

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 Thursday, 10 June 2010
10 The hearing starts at 9.01 a.m.
11 (Closed session)
12 (Expunged)
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Witness: Witness P-0279 (Resumed) (Closed Session)
Questioned by Mr. Hooper (Continued)

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8 (Open session at 9.05 a.m.)

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

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

13 The two accused persons are in the courtroom.

14 Good morning, Mr. Witness. Can you hear me clearly?

15 THE WITNESS: (Interpretation) Yes.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well. We are
17 going to start our first session, which is going to last for about two
18 hours. If you feel tired at any point, please let me know and we will
19 take a short break. Otherwise, we are going to sit for two hours.

20 Mr. Hooper, you have to conclude your cross-examination, and so
21 you have the floor now.

22 MR. HOOPER: Yes, thank you.

23 Questioned by Mr. Hooper: (Continued)

24 Q. Good morning, Mr. Witness.

25 A. Good morning.

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1 Q. Now, you were telling us yesterday how towards the end of the
2 battle, which you placed at about 10.00 or 11.00 in the morning, you saw
3 Ngudjolo and Katanga go into the school, and you previously told us that
4 they weren't in the school very long, and then they -- there came a time
5 when they left.

6 Now, after they left, were you still fulfilling the task of
7 helping to bury the dead?

8 A. I was not the only one who was doing that. I was doing it
9 together with other soldiers.

10 Q. Yes, indeed, and that's why I used the word "helping." You were
11 helping to bury the dead with -- with other soldiers, and you've told us
12 how you were digging big holes and putting the bodies in the holes, many
13 at a time, and my question is: After Mr. Katanga and Mr. Ngudjolo left,
14 were you still doing that after they'd gone or had you finished your
15 burial operation by then?

16 A. We had already finished.

17 Q. And so by the time they go, the bodies have all been buried; is
18 that right?

19 A. Yes.

20 Q. Now, we heard you tell us previously and again yesterday how
21 there came a time when you left Bogoro in order to climb up back to
22 Zumbe, and you told us that you got to Zumbe and it was still light. And
23 my understanding of nightfall there, when it becomes dark, it's dark at
24 about 6.00; is that right?

25 A. That's right.

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1 Q. And so for you to have taken those three, three and a half hours
2 to get to Zumbe - we can work it out together - that it must have been
3 about half past 2.00 or 3.00 approximately, approximately, when you came
4 to make that journey and leave Zumbe.

5 Now, having said that, I'm looking here at that same interview
6 that we were looking at yesterday, your interview, and what you saw
7 happened in the centre of Bogoro, and what you say there is, at paragraph
8 40:

9 "Ngudjolo and Germain entered the school."

10 Let me just make it plain to you in case you misunderstood me.
11 I'm now reading from the statement you made in 2007. All right? These
12 are your words:

13 "Ngudjolo and Germain entered the school. I do not know what
14 happened once they went inside. I estimate that they were in the school
15 for an hour. It was in the afternoon, as now the sun began to set."

16 So there we have a different situation, do we not, where your
17 recollection related then is that it was at sunset, well before the
18 three, three and a half hours that you -- well after the three, three and
19 a half hours it took you to walk up in the light. It's sunset in Bogoro
20 when you witnessed that. Now, why is there this difference? Can you
21 help us?

22 A. Could you be clear about the difference you're talking about,
23 please?

24 Q. Well, you've told us how you got to Zumbe in the light, and it
25 took you three, three and a half hours to get there, and by then you've

1 told us that you'd seen Ngudjolo and Katanga go into that school and come
2 out of that school and leave, and then you leave at some point, three,
3 three and a half hours up to Zumbe in the light, are you, before sunset.
4 But in your statement you're saying that they entered the school. They
5 were in the school for an hour. It was in the afternoon as now the sun
6 began to set. That's the difference. You've got the sunsetting in
7 Bogoro before you've even started your walk home. And I'm asking you, do
8 you remember saying that to the investigators, that the sun had begun to
9 set? Do you remember saying that, and if so, how does that fit in with
10 your present recollection?

11 A. I do not remember.

12 Q. Now, you've told us that you saw two young Hema girls taken,
13 taken into the bushes. Now, you dealt with things like that in your
14 statement. I'm looking at paragraph 42, and you say this:

15 "I do not think that any women were abducted during the attack."

16 And neither there nor anywhere else in your statement do you
17 mention anything about anyone being raped or being abducted to be raped.
18 And why is that, may I ask?

19 A. Could you please repeat your question.

20 Q. You've told us about seeing two young Hema girls taken into the
21 bushes, and you conclude that they were raped, but in your statement
22 there's no mention of any girls being taken into the bushes or raped, and
23 indeed, at paragraph 42 you say:

24 "I do not think that any women were abducted during the attack."

25 So why in your statement are you saying that and making no

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1 mention of any rapes, but in your evidence you tell us there were -- was
2 an incident with two girls and rape? Why is there this difference? Can
3 you help us?

4 A. Well, this is what I can say: If I said that here, it was in
5 answer to the additional questions that were put to me in open court.

6 Q. Is it something -- an incident like that, was that something you
7 forgot to mention when you were being interviewed over those three days?

8 A. It could happen. It can happen that you forget certain points.

9 Q. All right. Now, let me ask you about your own actions in Bogoro.
10 Now, you've told us how you rejoined the road, the road from Katonie.
11 You rejoined the road from the footpath, and together with the commanders
12 that you named and other combatants, you marched down the road towards
13 Bogoro. What happened then? Just tell us, please. And I'm asking about
14 what you did. What did you do then? How did things unfold for you?

15 A. I did not fully grasp your question.

16 Q. You've told us how you left Katonie. You went on a footpath.
17 You rejoined the main road and with all the others you marched towards
18 Bogoro, and my question is: What did you do then?

19 A. At that point in time, it was the moment for attacking Bogoro.

20 Q. So what did you do?

21 A. It was wartime, and I participated in the fighting.

22 Q. Well, just tell us what you did. You see, it's 4.00 or 5.00 in
23 the morning, until 10.00 or 11.00. Well, what happens in those five
24 hours? What do you? What do you do? Just take us through it.

25 A. I would say it was wartime, and we were fighting.

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1 Q. Well, I wasn't there and I could say that. What did you do?
2 Just tell us what you did? We won't be shocked. Just tell us what you
3 did.

4 For a start, let me ask you this: Where did you go? In Bogoro,
5 where did you go?

6 All right. Well, that's quite a long pause. You've spoken, for
7 example, of -- let's find your words.

8 "The attack, therefore, commenced, and they entered into the
9 camp. There was gunfire and people were killed in the camp. It was 4.00
10 or 5.00 in the morning."

