

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Tuesday, 25 May 2010
10 The hearing starts at 9.15 a.m.
11 (Closed session)
12 (Expunged)
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1 (Expunged)

2 (Open session at 9.17 a.m.)

3 (The accused entered court)

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

5 Mr. President.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

7 Court Officer.

8 The accused persons are with us.

9 Good morning, Witness, can you hear me?

10 THE WITNESS: (Interpretation) Good morning.

11 PRESIDING JUDGE COTTE: (Interpretation) Are you much better?

12 Has your health improved?

13 THE WITNESS: (Interpretation) Yes.

14 PRESIDING JUDGE COTTE: (Interpretation) We are all very happy

15 about that. We are going to continue with our proceedings. You do

16 remember, Witness, that the Prosecutor was about to conclude his direct

17 examination, so he is the one who is going to begin again this morning

18 and then it would be the turn of the Legal Representatives of the Victims

19 to question you.

20 So, Mr. Prosecutor, over to you.

21 WITNESS: WITNESS P-0279 (Resumed)

22 (Witness answered through interpreter)

23 Questioned by Mr. Garcia: (Continued)

24 MR. GARCIA: (Interpretation)

25 Q. (Interpretation) Good morning, Witness.

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

Page 3

1 A. Good morning.

2 Q. Mr. Witness, when we adjourned on Friday, I had raised one issue
3 and you had briefly commented on a celebration that had taken place on
4 Zumbe hill after the attack on Bogoro. Do you remember that?

5 Mr. Witness, the last question that I put to you on that issue
6 was whether there had been speeches made during that ceremony, that is,
7 during the celebrations on Zumbe hill. Can you tell us whether any of
8 the commanders made speeches during those festivities?

9 THE INTERPRETER: The Swahili interpreter cannot hear anything.
10 The witness has just said that he remembers nothing about those
11 celebrations.

12 And the Swahili booth says they cannot see the witness on the
13 screen.

14 PRESIDING JUDGE COTTE: (Interpretation) The Swahili booth
15 cannot see the witness on the screen?

16 THE INTERPRETER: The problem has been resolved, Mr. President.

17 PRESIDING JUDGE COTTE: (Interpretation) That is perfect.

18 Now, Mr. Witness, are you in a position to answer the
19 Prosecutor's question? He had put that question to you at the end of the
20 day last Friday, but you were not feeling very well and you could not
21 answer. But now can you answer the question because ever since we
22 started we have not really heard your voice, apart from the greeting.

23 THE WITNESS: (Interpretation) I could have given you an answer,
24 but I have forgotten.

25 PRESIDING JUDGE COTTE: (Interpretation) Please proceed,

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 Mr. Prosecutor.

2 MR. GARCIA: (Interpretation)

3 Q. Witness, just to assist you, I will refer to transcript 145,
4 page 55, and it starts on line 10. And that is the French version of the
5 transcript, line 12. I asked you the following question:

6 "Did the commanders say anything to the soldiers who were
7 present?"

8 And your answer was:

9 "Yes, they made statements, but I have forgotten what they said."

10 Do you remember having stated that in this courtroom on Friday?

11 A. Yes.

12 Q. Without necessarily going into the nature of the speech, can you
13 tell us how long those celebrations lasted, that is, the celebrations
14 which took place on Zumbe hill after the Bogoro attack?

15 A. If my memory serves me correctly, these celebrations lasted for
16 about eight hours.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, I
18 frequently have had to repeat this to you, so do not forget to speak
19 slowly and directly into the microphone. You are speaking slowly and I
20 thank you for that, but speak loudly also.

21 MR. GARCIA: (Interpretation)

22 Q. We referred to page 55 of transcript number 145, line 2, and the
23 lines following. In answer to my question you said that during the
24 celebration of Zumbe, Chief Ngudjolo was there, Commander Boba Boba was
25 there, other commanders as well as a group of soldiers were equally

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 present. Do you remember telling us that?

2 A. Yes.

3 Q. Still without entering into the substance of the speeches, can
4 you tell us who made those speeches on Zumbe hill during those
5 celebrations?

6 A. On that day of the celebrations there were commanders, but I was
7 not an eye-witness to any speeches that could have been made.

8 MR. HOOPER: I'm sorry to interrupt, I'm just a little puzzled
9 because I notice my friend has been pursuing this matter, both on Friday
10 and again this morning, with the witness about this feast, but we've had
11 no notice of any evidence about a feast held at Zumbe after the battle.
12 So I'm just -- maybe my friend knows something we don't.

13 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, you are
14 subscribing to what Professor Fofe said. Is that correct? He said that
15 at the end of the hearing on Friday morning.

16 MR. FOFE: (Interpretation) Thank you, Mr. President. I did
17 not want to interrupt the proceedings, given that we started a bit late,
18 but if you remember, at the end of the hearing on Friday I addressed the
19 Court on this issue relating to the feast in question. I do not wish to
20 discuss this in the presence of the witness, but the idea was that today,
21 at the beginning of the hearing, the Prosecutor would react to that
22 objection. That is what I thought I understood from your statement at
23 the end of the hearing on Friday.

24 If this issue can be discussed now, then it would be appropriate
25 for the witness to withdraw from the courtroom. Thank you,

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

Page 6

1 Mr. President.

2 (Trial Chamber confers)

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

4 Professor Fofe. We all remember that at the end of the hearing last

5 Friday - and I'm looking at the transcript, page 54, line 10 - in answer

6 to the Prosecutor's question which was this:

7 "What did you do after you returned to Zumbe?"

8 And the witness answered lines 11 to 13:

9 "We were happy, and that was because Bogoro had fallen. We were
10 happy that Bogoro had fallen and we organised a sort of feast there on
11 Zumbe hill."

12 The exchange continued between the Prosecutor and the witness,
13 but that exchange was relatively briefly because the witness was not
14 feeling well. So the hearing was suspended. The witness left us, and
15 Professor Fofe raised the objection that he has just reiterated.

16 We would have thought, Mr. Prosecutor, that you would react to
17 Professor Fofe's objection, but you continued with your questions. And
18 that is what is happening right now. For its part, as for the two
19 previous interventions, that is, that of Mr. Hooper relating to the names
20 of four people who are supposed to have been abducted at the same time as
21 the witness, as well as another intervention relating to medications that
22 the witness mentioned, in light of those interventions, the Chamber feels
23 that the proceedings should be allowed to continue for the purpose of
24 ascertaining the truth. And if during your respective cross-examinations
25 you feel that there is a prejudice, then the Chamber will decide whether

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 you will be given time to continue with your investigations on this
2 issue; and if need be, order that the witness be re-called. And so this
3 is the same thing as the two previous interventions.

