

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 Tuesday, 9 March 2010
10 The hearing starts at 9.04 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 Please be seated.
16 We are in open session. The accused persons are here with us.
17 Before we bring in Witness 161, we have certain housekeeping
18 matters to resolve.
19 The Defence of Germain Katanga requested a brief ex parte
20 hearing. Mr. Hooper, is that really urgent, because we have real
21 difficulties to organise that ex parte hearing before the beginning of
22 next week.
23 MR. HOOPER: Yes, Mr. President, because we won't speak about it
24 otherwise until next week. It was why I was provoked into trying to
25 mention something today.

1 May I say that I could probably limit what I have to say to
2 certainly no more than 15 minutes, possibly even less, but I think
3 probably 15 minutes. And if it was necessary to do that after we
4 normally rise, though I appreciate that's an inconvenience and would
5 demand at least the attentions of a French interpreter or an English
6 interpreter, I should say, then that certainly would be -- be all right.

7 May I say I've got two other matters that I'd like to raise very
8 briefly in open court before the witness comes into court.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well, but we will
10 try to begin by resolving that issue of the ex parte hearing, because
11 there are a certain number of constraints. We cannot extend the hearing
12 beyond 1.30 p.m. for reasons related to another hearing this afternoon of
13 Trial Chamber I. There are also reasons related to the fact that the
14 recording cannot go beyond two hours. There is also the status of the
15 interpreters and material reasons concerning the fact that the people
16 participating in the ex parte should have the opportunity to take lunch
17 before the hearing.

18 Professor Fofe, yesterday you indicated that you would need at
19 least the four hours of this meeting -- of this hearing today for your
20 cross-examination.

21 MR. FOFE: (Interpretation) Yes, Mr. President, but it is an
22 estimate.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, an estimate. At
24 the same time, yesterday afternoon the OTP indicated to us that they
25 would like to go ahead maybe not with the direct examination of

1 Witness 323 but at least with his taking of the oath. That seems to be
2 impossible, but what we are going to try to do to ensure that Witness 323
3 appears today in the courtroom is that we are going to interrupt the
4 cross-examination of Mathieu Ngudjolo's Defence team at 1.00 p.m. so that
5 Mr. Hooper should make his presentation at 1.00 p.m. The Court Officer
6 should try to ensure that a representative of the Registry is possible.

7 You mean that is not possible? Well, to go into an ex parte
8 hearing, we also need at least 20 minutes of interruption in order to
9 rearrange the courtroom.

10 (The Trial Chamber confers)

11 PRESIDING JUDGE COTTE: (Interpretation) This means that
12 20 minutes of an ex parte hearing actually represents 40 minutes because
13 of the preparation of the hearing and the hearing itself. This means
14 that Professor Fofe -- since we are going to break at half past 12.00,
15 that will make it possible for the Registry to arrange the hearing with
16 Germain Katanga's team and the Registry. So Witness 323, in any case,
17 will not be able to testify before next week, because we would not have
18 concluded with Witness 161. So I believe that is the only way to satisfy
19 maybe not everybody, but to reconcile the various positions.

20 So to summarise, the Defence team of Mathieu Ngudjolo will
21 cross-examine up to 12.30, and then the courtroom will be rearranged and
22 the ex parte will hold as of from 1.00 p.m.

23 Mr. Hooper, you told us that before the arrival of the witness
24 you wished to make some observations. You will have the chance to do
25 that, but before that, next week, if -- unless I am mistaken, we are

1 going to sit for three times one and a half hours. And in order to
2 enable you to plan, the Chamber will sit on Monday, the 29th of March,
3 which initially was supposed to be free, but we will sit on the 29th of
4 March in the afternoon as from 2.00 p.m. It is quite possible that we
5 will not be sitting right up to 6.30 p.m. because we will be resuming the
6 following morning at 9.00 a.m., but please remember that we will have
7 that hearing on the 29th of March at 2.00 p.m., and that will enable us
8 to catch up with the time lost.

9 So, Mr. O'Shea, Mr. Hooper, who wish to take the floor?

10 MR. O'SHEA: (Microphone not activated) ...

11 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper.

12 MR. HOOPER: Yes. Thank you. Just touching on the ex parte
13 hearing, I don't know if there is any other room that's available, i.e.,
14 with translation facilities, where we could raise the matter. I just
15 raise that to get over -- around the problem of the timing, but can I
16 just raise the two matters that I'm going to touch on very briefly.

17 You may recall that with this witness, the Defence for
18 Germain Katanga raised with him last week the issue of the extent of his
19 understanding of Ngiti, and the witness has said -- well, it's perhaps a
20 little unclear. We, for our part, do not accept that he speaks Ngiti.
21 My understanding is the witness states that he doesn't speak Ngiti but he
22 has an understanding of Ngiti.

23 As someone who has an understanding of French but doesn't speak
24 French, I would say that really, one's understanding is itself a function
25 of one's ability to speak it, and that's really the waters in which I was

1 trying to take the witness, of course, last week.

2 Now, in the course of that, I was, to use a football analogy,
3 rather shouldered off the ball by an intervention from the interpreter's
4 booth, interpreters with whom, of course, I make no criticism at all.
5 They were dealing in a difficult situation, but what was said from the
6 booth, the intervention from the booth, was, "This witness is speaking in
7 Ngitì."

8 Now, we challenge that and immediately afterwards we made
9 inquiries, and my understanding is from the booths that no one in the
10 booths speaks Ngitì. In other words, they wouldn't know one end of Ngitì
11 from the other. So there is absolutely and was no -- and this is my
12 understanding and I'll stand corrected, of course, if I'm wrong and
13 withdraw this comment, but there was absolutely no basis for that
14 intervention as a matter of fact, because nobody was in a position to say
15 whether the witness was speaking Ngitì or Zulu or Shona, or any other
16 language.

17 Now, the effect of that was, of course, quite significant because
18 you, the Judges, said, "Ah, he's speaking Ngitì, we hear from the booth,"
19 and I was suitably cowed by that observation.

20 And as of today, this Defence does not accept that there is a
21 sufficiency of evidence before the Court that this witness had the
22 capacity to understand the fairly long statements in Ngitì that he
23 related to the Court were being said and which he claimed he understood,
24 and there were various statements, you may recall. So I wanted to make
25 plain our position that it's for the Prosecution to prove his

1 understanding. It's not for the Defence to prove that he didn't
2 understand.

3 The other matter is a very, very different matter indeed. We are
4 understandably a little concerned, and we've touched on this before, as
5 to the possibility of even innocent witness contamination,
6 cross-contamination. It happens very easily, as we all know, in all
7 cases. So with that in mind, we made inquiries of WVS as to what the
8 circumstances of witnesses' visits to The Hague were. Were they
9 accommodated together? Were they brought together? During one witness's
10 testimony was he returning to the society of others, other witnesses yet
11 to come? Were they sharing hotels or other accommodation? And when he
12 completed -- the witness completed his testimony, was he again in
13 association with -- with witnesses?

14 Now, we know from experience from the ad hocs that there's often
15 a care taken to ensure that a witness once they enter the witness box is
16 not in contact, either physically or by telephone, et cetera, with other
17 witnesses who are within the jurisdiction of the court. Of course, the
18 court can't determine or really control witnesses when they're not within
19 the jurisdiction of the court. Now there again there's an issue because
20 we understand some of these witnesses may be, for example, in, say,
21 Kinshasa together, for example. So -- so again, we're concerned. We
22 don't know, but we have concerns.

23 Now, the Witness and Victim Unit, like so many departments within
24 the ICC, have always shown themselves towards the Defence as being
25 extremely helpful, very polite, but also extremely cautious. We

1 understand many departments here have explicit instructions not to talk
2 to the Defence, but they are, therefore, necessarily circumspect.

3 When we raised this issue with them, they gave it proper
4 attention and thought and we received an e-mail this morning or last
5 night to the effect that they were unable to help with my very general
6 inquiry, that is, how were witnesses dealt with when they were here in
7 respect of other witnesses, and as is commonly the case with inquiries to
8 various departments here, we are referred directly to the Chamber.
9 "Address all your questions to the Chamber."

10 So I'm sorry to bring this matter to the Chamber, because I know
11 you're more than sufficiently burdened with other issues, but
12 unfortunately, that's -- that's the only alternative that we've been
13 provided.

14 Obviously you, the Chamber, will doubtless need to be informed,
15 just as we sought to be informed, so I certainly don't expect any
16 response, if any, today, but we would be very grateful if the Chamber
17 could -- could explore that area and either permit VWU to tell us and
18 inform us themselves or convey and discuss the matter with us, or
19 alternatively, allow that information to be passed through you to us.

20 So those are the two matters that I wish to raise. Thank you.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
22 Just a moment.

23 (The Trial Chamber confers)

24 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, regarding
25 the second point of your intervention, the Chamber will contact the UWV

1 (as interpreted) and to seek information regarding the concerns of your
2 Defence team and maybe even the other Defence team, and when we'll have
3 the necessary information, we will provide you with it. That was the
4 second point.

