

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial hearing
9 Thursday, 18 March 2010
10 The hearing starts at 9.59 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Court is in session.
15 Please take your seats.
16 The two accused are with us. There was some difficulties this
17 morning to start our hearing at the time initially envisaged. Apparently
18 everything is now under control, and we are highly satisfied with that.
19 Before bringing the witness who has been before the court since
20 yesterday, Counsel Gilissen would like to make a brief intervention.
21 So, Counsel Gilissen, we are listening to you.
22 MR. GILISSEN: (Interpretation) Thank you very much, your
23 Honour. You asked the VWU to submit a draft protocol to you. This
24 protocol has been subject to meetings between the Defence lawyers, the
25 Legal Representatives of Victims. It has been submitted to the

1 Prosecutor's Office, OTP, and where it concerns the Defence and in
2 particular, and here I'm speaking under the control of my colleagues, the
3 Defence of Mathieu Ngudjolo as well as the two Legal Representatives,
4 that at the end of the process while we are dealing with law, with
5 regards to a -- we're coming to an agreement, the unit seems to be very
6 hurried by the deadline you -- to have a draft protocol, which does not
7 satisfy us.

8 What I mean by that is we can discuss certain words, but above
9 all it is a draft that has only ever existed in English. Some of my
10 colleagues, and I am indeed among them, do not use English or only use
11 English not as a full language, a full legal way. You will understand
12 what I mean by that. And we have expressly asked, obviously, that this
13 protocol be -- have a -- the French version. This is -- we would wish
14 that the French version be the one which is authoritative. This is
15 something that can be discussed. We would, therefore, wish that the
16 Chamber takes this into account, and my request that I make orally would
17 be that they don't take into account this draft from the unit. I think
18 once the -- it has been -- the translation has been made into French and
19 it's distributed to the parties, unless I'm wrong, then one meaning --
20 meeting between us should make it possible for us to submit a draft
21 protocol to the Chamber which is subject to the agreement of all the
22 parties.

23 Thank you very much, your Honour. That's all I wanted to say.
24 Thank you very much for giving me leave to say this to the Court.

25 PRESIDING JUDGE COTTE: (Interpretation) No, no,

1 Counsel Gilissen. It's us who would like to thank you. Certainly this
2 protocol we did want to be drafted as quickly as possible. We wanted it
3 to satisfy everyone, and to -- given that everybody has different
4 interests, but it has appeared that the discussions which have been
5 carried out until this time were fruitful and certainly showed the
6 goodwill of everybody, which is by far the most essential point.

7 Now, at the end of last week the unit transmitted to us a
8 document which is in English. We received perfectly the request that you
9 have just formulated orally. It is clear, and I would ask the
10 Court Officer to ensure that this part of the transcript particularly be
11 addressed to the unit. It is clear that it is important that at the same
12 time there be a French version and an English version with regards to
13 your discussions, and in the light of these two versions, a last meeting.
14 Now, I think -- hopefully one will be enough, and at the end of the week
15 we will have the definitive point of view of everybody with regards to
16 this draft protocol.

17 I think that I have been well understood.

18 Court Officer, it is therefore important to transmit this wish of
19 the Chamber to the unit that a French version be made in the shortest
20 possible time-frame, and this is to be done in order to have the very
21 last version -- latest version of it. We would like it to be done by
22 Friday at 1600 hours. Next Friday, that is.

23 Having said that, we shall now go into closed session to enable
24 the usher to bring in Witness 159.

25 (Closed session at 10.06 a.m.)

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13 (Open session at 10.07 a.m.)

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

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

18 Witness, we therefore have 50 minutes ahead of us, 50 minutes
19 during which the Prosecutor is going to continue with her
20 examination-in-chief which she started yesterday and which she will
21 continue with this morning. We would therefore like to remind you, as
22 you did yesterday, that we would like you to reply slowly to the
23 questions that are asked of you.

24 Prosecutor, you have leave to address the court.

25 MS. LUPING: (Interpretation) Thank you very much. Good

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Ms. Luping (Continued)

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1 morning, your Honour, Judges --

2 Questioned by Ms. Luping: (Continued)

3 Q. (Interpretation) -- Witness.

4 (In English) Mr. Witness, yesterday you provided us some details
5 of what happened during the attack of February 2003. This morning I'll
6 be asking you some specific questions, and I'll be starting from the
7 beginning of your account. Before I do, I wanted to simply also remark
8 on two reminders. As the President has indicated, first for you to speak
9 slowly. Secondly, to ask you to only respond and answer to the specific
10 questions that I pose and to try to be as precise and as concise as
11 possible in your responses to be helpful to the interpreters.

12 MS. LUPING: Mr. President, my first question would be of an
13 identifying nature, so I would ask if we could move to private session.

14 PRESIDING JUDGE COTTE: (Interpretation) Understood. We shall
15 go into private session.

16 (Private session at 10.10 a.m.)

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24 (Open session at 10.27 a.m.)

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

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Questioned by Ms. Luping (Continued)

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1 Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, please
3 continue.

4 MS. LUPING:

5 Q. Mr. Witness, you said that after the attack started that you fled
6 and hid in the bush. I'd like to you to please mark this hiding-place on
7 a clean copy of the map of Bogoro. It's the same map as you saw before,
8 but it's a clean copy with no markings.

9 If you could please mark this hiding-place with a cross.

10 A. Do you want me to put a number or a mark?

11 Q. I'd like you to put a mark, an X, please.

12 A. (Marks)

13 Q. Thank you.

14 MS. LUPING: I will not be seeking an EVD number at this stage,
15 because I will be asking for a second marking.

16 Q. You also said that the attack was coming from both sides and that
17 you approached the camp, that there was a small distance separating you
18 from the UPC camp, and you were hidden next to the camp. My question is:
19 Was this a different hiding-place to the first place you've indicated now
20 on the map?

21 A. It was the same hiding-place. Thanks to my hiding-place, I could
22 observe movement and see what was happening at the camp, because the
23 place that I marked with an X on this map is not far from the military
24 camp.

25 Q. And, Mr. Witness, could you indicate in your estimation roughly

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1 what distance this hiding-place was from the camp?

2 A. I put a mark on this map, and it was the bush all around. My
3 hiding-place wasn't far from the camp. From the hiding-place, I tried to
4 do what I could to get into the camp, but I could not do so. I was in
5 the bush, and I tried to go back to the camp but I was not successful.
6 The position of this X here is between Mount Waka and the military camp,
7 and that is where I was hiding, and that's where I was observing the
8 attacks that took place on the camp. And again, this place is not far
9 from the camp.

10 Q. Thank you, Mr. Witness.

11 MS. LUPING: Mr. President, I believe an EVD number could be
12 assigned to this map, and the document will be public.

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

15 COURT OFFICER: (Interpretation) Thank you, your Honour. This
16 map shall bear the following number: EVD-OTP-00054.

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

19 Prosecutor, you may proceed.

20 MS. LUPING: Mr. President, I think the witness can now move to
21 the other seat.

22 PRESIDING JUDGE COTTE: (Interpretation) Witness, you may now
23 return to the other seat.

24 MS. LUPING: Mr. President, I would ask if we could move into
25 private session for one question which is of an identifying nature.

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Questioned by Ms. Luping (Continued)

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1 PRESIDING JUDGE COTTE: (Interpretation) In that case, we will
2 move into private session.
3 Madam Court Officer, please.
4 (Private session at 10.35 a.m.)
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Questioned by Ms. Luping (Continued)

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1 (Open session at 10.45 a.m.)

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

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
5 Madam Luping, you may proceed.

6 MS. LUPING:

7 Q. Mr. Witness, yesterday you stated that the enemy forces were
8 attacking from two sides. Do you know from which two sides they were
9 coming?

10 A. Yes. Yesterday, I said that the enemy came from two directions.
11 First of all, the FNI attackers attacked coming from the north. They
12 came along the road from Kasenyi. And then secondly, the FRPI attackers
13 attacked coming from the south. They came along the road from Gety.

