

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, 24 March 2011
10 The hearing starts at 9.03 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
15 Mr. Gilissen, you wanted to say something before the witness is
16 called in.
17 MR. GILISSEN: (Interpretation) Thank you, your Honour.
18 Your Honours, we would like to thank you for the reclassification that
19 you authorised and we were able to look over the documents that we have
20 been given access to. And very respectfully, we really don't want to
21 talk about our feelings about having had to leave the room
22 yesterday - that is the regulation - but it appears to us, very
23 respectfully, that there is a problem in the practice of *ex parte*
24 proceedings. Obviously the documents that are filed *ex parte* really do
25 not have -- include any justification of the *ex parte*, and that, we know,

1 is the regulation. But when we look at the decisions on issues discussed
2 in *ex parte* proceedings, I admit to you that except for the rules of law
3 applicable before this Court, we really do not understand the reason why.
4 Mr. Luvengika, myself, and the other members of the team are certainly
5 not prepared simply to open fire on detained prisoners coming from
6 Kinshasa or to undermine other issues. But the Chamber has an enormous
7 responsibility. Except the Chamber feels that it is against nature, I
8 would like to say that this participation of Legal Representatives in
9 such issues could be reviewed by the Chamber and reconsidered.

10 Thank you, your Honour. I believe that I have made our feelings
11 known as we always do when we feel it is necessary.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Mr. Gilissen.

14 The Chamber had a feeling that resorting to *ex parte* proceedings
15 was rather more important during the preparatory phase of the
16 presentation of the Prosecutor's case because a certain number of
17 witnesses could be subject to risks that compelled us to have recourse to
18 *ex parte* filings and proceedings. We do not feel that there were any
19 excesses during that preparatory period for the preparation of the
20 Defence case.

21 Regarding the detained witnesses that we are going to examine
22 next week, it seems to us that there were strategic considerations on the
23 part of the Defence teams. There was also a period of waiting to find
24 out what would be the response of the Democratic Republic of Congo to the
25 requests for co-operation, but you have expressed that concern and we are

1 going to examine that because every concern expressed by any of the
2 parties or the participants has to be examined. So we will look into
3 that and we will get back to you to determine whether we are responsible
4 for any abuses or whether there are any modifications to be implemented.

5 For the time being we are going to call in Witness 136, who is
6 the first witness of the Defence of Mr. Germain Katanga.

7 Good morning, accused persons, I did not greet you.

8 Witness 136 did not wish to have protection measures in the
9 courtroom, so he will testify publicly. And we will go into private
10 sessions, which will be very rare indeed, only for the purpose of
11 identifying third parties, but Mr. Hooper has made the effort to transmit
12 to us a list of names with numbers which will enable us to identify
13 certain persons. The witness did not ask for his voice to be distorted
14 and for his -- for face distortion. So we will call him in. He will
15 give his personal details and then take the solemn oath. Mr. Hooper will
16 examine him and then Mr. Fofe or Mr. Kilenda, according to the directive
17 1057, and then the Legal Representatives, after which the Chamber will
18 decide whether we ourselves have any supplementary clarifications to
19 seek.

20 So, Madam Court Officer, let us bring in Witness 136.

21 Mr. Hooper, please.

22 MR. HOOPER: Yes, just on a number of matters. First of all,
23 when I speak with these earphones on I get an echo. You may recall
24 Mr. O'Shea had this problem earlier. It's this new system. I don't know
25 if it's just that this particular microphone area in front of me is

1 blighted, but I find it rather, to put it mildly, a distraction,
2 particularly when there's interpretation going on. I don't find this a
3 happy work regime, but enough of my moaning.

4 Can I just get the, perhaps, two issues that very briefly occupy
5 me this morning. The first one is this. My understanding of the order
6 of questioning after I take the witness through his evidence in chief is
7 that it then passes to the co-accused, then to the Prosecutor, and then
8 finally, with the Court's leave, to the victims' representatives. That's
9 my understanding, and I see a nod from at least one member of the Bench
10 and I move on with that understanding.

11 Secondly, you've made reference just now to the list that we've
12 provided and I hope everyone's got it in front of them or to hand. We
13 have a paper, hard copy version of this list that we can put in the hands
14 of the witness very soon after he commences his evidence. Now, I've got
15 no problem resorting to this list, but it seems to me, in my respectful
16 submission, that it should not be necessary for me to resort to this list
17 unless, of course, by doing so I'm going to reveal the status in that
18 particular sense of the particular person. And, for example, if I was to
19 say, "Do you know someone called Michael?" And the witness was to say,
20 "Yes." And I would say, "Tell us about Michael," whatever the question
21 might be, that is a question that is neutral and the answer is not in
22 that context in any way, in the least way, expected to identify Michael
23 as having, say, the status of a witness.

24 So I have this list prepared, but subject to the views of the
25 Court, I have little or no intention of using it. I will ask direct

1 questions without, as it were, indicating status. So that's what I
2 propose to do, and I say unless there's any objection to that course.

3 Subject to that, I've no other matters except that perhaps I can
4 indicate, and I'm grateful to my friends for the victims having listed
5 his questions, we've considered them and we raise objection to a number
6 of them. I won't specify which ones. What I'd say is that these
7 questions are too open -- sorry, may I rephrase that. These questions
8 are not open enough. They're essentially closed questions and they
9 should be open questions. And subject to the representatives
10 readdressing that, which, in my submission, respectfully they should,
11 then I don't stand in the way of their questions. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, on
13 point number three. The Court Officer is going to make sure that there
14 is no echo for whoever is conducting the examination. With regard to the
15 order of examination I refer you to decision 1665 of December 2009,
16 paragraph 63. It is indicated that the Defence of Germain Katanga will
17 be the first to examine any witness called by them, then there will be
18 the Defence of Mr. Mathieu Ngudjolo, then the Prosecution will have the
19 possibility of cross-examining the witness. And if the Defence of
20 Mathieu Ngudjolo wishes to conduct a re-examination, then they will ask
21 for leave to re-examine and the questions will relate only to their own
22 case. Then if necessary, the Legal Representatives and then the Defence
23 of Germain Katanga will have the final word.

24 Mr. Prosecutor, on the third point, that is, using the list of
25 names which have corresponding numbers, on that list there are OTP

1 witnesses and I believe that is the reason why you are taking the floor.

2 MR. MACDONALD: (Interpretation) I do not want to say this in
3 open session, but indeed, Mr. President, when you look at the list,
4 number 1, for example, or number 15, I believe that if these persons are
5 referred to --

6 MR. HOOPER: (* Previous translation continues) ... I must remind
7 my friend we're in open session. He's defeating the whole purpose of
8 this discussion.

9 PRESIDING JUDGE COTTE: (Interpretation) For the time being we
10 are not mentioning any name. We are simply defining the rules of the
11 game. If names of people who have already appeared in this courtroom
12 have to be mentioned, then we have to provide their anonymity. That is
13 our only concern and that would compel you to use the numbers that you
14 have provided to us. I don't think that there is any difference of
15 opinion on that issue.

16 Regarding the last point raised by Mr. Hooper, before we move to
17 the witness and relating to the questions, and I believe only
18 Mr. Gilissen sent in questions because, Mr. Luvengika, we did not receive
19 anything from you, that is, questions that you intend to put to
20 Witness 136, or am I mistaken?

21 MR. LUVENGIKA: (Interpretation) No, your Honour, you are
22 absolutely correct. For the time being I have no questions to ask, but I
23 reserve the right to seek your leave in light of the testimony of the
24 witness and then I will determine whether I have questions or not.

25 PRESIDING JUDGE COTTE: (Interpretation) Very well. But,

1 Mr. Gilissen, I think it would not be unreasonable for you to review the
2 phrasing of the second question that you intend to ask, and it can indeed
3 be challenged. So you have the time necessary to rephrase it if you
4 still intend to put that question to the witness after the examinations
5 of Mr. Hooper and Mr. Kilenda.

6 Court Officer, please have Witness 136 brought into the
7 courtroom, please.

8 (The witness entered court)

9 PRESIDING JUDGE COTTE: (Interpretation) Good morning, sir. Can
10 you hear me well? Please speak loudly and into the microphone because I
11 cannot hear you. Can you hear me well?

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

13 PRESIDING JUDGE COTTE: (Interpretation) I can also hear you
14 well also. The Court is happy to welcome you because you are coming to
15 testify and to help us better understand the facts of which we are seized
16 and which we have to adjudicate. I would like to ask you to give us your
17 personal details, your name and first name.

18 THE WITNESS: (Interpretation) My name is Dubatso Baguma
19 Jonathan.

20 PRESIDING JUDGE COTTE: (Interpretation) Date and place of
21 birth?

22 THE WITNESS: (Interpretation) I was born in Nyakunde on the
23 27th of February, 1981.

24 PRESIDING JUDGE COTTE: (Interpretation) Very well. What is
25 your current occupation, that is, if you have one?

1 THE WITNESS: (Interpretation) I am currently a student.

2 PRESIDING JUDGE COTTE: (Interpretation) And what are you
3 studying?

4 THE WITNESS: (Interpretation) Agronomy.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well. Before
6 beginning your testimony you have to take an undertaking to speak the
7 truth. It is a solemn undertaking and I believe you are aware of it.
8 I'm going to read that undertaking slowly for you to understand very
9 well. So listen to me. I solemnly declare that I will speak the truth,
10 the whole truth, and nothing but the truth. Did you hear me well?

11 THE WITNESS: (Interpretation) Very well.

12 PRESIDING JUDGE COTTE: (Interpretation) Now, do you undertake
13 to speak the truth, the whole truth, and nothing but the truth?

14 THE WITNESS: (Interpretation) Yes.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well. Please
16 listen carefully once again. You have just said that you undertake to
17 speak the truth, the whole truth, and nothing but the truth. If in the
18 course of your testimony or in answer to the questions that will be put
19 to you, you do not speak the truth, you may be prosecuted before the
20 International Criminal Court for perjury. And if the facts are proven,
21 you can be convicted. Did you understand?

22 THE WITNESS: (Interpretation) Yes.

23 PRESIDING JUDGE COTTE: (Interpretation) The Court notes that
24 the provisions of Article 69(1) of the Statute and Rule 66(1) of the
25 Rules of Procedure and Evidence have been complied with.

1 Mr. Witness, during the entire course of your testimony we will
2 be asking you to speak loudly, directly into the microphone, and to speak
3 slowly, as I am doing, so that the interpreters should be able to
4 correctly interpret what you say in French and also for the court
5 reporters to correctly note our proceedings. When a question is put to
6 you, please wait for five seconds before answering. Once again, that is
7 to facilitate the work of the interpreters and the court reporters. We
8 all make an effort to respect that five-second rule because -- and
9 sometimes we do not succeed because there are heated debates. So try to
10 think about it. You chose to testify in French. You have to stay with
11 the French. Please do not change the language in the course of your
12 testimony. Whatever you say here has to stay with you. You do not have
13 to discuss it outside of the courtroom because your testimony is being
14 provided to the Court only.

