

Trial Hearing
Witness: DRC-D03-P-0066

(Open Session)

ICC-01/04-01/07

1 International Criminal Court
2 Trial 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 Friday, 19 August 2011
10 (The hearing starts in open session at 9.03 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 everybody. Good morning, Mr Garcia. Good morning to the accused.
14 Before we call in our next witness, on behalf of the Chamber I would like to give you
15 some details about an application that was filed yesterday by Mathieu Ngudjolo's
16 Defence team and then we shall give the floor to Professor Fofé who would like to
17 make two brief comments, and finally I would like to remind you that Tuesday's
18 hearing that will be taking place in the afternoon will not begin at 2, as initially
19 thought, but 2.30 because there's going to be an official ceremony in relation to the
20 ratification of the treaty of Rome by a new State, Granada, will be taking place
21 between 2 and 3, so we shall try and pay tribute to this event between 2 and 2.25 so
22 that we can actually start at 2.30.
23 Yesterday, application 3118 of 18 August 2011 was filed by Mr Kilenda concerning the
24 difficulties that Defence encounters in obtaining communication by the radio stations
25 RFI and VOA of recorded tapes which they believe are useful for the defence of

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1 Mathieu Ngudjolo.

2 Professor Fofé, the Chamber would like you to list every single process that you

3 undertook since the Chamber gave out its rulings 3045 of 30 June for the channel RFI

4 and 3076 of 15 July for VOA, rulings of which a certified copy was delivered to you

5 by the Registry. So list every single procedure you undertook since those orders

6 were handed down for the purpose of having them executed.

7 The Chamber would also like you to provide it with copies of the written letters of the

8 emails that you wrote or sent to these radio stations, as well as the answers that they

9 may have sent you, if that applies. It would also like you to specify whether or not

10 you have entered into telephone contact with persons - qualified persons - at these

11 two radio stations, particularly in the case of RFI, with the assistant of the head of the

12 archive department, Mrs Catharine Sourning, whose name you provided us, so

13 whether you did take -- make telephone contact with these qualified persons so as to

14 draw their attention to the urgency of handing over these recordings.

15 The Chamber also suggests that - this is simply an invitation - that you should

16 urgently call the contacts at the station by phone, plus an email, telling them that if

17 they wish to obtain confirmation that it was indeed the Judges of the Court that

18 authorised such communication they can enter into contact with the Court's Registrar,

19 the Director of the Court Services, Mr Peter Vanaverbeke, or else Ms Toumaj, and

20 please provide them with their telephone numbers.

21 Let me remind the parties and the participants that in the case of the RFI, the initial

22 answer that you obtained consisted in requiring that the decision be given by Judges.

23 Now, if they want confirmation of that, they should seek it from the authorised

24 services of the Registry. Please invite them to do so.

25 Indeed, the Chamber considers that in view of the urgency and in view of the way in

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1 which testimonies are going on, we must have a practical approach and we would
2 like to call everybody's attention to the inevitable slowness and the very uncertain
3 character of this rather cumbersome cooperation process.

4 Furthermore, and the elements that we are asking you to provide us with very
5 quickly, will in any case be useful for setting up a file for a request for cooperation by
6 the Registry if we absolutely need to resort to such a procedure. So please, could
7 you provide us with all those elements as quickly as possible and before Monday
8 11 a.m. and keep the Chamber informed of the outcome of the procedures that we are
9 suggesting you undertake.

10 Now, in view of the relative urgency of this matter and your workload, as you are
11 dealing with your witnesses, anything that you can send us reasonably by email, well,
12 please go ahead and do that, because all this is public. You can simply copy those
13 emails to all the parties and participants.

14 So we shall have another update very soon, including about the telephone calls that
15 you're going to be making to these people saying how they can get confirmation that
16 this has been officially requested.

17 Now, first of all about the meeting with the Witness 88 on Monday before
18 familiarisation on Tuesday morning, Professor Fofé.

19 MR FOFÉ: (Interpretation) Good morning, your Honours, Madam Judges. Thank
20 you.

21 I would like to begin by formally acknowledging the assignments you have just given
22 to us and of course we will do that as expeditiously as possible.

23 Your Honour, Madam Judges, the first point I would like to deal with this morning
24 concerns the working session that you so kindly gave us leave to organise between
25 the Defence team of Mathieu Ngudjolo and its witness P-0088. In your oral decision

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1 yesterday, you granted us four hours for holding that working session on Monday, on
2 this coming Monday.

3 Yesterday afternoon Ms Jasmine contacted our case manager, Natalie, to inform our
4 team, I think primarily to ask our team to confirm which language Witness P-0088
5 would be testifying in before the Chamber. We answered that this witness has
6 chosen to testify in Swahili, which is a language he speaks, understands more easily.
7 That being said, we believe that it would be more effective if during that working
8 session relating to the video that you are aware of the witness is allowed to answer
9 our questions in Swahili so that he can give us the degree of detail that we want so
10 that he is able to do so and respond as precisely as possible.

11 Now, when we said this to Ms Jasmine, she told us that if that was the case then an
12 interpreter would be needed from Swahili to French, and we answered of course that
13 naturally so, yes, if the witness speaks Swahili that the presence of an interpreter is
14 necessary.

15 Now, in view of this, your Honours, well, we turn to you once again so that in your
16 wisdom you may determine whether or not there is a need to reassess the time period
17 that you have granted us of four hours, and if you believe that this is worthwhile
18 because of this particular element that hadn't been considered, whether it is
19 worthwhile to prolong that time period.

20 We on the Defence side cannot propose a given time period. This is a technical
21 matter, and I think Madam Registrar might herself wish to make an estimation for a
22 four-hour session that takes place in one language only: What are the implications
23 in time terms if the same session requires interpretation? This is the issue I am
24 submitting to your wisdom today.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé. Madam

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1 Jasmine Toumaj, the court officer, we know how efficient she is. She contacted me
2 yesterday afternoon to talk to me about this difficulty, and you're quite right,
3 yesterday's oral decision hadn't considered this particular point.
4 We agreed yesterday afternoon, so to say that of course a Swahili-to-French
5 interpreter must be present and that, in all likelihood, will mean that this working
6 session will be carried out in a courtroom - I don't know which one, there are some
7 small ones - but in any case one needs to be available for conventional simultaneous
8 interpretation to take place, which makes things far more simple.
9 Making use of interpretation can perhaps not complicate the working session, but
10 make it a little bit more burdensome, and the court officer will contact me if she
11 thinks that additional time is needed if this turns out to be necessary, and if that is
12 necessary, we can go up from four to five hours and that means that the court officer
13 will have to provide for either a longer working session or two smaller sessions, one
14 of which might be prolonged. In any case, I'll be in my office and you can call me
15 there, or else you can call me on my cell phone and I will give it to you
16 privately - perhaps not during a public hearing - and if it is necessary, I will assess
17 that. Clearly, you will get an additional hour.
18 I think you had a second point you wished to make, Professor Fofé. You told us that
19 it would relate to the rank briefly dealt with yesterday by Ms Luping, the rank of
20 Mr Ngudjolo when he was an officer in President Mobutu's army. Please be very
21 brief on this topic.
22 MR FOFÉ: (Interpretation) Thank you, your Honour. Your Honour, Madam
23 Judges, the Defence of Mathieu Ngudjolo would like to make a -- specify something
24 about the so-called rank of colonel that the Prosecutor alleges Mr Ngudjolo had when
25 he was in President Mobutu's army because, after all, this is an important point in the

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1 presentation of the case of the Prosecution.

2 You will remember, your Honours, that during the cross-examination of P-0055 in

3 public hearing yesterday, 18 August 2011, Ms Luping, representing the OTP, alleged

4 on several occasions the fact that Mathieu Ngudjolo had the rank of colonel in

5 President Mobutu's army. When she was asked to provide the foundation for that

6 allegation, the Prosecution, through Mr Macdonald - Mr Eric Macdonald - referred

7 Defence to its own exhibits that were very recently disclosed.

8 Your Chamber then intervened to ask Prosecution to provide the Defence, after

9 looking for them, the references for the documents on the basis of which this

10 allegation was made.

11 During the afternoon, the Prosecutor sent an email to Defence indicating the exhibit

12 DRC-D03-001-0695, 0696, 0697, 0698 and 0699, as being the foundation for said

13 allegation.

14 As you will observe and have no doubt already ascertained, these documents that all

15 relate to the paramedical activities and teaching activities of Mr Mathieu Ngudjolo do

16 not associate anything relating to the rank of colonel with Mr Ngudjolo, nor in fact

17 any other military rank.

18 In his email, the Prosecutor bases himself on the fact that there is a reference "CL"

19 mentioned, therefore, in these -- in the margin of these documents, and it is on this

20 basis that he alleges that Mathieu Ngudjolo was a colonel in the army of President

21 Mobutu.

22 Defence wishes to emphasise, and we believe this is important because what the

23 Prosecutor said yesterday is all recorded in yesterday's transcript on page 44, lines 10

24 to 28, up to page 45, line 1 to line 18, transcript 294 of 18 August 2011.

25 Now, the Defence would like to spell out that the abbreviation "CL" means

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1 "classement" in French, "classification" and not "colonel." Indeed, in no military
2 administration whatever, especially not in the administration to which the
3 Prosecution wrongly attributes to Mathieu Ngudjolo a rank and, in fact, a rank that he
4 himself has never claimed to have, never is the word "colonel" abbreviated in this way.
5 "Colonel" is abbreviated "COL." At least in Mobutu's administration, that was the
6 case, and I do -- well, I may be mistaken, but I believe that in many military
7 administrations the rank of colonel is abbreviated "COL" and "classification," at least
8 in Mobutu's administration, was abbreviated "CL," to the extent that all of us here,
9 Mr Kilenda, myself, even in our own private documents at home, when it is a matter
10 of archiving our documents, we write the abbreviation "CL."

11 That being said, your Honours, and once again if you would allow me, I shall use this
12 opportunity to say we are seeing here one of the illustrations here of the difference
13 between facts and allegations. "CL" equals "classification." That is a fact. When
14 the Prosecutor says, "CL equals colonel," that is an allegation, an allegation that arises
15 from an interpretation which is wrong.

16 That's one illustration, your Honour, of that difference, and I would like to end by
17 asking all the parties and participants, when you see a document, when you see some
18 reference that is unclear, rather than coming forward in public hearing and making
19 this type of allegation, it is a good idea to try and approach the other party to get the
20 required clarification.

21 In any case, and I shall end now, Mathieu Ngudjolo is on the list of the Defence team
22 and will be testifying before the Chamber, in particular about his educational
23 background and his professional career.

