

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

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1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra, and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Wednesday, 19 October 2011
10 The hearing starts at 9.07 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
15 Good morning to all. Welcome to the accused and everybody. We
16 shall now resume our proceedings. We would continue to put questions to
17 Mr. Katanga. These are questions from the Chamber.
18 WITNESS: WITNESS DRC-D02-P-0300 (Resumed)
19 (Witness answered through interpreter)
20 Questioned by the Court: (Continued)
21 PRESIDING JUDGE COTTE: (Interpretation) And I would like to
22 briefly revisit something we broached yesterday, page 74 of transcript
23 327 (* sic), yesterday's transcript, I can't find it but I think I will
24 hopefully. Regardless, you told us that Garimbaya was a company
25 commander and that Bebi was an ordinary platoon commander. And we

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1 understood that distinction. At that time, was Garimbaya the
2 highest-ranking commander of the APC in Aveba before the arrival of
3 Blaise Koka? Was he the highest-ranking officer as company commander?

4 A. Good morning, your Honour. Good morning, your Honours. In fact,
5 Garimbaya was not the highest-ranking officer. What I mean is that some
6 officers of the 12th Battalion had remained in Singo and what I'm saying
7 is that some APC officers remained in Singo. But Garimbaya wanted to
8 remain in Aveba. I cannot say that Garimbaya was the highest-ranking
9 officer. Now, they did not have grades as such. They were simply known
10 as company commanders. So I cannot say who was the highest ranking. In
11 fact, Captain Mutombo was in Gety but he had been a captain even in
12 Mobutu's time. And others who were in Singo, like Lieutenant or Captain
13 Kassongo, were those people who had those ranks. So they had captains
14 apart from Faustin, who at the time was the commander of the
15 12th Battalion, who was a major, and thereafter only a number of captains
16 remained in place.

17 PRESIDING JUDGE COTTE: (Interpretation) I do understand that
18 there were some officers therefore who had been former soldiers in the
19 army and who had official ranks and that such was not Garimbaya's case?

20 A. Yes, Mr. President.

21 PRESIDING JUDGE COTTE: (Interpretation) But in Aveba, did Garimbaya have
22 any authority over Bebi? Yesterday you seemed to have said that Bebi was
23 a platoon commander, but did Garimbaya have real authority over Bebi?

24 A. Your Honour, they were operating under a classical organisational
25 chart, and since they were trained, he had to respect Garimbaya as his

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1 boss.

2 PRESIDING JUDGE COTTE: (Interpretation) Therefore, although
3 Garimbaya, if I may say, was not an official officer bearing ranks and
4 epaulettes, he was the one with the highest authority in Aveba?

5 A. Yes, authority over Bebi.

6 PRESIDING JUDGE COTTE: (Interpretation) Authority over Bebi.
7 Now, on page 81, and I'm talking about your role as a co-ordinator,
8 transcript 324, yesterday we talked about -- rather, 327, I believe,
9 yesterday we talked about this issue of co-ordination and you told us
10 that your role was to quell conflicts. Now, that role of conciliation,
11 so to speak, which you played, did it require that you appease or quell
12 down any conflicts between the APC militants and local combatants within
13 the entire Walendu-Bindi collectivity? As a co-ordinator, was it your
14 role to settle all these conflicts within Walendu-Bindi, disputes between
15 APC combatants and local combatants?

16 Let me take a simple example to illustrate my point. As a
17 co-ordinator, if a conflict arose between Yuda, for example, who was the
18 APC commander in Kagaba and Cobra who was the local commander in Bavi, if
19 I understood properly, could you have intervened in such a case?

20 A. Your Honour, we attempted to do so but it did not work. It did
21 not work on a -- in a sustained manner. When I attempted to go too far,
22 it really did not work. Let me take an example of what happened between
23 the *garrison* and Cobra's group. We did our level best to reconcile them
24 and to bring them together, but it did not work.

25 PRESIDING JUDGE COTTE: (Interpretation) Very well. So in

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1 theory, your role as a co-ordinator would have applied in such
2 circumstances, but practically it was difficult, if not impossible?

3 A. Mr. President, I would say it was impossible.

4 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you.
5 Let us now proceed with a different set of questions, and the answers to
6 these questions will be important for the Chamber.

7 Within the Walendu-Bindi collectivity and community, how were the
8 wisemen designated? Was it from father to son or was it on the basis of
9 one's age because one had become an elder or was it by merit? How did
10 one become a wiseman? On what grounds were wisemen selected?

11 A. Mr. President, wisemen did not become wisemen only because of
12 their age. There were some young people who were already classified as
13 wisemen because of their manner of speaking, their maturity, and their
14 ability to convince people with their words. That is one.

15 Secondly, Mr. President, to be a wiseman one needed to have
16 experience and experience comes with age. And through -- over time, with
17 age one has experienced several difficulties and solved a great number of
18 problems. That is also a process whereby one becomes wise. But there
19 are also other wise people who were -- who became wisemen simply because
20 of their interventions. For example, in case of a problem in a village
21 they might make a moral or material contribution which will then warrant
22 them to become wisemen. Those who organised churches, for example,
23 health centre leaders, among others, were persons who bore such
24 responsibility that they were considered to be wisemen.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Katanga.

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1 I made a mistake in my reference to the transcript of yesterday,
2 it's 324, not 327, as I mistakenly stated. I have transcript 324 before
3 me.

4 And then, Mr. Katanga, for you and I, we have to observe the
5 five-second rule. We have to be very careful. You often refer to me as
6 Mr. Judge, President, and although I am the one putting the questions to
7 you, I am doing so on behalf of the entire Bench, that is, all three of
8 us. Thank you. Thank you very much.

9 Now we're talking about wisemen. As far as you know -- and you
10 have already told us that there were several ways by which one could
11 become a wiseman. Now those wisemen, did they have any authority over
12 the war-displaced persons? Could a wiseman have authority or power over
13 people from elsewhere who were not initially members of the community?

14 A. Yes, Mr. President. And when I say so, I mean that whatever
15 happened in the city or in the village, it was the wisemen who attended
16 to it. For example, there may have been an influx of refugees or
17 displaced persons. There were some combatants who owned homes and houses
18 in the -- in town. And when they had left their homes to go to the
19 camps, their houses were empty. So whenever such a problem arose, the
20 wisemen would ask the combatants for permission to use their homes to
21 host these refugees, and that is why I can say that wisemen had practical
22 discussions with combatants to deal with difficult problems.

23 PRESIDING JUDGE COTTE: (Interpretation) Can we then take
24 it - and please correct me if I'm mistaken - can we then take it that the
25 wisemen had authority over natives of the community as well as over

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1 displaced persons?

2 A. Yes, even outside of the community.

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

4 Now, can you tell us whether Chief Akobi whom we talked about yesterday
5 was still the chief of the Walendu-Bindi collectivity in August 2002?

6 A. Your Honour, in theory I would say yes, but practically let us be
7 very clear on this point, your Honour. Chef Akobi was not able to
8 exercise all his powers or functions. He was somewhat limited although
9 he was the traditional leader, traditional chief, he -- however -- well,
10 he was often consulted by those who wanted to do so. But those who opted
11 not to could proceed without consulting him.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, until
13 when -- and up until when did he exercise those functions as the chief of
14 the collectivity if I understand you very well?

15 A. He was replaced this year, I mean this year, June of this year he
16 was replaced.

17 PRESIDING JUDGE COTTE: (Interpretation) Why was his authority
18 limited, if I have understood your answer?

19 A. Your Honour, the wisemen whom we had used to say at that time
20 that although Chef Akobi exercised his functions, even if he did, who
21 would he report to? So in the light of the absence of authority or the
22 powers that be, as such, what I can say is that the management of our
23 collectivity then reverted to the wisemen

24 PRESIDING JUDGE COTTE: (Interpretation) So are you saying that
25 he delegated some of the powers that he was no longer exercising to the

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1 wisemen?

2 A. Yes, I can confirm that, Mr. President.

3 PRESIDING JUDGE COTTE: (Interpretation) Very well. In which
4 village was the headquarters of the chief of the Walendu-Bindi
5 collectivity located? Was it in Gety État, that is, Gety State? Was it
6 there that the headquarters of the collectivity was set up?

7 A. Your Honour, before the event of January 2001 occurred, when the
8 money was buried, he continued to live in Gety state, but until August, he moved
9 around. He moved about. And he used to be in Zitono, his native
10 village.

11 PRESIDING JUDGE COTTE: (Interpretation) You who were
12 co-ordinator at some point, did you use to visit this chief at some
13 point? Did you visit him ever?

14 A. I don't think so. I did not meet the chief of the collectivity.
15 However, I met him later on in 2003 at a meeting. Now, your Honour, I
16 don't recollect ever going to his house.

17 PRESIDING JUDGE COTTE: (Interpretation) As the chief of your
18 collectivity, did the various commanders in Aveba have to inform him of
19 all their decisions or were they totally disconnected from the chief of
20 the collectivity and the various commanders in Aveba?

21 A. Mr. President, I would not say that there was such a break in
22 communication between them. You see, the secretary of the basic
23 communities were also the administrative secretary -- or was also the
24 administrative secretary of the chief of the community. Mr. Muganga Leba was
25 the administrative head of the various collectivities as well as

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1 secretary to the basic community. That is one aspect. Secondly, I
2 would -- I could say that the relationship between combatants and Chef
3 Akobi were still in place, they still existed, but there was no reporting
4 as such, no reporting mechanism in place as such.

5 PRESIDING JUDGE COTTE: (Interpretation) Did Chef Akobi, the
6 chief of the collectivity, have power to object to or stand against any
7 decisions from or taken by the commanders in Aveba?

8 A. I cannot say so because we never had such a case in hand. You
9 see, maybe if there had been an incident, I could have used it to point
10 out that he forbade anyone from doing something which may or may not have
11 been upheld by the commander. But as for the war in Gety, he prohibited
12 it and there was no war in Gety État.

13 PRESIDING JUDGE COTTE: (Interpretation) As far as you know,
14 were there any divergent opinions between the chief of collectivity
15 and Kakado? Do you have any recollection of any conflict between the
16 chief of the collectivity and Kakado?

17 A. What I can say, your Honour, is that I am now going to disclose a
18 secret to you, to you and to your Honours. You see, there was some
19 doubt, some doubt in Kakado's mind, but we were not aware of it. You
20 see, Chef Akobi was not the true traditional leader as would go from
21 father to son according to our tradition. He was the son of another
22 member of that family. We, the others, did not know this fact, but within the
23 community some people knew, and Kakado simply, therefore, wanted to use
24 Chef Akobi or refer to Chef Akobi as an interim chief of collectivity.
25 To that extent, Kakado, therefore, never considered Chef Akobi to be the

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1 true chief deserving the respect due to a chief.

2 PRESIDING JUDGE COTTE: (Interpretation) But do you recall any
3 instance of conflict, an objection or a difficulty between Kakado and
4 Akobi?

5 A. No, not a direct conflict, no.

6 PRESIDING JUDGE COTTE: (Interpretation) Does this mean then
7 that you as a co-ordinator, mindful of settling conflicts and concerned
8 about these things, that you never, ever stepped in to settle any
9 conflict between Kakado and Akobi?

10 A. No, no, no.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. Let us now
12 move on to another area of questioning.

13 On several occasions you talked to us about the Kazana battle.
14 I'm not going to mention the transcript references, but it was a battle or a war
15 against the UPDF forces in the first semester of 2001, I believe. Can you
16 tell us or remind us whether the Ugandans remained in your collectivity
17 although they had been defeated?

18 A. Your Honour, the Ugandans remained in our collectivity. The only
19 thing that happened is that they did not continue their progression.
20 They were blocked in Kazana and then they went back to their headquarters
21 in Gety État.

22 PRESIDING JUDGE COTTE: (Interpretation) So they remained on the
23 ground and if you do recall, when did they leave?

24 A. Your Honour, what I could say is that the Ugandans -- those
25 Ugandans came when -- when Jean-Pierre Bemba came and they left in 2002.

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1 They left Walendu-Bindi in 2002.

2 PRESIDING JUDGE COTTE: (Interpretation) And they left in 2002
3 and do you remember what the reason was for their leaving at that time?

4 A. I don't really remember. We simply learned that the Ugandans
5 were to leave and go back home, and then we found out that, in fact, they
6 had stayed in Bunia after they had left our collectivity. They had left
7 the North Kivu and they had taken the footpath and come through our
8 collectivity on their way to Bunia.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. In
10 transcript 316, page 63 and page 64, starting on line 25 of page 63 and
11 on page 64 roughly lines 1 to 11, you spoke about your trip to Beni and
12 you told us that Mbusa introduced himself as the protector of the Lendus
13 against the Hema. You used the term "umbrella." In your opinion, did
14 the APC commanders try to mobilise Lendu combatants around themselves using the conflict
15 that existed between the two communities?

16 A. Well, I'm not sure that I would express it quite that way. The
17 conflict between the RCD-K/ML and the UPC -- you know, when they said
18 that the UPC was a Hema party, that brought the rebellion of the UPC
19 closer to the Rwandan speakers from the North Kivu, that is, the northern
20 part, Goma, their goal was to ally themselves with the UPC who were also
21 pro-Rwandan. And they explained that after the conquest of Nande and the
22 Lendus, they would establish the Hema-Tutsi empire.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you. You have
24 led me directly to another question I wanted to ask you and this will
25 perhaps enable you to give me a more general answer. In that very same

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1 transcript, 316, on the same pages, that is, pages 63 and 64, on page 64
2 line 3 to 11, but also in transcript 321 on page 65, line 4 to 11, you
3 referred to Hema-Tutsi forces in the first transcript and then elsewhere
4 you refer to the UPC ideology, whereby a Hema-Tutsi empire was to be
5 established. And you added, and I quote your words, "it was terrible."

6 Now, my question is: Did you mean Hema-Tutsi or was it
7 Hima-Tutsi?

8 A. Yes, it was Hima. Hima.

9 PRESIDING JUDGE COTTE: (Interpretation) Well, perhaps there was
10 a transcription error and indeed it's difficult to hear the difference
11 between Hima and Hema. There's only a one vowel difference between the two
12 words, but it seems to be an important one. Could you explain to us what you mean by this
13 ideology, this empire? You yourself just used the term "empire." What exactly was the
14 threat here? Can you explain that so that we can understand the
15 relationship with Rwanda, et cetera.

