

Trial Hearing
Witness: DRC-D03-P-0055

(Open Session)

ICC-01/04-01/07

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Germain Katanga
5 and Mathieu Ngudjolo Chui - ICC-01/04-01/07
6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra
7 and Judge Christine Van den Wyngaert
8 Trial Hearing
9 Thursday, 18 August 2011
10 (The hearing starts in open session at 9.02 a.m.)
11 THE COURT USHER: All rise. International Criminal Court is now in session.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Good morning,
13 everyone. Good morning, the accused. Before the witness comes into the
14 courtroom, Witness 55, Mr Kilenda or Professor Fofé would like to make a few
15 remarks. I'm not quite sure which one of you it is. You may proceed.
16 MR FOFÉ: (Interpretation) Thank you very much, your Honour. Good morning,
17 your Honours. Our team had a discussion about DRC-OTP-1063-0002; that's an
18 exhibit from the Prosecution, the item that your ruling yesterday had to do with, the
19 ruling whereby you granted us authorisation to add this exhibit to the list of items of
20 evidence and to disclose it to the parties and participants.
21 After analyzing the situation, we concluded that, in light of the importance of this
22 item, we should -- with the witness DRC-D03-0088 on this particular document. It
23 would appear, your Honours, that this witness is already in the process of travelling
24 here to The Hague and, consequently, we would like to request leave from the Bench
25 to allow us to work with this witness on this particular document here in The Hague.

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1 As you know, Witness 88 will be giving testimony after Witness 66 and could begin
2 today, if things unfold smoothly with the Witness 55. We do not wish to change the
3 order in which witnesses shall appear because this list of witnesses, this order, has a
4 certain logic to it and we want to continue following this logic; in other words we
5 would like to have Witness 88 give testimony after Witness 66.
6 In practical terms, what we are requesting from the Chamber is to grant us some time.
7 Even though Witness 88 is arriving on the weekend, we would like to ask that the
8 witness not proceed to give testimony immediately, given the rate at which we are
9 proceeding. We were thinking that he could begin giving testimony next week. So,
10 we would like to ask that at the end of the testimony of Witness 66, if we could have
11 some time, a few days, to work with Witness 88 on this particular item, this video.
12 Your Honours, I think you have seen just how hard our team is working to meet our
13 obligations of proceeding expeditiously so that the trial does not drag on, but we do
14 think that a speedy trial should not necessarily mean doing any prejudice to the
15 essential rights of the defence of Mr Ngudjolo.
16 THE INTERPRETER: Interpreter correction: The witness arrived in The Hague on
17 the weekend.
18 MR FOFÉ: (Interpretation) With regard to Witness 88 -- 480, correction, given that
19 that witness was dropped from the list of witnesses, we will have some time. This is
20 only the defence team's opinion, but we do believe that we will have enough time to
21 make slow yet steady progress. So there you have it, your Honour. Those are my
22 submissions. I thank you.
23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé. Now,
24 before we canvas the parties and participants for their opinions, I think there's two
25 matters here: First of all the meeting with this witness can only begin before

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1 familiarisation and, furthermore, the matter of the length of the working session.
2 You are frightening the Chamber somewhat when you say a few days. A working
3 meeting with this witness might be one or two days, but a few days? Is it truly
4 necessary to have a few days, in the plural, to show him this video or to show him
5 related documents, in light of your application the other day?
6 But we're not entirely sure what the full content of the video is all about, but, really,
7 when you say "a few days" this frightens us. Could you be more specific and then,
8 after that, I will ask the Prosecution, Mr Hooper, the others to respond.
9 MR FOFÉ: (Interpretation) If we could just have a few moments to consult one
10 another, your Honour.
11 Thank you, your Honour. Your Honour, I may have said a few days, and that was
12 because -- well, in the final analysis, I was referring to or depending upon the wisdom
13 of the Bench.
14 Our situation is as follows: It would appear that this witness has never seen this
15 video apparently and, consequently, it is difficult for us to really determine the
16 number of days necessary because we don't know how the witness will react, what
17 this working meeting may generate in terms of other duties or tasks to carry out.
18 But reasonably speaking, I think we can ask the Chamber, in a reasonable way, for
19 three days. Three days. If ever the working meeting could be shorter, we could
20 inform the Chamber of that quickly.
21 Our legal assistant has just provided me with some additional information regarding
22 the schedule that has already been set. Particularly in relation to Witness 88, he will
23 be arriving on Sunday and the familiarisation meeting is scheduled for Monday.
24 This means if the Chamber agrees to our request, it may be necessary to put off that
25 familiarisation meeting. Thank you, your Honour.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé. If we've
2 understood you correctly, we find ourselves faced with a situation that is somewhat
3 out of the ordinary, insofar as the addition of this item came yesterday late, and we
4 provided some explanations yesterday. We are not going to go back to that point.
5 The first ten pages of yesterday morning's transcript are sufficient to refresh our
6 memories, if necessary.

7 Mr Prosecutor, your reaction, your comments on this request; not so much on the
8 whole issue of the time but, rather, the very principle of this meeting which would
9 only be possible before familiarisation begins officially.

10 MR MACDONALD: (Interpretation) Quite so. Good morning, your Honours.
11 Indeed, we find ourselves facing an unusual situation. The Office of the Prosecutor
12 is partly responsible for this, and I'm well aware of that, your Honour. However,
13 perhaps -- perhaps I think we should downplay or reduce the number of preparation
14 days, if I can put it that way.

15 The video in question is 47 minutes long. That's the first consideration. Secondly,
16 we may not have any objections to, before the witness begins familiarisation, if there
17 were to be a meeting with the Defence team, that could be done in the presence of a
18 member of the unit, as was the case already in the past after an application was made
19 by Mr Hooper for a witness. I believe it was the third witness who is currently
20 detained.

21 Now, another thing that the Chamber should recall is that, not having seen the video
22 but as mentioned yesterday - and I think my colleagues will agree once they view the
23 video - that this is a presentation made by the witness himself, Witness 88. So I
24 would say is it necessary to meet with him, considering that already he is a witness
25 for the Defence - and I'm sure they've met with him before he became a Defence

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1 witness - to assess all of this? You have a photograph of the chart that Witness 88
2 sketched in the presence of the Prosecutor, which is an item that is to be found on the
3 list of the Defence.
4 The other option is that the witness could see the video in the course of familiarisation,
5 could view the video, refresh his memory regarding any remarks he may have said,
6 and during the familiarisation beyond a meeting with the Defence.
7 One last point, your Honour, to conclude -- I beg your pardon, when it comes to the
8 scheduling or the preparation time, a video of 47 minutes, rather brief, I would just
9 like to remind all that the witness is the one giving the presentation, so he will be able
10 to refresh his memory quickly.
11 Furthermore, certainly on the familiarisation list that will be sent soon by our learned
12 friends, I would point out to the Chamber that the witness did give a statement to the
13 OTP, and I think it was over three days unless I'm mistaken, so already there are
14 several transcripts because it was an interview under Article 55(2) of the Statute and
15 so the witness will need some time to read over that document. So that's what I have
16 to say about the actual timing of -- or the time that the witness will come before the
17 Chamber.
18 Yesterday, or the day before, we did cross-check with the unit to determine when
19 familiarisation would occur, for our own internal planning purposes, and we were
20 given no date. They did not revert to us and we didn't know that the witness was
21 going to be arriving on Sunday. Now, Monday we are not sitting, just to remind
22 everyone, so there's one day.
23 So those are the comments from the Prosecution. If the Chamber decides that such a
24 meeting is to be held, we would say that a member of the unit must be present - that
25 is our wish, of course, and the Chamber will decide - and a report should be drawn

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1 up. What we want to avoid is any -- any witness proofing, any proofing of witnesses.
2 They can discuss the video, so be it, but certainly not -- there certainly should be no
3 proofing of the witness.
4 So there you have it, your Honour. That is the position of the Office of the
5 Prosecutor.
6 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Hooper, have you
7 any observations in particular regarding Professor Fofé's application?
8 MR HOOPER: Well, all I'd say is it's just over 45 minutes long, this video. It's a
9 video showing a visit in July of 2009 of Mr Ocampo to Zumbe. You see him arriving
10 by helicopter and greeting the locals and saying general things. He's greeted by the
11 chief of the locality, the gentleman in question. There's a blackboard, or board,
12 towns around Zumbe indicated. There's a line or two stated by him, I'll say no more
13 than that, and then there's general meeting and greeting with other residents.
14 So I really am rather surprised, to be frank, that it takes three days. I'd have thought
15 a couple of hours, but there we are. My friends know their position.
16 I'm not entirely sure whether VWU are really in a position to monitor, as my friend
17 suggests, discussions, or that they'd want to.
18 Those are all my comments. Thank you.
19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper.
20 Mr Gilissen, do you wish to speak to this application?
21 MR GILISSEN: (Interpretation) Thank you very much, your Honours. Good
22 morning, your Honours. I think for the most part the essential elements have been
23 put to the Chamber: 47 minutes of video that the Defence wishes to use. We are all
24 aware that within this 47 minutes only part of the video, really a fraction of the video,
25 is relevant, so I think we need to remember that we must strike the right balance

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1 between this unusual request from the Defence and what the Chamber can agree to.
2 I think there is a precedent in this regard, the Prosecutor spoke to that, and since
3 you've given me leave to speak to this, yes, I think the Defence should be able to meet
4 with this witness, under conditions that certainly do not show any possibility of
5 proofing, and I would point out that the appearance is very important. We can't
6 allow for any possibility of proofing to occur. Certainly the conditions, and I'll just
7 paraphrase, with guarantees that the Chamber has already provided guarantees, and
8 I think these guarantees have to be applicable to the Defence as well.
9 So there you have it, your Honour. I won't dwell on the matter. I think it's really
10 very important to ensure that there's no appearance of impropriety.
11 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Gilissen.
12 Mr Luvengika.
13 MS NSITA: (Interpretation) Good morning, your Honours. I think my learned
14 friends, who have already spoken, have covered pretty much all the points relating to
15 this matter. However, I would like to draw the Chamber's attention to a matter of
16 principle.
17 Meeting with witnesses in The Hague before testimony, that would be opening the
18 door to a form of proofing. As Mr Hooper, my learned friend, just said, I'm not so
19 sure that the presence of the VWU during such discussions could be possible. It
20 would be a discussion between a Defence team with a witness, and I find that this is a
21 rather sensitive proposal and I conclude that I must really leave this in the hands of
22 the Chamber and rely on their wisdom.
23 MR MACDONALD: (Interpretation) On this last point, your Honour, if I may?
24 Be it the unit, or a neutral organ of the Registry - a neutral unit within the Registry, or
25 a legal officer - in that situation a legal officer would not be bound by solicitor-client

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1 privilege.

2 What's important, your Honour, is the following: As my colleague, Mr Gilissen, was
3 just saying, what's important here is the appearance. Appearances are important,
4 because witnesses come, give testimony, make statements, and at this particular stage,
5 once they're right here in The Hague, having contact with a witness, this truly is an
6 unusual measure.

7 So I believe that the Chamber, to ensure that there is both fairness and the appearance
8 of fairness and to protect the integrity of the case file, should - and must - provide for
9 some safety measures to protect all these interests, to ensure the right balance
10 between all these competing interests. Be it a member from the unit, someone from
11 the Registry, that person would be there to ensure, and the Registry or the unit could
12 determine whether proofing was there. They're not there to act as policemen, so to
13 speak, to police the Defence, but they could be there to ensure that the appearances
14 are proper, thus protecting the fairness and integrity of the proceedings.

15 I thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) One last observation, Professor Fofé.
17 I think we do have some material here for our decision.

18 MR FOFÉ: (Interpretation) Thank you, your Honour. Well, in the final analysis,
19 of course, the Defence team of Mr Ngudjolo will rely upon the wisdom of the
20 Chamber in this regard. However, I would like to briefly respond to a number of
21 arguments that were put forward in particular by the Prosecution in relation to this
22 situation.

