

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra, and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and Mathieu
7 Ngudjolo Chui
8 Trial Hearing
9 Thursday, 19 May 2011
10 The hearing starts at 9.03 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) You may be seated.
15 Good morning, everyone. Good morning, accused persons.
16 We are going to continue with our work where we left off
17 yesterday, that is, with the continuation and conclusion of the
18 cross-examination of the Prosecutor. And before the witness is brought
19 in, Court Officer, the Bench would like to tell the Defence team of
20 Mr. Ngudjolo, and specifically Professor Fofé, that the *ex parte* hearing
21 that they requested yesterday in the company of the VWU will take place
22 next Tuesday, the 24th of May. We will have our normal hearing to
23 12.00 p.m., and then the *ex parte* will take place from 12.30 to
24 1.30 p.m., so the parties and participants should know that they will be
25 free at midday on that day, and that is because we need some time to

1 change the configuration of the courtroom before the *ex parte* hearing.

2 So, Court Officer, Court Usher, please have the witness brought
3 into the courtroom. Thank you.

4 We are basing ourselves on the supposition that the testimony of
5 Witness 147 will be concluded this morning, and the next witness should
6 begin about 11.00, 11.30, that is when that witness should be in the
7 Court premises.

8 (The witness takes the stand)

9 PRESIDING JUDGE COTTE: (Interpretation) Good morning,
10 Mr. Witness.

11 THE WITNESS: (Interpretation) Good morning.

12 PRESIDING JUDGE COTTE: (Interpretation) I can see that you are
13 able to hear me well and that we can continue with our work.

14 THE WITNESS: (Interpretation) Yes.

15 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Thank you,
16 Mr. Witness.

17 Mr. Prosecutor, you can now continue with your cross-examination.
18 I simply want to remind you, because I was asked once again about that,
19 that it is preferable to comply with the five-second rule, even if the
20 exchanges become a bit lively. And that pause is necessary for proper
21 interpretation.

22 MR. GARCIA: (Interpretation) Good morning, Mr. President, your
23 Honours.

24 WITNESS: WITNESS DRC-D02-P-0147/DRC-D03-P-0236 (Resumed)

25 (Witness answered through interpreter)

Witness: Witness DRC-D02-P-0147/DRC-D03-P-0236 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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1 Questioned by Mr. Garcia: (Continued)

2 Q. (Interpretation) Good morning, Mr. Witness.

3 A. Good morning.

4 Q. Mr. Witness, to begin with, I would like to reassure you that I
5 do not have very many questions for you today. And once again, if you do
6 not understand any question I put to you, do not hesitate to point that
7 out and I will repeat.

8 Can you hear me, Witness?

9 A. Yes.

10 Q. Mr. Witness, yesterday I asked you questions about the dates of
11 birth of your children. I would like to revisit that topic for a few
12 minutes. I have some questions for you on that.

13 MR. GARCIA: (Interpretation) And, your Honour, I would like to
14 briefly go into private session for some identifying questions.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well.

16 Court Officer, let us go into private session for those questions
17 of an identifying nature.

18 (Private session at 9.09 a.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-D02-P-0147/DRC-D03-P-0236 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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12 Page 4 Expunged – Private session.

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Witness: Witness DRC-D02-P-0147/DRC-D03-P-0236 (Resumed) (Private Session)
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12 Page 6 Expunged – Private session.

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Witness: Witness DRC-D02-P-0147/DRC-D03-P-0236 (Resumed) (Private Session)
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12 Page 7 Expunged – Private session.

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Witness: Witness DRC-D02-P-0147/DRC-D03-P-0236 (Resumed) (Private Session)
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1 (Expunged)

2 (Open session at 9.31 a.m.)

3 COURT OFFICER: (Interpretation) We are in open session, your
4 Honour.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

6 Prosecutor, you may proceed.

7 (Prosecution counsel confer)

8 MR. GARCIA: (Interpretation)

9 Q. Mr. Witness, you told us that you spent a certain amount of time
10 in Aveba, is that correct, and that this was in the year 2003 according
11 to your testimony?

12 A. Yes, that is correct.

13 Q. Correct me if I am wrong, but you spent approximately three years
14 in Aveba; is that correct?

15 A. Yes, that is correct.

16 Q. During those three years, Mr. Witness, would it be correct to say
17 that you were living in Aveba close to the home of Francine Katanga?

18 A. Yes. I was a neighbour of Francine.

19 Q. Would I be right to say, Mr. Witness, that there was a military
20 camp in Aveba whilst you were there from 2003 to 2006?

21 A. Thank you for the question. While I was in Aveba, I lived far
22 from the camp. I was at the very end. I lived at the very end of the
23 locality. I would say the following. I was living at the entrance into
24 the town of Aveba, and I would like to add that it was not my habit to go
25 moving around within the locality. When my children went to school, I

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1 would stay at home or I would go to my farm to do some farm work. And so
2 I would like to state here that I have never seen the camp you are
3 referring to.

4 Q. But, Mr. Witness, you do agree with me, of course, that there was
5 a military camp in Aveba, don't you, during the period you were resident
6 in the place?

7 A. When I arrived at Aveba, I did not see the military camp. I did
8 not know where it was located. I had no information in that regard.

9 Q. Mr. Witness, just to make sure we understand you correctly,
10 during the three years you spent in Aveba you did not see a military
11 camp; is that your evidence?

12 A. I am telling you the truth. I told you that it was not my habit
13 to go walking around within that locality when I was in Aveba. My
14 children were attending school and I would carry out my job. I was a
15 shoe mender. I needed money to look after my children. I carried out my
16 activities as a shoe mender and I also tilled the farm that had been
17 given to me just close to my home.

18 Q. Mr. Witness, you did at least see fighters, combatants, in Aveba
19 during the three years you spent there, didn't you?

20 A. Thank you for the question. Yes, I used to see combatants in
21 Aveba and I could hear their voices when they would go jogging and
22 singing. With regard to the shouts they made when they went running, I
23 would hear them but I never saw them. It was never my habit to step out
24 to see them.

25 Q. And during those three years, how many times did you see

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1 Mr. Germain Katanga?

2 A. Thank you very much for that question. And I would like to tell
3 you that this is a very good question and I will answer it. It so
4 happened that one day I left home and I went through Francine's compound.
5 Francine was my neighbour. Her husband was called Safari and Safari used
6 to refer to me as his father. So I was passing near Francine's compound.
7 And may I say that at the beginning I did not know them. I saw her -- I
8 saw him, he was standing at the entrance of Francine's compound. The
9 person who was with me asked me whether I knew Germain Katanga and I
10 answered saying, "No, I do not know him." And that person said, "The
11 man, the gentleman you see standing near that door is Germain Katanga."
12 That's what he told me after we had already gone past. I could not turn
13 back to see him, to look at him. So I would like to tell you that it
14 happened only once on that particular day and it didn't happen again.

15 Q. Mr. Witness, so for the three years you spent in Aveba you saw
16 Germain Katanga once and you saw him once despite the fact that you were
17 living close to the residence of Francine Katanga; is that your
18 testimony?

19 A. Thank you for that question. You know, they went to Bunia,
20 Francine went to live in Bunia. And we remained for several years, and
21 during that time Germain was not in -- within the locality. So I saw
22 Katanga only on that one occasion.

23 Q. Mr. Witness, you do know, however, that at the time you were in
24 Aveba Mr. Germain Katanga was the leader of all the combatants who were
25 in Aveba; you did know that, didn't you?

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1 A. Thank you for your question. When I arrived at Aveba it was
2 later on. I had no information. I did not know whether he was there or
3 not, but I did receive information to that end.

4 Q. Just to make things clear, you received information stating that
5 Germain Katanga was the leader of all the combatants based in Aveba; is
6 that what you're saying?

7 A. Yes. When I arrived at Aveba, I did not know whether or not he
8 was the leader of all the fighters. I had no information about that,
9 about his being the leader of all the fighters.

10 Q. You also told us that you did not see any military camp, but is
11 it not correct, Mr. Witness, that there were children, children under the
12 age of 15, who were combatants in Aveba?

13 A. I never witnessed that.

14 Q. Mr. Witness, were you ever informed or did you notice that in the
15 month of November 2004 a demobilisation site for child soldiers was
16 established in Aveba, that is, a place where children could go to be
17 demobilised so that they would no longer serve within a militia?

18 A. Thank you for the question. When I was at that place I never
19 witnessed anything of the sort. I told you what I saw along the way.
20 Further down there was a road -- in fact, the road was located higher up
21 and I lived below, and I could not see what was happening.

22 Q. But, Mr. Witness, having spent three years in Aveba you must have
23 had the opportunity to move around the neighbourhood, to see what was
24 happening, to see that there was a demobilisation centre in the year
25 2004. You must have seen it or you must at least have heard mention

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1 about it?

2 A. Thank you for your question. At the place where I resided when I
3 was studying not far from Aveba, I was in my mother's family, that is,
4 the home of my uncle's on my mother's side. My sole point of interest
5 was to go from my home to the home of my uncle's. It was not my habit to
6 go into the centre of Aveba to move around because I had neither friend
7 nor acquaintance there.

8 Q. Mr. Witness, you also told us that you went to Zumbe with your
9 family at some point in time in the year 2002 if I remember correctly.
10 Do you remember having talked about Zumbe in the course of your
11 testimony?

12 A. Yes, thank you. It is true, I did go to Zumbe.

13 Q. When you went to Zumbe, did you see any combatants, Mr. Witness?

14 A. You have done well to put that question to me and I would like to
15 thank you for it. As I just told you, when we arrived at Zumbe, many
16 other people, a large number of people, ended up in Zumbe. The
17 population that went to Zumbe was -- or far exceeded the local population
18 of Zumbe. We saw people around us, but it was difficult to know who was
19 a fighter and who wasn't. I say this because there was a multitude of
20 people.

21 Q. Mr. Witness, when I talk about fighters, when I talk about
22 combatants, I'm talking about people who are armed, who are members of a
23 militia, who are fighters. You must have seen them when you were in
24 Zumbe, I believe.

25 A. Thank you for that question. I did not see people or anyone

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1 bearing arms amongst the persons we found in Zumbe. There were many of
2 us in Zumbe, but I did not see anyone carrying fire-arms.

3 Q. However, Mr. Witness, there must have been certain people who
4 were protecting the village of Zumbe. Are you telling us that there was
5 no one who was protecting the village, no one who was armed? According
6 to your evidence, there were no fighters, no combatants?

7 A. Thank you. Why am I telling you that there were no fighters in
8 Zumbe? Well, that is because many people had fled from Bunia, from Dele,
9 and gone to Zumbe. It was therefore difficult to identify who the
10 fighters were. We did not see them carrying any weapons. Maybe they hid
11 the weapons. I don't know what they did to hide the weapons if I thought
12 they had them. And here I am telling you the truth. I did not see any
13 guns.

14 MR. GARCIA: (Interpretation) Your Honour, I would like a
15 document to be shown to the witness. I think he still has it before him,
16 the statement which he provided to the Defence team.

17 Q. Is that correct, Mr. Witness, do you have it in front of you?

18 MR. GARCIA: (Interpretation) I can see it from here, your
19 Honour.

20 Q. Mr. Witness, since you already have the statement in front of
21 you, I would like you to turn to page 4 thereof. The reference is
22 DRC-D02-0001-0657. Mr. Witness, I simply wish to draw your attention to
23 the paragraph which starts -- which has the title: "Major Attack on
24 Zumbe by the UPC." The first paragraph starts with: "When I was in
25 Zumbe ..." I would like to ask you to read that paragraph very

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1 attentively and I will put some questions to you afterwards.

