

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 Thursday, 4 March 2010

10 The hearing starts at 2.10 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 hearing shall
15 begin. You may be seated.

16 We are in open session. The accused are in the courtroom. The
17 Chamber, in the absence of the witness, is going to begin by handing down
18 an oral ruling. The -- an oral submission was presented orally to the
19 Chamber by the Defence teams of both accused during the direct
20 examination of Witness 161 on February 26, 2010. The Defence teams
21 indicate that during the oral testimony the witness mentioned new
22 elements that were not contained in the written statements as taken down
23 in October of 2006. While recognising that the witness did pronounce
24 these words representing new information in a very spontaneous fashion at
25 the hearing on February 26, 2010, the Defence teams consider that in so

1 doing they undergo a prejudice of particular importance. Therefore, they
2 believe, given the content and the nature of this new information, that
3 it would be appropriate for the Chamber to order either the exclusion of
4 that part of the transcript containing said information or to postpone
5 the cross-examination of this witness in order to enable them to have
6 sufficient time in order to investigate on the credibility of the witness
7 or that the Chamber should not take account of the contested portion of
8 the transcript in its decision.

9 The Chamber has noted that the Defence teams recognise that the
10 Prosecutor complied fully with its disclosure obligations. Defence teams
11 both recognise, having received in due time, the witness statement for
12 Witness 161 as well as they agree having received from the Prosecutor a
13 document which lists the main themes to be dealt with with each witness
14 during the trial.

15 The Chamber also notes that the Defence teams do not contest the
16 spontaneity and the inherent spontaneity in any oral testimony during a
17 hearing as well as the potential surprise effect that could result from
18 that. It remains, according to the Defence teams, that they have
19 undergone a prejudice given the fact that this testimony is totally new,
20 the testimony given by the witness in Court. The fact that this
21 information is new must be evaluated by the Defence teams, not only in
22 relationship to the prior statements made by this witness but also
23 because of the fact that no other Prosecution witness statement mentions
24 this very same information. In an e-mail dated on March 3rd, 2010, the
25 Prosecutor in fact confirmed that no other Prosecution witness heard

1 identical words to those that were expressed by the Witness 161 in his
2 testimony.

3 The novelty of these -- this new information and in addition,
4 which is compounded by the responses given on March 3rd, 2010, by the
5 witness to questions put forward by the Chamber could -- would not enable
6 the Defence teams to carry out an informed and effective
7 cross-examination of Witness 161.

8 The Chamber notes that the Defence teams have in addition
9 recalled that they had not considered thus far that they should
10 investigate the credibility of this witness because on the basis of the
11 documents that had been disclosed to them by the Prosecutor they expected
12 that this witness would testify essentially on the crimes committed
13 during the attack which took place in Bogoro and not on the aspects of
14 the case which involve the criminal responsibility of the accused. The
15 Chamber also notes that both Defence teams have noted that they did not
16 systematically investigate the credibility of witnesses and that it must
17 be recognised, in their favour, that they have the possibility to
18 determine on a discretionary basis upon which essential aspects of the
19 case presented by the Prosecutor they intend to concentrate on.

20 The Chamber recalls the importance of the oral nature of
21 proceedings, and with that the inevitable and necessary portion of
22 spontaneity which results from that. The Chamber agrees in that respect
23 with the statement made by Trial Chamber I on April 2nd, 2009, quoted
24 yesterday in this very courtroom by Madam Prosecutor. And the Chamber
25 also recalls that thus far witnesses have not undergone witness proofing

1 in this Court.

2 The Chamber would, however, like to emphasise the terms of
3 Article 67(1)(a) of the Statute regarding the right of the accused to be
4 informed of the nature of the charges as well as the terms of Article
5 64(2), which deals with the obligation to provide for a fair trial.

6 In order to evaluate the existence as well as the importance of
7 the alleged prejudice to the Defence, when a new element is brought up in
8 an oral testimony the Chamber considers that it is on a case-by-case
9 basis that one has to weigh these various principles in light of and in
10 function of the actual content of this new information presented. In
11 this instance, the Chamber notes that the element of new information
12 refers to the fact that through words proffered on the 24th of February,
13 2003, by women and children during the attack on Bogoro and that
14 Witness 161 referred to in his testimony on February 26th, 2010,
15 incriminating by name Germain Katanga and Mathieu Ngudjolo. The Chamber
16 notes that this incrimination is not the result of his former statements
17 and thus was not included amongst the themes that the Prosecutor had
18 indicated they were to discuss.

19 The Chamber considers, therefore, that in this precise case this
20 level of incrimination at this stage in the procedure on the part of a
21 witness who was thought to be testifying only on crimes committed during
22 the attack in Bogoro could potentially indeed cause a prejudice to the
23 Defence. Because it is difficult for the Defence to carry out as of now
24 an in-depth cross-examination and an informed cross-examination on these
25 new elements because the Defence has not thus far carried out a

1 credibility investigation on this witness given the fact precisely that
2 these are new elements.

3 Given the above and on the basis of a proposal made before this
4 Chamber on March 2nd by Madam Prosecutor representing the OTP and to
5 which the Defence teams, we believe, have adhered, the Chamber decides as
6 follows:

7 The Defence teams shall proceed as of now with their
8 cross-examinations followed by any re-direct on the part of the
9 Prosecutor and then additional comments on the part of Defence, and
10 cross-examinations on all of the various aspects of the testimony of
11 Witness 161. It is up to the Defence teams to decide whether or not they
12 want to broach these new elements as of today or not. The Chamber
13 decides that the Defence teams shall then have a time-frame which will
14 enable them to carry out any investigations they deem necessary based on
15 the new information presented on February 26th, 2010, including the
16 responses given to the questions put by the Chamber yesterday on this
17 particular point. The Chamber requests that the Defence submit written
18 submissions on the state of their investigations by May 3rd, 2010, at
19 4.00, I repeat, written submissions regarding the state of affairs of
20 these investigations by May 3rd, 2010, at 4.00.

21 If the Defence teams believe that the defence of their clients
22 requires a re-call of Witness 161, it is up to them to say so and to
23 inform the Chamber by written submission. The Chamber will then
24 determine on the basis of the particular security requirements related to
25 this witness on the measures whereby the witness could be re-called for

1 cross-examination in keeping with Article 69(2) of the Statutes, if need
2 be will provide an additional response to the concerns voiced by
3 Madam Prosecutor.

4 The result is that the Defence teams are going to be able to
5 begin their cross-examination this afternoon. I believe they've heard
6 that in the decision the Chamber leaves them the possibility of
7 evaluating whether or not they want to discuss these new elements as of
8 now, in their cross-examination, or not. I'm sure you have also
9 understood that if it is felt to be necessary, it will be possible to
10 request that the witness be re-called. You have also understood that we
11 have not set a dead-line for the results of any investigations, but the
12 Chamber requests to be informed of the state of affairs of your thoughts
13 and various initiatives by May 3rd, 2010, 4.00, so that we have a clear
14 vision of what's going to happen with Witness 161.

15 Before we bring the witness in, Witness 161, for
16 cross-examination, the Chamber would like to emphasise that we
17 appreciated very much the way the cross-examination of witnesses has
18 taken place thus far by extremely professional Defence teams. We have
19 appreciated the tone and the way the witnesses were cross-examined. We
20 would simply like to recall, although it may not be necessary as we're
21 beginning the cross-examination of this witness, we would like to recall
22 this very special situation of this witness who is also a victim who has
23 lost many members of his family during the events that we are examining
24 in this case. So I would be very grateful to both Defence teams for
25 having listened to the Chamber on these various matters.

1 Court Officer, Usher, it is time now to bring the witness into
2 the courtroom.

3 Mr. O'Shea -- Usher, would you wait just a moment, please, before
4 the witness comes in.

5 MR. O'SHEA: Yes, Mr. President. Thank you for giving me the
6 floor. Mr. President, your Honours, we are most grateful for the
7 decision which has just been delivered, and of course I cannot go back on
8 that decision and I will not. However, I have a duty to draw your
9 Honours' attention to a concern that we on the side of the Defence have.
10 I do say with reluctance and I do say with the greatest of respect, I
11 understand in terms of the decision which has just been delivered that
12 the Defence will be given an opportunity to carry out investigations with
13 a view to potentially further cross-examination later, potentially, not
14 only with regards to the spontaneous answer of the witness during the
15 course of the examination-in-chief of my learned friend, but furthermore
16 also in terms of the responses to your Honours' questions. And we are
17 indeed grateful for that indication.

18 Can I say that my understanding of what occurred at the end of
19 the proceedings of yesterday was that your Honours wanted to have as full
20 a picture as possible before reaching a final decision on the question of
21 admissibility. It was my understanding that at least part of those
22 questions asked and in particular those questions asked by you,
23 Mr. President, had in mind the importance of understanding the full
24 context before reaching a final decision on the question of the
25 admissibility of the answer which was given during the course of the

1 examination-in-chief. That was my understanding.

2 Now, I appreciate that it has been often stated in the
3 International Criminal Court, and indeed by this Chamber, that there is
4 both the principle of orality and also that -- what this Chamber is
5 seeking to do is to ascertain the truth of the matter before it. This
6 brings me to the thorny issue, if I may put it that way, which is that we
7 are yet again brought in front of the contention between the adversarial
8 system and civil law notions of criminal proceedings, if I may put it
9 that way. In our submission, although the Judges have complete liberty
10 to ask questions in terms of the Rules, that liberty must be measured
11 against the fairness of the trial for the accused. The question which I
12 think concerns us, Mr. President, is the question which was put during
13 the course of yesterday's proceedings at page 61 of the French
14 transcript, lines 7 to 8. And this is a question from you,
15 Mr. President, and it reads as follows:

16 (Interpretation) "On February 23rd, 2003, from the various places
17 where you were situated, did you see the two accused in Bogoro?"

