

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 Friday, 11 June 2010

10 The hearing starts at 9.05 a.m.

11 (Open session)

12 COURT USHER: All rise. The International Criminal Court is now
13 in session.

14 PRESIDING JUDGE COTTE: (Interpretation) Court is now in
15 session. Please be seated.

16 The accused persons are in the courtroom. We can therefore begin
17 our hearing.

18 The Chamber would like to come back to the request made yesterday
19 by Professor Fofe to use a document which is a photograph of a
20 blackboard, as well as the objections raised by the Prosecutor at the end
21 of the hearing.

22 The Prosecutor raised three points. On the first point, the
23 Chamber notes that this document on which the names of Zumbe, Bogoro,
24 Kasenyi, and then UPC and UPDF are related to the testimony of the
25 witness and the statements that he made. Several documents before this

1 Chamber did not come from the witnesses themselves.

2 On the second point, the Prosecutor is correct. It is not yet
3 time for -- to plead, and Professor Fofe has to take note about that.

4 On the third point, the position taken by the Chamber regarding
5 Witness 250 concerned statements, so there was recourse to testimonial
6 evidence, and this is not the case here, which is documentary evidence.
7 We refer you to transcript 105, pages 33 and 34.

8 The Chamber is of the opinion that this is a relevant document
9 which is related to our case, and the presentation of this document
10 should, and this is conditional, should be of a nature to refresh the
11 witness's memory about the dates or at the very least the periods during
12 which he travelled twice to Zumbe. First of all, the family visit and
13 the trip after he is supposed to have been abducted.

14 And so, Professor Fofe, it is for this purpose that I have
15 defined only that this document can be used, and I will remind you of the
16 point I raised, that is, the document should assist the witness to
17 remember the dates or the periods when he travelled to Zumbe on two
18 occasions. So it is important to clarify this issue. It is only for
19 that purpose that this document must be used. So you should not try to
20 plead by anticipation, and you have to phrase your questions within the
21 limited context that has been defined. And the Chamber will determine
22 subsequently whether that document deserves to be assigned an EVD
23 reference number. It is not yet that time now.

24 And so, security officers, we are going to ask you to escort the
25 two accused persons out of the courtroom briefly. The witness will be

1 brought in, and then they will return immediately.

2 (The accused withdrew)

3 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, let us
4 go now into closed session so as to bring in the witness, and then we
5 will revert to open session.

6 (Closed session at 9.10 a.m.)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Open session at 9.11 a.m.)

20 COURT OFFICER: (Interpretation) We are in open session,
21 Mr. President.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
23 Court Officer.

24 Good morning, Witness.

25 THE WITNESS: (Interpretation) Good morning.

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

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1 PRESIDING JUDGE COTTE: (Interpretation) Here we are once again
2 for a hearing that will last up to 1.30 p.m. It will be broken into two
3 sessions. If at any one point you feel tired, please inform us as I have
4 been telling you every day. For the time being, it is Professor Fofe, on
5 behalf of the Mathieu Ngudjolo Defence, who is going to continue with his
6 cross-examination.

7 Professor Fofe.

8 MR. FOFE: (Interpretation) Thank you, Mr. President, your
9 Honours. Good morning.

10 Questioned by Mr. Fofe: (Continued)

11 Q. (Interpretation) Good morning, Witness.

12 A. Good morning.

13 Q. Mr. Witness, we are going to continue with our cross-examination,
14 and let me explain to you that we will be looking into the account that
15 you gave us about your experiences, beginning with what happened in your
16 village, which we are not going to mention in open session. We will then
17 follow your itinerary to Zumbe and from Zumbe to Bogoro. So we will be
18 discussing the story of your experiences. And with the leave of the
19 Presiding Judge, I would like to ask the Court Officer to show you a
20 certain number of photographs. Please look at those photographs, and
21 then you will tell us whether you recognise those places or not.

22 MR. FOFE: (Interpretation) With your leave, Mr. President, I
23 would like document number DRC-D03-001-0335 (as interpreted) to be shown
24 to the witness. In order to be extremely careful, we should begin by
25 considering this document as confidential.

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1 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
2 project that first document on our screens, and you will tell us what to
3 do in order to view the document.

4 COURT OFFICER: (Interpretation) In order to see that document,
5 please press on "PC 1" next to your computers.

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

8 MR. FOFE: (Interpretation) Mr. President, we have a hard
9 copy -- or, rather, hard copies of that photograph in order to progress
10 or to advance more quickly.

11 PRESIDING JUDGE COTTE: (Interpretation) I do actually have a
12 copy.

13 MR. FOFE: (Interpretation) We should give a copy to the
14 witness.

15 PRESIDING JUDGE COTTE: (Interpretation) Yes. Let us begin by
16 giving a copy to the witness so that he can familiarise himself with the
17 photograph, whether on the screen or with the hard copy.

18 The accused persons, can you see the photograph on your screens?
19 Very well. That is perfect.

20 MR. FOFE: (Interpretation) Thank you very much, Court Usher.

21 Q. Mr. Witness, please look at this photograph carefully. Do you
22 know this place?

23 A. I have no idea.

24 Q. Thank you.

25 MR. FOFE: (Interpretation) With the leave of the

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1 Presiding Judge, Court Officer, let us go to the next photograph, which
2 ends with 0336. I also have hard copies. And just to be careful, this
3 is a confidential document.

4 Q. Mr. Witness, please look at that photograph. Do you know that
5 location?

6 PRESIDING JUDGE COTTE: (Interpretation) Witness, does that
7 photograph ring a bell? You have to answer Professor Fofe's question.

8 THE WITNESS: (Interpretation) Yes.

9 MR. FOFE: (Interpretation)

10 Q. Thank you, Mr. Witness. Where is this place?

11 A. (Expunged)

12 MR. FOFE: (Interpretation) Thank you very much. Still with the
13 leave of the Presiding Judge, Court Officer, let us look at the document
14 ending with 0338. I also have hard copies of that photograph.

15 Q. Mr. Witness, you have already looked at that photograph. Please
16 tell us whether you recognise that place.

17 A. I can see (Expunged) on this photograph.

18 Q. Yes, indeed. Thank you, Mr. Witness.

19 MR. GARCIA: (Interpretation) With your leave, Mr. President,
20 I'm sorry to interrupt my learned colleague Professor Fofe, but given the
21 nature of the questions, out of caution we should go into private
22 session.

23 PRESIDING JUDGE COTTE: (Interpretation) The next photographs
24 that you're going to show, in relation to those, is it possible to
25 paraphrase, such as "(Expunged)" or should we go into private

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1 session?

2 MR. FOFE: (Interpretation) Just a moment, your Honour.

3 (Defence counsel confer)

4 MR. FOFE: (Interpretation) Your Honour, I think we can stay in
5 open session, because we believe there is no risk.

6 PRESIDING JUDGE COTTE: (Interpretation) Very well. Let us all
7 be alert. Thank you and, Professor Fofe, please proceed.

8 MR. FOFE: (Interpretation) Thank you, Mr. President. Just to
9 enlighten the Bench, the parties and participants, I would like the usher
10 to assist us once again. Mr. President, these are the same photographs
11 but with the legends, and now we would like you to see them with those
12 legends. That is the way we saw them, the way we received them.

13 The witness quite correctly identified photographs 336 and 338.
14 He had difficulties identifying 335.

15 PRESIDING JUDGE COTTE: (Interpretation) He even said, "I had no
16 idea."

17 MR. FOFE: (Interpretation) That is understandable, because it
18 is not easy. So I will suggest to the witness that this photograph
19 number 335, it is the entrance into the place that follows.

20 Q. I think this is a fair suggestion that I'm making to you,
21 Witness. It is understandable because it is not easy to identify this
22 place, but I'm putting it to you that it is the entrance into location
23 336, as indicated in the legend. Do you agree with me?

24 A. I do not remember.

25 Q. Very well. That is not really a problem. We will continue.

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1 Mr. Witness, keeping in mind the necessity to protect you, I
2 would like to refer you to photograph number 338 which you correctly
3 identified. Opposite this location there was the camp of the Ugandan
4 soldiers; that is, opposite this location. Isn't that correct?

5 A. No.

6 Q. Very well.

7 MR. FOFE: (Interpretation) With the leave of the
8 Presiding Judge, I would like to ask the Court Officer to show the
9 witness the photograph ending with 0337.

10 PRESIDING JUDGE COTTE: (Interpretation) Court Usher, you will
11 be asked to assist us once again.

12 MR. FOFE: (Interpretation) Yes, Mr. President.

13 COURT OFFICER: (Interpretation) Is this photograph also
14 confidential, Professor Fofe?

15 MR. FOFE: (Interpretation) I believe this can be a public
16 document, but let us keep it confidential for the time being.

17 Q. Mr. Witness, have you looked at that photograph? Please take
18 your time to look at it and tell us whether you are able to recognise
19 that place.

20 A. I do not remember what this photograph represents.

21 Q. Yes, indeed. I know it's not easy.

22 We will now move on to the next photograph, which ends with the
23 figures 0334 -- rather, 344.

24 MR. FOFE: (Interpretation) Court Usher, could you please assist
25 us. This is also a confidential document.

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1 Q. Mr. Witness, study this photograph very carefully, and you tell
2 us whether it rings a bell. You tell us whether you recognise the place
3 in the photograph.

4 A. I do not remember this place.

5 Q. Yes.

6 MR. FOFE: (Interpretation) I think we will need the Usher's
7 assistance once more.

8 I have just handed over to the Usher, for the benefit of the
9 Bench, the parties, and the various participants, the photographs which I
10 have just shown to the witness, photographs that have certain captions,
11 and I would like to suggest to the witness -- I would like to make a
12 suggestion to the witness.

13 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, before
14 you take the floor, try to study the documents, and then you can stand up
15 and say what you have to say.

