

1 International Criminal Court
2 Trial Chamber II - Courtroom I
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial hearing
9 Monday, 9 May 2011
10 The hearing starts at 2.05 p.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
15 Good afternoon, everyone. Good afternoon, accused persons.
16 Is Mr. Mathieu Ngudjolo feeling better today and ready to
17 continue with our proceedings? Very well. We are happy for you.
18 Before Witness 0176 comes into the courtroom, the Bench would
19 like to inform you that the Dutch authorities have sent a document to the
20 Registry between 1.00 and 1.30 p.m. It is a note verbale asking the
21 Chamber to kindly postpone the hearing initially scheduled tomorrow at
22 9.00 a.m. to Thursday morning, that is, Thursday on the 12th of May, and
23 that would be the earliest possible date they would be able to attend.
24 So we are going to postpone that hearing to 9.00 a.m. on Thursday a.m.,
25 and this is a hearing that is actually a part of our hearings, so it does

1 not really change much. So it is postponed to Thursday morning at
2 9.00 a.m.

3 And, Court Officer, please inform the director of court services
4 and all those concerned that the Chamber has agreed to that request and
5 the hearing is postponed to 9.00 a.m. on Thursday morning. We would be
6 very grateful for that.

7 I would like to seize the opportunity to thank the
8 Legal Representatives and the Office of the Prosecutor for having
9 accepted to leave their normal seats to our invited guests, that is, from
10 the host country. I believe they didn't react to the message, so it
11 means they consent, because these people are going to provide some
12 information to us, and it is clear that the clarification that we wish to
13 have on certain issues will come from Mr. Mabanga and also from the
14 Registry services and the authorities that will be sent to us here in the
15 court by the Dutch authorities. So this will affect the configuration of
16 the courtroom, and thank you all for your understanding. The Defence
17 benches are not affected.

18 Court Officer, let us please go into closed session to have the
19 witness brought into the courtroom.

20 And, Court Usher, please could you kindly fetch the witness.

21 (Closed session at 2.10 p.m.)

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5 (Open session at 2.11 p.m.)

6 COURT OFFICER: (Interpretation) We are in open session,
7 your Honour.

8 PRESIDING JUDGE COTTE: (Interpretation) Good afternoon,
9 Mr. Witness.

10 THE WITNESS: (Interpretation) Good afternoon.

11 PRESIDING JUDGE COTTE: (Interpretation) I see that we can hear
12 each other well, and we can resume our work.

13 At the end of our hearing last Friday, Mr. Hooper, you said that
14 your direct examination had been concluded subject to a few final
15 questions that you might wish to ask the witness. Now, do you have any
16 last questions you wish to put to the witness before we hand over to the
17 team of Mathieu Ngudjolo?

18 MR. HOOPER: I have no other questions of the witness. Thank
19 you.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.

21 Mr. Kilenda, would it be you or Professor Fofé who will question
22 this witness on behalf of Mathieu Ngudjolo?

23 MR. KILENDA: (Interpretation) I will be the one, your Honour.

24 Good afternoon, Mr. President. Good afternoon, your Honours.

25 Good afternoon, Witness.

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1 THE WITNESS: (Interpretation) Good afternoon.

2 MR. KILENDA: (Interpretation) My name is Jean-Pierre Kilenda.

3 I am lead counsel for Mr. Mathieu Ngudjolo. I seized the opportunity
4 offered by the weekend to re-read the answers that you gave to the
5 questions put to you by my learned friend seated to my right here,
6 Mr. Hooper. I would like to say that, everything being equal, for the
7 time being I have no questions for you. I would like to thank you for
8 coming to appear before this court.

9 MR. KILENDA: (Interpretation) Thank you, Mr. President.
10 Thank you, your Honours.

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

12 On behalf of the Office of the Prosecutor, it will be
13 Madam Luping's turn. You can proceed, Ms. Luping.

14 MS. LUPING: Thank you, Mr. President. I'm sorry, Mr. President.
15 I'm just having a technical problem with my computer at the moment. I'll
16 just try to sort it out. I won't be a moment.

17 PRESIDING JUDGE COTTE: (Interpretation) If you want to work
18 usefully, you have to take the time to sort out the problem.

19 MS. LUPING: (Interpretation) Good afternoon, your Honour.

20 Questioned by Ms. Luping:

21 Q. (Interpretation) Good afternoon, Witness.

22 A. Good afternoon.

23 Q. (In English) Mr. Witness, my name is Dianne Luping, and I'll be
24 asking you questions on behalf of the Prosecution. Before I start, there
25 are just a couple of points that I'd like to make, simply that as you did

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1 so very well for Mr. Hooper, that if you could simply answer only the
2 questions that I ask, and please keep your answers brief.

3 Now, Mr. Witness, you confirmed that both you and your parents
4 were Hema. Isn't it a fact that the majority of the population in Bogoro
5 at the time of the 24 February 2003 attack were also Hema?

6 A. Well, in answer to your questions, madam, I'm going to give you
7 an answer to the effect that it is not true to say that the majority of
8 the population of Bogoro were Hemas. There were several ethnic groups.

9 Q. Well, there were a number of other ethnic groups, but most were
10 Hema. Isn't that correct?

11 A. Yes. You are correct. The majority were Hema, but there were
12 other ethnic groups which were not the majority, such as the Ngiti and
13 the Lendu.

14 Q. Isn't it a fact that in the period between the year 2001 and 2003
15 that there had been a number of attacks on Bogoro perpetrated by the
16 Lendu from Zombe as well as the Ngiti?

17 A. Yes. Some of the Lendus from Zombe, as well as some of the
18 Ngitis and the Bira. That is the composition, generally speaking.

19 MS. LUPING: Mr. President, I have a few questions of an
20 identifying nature. If we could go into private session.

21 PRESIDING JUDGE COTTE: (Interpretation) Yes, we will do so,
22 Madam Prosecutor, and please remember to request that we go back into
23 open session as soon as you think it is necessary.

24 Mr. Witness, we are going to go into private session, because the
25 Prosecutor will ask some identifying questions.

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1 (Private session at 2.20 p.m.)

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19 (Expunged)

20 (Open session at 2.22 p.m.)

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

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Please
24 proceed, Ms. Luping.

25 MS. LUPING:

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1 Q. Mr. Witness, you confirmed that the UPC installed itself in the
2 UPDF former military camp in Bogoro. The UPC moved into Bogoro after the
3 second big attack on Bogoro in 2002, didn't it?

4 MR. HOOPER: Sorry to interrupt, but there's been a number of
5 questions. This is one, I suggest, and earlier, "Is it a fact that,"
6 that don't quite perhaps fulfil the criteria of being open, neutral
7 questions. I merely ask my friend to refrain from asking over-pointed
8 questions rather than asking open, neutral questions.

9 MS. LUPING: With all due respect, Mr. President, as my learned
10 friend is aware, we are in the process of cross-examination.

11 PRESIDING JUDGE COTTE: (Interpretation) You are indeed in
12 cross-examination, which gives you a wide margin for manoeuvre, so you
13 will proceed without trying to direct or predetermine the answers of the
14 witness. Please proceed.

15 MS. LUPING:

16 Q. Mr. Witness, the UPC moved into Bogoro in 2002, didn't it?

17 A. Yes. I believe that the UPC moved to -- into Bogoro in 2002.
18 You're correct.

19 Q. And that was when the UPDF left Bogoro, wasn't it?

20 A. Yes.

21 Q. Mr. Witness, you've mentioned that there were permanent UPC
22 positions at Waka Mountain and in Diguna, and you've also stated that
23 there was a foot patrol along the Kasenyi road. My question is: There
24 were also foot patrols along the Bunia road, more precisely near Tseyi,
25 weren't there?