15 You have a jug of water in front of you. Please, if you feel
16 thirsty, do not hesitate to have a drink of water. We all do it and the
17 Court will have no objection to you having some water. That is why that
18 jug of water is there.

19 You also have a box of tissues and please do not hesitate to blow
20 your nose because sometimes the change of climate between the DRC and
21 The Hague may lead to colds for the witnesses, so do not hesitate to blow
22 your nose. I can see that you are nodding.

23 Your testimony will now begin. Mr. Hooper will examine you first
24 and then it will be the turn of the Defence of Mathieu Ngudjolo. Each
25 party will present themselves. Then it will be the turn of the

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1 Prosecutor. Then the Legal Representatives of the Victims, who are
2 seated to my left. And then the Court may also have questions for you.

3 Mr. Hooper, please, you can start.

4 MR. HOOPER: Yes, thank you very much, Mr. President.

5 WITNESS: WITNESS DRC-D02-P-0136

6 (Witness answered through interpreter)

7 Questioned by Mr. Hooper:

8 Q. And good morning, Witness.

9 A. Good morning.

10 Q. In fact, my understanding is you arrived from Bunia via Kinshasa
11 and you arrived here on Tuesday morning; is that correct?

12 A. Yes, that is correct.

13 Q. Right. I hope that despite all that travelling you're
14 comfortable this morning and ready to answer all our questions.

15 A. Yes, I'm ready to answer your questions.

16 Q. And coming into this courtroom there's 30 people in robes, many
17 of whom you've never seen before. You've seen me before, though not
18 dressed like this. Do you recognise me?

19 A. Yes, I've already seen you once.

20 Q. And I think there's some other familiar faces. There's
21 Sophie Menegon, I think you may have met her on a previous occasion, and
22 Caroline, Mama Caroline sitting there behind me. Do you recognise her?

23 A. Yes, I can recognise them.

24 Q. And right at the back here, can you see somebody else you might
25 know.

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- 1 If you could just stand up.
- 2 A. Yes, I know him.
- 3 Q. And who is he to you?
- 4 A. He is my elder brother.
- 5 Q. Now, you told us a little about yourself. You are -- by way of
- 6 ethnicity, you are Ngiti; is that right?
- 7 A. Yes, I am Ngiti.
- 8 Q. And I understand that your maternal tongue is Swahili; is that
- 9 right? Your first language is Swahili?
- 10 A. Yes, that is correct.
- 11 Q. And, plainly, you also speak French and you're happy to have
- 12 questions asked and translated into French for you and to reply in
- 13 French. You're comfortable in that language; is that right?
- 14 A. Yes, that is fine with me.
- 15 Q. And do you also speak Ndruma?
- 16 A. Yes, I speak some Ndruma.
- 17 Q. Now, you told us how you're at university in Bunia studying
- 18 agronomics. Which year are you in?
- 19 A. I am in my third graduate year.
- 20 Q. And does that mean -- do you have exams this year?
- 21 A. Yes, we have examinations this year. I will defend my first
- 22 grade this year.
- 23 Q. Now, you are the younger brother of Germain Katanga. Can you
- 24 help us as to the family relationship that you have. Do you have the
- 25 same father?

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1 A. Yes, we have the same father, but we have different mothers.

2 Q. And when did you first meet Germain approximately?

3 A. I first met Germain Katanga in 1998.

4 Q. All right. I will come back to that. Let me just ask you a
5 little bit more about yourself. You were born in Nyakunde. Where did
6 you grow up? Just give us a brief picture of your life to date.

7 A. Earlier my parents were living in Lolwa. I was born in Nyakunde.
8 I was taken to Lolwa up to the age of 10 years. At the age of 10, we
9 went back to Aveba and I attended my -- I did my primary school studies
10 in Aveba. And for my secondary education I started in Aveba and
11 continued in Nyakunde. I later on returned to Aveba to continue these
12 studies.

13 Q. And did you obtain your *diplôme d'état*, your school diploma; and
14 if so, what year, can you remember?

15 A. I obtained my diploma in the year 2003.

16 Q. And can you remember, had you had to take any -- re-do any of the
17 years of your secondary education?

18 A. Yes, I do remember.

19 Q. Now, when you first met your brother in 1998, where were you when
20 you met him?

21 A. The first time he found me at Aveba. The second time we met with
22 him in Nyakunde.

23 Q. And prior to 1998, do you know where your brother was living and
24 what caused you to be, as it were, separated and not to see one another
25 for all that time?

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1 A. My brother was living somewhere but we did not have any means of
2 communication or means of travel, and that is why we could not be
3 together with him.

4 Q. Do you know anything about your brother's schooling? Do you know
5 if he went to school at all?

6 A. Yes, he went to school.

7 Q. Do you know if after you met him in 1998 he went to school at
8 all?

9 A. Yes, I know he was a student at that point in time.

10 Q. Do you know if he managed to get his *diplôme d'état*; and if so,
11 when?

12 A. Yes, he has his *diplôme d'état*. He obtained it in the year 2004.

13 Q. Now, I'd just like to come back to your family a little bit.

14 Including Germain, who is the oldest in the family? I want you, if you
15 can, to give us just a list of who's who amongst your brothers and
16 sisters.

17 A. In our family the oldest is Kandadhu Aletsobi --

18 THE INTERPRETER: The name was not very clear, the interpreters
19 would like to say.

20 THE WITNESS: (Interpretation) We also have our sister
21 Francine Minoru. After her we have Germain Katanga.

22 MR. MACDONALD: (Interpretation) I beg your pardon, your Honour.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes.

24 MR. MACDONALD: (Interpretation) I understand that we are going
25 through this list, but I would think that for the purpose of the

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1 transcript it would be good for the witness to spell the names because
2 these names do not appear on the list of names provided. I just wish to
3 ensure that the court record contains the right spellings, otherwise a
4 document could be submitted with the name and we'll admit it into
5 evidence.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
7 Mr. Prosecutor.

8 MR. HOOPER: (* Previous translation continues) ... very helpful
9 interjection. Of course I was going to go back to the spelling once we
10 got the list, but I don't want to distract the witness from his list.

11 Q. So can you continue, please. You got to Francine and Germain.
12 What happens after that, if you can remember, pick up the thread?

13 A. There is John Musangura.

14 Q. And after John Musangura?

15 A. Jonathan Dubatso.

16 Q. And that's yourself, of course, that's you?

17 A. That's right. That's me.

18 Q. And after you, are there other brothers or sisters?

19 A. After me there are three younger siblings.

20 Q. All right. Well, I'm not troubled with those names. Can I just
21 go back to the very first name you mentioned and ask you to spell it for
22 us because we didn't quite understand. That's Kandadhu Aletsobi, the
23 eldest in the family. Can you -- can you spell his name so that it goes
24 on to our transcript in its proper spelling. If you want a piece of
25 paper to write it down, you're welcome, but if you can spell it as you

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1 sit there, please do.

2 A. Yes, I would like to write it on a sheet of paper.

3 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could
4 you please hand over to the witness a sheet of paper and writing
5 materials so that he can indicate the name of his oldest brother, the
6 oldest in the family.

7 MR. HOOPER:

8 Q. And while you've got the list, can I ask you to keep the piece of
9 paper in front of you and can you write the -- for us the other name that
10 I think probably caused a bit of difficulty and that was -- not your name
11 but the other brother, John, John Musangura. Can you spell Musangura for
12 us, put that there as well and then we'll have both of those spellings.
13 And I think the other spellings are straightforward.

14 COURT OFFICER: (Interpretation) To view the document please
15 press on the button "Docu Cam Witness."

16 MR. HOOPER:

17 Q. And reading that, if I can just spell in the first name
18 Kandadhu Aletsobi, as I read it, if you can follow me, Jonathan, please,
19 with -- as I spell it so that I can get it right. K-a-n-d-a-d-h-u, and
20 then A-l-e-t-s-o-b-i. The secondly name is John Musangura, that's
21 M-u-s-a-n-g-u-r-a, Nduru, N-d-u-r-u. Thank you. So -- now, if I can
22 move on to -- and ask you a little bit --

23 MR. HOOPER: Thank you very much, Mr. Registrar.

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

25 MR. MACDONALD: (Interpretation) Could we give an EVD reference

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1 to this document? The reason I am asking for this is that we have
2 realised during the presentation of the Prosecution evidence that
3 sometimes we forget and we do this later on and it makes it difficult to
4 read the transcript later on. So if we could just give an EVD reference
5 to this sheet of paper now, we would be through with this business and
6 carry on.

7 PRESIDING JUDGE COTTE: (Interpretation) Do you find any
8 objection with that, Mr. Hooper? I think it's only proper that the sheet
9 which contains the names and the numbers should be given an EVD number,
10 and the document which the witness has just prepared should also be given
11 an EVD number.

12 Court Officer, could you please do that.

13 After that we will proceed and strive to observe the rule of
14 mental count of five seconds before taking the floor. Moreover, I tried
15 to activate "Docu Cam Witness" and it was not working on my console.

16 COURT OFFICER: (Interpretation) Thank you, your Honour. The
17 list bearing the names will have the EVD reference EVD-D02-00115 and it
18 is filed as confidential. The document on which the witness wrote two
19 names will bear the EVD reference EVD-D02-00116 and will be filed as
20 public.

21 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Thank you.

22 Mr. Hooper, you may proceed.

23 MR. HOOPER: Right.

24 Q. So you moved to Aveba and when you moved to Aveba and you're
25 living in Aveba, are you living with your mom and dad or are you living

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1 somewhere else?

2 A. I was living with my mom and dad.

3 Q. And what did your father do? What was his job, if any?

4 A. My father was a nurse.

5 Q. And what did he do? What was his job in Aveba? Where did he
6 work?

7 A. My father worked at the Aveba health centre.

8 Q. And just to help us with the geography, how far was your house,
9 your dad's house, from the health centre approximately?

10 A. From my father's house to the health centre, the distance was
11 about 1.500 metres.

12 Q. Now, when you get to Aveba you go to a primary school, from what
13 you've said, so which school was that? And afterwards, what was the name
14 of the secondary school which you went to, if you can just give us the
15 names of those schools, please.

16 A. I attended the Aveba primary school and I studied orientation
17 studies or counselling at the --

18 THE INTERPRETER: The interpreter did not get the last name. We
19 apologise.

20 MR. HOOPER:

21 Q. Sorry, we just lost the last name. The trouble is everything you
22 say gets translated and it has to go through all these wires and
23 sometimes it doesn't quite come out at the end. So can you just tell us
24 again, please, what was the name of your secondary school?

25 A. I attended the Bajanga institute, Institute Bajanga.

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1 Q. That's B-a-j-a-n-g-a.