18 (In English) That's a perfectly understandable question to put in
19 the context of an answer where the witness has stated that he had heard
20 the names of the two accused being shouted out. But it raises a distinct
21 issue. When my learned friend was asking questions for the Prosecution,
22 as I indicated earlier, she did not elicit that spontaneous response from
23 the witness. It was something that came out of the witness's own mouth
24 on the witness's own initiative. Your Honours's question was of a
25 different nature because your Honour's question went straight to a

1 specific issue. Now, it is the issue of whether this witness had seen
2 the accused and goes to the issue of the presence of the accused at the
3 scene of Bogoro. Now, that is an issue which of course is highly
4 relevant to this trial needless to say, however, it is in terms of this
5 witness an issue which has not been raised by the witness in any of his
6 prior statements but it is also, and more importantly, an issue which has
7 not been raised either by the Prosecution advocates or by the Defence
8 advocates. And therefore, I highlight that aspect of your Honour's
9 question.

10 We will of course take advantage of the mechanisms which have
11 been put in place by the decision that your Honours have just rendered,
12 with a view to seeing where we go with all this. I have distributed a
13 decision of the International Criminal Tribunal for the former
14 Yugoslavia, a case called Hadzihasanovic, which -- which is a decision of
15 the Trial Chamber for the International Criminal Tribunal for the former
16 Yugoslavia, "Decision on Defence Motion Seeking Clarification of the
17 Trial Chamber's Objective in its Questions Addressed to Witnesses." It's
18 a decision dated the 4th of February, 2005. It is, in fact, a decision
19 which is against my present submission. It is a decision which supports
20 the principle of orality in its fullest sense and the liberty of Judges
21 to ask questions in the fullest sense. So I draw that decision to the
22 attention of your Honours because I think that in a sense it would lay
23 the picture that there is, in essence, nothing wrong with the question
24 which was put by your Honours.

25 I measure that against a comment made by Judge Fulford in the

1 other Chamber of the International Criminal Court, and that is a comment
2 which we may be -- found reproduced in a public motion and that motion
3 is: (Interpretation) "Application With a View to the Applicable
4 Principles for the Questions Raised -- or Questions put to the Witness by
5 the Judge of the 15th of January, 2010."

6 (In English) (Previous translation continues) ... Judge Fulford
7 says, but simply indicate that there is a view expressed there by that
8 learned Judge to the effect that where an issue is strongly contentious
9 it would be better to leave or preferable to leave such an issue to the
10 advocates for the parties rather than for the Judge to analyse the
11 details themselves through Judges' questions.

12 (Defence counsel confer)

13 MR. O'SHEA: Just for the assistance of all concerned I give the
14 filing number of the comment of Judge Fulford. It's
15 ICC-01/04-01/06-2252, and it's paragraph 2.

16 I support Judge Fulford's comment with the Appeals Chamber
17 decision in the (interpretation) "Ruling Relative to the Appeal Made by
18 the Prosecutor and the Defence Against the Decision on Victims
19 Participation issued on the 18th of January, 2008, by the Trial Chamber."

20 (In English) And without quoting any specific parts of that
21 decision, I refer your Honours to paragraphs 93, 100, and 104. The
22 number of that appeal decision is ICC-01/04-01/06-1432.

23 I don't take it further than that other than to suggest, your
24 Honours, that in the determination of the fairness of the proceedings
25 your Honours might wish to consider whether it would not be appropriate

1 to refrain from relying on the specific answers relating to the presence
2 of the accused elicited by the question of your Honour, Judge President,
3 albeit that those answers are of a hearsay nature and of a limited
4 nature. They do, as I say, relate to a matter which has not been raised
5 by any party in this Court. Otherwise, I raise this matter with a view
6 to flagging it up simply so that we are aware perhaps of the possible
7 dangers of being too liberal with regard to questions on matters of which
8 there is on one hand no notice and on the other hand which have not been
9 elicited by the parties or the witness himself. And I say all this with
10 the greatest of respect, of course.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
12 Counsel O'Shea.

13 I would just ask for a moment to be able to discuss this with the
14 other Judges.

15 (Trial Chamber confers)

16 PRESIDING JUDGE COTTE: (Interpretation) Counsel O'Shea, the
17 Court thinks that it was very well expressed yesterday, that it expressed
18 itself very well yesterday. The questions that it asked did not go into
19 everything that the witness had been able to see and hear on the 24th of
20 February, 2003. The Court only had the concern in the questions that it
21 put to inform itself of what the prejudice mentioned by the Defence could
22 be, the reality of this prejudice, its nature, and its importance. As
23 I've already indicated, we have to glean the maximum amount of
24 information. We've obtained information from your two Defence teams,
25 we've also done that from the Prosecutor, and also from the Legal

1 Representatives of the Victims. But on the contentious point, we think
2 that it's important to try to obtain more from this witness in order to
3 be able to today issue a useful decision, not with a view to satisfying
4 any particular party, but with a view to implementing a fair procedure
5 and that is what we all want, a fair trial.

6 The Chamber would also like to recall that in the decision of the
7 1st of December, 2009, it recognised the right to ask questions freely.
8 The questions asked yesterday did respond to precise objectives. The two
9 Defence teams today are able to proceed with cross-examination from now
10 with regard to the answers brought by the witnesses -- to the witness to
11 the questions put to him by the Court. And if it so wishes, then it will
12 assess with regards to the unexpected remarks made by the witness while
13 they did not do so, I think in October I think it was, of 2006. Now, the
14 Court has recognised the possibility to investigate, both in terms of
15 these new comments that were made as well as with regards to the answers
16 to the questions and which are in a straight line with these previous
17 words, because we are trying all to better inform ourselves and also be
18 able to better measure the prejudice that you allege.

19 Now, we think that in the case in point the rights of the Defence
20 have really been scrupulously respected because this is our objective.
21 So we will state -- now, we really have listened to you. We would like
22 to thank you for the decision which you have said yourself that perhaps
23 it didn't perhaps serve your interests but you wanted to draw our
24 attention to it. And we are going to now go into the cross-examination,
25 if you don't mind, everybody having in front of their eyes the decision

1 which was issued, the -- which shall order our debate with regards to
2 Witness 161 in the coming days and perhaps somewhat later, if there has
3 to be a re-call of this witness. Because one, just as the other, we've
4 said to you on the other day, we said perhaps you consider that there
5 won't be a need for a re-call, we don't know yet. And that is why we
6 would like to know on the 3rd of May where you are.

7 Prosecutor. Prosecutor, we're not trying to go into too much of
8 a debate which will delay the cross-examination, but go ahead.

9 MS. DARQUES-LANE: (Interpretation) Yes, I'd like to take the
10 floor not to continue this debate but just to make a comment with regards
11 to the reception of documents which the Defence wanted to use in the
12 cross-examination today. We want to draw the attention of the Chamber to
13 the fact that we have received these documents, seven of them, we
14 received them at 11.52 today. So we would like to recall -- remind the
15 Defence that there is a three-day dead-line when it comes to providing us
16 with documentation which until today we have never seen; and furthermore,
17 we would have liked to draw the attention of the Bench to one of these
18 documents in particular, which is the document which finishes with 0080.

19 PRESIDING JUDGE COTTE: (Interpretation) The Chamber has certain
20 difficulties because unless it is mistaken the Defence of Germain Katanga
21 addressed several messages indicating the evidence which it would use
22 successively. So you are referring, Prosecutor, to what message?

23 MS. DARQUES-LANE: (Interpretation) To the message of this
24 morning, or rather, this midday, 4th of March, seven documents --

25 JUDGE COTTE: (Interpretation) Apparently personally I don't

1 have this. I have a message of the 2nd of March. I should have a
2 message of the 1st of March with six documents. I have a message of the
3 3rd of March, but I do not think that I've received a message on the 4th
4 of March, which as far as we're concerned -- well, I wouldn't say that
5 resolves the question -- well, one thing is certain, you have the feeling
6 and more than the feeling, and you are denouncing the fact that documents
7 which are going to be produced come to you late without you having the
8 sufficient time in order to examine them simply with regard to this point
9 is were there difficulties within the Katanga team to transmit within
10 reasonable dead-lines which have been set in a decision of the 1st of
11 December these documents which were intended to produce. Just clarify
12 that before we start.

13 MR. HOOPER: Thank you, Mr. President. The documents that my
14 friend refers to are in fact a series of photographs. The photographs
15 were taken yesterday in Bogoro. Now, we got them yesterday and
16 Ms. Menegon did her best to get them on to ringtail last night but she
17 couldn't because the system is very slow in terms of getting information
18 on. And so she started early today, and she was able to get them and
19 convey them to my friend. So these aren't the kind of documents that are
20 a grande surprise for anyone because they're of their nature photographs.
21 They're not the kind of matter that's going to take a lot of homework,
22 you look at them or you don't look at them. Whether I refer to them in
23 the course of my cross-examination isn't entirely decided yet. I may do
24 so. As I say, they were only taken yesterday by the person of resource.

25 MS. DARQUES-LANE: (Interpretation) Your Honour.

1 PRESIDING JUDGE COTTE: (Interpretation) Just to try and find
2 where we are without losing too much time. I do have a document which
3 speaks of six photographs, this one.

4 MS. DARQUES-LANE: (Interpretation) I don't think so, your
5 Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) So it's a subsequent
7 document which contains photographs received yesterday which was
8 difficult to put into ringtail.

9 Counsel Hooper, do you intend to use today all the latest
10 photographs, the ones that just came in this morning? Does -- do you
11 intend to use other documents which would make it possible for the Office
12 of the Prosecutor to calmly be able to view these documents? Because
13 apparently the documents or photographs which you intended to produce
14 came successively. Do you intend to today use the documents which have
15 already been received for a while or those which -- because those who,
16 for example, only came today might only be used on Monday, but what basis
17 do you intend to work on?