2 Mr. Witness, I don't wish to interrupt you, but have you been
3 able to peruse that paragraph? I suppose you have. I am going to read
4 this paragraph in its entirety. You stated to the Defence team - and
5 this is in your statement of 16th of April, 2011 - you say:

6 "Whilst I was in Zumbe we were attacked by the UPC forces of
7 Bunia, Katoto, Mandro, Bogoro, and Kasenyi all at the same time. We were
8 encircled. The APC had already left when this attack took place. I do
9 not remember the date. The combatants fought against the UPC. I do not
10 know the details because I was in the bush. I do not know whether the
11 combatants used fire-arms. After that major attack there was no further
12 attack of the UPC."

13 From this paragraph, Mr. Witness, we can see that you did state
14 that there were certain combatants, certain fighters, who fought against
15 the UPC. After re-reading this paragraph, will you change your evidence?

16 A. How can I change my evidence? How can I change my answer? These
17 are events which did take place whilst I was there at that place, and I
18 cannot change my statement thereon.

19 Q. Mr. Witness, I would like you to turn to the previous page, 0656,
20 and that is page 3, the last paragraph.

21 MR. FOFÉ: (Interpretation) Your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Yes, Professor Fofé.

23 MR. FOFÉ: (Interpretation) I have the impression that the
24 Prosecutor would like to or is trying to influence the witness by
25 presenting to him by anticipation certain passages which he has not

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1 touched on hitherto in his cross-examination. I think we should proceed
2 stage by stage in order not to subtly mislead the witness. The witness
3 has been consistent right from the start of his testimony, and I do not
4 think that we should try to influence him in one way or the other.
5 That's my point, your Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
7 Professor Fofé.

8 Mr. Prosecutor, how do things stand for you now? You have asked
9 the witness to read the last paragraph of this page, that is, page 3.
10 You have not yet put any questions to the witness. Is it a question
11 which is similar to the one you just asked about the presence of
12 combatants in Zombe or are you going to change the subject matter here?
13 Of course, you would remember that our concern - and things have been
14 happening fine this morning - our concern is that clear and unambivalent
15 questions should be put to the witness so that he can give us clear and
16 unambivalent answers. This will enable us to do our job properly.

17 You have the floor.

18 MR. GARCIA: (Interpretation) Your Honour, I can assure you that
19 I will carry on with the same line of questioning. The witness has said
20 that there were no combatants in Zombe, and I am referring to statements
21 or excerpts in his statement which say the contrary. My point, your
22 Honour, is to enable the witness to give clarification to the Chamber.

23 PRESIDING JUDGE COTTE: (Interpretation) Before you read -- or
24 asking the witness to read the excerpt, you should read the excerpt
25 yourself.

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1 MR. FOFÉ: (Interpretation) I beg your pardon, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Yes, Professor Fofé.

3 MR. FOFÉ: It's not my intention to interrupt my learned
4 colleague; however, for the benefit of the transcript I would like to
5 state that when the Prosecutor talks about inconsistencies, that is his
6 viewpoint. We of the Defence team have realised, have noticed, that the
7 witness has been consistent, and in this line of questioning the witness
8 has been consistent and there have been no inconsistencies. Thank you,
9 your Honour.

10 PRESIDING JUDGE COTTE: (Interpretation) Well, what you have
11 stated will be included in the Court record. Of course, it's true that
12 the Defence and the Prosecution may have different viewpoints. Some may
13 see nuances and inconsistencies and others would see consistency. In any
14 case, in the final analysis it is up to the Bench to determine whether
15 there are inconsistencies, nuances, or any other problem with the
16 testimony.

17 You may proceed, Prosecutor.

18 MR. GARCIA: (Interpretation)

19 Q. Mr. Witness, I'm going to read out to you the excerpts which I
20 find relevant, and if you so please you can read along with me. On page
21 3 at the bottom of the page I will start with the last paragraph, and
22 this is the third sentence, it starts with: "... in Zombe ..." this is
23 what you said to the Defence team:

24 "In Zombe I heard the name 'Ngudjolo' but I never met him there.

25 I was very far from the centre of the town," and this is on page 4,

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1 Mr. Witness, "I saw combatants but not many of them" --

2 PRESIDING JUDGE COTTE: (Interpretation) Are we on the same
3 page?

4 MR. FOFÉ: (Interpretation) I am having a hard time finding the
5 text.

6 PRESIDING JUDGE COTTE: Sorry for not respecting the five-second
7 rule, but I'm not sure that we are all on the same sheet, same sheet of
8 music as it were. This is a statement from the 16th of May and we're
9 talking about the page number 3 and that doesn't correspond to the copy
10 which I have. Could you provide us with additional information so that
11 we're able to follow what's going on. On my copy, page 3, the last
12 paragraph says: "I heard the name of one of the two accused."

13 MR. GARCIA: (Interpretation) Indeed, your Honour, I am
14 referring to the sentence which begins with: "In Zumbe I heard the name
15 Ngudjolo," that's the end of the third page, beginning of the fourth
16 page.

17 PRESIDING JUDGE COTTE: (Interpretation) With regards to my
18 copy, it doesn't begin with "in Zumbe ...," it just begins with "I heard
19 the name" --

20 MR. GARCIA: (Interpretation) Yes, the paragraph begins with "I
21 heard the name ...," but if you look at the third sentence it begins with
22 "in Zumbe ..."

23 THE INTERPRETER: Everybody is speaking at the same time. The
24 interpreter cannot interpreter.

25 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

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1 MR. FOFÉ: (Interpretation) Thank you very much, your Honour.

2 As is our practice here before the Court, of which you are the
3 Presiding Judge, it is a good idea to quote the entire paragraph. I
4 think it would be a good idea to begin the paragraph at the beginning of
5 the paragraph. Thank you, your Honour.

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

7 Mr. Prosecutor, since we all want to make some progress here, I
8 would like to ask you to re-read the paragraph beginning with the
9 beginning of the paragraph starting with "I heard the name ..." If you
10 could please read from there, then you can stop wherever you think that
11 it will be appropriate for you to stop. You are the person in charge of
12 the cross-examination.

13 MR. GARCIA: (Interpretation) Yes, indeed, your Honour, but I
14 just wanted to save some time by going right to the appropriate passage.

15 Q. Mr. Witness, I'm now going to read the entire paragraph. We're
16 on page 0656, page 3 of the document which you have before you and that
17 continues on to page 4 of the document.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr. Usher, will you
19 please assist the witness who I'm sure cannot do what we're asking him to
20 do alone, but if you could just be sure that he is clear what we are
21 talking about, the paragraph which begins with "*J'ai entendu*," "I heard,"
22 and that's where the Prosecutor will start.

23 Mr. Garcia, you have the floor, sir.

24 MR. GARCIA: (Interpretation)

25 Q. Mr. Witness, you stated to the Defence the following:

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1 "I heard the name Ngudjolo. He lived in Kambutso, one of the
2 five villages of Zumbe. In the beginning I did not know Ngudjolo, but I
3 saw him one time much later near the residence of Colonel Ngudjolo in
4 Bunia Yambi-Yaya. In Zumbe I heard the name Ngudjolo, but I did not meet
5 him there."

6 And now we're moving on to the next page, Mr. Witness.

7 "I was very far from the centre of the village. I saw some
8 combatants but not very many of them."

9 Mr. Witness, you will agree with me when I say that in this
10 passage you talk about the fact that there were combatants in Zumbe at
11 the time you are referring to and in this place --

12 MR. HOOPER: The -- there's -- these inaccuracies that creep into
13 the questions, such as: "Earlier on you said there were no combatants,"
14 when in fact what the witness has said was it was difficult to tell the
15 difference between the fighters and the non-fighters. And here it's
16 being put that he didn't see combatants or being proposed to him he
17 didn't see combatants in Zumbe but he's clearly speaking of combatants,
18 and he's also left out the subsequent sentences relating to Kute and
19 Ngabu, for example. So the overall thread, really, between the question
20 and the content of the statement gets lost when it gets recomposed by the
21 Prosecutor. That's the difficulty. And these might be nuances but
22 they're objectionable nuances, in my submission.

23 MR. GARCIA: (Interpretation) I think that the objection was
24 clear, weren't there -- the question was clear: Were there combatants in
25 Zumbe, yes or no, at the time that we are referring to.

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1 PRESIDING JUDGE COTTE: (Interpretation) That indeed is what the
2 Bench understood, Mr. Prosecutor. We want to know whether or not the
3 witness saw or did not see any combatants in Zumbe. And in the
4 question/answer series I think that we can quite objectively understand
5 that the point has not been entirely clarified. And this attempt in
6 clarification is something which we will allow the Prosecutor to continue
7 endeavouring in.

8 Mr. Prosecutor, sir, you have the floor.

9 MR. GARCIA: (Interpretation)

10 Q. Mr. Witness, I re-read the passage to you and I did so that you
11 would fully understand it. And if I understood correctly you read the
12 passage as well, but I will ask you the question again. Sir, when you
13 were in Zumbe, were there, yes or no, any combatants?

14 A. Thank you for the question. I said a short while ago that with
15 regards to Zumbe it was difficult to identify the combatants. It was
16 only when the fighters surrounded us that I was able, in fact, to
17 discover that there were combatants. I had never seen them before we
18 were surrounded or when we were being pursued. It was only at that point
19 that I heard that there were combatants. But when we were not fleeing, I
20 was not able to identify or see any combatants on site.

21 Q. Mr. Witness, I would like to simply draw your attention to the
22 same page 0656, at the middle of the page. This paragraph begins with,
23 "*Je n'ai pas vu un camp*," "I did not see a camp."

24 PRESIDING JUDGE COTTE: (Interpretation) I think the simplest
25 thing to do would be to read the paragraph.

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1 Mr. Witness, when we talk about the paragraph in question, it's
2 the seventh one on the page.

3 MR. GARCIA: (Interpretation)

4 Q. Mr. Witness, I'm going to read another statement which you made
5 to the Defence team. You said:

6 "I did not see a camp. I found the combatants in Zumbe. There
7 were many combatants. It was difficult for me to know who their leader
8 was."

9 And you also said that:

10 "It was difficult to distinguish in Zumbe the civilians from
11 combatants because there were a lot of people going through there."

12 After having read that paragraph, Mr. Witness, you will agree
13 with me when you arrived in Zumbe, that it -- you found a large number of
14 combatants, sir; is that correct.

15 A. Thank you. Yesterday, or perhaps it was the day before
16 yesterday, I stated before the Court that I was one of the last people to
17 arrive in Zumbe, one of the last people to arrive from Dele to Zumbe.
18 And when I arrived in Zumbe there was a veritable multitude, a very large
19 crowd of people. And it was difficult to know who was who; that was
20 simply quite difficult.

21 Q. And in Zumbe, Mr. Witness, you will agree with me when I say that
22 there was a military camp located there when you arrived?

23 A. Thank you for the question. I did not see any military camp
24 there.

25 Q. With regards to Mathieu Ngudjolo, Mr. Witness, when you arrived

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1 in Zumbe I'm sure that you heard that he was the leader of the combatants
2 in Zumbe; is that not correct?

3 A. I heard the name Ngudjolo mentioned but there was no reference
4 made to what his function was. I don't know if he was a leader because I
5 was far away. I was far from where he was and it was difficult for me to
6 know what his job was, what his function was, within the army.

7 Q. So you will agree with me then, sir, that in -- let's forget the
8 question or let's not talk about his specific role, but let's concentrate
9 on the fact that he was a member of the army, of the combatants; is that
10 not right, Mr. Witness?