16 MR. GARCIA: (Interpretation) With your permission, before any
17 document is given to the witness, I object to the fact that there are
18 captions on these photographs. The first document that we were given
19 were photographs without any legends. Now, these ones have legends. I
20 don't know where the legends come from. I don't know whether they come
21 from Professor Fofe's team. As far as I'm concerned, photographs should
22 be shown to the witness without any captions or legends. If he wishes to
23 suggest anything to the witness, he's free to do so. The photograph is
24 not supposed to be captioned, because this could induce the witness to
25 answer in one way or the other.

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1 MR. FOFE: (Interpretation) I fully understand the Prosecutor,
2 but if I were to -- if I am proceeding in that manner, it is in order to
3 ensure that the witness understands. It is for reasons of clarity. I
4 could make a suggestion to him without providing him with a photograph
5 that is not captioned. The photograph that has a caption is supposed to
6 just edify him. Well, if you are not in argument, we could proceed
7 otherwise.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Fofe, these legends
9 come from the Defence team of Mr. Ngudjolo?

10 MR. FOFE: (Interpretation) Yes, indeed. It is our resource
11 person who wrote out these legends.

12 PRESIDING JUDGE COTTE: (Interpretation) Very well. The ideal
13 thing would have been to write the legends as a question and not write
14 them as statements. Of course, you can provide a photograph which has --
15 which is not captioned, and then you ask the witness a question. You
16 could even make a suggestion to the witness to the effect of trying to
17 know whether it represents a particular location.

18 MR. FOFE: (Interpretation) I agree, your Honour, but I would
19 like to inform the Bench that when we request for EVD numbers to be given
20 to these documents, we would not like to have EVD numbers for photographs
21 that are captioned.

22 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed.

23 MR. FOFE: (Interpretation) If you think that I can ask him
24 questions or make suggestions using photographs that are not captioned,
25 that's fine with me.

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1 PRESIDING JUDGE COTTE: (Interpretation) Given the position of
2 the Prosecutor, I think it's preferable to do your cross-examination with
3 photographs that are not captioned. This may take more time. You simply
4 ask the witness what each photograph represents, and you could also ask
5 whether it tallies with certain facts.

6 Thank you, Mr. Prosecutor, thank you, Mr. Fofe, for showing
7 understanding. We are going to proceed therefore with the photographs
8 that have been tendered.

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

10 PRESIDING JUDGE COTTE: (Interpretation) I think that
11 photographs which are not captioned should therefore be handed over to
12 the witness, the photographs 337, 338 which are not captioned. That
13 shouldn't pose a problem.

14 MR. FOFE: (Interpretation)

15 Q. Mr. Witness, I am going to put a number of questions to you,
16 about two of them. I will make a suggestion. Could you please take the
17 photograph which ends with the figures 0337.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
19 Court Officer -- or thank you, Court Usher. I think it would be
20 appropriate to help the witness to locate the photograph amongst the
21 photographs he has in front of him.

22 Very well. The discussion is on photograph number 337.

23 MR. FOFE: (Interpretation)

24 Q. Mr. Witness, I would like to suggest to you that this photograph,
25 which is difficult to recognise, I admit, shows the place where the

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1 UPC -- or, rather, the UPDF camp was located. I'm talking about the camp
2 of the Ugandan soldiers. And what we are looking at here are the
3 trenches for snipers, snipers' holes, and this is the place where the
4 camp of the Ugandan soldiers was located. Do you agree with that
5 suggestion?

6 A. No.

7 Q. Second suggestion with regard to the same photograph. I would
8 like to suggest to you (Expunged). Do
9 you agree with that suggestion?

10 A. Where?

11 Q. Let me repeat. You have just said that you do not agree that
12 this photograph represents the place where the camp of the Ugandan
13 soldiers was located. Well, I want to make another suggestion to you,
14 and I am saying that this area on which the camp of the Ugandan soldiers
15 was located is found opposite -- well, it's difficult for me. We are in
16 open session.

17 PRESIDING JUDGE COTTE: (Interpretation) I think if you just
18 talk of the "ferme" or the farm, that will be fine.

19 MR. FOFE: (Interpretation) Yes, indeed.

20 Q. Opposite the "ferme." Would you agree with that suggestion,
21 Mr. Witness?

22 A. I do not remember.

23 Q. We'll move on to the next photograph, which ends with the figures
24 0344.

25 MR. FOFE: (Interpretation) Well, for the benefit of the

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1 Chamber, the above photograph bearing the figure 0334 will not be used.
2 We are going to use the photograph which is below. That is 0344.

3 Q. Mr. Witness, I wish to suggest to you once more that this area
4 shows the place where the camp of the Ugandan soldiers was located
5 opposite the "ferme," in French, or the farm, in English. Do you agree
6 with that suggestion?

7 A. I do not agree with you, because I do not know the place which is
8 shown on the photograph.

9 Q. Thank you, Mr. Witness. We are going to put these photographs
10 aside for a while and move on.

11 Mr. Witness, could you describe to the Chamber the layout of the
12 land, starting from your village in Zumbe -- or to put it in simpler
13 terms it, to go to Zumbe do you have to climb or descend?

14 A. There are various roads leading to the place. There are certain
15 areas, roads, which enable you to go down and cross a stream, and then
16 you carry on. You cross a road, and you cross another stream, and then
17 you start climbing again.

18 Q. Very well. To put it in simple terms, if you have to go to
19 Zumbe, do you climb or you descend?

20 A. You climb.

21 Q. Could you tell us the approximate distance between your village
22 and Zumbe?

23 A. I cannot estimate the distance for you.

24 Q. You informed us that when Boba Boba came to take you away, you
25 went to Zumbe on foot, and it took you one hour to get there on foot.

1 The question I have for you is the following: Is it possible to ascend
2 to Zumbe from your village within a period of one hour, that is, going on
3 foot?

4 A. As I told you previously, I said it took one hour, and the
5 persons who came to take us away asked us to walk briskly.

6 Q. Well, just to ensure that we understand, to ensure that the Bench
7 understands, Mr. Witness, tell us, through what place did you go through
8 in order to get to Zumbe? What road did you take to go to Zumbe?

9 A. There are many roads in that area.

10 Q. Did you use the motorable road at that leads to Zumbe?

11 A. No.

12 Q. Tell us, therefore, in very simple terms what road did you take?
13 You just said that there are several roads. So what road did you and
14 Boba Boba take?

15 A. We went through the bush, and sometimes we would use footpaths.

16 Q. Mr. Witness, I would like to suggest to you that to go from your
17 village to Zumbe the distance is 15 kilometres by road, and if you are
18 taking footpaths, you're going to have a distance of at least
19 23 kilometres. Do you agree?

20 A. Could you please repeat your question.

21 Q. Yes. A short while ago you said you were not able to evaluate
22 the distance between your village and Zumbe. Well, I am suggesting to
23 you that the distance between your village and Zumbe, using the motorable
24 road, is 15 kilometres, and if you have to use the footpaths, that
25 distance between at least 23 kilometres. Do you agree with that

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1 suggestion?

2 A. I do not understand your question. You talked about motorable
3 roads, and you said that the motorable -- well, going by motorable road
4 the distance is 15 kilometres. I really didn't understand your question.

5 Q. Well, that's no problem. We will move on. I would like to
6 suggest to you that even if, as you said, you were forced to walk at a
7 brisk pace, those who have done military service know that if you are
8 marching like soldiers, you were marching like soldiers, you would cover
9 about 5 kilometres per hour, and if you are marching or walking like
10 commandos, you are going to be doing 8 kilometres per hour. So if you'd
11 used the footpaths as you said, you should have taken at least four
12 hours. In any case, it should have taken you at least four hours.

13 MR. GARCIA: (Interpretation) Your Honour.

14 PRESIDING JUDGE COTTE: (Interpretation) Yes.

15 MR. GARCIA: (Interpretation) I do not support the fact that
16 questions are being put to the witness by Mr. Fofe in this manner.

17 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, I would
18 like to ask you to strive to ask questions which are not leading.

19 MR. FOFE: (Interpretation) Thank you. I think we can move on.

20 THE INTERPRETER: The interpreters would like to inform the
21 Chamber that there are overlapping speakers, and it is making
22 interpretation difficult for us.

23 MR. FOFE: (Interpretation)

24 Q. Mr. Witness, you said you used a footpath. Before we move on,
25 could you please tell us about the footpath you took. Is that footpath

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1 located near the motorable road that leads to Zumbe?

2 A. We crossed the road leading to Bogoro. We -- we left aside
3 this -- this road leading to Zumbe.

4 Q. Thank you.

5 MR. FOFE: (Interpretation) With the leave of the
6 Presiding Judge, could the Court Officer show the witness the document
7 which ends with the figures 0342, and I think that this is a public
8 document.

9 Could the Court Usher distribute the hand copies thereof.

10 Q. Mr. Witness, could you please study that photograph and tell us
11 whether or not you recognise this area.

12 A. This is the road lead to go Bogoro, and this is the place where
13 the road crosses the road leading to Zumbe.

14 Q. Thank you very much, Mr. Witness. Yes, indeed.

15 You have described this area well, Mr. Witness. Consequently,
16 I'm going to put to you the following question: Do you know that at the
17 time the UPC chased Lomondo out of Bunia and occupied Bunia and its
18 environs, including your village, do you know that there were UPC
19 soldiers who were stationed on this particular spot? This place where
20 the roads cross, the one going to Bogoro and the other road going to
21 Zumbe. Do you know?

22 A. No.

23 Q. Following the itinerary that you took with Boba Boba -- or the
24 route that you took with Boba Boba, were you not concerned by soldiers
25 who were posted there?

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1 A. Are you speaking about the soldiers, soldiers who were where?

2 Q. Professor Fofe, I will ask my question once again. When you went
3 to Zumbe with Boba Boba and the -- his soldiers, were you not concerned
4 or bothered or disturbed by soldiers from the UPC who were stationed in
5 that area?

