

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Situation: Democratic Republic of the Congo

4 In the case of The Prosecutor v. Germain Katanga

5 and Mathieu Ngudjolo Chui - ICC-01/04-01/07

6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra

7 and Judge Christine Van den Wyngaert

8 Closing Statements

9 Wednesday, 16 May 2012

10 (The hearing starts in open session at 9.00 a.m.)

11 THE COURT USHER: All rise. The International Criminal Court is now in session.

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

13 everyone. Our hearing shall now begin. Good morning to the accused.

14 We only have a limited amount of time for these various questions and requests for

15 clarifications from the OTP. I think you've seen that there were several questions, and

16 that is why we thought it would be better to disclose this list of questions yesterday

17 afternoon. All the parties and participants have a copy of this list of questions, and the

18 court clerk also has a list of these questions if any of you need the questions. This way I

19 won't have to read out the questions and we can save some time.

20 Mr Prosecutor, for the 90 minutes that you have, if you could please take us through these

21 questions, following the order, and if you could also mention the number of the question,

22 and if you could very briefly indicate which topic you're speaking to. So we will ask you

23 once again to be very specific in your replies and concise. Please proceed.

24 MR MACDONALD: (Interpretation) Thank you, Mr President. To begin with, the

25 Prosecution would like to thank the Chamber for sending us this list of questions

1 because it made it possible for us to be better prepared. The Prosecution will answer all  
2 the questions, but given the time limits that we had to prepare those questions we are  
3 simply going to tackle the very crucial matters.

4 I believe there is an issue of the structure of the Prosecution closing brief here, but most of  
5 the information being sought here can be found in the Prosecution closing brief, maybe  
6 under different titles, or sections. We are therefore going to try to answer the questions  
7 by bringing together all the similar information.

8 PRESIDING JUDGE COTTE: (Interpretation) That is why those questions seem to be  
9 requests for clarification, so please refer us to the relevant paragraphs whenever  
10 necessary.

11 MR MACDONALD: (Interpretation) Without further ado, your Honour, for the first  
12 three questions my colleague Ms Luping will answer those questions and I will come back  
13 to answer the fourth one, then our other colleagues will do the same. Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) Very well. Ms Luping, you can now  
15 proceed with the first three questions.

16 MS LUPING: (Interpretation) Thank you, Mr President, your Honours. (Speaks  
17 English) I'll be dealing with the first three questions relating to the contextual elements.  
18 Dealing first with question 1, the Chamber raised two questions relating to the concepts of  
19 organisation underlying the theory of indirect co-perpetration used by Pre-Trial Chamber  
20 I in this case and the contextual elements of war crimes, first asking if the legal  
21 organisation required in relation to these two legal concepts is identical and, secondly, if  
22 there are different constituent elements to prove the notion of organisation underlying the  
23 two legal concepts.

24 The Prosecution submits that it's important that the question of the organisation required  
25 to be proved for these two legal concepts be treated separately, as they're distinct and

1 serve very different purposes, and there are different constituent elements of the notion of  
2 organisation required for these two different legal concepts. Indeed, it's a case of  
3 comparing two very different things.

4 In terms of the contextual elements of the war crimes, the concept of organised armed  
5 groups is derived from international humanitarian law. It was created as a threshold to  
6 determine the existence of a non-international armed conflict basically to weed out  
7 instances of mere banditry or internal disturbances falling short of constituting an armed  
8 conflict.

9 The degree of organisation and the crucial organisational elements required to prove the  
10 existence of an organised armed group relates to the military capabilities of the group, in  
11 particular their ability to plan and carry out concerted military operations. We refer in  
12 particular to the ICTY Tadic trial judgment, case number IT-94-1-T, paragraph 120.

13 Now, in contrast, the level of organisation required for the purposes of indirect  
14 perpetration under Article 25(3)(a) serves a completely different purpose; namely, to  
15 attribute liability for the perpetrator behind the perpetrator, and it's not necessarily linked  
16 to an armed conflict at all.

17 The focus of this inquiry is on the common plan tying together the actors in the  
18 organisation, the role of the accused within that organisation and the relationship between  
19 the organisation and the crime, and the relevant elements of an organisation, for the  
20 purposes of indirect co-perpetration, revolve around the internal structure and  
21 methodology of the body involved in the commission of crimes, which may not even be  
22 military in nature and in fact may be completely detached from any military operations.  
23 For instance, crimes against humanity, which can be committed in times of peace may be  
24 executed by a purely civilian bureaucracy which is sufficiently organised therefore  
25 allowing for the attribution of responsibility of those holding certain positions but that

1 does not satisfy the requirements of an organised armed group for the contextual  
2 elements of war crimes.

3 Now, it is true that if you focus only on the degree of organisation then there will likely be  
4 considerable overlap and that where there exists a sufficient degree of organisation for the  
5 purposes of Article 25(3)(a) then there's also likely to be sufficient also for the purposes of  
6 finding an armed conflict and vice-versa, but that's only isolating one aspect and that's the  
7 degree of organisation, but if you look more broadly at the other aspects, a particular  
8 organisation may qualify as sufficient for the purposes of 25(3)(a) but not for armed  
9 conflict and vice-versa, so it would be possible to have a group that satisfies the  
10 requirements of organisation for the purposes of indirect co-perpetration, in particular in  
11 its particular structure and procedures, allowing to impute liability to those holding  
12 certain positions, but this may fall short of constituting an organised armed group for the  
13 purposes of finding a non-international armed conflict. For example, if that organisation  
14 is very small and comprises only a few members or is non-military in nature.

15 It's also true that as a factual matter there may often be an overlap between these two  
16 inquiries. For example, in this case, many of the same facts may be used to support both  
17 analyses, but we submit it's best to keep these inquiries separate bearing in mind their  
18 different purposes and not try to merge them as a legal matter.

19 Turning to the second question. The Chamber asked the context in which the  
20 conflict -- sorry, of which conflict the Bogoro attack occurred and details of simultaneous  
21 conflicts, if any, taking place in the region relevant to the characterisation of the conflict.  
22 The Prosecution submits that the relevant armed conflict at the time of the Bogoro attack  
23 in which that attack took place was a non-international armed conflict in Ituri, involving  
24 local armed groups divided largely along ethnic lines; namely, the conflict between the  
25 respective Lendu and Ngiti armed groups commanded at the time of the Bogoro attack by

1 the accused, against the predominantly Hema armed groups of the UPC as well as the  
2 PUSIC.

3 This non-international armed conflict amongst these local armed groups existed both  
4 before and after the Bogoro attack, in particular in the period August 2002 to at least  
5 mid-2003. In August 2002, Lendu and Ngiti armed groups carried out an attack on  
6 Bogoro, fighting against the UPC forces based there.

7 The Ngiti armed group of Walendu-Bindi, which was then led by Kandro, together with  
8 the APC and some Lendu forces of Bedu-Ezekere attacked UPC forces based at  
9 Nyankunde September 2002. The accused Lendu and Ngiti armed groups again fought  
10 after the Bogoro attack against UPC forces at Mandro, March 2003; Bunia, both March and  
11 May 2003. And the Lendu armed group of Ngudjolo fought against PUSIC forces at  
12 Tchomia, 31 May and 15 July 2003, and his forces again fought against PUSIC forces at  
13 Kasenyi on 11 June 2003 together with Ngiti forces, attacking PUSIC forces at Kasenyi on  
14 23 July 2003.

15 UPC forces attacked Bunia on 9 August 2002; Songolo, end of August 2002; Zumbe on 15  
16 and 16 October 2002. We refer to paragraphs 21, 659 and 666 of our closing brief.

17 As for any simultaneous armed conflicts relevant to the characterisation of the conflict,  
18 namely any conflicts involving foreign actors, the Prosecution submits that if any existed,  
19 which we have not asserted did exist, that they're not relevant in the sense that they do  
20 not impact upon or change the non-international character of the conflict at the time of the  
21 Bogoro attack.

22 Now, there is evidence on the record that Ugandan forces were involved in fighting in  
23 Ituri in August 2002 at Bunia; October 2002 at Zumbe; again in Bunia in March 2003; but  
24 we submit that its involvement in these battles did not internationalise the conflict as  
25 those battle didn't involve two States fighting against one another but involved Uganda

1 against local armed groups. We refer to paragraphs 24 to 30 of our closing brief.

2 Now, turning to the last question in relation to contextual elements that I'll be addressing,  
3 and that's the issue of the organisational policy to attack civilians, the Chamber asked the  
4 Prosecution to deal with four questions related to the organisational policy to commit an  
5 attack directed against a civilian population as required under Article 7(2).

6 First, the Chamber has asked, besides Bogoro, which attacks do we allege that the FRPI of  
7 Germain Katanga and the armed group of Bedu-Ezekere were involved in together?

8 Now, in addition to the attack at Bogoro, we submit that the relevant attacks for the  
9 purposes of demonstrating an organisational policy to attack civilians, and in which both  
10 groups were involved, include the following:

11 Nyankunde: The organised Ngiti armed group of Walendu-Bindi carried out an attack  
12 against the civilian population at Nyankunde, together with APC forces, with the support  
13 of elements of the Lendu armed group of Bedu-Ezekere under the authority of  
14 Mathieu Ngudjolo.

15 Now, although the Ngiti group was not named FRPI at the time, we submit it was an  
16 organised armed group and this same armed group, namely the Ngiti military of  
17 Walendu-Bindi, then under Kandro's control but later coming under Katanga's control,  
18 simply later adopted the name FRPI, but we submit these included members of the same  
19 Ngiti and Lendu groups that later attacked Bogoro. Germain Katanga was also himself  
20 involved in this attack at Nyankunde and at the time already had the rank of colonel.

21 We refer to paragraphs 655 and 656 of our closing brief.

22 Mandro: Shortly after Bogoro, the FRPI forces of Germain Katanga and the  
23 Bedu-Ezekere forces of Mathieu Ngudjolo jointly attacked Mandro. We refer to  
24 paragraph 662 of our closing brief. They again came together to jointly support the  
25 UPDF in a counter-attack against the UPC at Bunia in March 2003. We refer to

1 paragraph 663 of our closing brief.

2 FRPI forces based at Bunia, under Mathieu Ngudjolo and Germain Katanga, again fought  
3 the UPC at Bunia in May 2003. Now, we refer in particular to the evidence of Witness  
4 P-12, refer to transcript T-196 at pages 11 to 22 of the English transcript; Witness 30,  
5 transcript T-177, pages 36, 41, 48, transcript T-179, page 30, transcript T180, pages 57 to 58;  
6 EVD-D02-00058; EVD-OTP-00135 and 00136. We also refer to EVD-OTP-00179 as  
7 introduced by Witness 2.

8 The Bedu-Ezekere forces of Mathieu Ngudjolo, with support from Ngiti forces of  
9 Walendu-Bindi, again attacked Kasenyi together on 23 July 2003. We refer to paragraph  
10 666 of our closing brief.

11 Now, we submit in addition, as the accused are charged as indirect co-perpetrators, that  
12 it's also relevant to consider for the purposes of demonstrating an organisational policy  
13 the attacks that continued to be perpetrated by Mathieu Ngudjolo's armed group against  
14 the civilian population in attacks in Tchomia in May and July 2003 and the attack in  
15 Kasenyi in June 2003. We refer to paragraph 664 and 665 of our closing brief. Germain  
16 Katanga's FRPI forces also continued to attack civilians in the Lac Albert area, and we  
17 refer to paragraph 682 of the closing brief.

18 Turning now to the attacks on Bogoro in 2001 and 2002, we submit that these attacks are  
19 also relevant in demonstrating an organisational policy.

20 Now, addressing the Chamber's fourth question on this topic, whilst these groups were  
21 not called FRPI or FNI at this time, they did comprise of Lendu and Ngiti from this area,  
22 from Bedu-Ezekere and Walendu-Bindi, in relation to the first attack of January 2001, and  
23 in that attack they were already organised in the sense that they were able to plan and  
24 carry out this military operation, even if they didn't have the same level of organisation as  
25 they did say by 14 August 2002 at the time of the second major attack on Bogoro carried

1 out by Lendu forces. We submit that these were the same groups. They were  
2 comprised of combatants from the same geographic locations, even if they later used a  
3 different name.

4 The point, in our submission, is that in its essentials the organisation responsible for these  
5 attacks remained the same. Now, over time an organisation carrying out an attack  
6 against a civilian population may evolve, may even change its name, but the relevant  
7 question when considering the responsible organisation and organisational policy is not  
8 whether the organisation is identical over time in all its aspects, but whether in its essence  
9 it remained the same.

10 Now, if any change to the organisation were relevant, then an organisation could defeat  
11 liability under Article 7 of the Statute simply by agreeing to change its name each day.

12 Again we submit that as co-perpetrators, even though the second attack - major attack - on  
13 Bogoro in 2002 was carried out by Lendu of Bedu-Ezekere, that this is also relevant for the  
14 purposes of demonstrating an organisational policy.

15 Turning to the Chamber's second question on the organisational policy, we submit that  
16 the organisational policy during all these attacks was indeed to direct an attack against the  
17 civilian population. As we described at paragraphs 635 and 669 of our closing brief,  
18 insiders of both the accused's groups describe a policy of revenge and targeting of all  
19 Hema as the enemy, with no distinction made between civilians or combatants.

20 Witness 28 describes that their usual method was to show no pity. I refer to paragraph  
21 645 of our brief.

22 Witness 280 explained how, even in their military training, combatants were instructed all  
23 Hema are the enemy and that their objective was to fight against the Hema. I refer to  
24 transcript 138, page 38.

25 Before the Bogoro attacks songs insulting the enemy, in which women were equally

1 targeted, were sung in front of the commanders, including Germain Katanga. I refer to  
2 paragraph 669 of our brief.

3 The modus operandi used in all these attacks, which involved a deliberate targeting of the  
4 civilian population, we submit also evidences this clear organisational policy. We refer  
5 to paragraph 665 to 666 of our brief.

6 Turning to the final question from the Chamber on this issue, namely whether in all these  
7 attacks the principal target was the civilian population, the Prosecution submits that there  
8 is simply no requirement in law that the civilian population be the primary goal of the  
9 attack. It simply suffices that the attack is carried out against a predominantly civilian  
10 population with intent and knowledge.

11 We recall that motives are irrelevant for the purposes of crimes against humanity, as it  
12 may be that the ultimate purpose of the attack is to secure a part of the territory, or to  
13 weaken the enemy's morale. However, this doesn't negate or exclude the applicability of  
14 crimes against humanity if their constituent elements are present.

15 In any event, in this case we submit that, alongside any military objectives of fighting the  
16 UPC, civilians were clearly targeted as all Hema were treated as the enemy with no  
17 distinction being made between civilians or combatants.

18 Thank you, Mr President. Thank you, your Honours. I now give the floor to my next  
19 colleague.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Ms Luping. If we have  
21 some time later maybe we will seek further clarification, but for the time being,  
22 Mr Macdonald, please proceed.

23 MR MACDONALD: (Interpretation) Thank you, your Honour. The fourth question  
24 is as follows: "Can you tell us who, amongst the Lendu militia, were consumed by that  
25 ethnic hatred and helped to spread it?"