14 Q. And what ethnicity were these FNI attackers?

15 A. The FNI attackers were of the north Lendu ethnic group, and they
16 lived in the territory of Djugu.

17 Q. And how did you know they were north Lendu? How could you tell?

18 A. I knew because there's a difference in language.

19 Q. During the attack could you hear what language or languages the
20 Lendu attackers were speaking?

21 A. The north Lendu speak two different languages. They speak Lendu,
22 and they also speak Swahili, whereas the south Lendus, in other words the
23 Ngitis, they usually only speak their own language which is Ngiti.

24 Q. And during the attack are you saying that you heard them speak
25 both Lendu and Swahili? Is that what you're saying?

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Questioned by Ms. Luping (Continued)

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1 A. Yes, that's correct. During the war the north Lendus spoke
2 mainly Lendu and Swahili, whereas the Lendus from the south would speak
3 Ngiti during the war.

4 Q. And when you speak of the war, are you still speaking of the
5 attack of February 2003?

6 A. Could you repeat your question, please, so I can be sure I
7 understand.

8 Q. In the transcript it is translated that:

9 "During the war, the north Lendus spoke mainly Lendu and Swahili,
10 whereas Lendus from the south would speak Ngiti during the war."

11 My question is: When you speak of "the war," are you still
12 speaking of the attack of February 2003?

13 A. Yes, that's correct.

14 Q. And of what ethnicity were the FRPI attackers?

15 A. The enemies from the FRPI were, in the majority, south Lendus.
16 In other words, Ngitis. We call them Ngiti in Bunia.

17 Q. And how could you tell that these FRPI attackers were Ngiti?

18 A. Thank you for your question. As I've already stated just a few
19 moments ago, every time these two enemies attempted to attack Bogoro they
20 each would do so in turn. Sometimes it was an attack from the FRPI and
21 sometimes an attack from the FNI. The FRPI members would speak Ngiti.
22 And when during the attack they arrived, they would speak Ngiti for the
23 most part. This is a language that they used during the war, during the
24 attack, so that no one else could understand them. And then when they
25 wanted to flee or launch a signal, they would do so only in the Ngiti

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1 language, and therefore I was able to identify them and say they were
2 Ngitis and the others were Lendus.

3 Let me add the following: We lived with Ngitis and the Lendus
4 before the war. (Expunged)
5 (Expunged) and I can distinguish
6 between the Lendu language and the Ngiti language.

7 Q. Thank you, Mr. Witness.

8 MS. LUPING: Mr. President, I'm conscious of the time. We're
9 looking at five minutes to 11.00. Perhaps we should take a break now,
10 with your leave.

11 PRESIDING JUDGE COTTE: (Interpretation) Yes. That's possible
12 if it's easier for you in your examination-in-chief. We will have our
13 break now.

14 Witness, we're going to have a 30-minute break, which will allow
15 you to rest.

16 Madam Court Officer, we need to go into closed session so that
17 the witness can withdraw.

18 (Closed session at 10.54 a.m.)

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1 (Expunged)
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3 (Open session at 10.55 a.m.)
4 COURT OFFICER: (Interpretation) We're in open session, your
5 Honour.
6 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
7 madam.
8 We shall now rise and resume at 11.30.
9 Recess taken at 10.55 a.m.
10 On resuming at 11.33 a.m.
11 (Closed session)
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20 (Open session at 11.34 a.m.)
21 COURT OFFICER: (Interpretation) We are in open session, your
22 Honour.
23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 Court Officer.
25 Mr. Gilissen, during the break a representative of the unit was

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Questioned by Ms. Luping (Continued)

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1 advised by myself orally and in writing of the decision taken at the
2 beginning of the hearing so that there should be no loss of time. So
3 please do not hesitate to take the initiative to contact the unit so that
4 latest next Friday we should be able to have the documents in French and
5 English.

6 MR. GILISSEN: (Interpretation) We will do that, your Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) Good morning once
8 again, Mr. Witness. You are back with us. Can you hear me well?

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

10 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

11 Madam Prosecutor, you can proceed with your examination.

12 MS. LUPING: (Interpretation) Thank you, Mr. President.

13 Q. Mr. Witness, just before the break, you were describing or
14 explaining how Lendu and Ngiti attackers were coming two directions.
15 Could you see whether they had any weapons?

16 A. Yes. I saw the attackers carrying weapons with my own eyes.

17 Q. And what type of weapons could you see that they were carrying?

18 A. The weapons that they were carrying, well, I would say that
19 amongst those who had firearms or rifles, there were many types of
20 weapons. The rifles or the firearms that I saw the attackers carrying
21 were SMGs. One of the attackers was called Rene, while another was
22 called Etienne, as well as other Ngiti attackers, and they were all
23 carrying the weapon that I have just mentioned.

24 Q. And speaking more generally for now, other than firearms could
25 you see if the attackers were carrying any other type of weapons?

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Questioned by Ms. Luping (Continued)

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1 A. Yes. Apart from the firearms, the attackers also had other types
2 of weapons. I would describe them as bladed weapons, including spears,
3 arrows, and machetes.

4 Q. And amongst the attackers that you saw, what was the age of the
5 youngest fighter?

6 A. Thank you for your question. Amongst the combatants that I saw,
7 the youngest would have been, at most, 10 years old.

8 Q. And these young fighters, can you recall how many you saw?

9 A. It would be difficult for me to give you a precise number. When
10 I saw them, they were in a group, and they were all mixed up together.
11 Some of them were 10 years old. Others were 12 and 15 years old.
12 Amongst the children who were there, I would say most of them were
13 15 years old.

14 Q. And the children that you saw amongst the fighters, can you
15 recall from which direction they were coming?

16 A. Thank you. The children who were amongst the group of fighters,
17 that is those that I saw, arrived from the road to Gety. That is in the
18 FRPI group. They were armed.* They were meant to shoot, and then afterwards
19 those who had bladed weapons, such as machetes and spears, would come and
20 finish off those who had fallen. Those children were merciless.

21 Q. And the children that you saw armed and who were shooting, can
22 you recall what type of weapons they were using?

23 A. Thank you. These children were carrying the same types of
24 weapons as Rene and Etienne. Most of the weapons that they had were
25 SMGs.

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1 Q. And these children who were fighters, could you hear anybody
2 giving them orders?

3 A. Yes. When the camp fell, that is when the attackers captured the
4 camp and Bogoro had fallen, I was able to observe that camp from my
5 hiding-place. I was able to see what was happening there, and amongst
6 the people I saw there was Mr. Ngudjolo. The second one was Mr. Etienne.
7 This was someone who was living in Bogoro. Sometime later I saw his
8 colleague, Germain Katanga. They all arrived the camp, and they started
9 congratulating the children who were there. It was at this time that the
10 enemies started penetrating into the camp, and they continued carrying
11 out their activities.

12 Q. I will ask -- be asking you questions about that later. First,
13 though, you have just mentioned that the attackers captured the camp and
14 Bogoro had fallen. Do you know at what time roughly this was?

15 A. I did not have my watch with me for me to be able to look at the
16 time, but I can estimate that it was 8.30 a.m., and at 9.00 a.m.
17 everything finished. The population of Bogoro had fled. Some of them
18 had been killed.

19 At 9.00 a.m. prompt, all their operations had been concluded
20 because Bogoro had fallen. They had taken Bogoro. I did not have my
21 watch, but I approximate that it was 8.30 a.m.

22 MS. LUPING: Mr. President, I have a question of an identifying
23 nature. If we could move to private session.

24 PRESIDING JUDGE COTTE: (Interpretation) Given that the question
25 can make it possible to identify the witness, Madam Court Officer, let us

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- 1 go into a brief private session.
- 2 (Private session at 11.48 a.m.)
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Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Ms. Luping (Continued)

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Page 32 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Ms. Luping (Continued)

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1 (Open session at 12.25 p.m.)

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

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Prosecutor,
5 please continue.

6 MS. LUPING:

7 Q. Mr. Witness, you said you saw many others being killed. Were
8 there any other civilians being killed who you recognised?