24 Thank you very much, your Honour.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé, and we

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1 were going to conclude on the last words that you mentioned. You've done it, and
2 the exact capacity of Mathieu Ngudjolo in the army of Mr Mobutu can be specified
3 when he testifies.
4 We shall now bring in P-0066. He will be reminded in public hearing about the
5 protective measures he will be benefiting from, but to bring him in, we shall go into
6 private session, or rather, closed session, and then back in open session we shall give
7 him the assurances of Article 97 and the guarantees of Rule 74 before listening to his
8 solemn undertaking.
9 Court officer. Oh, yes, but -- yes, we need to go into closed session to bring in the
10 witness.

11 (Closed session at 9.28 a.m.)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 9.29 a.m.)

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

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22 (The witness speaks Swahili)

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer.

24 Good morning, sir.

25 THE WITNESS: (Interpretation) I want to speak Swahili.

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1 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead and speak Swahili.

2 I wanted to greet you first of all and make sure that you heard me, that your
3 earphones are working, and thank you for having come.

4 THE WITNESS: Yes, I can hear you.

5 THE INTERPRETER: The Swahili interpreters apologise. We had a few minor
6 technical difficulties which have been resolved.

7 PRESIDING JUDGE COTTE: (Interpretation) That's fine.

8 Witness, thank you for coming here to give testimony. The Ngudjolo Defence team
9 has called you as a witness and they have told us that you wish to enjoy a number of
10 protective measures during the hearing. I can confirm that these measures were
11 granted. Consequently, you will not be referred to by your name, or by your first
12 name, rather. We will refer to you as "Mr Witness" or as "Witness 66." Your image
13 will be distorted on the screen and your voice will also be distorted. You will come
14 into the courtroom in closed session, that is to say in a very low-key manner, and you
15 will also leave the courtroom in just -- in an equally low-key fashion; that is to say in
16 closed session. Everyone shall endeavour to ensure that no answer that you might
17 give would lead to you being identified, so you will benefit from these procedural
18 measures throughout the course of your testimony in order to protect you, and thus
19 you will be able to answer questions very freely.

20 Now, an example of this is that we are going to go into private session so that you can
21 give us your name and date of birth.

22 Throughout the course of your testimony, please speak in a loud voice, slowly, so that
23 the interpreters and the court reporters can translate what you say from Swahili into
24 French and from French into English.

25 When someone asks you a question, please don't answer immediately. Please

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- 1 observe a pause of five seconds. Please count to five in your head so that there is no
- 2 overlapping of speakers. If you forget these rules, we will remind you of them.
- 3 I think you've understood these instructions. Court officer, if we could go into
- 4 private session now so that the witness can tell us his identity.
- 5 (Private session at 9.34 a.m.)
- 6 (Expunged)
- 7 (Expunged)
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12 (Open session at 9.41 a.m.)

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

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Witness, please listen

15 to me very carefully. The Chamber wishes to give you the assurance that is

16 provided for under Article 93(2) of the Rome Statute that -- this is an assurance that

17 the Ngudjolo Defence team asked for you on your behalf on 19 July 2011. The

18 Prosecution was consulted in advance pursuant to Rule 191 of the Rules of Procedure

19 and Evidence and the Prosecution said on 12 August that they had no objection to

20 such assurances being provided to you. The lawyer, Mr Mundere Cikonza, who the

21 Registry has designated for you, has not made any observations in this regard. In

22 any event, pursuant to Article 93(2) of the Rome Statute the Chamber hereby gives

23 you the assurance that you will not be prosecuted, you will not be detained, nor will

24 the Court restrict your personal freedom in any way for anything that you did before

25 you left the Democratic Republic of the Congo or anything that you failed to do

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1 before your departure. The Chamber also wishes to inform you, and we must do so
2 since the application was made, and the earlier procedure was followed, the Chamber
3 must notify you of the provisions of Rule 74 of the Rules of Procedure and Evidence.
4 Your lawyer said on 17 August - and the official filing actually was dated the 18th,
5 3117, application 3117 - now, he met with you and at that time he thoroughly
6 explained the content and the meaning of this rule and provided you with a legal
7 opinion.

8 He has confirmed that you were of the opinion that you required the guarantees
9 provided for in Rule 74(3)(c) so that you would be able to tell us everything that you
10 knew and describe everything that you have experienced without any fear or concern
11 so that you could provide fulsome testimony that would be most useful for the
12 demonstration of the truth.

13 Now, the Prosecution was consulted pursuant to paragraph 4, Rule 74, and the
14 Prosecution informed us on 12 August 2011 that they did not have any objections to
15 these guarantees being provided to you.

16 Rule 74 is extremely clear. It says that you cannot answer questions that are asked of
17 you if the content of your answer could incriminate you, and the Chamber does stress
18 that you can prevail yourself of this opportunity at any time, but this same rule also
19 indicates that if that is the case, if the Chamber plans to order you to answer the
20 question, the Chamber can give you a number of guarantees that I will remind you of.

21 The information in your testimony shall remain confidential and will not be revealed
22 to the public or to a State. The information from your testimony will not be used,
23 directly or indirectly, against you as part of later proceedings before the Court unless
24 they are proceedings under Articles 70 and 71 of the Statute. I think your counsel
25 has explained to you that these are very specific provisions.

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1 From a procedural point of view, these guarantees will lead to the Chamber ordering
2 you -- or ordering, rather, that your testimony is given in private session and that the
3 content of your testimony is not disclosed and that the transcripts of your testimony
4 are sealed. So these are the guarantees that we can provide to you.

5 The Chamber takes note that in any event you are enjoying protective measures,
6 protection of your identity, and that is pursuant to the oral ruling of 15 August 2011.

7 Finally, regarding the authorities of the DRC, the Chamber reminds all that in an oral
8 ruling of 13 April 2011, the Chamber took note of a letter from the Minister of Justice
9 of the DRC, a letter that was sent to the Prosecutor on 30 January. The terms of the
10 letter were confirmed on 7 March.

11 The DRC authorities have made a commitment that "Witnesses that are called to give
12 testimony, either incriminating witnesses or exculpatory witnesses, as part of the
13 investigation underway regarding the situation in the DRC, will not be brought
14 before the Congolese courts for anything that they may have done or any offences
15 they may have committed that they may have spoken of before the Court or for any
16 measures taken or offences committed that would not have been known about if the
17 testimony had not been given."

18 The Congolese authorities also made reference to provision 19(1)(c) of the agreement
19 on privileges and immunities of the International Criminal Court - the DRC is a
20 signatory to this agreement - and the agreement provides that witnesses shall enjoy
21 absolute immunity for their words and written documents, as well as for anything
22 that they may have mentioned during their testimony, and that the immunity shall
23 continue even after they appear and give testimony before the Court.

24 The Court -- the Chamber takes note of this and provides you with the guarantees
25 that have just been set out. We realise that this is all rather complex, but I believe

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1 that these guarantees are in keeping with the explanations that your legal counsel
2 gave you.

3 We will now proceed with your solemn undertaking. Before you begin testimony
4 and answering Mr Ngudjolo's Defence team's questions, you shall now make an
5 undertaking to tell the truth, and I will slowly read out the words of this undertaking
6 so that you can fully understand the meaning thereof. So please listen very carefully.
7 This is the undertaking: "I solemnly declare that I shall tell the truth, the whole truth
8 and nothing but the truth." Have you understood? Have you heard?

9 THE WITNESS: (Interpretation) Yes, I am following.

10 PRESIDING JUDGE COTTE: (Interpretation) So are you now in a position to give
11 us this commitment that you shall tell us the truth, the whole truth and nothing but
12 the truth?

13 THE WITNESS: (Interpretation) Yes, I do make that commitment.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you. You have just given an
15 undertaking to tell the truth, the whole truth and nothing but the truth. Now, if in
16 the course of your testimony, or when you answer questions put to you, you do not
17 tell the truth, you must realise that you could be subject to proceedings before the
18 International Criminal Court for perjury and, if that offence were shown to be the case,
19 you could be found guilty. Have you understood me?

20 THE WITNESS: (Interpretation) Yes, I understand.

21 PRESIDING JUDGE COTTE: (Interpretation) The Court takes note that we are
22 satisfied pursuant to the provisions of Article 69(1) and Rule 66. Once again I would
23 remind you please speak in a loud voice, slowly, articulate carefully and speak right
24 into your microphone, please. Don't hesitate to have a drink of water. There's a
25 pitcher of water and a glass beside you, so between two answers you may have

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1 something to drink. Respect the five-second rule, and if you need a tissue, there is a
2 box of tissues beside you. The Court will not take any offence if you have a drink of
3 water or if you need to use a tissue.

4 The Court wants you to give testimony under the best possible conditions, physical
5 conditions and mental conditions.

6 Professor Fofé, please proceed.

7 MR FOFÉ: (Interpretation) Thank you very much, your Honour. Could I have
8 just a moment to arrange my papers?

9 (Pause in proceedings)

10 QUESTIONED BY MR FOFÉ: (Interpretation)

11 Q. Good morning, Witness.

12 A. Good morning.

13 Q. My name is Jean-Pierre Fofé Malewa and I am one of the two counsel within the
14 Ngudjolo Defence team. You had an opportunity to meet me already, and on behalf
15 of the Mathieu Ngudjolo Defence team I will be asking you a number of questions,
16 and I believe I have quite a few. We would like to take advantage of your being here
17 to obtain as much information as possible. Through my questioning, I will be giving
18 you an opportunity to provide information to the Honourable Judges, all the
19 information that you have about the various matters that I will be looking at with
20 you.

21 Please relax. Please don't be afraid. You have had a familiarisation session so that
22 you could acquaint yourself with the courtroom, and I will try to ask you clear
23 questions and I will speak slowly, and I would like to ask you to wait until the end of
24 the translation of my questions, the translation into Swahili, before you answer. You
25 must allow for some time. You must observe a bit of a break between my question

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1 and your answer, and I will do the same thing. I will be listening to you in Swahili,
2 but I will make an effort not to quickly move on to the next question, so each time we
3 will have to observe a pause for interpretation and transcription purposes.
4 I would like to ask you to speak in a loud voice, because initially you were
5 speaking -- you were not speaking very loudly. So, please speak loudly right into
6 the microphone so that everything that you say can be heard properly by the
7 interpreters. You must speak in a loud voice and slowly, slowly.

8 THE INTERPRETER: Message from the interpreters: Thank you very much.

9 THE WITNESS: (Interpretation) Yes, I understand.

10 MR FOFÉ: (Interpretation)

11 Q. So you will have to wait a little bit after the end of my question before you give
12 your reply.

13 Your Honour, I would like to begin my examination-in-chief with a brief series of
14 questions in private session.

15 PRESIDING JUDGE COTTE: (Interpretation) Court officer, if we could go into
16 private session for a few moments so the witness will be able to speak quite freely
17 about these various matters relating to his identity.

18 (Private session at 9.58 a.m.)

