five. Very wrong in my addition. The five items entered
12 into evidence with EVD numbers. Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor,
14 remember that these photographs, unless I am wrong --

15 MS. DARQUES-LANE: (Interpretation) Yes. If we could have a few
16 clarifications, because we think that there are five photographs, but if
17 we could have the references.

18 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, are you
19 able to do this? Yes. Okay. We are listening to you.

20 COURT OFFICER: (Interpretation) Thank you, your Honour.

21 So the five documents we're talking about are as follows:

22 MFI-D02 -00014. Then we have MFI-D02-00015, MFI-D02-00016,

23 MFI-D02-00017, MFI-D02-00018.

24 MS. DARQUES-LANE: (Interpretation) We don't have any
25 objections.

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

3 Court Officer, the different photographs which you have just
4 given us references of will therefore be entered into evidence with an
5 according EVD number.

6 Witness -- I'm sorry, Court Officer, please.

7 COURT OFFICER: (Interpretation) So the new numbers of these
8 five documents are as follows: EVD-D02-0014, EVD-D02-0015, EVD-D02-0016,
9 EVD-D02-0017, EVD-D02-0018.

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

12 Witness, you have come to the end of your testimony. You have
13 spent a long time with the Bench and with all the participants replying
14 to all the questions that were asked you by the Prosecutor, by the Legal
15 Representatives of Victims, by the head of the Katanga Defence team, and
16 by Professor Fofe, the Defence team of Mathieu Ngudjolo, as well as by
17 the bench, as well by Judge Diarra, and myself. We would all like to
18 thank you for that, for your presence, your presence as Counsel Hooper
19 said, your -- your very free presence without particular protective
20 measures, because that is the way you so wished. We would like to thank
21 you for the answers that you have given, for the time that you have of
22 given to us to help us better understand the facts which you saw on the
23 24th of February, 2003, for the clarifications and details you have given
24 to those who asked you for them. So your contribution is very useful for
25 us, and we would like to thank you for it.

1 In a relatively short time-frame you are going to go back to the
2 Democratic Republic of Congo, and we would like to wish you a pleasant
3 trip and we hope you travel well and you arrive safely at your house.
4 Thank you, Witness.

5 THE WITNESS: (Interpretation) Thank you, your Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, Usher,
7 if you would like to take the Witness to the room that is accorded to
8 him.

9 Good-bye, Witness.

10 THE INTERPRETER: The witness said "thank you" off microphone.
11 (The witness withdrew)

12 PRESIDING JUDGE COTTE: (Interpretation) Before we separate and
13 if the interpreters and the technicians could give me another minute, I
14 would just like to remind the Office of the Prosecutor and the Defence
15 teams that the Defence team of Germain Katanga has seized the Chamber on
16 the 12th of March, 2010, with submissions with the number 1960. Now, the
17 submissions were communicated to us with a title "Confidential ex parte."
18 The Legal Representatives of Victims, therefore, are not addressees
19 thereto. I would therefore -- with regards to the remarks that I will
20 make, I will therefore not refer to certain aspects, but it's indicated
21 that an intermediary with the number 310 should, as regards the Katanga
22 Defence team, in their view, should have his identity disclosed quickly
23 to the extent that this intermediary will or might have been in contact
24 with Witness 323, and we will start -- when we start the hearing in the
25 afternoon, when that person starts at the beginning of the afternoon.

1 Now, Prosecutor, if at the beginning of the afternoon you have
2 oral observations which you would like to make with regards to
3 paragraph 16 of this submission, 1960, of Counsel David Hooper of the
4 12th of March, 2010, then, of course, we will listen to it with interest,
5 in particular if you are able to give us the reference of possible
6 submissions or decisions in which the relationship could figure between
7 Witness 323 and the intermediary 320.

8 We can't go over too much for the moment, but it's just to warn
9 you about that for this afternoon.

10 MR. MACDONALD: (Interpretation) The Prosecution would like to
11 inform the Chamber that we vigorously object to any disclosure of the
12 identity of the intermediary 310. There is no factual basis upon which
13 these allegations can be made. The witness will be here. He can be
14 asked just as 2 -- 250 was questioned. And furthermore, the Prosecution
15 says that we can re-evaluate the need to disclose this intermediary's
16 identity, but in the first place, this is not in the Lubanga case and the
17 only reference to disclosure of intermediary's identity is -- is number
18 183 and 316, and that's in the light of your decision as well.

