

1 International Criminal Court
2 Trial Chamber II - Courtroom I
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 Thursday, 25 August 2011
10 The hearing starts at 9.03 a.m.
11 (Closed session)
12 (Expunged)
13 (Expunged)
14 (Expunged)
15 (Expunged)
16 (Expunged)
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18 (Expunged)
19 (Expunged)
20 (Expunged)
21 (Expunged)
22 (Expunged)
23 (Open session at 9.04 a.m.)
24 COURT OFFICER: (Interpretation) We are in open session,
25 your Honour.

Witness: Witness DRC-D03-P-0066 (Resumed) (Open Session)
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1 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Once again,
2 good morning to everyone.

3 Good morning, Mr. Witness.

4 Mr. Court Usher, the witness is indicating that his microphone is
5 not turned on. Would you please turn on the microphone for him. Very
6 well.

7 Good morning, Witness.

8 THE WITNESS: (Interpretation) Good morning. I must say that I
9 have a headache, and I have some pain in my ribs. I am in pain.

10 PRESIDING JUDGE COTTE: (Interpretation) We will all take that
11 into account, and normally your presence here in the courtroom this
12 morning should not be very long. If something is not -- if you're not
13 feeling well, tell us. If you're having a headache, the Court Officer
14 will ask the unit if it is possible to send some medication in that you
15 can take with a glass of water.

16 Now, before we continue cross-examination, the Chamber wishes to
17 inform the Ngudjolo Defence team that before the next witness comes in,
18 the Chamber would encourage the Defence team to make observations
19 regarding the e-mail from the Prosecution dated the 23rd of August,
20 2.41 in the afternoon, and in this e-mail the Prosecution announced that
21 they would be objecting to the use of the video that we have mentioned
22 several times. In any event, the -- apparently they object to the part
23 of the video that includes the sketching of a diagram by the witness and
24 the comments relating to this sketch. And you will have an opportunity
25 to make observations in this regard just before the next witness comes

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1 in, and we will give our ruling just before the next witness begins,

2 Witness 0088.

3 Prosecutor, if you could be so kind to resume your
4 cross-examination at the point where you had left off yesterday. Please
5 proceed.

6 MR. GARCIA: (Interpretation) Good morning, your Honours.

7 Questioned by Mr. Garcia: (Continued)

8 Q. (Interpretation) Good morning, Witness.

9 A. Good morning.

10 Q. Witness, I realise that you are having some pain this morning,
11 and I would like to reassure you that I don't have many questions for
12 you. Perhaps 10 or 15 minutes' worth of questions. I just wanted to
13 reassure you of that right from the outset.

14 Now, if we could continue with the line of questioning that we
15 were dealing with yesterday, I just would like to ask you a few things.

16 Now, during your testimony in this courtroom in response to
17 questions from Professor Fofé, you mentioned that someone by the name of
18 Philippe was part of the health committee. Do you remember talking about
19 that, about mentioning someone by the name of Philippe in relation to the
20 health committee?

21 A. Philippe was a nurse. He worked with Mathieu Ngudjolo.

22 Q. I see. Now, to be specific, was Philippe part of the council or
23 the health council or the health committee?

24 A. No. He was just a nurse.

25 Q. I have another question for you, Witness. When I was questioning

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1 you yesterday, I asked you about the certificate that you signed, and you
2 told us that the archives of that school had been destroyed, burnt down
3 during the war, so I would just like to know -- and this is for
4 information purposes. I realise that during the war in your area, in the
5 Bedu-Ezekere groupement in Zumbe, when there were attacks, I believe that
6 the schools were burnt down sometimes, and the records or the archives
7 also were destroyed. Was that the case in your region?

8 A. I mentioned the archives, and these were the archives or the
9 records, rather, that were in my office. It wasn't just records in my
10 school. There were also some records with Ngudjolo, and these records
11 were found in some houses that had straw roofs that had been burnt down.

12 Q. And you were a teacher. You were the headmaster. Isn't it true
13 that during that time in -- during the war, certainly in your area and in
14 other areas within the Walendu-Bindi collectivity and in Ituri in
15 general, there were many cases of schools being destroyed and records
16 also be -- being destroyed, records that were in the school or kept
17 elsewhere? Is that correct?

18 A. No. Other schools were built of durable materials and were not
19 burnt down, but our building which had a straw or thatched roof was burnt
20 down. I can't remember exactly how many schools were burnt down.

21 Q. Thank you for your answer, Witness. If I've understood you
22 correctly, it all depended on the kind of school, so it was possible that
23 some records survived if the records were in schools that were built out
24 of other materials, built out of other materials, not straw or thatch; is
25 that correct?

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1 A. Some schools were not burnt down, but the records were looted.

2 In the case of my school, well, those records were burnt completely.

3 Q. If I understand correctly, during the war not only were some
4 schools burnt down and the records destroyed, but there were also
5 cases --

6 MR. HOOPER: Isn't this going a little too speculatively for this
7 witness? Isn't he, rather, limited to speaking of his school and the
8 school he has knowledge of? Now we're moving to a generality of schools
9 without specificity and I object to that line of questioning.

10 MR. GARCIA: (Interpretation) If you don't mind, your Honour.

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

12 MR. GARCIA: (Interpretation) I must acknowledge that I don't
13 understand at all the legal basis for Mr. Hooper's objection. I am in
14 cross-examination, and I have a fundamental right to ask leading
15 questions of the witness. Not only am I asking these questions that are
16 leading in nature in light of the responses from the witness, so I really
17 don't see what is the legal foundation for his objection other than this
18 kind of question is not very -- that he's not very fond of such
19 questions.

20 MR. FOFÉ: (Interpretation) Your Honour, good morning,
21 your Honours. I totally support the objection that Mr. Hooper has made.
22 I was a bit distracted. Since things are moving along quickly, I was
23 momentarily distracted.

24 Now, on page 5, we see that the witness gave a relevant answer.
25 He said -- I don't have the line reference, but in any event he said

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1 other schools that were made of more durable materials may not have been
2 burnt down. However, his school was made out of thatch and so his school
3 was burnt down and --

4 PRESIDING JUDGE COTTE: (Interpretation) For the transcript, I
5 believe we're at page 5, lines 10 to 12.

6 MR. FOFÉ: (Interpretation) Thank you. The witness added, and
7 he said that he could not speak of other schools. He could not say what
8 happened in the case of other schools. He couldn't speak of these other
9 schools.

10 PRESIDING JUDGE COTTE: (Interpretation) I'm not respecting the
11 five-second rule, but I think we need to have a very specific framework
12 here for our discussion. So he said that other -- other schools were
13 made of durable materials and they were not destroyed. His school which
14 was made out of thatch was destroyed, and then he said, "I couldn't tell
15 you exactly how many schools were burnt down." So now we have the
16 specific quotation in our minds, just to be very specific.

17 MR. FOFÉ: (Interpretation) That was the witness's answer, and
18 now the Prosecutor is continuing, basing himself on an allegation.

19 You see, this is always the problem. I think we need to make
20 things clear. Just because the Prosecutor comes to some kind of
21 hypothesis, that doesn't mean that it's necessarily true. One mustn't
22 start off with an allegation and base a question on an allegation as if
23 the allegation were true, because if you do so, you may mislead the
24 witness and have the witness believe that he is not telling the truth and
25 that the Prosecutor is the one who is the bearer of the truth.

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1 I think this is an important point, your Honour. The Prosecutor
2 really has to make a distinction between facts that we all accept and
3 *allegations that are either his allegations or the allegations of his witnesses.
4 One must not put allegations to a witness as if they were absolute truth.

5 I thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you. I think
7 what we conclude from all of that is that, Prosecutor, this question is
8 speculative in nature. That would be our first comment.

9 Secondly, we mustn't ask the witness for more than what he can
10 give us and lead him into areas or present him with hypotheses that he
11 cannot formulate. We are dealing with a witness who was the headmaster
12 of a school. He may have contacts with other headmasters, and so he may
13 be in a position to know the -- what the condition of the school
14 buildings after that period of time, after that period of conflict in
15 that area during that period of time.

16 Prosecutor, please continue in light of what has just been said.
17 Cross-examination, yes; freedom to ask questions, yes; leading questions,
18 yes; speculative questions, no, because I think you may be leading the
19 witness into speculations. Please proceed.

20 MR. GARCIA: (Interpretation) Your Honour, regarding this whole
21 question of speculation, why did I ask this question? Well, I base my
22 question on the statements made by the witness, and I refer to the
23 transcript, page 5, lines 20, 21. He said that some schools had not been
24 burnt down but the records had been looted. That is why I asked my
25 question. I wasn't asking the witness to speculate about anything.

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1 PRESIDING JUDGE COTTE: (Interpretation) Very well. Continue.

2 MR. GARCIA: (Interpretation)

3 Q. Witness, once again I realise that you have said to us a few
4 moments ago that some schools were not burnt down but the records of
5 those schools were looted. So I understand that you have this knowledge
6 as the headmaster of a school. I would suppose that you have links or
7 contacts with other teachers in other parts of the Ituri District. Is
8 that correct? Do you have this knowledge?

9 A. Well, the situation varied from one school to another. You see,
10 when a war occurs, there's looting. And there was not necessarily
11 looting in all the schools. It wasn't a systematic thing.

12 Q. Witness, we are going to hark back to the issue we were
13 discussing yesterday. I didn't have time to conclude.

14 A. I beg your pardon, Mr. Prosecutor. Please be brief. At the
15 beginning, I said I was having some health problems, and I still am
16 experiencing these problems. You can go on.