9 A. The population -- the civilian population in Bogoro was killed in
10 high numbers. Given that I was hiding at a distance further away, I
11 wouldn't be able to identify all the victims. The only thing that I know
12 is that several people were killed.

13 Q. Do you know a person called Louise?

14 A. Yes. Louise is one of the wives of a policeman who was in the
15 groupement. The groupement -- the groupement of Babiase.

16 Q. And do you know if she was at the attack on Bogoro that day?

17 A. Louise is -- Louise died in the attack in 2001.

18 Q. Do you know a person called Florence, or Florence?

19 A. Florence is the granddaughter of the customary chief of Bogoro.
20 Florence is also -- or Florence also died in this attack.

21 Q. When you say she died in "this attack," to which attack are you
22 referring?

23 A. Florence died in the 2002 attack of the 25th of February, 2002,
24 the last fighting.

25 (Prosecution counsel confer)

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Questioned by Ms. Luping (Continued)

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1 MS. LUPING:

2 Q. Mr. Witness, you said that many people were killed in Bogoro and
3 that you learnt that other families also died in Bogoro during the attack
4 of 2003. Can you please explain how you learnt this?

5 A. Thank you for your question. There were many people in the camp,
6 and when we left, I know that the population fled. And during that time,
7 some of them were killed between the camp and the Bayo River which was
8 near Mount Waka. Many people were killed on the way. And when we
9 arrived in Bunia, we were given more details about what had happened.
10 Each person could find out then about the number of their family members
11 who had died.

12 As far as I was concerned, I knew that when people took that road
13 along toward Bayo there were a lot of people killed, and I actually saw
14 that.

15 Q. Could you estimate how many people you would say you saw being
16 killed?

17 A. It's difficult to give such estimates, because many people were
18 killed. I can't give you an estimate.

19 Q. You said that when you were in Bunia, people were investigating
20 as several people were missing. Can you say who was investigating these
21 missing people?

22 A. Thank you. When we were in Bunia, the chief of the
23 Tibogoro (as interpreted) groupement spoke to the press, and during the
24 war there were a number of different journalists in Bunia. I cannot give
25 you details about that, but there were also representatives of human

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Ms. Luping (Continued)

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1 rights organisations and other individuals.

2 When the chief of the Babiase-Bogoro groupement was questioned
3 and asked for details, he said, well, they had to wait in order for him
4 to take a census, so to speak, of the survivors in Bunia, and he wanted
5 to find out what had happened. He was going to find out what had
6 happened to those people, and he stated that he was going to carry out an
7 inquiry to find out how many family members had been killed in the
8 various families, and it was the chief of the groupement who gave that
9 information.

10 Q. And what was the name of this chief of the Babiase-Bogoro
11 groupement?

12 A. The name of the chief of the Babiase groupement (Expunged)
13 (Expunged).

14 Q. And do you know his complete name?

15 A. I know that he was called (Expunged)
16 (Expunged).

17 THE INTERPRETER: The interpreters did not hear that name.

18 THE WITNESS: (Interpretation) And when he was there, we called
19 him (Expunged).

20 PRESIDING JUDGE COTTE: (Interpretation) Witness, a moment ago
21 you said his name was (Expunged). He also used the name of his father,
22 but the interpreters did not hear the name that you gave at that point in
23 time. Could you please repeat that name?

24 THE WITNESS: (Interpretation) (Expunged).

25 MS. LUPING:

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Ms. Luping (Continued)

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1 Q. Mr. Witness, what was the age of the youngest civilian that you
2 saw who was killed?

3 A. Thank you. Well, regarding the youngest civilian that was
4 killed, he was 15.

5 Q. Mr. Witness, you stated that when the camp fell and Bogoro fell,
6 you could observe what was happening inside the camp, and you could see
7 Ngudjolo and Etienne. My question is: Did you see them -- was that
8 inside the camp?

9 A. Thank you. Thank you very much. Given the position of the camp
10 and the way I saw it, I saw them in front of the camp. They were
11 standing and turned their backs to Mount Waka. They were looking toward
12 the road to Kasenyi when I saw them. They were inside the camp.

13 Q. And when you say you saw Ngudjolo, had you seen him before this
14 attack on Bogoro?

15 A. Yes, before the attack on Bogoro I saw him. Where did I see him?
16 Well, I saw him in his village. He is from the village of Dzago, which
17 is in the Ezekere groupement. He lived there. Dzago is a small locality
18 which is on the road to Bunia. I saw him.

19 Q. And can you recall how many times you had seen him before the
20 attack on Bogoro?

21 A. Thank you for question. As I've already said, people of various
22 ethnic origins lived in Bogoro. There were -- there were Lendus, Ngitis,
23 Biras and Lulus. I knew him. I had seen him, and I knew that he lived
24 in his own village of Dzago in the Ezekere groupement. Dzago is near a
25 road, and the people from Dzago would come to Bogoro, and the people from

Witness: Witness P-0159 (Resumed) (Open Session)
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1 Bogoro would go through Dzago when they went to Bunia. I saw him before
2 the war.

3 Q. And when you say you saw him in his village, in what
4 circumstances did you see him?

5 A. When I saw him in his village, he was living there. I saw him
6 just as I saw other citizens who lived there. I didn't know who he was,
7 but according to information that I received, he lived in Dzago.

8 Q. And these times that you saw him, do you know when approximately
9 this was?

10 A. As I have said previously, I saw him before the war that took
11 place in Bogoro. There was a period of peace between the Lendu and the
12 Hema, and it was during that period that I saw him and that I got to know
13 him -- rather, that I knew of him.

14 Q. Mr. Witness, we know that Governor Lompondo was ousted from Bunia
15 on the 9th of August, 2002. My question is: These times you saw
16 Ngudjolo, were they before or after 9 August 2002?

17 A. Thank you very much for your question. I saw Ngudjolo before
18 that date.

19 Q. When you say you saw Ngudjolo on the day of the attack, could you
20 see or hear what he was doing?

21 A. What I know about him is that he gave orders, and when Rene and
22 Etienne were bearing arms, I saw that they were the ones who were
23 shooting at the population, and I noticed that he gave orders in Bogoro.

24 Q. And when you say "he gave orders in Bogoro," are you referring to
25 Ngudjolo?

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Ms. Luping (Continued)

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1 A. Yes.

2 Q. And could you hear what language he was speaking in when he was
3 giving these orders?

4 A. He often spoke in Swahili.

5 Q. And could you hear any of these orders that were being given?

6 A. What I heard with my very own ears and which I saw with my own
7 eyes when he was at the camp, he was accompanied by his bodyguards, and
8 he was congratulating them. After that, he gave an order. He said the
9 following, he said, "Continue with your work. We have won." And I heard
10 him say those words.

11 Q. And can you recall what Ngudjolo was wearing?

12 A. Mr. Ngudjolo wore a military uniform. It was a green uniform.

13 MR. GILISSEN: (Interpretation) Your Honour, I -- if I may. I'm
14 not in the habit of interrupting a witness. The witness has used the
15 word "mtoto," apparently, which means "children" or "child." With
16 caution, of course, since I do not speak Swahili, I would like to refer
17 to the Chamber and the Prosecutor and check this, and since, apparently,
18 those words were spoken just a moment ago, perhaps it's preferable to
19 clarify that right away. Thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
21 Mr. Gilissen.

22 Could the Swahili/French booth tell us exactly which words were
23 pronounced and perhaps clarify the point that Mr. Gilissen has just made?
24 Could you perhaps backtrack and tell us exactly what was stated?

25 THE INTERPRETER: There was a sentence that was finished with

Witness: Witness P-0159 (Resumed) (Open Session)
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1 "mtoto" but the words preceding that were not clear. Indeed, we heard
2 "mtoto" which means "child," and it was during the passage where he spoke
3 about body-guards.

4 PRESIDING JUDGE COTTE: (Interpretation) Witness, in your answer
5 to a question which is the following in the French transcript:

6 "Could you hear the orders that were given?"

7 You answered, and again I'm quoting the French transcript:

8 "What I heard with my own ears and what I saw with my own eyes
9 when he was there, when he was there in the camp, therefore, he was
10 accompanied by his body-guards, and he was congratulating them. After
11 that, he gave an order. He said the following," and I quote, still the
12 French transcript: "'Continue with your work. We have won.' And I
13 heard him say that."

