

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
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Monday, 12 September 2011 -- Part 2
10 The hearing starts at 4.16 p.m.
11 (Open session)
12 COURT USHER: All rise.
13 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
14 We will now have the testimony of Witness D03-P-0100. By an
15 application of filing 3081 of the 19th of August, 2011, the Defence of
16 Mathieu Ngudjolo requested protection measures for four witnesses:
17 D-03-P-044, P-055, P-066 and P-0100.
18 After analysing the situation of all four witnesses, and having
19 justified the request and the necessity for those protective measures and
20 having determined that the decision would not prejudice the proceedings
21 of the Chamber, the Chamber by decision of the 15th of August, 2011,
22 decided to grant those measures. Witnesses 044, 055 and 066 have already
23 appeared, and we are now left with Witness 0100, who will now appear. He
24 will benefit from the use of a pseudonym and from face and voice
25 distortion. When he comes into the courtroom or leaves the courtroom,

1 that will be done in closed session and we ask all the parties and
2 participants to ensure that no identifying information is revealed and
3 that everything that can take place in open session should take place in
4 open session, to promote the orality of the proceedings. We refer you
5 back to our decision of the 15th of August. The situations of the
6 witness were analysed and the situation in particular of Witness 0100 is
7 actually very particular. So you can go back and read that decision.

8 Court Officer, Court Usher, please have the witness brought into
9 the courtroom. He will give us his identity details in closed session
10 and then we will go back into open session for his solemn undertaking.
11 Court Usher, please fetch the witness and Court Officer, let us go into
12 closed session to allow the witness to come into the courtroom.

13 (Closed session at 4.19 p.m.)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 4.21 p.m.)

22 COURT OFFICER: (Interpretation) We are in open session,
23 Mr. President.

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

25 Good afternoon, sir.

1 THE WITNESS: (Interpretation) Good afternoon.

2 PRESIDING JUDGE COTTE: (Interpretation) I believe you can hear me
3 very well. We would like to thank you for travelling here to give your
4 testimony at the request of the Defence of Mr. Mathieu Ngudjolo.

5 THE WITNESS: (Interpretation) Thank you for your words of
6 welcome. And I thank the good Lord for having made it possible for me to
7 travel here. But I have already spent many days here, and I'm not very
8 happy about it. Today, I am prepared to answer any questions that may be
9 put to me.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. You had to
11 wait for a longer period than was expected, but the testimony of the
12 previous witness was longer than planned, and that is the explanation for
13 that delay, which we understand was long and probably unpleasant for you.
14 However, you are here in the courtroom now, and through the Defence team
15 of Mr. Mathieu Ngudjolo, last July you expressed the wish to be granted
16 protection measures during your testimony. The Chamber has accepted to
17 grant you those protection measures, and this means that you will enter
18 and leave the courtroom in closed session, the public would not be able
19 to see or identify you, we will not refer to you by your name, but we
20 will refer to you instead as Mr. Witness. All the parties and
21 participants, as well as the Bench, will make an effort not to identify
22 you or any people close to you.

23 This means that people who are close to you will be assigned
24 pseudonyms to enable us to continue our proceedings in open session
25 without any risk to yourself. Your voice will be distorted and will be

1 unrecognisable, as well as your image on the screens. These are the
2 measures that you requested and which have been granted to you.
3 Throughout the entire period of your testimony, we would like to ask you
4 to speak slowly. Please do not be afraid to speak slowly because it is
5 important for the interpreters to be able to interpret every single thing
6 that you say. We also ask you to speak in an articulate manner so that
7 everything you say should be well-understood. And whenever you use a
8 proper noun that is the name of a person or a place which is rather
9 difficult, do not hesitate to use your own initiative to spell such a
10 name. But this would not be necessary for simple names. Each time a
11 question is put to you, please wait for five seconds. You can count up
12 to five before beginning your answer. Once again, this should enable the
13 interpreters to do their job properly.

14 You will not be the only one who is required to do that. We will
15 also do it. And whatever is said in this courtroom should be kept to
16 yourself. Do not discuss it outside of the courtroom. That is what
17 I wanted to tell you, Mr. Witness, before you begin your testimony.
18 There is a jug of water next to you, and if you feel thirsty, do not
19 hesitate to have a drink of water. That is what all of us do here. You
20 also have a box of tissues and it is perfectly acceptable for you to blow
21 your nose whenever you want. Our concern is for you to be in a good
22 physical and moral condition, to be able to give us your testimony and
23 answer the questions put to you, telling us everything that you
24 experienced, that you heard, that you saw.