2 Now, I would to turn to some of the events that befell you while
3 you were living in Aveba, and I want to come, first of all, to talk about
4 the Ugandans and the Ugandan army. Did any difficulties arise in your
5 area because of the Ugandan army? And can you tell us a little about it
6 if there was, please.

7 A. In our village there were many problems with the Ugandan army.
8 The Ugandan army arrived at our village in 1996 with the group RCD-K/ML.

9 Q. And what happened after that? Was there any fighting? What
10 happened?

11 A. The Ugandan army was based in Gety and Boga. To go to Boga you
12 had to pass through Aveba and Bukiringi and other villages which are
13 situated along the road. So the Ugandans, while going through these
14 villages, would burn down the houses of the people, they would kill the
15 inhabitants of the villages, and they would pillage the houses and
16 hospitals. And even worse, in Aveba there was a lot of fighting with the
17 young people in the village who did not wish to give up their village to
18 the Ugandans, so they had to defend the village against the Ugandans who
19 were burning down houses and pillaging their property. That is -- those
20 are the events that happened when the Ugandans came.

21 Q. Now, you were talking about young people who didn't want this to
22 happen to their village. At that time was Germain living in Aveba or
23 not, as you remember?

24 A. When the Ugandans attacked the first time, Germain was not in
25 Aveba.

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1 Q. Right. Now, you speak of -- let's move to the second time, then.

2 What happened the second time?

3 A. Could you please repeat your question.

4 Q. All right. Well, let me put it in a different way. This --

5 you've told us how the Ugandans would burn and kill and pillage, and you

6 told us that the young people resented that. So let me ask you this

7 question as a different question: What did those young people do, if

8 anything, to prevent the Ugandans doing what they were doing at that

9 time? What happened?

10 A. Using primitive means, traditional flute and machetes, well, they

11 used flutes to alert the young inhabitants of the village when the enemy

12 arrived and they would use their arrows and their machetes to defend

13 themselves against the Ugandans. And the parents and the young people

14 were in the bush.

15 Q. Did you go into the bush at that time?

16 A. Yes, I was in the bush very far from the village of Aveba.

17 Q. Did the defenders, the young defenders of the area, did they

18 manage to get any fire-arms or did they just use the kinds of weapons

19 that you've spoken about, bows and arrows and the like?

20 A. The young people did not have fire-arms at that point in time.

21 Q. Now, you've spoken of people being killed. Did you have any of

22 your own friends killed at that time?

23 A. Yes, my friends were killed, my schoolmates.

24 Q. Were those schoolmates of yours, were they fighting the Ugandans?

25 In what circumstances did they come to be killed?

Witness: Witness DRC-D02-P-0136 (Open Session)
Questioned by Mr. Hooper

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1 A. When the Ugandans came the first time, they met with them on the
2 road, they met the Ugandans and the Ugandans shot at them whilst they
3 were returning from school.

4 Q. Now, at that time when it came to any defence of the village, was
5 it just the young people who were involved or were other people, other
6 age groups, involved as well; and if so, to what extent?

7 A. At that time, anyone who was physically able, anyone who was
8 physically capable, would go to defend the village.

9 Q. And at that time what effect did these attacks by the Ugandans
10 have on the village, apart from what you've described? For example, I
11 mean was the village able to function as a village? Were you able to go
12 to school? Did the markets function? What was the position?

13 A. At that time the schools were closed, the hospital was closed,
14 there were no markets and no one was engaged in such activities in Aveba;
15 and the same applied in the areas along the road leading from Gety right
16 up to Bukiringi.

17 Q. Now, did anybody organise the defence? Did it have any structure
18 to it?

19 A. In Aveba there was no one to organise the defence. It was
20 several days later that a young man came from Bavi. His name was Yuda at
21 that time. He's the one who came to organise things a bit. He organised
22 self-defence groups at Aveba. After him another young man came by the
23 name of Surimbaya.

24 PRESIDING JUDGE COTTE: (Interpretation) When you give a name,
25 Mr. Witness, try to pronounce the name slowly so that it will be well

Witness: Witness DRC-D02-P-0136 (Open Session)
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1 transcribed. You should pronounce the name well. Could you please
2 repeat the names that you just gave. You mentioned the name of Yuda and
3 you gave another name. Could you say those names very slowly, please.
4 Thank you.

5 THE WITNESS: (Interpretation) The name was Surimbaya.

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

7 MR. HOOPER:

8 Q. And just on that name the spelling I have is S-u-r-i-m-b-a-y-a.

9 Now, you mentioned another name, Yuda. Did Yuda have another
10 name?

11 A. I knew him just by the name of Yuda. I did not know any other
12 name. He was called Yuda because he came from that village.

13 Q. Now, we've heard of a man called Yuda and we'll come to him in
14 the meantime, but Yuda, do you know what happened to him? The man you're
15 talking about, what happened to him?

16 A. Yuda led these self-defence groups. Once he'd gone to Gety to
17 defend himself against Ugandans. He died there.

18 Q. All right. Now, while there was this -- these problems with the
19 Ugandans, you've told us that Germain wasn't there at the beginning, did
20 there come a time when, while the Ugandans were in the area, Germain did
21 come or not?

22 A. Germain came and found the Ugandans in the region of Gety and
23 Boga and he found us in the bush.

24 Q. And what did he do at that time? Did he play any part in the
25 fighting?

Witness: Witness DRC-D02-P-0136 (Open Session)
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1 A. No.

2 Q. And approximately how long were the Ugandans in the area at that
3 time?

4 A. The Ugandans were there for more or less two years.

5 Q. Now, you first saw or met your brother in 1998 and you told us
6 you met him in Aveba. Now, after you met him, did Germain stay to live
7 in Aveba or what? What was his movements over the next few years, do you
8 know?

9 A. Once he came to Aveba, when he came back, he came back once to
10 Aveba.

11 Q. Now, was there any later fighting with the Ugandans?

12 A. There was fighting in Gety and Bukiringi with the Ugandans.

13 Q. Did Germain participate in that?

14 A. In Bukiringi -- he went to Bukiringi to defend.

15 Q. Do you know if Germain at that time had a fire-arm?

16 A. At that time nobody had fire-arms. Germain did not have a
17 fire-arm.

18 Q. Do you know if he ever managed to get one?

19 A. Yes, at Gety he had an opportunity to obtain a fire-arm from a
20 Ugandan.

21 Q. Do you know how he'd managed to get the gun from the Ugandan,
22 what he'd had to do? Or how did he get this gun from the Ugandan?

23 A. Well, it's what happens in war. I don't know how he obtained it.
24 Perhaps the Ugandan threw away his weapon. I don't know, as I wasn't
25 there.

Witness: Witness DRC-D02-P-0136 (Open Session)
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1 Q. Now, I want to come to an event that we all know about in this
2 court and we use it as a milestone, as a point of reference in the case,
3 and that is fall of the governor, the military governor, Lopondo, which
4 we know occurred in August, the first week of August, of 2002. Now,
5 forgetting the exact date, the date itself doesn't matter too much, but
6 is that something that you have heard about because I want to ask you
7 about events in relation to that, what happened after that, after
8 August 2002. So is that a helpful reference for you or not?

9 A. Yes, I do understand that reference.

10 Q. Now, we also have learned that for several years there had been
11 severe problems and fighting north of Bunia with the group known as the
12 Lendu Nord and that there had been problems fighting, fighting the Hema.
13 Were there problems between the people that you were living with in
14 Walendu Bindi and Ngiti? Were there problems between you the Ngiti and
15 the Hema?

16 A. At the time when the Ugandans were based in Gety, there were no
17 problems with the Hema, but we didn't know the aim of the Ugandans in
18 fighting. It was in the north where they were -- there was a coalition
19 with the Hema militia who were fighting the Lendu Nord.

20 Q. Did war come to Walendu Bindi, to your area?

21 A. Once the Ugandans had left our area it was calm for a while.
22 Then war returned because there was the Lopondo front in Bunia, and
23 that's when the war returned to our region.

24 Q. And what happened? How did the war -- what happened when the war
25 returned? What do you know of it?

Witness: Witness DRC-D02-P-0136 (Open Session)
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1 A. Once Lopondo had been driven out of Bunia, he had fled through
2 the village of Songolo, and from Songolo went to Komanda to go to Beni.
3 So all these forces were scattered in the Bunia region. Sometime later
4 there was an attack on Songolo, by Nyakunde, who was chasing Lopondo. So
5 the village of Songolo was attacked. It was just a few days after
6 Lopondo had been through, and the people of Songolo fled into the bush as
7 well.

8 Q. And Songolo, did you happen to visit Songolo at all about that
9 time?

10 A. The -- I was in Songolo at the time of the attack of -- I had
11 gone to sit my first state -- *examen d'état* in Songolo. It was at that
12 time that Lopondo was driven out of Bunia.

13 Q. And when Songolo was attacked, what did you do? Where did you
14 go?

15 A. I went back home to Aveba and I was in the bush.

16 Q. Now, after the Songolo was attacked, you fled to Aveba, of
17 course, in the bush. But did you know or learn anything about an attack
18 on Nyakunde in early September of 2002?

19 A. Yes. Lopondo's soldiers --

20 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, it
21 seems that the witness is having difficulties with his microphone and his
22 headset. Could you please ascertain what is wrong.

23 THE WITNESS: (Interpretation) It is better now.

24 PRESIDING JUDGE COTTE: (Interpretation) Yes, well, I had the
25 same problem so this coincided. The -- Mr. Hooper put a question to you.

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1 Do you wish him to repeat it?

2 So, Mr. Hooper, could you please repeat your question so that the
3 witness can answer it.

4 MR. HOOPER:

5 Q. Do you know anything about the attack on Nyakunde that followed
6 the Songolo attack?

7 A. Once Songolo was attacked, Lopondo's group, which was scattered
8 in the Bunia area, wanted to continue towards Beni, and the only way to
9 get to Beni was to go through to Nyakunde to get to Komanda where they
10 could then take the road to Beni. So the troops came and went to Singo
11 where they found a group of Kandro who were organised for self-defence in
12 Singo. And together they organised themselves and they left Nyakunde to
13 open the road to Komanda and they managed to succeed in opening that
14 road.

15 Q. Now, you're living in Aveba over the next several months. Did
16 there come a time when you left Aveba to go somewhere? And where was it
17 and when was it?

18 A. I -- when I went to sit the first state exam, I did not do well
19 enough and I had to re-sit the exam. And the conditions were difficult
20 in Aveba, so I went to Beni to continue my studies. I left Aveba in
21 2002.

22 PRESIDING JUDGE COTTE: (Interpretation) Could you please repeat
23 the date which you left Aveba.

24 THE WITNESS: (Interpretation) It was in December, the beginning
25 of December in 2002.

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1 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Perfect.