23 Here is my first point: The duration of the video, 47 minutes. This remains to be
24 determined and we will verify this with the witness.

25 My second point is as follows: The presence of a member of the VWU or some other

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1 staff member from the Registry, and I would like to stress one point, your Honour.
2 This situation that we are dealing with right now is different from what happened
3 with the other Defence team, the Defence team representing Mr Katanga. We are not
4 going to repeat what has already been said but this present situation was created by
5 the Prosecution, by an omission on the part of the Prosecution, and therefore this
6 situation must -- well, or rather, the solution must enable the Defence to find itself in
7 the situation pro/ante.
8 In other words, if you were to grant our request, your Honour, we would request that
9 the working session with the Witness 0088 take place in full keeping with the rules of
10 confidentiality as regards the preparatory work carried out by the Defence team.
11 My third point: The Prosecutor has stated that the tables, the graph, that was
12 communicated to the Defence, the sketch, does to a certain extent attenuate the
13 problem.
14 Well, your Honour, a sketch table cannot replace a video, even if the duration is
15 47 minutes. We all know what a table is; a table cannot replace a 47-minute video, a
16 video which is something dynamic, it's lively. It's just not possible.
17 Fourthly: The Prosecutor referred to the long interview with Witness 88 that the
18 Defence had. Well, no, correction. The interview that the Prosecutor had with the
19 witness took place before the video, if I'm not mistaken.
20 Your Honour, I shall conclude in saying the following: As regards the duration, we
21 of course rely on your wisdom. It's up to you to determine how much time we can
22 be allowed, in all fairness, to work with this witness, but the Defence considers that
23 this should take place, that it should be able to take place without the presence of a
24 representative of the VWU or of the Registry because these contacts should be
25 covered by client-attorney privilege.

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1 And in analysing each part, of course, your Honours, this will depend on the parties
2 and I believe it is true to say that it's only the Defence counsel of Mathieu Ngudjolo
3 who can adequately evaluate the value of this document.
4 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé.
5 Inasmuch as is possible, the Chamber will respond orally, after the break. If we feel
6 it is necessary to obtain additional information we will respond tomorrow morning.
7 Madam Court Officer, we will need additional information as to the exact timing of
8 the familiarisation session, which I believe is to take place on Monday. We also need
9 to know, inasmuch as the Chamber is not sitting on Monday, whether it would be
10 possible to postpone the familiarisation to the later part of the afternoon. In other
11 words, at a time where, in keeping with regular practice, the session take place but at
12 the end of the afternoon, which would mean then that the morning and the early part
13 of the afternoon would be free.
14 We would also like to know whether the Chamber could sit in the afternoon instead
15 of the morning on Tuesday. I don't have the schedule of all of the various hearings
16 taking place next week in mind. Perhaps you could check and let Ms Pauline
17 Baranes and Mr De Smet, who are in their offices, are legal counsel, and this
18 information would be useful just for practical reasons, if there's no legal reason here,
19 but that information would be useful in order for us to respond to Professor Fofé's
20 application. Thank you.
21 We shall now move into closed session so that the next -- our witness can come in.
22 (Closed session at 9.36 a.m.) *(Open session)
23 THE COURT OFFICER: (Interpretation) We're in closed session, your Honour.
24 MR MACDONALD: (Interpretation) While the blinds are coming down, may I?
25 When this kind of application is anticipated, I'm sure that an email was sent to the

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1 Chamber, to inform the Chamber that Defence was going to make an application,
2 would it be possible for us to be informed of this kind of situation so that at least we
3 know what's going to happen? I mean this has been the case in the past. I think if
4 we want to respond usefully it would be nice for us to be informed. If an email had
5 been sent to us last night, it would have facilitated our situation, and we understand
6 in some cases we can postpone such decisions, but in this case it's fairly urgent. So
7 in this kind of situation in the future, would it be possible to inform the parties? I
8 really think that's the basic minimum.

9 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, the comment
10 just made by Mr Macdonald, which starts on line 17 of page 13 and following, should
11 be in open session and should appear on the transcript because, of course, this was a
12 general comment and need not be in closed session. Briefly, Professor Fofé.

13 MR FOFÉ: (Interpretation) Well, I feel that this comment is aimed at me and I
14 must say we're working very hard and we've been working on Witness 55, and we're
15 preparing Witness 66, and I can't tell you what time we went to bed last night. It
16 was only this morning that we were able to analyse the situation and we did inform
17 the Chamber by email, so that we be able to raise the matter in Court. We could not
18 react any quicker than that, given that the oral ruling was only made yesterday, so we
19 really can't react any faster than that.

20 PRESIDING JUDGE COTTE: (Interpretation) Professor, we realise that the fact
21 that a Defence team, while it is presenting its case is under numerous constraints, and
22 we understand that we added additional constraints last night, given the rulings, et
23 cetera and we understand that. But it is also true that all of these constraints that
24 you undergo have an effect on the other teams that must respond. We received your
25 email, which did not reveal what you were going to be speaking about, and of course

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1 it's difficult to improvise in a public hearing and it's also quite risky to improvise
2 because we're all legal experts and we wants to express ourselves in a relevant and
3 strictly useful fashion.
4 Therefore, each and every time it is possible, please, if you could at least indicate the
5 subject upon which you intend to make an oral application. That way, the various
6 legal counsel who are working in the various offices can prepare themselves, collect
7 the various documents and perhaps exchange emails regarding potential responses, et
8 cetera.
9 We're all used to this, this is how we proceed. We understand that in some cases last
10 minute reactions may occur, if only because one the members of the team say, "Yes,
11 but what if," et cetera. We understand Mr Macdonald's comment. We also under
12 your reaction to that comment. Let us all do our best to simplify the task of each and
13 every member of this courtroom.
14 Madam Court Officer, this is the very last sentence on that topic, that is page 15, line
15 11, the entire portion must be in open session, in spite of the fact that we had
16 previously moved into closed session. *(Closed session at 9.41 a.m) (Expunged)
17 (Expunged)
18 (Expunged)
19 (Expunged)
20 (Expunged)
21 (Expunged)
22 (Expunged)
23 (Open session at 9.42 a.m.)
24 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.
25 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Professor Fofé, I have

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1 been told that at present the Chamber does not have access to that video and
2 therefore it would be preferable to put that video on the eCourt system. Is that
3 possible?

4 MR FOFÉ: (Interpretation) Yes, the Defence team received a copy of that video as a
5 courtesy copy, I believe, on August 11. So, indeed, it was an informal courtesy copy.

6 MR MACDONALD: (Interpretation) Yes, the purpose was speed, to save time.
7 We communicated it in a non-Ringtail format. Now, we can perhaps upload it into
8 the eCourt system. Could you give me just a moment, please?

9 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course, because it is
10 important that the members of the Chamber be able to view the 47 minutes of the
11 video in order to make the appropriate decision, and you have used some technical
12 terms there that the members of the Chamber are not in a position to evaluate.

13 MR MACDONALD: (Interpretation) Well, I could also give you a courtesy copy,
14 meanwhile, and then the Defence team can record it under their own references, that
15 is the one that we communicated, and meanwhile you will be given a courtesy copy
16 so you can view it. We will make the request right away. I have a copy in my
17 office that we can give to you.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Thank you very much.
19 If it were at all possible to send that copy to Mr Simon De Smet on the 13th floor.
20 Give him a call so that they be able to open the door to whoever goes up to the 13th
21 floor with that video in hand. Thank you. Madam Luping, it's all yours.

22 MS LUPING: (Interpretation) Good morning, your Honour, Madam Judges.

23 QUESTIONED BY MS LUPING:

24 Q. Now, Mr Witness, just as a point of information, the Defence counsel for
25 Mr Ngudjolo informed the Prosecution yesterday that the date they received the

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1 document that we discussed at the end of yesterday from you was on 12 June 2009,
2 and I'm referring to EVD-D03-0090; the document we discussed yesterday, sir. This
3 is the one where you originally said you didn't remember seeing it but, when we
4 pointed out you were the one in fact who provided it to the Defence, you indeed
5 recalled you had seen it.

6 Now, the date, Mr Witness, 12 June 2009, am I right in saying that you don't recall the
7 precise date?

8 A. I have forgotten the date when I gave that document.

9 Q. Okay. Now, I have just a question simply to clarify the record, because there's
10 a lack of clarity on this issue and it may just be an issue of spelling. But am I right in
11 saying that both you, you personally and Mr Mathieu Ngudjolo, that you're both of
12 the Djotsi clan, the same clan? Isn't that right, Mr Witness?

13 A. Myself and Mathieu Ngudjolo are not a member of the same clan. He's a
14 member of the Ndotsi clan and I am a member of the Djotsi clan.

15 THE INTERPRETER: The interpreter did not distinguish the difference between the
16 two.

17 PRESIDING JUDGE COTTE: (Interpretation) I believe we need to spell, because
18 even if you have a musical ear it's very difficult to distinguish those two terms.

19 Witness, would you be so kind as to spell the name of Mr Ngudjolo's clan and then
20 spell the name of your own clan?

21 THE WITNESS: (No Interpretation)

22 PRESIDING JUDGE COTTE: (No interpretation)

23 THE WITNESS: (No interpretation)

24 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, I was simply
25 stating that we were involved in a long discussion when the witness came in, and I

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1 had neglected to say "good morning," and I therefore repaired that omission, and the
2 witness responded "good morning."

3 (Pause in proceedings)

4 We're going to put this document on the overhead projector. And, court officer, it
5 might be useful for the witness to have a few sheets of paper next to him so that he
6 can write things down - names, in particular - if need be, if he prefers to do it that way
7 rather than spell.

8 THE COURT OFFICER: (Interpretation) Please press "Docu Cam Witness" if you
9 want to view this document.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Witness.

11 We are going to retrieve the original of this document and give it an EVD number and
12 then Madam Luping will continue, but first --

13 THE COURT OFFICER: (Interpretation) Thank you, your Honour. The
14 document shall bear the number EVD-OTP-00271 and shall be a public document.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. Madam
16 Prosecutor, you may proceed after this illustrated response to your question.

17 MS LUPING:

18 Q. Just to clarify, Mr Witness, you've referred to your clan as the Djotsi and
19 Mr Ngudjolo's as the Ndotsi, and I apologise for my pronunciation but would I be
20 right in saying that these clans are closely related there? They appear to be at least
21 very similar in spelling. Are they closely related, the clans?

22 A. They are two distinct clans. I am a Djotsi, and someone from my clan can
23 marry someone from the other clan, the Ndjotsi clan. That is Mr Ngudjolo's clan.
24 In other words, we do not have a close -- we are not closely related.

25 Q. Thank you for that clarification. Now, you explained to the Chamber already

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1 that Mathieu Ngudjolo's brother, Deo-Lochubo, that he was the vice-president of the
2 Kambutso health committee. Now, it's right, isn't it, that he was living in Kambutso
3 at the time as well?

4 A. Yes, Deo-Lochubo lived in Kambutso.

5 MR FOFÉ: (Interpretation) May I -- I beg your pardon. The witness answered the
6 last question but, as for the previous question, there is an element that is not
7 absolutely correct regarding the brother of Mathieu Ngudjolo; that is, what the
8 Prosecutor said is not in keeping with what the witness testified as to the function of
9 the brother of Mr Ngudjolo.

10 PRESIDING JUDGE COTTE: (Interpretation) Would you be so kind, Mr Witness,
11 as to recall what the function in the health care system, or the administration of the
12 health care system, the brother of Mathieu Ngudjolo occupied? Could you tell us
13 that?