25 We will begin by asking you to identify yourself, and in order to

1 do so, we are going to go into private session, which will enable you to
2 answer the questions without any risk, because whatever you say will not
3 be heard outside of this courtroom. Court Officer, please let us go into
4 private session in order to have the witness give us his identity
5 details.

6 (Private session) at 4.28 p.m.

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 (Expunged)

25 (Expunged)

1

2

3

4

5

6

7

8

9

10

11

12 Page 6 expunged – Private session.

13

14

15

16

17

18

19

20

21

22

23

24

25

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 (Open session at 4.35 p.m.)

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

16 your Honour.

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

18 Mr. Witness, we now come to an important moment. Before

19 beginning your testimony you must make the solemn undertaking to say the

20 truth, the whole truth and nothing but the truth. I will read the

21 wording of that undertaking slowly so that you appreciate its full

22 importance. This is the formula: "I solemnly declare that I will say

23 the truth, the whole truth, nothing but the truth." Have you heard me

24 clearly?

25 THE WITNESS: (Interpretation) Yes, sir, I heard you very clearly.

1 PRESIDING JUDGE COTTE: (Interpretation) So, Mr. Witness, do you
2 undertake to say the truth, the whole truth, and nothing but the truth?

3 THE WITNESS: (Interpretation) Yes. I undertake to say the truth,
4 nothing but the truth. I will tell you what I witnessed personally and
5 what I experienced.

6 WITNESS: WITNESS DRC-D03-P-0100

7 (Witness answered through interpreter)

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you. You have just
9 undertaken to say the truth, the whole truth, nothing but the truth. If,
10 during your testimony, or in answering the questions from the parties and
11 the participants sitting to either side of you, to your right and to your
12 left, if you do not speak the truth, you could be tried before the
13 International Criminal Court for bearing false witness, and if that
14 offence were to be demonstrated, you could be convicted. Once again,
15 have you understood me clearly?

16 THE WITNESS: (Interpretation) Yes. I have understood you
17 clearly.

18 PRESIDING JUDGE COTTE: (Interpretation) So, Mr. Witness, the
19 Court takes note that the provisions of Article 69(1) of the Statute and
20 Rule 66, paragraphs 1 and 3 of the Rules of Procedure and Evidence of the
21 Court have been complied with.

22 Now the Defence team of Mr. Mathieu Ngudjolo will begin its
23 examination-in-chief. Could I remind you once again, and that is what
24 you are doing so far, to speak slowly, but also to speak loudly so that
25 the interpreters can clearly hear what you are saying, and to do, as you

Witness: Witness DRC-D03-P-0100 (Private Session)
Questioned by Mr. Fofé

Page 9

1 are doing, in other words to articulate clearly.

2 Professor Fofé or Mr. Kilenda, I don't know which of the two of
3 you will be questioning the witness but I give your team the floor.

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

5 Questioned by Mr. Fofé:

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

7 A. Good afternoon.

8 Q. My name is Jean-Pierre Fofé Djofia Malewa. I am the co-counsel
9 within the Defence team of Mr. Mathieu Ngudjolo, as you know. On behalf
10 of this team, I am going to ask you precise questions, and so I would ask
11 you to answer me clearly, speaking loudly and slowly, slowly, as the
12 Presiding Judge has just told you. Please also do not forget to wait
13 five seconds after the end of my question. In the same way, I will wait
14 five seconds after your answer. This is in order to enable good
15 interpretation and transcription of my questions and your answers.

16 MR. FOFÉ: (Interpretation) Mr. President, your Honours, I am
17 going to begin with a brief period in private session, please.

18 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we will go
19 into private session. Professor Fofé, I will leave it to you to let us
20 know as soon as we can go back into open session.

21 (Private session at 4.41 p.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-D03-P-0100 (Private Session)

Page 10

Questioned by Mr. Fofé

1

2

3

4

5

6

7

8

9

10

11

12

13 Page 10 expunged – Private session.

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Witness DRC-D03-P-0100 (Private Session)

Page 11

Questioned by Mr. Fofé

1

2

3

4

5

6

7

8

9

10

11

12

13 Page 11 expunged – Private session.

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Witness DRC-D03-P-0100 (Private Session)

Page 12

Questioned by Mr. Fofé

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 *A. In 2003, in the month of February, I took refuge in Zumbe.

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-D03-P-0100 (Private Session)

Page 13

Questioned by Mr. Fofé

1

2

3

4

5

6

7

8

9

10

11

12 Page 13 expunged – Private session.

13

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Witness DRC-D03-P-0100 (Private Session)

Page 14

Questioned by Mr. Fofé

1

2

3

4

5

6

7

8

9

10

11

12

13 Page 14 expunged – Private session.

14

15

16

17

18

19

20

21

22

23

24

25

Witness: Witness DRC-D03-P-0100 (Private Session)

Page 15

Questioned by Mr. Fofé

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 (Open session at 5.04 p.m.)