18 MR. HOOPER: Well, the earlier documents were put in because we
19 didn't know where the witness lived, and that was only elicited yesterday
20 at the close of his evidence in chief. These other photographs we put in
21 last night because they, we think, perhaps help serve, identify where
22 this witness was and perhaps we might be able to identify where he was
23 hiding. Now, all this has a significance for the future because as you
24 know, apart from the general nature of his evidence, we've also asked
25 this Court, you the Judges, to go and visit the locus in quo, to go and

1 visit Bogoro itself. We think this is an essential step in your
2 acquiring an overview of the case.

3 So for that purpose also when parties speak, when witnesses speak
4 of a particular location that may be relevant, it becomes even more
5 important that we can accurately identify that. So that in the event of
6 there being a visit, a mission, by you the Judges, to Bogoro, we can go
7 and see for ourselves and you can go and see for yourselves where these
8 places and localities are.

9 So it's with that in mind -- and bearing in mind this is not
10 something the Prosecution themselves has led us to. We don't know at the
11 end of this witness's examination-in-chief exactly where his house was or
12 exactly where he was hiding. We have a mark on a photograph, and I will
13 be exploring that with the witness this afternoon exactly what it
14 represents, because there's no house there as we can see so we need to
15 explore that, and that's the purpose of these very lately obtained
16 photographs. It's part of the obvious difficulties we've been confronted
17 with when we turned our directions, of course, to questioning the nature
18 of his evidence and the accuracy of his evidence.

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

21 Prosecutor, where it concerns the photographs, I do think that we
22 can continue our proceedings in the cross-examination. Each of the
23 photographs will be presented, and when we have the presentation
24 everybody will be able to make an objection. The Court does admit that
25 it is infinitely preferable to be able to communicate in time-frames or

1 dead-lines, which means everybody can form an opinion before the hearing.
2 Apparently it wasn't the case yesterday for reasons related to perhaps
3 technical reasons, perhaps reasons related to the delay in transmitting
4 these photographs, but we have to make progress. Are you in agreement
5 with that?

6 MS. DARQUES-LANE: (Interpretation) I am perfectly in agreement
7 and I understand that things were done at the last minute. My colleague
8 could have notified us yesterday. It's clear, however, the only thing
9 which I wanted to highlight is that the photo number 0080, there is a
10 panel with a text in Swahili -- a placard with a text in Swahili. And we
11 would submit that the late transmission of this document means that we
12 haven't been able to translate this sign or notice or placard, and we
13 consider that it shouldn't be submitted to the witness.

14 Furthermore, we consider that this photo will not help at all to
15 establish the location of the residence of the witness. That is all.

16 PRESIDING JUDGE COTTE: (Interpretation) So we're going to try
17 and close this difficulty rather than incident. It is certain that for
18 the balance of the proceedings communication has to be done sufficiently
19 early and also with regard to the Chamber as well because of reasons I
20 don't know, but I know that I do not have myself the -- of documents.
21 I'm not sure that my two colleagues have them which apparently came at
22 midday. So with regards to strict information, there's something which
23 isn't going right, so we will improve. We're all going to ensure that
24 things improve. It would be wise for the photograph which the
25 Prosecutor's just spoken about and which has a text in Swahili not be

1 used today. Apparently, you have a certain number of filings which you
2 intend to submit which should make it possible to carry out the
3 cross-examination in conditions which are decent for the three hours of
4 the hearing that remain.

5 Can we consider that the translation can be done,
6 Madam Court Officer, by some of our interpreters or translators? I do
7 not know whether we have Swahili translators, but we have at least the
8 interpreters so that tomorrow when that photograph is going to be
9 presented each person should know what the writing means.

10 Mr. Hooper, we are going quickly so as to close this discussion.

11 MR. HOOPER: I'll pass out the photograph, and your Honour will
12 see that it's really a mountain being made out of a molehill here, I'm
13 afraid.

14 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, everyone is
15 trying to put things in perspective. The issue of the time-frame is a
16 problem that we have to be very careful about. There could have been a
17 delay in the transmission and maybe the documents were sent to the three
18 Judges, but the problem here is just the photograph in which there is
19 Swahili writing. It can be translated for Monday.

20 MR. HOOPER: (Previous translation continues) ... the
21 photographs. Can your Honour be shown them, please. I've handed them
22 out for the Judges to see. So it's one of those NGO signs you get
23 whenever there is a fountain created, and it says "this is clean water,"
24 "... une bonne santa," a helpful Swahili speaker has interpreted.

25 PRESIDING JUDGE COTTE: (Interpretation) Is this the photograph

1 you are talking about where there is the sign board, Madam Prosecutor?
2 In that case I think after the break, after that photograph would have
3 been shown to one of our sworn interpreters, that interpreter can tell us
4 what is written on that sign board and everything will be fine.

5 Madam Court Officer, during the break I do not think we should
6 disturb too much the break of our Swahili interpreters. We are not going
7 to do that given the size of the sign board. Everything has understood.

8 So, Mr. Hooper, you can proceed, but before that we are going to
9 have to bring in the witness. This was simply preliminary to the
10 cross-examination.

11 MR. HOOPER: (Previous translation continues) ... I might reach
12 this point very early on. We have another photograph of the source
13 without the board which hasn't been distributed, but I'll refer the
14 witness to that if that is easier if we have a copy.

15 PRESIDING JUDGE COTTE: (Interpretation) That would be the best,
16 Mr. Hooper.

17 (The witness takes the stand)

18 PRESIDING JUDGE COTTE: (Interpretation) Good afternoon,
19 Mr. Witness.

20 THE WITNESS: (Interpretation) Good afternoon.

21 PRESIDING JUDGE COTTE: (Interpretation) So you can hear me
22 well. We are meeting again today. It will be the Defence teams that
23 will carry out what we refer to as a cross-examination. They will simply
24 put questions to you and you will answer as you have been doing so far
25 frankly, and you will speak loudly and particularly very slowly.

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 20

1 Mr. Hooper, it is your turn.

2 THE WITNESS: WITNESS P-0161 (Resumed)

3 (Witness answered through interpreter)

4 Questioned by Mr. Hooper:

5 Q. Good afternoon, Mr. Witness.

6 A. Good afternoon.

7 Q. I think we may have met in Bogoro; would that be right?

8 A. I do not think so. I do not recognise you.

9 Q. Well, I was shown round on a visit in December of 2008 by a very
10 kind gentleman who pointed out various things around the Bogoro Institute
11 to me. But as far as you recall, that's not you. You can't remember?
12 Or I may be wrong, you see.

13 A. Maybe it is me, but I believe I have forgotten you.

14 Q. Well, I've -- I'm very poor at recognising people, so it's
15 probably my mistake rather than yours.

16 Now, let me ask you, in the course of your evidence you told us
17 about the man in the white shirt who was shouting out to people who were
18 killing civilians, "Don't kill the civilians." Do you remember telling
19 us that?

20 A. Yes.

21 Q. Now, I see from the statement you made to the Office of the
22 Prosecution that you recognised that that man spoke in what you thought
23 was Congolese Swahili; is that right?

24 A. Yes.

25 Q. And so what did that lead you to believe insofar as where this

1 man may have come from?

2 A. I was not able to know that. Many people had come there and
3 people were fleeing. All I saw was one person wearing a white shirt in
4 the camp, but I wasn't able to identify those people.

5 Q. And this man had a whistle and was using it to attract people's
6 attention; is that right?

7 A. Yes. He said, "Do not kill the civilians. Go back to where you
8 are coming from."

9 Q. Very well. Thank you. And he was ignored, but despite the fact
10 he was ignored it would be fair to say that he seemed to you to be a
11 person in authority, did he not?

12 A. I wouldn't be able to know that. I had come from about a
13 kilometre, and I saw him wearing a white shirt and he was standing in the
14 camp. He was a slender gentleman.

15 Q. Now, yesterday you told us that you know Germain Katanga. You
16 said, "I know Germain Katanga very well and he knows me." And you added,
17 "Germain Katanga knows me from when I was," and you gave a function you
18 were doing. I'm not going to repeat it because we're in open session,
19 you see, and if I say you were -- doing something, people might realise
20 who you were. So I'm going to skip that. You know what your function
21 was you described. You say, "Germain Katanga knows me from when I was,"
22 doing such and such, "at Bavi and" when I was doing the same thing "in
23 Soke and Kagaba." Now, when was that, when do you say that was?

24 A. I did not say that I used to converse with him. I was passing
25 through (Expunged)

1 (Expunged) even sometimes we
2 would even go hunting. We used to hunt wild animals and those people
3 know me very well.

4 Q. Well, when was this? What year was this that you're talking
5 about?

6 A. It was before the war, well before the war.

7 Q. Well, what year would that be?

8 A. We did not stay at one place. We went to Bavi, Kagaba, and we
9 were not fighting against each other. It is only after the war broke out
10 that we had problems, otherwise before that we visited each other and the
11 people even spent the night in other people's houses. The problems began
12 in 1992 (as interpreted). It was during that year that the killings
13 began. People started killing each other.

14 Q. Now, what you've just said has been interpreted to me as "1992."
15 Did you mean 1992? 1992 is 20 years ago almost. What year are you
16 talking about?

17 A. No. It was not 1992. I said "2003."

18 Q. Now, I know it's not easy sitting there and I know you've
19 suffered grievously, and you're having to talk about those events. Just
20 try and -- just think about your answer there. You see I'm asking you:
21 Well, when did you meet Germain Katanga? And you say it was when you
22 were able to move about before the war. So I've asked you: Well, when
23 do you say that was? Now, it's not 2003, is it, because that's after the
24 war. It's not 2002 because that's after the war. And it's probably not
25 2001 either because we know that there was problems then and even before

1 then. So when do you say you were visiting Bavi and Kagaba and had the
2 opportunity to know Germain Katanga? Can you help me.

3 A. What I'm saying is this, and you will understand. When it is
4 said that there is someone somewhere, he knows me and he knows that I am
5 from (Expunged). He knows that locality and he knows it very well.
6 Sometimes we went to hunt wild animals in the company of Ngitis in the
7 forest and they know me well. They know the people of my family. We are
8 people from (Expunged). How is it possible for him not
9 to know me?