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1 A. Yes. The way your question is phrased, I would say that there
2 was a patrol on the Kasenyi road. When people left Bunia to go to
3 Kasenyi to buy fish or carry out trade, they used that road. It was a
4 motorable road but which was also used by pedestrians. There were, of
5 course, patrols by the soldiers inside Bogoro all the time, because they
6 could move about inside the town.

7 Q. Yes, indeed, and this included the Bunia road, did it not?

8 A. Yes.

9 Q. And these position and patrols that you've already mentioned,
10 they were also all present on the day of the 24 February 2003 attack,
11 weren't they?

12 A. No. No, not on that day. It was on a different day. That is
13 before the attack.

14 Q. Mr. Witness, as you confirmed, the UPC were aware that there was
15 going to be an attack on Bogoro, so there were patrols of UPC soldiers in
16 the usual routes and positioned in the usual positions, were there not?

17 A. Yes. You have already asked me that question, Madam Prosecutor.
18 I have also already mentioned the position on Mount Waka. There were
19 soldiers who spent the night there every day, and there were positions on
20 the Diguna road and on Mount Waka. You have just mentioned the
21 Kasenyi-Bunia road. On that day there were no patrols.

22 Q. Mr. Witness, you've mentioned that amongst the UPC weapons there
23 was the G2. There were also SMGs, RPGs, and mortars, weren't there?

24 A. Yes.

25 Q. Mr. Witness, you mentioned that at the start of the attack, you

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1 were facing Waka Mountain and facing attackers. Now, the attackers
2 encircled Bogoro from all sides in addition to Waka Mountain, coming from
3 Geti, Kasenyi, Medhu, and Bunia roads, weren't they?

4 A. Yes, that is correct.

5 Q. The attackers were Ngiti from the Geti and Medhu routes, and
6 Lendu from Zumbe. Isn't that right?

7 A. Yes, that is correct.

8 Q. Mr. Witness, you yourself saw a number of Lendu commanders during
9 the big February 2003 attack, including Kute, Besto, and Ngadjole. Isn't
10 that correct?

11 A. Well, the manner in which the fighting took place on that day,
12 well, it was difficult to identify who was who during the fighting. At
13 the time, we used to hear that such and such a person held such and such
14 a position within the army. It was difficult at the time to determine
15 who was Kute, Ngudjolo, or the others.

16 Q. Mr. Witness, you provided a witness statement to the Defence
17 taken by a Mr. Jean Logo Dhengachu. Isn't that correct?

18 A. Yes.

19 MS. LUPING: Mr. President, I have a clean copy of the statement.
20 If the Court Usher could ensure we provide it to the witness.

21 PRESIDING JUDGE COTTE: (Interpretation) Court Usher, could you
22 please bring to me the document which Ms. Luping wishes to show to the
23 witness. Thank you.

24 MR. KILENDA: (Interpretation) Could I have a moment,
25 your Honour?

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1 PRESIDING JUDGE COTTE: (Interpretation) Go ahead.

2 MR. KILENDA: (Interpretation) A short while ago we understood
3 from a question asked by Ms. Luping, we thought we heard the name
4 Ngudjolo. Should we -- shouldn't we ask the witness whether he's talking
5 about Ngudjolo or Ngadjole.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, could you
7 please give us that clarification, because it has to do with a phonetic
8 mix-up in the names, and it also has to do with identification of
9 particular individuals. Looking at the draft transcript, French
10 transcript, page 10, lines 5 to 7, I read the question asked by
11 Ms. Luping. She said:

12 "You said a certain number of Lendu commanders during the big
13 attack of 24 February, including Kute, Besto, and Ngadjole. Is that
14 correct?"

15 Later on in your answer, still on page 10 of that transcript,
16 line 12 of the French, we read:

17 "It was difficult to make a distinction between Kute, Ngudjolo,
18 and the others."

19 Could you please clarify the point? Who are you talking about?
20 That is the question Mr. Kilenda is putting to you. Are you talking
21 about someone whose name was Ngudjolo or who bore the name Ngadjole? I
22 apologise for my pronunciation.

23 THE WITNESS: (Interpretation) Thank you very much. I think I
24 understand the question clearly now. The name was Ngadjole and not
25 Ngudjolo.

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1 PRESIDING JUDGE COTTE: (Interpretation) Ms. Luping, you may
2 proceed, please.

3 MS. LUPING: (* Microphone not activated)

4 Q. Witness, I would ask you to turn to the very last page of your
5 statement, page 21, at 0690. You signed this statement on the
6 15th of April, 2011; is that correct?

7 A. Yes, that is correct.

8 Q. And that is your signature and also at the bottom of the page
9 your initials; is that correct?

10 A. Yes, indeed.

11 Q. You speak French as well as Swahili. Isn't that correct?

12 A. I speak -- I speak Swahili more. My level of French is not as
13 good as my level of Swahili.

14 Q. The statement was read back to you in French and translated in
15 Swahili, wasn't it?

16 A. Yes. It was translated from Swahili -- or, rather, from French
17 into Swahili.

18 Q. (* Previous translation continues) ... consider the contents of
19 the statement to be the truth. Isn't that right?

20 A. Looking at the questions which were put to me here, I am inclined
21 to believe that what is written here is correct.

22 Q. Mr. Witness, I'd ask you to turn to page 8. That's 0677 at the
23 bottom right corner of the page. DRC-D02-0001-0677, so page 8.

24 You now have the page before you, Mr. Witness?

25 A. Yes, I have the page before me.

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1 Q. I'm now going to read an excerpt from your statement. It's under
2 the heading "Les Attaquants."

3 "(Interpretation) Among the Lendu commanders whom I recognised
4 on the 24th of February, 2003, in Bogoro, there was Kute, Besto, Ndjabu
5 of Kavalega, Mbiti, Ngadjole. I did not see them come down. However, I
6 saw them in the battle at the beginning."

7 (In English) Indeed, that was your statement. Isn't that
8 correct, Mr. Witness?

9 A. Yes. I believe that what is written here is correct.

10 Q. Now, just referring to Ndjabu of Kavalega, whom you also saw
11 during the attack, he's also known as Boba Boba, is he not?

12 A. I do not know the name Boba Boba. However, I know the name
13 Ndjabu very well.

14 Q. And do you know the name Ngabu Mateso Martin?

15 A. No.

16 Q. And the commander Mbiti, who you also saw during the attack, do
17 you know him by any other names?

18 A. No. I only know the name Mbiti.

19 MS. LUPING: Mr. President, I believe that the Court Usher can
20 take the statement back from the witness at this point.

21 PRESIDING JUDGE COTTE: (Interpretation) Usher, could you please
22 return the document to Ms. Luping.

23 MS. LUPING:

24 Q. Mr. Witness, going back to the attack of the 24th of February,
25 2003, you said the attackers were shouting and making a big noise to

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1 intimidate. Isn't it a fact that they were saying to capture them?

2 A. Yes. Those were the cries we could hear, "Capture them. Capture
3 them."

4 MS. LUPING: Mr. President, I now have some questions of an
5 identifying nature. If we could please move into private session.

6 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could we
7 please return -- or go into private session. And we hope that the
8 Prosecutor is going to be careful and have us return to public session as
9 soon as possible.

10 (Private session at 2.44 p.m.)

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25 (Closed session at 2.55 p.m.)

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13 (Open session at 2.57 p.m.)

14 COURT OFFICER: (Interpretation) Your Honour, we are in
15 open session.

16 PRESIDING JUDGE COTTE: (Interpretation) We will rise, but
17 please do not go far from the courtroom. We will sit again at
18 five minutes past 3.00. I will seize this opportunity to have a
19 discussion with one of the Legal Officers.

