

Trial Hearing
Witness: DRC-D03-P-0055

(Open Session)

ICC-01/04-01/07

1 International Criminal Court
2 Chamber II - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Germain Katanga
5 And Mathieu Ngudjolo Chui - ICC-01/04-01/07
6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra
7 and Judge Christine Van den Wyngaert
8 Trial Hearing
9 Wednesday, 17 August 2011
10 (The hearing starts in open session at 9.02 a.m.)
11 THE COURT USHER: All rise. The International Criminal Court is now in session.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Good morning.
13 Good morning to all. Good morning to the accused.
14 Before we call in the witness, the Chamber felt that it would be useful to carry out a
15 brief consultation, if possible, regarding the filing 3111 sent in yesterday by Mathieu
16 Ngudjolo's Defence. This filing relates to his request in keeping with Regulation 35
17 of the Court to add to the list of evidence and documents that they intend to use and
18 that they intend to communicate to the parties and participants, a document - the
19 reference of which is DRC-OTP-1063-0002 - and which deals with a trip which took
20 place mid-2009 by the Prosecutor of this very Court to the Democratic Republic of the
21 Congo, in Zombe, and during that trip the Prosecutor was said to have met Witness
22 0088, who is to testify soon. There was then a courtesy copy of the official version
23 that was recorded.
24 The Prosecutor sent an email yesterday at 17.29, 16 August, stating that he wanted to
25 respond orally to this request, to this filing, and so, if we've understood this filing, he

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1 is not against this request, inasmuch as the Prosecutor is available to express himself.
2 We would like to know whether Mr Hooper is ready to express his opinion, as well as
3 the representatives of victims, and that would enable us to clarify this point this
4 morning and enable us to continue our discussions. Given that we have a series of
5 witnesses that follow each other rather quickly, we do not want to waste any time.
6 Prosecutor -- or, rather, Mr Hooper, having heard Mr Macdonald, would you be
7 ready to make observations on this request that was made yesterday as regards the
8 request to include an additional piece of evidence?

9 MR HOOPER: Yes. Sorry about the slight delay. We have no objection.

10 PRESIDING JUDGE COTTE: (Interpretation) Fine. In that case, Prosecutor, you
11 may now speak to the request made by Mr Kilenda. Mr Macdonald, please proceed.

12 MR MACDONALD: (Interpretation) Thank you, your Honour. Your Honours,
13 thank you for allowing me to express myself orally, because this can indeed
14 accelerate the procedure. We have no objections to the filing, but we did want to set
15 the context for this communication.

16 It is clear that this document, this piece of evidence - and here I'm speaking on behalf
17 of the OTP - it was my responsibility to carry out in-depth investigations on the
18 document, in particular, a video that we did have in the OTP, that we had in full at
19 the OTP.

20 In July, I believe on 10 July 2009, the Prosecutor went to Ituri - in particular, he went
21 to the region of Zumbe - in the context of his outreach activities. As is the case of
22 other organs of the Court, the OTP carries out outreach activities. This was not an
23 investigation; it was outreach. In spite of that, indeed, the OTP is a unit, as such, is a
24 whole.

25 During that visit, the information section of the OTP did film at certain points in time

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1 this visit in Zumbe with a camera that belongs to the OTP. Indeed, the Prosecution
2 team was aware of the fact that the Prosecutor had gone to that region. We did not
3 know, however, and we learned when this filing was made, that the OTP itself had
4 filmed the visit.

5 So, indeed, there is an initial request regarding whether or not there was any
6 information and there was a mission report which was communicated initially, and
7 then we were told -- well, we were asked if there were any videos, and I asked those
8 who were involved, that is the cooperation section, the unit that's involved with
9 outreach and information, we asked whether or not they had images of that visit
10 filmed by the OTP and I was told, yes.

11 In that case, I said, well, it's important that we know that and we looked at the video
12 and you can indeed see an individual who is speaking to a very large group of
13 individuals assembled in Zumbe, and the Prosecutor is there, and it is indeed that
14 witness under the number D03-P-0088.

15 The quality of the video is non-professional. It has some stops because it was not
16 filmed continually; in other words, all of the speeches and presentations made during
17 that day were not filmed, that is, the entire day was not filmed when the Prosecutor
18 was present.

19 But as I stated in my email, your Honour, it is perfectly clear, as you know, and this is
20 in the eCourt, this Witness D03-P-0088 was interviewed by the OTP and I myself was
21 present during that interview. We communicated the transcripts several months
22 ago - if not several years ago - and most certainly I think it was in 2009, although
23 I don't have the exact date. We did communicate the content of that interview with
24 the OTP.

25 We believe -- well, when you compare the two, and I'm not necessarily certain I need

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1 to delve into that aspect, but we believe that the information in the video is not new,
2 given the interview that took place with the Witness 0088 and also given that the
3 witness is being called by the Defence, and if you take account of the fact that during
4 that visit certain pieces of information were drawn in a table, with a piece of chalk,
5 and that the photograph of that table is one of the pieces of evidence that the
6 Defence intends to use. So, this is a photograph, in fact, which shows that table
7 which is included in the list of evidence presented by the Defence.

8 So, your Honour, I don't want to go into a long discussion, but indeed, when the
9 Prosecutor carries out his functions, not in terms of investigation but within his other
10 functions, do we have to communicate such information? I don't think that's the
11 point to be discussed here today.

12 I am willing to take responsibility for the fact that this video should have been
13 communicated as early as March, when we were told that the chief, the person in
14 question, was to be a witness. And let me reassure you, and here I give you my
15 word and I promise that indeed the video at the time was not accessible to the
16 Prosecution division.

17 And as regards this particular filing, we most likely should have done things
18 differently, but -- and there are potential consequences of the Prosecutor's visit. This
19 is one example, this filing is one example, and I shall inform the Prosecutor and in
20 order to avoid that similar situations occur again. And without going into the whole
21 discussion today, the question is: When the Prosecutor carries out these other
22 functions, do we have an obligation to communicate such information? But, indeed,
23 0088 is a witness.

24 The Defence now has this piece of evidence. If there's been any prejudice, to my
25 knowledge, 0088 has not begun his familiarisation and has not arrived in The

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- 1 Netherlands as of yet and he's not in the hands of the unit as of yet, so the
2 Defence still has time, additional time, to prepare things. Thank you, your Honour,
3 those are the comments I wanted to make this morning. Thank you very much.
4 PRESIDING JUDGE COTTE: (Interpretation) Thank you. So no objections on
5 behalf of your office, no objections from Mr Hooper. Any comments from
6 Mr Gilissen, or Mr Luvengika?
7 MR GILISSEN: (Interpretation) Thank you, your Honour, ladies and gentlemen.
8 I have no objections inasmuch as we could have made any objections. That's why I
9 use the word "observations." Well, this is a request for a new piece of evidence.
10 There's no issue regarding responsibility, but I -- we have taken note as regards the
11 comments you made regarding the admissibility of this evidence, but we would like
12 to say a few words about the potential prejudice. I think this is hypothetical, given
13 that this witness is going to be heard by the Chamber.
14 Thank you, your Honour.
15 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
16 Maître Luvengika.
17 MR NSITA: Good morning, your Honour. Your Honours, I have no comments to
18 make regarding this filing. However, the Prosecutor did raise an issue which is of
19 importance in particular the official missions carried out by the Prosecutor, and I
20 wonder whether the Chamber can reflect upon that matter at some point in time; in
21 other words, whether or not the various elements collected during those visits need to
22 be communicated in an ongoing trial.
23 Thank you, your Honour.
24 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
25 MR KILENDA: (Interpretation) Your Honour?

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1 PRESIDING JUDGE COTTE: (Interpretation) Maître Kilenda, please proceed.

2 MR KILENDA: (Interpretation) It's never too late to do the right thing, and we are
3 very pleased to hear that the Prosecutor realises that he could have completed further
4 diligence and indeed communicated that video.

5 But it is important to respond to the following question; in other words, is there an
6 obligation to communicate? The Prosecutor must communicate everything to enable
7 the Defence to analyse the evidence. It is then up to the Defence to interpret the
8 evidence to determine how to use the evidence which is communicated by the
9 Prosecutor.

10 That the Prosecutor says this morning that it is of his opinion that if you compare the
11 information on the video and the information that we've already received in the form
12 of a written statement that there's no new information, well, that is his own
13 interpretation, that is his own analysis and we have our interpretation.

14 We're very pleased to hear that he's not unfavourable to including this new piece of
15 evidence, and we are very pleased, but we have a question which we would like to
16 ask you to transmit to the Prosecutor. At this point in time, can the Prosecutor tell
17 me publicly that he has indeed communicated the entire video cassette in full? That
18 is the only question we have. We just want to ascertain whether or not we have the
19 full video, or not.

20 Let me add, your Honour, your Honours, it was only very recently when I was in
21 Bunia that I even heard about the existence of this cassette, this tape, and since I
22 called -- I used to call Professor Fofé every evening, we had a one-hour discussion
23 before even deciding to ask the Prosecutor to communicate these elements.

24 Your Honour, I shall not go on any longer. You have read the filing. My question
25 is has this tape - has this video - been communicated in full, because we have believe

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1 that the rights of the Defence of Mr Mathieu Ngudjolo here are in question.

2 Thank you, your Honour.

3 PRESIDING JUDGE COTTE: (Interpretation) Well, we're not going to extend this
4 discussion too much longer. The Chamber would like to share its opinion with you.
5 First of all, Mr Prosecutor, can you reassure Mr Kilenda that he has indeed received
6 the entire tape; in other words, the entire discussion that the Prosecutor had with
7 Witness 0088? Please respond to that first question and then I will say some more.

8 MR MACDONALD: (Interpretation) To clarify, it was a presentation made by
9 Witness 0088 to the delegation and in the present of the -- in the presence of the entire
10 community that was there. And we did confirm this in writing by email last week,
11 or perhaps it was yesterday, that indeed this is the entire footage. In other words
12 there were a series of video sequences, it stops and starts, but I would like to reassure
13 my colleague that the Prosecution has not erased anything from that video, and I am
14 looking at my colleagues when I say that, given the accusations that have been made.
15 Trust me, when we communicate a document, we communicate it in full and we do
16 not play around with these things.

17 Thank you, your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Mr Prosecutor.
19 Let me make a few comments of a general nature. First of all, the Chamber would
20 like to thank the Prosecutor for the context that he has provided, in particular at the
21 beginning of the hearing as regards the filing transmitted yesterday by Mr Kilenda.
22 The Chamber would like to recall, but you have also mentioned this a moment ago,
23 Mr Macdonald, that the OTP is indivisible, it is a whole, and clearly speaking it is
24 necessary to ensure appropriate coordination between the cabinet of the Prosecutor,
25 so to speak, and the various members of the Prosecution teams in the various

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1 Chambers.