11 Now, were you among those who went in the camp?

12 A. Yes.

13 Q. And were you fighting in the camp?

14 A. Yes.

15 Q. And at 4.00 or 5.00 in the morning that would still be dark,
16 wouldn't it?

17 A. It was at the time when the sun was about to rise.

18 Q. And how close were you to the centre of the camp? What did you
19 see in the camp?

20 A. I saw dead bodies in the camp.

21 Q. Now, the sun was rising and you're in the camp and you see dead
22 bodies. Had all the soldiers -- had the UPC soldiers, had they fled when
23 you saw that?

24 A. Some of them had fled.

25 Q. And what happened then? Some of them had fled. You're at the

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1 camp. You see dead bodies. The sun is rising. What happened then?

2 All right. Let me ask you another question. So you went to the

3 camp. Did you to the school?

4 A. I didn't go to the school.

5 Q. Did you go to the market?

6 A. Yes, next to the market.

7 Q. Now, as you go into Bogoro -- in fact, can I call up a document,
8 because it might help you. DRC-OTP-1007-1087, and it's a sketch you
9 kindly prepared during your three-day interview in 2007. It might save
10 you, perhaps, from having to write another one.

11 COURT OFFICER: Mr. Hooper, what is the level of confidentiality
12 of this document?

13 MR. HOOPER: Hmm. Unfortunately, it's got the witness's names on
14 it. I'm wondering if we can -- it's a bit of a nuisance. Is it possible
15 electronically to take the name off on the image so that we can remain
16 in -- it can remain in a public --

17 COURT OFFICER: We can display it only for the court participants
18 if you wish, or -- and not to the public, but we cannot redact anything.

19 MR. HOOPER: Would it be possible for me to tear off the name on
20 this and either we can use the original and this can go onto a public
21 image so that the public aren't denied the opportunity of following the
22 evidence.

23 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we are
24 going to hide the name of the witness from the public, but everybody
25 within the courtroom will have the names on the document by seeing the

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1 original before them. In order to do so, we should put something over
2 the name of the witness, a Post-It or something like that.

3 MR. HOOPER: I've folded it so that the signature isn't -- isn't
4 visible.

5 PRESIDING JUDGE COTTE: (Interpretation) Perfect,
6 Counsel Hooper. We can therefore proceed like that.

7 COURT OFFICER: (Interpretation) In order to view the
8 confidential document in eCourt, please press the button "PC 1." If you
9 want to see the public document, please press "Docu Cam Witness."

10 MR. HOOPER: Thank you very much.

11 MR. GARCIA: (Interpretation) Can you see the name? Does the
12 name appear? It seems so.

13 MR. HOOPER: So we need a Post-It. We got a big Post-It here.
14 Or else I can just tear it off again -- or tear it off.

15 All right. Thank you. Thank you very much, everybody, for
16 helping that.

17 Q. So now we have -- so let's look at this plan that was drawn.
18 Now, did you draw this, Mr. Witness, or what was the position? Is this
19 your drawing?

20 Sorry, you may not have had it, so let me ask the question again.
21 Looking at that, is that your drawing, Mr. Witness?

22 A. Draw what?

23 Q. I'm not asking you to draw it. The image on the screen in front
24 you, do you recognise that as the sketch you made in 2007 when you were
25 interviewed by the investigators?

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1 Now, put your mind to rest. I don't think anyone is going to
2 suggest otherwise. This is something produced by the Prosecution, and
3 it's said that this is the sketch that you produced when you were
4 interviewed in 2007. In the course of the interview there was a sketch
5 made by you and this is it. Do you recognise it?

6 Is this your sketch, Mr. Witness?

7 Well, is there an answer, please? Would you rather see a hard
8 copy if we have one? Now, Mr. Witness, you weren't having any trouble
9 answering questions a moment ago. What's the problem now?

10 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, you
11 will provide a hard copy to the witness so that he can see it, he can
12 touch it.

13 And then, Witness, you will have to answer Counsel Hooper.

14 MR. HOOPER: Here's a copy coming to you.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well. Witness,
16 please take the time to look at it. Look at this hard copy. It
17 corresponds with what is on your screen, but perhaps it's more readable,
18 more legible for you. You can consult it more easily, and then you can
19 answer the question that was put to you.

20 MR. HOOPER:

21 Q. So looking at that, Mr. Witness, you can see that if you look on
22 the left-hand side we've got -- it's got "Binia" but that's Bunia and
23 Beni indicated in the roundabout there, up at Dele, and then we come down
24 the road, there's Katonie. At the top there's Zumbe, and then there's a
25 bend in the road, and then there's the Bogoro area, and then we have got

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1 the road to Kasenyi and a road to Gety and to Diguna and Gety.

2 Now, looking at that, do you recognise that as being the sketch
3 that you provided in 2007? Yes or no, please.

4 A. I no longer remember.

5 Q. Well, I'm going to ask you about it anyway. Now, looking at this
6 sketch, if you look at -- can you see where Katonie is indicated? And
7 then you go towards Bogoro. And can you see that there's a square and
8 above it the word "Eglise." Do you see that? Yes or no, please.

9 A. Yes.

10 Q. And was -- do you remember there was a church there? It doesn't
11 matter which religion it was, but do you remember there was a church
12 there?

13 A. I do not remember any more.

14 Q. All right. Now, just before or almost opposite the church but on
15 the other side of the road can you see that there's a line, and there is
16 written, am I right, "Ya Upece." Is that right? Or sorry, "Ka Upece."
17 Do you see that?

18 A. Yes.

19 Q. And am I right in saying that that's where you indicated that the
20 UPC camp was? Is that right?

21 A. Yes.

22 Q. And then if we continue along the road past the UPC camp, past
23 where the church was marked, we come to another area called "Marche." Is
24 that right? Do you remember that? And it's written there "Marche."

25 A. I see.

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1 Q. Well, that's where you've written it, isn't it, "Marche." And
2 can you see those little red crosses? And if you don't see them on -- on
3 the document, which I think they are marked, they may not be in red
4 there, they'll be on the screen in red. Red crosses which extend from
5 the "eglise" on both sides of the road. On one side there's two red
6 crosses marked and on the marche side there's three red crosses marked.
7 Do you see those crosses?

8 MR. GARCIA: (Interpretation) If you could allow me,
9 Your Honour, to indicate to Counsel Hooper that we can't see colours on
10 the screen. At least on our, screen we can't see the colours.

11 PRESIDING JUDGE COTTE: (Interpretation) Usher, please could you
12 check. I'm lucky enough to have the colours on my screen, so I want to
13 be sure that everybody has it. On the paper it's clear, but in the
14 screen I can see -- on some screens you can at least see little red
15 crosses, even if not on paper. Do -- does the witness have these little
16 red crosses? Yes?

17 THE WITNESS: (Interpretation) Yes.

18 MR. HOOPER:

19 Q. So, now, those red crosses you state in your interview were where
20 bodies were scattered. All right? This is your sketch, may I remind
21 you. Do you remember that? Do you remember, (a), making a sketch
22 indicating where bodies were, and also that that, in fact, reflects your
23 evidence?

