

Trial Hearing
Witness: DRC-D03-P-0044

(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 Monday, 15 August 2011
10 (The hearing starts in open session at 2.02 p.m.)
11 THE COURT USHER: All rise. The International Criminal Court is now in session.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Good afternoon,
13 everyone. Good afternoon, accused. I believe Mr Gilissen will kick off this hearing.
14 Now, if you could have the blinds behind the witness stand raised for a few moments,
15 Madam Court Officer, just so that the people in the gallery don't have the impression
16 that they are cut off.
17 MR GILISSEN: (Interpretation) Thank you, your Honours. Indeed, I'd like to
18 introduce Mr Hedi Aouini, who is a lawyer from the Tunis Bar, and he is acting here
19 on a pro bono basis. Thank you.
20 PRESIDING JUDGE COTTE: (Interpretation) The Chamber wishes to welcome
21 your new colleague and we hope that his time here, working with the various legal
22 representatives of the victims, will be a useful experience for him. And perhaps one
23 day all of Tunisia will join the Court, or has this been done? Is Tunisia a member
24 State? Good luck, Counsel.
25 First of all, on behalf of the Chamber, I would like to take stock of the various filings
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1 and other matters, and we will give you some information for planning and
2 scheduling purposes. The Prosecutor will have a few things to say; apparently he
3 has asked for a few moments to make some observations regarding a filing
4 underway.

5 And then Mr Kilenda will be speaking; he has been wanting to take the floor ever
6 since the beginning of the Ngudjolo case. And then after that the Chamber will be
7 issuing a ruling regarding upcoming witnesses, and then we will have Witness 44
8 come into the courtroom.

9 So we are now resuming the trial, and I think it might be useful to briefly take stock of
10 the various filings that were being dealt with when the hearings were suspended, as
11 well as the filings that are currently underway. So I thought it would be a good idea
12 for us to summarise matters together.

13 First of all, the Chamber shall be providing a response to filing 3081 dated
14 21 July 2011, a filing from Mr Kilenda. In this filing he asked for protective measures
15 for four witnesses that he will be bringing to the courtroom, Witnesses 44, 55, 66 and
16 100.

17 Now, my second point is that on 12 August the Chamber provided a response to an
18 application from Mr Kilenda, our reply was in ruling 3102 and in relation to this
19 application from Mr Kilenda, number 3082 dated 21 July, regarding the addition and
20 disclosing of a certain number of documents.

21 Third, the Chamber will be providing a reply to Mr Kilenda's application, filing 3085
22 dated 2 August, regarding redaction of the name of a source of a number of
23 additional documents.

24 As for application 3079 from Mr Kilenda dated 19 July the same holds true; this was
25 an application for assurances under Article 93 and guarantees pursuant to Rule 74 for

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1 Witnesses 66, 88, 480 and 707. However, there will be separate replies, one reply for
2 each one of the first three witnesses, and then a decision from the Chamber for
3 Witness 707 because that person's situation is somewhat different.
4 Now, in this regard, regarding filing 3101 from the Prosecution, does this require
5 some sort of reply from you? Now, if this reply from the OTP dated 12 August, if
6 that needs additional consideration could you please let us know?
7 We also take note that the Registry has designated a counsel for the first three
8 witnesses and, as soon as possible, once the review of the files is complete a reply will
9 be provided to application 3086 dated 5 August regarding testimony of Witness 480.
10 Now, I believe that there also will be a reply to Mr Mabanga's application - he is the
11 duty counsel - and the filing was 3037 dated 28 June, and this filing has to do with the
12 protection of the families of the three witnesses who are being detained. So a reply
13 should be provided today 15 August.
14 Fourth point: The Chamber will be providing a response to filing 3055 dated 27 June;
15 this is an application from Mr Luvengika asking for clarification as to the practice that
16 is in place for travel and accommodations of witnesses who are asked to come to give
17 testimony.
18 Point number 5: The very specific litigation dealing with the three detained
19 witnesses, the application for asylum, led to a ruling number 3073 dated 14 July in
20 relation to applications for leave to appeal from the Prosecution and The Netherlands
21 as well as an application from the DRC and an order number 3097 of 10 August
22 asking for the Registry to provide more information regarding a number of points
23 related to the Chamber's prerequisites in terms of protection with -- in keeping with a
24 possible return to the DRC. These requirements set out by the Chamber are to be
25 found in decision 3033 dated 22 June.

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1 6: After one of the members of the Chamber went to the detention centre on 14 July,
2 the Chamber issued a ruling number 3078 dated 15 July and this ruling had to do
3 with the conditions of detention of the detainee witnesses. The information shall be
4 sent to you by email today to all of you.

5 Normally, we should receive an update on the detention conditions of these witnesses
6 on the 15th of each month so that we can be sure that everything is unfolding
7 properly, but the Chamber also was concerned about the conditions of detention of
8 the two accused persons and the Chamber is monitoring the conditions of detention
9 of these two categories of people very closely.

10 So all this to say these various matters are being dealt with and a reply shall be
11 provided soon. So we thought it was useful to take stock of the general situation so
12 that we would all be on the same wavelength when the proceedings resume and of
13 course all of this is pursuant to possible rulings.

14 As for the scheduling of our hearings, for reasons that are beyond our control, the
15 Chamber will not be able to sit on 22 August next and so the afternoon shall be
16 available to you. The Chamber will have to -- will have to reduce the hearings on
17 9 September and only sit in the morning. We will only be able to sit from 9 to 11 that
18 day. We may be able to go somewhat beyond 11 a.m., will see in a while, but for the
19 time being it would appear that these hearings will be shortened and will only last
20 two or three hours.

21 Prosecutor, this morning you asked us to provide you with some time so that we
22 could discuss one of the witnesses, Witness 480, one of Mr Ngudjolo's witnesses.
23 Now, we know that a number of responses were recorded and will be passed on.
24 What's your viewpoint? Please proceed.

25 MR MACDONALD: (Interpretation) Good afternoon, your Honours. The

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1 Prosecution would like to address the Court so as to avoid having to file a filing. We
2 do not challenge the approach that has been suggested by the Congolese authorities.
3 I really can't give a lot of detail since this is an open hearing.
4 I would just add, your Honour, that in light of the situation - and this is a point that
5 we did not include in the email to the Chamber, or to the parties and
6 participants - but we do believe it would be advisable to make contact with the
7 Congolese authorities so that if the Chamber were to agree to testimony via video
8 conference that the video conference would be held in Bunia for reasons of safety.
9 In light of the region that the witness is deployed in, in the Prosecution's experience
10 and in light of the information we have about the region, this region is not safe for
11 having a video conference. Particularly, we believe that this person - correction - this
12 testimony has to do with an ICC witness. I think it would be advisable, preferable,
13 for the testimony to be given in the field office in Bunia, and I am sure that under the
14 circumstances this would avoid travel, wasting several weeks of time, perhaps even a
15 month-and-a-half, and perhaps the Congolese authorities would look more
16 favourably upon such an approach. So those are our comments on the matter. I
17 thank you.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor. So what
19 you've just said will be recorded in the transcript and will be considered to be the
20 equivalent of a filing.

21 Now, the Ngudjolo Defence may have something to say and the Chamber will take
22 this under advisement and to decide what to do about this approach suggested by the
23 DRC government and what to do about the suggestion from the Registry.

24 Mr Kilenda, you now have the floor. Please proceed.

25 MR KILENDA: (Interpretation) Thank you, your Honour. Good afternoon, your

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1 Honours. We are very pleased to see you once again after the summer recess and we
2 are pleased to resume the proceedings.

3 Your Honours, parties and participants, the Chamber has set a date for the various
4 witnesses from the Ngudjolo Defence team and we are delighted to have this
5 opportunity. Finally, we will have an opportunity to defend our client, who has
6 been condemned to silence for nearly four years for procedural reasons, ever since he
7 was transferred to The Hague. He will be able to speak freely and give you his
8 version of the events and facts relating to the crimes that the international community
9 has accused him of, represented here by the Office of the Prosecution.

10 In keeping with the opening remarks made on 24 November 2009, and also basing
11 ourselves on the requirement of due diligence, the Mathieu Ngudjolo Defence team
12 shall endeavour during the presentation to go directly to the heart of the matter,
13 without any beating around the bush, without any extraneous material, with a spirit
14 of complete transparency.