2 So if it is indeed an outreach mission, as you have stated, certain elements can
3 nonetheless be important for an ongoing case. Therefore, in the future it would be a
4 good thing that the Prosecutor's cabinet, that his team, report to the Prosecution
5 teams in the various Chambers in order to ascertain whether or not part of this
6 information should be communicated. I think we've discussed this point and no one
7 can contest such a decision, which is pure common sense.

8 We expected that Mr Kilenda speak to the fact that he and you, Mr Macdonald, may
9 have a different vantage point as to the discussions that took place between
10 Mr Ocampo and the witness 0088. That's perfectly justifiable. Each party may have
11 different interpretations and you have indeed expressed your opinions.

12 Now, now that we've made those general comments, as regards the filing itself it
13 appears to be perfectly clear that as of 7 March 2011, which was the deadline for the
14 Defence teams to communicate their documents and evidence, at that point in time
15 they did not have this video and they were not even aware of its existence.

16 We have heard oral confirmation of what was written yesterday from Maître Kilenda.
17 Apparently it was fairly recently, in June I believe, that he heard about this video.
18 There were discussions between the Defence team of Mathieu Ngudjolo and the OTP,
19 and we have now learned of the existence of the video, it has been communicated and
20 Regulation 35 therefore applies and this document can be admitted.

21 Now, Mr Kilenda, if you were to use this video during the testimony of Witness 0088,
22 we would ask you to contact the Registrar in order to ascertain the technical and
23 material conditions whereby this video can be used, since we have no knowledge as
24 to its duration, so that it be projected and that in terms of its viewing and perhaps
25 also the interpretation, which of course requires that the soundtrack be audible in

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1 order to avoid wasting time. We all remember what happened in August and
2 September 2010. A lot of time was wasted. So these things need to be prepared
3 adequately with the technical services and the Registrar, and the appropriate
4 individuals will serve as intermediaries in order to do so.

5 Thank you for the comments made, with the utmost courtesy. We can now go back
6 to our hearing.

7 Closed session, please, Madam Court Officer, in order to bring in Witness 0055.

8 (Closed session at 9.25 a.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 9.27 a.m.)

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

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

21 WITNESS: DRC-D03-P-0055 (On former oath)

22 (The witness speaks Swahili)

23 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Witness.

24 THE WITNESS: (Interpretation) Good morning.

25 PRESIDING JUDGE COTTE: (Interpretation) How are you feeling this morning?

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- 1 THE WITNESS: (No interpretation)
- 2 PRESIDING JUDGE COTTE: (Interpretation) I cannot hear interpretation in French
3 from the witness.
- 4 THE INTERPRETER: The witness said, "Yes, thank you, I'm fine."
- 5 PRESIDING JUDGE COTTE: (Interpretation) I'm glad to hear that, Witness.
6 We're going to resume where we left off yesterday at 1.30, or shortly before.
- 7 Professor Fofé had just asked the witness to write down on a document, which was
8 given an EVD number, the list of the members of the Kambutso health committee; is
9 that correct?
- 10 Professor Fofé, you may proceed.
- 11 MR FOFÉ: (Interpretation) Thank you, your Honour. Good morning, Mr President.
12 Good morning, your Honours.
- 13 QUESTIONED BY MR FOFÉ: (Interpretation) (Continuing)
- 14 Q. Good morning, Witness.
- 15 A. Good morning.
- 16 Q. Did you have a good rest? Can we continue our discussion relaxedly?
- 17 A. Yes, I had a good rest. I'm fine. We can continue.
- 18 Q. Thank you very much. Witness, as the President just recalled, yesterday, when
19 you were answering one of my questions, you gave the names of the members of the
20 health committee of Kambutso. Could you now give us the names of the nurses that
21 worked at the health centre in Kambutso?
- 22 PRESIDING JUDGE COTTE: (Interpretation) If the witness is in a position to give
23 us those names, let us give him a piece of paper and a pen so that he can write them
24 down, court usher, and we will then be able to put them on the overhead projector so
25 that we can look at them, and this will save time.

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1 Thank you, Witness.

2 THE COURT OFFICER: (Interpretation) Can you confirm the level of
3 confidentiality?

4 MR FOFÉ: (Interpretation) May I see the list first, your Honour? To begin with,
5 this list could be first considered confidential, your Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) All right. There we are. Thank you,
7 usher. Court officer, this document can be seen on "Docu Cam Witness," by pressing
8 "Docu Cam Witness." Let me allow you all to read this. No doubt, Professor Fofé
9 will want us to allocate an EVD number to this document.

10 MR FOFÉ: (Interpretation) Yes, it is a good idea to allocate an EVD number to this
11 document.

12 PRESIDING JUDGE COTTE: (Interpretation) Which, for the time being, is
13 confidential.

14 MR FOFÉ: (Interpretation) And I would also like to suggest to the Chamber that we
15 could very briefly go into closed session so that the witness himself can pronounce
16 these names so that they appear on the transcript.

17 PRESIDING JUDGE COTTE: (Interpretation) Let's first ask the court officer to
18 allocate an EVD number. Then we shall go into private session so that the witness
19 can state the names that he wrote down so quickly, for which we thank him.

20 THE COURT OFFICER: (Interpretation) Thank you, your Honour. This
21 document will carry the number EVD-D03-00089.

22 PRESIDING JUDGE COTTE: (Interpretation) And it is confidential. Let's go into
23 private session for a short moment.

24 (Private session at 9.36 a.m.)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

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13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 9.39 a.m.)

21 THE COURT OFFICER: (Interpretation) We are now in open session.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Go ahead, Professor.

23 MR FOFÉ: (Interpretation) Should the list not be retrieved?

24 MS LUPING: If we could please just have permission to see the list one more time, if
25 the court usher could provide it to us for a moment.

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1 PRESIDING JUDGE COTTE: (Interpretation) Court usher or court officer, could you
2 please hand over the list to the Prosecutor. Professor Fofé, you can go on, I think.

3 MR FOFÉ: (Interpretation)

4 Q. Witness, now, to continue, now I am going to give you some context concerning
5 the meeting that took place. This was a preparatory meeting for the establishment of
6 the health centre in Kambutso. Now, for that purpose I will be -- with the
7 President's leave, I will ask the usher to show you EVD-D03-00087. I have the
8 original of this document, and perhaps the usher could show it to the witness before
9 we go on.

10 We spoke about this document yesterday, and you told us that you -- well, you gave
11 your name as one of the participants in this meeting. Well, I have quite a few
12 questions to ask you about that meeting. Now, because you were in attendance at
13 that meeting, I will, with the assistance of the court officer, present you a document --

14 MS LUPING: Mr President --

15 PRESIDING JUDGE COTTE: (Interpretation) Ms Luping.

16 MS LUPING: (Overlapping speakers) -- provides the document, if Mr Fofé could
17 please present his questions in advance. He can show the document after the
18 questions are put to the witness. We have to comply with the appropriate procedure
19 in this instance, and failing to do so otherwise is simply refreshing the witness's
20 memory.

21 MR FOFÉ: (Interpretation) All right, then.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Prosecutor. I
23 simply want to know which document we are talking about, EVD-D03-00087, or are
24 we talking about a different document about which we know nothing? And if this is
25 an upcoming document for the purposes of the discussions now, it is indeed

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1 necessary to present it, to introduce it, so that the witness will -- well, so that we can
2 assess whether the witness is in a position to say something useful or whether it's
3 something out of the blue.

4 Professor Fofé, what's the situation?

5 MR FOFÉ: (Interpretation) Thank you, your Honour. Yes, I do approve of the
6 Prosecutor's objection. I fully agree with her. But I thought that the two
7 documents were connected and that is why I used the document that was used
8 yesterday by way of introduction to the second document, but I will follow what
9 Madam Prosecutor suggests.

10 Your Honour, this document DRC-D03-0001-0049 - and it consists of two
11 pages - because of the language used in the document we produced a French
12 translation, which is document DRC-D03-0001-0678.

13 PRESIDING JUDGE COTTE: (Interpretation) Fine. To avoid any refreshing
14 exercise, there has to be an introduction indeed.

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

16 Q. Witness, do you remember how this meeting, during which you were
17 appointed to carry out the duties that I won't be quoting here because we're in open
18 session, but in any case do you remember how this meeting was conducted? Can
19 you tell the Chamber what it dealt with, how the meeting was conducted, who was
20 there and what happened during that meeting during which you were appointed to
21 the duties in question that relate to the document you have before your eyes? Go
22 ahead, Witness. Please speak slowly, loudly and clearly so that the Judges can
23 follow you.

24 A. Thank you. This is how the meeting went. The purpose of the meeting was
25 to identify someone who could be in charge of the Kambutso health centre. Mathieu

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1 was the one to call the meeting so that we could think about this appointment,
2 because there was a large population in Zumbe and the Kambutso health centre could
3 not on its own cover the needs of the whole population in terms of health care.
4 Mathieu convened us so that we could think about opening another health centre in
5 Kambutso.

6 Q. You just talked about Mathieu. What -- which Mathieu are we talking about
7 here? What is Mathieu's name?

8 A. I am talking about Mathieu Ngudjolo.

9 Q. Now, during that meeting -- first of all, before we get to that stage, you just said
10 that Mathieu Ngudjolo was the person who organised the meeting; is that right?

11 A. Yes.

12 Q. Now, during the meeting -- first of all, roughly, without giving any names,
13 please just talk about functions or duties, during the meeting who was present?
14 Who was in attendance? I'm not asking you for names. I'm just asking you for the
15 functions of the people who attended.

16 A. The people who attended the meeting were the chiefs of the localities for the
17 area.

18 Q. Now, during that meeting did you ask Mathieu Ngudjolo any questions? Did
19 you seek additional explanations about this meeting that he had organised?

20 A. Yes, questions were addressed to him; for instance, whether the health
21 centre -- well, if it did open, how would we get medical supplies?

22 Q. Thank you. Now, apart from that particular question, perhaps you could give
23 us further details about other questions in addition to the one about medical supplies?
24 Were there any other questions addressed to him? Could you try and recollect?

25 A. Another question was, for instance, how would the premises of the health

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1 centre be built?

2 MR FOFÉ: (Interpretation) Thank you, Witness. Your Honour, I think that at this
3 stage we could perhaps ask that the witness be presented with the
4 DRC-D03-0001-0049.