24 A. I do not remember any more.

25 Q. All right. Now, if we go past the market and carry on along the

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1 road, when we get to the other side of the market, on the right we've got
2 "Ecole." Do you see that? You've drawn a rectangle with "Ecole." Is
3 that the school that you've spoken about?

4 A. Yes.

5 Q. Now, we therefore have the UPC camp. We have other buildings.
6 We have the market, and then we get to the school. Now, how far was it
7 from the UPC camp to the school? Approximately. And if you're not good
8 at distances in metres or whatever, perhaps you can tell us how far it
9 was perhaps in terms of the length of a football pitch. How far was it
10 between the UPC camp and the school? Or don't you know? You don't know.
11 All right.

12 A. Yes. No, I do not know.

13 Q. All right. Well, I won't burden you with any more questions
14 about that.

15 Now, you said that towards the end of the battle Ngudjolo and
16 Germain Katanga went into the school. As I understand it, you didn't go
17 into the school at all. Now, when you were asked about that, you were
18 asked by the Prosecution, this is T-145 35/4, where were you was the
19 question from the Prosecution, and your answer was:

20 "I was quite far from them."

21 And then you were asked:

22 "Q. Were you able to see them?"

23 And you said:

24 "No."

25 So my question is: Where were you when they went into the

1 classroom?

2 A. We were next to the market.

3 Q. Right. So you were at the market, but you couldn't see them go
4 into the school; is that right?

5 A. From the market you could see how the people entered into the
6 school, but you could not -- or you did not know what they were doing
7 within the school.

8 Q. All right. From -- from the market could you see the door
9 through which they went into the school, into the school building itself?
10 Could you see the doors of the school?

11 Well, that's almost a minute of reflection on your part. Do you
12 have an answer? I take it no.

13 Would that be right, you have no answer to my question.

14 A. To this question, I can say that the door of the school was next.
15 From the market you couldn't see the door, but the window, all the
16 windows, it was possible to see them, or it was possible to see if the
17 people were inside.

18 Q. Now, who did you see inside?

19 A. Inside the school? Well, I was far from the school.

20 Q. Yes, indeed, because you were at the market, weren't you?

21 A. Yes.

22 Q. All right. And then you go up to Zumbe, and at some point you
23 tell us you were (Expunged)
24 (Expunged). Don't tell us the name. How long after Bogoro did that
25 happen?

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1 A. It was after the attack on Bogoro, but I do not remember when.

2 Q. All right. Now, I want to show you a photograph of someone.

3 MR. HOOPER: This photograph is private in status, and we haven't
4 had time to put it in eCourt because we only received it in this form, I
5 think, today. Yes, today. And obviously, again, people should be
6 careful about displaying it at large.

7 Q. Now, looking at that photograph, do you recognise the person in
8 it, in that photograph?

9 A. I do not remember.

10 Q. You don't remember. All right. Then we'll take the photograph
11 back. I've finished with the photograph, yes.

12 MR. HOOPER: Can I give the number now so that it's on the
13 transcript in the appropriate place. The photograph reference was DRC --
14 that number doesn't look right, but DRC-00150.146. I think that probably
15 should be 0150.0146. Either one of those numbers.

16 Thank you, Mr. Witness.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, you have
18 given the reference DRC-00150.146. Do you wish to have an EVD number for
19 that?

20 MR. HOOPER: Yes, please. And we need a -- EVD for that and an
21 EVD number for this sketch and that's it. Thank you.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
23 Now, Court Officer, for these two documents produced this morning.

24 COURT OFFICER: (Interpretation) Yes, Mr. President.

25 Sketch number DRC-OTP-1007-1087 will bear the EVD number

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1 EVD-D02-00040.

2 The photograph produced by Mr. Hooper will have the following EVD
3 number: EVD-D02-00041.

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

6 Mr. Witness, Mr. Hooper, who is lead counsel for Mr. Germain
7 Katanga, has just concluded his cross-examination, and it is now the turn
8 of the Defence team of Mr. Mathieu Ngudjolo to conduct their
9 cross-examination, and I believe it will be Professor Fofe who will
10 introduce himself to you and tell you how he's going to proceed.

11 The Court would like to seize this opportunity to remind you once
12 again that you may have time to reflect, but you have to always answer
13 the questions.

14 Professor Fofe, please proceed.

15 MR. FOFE: (Interpretation) Thank you very much, Mr. President.
16 Good morning, Mr. President, your Honours.

17 Questioned by Mr. Fofe:

18 Q. (Interpretation) Good morning, Mr. Witness.

19 A. Good morning.

20 Q. My name is Jean-Pierre Fofe, and I am co-counsel in the Defence
21 team of Mr. Mathieu Ngudjolo. To begin with, I would like to reassure
22 you that we are not your enemies. By asking you questions, we wish to
23 give you the opportunity to speak the truth, the whole truth, and nothing
24 but the truth to the Honourable Judges. Please do not be afraid of
25 anyone. Simply tell the truth. It is simple to tell the truth.

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1 As the President has told you several times, it is necessary for
2 you to speak slowly and loudly. I would like to add that the two of us
3 have to observe a pause between the questions and the answers. You have
4 been doing it very well, and sometimes even too well, during the
5 cross-examination of Mr. Hooper.

6 Witness, I would like to ask you to look at me when I ask you a
7 question. You have to look at me when answering my question. Are we
8 agreed? Are we agreed on that, Mr. Witness?

9 MR. GARCIA: (Interpretation) Mr. President, I am taking the
10 liberty to interrupt Professor Fofe, but to my knowledge I believe that
11 the witness has to look at the Bench while answering questions.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Mr. Prosecutor, but I believe that the witness is capable of glancing
14 around the court while answering his question.

15 Witness, Professor Fofe has just talked an issue of protocol when
16 he puts questions to you. When he is asking you a question, it is
17 important for you to look at him, to look at the Bench, and to show some
18 courtesy as you have done so far, but the most important thing is for you
19 to answer his questions. Mr. Fofe is going to ask his questions to you
20 now. He simply wanted to lay a foundation regarding the way he's going
21 to proceed so as not to surprise you.

22 MR. GILISSEN: (Interpretation) I'm sorry, but I'm afraid of
23 appearing naive. I do not know about looking at whoever unless the --
24 unless it is the Bench, and the little I know about the Congolese system
25 makes me to think that it would be an error to ask the witness to act in

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1 that manner. Should I be more specific, Mr. President? It does not work
2 like that there. I'm looking at Mr. Luvengika, and he's confirming that
3 to me. That is my feeling.

