

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 Monday, 28 June 2010
10 The hearing starts at 2.05 p.m.
11 (Closed session)
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11 (Open session at 2.08 p.m.)

12 (The accused entered court)

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

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

17 The accused are with us.

18 Before addressing the issue which we are discussing outside the
19 presence of the witness, the Chamber would just like to indicate firstly
20 that Counsel Gilissen is absent today, but Madam Goffin representing him,
21 therefore -- substituting him.

22 Secondly, to reply to a question raised by Counsel MacDonald on
23 Friday, the Chamber thinks that it's appropriate to ask the unit to have
24 Witness 30 come. We still don't know very well the way in which hearings
25 will come in the coming days, but in theory before us we have 13

1 hearings, five on the 9th to the 13th of July and another five the week
2 after, having said that on the 9th in the morning Dr. Baccard will be
3 with us. Witness 30 should therefore in principle be able to testify
4 here. If it would appear that the testimony is interrupted, it will then
5 continue after the 23rd of August.

6 So where it concerns the birth certificates which the Defence
7 team of Germain Katanga proposes producing in a moment, Prosecutor, you
8 would like to express your possible objections bearing in mind that the
9 15th of June you didn't have any, but taking into account what we took
10 from the hearing on Wednesday, at the end of that hearing you might have
11 changed your point of view.

12 You have the floor as far as possible, briefly. If you can be
13 brief. We are listening to you.

14 MR. MACDONALD: (Interpretation) Thank you, Your Honour. It's
15 not necessarily an objection to the document being used by the Defence as
16 such, but it is the way in which it is used, and this is why: You have
17 an additional element. The witness was cross-examined on Friday in the
18 last session -- no, Wednesday it was, in fact. And he mentioned that he
19 didn't recognise having as a name or a first name Mateso, firstly.

20 Secondly, your Honour, also in light of the fact that the Defence
21 is bringing such documents in the -- in the time-frame envisaged by your
22 decision but what does not make it possible for the Prosecutor to carry
23 out immediate verification with regards to the authenticity thereof for
24 logistical reasons and availability reasons as well. Here I'm talking
25 about Decision 1665. It's also in light of the impact of the use of

1 certain documents, the impact that they can have on the witnesses
2 themselves.

3 With regards to the authenticity thereof, the Prosecution does
4 carry out investigations post facto, and it also checks the way in which
5 certain documents have been obtained or could have been obtained by the
6 Defence. And here I'm also referring to a very specific event when the
7 Defence wanted to use the ID card of the sister of the Witness 279. It
8 was a photograph of the sister. It was an issue of asking, "And why do
9 you think that your sister is indicating the date of 1988," while the
10 witness is not able to respond to -- answer that question when he thinks
11 that (Expunged), and at that time his sister was
12 younger than him. And there was an attestation or the authenticity with
13 regards to this ID card which was filed, and our investigations give rise
14 to believe when it comes to this example that this attestation was
15 obtained in conditions which challenge its content and it was not in the
16 possession of the school, but it was created on the request of the
17 Defence investigator for the needs --

18 MR. HOOPER: I most strongly object to the way in which the
19 Prosecution are approaching the particular issue. They've now decided to
20 ride a second horse, a horse which shouldn't be introduced in this way,
21 because if there are any objections to the authenticity of the document,
22 which has nothing to do with the present application that relates to the
23 previous witness, then that is a matter for evidence to be duly tendered
24 by the Prosecution if they wish to do it.

25 In respect of --

1 MR. MACDONALD: Can I finish, Mr. Hooper, then you can object,
2 because you've been interrupting me --

3 PRESIDING JUDGE COTTE: (Interpretation) If you would, please,
4 do not speak at the same time, please.

5 So, Counsel Hooper, you finish.

6 Mr. MacDonald, wait five seconds and then answer, but not at the
7 same time.

8 MR. HOOPER: So I object to this mixing of issues. The issue
9 before the Court is whether the Defence can produce the birth certificate
10 to this witness. That is the issue. Now, is there an objection to that
11 or not?

12 PRESIDING JUDGE COTTE: (Interpretation) So, Prosecutor, you
13 have the floor again. Please try to focus on what is the subject of
14 today's hearing. You have the concern of making a comparison with what
15 might have happened before. You will note what the reaction was. Please
16 focus on our proceedings today. We have understood that there were three
17 points which you wished to address before us, the fact that the witness
18 did not recognise the name Mateso, the fact that the Prosecution has
19 little time to carry out verifications, and the impact that the
20 presentation of such documents could have on the witness himself. So
21 please continue from where you were at that point. We are listening to
22 you.

23 MR. MACDONALD: (Interpretation) Yes, I shall continue. I would
24 use this example to illustrate. This is an example that really cries
25 out, and the Defence is coming with birth certificates which they state

1 are authentic if -- we don't know what date they were produced, it's not
2 marked on the document, when there were conformed, the place, Kilo Moto,
3 is a company, it's not a place. That's not indicated thereon. So the
4 document itself does not contain, we would submit, guarantees with
5 regards to its reliability.

6 Furthermore, in light of the behaviour of the Defence
7 investigator when he obtains documents, this is what we're saying, and
8 it's not a great secret because all these elements were disclosed to the
9 Defence, but we are also going to ask that this information with regards
10 to 279 be added to the Prosecution evidence, but we shall submit the
11 application in appropriate time, but I would just like to illustrate with
12 this example the fact that when Counsel Hooper, in cross-examination,
13 presents documents to the witness to present them as being true and that
14 if the documents are not or they contain information which seriously is
15 dubious or doubtful with regards to their intention, then you have to be
16 fair with the witness.

17 This is what we would plead. You can't make proposals which are
18 false, even if the fact that Counsel Hooper thinks they're true. You
19 can't make statements which could be false. You can't base yourself on
20 good faith. Yes, we've obtained it in light of the disclosure we made
21 last week. You have to be careful with this document, particularly where
22 there are photographs of members of the family.

23 Here it's not the case with the certificate. However, we think,
24 your Honour, that Counsel Hooper can certainly show the birth certificate
25 to the witness, the latter, if he's already seen it, because it is a

1 copy, he will recognise it or not, and that's it. You can ask questions
2 with regards to the content of the document, perhaps with regard to birth
3 of date -- date of birth, but with regards to speculation, why is this
4 date indicated, well, the witness doesn't recognise it, we would submit
5 that that's going far too far, because there's speculation. You're
6 asking the witness to speculate with regards to things that he does not
7 recognise and he cannot answer; namely, why other people come with
8 documents with a different birth date, dates of birth, because we have to
9 investigate the source of this document, and when the investigations are
10 carried out, then you see that they are obtained on condition which
11 should lead us to be cautious, and that's what I wanted to bring to your
12 attention, your Honour.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
14 I would just ask you for a moment.

15 (The Trial Chamber confers)

16 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you,
17 Prosecutor, for the clarifications that you wanted to make. The Chamber
18 has listened with attention. It has noted that where it concerns a
19 document presented to another witness, you were in right to think that
20 given the investigations you were carrying out, that the document in
21 question might not be authentic. It's difficult to put both together and
22 draw a conclusion with regards to the document that's going to be
23 presented. At the moment, we notice that you don't oppose that this
24 birth certificate be presented, but that you want that the Defence of
25 Germain Katanga to attentive when it presents this document to the

1 witness by not asking questions which are unduly speculative. I think
2 that Counsel Hooper has noted all of that. I think that he was going to
3 make an effort to use this document in the most ethical way possible and
4 the most procedural way possible as well.

5 We're therefore now going to go into closed session such that the
6 witness may enter. We're going to ask our two accused to leave the
7 courtroom for a minute.

8 Counsel Hooper, if you consider that you have to present this
9 document, do so, and you would just remember not the objections but the
10 comments that the Prosecutor wished to make. Understood? The Court will
11 assess what has -- what we have to do with regards to all the evidence
12 that is produced. It can't just be done right at this moment. We have
13 to look at everything and then we're going to rule in a few months
14 thereon.

15 MR. HOOPER: Yes. Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) And we are going into
17 closed session. Usher, please could you go back out and escort back in
18 the witness after you were interrupted as you went previously so to do.

19 (Closed session at 2.22 p.m.)

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Witness: Witness P-0280 (Resumed)(Open Session)
Questioned by Mr. Hooper (Continued)

Page 9

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7 (Open session at 2.23 p.m.)