1 Yesterday, during my presentation, we did mention this issue; that is the Prosecution. I  
2 would like to come back to it and maybe repeat myself. This hatred was wide-spread  
3 amongst the combatants of Mr Ngudjolo and Mr Katanga.  
4 During our presentation yesterday on the common plan, we referred to Witness P-28,  
5 P-280, P-219 and P-250 when speaking about that hatred which we submit prompted a  
6 spirit of vengeance. We also referred to EVD-D03-0098, and we appeal to the Chamber  
7 to refer back to this document; that is the denunciation of the planning of the  
8 extermination of the resistance fighters at the base by the groups supported by Uganda.  
9 This hatred was also shared by Mr Ngudjolo and Mr Katanga, because the evidence  
10 shows us that they were the supreme authorities of those Lendu-Ngiti groups.  
11 There are other elements. For example, in paragraph 496 of our brief - and I will quote  
12 what Witness P-12 says - during a conversation with Mr Ngudjolo, Mr Ngudjolo is  
13 supposed to have told him the following: "I made many mistakes by killing Hemas  
14 inadvertently, because I was confusing between biological and ideological affiliation. I'm  
15 truly sorry about this, but I did kill many Hemas. I believe that is all over now and we  
16 have to begin working to reconstruct or to rebuild our region." This is in transcript 197,  
17 page 36, of the testimony of P-12.  
18 I would also refer the Chamber to the conversation that Katanga had with P-160 and P-12.  
19 In cross-examination of P-160, this witness mention that Bogoro was attacked as an act of  
20 vengeance for a Hema massacre, and he confirmed what he said in his prior statement in  
21 response to Mr Hooper's question. This is one of the elements of the case file that  
22 indicates this hatred that was consuming Mr Katanga also --  
23 PRESIDING JUDGE COTTE: (Interpretation) You talked about hatred and a desire for  
24 vengeance. We fully understand you, but what is important to us is the two questions  
25 that we have asked and the link that might exist between those two questions.

1 Are we to understand from your presentation that according to you - that is the  
2 Prosecution - Mr Katanga and Mr Ngudjolo were factors in sustaining that ethnic hatred?  
3 Did they contribute to spread that hatred? And the follow-up question is as follows:  
4 Can you tell us whether Mr Katanga and Mr Ngudjolo were in a position to stop the  
5 expression of this hatred?

6 MR MACDONALD: (Interpretation) Well, to cut to the chase, your Honour, yes. We  
7 say yes, in light of their authority, and I go back to the ascendancy of the two groups, in  
8 light of the structure of the two groups, in light of the chain of command, and we will  
9 return to that point in questions 7 and 9 and inevitably question 15 in our replies we will  
10 speak to that.

11 The two accused did have an opportunity to block what happened, certainly Mr Katanga,  
12 and when we consider the civil authorities and the documentary evidence he had  
13 ascendancy over the civilian authorities.

14 If you look at the document from June 2002, it was the first EVD item that I mentioned  
15 during my presentation, in June 2002 he was recognised by civilian authorities. It was  
16 recognised military authorities had taken over, had taken control and were now  
17 administering the territory in Irumu.

18 So the answer is certainly yes, your Honour, and the various replies will be dealt with in  
19 greater depth when we answer questions 7, 9 and 15.

20 PRESIDING JUDGE COTTE: (Interpretation) So we see that the important point here is,  
21 in light of each reply, please provide evidence. You mentioned a document of June 2002,  
22 and you said you would find the exact reference. Please do so, please send us that  
23 reference, but we would appreciate receiving as much actual evidence relating to these  
24 points.

25 So with regard to the propagation of this hatred and this desire for vengeance, do you

1 think that there were other people, other prominent people within the region, who might  
2 also have helped spread this hatred and this thirst for vengeance?

3 MR MACDONALD: (Interpretation) I think we always have to refer to the evidence on  
4 record, your Honour. And clearly both communities had been surrounded, were in an  
5 enclave and were suffering. Even in Bedu-Ezekere witnesses spoke of famine. So this  
6 was widespread, both within the civilian population and the military people, the  
7 combatants rather, themselves.

8 There may have been different players, be it Germain Katanga and Mathieu Ngudjolo  
9 themselves, but also amongst the so-called civilian authorities there may have been such  
10 people. Once again, we have to refer to the evidence within -- also within the spiritual  
11 authorities, the fetish priests, the féticheurs.

12 So a community that is under attack and that is defending itself bands together; and in  
13 such an environment I think we can safely assume that this is quite a reasonable  
14 conclusion, that indeed this hate was being shared by a great many people and I will try  
15 to find the actual EVD reference that -- if I can't find --

16 PRESIDING JUDGE COTTE: (Interpretation) If you could send it to us in the course of  
17 the hearing, or perhaps when we suspend.

18 MR MACDONALD: (Interpretation) I will do so.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper.

20 MR HOOPER: It's a most exceptional interruption, but we've heard and it's been  
21 referred to as a document from June 2002, certainly that's how it's been translated for me  
22 and appears on the transcript, and I've been indicating to my friend, I think he's  
23 being -- he says 2002.

24 MR MACDONALD: It is 2002, your Honour, and I have the reference. I can give it.

25 MR HOOPER: All right.

1 MR MACDONALD: (Interpretation) There is no doubt, as mentioned yesterday --

2 PRESIDING JUDGE COTTE: (Interpretation) Well, send us that information in the  
3 course of the hearing, and we do take note, Mr Hooper, that this is an exceptional sort of  
4 remark.

5 MR MACDONALD: (Interpretation) I have the reference, it's EVD-OTP-00275.

6 THE INTERPRETER: Overlapping speakers.

7 MR MACDONALD: (Interpretation) A draft agreement relating to the settlement of a  
8 conflict in the Irumu district.

9 PRESIDING JUDGE COTTE: (Interpretation) We will try to deal with this issue and  
10 finish with it.

11 Now, can you tell us whether you have actual evidence that we may not have in mind  
12 right at this particular moment that would show that there was any kind of rhetoric or  
13 speeches being given, a specific example of this hate that you say was present? This is  
14 what is -- this is what is of interest to us.

15 MR MACDONALD: (Interpretation) Well, in my reply a few moments ago, I  
16 mentioned the various songs that were being sung before the actual battles. You also  
17 have the testimony of Witness 219. And in these songs the singer said that they had to  
18 catch a Hema person and kill him, and Mr Ngudjolo and Mr Katanga were present when  
19 these songs were being sung.

20 We also should consider the testimony of Witness 28 who also spoke of these songs being  
21 sung. There was also the sort of rhetoric, the speech just before the battle. I believe  
22 Witness 220 mentioned that. So, yes, there were such examples of hatred being  
23 expressed and we heard this from various witnesses. The evidence is on the record.  
24 This is the reply I wish to give.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I think it is important

1 to -- for all parties and participants to realise that we need more clarification about this  
2 hatred. There may not -- there may be some divergences of opinion on this point, so we  
3 are trying to obtain some clarification in this regard. Please continue, Mr Macdonald.

4 MR MACDONALD: (Interpretation) Your Honour, this concludes our answer  
5 regarding question 4. If we could now move on to question number 5, if you would just  
6 allow me one moment.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes, take some time to get ready.

8 MR MACDONALD: (Interpretation) Fasten your seat belts. Question number 5, the  
9 question was as follows: When did the village of Bogoro fall? Can the Prosecution  
10 specify the time, the hour? Can you actually give an approximate time of day when this  
11 occurred?

12 So what form did the -- what -- how was the village actually taken? We say that it was  
13 when the UPC camp fell. There was this corridor of UPC civilians' direction of  
14 Montagne Waka. I'm gesturing.

15 The UPC camp, when did it fall? It fell because it had been attacked, the attack on  
16 Bogoro. The UPC fighters were deserting so as to survive, so that is the actual form that  
17 the taking of control occurred in. So it was when the combatants deserted.

18 PRESIDING JUDGE COTTE: (Interpretation) So you say the moment when the final  
19 UPC combatants left the institute and fled towards Mount Waka?

20 MR MACDONALD: (Interpretation) Indeed, as they left. The moment when the  
21 combatants took possession or took control of the site and asserted their power over the  
22 village of Bogoro, when they were in the --

23 THE INTERPRETER: Overlapping speakers.

24 MR MACDONALD: (Interpretation) If I could refer you to paragraph 43 in our brief,  
25 and a footnote. There is reference made to two witnesses, 323 and 280, saying that the

1 fighting ended at about 11 in the morning, and what's more -- and various witnesses, 279,  
2 28, 287 and 167 also spoke about the time at which the fighting ended. 250 as well, and  
3 Witness 160, they too said that the fighting ended before 10 in the morning.  
4 And finally 233 and 268 said that the fighting ended later, at noon according to 233 and at  
5 another time for 268, but I would remind you that those witnesses had hidden and at that  
6 time they were still fighting to save their lives because at that particular time the attackers  
7 were looking for victims in the bush. That is why we said in our brief that it was in the  
8 morning.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Please continue,  
10 Mr Prosecutor.

11 MR MACDONALD: (Interpretation) Question number 6, the question is a short one:  
12 Do you allege that during the attack heavy weaponry was used by the attackers? If so,  
13 by whom?

14 In paragraphs 41 and 565 of our brief we state that indeed the combatants did have heavy  
15 weaponry, such as mortars and rocket launchers, firearms and bladed weapons, including  
16 machetes, spears and arrows. We made reference to the testimony from P-28, P-280, 250,  
17 279, and also Chief Manu. We mentioned the delivery of various pieces of weaponry.  
18 Only Witness 148 presented by the Katanga Defence said that the APC soldiers were few  
19 in number and that they were there to provide reinforcement, because they had  
20 experience when it came to the use of heavy weaponry, and we made reference to  
21 transcript 279, page 32. Witness D02-148.

22 Furthermore, in light of the dead-lines that were set we were unable to make some  
23 cross-checks, but there was also 323. We'll have to see what the witness said, but  
24 yesterday, or this morning rather, we wanted to point out to you that according to the  
25 Prosecution evidence no witness said that the APC members were handling heavy

1 weaponry, other than rocket launchers.

2 So that is what the evidence is on the Court record in response to your question. I hope  
3 that's clear, your Honour.

4 PRESIDING JUDGE COTTE: (Interpretation) Please continue.

5 MR MACDONALD: (Interpretation) The seventh question will be dealt with by my  
6 colleague, Mr Garcia.

7 PRESIDING JUDGE COTTE: (Interpretation) Mr Garcia, please proceed.

8 MR GARCIA: (Interpretation) Good morning, your Honours. Basically I'd like to deal  
9 with question number 7 right now, and the question basically is about how Germain  
10 Katanga exerted authority over the commanders of the camps in Walendu-Bindi.

11 Now, to answer that particular question, your Honours, the Prosecution would remind  
12 you of the testimony of P-28 and 219, because their testimony is essential.

13 Briefly, I'll just give you an overview. You see, it was with the reporting system, the  
14 system of reports between the Ngiti camps and also the system of discipline and  
15 punishment that Germain Katanga was able to exert control over the commanders.

16 What do I mean by that? Well --

17 PRESIDING JUDGE COTTE: (Interpretation) Yes, do explain that, but please don't  
18 forget the last part of our question, which was the evidence - the actual evidence - that  
19 you are basing your argument on. You mentioned two witnesses, P-28 and P-219. Is  
20 there any other evidence that supports your earlier assertions?

21 Please proceed, Mr Garcia.

22 MR GARCIA: (Interpretation) Thank you, your Honour. Basically, the comments and  
23 the evidence that I will provide are already on the case record and perhaps were not dealt  
24 with in great depth in the brief, but I will try to go into greater detail right now.

25 The evidence - the testimony, rather - of P-28 was that he accompanied Mr Katanga in the

1 camps when they visited those camps to see how they were operating. We would put it  
2 to you, your Honour, that when P-28 related this account, when he said that they went to  
3 verify the operations in the camps, it was because Germain Katanga was the authority, the  
4 president. He was the leader of all the Ngiti commanders in the area of Walendu-Bindi.  
5 He went to go and inspect the situation to see whether the commanders were following  
6 his orders and directions -- his actual instructions, rather.

7 I would refer the Chamber to transcript 217, page 23, lines 6 to 17. Now, these are the  
8 most relevant lines. If we look at line 16, the witness said, "And it was to find out how  
9 the camps were operating." The Prosecution reiterates this point. It was a matter  
10 of -- you see, he was going to cross-check to ensure that his orders were being followed.  
11 Now, transcript 206, page 27, lines 6 to 15. Witness 219 also came and gave testimony,  
12 saying that the combatants in Aveba to report information back to Mr Katanga, and I  
13 think what's important to gather from this testimony here is that he said that when these  
14 combatants would come to the Aveba camp it was to tell them -- to tell about problems in  
15 the other camps and 219 stressed that this was the procedure to follow.

16 So once again, when it -- once again, transcript 206, page 27, line 12. I'll just quote the  
17 actual witness and his testimony, "So someone might come and introduce himself, explain  
18 what happened, what was going on, and he might say, well, there's such-and-such a  
19 problem at a particular point -- a particular place rather. That was the procedure."

20 So there wasn't any report properly drawn up on actual paper and signed, but all the  
21 same, your Honour, Germain Katanga would go and accompany this witness to the camp  
22 and also they would introduce themselves - this was the procedure in place at the Aveba  
23 camp - to explain to Germain Katanga whether there had been any problems. So, once  
24 again, here we are seeing this procedure dealing with the operations in other camps.  
25 The Prosecution argues that if Katanga was visiting the camps to check on how these

1 camps were being operated, and since people were reporting to him, this is what P-219 is  
2 telling us, this was the case because he was the supreme commander of the camps and the  
3 commanders there. This was confirmed by 219.

4 Now, the second part of my answer has to do with the way in which Mr Katanga  
5 exercised his authority, and this is one item that goes hand-in-hand with this system of  
6 reports. Allow me to explain.

7 219 confirmed that, when a commander departed from the system for organising troops,  
8 his camp was attacked and set on fire. The relevant transcript is transcript 206, pages 26  
9 and 27, and I just wish to stress and actually repeat what was said by the witness in  
10 question, because this is important.

11 He gave a number of examples. The question was as follows. This is lines 15 to 19,  
12 from transcript 206, page 26, 27, Question: "Could you tell us what would happen if a  
13 commander or some kind of officer who was responsible for an Ngiti camp did not follow  
14 Germain Katanga's orders? Were there consequences? What would be done  
15 under such -- in such a situation?"

16 Answer, line 20: "Well, first of all the only commander who did not obey Germain's  
17 instructions was Kisoro. If there was a commander who did not follow the system for  
18 organising the troops, well, his camp would be attacked and set on fire, and once that had  
19 been done that commander would flee and then after that could come back to the group  
20 and reconcile himself with the rest of the troops.

21 The witness gave a number of examples, and one preceded Katanga, but this -- I think this  
22 is really quite a specific reply. It deals with Mr Katanga, and it's quite likely that there is  
23 a direct link here with Mr Katanga and his ability to exercise this control.

24 Just to conclude on this point, I'd like to remind your Honours that the documentary  
25 evidence, which I mentioned yesterday on several occasions, was also relevant when it

1 comes to this control exercised by Germain Katanga. This is one example of many.

2 Germain Katanga ordered, issued orders, led the delegation to Beni.

3 I'd just like to speak of this particular documentary evidence, EVD-OTP-00239. This is a

4 letter that has to do with the collecting of taxes when gold was being purchased, dated 3

5 March. Cobra Matata, Germain Katanga, was informed of a number of matters having to

6 do with gold in his region. This is another example, EVD-OTP-00236. Germain

7 Katanga asks the commanders to come to a meeting, saying that all must attend. No one

8 can be absent. So this is evidence, your Honour, supporting our assertion that Germain

9 Katanga was indeed exercising authority over Ngiti commanders.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

11 Now, Mr Garcia, are we to understand, can we conclude, that all these procedures that

12 were established that you've reminded us of meant that Mr Katanga was obeyed in an

13 almost automatic way? Was this the conclusion that you were coming to?

14 MR GARCIA: (Interpretation) Indeed, your Honours. That was the conclusion that

15 the Prosecution came to. There was a system of discipline that was in place at the time.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

17 Mr Macdonald, I would like to hark back very briefly to the APC and the heavy weaponry.

18 I don't want to forget this particular point. You spoke to this a few moments ago.

19 Now, in the eyes of the Prosecution, in your opinion can we assume that APC combatants

20 were present at the Bogoro attack? You say that there were no witnesses that said that

21 APC members were there using heavy weaponry, but more generally speaking, at this

22 particular stage in the proceedings, are you saying that there were APC combatants in

23 Bogoro?

24 MR MACDONALD: (Interpretation) Well, you also have Witness 228 who dealt with

25 that matter. He even referred to Mr Blaise Koka.