4 PRESIDING JUDGE COTTE: (Interpretation) Please, please do not
5 speak at the same time.

6 JUDGE DIARRA: (Interpretation) I would like to give you a
7 dissident view -- a dissenting view here. In Africa it is not courteous
8 to look at your elders or superiors when you are speaking to them. When
9 my mother was speaking to me, they would say, "Don't look at me in my
10 eyes," and I had to lower my eyes. *That is proof of
11 honesty.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Judge Diarra, for that contribution.

14 Court Officer -- and this is the advantage of having a collegial
15 system on the Bench, because all the cultures are represented here.

16 Maybe Professor Fofe was referring to the way in which sometimes
17 the witness seems to isolate himself. And I will tell you, Mr. Witness
18 to try to look at me. I am the one asking you to look at me, authorising
19 you to look at me. So you are going to have a different person
20 questioning you now. It is going to be Professor Fofe. If you wish to
21 look at Professor Fofe or the three members of the Bench, Judge Diarra
22 and Judge Van den Wyngaert, who are also looking at you, as well as
23 myself, then you can do that, but the essential thing is for you to
24 answer. You can answer with your eyes down if you think that is easier
25 for you, but if you can look at the various parties, that will be all

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1 right. All of us are not very familiar with the African context, but,
2 Witness, you have to remember that your presence here is very useful.
3 You are very useful to us. All that we are doing here might appear to be
4 tedious to you, but it is very useful.

5 Professor Fofe, please proceed.

6 MR. FOFE: (Interpretation) Thank you, Mr. President. This was
7 simply a point of detail for us.

8 With the leave of the President, we would like to begin our
9 cross-examination in closed session to allow the witness to answer freely
10 to the questions that we are going to put to him, and we apologise to the
11 public for that brief period.

12 PRESIDING JUDGE COTTE: (Interpretation) That is understood, and
13 the entire team of Mr. -- the Defence team of Mr. Ngudjolo will be on the
14 alert to decide to go back to open session as soon as it is possible.
15 For the time being, we go into closed session.

16 Court Officer, please.

17 (Private session at 10.14 a.m.)

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Witness: Witness P-0279 (Resumed) (Private Session)
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Witness: Witness P-0279 (Resumed) (Private Session)
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Witness: Witness P-0279 (Resumed) (Private Session)
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Witness: Witness P-0279 (Resumed) (Private Session)
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Witness: Witness P-0279 (Resumed) (Closed Session)
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8 (Closed session at 10.57 a.m.)
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17 (Expunged)
18 (Open session at 10.58 a.m.)
19 COURT OFFICER: (Interpretation) We are in open session, your
20 Honour.
21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Court Officer.
23 We stand adjourned, and we are going to reconvene in 30 minutes.
24 That's at 11.30.
25 Recess taken at 10.58 a.m.

Witness: Witness P-0279 (Resumed) (Closed Session)
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1 On resuming at 11.35 a.m.
2 (Closed session)
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12 (Open session at 11.36 a.m.)
13 (The accused entered court)
14 COURT OFFICER: (Interpretation) We are in open session, your
15 Honour.
16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
17 Court Officer.
18 The accused are with us.
19 Professor Fofe, please continue with your cross-examination. We
20 are in open session. You -- I leave it to your discretion to see if we
21 need to go into private session or not.
22 MR. FOFE: (Interpretation) Thank you very much. I think that
23 by -- as way of precaution it would be better to go into private session.
24 PRESIDING JUDGE COTTE: (Interpretation) We shall therefore go
25 back into private session for a moment. We will therefore remain on

Witness: Witness P-0279 (Resumed) (Private Session)
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1 alert. Go back into open session as soon as possible.
2 Court Officer, if you so please.
3 (Private session at 11.37 a.m.)
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Witness: Witness P-0279 (Resumed) (Private Session)
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Witness: Witness P-0279 (Resumed) (Private Session)
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Witness: Witness P-0279 (Resumed) (Private Session)
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Witness: Witness P-0279 (Resumed) (Private Session)
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16 (Expunged)
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21 (Open session at 12.01 p.m.)
22 COURT OFFICER: (Interpretation) We are in open session,
23 Mr. President.
24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Court Officer.

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1 Professor Fofe, please continue with the cross-examination.

2 MR. FOFE: (Interpretation) Thank you, Mr. President.

3 Q. Witness, on the 8th of June, that is the day before yesterday,
4 and yesterday, the 9th of June, in answer to a question put to you by
5 Mr. Hooper, you testified that before being abducted by Boba Boba, you
6 and your parents had sought -- had sought refuge in Zumbe after fleeing
7 from a war, and I am referring here to transcript 151, pages 53 to 56.

8 My question to you is as follows: What war caused you and your
9 parents to flee from your village and seek refuge in Zumbe?

10 A. I no longer remember.

11 Q. In order to jog your memory, was this the war that had led to the
12 fall of Lompondo in Bunia? Was it that war?

13 A. I no longer remember.

14 Q. In order to help you remember, I will need to read out
15 paragraph 11 of your statement to the investigators of the OTP, and it is
16 the document that I referred to, DRC-OTP-1007-1077. Paragraph 11. And I
17 will read out a paragraph from -- an excerpt from paragraph 11, and I
18 quote:

19 "The militia forcibly took me away from my house where I lived
20 with my parents in the village of ..." and you know that village. "I no
21 longer remember the date, but I know that it was after the fall of
22 Lompondo in Bunia. Commander Boba Boba, accompanied by a section of 12
23 militiamen, had come and taken me. They came on foot," and so on and so
24 forth.

25 Let me stop there. End of quote.

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1 So this was, in fact, the war that led to Lompondo fleeing Bunia.

2 Isn't that so?

3 A. I do not remember.

4 Q. But you remember giving this statement; right?

5 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, do you
6 want Professor Fofe to read out that excerpt from your statement once
7 again so as to help you remember?

8 Professor Fofe, please re-read paragraph 11 of that statement.

9 MR. FOFE: (Interpretation) Thank you, Mr. President.

10 Q. I will read out from your statement, Mr. Witness.

11 "The militia forcibly took me away from my house where I lived
12 with my parents in the village of I no longer remember the date,
13 but I know that it was after the fall of Lompondo in Bunia.
14 Commander Boba Boba, accompanied by a section of 12 militiamen, had come
15 to take me away. They came on foot ..."

16 Do you remember telling the investigators of the OTP that?

17 PRESIDING JUDGE COTTE: (Interpretation) Witness, these are
18 things that happened a long time ago. It is possible for you not to
19 remember, but you have to give an answer which can be "Yes," "No," "I do
20 not remember." It has to be your answer. We cannot dictate the answer
21 to you, but you have to answer the question.

22 THE WITNESS: (Interpretation) I do not remember.

23 MR. FOFE: (Interpretation)

24 Q. Witness, I will nevertheless ask you a certain number of
25 questions about that war that prompted the flight of Lompondo from Bunia.