6 A. At that time, we had not seen UPC soldiers.

7 Q. So at that time, could you now remember when was it, because we
8 haven't had any precision in that regard. When was it? When did you go
9 through there with Boba Boba and his soldiers?

10 A. We didn't take this road.

11 Q. Yes. Exactly, because you just said that at that time there
12 weren't UPC soldiers there in that place. So I'm asking you to help us
13 and help the Judges understand. When you state "at that time," what time
14 are you talking about? When did you and Boba Boba go through there?

15 MR. GARCIA: (Interpretation) Your Honour. Quite simply, so it
16 be clear, I had understood that the witness is saying in his last answer,
17 22, that they didn't take that road. So I didn't want there to be
18 confusion afterwards. Perhaps we could clarify that point before
19 addressing the question. We could address that, and then Professor Fofe
20 can ask the question he wished to ask.

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

22 Certainly, Professor Fofe, you had certain difficulties in
23 obtaining from the witness precisions with regards to the route that was
24 taken in order to go from the farm to Zumbe after the capture. The
25 witness recognised the crossroads that is on the photograph, but he said

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1 he didn't take that road. So please continue your cross-examination with
2 regards to the issue of whether soldiers were present on the day that he
3 said to have passed, and this will lead to a blockage, I think, if you
4 continue in this line. Perhaps you have to re-orientate your questioning
5 somewhat.

6 MR. FOFE: (Interpretation) Your Honour, I have followed the
7 witness well, and I think that when I asked him if he had not been
8 bothered by UPC soldiers, the witness had said "at that time," "at that
9 time" --

10 PRESIDING JUDGE COTTE: (Interpretation) We didn't find -- we
11 didn't see UPC soldiers.

12 MR. FOFE: (Interpretation) I would like him to be precise. At
13 that time. What does he mean by "at that time," because until now we
14 haven't had that degree of precision, and it's essential. "At that
15 time." When was that? That is my question.

16 PRESIDING JUDGE COTTE: (Interpretation) Yes, well, the Chamber
17 does not underestimate the importance of the issue formulated as such,
18 "at that time." But there can't be any misunderstandings or ambiguity
19 for the witness with regard to the point of whether he took this road or
20 not, because he said he didn't take it. But "at that time," yes, if you
21 continue along that vein, there is no problem.

22 MR. FOFE: (Interpretation) Thank you, Your Honour.

23 Q. Witness, you can see the difficulties that we have. Please try
24 and help us. When did Boba Boba come to take you from your village when
25 you went to Zumbe? When did this happen?

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1 A. That wasn't your previous question, Counsel.

2 Q. It's nevertheless well formulated. Please answer this precise
3 question.

4 A. I do not understand the question. Before this, you asked me at
5 what time the UPC soldiers were at that place, and now you are asking me
6 when Commander Boba Boba came and took me away. I therefore do not
7 understand your question and cannot give you an answer.

8 Q. (No interpretation)

9 A. I have forgotten.

10 Q. Witness, do you stand by your account that you were taken by
11 Boba Boba, that you were taken to the Zumbe camp - and I put "camp" there
12 in quotes, because that was the term you used - that you received
13 military training there and that you took part in the Bogoro attack? Do
14 you continue to maintain this?

15 I note a very long silence. I've had no answer from the witness
16 with regard to this question.

17 PRESIDING JUDGE COTTE: (Interpretation) Witness, you have to
18 reply. You have to give an answer. In reality, Professor Fofe is just
19 asking you if you confirm or do not confirm the answer which you gave to
20 the question of the Prosecutor during his examination-in-chief, if you
21 confirm it or if you confirm the account that you've given before the
22 investigators, before this Chamber, on several occasions. This is a
23 confirmation. You can say "yes," or you can say "no." It is a request
24 for a confirmation to which you can answer "yes" or "no."

25 THE WITNESS: (Interpretation) Yes.

1 PRESIDING JUDGE COTTE: (Interpretation) Right. You confirm --
2 you have confirmed that.

3 Now with regards these clarifications that you want to obtain,
4 that we all want to obtain, indeed, Professor Fofe, perhaps it would be
5 possible to ask the witness not for dates, which obviously he has a few
6 difficulties in finding in his memory, but you have tried, but perhaps
7 you could, rather, try periods of time.

8 Witness, or more precisely how much time went by between the
9 moment that you returned to the -- the time when you returned to the farm
10 coming from Zumbe with your family, how much time lapsed from when you
11 left Zumbe to go back to the farm and from when you were captured by
12 Boba Boba? It's difficult for you to remember dates. We can understand
13 that, but was it a period of a few days, weeks, several weeks, months, a
14 year, two years? We would like to have an estimate as regards to this
15 time.

16 THE WITNESS: (Interpretation) I have forgotten.

17 PRESIDING JUDGE COTTE: (Interpretation) Very well.
18 Professor Fofe, please continue.

19 MR. FOFE: (Interpretation) Thank you, Your Honour.

20 Q. Witness, we are therefore will going to continue. I would like
21 to ask you for clarifications. Firstly with regards to the attack on
22 Bogoro which you speak about, when exactly did this take place?

23 There is once again a long period of silence.

24 A. It was just before midday.

25 PRESIDING JUDGE COTTE: (Interpretation) Could the

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1 interpretation booth tell us exactly what the witness said again. On the
2 French transcript it says it was in "avant-midi," in French, "the morning
3 period."

4 THE INTERPRETER: This is what the witness said, your Honour. He
5 said it was in the morning period, prior to midday.

6 PRESIDING JUDGE COTTE: (Interpretation) This isn't an unusual
7 way of expressing it, but we just wanted it to be repeated.

8 JUDGE DIARRA: (Interpretation) Your Honour, could somebody give
9 us a precision. "Prior to midday," is this something that has a specific
10 meaning, or does it mean before midday? That doesn't help me. That's a
11 long period. Let's face it.

12 MR. FOFE: (Interpretation) With all respects, I would have to
13 admit that it's not what I wanted to have. I'm going to have to make my
14 question more precise so that the answer will be more precise.

15 Q. Witness, in which year did the attack on Bogoro take place?
16 Which year? Which month? What day of the month? What day? What month?
17 Which year?

18 A. I have forgotten.

19 PRESIDING JUDGE COTTE: (Interpretation) Witness, it's difficult
20 to remember dates several years after the facts have occurred, but there
21 are dates or months or years that are important in a life, and
22 particularly in your life. So please make an effort, a real effort.
23 Perhaps you've forgotten. You might forget that, that's an answer you've
24 given, but please try to remember what the date is of that attack on
25 Bogoro, the year, the month, the day. Perhaps you can't remember that

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1 precisely, but please make an effort. If you really do not remember,
2 then please tell us again that you have forgotten, but please make an
3 effort to remember.

4 THE WITNESS: (Interpretation) I don't remember.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
6 Professor Fofe, you can continue.

7 MR. FOFE: (Interpretation) Thank you, Your Honour.

8 There was an exchange there of Lingala, which we just heard on
9 the French channel.

10 Q. Witness, we are now going to go to Zumbe camp. We're also going
11 to talk about your training. Could you tell us in which precise place
12 the camp was where you went in Zumbe village.

13 This is once again a long silence from the witness.

14 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

15 MR. GARCIA: (Interpretation) If you would allow me, your
16 Honour. I don't want to interrupt my colleague, but I think that we
17 thought we would continue until 11.00. Perhaps it would be appropriate,
18 given the circumstances, given what I have seen, to give the witness some
19 time to rest, reflect.

20 MR. FOFE: (Interpretation) Excuse me, your Honour. Your
21 Honour, if you would allow me.

22 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead.

23 MR. FOFE: (Interpretation) I don't know if the Prosecutor is
24 finished.

25 MR. GARCIA: (Interpretation) If you would just allow me. I

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1 just had one last thing to say, what is -- concerns me is the quality of
2 the testimony. I don't want it to be affected by possible fatigue. I
3 don't want the witness to affected in this way.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Mr. Prosecutor, for that. I'm sorry, I didn't respect the five-second
6 rule. I have to respect as everybody else does for reasons which have
7 nothing to do with the witness.

8 We are going to have a ten-minute break. So it's now 10.25. We
9 will be back at -- shall we 10.35, to really be back here at 10.40.

10 Witness, you are going to leave the courtroom for ten minutes.
11 The accused are going to go out before you.

12 Court Officer, please can you take us into closed session so the
13 witness can leave the courtroom.

14 (The accused withdrew)

15 PRESIDING JUDGE COTTE: (Interpretation) Usher, you're going to
16 accompany him.

17 (Closed session at 10.25 a.m.)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 10 .26 a.m.)

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

1 Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
3 Court Officer. Let's do everything we can to be back in our respective
4 places at 20 to 11.00 so we do have a real 20-minute portion of time
5 before our break at 11.00. This session is now suspended.

6 Break taken at 10.27 a.m.

7 On resuming at 10.38 a.m.

8 (Open session)

9 COURT USHER: All rise.

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

12 It is 10.40. Thank you for being punctual.

13 Prosecutor, you wish to address the Court? Please go ahead.

14 MR. GARCIA: (Interpretation) Very briefly, Mr. President. I'm
15 seizing this opportunity, because just before the short break, I realised
16 that the witness seemed to be tired, and what I've also realised is that
17 when he is tired, he doesn't answer the questions put to him. So I would
18 not wish this type of silence under certain circumstances be wrongly
19 interpreted to the effect that the witness did not want to answer the
20 questions.

21 I do not know whether the Chamber had intended to hold another
22 uninterrupted session of two hours this afternoon, but VWU has notified
23 us that the capacity to concentrate of this witness is not very strong.
24 We have to ensure that the testimony is not affected, and I would like
25 that we break up the session for this afternoon into two or submit -- or

1 respectfully submitted.

2 MR. FOFÉ: (Interpretation) Mr. President.

3 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead,
4 Mr. Fofé.

5 MR. FOFÉ: (Interpretation) Your Honours, the Defence does not
6 share that position of the Prosecutor. I do not know whether the
7 Court Officer computed the number of hours of the direct evidence of this
8 witness. The direct evidence of the witness lasted for a long time, and
9 during that entire period the witness did not adopt such an attitude.