2 December 2002. Thank you.

3 MR. HOOPER:

4 Q. And how did you get to Beni?

5 A. In Beni -- I'd gone to Beni by plane.

6 Q. And how did you manage to get a plane ride from Aveba to Beni?

7 Was that a common thing or how did that come about? How did that happen?

8 A. There was a plane in which Adirodu came from Beni to Aveba, and

9 my father had given me some money to buy a train (* as interpreted)

10 ticket to go and study in Beni.

11 Q. Is that right? Did you say "train ticket"? It came out in

12 English as "train ticket," but I don't think there's any trains in this

13 part. Can -- what did he say in French? Right. I think it was money to

14 pay the ticket. "Train ticket" has come out in English.

15 Can you just repeat just for -- there's no trains, I know, there.

16 Just repeat, please, what did your father do?

17 A. My father paid the plane ticket so that I could travel to Beni.

18 PRESIDING JUDGE COTTE: (Interpretation) On page 29 of the

19 provisional French transcript, line 11, it does, Maître Hooper,

20 specifically say, "My father gave me some money to pay for the plane

21 ticket to go and study in Beni." So that is clear.

22 MR. HOOPER: Thank you very much.

23 Q. Right. So you go off to Beni and how long do you stay in Beni

24 for? When, if ever, do you come back home?

25 A. I finished my secondary studies then in Beni. I got my diploma

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1 in 2003, and at the end of that same year I returned to Aveba.

2 Q. And we can follow that that same year is the year 2003. Now, I
3 want to ask you about --

4 JUDGE DIARRA: (Interpretation) When you say "the end of the
5 year," do you mean the end of the school year or the end of the calendar
6 year, please?

7 MR. HOOPER:

8 Q. Yes, can you clarify that. When you say "the end of the year,"
9 when would you have taken your *diplôme d'état*, what time of the year
10 would that have been? Do you remember?

11 A. The *examen d'état* was in July and I returned in December to
12 Aveba.

13 PRESIDING JUDGE COTTE: (Interpretation) So we take it that you
14 spent the whole of 2003 in Beni. You left Aveba in December 2002 and you
15 returned to Aveba in December 2003. Is that clear? Yes. Thank you.

16 MR. HOOPER:

17 Q. Now, I want to put a document in front of you which is DRC -- I
18 think it's been given an EVD number now. So this is a document which is
19 coming your way. I'm just going to, for the formalities, state it's
20 EVD-D02-00115. Here's a clean copy for you. And you'll see it's a list
21 of names with numbers against them.

22 And again, I'm quite happy to actually just use the names, but I
23 think my understanding is that that's not a -- that this is the way
24 forward. So let's just look at these names.

25 MR. HOOPER: Can we go into --

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1 Q. Can I ask you, Jonathan, just to look at those -- that list, just
2 run your eyes down that list, and just confirm to yourself, as it were,
3 that those are all names that you know?

4 A. Yes, I know all those names.

5 MR. HOOPER: Now, if we can just go into closed session for
6 two minutes and I'll read these names into the transcript so that we have
7 a record on the transcript.

8 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could we
9 go into private session so that Mr. Hooper can clarify the use that will
10 be made of the names which should not be mentioned in open session.

11 (Private session at 10.26 a.m.)

12 (Expunged),

13 (Expunged)

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17 (Expunged)

18 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Open session at 10.28 a.m.)

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

7 Mr. President.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

9 Madam Court Officer.

10 Mr. Hooper, please.

11 MR. HOOPER:

12 Q. Now, when you came back at the end of 2003, later there was a
13 process of demobilisation of combatants in the Walendu-Bindi area. Did
14 you -- are you familiar, can you tell us anything about that?

15 A. Yes, indeed. There was a demobilisation site in Aveba.

16 Q. Can you remember when it was set up?

17 A. It was set up in December 2004.

18 Q. And you, yourself, did you have a -- play any role associated
19 with that?

20 A. I just did some work as a packer. In addition to that, my
21 father's motorbike had been rented in order to transport the children to
22 their families.

23 Q. Did you, yourself, ever work for an NGO?

24 A. Yes.

25 Q. And what was the name of that NGO and what did it do?

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1 A. I worked at an NGO known as *Premières Urgences* which was working
2 to rehabilitate the schools and hospitals of the Walendu-Bindi
3 collectivity of Boga and right up to Tchabi (* phon).

4 Q. And did you ever have any work associated or at the
5 demobilisation site?

6 A. My activities at the demobilisation site was just as a packer.

7 Q. As a packer; is that right?

8 A. Yes.

9 Q. And who -- from what you saw, who was in charge? Who was working
10 the mobilisation site -- demobilisation site?

11 A. There were different parts of the demobilisation site. One was
12 for adults and the other for children. On the MONUC site the person
13 responsible was Faboure, and the official representing the government was
14 Mr. Tchaki, and the representative of CONADER was Mr. Xavier. Regarding
15 the children's site, the person responsible was (Expunged) (* phon)
16 who was working in collaboration with certain local NGOs, including
17 (Expunged).

18 Q. All right. Can I just pause you there.

19 MR. GARCIA: (Interpretation) I'm sorry to interrupt but it is
20 important. There are names and locations on the list that was disclosed
21 to Mr. Hooper and I wanted to ask that it should be made clear to the
22 witness to take his time when he's testifying and to remember that there
23 are names on this list that must not be mentioned in open session. There
24 is another name that I am being told was redacted and should not be
25 mentioned in open session, so we have to go briefly into private session

1 for me to mention that name.

2 PRESIDING JUDGE COTTE: (Interpretation) Before we go into
3 private session -- just one minute, Mr. Hooper. Before we go into
4 private session, it is true, Mr. Witness, that on this list of names that
5 you have in front of you, it has to be placed in front of you and it may
6 not be read in open session. That will require a little bit of
7 gymnastics on your part, but if you have to mention any of those names
8 you have to use the number or the figure next to the name. If you want
9 to mention the name at number 6, do not read the name, just say
10 "Number 6." So please take your time and be careful. But we will now go
11 briefly into private session.

12 Court Officer, please.

13 MR. HOOPER: Yes, please.

14 (Private session at 10.36 a.m.)

15 (Expunged)

16 (Expunged)

17 (Expunged)

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Evidentiary Matters

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12 Page 38 expunged – Private session

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23 (Expunged)

24 (Open session at 10.56 a.m.)

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

1 your Honour.

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

4 Now, very briefly, I was informing Mr. Gilissen that we're
5 dealing with names here which were not disclosed to the public. I was
6 informing Mr. Gilissen, in response to what he said at the beginning of
7 the hearing, that in the past few weeks and months the Chamber has been
8 trying to reclassify decisions that were handed down as confidential and
9 *ex parte*. And the purpose of this exercise is to have these documents
10 available to all parties and participants and even to the public where
11 necessary. Similarly, we have tried and we are almost through an
12 exercise to give access to each and everyone to filings that were
13 submitted in preparation for the evidence of witnesses who are detained
14 in the DRC. Some of these filings related to requests for co-operation
15 in order to obtain the transfer of these detained witnesses. Things are
16 not proceeding at the pace we would have liked them to, but we have tried
17 as much as we can to reclassify *ex parte* and confidential documents into
18 public documents wherever possible. You must understand that it is up to
19 the parties to justify the *ex parte* status of a filing. Very often,
20 sometimes too often, we are given filings which are supposed to be
21 confidential and *ex parte*.

22 The Prosecution, the Defence, and the Legal Representatives will
23 remember that the exception -- that *ex partes* are the exception here and
24 they have to be justified. If sometimes we have the impression that
25 certain *ex partes* are not necessary, we will make that known to you. But

1 you have to understand that these requests come from you. We have done
2 our job but you also have to do your job.

3 We are going to rise at this point and we will reconvene at
4 11.30. The Chamber would ardently like you to inform us of the names on
5 which you reach agreement, the names for which numbers should be used and
6 the names which can be mentioned in open court, focusing on the first
7 name and the alias. We stand adjourned.

8 Recess taken at 10.59 a.m.

9 On resuming at 11.36 a.m.

10 (Open session)

11 COURT USHER: All rise.

12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.

13 Madam Court Officer, could you help me, are we in private
14 session? Mr. Prosecutor, do we need to be in private session or not?

15 MR. GARCIA: (Interpretation) No, Mr. President.

16 Mr. President, we had an opportunity to speak with Mr. Katanga's
17 Defence team during the break. There are certain names on the list which
18 could be mentioned in open session with the caveat, your Honour - and
19 I've discussed this with Mr. Hooper and Mr. O'Shea - that if these --
20 those names -- some of those names are not problematic but it's the
21 nature of the question put to the witness and I think Mr. Hooper has
22 given us some guarantees relating to certain names that he will not put
23 questions which could lead the witness to ascertain the identity of
24 another witness. So the names are numbers 2, 3, 4, 9, 11, 12, 17, 18,
25 19, and as regards number 16, this applies also to number 16. But I'd

1 just like to ask the Defence to be careful that if they use number 16,
2 not to link it to any of the witnesses of the Prosecution. That is all I
3 need to say, your Honour.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
5 Prosecutor and Mr. Hooper, for having adopted that constructive approach.
6 In future, for us not to waste any time, it would be highly desirable
7 when a list of this type is prepared, for the party who prepares the list
8 to ensure that the names in question do not appear in an order or
9 decision handed down by the Chamber deciding that the names in question
10 must be redacted. I must confess, I don't remember all the orders or
11 decisions of redaction which have not been lifted. You remember they
12 were -- in theory they were all temporary and we re-examine them on a
13 regular basis. But when the witness comes in and perhaps we should
14 change the list he has before him and perhaps we should delete numbers 2,
15 3, 4, 9, 11, 12, 16, 17, 18, and 19, so that he knows he shouldn't use a
16 figure in that case. Perhaps, Ms. Menegon, you could prepare a new list
17 for the witness so that the witness is quite clear about the fact that
18 the only names which cannot be mentioned are those which have numbers 1,
19 5, 8, 10, 13, 14, for reasons we can all remember, and 15. Is that
20 correct, Mr. Garcia?

21 MR. GARCIA: (Interpretation) That is correct.

22 PRESIDING JUDGE COTTE: (Interpretation) And in future to avoid
23 similar discussions, please let us ensure that the list which you've so
24 kindly submitted to the Court should be a list which is not open to
25 challenge.

1 Madam Court Officer, can we call in the witness and can the Usher
2 please go and fetch him. Before the witness enters the room.

3 MR. HOOPER: (Previous translation continues) ... we've prepared
4 a list by putting a line through the name, but the problem is we're then
5 left with a residue of Prosecution witnesses and I would have thought
6 that becomes apparent. Part of our reasoning for putting a melange of
7 names there was that it didn't highlight who was, as it were, an
8 oversensitive protected party. So if we give them just the list -- we
9 can do that, just six names, you don't have to be Sherlock Holmes to
10 realise the problem. But I'm quite happy to carry on with this list and
11 get on with it.