19 (Expunged)

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- 11 (Expunged)
- 12 (Open session at 10.14 a.m.)
- 13 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 14 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
- 15 Professor Fofé, please proceed.
- 16 MR FOFÉ: (Interpretation) Thank you, your Honour.
- 17 Q. Mr Witness, do you know what school Mathieu Ngudjolo studied at when he
- 18 went to primary school? What primary school did he go to?
- 19 A. Yes, I know.
- 20 Q. Can you tell us what school it was?
- 21 A. It was the Zago primary school.
- 22 THE INTERPRETER: The witness repeats "Zago."
- 23 MR FOFÉ: (Interpretation)
- 24 Q. You still have the sheet of paper. Would you be so kind as to write down the
- 25 name of the elementary school where Mathieu Ngudjolo went to school, the primary

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1 school, and please write in block letters, please? The Zago primary school, does it
2 still exist today under the same name?

3 A. Well, let me give you an explanation so that you can understand. The Zago
4 primary school no longer exists, but the Buy-Sabuni school was a sort of extension of
5 the Zago school, so in fact today the Zago school is now included in the Buy-Sabuni
6 school because the other one no longer exists.

7 Q. Again, Witness, please don't forget to speak slowly. Well, am I to understand
8 that the Zago primary school stopped existing or stopped functioning at a given point
9 in time, but that in fact that school is now included in the Buy-Sabuni school? Can
10 you explain it again slowly, please?

11 A. Yes. In 1989 the pay system used for the teachers discovered that -- the salary
12 system discovered that the teachers didn't have enough work and some schools were
13 closed, and in March of 1989 the SECOPE went to the Zago school and discovered
14 that there were not enough pupils. Those pupils were transferred to Buy-Sabuni
15 school, and today the Buy-Sabuni school where I am the principal is a very large
16 school, because it includes the former pupils or rather the pupils of the former Zago
17 school.

18 Q. Thank you, Witness. Can you recall approximately during which years
19 Mathieu Ngudjolo studied at the Zago primary school which is now part of the
20 Buy-Sabuni primary school?

21 A. It's been a long time. I would need to check our records in order to be able to
22 give you an answer to that.

23 Q. Yes, indeed. You've just spoken about archives and records. Did you, as the
24 principal, or were you able to preserve all of the records of the Zago primary school?

25 A. The archives -- the archives, or the records, were burned because the school was

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1 burned during the war. There was a fire.

2 Q. Well, we'll discuss the war a bit later on but, briefly, the school archives and the
3 school itself was burned by whom? By which forces? Which war? Just briefly,
4 because we shall come back to this question.

5 A. It was in 1999, when there was the war between the Hemas and the Lendu.

6 Q. Mr Witness, did you recently sign a certificate stating that Mathieu Ngudjolo
7 studied at the Zago primary school, which is now presently the Buy-Sabuni primary
8 school?

9 A. Yes, I did sign that certificate.

10 MR FOFÉ: (Interpretation) Your Honour, with your permission, we would like to
11 show the witness document DRC-D03-0001-0688 and this is a public document.

12 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, this document
13 was disclosed in due time by the Defence team of Mathieu Ngudjolo. Would you be
14 so kind as to display it on the screen.

15 THE COURT OFFICER: (Interpretation) Professor Fofé, it would seem the
16 document is not yet in the eCourt system.

17 MR FOFÉ: (Interpretation) Well, okay, I will send you the original copy and I
18 would like to correct this document should be confidential. I will send the original
19 through the usher.

20 PRESIDING JUDGE COTTE: (Interpretation) It was included in the list that you
21 sent to us, but I do note that indeed I don't seem to have it in my file, so apparently it
22 is not available indeed.

23 This is a confidential document. We are going to display it on the overhead
24 projector so that everyone in the courtroom can view it, including the witness.

25 THE COURT OFFICER: (Interpretation) In order to view the document, please

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1 press the button "Docu Cam Witness".

2 MR FOFÉ: (Interpretation)

3 Q. Witness, have you had time to examine this document? Witness, have you
4 been able to read through this document?

5 A. Yes, I have read through the document.

6 Q. Did you draft this certificate?

7 A. Yes, I drafted the certificate.

8 Q. Is the information contained in this certificate correct and true?

9 MR GARCIA: (Interpretation) Your Honour, I am very sorry to interrupt my
10 learned friend, but there's a major problem with this certificate given the testimony of
11 the witness which is why I do not understand, although I do understand what
12 Professor Fofé is trying to do in tendering this document. Please take a look at page
13 27 and 28 of the witness statement. He's asked whether he remembers the dates, this
14 is on line 17, page 27, of the French transcript. In other words, he was asked if he
15 remembers which years Mathieu Ngudjolo went to elementary school. Now initially,
16 the witness said he didn't know those dates; he would have to look at the archives.
17 Next question "Where are those archives?" At line 27, and the answer was: "Well,
18 the archives were burned." So, from what I understand, the witness cannot
19 remember the dates, he wasn't there at the time, he wasn't at the school in those years,
20 1997, and then, secondly, the archives have burned since then. Correction, it was
21 1997. The witness was not there.

22 So how is it possible that the witness signed this statement, saying that Ngudjolo was
23 a regular pupil during the years 1977-1983? There really is a problem with this
24 certificate of attendance. If Professor Fofé's intention is to produce this document as
25 evidence, I object. There's no probative value to this document in relationship to the

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1 witness's testimony.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Prosecutor. You've
3 made a number of statements. The Judges themselves were thinking along similar
4 lines, waiting to see what was to follow; in particular, the questions that Professor
5 Fofé intended to ask. And, obviously, Professor Fofé also heard the responses given
6 by the witness regarding the archives and the fact that he was not there at the time
7 and given what was stated earlier in response to the questions put to him.

8 Professor Fofé, please proceed keeping in mind the potential objections that
9 Mr Garcia has already explained and the questions in our minds regarding a
10 statement - a certificate - signed 15 June 15 2011 in the absence of archives apparently.
11 Please proceed.

12 MR FOFÉ: (Interpretation) Your Honour, let me answer the Prosecutor's objection.
13 He formulated that objection very clearly. As far as I know, unless I am mistaken,
14 Mr Prosecutor did not announce this objection. Of course, I'm talking
15 under -- subject to the correction of my other team members.

16 PRESIDING JUDGE COTTE: (Interpretation) Well, what we need to know is
17 whether the Prosecutor had this document or not.

18 MR GARCIA: (Interpretation) Yes, we did have this document, but the Prosecutor
19 didn't know what the witness was going to say about the document. And it is now,
20 during the hearing, as we hear the witness speak concerning schooling for
21 Mr Ngudjolo. What we can tell is that there is no factual basis for this document, so
22 we cannot object prematurely to a document whereas on face value it would appear
23 to be an official document. It is only in the light of the statements made by the
24 witness in this courtroom that we are in a position to object.

25 MR FOFÉ: (Interpretation) May I answer?

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- 1 PRESIDING JUDGE COTTE: (Interpretation) Yes, very briefly, Professor Fofé, but
2 please take stock of the -- at least provisional vulnerability of this document.
- 3 MR FOFÉ: (Interpretation) I would like to add this: Mr Prosecutor will have
4 opportunity to ask this witness questions during the cross-examination. We have
5 asked this witness our questions, the questions that we chose; the witness has just
6 answered them, he has recognised that he is the drafter of this document.
- 7 The Prosecutor during his cross-examination will be able to return to this question
8 and ask other questions, address them to the witness, and it is not up to me at this
9 particular point in time to cover all questions involving all points. I ask the
10 questions I believe are essential. The Prosecutor will be able to return to them when
11 he does his cross-examination and ask the witness the basis on which he drafted this
12 document. The witness will be here with us during the cross-examination
13 performed by the Prosecutor.
- 14 Your Honour, I would like to also add one more thing, if I may: The Prosecutor
15 carried out investigations in this case and, unless I'm mistaken, in view of the size of
16 this case, well, in any case the Prosecutor gave us no evidence whatsoever concerning
17 the schooling of Mr Ngudjolo which is an omission, because when you prosecute
18 somebody it is important to have a file concerning the personality - the character - of
19 the person involved.
- 20 Does the Prosecutor have a file on the character of Mr Ngudjolo? Briefly, your
21 Honour, what I wanted to say is there have been many omissions on the other side,
22 on the Prosecutor's side.
- 23 PRESIDING JUDGE COTTE: (Interpretation) Professor, we are not giving good or
24 bad marks to anybody here. We are not even assessing the quality of the action
25 undertaken by the Office of the Prosecutor so far as regards the accused's educational

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1 background and career.

2 Now, if you think these points are important, you can develop them when the time
3 comes, but we cannot -- it is inevitable that all of us should wonder about a document
4 that you present about which you asked the witness questions immediately after he
5 has stated that the archives had disappeared.

6 So what we would like to know, and this is perhaps an opportunity for you to do
7 so -- and perhaps you were about to do this in fact, but in any case how was it that
8 this witness drafted this certificate? On what basis did he do it, where did he get his
9 information? That would perhaps avoid Mr Garcia having to do this. And, in any
10 case, it is of interest to us at a moment when you are perhaps asking for the document
11 to be put into the file. We need more information on that particular point.

12 MR GARCIA: (Interpretation) Very briefly and simply to clarify one point. The
13 Prosecution doesn't want to produce this document through the witness. Professor
14 Fofé, the Defence, is doing that. So the responsibility for demonstrating all the facts
15 that might justify filing this document, it is up to Professor Fofé.

16 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, that is exactly what I just
17 said, so we understand one another.

18 MR GARCIA: (Interpretation) We simply need to have information about what
19 this certificate is based on.

20 PRESIDING JUDGE COTTE: (Interpretation) This is exactly what I just said.
21 Please go on, Professor Fofé.

22 MR FOFÉ: (Interpretation) Thank you very much.

23 Q. Witness, you have had time to look at this document carefully and you have just
24 acknowledged that you drafted it acting in your capacity as headmaster. On what
25 basis did you draft this certificate?

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1 A. Thank you very much for your question. I am headmaster of a school, so to
2 establish -- to draft such a certificate, I consulted Mr Henri - Mr Ngudjolo's uncle - he
3 was the one who gave me the information about the years of attendance for
4 Mr Ngudjolo. So I drafted that document on the basis of statements made to me by
5 Mr Ngudjolo's paternal uncle. I should point out that, no, there were no archives.

6 Q. Could you perhaps tell the Chamber, if you know, what is -- how was it
7 translated into French? Perhaps you could give the Chamber the name of Henri.
8 You mentioned an "Henri," which is a Christian name or a first name, but what is his
9 surname; i.e., Mathieu Ngudjolo's paternal uncle?

10 A. No, I don't remember his name, his surname. We generally call him Henri.

11 MR FOFÉ: (Interpretation) Your Honour, as far as I am concerned, I would like to
12 stop there on this point. Now, if the Prosecutor wishes to get more details about this
13 document, he can do so during his cross-examination. It seems to me that I can stop
14 there, your Honour. Your Honours, in fact, I would respectfully seek an EVD
15 number for this document.

