

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra, and

4 Judge Christine Van den Wyngaert

5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07

6 In the case of the Prosecutor versus Germain Katanga and Mathieu

7 Ngudjolo Chui

8 Trial Hearing

9 Monday, 22 March 2010

10 The hearing starts at 2.03 p.m.

11 (Open session)

12 COURT USHER: All rise. The International Criminal Court is now
13 in session.

14 PRESIDING JUDGE COTTE: (Interpretation) The Court is in
15 session. Please be seated.

16 The accused are with us, yes, so we can start. Good afternoon.

17 Before giving the floor to Counsel O'Shea, who would like to make a
18 communication, the Chamber first of all would like to ensure itself that
19 where it concerns the communication of the personal diary of the
20 Witness P-150 (as interpreted), that everything has been done in this
21 regard. Where it concerns Witness 159, I've seen an exchange of
22 information in this regard --

23 THE INTERPRETER: Overlapping speakers.

24 MR. KILENDA: (Interpretation) Everything is being done.

25 PRESIDING JUDGE COTTE: (Interpretation) Okay. Let's hope that

1 everything can be done usefully such that those who want to have
2 communication of the whole diary can have access to it, that's perfect.

3 The second clarification to be made, you all were addressees this
4 morning of an e-mail from the Registry addressed at 11.48 and which
5 referred to the correction of interpretation errors. You all received
6 this message. It concerned problems of interpretation in the French
7 and -- or English transcripts 12th and 13th of February, and you all
8 noted that the Registry has given you until the 24th of March to make
9 possible observations in this regard. That's perfect then.

10 Counsel O'Shea, you therefore have the floor. We are listening
11 to you.

12 MR. O'SHEA: Good morning, Mr. President, your Honours. If I
13 could just say that I take note of the fact that my absence last week was
14 perhaps a little missed during the course of the proceedings. I read the
15 transcript, and I'd just like to inform the Chamber that I was before the
16 International Criminal Tribunal for Rwanda receiving the judgement in
17 appeal in the case of Bikindi, and I am lead counsel and I have no
18 co-counsel in that case, for financial reasons I wasn't afforded one. So
19 I really had no choice in the matter but to be there. But that's not the
20 reason I move to my feet. I just wanted you to be aware of that. I know
21 Mr. Hooper mentioned it briefly.

22 PRESIDING JUDGE COTTE: (Interpretation) Counsel O'Shea, we all
23 noted your absence. How could we have not noted your absence, and we are
24 so pleased to have you with us here today. You can therefore continue.

25 MR. O'SHEA: Thank you very much, your Honour.

1 And I thought for a moment that I wouldn't have to get to my feet
2 when your Honour asked the question about the diary, but I think I had
3 better. We have been in communication with the Victims and Witnesses
4 Unit, but as things stand at the moment we do not have neither the diary
5 nor an indication of when we're going to get the diary. And I would like
6 to stress the importance of us receiving this document, let me say,
7 within the next hour or so so that it can be forwarded to Mr. Hooper
8 in -- for the purposes of the preparation of his cross-examination.

9 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead,
10 Prosecutor.

11 MS. LUPING: (Interpretation) Thank you, your Honour.

12 (In English) Just to clarify that a request has been made to the
13 Victims and Witness Unit. The diary is in the possession of the witness
14 who has confirmed that he does consent to the Defence having access, and
15 an e-mail to that effect was circulated on Friday of last week, so we
16 understand. And a request was made specifically to the Victims and
17 Witness Unit to assure that copies were made available to the Defence but
18 also to the Prosecution as soon as possible.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
20 Prosecutor. That's exactly what we had understood and seen and read on
21 Friday, so everybody did their best to ensure that this diary could be
22 made available to the Defence teams which so wished. We have noted that
23 the Defence team of Mathieu Ngudjolo firstly addressed you, and you had
24 the courtesy of addressing the unit, the Registrar. Please could you
25 send a mail to the unit from the courtroom to ask the person that you

1 will send the e-mail to ensure that two copies of this diary be very
2 quickly made available for the two Defence teams to the extent that the
3 witness has no objection there to. So if that could be done now, the
4 Bench would be very pleased, and we would also like to thank you for
5 that. We can therefore continue with the examination-in-chief of this
6 witness which we shall -- who we shall bring into the courtroom. We are
7 going into closed session for the time of his entry into the courtroom.

8 Court Officer, please could you take us into closed session.

9 Usher, please, could you escort in the witness. Thank you.

10 (Closed session at 2.10 p.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Open session at 2.11 p.m.)

18 MR. GILISSEN: (Interpretation) Your Honour, with your
19 permission, we have just conferred with Counsel Luvengika --

20 PRESIDING JUDGE COTTE: (Interpretation) Are we in open session?

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

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

25 Please go ahead.

1 MR. GILISSEN: (Interpretation) From the moment that this
2 document or this notebook is subject to communication to the Defence
3 teams, and I imagine with the hope of the Defence team to be able to find
4 arguments therein, we would like to try to have one copy. We can use the
5 copy between us, one copy. We'd prefer to say this now because if we
6 have to wait for the Defence to -- has an argument in that regard, then
7 that might cause delay. Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
9 Counsel Gilissen.

10 Court Officer, if you could add to the e-mail that a third copy,
11 having noted -- please, Prosecutor, go ahead.

12 MS. LUPING: My apologies for interrupting you, Mr. President,
13 but just to clarify what I had previously noted, that the Prosecution
14 would also like a copy, if that's possible, from the Victims and Witness
15 Unit.

16 PRESIDING JUDGE COTTE: (Interpretation) So four copies then,
17 which the VWU is asked for. Having stated that everybody who will
18 receive a copy cannot -- can only use it with the strict objective of its
19 own mission. Are we all in agreement on that? That's perfect then.

20 Good afternoon, Witness.

21 THE WITNESS: (Interpretation) Good afternoon, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) You can hear me well
23 then?

24 THE WITNESS: (Interpretation) Yes, I can hear you well, your
25 Honour.

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1 PRESIDING JUDGE COTTE: (Interpretation) Perfect. We are very
2 pleased to see you here. Witness, we have this afternoon. We have a
3 four-hour hearing, two times two hours, during which the Prosecutor is
4 firstly going to continue and possibly finish her examination-in-chief
5 and during which some of the Legal Representatives of Victims will also
6 possibly ask you certain questions. And then it will be the Defence's
7 turn, Mathieu Ngudjolo's Defence team's turn, to carry out their
8 cross-examination.

9 I would like -- wanted to give you these indications, such that
10 you know how this afternoon in Court is going to go for you. And I would
11 also like to remind you, as you have been able to do very well so far,
12 but I would like to remind you that it's very important that you speak
13 slowly, as I myself try to do, so that the interpreters can follow you
14 well and, above all, interpret well. And as you have also been able to
15 do, it is important that you answer in the most precise way as possible.
16 And when you are not asked to give an account, to answer in a way that is
17 sufficiently concise.

18 Prosecutor, you therefore have leave to address the Court. We
19 are listening to you.

20 MS. LUPING: (Interpretation) Thank you, Judge and Witness.
21 Good afternoon once again.

22 THE WITNESS: WITNESS P-159 (Resumed)
23 (Witness answered through interpreter)
24 Questioned by Ms. Luping: (Continued)

25 Q. (In English) Mr. Witness, I will be asking you specific

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1 questions in relation to the account that you provided to us last week.
2 I would simply want to reiterate the President's reminder to please try
3 to answer the specific questions posed to you as precisely and concisely
4 as possible. This will assist the interpreters in their task.

5 Mr. Witness, you stated that a person called Florence died
6 during, and I quote, "the last fighting." I understand that when you
7 referred to "the last fighting," you meant that this happened on 25
8 February 2003; is that correct?

9 A. Yes. I think that we are speaking about the last fight, and
10 if -- the last battle. And if I remember well I think there are two
11 people called Florence. One of them died right at the beginning of the
12 battle and I participated at her burial. The second Florence is the
13 person who died in the last fighting.

14 Q. And the second Florence who died in the last fighting, do you
15 know if she was a civilian or a military person?

16 A. Florence who died in the last battle was not a soldier. She was
17 a civilian, a young girl, a young civilian. She wasn't married.

18 Q. Moving to my second question. You said that a man called Uchopi
19 went to free his brother. There are some differences and clarification
20 required because of differences between the French and English
21 transcripts on this point. My question is: Did Uchopi tell you whether
22 his brother Gilbert was dead or alive?

23 A. When Uchopi went to find his small brother Gilbert and his wife
24 Acheni, Acheni is the wife of Gilbert, therefore -- and when he wasn't
25 able to see Gilbert and wife Acheni, people went to Bunia and Uchopi went

1 to Medhu to look for his brother. When he came back from Medhu he said
2 to us that his brother Gilbert and his wife Acheni were no longer the
3 people who were taken hostage in Bogoro. There was
4 Abana (as interpreted) the wife of Dino, and all these people were no
5 longer alive. That's the information that we were given. This means
6 that Gilbert was no longer alive. He had been killed there.

7 Q. Mr. Witness, I'm now going to take you back in time. You
8 explained that there were three big attacks on Bogoro. You stated that
9 the first big attack on Bogoro took place on 9 January 2001. My question
10 is: Were you present during that attack of 9 January 2001?

11 A. Yes. The 9th of January, 2001, the attack was launched in Bogoro
12 around 9.00 in the morning; I was present.

13 Q. And do you know who were the attackers?

14 A. Thank you for your question. Those who attacked first were the
15 Lendu Nord. They came by -- which road? They came by the usual road.
16 That is to say they came from Kavalega and Kasenyi. When they arrived
17 they were -- not everyone was armed, and in Bogoro there was nobody to
18 ensure the security of the population. When they arrived at 9.00 they
19 fired -- opened fire once. It was around 9.00. The inhabitants were
20 either at home or in the fields carrying out their daily activities. We
21 therefore heard gun-fire from the centre by the shops, and we also heard
22 a lot of noise, people shouting, crying out, and they started to flee.
23 They said that the Lendu had come and everybody had to try and save
24 themselves. There were no people to defend Bogoro on that 9th of
25 January. Given that the population were leaving in a disorderly way,

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1 they were trying to hide themselves in a house which was used as a
2 school. There was an evangelist in Amisi -- called Amisi, and all the
3 members of the Bogoro population tried to get to this house. The Lendu
4 arrived in force. They started to kill people all around at the time
5 that the members of the population were fleeing, and the Lendu arrived in
6 place. They killed a lot of people outside this house and around there.
7 Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Witness, please try and
9 speak more slowly. You have a lot to say. Try and say it very slowly so
10 that we can really get the best benefit out of it thanks to the
11 interpreters.