14 THE WITNESS: (Interpretation) He was not a doctor. He worked within the
15 health committee as vice-president. Perhaps I can explain how the election took
16 place. There were three candidates chosen by the committee; that is, myself,
17 Deo-Lochubo and Singo Pele. Singo Pele.

18 And after the election I was in first position and, therefore, I became the president of
19 the health committee; and Deo-Lochubo was in second position and, therefore, he
20 was appointed vice-president; Singo Pele, the third, in keeping with the election
21 results became secretary. That is how the election took place.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Witness.

23 MS LUPING: Thank you, Mr President.

24 Q. Thank you, Mr Witness. Now, Mr Witness, just a point actually to clarify
25 because at least it's correct in the English transcript. I make no mention of

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1 Mr Deo-Lochubo being a doctor. Now, Mr Witness, it's right, isn't it, that he was
2 also a teacher Deo-Lochubo? That's one of his -- that's his background as well?

3 A. As I stated yesterday, during the war the schools didn't function and, during the
4 period of the war, he was not a teacher. It was only after the war that he became a
5 teacher.

6 Q. Now, Mr Witness, you mentioned a few names yesterday of people that you
7 know in the health industry. Dr Mateso, Dr Mateso Lodya, this is somebody that
8 you must know as well?

9 A. The name you have just mentioned doesn't mean anything to me. There was
10 no one with that name amongst the doctors that worked with me there.

11 Q. Well, I'm going to confine my question to Mateso Lodya. He may be known to
12 you as a nurse. You must know him.

13 A. I do not know Mateso Lodya. Perhaps the name is Mateo Loja, but the way
14 you pronounced the name I did not recognise it.

15 Q. And Mr Mateo Loja, how do you know him?

16 A. Mateo Loja - it's not Lodya, it's Loja - was a nurse at the health centre in Zumbe.

17 MR FOFÉ: (Interpretation) Your Honour, it might be useful once again for the
18 witness to write down these names so that we ascertain the correct spelling.

19 PRESIDING JUDGE COTTE: (Interpretation) Yes, it would seem there's only one
20 letter that's different.

21 MR FOFÉ: (Interpretation) Again, that's the way it is with African names. The
22 name "Fofé," if you write it without the accent people will say "Fofé," which is not
23 correct, and that's why you need the accent to pronounce it "Fofé." I'm just joking, of
24 course.

25 PRESIDING JUDGE COTTE: (Interpretation) Witness, would you be so kind as to

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1 write down the two family names that you've pronounced; that is Lodya and Loja.
2 We shall be able to see them written down and that will make things easier for us and
3 allow us to find out who you did know, or didn't know.
4 (Pause in proceedings)
5 Well, there's no point in putting this on the overhead projector. Please accept me
6 reading this out. We have on the one hand "Mateso." Yes, yes, we'd better do that
7 actually, because I'm not sure whether there's a "Y" involved or not. Let's put it up
8 on the overhead projector then.
9 THE COURT OFFICER: (Interpretation) Please press the "Docu Cam Witness"
10 button.
11 PRESIDING JUDGE COTTE: (Interpretation) The first name appears to be
12 L-O-D-Y-A, whereas the second one is L-O-J-A.
13 Madam Prosecutor, now that you have both these names, perhaps you could ask your
14 question once again so as to find out who is whom and who the witness knows.
15 MS LUPING:
16 Q. I'm referring to Mateso Lodya, as spelt the first name on your list. Now,
17 you've confirmed that he was a nurse at Zumbe; isn't that right?
18 A. Yes, that's right.
19 Q. And he was also known by a nickname, "Dr Mateso," isn't that right?
20 A. Yes, he was.
21 Q. Now, Mr Witness, of course my pronunciation is not going to be as good as
22 yours in terms of the names I'm going to be giving you now, but let's be clear. If you
23 think I'm mispronouncing a name, but you recognise the name, please say so, because
24 I think you did fully understand exactly who I was talking about, didn't you, Mateso
25 Lodya, even if I'm mispronouncing it?

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- 1 Now, Ngabu Gokpa Isakara - and I'm going to spell the name, N-G-A-B-U,
2 G-O-K-P-A, I-S-A-K-A-R-A - do you know this person, Mr Witness? He's also
3 known as "Pastor Isakara."
- 4 A. Yes, I know that person. He is a reverend from the CK20 church.
- 5 THE INTERPRETER: But the interpreter did not hear the locality. Perhaps that
6 could be repeated?
- 7 PRESIDING JUDGE COTTE: (Interpretation) Witness, could you please repeat the
8 name of the locality that you just mentioned? It was not properly heard by the
9 interpreter in the Swahili booth.
- 10 THE WITNESS: (Interpretation) Mr Ngabu Gokpa Isakara is a reverend in the
11 CK20 church in Kathonie.
- 12 MS LUPING:
- 13 Q. And how do you know Pastor Isakara?
- 14 A. It's very easy to know a pastor. He's a preacher. He carries out
15 evangelisation among the Christians, so it was during the familiarisation process that
16 people come to meet with their priests and pastors.
- 17 Q. Now, Mr Witness, you mentioned that you know a person called Papa Mbaraza,
18 and as we're in open session I'm not going to repeat again how it is that you know
19 him. I'd be right in saying that you're still in contact with him; isn't that right?
- 20 A. Mr Mateso Mbaraza, as I said earlier on, was a colleague of mine when I was
21 registrar with the -- at the secondary tribunal in Saliboko. At that time, he carried
22 out the same duties in Loga. He left to come back and work at the prosecutor's office
23 and still today we have contacts. There's no problem between us.
- 24 Q. You also referred to a person you mentioned as President Jacques, and this is
25 somebody you said who was involved in the defence committee in Zumbé. My

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1 question is he was also responsible for matters relating to youth; isn't that right?

2 A. Concerning what was referred to usually as "the base," well, I don't know
3 exactly how they were organised and what their organisation chart was because I
4 never worked with them.

5 Q. Now, you've also mentioned a person called Ngabu Safari as part of the defence
6 committee. Am I right in saying that his full name is Jean de Dieu Ngabu Safari and
7 that he's also known as Kpenge?

8 A. Yes, he was part of that group. He was in charge of management.

9 Q. And he's now deceased; isn't that right?

10 A. Yes.

11 Q. And you must also know a person called Adolphe Liga and I'll spell that name:
12 That's A-D-O-L-P-H-E, Liga L-I-G-A.

13 A. Yes, I know Adolphe Liga.

14 Q. And how do you know him?

15 A. He is a young person from Kathonie. After the war, we met in Zumbe. What
16 I know is that he is a young man from the Kathonie neighbourhood.

17 Q. And he was also one of the authorities as well, wasn't he?

18 MR FOFÉ: (Interpretation) I'm sorry, perhaps there's a problem with the
19 interpretation. I heard someone talking about "power", or at least in French what we
20 heard was "A member of the power," "membre du pouvoir."

21 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, perhaps we can
22 ask you to be a little more specific about the duties or the responsibilities carried out
23 by this person, the word "power" being a very general one.

24 MS LUPING:

25 Q. I'll repeat my question, Mr Witness. He was one of the civilian authorities; isn't

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1 that correct?

2 A. I don't know any details about Adolphe, but I gave you some details about the
3 organisation of the base organisation. As to Adolphe, I don't know very much about
4 him.

5 Q. Okay. Now, Mr Witness, you talked about a person called Kute yesterday and
6 you explained how he formed part of the self-defence group and that he was living at
7 Lagura. Kute is also known as Pascal Kute; isn't that right?

8 A. I don't know what his Christian name is, but I do know that he was called
9 "Kute."

10 Q. And also forming part of the self-defence group at Lagura was a person called
11 Bebe Besto; isn't that right?

12 MR FOFÉ: (Interpretation) If I may?

13 MR MACDONALD: (Interpretation) May I make an objection before my colleague
14 takes the floor? My colleague systematically stands at every single question that is
15 asked. He stands up, stems the flow, comes up with translation issues, but if there
16 are problems in that respect we can come back to them later. My contention is that
17 he is practically impeding the Prosecutor's work; the way she wishes to carry out her
18 examination. In spite of the fact that this is his witness, he cannot be allowed to do
19 this. Systematically this morning he has stood on his feet and interrupted the
20 natural flow within which the questions are being asked.

21 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, the Chamber must be
22 in charge of ensuring the fairness of the way in which the proceedings are conducted
23 and of course it is far preferable to have the questioning conducted in a linear manner.
24 Actually, the last intervention you made was quite justified because the word
25 "pouvoir" did not give enough details to the witness for him to be in a position to

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1 respond.

2 We could of course wait until the end of the discussions to clarify that, but sometimes
3 it's useful to do so while it happens because we get a better answer. So very briefly,
4 please answer Mr Macdonald. Then we go on and I do believe that, Professor Fofé,
5 you only stand when you think it's absolutely essential. Let's hear what you have to
6 say.

7 MR FOFÉ: (Interpretation) Thank you, your Honour. I would like to reassure
8 Mr Prosecutor that I certainly do not stand up for no purpose, and the reason I'm
9 standing up now is that in the French interpretation of Madam Prosecutor's questions,
10 we heard "Kute participe," "Kute took part." Well, actually, I don't remember the
11 whole sentence, but in any case, the term that we heard was for the formation of a
12 party of self-defence. To be very brief, so as to avoid interventions, subsequent
13 interventions, perhaps we could ask Madam Prosecutor to use a transcript of the
14 testimony made by the witness yesterday and take out the actual words used by the
15 witness. If you use the words used by the witness, it will help. Every single word
16 is important, every concept is important. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Mrs Luping speaks slowly, which
18 encourages a good interpretation. Consequently, the job is made easier for the court
19 reporters, but these are tasks that cannot be necessarily reflect what is being said
20 absolutely exactly, and it is true that your question, page 27, line 2, states that there is
21 a formation of a party for self-defence, and then another portion of a sentence which
22 doesn't give a very clear idea of what you were asking and certainly doesn't give a
23 clear idea to the witness of what is expected of him, so please reformulate that, and
24 Professor Fofé will use the spring under his seat in a very restrained manner.
25 Madam Luping, please go ahead.

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1 MS LUPING: Just to confirm that I in fact was quoting directly from the transcript in
2 English. That Kute formed part of the self-defence group and that he lived at Lagura
3 and I'll give the reference to the French transcript where that appears. That's T-293,
4 page 49, lines 2 to 4. I was already quoting directly from the transcript.

5 Q. And I'll repeat my question, Mr Witness. And I would like to emphasise
6 before I do, Mr Fofé, that I always - always - pay attention to the exact words used by
7 the witness himself. So you can rest assured that when I am repeating back to the
8 witness, you can assume I'm referring directly from the transcript his own words.

9 Now, to repeat my question, Mr Witness: Isn't it right that a person called Bebe
10 Besto also formed part of the self-defence group at Lagura?

11 A. I don't know that person.

12 Q. Mr Witness, you explained yesterday what you know about a person called
13 Mr D. This is a relative of Mr D, isn't it, Bebe Besto, and this is somebody who
14 would have been very well known? Before you answer, Mr Witness, I'm going to
15 spell the name because I don't want there to be any issue about mispronunciation on
16 my part. The spelling is B-E-B-E, B-E-S-T-O. Now, this is somebody you know,
17 isn't it, Mr Witness?

18 A. I do not know -- I do not know Bebe Besto.

19 Q. Now, Mr Witness, you mentioned or described how at Zombe the self-defence,
20 there was a self-defence group, how the strongest would stay behind when there were
21 attacks at Zombe. And you've already mentioned how Kute was part of the
22 self-defence group at Lagura. Now, I'm going to refer to another statement you
23 made yesterday, and I refer to page 32, lines 20 to 22 of transcript 293, where you
24 explained that there were regular battles and there were people in charge of the
25 self-defence who were put in place, action, to protect the population or the locality.

