

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 Tuesday, 2 March 2010
10 The hearing starts at 2.04
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. The
15 Court is now in session. We are therefore in open session. The two
16 accused are with us. The witness is not here yet. We are therefore
17 going to take up our proceedings where we left off on Friday, the 26th of
18 February, at 1600 hours. Before giving the floor to the Prosecutor, the
19 Chamber would like to have -- give an update which is necessary and
20 important with regards to the very terms of the words said by the
21 Witness 161 during the hearing of the 26th of February in the morning and
22 which are at the heart of the current discussion.
23 During its presentation of its oral application such as figures
24 in the transcript number 109 of the hearing of the 26th of February,
25 2010, in the French version, page 57, lines 23 to 25, and pages 58 lines

1 1 to 3, Counsel O'Shea indicated, and I quote, and I will also quote the
2 punctuation because it does have a real importance.

3 "At page 45 of the English transcript of the testimony of this
4 witness, 161, lines 14 to 20, the witness states as follows: 'The people
5 who were killed were the inhabitants as well as some UPC soldiers. The
6 people who were killing them were the Ngiti, as well as the Lendu, as
7 well as the Bira, and after that they started to shout, "You inhabitants
8 of Bogoro, today you're going to see. Today, Germain Katanga himself, in
9 person, has taken possession of women and children.' Their women and
10 children, they shouted, 'Germain Katanga, Ngudjolo.' They shouted in
11 this way. I heard these shouts with my own ears."

12 In this same French version of the transcript the edited version
13 of the transcript of this same hearing, a version which we received after
14 our hearing of course, the words of the witness are reported as follows
15 in page 45, lines 24 and 25 and page 46, lines 1 to 4, of the French
16 version, and I quote from line 24:

17 "'You, inhabitants of Bogoro, today you are going to see. Today,
18 Germain Katanga himself in person has taken possession.' It was the
19 women and children who were shouting like that. Their women and their
20 children. They shouted. They said the following, 'Germain Katanga,
21 Ngudjolo, 'oh eh.'" They shouted in this way. I heard these cries with
22 my own ears."

23 In response, in answer to the application made on Friday by
24 Professor Fofe, we have -- or we all received, you all received
25 yesterday, on the 1st of March, 2010, in the afternoon a table which had

1 on its left side the version which I have just read. There is also on
2 the left side you have the title: "Interpretation made during the
3 hearing of the 26th of February, 2010." I will not read it. The only
4 difference is that in the table the word "oye," or "hey
5 yee" (as interpreted) in English substitutes an "oh eh." But also in the
6 right-hand column under the title "Translation of What was Heard During a
7 Re-Listening," the following version which I shall read now and which
8 constitutes the version of reference:

9 "Their women and their children were shouting saying 'today,
10 Germain Katanga himself has taken possession.' It was the children and
11 the women who were shouting like that. They said the following
12 'Germain Katanga and Ngudjolo, oye!'" Hey yee in English. "They were
13 crying or they were shouting in that manner. Myself, I heard these
14 shouts with my own ears."

15 Furthermore, once again that these -- while these words are at
16 the very heart of our proceedings or debates that we are currently
17 having, we have to continue on the right basis and one which is admitted
18 by everybody. We are all in agreement with that. Currently, the
19 Prosecutor is going to respond to Counsel O'Shea and to Professor Fofe,
20 in particularly where it concerns the point as to whether there was or
21 was not during the first interviews with the witness a questioning of
22 this person with regards to Mr. Katanga or Ngudjolo with the facts which
23 are subject to our referral and also the prejudice that the Defence
24 considers it has undergone. The Chamber would like on these two points,
25 but it would seem that the Prosecutor has thought about dealing with

1 these, the Chamber would like to have precisions in this regard.

2 Now, the Chamber also notes that the Legal Representative of
3 Victims have both explained on Friday as well, unless there is a
4 significant element in the -- the Chamber doesn't envisage giving them
5 the floor again today.

6 Furthermore, the two Defence teams will also have the floor
7 briefly, with a view to replying to the Prosecutor, with a view also to
8 clarify once again very exactly to the Chamber what their prejudice is, a
9 prejudice which -- on Friday -- at Friday's hearing was clarified --
10 classified as extreme by Counsel O'Shea. Now -- that Professor Fofe also
11 joined that as well with regards to the importance of the prejudice
12 suffered.

13 Now, the Chamber would also like us to have clarification with
14 regards to what exactly this prejudice constitutes. Now, the Chamber
15 would also like in this scenario where it recognises the existence of any
16 type of prejudice which it will decide upon subsequently, in the scenario
17 where it will decide to delay the cross-examination, a hypothesis, a
18 scenario, the Chamber would like to know from the two Defence teams what
19 dead-line, what reasonable dead-line, they would need in order to better
20 prepare their cross-examination in the light of the -- these words or
21 comments which are at the very heart of our proceedings.

22 Have I been understood by everybody? It would appear to be the
23 case.

24 So the Office of the Prosecutor now has the floor.

25 MS. DARQUES-LANE: (Interpretation) Thank you, your Honour.

1 First of all, I would like to point out to you that we have provided
2 jurisprudence which we shall refer to. We have distributed these
3 elements or this information to all the different participants.

4 PRESIDING JUDGE COTTE: (Interpretation) Very good. Please
5 continue, Prosecutor.

6 MS. DARQUES-LANE: (Interpretation) Well, I will briefly take up
7 the points which have been mentioned by Counsel O'Shea on Friday.
8 According to Counsel O'Shea the new elements or new elements were
9 accounted by Witness 161 and states that these -- who does recognise that
10 they were communicated in a spontaneous way during the hearing.
11 According to the Defence, the surprise element which are raised do cause
12 such prejudice that it has presented three options by which to proceed.
13 The first option that the Katanga Defence and thereafter the Ngudjolo
14 Defence prefers are -- is to exclude the part of the transcript which
15 you've just read, your Honour, and in support of this request it explains
16 that the Prosecution has contributed to this state of affairs either
17 through a lack of diligence during its investigations or by asking
18 questions which were too open during the examination-in-chief.

19 The second option which is proposed by the Defence would be to
20 interrupt the cross-examination with a view to giving the Defence teams
21 time to prepare their cross-examination.

22 And the third option which ultimately is perhaps a repetition of
23 the first would be for the Chamber to declare that it will not base
24 itself on the part of the testimony which is contested by the Defence.
25 So the Prosecution considers that the issue raised by my colleague

1 highlights the need to satisfy two legal imperatives, namely, to find --
2 to show the truth and the concern of a fair trial.

3 So I will summarise the point of the Prosecution in a few points
4 which I will thereafter develop.

5 Firstly, as the Defence recognised, the Prosecution has acted in
6 good faith and in accordance with the provisions of the Statute and the
7 regulations as well as the practice ordered by the Chamber in its
8 decision 1665.

9 PRESIDING JUDGE COTTE: (Interpretation) You are speaking about
10 the way in which the examination-in-chief was conducted; is that right?

11 MS. DARQUES-LANE: (Interpretation) That is right.

12 Also, the Prosecution conformed with the provisions with regards
13 to disclosure of evidence, the interview notes and the written statements
14 were disclosed to the Defence almost a year ago on the 16th of April,
15 2009. The Prosecution highlights the fact that the information which has
16 come out during the testimony of Witness 161 came out spontaneously and
17 it does not constitute a sufficient prejudice which would justify the
18 exclusion of the contested part. If there is a difficulty for the
19 Defence, the Prosecution considers that the appropriate remedy in the
20 circumstances is a cross-examination with the possibility to re-call the
21 witness if so necessary following an investigation.

22 If there should be an adjournment before the start of the
23 cross-examination, this adjournment should be a short adjournment because
24 of the security situation in the DRC.

25 I would also like to stress that the analysis which our colleague

1 has made is dangerous to the extent that it leads to a situation where it
2 could prevent the truth to be shown, and it is contrary to the spirit of
3 the Statute, as can be seen in Article 69(3) in fine, and I will read it:

4 "The parties can present evidence relevant to the case in
5 accordance with Article 64. The Court shall have the authority to
6 request the submission of all evidence that it considers necessary for
7 the determination of the truth."

8 So the Defence also refer to the notification which is incumbent
9 upon the Prosecution to carry out, which there is not. The evidence
10 which includes the witness statements should be disclosed sufficiently in
11 advance to the Defence to enable it to prepare itself adequately. The
12 Prosecution therefore informs the Defence of the content -- or the
13 expected content of the testimony as well as -- which can be developed by
14 the witness during -- more amply developed by the witness during the
15 hearing. This is what the Prosecution has done.

16 And here I would like to recall the principle of the oral nature
17 of proceedings. It is confirmed in Article 69(2). So the logic of the
18 examination and cross-examination is to have the witness express
19 incriminating or exonerating evidence or information which goes beyond
20 the statements which were made by that person during the investigation
21 phase. Furthermore, the Chamber can also ask any question that it
22 considers useful in order to ensure that the truth comes to light.

23 So the fact that that incriminating or exonerating evidence can
24 appear later when the witness comes to the stand is not in itself against
25 the principle of a fair trial; it is even an essential element when it

1 comes to the truth coming to light, and therefore is manifestly
2 legitimate.