5 PRESIDING JUDGE COTTE: (Interpretation) Yes, we shall show this document to
6 the Witness. Do you wish the handwritten version to be presented to him, or the
7 courtesy translation that you have produced?

8 MR FOFÉ: (Interpretation) I would prefer him to be shown the original version in
9 Swahili.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course.

11 MR FOFÉ: (Interpretation) We are working on the original Swahili version.

12 PRESIDING JUDGE COTTE: (Interpretation) Go ahead, court officer.

13 THE COURT OFFICER: (Interpretation) Professor Fofé, could you give us the
14 level of confidentiality for this document, please?

15 MR FOFÉ: (Interpretation) This can be a public document. Your Honours, in view
16 of the importance of these documents for the Defence team, I would like to propose
17 that the witness reads out this document, which is in Swahili, so that we can get the
18 French interpretation of the document so as to be perfectly sure that everything is
19 clear and in the transcript.

20 PRESIDING JUDGE COTTE: (Interpretation) Well, if this document is especially
21 important to you and if you do believe that it is essential to read it out, then we shall
22 ask the witness to do so. The document is not a very long one.

23 So, Witness, we would like you to take up the document that you have before you
24 and read it out not too slowly, not too fast, so that the interpreters can follow you.

25 Witness, go ahead. Begin with the top of the page, the place and the date. Could

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1 you read it out.

2 THE WITNESS: (Interpretation) "Kambutso, 22 September 2002. Opening meeting
3 for the Kambutso health centre.

4 Agenda:

5 1. Prayer.

6 2. Introduction.

7 3. Opening of a health centre in Kambutso:

8 (a) Location;

9 (b) Construction;

10 (c) Vote of members of COSA;

11 (d) Opening date.

12 4. Miscellaneous.

13 Report: The meeting began with the prayer given by our Pastor Lukpa.

14 2. After the prayer, we went on to the introduction made by each of the participants.

15 First of all, the representatives of the State for the various localities and then the
16 representatives of the various churches.

17 3. Opening of a health centre in Kambutso:

18 (a) Location.

19 Question from the préfet: 'Would the opening of a health centre in Kambutso meet
20 the conditions of your internship?' Answer: 'Yes.'

21 Question: 'If the health centre opens, can you give us the conditions relating to the
22 opening of such a health centre?' Answer: 'Yes, there are some conditions. One,
23 first condition, if it is located in a rural environment, well, the number of inhabitants
24 must be 5,000.

25 Secondly, second condition, there must be members of the committee who will be in

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1 charge of handling the health centre's assets.

2 Third condition, there has to be a head nurse in charge and this nurse must be a

3 general care nurse. Fourth condition. Fourth condition, you will have to accept to

4 provide care to patients, vaccinate children and pregnant women, carry out

5 midwifery and submit monthly reports on a regular basis.'

6 Question: 'If we do open a health centre, how will we get medical supplies?'

7 Answer: 'For the time being, we can begin with the few supplies, medical supplies,

8 that we already have.' Question: 'Will we get help if things go well?'

9 Answer -- well, another question: 'When will we be opening the health centre?'

10 Answer: 'Once the health centre committee has been set up and once we have found

11 a location where we shall be opening it, that is when we can begin work.'

12 Question: 'With regard to work materiel or equipment, how are we going to obtain

13 such equipment?' Answer: 'We do have -- I do have some equipment, and that

14 will be enough for us to start.'

15 Question: 'We members of the local population would like to know whether you

16 have already found a doctor who will be able to sign your file because, you see, you

17 are only a student.' Answer: 'As far as the physician is concerned, there are no

18 difficulties in this regard.'

19 A) Location. Question: 'Is there a location where we can build the health centre?'

20 Answer: 'There is a place and we are going to go and visit this place.'

21 B) Construction. Question: 'The place that we are going to go, this possible

22 construction site for the health centre, is there not already a house there?' Answer:

23 'No. With regard to the building, Mr Justin has agreed to donate two large pieces of

24 lumber that will have to be sawed.'

25 C) Members of the COSA committee. COSA is C-O-S-A. Two chairmen are

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1 needed, two secretaries are needed, two representatives of the churches, three council
2 members, one youth representative, one representative of seniors in the community
3 and one representative of the women in the community. Conditions for becoming a
4 member of the committee: First of all, you have to be from the local community.

5 You have to have good social skills and you have to know how to read and write.

6 D) Opening date. Contributions to the building. 1, Mbilu, one large piece of
7 lumber; Dheda, one piece of lumber.

8 Head of the Lema locality. 3, Demi, one piece of lumber. 4, old Justin, two pieces
9 of lumber."

10 Thus ends the reading out of this report.

11 MR FOFÉ: (Interpretation)

12 Q. Thank you, Witness. If you could just hang on to your reading glasses for a
13 moment, I'd like to ask you three brief questions. First of all, I would like to ask you
14 to look at the second page, the second and last page of the original document. The
15 second page, the last page, are you there?

16 A. Yes.

17 Q. If you could look at the top of the page, the beginning, and the question was
18 asked -- "Q" stands for "question," doesn't it?

19 A. Yes.

20 Q. What is that?

21 A. "Reply."

22 Q. Exactly, because you didn't translate that. You see, in the world of law, you
23 have to be extremely specific about these things. So "R" stands for reply. If you
24 look further down, underneath the "R", there is another "Q", standing for "question,"
25 is that not so?

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1 A. Yes.

2 Q. Then there is another "R" underneath; that stands for "reply," is that not so?

3 A. Yes.

4 Q. And what is the word in Swahili for reply?

5 A. "Majibu," M-A-J-I-B-U.

6 Q. You repeated -- I beg your pardon. I'll just to wait for a moment. I asked you
7 that because when you were reading it out, you were speaking about questions and
8 you said, "maulizo," but in actual fact, it's an "R." We've taken note of that.

9 MR FOFÉ: (Interpretation) I beg your pardon, your Honour. I'm just checking to
10 make sure that everything was transcribed properly. Just a moment, if you don't
11 mind.

12 Q. If you could please, Witness, put your reading glasses back on and if you could
13 look at the first page, the first page and the second last question, and then look at the
14 answer to the second last question. It would appear that this was not translated.
15 Could you read out the answer to the second last question?

16 A. "After the creation of the health committee and once the location is secured for
17 the building and the beginning of the work."

18 Q. I think that's the last question. I'm speaking of the second last question. If
19 you could go up a bit on the page. I think you just read out the last page. If you
20 could please go up a bit on the page and look at the second last question, please.

21 A. "For the time being we can begin with the few medications that we have."

22 Q. Please go on.

23 A. "And then the NGOs that you are used to be hearing about will be able to help
24 us if our reports show that our activities are conducted properly."

25 Q. Thank you very much, Witness. Witness, we have seen that the person who

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1 was asking the questions was the prefect. It is written here "prefect." Who was that
2 person? If you could look at point 3 on the first page, subsection A --

3 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping.

4 MS LUPING: There's nothing in the translation provided for this document
5 naming the persons asking the questions. If we could just ask Mr Fofé to remember
6 to keep his questions neutral and open. We don't want to start again with leading
7 questions. Just keep them open and neutral.

8 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, please keep on going,
9 but it is important for you to try to specify who asked the question and who gave the
10 answers; otherwise, this document will be of only very minor use or will be only
11 somewhat useful.

12 MR FOFÉ: (Interpretation) Yes.

13 Q. Witness, if you could please look at point 3 on the first page and, "Opening of
14 the health centre in Kambutso: (a) Location." Then there was a question. Could
15 you read out this particular passage? Please read it out in Swahili.

16 A. "Question from our brother, the prefect."

17 Q. Thank you. So there was a question from the prefect. My question is as
18 follows: Do you know this person? Who was this person?

19 A. It was the prefect responsible for the studies at the secondary level; in other
20 words, the headmaster.

21 Q. Do you remember his name and, if so, could you please provide the name to the
22 Bench?

23 A. I've forgotten his name.

24 Q. You do have time. If between now and the end of the testimony you
25 remember the name of this headmaster, please let us know and you will be able to

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1 thus give the name to the Judges.

2 A. Now I remember. His name was Mburombe.

3 PRESIDING JUDGE COTTE: (Interpretation) Could you please spell out his name,
4 Witness? Please quickly spell out his name so that it can be recorded.

5 THE WITNESS: (Interpretation) M-B-U-M-B-I. I beg your pardon, I skipped over
6 one syllable. Let me repeat: M-B-U-R-O-M-B-E.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Please continue.

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

9 Q. One last question, Mr Witness. So it was this headmaster, Mr Mburombe, who
10 was asking the questions. Who was answering all these questions?

11 A. Mathieu Ngudjolo was answering all those questions.

12 PRESIDING JUDGE COTTE: (Interpretation) Ms Luping.

13 MS LUPING: It's just a question of clarification. In the document it refers to one of
14 the questions being asked by the préfet. I think we need to be asking an open-ended
15 question to the witness as to who was asking any of the other questions. It's an
16 assumption on the part of Professor Fofé in this regard.

17 PRESIDING JUDGE COTTE: (Interpretation) Very well, that's a point that we'll
18 have to remember. Now, this person mentioned, "our brother, the prefect," or the
19 headmaster, was he the one asking all the questions? We have just heard a reply
20 and the observation from Ms Luping also applies to the answer. "Did Mr Ngudjolo
21 answer all?" The answer was, "Yes." Please continue.

22 MR FOFÉ: (Interpretation) I shall hark back to that last question before I move on to
23 something else.

24 PRESIDING JUDGE COTTE: (Interpretation) I beg your pardon about the answer.
25 I think on line 15 of the very last page of the transcript, page 27, the witness replied

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1 saying that, "Mathieu Ngudjolo was the one who answered all the questions." Now
2 we should go back to the point of the brother; that is to say the headmaster.

3 MR FOFÉ: (Interpretation) Thank you.

4 Q. So you said that Mr Ngudjolo answered all the questions. Witness, who asked
5 all the questions?

6 A. Well, the headmaster was not the only one asking questions, there were many
7 other people who asked questions, but right now I couldn't give you the names of all
8 the people who were asking questions.

9 MR FOFÉ: (Interpretation) Thank you very much, Witness.

10 Your Honour, we would like to ask if an EVD number could be attributed to this
11 document that we have just been dealing with.

12 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer. Ms Luping.

13 MS LUPING: Mr President, the prosecution don't object to an EVD being assigned
14 per se, but it is again a question of procedure. Before any EVD can be assigned to
15 this document, there are certain questions that still need to be posed to the witness
16 that we were expecting to be asked; for example, "Who drafted the document?
17 When was the document drafted?"