11 MR. FOFÉ: (Interpretation) Excuse me, your Honour. I
12 understand the concerns of the Prosecutor. But I think we have to object
13 to the way the questions are being formulated. These are statements
14 which with regards to this witness have no basis. The statements made, a
15 written statement, we have heard a great deal about the statements before
16 the Chamber. But having the witness or leading the witness to believe
17 that something or other is the truth, that is the problem. I think that
18 the questions need to be reformulated. I think the questions need to be
19 asked in a different way, in such a way as to not lead the witness in one
20 way or the other. I think we need to do our best not to try to influence
21 him one way or the other. Thank you, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation)

23 MR. MACDONALD: (Interpretation) I would like to respond to that
24 objection which has been systematically raised since we began our
25 cross-examination and whenever we talk about the responsibility of

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1 Mr. Mathieu Ngudjolo. The Chamber will have observed that there have
2 been consistent objections after practically each and every question.
3 The Prosecution is conducting its cross-examination, just as the Defence
4 has been able to cross-examine certain witnesses. In the
5 cross-examination process, we often are allowed to ask questions which
6 can be at times suggestive, I think that is incontestable, just as the
7 Defence was able to do the same thing and as they did during their
8 cross-examination of the Prosecution's witness. I think that the
9 questions we're asking go to the very heart of the matter that the Bench
10 will have to deliberate upon. I think it is clear that this of course
11 will have an impact on the testimony which we're hearing, and I think
12 that everybody has understood what we're doing, what we're trying to
13 do and what we've been doing, indeed, since the beginning of our
14 cross-examination.

15 Each time a question is asked, the Prosecution has to be fair
16 with the witness. But we have also heard testimony from the witness.
17 We've also seen a number of documents tendered as evidence. The
18 Prosecution has based its questions on all of that evidence and that
19 testimony. Here the Prosecution is not being unfair with the witness
20 when we ask questions which have to do with Mathieu Ngudjolo given the
21 proof and evidence before your Honours. The witness - and we will say
22 this again - the witness can agree with the question or not. When we
23 say, is it not a fact that Mr. Ngudjolo was the leader of combatants in
24 Zombe, I'm just using that as an example, the witness can say yes or no
25 or can say he doesn't know, as he has done. And given the answers which

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1 may be given, the Prosecution might decide to ask additional questions in
2 order to clarify the response. We might also call into question the
3 credibility of the witness and that is what we're dealing with.

4 So, your Honour, I would like to ask that we try to resolve this
5 issue for once and for all in order to avoid Professor Fofé and
6 Mr. Kilenda from rising every time we ask a question to object as we
7 conduct our cross-examination. During cross-examination, it is indeed
8 acceptable to ask suggestive questions. We can ask open questions to a
9 certain degree, but if you want to move things forward and if you to be
10 as concise as possible, then we do ask suggestive questions. That is the
11 essence of the cross-examination, especially according to Anglo-Saxon
12 law.

13 PRESIDING JUDGE COTTE: (Interpretation) Maître Fofé, would you
14 like to address the Court?

15 MR. FOFÉ: (Interpretation) Very rapidly, your Honour. I would
16 just like to say to the Prosecutor that I'm familiar with Anglo-Saxon
17 law, and I know that in the period of cross-examination that we can ask
18 suggestive questions. All that we're trying to say is that we have a
19 problem with the formulation of the questions so that the witness is not
20 being led or being influenced which might give the witness the
21 impression -- the Prosecutor must not give the impression to the witness
22 that he is right. That is the problem. We have to have questions which
23 will not once again lead the witness or influence the witness, because if
24 we follow the Prosecutor, and fortunately we have a witness who is
25 following the proceedings well, but these repetitive questions with the

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1 same formulation might give the witness the impression that the
2 Prosecutor is right; whereas, the only basis that the Prosecutor has is
3 indeed his own hypothesis. That's the problem. This is not proof. This
4 is the Prosecutor's theory and that is what has led to us to object
5 during the objections which we made.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper.

7 MR. HOOPER: (Previous translation continues) ... is drifting
8 away and I'm sorry. But the Prosecution now -- can be a little
9 oversensitive about these matters. I think I was only on my feet once
10 this morning in an hour and a half. A little bit more yesterday, but
11 then I was perhaps feeling particularly fractious yesterday. I apologise
12 to Mr. Garcia for perhaps that product.

13 But really, getting to the heart of it, I think what we object to
14 is putting to a witness: "Is it not a fact that ... ?" Now, that's not
15 something that the Defence did in cross-examination that I can recall,
16 and I'll stand corrected if need be. But I don't remember that approach.
17 If, for example, the Prosecution want to assert to a witness or ask a
18 witness, for example, what Katanga's role was in Aveba, they can of
19 course say: Was it not the case that Germain Katanga was leader in
20 Aveba? Or: What was Germain Katanga's role in Aveba? Or: Who was the
21 leader in Aveba? These are all acceptable questions. They can even put
22 to a witness: It is the Prosecution case that Germain Katanga was the
23 leader at such and such a time of militia in Aveba; do you agree? But
24 what we object to is prefacing questions by saying: Is it not a fact
25 that ... ? When it is not a fact that. It may be a disputed fact.

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1 So if these questions are formulated in a way that perhaps avoid
2 that particular wording, which more than one of our Prosecutor uses, so
3 they've all been on the same course I suspect or watched the same video,
4 I don't know, but it's all that that same phrase is repeated by several
5 different Prosecutors in different languages. In any event, we object to
6 it and I think there is good cause to object to it, and it touches on
7 what Professor Fofé just said, that it shepherds a witness - in a
8 vulnerable position as they are - into thinking that that's something
9 that's been established. It may not even have been on areas that they're
10 familiar with. So if that could be avoided, there will be, I'm sure, far
11 less interruptions on our part.

12 And those are my submissions.

13 MR. MACDONALD: (Interpretation) We are now dealing with
14 semantics raised by Mr. Hooper.

15 PRESIDING JUDGE COTTE: (Interpretation) The interpretation from
16 English into French just stopped and you have already started speaking.
17 You are therefore not respecting the very important five-second rule.
18 And if we don't respect that, then, of course, our interpreters will
19 begin pulling their hair out in the booth and they will not be able to
20 interpret.

21 So you can start again on your respective positions, but very
22 quickly, very quickly.

23 MR. MACDONALD: (Interpretation) Mr. Hooper used the English
24 term "was not the case," and in translation it was: Is it not the case
25 or is it not exact. That is what the Prosecution has been doing, exactly

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1 the same thing, "is it not correct" or "is it not a fact." Of course,
2 this might influence the witness or it might give us the impression that
3 we are influencing the witness, but that is the cross-examination. What
4 we're trying to do, your Honour, is to try to advance things as much as
5 possible. And I think that we've been doing a very good job up until now
6 and that the Defence witness is suffering, and I think that his
7 credibility is suffering as is the Defence's, and I would just like to
8 rapidly put those comments. Thank you.

9 PRESIDING JUDGE COTTE: (Interpretation) I'm not going to give
10 the Defence the floor. I think that we already heard what they had to
11 say and I think that they made their point very clearly. This is a
12 discussion which has occurred several times, and each time I have cited
13 paragraph 63 of decision 1665 which has to do with the freedom of action
14 which is provided to the person who is conducting cross-examination. We
15 cannot accuse the Defence teams of being too much on the defensive or
16 being particularly vigilant when some questions deal with areas which are
17 seen as being very sensitive, and that has led to a certain number of
18 interventions which you may see as being too rapid from Mr. Kilenda, from
19 Professor Fofé, or from Mr. Hooper as well. I think that we've
20 understood that. We also had a discussion concerning the use of the term
21 "is it not true" or "is it not a fact that."

22 And I think what we also need to do is take into account the
23 witness whose testimony we're hearing. I'm not a specialist in human
24 sciences, but it would seem to me that their culture, their vocabulary,
25 and all of that taken with the interpretation may lead to difficulties

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1 when the Prosecutor uses the term "is it not true that ..." because there
2 again I'm not at the end of the interpretation in Swahili but it's
3 possible that some of our witnesses might feel as though they are being
4 presented with truth or a fact. So when we take into account their
5 participation in our proceedings, some can refute the statement, some
6 might not feel that they say they have -- they have that same
7 possibility.

8 And when Professor Fofé rose, Mr. Garcia on page 25, line 27,
9 said, and I'm sure his intentions were the best, said: "You will agree
10 with me that ..." Let's forget the whole question, let's put all that to
11 the side for now, and I'm referring to his specific role, he was part of
12 the combatants' army, referring there to Mathieu Ngudjolo. There was an
13 affirmation. And some witnesses might take that as a statement of fact.
14 I think that it might be good if possible -- that it might be good to
15 perhaps reformulate your questions, despite the fact that I don't want
16 your questions to be less dynamic, but I think that they should be less
17 suggestive.

18 I think that we need to bear that in mind and I know that you are
19 aware of this because we've been working on this case for some time now,
20 but we have to understand that we have interpretation on one hand and
21 there are also certain phrases which a witness who is from a different
22 country, a non-European country, might read differently than we do. And
23 I think that we need to understand that and this is something that I see
24 every day. I mean, if you have a question: "Is it not true that ... ?"
25 it almost sounds like it's an accusation, and it's something which is

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1 almost unusual. But I think we all need to work on this. I think that
2 we all need to understand that we are pursuing the same objective.

3 So when we feel that you are going to say something which might
4 raise an objection, it might be a good idea at that point to reformulate
5 the question in such a way that we can avoid the objection. And you have
6 to always bear in mind as well that we need to understand that our
7 witness who is from the Democratic Republic of Congo might be a bit
8 surprised by the way questions are phrased, and I think that it's
9 important to bear all that in mind. That is something which we have all
10 been aware of since the beginning of the proceedings. I know that you're
11 not trying to put him in a difficult situation. You might want to put
12 him in a difficult situation for another time, but I know that you're not
13 doing that now. So please be very careful when you choose your words to
14 ensure the equity in these proceedings.

15 So, sir, you may proceed.

16 MR. GARCIA: (Interpretation) Your Honour, I would just like to
17 reassure both the Bench and Mr. Hooper that I am not trying to lead the
18 witness into making a mistake. I'm just asking questions in a certain
19 way in the -- according to the system we use in a common law system and
20 also according to the system which we've been using in these proceedings.
21 So I'm not trying to get him to make a mistake.

22 Q. Mr. Witness, I would like to go back to the last question which I
23 put to you before we began our discussions, and I'm going to try to
24 simplify the question if that's possible. While you were in Zombe, am I
25 correct in saying that to the best of your knowledge Mathieu Ngudjolo was

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1 a member of combatants? Let's forget the question dealing with his
2 specific role. I just want to know if the question that I just asked you
3 is correct or not, whether he was a member of the combatants? He was a
4 fighter and not a civilian?

5 A. No. Thank you for the question. I have just said that I was
6 living far away from the village in which Mathieu Ngudjolo lived. I did
7 not know whether he was a member of an armed group or not. I got to know
8 that Mathieu Ngudjolo was a soldier when he was taken by the members of
9 the government. I saw him in the Yambi-Yaya neighbourhood. I just saw
10 him when he was passing by and someone else pointed him out to me and
11 told me that it was Mathieu Ngudjolo. That was the only time that I was
12 able to see him. Maybe here you will show him to me again.

13 Q. To be clear, it was only when he was pointed out to you that you
14 knew that he was a soldier, but before that you were totally unaware that
15 he was a soldier or leader of the fighters in Zumbe; is that your
16 testimony?

17 A. I will give you an answer. When I was in Zumbe, I did not know
18 that Mathieu Ngudjolo was a member of any armed group or that he was a
19 combatant.

20 MR. FOFÉ: (Interpretation) I'm sorry, Mr. President, my
21 learned colleague, on page 34, first line, there is a slight problem of
22 interpretation. I do not know whether you can see that, your Honour.
23 There is a problem of interpretation. It was not "arrest" or "taking
24 away."

25 PRESIDING JUDGE COTTE: (Interpretation) On page 33 and 34 it is

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1 stated that it was when Mathieu Ngudjolo was arrested or taken away by
2 the members of the government. It is the word "arrest" that is worrying
3 you? Well, we have to cross-check with the audio recording whether that
4 is indeed the correct interpretation of what the witness said.

5 It seems that the correction was made immediately afterwards
6 because the interpreter said was arrested and then changed to "was taken
7 by," so that is in the transcript already.