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

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

11 Good afternoon, Witness. I can see that you can hear me well.

12 We can therefore go back into our work.

13 Counsel Hooper, if you so wish, you have the floor.

14 MR. HOOPER: Thank you very much Mr. President.

15 Questioned by Mr. Hooper: (Continued)

16 Q. And good afternoon to you, Mr. Witness.

17 A. Good afternoon.

18 Q. Or "jambo," hello. The four days have past since we were last
19 discussing, in fact, issues concerning your age, and I want to return to
20 that issue, and let us just remind ourselves, I hope accurately, what the
21 position is.

22 In your statement you gave the date of birth of the (Expunged)
23 (Expunged). We discussed that last Wednesday, and you replied that
24 you were born on (Expunged), and you said:

25 "I don't have the exact date. (Expunged). That is all I know."

Witness: Witness P-0280 (Resumed)(Private Session)
Questioned by Mr. Hooper (Continued)

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1 In your evidence you gave the date, of course, (Expunged)
2 (Expunged). In your statement, you referred to school reports that
3 had unfortunately been burnt in the war, and to a baptism certificate
4 that you once had, unburnt, but it had become torn into pieces. You may
5 remember we discussed that too.

6 We then discussed, and I --

7 MR. HOOPER: Are we in closed session? I assume we are. No.
8 All right. Well, I think at this point we should be if closed session.
9 We've had variable dates, so I don't think there's any identifying
10 aspects of that. I'm moving on now to family, so can we go into closed
11 session, please.

12 PRESIDING JUDGE COTTE: (Interpretation) Understood,
13 Counsel Hooper.

14 Court Officer, please take us into private session for everything
15 that might possibly identify the witness.

16 (Public session at 2.26 p.m.)

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Witness: Witness P-0280 (Resumed)(Private Session)
Questioned by Mr. Hooper (Continued)

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Page 11 expunged. Private Session.

Witness: Witness P-0280 (Resumed)(Private Session)
Questioned by Mr. Hooper (Continued)

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Page 12 expunged. Private Session.

Witness: Witness P-0280 (Resumed)(Private Session)
Questioned by Mr. Hooper (Continued)

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Page 13 expunged. Private Session.

Witness: Witness P-0280 (Resumed)(Private Session)
Questioned by Mr. Hooper (Continued)

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- 8 A. I did not see it.
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Witness: Witness P-0280 (Resumed)(Private Session)
Questioned by Mr. Hooper (Continued)

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Page 15 expunged. Private Session.

Witness: Witness P-0280 (Resumed)(Private Session)
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Page 16 expunged. Private Session.

Witness: Witness P-0280 (Resumed)(Private Session)
Questioned by Mr. Hooper (Continued)

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Witness: Witness P-0280 (Resumed)(Private Session)
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Witness: Witness P-0280 (Resumed)(Private Session)
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Witness: Witness P-0280 (Resumed)(Private Session)
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Witness: Witness P-0280 (Resumed)(Private Session)
Questioned by Mr. Hooper (Continued)

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Witness: Witness P-0280 (Resumed)(Private Session)
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Witness: Witness P-0280 (Resumed)(Private Session)
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Witness: Witness P-0280 (Resumed)(Private Session)
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Witness: Witness P-0280 (Resumed)(Private Session)
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Witness: Witness P-0280 (Resumed)(Private Session)
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Page 26 expunged. Private Session.

Witness: Witness P-0280 (Resumed)(Private Session)
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12 (Open session at 3.24 p.m.)

13 COURT OFFICER: (Interpretation) We're now in open session, your
14 Honour.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

16 Counsel Hooper, please continue to cross-examine, and witness --

17 Counsel Hooper, please proceed.

18 MR. HOOPER:

19 Q. Let me stress we're in open session, so try not to mention names.

20 How did you come to be with the investigators in Beni?

21 A. I've already answered this question. I said I don't have any
22 name, no specific name to give you that I can give regarding the person
23 with whom I went to Beni. The proper answer would be to give you the
24 name of the person who took me to Beni, but I don't have these names. I
25 didn't know -- I only knew the face of this person, but I didn't have a

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1 name.

2 Q. I'm going to offer a description. Was he a bit fat and of Logo
3 ethnicity?

4 A. I do not know this ethnic group.

5 Q. To your knowledge were you the only person from your home -- I'm
6 not going to mention the name, the home area. Were you the only person
7 from your home area that that person put in contact with the ICC?

8 A. I do not know.

9 Q. Now, you were demobilised, as I understand it, through CONADER,
10 C-O-N-A-D-E-R, the organisation set up by the DRC to manage the
11 demobilisation of militia. Is that right, you were demobilised through
12 CONADER?

13 A. I was not demobilised.

14 Q. Why not?

15 A. No, I did not go back to the centre with a weapon, because to be
16 demobilised you have to go to the centre with your weapon.

17 Q. I understand that's true if you're an adult, but if you are a
18 child soldier, you didn't need a weapon. But then on your date of birth
19 you're not a child soldier, were you?

20 MR. MACDONALD: Objection, your Honour.

21 MR. HOOPER: It's a direct question, and he can give us a reply.

22 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

23 MR. MACDONALD: (Interpretation) We're playing with the concept
24 of demobilisation. Counsel Hooper's drawing a distinction as to whether
25 there's a person of less than 15, whereas demobilisation involved

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1 demobilisation programmes, and Counsel Hooper has just referred us to
2 something, to the broader definition of a child soldier as we know it in
3 the West. And I don't want to give the impression that I'm answering
4 instead of the witness. That's -- I'm just making that point.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
6 Now we have understood Counsel Hooper's intention.

7 Counsel Hooper, please continue.

8 MR. HOOPER:

9 Q. So your explanation for not being part of any demobilisation
10 process with all the advantages that such a process might have had for
11 you is that you didn't have a weapon; is that right?

12 A. I think that in the programme I went into, it wasn't a
13 demobilisation programme. It was, rather -- I've forgotten the
14 programme, but I wasn't in the demobilisation programme where you had to
15 hand in a weapon.

16 Q. But I thought you'd said you buried your weapon. Didn't you?

17 A. I had said that I had hidden my weapon, hidden it in the bush.

18 Q. So did you go to look for it?

19 A. The large weapon was in Zumbe. I hid the small weapon, but I
20 didn't remember where -- or I don't know where I hid it until now.

21 Q. I see. So what programme did you go into? Now you've mentioned
22 a programme. Which programme was that?

23 A. I think I've forgotten. If I remember, I will tell you.

24 Q. And did you get an any certificate with your date of birth or --
25 as a result of that programme?

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Questioned by Mr. Hooper (Continued)

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1 A. No. There was none.

2 Q. And for how long do you say you were a militia?

3 A. Since I started with my testimony here, I have said that I do not
4 remember how many days. I'm confused with regards to days, months, and
5 years.

6 Q. All right. Now, can I come now to your evidence in respect of
7 the attack on Bogoro. Now, you were part, you told us, of the group who
8 left Lagura. How many of you left Lagura in your group?

9 A. I don't have an idea with regards to the question of how many of
10 us there were in the group.

11 Q. All right. Now, you told us that you went down to a place called
12 Mayi Ya Franga, or the river Franga. Which route did you take to get
13 there?

14 A. If you take the direction of Kasenyi, you go down towards Mayi Ya
15 Franga, and if you go even further down, you will find a place where
16 there are a lot of stones, and you will see a road. There's a route --
17 road that's there. You start to go up, and you turn, and you start going
18 towards the hill via this road that takes you to the village, the name of
19 which I have forgotten.

20 Q. I'm sorry, I'm not clear in my mind where you're talking about.
21 You leave Lagura camp. Where do you go to get to Mayi Ya Franga? Do you
22 (Microphone not activated) ... takes you to Mayi Ya Franga or what?

23 A. We went on foot. This is a path for people on foot. But I've
24 forgotten the name of the village. It's in the direction of Kasenyi.
25 You go down towards this village and -- towards the bottom of the

Witness: Witness P-0280 (Resumed)(Open Session)
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1 village -- or towards the top of the village.

2 Q. So from Lagura you go out to your left, am I right, and down the
3 steep slope? If it was daylight, you would have been able to look
4 towards Lake Albert, the plateau, and Kasenyi; is that right?

5 A. I'm the one who should be giving you the references. I'm the one
6 who knows the hill. It's give to give you all the references. Sometimes
7 you ask -- you give me explanations, but I know there are a lot of
8 different ways to go there.