3 From all the manifestation of the truth supposes spontaneousness
4 and the freedom of testimony in the dock. Further more, it is only when
5 that person comes to testify here in the dock that the witness takes the
6 solemn undertaking or oath. So we would therefore recall the
7 jurisprudence mentioned by the Defence on Friday.

8 It is important to mention certain distinctions that there are.
9 Between the jurisprudence of ad hoc Tribunals and the proceedings before
10 our Court and the current situation. The case law which was cited by the
11 Defence comes from situations where there was a supposed or proven
12 violation of the disclosure obligations on the part of the Prosecutor
13 which has -- was not the case here.

14 Secondly, this case law raised by the Defence falls within a
15 context in which the proofing of witnesses is authorised, whereas here it
16 is not. So the proofing of witnesses makes it possible for the
17 Prosecution as well as for the Defence to ensure that the witness re-read
18 their statements, and therefore are able to refresh their memory. And
19 also to ask the witness if there are -- if there is additional
20 information to add with regards to the written statement.

21 As we know, the text of this institution -- of the text of this
22 institution and the case law that comes from it privilege spontaneity
23 on -- of the testimony. And here I am referring to the decision in the
24 Lubanga case, decision 679, a decision relating to the preparation of
25 witnesses before they come to testify before the Court. So the decision

1 of the 8th of November, 2006, of Pre-Trial Chamber I. Then there is --
2 we can also recall the decision of the Trial Chamber I, still in the
3 Lubanga case, which is called "The Decision on the Practices Used to
4 Prepare and Familiarise Witnesses Before They Testify in the trial." The
5 decision of the 30th of November, 2007, 1049.

6 Then I will also refer to Judge Steiner's statement during the
7 hearing of the 14th of December, 2007, so transcript 12, page 6, lines 2
8 to 6, where ultimately Judge Steiner, she takes as her own the decision
9 of the prohibition of the proofing of witnesses.

10 In answer to the statement of the witness to the effect that the
11 Prosecution lacked due diligence during its investigation, I would like
12 to refer the Chamber and the Defence to the testimony of witness CHM 1,
13 the head of investigations in the Katanga case, who during her testimony
14 of the 25th of November, and this is transcript T81, that is the French
15 version. And what comes out of this testimony, Mr. President, is that
16 the Office of the Prosecutor during its investigations makes an effort to
17 carry them out in a neutral manner, does not suggest any names to the
18 witness or witnesses that they meet.

19 We should also point out that investigations are carried out over
20 several years and that they change as well as the theory of the
21 Prosecution on a case.

22 It should be pointed out that Witness CHM 1 stated that the
23 investigation started in May 2006. Witness 161 was interviewed in
24 October of 2006. That means it was shortly after the beginning of the
25 investigations.

1 The other point raised by my learned colleague is the manner of
2 leading the witness. He found that the fact that the questions being put
3 to the witness were too open, and he found that this was the case. In
4 answer to that criticism, I would like to refer to paragraph 66 of
5 decision 1665, and I will also refer to paragraph 52 of the decision
6 mentioned, that is, decision 1049 of the Lubanga case, in which the
7 Chamber underscored the spontaneous nature of the testimony, indicating
8 that it could have capital importance for the ability of the Court to
9 determine the truth. That is in the middle of the paragraph. More
10 recently during the examination of Witness 268 -- 298, still in the
11 Lubanga case - and I think you have a copy of that passage -
12 Mr. Desalliers objected to the fact that questions put to the witness
13 brought about answers that were out of the written statement of the
14 witness. In answer to this objection, Judge Fulford answered as
15 followed:

16 "Sometimes in a legitimate manner during examination carried out
17 by the two parties, the witnesses find themselves answering questions on
18 issues that are outside of what is in the written statement that had been
19 given to the Court before."

20 There are other decisions, and you have copies of those. There
21 is the Norman decision of the Sierra Leone Court, which supports this
22 point, that is, that additional information can be given in the courtroom
23 and that this is possible because it is the nature of oral testimony, to
24 provide more elaborate and complete information than written statements.
25 And I would like to draw your attention to paragraph 25 of the Norman

1 decision of the 16th of July, 2004.

2 And in fact, Professor Fofe quite recently during the examination
3 of Witness 250 reiterated that principle when he stated - and that is T93
4 during the hearing of the 29th of January, on page 8, lines 17 to 25, and
5 page 9, lines 1 and 2 - I will quote only a brief excerpt.

6 "It may happen that the witness gives answers that the Prosecutor
7 does not expect. That is possible. It is not incumbent on the
8 Prosecutor to do everything for the witness to give him the answers that
9 he expects."

10 Further on Professor Fofe - and I would like to take the liberty
11 of quoting him - tells us:

12 "It will be up to Defence counsel to cross-examine the witness if
13 need be on the same issue."

14 This leads us somewhat to understand, Mr. President, that the
15 Defence, once you have a remedy, when there are -- there is a new
16 information in addition to the written statement, only when such
17 information is favourable to them. But when that -- or rather, when that
18 information is not favourable to them and then to keep the part of that
19 testimony if it is favourable to them.

20 Your question to us was: What is the remedy? In fact -- what is
21 the remedy to the fact that new information might be spontaneously given
22 during an examination?

23 The position of the Prosecution is simple. Our first proposal
24 was that this remedy is at the very heart of the cross-examination
25 because excluding one part of an account is an extreme solution and which

1 is only envisaged in the case of non-compliance with the disclosure
2 obligation of evidence, which is absolutely not the case here. There is
3 no established violation of the disclosure obligations of the
4 Prosecution.

5 As Mr. O'Shea pointed out, there was no bad faith on the part of
6 the Prosecution at all in their examination of the witness.

7 Moreover, the Defence feels that they can provide a remedy to
8 that new information given to us by Witness 161 during the
9 cross-examination of the witness. That is what they can do, but they can
10 also cross-examine other witnesses on that subject.

11 I would like to draw your attention to the abundant case law, to
12 the fact that excluding part of an account from a testimony is an
13 exceptional measure and that it is very rarely applied. And I would like
14 to refer you to the case in which Mr. O'Shea participated. That is the
15 Sesay case. It is the oral decision of the 28th of July 2004, and you
16 have that in the documents we provided to you. And Mr. O'Shea applied
17 for the same exclusion because of noncompliance with disclosure
18 obligations. The Chamber dismissed that application, pointing out that
19 that measure was extreme and would only about a last resort. So I would
20 draw the attention of the Chamber to paragraph 5.

21 I will only now go on to quote the various cases in which this
22 principle was also underscored, that is the Karemera, that is, at the
23 Rwanda Tribunal, the decision of the 20th of February, 2008, paragraph
24 20. The same case, there is a decision of the 19th of October, 2006,
25 paragraph 6. That jurisprudence also shows us that the Chamber can

1 impose less Draconian measures if they determine that there has been
2 non-compliance with disclosure obligations. It is interesting to look at
3 that case law and inspire ourselves from it, while bearing in mind that
4 the situation here is different, given that the Prosecution did not fail
5 to comply with its disclosure obligations.

6 One solution that can also about seen in that jurisprudence is
7 cross-examination, which remedies the surprise effect that may be sprung
8 on the Defence when there is additional information.

9 The cross-examination could be postponed or the witness could be
10 re-called. This measure was envisaged in the Karemera case when Witness
11 AXA was re-called. And there was also the cross-examination of a second
12 witness BDW which was postponed.

13 Similarly, in the Lukic and Lukic case at the ICTY, the witness
14 was re-called, paragraph 18.

15 Our position is flexible, but we feel that the cross-examination
16 that the Defence teams are going to conduct will be sufficient to remedy
17 the discrepancies in the oral and written versions of the testimony of
18 Witness 161 if there are discrepancies.

19 Furthermore, it may be possible to re-call the witness and to
20 postpone the cross-examination, but that should be done within the
21 shortest time possible, taking into account the new information, such
22 that the witness - that is, if there is a postponement - the witness
23 should not have to return to his place of residence for security reasons.

24 We believe that testing the credibility of all witnesses is part
25 of the preparation of the witness and through the cross-examination, and

1 I'm referring here to paragraphs 73 and 71(C) of decision 1665. It is
2 obvious that a Defence made up of experienced lawyers that we are
3 fortunate to have here would have known that it would be possible for --
4 additional information could be given during witness testimony.

5 There are three decisions to which I will refer to support the
6 fact that cross-examination is sufficient to enable the Defence to
7 distinguish, or rather, make out the differences between the written
8 statement and the testimony of the witness. There is the Oric case, page
9 3; the Karemera case, which I have already mentioned before, and that is
10 19th October 2006, paragraph 7; and the Norman case that I have already
11 mentioned, paragraph 25.

12 The last point that I would like to make is the fact that we are
13 within a framework of professional justice here and not in front of a
14 jury that could be easily impressed and that has to be protected from all
15 sorts of surprises and information and not be unduly influenced.

16 I will quote in English the excerpt on page 3 of the Oric
17 judgement:

18 (In English) "In the practice of this Tribunal, the possible
19 violation of Rule 68(i)," (interpretation) these are the disclosure
20 obligations, (In English) "by a system of sanctions then by the Judges'
21 definitive evaluation of the evidence presented by either of the parties
22 and the possibility which the opposing party will have had to contest
23 it."