16 A. Well, whether you're talking about the Tutsis or the Hema, their
17 characteristic is that they are cattle raisers, cattle breeders. And
18 according to our ideology, we were told that they were going to chase us
19 away from our land so that they can use our land as pastureland for their
20 cattle. And the Hemas and the Tutsi wanted to dominate the territory so
21 that they could control the land, at least that's how I understood it.

22 PRESIDING JUDGE COTTE: (Interpretation) Now, this threat that
23 you were worried about and frightened of that you've just explained, that
24 is, that your land be taken, and of course this is a vital threat, did
25 the UPC commanders -- correction, did the APC commanders realise that

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1 that was the situation, that there was a desire to set up an empire? Do
2 you have the impression that the APC commanders were aware of that?

3 A. I really don't know. I don't know how to say it otherwise.

4 Well, given that there were political statements, it's hard for me to say
5 whether or not they knew it or not.

6 PRESIDING JUDGE COTTE: (Interpretation) That word "Hima"
7 what -- the Hima-Tutsi, when you use the expression Hima-Tutsi, what do
8 you mean?

9 A. Well, Hima is a language. It's a language, in fact, that I
10 myself don't understand even to this day, but we heard the words
11 "Hima-Tutsi," "Hima-Tutsi." I myself don't really understand. Maybe it
12 refers to Hema or maybe it refers to something else or something similar
13 to the Hema. But I have heard the term "Hima" and so I say here before
14 you today that perhaps it means Hema-Tutsi. Maybe Hima-Tutsi is the same
15 as Hema-Tutsi.

16 PRESIDING JUDGE COTTE: (Interpretation) Well, am I mistaken if
17 I were to say that this threat could be a threat from the Hema-Tutsi?
18 Have I gone too far if I say that?

19 A. I beg your pardon. Could you repeat?

20 PRESIDING JUDGE COTTE: (Interpretation) You've explained - and
21 this is not a criticism - that you cannot really explain what is meant by
22 the term "Hima." But on line 17 -- or rather, line 4 of page 14, you
23 said, and I quote, "but perhaps they just mean Hema." Does this mean
24 that Hema and Hima are parallel in some sort of way?

25 A. Well, that's what I was saying. It's a language perhaps or maybe

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1 it's just a pronunciation difference. I really can't confirm that. But
2 according to the sub-ethnic group, it said that the Hema are pro -- the
3 Hima are pro-Tutsi, they are close to the Tutsi.

4 PRESIDING JUDGE COTTE: (Interpretation) Well, this ideology
5 which is considered as a threat - and I've understood that - is this
6 something that you were able to discuss with the commanders in Aveba?
7 Was this a topic of conversation?

8 A. With the commanders in Aveba -- well, yes, it did happen that
9 people talked. When there was an attack, people would say yes, they want
10 to come in and occupy our land. They are the ones who want to establish
11 their empire. Those things were said, but as to understanding in depth
12 what was meant, I must say it's a bit difficult for me to confirm.

13 PRESIDING JUDGE COTTE: (Interpretation) Well, in order for
14 everything to be as clear as possible, could you repeat who in Ituri, who
15 were the communities that wanted to set up this empire?

16 A. Your Honour, this initiative, this policy, could only be from the
17 Hema (* as interpreted) because they were pro-Tutsi.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Let me ask
19 another question. In transcript 317 on page 16, lines 10 and 11, you
20 stated that you were not in Kanyabayonga but the combatants from your
21 collectivity who were in the North Kivu were called "your combatants."
22 Perhaps I should read out the text, line 10:

23 "If I may provide a slight correction to avoid any confusion. In
24 the month of November I was not directly in Kanyabayonga. I got as far
25 as Beni and then I went in. And at the time, the combatants in the

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1 collectivity who were in the North Kivu zone, they are the ones who
2 called themselves my combatants. They were under my command."

3 I don't know if this was a mistake in transcription or not.

4 Perhaps you can confirm that you did mean "under my command." It's -- we
5 want to understand the difference. How can we understand, how can we
6 explain that combatants who claim to be under your command in the North
7 Kivus, whereas you were appointed co-ordinator in Aveba? You were the
8 co-ordinator in Aveba and yet in North Kivu there are combatants who --
9 who fight under your name? How can we understand that?

10 A. When we went to Beni, I did not return with all of the combatants
11 who had come with us. There were others who remained there. In other
12 words, they stayed in Beni for some of them. And others, in order to be
13 covered so to speak, because they weren't well-known after our trip to
14 Beni, and they found other combatants with whom I had gone to Beni and
15 they ended up living together. And so when they went out on patrol for
16 the APC, they -- to make things easy for themselves, they would identify themselves as
17 my combatants, the people whom I left there. In fact, I left them back simply for
18 reasons of transportation. And they were to travel on foot or perhaps we would
19 send a few by airplane, three or four at a time, each time it was possible to
20 go back to Aveba. And that's why it wasn't just that delegation that
21 went with me but others as well and they lived together. That's how it's
22 to be understood.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Who was
24 commanding? Who had authority over this group that remained back, that
25 didn't leave at the same time as you did? Who directed, who commanded

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1 that group?

2 A. Well, at that time it was Bahati de Zombe. Bahati de Zombe
3 was amongst the combatants there. My bodyguards as well. And Doppel
4 Mbafele as well. And there was also Amuta (* phon), another commander.
5 They were able to organise themselves there.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you. That's
7 clear. Yesterday Mr. Luvengika, you will recall, mentioned the situation
8 of civilians. You -- during the different attacks that you yourself
9 participated in, did you see combatants and/or soldiers purposely attack
10 civilians? Did you yourself witness scenes of that nature?

11 A. Your Honour, if I may, when we went to Chay, when we went up to
12 Chay -- actually, I'm not sure whether we went down or up, it's probably
13 up because we're going from west to east. Anyway, when we went to Chay,
14 at the time there were only UPC soldiers. And to say that they attacked
15 civilians, I would say no. The targets in Chay were military. There
16 were no civilians so there's no way that I can speak about civilians who
17 were killed or anything like that.

18 PRESIDING JUDGE COTTE: (Interpretation) And during other
19 attacks, other actions, you did not see either combatants or soldiers hit
20 or kill civilians? You did not yourself witness such scenes?

21 A. No, I did not, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) To your knowledge, did
23 the APC soldiers give their men any rules of conduct regarding the
24 protection of civilians?

25 A. I would say yes, yes, your Honours. I would say yes, because the

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1 main goal was to protect civilians and their property, but sometimes
2 instinct takes the forefront, if you will. And sometimes the soldiers
3 are chased out, but rather than actually running away, they go into the
4 homes of civilians and they might shoot soldiers who are patrolling, who
5 are checking for security reasons. They would shoot each other and
6 that's what changed the situations. So when someone saw their brother
7 fall, a second and third fall as well, he either fired or launched a rocket at the house --
8 or sometimes they just did whatever they liked.

9 PRESIDING JUDGE COTTE: (Interpretation) Well, as co-ordinator
10 did you intervene in order to ascertain that the rules were applied, that
11 is, *vis-à-vis* the conduct to civilians? Did you learn of situations
12 where civilians, in spite of the rules, were injured or killed and as
13 co-ordinator were you -- did you have to intervene to remind people that
14 these rules of conduct existed and that they were to be applied?

15 A. Your Honours, let me give you an example. In Bunia, when Bunia
16 fell in 2002, a lot of Hema ran away when UPC took over. Sometimes they
17 were threatened in their areas. When they went through Kagaba, for example, they
18 were threatened. And if they got to Medhu they were threatened, and in
19 Olongba, and they were threatened, . They were able to go as far as Aveba. Even in
20 Aveba there were combatants and they were APC commanders who threatened the
21 Hemas who were in our territory. And so, yes, I had to intervene, your Honours.
22 I asked that -- I said that that's not the ideology. The ideology is to
23 allow the civilian population to live freely in peace.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you. So, on February
25 10th, 2003, you went to Bogoro. I repeat, February 10th, 2003. When you

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1 went to Bogoro on that date of February 10th, 2003, did you know that the
2 more major operation, that is, to re-take Bogoro as well as Bunia, was being
3 prepared?

4 A. Well, when we went there, our goal was what I said earlier, your
5 Honours. But when we went into Bogoro, we knew that it was going to be
6 re-attacked again as quickly as possible. And --

7 PRESIDING JUDGE COTTE: (Interpretation) Correct me if I'm
8 wrong, what you mean is that when you went there on February 10th, the
9 main goal was to evaluate the forces in Bogoro and if the opportunity
10 arose to take over Bogoro. Was that the case?

11 A. Yes, that was the case, your Honours.

12 PRESIDING JUDGE COTTE: (Interpretation) And you've said that if
13 in case of failure - that wasn't exactly the word you used - but if you
14 were not able to take Bogoro on February 10th, shortly thereafter
15 a new operation would have to be attempted. Do you know
16 whether this second attempt had been under preparation for quite some
17 time?

18 A. Well, it was already included in the definition of the mission,
19 but what actually happened on the ground was based on certain reports.
20 But the mission was already defined, if you will, and the purpose of this
21 trip was to accomplish the mission.

22 PRESIDING JUDGE COTTE: (Interpretation) In other words, the
23 February 10th trip was part of an overall operation which was to
24 re-conquer Bogoro?

25 A. Yes, of course. That's correct.

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

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1 PRESIDING JUDGE COTTE: (Interpretation) Please, you don't have
2 to say yes if you don't agree with what I'm saying. I don't want to
3 distort what you're saying.

4 In preparing this overall operation, did the co-ordinator have a
5 role to play?

6 A. The co-ordinator could have a role to play, your Honours,
7 inasmuch as when ammunition came from Beni, for example, when the
8 ammunition came to Aveba we had to take account of the combatants with
9 whom we had "difficulties," even the local community had difficulty managing them
because sometimes

10 we would go to a given place, and we would understand that in fact the
11 combatants had not been good to the local population. So we had certain
12 reservations about providing them with ammunition. So there were cases
13 where I might have identified situations where those combatants did not
14 deserve to have ammunition and did not deserve to be entrusted with a
15 particular type of mission.

16 PRESIDING JUDGE COTTE: (Interpretation) In other words, this
17 operation to re-conquer Bogoro and Bunia, how long had that been in
18 preparation?

19 A. I would say, your Honours, that that mission had -- had already
20 been defined when we were in Beni and we were told already that we would
21 help the APC go into Bunia.

22 PRESIDING JUDGE COTTE: (Interpretation) In other words, end of
23 November 2002.

24 A. Yes, end of November 2002 the operation had already been put on
25 paper, so to speak.

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

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1 PRESIDING JUDGE COTTE: (Interpretation) Fine. We'll come back
2 to that in a moment. Do you remember if Garimbaya participated in the
3 February 10th, 2003, operation? Was he amongst the roughly 100
4 individuals who went to Bogoro on February 10th?

5 A. No, Garimbaya did not go there because he had to wait for the plane to
6 land. There was a plane to land and as we went off he had to receive the delivery
7 and sign the papers.

8 PRESIDING JUDGE COTTE: (Interpretation) So he was in Aveba?

9 A. Yes, he was in Aveba.

10 PRESIDING JUDGE COTTE: (Interpretation) Let me go back to what
11 you've just stated, in other words, referring to Garimbaya. And here I'm
12 referring to transcript 318 on page 3, lines 7 to 18, where you stated
13 that Adirodu came to Aveba, as we know now, on the 15th February 2003. Let me
14 quote what you said on line 7. After the attack on February 10th
15 you said that Adirodu -- this is on line 7 and I believe it's Mr. Hooper
16 who is actually speaking or asking the question -- yes, it's Mr. Hooper.
17 "After the February 10th attack Adirodu arrived and there was a
18 confrontation with Kisoro and that was -- he was established in Kaswara
19 and that Blaise Koka received an order to attack Bogoro. This plan, the
20 details regarding the attack on Bogoro, do you know how that was
21 discussed?"

22 And then on line 13 you answered, and I quote:

23 "The details as to how we were to attack Bogoro came on a piece of
24 paper. The skeleton of the attack was -- the sketch of the attack was on
25 a piece of paper."

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

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1 So my question is: Did you see this sketch, did you see -- did
2 you have an opportunity to read the text; and if so, can you describe to
3 us the main lines of this plan? You've referred to a number of things on
4 October 6th, last week, but can you be a bit more precise?

5 A. This operation was defined, it was spelt out on paper, as I said. And you
6 can see on the map where we represented the progression of the APC
7 troops. The APC was to organise several operations simultaneously.
8 There was the road from Komanda to Bunia that was compulsory because each
9 time there was an operation organised in Bogoro toward the Bogoro road,
10 there had to be movement on the other side in order to shift or move
11 reinforcements. But on that day there was also a deployment of soldiers,
12 reinforcements, military reinforcements, which made it possible in the days
13 following the attack on the 10th, for Bogoro to be
14 attacked as well as some localities on the road between Komanda and
15 Bunia. So that is it. And once we got there, to the place from which the attack
16 was to be managed, we needed to know what kind of passwords were to be
17 used. Some other commanders or other officers may have come to provide
18 reinforcement using another road, another itinerary. That's a technical
19 detail, if you will, but also of strategic importance.

20 PRESIDING JUDGE COTTE: (Interpretation) And that plan or that
21 sketch, did it also include any material recommendations?

22 A. Everything was planned, your Honour, even reinforcements for the
23 health personnel, the health staff.

24 PRESIDING JUDGE COTTE: (Interpretation) When you say
25 "everything," what do you mean by everything?

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

Page 21

1 A. Ammunition, weapons, medicines, rations, the men, the uniforms,
2 and so on.

3 PRESIDING JUDGE COTTE: (Interpretation) So this was a very
4 elaborate plan?

5 A. Yes, in any case there was a real hierarchy in that plan, your
6 Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) To your knowledge,
8 which were the other localities that had to be attacked at the same time as Bogoro?

9 A. The road from Komanda to Irumu was attacked, the Komanda-Irumu was at
10 least affected. As well as the Chay,
11 Ngadjo line, there also had to be movement there. And in the north also from
12 Mongbwalu, people had to move in that area as well as in Mahagi. So this
13 was an operation that was planned to cover almost every area.

14 PRESIDING JUDGE COTTE: (Interpretation) And in these various
15 localities you have mentioned, to your knowledge were there any UPC camps
16 there, large UPC camps, similar to those in Bogoro?