Witness: Witness P-0279 (Resumed) (Open Session)
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1 The war that led to Lompondo being chased out of Bunia, which military
2 forces were involved in this war? In other words, which groups were
3 fighting against each other?

4 A. I was told that it was the soldiers of the UPC. That is what I
5 heard.

6 Q. Now, who were the UPC soldiers fighting against?

7 A. I do not remember.

8 Q. Which military forces led you and your parents to flee? I want
9 to put the question in a way that is really clear. Which military forces
10 were you and your parents afraid of?

11 A. We were afraid of the UPC group.

12 Q. Are we therefore to understand that you left or fled your village
13 because you were afraid that you could be killed or at least because you
14 were afraid of the military forces of the UPC which had just chased
15 Lompondo out of Bunia?

16 A. Yes.

17 Q. Let me put it to you that this war of the UPC which led to
18 Lompondo fleeing Bunia took place in August 2002. Do you agree with
19 that?

20 A. I do not remember.

21 Q. Thank you, Witness. I am informing you, because all the parties
22 are aware that it was in August 2002 that the UPC soldiers chased
23 Lompondo out of Bunia.

24 Mr. Witness, when you fled those military forces of the UPC and
25 sought refuge in Zumbe, you knew very well that the UPC soldiers had

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1 occupied the entire town of Bunia and the outskirts or neighbouring
2 areas, including your village. You were aware of this. Isn't that
3 correct?

4 A. Yes, I do remember that very well.

5 Q. Thank you very much. Those UPC soldiers occupied Bunia and its
6 environs, including your village, up till March 2003. Do you remember
7 that?

8 A. No, I do not remember.

9 Q. Before I make the suggestion to you, do you personally know up
10 till when the UPC soldiers occupied Bunia and its environs, including
11 your village? Do you know that?

12 A. No.

13 Q. Very well. I'm putting it to you, and all the parties are aware
14 of this, that they occupied Bunia and its environs, including your
15 village, up till the 6th of March, 2003.

16 Now, Witness, let me give you the opportunity to tell us
17 precisely what happened. You have to tell the truth about what happened.

18 You took refuge in Zumbe along with your parents in August of
19 2002. Where did you go from Zumbe, that is, in the company of your
20 mother as well as your brothers and sisters?

21 A. Regarding the year that you are referring to, I do not remember
22 anything about that year.

23 Q. Even if you do not remember that year, when you left Zumbe where
24 did you go along with your mother and your siblings? Where did you go?

25 A. We went back to where we had been living before.

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1 Q. Mr. Witness, was it possible for you to return to your village,
2 that is where you had been living before, while the UPC soldiers were
3 there?

4 A. During the period when they were there, it was not possible for
5 us to return there, but it was only after they left that we were able to
6 return along with other people.

7 Q. Thank you very much, Mr. Witness. It was when the UPC soldiers
8 left that you returned to your village. That is indeed the case. Thank
9 you very much. And we all know that the UPC soldiers left on the 6th of
10 March, 2003.

11 Witness, given that you returned to your village after the
12 departure of the UPC soldiers, it therefore means that you were never
13 abducted or taken away by Boba Boba before that date. That is the truth;
14 correct?

15 A. Please kindly repeat your question.

16 Q. I'm asking you this question to give you the opportunity to tell
17 the Honourable Judges the truth. You have just admitted that you
18 returned to your village when the UPC soldiers were no longer there. We
19 very well know that the UPC soldiers were no longer in your village as
20 from the 6th of March, 2003. My question is, therefore, as follows:
21 Given that you returned to your village after the 6th of March, 2003, you
22 were therefore not taken away by Boba Boba prior to that date?

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

24 MR. GARCIA: (Interpretation) Mr. President, I understand that
25 we are in cross-examination here, but what is problematic in the question

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1 is that it contains a premise that the witness has not agreed to, that
2 is, the date on which the UPC soldiers left his village. So when
3 Professor Fofe asks that question to the witness which already contains
4 that element, the witness does not know which particular date is being
5 referred to. All that he's saying is that he returned to that village
6 when they were able to. That is when the UPC was no longer there.

7 Now, regarding the date that Professor Fofe has included in his
8 question, the witness did not agree to that.

9 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, indeed,
10 the answer that you expect from a witness to an important question is an
11 important answer. So even if that task is difficult, it would be
12 essential to try to have the witness tell us, to the extent that he can
13 remember, the time that he left with his family to return to their
14 village, which would have us not make deductions.

15 MR. FOFE: (Interpretation) Thank you, Mr. President. I'm going
16 to put my question again to the witness, but before that, I would like to
17 point out that there has been admissions between the parties, including
18 the date of departure of the UPC from Bunia. This is an agreement that
19 was signed between us.

20 MR. GARCIA: (Interpretation) Just a minute, Professor Fofe.
21 Regarding the admissions of the date of departure of the UPC, I believe
22 it does not contain the village of (Expunged).

23 PRESIDING JUDGE COTTE: (Interpretation) We are going to redact
24 that, but we are trying to reconstitute a chronology for the witness to
25 clarify the statements that he gave to the OTP and his testimony in this

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1 courtroom. Obviously the witness has difficulty remembering events that
2 took place a long time ago, irrespective of what age he was at that time,
3 but he was a young man. So it is a difficult task that Professor Fofe
4 has to accomplish.

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

6 PRESIDING JUDGE COTTE: (Interpretation) Just a moment to
7 cross-check one small detail.

8 MR. KILENDA: (Interpretation) With your leave, Mr. President, I
9 would like to move and try to cross-check something.

10 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, the
11 Chamber obviously does not have any advice to give to any of the parties,
12 but we wish to better understand also the itinerary of the witness and
13 his family. And even if yesterday Mr. Hooper already tried to have
14 clarifications on that point, what we really need to also understand is
15 whether the witness indeed travelled to Zume on two occasions, once with
16 his parents and once after being abducted, and what was the interval
17 between those two trips to Zume. I believe that is what you're trying
18 to clarify yourself.

19 MR. FOFE: (Interpretation) That is indeed so, your Honour.

20 Before coming back to this question, I would like to ask -- or,
21 rather, before asking that question to the witness again, I would like to
22 have it on record that the village that we are talking about is indeed in
23 Bunia. It is at the entrance into Bunia. The UPC forces were
24 everywhere. So it is at the entrance into Bunia.

25 That said, I will put that question directly to the witness.

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1 Q. Witness, please try to help us, because all we are looking for is
2 the truth. To your knowledge, after the UPC soldiers launched the war
3 that caused you to flee to Zumbé and that chased Lomondo from Bunia,
4 those UPC soldiers stayed in Bunia and in the villages around Bunia. To
5 your knowledge, when did the UPC soldiers leave Bunia and your village?
6 When was that approximately, as far as you know?