24 (Interpretation) The last point is that in light of the case law
25 I have referred you to, it is incumbent on the Defence to show or to

1 prove the prejudice suffered through non-compliance with the disclosure
2 obligations of the Prosecutor, and those are my submissions,
3 Mr. President.

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

6 Professor Fofe, are you going to be the first to take the floor
7 or will it be Mr. O'Shea? Mr. O'Shea, please, you can address the Court.

8 We would like to ask you to go to the heart of your observations,
9 particularly regarding the prejudice and the time-frame, that is, in the
10 event that it is decided that the cross-examination be postponed.

11 MR. O'SHEA: Thank you, Mr. President, your Honours. There are
12 some authorities which I see have not yet been distributed. So I would
13 request that they are distributed, please, to the translators at a
14 minimum. And I'll proceed in the meantime.

15 PRESIDING JUDGE COTTE: (Interpretation) These are documents
16 that are supporting arguments?

17 MR. O'SHEA: They are authorities which I referred to the last
18 time during the course of my arguments which I felt it proper that the
19 parties and participants have copies of, whether they've managed to find
20 them themselves or not. There are also two Appeals Chamber decisions to
21 which I'm going to make reference now, and I think it's important that
22 the translators have -- at least have copies of those decisions. Oh,
23 they've been sent by e-mail. I don't know if the translators have got
24 them then. Maybe they can give me a thumbs up if they have them.

25 THE INTERPRETER: The translators did not get them.

1 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer,
2 can you please find out whether the interpreters have them, and secondly
3 whether we will have hard copies before us or are we going to rely on
4 interpretation.

5 (Trial Chamber and Court Officer confer)

6 COURT OFFICER: Mr. O'Shea, would you by any chance have paper
7 copies for the interpreters?

8 MR. O'SHEA: Yes.

9 I'll just indicate that I will be referring to -- or I will let
10 them have ...

11 Well, I apologise insofar as there's been any misunderstanding
12 here.

13 Mr. President, your Honours, let me start by addressing the issue
14 of the appropriate remedy, if I may. My learned friend has indicated
15 that rather than adjourning the cross-examination of this witness, it
16 would be more appropriate for the Defence to seek to re-call the witness
17 if necessary.

18 Can I indicate at this juncture that if this Chamber is not
19 minded to adopt the other -- one of the other two options which I had
20 indicated, which is either the exclusion of the evidence or a declaration
21 that that evidence will not be relied on; those were the two other
22 options which I'd indicated on the last occasion. It would in fact be
23 the preference of the Defence to fall in line with what my learned friend
24 has suggested. It would be our preference to proceed with the
25 cross-examination of this witness, proceed with our further

1 investigations, and if on the basis of those further investigations we
2 feel the need to re-cross-examine the witness, to have the witness
3 back -- because it may be, I indicated on the last occasion, that we're
4 concerned that this trial proceeds in an expeditious manner. And it may
5 be that our investigations of the witness lead somewhere and it may be
6 that they don't. We cannot know that at this stage. And so with that in
7 mind, if it were our prerogative to, as it were, give a view on this, we
8 would prefer the option of re-calling the witness than postponing the
9 cross-examination.

10 Can I also indicate on the question of remedies that my learned
11 friend's last reference to the use of sanctions, sanctions is not the
12 appropriate discussion here in my submission, because as my learned
13 friend rightly points out I'm not alleging bad faith on the part of the
14 Prosecution and at no time during the course of my submissions have I
15 suggested a violation of disclosure obligations. So this is not a
16 question of sanctions at all. It is a question of - and you,
17 Mr. President, have hit the nail on the head - it is a question of
18 prejudice.

19 My learned friend has cited two authorities from the Special
20 Court for Sierra Leone, one in the case of Norman and one in the case
21 where I appeared, the case of Sesay. Insofar as those decisions of the
22 Special Court for Sierra Leone in any way suggest that because the
23 Prosecution cannot be found at fault, that the principle of orality
24 dictates that all evidence should be admitted. Insofar as those
25 decisions give that impression - and I admit that they do to some

1 extent - they are in my respectful submission wrong.

2 The issue in those cases was also different to the extent that it
3 was more a question of determining whether the extra detail which the
4 witness had come out with was something which the Defence have had notice
5 of; and if it wasn't something the Defence have had notice of, whether
6 that evidence should be excluded. This is slightly a different situation
7 here because what we're dealing with here is not simply that the witness
8 has come out with extra details. What we're dealing with here is that a
9 witness who was described by the Prosecution as a crime based witness has
10 now become a full-on witness for the Defence. In other words, the
11 Defence was anticipating that this witness would deal with crime base and
12 that this witness would not in fact incriminate Mr. Katanga. And as I
13 indicated on the last occasion, there are no references to Mr. Katanga in
14 this witness's statements.

15 There are two Appeals Chamber decisions that I'd like to draw to
16 your Honours' attention. One is in the case of the Prosecutor versus
17 Karemera et al., a case before the Appeals Chamber --

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

19 PRESIDING JUDGE COTTE: (Interpretation) Go ahead.

20 MS. DARQUES-LANE: (Interpretation) We do not have the
21 authorities that have been mentioned.

22 PRESIDING JUDGE COTTE: (Interpretation) You haven't received
23 them? You don't have copies?

24 MS. DARQUES-LANE: (Interpretation) No, we don't have them.

25 PRESIDING JUDGE COTTE: (Interpretation) Would it be possible to

1 provide copies for the Prosecution?

2 MS. DARQUES-LANE: (Interpretation) I beg your pardon.

3 PRESIDING JUDGE COTTE: (Interpretation) On the contrary, you're
4 right to do so.

5 MR. O'SHEA: (Previous translation continues) ...

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea, could you
7 wait just a moment because I did not hear what you said at the very end
8 of your comment, and I would like to hear the very end of your
9 demonstration.

10 Yes, you can continue.

11 MR. O'SHEA: In the case of Karemera on the decision of the
12 Appeals Chamber, and this is a decision of the Appeals Chamber, "Decision
13 on Interlocutory Appeal Regarding Witness Proofing," dated the 11th of
14 May, 2007, and I make reference to paragraph 12 of that decision to be
15 found on page 5. The second paragraph of that decision -- of that
16 paragraph reads as follows:

17 "However, the Appeals Chamber observes that the Prosecution's act
18 of disclosing new material to the Defence as a result of a proofing
19 session does not mean that the Trial Chamber will allow the evidence to
20 be led or that it will ultimately credit the testimony in its final
21 assessment of the case."

22 Now, the reason I cite that particular paragraph of that decision
23 is to indicate to your Honours that the option which I had outlined last
24 week, the option of declaring that the Chamber would not rely on that
25 particular part of the evidence of the witness is an option, and that it

1 has been foreseen, at least by the Appeals Chamber of the International
2 Criminal Tribunal for Rwanda, that Judges could in their final assessment
3 of the evidence not rely on a piece of evidence for reasons of fairness.

4 I would add in our particular case that the Chamber can in fact
5 declare that to be the case now. Of course, the Chamber could leave it
6 to the end of the case as to how it's going to address that particular
7 matter, but in my submission it would be preferable to put the parties on
8 notice that that particular part of the witness's evidence will not be
9 relied upon. That is -- that would be fair to the Defence because then
10 the Defence does not have to exhaust its resources in investigation and
11 trying to re-call the witness. It would also be fairer to the
12 Prosecution because it allows the Prosecution to attempt to deal with the
13 matter if it feels a need to do so immediately and not at the end of the
14 case.

15 I will then refer to another Appeals Chamber decision in the case
16 of Bagosora dated the 18th of September, 2006. This is a case before the
17 International Criminal Tribunal for Rwanda before the Appeals Chamber,
18 and it's a decision on Aloys Ntabakuze "Interlocutory Appeal on Questions
19 of Law Raised" by the 29th of June 2006, the Trial Chamber I "Decision on
20 Motion for Exclusion of Evidence."

21 At paragraph 18 of that decision on page 7 the Appeals Chamber
22 states as follows:

23 "When the Defence is of the view that the Prosecution introduces
24 evidence of material facts of which it had no notice, it can make an
25 objection to the admission of such evidence for lack of notice. If the

1 Trial Chamber agrees with the Defence that insufficient notice has been
2 given, it should exclude the challenged evidence in relation to unpleaded
3 material facts, require the Prosecution to amend the indictment, grant an
4 adjournment to allow the Defence adequate time to respond to the
5 additional allegations, or take other measures to preserve the rights of
6 the accused to a fair trial."

7 And I cite this decision in opposition to the decisions before
8 the Special Court for Sierra Leone insofar as those decisions do not seem
9 to recognise the possibility of excluding evidence when it is not the
10 fault of the Prosecution.