17 A. Yes, your Honour. There was also a base in Irumu, Nyankunde,
18 Marabo, Ngadjo, Chay. And in the north, ever since the month of November
19 the UPC had retaken Mongbwalu. It was under its control. Operations had to be
20 conducted again in Bambu, Kobu (* phon), Lipri. There
21 were UPC camps in all those areas. So it was important for them to be able to attack.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Was there
23 any specific role in the plan for the co-ordinator, that is you?

24 A. Your Honour, I was the one in possession of the Thuraya, that is the means of
25 communication. The communication tool was in my house, that is quite aside from

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

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1 the *phonie*. Each time that an operation was planned or defined in that way, in order
2 to be sure that the combatants would reinforce the APC, it would either be EMOI or
3 the general staff of the APC that would call. Sometimes it was even Mbusa
4 who would call himself. So I was almost at the centre of this because I
5 could say: Look, the combatants are there. They are available. I do
6 not know what you are proposing for them. So we were there at their
7 disposal.

8 PRESIDING JUDGE COTTE: (Interpretation) You were informed
9 because the means of communication were with you, but did you have a
10 specific role that was planned for you, the co-ordinator? That is, as
11 part of that operation?

12 A. As part of community life to ensure peace, I provided minimum
13 service. That is, I could provide that service if they asked for it.

14 PRESIDING JUDGE COTTE: (Interpretation) Kasaki, for reasons
15 that we mentioned yesterday, bodies could not be buried for some
16 reasons on the 10th of February, Kasaki had declared a prohibition and called for a
17 different ceremony to be held that required a delay of 15 days. I believe I got that
18 right. Now, did this prohibition imposed by Kasaki compel Adirodu or Blaise Koka
19 to readjust their plan, to adapt it, to amend it; or did they keep the
20 plan as it had been originally drawn up?

21 A. Your Honour, I would say that the plan was kept as it had been
22 drawn up. Even if the combatants from Aveba could not go, there were
23 many combatants along that road in Gety, Mandre, in Kagaba, who could
24 join the combatants of the *garnison*. And around Kagoma and other
25 places, there was a large number of combatants, even if those in Aveba in

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

Page 23

1 the -- and the vicinity could not go.

2 PRESIDING JUDGE COTTE: (Interpretation) And you have just
3 talked to us about that large-scale attack. You have described it to us
4 a little bit. Now, can you tell us which of the battles were won and
5 which of them were lost? Do you still have that in memory? At that
6 time, of course.

7 A. At that time we succeeded in the Nyankunde attack, then lost the
8 Songolo attack. Then it was won. Then I believe the APC lost the attack
9 on Chay because they did not stay there. And against the operation
10 *effacer le tableau*, that was a victory. So I would say there were many
11 attacks that were successes and others that were failures.

12 PRESIDING JUDGE COTTE: (Interpretation) Now, regarding the
13 specifics of this large scale operation, can you be more specific without going back to
14 Nyankunde?

15 A. I can say that in Bogoro one out of ten was lost, 24 won. And on
16 the Komanda road I believe that that was a victory too. So Komanda-Irumu
17 road, that was a victory. I would also say that Bogoro was a victory.
18 And there were advances. There was progress in other areas.

19 PRESIDING JUDGE COTTE: (Interpretation) So over this period,
20 end of February/early March, you have just talked about the 10th
21 February, 24th February, Bogoro, the Komanda-Irumu road. Do you have any other
22 examples about where you lost and where you won?

23 A. That would be difficult because I was not writing down anything.

24 PRESIDING JUDGE COTTE: (Interpretation) Let us briefly go back
25 to the end of the battle of Kasana in 2001. At the end of that battle

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

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1 you had to oppose Kasaki in defence of the interests of Chief Akobi. On
2 the other hand, you said that you could not oppose Kasaki when he refused
3 to send local combatants or when he refused that local combatants should
4 go to Bogoro alongside the combatants of Blaise Koka on the 24th of
5 February, 2003. Why is it that on that occasion you were unable to
6 convince Kasaki? Why is it that you were not able to convince him that
7 on the one hand there was the prohibition because of the respect of the
8 dead bodies, but that on the other hand the Bogoro battle that you have
9 told us was already being prepared in Beni in November 2002? So why were
10 you not able to convince him?

11 A. I can say that there were two major reasons. The first reason
12 was our objective. Our objective as combatants was not to go outside of
13 our area. Secondly, in the situation in which Chief Akobi found himself,
14 I realised that Mr. Kasaki was contradicting himself because he was
15 telling us to protect our population, but then he was grabbing the
16 property of our population. So this was a contradiction in relation to
17 our objective. So what I can say is that I could not compromise between
18 those two things, and on the other hand this was something that was
19 rather mystical. I could not fully appreciate whether he was correct or
20 he was wrong.

21 PRESIDING JUDGE COTTE: (Interpretation) Very well. In
22 transcript number 318, page 19, lines 15 to 18, and on page 22, lines 11
23 to 13, you told us that for the 24th of February, 2003, apart from
24 Garimbaya's men and Yuda's *garrison*, a group of soldiers from Gety went
25 to Bogoro. Can you tell us who was in command of those three groups,

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

Page 25

1 Garimbaya, Yuda, and that group of soldiers from Gety? I believe there
2 was a commander.

3 A. There was the operations commander who managed those operations,
4 and this was Blaise Koka.

5 PRESIDING JUDGE COTTE: (Interpretation) So Blaise Koka had
6 authority over Garimbaya and Yuda. What about the combatants from Gety,
7 who was their leader?

8 A. The commander of the combatants was Joel Androzo, but the APC
9 commander was Mutombo's deputy because when Mutombo went out, travelled to
10 Aveba, it was his deputy who was responsible but I no longer remember the
11 person's name. If I remember I will tell you.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Still in
13 transcript 318, page 32, lines 9 to 11, I will read your answer. You
14 said as follows:

15 "After Yuda was injured, it was his deputy who automatically took
16 over from him. And so when Bogoro fell, it was Dark who stayed there as
17 area commander and who was in charge of the entire situation."

18 How do you explain that the APC did not wish to keep such an
19 important position? to hand over command of
20 this operation to someone from Beni at the same level as Koka?

21 A. Your Honour, it was an issue of knowledge of the field. One had to really
22 know the area and have a mastery over the situation. Regarding Yuda, if Bogoro had
23 fallen when he was not injured, he is the one who would have stayed in Bogoro
24 because that initiative had already been taken before the attack. So those who came,
25 the officers from Beni could then recover and occupy the Kagaba position, and take

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by the Court (Continued)

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1 over directly. So on the field you needed someone from the area also.

2 PRESIDING JUDGE COTTE: (Interpretation) So they needed someone
3 who had taken part in the battle and who had mastery of the situation,
4 and it was preferable that he should be a local, if I understand you
5 well?

6 A. In any case, he should be from that ethnic group.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We have
8 talked about this ritual prohibition ordered by Kasaki. He ordered a
9 delay of 15 days and was this actually implemented, the ceremony?

10 A. Yes, it took place, your Honour. And in fact I can say that this
11 was a few days after the fall of Bogoro. If Blaise Koka had delayed that
12 operation for three, four to five days, then the ceremony would already have
13 taken place.

14 PRESIDING JUDGE COTTE: (Interpretation) Very well. How do you
15 explain the fact that large numbers of combatants went to Tchei on the 3rd
16 of March, 2003, to see Kakado, whereas the offensive, the attack against the UPC, had
17 already been launched. On the 24th of February there was Bogoro, so how did
18 these people travel to Tchei on the 3rd of March?

19 A. Your Honour, I can tell you that the large numbers of combatants
20 who went there had been far away from the area of operations. For
21 example, I can tell you that large numbers of combatants did not come
22 from Kagaba, Gety, or Singo. It was only the combatants who were in the
23 vicinity of Tchei who went there, that is, from Bukiringi, Aveba, Kaswara,
24 part of Nyabiri, those people could go to Tchei, Bunga. There
25 were many of them, your Honour. It does not mean that all the combatants

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Questioned by the Court (Continued)

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1 from the front line could leave, no.

2 PRESIDING JUDGE COTTE: (Interpretation) Are we to understand
3 that that meeting of the 3rd of March had been planned for a long time?

4 A. I would even say that the decision had been
5 taken one year before, because this was a message that had been sent out frequently,
6 saying as follows: I'm telling you that you are fighting now but I
7 promise that there will be a change and this change will take place on
8 the 3rd of March. So this was one year earlier, and so we knew that
9 even though we were suffering there would be change on the 3rd of March,
10 2003. But we did not know precisely what change would take place

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. If I
12 understand well, that date of the 3rd of March, 2003, 030303, had a
13 special meaning?

14 A. Yes, I believe it had a special meaning and I said it.

15 PRESIDING JUDGE COTTE: (Interpretation) Please explain it once
16 again. I did not fully understand. You say you knew about it one year ahead of time?

17 A. He said it and this was someone who spoke in parables, your Honours. He said
18 that on such and such a date there would be this and on this date such and such a
19 thing would happen. 030303, this meant that on such and such a day there will be a
20 difficulty, the second day there will be a problem, and on the third day
21 there will be another issue. So those three figures corresponded to
22 what would happen, and on the fourth day there would be no problem.

23 PRESIDING JUDGE COTTE: (Interpretation) So that meeting was
24 really planned for that specific day, even if you were in an area of
25 military operations?

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1 A. Your Honour, even those who were in the area of operations were
2 also expecting that change irrespective of where they were.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Katanga.

4 Now, let us briefly revisit issues that are somewhat personal for
5 you but you touched on these issues in the course of previous hearings.
6 But it is important that we should understand those things and
7 your presence here should help us to understand. Let us come back to
8 this issue of *gris-gris* or fetiches. In Transcript 315, pages 32 and 33, you told us that
9 you brought your *gris-gris* to The Hague. "Your Honours, I brought it to The Hague.
10 It is Marc Dubuisson who is keeping it."

11 Can you tell us when you obtained that *gris-gris* which we
12 understand is important to you. When did you receive it?

13 A. I would say that with regard to that *gris-gris*, each series is in a
14 packet with -- for any new series when it is released and given -- I'm
15 given it, and I put it in the packet. When I receive it I put it inside the packet. So
there were many of them. I do not

16 know how many types there are in that bag, in that sachet, but I can tell you
17 that I had been receiving those objects even well before the war. Your Honours,
18 when I arrived in that collectivity I joined that system.

19 PRESIDING JUDGE COTTE: (Interpretation) Can you tell us who
20 handed those *gris-gris* to you a long time ago.

21 A. There was only one person on the Aveba road, Kasaki. So whenever he
22 produced them he gave them to us, to those who wanted them. Before the war he
23 did not distribute them free of charge. People bought them and it was his line of
24 business. He would tell us that this one was for good luck, to treat illnesses, and so on
25 and so forth. Because it could happen in our area that one is struck with a stone

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 which is cursed or “treated”, and there is a risk that one can die.
2 Somebody can take a grain of beans and shoot you with it. This is
3 something that is mystical. If you are not protected, then you die.

4 PRESIDING JUDGE COTTE: (Interpretation) On the 3rd of March,
5 2003, during that assembly in Tchei you have told us that new *gris-gris*
6 were distributed during that ceremony. As far as you can remember, did
7 other people receive fetishes that were more powerful than others, if
8 that is possible?

9 A. I cannot say that some people received more powerful fetishes,
10 but sometimes even if we sourced the products from the same place, there
11 are others who have individual sources. I may have a personal source for
12 myself. So I can say yes. What was distributed on that day was for
13 everybody, even those who were at the front, they were sent to them.
14 This simply means that this was a big day and Mr. Kakado himself was able
15 to bless those fetishes with his own hands.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well. So
17 everybody received them but there were no special products or fetishes
18 for some individuals ?

19 A. No.

20 PRESIDING JUDGE COTTE: (Interpretation) To your knowledge, we
21 know that you have been in The Hague for several years now, but to your
22 knowledge do Kakado and Kasaki still have the same influence in Ituri?
23 Do you know what has happened to them ever since you left?

24 A. Your Honours, it is with regret that I would like to announce to
25 you that Kasaki died in 2009, I believe, and Kakado died I believe it was

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 two or three days ago. He died while I was in the witness-stand. Both
2 of them are dead and it is really regrettable for me.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you. That is
4 information that you are giving us. I was not expecting that you would give
5 us such sad information, but thank you.

6 At the time under review, end of 2002/early 2003, the powers that Kakado had,
7 that is, the distribution of fetishes and also the fact that he was a
8 seer, he could prophesy, he was a spiritual authority, now did these
9 powers enable him to protect and guide the Ngiti commanders of the APC
10 also?

11 A. This was really a community thing, your Honour. Anyone who
12 belonged to that ethnic group had to be protected.

13 PRESIDING JUDGE COTTE: (Interpretation) Whether they were
14 commanding APC soldiers or local combatants, is that what you mean?

15 A. Even if the person was in North Kivu and he had received that
16 product, he was protected. Even in Kinshasa.

17 PRESIDING JUDGE COTTE: (Interpretation) As long as you were
18 from that ethnic group, you benefitted from Kakado's protection?

19 A. Yes, your Honour, apart from those who sabotaged it.

20 PRESIDING JUDGE COTTE: (Interpretation) What do you mean by
21 "sabotage"?

22 A. People who distrusted those fetishes, that is, people who did not
23 believe in them. That is what I mean by "sabotage."

24 PRESIDING JUDGE COTTE: (Interpretation) I understand.

25 Yesterday in transcript 324, page 80, line 7 onwards, I will not

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1 read but I believe it can be summarised as follows and please correct me
2 if I do not summarise you correctly. You told us that Kasaki took part
3 in the production of all the fetishes and that the other local
4 representatives of Kakado in the other villages were simple executors or
5 representatives who received finished products, to quote you. And on the
6 same page you stated that the combatants did not go to battle without
7 Kasaki's fetishes.

8 I hope I'm not mistaken. Now, did the local combatants go to
9 fight in Bogoro on the 24th of February, 2003?

10 A. Yes, your Honour.

11 PRESIDING JUDGE COTTE: (Interpretation) In which group were
12 these local combatants, the three groups that we mentioned or other
13 groups?

14 A. Gety, Mandre, Kagaba, there were combatants in the vicinity of
15 Bogoro.

16 PRESIDING JUDGE COTTE: (Interpretation) So there were both
17 local combatants and APC soldiers?

18 A. Yes, your Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) And how did the
20 combatants of Gety and Kagaba go to Bogoro to fight without Kasaki's
21 fetishes?