18 In terms of the chain of custody we've been informed that it was Mathieu Ngudjolo
19 himself who provided the document to this witness, but no questions in relation to
20 this have been specifically put to the witness. Has he seen the document before?
21 When was the first time he saw it? If he received it, how did he receive it, who from
22 and in circumstances?

23 These are all appropriate questions that need to be asked in advance before any EVD
24 can be assigned to the document.

25 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, in light of the remarks

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1 just made by the Prosecution, and to ensure that the document appears in the case file
2 in the best possible conditions, the witness will have to answer these various
3 questions.

4 Now, I don't know whether you took note of them as Ms Luping was making these
5 points, but in any event the questions are seen on the page 29 of the real-time
6 transcript.

7 Now, the first question was: "Who drafted this document, do you know?" It is
8 entitled "Agenda," but in actual fact I think this is more of the minutes of a meeting,
9 or the transcript of a meeting. Who drafted this document, Witness?

10 THE WITNESS: (Interpretation) Well, since Mathieu Ngudjolo was the one who
11 organised the meeting, he himself drafted this report.

12 PRESIDING JUDGE COTTE: (Interpretation) Do you know when the report was
13 drawn up; this account, or these minutes of a meeting? I suppose you may not be in
14 a position to know, but let us assume you do know.

15 THE WITNESS: (Interpretation) It was on 22 June -- correction, 22 September 2002.

16 PRESIDING JUDGE COTTE: (Interpretation) So, according to you, this report was
17 drafted on the same day; is that correct?

18 THE WITNESS: (Interpretation) Yes.

19 PRESIDING JUDGE COTTE: (Interpretation) Very well. We've seen from your
20 replies - your replies to Professor Fofé's questions - that this was a meeting that
21 allowed you to recall the events quite clearly. Now, did you see these minutes
22 before? Is this a document that you've been familiar with for a long time, or is it
23 not?

24 THE WITNESS: (Interpretation) Could you repeat your question?

25 PRESIDING JUDGE COTTE: (Interpretation) Of course. Is today the first time

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1 you've ever seen this document, or is this a document that you've been able to read in
2 the past? If you've already had an opportunity to read it, do you remember when
3 you saw and read this document?

4 THE WITNESS: (Interpretation) I know that after drafting the document I did not
5 have an opportunity to read it. I don't know how it came to be that this document
6 found itself here.

7 PRESIDING JUDGE COTTE: (Interpretation) So are you telling us that this is the
8 first time you've ever seen this document, Mr Witness?

9 THE WITNESS: (Interpretation) Yes.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes, Ms Luping.

11 MS LUPING: Thank you, Mr President. It's just a question of information. This
12 document was in the familiarisation package for this witness. He should have read
13 it just days before he gave his testimony. I just wanted this clarified for -- as a matter
14 of record, Mr President. The witness at least has seen this document before his
15 testimony.

16 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, now let's assume you
17 wish to ask a few more questions about the -- where the document came from and
18 how the witness came to have knowledge of this document. If you have any further
19 questions, very well, or we will give an EVD number to it.

20 MR FOFÉ: (Interpretation) I'd just like to respond to what my learned friend has just
21 said. This document was not one of the documents provided during familiarisation.
22 There were no documents for that. Consequently, with all due respect, we would
23 like to request that an EVD number be assigned to this document.

24 PRESIDING JUDGE COTTE: (Interpretation) Well, we've found out about
25 the -- where the document has come from, and I think we can now assign an EVD

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1 number to it. This is -- yes, Mr Macdonald.

2 MR MACDONALD: (Interpretation) We are going to double-check, because many
3 lists were sent back and forth and were received by everyone, as the Chamber may
4 note. I think you may see in the final list -- and we will double-check and we will try
5 to determine whether that document was on that list, or not. That is why we have
6 made this particular point and then we will --

7 MR KILENDA: (Interpretation) This document was not in any way listed on that
8 document.

9 PRESIDING JUDGE COTTE: (Interpretation) Well, no one can keep you from
10 double-checking this point, Mr Prosecutor, but you have heard two statements: One
11 by Mr Kilenda and one by Professor Fofé. Now, this is document
12 DRC-D03-0001-0049 and what EVD number would you like to attribute to this?

13 THE COURT OFFICER: (Interpretation) Thank you, your Honour. This
14 document shall bear the number EVD-D03-00090 and shall be registered as a public
15 document.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. Professor
17 Fofé.

18 MR MACDONALD: (Interpretation) I apologise to my colleagues. Indeed, there
19 was no familiarisation list for witnesses 44, 55 and 56. It was my mistake and I
20 apologise for that, I apologise to my colleagues.

21 PRESIDING JUDGE COTTE: (Interpretation) Duly noted, and I can see that they
22 have accepted your apologies with a smile. Professor Fofé, please proceed.

23 MR FOFÉ: (Interpretation) Thank you, your Honour. Thank you, Mr Prosecutor.

24 Q. Witness, you mentioned the names of the nurses who worked at the health
25 centre in Kambutso. Given your functions that I'm not going to repeat because we're

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1 in open session, was the number of nurses sufficient for the good and proper
2 functioning of the health care centre in Kambutso?

3 A. I would say the following: The number was sufficient. We couldn't hire
4 more nurses than necessary; the number of nurses was sufficient.

5 Q. Thank you very much. For information, do you know someone by the name of
6 Manje Bulo Gracia?

7 A. Yes, I know him.

8 Q. Who was he?

9 A. He was one of the nurses. You will find his name on the list.

10 Q. Thank you. Therefore, the person you referred to as Bulo Gracia, he also has
11 the name "Manje"; is that correct?

12 A. Yes, that's correct.

13 PRESIDING JUDGE COTTE: (Interpretation) That's number 6 on the list, isn't it?

14 MR FOFÉ: (Interpretation)

15 Q. Do you know a certain Mr Lubanga?

16 A. Yes, Mr Lubanga, I know him. He was also one of the nurses. Ngaluba Guba
17 is also on the list. Ngaluba Guba. I beg your pardon, the name is Lubanga Guba.

18 Q. So on the list of nurses, the person you referred to as Ngaluba Guba, the name
19 should be Lubanga Guba, is that it?

20 A. Yes, it should be Lubanga Guba.

21 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping.

22 MS LUPING: I'm sorry to interrupt my friend, but if he's intending to provide any
23 additional names to the witness, I will be objecting on the basis that this is simply a
24 process of trying to refresh the witness's memory. If he's going to be asking any
25 additional names of nurses, he needs to be doing so in open-ended names and not

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1 simply providing additional names.

2 This is not an appropriate manner to obtain any additional information he believes
3 has been omitted.

4 PRESIDING JUDGE COTTE: (Interpretation) We agree, Madam Luping.

5 A moment ago, the witness referred to seven names which were listed. It would
6 appear that two of those names need to be corrected. We have just done that for two
7 of those names. Professor Fofé, if you want to ask the Witness for additional
8 information - in particular, other names of nurses - please do ask him general
9 questions but do not mention a name to him to ask him if that name corresponds to a
10 nurse, because he already had the opportunity to give us a list of the names of nurses
11 that he remembered. Perhaps that was not your intention, of course, but this is an
12 opportunity to remind you of the procedure. So please do heed that procedure.
13 You may proceed, but -- and perhaps we could speed things up just a wee bit, if you
14 could. You may proceed.

15 MR FOFÉ: (Interpretation) Thank you, your Honour. I would like to reassure the
16 Bench, as well as the Prosecutor, that there are not other names. I'm not going to
17 mention the other names, but let me just say the following, and I'm sure my learned
18 colleague, Maître Luvengika, will support me here. In the DRC, people have several
19 names, different names, post names, and therefore I wanted to clarify.

20 In the case of Manje, it's not really a correction here, it's just an additional name. It's
21 what we call a "post name," if you will. And, therefore, that's all I wanted to say. I
22 shall move on.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, please move on, and I can trust
24 Madam Luping to watch and listen carefully.

25 MR FOFÉ: (Interpretation)

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1 Q. What were the responsibilities of the chairman of the health committee in
2 Kambutso, chairman or president?

3 A. Well, I can speak about the tasks of the president as well as the various
4 members of the committee. The members were in charge of raising awareness on
5 the part of the population; in other words, organising an awareness campaign as
6 regards health and health care.

7 The committee was also in charge of managing medication. It also was in charge of
8 monthly budget control. The committee was responsible for evaluating a particular
9 situation, if there were tensions or conflicts amongst the medical personnel.

10 Q. Did the president of the health committee keep records, archives, of the health
11 centre in Kambutso? And if the answer is "yes," do these archives exist still today?

12 A. Well, preserving archives was not one of the tasks of the president; it was the
13 responsibility of the secretary. As regards care management, that was the
14 responsibility of the nurse in charge. In other words, the committee had a secretary
15 as a reference person.

16 Q. Witness, do you know a person by the name of Bahati from Zumbe?

17 A. Yes, I know Bahati de Zumbe.

18 Q. Who was he?

19 A. Bahati de Zumbe was a nurse at the Zumbe health care centre.

20 Q. The health care centre in Zumbe is different from the health centre in
21 Kambutso?

22 A. Yes, those are two different institutions.

23 Q. Do you know when Bahati de Zumbe left Zumbe?

24 A. No, I don't remember the date when he left Zumbe. I know that he went to
25 work in Lumbe; whereas, he was living in Bunia. He was a nurse in Zumbe but in

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1 fact his official residence was in Bunia, and he would go regularly to work and he
2 would go back home.

3 Q. Do you remember, approximately, when, that is, what period of time, he was a
4 nurse at the health clinic, or the health centre, in Zumbe, that is, approximately?

5 A. When I arrived in Zumbe -- first of all, when I arrived in Bunia, it was Bahati,
6 and I remember that that was in '79, 1979. Bahati was a nurse in Zumbe at the time.

7 Q. We're talking about 1979. When did you yourself arrive in Zumbe?

8 A. I arrived in Zumbe in 2001. And Bahati was already there; he was already a
9 nurse.

10 Q. So you arrived in 2001. Can you try, based on that fact, to estimate when
11 Bahati de Zumbe left Zumbe?

12 A. As I've just said, I really can't answer that question. I really don't remember
13 when he left definitively. I already told you his official residence was in Bunia, but
14 he went to Zumbe to work as a nurse.

15 Q. Witness, the date of 24 February 2003 --

16 MS LUPING: Objection, Mr President.

17 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping.