15 Furthermore, we would urge the parties and participants to strictly respect the
16 framework that has been set through your various rulings and, if parties and
17 participants could focus on what is truly essential by going directly to the heart of the
18 matter, we decided to avoid calling general witnesses whom are also referred to as
19 contextual witnesses who would be familiar with all aspects of the case and would be
20 familiar with all the events that happened in the Ituri region. Our witnesses are
21 being called to give testimony about specific matters that they are familiar with that
22 they experienced personally, them themselves.

23 Our search for exonerating witnesses was quite meticulous and we constantly wished
24 to remember the need for a speedy conclusion of the trial. Our team regularly
25 assessed the list of witnesses and the various areas that they would be testifying

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1 about before this Chamber, so these were the concerns, your Honours, that led us to
2 spending last weekend assessing the various themes, topics and matters to be covered
3 by the witness.

4 Witness DRC-D03-P-480 was of particular concern to us. This is why, your Honours,
5 we wished to inform you that after reflecting duly we decided not to call this witness
6 unless you require us to make an official filing. Otherwise, we would like to ask the
7 Chamber if you could please take this as an oral filing and allow us to withdraw this
8 witness from our list, and also from a mathematical point of view this would mean
9 we would be calling ten witnesses in all, including Mathieu Ngudjolo, and possibly
10 the expert.

11 As for the allocation of the various tasks, the co-counsel Professor Jean-Pierre Fofé,
12 shall examine five of the witnesses; the main counsel will also examine witnesses,
13 namely, the five other witnesses. The Defence would like to ask the Chamber if the
14 custom that they have established to present -- to speak to the witnesses after, now if
15 that could be -- if that practice could be upheld, this would be very useful for the
16 witnesses who have agreed to travel to The Hague to take part in these proceedings.
17 Now, your Honours, parties and participants, I would like to thank you for your
18 attention.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda, for your
20 remarks. With regard to the last remark, the wish that you expressed to see
21 witnesses to thank them, to see them in person, or rather to be thanked in person by
22 Mr Ngudjolo and his Defence team, the Chamber shall take the same attitude as the
23 one that was shown for Mr Katanga's witnesses. It is a question of fairness and it is a
24 healthy thing.

25 Madam Court Officer, please note that we will be proceeding in this manner. After

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1 each witness from Mr Ngudjolo's Defence team has finished, and in consideration of
2 the status of the proceedings, if the Registry could make the necessary arrangements
3 for a brief meeting after testimony concludes.

4 As for the decision to withdraw or, rather, to renounce the right to call Witness 480,
5 who is not a totally indifferent witness, do any parties wish to express a view? I
6 believe the Prosecution made a few remarks about this particular person. I believe
7 there may be some problems here. Mr Prosecutor, do you have any comments at
8 this time?

9 MR MACDONALD: (Interpretation) Thank you, your Honour. We have no
10 objection.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I would like to ask
12 Mr Gilissen and Mr Luvengika if they have any observations.

13 MR GILISSEN: (Interpretation) No, your Honours. Myself, I have no comment in
14 particular to make and I rely upon the wisdom of the Court.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Luvengika?

16 MR NSITA: (Interpretation) I have no comments to make in this regard. I thank
17 you.

18 PRESIDING JUDGE COTTE: (Interpretation) We thank you. Mr Hooper, do you
19 have any observations regarding this decision taken by the Defence team of the
20 co-accused?

21 MR HOOPER: No, I haven't, and may I bid everyone a very good afternoon. Your
22 Honour may notice I am a little déshabillé. In the rush back from the holiday I
23 haven't unpacked my gown yet which is why I am not wearing one this afternoon
24 and I hope nevertheless your Honour can see and hear me in terms of the hearing.
25 Your Honour, at one point I wanted to raise a matter concerning the detention

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1 conditions of Germain Katanga. I had been minded to do it today. I am aware that
2 there is a report in relation to the other detainees that the Court will be receiving
3 tomorrow, but if there is an appropriate opportunity I don't want to interrupt my
4 learned friend Mr Kilenda, who is now effectively opening his case, but if there is an
5 opportunity for me very briefly in a matter of minutes to raise some concerns, I would
6 be grateful for the opportunity to do so. Thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Well, first of all you are very
8 dignified in the clothes you are currently wearing. I will just wait for the translation
9 to come through. I was saying that you look quite dignified the way you are
10 currently dressed and the Chamber had not even noticed that you were missing one
11 particular part of your courtroom attire. As for the conditions of detention, we will
12 return to that point later. Mr Kilenda, I think you have seen that each party has said
13 that they have no objection to Witness 480 being dropped off the list of witnesses that
14 you were planning to call. I believe he was seventh on the list, so the list shall be
15 amended accordingly, and the Chamber takes note of your decision. You were the
16 person in the best position to determine exactly what sort of witness this person
17 would be for the Ngudjolo Defence.

18 Madam Court Officer, would you be so kind as to tell the head of courtroom services
19 about this decision that has been taken; this decision that I referred to a few moments
20 ago, this is filing 3086 of 5 August which is no longer relevant, and this will allow the
21 Registry to have some time, time that they can allocate to other matters. So Witness
22 480 will not be giving testimony.

23 Since we're dealing with general matters, Mr Hooper, before I read out the ruling
24 relating to protective measures, if you have any comments to make about problems in
25 the detention centre, please do so, unless -- well, if you could wait until tomorrow,

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1 actually, because in a few moments we will be receiving a report -- correction, you
2 will be receiving a report that we received this morning. It's not actually a report, it's
3 an email, and the email provides specifics about the conditions of detention as of
4 15 August, the day that the proceedings resumed; so I think we will be able to deduce
5 the conditions for the two accused. So it might be better for you to speak to this
6 tomorrow at the very beginning of the hearing, if that is all right by you, once you
7 have seen the report, and you may have actually received it. If not, one of the staff
8 shall send it to you very soon. Are you in agreement?

9 MR HOOPER: I am, your Honour, thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) Then we shall hear you tomorrow
11 morning at 9 o'clock.

12 MR KILENDA: (Interpretation) Your Honour, we have a problem with the
13 transcript. It has stopped on page 4.

14 PRESIDING JUDGE COTTE: (Interpretation) I will take a look at my own to see
15 whether or not it's functioning. Mine is on page 13.

16 Court officer, can you please request that a technician come in to help the team that
17 most needs the transcript at this point in time; that is Maître Kilenda's team.

18 Part of the next testimony will be held partially in open session and partially in
19 private session. We're very sorry for this back and forth, but we did feel that
20 otherwise there would be a risk of some of these witnesses being identified. So, for
21 the time being, we're now in open session.

22 The Defence of Mathieu Ngudjolo has made a filing 3081, dated July 18, 2011,
23 regarding procedural protection measures to the benefit of four witnesses they intend
24 to call. They have requested that there be specific measures in order to protect their
25 identity vis-à-vis the public, the reasoning being that they fear reprisals because of

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1 their testimony before the Court in favour of the accused. The Defence has
2 emphasised, and I quote, "These testimonies are absolutely necessary for the accused
3 in order to prove his innocence."
4 The Prosecutor and Maître Kilenda, the legal representative of the main group of
5 victims, responded to this filing on August 9, 2011, with filings under the reference
6 3090 and 3089. Recalling the principle of the public hearing, both feel that the
7 Defence has not proven the existence of objective risks that would be run by these
8 witnesses if they were to testify without their identity being protected. However, the
9 Chamber notes that the legal representative of victims considers that the situation of
10 Witness D03-100 does justify that he benefit from the protective measures requested.
11 The VWU, consulted by the Chamber, considers in its report number 3091 dated
12 August 9, 2011, that given the general security situation in Ituri and given the anxiety
13 expressed by these four witnesses, the impression of the risk being - and I
14 quote - "very real" for each of the four, the protective measures requested by the
15 Defence are - and I quote the terms - "reasonable and appropriate." The unit insists
16 particularly on the necessity of such measures as regards, in particular, Witness
17 D03-100 and here they agree with Maître Luvengika.
18 The Chamber recalls once again the importance for all of the open trial, which has
19 been clearly reaffirmed in Articles 67(1) and 64(7) of the Statutes. The Chamber also
20 recalls that this principle, however, cannot be considered as an absolute principle if
21 and when the - and I quote - "The safety and physical and psychological well-being,
22 as well as the dignity and privacy of victims and witnesses, are at stake." This is
23 according to Article 68 of the said Statute.
24 All the same, the protective measures intended to protect a witness or another person
25 where the testimony may mean that the individual is running a risk can be granted

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1 exceptionally after a case-by-case evaluation of the necessity of such measures and the
2 proportionality of such measures in light of the rights of the accused.