12 Prosecutor, I see that you stood up. Please go ahead.

13 MS. LUPING:

14 Q. Mr. Witness, I just want to remind you, if you could please
15 answer the specific question as concisely as possible. You stated that
16 the Lendu Nord arrived first. My question is: Could you clarify if any
17 other group of attackers were involved in this 2001 attack?

18 A. Thank you very much. There was another group of attackers which
19 was composed of Lendu Sud, so people who live in the Ngiti area.

20 JUDGE DIARRA: (Interpretation) Prosecutor, I'm just checking
21 something with the interpreter. Is Ngiti is the name of -- the name of a
22 village or is it also the name of an ethnic group at the same time?

23 THE INTERPRETER: (No interpretation)

24 JUDGE DIARRA: (Interpretation) I was asking the booth, this was
25 for a technical piece of information, Ngiti, is this a village or a town

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1 or is it an ethnic group? It's not just today that I've heard this word,
2 Ngiti. We don't -- if we don't know, if it's not known, then please
3 let's leave that. There's no problem.

4 THE INTERPRETER: (No interpretation)

5 PRESIDING JUDGE COTTE: (Interpretation) Is the booth going to
6 answer the question?

7 THE INTERPRETER: (No interpretation)

8 PRESIDING JUDGE COTTE: (Interpretation) Judge, can we continue?

9 JUDGE DIARRA: (No interpretation)

10 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

11 MS. LUPING:

12 Q. Mr. Witness, during this attack of 2001, did anything happen to
13 you or your family during the attack?

14 A. Where it concerns myself personally and where it concerns the
15 members of my family, we lost something.

16 Q. And could you clarify what you lost?

17 A. Where it concerns us, I lost some of my belongings. (Expunged)
18 (Expunged)
19 (Expunged)

20 Q. You stated that the next big attack on Bogoro was in 2002. My
21 question is: Where were you during this attack?

22 A. During the fight in 2002 I was in Bogoro.

23 Q. And do you know who attacked Bogoro during the 2002 attack?

24 A. Bogoro was most frequently attacked by the Lendus north and that
25 is because we were their neighbours.

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1 Q. And so you're saying it's the Lendu Nord who attacked during this
2 2002 attack, to be clear?

3 A. That is correct. It was the north Lendus, and those are the
4 Lendus who hailed from the Djugu territory.

5 Q. And did you recognise any of these attackers during the 2002
6 attack?

7 A. Thank you for the question. Recognising someone by his name, the
8 only thing I know is that those who were attacking were the north Lendus.
9 They arrived from the centre, and I know the names of many people who
10 were killed. And if you allow me, I will give their names but for the
11 time being I will limit myself to your question.

12 Q. And, Mr. Witness, you said you know the names of many people who
13 were killed. If you could please provide us with those names of people
14 you know who were killed in that attack.

15 A. Yes. When they arrived during the 2002 attack, the fighting took
16 place in the area of the centre. That is where most of the fighting took
17 place. To begin with, the people that I saw and that I knew very well
18 included Bitamazire, the head of the locality, he was killed, his wife,
19 and his two young children. This man was buried in a common grave. I
20 would say that it was in a pit latrine. This second person is -- was the
21 wife of pastor Andre Kahigwa. She was killed with her two children and
22 her grandchildren. Thirdly, there were women who were killed, for
23 example, the wife of a young soldier that I mentioned before and that
24 young soldier was called Tibasaga. That woman was killed alongside all
25 her children and the father of her husband who was known as Nyororo.

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1 These are the names of the people that I know who were killed; that is,
2 apart from the others who were killed and whose bodies were discovered
3 later. Those bodies were not identified, (Expunged)
4 (Expunged)
5 (Expunged)

6 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, the
7 names that have been mentioned, do you wish them to be spelled so as to
8 be included in the transcript because I can see that in the transcript
9 one of the names was not written down, or does everyone just think that
10 we are talking about 2002 and that it is not crucial to have those names?
11 I simply want to ask you, the Defence, before we pass on to something
12 else.

13 MR. KILENDA: (Interpretation) We are in the hands of the Court.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.
15 And you, Prosecutor?

16 MS. LUPING: If the witness could spell the names, that could be
17 helpful for the record.

18 Q. Mr. Witness, you've mentioned a number of names, and I'd like you
19 to spell them. I'll start with the name Bitamazire, if you could spell
20 that, please.

21 A. Bitamazire is spelled B-i-t-a-z-i-r-e.

22 JUDGE DIARRA: (Interpretation) This gives Bitazire, whereas you
23 said Bitamazire. So is it Bitazire or Bitamazire?

24 THE WITNESS: (Interpretation) It is actually Bitamazire. I
25 forgot the m and the a.

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1 JUDGE DIARRA: (Interpretation) Thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) So, Mr. Witness, simply
3 repeat the spelling again.

4 THE WITNESS: (No interpretation)

5 PRESIDING JUDGE COTTE: (Interpretation) Bitamazire. And what
6 comes next, please?

7 THE WITNESS: (Interpretation) The second name that I mentioned
8 was the name of the wife of reverend pastor Kahigwa, which is spelled
9 K-a-h-i-g-w-a.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well.

11 Then you mentioned Tibasaga, is that correct?

12 THE WITNESS: (Interpretation) Bataga.

13 PRESIDING JUDGE COTTE: (Interpretation) So kindly spell it for
14 us, please.

15 THE WITNESS: (Interpretation) It is spelled B-a-t-a-g-a.

16 MS. LUPING:

17 Q. And finally, Mr. Witness, you mentioned a person called Nyoro, if
18 you could please spell that for the record.

19 A. Yes, Nyoro is spelled N-y-o-r-o.

20 JUDGE DIARRA: (Interpretation) That gives Nyoro, that is what
21 you actually spelled is actually Nyoro; whereas, you had talked about
22 Nyororo.

23 THE WITNESS: (Interpretation) Your Honour, please add an r and
24 an o at the end.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.

1 Thank you Judge Diarra for that clarification.

2 Madam Prosecutor -- well, but before that, Mr. Witness, every
3 time you mention a name, try to pronounce it very slowly so that we don't
4 have to ask you to spell it. Thank you in advance.

5 Madam Prosecutor, please go ahead.

6 MS. LUPING:

7 Q. And, Mr. Witness, these individuals who you mentioned (Expunged)
8 (Expunged) do you know their ethnicity?

9 A. Thank you for that question. All those people that I mentioned
10 are from the Hema south ethnic group.

11 Q. And amongst those people that you have mentioned (Expunged)
12 (Expunged) were any of them military people?

13 A. All those people that I mentioned and (Expunged) were
14 civilians. There was no soldier amongst them.

15 Q. Mr. Witness, you stated that after the February 2003 Bogoro
16 attack you went to Bunia, where you stayed for some time. My question
17 is: Why did you leave Bunia?

18 A. After the attack of 2003, we left Bogoro. I was in Bunia. I
19 stayed in Bunia until the Ugandans left and returned home to Uganda, and
20 then I went to Kasenyi because when the Ugandans left they left with a
21 group of Congolese. And those Congolese went to Uganda, and they are
22 there till today. I did not cross the border. I did not go to Uganda.
23 I went to Kasenyi, and after Kasenyi I went to Bunia. And the last
24 attack found me in Bunia.

25 Q. And when you say you went to Kasenyi, how long did you remain

1 there before you went back to Bunia?

2 A. I did not stay for long in Kasenyi because of the living
3 conditions and because I was displaced from one place to the other
4 because of the fighting. So I did not stay for long in Kasenyi. I
5 returned to Bunia.

6 Q. And when you state that you were displaced from one place to the
7 other because of the fighting, was there fighting in Kasenyi when you
8 were there?

9 A. Yes. There was fighting during that period. The war had spread
10 to the entire Ituri region, and the Lendus were attacking every area
11 inhabited by the Hemas. There was fighting in Kasenyi which did not last
12 for very long.

13 Q. And this fighting in Kasenyi, do you know if it was before or
14 after the arrival of French soldiers in Ituri on 6 June 2003?

15 A. The French arrived Bunia when the fighting in Bunia had already
16 ended. Bunia had already fallen when the French soldiers arrived, and
17 the fighting that took place in Kasenyi happened before the arrival of
18 the French in Bunia.

19 Q. And during this fighting in Kasenyi, do you know if any civilians
20 were killed?

21 A. Civilians were killed in Kasenyi, but not in large numbers.

22 Q. And how do you personally know of any civilians killed in
23 Kasenyi?

24 A. I was in Kasenyi during the attack. Kasenyi is a big locality.
25 It is slightly bigger than Bogoro, and when the Lendus arrived everyone

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1 was at their own place. We heard the noises and everyone tried to hide.
2 When they arrived they killed a certain number of civilians in the
3 centre. (Expunged) I saw being
4 killed. His name was Ngaba. He was a pharmacist. He was selling
5 medicines there. Do you want me to spell his name? He was selling
6 medicines in Bogoro, actually, and his name is spelled N-g-a-b-a.