1 Yes, at that time, within the collectivity of Walendu-Bindi, there were APC soldiers,  
2 combatants. What we do not agree with -- this may be putting it a bit strongly, it's up to  
3 the Chamber to assess, but we challenge the presence of 150 APC soldiers at the time of  
4 the Bogoro attack.

5 PRESIDING JUDGE COTTE: (Interpretation) You were clear on that point yesterday.  
6 We won't go back to that.

7 MR MACDONALD: (Interpretation) Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Yes, we remember that clearly.

9 Mr Garcia, if you could please continue. We were dealing with question number 8.

10 THE INTERPRETER: Overlapping speakers. Could parties and participants please  
11 respect the five-second rule.

12 PRESIDING JUDGE COTTE: (Interpretation) Yes, Aveba and the role that Mr Cobra  
13 Matata may have played in all of that. Please proceed.

14 MR MACDONALD: (Interpretation) We would put it to you, your Honour - well, we  
15 remind you - that this evidence is for the most part based on the testimony of Witness 250.

16 We also remind you that D03-100 came and gave testimony, and that is important.

17 We are in open session and so I can't go into certain details, but why is that important?

18 Because 250 - and this was pointed out in our brief under "Credibility," the part having to  
19 do with credibility - he testified with a certain mindset, so to speak. He had been  
20 relocated, he was far from his family members, and we would encourage the Chamber to  
21 consult the session, the closed -- the transcript of the closed session, and try to see what  
22 the witness was feeling at the time of his testimony.

23 The question was the delegation: Did the delegation stay there in Aveba for a month or  
24 for a week or a number of days? The witness said that he thought Katanga had asked the  
25 delegation to go meet Cobra Matata with a view to reconcile members of the FNI, FRPI,

1 transcript 93.

2 Once in Bavi, Cobra Matata sent Boba Boba to Medhu to meet Medhu. So 250 specified  
3 that Kudo (phon) had a lower rank, he was ranked lower than Cobra Matata, and the goal  
4 of that meeting, and I quote transcript 93, page 20, "Germain and Cobra had co-operated  
5 with the FNI." Further on he added, "We had to determine where the enemies were or  
6 where allies were and find a place." During cross-examination 250 stated that the  
7 delegation had travelled to Bavi, and I quote transcript 102, page 19, "It was to reach that  
8 objective. That's what they wanted. That is why we went there."

9 Mr President, your Honours, I refer you to the testimony of P-250 in its entirety. It is the  
10 only evidence dealing with that visit on the case file, different from testimonies by  
11 different witnesses. We therefore cannot speculate, the Prosecution cannot speculate on  
12 this matter, and all we can say is that all that Prosecution can do is interpret the situation.  
13 We would like to recall that Witness P-250 testified that the purpose of the visit was to  
14 meet Chief Katanga, and at the very beginning of the mission with Mr Boba Boba to  
15 Aveba, and that appears in transcript 92, pages 58 and 59. The idea was not to meet  
16 Cobra Matata.

17 The witness also clearly testified, Mr President, your Honours, that Cobra Matata and  
18 Kudo were under Germain Katanga's authority. In answer to a question from  
19 Mr Hooper, P-250 answered, referring to Bavi for Cobra and maybe for Oudo, said that  
20 the camp did not belong to them; that they were looking for an FRP camp and that is  
21 where they were working.

22 Now, Mr President, additionally, there is the letter EVD-0300 -- and I forget the number,  
23 that is the --

24 PRESIDING JUDGE COTTE: (Interpretation) 0025.

25 MR MACDONALD: (Interpretation) Yes, 0025. The letter of 4 January. We shall

1 revert to that letter on 4 January 2003 and look at the sequence of events as requested by  
2 the Chamber.

3 When the delegation arrived, let us remember the context in which 250 was testifying  
4 mindful of his recollection and the times. He said they went to Aveba. There were  
5 planning sessions on the Bogoro attacks and Cobra Matata was there, but Aveba and Bavi  
6 are not too far apart so Cobra returns to his turf, to his camp, while the delegation remains  
7 in Aveba for some time and, as time goes by, then Germain Katanga subsequently asks to  
8 go meet Cobra Matata.

9 The reasons for which Katanga asked Cobra Matata -- or asked to meet Cobra Matata are  
10 given by Witness 250 in his testimony before this Court under oath. There are previous  
11 statements, and Mr Hooper examined him relating to those prior statements. The  
12 Prosecution recalls that we were not able to jog the witness's memory on this point, but  
13 this is the only evidence that is before the Court and Prosecution cannot offer any answer  
14 by speculation.

15 Are there any other questions from the Chamber?

16 PRESIDING JUDGE COTTE: (Interpretation) Please, we would like to apologise to the  
17 interpreters for not respecting the five-second rule. We will do our level best to speak  
18 slowly and observe the pause, but, Mr Macdonald, before you sit down, I would like to  
19 put another question to you on Bogoro and the APC.

20 A short while ago you said that the Prosecution's position is that there could not have  
21 been 150 APC combatants in Aveba. Now, do you however accept that there were any  
22 APC combatants, regardless of the number, present at the time of the Bogoro attacks?  
23 You also say that you did not know whether they used heavy weaponry, but can you say  
24 that there were any APC combatants in Bogoro at the time of the attacks?

25 MR MACDONALD: (Interpretation) The Prosecution is aware that Witness 28, and

1 other victims who were witnesses, asserted that they saw APC combatants in Aveba and  
2 Bogoro. The answer therefore is there may have been APC combatants in the area, but  
3 that has no bearing on the responsibility of the two accused persons as to their leadership  
4 of the combatants.

5 So the presence of the APC will emerge from the evidence before the Court, but let me  
6 stop there because the simple answer is that some civilian witnesses did testify that they  
7 saw some soldiers, some combatants, with APC uniforms. Now, whether they were  
8 APC combatants indeed or just APC deserters or combatants who had taken APC  
9 uniforms, whatever the scenario may have been, there is a gamut of possible explanations  
10 as to why those APC combatants were spotted, including the testimony of Witness P-28.

11 So the answer is it is possible that there may have been APC combatants in the area.

12 The number which we offer would be between two to 25. It may be -- it may appear  
13 unreasonable but we have two witnesses, one from the Prosecution in his context and two  
14 from the Defence regarding this matter, and these would all have to be taken into  
15 consideration.

16 PRESIDING JUDGE COTTE: (Interpretation) You must be aware that the time must  
17 come for the Court to determine who did what on 23 February in Bogoro.

18 MR MACDONALD: (Interpretation) If there is a third party, it must be a third  
19 co-perpetrator who is not called before this Court. In any event, that does not change the  
20 scope and nature of the charges before the Court. There may be a third co-perpetrator in  
21 a joint plan, but the degree of such participation must be such that it can emerge from the  
22 evidence; but you know, Mr President, that there is assistance, there is help that was  
23 provided. 253-D, there might have been some kind of help, but if you came to the  
24 conclusion that the third actor was part and parcel of the common plan, that in itself does  
25 not diminish in any manner whatever so far the responsibility of the two accused people

1 because they were in charge of the Ngiti and the Lendu combatants, and not over any  
2 other force which may or may not have had a headquarters in Medhu.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

4 MR MACDONALD: (Interpretation) I think that this is the answer I can provided.

5 PRESIDING JUDGE COTTE: (Interpretation) There is no implicit accusation,  
6 Mr Prosecutor. We are just trying to move forward relying on the specific answers that  
7 you offer.

8 Question number 9, Mathieu Ngudjolo's responsibility. But before we go there,  
9 Mr Gilissen, Mr Luvengika, I believe that we are going to go overboard somewhat before  
10 we can exhaust the questions to the Prosecutor, and we hope that we will not interfere  
11 too much with your own time but that is likely what is going to happen.

12 Question 9, who is going to answer? It was basically the same question that was asked  
13 regarding Mr Katanga, which now applies to Mr Ngudjolo. Now, what is in the  
14 evidence pertaining to this matter? You may feel that you are repeating yourself because  
15 you have already made this point, but please note that these questions are important for  
16 the Chamber.

17 MR DUTERTRE: (Interpretation) Good morning, Mr President. Good morning, your  
18 Honours.

19 How did Mr Mathieu Ngudjolo exercise his authority? Authority is a personal end and  
20 organisational matter. We have mentioned different places, we have mentioned in  
21 different aspects of our final brief how this happened but we can break this down into six  
22 different items.

23 How did Ngudjolo exert authority over the commanders?

24 One, because he was the highest commander over and above the other commanders. He  
25 was the commander-in-chief, Chief of General Staff, at the top of the hierarchy, so that we

1 can understand. P-250 and P-280 testified to that effect. P-280 used the following  
2 formula: Mr Ngudjolo was the number one. He was our chief. And you can find that  
3 in paragraph 304 and 362 of our brief.

4 Secondly, Ngudjolo is the one who gave orders. He was the one who was in a position  
5 to give orders; and even if he didn't issue those orders directly to the soldiers, according  
6 to P-250 when a commander issued an order it was understood to come from above. So  
7 he had ascendancy over the commanders according to P-250's testimony as confirmed by  
8 P-280, who stated that all of them received their orders from Ngudjolo; he who had the  
9 biggest camp and was the supreme commander. We can find that in paragraphs 547 and  
10 404.

11 At paragraph 547, P-280 is quoted, when he says, "All of us, including Kute, received  
12 orders from our chief whom we knew very well, that is the Chief of General Staff  
13 Ngudjolo, in various important areas such as distribution of weapons." This according to  
14 P-280's testimony at paragraph 405.

15 Third point, Mr President, your Honours, Mathieu Ngudjolo also issued instructions.  
16 An example can be found at paragraph 405, where Ngudjolo designated the members  
17 who would be part of the delegation to Aveba. Point number 4, Ngudjolo had deputies  
18 at the General Staff, paragraph 321 of our brief where P-250 states that he had deputies;  
19 namely, Boba Boba, Bahati de Zumbe and Kabdole (phon).

20 Fifth point, Ngudjolo made sure that new recruits committed to obedience. Point  
21 number 6, there was a reporting system up to down and down to up as we can see from  
22 paragraph 324, according to P-350. So Ngudjolo was able to channel down information  
23 in a hierarchical structure.

24 Finally, there was a disciplinary system in place, which went as far as Zumbe, and you  
25 can find that at paragraphs 410, 415 of our brief where reference is made to the battalion

1 commander and where it is specified that Ngudjolo had a team in place to handle all  
2 matters of discipline.

3 So in addition to the presence of child soldiers, Military Police and all that would ensure  
4 automatic execution of orders, there was a system in place that gave Ngudjolo authority  
5 of command over the commanders, and this has been confirmed by testimonies to the  
6 effect that all had to respect and uphold Ngudjolo's orders.

7 Thank you, Mr President.

8 PRESIDING JUDGE COTTE: (Interpretation) Now, for you and Mr Garcia, all the  
9 evidence that you have put forth and the procedures should point to the fact that the  
10 orders were automatically complied with; is that the case?

11 MR MACDONALD: Yes, Mr President.

12 PRESIDING JUDGE COTTE: (Interpretation) Are you the one answering question  
13 number 10, or who is taking that? All right. Mr Macdonald, you have the floor for  
14 question number 10, which also relates to Mr Ngudjolo.

15 MR MACDONALD: (Interpretation) Mr President, one second so I can look at the  
16 answer. I am sorry, I took the wrong document this morning, but I'll provide you with  
17 an exhaustive answer.

18 The question is to determine whether, going by EVD-0025, Mr Ngudjolo was the  
19 commander of the FNI, and (b) whether he was under the authority of Mr Germain  
20 Katanga and --

21 PRESIDING JUDGE COTTE: (Interpretation) With the idea of identifying himself  
22 being highlighted, as we pointed out from your written brief.

23 MR MACDONALD: (Interpretation) It is the Prosecution's position, Mr President, that  
24 what we need to understand is that at the time of the Bogoro attacks Mathieu Ngudjolo,  
25 regardless of the term used, was in charge of all the combatants in the Bedu-Ezekere

1   groupement, and Germain Katanga was in the Walendu-Bindi collectivity. Each of them  
2   were part of a coalition. Germain Katanga, however, was not above Mr Ngudjolo,  
3   neither was Mr Ngudjolo above Germain Katanga. They exerted separate authority over  
4   their respective groups, their respective combatants, during the Bogoro attacks.

5   But now, if we refer to that letter, we note that they were there for three weeks, from the  
6   4th -- between 4 January and December. What is happening in December? In  
7   December they were in Beni, with a view to create a coalition under the same umbrella of  
8   an association which would bear the same name and bring together all the Lendus from  
9   the north and from the south. Dr Adirodu, in his manifesto, does point out that fact. In  
10   the north there are ongoing discussions for the creation of the FNI, and at that time there  
11   is some ambiguity on the field.

12   Now, what is the information flowing between the combatants at that time? It is difficult  
13   to establish evidence to that fact, but one thing is clear: Bedu-Ezekere is to the south of  
14   Bunia. It is not in the Irumu territory, but it is almost there.

15   We know that Mathieu Ngudjolo had very close links with Dr Adirodu, and this is  
16   obvious from the testimony which bears that out, so Dr Adirodu in a way was the  
17   protagonist of the -- for the creation of this movement which was more bent towards  
18   Kinshasa, whereas the FNI was more tilted towards Uganda. That was the situation on  
19   the ground at that time.

20   Once again, you need to look at Witness 250's testimony, mindful of course of the caution  
21   that I mentioned that must be borne in mind a short while ago relating to the manner in  
22   which he has testified on a number of subjects and the reasons for which he made his  
23   testimony in that manner.

24   The entire issue of the FRPI is therefore not very clear, but from this document we can see  
25   that there is a stamp with the word "FRPI" and the headquarters in Kati, which is in

1 Bedu-Ezekere. I am sorry, I am going too fast.

2 So, Mr President, I think that we want to assist the Chamber to the best of our ability, but  
3 there are some answers that are not straightforward and not simple because the situation  
4 on the ground was not that clear.

5 However, regardless, what must be borne in mind is that the stamp on the letter must  
6 reflect the existence of an organised structure that was in place in Bedu-Ezekere. So on  
7 4 January, the idea must have been to establish contact with Aveba and identify with a  
8 new group, which would be the FRPI, and the Lendu in the south were close to the Ngiti  
9 and would like to join this group in order to face this common enemy. So, at the time of  
10 the organisation, there must be a reflection of the relationship between the UPC and the  
11 FNI reflected in this new arrangement. That is the situation, but it was one that tended  
12 to evolve.

13 At the same time you hear from evidence that the FNI was present in Haru, but at the  
14 time of the Bogoro attacks what we must understand is that Mathieu Ngudjolo did not  
15 have any authority above him, Germain Katanga did not have any authority above him,  
16 because both accused persons were masters on their own turfs.

17 That is the answer I can provide and I would now hand the floor to my colleague to take  
18 the next question.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Macdonald.

20 Question number 11, still about Mathieu Ngudjolo, relates to your statement yesterday  
21 that he, Mathieu Ngudjolo, could not have so easily transformed from a nurse to a colonel,  
22 and according to your brief you make a number of statements as to the developments in  
23 that situation and the possibilities that may have obtained. We would like to seek  
24 clarification from you on that point. You have the floor.

25 MR DUTERTRE: (Interpretation) Thank you, Mr President. Thank you, your

1 Honours.

2 The question from the Chamber is to determine whether Mathieu Ngudjolo could have  
3 become the Chief of Staff in three weeks in Bedu-Ezekere.

4 The evidence is that he arrived in Bedu-Ezekere on 3 August and this -- on 14 August,  
5 rather. This can be found in P-250's testimony, who says that he became the Chief of  
6 Staff and that is at the time of the Nyankunde attack.

7 There is, indeed, a very rapid change relating to the transformation into Chief of Staff.

8 The Bedu-Ezekere group was under attack, it was surrounded at that time and they  
9 needed a leader. They organised themselves therefore accordingly, and Mr Ngudjolo,  
10 your Honours, had all what was needed to become a chief at that time, or a leader at that  
11 time. He was a native of that group. He was a son of the soil. He came from a family  
12 of notables. His brother was a notable. He had some status in the community. He  
13 had travelled outside of the group. He had been a corporal in the civil guard and,  
14 therefore, had some measure of experience in fighting in Goma. Therefore, at that crucial  
15 moment he had the qualities and qualifications required. The group needed a chief at  
16 that time, they did not have time on their hands and Ngudjolo was the right man to be the  
17 chief - the leader - and he became the leader.