3 Therefore, the Chamber must determine the necessity of granting such measures
4 given the precise situation of each and every one of these four witnesses.

5 At this point in time, court officer, I would like to request that we go into private
6 session in order to discuss the situation of each and every one of these four witnesses,
7 which could lead to their identification.

8 (Private session at 2.36 p.m.)

9 (Expunged)

10 (Expunged)

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13 (Expunged)

14 (Expunged)

15 (Expunged)

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1 (Expunged)

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5 (Expunged)

6 (Open session at 2.41 p.m.)

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

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

9 For the reasons that I have explained, the protective measures for these four witnesses
10 are necessary. The Chamber considers that they are proportionate inasmuch as the
11 Witness and Victims Unit has indicated that they cannot perhaps make it impossible
12 for reprisals to take place, but they will make it possible to avoid that there be
13 constraints and therefore that these measures not be even more intrusive. It would
14 seem that these measures do not go against the principle of a fair trial. The identity
15 of witnesses can still be preserved vis-à-vis the public and therefore the public can be
16 informed of the content of the testimony.

17 Therefore, the four witnesses will be referred to with a pseudonym throughout the
18 duration of the procedure, given that any information which would make it possible
19 to identify them will be dealt with either in confidential documents or in private
20 session. The witnesses will benefit from voice and face distortion while they are
21 testifying. They will come in and leave the Chamber in closed session and, unless
22 I'm mistaken, I believe that the blinds must also be down; and lastly the Chamber
23 orders that the parties and participants not be allowed to identify the witnesses to
24 third parties and recall that they benefit from the protocol regarding investigations
25 and witnesses benefiting from protective measures.

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1 Any other questions to be put in private session should be grouped together, if at all
2 possible, to avoid having to go back and forth between open session and private
3 session.

4 Maître Kilenda and Professor Fofé, these measures are such that -- well, any measures,
5 for example, the use of code numbers to refer to individuals, if at all possible to avoid
6 having to go back and forth from open session to private session, would be
7 appreciated, but we have to be cautious that the concept of protection not go against
8 the principle of a public trial.

9 Given that this ruling has been presented for all four witnesses, it will not be repeated
10 for each and every witness, we will simply recall to the witness that they will benefit
11 from protective measures and we will simply recall that the ruling handed down
12 today concerns all four witnesses. We will not spend additional time re-reading it
13 each time the different witnesses appear.

14 So I think we can now call the witness into the courtroom, and in order to do that we
15 shall go into closed session. Madam Court Officer, would you please be so kind as
16 to do so. And once the witness comes in we will welcome the witness, describe the
17 protective measures, we will also take his identity in closed session and then we will
18 go into open session in order for the witness to take the oath. Closed session, please.

19 (Closed session at 2.45 p.m.)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Open session at 2.48 p.m.)

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- 1 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 2 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Madam
- 3 Court Officer.
- 4 Good afternoon, sir.
- 5 THE WITNESS: (Interpretation) Good afternoon.
- 6 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me? Can you hear
- 7 me fine?
- 8 THE WITNESS: (Interpretation) Yes, I can hear you fine.
- 9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, that's perfect. You've
- 10 come here today to testify in defence of Mathieu Ngudjolo, and the Court is very
- 11 pleased to welcome you here.
- 12 You have requested through the intermediary of your counsel the request to benefit
- 13 from protective measures during this hearing, and I want you to know that the
- 14 Chamber has granted these protective measures. Therefore, you will not be referred
- 15 to by your name, or your family name or your first name in public session. Any
- 16 element, anything that might enable your identification will be carefully avoided.
- 17 You will be referred to as "Mr Witness," or we shall refer to the number that you have
- 18 in the order of witnesses that can be used as a pseudonym.
- 19 In addition, your face is distorted because you know that the hearings are filmed and
- 20 broadcast, but your face will be distorted so that no one can recognise you, as is the
- 21 case of your voice as well.
- 22 Each and every time we need to request any information from you that could lead to
- 23 your identification, we will go into private session. And this is what we are going to
- 24 do for a brief moment right away so that you can give us, give to the Court, your
- 25 precise identity. Have you understood what I've just said, Mr Witness?

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- 1 THE WITNESS: (Interpretation) Yes, I've understood very clearly.
- 2 PRESIDING JUDGE COTTE: (Interpretation) Fine. Madam Court Officer, please
- 3 shall we go into private session.
- 4 (Private session at 2.51 p.m.)
- 5 (Expunged)
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1 (Expunged)

2 (Open session at 2.54 p.m.)

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

4 PRESIDING JUDGE COTTE: Thank you, Madam Court Officer. Mr Witness, sir,

5 before you begin giving testimony, you must take an oath, a solemn undertaking to

6 say the truth. It is indeed a solemn undertaking. I'm going to read the text of this

7 oath slowly, it's very short. I am going to read it slowly so that you understand

8 exactly what it means and how important it is, so please listen carefully:

9 "I solemnly declare that I will tell the truth, the whole truth and nothing but the

10 truth."

11 Have you understood and heard what I just said?

12 THE WITNESS: (Interpretation) Yes. Yes, I followed quite well.

13 PRESIDING JUDGE COTTE: (Interpretation) In that case, do you solemnly declare

14 to tell the truth, the whole truth and nothing but the truth?

15 THE WITNESS: (Interpretation) Yes, I do.

16 PRESIDING JUDGE COTTE: (Interpretation) Witness, you have just promised to

17 tell the truth, the whole truth and nothing but the truth. If it were to occur as you

18 are giving your testimony spontaneously or in answer to questions you do not tell the

19 truth, you could be prosecuted for false testimony before the International Criminal

20 Court. And if it were proven that such were the case, you could be convicted.

21 Have you understood this clearly?

22 THE WITNESS: (Interpretation) Yes, I followed.

23 *PRESIDING JUDGE COTTE: (Interpretation) The Court has, therefore, taken note

24 that Article 69(1) of the Statute and Rule 66, sub-rule 3, of the Rules of Procedure and

25 Evidence have been complied with

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1 Witness, this is something I may have to remind you about and please do not take
2 offence. You must speak clearly in front of the two microphones. You must speak
3 loudly, clearly and slowly, because every word you are saying - as is the case with the
4 words I am saying - must be interpreted from your language into French and then
5 into English, and they must be recorded by the court reporters. It is, therefore,
6 necessary to speak slowly.

7 Mr Witness, when you hear the question, wait a few seconds, five seconds - count it
8 out in your head - in order to avoid overlapping, and this simplifies the task of the
9 interpreters and the court reporters. Even if you want to answer right away, give
10 yourself a few seconds and wait.

11 And please feel free to pour yourself a glass of water. This room is not very well
12 ventilated, you are going to be speaking a lot and you may be thirsty. That's why
13 there's water on the table. Please feel free to pour yourself a glass of water and drink
14 water. There's also a box of Kleenex on the table if you should need -- if you should
15 have a need of blowing your nose - given the climate here in The Hague, that could
16 occur - and don't worry we will not be offended if we see you using the Kleenex or
17 drinking water. That is exactly why they are on the table. Have you understood
18 this?

19 THE WITNESS: (Interpretation) Yes, I've understood clearly.

20 PRESIDING JUDGE COTTE: (Interpretation) Well, Maître Kilenda, I believe we
21 are ready to begin.

22 MR MACDONALD: (Interpretation) I'm sorry. My colleague has to move
23 because her computer isn't working, so if I may exceptionally ask for this computer to
24 be changed. But it is very important for my colleague to be able to sit here at the
25 front.

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(Open Session)

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1 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course. Registrar, I am not a
2 technician, but if we can be of assistance to the OTP that would be a very good thing.
3 Clearly the presence of your colleague at the front is something that we miss. Mr
4 Kilenda.

5 MR KILENDA: (Interpretation) My first witness is, starting with this one, will be
6 questioned by Professor Fofé in actual fact.

7 PRESIDING JUDGE COTTE: (Interpretation) So, Professor Fofé, the floor is yours.

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

9 Good afternoon, your Honours.

10 QUESTIONED BY MR FOFÉ: (Interpretation)

11 Q. Good afternoon, Mr Witness.

12 A. Good afternoon.

13 Q. Mr Witness, we have had opportunities to see one another and greet each other.
14 My name is Jean-Pierre Fofé Djofia Malewa. I am co-counsel in the Defence team for
15 Mr Ngudjolo. I will be asking you a number of questions so as to provide you with
16 the opportunity to provide enlightenment to the Honourable Judges. So let me ask
17 you to please very carefully listen to my questions before answering them and, as
18 pointed out just now by the President, be careful to speak loudly, slowly and clearly
19 and feel comfortable.