14 Now, would you like to add anything to that answer? Do you
15 remember saying anything else, anything more that perhaps was not
16 translated? Because it is difficult to interpret and translate this
17 simultaneously. Do you want to add something in response to this
18 question, to add to the answer that you already gave? If you have
19 nothing else to add, perhaps the Prosecutor will ask you additional
20 questions which will enable you to clarify.

21 Have you understood my question, Witness?

22 THE WITNESS: (Interpretation) Your Honour, thank you very much,
23 and I've understood. I don't have anything else to add. What I said was
24 fine.

25 PRESIDING JUDGE COTTE: (Interpretation) Well, Madam Prosecutor,

Witness: Witness P-0159 (Resumed) (Closed Session)
Questioned by Ms. Luping (Continued)

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1 it's up to you to continue.

2 MS. LUPING:

3 Q. Mr. Witness, when you referred to seeing body-guards with
4 Ngudjolo, can you recall the age of the youngest body-guard with him?

5 A. The youngest escort, the youngest body-guard, was about 12 years
6 old.

7 MS. LUPING: Mr. President, I think -- I think we're fast
8 approaching the lunch break. I was wondering if we should break at this
9 point.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes. You're very wise,
11 Madam Prosecutor, if you think this is the appropriate time.

12 Yes, Mr. Hooper.

13 MR. HOOPER: There's a matter can I raise in the absence of this
14 witness, and it will just take a few minutes to outline the matter, and
15 it would be a matter that, I think, could usefully be raised before lunch
16 and should be. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Fine.

18 Madam Court Officer, we will move into closed session so that the
19 witness can withdraw.

20 Witness, we are having a break for lunch, one hour and a half,
21 and we shall return to the courtroom at 2.30. Thank you for your
22 cooperation this morning.

23 (Closed session at 12.55 p.m.)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Open session at 12.57 p.m.)

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

10 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, please go
11 ahead.

12 MR. HOOPER: Thank you. I don't know how long Ms. Luping intends
13 to be with the witness this afternoon. It's a difficult -- probably a
14 difficult matter to estimate, but I know there's other matters that
15 she'll be wanting to -- to address, and I think we could reasonably say
16 she might well take the afternoon. And I see a nod, an affirmative nod.

17 Rather like as happened with Witness 161, the witness before
18 last, this witness has unexpectedly introduced evidence implicating
19 Germain Katanga. He provided -- this witness provided a statement taken
20 over several days to the Prosecution where he was questioned fairly
21 exhaustively about the events and gave his account. He, in that account,
22 mentioned Mr. Ngudjolo, and he mentioned Mr. Etienne, Etienne. He's done
23 that again today.

24 There's no mention in this statement, and we're not at all on
25 notice that he was going to be an incriminating witness in that true

1 sense of the word, that he suddenly emerged as one, and as we can see
2 from the notice that we had from the Prosecution in addition to their
3 statement, it must be the case that the Prosecution are as surprised as
4 we are by that development. And indeed it's a surprising development,
5 because he was specifically asked who commanded the Ngiti, and he said he
6 didn't know.

7 So we, the Defence, are suddenly presented with a witness for
8 whom we may have had few questions, suddenly again as with previous
9 Witness 161, a witness that is now going to occupy and must occupy our
10 attentions.

11 Now, I mention all that to say this: You may observe that
12 Mr. O'Shea isn't here today. He's been -- he's had to take a judgement
13 in the ICTR, which was issued today, and he'll be back with us next week,
14 but, of course, he's not here to hear the current testimony.

15 I have a personal commitment on Monday in London, a certain
16 ceremony which I have to attend and I can't not attend. Arrangements
17 have been made on the understanding that if this witness was going to
18 carry on until next week, well, I could have given way to Mr. O'Shea. He
19 could have conducted the cross-examination. But when the witness becomes
20 a witness of this level of incrimination, I consider it my duty to do the
21 cross-examination.

22 Now, I'm not going to be here Monday, and I'd ask and crave the
23 Court's indulgence to permit me to be here to conduct the
24 cross-examination, and there are various ways, I suppose, that that could
25 be arranged.

1 If we maintain the current order of cross-examination which for
2 this Defence we'd prefer, then I would, naturally, come before the
3 Defence for Mr. Ngudjolo. We could intersperse a witness. That is,
4 there are two witnesses that Mr. O'Shea, I know, was, in fact, earmarked
5 to deal with. That's the doctor. I don't think either of the witnesses
6 are protected but it's a doctor and photographer, and I won't say more
7 than that just in case there is a level of protection of their names.
8 They could possibly be insinuated.

9 I have an appointment in London on Wednesday evening which I've
10 been hoping to keep, but I can put that to one side and abandon that. I
11 have a flight back at the moment at 8.00 on Tuesday from London. So
12 that's the general position. However, we've been trying to contact our
13 investigator in DRC as of the last half an hour or so, and we haven't
14 been able to raise him, and I don't know whether we will be able to
15 contact him today because there are matters relating to this witness that
16 now he's developed in the way that he has that I would want to see if we
17 could get some answers in respect of.

18 So in any event, it would naturally be a -- I'd almost certainly
19 be asking for a period of time in order to better prepare
20 cross-examination. So that's the general position. So I'm asking the
21 Court to permit me to cross-examine this witness no earlier than Tuesday
22 afternoon and not to deal with him on Wednesday, and I suggest that time
23 can perhaps be saved, if the Court has an acute concern about that, by
24 interposing either doctor -- the doctor or the photographer who we have
25 very few questions of in any event.

1 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor.

2 MS. LUPING: Mr. President, Mr. Hooper has raised a number of
3 matters that we will need to consider, not least the question of
4 logistics and timing, and the Prosecution would like the opportunity to
5 respond to his request after the lunch break.

6 PRESIDING JUDGE COTTE: (Interpretation) Well, we need some
7 additional information. We have understood, Mr. Hooper, that you would
8 like to be able to cross-examine this witness yourself, that you were not
9 able to do so on Monday afternoon because you will not be present in
10 court, but that you could possibly be here on Tuesday, and given that
11 we're not sitting tomorrow, Madam Prosecutor, you need the next hour and
12 a half over the lunch break. Perhaps you need some time Monday
13 afternoon. Remember, next week we are sitting four days in the
14 afternoon, and I believe Monday -- sorry, Friday morning. Four
15 afternoons plus Friday morning. So even if it's difficult for you to
16 estimate, you will need an hour and a half over lunch, and how much time
17 will you need in addition to this afternoon to continue your examination?

18 MS. LUPING: I'm afraid it's difficult to estimate at this time,
19 Mr. President. We will certainly require the rest of today, and I think
20 we'll have a better idea towards the end of the day as to whether we need
21 any further time or not.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you. It is -- is
23 it totally impossible that the Defence of Mathieu Ngudjolo begin the
24 cross-examination given that they have prepared, given the content of the
25 witness's statement given to the Office of the Prosecutor? Could we

1 perhaps change the order of cross-examination for this particular
2 witness, which would only be starting, potentially, Monday afternoon and
3 perhaps even only on Tuesday, because there's also the Legal
4 Representatives in between, and if Monday's hearing has to be a bit
5 shorter, that is also a possibility. Do you think, Mr. Kilenda,
6 Professor Fofe, whether you could begin the cross-examination for this
7 witness, which would, given what we've heard this morning and which would
8 give time to Mr. Hooper to prepare his cross-examination which he hadn't
9 planned as being in quite as much depth, and this would be in the
10 interest of justice for all?

11 MR. KILENDA: (Interpretation) Thank you very much, your Honour.
12 I am not in the habit of making decisions without consulting the other
13 members of our team. It's a question of simple respect. So would you
14 allow us to give you an answer at the beginning of the afternoon?