17 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could
18 the VWU tell -- tell -- tell us about these health problems about the
19 witness before he comes into the courtroom. We really should be aware of
20 such matters, because we, too, may have a headache in the middle of a
21 hearing.

22 Yes, Court Officer.

23 (Trial Chamber and Court Officer confer)

24 PRESIDING JUDGE COTTE: (Interpretation) Witness, we are going
25 to take into account what you have told us. The unit is going to send a

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1 tablet, a tablet that you can take that should lessen your headache, and
2 hopefully you'll be able to continue your testimony under somewhat less
3 bad circumstances or even in good circumstances.

4 MR. GARCIA: (Interpretation)

5 Q. Yesterday as we were ending the hearing, we were talking about
6 the attacks that had occurred after you returned to the Walendu-Bindi
7 collectivity and you -- from, from the Walendu-Bindi collectivity. You
8 mentioned an attack on Bunia, and I believe that you also said that
9 during the attack on Bunia, the Lendu from Zumbe were involved. Is that
10 correct?

11 A. Yes, that's correct.

12 Q. Am I correct to say, Witness, that Mathieu Ngudjolo was also
13 involved in this attack on Bunia, that he took part in the hostilities?

14 A. I can give you an answer to that. The commander of the UPDF
15 based in Dele came to see the chief of the groupement. He was the one
16 who terrorised all the young people. It was Kiza, Commander Kiza from
17 the UPDF, and he brought with him Ngudjolo. And some of the young people
18 went to take part in the fighting, others just looted. And if I need to
19 give you fuller explanations, I can tell you that it was conflicts
20 between the UPDF and the UPF. Commander Kiza was based in Dele, and he
21 went to the chief of the groupement, Ngabu Emmanuel. It wasn't just
22 young people who were involved. There were also women who had to go off
23 with that group to go and take various items or equipment from Bunia.

24 Q. If I understand your answer correctly, Mathieu Ngudjolo did take
25 part in the attack on Bunia; is that correct?

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1 A. I'm saying that that is correct, but it wasn't just
2 Mathieu Ngudjolo. It was all the young people, nearly all the young
3 people of Bunia, fathers, mothers, because, you see, it was all-out
4 fighting, and the Ugandan soldiers of the UPDF were taking part, and the
5 UPDF was -- they were the ones who won the fighting.

6 Q. *Witness, am I correct to say that at that particular time, when the Bunia attack
7 occurred, Mathieu Ngudjolo was the leader of the combattants in the
8 Bedu-Ezekere groupement?

9 A. Prosecutor, I think that you know who the leader of the
10 representatives of the combatants were. It was Banga Mande Jacques, who
11 has now passed away. It wasn't Ngudjolo. It was Jacques who was the
12 leader of the combatants in our groupement, Bedu-Ezekere.

13 And with regard to the operation that occurred in Bunia, there
14 was the chief who was contacted by Kiza.

15 THE INTERPRETER: Message from the Swahili interpreter: The
16 Swahili interpreter did not hear the last part of the witness's reply.

17 PRESIDING JUDGE COTTE: (Interpretation) Witness, could you
18 please repeat the end of your reply. The interpreters did not hear it.
19 And we will allow you a moment to take that tablet and to have a drink of
20 water.

21 Now, what was the end of your question, please? The interpreters
22 did not hear the name of the groupement, apparently.

23 THE WITNESS: (Interpretation) Your Honour, Zumba is in the
24 Bedu-Ezekere groupement.

25 PRESIDING JUDGE COTTE: (Interpretation) Well, interpreters, you

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1 have now heard what was missing.

2 Witness, please take this tablet, take your time, and we will
3 then proceed.

4 THE WITNESS: (Interpretation) I am ready.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

6 Prosecutor, please proceed.

7 MR. GARCIA: (Interpretation)

8 Q. Witness, I'd like to go back over one thing before we proceed.

9 Are you telling me that as regards that attack on Bunia, Kiza forced
10 Mathieu Ngudjolo to go and to take part? Is that your testimony?

11 MR. FOFÉ: (Interpretation) That is not what the witness said.
12 I am sorry, but that is not what the witness said.

13 MR. GARCIA: (Interpretation) I'm putting a question for
14 clarification, Professor. The witness is present. He can answer.

15 MR. FOFÉ: (Interpretation) Yes, yes, but you have to base
16 yourself on the answer that was given.

17 THE INTERPRETER: Overlapping.

18 PRESIDING JUDGE COTTE: (Interpretation) Please, particularly
19 this morning as the witness says he's not feeling well, let's avoid this
20 sort of internal argument. Put the questions as clearly as possible that
21 are unlikely to prompt objections from any other party. So, Prosecutor,
22 please reformulate your question on the basis of the clarification given
23 by the witness. And without wishing to assume this is what was being
24 done, don't put words into his mouth, and be careful as to what he said
25 precisely. Please proceed.

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1 MR. GARCIA: (Interpretation)

2 Q. Witness, I want to make sure that we're clear about this, and I'm
3 going to read back to you what you said and see what you can explain to
4 us. It's page 11, line 2 of your answer. A question was put to you, and
5 your answer's as follows:

6 "I can answer you. The UPDF commander based in Dele came to see
7 the groupement chief. He was the one who terrorised all of the young
8 people. It was the UPDF commander Kiza, and he brought them with him.
9 Ngudjolo was among them."

10 What I would like to know, Witness, quite simply, is the
11 following --

12 THE WITNESS: (Interpretation) I'd like to thank you for this
13 question. Let me answer.

14 As records what happened in Bunia, I would say that it was the
15 UPDF and the UPC that were concerned. Commander Kiza was based in Dele.
16 He was an UPDF commander. He went to see the chief of the groupement,
17 and he asked for people to come for the self-defence of Zumbe, and that
18 is how the chief who was in charge of the movement went with the
19 self-defence people to Bunia. To be honest, I would say that the UPDF
20 commander Kiza gave weapons to the young people from Dele who went to
21 attack Bunia. It wasn't just young people involved. There were other
22 people there as well.

23 That's what happened. They looted. There were young people who
24 stayed there in the town, but the women went with them as well. There
25 were a lot of rifles around at the time.

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1 That is what I said earlier on. Perhaps you didn't follow what I
2 said, but that is what happened.

3 Q. Witness, when you say that the UPDF commander terrorised the
4 young people, what exactly do you mean? Can you give us more by way of
5 an explanation?

6 A. I didn't say the commander terrorised the young people. I said
7 that he came to see the chief.

8 Q. Witness, the reason why I said the commander was terrorising
9 people, the young people, is because that's what we have on the
10 transcript. When I put a question to you, you answered by saying:

11 "The UPDF commander in Dele came to see the groupement chief. It
12 was he who was terrorising all the young people."

13 I presume you were talking about the UPDF commander. Is that
14 correct?

15 A. Let me come back to what I was saying and clarify it for you.

16 During the war in Bunia, it was the UPC elements and the UPDF who
17 were concerned. The UPDF commander based in Dele, Commander Kiza, went
18 to the chief. He called up the chief, and after that conversation the
19 young people went off to battle. Dele is at the foot Mount Zumbe. He
20 gave weapons to those young people, and I added also that there were
21 woman who were involved in the looting. That's what I said.

22 I also said all the young people went. It wasn't just Ngudjolo
23 who went from Zumbe. It was all of the young people who went.

24 Q. Witness, we have understood that. The question is that I would
25 just like to have a clarification on what you said here in the courtroom

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1 when you said, "It was he who terrorised all the young people," and I
2 asked for further explanation as to how he terrorised them or what you
3 meant by using the word "terrorise." Can you answer that question?

4 A. I think we're perhaps not in agreement as to this word
5 "terrorise." I don't know why you're using this word "terrorise." Let
6 me repeat what I've already said.

7 During the battle of Bunia, the groups concerned were the UPDF
8 and the UPC. The UPDF commander was called Kiza. He was based in Dele.
9 He went to see the groupement chief. When you use the word "terrorise,"
10 I don't know in what context you're using it. I really don't know.

11 On that day when they met, subsequently all of the young people
12 from Zumbe went off to loot, and there were women also involved in the
13 looting. That's what I said.

14 MR. FOFÉ: (Interpretation) May I intervene?

15 PRESIDING JUDGE COTTE: (Interpretation) The verb used on
16 page 11 which was interpreted into French as "*terroriser*" and in English
17 as "terrorise," does it mean anything else? Can it have a different
18 meaning?

19 MR. FOFÉ: (Interpretation) I think the Prosecutor has
20 understood that it's not the witness who used the term "terrorise."
21 Perhaps there has been a slip in interpretation, because the witness
22 himself expresses surprise at the use of that word. You heard his last
23 answer. He is surprised that this word "terrorise" is being used. So
24 perhaps there has been some misunderstanding as regards interpretation.
25 By anyhow, three times over the witness has said what actually happened.

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1 Thank you, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you. To clarify
3 things, Witness, when Commander Kiza came, did he force, oblige, compel
4 the young people among the population to bear arms and Mathieu Ngudjolo
5 to fight? This is the question that the Prosecutor's been putting to you
6 for a while. You have provided certain answers, and we're now wasting a
7 bit of time on the term "terrorise" that you deny having used, but was
8 there any moral coercion, any insistence on the part of Commander Kiza?
9 That is what we need to hear clearly from you.