20 Recess taken at 2.58 p.m.

21 On resuming at 3.12 p.m.

22 (Closed session)

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4 (Open session at 3.13 p.m.)

5 COURT OFFICER: (Interpretation) We are in open session,
6 your Honour.

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

9 Ms. Luping, you may resume your cross-examination. Were we in
10 private session, I believe, at the moment when we rose? Would you like
11 us to go back into private session?

12 MS. LUPING: I still simply have one more question that needs to
13 be asked in private session, Mr. President, and then we can go back into
14 open session.

15 PRESIDING JUDGE COTTE: (Interpretation) All right.
16 Court Officer, for one question may we go into private session again, and
17 then we'll move back into open session.

18 (Private session at 3.14 p.m.)

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15 (Open session at 3.20 p.m.)

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

17 your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

19 Ms. Luping, you may go ahead.

20 MS. LUPING:

21 Q. Mr. Witness, just returning back to the attack of

22 24 February 2003, you stated that the UPC fled at the end of the fighting

23 at the camp. Isn't it a fact that the attackers took over Bogoro?

24 A. Could you please repeat your question. I didn't understand

25 properly.

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1 Q. Certainly, Mr. Witness. You've stated the UPC fled the camp at
2 the end of the attack of 24 February 2003. My question is simply: Isn't
3 it a fact that the attackers who attacked Bogoro then took over control
4 of Bogoro?

5 A. Yes. When we fled, they stayed there.

6 Q. I'm now going to turn to the -- the fighting in Bunia on the
7 6th of March, 2003. Now, isn't it a fact, Mr. Witness, that you yourself
8 participated in that fighting as a UPC soldier?

9 A. Yes. I fought during the attack on Bunia as a UPC fighter.

10 Q. And it's correct, isn't it, that the UPC attacked the UPDF at
11 Dele?

12 A. Yes, that is correct.

13 Q. And isn't it also correct that the UPC were then dislodged from
14 Bunia by the UPDF with support from Lendu and Ngiti combatants?

15 A. Yes, that is correct.

16 Q. Mr. Witness, isn't it a fact that you were also amongst Hema
17 forces that fought at Bunia in May 2003?

18 A. If I remember correctly, that is not right. I don't remember.

19 Q. After the fighting on the 6th of March, 2003, in Bunia, isn't it
20 a fact that the Lendu and Ngiti who remained in control at Bunia were
21 killing civilians?

22 A. Yes, that's right.

23 Q. And isn't it a fact that UPC forces ousted those Lendu combatants
24 in May 2003 and that you participated in that fighting?

25 A. Yes. At that time, I was not part of the UPC, I was a PUSIC

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1 soldier, but I was there.

2 MS. LUPING: Mr. President, if I could go into private session
3 for certain questions of an identifying nature, please.

4 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please.

5 (Private session at 3.27 p.m.)

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4 *Q. Now, Mr. Witness, you mentioned a number of Lendu commanders you
5 saw at the attack at Bogoro. Isn't it a fact that Mathieu Ngudjolo was
6 the most senior commander at Zumbe at the time of the 24 February
7 attack -- 2003 attack? Isn't that right, Mr. Witness?

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Kilenda.

9 MR. KILENDA: (Interpretation) Where does this information come
10 from? Where did the Prosecutor take it? The witness never mentioned
11 Mathieu Ngudjolo. I believe these are leading questions, and she's
12 trying to involve Mr. Ngudjolo in it.

13 (Expunged)

14 (Expunged)

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Witness: Witness DRC-D02-P-0176 (Resumed) (Private Session)
Questioned by Ms. Luping

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15 (Open session at 3.43 p.m.)

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

17 Mr. President.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

19 Court Officer.

20 For the purposes of our transcript and for the public, we have

21 just spent some time in private session, because the position of the

22 witness was referred to which was necessary in the questions put to him

23 by the Prosecutor, which were of an identifying nature. It is not

24 excluded that we may have to go back into private session, but we will

25 try to do what is possible.

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1 Madam Prosecutor.

2 MS. LUPING: Thank you, Mr. President.

3 Q. Mr. Witness, I'm now going to repeat my question. You mentioned
4 a number of Lendu commanders that you saw at the attack at Bogoro. Isn't
5 it a fact that that Mathieu Ngudjolo was the most senior commander at
6 Zombe at the time of the 24 February 2003 attack?

7 A. It is not possible for me to know that.

8 MS. LUPING: Mr. President, if we could briefly go back into
9 private session.

10 PRESIDING JUDGE COTTE: (Interpretation) Court Officer.

11 (Private session at 3.45 p.m.)

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16 (Expunged)

17 (Expunged)

18 (Expunged)

19 *(Open session)

20 A. Well, this is what I can tell you, ma'am. You asked me who was
21 the commander or leader of the Lendus. I believe that was your question.

22 Q. I will repeat my question. I believe it was a simple question,
23 but I shall repeat it to be clear. Isn't it a fact that at the time of
24 the 24 February 2003 attack, Mathieu Ngudjolo was the most senior
25 commander at Zombe?

Witness: Witness DRC-D02-P-0176 (Resumed) (Private Session)
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1 A. That is correct.

2 Q. Now, Mr. Witness, you confirm that you participated in the
3 fighting in Bunia in May 2003. Isn't it a fact that Mathieu Ngudjolo was
4 the most senior commander of those forces in Bunia at that time?

5 A. Yes. Based on what I heard, that is correct.

6 MS. LUPING: Mr. President, I need to briefly remain in private
7 session simply because I have questions of a very identifying nature in
8 relation to the witness's family.

9 PRESIDING JUDGE COTTE: (Interpretation) Ms. Luping, I'm really
10 still wondering when we have a question such as this:

11 "Q. Is it not correct that during the attack of the
12 24th of February, 2003, Mathieu Ngudjolo was the highest ranking
13 soldier in -- or commander in Zombe?

14 "A. Yes.

15 "Q. Mr. Witness, you participated in the fighting in Bunia.
16 Isn't it correct that Mathieu Ngudjolo was the ranking commander at that
17 time?"

18 And the answer is, "Yes."

19 How does this fit into private session? I want you to assist us.
20 Why should this exchange take place in private session? In May 2003, our
21 witness was not the only fighter in the Bunia conflict, so he cannot be
22 identified through that. What do you think? Since our proceedings have
23 to be public, it is important -- in fact, I know it is complicated, I
24 know that, but there is a certain number of questions and answers that
25 are not of an identifying nature and should have deserved to be in

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1 open session. It is not too late, but if we have to avoid cutting and
2 pasting after the proceedings, then it would be better to make an effort
3 now.

4 MS. LUPING: Understood, Mr. President, and certainly that
5 portion and that response, that specific portion that you referred to,
6 can indeed be reclassified.

7 (Private session)

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24 (Expunged)

25 (Open session at 3.53 p.m.)

Witness: Witness DRC-D02-P-0176 (Resumed) (Open Session)
Questioned by Ms. Luping

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

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
4 Court Officer. And please do not forget to refer to page 30 of this
5 provisional transcript. I believe it is page 30 where I expressed my
6 concern about keeping some exchanges in private session, and the
7 Prosecutor agreed with me that those could be reclassified public.

8 For the time being, we are back in open session and,
9 Madam Prosecutor, you can go ahead.

10 MS. LUPING:

11 Q. Mr. Witness, I'm now going to -- to go back to prior attacks on
12 Bogoro. Now, in January 2001, when there was the first big attack on
13 Bogoro, the attackers included the Lendu, didn't it?