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

23 your Honour.

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

25 Professor Fofé, proceed, please.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 16

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

2 Your Honour, to enable us to carry on smoothly, we should like to
3 present to the witness Exhibit EVD-D03-00004. This is a confidential
4 exhibit. Exhibit 5 on your list.

5 PRESIDING JUDGE COTTE: (Interpretation) Yes, Court Officer, and a
6 confidential exhibit, if you please.

7 COURT OFFICER: (Interpretation) The document can be consulted on
8 PC 1.

9 MS. LUPING: Before the document is shown we would ask that
10 Professor Fofé simply as a matter of procedure ask the usual questions to
11 lay the foundation in order to be able to show the document to the
12 witness. Because clearly whilst he may be in the chain of custody, this
13 document does not emanate from the witness so we need some questions
14 being put to him in advance in relation to the document, who it was
15 obtained from, in what circumstances. Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, in all
17 likelihood this is exactly what you intended to do, so we shall be
18 listening to you.

19 MR. FOFÉ: (Interpretation) I shall indeed comply with these
20 formalities, your Honour. If I understand the objection raised by the
21 Prosecutor, she would not want us to show the document directly to the
22 witness, is that so?

23 PRESIDING JUDGE COTTE: (Interpretation) That is exactly right.
24 She would like you to introduce that document according to the rules in
25 force.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 17

1 MR. FOFÉ: (Interpretation) I have already asked some questions
2 concerning person number 3, and person number 4, in reference to this
3 document. These are introductory questions. But I could pursue that
4 line of questioning.

5 MS. LUPING: Just a question of clarity also, with Professor Fofé
6 because at this stage we are obviously not certain exactly what use he
7 would like to have this document with this witness, but we would expect
8 before the document is shown, for example, if there are any dates of
9 birth to be asked, they need to be asked before the document is shown.
10 Otherwise, this is simply an exercise of refreshing the witness's memory.
11 It's important to have an understanding while the witness is here
12 testifying orally as to what his memory is. For example, Rita; we've had
13 no day or month asked of the date of birth. I'm assuming these questions
14 are going to be asked but we would simply ask that they are asked of the
15 witness without him seeing the document. Thank you. I hope that's
16 clear.

17 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé,
18 therefore, you will devote yourself to the exercise which consists in
19 reviewing with the witness, without the document in question yet, the
20 makeup of his family, dates of birth, et cetera, of his children, which
21 should not be extremely complicated.

22 MR. FOFÉ: (Interpretation) With your leave, your Honour, I will
23 revert to this later. I will now cut to the chase, if I may.

24 Q. (Expunged)-- we are in open session. We are in open session, are
25 we not? We are indeed in open session, so I shall be careful.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 18

1 Mr. Witness, between the month of August 2002 and the end of
2 February 2003, where did you live?

3 A. I lived in Bunia. In the month of August, I fled from the war
4 that was raging, so I went to Zumbe. The objective of that war was to
5 drive Lopondo out, so I left for Zumbe and I took up residence in Ditu (*
6 phon) in Zumbe.

7 Q. Were there any members of your family with you, without giving
8 their names? Who from your family joined you in Zumbe during that period
9 between August 2002 and the end of February 2003?

10 A. I was there with my wife.

11 MS. LUPING: (* Previous translation continues)... concern for
12 the identification of certain individuals, that the witness has been
13 asked to not provide names. But bearing in mind the context of the
14 question, it may be prudent simply for this particular question if the
15 answer is given in partial or closed session, simply for the sake of
16 avoiding the identity of any individuals.

17 PRESIDING JUDGE COTTE: (Interpretation) If I may,
18 Madam Prosecutor, the witness could always answer without giving names,
19 or in reference to the person that poses a particular problem, avoiding
20 that. There are ways of answering. The whole matter consists in knowing
21 whether we want to have the full name of the persons that left with him
22 or if the witness could just give us a rough answer as to which members
23 of the family went with him in general fashion, without being specific.
24 And I believe that the witness has understood. Mr. Witness, who was with
25 you in Zumbe is the question that was asked of you. Do not give us names

Witness: Witness DRC-D03-P-0100 (Private Session)

Page 19

Questioned by Mr. Fofé

1 or first names, but since we need specifics, let us move back into
2 private for this particular answer because otherwise it seems to be that
3 this session will be forever a private session and I refuse to see that.
4 So, Court Officer, please, for this answer.