20 Your Honour, in view of the protective measures you have just granted, I think it
21 would be useful for me to start my questions with a series of questions in closed
22 session.

23 PRESIDING JUDGE COTTE: (Interpretation) The public must understand that the
24 questions that are about to be asked could identify the witness and that is why a
25 private session is being called for, and I think Professor Fofé will try to keep it as short

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(Private Session)

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1 as possible, but the Court must ensure the security of the witnesses before it so, court
2 officer, perhaps we could go into private session for a short time. And Professor
3 Fofé, please keep in mind it's always rather difficult for us to interrupt you, so please
4 keep in mind the particular situation. Court officer.

5 (Private session at 3.03 p.m.)

6 (Expunged)

7 (Expunged)

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10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

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12 Page 22 expunged – Private session.

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4 (Expunged)

5 (Open session at 3.25 p.m.)

6 THE COURT OFFICER: (Interpretation) Your Honour, we are in open session.

7 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, we can go back to the

8 temporary transcript, page 30, lines 4 and 5. Perhaps you could rephrase your

9 question, the witness hasn't yet answered it and will be able to do so -- or try to do so

10 now.

11 MR FOFÉ: (Interpretation)

12 *(Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 *(Redacted)

2 (Redacted)

3 Q. Witness, without giving further details, you mentioned a name when we were
4 in private session and we noted that the name in question was not transcribed
5 properly: Page 22, line 9, and page 22, line 13. You mentioned a place, Ndungbe,
6 and I believe the words were transcribed incorrectly. Could you spell out the name
7 of this place?

8 A. I shall begin: N-D-U-N-G-B-E, Ndungbe.

9 Q. Thank you very much. We will try to take things systematically from the time
10 of your arrival in Kambutso. What year did you arrive in Kambutso?

11 A. I arrived in Kambutso in the year 2002.

12 Q. When you arrived in Kambutso in the year 2002, what was your status? What
13 was your status?

14 A. When I arrived in Kambutso, I was a teacher.

15 Q. Did you teach there in Kambutso?

16 A. I taught in Zumbe.

17 *(Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 A. I shall provide you with a rather long explanation. At that time I was a teacher;
25 that is to say I was taking the training but as a teacher. Why was that so? Well, at

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1 that time there were no nurses.

2 Q. Were you the only person taking this training, or were there several of you?

3 A. No, I was not by myself. There were several of us.

4 *(Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 PRESIDING JUDGE COTTE: (Interpretation) Well, on that definitive statement,
- 24 Mr Prosecutor, I will encourage Mr Kilenda to refrain from asking leading questions.
- 25 Now, the first part was leading. Perhaps if counsel could start at a higher level and

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- 1 ask exactly what organisations existed at the time.
- 2 MR FOFÉ: (Interpretation)
- 3 *(Redacted)
- 4 (Redacted)
- 5 (Redacted)
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1 Q. Witness, I'm going to mention a number of names to you and please tell me
2 whether you know these people.

3 MR MACDONALD: (Interpretation) I object. Is this related to the last question
4 or -- oh, apparently not. Otherwise, that would be an attempt to refresh the
5 witness's memory.

6 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, you're moving on to
7 another stage?

8 MR FOFÉ: (Interpretation) Certainly.

9 PRESIDING JUDGE COTTE: (Interpretation) I think you know about the problems
10 with trying to refresh witnesses' memories. Please proceed in a different manner.

11 MR FOFÉ: (Interpretation) Yes, your Honour.

12 Q. Witness, do you know a person by the name of Mandro-Ndalo?
13 Mandro-Ndalo?

14 A. No, I don't know that person.

15 Q. Do you know someone by the name of Likpa-Tchu (phon)?

16 A. No, I don't know that person either.

17 MR FOFÉ: (Interpretation) Your Honour, I am about to begin another subject. It
18 might be better, if you agree, for us to have our break now and then we can continue
19 after the break.

20 PRESIDING JUDGE COTTE: (Interpretation) Court officer, we are going to go into
21 private session so that the witness can leave the courtroom. Mr Witness, we are
22 going to now have a 30 minute break and then we will continue for another two
23 hours so you can take some rest during that 30 minutes.

24 THE INTERPRETER: Interpreter correction; the last name mentioned was
25 Likpa-Tchulu.

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(Closed Session)

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- 1 (Closed session at 3.55 p.m.)
- 2 (Expunged)
- 3 (Expunged)
- 4 (Expunged)
- 5 (Expunged)
- 6 (Expunged)
- 7 (Expunged)
- 8 (Open session at 3.56 p.m.)
- 9 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer. We will
- 11 resume at 4.30. The hearing is now suspended.
- 12 (Recess taken at 3.56 p.m.)
- 13 (Upon resuming in closed session at 4.32 p.m.)
- 14 (Expunged)
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(Open Session)

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1 (Expunged)

2 (Open session at 4.34 p.m.)

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

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. Witness,
5 can you hear me?

6 THE WITNESS: (Interpretation) Yes.

7 PRESIDING JUDGE COTTE: (Interpretation) Perfect. In that case, we shall
8 proceed. Please do not forget to speak clearly and loudly into the microphone.

9 Professor Fofé, you may proceed.

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

11 Q. Witness, before we continue, one other thing. Just before the break, you
12 mentioned a few names. You mentioned, in particular, Lissi Tabo. We noticed that
13 in the transcript it was spelt as Lucie Tabo, line 25 of page 36. To be perfectly clear,
14 would you mind spelling the name of Lissi Tabo?

15 A. This is how you spell Lisi Tabo: L-I-S-I T-A-B-O.

16 Q. But do you know of another name, family name or first name, for that person?

17 A. No.

18 Q. Does the name Lucie mean anything to you?

19 *(Redacted)

20 THE INTERPRETER: The witness repeats the name "Lucie."

21 MR FOFÉ: (Interpretation)

22 *(Redacted)

23 (Redacted) There's no problem for Manje Bulu, that was written correctly in the
24 transcript but there was a bit of a problem in taking down the name Lubanga Guba.

25 Would you be so kind as to spell the name Lubanga Guba?

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1 A. Yes, let's go ahead. L-U-B-A-N-G-A and then G-U-B-A.

2 Q. Thank you very much, Witness. Witness, when you spoke about the health
3 care centre in Kambutso, you mentioned that there were two buildings: There was
4 the maternity and what you called the health care centre. What was the building
5 made of, what were they built with, these two buildings?

6 A. The health care centre was made of wood and it was covered with corrugated
7 iron.

8 Q. And what about the walls, what were the walls covered with?

9 A. As regards the foundation of the building, there were stones.

10 Q. But what about the walls, the actual walls? You mentioned wood, but was
11 there anything else?

12 A. I'm afraid I haven't understood your question, sir.

13 Q. Well, what I would like you to tell me is -- well, I'd like you to describe the two
14 buildings you referred to. You've said that there was a foundation made of stone
15 and then you mentioned wood and you mentioned corrugated iron. I would like
16 you to describe a little bit more, in fuller detail, the actual walls; in other words, were
17 the walls covered with something?

18 A. Thank you. The building of the health care centre was made of wood, to start
19 with, and it was reinforced; that is, the lower part of the walls were reinforced with
20 stone to prevent the wood from rotting. So it wasn't reinforced all the way up to the
21 top, just the lower part of the wall was reinforced with stone.

22 Q. You stated earlier before the break that you know Mathieu Ngudjolo well.
23 You described how you came to know him. Can you tell us where he is in the
24 courtroom? Do you see Mr Mathieu Ngudjolo?

25 A. Yes, your Honour, I am able to point to Mr Ngudjolo. May I stand up?

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1 Q. Yes, of course, you may stand up and look around and you can point to the
2 individual that you recognise as Mathieu Ngudjolo with your hand.

3 PRESIDING JUDGE COTTE: (Interpretation) You may stand up. There is a curtain
4 behind you and to each side, so that you're not seen. Can you show us with your
5 finger? Can you point to Mr Ngudjolo, the person you recognise?