7 JUDGE DIARRA: That is Ngaba because it is a g. Maybe you are
8 referring to a j?

9 THE WITNESS: (Interpretation) It is actually j.

10 MS. LUPING:

11 Q. And, Mr. Witness, what was Njaba's ethnicity?

12 A. Njaba was a Hema north.

13 Q. And other than Njaba, (Expunged)
14 (Expunged)

15 (Expunged) Njaba in Kasenyi because he was killed there at
16 the centre right next to his pharmacy. His pharmacy was even pillaged.
17 (Expunged)
18 (Expunged)

19 Q. And do you know the age of the youngest civilian that you learnt
20 was buried after this attack?

21 A. I would like to know what attack you are referring to, the Bogoro
22 attack or the Kasenyi attack?

23 Q. Thank you for your question, Mr. Witness. I was referring still
24 to the attack in Kasenyi.

25 A. Thank you very much. As I mentioned when I was talking about

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1 Kasenyi, there were civilians who were killed. The person that I saw
2 (Expunged) was Njaba. Yes, there were
3 many people who were killed, but (Expunged)
4 (Expunged). And that is why I cannot tell you who of them was the youngest.
5 Nevertheless, based on the information that I received, I cannot give you
6 any precise details. Yes, there were children who were killed, but I do
7 not have any precise details regarding their ages.

8 Q. Thank you, Mr. Witness.

9 MS. LUPING: Mr. President, the Prosecution has no further
10 questions.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
12 Madam Prosecutor.

13 Mr. Witness, the Prosecutor has now concluded her direct
14 examination. It is now the turn of the Legal Representatives of the
15 Victims who are going to ask you some questions. The Chamber received
16 requests for questions to be asked by Mr. Fidel Luvengika, who is the
17 Legal Representative of the main group of victims, and they filed an
18 application this morning which was followed by another application taking
19 into account the questions asked by the Prosecutor. And Mr. Luvengika
20 withdrew questions 1 to 7 as well as questions 8 to 9 of the original
21 list. He also decided to rephrase questions 10 and 11 and maintained
22 questions 13 and -- 12 and 13.

23 So, Mr. Luvengika, can you ask your questions now? That is with
24 the exception of question number 12, which to us did not seem like a
25 question that is likely to be asked by a Legal Representative, given that

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1 the phrasing of that question does not make it possible for the witness
2 to provide answers on events that he may have witnessed or on utterances
3 that he may have heard. This question seems to us to be beyond the scope
4 of competence of the witness because he is not an expert and does not
5 have the political philosophical expertise to answer those questions. We
6 do not feel that he should be asked to speculate.

7 So, Mr. Luvengika, please ask your questions 10 and 11 as you
8 rephrased them, as well as question number 13. You can go ahead now.

9 MR. LUVENGIKA: (Interpretation) Thank you, Mr. President, for
10 giving me leave to address the Court.

11 Questioned by Mr. Luvengika:

12 Q. (Interpretation) Good afternoon, Mr. Witness.

13 A. Good afternoon.

14 Q. As the Presiding Judge has just said, I am the
15 Legal Representative of the principal group of victims of the Bogoro
16 attack of February the 23rd, 2003. I'm going to ask you questions for
17 the purpose of clarification. It is true that some questions that we
18 intended to ask you before your direct examination have already been
19 answered.

20 MR. LUVENGIKA: (Interpretation) And with your leave,
21 Mr. President, I would like to follow-up with a few more questions that
22 were not indicated, not many of them maybe, just one, but I want the
23 witness to carry out the exercise that he just made a short while ago,
24 that is, to spell names that he mentioned during his testimony, and the
25 spelling of which was not quite correct. So there are also incomplete

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1 names and we would like to have clarifications, and this is of interest
2 to us regarding the list of the names of our victims.

3 PRESIDING JUDGE COTTE: (Interpretation) So are we to understand
4 that these are clarifications regarding spellings? Just for matters of
5 procedure, are we going to ask the witness to spell the names as he has
6 been doing so far, or would you prefer that he writes down the names on a
7 sheet of paper? Maybe just spelling would be enough if the names are not
8 too many.

9 MR. LUVENGIKA: (Interpretation) Maybe to save time it would be
10 easier to ask him to just write down the names, otherwise I will have to
11 request the Court to go into closed session since we did not know -- we
12 do not know the full names of those people that he could mention, and
13 this may put those witnesses at risk.

14 PRESIDING JUDGE COTTE: (Interpretation) So we do agree that the
15 names should be written down, and these are the names of people concerned
16 with the attack being considered by this Court. The Prosecutor asked
17 questions concerning the attacks of 2001 and 2002, but in your capacity
18 as the Legal Representative of Victims, we should be dealing about the
19 events of February 2003; is that correct?

20 MR. LUVENGIKA: (Interpretation) Yes, indeed, Mr. President.

21 PRESIDING JUDGE COTTE: (Interpretation) Very well. Go ahead.

22 MR. LUVENGIKA: (Interpretation)

23 Q. Mr. Witness, you testified in this courtroom that the fighters of
24 the FNI and the FRPI looted and burned down houses and took away roofing
25 sheets. Can you tell us the number of houses that were destroyed or

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1 burned down during the attack of 2003?

2 A. Thank you for your question. My answer is as follows: If you
3 allow me to add a few details regarding the pillaging of property as it
4 happened, if you allow me to provide details about that looting and the
5 way in which the houses were burnt down as well as how the roofing sheets
6 were stolen.

7 PRESIDING JUDGE COTTE: (Interpretation) We are listening to
8 you, Mr. Witness. You're also there for that, so you can give us the
9 details. And that is precisely what he asked you. We will be following
10 you keenly.

11 THE WITNESS: (Interpretation) Thank you. I said this: In 2003
12 at the time of the attack many people were killed and goods were looted.
13 At the camp there were two vehicles. One was burnt, the other one was
14 not burnt. It was intended for transporting the goods that had been
15 looted, the goods that had been looted from Bogoro, and that vehicle
16 headed towards Gety. The FRPI combatants had that vehicle; they were
17 using that vehicle. And the FNI combatants began to take the metal
18 sheets off the roofs of the houses in Bogoro. I couldn't give you
19 details as to the number of houses that were destroyed or burnt down, but
20 all the houses in Bogoro were destroyed; that is to say, the metal roofs
21 of these houses were taken off. I'm mentioning this because I found
22 myself right by Mount Waka, and I was watching everything that was going
23 on from the beginning right to the end. I left the hill when I saw some
24 Bira people who arrived last, they came and they scooped up the various
25 goods that the fighters had forgotten. I also saw that. At home my

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1 mother was the one who ran the family accounts, and the vehicle I
2 mentioned earlier came twice to our home. We had medications and goods
3 from the hospital and those vehicles went into the yard of our house
4 twice. Twice they came.

5 At that point the combatants wanted to exchange some ammunitions
6 while they were looting. I saw all of these events from Mount Waka. If
7 you go, you will see Bogoro and the village very clearly from that spot
8 and you can see everything that goes on.

9 Q. Thank you. Here's my second question: What happened to the
10 victims who fell on the 24th of February, 2003? Were their bodies
11 buried?

12 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead,
13 Mr. O'Shea.

14 MR. O'SHEA: I just ask -- I'd just like my learned friend please
15 to be careful and specific about the date that he chooses to use in his
16 question because I think this witness has referred to a specific date and
17 my learned friend has referred to another.

18 PRESIDING JUDGE COTTE: (Interpretation) It is true that up
19 until now the people who have been speaking to the witness have been
20 speaking of February 2003, and as Mr. O'Shea has mentioned the witness
21 when he spoke at the very beginning of examination-in-chief by the
22 Prosecution gave a date that may not actually match the date that we have
23 in mind. So please speak of February 2003 until further information is
24 requested from the Defence teams. Thank you.

25 MR. LUVENGIKA: (Interpretation) Thank you, your Honour.

1 Thank you, Mr. O'Shea, for that point.

2 Q. Now, Mr. Witness, I'm not so sure whether I should rephrase the
3 question. I think you've understood it, but I will rephrase the question
4 all the same. My question is: Can you tell us, earlier in your
5 statements you spoke (Expunged)
6 (Expunged) the attack of February 2003, and so my question --
7 well, I will divide my question into several components. Now, when did
8 you go back to Bogoro after that attack in February 2003?

9 A. Thank you for your question. Here is my answer to your first
10 question. You asked whether the people who had been killed had been
11 buried or not, the people killed in February 2003. None of them were
12 buried. That's the first part of my answer. All the people who were
13 killed at that point were not buried. They -- their corpses were
14 devoured by wild animals. Could you ask your question again, the second
15 part of your question, so that I can continue with my replies?

16 Q. Thank you for the first part of your answer. Now, as for the
17 second part, if you know, now, I had asked another question and I was
18 trying to find out when you went back to Bogoro after that attack. Did
19 you take part in the burial of the bones that were remaining or the
20 remains of those people who died in February 2003?

21 A. Here is my answer: Now, as far as I know the bodies of the
22 people who were killed at -- during the attack of February 2003, those
23 bodies were not buried. It was difficult to do that. During the
24 fighting in Bogoro some people were killed, but I certainly -- I remember
25 very well that no one in Bogoro had the courage or were bold enough to

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1 collect any of those dead bodies to bury them.

2 Q. I'd now like to touch upon a rather difficult matter for you, and
3 I certainly understand what you may feel. My question has to do with
4 your mother. You stated that you saw the place where she fell during the
5 attack, the place where she died. When you went back to Bogoro, did you
6 have an opportunity to bury the remains of your mother in a dignified
7 way?

8 A. Your question is difficult to answer. I don't know quite what to
9 say. I'll give you an answer, but I would like to tell you that this
10 question causes me great sorrow. When we went back to Bogoro when the
11 people returned to that locality, I saw the place where my mother had
12 fallen. My father and I, we tried to take her body away to bury it, but
13 we were unable to recover her body. It was difficult. We could gather
14 the remains, but even then we couldn't recover all the remains of her
15 body because her remains were scattered.

16 Q. Thank you, Witness. And believe me, I understand what you're
17 feeling.

18 MR. LUVENGIKA: (Interpretation) Your Honour, I think I have
19 concluded the list of questions and I would like to ask for private
20 session so that we can ask questions about the various names, that list
21 of questions.

22 PRESIDING JUDGE COTTE: (Interpretation) Before we go into
23 private session to get that information, those spellings, Mr. Luvengika
24 (as interpreted), do you expect to be saying something?