11 Now, your Honour, Mr. President, has put a specific question,
12 which is to articulate the nature of the prejudice suffered by the
13 Defence. And on the last occasion I made reference to the decision of
14 the 18th of November, 2003, in the case against -- case of Prosecutor
15 against Bagosora before Trial Chamber I, decision on admissibility of
16 evidence of Witness DP. And I made reference to paragraph 6 of that
17 decision. And since I've already quoted it, I won't quote it again, but
18 the important point to be drawn out of that is the emphasis on the
19 question of whether the Defence has had notice of what the particular
20 witness was going to testify on. And that, in essence, is the crux of
21 the issue before us today because that's what distinguishes our case from
22 many of these other cases in the jurisprudence, is that the prejudice
23 suffered by the Defence is less in the details and more in the crux of
24 what the witness, this particular witness, was going to talk about.

25 When the Defence is conducting its investigations -- when the

1 Defence is conducting its investigations, it has a duty to, in my
2 submission, be cautious and fair towards Prosecution witnesses. In order
3 to effectively attack the credibility of a Prosecution witness, the
4 Defence must as a matter of course investigate the background of that
5 Prosecution witness. This is the most delicate exercise. It necessarily
6 entails discussing that witness with third parties without, of course,
7 revealing the fact that he or she is a witness. It creates a very
8 delicate and difficult situation for all concerned in criminal
9 proceedings in the sense that on the one hand one is trying to protect
10 the witness from prejudice and from their identities being revealed, the
11 fact that they're witnesses; and on the other hand, one has to ensure
12 that the Defence can properly prepare their case. But because it's such
13 a difficult and delicate exercise, counsel for the Defence will not
14 gratuitously investigate the background of a witness if what that witness
15 is going to say against the -- in the trial against the accused is in its
16 content not incriminating against the accused. We as Defence counsel, we
17 take instructions from our clients, and on the basis of those
18 instructions we determine how to conduct our investigations of
19 Prosecution witnesses.

20 And if it is not our intention to challenge the credibility of a
21 Prosecution witness because it does not -- it is not necessary for our
22 case, then we are not going to go down that road of digging into the
23 background of the Prosecution witness. And that is not a lack of
24 diligence on the part of the Defence. That is just part of its overall
25 duty to be sensitive towards Prosecution witnesses. It is also part of

1 its duty to use the resources of the Court wisely. So it cannot be
2 suggested that if there are 27 witnesses that the Defence must, as a
3 matter of course, investigate all of those witnesses with a view to
4 challenging their credibility. It would amount to a waste of resources
5 and it would amount to a lack of sensitivity towards those witnesses. On
6 the record of this case we see there are a number of witnesses who are
7 there to describe the events at the scene of Bogoro, but not necessarily
8 to incriminate the accused directly. So then the prejudice to the
9 Defence becomes obvious when we have a situation where a witness who is
10 simply describing what happened to his family and simply describing what
11 happened on the day suddenly becomes a witness who is directly
12 incriminating the accused, when this was never before the case in any of
13 their statements.

14 The distinction that my learned friend has rightly alluded to and
15 which I alluded to last week between the proceedings before the
16 International Criminal Court and ad hoc Tribunals, that is, in ad hoc
17 Tribunals Prosecutors are permitted to see their witnesses shortly before
18 they testify; that distinction makes no difference to the situation
19 before us because of the nature of the prejudice which I am asserting.
20 That prejudice would exist in any system, and it would not have been of
21 much assistance to us had we received a document from the Prosecution the
22 day before the witness testified saying, "This witness will now testify
23 against the accused and say that Mr. Katanga -- Mr. Katanga -- will say
24 that people were shouting out that Mr. Katanga has taken possession," or
25 whatever, whatever. If those statements, as your Honour has accurately

1 set them out at the beginning of this session, if those statements had
2 been put in what is called a will-say statement a day before the
3 testimony of the witness, we'd still be in the same position, we'd still
4 be highly prejudiced.

5 I hope those submissions are sufficiently succinct.

6 PRESIDING JUDGE COTTE: (Interpretation) You were sufficiently
7 brief and we thank you for that. The Chamber would like to ask you a
8 question, and if you feel you're able to respond please do so. You've
9 indicated just a moment ago - and we were listening very carefully - that
10 investigating the credibility of a witness is something that's quite
11 delicate and that, generally speaking, a Defence team does not feel
12 required to investigate systematically on every single witness as regards
13 their credibility and that it all depends on whether or not it's a crime
14 based witness or a full-on witness, calling into question the full
15 liability of the accused and that in addition it would be a costly
16 investigation. Can you tell the Chamber, if possible, irregardless of
17 any new elements that you feel you heard the other day, whether or not
18 you have already investigated on the credibility of Witness 161.

19 MR. O'SHEA: I can answer that, but I'd like to briefly consult
20 with my lead counsel if that's all right.

21 (Defence counsel confer)

22 MR. O'SHEA: I just wanted to check --

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course, that's
24 perfectly possible and irregardless of any new elements that you have
25 just heard, in other words, that you consider as new elements that you

1 learned last Friday. That was my question, but of course do consult your
2 colleague.

3 MR. O'SHEA: I just wanted to check and double-check, but the
4 position is that we have not investigated the credibility of Witness 161.

5 PRESIDING JUDGE COTTE: (Interpretation) In other words, you
6 have not as of yet investigated the credibility of Witness 161. Is that
7 the case?

8 MR. O'SHEA: (Previous translation continues) ...

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much for
10 that answer.

11 Now, in the hypothesis -- well, let me come back to the
12 suggestion I made at the very beginning of this hearing. In the
13 hypothesis that we were to consider postponing the cross-examination, you
14 mentioned re-calling the witness and this was something that was
15 mentioned as a possibility on the basis of numerous case law by the
16 Prosecution. Now, if it was decided to postpone the cross-examination,
17 can you tell the Chamber what time-frame would be required by you and
18 your team, in particular, in order to investigate the credibility of this
19 witness, because we have understood and as much as this solution is
20 decided to be the best one, we do have to think in terms of
21 expeditiousness. We don't want the witness to have to leave The Hague,
22 and therefore we're trying to find the best possible solution between the
23 various legal issues, the time issues, and the other matters.

24 MR. O'SHEA: (Previous translation continues) ... of difficulties
25 which only certain people in this room are aware of, and therefore I

1 can't go into details about them. But there are difficulties in terms of
2 certain ex parte matters which would make it, I think, difficult for us
3 to do this properly while here in The Hague in trial. It may be
4 necessary for counsel to go to the Democratic Republic of Congo, and I
5 don't think at this stage in the proceedings we can simply leave it in
6 the hands of our personal resource, given those matters of which only
7 certain people in this room are aware.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
9 Mr. O'Shea. Thank you.

10 Professor Fofe, it's -- we shall now listen to your arguments.

11 MR. FOFE: (Interpretation) Thank you very much, your Honour.
12 Your Honour, your Honours, good afternoon. I would like to try to
13 respond to certain arguments made by the Prosecutor before I make some
14 practical proposals in order to enable us to move forward. And first and
15 foremost I would like to emphasise the fact that the Defence is not
16 complaining about the fact that the Prosecutor did not meet with its
17 obligations in disclosure, in terms of disclosure. The
18 Defence (as interpreted) did meet its disclosure requirements regarding
19 Witness 161.

20 The issue which you summarised very adequately in your
21 introductory statement is that in the interview notes that the
22 Prosecution sent to the Defence, that is, following the interview with
23 Witness 161, the important element raised by Witness 161 here in the
24 courtroom is not included. The Defence would like to emphasise that this
25 is -- this is not just any bit of information; it's an accusation. It is

1 stating that the accused carried out certain acts. And as Mr. O'Shea has
2 just stated, when one reads the interview notes from this witness this
3 was no mention this witness was to testify as to a number of crimes
4 committed but in general, at least according to the interview notes,
5 there was no mention of Mathieu Ngudjolo being accused of any particular
6 acts.

7 Therefore, we must point out that this witness had been
8 interviewed by the Prosecution on February 4th, 2006; the 4th of October,
9 2006; -- well, let me start again. This witness was heard by the
10 Prosecution on the 4th of February, 2006, during one hour and 55 minutes;
11 and then on October 4th, 2006, during four hours and 50 minutes; and
12 again on the 5th of October, 2006, during three hours and 45 minutes. In
13 other words, a total duration for the interviews of ten hours and 30
14 minutes.

15 If the witness had had such important information, he certainly
16 would not have omitted it, he would not have omitted to mention it during
17 such long interviews. And again, we'd like to emphasise that this is not
18 just any commonplace bit of information, but rather a direct accusation
19 aimed particularly at our client. Where it concerns the principle of the
20 oral nature of proceedings, the Defence is aware of the importance of the
21 principle of oral proceedings, and the Prosecutor had the presence of
22 mind to cite to us aspects where it concerns this principle of oral
23 proceedings which is an essential principle, a relevant principle, that
24 we do not challenge.

25 Nevertheless, it is here important not to forget where it

1 concerns the Defence's situation to add to this principle of oral
2 proceedings another principle, which is as important, and that is of
3 prior and detailed information on the part of the accused. This is a
4 principle previous and detailed provision of information and this is
5 enshrined in Article 69(4), I think, of the Statute and also in Article
6 67, the first paragraph, of the Statute. Article 67(1), which states the
7 rights of the accused and which mentions, amongst other rights, that of
8 being informed promptly and in detail, et cetera, et cetera.

9 Your Honour, honourable Judges, if this statutory provision -- if
10 these statutory provisions are not respected, then the prejudice suffered
11 by the Defence is clear.