6 THE WITNESS: (Interpretation) Yes, I can point to him. He's seated in the back,
7 sitting beside a white man.

8 PRESIDING JUDGE COTTE: (Interpretation) Yes, that is a security agent who
9 works for the Court, a security guard, who is also standing. Thank you very much,
10 Witness. You may now be seated.

11 MR FOFÉ: (Interpretation)

12 Q. Thank you very much, Witness. You did indeed point to Mr Mathieu
13 Ngudjolo.

14 Witness, I would now like to discuss the day-to-day life in the groupement of Ezekere;
15 the Ezekere groupement. In order for things to be perfectly clear, where exactly
16 were you between August 2002 and March 2003?

17 A. Well, I arrived in Kambutso in 2002, but I don't remember which month it was.
18 So I was in Kambutso in 2002 and also in 2003.

19 Q. What groupement is Kambutso in?

20 A. Kambutso is in the groupement Bedu-Ezekere. It is therefore a locality in the
21 groupement Bedu-Ezekere.

22 Q. Who was the head of your groupement, that is the Bedu-Ezekere groupement,
23 in the years 2002 and 2003?

24 A. The name of the head of our -- of the groupement at the time was Emmanuel.

25 Q. Do you know the full name of Emmanuel?

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1 A. I don't know his other names. We called him "Manu," which is short for
2 Emmanuel, and I do not know his other names.

3 Q. Fine. In that case you called him "Chef Manu"; is that right?

4 A. Yes.

5 Q. During that period, that is 2002 to 2003, were there any military camps in the
6 Bedu-Ezekere groupement?

7 A. There were no military camps in Bedu-Ezekere.

8 Q. During that same period of time, were there any child soldiers in the
9 Bedu-Ezekere groupement; your groupement?

10 A. No.

11 MR MACDONALD: (Interpretation) If I may I'd like to object, because I think that
12 the last two questions were somewhat leading and obviously the answers as well.
13 Those were leading questions, in my view.

14 PRESIDING JUDGE COTTE: (Interpretation) We've taken note of your objection,
15 Mr Prosecutor. Professor Fofé, please do take care. I do understand that you do
16 want to concentrate your direct examination, but at the same time please be cautious.
17 Please proceed.

18 MR FOFÉ: (Interpretation) Thank you, your Honour. If I may say, respectfully,
19 I don't see how those questions can be considered as leading. They are direct
20 questions, but they are not leading.

21 PRESIDING JUDGE COTTE: (Interpretation) Let's not discuss it. Please proceed.

22 MR FOFÉ: (Interpretation)

23 Q. Witness, what was the situation in terms of security within your groupement
24 during the years 2002/2003?

25 A. There was intensive fighting during that period.

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(Open Session)

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1 Q. Was there fighting in your own groupement at that point in time during that
2 period?

3 A. This is what I would like to say. It's true that there was fighting.

4 Q. Where did this fighting come from?

5 A. The fighting came from Bogoro. It all started from Kasenyi, from Tchomia and
6 even from Mandro. That's where the fighting came from, but sometimes also there
7 was fighting in Bunia.

8 Q. Well, when you say that the fighting came from Bogoro, Kasenyi, Tchomia,
9 Mandro and Bunia, do you mean that the fighting came from those places and went toward.

10 MR MACDONALD: (Interpretation) Objection. Objection. Perhaps I'm going to
11 be a bit more direct in my objection and I would like to apologise to my learned
12 friend, but we do know that there were -- there are certain themes, there are certain
13 subjects, certain hot topics, that are more important than others. We've been trying
14 this case for more than a year-and-a-half, and really to have to object to a leading
15 question frankly -- the initial question already was leading when Professor Fofé asked
16 the question, "Where did the fighting come from?", and the witness said, "Bogoro,
17 Kasenyi, Tchomia," et cetera. The last -- the very last question, why not ask instead of
18 that question, "Explain the fighting to us," rather than asking where it came from,
19 because here we're already explaining to the witness the meaning of where the
20 fighting came from. He is no longer in cross-examination. Indeed just a few weeks
21 ago he was in the situation of cross-examination, but in direct indeed sometimes it's a
22 bit more difficult. It's more difficult not to ask leading questions, in spite of the fact
23 that we are sometimes in a hurry and we want to go straight to the heart of the matter.
24 PRESIDING JUDGE COTTE: (Interpretation) Well, Mr Prosecutor, as regards the
25 question, "The fighting, where did it come from?", the Chamber sees no objection to

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1 the verb "come from." Perhaps the question could have been put in a different way.
2 Since the witness had already said that there was fighting, the question could have
3 been, "Where was -- where did the fighting take place?", but to use the verb "come
4 from" which could have been replaced by "Where did it occur, or take place?", and the
5 witness answered, "Tchomia, Mandro, Kasenyi," et cetera. The next question indeed
6 was much more leading, because Professor Fofé you're encouraging the witness - and
7 I'm reading here from the transcript on line 16, page 44 - "So when you say that the
8 fighting came from Bogoro, Kasenyi, Tchomia, Mandro and Bunia, does that mean
9 that the fighting came from those places and was directed against?"
10 Now, here you are really leading the witness, even not having heard his answer, and
11 therefore I believe that that objection is well-founded. I think it's extremely
12 important that you ask those questions, it's an important issue for the defence of
13 Mathieu Ngudjolo, but would you be so kind as to ask questions in a more general
14 form, less targeted and lead the witness slowly but surely toward the response that
15 you're hoping to get from him. You may proceed, Professor Fofé.
16 *JUDGE DIARRA: (Interpretation) Except that, your Honour ...
17 PRESIDING JUDGE COTTE: Yes.
18 JUDGE DIARRA: With your leave, I would like to say that I have a completely
19 different problem with this passage. I have a different problem when he says, "The
20 fighting came from Bogoro," and then he says, "everything started from Kasenyi,
21 Tchomia, Mandro, Bunia". Is Bogoro in the same place as these other localities? What
22 is the difference between "it came from Bogoro" and "everything started from
23 Kasenyi"? I'm really a bit confused. I'm really a bit confused as to what happened
24 when.
25 PRESIDING JUDGE COTTE: (Interpretation) Well, it's not really that different,

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1 Judge Diarra. In fact, the use of the verb in French "provenir", "come from," perhaps
2 led the witness astray. What we want are precise answers.

3 Now, perhaps that is what Professor Fofé intends to do; that is, find out where the
4 fighting took place and whether or not the witness -- well, if the witness can tell us
5 how this fighting occurred, in other words where the different forces started from, on
6 the condition that the witness actually saw what happened, or he can tell us that he
7 heard about it, in which case we will understand that we're hearing a second degree
8 testimony, so to speak.

9 You may proceed, Professor Fofé.

10 MR FOFÉ: (Interpretation) I would like to say to the Chamber that this series of
11 questions began with a question on the security situation in the Bedu-Ezekere
12 groupement, so my line of question relates to the Bedu-Ezekere groupement.

13 As was said by way of introduction in -- when our case was presented, our witnesses
14 are not here to talk about all the attacks. What I'm trying to do is to get the witness
15 to talk to us about the security situation in the Bedu-Ezekere groupement. In other
16 words, which were the attacks that involved this groupement? That's my concern.
17 So if you will allow me, we could perhaps ask him this question directly: Did the
18 Bedu-Ezekere groupement ever suffer attacks? That's a clear question, and that
19 perhaps might help us to go forward.

20 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, are you in a position to
21 tell us whether, as far as you know, during that period the Bedu-Ezekere groupement
22 came under attack once or several times? This question is part of the answers that
23 you gave us earlier on, i.e. that the security situation was very difficult or even worse.
24 We look forward to your answer on this.

25 THE WITNESS: (Interpretation) Thank you. Let me answer you in this way:

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1 Yes, there were attacks. However, I cannot remember the particular dates of those
2 attacks. I can confirm that attacks occurred, but I'm not in a position to give the date
3 or dates of those attacks.

4 MR FOFÉ: (Interpretation)

5 Q. Mr Witness, you can see that it is not easy to do this, but I am seeking very
6 precise answers to the questions I raised. So my question is whether your
7 groupement, the Bedu-Ezekere groupement, suffered attacks. Can you please
8 answer us very directly on that question?

9 A. Yes, the Bedu-Ezekere did come under attack.

10 Q. Without needing to give us specific dates, I earlier on gave a time-frame,
11 August 2002 to March 2003, or even the entire year, 2002 up to March 2003. During
12 that period, did Bedu-Ezekere undergo attacks, come under attack?