16 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, for the time being, we
17 cannot attribute an EVD number to this document. Either you establish the
18 circumstances under which it was drafted in a far more specific manner -- we have
19 just heard this, and apparently the witness has no further details to give apart from
20 the fact that this was information provided by the uncle of Mathieu Ngudjolo.
21 We have a lot of respect for that uncle, but before attributing an EVD number to a
22 certificate whose content comes from a close relative of a witness we have to be very
23 careful.

24 Court officer, I don't know what sort of provisional number we can give to a
25 document but, in any case, we will be giving a temporary number to this document.

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1 And it is during the cross-examination by Mr Garcia that we will assess whether or
2 not this certificate should be included in the evidence. All of this is totally
3 independent. If we did include it at any other time, that is independent of its
4 probative value.

5 Now, court officer, could you please give me the exact name that one uses for this
6 particular process.

7 THE COURT OFFICER: (Interpretation) Yes, your Honour, "MFI."

8 PRESIDING JUDGE COTTE: (Interpretation) Yes, please allocate an MFI number.

9 And Mr Garcia will remind us that here we are really referring to a provisional
10 document when the time comes.

11 THE COURT OFFICER: (Interpretation) The document DRC-D03-0001-0688 will
12 be given the MFI number MFI-OTP -- sorry, D03-00091. Let me repeat my number.
13 The number will be MFI-D03-00091 and shall be recorded as being confidential.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer. Professor
15 Fofé, please go on.

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

17 Q. Witness, what is your religion? Perhaps the documents could be removed
18 from the screen, because it might be a source of distraction.

19 PRESIDING JUDGE COTTE: (Interpretation) Before we take the document away,
20 would you like the other documents to be given an EVD number? I think it's what
21 he wrote on a piece of paper. What were you thinking in terms of?

22 MR FOFÉ: (Interpretation) Actually, I was thinking of the last document that has
23 just been given an EVD -- an MFI number.

24 PRESIDING JUDGE COTTE: (Interpretation) I'm sorry I interrupted you, so
25 Professor Fofé will ask his question once again.

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1 MR FOFÉ: (Interpretation) Your Honour, I see what your train of thought is.

2 I think it is necessary -- at this point, it is necessary to project the list of numbers that
3 the witness mentioned so that we can -- so as to avoid forgetting it.

4 PRESIDING JUDGE COTTE: (Interpretation) Court officer, please put -- or, rather,
5 usher, please put the sheet of paper where several names were inscribed by the
6 witness on the screen. This was a confidential document.

7 Going back to the first question that you asked, I believe the witness gave a more
8 extensive answer than you actually wished for. Could you check that, please.

9 Please hand me the document before it's put on the overhead projector. If the names
10 involved are just localities, there's no problem. Good. Okay, we can put it on the
11 overhead projector and it can be a public document, but you check it, Professor Fofé.

12 MR FOFÉ: (Interpretation) Yesterday, indeed, a public document.

13 THE COURT OFFICER: (Interpretation) This document can be seen by pressing
14 "Docu Cam Witness."

15 PRESIDING JUDGE COTTE: (Interpretation) Does everybody -- can everybody
16 see this? The accused, yes? Good. A third name had already appeared on the
17 certificate we just took a look at. There we are. You would like to have an EVD
18 number allocated? Court officer, please go ahead and then we shall continue.

19 THE COURT OFFICER: (Interpretation) Thank you very much, your Honour.
20 This will have the number EVD-D03-0092 and shall be a public document.

21 PRESIDING JUDGE COTTE: (Interpretation) Very well. Go on, Professor Fofé.

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

23 Q. Witness, you have probably followed these exchanges. They do not concern
24 you. These are purely procedural exchanges that shouldn't perturb you, and we
25 shall now continue our own exchange so there's really no source of concern for you

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1 here whatsoever. Witness, what is your religion?

2 A. I'm Protestant. I am a member of the CECA-20 community in the Congo.

3 CECA-20 stands for Communauté Evangélique au Centre de l'Afrique, Evangelical
4 Community in the Centre of Africa, CECA-20.

5 Q. Have -- did you go to school and follow studies and, if so, what did you do?

6 A. Yes, I did undergo some studies. I went to primary school up to the end and I
7 went on to secondary school in teaching and I went all the way to the end. Now I'm
8 practising, our country, I'm D6N -- or, rather, D6L, D6L in our national educational
9 system in the Congo.

10 Q. Could you please tell us where you attended primary school? What was the
11 name of the school and where was it?

12 A. I went to primary school at the primary school in Zago.

13 Q. Do you remember from what year to what year you went to primary school,
14 roughly, in Zago?

15 A. The first year of primary school in 1974 to 1975, and I finished primary school at
16 the end of 1979 to 1980 school year, and that is when I got my certificate of primary
17 schooling, 1980.

18 Q. Could you carry out the same exercise concerning secondary school. What
19 school, where, which years and when you began and when you ended.

20 A. As for secondary schooling, I attended three different institutions. The first
21 year of secondary schooling I did in Zago, the second year and third and fourth years
22 of secondary schooling, I went to the Bogoro institute, and the fifth and sixth year of
23 secondary schooling, I went to the Ituri institute which is in Bunia. I switched three
24 times.

25 Q. As far as you know, did Mathieu Ngudjolo attend a secondary school and

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1 which?

2 A. Well, a long time has gone by since he -- Mr Ngudjolo was in primary school. I
3 only know of three schools he went to. He went to the Ituri institute, but I don't
4 have any details about the years. I didn't really prepare to answer such a question.
5 He also attended the Red Cross school. I don't know the year of that either. And,
6 finally, he also was given medical training at the Blanc hospital in Bunia. That's all
7 I know about Mathieu Ngudjolo's education.

8 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, we heard earlier on
9 what you said when you regretted the absence of what is often referred to in civil law
10 as a file on character. We fully understand that you might, for the benefit of the
11 Chamber, want to give an overview of Mathieu Ngudjolo as being -- as acting in the
12 realm of public health, but is it absolutely necessary in terms of relevance in respect of
13 the truth that we are all trying to disclose to really go into detail about the primary
14 and secondary schooling of Mathieu Ngudjolo once again? Of course, his medical
15 background and medical and administrative background and perhaps a military
16 background is of relevance, is of interest to us, but all three of the members of the
17 Bench are not quite sure that it's really necessary to go back that far in time. I'm
18 asking you this question, but please proceed.

19 MR FOFÉ: (Interpretation) Thank you, your Honour, I understand.

20 Q. Witness, just two last questions and then we'll go on to a separate issue. You
21 talked about the Ituri institute and you said that you yourself had attended the Ituri
22 institute in Bunia and you also referred, as concerns Mathieu Ngudjolo, to the fact
23 that he too had gone to the Ituri institute. At any moment in time, were you
24 studying at that Ituri institute together in Bunia?

25 A. Yes, when I was in the fifth year of secondary school, he was in the first year of

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1 secondary school.

2 Q. And without going into any detail, at the end of that course of study, what did
3 Mathieu Ngudjolo become?

4 A. Mathieu Ngudjolo, when he ended his medical training, he became a nurse and
5 started practising.

6 Q. Thank you very much, Witness. One or two questions and then after the break
7 we'll change topic. What is your marital status, Witness?

8 A. I'm married. I have eight children - legitimate children - and two children
9 under supervision, or rather guardianship.

10 MR FOFÉ: (Interpretation) Thank you, Witness. After the break, your Honour,
11 we shall go into the nitty-gritty, as it were. I think it would be a good idea to have a
12 break now so that the witness can rest.

13 PRESIDING JUDGE COTTE: (Interpretation) Yes, fine.

14 Witness, we're going to suspend the hearing for 30 minutes and this will give you an
15 opportunity to rest. We shall start again at 11.30.

16 Court officer, please let us go into closed session so that the witness can go out of the
17 courtroom very discreetly.

18 (Closed session at 10.56 a.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Open session at 10.58 a.m.)

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- 1 THE COURT OFFICER: (Interpretation) We are now in open session, your
2 Honour.
- 3 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, court officer.
4 The hearing is suspended.
5 (Recess taken at 10.58 a.m.)
6 (Upon resuming in closed session at 11.33 a.m.)
7 (Expunged)
8 (Expunged)
9 (Expunged)
10 (Expunged)
11 (Expunged)
12 (Expunged)
13 (Open session at 11.35 a.m.)
- 14 THE COURT OFFICER: (Interpretation) We are now in open session.
15 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer.
16 Mr Witness, we shall now resume. Can you hear me?
17 THE WITNESS: (Interpretation) Yes.
18 PRESIDING JUDGE COTTE: (No interpretation).
19 MR FOFÉ: (Interpretation) Thank you, your Honour.
- 20 Q. Witness, earlier today in private session, when the Judges were coming in, the
21 Presiding Judge said the following: He said, "We are resuming the hearing full of
22 enthusiasm." Are you full of enthusiasm, Witness?
23 A. Yes. Yes, I will continue.
- 24 Q. So I do hope you are feeling in fine form and we shall now resume. Witness,
25 I would now like to ask you to give us some context. Let us say we are now in the

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1 period 2002/2003. That is the period of time that is of interest to us, 2002/2003.

2 I can be even more specific, the period from August 2002 to March 2003.

3 Witness, do you remember that period of time, August 2002 until March 2003?

4 Could you tell us what happened during that time? What locality were you living in
5 between August 2002 and March 2003?

6 A. During that period I was living in the locality of Masu, beside Zumbe.

7 Q. Just for the edification of the Honourable Judges, what is the distance between
8 Masu and Zumbe? Could you briefly tell us? Could you tell us what the distance
9 is between those two places, and just wait a moment so that the interpretation can
10 finish?

11 A. It's not a great distance. I would say that Masu and Zumbe are really in the
12 same place. There was the Masu locality right beside Zumbe. I would say that the
13 distance is one kilometre. They are two areas that are side-by-side, that border one
14 another. There's Zumbe 1, Zumbe 2 and then Masu. I really wouldn't make a
15 geographical distinction between the two places. It is the same centre.

16 Q. During that period of time, August 2002 until March 2003, what were you doing
17 for a living at that time? What was your profession? What were you doing during
18 that period?

19 *(Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. Witness, do you know a gentleman by the name of Jean Ngabu Safari?

5 A. When you utter that name, I feel sad. He was my teacher and I lost him

6 recently on 30 April 2011. He died during a ceremony and, God willing, on

7 6 September we will have a memorial ceremony. He was one of my staff and I knew

8 him very well.

9 Q. Thank you very much, Witness. I think you anticipated some questions that I

10 was going to ask about him. So we understand that Mr Jean Ngabu Safari is now

11 deceased; is that correct? Is that correct, Witness? Jean Ngabu Safari is now

12 deceased; is that right?