10 THE WITNESS: (Interpretation) Your Honour, let me come back to
11 what I've said. The UPDF commander, Kiza, went to see the chief, Chief
12 Ngabu Emmanuel. I don't know whether he terrorised him or not. I can
13 say nothing on that. What I saw was that after they met, the young
14 people went off to Dele. The commander gave them weapons, that was
15 clear, and then there were many weapons around the collectivity, and they
16 went off to fight in Bunia. I also saw women who left and went to the
17 town to loot. There were also young people who did that too. That is
18 what happened, your Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness, for
20 that clarification.

21 Prosecutor, please proceed.

22 MR. GARCIA: (Interpretation)

23 Q. Witness, I'm going to put other questions to you on the attacks
24 that were perpetrated. Am I correct in saying, Witness, that following
25 your trip to the Walendu-Bindi collectivity, in May, more specifically on

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1 the 31st of May, Tchomia was attacked, and those who took part in the
2 attack were the Lendu from Zumbe? Would you agree with that?

3 A. Prosecutor, I don't know what sort of proof you have. It's not
4 just in Zumbe that you have Lendu. You find Lendu in five
5 collectivities. If you're asking questions about Tchomia, I really don't
6 know how to answer them.

7 Q. Very well. We'll go through step-by-step. Do you know, Witness,
8 that Tchomia was attacked on the 31st of May, 2003?

9 A. Prosecutor, you are not following me. This is what I say: On
10 the question of Tchomia, I cannot answer your question. I just don't
11 know.

12 Let me add the following: Zumbe is a small groupement. Zumbe is
13 not a large collectivity. It's a small groupement out of the six that
14 are in the Walendu-Tatsi collectivity.

15 Q. Witness, would you agree with me that Kasenyi was also attacked
16 in June 2003, approximately on the 11th of June, 2003?

17 A. Prosecutor, you started to ask me questions about Tchomia and
18 then about Kasenyi. If you have any proof, then tell me who are the
19 people who went to those places. I know nothing about what you're
20 questioning me about.

21 Q. Witness, the reason I'm putting these questions to you is because
22 at the time, you were the chairman of the drafting committee, and as I
23 said several times over yesterday, in that capacity you were responsible
24 for drafting reports on attacks that were carried out, setting out the
25 details of those attacks. You were also the personal secretary to

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1 Chief Manu.

2 So if your testimony here today that you know nothing about those
3 attacks against Tchomia and Kasenyi? Is that your testimony? And let me
4 remind you that you are under oath, Witness.

5 A. Prosecutor, I said that I know nothing. I cannot lie. We are
6 asked by the law to speak the truth. Everything I know I can tell you
7 without any hesitation. You know. You know better than I do, because
8 you are prosecuting. You have your proof.

9 Q. Witness, I would put it to you that the reason why you're saying
10 here today that you have no knowledge as to those attacks is because you
11 know full well that the Lendu from the Bedu-Ezekere groupement were
12 involved in both attacks. Is that correct, Witness? And that is the
13 reason why you do not wish to talk about this.

14 A. Prosecutor, that is your personal view. I do not share it. I'm
15 being asked to speak the truth, to say what can be verified. What you
16 have just said, Prosecutor, is your personal opinion.

17 Q. Witness, you came back from your trip to Walendu-Bindi. What
18 happened afterwards, Witness, is that all of the villages or localities
19 with which you had problems, with which the Lendu had problems, the
20 Ngiti, were attacked. Bogoro, to begin with, Mandro, Bunia, Tchomia,
21 Kasenyi. All of the places, all of the villages that were causing you
22 problems, Witness, were attacked. Would you agree with that, Witness?

23 A. No. Let me explain why. The Bedu-Ezekere groupement is one of
24 the Walendu collectivities. You cannot generalise on the basis of one
25 instance. I've already said that you're entitled to your own opinion.

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1 You say that it's the Lendu from Zumbe who perpetrated all of the attacks
2 that were carried out, but you're wrong. During the battle of Bunia,
3 there was a clear dissidence between the UPC elements and the UPDF
4 elements. That's just one concrete example.

5 MR. GARCIA: (Interpretation) Your Honour, may I have one
6 moment?

7 (Prosecution counsel confer)

8 MR. GARCIA: (Interpretation) Your Honours, I have no further
9 questions. Thank you.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.

11 Let us just go back over the last exchange, and I'd like to refer
12 to the French version of the provisional transcript.

13 Witness, the Prosecutor asked you whether, as far as you know,
14 the Lendu from Bedu-Ezekere were involved in those two attacks.
15 "Involved" means took part in, and your answer was -- and I'll try to
16 find your exact wording. This is page 20, line 11 of the French
17 provisional transcript:

18 "You cannot generalise on the basis of one single instance.
19 According to you -- well, I've already said that is just your personal
20 opinion. You say you think that it is the Lendu from Zumbe who
21 perpetrated all of the attacks that were carried out."

22 Witness, I would like to draw your attention to the difference
23 between the word "involved" used in the question, in other words, did
24 they take part, and your answer in which you say, "You think that the
25 Lendu from Zumbe perpetrated all of the attacks." This gives the

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1 impression that you believe that the Prosecutor is saying that they took
2 the initiative of this attack.

3 So the question from the Bench is as follows: As far as you
4 know, the Lendu from Bedu-Ezekere, did they simply take part in those
5 attacks? There is a difference between "involved" and "perpetrated." So
6 was there, as you know, participation, taking part in such attacks?

7 THE WITNESS: (Interpretation) Your Honour, with all due
8 respect, I have to say that what I saw as regards any involvement or
9 participation of the Lendu from Zumbe was at the battle of Bunia. At
10 that battle, it was Commander Kiza from the UPDF who went to see the
11 groupement chief. The Lendu from Zumbe went to take part in that battle.
12 They were bearing arms. I have said this several times over. And after
13 that, there were many weapons distributed throughout the region. That is
14 my testimony, your Honour.

15 I told the Prosecutor that I know nothing about the battle of
16 Tchomia, nor do I know anything about the battle of Kasenyi, but I can
17 say that the Walendu took part in the battle of Bunia between the UPC and
18 the UPDF, and those who were responsible for that battle, well, it was
19 Commander Kiza. I don't know where he is now.

20 Thank you.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
22 That provides us with the clarification we wanted, and you confirmed also
23 what you said previously.

24 Mr. Gilissen, do you have any questions as a result of what we
25 have heard so far, any questions to put to the witness?

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1 MR. GILISSEN: (Interpretation) Good morning, your Honours.
2 Indeed, I would like to put a number of questions as a result of the
3 exchanges to date. And let me stress that point, based essentially on
4 the exchanges so far, because you know that the evidence we've received
5 so far is very limited. We've received the tables of subjects to be
6 dealt with, but no statements or declarations.

7 PRESIDING JUDGE COTTE: (Interpretation) You may proceed
8 Mr. Gilissen, provided that these questions, these spontaneous questions,
9 fall within the remit of your legal representation.

10 MR. GILISSEN: (Interpretation) Thank you, your Honour. Your
11 Honours, it goes without saying that I will remain within the remit
12 entrusted to me. And I would like to congratulate your Honour on the
13 slow expression that he has been using, and I shall try to do what has
14 already been intimated this morning, to proceed step-by-step. This means
15 that I don't have a large number of questions to put to the witness.

16 Questioned by Mr. Gilissen:

17 Q. (Interpretation) Good morning, Witness.

18 A. Good morning.

19 Q. My name is Jean-Louis Gilissen. I am a lawyer from Liège, in
20 Belgium. And in this trial, together with Mr. Luvengika, my colleague, I
21 represent the victims, and I represent a particular category of victims,
22 those who are known as child soldiers. I wanted to tell you this so that
23 you understand the interest that I am representing defending in this
24 trial. You will understand that I was extremely interested in hearing
25 your testimony, which I followed closely, in particular the decision that

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1 was taken by the base committee to set up what you referred to as the
2 self-defence committee. I'm referring to page 38, lines 14, 15, and
3 line 27, where you alternated between the two. You referred to the
4 committee of young people. That was on transcript 295, page 39.

5 Now, I'd like to have a better understanding as to what was
6 happening as regards the people in charge of the collectivity and how it
7 was that they came to set up what you described as being a group of young
8 people - and here I'm referring to page 60 of the transcript - who
9 subsequently become combatants.

10 Could you explain to us why that decision was taken? Why not set
11 up a militia or an army rather than this group of young people who are
12 then turned into combatants?

13 A. I have followed your question. The first thing I can say is as
14 follows: When I was talking about young people, and you are the
15 representative of victims, you might imagine that I'm talking about
16 children. I said earlier on, I said on Friday of last week it was a
17 local organisation. It was created independently of the state, and the
18 representatives were the groupement chiefs. We were surrounded. There
19 was no way out. All of this was done in order to protect the women, the
20 children. We were not pursuing any other objectives in setting up the
21 committees.

22 At the start of the battle -- and you know full well that it was
23 a war between the Hema and the Lendu who were at odds with one another.
24 It was war. We had no other objectives aside from what I've already told
25 you, in other words, protection.

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1 Q. Thank you very much, Witness. I'd like to thank you particularly
2 for having clearly summarised what had you said at various -- on various
3 occasions.

4 Now, if I understand what you're saying, there was a form of --
5 state of necessity that justified the creation of this self-defence
6 system?

7 A. Counsel, the state should have protected the population, and if
8 there has to be an army, it should be a republican army. When I refer to
9 the absence of the state, what it means is that nobody, nobody at all
10 could protect us. To defend ourselves, we organised this system, this
11 which was in charge solely of our protection. It had absolutely no other
12 objective apart from our protection.