5 (Private session at 5.16 p.m.)

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 (Expunged)

25 (Expunged)

Witness: Witness DRC-D03-P-0100 (Private Session)

Page 20

Questioned by Mr. Fofé

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 5.21 p.m.)

25 COURT OFFICER: (Interpretation) Your Honour, we are now in

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 21

1 public session.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

3 Professor Fofé.

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

5 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea.

6 MR. O'SHEA: Some spellings, for example the name of the school?

7 MR. FOFÉ: (Interpretation) Your Honour, we will revert to the
8 schooling of Baudouin, and when we do, we will be spelling out all the
9 names. We will be going back over the schooling of Baudouin in public
10 session.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well.

12 MR. FOFÉ: (Interpretation) Your Honour, I crave your indulgence,
13 if you may give me one extra minute. I'm doing my best to be brief.

14 Q. Mr. Witness, you have just told us in private session that
15 Baudouin was not with you in Zumbe during the time --

16 PRESIDING JUDGE COTTE: (Interpretation) Yes, Madam?

17 MS. LUPING: Looking very carefully at precisely what the witness
18 said in closed session and those were not the witness's words. I would
19 ask that Professor Fofé be very careful in responding actually --
20 providing accurately the precise words of the witness. He has to
21 understand that obviously these are issues that are important for us to
22 understand what the witness himself said. We mustn't be suggestive in
23 the way we summarise what he said back to the witness.

24 PRESIDING JUDGE COTTE: (Interpretation) Indeed, Madam Prosecutor.

25 Professor Fofé I'm sure will be paying attention. However, we

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 22

1 should not go to the opposite extreme either. Each one is to play his
2 own or her own role, but obviously with as much intelligence and
3 open-mindedness as possible. Please carry on, Professor Fofé.

4 MR. FOFÉ: (Interpretation) I'm obliged, your Honour.

5 Q. Mr. Witness, where was Baudouin between August 2002 and the end
6 of February 2003? Without giving us any specific details about his
7 schooling, just tell us where he was between August 2002 and the end of
8 February 2003.

9 A. I should like to thank you for this question. Beginning in the
10 year 2002, up until 2003, and indeed into 2004, he was in the Walendu
11 sector. Bindi *chez* Lingiti (* phon). He did not live with us. He lived
12 in Bindi with the Lingiti, Walendu-Bindi.

13 Q. Now we will broach the schooling of Baudouin, beginning with the
14 sixth year of primary school. Try and refresh your memory. Where did he
15 go to school for his sixth primary school year?

16 A. His sixth primary school year was at the mission school in
17 Bogoro.

18 Q. Are you in a position to remember what was the year in which he
19 attended the sixth year of primary school? Try and remember the sixth
20 year in Bogoro. What year was it?

21 A. He began his sixth year in Bogoro, in 1999, and he finished in
22 the same year.

23 Q. Do you remember the name of the school that he went to for his
24 sixth primary school year in Bogoro? What was the name of that school?

25 A. The name of that school was EP Bogoro.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 23

1 Q. Mr. Witness, after finishing primary schooling, where did
2 Baudouin go?

3 A. When he completed the sixth year, he went on to the next stage in
4 Buy-Sabuni. In 2000, the war intensified. He interrupted his studies at
5 Buy-Sabuni. I made some efforts. We fled to Bunia. And that is how
6 come I took my child to Songolo passing through the bush. That is how
7 come he was registered in a school in Songolo.

8 Q. How long did he stay in Songolo?

9 A. He settled in Songolo towards the end of October. He spent four
10 months there. During the fifth month, there was some unrest, and it was
11 because of that unrest that I took him to Kagaba.

12 Q. And which year was that; that is, the year he went to Kagaba?

13 A. He went to Kagaba in 2000.

14 Q. Mr. Witness, can you, from that point - explain to us slowly so
15 that you should not make any mistakes - can you explain to us his
16 schooling, that is the schools he attended as from that time on? Please
17 give us your answer.

18 A. Baudouin left Songolo. He went to Kagaba and completed that
19 stage of his studies in 2000. He did his second year there in Kagaba,
20 and he completed in 2001. He then continued with the third year of
21 studies, which he finished in 2002. After that, he continued with his
22 studies, but the disturbances once again broke out because Yuda was
23 causing confusion and disorder, people were fleeing, and the schools
24 could not function properly. That is why I took him to Geti. In 2003,
25 that person known as Kasoro cause add lot of problems in Geti, and

Witness: Witness DRC-D03-P-0100 (Private Session)
Questioned by Mr. Fofé

Page 24

1 Baudouin returned to Kagaba because Yuda was no longer there. He
2 completed his fourth year studies there in 2003.

3 Q. Mr. Witness, where did Baudouin live in Kagaba?

4 A. There, in Kagaba, at the very beginning, when Baudouin arrived
5 there in 2000, he stayed with someone from my family called (Expunged),
6 who was a displaced person. It was not possible for him to continue
7 staying with that person, and he found a house at (Expunged),
8 where he stayed. He was a young person who was very dynamic and who did
9 farm work to be able to survive. During the course of that period, he
10 did that work, and given that we did not have the resources to help him
11 to continue his studies, we had to take a goat to the teacher. That is
12 how he was able to pursue his studies, and it was in 2003 that he
13 completed his fourth year there.