7 A. I do not remember.

8 Q. Considering that the witness does not remember, I wish to put the
9 following discussion to him: Witness, I am suggesting to you, I'm
10 putting it to you, that the UPC soldiers left the town of Bunia and your
11 village on the 6th of March, 2003. Does that look likely, the date of
12 the -- the date of March 2003? 6 March 2003.

13 PRESIDING JUDGE COTTE: (Interpretation) Maybe we should use the
14 term "possible."

15 MR. FOFÉ: (Interpretation) Yes, indeed, your Honour.

16 Q. Now, from what you can get from your memory, is it possible that
17 the date could have been the 6th of March, 2003?

18 A. I do not remember, or I do not believe so.

19 Q. If you do not believe this, what possible date would you
20 therefore propose?

21 A. I have no idea. I cannot suggest a date.

22 Q. Mr. Witness, I am going to ask you a question which could help
23 refresh your mind. Do you know that fighting broke out between the UPC
24 and the UPDF, that is the Ugandan army, in your village?

25 A. No.

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1 Q. I have one last question in this series. When you returned with
2 your parents to your village, where were you coming from?

3 A. We were returning from Zumbe.

4 Q. Thank you. We are going to change topics for a while.

5 Mr. Witness, you talked about the FNI in your statement. You mentioned
6 the FNI in your statement to the investigators, and here I'm alluding to
7 paragraph 13. And you also mentioned the FNI here in the courtroom, and
8 here I'm referring to transcript 145, the hearing of the 21st of May,
9 2010, page 13, line 24; page 24, lines 22 and 23; page 25; and page 33.
10 You mentioned the FNI. Could you please tell us what FNI stands for?

11 A. I will tell you the following: The FNI was the name given to the
12 group that was located on the hill of Zumbe.

13 Q. Do you know the person who created the FNI?

14 A. No.

15 Q. Do you know when the FNI was created?

16 A. No.

17 Q. Do you know where the FNI was created?

18 A. No.

19 Q. You don't know much about the FNI, do you?

20 A. That is correct.

21 Q. Well, so what pushed you to talk about the FNI, whereas you know
22 nothing about it?

23 A. I did not understand your question.

24 Q. My question is quite simple. Apparently you know nothing about
25 the FNI, so who asked you to talk about the FNI?

1 MR. GARCIA: (Interpretation) Your Honour, I understand that
2 this is a cross-examination. The question has been put two times, but it
3 is not very clear. Professor Fofe's asking the witness to mention the
4 person who asked him to talk about FNI, and I'm wondering who he's
5 referring to. I understand why the witness is confused. I understand
6 why he's having difficulties in answering a question of that nature.

7 PRESIDING JUDGE COTTE: (Interpretation) Very well. The witness
8 did not answer Professor Fofe's question, and you intervened.

9 Well, Professor Fofe, could you rephrase your question and put it
10 such that the witness will understand it and provide you with an answer.

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

12 Q. Mr. Witness, I asked you a few questions about the FNI, and from
13 the answers you gave me, we understood that you know nothing about the
14 FNI. Is that true or false?

15 A. That is true.

16 Q. It's true that you know nothing about the FNI; is that the case?

17 A. Could you please repeat your question?

18 Q. Is it correct that you know nothing about the FNI?

19 A. I did not fully understand your question.

20 Q. I don't know how that question is being translated to you or for
21 you into Swahili. The question I'm putting to you is the following, it
22 is a leading question: You know nothing about the FNI. True or false?
23 If I say that you know nothing about the FNI, would that be correct or
24 incorrect? Would that be true or false? Would I be telling the truth,
25 or would I be lying?

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1 A. All I know about the FNI is what I witnessed, what I saw whilst I
2 was in the FNI camp.

3 PRESIDING JUDGE COTTE: (Interpretation) I think that we're
4 going to retain, Professor Fofe, the answer which has been given. You
5 asked him about the FNI, what it stood for, and the witness answered, and
6 he said it was the name of the group that was located on Zumbe hill. I
7 do not have the feeling that you are going to get any more clarification
8 than that. Could you please proceed to other topics, or carry on with
9 the rest of your questions.

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

11 Q. Mr. Witness, I will now broach the question of Boba Boba, the
12 arrival of Boba Boba to your village. Let me start by asking you a few
13 questions for reasons of clarification.

14 Could you please tell us when did Boba Boba come to take you away
15 from your village?

16 A. I have forgotten the time, and I have forgotten the date.

17 Q. In which year did this happen?

18 A. I do not remember.

19 Q. When Boba Boba came to take you away, how many -- how many
20 militiamen accompanied him?

21 A. He was accompanied by a group, and I do not know how many people
22 were in the group.

23 Q. Now, these soldiers who accompanied him, did they have weapons?

24 A. Yes.

25 Q. What type of weapons did they have?

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1 A. They were weapons, but I don't know what type of weapons they
2 were.

3 Q. What about Boba Boba himself? Did he have a weapon?

4 A. He did not have a weapon.

5 Q. Mr. Witness, I am going to read out to you once more paragraph 11
6 of the statement you made to the investigators of the OTP. This is what
7 you said, and I quote:

8 "Commander Boba Boba, accompanied by a section of 12 militiamen,
9 came to take me away. They came on foot. Boba Boba had two weapons with
10 him."

11 How can you account for these discrepancies in the various
12 statements you made?

13 A. I do not remember.

14 Q. May I remind you that you made these statements to the
15 investigators of the OTP on the 28th, the 29th, and the 30th of March,
16 2007; that is, four years after the events we're talking about. How,
17 then, can you justify the fact that there should be this many
18 discrepancies between the various statements you've made?

19 A. I do not remember.

20 Q. Mr. Witness, do you remember having stated that Boba Boba was
21 accompanied by a section of 12 militiamen? Do you remember having made
22 that statement?

23 A. I do remember.

24 Q. Do you remember having used the term "section"?

25 A. No.

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1 Q. Should I understand, therefore, that you are not the person who
2 used the term "section"?

3 A. I do not remember.

4 Q. Now after listening to this excerpt that I read out, do you
5 remember having used the term "section"? Do you now remember that you
6 used that word, "section," that is, a section of 12 militiamen?

7 A. I do not remember.

8 Q. Mr. Witness, before I carry on, I would like to remind you that
9 you signed this statement. You signed each page of the statement, and at
10 the end you signed the entire statement, and as Mr. Hooper told you
11 yesterday or the day before yesterday, you had the opportunity to read
12 the statement again when you arrived here at The Hague?

13 Well, if it is possible, I would like you to answer this question
14 very simply: Are you the one who used the word "section" when you gave
15 your statement to the investigators of the OTP?

16 A. Well, to answer this question about the term "section," I really
17 do not remember.

18 Q. So this term "section" did not come from you.

19 MR. GARCIA: (Interpretation) Your Honour, I want to take
20 objection to this. I think this is the fourth or fifth question being
21 asked about this term, and the witness has clearly stated that he does
22 not remember having used it, and yet counsel keeps putting this question
23 to him. I really wonder whether this is going to be useful for the trial
24 if this question is put to the witness for the sixth time.