10 Q. Now, we're not concerned about whether he knows you, it's whether
11 you know him. So we're talking about a time before the war. Now, you
12 tell us, please, where and when you say you met Germain Katanga and what
13 he was doing, please.

14 A. I did not say that he came to work. I was a villager. I went to
15 my place of work. (Expunged). I went --
16 I -- in fact, I didn't say that he was carrying out any particular
17 activity.

18 Q. Well, how did you meet him -- let me ask you this: How old was
19 he at the time when you met him?

20 A. That is not it. (Expunged)
21 (Expunged)
22 (Expunged). It is possible for
23 him to recognise me, but I did not meet him to discuss with him.
24 Nevertheless, we know each other. He knows that I come from such and
25 such a village, and I also know that he comes from that particular

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 24

1 village. (Expunged).

2 Q. So which village does he come from do you say?

3 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor.

4 MS. DARQUES-LANE: (Interpretation) I'm sorry to interrupt my
5 learned friend. Maybe it would be preferable to go into private session
6 given the answers that the witness is giving.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes, you're correct,
8 Madam Prosecutor. We should go back into private session briefly, and we
9 have to be vigilant to come back to open session as soon as possible.

10 Madam Court Officer.

11 MR. HOOPER: Can I say that my question is in fact an
12 open-session question. It's not a -- I didn't ask him which village he
13 came from. I've asked him where Germain Katanga comes from. And may I
14 say we're so often in closed session that no one can possibly follow this
15 case, and obviously you're very much in our hands, I recognise that,
16 Mr. President, but as far as possible - and there will be slips
17 inevitably from both of us - I'll try to meander a course, with the help
18 of the witness of course, where we won't reveal anything that identifies
19 him.

20 May I also point out that this witness's image is being televised
21 as I understand it. He hasn't asked for his face to be occluded in any
22 way, so anyone sitting in Bunia today watching the television there will
23 see it or Bogoro. I hope he appreciates that because I was a bit
24 surprised that we had this situation where he's on a pseudonym, so we
25 don't know his name, and we're all skirting around this issue of his

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 25

1 identity, but his image is being -- is going around the world. So you're
2 famous, sir. But certainly your image is going around the world and
3 anyone who knows you, of course, can recognise you. So it's a strange
4 situation.

5 And perhaps in those circumstances, though, and this is the
6 point, we needn't be quite so circumspect about some, perhaps, personal
7 matters.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, you were
9 interrupted and that is indeed unpleasant, but at the same time barely
10 five minutes ago you said that the witness should not give his
11 occupation. Are we in private session? Yes, you said that he should not
12 tell his occupation, but immediately he talked about his activities with
13 (Expunged). So you
14 have to strike a balance between the fact that this witness did not
15 benefit from particular protection measures in the courtroom, but we
16 should avoid focusing too much on certain aspects. Some of the questions
17 that you asked, of course it is true, can be asked in open session; but I
18 had the impression that we were at the very edge.

19 So, Court Officer, are we in private session or open session?

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

21 PRESIDING JUDGE COTTE: (Interpretation) So, Mr. Hooper, you can
22 ask your questions, but please be very vigilant. Please proceed.

23 Mr. Witness, Judge Diarra has quite correctly asked me to remind
24 you that we are in open session and that you should also try to be
25 careful and not give any names that might make it possible to identify

1 people that you think might be very close to you.

2 Mr. Hooper, please proceed.

3 MR. HOOPER:

4 Q. So I was asking which village he came from, Germain Katanga.

5 A. I cannot know that. He came and built a house. He knows that
6 I'm a Hema and I know that he's Ngiti, so I know him well.

7 Q. Where did he build the house?

8 A. That's not a question. How can I know where he built? I
9 actually said that I build a house somewhere.

10 Q. All right. So you don't know the village he comes from, and I
11 must have misunderstood what you said about the house. And when you met
12 him, how old was he?

13 A. I did not say that I met him. How would I have met him? What I
14 said is that he can recognise me because (Expunged)

15 (Expunged)

16 but I did not meet him. I heard about Germain Katanga during the war
17 because it was being said that he was coming to exterminate people in
18 Bogoro.

19 Q. Very well. So would it be right to say not only did you never
20 meet him but before the war you had never heard about him; is that right?

21 A. Can you kindly repeat your question? Please remind me of what he
22 was doing before the war.

23 Q. Let me ask you this question: Is it right to say before the war
24 you'd never heard of Germain Katanga?

25 A. No, I had not heard of him before the war.

1 Q. And you never met him during the war either; is that right?

2 A. But if I had met him during the war he would have killed me. It
3 was only after the war that I heard people talking about him. It was
4 being said that Germain Katanga had come to kill the people of Bogoro.
5 He's from Bavi and I heard about him.

6 Q. All right. Now, do you remember you were telling us yesterday,
7 Mr. Witness, about previous attacks on Bogoro, and I'm going to just
8 spend a few moments asking you some questions about that. And before I
9 do so, and this is no criticism of you at all, but would it be fair to
10 say that you're not very good on dates, you know, telling us which year
11 such and such a thing happened? Would that be fair to say?

12 A. What do you mean by that, counsel? I didn't quite understand
13 your question.

14 Q. Would it be fair to say you're not very strong on dates, on
15 knowing exactly when things happened?

16 A. When you speak about what happened, what do you mean by that? In
17 2003 I know there was a battle in Bogoro. What other events are you
18 talking about, sir?

19 Q. Well, let's make -- I'll make something very clear. On the 24th
20 of February there was an attack on Bogoro, and during that attack, sir,
21 you lost very many members of your family who were cruelly murdered. I
22 accept that, all right, I'm not disputing that. I'm asking you, though,
23 about earlier attacks. Would it be fair to say, for example, the first
24 attack took place in 2001? Do you remember that attack?

25 A. Yes, I remember.

1 Q. And do you remember that that attack took place and was an attack
2 composed largely by people from Katonie up the road to Bunia; is that
3 right?

4 A. In 2001 I would say that there were several groups. There were
5 several groups who came from several different places. We were at home
6 in our house, and we were surprised. And the different groups came from
7 different places.

8 Q. Do you remember that it was triggered by the Ugandans using
9 helicopters to attack the local Lendu people? Do you remember that?

10 A. When the Ugandans used helicopters to attack the Lendu people, I
11 was running away to Bunia. I was in Bunia. We had run away and we went
12 to Bunia.

13 Q. Now, yesterday you were asked about the attack in 2002. My
14 friend, the Prosecutor, quite mistakenly, I know, led you to say that
15 that -- talk about an -- Lopondo, do you remember when Lopondo fell? I'm
16 going to ask you about that attack when Lopondo fell.

17 Now, isn't it right that Bogoro was attacked by APC soldiers who
18 were trying to get back to join the Governor Lopondo up in Songolo, do
19 you remember that attack in August of 2002?

20 A. Yes, I remember.

21 Q. And is it right to say that there were many attacks on Bogoro
22 over those two years?

23 A. The first time the battle was not very intensive, the second time
24 it was a more intensive battle, as well as the third and fourth times it
25 became worse, it became more intensive each time. They attacked four

1 times.

2 Q. And we've heard that in addition to those four attacks there were
3 other attacks as well on the area; is that right?

4 A. I don't remember the dates, but I can tell you that Bogoro was
5 attacked four times. I was not able to note down the dates, but I
6 remember very well -- I remember the battle that took place on February
7 24th, 2003.

8 Q. I know you do. Can I ask you, prior to the attack on February
9 the 24th, 2003, what can you tell us about attacks by the UPC on the
10 Lendu and the Ngiti living locally? What do you know about that, sir?

11 A. I can't give you any details. I don't know. It was the Ngitis
12 that attacked UPC soldiers. It was the Ngitis who attacked the UPC
13 members in Bogoro. Now, if we say that the UPC members attacked the
14 Ngiti, why is it that they were not able to chase out the Ngitis so that
15 the Hema would stay there in that territory?

16 Q. You see, you were living in Bogoro during this time and I'm
17 asking you: Isn't it not right that the UPC used to attack Lendu and
18 Ngiti people and kill and hurt them; is that right?

19 MR. GARCIA: (Interpretation) Your Honour, I believe that this
20 is the second time that the same question is put to the witness. He has
21 answered relatively clearly. I don't want to interrupt my colleague's
22 cross-examination, but I think he should put another question to the
23 witness.

24 PRESIDING JUDGE COTTE: (Interpretation) You may repeat the
25 question but the very last time. Given the answer that was given to the

1 previous question, repeat the question and that's it, please.

2 MR. HOOPER: Let me ask another question, a different question.

3 Q. When the Hema militia, the UPC, took over Bunia in August and
4 again in May of 2003, didn't they adopt a policy of ethnic cleansing to
5 empty the town of its Lendu and Bira people? Did you hear anything about
6 that or know anything about that, that's what the UPC were doing down the
7 road in Bunia at that time? Did you -- do you know anything about that?
8 Did you hear anything about that?

9 MR. GARCIA: (Interpretation) I'm very sorry to interrupt again.
10 I see that Mr. Hooper has reformulated his question, but then the issue
11 is to know whether the witness knew or had any knowledge as to what the
12 UPC or the philosophy of the UPC, it's --

13 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, you may
14 reformulate the question because in this last reformulation there was a
15 reference to ethnic cleansing, and you must reformulate the question
16 regarding that -- starting with that aspect. And please do avoid leading
17 the witness, in particular in areas where the witness is perhaps not able
18 to respond. So please reformulate and then we shall proceed, Mr. Hooper.

19 MR. HOOPER: May I say I accept that the witness can obviously
20 say: I know nothing about that at all, or he can say: I heard something
21 about it. It's up -- it's clearly within what he can say. I'm merely
22 reading from the Secretary-General's letter to the Security Council dated
23 July 2004.

24 Q. Did you hear anything after the UPC seized Bunia about the UPC
25 ethnically cleansing Bunia and chasing out the other ethnic groups? I

1 know you were in Bogoro. Did you hear anything about that at all?