22 A. They all had the fetishes, your Honour. Kasaki's local branch services
23 there had already planned towards that.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
25 Now let us move to Uganda. You mentioned a period during which you went

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Questioned by the Court (Continued)

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1 to Uganda. According to you, what were the intentions of President
2 Museveni when he chose you, Germain Katanga, as interlocutor and when he
3 established permanent contact with the FRPI? Why is it that you were the
4 one who was chosen to meet with Museveni?

5 A. Mr. President, your Honours, when the CCGA began, or rather, let
6 us go back to the time of the fall of Bunia, as an attempt was made to set up
7 a hierarchy and an organisational chart. The officers, the Ugandan and
8 Congolese officers, and even those from Ituri were already beginning to
9 talk about my name. And from that time on, people were already writing
10 reports. So I cannot say too much, Mr. President, your Honours. The
11 Ugandans already had a bad recollection of me or bad memories of me
12 because of their failure or their defeat in Aveba. Because whenever they
13 came to Aveba they were defeated.

14 So, you see, it is said that even within communities there are
15 traitors and people had told the Ugandans that: He is the one who is
16 making it impossible for you to set up in Aveba. His name is
17 Germain Katanga, son of Nduru. So the Ugandans already knew that if they
18 got to Aveba, they will find someone in the resistance whose name was
19 Germain Katanga and who had his men. So Uganda knew me even before my
20 government got to know me.

21 PRESIDING JUDGE COTTE: (Interpretation) Why did you take the
22 risk of contacting the Ugandan President in that manner, whereas, as you
23 said, it was likely to put your own life in peril?

24 A. Well, I think that I was becoming slightly civilised. I was
25 becoming somewhat civilised, your Honour. I knew that by taking

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1 advantage of that flexibility and that co-operation with Uganda, it was
2 going to wipe out or take away that image of enmity with them and
3 intransigence and intolerance between us and them. Because, you know,
4 Ugandans thought of us as people with whom they could not have any
5 dealings. And so rather than relate to Ngiti it was better to kill them.
6 So my intention was to try to clean up our image. And regardless of the
7 risks, I decided to go.

8 PRESIDING JUDGE COTTE: (Interpretation) Well, we need to
9 observe some rules of discipline, yourself and myself, namely, the
10 five-second rule in order to facilitate interpretation and court
11 reporting.

12 Now let me backtrack to the local combatants of February 24th of 2003.
13 You told us there were local combatants in Bogoro on the 24th of February,
14 2003. You told us that they all had their fetishes. How is it then that
15 the local combatants who had these fetishes or *gris-gris*, how is it that
16 they were able to disregard Kasaki's prohibition calling for a prior
17 traditional ritual? How was that possible?

18 A. Your Honour, this prohibition did not apply to the entire
19 collectivity. It applied only to the Aveba area where the majority of
20 combatants were of -- or rather, from which the majority of the dead
21 combatants had come, and that is why Aveba was the main target of that
22 prohibition. It did not apply to the entire collectivity.

23 PRESIDING JUDGE COTTE: (Interpretation) I understand. It
24 therefore was limited to the region from which those who had gone to
25 fight on the 10th of February, 2003, had hailed and who had then left

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 their dead bodies on the ground. Is that what you are telling us?

2 A. Yes, Mr. President, your Honours.

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

4 last question. There is a document which we talked about at length last

5 week, EVD-OTP-00078 (* as interpreted). It's a letter, subject:

6 Prohibition to brandish weapons. I believe that we all remember this

7 document. We noted that three different functions were outlined as the

8 recipients in Aveba, namely, the chargé de front, that is, the person in

9 charge of the front; the commander in Aveba; and the president of the

10 movement in Aveba. The person in charge of the front, the commander, and

11 then the president of the movement in Aveba.

12 You are a man from Aveba. Can you please tell us about the

13 respective duties of those three personalities. How were their roles set

14 up and how were they identified and can you tell us who held those

15 positions at the time as far as you can recall?

16 A. Let me start by the chargé du front, the person in charge of the

17 battle front, that was Kasaki Bandru. The commander -- well,

18 Mr. President, maybe you could read out those positions one after the

19 other and I will deal with them as you read them out. The chargé de

20 front, the commander, and then the president of the movement in Aveba.

21 MR. HOOPER: (Previous translation continues) ... pass him a

22 copy. We've got -- we all know what it is but -- it's unmarked. Thank

23 you.

24 PRESIDING JUDGE COTTE: (Interpretation) Yes, please, hand him

25 the document. Court Officer, please.

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1 Now you have the document before you. I thank you, Mr. Hooper.

2 Yes, Mr. Katanga should have had that document before him. It
3 would have facilitated things.

4 A. Now, from all the addressees mentioned, I have singled out the
5 commander in Aveba Mukubwa, the chargé de front, that is 00278 -- well,
6 this might not be the right letter -- well, are you referring to the
7 letter of 9 February 2003? Well, because this one is -- doesn't appear
8 to be the right letter.

9 PRESIDING JUDGE COTTE: (Interpretation) This is not the right
10 letter. In fact, last Friday we talked about three letters and they were
11 assigned EVD numbers. Which of these letters dealt with those three
12 positions?

13 MR. HOOPER: (Previous translation continues) ... those names on
14 it -- 00278, 16 on the OTP list.

15 PRESIDING JUDGE COTTE: (Interpretation) Yes, it is the letter I
16 have before me, but I'm looking for those three positions that I just
17 mentioned.

18 MR. MACDONALD: (Interpretation) The letter-head, the
19 letter-head would bear that information.

20 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. I'm
21 sorry.

22 Yes, that is where we are, Mr. Katanga. Can we read the
23 letter-head. At the very top to the left we have the *cabinet chargé de*
24 *front*, and then to the right on the list of addressees the commander of
25 Aveba, and the main addressee being the president of the movement in

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1 Aveba. This is the document I was looking for and I'm sorry for the
2 confusion. This is the good -- the right document and you have told us
3 that the *chargé de front* was Kasaki Bandru. Now, for the *commandant*
4 *d'Aveba*, the Aveba commander, to the right, can you tell us how all of
5 this was configured. Tell us about the functions, the duties, and the
6 identities of the persons holding these three positions.

7 A. Mr. President, let me say, if I recall properly, that the
8 commander in Aveba could have been myself or Iringa since we were in the
9 month of February.

10 Now, this comes with some kind of confusion because the word
11 "president of the movement" is also used. Now, when reference is made to
12 the president of the movement, I wonder whether it was myself or another
13 president; and if so, which president would it have been and which
14 movement would they have been referring to? This is a matter that is not
15 clear to me. So I wonder whether it was the president -- I'm sorry,
16 going too fast. I wonder whether it was the president of the FRPI or the
17 president of another group with another acronym mindful of the names that
18 were given to various movements in our area. So I'm not sure. I do not
19 know. If that position were mentioned after the 3rd of March, then I
20 could identify myself as being one of the addressees.

21 PRESIDING JUDGE COTTE: (Interpretation) Are you telling us that
22 you cannot give us any further details as it is or as it were?

23 A. In any event, I have trouble with reference being made to commander in Aveba
24 Mukubwa and president of the movement in the same letter.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Katanga.

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1 As we agreed --

2 MR. MACDONALD: (Interpretation) I believe that there was a
3 confusion with the EVD number, 00278 --

4 PRESIDING JUDGE COTTE: (Interpretation) And I believe that is
5 the correct number and it should appear so on the transcript. We agreed
6 that after the Chamber would have put it questions, the Prosecutor would
7 have a brief moment to deal with any issues that may have emerged from
8 Mr. Katanga's answers and which may require any further clarification for
9 the benefit of the Prosecutor.

10 Mr. Prosecutor, you have the floor.

11 MR. MACDONALD: (Interpretation) Thank you, Mr. President. We
12 have no further questions following the questions from the Chamber.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

14 Mr. O'Shea, yesterday --

15 MR. MACDONALD: (Interpretation) I'm sorry to interrupt you once
16 more and before you give the last word to Mr. Hooper's team --

17 PRESIDING JUDGE COTTE: (Interpretation) It will not be the last
18 word, I believe.

19 MR. MACDONALD: (Interpretation) Maybe you need to consult
20 Mr. Ngudjolo's team whether they have questions.

21 PRESIDING JUDGE COTTE: (Interpretation) I have not forgotten
22 you. Yes, yesterday Mr. O'Shea or should I say Mr. Katanga's Defence
23 team expressed a wish, at least to the extent we understood it, to use a
24 document which we touched on briefly but did not tackle substantively
25 yesterday. Now we would like to Mr. O'Shea to now tell us why he intends

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1 to use that document and Mr. Prosecutor would also make any oral
2 representations as to the use of this document as need be. You did so by
3 e-mail on the 18th of October at 9.47, but at that time you did not know
4 what Mr. O'Shea's reasons were for wanting to use that document. So
5 following your respective submissions, the Chamber will determine what to
6 do, as to whether the document can be used. And if it were to be the
7 case, Mr. O'Shea would then use it. But again, we do not know what
8 Mr. O'Shea's remarks are and it is only after hearing the parties that we
9 will come to a determination. And I just want to reassure Mr. Kilenda
10 and Professor Fofé accordingly.

11 MR. O'SHEA: (* Previous translation continues) ...
12 Mr. President, your Honours, this is an application essentially to add to
13 the list of evidence which the Defence intends to use a letter dated the
14 6th of March, 2011, from Oudo Mbafele to (interpretation) Excellency, the
15 PDG of CODECO. (In English) And it is a document which in our submission
16 is significant to the fairness of the proceedings in the light of the
17 cross-examination of the Prosecution and indeed I can add in the light of
18 the importance of which your Honours have placed apparently on the letter
19 of the 9th of February, 2003, in your -- in you, Mr. President's, your
20 last question.

21 The legal difficulty that we face at this stage is
22 Regulation 35(2) which allows for extensions of time in appropriate
23 circumstances to dead-lines that have been set, and the dead-line in this
24 instance is the dead-line of the 7th of March, 2011, which required the
25 Defence to disclose the list of the documents which it intended to use

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1 and, of course, the dead-line of three days before the
2 examination-in-chief to disclose the list of documents which the Defence
3 intends to use during its examination-in-chief.

4 Now, I emphasise that this document is not being used or we do
5 not intended to use for the examination-in-chief. It is no -- we have no
6 intention of re-opening the examination-in-chief. Our intention to use
7 this document is formed for the purpose of using it in the re-examination
8 of issues which were raised and dealt with extensively during the
9 cross-examination by the Prosecution of the accused.

10 So that is the specific context within which this application is
11 being made and it is an important context.

12 Prior to the 7th of March, 2011, the Defence for Mr. Katanga had
13 no intention to use this letter. And three days prior to the
14 examination-in-chief, the Defence for Mr. Katanga had no intention to use
15 this letter. And I remind your Honours of decision 1665, paragraph 106,
16 which specifies that:

17 "Parties are forbidden to include in the list of documents which
18 they disclose documents which they do not intend to use."

19 With regard to seeking leave to add this document to the list, in
20 my submission, we have to root ourselves firmly within Article 69(4) of
21 the Statute and the basis of admissibility of evidence, which of course,
22 as we all know, refers to the principle of having regard to the fairness
23 of the proceedings. And it is in that context that the jurisprudence of
24 your Honours must be understood, because of course disallowing the
25 Defence to use this document in re-examination would, in effect, be

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1 rendering it inadmissible in these proceedings even if on a procedural
2 basis.

3 Regulation 35(2), in my submission, must be read as with any
4 international provision, teleologically. It is a provision which is
5 intended to apply to a wide range of circumstances. The classic
6 circumstance is where a dead-line is set for the filing of an application
7 and the words "file the application" are used therein. The circumstances
8 of adding a document to a list of documents to use during the examination
9 of a witness is a peculiar circumstance, which I think that your Honours
10 have recognised in the way that your Honours have dealt with this type of
11 situation before. And what 35(2) says is that:

12 "The Defence must demonstrate," in this case the Defence, "must
13 demonstrate that he or she was unable to file an application within the
14 time-limit for reasons outside of his or her control."

15 Your Honour, your previous decision in relation to the Defence
16 was dated the 27th of September, 2011, and is found at transcript 314 and
17 was in relation to a request to add documents for the purpose of
18 examination-in-chief. And in that instance, your Honours held that 35(2)
19 was not complied with because the documents were in the possession of the
20 Defence well before the 7th of March, 2011. What distinguishes this
21 particular instance from the situation of putting documents on a list for
22 purposes of examination-in-chief is that in this instance we are dealing
23 with a set of circumstances which are effectively outside the control of
24 the Defence, that is to say, the cross-examination of the accused by the
25 Prosecution. Before the 7th of March, 2011, the Defence had no idea how

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1 the cross-examination of Mr. Katanga would be conducted. Those were
2 circumstances outside our control, and I may add that before that date
3 and on that date neither did we have a settled intention to call
4 Mr. Katanga at all.

5 So given the fact that it should not be encouraged in proceedings
6 to add documents to a list when there is absolutely no intention to use
7 them, in our submission, we were unable to add this document to our list.
8 In other words, ability to add documents to the list should not be purely
9 a physical and mental ability in terms of the possession of the document,
10 it should also look at the actual circumstances in terms of what were the
11 intentions of the parties and could those intentions have been different?
12 Since we had absolutely no intention to use the document, we were, in
13 fact, unable in that context.

14 If your Honours is against me on that specific point, in other
15 words, the application of 35(2), your Honours have allowed for the
16 possibility of adding a document to the list of evidence - and here I
17 come back to the decision relating to the Defence, a decision of the 27th
18 of September, 2011 -

19 "If the document is deemed to be significantly more convincing
20 than other documents already disclosed or," and I use the words of
21 yourself, Mr. President, in that decision, "highlights a fact that is
22 significant in the case ..."

23 Now, with regard to those two requirements, in my submission,
24 there are a number of issues which make this letter of a degree of
25 significance and --

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1 MR. MACDONALD: I'll intervene here to -- just to -- before we go
2 on --

3 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor,
4 Mr. Prosecutor, what's going on?

5 MR. MACDONALD: (Previous translation continues) I am sorry to interrupt.
6 Before we look at the content of
7 this document, I just want to remind everybody that the Chamber has the
8 document, can read the document and appreciate its content without having
9 to discuss it before the singular position that the accused is here in
10 front of us. And if the Chamber is to allow the use of this document,
11 then theoretically, the accused has not seen it prior to coming and
12 testifying here unless he is seen it in the dossier. And so I -- just in that sense.