13 A. Yes, he is deceased.

14 Q. Very well. I would like to ask you to make a particular effort to try to gain

15 control of your emotions. I see that you are touched. I would like to ask you some

16 questions about him. Now, from August 2002 until March 2003, you were in Masu

17 by Zumbe and you have told us that Jean Ngabu Safari was -- how was this

18 translated? He was one of your teachers? Now, during this period of time,

19 August 2002 to March 2003, I suppose you were working with this gentleman, the late

20 Jean Ngabu Safari?

21 A. Please ask me questions that have to do with me, because Ngabu is no longer

22 with us. It would be up to him; you would have to ask him such questions if he

23 were still alive.

24 Q. Witness, I don't know whether my question was translated properly into

25 Swahili. My question is as follows: During the period of time from August 2002 to

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1 March 2003, when you were in Masu and Zumbe, that area, during that time did you
2 have an opportunity to work with Jean Ngabu Safari?

3 *(Redacted)

4 (Redacted)

5 (Redacted). So, as

6 for Ngabu, well, it would be up to him to say what he was doing. I really can't
7 speak for him.

8 Q. Thank you very much, Witness. Once again, I'd like to ask you to speak
9 slowly, because everything that you are saying - you may not realise this - is very
10 important. So please speak slowly. You just mentioned the drafting committee.
11 In French, the comité de rédaction. Who were the members of this committee?

12 A. Thank you. *(Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 Q. Thank you, Witness. What was the work done by this drafting committee?
19 What was the committee's mandate?

20 A. Well, this committee drafted various reports, reports of meetings that the chief
21 had chaired.

22 Q. Now, you don't necessarily have to give us all the topics but, generally speaking,
23 what topics did these reports deal with, these reports that were drawn up by the
24 drafting committee?

25 A. Well, we are talking about a chief who dealt with justice, legal matters, who had

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1 to rule on disputes between various parties.

2 Q. We are still speaking about the period of time between August 2002 and
3 March 2003. Do you remember some of the reports that were drafted during this
4 period of time?

5 A. It's difficult for me to remember these reports. These were written documents,
6 and it's difficult for me to remember an entire report. This is a vague question, I find.
7 I'm not a computer. There were various reports, and I couldn't memorise them all.

8 *(Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 MR FOFÉ: (Interpretation) If you would allow me to consult my colleague Mr
13 Kilenda for a moment.

14 (Defence counsel confer)

15 Q. Witness, we are talking about an organisational structure, and the term is the
16 "base committee," the "comité de base" in French. To your knowledge -- now
17 this -- correction, we are talking about the drafting committee. Now, was this part of

18 *(Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 There was the self-defence committee that organised the young people, because we
4 were being attacked from all sides. The groupement was being attacked. You see,
5 there was a tribal war underway. Fourth, there was a health committee which was
6 led by doctors and, finally, there was a management committee and that committee
7 managed all the situations prevailing in the groupement. So there you have it.
8 That was the organisational structure that the chief had set up within his groupement
9 during that period of time.

10 Q. Thank you very much. Now, this entire structure -- well, let me start my
11 question this way: You were talking about the drafting committee and a
12 defence committee. Was the administrative department called the administrative
13 committee?

14 A. It was an unofficial organisation; it had not been established officially.

15 Q. So this overall structure, the administration committee, the drafting committee,
16 the self-defence committee made up of young people who are in charge of
17 self-defence, the health committee, the management committee, all of this taken
18 together, was there a name for the entire structure?

19 A. Yes, the entire structure had a name. It was called the comité de base, the base
20 committee.

21 Q. Witness, I'm going to ask you a few questions that may seem difficult to you,
22 but I'm going to try nonetheless. Can you give us some names of the members of
23 the administrative committee, if you remember, of course, a few names.

24 *(Redacted)

25 (Redacted). There was Singo Pele, who worked with

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1 the groupement chief. I've forgotten the names of the others. I only remember one
2 name. If they were here, I could name them. I was part of the administration, but I
3 worked in a very small department; that is, in the drafting committee.

4 THE INTERPRETER: Correction: Just before "Singo Pele," add "amongst the
5 judges, there was" Singo Pele.

6 MR FOFÉ: (Interpretation)

7 Q. Can you give us the names of some individuals who were members of the
8 self-defence committee, the young people?

9 A. The person in charge is now deceased; his name was Mandro Jacques. He was
10 the president, or the chairman, of the self-defence committee. I could add that
11 Ngabu Jean de Dieu Safari also helped them. He is deceased. *(Redacted)
12 (Redacted)

13 Q. Well, to be systematic about these things, what was the role played by the youth
14 committees?

15 A. They were in charge of ensuring self-defence because the war had begun, and it
16 was a war between the Hema and the Lendu. They were killing each other, and
17 that's why these committees were set up. And the purpose was to bring together the
18 young people when there was an attack and so that they would attack the enemy
19 using knives, that's machetes. That's what those committees were for.

20 Q. So if I understand you correctly, when your groupement was attacked, the role
21 of the committee was to ensure the self-defence of the groupement. Have I
22 understood you correctly?

23 A. Yes, that's correct.

24 Q. During that period, you yourself were there. Did it occur that these young
25 people, these youth committees, go and attack, rather than just defend themselves?

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1 Did they take the initiative of going out and attacking other localities?

2 A. The committees didn't have enough means to go out and attack other localities.

3 Q. You also referred to the health committee. Can you give us any names of
4 individuals who were members of the health committee?

5 *(Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. Witness, during that period, that is, August 2002 until March 2003, did you see
13 or hear that Mathieu Ngudjolo went out to attack Bogoro?

14 A. No. Mathieu Ngudjolo was a nurse at the time.

15 Q. Did you see or hear that Mathieu Ngudjolo, during the period we're referring to,
16 sent out young people from Zumbe to go and participate in the attack on Bogoro?

17 A. No.

18 Q. During that period, which attack on Bogoro do you remember?

19 A. I remember something about the attack on Bogoro, and I can say that when the
20 people from APC from Tchomia went to Zumbe, they were going toward the North
21 Kivus and that's the attack that I remember. Chief Manu helped people, helped
22 some people leave during that battle. That's the only battle that I am aware of. As
23 regards the other battles, I have no knowledge about that.

24 Q. We'll come back to that event; that is, regarding the presence of the APC in Zumbe.
25 We'll come back to that later. Other than the actions carried out by the APC in Zumbe,

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1 did you learn at some point in time that Bogoro had been attacked; is that correct?

2 A. I don't remember the details about that attack. There were several attacks here
3 and there. We didn't really know when things were occurring, but I do remember
4 that we heard gunfire on a regular basis. * But if you are asking me for a precise
5 response about the different attacks, I would say, well, it's very difficult because there
6 were several attacks ---

7 Q. I am talking about the attack on Bogoro that took place in February 2003.

8 A. ---so it's very difficult for me to give you an answer which will satisfy you.

9 MR GARCIA: (Interpretation) Objection.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr Garcia?

11 MR GARCIA: (Interpretation) I believe that it really is inappropriate for Professor
12 Fofé to suggest dates. He started out in a perfectly appropriate fashion, asking open
13 questions, but here now the professor has just suggested the date, or at least a part of
14 the date. And I see that Professor Fofé is signalling to me but, frankly, this is a very
15 leading question. The date has already been given. We can no longer go back.
16 And I submit, your Honour, that the probative value of anything that's to be said now
17 by the witness regarding that day is very minimal, given the fact that it's already been
18 suggested by Professor Fofé, and that Professor Fofé knows perfectly well that this is
19 an extremely important topic, and anything -- any time the subject is of particular
20 importance, the question must be neutral and open-ended.

21 I would simply like to recall, we know that Professor Fofé -- we know what he's going
22 to be pleading at the end of this case. I would like to just point out that given the
23 information given to the witness by Professor Fofé, the probative value of these
24 responses are minimal.

25 PRESIDING JUDGE COTTE: (Interpretation) Well, we -- would you allow us to,

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1 perhaps, benefit from the final version of the transcript to determine the probative
2 value of the testimony because, frankly, I don't have any precise dates in the
3 transcript that I have, the provisional transcript that I have. And I am sure that,
4 given the experience that Professor Fofé has already gleaned yesterday, given Madam
5 Luping's comments, indeed we've all noted that he began his questioning in a very
6 cautious manner. We're also reflecting upon the probative value of this testimony.
7 Please, Professor Fofé, would you be so kind as to continue in a very cautious fashion,
8 avoiding suggesting any dates in an inappropriate fashion on your part.
9 Now, we do understand that you're seeking to obtain from the witness a date, but
10 you must do so in the most appropriate manner in terms of procedure that not lead to
11 any criticism on the part of the OTP. You may proceed, Professor Fofé.
12 MR FOFÉ: (Interpretation) Thank you. I've taken note of the objection expressed
13 by my learned friend and I didn't give any precise dates, might I add, but that being
14 said I will stop that line of questioning.
15 Let me go back now to the topic at hand that we've been discussing with the witness;
16 in other words, the structure of what he has called the base committee.
17 Your Honours, I asked the witness -- and that was the purpose of this line of
18 questioning. I asked the witness about the comité de base, the base committee, and
19 the witness has just given some answers that we all were able to follow. He
20 described the structure of the base committee, he gave us names of some of the
21 members of the various subcommittees, part of the base committee, and I would like
22 to ask the Chamber's permission to present to the witness document
23 DRC-D03-0001-0328. I see that the Prosecutor is on his feet.
24 PRESIDING JUDGE COTTE: (Interpretation) Yes, this is indeed one of the
25 documents that you have disclosed to us. Mr Prosecutor, what's the matter?

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- 1 MR GARCIA: (Interpretation) Well, your Honour, I would like to state that we
2 didn't have any initial objections regarding this document to start with, but of course
3 it all depends on how the witness answers. A number of questions have been put to
4 the witness, he provided a number of names and a number of questions have already
5 been put to the witness regarding the base committee.
6 Now, if Professor Fofé intends to use this document to refresh the witness's memory,
7 because there's a lot of information in the document, then that's a completely different
8 story. We must emphasise the importance of the oral testimony. Professor Fofé
9 has already put to the witness a series of preliminary questions. I see that the
10 Chamber has a copy of the document in hand. There are a number of additional bits
11 of information in that document. If Professor Fofé considers that the witness has
12 forgotten certain things and he wants to use this document to refresh his memory,
13 that's a completely different matter.
14 Another point: Obviously this is difficult because the witness does not have the
15 document in front of him, but we don't know who drafted the document, where it
16 comes from, nor do we have the exact date. Well, there is a date, but we need to
17 know who drafted this document.
18 So all of these questions are preliminary questions that I think need to be put to the
19 witness before the Chamber can allow Professor Fofé to show the witness this
20 document.
21 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.
22 MR FOFÉ: (Interpretation) Your Honour --
23 PRESIDING JUDGE COTTE: (Interpretation) Yes?
24 MR FOFÉ: (Interpretation) -- we are discussing events that took place some time ago,
25 2002/2003. I have just asked the witness a number of questions - several

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1 questions - regarding the content of this document. This document is signed, and
2 I would like to suggest that the Prosecutor take a look. There are four pages in all in
3 this document; is that correct?