13 Q. Yes, of course. I understand, and it seems to me that I may say
14 that everybody here understands you. You are clear, and it seems to me
15 that your rationale is very consistent.

16 Now, faced with this absence of state, absence of protection of
17 army or police force, the base committee, in other words, replaced the
18 state which was absent. Can one say that it did this in the context of
19 an overall mobilisation of the population?

20 A. I said that the initiative came from the chief of the groupement.
21 He was at the initiative of this organisation, and as you will realise
22 from the documents, there was a distribution of functions between the
23 various departments, and I also spelled out that every department was
24 independent of the others.

25 Q. Yes, you did indeed say that, Witness. If I may, however, you

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1 are not really answering my question, and this is what of interest to me
2 and which is of interest to everybody here. The base committee which
3 takes the place of the state, well, for the purposes of defending the
4 population, did it create a movement of overall mobilisation? I'm not
5 talking here about the actual organisation of the base committee. What
6 I'm trying to understand is something that will prevent us from making
7 any mistake. I think you can help us to better grasp and to avoid
8 misunderstandings.

9 A. I said that the organisation was done within the Bedu-Ezekere
10 groupement in Zumbe.

11 Q. Yes, you did say that, and you've just repeated it again.
12 There's no point in you repeating it anymore. I've already noted that,
13 like everybody here. But in the face of attacks that, according to
14 you -- page 38, lines 14 and 15, transcript 295; page 61, lines 11, 12;
15 page 62, lines 19 to 23. Now, confronted with those attacks coming from
16 all sides in Zumbe that was hemmed in and attacked, was there a general
17 mobilisation of human resources and of material means to fight those
18 attacks?

19 A. I don't think I follow you. When you use the word
20 "mobilisation," perhaps you could explain what you mean by that word.
21 Who is mobilising who, and where was this thought to occur?

22 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

23 MR. FOFÉ: (Interpretation) I have let the witness answer this
24 last question on purpose before intervening. I believe that our learned
25 friend should limit his question to the -- to the mandate that he has.

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1 And the last question that the witness didn't understand, and
2 understandably, with reference to overall mobilisation, well, I really
3 don't think that this comes under the -- within the boundaries of his
4 mandate. So perhaps he should recenter, and perhaps he should also use
5 words that the witness is -- can easily understand. Thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) Yes. Thank you,
7 Professor Fofé. Actually, I don't think Mr. Gilissen has gone beyond his
8 boundaries. The situation of child soldiers is part of an overall
9 process, and he has understood. Indeed, the witness told him so. His
10 question is too abstract, and apparently the words he has used do not
11 mean much to the witness. So perhaps he should rephrase it, which might
12 not be an easy task, but in any case, we want the witness to understand
13 it better and be in a position to answer. So, Mr. Gilissen, go ahead
14 either with the same question but rephrased, or else by deferring it so
15 as to ask your colleagues to the reformulation for you.

16 MR. GILISSEN: (Interpretation) Thank you, your Honour, yes.
17 Perhaps this concept of overall mobilisation might not be meaningful to
18 the witness, but of course, my learned friend over there does understand.
19 We were talking here about young people, about women who had joined in
20 the -- who had taken part, so I don't really understand his objection.

21 Q. But in any case, Witness, let me try and explain to you what I
22 mean by general mobilisation. First of all, this is a concept that we
23 know about -- you know about in the Congo. Mr. Luvengika has just
24 confirmed this to me. This word "*mobilisation générale*" does exist. You
25 are a cultivated person. You are a cultured person. You have

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1 responsibilities, you have occupied several functions, and I believe we
2 do understand one another. But because I do want to help you, because
3 you, too, will be helping us with your answer, general mobilisation, as
4 you well know, is the use of all means that are taken up and used, called
5 upon, for the defence the country, of the nation, of the group of the
6 collectivity of the city, the village.

7 I think we cannot possibly not understand one another. The
8 general mobilisation over there in Congo is the same thing as in Belgium.
9 We talk about one and the same thing. I'm sure that I can rely on you to
10 answer the question.

11 A. With all due respect, Counsel, I continue to say this: The
12 person in charge who initiated this creation was not an ignorant person.
13 He was a person who had responsibilities, in charge of a family, and like
14 any parent, we all wanted to protect our children.

15 Now, the reason I'm coming back to what I said last week when
16 Professor Fofé asked me a question, well, he asked me a question
17 concerning the schooling of our children in our collectivity, and I
18 answered him that we had a traditional organisation to teach children.

19 Now, to come back to what you asked me. When you talk about
20 general mobilisation, I think that you want to find out whether the
21 children took -- were part of the mobilisation, and to answer you I would
22 say no, they were not part of that mobilisation. I told you that during
23 the Bunia battle, women, too, had gone to loot along with their husbands,
24 but as for children, I can tell you that, no, the children are our
25 future. We are parents. Even the person who was at the root of these

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1 protection movements was a parent. We cannot use children. We cannot
2 mobilise children in battle. What can a child, in practical terms,
3 contribute to a battle? A child is weak and cannot do anything.

4 So in short, quite frankly, children did not take part in battle.
5 Even women did not take part in battle, with one exception, during the
6 Bunia battle when the women went to loot. This is what happened.

7 For your information, Counsel, I would like to state clearly that
8 children are our future, and we protect them. Thank you.

9 Q. Thank you very much, Witness. That is a very clear explanation
10 that sheds light on this.

11 Page 9 earlier on, line 7 of the English transcript, you said
12 that young people, and you stressed all the young people, including
13 women, took part in the Bunia battle. So at one point in time, the
14 self-defence system where the young people become combatants changed and
15 quite clearly is not quite the same thing, and you make this distinction.
16 So I would like you to tell us about changed between maybe 2001, 2002,
17 and the beginning of 2003, because you are talking about Bunia, and that
18 is the beginning of 2003. What -- why all of a sudden did all the youths
19 and the women take part in the battle? And you said the attack of the
20 UPDF, the enemy, gives you weapons. There's something here I need to
21 know. How is it that Commander Kiza could go and simply see Chief
22 Emmanuel or any other chief whereas these people were the ones who
23 attacked you, terrorised you, burnt down your schools? What happened at
24 that particular moment for things to change so radically?

25 A. Thank you very much for the question. I'm not sure you really

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1 followed me when I was speaking to the Presiding Judge, so please try and
2 follow what I'm going to say now.

3 This is what I said earlier: There was a disagreement,
4 dissidence between the UPC -- within the UPC in Bunia, and I don't know
5 the reasons for those disagreements. They fought amongst themselves, and
6 Commander Kiza, who was based in Dele, he came there with combatants,
7 with a self-defence group, and all these young men went there. This was
8 a conflict area where fighting was ongoing, and children could not go
9 there. The women went to that area to loot. That is what I said.

10 When you began to speak, you introduced this idea of child
11 soldiers. What I would like to say to you is that the explanations I
12 have just given, I'm not sure you really understood them.

13 Q. Don't worry about me. I do believe I have very thoroughly
14 understood what you said. I thoroughly understood that all of a sudden
15 that the number of youths was vastly diminished. But I'd like to ask you
16 this question: When you used -- you used the word "child," what is the
17 maximum age that someone can be referred to -- still be referred to as a
18 child?

19 A. Counsel, I am sure you know what "child" means, but in any case,
20 I will try and give you some explanations on the topic. A child is a
21 person aged between 0 to 18 years old, and beyond the age of 18, he is an
22 adult. I think I've given you an adequate definition of the word
23 "child."

24 Q. Yes, absolutely. We fully agree on that, and I would like -- and
25 this is going to be my last question, actually, now. During the numerous

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1 trips that you went on, including the trip that we discussed on several
2 occasions to go and buy soap, did you meet with young people that carried
3 weapons and who were quite obviously not adults, who were children, and
4 indeed sometimes young children?

5 A. Counsel, you know, when I went on those trips it was to replenish
6 our supplies for the benefit of my own family. I had -- there was no
7 interest for me to go and see anybody, be they young or not. My only aim
8 was to replenish my family's supplies.

9 Q. Now, I'm asking you questions simply to be sure that I understand
10 you. During your trips, what you are saying, you saw nothing at all. Is
11 that what I am to understand from your answer?

12 That is my question. I want you to confirm whether or not I
13 understood you properly.

14 So what you're saying is that during your numerous trips, you
15 didn't see anything at all about young people carrying weapons or
16 anything else you might have seen, and if you did see something, please,
17 could you tell us about it?

18 A. No, I didn't see any children with arms.

19 Q. Well, thank you very much, Witness, for your answer.

20 MR. GILISSEN: (Interpretation) Your Honours, I do believe that
21 on the basis of the questions (* as interpreted) I obtained, I cannot go
22 any further without running risk of what Professor Fofé was criticising
23 me for earlier on, i.e., going beyond my remit. Thank you very much,
24 your Honour.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

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1 Mr. Gilissen.

2 Before giving the floor to Maitre Luvengika and so as not to
3 oblige the witness to jump all the time from one topic to another. Now,
4 along the same lines as the questions that Mr. Gilissen has just raised,
5 Witness, could you tell us what the ages -- since you have specific
6 knowledge about this, what were the ages of the young people who were
7 members of the youth and security council committee that was part of the
8 base committee of the Bedu-Ezekere groupement? A few hearings ago we did
9 discuss the -- a document that presented the structure of the base
10 committee, and in that document we saw a specific reference being made to
11 the *conseil de jeune et de sécurité*, the youth and security subcommittee
12 which played a role in terms of security in the respective environments
13 in terms of self-defence, et cetera, et cetera.

