

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, 19 April 2010.
10 Hearing starts at 2.06 p.m.
11 (Open session)
12 COURT USHER: All rise.
13 PRESIDING JUDGE COTTE: (Interpretation) Court is in session.
14 Please be seated.
15 The accused persons are with us. Good afternoon, gentlemen.
16 Despite the atmospheric difficulties, this Chamber is almost
17 complete. We congratulate you and we thank you for it, and this will
18 make it possible for our work to go on properly.
19 Now, some housekeeping matters. Considering that Mr. O'Shea is
20 not available and he was the one who started a cross-examination of
21 Witness 418, so as not to be too choppy with the testimony of Witness 418
22 we will delay that testimony either to after the end of Witness 287 or
23 until the time Mr. O'Shea has returned, that is, unless he is not delayed
24 in Italy. There are places that are more unpleasant than Italy, so we
25 hope that he can return to us quickly.

1 Regarding the order of appearance of witnesses. With regard to
2 Witness 219 the Prosecutor filed application number 2022 on the 13th of
3 April, 2010, seeking leave to bring forward the date of the testimony of
4 that witness and to have partially admitted into evidence the general
5 statement of that witness under Rule 68(b) of the Rules of Procedure and
6 Evidence.

7 By e-mail of the 14th of April, 2010, you were requested to
8 submit your observations on Friday, the 23rd of April, at the very
9 latest. For the time being, we have received the observations of the
10 Defence of Germain Katanga through filing number 2026 of the 16th of
11 April, 2010, but which deals only with the variation of the order of
12 appearance of this witness. So we are awaiting the second part of that
13 submission, and we are also waiting for the observation of the Defence of
14 Mr. Mathieu Ngudjolo before the 23rd of April.

15 Now, regarding Witnesses 157 and 238, on the 15th of April, 2010,
16 the Prosecutor submitted written notification number 2024 requesting that
17 these witnesses be called only at the end of the Prosecution case and
18 that is if they are, indeed, to be called because they wish to reserve
19 the right not to call those witnesses.

20 Mr. Hooper, on behalf of Mr. Katanga, submitted his observations
21 in filing number 2029, dated 16th April, 2010, and we received that
22 document this morning. If the Defence of Mr. Ngudjolo wishes to submit
23 their own observations on Witnesses 157 and 238, they should do that
24 without delay even though there is no specific time-line. It would be a
25 good thing because it would enable us to take a decision.

1 Now, regarding Witness 166, the Prosecutor submitted application
2 2020, dated the 1st of April, 2010, seeking the admission of the written
3 statement of that witness under Rule 68(b) of the Rules of Procedure and
4 Evidence. Mr. Kilenda, for the Defence of Mr. Ngudjolo, submitted his
5 observations through filing number 2025 of the 15th of April, 2010. And
6 we are currently awaiting the observations of the Defence of Mr. Germain
7 Katanga, and the deadline is 21 days. Those 21 days are still running,
8 and we would like to make a quick precision regarding this Witness 166.

9 Now, concerning the disclosure of the transcripts of witnesses in
10 the Lubanga case that could be relevant to the Katanga and Ngudjolo case,
11 on the 15th of April, 2010, at 17.41, you received a mail from a legal
12 officer of Trial Chamber I, pointing out that that Trial Chamber had
13 given its approval for that -- for those transcripts to be disclosed to
14 the two Defence teams in this case with the redactions proposed by the
15 Office of the Prosecutor.

16 It was pointed out that those redactions could, however, be
17 reviewed as soon as Trial Chamber I will be in possession of the
18 assessment it requested from VWU. So I wanted to remind you of this mail
19 of the 15th of April, 2010, because those correspondences arrived in our
20 absence.

21 Yes, Mr. Prosecutor.

22 MR. MACDONALD: (Interpretation) Good afternoon, your Honour;
23 good afternoon, Judges, and we wish you a pleasant return from the
24 vacation.

25 We disclosed the redacted transcripts as requested by Trial

1 Chamber 1 a short while ago, so they're now in the possession of the
2 Defence teams.

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

5 And the last piece of information that we would like to give you
6 concerns intermediary 143. The legal officer of the Trial Division sent
7 to the Defence teams a mail on the 13th of April, 2010, at 17.59 to
8 indicate that the Victims and Witnesses Unit will respond only around the
9 23rd of April to the Trial Chamber regarding the protection measures to
10 be granted to that intermediary. So after the long break, it was
11 necessary for us to deal briefly with the issues pending that we had to
12 deal with, and as you know, some of those issues are closely linked to
13 the decision to be handed down by Trial Chamber I.

14 We will now proceed with the testimony of Witness 287.
15 Mr. Prosecutor, please.

16 MR. MACDONALD: (Interpretation) I'm sorry to interrupt, your
17 Honour, but I think it is appropriate to inform the Chamber of certain
18 issues before we go to Witness 287, with your leave, of course.

19 The first point: You refer to Witness 418, and I would like to
20 point out to the Chamber that Witness 418 will apparently not be
21 available this Friday and next Monday. So as from Tuesday of next week,
22 he will be available in principle. We have not personally communicated
23 with the witness to find out the reasons why he will not be available on
24 Friday and Monday given that his testimony has already started, but I
25 wanted to inform the Chamber.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 Mr. Prosecutor. To conclude with Witness 418, it is important for the
3 Defence teams, because it would have an effect on their own work. We
4 hoped that Mr. O'Shea would have joined us by then. At least we hope so.
5 And we think that Witness 287 is going to take up many days of the week.
6 So based on the idea that Witness 418 will be cross-examined --
7 cross-examined as from next Tuesday, as you have said, Prosecutor, it
8 will not be possible before. So let us in principle agree that we will
9 start on Tuesday so as not to be too choppy with the testimony.

10 So in principle, it will be on Tuesday, the 27th of April. We
11 have to confirm that.

12 Please proceed, Mr. Prosecutor.

13 MR. MACDONALD: (Interpretation) I also would like to refer
14 briefly to the mail that I sent to all the parties this morning regarding
15 the order of appearances of the witnesses. In collaboration with the
16 unit, we tried to look at the travel possibilities for the upcoming
17 witnesses, but given the closure of a large portion of the airspaces, it
18 is clear that even those planes that might be able to fly will be packed
19 full. This means that it is possible that those witnesses might arrive,
20 and given that we have this familiarisation procedure, their testimonies
21 could be delayed.

22 I can tell you that the next witness who is to take the stand is
23 not in Europe yet, and it is clear that when that witness will arrive he
24 will need a certain number of days to be familiarised with his previous
25 statements, particularly given the fact that he can hardly read and so

1 has to be assisted by an interpreter.

2 These are issues that we have to take into account in the coming
3 days.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Mr. Prosecutor. It is clear that we will all try to adapt ourselves,
6 because this is independent of the resources that we have, and we depend
7 on external conditions which, of course, even involve a certain number of
8 governments. And, Mr. Prosecutor, just try to brief us about -- on the
9 information at your disposal, including the defence teams and the
10 Legal Representatives. You can send your information directly to the
11 three Judges so that we should be able to reprogramme our schedule.

12 So if you are aware that Witness 249 cannot appear as planned,
13 you have to inform us, and we have to make the best possible out of that
14 situation.

15 MR. MACDONALD: (Interpretation) Certainly, Mr. President.

16 My last point concerns the document of the Registry, that is
17 tendering into the case file the expert report on Ngiti in the hearing of
18 the 4th of March, 2010. So this means that Witness P-161 testified and
19 spoke in Ngiti. We have a translation report which was put in the case
20 file, but the issue that I am raising, Mr. President, is that since this
21 is a factual element, it may be appropriate to assign an EVD reference
22 number to that report so that it should not only be put into the case
23 file but tendered into the court records. And this was report number
24 2021, and, in fact, this is an element that could actually be used in the
25 final arguments.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 Mr. Prosecutor. We fully understand the report that you are talking
3 about, which was submitted just before we broke, that is, in early April.
4 It was a translation that we all wished to have. I believe that you all
5 received that report regarding the suggestion just made by the
6 Prosecutor. Do you have any spontaneous objections? Can we decide on
7 this issue right now and, in fact, accept that this document will be
8 included into evidence?

9 Does Mr. Hooper any particular objection, because it was a
10 translation of a statement made by Witness 151 in Ngiti, as he said, and
11 a translation by a translator was submitted in early April. So the
12 Prosecutor is proposing that this document be included into the evidence.
13 Do you -- is there any objection, or do you wish to have more time to
14 reflect so that we take a decision tomorrow?

15 MR. HOOPER: Good afternoon, Mr. President. Yes, could we have
16 more time, perhaps to -- until the end of this week? It may be, for
17 example, more appropriate that the maker of that report be called as a
18 witness. That might be a -- perhaps a better way to go about it, but
19 that might very well be dependent upon whether we have or find any
20 difficulties with the report. Now, I haven't taken instructions on that,
21 so I'd like to discuss it first with Mr. Katanga and then come back to
22 the Court with our submissions either in writing, perhaps briefly towards
23 the end of the week. That might be the best way. There doesn't appear
24 to be a great urgency about it. So we can come back, then, with written
25 proposals, acceptance or not, by the end of this week, the 23rd of April.