4 PRESIDING JUDGE COTTE: (Interpretation) Yes, apparently there are four pages.

5 MR FOFÉ: (Interpretation) If you turn to the last page you will see that there are
6 signatures, and in fact there are signatures and there is a date. So that argument is
7 of no value, in my thinking.

8 What I would like to emphasise is that the Prosecutor's objection whereby he is
9 asking the Defence to ask numerous questions on one document, well, your Honours,
10 is it not the case that the questions I've already put to the witness suffice by way of
11 introduction as introductory questions to this very document?

12 Do we have to deal with the entire content of a document in questions before we
13 show the document to a witness? Is it possible for a witness to recall every single
14 detail that may be contained in a particular document, in particular details that date
15 back so far in time? I don't think so and I don't think it is fair.

16 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, I do think that you
17 endeavoured, rightly so, to introduce this document. The witness gave a number of
18 responses regarding the administrative organisation of this base committee. We
19 have the various committees included, or the subcommittees included in the base
20 committee. He has also given us the names of a number of individuals that he
21 remembers that were members of those various subcommittees. So clearly the
22 presentation of the document - the introduction - is satisfactory.

23 I believe, however, that Mr Garcia wanted to emphasise the content of the first two
24 pages of the document, because we must be aware that on page 45 of the French
25 transcript you asked the following question, this is line 10, "We're still in the period

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1 August 2002 to March 2003. Do you recall, Mr Witness, certain reports that were
2 drafted during that period?" And the witness, who is here in the courtroom, said,
3 "It's very difficult for me to recall these reports. These are written documents. It's
4 hard for me to remember the entire content, and that's rather a vague question and
5 I'm not a computer. There were various reports and I'm not able to memorise all of
6 them. I can't remember all of them."

7 And so, you see - and this is not a criticism, Mr Witness - the witness expressed the
8 difficulty he has in remembering the content of these reports. The content of these
9 reports clearly is part of the activity of the base committee, and there is no doubt in
10 my mind that page 1 of this document describes the role of the base committee.
11 I think, therefore, that you have to be very cautious.

12 If you were to give page 1 and 2 in their entirety to the witness, it is a way of
13 refreshing his memory in such a way that he will remember things that he was not
14 able to tell us a few moments ago. I think that's quite clear.

15 Perhaps it would be preferable for you to ask two or three additional questions first
16 in order to obtain further information from the witness as to what exactly was the
17 activity of the base committee and the five different subcommittees. You've
18 obtained some information, but perhaps you can obtain more information. Since he
19 was a private secretary, which meant that he was kind of a common link between
20 these various sub-groups, that might enable him to recall what the activities of the
21 various sub-groups were. I think that if you were to make an additional effort along
22 those lines, we would then be willing to show him this document.

23 MR FOFÉ: (Interpretation) Thank you. Well, I will have to modify the way I
24 intended to organise my examination.

25 PRESIDING JUDGE COTTE: (Interpretation) I think you could perhaps summarise

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1 in a certain way.

2 Witness, I'm sure you've followed this discussion. We have a procedural problem
3 here, which we are discussing, and what we want to know - and Professor Fofé has
4 asked you the question and for us it's interesting to know - what were the issues?

5 What were the matters that each of the sub-groups dealt with? You don't have to
6 repeat what you said about the self-defence committee. You've described that quite
7 clearly and sufficiently precisely. Well, what about the administrative committee?

8 What about the medical committee? What about the management committee? Can
9 you be just a wee bit more precise and explain the kind of reports that were drafted,
10 the kind of matters that were discussed, because these issues - these things - are
11 important. You can start with whichever committee you want.

12 I've just given you some examples, or rather we would like you to give us some
13 examples.

14 THE WITNESS: (Interpretation) Okay, I've followed your question, your Honour.
15 The various committees were independent, depending on their department. The
16 chief was the only person who received the reports from the various different
17 committees. The administration was independent and they worked for the justice
18 department. There was the -- the elders' committee, which verified the completeness
19 of secret reports. According to custom, there are certain values. One is -- one value
20 is to be modest.

21 THE INTERPRETER: The interpreter requests that the witness speak more slowly.

22 PRESIDING JUDGE COTTE: (Interpretation) What you're saying is very interesting
23 and we thank you for that, but could you be so kind as to speak more slowly. Pick
24 up from where you left off. Your answer is very interesting. Continue. Continue,
25 please, more slowly.

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1 THE WITNESS: (Interpretation) I beg your pardon. I shall continue.

2 MR FOFÉ: (Interpretation) Could the witness pick up when he was talking about
3 the elders' committee?

4 PRESIDING JUDGE COTTE: (Interpretation) Yes, you've mentioned a number of
5 topics and you had just begun discussing the elders' committee.

6 THE WITNESS: (Interpretation) Yes, I was saying that the elders' committee was
7 responsible for preserving tradition according to our Lendu customary values. I can
8 give you an example, since you asked. Well, for example, we are not allowed to
9 marry our sister and, if you do that, then you have to go before the elders' committee.
10 That's an example.

11 Let me go on and speak about the drafting committee. There was someone in charge
12 of that committee.

13 JUDGE DIARRA: (Interpretation) What do you mean by the word "sister" in your
14 community? When you just said you can't marry your sister, what do you exactly
15 mean by "sister"?

16 THE WITNESS: (Interpretation) In Africa, where I come from, the word "sister" does
17 not have the same meaning as in the West. It's an extended meaning. It might be
18 the daughter of your uncle, or your aunt. As far away as the fourth generation, you
19 still refer to that person as your sister. A girl who is a member of your clan is also
20 considered as your sister. If you're born in the same village as another girl, you are
21 considered as sisters and so you cannot get married. This is something that the
22 elders would deal with. During the war it was important to call upon the wisdom of
23 the elders. I hope you've understood, Madam Judge.

24 JUDGE DIARRA: (Interpretation) Yes, of course, I understood. I just wanted all of
25 the members of the Court to understand as well.

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1 THE WITNESS: (Interpretation) May I continue?

2 PRESIDING JUDGE COTTE: (Interpretation) Yes, please continue. Please continue
3 with other examples regarding the roles of the various subcommittees.

4 MR FOFÉ: (Interpretation)

5 Q. You're saying very interesting things. Would you be so kind as to speak
6 slowly, take the time you need and speak slowly. That's very important for us. Go
7 ahead. Please continue. You were talking about -- you had just begun talking
8 about the drafting committee.

9 A. Well, as regards the drafting committee where I worked myself, I can say the
10 following: There was a chief who chaired the meeting and we could not publicise
11 any news without going through the chief. In that committee -- well, the committee
12 met independently and all the reports were sent to the same chief. But
13 during -- well, in fact, during each of the subcommittee meetings the work was done
14 independently, and then the reports were sent to the chief.

15 Let me continue and talk about the health committee. It, too, was independent. It
16 was in charge of health, and those in charge had to supervise that committee. It, too,
17 was independent. I don't know whether I've forgotten one of the committees.

18 PRESIDING JUDGE COTTE: (Interpretation) Perhaps the management committee,
19 perhaps it had special duties, if you remember them.

20 THE WITNESS: (Interpretation) Yes, yes, I do remember quite well. The
21 management committee took care of the proper operation of all the other committees.
22 Generally speaking, this committee had to make sure that all the committees were
23 functioning properly, or otherwise. This was an independent committee, and when
24 one committee wasn't working properly then the report was sent to the chief and the
25 chief received reports from all the other committees too. That's how the

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1 management committee operated.

2 THE INTERPRETER: The Swahili to French interpreter points out that the witness is
3 still going rather fast.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness. Please make
5 sure when you have a lot of things to say, please make sure that you slow down
6 somewhat because, as the interpreters have just said, they need that and you and I
7 must help them to do their job.

8 Professor Fofé, could you perhaps just remind us what the origin of this particular
9 document is.

10 MR FOFÉ: (Interpretation) Your Honour, I shall try to trace the chain of custody.

11 PRESIDING JUDGE COTTE: (Interpretation) Yes, I'm looking at your table.
12 Indeed, there is a date on it.

13 MR FOFÉ: (Interpretation) Your Honour, this document was produced on
14 20 October 2009, that's right, and I really do need to know who gave this document to
15 a member of our team. So, yes, there we are. In the chain of custody you can see
16 that the member of the drafting committee, in other words, one of the signatories on
17 the last page gave it -- handed it over to the resource person in our team.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr Garcia.

19 MR GARCIA: (Interpretation) Well, your Honour, we need more specific details.
20 Then one of the members of the executive can see in the chain of custody mention
21 being made of this member of the executive. But who in particular, which
22 individual did that and which person drafted that?

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, we do agree, and we are asking
24 Professor Fofé the same question. He is actually looking for the details.

25 MR FOFÉ: (Interpretation) I can see what the Prosecutor's getting at, but please let

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1 me reassure him because what we wish to do is to establish the truth. We can very
2 well not enter this document today, if the Chamber doesn't wish to do so, or if the
3 Prosecutor is against it for that matter. But, in any case, we will in the end answer
4 your question. We will answer your question in the end, and I am hesitating
5 between two people right now, actually; i.e., the person number 2 - i.e., our Witness
6 0088 - and number 4, the first one in number 4 - i.e., 0033 - who has passed away. So
7 we'll check that.

8 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, there's no urgency
9 about this matter. Do this in your own time. Now, if you had wanted to have an
10 EVD number attributed to this document today, well, we can defer that but, on the
11 other hand, the Chamber considers that the additional elements supplied by the
12 witness just a few moments ago, concerning the specific role of each of these
13 subcommittees are now sufficient for you to perhaps present the document to him
14 and ask him any additional questions if you think that's necessary.
15 The witness has just covered the concerns we had about pages 1 and 2, so if you wish
16 to hand over the document to him now - and the usher will help you to do
17 that -- court officer, we should make it available.

18 Now, as for the question of entering it into the file, we will have to defer that until we
19 have more knowledge of the chain of custody and how the document was obtained.
20 But its contents are of interest to us now.

21 MR FOFÉ: (Interpretation) But before doing that, I would like to ask the witness a
22 few questions, if I may:

23 Q. Witness, you had just given an example --

24 A. I need to take a very short break.

25 PRESIDING JUDGE COTTE: (Interpretation) Court officer, please, let's go into

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1 closed session so that the witness may leave the room for a short period. And let me
2 ask the usher to escort him to the closest position so that we lose as little time as
3 possible.

4 (Closed session at 12.38 p.m.)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Open session at 12.43 p.m.)

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

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer. Right.