14 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping?

15 MS. LUPING: What I would ask, actually, if that name could be
16 spelt in private session. Just to avoid having to seek another redaction
17 for that name.

18 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. Referring
19 to the name of the person at whose place Baudouin stayed, initially in
20 Kagaba, we are going to go into private session and the witness will
21 spell the name. But please wait while we go into private session.

22 (Private session at 5.41 p.m.)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-D03-P-0100 (Private Session)
Questioned by Mr. Fofé

Page 25

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Open session at 5.42 p.m.)

12 COURT OFFICER: (Interpretation) We are in open session,
13 your Honour.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

15 Mr. O'Shea.

16 MR. O'SHEA: It's just that on page 23, line 22 of the English
17 transcript, there is a reference to Kasoro. I don't know if it's the
18 same spelling in the French transcript.

19 PRESIDING JUDGE COTTE: (Interpretation) I would like to locate
20 the corresponding segment in the French transcript. You have said page
21 23 of the English transcript? Generally speaking, the English is more
22 concise.

23 MS. LUPING: (Previous translation continues)... the French
24 transcript and it is the same name in English and French, same spelling
25 at least.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 26

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
2 Ms Luping, for assisting us. Yes, indeed, page 26, line 1, in 2003, that
3 person known as Kasoro created a lot of problems. Mr. Witness, can you
4 spell that name Kasoro for us so that we should be clear about the way it
5 is written?

6 THE WITNESS: (Interpretation) Kasoro is spelled as follows:
7 K-a-s-o-r-o.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
9 Professor Fofé.

10 MR. FOFÉ: (Interpretation) Thank you, your Honour. Your Honour,
11 are we in open session?

12 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we are
13 indeed in open session. The light is not showing there on that little
14 box. I believe it can be positioned so as to be visible.

15 MR. FOFÉ: (Interpretation)

16 Q. Mr. Witness, we are going to continue in open session, and we
17 have about 30 minutes left for today. You have just told us where
18 Baudouin was and what he was doing during that period from August 2002 to
19 the end of February 2003. My question to you, Mr. Witness, is as
20 follows: During that period, apart from his studies, was Baudouin doing
21 anything else?

22 A. No. Aside from his studies, and the farm work that he was doing
23 to help him pay for those studies, he was not doing anything else.

24 Q. Mr. Witness, during that period, was Baudouin a militiaman or a
25 combatant?

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 27

1 A. No. Baudouin was not a combatant.

2 Q. You have stated here that you were in Zumbe while Baudouin was in
3 Kagaba. Would it have been possible for Baudouin to be a militiaman or a
4 combatant without your being aware?

5 MS. LUPING: This is a leading question. And we would ask
6 Professor Fofé to keep his questions neutral.

7 MR. FOFÉ: (Interpretation) In any case, the previous question
8 that I asked was neutral, and I wanted, actually, to be helpful to you.

9 Q. Now, let me merely ask my last question, which was neutral.
10 I asked the witness whether, aside from the studies, Baudouin was doing
11 something else and the answer was no, so let me stop there.

12 MS. LUPING: (* Microphone not activated)... to that and explain
13 the position of the Prosecution. The concern with the last question as
14 formulated, notwithstanding the previous questions and answers provided
15 by this witness, is that it's a highly speculative question. Would it
16 have been possible for you to know if Baudouin was a combatant? Would it
17 have been possible for you to not be aware of this? We have to stick to
18 the facts. We have to stick to precisely what this witness knew or did
19 not know. We shouldn't be asking in a very leading and suggestive manner
20 for the witness to speculate as to what he may or may not have known,
21 especially bearing in mind where the witness said he was located.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Ms. Luping.
23 I think Professor Fofé is fully convinced of what you have said to all of
24 us. It is true that that last question was quite speculative in nature.
25 He could have rephrased it but he has said that he is withdrawing that

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 28

1 question and we are simply going to move on calmly.