4 So that said, Mr. Prosecutor, you can continue and try to
5 determine whether the memory of the witness is forthcoming, that is,
6 regarding the issues that you want to discuss. You can tell us at the
7 same time whether in the prior statements of this witness or in his --
8 the first part of his testimony mention is made of these feasts that were
9 held in Zombe.

10 MR. GARCIA: (Interpretation) Mr. President, regarding these
11 celebrations on Zombe hill after the Bogoro attack, they are not
12 mentioned in the witness's statement. But I would like to point out that
13 when you look at the witness's statement, it is approximately six pages.

14 PRESIDING JUDGE COTTE: (Interpretation) You reminded us of that
15 last week. It was a brief statement and it is a single statement, so it
16 should be important, as the Defence teams have said, that this issue is
17 not mentioned. For the time being, please proceed.

18 MR. GARCIA: (Interpretation) If you would allow me a moment,
19 your Honour.

20 (Prosecution counsel confer)

21 MR. GARCIA: (Interpretation)

22 Q. Witness, you also stated during your testimony last week that
23 following the attack on Bogoro (Expunged)
24 (Expunged). Is that correct?

25 A. Yes.

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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1 Q. Witness, are you able to tell us in terms of time how much time
2 after the Bogoro attack (Expunged)

3 (Expunged)

4 MR. GARCIA: (Interpretation) Your Honour, I'm going to ask you
5 to go into private session, please.

6 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
7 take us into private session so we can have an answer from the witness as
8 to the question that was put to him.

9 (Private session at 9.34 a.m.)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Page 9 expunged. Private Session.

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Page 10 expunged. Private Session.

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Page 15 expunged. Private Session.

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Page 16 expunged. Private Session.

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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11 (Open session at 10.07 a.m.)

12 (The accused withdrew)

13 COURT OFFICER: (Interpretation) We are now in public session,
14 your Honour.

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

17 Just a few words for the people who are in the gallery and who
18 are following us, with the agreement of all of the participants we
19 decided to shorten our hearings somewhat with this witness that we have
20 been working with for some time. We are therefore going to suspend for
21 ten minutes right now until 10.20, and then we will work until 11.00; and
22 then we will move into the second phase of the hearing. In order for the
23 witness to leave this room in a discreet manner, we will move into
24 private session and there we will be a ten-minute break.

25 Court Officer, I was wondering whether we could move into private

Witness: Witness P-0279 (Resumed) (Closed Session)
Procedural Matters

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1 session -- closed session, rather?
2 (Closed session at 10.08 a.m.)
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12 (Open session at 10.09 a.m.)
13 COURT OFFICER: (Interpretation) We are in open session,
14 your Honour.
15 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
16 Court Officer.
17 So the hearing is now suspended, and we will resume at 10.20.
18 Break taken at 10.10 a.m.
19 On resuming at 10.24 a.m.
20 (Closed session at 10.24 a.m.)
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22 (Expunged)
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24 (Expunged)
25 (Expunged)

Witness: Witness P-0279 (Resumed) (Open Session)
Procedural Matters

Page 19

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5 (Open session at 10.25 a.m.)

6 PRESIDING JUDGE COTTE: (Interpretation) The accused have
7 entered. Good.

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

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

12 Welcome back, Mr. Witness. We will be here until 11.00 or
13 shortly thereafter. Since we did have a short break, I was wondering
14 whether you can hear me correctly. Can you hear me well?

15 THE WITNESS: (Interpretation) Yes.

16 PRESIDING JUDGE COTTE: (Interpretation) You can hear me well.
17 Good. Are you well?

18 THE WITNESS: (Interpretation) Yes.

19 PRESIDING JUDGE COTTE: (Interpretation) Very well.

20 Mr. Prosecutor, you can now continue.

21 MR. GARCIA: (Interpretation)

22 (Expunged)

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Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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22 MR. GARCIA: (Interpretation) Then I would like to move into
23 closed session.

24 PRESIDING JUDGE COTTE: (Interpretation) We will now move into
25 private session. Whatever we can do to not prolong that private session

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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- 1 should be done.
- 2 Madam Court Officer, we should now move into private session.
- 3 (Private session at 10.29 a.m.)
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Witness: Witness P-0279 (Resumed) (Private Session)
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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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7 (Open session at 10.36 a.m.)

8 PRESIDING JUDGE COTTE: (Interpretation) Just one second.

9 COURT OFFICER: (Interpretation) We are in open session,
10 your Honour.

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

13 Mr. Prosecutor, you can continue.

14 MR. GARCIA: (Interpretation)

15 Q. Witness, while you were in Ladile camp, were you able to observe
16 whether commanders from outside visited the camp during your stay there?

17 A. The commanders who came from elsewhere --

18 THE INTERPRETER: The Swahili interpreter did not quite
19 understand the end of the witness's answer.

20 PRESIDING JUDGE COTTE: (Interpretation) The end of your answer
21 was not understood by the interpreter. Can you kindly repeat, please, so
22 that we can fully understand what you have just said? Thank you.

23 THE WITNESS: (Interpretation) Mr. Prosecutor, can you repeat
24 your question?

25 MR. GARCIA: (Interpretation)

Witness: Witness P-0279 (Resumed) (Open Session)
Evidentiary Matters

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1 Q. Witness, while you were in Ladile camp, did you see any
2 commanders visiting the camp from outside?

3 MR. HOOPER: Just before that question is answered, I'm on no
4 notice of anything concerning Ladile that this witness was going to
5 testify about. As far as I know, Ladile has not been mentioned in his --
6 any statement that I've been served with. And there are now questions
7 being asked in respect of events at Ladile. And again, I've not been
8 served with any notice about this.