5 Now, with regard to the first point, does the Office of the
6 Prosecutor have any observations to make on that first comment relating,
7 on the one hand, to the understanding by the witness of the Ngiti
8 language, and on the other hand, the fact that he is supposed to have
9 taken the risk during his answers of using Ngiti, and the interpretation
10 booth was not in a position to translate, and they pointed out that the
11 witness was speaking Ngiti. So regarding this first observation by
12 Mr. Hooper, we would like to know whether the OTP has any observations to
13 make.

14 MS. DARQUES-LANE: (Interpretation) Mr. President, your Honours,
15 the Office of the Prosecutor would like to request the Chamber that the
16 excerpt of the transcript which was in an unknown language or in a
17 language that was described as being Ngiti should be taken out and
18 translated by a sworn Ngiti translator.

19 Thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) Very well.

21 Mr. Hooper, a short while ago you told us, or you reminded us
22 that a few days ago the witness, in answer to a question asked him,
23 answered in Ngiti. The translation booth pointed this out to us. It is
24 clear that the Chamber will remind the witness. It seems to me that I
25 did so before, but I may be mistaken, but we have to remind him that he

1 has to express himself here in Swahili so that the interpretation should
2 be carried out properly and there should be no difficulty in that area.

3 Regarding the observation made by the Prosecutor, Madam Court
4 Officer, it will indeed be appropriate, if possible, to identify that
5 excerpt of the witness's answer which is supposed to have been given in
6 Ngiti, and that excerpt should be translated so that we should know
7 precisely what he said, and that translation will be made available to
8 all the participants.

9 Now, Mr. Hooper, regarding the witness's statement according to
10 which he understands Ngiti, and there again if I'm not mistaken, that is
11 something he said while referring to his personal life and to his
12 childhood, as well as to his matrimonial life.

13 For the time being the Chamber will limit itself to taking due
14 notice of this. The witness has stated that he understands Ngiti, and
15 the Chamber notes this statement, and when the time comes, in light of
16 the personal background of this witness, the Chamber will make its
17 determination.

18 Also, at the beginning of his cross-examination yesterday,
19 Professor Fofe tried to make certain determinations regarding the
20 languages that he speaks or he understands.

21 The Chamber perfectly understands that procedure, which is quite
22 close to what you were trying to do yourself, but we do not intend to go
23 beyond that for the time being.

24 So to summarise, the Chamber duly notes the fact that the witness
25 stated that he understands Ngiti. We remind -- we will remind him that

1 he should express himself in Swahili, and we also decided that the
2 excerpt that is supposed to be in dispute should be translated.

3 And with regard to your second observation, as I've said, we are
4 going to contact the VWU to seek information regarding the ways and means
5 of separating witnesses to avoid all risks of contamination. And at this
6 point we are going to bring in the witness for Professor Fofe to continue
7 with his cross-examination.

8 Court Officer, can you now have the witness brought into the
9 courtroom.

10 MR. HOOPER: Thank you. Thank you, Mr. President. Can I just
11 say that the translation of what may -- of what the witness claimed was
12 Ngiti, it may be that there are words they're Ngiti. I can say, for
13 example, "maji" is "water" in Swahili, and "ndio" is "yes," but it
14 certainly doesn't make me a Swahili speaker and it certainly wouldn't
15 allow me to understand phrases in Swahili. So what I'm saying is there
16 hasn't been an appropriate test as yet of that capacity to understand.

17 The witness is coming in. I make that observation just to
18 clarify my position. Thank you, Mr. President.

19 (The witness takes the stand)

20 WITNESS: WITNESS P-0161 (Resumed)

21 (Witness answered through interpreter)

22 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Witness.
23 Can you hear me well?

24 THE WITNESS: (Interpretation) Yes, your Honour, I can hear you.
25 I can hear you well.

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1 PRESIDING JUDGE COTTE: (Interpretation) You can hear me well
2 good.

3 Please, Professor Fofe, he will continue with his
4 cross-examination. Professor Fofe, you have leave to address the Court.
5 We are in open session, Witness.

6 MR. FOFE: (Interpretation) Thank you.

7 Questioned by Mr. Fofe: (Continued)

8 Q. (Interpretation) Good morning, Witness. We are going to
9 continue with our examination, still in the same spirit of mutual
10 respect, and we are going to speak slowly in order to facilitate the
11 interpretation, the translation, and the transcription. We are not going
12 to forget to have a small break between the question and the answer. And
13 the final thing, Witness, please just answer my questions. They are
14 precise. And I would ask you to also answer in a succinct way so that we
15 may make progress.

16 If I make a quote, I would ask you to wait until I have finished
17 that, and I will ask you a precise question.

18 Have you understood that well, Witness?

19 A. Yes, I have understood you well, Counsel.

20 MR. GILISSEN: (Interpretation) This isn't the first time the --

21 THE INTERPRETER: Mr. Gilissen's microphone needs to be placed
22 nearer his mouth because we can't hear it very well in the booth, please.

23 MR. GILISSEN: (Interpretation) If the witness, with regards to
24 a particular question, wants to give an additional explanation, you can't
25 have a mechanism which limits the response of the witness, something that

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1 could create a risk, we're all in agreement with that, whereby the
2 reality is distorted. We cannot have a situation where the witness can
3 be led in some way, but this is what I wanted to say.

4 PRESIDING JUDGE COTTE: (Interpretation) Counsel Gilissen, the
5 Chamber has confidence and trust in the ethics of all the counsel here in
6 this courtroom. You have expressed your point of view. You were right
7 to do so. Professor Fofe simply, I think -- this is something he will
8 explain later. He just wanted to remind the witness, who has expressed
9 himself at length on certain points, that with regard to certain
10 questions it is perhaps not essential to go back into an account that we
11 have already heard and that with regards to precise questions, precise
12 answers are necessary. He explained that.

13 And for me this is an opportunity, Witness, to remind you - I
14 omitted to do this when you came in - that we would like, as you are
15 doing in the most -- the great majority of questions that are put to you,
16 to only speak in Swahili or in French, but not to speak other local
17 languages other than Swahili. There is no question for you with your
18 answer to use Ngiti. You have to speak Swahili, because only Swahili can
19 be interpreted by the interpreting booths, which obviously is very
20 important for the Court.

21 Professor Fofe, please give a brief answer to Counsel Gilissen
22 and then continue.

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

24 I am made somewhat saddened by the reaction of Counsel Gilissen,
25 who used a couple of unfortunate words he used. "Artifice" he said in

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1 French, "mechanism." These are words that I found unfortunate. I would
2 like to use the Chamber that where it concerns this "artifice" or trick,
3 that we are acting in a professional way. The Defence has no concern
4 other than to find the truth.

5 If I ask the witness to answer in a precise way, this is quite
6 simply taking into account the fact that we are intervening after our
7 colleague Hooper, who has asked a lot of questions, and we want to avoid
8 repetition. That is it. Our attitude has no trace of trickery to it.

9 MR. GILISSEN: (Interpretation) Just one word. If I have
10 injured anyone, I would like to give my most sincere apologies. I think
11 I will re-read the transcript that I spoke about a risk and a situation
12 to be avoided.

13 If, because we're in the morning, perhaps I didn't digest my
14 breakfast properly, or perhaps I didn't sleep, if I went beyond that then
15 you have my most sincere apologies, and I do hope that you will -- I do
16 hope that you will accept them and I really didn't want to offend anyone.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
18 Counsel Gilissen. We feel there is no incident, and even if there had
19 been one, it would now be closed.

20 Professor Fofe, continue your cross-examination.

21 Witness, you will be able to speak in a moment.

22 MR. FOFE: (Interpretation) Thank you very much. The incident
23 is effectively over.

24 Q. Witness, we are now going to try to speak about different attacks
25 which you referred to, not only in your statement before the Prosecutor,

1 but also here in your testimony before the Chamber.

2 You stated before the investigators of the Prosecutor and you
3 have repeated here before the Honourable Bench that Bogoro had been
4 attacked four times. Briefly, could you remind us of the approximate
5 dates of these attacks, briefly, even without precision.

6 A. Thank you for having given me the floor. When these attacks took
7 place, I didn't have the presence of mind to note them somewhere. I
8 didn't have a possibility to write the dates on which these attacks took
9 place.

10 Q. Could you remember at least the years in which these attacks took
11 place?

12 A. The attacks started in 2001 (as interpreted). In 2001, 2002, the
13 attacks continued, and the last one was in 2003.

14 Q. So for clarity, because I think there was a small problem with
15 the interpreting, you said that the first attack was in 2001. The second
16 attack was in -- sorry, the first was in 2000, the second in 2001, and
17 the third in 2002, and the fourth in 2003.