18 Now, when the explanation is offered, Mr President, that he only became a soldier in 2003,  
19 transforming from a nurse to a soldier at that time, that argument does not hold sway,  
20 Mr President. The idea simply is that such an argument cannot be -- cannot hold sway,  
21 because one does not just become that overnight in the circumstances that obtained at the  
22 time.

23 Thank you.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Question number 12 relates  
25 to the role of the fetish, or féticheur, in that area. Prosecution, now.

1 MR GARCIA: (Interpretation) Mr President, your Honours, as for question number 12,  
2 it is the position of the Prosecution that the féticheur of the Walendu-Bindi and the  
3 Bedu-Ezekere collectivities were not in a position to take military decisions.

4 The evidence relating to the Walendu-Bindi collectivity flows from the testimony of P-219,  
5 at transcript 206, pages 31, 32 and 37. In summary, those pages indicate that Witness  
6 P-219 talked about Kakado, Sarado and Raymond, as well as Kasaki, describing their  
7 functions.

8 When he does so, it doesn't emerge that these were people who had military significance.  
9 They were simply féticheurs. And what does this mean? It means that these were  
10 people who engaged in prayers and various rituals.

11 P-219 assessed that Kakado had spiritual authority, and this authority had no bearing or  
12 was not at the level of the army. What he did was to make people stronger and to build  
13 up their morale. That he was the most respected person in the community. Reference  
14 transcript 208, page 7, lines 5 to 9.

15 As for Sarado, P-219 makes the same explanation. He offers the same explanation that he  
16 was the spiritual leader in Tchei. Raymond was a doctor specialising in fetish, and as  
17 for Kasaki, your Honours, I would refer you to paragraph 165 of its final brief where it is  
18 stated that he, Raymond, was the specialist in ceremonies and rituals before the troops  
19 went to war. The Prosecution would also refer you to paragraph 201, where P-219  
20 confirms that the féticheur did not have any authority to put any combatants or soldiers  
21 on mission.

22 Now, Mr President, regarding the question about féticheurs being able to issue orders in  
23 Bedu-Ezekere, the Prosecution is of the following position: The Chamber referred to two  
24 paragraphs wherein it is stated that the féticheur were able to offer advice or counsel  
25 relating to the date of an attack, or that they could also say a few things about instructions

1 relating to the fetishes.

2 The Prosecution holds, Mr President, your Honours, that such advice or opinions of the  
3 féticheurs did not amount to military decisions; spiritual advice based on superstition.

4 There is nothing in the evidence to show that the féticheurs planned, organised, or  
5 executed the attack on Bogoro.

6 Furthermore, it is the position of the Prosecution that a military decision can only be taken  
7 by someone who is part of the military structure in place, for example in Bedu-Ezekere.

8 Mr President, your Honours, the evidence before you therefore does not reveal that the  
9 féticheurs did have any position within the military hierarchy in Walendu-Bindi or in  
10 Bedu-Ezekere. No evidence whatsoever. Mathieu Ngudjolo alone was the military  
11 leader in Bedu-Ezekere, and he alone had the authority to give orders to his combatants to  
12 attack Bogoro.

13 In a nutshell, therefore, the féticheurs were not part of the military chain of command in  
14 Bedu-Ezekere. There is no evidence to show that they had any military authority over  
15 the combatants. Consequently, they could not issue orders or military orders to the  
16 combatants.

17 Finally, P-280, at transcript 144, page 47, lines 12 to 23, is also useful relating to the  
18 relevance of féticheurs in Bedu-Ezekere. P-280 stated that all that mattered in  
19 Bedu-Ezekere was in the hands of Ngudjolo, and Ngudjolo alone. It is Ngudjolo who  
20 even asked the combatants to see the féticheurs before going to the combatants. That is  
21 basically what the position of the Prosecution is relating to the ability for féticheurs to give  
22 any orders in Bedu-Ezekere.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Garcia. And we can  
24 come back to what Mr Macdonald told us in the beginning. The féticheurs probably did  
25 not issue any military orders, but it is possible that they could have played a role in

1 spreading the ethnic hatred that we talked about a short while ago. I believe this was  
2 touched upon by Mr Macdonald.

3 MR GARCIA: (Interpretation) Yes, that is correct, your Honours.

4 PRESIDING JUDGE COTTE: (Interpretation) So we do now understand what role the  
5 féticheurs might have played in this entire business, at least according to you.

6 We have three questions left. Question 14 should not lead to a very long answer. And  
7 regarding question 13, we want to be sure that what you mentioned in your brief is what  
8 we believe we have understood. Who is going to answer?

9 MR MACDONALD: (Interpretation) I will be the one to answer.

10 PRESIDING JUDGE COTTE: (Interpretation) We have a map in our minds.

11 MR MACDONALD: (Interpretation) But before I answer your Honour, I would like to  
12 recall that my colleague, Mr Dutertre, also had to answer the question of the Chamber.

13 Do you believe that there were various stages in this structure as indicated by Witness 250?  
14 Maybe we will provide an answer to that question immediate, otherwise I will give you  
15 an answer to questions 13 and 14.

16 PRESIDING JUDGE COTTE: (Interpretation) I had a feeling that Mr Dutertre had  
17 answered, but if he wants to complete his answer --

18 MR DUTERTRE: (Interpretation) I believe it was actually two questions.

19 PRESIDING JUDGE COTTE: (Interpretation) Please take your time.

20 MR DUTERTRE: (Interpretation) To say that Mr Ngudjolo became Chief of Staff in  
21 December does not mean that the structure was completed at that time. In paragraph  
22 333 it is stated that the Lendu militia group evolved. There were many camps. P-250  
23 stated that after Ngudjolo became leader, positions were set up in the groupement.  
24 There were two battalions in existence prior to the Bogoro attack, so this means that before  
25 the Bogoro attack the militia commanded by Mathieu Ngudjolo was well-structured.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Macdonald, I would  
2 like us to hand over to Maître Gilissen at a quarter-to so that he should be able to present  
3 for 15 minutes and then we will resume after the break so as to allow the two speakers to  
4 have the allocated time.

5 MR MACDONALD: (Interpretation) I will answer the last question, your Honour.  
6 Question number 13, the answer is yes. The delegation travelled to Aveba, and then to  
7 Bavi. After Bavi part of that delegation went to Medhu before returning to Aveba, and  
8 upon their return to Aveba they received weapons and then returned to Zumbe. So once  
9 again, given the order in which you ask your question, we do agree because there is  
10 document EVD-OTP-00025 which is dated in January and is signed in Bolo.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. We do agree that during that  
12 period of instability and risky movements there were people who actually travelled to  
13 certain places.

14 MR MACDONALD: (Interpretation) These were combatants that were travelling in an  
15 area which was more secure, for example Bavi to Aveba, which was more secure than the  
16 Songolo area, for example in the direction of Mutombo and Nyankunde. I hope I'm not  
17 making any geographical errors here, but the closer they were to the centre of the  
18 collectivity, the further away they were from the enemy.

19 PRESIDING JUDGE COTTE: (Interpretation) Question number 14 relates to a  
20 statement made by Witness 219, about his time, when he was on guard in Zumbe, and he  
21 met with Mr Katanga. So we will ask you to confirm that you are no longer relying on  
22 that statement of 279, because we -- you did not mention it in your closing brief, and if  
23 you are no longer relying on that statement by 279 we would like to know why?

24 MR MACDONALD: (Interpretation) Yes, indeed, your Honour. We are no longer  
25 relying on this part of the testimony of 279, because we believe he's making an error; he's

1 confusing with the situation with the facts related to the Mandro attack.

2 Mr Katanga , in light of the evidence, is supposed to have taken part in the Mandro attack  
3 and Chief Manu also implies that Katanga is supposed to have taken part in the Mandro  
4 attack. So it appears that from Zumbe Mandro was attacked. Mr Katanga was present,  
5 so he would have been in the Bedu-Ezekere groupement. So we believe this is a  
6 chronological error made by the Witness 279.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Question number 15.

8 Mr Macdonald, you have six to seven minutes.

9 MR MACDONALD: (Interpretation) In answer to the specific question who issued the  
10 orders or whether Mr Ngudjolo actually issued the orders, there is one witness who  
11 mentioned that; that is Witness 279, paragraph 544.  
12 You also have paragraphs 545, to 549, where we discuss the statements of P-250 and P-280.  
13 P-280 states that Kute would have received his instructions or orders from Ngudjolo.  
14 This is in transcript 156, page 9, and he added "All of us including Kute received orders  
15 from our leader that we knew very well." That is Ngudjolo. Transcript 162, page 12.  
16 So it is established that Ngudjolo was the leader. And in answer to question 9, it is clear  
17 that orders came from the top to the bottom. 324, 403 and 409, those are the paragraphs,  
18 the relevant paragraphs in our brief.

19 Right now, the Prosecution submits that this evidence shows that the orders given to the  
20 combatants of the Bedu-Ezekere groupement came directly from Ngudjolo, even though  
21 this evidence is circumstantial.

22 PRESIDING JUDGE COTTE: (Interpretation) A point of clarification, Mr Prosecutor.  
23 Our concern is not to know whether the two accused were issuing orders, whether they  
24 had the authority to do so. What we would like to know is whether they ordered the  
25 Bogoro attack?

1 You have stated in your brief that the Prosecution proved, beyond reasonable doubt, that  
2 Mathieu Ngudjolo and Germain Katanga were the leaders of the respective military  
3 groups, and that they planned, ordered and executed the attack on Bogoro. Can you tell  
4 us who, and when did they give these orders? Can you confirm to us that the two  
5 accused ordered the attack?

6 MR MACDONALD: (Interpretation) I believe in the case of Mr Ngudjolo it is Witness  
7 279, and Ngudjolo is supposed to have said, "Let us go to war." In the case of  
8 Mr Katanga, according to Witness 160, he had a conversation with Mr Katanga, and  
9 Mr Katanga stated, "I made the plans, I gave the orders and they went." So these  
10 elements that indicate that the orders were direct, one is a confession, and the other is  
11 through a witness who testified in this courtroom.

12 And just to conclude now, your Honour, and I have a few minutes left. I would like to  
13 reiterate once again that this issue of direct orders, in our view, is not essential. As I have  
14 stated, an order can be implicit, and I refer you to footnote 2143 of our brief. I will not  
15 read it out in full.

16 In light of the entire body of evidence, in which you have a description of the authorities,  
17 the chain of command, it is clear that these two people were the leaders of their respective  
18 groups. And we submit that the combatants, who travelled to Bogoro to attack the  
19 village, which is a village that had previously been attacked by those same two  
20 communities, this attack required a large force, in order to dislodge the well-armed UPC  
21 group.

22 Those two forces could not have attacked Bogoro without the consent of the two accused.  
23 They had the authority to the extent that a combatant could not go to battle and lose  
24 weapons and ammunition without the knowledge of the two accused.

25 Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) The Chamber thanks you, Mr Macdonald,  
2 as well as the other members of your team who provided the clarification that we sought.  
3 It was quite useful for us.

4 Mr Gilissen, you have 15 minutes. We will listen to you with keen interest. We will  
5 then have our mid-morning break, and you will continue for 35 minutes before handing  
6 over to Maître Luvengika.

7 MR GILISSEN: (Interpretation) Thank you, your Honours. Good morning. It is  
8 Maître Julie Goffin who is going to begin our presentation.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well. Maître Julie Goffin, please  
10 go ahead.

11 MS GOFFIN: (Interpretation) Good morning, your Honours. It is an honour for me to  
12 present the first part of the final arguments of the legal representatives of the child  
13 soldiers. We believe that there should be fairness, both for the Prosecution and the  
14 Defence.

15 The -- Mr Gilissen will speak about the nature of the conflict, as well as the use of children  
16 of less than 15 years and having them participate in the hostilities. The victims  
17 represented by Mr Gilissen are young boys and girls who participated in the Bogoro  
18 attack while they were less than 15 years old at the time of the events, so it is in their  
19 interest to have the truth ascertained and in return benefit from the revelation of the truth.  
20 The victims provide light on the events, and they are in a position to make a contribution  
21 to the ascertainment of the truth. It is essential that their participation in the proceedings  
22 should be significant. I am not going to come back to the modalities of participation for  
23 the victims, but I will point out that that ensured the fairness of the trial.  
24 The contribution of the victims also enabled them to be participants and they may defend  
25 interests that are similar to the interests of the Prosecution, but this does not make the

1 legal representative an alternative Prosecution.

2 The victims also have led to a new configuration of the ascertainment of the truth, because  
3 there is now a triangular formation and this contributes to the evolution of international  
4 criminal law and this will force those who are nostalgic about direct confrontation  
5 between Prosecution and Defence to take note of this new reality.

6 The procedural rules were recalled by the Chamber to ensure that the participation of  
7 victims is not an intrusion, or an encroachment, on the role of the Prosecution. The  
8 contribution of the victims is indisputable because they are talking about their own  
9 personal experience, but the fact remains that safeguards have been put in place by the  
10 Chambers. The mechanism for contribution was conceived as a prerogative, and so  
11 victims should not be confused with playing the role of the Prosecution.

12 The rights of the Defence have been safeguarded, and the judicial system has a lot to  
13 benefit from the intervention of the victims and I believe Mr Gilissen will confirm that  
14 when he takes the floor after me.

15 Thank you, your Honours.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

17 Mr Gilissen.

18 MR GILISSEN: (Interpretation) Thank you very much, Mr President, your Honours. I  
19 salute the parties. This is a difficult and delicate exercise. I will try to be brief and to  
20 focus on the crucial issues.

21 All the parties and participants agree on the essential thing, that is between August 2003  
22 and July 2003 there was an armed conflict in Ituri, and today we are all certain that the  
23 main actors of this conflict were not only armed groups, but armed forces.

24 There were armed groups - and the Prosecutor talked about this this morning - which had  
25 an organisation, responsible commands, and authority, effective control and a genuine

1 capacity to plan and carry out concerted military activities and control over the -- on the  
2 ground in Ituri, which made it possible for them to act where they wished to act.  
3 We are all convinced that the Bogoro attack is part of that conflict and that it is related to it.  
4 It is clear that the accused acknowledged that they were aware of the prevailing  
5 circumstances, and it has been stated we believe quite correctly that they were aware that  
6 the Bogoro attack was part of that armed conflict and everything that has been revealed  
7 has just been confirmed, your Honour.  
8 This is essential for the victims; that is the characterisation of that armed conflict. The  
9 Prosecution repeated it this morning and we believe that they are correct. This armed  
10 conflict between August 2002 and July 2003 did not appear ex nihilo. It did not break out  
11 by chance, or it did not break out as a result of a poor co-ordination between the clouds  
12 and the stratosphere. This conflict was a result of activities that happened over several  
13 years and, in light of the evidence, we can identify the major stages that led to the  
14 suffering of Ituri and its population.  
15 We have known that Ituri was occupied within an international framework. Uganda  
16 intervened. We cannot overlook the fact that not only did Uganda intervene, but its  
17 army, the UPDF, was in Ituri. They played a role in the rebellion, and if the UPDF was  
18 there it was because at one point the RCD triggered off a rebellion and Uganda played a  
19 role in the creation of the RCD-K/ML. This was confirmed by many testimonies.  
20 We are also fully aware that most of those events took place against the central  
21 government in Kinshasa. The situation was volatile. However, the arrival of the UPDF  
22 meant that this army occupied areas in Ituri for several years. There were also political  
23 and economic interventions, in addition to the Ugandan military intervention. Life was  
24 not easy in Ituri at that time, but the UPDF stayed put.  
25 The Ugandans continued to play an extremely active role in all the domains that I have

1 just mentioned. And during the period that concerns us, that is from August 2002 to  
2 July 2003, the UPDF was still there. We know that the UPDF and also the Kinshasa  
3 government played a role in the creation of the militia groups. We are less  
4 well-informed than Trial Chamber I but we know the situation of the UPC. I believe we  
5 all understand the word that I am using, the "role." They played a role in providing  
6 assistance, and resources, weapons, logistics, training, and they exercised some control  
7 over the UPC militia group.