13 MR. O'SHEA: Yes. Well, everything is a question of balance,
14 your Honours, and of course we're in a peculiar situation here. We can't
15 ask the accused to leave the room. It's his trial. Of course I will try
16 not to --

17 PRESIDING JUDGE COTTE: (Interpretation) Now, Mr. O'Shea, I do
18 hear you. I do understand you very clearly. So we have a document that
19 you would like -- mindful of the Prosecutor's cross-examination and of
20 the use he made of the letter of the 9th of February, 2003, with our
21 authorisation, it is your wish to use it and you mentioned a number of
22 doors that may be opened to enable this use, Regulation 35 and the
23 interpretation thereof by the Chamber, and I think that this clarifies us
24 on your intent.

25 Now we want to listen to the Prosecutor, but we have understood

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1 that the banner in front -- before your argument is: Fairness at trial.
2 We do understand that. But the Prosecutor does not have much time except
3 he can speak in two minutes.

4 MR. MACDONALD: (Interpretation) I would like to take the floor
5 after the break, but let me help --

6 PRESIDING JUDGE COTTE: (Interpretation) I think that we do not
7 need to blow things out of proportion regarding this request of
8 Mr. O'Shea, and all of this within the context of the testimony of an
9 accused persons who has agreed to testify as a witness in his own case.
10 So all of this should unfold within the context of a fair trial.

11 MR. MACDONALD: (Interpretation) Mr. President, I agree with
12 you, but I'm sorry I did not observe the five-second rule. What I would
13 like to say, however, is that when we look at the questions from
14 Mr. Hooper about documents and authority of Mr. Katanga during
15 examination-in-chief, these documents were disclosed in May 2009 by way
16 of the Prosecutor's list of documents. But now, mindful of the
17 documents, there is nothing new but my colleague wishes to bring up
18 something that was introduced indirectly by examination-in-chief.

19 So this is sheerly an application to re-open examination-in-chief
20 because they had forgotten to talk about this document. They knew that
21 the document existed and what they are now doing is trying to stop the
22 Prosecutor from cross-examining the witness again on this point. But if
23 we want to re-open examination-in-chief, this is possible. These are
24 things that may happen, and in which case my colleague, my learned
25 colleague, will put the questions in examination-in-chief; Mr. Kilenda

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1 will put his questions; we would do the cross-examination; Mr. Gilissen
2 will examine as well, the Chamber; and then the Rules would have been upheld in
3 relation to that specific document. We are not going to reopen questioning at large
4 and cross-examination at large. This I believe is the
5 the procedure would offer a reasonable solution in relation to that specific document,
6 upholds fairness at trial and which stops us from going way out of our
7 bounds.

8 PRESIDING JUDGE COTTE: (Interpretation) I think that we must
9 stop here – we have run out of tape. The Chamber will rule when we resume. Yes
10 Mr O'Shea very quickly please.

11 MR. O'SHEA: (Previous translation continues) ... to consider
12 what my learned friend has just said and, if necessary, I say "if
13 necessary," come back to this issue briefly after the break. It may not
14 be necessary if your Honours are minded to grant the application, but if
15 your Honours are still unsure during the course of the break or minded to
16 decide against me, I'd like the opportunity to respond to my learned friend.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea, we have to
18 decide on your request to question Mr. Katanga on that document. We will
19 determine the terms under which such may be possible. The Prosecutor has
20 made his suggestion. Maybe it will be entertained. Maybe another
21 suggestion will hold sway. But I think that the simpler thing to do is
22 to wait, take the break, and upon our return we will determine how to
23 proceed. But you always have the opportunity of taking the floor again should
24 anything extraordinary cross your mind as is likely to happen.

25 So I now ask the Court Usher to please take Mr. Katanga back to

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1 his seat.

2 (The witness stands down)

3 (Trial Chamber confers)

4 COURT USHER: All rise.

5 PRESIDING JUDGE COTTE: (Interpretation) The sitting is
6 suspended. I had forgotten to do so.

7 Recess taken at 11.03 a.m.

8 On resuming at 11.34 a.m.

9 (Open session)

10 (The witness takes the stand)

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

12 MR. LUVENGIKA: (Interpretation) Your Honour.

13 PRESIDING JUDGE COTTE: (Interpretation) Go ahead.

14 MR. LUVENGIKA: (Interpretation) I apologise for interrupting,
15 but I wanted to correct something in the transcript. The word Hima is
16 spelled H-i-m-a.

17 PRESIDING JUDGE COTTE: (Interpretation) I beg your pardon, I
18 was not on the right channel. I couldn't hear what you were saying.

19 MR. LUVENGIKA: (Interpretation) I have a correction as regards
20 the spelling of the word "Hima" which is spelled H-i-m-a in Hima-Tutsi.

21 PRESIDING JUDGE COTTE: (Interpretation) Indeed. This morning
22 there was an exchange where Germain Katanga and myself were very careful
23 to distinguish between the word "Hima" and "Hema." So it is important
24 that the transcript show up those differences, H-e-m-a and H-i-m-a, as we
25 explained it this morning. At the end of Mr. Katanga's testimony in

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1 keeping with the submission filed by Mr. Hooper, we'll discuss these matters as
2 regards the discrepancies between the English and the French. We're not going to
3 deal with it now, but we will do so later, just before starting with Mr. Ngudjolo's testimony.

4 First of all, I'd like to thank Mr. O'Shea for the explanation he provided at the end
5 of the sitting and also thank the Prosecutor for his comments. We have a document
6 dated the 6th of March, 2003, that the Defence team of Mr. Germain Katanga
7 would like to use. This document, as is, is of interest. It is dated
8 March 6th, 2003, so from the point of view of the time it is within the period
9 of time we are interested. It mentions Bogoro. It also mentions the
10 name of individuals that we have been speaking about for quite some time.
11 It could potentially be useful in order to enable us to see the truth and
12 the Chamber feels that this document highlights a hitherto unknown element -- one
13 which is a significant aspect for this case. The probative value thereof shall be
14 evaluated at a later stage. The Chamber would also like to recall that we have an
15 accused here who has accepted to testify as a witness and therefore we
16 should not miss this opportunity to hear his own explanations if he can
17 give any explanations regarding this document.

18 Now, we need to define the procedure. Mr. O'Shea has emphasised
19 the fact that it must be a fair procedure and the Prosecutor emphasised
20 the adversarial nature of the procedure. The Chamber shall therefore
21 authorise the Defence team of Mr. Germain Katanga to ask additional
22 questions limited to this document alone. Once the Katanga Defence team
23 has asked the questions it wants to ask related to this document, the
24 Prosecution will have an opportunity to cross-examine Mr. Germain Katanga
25 on this document. Then we will return to our normal procedure, which

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1 means that we will give the floor to Mr. Kilenda for any final comments
2 on the entire examination but also, if he so desires, the questions
3 between Mr. Hooper, Mr. Katanga, and the discussions between the
4 Prosecutor and Mr. Katanga, and then Mr. Hooper and Mr. O'Shea or both
5 will put their closing questions or comments, including the document
6 that was dealt with just before, that is, including examination and
7 cross-examination. We believe that this document should not involve the
8 Legal Representatives of Victims, that's why I didn't mention their
9 participation in this process. Has everyone understood? Apparently yes. Therefore,
10 either Mr. Hooper or Mr. O'Shea, I'm not sure which one of you now, may proceed
11 to question Mr. Germain Katanga on this document dated March 6th, 2003,
12 and then the Prosecutor will cross-examine on this very same document.
13 Mr. MacDonald.

14 MR. MACDONALD: (Interpretation) I've understood. My purpose is
15 not to question that decision, but simply recall the use of documents
16 which do not necessarily have a prima facie relationship with
17 Mr. Katanga, as was the case last Friday with our cross examination on the document
18 dated February 9th. I respectfully submit that my learned
19 colleague must put questions to establish whether the document is recognised,
20 without showing it. Of course it's up to -- it's up to the Chamber to determine
21 whether or not Mr. Katanga can comment on the document and whether or not
22 the sufficient foundations have been established or not. And then we can perhaps
23 show him the document afterwards. So it's more -- my comment relates more to the
24 usual procedure relating Decision 1665 and other regulations.

25 PRESIDING JUDGE COTTE: (Interpretation) We understand. The

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1 Defence team is authorised to use this document and shall proceed as we
2 do on a regular basis. In other words, begin by introducing the
3 document. Mr. Katanga is aware of the date because we have already
4 mentioned that, but, Mr. Hooper, you will first of all ensure that
5 Mr. Katanga can, indeed, comment this document. We agree, therefore.
6 And then the document will only be shown to the witness after those
7 preliminary comments, to use the very term that you yourself used.

8 Questioned by Mr. Hooper: (Continued)

9 Q. Good morning, Mr. Katanga. The document I have in front me is a
10 document, as you've heard, dated the 6th of March, 2003. It's in
11 handwriting and it's signed by Oudo Mbafele. With those little clues,
12 are you -- have you seen such a document at any time, either before
13 coming to The Hague or since your arrival in The Hague?

14 A. Well, there are many, many documents that I only saw once I
15 arrived here in The Hague.

16 Q. All right. And in fact, does that extend to all the documents in
17 letter form?

18 A. I would say that all of the documents relating to letters -- in
19 fact, sometimes I was actually surprised to see my own signature here.

20 Q. All right. Now I'm going to ask that this document be put in
21 front of you so that I can ask you more particular questions about it. I
22 have a copy for you. And can I give the reference to it, first of all,
23 it's DRC-0029.0038.

24 MR. HOOPER: That's not how the number appears --

25 PRESIDING JUDGE COTTE: (No interpretation)

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1 MR. HOOPER: -- because it's mis-numbered, but I interpret it in
2 that way. I see Mr. MacDonald agrees. So it's that document dated the
3 6th of March. If that can come up on the screens and it's a public
4 document.

5 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, would
6 you be so kind as to give a copy of the document to Mr. Katanga. Last
7 week Mr. Katanga already had an opportunity to comment on a number of
8 documents which were letters dated at the same period, from February 9th
9 through to the month of March. This is an additional document, a new
10 document, and Mr. Hooper is going to be asking questions to the witness
11 and Mr. MacDonald will have an opportunity to cross-examine.

12 COURT OFFICER: (Interpretation) Press "PC 1" to see the
13 document.

14 MR. HOOPER: And I have a hard copy for Mr. Katanga, if that
15 could go to him, please. Thank you. And may I say the hard copy has
16 also got a symbol on the back, stamps on the back, which are on the
17 original document and which can be seen on the eCourt-exhibited document.
18 May I also say that the document is clipped a little bit at the top, both
19 in the hard copy and also in the electronic version that we have.

20 Q. Mr. Katanga, looking at that -- please take your time. I'm
21 sorry, you may not have seen it for a while. Let me pause and let you
22 read through it and then I'll come back and ask you questions.

23 A. Yes.

24 Q. Right. So let me say -- ask you this: Looking at that document,
25 have you ever seen it before? By that I mean had you seen it before

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1 coming to The Hague?

2 A. No. Before I came to The Hague I had never seen this letter.

3 Q. All right. Now, if we turn to the top line, it's not clear at
4 the top. But can you make out -- can you help us -- well, you're
5 probably in no better position than anyone else in the courtroom. I
6 suggest the top line on the left reads: "Forces de Resistance
7 Patriotique en Ituri."

8 A. Yes.

9 Q. That's the FRPI in its full name. And if we look at the date
10 that would appear to read "Olongba." Can you make it out yourself or
11 not?

12 A. Yes, what you've just said is correct. That's also what I can
13 see. It's "Force de Resistance Patriotique en Ituri" and on the other
14 side of the page, on the right: Olongba, March 6th, 2003.

15 Q. Take a little time going through this because it is handwritten.
16 And then we have the -- what would appear to be the address of the source
17 as "Cabinet du Commandant de Bataillon Charge des Operations à
18 Gety/Nord." I'll come back to that in a moment. And then we have
19 "Transmis copie pour information aux" and there's then a list and I'll go
20 through the list. And if you dissent from anything that's said by me
21 from what we can all read, please let me or anyone else can let me know.

22 "Son Excellence Président du RCD/ML de Kisangani à Beni; Monsieur
23 le Directeur de Communication du RCD/ML à Gety-Bolo; Monsieur le
24 Commandant Auditeur des FRPI des Walendu-Bindi à Bolo; Son Excellence le
25 Charge de Guerre des FRPI des Walendu à Bolo; Membres du comité des FRPI

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1 des Walendu à Beni; Membres du comité de Gestion de CODECO à Tchele Tchele
2 (* sic); Monsieur le Commandant Suprême des FRPI des Walendu-Bindi à
3 Olongba."

4 THE INTERPRETER: Mr. Hooper is reading the titles in French that
5 are on the document, the English channel.

6 MR. HOOPER: "À Son Excellence PDG de CODECO à Tchele Tchele ."

7 And then on the other side we have the heading of this letter
8 document:

9 (Interpretation) "Transmission of service reports."

10 (In English) We have the addressee of this letter:

11 "Son Excellence PDG."

12 (In English) I hope my reading that in French wasn't -- didn't
13 create too much of a confusion with our interpreters. Can I give way,
14 please -- can I ask Ms. Menegon to read the text so that that's read in
15 and I'll spare everyone my pronunciation.

16 MS. MENEGON: (Interpretation) Good morning.

17 "Your Excellency PDG. It is a great honour for me to inform you
18 of the following matter referenced above. Indeed, since the death of the late Colonel
19 Kandro, the population of the Walendu-Bindi in general and in my area of action
20 in particular has lived in an atmosphere of trauma on the hand of -- at
21 the hand of Commander Safari Ndekote . In particular there have been acts of
22 looting, torture, as well as innocent people being killed. This being
23 said, his removal from the locality Avenyuma by my troops after the
24 series of attacks in Jerusalem camp for reasons and facts listed here.
25 Positioning of soldiers in various positions near Bunia, that is, in

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1 Songolo, Djunde, Tatu, Nyamalinga ... this has also made it possible to
2 set up the command unit within our combatant army. Neutralisation of the
3 UPC enemy forces based in the localities of Bogoro, Chay, Makabo,
4 Kombokabho, Mandro ... including the fall of the city of Bunia by the
5 combatant forces under my command.

6 "Please accept, Excellency PDG, the expression of my highest
7 consideration.

8 "Battalion Commander Oudo Mbafele, operational command."