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

3 Q. Mr. Witness, I asked you whether, aside from his studies,
4 Baudouin was doing anything else. Your answer was no. My next question
5 to you is as follows: During the period when you were in Zumbe and
6 Baudouin was in Kagaba, did Baudouin come to see you, that is during that
7 period from August 2002 to the end of February 2003?

8 A. It was difficult for anyone to travel from Kagaba to Zumbe. The
9 answer is no, Baudouin never came to see me. And that was because it was
10 difficult to leave Zumbe and pass through the Kasenyi hill as well as
11 many other hills. It was very difficult to make that trip during the
12 night. So he never came there, not even once.

13 Q. Mr. Witness, do you know a gentleman by the name of Boba Boba,
14 who is nicknamed Boba Boba?

15 A. Yes. I know him. He is a young man from Ezekere.

16 Q. To your knowledge, during that period, that is from August 2002
17 to the end of February 2003, did Baudouin have any dealings at all with
18 Boba Boba?

19 A. No. I think Baudouin did not even know Boba Boba.

20 Q. Mr. Witness, do you know a person by the name of Nyunye?

21 A. Yes, I know him.

22 Q. As far as you know, did Baudouin have any dealings at all, any
23 relations, with Nyunye, during the period in question?

24 A. He had nothing to do with him. Baudouin was living in Kagaba
25 while Nyunye was in Zumbe.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 29

1 Q. Mr. Witness, do you know Mr. Mathieu Ngudjolo? And if yes, can
2 you point him out to us here in the courtroom?

3 A. I can see him right at the back. He was our nurse. That is him.

4 Q. Thank you very much. It is duly noted that the witness
5 recognised Mr. Ngudjolo.

6 Mr. Witness, during that period --

7 MS. LUPING: We've not objected previously to this rather leading
8 way of asking questions about a particular period of time we might be
9 interested in, and we obviously understand that our learned friend will
10 be asking questions regarding his client and we have no objections to
11 that. We would simply request that when questions are asked in relation
12 to Mr. Ngudjolo, that the questions are put in a more neutral fashion
13 without steering the witness to any specific period of time. We can
14 understand that Professor Fofé wants to cut to the chase, but we would
15 ask that he take the appropriate steps slowly in a neutral manner,
16 without leading the witness. If there are any questions to be asked, for
17 example, about what Mr. Ngudjolo was doing at any period of time, we
18 would ask that the witness himself be asked to give the dates according
19 to his own knowledge as to what Mr. Ngudjolo's activities were, if that's
20 the next question that was to be asked.

21 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

22 MR. FOFÉ: (Interpretation) Your Honour, the Prosecutor is missing
23 the point. This is not in my remit. I would like to remind her that
24 when she begins her cross-examination, she can broaden the time frame if
25 she wishes to do so. I have my way of doing things, and I'm asking

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 30

1 questions concerning the material period, the period of the indictment.
2 So I would like to ask my learned friend to calm down because I'm not
3 going to put questions to the witness about the activities of
4 Mathieu Ngudjolo.

5 PRESIDING JUDGE COTTE: (Interpretation) Please, please, please.
6 Clearly, tension is rising and quite pointlessly. In the case of other
7 witnesses, we accepted that questions should be asked relating to
8 specific periods. We can also talk about 1996 to 1999, but here we are
9 talking about a period from the fall of Lopondo that everybody agrees on,
10 that is August 2002 right to the end of February 2003. In the case of
11 other witnesses, questions were put to them referring to the specific
12 time frame of August 2002 to March 2003. We are not going to digress
13 from that formula, which enables the Chamber and all the parties and
14 participants to know what we are talking about, rather than dwelling on
15 issues that are of no interest at all. I said a short while ago that we
16 should be rigorous in our procedures, but we can make an effort to
17 understand the Rules of Procedure, that is, intelligently. Please
18 proceed.

19 MR. GARCIA: (Interpretation) I don't want to interrupt my learned
20 friend, Professor Fofé, but this is a question and a subject which is
21 very important.

22 PRESIDING JUDGE COTTE: (Interpretation) We are quite sure of
23 that, Mr. Prosecutor. We have been here for three years, we know that.

24 MR. GARCIA: (Interpretation) Professor Fofé is obviously going to
25 address Mathieu Ngudjolo's functions during a certain period of time.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 31

1 PRESIDING JUDGE COTTE: (Interpretation) You don't know anything
2 about that. You really don't know.

3 MR. FOFÉ: (Interpretation) I can present this to you.

4 PRESIDING JUDGE COTTE: (Interpretation) I can understand that
5 people want to anticipate things but here we are having too many
6 interruptions which are not enabling us to make progress. The beginning
7 of this witness's testimony is of extreme slowness. I don't think we
8 have ever been as slow as this. I don't know what my fellow judges
9 think. We've never gone as slowly as this. Now, let us try and move
10 forward, as I have said, in a way that is procedurally rigorous, but, if
11 possible, intelligent. We are all aware of what is at stake with this
12 witness's testimony. Please go ahead, Mr. Garcia.