9 Now, what I've heard said several times today and last week by
10 the Prosecution is the statement that this is a short statement from the
11 witness. Now, the statement was taken back in 2007. The Prosecution
12 have had access to this witness at least for the past three years. It's
13 certainly no fault of the Defence and, if anything, a matter of prejudice
14 to the Defence that the Prosecution have chosen not to speak to this
15 witness further. That's not the Defence's fault. It was a choice, I
16 suspect a quite deliberate choice, on the part of the Prosecutor not to
17 go and speak to this witness and turn over further stones.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
19 No one is accusing the Defence of anything, neither are we accusing the
20 Prosecutor.

21 But the Prosecutor, please tell us why are we dwelling on Ladile,
22 whereas Ladile was not mentioned in his only brief statement given to you
23 a few years ago? So can you clarify the Defence on this so that the
24 testimony of the witness can be carried out under the legal -- under the
25 appropriate legal circumstances? Whoever is taking the floor, please, we

Witness: Witness P-0279 (Resumed) (Open Session)
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1 are listening to you.

2 MR. MACDONALD: (Interpretation) I was observing the five
3 seconds, but I would like to ask for a brief period out to consult with
4 my colleagues.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well.

6 MR. FOFE: (Interpretation) I'm sorry, Mr. President, but while
7 the Prosecutors are consulting, I would like to express a concern
8 regarding the presence of the witness during these exchanges.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Fofe.
10 You would have realised that the Prosecutor is generally vigilant when it
11 comes to those things; but if it is necessary for the witness to leave,
12 he is going to tell us.

13 Mr. Prosecutor, should the witness stay in?

14 MR. MACDONALD: (Interpretation) Yes, indeed. If we have to go
15 into greater detail with this discussion, it would be more appropriate
16 for the witness to withdraw from the courtroom so that we can express
17 ourselves freely.

18 PRESIDING JUDGE COTTE: (Interpretation) Very well.

19 Security officers, please escort the accused persons out.

20 (The accused withdrew)

21 PRESIDING JUDGE COTTE: (Interpretation) And, Court Officer, we
22 will go into closed session so that the witness can withdraw and then we
23 will come back to open session after that.

24 (Closed session at 10.43 a.m.)

25 (Expunged)

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7 (Open session at 10.44 a.m.)

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

9 Mr. President.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

11 The Prosecutor, you are going to address the Court, but before
12 that the Chamber would like to recall that the three interventions that
13 were made since the beginning of the testimony of this witness were
14 motivated by spontaneous statements of the witness while describing the
15 abduction of his four friends in (Expunged). He talked about medication and
16 fetiches, as well as the return to Zumbe and a feast. So this was during
17 the hearing and certain statements were made that were unexpected. We
18 will come back to that at the end of the cross-examination.

19 Regarding Mr. Hooper's intervention regarding what happened in
20 Ladile - just a moment, Mr. Kilenda - these are issues that were not
21 expected by the Defence, so they did not expect the witness to be put
22 questions on that.

23 Mr. Kilenda.

24 MR. KILENDA: (Interpretation) I'm sorry to have interrupted
25 you. I simply wanted to point out that our clients are not in the

1 courtroom.

2 PRESIDING JUDGE COTTE: (Interpretation) Yes, that is a good
3 point.

4 Security officers, please escort the accused persons in.

5 We have to bring in the witness and take him out in a very
6 discreet manner, which compels us to sometimes not fully follow or comply
7 with our reflexes as we would have wished.

8 (The accused entered court)

9 PRESIDING JUDGE COTTE: (Interpretation) The accused persons,
10 before you came back into the courtroom, I said a few things in your
11 absence and I am going to summarise them so that you should not lose
12 anything regarding what is happening in this trial, which is your trial.

13 The Prosecutor is going to comment on the fact that issues are
14 raised by the witness regarding Ladile, but the Chamber reminded the
15 Prosecutor that he should distinguish between statements spontaneously
16 made by the witness regarding people who were abducted before him in
17 (Expunged), the use of medications, and a feast which is alleged to have
18 taken place in Zumbe after the Bogoro attack. Those were spontaneous
19 statements made by the witness.

20 And now talking about the duties that the witness carried out in
21 Ladile, were they mentioned before or not? And that is what the
22 Prosecutor is going to enlighten us about. That is what happened during
23 your absence, accused persons. Have you understood me? Very well.

24 MR. MACDONALD: (Interpretation) Mr. President, I'm sorry,
25 because all these questions are linked to the duties carried out by the

1 witness within the group. This can lead to his identification, so I am
2 compelled to request that we go into private session.

3 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, the
4 security of the witness is of crucial importance, so we are going to go
5 into private session.

6 (Private session at 10.48 a.m.)

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7 (Open session at 11.03 a.m.)

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

10 PRESIDING JUDGE COTTE: (Interpretation) Professor.
11 Professor Fofe, please go ahead.

12 MR. FOFÉ: (Interpretation) Thank you very much, your Honour. I
13 just want to be very brief here. Where it concerns the exchanges that
14 we've had in private session, the Defence of Mathieu Ngudjolo is not
15 against the principle of orality. We are aware that with orality you can
16 have surprises in hearings; but what we want to stress is that such
17 surprises, when they cause damage, as it were, do require that the
18 Defence be accorded the necessary time in order to carry out additional
19 investigations relating to the new elements which are mentioned in the
20 court in such a way. And you also mentioned these aspects, the use of
21 fetiches, the feast in Zombe subsequent to the war in Bogoro, Ladile camp
22 in particular. And I would like to notify the Chamber that the Defence
23 of Mathieu Ngudjolo will take the necessary time to cross-examine this
24 witness. The Prosecutor is talking generally -- the Chamber won't be
25 surprised by the cross-examination of this witness, by the length of

1 duration of the cross-examination by Mathieu Ngudjolo's Defence.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
3 Professor Fofe.

4 Prosecutor, briefly, please.

5 MR. MACDONALD: (Interpretation) Just a brief reply. I would
6 like to remind you of your words of the 4th of March, 2010,
7 transcript 112, when the same point, the same arguments, were presented
8 by Counsel Hooper, exactly the same thing. You have already issued a
9 decision and it is this decision which the Chamber has been repeating
10 since the start of the testimony of this witness, that the Chamber would
11 evaluate the need to allow the Defence to have the necessary time to
12 prepare on a case-by-case basis in light of the spontaneity in the search
13 for the truth. Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
15 Court Officer, do we have five minutes?

16 MR. GILISSEN: (Interpretation) With your permission,
17 your Honour, but perhaps after the break.

18 PRESIDING JUDGE COTTE: (No interpretation)

19 MR. GILISSEN: (Interpretation) I just want, in a very short
20 way, to speak about something on this issue, but perhaps after the break.