8 This appears to me to be essential, because by delegating the functions of the UPDF to the  
9 UPC, and I am going to mention just one example, the occupation of Bogoro, who set up  
10 the camp in Bogoro? Who occupied Bogoro? It was the UPDF. So, who decided to  
11 hand over this occupation of Bogoro to the auxiliary militia group? It was still the UPDF.

12 On 23 February 2003 it was the UPC which was attacked in Bogoro and that is because the  
13 UPDF was no longer there. They had handed over Bogoro to their allies, the auxiliary  
14 militia group, the UPC. Your Honours, those of us, legal representatives, have a specific  
15 role to ensure that the victims are heard. What the UPC did has been greatly discussed,  
16 but there has been no mention of what the UPDF had them do. So, Uganda was one of  
17 the international stakeholders, and at the time of the events were occupying Ituri, and  
18 played their role fully, as a major stakeholder in the political, economic and military  
19 domains.

20 We have a difficulty with the events that we are dealing with because we are dealing with  
21 a very specific moment, that is between August 2002 and July 2003.

22 One of the episodes of that long armed conflict is what we are dealing with and there  
23 were many such episodes. At that time there was a remarkable aspect which I will  
24 describe as unique, that is between August 2002 and February 2003. That is before  
25 24 February 2003.

1 We have listened to the witnesses, and we have the documents. The actors or  
2 stakeholders in Ituri were involved in a major project of repositioning. There were  
3 approaches, meetings, and negotiations because negotiations did, indeed, take place.  
4 There were new agreements, and pacts. Those who were involved in the contemporary  
5 life of Ituri at that time were trying to change the political and military configuration of  
6 Ituri. Some of them wanted to put an end to the occupation of Ituri by foreign forces and  
7 their local allies. They wanted to return to the area.

8 And, Mr President, I am aware of the time constraints, and I would like to conclude  
9 quickly. Some people were willing to do anything to put this conflict to an end, and to  
10 ensure the territory of the Congo would remain an undivided whole. Others had other  
11 ideas. Some people were willing to even change alliances, and others were the last, they  
12 wanted independence and autonomy. So all the various factors came together, and these  
13 stakeholders in the territory of Ituri were thus -- began to take up new positions. I realise  
14 that I -- I realise that I may need to break at this point.

15 PRESIDING JUDGE COTTE: (Interpretation) Yes, we realise fully that it is extremely  
16 unpleasant to have to stop once one is in the very middle of presenting legal arguments.  
17 It's more of a technical problem. We actually have to think of our recording devices.  
18 We shall now suspend, resume at 11.30, and then you will have 35 minutes to continue  
19 presenting your arguments. The hearing is suspended.

20 (Recess taken at 11.03 a.m.)

21 (Upon resuming in open session at 11.32 a.m.)

22 THE COURT USHER: All rise.

23 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Mr Gilissen, we  
24 shall now resume. Please continue with your final arguments. You have the floor.

25 MR GILISSEN: (Interpretation) Thank you very much, your Honour, your

1 Honours. I'll try to get a second wind, so to speak, and continue with the point  
2 I was making.  
3 So I was trying to express the feelings of the victims regarding that particular moment,  
4 that singular moment, in the life of the Ituri region; that is to say, that time just before  
5 the attack on Bogoro, and I would also like to make a link between that and the actual  
6 attack itself on 24 February 2003.  
7 This was a very special time, a very special moment in terms of the dealings amongst  
8 the various stakeholders in the region, the various stakeholders of interest to us  
9 participants in this trial. For example, there was the government in Kinshasa and  
10 then there were the local stakeholders and then those who became the indispensable  
11 stakeholders, so to speak, and this whole situation was about the Congolese  
12 government seeking to return to the area and regain control.  
13 The government in Kinshasa needed to find local allies, and so the Congolese  
14 government did so. Initially, this was not a question of the Congolese government  
15 trying to assert exclusive control over the area, it was not about them having  
16 responsibility for the local commanders, but we realise that there must have been  
17 negotiations because these various stakeholders were told that militiamen would be  
18 accepted into the national army after the hostilities ended, that the non-commissioned  
19 officers and even the high-ranked officers would be granted some kind of equivalent  
20 rank within the Congolese army. And so this was a very complex situation.  
21 At that time, people had to come together in Beni so that these various stakeholders  
22 could gather and make some sense of things. And so, your Honours, these  
23 negotiations and the alliance that was born from these negotiations were such that the  
24 goal of the authorities in Kinshasa was to regain control over Ituri.  
25 Why did they want to do so? Well, they had lost control. For all practical purposes,

1 a foreign army, a foreign force, had occupied that area and some militia had become  
2 associated with that foreign power and had become subsidiaries.

3 When analysing the initial information, the preliminary -- pardon me, the Pre-Trial  
4 Chamber saw a number of things and, your Honours, amongst the various items of  
5 information you have received, and amongst the various items of evidence that you  
6 will assign a certain weight to, what do we find? What is going to lead us to one  
7 particular conclusion? What is going to be the linch-pin of this armed conflict?

8 I think we really must observe what happened and come to the appropriate  
9 conclusions. The evidence brought before Pre-Trial Chamber I in the case of The  
10 Prosecutor versus Lubanga is not entirely -- that evidence is not entirely foreign to the  
11 information that was brought before your Chamber. What's more, there may not  
12 necessarily be any contradiction. Speaking of another issue involving other  
13 stakeholders, another story, one may come to different conclusions and I'm giving an  
14 example: A cunning attempt to try to introduce the whole issue of intermediaries  
15 into another trial. The Chamber shall come to some realisations, but I stress these  
16 two situations were different.

17 Now, it is true that the UPC was part of a certain vision, a Congolese vision, of  
18 independence, of autonomy, but that was never the case for the Ngiti or Lendu  
19 warriors. For them it was all very clear. They joined up because they were invited  
20 to, and the strategy was to regain control over the national territory, to push back the  
21 international enemy and the local intermediaries; that is to say the local militia  
22 involved.

23 So in the minds of the Lendu and Ngiti warriors, there was a different logic, a  
24 different set of assumptions, it was a different kind of battle, and the international  
25 aspect cannot be set aside. It was an obvious part of what happened.

1 The attack on Bogoro, the fall of Bogoro, that fortress Bogoro, the village of Bogoro,  
2 this was not a one-off. It is not something that you can look at in an isolated manner;  
3 it was part of a broader picture. The central government in Kinshasa was doing all it  
4 could to make use of the local stakeholders who were necessary for their plans.  
5 The local stakeholders were no longer self-defence groups, they were not self-defence  
6 groups, they had become attackers themselves. They received assistance, training.  
7 They were provided with logistics, weaponry, munitions, well-supplied. The local  
8 warriors, Lendu and Ngiti, became capable with the assistance, the advice and  
9 guidance of Congolese army officers who had been sent there. Specifically, Blaise  
10 Koka spoke of that, and their task was to turn these local groups into true armed  
11 groups.  
12 The APC, well, most of them deserted the ranks, they simply deserted, and so  
13 something needed to be built locally, at the local level, in order to ensure  
14 comprehensive control, exerted through EMOI, that was a body that had been set up  
15 in Ituri, and the leaders of these fighters, members of former self-defence groups,  
16 became true attack forces thanks to these specialists who had been sent by Kinshasa,  
17 and they drew up a plan to regain control over the national territory. That is why  
18 the supplies came from Beni. That is why those instructors were sent to them. That  
19 is why they were sent everything they needed to organise not the attack on Bogoro  
20 but rather the reconquering of the national territory. As the Prosecutor spoke of  
21 earlier, a series of various short-term attacks. So this was the broader picture.  
22 Without this broader plan, there would not have been an attack on Bogoro, if that  
23 attack had not been part of this broader picture, these alliances with the Congolese  
24 government who wanted to regain control and authority over the region. So that is  
25 where things happened. That is when we realised that the effective control over the

1 area was not what we imagined it to be.

2 The local stakeholders were part of the common plan, but they added a local touch, a

3 bit of local flavouring, so to speak. They added their own -- they added a number of

4 specific ingredients, local ingredients, so to speak, to this recipe.

5 The Hema in the form of the UPC and, you see, everything that really characterised

6 Bogoro, the Bogoro of the old days, the town where goods transited through to get to

7 the centre of the country from Lake Albert.

8 So there was this initial common plan, but then all the local factors came into play.

9 Things were volatile in the area at that time, and I think it's necessary to understand

10 that point because it cannot be challenged that those who had control over the crimes

11 in the area were the Lendu warriors and those they reported to, the Ngiti warriors

12 and those who they reported to, those who used the alliance to end the international

13 conflict, the international occupation of Ituri, and that was the framework within

14 which we saw this use of children under 15 as child soldiers on 24 February 2003.

15 We are not dealing with the same sort of picture as the picture that was painted for

16 Pre-Trial Chamber 1. There was this international occupation, but there were ethnic

17 components to the conflict that emerged.

18 What was the interest of the Congolese government in all of this? Was it in their

19 interest to massacre local people who actually experienced this hatred, this

20 all-consuming thirst for vengeance that the Prosecutor spoke of.

21 Your Honours, allow me to offer you some explanations because, you see, I've talked

22 to the young people who were involved, those who were actually in Bogoro and

23 others, those who experienced the events in real life. They experienced the events in

24 their very flesh, not in some courtroom thousands of miles away where it is cold in

25 one season and warm in another. I'm speaking of the victims; the ones who were

1 actually there on 24 February 2003.

2 To defeat the Hema, the UPC, that was what they were thinking. That was their  
3 identity, to beat the Hema, to beat the Ugandans, so this was an extraordinary  
4 situation. There were serious disturbances, all kinds of trouble, and so they had a  
5 certain vision of the enemy, and then there was that common threat that the  
6 Prosecutor spoke of yesterday. It was a complex situation, and the -- you see, many  
7 people were perceived as enemies: The Ugandans, the UPC, the civilians. We  
8 know that the events can be interpreted in a number of different ways. You can read  
9 the situation in many ways. The situation was complex and volatile in Ituri.

10 Now, we do not agree with the Prosecutor in his analysis of the armed conflict. We  
11 take the perspective of the victims. And so I wish to stress, your Honours, that in  
12 any event the legal instruments that you may use to deal with the offences suffered  
13 by the people that I represent, you may speak of Article 8(b)(2) of the Rome Statute or  
14 some other Statute, but this is not particularly relevant for the victims. We're talking  
15 about the same events, the same legal notions.

16 Let it not be said that, if it had been known that it was a matter of internal conflict, the  
17 Defence would have been different. That would mean that the witnesses would  
18 have come - the Defence witnesses - and would have come and said something else.  
19 Unthinkable, of course.

20 Now, your Honours, I would now like to move on to my second point. Mr Katanga  
21 made a number of admissions and finally some admissions regarding the presence of  
22 children when the attack occurred on Bogoro in the presence of children in armed  
23 camps, and I think you shall recall that at one particular point there was mention  
24 made of pygmies in Bogoro, the little people, the pygmies. Blame was put on the, or  
25 responsibility rather was placed on the, shoulders of the pygmies. It was also said

1 that those who said that the victims -- some people tried to claim that these victims  
2 under 15 were not actually adults, but rather were -- correction, were not children,  
3 they were actually adults, rather short adults, but when one looks at the statements  
4 and evidence from the witnesses who were there, who speak to the looting, to the  
5 other events, we really have to focus on what is essential.

6 These admissions have their limits, because I think you saw in the  
7 Defence briefs -- well, you were told that scientific tools can be used - quite useful  
8 ones - to assess the age of a child, but I think this only -- that argument can only go so  
9 far.

10 Considering the Prosecutor's burden of proof and your work to determine whether  
11 the children in question were 14, 14-and-a-half, 15, 15-and-three-months, it's a matter  
12 of verifying whether the children were clearly under 15 years of age. Obviously, we  
13 find ourselves in a place where there is that possibility for error and we assert that  
14 there certainly were children under 15 present.

15 For example, Witness 268 told us that there were children as young as 10, 11, 12, 13.  
16 12 years old, your Honour, imagine. 11 years old, 10 years old according to that  
17 witness.

18 Witness 161, children taking part between the ages of 8 and 10 years.

19 Witness 132, Kagaba camp, children of 13 and 14 years. Karidu (phon), and we  
20 know quite clearly that he was 13 at the time of his demobilisation.

21 Some very brief, or rapid, observations. We were all surprised, I think, by the care  
22 that the witnesses took when they spoke about how difficult it was to assess the age  
23 of the children that they saw. Some witnesses indeed refused to give a particular  
24 age, or make an assessment of an age, when they spoke of the kadogo, the child  
25 soldiers.

1 A linguistic expert in some ivory tower will tell us that kadogo means, "Yes, the little  
2 ones, or the young ones," but if this particular word was chosen it was because people  
3 were so shocked by this particular situation: These kids - kids - who found  
4 themselves amongst troops finding themselves taking part in a war effort that they  
5 should never have been apart of. All observers, anyone coming from the western  
6 world, from South America, Australia, anywhere in the world, they were all shocked  
7 by what they saw, shocked by these children, because what happened was shocking.  
8 This is not something that is abnormal, or unusual. This is utterly unacceptable.  
9 The witnesses did not make these assessments of age randomly, or just guess at ages.  
10 The tools that were used, for example voices that had not broken, the physical  
11 characteristics of these children, the mental and psychological characteristics of these  
12 children who were obviously under 15.  
13 Your Honours, these were -- these were -- these -- these women who came and told us  
14 about these children, these women knew what they were talking about. They  
15 had -- they knew children. They had given birth to children themselves. Or the  
16 fathers came and spoke about their life experiences, about the children that they saw  
17 there who massacred people, who looted. So I think it's -- it cannot be said. One  
18 cannot state that everyone was wrong. Everyone got it wrong.  
19 A second issue that I will say only a few things about. I think we all agree on the  
20 Vienna Convention and the provisions that relate to the offence in question, and the  
21 preparatory work that is so important to our task has to be considered as in addition  
22 to Article 32 of the Convention, not as a last measure, last resort.  
23 Then, of course, there's also that last concept that the offence, as it exists in  
24 independent law of the International Criminal Court, this offence was defined within  
25 a certain framework, but direct participation in hostility is not synonymous with

1 active participation, not in English, not in French, not in any language of the world.  
2 Those words are not synonymous in any language.  
3 International Humanitarian Law wanted to protect a group of people. The  
4 negotiators, those who negotiated the Rome Statute, wanted to adapt, to innovate.  
5 They wanted to adapt this concept of participation to better protect children in such  
6 situations of armed conflict. Direct participation in hostilities within international  
7 law is a concept that is intended to maximise the type and the number of people who  
8 are protected, who are excluded.  
9 The concept of active participation in hostilities is used in the law of the ICC is to  
10 maximise the number of children who are to be protected. These are two techniques  
11 for on the one hand we protect people who do not participate or no longer participate  
12 in hostilities, direct participation, a certain concept, then on the other hand we try to  
13 protect as many children as possible because they find themselves in a situation that  
14 they must -- cannot be allowed to be in.  
15 So this is about providing the maximum amount of protection to children through  
16 this concept of direct participation, which is a rule that is inclusive, not exclusive.  
17 This is a concept that provides a maximum amount of protection to children. These  
18 are two different techniques; two techniques to protect these children as much as  
19 possible and the children who participated indirectly in hostilities.  
20 Your Honours, this is quite normal. How weak it would be on the part of ICC  
21 Judges to say, "Oh, well, this was just indirect participation." We have to render  
22 justice. It would be so -- it would be such powerlessness to turn our backs on these  
23 children. Those who participate directly in hostilities are deemed to be as legitimate  
24 targets. That's normal.  
25 Children who are forced to take part in hostilities, even indirectly, are targets too, and

1 that is not legitimate.