2 A. Well, this is my answer: I am here before this Court to testify
3 about what happened in Bogoro. I was not a member of the UPC. I am not
4 a witness for the UPC.

5 Q. All right. Well, let me ask this final question perhaps or
6 penultimate question. In the same letter from the Secretary-General to
7 the Security Council he refers to --

8 MR. GARCIA: (No interpretation)

9 PRESIDING JUDGE COTTE: (Interpretation) No, I'm afraid we
10 cannot interrupt again. I would like to speak to the witness.

11 Witness, sir, can you hear me speaking to you?

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

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, very much.
14 You have just stated:

15 "I am here before this Court to testify about what happened in
16 Bogoro," and indeed that is quite true. Some questions that are being
17 put to you and that will be put to you later on might seem a bit distant
18 from what you yourself experienced on February 24th, 2004, in Bogoro, but
19 these questions can be of importance in order to ascertain the truth
20 which is what we are all endeavouring to do. Therefore, either you know
21 the answer and you respond even though these questions may seem unrelated
22 to what happened on February 24th where you have a clear memory or you
23 don't know at all and you say so, but please don't be surprised by some
24 questions which may seem to you a bit far from the subject.

25 Mr. Prosecutor.

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 32

1 MR. GARCIA: (Interpretation) Your Honour, if I may. The
2 problem is not so much the question, but it's the way Mr. Hooper is
3 asking the question. He's referring to a document, a letter from the
4 Secretary-General of the Security Council, and that's the problem. You
5 cannot use a document that comes from a third party to cross-examine a
6 witness, and in particular because you might lead him into making an
7 error. If Mr. Hooper wants to ask him a question about the philosophy of
8 the UPC or what the Hema did in Bogoro -- in Bunia at a particular
9 time -- but he cannot ask a question to the witness with a document in
10 hand in order to try to lead the witness into saying something that may
11 be incorrect or to lead him in a certain way.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
13 We've heard your comment.

14 Mr. Hooper, would you be so kind as to reformulate your question.
15 I think you need to set aside the document. It is, no doubt, possible to
16 obtain what you're looking for from the witness without having to mention
17 this document. Could you please avoid formulating the questions in such
18 a way and in -- that you lead the Prosecution to have to object, which
19 they have done rightly so thus far, and perhaps also to avoid the witness
20 being uncomfortable and not understanding the proceedings. It is
21 important that he do so.

22 Go ahead, Mr. Hooper.

23 MR. HOOPER:

24 Q. Did you hear anything about UPC attacks on Lendu or Ngiti
25 villages?

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 33

1 A. I beg your pardon, I was not a member of the UPC. I was not a
2 soldier in the UPC, and I don't want to speak about or testify about the
3 UPC.

4 PRESIDING JUDGE COTTE: (Interpretation) But at the same time,
5 Witness, and you have told us on several occasions, that you did want to
6 contribute to the work of the Court in good faith with the best of will
7 and in a very frank fashion. And you've also taken an oath to say the
8 truth, the whole truth, and nothing but the truth. And we understand
9 that this is a very demanding exercise. Again, you cannot respond that
10 you don't want to respond. Either you know the answer and you say so or
11 you do not know the answer and you say "I don't know," or you don't
12 remember, in which case you say "I don't remember." But you must respond
13 to the questions that are put to you. Thank you very much, Mr. Witness.

14 Go ahead, Mr. Hooper.

15 MR. HOOPER:

16 Q. Let me ask you another question. While you were in Bogoro,
17 Mr. Witness, did you notice any attacks by the UPC from Bogoro on Zumbe?
18 Did you notice -- hear any shots, for example, anything like that ?

19 A. When you talk about the UPC, are you talking about the Ugandans
20 or other people?

21 Q. Well, you've told us about the UPC and how they took up a camp in
22 the Bogoro institute -- around the Bogoro Institute. So that's the
23 UPC -- or part of the UPC, and I'm asking you: Were you aware at any
24 time they were occasionally attacking Zumbe or Lagura or Lakpa or Songolo
25 or other places like that? Did you ever -- were you ever aware of that?

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 34

1 A. I heard about it. I heard about it.

2 Q. Would it be right to say that there were many attacks launched,
3 for example, from Bogoro against neighbouring villages? Did you hear
4 about that?

5 A. Do you mean in Lendu territory or Ngiti territory because we live
6 in between the Lendu and the Ngiti. We're in the middle between those
7 two ethnic groups.

8 Q. Attacks against both.

9 A. When you refer to both sides, I can't give you a precise answer.
10 If you give me something precise, I can give you a precise answer
11 depending on what's in your question.

12 Q. Let me move on to the attack on the 24th of February, 2003. As
13 you know, Witness, we have a list of those who were killed from your
14 family, and we well understand your grief and loss. And it must have
15 been a truly shocking, shocking day for you. And I'm sorry that I have
16 to go over some aspects of your story, and if you ever want to take a
17 break you let His Honour know and we will. I'm not here to upset you at
18 all. All right. I think we can all well imagine what it must be like to
19 lose one member of our family, let alone as many as you did that day.
20 And for you it starts at 5.00 that morning when you're awoken by the
21 sound of gun-fire; is that right?

22 I think that may have been an answer. Let me just repeat the
23 question. It starts for you at 5.00 in the morning when you wake up to
24 the sound of gun-fire; is that right?

25 A. Yes, that's correct.

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Mr. Hooper

Page 35

1 Q. And I see from your statement you're able to say it's 5.00
2 because you looked at your watch when you woke up; is that right?

3 A. That's correct.

4 Q. And this -- at this time in that house, as you've told us, was a
5 wife and several children; is that right?

6 A. The children were in a house and there were three wives. One of
7 my wives was -- well, her child was in the hospital and there were three
8 wives --

9 Q. It's my -- obviously my fault or my optimism that we could
10 perhaps go through this without going into closed session, and I think
11 we're going to have to go into closed session. And indeed this would be
12 the time I'd ask to go into closed session. I don't know if you want to
13 go into closed session now at five to. I'm entirely in your hands. I'm
14 quite ready to go on for five minutes.

15 PRESIDING JUDGE COTTE: (Interpretation) Well, I think it's time
16 in that case to have a break. This will enable the witness to rest and
17 then we will come back in the last two hours and you will be able to ask
18 the rest of your questions, Mr. Hooper.

19 Witness, thank you very much for your contribution during this
20 first part of the afternoon.

21 Could the Court Officer or the Usher please escort the witness
22 out of the courtroom, and before we actually rise I have some
23 housekeeping information to give you. But we shall sit again at 4.30.

24 (The witness stands down)

25 PRESIDING JUDGE COTTE: (Interpretation) We're in open session.

1 I wanted to indicate that next week we would only be sitting three days:
2 Monday, Tuesday, and Wednesday because one of the Judges will be on an
3 official mission for the Court -- in fact, that mission is going to take
4 longer than expected. So we will only be sitting Monday morning and
5 Tuesday morning. We will not be able to sit Wednesday, Thursday, Friday.
6 I wanted to inform you now because it's a bit late at 6.30 and you may
7 have to make other arrangements due to that change. And we will see
8 where Mr. Hooper is at the end of the day. If we believe that the two
9 hearings next week will be devoted to the witness, which is likely going
10 to be the case, that would mean that the next witness, 323, would only be
11 called the following week. So I wanted to inform you of these details
12 for professional reasons.

13 We shall rise now and be back at 4.30.

14 Recess taken at 3.56 p.m.

15 On resuming at 4.32 p.m.

16 COURT USHER: All rise.

17 PRESIDING JUDGE COTTE: (Interpretation) The Court is now in
18 session. Please be seated.

19 Before asking the witness to join us, the Court Officer, having
20 had the text which was on the sign in a photograph of Counsel Hooper's,
21 she is going to read this translation.

22 Court Officer, please read this aloud, this translation.

23 COURT OFFICER: (Interpretation) Thank you, your Honour. The
24 interpreters, the Swahili interpreters, have informed me that on the sign
25 in the photograph DRC-D02-001-0080 you can read the following. Written

1 in blue: "European Union 2007, drinking water for good health."
2 Furthermore, black writing saying: "Use your own containers to take
3 water. Don't do washing-up in it and don't bathe in it and don't play at
4 the spring. This is necessary to maintain the spring. Animals should
5 not have access to the spring."

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
7 Court Officer. That's now clear.

8 We are going to ask the Usher to bring the witness into the
9 courtroom.

10 (The witness takes the stand)

11 PRESIDING JUDGE COTTE: (Interpretation) Good afternoon,
12 Witness. Is everything working well? Good. You can hear me well. That
13 is perfect.

14 Counsel Hooper, you can therefore continue with your
15 cross-examination. We are listening to you.

16 MR. HOOPER: Thank you very much, Mr. President.

17 And can we go into closed session, please.

18 PRESIDING JUDGE COTTE: (Interpretation) We now, Court Officer,
19 are going to go into private session.

20 (Private session at 4.36 p.m.)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged).

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 38

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 38 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 39

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 39 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 40

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 40 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 41

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 41 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 42

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 42 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 43

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 43 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 44

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 44 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 45

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 45 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 46

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 46 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 47

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 47 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 48

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 48 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 49

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 49 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 50

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 50 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 51

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page 51 expunged - Private session

Witness: Witness P-0161 (Resumed)(Private Session)
Questioned by Mr. Hooper

Page 52

1 (Expunged)
2 (Expunged)
3 (Expunged)
4 (Expunged)
5 (Expunged)
6 (Expunged)
7 (Expunged)
8 (Expunged)
9 (Expunged)
10 (Expunged)
11 (Expunged)
12 (Expunged)
13 (Expunged)
14 (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged)
18 (Expunged)
19 (Expunged)
20 (Expunged)
21 (Expunged)
22 (Expunged)
23 (Expunged)

24 (Open session at 5.29 p.m.)