25 MR. GILISSEN: (Interpretation) Your Honour, with the leave of

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1 the Chamber I would have two kinds of questions regarding issues that
2 were touched upon during the examination. Now, there was no written
3 submission, I was away at that time, but I was intending to restrict my
4 request for leave to talk about the "garde rapprochee" and the existence
5 according to the witness of -- the existence of two separate groups, and
6 that was information that we gathered during the last hearing.

7 PRESIDING JUDGE COTTE: (Interpretation) So those are issues
8 that could be dealt with in open session, so you could ask now and then,
9 Mr. Luvengika, we will go into private session to deal with the spellings
10 of various names. Mr. Gilissen, please go ahead and please remain within
11 the framework of your representation.

12 MR. GILISSEN: (Interpretation) Entirely.

13 Questioned by Mr. Gilissen:

14 Q. (Interpretation) Good afternoon. I am Mr. Gilissen, and I am the
15 counsel representing a group of child soldiers. I would like to be very
16 clear with you, young people who took part in the assault on Bogoro. My
17 first question, and I look to the Bench if I've understood the Rules
18 properly - and I do hope that this phrasing will be acceptable - this has
19 to do with the group that accompanied Mr. Ngudjolo on that day in
20 February 2003. And you said, Witness, that you saw Mr. Ngudjolo in the
21 UPC camp after it fell and that Mr. Ngudjolo was surrounded or
22 accompanied by a group of people who you referred to as the group of
23 bodyguards, the inner ring of bodyguards. And you said that these people
24 were about 12 years old.

25 My question has to do with two aspects. I would like to know

1 whether you could tell us how many people in approximate terms or in
2 exact terms, how many people made up this inner circle of bodyguards?
3 And could you tell us how old these people were, these people who
4 belonged to the inner circle of bodyguards?

5 A. Thank you for your question. I think that I already answered
6 that well before. What did I say? Now, to give you a specific figure, I
7 would say -- well, it's difficult. However, what I did see is that there
8 were many of them. I saw two different groups, but I didn't count the
9 number of people. Now, I don't want to tell any lies. I don't have an
10 exact figure for you. What I saw was a group of children, and the age of
11 the youngest that I mentioned here was one of the children who left the
12 group where he was and he went off, about 5 metres off. That's what I
13 saw. And I am before this Court to give testimony about what I know and
14 what I saw.

15 Q. Witness, thank you for being so careful. Our objective is to
16 help the Chamber come to a judgement based on the best possible
17 information, and I realise that you couldn't necessarily give a reliable
18 estimate of the number of young people who were taking part. Now, you
19 said that there was this group of children. In terms of age, what do you
20 mean by the word "children"? Does that mean young people 12, 13, or 14
21 years of age? I'm trying to help you. If I'm asking a leading question,
22 I'll stop there. Would they have been up to 15 years of age? Over 15
23 years of age? If you could answer, this would help us understand better.

24 A. Thank you for your question. Thank you for making this clearer
25 to me. When I was speaking of children I would say this: Given their

1 age and their belonging to an armed group, it was difficult for those
2 same people to be taking part in those military activities. And I can
3 say that the oldest was 15 amongst those children, the youngest -- the
4 oldest --

5 THE INTERPRETER: Corrects the Swahili interpreter.

6 THE WITNESS: (Interpretation) The oldest was 15.

7 MR. GILISSEN: (Interpretation)

8 Q. Yes, thank you. You may have seen me hesitating. There was a
9 little bit of a problem with the interpretation, but that problem has
10 been cleared up. Once again, with the leave of the Chamber, the second
11 matter I would like to ask you about, Witness, is the information that
12 you provided us, and according to this information, this was found in the
13 previous session, during the attacks that you attributed to the FNI
14 and/or the FRPI, FRPI, during these attacks that you attributed to the
15 FRPI you said that there always systematically was the use of two groups
16 of separate people. There was a group of fighters and then you said
17 there was a group of civilians, armed civilians, who were in charge of
18 looting and/or killing or executing.

19 If possible, could you explain to us or give more information
20 about these two groups of people and the roles that they were assigned.
21 And above all, sir, I want to understand more about the people you
22 referred to as the children, the young people, the youths under 15 years
23 of age. Now, were they participating in -- were they part of one group
24 or both group? Were they amongst the fighters or were they amongst the
25 looters and executors, to use the words that you used earlier?

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1 PRESIDING JUDGE COTTE: (No interpretation)

2 MR. O'SHEA: Yes, I'm sorry to interrupt, but I would like my
3 learned friend if possible to rephrase his question. I think that this
4 is a very leading manner in which to ask his question.

5 PRESIDING JUDGE COTTE: (Interpretation) Mr. Gilissen, would you
6 like to rephrase your question or should the Bench attempt?

7 MR. GILISSEN: (Interpretation) I will attempt under the
8 watchful gaze of my learned friend, and if I was a little bit leading --

9 PRESIDING JUDGE COTTE: (Interpretation) You will quickly
10 correct it.

11 MR. GILISSEN: (Interpretation) I will try to make it simpler.

12 Q. Witness, during the last session you mentioned the existence, in
13 your opinion, of two separate groups that took part in the attacks by the
14 FNI and the FRPI. Could you provide us with additional information and,
15 above all, could you tell us whether young people aged over 15 years of
16 age were taking part in either group's activity or both groups'
17 activities?

18 A. Thank you for your question. I've understood it just fine. When
19 I talk about the FNI and when I talk about the FRPI, I would say FNI was
20 a group led by Mr. Ngudjolo and the FRPI was led by Germain Katanga. The
21 people who I mentioned earlier -- the young people I mentioned earlier
22 were within the two groups.

23 PRESIDING JUDGE COTTE: (Interpretation) Witness, perhaps --
24 now, do you have the impression that you're repeating yourself? Perhaps.
25 But the question was asked of you, and if you are able to answer it would

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1 be useful for us to have an answer and to know. Within the group of
2 people who were attacking - you mentioned this on several
3 occasions - now, there were the people who were attacking, who were
4 shooting, and then you said that there was another group. And I believe
5 you used the word "finished off." They finished off people and they
6 looted. Were there young people within either one of these groups or
7 were there young people perhaps in both groups? We have taken note of
8 your answer. You spoke of the FNI and the FRPI groups, but now we're
9 talking about the groups that took part in the attack in an operational
10 manner, not in a political or military kind of way. If you could answer
11 that question. Thank you.

12 THE WITNESS: (Interpretation) Here's my answer. The young
13 people, the children, if you want more specific information, the young
14 people or the children were in both groups and most of them were within
15 the armed group. The group of people who looted and those who bore
16 weapons, bladed weapons, such as machetes and spears, I would say those
17 groups belonged -- there was the population within those groups. I don't
18 know which organisations, I don't know how they were organised, but I saw
19 that there were women as well. And the same women when the men were
20 fighting and others were looting, these women were helping to transport
21 the goods that had been looted.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

23 Mr. Gilissen.

24 MR. GILISSEN: (Interpretation) Thank you, your Honour. Now I
25 think that if I were to go any further than that, I might be leading or

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1 moving away from the areas of interest to the people whom I represent.

2 PRESIDING JUDGE COTTE: (Interpretation) Now, the Chamber does
3 not have any particular questions relating to the matters that were dealt
4 with or questions put of the witness during examination-in-chief and also
5 the replies to questions from the Legal Representatives of Victims. And
6 so I believe, Mr. Kilenda, we will now turn to you.

7 JUDGE DIARRA: (No interpretation)

8 THE INTERPRETER: Inaudible.

9 PRESIDING JUDGE COTTE: (Interpretation) I beg your pardon.
10 Thank you, Judge Diarra. It would be dangerous to divide a series of
11 questions into two segments, and I fell into the trap. We will go into
12 private session so that Mr. Luvengika can conclude the series of
13 questions. I believe he wanted some information regarding the spelling
14 of certain names.

15 MR. LUVENGIKA: (Interpretation) Your Honour, I just wanted to
16 finish off my questions, one last question.

17 PRESIDING JUDGE COTTE: (Interpretation) In open session?

18 MR. LUVENGIKA: (Interpretation) Yes.

19 PRESIDING JUDGE COTTE: (Interpretation) Yes, go ahead.

20 Questioned by Mr. Luvengika: (Continued)

21 Q. (Interpretation) Witness, I just wanted to better understand the
22 way that the various ethnic groups were living together in Bogoro, and my
23 question is as follows: Are there several different ethnic communities
24 living in Bogoro? And my sub-question is as follows: Could you explain
25 to us how these various groups live together at the current time in

Witness: Witness P-159 (Resumed) (Private Session)
Questioned by Mr. Luvengika (Continued)

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1 Bogoro?

2 A. Your question has to do with the time after the 2003 attack.

3 You're speaking about the current time? Could you explain that to me,

4 Mr. Luvengika?

5 Q. Yes, indeed. After the year 2003, the current time -- currently
6 in Bogoro, what ethnic groups live together in Bogoro and how are they
7 getting along?

8 A. To my knowledge, because since I left Bogoro I know that Bogoro
9 is essentially lived in by the Hema. Where it concerns other ethnic
10 groups such as Lendu and other ethnic groups, I don't know if they have
11 come back. I don't know anything about that. What I do know is that
12 after the war approximately half the population came back to live there.

13 Q. Thank you very much for that. I have finished with the
14 questions.

15 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we are
16 therefore going to go into private session to enable the witness to give
17 the identities and spellings.

18 (Private session at 3.31 p.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-159 (Resumed) (Private Session)
Questioned by Mr. Luvengika (Continued)

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13 Page 31 - Expunged - Private session.

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Witness: Witness P-159 (Resumed) (Private Session)
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13 Page 32 - Expunged - Private session.

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Witness: Witness P-159 (Resumed) (Private Session)
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13 Page 33 - Expunged - Private session.

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13 Page 34 - Expunged - Private session.

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12 (Expunged)

13 (Open session at 3.51 p.m.)

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

15 Honour.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

17 Court Officer.

18 Counsel O'Shea, it's during the break that we should be able to
19 sort out this communication problem because the document will be in the
20 hands of the witness, so the Court Officer will see this person about it
21 then.