2 I can see that my time is running out, your Honour and, well, I really must say one  
3 thing: If you follow the Defence along their path, I must point out that things aren't  
4 as simple as they may appear. The Optional Protocol to the Conflict on the Rights of  
5 the Child, Article 4(1), prohibits any form of participation, and I think that's an  
6 interesting point because that is a protocol that was ratified by the Congo. It was  
7 ratified on 28 March 2001, and it came into effect on 11 November 2001, so it was  
8 prevailing at the time. Even Additional Protocol II to the Geneva Convention is not  
9 as affirmative and decisive as you might think. \* Article 4-3-c prohibits participation  
10 both direct and indirect and then you have the Statute of the Special Tribunal for  
11 Sierra Leone. When the UN Security council was seized of that matter and had to  
12 adopt the Statute, a number of changes were made to the wording so as to not to use  
13 the wording of international humanitarian law but rather the wording of the Rome Statute.  
14 And I think, your Honours, it is interesting to point out that this Statute apply to the  
15 Special Tribunal for Sierra Leone after the fact. This Statute dates back to before the  
16 attack, but I point out that it was adopted by the Congo in 2002. So it applies, and  
17 everyone was supposed to know that. It was talked about in the Congo. And  
18 when one becomes the leader of a militia, one is supposed to know, one should have  
19 known, obviously.

20 Mr President, I think therefore that on this point I need to say that it will be difficult,  
21 mindful of the charges, to claim that such persons were victims. It would be  
22 indecent to claim to be victims in this case. It is true that it is their right to defend  
23 themselves and to do so properly, which is in order, but we know, we know who the  
24 victims are. We know who the victims in this case are.

25 So, Mr President, maybe I should simply then say that under such circumstances,

1 referring to 32(2) of the Statute to argue erring in the law would be really a matter of  
2 escapism and I think therefore that, Mr President, I believe that the Chamber will  
3 indeed support the answer that has been provided to this question in the Lubanga  
4 case.

5 Mr President, your Honours, one last submission, an essential submission to the  
6 extent that we can find it in the filings of my learned colleagues, and I want to  
7 commend them for the clarity of their submissions except for one point, one point  
8 which somehow blurs out the clarity of their submission. It is mixed -- it is mixed  
9 up, it is somewhat confused, and maybe deliberately so. It is an attempt, and you  
10 can clearly see through it when you read or, re-read that item again pertaining to  
11 Article 28 of the Statute which is the mode of responsibility which seeks or which  
12 deals with another purpose different from the offence that we are dealing with.  
13 The purpose here relates to the age of the children. Under Article 28 reference is  
14 made to the perpetration of the crime proper, the crime itself, so to go from  
15 self-defence to an attacking position is a crucial point in the responsibility of the  
16 militia. When you are in a state of self-defence, seeking to survive and to meet your  
17 needs, well, there can be general mobilisation. It is possible to justify in law such an  
18 approach, but what about using children? Well, as a matter of necessity, yes, but  
19 when you become a militia then the distinction must be made. If you are not able to  
20 make that distinct between necessity and militia, then you are better off abstaining,  
21 otherwise you commit an offence.

22 Finally, finally, and I would like to wrap up there, Mr President, there has been a  
23 terrible argument put forth several times in the filings of my learned colleagues that  
24 the children who were part of the Bogoro attacks were not our children, they were not  
25 our children. We do not know them, we do know who they are, or maybe they do

1 not want to mention who the children were, and it is their right, but Mr President,  
2 what does all this mean when the statement is made that they were not our children?  
3 Mr President, your Honours, on this matter we must speak clearly and say the  
4 following: When one is involved in a common plan of this nature, having control  
5 over the crime at some point or another, at one level or another, then there is control  
6 of -- over the crime. If you abstain, then the crime will not be committed.  
7 What further needs to be said is that there is joint responsibility in this matter and  
8 that, Mr President, was Mr Macdonald's submission in answer to your question a  
9 short while ago, saying that even if there were another - and we don't know who that  
10 other would be because we know who the actors or the perpetrators in the Ituri were  
11 at the time - if there was some third party that appeared, so to speak, in Ituri on  
12 24 February 2005 -- or 2004, rather, at midnight then such a third party would also be  
13 responsible, so to speak, your Honours, for the crimes that were committed.  
14 I will stop here, Mr President. I will stop here. It is about time to do so, and I will  
15 stop by saying that the victims, the victims have a right to the truth. They have a  
16 right to understand what happened to them. They have the right to understand and  
17 to know the name or the names of those who destroyed their lives, and I'm referring  
18 there only to those who were lucky enough to survive. Many of them died.  
19 It is indeed an honour, Mr President, your Honours, to ask that justice be done.  
20 Thank you.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Gilissen. You took  
22 a little extra time because we interrupted you at some point in your submission. If  
23 we have a little time after Mr Luvengika, we will have a little question to put to you  
24 relating to the international character of the conflict.

25 Mr Luvengika, you now have the floor. You told us that you will be sharing your

1 time with Ms Denis, or with Maître Denis, but you will be starting, so you have the  
2 floor, Mr Luvengika.

3 MR NSITA: (Interpretation) Mr President, your Honours, in the context of these  
4 final submissions we will seek to answer some of the arguments put forth by the  
5 Defence teams in their final written submissions on behalf of the victims whom we  
6 represent. I will provide a general introduction and then deal with specific  
7 questions raised by the two Defence teams relating to the role of victims in these  
8 proceedings, particularly in respect of the Prosecutor's role that has been ascribed  
9 to us. Maître Denis will then deal with specific points relating to the alleged crimes  
10 in the case before us, particularly providing a context on the situation in Bogoro at the  
11 time of the attack of 24 February 2003. Then I will conclude by succinctly dealing  
12 with the role of the accused persons, but I believe that on that point I had pointed out  
13 two concepts which the victims wanted me to raise but, quite fortunately, the two  
14 concepts have already been dealt with through the questions that the Chamber put  
15 this morning to the Prosecutor. I will therefore only touch on those points briefly to  
16 express the victims' feelings relating to those concepts.

17 As a matter of general introduction, let me say that we have now come to the end of  
18 the substantive proceedings in this case which began on 24 November 2009. During  
19 that phase, more than 350 victims were accepted to participate in the proceedings.  
20 Some of them unfortunately will not be alive to see the end of this trial because they  
21 did not survive.

22 Victims have tried to follow as much as possible the unfolding of these proceedings  
23 using ordinary means, such as radio sets with poor reception, or summaries of the  
24 proceedings, on what has been transpiring here in the Court, but they have also been  
25 misinformed by local media.

1 The developments have required that I and my team also provide information to the  
2 victims, but let me say it clearly to you that my clients expressed deep regret when  
3 they learnt that the Courts would not allow them to have discussions with their  
4 lawyers as they prepared their final submissions. I do respect the decisions of the  
5 Chamber, but I simply wanted to point out to you that this was the position of my  
6 clients who asked me to tell you that they were sad about the situation.  
7 In fact, they said that they felt that, "The ICC did not need victims, that the ICC does  
8 not want to listen to us. How can we believe that they want to listen to us when  
9 they deny our lawyer the opportunity to defend us?" That is what they said.  
10 However, they continue to trust your august institution, and they expressed their joy  
11 at the visit that your Chamber made to their area and they are convinced that this will  
12 build a better understanding of the facts and the entire case file.  
13 Mr President, your Honours, as legal representative I did not at any point in time  
14 whatsoever attempt to act as a substitute, or a deputy prosecutor, contrary to the  
15 arguments put forth by Mr Germain Katanga's Defence team. The filings of the legal  
16 representatives do not make of him, or her, a Prosecutor bis. The legal  
17 representative has put together all material relating to the interests of the victims and,  
18 therefore, works to uphold the right of the victims to effectively participate in the  
19 proceedings.  
20 The Prosecutor, on the other hand, argues his case according to his own strategy, but  
21 we represent the interests of victims; victims who do not only participate in these  
22 proceedings for the sole purpose of obtaining financial compensation. They  
23 participate in order to point out that they were victims of pain and suffering, and that  
24 their truth and their story be told so that their concerns can be brought to bear  
25 through submissions by the legal -- their legal representative, who in so doing

1 enables the Court to have a clearer view of the entire case and therefore contribute to  
2 the emergence of the truth.

3 By the way, this is only proper because the accused persons have denied that any  
4 crimes were committed in Bogoro. How can you imagine that they would deny  
5 personal involvement in such cases, or in such crimes? They could be understood to  
6 deny personal involvement in such cases, but not to deny that the crimes were indeed  
7 committed. Therefore you can understand the regret, the sadness and how shocked  
8 victims could be when they are told that their main purpose is only to get  
9 compensation.

10 Victim V-02 provided an unequivocal answer when asked what she expected from  
11 justice, or from the Court. She said, "I hope that the suspects will acknowledge that  
12 they committed those acts and that justice will be done." Victim V-04 also said,  
13 "I would like to ask the Judges to carefully examine the situation and determine  
14 which or who of the accused persons should be held in prison who should be  
15 released."

16 And I want to refer here to transcripts -- to the relevant transcripts for the assertions I  
17 have just mentioned. Victims want to know what the truth is and they want that  
18 their fate be acknowledged. They hope that the courts will make it impossible for  
19 anyone in the future to ever live through what they experienced.

20 Defence argues that there is collusion between the Prosecutor and legal  
21 representatives. If every now and then our arguments appear to coincide with those  
22 of the Prosecutor, it is because these are the only possible conclusions to which one  
23 can come relying on the evidence before the Court.

24 However, we do not always defend the same point of view. For example, the  
25 Prosecutor and our team do not have the same understanding of the armed nature of

1 the conflict, or the same analysis of the testimonies of various witnesses.

2 Defence teams have also criticised the legal representatives, saying that it was not up  
3 to them in their final submissions to make any comments on the credibility of  
4 witnesses. Defence teams claim that we have been forbidden by the Chamber to put  
5 any credibility related questions to the witnesses. Such assertions do not comply  
6 with the rules governing this Chamber and do not reflect the mandate of the legal  
7 representatives when it comes to defending the interests of their clients.

8 By the way, the Chamber has never forbidden legal representatives from dealing with  
9 these questions, and I refer here to paragraph 90(c) of decision number 1665 which  
10 stated that, in principle, the legal representative would not put questions to a witness  
11 on their credibility, except where such questions were to have a bearing on the  
12 interests of the victim.

13 Let us recall the Trial Chamber's decision number 1788, which also made it possible  
14 for legal representatives to challenge the admissibility and relevance of items of  
15 evidence under 69(4) of the Statute.

16 Furthermore, it would appear obvious that defending the interests of victims entails  
17 hearing what the victims have to say about reality. How can then the Chamber not  
18 be allowed to hear this in order to come to its own determination?

19 In this case, we have heard witnesses who have put forth conflicting arguments,  
20 particularly on the negation of the crimes, and it is therefore clear that we need to be  
21 able to make our arguments relating to victims and victim witnesses.

22 Mr Germain Katanga's Defence team has been -- has challenged the legal  
23 representatives of being selective in its criticisms and it has referred to Witness  
24 D2-176. Defence is clearly aware that the credibility of a testimony on one point may  
25 not apply to another point if the Defence team also rejects part of Witness P-12 and

1 P-219's testimonies, but not all of the testimony.

2 P-171's testimony has also -- 161's testimony has also been challenged, based on the

3 argument that she could not see anything from her hiding place, but still uses the

4 same witness to argue that it was the civilians who had looted or pillaged items in

5 Bogoro. So on the one hand they say that this witness's testimony about seeing

6 something was not -- I mean, speaks to her credibility, but they argue that the same

7 witness stated that the pillaging in Bogoro was done by civilians and they use that as

8 an argument for themselves. Therefore, we have used evidence from

9 Defence witnesses and we also recognise any other evidence that points to the

10 credibility of the witnesses.

11 In its final submissions, the Germain Katanga team tends to criticise legal

12 representatives by saying that the legal representatives are critical when dealing with

13 Defence witnesses who do not acknowledge the position of Mr Germain Katanga

14 within the militia, whereas they were close to him.

15 The same Defence team also uses victim V-02 and points out that the victim did not

16 know the name of the commander of the UPC at the Bogoro institute camp, whereas

17 this woman was a simple, ordinary lady and a civilian.

18 Furthermore, let me state that the legal representative should be able to deal with

19 matters of credibility when the Defence questions the credibility of witnesses who

20 have appeared before this Court.

21 Let me now turn quickly to a question that was raised by Mr Katanga's Defence team,

22 which felt that the testimony of victims should be given low probative value.

23 In its submission the Defence argued that the probative value of victim witnesses

24 should be low, because the sole purpose of their testimony is to obtain compensation

25 and because they do not know anything about the responsibility of the accused

1 persons. Defence also claims that they did not receive the list of victim witnesses  
2 before the beginning of the trial.

3 I have already stated, Mr President, that the sole purpose of victims participating in  
4 this trial is not to obtain compensation. That will be oversimplifying matters, even  
5 amounting to an insult of the work before this Court. Victims seek to be -- to get  
6 recognition for the suffering that they have been through and, therefore, ask the  
7 Court to identify the perpetrators.

8 The victims live in the same area. They are direct witnesses of what happened in  
9 their area. Like Cobra Matata, they too have a vision and an understanding of those  
10 who are responsible for what happened to them.

11 Many of them believe that Germain Katanga and Mathieu Ngudjolo are responsible  
12 for what happened. V-2, for example, had reliable information before and after the  
13 attack enabling them to determine who was the leader of their attackers. V-4, for  
14 example, only learnt after the attacks who was the leader of the militia, and those  
15 who do not know are waiting for such a determination to be made by the Court.

16 Finally, Defence cannot claim to have been in a position of disadvantage for not  
17 having received the list of victim witnesses before the beginning of the trial. We are  
18 talking here about two victim witnesses who testified on two specific areas. The  
19 Defence team had five months to investigate into these matters, and I believe that it is  
20 somewhat late in the day for them to raise this kind of argument, but in any event it  
21 must be said that the Defence teams had enough time to investigate. Mathieu  
22 Ngudjolo's team was even able to identify Victim 203 -- D2-405, and  
23 challenge -- rather D3-410 and challenge the allegations of V-02.

24 I will be now turning briefly to the credibility of witnesses P-161, V-2 and V-4, the  
25 two Defence teams having challenged their testimonies in their closing briefs.

1 As for P-161, Germain Katanga's Defence did not challenge most of his testimony  
2 relating to the attack and the fact that he lost three children during the attack and the  
3 fact that he lost family members and had to flee. However, Defence team argues  
4 that because of the damage suffered such victim -- witness is partial in his testimony,  
5 which they argue has a number of contradictions.

6 The two Defence teams regarding P-161 also argue that the witness could not see  
7 anything from her hiding place. This, however, did not stop Mathieu Ngudjolo's  
8 team from using P-161's testimony regarding the presence of Ugandans in Bogoro on  
9 24 February 2003.

10 Let me recall that this witness agreed to testify and, by doing so, had to jog her  
11 memory and deal with a most tragic event in her life. During her testimony, we  
12 must recall -- or during his testimony we must recall that this witness broke down  
13 before you all in spite of his strong character when he had to remember the details of  
14 the things that happened on 24 February 2003 during an attack in Bogoro.

15 It is clear that in the face of such a situation the witness did not stay put; he must  
16 have moved about several times and changed positions from his house to the stable  
17 trying to find a refuge for his family. He was concerned about his cattle and he tried  
18 to find out what had happened around him and in the institute. So P-161 cannot be  
19 criticised for not being able to estimate the distance between his house and the  
20 institute.

21 When the Chamber visited the area, it was necessary to use a GPS to measure the  
22 distance, and here we are criticising a poor peasant for not being able to estimate a  
23 distance between his house and the institute. He cannot also be criticised for  
24 confusion in his account.