12 I see Mr. Garcia has a contribution.

13 MR. GARCIA: (Interpretation) So there's no misunderstanding,
14 I'm reading the transcript and I don't think the 6 and 7 were mentioned
15 as the names which remain. I think the Chamber referred to number 1 as
16 being included among the names which have to be redacted.

17 PRESIDING JUDGE COTTE: (Interpretation) I will re-read. 1, 5,
18 6, 7, 8, 10, 13, 14, and 15. Do we agree? The list which has -- which
19 was given EVD-D02-00115 remains unchanged, but for the witness it is
20 not -- it is not a problem. If he has a list which has some names which
21 have been redacted, he then does not have to make the intellectual effort
22 of using the figure rather than the name and first name or the alias. I
23 think we should be able to operate properly on this basis. So will the
24 Court Officer please bring the witness in.

25 (The witness takes the stand)

Witness: Witness DRC-D02-P-0136 (Open Session)
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- 1 PRESIDING JUDGE COTTE: (Interpretation) Good morning once
2 again, Witness. Do you hear me well?
- 3 THE WITNESS: (Interpretation) Yes, I can hear you perfectly.
- 4 PRESIDING JUDGE COTTE: (Interpretation) You're going to be
5 given a list, which you saw previously, but a certain number of names on
6 this list have been crossed out. For those names, if you need to refer
7 to those names to answer questions put to you, you do not have to use the
8 number. Have you understood me? You only use the number to refer to the
9 people whose names have not been redacted. Are we clear? In other
10 words, so this will be quite clear I will list them. If you wish to
11 speak of person number 1, you say "Number 1." Likewise for numbers 5, 6,
12 7, 8, 10, 13, 14, and 15. I think that is now quite clear for you.
13 We've wasted a little time in clarifying this.
- 14 Mr. Hooper will resume his questioning.
- 15 You have the floor.
- 16 MR. HOOPER: Yes, thank you.
- 17 Q. Mr. Witness, what I can -- my advice to you is forget that list
18 all together. All right. Put it out of your head. I'll ask you
19 questions and I'll help you despite of the list. But as you've got the
20 list in front of you, let me take you to number 1. Just look at the name
21 at number 1 on your list. Have you seen the name?
- 22 A. Yes.
- 23 Q. Okay. Now, forget the list now. I'll refer you to that list
24 from time to time, otherwise forget about it. Now, number 1, now we're
25 going to call that person, whose name we all know because we can see it

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1 against number 1, we're going to call that person number 1. Do you
2 follow? We're not going to mention his name at all. So do you know
3 number 1?

4 To your knowledge was he ever, ever a combatant, ever a man who
5 fought?

6 A. Yes, I know number 1. When I came back from Beni I saw him in
7 Aveba.

8 Q. How well did you know him?

9 A. Yes, I know him very well.

10 Q. When you got back to Aveba - and we're talking of December
11 2003 - what was he doing? What did he do?

12 A. When I returned to Aveba, number 1 was studying at the institute
13 in Aveba, the Mkubwa, and then he was -- he sang at the church.

14 PRESIDING JUDGE COTTE: (Interpretation) Witness, I can't hear
15 you very clearly. Perhaps you need to speak more loudly. I've raised my
16 volume. I'm not yet deaf, but I have difficulty hearing you. So please
17 will you speak clearly, loudly into the microphone. So when you returned
18 to Aveba in 2003 what was this individual doing? Could you please resume
19 your answer?

20 THE WITNESS: (Interpretation) When I returned to Aveba,
21 number 1 was studying in the Aveba Mkubwa institute. Moreover, he used
22 to sing in the church and he played football.

23 MR. HOOPER:

24 Q. Did you sing in the church or play football?

25 A. My first contact was at football.

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1 Q. You say he sang in the church. Did you sing in the church or
2 not?

3 A. Yes, I saw him in the church.

4 Q. So the church choir or singing in the church, football. How well
5 did you know him? Did you talk with him? How much did you talk with
6 him? Things like that. How well did you know him?

7 A. I often went out with him. I spoke to him. At football, too,
8 we -- I often played football with him.

9 Q. And what happened to him? Did he stay in Aveba? What happened?

10 A. Once there was a group -- the national army group came to Aveba.
11 There was some friction with the local militias. So we all fled to Bunia
12 with witness number 1.

13 Q. Now during -- do you know what happened to him eventually? Did
14 he return to Aveba or what? What happened to him eventually that you
15 know? Did you keep in contact with him, for example? When did you last
16 speak to him, if at all?

17 A. When we were in Bunia I was with him all the time. We -- when
18 we -- when we parted company in Bunia, he left -- he went to Kinshasa and
19 after that we only spoke on the telephone.

20 Q. Do you know why he went to Kinshasa?

21 A. I had asked him what he'd gone to Kinshasa to do, and he told me
22 that a white had taken him as an orphan to enable him to study.

23 Q. Now, I want to take you back to the time when you left Aveba to
24 go to Beni to continue your studies, and that was, you told us, December
25 of 2002. Now, at that time when you left Aveba for Beni, was number 1 at

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1 that time in Aveba, living in Aveba, do you know? Can you help us?

2 A. When I left for Beni, number 1 was not in Aveba.

3 Q. Now, you spoke before the break of demobilisation. Do you know
4 if number 1 was demobilised or not?

5 A. I -- *number 1 was demobilised.

6 Q. Do you know, was number 1 ever in a militia? Did he ever fight?
7 Did he ever tell you he'd been in the militia? Did he ever speak about
8 it or did anybody else to your knowledge? Can you help us, please?

9 I'm sorry, we have an interruption. Just one moment.

10 MR. GARCIA: (Interpretation) I object. These are leading
11 questions. This is suggesting to the witness what he should answer and
12 what -- along what lines he should answer.

13 PRESIDING JUDGE COTTE: (Interpretation) Witness, you should
14 simply answer the question: Do you know whether number 1 was a member of
15 a militia, and we await your answer.

16 THE WITNESS: (Interpretation) No.

17 MR. HOOPER:

18 Q. Did number 1 ever speak to you about being a member of the
19 militia or not?

20 A. Number 1 never spoke to me about being a member of a militia
21 group.

22 Q. Did number 1 ever speak of fighting or being a combatant?

23 A. No.

24 Q. Did number 1 ever speak of being at the battle of Bogoro, for
25 example?

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1 A. No, he never spoke to me about that.

2 Q. Did anybody else ever mention to you that he'd fought at Bogoro
3 or been a combatant?

4 A. No, neither.

5 Q. Did you ever see him carrying a weapon or wearing a uniform?

6 A. No.

7 Q. When you say that (Expunged) was demobilised, do you know in what status
8 he was demobilised? Was he demobilised as an adult or as a minor or
9 child?

10 A. He was demobilised as an adult.

11 Q. Now, when you say he was demobilised as an adult, does that mean
12 that he was a soldier? What does his demobilisation, in other words,
13 mean to you?

14 A. At that time the real militias gave weapons to young people who
15 were not militia men in Aveba. So at the time he had been given a weapon
16 for him to join, and it was at that time that he was demobilised, the
17 weapon for him to give to CONADER.

18 Q. And do you know who gave him the weapon to give to CONADER?

19 A. Yes, I do know.

20 Q. Can you give us the name, please? Don't worry about the list,
21 just give us the name and spell it. It's not a name on the list, don't
22 worry.

23 A. The name was Garimbaya.

24 Q. (* Previous translation continues) ... Garimbaya and that's
25 spelled G-a-r-i-m-b-a-y-a. Now, I'd like you to look at that list once

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1 more and I'd like you to look at the name at number 5. Do you know that
2 person? We're going to call this person number 5. Do you know him?

3 A. Yes, I know number 5.

4 Q. And how well do you know number 5?

5 A. I know him well. I know his parents and all his brothers.

6 Q. And again, don't name anyone. You can refer to a brother or
7 sister or father or mother, but don't give us any actual names, all
8 right. We're calling him number 5 with his brothers and sisters, his
9 mother, his father, all right. Now, when he was living -- well, first of
10 all, let me ask you this: You knew him well and you knew his parents and
11 his brothers. Does the name of one of his brothers appear on the list in
12 front of you at number 7?

13 MR. GARCIA: (Interpretation) Your Honour, I would like to
14 object once again. This is an extremely leading question because the
15 name is being presented to him and he's being directed to answer in a
16 certain way.

17 PRESIDING JUDGE COTTE: (Interpretation) It has already been
18 done.

19 Mr. Hooper, you have to rephrase your question to seek your
20 answer in a different way. Please proceed.

21 MR. HOOPER: Yeah, I take the point, but ... all right.

22 Q. Do you see the name -- well, let's go back to how you know
23 number 5. Number 5, how did you get to know him, in what circumstances?

24 A. We were used to his parents in Aveba after fleeing from Bunia.

25 It was on that occasion that I came to know him.

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1 Q. And where was he living?

2 A. At first he was living in Bunia in Dele village before the war,
3 but after the war they fled to Aveba to join their elders who were there
4 in Aveba.

5 Q. Right. This eldest, does it name appear anywhere on the list in
6 front of you?

7 A. Yes.

8 Q. And where is that? What number?

9 A. Number 7.

10 Q. Now, did he have other brothers living there? Any other family
11 other than his mother and father living there that you knew? And let's
12 not have names just at the moment. If there are any names, I'm going to
13 ask you to write them down. Just, did he have any other family there
14 that you can remember?

15 A. Yes.

16 Q. And what relation were they to him?

17 A. They were his brothers.

18 Q. Did he have any sisters?

19 A. Yes, there was one sister.

20 Q. Looking at the list again, do you see if her name appears on the
21 list; and if it does appear, what is the number?

22 A. Number 6.

23 Q. Now, can you remember whether at any time that you knew number 5,
24 whether to your knowledge he was in the militia or a combatant?

25 A. No.

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1 Q. Now, you've spoken of his being at Aveba. Did you ever see him
2 anywhere else other than Aveba?

3 A. I saw him in Aveba. I also saw him in Bunia. And once we spent
4 the night with him in his house there.

5 Q. And where was his house there in Bunia, can you remember?

6 A. He was living with one of his elder brothers in Dele, and that is
7 where I also spent the night.

8 Q. And in all the time you knew him, did he ever make any mention of
9 being in the militia, of having been a combatant?

10 A. No.

11 Q. To your knowledge, was he ever a combatant in the militia?

12 A. I would say no.

13 Q. Now, I'd like to come to another name on the list, and that's the
14 name at number 8. And can you see that name?

15 A. Yes.

16 Q. So we're going to call that person number 8. In fact, I'm going
17 to, if I can, be given a piece of paper -- or maybe I can ask you. Do
18 you know someone by that name?

19 A. As to number 8, there were two people bearing the name at
20 number 8. One was in Kagaba and I met the other one in Aveba.

21 Q. Did the one in Aveba have another name other than the name that
22 appears at number 8; and if so, don't say it out loud. If you do know
23 him by any other name, I'll get you to write it down on a piece of paper.
24 So what's the position? Did he have another name or do you know him by
25 any other name other than the name that appears at number 8?