1 I would be grateful.

2 PRESIDING JUDGE COTTE: (Interpretation) Let us give you right
3 up to Friday, and each party will take the time to read or re-read that
4 report. So we will discuss it again on Friday so as to react to the
5 suggestion just made by the Prosecutor.

6 We will now move to the testimony of Witness 287, and Witness 287
7 has been called by the Prosecutor. This witness is affected by the
8 decision handed down by the Chamber, that is decision 1667, dated 23rd of
9 November, 2009, and it relates to protection measures for certain
10 witnesses. He will benefit from the following measures: The use of a
11 pseudonym, voice distortion, and face distortion. This means that there
12 will be a closed session when that witness comes into this courtroom and
13 when the witness leaves the courtroom.

14 In light of the observations made by the Victims and Witnesses
15 Unit, that is pursuant to a request made by the witness himself, it turns
16 out that that witness has to be considered as vulnerable, which is a
17 situation provided for by the aforementioned decision 1667 of the 23rd of
18 November, 2009, in its paragraph 14.

19 I should also like to point out that Rule 88 of the Rules of
20 Procedure and Evidence allows the Chamber to order -- to make -- to order
21 special measures, amongst other things, to facilitate the testimony of a
22 traumatised witness or a witness who is the victim of sexual violence.

23 In the instant case, the unit envisages the drawing of a curtain
24 that would avoid all visual contact between Witness 287 and the two
25 accused, with the understanding that the accused will be able to see the

1 face of the witness on their screens. The unit also provides for the
2 possible presence of a psychologist of the unit in the courtroom if the
3 need arises.

4 I will therefore ask the parties if they have any observations to
5 make on the requests by the unit, which is a neutral organ of the court
6 and which made those requests after interviewing the witness and at the
7 request of the witness and after a psychological analysis. And before
8 you address the Court, Mr. Hooper and Mr. Kilenda, the Chamber would like
9 to point out that just like you, we attach great importance to the fact
10 that the proceedings should be carried out in public to the extent
11 possible, and the witnesses should not be too distant from the accused,
12 but testimonies have to lead to the ascertainment of the truth, and this
13 means that the witnesses have to testify in the best conditions possible,
14 particularly psychological conditions.

15 Now, Mr. Hooper, regarding the request of the unit, do you have
16 any special observations to make? You can address the Court.

17 MR. HOOPER: I've no observations. We understand the reasons for
18 them. Thank you.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
20 And now Mr. Kilenda.

21 MR. KILENDA: (Interpretation) Thank you, Mr. President, your
22 Honours. The Defence of Mr. Ngudjolo would like all the witnesses to
23 testify in the best conditions possible, so we do not have any objection
24 to the measures proposed by the unit.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.

1 I do not think there are any objections from the Legal
2 Representatives of the Victims.

3 The Chamber would like to thank the Defence teams, and we thank
4 you for having understood that it is an exceptional measure taken by the
5 Chamber, and it is done on a case-by-case basis.

6 Madam Court Officer, the effective implementation of this measure
7 means that as we did for Witness 250, Mr. Ngudjolo shall leave his seat
8 and sit near Mr. Katanga. So the security officers will sit the accused
9 persons close to each other.

10 And accused persons, we remind you that you should not
11 communicate during the proceedings. You shall be sitting next to each
12 other, but please do not communicate amongst yourselves.

13 This decision also means that the witness will be able to come
14 into the courtroom and go out not only in closed session but in the
15 absence of the accused. This is a sort of gymnastics that they are
16 familiar with, but the accused persons will have to come into the
17 courtroom after the witness and leave after the witness.

18 Madam Court Officer, can that witness be brought in right now?
19 Very well. Thank you.

20 Security officers, please briefly lead Mr. Katanga and
21 Mr. Ngudjolo out of the courtroom to enable the witness to be brought in.

22 Madam Court Officer, let us go into closed session in order to
23 bring the witness into the courtroom with all the necessary discretion,
24 and the small curtains should also be drawn so that there should not be
25 any visual contact between the witness and the accused persons.

1 (The accused withdrew)

2 (Closed session at 2.31 p.m.)

3 (Expunged)

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8 (Open session at 2.38 p.m.)

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

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

13 I'd like to address the public to indicate to them that the
14 witness has come into the courtroom in closed session, has stated the
15 identity in closed session. We are now in public session to have the
16 solemn undertaking of the witness.

17 So, Witness, you should take the solemn undertaking to tell the
18 truth. This is a solemn undertaking which I shall read slowly so that
19 you can understand the importance of it fully. This is the text of the
20 undertaking:

21 "I declare -- I solemnly declare that I will tell the truth, the
22 whole truth, and nothing but the truth."

23 Have you understood me well?

24 WITNESS: WITNESS P-0287

25 (Witness answered through interpreter)

1 THE WITNESS: (Interpretation) Yes.

2 PRESIDING JUDGE COTTE: (Interpretation) You commit yourself to
3 telling the truth, the whole truth, and nothing but the truth?

4 THE WITNESS: (Interpretation) Yes. I solemnly declare that I
5 will tell the truth, the whole truth, and nothing but the truth.

6 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to
7 thank you for that, madam. It would also ask you to listen very
8 carefully. You have just committed yourself to telling the truth. If
9 during your testimony or in answering the questions which are put to you
10 by the Prosecutor, by the Legal Representatives of Victims, by the
11 Defence lawyers, or by the Court, if you do not tell the truth then you
12 could be subject for prosecution before the court for false testimony,
13 and if the facts are demonstrated, you could be subject to a conviction.

14 Have you understood that well?

15 THE WITNESS: (Interpretation) Yes.

16 PRESIDING JUDGE COTTE: (Interpretation) So the Court notes that
17 it is satisfied under Article 69(1) of the Statute, and Rule 66 of the
18 Rules of Procedure and Evidence; namely, paragraphs (1) and (3) thereof.

19 The Prosecutor is going to start to ask you certain questions.
20 Once again, please speak straight into the microphone. Please speak
21 slowly, loudly. Please not hesitate to speak loudly, and do not change
22 language during your testimony. We would like to thank you, and I pass
23 the floor now to the Prosecutor.

24 THE WITNESS: (Interpretation) Okay.

25 MR. GARCIA: (Interpretation) Good afternoon, your Honour,

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1 Judges. Lucio Garcia. I'm a prosecutor who will be asking questions to
2 the witness today within the framework of the examination-in-chief.
3 Firstly, your Honour, I would like to ask for a private session taking
4 into account the nature of the questions that I intend to ask to the
5 witness.

6 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to
7 now address the public. Taking into account the need for protection that
8 this witness is subject to, there will probably be frequent passages into
9 private session, and we cannot state how long that will be.

10 Court Officer, please take into private session.

11 (Private session at 2.43 p.m.)

12 (Expunged)

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9 (Open session at 2.54 p.m.)

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

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

13 Prosecutor, please continue. We are now in open session.

14 MR. GARCIA: (Interpretation)

15 Q. Witness, we are going to go back to this day that you mentioned,
16 on the 24th of February, 2003. And for the remainder of
17 examination-in-chief, unless I ask you a question with regards to another
18 attack, when I speak about the attack, it is going to be this one. Have
19 you understood that?

20 A. Yes.

21 Q. So if I understand well, you are -- you were in your house when
22 the attack took place.

23 A. Yes, I was in my house.

24 Q. Without mentioning names, please could you confirm to us that
25 when you were in the house you were with your two girls and your husband,

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1 just with them.

2 A. Yes.

3 Q. Are you able to tell us approximately towards what time the
4 attack started?

5 A. This attack commenced at 4.00 in the morning.

6 Q. What woke you up at 4.00 in the morning?

7 A. It was 4.00 in the morning, and we were woken up by gunfire, and
8 this woke me up.

9 Q. Please, could you tell us what you did when you heard the gunfire
10 that woke you up. What was your reaction?

11 A. When I heard the gunfire, my husband went out quickly to try and
12 see what was happening, and he went out but he never came back to the
13 house. I waited, because there were UPC soldiers who were in the camp,
14 and they told us the following: "If the enemy comes, you should come
15 quickly to where we are."

16 So I waited for a bit, and my husband didn't return. The gunfire
17 was becoming heavier, so I ran to go to the camp.

18 Q. Did your husband return to the house at any particular time?

19 A. No. I didn't see him again afterwards -- well, I saw him after
20 the battle when we were already in Bunia, but when the attack started, I
21 did not see him.

22 Q. When you went out of your house, you -- who did you leave with?

23 A. I was alone with my two children.

24 Q. And when you left your house, could you describe what you saw
25 outside?

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1 A. Yes. When I left my house, I saw soldiers who were fighting. I
2 didn't see the enemy. I saw the UPC were shooting, and they were telling
3 us to come quickly to go to the camp.