13 MR. GARCIA: (Interpretation) Just this, your Honour, if we are
14 going to deal with this issue, could we allow the witness who is here to
15 testify to give us the relevant information concerning what
16 Mathieu Ngudjolo was doing, his functions?

17 PRESIDING JUDGE COTTE: (Interpretation) But we don't even know
18 what questions Professor Fofé is going to ask. What leads to you to
19 believe that at the moment, at this point in time, he is going to ask the
20 witness Mr. Mathieu Ngudjolo's functions? I don't know if the two of you
21 got together before the hearing to discuss how this examination-in-chief
22 was going to proceed but we, as far as we are concerned, are trying to
23 follow the questions asked as they come in the context of
24 examination-in-chief. Please, I will confess that I'm very disconcerted.

25 MR. GARCIA: (Interpretation) I apologise, your Honour, if we have

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 32

1 misinterpreted the questions that Professor Fofé is likely to ask in --
2 now. We don't want to interrupt. We just want the questions, if they
3 are asked, to be neutral. If the witness has a date to give, let him say
4 so in the Chamber. At what time Mathieu Ngudjolo occupied those
5 functions.

6 PRESIDING JUDGE COTTE: (Interpretation) Please don't ask the
7 questions or answer them before Professor Fofé has even put them to the
8 witness. You will have your own chance to ask questions. Do not do so
9 in Professor Fofé's place. Professor Fofé, five or six times now you
10 have heard that you should not be asking leading questions. I think that
11 you are well aware of that constraint. We do not know what you intend to
12 ask now, but please be vigilant in the questions you're asking. Ensure
13 that those questions are not suggestive questions. Do not tell the
14 witness what you want to hear before the witness has even given his
15 answer. But we believe that you know this. It is in that spirit now
16 that I would like you to continue your examination-in-chief. Please go
17 ahead. We only have ten minutes remaining. We are listening to you.

18 MR. FOFÉ: (Interpretation) Thank you very much, Mr. President.
19 Thank you. Thank you very much, your Honour.

20 I just have two questions following on from the witness's
21 indication of Mathieu Ngudjolo in the courtroom.

22 Q. Mr. Witness, during the period at hand, from August 2002 to the
23 end of February or March 2003, one way or another, did Baudouin work with
24 Mathieu Ngudjolo?

25 A. No.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 33

1 MR. FOFÉ: (Interpretation) Your Honour, with that answer our
2 second question now is no longer relevant. That is all I wanted to ask.

3 Q. Mr. Witness, you have told us that during that period, Baudouin
4 was therefore in Kagaba.

5 A. Yes. Throughout that whole period, he was in Kagaba.

6 Q. Apart from his school activities, did Baudouin engage in any
7 other activities? I am asking my question that way to avoid being
8 suggestive. In addition to his school attendance, did he have any
9 dealings with other people in Kagaba? Was he engaged in any other
10 activities in Kagaba where he was living?

11 A. Baudouin did not have any other dealings with anybody at all in
12 Kagaba. In Kagaba, he was living in the same house as another young man.
13 This young man was in (Expunged), and they were living together
14 in the one house during this period.

15 Q. Mr. Witness, while you were in Zumbe as a refugee, during that
16 period, and you told us that Baudouin had studied in Bogoro so we can
17 suppose that you knew Bogoro to a certain extent, during that period,
18 from August 2002 to February 2003, did anything happen in Bogoro?

19 A. Yes. I am able to give you some explanation.

20 Q. Please don't go into detail. Just tell us quite simply, briefly,
21 what happened in Bogoro.

22 * A. In Bogoro, there was the Ugandan army and the Hema youth.
23 They were in the habit of attacking us on several occasions. They attacked us twice.
24 We were in Zumbe. They made us suffer. They killed people in Zumbe. We heard
25 with our own ears and we saw with our own eyes, and it was on the 24th

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 34

1 of February. We heard gun-fire and weapons being fired in
2 Bogoro. That began early in the morning. Before 6.00 a.m., or between
3 5.30 a.m. and 6 a.m., we heard gun-fire, the noise of weapons.

4 Q. Thank you very much. Mr. Witness, on that day you have just
5 indicated, on the 24th of February, 2003, the 24th of February, 2003,
6 where was Baudouin?