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1 A. Yes, I can write it down for you.

2 Q. All right. Then I hope there's a piece of paper coming now and
3 we'll --

4 PRESIDING JUDGE COTTE: (Interpretation) Court Usher, please
5 hand over the piece of paper to the witness.

6 Mr. Witness, make sure that that sheet of paper is well placed in
7 front of you so that you should be able to shade it to ensure that
8 whatever you write on that sheet of paper should not be seen from the
9 public gallery.

10 Mr. Prosecutor.

11 MR. HOOPER: (*Previous translation continues) ... can we go into
12 closed session and that might be an alternative.

13 PRESIDING JUDGE COTTE: (Interpretation) Well, we are going to
14 go into private session. We are trying everything possible to avoid
15 private sessions.

16 (Trial Chamber and Court Officer confer)

17 PRESIDING JUDGE COTTE: (Interpretation) Or as the Court Officer
18 has suggested, we will pull the curtain down while he writes so as to
19 avoid going into private session.

20 MR. HOOPER: (Previous translation continues) ... on balance I'm
21 much persuaded by Ms. Menegon that private session will be better because
22 we can then utter the name, it goes on the transcript, and we're another
23 piece of paper less.

24 PRESIDING JUDGE COTTE: (Interpretation) Well, the preferable
25 option is to move into private session, very briefly, and then we will

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1 return to open session.

2 (Private session at 12.13 p.m.)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session at 12.14 p.m.)

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

18 your Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

20 And to the public, when we were in private session, the witness

21 mentioned the name without having to write it down on a sheet of paper.

22 Mr. Hooper, please proceed.

23 MR. HOOPER:

24 Q. So dealing with that man, with his added name, number 8 as we're

25 going to call him, when and where did you know him and what was he doing

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1 when you knew him?

2 A. The person at number 8 sold items belonging to a person known as
3 Kulikpa. And after that, he worked in a vehicle belonging to that same
4 person.

5 Q. And the name you've just mentioned, can I just spell it, Kulukpa,
6 K-u-l-u-k-p-a.

7 A. K-u-l-i-k-p-a, that is correct.

8 Q. You've corrected me. Thank you. Is that Kulikpa or Kulukpa?
9 Can you just -- there's a bit of a -- I gave a different spelling to you.
10 We're going to have to look to your spelling. Is it Kulikpa or Kulukpa?

11 A. It is K-u-l-i-k-p-a.

12 Q. Thank you very much. And how well did you know him?

13 A. When I came to Aveba, he was living with a certain person that I
14 knew very well.

15 Q. And when you say "when I came to Aveba," what period are you
16 talking about? Are you talking about before you were at Beni doing your
17 studies or when you came back in December of 2003? Which period are you
18 talking about?

19 A. After my return from Beni.

20 Q. Do you know, from anything that he told you or that you learnt
21 from others, do you know whether he ever was a combatant in a militia?

22 A. No, I do not know.

23 Q. Did he ever speak to you of being in the militia?

24 A. He never told me that he was a militiaman.

25 Q. Did anybody else ever mention to you that he was a militiaman?

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1 A. No. Other people referred to him as -- referred to him as a
2 trader, and after having left that job, he was referred to as a driver.

3 Q. All right. Now I'm going to come now to another name on the list
4 and that's the name at number 10. If you can turn to your list and look
5 at that. And we're going to call that person number 10. Do you know
6 number 10?

7 A. Yes, I know number 10.

8 Q. And how did you come to know him and what do you know of him?
9 What did he do?

10 A. When I was at Beni, number 10 found me there at Beni. He had
11 travelled with a person called Antoine and he had to take his junior
12 assistant to Beni. So with Antoine we spent the night together in Beni.
13 That was the first time that I got to know him.

14 Q. All right. So before you went to Beni for your studies you
15 hadn't met number 10; is that right?

16 A. No.

17 Q. And to your knowledge, was he ever a combatant or in the militia?

18 A. At no time.

19 Q. Do you know what his job was?

20 A. He was a machinist, so he sawed timber or wood.

21 Q. Now I'm going to come to another name, number 13 on the list.
22 Have you met number 13?

23 A. Yes.

24 Q. I have no other questions on that name. Now, before we were
25 discussing lists and things we were talking about demobilisation. You

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1 were telling us how you -- your knowledge of the site in Aveba for
2 demobilised combatants. Now, do you know why that site was set up in
3 Aveba?

4 A. The reason why the site was set up in Aveba was that people were
5 sociable in Aveba, they welcomed everyone, and that was why the site was
6 set up in Aveba.

7 Q. And you were telling us, I think, that Martin, who was the main
8 man at Save the Children, was there and you also spoke of the NGO
9 Terre des Enfants working there. And we may have dealt with this
10 earlier, I can't remember, but was there just one site or was there a
11 site for adults and another site for young persons or children? Can you
12 help us as to what was going on that you saw in Aveba?

13 A. The site was at the same location, but the area reserved for
14 adults was separated from that reserved for children.

15 Q. And you gave us some names earlier. I'm just going back to them
16 for spelling. You told us that the main person for MONUC was Faboure,
17 that's F-a-b-o-u-r-e. He was a soldier with -- or representative of
18 MONUC. And you also mentioned that in relation to the Congolese and FRDC
19 there was a man called Tchaki, T-c-h-a-k-i. And do you know who was the
20 person responsible for CONADER? If not, it doesn't matter.

21 A. Yes, I know the person who was responsible for CONADER.

22 Q. And what was that person's name? You're free to give it. Don't
23 worry about writing it down. You can tell us openly.

24 A. His name was Xavier.

25 Q. I think we've all got that, X-a-v-i-e-r. Now, I want to show you

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1 a document, we've got it in hard copy. I'm going to first pass that to
2 you and give you the EVD number which I've been provided, which I
3 mismanaged and lost. Here we are. EVD-OTP-00120. And we'll all
4 remember, it's the booklet compiled.

5 MR. HOOPER: If that can go to the witness and I have another
6 document to give him as well. And that -- we'll deal with it one by one.

7 Q. So that's -- you're being handed the EVD document --

8 MR. GARCIA: (Interpretation) I think that document is
9 confidential.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well. We will
11 just pull down the curtains behind the witness, then he will be able to
12 look at the document; otherwise, everything will depend on the questions
13 put to him by Mr. Hooper.

14 So, Court Officer, please let us pull down the curtains. We will
15 stay in open session, and then, Mr. Hooper, for the time being, you just
16 have to be careful about the type of questions that you ask because this
17 document is highly confidential.

18 MR. HOOPER: Yes. It's obviously confidential because of the --

19 MR. GARCIA: (Interpretation) Your Honour, we will simply want
20 to look at the document briefly.

21 PRESIDING JUDGE COTTE: (Interpretation) Very well.

22 Court Usher, please give the document to the Prosecution team
23 briefly.

24 MR. HOOPER:

25 Q. Now, Mr. Witness, I think in the past have you had the

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1 opportunity of being shown this document before? Have you been shown
2 this document before? Oh you don't -- all right.

3 PRESIDING JUDGE COTTE: (Interpretation) We will wait for the
4 witness to have that document placed before him.

5 COURT OFFICER: (Interpretation) To the parties and
6 participants, you can press "PC 1."

7 MR. HOOPER:

8 Q. Can you -- that's it. Can you have a quick look at that. Okay.
9 Now can I ask you to turn to the last page where there's writing in the
10 document. There's a lot of blank pages at the end, but if you just look
11 at the last page of writing and if you look at the bottom right-hand
12 corner, Jonathan, at that page you'll see it's got the number
13 DRC-OTP-0164-0887. Do you have that? Well done. And we can see that
14 that page, if we look at it, it's headed "Mois de Juin," month of June.
15 And underneath it's -- the next line reads "Saturday" -- in French,
16 "Saturday, the 18th of June, 2005." And at the bottom of the page you'll
17 see that it's got a reference to the 21st of June, 2005. Have you got
18 that? There's a little box. There's one name that starts Alezo, and
19 then it goes down. And the last name -- have you got the right page? I
20 think I'm losing you, am I? So -- okay. Just looking at the last page.
21 And what I want to draw your attention to is the very last entry on the
22 last page, and if you look at it, can you see it's got a number, 952? Do
23 you see that?

24 A. Yes.

25 Q. And we all know that that is the total number of people, of young

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1 people, people less than 18 in this definition, people less than 18 who
2 have passed through the mobilisation site at Aveba. So that's what this
3 document shows us. All right. Now, have you seen this document before
4 and made some comments on it?

5 A. Yes.

6 Q. Now, from -- 952, almost a thousand people go through this site.
7 Now, to your knowledge were all these people in fact young combatants or
8 associated with combatants or not?

9 A. I would say not.

10 Q. What proportion of these names, what percentage approximately, do
11 you feel were not combatants?

12 A. I would say three-quarters of them were not combatants.

13 Q. And how do you say that came about, that that happened? How do
14 you say that a system that was meant to be demobilising young combatants
15 in fact ends up demobilising people who aren't combatants? How did that
16 happen, to your knowledge?

17 A. The times were terrible then and the -- an organisation came at a
18 time when nobody had any resources. And at the time, as the people who
19 were demobilised were given kits, they were given sandals, they were
20 given clothing, and they were told that they would be supported so that
21 they could study, and these promises meant that a lot of young people
22 went to be demobilised even though they were not combatants.

23 Q. Now, I think on an earlier occasion you had the opportunity of
24 looking at that booklet in front of you and I'd like you to be shown this
25 document. I'll pass it to you in hard copy. But the document is a

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1 handwritten document and its reference to be called up is
2 DRC-D02-0001-0436 and it's a confidential document.

3 MR. GARCIA: (Interpretation) I think Mr. Hooper needs to put
4 preliminary questions before putting -- presenting the document.

5 PRESIDING JUDGE COTTE: (Interpretation) I think there are
6 problems with the sound level. I didn't hear the beginning of your
7 statement, so could you please repeat it. I'm very sorry. I can hear
8 now but I couldn't hear at the outset.

9 MR. GARCIA: (Interpretation) I'm very sorry, your Honour.
10 Before Mr. Hooper shows the witness the document he has to give the
11 grounds and put questions. We didn't do this for the first document. We
12 want to try and be effective, but we must follow the rules.

13 PRESIDING JUDGE COTTE: (Interpretation) Yes, we have to follow
14 the rules. So please do so.

15 MR. HOOPER: Indeed.

16 Q. So I've identified the document I'm going to seek to show you so
17 everyone is alerted to what it is, but I do have some questions to ask.
18 Now, is it right that on an earlier occasion you were provided an extract
19 of the exhibit, the red notebook that we've seen, and were you invited to
20 identify, as far as you were able, people that you knew and you -- though
21 their names were in the book, that they were not in fact combatants. Is
22 that an exercise that you were on an earlier occasion invited to do and
23 indeed did do?