18 MS LUPING: Mr Fofé is clearly aware that this is an extremely leading question he's
19 about to ask. If he could please avoid giving dates to the witness, even if they are
20 not contested as between the parties. That's not the point. The issue is the
21 knowledge of the witness, not of Professor Fofé. If he can please avoid giving dates
22 and try to avoid such leading questions.

23 PRESIDING JUDGE COTTE: (Interpretation) Well, it was only the very early phases,
24 the preliminary phases of the question, but you are right that we need to be cautious.
25 Professor Fofé, would you be so kind as to rephrase your question, which could

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1 potentially help the witness answer even before you finish the question?

2 MR FOFÉ: (Interpretation) Thank you very much, your Honour. I was trying to
3 speed things up, but we can go back to the situation.

4 Q. While you were in Zumbe, what were the events that you experienced that is
5 related to security?

6 A. Well, I remember when I was in Zumbe there was no security. It was during
7 the war; it was a totally insecure situation. We had to move around and run away at
8 any given point in time.

9 Q. What battles do you remember in particular? You referred to war or battles,
10 which ones do you remember in particular?

11 A. I don't remember the exact date. There were regular battles, and there were
12 people in charge of self-defence and they became involved in order to protect the
13 population in the locality. One day, during a battle that came from Mandro,
14 that -- I don't know if I should mention the name of the person at this point in time.
15 Well, I was saying there was a battle led by Mr Bosco Ntaganda, and this battle had
16 an affect on Ezekere, Kambutso and other localities.
17 We fled from our town, because houses had been burned and people ran away. The
18 whole thing lasted more than a week. People died of hunger in the bush, and people
19 went out to the bush to hide with their families. And when we came home, we
20 discovered anti-personal mines that had caused victims' deaths. People had lost
21 their limbs. Those are the memories that I have of that attack.

22 Q. Do you remember what year that was, approximately?

23 A. Well, to answer your question -- well, perhaps you can help me a bit to
24 remember. Just now I'm not able to answer your question.

25 Q. Thank you, Witness. Witness, sir, you have again spoken about the attack, and

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1 you mentioned the effect on your groupement and the damage that was caused in
2 your groupement. During that period, who was the chief of your groupement; that
3 is, the Bedu-Ezekere groupement?

4 A. At that time, the chief of the groupement was Ngabu Emmanuel. People call
5 him Ndudjini.

6 Q. Is Ngabu Emmanuel, also known as Ndudjini, does he have another name that
7 he's called by? If you know, of course.

8 A. He's known by the name of Ndudjini or also Chief Manu.

9 Q. Before Chief Manu, was there someone else who was the chief of the
10 Bedu-Ezekere groupement before Chief Manu?

11 A. Yes, before him it was Losinu Safari. Losinu Safari.

12 Q. Could you tell us briefly how it came to be that Losinu Safari stopped being the
13 chief of the groupement?

14 A. Well, I can tell you the following: He did not resign; he fled during the war.
15 He went to the direction of Nyankunde to Nganda (phon), where there were no
16 battles. He spent a lot of time away, so people realised they couldn't continue
17 without a chief, and that's why Chief Manu was chosen amongst the population to
18 replace the person who was no longer there.

19 Q. Do you remember approximately -- I do know that there were several attacks.
20 Do you remember which attack caused Chief Losinu Safari to flee?

21 A. He was afraid. And given that there had been several attacks regularly, well,
22 that caused him to flee. There was no security, so that is why he decided to leave.

23 PRESIDING JUDGE COTTE: (Interpretation) I think it's time for a break at this
24 point. Witness, we're going to take a 30-minute break, and this will be an
25 opportunity for you to rest and relax, and we shall resume at 11.30. Court officer,

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- 1 closed session please so that the Witness can withdraw.
- 2 THE INTERPRETER: Interpreter's correction: On line 10 please add the town
- 3 Komanda after Nyankunde. "In the direction of Nyankunde and Komanda."
- 4 (Closed session at 10.57 a.m.)
- 5 (Expunged)
- 6 (Expunged)
- 7 (Expunged)
- 8 (Expunged)
- 9 (Expunged)
- 10 (Open session at 10.58 a.m.)
- 11 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 12 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. Professor
- 13 Fofé, can you give us an estimate as to how much time you're going to need to
- 14 complete your direct examination of this Witness?
- 15 MR FOFÉ: (Interpretation) Well, it's difficult for me to tell you. In keeping with
- 16 our -- well, actually, I will evaluate the situation during the break, and perhaps I can
- 17 give you a clearer response after the break, but I think that we will probably need the
- 18 rest of the day.
- 19 PRESIDING JUDGE COTTE: (Interpretation) Well, it would be preferable if you can
- 20 complete your direct examination today. So I get the impression it's going to be
- 21 somewhat longer than what you had expected.
- 22 MR FOFÉ: (Interpretation) Yes, that may be the case, but I will evaluate the situation
- 23 during the break.
- 24 PRESIDING JUDGE COTTE: (Interpretation) The hearing is now suspended for
- 25 30 minutes. We'll be back at 11.30.

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- 1 (Recess taken at 10.59 a.m.)
- 2 (Upon resuming in closed session at 11.34 a.m.)
- 3 (Expunged)
- 4 (Expunged)
- 5 (Expunged)
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- 8 (Expunged)
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- 10 (Expunged)
- 11 (Open session at 11.35 a.m.)
- 12 THE COURT OFFICER: (Interpretation) We are now in open session, your
- 13 Honour.
- 14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer.
- 15 Witness, can you hear me?
- 16 THE WITNESS: (Interpretation) Yes, I can hear you.
- 17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness. We can
- 18 therefore proceed. Go ahead, Professor Fofé.
- 19 MR FOFÉ: (Interpretation) Thank you, your Honour. Your Honour, as promised,
- 20 during the break I assessed the situation and I think I can make an effort so as to be
- 21 finished with my direct examination today.
- 22 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Professor
- 23 Fofé. Please proceed.
- 24 MR FOFÉ: (Interpretation)
- 25 Q. Good day again, Witness.

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1 A. Yes, good day.

2 Q. Witness, we were in the process of talking about the groupement chief and we
3 shall enter into some details about the current groupement chef, or, rather, the one
4 who was there, i.e. Chief Manu. Could you remind us perhaps. You spoke to us
5 about the attacks that your groupement came under, and during the attacks Chef
6 Manu was present. Could you perhaps remind us what are the measures that the
7 groupement chef/chief took so as to attempt to defend the population in his
8 groupement?

9 A. The plan for defending ourselves? Well, there was no plan, I don't think, but
10 we had to defend ourselves nonetheless.

11 Q. Unless I'm mistaken, I do believe that yesterday you talked about the UPC and
12 the UPDF as being at the root of these attacks. Could you, if you know, very briefly
13 describe to us what the UPC did? Or, rather, to speed matters up, perhaps you
14 could remind us where the military forces of the UPC were stationed.

15 A. First of all, the UPC was a political and military group of the Hemas. They
16 were the ones who ruled over Bunia as a whole and also ruled over Kasenyi, Tchomia,
17 Bogoro, Mandro, all nearby, and the whole nearby area to Bunia. All of these areas
18 and places were under the control of the UPC.

19 Q. Very briefly once again, Witness, could you tell us what the UPDF is? What is
20 it?

21 A. That is the Ugandan army. The UPDF is the army of Uganda.

22 Q. Among the localities where the UPC soldiers were stationed that you just
23 quoted, among those localities there was Bogoro. Do you know Bogoro?

24 A. Yes, I am very familiar with the Bogoro locality.

25 Q. Did you ever live there, in Bogoro?

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1 A. No, I never lived in Bogoro, but from time to time I went there, for instance, to
2 go to the market.

3 Q. During the period that we are concerned with from 2002 to 2003, and with a
4 special focus on 2003, do you remember a major event that occurred in Bogoro?

5 A. Yes. There was fighting in Bogoro at a certain moment in time.

6 Q. So this war that took place in Bogoro, do you remember more or less when it
7 happened?

8 A. The fighting in Bogoro took place on 24 February 2003.

9 Q. Do you know who attacked Bogoro on 24 February 2003?

10 A. I'm not absolutely sure about who the attackers of Bogoro were.

11 Q. All right. And when Bogoro was attacked on 24 February 2003, was Bahati de
12 Zumbe with you in the Bedu-Ezekere groupement on 24 February 2003?

13 MS LUPING: Objection, Mr President.

14 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping.

15 MS LUPING: We'd ask that Professor Fofé ask an open-ended question in relation
16 to this. For example, he can simply ask, "Where was Bahati de Zumbe on that date?"

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam Luping.

18 Professor Fofé, I hope you're registering that. The question has already been asked
19 and heard by the witness, so he's going to answer it.

20 Witness, you heard the question. Professor Fofé will be careful in the upcoming
21 questions. And the question was whether Bahati de Zumbe was at the

22 Bedu-Ezekere groupement on 24 February 2003. We'll not pretend to have heard
23 this question. After all, it was asked.

24 THE WITNESS: (Interpretation) I don't know where Bahati de Zumbe was on that
25 day. When the clashes took place, Bahati de Zumbe was no longer there. He had

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1 left Zumbe.

2 MR FOFÉ: (Interpretation)

3 Q. Why is this person called Bahati de Zumbe?

4 A. Well, I don't really know. I don't know why he's called Bahati de Zumbe,
5 Bahati from Zumbe.

6 Q. What is his -- which is his native groupement; his original groupement?

7 A. Bahati de Zumbe, as far as I know -- well, actually I don't know where he was
8 born, but what I do know is that Bahati de Zumbe is of the Ngiti ethnic group.

9 Q. Thank you. Let's go back to the attack on Bogoro on 24 February 2003. How
10 did you come to know that Bogoro had been attacked on 24 February 2003?

11 A. I found out that Bogoro had been attacked because I heard gunfire, I heard
12 shelling, very early in the morning. Everybody in our locality was woken up by
13 gunfire, very heavy gunfire, and we went up onto the hill to try and assess where the
14 noise was coming from, this noise of gunfire, and we realised that fighting was going
15 on in Bogoro.

16 Q. When you heard the gunfire of heavy guns, where were you personally and
17 what did you do? Where were you? Could you perhaps describe to us the
18 sequence of events, who you were with and so on, when you heard the gunfire or
19 shelling?

20 A. That morning I was at home, and I left my house to go to the health station, and
21 that is -- at that moment we could continue to hear gunfire, and that was a time when
22 we decided that we would try to locate the origin of this gunfire. So I left my home
23 to go to the health centre because we were going to supervise the medicines that day
24 and we also planned to have a meeting there.