8 Mr. Garcia, please continue.

9 MR. GARCIA: (Interpretation)

10 Q. Mr. Witness, during the time that you spent in Zombe and later on
11 in 2003 you certainly heard of Commander Boba Boba; is that correct?

12 A. Thank you. I cannot testify about something that I neither saw
13 nor heard.

14 Q. Just to be clear, is it today that you heard this name for the
15 first time or did you ever hear mention of that name before?

16 A. Thank you. With regard to the name Boba Boba, I have never heard
17 it. It is in this courtroom that I have just heard that name, Boba Boba.

18 Q. Mr. Witness, if I mention the name Ngabu Mateso Martin, does that
19 name ring a bell? Have you ever heard it mentioned before today?

20 A. No.

21 Q. Witness, you have certainly heard about Kute, Commander Kute, of
22 Lagura; is that correct?

23 A. Yes, I heard that name Kute but he is now deceased.

24 Q. I understand, Witness, that he is now deceased, but is it not
25 correct to say that he was the commander in Lagura?

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1 A. Thank you for your question, Mr. Prosecutor. I have heard about
2 Kute in Lagura, but I did not hear about the position that he occupied.

3 Q. Mr. Witness, I can see that you still have your statement with
4 you. That is page 4, 0657. Can you refer to that page, Mr. Witness?

5 PRESIDING JUDGE COTTE: (Interpretation) Court Usher, can you
6 make sure that the witness is indeed looking at page 4 and that is 0657.

7 MR. GARCIA: (Interpretation)

8 Q. I will read out to you, Mr. Witness, at the top of the page this
9 is what you said:

10 "I heard that Kute was in Lagura and that he was one of the
11 commanders of the combatants. He is deceased."

12 Barely a month ago you told the Defence that he was one of the
13 commanders; is that correct?

14 A. Yes.

15 Q. Are you changing your testimony? Are you now telling us that he
16 was one of the commanders in Lagura? And I'm talking about Kute.

17 A. This is my answer and I am telling you the truth. I heard about
18 the name Kute in Lagura, but I have no idea what he was doing in Lagura.

19 Q. What about Nyunye, N-y-u-n-y-e, does that name ring a bell?

20 A. I also remember that name, Nyunye. I have heard about it.
21 However, it is difficult for me to know what he was doing.

22 Q. But you agree with me that he was a combatant, at least Nyunye
23 was not a civilian; right?

24 A. I do not know whether Nyunye was a combatant or not. In fact, it
25 was difficult for me to distinguish between a combatant and a civilian.

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1 I didn't go out very often, and when I did go out it was to go to Dele
2 and work in my farms.

3 Q. Mr. Witness, I can see that you have the statement that you gave
4 to the Defence. Put it aside for the time being. Please do not read it
5 while you are testifying. If we need to refer to it, then we will tell
6 you. So please, set it aside. Thank you.

7 Now, Mr. Witness, at that time you must have heard about the
8 attack on Bogoro which took place on the 24th of February, 2003, during
9 which many civilians were killed. Did you hear about it at that time?

10 PRESIDING JUDGE COTTE: (Interpretation) Is something wrong,
11 Mr. Witness? Do you want to have some water?

12 THE WITNESS: (Interpretation) Yes. I need to have a drink of
13 water.

14 PRESIDING JUDGE COTTE: (Interpretation) Very well. Take the
15 time to have some water and then you will answer the question.

16 THE WITNESS: (Interpretation) Thank you. Please repeat the
17 question.

18 MR. GARCIA: (Interpretation)

19 Q. Mr. Witness, I was asking you a question about the attack on
20 Bogoro on the 24th of February, 2003, during which civilians were killed.
21 Did you hear of that attack at the time?

22 A. Thank you for your question. Before all else let me say that
23 there were people who went to Aveba. I did not spend very long in Zumbe
24 because I was suffering. My life in Zumbe was difficult. I did not have
25 much to eat. What I had harvested from my farms was finished. I told

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1 myself I have to go to Dele and if I have to die there then so be it. I
2 went to Dele and I did not have any information about Bogoro. In Dele I
3 was living in the bush. I hid in the bushes throughout the day, and at
4 night I would come out to go and look for food in the farm.

5 Q. Very well. I remember that you told us something similar during
6 your testimony yesterday, but my question was precise: Have you ever
7 heard about the attack on Bogoro on the 24th of February, 2003? It could
8 have been before or after 2002 or 2003.

9 A. I believe that I have answered that question. I told you that I
10 never received any information about the Bogoro attack. The reason was
11 simple: I was alone in the bush and I did not meet with anybody.

12 Q. Mr. Witness, do you know that there were UPC soldiers in Bogoro
13 at that time, 2002 or early 2003?

14 A. Can you please repeat your question. I did not quite understand
15 it.

16 Q. That is my last question on this issue, Mr. Witness. Were you
17 aware that there were UPC troops in Bogoro in 2002 and early 2003? Is
18 this something that you knew at that time?

19 A. You know, I was not in Bogoro. I did not pass through Bogoro. I
20 did not know what was happening in Bogoro. I did not know and I do not
21 know.

22 Q. Mr. Witness, during your testimony you told us that at one point
23 you went to Aveba. Isn't it correct that you took the road through
24 Bogoro in order to go to Aveba?

25 A. Thank you for that question. With regard to my trip to Aveba,

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1 let me tell you the following. I was in the bush in Dele, and from Dele
2 I tried to find a way to Aveba. I passed through Songolo, Soke, and
3 Kagaba until I arrived Aveba.

4 (Prosecution counsel confer)

5 MR. GARCIA: (Interpretation)

6 Q. Mr. Witness, would I be correct to say that the road through
7 Bogoro was open at the time that you were going to Aveba in May 2003?
8 The UPC was no longer in Bogoro?

9 A. Let me give you a clear answer. I have already said here that if
10 the Bogoro road was open I was not aware of it. I was in Dele and I used
11 another road to Aveba. I passed through Songolo, Medhu, Soke, and Kagaba
12 until I reached Aveba. You know, at that time I had doubts.

13 Q. Mr. Witness, is it correct to say that when you were in Zumbe
14 there were APC soldiers who were also there?

15 A. Thank you for that question. I saw APC soldiers who had come
16 from Kasenyi. Those people had been sent by Lopondo. When they returned
17 from Kasenyi, we saw them in Zumbe. However, they did not stay there for
18 long. They left in the direction of Bavi and they went right to
19 North Kivu using the road to Beni.

20 Q. Mr. Witness, with regard to those APC soldiers, did they also
21 pass through Songolo? If you have not understood the question,
22 Mr. Witness, I will reformulate. In order to go to Bavi, did the APC
23 soldiers pass through Songolo, that is, to your knowledge?

24 A. Thank you for your question. When the APC soldiers arrived in
25 Zumbe, they left afterwards. In principle they passed through Songolo to

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1 Bavi, and from Bavi they dispersed and went in different directions. I
2 believe that they went to Beni because that is the road they took. At
3 that time I was in Zumbe so I could not know for sure the direction that
4 they took, but they passed through the Songolo and Bavi road.

5 Q. And am I correct to say that their commander was
6 Commander Faustin?

7 A. I will give you a clear answer. To say that their commander's
8 name was Faustin, I do not know. After their arrival, these people did
9 not spend a long time there. They left and it was difficult for us to
10 identify them.

11 MR. FOFÉ: (Interpretation) I would like the Prosecutor to be
12 asked to observe the pause to allow for the interpretation. Because on
13 page 41, line 12, for example, the last sentence made by the witness does
14 not appear on the transcript because of the time. This is not very
15 important, but I was just giving you an example. And in line 12 he added
16 the following in Swahili, "That was the news that I heard." This is
17 important because the witness added that this is what he heard. It is
18 important because it shows how he got that information. So if the
19 Prosecutor can observe the pause, then the interpretation and
20 transcription can be done properly. Thank you, your Honour.

21 PRESIDING JUDGE COTTE: (Interpretation) It is very important to
22 observe the five-second rule, particularly because the court reporters
23 are very short staffed, particularly today. So we have to break right
24 now.

25 Mr. Witness, you will have a 30-minute break and we will

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1 reconvene at 11.30.

2 Mr. Prosecutor, how much time is left?

3 MR. GARCIA: (Interpretation) Very short, your Honour, 15 to 20
4 minutes maximum. I have very few questions left.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well.

6 The Defence teams, take note.

7 Court Officer, let us keep Witness 146 close by and Witness 147
8 can greet the accused persons after the session, the second session, at
9 1.30 p.m.

10 Court Usher, please accompany the witness out of the courtroom.

11 (The witness stands down)

12 MR. MACDONALD: (Interpretation) On this issue of expressing
13 thanks.

14 PRESIDING JUDGE COTTE: (Interpretation) You can try but we no
15 longer have time.

16 MR. MACDONALD: Why should the witness thank the accused persons?
17 They are not related. He is not a member of the family.

18 PRESIDING JUDGE COTTE: (Interpretation) Except I am mistaken,
19 there were requests for meeting with the accused in the prison. We
20 decided that this would be done on a case-by-case basis, but regarding
21 thanking the accused persons or the accused persons thanking the
22 witnesses, we decided that it would be a five-minute affair inside the
23 Court premises. I believe that this is something that was decided from
24 the beginning of the presentation of the Defence case.

25 The hearing is suspended. We will reconvene at 11.30 a.m.

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1 Break taken at 11.02 a.m.

2 On resuming at 11.33 a.m.

3 COURT USHER: All rise.

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

5 As concerns courtesy visits, visits of thanks between witnesses

6 and the Defence, we have an oral decision of the 30th of March, 2011.

7 This decision also ruled on an application for a meeting at the detention

8 centre between the accused and the three detained victims. In that

9 decision, the Chamber ruled on the modalities for the organisation of

10 short sessions to give thanks at the end of the testimony.

11 Court Officer and Court Usher, please bring in the witness.

12 THE INTERPRETER: Correction of the interpreter: The sentence

13 should read: "This decision also ruled on an application for a meeting

14 at the detention centre between the accused and the three detained

15 witnesses."

16 (The witness takes the stand)

17 PRESIDING JUDGE COTTE: (Interpretation) Witness, can you hear

18 me clearly?

19 THE WITNESS: (Interpretation) Yes, I do hear you.

20 PRESIDING JUDGE COTTE: (Interpretation) Very well.

21 Prosecutor, could you please take the floor to complete your

22 cross-examination. We are listening to you.

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

24 Q. Mr. Witness, I have only a few additional questions for you.

25 First of all, I would like to talk about your movements. In the course

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1 of your testimony you said you went to Zumbe and that after Zumbe you
2 returned to Dele to look after your farms; is that correct?

3 A. Thank you for your question. I left Zumbe because there was
4 famine. My family had already left. I had to go to the forests in the
5 middle of the night to look for something to eat and to bring this food
6 back to my place of residence.

7 Q. If I understood your testimony well, your place of residence is
8 Dele. You therefore returned to Dele; is that correct?

9 A. When I left Zumbe, I returned to Dele, but I was not living in
10 the camp. I was in the forest. At that time, the people of Ngiti and
11 Lendu ethnicity had difficulties surviving against the people of the UPC.

12 Q. Would I be right to say, Mr. Witness, that at that time in
13 December of 2002 when you returned to Dele, the UPDF had a base in Dele.
14 Ugandan soldiers were stationed there.

15 A. UPC soldiers were there --

16 THE INTERPRETER: Or rather, correction from the Swahili booth:
17 UPDF soldiers were there and I was really afraid.

18 MR. GARCIA: (Interpretation)

19 Q. Mr. Witness, would I be right to say that at that point in time
20 in December 2002 the UPC and the UPDF were no longer together; in other
21 words, you had no reason to fear the UPDF at that point in time?