4 Q. Did you go towards the UPC camp?

5 A. When I started running I was with my children, and I arrived at
6 the UPC camp, and I went into a house belonging to a soldier, because
7 there were houses there for soldiers. I grabbed my two daughters by the
8 arm, and there was a classroom where there were lots of civilians taking
9 shelter, and I ran into one of the village houses, and I hid as I was
10 told to, because the fighting was getting more intense. There were
11 gunshots, and I laid down on the ground as I was instructed.

12 Q. How much time did it take you to get from your house to this
13 soldier's house where you took refuge?

14 A. I didn't note how much time I took, because the most important
15 thing was to run as fast as I could.

16 Q. As you ran from your house to the soldier's house, did you manage
17 to see the attackers?

18 A. No. Initially I didn't see the attackers. I just heard shots,
19 shots in the air. Initially, however, I did see UPC soldiers.

20 Q. And this house which you describe as the house where you took
21 shelter, was this within the UPC camp?

22 A. Yes.

23 Q. So you say that you entered into that house, and you lay down on
24 the floor.

25 A. Yes.

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1 Q. Did you hide somewhere in the house?

2 A. No. We simply entered the house and there was a bed, and me and
3 my daughters hid under the bed.

4 Q. What happened next?

5 A. While I was hiding under the bed, the fighting continued. There
6 were gunshots getting more and more intense all around, and about 10.00
7 in the morning I suddenly saw the assailants enter the camp. In other
8 words, there were soldiers who -- who were on our side who had run away
9 without me knowing it.

10 Q. Just to be clear on this point, so from the moment you took
11 shelter in this house, this lasted until 10.00. You're saying until that
12 point at 10.00, you were under the bed the whole time?

13 A. Yes.

14 Q. Can you please explain to us in which circumstances you saw the
15 assailants for the first time?

16 A. Yes, I can do that. They were wearing a military uniform, and
17 they had rifles, but there were others who had more traditional weapons,
18 bows and arrows, lances, and some of them wore civilian clothing. And
19 there were also soldiers who were wearing leaves on their clothing.

20 Q. You said that you were hiding under the bed with your two
21 daughters. Can you explain to us how you were located? How did the
22 attackers find you?

23 A. Yes, I can. While we were hidden there, I didn't know at which
24 point the soldiers and the other civilians ran away, but when I saw the
25 assailants I was under the bed. They came into the house, and they were

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1 looking for people who were in there. The assailants then pushed their
2 lance under the bed and hit one of my children who cried out, and from
3 there they started firing at us while we were under the bed. And after
4 that ...

5 THE INTERPRETER: The witness did not complete her answer.

6 MR. GARCIA: (Interpretation)

7 Q. Witness, I understand that it's difficult for you to recall what
8 happened at that particular point in time?

9 MR. GARCIA: (Interpretation) I wonder, your Honour, if we could
10 take some time. I see that the witness is hesitating.

11 PRESIDING JUDGE COTTE: (Interpretation) If you wish, Witness,
12 you may take a few moments. If you think that you can continue, please
13 let us know, but if you would like to take a break, this is perfectly
14 possible. Please let us know. Please tell us what you would like to do.

15 THE WITNESS: (Interpretation) Yes.

16 PRESIDING JUDGE COTTE: (Interpretation) If you would like to
17 drink some water, remember you can do that. You can take five minutes to
18 have a drink. If you would like to calm down. We understand that we are
19 asking you something very difficult.

20 THE WITNESS: (Interpretation) Yes, I understand.

21 PRESIDING JUDGE COTTE: (Interpretation) So the Prosecutor will
22 continue, but please remember that if you want to make a break at any
23 point, just give us a sign and we will stop. The most important thing is
24 for us to understand clearly what happened, and we need to make sure that
25 you are in full possession of your faculties to answer our questions.

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1 Thank you.

2 So Mr. Prosecutor will continue gently.

3 MR. GARCIA: (Interpretation)

4 Q. Witness, do you feel able to continue answering our questions?

5 A. I would like to make a small break if I may.

6 PRESIDING JUDGE COTTE: (Interpretation) Would you like to leave
7 the courtroom for that break, or would you like to remain seated? We can
8 take five minutes seated as you are. It's up to you to decide.

9 THE WITNESS: (Interpretation) Can I go outside? Yes, I would
10 like to if I may.

11 PRESIDING JUDGE COTTE: (Interpretation) So, security officers,
12 we will ask you to make Germain Katanga and Mathieu Ngudjolo Chui leave
13 the room for the moment so that our witness may leave the courtroom for
14 some ten minutes, and we will adjourn for ten minutes.

15 Now, Court Officer, we will go to closed session.

16 (The accused withdrew)

17 (Closed session at 3.10 p.m.)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

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25 (Expunged)

Witness: Witness P-0287 (Closed Session)
Questioned by Mr. Garcia

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1 (Expunged)

2 (Expunged)

3 (Open session at 3.10 p.m.)

4 COURT OFFICER: (Interpretation) Your Honour, we are in open
5 session now.

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

8 Now, we will adjourn for ten minutes and we will resume then at
9 3.22 or 3.23 p.m.

10 Recess taken at 3.10 p.m.

11 On resuming at 3.30 p.m.

12 (Closed session)

13 (Expunged)

14 (Expunged)

15 (Expunged)

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Witness: Witness P-0287 (Private Session)
Questioned by Mr. Garcia

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1 (Open session at 3.33 p.m.)

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

4 PRESIDING JUDGE COTTE: (Interpretation) We are now in open
5 session.

6 (The accused entered court)

7 PRESIDING JUDGE COTTE: (Interpretation) The two accused are
8 back in their seats. Thank you, Madam Witness, for coming back to the
9 courtroom. The Prosecutor is going to continue with his direct
10 examination for just 30 minutes and then we'll break for another 30
11 minutes and then resume at 4.30.

12 Mr. Prosecutor.

13 MR. GARCIA: (Interpretation) With your leave, Mr. President, I
14 would like to request that we continue in private session considering the
15 nature of the questions that I intend to put to the witness.

16 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, let us
17 go into private session.

18 (Private session at 3.34 p.m.)

19 (Expunged)

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Witness: Witness P-0287 (Private Session)
Questioned by Mr. Garcia

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Page 28 expunged. Private Session.

Witness: Witness P-0287 (Private Session)
Questioned by Mr. Garcia

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12 Page 29 expunged. Private Session.

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Witness: Witness P-0287 (Private Session)
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23 (Open session at 3.43 p.m.)

24 COURT OFFICER: (Interpretation) We are in open session,
25 Mr. President.

Witness: Witness P-0287 (Open Session)
Questioned by Mr. Garcia

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

3 Mr. Prosecutor, please repeat your question to refresh the memory
4 of the witness.

5 MR. GARCIA: (Interpretation)

6 Q. Witness, can you tell us, that is if you're able, how those
7 attackers were dressed, both those who were inside the house and those
8 who were outside?

9 A. Some of them were wearing military uniform, while others were in
10 civilian clothing. Others still were covered with leaves.

11 Q. You also told us that you had a conversation with some of the
12 assailants inside the house; is that correct?

13 A. That is correct.

14 Q. When you answered their question, that is, telling them why you
15 were there in that house, what happened next?

16 A. They asked me whether I was the wife of a soldier, and I told
17 them that I wasn't and that I was a civilian. I had my two children, one
18 on my back and one in my arms, and we were fleeing, and the fighting was
19 intense, and the gunfire was intense also.

20 Q. What was the reaction of those assailants when they heard your
21 answer?

22 A. Some of them said that I should be killed, while others said,
23 "No. Let us not kill her. She is from Bogoro, and she can show us where
24 the armory is."

25 Q. What did they tell you after that?

Witness: Witness P-0287 (Open Session)
Questioned by Mr. Garcia

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1 A. I became afraid when they told me that, and I told them, "Follow
2 me, and I'm going to show you." I took my two children, and one of them
3 said, "Leave the children here. We are going to kill them here. And you
4 yourself, you are going to be killed by -- or, rather, with the guns that
5 we are going to find in the depot." That is when they shot my children.
6 They had been undressed. They were naked except for some small underwear
7 and a blouse.

8 Q. I am going to seek some clarification from you regarding what you
9 have just told us.

10 A. Very well.

11 Q. When the attacker in question told you, "We are going to kill
12 these children here," were those children still with you? Were you still
13 holding them in your hands? Where were they?

14 A. I had those children in my arms, and when they told me that they
15 were going to kill the children and then they would also kill me, one of
16 them hit me with a machete, and I let my two children go. And when I
17 moved forward, I heard a gunshot. I do not know whether it was at that
18 time that they were killed, but I know and I am sure that they were
19 killed.