1 The question I have is very simple, Mr Witness. As you described how there were
2 attacks in the Bedu-Ezekere groupement by UPC forces coming from Mandro, Bunia,
3 Tchomia, Kasenyi and Bogoro, isn't it right that Lagura and Zumbe were not the only
4 place with self-defence groups? Can you tell us the other places within -- within the
5 Bedu-Ezekere groupement where the people had their self-defence?

6 A. I apologise. Well, during the war, as I said yesterday quite clearly, all the
7 people who lived in the Bedu-Ezekere gathered in Zumbe. All the people who were
8 in the various localities assembled in Zumbe, and a small number of them took shelter
9 on the Lagura Hill, on Mount Lagura. That's what happened.

10 Q. But referring to, for example, Kambutso, Mr Witness, the second health centre,
11 as you explained to us, was built there to cater for the population from Zumbe. Now,
12 there had to be somebody protecting that health centre; isn't that right?

13 A. Regarding the health centre being built in Kambutso, this is what I would say:
14 If someone needs treatment, he can choose where he wishes to go. When people
15 found themselves in Zumbe, well, that is to say that people came from various
16 localities and went to Zumbe, and so the Kambutso health centre was set up for the
17 population of Kambutso.

18 Q. Mr Witness, you're not answering the question that I asked you. I think it was
19 a simple question. I'm going to repeat it again. There was also self-defence at
20 Kambutso, wasn't there? You needed somebody to protect the health centre, for
21 example?

22 A. There were no self-defence forces in Kambutso.

23 Q. So what you're saying, Mr Witness, is that in the infinite wisdom of the leaders
24 at Zumbe, when deciding where to place a second health centre, bearing in mind
25 you've got refugees, an influx of refugees in Zumbe, you're under attack, you

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1 described how you know, you're under attack, you are surrounded by UPC, that you
2 would put a health centre, vulnerable to attack, with not one single person to protect
3 it? Is that your testimony, Mr Witness?

4 A. Well, if you look at the records in relation to the way in which this health centre
5 was set up, that will remind you of the difficulties, the enormous difficulties,
6 encountered before 2002. When security was restored, then people came back to
7 Kambutso.

8 Q. And what about Ladile, Mr Witness, that had a self-defence group there, too,
9 didn't it, Mr Witness?

10 A. No. Well, I don't know whether there was a self-defence group in Ladile.

11 Q. Ezekere, that's your own -- that was your own hometown. There was a
12 self-defence group there too, wasn't there?

13 A. There was nobody left in Ezekere. How could there be a defence group, a
14 self-defence group, whereas there was nobody there?

15 Q. Ezekere's not very far from Mandro, is it, Mr Witness? They needed support
16 from self-defence, from people based at Ezekere, isn't that right?

17 A. Could you repeat your question, please?

18 Q. Well, you said there was nobody at Ezekere, not one single person living at
19 Ezekere. And my point was simply this. Mandro, located quite close to Ezekere,
20 was also constantly under attack, under threat. They needed the self-defence people
21 who were based at Ezekere to support them, didn't they?

22 A. No, that's wrong. Starting from the year 2000 to 2002, we realised that there
23 was nobody in Ezekere. Ezekere and Mandro are not close to one another. From
24 Ezekere to Mandro it takes three hours from foot, taking the footpath. I couldn't
25 assess how many kilometres there are between the two places but, in any case, they

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1 are by no means close to one another.

2 Q. And what about Kanzi, that's K-A-N-Z-I, Mr Witness? There was a
3 self-defence group there, and you know it, don't you, Mr Witness?

4 A. I have no idea. I know nothing about a self-defence group in Kanzi.

5 Q. Okay. Mr Lone Nyunye, and I'm going to spell that for you: Lone, L-O-N-E,
6 Nyunye, N-Y-U-N-Y-E. You know that person, don't you?

7 A. Yes, I do know that person.

8 Q. And he formed part of the self-defence group too, didn't he?

9 A. Yes.

10 Q. And he was based at Zumbe?

11 A. Yes, he was in Zumbe.

12 Q. And Kpadhole, I'm going to spell that for you: K-P-A-D-H-O-L-E. Now, this
13 is somebody you must have heard of too, isn't it?

14 A. Yes, I know Kpadhole.

15 Q. And he was also somebody who formed part of the self-defence group, isn't that
16 right?

17 A. Yes.

18 Q. And where was he based?

19 A. I don't know Kpadhole's address. I don't know whether he was based in
20 Zumbe or in another locality. All I can say with certainty is that he was part of a
21 self-defence group.

22 Q. Indeed, he was part of the self-defence group at Ezekere, wasn't he, Mr Witness?

23 A. As I've already said here, as of the year 2000 there was no longer anyone.
24 People took refuge in Zumbe. Kpadhole was part of the self-defence group, but I
25 don't know where he was based.

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1 Q. Ngabu Mateso Martin, and I'll spell that for you: N-G-A-B-U, Mateso,
2 M-A-T-E-S-O, Martin, M-A-R-T-I-N, also known as Boba Boba. This is someone you
3 must know, Mr Witness.

4 A. Yes, I do know Boba Boba.

5 Q. And he's currently a colonel in the FARDC, that's the Congolese National
6 Armed Forces; isn't that right?

7 A. Yes, that's true, he is a member of the Congolese army, but I don't know where
8 he is at the current time.

9 Q. And isn't it right that the time of the conflict we're talking about, 2002-2003, he
10 was also -- he also formed part of the self-defence group; isn't that right?

11 A. Yes. As you say, yes, he was a member of the self-defence group.

12 Q. And he was based in Ladile, isn't that right?

13 A. I know Boba Boba. I don't know whether he was in Ladile or elsewhere. I do
14 know that he was part -- or one the people who was going back and forth between
15 various localities. I don't know where he was based; I just know that after the war
16 he went back to Ezekere.

17 Q. Now, I'm going to talk about -- or I'm going to ask you about two people who
18 are based at Kambutso: One, Lebe, L-E-B-E, the other Patrick. Now, both of them,
19 they were part of the self-defence group too, weren't they?

20 A. I don't know Lebe and I don't know Patrick.

21 Q. Now, there was a person called Kiza, K-I-Z-A, based at Masu. He was also
22 part of the self-defence group, wasn't he?

23 A. I don't know Kiza.

24 Q. Kabosse, K-A-B-O-S-S-E. This is somebody who was part of the self-defence
25 group, wasn't it?

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- 1 A. Yes, I do know Kabosse.
- 2 Q. And where was he based?
- 3 A. He was based in Lagura.
- 4 Q. And more specifically, he was based at Kathonie; isn't that right?
- 5 A. As I just said, at the height of the war there was no one in Kathonie; everyone
- 6 had gone to Zumbe. And other people settled in Lagura. There was no one in
- 7 Kathonie.
- 8 Q. Kabosse, he formed part of the self-defence group, didn't he?
- 9 A. I just said so. I said "yes."
- 10 Q. And Mr Deo-Lochubo, he also formed part of the self-defence group, didn't he?
- 11 A. No, not at all, he was not part of a self-defence group.
- 12 Q. I'm going to return for a moment, Mr Witness, to the preparatory meeting that
- 13 you explained to us about yesterday. Now, this is the meeting that was called by
- 14 Mathieu Ngudjolo to discuss the creation of a second health centre at Kambutso.
- 15 You already explained how the health centre was created to deal with this large influx
- 16 of refugees at Zumbe. You've described how many refugees from the Bedu-Ezekere
- 17 groupement were stuck in Zumbe. You also explained how -- during the meeting
- 18 Mathieu Ngudjolo was asked how, how your group was going to get medical
- 19 supplies for the people at Zumbe.
- 20 Now, the fact is there were difficulties in getting supplies, weren't there, Mr Witness,
- 21 medication -- not only medication, food, other supplies; isn't that right?
- 22 A. We didn't have a lot of problems when it came to food. When the people were
- 23 fleeing, people would go into the fields and could harvest a few things and make
- 24 something to eat.
- 25 Q. Yes, but there were large numbers of people, more than normal at Zumbe, so

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1 that put a pressure on the supplies at Zumbe; isn't that right, Mr Witness?

2 A. As I just told you, when it came to food, it's true that there were some
3 difficulties getting supplies of some goods, but there wasn't a lot of difficulty when it
4 came to food.

5 Q. And medication? I mean, there were problems getting medication, weren't
6 there, Mr Witness. You're surrounded, okay, you've explained UPC have control
7 over the whole of Bunia. Your Hema enemies are at Tchomia, Kasenyi, Mandro.
8 They're based at Bogoro. You're surrounded. You said how you yourself, you
9 don't move from Zumbe until there's peace.

10 Now, in that situation, where you're surrounded by your enemies, you're blocked off;
11 it's not easy to move, particularly not for the civilians. Now, there are problems in
12 getting supplies, aren't there, Mr Witness?

13 A. Yes, you're quite right, there was that problem.

14 Q. And the problem was also in relation to medication, wasn't it?

15 A. Well, if you look carefully at what was written in the report, mention is made of
16 the opening of the health centre and it says that there was a small amount of
17 medication when the health centre was opened, and then we used those medications
18 and initially -- that was initially. And then some time later, not so long after that, an
19 NGO, MDR (phon), took our health centre under its wing, as well as the health centre
20 in Zumbe, and this NGO started to provide us with -- provide us with fresh supplies
21 of medication.

22 THE INTERPRETER: The Swahili interpreter did not quite understand the name of
23 the NGO.

24 PRESIDING JUDGE COTTE: (Interpretation) Witness, could you please repeat the
25 name of the NGO that you mentioned?

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1 THE WITNESS: (Interpretation) MedAir.

2 PRESIDING JUDGE COTTE: (Interpretation) MedAir. Could you spell that out
3 for us?

4 THE WITNESS: (Interpretation) M-E-D-A-I-R, MedAir.

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

6 MS LUPING:

7 Q. And in what year did this NGO provide these supplies, Mr Witness? Give us
8 the date, the month and the year when they first started providing you with these
9 supplies?

10 A. I think that it would be better to make reference to the document, because I fear
11 that I can't help you any more than that.

12 Q. Now, Mr Witness, you must have been aware of a delegation that left Zombe to
13 go to Kpandroma to get supplies; isn't that right? I shall spell Kpandroma for the
14 record. It's K-P-A-N-D-R-O-M-A.

15 A. You see, some of the things that you are talking about don't have anything to do
16 with me. I was taking care of my work at the health centre. I wasn't in a position to
17 know whether a delegation had been sent to get some medications. I wasn't aware
18 of that.

19 Q. Now, Mr Witness, you explained what your role was within the health
20 committee. I'm not going to say it because we're in open session, so I'm not going to
21 ask you to repeat it, but we all know what your -- your role was. Isn't it right that
22 you must have been informed of a group going to Kpandroma to get medication? I
23 mean, this is a time of war, Mr Witness. This can't have been a daily occurrence.

24 A. I don't understand what you're driving at with your question. I don't know
25 whether you mean that they came to get medicine from us, or whether we went to

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1 them to get medication. It's not clear to me.

2 Q. I'm going to repeat the question, Mr Witness. Isn't it right that a group left
3 from Zumbe to Kpandroma to get medical supplies?

4 A. I don't know.

5 MR FOFÉ: (Interpretation) I beg your pardon, your Honour. We do hope that the
6 Prosecutor has some neutral grounds for stating these facts. I'm saying this so that
7 we can avoid my having to stand repeatedly during the cross-examination, because
8 this is something - an event - that has not necessarily been proven. Is this event part
9 of the -- my learned friend's working hypothesis? In short, I think that in the future
10 the Prosecutor should ask her questions on the basis of facts that all parties recognise;
11 facts that have been shown to be true and have been agreed to by all parties.

12 MR MACDONALD: (Interpretation) The Prosecution only is basing itself on facts
13 disclosed and, yes, that was disclosed in a discussion that was in the course of a
14 discussion with Witness 290.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Professor Fofé, slowly,
16 so that the interpreters can keep up, go ahead.