22 A. Thank you for your question. While the soldiers of the UPDF were
23 there, I returned from Zumbe. There was famine, that is, hunger, at that
24 time. My family members had already left. And this was at the month of
25 December, and I remained in the forest.

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1 Q. Mr. Witness, if it was safe for you to return to Dele, it should
2 have been equally safe for the rest of your family to return there at
3 that point in time. At that time, therefore, was the UPDF in Dele?

4 A. When I returned to Dele, I knew that I was returning to a
5 situation of insecurity. The Ugandans were there. However, there was
6 one thing I was not aware of. I did not know whether they were going to
7 carry on staying in that -- at that place. If UPC soldiers caught me,
8 they would kill me; that is why I was afraid. I felt unsafe, given that
9 the Ugandans were there at that time.

10 Q. What I'm trying to say, Mr. Witness, is that you gave us an
11 account stating that your family had left before you returned to Dele.
12 Is it not correct that in your testimony even here before this Court you
13 on two occasions stated that you left with your family together and that
14 you did not leave on two separate occasions. I'm going to read the
15 relevant excerpts to you, Mr. Witness. I will start reading from page
16 14, transcript 261 of the French, page 14. You stated here in the
17 courtroom on the first occasion the following:

18 "From Zumbe after the major war which broke out in four
19 localities, I took my entire family to go to Aveba, where my child Amos
20 was" --

21 PRESIDING JUDGE COTTE: (Interpretation) Are you sure you're on
22 page 14?

23 MR. FOFÉ: (Interpretation) That's right, your Honour. I would
24 like the Prosecutor to give us the right reference so that we can follow
25 him.

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1 PRESIDING JUDGE COTTE: (Interpretation) I do not find that
2 excerpt on page 14.

3 MR. GARCIA: (Interpretation) I apologise. I think I misled the
4 Chamber and the witness.

5 PRESIDING JUDGE COTTE: (Interpretation) Do take your time.

6 THE INTERPRETER: Message from the English booth: Could the
7 five-second rule be observed, please. Thank you.

8 MR. GARCIA: (Interpretation) Your Honour, I apologise.
9 Transcript 261, page 34, and I will start reading a few lines -- well, I
10 will start reading from the very beginning just to give you context. And
11 thank you, Professor Fofé, for intervening.

12 Q. The question I'm putting to you, Mr. Witness, is the following --
13 or rather, it was Mr. Hooper who asked you the question, line 21, he
14 asked:

15 "For how long did you and your family remain in Zumbe? Or to put
16 the question differently, did you or your family at some point in time
17 leave Zumbe? And if that was the case, could you please tell us when to
18 the best of your recollection?"

19 That is the question Mr. Hooper put to you. You asked him to
20 repeat the question, and later on in line 27 you answered:

21 "I arrived at the end of the academic year in the month of
22 August, and from the month of August, the month of September, I think
23 there is a difference of three months and a few weeks. It's not four
24 months."

25 And the question that was put to you was the following:

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1 "Where did you go after Zumbe?"

2 And you answer -- and you answer saying:

3 "And where" --

4 Or, rather, the question of "Where did you go after Zumbe?" you
5 answered saying:

6 "In Zumbe, after the major war which made us move between four
7 localities, I took my entire family to Aveba where my son Amos was."

8 After reading this excerpt, I will move on to other passages that
9 deal with your movements. From your testimony, therefore, according to
10 this excerpt it is clear that you and your family went to Aveba together.

11 You went together, not separately. Is that correct, Mr. Witness?

12 A. Try to listen to me very attentively. After the great war, we
13 were in Zumbe. My family, that is, my wife and the children, took the
14 road leading to the plain of Kasenyi. They went to Aveba. I remained --
15 I stayed behind for a few days. My cattle was there. People were
16 complaining. People said that my goats could turn out to be a problem if
17 I moved with them along the way. Mainly people were moving away. If I
18 did the same thing, UPC soldiers were going to catch us and they could
19 harm us. That is why I stayed behind alone in Zumbe for a while.

20 Q. So, Mr. Witness, you are repeating to us what you said a short
21 while ago, but I will read out to you what you said later on on the same
22 subject matter. And on your way you changed your itinerary. You will
23 find this on page 35 once more, lines 24 onwards. Mr. Hooper's question
24 is in line 21 of page 35. Mr. Hooper asks you the following question:

25 "When did you arrive at Aveba, you, yourself? At what -- or when

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1 did you arrive at Aveba yourself?"

2 From line 24 you answer, saying:

3 "I arrived at Aveba at the end of the month of May 2003."

4 Question by Mr. Hooper:

5 "When you arrived in May, where was your family?"

6 Line 26, your answer:

7 "Thank you for asking me the question."

8 And, Mr. Witness, you answer by saying:

9 "I have already stated here before you that after the UPC attack,
10 the major attack on Zumbe, I left Zumbe on the 1st of December with my
11 entire family and we went to Aveba."

12 And you carry on saying:

13 "We passed through the plain of Kasenyi like everyone else in
14 order to reach Aveba."

15 That's the first part of your testimony here in this courtroom.

16 Later on you change what you said.

17 "Well, in fact, my family left earlier. I stayed behind in Zumbe
18 because I had goats to take care of and I left later on with my goats
19 because if I left together with my goats and my family, UPC soldiers
20 would have attacked us and killed us and that is why I stayed behind with
21 the goats ."

22 Mr. Witness, you will notice with me that in your answers there
23 are two very different accounts. On the one hand when you start you go
24 to Aveba together with the entire family. You even give details. You
25 say you passed through the plain of Kasenyi, and almost immediately you

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1 repeat what you are saying and the story changes. Your family leaves
2 earlier. Is it not correct, Mr. Witness, that the reason why on two
3 occasions you said that you left together with your family, is it not
4 true that you said this two times because you indeed left together were
5 you family at the time when the UPDF was leaving Bunia because at that
6 time you no longer benefitted from UPDF protection? Would I be right to
7 say that, Mr. Witness?

8 A. Thank you for your question. Thank you as well for giving me the
9 floor. Yesterday or the day before yesterday I said the following:
10 Before my family left the locality we are talking about, there was a
11 group of persons which had left the place where we were and who went
12 through the road which passes through the plain of Kasenyi. Before their
13 departure, I must say that I had livestock, I had goats. Before they
14 left, these people told me -- they said, "You should not take the
15 livestock along with you." That is why I stayed behind in Zumbe. They
16 left and I did not follow them to Aveba. I stayed behind in Zumbe.

17 Later on, after a short while -- of course I remained in Zumbe,
18 but I had problems getting food, and that is why I left Zumbe to go to
19 Dele. I did not have a farm in Zumbe. All the food, all the harvest I
20 had at that time was already used up to feed my family. At that point in
21 time I had nothing, and that is why I moved to Dele where I had farms. I
22 was living in the forest under the bamboo trees, and at night I will go
23 to look for food. And in the evenings I will return to sleep under the
24 reeds. At that time, I did not have even salt or soap.

25 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr. Fofé.

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1 MR. FOFÉ: (Interpretation) Your Honour, I deliberately let the
2 witness answer the question because it would have given him the
3 opportunity to clarify his version of the events. I would like to say
4 the following, your Honour: In all fairness to the witness, I would like
5 to request your Honours to verify this part of the questioning by the
6 Prosecutor. Yesterday we had a lot of problems, interpretation problems,
7 as well as stenography or transcript problems. I would like the
8 interpreters and the stenographers to correct me if I'm wrong. I think
9 it would be proper and fair to the witness to listen again to the answers
10 given in Swahili by the witness to the questions being mentioned by the
11 Prosecutor so that we can double-check what he said in Swahili. I do not
12 believe that what he said was accurately transcribed. I think this is
13 necessary. That way we will refrain from insinuating that there are
14 inconsistencies in the testimony of the witness and it will be fair to
15 the witness to do so.

16 Before the break I humbly suggested to the Prosecutor to make a
17 pause between question and answer in order to give the interpreters an
18 opportunity to translate the entirety of the testimony and also give the
19 stenographers the time to accurately transcribe what is said. Thank you,
20 your Honour.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Professor Fofé.

23 Mr. Hooper.

24 MR. HOOPER: I second that and, in fact, I state it's Tuesday's
25 transcript in particular that needs looking at. And there's a problem

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1 because the Swahili spoken by the witnesses here, which is DRC-based
2 Swahili, is different to that which is spoken by those who have the
3 arduous job of translating because it's a melange of language which
4 doesn't exist in normal Swahili.

5 MR. GARCIA: (Interpretation) Your Honour, I would like to
6 ask -- tell the Defence team that I'm referring to transcript 261. And
7 since that transcript was produced, Professor Fofé or Mr. Hooper have not
8 raised any objections about translation. I am surprised, therefore, that
9 today in the courtroom while I'm cross-examining the witness and asking
10 clear answers or asking clear questions, they suddenly raise problems
11 about interpretation. If that were the case, they should have done so
12 earlier.

13 MR. HOOPER: All I can say to that is that my friend is entitled
14 at this current point of course to rely on the transcript he has. But if
15 I was he, I would be cautious about it.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well. If we
17 understand you well, pages 34 right up to 36, on -- 37 of this particular
18 transcript, transcript 261, transcript of last Tuesday, may pose a
19 problem. Consequently, the need to reverify it and the recording has to
20 be re-listened to.

21 Court Officer, I believe that such a verification should be
22 carried out because it is important for us to have transcripts which
23 fully and accurately transcribe what the witness says. The Chamber would
24 like to inform you that after reading these pages from 34 to 37 which
25 have been submitted to us, when we read these pages we do not find any

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1 particular difficulties. The Prosecutor is carrying out his
2 cross-examination in his own manner, and as I said this morning some
3 might see inconsistencies, some might see nuances; others might see
4 coherence or consistency in the same testimony that is given by a
5 witness. The witness is trying to re-explain things, to explain why
6 sometimes he said the entire family left and why he stated that he left
7 later on. He's giving his reasons. We are listening to him because that
8 is his testimony. And I think it's a good thing that the Prosecutor's
9 questions are prompting him to clarify what might not have been correctly
10 transcribed in Tuesday's transcript. So he should be given the
11 opportunity to explain himself.

12 So, Madam Court Officer, we would like to have you ensure that a
13 verification is carried out and to ensure that the interpretation and
14 stenography were accurate on those points, but it's also very important
15 for the witness to be able to provide us with his testimony.

16 Mr. Garcia, sir, you may continue with your cross-examination.

17 MR. GARCIA: (Interpretation)

18 Q. Mr. Witness, am I right in saying that it was in the month of May
19 the year 2003 that the UPDF soldiers left Bunia and that after that there
20 was no protection for you nor for the other people who were in a
21 situation identical to yours?

22 A. Excuse me, I was distracted. I was thinking about something
23 else. Would you please repeat your question.

24 Q. Certainly, Mr. Witness. Am I correct in saying, Mr. Witness,
25 that it was in the month of May the year 2003 when the UPDF left Bunia

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1 and that because of their departure you were no longer safe?

2 A. When the UPDF troops left, I personally was in the bush. But the
3 livestock that we have been referring to was higher up on the Zumbe
4 mountain where I had left it. After that, after the UPDF soldiers left,
5 I took advantage of that fact in order to go get back the goats, and then
6 I went back down. And I led my livestock to the side of the trail. I
7 could go through Songolo and Kagaba with my goats. And I was able to
8 arrive subsequently in Aveba.

9 Q. Mr. Witness, we're going to change our subject.

10 MR. GARCIA: (Interpretation) Your Honour, I would like to move
11 into private session for the remainder of my questions.

12 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer,
13 would you please take us into private session for a brief period I hope.

14 (* Open session at 12.05 p.m.)