17 Professor Fofé, keeping in mind that direct examination must always be conducted in
18 a gradual manner, that the progression may be slow for a series of reasons,
19 nonetheless we would ask you to be careful to ensure that the questions you are
20 asking are truly relevant and do enable us to better grasp the direction in which you
21 wish us to go. Sometimes we wander a little, and that is why I am reminding you of
22 this at this particular point in time and let me give you the floor now. Witness, by
23 the way, do you hear me?

24 THE WITNESS: (Interpretation) Yes, I can follow you clearly.

25 PRESIDING JUDGE COTTE: (Interpretation) Yes, that's fine, we can see you're in

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1 fine fettle. Professor Fofé, go ahead.

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

3 Q. Witness, earlier on you spoke about the elders' committee and you said that,

4 amongst other things, this committee was, as it were, in charge of guarding the

5 customs and you gave an example; for instance, bans on certain marriages between a

6 brother and a sister under the African conception of these words.

7 Before I have the document presented to you, could you tell us what your custom is

8 concerning rape?

9 A. Well, that is a highly relevant question, concerning rape. This is a purely

10 Western issue. According to our customs, before the troubles we

11 encountered -- well, I don't really know what you mean by "rape." Often you look at

12 the age of the person who's the victim of rape. If the person is over the age of 18,

13 then rape is treated differently compared to somebody who is less than 18 years old.

14 So, if we're talking about a minor, the situation is a different one.

15 I think there have been changes in our customs. As the country has developed in

16 our customs, when a girl was raped, there would have to be reparation. For instance,

17 you might have to bring a goat, sacrifice it and then eat it and that could solve the

18 problem. For instance, according to our custom, children were said to create

19 problems between families and that those problems had to be solved between the

20 family. But today we are now beginning to use positive law and custom is, as it

21 were, giving way to positive law. But this is what happened in our customary law

22 at the time.

23 MR FOFÉ: (Interpretation) Your Honour, so you have allowed me to present the

24 witness with DRC-D03-0001-0328.

25 PRESIDING JUDGE COTTE: (Interpretation) Court officer, this is a four-page

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1 document.

2 MR FOFÉ: (Interpretation) A confidential document.

3 PRESIDING JUDGE COTTE: (Interpretation) Could a copy be given to the witness
4 and could it be placed on the overhead projector, and then Professor Fofé will tell us
5 which pages he wishes us to see.

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

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

9 MR FOFÉ: (Interpretation) And we have a paper, a hard copy, that can be shown to
10 the witness, if necessary.

11 MR HOOPER: Sorry to interrupt.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper.

13 MR HOOPER: Can I just say I'm looking at the list of material that was going to be
14 discussed with the witness, and I don't see anything here on traditions on rape, and
15 I'm just concerned. It's been said -- I haven't intervened, but it would be helpful,
16 even at this late stage, if there is something that's going to be touched upon that's
17 foreseeable, then even short notice is perhaps preferable to no notice on all the
18 parties.

19 And, secondly, I'm unclear whether the witness is speaking of Lendu or Ngiti
20 traditions. Thank you.

21 MR FOFÉ: (Interpretation) Yes, I do understand my learned colleague's observation.
22 I myself hadn't planned to make those questions, but they arise as a result of the
23 answers he gave about the elders' committee. He gave an example about marriage,
24 and it came to my mind to ask this question off the cuff, but I don't need to go any
25 further.

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1 PRESIDING JUDGE COTTE: (Interpretation) Very well. The Chamber itself had
2 thought that so as to enable the witness to contribute on the basis of the first and
3 second pages, without seeing it, that Professor Fofé had sought to have additional
4 information about the elders' committee. We do understand that these questions
5 have now been set aside by Mathieu Ngudjolo's team, which should be a source of
6 reassurance to Mr Hooper.

7 Now, the witness now has the document before him. What do you intend to do,
8 Professor Fofé?

9 MR FOFÉ: (Interpretation)

10 Q. I would like you, Witness, to take a look at this document, the entire document,
11 actually, from start to finish. Take your time, go through the whole document. Do
12 you recognise this document?

13 A. Yes, I do recognise it.

14 Q. If we go to the last page of this document, under point 4 we can read "drafting
15 committee:" followed by two names that I won't read out because we are in open
16 session, the first name that you are familiar with, and the second name. Now, the
17 second name and the signature alongside that, is that your signature, Witness?

18 A. Yes, it is.

19 Q. You just described for the benefit of the Chamber what the structure of the
20 committee, the comité de base, was; the base committee with its various
21 sub-committees. Now, this document does it describe the structure of the base
22 committee with the various sub-committees as it was in 2002-2003?

23 A. Yes.

24 Q. In the course of your testimony, on several occasions you have stated that each
25 of these sub-committees was independent and reported to the chief. Can you

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1 remind us of the name of that chief?

2 A. Yes. At the time our chief was Ngabu Mandro Emmanuel.

3 MR FOFÉ: (Interpretation)

4 Thank you very much, Witness.

5 I believe I have no further questions on this particular document, your Honour, so we
6 shall carry out the duty you allocated to us concerning the details on the chain of
7 custody, because as I said earlier on, I'm hesitating between one of two people.

8 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, we'll come back to this
9 on Tuesday.

10 Court officer, please allocate an MFI number so that this is not lost.

11 MR GARCIA: (Interpretation) So that we don't need to come back to these questions
12 of detail, perhaps we could ask the witness himself whether he actually knows who
13 drafted the document and when he signed it. Because, you see, at the bottom, "done
14 on" with a date, but is that when the document was drafted, or when he signed it?

15 PRESIDING JUDGE COTTE: (Interpretation) Since we do have the document in our
16 hands, Professor Fofé, please ask those two questions and this will enable us to deal
17 once and for all with this document.

18 MR FOFÉ: (Interpretation) Certainly, your Honour.

19 Q. Witness, you have been able to look at this document. Who drafted this
20 document?

21 A. I already said this before this Court. *(Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 want to go too far. You can see that there is writing, handwriting, and it is Ngabu

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1 Jean de Dieu's handwriting.

2 Q. Thank you, Witness. *(Redacted)

3 (Redacted)

4 A. This document was drafted at the beginning of the war; it was at that time that
5 he drafted it. As for the date, you can see that almost ten years have gone by, so it's
6 very difficult for me to remember the date.

7 Q. Now, on what date did you yourself sign this document?

8 A. Mr Fofé, this document, it goes back a long while. It's very difficult for me to
9 give you a date. I'm sorry, I can't answer you on that.

10 Q. I'm asking you this question because on the last page you can see a date, on the
11 last page. Can you explain to us what this date is on this last page?

12 A. I don't see the significance of providing information about that date. What
13 should I say about this date? I don't think I have much to say about the *(Redacted)
14 (Redacted)

15 (Redacted). I don't see
16 the relevance of your question, as far as I'm concerned. You want me to give
17 explanations about a date, but I don't see what I should be saying about this date.

18 Q. You yourself are taking part in procedural discussions, but perhaps what
19 I would like to see on record is that Ngabu Safari Jean de Dieu was Defence witness
20 DRC-D03-P-0033; is that right?

21 PRESIDING JUDGE COTTE: (Interpretation) Yes, that's right, that's right, and by
22 force of circumstance you had to withdraw him from your list of witnesses.

23 MR GARCIA: (Interpretation) I don't want to interfere with the questioning of
24 Professor Fofé, but there's something a bit troubling about his questions. When you
25 look at what appears on the document, page 0331, you can see "Done in Zombe:

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1 20 October 2009," whereas the witness said that it was drafted at the beginning of the
2 war, whereas on the document itself on page 0329 there is mention made of the
3 creation of the committee in July 2003 and so all this doesn't coincide.

4 Are we talking about two different documents? Is there one document that was
5 signed at a different time from the other part of the document? There's something
6 that escapes me. The date 2009 is mentioned in the document, whereas the witness
7 says the document goes back to the time when the base committee existed. So this is
8 a major problem, isn't it?

9 PRESIDING JUDGE COTTE: (Interpretation) This is exactly the type of details that
10 Professor Fofé wanted to get from the witness, but the witness replied that he didn't
11 see very well what he could add to that.

12 Mr Witness, we are all wondering -- the Chamber doesn't wish to interfere too much,
13 or might appear to be too excessive both in the case of examination-in-chief and
14 cross-examination. You said -- having looked at the document, you indicated that it
15 went back some ten or 11 years. Let's say that we -- let's say ten/nine years. In any
16 case, on the fourth page you have noticed that it is written, "Done in Zombe:
17 20 October 2009." Could you tell us whether, as far as you know - we know you're not
18 an expert - this "Done in Zombe: 20 October 2009" was written by Mr Jean de Dieu
19 Ngabu Safari? That's my first question. Do you believe that he was the one to have
20 written, "Done in Zombe: 20 October 2009"? If you think so, just tell us so that it is
21 his writing, which you must be quite familiar with. How can you explain the fact
22 that this document goes back to 2001 or 2002, yet bears this date from 2009? So these
23 are my questions for you, if you could reply.

24 THE WITNESS: (Interpretation) Regarding the date, I said that I had no explanation
25 to provide. The only thing I know is that I did see the document. I signed it. That

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1 was the answer I gave when Professor Fofé asked me that question.

2 PRESIDING JUDGE COTTE: (Interpretation) I see, but let me ask you the question
3 again. Now, if you can answer, the last part where it says, "Done at Zumbe:
4 20 October 2009," was that also written by Mr Ngabu Safari Jean de Dieu? Did he
5 write that?

6 THE WITNESS: (Interpretation) Yes. As you can see, it is indeed his handwriting.
7 I only signed the document.

8 PRESIDING JUDGE COTTE: (Interpretation) So I gather from you that this last part,
9 "Done at Zumbe: 20 November 2009," is something that Ngabu Safari Jean de Dieu
10 wrote, who was alive at that time.

11 My question, Mr Fofé, is whether this last part, whether this matches the date of
12 drafting of the document, or is it a date -- was it the date on which the document was
13 turned over to the Ngudjolo Defence team? I think we need to clear this up before
14 we can rule, if you wish, as to whether it should be admitted into evidence or not.
15 You may proceed, Professor.

16 MR FOFÉ: (Interpretation) Thank you, your Honour. I've taken careful note of that
17 task you have assigned to me. I would like to ask a question of the witness relating
18 to page 2, what we find on page 2. The heading is "Information" on the second page
19 of the document. "Information," the first sentence.

20 Q. Witness, I think you can see on the second page of this document it is written
21 "Information," and then it reads as follows, and I quote, "This structure - the base
22 committee - was set up in Zumbe on 9 January 2001 until July 2003 when the Artémis
23 force arrived in Bunia." I think you see that I have quoted this sentence faithfully.
24 My question is as follows:

25 This particular sentence, is that a true reflection of reality? Was the structure - was

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1 this committee - indeed set up at that time?

2 A. No, I haven't understood.

3 THE INTERPRETER: The interpreter has not yet finished his interpretation.

4 MR FOFÉ: (Interpretation)

5 Q. Judging by what we see here, what is written here, the -- the base committee
6 was established in Zumbé on 9 January 2001; is that correct?