15 PRESIDING JUDGE COTTE: (Interpretation) Yes. No problem. We
16 have heard the issues. The witness mentioned a name this morning that is
17 a problem for Mr. Hooper. He's requested additional time. There are
18 also other constraints that we were not aware of, that we've just learned
19 that he will not be with us on Monday. Madam Prosecutor has expressed
20 her position. And as I turn toward the Prosecution, if the
21 Mathieu Ngudjolo team is willing to start, I believe the Prosecution
22 would not be against that, but we will discuss it at the beginning of the
23 afternoon session at 20 to 3.00. It is now 10 past 1.00. We will resume
24 at 20 to 3.00.

25 The hearing is suspended.

1 Luncheon recess taken at 1.07 p.m.

2 On resuming at 2.46 p.m.

3 (Open session)

4 COURT USHER: All rise.

5 PRESIDING JUDGE COTTE: (Interpretation) Court is reconvened.

6 Please take your seats.

7 Now, would it be possible to decide what we can do on Monday,
8 beginning with Mr. Kilenda?

9 MR. KILENDA: (Interpretation) Thank you, Mr. President, your
10 Honours. We consulted within the team, and we also consulted with our
11 learned colleague Mr. Hooper, and we agree on condition that the
12 Prosecutor finishes her direct examination on Monday that we the
13 pre-established order should be followed. That is, we will cross-examine
14 after Mr. Hooper.

15 PRESIDING JUDGE COTTE: (Interpretation) Am I to understand that
16 if the direct examination of the Prosecutor ends on Monday after the
17 third hour, if we still have one hour and the questions of the Legal
18 Representatives and the Chamber are not very long, then Mr. Hooper would
19 begin?

20 MR. KILENDA: (Interpretation) Yes.

21 PRESIDING JUDGE COTTE: (Interpretation) But I thought he would
22 not be there on Monday. That is what I thought I understood.

23 MR. HOOPER: Yes, you've understood exactly correctly. I'm not
24 here on Monday. If the current order -- or the order that we've been
25 following is maintained for this witness, which we'd prefer, there's not

1 a great advantage if my friend goes first, because I won't be here on
2 Monday to hear that part of the evidence. And though there's a
3 transcript, it means that I won't be here to perhaps participate if there
4 are issues that arise, and so having that order, and particularly the
5 primary cross-examination, would be -- we would be happier if it was
6 maintained in the ordinary way, and there's no great advantage, for the
7 reason I've just said, if my friend goes first, because I won't be here
8 to play an active role in that primary cross-examination.

9 PRESIDING JUDGE COTTE: (Interpretation) I admit it's a bit
10 difficult for me to understand everything that is being said.

11 Well, I deduct from -- that the Prosecutor will continue today
12 and then on Monday. The legal representatives of the victims will then
13 take the floor. The Chamber could have questions to ask, and then maybe
14 we will suspend and then resume only on Tuesday with the
15 cross-examination of Mr. Hooper.

16 Prosecutor, please.

17 MR. DUTERTRE: (Interpretation) Good afternoon, Mr. President.
18 Good afternoon, your Honours. The Prosecution perfectly understand the
19 constraints of Mr. Hooper. It is possible that we could conclude the
20 direct examination today. This would mean that the legal representatives
21 of the victims could ask their questions. If that is the case, then
22 either Mr. Kilenda can start on Monday, but if it is not convenient to
23 others, we could wait for Mr. Hooper to return on Tuesday to begin the
24 cross-examination first.

25 PRESIDING JUDGE COTTE: (Interpretation) That would mean that we

1 will not sit on Monday, and this poses a question to me regarding the
2 necessity for an expeditious trial.

3 When we fix a trial schedule, it was to -- it is to try to
4 respect it, and co-counsel and counsel should try to respect that.

5 MR. DUTERTRE: (Interpretation) We are saying the same thing,
6 Mr. President. We have no problem with the Defence of Mr. Ngudjolo
7 starting the cross-examination. We thought we understood that there was
8 a difficulty with the witness who brought in new things, but if there is
9 no guarantee that this witness will finish on Monday, then this will
10 delay the testimony of 150 to Tuesday or Wednesday, that would not be
11 good, but we are in the hands of the Chamber. However, we are -- we
12 still believe that we are in advance of the schedule, and whatever the
13 decision taken, the other witnesses, * 0159, 0418, and 0373, will be
14 finished before the Easter recess.

15 JUDGE DIARRA: (Interpretation) I'm sorry, when a team has a
16 lead counsel and a co-counsel, for exceptional circumstances, that is to
17 prepare the schedule of counsel, the rule to the effect that
18 Mr. Ngudjolo's team passes before you, can't that be an exception? This
19 is something that I do not understand. Is it Mr. Ngudjolo's team that
20 has a problem with Mr. O'Shea, who is not supposed to be here at the time
21 he is supposed to be here, and then Mr. Hooper who has to be in London
22 when he is supposed to be here? This is an exceptional case that should
23 make everyone to reflect and push back the limits of what is acceptable.
24 Everybody has to be reasonable so that we should conclude this trial
25 within a reasonable time period without even thinking of the fact that we

1 have our own constraints, the Vice-president has administrative
2 obligations.

3 Yesterday, I had bed-rest ordered by the doctor, if you are able
4 to see my head, but I made a point of being here.

5 MR. KILENDA: (Interpretation) Thank you, your Honours.

6 Mr. President, your Honours, this is a case of force majeure, and during
7 this exchange Professor Fofe and myself have just consulted, and we
8 accept to begin the cross-examination first if that is the decision.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.
10 This is all exploratory, because we do not know the precise time that is
11 going to be taken by the direct examination and the Legal Representatives
12 and possibly the Chamber. At the same time, Mr. Hooper, we have the
13 concern to ensure that this trial should be conducted fairly, and we bear
14 in mind what the Defence team of Mr. Katanga has said, given that you
15 will not be here on Monday and you want to conduct the cross yourself. I
16 believe the other members of your team can tell you or brief you on what
17 happened during Mr. Ngudjolo's cross-examination on Monday.

18 So we understand what you said this morning, but what we are
19 saying is this: If the cross-examination is able to begin on Monday, it
20 will be Mr. Mathieu Ngudjolo's team that will begin, and we thank them
21 very much.

22 And now we will go into closed session. We share the
23 Prosecutor's ideas, because interrupting the witness and so on and so
24 forth is not very good.

25 So, Madam Court Officer, take us into closed session, and the

1 Court Usher is going to fetch the witness for us.

2 MR. HOOPER: Just before the witness is brought in can I raise
3 quite a different matter -- oh.

4 (Closed session at 2.56 p.m.)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Open session at 2.56 p.m.)

12 COURT OFFICER: (Interpretation) We are in open session,
13 Mr. President.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
15 Court Officer.

16 Mr. Hooper, please go ahead.

17 MR. HOOPER: A little while ago, because there was a reference in
18 this witness's statement to his having a diary and making particular
19 entries in it, the Defence called -- requested a copy or to have sight of
20 the diary, and recently, last couple of days, we received a photocopy of
21 scanned or scanned pages from the diary which I have here.

22 It's been redacted, edited. There's no explanation for the
23 redactions. We don't know what reason the Prosecution who have made the
24 proprio motu redactions, the basis on which they've made it, and it
25 renders the document less intelligible to us than it should be.

1 Now, I don't know whether this witness, whose diary it is, has a
2 particular sensitivity, but we would submit that we should see the entire
3 unredacted document. And it might be, Mr. President, that the Court
4 itself could inquire of this witness whether he has any objection to my
5 and indeed Mr. Kilenda having sight of the diary. If that is the case,
6 then there would be no reason at all to have these redactions.

7 I don't know if Ms. Luping has any observations on that.

8 MS. LUPING: Mr. President, just to explain that the original
9 request that was made by the Defence was to have access to entries that
10 had been mentioned in the witness's prior statement, and those extracts
11 were the copies that were made. The information that is redacted is
12 simply information that has no relevance to the incidents to which the
13 Defence had requested access. They either refer to individuals who have
14 nothing to do with the incidents in question or personal matters that
15 were noted by the witness.

16 PRESIDING JUDGE COTTE: (Interpretation) Can you simply remind
17 us of the witness? Was it the witness who is testifying today or the
18 witness who testified a short while ago, because we do not know the
19 specific witness yet.