14 Now, as far as you know, how old were the young people that were
15 part of this youth committee, and specifically the youngest ones, how old
16 were they? How old were you when you began to be part of this committee
17 or subcommittee? At what age were you eligible to be part of the
18 subcommittee?

19 THE WITNESS: (Interpretation) Well, to be part of this group
20 you had to be an adult, i.e., at least 18 years old.

21 THE INTERPRETER: The interpreter corrects himself: Nineteen
22 years old at least.

23 PRESIDING JUDGE COTTE: (Interpretation) So we could have called
24 the committee a committee of young adults.

25 THE WITNESS: (Interpretation) No. That was not the name we

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1 called it, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Now, to be specific, so
3 to be part of the youth committee, you had to be at least 18 years old,
4 and what was the maximum age? You couldn't be a member of the youth
5 committee if you were 15 years old, so what was the range, from 18 to
6 what age?

7 THE WITNESS: (Interpretation) Well, there was no upper limit.
8 It hadn't been specified. Any adult person could take part in it except
9 for elderly people, but no specific upper limit had been set. However,
10 obviously, as you know, old people cannot fight. They're comparable to
11 children in some way.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
13 Maitre Luvengika.

14 MR. LUVENGIKA: (Interpretation) Good morning, your Honours.

15 Questioned by Mr. Luvengika:

16 Q. (Interpretation) Good morning, Witness. My name is Nsita Fidel
17 Luvengika. I represent the victims of the attack of Bogoro, 24th of
18 February, 2003.

19 After the examination-in-chief and the cross-examination
20 conducted by the Prosecutor, you stated that you were not cognisant with
21 this attack. Now, that has led me to renounce asking you any questions,
22 but I would like to better understand one thing if I may. Coming from
23 Bunia and going to Bogoro, if I understand well, the last locality on
24 that route when you take the main route is Katoni, isn't it? Is that
25 right? Is it the Katoni locality which is the last one?

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1 A. No, Kavalega is.

2 Q. And as for the Katoni locality, how far is it from Bogoro?

3 A. I think a rough estimate is 8 kilometres.

4 Q. Yes. That's what I thought too. And because of the closeness
5 between Katoni and Bogoro, so since 2003 and up to today, you never even
6 heard of the Bogoro attack, the fact that Bogoro had lost its whole
7 population, that they had left, that it had been plundered, burnt down?
8 You never had any knowledge of those events?

9 A. No. I'm not in a position to talk about a topic that I'm not
10 familiar with. I was asked to say the truth here and just the truth, so
11 I have refrained from making comments on topics that I am not
12 knowledgeable about.

13 MR. LUVENGIKA: (Interpretation) Thank you very much. In view
14 of the answer given by the witness, your Honour, I have no further
15 questions.

16 Questioned by the Court:

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much to
18 you, Mr. Luvengika.

19 Witness, the Chamber would like you to give it some additional
20 details about topics that have been very extensively covered already. So
21 you must be patient if we hark back somewhat. Nonetheless, we need to
22 have as exhaustive information as we can possibly get.

23 You talked to us about trips to markets that belonged to the
24 Walendu-Bindi collectivity, and we extensively talked about a trip that
25 took place in January 2003. Now, on -- during other trips other than

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1 this, were you ever confronted with a problem of lack of resources that
2 would have compelled you once again to draft a cover letter -- a covering
3 letter along the same lines as the one written at the beginning of
4 January 2003, or was this the only time that was done, because that
5 particular day the wherewithal was lacking?

6 A. Your Honour, a person asks for something as he becomes poorer and
7 poorer and has nothing. I was writing that on the day that I didn't have
8 any soap.

9 PRESIDING JUDGE COTTE: (Interpretation) So the difficulties of
10 the 3rd of January, 2003, well, that date isn't quite certain, but in any
11 event, those difficulties did not occur before or after, and you only
12 wrote this covering letter once? Is that what you're saying?

13 A. Your Honour, you can't ask for something today and say, "Give me
14 something today," every day. It is only on the day that you don't have
15 any salt that you ask for salt. And I'm not a beggar who would start
16 writing letters every day. I'm not a beggar.

17 PRESIDING JUDGE COTTE: (Interpretation) But I am surprised,
18 Witness, to see how difficult it is you when we put simple questions to
19 you, easy-to-understand questions.

20 Now, you said that these trips to fetch supplies meant taking
21 risks, obviously, and we took note of that indeed. Now, when you were
22 travelling to go purchase food or other supplies such as soap, were you
23 doing this for yourself, for your family - that's what I thought I heard
24 a few moments ago - or were you purchasing the items for the community,
25 for several -- many families in the community?

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1 A. It was for my family, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) Very well. To your
3 knowledge, did you yourself or other people who were with you, or people
4 who like you would make these trips to fetch supplies, to your knowledge,
5 either you or the people who were with you or other people, did you take
6 the opportunity to purchase weapons during these trips?

7 A. I'm not in a position to know that, your Honour.

8 PRESIDING JUDGE COTTE: (Interpretation) Well, let us restrict
9 the question to yourself and people like Martin Banga who accompanied you
10 on the trip in January 2003. Now, when you were making these trips to
11 fetch supplies, did you not have an opportunity to purchase or to receive
12 arms, weapons, to obtain arms?

13 A. Well, when you talk about weapons, I really don't understand
14 anymore. When you start talking about weapons, I really have no idea
15 what you're talking about.

16 PRESIDING JUDGE COTTE: (Interpretation) It's a very simple
17 question, Witness. During these trips and particularly the trip of
18 January 2003, did you only bring back food to Zumbe, only food or basic
19 commodities such as soap? You never brought back any weapons?

20 A. No. I did not come back with a weapon. There weren't any shops
21 where you could buy weapons.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
23 Could you be more specific or tell us once again, because I've forgotten,
24 could you tell us whether Martin Banga was a member of one of the
25 committees, these committees that were part of the base committee? Was

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1 he part of the management committee, the youth committee, the drafting
2 committee? Was he a member of one of these committees, this fellow who
3 was travelling with you?

4 A. Yes, he was one of the members.

5 Q. Do you remember which committee he was a member of?

6 A. Yes, I remember.

7 Q. Which committee was he a member of?

8 A. He was the vice-chairman of the self-defence committee.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

10 I would now like to change subjects, even though we are still
11 talking about this letter, the covering letter.

12 Now, during the proceedings yesterday and perhaps even the day
13 before that, you saw that we were trying to understand how and when a
14 stamp was placed on the letter, a stamp that reads "Office of the
15 Headquarters, Tatsi Zombe." How did it come to be that this stamp was
16 placed on this letter, the letter making a request for assistance that
17 was drafted in January 2003? We had a hard time understanding when this
18 stamp was placed, this stamp or seal was placed on the letter. Do you
19 know whether someone in the office of the headquarters of the FRP -- was
20 there an office set up in Zombe, an office representing the FRPI?

21 A. No, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Very well.

23 Prosecutor, we have really focused on this letter quite a bit,
24 and could you remind us very briefly, could you tell us how this letter
25 came to be in the possession of your office? Could you explain the chain

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1 of custody of this letter, if you remember?

2 MR. GARCIA: (Interpretation) Well, what I can tell you,
3 your Honour, briefly is that this is -- was -- this is a document that
4 was seized at the Medhu camp, and it was provided to the office from the
5 *Tribunal de Grande Instance* in Bunia, the Bunia court. So we can send an
6 electronic version of the chain of custody to you and so the Chamber, the
7 parties and the participants will have all the relevant details regarding
8 the chain of custody of this particular document.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

10 MR. GARCIA: (Interpretation) Sorry, your Honour, but just -- we
11 can also make reference to transcript 99 and 21 -- 95 and 216, page 54.
12 Mr. MacDonald provided more detailed information about how this document
13 was seized. This was a seizure at the Medhu camp. This was done by the
14 Bunia court with the assistance of MONUC, on the 23rd of September, 2004.

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

16 As we agreed, when several months ago you were told that the
17 Chamber was going to take the prerogative of asking a number of
18 questions, and we did say that after the Chamber had finished with its
19 questions, the Prosecution could ask questions before the Defence teams
20 conclude.

21 Now, do you have any further questions or reaction of any kind in
22 light of the questions that we have just put?

23 MR. GARCIA: (Interpretation) We have no further questions,
24 your Honour.

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

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1 Mr. Hooper, at this particular stage in the proceedings with this
2 witness, do you have any final comments?

3 MR. HOOPER: Yes. I'd like to be permitted to ask questions,
4 particularly about this letter. We touched on in chief -- in the
5 transcript in chief we have a page or two on it. I notice that yesterday
6 the transcript (* indiscernible) page 27 to 60 was occupied entirely with
7 questions concerning the letter, and there are some matters which I'd
8 like to explore with the Chamber's consent plus some other questions.
9 Thank you.

10 Questioned by Mr. Hooper:

11 Q. Good morning, Mr. Witness. My name is David Hooper. I represent
12 Mr. Germain Katanga's interests in this case, together with others who
13 sit here around and about me.

14 Now the first thing I'd like to ask you about is something
15 recorded on the transcript as having been said both in the French and the
16 English, and I can give each of the references. The first is
17 transcript 297 in the French. That's page 64, line 12. And in the
18 English, my reference is page 72, line 9. Why there should be this
19 eight-page difference between the English and the French transcript
20 numbers, I don't know, but the compression is that particular way, but
21 there we are.