10 It is important for us to be honest, so to speak. For our part,
11 we believe that this witness does not want to tell the truth. The
12 witness is not tired. The witness is embarrassed by the questions
13 seeking clarification that are put to him and which are supposed to
14 enlighten the Honourable Judges.

15 All the parties and participants in this case, Mr. President,
16 your Honours, should have as their main concern to have clarification.
17 So the witness is not at all -- or, rather, the Defence is not at all
18 agreed with the Prosecutor. The witness is not tired. And we have
19 already said before that the measures taken for the benefit of this
20 witness were justified by the fact that he was supposed to be a
21 vulnerable witness, but we believe that those measures have to be
22 reconsidered because the witness is not vulnerable. The witness is not
23 tired at all. He's simply refusing to tell the truth.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Professor Fofé.

1 Mr. Hooper, please.

2 MR. HOOPER: If this is a time for subjective opinion, as the
3 Prosecutor appear to feel that the Court would receive the benefit of its
4 own instructions, which I don't feel is appropriate in this kind of
5 situation at all, may I just comment that from our viewpoint here, as far
6 as we can tell, I'm trying to be as objective as I can, I've not seen a
7 tired man sitting there this morning. I've seen perhaps from time to
8 time a sullen and resentful person, but that, of course, is not -- is not
9 to do with tiredness.

10 What I have heard, though, this morning is he's being
11 cross-examined by Professor Fofe, who has done it with as great a charm
12 and politeness as it's possible to question a witness. This witness has
13 not had an abrasive and difficult time this morning.

14 I regret that the Prosecution appear to be taking these postures
15 in the way that they do. I submit it's not appropriate. You, the Bench,
16 are clearly well positioned to assess the position of this witness, and
17 we all know that you've had the benefit, rather than we have, of the
18 various reports that have been received.

19 Can I take this opportunity also to suggest this, that where
20 there are psychiatric or psychological reports made available to the
21 Bench, would it be possible for us, the Defence, to have access to them,
22 albeit perhaps in a redacted form? I say that, because we're concerned
23 that some of these reports could possibly adversely affect the view of
24 you, the Judges, to the prejudice of the accused. And so it would be
25 appropriate in those circumstances that if the VWU are to communicate

1 information to you as to their view of a particular witness, that that
2 information is shared with the Defence so that we can or cannot react to
3 it.

4 I don't ask that now in respect of the witness, but I raise it
5 now as a concern that we were discussing amongst ourselves, if I can say
6 so, yesterday, and we felt on reflection that it was appropriate to make
7 that application, and I do take that opportunity now. Thank you.

8 MR. GILISSEN: (Interpretation) Mr. President, please.

9 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr. Gilissen.

10 MR. GILISSEN: (Interpretation) Thank you. I'm waiting for that
11 noise -- I do not think that it is time to express subjective
12 appreciation, Mr. President, but I do not hide the fact that I share the
13 beginning of the analysis of my learned colleague. I was absent for a
14 week and a few days, and I think it would be honest to say that this is
15 not precisely the same witness that I left. Mr. Fofe and Mr. Hooper are
16 correct. We seem to have a different attitude here. Does that mean that
17 the witness who was interviewed by VWU on the 11th and 12th of May one
18 month ago and since then was waiting to testify in a country that is not
19 his own, in a culture that is not his own, isn't it possible that he
20 finds himself in a situation -- well, I'm not a psychiatrist, and I'm not
21 a psychologist, just like my friends. I believe we cannot analyse the
22 issue of tiredness or something else in a situation that is problematic.

23 Is it because the witness does not want to tell the truth because
24 he might be contradicting himself? Is it because he is too tired and --
25 maybe I should say we do not have the authority to really evaluate. What

1 is clear is that the witness is no longer in a position to collaborate
2 effectively, which is what we hope. It would be a good thing to know the
3 cause rather than jumping to conclusions.

4 We have a very specific experience. Mr. Luvengika and myself are
5 looking at the witness, because we can see him directly, and we are also
6 looking at him on the screen, and he is a different person. I think it
7 would be dangerous for us to speculate even in good faith the reason why
8 he is so.

9 Your Honours, you will have the time to make your determination,
10 and it would be a good thing to really analyse the situation rather than
11 deciding that there is no problem or actually characterizing the problem.

12 I am wondering whether it would not be useful to call in a
13 psychologist. I share the opinion of the Defence that we should have
14 transparent information for all of us to try to see what is happening,
15 because there is definitely a problem.

16 Thank you very much, your Honours, for listening to me.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
18 Mr. Gilissen. It was important to listen to the points of view of all
19 the parties and participants, even if we are coming back to a discussion
20 that we had yesterday or before yesterday, but know that the Chamber is
21 refraining or trying to refrain from any speculation regarding the state
22 of the witness, because we are not qualified to do that. We are trying
23 to limit ourselves to objective information.

24 The Presiding Judge, which is -- that is myself, I try to observe
25 the witness whenever it is possible. My colleague Judges here are

1 observing the image of the witness on the screen, so we are very alert to
2 changes in his attitude. We may not be able to analyse it, but we are
3 alert to that, and to us the witness is not a machine.

4 The VWU takes care of the witness after -- or, rather, during
5 every break and after every adjournment. The unit is aware that the
6 Chamber is always open to any comments relating to the state of health or
7 the psychological state of the witness, because ever since the trial
8 started, we have had witnesses who were not fully fit because of
9 individual health circumstances.

10 So far we have not received any message from the VWU drawing our
11 attention to any possible psychological problems, because in the area of
12 psychology, every word is very important. So there has been no report of
13 a situation of distress.

14 It is true that the attitude of the witness has changed, but
15 regarding his vulnerability, Professor Fofe, I believe that the measures
16 that were adopted and which we consider every morning, you have wondered
17 whether those measures were necessary, but we think they are to allow the
18 witness to speak freely regarding whether he's tired or not.

19 As I said a day or two days ago, the way the questions are being
20 put is slow. It is not a barrage of questions. The Chamber accepted to
21 be patient, to allow the witness to take his time and reflect before
22 answering the questions. So it does not seem to us that this is a case
23 of physical tiredness, but mental fatigue linked to the type of questions
24 being put to the witness which he has difficulty answering is probably an
25 issue here, but the pace of the questions is not such that the witness is

1 being placed in a situation of great difficulty.

2 Now, regarding the request to have access to the psychological
3 reports submitted by the unit before the appearance of the witness in the
4 courtroom, the Chamber would like to -- to point out that this is simply
5 information provided to us to enable us take the appropriate protection
6 measures. To our knowledge, the unit did not wish to have this report
7 about the -- on the psychological -- the psychological report on this
8 witness to be made accessible to all the other parties and participants,
9 but the information given by the unit does not dictate anything to the
10 Chamber.

11 Now, regarding the cross-examination of this witness, we do not
12 feel that Professor Fofe is going to go on for hours and hours. He, of
13 course, is defending the interests of his client. He's trying not to
14 repeat the questions that Mr. Hooper has already put to the witness.
15 He's going to focus on the defence of his client, Mathieu Ngudjolo. The
16 Prosecutor will have his re-examination.

17 The Chamber has taken into consideration the comments that have
18 been made, and we are going to take the initiative to contact the unit to
19 try to see whether there is a sort of notification that they wish to give
20 us or not, but so far they have not told us anything, but we are open to
21 any suggestions that they wish to make to facilitate the testimony of
22 this witness. So after the break, we are going to resume at 11.30, and
23 we are going to split the session, because we wish to have the most
24 effective testimony possible. We will sit from 11.30 to 12.20. We will
25 break for ten minutes and then have the second part of the session. We

1 hope that the witness will speak more, give better answers. Maybe not
2 with regard to the meaning but regard to the intrinsic quality. We hope
3 that the reflection time will not also be very long. So it is very
4 difficult to distinguish between what is simply an attitude and the time
5 needed for reflection before answering a question.

6 Thank you to all the parties, because we are dealing here with a
7 complicated witness. We are very aware of that. The Prosecutor and the
8 Defence all have their interest, but we would like to have a fair -- fair
9 proceedings.

10 Professor Fofe, do you have any idea of the approximate time that
11 you will need.

12 MR. FOFE: (Interpretation) Mr. President, that is an issue that
13 concerns us. We will discuss it during the break and give you an answer
14 upon resumption.

15 PRESIDING JUDGE COTTE: (Interpretation) Yes. You have
16 understood, because this issue does not only affect this witness but our
17 schedule for next week.

18 Now we are going to take our break, because it is pointless to
19 bring in the witness now. We will reconvene at 11.30.

20 Recess taken at 10.58 a.m.

21 On resuming at 11.35 a.m.

22 (Open session)

23 COURT USHER: All rise.

24 PRESIDING JUDGE COTTE: (Interpretation) The Court is in
25 session. Please be seated.

1 We are not going to start another debate on the topic which we
2 discussed on before the break. Know that the Presiding Judge discussed
3 during the break with the representatives of the VWU. Our witness is
4 specially monitored by the unit after each session, after each hearing.
5 The proceedings are being viewed in the various offices by the unit. Our
6 witness is fine. Our witness is still here because the hearing is longer
7 than expected. He has been in The Hague for the past few weeks, and we
8 have had the same phenomenon with other witnesses. He did not expect his
9 testimony to last for so long. Apparently, it depends on him as well to
10 speed up the proceedings. We are going to remind him of that fact, and I
11 think that the representatives of the unit who are psychologically
12 qualified to do so are going to remind him.

13 As far as we are concerned, we have to, that is without
14 undermining the interests of Mr. Ngudjolo's Defence team or the
15 re-examination of the Prosecution, we have to put an end to this
16 discussion.