21 PRESIDING JUDGE COTTE: (Interpretation) The Chamber would have
22 liked to finish this issue now. I would like to ask you for a moment
23 nevertheless.

24 (Trial Chamber confers)

25 PRESIDING JUDGE COTTE: (Interpretation) Very well. We have

1 technical constraints which do not allow us to go further than five
2 minutes. These five minutes are not sufficient for Counsel Gilissen's
3 intervention and for the observations that the Chamber wishes to make in
4 response to the Prosecutor and to the two Defence teams.

5 We are therefore going to break. It is 11.10. We will be back
6 at 11.40 without the witness to finish this discussion, firstly listen to
7 Counsel Gilissen. The Chamber will express its point of view, and then
8 we will try to continue with our work.

9 MR. LUVENGIKA: (Interpretation) Your Honour.

10 PRESIDING JUDGE COTTE: (Interpretation) Please, would you like
11 to say something?

12 MR. LUVENGIKA: (Interpretation) It's just a courtesy issue.

13 PRESIDING JUDGE COTTE: (Interpretation) I'm coming to that. I
14 was going to get to that. Thank you, Counsel Luvengika, for reminding me
15 of that. I had envisioned doing it at the end but I had forgotten it
16 with us. We have on my left, discretely sitting at the back of the
17 courtroom, Counsel Flora Mbuyu who works with the Defence team of
18 Counsel Luvengika and who works in the Democratic Republic of Congo. We
19 didn't greet you at the beginning of the hearing, but we would like to
20 welcome you here and we are very pleased to have you with us.

21 Security officers, you can escort out the two accused -- I'm
22 sorry? Yes, we are going to be able to have our break and we will be
23 back at 11.40. We are now going for the break.

24 Recess taken at 11.10 a.m.

25 On resuming at 11.43 a.m.

1 (Open session at 11.43 a.m.)

2 COURT USHER: All rise.

3 PRESIDING JUDGE COTTE: (Interpretation) Our hearing is now

4 recommencing. Please be seated.

5 The accused are present.

6 Counsel Gilissen, you wished to take the floor. We are listening

7 to you.

8 MR. GILISSEN: (Interpretation) Thank you very much,

9 your Honour, the Bench. I won't take much of your time. I think it's

10 premature at the moment for the Defence to complain about what is

11 currently happening. This is our first argument. The second given that

12 repetition and insistence is never a legal argument. Having said

13 that - I don't want to be long - it is clear that it's the whole

14 usefulness and the need of the hearing that it's public or not that it is

15 in question fundamentally. And here I will not be lengthy in this

16 regard. It goes to the very heart of the orality of

17 proceedings - Professor Fofe said this - and it's related to the

18 examination and cross-examination that these are tools for -- to find --

19 research and the administration of elements retained by your Chamber as

20 having sufficient probative value. So nobody is authorised as such to be

21 astonished by the appearance in hearings of new information or evidence

22 or the disappearance of elements with regards to previous statements that

23 the witness might have made. And it is therefore not unique or in one

24 direction. I do not see how the party can complain because it's not

25 obtaining information from this witness that it has in its dossier. And

1 this is how things are weighed up.

2 And this -- if I have allowed myself to take the floor, it's
3 because it does seem to me that there is a fundamental aspect and this is
4 that of the fairness of the proceedings. You have the search for the
5 truth and here I'm prepared to write a memoir in this regard. You have
6 the European Court, and I -- made an issuance in this regard, you know
7 what I am referring to here. It is clear that the refusal to ask a
8 question to a witness can constitute a breach of the fairness if we
9 consider that this question could influence in a significant way the
10 evaluation that one would make of all the proceedings.

11 It is therefore - and this is something that's true for all
12 parties, and here I will be corrected if -- but I think it refers to all
13 parties but also participants and I would go so far as to say also with
14 regards to the witnesses themselves. A fairness is an overall process.
15 I don't think I should have to insist on that. I think you will see very
16 well what I am referring to. The evaluation of fairness is an overall
17 process, and as such this is something that I'm saying firmly. This is
18 my position. I can be told if I'm right or if I am wrong that it is
19 wrongly that the Defence is complaining, as it is doing currently. What
20 is the reason?

21 The Defence is right, for example, and legitimately within its
22 rights, to point out, which is something that it has done, to point out
23 that there are new items of information which might cause problems. If
24 the procedural treatment accorded to these new evidentiary items should
25 be problematic, then it is not the upcoming of new information that

1 causes damage to the Defence or anyone else. The new information is part
2 of the necessary search for the truth via our means of procedure in the
3 hearing.

4 And I am aware, your Honour, of -- that I'm repeating things.
5 But if they have to be repeated, let's do so in a legal way. I'm not
6 saying once for all, but at least once properly. The Defence, it would
7 seem, would not have an interest in the legal sense of the term in
8 stating that there is a damage apart from with regards to the legal and
9 procedural treatment that the Defence is accorded or not with regard to
10 these -- this new information. It is too early.

11 That's what I wanted to say, but I think that's the essential
12 point in this regard. And whether I'm allowed to say this -- I wouldn't
13 say that we've lost time on this. I'm very pleased, quite the contrary,
14 that we can go right into the very heart of the matter, and I think that
15 however that might be formulated I've made a humble attempt to do so. I
16 am not a magistrate myself. I am just on the other side, but I do think
17 that if the problem is well understood and well expressed, then we, in
18 the future, can avoid having to go back to this issue. And with that, I
19 would like to thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you for your
21 contribution, Counsel Gilissen.

22 No remarks from the Defence? No. Okay.

23 You are quite right, Counsel Gilissen. A legal discussion is
24 never a waste of time when it means that we can improve the conditions of
25 the legal debate. Having heard you all, the Bench firstly would like to

1 remind you, as you know, it has stated this on several occasions, that it
2 only has one objective, a difficult objective admittedly, which is to
3 chief the manifestation of the truth, and it can achieve this by ensuring
4 that our substantive debates do take place in a fair way. You have
5 reminded us of that, Counsel Gilissen, and with due diligence.