22 And in it, you are asked the question at that point of the
23 distance between Zombe and Bogoro, and your reply was 40 to 35 kilometres
24 in one transcript. Thirty-five to 40 kilometres in the other transcript.
25 It comes to the same thing. And I merely ask you, is that right?

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1 Because I suggest it's incorrect and may have been a slip of your tongue.

2 So my question is: What do you estimate the distance is between Zumbe
3 and Bogoro?

4 A. Between Zumbe and Bogoro there is a hill. There is no main road.

5 To estimate the distance between Zumbe and Bogoro, it's a difficult task.

6 I gave that answer -- between Katoni and Bogoro there is a main road, and

7 the kilometre, the distance, is known, but as for the distance -- well,

8 it's difficult. There are three hills between Bogoro and Zumbe. If I

9 answered in that manner in response to that reply (* as interpreted),

10 it's because between Katoni and Bogoro there's a main road, and we know

11 how many kilometres that is. But between Bogoro and Zumbe we don't know

12 what the distance is, because you see there are these hills between the

13 two places.

14 Q. I see. All right. So if you say 40 to 35 kilometres, that's

15 not a slip of the tongue. That's your estimate, is it?

16 A. Well, when I said I'm mistaken -- well, I don't have specific

17 information. I can't measure the number of kilometres between two hills.

18 Q. All right. Now, you were also asked the distance between Zumbe

19 and Aveba, and you suggested that that was 80 kilometres. That's at the

20 same transcript, page 63, line 1. Eighty kilometres. That's about

21 right, though, isn't it? It's about 80 kilometres, would you say, or

22 what?

23 A. Yes. When I was asked that question, I was thinking about that.

24 Well, what I do know specifically, because there is a main road, and the

25 white people who went by that way built that road, and they know how many

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1 kilometres it is. I do know from Aveba to Bunia -- well, it's close to
2 Bunia. It's about 80 kilometres.

3 Since I was asked to estimate the kilometres, I would say about
4 80 kilometres. That is the number that the white people gave. When I'm
5 speaking about Zumbe, it's because, you see, the white people didn't
6 measure the number of kilometres there. That is why I answered in that
7 fashion.

8 MR. FOFÉ: (Interpretation) I beg your pardon, your Honour. If
9 we could just remind the witness to speak slowly, slowly, your Honour.

10 Once again you got carried away, Witness. Please answer
11 Mr. Hooper's question very slowly.

12 MR. HOOPER:

13 Q. Right. All right. So there's -- that's -- that's the position.
14 You told us yesterday that you'd been to Aveba market. Is that right?

15 A. Yes, several times. At the Aveba market things were less
16 expensive, supplies for my family. I went to that market several times,
17 not just once.

18 Q. And at the time it was a good, thriving market; is that right?

19 A. Yes. In Aveba -- well, Aveba is an agricultural area. There are
20 many people and many supplies were there. In the Walendu-Bindi
21 collectivity, since we didn't have any farms, we would have to go and buy
22 supplies at the market.

23 Q. And by "supplies," this would be oil, food, basic necessities,
24 and soap. You could buy soap at Aveba, and other things; is that right?

25 A. Well, you see, the life of a displaced person is a new life.

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1 Some people here have not experienced that, that life of a displaced
2 person. When you ask me that question, I am referring to the life of a
3 person who has been displaced.

4 Now, to answer your question, you see, we were living the lives
5 of displaced people. It was a bad life, and what we cared about was
6 finding something to eat, and if we could wash our clothes, all the
7 better, because at least we would not be living like animals.

8 Q. Yes. My question wasn't as complicated as perhaps you saw it.
9 We well understand that your life must have been very difficult on Zumbe,
10 which is a very poor area of land as we have learnt, with limited food.
11 You and your family must have been living in considerable distress. I
12 understand that, and we all understand that soap, simple though it is, is
13 a mark of human dignity. We understand that, and we understand your
14 wanting to provide it to your family.

15 Now, can we come to the letter. We saw the letter at length
16 yesterday, but I think in fairness to you, if there is a hard copy, and
17 there is, I'd put that in front of you, and we can also have it on the
18 screen as our EVD-OTP-00025 item. So you have both the hard copy, this
19 one is unmarked, if I can pass it up to you, and you'll have the
20 electronic copy. And we spent a great deal of time on this, and I hope
21 not to spend many minutes with you on it, but I seek to clarify some
22 matters with you, sir.

23 A. Before any more questions are asked, I would like to go relieve
24 myself. You said that you weren't going to be asking a lot of questions
25 but it is possible that you may be asking me a lot. I would like to go

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1 and relieve myself first.

2 Q. You obviously have a very good -- ah, okay.

3 PRESIDING JUDGE COTTE: (Interpretation) We will now suspend the
4 hearing. We will go into closed session so the witness can leave the
5 courtroom, and we will resume at 11.25, at 11.25 on the dot.

6 (Closed session at 10.52 a.m.)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session at 10.53 a.m.)

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

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Yes,
22 Professor Fofé.

23 MR. FOFÉ: (Interpretation) Very quickly, your Honour. Just to
24 ask you if at all possible, could the VWU check on the witness's
25 condition, if at all possible, during the break.

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1 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, if you
2 could please telephone the VWU and ensure that the unit does something so
3 that the witness will not be excessively indisposed by his headache.

4 Recess taken at 10.54 a.m.

5 On resuming at 11.30 a.m.

6 (Closed session)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Open session at 11.31 a.m.)

16 COURT OFFICER: (Interpretation) Your Honour, we are in open
17 session.

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

20 Witness, can you hear me?

21 THE WITNESS: (Interpretation) Yes.

22 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, you may
23 proceed with your final questions.

24 MR. HOOPER: Yes. Thank you very much.

25 So can we revert to the position just before we adjourned where

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1 we have the witness with a hard copy of the document, which I see he has
2 in front of him, and that the document itself be put on the screen, which
3 is EVD-OTP-00025 and is the letter of January 2003, addressed to
4 Operator Oudo at Olongba.

5 COURT OFFICER: (Interpretation) The document can be viewed on
6 the computer by pressing "PC 1."

7 MR. HOOPER:

8 Q. Now, this -- of the various documents that you've been shown and
9 that we've seen, am I right in understanding that this is the only
10 document in your own handwriting?

11 A. That is correct.

12 Q. And from the time that you wrote it and handed it over at
13 Tatu market, is it your evidence that you then did not have sight of this
14 document again until you came to sit in that chair to give evidence here
15 a couple of days ago?

16 A. Yes, that is correct, but Maryse said we hadn't written that
17 letter to the Tatu market, and when she came, she did indeed mention that
18 letter.

19 Q. My question, and I understand the answer is quite clear, from the
20 time you wrote it, you didn't see it again until you stepped into this
21 courtroom; is that right? The document was never shown to you to discuss
22 until you stepped into that witness box. Is that your position -- your
23 answer?

24 A. Yes. I said that was indeed the case.

25 Q. And so until you were asked questions by my friend Mr. Fofé a

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1 couple of days ago as to, for example, whether you'd written it at all or
2 anything like that, nobody could have known your answer until you gave it
3 before the Court. That was the first time you told anyone about it. Is
4 that the situation?

5 A. When I was shown the letter, I explained in which circumstances I
6 had drafted it.

7 Q. But the first time you were ever given an opportunity to say any
8 of that was here in this court; is that right?

9 A. Yes. It is here that we are discussing the letter. Back home in
10 the Congo, nobody asked me any questions about it.

11 Q. And indeed, you never saw it; is that right? You were never
12 shown it?

13 A. Maryse briefly mentioned the letter but without showing it to me.
14 Maryse was a member of the Ngudjolo team and she mentioned it without
15 dwelling on it.

16 Q. And did you know the letter she was talking about when she raised
17 it briefly with you?

18 A. No. I didn't know which letter it was, because that person was
19 not very clear.

20 Q. All right. So -- so we understand it. So I just want you to
21 help me just to clarify a number of matters.

22 We've established that you say you wrote it. I'm a little
23 unclear at whose request it was to write it. Who asked you to write the
24 letter?

25 A. I am an adult. I was the one who wrote this letter, as I said

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1 yesterday.

2 Q. Please just listen to the question. Did anybody ask you to write
3 the letter?

4 A. Yes.

5 Q. And who was that?

6 A. When I asked for soap from the operator, he said that to cover
7 him from the point of view of his accounting that I ought to write a
8 letter. So I wrote it, I signed it, and Martin Banga did the same.

9 Q. And from your answers yesterday am I correct in understanding
10 that in writing that letter, it was a letter that was the product of
11 discussion between you and Oudo and between you, as it were, the way in
12 which the letter should be framed was decided?

13 A. Yes, that is correct.

14 Q. Okay. And we understand, of course, you wanted to get soap.
15 Now, the letter we can see, as we've touched on at length yesterday,
16 purports, appears to have been written in Aveba, and you say no, this
17 letter was, in fact, written in -- in Tatu, but it was composed to look
18 as if it came from Aveba.

19 Can I ask you this: Do you know how far Tatu is, Tatu market,
20 from Aveba?

21 A. I think that they're not very close to each other. I would say
22 there's a distance between the two of about 40 kilometres.

23 Q. And would you agree that if you were in Aveba where there was
24 soap to buy, it would be a very strange thing to write to Tatu market and
25 have to go all the way to Tatu market to get your soap? This would be

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1 right. If you had truly been in Aveba, you could have got your soap in
2 Aveba. That would be logical, would it not? Of course, you say you
3 weren't in Aveba, you were in Tatu. I'm just saying, if you had been in
4 Aveba, you wouldn't have needed to write letters to Tatu. That would be
5 right, wouldn't it?