13 A. Yes, it did come under attack during that period.

14 Q. And where did those attacks come from?

15 A. These attacks came from Bogoro, Kasenyi, Tchomia, Bunia.

16 Q. And which were the forces leading those attacks?

17 A. Well, you know, I myself was not a combatant. They were combatants or
18 soldiers; they were the ones who came to attack.

19 Q. And they were soldiers that belonged to what movement or what organisation?

20 A. I don't have any specific information on this topic. You know, when you hear
21 bullets flying, generally a soldier is behind those bullets, so it's difficult for me to
22 answer that question.

23 Q. And your groupement, the Bedu-Ezekere groupement, did it defend itself
24 against those attacks?

25 A. Yes.

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1 Q. And in what way did your groupement defend itself?

2 A. Well, to respond to that attack, we would use arrows and machetes and spears.

3 Q. And these attacks of which the Bedu-Ezekere groupement was a victim of, well,
4 did they cause damage within the groupement?

5 A. Yes, there was damage.

6 Q. What type of damage? Could you briefly describe the type of damage suffered
7 by the groupement as a result of the attacks?

8 A. Well, some houses were burnt down, some people died and property was
9 looted.

10 Q. During that period of time, was it possible for you to call on the state authorities
11 for protection?

12 A. I am not in a position to answer that question because I was not the chief of the
13 groupement. It is the chief of the groupement who might have been able to do such
14 a thing.

15 Q. Witness, you spoke about a place called Bogoro. Are you familiar with Bogoro?
16 Have you ever been there?

17 A. Yes. If you follow the proceedings today, well, I said I was born in Bogoro and
18 went to primary and secondary school in Bogoro, so I have to answer you that I do
19 know Bogoro.

20 Q. Did you ever find out what happened in Bogoro during that time period?

21 A. Perhaps you could repeat your question.

22 Q. You said to the Honourable Judges that during that period, from 2002 to
23 2003 - and I, in fact, mentioned March 2003 - you were at Bedu-Ezekere, say, in 2003;
24 that's where you were. Did you -- were you aware of what had happened in
25 Bogoro?

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- 1 A. Yes.
- 2 Q. And what happened in Bogoro in 2003?
- 3 A. All right. In 2003 there was a war in Bogoro.
- 4 Q. Do you remember the date on which the war in Bogoro you just mentioned took
- 5 place?
- 6 A. Yes.
- 7 Q. When was it that the attack on Bogoro took place?
- 8 A. The fighting in Bogoro took place on 24 February 2003.
- 9 Q. Where were you on 24 February 2003?
- 10 A. On that day I was at Kambutso.
- 11 Q. What were you doing that day at Kambutso?
- 12 A. *(Redacted)
- 13 (Redacted)
- 14 Q. Being as it was that you were in Kambutso, how is it that you learned about the
- 15 fact that this attack had occurred in Bogoro?
- 16 A. Thank you. I learned that there was an attack in Bogoro when I heard gunfire.
- 17 Q. Do you remember more or less what time on that day the gunfire began?
- 18 A. Yes, the gunfire began very early in the morning. I could say towards 6 a.m.,
- 19 perhaps even 5 a.m. 5 a.m. to 6 a.m.
- 20 THE INTERPRETER: The interpreter corrects herself, "No, towards 4 in the morning.
- 21 Gunfire began towards 4 in the morning," interpreter's correction.
- 22 MR FOFÉ: (Interpretation)
- 23 Q. When you heard the gunfire, and you say towards 5 or 6 in the morning, at
- 24 what -- where were you exactly?
- 25 *All right. (Redacted)

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- 1 *(Redacted)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 (Redacted)
- 12 (Redacted)
- 13 (Redacted)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Redacted) That was towards 7 or 8 in the morning and that's when I left to go to my
- 17 village.
- 18 Q. You said that -- well, I should point out to you that we are also looking at the
- 19 translation as we go along. So you said that between 7 and 8 you went where?
- 20 You went some place, but where was it?
- 21 A. I went to my village, Kambutso. I went to Kambutso.
- 22 *(Redacted)
- 23 (Redacted)
- 24 A. My house is at a place called Quatre Coins, Four Corners, west of the health
- 25 centre.

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1 Q. What is the approximate distance between your home and the health centre?

2 In other words by foot, if you go from the health centre to your home, how long does
3 it take more or less?

4 A. If I go by foot from the health centre to my home, it takes ten minutes. It's not
5 far.

6 Q. How about Mathieu Ngudjolo's home, where he lived at the time? How far
7 was it from the health centre in Kambutso?

8 A. As far as Mathieu Ngudjolo's house is concerned, well, if you walk - if you go
9 by foot - you would have to take a diversion, as it were, but as the crow flies the
10 distance is small. Somebody might shout and would be heard from the other
11 location.

12 Q. Mr Witness, we're talking about 24 February and you were -- you had heard
13 gunfire not far from Bogoro. Could you *(Redacted)
14 (Redacted) What happened that morning?
15 What was the situation?

16 A. All right. The situation in Kambutso was calm on that morning. However,
17 the population was frightened because they wondered whether the gunfire would
18 reach their homes. This was the population -- this was a question that the
19 population was wondering about. Everybody wanted to find out what was going
20 on in Bogoro. Everybody was looking for information. That was the atmosphere at
21 the time.

22 Q. And Mathieu Ngudjolo, what was he doing? What did he do that day?

23 MR MACDONALD: (Interpretation) As far as I can tell, there should be implicit or
24 perhaps stated "as far as he knows, as far as he knows," because you have to make a
25 difference between what he actually saw and what he heard, and we have already

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1 heard a point in time when he met with Mathieu Ngudjolo and the other times when
2 he wasn't he himself present so that we can make a distinction.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, be as specific as you can
4 in answering Mr Fofé's questions. When you say -- when you see somebody, please
5 point that out. When you heard that such-and-such a person was in such a place,
6 please make that clear too and make the distinction between the two quite clear. So
7 we'll listen to your answer to Professor Fofé's question, which is, "On that day,
8 24 February, as far as you know what was Mathieu Ngudjolo doing?" Try to be as
9 specific as possible with your answer on the basis of what you remember seeing, or
10 perhaps hearing. Go ahead.

11 *(Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 MR FOFÉ: (Interpretation)

17 Q. As far as you know, on that day did the people from Kambutso leave Kambutso
18 to go and take part in the attack on --

19 MR MACDONALD: (Interpretation) Objection. That is a truly leading question.

20 That's -- what's being suggested is did these people go and do such-and-such. No,
21 you have to ask what did the Kambutso people do, especially in direct questioning.

22 The witness apparently is not answering in the way Professor Fofé would have liked
23 him to and so he is taking a roundabout way to lead him in the right direction. So,
24 very respectfully, I would like to say that this is -- goes against your 1665 decision.

25 PRESIDING JUDGE COTTE: (Interpretation) As this is our Bible.

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1 MR MACDONALD: (Interpretation) And we must keep in mind that some points
2 are more important than others that are dealt with in the case of direct questioning,
3 and here we're dealing with 24 February, so I'm sure the Chamber realises the
4 enormous significance of not using leading questions.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well. Indeed, we are talking
6 about 24 February 2003 and there's a question about what Mathieu Ngudjolo might
7 have been doing that day, and that is indeed an important issue to these proceedings,
8 and Professor Fofé will continue.

9 But please be more progressive, more gradual in your questioning, without us having
10 to appreciate whether you are satisfied with a reply or not. That is really your call.
11 Please proceed, Professor Fofé.

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

13 *(Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Q. During your testimony you spoke of Mrs Tabo Lissi. Did you see her that
23 day?

24 A. Here's my reply: I did not see her.

25 Q. Thank you very much. During that time, were the people of Kambutso

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1 involved in a military organisation of some kind? Did they have some kind of
2 military organisation?

3 A. No.

4 Q. During that period was Mathieu Ngudjolo involved in any kind of military
5 activity?

6 A. Could you please repeat your question?

7 Q. During that time, 24 February 2003, during the time of the attack on Bogoro,
8 was Mathieu Ngudjolo involved in any kind of military activity at that time?

9 A. No.

10 Q. Witness, now, to your knowledge, did Mathieu Ngudjolo take part on the attack
11 on Bogoro on 24 February 2003?

12 MR MACDONALD: (Interpretation) Objection. Once again, I rise to object to this
13 highly suggestive question. "To your knowledge, what did Mr Ngudjolo do that
14 day," that would be a less suggestive question. But to put the question so bluntly
15 regarding Bogoro, I find that very leading because it speaks to the criminal liability.