6 This Chamber -- it is Professor Fofe who reminded us of this,
7 which shows the extent to which contributions are coming together, this
8 Bench is very much firm with regards to the orality of proceedings. We
9 want these to be -- these proceedings to be public. The legal tradition
10 of the Bench is one which is very much integrating the orality of
11 proceedings, and that is a fundamental part.

12 Now, the three spontaneous interventions have taken place since
13 we have been listening to 279. Now we have said on several occasions
14 something that we are now going to repeat. A first spontaneous
15 intervention was linked to information with regards to the prior capture
16 of four young people who were friends of our witness. There was
17 information with regards to the administration of medicine before the
18 fighting. The word "medicine" or "medication" has a very particular
19 meaning here. Now, there was also spontaneous information with regards
20 to celebrations or a feast or a ceremony once they went back to Zumbe
21 after the attack on Bogoro, and this spontaneity is particularly
22 significant.

23 We will see at the end of the two cross-examinations if the
24 comments which were stated were really new. And in this regard, the
25 Chamber would like the Prosecutor's team to provide us with the precise

1 references of documentation in which there is a reference to the capture
2 of four other boys and their names. I think, Prosecutor, if you would
3 allow me to remind you of that, it would be useful. Also, which is
4 everything that refers to medicine and also to the festivities which will
5 enable us to find documentary references to it by 9.00 in the morning.

6 Now, at the end of the cross-examination we will see if all this
7 is new, and we will also see if the Defence maintains that there was a
8 harm which it has suffered. We will see if it's a possibility to ascribe
9 time in which to investigate, and if at the end of this time-limit, if
10 there is a possibility for the Defence to have a reminder.

11 (Expunged)

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24 (Expunged) But please ensure, and I think
25 you will have understood this, that you do not go beyond, once again,

1 what we have considered as a legitimate right of follow-up but which
2 should be strictly focused and channelled.

3 Prosecutor, please continue -- no, we will have -- first of all
4 we shall go into closed session in order to have Witness 279 enter the
5 courtroom.

6 (The accused withdrew)

7 MR. MACDONALD: (Interpretation) Just before -- please excuse
8 me, President. Please would you give us 30 seconds to consult and
9 address the Chamber with regards to the decision that you have just
10 issued?

11 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead.

12 (Prosecution counsel confer)

13 MR. MACDONALD: (Interpretation) Your Honour, I would first of
14 all like to thank you for giving us that time. The Chamber has just
15 ruled -- has just made a ruling that obviously will affect the approach
16 that we will take with regard to the spontaneity and the extent to which
17 the witness can go so that this Chamber could be enlightened about
18 certain facts regarding the events that may have occurred on the hill in
19 Zumbe (as interpreted) --

20 PRESIDING JUDGE COTTE: (Interpretation) I'm sorry to interrupt
21 you, but you are talking about nuances with regard to the Chamber's
22 position. But the Chamber has not changed its position one iota with
23 regard to the position it has adopted thus far with regard to spontaneous
24 statements made by a witness. It considers that some spontaneous
25 statements justify that a certain number of additional questions be asked

1 in order to go to the heart of the matter if that allows us to get closer
2 to the truth. That is exactly what has happened with regard to the three
3 first statements and the testimony provided by this witness, 279. With
4 regard to the episode at Ladile, the Chamber insists that we are here
5 faced with a somewhat different situation which justifies a very
6 well-channelled or focused legitimate right of follow-up, a legitimate
7 right of follow-up that does not allow us to go beyond certain areas.
8 But we are not changing the position of this Chamber. I want to be very
9 clear. I'm sorry to have to insist on this, but this goes back to a
10 decision made on the 24th March and as well as on the 4th of March.

11 So I'm sorry to have interrupted you and then you will be able to
12 continue, Prosecutor.

13 MR. MACDONALD: (Interpretation) Five seconds, your Honour,
14 please.

15 (Prosecution counsel confer)

16 MR. MACDONALD: (Interpretation) Your Honour, I'm sorry, perhaps
17 I didn't explain myself properly. The Chamber certainly did make some
18 clarification regarding the particular case in which we find ourselves.
19 The Prosecution understands that we can ask questions about the duties
20 that the witness had at a certain time. The Prosecution plans to
21 rephrase its questions in light of the answers provided by the witness
22 thus far.

23 (Expunged)

24 (Expunged)

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4 We think that is a very legitimate and important question because
5 the Prosecution has the burden of proof in that the Chamber must evaluate
6 the authority and the means of communication and exchange of information
7 that occurred, either between the commanders themselves or between the
8 camps that were on the hill of Zumbe or in the region of Bedu-Ezekere,
9 and despite the fact that this is a new topic for the witness that he
10 raised himself, there are nonetheless important questions that this camp
11 raises.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
13 Mr. Prosecutor. If we could have a moment, please.

14 (Trial Chamber confers)

15 PRESIDING JUDGE COTTE: (Interpretation) Well, Mr. Prosecutor,
16 we can decline - and I am looking at Counsel Gilissen - we can decline
17 the fair nature of this trial in many ways, but with regard to the
18 question you want to ask, it seems that you have not clearly understood
19 what we said earlier.

20 The oral nature of these proceedings is important. Spontaneity
21 is also important. Searching for the truth from spontaneous statements
22 is also important. But once again, once they went to Ladile, it was a
23 young man who went there - and we are in public session so I'm not going
24 to say anything - it's a person who lived in Zumbe who left and went to
25 Ladile. (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged) But Ladile was not brought to the attention of
4 the Defence as being -- as a sector that could be subject to questions by
5 the Prosecution, and so, it is best to restrict your questions to what
6 the Chamber asked you earlier.

7 And so, if you are going to ask questions that are consistent
8 with (Expunged) who lived in a house
9 that was beside the residence of someone who was close to that person, or
10 if you were to ask a question such as: Were there any commanders who
11 went into that house? - that is obviously going beyond the scope of the
12 questions that were asked earlier. A legitimate right of follow-up, yes,
13 but going beyond that is not acceptable. And so you will not be able to
14 pursue with those questions. You will ask other questions once the
15 witness is escorted into the room.

16 We will now have the accused persons escorted out of the room so
17 that we can go into closed session and usher in the witness.

18 (The accused withdrew)

19 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, we
20 will move into closed session in order to usher in the witness.

21 (Closed session at 12.08 p.m.)

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Witness: Witness P-0279 (Resumed) (Closed Session)
Evidentiary Matters

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6 (Open session at 12.10 p.m.)