9 Q. All right. Well I'm asking you to tell me the one you went down
10 that night. Now, I know it was night-time, but it might help us if we
11 approach the question this way, as I've tried to. Listen to my question.
12 If you walk down that path during the day, as you walk down that path am
13 I right in saying that you can see Lake Albert in front of you as you
14 descend Monts Bleus down that path? Straight ahead is Lake Albert. Is
15 that right?

16 A. Well, I don't know.

17 Q. Well, why not?

18 A. The way in which you've just asked me, you said that you can see
19 Lake Albert. I've never thought of looking for where Lake Albert is. I
20 know that -- I know the road that we took, quite simply.

21 Q. All right. Well, as you walked down your path, what could you
22 see? If it was daylight. We appreciate that you say you travelled at
23 night, but I'm trying to identify the route you took, you see. You leave
24 Lagura camp. You walk down a path. What's in front of you? What can
25 you see?

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1 A. When you leave Lagura, you go down, and you'll see the locality
2 Katonie. You will not arrive in the centre of Katonie, but you will go
3 towards the end of Katonie, and from there you take a path, a rocky path,
4 a lot of stones on it, and you go down it. This will take you to a
5 stream. You cross that by foot, and you take the road, the main road, to
6 Kasenyi. And when you arrive at the main road, you start going up. You
7 arrive at Mayi Ya Franga, and from Mayi Ya Franga you go directly to
8 Diguna.

9 Q. This main road to Kasenyi, where does that road go? It goes to
10 Kasenyi, where else does it go? Is it the Bogoro-Kasenyi road that
11 you're talking about?

12 A. I said when you leave Katonie, you take the path which only
13 pedestrians can go on, and when you arrive in Katonie, even in the
14 centre -- you arrive in the centre of Katonie. There's a path. You go
15 past houses. There's another village in front of you. You go through
16 that, and then you will find a path which takes you to the main road from
17 Kasenyi, and you go down just to Mayi Ya Franga. You have Bogoro above
18 you and you're going down.

19 Q. You say the main road to Kasenyi. Where does that road go?
20 Obviously it goes to Kasenyi. Where else does it go? For example, if
21 you were coming from Kasenyi using that road, where does that road take
22 you? Does it take you to Bogoro?

23 A. The road from Kasenyi goes via Bogoro, Kasenyi, Tchomia. It's
24 the same road. It leaves Kasenyi, and it goes all the way to Bunia.

25 Q. Let me ask the question again. Is this the road that links

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1 Bogoro with Kasenyi? Yes or no?

2 A. I think you're complicating things for me. I said that the road
3 which leaves Bunia goes as far as Kasenyi. So from Kasenyi you can go
4 all the way to Bunia. There is just one road. Everybody knows it.
5 Kasenyi-Bunia, Bunia-Kasenyi. It's the same road. There aren't two
6 roads which go to Kasenyi.

7 Q. Well, do excuse me for not being clear. My question is simply
8 this --

9 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

10 MR. MACDONALD: (Interpretation) I think the witness has
11 answered Counsel Hooper positively. He said Tchomia, Kasenyi, Bogoro,
12 Bunia, he confirmed it. There's just one road.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
14 I do think Counsel Hooper that you have asked a certain number of
15 questions. The last answer of the witness does seem to be fairly
16 precise. Having said that, I don't know if you intend to continue with
17 these questions as to the route. Perhaps it would be the last question
18 then. Please go ahead.

19 MR. HOOPER: Well, there's other ways of getting to Bunia.
20 That's the problem.

21 Q. Excuse me for being slow in understanding precisely what you're
22 saying. I've asked a very simple question. The road you're talking
23 about, is that the road that links Kasenyi with Bogoro? In other words,
24 it goes from Kasenyi to Bogoro and then on to Bunia.

25 A. I think that you've already answered. That's what I was saying.

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1 The road that leaves Kasenyi that goes towards Bunia. Before you get to
2 Bunia, you go on this road from Bogoro.

3 Q. Thank you very much. So you reach that road, and there's a point
4 where you wait for battle to be ordered to start you told us. You told
5 us that you were with -- or there were other commanders with you,
6 company, platoon, and section commanders. Do you know any of their
7 names?

8 A. Since I started, I have told you that I don't have in mind the
9 names of the commanders.

10 Q. You then told us that the order was received, and you started
11 killing in silence and that this attack, this killing in silence started
12 approximately between 3.00 and 4.00 in the morning. Is that right?

13 A. Yes.

14 Q. And lasted until 5.00 or 5.30 in the morning approximately. Is
15 that right?

16 A. I think I told you that I didn't know the exact time. I didn't
17 say that the attack finished at a particular time -- or the attack on
18 Bogoro finish at a particular time. I didn't say that.

19 Q. Well, I thought you had.

20 MR. GARCIA: (Interpretation) I would like to object, your
21 Honour. Quite simply so it be fair for the witness, if Counsel Hooper
22 has a precise answer where the witness stated that the attacked ended at
23 5.00 or 5.30.

24 PRESIDING JUDGE COTTE: (Interpretation) Understood. If we
25 could have the reference this would be good. Having said that the

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1 witness has just said that he would contest that, so are you going to
2 give it to us, or are you going to give it to us afterwards, but we have
3 to have the reference.

4 MR. HOOPER: It's transcript 156, page 41, in the English, line
5 23.

6 Q. And I'll read it, relevant parts to it, to remind you what you
7 said on the 15th of June.

8 "I'm talking --" starting at line 19 on page 41. "I'm talking
9 about attack and the time it occurred. Sometimes you may think I'm
10 mistaken about the time, the exact time. I'm telling you about what I
11 did. We launched the attack at night. We encircled the entire village
12 of Bogoro. It was 3.00 or 4.00 in the morning. I think that it was at
13 that time that we started to kill the people, and we did so until 5.00 or
14 5.30, 5.30 in the morning. We started to fight the soldiers, and we
15 continued until 8.00 in the morning. And at 11.00, Bogoro had fallen
16 into our hands. The times I've given you are approximate times, but I'm
17 not a hundred per cent accurate there."

18 Okay? So you did give us times. They're approximate times.
19 They're not a hundred per cent right. So let me start again with my
20 questions about the killing of people quietly. And you told us, as we've
21 just -- I've just repeated, that was from 3.00 or 4.00 in the morning
22 until 5.00 or 5.30. Now, my question is this: During that time, however
23 long it took, you were killing quietly, but were your victims dying
24 quietly, or were they making a great amount of noise as people being
25 killed with machetes might do?

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1 A. They were screaming.

2 Q. You started to kill the soldiers, it would seem, about 5.30
3 until 8.00 or afterwards. Bogoro, you say, had fallen by 11.00. Did you
4 enter the camp, the UPC camp, yourself?

5 A. When we fought in Bogoro, there were those who went directly to
6 the camp. I went via the centre, because the centre and the camp are not
7 far from each other. The camp is above. The centre is further down. I
8 was below the camp. I didn't go to the camp. Those who went to the camp
9 were the others.

10 Q. So you didn't enter any UPC camp in the attack; is that right?

11 A. The question that you've put to me I don't understand. I don't
12 understand your question.

13 Q. Well, did you yourself enter a UPC camp?

14 A. I answered. I didn't enter the camp. I stayed outside. There
15 were those who entered in the camp because they were soldiers who were
16 fleeing. They were leaving the camp, and they went through the centre.
17 Those of us who were in the centre had to attack them.

18 Q. Was there any other camp that you entered other than the one in
19 the centre?

20 A. I think there's only one camp in Bogoro. There weren't a lot of
21 camps. There was just one big camp, their camp, that one.

22 Q. All right. Just so that we know what we're talking about. Now,
23 I want you to look, please, at a document which you've drawn,
24 DRC-OTP-1007-1106, which I think can be a public document inasmuch as --
25 well, hold on. There is a signature on it, but otherwise --

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1 MR. GARCIA: (Interpretation) There is the signature of the
2 witness on the document.

3 PRESIDING JUDGE COTTE: (Interpretation) I would like to try and
4 find exactly where the documents are.

5 Court Officer, could you have the document appear --

6 MR. HOOPER: It better then be a private document with that in
7 mind. We can bring it up, and perhaps the witness can see it and then I
8 think it would be almost 4.00.

9 PRESIDING JUDGE COTTE: (Interpretation) Yes. Indeed.

10 COURT OFFICER: (Interpretation) In order to look at this
11 document, please press the button "PC 1."

12 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Well,
13 Counsel Hooper, I think that we would ask the witness to answer on this
14 after the break. The witness is looking at the document, but we don't
15 have the time because of the recording time that's available. We don't
16 have time to start with the questions which you would like to put to him
17 with regard to this document. We're therefore going to have a break.