14 A. Yes. There were Lendus amongst the attackers.

15 Q. And in the second big attack on Bogoro in August 2002, the
16 attackers included Lendu from Zumbe, didn't they?

17 A. Yes, they were there also.

18 MS. LUPING: Mr. President, I need to return to private session
19 for questions regarding family members that are of an identifying nature.

20 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, let us
21 go back into private session.

22 Ms. Luping, it is 15.55, and even though we suspended briefly, it
23 would be preferable to end at 4.00 p.m. or at 4.05 at the latest. If you
24 have any further questions, then you can ask them after the break.

25 (Private session at 3.55 p.m.)

Witness: Witness DRC-D02-P-0176 (Resumed) (Private Session)
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12 Page 31 expunged. Private Session.

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Witness: Witness DRC-D02-P-0176 (Resumed) (Private Session)
Questioned by Ms. Luping

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Witness: Witness DRC-D02-P-0176 (Resumed) (Closed Session)
Procedural Matters

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- 13 (Closed session at 4.04 p.m.)
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- 23 Recess taken at 4.05 p.m.
- 24 On resuming at 4.39 p.m.
- 25 (Closed session)

Witness: Witness DRC-D02-P-0176 (Resumed) (Closed Session)
Procedural Matters

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9 (Expunged)

10 (Open session at 4.40 p.m.)

11 COURT OFFICER: (Interpretation) Your Honour, we are in open
12 session.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

14 Witness, can you hear me clearly?

15 THE WITNESS: (Interpretation) Yes, I can hear you clearly,
16 your Honour.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

18 Mr. Luvengika, I think it is your turn to put questions to the
19 witness. We are listening to you. You sent to us and to the Defence
20 counsel a list of questions. It bears the reference 26 -- 2863, and this
21 was on the 4th of May, 2011. After hearing the answers given by the
22 witness to questions put to him by Mr. Hooper and Ms. Luping, I think you
23 are able to determine which questions you're going to put to him.

24 You have the floor.

25 MR. LUVENGIKA: (Interpretation) Thank you, your Honour.

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Questioned by Mr. Luvengika

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1 Your Honours, Mr. Witness, good afternoon.

2 THE WITNESS: (Interpretation) Good afternoon.

3 Questioned by Mr. Luvengika:

4 Q. (Interpretation) My name is Mr. Fidel Luvengika Nsita. I am the
5 legal representative of the victims of Bogoro. I will ask you a few
6 questions, questions of clarification about certain events that took
7 place in Bogoro. Mr. Witness, all my questions are going to focus on
8 Bogoro.

9 You explained to us that before the big attack of 24 February,
10 certain attacks had been launched against Bogoro between 2001 and 2002.
11 In the course of that period between 2001 and 2002, do you know whether
12 the inhabitants of Bogoro who had fled the village as a result of the
13 attacks and the insecurity that prevailed in and around Bogoro, do you
14 know whether they would return from time to time to look after their
15 farms and to harvest their crops?

16 A. Yes. Your question is very clear, and I have answered in the
17 affirmative, because there were certain people who used to live in Bunia,
18 and they would go back to Bogoro to look for food and afterwards return
19 to Bunia. You are right.

20 Q. Thank you for your answer. When the attack started, how did the
21 inhabitants of Bogoro react? How did they flee, and to where did they
22 flee?

23 A. I think that certain inhabitants of Bogoro left. However, many
24 of them died. The few I talked about fled to Bunia, and they fled to
25 areas where soldiers were located. They went -- they took the road

Witness: Witness DRC-D02-P-0176 (Resumed) (Open Session)
Questioned by Mr. Luvengika

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1 leading to Lengabo. Lengabo is a locality which belongs to the Bira.
2 You leave Bogoro to Nyakeru, and from Nyakeru you arrive at Lengabo, and
3 afterwards you will reach the town of Bunia.

4 I believe that some of them spent about a day or two in the bush
5 where they had -- where they hid. On the way to Kasenyi they went to the
6 bush, to Diguna, on the hill. They passed through the bush to go to
7 Kasenyi.

8 Q. On the day of the attack and talking about Bogoro, could you
9 please tell us whether or not many of the inhabitants fled to hide in the
10 UPC camp?

11 A. Our system was the following: When an attack took place, we told
12 the inhabitants, everyone, that if they heard gunshots within the area,
13 they had to flee to the camp, because there were soldiers in the camp who
14 could protect them. Others were taken by surprise by the attack, because
15 they were located far away from the centre, and such people would hide in
16 the bush. However, in general, the population would flee to the military
17 camp.

18 Q. You, you personally, when you were in the camp together with the
19 inhabitants who had gone to hide there, were there men, women, and
20 children there, and if they were there, what were their ages, if you saw
21 them and if you can remember?

22 A. Are you talking about the population of Bogoro?

23 Q. Yes, indeed. I'm talking about the population of Bogoro. That
24 is, the people who fled to the UPC camp at the institute.

25 A. I think there were children. There were adult men, young people,

Witness: Witness DRC-D02-P-0176 (Resumed) (Open Session)
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1 women, and old people. However, with respect to their ages, how can I
2 provide you with the ages, the ages of these various people, including
3 the ages of the children? Each person has his or her own age, be they a
4 child, a woman, a man. How can I provide you the ages of each and every
5 one?

6 Q. I thank you for your answer. When I talk about children, what
7 I'm referring to is whether there were babies in the population. You
8 should inform us about that. Were there old people, and if there were
9 old people, were they aged about 80 or 90? When we're talking about
10 young people we're talking about adolescents of 15 or 16? That's what
11 I'm referring to, and, no, you cannot know their precise ages, but I
12 wanted you to give us a general indication.

13 A. There were children. There were even babies, babies aged 1 right
14 up to children aged 15. There were also old people, adults aged about
15 60.

16 Q. You explained that at some point, one of the soldiers or the
17 fighters asked civilians to flee when this soldier realised that they
18 could no longer provide security to the civilian population. How did
19 people respond to that instruction? Did they run away in a disorderly
20 manner, or did this UPC soldier give the population instructions on how
21 they could flee or escape from the camp?

22 A. No, not at all. To flee from that area, on that particular day,
23 there was no particular point in time when the population was instructed
24 to flee from the fighting, because the fighting was intense. However, I
25 believe that Germain, the commander, said that we are not strong enough.

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1 We have been defeated. But no one went to tell the population to leave
2 immediately. It was only after the attackers started burning down the
3 houses that the population understood that the enemy was already there.
4 I did not say that we informed the population or asked the population to
5 flee. Those who were there decided to flee. And I would like to inform
6 you that not many people were able to escape.

7 Q. You just talked about houses being burnt. In general terms,
8 could you describe to us how the attackers behaved towards the
9 population, how they behaved with respect to the buildings and the homes
10 in Bogoro?

11 A. As far as their behaviour is concerned, they behaved like
12 civilians. First of all, they were dressed in civilian clothing. In
13 short, they were all the people from that particular region. It wasn't
14 only men. There were women as well. The entire population of the
15 collectivity came to fight, including the women. You have to understand
16 that the Ngitis are short, stocky people. You could -- you can easily
17 take them for children, and it's difficult to know whether -- to tell
18 whether they are children. So the entire collectivity came, that is,
19 civilians and soldiers as well. You are talking about or you wish to
20 know about their behaviour, but I can tell you that looking at them,
21 looking at the way they proceeded, it was easy to say all of them were
22 civilians.

23 Q. My question related to their behaviour towards the population,
24 the civilian population of Bogoro. How did these attackers behave
25 towards the civilian population of Bogoro and towards the houses and

Witness: Witness DRC-D02-P-0176 (Resumed) (Open Session)
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1 other buildings located in Bogoro?