9 Thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam
11 Menegon.

12 Mr. Hooper, please proceed.

13 MR. HOOPER: All right, thank you.

14 Q. Now, I'd like, if I may, to come to the list of names that appear
15 on the top right to whom the copies have been transmitted. And if you
16 can deal with them one by one in response to my questions. First of all,
17 His Excellency President of the RCD/ML Kisangani at Beni, and who would
18 that be?

19 A. That was Mbusa Nyamwisi.

20 Q. "Monsieur le Directeur de Communication de RCD/ML Gety-Bolo," who
21 would that be?

22 A. Kasereka Sivamwenda, Mike-4.

23 Q. "Monsieur le Commandant Auditeur des FRPI des Walendu-Bindi à
24 Bolo"?

25 A. Germain Katanga.

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1 Q. And I'll return to that.

2 "Son Excellence le Charge de Guerre des FRPI des
3 Walendu-Bindi" -- (interpretation) Excellency, the charge de guerre of
4 the FRPI in Bolo.

5 A. Kasaki Bandru.

6 Q. (Interpretation) Member of the Walendu FRPI in Beni?.

7 A. These are all the people from the collectivity who were based in
8 Beni under Sambidhu.

9 Q. (Interpretation) Member of the CODECO management committee in
10 Tchele Tchele?

11 A. That's the management committee for agriculture.

12 Q. (Interpretation) The supreme commander of the FRPI in
13 Walendu-Bindi in Olongba?

14 A. Cobra Matata.

15 Q. (Interpretation) His Excellency the CEO of CODECO in Tchele Tchele?

16 A. Bernard Kakado.

17 Q. (In English) Now, we've had the contents of this letter read
18 out. I don't propose in the circumstances to ask you about them, others
19 might. But let me ask you this, let's go back to the third of the
20 addressees to be copied, which is (interpretation) the commander auditor
21 of the FRPI Walendu-Bindi Bolo (In English) which you've identified as
22 being yourself.

23 Now, can you just explain to us what an *auditeur* was generally
24 and more specifically in terms of your function in early 2003.

25 A. I believe I already said from the very outset that as the FRPI

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by Mr. MacDonald (Continued)

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1 developed, people gave themselves just any name. That is how come I
2 myself, I identified myself as co-ordinator or *coordonateur*. Others
3 called me *auditeur* and others called me commander of Aveba. But in
4 principle, *auditeur* is actually a military magistrate, that is someone
5 who is responsible for military justice. I do not know whether this was
6 misinterpreted or misunderstood by people in my area. So I cannot give
7 you a precise answer regarding what they meant when they referred to me
8 as *auditeur*. I was referred to by this name and I accepted. I could not
9 refuse. Some other people referred to me as commander. Others said
10 lieutenant-major and so on and so forth.

11 Q. All right.

12 MR. HOOPER: I'll come back to other matters in a moment, but can
13 I give way to my learned friend if he has any questions.

14 MR. MACDONALD: (Interpretation) Just to be sure, Mr. Hooper, is
15 this the end of your direct examination on this document?

16 MR. HOOPER: Yes.

17 MR. MACDONALD: (Interpretation) Just a moment, your Honour, to
18 determine whether we will have questions.

19 PRESIDING JUDGE COTTE: (Interpretation) You can even take one
20 minute if you want.

21 (Prosecution counsel confer)

22 Questioned by Mr. MacDonald: (Continued)

23 Q. (Interpretation) Perhaps I will ask you one question,
24 Mr. Katanga. You have described yourself as co-ordinator and you say
25 other people referred to you as *auditeur*, but when one looks at this

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 document one thing is certain. Whether it is that expression *auditeur*
2 that is used or not and to which Mr. Oudo Mbafele has referred, he never
3 mentioned a co-ordinator in Bolo in his letter. Is that correct?

4 A. I am simply trying to understand. I am trying to put it in
5 context so as to make meaning. You can see "Commander *auditeur* of the
6 FRPI Walendu-Bindi in Bolo." I do not know whether he was referring to
7 me, but I have heard it from him himself, from his own mouth, referring
8 to me in that manner.

9 Q. One last question. One thing is for sure, that title of
10 *auditeur*, it clearly shows that it is *auditeur* of the FRPI of
11 Walendu-Bindi in Bolo. Is that correct?

12 A. That is what he has written. That is what he wrote. I gave you
13 an explanation of my own intervention in their own conflict, that is,
14 between camp Jerusalem and the *garrison*. It did not work simply because
15 they did not recognise me. I explained about the conflict between Cobra
16 and the *garrison* before they went to Kagaba.

17 Q. Mr. Katanga, just to be very sure once again because this
18 document is part of the documents that were seized by the court of first
19 instance in Bunia with the assistance of MONUC and this means that the
20 chain of custody is the same as with the other documents that have been
21 produced before this Chamber. You recognise that camp Jerusalem was the
22 camp of Oudo Mbafele; is that correct?

23 A. He himself has indicated so.

24 Q. I'm sorry, I missed your answer.

25 A. I said that even in the letter he has stated that his camp was

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
Questioned by Mr. MacDonald (Continued)

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1 Jerusalem camp.

2 Q. But, Mr. Katanga, irrespective of this letter, you were aware
3 that there was indeed a camp known as Jerusalem camp?

4 A. During your cross-examination I told you that. It was Cobra who
5 went and joined that camp.

6 Q. To conclude, you would agree with me that on the 6th of March, at
7 least, Mr. Oudo Mbafele acknowledged himself as being the operational
8 commander of the FRPI, wouldn't you?

9 A. That is what he wrote. He did not write it to me. He did not
10 tell me that he was commander of operations. I've read it with you here.

11 Q. Thank you. Those were the questions that the Prosecution had
12 about that document.

13 PRESIDING JUDGE COTTE: (Interpretation) Just a clarification,
14 Mr. Prosecutor. That -- those documents seized at the Bunia Court --

15 MR. MACDONALD: (Interpretation) By the Bunia Court.

16 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed, by the Bunia Court with
17 the assistance of MONUC. Can you tell us in what framework and when was it done?

18 MR. MACDONALD: (Interpretation) It was in October 2004, and
19 this was part of a case dealing with something before the tribunal de grande instance
20 I do not have -- I do not remember all the details, but it was MONUC who carried
21 out the operation because of security reasons but at the request at tribunal de grande
22 instance and you have copies of those documents also seized in Medhu.

23 PRESIDING JUDGE COTTE: (Interpretation) You no longer remember
24 the nature of the case before that court of tribunal de grande instance in Bunia?

25 Just to put the seizure in context.

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1 MR. MACDONALD: (Interpretation) Not at this particular time,
2 your Honour. I can try to cross-check, and if I identify the information
3 I will disclose it to you and to all the parties present.

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

5 Mr. Kilenda or Professor Fofé, you can now address the Court on
6 your final observations.

7 MR. FOFÉ: (Interpretation) Good afternoon, your Honours. And
8 thank you for giving me this opportunity. Mr. President, after the very
9 edifying questions of the Bench, the Defence of Mr. Mathieu Ngudjolo has
10 no further questions to put to Mr. Germain Katanga. On behalf of our
11 team I would like to simply thank him for his testimony. Thank you, your
12 Honours.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
14 Professor Fofé.

15 Mr. Hooper, the document of the 6th of March, 2003, that we have
16 just dealt with was read out by yourself and by Ms. Menegon and it is in
17 the transcript. But do you think that it would, nevertheless, be
18 preferable to assign an EVD number to the document so as to be able to
19 identify it easily?

20 MR. HOOPER: Your Honour, yes. The reading out was merely --
21 with the manuscript document felt that people have an opportunity to
22 dissent from any wrong interpretation, as it were, but it seems that
23 there appears to be a body of consensus, as it was read, as to what it
24 truly said. So can I please ask for an EVD number on this public
25 document, please.

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1 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

2 Court Officer.

3 COURT OFFICER: (Interpretation) Thank you, Mr. President.

4 Document DRC-OTP-0029-0038 will be assigned the reference number
5 EVD-D02-00231 and shall be filed as a public document.

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

8 Mr. Hooper, it is now your turn.

9 Further Questioned by Mr. Hooper:

10 Q. And you said in response to Mr. MacDonald that there were
11 difficulties in them recognising you. But can I ask you this: Was Oudo
12 Mbafele *commandant opérationnel* -- it gives a -- the place is Olongba as
13 where it is dated, but he describes the office as (interpretation)
14 Cabinet of the operations commander responsible for operations in Gety
15 North.

16 (In English) Do you accept or not that that was his position?

17 A. I also am a bit confused about that title because I knew him as a
18 commander but not commander of operations. That is the difference. He
19 was a commander. Maybe this letter came into existence before we drew up
20 the organisation chart and maybe that is why I am a little lost when it
21 comes to recognising his title. I know that later when we drew up the
22 organisation chart he was battalion commander and here we see operational
23 commander of the battalion. We have all read it here. So it would be
24 difficult for me to say he bore that title. He was later the commander,
25 the full commander of battalion, and here it is indicated operational

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1 commander of the battalion.

2 Q. Now I have some general questions or other questions arising from
3 the questioning over the last several days since I last spoke to you
4 which will take me till probably mid -- till 1.00. I can indicate that
5 it will take me, I think, about that time.

6 Mr. Luvengika was very good enough to indicate a moment ago the
7 spelling of Hima and Hema. So that may pose a problem when it comes to
8 trying to allocate those spellings to the actual sounds or words that
9 have been employed on this issue in the case. But can I just come
10 briefly to that. Let's start with Hema, that's H-e-m-a. Who are the
11 Hema, H-e-m-a?

12 A. The Hema are from the Hema ethnic group in Ituri, one of the 18
13 ethnic groups in Ituri. This means that in Ituri we have 18 ethnic
14 groups, including the Hema.

15 Q. And when you use the word "Hema" in normal use, does that include
16 the Gegere?

17 A. For all those who do not know the difference between Hema North
18 and Hema South, they would simply refer to Hema. But as the situation
19 evolved, I believe that those words, Gegere and Hema, for those who had
20 not known before, it was as from the start of the conflict that people
21 started to make the difference between Hema North who were the Gegere and
22 then Hema South who were the Hema. I did not know that there were two
23 categories of Hema. I was only aware of one category. So Hema North
24 refers to the Gegere and Hema South is simply Hema South.

25 Q. We've heard that the Gegere and the Hema South spoke different

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1 languages. Is that correct or not?

2 A. The North Hema do not have a language of their own. They speak
3 Kilendu.

4 Q. Now, that's the Hema. Now let's go on to the Hima which,
5 courtesy of Mr. Luvengika, we're going to spell H-i-m-a. Now, what's
6 your understanding of the Hima?

7 A. The word "Hima," well, I heard it within the context of the
8 Hima-Tutsi empire, but if I split that word -- that compound word and
9 simply look at the term "Hima," it really doesn't mean anything to me.
10 One can say that it is simply a case of bad or wrong pronunciation or
11 maybe it is another language other than the one I know that is referred
12 to as Hema. But it may be possible to cross-check in the documents
13 because the word "Hima" appears all the time in Hima-Tutsi. So I really
14 cannot help you here to give you the exact meaning of the term "Hima." I
15 only came across it within the context that I've talked about, that is,
16 the conquest of the Rwandan-speaking Tutsis and the Hema who were going
17 to set up an empire known as the Hima-Tutsi empire.

18 Q. Now, we're all aware, of course, that the Tutsis are an ethnic
19 group within Rwanda. Do you know are the Tutsis with that name Tutsi,
20 are they an ethnic group in Congo?

21 A. Yes, there are Tutsis in Congo who are known as the Banyamulenge.
22 Ever since 1994 the Banyamulenges are there. They have occupied some
23 territory in Congo.

24 Q. And the Banyamulenge, which territory do they occupy in Congo?

25 A. Up till today they are occupying a part of Petit Kivu and another

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1 part of South Kivu. So they are close to their border, that is, the
2 border with Rwanda, close to that chain of mountains. They have occupied
3 a large piece of territory there. I cannot give you details because I do
4 not know. I was never there.

5 Q. Right. Now, you were asked by the Judges essentially this
6 question and this was whether the APC had introduced an ethnic dimension
7 into the conflict. Do you know whether or not the RCD-K/ML ever sought
8 to do that?

9 A. When I talked about the politics, it referred to the RCD-K/ML.
10 And when I mentioned the APC, it refers to the army. So this was a
11 political strategy to intoxicate the Lendu, the Hema, or the Lendus and
12 the Ngitis so that they could become their allies. So this was an
13 intoxication that was practiced frequently. And they said: Look, be
14 careful. One day the Hemas will attack you, they will grab your land,
15 they will dominate you, and they will set up their empire. So that was
16 the policy that at all times appeared to be their slogan.

17 MR. HOOPER: Now, can we see a photograph that was shown, that's
18 EVD-OTP-0094. Again, it's a public document.

19 COURT OFFICER: (Interpretation) Please press "PC 1" to view the
20 photograph.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We have the
22 photograph on screen.

23 MR. HOOPER:

24 Q. Now, we learned that this photograph was taken on the 18th of
25 August, 2003, in Nyankunde, and you were shown it a few days ago and

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1 asked to comment upon it. But my first question is this, very simply:

2 Do you know either one of these children?

3 A. I do not recognise any one of those children, no.

4 Q. Now, you've been asked to comment on the ages of these children
5 already. During your time in Walendu-Bindi, did you ever see children of
6 this age carrying this kind of weapon?

7 A. In fact, it is the parents of those children who would even get
8 angry first. In any case, that was not done, not at that age. We did
9 not see that.

10 Q. Well, let's just take the little chap on the left there. He's
11 got a pair of binoculars and not one but two AK-47s dangling from his
12 shoulder. Do you have any comment about that?

13 A. Well, when I see a photograph like that, either he carried those
14 weapons just for the photograph -- well -- but to say that this child can
15 carry two weapons including binoculars on his chest for two, three hours,
16 no. That is difficult. This child, as I see, cannot weigh more than 30
17 kilogrammes, and a single AK already weighs more than 5 kilogrammes. And
18 then you have two there plus the binoculars. So that would be difficult
19 for this child to carry all this for two or three hours. So maybe this
20 was simply a pose for the photograph. It is really difficult. This
21 weighs a lot.

22 Q. Now, you were asked about children in military camps generally.
23 Even today with the FARDC in the Congo, the national army, where do the
24 children of soldiers live?