18 Security officers, please could you escort out Germain Katanga
19 and Mr. Mathieu Ngudjolo.

20 (The accused withdrew)

21 PRESIDING JUDGE COTTE: (Interpretation) In the meantime, I was
22 able to obtain the document.

23 Court Officer, we'd like to go into closed session to allow the
24 witness to leave the courtroom.

25 Witness, you have a half-hour break in order to rest, and we will

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1 be back here at 4.30.
2 (Closed session at 3.58 p.m.)
3 (Expunged)
4 (Expunged)
5 (Expunged)
6 (Expunged)
7 (Expunged)
8 (Expunged)
9 (Expunged)
10 (Expunged)
11 (Expunged)
12 (Expunged)
13 (Open session at 3.59 p.m.)
14 COURT OFFICER: (Interpretation) We're in open session, your
15 Honour.
16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
17 Court Officer. The hearing is now suspended.
18 Recess taken at 3.59 p.m.
19 On resuming at 4.32 p.m.
20 (Closed session)
21 (Expunged)
22 (Expunged)
23 (Expunged)
24 (Expunged)
25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Open session at 4.34 p.m.)

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

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
9 Mr. Hooper.

10 MR. HOOPER:

11 Q. So we're in open session, Mr. Witness, but I don't think we're
12 going to be troubled by, I hope, identifying aspects of evidence.

13 Now, we're looking at a sketch, DRC-OTP-1007-1106.

14 COURT OFFICER: (Interpretation) In order to see the document,
15 please press the button "PC 1" next to your screens.

16 MR. GARCIA: (Interpretation) I just wish to be sure that it is
17 only the witness who can see -- that the witness see the document.

18 COURT OFFICER: (Interpretation) That document is confidential.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

20 Mr. Hooper.

21 MR. HOOPER:

22 Q. Again, if you need or prefer to see a paper exhibit rather than
23 it being shown in electronic format, I think we can probably provide you
24 with one, but dealing with it as you see it on the screen, the top of
25 your sketch is -- well, first of all, do you recognise this document?

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1 It's one that was drawn, I understand, by you during your interview or
2 interviews. Do you remember it?

3 A. Yes.

4 Q. That's good. Now, the top part shows a sketch that you made of
5 Lagura. I'm not interested in that.

6 The bottom part is a sketch that you made relating to Bogoro, and
7 can you just -- looking at that, we see at the top we've got an arrow
8 indicating the direction of Kasenyi. To the right of that we've got an
9 arrow indicating the direction Gety. I'm going clockwise around the
10 sketch. Then we've got an arrow pointing at 3.00, as it were. It says
11 "Ecole." What "ecole" is that? What are you indicating there?

12 A. That is school located in the UPC camp.

13 Q. Did you ever go to that school during the or after the attack on
14 Bogoro?

15 A. Yes.

16 Q. And when did you go there?

17 A. After the war.

18 Q. And when you say "after the war," do you mean the same day as the
19 attack on Bogoro or another day?

20 A. I went there after the fighting but on the same day of the
21 fighting. However, I have a clarification to make. On the day of the
22 fighting, I did not go inside the school. I was just outside.

23 Q. And then moving down, as it were, to 5.00, we've got -- what's
24 that? Is it -- C-a-n, what's that? Or C-a-m.

25 A. I have forgotten.

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1 Q. Well, that's "Camp," isn't it?

2 A. I have forgotten. The camp is actually where the school is
3 indicated. That is "Ecole."

4 Q. But you see, on this plan I suggest you've shown it as separate
5 and apart from the school and that where "C-a-m" is is camp, a separate
6 entity to the school. Isn't that right, as you've drawn it?

7 A. Even if I am the one who drew that sketch, if I make an error
8 about the camp or the school, that is possible. Everybody can make an
9 error.

10 Q. Now, you were interviewed first of all in March of 2007, and I've
11 forgotten whether I previously provided the dates of the interview, so
12 for completeness' sake, let me repeat them.

13 In 2007, you were interviewed by the Prosecutor's investigators
14 on the 29th of March, from 11.00 to 1.00; on the 31st of March, from 9.00
15 to 12.00; on the 1st of April from 9.50 to 12.30, and again from 16.00 to
16 17.45; and on the 2nd of April, from 14.30 to 17.45, and again that
17 evening from 19.40 to 20.00 hours.

18 I don't expect you to remember the exact times and dates, but do
19 you accept what I say?

20 A. Yes.

21 Q. And you were interviewed by two investigators called (Expunged)
22 (Expunged) Do you remember that?

23 A. Yes. I know there were two people there, but you are the only
24 one who knows their names.

25 Q. Well, obviously I have it printed in front of me and I appreciate

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1 your disadvantage there, but they appear to be two women. Do you
2 remember two women were asking you the questions? Do you remember that?

3 A. Yes, I remember that it was two women.

4 Q. And then in addition to those two, there were another three
5 people present, an interpreter called (Expunged)
6 (Expunged)
7 (Expunged). Do you remember other people being
8 present as well as those two women who were questioning you?

9 A. Yes.

10 Q. And then you were later interviewed 16 months later, in July of
11 2008, on the 11th, 13th, 14th, 15th, 16th, and 17th of July. You were
12 interviewed for almost 21 hours in July. Do you remember that? And
13 again, by the same women, (Expunged)
14 (Expunged). Does that ring a bell with you?

15 MR. GARCIA: (Interpretation) Just a point of clarification. My
16 learned colleague mentioned the name of (Expunged) during that second
17 interview.

18 PRESIDING JUDGE COTTE: (Interpretation) Yes.

19 MR. GARCIA: (Interpretation) I do not see her name on the first
20 on the first page. I just wanted the record to be clear.

21 PRESIDING JUDGE COTTE: (Interpretation) Very well. We would
22 like to know whether on the 11th, 12th, 13th, and 16th of July
23 (Expunged) was present during the interview of this witness.

24 MR. HOOPER: No, she wasn't. My mistake. I misread my note.
25 The people present, I'm sorry, were (Expunged), who had been

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1 present in the first interview, not (Expunged)

2 Q. So this time it's a woman and a man interviewing you in July
3 2008. Does that ring a bell with you?

4 A. Yes.

5 Q. Returning to that first interview, I want to ask you some
6 questions about some aspects of it. Can I ask you this -- I don't want
7 to mention any names because we're in open session, but can I ask you is
8 your mother alive or not?

9 A. You have just said that my mother is alive. Let me ask you a
10 question. Do you know where she is?

11 Q. Let me ask you a question, and then if you want to ask me that
12 question you can. Is your mother alive, do you know, or is she dead?

13 A. My mother's younger sister is alive.

14 Q. Maybe there was a bit of a translation hiccup. Is your mother
15 alive? The lady that we've discussed so far, as far as names are
16 concerned, is she alive or not?

17 A. I believe that I stated before that my mother is no longer alive.

18 Q. And when you say "stated before," when did you state that before,
19 because I don't believe you've mentioned that in your evidence before the
20 Court. Is that your evidence, that (Expunged) -- I'm sorry. We're in open
21 session. We need a redaction there. We know the name. I'm not going to
22 go into it again.

23 You say you believe she's no longer alive. Is that your
24 evidence?

25 MR. GARCIA: (Interpretation) I would like to object,

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1 Mr. President. It regards what the witness stated. He said that he
2 believed he had already stated that his mother is deceased.

3 PRESIDING JUDGE COTTE: (Interpretation) Page 52 of the French
4 transcript, lines 5 and 6, we have the following answer:

5 "I believe that I stated that before. I believe I have already
6 said that my mother is no longer alive."

7 That is what the witness said. And in the French of the version
8 of the transcript, Mr. Hooper continues by saying:

9 "When you say that you have already stated, when did you state
10 that, because I do not know -- I do not think that you talked about that
11 during your interview with the Prosecutor. Are you saying that --" and
12 Mr. Hooper realises that he mentioned the name in open session. "You
13 believe that she is no longer alive. That is what you're saying."

14 That is where we were. So Mr. Hooper will rephrase his question,
15 and be careful not to mention the name of the person. Based on what he
16 says, the witness says, "I believe my mother is no longer alive."

17 So, Mr. Hooper, please kindly rephrase the question.

18 MR. HOOPER:

19 Q. I think the answer is clear on the transcript, and I'm not asking
20 the sensitive questions to upset you, because I hadn't expected that to
21 be your reply.