17 The Chamber is requesting you to ensure that the testimony of
18 this witness is concluded on Monday, in the afternoon. The Chamber would
19 not like to hear this witness again on Tuesday morning. We have to make
20 progress here, and we think that if we carry on in this manner, if we
21 prolong things, it could affect the quality of the testimony which is
22 given before this Chamber.

23 This witness has been here for long in a country which is not his
24 own, and he wishes to return to his home country.

25 MR. LUVENGIKA: (Interpretation) Your Honour.

1 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr. Luvengika.

2 MR. LUVENGIKA: (Interpretation) Your Honour, with respect to
3 the time we have with this witness and given what you just explained with
4 respect to time management for the evidence of this witness, the Legal
5 Representatives would like to request whether the Bench would allow them
6 to put additional questions to the witness. It's not going to take time.
7 We just seek to get some clarification from the witness. It's not going
8 to take us a long time. It's just additional questions which we will put
9 to the witness for reasons of clarification.

10 PRESIDING JUDGE COTTE: (Interpretation) Mr. Luvengika, of
11 course, you understand that the Legal Representatives take the floor
12 after the Prosecutor and before the Bench takes the floor. So if you
13 take the floor, then you will be giving the Defence the right to
14 re-examine the witness again. If we proceed in that manner, we're not
15 going to gain time. In other words, at the end of the cross-examination,
16 the Prosecution is going to do a re-examination.

17 If you have one or two questions, points of clarification, which
18 can help in the establishment of the truth, fine, we will give you time
19 to put those questions. However, our wish is that on Monday, close of
20 business, the testimony of this witness should be concluded.

21 MR. LUVENGIKA: (Interpretation) Very well, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Could you send the
23 questions you intend to put to this witness to the Bench by close of
24 business today or latest Monday morning.

25 Well, could the accused persons step out of the courtroom so that

1 the witness can come in.

2 (The accused withdrew)

3 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we have
4 to go into closed session.

5 Court Usher, could you please rise and go bring in the witness,
6 please.

7 (Closed session at 11.40 a.m.)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session at 11.41 a.m.)

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

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

21 Mr. Witness, we are meeting again for a period of one hour, 35
22 minutes. The Chamber would like to request you to answer the questions
23 more rapidly than you've been doing so far. The faster you answer the
24 questions, bearing in mind that you still have to be exhaustive in your
25 answers, then the sooner your testimony would end.

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1 Apparently the witness is not wearing his headset.

2 Fine. Can you hear me? I was telling you, Mr. Witness, that you
3 should please answer the questions more rapidly, bearing in mind that
4 your answers still have to remain exhaustive. This will make it possible
5 for us to rapidly conclude your testimony before this court and your
6 presence here in the Netherlands.

7 Professor Fofe, you have the floor once more.

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

9 Q. Mr. Witness, good morning once again.

10 A. Good morning.

11 Q. Mr. Witness, out of an abundance of caution, I would like us to
12 go into private session for about two questions.

13 PRESIDING JUDGE COTTE: (Interpretation) Very well.
14 Court Officer, please.

15 (Private session at 11.43 a.m.)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

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Witness: Witness P-0279 (Resumed) (Private Session)
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10 (Expunged)

11 (Expunged)

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14 (Expunged)

15 (Open session at 11.49 a.m.)

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

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

19 Professor Fofe, you may proceed.

20 MR. FOFE: (Interpretation) Thank you, Your Honour.

21 Q. Mr. Witness, where was Boba Boba's house located? I will stop
22 there since we are in open session. Where was Boba Boba's house located?

23 A. At that point in time, it was located in Ladile.

24 Q. Could you please give us a brief description of Boba Boba's
25 compound. Can you tell us what it looked like? Could you describe Boba

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1 Boba's compound to us.

2 A. It wasn't really a compound. It was just a house, and close to
3 that house there were other houses belonging to other soldiers.

4 Q. How many wives did Boba Boba have?

5 A. All I know is that he had one wife, (Expunged)
6 (Expunged) but I also heard that he had a wife of Lendu ethnicity.

7 Q. Let us now broach the topic of military training. Mr. Witness,
8 you stated that you underwent military training for a period of about one
9 week. What was your training programme? How was a typical day in
10 training organised?

11 A. What I can tell you is that first of all, in the morning, we had
12 training. After that, those who had to go stand guard duty went to do
13 so.

14 Q. You added that you learned how to load a weapon, how to shoot, as
15 well as various war techniques or combat techniques. What war techniques
16 or combat techniques did you learn?

17 A. That is what I just told you.

18 Q. So what you just told us, the combat techniques?

19 A. What I just told you with respect to the training. Now, what is
20 the difference between training and combat techniques?

21 Q. Mr. Witness, you did say and you repeated that you learned how to
22 load a gun and how to shoot. From what you learnt in training, how is a
23 gun loaded?

24 A. First of all, you take the cartridges and you put them -- you put
25 them into the magazine, and you then take the magazine and you insert it

1 into the gun.

2 Q. You also said that you had an SMG weapon. How much ammunition
3 did you carry personally?

4 A. What ammunition are you talking about? I have not understood
5 your question.

6 Q. Let me make it clearer. How many cartridges, how much
7 ammunition, how many cartridges did you carry on you?

8 A. I know that in each magazine you put 30 or 32 rounds or
9 cartridges.

10 Q. When you went to Bogoro, at what particular point in time were
11 you in contact with the enemy? At what particular point in time?

12 A. It was in the morning.

13 Q. And in what particular location did you start fighting the enemy?

14 A. In Bogoro, the enemy position was located between the Cypress
15 trees in Bogoro, and it was in that location that we started fighting in
16 order to gain access to the town.

17 Q. And what formation did you adopt in order to face the enemy and
18 that place? What I'd like to say is how were you positioned? I think my
19 question is clear. How were you positions in order to face the enemy in
20 that place?

21 A. You would like to know how we were positioned? I haven't
22 understood your question.

23 Q. Exactly. That's exactly what I want to know.

24 A. In order to fight, we were positioned in a straight line to carry
25 out the fighting.

1 Q. You were in this line from which place unto -- until which place?

2 A. I no longer remember.

3 Q. Thank you, Witness.

4 MR. FOFÉ: (Interpretation) Your Honour, your Honours, we have
5 finished. We have finished with this witness.

6 PRESIDING JUDGE COTTE: (Interpretation) You've finished your
7 cross-examination.

8 MR. FOFÉ: (Interpretation) We have finished.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
10 Professor Fofé.

11 Prosecutor.

12 MR. GARCIA: (Interpretation) If you would allow us a few
13 moments, your Honour.

14 PRESIDING JUDGE COTTE: (Interpretation) Of course.
15 (Prosecution counsel confer)

16 MR. FOFÉ: (Interpretation) I'm sorry, your Honour. I just
17 wanted to say that we have evidence, we have photographs that we've used.
18 Perhaps this is the appropriate moment to give them an EVD number.

19 PRESIDING JUDGE COTTE: (Interpretation) Of course. Could you
20 remind us now. There were photographs of places that you presented this
21 morning which had the numbers. Let's find them. 0035, 0036, 0038, 37.
22 All these were presented to the witness this morning, and they either
23 represented places -- it's these photographs that you wanted to give an
24 EVD number to.

25 MR. FOFÉ: (Interpretation) You're right. Also, there was the

1 photograph 342.

2 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Is the
3 Registrar able to attribute an EVD number to these photographs?

4 COURT OFFICER (interpretation): Yes, your Honour. The
5 photograph recorded under DRC-D03-0001-0335 will have the number
6 EVD-D03-00015. And it will be registered, recorded, as confidential.

7 The photograph registered under DRC-D03-0001-0336 will have the
8 EVD number EVD-D03-00016, recorded as confidential.

9 The photograph, the confidential photograph, recorded as
10 DRC-D03-0001-0338 will have the number EVD-D03-00017.

11 The confidential photograph recorded under DRC-D03-0001-0337 will
12 have the number EVD-D03-00018.

13 The photograph, confidential photograph, recorded as
14 DRC-D03-0001-0344 will have the EVD number EVD-D03-00019.

15 The photograph -- public photograph recorded as DRC-D03-0001-0342
16 will have the number EVD-D03-00020.

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

19 Before the Prosecutor takes the floor, Counsel Luvengika, if you
20 have any questions to ask -- Counsel O'Shea, please go ahead.

21 MR. O'SHEA: Your Honours, I'm afraid that I have an objection of
22 principle to this procedure. In -- in your Honours' decision 1665, which
23 is the decision which we rely upon and by which the legitimate
24 expectations of the accused are created with respect to the order of the
25 proceedings, your Honours have set out in some detail the timing and

1 manner of questioning to witnesses. And I could draw your Honours'
2 attention to page 33 of your Honours' decision, the first part of page
3 33 -- of course, your Honour will be looking at the French version, so
4 the page numbers may not be the same. Let me go by paragraph numbers.

5 If we look at paragraph 88 of decision 1665 of the 20th of
6 November, 2009, that paragraph deals with anticipated questions by the
7 Legal Representatives, and it states as follows, and I'm reading in
8 English:

9 "If after examination-in-chief by the party calling the witness
10 the Chamber is of the view that matters raised in the proposed questions
11 of the victims have not been sufficiently addressed by the witness, it
12 may authorise the Legal Representatives to put questions before
13 cross-examination commences."

14 Now, in our respectful submission --

15 PRESIDING JUDGE COTTE: (Interpretation) Counsel O'Shea.
16 Counsel O'Shea, the Chamber is goes to interrupt you.

17 Counsel Luvengika, this decision 1665 is -- has effectively came
18 up just before our substantive debates or just -- no, just afterwards, in
19 fact, with a view to a ruling or providing rules for our proceedings, and
20 of course if there were no objections, there would be no questions. The
21 Chamber doesn't feel itself bound to the extent that it can't organise
22 things as it wishes, but when there's an objection, it is clear that
23 imperatively in the future, something which isn't necessarily simple, but
24 we have to -- you have to better put your questions in such a way that
25 they are put in a spontaneous way or an envisageable way, and I think

1 that you will understand that the formulation of this objection is enough
2 to challenge the authorisation which I'd given you previously, because
3 there isn't agreement with regards to the principle, and as such we have
4 to keep to the code of good practice, if I can put it like that.