19 PRESIDING JUDGE COTTE: (Interpretation) That was just to notify
20 you in that regard, and it would seem that we have to gather together
21 information in order to be able to usefully be able to respond to
22 submissions of Counsel Hooper. The Chamber will, therefore, have to ask
23 for a much more precise contribution from your office, Prosecutor.

24 Very briefly.

25 MR. KILENDA: (Interpretation) We inform you that we also make

1 this application with Counsel Hooper which is also relevant, and we are
2 currently going to file submissions which will also be very brief.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
4 Counsel Kilenda.

5 Thank you, interpreters, and to the technicians who undertook
6 additional work. So we will not start at 2.30 but at 2.35. The hearing
7 is now adjourned.

8 Luncheon recess taken at 1.08 p.m.

9 On resuming at 2.43 p.m.

10 (Open session)

11 PRESIDING JUDGE COTTE: (Interpretation) Court is reconvened.
12 Please be seated.

13 The accused persons are with us.

14 The Chamber will come back briefly to what we were saying before
15 the break and which relate to the filing submitted by the Defence team of
16 Mr. Katanga, submission number 1960, corrigendum of the 12th of March,
17 2010, and Mr. Kilenda said that they would associate themselves with that
18 filing and make a written submission this afternoon.

19 Mr. Prosecutor, we would like you to give us your observations on
20 this filing by 4.00 p.m. this Friday, that is, submission 1960 CONF EX of
21 the 12th of March, 2010, from the Defence team of Germain Katanga. So we
22 need your observations by this Friday, 19th March, 2010, 4.00 p.m.

23 MR. MACDONALD: (Interpretation) With your leave, Mr. President,
24 when you talk about a response to this submission, apart from what was
25 said regarding P-310, regarding Witness 323, is that it?

1 PRESIDING JUDGE COTTE: (Interpretation) Yes. The two
2 observations. We thought we understood that you would respond to all the
3 problems raised by the Defence team of Germain Katanga.

4 MR. MACDONALD: (Interpretation) With your leave, given that
5 Mr. Kilenda said that they would make a submission this afternoon before
6 4.00 p.m., usually there are 21 days for the response, and we have about
7 four days of full days per week, so can we have up to Monday to respond,
8 Mr. President, because this is an important filing which concerns
9 intermediaries? But I can tell you right now regarding transcriptions of
10 common witnesses such as Witness 46, there are many things on which the
11 Prosecution is going to agree and accept disclosure after linking up with
12 Trial Chamber I. But regarding the key issues of -- concerning the
13 intermediaries, we would like to have up until Monday.

14 PRESIDING JUDGE COTTE: (Interpretation) Given that there are a
15 certain number of joint issues between Chamber I and Chamber II, and
16 given that your office is indivisible and would have given some responses
17 to Trial Chamber I, wouldn't this be possible for Friday, 4.00 p.m.?

18 MR. MACDONALD: (Interpretation) Nothing is impossible,
19 Mr. President, but this is just a request we are making regarding that we
20 received this request last week, and it is important.

21 PRESIDING JUDGE COTTE: (Interpretation) It arrived on Thursday,
22 the corrigendum arrived on Friday, but it is not very significant, and
23 Friday would make a week. The Defence of Mr. Katanga said that it was
24 urgent. I know that many things are quite urgent right now, so we would
25 very much like you to make your submission by Friday, 4.00 p.m.

1 Now we are going to call Witness 323, and we would like to draw
2 the attention -- the attention of all the participants to the fact that
3 Witness 323 will be referred to by a pseudonym. His voice and image will
4 both be distorted.

5 This means, Madam Court Officer, that the curtain will be drawn.
6 There will be a closed session for the witness to come in, which will be
7 lifted after he enters the courtroom.

8 Mr. Prosecutor, we are listening to you.

9 MR. MACDONALD: (Interpretation) Still regarding 323 and 310 as
10 discussed by the Chamber before the break this morning, just a point of
11 information. When will the Chamber wish to have the substantive debate
12 regarding the disclosure of the identity of Witness 310? I thought this
13 morning you wanted to have references. I can provide some information to
14 you, but do you want all of it on Friday?

15 PRESIDING JUDGE COTTE: (Interpretation) If you have some
16 information immediately which makes it possible for us to better
17 understand the relationship that could have existed between
18 intermediary 310 and Witness 323, and if you have references to decisions
19 that Trial Chamber I could have handed down concerning intermediary 310,
20 then we would be happy to have them right now. You made us understand
21 that the Trial Chamber I had not disclosed the identity of 310. Are we
22 agreed?