20 MS. LUPING: Certainly, Mr. President. This is Witness 159, who
21 is currently testifying, that we are talking about.

22 PRESIDING JUDGE COTTE: (Interpretation) So this is our current
23 witness. Very well. I did not remember that since yesterday he had
24 referred to any diary.

25 Now, Mr. Hooper, Mr. Kilenda, the answer just given by the

1 Prosecutor, are you satisfied by it? You have heard the reasons that she
2 has given for the redactions that were made in the diary that you
3 received. Are you satisfied by that answer or not?

4 MR. HOOPER: No, we're not satisfied. First of all, these are
5 redactions that have been made proprio motu by the Prosecutor. That's
6 the first thing. We don't know whether this has arisen as a result of an
7 express sensitivity on part of this witness or not. This witness may
8 indeed have absolutely no objection to my having sight of the document.

9 Secondly, the relevance of having sight of the document is to
10 better assess the nature of these entries, and having seen the little
11 that I have seen, that's plainly, in my view, necessary. The scanned
12 extracts are not in context. There is, in our view, an over-redaction.
13 It's very difficult, for example, to see the context of a particular
14 entry, and until we see the context of a particular entry, its date, the
15 surrounding dates, and the surrounding information, it's very difficult
16 for us to assess the contemporaneous nature, for example, of the entries
17 that are made.

18 We found this, as you know, with a previous witness who produced
19 a diary, and when looked at the rest of the context of the diary it was a
20 very strange document, indeed. The same thing, we think, has arisen
21 here, and the Defence merit access to the total document. Again, it may
22 be this witness has absolutely no objection to us seeing it.

23 MS. LUPING: Mr. President, if I could just make one point of
24 clarification.

25 PRESIDING JUDGE COTTE: (Interpretation) If you would like to

1 take the floor so we can finish this discussion. Everybody, including
2 myself, has to speak more slowly, because I'm trying to find in the
3 transcript that you just mentioned, and those words are not there, or
4 very few of them. There is no -- there's a mention which says that
5 the -- that everything has been too fast, so people can't follow. This,
6 for me, causes a lot of problems. So we thought we could understand that
7 you had carried out a certain number of redactions, because from the
8 point of view of the Office of the Prosecutor, these redactions concerned
9 passages which didn't seem relevant to you and which were not of interest
10 to the Defence. These are therefore redactions that you took the
11 initiative on.

12 I will now give you the floor.

13 MR. KILENDA: (Interpretation) I would just like to join the
14 point of view expressed by Counsel Hooper to tell your Chamber that we
15 would like to see the original document for all the reasons that have
16 been mentioned, and -- it is a decision of your Chamber that all
17 redactions should be done under the control of the Chamber.

18 THE INTERPRETER: The English interpreter is sorry for the lack
19 of interpretation, but there was an incredible amount of interference on
20 the channel.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor,
22 you have the floor. If I can allow myself, I would ask you for some
23 clarifications in this regard. I don't have a memory with regards to
24 this journal or this diary of the witness, but perhaps that's something
25 I've forgotten.

1 Now, a question: Is this a document which is important, or,
2 let's say, a document of several pages or not? Is it the witness himself
3 who has expressed the wish to see redactions made to this diary? A third
4 question: Is it invisible -- can it be envisaged to ask the witness the
5 question when he is there, and if he considers that the diary can be
6 presided to the Defence, would you have a significant obstacle to that
7 being done? The floor is over to you, Prosecutor.

8 MS. LUPING: First a small point of clarification, Mr. President.
9 The witness, * today, has not mentioned his diary in testimony. It was
10 in his prior statement. So that's why you've not been able to find a
11 reference to it in the transcripts.

12 As for the document itself, it is not a lengthy document, but as
13 regards the -- what was -- as regards what was provided to Defence, this
14 was simply in response to their specific request to have access to those
15 entries mentioned in the diary, and we were given specific references in
16 the request made by the Defence and that was what was provided to them.
17 It was in light of this that those redactions were made.

18 As this is a new request made by the Defence to have access to
19 the whole of the document and not only to those entries related to the
20 specific incidents mentioned by the witness, we would need to have time
21 to consider this new request being made.

22 PRESIDING JUDGE COTTE: (Interpretation) When you speak about
23 the entries, could you just be a bit more clear. You indicated that you
24 had satisfied the demands of the Defence with regards to specific
25 references -- or they had given references to particular entries. Is

1 that with regards to Mandro, yes? We now --

2 THE INTERPRETER: Bogoro rather than Mandro.

3 PRESIDING JUDGE COTTE: (Interpretation) That's good. So now we
4 have a precise objective, which is namely that of ensuring that the
5 witness has been able to note with regards to Bogoro that is there really
6 an interest for you to have this complete diary at the moment. If the
7 request is precise, why do you react in this way today?

8 MR. HOOPER: In his previous declaration, the witness speaks of
9 previous attacks and this attack and of making what appear to be
10 contemporaneous entries in his diary. It's a similar situation to an
11 earlier witness, you may recall, one the first witnesses. So the Defence
12 requested the Prosecution to see if it was to have the witness bring and
13 produce his diary.

14 Now, in order -- we're trying to find our e-mail, but our
15 computer here isn't working as well as it might this afternoon. But as
16 far as the original e-mail is concerned, I can't remember the expressed
17 terms but we are asking for the diary, and the relevance of the diary we
18 stressed was, of course, the entries in respect of these previous
19 attacks. But, of course, that wouldn't be our only interest in seeing a
20 document like that, but it's often because of the other surrounding
21 entries that one can better measure the purpose of the document itself,
22 and, of course, perhaps when those entries were made, the particular
23 relevant entries were made, and how those entries sit, as it were, or
24 relate to other entries.

25 Now, the document that we've had I can pass up and it's an

1 unmarked document, a printout of the scanned documents, and the Court can
2 see for itself, perhaps, our concern --

3 MS. LUPING: I'm sorry to interrupt my friend, but perhaps I can
4 help the situation by just confirming that if the witness does give
5 permission for the Defence to have access to the full diary, then the
6 Prosecution would not object.

7 PRESIDING JUDGE COTTE: (Interpretation) In that case, we will
8 stop with your previous comment. You said you wanted to have a bit more
9 time to speak with the witness to find out whether he would accept that
10 the entire diary be disclosed to the Defence. In other words, you're
11 going to have to speak with the witness in the appropriate conditions,
12 not alone. You'd have to check with the Victims and Witnesses Unit.
13 Perhaps you can give us the response on Monday before the
14 cross-examination begins. Is that okay with the Prosecution?

15 Well, in order to check with the witness -- actually, I myself am
16 hesitating whether or not I could ask him the question in court because
17 it might put him in an uncomfortable position to ask him that in open
18 court. I think it's preferable to discuss with the Victims and Witnesses
19 Unit and determine how a conversation can take place in order to discuss
20 with him and ask whether he agrees to disclose a copy of the diary to the
21 Defence, and you can give us this answer on Monday.

22 If the witness were not willing to disclose the diary, you could
23 let us know in an e-mail which would have to be copied to all of the
24 participants, in which case we would ask that you give us the original
25 copy of the diary as well as a copy of what has been given to the Defence

1 in order for us to be able to evaluate the relevance of the redacted
2 items. Do we agree on that?

3 MS. LUPING: Yes, Mr. President. We would agree to that.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
5 Madam Prosecutor. The important aspect, of course, is that the Chamber
6 be made aware of this tomorrow morning, in particular. If the witness is
7 not willing to have the full diary disclosed to the Defence, in which
8 case we would have to examine the relevance of the redacted elements, we
9 would need time to do so, starting tomorrow toward the end of the
10 morning, or even earlier if possible. Thank you very much.

11 Madam Court Officer, we can now go into closed session, please,
12 in order to bring the witness in?

13 (Closed session at 3.12 p.m.)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 3.14 p.m.)

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

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Questioned by Ms. Luping (Continued)

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1 your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Please, Prosecutor, if
3 you could continue with your examination-in-chief. You have the floor.