17 MR FOFÉ: (Interpretation) Yes, your Honour. I think the Prosecutor should
18 make a clear distinction between a fact and an allegation.

19 Madam Prosecutor asked the witness a question about this allegation, and the witness
20 said that he knew nothing about the allegation. And when the witness answers,
21 saying that he does not know anything about an allegation, I don't think there's any
22 point in stressing the point. I think we really need to make a distinction between a
23 fact that has been shown to be true and an allegation made by a witness; any
24 particular witness.

25 PRESIDING JUDGE COTTE: (Interpretation) Briefly.

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1 MR MACDONALD: (Interpretation) I think the witness fully understands the
2 questions being put to him and can -- this is the point of cross-examination. Ever
3 since the beginning, we have been cross-examining the Defence witnesses ever since
4 the end of March, and this issue has come up several times and it's clear that the
5 Prosecution is basing itself on facts that were disclosed. And consequently we allege
6 things and, if the witness agreed -- if the witness agrees that becomes part of the case
7 file. If the witness says, "No," it doesn't. The witness has understood this. Be it
8 names of certain people or others, that's -- the witness is well able to deal with these.
9 He's a grown-up. So ever since the beginning, this has been what our
10 cross-examination has been all about.

11 MR FOFÉ: (Interpretation) Your Honour --

12 THE INTERPRETER: Overlapping speakers.

13 PRESIDING JUDGE COTTE: (Interpretation) We may have to suggest that one of
14 our young colleagues write his thesis on something -- this sort of thing.

15 MR FOFÉ: (Interpretation) I'm not mistaken. I'm not mistaken. Now, when
16 Madam Prosecutor puts a question to the witness, a question having to do with an
17 allegation, not about a fact, and the witness says, "No, I don't know," you have to
18 leave it at that, because if you keep on going it is as if you are trying to show that the
19 witness is lying. That's the danger. I think we have to be fair to the witness and
20 accept his answer, because this is an allegation that he may know nothing about.
21 So there you have it, your Honour. I think this is a very important point.

22 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper.

23 MR HOOPER: No, it is a very interesting point and well worthy of a thesis I am sure
24 in due course. The question, "Were you aware of a delegation to Kpandroma?", is of
25 course one thing and the witness has essentially been asked that several times, but yet

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1 again I think that what's objected to is the technique. The technique is, "You must
2 have known," putting the witness really perhaps in the feeling that he is somehow in
3 error. And really it's a technique to lure, as I well know, a witness into perhaps
4 saying something that perhaps he otherwise might not.
5 Now, that's the concern, and your Honour has in fact previously put your finger on
6 the fact that these interruptions are often based not on an objection to a question or
7 subject being raised, but to the technique or manner in which it's raised, and that's
8 been a matter that my friend, the Prosecution, has a technique that's been employed
9 three times in respect to exactly the same matter, "You must have been aware of a
10 delegation."
11 And when my friend, Mr Macdonald, got on his feet to usefully contribute to the
12 issue, he mentioned that it was based in fact, or disclosed, as a result of Witness 290.
13 Well, I don't know who 290 is. That's on the English transcript.
14 MR MACDONALD: 270. 270.
15 MR HOOPER: Was it 250?
16 MR MACDONALD: 270.
17 MR HOOPER: Oh, I think there's an inconsistency in the transcript, I'm told from
18 my -- all right, very well. But, anyway, the problem as we come up to that happy
19 moment of the morning is really a problem of technique, I think. That's not said as a
20 criticism, but it's what provokes the anxiety, rightly or wrongly.
21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper, for your
22 contribution to the discussion. We're dealing with a matter of
23 technique -- techniques used during cross-examination. I'm not sure whether we're
24 talking about professional matters here, or something else. Sometimes the border
25 between - or the boundary between - two matters can be quite tight, and I think we

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1 have to adjust our approach depending on the witness that we have in front of us.

2 This witness is certainly able to say what he knows, what he doesn't know, and

3 whether this is a fact or an allegation, well, what's clear here is that the witness

4 responded quite distinctly - quite clearly - saying that he didn't know.

5 We are now going to give the witness a break. We will work on other things during

6 the half-hour. Now, court officer, we shall now go into closed session so that the

7 witness can leave the courtroom. Witness, please take some rest during the

8 half-hour and we will resume at 11.30.

9 (Closed session at 10.58 a.m.)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session at 10.59 a.m.)

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

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer. If you

19 could please tell the security officer in the public gallery that it is important to ensure

20 that people sitting in the public galleries are properly attired. You don't sit in such a

21 way when you are viewing a trial. You don't slouch in your chair, and I think it's a

22 matter of courtesy towards everyone here in the Court.

23 (Recess taken at 11.00 a.m.)

24 (Upon resuming in closed session at 11.36 a.m.)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Open session at 11.37 a.m.)

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

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

9 The Chamber shall hand down its ruling as regards the application made orally early
10 this morning, on August 18 at 9 o'clock, by Professor Fofé; that is, on behalf of the
11 defence of Mr Mathieu Ngudjolo.

12 It seemed to us important to give a rapid response so that the parties can organise
13 their working days appropriately. Therefore, this oral decision may not be as full
14 and precise as would be the case in a written ruling, or even compared to the more
15 traditional oral rulings that are handed down by this Chamber.

16 The video was viewed by two legal officers working for the Chamber, who were able
17 to report to us during the break. Let me make three prior comments.

18 We realise, and we did hear what the various parties stated this morning, that this is
19 an exceptional situation, so we would like to emphasise the exceptional nature of the
20 ruling handed down. Regulation 55, regarding the inclusion of a video regarding
21 the mission of the Prosecutor of this Court to Zumbe, who met with Witness 088, who
22 shall be deposing very soon, was only communicated very recently to Mathieu
23 Ngudjolo's Defence, which is why an application was made even more recently and a
24 ruling was made yesterday, on 18 August.

25 So I repeat: These are exceptional circumstances. That does not mean, however,

1 that the decision made today, the ruling handed down today, will necessarily be
2 repeated in the future.

3 Secondly, there is precedent, but the circumstances were not comparable. Several of
4 you referred to that situation this morning. It was the meeting authorised by the
5 Chamber between Germain Katanga's Defence team and the Witness 350. The
6 circumstances were slightly different but, indeed, there is a certain level of
7 comparison.

8 Thirdly, during the discussion that we had this morning, we noted that there were no
9 objections on the part of the Prosecution, no objections from the Defence of Germain
10 Katanga, and no objections from Maître Gilissen and Maître Luvengika. Several of
11 you, however, did emphasise, rather firmly, that there was an absolute necessity not
12 to transform a potential meeting into what is called "witness proofing," using the
13 appropriate expression, and several of you referred to the matter of appearances; in
14 other words, that no one be able to think or consider that such a meeting might allow
15 in any way or form for the witness to be influenced, that is Witness 88, and therefore
16 we refer in particular to the particular ethics of the Mathieu Ngudjolo Defence team.

17 Therefore, the Chamber has decided to authorise such a meeting. That meeting will
18 take place on Monday. It will take place in the premises of the VWU. It shall last
19 four hours, and the way those four hours are to be used will be decided in contact
20 with the Mathieu Ngudjolo Defence team and the various Court services, in order to
21 determine whether for you and for them, for material reasons, it is better to have a
22 four-hour meeting in the morning or a four-hour meeting in the afternoon or two
23 two-hour sessions; one in the morning and one in the afternoon of Monday.

24 It is not up to the Chamber at this point to go into those details. The meeting, as I
25 said, will take place within the VWU, duration of four hours. However, the actual

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1 scheduling of those four hours will take place after contacts being taken either this
2 afternoon or tomorrow, or later, with the services of the Court.
3 We request that there be a representative of the Registrar present, familiar with the
4 case. It is therefore up to the Court services to decide whether or not Mr Peter
5 Vanaverbeke, Madam Jasmine Toumaj, our court officer, or any other individual who
6 is considered as qualified to do so.
7 The person appointed by the Court Management Services will be -- there will be an
8 email in order to inform the Chamber of that decision and that person will check that
9 the four-hour duration not be extended; first of all.
10 Secondly, that only matters strictly related to the conversation between Mr Luis
11 Moreno-Ocampo, Prosecutor of the International Criminal Court and Witness 088 as
12 well as the sketch as the witness prepared himself. The reference of that is
13 DRC-D03-0001-0347. We can recall that that meeting took place in Zombe during
14 the meeting in 2009. The representative of the Registrar appointed by CMS can
15 make any necessary comment to the Mathieu Ngudjolo Defence team if any of the
16 conditions abovementioned, that is the timing and the content of the actual discussion,
17 if those areas are not respected. If there is a problem, the representative of the
18 Registrar will refer to the Presiding Judge on Monday.
19 Lastly, a report shall be drafted by the Registrar's representative as regards the
20 meeting as soon as the meeting is completed. Of course the purpose is not to relate
21 fully the content of the discussions, but to inform the Chamber as to the conditions
22 under which these conversations took place in keeping with the various requirements
23 that I have just mentioned. This report shall be submitted to the Chamber before
24 Witness 88 appears in Court. That is obvious.
25 So, Madam Court Officer, we shall go back into closed session so that the

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- 1 witness -- Professor Fofé?
- 2 MR FOFÉ: (Interpretation) Before the witness comes in, we need a moment.
- 3 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, you may proceed.
- 4 Well, yes, we are still in open session. Yes, Professor Fofé.
- 5 MR FOFÉ: (Interpretation) Your Honour, thank you very much for that ruling.
- 6 PRESIDING JUDGE COTTE: (Interpretation) I probably should have indicated,
- 7 but perhaps you understood that the familiarisation session will take place on
- 8 Tuesday morning. Familiarisation will take place Tuesday morning and we shall sit
- 9 from 2 o'clock until 6.30 in the evening, so we are somewhat modifying our schedule.
- 10 We had already planned not to meet on Monday, so I say again familiarisation in the
- 11 morning of Tuesday and we will sit Tuesday afternoon. And let me add that most
- 12 likely Witness 66 might still be with us at the beginning of the afternoon hearing.
- 13 MR FOFÉ: (Interpretation) May I have just another moment to consult?
- 14 PRESIDING JUDGE COTTE: (Interpretation) Yes, briefly please.
- 15 MR FOFÉ: (Interpretation) Your Honour, if the Prosecutor has no problem with
- 16 what I'm going to suggest, and the other parties and if the Chamber agrees as well,
- 17 would it be possible in order for the Defence team to save time - Mr Mathieu
- 18 Ngudjolo's Defence time - in order for us to stick to the four hour time limit you have
- 19 given, because of course we will keep to the requirements that you have laid down?
- 20 Would it be possible that the witness be able to view the video before we meet with
- 21 him, so that we not lose any of the four hours you have granted us? In other words,
- 22 that he be able to view the video first and then the four hours actually begin when we
- 23 arrive in the room, if you will; that is, if the Prosecutor sees no problem with that?
- 24 MR MACDONALD: (Interpretation) No objection.
- 25 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper? What about this side

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1 of the room, do we agree? Do you think it would be possible to ask a member of the
2 VWU -- once of course the witness has arrived in The Hague, not on Sunday of course
3 but perhaps Monday morning, before he meets with Counsel, would it be possible for
4 someone from VWU to show the witness the video? Fine, okay. We had asked that
5 question earlier and we had said, "No," but we've now decided that we can accept
6 that request, Professor Fofé.
7 In that case the Registrar will decide how they are going to organise this, but we hope
8 that you all realise that there are a lot of constraints here for the Registrar. It is up to
9 the Registrar to decide how they are going to organise it but, before the working
10 session begins and before we start counting the four hours, the witness will have an
11 opportunity to view the video in whatever room is most appropriate within the VWU.
12 This will enable Counsel to begin discussion immediately with the witness on the
13 basis of the requirements and conditions I announced earlier.
14 So, Madam Court Officer, thank you very much in advance for communicating these
15 decisions to all. Everyone here, of course, is very much attached to our professional
16 code of conduct, and at the same time we do want to facilitate a procedure as fair and
17 equitable as possible.
18 Do you have anything else - any other questions - Madam Court Officer? You had
19 started to get up. Apparently not. In that case, we shall move into closed session.
20 (Closed session at 11.51 a.m.)
21 (Expunged)
22 (Expunged)
23 (Expunged)
24 (Expunged)
25 (Expunged)