25 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, I think

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1 we are going to end it there, because I don't think you are going to
2 obtain any more than what you have obtained from the witness about this
3 word. I think we have to proceed.

4 Thank you, Mr. Prosecutor.

5 MR. FOFE: (Interpretation)

6 Q. Mr. Witness, let me put one last question to you before we move
7 on. What does "section" mean?

8 A. To the best of my knowledge, a section is like a group. That's
9 all I know about section.

10 Q. Thank you very much. Mr. Witness, could you please tell us
11 through which area did Boba Boba pass with his section or his group of
12 militiamen before he took you away? That is, if you know, give us the
13 answer, please. Which area did he pass through with his 12 militiamen to
14 come and take you away? So through which area did Boba Boba and the 12
15 militiamen go through to come take you away from your village?

16 A. I do not know what region or what area they passed through to
17 reach our village. I do not know.

18 Q. And here I'm referring to transcript 144, page 35, lines 12, and
19 I'm also going to refer to your statement before the Office of the
20 Prosecutor to the Defence.

21 You stated before the Judges, and here I'm quoting transcript
22 144, page 19 now, line 14 to 16:

23 "It was the Commander Boba Boba, who with some of his soldiers.
24 They went into my neighbourhood, and they took me, my and my friends from
25 the neighbourhood. We went to Zumbe hill."

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1 Could you describe briefly to us how you personally were taken
2 when they arrived?

3 Thank you. So the silence of the witness, I'm going to continue,
4 because if not we're never going to finish this.

5 Witness, through where did you go with Boba Boba and his militia
6 in order to go to your village in Zumbe? Via where or what did you go,
7 or what route did you take?

8 A. There are paths you can take. We took them in order to go to the
9 village where I was living, and afterwards you go up the hill, up Zumbe
10 hill.

11 Q. Yes. I think to really shed light on that for the Honourable
12 Judges, you've made an effort there to answer the question, but in order
13 to really clarify things for the Honourable Bench, I would ask you to
14 make a small sketch to show us the route which you followed. So from the
15 place where you were taken, just to make a little drawing, even if you
16 don't go all the way to Zumbe, but you show how you left from your
17 village, by -- what way you went, where you went through, to Zumbe if
18 possible. That with will be clearer and perhaps easier as well for you.

19 MR. FOFE: (Interpretation) With the leave of the
20 Presiding Judge.

21 PRESIDING JUDGE COTTE: (Interpretation) We shall try.

22 Court Officer, please, as you just did, please could you -- or,
23 rather, Usher, please could you provide the witness with a piece of
24 paper.

25 Witness, I think you've understood what Professor Fofe is asking

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1 of you. Please try, as far as possible, to make a sketch describing the
2 route that you took to go from your village to Zumbe, even if it is an
3 estimation, and it can only be such.

4 THE INTERPRETER: The interpreter states that he was not able to
5 follow what the witness said.

6 PRESIDING JUDGE COTTE: (Interpretation) Witness, you have just
7 said something which the interpreter did not understand. Please, could
8 you repeat what you said so that the interpreter can interpret what you
9 just said. Please speak well into your microphone, please.

10 THE WITNESS: (Interpretation) I said that the sketch of the
11 road which you would like me to make is something that I cannot do.

12 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, if the
13 witness says himself he can't to it, perhaps you should draw certain
14 consequences therefrom, otherwise we might have something that really is
15 too much of an estimate. But perhaps you might guide him a bit with some
16 greater precision. I have to say that this exercise isn't simple.

17 MR. FOFE: (Interpretation) I don't understand the reaction of
18 the witness. Does he say he's not able to do it? Is that what he's
19 saying?

20 PRESIDING JUDGE COTTE: (Interpretation) Looking at my French
21 transcript again, and looking at line 11, "I said that the sketch of the
22 road that you wish be made is something that I cannot do."

23 MR. FOFE: (Interpretation) Thank you very much, your Honour,
24 Judges. I'm just going to add some clarification so that the witness
25 understands what we want. We're not asking for a detailed map of the

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1 road, no.

2 Q. Witness, please excuse me. I'm not doing this to try and cause
3 you difficulties. Please excuse me. It is in order to allow us and to
4 allow the Honourable Bench to really well understand what happened, how
5 things happened. It is not in order to create difficulties for you.
6 What I would ask of you is not to make a strict map with a scale, no. I
7 would simply ask you to make a small sketch indicating the place where
8 you were taken, how you went there, going to Zumbe, as you did just now.
9 You can take the two major roads and indicate where you were living,
10 where you were taken. You can draw small arrows quite calmly, right to
11 the place where you went up Zumbe. And that will help us really
12 understand things well. And if you can indicate some points on it; for
13 example, your house, the farm, the road, other points, right up to the
14 point where you went up to Zumbe. Even if you don't arrive in Zumbe --
15 and you might stop it at a certain level where you were committed to
16 going to Zumbe. You can just draw an arrow towards Zumbe. That will
17 give us an idea of what really happened. A bit like you did with the
18 investigators of the Office of the Prosecutor, the path that you took
19 from Bogoro. Something -- something along those line. I think this is
20 something that you could do.

21 A. I am not capable of doing this drawing.

22 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, I think
23 we have to stay with that, because you will not obtain what you wish, and
24 what might be obtained may not be of very much use in order to shed light
25 on the truth. You've got an answer. You've attempted. You didn't

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1 obtain it. Everybody notes that.

2 MR. FOFE: (Interpretation) Thank you, Judge. We note that, and
3 we draw all the conclusions therefrom.

4 Q. Witness, I think that this is the appropriate moment for the
5 Prosecutor to present objections to certain items which we are going to
6 be able to use with the witness, and as it's already 1.15, I would
7 suggest that the witness withdraws so that we can use the last 15 minutes
8 for such objections.

9 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor?

10 MR. GARCIA: (Interpretation) I have been able to review the
11 items. I had a precise question to ask to Professor Fofe. It's not
12 going to be very long, just quite simply if the witness would take off
13 his headphones.

14 PRESIDING JUDGE COTTE: (Interpretation) Which item? Which
15 exhibit are you talking about? Which one do -- does the Defence of
16 Mathieu Ngudjolo want to produce? I remember there was a set of
17 photographs, if my memory serves me well. Well, according to what I have
18 in front of me, if that's still current, there was a set of photographs.
19 There was also a sketch which Counsel Hooper used this morning, which
20 was -- which he envisaged using again, and there was a map.

21 MR. GARCIA: (Interpretation) If I could help, I could just
22 simplify things. Professor Fofe, please clarify if this is the
23 photograph you sent on the 21st of May, 2010. It was nine photos.