25 COURT OFFICER: (Interpretation) Mr. President, we are in open

Witness: Witness P-0161 (Resumed)(Open Session)
Questioned by Mr. Hooper

Page 53

1 session.

2 Mr. Hooper, before showing that photograph on the screen I would
3 like to know the confidentiality level of the document.

4 MR. HOOPER: Public.

5 COURT OFFICER: (Interpretation) In order to see this document
6 please press the button PC 1.

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

9 Mr. Hooper, you can continue. Is the photograph there? Yes.

10 We can see the photo on the screen. You may proceed, Mr. Hooper.

11 MR. HOOPER:

12 Q. So that's the start of the Waka river coming to you in a moment.
13 Can you see the photograph there? It's -- I hope it's on the screen,
14 Mr. Witness.

15 A. (No interpretation)

16 Q. All right.

17 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor --

18 MR. GARCIA: (Interpretation) Your Honour, I seem to remember
19 that when the question is to show a photograph to a witness, there is a
20 particular procedure that has been adopted by the Chamber, and this
21 procedure includes before suggesting where this picture was taken, there
22 should be a preliminary question asking the witness whether or not he
23 recognises the place because otherwise he may be led into making a
24 mistake. So I would like this procedure to be followed.

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

Witness: Witness P-0161 (Resumed)(Open Session)
Questioned by Mr. Hooper

Page 54

1 Well, having had numerous technical difficulties a few moments
2 ago, perhaps Mr. Hooper was slightly unconcentrated.

3 Would you be so kind, Mr. Hooper, to ask your questions in
4 keeping with the procedure that was determined, as the representative of
5 the Prosecution has just reminded us, and then the witness will answer
6 and continue the cross-examination as we all would like it to take place.

7 MR. HOOPER: Well, I understood he did answer the question and
8 I'll ask it again.

9 Q. Is that the source of the Waka river that you're looking at in
10 that photograph and do you recognise it?

11 MR. GARCIA: (No interpretation)

12 PRESIDING JUDGE COTTE: (Interpretation) Well, I don't think we
13 should make this last any longer than necessary, but you could have asked
14 the question in the form: What do you see in this picture before telling
15 him right away exactly what the photograph shows. I believe that this is
16 what the representative of the Prosecution intended.

17 MR. GARCIA: (Interpretation) Yes, I thought that Mr. Hooper was
18 going to reformulate his question.

19 PRESIDING JUDGE COTTE: (Interpretation) I'm certain that that
20 is exactly what he's going to do now, unless of course he prefers to go
21 on to another question. This is perhaps a little bit too formal, but we
22 do need to get ourselves into the right habits right from the start.

23 Mr. Hooper, please proceed.

24 MR. HOOPER:

25 Q. Do you recognise what's in the photograph?

Witness: Witness P-0161 (Resumed)(Open Session)
Questioned by Mr. Hooper

Page 55

1 A. Yes, I see water. It's the water of the Waka.

2 Q. Now, this photograph, let me tell you, was taken yesterday. I
3 was fortunate enough to be able to send someone along from Bunia to take
4 the photograph and it was sent here electronically, which is why we've
5 got it today. So -- and I mention that because of course that would be
6 the 3rd of March, and we're dealing with events, those sad and terrible
7 events that you confronted, of the 24th of February. And so it's about a
8 week difference in time of year. And so with that in mind, perhaps not
9 with this photograph but with subsequent photographs I'm going to show
10 you, I'm interested to know a little bit about the vegetation that we
11 see. Now, I'm going to show you now a series of photographs. I'm going
12 to show you three. If you have any difficulty recognising where they
13 are, I'll suggest where they are and you can help comment on that
14 suggestion.

15 So the first photograph I'm going to show you is
16 DRC-D02-001-0081 (sic), and after that 82, and after that 83. We don't
17 need to dwell on them very long. So the first one is 81, if we could
18 have that up on our screens.

19 PRESIDING JUDGE COTTE: (Interpretation) First of all, we need
20 to give a number to the previous photograph that was shown to the
21 witness. Is this going to be an MFI number or an EVD number for the
22 previous photo which you showed to the witness?

23 MR. HOOPER: (Previous translation continues) ...

24 MR. GARCIA: (Interpretation) Your Honour, if I may.

25 PRESIDING JUDGE COTTE: (Interpretation) Yes.

Witness: Witness P-0161 (Resumed)(Open Session)
Questioned by Mr. Hooper

Page 56

1 MR. GARCIA: (Interpretation) Again, as regards the photographs
2 to be shown to the witness, previously we gave MFI numbers to such
3 photographs, unless I'm mistaken, and the reason is because when
4 Mr. Hooper introduces information regarding the date when the photograph
5 was taken, we received this photograph this morning. And so therefore we
6 were not able to check that, and therefore I would like to request that
7 these pictures be given MFI numbers so that we can check these.

8 PRESIDING JUDGE COTTE: (Interpretation) Could you confirm that
9 indeed the previous photographs were given MFI numbers? In that case,
10 yes, then these photographs will be given MFI numbers and Mr. Hooper can
11 continue his cross-examination with the next photographs.

12 Please proceed, Mr. Hooper.

13 MR. HOOPER: Yes, I'm telling my friend as counsel that this
14 photograph was taken yesterday and I ask it to be an EVD number.

15 PRESIDING JUDGE COTTE: (Interpretation) Well, Mr. Hooper, we're
16 not going to go back on a discussion that took place previously.
17 Mr. Garcia has just stated that he received this photograph very recently
18 and that the decision that was taken was to give MFI numbers which are
19 temporary numbers, and therefore we will be giving MFI numbers. And that
20 of course if -- if it is so requested, given that the photograph was
21 taken at a particular date, the Prosecution has not had time to take a
22 similar photograph to check. And so for the time being we will give it
23 an MFI number, please, and later if you want you can present a new
24 photograph.

25 COURT OFFICER: (Interpretation) Thank you, your Honour. This

Witness: Witness P-0161 (Resumed)(Open Session)
Questioned by Mr. Hooper

Page 57

1 will be DRC-D02-0001-0080 will be given the following MFI number
2 MFI-D02-0015.

3 MR. HOOPER: Thank you very much.

4 Now, I can call for any photograph, can I? Very well. Can I
5 call for photograph 0082, please.

6 COURT OFFICER: Mr. Hooper, are all your photographs public
7 documents?

8 MR. HOOPER: Yes, they're all public.

9 Can we see that one and how do we get it to see it?

10 COURT OFFICER: (Interpretation) You must press PC 1 to see the
11 photograph.

12 MR. HOOPER:

13 Q. Now, do you recognise that spot?

14 A. Yes. It's the water of the Waka.

15 Q. Jolly good.

16 A. The stream.

17 Q. And -- now, as I've indicated, I understand this photograph was
18 taken yesterday, sir. Looking at the vegetation there, the grasses and
19 bushes, is that similar to how it was in February 2003 or not?

20 A. Yes, the vegetation was the same.

21 Q. Now, this might be a difficult question, it might even be a
22 question you can't answer, but tell me this: Looking at the place in
23 that photograph, how far would that be from where you and your wife were
24 hiding?

25 A. We were hiding upstream --

Witness: Witness P-0161 (Resumed)(Open Session)
Questioned by Mr. Hooper

Page 58

1 THE INTERPRETER: Correction:

2 THE WITNESS: (Interpretation) Downstream, downstream.

3 MR. HOOPER:

4 Q. So as far as you can judge, this photograph shows the Waka river
5 near the source; would that be right?

6 A. Yes, that's correct.

7 Q. And how far would you have been hiding with your wife from this
8 spot?

9 A. We were hiding downstream.

10 Q. Well, is that a -- what sort of distance would that be? And I
11 know distance isn't easy, some people are better at it than others. But,
12 for example, in terms of the length of a football pitch, you might be
13 familiar with that, how far from this spot would your hiding-place have
14 been, one football pitch, two, three, if that helps you; otherwise,
15 whatever you want to reply.

16 A. I would say about 1 kilometre.

17 Q. Now -- so a long way, about 15 minutes' walk away; would that be
18 right?

19 A. No, it's not 15 minutes on foot.

20 Q. So how far is it on foot?

21 A. From my house to the place where I was hiding --

22 Q. (Previous translation continues) ... asked you that and don't
23 tell us that at the moment. From the source of the Waka that we saw in
24 the photograph, carrying down that stream, how long a walk would it be
25 before we reached your hiding-place, from the source to the hiding-place?

1 A. It would take three minutes, three minutes on foot.

2 Q. Thank you very much. So hearing the firing, 5.00, waking up,
3 going outside, and then talking to your wife, and she and the children go
4 off to the hiding-place; is that right?

5 A. That's correct.

6 Q. And that's close to 5.00 in the morning; is that right?

7 A. That's correct.

8 Q. And how many children went with her?

9 A. There were some children who were born after the war. I had --
10 just, just a moment. I'm looking for a piece of paper where I wrote down
11 the number of children.

12 Q. Okay. Thank you very much. If you want to refresh your memory
13 from that --

14 (Expunged)

15 (Expunged)

16 Q. It's my fault. It's so easy to fall into this. You're naming
17 children. Let's not name the children because we're in open session and
18 that might lead people to see around your pseudonym, so let us rather --
19 just give us an approximate number of how many children went with your
20 wife to the hiding-place that morning, two, three, four, whatever it is.

21 A. There were eight of them.

22 Q. And later when you join your wife at the hiding-place, are they
23 all there still or not?

24 A. They had already gone away. They were running away. They
25 were -- they had separated.

1 Q. All right. Thank you for that. Anyway, they go off, your wife
2 goes off, and the eight children go with her. And then as I understand
3 your account a UPC soldier arrives; is that right?

4 A. Yes, yes. That's what happened.

5 Q. And you told us how he's come to get some milk and that he'd come
6 from the camp, and by "the camp," I understand you to mean the camp at
7 the Bogoro Institute; is that right?

8 A. (No interpretation)

9 Q. And how long after the firing started, the shooting started, how
10 long after you got up was it that the UPC soldier arrived?