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- 1 (Open session at 11.52 a.m.)
- 2 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 3 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Madam
- 4 Court Officer.
- 5 Good morning again, Witness.
- 6 THE WITNESS: (Interpretation) Good morning.
- 7 PRESIDING JUDGE COTTE: (Interpretation) I see that you can hear me. We can
- 8 then resume.
- 9 Madam Prosecutor, please proceed.
- 10 MS LUPING: Thank you, Mr President. Before I do resume with my questioning,
- 11 if I could please ask that the court officer assign an EVD to the list of -- there was a list
- 12 of names referring to Mr Mateso Lodya, or Lo-ya (phon) if I am now pronouncing it
- 13 correctly?
- 14 PRESIDING JUDGE COTTE: (Interpretation) Lo-ya.
- 15 MS LUPING: Lo-ya, indeed.
- 16 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. Madam Court Officer,
- 17 the witness wrote the names Loja and Lodya. Can we give that document an EVD
- 18 number, please.
- 19 THE COURT OFFICER: (Interpretation) Thank you. This document shall bear
- 20 the number EVD-OTP-00272 and is a public document.
- 21 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. Madam
- 22 Luping, please proceed.
- 23 MS LUPING: Thank you, Mr President.
- 24 Q. Mr Witness, you mentioned a person called Bahati de Zumbé. Now, isn't it
- 25 right that he's also known as Bahati Talika?

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- 1 A. Yes, his family name is Bahati Talika, or his traditional name if you will.
- 2 Q. And he was working as a nurse with Mathieu Ngudjolo in Bunia before
- 3 everybody fled to Zombe; isn't that right?
- 4 A. I don't have any precise knowledge of that, but shortly before the fighting he
- 5 worked in Zombe.
- 6 Q. He was amongst the Lendu who fled from Bunia, going to Zombe? This is
- 7 after the fall of Lomondo; isn't that right?
- 8 A. Bahati from -- de Zombe was a nurse in Zombe before the war.
- 9 Q. Now, Bahati de Zombe, he was a colonel in the FARDC, in the Congolese
- 10 National Armed Forces; isn't that right?
- 11 A. I learned that Bahati de Zombe is presently a member of the Congolese army,
- 12 but I do not know his rank.
- 13 Q. And before he was integrated into the national army, he too was a member of
- 14 the self-defence group, wasn't he?
- 15 A. Yes, he was a member of the self-defence group.
- 16 Q. And do you recall where he was based as a member of the self-defence group?
- 17 A. There was no base.
- 18 Q. Where was he living as a member of the self-defence group? Where was he?
- 19 A. He was in Zombe.
- 20 Q. Now, Mr Witness, you've explained to the Chamber how the APC - a number of
- 21 the APC - also came to Zombe. Now, one of these APC was a person called Major
- 22 Faustin, who came to Zombe; isn't that right?
- 23 A. Yes, I saw that man. He was a commander.
- 24 Q. And he came to Zombe with his 12th Battalion; isn't that right?
- 25 A. Yes, he came with his whole battalion.

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1 Q. And Faustin and his battalion they left Zumbe, going first to Songola and on to
2 Nyankunde; isn't that right?

3 A. No, I have no information as regards their movements. All I know is they left.
4 I don't know where they went. Perhaps it was Songolo or another place. I don't
5 know. I think they went home to Beni, because they said that they were going to
6 Beni.

7 Q. Now, when Faustin and his battalion left Zumbe, there was a delegation of
8 Lendu self-defence people, including Bahati de Zumbe with Faustin, isn't that right?

9 A. I can give you no explanations. I don't know whether Bahati de Zumbe was
10 with them or not.

11 Q. But there was a group of Lendu who left with Major Faustin and his group,
12 weren't there?

13 A. Well, I know very little about Faustin's group. I don't know whether he went
14 with a group of Lendu or not.

15 Q. Now, Mr Witness, you presumably will have heard of an attack at Nyankunde
16 that took place in September 2002. You've heard of that attack; is that right?

17 A. Between Zumbe and Ezekere there is a great distance and I cannot know what
18 happened in Nyankunde, which is very far away indeed.

19 Q. Now, Mr Witness, this is one of the biggest attacks, one of the most well-known
20 attacks during that time in Ituri. Hundreds of people died in that attack. Now, isn't
21 it right that you must have heard of this attack? It was very well-known,
22 Mr Witness.

23 A. As I just said, well, from where I was living, it was very difficult for me to know
24 what was going on in Nyankunde because of the very great distance. I don't know
25 what happened there in terms of fighting.

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1 Q. So, Mr Witness, it's your testimony that there's this significant attack on
2 Nyankunde; it's very well-known, it's one of the largest attacks, hundreds died.
3 Hospital -- the hospital, people died even at the hospital at Nyankunde. And your
4 testimony today is that you have never heard anything about this attack; is that what
5 you're saying?

6 A. What I am saying is that I have no information about the attack on Nyankunde.
7 I have absolutely no information.

8 Q. Mr Witness, Mathieu Ngudjolo, are you aware that when he was arrested and
9 transferred to The Hague he was a colonel in the FARDC, the Congolese National
10 Armed Forces?

11 A. Yes, I know that his rank was colonel. I found out that he had gone to
12 Kinshasa and from Kinshasa to here.

13 Q. And, Mr Witness, you've explained how well you know Mathieu Ngudjolo and
14 his family. Now, isn't it right that before he studied as a nurse in Bunia that he was
15 in Mobutu's army?

16 A. Well, I was not an eyewitness of that. I have just heard about that.

17 Q. And he was a colonel in Mobutu's army, wasn't he?

18 A. In terms of his rank, I just don't know.

19 MR FOFÉ: (Interpretation) I allowed the witness to answer that question before
20 standing up but, well, this question is once more a matter of what we were talking
21 about earlier on.

22 Madam Prosecutor attributes to Mathieu Ngudjolo the rank of colonel in Mobutu's
23 army. Now, could Madam Prosecutor give us evidence that this fact was, indeed, a
24 fact? What is her foundation, what is her basis? Mathieu Ngudjolo, first of all, was
25 he a colonel in Mobutu's army? Perhaps the Prosecution could give us proof of that.

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1 Thank you very much, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Well, if none of us have any doubt
3 about the rank of Mathieu Ngudjolo, none of us have any doubt about his rank when
4 he was arrested and transferred to the Court, nonetheless for the Bench we do not
5 know what rank he had reached when he was in President Mobutu's army.

6 So we are coming back to these very interesting exchanges that we had earlier on
7 relating to the technique used for questioning or recross. And, Mr Macdonald, I see
8 you are standing up. But, in any case, as far as we are concerned - but I might be
9 mistaken - this is the first time I've ever heard of the rank of colonel as regards
10 Mr Ngudjolo during Mobutu's time.

11 MR MACDONALD: (Interpretation) This is a question that comes out of the
12 documents that were recently added to the list of the evidence provided by the
13 Defence team. We interpreted some of the information that appears in that
14 document in the sense that he had this rank.

15 We might ourselves be mistaken but one thing is for sure, your Honour, is that we are
16 asking the witness the question whether or not he was a colonel, and the answer was
17 that he didn't know. So perhaps we could simply just go on with our further
18 questions.

19 PRESIDING JUDGE COTTE: (Interpretation) Witness, you knew that Mr Ngudjolo
20 had been a member of the army during Mobutu's time, didn't you?

21 THE WITNESS: (Interpretation) As I said earlier, I did have information about
22 this but I hadn't been an eyewitness of that.

23 PRESIDING JUDGE COTTE: (Interpretation) And at the time you didn't know
24 what his rank was? Nobody told you about that, did they?

25 THE WITNESS: (Interpretation) No, nobody told me.

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1 PRESIDING JUDGE COTTE: (Interpretation) Please go on, Madam Prosecutor.

2 Thank you, Witness.

3 MR FOFÉ: (Interpretation) I apologise, your Honour, but perhaps the Prosecutor
4 could give us the reference to the document, for the document that he just mentioned,
5 the document that he interpreted and led him to infer this conclusion.

6 PRESIDING JUDGE COTTE: (Interpretation) Yes, he'll look for it and give it to
7 you during the hearing.

8 MR FOFÉ: (Interpretation) Thank you.

9 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, you can go on.

10 MS LUPING:

11 Q. Mr Witness, I now want to turn to the Bogoro attack. Now, there's something
12 that's a little puzzling, because you can't -- you could not remember the date you
13 went from Bunia to Zumbe, you couldn't remember the year, nor the year you went
14 from Zumbe to Ezekere but you were very precise about the day of the attack on
15 Bogoro of 24 February 2003.

16 Am I right in saying, Mr Witness, that on that day you didn't know that you'd be
17 testifying eight years later. You didn't take any notes on that day, did you?

18 A. Although I didn't note down the date, this was a very major event that
19 happened where I live.

20 Q. Yes, but we've seen, haven't we, Mr Witness - and this is not a criticism - that
21 you're not very good at dates, quite understandably, after so many years have passed
22 on. The date 24 February 2003, now, someone told you about that date before you
23 came to testify; isn't that right?

24 A. No, nobody suggested that date to me.

25 Q. I'm now going to come to the day of the attack and your explanation of what

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1 you were doing that day. Now, you stated that you left the health centre at 9 in the
2 morning, to go up to the hill, to see what was happening at Bogoro because you could
3 hear the gunfire.
4 Now, when you were asked if you returned to the health centre, once you'd left it at 9
5 in the morning - and I'll be quoting from the transcript - you stated that you did not
6 return to the health centre after leaving the hill; that you went straight home.
7 And I want to read this passage to you. It's transcript 293, page 41, starting
8 from -- sorry, yes, starting from lines 12 to 16, and I'm going to start with the question
9 that was put to you by Professor Fofé.
10 This is in the French transcript: (Interpretation) "On that day, did you go back to
11 your home? On that day, did you go back to the health station in Kambutso, once
12 again?" (Speaks English) And this was your response, Mr Witness, and I quote,
13 (Interpretation) "No, I didn't leave my home to go back to the health station. I left
14 the hill at 10 a.m. and I went straight back to my home. So I didn't go back to the
15 health station from the hill."
16 Now, that was a very clear question and a very clear response, Mr Witness. But then
17 when it was suggested to you by Professor Fofé that when you left the hill to go to
18 your house, you passed the post, the health post of Kambutso, and you said that you
19 did. And this passage is page 41, line 17 to 19, and this was the question: Okay.
20 (Interpretation) "So, from the hill going to your home, you went via the health
21 station in Kambutso, is that not so?" Your answer: "Yes."
22 (Speaks English) Now, when asked by the President if, when passing the health
23 centre, you went in, in complete contrast to your clear response only moments before
24 that you left from the hill to directly go straight home and you did not return to the
25 health centre, your response was that you did go into the health centre and that you

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1 saw Mathieu Ngudjolo there. And I'm going to quote the specific passage, starting
2 from the question and your response. It's page 42, line 6 and I'll go up to line 13:
3 (Interpretation) "What is important for the Chamber at this particular moment in
4 time is to find out whether you stopped at the health station and who you saw at the
5 health station. So please answer those two questions right now, and then Professor
6 Fofé can go back to his questioning after that."
7 (Speaks English) And the question posed to you was: (Interpretation) "You said
8 that you went to the health station towards 10 a.m. Did you go in? Did you stop
9 there and, if so, who did you see in there?"
10 (Speaks English) And your response was: (Interpretation) "When I left the hill, I
11 once again arrived at the health station in Kambutso and found there the midwife and
12 Mathieu Ngudjolo."
13 (Speaks English) Now, Mr Witness, the reason you changed your account, when
14 you were so clear that you'd gone straight home, is because you were wanting to put
15 Mathieu Ngudjolo at the health centre up to 10 o'clock in the morning instead of at
16 Bogoro; isn't that right?
17 A. No, I don't know whether what you just read out is actually my statement.
18 This is what I said yesterday. I may have spoken too fast and it wasn't taken on
19 record properly. This is what I said.
20 I said I left my house in the morning. I went to the health station and there I found
21 the midwife, and Mathieu Ngudjolo met -- came and met me. Now, when the
22 gunfire intensified, towards 9 a.m., I went to the hill, where lots of people were
23 observing what was going on. And when I left the hill and I went back, I went via
24 the health station, and when I arrived there, Mathieu Ngudjolo and the midwife were
25 there. The newborn had already died and his lifeless body had been taken home.