25 Regarding the possibility of seeing the institute from his hiding place, it should be

1 pointed out that during the field trip it was quite possible to see the institute from his  
2 plot. And during his examination, the parties and participants did not find out  
3 whether the witness stayed permanently in his hiding place. It is clear that in such  
4 circumstances he must have moved about.

5 The Defence also challenges the number of head of cattle that P-161 claims to have  
6 lost during the attack. They claim that he could not have lost so many heads of  
7 cattle during that attack, but during his testimony P-161 stated that amongst, or  
8 rather, out of the 68 cows that he had he had lost 11 before the attack. He even  
9 accused the UPC of confiscating part of his cattle stock.

10 So as not to dwell too much on this witness, I would like to appeal to the Chamber,  
11 when it is deliberating, to try and cross-check the veracity of the witness's statements  
12 in light of the criticisms made by the Defence teams.

13 With regard to P-V2, the Defence of Germain Katanga admits that she lost her child,  
14 and this could have happened during the attack of 24 February, but the two  
15 Defence teams challenge the reliability of her testimony because this victim was  
16 critical of the accused. They also claim that she was not clear in her testimony  
17 regarding the women who go to the Bogoro market.

18 It is alleged that the Defence stated that their witness D03-410 should have warned  
19 them about the impending attack on Bogoro. Given the time that we have, I'm not  
20 going to go into too much detail here, but I appeal to the Chamber to carefully assess  
21 the testimony of the witness here in the courtroom, in light of the interpretations  
22 given to it by the Defence teams.

23 The Defence of Germain Katanga challenge her credibility and even talk about her  
24 propensity to tell lies. She is being criticised for her attitude on the day of the attack.  
25 She woke up and she realised the scope of the attack and it was only afterwards that

1 she woke up her husband.

2 I'm wondering whether during such an attack, as described to us, people would have  
3 the time to really think and to have the logical reflexes that we might think they  
4 should have had with hindsight.

5 The Defence relies on an incorrect interpretation of the answers of the victim to  
6 conclude that there is a propensity to lie. When VD -- or rather V-2 stated that she  
7 did not have any answers regarding the continuation of the proceedings, she was  
8 talking about the legal answer; she was not referring to reparations. And if you read  
9 through her statements, her testimony again, this is clear. She could not have been  
10 clearer. And here, an attempt is being made to link that testimony to a request or  
11 application for reparation or compensation, and yet she was clear. She stated that  
12 she wanted justice to be administered and that those responsible should be convicted.  
13 The same applied to her husband. We can state that her husband was criticised for  
14 having going -- gone to look for the birth certificate of her -- his son in Kasenyi, but  
15 we know the competent authorities who can issue those civil certificates for Bogoro  
16 because Bogoro is part of that collectivity.

17 Let me now move on to V-4, and I will try to be brief.

18 PRESIDING JUDGE COTTE: (Interpretation) I'm encouraging you to be brief,  
19 because if I look at the time allocated to you you are really cutting it close.

20 MR NSITA: I did not want to be too long in the second part. Now, regarding  
21 victim V-4, I would like to appeal to the Chamber once again to carefully examine her  
22 testimony because her statements were distorted and wrongly interpreted.

23 I am going to stop there and I will now give the floor to Maître Denis who will deal  
24 with some specific points relating to the crimes committed in Bogoro. Thank you.

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

1 Denis, you now have the floor.

2 MS DENIS: (Interpretation) Good afternoon, your Honours. As Mr Luvengika  
3 has said, I'm going to speak to four points. I will begin with the context of the  
4 crimes. Secondly, I will deal with the presence of civilians in Bogoro. Thirdly,  
5 pillaging and destruction and lastly, rapes and sexual enslavement.

6 Given that we have a limited amount of time, I will try to focus on points that are  
7 likely to enlighten the Chamber during its deliberation.

8 Now, regarding the context of the interethnic strife and wide-spread attacks,  
9 wide-spread and systematic attacks against the civilian population, I think we have  
10 already spoken about the interethnic conflict. We would like to say that when we  
11 talked to our clients about the fact that the Defence denied the existence of such a  
12 conflict, they simply smiled because they know that this conflict between the  
13 Lendu/Ngitis on the one hand, and the Hemas on the other hand, has existed for a  
14 long time.

15 I would like to refer the Chamber to paragraphs 55 to 61 in our brief. The Prosecutor  
16 also mentioned this issue in Court, and I would like to reiterate certain details. It has  
17 been clear that both Prosecution and Defence witnesses have referred to this  
18 permanent conflict between the Lendus and the Ngitis on one hand and the Hemas  
19 on the other. I refer to D03-4488 and another witness that we have referred to in our  
20 brief.

21 I believe it is very edifying for the Chamber to take into consideration the vocabulary  
22 used by the witnesses in these proceedings when referring to Lendus, Ngitis and  
23 Hemas. The word "enemy" was used by many witness, and many of them also  
24 mentioned the state of war between the Lendus, Ngitis and the Hemas.

25 Mr Mathieu Ngudjolo, during his testimony, also admitted that there was a context of

1 interethnic conflict. He felt that this was not applicable to Bogoro, but we had other  
2 indications about that. Several witnesses stated that at one point the various  
3 communities lived harmoniously in Bogoro, but that the situation deteriorated in the  
4 area and led to the departure of most Lendus/Ngitis from the village of Bogoro.

5 There was another point mentioned, and I'm referring to the Defence claim that there  
6 was political manipulation regarding this interethnic conflict. And even if there was  
7 political manipulation, it does not cancel out the fact that the interethnic conflict  
8 existed during the period in question; that is, 2002/2003, a conflict between the  
9 Lendus/Ngitis on the one hand and the Hemas on the other.

10 And why should we dwell for so long on this issue? It is necessary to understand  
11 this issue in order to better grasp the attitude of the military groups towards the  
12 civilian population. It also explains why we are dealing here with combatants who  
13 are consumed by hatred for the other communities and therefore blindly obeyed their  
14 commanders. This context is necessary to understand the context of systematic and  
15 wide-spread attacks against the civilian population.

16 We have noted that in their brief the Defence of Mr Katanga submits that the scope of  
17 the attack had to be exceptional to be described as systematic and wide-spread. We  
18 are being told that 200 victims are not sufficient and that there would have been a  
19 requirement to have an attack on a wide or larger geographical area.

20 The Prosecutor already talked about that, but I would like to add something. The  
21 jurisprudence of the ICTY in the Blaskic case, I would like to point out here that I  
22 prepared a small paper on my authorities, but I forgot to distribute it. The Appeals  
23 Chamber stated that it is not required that the entire population of a geographical  
24 area should be targeted by the attack. What is necessary is that a sufficient number  
25 of individuals should be targeted, or that they should have been targeted in a way to

1 indicate that the attack was intended to target a civilian population.

2 In the instant case we believe that, in light of the evidence on record, it can be  
3 concluded that it was the civilian population that was targeted. The Defence has  
4 talked of the strategic interest of Bogoro, or lack thereof, but as the Prosecution has  
5 stated a military objective does not mean that the civilian population was also  
6 targeted.

7 And I would like to come back to my first point; that is this famous context of the  
8 existence of an interethnic conflict. The local philosophy of the Lendu and Ngiti  
9 groups at that time was that the enemy was any Hema, a soldier, a civilian, a baby, a  
10 man or a woman, anyone who was Hema. So if they could target a military position  
11 in a village, they would benefit or seize the opportunity to also attack the civilians.  
12 We mention this in paragraphs 62 to 75, where we described the attacks before and  
13 after the Bogoro attack of 24 February 2003. I also refer to the Human Rights Report  
14 entitled "The Curse of Gold," which is in evidence and which described the  
15 techniques used to target civilian populations as an act of violence.

16 So contrary to what the Defence teams have claimed there is a deliberate policy to  
17 attack civilian populations, and also contrary to what the Defence of Katanga says,  
18 the elements of the crimes do not require that it should be the same perpetrators who  
19 target military and civilian populations.

20 According to the elements of the crime, in order for there to be a policy, having as  
21 objectives such an attack, the organisation should favour or actively encourage such  
22 an attack against a civilian population.

23 In the instant case, various witnesses testified that Lendu and Ngiti militiamen were  
24 trained in a culture of hatred for the Hema, and I will refer to paragraph 59 of our  
25 brief. We quoted Witness P-280, who explained how Commander Kute told them

1 that the enemy was the Hema and the UPC. He also stated that we were fighting  
2 because the Lendus were fighting against the Hemas.

3 There is further evidence on record to establish the training of the Lendu and Ngiti  
4 militiamen within that context of hatred. It is obvious that under those  
5 circumstances the argument of the Defence teams, according to which the accused  
6 did not have knowledge of that context, does not hold water. Mr Katanga himself  
7 talked about the suffering of the civilian population and stated that there were targets  
8 of attacks by the various armed groups.

9 Regarding the systematic and wide-spread attacks against the civilian population, the  
10 Chamber I believe still remembers the evidence about the Bogoro attack itself. I'm  
11 going to reiterate a few examples and I will refer to the testimonies in our brief.  
12 The witnesses described how their village was surrounded to ensure that no one  
13 escaped. We heard that the attack started as from 5 a.m. People were still in bed  
14 and sleeping. The idea was to kill them silently. The attack was extremely violent,  
15 various firearms were used, but machetes were also used to finish off those who had  
16 fallen. During the attack and after the attack civilians were hunted down, men,  
17 women and children were pursued and killed and then the combatants resorted to  
18 pillaging.

19 In light of all these elements, or all this evidence, the legal representative is convinced  
20 beyond reasonable doubt that the crimes were perpetrated within a context of a  
21 systematic and wide-spread attack against a civilian population.

22 I will move on to the second part of my presentation, that is characterisation, and I  
23 will try to be brief. The Chamber will recall that we have discussed these issues at  
24 large -- at length. Once again, my objective is to enlighten the Chamber regarding  
25 certain details.

1 We stand by our point of view that there is sufficient evidence to conclude that the  
2 armed conflict was a conflict of an international nature. We asked the question to  
3 know whether it is relevant to artificially split the nature of the conflict in Ituri.  
4 The ICTY admitted the possibility of the simultaneous coexistence of a conflict of both  
5 a national and international nature. They also dealt with the possibility of an  
6 artificial division of conflicts.

7 There is the Kordic case, the Appeals decision of 2004, and the Appeals Chamber was  
8 of the opinion that the Trial Chamber could take into consideration the totality of the  
9 situation and not only what was limited to a specific geographical area in order to  
10 arrive at the conclusion of the international nature of the conflict.

11 When we look at the context of this case and the evidence that has been adduced, it is  
12 clear that Uganda was present almost everywhere and at all times and exercised  
13 considerable influence on the events, and this is sufficient to conclude that the conflict  
14 was of an international nature.

15 This does not really have an impact on the other issue of the characterisation. We  
16 have discussed this already, but the issue is whether there would have been a  
17 violation of their rights of the Defence if there was a re-characterisation. I believe  
18 that the Defence would not have been different, because the elements of the crime are  
19 the same as those that would have been in a conflict of an international nature and  
20 the same applies to the definition of the charges.

21 So we can also point out certain things in their closing brief. Paragraph 39, the  
22 Defence of Ngudjolo states that the debate on the international nature or not of the  
23 conflict does not have any impact on the charges against Ngudjolo, and we know  
24 what is the thesis of the Defence. They are trying to claim that the plan to attack  
25 Bogoro came from Kinshasa, from the APC and others, so that Defence position

1 would not have been different whether it was agreed that it was an international  
2 conflict or not.

3 And to conclude, I believe that the Chamber respected the provisions of Regulation  
4 55 and, when it came to calling of witnesses, the criteria necessary were complied  
5 with.

6 I will now move on to the second major point of my presentation which will take  
7 much longer, but I would like to reassure you that the last two points will be brief.

8 This issue is important for the victims, that is the presence of civilians in Bogoro on  
9 24 February 2003, and when you read the Defence briefs you will realise that they are  
10 disputing the presence of civilians in Bogoro. This issue is important for the victims,  
11 but also important for the issue of determining crimes against humanity and  
12 intentional attacks against a civilian population.

13 The first argument put forward by the Defence teams is that most civilians had  
14 already fled Bogoro because of the situation of persistent conflict. I refer to  
15 paragraph 99 onwards in our brief. We discussed this issue at length and stated that,  
16 in spite of this situation of insecurity, people continued to live in Bogoro for two very  
17 simple reasons which were testified to by certain witnesses.

18 To begin with, people were used to living in this situation of insecurity. They also  
19 had the UPC which protected them, and from their point of view they felt that the  
20 UPC would always be in a position to repulse any attacks. There was also the  
21 economic reality. People could not leave Bogoro to go and live in Bunia, because  
22 Bunia was the only area that was secure at the time. They could not abandon their  
23 fields, or their cattle, and from a financial point of view they did not have the  
24 resources to go and live in Bunia.

25 And several witnesses have testified that many civilians had decided to continue

1 living in Bogoro, and we have this issue that was discussed, particularly the example  
2 of the end of the mourning period of Pastor Babona. People were there and they  
3 attended that.

4 The Chamber has also heard that as from 25 February, that is immediately after the  
5 attack, many people sought refuge in Bunia. If civilians had not been living in  
6 Bogoro, they would not have sought refuge in Bunia.

7 There is a second argument put forward by the Defence teams; that is that the reality  
8 was that those civilians were combatants. Katanga's Defence claim that villages  
9 everywhere in Ituri had machetes, or guns.

10 They also claim that there was a self-defence group made up of the young people of  
11 the village. This issue has not been discussed so far, so I would like to refer to the  
12 jurisprudence of the ICTY in the Blaskic case. I'm not going to go to the details of  
13 that decision, but I will focus on the relevant extracts of the Chamber's decision which  
14 explains the criteria to be used to determine whether a group can be considered as a  
15 group of combatants.

16 That Chamber ruled that organised resistance groups cannot claim to be civilians  
17 with the following conditions: First of all, if they have a leader at the head of the  
18 organisation that the subordinates respond to; if there is a specific distinctive insignia  
19 of some kind that can be recognised from a distance; that they clearly are bearing  
20 weapons; and that they conduct their operations respecting the laws and customs of  
21 war.

22 The mere presence of resistance, or combatants within the civilian population, does  
23 not change the fact that they were fundamentally civilians. It is quite difficult to  
24 liken a few villagers who slept with weapons under their beds, it's quite difficult to  
25 liken them to combatants.

1 For instance, we must consider the Defence witnesses' testimony, and I make  
2 reference to P-166. This person was not actually present in Bogoro on the day of the  
3 attack, so how could he claim that civilians were not present?  
4 The Defence also relies on D2-148, and we have developed a certain line of argument  
5 and we really must point out that this witness represented serious -- we had serious  
6 doubts about his credibility.  
7 Now, there is no evidence that there was a self-defence group; rather, the evidence  
8 shows that people did not have time to react because the attack began at 5 in the  
9 morning, when they were still asleep in bed.  
10 The evidence also shows that the victims of the attack were the elderly, young  
11 mothers with babies (Redacted). We must recall the very strong testimony from  
12 Witness V-2 who called out to her attackers begging not to be attacked, (Redacted)  
13 (Redacted) and who ultimately saw her baby killed in front of her.  
14 The Defence has said, "Well, it's really not up to us to make this distinction. They  
15 were all in the camp and the civilians were merely killed by stray bullets, and we  
16 can't make this distinction," but this is incorrect. When we consider the actual  
17 evidence on the record, we know the witnesses explained that the UPC members had  
18 camouflage uniforms and they had weapons. They could be recognised.  
19 We also know that women and children were killed with machetes as they lay on the  
20 ground. I don't know how you could liken such a person to a combatant. Victim 4  
21 described how many civilians took refuge at the camp in the institute, and when that  
22 camp was overrun they explained how they tried to escape the classrooms and how  
23 the attackers began to chase after them, including women and children.  
24 Then we have the evidence on the record that there were not just victims within the  
25 UPC camp; victims also died outside and their bodies were strewn throughout the

1 entire village of Bogoro.

2 We have two other explanations from the Defence regarding this same issue, namely,  
3 the issue of civilians. Mr Katanga's Defence has claimed that civilians were killed by  
4 combatants who went too far or got out of control, but there is no evidence to support  
5 such an assertion.