5 MR. LUVENGIKA: (Interpretation) Thank you, Your Honour, your
6 Honours. It's true that it was with your leave we didn't want to go
7 against the decision, but we just -- at a practical level we have noted
8 happily that the Chamber, at the end of the cross-examination and having
9 given the floor to the Prosecutor, has often asked us if we had any
10 questions for clarification, and it's within this framework that I wanted
11 to intervene. My intervention goes into questions which have come out of
12 the debates. They couldn't have been seen in advance following answers
13 which were given by the witness with regards to certain passages,
14 contextual ones. We are still wishing to have more, and that's how we
15 have questions from the Legal Representatives. We don't want to
16 challenge what's already established by the Chamber.

17 Thank you, Your Honour.

18 MR. GILISSEN: (Interpretation) With your leave. I certainly
19 understand the position of counsel, and I would just like things to be
20 clear here, and I do want to be objective. You have to be fair. I do
21 share the feeling of my colleagues.

22 This is the first time that we are asking for that, a return to
23 the decision as stated, if you would allow me, does seem a good way of
24 proceeding. Perhaps, however, we could look at the request of
25 Counsel Luvengika to ask questions, but rather instead of that he could

1 ask the Chamber to ask questions that might be suggested in this way
2 which wouldn't cause bother to anybody, because the Chamber would be the
3 arbiters of that, and this is asking that they could do with all of the
4 rigor which characterizes the proceedings with regards to the rights of
5 the Defence and as such I don't think there would be any surprises, there
6 were some, and I'm sure that if there are the Chamber will draw the
7 conclusions therefrom.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much for
9 that. So the Chamber has well understood that the Legal Representatives
10 of Victims did not intend to push their way through. We know the way in
11 which you work and the precautions that you take in order to have a
12 useful contribution in the proceedings where your presence is new. This
13 isn't a simple task.

14 Now, in the very specific context of the end of the examination
15 of this witness we will stay there. As Counsel Luvengika indicated just
16 now, the Chamber at the end of the examination of different witnesses has
17 turned towards you to ask if there were any final comments to be made on
18 your part, and once again we've had discussions which have been quite
19 lengthy with regard to the conditions under which this testimony is
20 taking. We don't want it to be extended overtly.

21 Prosecutor, you are carrying out your re-examination.

22 Further Questioned by Mr. Garcia:

23 Q. (Interpretation) Good morning, Witness.

24 A. Good morning.

25 Q. I would like to start by saying that I do not have the intention

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1 of taking lots of time with regard to my questions. I do understand that
2 you have been here for a few weeks answering certain questions, whether
3 they were mine or the questions of Defence counsel. But it is important,
4 important for me as well as the Chamber, to come back to some of the
5 issues, some of the questions which were put by the Defence team. What
6 we're trying to do here essentially is to shed light on certain points.
7 Can you understand me?

8 PRESIDING JUDGE COTTE: (Interpretation) Witness, the Prosecutor
9 is not going to take up again all the examination-in-chief that he's
10 already carried out over several days. He just simply wishes to have
11 clarification with regard to answers which you have provided to the
12 questions which Counsel Hooper put to you, as well as Professor Fofe.
13 That's it. Within what -- that's the context in which you have his
14 intervention. It won't be long, but the important thing is to answer the
15 questions with a high degree of precision because he's asking for
16 clarification. So he really does want you to give detail with regard to
17 points which you have doubtlessly already gone into. So please listen to
18 him well and answer him.

19 Go ahead, Prosecutor.

20 MR. GARCIA: (Interpretation)

21 Q. Once again, Witness, we are just trying to shed light on certain
22 points.

23 You spoke to us during the cross-examination, and you talked
24 about your electoral card. So Counsel Hooper was asking you questions
25 about this card, and the issue was about the security with regards to

1 obtaining this electoral card. Do you remember speaking about this with
2 Counsel Hooper?

3 A. Yes.

4 Q. Thank you, Witness. So essentially, I'm just going first of all
5 to -- I'm just going to state what was said. Counsel Hooper asked you a
6 question. Everything can be found in the transcript 151, lines 24 and
7 following, and it continues, page 23 and page 24. So, Witness,
8 Counsel Hooper asked you -- the following question:

9 "How is it that this card helped to guarantee your security?"

10 You didn't answer that question. Counsel Hooper thereafter
11 continued. He asked you the following question:

12 "Do you have an answer? To what extent did that ensure your
13 security, the fact that you had such a card with all the mentions of
14 points thereon?"

15 This was a question that he asked you. And you answered thereto:

16 "I have just told you. It was when I was moving around, this
17 card was of help to me. When I was moving from place to place, when I
18 came across soldiers, if they asked for my card, I would present it to
19 them. It was this card that helped me with my security."

20 And that -- that's what you answered Counsel Hooper.

21 I have certain questions to ask you with regards to this part of
22 your testimony. You made reference to the fact that when you were moving
23 around you could come across soldiers. Where it concerns these soldiers,
24 were they FRDC, or were they, rather -- FARDC, or were they, rather,
25 militia?

1 A. They were FARDC soldiers.

2 Q. And, Witness, so that we can all understand how this occurred,
3 these soldiers, where were they? Where could you come across them?

4 A. There were even FARDC troops where we were living. They were
5 also at the roundabout where you have the road going to Bogoro and Zombe.
6 They were also in Lengabo, in Yambi, and around that area.

7 Q. And so we can also understand, when you met or came across these
8 soldiers, did they have control points?

9 A. Yes.

10 THE INTERPRETER: "Check-points," corrects the interpreter.

11 MR. GARCIA: (Interpretation)

12 Q. Normally when you meet these soldiers at check-points, when you
13 meet them in the places that you've mentioned, what happens then?

14 A. Could you repeat your question?

15 Q. So, Witness, when you came across these soldiers at check-points,
16 what did they say to you? What was asked of you?

17 A. They asked us to present our card. That's what they did
18 basically.

19 Q. Did they ask other things other than asking for your cards?

20 A. Nothing else.

21 Q. What happened, Witness, if the person did not have his card?

22 A. If the person did not have a card, that person was stopped. He
23 remained there, but I don't know what happened afterwards.

24 Q. When you talk about stopping that person or immobilising that
25 person, as you put it, what does that mean exactly?

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1 A. The soldiers asked questions to the person concerned, but I don't
2 know what these questions were.

3 Q. And you yourself, were you stopped by soldiers who you met at
4 check-points?

5 A. No.

6 Q. Witness, could you tell me, when you were at these check-points
7 were you free to leave, or did you have to stay there and answer the
8 questions that the soldiers put to you?

9 A. It's difficult to answer this question with regard to the answer
10 one had to give to the soldiers.

11 Q. Witness, I'm going to change subject. During your
12 cross-examination, you were shown photographs, photographs of your
13 sister. Could you tell us or tell the Court how you felt with regards to
14 the fact that you were being shown photographs here in the courtroom of a
15 member of your family?

16 I understand that this could be difficult for you, but it is
17 important for the Chamber to know how you felt when these photographs
18 were shown to you.

19 A. I felt uncomfortable.

20 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, let us
21 allow you some time to recover, to calm down.

22 Mr. Prosecutor, do you have many other questions to put to the
23 witness or not so that we should be able to decide whether we might
24 suspend or adjourn. It depends on what you have.

25 MR. GARCIA: (Interpretation) Mr. President, I don't have many

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1 questions. I think if we break even for ten minutes to allow the witness
2 to pull himself together, we will be able to finish.

3 PRESIDING JUDGE COTTE: (Interpretation) We do not need to rush
4 our proceedings. All we want to know is whether we need to suspend or
5 not. If the questions that you intend to put to the witness may arouse
6 similar feelings, that is what is going to guide us.

7 MR. GARCIA: (Interpretation) My next questions were probably
8 going to arouse the same type of feelings, and then I have another series
9 of questions that are more neutral.

10 MR. HOOPER: May I say I'm very concerned to hear a Prosecutor
11 say that he anticipates his next questions are going to have an emotional
12 or sentimental reaction from a witness. The best way to avoid that is
13 not to ask the question.

14 There's one matter perhaps I could usefully raise if we are going
15 to have a short break for the witness, where the witness isn't in court,
16 which is not connected -- well, not connected directly with the witness.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, we are, in
18 fact, about to suspend the hearing without leaving the room so as to
19 allow the witness to pull himself together. It is not even certain that
20 the common questions will lead to the same type of reaction. So we'll
21 take two or three minutes for the witness to recover, then the Prosecutor
22 will ask other questions. He will determine how far he needs to go.

23 MR. HOOPER: If we're to -- to remain in court, I'm in a position
24 to deal with this matter. It doesn't concern the witness directly, and
25 he might, you know, rather find the position where we're not sitting here

1 focusing on him rather more attractive than if we are. So perhaps I
2 could raise this issue, take a few minutes, and you can cut me down or
3 cut me off at any moment.

4 PRESIDING JUDGE COTTE: (Interpretation) You can raise that
5 point now, Mr. Hooper. We hope it does not lead to more lengthy debates.
6 Please go ahead while the witness pulls himself together.

7 Witness, please do not hesitate to have a drink of water. Try to
8 calm down so as -- for everything to go better.

9 MR. FOFE: (Interpretation) Mr. President, the witness can even
10 take off his headset.

11 PRESIDING JUDGE COTTE: (Interpretation) I should have told you
12 that a short while ago. I want to be sure that you understand me. You
13 can take off your headset so that we discuss something with Mr. Hooper,
14 and you'll put them on again.

15 Mr. Hooper, please.

16 MR. HOOPER: This is not -- not a matter I was going to raise
17 with this witness for reasons which will become apparent but which is
18 associated with him and is a matter of evidence which I'd seek to have
19 admitted, and it's in a document. Can I call up the document? It's in
20 the eCourt system. It's DRC-OTP-1023-0073. And once that's come up, can
21 I give people an opportunity to look at it.