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1 That was towards the end of the fighting. And then I went on to my home. And
2 then Maître Fofé asked me whether I left my house to go back to the health station
3 once again - and I think that's where the confusion arises from - and this time I said
4 that I, when I once again left my home, I didn't go via the health station.

5 Q. Now, Mr Witness, you've just stated that that was towards the end of the
6 fighting at Bogoro. Now, how can you possibly know that, Mr Witness? Can you
7 please explain to us how do you know that this was at the end of the fighting?

8 A. Well, you hear gunfire, and when you no longer hear the intensity of the gunfire,
9 you can infer that the fighting has stopped.

10 Q. Isn't it right, Mr Witness, that the reason why you're at pains to state that it was
11 towards the end of the fighting is because you're wanting to say that Mathieu
12 Ngudjolo was still at Kambutso; that he was not at Bogoro when the fighting was still
13 ongoing? Isn't that right, Mr Witness?

14 A. Can I ask you a question?

15 Q. No, Mr Witness. I asked you a simple question and I'd like you to respond to it,
16 please.

17 A. Well, I shall answer you. I myself was in Kambutso. At the time I was at
18 Kambutso, I left Mathieu and went up the hill. Perhaps you have a different vision
19 of me, or a different understanding of me, Madam Prosecutor.

20 Q. Now, the point is, Mr Witness, isn't it, that Mathieu Ngudjolo, he's a close
21 family friend? He's your chief, in fact, and that is the reason why you're now saying
22 to the Chamber that he was at Kambutso when the fighting is still ongoing and not at
23 Bogoro. Now, that's the real reason, isn't it, Mr Witness?

24 A. What I am telling you is the truth. He was not in Bogoro where the fighting
25 was ongoing.

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1 Q. Well, Mr Witness, I want to go back to your little story of what happened that
2 day, because you're very specific, in fact, and you're quite consistently so, about the
3 hours that you left and the hour that you come back. It's towards 9 you're leaving;
4 you're coming back from the hill and it's towards 10 o'clock; Mathieu Ngudjolo is still
5 there.

6 Now, this is an event that took place more than eight years ago, when you can't
7 remember the year you're fleeing to Zumbe or the year you're going back to your very
8 own home but you want this Chamber to believe that you can remember the precise
9 hours that you're at this health centre, quite conveniently with Mr Ngudjolo; is that
10 what you want us to believe?

11 A. No, that is not the case. I moved; I fled Bunia; all that. But it is not a historic
12 affair.

13 Q. Now --

14 THE INTERPRETER: Or, rather, correction by the Swahili interpreter: "A historical
15 fact."

16 MS LUPING:

17 Q. Now, this is something I want just simply to be stated for the record so that
18 we're clear. You see, Defence for Mathieu Ngudjolo informed the parties on the
19 topics this witness would be talking about, and not once is there any mention of
20 "l'accouchement," of Mathieu Ngudjolo helping to deliver a baby. Nowhere is this
21 mentioned.

22 In 2756, 2771, in terms of the filings, the information provided by the Defence Counsel
23 of Mathieu Ngudjolo, or thereafter, when all of a sudden out of the woodwork, two
24 witnesses appear in July 2011 to talk about this. And now we're hearing this. We
25 heard this for the first time in the courtroom for this witness. I just want this noted

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1 for the record and I'll now move on.

2 MR FOFÉ: (Interpretation) May I?

3 PRESIDING JUDGE COTTE: (Interpretation) One moment. Madam Prosecutor,
4 unless the document I have is obsolete, and in spite of being rather a summary
5 document, the document that sets out the subjects that are going to be dealt with,
6 with this witness, were (a) and the facts, (b), that we have mentioned at the very end,
7 that the witness will say what Mathieu Ngudjolo did on that day - we're talking here
8 about the Bogoro attack in February 2003 - and will testify to his presence in the
9 health centre in Kambutso. I would simply like to remind that -- remind us of that.

10 Professor Fofé. Go ahead, Professor Fofé.

11 MR FOFÉ: (Interpretation) Thank you, your Honour. You, in fact, provided the
12 essential item that I was going to mention for the purposes of the record. In addition
13 to that, your Honour, I'm somewhat nonplussed by the fact that this development
14 was given in the presence of a witness who is in the process of testifying. If Madam
15 Prosecutor has a particular problem in relation to this issue, this is not the time or
16 place to make statements in front of the witness. I'm rather surprised, particularly in
17 view of the fact that her statements are not founded. That's what I wanted to say,
18 your Honour, and in any case it is pointless in developing these issues in front of a
19 witness who is in the process of testifying. It's not founded. Thank you, your
20 Honour.

21 PRESIDING JUDGE COTTE: (Interpretation) As far as the Chamber is concerned,
22 it considers that the witness is as he is. He expresses himself. We have had
23 opportunities to say that it seemed to us that he has sufficient wherewithal not to be
24 too impressed. What is essential to the Chamber is that he says the truth, the whole
25 truth and nothing but the truth.

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1 As for my intervention, well, it was dictated simply to ensure that the proceeding is
2 fair and particularly to make sure that nobody can get the impression that he has been
3 misled. I think this point was actually predictable in the way in which the testimony
4 was going to take place.

5 Madam Prosecutor, you can go on.

6 MR MACDONALD: (Interpretation) We do not deny that the topic of the presence
7 in Kambutso existed, but what we will be pleading at the right time is the issue of the
8 delivery and this was clearly specified by my colleague. The particular point is the
9 delivery.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well, Mr Prosecutor, but in any
11 case we have been recently invited to take an interest in this point at a later stage.
12 Professor Fofé, we are of course in the heart of the testimony. You can say what you
13 want to say now.

14 MR FOFÉ: (Interpretation) Thank you. Very briefly, the delivery is a normal
15 procedure for a nurse at a health station. He might give treatment, he might make
16 injections, deliver babies. That is just the normal activity of a nurse.

17 Now, that being said, your Honour, I would like to seek your leave - and I say this so
18 that it is taken on record in the transcript - to have verification made on the passage in
19 the transcript that Madam Prosecutor has just read out to us.

20 In other words, the transcript -- actually, I don't have the number.

21 PRESIDING JUDGE COTTE: (Interpretation) 293, pages 41 and 42.

22 MR FOFÉ: (Interpretation) Yesterday's transcript, page 41, lines 12 to 28, and up to
23 page 42, lines 1 to 15. I would like someone to listen to all the questions and all the
24 answers again - all the answers that the witness gave - and someone should make
25 sure that everything was faithfully transcribed. In particular, your Honour, the

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1 extract, the following passage, page 41, line 12 to line 19. That segment in particular,
2 page 41, lines 12 to 19. I fear there may have been -- well, I stress this passage must
3 be cross-checked very carefully.

4 PRESIDING JUDGE COTTE: (Interpretation) Court officer, could you make the
5 arrangements so those extracts are listened to again, particularly the part on page 42,
6 lines 1 to 15. The witness said that he had left at 10 and went directly to his home.
7 "I didn't go back to the health centre from the hill." So, if it is possible, please have
8 that checked.

9 And I think you must realise that if -- well, if the Presiding Judge spoke himself to get
10 additional information from the witness, well, it was because he may have had the
11 impression that the answers found on page 41 may not have been entirely clear.
12 That is why what we see on page 42, from lines 1 to 15, was in keeping with my
13 concern to seek greater clarity and to determine exactly what the witness's itinerary
14 was once he left that will -- that hill that he had gone to to try to determine what was
15 going on with a group of other people. They wanted to determine what was going
16 on elsewhere. It's important for us to clear this up, and to see what we find at page
17 41, lines 1 to 15, is taken in light of the greater context and Madam Prosecutor's
18 harking back to this point, which she thinks is very important, so that we can be very
19 sure whether or not that witness was present at approximately 10 o'clock at the health
20 centre.

21 Ms Luping, we shall now proceed.

22 MS LUPING: Thank you, Mr President.

23 Q. Mr Witness, I'm going to go back to the attack on Bogoro. Now, isn't it right
24 that many civilians were killed there, including women, children and the elderly?

25 A. Yes, we learned that many people died.

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1 Q. And that included women, children and the elderly, didn't it?

2 A. Yes, I just acknowledged that we learned that many people died. When there
3 is a war all kinds of people are affected; all people from all parts of society, including
4 women, children and the elderly.

5 Q. And there was also a lot of property destroyed there, wasn't there? I mean,
6 rooftops -- rooftops were taken off, the tiles, houses were burnt; isn't that right?

7 A. Yes, some houses were burnt down, destroyed. That did occur.

8 Q. And how did you learn of this, Mr Witness?

9 A. After the battle, we were asked to serve as an activity leader. There was a
10 training seminar going on and we went by way of Bogoro, and there we saw that
11 houses had been destroyed. It was in Bogoro on 24 May 2004. We went for
12 training in Tchomia and we found Bogoro destroyed.

13 THE INTERPRETER: Interpreter's correction: The witness made mention of an
14 organisation, the IRP. He was recruited to run some activities, or lead some
15 activities, for the IRP.

16 MS LUPING:

17 Q. Now, the people in charge at Bogoro, they were the FRPI forces, weren't they?
18 They're Ngiti at Bogoro, weren't they?

19 A. Could you repeat your question? I haven't understood.

20 Q. Now, isn't it right that, after the attack at Bogoro, the people in charge there are
21 the FRPI forces? You have Ngiti forces there; isn't that right, Mr Witness?

22 A. I was saying that on the 24th we got to Bogoro. There had been a checkpoint
23 set up by the Ngiti and some of their colleagues were there and they asked us for
24 money, and on the way back they did the same thing.

25 Q. Indeed, FRPI forces - these Ngiti - they were amongst the attackers at Bogoro,

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1 weren't they?

2 A. I couldn't say that. I wasn't on the battlegrounds, so I don't know whether it
3 was them who led the attack.

4 Q. Now, come on, Mr Witness, we want to be clear on this. You visited Bogoro,
5 you just said, and you've just said Ngitis were the ones in charge there, FRPI. You
6 know that FRPI, Walendu-Bindi forces, were involved in the attack at Bogoro; isn't
7 that right?

8 A. I'm not saying that I stayed in Bogoro. I was on my way to Tchomia and, when
9 I got to Bogoro with the other people, we saw them there. They were in charge of
10 the town. We were in a vehicle. They asked us to give them some money, 100
11 francs per person.

12 Q. But, Mr Witness, you're not answering my question and I think the question
13 was simple and clear. Now, isn't it right that you would have learned at least, after
14 the attack, that Walendu-Bindi forces, FRPI forces, Ngiti, were involved in the attack
15 on Bogoro?