22 MR. O'SHEA: Can I also mention so that the Court is aware, the
23 Court has already asked for some clarifications in relation to witness
24 contact. I use that expression broadly. And for the part of the Defence
25 of Mr. Katanga, we'd like to have the answers in relation to that before

1 we start our cross-examination. I'd just like the Bench to be aware of
2 that. Does your Honour understand what I mean by "witness contact"? I'm
3 only being vague ...

4 PRESIDING JUDGE COTTE: (Interpretation) Are you talking about
5 contact which your application 1960 refers to? Is that right?

6 (Defence counsel confer)

7 MR. O'SHEA: Can I just say -- can I just use the expression
8 "inter-witness contact"?

9 PRESIDING JUDGE COTTE: (Interpretation) Exactly. You will
10 remember that unless I'm mistaken - but here I'm speaking from my
11 memory - I should -- on the name of the Bench, and I should reply to the
12 request that you made, I should have addressed to the unit a request for
13 clarification which should have been issued on the 23rd of March, and I
14 think it's the 23rd, so, i.e., tomorrow. So normally we will have the
15 answer from the unit tomorrow.

16 Court Officer, I'm now turning towards you so that you can ensure
17 within that Registry. Here I'm talking about a request -- to the unit
18 with a view of giving clarification for the Chamber who will then provide
19 the information to the participant with regards to the modalities by
20 which the witness are or are not put in contact when they travel, perhaps
21 together, when they are in The Hague, before testimony, during their
22 presence in the Court, after testimony, et cetera. So I thought that I'd
23 asked these clarifications for the 23rd. If this is the case, then I
24 would have to remind the unit that it's important that we do have these
25 clarifications tomorrow. And I hardly said -- it could happen in French.

1 If it could be given in French and in English, this would be most
2 appreciated.

3 Counsel Kilenda, I don't think that we can start the
4 cross-examination at the time, so we'll start again at 4.30.

5 Witness, at 4.30, it is the Defence team of Mathieu Ngudjolo that
6 will start what we call the cross-examination and who will therefore ask
7 you a certain number of questions. We are now going into closed session
8 so that you can leave the courtroom, and then we will go back into open
9 session so that we can just break.

10 Court Officer and Usher -- and the Usher will escort the witness.

11 Court Officer, please take us into closed session.

12 (Closed session at 3.55 p.m.)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 3.56 p.m.)

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

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 Court Officer. The hearing is therefore suspended. We will be back at
25 4.30.

1 Recess taken at 3.57 p.m.

2 On resuming at 4.37 p.m.

3 COURT USHER: All rise.

4 PRESIDING JUDGE COTTE: (Interpretation) Court is reconvened.

5 Please be seated.

6 Before we bring in the witness, it seems that we have a minor
7 difficulty with the disclosure of parts of his diary. We thought we
8 understood that the witness had agreed that an entire copy of his diary
9 be given to the Defence. That is in an e-mail of Friday, and it has --
10 it was said that the Defence could have a copy of the diary or consult
11 the diary in the presence of the unit. That was the substance of the
12 mail of Friday. We have been told that the witness agreed only to the
13 disclosure of certain passages of that diary and not the diary in full.

14 Madam Prosecutor, would you by any chance be aware of what the
15 witness has agreed to, that is, in relation to what you communicated to
16 the Defence? One could think that the witness has agreed to more than
17 what you disclosed to the Defence because one would have thought that
18 perhaps they had reason to believe they were going to be given
19 everything. So can you clarify matters for us?

20 MS. LUPING: Mr. President, we have been in contact with the
21 Victims and Witness Unit as requested on the Friday, and we asked them to
22 indicate to us the thinking of the witness, whether or not he consented
23 to disclosure of his entire diary. The unit responded that the witness
24 did consent to providing full access to the whole of the document to the
25 Defence. So this is the first time that we are learning that he has a

1 different opinion on the matter.

2 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer,
3 would it be possible to have a representative of the unit to join us
4 right now quickly to explain matters for us so that we should not dwell
5 for too long on this issue, which we hope to resolve shortly.

6 (Trial Chamber and Court Officer confer)

7 PRESIDING JUDGE COTTE: (Interpretation) On a different matter,
8 Mr. O'Shea, I contacted VWU regarding the contacts that you were talking
9 about a short while ago. We had asked that the information be provided
10 to us for tomorrow in the afternoon, that is the 23rd of March, and it is
11 after receiving that information that we will forward it to you and to
12 the other participants. So you should have that information tomorrow,
13 the 23rd of March.

14 MR. O'SHEA: Thank you, Mr. President, and hopefully we will have
15 that information before we have to start. Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) We should normally have
17 that information tomorrow at 4.00 p.m. since our hearings are from 2.00
18 to 4.00 p.m. and from 4.30 p.m. to 6.30, then that will be the case.

19 Madam Prosecutor, can you tell us the volume of the excerpts that
20 you have disclosed to the Defence team so that we should not waste too
21 much time? Do you have the full diary yourself? Is it a large document?
22 Is it made up of several pages?

23 MS. LUPING: The Prosecution does not have the full document in
24 its possession, but can confirm that it is not a lengthy document. We
25 have sighted it, Mr. President.

1 PRESIDING JUDGE COTTE: (Interpretation) So, Madam
2 Court Officer, so in principle we should have a representative of the
3 unit who will join us very shortly. Very well then.

4 (Trial Chamber and Court Officer confer)

5 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, the
6 private diary of the witness, in which language is it written?

7 MS. LUPING: It is a mix of languages, Mr. President. There's a
8 combination from my recollection of Swahili, English, and French. I also
9 wanted to add a small point of clarification. I was just reading the
10 French transcript against the English transcript of what I previously
11 stated, and there is a slight contradiction between the transcripts.
12 What I had said is the Prosecution does not currently have the whole of
13 the diary in its possession nor even a copy of the whole of that
14 document; however, to be clear, we have sighted, we have seen, the whole
15 of that document previously. And the extracts, as we explained on
16 Friday, that were provided were the relevant extracts as had previously
17 been requested by Defence.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
19 Madam Prosecutor, but just from memory to enable us to save time, the
20 relevant excerpts that you disclosed to the Defence, what percentage does
21 it represent of the total document? Is it 10 pages? 20 pages? And so
22 on and so forth. We just want to have an idea.

23 (Trial Chamber and Court Officer confer)

24 MS. LUPING: Mr. President, I don't want to give an inaccurate
25 response. It's hard to estimate now. However, I would say that there

1 are additional pages, clearly. We only copied and provided only those
2 extracts that make any reference whatsoever to various attacks at Bogoro,
3 as the Defence had requested. The other pages are not relevant to any of
4 the incidents at Bogoro.

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

6 Madam Court Officer, there is a representative of VWU who is now
7 present. If the Court Usher can escort that person into the room.

8 The Legal Representatives, would you have any objection, given
9 the layout of the courtroom, to the two representatives to sit behind you
10 just long enough for us to ask for their clarifications?

11 MR. GILISSEN: (Interpretation) No objection at all.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

13 So, Court Usher, if you can ask the person or persons that we are
14 waiting to sit behind the Legal Representatives and their collaborators,
15 that would be fine.

16 Good afternoon, Madam. Good afternoon, sir. Thank you for
17 joining us. We simply wanted to clarify the conditions in which
18 Witness 159's agreement was sought regarding the disclosure of his diary.
19 This was raised during the hearing of last Friday
20 morning (as interpreted) and at their request the Defence teams received
21 from the Prosecutor excerpts that the OTP thought relevant, that is,
22 those parts of the document that they felt they were relevant. But the
23 Defence had wanted to have the full diary, and there was an option:
24 Either the Chamber demands or asks for the disclosure of the entire diary
25 or the disclosure of the relevant excerpts decided on by the Prosecutor

1 to try to determine the scope of the redactions, or the second option was
2 to try to find out from the witness whether he agreed to have the entire
3 diary disclosed. And we learned on Friday morning through a mail from
4 the Prosecutor that after you interviewed Witness 159 he agreed that a
5 full copy of his diary should be disclosed. And in the afternoon one of
6 the Defence teams contacted the Prosecutor to try to have that document
7 disclosed. And this afternoon one of Defence teams told us that this
8 exercise was ongoing and another team wanted to have the copy as soon as
9 possible. And this afternoon once again we learned that in fact the
10 witness only wished to agree to the disclosure of certain passages of his
11 diary.

12 So if you know, you should now tell us whether the witness
13 changed his mind between Friday and today, and also if you know what is
14 the proportion of the diary that he would like to authorise to be
15 disclosed. Is it more than what the Prosecutor disclosed to the Defence
16 teams at their request, so without losing more time we should be able to
17 understand what happened.

18 You have the floor now and we thank you in advance.

19 MR. MAVIN: Thank you, Mr. President. Paul Mavin from the
20 Victims and Witnesses Unit, represented by (Redacted), also from the
21 Victims and Witnesses Unit. If you could just give me one moment while I
22 just quickly confer with my -- with (Redacted) in relation to this matter.

23 Thank you.

24 (Victims and Witnesses Unit representatives confer)

25 MR. MAVIN: Yes, thank you, Mr. President.

1 It is the case that on Thursday, last Thursday, the witness was
2 spoken to by telephone, where it was put to him about the disclosure of
3 the diary to the parties. During that conversation the witness did
4 indicate that, yes, that that was okay to do so. However, when the issue
5 was -- when he was spoken to about getting photocopies of the document
6 today, the witness clearly indicated that he had concerns about the
7 disclosure of the full diary, in that there were elements within the
8 diary which he believed if disclosed to the parties would cause a
9 security concern for him. And that is the reason for his now reluctance
10 to disclose the entire contents of the diary.

11 It is possible that during the phone call that we had with the
12 witness last week, that he may have interpreted that as disclosure of the
13 relevant parts that had been provided to the Prosecutor as to what would
14 be disclosed to the Defence. From the brief discussions that were --
15 that has been had with him today, I'm led that believe that there is
16 approximately four pages of document -- of the document which he would be
17 prepared to disclose to the Defence. That is all I have at this point in
18 time.