23 MR. MACDONALD: (Interpretation) Intermediary 310 is not
24 involved in the Lubanga case, which means that there is no decision taken
25 concerning 310. I don't have any intention to discuss substantively on

1 this issue but simply to give information. If you ask us to do so I'm
2 ready, but I don't want to delay 323.

3 PRESIDING JUDGE COTTE: (Interpretation) In our mind, given the
4 date that we received this submission by Mr. Hooper, and if necessary he
5 can explain why this submission was late, but if we understood
6 completely, he needed to have some information that could have been given
7 to Trial Chamber I.

8 As far as we are concerned, the testimony of Witness 323 will go
9 on as planned, and it is during the cross-examination, as you mentioned
10 this morning, that the Defence will be able to better inform themselves
11 regarding the conditions under which the witness was approached and asked
12 to testify. On the other hand, if we fix brief periods to have your
13 observation on filing 1960 and there is another intermediary, number 143,
14 and who apparently could have approached many Prosecution witnesses, that
15 would make it possible for us to take a more useful position.

16 MR. MACDONALD: (Interpretation) You have answered the question
17 that the Prosecution raised this morning, so let us wait for the
18 cross-examination, and if necessary, with regard to 143, we will -- we
19 will do that. But for what you have requested, we will provide our
20 observations on Friday.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Mr. Prosecutor.

23 (Trial Chamber and Court Officer confer)

24 PRESIDING JUDGE COTTE: (Interpretation) The Court Officer has
25 just informed me that we have a few difficulties with Witness 323. We

1 are in contact with VWU to try and find out the reasons for the possible
2 reticence of this witness at this particular time. To the extent
3 possible, we wanted to begin this afternoon with his solemn undertaking
4 and the beginning of the direct examination of the Prosecutor. So while
5 we wait for information, you can consult amongst yourselves and do some
6 work so as not to waste time.

7 (Trial Chamber and Court Officer confer)

8 PRESIDING JUDGE COTTE: (Interpretation) The Court Officer has
9 informed me that Witness 323 is coming. Apparently, Mr. Prosecutor, we
10 need to be cautious, because it would seem that the witness is somewhat
11 frightened at the idea of testifying before the Court, in front of all of
12 us.

13 Court Officer, we're going to go into closed session so that the
14 witness can enter into the courtroom, give his name, and then we will go
15 into open session in order for him to take the solemn undertaking. If
16 indeed the witness is on his way, we may already go into closed session,
17 please.

18 (Closed session at 3.11 p.m.)

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Witness: Witness P-0323 (Closed Session)
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7 (Open session at 3.21 p.m.)

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

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
11 madam.

12 Witness, I'm going to ask you to listen to me very carefully.
13 Before you begin your testimony before the Court, you must pronounce the
14 solemn undertaking to tell the truth. This is called the solemn
15 undertaking that I'm going to read out slowly so that you can understand
16 the import of this statement.

17 "I solemnly declare that I will speak the truth, the whole truth,
18 and nothing but the truth."

19 Did you hear the solemn undertaking that I have just read out,
20 Witness?

21 THE WITNESS: (Interpretation) Yes.

22 PRESIDING JUDGE COTTE: (Interpretation) You therefore declare
23 that you will tell the truth, the whole truth, and nothing but the truth?

24 THE WITNESS: (Interpretation) Yes.

25 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to

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1 ask you to listen once again. You have just promised to tell the truth.
2 If at any point during your testimony or in answer to the questions that
3 are put to you you do not tell the truth, you could be, yes, prosecuted
4 before the Court for false testimony, and if it were proven that you had
5 given false testimony, you could be convicted.

6 Have you just heard and understood what I have just said?

7 THE WITNESS: (Interpretation) Yes.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you. The Court
9 takes notes, therefore, that the conditions of Article 69(1) of our
10 Statute have been complied with as well as Rule 66 of the Rules of
11 Procedure and Evidence, in paragraphs (1) and (3) in particular.

12 Witness, you are first going to answer the questions put to you
13 by the Prosecutor. You will answer those questions as precisely and as
14 simply as possible. If you do not know the answer to a question just
15 say, "No, I don't know." And then, at a later stage, the Defence
16 counsels as well as the Legal Representatives of Victims, who will, in
17 fact, go first, will also ask you questions. This afternoon the hearing
18 will be relatively short. We have another 30-some minutes, and the
19 representative of the Office of the Prosecutor is going to begin asking
20 you questions.