6 On the contrary, we have evidence from a number of witnesses who were amongst  
7 the attackers. They described what they described as the technique followed during  
8 the attack. They said that they had a method that they usually used, that things  
9 were organised. First, a group of people would shoot at the victims and then a  
10 second group would go after those people with machetes.

11 Finally, one last remark about the civilian victims. The Defence team of Mr Katanga  
12 claim that Mr-- that the Prosecution did not sufficiently establish the number of  
13 civilian victims, and the critical point here is the list of victims that was submitted to  
14 this Chamber. I make reference to document EVD-OTP-00203, and I believe the  
15 Chamber will recall that particular document, and I don't need to go into a great deal  
16 of details. It is that main list of victims that people have talked about so much.

17 The Chamber received a number of very specific explanations about how this list was  
18 drawn up. This list was drawn up on the basis of information from several sources.  
19 As much detail as possible was provided by the families, for instance the name of the  
20 people who died, their marital status. The list makes a distinction when it comes to  
21 the year of death, 2001, 2002 or 2003.

22 Admittedly, a few mistakes may have been made when the list was drawn up.

23 Mr Katanga's Defence attempts to illustrate that by mentioning two cases of people  
24 who are actually alive. The Chamber did receive a number of specific explanations  
25 in this regard. It should be noted that the Defence made a mistake in their brief

1 when they said that the daughter of a particular victim D-176, that the name was  
2 there, but is not the case. I would ask the Chamber to cross-check this list carefully.  
3 All this to say, yes, there may have been some mistakes made when the list was  
4 drawn up. We have had some explanations in this regard, but we did receive  
5 explanations.

6 It was explained to the Chamber that the list was not exhaustive. Apparently later,  
7 other people were victims of the attack, but their names were not placed on the list  
8 because their families had fled, and so the families had not been able to provide the  
9 information before the list was ended.

10 Furthermore, the information on the list has been corroborated by testimony heard  
11 before this Bench. Other witnesses mentioned other family members they had lost,  
12 and I think you will recall the testimony of 317 who described how his team  
13 conducted inquiries in the field and drew up a provisional list of 330 people who had  
14 died or who had gone missing and most of them, the majority, were civilians.

15 In light of all this information, I believe the Chamber has sufficient credible and  
16 reliable evidence to conclude beyond all reasonable doubt that more than 200  
17 civilians were killed during the attack on Bogoro on 24 February 2003 or thereafter.

18 I would now like to move on to the second-last point of my presentation, and this has  
19 to do with looting and destruction of the village. In this regard, the accused have  
20 made two arguments; one having to do with the people responsible for the looting  
21 and destruction and, secondly, an argument having to do with the nature of the  
22 goods that were looted or destroyed.

23 The Defence claims that the Prosecution did not establish that the looting and the  
24 destruction was done by combatants who came under the control of the accused.

25 There is one remark that must be made, and this is more of a legal matter, regarding

1 the mode of responsibility that was chosen by the Pre-Trial Chamber. That  
2 Chamber said that looting was not part of the common plan, but rather was part of a  
3 general behaviour that occurred. This is not the same approach.  
4 In this particular case, the Chamber heard witnesses who were amongst the attackers,  
5 who described how they actually carried out the destruction of the town. They  
6 explained it was a technique, a technique used in war. It was their method that they  
7 used whenever attacking a village. In particular, this method was to torch the  
8 houses so that the civilians would have to come out and then the civilians would be  
9 killed.  
10 Witness 219 specified, and I can provide the references, he specified that the main  
11 reason for joining the militia in many cases was to engage in looting and it was also  
12 one of the techniques of the attackers; namely, it was allowed to loot the village once  
13 the attack was over. This witness explained how, after the attack, civilians did arrive  
14 and engage in looting under the control of the attackers.  
15 Now, as for the goods that were looted, or the possessions that were destroyed,  
16 Mr Katanga's Defence maintains that the looting was allowed for UPC goods and for  
17 those who had taken part in the hostilities because in this way it was justified; it was a  
18 matter of military necessity.  
19 Once again, if we look at the evidence, there is a problem with this statement. There  
20 is no evidence showing that it was the UPC possessions that were looted. On the  
21 contrary, it was the property of the village people who were -- that was taken. It  
22 was the houses and the schools and the churches that were destroyed.  
23 Now, Bogoro was a place where there were many cattle and livestock, and it was  
24 acknowledged that this place was one where one could find a great deal of livestock.  
25 Several witnesses reported that their livestock had been stolen. Some of the

1 livestock was actually moved to another location before the attack and, you see, really,  
2 this is quite logical. As I explained initially, the population had no other choice.  
3 They had to go to Bogoro for financial reasons, for reasons of safety. They could not  
4 go somewhere else.

5 And it would have been entirely irresponsible to shift their livestock to a place that  
6 was more dangerous, because the entire region was dangerous. Bunia was really the  
7 only safe-haven, but you are not going to take a herd of several hundred animals to  
8 Bunia.

9 In addition to the looting of livestock, some witnesses gave testimony saying that  
10 their fields were destroyed. Now, some people claim that the Hema were not  
11 farmers who engaged in field activities, but there were fields, there were farms.  
12 We also have the Defence argument that -- in particular this comes from the Katanga  
13 team, this argument that the Ngiti had come to get their goods that had been taken  
14 from them and, really, that there had been no looting, but this is not reflective of the  
15 reality; this is seen in the evidence.

16 The Defence acknowledges that in February 2003 in Bogoro -- in February 2003,  
17 Bogoro for the most part was inhabited by Hema and most of the Ngiti people had  
18 fled in 2000 and 2001, so it is really difficult to imagine how the Ngiti would return in  
19 2003 to try to get goods that they had abandoned two years earlier.

20 A final argument put forward by the Katanga team was that looting occurred only  
21 sporadically here and there, but once again the evidence is quite clear. Bogoro and  
22 the surrounding area were decimated by the attack, were looted by others and as I  
23 said earlier - I apologise for being repetitive - that was the technique that the  
24 combatants used. They would arrive, they would kill the soldiers and then attack  
25 the villagers. That was their method. This also was explained. The soldiers were

1 not necessarily paid.

2 I would now like to move on to the final point and this relates to rape and sexual  
3 enslavement, and I reassure the Chamber I will not make a long presentation, I don't  
4 have a lot of time, but I would refer you to our conclusions.

5 We have taken careful note of the information provided by the OTP regarding  
6 certainly arguments put forward by the Defence, and I just wish to visit the issue of  
7 Witness P-132. This person testified and was referred to by a pseudonym, which the  
8 Chamber certainly understands.

9 The Defence did not challenge that this person was present and then was abducted by  
10 the Ngiti. It should be noted as well that, during cross-examination of this witness  
11 and during examination, the Defence teams did not challenge the fact that she had  
12 been raped. They did not touch upon that issue, and I think that the Chamber will  
13 recall - I can provide the reference - that the Katanga Defence interrupted the  
14 Prosecutor when he wanted to obtain further information about the rapes that this  
15 person had been subjected to.

16 In the brief the Defence mainly challenges the credibility of this witness, saying that  
17 she contradicted herself and also that team mentions a certain hostility on her part.  
18 This has already been said, but I think it's worth mentioning again, particularly when  
19 we're talking about victims. Like any victim of sexual assault, we have to take into  
20 account the sensitivities of this -- of such people. Rape is a very difficult issue for  
21 people to talk about. It is a form of severe trauma, particularly if one lives in a  
22 particular society, and I think we really have to remember the report from the VWU  
23 regarding this victim who really stressed the delicate nature of this person and her  
24 wish to hide - conceal - the fact that she had been raped.

25 So I think this explains these so-called contradictions. This person had a hard time

1 casting her memory back to the events, because at one time she wished to deny what  
2 had happened to her and the explanations regarding the camp that she was taken to  
3 and certain dates.

4 Regarding the assessment of this testimony, I think the Chamber will have to  
5 remember the Katanga Defence's approach. Of course, the Defence must do their  
6 work, we certainly don't challenge that, but I would mirror the -- I would  
7 put -- I would put that consideration right beside the consideration of the nature of  
8 the victim and particularly the hint that she may not have been subject to a forced  
9 marriage.

10 I think, really, the Chamber has to take that into account. Was this person really  
11 capable to deal with the arguments that were put to her when she found herself in  
12 such a position of weakness? I think the Chamber will have to remember that this  
13 account was corroborated by other witnesses. We made reference to that in our  
14 conclusions and this was not challenged by the Defence .

15 To conclude, your Honour, I thank you very much.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Luvengika, you  
17 only have a few moments. The Chamber would like to ask you a question. If we  
18 don't imagine to get to that today, we will do that Monday before Mr Hooper's team  
19 begins their submissions.

20 MR NSITA: (Interpretation) Thank you, your Honours. Thank you for giving me  
21 this opportunity to address the Court.

22 As I said a few moments ago, the point that I wanted to touch upon deals with the  
23 role of the accused. I wanted to do that, because the victims were the ones who  
24 asked me to do this. Unfortunately, I see that the Chamber had the same concerns  
25 and that this morning the Prosecution answered some questions in this regard, but I

1 wanted to share some of the views and concerns of the victims with the Chamber and  
2 I shall do so now.

3 Regarding Mr Katanga and the issue of the wise men and the fetish priests, according  
4 to the victims - and this comes directly from them - within African society fetish  
5 priests are respected in general, or feared and listened to, but that doesn't mean  
6 necessarily that they hold authority or the power to command particularly over  
7 armed people, over soldiers.

8 To sum up their remarks --

9 MR HOOPER: Yes. I am just concerned, very briefly to interrupt, that we're not  
10 moving into evidence, or an attempt at evidence. We can't have at this stage my  
11 learned friend voicing what he suggests are the views of others. He has to deal with  
12 the evidence that we've heard.

13 And I'm sure my interjection may have been ahead of its time and perhaps  
14 unnecessary, in which case I apologise to my friend, but I was just concerned to  
15 protect the interests of my client.

16 PRESIDING JUDGE COTTE: (Interpretation) We entirely understand your point.  
17 Mr Kilenda (sic), please try to summarise given the little time we have left.

18 MR NSITA: (Interpretation) Those remarks were corroborated by 219 and the  
19 victims -- well, I believe we have touched upon those matters in the final written  
20 submissions.

21 Regarding Mr Ngudjolo, it is true that some of us really asked the same questions as  
22 what the victims were asking. They thought that it was unlikely that Mathieu  
23 Ngudjolo, a nurse at the time of the attack on Bogoro, would take part two days later  
24 on the attack on Bunia, and they asked me, "How can he claim that overnight he went  
25 from being a mere nurse to being a soldier?"

1 So these are the concerns that have been passed on to me from the victims regarding  
2 the evidence that has been adduced. Your Honours, I thank you most sincerely.

3 MR KILENDA: (Interpretation) I'm certain that you were speaking to  
4 Mr Luvengika a few moments ago, not to Mr Kilenda, when you asked him to  
5 summarise.

6 PRESIDING JUDGE COTTE: (Interpretation) That is indeed an error on my part  
7 that cannot be forgiven.

8 Now, one question that you tried to answer very quickly, Mr Luvengika. At the  
9 beginning of your remarks, Mr Gilissen, you stated, or you argued, that the Lendu  
10 and Ngiti combatants were conducting an ethnic war against the Hema, and this was  
11 part of a broader framework; namely, part of an attempt to regain control over the  
12 national territory.

13 Now, in your opinion, the dissemination of this idea that a Hema empire threatened  
14 the survival of the Lendu was such that it was possible to make this link between this  
15 domestic conflict and this international?

16 MR GILISSEN: (Interpretation) That is no doubt a very complex issue.

17 PRESIDING JUDGE COTTE: (Interpretation) If you cannot answer in two minutes,  
18 you can give us an answer Monday at 9 a.m. before Mr Hooper begins.

19 MR GILISSEN: (Interpretation) Thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) The question will be shown on the  
21 transcript and of course subject to whatever the Defence may have to say, but if you  
22 could deal with that question, that issue of ethnic conflicts.

23 THE INTERPRETER: Overlapping speakers.

24 PRESIDING JUDGE COTTE: (Interpretation) Mr Luvengika, you mentioned the  
25 disappointment of the victims that you represent. You say that they were not able to

1 be in touch with you in April.

2 Now, you'll have to tell the victims that you represent that the decision taken is  
3 compatible with the provisions that govern the operations of this Court, so please try  
4 to explain to them. We do not want any misunderstanding to occur.

5 Please tell them as well - and we know that you are aware of this - that the situation  
6 of the victims, no matter who they may be, throughout the entire trial has never been  
7 a minor concern of the Chamber. The Chamber has always been very much  
8 concerned.

9 MR NSITA: (Interpretation) I wish merely to reassure you that your remarks I  
10 have tried to pass them on, or explain them, to the victims. I am in a way a mediator  
11 between the Court and the victims, and I understand everything that happens at the  
12 Court and the legal statutes.

13 I am dealing with a group of victims who are illiterate, who have a hard time  
14 understanding sometimes, so this task is sometimes a difficult one, but I have tried to  
15 explain this to the victims. All the same, I will -- I did want to share their concerns  
16 with the Court.

17 PRESIDING JUDGE COTTE: (Interpretation) Very well. And I think you'll  
18 realise that, in the few words I said, I was careful to say that this would be no doubt a  
19 difficult task.

20 Now, Mr Hooper, you'll have to tell us by Friday, 18 May, at 2 in the afternoon, just  
21 for organisational matters, exactly which people will be speaking. Perhaps you'll be  
22 splitting your time? If you could make a very brief filing to let us know.

23 Now, Mr Hooper, if you could also before Friday, the 18th, at 2 in the afternoon, tell  
24 us whether Mr Katanga will be making a statement, as Mr Ngudjolo has said he  
25 would. Once again, this is just so that we can organise our proceedings.

1 MR HOOPER: I can indicate now that he will, and I estimate that he'll take about  
2 15 minutes to say what he's indicated to me he'd like to say.

3 PRESIDING JUDGE COTTE: (Interpretation) Very well. So that will be  
4 Wednesday morning. Monday morning a reply from the legal representatives of  
5 victims regarding that last question which we just asked, then Mr Hooper.

6 MR HOOPER: All members of the team will be contributing to the submissions on  
7 Monday, and I hope that doesn't pose any particular problem because of course not  
8 all are counsel or members of Bars. That doesn't, I'm sure -- it will not detract from  
9 the force of their arguments, and they do so of course under and with the discussion  
10 of counsel in the case.

11 PRESIDING JUDGE COTTE: (Interpretation) Well, as lead counsel, Mr Hooper,  
12 you are the one who organises the best defence that you think is possible for  
13 Mr Katanga. So we will listen to the members of your team who will be speaking, as  
14 no doubt may be the case for the Ngudjolo Defence team.

15 Now, I believe that the time has come to close for the day, after thanking our  
16 interpreters and all those who have allowed us to have two days of productive and  
17 interesting hearings. So we will see you Monday, 9 a.m. The hearing is now  
18 adjourned.

19 THE COURT USHER: All rise.

20 (The hearing ends in open session at 1.31 p.m.).

## 21 CORRECTIONS REPORT

22 The Court Interpretation and Translation Section has made the following corrections  
23 in the transcript:

24 \*Page 49 lines 9 to 13

25 "4(3)(c) prohibits participation, both direct and indirect, and then you have the

1 Statute from the Special Tribunal for Lebanon. When the UN Council referred the  
2 matter to that special tribunal a number of changes were made to the wording so as  
3 not to use the wording of International Humanitarian Law but rather the wording of  
4 the Rome Statute.”  
5 Is corrected by  
6 “Article 4-3-c prohibits participation both direct and indirect and then you have the  
7 Statute of the Special Tribunal for Sierra Leone. When the UN Security council was  
8 seized of that matter and had to adopt the Statute, a number of changes were made to  
9 the wording so as to not to use the wording of international humanitarian law but  
10 rather the wording of the Rome Statute.”