25 Q. And when you went to the health centre, who were you in the health station of

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1 Kambutso with? Who was with you there?

2 MS LUPING: Objection, Mr President.

3 MR FOFÉ: (Interpretation) I'm sorry, I might have made a mistake. I probably
4 didn't use the exact same words as the Witness, but perhaps we could take a look at
5 his last answer. I might have made a mistake here.

6 PRESIDING JUDGE COTTE: (Interpretation) Mrs Luping, is it the station? Is it
7 the centre? What is your -- what does your objection concern?

8 MS LUPING: He has never said "Kambutso on the day of that attack." He never
9 used those words; these are words that were given by Professor Fofé.

10 PRESIDING JUDGE COTTE: (Interpretation) Well, that's true. Professor Fofé
11 talks about the centre station, health station or centre in Kambutso, that's in relevant
12 part, whereas in the previous answer the witness had said he had left his home to go
13 to the health station. And the question here is whether it was the Kambutso or the
14 Zumbe one. *(Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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7 Q. Okay. So from the hill, as you left to go home, you did go via the Kambutso
8 health station; is that right?

9 A. Yes.

10 Q. And you said that that was towards 10 a.m.; is that right?

11 A. Yes, exactly.

12 Q. And when you reached the Kambutso health station, did you find out about
13 *how the delivery, a difficult one, had gone ?

14 MS LUPING: Objection, Mr President. This is a very --

15 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping.

16 MS LUPING: This is a very leading question. If we can please ask Professor Fofé
17 to keep his questions open and neutral and to stop asking leading questions.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, we don't know, perhaps
19 we will some time find out, whether the delivery was particularly difficult or not; but
20 you have just clearly answered Professor Fofé that when you came back from the hill
21 to go back home you went via the health station towards 10 a.m.

22 What is important for the Chamber at this particular point is whether or not you
23 stopped at the health station, who you saw inside the health station. For the time
24 being, please answer those two questions and then Professor Fofé will proceed with
25 his questions.

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1 You said that you went via the health station towards 10 a.m. Did you go inside?

2 Did you stop there and, if that is the case, who did you see inside the station?

3 THE WITNESS: (Interpretation) Yes, when I left the hill I reached the Kambutso

4 health station again and I found the midwife there with Mathieu Ngudjolo. The

5 mother, who had been delivered, was also there but unfortunately the baby had died

6 and the woman left to go back home with the corpse of her baby.

7 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, you can continue.

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

9 Honour, I think with your questions we now have enough information on this topic.

10 I would briefly like to go into closed session for just a few minutes to deal with the

11 next topic, if I may.

12 PRESIDING JUDGE COTTE: (Interpretation) Court officer, let us go into private

13 session for a short period.

14 JUDGE DIARRA: (Interpretation) Personally, did he find only Mathieu Ngudjolo

15 and the remains of the dead baby? What had happened to the nurse?

16 PRESIDING JUDGE COTTE: (Interpretation) It seemed to us, but I might have

17 misunderstood -- let me just look at the transcript. He found the midwife, Mathieu

18 Ngudjolo, and the poor mother who had just lost her baby.

19 JUDGE DIARRA: (Interpretation) That's clear.

20 PRESIDING JUDGE COTTE: (Interpretation) Yes, the witness had actually

21 specified that, so let's go into private session.

22 (Private session at 12.01 p.m.)

23 (Expunged)

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13 Page 42 expunged – Private session.

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- 12 (Open session at 12.05 p.m.)
- 13 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 14 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Professor Fofé.
- 15 MR FOFÉ: (Interpretation) Thank you, your Honour.
- 16 Q. Witness, where was your cousin living during the time of the conflicts; that is to
- 17 say between 2002 and 2003?
- 18 A. During the war my cousin was living in Zumbe.
- 19 Q. Was he living in Zumbe with his entire family?
- 20 A. Yes, he was living in Zumbe with his entire family. According to what he told
- 21 me --
- 22 THE INTERPRETER: The Swahili interpreter apologises. He did not hear the last
- 23 part of the statement.
- 24 PRESIDING JUDGE COTTE: (Interpretation) Just to facilitate the work of the
- 25 interpreters, we would like to ask you to repeat the answer that you just gave. You

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1 started off by saying, "Yes, he was living with his entire family," and then the Swahili
2 interpreter lost the thread of your reply. He didn't quite understand. Could you
3 repeat your reply?

4 THE WITNESS: (Interpretation) My cousin was living with his entire family there.
5 However, among the various people he was living with, Mr D did not live with his
6 father. Mr D did not live with his father in Zumbe.

7 MR MACDONALD: (Interpretation) I apologise for interrupting my learned
8 friend. I realise there may have been a problem with the interpretation and we have
9 not quite been able to follow the thread of the reply the first time, but in my headset I
10 heard "He told me." With all due respect, your Honour, I would like to ask if, at the
11 end of the day, if the initial passage that was recorded could be listened to again by
12 the interpreters so that we can have the answer who at that time, the beginning of the
13 answer that was given by the witness. I realise that now we have the additional
14 item of information when the witness asked -- answered a second time, but some
15 information was not recorded in the transcript that was interpreted before the
16 interpreter stopped - halted - and the interpreter said that he had lost the thread, he
17 had misunderstood. This is information that the Prosecution would like to obtain, if
18 possible, please. I believe, in English, it appears.

19 PRESIDING JUDGE COTTE: (Interpretation) Witness, a few moments ago I told
20 you that you had to be patient. Now, page 53 of the French transcript, line 16, in
21 response to a question at line 15, "Was he living in Zumbe with his entire family?",
22 and we were referring to your cousin, and the answer, line 16, was "Yes, he was living
23 in Zumbe with his entire family, according to what was told to me," and then it ends
24 with "..."

25 So, you had started with a sentence, "According to what he told me," so please give it

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1 some thought and we are going to ask you to repeat your answer to the question,
2 namely, "Was your cousin living in Zumbe with his entire family?", and after thinking
3 about it, please once again give us your reply, as an exhaustive reply as possible.

4 Please proceed. We are listening to you.

5 THE WITNESS: (Interpretation) My answer was clear. I said this: My cousin
6 was living with his entire family in Zumbe. However, one of their children, Mr D,
7 was not living with them in Zumbe.

8 PRESIDING JUDGE COTTE: (Interpretation) Witness, it's very important for the
9 Chamber to have this information and to be quite sure about it. Now, the fact that
10 one of the children, Mr D, was not living with them, is that something that you saw
11 for yourself or was it something that was told to you?

12 THE WITNESS: (Interpretation) I was in the habit of going to visit them at their
13 house, so my cousin told me that that child was not living with them and that he had
14 sent the child to school in Gety.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness. Professor Fofé,
16 please resume your examination-in-chief.

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

18 Q. Witness, during this period of time, 2002 to 2003, was Mr D in a militia group?

19 A. As I said earlier, according to my cousin's explanations to me, the child went to
20 Gety to study.

21 Q. Now, you say that you would go to your cousin's home and you would chat
22 with your cousin, about Mr D in particular. At any time during that period, 2002 to
23 2003, did you hear that Mr D at one particular point in time had been part of a
24 delegation that went to Aveba to negotiate a plan of attack for the attack upon
25 Bogoro?

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1 A. Personally, I have no explanations in this regard.

2 Q. Witness, in light of the answer as it has been transcribed in French, I would like
3 to ask you the question again. Did you learn that Mr D was part of a delegation that
4 went to Aveba to negotiate the plan of attack upon Bogoro? Did you learn that?

5 A. I never heard that story and I have no explanations in this regard.

6 Q. Now, once again, during this period of time did you learn that Mr D had taken
7 part in the attack upon Bogoro on 24 February 2003?

8 A. I never heard that story and I know nothing about that.

9 Q. Now, once again, regarding this attack on Bogoro on 24 February 2003 did
10 you learn or did you see -- in light of the duties that you were performing at that time,
11 did you see Mr Ngudjolo taking part in the attack on Bogoro on 24 February 2003?

12 A. As I said earlier, Mathieu Ngudjolo did not take part in that fighting because I
13 left him at the health centre. When I went back at 10 a.m., he was still there while
14 the fighting was underway.

15 Q. Witness, could you repeat your reply? I've been listening in Swahili, and I am
16 looking at the French transcript and I think there's a problem. Could you repeat in
17 Swahili what you have just said in reply to my question?

18 PRESIDING JUDGE COTTE: (Interpretation) Speak very slowly when you repeat
19 your answer.

20 THE WITNESS: (Interpretation) I said this: When I got to the Kambutso health
21 centre, I left Mathieu there. I went to the hill, and when I came back from the hill at
22 10 a.m. I saw Mathieu again at the health centre while the fighting was coming to an
23 end.

24 MR FOFÉ: (Interpretation)

25 Q. Thank you, Witness. Witness, do you know a gentleman by the name of Kute?

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1 A. Yes, I do know Mr Kute.

2 Q. Where was he living?

3 A. Mr Kute was living in Lagura.

4 Q. And what was he doing there?

5 A. Kute was part of the self-defence group.

6 Q. To the best of your knowledge, Witness, what was Kute's behaviour like in
7 relation to the population?

8 A. Mr Kute was a nasty man, very nasty.

9 Q. Just a moment. Let me check one item of information. Could you give us, in
10 approximate terms, the distance between Lagura and Zumbe?

11 A. The distance between Lagura and Zumbe, in approximate terms, might be
12 between eight -- between seven and eight kilometres.

13 Q. Is it possible to go from Zumbe to Lagura in a vehicle? What I mean by that is
14 a car, a jeep, something like that.

15 A. No, there is no road between Zumbe and Lagura. There's a path that you
16 cannot even use, that you cannot even ride a bicycle on.

17 Q. Thank you, Witness. Witness, do you know the APC?

18 A. The APC was a military movement in the Congo based in Bunia, Tchomia. Yes,
19 I do know about the APC.

20 Q. Between 2002 and 2003, did APC soldiers arrive in Zumbe?

21 A. Yes. The APC soldiers were defeated; they fled from Kasenyi to Zumbe.

22 Q. How long did they spend in Zumbe?

23 A. They stayed in Zumbe for a few months, but it wasn't an entire year. I can't
24 give you the specific number of months they spent there.

25 Q. Exactly where in Zumbe did they stay, these soldiers? What place in Zumbe?

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1 A. In Zumbe, they set up operations at the Zumbe primary school.