7 One moment.

8 MS. LUPING: Mr. President.

9 PRESIDING JUDGE COTTE: (Interpretation) Madam Luping.

10 MS. LUPING: I would just ask that Mr. Fofé avoid giving dates to
11 the witness. There is no date being given by this witness at this stage.
12 A precise date has now been given by Mr. Fofé and of course it does have
13 an impact about the weight of what the witness's response will be now on
14 this. But we would ask if he avoid giving dates on these types of
15 issues.

16 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, we only
17 have three and a half minutes remaining. The witness has just talked to
18 us about a battle in Bogoro. Please ask your question again in the light
19 of that.

20 MR. FOFÉ: (Interpretation) Your Honour, I am following what the
21 witness is saying in Swahili. I have the advantage of understanding him
22 directly. I apologise, Madam Prosecutor, but the witness was giving the
23 date in Swahili and that means that the date was not translated. I was
24 following what the witness was saying. The witness gave the exact date.

25 Q. Mr. Witness, could you repeat that date? We can check.

Witness: Witness DRC-D03-P-0100 (Open Session)
Questioned by Mr. Fofé

Page 35

1 A. Yes, I can repeat the date. It was --

2 Q. Page 37, line 8. Mr. Witness, can you give us the exact date of
3 the attack in Bogoro, just the date?

4 A. The gun-fire that took place on the 24th of the month of
5 February. It was in Bogoro.

6 PRESIDING JUDGE COTTE: (Interpretation) All right.

7 THE WITNESS: (Interpretation) It was in 2002. It was in 2003.
8 No, it was in 2002. I'll repeat: It was the 24th of February, 2002.

9 PRESIDING JUDGE COTTE: (Interpretation) The first page of -- part
10 of page 37 of the French provisional transcript will need to be checked
11 against the cassette recording. Those of us who do not speak and
12 understand Swahili need to be sure of the date that was given by the
13 witness. We are wondering whether there is any inconsistency. The
14 witness may answer your -- has the witness answered your very last
15 question before we break for the afternoon? I don't remember.

16 MR. FOFÉ: (Interpretation) May I ask the last question on this
17 point, your Honour? I think we have one minute remaining.

18 PRESIDING JUDGE COTTE: (Interpretation) Well, it really is the
19 very last minute.

20 MR. FOFÉ: (Interpretation) We will come back to it tomorrow
21 morning.

22 PRESIDING JUDGE COTTE: (Interpretation) All right we will come
23 back to it tomorrow morning. Mr. Witness, we would like to thank you.

24 Thank you, Mr. Witness, for the beginning of your testimony. As you have
25 seen, sometimes you have been testifying in a somewhat lively atmosphere,

1 but that is part and parcel of the unfolding of a hearing. Now you may
2 rest and we will see you again tomorrow morning at 9.00 a.m. We thank
3 you for your contribution over the course of the afternoon.

4 The usher will now escort you out of the courtroom as soon as he
5 comes back, and we will go into private session so that you may leave the
6 courtroom discreetly.

7 (Closed session at 6.14 p.m.)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Open session at 6.14 p.m.)

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

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Court Officer.
18 We now adjourn and we will meet again tomorrow morning at 9.00.

19 The hearing ends at 6.15 p.m.

20 CORRECTION REPORT:

21 The Court Interpretation and Translation Section has made the following correction
22 in the transcript:

23 * Page 33 line 22 to page 34 line 3:

24 "A. In Bogoro, there was the Ugandan army and the Hema soldiers, and
25 they attacked us on several occasions. They attacked us twice. We were

1 in Zumbe. They made us suffer. They killed people in Zumbe. We heard
2 with our own ears and we saw with our own eyes, and it was in the month
3 of February, we heard gun-fire or the noise of weapons being fired in
4 Bogoro. That began early in the morning. Before 6.00 a.m. or round
5 about 5.30 a.m., we heard gun-fire, the noise of weapons.”

6 Is corrected by

7 “A. In Bogoro, there was the Ugandan army and the Hema youth.
8 They were in the habit of attacking us on several occasions. They attacked us twice.
9 We were in Zumbe. They made us suffer. They killed people in Zumbe. We heard
10 with our own ears and we saw with our own eyes, and it was on the 24th
11 of February. We heard gun-fire and weapons being fired in
12 Bogoro. That began early in the morning. Before 6.00 a.m., or between
13 5.30 a.m. and 6 a.m., we heard gun-fire, the noise of weapons.”

14 RECLASSIFICATION REPORT

15 *Pursuant to Trial Chamber II's email instructions dated 10 July 2012, the excerpt of
16 the transcript Page 12 line 22 is reclassified as public, as ordered by the Chamber.