18 A. That is correct, Counsel.

19 Q. Witness, did -- were these attacks of the same intensity?

20 A. All these attacks were of the same intensity.

21 Q. So we are now going to continue in a methodological way, step by
22 step, and before starting with the attack in 2000, I would just like to
23 verify or check what you said in paragraph 13 and 14 of your statement
24 before the investigators of the OTP. If this is confirmed, I don't want
25 to go into details. I just want to mention the year of the first year.

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1 I'm referring to document DRC-OTP-0164-0 -- 0488, paragraphs 13
2 and 14. And in these paragraphs, you spoke about the attack on the
3 village of Bondihango and Bogoro in 1992. Do you remember that?

4 A. Yes, the attack on Bondihango. That happened when we fled to go
5 to Bogoro.

6 Q. So it was in 1992; is that correct?

7 A. Yes. The attack which started in Bondihango, people were killed
8 there.

9 Q. We are now going to leave this attack aside to go to the first
10 attack on Bogoro in 2000. Could you tell us the origin or the cause of
11 this -- these first battles in Bogoro in 2000?

12 A. I couldn't tell you why the attack took place. We noted that
13 there was an attack, but we didn't know why this attack was taking place.
14 The chef de poste was killed. The chef de poste was killed in this
15 attack, from Nombe.

16 Q. Could you remind us who were the main figures in this first
17 fighting, the people who were fighting during this first battle?

18 A. During the first attack, it was the Lendu who came firstly,
19 Ngudjolo's men. They fought, and they went to fight the Ngiti so that
20 they could -- sorry, they went and they called upon the Ngiti from Lakpa
21 so that they could help them.

22 Q. The people who were fighting during this first battle, what did
23 they use as -- as instruments, as war instruments during this first
24 battle?

25 A. They had machetes. They had bows. They had arrows. I wouldn't

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1 tell lies; I didn't see any rifles at that time.

2 Q. As far as you can remember, Witness, do you remember the damage
3 that there was in both camps after the fighting, the damage that was
4 done?

5 A. People had been killed, objects had been pillaged, looted.
6 People had been killed. They took the objects with them to their homes.
7 This is everything that I have to say. People were killed and objects
8 were taken.

9 Q. Were there people killed in both camps?

10 A. The fighters came to exterminate people. They came to
11 exterminate the people in Bogoro.

12 Q. So we are now going to go on to the second battle, that of 2001.
13 I'm going to repeat my question. If you could -- if you can answer it,
14 answer it. Do you know the cause of the second battle in 2001?

15 A. No, I couldn't tell you what the cause of it was. I can't state
16 something that I don't know.

17 Q. And who was fighting during this second battle?

18 A. They came to exterminate the population in Bogoro. It wasn't the
19 population in Bogoro who were fighting against them. They arrived in
20 Bogoro to exterminate the population.

21 Q. And during this fighting in 2001, what did the people in both
22 camps, the people who had clashed, what did they use as war instruments
23 in 2001?

24 A. I wouldn't know what weapons were used. I was not next to them,
25 but I do know that they had weapons, and at that time they even had

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1 rifles. We saw that they had bombs, but I couldn't tell you what type of
2 rifles or weapons they had.

3 Q. Witness, I am speaking about the fighting in 2001, 2001. Were
4 there bombs in 2001?

5 A. There were.

6 Q. So we are going to go into the fighting, the war about which
7 you've come to testify here in The Hague at the court, namely, the war of
8 the 24th of February, 2003.

9 I haven't asked my question yet. So I am now speaking about
10 February, 24th of February, 2003, and you stated the following before the
11 Honourable Bench, that during this war of -- or when, rather, this war of
12 2003 started, you believed that it was going to be something that would
13 be over soon, but afterwards, you noted that these attackers had very
14 dangerous weapons. Is that not what you said? Is that not your
15 testimony?

16 MR. GARCIA: (Interpretation) Your Honour, I'm sorry to
17 intervene, but is it possible to know exactly where in the transcript
18 they are referring to so the Prosecution can see this?

19 MR. FOFE: (Interpretation) Yes, you can.

20 PRESIDING JUDGE COTTE: (Interpretation) That would be
21 preferable.

22 MR. FOFE: (Interpretation) I am referring to transcript 109,
23 hearing 26 February 2010, page 32, line 15 and 16.

24 Q. So I will ask my question again. Witness, you stated that when
25 this war of 2003 started, you believed that it would be short-lived or

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1 fleeting. Afterwards, you noted that these attackers had very dangerous
2 weapons. Is that what you -- what happened? Is that what you stated?

3 A. Large weapons. They had a weapon --

4 THE INTERPRETER: Overlapping speakers.

5 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, please go
6 ahead.

7 MS. DARQUES-LANE: (Interpretation) They said it was page 32 of
8 the transcript of the 26th of February.

9 PRESIDING JUDGE COTTE: (Interpretation) Transcript 109,
10 26th of February, 2010, page 32, lines 15 and 16. That is it.

11 MS. DARQUES-LANE: (Interpretation) Perhaps I might be wrong,
12 but I do not see the words that the colleague has mentioned. What I have
13 in lines 15 and 16 is: "What are we going to do with this serum, and we
14 thought that this might be something that was short-lived, but we slept."
15 I don't know anything -- I can't see anything to do with the dangerous
16 nature of the weapons. Maybe it's later.

17 PRESIDING JUDGE COTTE: (Interpretation) Yes. The reference
18 would seem to be the one that you have given. Professor Fofe is
19 referring to the situation of the sick child in the dispensary. This is
20 doubtlessly a reference error.

21 We will leave you the time to carry out the verification of this
22 such that everybody does know what the witness said on that day before he
23 confirms what he says with a view to the exact sense or meaning of the
24 question.

25 MR. FOFE: (Interpretation) I'm going to read the passage of

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1 interest to me, the passages of interest to me, and possibly add to them.

2 PRESIDING JUDGE COTTE: (Interpretation) Please quote them
3 properly so that we can all follow them when you read them. We are
4 listening to you, Counsel -- Professor Fofe.

5 MR. FOFE: (Interpretation) I'm going to -- I'm going to make
6 two references here. Firstly to page 32, lines 15 to 16. The witness
7 states the following:

8 "We thought that it was going to be something short-lived."

9 PRESIDING JUDGE COTTE: (Interpretation) There has to be -- we
10 are on transcript 109 here. Transcript 109, hearing of the
11 26th of February, 2010, page 32, lines 15 and 16.

12 MR. FOFE: (Interpretation) "We thought it was going to be
13 something short-lived."

14 That's it.

15 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, are you
16 referring to the realtime in-court version, or the edited version after
17 review by the court reporters? We're not questioning what you're saying,
18 but there is a discrepancy between what some of us have on our screens
19 corresponding to the references that you have given and what you are
20 reading out. That is what explains that difference.

21 MR. FOFE: (Interpretation) Mr. President, we have the edited
22 version. Transcript number 109, French version, hearing of the
23 26th of February, 2010, page 32, lines 15 and 16.

24 PRESIDING JUDGE COTTE: (Interpretation) I'm going to ask the
25 Court Officer. On our screen here we have the RMT version. Is that

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1 correct?

2 (Trial Chamber and Court Officer confer)

3 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor.

4 MR. FOFE: (Interpretation) I do now see where the error is
5 coming from, so let me instead refer now to page 33, lines 13 and 14 of
6 the same transcript.

7 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, we
8 are talking about the UPC soldier who came to look for milk.

9 MS. DARQUES-LANE: (Interpretation) Like the Defence, we have
10 the edited version of the transcript and not the realtime version, and so
11 when our learned colleague refers to page 32, line 16, we have the same
12 thing as him, and if we go to line 33, reference is made to the UPC
13 soldier who came to buy milk.

14 Thank you.

15 MR. FOFE: (Interpretation) Yes. I have understood. I can now
16 see the error. I will set aside this part of the question and move on to
17 the dangerous nature of the weapons, and this is page 33, lines 13 and
18 14.

19 PRESIDING JUDGE COTTE: (Interpretation) This time around, I
20 think we are looking at the same thing, the dangerous weapons.

21 Mr. Witness, we are having some technical difficulties. You are
22 very patient, and we thank you for that.

23 Professor Fofe, please proceed.

24 MR. FOFE: (Interpretation) Much obliged, Mr. President.

25 Q. The witness states as follows:

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1 "A soldier came to buy milk from me, and he said, 'But these
2 people have large' -- or, rather, 'They have very, very dangerous
3 weapons.'"

4 And on page 34, line 2, the witness says as follows:

5 "But it is terrible this time around. The cannon fire was
6 there."

7 My question is this: Does it mean that the war of February 2003
8 was more intense than the previous fighting?

9 A. Yes, that is correct. It was a terrible battle. They arrived in
10 huge numbers in relation to the previous attacks. The fighting in 2003
11 was dangerous. They even came with armed -- with children, with women,
12 and armed young girls. They were referred to as the PMFs. While they
13 were fighting, the women and the children were pillaging property.