22 Now that the document is in -- in -- in English, and I don't
23 think we have a translation, so I'm willing to read it in redacted form,
24 as it were, so that it doesn't identify anyone and so that, in fact, the
25 position is clear. So what I'm asking here, just for a moment, what

1 I'm --

2 MR. GARCIA: (Interpretation) Mr. President, before Mr. Hooper
3 continues, if it is a document or information linked to this document,
4 then I object.

5 PRESIDING JUDGE COTTE: (Interpretation) Apparently not. I hope
6 so at least. This is a cross-examination. We are suspending just
7 briefly for the witness to recover. I do not think that we have to go
8 back to a document that had to be presented before. I do not think so.

9 Mr. Hooper, what is precisely that document you need to present
10 now?

11 MR. HOOPER: Well, what I'd say is this: This is not a document
12 that would be introduced or intended to have introduced through the
13 witness, but it's a document that is relevant to the witness, and it was
14 my intention once, in fact, the witness's evidence had finished that I
15 would seek to apply to have this document admitted. It relates
16 essentially more to the Intermediary 143 rather than to this witness,
17 though the subject matter concerns the witness, but, in fact, it doesn't
18 have any bearing on the witness. It's, rather, a focus on Witness 143.
19 And all I'm, in fact, asking here is raising the matter now and seeking
20 to proceed by one of two ways.

21 This is a Prosecution document, and it's quite plain what its
22 contents are, and I'd invite the Prosecution to admit it, admit its
23 context -- its contents. Alternatively, I'd seek to produce the
24 document.

25 The document is in English. I can take the opportunity to read

1 it in redacted form so that it, in fact, is translated into French. I'm
2 quite willing to do that not today but, as I'd intended, at the close of
3 this witness's testimony, which I anticipated may have been on Monday.
4 As we're reaching the point now where I would be making that application
5 and given that we are spending some minutes giving the witness a rest, it
6 seemed to me that it was appropriate, if possible, to raise the matter
7 now. As I say, at any time I anticipated your Honour, Mr. President,
8 could cut me off if you thought it was going to take too long and we
9 could put it over to Monday, but if it was a question of using some court
10 time while the witness was having a period of calm and reflection, then I
11 thought it was appropriate to do it now. It may be it's confusing, and
12 perhaps in those circumstances I can abandon my application today and
13 raise it -- and raise it on Monday. And I propose to do that. And also
14 give, perhaps, the Prosecution the opportunity, which I was going to
15 invite them to do over the weekend, to admit the contents as a matter of
16 fact.

17 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you,
18 Mr. Hooper.

19 It is always difficult to determine a decision regarding the
20 presentation of a document that is only presented superficially and whose
21 content we do not know. So we will conclude the examination of this
22 witness, after of which you will decide, Mr. Hooper, whether it is
23 helpful to present that document to us. We hope the witness has had time
24 to sort of recover, and we do not wish to -- and I don't know whether
25 this is correct and pollute the re-examination through digressions which

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1 could distract the witness.

2 So, Court Usher, please, can you have him put his headphones back
3 on.

4 Can you hear me, Mr. Witness?

5 THE WITNESS: (Interpretation) Yes.

6 PRESIDING JUDGE COTTE: (Interpretation) Very well.

7 Mr. Witness, everyone has a right to be emotional from time to time, and
8 the Court absolutely will not take you to task for feeling emotional. We
9 simply hope that you have been able to pull yourself together and are now
10 in a position to answer the next questions from the Prosecutor. So he's
11 going to put those questions to you, and as you have done since the
12 resumption of the hearing, you are going to answer his questions as
13 precisely as possible, because he is seeking clarification. So,
14 Mr. Witness, please be courageous and answer the questions.

15 Prosecutor, please proceed. Mr. Prosecutor, please ask your
16 questions.

17 MR. GARCIA: (Interpretation)

18 Q. Witness, I do understand that it is difficult for you to answer
19 these type of questions, but I need to ask you a follow-up question
20 regarding how you felt when a photograph of a member of your family was
21 shown to you. You told us that you felt uncomfortable. Can you explain
22 to us why you felt that way? It is important for the Chamber to know
23 that.

24 A. I would like to tell you why I felt ill at ease. It is because
25 this photograph was shown to me, and it had been a long time since I had

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1 last seen her, and when I saw the photograph, I felt sad. Furthermore,
2 this could cause -- or, rather, put this person at a very high risk given
3 that to my knowledge this person does not know where I am and her
4 photograph was shown.

5 Q. Thank you, Mr. Witness. I will go now to the last topic and the
6 last question that I have to put to you.

7 Witness, are you feeling all right? Are you able to answer my
8 questions?

9 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, take your
10 time. Take your time to use the Kleenex, the paper in front of you. You
11 have all the time necessary. There is no problem. You have to be
12 feeling very comfortable.

13 I will myself clear my nose, because I need to do so.

14 Very well, then. Witness, you have calmed down. The Prosecutor,
15 I believe, is going to ask you questions that will not make you
16 emotional. We are going to see whether you are able to answer.

17 Prosecutor, please proceed.

18 MR. GARCIA: (Interpretation)

19 Q. Witness, I have only a few questions left for you, and once
20 again, I will refer to a question that were put to you by Mr. Hooper
21 during his cross-examination. That is transcript 152, French version,
22 page 18, lines 11 and following.

23 Witness, I will tell you what -- I will tell you the question
24 Mr. Hooper asked you.

25 "When you went to Zumbe with your parents, were there soldiers,

1 combatants there?"

2 Can you answer, please? At that time you were silent. Are you
3 in a position to answer that question? This is simply to know whether at
4 the time you went to Zumbe with your parents there were soldiers or
5 combatants there. If you are able to answer the question, you can do so.
6 If not, tell us also. The issue here is simply to clarify everything for
7 the Court.

8 A. I do not have an answer to that question.

9 Q. Mr. Witness, just for the Chamber to be clear, when you say you
10 do not have an answer to that question, can you elaborate on why? And
11 please bear in mind that the Chamber would like to understand, and take
12 your time.

13 A. It is because I did not see any soldiers there. That is why I
14 just said that I do not have an answer to that question.

15 MR. GARCIA: (Interpretation) Just a moment, Mr. President.

16 (Prosecution counsel confer)

17 PRESIDING JUDGE COTTE: (Interpretation) Please proceed.

18 MR. GARCIA: (Interpretation)

19 Q. Witness, I have one last question for you. I just read out to
20 you some of the questions that were put to you by Mr. Hooper, and I told
21 you that you kept silent. You did not answer certain questions,
22 including the one I just asked you, that is, whether there were soldiers
23 or combatants in Zumbe.

24 In order to shed light on your testimony so that the Chamber can
25 understand you, can you explain to us why it was that you sometimes kept

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1 silent and did not answer certain questions? We would like to know
2 whether -- why you simply said that you were not able to answer certain
3 questions, that is, if it is possible for you explain.

4 A. It is because I did not see any soldiers whilst I was there.

5 Q. Witness, there were other questions to which you were silent.
6 You did not provide any answers, and Mr. Hooper took note of that. It
7 would be important for us to explain why, and I believe that you are able
8 to explain. Could you explain to the Chamber while you -- why you stayed
9 silent in response to certain questions?

10 A. When you notice that I refused to answer questions, it is because
11 I have no answer to provide in response to the question that is put to
12 me.

13 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, when you
14 say, "I don't have any answer to provide in response to a question," is
15 it the same thing as saying, "I do not know"? "I have no answer for that
16 question," does that mean, "I do not know"? This is important for us,
17 because at the end of your testimony we should be able to see whether we
18 understood each other well.

19 THE WITNESS: (Interpretation) Could you, your Honour, repeat
20 your question?

21 PRESIDING JUDGE COTTE: (Interpretation) Very well, I will. You
22 said on several occasions, "I do not have an answer for that question."
23 To your mind is it the same thing as saying, "I do not know," or does
24 that have another meaning?

25 The Prosecutor is going to carry on asking his questions, and if

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1 you are able to answer my questions later on, feel free to do so.

2 Mr. Prosecutor, you may proceed.

3 (Prosecution counsel confer)

4 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr. Prosecutor.

5 MR. GARCIA: (Interpretation)

6 Q. Mr. Witness, with your permission I would like to ask a last
7 question relating to the photograph of your family member which was shown
8 to you. We asked you why you felt uncomfortable, and your answer was,
9 amongst others, "These could put this individual at risk, at serious
10 risk."

11 When you talk about serious risk, what are you referring to?

12 A. Could you please repeat your question.

13 Q. I asked you why you felt uncomfortable when you were shown
14 photographs of your sister, and your answer was, amongst other things:

15 "And when I saw the photograph, I felt sad. Furthermore, this
16 could put the individual in the photograph at serious risk."

17 Why do you think this would pose a serious risk to your sister?
18 Could you give an explanation to edify the Chamber? Could you explain to
19 us what you were thinking of?

20 MR. FOFE: (Interpretation) I beg your pardon, your Honour. I
21 couldn't hold myself. I would like to state to the Chamber that this is
22 a question which is inviting the witness to speculate. A question of
23 that nature should not be allowed.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Professor Fofe.

1 As far as we're concerned, the Chamber was wondering what the
2 relevance of that question was at the end of this examination. Will the
3 answer that will be given by the witness make it possible for us to
4 establish the truth? We are trying to get clarifications from the
5 witness with respect to the events that he experienced, that he saw, that
6 he heard. Is it really necessary, Mr. Prosecutor, to return to an aspect
7 which made the witness so emotionally uncomfortable that we had to
8 suspend for a while?

9 MR. GARCIA: (Interpretation) I think it would be preferable for
10 the witness to remove his headset before I answer, but I think that this
11 question is relevant, and my answer to the Chamber, therefore, is yes.