22 In your statement, at paragraph 89, you do say this, you say --
23 and by that I'm referring, of course, to the first interview, paragraph
24 89 for reference. You say:

25 "When the French arrived, I met my brother again. He told me

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1 that our mother had been killed by the Hema militia but that our father
2 and brothers were alive."

3 All right. So certainly you said that before. You said it in
4 your interview in 2007. That's certainly what you told the investigators
5 in 2007. And you may remember that you told them that your belief in
6 your date of birth was what your mother had told.

7 You see, my information is your mother is alive and (Expunged)
8 (Expunged) And I wouldn't say that to you now unless I was, in my own mind,
9 pretty certain of the reliability of that statement.

10 So when did you learn that your mother had died, and did you
11 learn that she'd been killed by the Hema?

12 A. I believe that I was clear in my statements. What I said before
13 stays, remains as the answer to your question that you have just put to
14 me.

15 Q. When were you last in touch with your father?

16 A. I have no idea. I have not seen for -- my father for quite some
17 time. No, I really have no idea with regard to the period that has
18 elapsed, because this was a very long time ago that I last saw my father.
19 I'm not even sure whether he's alive or not.

20 Q. May I suggest you were in contact with your father up until the
21 time that you were introduced to the ICC investigators, and it's from
22 then on that you've broken all contact with him. Is that right?

23 A. I believe, yes, that happened only once. I met with my father,
24 but we were in two different places.

25 Q. Well, I understood your history was that at some time that you're

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1 unclear about, you went Aveba and met with your family. Is that right?
2 A. You asked me the question whether I had seen my father, and you
3 have gone on to talk about Aveba. I believe I told you the following: I
4 saw my father in Aveba at the time -- well, I would say that it was a
5 long time ago that I saw my father in Aveba, because it was many, many,
6 many days ago.

7 Q. Well, however you got to Aveba and your family, I'm not going to
8 go into that now. I've asked you a question about that last week. But I
9 suggest there was a time when you and your family returned home. I'm not
10 going to mention home. We're in open court. You returned home, and you
11 lived at home until 2007 and your meeting with the investigators and that
12 you were living with your family, brothers, sisters, father, and mother
13 up until you went to Beni for your interview, that it's only since 2007
14 that you've not had contact with your family, including your brothers and
15 sisters; is that right?

16 A. I think I've given you account of the fact as I know them. I was
17 not at home for more than two days. I was often with my uncle on the
18 third or the fourth day.

19 Q. And because I mentioned what I have, I promise you I will give
20 the Witness and Victims Support Unit all the information I have about
21 your mother. So you needn't go away from this court wondering what I
22 might know that you don't. All right?

23 Now, can I come to this statement, the attack on Bogoro. At
24 page -- paragraph 39 of the statement you say:

25 "We left Lagura at 2200. Before leaving Lagura, a group from

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1 Zumbe and another group from Zumbe airport joined our group at Lagura.
2 The head of my group was Commander Lobo. I do not recall the names of
3 the chiefs of the Zumbe or Zumbe airport groups. Each group had about
4 12 militia. In my group most were adults. The three groups left for
5 Bogoro."

6 Now, just pausing there. Do you remember saying that, and is it
7 true that three groups moved from Lagura, that you were in one of those
8 groups, and that each group had about 12 militia?

9 A. I have no idea. I have no answer that I can give to this
10 question.

11 Q. Now, I ask that because you were asked last week about who you
12 went down with to Bogoro, and you may remember you told us it was a
13 battalion, and then you corrected that to two companies. I refer to
14 transcript 157, at page 22. Two companies.

15 Now, a company has at least a hundred men in it, does it not? So
16 that would be 200 men. What do you say?

17 A. The number of soldiers in my group on the hill, not including
18 civilians -- well, our group considered civilians to be combatants. I
19 think there were many of us on the hill, an even higher number than the
20 number which you have just given.

21 Q. So how many people -- sorry.

22 MR. HOOPER: Can I ask the interpreter to speak up a little bit,
23 because it's very quiet in English. Not too loud though.

24 Q. How many people do you say went down with you to Mayi Ya Franga?

25 A. I do not have a number that I can give to you.

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1 MR. GARCIA: (Interpretation) I'm sorry, your Honour. Sorry to
2 interrupt my learned friend again, and I won't -- don't want to come back
3 to the cross-examination to clarify what has been said.

4 Now, we're talking about the number of companies or the number of
5 soldiers which left the Lagura camp. Now, perhaps the witness could
6 remove his headset or --

7 PRESIDING JUDGE COTTE: (Interpretation) Carry on in English.

8 MR. GARCIA: Simply just so that the record is straight on the
9 matter as to the amount of people. It's page 21 on transcript 157, and
10 what is important to note is that the witness says:

11 "I think that there were about two companies. We were two
12 companies who went firstly."

13 So just so that be clear on the matter as to -- because I
14 understand Maitre Hooper now is cross-examining on the amount of people
15 that left camp Lagura. The record has to be straight on what the witness
16 has stated previously. And I don't want to necessarily have to interrupt
17 Maitre Hooper at every occasion when he is doing cross-examination, and
18 the Court has noticed that most of the time when Maitre Hooper does a
19 summary of the facts, which are general aspects on which the witness has
20 testified, the Prosecution has not objected, but in a certain cases where
21 it's a question of precise numbers, precise details, I would ask so I
22 don't have to get up at every time and interrupt my colleague, I'm sure
23 that he would appreciate that, that the exact place in the transcript be
24 cleared up and be -- the reference be given to the Court and that it be
25 read back to the witness so the witness knows exactly what we're speaking

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1 about, is not misled into error or confused.

2 MR. HOOPER: All right. Witness -- thank you, Mr. Garcia.

3 Q. Let me read what you said earlier so that we're clear about it.

4 Page 21. You were asked about who you were with and went down with. You
5 say:

6 "I think there were about two companies. We were two companies
7 that went firstly. These two companies went below Mayi Ya Franga."

8 And then you say there were others. You're not sure who
9 followed. So you'd seen at least two companies. At least two companies
10 went down to Mayi Ya Franga, on your evidence, and collected there, but
11 in your statement you talk about three groups, Lagura, Zumbe, Zumbe
12 airport. Each group had about 12 militia. That's 36 people; 3 times 12.
13 That's very much less a number than you're suggesting now.

14 What do you have to say?

15 A. I would like to know what I said. I said a company went down,
16 and I was referring to my own company. I was describing the way in which
17 the company went down.

18 THE INTERPRETER: Is the English interpretation coming through?
19 The console is engaged. Is the English interpretation coming through
20 loud and clear?

21 MR. HOOPER: (Microphone not activated) ... to the interpreter, I
22 can say that I can hear you if I turn you up, but then I get deafened by
23 the ordinary transmissions. So I don't know whether you're -- it's
24 possible to speak a bit close to the microphone. I'm sure you're doing
25 it quite properly, so that's probably not the answer. But I can hear

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1 you. I can carry on.

2 THE INTERPRETER: Very good, Mr. Hooper.

3 PRESIDING JUDGE COTTE: (Interpretation) So I'm turning to the
4 interpreters. So Mr. Hooper should not turn the volume button up too
5 loud, perhaps one of you should speak a little bit louder into the
6 microphone. I'm not quite sure, but on our side we -- we must speak a
7 little bit more slowly. So we'll try to -- we'll try to settle this and
8 with everybody staying in a good mood as usual and thank you very much.

9 Amidst all this, our witness is no longer quite sure which
10 question he should be answering. Now, are we -- amidst all the volume
11 considerations.

12 Now, Mr. Hooper, please carry on.

13 MR. HOOPER: Yes.

14 Q. Sorry, Mr. Witness. You say in your statement at page 47:

15 "The attack began in the middle of the night towards 1.00 a.m."
16 1.00 in the morning. Is that right?

17 A. I have no idea.

18 Q. You say at paragraph 56:

19 "At 5.00 in the morning, at the end of the battle, all the
20 soldiers and commanders went to the centre."

21 "5.00 in the morning, at the end of the battle." Is that right?
22 Was the battle at its end at 5.00 in the morning?

23 A. I think I told you I had no idea about this. That's the answer I
24 gave earlier.

25 Q. All right.

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1 MR. GARCIA: (Interpretation) If I may, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

3 MR. GARCIA: (Previous translation continues) ... may be straight
4 on this, correct on this matter, I think Maitre Hooper spoke about a page
5 47 --

6 MR. HOOPER: No, I'm not. I'm at paragraph 56 of the statement.

7 MR. GARCIA: (Interpretation) I realise that, Maitre Hooper, but
8 previous to that you spoke about a page 47 erroneously. I think you
9 meant paragraph 47.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes. On page 60 of the
11 French transcript.