14 Q. And I'm going to refer to the weapons used, and this is document
15 DRC-OTP-164-198. Paragraph 36. It's actually 164-0488. And I'm going
16 to quote paragraph 38. I'll quote what you said to the investigators of
17 the OTP, line 8, and I quote:

18 "On the morning when the attack started, a UPC soldier came to
19 buy milk from me. Because of the attack, he wasn't able to return
20 immediately to the camp, and after hearing the gunshots, he described to
21 me the types of weapons with which the attackers were shooting. I
22 remember that he mentioned that they had weapons such as SMGs, RPGs, and
23 G2s. I do not know what those names mean or even the difference between
24 those various types of weapons. That soldier was surprised by the type
25 of weaponry used by the attackers, and he was wondering whether the UPC

1 would be able to resist that attack. I remember that at one point we saw
2 something that looked like a bomb which was thrown in the direction of
3 the UPC camp and which killed several people after exploding. It was
4 like a ball of fire that we saw arriving from afar. I no longer remember
5 the name of the UPC soldier who was at my home at that time."

6 A. Thank you. You have just read out what I actually stated. I
7 confirm what you have just read. I am not telling lies.

8 Q. Thank you, Mr. Witness. Since you confirm, I'm not going to read
9 out paragraph 39, because paragraph 39 is about the same issue. I'm also
10 not going to read out transcript 111, hearing of Wednesday, 3rd March
11 2010, page 29, lines 15 to 16, which confirm what we have just talked
12 about.

13 My question is as follows: Mr. Witness, did you for one minute
14 wonder about the origin of those heavy weapons?

15 A. How would I have asked myself that question? Was I working for
16 them? I saw what was happening, and I regret it a lot. I did not know
17 how or where they came from. Those people had not been armed before, so
18 how could they suddenly have been so armed?

19 Q. Mr. Witness, at that time and during that war of 2003, was the
20 UPC -- or, rather, did the UPC have good relations with the UPDF, that
21 is, the Ugandan army?

22 A. No. When the Ugandan soldiers were there, the UPC was not
23 present. When the Ugandans left, there were APC soldiers who came there.
24 Later on, the population of the area was exterminated. The APC fled, and
25 it was after that that the UPC came to guard Bogoro.

1 Q. Thank you very much. And do you recall that it was the UPC that
2 chased out the APC from Bunia in August 2002?

3 A. I was in Bogoro. I do not know whether it was the UPC that drove
4 out the APC or not. I have no idea about that. All I know is that the
5 soldiers were fighting. I did not know whether it was the APC or the UPC
6 fighting. We just knew that there was fighting in Bunia. We did not
7 know whether it was the Ugandans or others that were fighting, because
8 the Ngitis went to fight against the Ugandans. I have no further
9 knowledge of this.

10 Q. Thank you very much. At that time, that is, 2003, to your
11 knowledge, did the UPC have a good relationship with the APC?

12 A. I do not know. How could I possibly know?

13 Q. Do you know whether at the time the UPC, which was occupying
14 Bogoro, that is, in 2003, had a good relationship with the Kinshasa
15 government, that is, the Government of the Democratic Republic of Congo?

16 A. How am I supposed to know that? I was a simple citizen, a cattle
17 rearer. Was I someone who was known in the area?

18 I do not know. I cannot tell you something that I do not know
19 about.

20 Q. At that time was the Kinshasa government present in Ituri, and
21 specifically in Bogoro?

22 A. Which year are you referring to?

23 Q. In 2003.

24 A. No. No. They arrived afterwards, that is, after the population
25 had been massacred. We had already fled. I saw the soldiers from

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1 Kinshasa, that is, the FARDC, in 2005 in Bogoro. They were together with
2 the MONUC soldiers.

3 Q. Thank you, Witness. I'm going to refer to transcript number 109,
4 hearing of the 26th of February, 2010, page 36, lines 11 to 13.

5 Mr. Witness, you stated that you saw someone who was wearing a
6 uniform similar to the uniform of your soldiers, and we are still here
7 during the period of the Bogoro war in 2003. Let me repeat: During
8 these hostilities, that is, the fighting of 2003, you have said that you
9 saw someone wearing a uniform similar to the uniforms of your soldiers,
10 and there were others who had camouflage uniforms similar to those of the
11 UPC. Is that correct?

12 A. Yes. Let me answer according to what I saw. There were people
13 wearing the UPC military uniforms while others were wearing Ugandan
14 uniforms. This is something that I saw.

15 Q. Very well. My question is as follows: What has prompted you to
16 exclude the possibility that those attackers, those combatants, could
17 have been Ugandan soldiers?

18 A. At that time, Ugandan soldiers were in Bunia. Others were in
19 Zombe. They even took the women from Zombe. Others were in Bavi. They
20 had taken Bavi women also. That is something that I knew well before
21 that.

22 Q. Very well. What makes you exclude the possibility that those
23 attackers could have been APC soldiers?

24 A. Are you referring to the APC or the UPC, because at that time the
25 APC was not there. We had soldiers of the UPC.

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1 Q. I said APC.

2 A. No. These were not APC soldiers but, rather, UPC soldiers. The
3 APC was not present there. The APC soldiers left that place in 2000,
4 after the population had been exterminated. Those soldiers fled, and
5 Bogoro became a deserted town.

6 Q. Last question on this issue. What makes you think that those
7 soldiers who came to fight in Bogoro in February 2003 could not have been
8 soldiers of the Congolese army who wanted to recover part of the national
9 territory occupied by the UPC?

10 A. Can you kindly repeat your question, which I did not understand
11 well?

12 Q. My question is as follows: You saw soldiers wearing uniforms
13 that you have described. You actually witnessed those events. Why do
14 you think it is not possible that those soldiers could have been soldiers
15 of the national Congolese army attempting to recover a part of the
16 national territory occupied by the UPC?

17 A. The national army cannot arrive with red head-gear on their
18 heads. They cannot come with grass worn around their waists. The
19 national army would arrive wearing berets or caps.

20 Q. Very well. Let me refer to paragraph 57 of document
21 DRC-OTP-164-488, and on paragraph 57, you stated as follows and I quote
22 you:

23 "I would like to point out that while I was with my wife in my
24 hiding-place not far away from the UPC camp, I saw a man in a white
25 shirt, and I was able to hear that he was using a whistle. He was

1 drawing the attention of the fighters to himself and then addressed them
2 in Congolese Swahili. Based on his manner of speaking, I would say that
3 he was neither a Lendu nor an Ngiti. Unfortunately, I have no idea where
4 he could have come from. Whatever the case, I am convinced that he was a
5 Congolese. He was shouting to the combatants, telling them not to kill
6 civilians but only the UPC soldiers as previously agreed. I do not think
7 I would be able to recognise him. I do not know what was his precise
8 role, but I do remember that he was quite tall."

9 My question is as follows -- that was an end of quote. I forgot
10 to specify. And my question is as follows: This tall person who was
11 neither a Lendu nor an Ngiti but who you say you were convinced was a
12 Congolese, could that person not have been an APC combatant?

13 A. Yes, that could have been possible, an APC combatant, and that is
14 because there were also APC soldiers amongst them.

15 Q. Let me now come back to transcript number 110 of the hearing of
16 the 2nd of March, 2010, page 70, lines 6 to 8. Once again, Mr. Witness,
17 you stated as follows in this courtroom before the Honourable Judges:

18 "Amongst the attackers, there were some of them who were slender
19 and who were wearing Ugandan uniforms."

20 And on the following day, that is, on Wednesday, 3rd February,
21 2010, and I'm referring to transcript 111, page 16, lines 15 and 16, you
22 repeated what you had said by stating that:

23 "The attackers were together with tall people wearing
24 Ugandans" -- or, rather, "wearing uniforms similar to those of the
25 Ugandans."

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1 My question is as follows: What makes you think that those
2 slender combatants wearing uniforms similar to those of the Ugandans
3 could not have been Ugandan soldiers?

4 A. No. I am not in a position to answer that question. I saw
5 military uniforms. I could not tell whether these were Ugandans or not.
6 How do you think I could possibly answer that question? I saw the
7 uniforms that they were wearing. They were similar to the Ugandan
8 soldiers' uniforms, and then they had banners around their neck, and they
9 were wearing some head-gear. That is what I saw. And furthermore, they
10 were speaking Swahili, which was different from that of the other
11 combatants.

12 Q. Thank you, Mr. Witness. Now I'm going to refer once again to
13 transcript number 109, the hearing of the 26th of February, 2010,
14 page 41, lines 24 and 25.

15 Mr. Witness, you testified as follows: Considering the intensity
16 of that war of 2003 and the heavy weaponry used, the UPC soldiers fled,
17 leaving behind the civilian population in the camp.

18 MS. DARQUES-LANE: (Interpretation) I'm sorry to interrupt. The
19 first portion read out by my learned friend is not on page 41. Maybe I
20 am mistaken. Can you please clarify?