2 A. Are you talking about the day of the battle of the 24th?

3 Q. Yes, indeed.

4 A. Well, on that point when you ask about their behaviour, well,
5 they came in and we fought against each other and they defeated us. They
6 came in making a lot of noise, shouting at the top of their voices, and
7 we saw that they started the fire. I don't know how else I can explain
8 the situation to you.

9 Q. How did they treat civilians? If they caught an inhabitant of
10 Bogoro, a Hema person, how would they treat that person? How did they
11 treat the homes and other buildings, hospitals, health centres in Bogoro?
12 How did these Ngiti attackers behave towards all these people and the
13 property in that region?

14 A. I have understood you now. When they arrived, they were shooting
15 at all civilians who tried to leave their homes, and some of them would
16 hack down their victims. Even women had machetes, and they started
17 cutting down people. And when we went to the school premises, we found
18 blood in the classrooms. Many people died, civilians who had been killed
19 within the classrooms.

20 Q. I will now ask you a series of questions, and I would like to
21 appeal to you to listen to me very attentively and be careful with the
22 answers you're going to provide. The reason is because I do not want us
23 to go into private session. I would like to us carry on in public
24 session. Have you understood me clearly?

25 A. Yes, I have understood you.

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1 Q. You said that on the day of the attack or on the eve of the
2 attack, a ceremony took place organised in Bogoro. Did you personally
3 attend that ceremony?

4 A. Yes, I attended the ceremony.

5 Q. In the course of your testimony last Friday, you said that the
6 guests started arriving as from the 22nd of February; is that correct?

7 A. That is correct.

8 Q. I believe that there were other invitees who attended, that is,
9 invitees apart from members of the family. Is that correct?

10 A. That is correct.

11 Q. Could you please tell us whether there was a certain system of
12 receiving these guests? Where were they lodged? Were they lodged in the
13 same place, or they were lodged in various places all over the village?

14 A. The guests started arriving from the 22nd. On the 23rd,
15 preparations started. I think that those guests all spent the night at
16 the same place, in a house.

17 Q. Do you have an idea of how many guests there were that day?

18 A. No. I can't tell you how many guests there were. I had other
19 worries and concerns at the time. I was only paying attention to my
20 close family. I don't know exactly how many other people were invited,
21 because I was preoccupied with my own concerns.

22 Q. Were you able to see all of the people who were there?

23 A. Yes. There was the representative of the churches, and they were
24 the ones who were in charge of organising the programme, organising what
25 would take place on that day.

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1 Q. So are we to understand that there were also a lot of guests who
2 were members of the religious community?

3 A. I'm sorry, could you please repeat the question? I didn't
4 understand.

5 Q. Among the guests, are we to understand that there were also a lot
6 of church people, people who prayed in that community? I don't want to
7 mention their names. Among the members of the community of the church
8 who organised the ceremony.

9 A. No. There was not a great number of such guests, only a few. I
10 would estimate that there were six church people there.

11 MR. LUVENGIKA: (Interpretation) Mr. President, for the next
12 question, I would like to go into private session because the next
13 question is highly likely to identify people.

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

15 (Private session at 5.03 p.m.)

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7 (Open session at 5.12 p.m.)

8 COURT OFFICER: (Interpretation) So we are in open session,
9 your Honour.

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

12 For the transcript and for the benefit of the public,
13 Mr. Luvengika was asking questions about the cattle in Bogoro, and he was
14 addressing the witness, saying:

15 "You had talked to us about the looting of cattle near Semiliki,
16 and you had said that those cattle were being taken to Uganda; is that
17 correct?"

18 The witness answered: "Yes."

19 And Mr. Luvengika wanted a clarification from the witness
20 concerning the number of head of cattle, because to his knowledge, before
21 the attack of 2001, there were a large number of cattle in the region.
22 The witness answered that it was difficult for him to know how many cows
23 were in Bogoro at that time, and the question should be asked of
24 veterinarians.

25 Mr. Luvengika, you may continue.

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1 MR. LUVENGIKA: (Interpretation)

2 Q. Witness, you would agree with me, would you not, that the
3 thousands of cattle that had been looted at Semiliki and which had indeed
4 also caused the death of certain cow herds were not the only cows that
5 were in Bogoro?

6 A. Yes, I do agree would you on that point.

7 Q. And I suppose that you would also agree with me that following
8 the situation of insecurity in the region, on the Kasenyi road and
9 everywhere, the cow herders did not venture to herd all of their cattle
10 together. They would take a part of their herd that they would drive
11 from one place to the next. Do you agree with that proposition?

12 A. Yes. That is how it happened. You know, there was a procedure
13 in place whereby each cow herder to give a specific number of cattle, and
14 once the cattle had been brought together into a larger herd, they would
15 be driven to Uganda. That's how it happened.

16 MR. LUVENGIKA: (Interpretation) Thank you, Witness.

17 Your Honour, I have no further questions for this witness. Thank
18 you very much.

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

21 Witness, on Friday morning and today you have answered a certain
22 number of questions put by Mr. Hooper, put by Ms. Luping, and by
23 Mr. Luvengika. Because you are here in The Hague and here before this
24 Court, the Chamber would also like to ask you a few questions which are
25 essentially aimed at obtaining complementary details with regard to

Witness: Witness DRC-D02-P-0176 (Resumed) (Open Session)
Questioned by the Court

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1 answers that you have already given or are aimed at providing us with
2 additional clarification as to answers that you have already given and
3 with regard to which we would like to go into more detail. We would like
4 you to extend some of those answers if you are able to do so. We're not
5 asking you to answer at great length. We're simply asking you to help us
6 better understand some of the answers that you have given.

7 Questioned by the Court:

8 PRESIDING JUDGE COTTE: (Interpretation) So on page 22 of the
9 transcript of the hearing of Friday morning at lines 20 to 23 in the
10 French version, you told us with regard to the UPC:

11 "I was enlisted when I was in Bogoro. You know, in Bogoro at
12 that period, there was an inter-ethnic conflict."

13 And then a little lower you say:

14 "At that time I was a civilian. I saw that life as a civilian
15 was becoming increasingly difficult."

16 Witness, can you please specify which ethnic groups were involved
17 in the inter-ethnic conflict that you mentioned.

18 A. The conflict was between the Hema and the Lendu groups in general
19 terms. When I mention the Lendu group, I include the Ngiti in that
20 description. So the conflict was between, in general terms, the Hema and
21 the Lendu.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
23 And could you specify what were the bones of contention between these
24 groups? What was at the origin of this conflict? What drove this
25 conflict?

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1 A. I would have to say that I don't know what was the reason
2 underlying this conflict. However, the conflict began between the Hema
3 and the Lendu in Djugu, and it was a conflict over land. You know, the
4 Lendu are farmers. They are -- they grow crops, and the Hema are
5 livestock farmers. So originally it was a conflict between those who
6 grow crops and those who farm livestock.

7 PRESIDING JUDGE COTTE: (Interpretation) And afterwards, did
8 other elements come into play in this conflict going beyond the mere land
9 conflict? I say "mere," although we do understand that this is a very
10 important point of contention, the conflict between livestock farmers and
11 crop growers, but are there other elements that came into play that would
12 help us to understand how this conflict arose and, particularly, how it
13 came to last over the longer term?