20 Q. You say you were hit with a machete. What part of your body was
21 hit?

22 A. My back.

23 Q. And when you say that you let those two children go, how did this
24 happen precisely?

25 A. When they hit me and they said that they were going to kill the

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1 children and then kill me, then I left the children with them.

2 (Prosecution counsel confer)

3 MR. GARCIA: (Interpretation)

4 Q. Madam Witness, if I understand you correctly, you heard gunshots
5 after leaving the children with them.

6 A. I heard gunshots while I was going away with them to show them
7 the weapons and ammunitions dump. Just before I left I wanted to take my
8 children. They said, "No. Leave the children behind. We are going to
9 kill them, and we are also going to kill you but using the guns that we
10 are going to find in the weapons store."

11 When we left to go to that place, I heard gunshots. We were not
12 very far away from where we had left.

13 Q. Let me go back to the point where the assailants asked you to go
14 and show them where the weapons were hidden. Were you aware of the place
15 where those weapons were stored?

16 A. No. I did not know. I was doing everything to defend myself. I
17 thought that they were going to release me. This was a tactic to try to
18 save myself.

19 Q. If I understood you correctly, you took them to a store rather
20 than to a weapons cache.

21 A. That is correct. I did not know where the weapons were stored.
22 When they took me, we went in the direction of the centre. There was a
23 large store there, and I told them, "It is here." They asked me to break
24 down the door, and they gave me some tools. They also told me, "After
25 having broken down this door, you're going to go in and give us the guns

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1 and ammunition inside, and we will use them to kill you."

2 At that time I started breaking the door. I was able to break
3 the first lock, but the second one was difficult to break, and one of
4 them shot at the lock. And we went in the house. There was money.
5 There were drinks. There was property and other things.

6 I wanted to escape, but I couldn't do so. I realised that I had
7 been injured in my leg. I was feeling pain there, and I thought maybe I
8 had been hit in the leg. However, I was not yet aware that I had been
9 injured by a bullet.

10 MR. GARCIA: (Interpretation) Mr. President, considering the
11 time and given that I was going to go to another line of questioning that
12 would require more than four minutes, I think we should break now.

13 PRESIDING JUDGE COTTE: (Interpretation) Very well,
14 Mr. Prosecutor.

15 Mr. Witness, we are going to break for 30 minutes. As I told you
16 before, the accused persons are going to leave the courtroom, and then we
17 will go into closed session before you yourself will leave this room.

18 So accused persons, we will resume at 4.30 p.m.

19 THE WITNESS: (Interpretation) Very well.

20 (The accused withdrew)

21 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
22 let us go into closed session, and the Court Usher will lead the witness
23 out of the courtroom.

24 (Closed session at 3.56 p.m.)

25 (Expunged)

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7 (Expunged)

8 (Open session at 3.57 p.m.)

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

10 Honour.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

12 The hearing is suspended. We will resume at 4.30 p.m.

13 Recess taken at 3.58 p.m.

14 On resuming at 4.42 p.m.

15 (Closed session)

16 (Expunged)

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19 (Expunged)

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Witness: Witness P-0287 (Open Session)
Questioned by Mr. Garcia

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1 (Expunged)

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4 (Expunged)

5 (Open session at 4.44 p.m.)

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

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

10 Accused, we are somewhat delayed due to a technical problem with
11 the computers. It might be the case that water has been spilt, so please
12 be very attentive to not knocking water over given all the electronic
13 circuits that we're surrounded by.

14 Prosecutor, you can therefore continue with your
15 examination-in-chief where you finished. The floor is over to you.

16 MR. GARCIA: (Interpretation)

17 Q. Witness, quite simply just to take you back in time, we
18 mentioned, among other things, that you led the assailants to a shop, and
19 you tried to flee. I would now like if you would allow me to go back a
20 bit to the time when you left the house in which you took refuge just to
21 clarify what happened between going from the house to the shop.

22 A. Yes. When I fled, I went to hide in this house, and I hid under
23 the bed, and at that time I saw the enemy coming. They surrounded the
24 house. There were other people who entered into the house. There was
25 one who took spears and threw it under the bed and it hit my daughter,

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1 and it was at this time that I cried out. I said, "Don't kill us here."

2 And it was at that time that they got us out from under the bed.

3 Q. Witness, we are now going to go back to the time when you went

4 outside of the house, when you left the house, when you took refuge.

5 Could you tell us what you saw when you left the house. What -- what did

6 the scene look like outside?

7 A. When we went outside, I saw the enemy. They were soldiers.

8 There were some who were dressed in military uniform, others as

9 civilians, and others had leaves around their body. They were armed with
10 spears and bows and rifles.

11 Q. Once again, at the same time when you were outside the house did
12 you note outside the presence of UPC soldiers?

13 A. When I left, I didn't see UPC soldiers. I only saw the enemy. I
14 didn't see the UPC soldiers again.

15 Q. Witness, you mentioned to us at the start of your examination
16 this afternoon, and here I will refer to page 25, line 20 to 21, that
17 there were classrooms where civilians took refuge. Is this the school
18 that was in the centre of the UPC camp?

19 A. Yes. It was a school which had been there for a long time. And
20 when the UPC soldiers, they arrived, they lived there. And when the
21 enemy came and attacked it, we, the civilians, we went to hide in that
22 school.

23 Q. And when you left the house, were you able to see what was
24 happening in the school in question?

25 A. Yes. I didn't see, but I saw that outside there were people who

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1 were injured, who had been hit by bullets. There was a young person who
2 I knew who was there. He couldn't walk any more. He was crawling.

3 Q. When you mention people who were injured or people who were hit,
4 are these civilians or are they soldiers you're talking about?

5 A. What I saw -- the person who I saw who was injured, this was a
6 civilian, an electrician.

7 Q. When you mention the people who were injured, were there other
8 persons you saw who were injured?

9 A. Yes, there are other people who I saw when I arrived in Bunia,
10 but I heard people speak about other injured people who I myself did not
11 see.

12 Q. And these people, where were they with regards to the school that
13 you mention?

14 A. The people who were injured, to my knowledge these were people
15 who wanted to flee but had been hit by bullets and could not reach the
16 school. These were people who had been hit by bullets when they tried to
17 flee.

18 Q. And at that time when you went outside the house did you notice
19 anything else with regard to the school that was situated within the UPC
20 camp?

21 A. Yes. When we left, I saw houses that were on fire, and I saw a
22 group that came that entered into the camp.

23 Q. Witness, you mentioned a group. Could you explain to us or give
24 us further details with regards to this group?

25 A. Yes. I saw a soldier who was their head, because when we left

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1 from our hiding-place to go there I heard a soldier say that the -- that
2 their leader had come. So this was somebody who was important and who
3 was -- was of significant size, and he was accompanied by a body-guard.

4 Q. Witness, you mentioned that you heard an assailant state, "I
5 heard a soldier say that the leader had arrived."

6 A. Yes.

7 Q. And did you hear these words -- in what language did this person
8 speak?

9 A. Yes. He said it in Swahili. He mixed Swahili, in fact, with
10 Lingala, that he said that the leader had arrived.

11 Q. Could you tell us what specific term was used to designate
12 "leader" or "chief" in Swahili?

13 A. They said "Kunzi."

14 Q. What is the meaning of this term "Kunzi" as far as you are
15 concerned?

16 A. In my opinion, "Kunzi" means a leader.

17 Q. This person you stated was the Kunzi, could you tell us how this
18 person was dressed when you saw this person on that day?

19 A. When I saw him, this person was dressed in a military uniform.

20 Q. Was this person armed at the time that you saw him?

21 A. Yes. He had a weapon, and his body-guards also had large rifles,
22 and they had light weapons as well, small arms.

23 Q. Where it concerns the clothing of this person, are you able to
24 tell us if this person was wearing something on his head?

25 A. He was wearing a beret, or a military hat.

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1 Q. Witness, as regards the physical description of this person,
2 could you give us any further details?

3 A. Yes. The person that I saw was large. He had a very powerful
4 body. He had a beard and was in good physical shape.

5 Q. At the time, Witness, when you saw this person, did you know who
6 he was?

7 A. I knew that it was some kind of war chief, someone who was -- who
8 had soldiers under his command, and I heard these soldiers say that he
9 was their leader.

10 Q. Witness, when you heard this person or when you saw this person,
11 were you able to tell which ethnic origin this person was of?

12 A. Yes. I could see that he was of Lendu origin.

13 Q. Can you please explain to us how you were able to arrive at that
14 conclusion at that time?

15 A. They came from a direction in which the Lendu people lived.

16 Q. So which direction was that exactly?

17 A. I don't know how to say it. When you head towards Bunia, you go
18 through Kasenyi and then you continue to the right, and so this was on
19 the right. So they were coming from the Kasenyi direction.

20 Q. And just to clarify that last point, when you saw this group,
21 where did you actually cross paths with that group?

22 A. It was at the roundabout where you've got the road to Gety,
23 Kasenyi, and Bunia all meeting. The different roads cross the roads to
24 Bunia, Kasenyi, and Gety.