21 MR. FOFE: (Interpretation) Maybe I did not read it out
22 verbatim. I probably extracted the substance of the witness's testimony.
23 I'm going to cross-check. Just a moment.

24 I think that the essential part is there. I didn't quote it
25 exactly, but this is what was said. Page 41, lines 24 and 25:

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1 "And afterwards, the UPC soldiers fled. They left behind them
2 the civilian population which was being massacred."

3 PRESIDING JUDGE COTTE: (Interpretation) We are in agreement at
4 that level, but these are the premises related to the intensity of this
5 war and the heavy weapons used, which do not figure in this part of the
6 transcript. Apparently the premises leading to the fleeing of the
7 soldiers is something we have to be attentive to, but perhaps you could
8 reformulate your question. The witness could then reply to that.

9 MR. FOFE: (Interpretation) Thank you. I thought that the
10 premise was something that we had already spoken about.

11 PRESIDING JUDGE COTTE: (Interpretation) We can consider that it
12 has been accepted, but don't -- don't include the beginnings, if you
13 like, into the quote.

14 MR. FOFE: (Interpretation)

15 Q. Witness, before the 26th of February, 2010:

16 "Afterwards, the UPC soldiers fled. Behind them they left the
17 civilian population being massacred."

18 My question is as follows: Can we understand that these UPC
19 soldiers had fled given the intensity of the fighting, the intensity of
20 the fighting, yes, the weapons used by the attackers?

21 A. At a certain time there was fighting, and the UPC soldiers didn't
22 leave the civilian population. They said, "The war is becoming more
23 intensive. Civilian population flee." And this house had about six
24 rooms. The first person hearing the attackers fled. Other people were
25 left behind. Afterwards, the -- but the UPC soldiers did say to the

1 civilian population that they had to flee, and they didn't leave them
2 there. The fighting became more intense. There were a lot of heavy
3 weapons. There was a mortar.

4 Q. Okay. You confirm, therefore, that certain civilians were able
5 to flee at the same time as the UPC soldiers; is that correct?

6 A. Absolutely. Some members of the population fled with the UPC,
7 including my wife and child. They left the house together. Some
8 soldiers fled accompanied by the civilian population. During this time,
9 people were killed in their homes.

10 Q. Just a question by way of clarification. In the transcript -- in
11 transcript 109, 26th of February, page 37, lines 18 to 20. From what --
12 so that we are able to understand this fully, you stated that you had
13 heard cannon fire which was not like the sound of -- the sound of heavy
14 guns of your soldiers. What do you mean by "your soldiers"?

15 A. There were soldiers of the UPC who were in Bogoro. They were
16 guarding Bogoro. And it was our soldiers, they were -- had come to guard
17 Bogoro.

18 Q. Just for clarification, do you know what the "UPC" actually
19 means?

20 A. I have no knowledge relating to this part there. I just know
21 that they are soldiers. When the town is controlled by someone else, we
22 welcome those who arrive; but sometimes those who come, go against the
23 civilian population.

24 Q. In your testimony - I don't have the reference but I think
25 everybody was able to follow it - you spoke about the UPC soldiers who

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1 came to buy milk from you on that morning. Can you tell us at what time
2 these soldiers came, at what time they came?

3 A. I think that I had already said that, but I would repeat it.

4 Q. Have you followed my question? It was precise. You have already
5 spoken about it. So I'm asking you a question by way of clarification,
6 because you have already spoken about that at some length. My question
7 is as follows: At what time did these soldiers who came to get milk, at
8 what time did they arrive at your house on that morning?

9 A. The soldiers in question didn't come just once. They took milk
10 for their commanders. So these soldiers came every day in the morning.
11 They didn't just come on one day. They took milk, and they paid me every
12 month. They came to my home, and when they came I heard a gunshot. They
13 didn't return -- the soldier didn't return to the camp. He fled in
14 another direction because he was afraid of going back to the camp.

15 Q. And you've already given this clarification that the first
16 shots -- was at 5.00 in the morning? Is that right? You heard the first
17 shots at 5.00 in the morning?

18 A. The people were still in bed. It was towards 5.00 in the
19 morning. Everybody was at home. Some people were killed in their homes.
20 Other people fled. They were naked, without clothing.

21 Q. Okay. We can understand that these soldiers came to your house
22 before 5.00 in the morning. Is that correct?

23 A. No. When we heard shots, the soldiers were on their way to my
24 house. Instead of returning to their -- instead of returning to his
25 house, he stopped. He said, "Did you hear these gunshots?" And he said,

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1 "Is this an attack?" I said, "I don't know." And afterwards, we still
2 heard gunshots which were more intense.

3 The UPC soldier didn't return to the camp. He stayed at my
4 house, and he said, "But the situation is becoming dangerous." We saw
5 some soldiers, fighters, that they had started to run, and he said,
6 "Look. It's the Ugandans. The Ugandan fighters are running, and they
7 are going back, and the fighting today is intense." He said he was going
8 to take a path which would take him to Bunia.

9 Q. Thank you, Witness. Do you remember having stated here before
10 the Chamber that there were a hundred UPC soldiers in this Bogoro
11 military camp?

12 A. I'm going to answer you. Sometimes you want to interrupt me, so
13 you can't allow me to give me further explanations. Allow me to explain.

14 When a hundred soldiers came to Bogoro, at that time the fighters
15 were blocking the route -- the road. No -- from Kasenyi to Bunia.
16 Vehicles weren't travelling on it, and the UPC soldiers intervened to
17 allow vehicles to go to Kasenyi. Certain soldiers went to Kasenyi, and a
18 vehicle went from Kasenyi could go to Bunia. And on a particular day, a
19 Saturday, the soldiers divided up the task. Some went to Kasenyi, and
20 others took a vehicle -- or, rather, escorted a vehicle so the
21 soldiers -- there weren't a hundred of them who were in -- some were in
22 Kasenyi, some were in Bunia. So when the fighting broke out, some were
23 in Bunia, some were in Kasenyi.

24 Q. So we understand that in the UPC camp, normally when other
25 soldiers aren't going on a mission anywhere else, there are over

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1 100 soldiers in the camp in a normal situation. Is that correct?

2 Just to go in the direction of what you were saying, if we
3 understand what you have just said, we can say that if other UPC soldiers
4 hadn't gone elsewhere, they would have been more numerous in the UPC camp
5 in Bogoro. Normally there are other a hundred of them in Bogoro; is that
6 right?

7 A. Some had already gone, some remained. The soldiers had gone to
8 Kasenyi. Others had gone to Bunia, and there there were only half of
9 them.

10 Q. Thank you, Witness. Now, referring to the transcript 109, I'm
11 going to ask a few questions before the break. Transcript 109, page 42,
12 lines 6 to 13.

13 When we speak about this fighting of 2003 -- when you spoke about
14 it, you stated having seen Ngiti on the mountain, approximately 500 --
15 after 500 metres, and you couldn't see the type of weapon that they
16 possessed. Do you remember having said that?

17 MR. GARCIA: (Interpretation) If you would allow me, your
18 Honour. On this subject, I think with a view to being fair to the
19 witness, I think you have to repeat everything that the witness actually
20 said at the time. I mean, we are in cross-examination at the moment, but
21 the answer of the witness is much more detailed than what Professor Fofe
22 leads us to believe. So we don't want to lead the witness into making a
23 mistake.

24 PRESIDING JUDGE COTTE: (Interpretation) You are stating what
25 the 2006 statement, but Professor Fofe is in a -- is in a transcript --

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1 MR. GARCIA: (Interpretation) Professor Fofe has basically given
2 a summary which, as far as I'm concerned, does not reflect the entirety
3 of what the witness said in the hearing of the 26th of February, and here
4 I'm referring to lines 11 to 13, and particularly the second sentence of
5 that.

6 PRESIDING JUDGE COTTE: (Interpretation) So we're just going to
7 ask Professor Fofe to read a bit more of this transcript such that we can
8 really put it in the context of the witness and you can ask the question.
9 Okay.

10 MR. FOFE: (Interpretation) Okay. Thank you, your Honour. We
11 are now -- well, we were trying to save time, but, of course, we can do
12 this at more length.

13 Now, we are on page 43.

14 PRESIDING JUDGE COTTE: (Interpretation) Page 42, I think.
15 Page 42, lines 6 to 13. Perhaps you have to go a bit beyond line 6 so
16 that we can have a more complete reading of that.

17 MR. FOFE: (Interpretation) Okay. Page 42. I will take it to
18 line 2 with a view to the question that was asked.

19 Q. Can you tell us -- can you describe to us the Ngiti who were on
20 the mountain, how were they dressed? And the answer of the witness is
21 that the Ngiti on the hill were dressed in civilian clothing.

22 "Q. Were they armed?

23 "A. Yes, they were armed. They had machetes. They had arrows.
24 They also had weapons. They were stationed on the hill, and from the
25 bottom I could observe them. I was able to see them.