12 MR. FOFE: (Interpretation) I would like to inform the Chamber
13 that the witness understands French.

14 PRESIDING JUDGE COTTE: (Interpretation) Well, whatever the
15 case, the witness is going to be with us on Monday, so we will allow the
16 witness to leave the courtroom. The Prosecutor is going to make his
17 explanation, and on Monday we are going to have the final interventions
18 of the various parties.

19 The time now is 12 minutes past 1.00 p.m., and I don't know what
20 the duration of Defence interventions is.

21 Mr. Hooper, is it something that we can discuss in the presence
22 of the witness or not?

23 MR. HOOPER: I have no -- I have no questions today. I can't
24 promise that will be the case on Monday, but I have no questions today.
25 Arising from this. And my friend's made his point. I don't know see why

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1 he's flogging the horse.

2 MR. FOFÉ: (Interpretation) I beg your pardon, your Honour.

3 PRESIDING JUDGE COTTE: (Interpretation) My concern, Mr. Hooper,
4 was simply to know whether the intervention you made a short while ago --
5 I wanted to know whether what you said a short while ago and which I
6 interrupted, whether it required the presence of the witness.

7 MR. HOOPER: I will renew it on Monday. I won't raise it again
8 today.

9 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

10 Professor Fofé.

11 MR. FOFÉ: (Interpretation) Thank you, your Honour. I would
12 also like to inform the Chamber that we do not have any additional
13 questions for this witness. However, we will have a small request to
14 make to the Bench in the absence of the witness.

15 PRESIDING JUDGE COTTE: (Interpretation) So we can envisage
16 concluding the witness's testimony today?

17 MR. FOFÉ: (Interpretation) Absolutely, your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation) That's perfect.

19 Mr. Garcia, it would be indispensable for the witness to leave
20 the courtroom before you say what you want to say?

21 MR. GARCIA: (Interpretation) Yes, your Honour, and I would like
22 to inform the Chamber that this is going to be my last question for the
23 witness.

24 MR. FOFÉ: (Interpretation) I wish to make a suggestion. Since
25 the Prosecutor speaks English, I would prefer for him to speak in

1 English.

2 PRESIDING JUDGE COTTE: (Interpretation) That's an excellent
3 suggestion, thank you, Professor Fofe.

4 Mr. Prosecutor comes from a country which is bilingual. He will
5 speak English, and Mr. Hooper is going to have the pleasure of listening
6 to English, and I will content myself with interpretation. Our witness
7 can put on his head is set if he so wishes -- well, we're listening to
8 you, Mr. Prosecutor.

9 MR. GARCIA: So My Lord, the question is basically, and I
10 understand the objection, the issue being if this question is relevant.
11 Now, it's very much relevant to the state of mind of this witness, and
12 essentially when the Chamber would retire after the case and determine
13 the credibility of this witness, you will have to it evaluate not only
14 the substantive parts of his answers but also his demeanor in court, and
15 by "demeanour," I mean his reaction to certain elements.

16 Mr. Hooper made light of the fact on several occasions that there
17 was a certain hesitation on the part of this witness concerning these
18 pictures. In fact, if I'm not mistaken, Mr. Hooper came back on the next
19 day, asked the same questions to the witness, whether the witness could
20 identify or not his sister on the photographs, and he came back on this
21 issue several times, and I understand that if he came back on it and made
22 comments, it's so that the Chamber could infer from this that the witness
23 is not credible on this issue. So when I've asked the question to the
24 witness that he can explain how he felt when he saw this picture, the
25 witness's answer makes it now understandable why he hesitated initially

1 to identify his sister, and this is extremely important in light of what
2 Mr. Hooper has invoked when the witness finally identified his sister.

3 Mr. Hooper stated clearly and in court that there was hesitation
4 so that it could appear on the transcript. So now the Chamber has the
5 opportunity to listen to the witness, listen to him explain what were his
6 fears, and he's explaining that he has one fundamental fear, is that
7 harm, serious harm, could come upon his sister. So it's extremely
8 relevant. It's also extremely relevant not only to the question of his
9 hesitation concerning the identification of the pictures but to his whole
10 testimony in general that he's given to the court in these last two
11 weeks.

12 The Court will have to appreciate this testimony in
13 consideration -- while taking into consideration the fears that the
14 witness has. And the Prosecution did object on certain occasions to
15 pictures of family members being shown to the witness or documents
16 mentioning the families -- the family of the witness. So on these
17 issues, on the issue of general credibility, on the specific issue of why
18 there was a certain hesitation concerning the photographs of his sister
19 when he was first shown them, his testimony in this regard is certainly
20 relevant to the Chamber.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Mr. Prosecutor. Well, since that is your feeling, go ahead and ask your
23 question, and try to elicit a response from the witness. Go ahead.

24 Mr. Witness, could you please wear your headset.

25 MR. HOOPER: My friend won't lead the witness in any way. Thank

1 you.

2 PRESIDING JUDGE COTTE: (Interpretation) The Prosecutor will
3 limit himself to asking the question which he asked a short while ago.

4 You should not reformulate the question. So we go back to that
5 question. You ask the question in exactly the same words you used before
6 our exchange; that is, line 13 of the French transcript, page 63.

7 MR. GARCIA: (Interpretation) Thank you, Mr. President.

8 Q. Mr. Witness, I'm going to ask you the question once again, and
9 could you please give us an answer in order to clarify issues for the
10 Chamber. Mr. Hooper asked you a certain number of questions. Later on I
11 asked you further questions about the photographs of your sister which
12 were shown to you. You informed us that you felt uncomfortable, and
13 amongst other things you said that this could put your sister at serious
14 risk. Why do you think this will put your sister at risk, at serious
15 risk?

16 A. The problem is not about my sister alone. It also concerns the
17 other members of my family. I am saying this because photographs of my
18 family members were being shown.

19 PRESIDING JUDGE COTTE: (Interpretation) Could you carry on,
20 Mr. Prosecutor.

21 MR. GARCIA: (Interpretation) Your Honour, I have no further
22 questions for the witness.

23 Mr. Witness, thank you very much for taking the time to answer
24 the questions of all parties. Thank you for your patience. Thank you.

25 Thank you, Mr. Prosecutor.

1 Mr. Hooper, do you have any final questions for this witness, for
2 our witness?

3 MR. HOOPER: (Previous translation continues) ... thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, thank you.
5 Professor Fofe, what about you?

6 MR. FOFE: (Interpretation) No, your Honour. As I said a short
7 while ago, we don't have any further questions. But when the witness
8 leaves, we are going to file a motion to the Bench.

9 PRESIDING JUDGE COTTE: (Interpretation) Understood.

10 Mr. Witness, this is the end of your testimony before the court.
11 This is testimony which you must have found very long, but please know
12 that it was useful. If made it possible for all the parties and
13 participants here in the courtroom to understand a certain number of
14 things. It made it would be for us to make -- to try the accused persons
15 in the courtroom in full knowledge of the facts. We therefore thank you
16 for your contribution, and we thank you for coming from so far as way,
17 all the way to the Hague to appear before the court.

18 In a short while you are going to return to the place where you
19 are currently lodged. Please bear in mind that whatever is said here
20 before the court should not be related to anyone outside the court. You
21 give your testimony to the court, and when you return to where you are
22 living, you should not talk about it.

23 Mr. Witness, we thank you, therefore, and we wish you a safe trip
24 back to the country where you are currently residing.

25 Security officers, please could you lead the accused persons out

1 of the courtroom so that the witness can, in turn, leave the courtroom as
2 well.

3 (The accused withdrew)

4 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could we
5 go into closed session so that the witness can leave.

6 Mr. Witness, good-bye.

7 THE WITNESS: (Interpretation) Thank you.

8 (Closed session at 1.22 p.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 1.23 p.m.)

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

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 Court Officer.

25 Before I give the floor to Professor Fofe, you must have

1 understood that our concern is to conduct this trial as expeditiously as
2 possible. The accused persons have been detained for quite a long while.
3 We do not know what the conduct of the next witness is going to be like.
4 In any case, the profile of this witness is similar to that of the
5 witness who just left the courtroom. We are going to talk about that on
6 Monday. Apparently, they had the same experiences. It is important,
7 therefore, of course depending on the conduct of the witness, it is
8 important for all the parties to ensure that we do not go beyond the time
9 allotted for examination.

10 You must have understood that the Court Officer was taking note
11 of the time allotted to each of the parties. The witness was taking a
12 lot of time. Certain teams also took a lot of time. But, please, do not
13 forget that we are keeping a tally of the time you allot to your
14 examinations.

15 MR. FOFE: (Interpretation) I will give the floor to Mr. Kilenda
16 to give you the announcement.

17 PRESIDING JUDGE COTTE: (Interpretation) I hope this
18 announcement is going to -- or relates to what we are going discuss on
19 Monday.

20 MR. KILENDA: (Interpretation) I need just two minutes, your
21 Honour.

22 Your Honours, I am taking the floor very respectfully to bring it
23 to your attention that the Defence team of Mr. Mathieu Ngudjolo has
24 decided to file before your Chamber an application to initiate a
25 proceedings against this witness in accordance with Article 70(A) and (B)

1 of the Statute. We are drafting our submission, and we are going to
2 submit it later on on Monday morning, and we would like to ask that
3 suspend arrangements for the return of this witness until we have made
4 our written submission.

5 Thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.
7 We are going to meet on Monday. If the Chamber understood well,
8 Mr. Hooper is going to start our hearing on Monday with the intervention
9 he talked about. We can already bear in mind that the next witness could
10 appear before the court.

11 Court Officer, Witness 280 could be here on Monday. It may not
12 be possible for that witness to take the oath before 2.00 p.m. -- or
13 2.30 p.m., but he has to be available just in case we need him.

14 I don't think we have any other issues to discuss at the moment.
15 We stand adjourned, and we are going to reconvene on Monday at 2.00 p.m.

16 The hearing ends at 1.27 p.m.

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