25 Q. When you came across that group, were you fully clothed?

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1 A. I was wearing a blouse because they had already taken my clothes
2 off, and I was wearing briefs.

3 Q. Can you explain to us at which point they undressed you, and who
4 undressed you?

5 A. They undressed me when I came out from under the bed, and they
6 asked me to show the assailants where the munitions cache was. They
7 ripped off my skirt with a knife, and the wrap had already fallen off me
8 as I was running. So I was just standing there in briefs, and so when I
9 ran away, I was only wearing briefs and a blouse.

10 (Prosecution counsel confer)

11 MR. GARCIA: (Interpretation)

12 Q. Just for clarification, Witness, when you say that your wrap had
13 fallen off when you were running when did that occur? Where did you lose
14 your wrap exactly?

15 A. The wrap fell off in the morning as I left my house with my
16 children to run to the UPC camp. That's when I lost my wrap.

17 Q. When you came across this person, where were the assailants who
18 had -- who were with you outside the house in which you'd taken refuge?

19 A. Excuse me? Could you please ask the question again,
20 Mr. Prosecutor?

21 Q. Yes. I will reformulate my question. Could you please describe
22 to us the scene when you met this person that you described as a Kunzi?
23 Could you -- the Kunzi of the assailants. Could you describe where you
24 were? Where were you? Were you in their midst, behind them? Where were
25 you exactly vis-a-vis the assailants?

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1 A. I was in another group. They were in a different group. I was
2 with the group with which I had left the camp, and when we left the camp,
3 they were going into the camp.

4 Q. So let's go back to the moment in which you arrived at the store.

5 A. Yes.

6 Q. You said that they gave you some tools with which to open the
7 store's door; is that correct?

8 A. Yes, indeed.

9 Q. Are you all right, Witness?

10 A. Yes. Yes, I'm okay.

11 Q. Which kinds of tools were you given to open the door of this
12 store?

13 A. They gave me something that resembled a hammer and then a long
14 knife. So they gave me a hammer and a knife.

15 Q. And when they gave you these tools, what did they tell you to do?

16 A. As they handed me the tools, they told me to open the door, to go
17 into the store and show them the munitions dump, and then they said that
18 they would take these munitions and weapons and use them to kill me.
19 They said, "We will use those weapons to kill you."

20 Q. Were you able to open the store's door with the tools that they
21 gave you?

22 A. Yes. I was able to open the small lock with the hammer, but
23 there was a second lock which was larger, and I wasn't able to open that
24 one.

25 Q. Did someone open that second padlock?

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1 A. Yes.

2 Q. How did that happen? Can you explain that to us?

3 A. Initially this other person was not able to open the second
4 padlock, and he had to shoot at the padlock to open the door. And once
5 the door was open, they entered, and they started to loot the goods that
6 they found inside.

7 Q. Just so that we are sure to have understood, this was a store and
8 not a munitions and weapons dump; correct?

9 A. Yes, that's right.

10 Q. What was inside the store once the door was open?

11 A. There were diverse articles. There was money. There was
12 clothing. There were drinks. There were many items.

13 Q. Just to make sure that we have understood, did you stay outside
14 the store or did you go into the store?

15 A. No, I did not enter the store. Once the door was opened, the
16 assailants rushed inside to get their hands on the property that they
17 found, and then they used me to carry some items. Then they entered into
18 the nearby houses and in the store to loot them. They also went into a
19 house where people were hiding to get them out of there.

20 Q. Witness, now we're going to come back to this question of the
21 people hiding in a house. Sorry, we will come back to that question
22 later, but for now I'd like to ask you the following question --

23 A. Very well.

24 Q. You said that at one point the assailants made you carry some
25 goods; is that correct?

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1 A. Yes, that's correct.

2 Q. If you can, could you please relate to us the conversation that
3 you had concerning their wish for you to carry these goods.

4 A. Some of them, while they were looting, wanted to kill me, but
5 others said, "No, don't kill her. She will help us carry these things to
6 the hill where we are staying." And at that time, others entered into
7 another house where there were some people hiding.

8 THE INTERPRETER: Your Honour, the interpreter says that the
9 witness is speaking too fast.

10 PRESIDING JUDGE COTTE: (Interpretation) Witness, please kindly
11 speak a little slower so that the interpreters can follow what you are
12 saying and interpret what you are saying. So could we please ask you to
13 repeat what you just said a little slower. Thank you very much.

14 THE WITNESS: (Interpretation) Thank you. Yes, I will repeat my
15 answer.

16 On that day when I was at that point where they were starting to
17 loot, some people said that I should be killed. Others said, "No, don't
18 kill her. She will be able to carry articles, to take them to the hill
19 where we live." And in the end, when several assailants went into the
20 other houses to continue looting, there was another house nearby where
21 some civilians were. These civilians began to cry out and plead to the
22 assailants not to kill them. The assailants then entered the house to
23 arrest these civilians, and I took that opportunity to run away and hide.

24 MR. GARCIA: (Interpretation)

25 Q. Witness, if you can, you said that the assailants wanted you to

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1 carry these articles to the hill. Can you tell us what place this is;
2 which hill were they talking about? Can you describe that for us,
3 please?

4 A. We were there. There was another woman who was also looting and
5 carrying articles towards the hill called Zumbe. This is a hill which is
6 where the Lendu live.

7 Q. Witness, as concerns this other event that you told us a moment
8 ago, when it comes to the people hiding in a house, can you tell us more
9 about that? If I understood, this house was near the store. Is that
10 right?

11 A. Yes, that's right.

12 Q. And were you able to hear what the people inside the house were
13 saying, and if so, what were they saying?

14 A. Those people were shouting and crying, and they implored the
15 assailants, saying, "We're civilians. We're civilians. Please don't
16 kill us."

17 Q. What was the reaction of the assailants who were outside the
18 house when they heard these cries from inside the house?

19 A. It was at that point that the assailants or some of the
20 assailants ran to the house to attack the civilians and other assailants
21 continued looting, and so I took the opportunity to escape.

22 Q. What was the last thing that you saw as regards the assailants
23 when they were running towards that house where the people were crying
24 out from inside?

25 A. The last thing that I saw was some soldiers and civilians, as

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1 well as some mothers, women, running towards that house.

2 Q. Witness, I'm going to ask you a question for some clarification.

3 As concerns the assailants that you saw outside the house, how old was

4 the youngest of those assailants, if you could please tell us.

5 A. There were some young soldiers who were from 12 years of age and
6 older.

7 Q. You said to us, Witness, that you took that opportunity to escape
8 at that particular point. Could you please tell us how this occurred?

9 How did you escape?

10 MR. GILISSEN: (Interpretation) I think that the word Mtoto was
11 pronounced, and I don't see it in the French transcript nor in the
12 English translation. I hear a young soldier mentioned from the age of
13 12, but I think that this word is not chosen haphazardly, so I would like
14 to know if the interpreter could clarify whether this word was used.

15 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. In the
16 French transcript I can see that there were young soldiers aged of 12
17 years and above. So, interpreter, did you hear anything other than the
18 words that have been put into the transcript, or did you fail to
19 interpret another word?

20 THE INTERPRETER: Your Honour, we cannot answer that question.
21 Please ask the witness to repeat her statement.

22 PRESIDING JUDGE COTTE: (Interpretation) Witness, do you
23 remember the answer that you gave just a moment ago when the Prosecutor
24 asked you a question? If he refreshes your memory about the question or
25 if I tell you that the question was about the age of the youngest of the

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1 assailants, you answered the question at that particular point, and could
2 you please restate your answer for us just as you worded it back then.

3 THE WITNESS: (Interpretation) Thank you, your Honour. I can
4 repeat my response. I said that the youngest of them would have been
5 12 years of age or over.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Gilissen, have you
7 heard what you were looking for a moment ago?

8 MR. GILISSEN: (Interpretation) No, I'm -- I did not hear the
9 word a moment ago, but perhaps we could ask this question at another
10 moment and ask a more precise question. I just want to reassure the
11 Chamber that -- that I want to make sure that these words are not omitted
12 deliberately.

13 PRESIDING JUDGE COTTE: (Interpretation) So when we have the
14 definitive version of the transcript, let us make sure that it is as
15 close as possible to that which was recorded, and in any case the witness
16 has just repeated her response, and we have forced her to give us as
17 precise an answer as possible, so that will have to satisfy us. Thank
18 you.

19 JUDGE VAN DEN WYNGAERT: (Interpretation) "Mtoto," doesn't that
20 mean young or small? I don't see why this is causing you a problem.

21 MR. GILISSEN: (Interpretation) I want this to be very clear.
22 For me the word means "child." I'm not talking about how elegant or
23 otherwise the translation is from Swahili. I just wanted to have as
24 clear as possible a translation as possible. I wanted to know whether
25 these are children or not.