1 "Q. What type of weapons did they have? You have just spoken
2 about weapons. Can you specify what you want to mean by that?"

3 The answer of the witness, and here I quote:

4 "A. Are you going to understand something. The people who were
5 500 metres away from me, I couldn't see what type of weapons they had. I
6 am not a weapons expert, and I don't know what type of weapons they had."

7 My question is as follows: You stated, having seen Ngiti on the
8 hill approximately 500 metres away, you couldn't see the type of weapons
9 that they had. How were you able to make out the machetes and the
10 arrows?

11 A. I have the impression that you are trying to disorientate me. I
12 don't want to be disoriented. When at one time when you showed on my
13 screen something -- or you showed my cow shed, the Ngiti were on the
14 stones, I could see them. I could see them on the screen. I saw them.
15 They were further up. Somebody could have an arrow. There's a
16 difference between somebody who has an arrow and a firearm and a machete.
17 I could see them on a higher position. You showed me a photo yesterday,
18 and I could see where they were on the stones. Were you not able to see
19 that, Counsel?

20 Q. Thank you, Witness. Be reassured that everything -- or all that
21 we are trying to search for is clarity. Where there is any grey area, we
22 want to shed light on this such that everybody understands. It's not in
23 order to annoy you, it's so that one really understands well?

24 MR. FOFE: (Interpretation) Your Honour, I can see that we have
25 five minutes left. I think it would be appropriate to take a break at

1 this juncture.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
3 Professor Fofe. Thank you, Witness, for these two hours of contribution.

4 Court Officer, I would like to ask you to escort the witness to
5 the witnesses' room. You have half an hour to rest, Witness, and we will
6 start again at 11.30, and we'll have -- we will be with you for an hour.

7 Usher, can you please escort the witness outside the courtroom,
8 please.

9 THE WITNESS: (Interpretation) Thank you.

10 (The witness stands down)

11 PRESIDING JUDGE COTTE: (Interpretation) We are therefore going
12 to restart at 11.30. Professor Fofe will continue his cross-examination
13 from 11.30 to 12.30. At 12.30 we'll have a break for 20 minutes. You
14 will tell us the exact required duration in order to make the courtroom
15 available for an ex parte hearing, and this will be held with
16 Counsel Hooper and the Defence team of Germain Katanga.

17 Court Officer, please ensure that the representatives of the
18 Registry who are concerned by this type of hearing are concerned -- or
19 are involved in this ex parte hearing.

20 And I would just like to take the time that we have before the
21 break in order to indicate that on Monday we will continue the
22 cross-examination of the witness. One can think given the duration of
23 the hearing which is on Monday, which is four and a half hours, that the
24 Mathieu Ngudjolo's team would have finished their cross-examination.
25 Perhaps the re-examination will also have finished, as well as the final

1 observations of the Defence teams, which will make it possible for the
2 Prosecutor and Registrar to envisage the transfer of Witness 323 on
3 Monday, if not in the morning then in the hearing in the afternoon.

4 MS. DARQUES-LANE: (Interpretation) Indeed, your Honour,
5 Presiding Judge. Witness 323 is already in The Hague and has been for
6 two weeks and is waiting to give testimony.

7 PRESIDING JUDGE COTTE: (Interpretation) Perfect. We will
8 therefore have the break, and we will be back at 11.30. The session is
9 now adjourned.

10 Recess taken at 10.57 a.m.

11 On resuming at 11.32 a.m.

12 (Open session)

13 COURT USHER: All rise.

14 PRESIDING JUDGE COTTE: (Interpretation) Court is in session.
15 You can now take your seats.

16 The accused persons are with us. We are in open session.

17 Madam Court Officer, please have the witness brought into the
18 courtroom.

19 (The witness takes the stand)

20 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Witness.
21 Can you hear me well?

22 THE WITNESS: (Interpretation) Yes, I can hear you well,
23 your Honour.

24 PRESIDING JUDGE COTTE: (Interpretation) That is perfect. Thank
25 you, Witness.

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1 Professor Fofe, you can now continue.

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

3 Q. Good morning once again, Mr. Witness.

4 A. Good morning, Counsel.

5 Q. As I told you a short while ago before the break, the questions
6 that we are putting to you are simply for the purpose of clarification,
7 and that is of certain things that we do not quite understand.

8 A. Very well.

9 Q. I will refer to transcript number 109, page 46, lines 24 and 25.
10 I will refer again to the same transcript, number 109, page 51, lines 24
11 and 25.

12 Mr. Witness, on page 46, lines 24 and 25, you stated that on the
13 day of the fighting, that is the 24th of February, 2003, you fled in a
14 group of UPC members and of civilian members of the population who were
15 also fleeing. Still, during the same hearing, that is transcript 109,
16 lines 24 and 25, you stated that you fled towards the stream at which you
17 normally went to fetch water close to your home.

18 These are two contradictory statements. How can you explain this
19 contradiction to us?

20 A. I do not see any contradiction.

21 Q. Let me repeat what you said. You stated that you fled in a group
22 of UPC soldiers and civilian inhabitants who were fleeing, and then you
23 also stated that you fled towards the stream where you went to fetch
24 water quite close to your house. Can you explain that to us? Don't you
25 think there is a contradiction between the two statements?

1 A. You know, everybody fled. I had built my house very close to
2 that stream, and people fleeing were passing by that stream where people
3 bathe. I went down below when those people were fleeing. I was thinking
4 about the members of my family who were in the hospital. That is why I
5 decided to hide at that place.

6 Q. Thank you, Mr. Witness. Let me now refer to page 45, still in
7 transcript number 109, lines 17 and 18, and then page 47, lines 24 and
8 25.

9 You testified that the UPC soldiers were asleep, and I'm still
10 talking here about the 24th of February, 2003. You testified that the
11 UPC soldiers were asleep. They were surprised in their sleep because
12 they were not aware of anything.

13 MR. GARCIA: (Interpretation) I'm sorry, Mr. President, but we
14 have to be clear. What paragraph specifically is Mr. Fofe referring to?

15 PRESIDING JUDGE COTTE: (Interpretation) In principle, we are on
16 page 45 of transcript 109, lines 17 and 18.

17 Is that correct, Professor Fofe?

18 MR. FOFE: (Interpretation) Yes, that is correct. I also
19 mentioned page 47, lines 24 and 25, and I will now check the two
20 references myself.

21 Yes. More specifically, it is page 47, lines 24 and 25. So one
22 can look at it from page 23 (as interpreted).

23 PRESIDING JUDGE COTTE: (Interpretation) Given that the
24 vigilance of the OTP is extreme, as you must have noticed, it is
25 imperative to correctly quote the references to the transcript, which you

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1 have done, but you also have to be sure that the excerpts that you are
2 reading out correspond exactly to the references that you have given.

3 Now, did you find the references, Prosecutor?

4 MR. GARCIA: (Interpretation) Yes, Mr. President. That is our
5 concern, and this is that sometimes Mr. Fofe, in order to save time,
6 makes summaries, which to us do not always correspond to the substance.
7 I understand that he is acting in good faith, but in order to be fair to
8 the witness, he has to read out entirely the statement made by the
9 witness.

10 PRESIDING JUDGE COTTE: (Interpretation) The Chamber would like
11 to tell Professor Fofe that his concern, which is legitimate and which we
12 appreciate, should not lead us to situations that in the final analysis
13 causes us to lose even more time. We know that there is a difficulty in
14 you coming second in the cross-examination, and you have to bear in mind
15 the necessity not to ask questions that have already been asked by
16 Mr. Hooper. You are doing your work as best as you can, and you are
17 trying to extract all the necessary clarifications, but take your time
18 and do everything you have to do with a maximum of precision.

19 MR. FOFE: (Interpretation) Thank you very much, Mr. President,
20 and I will try to comply.

21 Q. Witness, on the 26th of February, 2003, you stated as follows,
22 and I will read from transcript 109, page 47, lines 22 to 25. The
23 question that was put to you was this:

24 "At 8.00 a.m. in the morning, where were the UPC soldiers?"

25 And your answer was, and I quote:

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1 "No. They, the enemies, found them in their camp. They were
2 present in their camp. In fact, they were asleep. They were surprised
3 because they were not aware of anything."

4 MR. FOFE: (Interpretation) I'm sorry, Mr. President. There is
5 an error in the transcript. I referred to transcript 109 of the hearing
6 of the 26th of February, 2010, and not 2003.

7 Q. Let me now repeat the answer of the witness:

8 "No. The enemies found them in their camp. They were present in
9 their camp. In fact, they were asleep. They were surprised because they
10 were not aware of anything."

11 My question to you, Mr. Witness, is this: How could you have
12 known that at that time the UPC soldiers were asleep? How could you have
13 known that?