2 Q. At that time, when they arrived in Zumbe, did the Zumbe primary school exist
3 at that time?

4 A. Yes, the Zumbe primary school was there. However, during the time of the
5 fighting, no school was operating in our locality.

6 Q. You just said that the APC soldiers spent a few months in Zumbe. When they
7 left Zumbe, where did they go?

8 A. When they left Zumbe, they went on the road to go back home. There were
9 various people; there were people from Beni and other places. Everyone went back
10 to his particular home.

11 Q. When you say that they went home, where was that?

12 A. You see, the army is not made up of a single ethnic group. There were people
13 from different ethnic groups. I can't tell you where each individual soldier went.
14 Apparently, they went to Beni. Some of them were from Beni.

15 THE INTERPRETER: Interpreter's correction: "We knew that they came from
16 Beni."

17 MR FOFÉ: (Interpretation)

18 Q. Thank you, Witness. Do you know an organisation called the FNI? Do you
19 know about that?

20 A. Yes, I know about the FNI.

21 Q. Now, during that time, 2002 to 2003, during that period of time, 2002 and 2003,
22 was the FNI present within the Bedu-Ezekere groupement?

23 A. During that period, the FNI was not in the Bedu-Ezekere groupement.

24 Q. During that period, 2002 and 2003, was Mathieu Ngudjolo the supreme
25 commander of the FNI in Zumbe?

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1 A. As I said earlier, the FNI was not based in Zumbe. In our sector, the FNI was
2 not present. I don't know how Mathieu could have been their commander, since the
3 FNI was not based in our village.

4 THE INTERPRETER: Interpreter correction: The witness made mention of the
5 Walendu-Tatsi sector.

6 MR FOFÉ: (Interpretation) Thank you very much, Witness. I've asked you the
7 essential questions and I thank you for your replies, and now the other parties and
8 participants will be asking you their questions. I thank you very much.
9 Thank you, your Honours.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé.
11 Mr Hooper, you have an opportunity to ask any questions.

12 MR HOOPER: No questions, thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. Madam
14 Prosecutor, it is now your turn to cross-examine. Are you ready or do you need two
15 or three minutes?

16 MS LUPING: (Microphone not activated) ... together, Mr President.

17 PRESIDING JUDGE COTTE: (Interpretation) Please, go ahead and prepare
18 yourself.

19 (Pause in proceedings)

20 MS LUPING: Thank you, Mr President, Madam Judges.

21 QUESTIONED BY MS LUPING:

22 Q. Mr Witness, my name is Dianne Luping and I'll be asking you questions on
23 behalf of the Office of the Prosecutor. You may remember meeting me and some of
24 my colleagues a couple of days ago. Mr Witness, if there are any questions that you
25 don't understand, just simply ask me to repeat them.

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1 A. Yes, I remember the circumstances where we met, indeed.

2 Q. So, Mr Witness, you explained to the Chamber that you had, at a certain point
3 in time, arrived in the Bedu-Ezekere groupement. Could you explain precisely
4 when you first arrived in the groupement and to where?

5 A. As I've already explained, I was born in the Bedu-Ezekere groupement. Now,
6 at a given point of time I was not in the groupement because I went to work in
7 various other places, and when we had to move during the war, I went back.

8 MS LUPING: Mr President, I want to ask a few questions of an identifying nature.

9 If we could briefly go into private session.

10 PRESIDING JUDGE COTTE: (Interpretation) Court officer, please, private session.

11 (Private session at 12.35 p.m.)

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- 11 (Open session at 12.39 p.m.)
- 12 THE COURT OFFICER: (Interpretation) We're in open session, your Honour.
- 13 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Prosecutor,
- 14 please proceed.
- 15 MS LUPING: Thank you, Mr President.
- 16 Q. Now, Mr Witness, I just mentioned to you the name of somebody, Mateso
- 17 Mbaraza. It is correct that he's also known as Papa Mbaraza?
- 18 A. Yes, he was also called Papa Mbaraza.
- 19 Q. And just recently he's been the Registrar of the TGI in Bunia, isn't that correct,
- 20 the Tribunal de Grande Instance?
- 21 A. Yes, even still today he is working there.
- 22 MS LUPING: My apologies to the interpreters. I will try to slow down.
- 23 Q. Now, Mr Witness, without mentioning what your role was within the
- 24 committee of the -- sorry, within the health committee at Kambutso, because you've
- 25 explained to us what that was, now my question is: Is it correct to say that you had

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1 no medical experience and no medical qualifications; is that right?

2 A. Could you repeat your question, please?

3 Q. Certainly. Isn't it right that you do not have any medical experience, no
4 medical qualifications?

5 A. As a member of the health committee, it was not required that I have medical
6 qualifications.

7 Q. Could you explain then how it is that you came to be a member of this
8 committee? Why do you think it was that you were elected to this committee? It's
9 just a question of understanding, because you've explained the tasks, including
10 managing medication, ensuring the population had an awareness of health care. It's
11 just for the sake of having a better understanding, if you could explain why you think
12 it was that you were elected to the committee in your position.

13 A. Well, you know, to elect someone to a particular position, it doesn't just come
14 from out of nowhere. People realised that I was capable of heading a particular -- or,
15 rather, occupying a particular position in the health committee.

16 Q. And you mentioned that it was Mathieu Ngudjolo who organised this meeting
17 in relation to the health committee, so was it Mathieu Ngudjolo who elected you to
18 the post you occupied?

19 A. No, that's not the case. I think that we have here a list of individuals, there
20 were the various heads of the neighbouring localities, and there was a procedure to
21 be followed to set up a health committee. It was not one person who appoints
22 another person. There were elections, so it wasn't Mathieu.

23 He organised the meeting, that's correct, but he did not elect me as president of the
24 health committee. You had the various chiefs; the various community leaders. You
25 saw the list, and so you saw that there were other participants who were involved in

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1 that election that put me at the head of this committee.

2 MS LUPING: Now, Mr Witness, I'll be asking you a few questions relating to your
3 family, and for this purpose I'd like to ask to go briefly into private session.

4 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, private
5 session please.

6 (Private session at 12.47 p.m.)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

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20 (Expunged)

21 (Open session at 12.54 p.m.)

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

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Madam Prosecutor,
24 please proceed.

25 MS LUPING:

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1 Q. Mr Witness, you said to the Chamber that you've known Mathieu Ngudjolo
2 since you first met him in Ezekere in 1975, and I quote you, "during our childhood."
3 My first question is the following: How old was Mathieu Ngudjolo then in 1975
4 when you first met him in Ezekere?

5 A. Well, I'm very old. I am much older than Ngudjolo. At the time, he was still
6 very young. He hadn't even started going to school yet.

7 Q. Well, according to the information we've been provided by the Defence as to
8 when Mathieu Ngudjolo was born, he would have been 5 years old in 1975; isn't that
9 right?

10 A. Well, yes, indeed. That's why I told you that when I met him he was still at
11 home. He wasn't going to school yet at that age. You don't go to school yet.

12 Q. And you would have been about 21 years old at that time, isn't that right,
13 Mr Witness?

14 A. Yes, that's correct.

15 Q. I am right, then, when I say -- I mean, you were both not children at the time?
16 I mean, you were clearly an adult when he was just a child; isn't that right?

17 A. Yes, that's correct, and that's why I stated yesterday that I knew him when he
18 was still a child.

19 Q. At his home, you knew his parents; isn't that right?

20 A. I knew his parents very well. Even today, I can tell you that his father is
21 deceased and I know his mother very well.

22 Q. You've explained that you knew Mr Ngudjolo very well. You knew his
23 parents very well. You know his wife, Sema Kalimi; is that correct?

24 A. Could you repeat your question, please?

25 Q. You've explained how well you know Mathieu Ngudjolo. I'm assuming you

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1 know his current wife, Sema Kalimi; isn't that right?

2 A. I know very well his present wife.

3 Q. And you mentioned somebody called Deo-Lochubo as being the Vice-President
4 of the Kambutso health committee. Now, that is Mathieu Ngudjolo's brother, isn't
5 it?

6 A. That's right. He is indeed his elder brother.

7 Q. He's also known as Deo Tchulo Lochubo, isn't he?

8 A. That's right.

9 Q. And can you give us the names of the other brothers of Mathieu Ngudjolo?

10 A. Mathieu Ngudjolo, the brothers that I know are Deo-Lochubo, Mbuna --

11 Q. Sorry, Mr Witness, but the answer you gave, we don't have it on our transcripts
12 yet. Oh, you've mentioned Deo-Lochubo and a Mbuna. Are these -- these are two
13 separate people?

14 A. Not Mbuna, but Nguna .

15 Q. And can you spell that for the record, please? Can you spell "Nguna"?

16 A. N-G-O-N-A.

17 Q. So you know two of Mathieu Ngudjolo's brothers, Deo-Lochubo and Nguna.
18 Do you recall any of the other brothers?

19 A. No, I don't know his sisters. I only know his brothers.

20 Q. And Nguna, what are his other names?

21 A. He is called Desiree. That's his Christian name.

22 Q. And other than Desiree, is he known by any nicknames or any aliases?

23 A. No, I don't know any other names apart from Nguna Desiree.

24 Q. And Desiree Nguna, how old is he? Do you know?

25 A. Well, I couldn't tell you with any accuracy what his age is. He's already

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1 married, he has children, and I don't know how old he is.

2 Q. And what's his occupation?

3 A. He works at ASEKO.

4 Q. And can you explain what ASEKO is?

5 A. This is an abbreviation, but I don't remember what it stands for. I don't work
6 there, but I believe that it relates to chauffeurs/drivers.

7 Q. Mr Witness, yesterday you explained when it was that you arrived in Zumbe,
8 when you fled Bunia and arrived in Zumbe. You said that you fled when the
9 fighting started, and the year you gave was 2001. My question is, this time when
10 you fled Bunia and went to Zumbe with other refugees, was this the time when
11 Lompondo was ousted from Bunia?

12 A. I'm afraid your question is unclear.

13 Q. I'll clarify the question. When you fled Bunia to go to Zumbe, was this the
14 time when UPC forces ousted Governor Lompondo from Bunia? Was this the
15 fighting that you fled?

16 A. Yes, that's right.

17 Q. Now, Mr Witness, you said that this was in the year 2001, but in fact - and it's
18 not contested by Defence for Mathieu Ngudjolo - this event when
19 Governor Lompondo was ousted from Bunia was, in fact, in 2002.

20 A. Well, I may have made a mistake, but that is due to the fact that a lot of time has
21 gone by. I didn't take note of any of these events since I had no idea that some day I
22 would come before the Judges and testify.