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1 PRESIDING JUDGE COTTE: (Interpretation) I wondered, did you,
2 sir, hear this word?

3 MR. FOFE: (Interpretation) No, I heard the witness's answer,
4 but I wasn't listening so closely that I could give you anymore precise
5 details on this issue. Thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
7 Yes, Judge Diarra.

8 JUDGE DIARRA: (Interpretation) I think that the word "young,"
9 the word "mtoto," is done justice because it has quite a broad meaning.

10 JUDGE VAN DEN WYNGAERT: (Interpretation) But is mtoto an
11 adjective or a noun.

12 MR. FOFE: (Interpretation) Both. "Mtoto" is a noun in Swahili
13 which can be translated as "child" or by "young person." I think that
14 the translation "young" is very close to what the witness said,
15 particularly in her second response.

16 JUDGE DIARRA: (Interpretation) She stipulated 12 years or
17 older. That is very clear about the age of the child.

18 PRESIDING JUDGE COTTE: (Interpretation) Okay. Having listened
19 to this exchange about what was said and repeated, we can see we are
20 talking about young people of the age of 12 or over.

21 Mr. Prosecutor, you may continue.

22 MR. GARCIA: (Interpretation)

23 Q. Witness, before addressing -- before we were addressing the issue
24 of when you escaped, but first I would like to go back just for a little
25 clarification. You mentioned on page 55 of the transcript, paragraph 20,

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1 21, that there was some young soldiers aged 12 or over. Can you tell us
2 precisely at which point you saw these young soldiers?

3 A. It was between 10.00 a.m. and 10.30.

4 Q. Can you remember where you saw them precisely?

5 A. Yes. In Central Bogoro.

6 Q. Can you please tell us, was this when you were outside the store
7 or before or after?

8 A. I first saw them when I was in the camp, and then I left -- when
9 I left the store with them and when they were looting in the store I also
10 saw them.

11 Q. Just one last point of clarification. When you talk about where
12 you saw them and when, were they amongst the people were inside the house
13 in which you had sought refuge?

14 A. Yes.

15 Q. We were talking about the time at which you escaped. Can you
16 tell us precisely how that happened?

17 A. Yes. When I escaped, I had some difficulties. I could not run
18 very well because there was a pain in my leg, and that is when I started
19 crawling right into the bush where I hid.

20 Q. What was the reaction of the assailants when you escaped from
21 that place?

22 A. At that time, they were looking for me. They were telling me if
23 I did not want them to kill me, I should come out, and if they found me
24 inside the forest, they were going to kill me. That is when I decided
25 not to leave the bush and to stay in my hiding-place.

1 Q. Apart from the fact that those assailants told you these things,
2 did you -- did they do anything else? And I'm talking as from the time
3 that you went into hiding for the first time.

4 A. When I was in my hiding-place, they were asking me to come out,
5 and that if I did not come out, they would consider me as an enemy. I
6 therefore decided to stay in the bush, and that is how they decided to
7 set fire to the bush. And at that point I was looking for the road to go
8 to Bunia.

9 Subsequently, I saw people coming from the Biras' village. I
10 stayed in the bush where I was. Later on, there was rain, and this put
11 out the bush fire, and that is what helped me.

12 Q. And just to be clear, in that first hiding-place, because that is
13 how we are going to refer to it, for how long did you stay there?

14 A. In my first hiding-place, I stayed there right up to nightfall.
15 I could not leave. They were there, and they had captured the entire
16 area, and they were looking for people who were hiding in the bushes.
17 They were telling the women to come out and prepare food for the
18 children, and that if we stayed hidden there they were going to consider
19 us as enemies.

20 Some of them were hiding near me --

21 THE INTERPRETER: Or, rather: "In the bush in which I was,"
22 corrects the Swahili interpreter.

23 THE WITNESS: (Interpretation) At one point I heard someone come
24 out, and they said it was an old man, and I heard a gunshot, and I think
25 they shot the man. That is how come I decided to stay in my hiding-place

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1 right up till nightfall.

2 Q. Just one point of clarification, Madam Witness. When you say
3 that some of them were hiding near you in the bush, were you able to see
4 those people?

5 A. No. I couldn't see them, but I could hear them. I could also
6 hear what the assailants were saying. When they were asking them, "What
7 are you doing there?" the person would say, "I'm hiding," and that same
8 person left his hiding-place and he was killed. This was an old person.
9 I did not see them, but I heard what they were saying.

10 Q. And when you say that the person was killed, what exactly did you
11 hear?

12 A. I heard a gunshot.

13 Q. You also stated that you waited till nightfall. What could you
14 hear or what was it possible to -- for you to see while you were hiding?

15 A. From my hiding-place I could hear them removing the roofing
16 sheets from the houses and to loot. I could hear everything that was
17 happening.

18 Q. Were you able to see anything while in that first hiding-place?

19 A. Mr. Prosecutor, can you kindly repeat your question?

20 Q. Yes, of course. You told us that you heard noises while you were
21 in your first hiding-place. What I'm asking you is were you able to see
22 anything at all?

23 A. From my hiding-place I saw a group coming from the Biras' area.
24 I had thought of going to Bunia. When I saw that group and when I heard
25 those people passing by, I went back into my hiding-place.

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1 Q. What did you do after that?

2 A. I stayed in my hiding-place till nightfall. After that, I tried
3 to look for the way to go to Bunia, and I was not able to do that. I
4 walked, and I realised that I was not making any progress and that I
5 could not find the road to that place. There was pain in my knee, and I
6 spent the night. There was gunfire coming from all directions, houses
7 and bushes were being set on fire. I could not continue.

8 Q. When you mention houses set on fire, where were these houses
9 located?

10 A. The houses were in Bogoro centre. These were houses located in
11 the centre of the village.

12 Q. You have testified that you could not find the road to a certain
13 location. Where precisely did you want to go?

14 A. I wanted to go to Bunia, but I was not able to. That is why I
15 stayed put. And during the night I decided to look for the way. I tried
16 to avoid being seen, and I did not want to pass through the parts of the
17 bush that they had burnt down. And I continued, and I found myself at
18 the centre. I saw two people on -- on a tree. I immediately recognised
19 those people as soldiers from the way they were dressed. I saw them
20 carrying guns and machetes, so I went back into the bush. It was at that
21 time that I decided to go to Kasenyi, but even then I could not go there.
22 I had a pain in my leg, and that is why I found a place in the bush where
23 I spent the night.

24 Q. With regard to the people that you saw and recognised as
25 soldiers, are you able to tell us their ethnicity?

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1 A. That would be difficult. It was during the night. I could not
2 quite identify them, but I think that they were Lendus because they were
3 the ones who had taken control of the area. But it was during the night,
4 and it was difficult to identify them.

5 Q. Witness, just to be clear on your testimony, you have just told
6 us that you spent the first night in your first hiding-place, and if I
7 understand you correctly, what you have just told us concerned the second
8 day.

9 A. No. The first day was when I was looking for the road to go
10 somewhere. I was not able to go there. It was around 6.00 p.m., and
11 that is how come I spent the night there. At midnight I decided to go to
12 Kasenyi, but I was unable to go there, and that was when I realised that
13 I was at the centre. So I continued walking. I saw a mango tree, and
14 under that mango tree I saw two people looking like soldiers. I walked
15 on. Those people followed me, but I did not run. I travelled on, but
16 they did not follow me. After that I continued and went into the bush
17 where I spent the entire night.

18 Q. From where you were hiding, were you able to see the former UPC
19 camp?

20 A. From my hiding-place I was looking for the road to go to Kasenyi,
21 but I found myself in the Balendu area. That is around Zumbe. From
22 there I could see the UPC camp, but from afar.

23 Q. Were you able to hear what was happening in the APC camp?

24 A. Yes.

25 MR. GARCIA: (Interpretation) I'm sorry, Mr. President. I said

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1 APC. I actually meant UPC.

2 Q. Can you, Madam Witness, tell us precisely what you heard?

3 A. On the morning of the second day, I spent the entire day at that
4 place. There was no way for me to move around. I was afraid that the
5 assailants would come after me and stop me.

6 In the late afternoon I saw a motorbike from Zumbe entering the
7 camp. There were two people on that motorbike.

8 Q. What was the reaction of those people in the camp when the
9 motorbike arrived, or what is it that you heard about the reaction of
10 those people?

11 A. When the bike arrived the camp, I heard them singing religious
12 songs. They were glorifying God and saying, "We have been fighting
13 against Bogoro for a long time and finally we won the battle." I could
14 hear them praying.

15 Q. What did you do after that?

16 A. After that I stay -- I stayed in my hiding-place. In the night I
17 also tried to find a way to escape, because I wanted to go to Bunia since
18 I had realised that Kasenyi was very far away. I did not want to meet
19 the enemy on my way, and that is why I took the decision to go to Bunia.
20 I believe that it was during the night of the second day. I tried to
21 find a way, but I was not able to. It was in the bush. Sometimes I
22 would fall, sometimes I would walk, but I felt so much pain that I was
23 not able to find a way through, and the following morning I saw a place
24 where items such as suitcases and beds were hidden. This was near my
25 hiding-place in Zumbe. And when I realised that things were being hidden

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1 there, I thought that this was the road that they would be using, so I
2 thought it was necessary for me to look for another place to hide in.