12 MR. GARCIA: That would have to read paragraph 47.

13 And second of all, on the question of what is stated in paragraph
14 56, it's at 5.00 in the morning, and Maitre Hooper has translated a part
15 of the paragraph as they went to the centre, and in the statement, in
16 paragraph 57, the witness states that: (Interpretation)
17 The -- (No interpretation).

18 And this is a part of the paragraph. I understand that
19 Maitre Hooper hasn't used all that is stated in that paragraph. He's
20 just using that point. But it's not "went," it's "they met" at the
21 centre. If that could be corrected in the record as well.

22 MR. HOOPER: Thank you. Thank you very much.

23 Q. So let me put it correctly. At 5.00 in the morning, at the end
24 of the battle, all the soldiers and commanders went -- sorry, met in the
25 centre. And your reply to that was, "I don't know anything about that."

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1 Now --

2 PRESIDING JUDGE COTTE: (Interpretation) And we'll just use this
3 moment of clarification, Court Officer, to ensure that on page 61 of the
4 French transcript, and at line -- I've forgotten the line. Line 16, that
5 we have paragraph -- paragraph 47 instead of page 47. Thank you.

6 Counsel Hooper, please carry on.

7 MR. HOOPER:

8 Q. So the sum of that is that you say that the battle started at
9 1.00 a.m. in the morning and finishes at 5.00 in the morning. All right?
10 What do you say now to that suggestion or that -- or those times that you
11 gave in your statement?

12 A. I said that I may disagree, that I may disagree with what I said
13 earlier. There may have been some mistakes when I met the investigators.
14 So please consider what I'm saying here in the courtroom to be the truth.

15 Q. All right. I fully understand what you're saying, and forgive me
16 for dwelling on this, but it may have some significance, you see. You
17 see, at paragraph 57, first sentence you say this:

18 "Towards 5.00 a.m., when there is a little light, we returned to
19 Lagura."

20 All right? So two things here. It's not a question of times by
21 a watch. You're now -- making your reference night or day, and you're
22 saying that at 5.00 -- towards -- not "at":

23 "Towards 5.00, when there is a little light, we returned to
24 Lagura."

25 What do you say to that? Is that right or wrong? Do you

Witness: Witness P-0280 (Resumed)(Open Session)
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1 remember saying that? And why did you say that?

2 A. I may have made a mistake. We fought a battle in Bogoro. When
3 you ask me about this battle, I may be speaking about a battle which took
4 place elsewhere. I can come back later to these events, think about
5 them, and correct my previous account.

6 Q. You see, this wasn't an interview that took part -- place over an
7 hour or so. It was over several days and many hours. All right? And it
8 was read back to you, and you had a chance to correct things, didn't you?
9 It was all read back to you carefully, and you had a chance to alter
10 anything you thought was wrong. And we can see that, because that's said
11 in the statement. And what I'm asking is this: How is it in your
12 statement you talk of a battle that takes place at night, between 1.00
13 and 5.00, and then it's all over, when the battle for Bogoro was largely
14 in daylight? It's a question of night and day here, you see. How can
15 you get it so wrong? Do you have any explanation? Were you not well at
16 the time when you were interviewed or what?

17 A. We're talking at length about what is written in my document, but
18 at the time, I told the investigators that I might go back on what I said
19 previously and that I might correct some facts, because at present I'm
20 thinking about the battles I fought, and I'm trying to relive the events
21 and give an account of them as they occurred.

22 Q. All right. Thank you. And we appreciate that and your efforts.

23 Now, how many attacks on Bogoro did you take part in?

24 A. I did not take part in several attacks on Bogoro. When the
25 soldiers launched an attack at the foot of the mountain where we were, we

Witness: Witness P-0280 (Resumed)(Open Session)
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1 counter-attacked and sometimes they pushed us back. I cannot give you
2 the exact number of attacks in which I took place when I was on that
3 hill.

4 Q. All right. Let's go back to this statement just on another
5 point. We have the battle, and I've heard what you've said quite
6 clearly, but in the statement you have the battle starting at 1.00 in the
7 morning and finishing towards 5.00 a.m. when there's a little light, and
8 you talk about taking the camp in this way, this is paragraph 52:

9 "We took the camp in this way: Kute approached the sentries and
10 killed them and took up a position at the entrance of the camp. From
11 there he behaved as a UPC sentry so as not to draw the attention of the
12 Hema militia to the outside of the camp. We arrived in small groups of a
13 few persons, and we asked Kute permission to enter the camp to visit
14 people. Kute imitated a UPC sentry, gave us permission to enter, and
15 repeated this to other groups that came along. Little by little, we
16 militia got into the camp."

17 Paragraph 53:

18 "At this moment Kute is called by Motorola our militia in the
19 centre of Bogoro. They were told we were in position and to throw one
20 bomb into the camp. We in the camp didn't fear being killed by this
21 bomb. Before starting out we had the fetishers choose who would go to
22 war --"

23 I'm sorry. And they're not armed with these documents. I'm
24 sorry. Let me slow up. Let me pick up from paragraph 53.

25 "At this moment Kute had called by Motorola our militia in the

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1 centre of Bogoro. They were told we were in position and to throw one
2 bomb into the camp. We in the camp did not fear being killed by this
3 bomb, as before starting out we had the fetishers choose who could go to
4 war without being killed."

5 Paragraph 54 --

6 MR. GARCIA: (Interpretation) If I may, your Honour. There's a
7 sentence missing in paragraph 53 as stated by Mr. Hooper.

8 PRESIDING JUDGE COTTE: (Interpretation) What's the sentence?

9 MR. GARCIA: (Interpretation) "The bomb fell on one of the
10 ammunition dumps." It's just before the statement "We did not get into
11 the UPC camp." (As interpreted)

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
13 Counsel Hooper, please carry on.

14 THE INTERPRETER: The interpreter corrects: "Arms dump" as
15 opposed to "ammunition dump."

16 MR. HOOPER: Thank you. Sorry for that omission.

17 Q. All right. Paragraph 54:

18 "The bomb exploded and alerted the UPC. They got up with sleep
19 in their eyes. Quickly we started to kill them. They had no means to
20 escape. I estimate that we killed almost a hundred per cent of the UPC
21 soldiers. That is to say that as little as 10 per cent could survive."

22 And then paragraph 56:

23 "At 5.00 in the morning, the end of the battle, all the
24 commanders and soldiers met in the centre," et cetera.

25 Now, I understand your evidence, but do you have any comment to

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1 make on that or is that again a matter to be corrected?

2 A. I think you have not understood me. I said I took part in
3 battles. I may have mixed up some things. When we speak, I may think --
4 be thinking about another battle. And further, I sometimes went back
5 home and was thinking about other things.

6 Q. And then -- all right. Paragraph 57, just so we've got the
7 sequence. I mentioned it before:

8 "Towards 5.00, when there was little light, we returned to
9 Lagura."

10 And you go on -- let me have a look. Paragraph 58 you say:

11 "Towards 5.00 a.m.," so again time, 5.00 a.m., "a bullet grazed
12 my left cheek. A shot by the FNE, a companion who fired his arm close to
13 me, he forgot it was loaded. By accident, it hit me. I remember very
14 well that the battle of Bogoro took place during the night, because I was
15 hit by this bullet at the end of the battle at 5.00 in the morning."

16 Now, I'm right in thinking you've only been hit in the face once
17 according to you. Is that right? And here we have it clearly taking
18 place during the Bogoro attack, and you use it to define the fact the
19 battle took place at night, because you say, "I was hit by this bullet at
20 the end of the battle, at 5.00 in the morning."

21 Now, are you mixing this up with another battle, or are you
22 really, as it seems to me, that you're talking about Bogoro?

23 A. I think I am referring to a war, but if we're talking about the
24 battle of Bogoro and other battles which we waged on the hill, the
25 confusion here is that one is talking about two battles here, the battle

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1 for Bogoro and the other battles. It's as if we were talking about two
2 battles at once.

3 Q. You then speak in paragraph 59 of someone going to Lagura -- so
4 you've gone back to Lagura at 5.00 in the morning. You get up to Lagura,
5 and while you're there you say someone came to -- and chose you to go
6 with him to Zumbe and then to Bogoro, and you drove down in two vehicles.
7 You arrived at Bogoro at 8.00, and you say:

8 "I remember it was 8.00, because I looked at my watch."