24 MR. FOFE: (Interpretation) Nine photos; correct. There was a
25 sketch. And a sketch.

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1 PRESIDING JUDGE COTTE: (Interpretation) Our witness still has
2 his headphones on, but perhaps the comments that you are making can be
3 heard by the witness. I just wanted to ask him to take off his
4 headphones for a moment.

5 Usher, please could you ask the -- thank you very much, Witness.

6 MR. GARCIA: (Interpretation) If you could just ensure me --
7 assure me that there aren't -- on these photos you don't have any members
8 of the family.

9 MR. FOFE: (Interpretation) No.

10 MR. GARCIA: (Interpretation) Taking into account this answer
11 concerning the nine photographs, I have no objection to make in this
12 regard where it concerns -- I don't think we are going to go into the
13 table today. I had an objection to make in that regard. That's
14 something that can be dealt with. It can be very short with regards to
15 this table, and it depends on what Professor Fofe intends to do with it.
16 But where it concerns the photographs, the Prosecution has no objections.

17 PRESIDING JUDGE COTTE: (Interpretation) When you speak about
18 the table, this is a black table; is that right?

19 MR. FOFE: (Interpretation) It's a sketch.

20 THE INTERPRETER: Overlapping speakers.

21 MR. FOFE: (Interpretation) Taking into account the time, I
22 think we finish at 1.30, I think the witness could withdraw and then we
23 could deal with this question, and then we could go back again tomorrow
24 morning.

25 PRESIDING JUDGE COTTE: (Interpretation) We'll do that then.

1 Witness, we shall free you for today -- free you up for today. You can
2 go back to the place where you're staying. You can rest after this long
3 morning.

4 The accused, you will please leave for a moment and come back for
5 the possible objection from the Prosecutor.

6 Court Officer, we will go into closed session in order to allow
7 the witness to leave the courtroom.

8 See you tomorrow, Witness.

9 (The accused withdrew)

10 (Closed session at 1.18 p.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Open session at 1.19 p.m.)

20 COURT OFFICER: (Interpretation) We are in open session, your
21 Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you. The accused
23 can come back in for a moment.

24 (The accused entered court)

25 PRESIDING JUDGE COTTE: (Interpretation) So if we've understood

1 well, the Defence of Mathieu Ngudjolo envisages presenting to the
2 witnesses a document which is a photograph of a black table. This
3 document was transmitted on the 24th of May. Yes. The 27th of May. I'm
4 sorry. The 24th or 27th. It is a document, DRC-D03-0001-0347. I don't
5 know if it's a confidential or public document.

6 MR. FOFE: (Interpretation) This document can be public.

7 PRESIDING JUDGE COTTE: (Interpretation) If it's public, for
8 everybody to be able to find it it is this one.

9 Very well. So a few explanations, Professor Fofe, which might
10 help to take away the concerns of the Prosecutor with regards to this
11 blackboard, this blackboard sketch.

12 MR. FOFE: (Interpretation) This photograph represents the
13 sketch. It was drawn by -- do I give his name? By a person who the
14 Prosecution knows. And this sketch was presented to the Prosecutor next
15 to the International Criminal Court in Zume by one of the renowned
16 figures of Zume. This sketch was presented to the Prosecutor in order
17 to show him the different positions of military forces which were
18 surrounding Zume and who were launching attacks against Zume. If we
19 want to use this sketch, it is for our demonstration. You will see in
20 order to establish that during this period, it was impossible for people
21 to leave Zume to go to the place where the witness was living.

22 Just a moment, your Honour. Yes. That's it.

23 And so the Prosecutor of the International Criminal Court was the
24 addressee of this sketch. It was drawn before him, so he must have seen
25 it. This sketch was of such importance that it was kept there in Zume

1 primary school. It was kept there. This blackboard sketch, that was
2 very important.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
4 I'd just like to recall that in an e-mail that was copied to all of the
5 participants, of the 27th of May at 8.32, the case manager of the Defence
6 team of Mathieu Ngudjolo gave precisions with regard to what she called
7 the chain of command of these documents, or, rather, the chain of custody
8 of these documents which we just mentioned a moment ago.

9 So, Prosecutor, we've got four minutes. If you would like to
10 give us your point of view, if you please.

11 MR. GARCIA: (Interpretation) Thank you very much, your Honour.
12 There are three things. First of all, the witness has no link with this
13 document. I can understand that other documents are shown to him, for
14 example, the members of his family that were mentioned, or other exhibits
15 that the witness could concern -- could confirm, but here it concerns a
16 table which has been drawn -- concerns a sketch which has been drawn by a
17 third party. The witness can say nothing in this regard.

18 And I'll just also say to the Defence team that they can't use
19 documentary evidence to counter -- to cross-examine with a view to
20 pleading the case, and this is what I think's being done. I don't think
21 that the witness can do this. And this is perhaps the most important
22 point, is that this was drawn by a third party. The Defence wants to
23 show it to the witness and have it be admitted, but this is a sketch
24 which has an evidentiary value.

25 Now, the Chamber already took a position with regards to Witness

1 250. The same Defence team, I think, well when, they attempted to
2 introduce via victim -- Witness 250 the statement of the parents, the
3 Chamber stated that you could not use articles envisaged in the decision
4 1665 for documentary evidence in order to have with testimonial value to
5 be admitted. This is the case here. They talk about Zumbe and the
6 attack thereon -- or they talk about the position of Zumbe. And with
7 regard to these different regions, this should not be shown to the
8 witness.

9 MR FOFE: (Interpretation) If you would excuse me, in order to
10 close this short session, what we all want to do is to come to the
11 manifestation of the truth. We have a witness here who, at a particular
12 time, was in Zumbe, at least this is what he says, and is said to have
13 experienced the situation there. We are faced with a witness who, it
14 would seem, has difficulties in remembering certain things, certain
15 events, and we think that the use of this sketch, the fact that it's
16 being shown to him, that it could help to remind him of certain memories.

17 Now, I don't think that it is something that is very difficult
18 for him. At least the objectives that we are searching for is to search
19 for the truth, to reveal the truth for every aspect and every issue
20 brought up here before the Chamber.

21 Thank you, Your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
23 Professor Fofe.

24 So we will tell you tomorrow morning where we are. We are now
25 going to adjourn, having thanked, which is what I often do but they know

1 that they are permanent thanks, I would like to thank all those who help
2 us throughout these hearings. There has been no technical incident
3 today, and we are very pleased about that. The hearing is therefore
4 adjourned. We will be back at 9.00 tomorrow morning.

5 The hearing ends at 1.27 p.m.

6 CORRECTION REPORT

7 The following correction has been made to the English transcript:

8 * Page 18, lines 10 to 11

9 "...So it is really not a proof of honesty (as interpreted)."

10 Is corrected by

11 "...That is proof of honesty."

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