19 PRESIDING JUDGE COTTE: (Interpretation) Now, it may seem like a
20 bit of a trivial point, but do you know whether these four pages
21 represent a large part of the document, or rather, a very small portion
22 of the document? We don't have that document. We haven't seen it. I
23 don't know if it's 10, 20, or 30 pages long. I don't know whether -- if
24 it's really a personal diary in which the witness may have recorded some
25 things that he would not like others to see, and perhaps it's for that

1 reason and perhaps during the discussions earlier the Prosecutor only
2 passed on information or disclosed, rather, information relating only to
3 the Bogoro attack. And you see, the document includes a mixture of
4 English, French, and Swahili and this could be a rather cumbersome task.

5 Now, have you seen -- could you tell us how large this document
6 is? Have you actually seen it? How large is it?

7 (Victims and Witnesses Unit representatives confer)

8 MR. MAVIN: Thank you, Mr. President. I've been informed that
9 the diary is probably approximately 40 to 50 pages in size, so it's only
10 a small portion he's prepared to release to the parties. And he has
11 confirmed with us during the conversation that it's a personal diary that
12 he's made at the time.

13 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea, what do you
14 think of all this? We are dealing with a personal diary that belongs to
15 this witness, who intends to give consent to part of this diary being
16 disclosed, a diary that belongs to him. I further specify that the OTP
17 has already disclosed to the two Defence teams the various extracts that
18 they thought were relevant dealing with the attack on Bogoro.

19 MR. O'SHEA: If I can first of all address the security fear or
20 concern of the witness. I wonder to what extent the witness knows that
21 we already are in possession of a fair amount of personal information
22 about him. It may be - and I'm only speculating here - it may be that
23 the witness does not fully understand in terms of the disclosure Rules of
24 this Court the extent of which personal information of him is already in
25 the possession of the Defence and the accused. It may be if he

1 understands the extent of the disclosure that we already have, he may
2 appreciate that it's not because something is of a personal nature that
3 the Defence may not know it. So if the witness has misunderstood the
4 nature of disclosure in these proceedings, it might be worthwhile for
5 you, Mr. President, or in the alternative the Victims and Witnesses Unit
6 to explain that clearly. I'm sure it has been explained -- in fact, I
7 know it has been explained by the Prosecution at one point. But it might
8 be worth that being re-explained to him so that he's making an informed
9 decision. Because if he is under the dissolution that the Defence does
10 not have personal information about him, then that perception should be
11 corrected, and he may view the matter differently in the light of that.
12 That would be my first comment.

13 As to where we go from here, the diary is something that the
14 witness has mentioned himself. It is something which the witness has
15 employed to support statements which he has made concerning the facts of
16 this case. If an inquiry is to be made into the credibility of this
17 witness, then in our submission the Defence needs to be in a position to
18 explore the extent to which these diary entries were made
19 contemporaneously, as claimed by the witness, or otherwise. In order to
20 do that, one, in my submission, has to be in a position to inspect the
21 diary in its entirety, to see the manner in which the witness has been
22 writing his entries, the language in which the witness has been writing
23 his entries, and the nature of other entries. Because the nature of
24 other entries in the diary may shed light upon the authenticity in terms
25 of contemporaneousness of the entries with which we've been provided.

1 So I'm sure that my learned friend for the Prosecution was not
2 saying this. She did say that the entries were not relevant. I would
3 interpret what she's saying to mean, in the context of what she's saying,
4 that they were not directly relevant. I'm sure she's not saying that
5 they're not relevant at all. And we say that the relevance lies in the
6 determination of the contemporaneousness of these specific entries with
7 which we've been provided with. And in our submission, there should
8 really be no reason why we should not be able in the interest of fairness
9 and justice to see the entire diary in order to make our evaluation and
10 in order, if appropriate, to use as a tool of cross-examination. If the
11 witness has a specific entry or entries that he has or that the Victims
12 and Witnesses Unit feels that he might have a legitimate security concern
13 in relation to, or if there are specific entries of a confined nature
14 which the witness might find embarrassing which will not contribute to
15 the debate, then those of course can be identified and left to the
16 discretion of your Honours. But otherwise, we would like to see the
17 entire diary, and it's a matter of decision for your Honours.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

19 Now, before I give the floor to the Ngudjolo Defence team, I
20 would like just to have confirmation that the witness mentioned this
21 diary well before this hearing. Now, if my memory serves me correct, he
22 has not spoken of this diary while giving testimony, has he?

23 MS. LUPING: That is correct, Mr. President. He referred to it
24 in his prior statement during the interview, but he has not mentioned it
25 at all during his current testimony.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Madam
2 Prosecutor.

3 Now, the conditions under which the Defence asked your office for
4 disclosure of pertinent extracts go back to what time exactly? Now, was
5 this during various exchanges between the two sides? When did that
6 happen? And was the disclosure done under a particular -- for a
7 particular reason or under a particular order?

8 MS. LUPING: If you could give me a moment to check exactly when
9 the request came.

10 PRESIDING JUDGE COTTE: (Interpretation) For example, number 17.
11 (Prosecution counsel confer)

12 THE INTERPRETER: Correction by the English interpreter: Rule
13 117. Second correction from the English interpreter: Rule 77.
14 (Trial Chamber and Legal Officer confer)

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Kilenda, Mr. Fofe,
16 would either one of you like to respond to these concerns or to make any
17 distinctions regarding these concerns?

18 MR. FOFE: (Interpretation) Thank you, your Honour. Your
19 Honours, the Ngudjolo Defence is of the opinion that in the interests of
20 the fairness of the trial, since the OTP had access to this document,
21 viewing and reading this document is necessary, the Defence teams, the
22 counsels of the Defence, must also be in a position to read this
23 document. We believe that this personal diary contains information that
24 is important, perhaps not just for the Prosecution but perhaps also for
25 the Defence. The Chamber must trust the Defence counsel and authorise

1 counsel to view this document. Even if initially we would not be able to
2 photocopy, it would be possible for counsel to go to the unit's office to
3 read the entire document in one of the unit's offices. We could consult
4 the document, read it on the spot, see what the document contains, and
5 assess the importance of the information found in this diary for the
6 diary. I believe that would be the best option for all parties. There
7 you have it.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
9 Professor Fofe, for that contribution.

10 Madam Court Officer, we will go into closed session so that the
11 witness can enter the courtroom and we will deal with the matter
12 directly.

13 Madam Prosecutor, yes, please go ahead.

14 MS. LUPING: Mr. President, before we do go into closed session,
15 I just have some information with points of clarification. The first in
16 response to your specific question. The first request that we received
17 from counsel for Defence for Germain Katanga, requesting access to
18 specific entries of Witness 159's diary, was on the 21st of February of
19 this year. What I would like to point out is that Defence for the team
20 for Germain Katanga has had access to the statement of Witness 159, and
21 specifically the information in that statement that he referred to a
22 diary, since the 13th of December, 2007. And as previously indicated in
23 an e-mail today, Defence for Mathieu Ngudjolo has had access to the
24 witness statement with this same information since early 2008.

25 What we would want to emphasise is that this is a personal

1 document, a personal diary, of the witness and we would like to
2 understand his reasons for withholding his consent, and we should try to
3 understand this, we believe, before a decision is made.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Madam Prosecutor.

6 Mr. O'Shea.

7 MR. O'SHEA: Mr. President, your Honours, I'd like to correct one
8 statement which is being repeatedly made by my learned friend, which is
9 that the Defence made a request for certain entries. In an e-mail dated
10 February the 21st, the Defence outlines that in the witness's statement
11 he refers to a diary with respect to attacks in Bogoro, cites the
12 relevant paragraphs, and then in the second paragraph of our e-mail we
13 state as follows:

14 "Would it be possible to consult the diary, to ask the witness to
15 bring it in The Hague?"

16 And that brings me to my second point, which is that the fact
17 that we've had access to the statements of the witness for a long time,
18 in our submission, is not of great significance here because the
19 practical reality may be that it is the witness himself who's in a
20 position to bring the diary to The Hague. And if the diary was something
21 that we, for our own interests as Defence counsel, felt that we needed in
22 2007 we could have asked for it in 2007. But that does not preclude us
23 from asking for it shortly before the witness testifies. We've been told
24 that the diary consists of about 50 pages. We're in a position to deal
25 with those 50 pages without impinging upon the expeditiousness of the

1 trial. So that in our respectful submission is not a reason to deny that
2 to us.

3 And also, it's not really fair to place the Defence on an
4 obligation to ask for the diary. The diary is clearly mentioned in the
5 statements of the witness. That also means, of course, that the
6 Prosecution have had knowledge of this diary since 2007 or prior to 2007.
7 And in our submission in terms of their disclosure obligations ought to
8 disclose the diary as a prior -- as prior statements of the witness which
9 have been specifically referred to in the interviews of the witness.
10 Even if it were not to fall within that specific obligation on the part
11 of the Prosecution, the Prosecution as an independent agency should in
12 all fairness if a document of that nature essential to a witness's story
13 disclose that document to the Defence. As a matter of integrity and
14 fairness they should do it as an independent agency, independently of the
15 Rules.

16 MS. LUPING: Mr. President.

17 PRESIDING JUDGE COTTE: (Interpretation) I beg your pardon. We
18 are not going to get started into some sort of discussion about what the
19 other people should have done, but if you could respond and then we'll
20 have the witness come in.

21 MS. LUPING: Very briefly, Mr. President, just simply to remind
22 the parties that the Prosecution's obligation is to provide for
23 disclosure of relevant information, which is what it has done.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Madam Prosecutor, for that brief reply.

1 Madam Court Officer, if we could go into closed session so that
2 the witness can come in, and then after that we will move into open
3 session.

4 (Trial Chamber and Court Officer confer)

5 PRESIDING JUDGE COTTE: (Interpretation) I beg your pardon. If
6 the representatives of the VWU could remain for a few moments, if it's
7 not too much of a trouble.