16 PRESIDING JUDGE COTTE: (Interpretation) Witness, answer the following
17 question: To your knowledge, on that day, 24 February 2003, what was Mathieu
18 Ngudjolo doing? If you know what he was doing, what he did on that day, take
19 some time, think about it, mull it over and answer the question very calmly. That
20 day, 24 February 2003, that morning - perhaps the afternoon as well - that day, to
21 your knowledge, what was he doing? And that also includes: Where was he? Go
22 ahead, mull over it and we will wait for your reply.

23 THE WITNESS: (Interpretation) Thank you. I'm ready to reply. *(Redacted)

24 (Redacted)

25 (Redacted)

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1 *(Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. Thank you very much, Witness. Now, you yourself, what did you learn about
16 that attack on Bogoro on 24 February 2003?

17 A. With regard to the attack of 24 February 2003, well, I've heard people say
18 various things but I can't really confirm them because I don't have any evidence.
19 Some village people were saying various things about the position of Bogoro and
20 Bedu-Ezekere; rather, Bogoro was in the middle of the Walendu-Bindi collectivity
21 and in the middle of Bedu-Ezekere.

22 On the one hand, some said that there were no -- was no fighting and that it came
23 from Walendu-Bindi, but it's difficult for me to confirm anything like that. I didn't
24 see anyone from that collectivity do anything so, really, it's just hearsay.

25 MR FOFÉ: (Interpretation) If you would allow us a few moments, we are just

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1 reviewing a few things.

2 (Defence counsel confer)

3 MR FOFÉ: (Interpretation) If I could have one moment to confer with colleagues.

4 (Defence counsel confer)

5 THE INTERPRETER: Interpreter's correction, to confer with the accused person.

6 MR FOFÉ: (Interpretation) Thank you, sir. We have concluded our

7 examination-in-chief, and now it is time for you to answer some questions from other

8 parties and participants. Thank you very much. Thank you, your Honours.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor Fofé. Thank
10 you for sticking to the time limit so closely. Prosecutor.

11 MR MACDONALD: (Interpretation) I believe my colleague, Mr Hooper, should be
12 asked whether he has any questions, unless I'm mistaken?

13 PRESIDING JUDGE COTTE: (Interpretation) Even though I have been back in The
14 Hague for a while now, I seem to have forgotten some of my reflexes. Thank you for
15 that point. Mr Hooper.

16 MR HOOPER: May I have just a minute. Just a minute.

17 (Defence counsel confer)

18 MR HOOPER: I have no questions. Thank you.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. Prosecutor,
20 are you in a position to begin?

21 MR MACDONALD: (Interpretation) I would suggest, I know that the
22 Chamber does not like such requests, and I know we still have 35 minutes remaining,
23 but in light of the testimony, in light of the information found in three filings, 2756,
24 2771, and the last filing, the application regarding protective measures, information
25 that the Prosecution, the parties and the participants received regarding the various

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1 topics that this witness would be testifying to and in -- I think cross-examination will
2 be brief, if there is cross-examination, but the next witness will begin tomorrow, I can
3 assure you of that.

4 At the present time, the presentation -- correction, the Prosecution needs to reflect,
5 but I think I need to do so calmly and I ask the Chamber to be indulgent and I
6 promise that we will make up for this time.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I think it would be quite
8 premature to ask the legal representatives of victims to ask questions. They have not
9 sent us any questions in writing, so we will -- we are resuming the proceedings today.
10 Things are falling into place. We shall now adjourn.

11 And, Mr Prosecutor, we certainly are taking note of your last sentence, and you spoke
12 of 35 minutes, and you also said that your cross-examination tomorrow would be
13 short.

14 Now, courtroom officer, I think it might be a good idea to ensure that the witness, the
15 next witness is available, perhaps not for the first hour -- well, the next witness
16 should be brought tomorrow. If there are any problems with transportation -- well,
17 I think the next witness should be at the Court by 10, 10.15, or perhaps 10.30.

18 MR MACDONALD: (Interpretation) Perhaps half-an-hour, half-an-hour after the
19 beginning of the proceedings.

20 PRESIDING JUDGE COTTE: (Interpretation) Court officer, if you could
21 double-check with the VWU as to the location of the next witness and see to it that the
22 next witness is at the Court by 9.30. We will be hearing from Mr Hooper regarding
23 problems relating to conditions of detention, then the Prosecution may be
24 cross-examining and the legal representatives may have some questions.

25 We will now go into closed session, unless Mr Hooper wishes to speak to the

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1 conditions of detention right now, since we do have some time. Mr Hooper, would
2 you like -- you're not prepared? Would you like to make your points now?

3 MR HOOPER: Yes, I'm quite happy to use that time. Perhaps the witness can go.
4 The only thing is, I haven't seen the report yet, but it may be on -- available to me.
5 So if you could just give me a few moments, perhaps while the witness is going out,
6 Ms Menegon who is here, will surely find it for me. Thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Now, Mr Prosecutor, if you were to
8 decide not to cross-examine the witness, please tell us as soon as possible. In the
9 course of the evening, you can send an email to Ms Baranes but don't forget
10 Ms Baranes usually takes note of these things very quickly, day or night, so please do
11 let her know. It's not a problem.

12 MR MACDONALD: (Interpretation) Certainly, your Honour, as soon as the
13 decision is taken we shall inform the Chamber, be it this evening or tomorrow
14 morning, but most likely this evening.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well. Court officer, we will
16 now go into closed session so that the witness can leave the courtroom. Witness,
17 thank you for spending the afternoon with us and we will see you again tomorrow
18 morning. You will now be leaving the courtroom, and we wish you a pleasant
19 evening.

20 (Closed session at 5.58 p.m.)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Open session at 5.59 p.m.)

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

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

5 Mr Hooper, please take some time to look at this short report which has to do with
6 the conditions of detention of the witnesses who are currently being detained.

7 MR MACDONALD: (Interpretation) I beg your pardon, the filing number was 3081,
8 in particular, paragraph 16 of that filing regarding protective measures.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. When you're ready.

10 MR HOOPER: Thank you very much, Mr President. Yes, I've had the
11 opportunity - thank you - of reading the report which largely deals, of course, with
12 the -- what I'll call the Kinshasa detainees and the regime that they are placed in at the
13 moment.

14 First of all, we're acutely aware the Chamber has deeply concerned itself and troubled
15 itself with the detention regime that's been imposed on Germain Katanga. And in
16 saying that, I must assume on Mathieu Ngudjolo, as well.

17 As a consequence of the problems that have arisen at the Detention Centre, placed on
18 them by the demands of their having to detain also the four Kinshasa detainees in
19 circumstances where there are, as we know, restrictions on contacts between the
20 Kinshasa detainees and the two accused of this case, and we appreciate that there are
21 particular problems that arise because of that. But we had hoped, as we left for our
22 summer break four weeks ago, that the Registry was on the point of reaching a form
23 of accommodation, a suitable system that would be of some benefit to Germain
24 Katanga over the intervening four weeks, between then and today.

25 I think our last sitting day was Tuesday, 12 July. I left with a certain degree of

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1 optimism that the Registry was, in fact, responding to the concerns expressed by the
2 Chamber, and I was very concerned when I discovered, I think on 14 or 15 July, and
3 at a time, of course, after the Court had recessed and at a time when it was not truly
4 possible to share our disquiet, certainly in a direct and easy fashion with the Chamber,
5 that in fact the Registry had in fact imposed a most onerous and restrictive regime
6 and inflicted this on Germain Katanga and, as I say, also Mathieu Ngudjolo.
7 I accept that both accused men have in the intervening period had the benefit of
8 family visits which have gone some little way - and I stress "little" - towards
9 mitigating the difficulties of the regime that was imposed on them.
10 What has happened is that they've been subject to a regime where they have been let
11 out of their cells between the hours of 1300 and 1700; that is a period of four hours a
12 day. For all the rest of the time, Germain Katanga, and I think I must therefore
13 include also Mathieu Ngudjolo, have spent in their locked cell with no opportunity of
14 leaving it. They have been let out just four hours a day; less on weekends. They,
15 therefore, have been locked in their cells for 20 consecutive hours, and these are cells
16 that have no opening window at all.
17 So, normally, with a week of 168 hours in it, 71-and-a-half hours, under a normal
18 regime, would allow these men to spend those hours, 71-and-a-half hours, outside
19 their cell. At present, they've been reduced to 27.5 hours. That is a loss of 44 hours
20 a week. That means that out of 168 hours in a week, 141 hours would have been
21 spent in a locked cell.
22 Bizarrely, the Kinshasa detainees, as opposed to the 27.5 hours spent outside the cell
23 by the two accused, they have the opportunity of 44.5 hours outside the cell. So,
24 really, the burden of accommodating the Kinshasa detainees has fallen full and
25 square on the shoulders of the two accused.