23 Q. Yes, Mr Witness. I mean, this is no criticism. Several years later, of course,
24 what we understand from you is you're not good with dates, and then that's not a
25 criticism, but in fact Lompondo was ousted on 9 August 2002 and you've confirmed

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1 that that was the event, in fact, you were talking about. So your move with your
2 family was in fact in 2002, after the fall of Lompondo.

3 Now, I'm going to move on. You said that you returned to Ezekere from Zumbe in
4 the year 2004, just at the moment when peace was restored when the French Artémis
5 forces arrived. Mr Witness, I'm right in saying, aren't I, that you returned to Ezekere
6 as soon as these French forces arrived, isn't that right?

7 A. I said that when the Artémis force arrived, peace was restored and that was the
8 time I went back to Ezekere, when security was restored.

9 Q. So after the French forces arrived, you moved immediately back to Ezekere; is
10 that correct?

11 A. Yes, that's right.

12 Q. Well, again, Mr Witness, this is not something that is in dispute with the
13 Defence for Mathieu Ngudjolo, that in fact the Artémis French forces did not arrive in
14 2004. They arrived in June 2003. So there's another error on dates, isn't that right,
15 Mr Witness?

16 A. No, I didn't make a mistake in relation to the date. What I said was that when
17 Artémis arrived, peace was restored and that is when I went back to Ezekere. That
18 was in 2004.

19 Q. And when you returned to Ezekere, were the French Artémis forces still in Ituri,
20 or had they already left?

21 A. When I went back to Ezekere, they were still in Bunia.

22 Q. Well, again, this is not something in dispute, Mr Witness, but the French forces
23 left Ituri in September of 2003, so you didn't return to Ezekere in 2004. It must have
24 been in 2003. Again, it's not a big criticism, Mr Witness. It's just clear you're not
25 very good with dates, and then that's not a criticism against you.

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1 Now, Mr Witness, you described a meeting - a preparatory meeting - to discuss the
2 creation of a second health centre at Kambutso, and you were very specific about the
3 date. You gave the date of 18 September 2002, but in fact, Mr Witness, I mean,
4 you've seen the documents that were shown to you even just this morning, the
5 minutes of the meeting that you discussed with Professor Fofé this morning. Now,
6 on that we had the date of 22 September 2002, and you confirmed those notes were
7 drafted the same day the meeting took place. So I'm right, aren't I, Mr Witness, that
8 the date you first gave of 18 September 2002 is not correct; isn't that right?

9 A. No, the date is not mistaken.

10 MR FOFÉ: (Interpretation) May I say something, your Honour? There's a slight
11 difficulty with the interpretation of the last answer given by the Witness.

12 PRESIDING JUDGE COTTE: (Interpretation) The answer that was just interpreted
13 into French, where he said "Non, ce n'est pas erroné," "No, it's not mistaken"?

14 MR FOFÉ: (Interpretation) Yes, that's right. The witness gave further details and
15 I think those details are important.

16 PRESIDING JUDGE COTTE: (Interpretation) Witness, we're going to ask you to
17 repeat the answer you just gave Madam Prosecutor. She had ended saying "So the
18 date that you gave the first time, i.e., 18 September 2002, is mistaken; is that not true?"
19 What did you answer?

20 THE WITNESS: (Interpretation) What I answered was this: "No, it is not
21 mistaken. There is a mistake. I made a mistake."

22 PRESIDING JUDGE COTTE: (Interpretation) Ms Luping, do you want more
23 details from the witness on that point?

24 MS LUPING: I would ask that the court officer call up the document that was
25 admitted this morning, that is DRC-D03-0001-0049, that was given an EVD this

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1 morning. I believe it's EVD-90.

2 PRESIDING JUDGE COTTE: (Interpretation) Court officer, I think we all know
3 what document is being discussed, we spent a lot of time on it this morning, and that
4 is the original version.

5 THE COURT OFFICER: (Interpretation) The document can be seen by pressing
6 "PC1."

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. There we are. We can
8 see the document on the screen. Mr Katanga and Mr Ngudjolo can see it and
9 everyone else, too, as well as the Witness, and that is essential. So, Madam
10 Prosecutor, please proceed. Thank you, usher.

11 MS LUPING:

12 Q. Now, I want to draw your attention, Mr Witness, to the very top of this
13 document - and you yourself read it out today for the record - and the date stated on
14 the right-hand top corner is 22 September 2002; isn't that right?

15 A. Yes, that's right.

16 Q. And according to your evidence this is indeed the correct date? This is the
17 date that the preparatory meeting called by Mathieu Ngudjolo took place; isn't that
18 right?

19 A. Yes, the date written down is the right one.

20 Q. Thank you, Mr Witness, and that's why I concluded that the date you first gave
21 before seeing this document of 18 September was not right. Now, Mr Witness,
22 you've got this document still before you, and in response to a specific question from
23 the President as to whether you had seen this document or not before your response
24 was "No." But that's not correct, is it, Mr Witness?

25 Now, obviously, some time may have passed -- let me finish, Mr Witness. Some

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1 time may have passed but, according to the information that Mr Ngudjolo's Defence
2 counsel provided to us, you are the person who gave this document to them and so
3 you must have seen it. Isn't that right, Mr Witness?

4 A. Maybe I've forgotten. Maybe I've forgotten the way in which it was presented
5 or, rather, the fact that I presented it.

6 Q. And this document, you confirm that the author was Mathieu Ngudjolo and he
7 provided the document to you as well; isn't that right?

8 A. Yes, now I understand. Yes, I had already seen this document and, indeed, I
9 was the one to provide it.

10 Q. And Mathieu Ngudjolo was the person who gave it to you; isn't that right?

11 A. Mathieu Ngudjolo left it at my house.

12 Q. And when was that? When did he leave it at your house?

13 A. This document stayed in my house. It was after the meeting and I kept those
14 documents.

15 Q. And, Mr Witness, when did you provide the document to the Defence of
16 Mathieu Ngudjolo?

17 A. I handed over this document, if I remember correctly, when the Maryse went
18 out on the field visit.

19 Q. So now you're remembering who specifically you gave it to within the team for
20 Mathieu Ngudjolo and now all of a sudden you do remember having seen this
21 document? Is that right, Mr Witness?

22 A. Yes.

23 Q. And, in fact, you only saw it a few months ago. Isn't that right, Mr Witness?
24 Isn't that when you gave it to the Defence counsel for Mr Mathieu Ngudjolo? We
25 are only talking a matter of months; isn't that right.

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1 MR FOFÉ: (Interpretation) If I may, your Honour? Perhaps the Prosecutor could
2 give us the foundation for her line of questioning. Is there a basis - a factual
3 basis - for this latter question, because here what we are talking about is an allegation
4 and we would like to hear her basis for that.

5 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, we only have a
6 few minutes left, so each of us need to track what the Witness is saying. And I think
7 he spoke about Maryse, and I believe that we all know that among the team of
8 Mr Ngudjolo there was a certain Maryse Alié, to be perfectly clear about who we're
9 talking about. And let me hear your answer now, Professor Fofé.

10 MR FOFÉ: (Interpretation) Before Madam Prosecutor answers, well, the chain of
11 possession for these documents is perfectly clear.

12 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, for the purposes
13 of clarity, could you perhaps give some details to Professor Fofé, which doesn't mean
14 that you won't be able to go on later.

15 MS LUPING: Well, Mr President, the problem - the difficulty - that we have here is
16 that on the one hand the witness was saying that he'd never seen the document before
17 and now, miraculously, he remembers. And we're not talking about eight years ago,
18 or seven years ago. At the very most, we must be talking about maximum two years
19 ago.

20 But this is where we turn to Professor Fofé, because this information as to when
21 precisely it was provided by the Witness to the Defence team for Mr Ngudjolo has not
22 been provided, this information. So we would like Professor Fofé, if he could
23 confirm, he can inform all the parties, exactly when the witness provided this
24 document to his team. Thank you, Mr President.

25 MR MACDONALD: (Interpretation) The date doesn't appear in the chain of

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1 custody on eCourt.

2 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, can you give us
3 details just in one minute on that topic.

4 MR FOFÉ: (Interpretation) I can see that Madam Prosecutor did not answer my
5 question, which was a precise one. She made an allegation with her last question
6 which was directed at a Defence counsel. We recognise that in the chain of custody
7 it could well be that the date was not mentioned; but the person, the member of the
8 team who had received the document from this witness, the member of the team is
9 mentioned and that is the name that the Witness just gave to the Chamber. It was,
10 indeed, Maryse and everyone here knows which Maryse is involved. We all know
11 that.

12 And let me add, your Honour, that it is necessary to avoid putting a witness in a
13 difficult position. Forgetting is a human thing. That's what I want to say, your
14 Honour.

15 PRESIDING JUDGE COTTE: (Interpretation) Well, the intervention and what
16 Mrs Luping has been saying lately can be understood. Even in spite of the fact that
17 forgetting is human, nonetheless memory is not infallible. Some of these events go
18 back a long time, but nonetheless the Office of the Prosecutor might have gotten the
19 impression that everything was not as clear as it should be as regards the particular
20 moment when you were disclosed this document.

21 We shall continue our discussions tomorrow. Professor Fofé has given us some
22 elements for the Prosecutor, and perhaps at 9 tomorrow morning when we resume
23 our sessions Madam Prosecutor might want to ask the Witness a last question about
24 exactly how the content of this document -- how he was appraised of it. But for the
25 time being, well, the gong has gone and perhaps we could go back into closed session

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1 to take leave of our Witness.

2 Thank you to the Witness. We shall meet you again tomorrow morning at 9. And,
3 of course, we thank all our helpers here in the courtroom.

4 (Closed session at 1.28 p.m.)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Open session at 1.29 p.m.)

11 THE COURT OFFICER: (Interpretation) We are now in open session, your
12 Honour.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer. Goodbye
14 to everybody. Have a good working afternoon. The hearing is adjourned.

15 (The hearing ends in open session at 1.30 p.m.)

16 CORRECTIONS REPORT

17 The Court Interpretation and Translation Section has made the following
18 corrections in the transcript:

19 *Page 40 lines 4 – 5

20 (Redacted)

21 (Redacted)

22 *Page 40 line 13

23 "...how the child bearing had taken place, a difficult one?" Is corrected by "...how
24 the delivery, a difficult one, had gone?"

25 RECLASSIFICATION REPORT

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- 1 *Pursuant to Trial Chamber II's email instructions dated 10 October 2012,
- 2 the excerpt of this transcript from page 38 line 14 to page 40 line 6 is reclassified as
- 3 confidential.
- 4