25 A. The children of soldiers also live in the camps, even today.

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 They have their parents there. If you go to Kokolo (* phon) camp, for
2 example, in Kinshasa, it is an entire population who are living
3 there. That is, the families of the soldiers occupy three-quarters of
4 the camp. That is, in Kokolo camp in Kinshasa town, it is the families
5 who occupy most of the camp. As for the soldiers, I would say it is only
6 about one-quarter who occupy that camp.

7 Q. Now, I want to come to another document that we're very familiar
8 with that you were asked questions about and that is EVD-D03-0038. It is
9 a public document.

10 Now, as that document is brought up let me ask you this question
11 so that we're clear: In what year did UPC/Hema attacks first take place
12 against Walendu-Bindi?

13 A. The first time that I heard that the UPC had attacked
14 Walendu-Bindi, it was in Songolo on the 31st of August, 2002.

15 COURT OFFICER: Could you please confirm the EVD number again.

16 MR. HOOPER: EVD-D03-38 -- oh, sorry, 98. Yes, it must be 98.

17 I'm sorry.

18 COURT OFFICER: (Interpretation) Press "PC 1" to view the
19 document.

20 MR. HOOPER:

21 Q. Now, as I understand it, this is a document you were aware of but
22 you yourself didn't see it or sign it. Is that a correct summary of your
23 position?

24 MR. MACDONALD: (Interpretation) Mr. President, I have held my
25 peace for the previous questions, but I think that in examination one

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1 should not be leading. If you want to summarise Mr. Katanga's thoughts,
2 then you must refer to part of the transcripts where he deals with one
3 thing and how it is dealt with. And so in such an examination, such a
4 question would be timely. But I think that my learned colleague is
5 suggesting, humbly I put it, suggesting an answer to the witness which is
6 not exactly correct. And I think that it is for cross-examination to
7 seek clarification -- or rather, re-examination to seek clarification in
8 these matters were the case to arise. Now, if there were any additional
9 questions to arise from what the Prosecutor has put to the witness,
10 please do so without leading.

11 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, please take
12 your time. Use the transcripts, provide the transcript references as
13 need be and this, like was the case yesterday, will avoid any objections
14 and interruptions. So please take your time, refer to the transcript,
15 clarify these matters, so that we can know the source of what you are
16 saying.

17 MR. HOOPER: Yeah, I don't know if there's any part of what I
18 said that's disagreed with by the Prosecution, I suspect not. But let me
19 go to the transcript which is at page 64 of transcript 314.

20 Q. Where you said in your answer --

21 "Q. When did you first see the document, this document?"

22 Your answer was this:

23 "In terms of having a detailed knowledge of this document, it was
24 here in The Hague and I know there was a document which our notables with
25 whom I went to Beni had produced. They had a document which they were

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1 going to deliver to the president of the RCD-K/ML."

2 The learned Judge asked:

3 "Are we to understand that you saw this document for the first
4 time in The Hague but that you had knowledge of it before it -- of it
5 before? Is that what you're saying?

6 "A. Yes, Mr. President."

7 Now, there was some, it appears, discussion, you may recall, that
8 took up some time between you and the Prosecution as to these -- when
9 these attacks commenced. But if we look to the first page where we have
10 "Chronologie des événements," that's on page 2, it reads, and I translate
11 loosely:

12 Here is the chronology of events that we lived through in the
13 collectivity of Walendu since the coming of the UPC/RP to power. And it
14 starts with a series of attacks on the 9th of August, 14th of August, and
15 goes through including at the end of August the first attack on Songolo,
16 and it carries on. The first attacks, though, are in August 2002.

17 And my question is: Does that approximate to your own
18 recollection of when the first attacks took place? About August 2002?

19 A. From what I remember and what I said, it was from that date that
20 our collectivity was seriously affected by that UPC operation in Songolo because it
21 was a very important operation.

22 Q. Now, in respect of Bogoro you were asked what you knew about it
23 and what investigations, if any, you had made into the deaths at Bogoro.
24 But looking at this document can we just see that it mentions from the
25 start, for example, on page 2, for example, 377 deaths of people from

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1 your community who were killed. It goes on. I'm not going to read them
2 all. At Songolo, 787 it says were killed. We have 72 deaths there at
3 the Lakpa area and so it goes on. Singo, October of 2002, 193 deaths. A
4 total of 1.831 deaths in all.

5 Do you know, did you make any investigations into any of those
6 deaths yourself?

7 A. Mr. David, I do not seek to criticise reports, but you may want
8 to know that reports that are published by the UN are terrible, terrible.
9 One can get sick listening to those reports. When a report states that
10 there were 800 deaths in an area, were those dead bodies buried or were
11 they burned to ashes? Mr. President, your Honours, this is very
12 complicated, and an area of about 2 kilometres when a report says that 100
13 people died, put it at 10 even, 10 even, Mr. President, your Honours,
14 this is death, ongoing death. 10 persons dying in a day in that area --
15 oh, well. Now, what about 800, 1.000, in a given area? So we must
16 wonder whether the investigators were careful, careful enough to verify
17 how many inhabitants there were in that area in the first place. If 800
18 people die in an area, the entire village will be wiped out. You see,
19 the number of people or the population in our areas is not like here in
20 Europe where there is a high density of people. No. 800? 100? No,
21 Madam President, Mr. President, your Honour, even 10, 10 is a high
22 number.

23 I don't challenge the reports, but I question the figures that
24 are being put forth. Are these figures correct? I wonder. I wonder.
25 It is true that people die, but the figures that appear -- the figures --

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1 those figures, those figures ...

2 Q. Now, I'd like to come to another area that you were asked about
3 and refer to and that was you told us that Cobra came to Aveba after
4 Nyankunde because of the death of Nono. And that's transcript 321 at
5 page 61, line 9, where you say he came claiming it was the people of
6 Aveba who had bewitched Nono. What did he do in Aveba, Cobra?

7 A. We learned that Cobra went to the Nyankunde operation or he was
8 part of the Nyankunde operation. But it is the same Cobra who was the
9 first to come back to the collectivity and to the BCA and he was the
10 first person to announce that Nono was dead and that the people of Aveba had
11 cursed Nono and caused his death. So he would have come and "machine
12 gunned" that group of people who were studying their files, looking at various
13 issues, dealing with a number of problems. Some came to complain about others
14 failing to settle their debts or about issues of bride price and so on and so forth.
15 Cobra simply "machine gunned" them, judges and complainants alike,
16 and they all died. He fired on them and they all died.

17 Q. And do you know how many were killed that day by him?

18 A. About 20, about 20. But others died subsequently in the
19 hospital. Now, I don't have an exact figure or number, no.

20 Q. Now, we've heard and discussed at a little length those previous
21 attacks on Bogoro and we've heard of an attack in August of 2002. Now,
22 in August of 2002, do you know who or what troops or combatants were in
23 Bogoro in August 2002 at the time that Faustin tried to break through to escape?

24 A. Part of our collectivity needed to be reassured that the UPC was
25 in Bogoro from that time on, and this came about from information from

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1 Faustin. He is the one who informed the community, but he did not
2 provide exact information, namely, that it was only the UPC. He,
3 however, gave the impression that Ugandans were there. He gave information to the
4 effect that there was a force, a force which was not homogenous. So it included
5 other people who were not of the UPC and that there was another group
6 alongside the UPC. That is the kind of information he provided.

7 Q. And do you know who that other group was?

8 A. What I can say is that it was speculation as to whether it may be
9 Ugandans or Rwandans. But to this date -- to that -- up until that time everybody
10 was convinced it was Uganda, the UPDF, that was going to help
11 the UPC out.

12 Q. Now, I want to ask you about the document that you've been asked
13 about, EVD-D03-00044, the cessation of hostilities document. We don't
14 need to bring it up. It's a document we're aware of which you signed on
15 the -- I've forgotten the date now, 20th or 22nd of March -- 22nd. 22nd.
16 And -- of 2003, of course, which you have told us was signed, transcript
17 323, at the ISTB in Bunia and not, as far as you know, the MONUC
18 building. Now, it may be an opportunity first to introduce a map that
19 we've got which we received, in fact, only after you concluded your
20 evidence-in-chief which may assist us and it's a map kindly presented to
21 us by the Prosecution.

22 MR. HOOPER: It's in eCourt I hope -- I think. But we don't have
23 the number.

24 Q. So while that's being sought, let me ask you -- take up some more
25 minutes asking you some questions about that. When you signed in March

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 2003, at that stage do you know where MONUC headquarters were? Let me
2 put it another way. We know later that MONUC took over a building on
3 that main stretch of road in Bunia where I understand they're still there
4 today. But at the time, do you know where the headquarters were if they
5 had one? Do you know if they occupied the building that they
6 subsequently came to occupy? Do you know what the position was as far as
7 you know?

8 A. I did not know the location of the MONUC headquarters, point one.
9 Point two, at that time and even today, I do not know Bunia very well.
10 All I know is the main road, from the main road to the airport and from
11 the main road to the Ndromo camp. That is all I know about Bunia.

12 Q. And when you spoke of this and the ISTB building you made
13 reference to brickwork or something we could see in a video to confirm
14 what you were saying. Which video were you referring to?

15 A. That must have been a misunderstanding. What I said was that the
16 ISTB buildings was built in baked bricks and that I saw the wall in baked
17 bricks. So it was not a building that reflected the image of the
18 United Nations. It was a school building, namely, the ISTB. And I was
19 able to identify the classrooms.

20 Q. Well, thank you for that clarification.

21 MR. HOOPER: And the document is DRC-OTP-1063-0044.

22 COURT OFFICER: Is this a public document?

23 MR. HOOPER: Yes, certainly.

24 Q. I have a hard copy for you.

25 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please,

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 would you kindly provide a copy of the document to Mr. Katanga whether or
2 not it is displayed on his screen.

3 MR. HOOPER: May I pass one copy for the witness and I've just
4 got one spare copies for your Honours. I'm sorry I haven't got more. If
5 you want to look at a hard copy -- it's sometimes easier to see and I
6 think this is probably an example on point.

7 MR. MACDONALD: (Interpretation) We have copies on a larger
8 format which we can make available.

9 PRESIDING JUDGE COTTE: (Interpretation) Please, if they are
10 available we would gladly receive them. And that would help us to view
11 them alongside what is on the screen. And in so doing, proceed to
12 conclude Mr. Katanga's testimony. At the end of our deliberations, I
13 have an oral decision which will take about five minutes to deliver.

14 MR. HOOPER: Yes, I've got probably about half an hour, I think,
15 perhaps a bit less. So ...

16 Q. And while those maps are being distributed, just coming back to
17 that meeting on the 22nd of March, can I ask you this: When did you
18 first meet the man called Lobho Justin, when did you first meet him,
19 Lobho Justin?

20 A. At the Bunia airport.

21 Q. On what date?

22 A. I saw him on the same day, the 22nd of March, 2003.

23 Q. All right. Thank you. I think this is the first time we've seen
24 a map of Bunia and I don't want to take a lot of time on it but it's
25 obviously significant for us in many ways. So let's just indicate that

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 the road that comes in from the bottom of the right-hand section of our
2 map is the road that continues to a roundabout which divides one road to
3 the left going towards Bogoro, Kasenyi, and also Gety. And if you go
4 straight on, it takes you eventually up to Beni with a turnoff to
5 Kisangani and the rest of Congo. So that's the road to the south. We
6 can see from -- for orientation on the left on Ndoromo camp which is the
7 present, also, locality of where visitors to Bunia get put up or ICC
8 visitors get accommodated and where the ICC has its place out there.
9 Returning to the central part of the -- to the town itself, on the right
10 we can see Kindia, which has been referred to a number of times. And if
11 we carry on all the way up towards the top, we come to another place
12 that's been mentioned and the scene of some killings, as we've heard, and
13 that's at Mudzipela at the top which is a little detached from the town
14 as it's set out here on the plan.

15 Now, can I ask you this with the benefit of this plan: When you
16 went to stay in Bunia from time to time after March of 2003, in the time
17 between then and May 2003 when the UPC come back, where were you staying
18 in terms of this map? Can you indicate it to us? And indeed, perhaps
19 you could mark it if that would be -- I say "place." It may be that you
20 stayed in more than one place. So let me put it this way. Can you show
21 us the locality or mark the locality or localities, if there was more
22 than one, in which you stayed when you visited Bunia in that period.

23 A. What I can say is I stayed in two localities or, in other words,
24 two neighbourhoods, two neighbourhoods. One in Kindia and two in Yambi
25 (* phon). Those are the two neighbourhoods in which I stayed in Bunia.

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 Q. Sorry, five seconds. I've found Kindia. We've found Kindia. Is
2 the other place marked on the map?

3 A. Yambi also often bears the name Quartier Lumumba. Lumumba. I don't know
4 that it is the neighbourhood itself which is known as Lumumba or whether it is the
5 street, but all I know is that it is Lumumba. I may not provide a better explanation
6 than that. I am talking about Lumumba. It is that when you get to Yambi Yaya you are
7 already in Lumumba neighbourhood. That's what I know. I know it to be Yambi Yaya

8 Q. Look at the plan, please, and take yourself up the main road as
9 if you're coming in that direction. We come to a place called Yambi
10 church. Carry on, we've got Fina Station Crossing marked. We've got on
11 the left the governor's office, assuming that's accurate then as now.
12 And then we come to Lumumba as a locality.

13 Now looking at that, can you place yourself or not? We also see
14 on the other side of Lumumba, by the way, the central prison which is
15 perhaps always a landmark. That's on the other side of Lumumba. Can you
16 help us just briefly.

17 A. What I can say is that from Yambi church it was, in fact, exactly
18 at that location where the Yeneka (* phon) hotel was located. That is
19 opposite the church -- maybe not directly opposite the church or it was
20 on the other side of the road, close to the church.

21 Q. And so are we right in concluding that the two places you stayed
22 in were Kindia and near Yambi church? Is that what you're saying? If
23 not, please correct us -- correct me.

24 A. No, there's no confusion, because it was at Yambi Yaya and
25 Kindia. When I arrived I stayed for the first time in Kindia.

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1 Q. So do we forget Lumumba as it's that area shown on the map, do we
2 forget that and just look at Kindia and Yambi as your response?

3 A. Well, to help someone who might go there, I could say that Yambi
4 Yaya is in the Lumumba neighbourhood. If someone arrived in Bunia for
5 the first time, that could be an explanation.