15 COURT OFFICER: (Interpretation) We are now in private session,
16 your Honour.

17 PRESIDING JUDGE COTTE: (Interpretation) Excellent.

18 Mr. Prosecutor, you may proceed.

19 MR. GARCIA: (Interpretation)

20 Q. Mr. Witness, I would like to go back to a statement that you made
21 yesterday. We were talking about the relocation question at that point,
22 relocation of course refers to that relocation of Pierre. You said,
23 according to page 65 of transcript number 262, French version, you said:

24 "And then I was told that Pierre was in the hands of the

25 Prosecutor of the International Criminal Court and that bothered me at

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1 the time. And when my wife heard that or if my wife hears this, then I
2 think that she might be at risk for committing suicide."

3 Sir, that's what you said here in the courtroom. You said that
4 yesterday. Now, when you made that statement, the statement concerning
5 your wife, I'm correct in saying, Mr. Witness, that the co-operation of
6 Pierre with the International Criminal Court as (Expunged)
7 (Expunged) frightens you, it worries you. You are worried about your safety
8 and you are also worried about (Expunged)
9 (Expunged). Am I correct in
10 saying that, sir?

11 A. Thank you for the question. When (Expunged)
12 (Expunged), for example, co-operates with the Criminal Court and when that
13 Court -- as far as I'm concerned I know it, and when I hear -- when I
14 learn that that might lead to an unsafe situation because of the things
15 said, well that's not supposed to happen. And that's why I say that that
16 was the -- something which is at the source of the difficulty of the
17 bitterness, if you will. And when I say that my wife could die because
18 of that, and when I say that when she hears that Pierre is in a
19 difficult situation, she might become bitter and she might think that we
20 have in some way rejected Pierre. That's what I said. (Expunged)
21 (Expunged), shouldn't leave without
22 you, (Expunged), knowing about it. And if (Expunged) is in a difficult
23 situation, then of course that leads to a more complicated situation and
24 that is what I was driving at yesterday.

25 Q. But, Mr. Witness, it goes even further than that, does it not?

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1 Aren't you afraid of the fact that Pierre came here to testify and that
2 that would have a negative impact on your safety because of the accused
3 here in this courtroom? Is it not that which frightens you? You have
4 had threats, there have been threats against you, your wife, your
5 children, your grandchildren, and that is what frightens you here today?

6 A. Without lying to you, the departure of Pierre who left the
7 family and who is at the root of the tension between the members of the
8 family is a problem, and the fact that the -- and also the fact that Pierre
9 doesn't do what he's supposed to do and the fact that Pierre
10 lied. All of this is not worthy of the family, and that shows that *the
11 *child was poorly raised, not well brought up.

12 Q. Mr. Witness, you spoke with Marc's (Expunged) and he is in the (Expunged)
13 (Expunged) that you are in. You both gave your (Expunged)
14 (Expunged) to co-operate with the Office of the Prosecutor of the
15 International Criminal Court and you both share the same fears of the
16 accused who are here in the courtroom with us. Is that not true,
17 Mr. Witness?

18 A. Let me be very clear in the answer that I provide you with.
19 (Expunged) of their own volition got themselves into a situation
20 which they no longer control, and you want to know whether or not we are
21 afraid. In fact, (Expunged) spread confusion in the minds of the
22 family members, and as (Expunged) we no longer agree with what they're
23 doing. When Pierre began to receive money -- when he began to make
24 money because he was a taxi-driver, he began to have a good time and he
25 had money in his pocket. And it was the taste of money, the love of

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1 money, that put him in this difficult situation and these difficult
2 situations continue to exist today, and I do not want to be a victim of
3 that situation. I would not like to have to deal with the consequences
4 of that situation. Pierre should be left alone. I would like to know
5 where he is and I would like to have Pierre returned to me and I would
6 like to be able to go (Expunged) with Pierre. Everything that has been
7 said here stems from lies.

8 MR. HOOPER: Can I ask that the transcript be reviewed and made
9 public because we're still in closed session. My friend used a pseudonym
10 and it's important, we think, that the things that the witness has said
11 should be on public record. We've spent far longer in private session
12 throughout the Prosecution's cross-examination in our view than was
13 necessary. If the Prosecutor knows his questions, then he can guide the
14 Court as to whether we should be in private or public.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, using
16 pseudonyms should indeed make it possible for us to reclassify that part
17 of the hearing, but that means that each reference to (Expunged) has to
18 be removed and Pierre put in its place.

19 So, Madam Court Officer, what we need to do is beginning with
20 page 54, line 5, where we go into private session and up until right now,
21 we need to go through the text very carefully. What the witness just
22 said needs to be looked at to see whether or not replacing the (Expunged)
23 with the pseudonym will make it possible for us to reclassify the
24 document. This is pending. We'll have to go through the document and
25 verify, first of all, and then we will be able to make a decision. I

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1 don't think that we need to do that now. That would be a waste of time.

2 We will do that afterwards.

3 Mr. Prosecutor, can we move into open session?

4 MR. GARCIA: (Interpretation) Your Honour, I just have one
5 question, if you would just give me a second, I will be able to answer
6 that question.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course, go
8 ahead.

9 (Prosecution counsel confer)

10 MR. GARCIA: (Interpretation)

11 Q. I have one last question to put to you, Mr. Witness. Am I
12 correct in saying, sir, that the reason that you're here is to protect
13 not only Pierre but also yourself and the (Expunged)
14 (Expunged) of them;
15 that is why you came here to testify?

16 A. It's because I would like to know where Pierre is. I'd like to
17 know what Pierre is doing. I'd like to know where he is now. And once
18 I learn that, then I will of course take measures to ensure my safety and
19 that of the rest of my family.

20 Q. Thank you, Mr. Witness.

21 MR. GARCIA: (Interpretation) Your Honour, I think we can move
22 back into public session.

23 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, if
24 you would please take us back into public session.

25 (Open session at 12.18 p.m.)

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

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

4 Mr. Hooper, do you have anything to say at this point?

5 MR. HOOPER: Merely that if that is the fundamental Prosecution
6 proposition in respect of the witnesses coming to give testimony, that
7 I'd ask that the question be put in such a way that both the question and
8 the answer can be public as well.

9 MR. GARCIA: (Interpretation) The Defence can ask the
10 questions and -- or here they did, in fact, and the witness answered. I
11 have no more questions for the witness.

12 PRESIDING JUDGE COTTE: (Interpretation) That's fine. We will
13 stay there then.

14 The two Legal Representative teams did not make a request, a
15 previous request, to put any questions to the witness concerning the
16 questions which -- excuse me, concerning the answers that he provided.
17 Do the Legal Representatives have any spontaneous questions to put to the
18 witness?

19 MR. GILISSEN: (Interpretation) Thank you, Your Honours. Yes,
20 we have one question to put to the witness under the direction of the
21 Bench.

22 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead and ask
23 the question if this is in -- this falls within your remit as the
24 Legal Representative, then go ahead.

25 Questioned by Mr. Gilissen:

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1 Q. (Interpretation) Good afternoon, Mr. Witness. We met during a
2 meeting -- a victims and witnesses meeting that was organised in the
3 past. I have one question to put to you today, sir. You live in Ituri,
4 you have always lived there. You have travelled around a great deal in
5 that area, we talked about that in some detail this morning. I wanted to
6 know if between this second part of the year 2002 and the first part of
7 the year 2003, when you were travelling around a great deal in Ituri,
8 when you were in many different areas, I wanted to know whether you met,
9 or rather, you encountered any armed groups; and if so, did you see any
10 children with those armed groups?

11 A. Thank you for your question. That was a very good question. I
12 don't know if you're asking me if I was one of the fighters. I don't
13 know if you're asking if I participated in the fighting. If that's what
14 you are asking in your question, if that had been the case I would have
15 been able to respond. But given that I did not participate in the
16 fighting, given the fact that I was not one of the combatants, I cannot
17 provide you with an answer. I did not see anything.

18 Q. I think perhaps we should correct the witness because I don't
19 think that he understood my question correctly.

20 PRESIDING JUDGE COTTE: (Interpretation) If you'd like to
21 correct the understanding of the witness, then please do so. Thank you
22 very much.

23 MR. GILISSEN: (Interpretation)

24 Q. I never said that you were involved personally as a fighter; that
25 was not my question, sir. Perhaps I poorly formulated my question. My

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1 question was the following: In your travels from Dele to other places,
2 you went to Aveba, you went to Zumbe, you explained that you travelled by
3 the Kasenyi plain and you gave us all that information in a fair amount
4 of detail, but during those trips when you were travelling, when you were
5 travelling at the end of the year 2002, as you told us, or at the
6 beginning of the year 2003, did you see -- did you encounter at any time
7 any groups of fighters, or did you not see anything, which is indeed what
8 you told us? You said you saw no groups of fighters. That was my
9 question, sir.

10 A. To answer your question I would like to say the following, during
11 the war, during the fighting, I was in the bush. I could not see the
12 events that you refer to in your question. My concern was with
13 surviving. I was simply concerned with making it through that difficult
14 period. It was difficult for me to know exactly what was going on at
15 that time. There was a lot of noise. There were crowds of people and it
16 was difficult to be able to determine exactly what was going on, who was
17 doing what, because there were so many people. So that's the answer I
18 can provide you with.

19 Q. Thank you very much, Mr. Witness.

20 MR. GILISSEN: (Interpretation) Your Honour, your Honours, I
21 think that we have pretty much covered the question. I have no further
22 questions to put to the witness stemming from the interests that I
23 represent. Thank you for letting me speak.

24 PRESIDING JUDGE COTTE: (Interpretation) Very good,
25 Mr. Gilissen.

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1 MR. LUVENGIKA: (Interpretation) Thank you very much for giving
2 me the floor. Your Honour, we have heard a great deal of information
3 from the witness and I don't think we have any further questions to put
4 to him.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
6 Mr. Luvengika.

7 Mr. Witness, the Bench would like to ask one question.

8 Questioned by the Court:

9 This morning, a few moments ago, you spoke at the Prosecutor's
10 request about your travels and the travels of your family. You talked
11 about it Tuesday during the first hearing, and this is transcript 261,
12 and this is the same transcript pages 34, 35, 36, and 37 which we were
13 alluding to earlier. We understood at that point, sir, that your family
14 left Zumbe in December of the year 2002 in order to go to Aveba, where
15 they were welcomed by your eldest son. And you said, answering the
16 Prosecutor's question and again this morning, that you had to stay where
17 you were and that you joined your family in the month of May, perhaps the
18 beginning of June. In any event, several months after they left. That
19 is what we understood from your testimony on Tuesday and from your
20 testimony this morning. For that entire period you were alone and you
21 were caring for your livestock. And we understood that your solitary
22 life at that point was relatively difficult to bear. The question we
23 have for you, sir, is the following:

24 During that time when you were alone, did you have the
25 opportunity to receive news of your family? Your family at that point

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1 was in Aveba living with your eldest son. Did you get any news
2 concerning your family? Were you able to know what they were doing?
3 Were you able to know whether everything was going well for them or was
4 that just simply a blank part of your life? And I hope that my question
5 is clear for you, sir.

6 A. Thank you. I understood your question perfectly. I will now
7 proceed with providing you an answer. When I was living in the bush with
8 my livestock, I didn't have the time to get news about my children
9 because, in fact, I encountered no one. I was very far from the road. I
10 was in the valleys which are filled with reeds and I encountered no one.
11 I also had my goats with me. I saw no one and I received no news. When
12 I could, I would try to get closer to the road in order to obtain some
13 news, people who were going to the Medhu market, for example. And when
14 it was possible, I would leave with the Bira who were going to the market
15 to buy food. But I received no news about the members of my family. I
16 don't know if they were doing well or not. That's the answer that I can
17 provide to your question, your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
19 Mr. Witness.

20 Professor Fofé.

21 MR. FOFÉ: (Interpretation) Thank you, Mr. President. Before I
22 ask my final questions to the witness, I would like to point out that on
23 line 23 of page 61 it is written "I did not have the time to get news
24 about my livestock because ..." and so on and so forth. I believe that
25 has to be corrected. It is news of my family.