21 If at any point you need a moment to rest, you may ask us for
22 that. If you need a drink of water, because you're going to be talking a
23 lot, please take a moment to pour yourself a glass of water. If you need
24 the Kleenex in front of you, please feel free to use the Kleenex that you
25 have in front of you.

1 We are here to help you, and we want you to feel comfortable, and
2 that is why I wanted to tell you those things.

3 The Prosecutor is now going to begin his direct examination. He
4 is seated to this side of the room. You can look toward him, and please
5 do not forget to speak as loudly as you can and slowly. It's never too
6 slow. You need to speak clearly and slowly so that the interpreters can
7 do their job well, and we thank you in advance for having listened to all
8 of these instructions.

9 Prosecutor.

10 MR. HOOPER: (Previous translation continues) ... starts can I
11 ask that the curtain be adjusted so that there's a line of sight for the
12 accused, please. Thank you.

13 (Trial Chamber and Court Officer confer)

14 PRESIDING JUDGE COTTE: (Interpretation) The Usher is going to
15 do his best. In fact, the curtain is in exactly the same position as for
16 the previous witness, 361.

17 THE INTERPRETER: Correction, 161.

18 (Trial Chamber and Court Officer confer)

19 PRESIDING JUDGE COTTE: (Interpretation) We're trying to recall
20 how we proceeded for previous witnesses who also required the use of a
21 pseudonym and distortion of face and voice. It would seem that in
22 technical terms, we cannot better adjust the curtain.

23 Mr. Hooper, can you not see the witness?

24 MR. HOOPER: (Microphone not activated) ... this evening with
25 Mr. Katanga's consent, and we'll -- we'll try and sort it out for

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Questioned by Mr. Dutertre

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1 tomorrow. But I think what had happened is the Bulldog grip or the grip
2 here just took in a bit more of the curtain, because the curtain comes
3 forward too far. We can sort it out over the adjournment, I'm sure.

4 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, we
5 need to try to find the best possible solution. If it appears that one
6 of the accused is not able to see the witness, which indeed he has the
7 right to see, then perhaps we need to move the accused and perhaps
8 position them differently from the last time, but indeed it is important.

9 Yes?

10 MR. HOOPER: (Previous translation continues) ... Mr. Katanga,
11 Mr. Katanga has indicated to me that he's got no difficulty this evening.
12 He has the screen and we'll sort it out with the court and the Registry
13 over the adjournment tonight and I'm sure it will be all sorted out by
14 tomorrow. Thank you.

15 PRESIDING JUDGE COTTE: (Interpretation) Fine. Prosecutor, go
16 ahead.

17 MR. DUTERTRE: (Interpretation) Thank you very much, Mr. Hooper,
18 President, your Honours.

19 Questioned by Mr. Dutertre:

20 Q. (Interpretation) My name is Gilles Dutertre. I'm going to be
21 asking you questions on behalf of the Office of the Prosecutor this
22 afternoon. You are testifying in a case that was undertaken against
23 Germain Katanga and Mathieu Ngudjolo, and like the other participants
24 today, I'm going to address you, calling you "Mr. Witness," without
25 indicating your name, because there are certain protection measures to

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1 which you are subject. So please do not interpret that as a lack of
2 politeness. It's just to protect your identity that I am going to call
3 you "Mr. Witness."

4 I will ask a certain number of questions. You have to feel at
5 ease. If you do not understand a given question, then please ask me to
6 repeat it or for me to reformulate it. And then furthermore, when I
7 mention questions which potentially might reveal your identity, I will
8 ask the leave of the Presiding Judge to go into closed session. This
9 means that nobody externally will be able to hear the exact information
10 which could identify you that you would provide us with.

11 Precisely, I will start with a certain number of points which
12 could be potentially identifying.

13 MR. DUTERTRE: (Interpretation) Your Honour, I would ask to go
14 into closed session for this.

15 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, can we
16 go into private session, please.

17 (Public session at 3.32 p.m.)

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Questioned by Mr. Duterte

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15 (Open session at 3.38 p.m.)

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

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
19 Please continue, Prosecutor.

20 MR. DUTERTRE: (Interpretation) Thank you, your Honour.

21 Q. Witness, at a particular -- when -- when did you -- well, did you
22 at any time become a soldier?

23 A. Yes. Somewhat later I became a soldier.

24 Q. Could you tell us in what militia, in what army, what the name of
25 the militia or the army that you became a soldier in?

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1 A. I became a soldier at the time that the UPC carried out military
2 activities.