6 MR. GARCIA: (Interpretation) These questions require
7 speculation on the part of the witness, and we would ask that there be no
8 such questions leading to speculation.

9 PRESIDING JUDGE COTTE: (Interpretation) Well, let's avoid
10 anything that's speculative in nature. And, Mr. Hooper, you could
11 perhaps proceed. Germain Katanga's Defence counsel would seem to require
12 further information on this letter. We all assumed that would be case as
13 of yesterday. Please proceed, Mr. Hooper.

14 MR. MACDONALD: (Interpretation)

15 Q. Now the letter isn't a request for soap, is it? If we look at
16 the third paragraph which you have in front of you, and I read part of
17 it:

18 "(Interpretation) We were unable to find monies in order to
19 obtain soap."

20 (In English) So this is a request for money.

21 Just pausing there, did -- at that time did you have any money?
22 What was your financial position there in Zumbe as a teacher at that
23 time?

24 A. I've said I was the one who wrote the letter to ask for soap.

25 Now, to get soap, you need money, and at that particular moment, we

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1 weren't working. We were going through difficult times. I arrived at
2 the market, and Oudo suggested I write the letter. I said this
3 yesterday. I didn't just want him to give me money, I wanted soap, and
4 that's why I specified that clearly in the letter.

5 Q. But you wanted to get the money to buy the soap with. Am I right
6 in saying that after you wrote this letter, as you told us in evidence,
7 you were provided with a sum of money in order to buy the soap? Was that
8 the sequence?

9 A. Yes. We were given some money. I've already said that.

10 Q. And this wasn't just a question of a -- may I just ask, how is
11 soap sold in these markets generally? Is it sold in little paper-wrapped
12 bars that we can find in fancy shops in Bunia these days? How was it
13 sold? When you buy soap or when you bought soap at this time, how was it
14 packaged?

15 A. Counsel, it was soap. Should we start talking about all sorts of
16 soap now? We needed soap, and we were given money to get some. I don't
17 know whether really it's worth running through the different types of
18 soap that exist.

19 Q. Well, I'm not seeking to embarrass you or so. And let -- let me
20 move on.

21 So you wanted money for soap, and you say it was just for your
22 family, but, in fact, this letter, if we look at the next sentence, next
23 sentence but one, it reads:

24 "(Interpretation) That is why we are turning to you."

25 (In English) (* Microphone not activated) ... this number?

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1 "(Interpretation) There are 15 of us. We are proposing to send
2 a small delegation."

3 (In English) So reading that, it would look as if the letter is
4 composed to ask for a lot of soap, soap for 15 people; is that right?

5 A. No. There were just two of us, Martin and myself.

6 Q. Yes. I understand that. Please listen to the question. The way
7 that this letter is composed, where you make reference to "*au nombre de*
8 *15*," then you go on to say:

9 "(Interpretation) We propose to send a small delegation."

10 (In English) And we bear in mind that this is a contrived letter
11 to cover you. Wasn't this part of the letter a -- in a way an excuse for
12 you to get not soap for one or two people but soap for 15, a lot of soap,
13 in fact? Isn't that why it's there and expressed like that? And you, of
14 course, were, as it were, the small delegation.

15 A. There were just two of us.

16 Q. I understand that. Why -- why the reference to 15? I'll ask you
17 again. Isn't that so that you could get a lot of soap, soap for 15, not
18 soap -- isn't that the reason?

19 A. No.

20 Q. Wasn't this a question of you getting your hands on a lot of soap
21 to trade when you got back to Zumbe?

22 A. No.

23 Q. And so how much soap did you take with you? Or let me put it
24 another way. Let me ask you another question. How much money did you
25 get, and how much soap did you buy?

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1 A. He gave us some money, and we bought some soap.

2 Q. How much money did you get, and what quantity of soap do you
3 remember taking away with you to Zumbe?

4 A. I can't remember exactly how much money we were given, and I
5 can't remember how many bars of soap we were able to buy. I think I've
6 already said that.

7 Q. Well, you would have had to have carried it back quite a long
8 way. So can't you remember? When you buy soap, do you buy it in
9 kilogrammes?

10 A. Counsel, this was a very long time ago. I can't remember.

11 Q. When you buy soap in this kind of market, don't you buy it in
12 blocks, big chunks of soap weighing kilogrammes?

13 *A. I don't know whether you yourself can tell me -- how many bars of soap
14 you would have to buy throughout your lifetime.

15 Q. My question is simple, and you've given me an answer, but let me
16 see if on reflection your memory serves you. How much soap did you take
17 with you after going to the trouble of composing this letter?

18 A. Mr. Hooper, you're trying to force me to provide you with a
19 detail which I've already forgotten given the amount of time that's gone
20 by since then.

21 Q. Would I be right in saying that soap was a very treasured
22 commodity in Bedu-Ezekere at that time, a valued commodity?

23 A. Counsel, I've already said that there are people here who have
24 never been in the situation of being a displaced person, of being in such
25 an uncomfortable situation. You have to understand that we were in an

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1 unbearable situation. We had no work. We were in the bush. We were
2 there between 1999 and 2003. You have to understand the situation that
3 prevailed at the time.

4 You're asking whether soap was a treasured product in Zombe.
5 People who have never known a war situation just cannot imagine what we
6 went through, and you have to bear that in mind when you're asking
7 questions of this nature, and you have to imagine the sort of answer that
8 can be given. We were living very difficult times.

9 Q. Indeed, and I do imagine as much as I can what that must be like,
10 and for that reason I ask the question. It was because of those terrible
11 conditions that you were in and the seclusion that you were living in
12 that something that we take for granted in day-to-day use, like soap,
13 suddenly became something that was treasured and wanted in Zombe. Am I
14 right?

15 A. To stay clean, you need soap.

16 Q. Now, you told us that at that time because of the deprivations of
17 the attacks, a large portion of the population of Bedu-Ezekere had moved
18 away, many of them into Walendu-Bindi.

19 Can you give us an estimate of how many people, such as your
20 family, an estimate of the number or percentage of the original occupants
21 of Bedu-Ezekere who had fled Bedu-Ezekere?

22 A. The best-placed person to answer that question was the person in
23 charge of making a census of displaced persons. If you asked that person
24 the same question, they could give you an answer. There were a lot of
25 displaced persons. I'm sure there must be records in the Walendu-Bindi

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1 collectivity. I wasn't involved in the census of displaced persons, so I
2 cannot give you the number.

3 PRESIDING JUDGE COTTE: (Interpretation) Witness, there are
4 questions being put to you such as that just put by Mr. Hooper that
5 require of you, the adult that you are, in an administrative post, an
6 answer by way of an estimate. Please, if you can give us that estimate,
7 do so, but once again, do not answer and tell us that it would be better
8 to ask somebody else.

9 Mr. Gilissen said this morning that you were educated,
10 intelligent. You have had responsibilities in the past. You still have
11 responsibilities today. So when questions are put to you in a court, do
12 your utmost, even if it is difficult, to delve into your memory and
13 provide the most accurate answers you can. We are not asking for you to
14 give us all of the precise details. I've already said that to you.
15 We're not asking of you what is impossible. We are asking you to do your
16 utmost. Thank you.

17 Please proceed, Mr. Hooper.

18 THE WITNESS: (Interpretation) I apologise, your Honour, but in
19 the collectivity of the Walendu-Bindi, well, that is not a place where I
20 was involved in any administration. The people there who have official
21 capacities, they're the ones who could answer the question.

22 PRESIDING JUDGE COTTE: (Interpretation) You are -- please do
23 not repeat or correct what I am saying, Witness.

24 Mr. Hooper, please go on.

25 MR. HOOPER:

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1 Q. [Previous translation continues] ... note in my memory, because I
2 thought you had on a previous occasion in your evidence referred to or
3 tendered an estimate to us, and I found the reference at last. If you
4 can just give me one moment. My reference was to the in-court -- the
5 LiveNote transcript rather than the settled one, but the -- and I could
6 -- I'm sure I could to turn out the reference. I have it at 28/15, where
7 you said:

8 "Ninety per cent of the people from our groupement, displaced
9 people, that is, were living there."

10 That's not exactly what you said but -- I can get exactly the
11 words, but I think that's a good note, as it were, of what you said.

12 "Ninety per cent of the displaced people of our groupement were
13 living in Walendu-Bindi."

14 May I just ask you: Do you remember saying that or can you
15 confirm that that is an estimate, that it's one that you're content to
16 give?

17 A. Yes, I did say that. There were many of them there, in that
18 place. It was an estimate. It wasn't a precise figure that I gave.

19 Q. You don't need to remind us it wasn't a precise figure. That's
20 obvious to all of us. It's an estimate, and we know that an estimate
21 means that it's not a precise figure.

22 And among those people who had settled in Walendu-Bindi, do you
23 know what proportion of them became combatants?

24 A. It's very difficult to answer that question.

25 Q. Well, have a go.

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1 A. I'm sorry, I couldn't tell you how many combatants there were. I
2 can't give you a proportion.

3 Q. All right. Let's come back to the letter and the market. The
4 person I understand you to say who was in control of the market was a
5 combatant, and you told us that all the markets were controlled by
6 combatants at that time, and the person who controlled the Tatu market
7 was called or known as "Operator Oudo." Am I correct in summarising your
8 position?

9 A. Yes. That is indeed what I stated.

10 Q. And again am I correct in summarising your position that it was
11 Oudo who needed a cover for providing you the money to buy the soap? He
12 needed a cover in respect of the person above him. Is that right or not?