11 A. Well, when I heard the sound of gun-fire I came out from where I
12 was and I said to my wife, "The situation is getting worse. Go and take
13 the children. Run away." And that's when I saw the UPC soldiers who
14 came to get milk. They were asking me, "Can you hear the gun-fire?" And
15 "the situation is deteriorating," they said, and I answered and I said,
16 "Yes, I heard that." They asked me how were they going to be able to get
17 back to the camp, the path has been blocked. And that's why they stayed
18 at my place and they followed the situation. And they said, "This is a
19 big army, a major -- they have heavy weapons, it's a weapon we don't
20 have. It's strange." So I said, "Well, I'll go to my farm and run away
21 with my cattle." And they said, "Well, look at the mountain, the
22 mountain is already surrounded." And they said, "How are we going to get
23 back to the camp?" And that's how they took the path that goes to the
24 Waka source, and they went to hide. I don't know where.

25 Q. Thank you very much. So you've sent your wife off with the

1 children. The UPC soldiers came and as I understand it quickly left in
2 order to get to safety. You don't try to get your cattle away, is that
3 right, you -- what do you do? The soldiers have gone. What do you do?

4 A. I waited. I wanted to get my cattle out. The cows were afraid
5 of the gun-fire and I wanted to get them out, and the people who were
6 fleeing saw me try to get the cattle free and they said, "What are you
7 doing here? Leave the cattle and let's go, let's run away." And that's
8 when I went down by the river to hide.

9 Q. I thought it was the UPC soldiers, before they left, who drew
10 your attention to how serious the situation was and told you not to try
11 to take your cattle. Wasn't that right? I thought that was what you
12 told us earlier, that it was the UPC soldiers who advised you that. What
13 do you say?

14 A. They said the following, "The attacker might find you here trying
15 to free your cattle. Leave the cows, leave them and run away, flee."
16 And at that time they were mixed and there were people in groups who were
17 running away.

18 Q. Just so I'm clear, I thought you told us it was the UPC soldier
19 who came to get the milk who told you - and the witness can answer, I'm
20 sure - who advised you to do that. What do you say?

21 MS. DARQUES-LANE: He's already answered the question.

22 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, you
23 had a comment?

24 MS. DARQUES-LANE: (Interpretation) Your Honour, I believe the
25 witness has already answered this question.

1 THE WITNESS: (Interpretation) Well, there were soldiers who
2 were running away.

3 PRESIDING JUDGE COTTE: (Interpretation) Just one moment,
4 please, Mr. Hooper, let me re-read the French transcript.

5 I believe that the question you just asked very recently the
6 witness answered: "There were people in groups who were running away."

7 Witness, the Chamber would like to know whether those people who
8 were running away in groups included both civilians from Bogoro and
9 soldiers from the UPC, were they mixed up in that respect? In other
10 words, were there soldiers and civilians in the group of people running
11 away? Could you be so kind as to answer that question which would enable
12 us to understand the answer to that question. And then we can go on to
13 other matters.

14 THE WITNESS: (Interpretation) Yes, yes, your Honour, I will
15 answer that question. It was when the soldiers who were at the institute
16 left. They didn't have any weapons left, they didn't have any
17 ammunition, and so they said, "Everyone has to find their own path to run
18 away." And so the people who were close to the soldiers ran away with
19 the soldiers, and others stayed in that location; and those who were
20 outside the building went along -- ran away with the soldiers. And some
21 of them were killed in spite of the presence of the soldiers amongst
22 them.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
24 But to be absolutely certain that the Court has understood, who told you,
25 "Leave your cattle and run away," was it a UPC soldier who had come to

1 get milk or was it the people, the group of people, who came and if I
2 understood correctly that group was composed both of soldiers and
3 civilians from Bogoro who were running away? Do you remember who exactly
4 told you, "Leave the cattle here and run away"?

5 THE WITNESS: (Interpretation) It was people from Bogoro who
6 said, "Don't -- here you are waiting to try to save your cattle. Don't
7 do that. Leave them here and run away," and that's when I ran away and I
8 went down by the river. People were in groups and they were running
9 away.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much. I
11 believe, Mr. Hooper, you may now proceed.

12 MR. HOOPER:

13 Q. You see, on the 26th of February - and I'm looking at page 34 for
14 those who have the transcript - you said, and you're talking about the
15 UPC soldier who came to get milk, and you asked him: "What am I going to
16 do?" And you said: "The cows were there at home. The soldier told me
17 that, 'you cannot take the cows. If you take the cows how are you going
18 to pass? We're already surrounded.'"

19 So is that what he told you or not?

20 A. When I said that -- well, I said, "I'm waiting." And they said,
21 "I'm looking for a way to run away because I can't go back to the camp.
22 I know that we're losing the battle." And so at that point in time he
23 ran away, he left me. And others who were running away came after him
24 and they said, "What are you doing here, sir? You're still here to try
25 and save your cows? Leave the cows and run away." Those were people

1 from Bogoro who said that to me. And as I was running away I was very
2 worried about the well-being of my family members, the one in the
3 hospital. And at the same time I had to run away and save my own life.

4 Q. All right. Now, when the UPC soldier was there who had initially
5 come for milk, you told us that he drew your attention to the fact that
6 you were surrounded and you looked, you told us, and you saw Ngiti on
7 Waka hill; is that right?

8 A. It happened in that way.

9 Q. And the Ngiti were saying, "Today is the day. Today they will
10 see."

11 Do you remember telling us that?

12 A. Exactly. That's what I said. There was noises coming from --
13 they were making noise from the hill.

14 Q. "Today is the today. Today they will see."

15 Now, can I ask you, can you say that to us in Ngiti, that phrase?

16 A. Do you want me to speak Ngiti? That's not my language. I prefer
17 to do it in Swahili. I heard what they said in the Ngiti language.

18 THE INTERPRETER: The interpreter states that the witness is
19 speaking in Ngiti.

20 THE WITNESS: (Interpretation) "Do not leave the Hema alive.
21 Kill the Hema."

22 That's the translation that I give of the sentence that I said in
23 Ngiti.

24 PRESIDING JUDGE COTTE: (Interpretation) I think you also heard,
25 Counsel Hooper, that the interpreter indicated a moment ago that the

1 witness was speaking in Ngiti, Kingiti; is that correct? You heard him
2 as well? Kingiti.

3 MR. HOOPER: Well, speaking in a language that I don't know if
4 the interpreter speaks or not.

5 Q. But can you say the phrase: "Today is the today. Today they
6 whether see," in Ngiti? That's all I'm asking you to do.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes, Prosecutor?

8 MR. GARCIA: (Interpretation) Just by way of clarification, I
9 don't know if we're asking the witness to say in that -- in that language
10 or to say that if he's able to do it. The question that I'm asking
11 Counsel Hooper, because if he wants him to speak, to say it in the Ngiti
12 language, then I think the question is inappropriate.

13 PRESIDING JUDGE COTTE: (Interpretation) You have to speak
14 slowly for the translation to work well.

15 (Trial Chamber confers)

16 THE WITNESS: (Interpretation) That happened --

17 JUDGE DIARRA: (Interpretation) Excuse me. I've got a
18 clarification to make to the debate. During his examination-in-chief the
19 witness stated in this courtroom that he understood perfectly Ngiti
20 because he had a wife from this ethnic group but that it wasn't his
21 language, he didn't speak it well. But he heard it, he understood it.

22 MR. HOOPER: And something may turn on the words used in Ngiti.

23 Q. And you speak Ngiti or do you. Can you say the phrase: "Today
24 is the day. Today they will see," in Ngiti, because we have people who
25 do speak Ngiti and then we can -- I can come and ask my question

1 supplementary. Thank you.

2 MR. GARCIA: (Interpretation) Your Honour, if the Chamber would
3 allow me. Once again I would like to reiterate what I said. The
4 question is inappropriate. We can't ask the witness to speak in another
5 language because this evidence, if it comes out, will be of no use to the
6 Chamber.

7 PRESIDING JUDGE COTTE: (Interpretation) It could be
8 interesting, taking into account what the witness said, to know if he is
9 able to satisfy the request of Counsel Hooper.

10 So ask your question again, that is to say -- well, I will allow
11 you to ask it, and the witness will either say: I'm not able to speak in
12 this language or he will speak in that language.

13 MR. HOOPER:

14 Q. It's just that phrase: "Today is the day. Today they will see."
15 Can you say it in Ngiti because it will be recorded for us, and then we
16 can -- is that possible? Can you say the phrase: "Today is the day.
17 Today they will see"?

18 A. (No interpretation)

19 THE INTERPRETER: The witness has spoken in Kingiti.

20 PRESIDING JUDGE COTTE: (Interpretation) The interpreter has
21 just said, I wanted everybody to note that, but the interpreter has just
22 said that the witness has replied in Kingiti. Are we in agreement?
23 Perhaps we can now go to another question as the -- Judge Diarra said.
24 The witness had allowed us to understand that he understood. We have
25 just seen that he is able to speak at least where it concerns the

1 sentence that Counsel Hooper wished to hear spoken in this language.

2 So now, Counsel Hooper.

3 MR. HOOPER: I understand he didn't speak in Ngiti. That's my
4 understanding.

5 But I'll move on and I can come back to a similar exercise so
6 that --

7 THE WITNESS: (Interpretation) I confirm that it was Kingiti.
8 What I just said was Kingiti. It's not another language. When I say
9 "Njo," that is Kingiti and that means in French "today," it's "today."

10 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

11 MS. DARQUES-LANE: (Interpretation) I don't want to go back to
12 this point, but as Judge Diarra said the question is to know whether he
13 understands, not speaks the language which is asked.

14 PRESIDING JUDGE COTTE: (Interpretation) We've all understood
15 that. He just added an additional clarification. He's able to speak it
16 as well. A question was asked. An answer has been given by the witness.
17 Not only does he understand the sentence in question, but he's also able
18 to speak in that language.