12 So what is this prejudice? You asked us this question. To not
13 spend too much time on this matter, this prejudice consists of the
14 preparatory faults of the Defence or lack of preparation of the Defence
15 where it concerns these important aspects introduced in full hearing. As
16 I just said, the witness was called upon to speak about crimes, and here
17 he introduces an essential element which is imputing certain crimes
18 directly to the accused and here Mathieu Ngudjolo. And it is precisely
19 here that we have to note the difference that there is between the
20 situation of the Defence on the one hand and the Prosecutor on the other.

21 When, for example, as Madam Prosecutor did, one refers to what
22 occurred in the courtroom during the testimony of Witness 250, well, if
23 Witness 250, who is a Prosecution witness, not a Defence witness, if
24 Witness 250 gives elements which exonerate the accused, then the
25 Prosecutor is not suffering any prejudice because the Prosecutor

1 investigates both exonerating and incriminating evidence in accordance
2 with Article 54(1)(a) of the Statute. The Prosecutor, therefore, merely
3 has to find the real perpetrators of the crime in carrying out the
4 investigations. Whatever the case, the Prosecutor does not suffer the
5 same prejudice as that suffered by the Defence given that it is the
6 Prosecution's witness and the Prosecutor has no interest in the
7 perpetrators of such crimes being Mathieu Ngudjolo or Germain Katanga.
8 As a public Prosecutor, the Prosecutor seeks the perpetrators. Those
9 could be other people.

10 So what is our position? The Prosecutor -- well, your Honour,
11 ladies and gentlemen, Judges, what is our position where it concerns the
12 situation in which we find ourselves? The Defence of Mathieu Ngudjolo
13 proposes to you that Madam Prosecutor continues her examination-in-chief
14 of Witness 161. After the examination-in-chief, the Defence of
15 Mathieu Ngudjolo will cross-examine this witness, immediately afterwards.
16 It will cross-examine this witness with regards to all the aspects of
17 that witness's testimony other than the new element which the witness
18 introduced into it -- into the proceedings. And with regards to this
19 particular subject, the Defence of Mathieu Ngudjolo will ask the Chamber
20 for time to carry out additional investigations and also request from the
21 Chamber this witness to be re-called should the additional investigations
22 carried out show the need there be to re-call this witness where it
23 concerns this element. Yes, the principal counsel points out to me that
24 I should ask -- that we ask for a reasonable time-frame, a reasonable
25 time-frame in order to carry out investigations on the subject of this

1 precise information.

2 Your Honour, Judges, we will have finished -- we would like to
3 finish our comments by adding an anticipatory aspect to this debate to
4 prevent situations which might compromise the fairness and the integrity
5 of the proceedings. Indeed, we find in the first month of the trial, we
6 think that it's useful to carry out this type of reflection by way of
7 anticipation in order to avoid future blockages. The reflection made by
8 the problem with regards to the testimony of Witness 161 related to the
9 risks of interference of Prosecution witnesses between each other.

10 The Defence asks a question with the way in which the procedure
11 is proceeding when a Prosecution witness has finished testifying here in
12 The Hague, taking into account the close links that there are between
13 several Prosecution witnesses, geographical proximity, ethnic links,
14 sometimes family links, sometimes family links, taking into account these
15 close links, if having testified before the Chamber a witness goes back
16 into his environment and has the possibility to enter into contact with
17 the following witness, is there no risk that that person will influence
18 the latter? That is a question. Perhaps it is not justified. Whatever
19 the case, we have thought it useful in good faith to submit that and
20 share it with the Chamber and with the parties and the participants, with
21 a view to guaranteeing and ensuring the integrity of the proceedings.

22 Thank you, your Honour. Thank you, Judges.

23 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead, Judge.

24 JUDGE DIARRA: (Interpretation) I would like to receive the
25 duration of what you consider a reasonable time-frame. "Reasonable" is

1 so relative. When we ask for a reasonable time-frame, it doesn't give us
2 a guide-line in this regard.

3 MR. FOFE: (Interpretation) I'm sorry, your Honour. Can we
4 consult each other.

5 (Defence counsel confer)

6 MR. FOFE: (Interpretation) Your Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead.

8 MR. FOFE: (Interpretation) Yes, your Honour, it is true that a
9 reasonable time-frame is an elastic concept, but it's also difficult for
10 us to set a precise time-frame in this regard. But we can draw the
11 attention of the Chamber to the fact that in order for the Defence to
12 organise a field mission it is necessary to introduce an application to
13 the DCSS (as interpreted) at least one month in advance, at least one
14 month in advance. And so there are a lot of formalities which have to be
15 carried out, and that is the first aspect.

16 The second is that the Defence team is small. It's difficult --
17 it's sometimes difficult -- it's often difficult to share different
18 tasks, given the amount of different tasks there are that need to be
19 fulfilled as well as the -- you have the trial which continues to the 2nd
20 of April, and it will be difficult for the Defence to organise a field
21 mission before the adjournment on the 2nd of April. Those are a couple
22 of elements which I wanted to raise.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 Professor Fofe.

25 So a question was put by Judge Diarra which was answered, not

1 before the middle of April in the scenario in which it is true that the
2 reasonable time-frame is very -- something that was difficult to imagine,
3 so thank you very much for replying to that. Another question that I
4 have for you and then an answer -- or just a reply to a question that you
5 asked, and a couple of questions which were addressed to the two Defence
6 teams. Where it concerns this witness, 161, in the same way as I
7 mentioned this to Counsel O'Shea, could you also say if your team or
8 confirm whether your team, where I might not have heard this correctly or
9 misunderstood this, can you tell us if your team has already started to
10 investigate with regards to the credibility of Witness 161.

11 MR. FOFE: (Interpretation) No, your Honour.

12 PRESIDING JUDGE COTTE: (Interpretation) So you are in the same
13 situation as the Defence team of Germain Katanga. This is a piece of
14 information that was important for us. Now, an answer not to forget a
15 question which finished your remarks with regards to the situation of a
16 witness having testified and the risk of consultation which there might
17 be. The Chamber would like to talk to the VWU which also has to deal
18 with such matters. So we will go towards them.

19 Furthermore, as you are standing, perhaps Counsel O'Shea you
20 shall speak later, but there was also a question which was -- refers to
21 the investigations and with regards to credibility. Perhaps you might
22 find this question to be simplistic. In reality there are no simple
23 questions in a procedure which is being created through our proceedings.
24 Now, the Defence at a general level, furthermore, in these type of
25 proceedings, should it not always expect for a witness that a crime

1 witness can become -- taking into account the spontaneous aspects of the
2 oral debates, that a witness -- a crime witness equals Prosecution
3 witness. Is there not a place, if not a wise precaution, and even if
4 it's somewhat costly but the search for the truth might -- is -- well, is
5 worth such expenditure, is it not wise to always start with an
6 investigation as to regards to credibility because the oral nature of
7 proceedings and the spontaneity attached to it can at any moment lead to
8 a witness under oath saying perhaps something more than what he said a
9 few years or even weeks earlier? That's just a simple question that's
10 important to us where it concerns an answer for the evaluations that we
11 have to make. And Counsel O'Shea or Counsel Hooper will also be invited
12 to give us an answer in this regard.

13 MR. FOFE: (Interpretation) Thank you very much, your Honour.
14 Your question is important and it's so important that I would like to
15 have some time in order to consult my colleague. Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) Before you consult your
17 colleague, I would also like to give a precision with regards to the
18 question that I've just asked. And in -- please don't -- please don't
19 take into account Prosecution witness but a crime witness. So a crime
20 witness. Isn't a crime witness always able or during his testimony could
21 he not always become a witness of -- well, let me say a witness who is an
22 incriminating witness?

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

24 (Defence counsel confer)

25 PRESIDING JUDGE COTTE: (Interpretation) Counsel O'Shea, you are

1 ready to reply.

2 MR. O'SHEA: Your Honour, the reason why there are rules on
3 notice for the Defence, the reason why we are entitled to know our case
4 according to the Statute before the trial is so that we are in fact in a
5 position to prepare. It would not be fair to an accused, particularly in
6 a case of such complexity as a war crimes case, to expect the accused to
7 speculate as to the new elements which might spontaneously come out of a
8 witness's mouth. The idea that we could -- I've already partially
9 answered this question, but the idea that we could -- we should take
10 every single Prosecution witness and investigate their background with a
11 view to testing their credibility is not realistic either from the point
12 of view of the interests of the Court or from the point of view of the
13 interests of the accused.

14 When counsel begins a case pre-trial and has Status Conferences,
15 he's often asked by the Judges to give reasonable indications as to when
16 they might be prepared to start the trial. In this -- in these
17 particular circumstances we have a Court in The Hague and a crime scene
18 in another continent. The logistics of planning and executing missions
19 to the Democratic Republic of Congo is in practice more complex than one
20 would imagine. There are difficulties on the ground and in the field
21 because of lack of infrastructure. There are difficulties in connecting
22 up with witnesses, meeting them, meeting them again if necessary.