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

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
10 Madam Court Officer.

11 Hello, Witness, welcome back. Can you hear me, Witness? Are you
12 well?

13 THE WITNESS: (Interpretation) Yes.

14 PRESIDING JUDGE COTTE: (Interpretation) All right. Thank you.
15 So you will be able to continue answering the questions asked by
16 Mr. Prosecutor.

17 Mr. Prosecutor, you have the floor.

18 MR. GARCIA: (Interpretation)

19 Q. Mr. Witness, during your testimony you told us about the Zumbe
20 camp, you also mentioned the Lagura camp, and recently you talked about
21 the Ladile camp. Who was the military grand chief of those three camps?

22 A. No, for all three camps it was him who was responsible, it was
23 Chief Ngudjolo.

24 (Prosecution counsel confer)

25 MR. GARCIA: (Interpretation) Your Honour, very briefly now we

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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1 will have to move into closed session in light of the upcoming questions.

2 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, we
3 will now move into private session.

4 (Private session at 12.12 p.m.)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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21 (Open session at 12.24 p.m.)

22 COURT OFFICER: (Interpretation) We are now in open session,
23 your Honour.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Madam Court Officer.

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 Mr. Prosecutor, you can therefore continue.

2 MR. GARCIA: (Interpretation)

3 Q. Witness, we are going to change topics. In your testimony you
4 said that you were involved in the attack on Bogoro. After the attack on
5 Bogoro, were you involved in any other attacks or any other wars?

6 A. No.

7 Q. Well, Witness, I'm going to ask you a few questions in order to
8 get some specifics regarding the -- some of the topics that you broached
9 during your testimony. During your testimony - and I am referring to the
10 French transcript number 144, on page 50, line 22 - when talking about
11 the attack and how it unfolded, you said:

12 "And at the time that the soldiers continued, the enemies and the
13 militia from the UPC, some of them were killed and others fled."

14 When you were referring to "the enemies," who were you referring
15 to?

16 A. At that time the enemies were the members of the UPC.

17 Q. You also said that no Hemas were part of the troops. Are you
18 able to tell us why that was the case?

19 A. What group are you referring to?

20 Q. I am referring to the FNI military group.

21 A. No, there weren't any Hemas.

22 Q. Why not?

23 A. Well, they weren't in that group because the FNI group and the
24 UPC group -- well, the UPC group was the Hema group. We didn't have any
25 contact with them. It was a big conflict.

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 Q. And you said that there were some military parades when you were
2 in the Zombe camp. Were there any Hemas during those military parades?
3 Was there any discussion about the Hemas during those parades?

4 A. Well, the way I saw things -- well, what I saw was that during
5 the parades people talked about the Hemas, and so that is what I saw with
6 regard to the Hemas.

7 (Prosecution counsel confer)

8 MR. GARCIA: (Interpretation)

9 Q. And, Witness, what was said about the Hemas?

10 A. (No interpretation)

11 THE INTERPRETER: The witness did not finish his sentence.

12 THE WITNESS: (Interpretation) I do not have any answer to give
13 to that question.

14 (Prosecution counsel confer)

15 MR. GARCIA: (Interpretation)

16 Q. Still on this issue of military parades, were you taught any
17 songs?

18 A. Yes, there were military songs.

19 Q. And what were these military songs all about?

20 A. We sang those military songs during parades or even before the
21 parades. After the songs we could then go on to the parades, and after
22 the parades it was possible to continue singing military songs.

23 Q. And the parades that you have referred to, did they take place
24 after, or rather, before the wars or the attacks, or was it after?

25 A. Before.

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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1 Q. And what were the lyrics, what were the words, of the songs?

2 A. I have forgotten.

3 Q. Do you want some time to think about it?

4 A. No.

5 (Prosecution counsel confer)

6 MR. GARCIA: (Interpretation) Mr. President, can we go into
7 closed session very briefly?

8 PRESIDING JUDGE COTTE: (Interpretation) Of course.

9 Court Officer, we will go into private session for a brief
10 moment.

11 (Private session at 12.34 p.m.)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 (Open session at 12.41 p.m.)

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

3 Mr. President.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

5 Court Officer.

6 Please proceed, Mr. Prosecutor, after that intervention by

7 Mr. Hooper.

8 MR. GARCIA: (Interpretation) Briefly, Mr. President, the

9 Prosecution is conducting its direct examination and our role in direct

10 examination is not only to bring out any information that is relevant,

11 but to ask any other questions that might bring out relevant information.

12 Mr. President, you have realised that the witness has difficulty

13 answering questions on certain topics, but the question to know what this

14 witness feels potentially regarding the words of songs is very relevant.

15 Now, regarding the credibility of the witness, when his

16 credibility is to be assessed we have to take into account that there is

17 a certain reticence on his part to talk about certain issues,

18 particularly the -- regarding the songs and what he feels in relation to

19 those themes of the songs is very relevant to his general credibility.

20 PRESIDING JUDGE COTTE: (Interpretation) We perfectly understand

21 you, Mr. Prosecutor. The Bench has reminded the witness that to the

22 extent that he remembers, he has to tell us what the words of those songs

23 were; but if he does not remember, he has to simply tell us that he does

24 not remember.

25 Mr. Witness, please look at me. Mr. Witness, I'm the one that

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 you have to look at. At this particular point the Chamber would simply
2 want to remind you that you undertook to speak the truth, the whole
3 truth, and nothing but the truth. So if you remember the words of those
4 songs that were sung before the battles, then you have to tell us; but if
5 you do not remember, tell us that you do not remember. But do not
6 forget - and I'm reminding you quite simply - do not forget that you have
7 to tell the truth. You will have a brief moment to think about it, and
8 if you don't remember, confirm that to us. But please do not forget your
9 solemn undertaking.

10 Mr. Prosecutor, you can ask that question one last time, because
11 you have already asked it several times, and we understand that you are
12 trying to have us better understand what happens in the days leading up
13 to the Bogoro battle and on the eve of that battle specifically. So you
14 can ask that question on the words of the songs and what the witness can
15 remember about it.

16 MR. GARCIA: (Interpretation)

17 Q. Mr. Witness, once again, are you ashamed of the words of those
18 songs and also with regard to the themes or subject matter of the songs?