16 A. I will go back to what I said earlier. I don't know whether it was the FRPI
17 soldiers who attacked Bogoro, but when I went by, when I was on my way, when I
18 went by Bogoro, I saw them there and they asked me for money. They were asking
19 people who were going by for money.

20 MS LUPING: Mr President, I am now going to be asking some questions of an
21 identifying nature, if we could move briefly into private session please?

22 PRESIDING JUDGE COTTE: (Interpretation) Court officer, if we could go into
23 private session please.

24 (Private session at 12.43 p.m.)

25 (Expunged)

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8 (Open session at 1.01 p.m.)

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

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Luping, please
11 proceed.

12 MS LUPING:

13 Q. Mr Witness, before you came here to testify, presumably, you were in contact
14 with Mathieu Ngudjolo's family. I'm talking about his wife, for example, Sema
15 Kalemi; his brother, Deo. You would be talking to them about the case against Mr
16 Ngudjolo; isn't that right? As a close family friend, you were wanting to know how
17 Mr Ngudjolo was faring?

18 A. As regards Mathieu Ngudjolo's wife, I don't see her. I haven't been seeing her
19 since he left. I haven't seen his wife. As regards Deo, he is someone that I see in
20 our locality and we talk to each other, occasionally, regarding facts that are of interest
21 to each of us.

22 Q. Now, that would include the case against Mathieu Ngudjolo, isn't that right?
23 And it would be logical, you're speaking to his brother, you'd be discussing the case
24 against him?

25 A. How is his brother going to know about Ngudjolo? Ngudjolo doesn't call his

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1 brother. How would he communicate? When we're here, we don't talk to people
2 who are back in the village. How would Mathieu Ngudjolo speak to his brother?
3 There's no means of communication between the two.

4 Q. Just so we're clear about your testimony, Mr Witness, what you're saying then is
5 that in your discussions with Mathieu Ngudjolo's brother, you never discussed the
6 case against Mathieu Ngudjolo; is that what you're saying?

7 A. Yes, and I can even add: How could he have any information about the case?

8 Q. And what about how Mr Ngudjolo was faring? You never once asked Deo, his
9 brother, any news about Mathieu? You never once discussed Mathieu Ngudjolo; is
10 that what you're saying?

11 A. What I'm saying is that I speak with Deo regularly, but we don't talk about
12 Mathieu's case because Deo has no information as to the case about his brother.

13 Q. Mr Witness, can you explain to us how it is that you came to be a witness for
14 Mathieu Ngudjolo? Who approached you to be a witness?

15 A. I don't know in what circumstances my name was identified in order for me to
16 become a witness. The first person who contacted me was Maryse.

17 Q. And you're in touch with Lopa Koli Christophe as well; isn't that right? This is
18 Mathieu Ngudjolo's resource person.

19 A. Well, I was in contact with Lopa Koli.

20 Q. And when was the first time you were in contact with Lopa Koli?

21 A. Lopa Koli is from my locality. I've known him for a long time, so if you're
22 asking me about this case, I don't know exactly when we began having contacts
23 because it's someone I see regularly.

24 Q. So, you're meeting with Lopa Koli, or you're seeing him, as you say, regularly,
25 and this is Mathieu Ngudjolo's resource person, who obviously has information about

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1 his case. So you were discussing Mathieu Ngudjolo's case with Lopa Koli; isn't that
2 right?

3 A. Well, Lopa Koli and myself, we never talk about Mathieu Ngudjolo because, for
4 him, I think he considers it as something confidential, secret.

5 Q. So he would never discuss with you how was Mathieu Ngudjolo? He never
6 would talk to you about that at all?

7 A. He simply told us to get ready for the trip, to come and testify. That's the only
8 information he gave us.

9 Q. Mateso Lodya, am I correct in saying that you spoke to him about testifying for
10 Mathieu Ngudjolo?

11 A. Could you repeat your question, please?

12 Q. Am I correct in saying that you discussed testifying on behalf of Mathieu
13 Ngudjolo with Mateso Lodya?

14 A. No, we did not discuss the issue related to my trip here.

15 Q. Maybe not your trip here, but am I correct in saying that you discussed the case
16 against Mathieu Ngudjolo?

17 A. No, that is not true.

18 Q. Mr Witness, am I right in saying that if somebody in your family is seen to
19 betray Mathieu Ngudjolo, that the fear is Mathieu Ngudjolo's family against your
20 family; isn't that right?

21 MR FOFÉ: (Interpretation) Your Honour, I beg your pardon, but I really feel
22 obliged to intervene. That question is based on a hypothesis, "if," "if." And I think
23 we've already pointed this out. "If someone had done such-and-such, would this or
24 that have happened?" You cannot ask witnesses questions that are founded on
25 hypotheses, "if this," "if that." On the contrary, you need to ask witnesses questions

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1 based on facts.

2 MS LUPING: With all due respect to Professor Fofé, it's a simple question and I
3 think that the witness should be given an opportunity to respond to it. He should
4 not be helped in this regard by Professor Fofé's intervention. If I can please repeat
5 the question and let the witness respond.

6 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping, let us, nonetheless,
7 endeavour not to ask too many questions that are based on hypotheses. The
8 question that you just put to the witness, as we understood it, would lead to a basic
9 individual reaction on the part of the witness. So you may proceed and ask your
10 question, but please do avoid questions including the word "if." Therefore, you may
11 repeat your question and the witness can answer.

12 MS LUPING:

13 Q. Mr Witness, now I'm correct, am I not, in saying that Mr D is seen as betraying
14 Mathieu Ngudjolo. Mr D is a member of your family. So my question is this: Am
15 I right in saying that what you fear, and the reason why in fact you came to testify,
16 what you fear is Mathieu Ngudjolo's family going against your family? Am I right,
17 Mr Witness?

18 A. That's not true. Someone who knows a subject, who masters a subject, can't
19 speak in general terms. Now, if my cousin has a relationship with Ngudjolo, that is
20 of no concern to myself.

21 MS LUPING: Thank you, Mr President. We have no further questions for this
22 witness.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Prosecutor.
24 Mr Gilissen, Mr Luvengika, do you have questions for Witness 55?

25 MR GILISSEN: (Interpretation) Thank you, your Honour. We have no questions

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1 for this witness, but I would like to thank the witness for having come here and for
2 his contribution to our work.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you. And Mr Luvengika?

4 MR NSITA: (Interpretation) Thank you, your Honour. I have no questions for
5 this witness, thank you.

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

8 Mr Hooper, do you have any questions or comments for this witness?

9 MR HOOPER: I hadn't asked any questions in the first round, but I've got two
10 matters, if I may discuss with the witness, or raise with the witness?

11 QUESTIONED BY MR HOOPER:

12 Q. Mr Witness, these are two matters. I represent Germain Katanga, who you
13 may have noticed sits at the back of the Court there, and I just want to ask you about
14 one matter that you referred to when you said you passed through Bogoro on your
15 way to a training seminar at Tchomia. You may remember stating that, and I
16 understand you to have given the date when that happened. I think the date you
17 gave was 24 May 2004. My question is this: Is there any particular reason why that
18 date, 24 May 2004, sticks in your mind? Are you sure about that date, or might it
19 have been at some other time?

20 A. The reason I mentioned the date you just mentioned, there was no ill-intention
21 meant. You know, after the war people weren't used to visiting each other, so when
22 we went to Tchomia the situation was not a good one. We met people on the way
23 who stopped us, but they didn't harm us. We paid some money and they let us go
24 by. That's why I remember it.

25 Q. It's not the event itself, sir. I'm not concerned with the event itself and what

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1 happened. I'm merely asking you about the date. You gave us I think -- do you
2 remember you gave us a date on which that happened?

3 A. Yes, I remember.

4 Q. And the date as I see it on the transcript here that you gave was 24 May 2004,
5 and my question is why do you remember that it was on that specific date, 24
6 May 2004?

7 A. I remember the date because I was intercepted on the way, at that date, and
8 that's why I remember it. I remember that on a particular date I was on my way and
9 someone stopped me, bothered me on my way, and because of that event I remember
10 the date.

11 Q. Thank you very much. One other question, and that is that you mentioned
12 going up to the top of the hill and looking down to see what was happening. From
13 your position on the hill, could you see Bogoro?

14 A. You can't see Bogoro very well. You can see part of Bogoro, a small part.

15 MR HOOPER: Right, thank you very much.

16 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, do you have any
17 additional comments?

18 MR FOFÉ: (Interpretation) Yes, your Honour, thank you very much. With the
19 help of the witness, I would like to verify something that I noted while he was
20 testifying. On page 52 of today's transcript, line 13 to 15, the Prosecutor -- and here I
21 am speaking to the witness.

22 QUESTIONED BY MR FOFÉ: (Interpretation)

23 Q. The Prosecutor asked you the question -- I don't remember the exact words of
24 the question, because what I'm interested in is the response given by the witness.
25 Have you found the appropriate place, your Honour? On page 52, lines 13 to 15,

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1 Madam Luping asked the witness a question about whether he remembered the
2 attack on Nyankunde.

3 Do you remember that question, Witness? A moment ago the Prosecutor asked you
4 a question whether you had learned about the attack on Nyankunde. Do you
5 remember that she asked you that question?

6 A. Yes, I remember that question.

7 Q. Fine. Please follow what I'm saying, because I jotted down the answer that you
8 gave and please follow very carefully and tell me whether what I'm reading
9 corresponds to what you intended to say. I'm quoting the answer that is in the
10 transcript on page 52, lines 13 to 15, and I quote you, "Between Zumbe and Ezekere
11 there are many kilometres. I cannot know what was happening in Nyankunde,
12 which is very far." That was the answer you gave. Was that correct?

13 A. There's a mistake in the beginning of the answer. It should be between
14 Ezekere and Nyankunde and not between Zumbe and Ezekere. So what I said was
15 between Ezekere and Nyankunde.

16 MR FOFÉ: (Interpretation) I understood that it was a slip of the tongue, but it was
17 necessary to correct the transcript.

18 I would like to thank you, Witness, for your testimony, for having accepted to make
19 this very long journey to come here to testify before the honourable members of the
20 Chamber regarding your knowledge about the situation regarding the case in
21 question. We thank you, and on behalf of Mathieu Ngudjolo's Defence team I would
22 like to wish you a safe journey home.

23 I would also like to recall to the Chamber our request to be able to speak with the
24 witness after his testimony, so we will have another opportunity to say goodbye in a
25 more informal setting. Thank you, Witness, and thank you, your Honours.

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1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé.
2 Witness, you have now completed your testimony. We would also like to thank you
3 for having come this far. I would like to remind you, as I've already said, that what
4 you've said here is not to be revealed outside. You should keep it for yourself. Do
5 not speak about it. Have a safe trip home to wherever you live.
6 We are now going to go into closed session, so that you may leave the courtroom, and
7 at the end of this hearing the Defence team will have an opportunity to speak directly
8 with you and to thank you face-to-face.
9 Court officer, closed session, please. We will begin with the next witness tomorrow,
10 who has been waiting today unfortunately, and we will need to respond to the matter
11 regarding assurances, Article 93, Rule 94, and regarding protective measures as well.
12 (Closed session at 1.26 p.m.)
13 (Expunged)
14 (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged)
18 (Expunged)
19 (Expunged)
20 (Open session at 1.27 p.m.)
21 THE COURT OFFICER: (Interpretation) We are in open session, your Honours.
22 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. The hearing
23 is adjourned until tomorrow morning at 9 o'clock.
24 (The hearing ends in open session at 1.27 p.m.)
25 RECLASSIFICATION REPORT

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Witness: DRC-D03-P-0055

(Open Session)

ICC-01/04-01/07

- 1 Pursuant to Trial Chamber II's oral instruction dated 18th of August 2011, the
- 2 excerpt of the transcript page 10 line 22 to page 12 line 16 (*) is reclassified from
- 3 closed session to open session.