23 But all of these difficulties come together to establish a
24 situation whereby we really have a duty to ourselves, our client, and the
25 Court to ensure that our investigations are channelled on the Prosecution

1 case as it has been presented to us. Otherwise, we would be asking for
2 unreasonable lengths of time to conduct our investigations. We would be
3 giving the Prosecution an unfair opportunity to prolong proceedings. The
4 accused, and especially this accused, has always been keen to move
5 forward and get on with this trial. And having those considerations in
6 mind, there must be, in my submission, a discretion on the part of
7 counsel for the Defence, a reasonable professional discretion, to focus
8 energies on the Prosecution case as it has been presented and not to go
9 down avenues which on the basis of the documents provided are clearly not
10 necessary for the accused and at the same time would amount to a
11 gratuitous interference in the life of the Prosecution witness.

12 So my answer to your Honour's question would be that, as it were,
13 Defence counsel must be given a measure of prerogative and discretion as
14 to what needs to be done in the interests of his client. And if what he
15 has done measures up against the Prosecution case as it has been
16 presented, then he should not be criticised because we have to manage
17 resources, we have to manage time, and we have to focus on those very
18 difficult issues and witnesses which do incriminate the accused.

19 As a question of relativity, your Honour, your Honours may wish
20 to consider that there are situations where a witness can come out with
21 new elements which could have perhaps potentially been anticipated by the
22 accused, and it's always a question of balance. But whereas in this case
23 the witness turns from a witness who does not incriminate the accused at
24 all to a witness who completely incriminates the accused, that is quite a
25 dramatic situation. And it would not be fair to the accused to say,

1 "Well, you should anticipate these possibilities," in the light of all
2 the factors I've indicated.

3 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
4 excuse me, I would like to know if it is possible to extend this already
5 long session by ten minutes and then to suspend for 45 minutes -- adjourn
6 for 45 minutes. But I don't want to stop this now. Is it possible? No.
7 Okay.

8 The constraints are not only for the Defence team in the field,
9 as you can see. Please go ahead, but I also have things to say to you,
10 but please go ahead, Professor Fofe.

11 MR. FOFE: (Interpretation) I'm sorry, your Honour. Excuse me.
12 I just wanted to take up your question again. Your Honour, Judges, the
13 Defence is aware of the fact that anything can happen, anything can
14 happen during a trial, anything. And so you have to be prepared for
15 anything. However, the Defence would like to draw the attention of the
16 Chamber to the fact that before the start of trial the Prosecutor
17 disclosed a document to us which stated the elements with regard to which
18 each witness would testify in front -- in the courtroom. And the Defence
19 is prepared and prepares itself in accordance with that document which
20 participates in the respect of the faithfulness of the proceedings. And
21 so it is clear that something unexpected can occur, as in the case in
22 point, but if that does occur then I think that the solution, the fair
23 solution, is to accord the Defence time in order for them to be able to
24 react to this unexpected event.

25 Thank you, your Honour.

1 PRESIDING JUDGE COTTE: (Interpretation) The Chamber would like
2 to thank you, Professor Fofe. I just want to say this to everyone. The
3 Bench does not underestimate the difficulties that you have or that you
4 might have in your investigations, and in the remarks that I noted there
5 was no criticism, particularly with regards to the fact that you did --
6 had not yet where it concerned this witness carried out any
7 investigations with regards to the credibility. You will have understood
8 that we are trying to inform ourselves, but we have to all be aware
9 whilst understanding what you have just said, we have to understand that
10 for each witness you are, despite everything, at the mercy of a new
11 element, namely that's linked to the oral nature of proceedings and their
12 spontaneity, the new element that you will judge to be more or less
13 important, perhaps it is -- might be a source of serious prejudice, but
14 it could lead to re-call or a delay and to have an investigation of
15 credibility which perhaps could have been carried out before even if it
16 is expensive, nevertheless, in terms of finances and also in terms of
17 time. But it's just a reflection that we share together in all parts of
18 this courtroom. It's something that we have to be aware of. Each
19 witness, because there is the oral nature of proceedings, there can be a
20 new element that might be raised which might be considered to be very
21 important. That's something that we have to bear in mind, because we are
22 at the start of the life of this Court as well.

23 So it's now 4.00 and we are therefore going to adjourn. There's
24 another issue which I would have liked to -- another question which I'd
25 like to have put to you, but that's something I will do after the

1 adjournment. So we are now going to adjourn for 40 minutes and we will
2 start again at 4.40, such that we have some time.

3 So the session is now adjourned.

4 Recess taken at 4.01 p.m.

5 On resuming at 4.40 p.m.

6 (Open Session)

7 COURT USHER: All rise.

8 PRESIDING JUDGE COTTE: (Interpretation) The hearing is
9 reconvened. Please be seated. We are in open session. The two accused
10 are present in the courtroom, so we can resume. We would like to ask one
11 question to the two Defence witnesses (as interpreted). Last Friday
12 Witness 161 provided information that you believe is new and
13 incriminating. You have underscored the importance of that information
14 and you say that it creates a real prejudice.

15 Madam Prosecutor, at the beginning of the hearing this afternoon
16 you said that this information - and I cannot remember your exact
17 words - but you indicated that that information was likely to be
18 elaborated on by other witnesses of the Prosecution in upcoming hearings.
19 That is not it.

20 MS. DARQUES-LANE: (Interpretation) Maybe I was not very clear.
21 What I wanted to say was that the Defence would be in a position to
22 cross-examine not only this witness on the new elements, but other
23 Prosecution witnesses.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Does that
25 imply that insofar as the Defence has the

1 cross-examination (as interpreted) of cross-examining other Prosecution
2 witnesses, it would be on issues of the same nature or are we simply
3 supposing right now? We have to be very clear. We are simply trying to
4 assess the prejudice and insofar as that new element is something that is
5 part of the proceedings and may arise during other examinations, we need
6 to know that to assess the prejudice caused to the Defence without
7 anticipating a decision on which we have not yet deliberated.

8 MS. DARQUES-LANE: (Interpretation) I would like to say that the
9 reliability of the statement made by the witness can be cross-checked
10 during other examinations in future of other witnesses.

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

13 You have all understood the meaning of the question that we were
14 asking ourselves. If you have any observations to help us better
15 understand or grasp the nature of the prejudice that you claim to have
16 suffered, then we are willing to listen to you; if not, then you do not
17 answer. Maybe Mr. O'Shea.

18 MR. O'SHEA: Well, it would be possible to explore issues with
19 other witnesses if other witnesses spoke about matters. But this idea of
20 these cries of Germain Katanga -- we don't see those in the statements of
21 the other witnesses. It's a unique -- a unique piece of evidence in --
22 from all angles, and may I add that your Honours need to look at the ...

23 (Defence counsel confer)

24 MR. O'SHEA: Yes. Thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) That is all? Very

1 well.

2 Now, Professor Fofe.

3 MR. FOFE: (Interpretation) Thank you, Mr. President. Indeed
4 that information as given in the testimony of the witness to my knowledge
5 is not repeated in any other statement of the Prosecution witnesses. We
6 therefore believe that the Chamber would administer justice if they ruled
7 on the issue as it stands now. Thank you.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea;
9 thank you, Professor Fofe.

10 Before we close this debate, Madam Prosecutor, in order to
11 facilitate the work of the Chamber so that we should have useful
12 information to base our decision on, are you in a position to tell us who
13 amongst your witnesses can during Defence cross-examinations -- will be
14 able to provide information or clarification not to support the exact
15 words that were mentioned by Witness 161, but to support the ideas? Do
16 you have the numbers of those witnesses of the Prosecution?

17 (Prosecution counsel confer)

18 PRESIDING JUDGE COTTE: (Interpretation) You can address the
19 Court, Madam.

20 MS. DARQUES-LANE: (Interpretation) Mr. President, your Honours.
21 The Prosecution is not in a position to speculate about what the
22 witnesses testifying on this issue are going to tell this Court.

23 PRESIDING JUDGE COTTE: (Interpretation) We are not talking
24 about speculation about new information being given as a result of the
25 spontaneity of an oral testimony. We are simply referring to any witness

1 or witnesses whose statement might be close to the testimony so far given
2 to us by the witness who has been testifying since Friday. If you can
3 identify the number of any such witness, we will be happy to have it.

4 Mr. Luvengika, please.

5 MR. LUVENGIKA: (Interpretation) Thank you, Mr. President, for
6 giving me the floor even though at the beginning of the hearing you said
7 that we will not address the Court since we spoke last Friday.

8 PRESIDING JUDGE COTTE: (Interpretation) I had allowed a way
9 out, that is in case there is an element in the Prosecution's submission
10 that concerns you.

11 MR. LUVENGIKA: (Interpretation) It is true that on Friday we
12 were slightly surprised by the incident that led to this issue which is
13 enlightening all of us, and when we addressed the Court we addressed the
14 Court without being prepared. But after having reflected on the issue I
15 would like to draw the attention of the Chamber to two elements. There
16 is the effect of a surprise, and a short while ago you asked the
17 question -- a question to the Prosecutor and we have exchanged on that.
18 And regarding this surprise effect related to new information provided in
19 the courtroom by the witness, our understanding is that this is a
20 surprise. There is new information that is not included in the case file
21 itself, but regarding the elements being added by Witness 161 to his
22 statements, if those elements are actually discussed by other witnesses,
23 I think it is not of the same nature but Witness 250 mentioned the
24 presence of the accused at the site of the crime, that is Bogoro. And
25 contrary to what Mathieu Ngudjolo's Defence team says -- and as I have

1 said we do not have the same understanding of the same issue. But if I
2 look at the previous statements of Witness 161, paragraph 25, page 5, he
3 says:

4 "With regard to the leaders of the attacks, I remember the names
5 such as Ndjabu Ngudjolo were circulating with regard to the Lendus, and
6 with regard to the Ngitis there were people such as Cobra and Kakado
7 being mentioned."