19 A. I no longer remember the words of those songs.

20 Q. Let us move into another line of questioning, Mr. Witness. You
21 testified that you were (Expunged)
22 (Expunged)

23 PRESIDING JUDGE COTTE: (Interpretation) For the record, we are
24 in open session and this exercise is becoming increasingly difficult.

25 MR. GARCIA: (Interpretation) Yes, indeed, Mr. President. We

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1 should go into closed session very briefly before going back into open
2 session.

3 PRESIDING JUDGE COTTE: (Interpretation) Please reflect on it
4 because it is also our job, but it is delicate to interrupt the parties.
5 It is not easy to discipline yourself, but your collaborators could
6 indicate to you when it is necessary to change.

7 Court Officer, let us go into closed session.

8 (Private session at 12.47 p.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 Q. (Expunged)

16 (Expunged). *Are you able to tell us whether Mathieu Ngudjolo
17 also had bodyguards?

18 A. That is a good question. Why would he not have had bodyguards,
19 whereas he was a chief, a leader?

20 Q. If I understand your answer correctly, Witness, Mathieu Ngudjolo
21 had bodyguards; is that correct?

22 A. Yes.

23 Q. Can you tell us how many bodyguards he had?

24 A. I no longer remember.

25 Q. Can you tell us their names, that is, the names of those

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1 *bodyguards?

2 A. I no longer remember.

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Open session at 12.51 p.m.)

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

24 Mr. President.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

Witness: Witness P-0279 (Resumed) (Closed Session)
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1 Court Officer.

2 We will suspend and resume at 1.02 or 1.03. At least we should
3 all be here before 1.05, so as to have 25 minutes of proceedings.

4 Before we break, Mr. Witness, the Chamber would like to ask you
5 to make a greater effort to remember. Seven years after the events, you
6 are not compelled to remember everything, but the effort that you have
7 already made to come here requires that you make further efforts to
8 testify. If you remember something, well and good; but if you do not,
9 then you simply do not remember. But coming or appearing in a court
10 requires you to make an effort to remember everything that you might
11 know, whether it is in favour of or against the positions of any one of
12 the parties.

13 Security officers, please escort out Mr. Ngudjolo and
14 Mr. Katanga.

15 (The accused withdrew)

16 PRESIDING JUDGE COTTE: (Interpretation) And then we will go
17 into closed session to allow the witness to withdraw from the courtroom.

18 Court Officer, let us go into closed session.

19 (Closed session at 12.53 p.m.)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Open session at 12.54 p.m.)

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

5 Mr. President.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

7 Court Officer.

8 We will resume at 1305. The Prosecutor, you have talked about
9 25 minutes, but if you do not finish you can continue tomorrow morning.
10 There is no need to rush things if we want to have answers, so take your
11 time.

12 MR. GARCIA: (Interpretation) I would simply like to point out
13 now that we are talking about this, that I seem to have the impression
14 that the witness was tired.

15 PRESIDING JUDGE COTTE: (Interpretation) We should not venture
16 into the psychological situation of the witness. Maybe he's tired, maybe
17 he's in the same situation as before. We will see what happens.

18 The hearing is suspended.

19 Break taken at 12.55 p.m.

20 On resuming at 1.05 p.m.

21 (Closed session at 1.05 p.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Open session at 1.06 p.m.)

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

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

11 Witness, can you hear me well? Do the headphones work well?

12 THE WITNESS: (Interpretation) Yes.

13 PRESIDING JUDGE COTTE: (Interpretation) We can therefore
14 continue with our work.

15 Prosecutor, you have approximately 20 minutes. You now have
16 leave to address the Court.

17 MR. GARCIA: (Interpretation)

18 Q. Witness, a last question concerning bodyguard of
19 Mathieu Ngudjolo. Are you able to tell us how old the youngest bodyguard
20 was?

21 A. Among his bodyguard, I would say there were adults. I don't
22 remember what their age was. I therefore couldn't give you an answer.

23 Q. Witness, during your testimony you spoke to us of an incident
24 concerning hostages - you used the word "mateka" - who were killed in
25 Bogoro. And on this subject you stated that you were with some of your

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Garcia (Continued)

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1 friends next to the centre of Bogoro when they left with these hostages.

2 And here I'm referring to transcript 145, page 43, line 20.

3 So, Witness, with a view to situating us as to when that
4 arrived -- occurred, you spoke to us or you told us that at a certain
5 given time Mathieu Ngudjolo and Germain Katanga met in a classroom. The
6 incident concerning the hostages, did that happen before this meeting or
7 did it happen afterwards?

8 A. It was after their meeting.

9 (Prosecution counsel confer)

10 MR. GARCIA: (Interpretation)

11 Q. Are you able to tell us how much time after the meeting
12 approximately?

13 A. Please could you ask your question again.

14 Q. Are you able to tell us how much time after this meeting the
15 incident concerning the hostages took place?

16 A. I don't have an answer to this question. I have forgotten. I no
17 longer remember.

18 Q. And where was Mathieu Ngudjolo when the incident concerning the
19 hostages took place?

20 A. *It was while they were in a classroom that some soldiers took
21 away those hostages. They were not aware.

22 THE INTERPRETER: The witness did not finish his sentence.

23 PRESIDING JUDGE COTTE: (Interpretation) The interpreters have
24 stated that you didn't finish your sentence. I don't know if it wasn't
25 finished or if they haven't been able to understand the end of your

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Questioned by Mr. Garcia (Continued)

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1 sentence. If it should be added to, could you add to it. I just want to
2 restate what you said, it's in the French transcript, 77, 2.

3 "They -- or he was in a classroom. It was at that time that the
4 soldiers who took the hostages ..."

5 I don't know if you added anything to that. If you added
6 anything, it has to be repeated, please.

7 THE WITNESS: (Interpretation) They took hostages and then they
8 took them into the bush. In my opinion, I said these hostages, they're
9 going to be executed.

10 MR. GARCIA: (Interpretation)

11 Q. Why did you tell yourself that these hostages were going to be
12 killed?

13 A. I'm sorry?

14 Q. You told us, Witness, that when you saw that they had taken these
15 hostages you told yourself or you -- that you knew that they were going
16 to be killed. Why did you tell yourself that? Why did you think that
17 they were going to be killed?

18 A. This is the reflection that I had at the time. There was a
19 dispute between the Hema and the group which we belonged to. This is why
20 all Hema were considered enemy. That's why I told myself that among
21 these hostages who were taken into the bush, they're certainly going to
22 be executed.