9 Now, did you go to Lagura and then get driven down --

10 MR. GARCIA: (Interpretation) I'm sorry once again to interrupt,
11 but if we want to state what the witness said previously in a statement,
12 then you have to mention all the details that are relevant there, too.
13 You have to be fair towards the witness. Who is this person? The name
14 is in the statement.

15 MR. HOOPER: Well, I think I'm being fair to the witness, because
16 the issue is quite simple. Did he at 5.00 go to Lagura? At Lagura was
17 he then instructed by somebody to go down with that somebody to Zumbe and
18 then to Bogoro, and did he drive down? Did he get there at 8.00, and
19 does he remember it was 8.00, "Because I looked at my watch"?

20 Now, this witness is fully capable of either accepting that that
21 happened or he's confused and it didn't. I know my friend's point but
22 it's an unworthy one.

23 PRESIDING JUDGE COTTE: (Interpretation) I think that the speed
24 of the interventions between you will make the situation for the witness
25 complicated. What we would wish is that you reformulate your question

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1 which had a reminder previous to it, but I'm putting myself in the place
2 of the witness, and I think that it might become somewhat complex for
3 him.

4 So please -- yes, Prosecutor?

5 MR. GARCIA: (Interpretation) It's on this point, your Honour.
6 Yes. If we want to put the witness in the context, what he said
7 previously, this is a fundamental rule. Counsel Hooper knows it has to
8 be fair to the witness. You have to mention the important details in the
9 statement. There are the paragraphs 59 and following. These details
10 have to be given to the witness, what he said, what he didn't say, in
11 order to -- in order to allow him to make a proper response in this
12 regard.

13 PRESIDING JUDGE COTTE: (Interpretation) So, Counsel Hooper,
14 having seen -- I'm sorry. Counsel Hooper will understand what he needs
15 to do with regards to this statement, but as far as the Court is
16 concerned, in the case in point the witness is having some difficulties
17 to see what is exactly being asked of him. We have time.

18 Counsel Hooper, go a bit backwards. Reformulate with the
19 greatest precision what the witness is said to have said and then ask
20 your question. It's just in order not to have him be too disoriented.

21 The floor is yours, Counsel Hooper.

22 MR. HOOPER: Yes.

23 Q. My question is this: Having returned to Lagura, did you then
24 drive down or were you driven down so that you arrived back in Bogoro,
25 and this is the bit I'll quote:

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Questioned by Mr. Hooper (Continued)

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1 "We arrived at Bogoro at 8.00 a.m. I remember it was 8.00 a.m.
2 because I looked at my watch."

3 Did you drive down to Bogoro again getting there at 8.00 or is
4 that again some mix-up?

5 A. I know that the questions you're asking me. From what I
6 understand what you want to say. I want you to understand me. What I'm
7 telling you here is I'm speaking about the present. Things about the
8 past -- if you speak about the past, when I say that's not the way it
9 was, please stop. What I'm telling you is what you have to take into
10 account. Please don't go back to what is past when I say that I do not
11 remember what it was.

12 Q. All right. And we understand in that answer you're making a
13 distinction between your evidence and what you may have said before, and
14 I appreciate that.

15 Now, let me ask you this: Is it the case that -- I'm looking at
16 paragraph 62 -- that having gone from Bogoro -- or from Zumbe to Bogoro
17 to attack it, then at 5.00 going back to Lagura and then being driven
18 down at 8.00, and I appreciate you don't accept that now, that happened,
19 and would it be right then that the following didn't happen either,
20 because at -- following at paragraph 62, you go back to Lagura:

21 "Then we were taken -- then we were taken by a vehicle to Lagura.
22 We arrived at Lagura at 10.00 a.m. I know that because I looked at my
23 watch."

24 Right. Again, is that something that happened? Did you go back
25 to Lagura, getting there at 10.00, or not?

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Questioned by Mr. Hooper (Continued)

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1 A. I think that at the time I'm speaking to you, I told you before
2 what I'm currently saying now. If I refuse to go back on what I've
3 already said before, that is because there are things that I accept from
4 the past, and there are other things that I refuse. I'm the one here
5 making this corrections. This is nobody else who is making these
6 corrections.

7 MR. GARCIA: (Interpretation) If you would allow me, for the
8 sake of the record, it is actually paragraph 63 and not paragraph 62.

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

11 Counsel Hooper, please continue.

12 MR. HOOPER:

13 Q. And dealing with the Mandro attack you do touch on this in your
14 statement and you say at one point at paragraph 65, I hope 65, you say:

15 "Kute told us to attack for only 30 minutes."

16 This is dealing with Mandro, all right? I don't want to confuse
17 you. We're dealing with Mandro.

18 "Kute told us to attack for only 30 minutes. I remember the time
19 exactly because all of us had watches and the order was very clear.
20 After 30 minutes, we quit the area."

21 And is that right or is that another attack? Or is it the one
22 you're talking about?

23 A. In Mandro we fought. The first time we came to Mandro it was to
24 attack Mandro and take the property we wanted to take. Normally, we
25 weren't meant to stay there, but we stayed there. What I said to you

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1 before, I didn't say it was just to the end. We stayed longer than
2 envisaged. That's what's happened.

3 Q. I see. All right. Now, coming back to Lagura, at paragraph 24
4 you say this, you say:

5 "I'm not certain, but there were about 2.250 fighters on the
6 hill at Lagura divided into battalions, companies, platoons, and
7 sections."

8 Is that right, 2.250 at Lagura?

9 A. I think -- I think I have confused this, giving the number of
10 persons. I shouldn't give you the number of persons. This was a
11 confusion on my part. When I spoke about the number of soldiers or about
12 people who were meant to be on the hill, this was a confusion on my part.

13 Q. All right. Thank you very much. I'm not going to ask you any
14 more questions about your statements. Now, you mentioned someone called
15 (Expunged). You may remember you told us he
16 was a volunteer at Zumbe camp, and you said at transcript 158, 47-17:

17 "He joined after me, and at that time I was getting ready to
18 leave my job."

19 Now, when you say the reference to the job, "I was getting ready
20 to leave my job," what job do you mean?

21 A. It was military service in the army.

22 Q. And by that do you mean in the militia?

23 A. Yes.

24 Q. Now, do you know the -- I'll ask the questions in open session,
25 and depending on your answer, because I don't want you to give them to me

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1 in open session, but depending on your answer, we can go into closed
2 session, all right? So it's a yes-or-no-answer situation.

3 The question is this: Do you know the post names of your
4 brothers and sisters?

5 A. I know their post names, yes.

6 Q. So your sister, for example, your elder sister, she's younger
7 than you but your elder sister, what's her post name?

8 MR. HOOPER: And of course we're in open session.

9 PRESIDING JUDGE COTTE: (Interpretation) So private session,
10 please.

11 JUDGE DIARRA: (Interpretation) I haven't understood the
12 question. So your sister, for example, your older sister who is younger
13 than you.

14 PRESIDING JUDGE COTTE: (Interpretation) I think there has
15 been -- I had the same feeling as yourself. But I think that when we are
16 in private session, Counsel Hooper will make this question more precise
17 and clarify it.

18 JUDGE DIARRA: (No interpretation)

19 (Private session at 5.46 p.m.)

20 (Expunged)

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18 (Open session at 5.52 p.m.)

19 COURT OFFICER: (Interpretation) We are in open session, your
20 Honour.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Court Officer. I'd forgotten to switch my microphone on. We are
23 therefore in open session. We should therefore ask Counsel Hooper if he
24 wanted to have an EVD number to have the extract of the birth certificate
25 DRC-0141, birth certificate 0142, and also on the sketch that the witness

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1 commented upon with the number 1106.

2 MR. HOOPER: Yes, please. And separate EVD numbers in respect of
3 each item.

4 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, if you
5 would be so kind.

6 COURT OFFICER: (Interpretation) Thank you, your Honour. The
7 document with the number -- ERN number DRC-D02-0001-0141 will have the
8 number EVD-D02-00042.

9 The document DRC-D02-0001-0142 will have the number
10 EVD-D02-00043.

11 The sketch with the number DRC-OTP-1007-1106, will have the
12 number EVD-D02-00044.

13 The three documents will be filed as confidential.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
15 Court Officer.

16 Counsel Hooper.

17 MR. HOOPER: (Previous translation continues) ... to say in open
18 session that I've completed my cross-examination of this witness, and I
19 thank him for his assistance.