14 A. Please listen to me. This is what I said: A UPC soldier was in
15 the habit of waking up while the others were still asleep. At that time,
16 that same soldier asked me, "Have you heard the gunfire?" And I said,
17 "Yes, I have heard." And then he said, "The war has started." It was
18 this UPC soldier who had left the other soldiers asleep in the camp to
19 come and fetch milk from me. That is what I have to say.

20 Q. I will now refer to the same transcript, number 109, page 31,
21 lines 23 to 25, and then page 32, lines 1 to 3, and I will read the
22 excerpt, and I'm quoting you.

23 "It was on a Saturday. People were strolling on the road, and
24 they found a letter which had been thrown on the road. The letter said
25 that on the 24th, they would go to Bogoro to go and cultivate their farm.

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1 Shortly afterwards, on Sunday, everyone was worried. Some even started
2 to flee. Those who had to go to Kasenyi left. Those who were to go to
3 Bunia left."

4 And now my question: Considering that this letter was there, the
5 UPC soldiers were indeed aware. Let me rephrase the question. The UPC
6 were well aware of that letter. Isn't that correct?

7 A. Yes, they were aware of it. The inhabitants were also aware.
8 That is why some of them left for Kasenyi, and others went to Bunia. The
9 most courageous stayed put.

10 Q. Are we, therefore, to understand that the UPC soldiers were not
11 at all surprised by that attack?

12 A. They were surprised. They were surprised. There were combatants
13 who climbed on the mango trees and spent the night there to wait for
14 them. That is, on the mango trees.

15 Q. Mr. Witness, to your knowledge and in all logic, wouldn't the UPC
16 soldiers who were aware of what was going to happen should have been on
17 alert?

18 A. I was 1 kilometre away from where the soldiers were at that time.
19 I did not know what their plan was. I did not know what they had planned
20 to do.

21 Q. Very well. I will now refer to your statement to the
22 investigators of the OTP, and that is document DRC-OTP-0164-0488, and I
23 will start with paragraph 34 and then paragraph 35.

24 Let me now begin by reading paragraph 34 in which you state as
25 follows, and I quote:

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1 "I, like the others who had listened to the recordings, we told
2 the UPC soldiers that the Ngiti combatants were going to attack the
3 village. We had told them that the combatants wanted to start during the
4 night. Based on what I had understood, the attack was to take place the
5 following day. The reaction of the UPC soldiers had been to say that the
6 Ngitis could always come and that they would drive them back without any
7 difficulty."

8 A. That is correct.

9 Q. Is that correct?

10 A. Yes.

11 Q. My question is this, and please explain to us carefully so that
12 we can understand, because we can see that there are a few
13 contradictions: In your statement to the investigators of the OTP, you
14 talked about listening to recordings of communications, and here before
15 the Judges you talked about a letter thrown on the road. How do you
16 explain that contradiction?

17 A. That is -- this is what I can say with regard to the letter --

18 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor.

19 MR. GARCIA: (Interpretation) You have -- one has to be fair
20 with the witness. Regarding the contradiction mentioned by
21 Professor Fofe, the Prosecutor feels that there is no contradiction.

22 MR. FOFE: (Interpretation) It is the witness who has to answer,
23 not you.

24 MR. GARCIA: (Interpretation) I cannot go into the details
25 because the witness is present. The witness stated the two things.

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1 Mr. Fofe cannot then state before this Court that there are
2 contradictions, because he may actually mislead the witness by doing so.

3 PRESIDING JUDGE COTTE: (Interpretation) It is, of course,
4 indispensable to be precise in the manner of putting the question, but I
5 think an excess of Byzantinism, that is, on the part of the parties, can
6 disorientate the witness, and that is what is happening. Both of you
7 should try to act in such a way that the witness can tell us what
8 happened.

9 So, Professor Fofe, you proceed, but everybody has to bear in
10 mind the necessity for the witness to understand perfectly well the
11 procedure in which he is participating.

12 Please proceed.

13 MR. FOFE: (Interpretation) Thank you, Mr. President. All of us
14 are seeking to have all the necessary clarifications from the witness.
15 The witness understood my question and was even preparing to answer, and
16 I think it is up to him to explain what he wanted to say, because on the
17 one hand, he talked about listening to recordings of communications, and
18 on the other hand, he talked about letters -- or, rather, a letter. So I
19 am asking the witness to tell us what happened in reality.

20 Q. Why is it that, on the one hand, you talked about listening to
21 communications and, on the other hand, you mentioned a letter. My
22 question is quite precise, and I would like to have a precise answer from
23 you.

24 A. I am going to give you an answer. There had been communications.
25 The letter was found on a Saturday. The dispensary was located at the

1 location known as the Mission, and the people who went there were the
2 ones who saw the letter. The combatants took the road leading towards
3 the Mission and then to Mayi Ya Franga, then to Kasenyi and Zumbe. So
4 the letters in question were thrown on the Mission road. I cannot tell
5 you lies. I am telling you the truth, just as I have been doing since
6 the beginning of my testimony.

7 Q. Thank you, Mr. Witness. I will now read out paragraph 35 of that
8 same document whose reference I gave to you a short while ago, and this
9 is your statement to the investigators of the OTP. You said this, and I
10 quote:

11 "After having learnt that Ngitis were going to attack the
12 village, some of the villagers decided to leave, either to Kasenyi or to
13 Uganda. For my part, I remained with my family. I cannot tell you how
14 many people left, but as far as I can remember, there were many of them.
15 There were men, women, and children."

16 Mr. Witness, this is my question: Is it, therefore, true that
17 when the inhabitants of Bogoro were advised of the imminent attack of
18 February 2004 -- let me correct. When the population of Bogoro were
19 informed about the imminent attack of February 2003, they decided to
20 leave Bogoro village. In any case, you said there were men, women, and
21 children. So many people decided to leave Bogoro village and flee to
22 either Kasenyi or Uganda. That is correct, isn't it?

23 A. You see, I will tell the truth and what I know. When some Hema
24 who were in the bush who were taking the cows, when they came, the people
25 who were with Bahema Sud didn't have villages. They were sleeping

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1 outside, so they fled. The population of Bogoro were there, and it was
2 the people who came from Bondihango who went because they didn't have a
3 precise place to go to. The people from Bogoro didn't leave. It was
4 only those who were in Bondihango. That is something that I said before.

5 THE INTERPRETER: The interpreter corrects: It wasn't taking
6 cattle, it was grazing cattle.

7 MR. FOFE: (Interpretation)

8 Q. Witness, you want to say this because we want to understand.
9 When the population of Bogoro was informed of the imminent nature of the
10 attack in February 2003, the people -- the population of Bogoro had not
11 left Bogoro.

12 A. You listen to me very well. I'm speaking of the Bondihango
13 groupement. It's people from this groupement who went to Uganda and
14 Kasenyi. They left from the groupement of Babiase. There wasn't --
15 there weren't houses. There was nothing. That is the reason why they
16 left. The inhabitants of Bogoro didn't leave. They stayed, because they
17 thought that the combatants might come, but they would be able to fight
18 them and drive them out.

19 PRESIDING JUDGE COTTE: (Interpretation) Witness, it is
20 indicated to me that you have to speak more slowly to allow the
21 translator, which is done from Swahili into French and then from French
22 into English, to be done correctly. So in order for the English to reach
23 the people who prefer English, there is a time lag, and this time lag
24 requires you to speak slower.

25 Professor Fofe.

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

2 Q. Now, to speak about yourself, Witness, having been notified, did
3 you not have fears of the safety of your family? We are in open session.
4 Do not give names. I just want to ask you, at a general level where you
5 were concerned, you had noticed that an attack was imminent. Did you not
6 fear or did you not have fears as regards the safety of your family?

7 A. Yes, I was afraid. I was afraid, and I said to my family the
8 following: "Let's flee." You see what is happening and what has led to
9 the situation that members of my family were killed. It was because I
10 married a Lendu. "If we go, if we flee together, it could be the
11 situation that the Hema will die. Perhaps they could attack us. Is it
12 not possible for us to stay here?" And I saw that. I understood that I
13 couldn't cause the death of this woman, and that is the reason why I
14 stayed, and that had the consequence that I lost a lot of members of my
15 family. Even today, I married other wives from other ethnic groups,
16 because I was able to keep them well with God's help.

17 Q. Thank you very much, Witness. Now, still with a view to
18 clarification, I am now going to refer to paragraph 36 of the document
19 DRC-OTP-0164-0498 (as interpretation), your declaration. I'm not going
20 to mention all the paragraphs. I think it's just the end of the
21 paragraph, paragraph 36 thereof.

22 You said that when the attack started towards 5.00 in the
23 morning, you woke your wife up and your children, who immediately left to
24 hide in the forest while -- when -- but you stayed at home. I would like
25 to draw your attention to the fact that we are in public session, so I

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1 won't mention the names of members of your family. So be careful not to
2 mention names of your family.

3 Have you understood me well?

4 A. Yes, I've understood you well.

5 Q. Okay. I would just like to clarify a point. You stated that
6 your wife and your children immediately left to hide in the forest while
7 you stayed at your home.