23 Q. To your knowledge, these hostages who were killed, were they
24 buried afterwards?

25 A. No, I don't think so.

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Questioned by Mr. Garcia (Continued)

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1 (Prosecution counsel confer)

2 MR. HOOPER: I'm sorry to interrupt my friend, it's just that in
3 Swahili I understand what was said was that the -- by this witness was
4 that he said that Germain Katanga and Mathieu Ngudjolo did not know about
5 the taking of the hostages. So I don't know if that can be checked on
6 the transcript, which I think would be the preferable position and -- for
7 tomorrow.

8 PRESIDING JUDGE COTTE: (Interpretation) We can of course check
9 the transcript.

10 Are you certain, Counsel Hooper, by memory?

11 MR. GARCIA: (Interpretation) If you would allow me. Before he
12 makes his statement again, I would just like to remind Counsel Hooper and
13 the Chamber that the witness is still here, that he hears the words that
14 are stated by all participants. So it's not the first time we make this
15 type of comment. If there is an issue of transcription, this is
16 something that he can do -- make without making statements of this kind.

17 PRESIDING JUDGE COTTE: (Interpretation) Please continue,
18 Prosecutor.

19 MR. GARCIA: (Interpretation)

20 Q. Witness, you spoke to us about this attack on Bogoro. What did
21 you do during the attack on Bogoro?

22 A. You want to know what I did during this battle?

23 Q. Yes, Witness.

24 A. During the battle it was a matter of killing the enemy, killing
25 each other. That's the essential part.

Witness: Witness P-0279 (Resumed) (Open Session)
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1 Q. Witness, also during your testimony you stated to us that
2 civilians killed (as interpreted) during the attack on Bogoro?

3 A. Yes.

4 Q. To your knowledge, were FNI soldiers punished for that?

5 A. Punished? Who should have been punished?

6 Q. Can you explain what you mean by that: Punish, who should have
7 received punishment?

8 A. You asked me a question. That is why I asked you to ask your
9 question once again.

10 Q. Witness, you told us that civilians were killed during the attack
11 on Bogoro. Were FNI soldiers punished for these acts?

12 A. No.

13 (Prosecution counsel confer)

14 MR. GARCIA: (Interpretation)

15 Q. We're going to change subjects, Witness. You mentioned to us
16 during your testimony that (Expunged)
17 (Expunged) is that correct?

18 MR. GARCIA: (Interpretation) I'm sorry, your Honour, but we are
19 in open session and I would ask you to go -- to take us into private
20 session.

21 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
22 take us into private session.

23 (Private session at 1.22 p.m.)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Garcia (Continued)

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1 (Expunged)
2 (Expunged)
3 (Expunged)
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6 (Expunged)
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10 (Expunged)
11 (Expunged)
12 (Expunged)
13 (Expunged)
14 (Expunged)
15 (Expunged)

16 (Open session at 1.24 p.m.)

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

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

20 Prosecutor.

21 (Prosecution counsel confer)

22 MR. GARCIA: (Interpretation) Your Honour, I just have one
23 subject to take up with the witness, and given the time, I would suggest
24 that we put that back to tomorrow morning.

25 PRESIDING JUDGE COTTE: (Interpretation) Understood.

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1 Witness, we are therefore going to go our separate ways at the
2 end of this morning. The Bench would like you to rest well this
3 afternoon in order to come back tomorrow in full possession of your
4 means.

5 Security officers, please escort out the accused. We will be
6 back tomorrow morning at 9.00 a.m.

7 (The accused withdrew)

8 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we shall
9 now go into closed session, such that the witness can be escorted out.

10 Usher, I would ask you to escort out the witness.

11 Good-bye, Witness, till tomorrow.

12 THE WITNESS: (Interpretation) Thank you.

13 (Closed session at 1.26 p.m.)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 1.26 p.m.)

22 COURT OFFICER: (Interpretation) We are in open session,
23 your Honour.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Court Officer.

1 Prosecutor, we are without the accused.

2 MR. MACDONALD: (Interpretation) Very briefly. I understand the
3 accused are not with us. Tomorrow morning before the witness comes back
4 into the courtroom, the Prosecution would like to talk to the Chamber and
5 the parties with regard to the last subject, which is the identification
6 of the two accused. So there are preliminary questions which have to be
7 put, but then we also have to have discussions with the Bench with
8 regards to how the accused can be identified. Given that the witness has
9 decided to be protected by a curtain, what we would like to do is to
10 state tomorrow that we would like to address this issue.

11 PRESIDING JUDGE COTTE: (Interpretation) The Bench would like to
12 go back for a very short moment to the intervention of Counsel Hooper.

13 In the French version of the transcript on page 78, line 6: I'm
14 sorry for interrupting my contradictor, if I have understood in Swahili
15 what was said by the witness and yesterday by Germain Katanga and
16 Mathieu Ngudjolo is that they were not aware of the hostage taking. I
17 don't know if we can check the transcript. This would be preferable for
18 tomorrow.

19 Prosecutor, the Prosecutor (as interpreted) intervened on that
20 occasion by memory. The President of this Chamber at that moment, I
21 didn't have in the French translation -- I didn't remember that our
22 witness had stated that. It is therefore important to check because if
23 it was stated in Swahili, perhaps it wasn't possible to ensure a full
24 interpretation thereof.

25 Court Officer, could you check what is in the provisional version

1 of the French transcript on page 76, 77, and 78, in order to see if the
2 witness did indeed state that and -- or if it is quite simply an
3 interpretation problem which was not possible to assure at that
4 particular time.

5 The Court is therefore adjourned. We will be back tomorrow.

6 The hearing ends at 1.29 p.m.

7 CORRECTION REPORT

8 *Page 63 line 20 to 21 "It was in a classroom -- or they were in a
9 classroom, rather. It was at that time that the soldiers who had taken
10 the hostages --" is corrected by : "It was while they were in a classroom
11 that some soldiers took away those hostages. They were not aware."

12 RECLASSIFICATION REPORT

13 *Pursuant to Trial Chamber II's email instructions dated 10 July 2012,
14 the excerpts of the transcript Page 58 lines 16 to 25 and Page 59 line 1
15 to 2 are reclassified as public, as ordered by the Chamber.

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