4 MS. LUPING: (Interpretation) Thank you, Your Honour.

5 Q. (In English) Mr. Witness, you mentioned previously seeing
6 Ngudjolo in his village Dzago. My question is: How did you learn that
7 this person you saw was called Ngudjolo?

8 A. Thank you for the question. I know Ngudjolo. I know him from
9 his village. The name of his village, as you mentioned, is Dzago. Dzago
10 is one of the localities of the groupement of Ezekere in the territory of
11 Djugu.

12 Q. And when did you learn that this person was Ngudjolo?

13 A. I identified him very well when the fighting restarted, at the
14 start of the attacks. It was at that time that his name was heard
15 everywhere. On the radio the journalist mentioned his name. It was at
16 that time that I got to know him very well, because in addition to
17 Ngudjolo, he also had the name of -- he had another name which he was
18 very known in Katonie by, almost everywhere by, and this name was Chui.

19 Q. And going back to the attack of February 2003, when you stated
20 that you saw Ngudjolo inside the UPC camp, when you saw him was he
21 carrying anything?

22 A. I saw him. He was carrying a weapon, a firearm. It was an SMG,
23 as I said before. He also had a beret, as I also said yesterday, a beret
24 which I can't say the name in Swahili, but in French --

25 THE INTERPRETER: The Swahili interpreter didn't hear what the

Witness: Witness P-0159 (Resumed) (Open Session)
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1 witness said.

2 PRESIDING JUDGE COTTE: (Interpretation) Witness, can you say
3 what you said at the end? When you spoke about the beret, can you say
4 again what that was? Thank you.

5 THE WITNESS: (Interpretation) "Large bord" or "wide brimmed" is
6 the name of the beret that he had.

7 MS. LUPING:

8 Q. Mr. Witness, you also have described seeing civilian killed near
9 the UPC camp. Were their bodies still there when you saw Ngudjolo at the
10 camp?

11 A. When I saw the people who were being killed, the bodies of these
12 people were still there, and he himself, Ngudjolo, was there.

13 Q. And could you estimate how far these bodies were from where
14 Ngudjolo was located in the camp?

15 A. Ngudjolo was in the camp, and the bodies were at a distance. I
16 would say just behind the camp. Just behind the camp. West of it,
17 because there there was an exit and people fled by this exit route, and I
18 would say that the * bodies were behind the institute. And people wanted to
19 flee in this direction, and that's why there were several bodies behind
20 the institute.

21 Q. You stated that you saw Ngudjolo giving orders to fighters at the
22 camp. My question is: After you saw Ngudjolo giving these orders, did
23 you see these fighters do anything?

24 A. Yes. When Ngudjolo gave his orders, the fighters continued
25 fighting. They continued to massacre the population. Others, too,

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Ms. Luping (Continued)

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1 continued to pillage or loot the goods and property.

2 Q. And when you say you saw fighters continue to massacre the
3 population, was this still within the UPC camp?

4 A. Yes. As I said before, when they started the attack, their main
5 objective was to attack the camp or to reach the camp, because they knew
6 that the force was near -- was present in the camp. They arrived. They
7 took over the camp. All the fighters were present in the camp. The FNI
8 group as well as the FRPI occupied Bogoro. Bogoro was in their hands.
9 Ngudjolo was in the camp. Other fighters continued to massacre the
10 civilian population. Even the few people who hid in the bush were
11 killed. Ngudjolo himself was at the camp at that time.

12 Q. And when you say that Ngudjolo himself was at the camp at that
13 time, just to be clear, where was he when the fighters were continuing to
14 massacre the civilian population? Could you see him still?

15 A. As I said - I will say it again - Ngudjolo was standing up within
16 the institute. I would say it is -- it was the place where the pupils
17 used to sing the national hymn when this was still a school. It was in
18 that place that Ngudjolo was. On the left there was the classroom, and
19 towards the bottom there was a road that went from Bunia to Kasenyi,
20 Gety, and he -- he was there.

21 Q. And you said you saw fighters pillaging as well. Where was this?

22 A. Thank you for this question. Every time that the FNI fighters
23 and the FRPI arrived or attacked a location they divided themselves up
24 into two groups. The first group was exclusively composed of fighters,
25 and the second group was composed of civilians, armed civilians,

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1 civilians around with bladed weapons such as machetes.

2 This second group had the objective either to pillage or to
3 finish off the people who were dead. They could even burn the houses.

4 Q. Did you see any of the fighters pillaging?

5 A. Yes.

6 Q. And where did you see fighters pillaging?

7 A. The fighters who were pillaging I observed from my hiding-place.
8 When I came out of my hiding-place, I went up Waka hill and I hid in that
9 place. It was a safe place. From this hill I could see everything. I
10 saw everything that was happening, because from Waka hill all the camp is
11 visible very clearly. The centre of Bogoro is also visible, and
12 everything that happens, everything that's done you can see from Waka
13 hill very well and in a correct and clear way.

14 Q. And from this place on the hill, where in Bogoro village could
15 you see fighters pillaging?

16 A. Thank you for the question. They pillaged in several places.
17 Some of them are the centre of Bogoro. Why? Because in the centre of
18 Bogoro, when there is fighting in the small neighbouring village around
19 Bogoro in groupements belonging to the Hema ethnic group, all the people
20 live in these small villages come into Bogoro, and most of them live in
21 the centre of Bogoro. If you take the neighbourhood between the centre
22 and Bogoro camp, most of the people lived in the centre of Bogoro, and
23 this place was pillaged. They also pillaged in the camp. More or less
24 everywhere, but I would say that most of the pillaging that took place
25 was in the centre.

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Questioned by Ms. Luping (Continued)

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1 Q. You have mentioned that there was burning of houses. I want to
2 clarify. Are you referring to this attack of February 2003?

3 A. In 2003, the houses were burned and the roofs were removed. The
4 corrugated iron roofs were removed for houses that had roofs. As regards
5 the straw huts, they were burned. And the houses that had a corrugated
6 iron roof were also attacked, and they took the roofs.

7 Q. And, Mr. Witness, was this something that you saw yourself with
8 your own eyes, or was this something you learnt from others?

9 A. No. I'm telling you about events that I saw myself. I was an
10 eyewitness, and I am here to tell the truth and to tell you what I
11 actually saw.

12 Q. Mr. Witness, I'm now going to return to what you saw inside the
13 UPC camp when you mention you saw someone called Etienne. My question
14 is: How do you know Etienne?

15 A. I know Etienne. (Expunged).
16 (Expunged)
17 (Expunged).

18 Q. And do you know the ethnicity of Etienne?

19 A. Etienne is a Lendu Nord.

20 Q. Could you see what Etienne was doing at the UPC camp?

21 A. What I saw Etienne do in the camp is that he was carrying a
22 weapon, and he used that weapon to beat people. Personally, when you
23 killed a soldier, he was shooting -- well, aside from Byaruhanga, he shot
24 another soldier. I saw Etienne use his weapon to shoot people who were
25 fleeing.

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Questioned by Ms. Luping (Continued)

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1 Q. And could you see what Etienne was wearing?

2 A. Etienne was wearing camouflage pants and a T-shirt.

3 Q. Do you know to what military group Etienne belonged at the time
4 of the Bogoro attack?

5 A. Etienne was a member of the FNI.

6 Q. And do you know to what military group Ngudjolo belonged at the
7 time of the Bogoro attack?

8 A. At the time of the attack against Bogoro, Ngudjolo was a member
9 of the FNI.

10 Q. When you saw Etienne at the camp, could you hear any of the other
11 fighters speaking to him or addressing him in any way?

12 A. No, I didn't hear anything. I didn't hear the fighters speaking
13 to Etienne, but I saw him inside the camp.

14 Q. And when you first saw Etienne in the camp, where was Ngudjolo?

15 A. Are you still referring to the attack that took place in 2003,
16 Madam Prosecutor?

17 Q. Yes, I am, and I'm referring to your previous information that
18 you saw Etienne in the camp, and you've also said that you saw Ngudjolo.
19 My question is: Did you see them there at the same time? Were they
20 there at the same time?