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

22 Witness, Counsel Hooper has finished cross-examination. I think
23 Professor Fofe is next for the Defence team, co-counsel with
24 Mathieu Ngudjolo. He will intervene for the Defence team of Mathieu
25 Ngudjolo. He is going to introduce himself.

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1 On several occasions the interpreters did indicate that the
2 exchanges were too fast, so, Witness, please do not forget when you
3 answer the questions that Professor Fofe is going to put to you calmly
4 and slowly, please also reply slowly even if you have a lot to say so
5 that the work of the interpreters can be made more easy, and so that
6 those who are here can better understood what you say.

7 So, Professor Fofe, you therefore have the floor. We are
8 listening to you.

9 Witness, there is just 35 minutes left for this afternoon.

10 MR. FOFE: (Interpretation) Thank you very much, your Honour.
11 Your Honours, good afternoon.

12 Questioned by Mr. Fofe:

13 Q. (Interpretation) Witness, good afternoon.

14 A. Good afternoon.

15 Q. My name is Professor Fofe as indicated by Judge Cotte. I am
16 counsel within the Defence team of Mr. Mathieu Ngudjolo. I want to ask
17 you certain questions with a view to clarification on the subject of your
18 testimony. Our aim is to give you the opportunity to tell the whole
19 truth to the Honourable Bench, the whole truth. Do not think one moment
20 that we are trying to cause you problems at all. All our questions are
21 aimed at shedding light on the situation for the Honourable Judges, and
22 as Judge Cotte has just said to you, it is necessary that you speak
23 slowly, that you speak loudly, and that we have a pause between the
24 question and answer and vice versa. Thank you very much, Witness.

25 So to start, we have a series of questions which are related to

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1 information which might identify you, and as such I would ask the
2 President if we could go into a short private session.

3 PRESIDING JUDGE COTTE: (Interpretation) Understood.

4 Court Officer, please could we go into private session for a
5 moment.

6 (Private session at 5.58 p.m.)

7 (Expunged)

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23 (Open session at 6.12 p.m.)

24 COURT OFFICER: (Interpretation) We are in open session, your
25 Honour.

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1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 Court Officer.

3 Professor Fofe, please continue with your cross-examination for
4 the remaining 15 minutes.

5 MR. FOFE: (Interpretation) Thank you, Mr. President.

6 Q. Mr. Witness, on Wednesday the 23rd of June, 2010, in answer to a
7 question from our learned friend Mr. Hooper, you stated that you were
8 taken by Kute and his body-guards on the very day that Lompondo was
9 chased out of Bunia.

10 MR. GARCIA: (Interpretation) I'm sorry to interrupt, but could
11 we have the precise reference, please.

12 PRESIDING JUDGE COTTE: (Interpretation) Professor, please take
13 the time to look.

14 MR. FOFE: (Interpretation) I have the reference, your Honour.
15 I wanted to give it immediately after my question. I have the various
16 references. Transcript number 160, page 65, lines 3 and 4.

17 I will also refer to the same transcript, number 160, page 66,
18 lines 11 to 14; page 68, lines 23 to 25; page 69, lines 15 to 17.

19 Q. Let me now repeat my question. On the 23rd of June, 2010, you
20 testified that you were taken by Kute and his body-guards on the very day
21 that Lompondo was chased out of Bunia by the UPC.

22 MR. GARCIA: (Interpretation) Professor Fofe, we have to be fair
23 to the witness. When you look at the transcript, on line 3 of page 65,
24 transcript 160, he says:

25 "I believe it was on the day that Lompondo was chased out."

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Questioned by Mr. Fofe

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1 So it is not very certain. The witness is not very certain.

2 PRESIDING JUDGE COTTE: (Interpretation) Yes. Let us be fair
3 with the witness.

4 "I believe that it was on that day that Lompondo was chased out
5 that I was also taken to the hill. I think it was on that day."

6 So, Professor Fofe, proceed.

7 MR. FOFE: (Interpretation) Yes indeed, your Honour.

8 Q. Mr. Witness, do you confirm that it was on the day that Lompondo
9 was chased out of Bunia that you yourself was taken by Kute?

10 A. I do not know whether I can confirm that, but it was during that
11 period when Lompondo was chased out. I was taken away up to the hill. I
12 cannot confirm that -- I confirm that I was taken, but I cannot say that
13 it was exactly then that Lompondo was chased out. It is not possible to
14 say that it was on the same day. I said that it was during the same
15 period but not on the same day.

16 Q. Very well, Mr. Witness. We are seeking clarification, and it is
17 up to you to enlighten us to the extent that it is possible for you.

18 According to you, when were you taken away by Kute -- Kute and
19 his body-guards? Please enlighten us on this issue. When was that?

20 A. I believe that I said it was when Lompondo left Bunia. Try to
21 understand me. I'm not saying that it was on the same day that Lompondo
22 left Bunia. I do not know whether it was the same day or a few days or a
23 few weeks afterwards, but it was during that period that Lompondo left
24 Bunia.

25 Q. Thank you very much. Now, who chased Lompondo out of Bunia?

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1 A. I do not know. I know that Bunia town was occupied by UPC
2 soldiers. There were also Ugandans. There were both UPC soldiers and
3 the Ugandans.

4 Q. And that war which led to Lompondo fleeing Bunia, which were the
5 forces involved? Which were the fighting forces that prompted Lompondo
6 to flee Bunia?

7 A. It is not possible for me to give you an answer. The war was
8 taking place in the centre of town. (Expunged) and we could see
9 people fleeing. The UPC was opposed to Lompondo's group, and people were
10 fleeing.

11 Q. Thank you. And what was the name of Lompondo's group?

12 A. That group was called APC.

13 Q. Are we, therefore, to understand that when Lompondo was chased
14 out of Bunia the APC was chased out of Bunia? Because the APC was the
15 military wing of Lompondo's group; is that correct?

16 A. Yes.

17 Q. Mr. Witness, are you aware that the APC was the armed wing of the
18 RCD-ML movement of Mbusa Nyamwisi?

19 A. I have no idea. All I knew was that the APC was made up of
20 government soldiers.

21 Q. And when you are talking about the government, which government
22 is that? Can you be more specific, please?

23 A. The Congolese central government.

24 Q. Thank you. Do you know in which town the general staff of the
25 APC relocated after being chased out of Bunia?

Witness: Witness P-0280 (Resumed)(Open Session)
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1 A. No, I do not know.

2 Q. Do you know to where Lompondo and his APC soldiers retreated
3 after being chased out of Bunia?

4 A. We heard about it, but I'm not in a position to confirm. I heard
5 that he went in the direction of Medhu and Songolo in the home area of
6 the Lendu Bindi. That is what we heard.

7 Q. I am putting it to you that Lompondo and his APC soldiers
8 retreated to Beni. What do you have to say to that?

9 A. I told you what I know. I do not know anything about the APC
10 soldiers who went to Beni. However, we captured some of them at the foot
11 of the hill, and these were APC soldiers.

12 Q. We are going to stop in a short while, but before we continue, I
13 would like to seek some information from you, Witness. When you were in
14 Ladile, was there electricity there, that is, in Ladile? I'm sorry. In
15 Lagura. That is where you were, Lagura.

16 A. No.

17 Q. What about Zumbe? Was there electricity there at that time?

18 A. No.

19 MR. FOFE: (Interpretation) Thank you very much, Witness.

20 Mr. President, I think we can stop here for now and continue
21 tomorrow.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
23 Professor Fofe. And please do not misunderstand me. Are you going to
24 use the entire morning of tomorrow? This is simply for the scheduling of
25 other witnesses.

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1 MR. FOFE: (Interpretation) Yes, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Very well.

3 Witness, we are going to adjourn this hearing after four hours
4 during which you answered the questions put to you. We will reconvene
5 here tomorrow morning at 9.00 a.m. with the continuation of the
6 cross-examination of Professor Fofe.

7 Security officers, please escort the accused persons out of the
8 courtroom, and we will see them here again tomorrow. And after the
9 accused persons leave the courtroom, Court Officer, please take us into
10 closed session to allow the witness to withdraw.

11 (The accused withdrew)

12 (Closed session at 6.26 p.m.)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Open session at 6.27 p.m.)

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

24 Mr. President.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

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1 Court Officer.

2 This hearing is adjourned. We will meet again tomorrow morning
3 at 9.00 a.m.

4 The hearing ends at 6.27 p.m.

5 RECLASSIFICATION REPORT

6 *Pursuant to Trial Chamber II's email instructions dated 10 July 2012,
7 the excerpt of the transcript page 14 line 8 is reclassified as
8 public, as ordered by the Chamber.

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