14 A. To be honest, I would have to say that I don't know the
15 background of this conflict. I really am not in a position to tell you
16 today why the Hema fought the Lendu. You know, in Bogoro, they're the
17 ones who came to attack us. I don't know why they came to attack us. I
18 am not in a position to answer this question, but I am wondering why we
19 were killing each other.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
21 Given your age, you could not necessarily go back beyond the time of your
22 birth and the things that you were able to witness yourself, but are you
23 able to tell us the date or the period at which this inter-ethnic
24 conflict became a reality in Bogoro? When did this inter-ethnic conflict
25 burst onto the scene in Bogoro?

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1 A. To my knowledge, this conflict began in 2001, when the Lendu
2 began to kill the population of Bogoro. That was in 2001. One week
3 before that conflict, everything was going fine. We visited each other.
4 We were living in peace. But we received information that people were
5 fighting a long way from where we lived, but among ourselves we were
6 saying, "We're brothers. We're sisters. We're going to live together.
7 There will be no problem here among us." We were surprised, though, to
8 see them attack Bogoro and kill people in the population. I don't really
9 know why they did that, but I know that that began in 2001.

10 PRESIDING JUDGE COTTE: (Interpretation) And from the time when
11 that conflict became significant in 2001, were there members of certain
12 ethnic groups living in Bogoro who decided to leave Bogoro to escape the
13 conflict? Perhaps you have answered this already, in fact, but could you
14 tell us again. In the presence of this conflict which suddenly broke out
15 in 2001 and took you by surprise, did that move people from certain
16 ethnic groups to leave Bogoro, and if so, were there a lot of people
17 leaving, if people did leave at that time?

18 A. Yes, I am in a position to answer that question, and this is how
19 I would answer it: The people who belonged to other ethnic groups left
20 Bogoro. They left at a time when there were a large number of people in
21 Bogoro. In the year 2000, when the population learned that the combat,
22 the fighting, would reach us, people belonging to other ethnic groups
23 started to leave Bogoro. Those who left were very numerous.

24 PRESIDING JUDGE COTTE: (Interpretation) Can you tell us what
25 happened to the land and the houses of the people who decided to leave

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1 Bogoro? These people must have closed up their houses, abandoned their
2 land, perhaps provisionally only, but what happened to that land and
3 those houses, counting from 2001, if I've understood correctly?

4 A. As far as the fields were concerned, I would say that the fields
5 were destroyed.

6 PRESIDING JUDGE COTTE: (Interpretation) And the houses?

7 A. As far as the houses are concerned, those which were built of
8 straw were burnt, and the houses made of sheet metal, like, for example,
9 our own house, were looted. The sheet metal was looted. People would
10 take the sheet metal and -- and leave with it.

11 PRESIDING JUDGE COTTE: (Interpretation) A final question on
12 this issue. You have told us that from 2001 onwards, there were,
13 therefore, representatives of these different ethnic groups who up until
14 that point had lived together quite well, who then left Bogoro. Are we
15 to understand that both Hema and Lendu left Bogoro? Did people from both
16 ethnic groups leave the town? This is a question. I'm not making a
17 statement. I'm asking you.

18 A. You know, the Lendu left earlier. They left Bogoro well before
19 this, before the Lendu left Bogoro. The Lendu were the first to leave.
20 The other ethnic groups fled Bogoro after the first fighting took place
21 in 2001, when the Lendu came to attack the population, and there were
22 deaths among the civilian population. That happened at the time when the
23 Ugandans were present. At that period, a large number of people left,
24 and they left publicly in front of everyone, and the Ugandan soldiers
25 escorted them to Bunia.

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1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness. A
2 last detail. You told us that the Lendu were the first to leave. What
3 happened to their possessions after they left, their fields, their
4 houses? Before 2001, if we've understood what you've told us, they left,
5 and in leaving they left land and homes behind them. What happened to
6 those assets?

7 A. When the Lendu left, they left definitively, once and for all,
8 and after they left, the inter-ethnic conflict broke out, and there were
9 people who then occupied those houses. You know, there were refugees or
10 displaced people from the war who came out of the bush and came into the
11 centre of Bogoro. Those people occupied the empty houses. That answers
12 your question with regard to the houses, but I don't have any specific
13 answer to give you with regard to the fields. You know, not everyone in
14 the locality was a farmer. Everybody looked after their own fields.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you. And you
16 told us about 2001 for some people. Did the Lendu leave before that?
17 Can you give us an approximate date? Do you have no approximate date in
18 mind? When did the Lendu or some of the Lendu, not all of them, start to
19 leave Bogoro? Is that a long time before 2001 or just a few short years
20 before that point?

21 A. I think that that happened a year beforehand. If I'm not
22 mistaken, it must have been at the beginning of the year 2000. I would
23 even say in 1999.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.

25 Now, let us move on to another aspect of your testimony. While

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1 speaking about the time when you were a mere civilian in Bogoro village,
2 on page 22, lines 20 to 22, of transcript number 255, you said that:

3 "We were in the habit of fighting not with modern weapons but,
4 rather, with traditional weapons, machetes, arrows, and knives."

5 That was your testimony. Can you tell us whether in addition to
6 your other activities as a civilian, which I will not mention, you took
7 part in fighting using those traditional weapons? Were you actually
8 involved in such fighting?

9 A. This is what I can say: These are things that happened in 2001.
10 It was after the killings that had taken place during the Bogoro attack.
11 As you know, we had set up a system. Each time the Lendus came to steal
12 cattle, we would go -- we would follow behind the Ugandans who were
13 fighting with firearms, and those of us young people were there. We were
14 not really the ones doing the fighting. We were simply fighting behind
15 the Ugandans. We were supporting them in their fight against the Lendus.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
17 The UPC arrived Bogoro at one point, according to your testimony. Now,
18 after they arrived, were there many civilians who continued participating
19 in such fighting using their traditional weapons, or did the presence of
20 the UPC forces make it possible for the civilians to disengage, that is,
21 to withdraw from participation in such fighting? Can you enlighten us on
22 that?

23 The system that you have just described, was it transferred from
24 the civilians who were fighting to the UPC fighters who had just arrived,
25 who had their uniforms and guns and other types of weapons?

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1 A. No. No. We no longer used that system. We followed that system
2 before we had any weapons. After weapons were received in the UPC,
3 civilians could no longer fight using traditional weapons. That was the
4 exclusive responsibility of the soldiers.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
6 And let me refer you now to page 26 of transcript 255, and I will refer
7 to lines 26 and 27. You testified about the information received by the
8 Bogoro population regarding the -- a possible attack. You said that
9 there was a radio operator who told you that the attackers had said they
10 would come and cultivate their farms, and those attackers were saying the
11 following:

12 "Inhabitants of Bogoro, be prepared. We are coming to cultivate
13 our farms there."

14 Now, Mr. Witness, can you tell us whether those attackers
15 referred to by saying what they said -- by saying what they said, were
16 they claiming any rights over land and property in Bogoro? And if that
17 is the case, which land specifically were they referring to? In other
18 words, what did they mean?

19 A. I believe that the expression "to cultivate our farms," was
20 simply a metaphor. They merely meant that they were coming to fight.
21 They thought of the battlefield as a farm or a field. It was simply a
22 metaphor to mean that they were coming to fight against us. We knew that
23 these -- that this was the way they expressed themselves. When they
24 referred to farms or fields, they were actually talking about the
25 battlefield.

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1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness,
2 for the interpretation that you have just given us.

3 On page 26 of transcript 255, at lines 7 and 8, in answer to a
4 question you say:

5 "There were about 130 of us, but before that date there were
6 about 240 of us, but after their departure, only about 130 soldiers were
7 left."

8 And this reduction, according to you, was due to the fact that a
9 contingent had left for Kasenyi. Can you tell us whether the majority of
10 those 130 soldiers who stayed in Bogoro were former civilians from Bogoro
11 just like yourself, or did they come from elsewhere?