8 And so as I was saying a short while ago, talking about the
9 surprise effect we are -- we were not expecting the witness to provide
10 new information that was not in the statement. But if this is
11 information that can be located in the statements of other witnesses that
12 the Prosecution is going to call, then we feel that the surprise element
13 as such is not fully the case here because in the course of preparing the
14 case as a whole the Defence certainly thought about countering such
15 arguments. And we do not think that there is a prejudice because of this
16 surprise element because we feel that such prejudice, such prejudice --
17 we feel that such prejudice or the remedy thereof should be proportional
18 to the surprise element. And we feel, just like the OTP, that a
19 cross-examination could make it possible for the Defence teams to rectify
20 the issue and correct whatever prejudice might have been caused to the
21 rights of the Defence.

22 That is the contribution that we wanted to add to what we said on
23 Friday. Thank you.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Mr. Luvengika. And this enables us -- I'm sorry, Professor Fofe, please.

1 MR. FOFE: (Interpretation) Thank you, Mr. President. The
2 contribution of the Legal Representative compels us to react because what
3 he has just added is not relevant. The Defence would like to begin by
4 stressing the fact that you asked a precise question to the Prosecutor --

5 PRESIDING JUDGE COTTE: (Interpretation) I'm going to come back
6 to that, Professor Fofe. I'm allowing you to continue, but know that I'm
7 going to come back to this point.

8 MR. FOFE: (Interpretation) Thank you, Mr. President.

9 And in answer to that precise question, the Prosecutor said that
10 she is not in a position to identify the witnesses who are going to come
11 and speak to this same issue. But what I particularly wanted to point
12 out is that our learned friend Mr. Fidel Luvengika has just alluded to
13 paragraph 25 of document DRC-OTP-0164-0488. And that document summarises
14 the notes of the interview of witness 161 by the Prosecutor. We would
15 like to draw the attention of the Chamber and of our learned colleague to
16 the fact that that paragraph 25 relates to the Bogoro attack of 2002.
17 And yet, the witness here, when he introduced the element in dispute was
18 discussing the attack of 2003. So one has to be very careful about that.
19 Thank you very much, Mr. President.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Just a
21 moment, Madam Prosecutor. We have to hand down an oral ruling on this
22 debate which has been taking place since Friday. It is theoretical but
23 also practical and very important. We have to be very well informed
24 about it. In early afternoon you said - and in fact I'm looking at my
25 personal notes, which is consistent with what you said - you said that

1 the Defence should be able to remedy this issue during the
2 cross-examination of this witness and other Prosecution witnesses.
3 Hence, the importance for us in assessing the prejudice, to know whether
4 other Prosecution witnesses are going to say or have already told you,
5 because we don't want to speculate, not that Mathieu Ngudjolo and
6 Germain Katanga were present because that is not the Defence -- that is
7 not what the Defence teams are challenging. They are stressing the
8 utterances that are supposed to have been made and the shouts that came
9 out of the people there at the time. So we thought it would be important
10 to have the numbers of the witnesses who, according to you, would be
11 likely to remedy the prejudice on which we have not yet ruled, but in
12 order to better assess such prejudice we need elements of our precision.
13 Maybe a short while ago I did not express myself correctly, but this is
14 precisely what I mean and I hope I have been understood.

15 Can we have that information by noon tomorrow? It should not be
16 very difficult for the OTP to locate that information tomorrow by noon.

17 MS. DARQUES-LANE: (Interpretation) Mr. Prosecutor,
18 (as interpreted) please, can I have a minute to consult with my
19 colleagues?

20 PRESIDING JUDGE COTTE: (Interpretation) Of course.
21 (Prosecution counsel confer)

22 MR. O'SHEA: Mr. President, I don't know if I can use this
23 opportunity --

24 PRESIDING JUDGE COTTE: (Interpretation) Just a moment,
25 Mr. O'Shea.

1 Prosecutor, you will address the Court later, but before you take
2 the floor for the clarity of our debate and for the fact -- because it
3 has to be realised that you added an element during your last
4 intervention and I would like to repeat it because it is important.
5 Amongst the measures that can be implemented if there was a prejudice,
6 the Defence could rectify it or remedy it during the cross-examination of
7 not only 161 but other Prosecution witnesses. And we are coming back to
8 that because we feel it can be useful regarding the element that you just
9 introduced.

10 MS. DARQUES-LANE: (Interpretation) Thank you, your Honour.
11 Perhaps I was too brief earlier on. My proposal, that is, based on what
12 I presented earlier, was that the Defence will have full leisure to put
13 questions to Witness 161, and -- in other words where he was, in order to
14 test the credibility of what he stated and also to test the witness's
15 credibility. In addition, all of the witnesses that we will be calling
16 and who were present during the attack, that is, the witnesses listed in
17 annex A, this is document 1599 which we could indeed copy and submit to
18 the Chamber by tomorrow noon, in that list there are a number of crime
19 based witnesses, in other words, witnesses who were present who were
20 victims of the attack, and who lived the events, who heard what happened
21 during the attack.

22 The statement made by Witness 161 can be put to these other
23 witnesses. When I stated earlier, perhaps too rapidly, that we were not
24 in a position to speculate, what I meant in fact was that we cannot
25 speculate as to the response that will be given by those witnesses under

1 cross-examination. That's what I meant to say. So indeed we can
2 identify other witnesses if the Chamber so desires, witnesses who were
3 present in Bogoro during the attack and that the Defence can decide to
4 cross-examine as regards these matters, these words in particular, and
5 indeed the scope of the cross-examination can thus be extended to include
6 the contested words that were pronounced by Witness 161 and those will be
7 in the days to come. Thank you. Thank you, your Honour.

8 PRESIDING JUDGE COTTE: (Interpretation) Well, again fine. I
9 take note of what you've stated and thank you for the comments you made
10 regarding speculation, and we did understand exactly what you meant. In
11 other words, we cannot anticipate what a witness will state before the
12 Court. But again, it's not so much the fact that such witnesses were
13 present in Bogoro, but rather the words stated according to Witness 161,
14 words stated by the women and children who were present. And therefore
15 we would be most satisfied if you could identify other witnesses who
16 might have heard similar words by tomorrow noon, if you could do that.
17 Again, tomorrow at 12.00.

18 Mr. O'Shea, and then we will continue.

19 MR. O'SHEA: Yes, thank you, Mr. President. I just wanted us not
20 to lose sight of the real issue here, which is our inability to
21 effectively deal with the credibility of this witness. It is the words
22 of the witness that initiates the problem, but putting those words to
23 other witnesses will not solve the problem. In order to challenge the
24 credibility of the witness, we have to investigate the witness himself.
25 Unless my learned friend is suggesting that there are other witnesses who

1 can open up the door as to the credibility or otherwise of this witness,
2 I don't for my part see how cross-examining other witnesses on the words
3 spoken is going to solve our particular area of prejudice, which is that
4 we find ourselves in an inability to challenge the credibility of this
5 witness with regard to what he has said about those words spoken.

6 So that's the real issue.

7 And while I'm on my feet, I'd like to just say something in
8 response to Mr. Luvengika, my learned friend Mr. Luvengika, because he
9 provided an example with a view to suggesting that, you know, the Defence
10 should be put on notice to prepare. And the reference that he made to --
11 in I think it was paragraph 25 that he cited, to Cobra, that's not
12 something that incites in the Defence a motivation to investigate the
13 credibility of this witness. On the contrary, that is something which
14 pushes us away from seeing it as necessary to investigate the credibility
15 of this witness.

16 So if one is to look at the particular facts of a situation, what
17 this witness has said previously in his statements, not just what he
18 didn't say but what he did say, encourages the Defence not to pursue a
19 challenge of his credibility by expressly naming persons other than the
20 accused.

21 Have I created some confusion, your Honour?

22 PRESIDING JUDGE COTTE: (Interpretation) I hope not. However,
23 we believe we've understood that you would like to be able to have the
24 necessary time in order to ensure, in order to check, the credibility of
25 this witness. We've heard the Prosecutor who made a proposed solution,

1 which was that the cross-examination of Witness 161 as well as the
2 cross-examination of other witnesses. The Chamber, in order to respond
3 to your request on behalf of Mathieu Ngudjolo, is endeavouring to collect
4 as much information which will enable it to render a decision. I
5 believe, therefore, that we can now close this long but very useful
6 discussion that we've just had.

7 We have the impression now that all of the parties and
8 participants agreed that we can continue the examination, the direct
9 examination, on the part of the Prosecution; and therefore, we will do
10 so. We will continue and complete the direct examination on the part of
11 Madam Prosecutor. And she will endeavour to give us as precise an
12 evaluation as possible as to how long this will require. Of course we
13 don't control the length of the witness's responses.