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1 I'm not going to go into the various other difficulties that have arisen. There have
2 been several and they've been deeply frustrating to Germain Katanga. He has no
3 shared meals under this regime. Until, I think, last week, he wasn't even provided
4 with a warm beverage in the morning, so strict was the regime imposed.
5 At the weekend, there's an opportunity of what all the prisoners view as the best part
6 of the week: It's two hours of sports activity, instead of the usual 55 minutes. They
7 haven't been able to do that either. Nor has there, it appears to have been, any
8 attempt to extend sport activities so that they could share it with the ICTY facilities.
9 So the past month has been deeply upsetting for Germain Katanga. He's borne it,
10 may I say, very stoically, with a great maturity. But it's been evident from the phone
11 calls that we've received over that period of time, various members of this team, that
12 the regime was, quite plainly, very stressful and this at a time, of course, when he's
13 entering a sensitive and difficult time in his case.
14 At one time I know that he was minded to want to speak to you directly in court, but
15 again he's withdrawn from that. He feels it's better coming from me, and I know the
16 Court will not hear his complaint through me in any other way than if it come
17 directly from him himself.
18 It's been a very difficult and frustrating time. I, for my part, feel the Registry could,
19 and should, have done more. This is something that has been a problem and a
20 foreseeable problem -- a foreseeable problem for a considerable time, and I do not feel
21 enough has been done.
22 The Detention Centre, as it clearly recognises, has a duty to look after those that are
23 placed in its care in a proper and humane way, and they have failed in that task.
24 I don't know what the future holds.
25 Now we have sittings during the week and there will be different arrangements made,

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1 but I'm quite sure, on the evidence and the history so far, this will not be a great relief
2 to either one of the accused, and they will continue to suffer for the, really, lack of
3 facility, lack of funding, lack of whatever it is that's resulted in this situation arising
4 when it shouldn't and needn't have done so.

5 That's all I wish to say on behalf of Germain Katanga, and I thank the Court again,
6 who are very aware, as we are, of its acute concerns in respect of the detention
7 arrangements for both the accused. Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much, Maître Hooper.

9 Let me make a few comments of a general nature, because as you have just recalled, it
10 is up to the Registry and those in charge of the penitentiary to find the best solution.

11 But we must be aware, and we would like to thank Mr Germain Katanga for having
12 understood this situation. But the fact is, things are not simple.

13 Even during the judiciary recess, we have remained in contact and there were legal
14 officers on duty, and I myself was made aware of the emails that you sent to the
15 Registry, including the difficulties that Mr Germain Katanga found himself in; in
16 particular, at the end of July, the last half of July.

17 We must all be aware of the fact that the recess period is a very difficult one. We
18 knew that was the case, because it called into question the very fragile balance that
19 we thought we had contrived in order to reconcile the best possible conditions for the
20 accused, as well as for the three detainees who came in, so to speak, and interfered
21 with the very complex system that had been set up in the prison.

22 Therefore one of the members of the Chamber on 14 July, under pouring rain,
23 actually went over to the penitentiary to discuss with the person in charge in order to
24 endeavour to find the best possible solution in favour of the accused.

25 But, you know, things work both ways. On the one hand, the efforts made for the

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1 detainees - the so-called Kinshasa detainees - have an impact more or less on our
2 accused that we have been sitting with side-by-side in this courtroom for some time
3 now.

4 The other effect is that -- and, of course, we are very pleased that both accused were
5 able to benefit from family visits, and if I've understood correctly the family visit, first
6 of all Mathieu Ngudjolo, had a negative effect on Germain Katanga because Mathieu
7 Ngudjolo had more hours when he could be outside of his cell, but unless I'm
8 mistaken there might have been the opposite effect afterwards because I believe
9 Germain Katanga also benefited from a family visit. So it's extremely difficult to
10 balance out all of these phenomena.

11 At the same time, whatever can be done vis-à-vis the ICTY detainees at the
12 penitentiary is also very complex and, contrary to what we might think, in some cases
13 it's actually impossible to implement.

14 The recess period, which was very complicated for the accused and we have taken
15 note of what you've just said and we understand how very difficult it must have been
16 for them in particular because it was a very rainy summer which didn't make it easy
17 for them when they were outside of their cell and we understand that that's an
18 important time for the accused.

19 We do hope that we will be able to restore balance. In other words, when the
20 accused are here in the courtroom - and we've recalled this previously - that the other
21 detainees will be able to go out of their cell and meet together so that they can have
22 more frequent contacts.

23 We will follow these matters with the Registry as closely and precisely as possible,
24 and we do hope that once again each and every one will be able to live in the best
25 possible conditions. We do understand that being in prison is not like being in a

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1 hotel - and I'm sure the accused have known this for quite some time - and, therefore,
2 that's one of the reasons why we want to hand down a ruling and complete this case
3 as expeditiously as possible.

4 So, Mr Hooper, believe me that the Registry is doing what it can. The Chamber has
5 put a lot of pressure on the Registry, and I believe that in some cases we've put
6 perhaps too much pressure, or at least we've been very interventionist in that it really
7 is the responsibility of the Registry, but we have taken note of your comments and we
8 shall do whatever we can so that the accused detainees be able to live in the best
9 possible conditions in the penitentiary inasmuch as possible.

10 We shall now adjourn until tomorrow morning at 9 o'clock. The hearing is
11 adjourned until tomorrow morning at 9 o'clock.

12 THE COURT USHER: All rise.

13 (The hearing ends in closed session at 6.20 p.m.)

14 CORRECTIONS REPORT

15 The Court Interpretation and Translation Section has made the following corrections
16 in the transcript:

17 * Page 18 lines 23 to 25

18 "PRESIDING JUDGE COTTE: (Interpretation) The Court has, therefore, taken note
19 that Article 69(1) of the Statute and the relevant articles of the Rules of Procedure and
20 Evidence as well have been complied with "
21 is corrected by

22 "PRESIDING JUDGE COTTE: (Interpretation) The Court has, therefore, taken note
23 that Article 69(1) of the Statute and Rule 66, sub-rule 3, of the Rules of Procedure and
24 Evidence have been complied with."

25 * Page 38 lines 16 to 24

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1 "JUDGE DIARRA: (Interpretation) Yes, but I have a completely different problem.
2 I have a different problem when he says, "The fighting is coming from Bogoro," and
3 then he says, "It started from Kasenyi, Bogoro," et cetera. Is the question that it all
4 left from Bogoro and it went to Kasenyi? I'm really a bit confused. I'm really a bit
5 confused as to what happened when"

6 is corrected by

7 "JUDGE DIARRA: (Interpretation) Except that, your Honour ...

8 PRESIDING JUDGE COTTE: Yes.

9 JUDGE DIARRA: With your leave, I would like to say that I have a completely
10 different problem with this passage. I have a different problem when he says, "The
11 fighting came from Bogoro," and then he says, "everything started from Kasenyi,
12 Tchomia, Mandro, Bunia". Is Bogoro in the same place as these other localities? What
13 is the difference between "it came from Bogoro" and "everything started from
14 Kasenyi"? I'm really a bit confused. I'm really a bit confused as to what happened
15 when"

16 RECLASSIFICATION REPORT

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

19 *Page 26 lines 12 to 25

20 *Page 27 lines 1 and 2 and lines 17 to 23

21 *Page 28 line 4 to 25

22 *Page 29 lines 1 to 22

23 *Page 30 lines 3 to 25

24 *Page 33 lines 19, 22 and 23

25 *Page 42 lines 12, 13 and 25

26

Trial Hearing
Witness: DRC-D03-P-0044

(Open Session)

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- 1 *Page 43 lines 1 to 16 and lines 22 and 23
- 2 *Page 44 lines 13 and 14
- 3 *Page 45 lines 11 to 15
- 4 *Page 46 lines 13 to 21
- 5 *Page 47 lines 23 to 25
- 6 *Page 48 lines 1 to 14