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Further Questioned by Mr. Fofé

1 PRESIDING JUDGE COTTE: (Interpretation) Very well. That is

2 correct. Line 23, page 62.

3 MR. FOFÉ: (Interpretation) Yes, your Honour, it is indeed page

4 62.

5 Further Questioned by Mr. Fofé:

6 Q. Good afternoon, Mr. Bachweki.

7 A. Good afternoon.

8 Q. You have already answered many questions and so I'm not going to

9 ask you many other questions. I have just a few points of clarification

10 that I would like to seek from you. The first point relates to the hill

11 known as Lagura. Do you know that hill known as Lagura hill?

12 A. I can say that Lagura hill was occupied by UPC soldiers. We

13 spent two to three days in the bush, and the people of Zumbe fled to the

14 Lagura hill. I and the members of my family spent three days in the bush

15 and we joined those who had sought refuge on that hill; however, I did

16 not know it before.

17 Q. Would you say that Lagura hill is quite different from Zumbe

18 hill?

19 A. Thank you. Your question is quite clear. With regard to the two

20 hills, Lagura hill and Zumbe hill, I would say that the two are

21 different.

22 Q. Without going into details, can you tell us approximately how

23 long it would take someone to travel on foot from Zumbe to Lagura?

24 A. Thank you. When I was in Zumbe, I did not have a watch.

25 However, when my family was there it so happened that I went there to

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1 fetch provisions, to buy provisions, at the bottom of Lagura hill. I
2 left Zumbe hill to go to Lagura and I took a road through the valley to
3 the foot of Lagura hill. However, I did not have a watch to be able to
4 estimate the time that it took me to go there. For example, if I leave
5 here to return to the hotel, since I have a watch it would be possible
6 for me to know how long it takes me to go back to the hotel. But at that
7 time it was not possible for me to estimate the time that it took me to
8 go to that place because I did not have a watch.

9 Q. Very well. You did not have a watch, but can you tell us whether
10 approximately that distance between the two locations is very long or
11 not, just an approximation?

12 A. One day I went to that locality on foot on my way to a farm that
13 I had bought. It took me a lot of time to cover that distance.

14 Q. Thank you very much, Mr. Bachweki.

15 MR. FOFÉ: (Interpretation) Mr. President, I have one last
16 question for the witness and in order to be clear, I would like to
17 request that we go briefly into private session. And during that time
18 the witness can have a drink of water.

19 PRESIDING JUDGE COTTE: (Interpretation) Very well. Let us go
20 into private session.

21 And, Court Officer, you can help the witness to have a drink of
22 water.

23 (Private session at 12.39 p.m.)

24 (Expunged)

25 (Expunged)

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12 Page 62 Expunged – Private session.

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12 Page 63 Expunged – Private session.

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12 Page 64 Expunged – Private session.

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1 (Expunged)

2 (Expunged)

3 (Open session at 12.52 p.m.)

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

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

7 Professor Fofé.

8 MR. FOFÉ: (Interpretation) Thank you, your Honour.

9 Q. Mr. Bachweki, thank you very much. I have no further questions
10 for you.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
12 Professor Fofé.

13 Mr. Hooper, it is your turn for your final observations.

14 Further Questioned by Mr. Hooper:

15 Q. Mr. Witness, we're in public session and so if we talk about
16 Pierre, let's just talk, as it were, very simply about Pierre. We don't
17 need to go in any details who he is, as it were. This morning just a
18 short while ago you were being asked questions about the UPDF, the
19 Ugandan forces who were, as we know, based at Dele. And you told us how
20 when they left you took the opportunity to go off with your goats and
21 make your way further south.

22 Now, talking about the Ugandans, the UPDF, you said this about
23 their presence at Dele, and this is at page 41, line 22, in the English
24 transcript this morning. You say:

25 "I felt unsafe, given that the Ugandans were there at that time."

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1 Why did the Ugandans cause you to feel unsafe? Whose side, if
2 any, were they on?

3 A. Thank you for your question. When I was in the bush, I felt
4 unsafe. I was afraid of being killed. If I had gone out of the bush and
5 fallen into the hands of the UPC, I would have been killed. Similarly,
6 the UPDF soldiers would have arrested me and killed me. It is for that
7 reason that I stayed in the bush, because I felt unsafe.

8 Q. Now, I want to ask you about Bogoro. You were asked about Bogoro
9 just this morning. Now, we've all heard your evidence in respect of that
10 and we well understand that at the time that Bogoro happened, February
11 2003, you were in the bush and you didn't get to know about it. Now, my
12 question is this: When did you later first hear about the fact that
13 there had been an attack at Bogoro? When did you first hear about it?

14 A. Thank you for that question. I have never heard anything about
15 the battle of Bogoro because where I was there was no one to speak to me
16 about it and no one came near the place where I was. Later on I went to
17 Aveba without having ever heard about that battle of Bogoro.

18 Q. Yes, we appreciate that. But my question is: Over the years
19 since, when did you first come to hear that there had been an incident at
20 Bogoro?

21 A. Thank you. Your question is clear. No, I do not know. I do not
22 even know what happened in Bogoro. I am a worker. I kept a low profile
23 and no one could explain to me what had happened in Bogoro.

24 Q. All right. Thank you. Now, I want to talk now about Pierre.

25 Now, Pierre, did you ever -- did Pierre ever have a -- to your knowledge,

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1 did Pierre ever have a security problem? Was he ever threatened when he
2 was living in Dele or afterwards? Has he ever had, in short, any reason
3 to be afraid to your knowledge of coming home?

4 A. Please kindly repeat your question.

5 Q. To your knowledge, has Pierre ever had any reason to be scared of
6 returning to Dele? Has he any reason to be fearful of coming back to
7 Dele, to your knowledge?

8 A. I do not know.

9 Q. Now, when you learnt that (Expunged) -- sorry, that's a redaction.
10 When you learnt that Pierre was to be -- was to travel somewhere,
11 what was your understanding for the reason why he was to move away from
12 Dele? What was the purpose, as you understood it, to be?

13 A. Counsel, your question was not clear. Would you please be so
14 kind as to reformulate it.

15 Q. When you first learnt that Pierre was to be relocated, what did
16 you understand the reason to be for the relocation?

17 A. Thank you for the question. I did not know that Pierre was to be
18 relocated. I was not aware of it and I didn't even know why he would be
19 relocated.

20 Q. All right. Let me put it another way -- well, I'll leave that I
21 think.

22 Now, yesterday you were asked some questions about a meeting or
23 at least a, rather, conversation between you and the Office of the
24 Prosecutor in September of 2010. And you may remember that you told us
25 quite a lot about that and about how they were offering you a telephone

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1 and asking to meet you and how you got cross, and you told them that
2 you'd only meet people if they came with Pierre. Do you remember telling
3 us that yesterday?

4 A. Yes.

5 Q. And you may recall that at some time you were -- this may have
6 been a bit unclear, but there was a telephone conversation with a white
7 man -- or at least I assume it was someone at the end of the line you
8 assumed was white. But we understand that that was someone called
9 (Expunged) -- sorry.

10 MR. MACDONALD: (Interpretation) Objection because we want to
11 avoid having to resend requests that we sent to -- applications that we
12 sent to you yesterday from the Office of the Prosecutor. Yesterday
13 Mr. Hooper suggested that an EVD number be assigned to the document in
14 question and we had no objection to that. Perhaps we could do the same
15 here. Thank you.

16 MR. HOOPER: Oh, right.

17 PRESIDING JUDGE COTTE: (Interpretation) You're just going to
18 say that -- I think that we used the pseudonym "George" if I remember
19 correctly. Did we not use the pseudonym "George" for that individual to
20 talk about that person?

21 MR. HOOPER: (Previous translation continues) ... this man's an
22 investigator. He never got a pseudonym.

23 PRESIDING JUDGE COTTE: (Interpretation) I understand. I see.
24 Okay. Does he need a pseudonym to be assigned to him so that we can
25 continue our questioning in public session?

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1 MR. HOOPER: Well, what I understood Mr. MacDonald just to say
2 now was that the document which is an investigator's report, can I call
3 it up, DRC-OTP-1061-0121, which is a private document I assume because
4 it's got his investigator's name in it, if that can be brought up on the
5 screen and so you, the Judges, can have it in front of you. You'll see
6 that it's the three-page document that Mr. Garcia started with yesterday
7 afternoon. You may recall there was some objections raised at that point
8 as to where it was going to go.

9 But what I understand from Mr. MacDonald is that the Prosecution
10 have no objection to this being put in evidence with an EVD number. And
11 for my part, I have no objection at all to that. And indeed, I was
12 moving towards that. That was the object of my -- essentially my
13 remaining questions. But it's -- it would be good, yes, because it would
14 give us the full picture of at least what is recorded here. The only
15 matter that I object to in the document is at paragraph 20 there's a
16 comment and that comment should not form part in any way of the record.
17 But the rest of it, I'm not accepting it's necessarily accurate, but
18 inasmuch as it contains a summary, from the Defence point of view what it
19 demonstrates we'd say is a consistency in the account of the witness as
20 to what he was saying and doing and his concerns that he was expressing,
21 and that is particularly true at paragraph 10 that the Court can see and
22 in due course see the rest in context of this document and other parts as
23 well. So if that's been -- that's now in evidence, there's no difficulty
24 arising about that.

25 PRESIDING JUDGE COTTE: (Interpretation) Just before the last

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1 paragraph, the part that's in italics which is a comment, Mr. Prosecutor,
2 do we perhaps not need that comment here?

3 MR. MACDONALD: (Interpretation) I just want to say that we
4 agree with the proposal or counter proposal that was made by Mr. Hooper.
5 We can remove or redact the comment. The only question that we have to
6 deal with now has to do with Mr. Ngudjolo's team and whether or not they
7 are agreeing. If they don't agree, then of course we will not reach an
8 agreement.

9 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, you
10 just heard what Mr. Hooper said about having this document introduced.
11 This document would make it possible to clarify or even perhaps to
12 confirm the testimony that the witness provided us with yesterday at the
13 end of the morning when he was answering Mr. Garcia's questions,
14 questions which come from a certain number of -- which are based on a
15 certain number of facts which come out of the investigator's notes. The
16 Prosecution agrees to this document being assigned an EVD number.
17 Mr. Hooper also agrees. How does your team feel about this, sir?

18 MR. FOFÉ: (Interpretation) Thank you, your Honour. We would
19 like a few moments to carefully go over the document before we accept it
20 being included in the case file as proof. We would like to have
21 sufficient time to go over the document in order to do that.

22 PRESIDING JUDGE COTTE: (Interpretation) How much time will you
23 need, Professor Fofé? Do you think that you could give us an answer
24 before 1.30?

25 Mr. Hooper, perhaps you have something to say? Perhaps you can

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1 provide us with something?

2 MR. HOOPER: You've anticipated my problem, that unless I know
3 the document has gone in; otherwise, I'll have to refer to it. So I need
4 a decision really before the witness goes I would have thought.

5 MR. MACDONALD: (Interpretation) Indeed, Mr. Hooper is doing his
6 redirect. It would be an alternative to him asking questions. We need
7 to have an answer before we release the witness otherwise we cannot
8 release him.

9 PRESIDING JUDGE COTTE: (Interpretation) That is very clear.
10 Professor Fofé.

11 MR. FOFÉ: (Interpretation) Your Honour, please allow me to say
12 that the other parties should not be exerting any influence upon us.
13 This document was not signed by the witness according to principle, and
14 therefore we should not accept it as evidence based on principle. Now,
15 what we are asking is the following. If our friend has certain questions
16 to ask about certain paragraphs, then he may ask questions about certain
17 paragraphs. I don't think that it will be necessary for him to ask
18 questions concerning all the paragraphs of the document. He might be
19 able to put a few questions to the witness concerning the passages that
20 he feel are relevant and at the same time we will review the document
21 before providing an answer concerning our final position.