19 Counsel Hooper, please continue.

20 MR. HOOPER:

21 Q. So what is the position? Because I can see from your statement
22 that you said you can speak Hema and you can speak Swahili. Can you also
23 speak Ngiti?

24 A. I have not understood your question. Do you want to ask me
25 again?

Witness: Witness P-0161 (Resumed)(Open Session)
Questioned by Mr. Hooper

Page 68

1 Q. I can see that you've previously stated that you speak Hema and
2 Swahili, and I'm asking you today: Do you also speak Ngititi or not?

3 A. What I said before is that I understand Kingiti because I was
4 married to a Kingiti (as interpreted) woman. I also -- I also know Bira.
5 I can also speak Kilendu. There's a difference between Kilendu and
6 Kingiti. If you speak in Lendu I can understand you, and I will be able
7 to answer you in Swahili because my mother is Gegere.

8 Q. I'm just a little confused about this. I understand that you had
9 a wife who was Lendu; that's right, isn't it?

10 A. Yes, even today she's still alive. She's at home.

11 Q. And you had a wife who is Ngititi, did you?

12 A. No. (Expunged)

13 (Expunged)

14 (Expunged)

15 Q. But none of your wives were Ngititi; is that right?

16 A. No. I didn't have an Ngititi wife. She was a Lendu. It was my
17 mother-in-law who was Ngititi, the mother of my wife.

18 JUDGE DIARRA: Witness, excuse me. I have a question for the
19 booth.

20 Can the interpreters in the booth tell me if the ethnic group
21 Ngititi and the language or the -- is the Ngititi language? I think there's
22 some confusion going on there or whether there's a difference between the
23 Ngititi and the Kingiti. I would like the booth to tell me.

24 THE INTERPRETER: (No interpretation)

25 JUDGE DIARRA: (Interpretation) Thank you very much. This makes

1 it possible to understand.

2 THE INTERPRETER: The English interpreter says that the Swahili
3 interpreter said: Your Honour, Ngiti and Kingiti is the same language.
4 The prefix "Ki" shows that it is a language in Africa, so you can say
5 Kiswahili or Swahili, it's the same thing.

6 JUDGE DIARRA: (Interpretation) We were making a difference
7 between Ngiti and Kingiti.

8 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, please
9 continue.

10 MR. HOOPER: I will and may come back to this at a later moment.

11 Q. When the soldiers draw your attention to the -- to Waka hill, am
12 I right in saying there was a UPC camp or outpost on Waka hill?

13 A. They had a camp at the hill because they were waiting. They had
14 stayed for a while in this place and afterwards they came back to their
15 camp. Yes, that was situated on the hill.

16 Q. And was that camp overrun by the attackers that morning?

17 A. Yes.

18 Q. And how long after you woke up at 5.00 was the camp on Waka hill
19 overrun, as far as you can remember?

20 A. It was at 8.00 in the morning.

21 Q. So I'm asking about the camp at Waka hill, the camp on top of
22 Waka hill, was that overrun at 8.00 in the morning?

23 A. It was overrun at 8.00 in the morning -- no, when the fighting
24 started -- when there was fighting and it was going to start, they
25 preferred not to spend the night on the hill. So they went to their camp

1 and spent the night there. They left the hill empty.

2 Q. All right. So I'm -- so how long after 5.00 was it that you
3 noticed the Ngiti on the hill or had surrounded the hill?

4 A. In 7.00 in the morning they were fighting and they were surprised
5 from behind because those who came to the hill attacked from behind, from
6 the road, from the position of the road, which comes from Songolo.

7 Q. Well, where were you at this time? Were you still at your house
8 or had you gone to hide by the river Waka?

9 A. I was in the village. I hadn't gone out by then. That happened
10 when I was there. I hadn't left then.

11 Q. When you say you were in the village, do you mean by your house
12 or somewhere else?

13 A. I was outside.

14 Q. Sorry to trouble you with this. When you say "outside," you mean
15 outside your house, by your house, or somewhere else?

16 A. I was in the farm. I was in the farm looking after my cattle.

17 Q. And do you remember how long you stayed looking after your cattle
18 before you fled to your hiding-place where your wife was?

19 A. When I left the cow-shed or the farm was when the UPC and the
20 civil population fled, so I also fled. I saw a woman who was also
21 fleeing with a child.

22 Q. All right. No -- thank you for that.

23 Now, I think you've said previously and consistently that that
24 was at 8.00 in the morning. Are you sure about that time or might you be
25 wrong about it?

1 A. No. At 8.00 -- the fighting started at 8.00 and it was at 8.00
2 that the population started to flee.

3 Q. I don't know what the French translation was, but I'm going to
4 have to go back to your answer just to clarify it. The fighting starts
5 at 5.00 in the morning when you wake up. I understand the camp is
6 overrun and soldiers and civilians flee at 8.00. All right. So that's
7 three hours later. And I'm merely asking you this, sir: You say 8.00 --
8 how can you -- in the difficult circumstances you were in, how can you be
9 sure it was 8.00? May you be mistaken about that?

10 A. I had a watch with me.

11 Q. Was it at that time that you noticed the man with the white
12 shirt?

13 A. Yes, yes. When the UPC militia fled with the civil population, I
14 looked at the camp. I saw a person with a white shirt. This person was
15 in -- and he was standing up.

16 Q. Now, while you'd been at your farm, had you seen attackers coming
17 from Waka hill and going towards the Bogoro Institute at any time?

18 A. Are you speaking about soldiers or Ngiti? Because if you say
19 "soldiers," I don't know if it's the UPC or who. It's difficult for me
20 to make a difference. Are you referring to the Ngiti?

21 Q. I used the word "attackers," those who were attacking. Did you
22 see them while you were at the farm? Did you see them coming from Waka
23 hill to attack the institute? Because you would have been in the middle
24 of course, so I'm asking you while you're there minding your cattle, did
25 you see attackers coming from Waka hill to go to the institute?

1 A. No. Those who went in Waka, they didn't go down to the
2 institute. Those who were in Waka had the aim of staying in place and
3 watching the people who are fleeing to exterminate them. These people
4 didn't go down the hill. They stayed there.

5 Q. So we're clear, while you were at the farm, you didn't see any
6 attackers coming past in the direction of the institute?

7 A. They came and they were positioned on the hill. They were
8 numerous.

9 Q. And you say that there they stayed in large numbers on the hill;
10 is that right?

11 A. I'm sorry?

12 Q. That was my fault. And you say you saw the attackers in large
13 numbers on the hill, but they stayed on the hill, they didn't go towards
14 the institute; is that right?

15 A. Those who came from the -- to the institute came from Zumbe going
16 through via Kasenyi. The others went via the Bunia road and others also
17 came via the Gety road, this road that goes to Aveba. It was these
18 people who attacked the institute. Those who came from Songolo stayed on
19 the hill and they were positioned there, and their objective or their
20 mission was to kill all the people who were fleeing or who went via the
21 hill.

22 Q. And as I understand it, at about 8.00 you leave your farm and you
23 go to the hiding-place with your wife by the Waka river, and you stay
24 there until the evening; is that right?

25 A. I stayed there until 1700 hours. That means that I left this

1 place at 7.00, 1900 hours.

2 Q. And from your hiding-place by the Waka river, what could you see?
3 Could you see the -- could you see the Bogoro Institute, for example?

4 A. Yes, I was able to see.

5 Q. And you could see the ground -- the area between your
6 hiding-place and the Bogoro Institute, is that right, or not?

7 A. Yes, I was able to see the institute.

8 Q. And could people see you and your wife?

9 A. No, they didn't see me. Those who were on the mountain saw me.
10 The person who was responsible for watching the people who fled saw me
11 and shouted, "There's somebody who's hiding there with a woman." When
12 they heard that the child of Ndora had been killed they said the
13 following, "This woman who is there, what's she doing there?" The person
14 who was on the hill replied, "No, this woman was killed." And they said
15 the following: "If you killed her did you flee -- perhaps you searched
16 her for money," and that's what they said. "No, she didn't -- she wasn't
17 searched for any money," and so they came back -- so they went to the
18 body of that woman, and her child was crying at the time.

19 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, we're
20 going to have to interrupt our hearing. We're going to have to interrupt
21 our hearing. There is very little time for the recording.

22 I think, Court Officer, that we have a photograph that hasn't
23 been given an MFI number. I think it has to be given one. It should
24 have perhaps stayed on the screen. Yes, that's it. Yes. So if you
25 could give this MFI number to it.

1 COURT OFFICER: (Interpretation) Thank you, your Honour. The
2 photograph with a number DRC-D02-0001-0082 will have the MFI number
3 MFI-D02-00016.

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

6 Usher, we will ask you to escort the witness out of the
7 courtroom.

8 Thank you, Witness, for your contribution throughout this
9 afternoon. We will be back on Monday morning at 9.00.

10 (The witness stands down)

11 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, in a
12 very approximate way can you estimate the amount of time which you need
13 to continue your cross-examination? The four hours of Monday morning?
14 More?

15 MR. HOOPER: No, less, to two hours.

16 PRESIDING JUDGE COTTE: (Interpretation) Two hours, thank you.

17 MR. HOOPER: (Previous translation continues) ...

18 PRESIDING JUDGE COTTE: (Interpretation) Of course, of course,
19 but we would like to thank you for that. That makes it possible for the
20 Mathieu Ngudjolo's team to know on Monday in principle they should be
21 able to start. You at this stage haven't got an approximate duration
22 with regards to your cross-examination?

23 MR. KILENDA: (Interpretation) Not yet.

24 PRESIDING JUDGE COTTE: (Interpretation) It's too early.

25 So we will be back on Monday at 9.00. For next week, therefore,

1 I would like to remind you there are two days of hearing only.

2 The Court session is now adjourned.

3 I forgot to thank the interpreters and all the technicians who we
4 haven't thanked this week, but who know that we appreciate their
5 collaboration.

6 The hearing ends at 6.28 p.m.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25