7 A. Yes, that's right.

8 Q. And the sentence goes on and it says that this base committee created on
9 9 January 2001 existed until July 2003 and that at that time the Artémis force arrived
10 in Bunia; is that correct?

11 A. Yes, that is correct.

12 MR FOFÉ: (Interpretation) Thank you very much, Witness. Your Honour, I have
13 no further questions on this point.

14 PRESIDING JUDGE COTTE: (Interpretation) Court officer, for the time being let us
15 attribute an MFI number to the document. The origin - the provenance - of this
16 document must be determined at a later date.

17 THE COURT OFFICER: (Interpretation) Thank you, your Honour. Document
18 DRC-D03-0001-0328 shall bear the MFI number MFI-D03-0093 and shall be registered
19 as a confidential document.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

21 Professor Fofé, please continue and we shall try to speed things up.

22 MR FOFÉ: (Interpretation) Thank you, your Honour. Should I speed up? Should
23 I speak more quickly?

24 PRESIDING JUDGE COTTE: (Interpretation) No, but I think you understand what
25 I'm trying to tell you.

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1 MR FOFÉ: (Interpretation) Yes, I understand. I shall try.

2 Q. Witness, take some time to drink a glass of water. I'll wait. Witness, during
3 this time, the year 2002, August 2002 to March 2003, were there military camps in the
4 Bedu-Ezekere groupement?

5 * A. Throughout that entire period, there were the self-defence forces that were organised in a
6 traditional fashion, but they were not very organised structures within Bedu-Ezekere.

7 Q. Now, the members of the youth committee - the self-defence committee - did
8 they take military training?

9 A. Well, there were no weapons. How can you conduct military training without
10 weapons? I said that it was a traditional organisation. They had spears and
11 arrows.

12 Q. During that time, August 2002 to March 2003, were there child soldiers within
13 the Bedu-Ezekere groupement?

14 A. No, there were no child soldiers because there weren't even any soldiers. The
15 young people within the self-defence group were called combatants.

16 Q. During your testimony, you made mention of a number of attacks on the
17 Bedu-Ezekere groupement. Please cast your mind back to that period of time,
18 August 2002 to March 2003, if you could focus on that time. I know that there were
19 attacks before that time, but that is not any of our concern. So during that time,
20 August 2002 until March 2003, where did the attacks come from; these attacks upon
21 the Bedu-Ezekere groupement?

22 A. It's difficult for me to answer that question. As I said earlier, this was a conflict
23 between ethnic groups; the various ethnic groups that were fighting against the
24 Lendu.

25 THE INTERPRETER: The Swahili interpreter points out that the witness is speaking

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1 quickly.

2 THE WITNESS: (Interpretation) I was saying to the east, to the north, there was
3 Mandro, to the west Bunia and to the south there was the locality of Bogoro, and we
4 were attacked from those four directions. Zumbe is surrounded and the tribes that
5 lived in the various localities would come and attack.
6 If the attack didn't come from Bogoro, it came from Kathonie. If it didn't come from
7 there, it came from Mandro. The attacks came in these various directions. Zumbe
8 was at the top and, you know, when the Prosecutor went by in that area he saw the
9 position of Zumbe, and when I heard -- that was when the Prosecutor came to
10 Zumbe.

11 MR FOFÉ: (Interpretation)

12 Q. Thank you, Witness, but once again please speak slowly.

13 I realise that it is your nature to speak quickly, and so do we, but let us try to speak
14 slowly, slowly, because you're giving us a lot of information. In your last reply you
15 gave us quite a bit of information. We will try to really get to the very depths of this
16 information. You said that in Bunia there was the UPC. In Bogoro, what military
17 forces were there?

18 A. Thank you for your question. The Hema were everywhere, and the places
19 where the Hema -- there was the UPC and the UPDF, the Ugandans, who were their
20 allies. In Bogoro, there was the UPC. I don't know whether the UPDF soldiers
21 were with them. It was hard to know that because I couldn't go to those places, get
22 in there. It was difficult to get into a Hema area. For a Lendu, it was difficult to get
23 into a Hema area.

24 Q. Now, given the answer you have just given us, are we to understand that the
25 attacks upon Bedu-Ezekere, between August 2002 and March 2003, came from these

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1 various localities you mentioned, Mandro, Bunia, Bogoro; is that correct?

2 A. Yes. Initially, when there was no conflict amongst the Hema soldiers, the UPC
3 was a single movement. * After that, difficulties broke out within the group.

4 Chief Kahwa founded PUSIC, and the UPC remained in Bunia.

5 The PUSIC movement took control of

6 Mandro, Tchomia and Kasenyi, and over in Bogoro,

7 the UPC reigned.

8 This is what we heard, because

9 we couldn't see these things with our own eyes, given that it was difficult to get into
10 these different areas.

11 MR FOFÉ: (Interpretation)

12 Q. Thank you, Witness. What damage was done during these attacks upon
13 Bedu-Ezekere?

14 A. Thank you very much for the question. Well, if you noticed that I stopped for
15 a second, it was because I was really thinking a lot. We lost many people within my
16 own family. Myself, I was a victim of these attacks. You know, I was a farmer and
17 we lost a lot of cows. We also had a lot of harm done; buildings were burnt down,
18 and so it's difficult for me to talk about these attacks.

19 Q. Witness, during that period of time when you were subjected to these attacks,
20 were you in a position to ask for protection from the Congolese government? Was
21 there any possibility to turn to the Congolese government? Could they protect you?

22 A. The government was totally absent. Oftentimes, we were beaten. Our
23 brothers were allied with the Ugandans and the government, which had power at the
24 time, was the Ugandan government. And since our enemies spoke the same
25 language, I said that given that the government of the Congo was absent that is why

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1 we are talking about this whole story today.

2 Q. Witness, now, given these various activities you were engaged in, you were
3 part of the drafting committee, did you ever have to draw up a report relating or
4 giving an account of all these attacks upon Bedu-Ezekere?

5 A. There was no authority that we could send such a report to. There was no way
6 to send a report to anyone. That is why we set up an organisation, an internal
7 organisation.

8 Q. Indeed. Now, within this organisation that was set up by the chief of the
9 groupement, now, within this organisation internally, did you have to draw up
10 reports so as to remember all these various attacks that the Bedu-Ezekere groupement
11 endured?

12 A. Yes. Ngabu, the secretary, was responsible for keeping a record of all those
13 documents. He kept all those documents. It was like an archive. It seems to me
14 that he does have some documents, because when I saw those documents I
15 remembered that there must have been other documents. He might have some
16 other documents and reports that we were in the habit of preparing at that time.
17 That was my work. My work was to draft these reports on the various attacks.
18 I don't know whether he still has these documents. Unfortunately, he has passed
19 away. The day of his funeral I went to look in his records, but I didn't find the
20 documents.

21 Since I was in charge of the drafting committee, I would make a report of everything.
22 If he were alive, he would be able to tell you more. Yes, I can confirm that we were
23 in the habit of drafting such reports.

24 MR FOFÉ: (Interpretation) Your Honour, I think we can conclude today's hearing
25 right now because the last answer from the witness is going to lead us into a series of

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1 details, and this is so important that I think it would be good for him to have a rest,
2 and it would be better for us to resume next week. Thank you very much, Witness.
3 Thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) Witness, that will be all for today.
5 We will not be able to have a hearing on Monday, but in the afternoon Tuesday, we
6 will have a hearing at 2.30 to continue with Professor Fofé's examination. And most
7 likely we will also have questions from Mr Hooper and then, in turn, from Mr Garcia.
8 Court officer, if we could go into closed session so that the witness can leave the
9 courtroom. Witness, thank you for being with us this morning.

10 (Closed session at 1.25 p.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Open session at 1.26 p.m.)

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

19 PRESIDING JUDGE COTTE: (Interpretation) Our thanks to everyone who has
20 helped us over the course of today's hearings. We shall now adjourn, and the next
21 hearing will be on Tuesday at 2.30 in the afternoon. We believe that Monday's
22 working session will unfold properly. And a reminder to the court officer: You
23 may contact me if a one-hour extension is necessary.

24 (The hearing ends in open session at 1.27 p.m.)

25 CORRECTIONS REPORT

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1 The Court Interpretation and Translation Section has made the following corrections
2 in the transcript:

3 * Page 63 lines 3 to 10

4 "After that, difficulties broke out within the group and the UPC remained over by --
5 on the side -- on the Bunia side. The PUSIC movement took control of Mandro and
6 the UPCreigned elsewhere. This is what we heard, we couldn't see these things with
7 our own eyes, so it was difficult to get into these different areas. THE

8 INTERPRETER: Interpreter correction: In the reply, the witness made mention of
9 Chief Kahwa who set up PUSIC, PUSIC, that movement took control of that area
10 Tchomia, Mandro and Kasenyi. "

11 is corrected by

12 "After that, difficulties broke out within the group. Chief Kahwa founded PUSIC,
13 and the UPC remained in Bunia. The PUSIC movement took control of Mandro,
14 Tchomia and Kasenyi, and over in Bogoro, the UPC reigned. This is what we heard,
15 because we couldn't see these things with our own eyes, given that it was difficult to
16 get into these different areas. "

17 CORRECTIONS REPORT

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

20 * Page 42 lines 4 to 8

21 "But if you are asking me for a precise response about the different attacks, I would
22 say, well, it's very difficult because there were several attacks during that period. It's
23 very difficult for me to give you an answer which will satisfy you. "

24 Is corrected by

25 " But if you are asking me for a precise response about the different attacks, I would

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1 say, well, it's very difficult because there were several attacks ---

2 Q. I am talking about the attack on Bogoro that took place in February 2003.

3 A. ---so it's very difficult for me to give you an answer which will satisfy you. “

4 * Page 61 lines 5-6:

5 “A. Yes, there were the self-defence forces that were organised in a traditional
6 fashion, but they were not very organised structures within Bedu-Ezekere.”

7 Is corrected by

8 “A. Throughout that entire period, there were the self-defence forces that were
9 organised in a traditional fashion, but they were not very organised structures within
10 Bedu-Ezekere.”

11 RECLASSIFICATION REPORT

12 Pursuant to Trial Chamber II's email instructions dated 10 October 2012, the
13 following excerpts of this transcript are reclassified as confidential.

14 *Page 35 lines 19 to 25

15 *Page 36 lines 1 to 3

16 * Page 37 lines 3 to 5

17 *Page 37 lines 12 to 17

18 *Page 38 lines 8 to 11

19 *Page 38 line 18 until page 39 line 2

20 *Page 39 lines 24 to 25

21 *Page 40 lines 11 to 12

22 *Page 41 lines 5 to 11

23 *Page 56 lines 21 to 24

24 *Page 57 lines 2 to 3

25 *Page 57 lines 13 to 15