21 A. Yes. As I've already stated, the first person I saw was
22 Ngudjolo. Then the second person I saw go into the camp was Etienne, and
23 then lastly I saw Rene. He was there. So I saw three people inside the
24 camp in addition to the other soldiers that I saw.

25 Q. And this third person, Rene, that you have just mentioned, how do

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Ms. Luping (Continued)

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1 you know him?

2 A. Rene is a young man, but he grew up in Bogoro. He's the son of
3 Papai Buna. Rene grew up and lived in Bogoro, and I know him very well.

4 Q. Mr. Witness, could you please spell Papai Buna for the record.

5 A. Yes, I can. P-a-p-a-i, and then B-u-n-a. Papai Buna.

6 Q. And what is Rene's ethnicity?

7 A. Rene is a member of the Lendu North ethnic group.

8 Q. You have stated that later on you saw Germain Katanga. My
9 question is: Had you seen Germain Katanga before this attack at Bogoro?

10 A. I saw Germain Katanga before the attack on Bogoro, in Bunia. I
11 saw him. I know he was a soldier in the APC.

12 Q. And in what circumstances did you see him?

13 A. I simply saw him in Bunia. The first time that I gained
14 knowledge of him and that I knew he was Germain Katanga was when there
15 was a meeting before the war. This meeting took place on a soccer field
16 in Bunia, and at the time it was the APC that controlled Bunia, and I saw
17 him at this meeting.

18 Q. And other than at this meeting, did you see him any other times?

19 A. No.

20 MS. LUPING: Mr. President, if we could go into private session
21 for me to ask a question which will be potentially identifying.

22 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course,
23 Madam Prosecutor.

24 Court Officer, could we move into private session.

25 (Public session at 3.45 p.m.)

Witness: Witness P-0159 (Resumed) (Private Session)
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16 (Expunged)
17 (Open session at 3.46 p.m.)
18 COURT OFFICER: (Interpretation) We're in open session, your
19 Honour.
20 PRESIDING JUDGE COTTE: (Interpretation) Fine.
21 Madam Prosecutor, please proceed.
22 MS. LUPING:
23 Q. Mr. Witness, going back to the attack on Bogoro of February
24 2003 --
25 MR. HOOPER: I'm sorry to interrupt my friend. As the Chamber

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1 knows this is completely novel information, and in order for the Defence,
2 really, to be put on proper notice of this kind of material, it's
3 incumbent, in my submission, for the Prosecution to give us some more
4 information through the witness. And, for example, when did this meeting
5 take place, the Bunia meeting. What was it for? Who else attended? So
6 that the Defence are in a position to investigate these matters. It's
7 not matter for cross-examination. If the Prosecution are introducing
8 these matters now, purposefully as they are, then it's incumbent upon
9 them to provide the Defence necessary basic information.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
11 In fact, the Chamber thought that Madam Prosecutor would have inquired
12 about the date of the meeting. As regards who participated, we heard
13 that it was a popular meeting open to all citizens. As regards the date,
14 indeed, this is a bit information that would be worthwhile obtaining from
15 the witness if you would be so kind as to ask the question, madam.

16 MS. LUPING: Mr. President, the witness has already confirmed
17 that this meeting took place when the APC were in control of Bunia. I
18 believe that that was a sufficient response. So our thinking is if the
19 Defence were wanting to clarify further details, this is information they
20 could obtain in cross-examination.

21 PRESIDING JUDGE COTTE: (Interpretation) Well, these are
22 questions that the Chamber shall therefore put to the witness.

23 Mr. Witness, the Prosecutor has mentioned a few moments ago a
24 meeting during which you apparently saw Germain Katanga for the first
25 time on a soccer field in Bunia at a time when the APC was in control of

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1 Bunia. Can you tell us what the date would have been or perhaps give us
2 a period of time when that meeting took place? Do you remember
3 sufficiently well to be able to give us a date?

4 THE WITNESS: (Interpretation) Thank you very much for your
5 question, your Honour. I do not know the exact date, but it was during
6 the year 2002. It was during that year that the APC was in control of
7 Bunia, and it was during that very same year that the conflict began.

8 During the year 2002, the APC was very powerful, and the popular
9 meeting took place on a soccer field. I do not know the precise date. I
10 simply did not remember it.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
12 That's useful information that you've provided. Can you tell us whether
13 during that meeting several individuals spoke, and, if so, do you
14 remember the names of the speakers at that meeting?

15 THE WITNESS: (Interpretation) At that meeting I arrived a bit
16 later. There were many people there, and at that time there were no
17 loudspeakers. There were no loudspeakers. And the people who were
18 managing the meeting were seated, and they were mainly people who worked
19 for the government of Lompondo.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
21 Madam Prosecutor, you may proceed.

22 MS. LUPING:

23 Q. Mr. Witness, returning to the attack of of February 2003 on
24 Bogoro, my question is: (Expunged)
25 (Expunged)

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Questioned by Ms. Luping (Continued)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 Q. I'm sorry, Mr. Witness. My question was not clear. You said
7 that you were at Bogoro during the attack and that you fled to Bunia. My
8 question is: When did you leave Bogoro to go to Bunia? And this is
9 after the fall of Bogoro.

10 A. Yes. I went to Bunia after the attack that took place in 2003,
11 after the 25th. That's when I went to Bunia. Before that date I was in
12 Bogoro. The day of the rally, I was in Bunia, but then I went back to
13 Bogoro.

14 Q. And did you leave the same day of the attack on Bogoro or the
15 next day? When did you leave Bogoro?

16 A. Thank you. I left two days after the attack. Why did I wait two
17 days? Well, when the attack began, I was in the bush in Bogoro, and I
18 was observing what was taking place, and then it was impossible to leave
19 for Bunia, at least taking the ordinary road. So I had to find a
20 different way through the bush, and I went gradually, and I would walk at
21 night. At a certain point in time I got to the Nyankunde road which I
22 took to go to Bunia.

23 Q. And you say you reached Bunia. For how long did you remain in
24 Bunia?

25 A. After the attack in Bogoro, I went to Bunia. We were in Bunia,

Witness: Witness P-0159 (Resumed) (Closed Session)
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1 and I said for a relatively long period of time.

2 MS. LUPING: Mr. President, I do have a number of further
3 questions, and I see the time is nearly up, so I won't be completing them
4 today. I will have further questions, then, on Monday. You might decide
5 this is an opportune moment to postpone.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
7 Madam Prosecutor. Indeed, we cannot continue beyond 4.00. Therefore,
8 you will complete your direct examination on Monday. We will meet at
9 2.00, from 2.00 to 4.00, and then from 4.30 to 6.30.

10 Witness, thank you very much for your cooperation today. We
11 shall therefore meet again Monday afternoon. The Prosecutor will
12 complete her examination-in-chief, then the representatives of victims
13 will ask any questions they may have, and the Chamber will also decide
14 whether or not they need to ask any questions, and then depending on the
15 remaining amount of time, if we have time left, the Defence team of
16 Mathieu Ngudjolo will begin their cross-examination, followed by the
17 Defence team of Germain Katanga.

18 Again, the Chamber would like to thank the Defence team of
19 Mathieu Ngudjolo, which is enabling us to continue without interruption.

20 Court Officer, shall we move into closed session in order to
21 enable the witness to leave the courtroom.

22 (Closed session at 3.59 p.m.)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0159 (Resumed) (Closed Session)
Questioned by Ms. Luping (Continued)

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4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Open session at 4.00 p.m.)

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

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

12 Madam Prosecutor, please do not forget the matter regarding the
13 personal diary of the witness that we discussed earlier.

14 The Chamber would like to thank all those who have assisted us in
15 our work today. It's been a long day, and our session is adjourned.

16 COURT USHER: All rise.

17 The hearing ends at 4.00 p.m.

18 CORRECTIONS REPORT

19 Some parts of the English transcript have been corrected.

20 Due to a large amount of corrections, these have been implemented
21 directly into the transcript. The locations of the corrections are
22 indicated by asterisks (*)

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