22 PRESIDING JUDGE COTTE: (Interpretation) So there is an option.
23 We can either excuse the witness and have him return tomorrow morning for
24 perhaps 15 minutes. That would make it possible for Mr. Ngudjolo's team
25 to go over the document, examine it in detail. That's the first option.

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1 Or Mr. Hooper can ask questions using the document as a basis for those
2 questions. What we need to find out is whether the number of questions
3 which you will be able to ask if the document is tendered will be able to
4 be asked in about the 15 minutes we have left. We can also ask the
5 witness to come back tomorrow for a few moments.

6 Mr. Hooper, in your final observations do you have a lot of
7 questions that do not stem from this document, sir?

8 MR. HOOPER: No. Basically, I'd sit down if this document was
9 admitted. So I think if in fact -- I mean, this is a document obviously
10 that the Ngudjolo team would be familiar with because we've had it for
11 quite a number of months. So I shouldn't have thought it would take very
12 long, and perhaps if they can give us an indication this afternoon, we
13 would know then whether or not the witness needs to be re-called
14 tomorrow. The only matter that then is left hanging over is the courtesy
15 bon voyage.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well.

17 Mr. Hooper, we are going to adjourn this hearing in a few
18 moments. It would not be very courteous for us to rush over the
19 good-byes for the witness who was so kind as to come here to provide his
20 testimony before the Bench. I think that we should rather ask him to
21 return here tomorrow morning.

22 Professor Fofé, we understand that your team is not complete
23 today, you are a bit short-handed, and that perhaps you need to contact
24 Mr. Kilenda. If this afternoon or in any event before 6.00 p.m., if you
25 could make your position known to all the relevant parties. If you say

1 that you have no objections to this document being accepted in the
2 proceedings with the last paragraph being removed as Mr. MacDonald
3 suggested and Mr. Hooper agreed, we will be able to meet tomorrow,
4 Mr. Hooper will be able to finish his redirect, and we will thank the
5 witness for taking the time to come and speak to us. These were the two
6 conditions that we agreed upon in our agreement for the 30th of March,
7 and we will then be able to finish up with the witness, excuse him, and
8 continue with witness 146.

9 Professor Fofé, please don't feel that you were put under any
10 pressure to act one way or the other.

11 MR. FOFÉ: (Interpretation) Thank you very much, your Honour.
12 I will indeed inform all the participants and relevant parties of my
13 decision this afternoon before 6.00 p.m. Thank you, your Honour.

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

15 We will now release the witness and we will ask the Court Usher
16 to accompany him out of the courtroom.

17 Mr. Witness, your testimony is practically finished. We will
18 only need you for a very brief period tomorrow morning. We will meet
19 again at 9.00, and that will also provide us with the opportunity to
20 thank you appropriately for coming here and providing us with your
21 testimony.

22 So, Mr. Witness, we will see you tomorrow morning.

23 Mr. Court Usher, if you could please now accompany the witness
24 out of the courtroom. Once the witness has left us then we will just
25 remain here for a few more minutes while the Bench speaks to the parties

1 about speaking time.

2 Madam Court Officer, would you please tell the VWU that victim --
3 or excuse, Witness 146, that we thought that we would be able to hear
4 today will not be heard by the Court today, unfortunately, and would you
5 provide him with our excuses. We will be hearing him tomorrow morning
6 surely close to the end of the morning --

7 (The witness stands down)

8 MR. HOOPER: (Previous translation continues) ...

9 PRESIDING JUDGE COTTE: (Interpretation) In the beginning of the
10 morning.

11 MR. HOOPER: (Previous translation continues) ...

12 PRESIDING JUDGE COTTE: (Interpretation) No, the beginning of
13 the morning.

14 Mr. Prosecutor, because Mr. MacDonald is here, he's not always
15 here, the Bench has observed - and this is not a judgement of
16 values - but we have seen that during your cross-examinations, if I can
17 use this expression, you have already used a great deal of time, which of
18 course is your right. Everything depends on the witnesses who provide us
19 with their testimony. You will remember that your decision -- our order
20 1665 from -- 2775, excuse me, from (* indiscernible) discussed the amount
21 of time which should be allotted to each team, and in paragraph 14 we
22 said that the speaking time for the OTP would be 120 hours. You will
23 have to do your best to understand that Mr. Hooper has decided not to
24 call four witnesses and that Mr. Ngudjolo's Defence team has also decided
25 not to call one witness because that witness passed away and that

1 happened about two weeks ago. In any event -- or maybe that's not when
2 it happened but that's when they learned about it. So I just wanted to
3 draw your attention to that. There might be a minor redistribution of
4 the speaking time, given the fact that some of these witnesses have
5 "disappeared," five of them will not be appearing. So please bear that
6 in mind. And Mr. Prosecutor, if Germain Katanga decides to appear, then
7 we will have to see what kind of time will be necessary for Mr. Kilenda
8 and Professor Fofé, and also what Mr. Hooper suggests if Mr. Katanga
9 decides to testify. I just wanted to draw your attention to that fact,
10 sir.

11 MR. MACDONALD: (Interpretation) With your leave, your Honour, I
12 would like to thank you because this is one of the issues that I wanted
13 to talk about. There is indeed a problem here. There are two problems.
14 First of all, if Mr. Hooper has an interrogation session or a questioning
15 session that lasts 45 minutes or an hour and a half, such as we did with
16 the witness, if he is able to bring out accusatory information and also
17 information concerning the credibility of the witness, I think it would
18 be good for that to stay within the 80 per cent of the time that we are
19 dealing with. And I think that what we saw over the past few days is a
20 very good example of what I'm talking about. The time required was in
21 fact much longer than we thought before we got to the relocation question
22 when we were referring to Pierre's situation. That's the first point
23 that I wanted to make. And when we can, we will try to not use a lot of
24 time during our cross-examination. Thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) Apparently the English

1 transcript is having technical difficulties, which is bad for
2 Mr. Katanga's team. So I would like to ask the French element of that
3 team or perhaps Mr. MacDonald could speak in English.

4 MR. MACDONALD: (Previous translation continues) ... the other
5 parties can benefit from the French translation or transcript. So when
6 we can, your Honour, we do try to be within the 80 per cent allocated
7 time for each witness. I understand there is the global 120 hours, but
8 when we can we try to -- even for each witness to be within this 80
9 per cent. It's not always possible because of the type of witnesses.
10 You may have noted, for instance, that for the third detained witnesses
11 our cross-examination lasted 20 minutes. But when you have a witness or
12 witnesses to come, for instance, D-161 or 160 or D-129, these witnesses
13 testify on a number of Prosecution witnesses. So if Mr. Hooper questions
14 very briefly a witness for 45 minutes, I think it is unfair to the
15 Prosecution from the Chamber to expect that we will be within 80 per cent
16 of that, those 45 minutes, to bring about any -- any elements that are
17 important for your Chamber's decision.

18 Now, that being said, your Honour, we're striving, striving, to
19 be as efficient as we can. And I understand that also Mr. Hooper or
20 certainly Mr. Hooper's Defence team was confronted, I think, with similar
21 problems with their allocated time when they cross-examined Prosecution
22 witnesses.

23 Also, your Honour, I think that with the current pace at which
24 we're going, Mr. Hooper will be finished -- his presentation will be
25 finished pretty soon. And depending on how quickly we can proceed with

1 the witnesses of Mr. Ngudjolo, maybe the foreseen schedule or initially
2 what was foreseen as the end of the Prosecution and Defence's cases will
3 be earlier than expected. So I think in terms of expeditiousness - I
4 think is the key word - expeditiousness, we're doing as quickly as we can
5 all of us. Thank you very much.

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

8 Mr. Hooper, please be very rapid because I have a few things to
9 say before we adjourn for the day.

10 MR. HOOPER: Just that I've noticed with a number, nearly all the
11 Defence witnesses, that when they're cross-examined the Prosecution
12 doesn't take the opportunity that it should to put its case. That's been
13 true of each witness. There's a skirting around some elements of the
14 evidence, but sometimes the heart of the evidence isn't addressed. So,
15 for example, with this current witness it's not been put to this witness,
16 as I understand it, what the Prosecution case is in respect of Pierre,
17 which my understanding is that he was, according to the Prosecution, born
18 on the 30th of August, 1990. And that's not a matter that's been put to
19 the witness. And nor at this stage, despite extensive cross-examination,
20 am I nor the Court in any position to know what the Prosecution position
21 is in respect of key documents that were shown to the witness; that is to
22 say, the "*extra de act de naissance* (* phon)" and perhaps the two other
23 documents that came from Kilo-Moto that were obtained by both the Defence
24 and the Prosecution independently and what their view is towards that --
25 those documents and what it is that they're putting to this witness in

1 respect to those documents. And it's unfortunate that a witness can
2 leave Court and we -- only more particularly, you the Judges of the
3 facts, are not in a position to know what exactly it is the Prosecution
4 are stating in respect of that, what their position is. And I note that
5 because I'm not going to save it all up for the closing brief to make
6 that point, and I've noticed that that's been a tendency with witnesses
7 and that from our viewpoint, the Defence viewpoint, we expect that the
8 Prosecution if they have a case, to put it and use the witness as an
9 opportunity to put it so that we're all clear where the Prosecution stand
10 in respect of particularly core points and facts that are being the
11 subject of the testimony.

12 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you
13 very much, Mr. Hooper.

14 Thank you, Mr. MacDonald, Mr. Prosecutor.

15 With regard to Mr. Hooper's comments, it's a question of method.
16 The Chamber will allow the Office of the Prosecutor to determine whether
17 or not they should take any of Mr. Hooper's comments to heart. With
18 regards to the time -- speaking time allotted, we listened very closely
19 to the Prosecutor and we understood the questions that you -- the
20 constraints that you are faced with during the cross-examination.
21 Mr. Hooper has to understand that he might be using some of
22 Mr. Ngudjolo's speaking time, which might at times -- because the team of
23 Mr. Ngudjolo might benefit from the work that was previously done by
24 Mr. Hooper. So we understood the points that were made about the
25 speaking time, that a 30-minute or questioning session does not

1 necessarily mean that the cross-examination led by Mr. Dutertre will be
2 80 per cent of that. It was longer than that, I don't know if it was too
3 long. It might be have been twice as long, about an hour and a half.
4 What I would like to remind you of here is that for the time being you
5 have a certain time amount, you have certain time-limits. You have to
6 use the time as you see fit. You have to understand how to use this
7 time. You have a certain amount of time, 120 hours, but we might decide
8 to redistribute that time, given the fact that we will not be hearing
9 from five witnesses. And this will all depend on the speaking time which
10 is given to the Ngudjolo team when Mr. Ngudjolo speaks and the time for
11 speaking that will be given to Mr. Germain Katanga if he decides to
12 speak, quite simply.

13 As for the other point that was raised by Mr. Hooper, this is
14 just a simple methodological issue. I think it would be good for all the
15 parties and the participants and the Bench as well that everything that
16 will make it possible for us to be as clear as possible about certain
17 points, points which remain unclarified by the end of testimony, would be
18 welcome. I think that we all need to be as clear as possible about what
19 we're talking about. We will be here tomorrow morning at 9.00 and we
20 will finish off Witness 147 -- 136 and we will hear from 146 tomorrow,
21 and with that, this hearing is adjourned. Thank you.

22 The hearing ends at 1.31 p.m.

23 RECLASSIFICATION REPORT

24 Pursuant to Trial Chamber II's instructions dated 30th of May 2011, the expunged
25 excerpt of the transcript page 50 line 14 to page 54 line 24 (*) is reclassified from

1 private session to open session.

2 RECLASSIFICATION REPORT

3 *Pursuant to Trial Chamber II's email instructions dated 10 July 2012, the

4 excerpt of the transcript page 52 lines 10 to 11 is reclassified as

5 public,as ordered by the Chamber.

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