12 A. I think that those who stayed back, and there were about 130 of
13 them, were people who hailed from Bogoro. And Germain, who arrived there
14 and took up his position as commander of Bogoro, he came with another
15 contingent. He came after the other group had already left for Kasenyi.
16 Germain arrived with a group, but that group was not much liked by the
17 population, because those were soldiers who had just completed their
18 military training.

19 THE INTERPRETER: From the Kiswahili booth: Could the witness be
20 requested to repeat, please.

21 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, the
22 interpreters had a small difficulty, and they wanted you to repeat your
23 answer. Thank you.

24 A. What I was saying was this: Those 130 soldiers were not all from
25 Bogoro. Some of them were from Bogoro, whereas others had arrived with

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1 Commander Germain.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.

3 We are still talking about Bogoro and about the month of February 2003.

4 Are you able to tell us even approximately how many civilians there were
5 in Bogoro at that time? You have told us that some people had left

6 Bogoro. In general, how many civilians were left in Bogoro at that time?

7 In other words, were there as many civilians as soldiers, or did you have
8 many more civilians than soldiers, maybe twice or three times as many
9 civilians as soldiers? Please just give us an approximate number, that
10 is, if you can remember.

11 A. I believe that there were more civilians than soldiers, if I'm
12 not mistaken. You had children, adults, and women made up at least 800,
13 800 people.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
15 You have given us a figure.

16 On page 25 of this transcript, lines 18 to 25, you told us that
17 there was a small minor attack in Bogoro on the 10th of February. That
18 is before the large-scale attack of the 24th of February, and it is on
19 line 18. It is stated that before the 24th of February, there were
20 attacks of a lesser scale, and Mr. Hooper asked you whether any attackers
21 were killed during those attacks, and you said:

22 Yes. There was an attack on the 10th of February, during which
23 we fought against the attackers, and so on and so forth. I think
24 ten people -- ten of the attackers were killed, and we lost only one
25 person. In any case, we are talking here of the attacks of a lesser

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1 scale than the one that took place on the 24th of February.

2 Now, as far as you can remember, can you tell us whether the
3 attackers who attacked on the 24th of February were the same ones who had
4 attacked on the 10th of February? Did you recognise the same people on
5 those two different dates, which are about 14 days apart?

6 A. I would like to seek permission to go and ease myself.

7 PRESIDING JUDGE COTTE: (Interpretation) Very well. We will
8 suspend briefly.

9 Court Officer, let us go into closed session to allow the witness
10 to leave the courtroom. He will be accompanied by the Court Usher to
11 where he wishes to go and then we will reconvene.

12 (Closed session at 5.44 p.m.)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 5.49 p.m.)

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

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1 your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

3 Mr. Witness, let me briefly summarise my question, because I
4 believe you still remember it. On the 24th of February, were you able to
5 recognise any attackers who were amongst the previous group of attackers
6 on the 10th of February, that is, shortly before that, if you can
7 remember?

8 A. As I have already said, there was an attack on the
9 10th of February. We fought, and we defeated the attackers. At the end
10 of that battle, we inspected the town, and we discovered that some
11 attackers had been killed. As I have said, we found one of the attackers
12 who had hanged himself. That is what I said.

13 PRESIDING JUDGE COTTE: (Interpretation) Very well. So you
14 cannot give us any further details, particularly as to whether you were
15 able to see that these were the same fighters who had attacked on the
16 10th of February that were attacking on the 24th.

17 Now, maybe, on the other hand, you can tell us this: On the
18 24th of February, were the attackers more numerous, or were they
19 accompanied by other members of armed groups that had not been present on
20 the 10th of February? Do you understand what I'm saying? On the
21 24th of February, did you have the attackers who had been there on the
22 10th in addition to others who had not been there? If you can clarify,
23 please.

24 A. Yes. As I have already said, during the attack of the 10th, it
25 was an attack of a lesser scale, that is, compared to that of the

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1 24th of February. And if my memory serves me correctly, that attack was
2 launched from a single direction. It was not like the other attacks
3 during which they attacked from all sides. On that day, they came from
4 only one direction, that is, from the direction of Geti. That is why I
5 said that that attack of the 10th was a minor attack. On the other hand,
6 the attack of the 24th of February was larger. There were many attackers
7 with a lot of reinforcements.

8 PRESIDING JUDGE COTTE: (Interpretation) With many
9 reinforcements, as you say, but can you tell us whether those
10 reinforcements came from organised armed groups?

11 A. As I have said, there were many reinforcements. Given the number
12 of combatants who attacked, they came from all directions. Before that,
13 they did not attack from all directions, but during the attack of the
14 24th, they came from all sides, as I have already stated.

15 PRESIDING JUDGE COTTE: (Interpretation) We will come back to
16 that. Thank you, Mr. Witness. Are we, therefore, to understand that the
17 attackers of the 24th of February were also better armed than those of
18 the 10th of February? Was that indeed the case?

19 A. Yes. That is correct.

20 PRESIDING JUDGE COTTE: (Interpretation) There were many more of
21 them, and they were better armed. Now, can you tell us in which way they
22 were better armed than those who attacked on the 10th of February? Which
23 types of weapons did you observe them using?

24 A. On that day, it was the first time ever since we had started
25 fighting -- well, you know, whenever the enemy attacked, we would

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1 identify the weapons that they were using, but on that day they used
2 weapons that had never been used before. They were better organised than
3 before. They had a lot of ammunition, and they were -- they really had
4 superior weaponry than ours, and that is the reason why we lost the
5 battle.

6 PRESIDING JUDGE COTTE: (Interpretation) We will talk about the
7 weapons -- we will conclude with the weapons, but in the transcript of
8 last Friday, page 21, you said that one of the -- or, rather, it is
9 page 35, line 24. You said that there was a UPC fighter called
10 Byaruhanga who had a G2 weapon. As far as you know, was he the only UPC
11 fighter who had a G2 weapon, or were there other UPC fighters who were
12 armed with G2 weapons, also known as MAGs, according to you?

13 A. I did not quite understand your question. Do you want to know
14 whether enemy fighters were also carrying G2 weapons or whether we -- we
15 were the only ones who had such a weapon or whether there were other
16 people amongst us with such weapons?

17 PRESIDING JUDGE COTTE: (Interpretation) Maybe I did not express
18 myself well, Mr. Witness. On page 35, last Friday's transcript, you say
19 that there was one of your UPC soldiers called Byaruhanga who had a G2 or
20 MAG weapon. What I wanted to know was whether amongst the UPC soldiers
21 some of them were using a similar weapon or was this man the only person
22 who had a G2 weapon in that group? That is, if you can remember.

23 A. Now I have understood your question. (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, the last
3 part of that sentence, which may be identifying, should be redacted.

4 So we note that there was a second soldier in the UPC who used
5 that weapon. Mr. Witness, do you remember the name of that soldier who
6 also operated a G2 weapon or MAG?

7 A. Yes, I can remember his name.

8 PRESIDING JUDGE COTTE: (Interpretation) Please tell us if you
9 remember.

10 A. Do you wish to know the name of this soldier?

11 PRESIDING JUDGE COTTE: (Interpretation) Just for information,
12 yes.

13 A. I think his name was Djibho.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness. Is
15 that the name by which you know him? Fine. We will take it as such.
16 Could you please spell the name for the benefit of the transcript.