8 You speak about the forest. Which forest are you talking about?

9 A. Listen, it was the women, not -- it was the wives, two wives,
10 plus -- or two women as well as eight children, a total of ten people. I
11 said to them, "Go and hide where you usually hide, next to the spring."
12 I didn't go with them. I stayed to observe the situation. It still
13 wasn't nightfall. It was dusk, and I stayed there. I was with a UPC
14 soldier, and I stayed there. The gunfire continued. Afterwards, there
15 was a firing of a bomb, and the bomb fell in the direction where my
16 family were hiding by the hill. It was at that time that the women who
17 were with the children left the hiding-place. They left the
18 hiding-place, and they went further down, and that was why the soldier
19 who was with me said, "The fighting has become more and more intensive.
20 Tell your family to continue to go ahead."

21 I fled. I went to where they were. I called them. They didn't
22 reply to me. They were no longer there. They'd already left.

23 I returned, and I found the soldier. He was still there. This
24 soldier told me the following: "Do you see what is happening on the
25 hill?"

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1 PRESIDING JUDGE COTTE: (Interpretation) Witness, more slowly,
2 please. Please speak slower. What you're saying is interesting. We're
3 listening, but you are going too fast, and the interpreters are not able
4 to translate this.

5 MR. FOFE: (Interpretation) I know what he says is interesting,
6 but he's repeating what he's already said. My question was precise.

7 Q. In this place, is it really a forest, that place? Is this place,
8 this hiding-place, really a forest? That is my question.

9 A. My two wives and my children hid by the river, not in the bush.
10 It was a river, next to a river.

11 Q. So it's not a forest in this place. We understand that there's
12 not a forest in that particular place. That's what we understand by
13 that.

14 A. Yes. It was a spring near to the river, and the place was called
15 Waka Spring.

16 Q. And it was in this place that you hid yourself later. You went,
17 you hid there later when you joined them?

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 I reflected. I told myself, I have members of my family in the
23 dispensary. Are they still alive? Why should I flee? I took the
24 decision to hide there and I stayed in that place. The other people
25 fled. I thought, Alone how am I going to be able to save myself? I took

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1 the decision to stay there by the spring.

2 Afterwards, this woman came who had a child. You could flee
3 here. Even if you see somebody from your family, you can't call them.
4 Everybody flees in their own way, and this is how you will see people go
5 out and taking particular directions I observed in this disorder.

6 I called her, she came, but her child was -- had already been
7 killed. We stayed with her, and we left there at 7.00 in the evening.

8 Q. Thank you. Precisely. You said that you hid separately. You
9 didn't join the other members of your family in the hiding-place. You
10 sought refuge in another place; is that right?

11 A. Yes. Everybody went to find their own hiding-place.

12 Q. You personally, how much time did you stay for in your
13 hiding-place? How much time -- when you fled to at that place, from what
14 time to what time were you in your hiding-place?

15 A. I stayed there from 8.00 to 1900 hours, 7.00 in the evening,
16 because the fighters were still positioned on the hill.

17 Q. A question I would like to ask you. Please don't see any
18 inconvenience there. Now, the UPC came. They said to leave, abandon the
19 cows and go and hide. These cows, weren't they UPC cows, the cows that
20 you were keeping?

21 A. I'm astonished by what you've just said. My own cows. How can
22 you say that they belong to the UPC? I -- why am I going to keep the
23 cows of the UPC? Don't injure me with such words, please.

24 Q. Witness, it's not to injure you. We have other elements that we
25 are trying to verify.

1 You stated that your house had been burnt. Had other houses been
2 burnt in addition to your house?

3 A. They burnt all the houses of Bogoro. All Bogoro was burnt. Even
4 the -- even the metal sheeting was destroyed, even the churches. So how
5 could my house remain without being subject to the same fate?

6 Q. Thank you very much, Witness.

7 PRESIDING JUDGE COTTE: (Interpretation) I just wanted to ensure
8 myself. The French transcript, has it also stopped at the answer where
9 it concerns -- where it concerns the cattle of the witness? I can see
10 that the transcript stopped at the sentence, "I am astonished by what you
11 said. My own cows." So we're just trying to verify this. Is that okay?
12 Is it working?

13 I think there's a problem just with my machine. We can continue.
14 No. The transcript has stopped. Please excuse me.

15 Court Officer, could you do something about the state of affairs.

16 Witness, we have a technical issue that we are attempting to
17 resolve so we can continue with the cross-examination.

18 MR. FOFE: (Interpretation) I'm sorry, your Honour. Excuse me,
19 your Honour.

20 PRESIDING JUDGE COTTE: (Interpretation) We had envisaged
21 breaking at 12.30 in order to allow the preparation of an ex parte
22 hearing with the Katanga Defence team. It is now 12.25. It is clear
23 that the difficulties that we have will be deducted from the speaking
24 time of the Defence team of Mathieu Ngudjolo.

25 Witness, we are therefore going to finish the hearing sooner than

1 scheduled. We will be back on Monday. It would be possible to think
2 that on Monday you should have finished your testimony unless there is
3 any unforeseen event, but at least that means you can plan your return to
4 your country.

5 Usher, please could you escort the witness out of the courtroom.

6 Witness, we would like to thank you for your contribution today.

7 THE WITNESS: (Interpretation) Thank you for your work,
8 Presiding Judge.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
10 (The witness stands down)

11 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, we are
12 listening to you, but everybody must be aware that nothing is being
13 written on the transcript, so these are very free exchanges.

14 MS. DARQUES-LANE: (Interpretation) Just to ask the Chamber, as
15 far as possible, if we could have an idea, perhaps next week, of the
16 timetable for the coming months with a view to planning the arrival of
17 future witnesses. Some of them are going to be accompanied. That would
18 make it possible also for them to be able to prepare their stay here.

19 Thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) You are absolutely
21 right, Prosecutor. This is one of our concerns. I also asked yesterday
22 the Registry. We have to have a short exchange. The calendar in the
23 month of mid-April, May, June, and the start of July, we should be able
24 to have that in the short term. It would appear that there is the issue
25 of whether the Special Tribunal for Sierra Leone will continue to stay in

1 the premises of the court from May or not. If it no longer is in the
2 court's premises from May, then both Chamber currently sitting will have
3 its own courtroom, which obviously would greatly simplify the
4 organisation of our hearings, and that is the question at the moment.
5 I've been asked for a bit of time, but as soon as we can give you a
6 clarification in that regard, because, of course, we have just as much
7 interest in this as you do.

8 MR. FOFE: (Interpretation) Your Honour, if possible -- would it
9 be possible for the Office of the Prosecutor to indicate to us the next
10 witness. We know there's 161, then 323, and then 159. Could the
11 Prosecutor tell us which witnesses -- which witness will follow after
12 Witness 159.

13 MS. DARQUES-LANE: (Interpretation) Your question is totally
14 justified, and this makes me express another problem that we wanted to
15 raise. The witness to follow 159 is normally 24 -- 287, and what we
16 wanted to ask the Chamber is that if this witness has to come and testify
17 here before the break or the two-week recess, it would seem difficult for
18 this witness to stay in The Hague for a long period. So it would be
19 preferable either to allow this witness with Witness 418, who is here in
20 The Hague, particularly because we would -- when Witness 287 is called to
21 testify, it would be preferable that the cross-examination follows the
22 examination-in-chief without the recess interrupting that.

23 Thank you.

24 PRESIDING JUDGE COTTE: (Interpretation) 323 is, in principle,
25 certain; 159 is, in principle, certain. Afterwards, we have 287, 249,

1 132, and 418. Now, where it concerns 287, is that also the case for 249,
2 who would normally come straight afterwards? It's difficult to make
3 projections, because we don't know at all the time that the testimony of
4 323 will last for, nor 159, but we do understand the concerns that you
5 could have given a two-week recess.

6 MS. DARQUES-LANE: (Interpretation) On the subject of 249, I
7 would like to give you an answer on Monday after having been informed in
8 more detail with regards to this matter.

9 PRESIDING JUDGE COTTE: (Interpretation) You will have
10 understood my concern, which is that Witness 418 has sufficient time,
11 because if the witness 418 does not have sufficient time, then we will
12 find ourselves just a few days from the recess without having a useful
13 witness. So let's perhaps wait until Monday. If on Monday you can give
14 us an update on that, that would be good.

15 Now, given that the transcript is no longer functioning, I think
16 we should suspend this hearing now. With regards to our substantive
17 debates, they will be back on Monday morning at 9.30.

18 Court Officer, for the holding of the ex parte hearing, we can
19 start again at what time, in 20 minutes?

20 (Trial Chamber and Court Officer confer)

21 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, at 1.00
22 we will restart for 20 minutes as requested. Understood. So the hearing
23 is, therefore, over with regards to the substantive debate. Another
24 hearing will be held at 1.00.

25 The hearing ends at 12.32 p.m.