24 A. Yes.

25 Q. Now I'm going to show you a document and ask you about the

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1 document and that's the document we've identified -- have you got the
2 hard copy of this document? No. Can you be given this, please?

3 The first thing I want you to do is look at it and tell me about
4 the mechanics, as it were, of the document before we go into its content.

5 All right. So you've got the document or a photocopy in front of you.

6 And looking at that, whose handwriting is it on that document?

7 A. I wrote this document.

8 Q. All right. And we see that this document is one, two, three,
9 four, five, six, I think seven pages. Yeah, seven pages. And it runs
10 from number 1 down to number 11 on the first page and it goes through
11 several pages one by one until the last page when we have at number 73 a
12 name, an entry against 73. So -- now, in respect of each of the entries
13 here and each of the entries -- each of the names that are entered, the
14 73 names, what do you say of those 73 names? Were they combatants or not
15 combatants?

16 A. These names were not combatants.

17 Q. And what process did you employ to identify them in order to
18 enter them on your list?

19 A. When I went back to continue my studies in Aveba, I was in charge
20 of the pupils. I was like the pupils' representative at the school. And
21 at the time then, I knew the students I was studying with from the first
22 year of secondary school up to the sixth year of secondary school. In
23 addition, I was involved in activities in church with a lot of these
24 names -- these fellow students. So I knew them through the church and I
25 also knew them through football, I played football with them. So I got

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1 to know them that way, and that's why I was able to draw up this list.

2 Q. All right. And just if we look at the list, if we look at say
3 the first page, I'm just taking a wholly random example. The bottom of
4 the first page, number 11 there's a name, we won't mention the name
5 because that's a private matter. We then have a number which I think --
6 is that 56 or 66? It's not perhaps clear. But am I right that that
7 number is the number in the red book?

8 A. Are you speaking of number 66?

9 Q. I'm looking at the first page of your document and the first --
10 the last entry there is number 11. He's got a name K and another K it
11 starts that name. And then there's a number and I just happen to have
12 chosen a number that's not clear, but I think if we look at our list and
13 if we look, I hope, at number 66 perhaps -- no, let's hope 56. Yes, if
14 we look at number - it is 56 - in the red book we see that that's the
15 number that name's given there.

16 MR. GARCIA: (No interpretation)

17 MR. HOOPER: If we look at --

18 PRESIDING JUDGE COTTE: (No interpretation)

19 MR. GARCIA: (Interpretation) With your permission, your Honour,
20 it is for the witness to answer and explain what he put in the list.
21 It's not for Mr. Hooper to provide the evidence. It is the witness.
22 These are leading questions. The witness is being directed to explain
23 how he drafted this list, and I would like my objection to appear in the
24 record and I would like Mr. Hooper to put questions which are not leading
25 questions and to let the witness explain how he drafted the list. It is

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1 not for Mr. Hooper to explain this. It is for the witness to explain, it
2 is for the witness to testify.

3 PRESIDING JUDGE COTTE: (Interpretation) I agree, Prosecutor,
4 but apparently in the Defence's approach, after having asked the witness
5 to explain under what conditions he drafted this document,
6 DRC-D02-0001-0436, he is endeavouring, I believe, to try to ask the
7 witness to specify whether there is a correlation between his own list
8 and the other list which was referred to previously. For the witness to
9 understand clearly what he is being asked, what we think he is perhaps
10 going to say, he has to be able to make a comparison. Now, it may be a
11 rather laborious approach by Mr. Hooper who had chosen a name with a
12 number which can't really read -- one can't read whether it is 56 or 66.

13 Mr. Hooper, can you kindly restrict yourself to presenting to the
14 witness the two documents you would like him to compare and then please
15 avoid leading questions, but the witness must be placed in a situation in
16 which he can explain, and if this is not explained to him, he will not
17 manage. So please, will you proceed. But I did take note of the
18 Prosecutor's comment. It is not an easy approach and one has to try to
19 be equitable. You have -- I pass back to Mr. Hooper.

20 MR. HOOPER: Thank you very much.

21 Q. So, Mr. Witness, let's forget a specific example and let me ask
22 you instead if we go to the top of the page, page 1, of your document, a
23 document divided into eight columns, nine columns, let's go across the
24 columns. And in the first column you have a number at the top of page 1
25 we have number 1. What does that number stand for?

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1 A. Top left is the number I used to identify the people, and then on
2 the right of the page, the number is on the OGC (* as interpreted) list.

3 Q. All right. So let's just take it column by column. You've told
4 us about column 1 which a 1 in it and that's your numbering. Second
5 column has a name in it. These may sound silly questions to you but it's
6 necessary I believe. What does that name represent, the one that starts
7 with B in the second column on the first page?

8 A. Are you referring to the second column or the second page? What
9 number is it, please?

10 Q. (* Previous translation continues) ... my questioning. It's your
11 first entry. We start at number 1, we have a name Baraka, right, who --
12 what is that? Is that a person who is -- who --

13 A. Yes, Baraka is a person.

14 Q. Then we have in the third column -- what is -- you've got another
15 one. What does that represent, it's under "tot gen" it's written, your
16 third column, what is that?

17 A. The third column is the general number on the document which you
18 gave me here.

19 Q. And that's the red book. Okay. So just carry on going across
20 your columns. What's the next column, "fonct" -- what does it stand for
21 at the top of the column?

22 A. "Fonct" -- that explains the function performed by the person
23 whose name is given, what function they had at the time of
24 demobilisation.

25 Q. Fine. And the next column, column 5?

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1 A. The next column is the function performed by the person now, at
2 the present time. The next is the address of the individual at the time
3 of demobilisation and the next one is the present address where the
4 person lives now, followed by the address of the parents, and the final
5 column is observations.

6 Q. Okay. Now, those observations, we can see in that final
7 right-hand column there are observations against many names. Whose
8 observations are those?

9 A. Those are the observations I made.

10 Q. And can you just now have a look -- just turn over the various
11 pages of that document and confirm to the Court that that's all in your
12 handwriting and all done with the object and method that you've described
13 and/or by you?

14 A. Yes, of course. All this was written by me.

15 Q. Thank you very much. Now there may be some other questions, but
16 those are all my questions this morning. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
18 So I take it that we can -- I can now pass to the Defence team of
19 Mathieu Ngudjolo. Are we in agreement? Apparently we are.

20 Madam Court Officer, can we raise the blinds so that the public
21 gallery can see the room. Who will be taking -- Mr. Kilenda?

22 MR. KILENDA: (Interpretation) Your Honour, can you allow me
23 two minutes to discuss the matter with my client?

24 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course. We
25 will all remain present.

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1 Mr. Hooper.

2 MR. HOOPER: (Previous translation continues) ... yes, thank you.

3 So this is the EVD number being assigned to the list written by this
4 witness.

5 PRESIDING JUDGE COTTE: (Interpretation) And on which document
6 he has just explained his position. So, Madam Court Officer, can we give
7 a number to -- an EVD number.

8 COURT OFFICER: (Interpretation) Thank you. The
9 DRC-D02-0001-0436 will have the EVD-D02-00117 and will be recorded as
10 confidential.

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

13 We will -- can we please raise the blinds behind the witness.

14 MR. KILENDA: (Interpretation) Thank you, your Honour, Judge,
15 your Honours, for giving me the floor.

16 Good morning, Witness.

17 THE WITNESS: (Interpretation) Good morning.

18 MR. KILENDA: (Interpretation) I am Jean-Pierre Kilenda. I am
19 of Congolese nationality. I am a member of the Brussels Bar and the
20 Kinshasa/Gombe Bar. I am principal counsel for Mr. Mathieu Ngudjolo. I
21 carefully listened to the questions put to you by Mr. Hooper, who is
22 counsel for Mr. Germain Katanga, and I feel that I have no questions to
23 put to you. I would just like to thank you for having come to enlighten
24 the Court on all the factual issues. Thank you.

25 Thank you, your Honour.

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

2 The Prosecution, which of you will speak first?

3 MR. MACDONALD: (Interpretation) Thank you, your Honour. My

4 colleague will take the counter -- the cross-examination, but I would

5 like to speak. Given the answers given, the questions, and the issues

6 which were not broached as announced by the Defence and above all in the

7 witness statement and take into account the preparation of the

8 Prosecution which was expecting to have a whole theme broached which was

9 not broached, this means that our cross-examination will be far more

10 focused and we will be able to complete it tomorrow. But as I understand

11 we have half an hour left, your Honour, and could I exceptionally ask

12 whether we can begin our cross-examination tomorrow morning. There were

13 no questions from the Kilenda team. We are thus submitting this request

14 to you. Of course we could begin the counter -- the cross-examination on

15 more general issues, but in the light of this limited testimony, we had

16 expected it to be far more extensive on certain subjects which had been

17 announced in advance, so I think the Prosecution needs to present a far

18 more concise cross-examination tomorrow morning with the permission of

19 the Chamber.

20 PRESIDING JUDGE COTTE: (Interpretation) Taking into account

21 what Germain Katanga's Defence team had said before the hearing, namely,

22 not just a summary but the actual statement, I think there are certain

23 points you were expecting which were indeed broached this morning.

24 Perhaps they were not broached in such detail as you had expected, but

25 they were dealt with this morning. So the Chamber is rather surprised

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1 that you're not in a position despite this to begin your
2 cross-examination. You know that we do not have an unlimited number of
3 hours for our hearings and not taking half an hour is highly problematic
4 to the President of the Chamber. Are there not any questions you could
5 raise which were foreseen and which were dealt with this morning or has
6 your whole cross-examination been called into question? I'm putting this
7 question to you because 30 minutes are 30 minutes and we must show due
8 diligence. I'm sorry for having constantly to remind you of this, but we
9 must show due diligence.

10 MR. GARCIA: (Interpretation) Your Honour, I can begin the
11 cross-examination right now.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you. If you want
13 to conclude or to stop ten minutes before, we will understand, but please
14 use the time that we have. Please proceed.

15 Questioned by Mr. Garcia:

16 Q. (Interpretation) Good afternoon, Witness.

17 A. Good afternoon.

18 Q. My name is Lucio Garcia and I represent the Prosecution. I have
19 a few questions to put to you today before the break. To begin with, I
20 would like to ask you some questions about your family. You mentioned
21 some names of members of your family. You talked to us about a certain
22 John?

23 A. Yes.

24 Q. Can you tell us approximately how old he is, that John?

25 A. 32 years.

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1 Q. Can you also tell us where John lives right now?

2 A. For the time being he lives in Bunia.

3 Q. And for how long has he been living in Bunia?

4 A. Ten months.

5 Q. Very well. Ten months so far. But before living in Bunia where
6 was he living?

7 A. He was living in Aveba.

8 Q. And if you can assist me here, was John a member of a militia
9 group in 2002/2003?

10 A. Yes.

11 Q. What was his responsibility in that militia group, Mr. Witness?

12 A. I do not know.

13 Q. You no longer know that now or you did not know at that time?
14 Have you always not known?

15 A. When it comes to the army, I don't know what position he occupied
16 there. I know that he was a member of the militia group.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, please
18 let us respect the five-second rule. You are being very quick.