8 (Closed session at 5.24 p.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Open session at 5.25 p.m.)

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

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
19 Court Officer.

20 Witness, can you hear me?

21 THE WITNESS: (Interpretation) Yes, I can hear you, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Fine. Witness, I'm
23 going to ask you to listen to me very carefully. Now, you have just been
24 waiting for a fair long time before coming back into the courtroom
25 because we were in a discussion with the various participants about the

1 diary that was mentioned when you gave a statement several months ago
2 before the investigators of the OTP. Now, given that this diary was
3 mentioned during the statement that you gave to the OTP, it is important
4 for the Defence of the accused, who must use their rights fully, have
5 access to this diary, not out of mere curiosity as you would imagine, but
6 rather to properly fulfil their duties, their duty of representing the
7 accused.

8 Now, the Office of the Prosecutor has already disclosed to the
9 Defence teams various elements from this diary that relate to the attack
10 on Bogoro, which certainly is the very reason why you are giving
11 testimony before the Court. But it is also important for all parties,
12 the OTP, the Defence teams, the Legal Representatives of Victims, to be
13 able to look at these passages having to do with the attack on Bogoro
14 against a backdrop, namely, the entire diary that you mentioned when you
15 made your statement several months ago to the OTP investigators.

16 And so, Witness, we are going to ask you if you could provide
17 that diary to the Victims and Witnesses Unit and in turn the VWU will be
18 in a position to allow the parties to view this diary at the -- on the
19 premises of the VWU, in their offices. Now, clearly the excerpts that
20 would be of interest to the various parties to the trial are the passages
21 that have to do with the Bogoro attack, the passages -- or rather, the
22 event that you agreed to testify about. We would be most -- and we are
23 very grateful for that. And furthermore, it's also clear that if various
24 excerpts from this diary may represent some kind of risk to your safety
25 or the safety of your family members or the safety of people who are

1 close to your heart. Now, if such matters were to be touched upon during
2 the hearing, we would immediately go into closed session because no
3 Chamber of the Court wishes any physical danger for people who agree to
4 come and give testimony. I reiterate. If various excerpts from this
5 diary are spoken to during the hearing and you feel ill at ease, we can
6 go into closed session.

7 Now, similarly, the Chamber draws the participants' attention
8 officially - and I'm speaking to all participants, the OTP, the Legal
9 Representatives of the Victims, the Defence - we reiterate that if we
10 deal with any excerpts that have to do with your personal life and your
11 privacy, they shall not speak of such things at any time. So we will
12 have access to your diary, but rather, only people here will have access
13 but only those who have sworn an oath of client/solicitor privilege. So
14 we are asking you and we also refer to Rule -- Article 64 of the Statute,
15 64(6)(b) that speaks to provision of that information, and thus the
16 Chamber is asking you to turn over this diary to the Victims and
17 Witnesses Unit this evening so that the Defence teams can review this
18 diary in the VWU offices and possibly under the various circumstances
19 that I have mentioned, speaking very slowly, I want to make sure that you
20 understand the spirit in which we are making this request of you and also
21 we wish for you to understand the precautions that we are taking to
22 protect your safety and those of your family members as well as the
23 privacy that you are entitled to.

24 So there you have it, Witness. Have you understood what I've
25 just said?

1 THE WITNESS: (Interpretation) Yes, your Honour. I followed you
2 very attentively and I have understood you. I don't want to say that I
3 refuse to give my diary. I accept to give it, but in this diary I wrote
4 about events which occurred at the time I was in place, I was present.
5 That's one thing. There are dates which I have written in this diary.
6 These are dates which I was able to remember, historic dates,
7 unforgettable dates, because these are dates on which events occurred,
8 events to which I was an eye-witness. I therefore do not refuse to give
9 this diary. I have written -- I've only written important aspects. I
10 have not made a lot of comments in it, no. It is a part of the diary
11 which is very important, and if you like I could give plenty of detail
12 with regard to each entry that you will find in this diary. And it is
13 for that reason that I accepted to come before the Judges and to testify
14 before this Chamber.

15 PRESIDING JUDGE COTTE: (Interpretation) The Chamber would like
16 to thank you, Witness. It would like to thank you for your frankness.
17 It is clear that nobody here, I think, expects to find in this diary a
18 complete account of everything that happened. You take the precaution of
19 telling us that these are only notes and dates that you put together, and
20 it is clear that nobody thinks that this diary will capture all events on
21 a minute-by-minute basis. And therefore, please don't have any concerns
22 in that regard. Nobody intends to give this diary greater importance
23 than what you have just said. It is a personal collection of notes.
24 We're in agreement with that I think.

25 THE WITNESS: (Interpretation) That is correct.

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1 PRESIDING JUDGE COTTE: (Interpretation) So we have understood
2 each other. I'm not going back to the precautions which we intend to
3 take. I think everybody has understood that. It is noted in the
4 transcript.

5 We are now going to thank the representatives of Victims and
6 Witnesses Unit, who if they want can leave the courtroom, and they have
7 to be provided with the diary, and this diary has to be consulted in
8 their presence, in their premises. And we would like to remind the unit
9 that tomorrow we expect to receive information which has been asked from
10 them last week.

11 Now, thank you for having come and join us. You are now free to
12 leave us if you so wish.

13 Witness, we are now during the 50 minutes approximately that
14 remain, we are going to start with the Defence team of Mathieu Ngudjolo.
15 We will start the cross-examination, your cross-examination, so you will
16 answer their questions. And once again, we would like to thank you for
17 your co-operation in order to enable this Court to better understand
18 everything that happened in February 2003 in Bogoro.

19 Counsel Kilenda, you are officiating here, so you have the floor.

20 MR. KILENDA: (Interpretation) Thank you for giving me leave to
21 address the Court.

22 Questioned by Mr. Kilenda:

23 Q. (Interpretation) Witness, I would like to welcome you.

24 A. Good afternoon.

25 Q. My name's Jean-Pierre Kilenda. I am the lead counsel in the

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1 Mathieu Ngudjolo case. I am assisted by members of our team, this whole
2 team around me, and I am going to cross-examine you. I will make an
3 effort to speak slowly. I will observe all the technical aspects that
4 need to be observed where it concerns addressing the Court, and I would
5 invite you to do the same. Please do not hesitate to interrupt me if I
6 speak quickly. If you do not understand a question, please let me know;
7 I will reformulate it.

8 In addition, Witness, the Defence of Mathieu Ngudjolo is very
9 pleased to learn that you are (Expunged)
10 (Expunged)

11 MS. LUPING: I'm sorry to interrupt my friend, but just a
12 reminder we are in open session.

13 PRESIDING JUDGE COTTE: (Interpretation) You are right,
14 Prosecutor. Counsel Kilenda forgot this for a moment.

15 MR. KILENDA: (Interpretation) The Prosecutor is right. If we
16 can go into closed session.

17 PRESIDING JUDGE COTTE: (Interpretation) Will this be closed
18 session for the rest of the time, because whatever happens we're going to
19 redact this mention here?

20 MR. KILENDA: (Interpretation) Yes, if we can go into closed
21 session.

22 PRESIDING JUDGE COTTE: (Interpretation) Okay. We will go into
23 private session.

24 (Private session at 5.40 p.m.)

25 (Expunged)

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17 (Open session at 5.41 p.m.)

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

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
21 Court Officer.

22 Please continue, Counsel Kilenda.

23 MR. KILENDA: (Interpretation) Thank you, your Honour.

24 Q. You are an eye-witness of events that you testified to, page 33
25 of the transcript 109 -- 119, lines 22 to 23, the 18th of March, 2010.

1 "There were a lot of deaths. There were a lot of people who were
2 killed, and I was an eye-witness to that."

3 Just as on page 62 of the same transcript, in answer to a
4 question of the Prosecutor who wanted to know with regard to the
5 destruction and pillaging if you had seen that with your own eyes or if
6 you had learnt that from other people, line 20 to 27 (as interpreted),
7 page 61, you answered - and here I quote you exactly:

8 "No. I am currently telling you events that I was an eye-witness
9 to myself, and I am here to tell the truth and to teach you what I have
10 myself have seen."

11 What you say, Witness, is very important for everyone who is here
12 in this courtroom and for all the international community who has put a
13 massive effort just to know what really happened in Bogoro. It is
14 therefore fundamental that you answer my questions precisely in order for
15 the truth to come to light. And of course, this is all done under the
16 supervision of the Chamber. Our team, that of Mathieu Ngudjolo, knows
17 that you will answer the question, even the most difficult questions,
18 which sometimes will be -- give rise to emotion on your part when these
19 questions touch on aspects that affect you personally. You said so well
20 yourself. When you answer a question of the Prosecutor on the 18th of
21 March, 2010, Madam Prosecutor wanted to know how your mother had been
22 killed. Transcript 119, page 23, line 21 to 23. Your emotion was
23 visible. The President invited you to rest before answering and you
24 said - and I quote you here:

25 "This is a very difficult question to answer, but as I am before

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1 this Court it is imperative that I answer it." Transcript 119, page 24,
2 lines 1 to 7.

3 MR. KILENDA: (Interpretation) Then, President, with your
4 authorisation I would like to ask for a closed session because I would
5 like to ask questions which relate to the witness's personal information.

6 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we are
7 therefore going into private session for a moment.

8 (Private session at 5.45 p.m.)

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3 (Open session at 6.02 p.m.)

4 COURT OFFICER: (Interpretation) We are in open session, your
5 Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
7 Court Officer.

8 Mr. Kilenda, please proceed.

9 MR. KILENDA: (Interpretation) Thank you, your Honour.

10 Q. Mr. Witness, can you please tell the Chamber and all the
11 participants when approximately the Ugandans settled in Bogoro.

12 A. I do not know the exact date on which the Ugandans arrived
13 Bogoro. What I know is that the Ugandans arrived after the first attack
14 in the year 2000. The Ugandans arrived at around that time. Regarding
15 the precise date on which they came to Bogoro and the date on which they
16 left, I do not know.