3 Q. I understand that you were a soldier in the UPC. Is that right?

4 A. That is correct.

5 Q. Witness, I'm now interested in the date on which you became a
6 soldier, and I have a particular reference point in this regard. We know
7 that Governor Lompondo was driven out of Bunia by the UPC on the
8 9th of August, 2002, and he fled. My question is, therefore, was it
9 before or after the departure of Lompondo from Bunia that you became a
10 soldier?

11 A. It was after the departure of Lompondo.

12 Q. And would you able to tell us approximately how many weeks, how
13 many months possibly after Lompondo left Bunia you became a soldier,
14 weeks, days, months?

15 A. It's difficult for me to answer you precisely, and I would like
16 to say that I know that I have to tell the truth here.

17 Q. Okay. Did you receive military training from the UPC, with the
18 UPC?

19 A. We had a -- an expedited form of military training.

20 Q. In which place did this training take place?

21 A. It was in Mandro.

22 Q. And you've just said that "we had military -- or we had training
23 which was expeditious." What does this mean, "expeditious," or "a la
24 va-vite"? How long did it last for exactly, this training?

25 A. It was training which lasted for three months.

Witness: Witness P-0323 (Open Session)
Questioned by Mr. Dutertre

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1 Q. Could you clarify for the Bench if you received a uniform or
2 weapon during or after your training?

3 A. The -- we obtained the uniforms later. We had civilian clothing.
4 And with regards to weapons, we used weapons that were made of wood.

5 Q. You are a UPC soldier -- or you were a UPC soldier. Could you
6 state if the UPC had a camp in Bogoro?

7 A. Yes. There was a military camp in Bogoro.

8 Q. Could you clarify for the Bench where this military camp was,
9 this UPC military camp was in Bogoro?

10 A. The UPC camp was where the UPC had been -- or sorry, where the
11 Ugandans had been established previously.

12 Q. In what place had the Ugandans been before, before the UPC were
13 there, before it was a UPC camp?

14 A. The Ugandans installed themselves at the school -- or, rather, at
15 Bogoro Institute.

16 Q. Were you yourself a soldier in this UPC camp in Bogoro? Were you
17 there at that place?

18 A. Yes.

19 Q. I'm now interested in the date when the UPC left Bogoro, and I
20 have another point of reference. We know that the UPC was driven out of
21 Bunia on the 6th of March, 2003. My question is, therefore, did the UPC
22 leave Bogoro before or after this event, before or after the departure of
23 the UPC from Bunia?

24 A. The UPC was driven out of Bogoro before this date.

25 Q. Could you say approximately how much time before?

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1 A. That must be a week and a half.

2 Q. And why did the UPC have to leave Bogoro?

3 A. It was because of the war that the UPC forces left this place.

4 Q. Briefly, can you say who led the war against the UPC and forced
5 them out of that place?

6 A. The war which drove the UPC out of Bogoro, well, at the time
7 there were Lendu, Ngiti, Ugandans, APC who were fighting together to
8 drive the UPC out of Bogoro.

9 Q. The day on which the UPC were driven out of Bogoro, were you
10 present yourself or were you not?

11 A. I was there.

12 MR. DUTERTRE: (Interpretation) Your Honour, I would now briefly
13 like to go into closed session, and then perhaps we could finish with
14 this particular aspect today.

15 PRESIDING JUDGE COTTE: (Interpretation) Understood. We will go
16 into private session, Court Officer.

17 (Private session at 3.51 p.m.)

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- 19 (Closed session at 3.55 p.m.)
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- 25 (Open session at 3.56 p.m.)

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

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

5 Prosecutor, at the end of this first half-hour of questioning, do
6 you think you will need three and a half hours tomorrow in order to
7 continue your examination-in-chief? Do you have an idea of how much time
8 you'll need, one day, two days, Tuesday, Wednesday?

9 MR. DUTERTRE: (Interpretation) It's difficult to say, but I
10 think at the latest on Wednesday we should have finished.

11 PRESIDING JUDGE COTTE: (Interpretation) You have tomorrow.

12 MR. DUTERTRE: (Interpretation) Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) The Chamber deplores
14 the loss of time that we had, but we do think that it was necessary such
15 for the witness to be able to come in good psychological conditions. He
16 did answer the questions that were put to him and with a certain degree
17 of mastery.

18 The Chamber would like to thank the interpreters and all those
19 who provide support to the Bench, and the session is now over for today.
20 We start tomorrow at 9.30.

21 The hearing ends at 3.58 p.m.

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