19 Mr. Witness, please, you have to be slow and you have been able
20 to do that so far.

21 And the Prosecutor, please observe the five-second pause which
22 will allow the -- our collaborators to work well or better.

23 MR. GARCIA: (Interpretation) Very well.

24 Q. Mr. Witness, I am not -- I am not -- I am going to go slowly.

25 I'm not asking you questions about the army. I'm asking you a specific

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1 question regarding what your brother was doing in the militia group at
2 that time. He is, of course, your brother and you know what he was
3 doing, or don't you want to tell us here in public?

4 A. I was not in the army and I do not know what he did in the army.

5 Q. But given that he is your brother, Mr. Witness, you certainly had
6 conversations with him, either before or after 2002/2003. So I suppose
7 that at one point or the other, he certainly told you what he was doing
8 within the militia group, or do you want to tell us that he never spoke
9 of what he was doing?

10 A. I will tell you that we all knew what the militia men were doing.

11 Q. I'm sorry, Mr. Witness, I have not understood your answer. Are
12 you saying that you really do not know what the militiamen were doing?

13 A. Well, I said that everyone knows what militiamen do, that's to
14 defend and to patrol, to defend the country, to defend the area.

15 Q. Yes, we have understood that, but what was his role? What was
16 his responsibility, his position within the militia group?

17 A. That question has just been asked for the third time and I had
18 already answered that I do not know, I was not in the army.

19 Q. Last question on this. Mr. Witness, you were not in the army,
20 but you had two brothers who were in the army, as far as I know.
21 Germain Katanga was also in the army; am I correct?

22 A. Yes.

23 Q. And despite the fact that you had two members of your family in
24 the army, in the militia group, you're not in a position here today to
25 tell us what was the position of your brother John in the militia group;

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1 is that your testimony here today?

2 A. Yes.

3 Q. And if I tell you, Mr. Witness, that he was S-3, will that jog
4 your memory?

5 A. I do not know what the S-3 is in the army. I don't know what the
6 responsibilities of the S-3 are.

7 Q. Please feel free to disagree with me, Mr. Witness, but if I
8 understand you well you do not know anything at all about the militia?
9 Is that your testimony, you did not know about it in 2002/2003 and today
10 also?

11 MR. HOOPER: I -- you know, it's all very well, but you've got to
12 fairly reflect what the witness has said. And what the witness has said
13 very clearly in his reply to you earlier, to the Prosecutor earlier, "We
14 all knew what the militia were doing." Now, the word that's coming
15 through my earphones is "army, army, army." This is a militia.

16 PRESIDING JUDGE COTTE: (Interpretation) No one should answer in
17 the place of the witness, that is preferable, but the Prosecutor you have
18 the right to adopt the rhythm of questions that you think is necessary,
19 but subject to the necessity of allowing the interpreters and court
20 reporters to work well. Please do not exaggerate, and Mr. Hooper was
21 very attentive, let us use the right term. When the witness talks about
22 "army," let us use the word "army," and when he uses "militia," we should
23 use "militia."

24 Mr. Witness, you have to be as concise as possible. You have so
25 far been doing that. This is another exercise that the Prosecutor is

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1 putting you through. You have to try to be as precise as possible. If
2 you do not know, say you do not know. It is important for him and
3 particularly so for us. Thank you.

4 Prosecutor, please proceed.

5 MR. GARCIA: (Interpretation) Thank you, your Honour.

6 Q. Mr. Witness, we are going to move on to something else if you are
7 agreed. For some time you testified on this issue of the attack by the
8 Ugandans. Do you remember that?

9 A. Yes.

10 Q. And you also talked about the involvement of your brother,
11 Germain Katanga, at one point in an attack against the Ugandans if I'm
12 not mistaken; is that correct?

13 A. Yes.

14 Q. Do you remember talking about that to us this morning?

15 A. Yes, I remember.

16 Q. In answer to a very specific question from Mr. Hooper you also
17 said that your brother, Mr. Germain Katanga, had recovered a weapon; is
18 that correct?

19 A. Yes.

20 Q. Correct me if I'm mistaken, but you didn't seem to be very
21 certain about how he got that weapon. You said somebody might have
22 thrown it; is that correct?

23 A. What I said was I do not know how the weapon was recovered
24 because I was not on the battle-field.

25 Q. Very well. We have understood that, Witness, you were not on the

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1 battle-field and that is very important. But today when you are
2 testifying, if I understand you, maybe your memory is faulty, but you
3 never knew how that weapon was recovered by Mr. Katanga?

4 A. Please ask your question again.

5 Q. Mr. Witness, if I understand you well, you never got to know how
6 your brother, Germain Katanga, got to have that weapon?

7 A. I will give you the answer that I gave once again. I do not know
8 what happened at the front. He came back with the weapon and so far I do
9 not know what strategy or what method he used, whether there was a
10 Ugandan who threw away the weapon or whether there was a Ugandan who was
11 killed in order for the weapon to be recovered. That I do not know.

12 Q. Thank you for your answer, Mr. Witness. I will ask you some more
13 questions. We have understood that you were not on the battle-field, but
14 I would like to know whether you met a person called Logo, that is, in
15 preparation for your testimony here at the Court?

16 A. Yes, I met with him.

17 Q. Mr. Witness, I do not know whether you are good with dates, but
18 when was the first time that you met Logo?

19 A. I no longer remember the date.

20 Q. I will try to help you, Mr. Witness. Was this less than one year
21 ago or more than one year ago?

22 A. I met him for the first time when they travelled with Caroline to
23 Bunia.

24 Q. I will ask you that question once again, Mr. Witness, and you can
25 tell me that you are not good with dates if that is the case. But was it

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1 less than one year ago or more than one year that you met Mr. Logo?

2 A. It was more than one year ago.

3 Q. Was it more than two years ago or less?

4 A. Less than two years.

5 Q. Can you tell us which month?

6 JUDGE DIARRA: (Interpretation) Your Honour, the Prosecutor is
7 not making things easy because he's going at lightning speed.

8 MR. GARCIA: (Interpretation) I'm sorry, Mr. President,
9 your Honours, I will try to slow down in order to facilitate the task for
10 the interpreters and the court reporters. I am sorry.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. Please
12 continue, Mr. Prosecutor, but slow down.

13 MR. GARCIA: (Interpretation)

14 Q. Once again, Mr. Witness, I will ask you the question. Do you
15 remember the month? If you're not able to, I will try to narrow it down.

16 A. I am not in a position to tell you the month or the date.

17 Q. You don't have a good memory with dates, obviously?

18 A. Yes, we met suddenly if -- I think we met suddenly and it was not
19 possible for me to remember the month and the day.

20 Q. And you do not remember that date because at that time when you
21 met Logo and the team for the first time, you did not know that I will
22 ask you this question today. This was not important to you at the time;
23 is that correct?

24 A. Yes.

25 Q. So you met Logo for the first time. You are not sure about how

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1 long it was -- how long ago it was, but it was more than one year ago and
2 less than two years. But during that first meeting did you have the
3 opportunity to give a statement, to write a statement?

4 A. No. I met with him the first time on the road. I was travelling
5 from Bunia to Aveba and we met on the way. We greeted each other, and I
6 went on my way and he also went on his way.

7 Q. Very well. But if I understand you well, that meeting was
8 organised in advance, it was not a coincidence?

9 A. Yes. It was organised, but it was not Logo who took my statement
10 for the first time.

11 Q. But that first meeting that you say took place on the road, there
12 was no statement taken?

13 A. No.

14 Q. Am I correct to say that you met Logo subsequently again?

15 A. Yes.

16 Q. Mr. Witness, how many times?

17 A. We met several times.

18 Q. Just to be clear, when you say "we met with him," are you
19 referring to someone else, that is, apart from you? Was it just you and
20 the Logo and the Defence team?

21 A. It was us, myself, Logo, and his Defence team.

22 Q. Let us try to go into the details of each meeting, that is, if
23 you are able to give us those details. Were you able to provide a
24 statement the second time you met?

25 A. Yes, a statement was taken from me.

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1 Q. And precisely when did that second meeting take place, can you
2 remember the date?

3 A. When that statement was being taken, I was not aware that it was
4 important for me to remember the date or the month. I did not know that
5 that question would be asked me today. They simply asked me questions
6 and I gave answers.

7 Q. Tell me, Witness, when they met with you, did they speak to you
8 about certain things or were you the one simply giving a statement? How
9 did it happen?

10 A. When they met with me they asked me questions and then I gave
11 them answers. I'm not the one who gave them information. I answered the
12 questions that they put to me.

13 Q. Now, during that second meeting, you say that you wrote a
14 statement. Was that statement handwritten by yourself or how was that
15 statement taken?

16 A. It is as I have told you. They asked me questions and I gave
17 them answers. They were the ones who wrote the answers down. I was not
18 the one doing the writing.

19 Q. Was that document subsequently shown to you?

20 A. Yes, that document was shown to me here.

21 Q. What did you say?

22 A. Yes, here. First of all, in Bunia I was told to sign my
23 statement because I would have to come and defend my statement here. So
24 I was told to read the statement and to sign it, and that is what I did.

25 Q. To understand you well, you signed that document in Bunia?

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1 A. Yes. I was given the statement, and after reading the statement,
2 I realised that it contained what I had told them so I signed the
3 statement.

4 MR. GARCIA: (Interpretation) Mr. President, I think at this
5 stage, if there is no objection from the Chamber, it would be advisable
6 to adjourn at this time because I'm going into another line of
7 questioning and I do not want to split the examination.

8 PRESIDING JUDGE COTTE: (Interpretation) Very well,
9 Mr. Prosecutor.

10 Mr. Witness, we are going to stop here for now. We will meet you
11 again tomorrow morning at 9.00 a.m. Take the afternoon to rest and
12 prepare yourself for the other questions that are going to be put to you.
13 And thank you for your contributions over the course of these four hours.

14 Court Officer and the Court Usher, please can you accompany the
15 witness out of the courtroom.

16 And the Chamber would like to thank all those who have assisted
17 us during this hearing. Sometimes we have been speaking too fast, but
18 after reading the transcript and listening to the interpretation we
19 realised that you have been managing to follow us. Thank you.

20 (The witness stands down)

21 PRESIDING JUDGE COTTE: (Interpretation) And the accused
22 persons, we are going to meet here tomorrow at 9.00 a.m.

23 Court is adjourned.

24 The hearing ends at 1.24 p.m.

25 CORRECTION REPORT

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1 The Court Interpretation and Translation Section has made the following correction
2 in the transcript:
3 *Page 47 line 5
4 "-- number 1 was not demobilised (* as interpreted)." Is corrected by "-- number 1 was
5 demobilised."