14 Could you give us an idea, please, of how long your direct
15 examination will take.

16 (Prosecution counsel confer)

17 MS. DARQUES-LANE: (Interpretation) Your Honour, I believe that
18 given the way the witness responds I could estimate at two hours, the
19 time required.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
21 We will continue then.

22 Professor Fofe. We're not going back to the discussion. We've
23 closed the discussion now.

24 MR. FOFE: (Interpretation) Yes, your Honour, you can trust me
25 not to do so. However, I do have a question regarding the list that the

1 Prosecutor will be sending to the Chamber tomorrow at noon. Will the
2 Defence team also receive a copy of this list?

3 PRESIDING JUDGE COTTE: (Interpretation) Well, in the initial
4 stage the Prosecution will send it to us and we will determine whether or
5 not that is required. We will now continue the direct examination. The
6 Legal Representatives of Victims will ask their questions if they so
7 desire. The Chamber will also ask any necessary questions at the end of
8 the direct examination. And before the end of that series of questions,
9 that is, at the end of the direct examination, the questions by the
10 Representatives of Victims and questions from the Chamber, a decision on
11 your request will be handed down for -- Court Officer, can we then
12 continue direct examination. The Prosecution will be continuing and
13 therefore please bring the witness into the courtroom.

14 (The witness takes the stand)

15 PRESIDING JUDGE COTTE: (Interpretation) Good afternoon,
16 Witness.

17 THE WITNESS: (Interpretation) Good afternoon.

18 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me?

19 THE WITNESS: (Interpretation) Yes, I hear you fine.

20 PRESIDING JUDGE COTTE: (Interpretation) Friday at the end of
21 the session the Prosecutor was carrying out her direct examination.
22 She's going to continue now.

23 THE WITNESS: (Interpretation) Fine.

24 PRESIDING JUDGE COTTE: (Interpretation) She's going to
25 continue. Let me remind you that you need to speak slowly. You have a

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Ms. Darques-Lane (Continued)

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1 strong voice and we appreciated that last week and we thank you for that.
2 You must speak before the microphone, which you did, that's perfect; but
3 you also need to speak slowly enough so that you can be interpreted
4 accurately and we thank you for that.

5 Madam Prosecutor, you may proceed.

6 THE WITNESS: WITNESS P-0161 (Resumed)

7 (Witness answered through interpreter)

8 Questioned by Ms. Darques-Lane: (Continued)

9 Q. (Interpretation) Good afternoon, Witness.

10 A. Good afternoon.

11 Q. Before we actually continue the examination that we began last
12 Friday, I would like to make a few comments.

13 A. Yes.

14 Q. I'd like to remind you that we're in an open session this
15 afternoon.

16 A. Yes.

17 Q. So I would like to ask you not to mention the names of your
18 family members because we are in open session.

19 A. Fine.

20 Q. I would like to make a second point, which is I will interrupt
21 you if you respond too rapidly or to enable us to follow what you're
22 saying. And I will also ask you to be brief in your responses if you can
23 do that.

24 A. Okay. Fine.

25 Q. My last preliminary comment is to ask you to tell us what you

Witness: Witness P-0161 (Resumed) (Open Session)
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1 yourself saw with your own eyes or what you heard yourself, and what was
2 told to you by other people, whether they be members of your family or
3 people from the village of Bogoro, that is just as important for us to
4 know what you saw or what other people saw when they told you about such
5 events.

6 A. Okay. Fine.

7 Q. Witness, I would now like to resume my direct examination.

8 A. Thank you.

9 Q. I'd like to re-situate exactly where we stopped on Friday. I
10 asked you questions about victims that you yourself saw; in other words,
11 you saw these victims die, although they were not members of your family.

12 A. Yes.

13 Q. Witness, do you know a woman named Suza?

14 A. I know her very well. Suza is the wife of Bodzana (phoen).

15 Q. When did you see her for the last time?

16 A. The last time I saw Suza was a Sunday, the 23rd -- in fact, she
17 was the one who took care of my child who died, (Expunged) she was a
18 nurse. She took care of sick people.

19 Q. And since the last time you saw her -- well, have you seen her
20 again? What happened to her?

21 A. The last time I saw her --

22 THE INTERPRETER: The interpreters would like to point out that
23 there is a Larsen effect.

24 THE WITNESS: (Interpretation) That is on the 24th. After the
25 23rd, on the 24th I didn't see her again because that was when she died,

Witness: Witness P-0161 (Resumed) (Open Session)
Questioned by Ms. Darques-Lane (Continued)

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1 the 24th of February.

2 MS. DARQUES-LANE: (Interpretation)

3 Q. How did she die?

4 A. The Lendu and the Ngiti killed her. She was killed by the Lendu
5 and the Ngiti.

6 Q. Did you see her when she was killed -- did you see her being
7 killed?

8 A. I beg your pardon. When she was killed I didn't see it myself
9 with my own eyes because I was 1 kilometre away, but it was her daughter
10 who was there -- when she ran away. When she came out of school she
11 found her mother who had been killed and she actually walked over the
12 dead body of her mother.

13 Q. When did her daughter tell you about this information?

14 A. It was when we went back to Bogoro in 2005, her daughter told me
15 the story. She said she'd found her mother dead, along with my brother
16 named (Expunged). They were all killed together.

17 MS. DARQUES-LANE: (Interpretation) One moment please, your
18 Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) Go ahead.

20 (Prosecution counsel confer)

21 (Trial Chamber and Legal Officer confer)

22 PRESIDING JUDGE COTTE: (Interpretation) You may proceed, Madam
23 Prosecutor.

24 MS. DARQUES-LANE: (Interpretation)

25 Q. Witness, could you please avoid mentioning the names of members

Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

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1 of your family in open session. Perhaps it would be more convenient if
2 we went into private session.

3 PRESIDING JUDGE COTTE: (Interpretation) Well, it depends on the
4 kind of questions you're going to ask, but if it is difficult for the
5 witness given the spontaneous answers he's given to sort through these
6 answers. Do you intend to ask questions which could lead to the witness
7 giving names? Probably? Well, then in that case as a precaution in
8 order to avoid numerous redactions we will go into private session, but
9 please do remind me when it is possible to go back into open session
10 because that is to be the rule.

11 Court Officer, can we go into private session, please.

12 (Private session at 5.26 p.m.)

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Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

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24 *and he told the others who were looking for
25 people who were hiding about this information. And they answered. They

Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

Page 55

1 *said, "Where is she?" And the man responded saying, "She's there, near
2 the rocks." And so they showed her and those people came and they found
3 her. And they asked her whose wife she was.

4 Q. Did you see the wife of Ndora being killed?

5 A. With my own eyes, yes, I saw it with my own eyes. And I was with
6 my wife. We were hiding near the river when that woman was killed.

7 First they shot her with a gun and then they asked her,

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

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Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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18 *A. At that time there were girls who were there who were forced to
19 accompany them. There were even some who were taken as their wives.
20 (Expunged)
21 (Expunged)
22 (Expunged)
23 (Expunged)
24 (Expunged)
25 (Expunged)

Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

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5 *A. It wasn't a woman. It was a young woman. (Expunged)
6 (Expunged) She was called (Expunged)
7 (Expunged) There were (Expunged) people from her family who had been were
8 killed. Her father was called (Expunged).
9 (Expunged)
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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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9 *not the Lendu. They were taken and they were taken to the
10 Lendu path called (Expunged) who left with several people (Expunged).
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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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Witness: Witness P-0161 (Resumed) (Private Session)
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Page 70 Expunged - Private Session

Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

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Page 71 Expunged - Private Session

Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

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Page 72 Expunged - Private Session

Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

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1 (Expunged)
2 *some of them who were tall and slim, and they were wearing Ugandan
3 uniforms. I was not able to identify them.
4 (Expunged)
5 (Expunged)
6 (Expunged)
7 (Expunged)
8 (Expunged)
9 (Expunged)
10 (Expunged)
11 (Expunged)
12 (Expunged)
13 (Open session at 6.24 p.m.)
14 COURT OFFICER: (Interpretation) We are in open session,
15 Mr. President.
16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
17 Court Officer.
18 Court is adjourned.
19 I'm sorry. Court Usher, please lead the witness out of the
20 courtroom.
21 I'm sorry, Mr. Witness, for forgetting to have you taken out of
22 the courtroom before adjourning, but that is not a major problem.
23 (The witness stands down)
24 COURT OFFICER: All rise.
25 The hearing ends at 6.25 p.m.

Witness: Witness P-0161 (Resumed) (Private Session)
Questioned by Ms. Darques-Lane (Continued)

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1 RECLASSIFICATION REPORT

2 *Pursuant to Trial Chamber II's email instructions dated 10 July 2012,

3 the following excerpts of the transcript are reclassified as public,

4 after the indicated redactions have been implemented, as ordered by the

5 Chamber:

6 page 54 lines 24 and 25,

7 page 55 lines 1 to 7,

8 page 73 lines 2 and 3,

9 page 60 lines 18 and 19,

10 page 65 lines 9 and 10,

11 page 61 lines 5 to 8