17 A. I am going to spell it, D-j-i-b-h-o.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you. A short
19 while ago when we were talking about the attack of the 10th, an attack of
20 a lesser scale, and of the attack of the 24th, which was a large-scale
21 attack, you referred to the approach or adopted by the attackers. And on
22 page 36 of the transcript of last Friday, lines 14 to 17, you said at
23 about 10.00 or 10.30 a.m. that you realised that the *manyatas* occupied by
24 the soldiers were on fire. "I could see smoke." And later on, on lines
25 16 and 17:

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1 "I noticed that when the attackers had -- when the attackers
2 entered, on the one side we saw that houses were being burned down, and
3 our commander, Germain, said that we should flee because we had lost the
4 battle."

5 And I note this short sentence which reads:

6 "The attackers were already amongst us."

7 Mr. Witness, could you tell us through what road -- which road
8 did the first attackers take, that is the attackers who entered the camp,
9 where did they come from, and which road did they use?

10 A. If you know where the school is located, well, the first
11 attackers came in through -- they came in through the mission in Geti.
12 They took the road leading to Geti, and they were the first ones to enter
13 the camp. And when we fled, the *manyatas* were already on fire. It is
14 the attackers who came from Geti and Zumbe who came in.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you. And were
16 you able to identify the group to which these first attackers belonged?
17 Were you able to identify persons you had met previously in this first
18 group of attackers who reached the camp first?

19 A. I did not identify anyone in the first group. I simply saw
20 people, people whose names I did not know, and they set houses on fire
21 and killed people, but I did not know them. You know, I did not know
22 many Ngitis by name. I, rather, knew the Lendus who attended my school.
23 However, as far as the Ngitis were concerned, it was difficult for me to
24 know them by name.

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

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1 We will proceed further in the transcript, page 41. You said that you
2 joined, that is page 25, the MLC. We would like you to tell us who the
3 leaders of the MLC were at the time. Take time to drink some water,
4 because you have been asked a good number of questions.

5 Now, do you remember the names of the leaders of this Congolese
6 Revolutionary Movement, MRC? Do you remember any names which you can
7 share with us.

8 A. I think I know the person who was the leader of that movement.

9 PRESIDING JUDGE COTTE: (Interpretation) Did you mention a name,
10 or did you simply say you know the name of the leader of the movement?
11 And if you do, could you please tell us that name?

12 A. Your Honour, do you wish to know who the leader of that movement
13 was?

14 PRESIDING JUDGE COTTE: (Interpretation) Yes. If you could tell
15 us that person's name. Maybe I am mistaken. When I look at the
16 transcript, I'm not sure that the date was 2003. Forget about the date.
17 Simply tell us, at the time you joined that movement, who was the
18 president of the movement?

19 A. I believe that at that time the president of that movement was
20 Ngudjolo Chui.

21 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, now, this
22 movement, the MRC, who were its members? Were the members from different
23 ethnic groups, and if that is the case, which ethnic groups were
24 represented within the movement?

25 A. I believe that within the MRC all the ethnic groups were

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1 represented. And if my recollection is correct, there were -- or there
2 was a minister of defence at that time. I cannot remember his name, but
3 I believe that he was the lawyer of Thomas Lubanga. I cannot remember
4 his name. He was a tall man.

5 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, that's no
6 problem at all if you cannot remember the person's name. However, you
7 said many ethnic groups were represented. Could you please mention some
8 of these ethnic groups, the ethnic groups that were represented within
9 the MRC.

10 A. Yes. There were the Hemas within the MRC, the Biras, Lulus, and
11 there were even the Jajambus.

12 PRESIDING JUDGE COTTE: (Interpretation) These are the names of
13 the ethnic groups that you can remember. Thank you.

14 Now, can you remember the date on which the MRC was created? I'm
15 talking about the year. If you can give us more precise information,
16 fine, but we would be grateful to know the date on which the MRC was
17 created.

18 A. I do not know. I do not know the date on which the MRC was
19 created. However, it may have been in 2005, if I'm not mistaken.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
21 And you joined the movement, to the best of your recollection, at the
22 time it was created, or did you join it a lot later on?

23 A. I think I joined the movement long afterwards, and I was a member
24 for only about one month, after which the movement was abolished -- or,
25 rather, after which the members of the movement joined the government.

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1 PRESIDING JUDGE COTTE: (Interpretation) During that very short
2 time, the short time during which you were a member of the movement, did
3 you have the feeling that there were conflicts between the Hemas and the
4 Lendus within that movement or everything was fine?

5 A. When I joined the movement, I was looking out for my own
6 interests. I do not remember what happened at that time as regards that
7 particular issue.

8 PRESIDING JUDGE COTTE: (Interpretation) Fine. So you are not
9 able to answer this question.

10 Mr. Witness, we have only one main question which can be asked as
11 three short questions. We are going to ask you that question in private
12 session. We wanted to ask you this question as a last question, because
13 we did not want to keep on going in and out of private session, and it's
14 going to force you to dredge up things that happened a long time ago.

15 Court Officer, could we go into private session for these
16 questions before we return into public session.

17 (Public session at 6.14 p.m.)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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12 Page 64 expunged. Private Session.

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

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11 (Expunged)

12 (Expunged)

13 (Open session at 6.19 p.m.)

14 COURT OFFICER: (Interpretation) Your Honour, we are in public
15 session.

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

18 The time now is 6.20 p.m., and after these questions put by the
19 Bench, we think we would like to ask the parties and the participants to
20 see if -- to tell us whether they have any further questions to ask with
21 regard to the answers that have been given by this witness.

22 Madam Prosecutor, as has been our practice with previous
23 witnesses, we would find no difficulty with your wishing to ask any
24 additional neutral and objective questions to this witness. If you wish
25 to get clarifications that relate to the answers given by the witness to

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1 the questions put by the Bench, well, you have up to tomorrow morning to
2 think about that.

3 Mr. Hooper and Mr. Kilenda will also make their final
4 observations.

5 And tomorrow, Court Officer, we should be able to thank the
6 witness for coming and to bid him good-bye, and we might give him the
7 possibility to greet Mr. -- well, the accused person and his team before
8 he leaves the court. So before the start of the testimony of the next
9 witness, we are going to do that.

10 I don't think we are going to have a long hearing tomorrow.
11 Tomorrow morning, we are going to deal with Witness 0176, and the next
12 witness will come immediately afterwards. Do you agree with me,
13 Mr. Hooper?

14 Fine. Thank you, Mr. Witness, for your contribution today. We
15 will meet again tomorrow at 9.00 a.m., and it wouldn't be for a long
16 time. In the meantime, we wish you a good evening.

17 Court Officer, let's move into closed session so that the witness
18 can leave the courtroom, and we will meet again at 9.00 a.m. tomorrow.

19 THE WITNESS: (Interpretation) Thank you very much as well.

20 (Closed session at 6.22 p.m.)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Open session at 6.23 p.m.)

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

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

9 We would like to inform you now that tomorrow the break will not
10 end at 11.30 as usual, but because of certain commitments, commitments of
11 Judge Diarra, our break is going to end at 11.40. The Vice-President,
12 Judge Diarra, will be using the break time to receive certain
13 delegations, and so you can start banking on a break that is going to
14 last for 40 minutes and not 30 minutes as has been our practice.

15 We stand adjourned.

16 The hearing ends at 6.24 p.m.

17 RECLASSIFICATION REPORT

18 Pursuant to Trial Chamber II's oral instruction dated 9th of May 2011, the
19 excerpt of the transcript page 27 line 19 to page 29 line 6 (*) is reclassified
20 from private session to open session.

21 SECOND RECLASSIFICATION REPORT

22 *Pursuant to Trial Chamber II's email instructions dated 10 July 2012, the excerpt
23 of the transcript page 25 lines 4 to 12 is reclassified as public, as ordered by the
24 Chamber.