3 Q. Just a point of clarification, Witness. When you talk of a place
4 where property was hidden, what type of items are you referring to here?

5 A. What I saw was a bed and suitcases with clothes and kitchen
6 utensils, but also roofing sheets which were hidden in the bush.

7 Q. And you are telling us that this place was in Zumbe or near
8 Zumbe?

9 A. Zumbe was a bit far, but this was really in the direction of
10 Zumbe.

11 Q. And what did you do after that?

12 A. Can you kindly repeat, please?

13 Q. If I understand you correctly, you were looking for a way
14 through. Did you finally find the road?

15 A. No, I did not find the way. When I saw those items, I changed my
16 hiding-place. I was very hungry, and I found a hiding-place, another
17 hiding-place, where I spent the night.

18 Q. And what did you do after that?

19 A. The following morning - that was the third day - I was no longer
20 able to walk. I was still hiding, and it was about 4.00 p.m. and I could
21 hear gunfire coming from the UPC side. That is in the direction of
22 Kasenyi. I do not know who was shooting. And I heard people shouting,
23 "What are you coming to do here? We have already buried all your people
24 who were here. We have killed them and buried them. You can continue
25 shooting." And when I heard that, I told myself that the UPC soldiers

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1 had arrived to chase the enemies out of the camp. I thought that
2 everyone had fled to Kasenyi, but at that point I thought they had been
3 coming to chase out the enemy, but I thought that if the Lendus found me
4 in that hiding-place they would kill me. But even if the UPC also found
5 me, they were going to kill me also, and I tried to find a way to
6 continue hiding in the bush.

7 Q. A point of clarification, Madam Witness. You said that you heard
8 people saying, "What are you coming to do here? We have buried all those
9 people."

10 The person who shouted that, in what language was that person
11 speaking?

12 A. He was speaking in Swahili.

13 Q. And from which direction were those utterances coming? Where was
14 that person speaking from according to you?

15 A. That voice was coming from the camp where the enemy soldiers were
16 located.

17 Q. And what did you do after that, after hearing that voice?

18 A. When I heard what they were saying, I took the decision to flee,
19 to leave that hiding-place, because I told myself that if the UPC
20 soldiers found me there they would kill me because they would think I was
21 on the side of the Lendus. They would think I was a Lendu. And if the
22 Lendus found me, they were also going to kill me. And since it was
23 already in the evening, I took the decision to leave that place.

24 MR. GARCIA: (Interpretation) Mr. President, since I intended to
25 move into another line of questioning --

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1 PRESIDING JUDGE COTTE: (Interpretation) In fact, we can work
2 right up to 6.30.

3 MR. GARCIA: (Interpretation) My fault.

4 PRESIDING JUDGE COTTE: (Interpretation) No, it is not an error.
5 We can continue. You can proceed.

6 MR. GARCIA: (Interpretation)

7 Q. Madam Witness, under which direction did you take?

8 A. I went in the direction of Bunia.

9 Q. Did you meet anyone while going in the direction of Bunia?

10 A. It was during the night. I did not meet anyone. It was during
11 the night, and I moved slowly. I was hungry. I was not even able to
12 drink water. My foot was swollen. I walked the entire night, right up
13 to the fourth day, and I arrived at a locality known as Lengabo.

14 Q. Madam Witness, without mentioning any names can you tell us who
15 you met at Lengabo? Did you meet anyone in Lengabo?

16 A. When I arrived in Lengabo, the first person that I met was a man
17 that I knew, because initially there were Ugandan troops guarding
18 Lengabo, and when I arrived there I saw this man, and when he saw me he
19 started crying because he had thought that I was dead. His wife gave me
20 a loincloth. They took me by the hand and took me a house which looked
21 like a church. I was very afraid. They took me to that house, and I had
22 asked them to go to the house and ask my parents to come and fetch me
23 with a motorbike, because I was no longer able to walk.

24 Q. Did your parents or any other members of your family come to
25 fetch you?

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1 A. He left me there, and then he went away and looked for someone
2 who was close to him. That person had a motorbike. He took me, and
3 halfway to where I was going I met with my parents and we went home.

4 Q. And the house that you have referred to, where specifically was
5 it located? And, Witness, don't mention the street, but in which town or
6 village?

7 (Expunged)

8 (Expunged)

9 (Expunged). My parents
10 took me to the hospital because my foot was swollen. We went to the
11 hospital. We met a doctor, and that doctor said that to have a clearer
12 idea we had to do an echography.

13 Q. Did you perform any echographies?

14 A. Yes.

15 Q. Just to be precise, was it an echography or an X-ray?

16 A. I'm sorry. It was X-rays or radiography, actually.

17 MR. GARCIA: (Interpretation) Mr. President, I hesitated to ask
18 that we go into private session, but I have two questions to ask in
19 private session, after which we will come back to open session.

20 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, let us
21 go into private session for those two questions, please.

22 (Private session at 6.00 p.m.)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session at 6.02 p.m.)

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

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

21 Prosecutor, please continue.

22 MR. GARCIA: (Interpretation)

23 Q. Witness, you spoke about the fact that you had had an X-ray.

24 Could you tell us what the results were from this X-ray?

25 A. Yes. The result of the X-ray showed that there was a bullet in

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1 my knee, and this bullet had remained in my body. They took -- we took
2 the photographs to the doctor, who operated on me on the six the day.

3 Q. So that we can understand, what state was your knee in when you
4 arrived in the hospital? Could you describe that to us.

5 A. My knee was very swollen, and there was blood which was running
6 and a liquid. A liquid, viscous liquid.

7 Q. Could you tell us which knee it was? Was it the left or right
8 one?

9 A. Yes. It was the right knee.

10 Q. Were you able to walk when you arrived in the hospital?

11 A. No. I was transported there.

12 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor,
13 Judge Van den Wyngaert would like to ask a question.

14 Judge, the floor is over to you.

15 JUDGE VAN DEN WYNGAERT: (Interpretation) Prosecutor, I was just
16 wondering what the relevance was to go into all this detail? Why are you
17 going into all this detail?

18 MR. GARCIA: (Interpretation) The Judge allowed me the question
19 given that there's another witness who's coming to
20 testimony (as interpreted) the doctor who will -- in his expert forensic
21 report, he speaks of the nature of the wounds. So it's just with regard
22 to this point. Obviously to explain that for the account, it's important
23 to know what state she came in. And I would also like to state to the
24 Court that I will have no further questions in this regard.

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

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1 So please continue.

2 (Prosecution counsel confer)

3 MR. GARCIA: (Interpretation) If you would allow me, your
4 Honour.

5 (Prosecution counsel confer)

6 MR. GARCIA: (Interpretation)

7 Q. If I understand correctly, Witness, you had an operation on your
8 knee?

9 A. Yes.

10 MR. GARCIA: (Interpretation) Your Honour, I would also ask for
11 the agreement of the Court Officer to have on the screen
12 DRC-OTP-1029-0251, which is confidential.

13 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, if you
14 please.

15 We can see the exhibit, Court Officer?

16 COURT OFFICER: (Interpretation) As is customary with a view
17 to -- please put your computers to "PC 1" in order to see the item.

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

20 Can everybody see this well, the item that the Prosecutor wishes
21 to introduce? The accused, can they say this item? Yes.

22 Prosecutor, please continue.

23 MR. GARCIA: (Interpretation) Your Honour, there are two
24 photographs, one which is very similar to the other. I would ask the
25 Defence teams of Counsel Hooper and Counsel Kilenda if they can say that

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1 this is the witness that we see in the photograph, without which I will
2 briefly examine the witness in this regard.

3 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, are you
4 able to give the Prosecutor a response, an answer, in this regard? He's
5 asking you.

6 And, Counsel Kilenda, if in your opinion this is the witness who
7 is currently on our screens, DRC-OTP-1029-0251 being given in mind that
8 there is another photograph which isn't on the screen, DRC-OTP-1020 --

9 MR. HOOPER: (Previous translation continues) ... lead the
10 evidence. I can't admit it. I'm not in a position to admit it.

11 PRESIDING JUDGE COTTE: (Interpretation) Counsel Kilenda.

12 MR. KILENDA: (Interpretation) Thank you, Your Honour. I am
13 incapable of answering completely, unable to answer the Prosecutor.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
15 Counsel Kilenda.

16 It's true, Prosecutor, that you're asking the Defence teams for
17 an exercise which is quite difficult. So perhaps it would be preferable
18 for you to go to the second part of your words just a moment ago.

19 MR. GARCIA: (Interpretation)

20 Q. Witness, are you able to see what appears on the screen, a
21 photograph? Can you tell us what appears on this photograph?