6 Q. Thank you very much.

7 MR. HOOPER: I'll pause there with the map in case anyone's got
8 any questions relating to it because it's not something that you've dealt
9 with or we've been able to deal with before, particularly your Honours,
10 if there's any particular feature while he's got the map that will assist
11 you with, otherwise I'll go on to further matters.

12 PRESIDING JUDGE COTTE: (Interpretation) You may proceed unless
13 Mr. MacDonald --

14 MR. MACDONALD: (Interpretation) Well, I wonder whether the map
15 doesn't already have an EVD number.

16 PRESIDING JUDGE COTTE: (Interpretation) I don't believe it
17 does.

18 Court Officer, would you be so kind as to give us an EVD number
19 and then Mr. Hooper can proceed.

20 COURT OFFICER: (Interpretation) Thank you, your Honour. This
21 Bunia map shall bear the number DRC-OTP-163-0044 and will bear the EVD
22 number EVD-OTP-00232. It is a public document.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

24 Mr. Hooper, please proceed.

25 MR. HOOPER: Thank you.

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 Can I see -- can we see again EVD-OTP-00236 which are the
2 invitation -- the July 2003, I think, invitation documents that we saw
3 earlier and were dealt with -- that's 13 on the OTP list of documents and
4 dealt with at our transcript 323 at page 30 in the English version. It
5 may be of assistance if you have a hard copy of these because it runs to
6 seven pages. Can this be passed to the witness, please. And we see
7 these are -- thank you.

8 Q. And try not to get them mixed up because you'll see, Mr. Katanga,
9 that those copies, in fact, are on both sides, as it were, so you've got
10 page 1 and then if you turn over, on the back of page 1 you'll find page
11 2. In other words, they've not been copied on separate pieces of paper.
12 So this is an invitation and you were asked about this particular page
13 you may remember. I've given the reference to the transcript already.
14 And just looking through, you'll see that there's one, two, three, four,
15 five invitations, each numbered, it would appear, 11, invitation number
16 11. And -- but relating to different persons or places. And I want to
17 ask you about that.

18 And can I, first of all, ask you this. When you were asked about
19 this in cross-examination, you answered effectively with a question
20 yourself, and you said, transcript 323, page 30, line 12, you said:

21 "Well, did they reply? Tell me, did they reply?"

22 And my question is: What did you mean "did they reply"?

23 A. Well, "did they reply," when I said that I meant -- well, when I wrote this
24 invitation I used the words that might come from a chief or his subordinate.
25 So that's why I asked the question "did they reply."

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 Using the term of hierarchy, if you will, I don't know whether anyone
2 actually replied to this invitation. That's why I said "did they reply."
3 Did they come upon this invitation. This is a question which remains in
4 my own mind.

5 Q. All right. Now, the first one you were asked about "Commandant du
6 Bataillon Axe Bunia à Tatu," now who was that?

7 A. Well, here it refers to Oudo Mbafele Moise, the commander.

8 Q. And the next one, is that Tibasima or Tibisina? Who is that or
9 what that is? Can you help us?

10 A. It's Commander Tibasima.

11 Q. And where was he in July 2003?

12 A. I've forgotten. I don't remember. I remember the name but I
13 don't remember exactly where he was.

14 Q. Now go over to the next one. It's Commander Songolo and then --
15 the writing, Bondela or Bodela on that one, I don't -- can you help us
16 with that and who it relates to?

17 A. This was the former residence of the late Kandro, in Songolo Anyozo,
18 Commander Michel.

19 Q. Then we have on the next one Wara Djuna, W-a-r-a and then
20 D-j-u-n-a, as I see it. What's that?

21 A. Well, he was around Medhu Metatu (* phon) or thereabouts -- yes.

22 MR. MACDONALD: (Interpretation) If I may intervene, the name is
23 elsewhere -- it's not Djuna but Djuma with an M like mother.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

25 Mr. MacDonald.

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 Mr. Hooper, please proceed.

2 MR. HOOPER:

3 Q. Do you agree with that?

4 A. Yes, it is written Djuma.

5 Q. All right. And you were telling us he was around Medhu Metatu --
6 I think you'd given your reply to that. And when we have Djunde on the
7 last one, D-j-u-n-d-e.

8 A. I'd like to say that all of these invitations were for these
9 people in the Bunia-tatu axis, if you will. So, in fact, the
10 invitation was for all the battalion commanders, the infantry battalion
11 commanders in Tatu. That's what you can deduce from looking at the way
12 the various commanders are mentioned.

13 Q. Thank you very much. That's all I want to ask you about those
14 documents. And then I'd like to look at another document you were shown
15 which is EVD-OTP-00239, which is the 3rd of March letter from Cobra
16 Matata and which you dealt with at -- and subsequently dealt with at
17 transcript 323, page 52, at line 20 onwards in the English version again.
18 And if we can have a hard copy for you - and also it's a public document,
19 of course - of that on our screen.

20 MR. HOOPER: And that was document 15, of course, on the OTP
21 list -- copy here. So that's on the screen. There's a hard copy here,
22 please can we transfer that to Mr. Katanga. Thank you very much. And
23 it's also got the -- it's on the back of the ... (indiscernible) one
24 moment.

25 Q. Now, again I've made reference to the transcript where you deal

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 with this and were questioned about it. And we can see that it's dated
2 the 3rd of March, Olongba, and with copies to the "Chef d'état major à
3 Nyabri," the commander of battalion and operator at Tatu, and the "Chef
4 de Teli sector, Talolo," with the primary addressee as Mr. or "Monsieur le
5 Président de FRPI" at Bolo.

6 MR. HOOPER: And I'll ask Ms. Menegon just to read the contents
7 into the record for us, please.

8 MR. MACDONALD: (Interpretation) This is not necessary. The
9 document is already part of evidence. Why does it need to be read out?
10 It's suffice it to just ask the next question. I believe I already read
11 it out myself into the record.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr. Katanga, you have
13 the document in front of you. Do you remember it?

14 Well, Mr. Hooper, perhaps you could ask your question, if you like, with
15 the assistance of Ms Menegon, by just referring to the portion of the text that you're
16 questioning, unless, of course, you want the entire list of recipients to be read out.
17 Please proceed and don't forget I need five minutes at the end of our
18 hearing to read out an oral decision. Go ahead.

19 MR. HOOPER: Well, all right, on the basis that it's been read
20 out and we have the document in front of us, perhaps I can step over that
21 and merely say that we see that this is a letter from Justin -- Cobra
22 Matata addressed to the president. And he says that he comes to restart
23 the exploitation of gold with Bahati Mangu Fidel as chief of the sector
24 Talolo at Bavi and there's a document annexed which we don't have. And
25 during the running of the service, the *encadreurs*, the framers, as one

Witness: Witness DRC-D03-P-0300 (Resumed) (Open Session)
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1 understands it, of the document presumably will be able to receive taxes
2 on the purchase of gold in the markets. And it writes: To conclude,
3 Mr. President, I keep you informed in order to avoid any confusion which
4 could arise. And then he signs himself "Franche Collaboration," and we
5 see these words: (Interpretation) The head of state or the --
6 (interpretation) Chief of Staff Colonel Matata.

7 (In English) Now, we've heard from you of this meeting and he's
8 been entitled to call himself colonel. Where did this phrase le Chef
9 d'etat major -- more than that, the Chef d'Etat Major Supreme come from?

10 A. Perhaps we need to refer to the French speakers. Does -- after
11 all, they're familiar with their language. Is that a common expression?
12 Does this expression, supreme chief -- supreme commander is usually the expression
13 and it's -- refers to the president, the head of state and supreme commander. He
14 controls the army and is the commander in chief. In my country, if you refer to
15 someone as supreme commander, well, it's Mr. Joseph Kabila. But when you talk about
16 a chief of general staff as now supreme, that means that no one else is higher in level.

17 PRESIDING JUDGE COTTE: (Interpretation) In other words, in the
18 military hierarchy at the very top you have the general Chief of Staff,
19 and then in the civilian authorities that command the army it would be
20 the president, the supreme commander. Is that what you mean?

21 THE WITNESS: (Interpretation) Yes, the supreme commander.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

23 Please proceed, Mr. Hooper.

24 MR. HOOPER:

25 Q. And the content of this letter about the gold, reading this

1 letter, who was to get the benefit of the exploitation of gold?

2 A. Cobra knew about the exploitation of gold. It was up to him to
3 manage the gold mines that were in his groupement in Baviba. That was
4 known for traditional small scale gold mining.

5 MR. HOOPER: Now your Honours asked for five minutes and I think
6 I don't ask another question without invading that time, but I do have
7 just -- well, I say "five minutes," so let's say ten minutes probably of
8 questions, maybe even 15. I've got two other documents to look at and it
9 takes time, as we can see.

10 Q. So, I'm sorry, I can't finish you today, Mr. Katanga, so we have
11 to have a few minutes tomorrow morning.

12 PRESIDING JUDGE COTTE: (Interpretation) If you had said you had
13 one last question, I would have let you go ahead, but if you need another
14 15 minutes, then indeed you will have to continue tomorrow morning. So
15 tomorrow morning you can ask your last questions and then immediately
16 thereafter we will hear Mr. Mathieu Ngudjolo.

17 I would like to recall that you need to set aside the two days
18 next week, Thursday and Friday. I don't know as of yet whether or not we
19 will be able to sit, but you need to be able to be ready if we inform you
20 on Tuesday or on Wednesday that we will be sitting.

21 Before we leave, the Chamber, as is regularly the case, we would
22 like to pay tribute to the work done by the interpreters and the court
23 reporters. It's difficult, it's a difficult job, it's a complex job, and
24 it's made even more difficult by our own behaviour. Often we speak too
25 quickly. We don't always apply the five-second rule. And I wanted to

1 recall these two points very clearly.

2 The Chamber has received an application number 3182 on behalf of
3 the Defence of Germain Katanga dated October 18th, 2011, requesting a
4 review of all of the transcripts of the deposition of Mr. Germain Katanga
5 in order to ensure that the transcripts are correct and that the English
6 and French versions coincide. This request is based on numerous examples
7 of discrepancies in those transcriptions which have been indicated in a
8 request for correction sent to the Court Registry included in the
9 appendix in keeping with the regular procedure. The Chamber felt that given
10 large number of these discrepancies and their potential impact on the outcome of this
11 trial, which could be significant, it is preferable that a full review of
12 Mr. Germain Katanga's deposition be carried out.

13 The Registrar indicated that it is necessary to continue
14 submitting individual requests for correction, but it is considered that
15 that would be cumbersome and unrealistic. Based on a decision handed
16 down on June 18th, 2009, by the Trial Chamber I in Lubanga, Defence has
17 made this request. In that case, the Chamber ordered the Registrar to conduct a full
18 review of the transcripts, in particular for the witnesses that
19 had been heard thus far, in order to check on the one hand that the
20 transcripts were full and complete, comparing it with the sound
21 recording, and to compare the French and English versions. Chamber I
22 indeed considered that in keeping with Rule 137(1) of the Rules of
23 Procedure and Evidence that it is up to the Registry and not up to the
24 parties to establish a full and faithful transcript of the procedure
25 including the transcripts. Chamber I also emphasised that the

1 reliability of the transcripts represented an essential condition of a
2 fair trial and that the numerous inconsistencies between the French and
3 English versions could lead to difficulties on the part of the Chamber
4 which would then not be able to decide without delay on key facts.

5 The Chamber shares the concerns which led Trial Chamber I to
6 order a review of the transcripts which at the time corresponded to all
7 of the Prosecution evidence. It points out, that Trial Chamber I also took note of
8 the measures suggested by the Registrar for the future in order to avoid that such
9 *a posteriori* review take place, and that the same measures should apply in this case.
10 However, the Chamber can only note that there are numerous
11 discrepancies noted by the Defence and emphasises that they are of varying
12 importance but, nonetheless, has noted that these discrepancies deal with crucial
13 testimony that could be used against the accused and which makes it
14 necessary on an exceptional basis to carry out a full review of the
15 transcripts in order to ensure a fair trial and to facilitate the work
16 involved in analysing the evidence.

17 The Chamber, therefore, grants the Defence application and asks
18 that the Registrar proceed to review the transcripts of
19 Mr. Germain Katanga's deposition, in keeping with the modalities that
20 applied in the Lubanga case and to do so for November 14th, 2011, at the
21 latest.

22 It goes without saying - now here I'm -- this is a comment on the
23 oral decision. Now, the -- as regards the 15 minutes remaining for
24 tomorrow, that is, the final questions on the part of Mr. Hooper and the
25 deposition of Mr. Ngudjolo, we must be very cautious and very careful,

1 myself to start with, in order to facilitate the task of the Registrar,
2 generally speaking, but more particularly the interpreters and the court
3 reporters who obviously often depend on our own behaviour in the
4 courtroom. So, Mr. Kilenda, Professor Fofé, Mr. MacDonald, I call upon
5 you all to improve our behaviour starting tomorrow. And I can see that
6 Mr. Ngudjolo is listening with great care because he's going to be at the
7 centre very shortly.

8 We shall meet again tomorrow -- yes, Prosecutor, Mr. MacDonald,
9 you have 30 seconds.

10 MR. MACDONALD: (Interpretation) Could the Chamber consider that
11 there be a five-minute break after Mr. Katanga's testimony before we
12 begin with Mr. Ngudjolo, just for reasons of reconfiguring and deciding who's sitting
13 where? Could we have a very brief five-minute break in between the two
14 witnesses. Of course it's up to you to decide, your Honour.

15 PRESIDING JUDGE COTTE: (Interpretation) Well, since we know
16 that Mr. Hooper will only need about 15 minutes and there will be a few
17 comments of courtesy, I think that it would be a good idea that the new
18 team be close by, next door, just outside the courtroom, starting at
19 about ten past 9.00 so that it be a very, very short break and that we
20 not need to leave the courtroom and that we be able to hear Mr. Ngudjolo
21 as a witness.

22 Yes, Judge Diarra?

23 JUDGE DIARRA: (Interpretation) Well, Mr. Katanga needs to go
24 back to his seat.

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

1 Usher, please escort Mr. Katanga back to his seat.

2 (The witness stands down)

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

4 We shall resume tomorrow at 9.00 for the very last questions for

5 Mr. Katanga and we will hear Mr. Ngudjolo.

6 The hearing ends at 1.30 p.m.

7 CORRECTIONS REPORT

8 Pursuant to the oral order issued by the Trial Chamber II on the 19th October 2011

9 this transcript has been revised and corrected.

10 Please note that the corrections have been implemented directly into the transcript.

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