17 Q. Thank you, Witness. Approximately on which date did the UPC
18 arrive in Bogoro?

19 A. The UPC settled in Bogoro in 2002. It was from that time that
20 they effectively settled in Bogoro.

21 Q. Thank you, Mr. Witness. In paragraph 17 of your statement to the
22 Prosecutor, that is document DRC-OTP-0164-0475, page 64 (as interpreted),
23 you say and I quote you:

24 "It was after the attack of 2001 that the Ugandan troops came and
25 settled in Bogoro. The Ugandan troops had arrived at the request of

1 Mbusa Nyamwisi and Tibasima Atenyi who controlled Bunia. They were the
2 ones who asked the Ugandan troops to come and provide security in Ituri.
3 In fact, it was the contrary that happened, and instead of providing
4 security, the Ugandan troops are supposed to have set up the ethnic
5 groups against each other and particularly the Lendus against the Hemas."

6 Mr. Witness, can you explain to the Chamber how precisely the
7 Ugandans set up the ethnic groups against each other?

8 A. Thank you very much. The Ugandans were in Ituri. They were in
9 Bunia. They were also in Bogoro for a short period of time. If you are
10 asking me how they created conflict between the ethnic groups, that
11 question reminds me of one thing. One day when a civilian vehicle which
12 was coming from Kasenyi arrived from Bogoro, it was the normal practice
13 for every vehicle on its way to Bunia to stop at Bogoro. The UPC
14 soldiers who were in Bogoro had to escort those vehicles. Even if there
15 were many vehicles, five or six, they had to escort those vehicles. On
16 that day there were three vehicles and there were even civilians on
17 board.

18 When that convoy arrived at the Ngobu (phoen) Bridge they were
19 attacked by the Lendus. During that attack the Ugandans arrived. They
20 stopped at a distance. They were armed and they were able to intervene,
21 but they did not intervene. On that day they refused to assist the young
22 people of Bogoro, and on that day there was looting and some people were
23 injured. It was because of the strength of the young people of Bogoro
24 that the vehicles were able to be escorted right up to Bunia. It was
25 from that day that we understood and accepted that the Ugandans were

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1 accomplices to those facts or events.

2 Secondly, whenever there was an attack and the young people asked
3 for the assistance of the Ugandans, the Ugandans did not come to help
4 them.

5 Q. Thank you, Mr. Witness. And how did the Ugandans set up the
6 Hemas against the Lendus?

7 A. The Ugandans did not create conflict between the Hemas and the
8 Lendus. The Ugandans created conflict not between the Hemas and the --
9 against the Lendus, but the Lendus, they set up the Lendus against the
10 Hemas.

11 THE INTERPRETER: That is what the witness is saying.

12 PRESIDING JUDGE COTTE: (Interpretation) I would like the
13 witness to repeat his last answer.

14 Mr. Witness, there seems to be a little bit of difficulty with
15 the interpretation, so in answer to that question how did the Ugandans
16 set up the Hemas against the Lendus? This is simply a technical problem,
17 so please repeat your answer slowly. Thank you.

18 THE WITNESS: (Interpretation) My answer is clear and it is as
19 follows. The Ugandans did not set up the Hemas against the Lendus. On
20 the contrary, they set up the Lendus against the Hemas.

21 MR. KILENDA: (Interpretation)

22 Q. Thank you, Mr. Witness. Which attacks were launched by the
23 Ugandans against the Lendus?

24 A. Can you kindly repeat your question, please?

25 Q. Are you aware of any attacks launched by the Ugandans against the

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1 Lendus?

2 A. No.

3 Q. When you talk about the Ugandans, who are you referring to
4 precisely?

5 A. When I talk about the Ugandans, I'm referring to the presence of
6 the Army of the Republic of Uganda which was present in Ituri.

7 Q. Thank you, Mr. Witness. And was Mr. Mbusa Nyamwisi indeed the
8 leader of the RCD/K-ML?

9 A. Yes.

10 Q. And the armed wing of that movement was the APC; isn't that
11 correct?

12 A. Yes.

13 Q. In paragraph 19 of your statement to the Prosecutor on page 4 you
14 stated that the UPC drove out Lompondo from Bunia and that Lompondo was
15 the leader of the APC, that is the Congolese People's Army. My question
16 is as follows: When Lompondo was driven out of Bunia, where did he go
17 to?

18 A. That is a political question. I am going to answer the question
19 but I am not a politician. Lompondo went to Beni.

20 Q. Thank you, Mr. Witness. Was there a cemetery in Bogoro?

21 A. During which period?

22 Q. We are talking about February 2003.

23 A. Are you talking about the graves of the people who died on the
24 25th or are you talking about ordinary cemeteries?

25 Q. I'm talking about a cemetery.

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1 A. I wanted to understand you well. When you are talking about a
2 cemetery, are you referring to the cemetery of people who were buried in
3 2003 or any ordinary cemetery in which people who had been killed before
4 were buried?

5 Q. Prior to the attack of 2003 was there a cemetery in Bogoro?

6 A. Before the attack of 2003 -- well, let me give you some details.
7 Yes, there was a cemetery, but I would like to give you further details.

8 Q. What is of interest to me right now is to know where that
9 cemetery was located.

10 A. I would like you to specify to me. When you are talking about
11 "cemetery," which attack are you referring to? Because apart from the
12 ordinary cemetery in Bogoro there are other places, other locations,
13 where people were buried. I would like you to give me details about
14 that.

15 Q. Mr. Witness, I am talking about an ordinary cemetery.

16 A. Thank you. I needed that clarification. There were ordinary
17 cemeteries. There was one ordinary cemetery on the road to Gety.

18 Q. Thank you. And who was responsible for the management of that
19 cemetery?

20 A. It was a cemetery that belonged to the village, and in the
21 village there is no one who can claim to be responsible for the cemetery.
22 No one managed the cemetery.

23 Q. Thank you, Mr. Witness. Where were you at the beginning of the
24 attack that you say took place at 5.00 a.m. in the morning, transcript of
25 the 17th of March, page 70, line 6.

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1 A. Are you referring to the attack of 2003?

2 Q. The attack that is of interest to us here. Whenever I'm going to
3 talk about "the attack," I would be referring to the attack of 2003.

4 A. Very well. (Expunged)

5 Q. Thank you, Witness. To your knowledge did the people of Bogoro
6 receive any instructions in the event of attacks?

7 A. There was no instructions -- there was no instruction to that
8 effect.

9 Q. Thank you, Mr. Witness. Let me now refer to transcript number
10 118 of the 17th of March, 2010, page 73, lines 9 to 25. In answer to a
11 question by the Prosecutor who asked you where you were at the time of
12 the attack, you stated, and I quote you:

13 "At that time I was hiding in the bush. (Expunged) is
14 not very far away from the camp. I could easily flee to the camp, but
15 that was not possible on that day. When our young people had done
16 everything to defend Bogoro, it turned out to be impossible. At
17 8.00 a.m. they launched the attack against the camp. They started with
18 the surroundings of the camp. Their main objective was to reach the camp
19 because the enemy was fully aware that our force was located in the camp.
20 It was therefore indispensable to destabilise the camp. They achieved
21 their first objective: They reached the camp. I was hiding in the bush
22 near the camp. I was observing what was going to happen subsequently.
23 The women, young girls, and children, almost the entire population of
24 Bogoro, had taken refuge in the camp. They were waiting for their fate.
25 When the young people tried to continue defending, they found that it was

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1 not possible. They realised that the enemy was stronger than them."

2 And let me remind you, Witness, that we are in open session. I'm
3 not going to mention the name. You know that name very well, so be
4 careful not to reveal your identity.

5 "There was a soldier from Bogoro," his name, "that man or that
6 soldier entered into the camp and he shouted out in a loud voice as
7 follows, 'Everyone should find their own way.'"

8 Mr. Witness, when somebody reads what you said so closely, the
9 question that comes to mind is the following: In light of what you have
10 described, what prompted you to go so close to the danger because such
11 courage seems to us to be worthy of a true soldier. Were you not a UPC
12 soldier?

13 A. If you come back to your question I will answer you very
14 appropriately.

15 Q. In light of the description you have given, obviously there was
16 danger. What prompted you to go so close to that danger because that
17 type of attitude seems to us to be very worthy of a soldier, and that is
18 why we are asking you this question, whether you were not a UPC soldier?

19 A. I'm not a soldier. I'm a civilian. The soldiers who were in
20 Bogoro were my brothers. I'm a civilian and I lived with the soldiers.
21 When the fighting started I was (Expunged) not far
22 away from the camp. Each time there was an attack we were in the habit
23 of running to the camp to seek refuge. The first objective of the
24 Lendus, to destabilise Bogoro, as I said before, the young people of
25 Bogoro were very strong. And each time that the enemy arrived, the young

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1 people of Bogoro defended their village. I remember that during an
2 attack from Ngiti it was too early in the morning. It was around
3 6.00 a.m. or 7.00 a.m. we observed the enemy. We saw where they were and
4 we fled into the camp. We gave the signal and our men came out. They
5 fought against the Lendus and they pushed them back. They even succeeded
6 in killing two of their commanders.

7 On the 25th of February I was (Expunged) at 5.00 a.m., at
8 5.30 a.m. in the morning of the day in which they came. Well before
9 nightfall we -- well before that in the night we could observe them
10 because they had lamps and they could be seen from afar, and I would like
11 to answer your question. I'm not a soldier. I am a civilian.

12 Q. Thank you, Mr. Witness.

13 MR. KILENDA: (Interpretation) Mr. President, I believe we can
14 stop here for today.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Kilenda.

16 Mr. Witness, we are going to adjourn this hearing. We thank you
17 for your contribution. We will meet again tomorrow at 2.00 p.m. for two
18 periods of two hours each of hearings.

19 And, Court Officer, we are going to go into closed session to
20 allow the witness to reach the courtroom -- or rather, to leave the
21 courtroom. And we will return to open session to adjourn.

22 (Closed session at 6.26 p.m.)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Open session at 6.27 p.m.)

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

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

12 We would like to thank all the support staff during this hearing,
13 and the hearing is adjourned.

14 The hearing ends at 6.27 p.m.

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