22 A. I can see myself and I'm lying down. And I am being operated on.
23 My knee is being operated on.

24 Q. So it is the operation that was carried out on you in the
25 hospital that you mentioned before your testimony; is that correct?

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1 A. Yes.

2 MR. GARCIA: (Interpretation) So, your Honour, taking into
3 account this testimony, I would ask an EVD number be given to this item.
4 And taking into account this testimony I would ask, unless there is any
5 kind of objection on the part of the Defence lawyers, for the item also
6 to be given an EVD number on the same factual basis, that particular
7 photograph.

8 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor
9 DRC-OTP-1026-0576 is there -- it is also wise to show that item as well?
10 You've asked witness to say who's on the operating table for the item
11 1029-251, the Chamber also think you should show the witness 1025-76.

12 The Prosecutor has shown these photographs.

13 Court Officer, please could you show this photograph so that the
14 Prosecutor may ask the witness the same question as the question he just
15 asked, please.

16 We therefore have the second item. Prosecutor, you have leave to
17 address the witness.

18 MR. GARCIA: (Interpretation) Thank you.

19 Q. Witness, are you able to see a photograph on your screen?

20 A. Yes.

21 Q. Could you briefly describe what you see on that photograph?

22 A. Yes. It's still the same operation which I was speaking about.
23 My foot is being operated on.

24 Q. To shed some light on the transcript, we see "my foot." Is it
25 your knee that's being operated on, if I understand it?

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1 A. It was my knee, yes, but it's -- well, it's my foot but around my
2 knee.

3 PRESIDING JUDGE COTTE: (Interpretation) Witness, what makes it
4 possible from these two photographs to confirm that it is you on the
5 operating table? Is it the T-shirt that the person is wearing on the
6 operating table?

7 THE WITNESS: (Interpretation) Yes. What makes me confirm that
8 it is really me, because I remember when I went into the operating table
9 I was still fully conscious, and this T-shirt is what I was wearing with
10 a dress. When I took my dress off, I still had this T-shirt on, and they
11 also gave me this red clothing.

12 PRESIDING JUDGE COTTE: (Interpretation) Judge Diarra, please go
13 ahead.

14 JUDGE DIARRA: (Interpretation) Just to add to your question, I
15 just wanted to ask if it was a member of the family who took the
16 photograph. Who had the idea of taking this photograph at this precise
17 moment?

18 THE WITNESS: (Interpretation) Somebody from my family took this
19 photograph.

20 JUDGE DIARRA: (Interpretation) Thank you.

21 PRESIDING JUDGE COTTE: (Interpretation) Do you consider,
22 witness, also to be able to recognise on this photograph -- on these two
23 photographs, the surgeon who operated on you and the person who assisted
24 during the operation? Did you -- you saw them before being under
25 anaesthetic? Do you recognise them?

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1 THE WITNESS: (Interpretation) Yes. This nurse, the person
2 who's dressed in blue, it is he who was doing the follow-up of my
3 situation, and it was he who recommended me to take -- to -- or to
4 undertake the X-ray.

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

6 So the members of the Defence team, it is important that the
7 witness be able to speak about these photographs with a view to
8 identifying whether it was her that was on the operating table.
9 Judge Diarra has asked a question which makes it possible to have
10 additional clarification with regard to the question put by the
11 Prosecutor, and the recognition of the operation assistant or the nurse
12 as the witness provided the follow-up also provided additional
13 information in this regard.

14 Prosecutor therefore proposes giving an EVD number to these two
15 items. At the end of this brief exchange that has taken place the Court
16 sees no obstacle to -- to each -- or to numbers being attributed to each
17 of those evidentiary items, each of these exhibits, but it's also -- it
18 was also necessary to carry out this prior checking.

19 MR. KILENDA: (Interpretation) Does the Court have any
20 objection? If it could rather have an MFI number to start with, because
21 we think that during the cross-examination we'll have questions to ask
22 with regards to both these photographs, which will perhaps make it
23 possible for us to think at other investigative duties. It is up to your
24 discretion. We obviously cannot impose anything.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

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1 Counsel Kilenda. The Court is -- wants to ensure that this trial is done
2 in the fairest way possible. We shall therefore retain the rights of
3 each. We will currently give an MFI number. I change my request that I
4 gave to the Court Officer. Please give two MFI numbers to these
5 exhibits, and the Prosecutor will come back to this, but when we have
6 finished the hearing of this witness -- before having finished the
7 hearing of this witness we will ask the question again and see whether it
8 is possible to give it an EVD number or not.

9 MR. MACDONALD: (Interpretation) With your permission, your
10 Honour, but with all the possible respect for my colleague,
11 Counsel Kilenda's, intervention, there is a distinction between the
12 admissibility of an item and its probative value. At this stage, the
13 witness was shown two photos. She recognised them both herself. She
14 described them, and she indicated that it was taken by a member of her
15 family. We also see clearly that there is an operation taking place on
16 the right knee.

17 I understand that Counsel Kilenda wants to ask questions. He can
18 do so when he wishes, but there is nothing at this time which limits the
19 admissibility of this evidence. Once again, there's a distinction
20 between admission and probative value. The Chamber will evaluate that
21 afterwards, but here why delay the admissibility of two photographs in
22 which the witness is present in the photos and she recognises herself and
23 she states that she was operated on. She remembers the operation, and,
24 respectfully, I would submit that there is no objection or element which
25 would prevent the admissibility of this item under decision 1665. Quite

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1 the contrary, in fact. With respect with the greatest possible respect,
2 my colleagues can ask questions -- any questions they wish during the
3 cross-examination.

4 MR. KILENDA: (Interpretation) If you would allow me, your
5 Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) Briefly, please,
7 because we're not going to spend an hour on this issue.

8 MR. KILENDA: (Interpretation) Your Honour, when you take this
9 photo, nothing indicates that it is this person who is here in the
10 courtroom. That's one. It's just her words. She says that its her.
11 But we, as the Defence, we have the duty to verify this. We have to
12 carry out investigations. We don't see an obstacle for the moment for
13 this to be given an MFI number, and at the appropriate time, if the Court
14 so decides, an EVD number shall be allocated to this document, and we
15 don't have military force to oppose that.

16 PRESIDING JUDGE COTTE: (Interpretation) Counsel Kilenda, you
17 are fully in your Defence role and MacDonald is fully in his role as
18 Prosecutor. So, for the moment, we can perfectly be content with an MFI
19 number for these two photographs. The Court does not regret the
20 questions which have made it possible for the witness to bring
21 clarification to her own identification with regards to these
22 photographs. By giving an MFI number, there is no prejudging of what
23 shall be decided following this taking position. So having heard you
24 all, we will give a MFI number to this.

25 Court Officer, please give both of these photographs an MFI

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1 number, and please remind me before the witness has finished testimony
2 that we shall have to rule with regard to a possible EVD number at that
3 time. I therefore propose that we finish this hearing. It's 6.25. I
4 don't think that the Prosecutor immediately wants to go to another issue.
5 Therefore, the Court Officer shall give a number to these items it.

6 COURT OFFICER: (Interpretation) Thank you, your Honour. The
7 first photograph, DRC-OTP-1029-0251, will have the number MFI-OTP-0097.

8 PRESIDING JUDGE COTTE: (Interpretation) And the second?

9 COURT OFFICER: (Interpretation) The second photograph,
10 DRC-OTP-1020-0576, will have the number MFI-OTP-0098.

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

13 We are therefore, Witness, going to free you for this evening.
14 You have made a long contribution, a difficult contribution. Thank you
15 very much for that, for your presence before us. We will be back
16 tomorrow morning at 9.00 in the morning for a hearing which of two
17 two-hour sessions with a half-hour break in between.

18 I am going to ask the security officers to escort the two accused
19 out of the courtroom, Mathieu Ngudjolo and Germain Katanga. We shall go
20 into closed session such that the witness can leave the courtroom. Then
21 we will go back into open session to close the session.

22 (The accused withdrew)

23 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, do you have
24 an idea of the time that you still need for your examination-in-chief?

25 MR. GARCIA: (Interpretation) Approximately, your Honour. I

1 would say that the first -- the first two-hour block tomorrow should give
2 us enough time to finish the examination in chief.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.

4 The accused already left the courtroom, but it was basically to the two
5 Defence teams that this clarification was useful for.

6 Court Officer, we'll now go into closed session to enable the
7 witness to leave the courtroom.

8 Thank you, Witness, we will be back tomorrow.

9 THE WITNESS: (Interpretation) Okay.

10 (Closed session at 6.26 p.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

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9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session at 6.29 p.m.)

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

19 PRESIDING JUDGE COTTE: (Interpretation) So, Counsel Hooper, we
20 will see you tomorrow morning at 9.00 in the morning. The hearing is now
21 adjourned.

22 The hearing ends at 6.32 p.m.

23

24

25