13 A. Yes, that's right.

14 Q. And the person above him for which he needed you to provide a
15 credible cover was Cobra Matata; is that right?

16 A. No. That's not what he said to me.

17 Q. So who was -- if we look at this letter, it's copied -- just look
18 at the letter that we have there. It's copied to -- well, I say it's
19 copied. Right at the bottom underneath your signature it's got "CCI,"
20 and then it's got -- what does "CCI" stand for?

21 A. Well, I didn't write that down, so I couldn't tell you what "CC"
22 means.

23 Q. But that's all in your writing, isn't it? Look at the letter
24 again. I've know you've only -- you've been surprised to see it sitting
25 here eight years after the events, a long way away from here to a market

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1 table in Tatu in 2003. I appreciate that. And you haven't had the
2 chance to look at this. You've been, as you said, astonished and
3 surprised to see this letter here. Sometimes, perhaps, the mind doesn't
4 work as clearly with proper reflection in those circumstances, but I just
5 want you to look at that writing. "*CCI: Le colonel Matata Cobra.*"

6 And we can see your writing. It's all over the page, you told
7 us. So let me ask you again. You wrote those words. You may have
8 forgotten it, but looking at it, reflecting on it, that's your
9 handwriting, isn't it?

10 A. As I've already said, I wrote till the point where our signatures
11 lie, mine and Martin Banga's, and everything below that, I'm not the one
12 who -- to have written them. I've already said this.

13 Q. When you first discussed this with us, didn't you say, in fact,
14 that it was Cobra Matata that the cover was required in respect of, that
15 that was the person you were talking about? Do you remember saying that?
16 This was discussed again yesterday, you might remember, but -- you said:
17 "He said we had to write to his chief, Matata Cobra. That's Oudo. We
18 handed the letter to him, and after he gave me some money. I can't
19 remember how much. I wrote the letter and signed it, and so did Martin.
20 We gave him this letter when he went to his office, and when he came
21 back, he gave us the money."

22 I know it's a long time ago, sir, but having said all that to us
23 and looking at the writing again that's at the bottom of that page, and
24 you know your own hand, just look at the writing there and the script
25 it's in and what appears to be the pen it's in, and look at the writing

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1 above which you say is yours. Look at the L. I'm not a handwriting
2 expert. Look at your Ls and your Cs and your Es.

3 I ask you again: Reflecting on all that, don't you think that
4 that's your handwriting that says -- that has written "*Le colonel Matata*
5 *Cobra*"?

6 A. Counsel, yesterday the Prosecutor asked me the same question. As
7 for what is written there, I don't know whether this was properly
8 reflected. I was asked whether I knew Cobra, and I answered saying yes,
9 I do know him. His other name is Matata. That's what I said on that
10 day.

11 Yesterday when the Prosecutor came back to this letter, he said
12 the same thing as you have just repeated, and yesterday I said to him
13 two things. One was that this letter has been politicised. Why is that?
14 Because everything that is at the bottom was not written by me. And
15 secondly, I said to him that what appears at the bottom involves only the
16 person who gave you this document. That's what I said yesterday.
17 Somebody could imitate my handwriting. Why would that be? Simply to
18 make improper use of the person's name or play the role of that person.
19 That's what I said yesterday.

20 Q. Well, let me just remind you, because I've found the transcript,
21 and in fairness to you and for the record, just remind you what you said
22 the day before yesterday in our transcript T-296, and I'm looking at the
23 English version, but I think I can find the French one. Just give me one
24 moment.

25 And it's at page 25, and the references to the name Matata at

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1 page 25, 38, and 43, and so I'll deal with those in that sequence, and
2 I'll go first of all to the first reference that you made to that name
3 the day before yesterday. And the Prosecution had -- my friend had made
4 you smile, I think, because he'd asked whether Cobra was with you on the
5 journey, and your answer was -- answer -- this is your answer to Mr.
6 Fofé:

7 "I was smiling because Cobra was in Bavi. How could I have
8 travelled with him? I don't remember his surname. Cobra was a commander
9 in Bavi, and I can't remember his name. Ah, he's called Matata."

10 So you remembered the name. And then later, at my page 42 and
11 the next in the sequence of those numbers I've just announced in the
12 French transcript, you talk about going to the market and you say:

13 "There's a person in charge of the market. It's somebody who
14 belongs to my groupement and part of my family."

15 Now, let's just pause there. This person who's in charge of the
16 market, who is somebody that belongs to your groupement and is part of
17 your family, is that Oudo?

18 A. This is what I said: Oudo is a member of our groupement. We
19 belonged to the same groupement, and that's where we know each other
20 from, and that person, as you have just asked me, was indeed Oudo.

21 Q. No. That's not what you said. I'm reading what you said. What
22 you said was:

23 "The person in charge of the market is somebody that belongs to
24 my groupement and part of my family."

25 So is Oudo part of your family, however widely expressed that is?

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1 A. He is a member of our groupement. He's a young person from Soke
2 and I'm from Sakata (* phon), so we're from the same groupement. Soke is
3 the main town in our groupement.

4 Q. Well, indeed, and I'm going to read the next bit and it may, in
5 fact, clarify your position in line with what you've just said, because
6 what you then say is this:

7 "He is in charge -- or, rather, he hails from Soke, from the same
8 groupement -- groupement, and I, too, hail from the Soke groupement. We
9 met with him at the market, and I told him that we had very scarce
10 resources and that we needed soap."

11 Now, please listen carefully to this next part.

12 "And he told us he would cover us with his authority, but to do
13 so, we would have to write to his chief, Matata Cobra, and I wrote a
14 letter."

15 So why when you first spoke of this subject did you say that he
16 said to you: "We would have to write to his chief, Matata Cobra"?

17 A. This is what I can say to you. You didn't understand what I said
18 properly. That's not what I said. *(Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. How far from Tatu is Bavi where Cobra Matata was? How far away

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1 was that?

2 A. Roughly 20 kilometres, I think.

3 MR. HOOPER: Right. Those are all my questions. Thank you very
4 much, Mr. Witness. I'm sorry to trouble you, as it were, at the end of
5 your evidence, but those are all my -- my questions of you. Thank you
6 very much.

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

9 Professor Fofé, it's now your turn to end the evidence of this
10 witness.

11 MR. FOFÉ: (Interpretation) Thank you, your Honour. I must seek
12 your leave to proceed very slowly indeed, because I have so many sheets
13 that have questions on them relating to the various areas that have been
14 broached just now before the Chamber. So I shall do this very gradually,
15 very slowly, so as not to forget anything.

16 Further Questioned by Mr. Fofé:

17 Q. (Interpretation) Good day, Witness.

18 A. Good day.

19 Q. Let me first ask you whether you want to have a drink of water,
20 if there's anything you need to be more comfortable, because we're
21 reaching the end of your testimony, and so I would invite you to have a
22 drink of water before we go on.

23 Witness, we are approaching the end of your testimony, as I just
24 pointed out. I'm going to ask you some clear questions, and I would
25 request you to please answer very slowly indeed so that everything is

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1 perfectly clear for the Honourable Judges.

2 You yourself said on two occasions that other people do not
3 understand the situation in which you found yourself, and you're quite
4 right to say so, and I won't go any further than that, but you are quite
5 right.

6 My first question is as follows: How many hills are there
7 between Bogoro and Zumbe?

8 A. There are three hills.

9 Q. So it was with that abrupt terrain with the presence of three
10 hills that might present a difficulty in estimating the distance between
11 Zumbe and Bogoro; is that right?

12 A. Estimating the distance between the two localities is very
13 difficult because of the hills. If there had been a road between the
14 various hills, then it would have been easy, as the whites did. But with
15 the presence of those hills, it's difficult. It was the whites who did
16 that work.

17 Q. My colleague Mr. Fidel Luvengika asked you if you had ever heard
18 anything about the battle in Bogoro on the 24th of February, 2003. I was
19 following your answer, and you said that you made a distinction between
20 what you heard and what you saw; and that you could not speak about
21 anything other than what you knew about. My question is this for the
22 purposes of clarity: We do understand the distinction you make, but what
23 did you learn about the attack in Bogoro on 24th of February, 2003?

24 A. I am at a loss on how to clearly answer your question with any
25 precision, and I must apologise for that.

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1 Q. Thank you, Witness. When you were answering my colleague
2 Mr. Jean-Louis Gilissen, you recalled the question I had brought up on
3 the topic of training. You were referring to my question where I was
4 seeking to know whether some sort of military training had been organised
5 in the Bedu-Ezekere groupement. Isn't that so?

6 A. I said that there was no military training within the
7 Bedu-Ezekere groupement. I said that on that day.

8 Q. Thank you very much. I asked you this question because in
9 today's transcript a reference was made to teaching, education, which is
10 rather vague, whereas my question related specifically to military
11 training, and the answer you gave was the one that you have just
12 repeated. Thank you very much for that.

13 Witness, I think you may see that I'm beginning at the end of the
14 account and we're coming -- and we're going back in time. Now, I think
15 you remember that this morning the Prosecutor asked you some questions
16 about the attacks on Bunia, Kasenyi, Tchomia, and so on and so forth, and
17 you clearly answered and you even gave an example. You spoke about the
18 attack on Bunia. You did a good job of talking about that particular
19 attack. You said that it occurred between the UPC and the UPDF.

20 Now, that particular attack, that war in Bunia on the
21 6th of March, 2003, you said -- you said it was between the UPC and the
22 UPDF. My question is as follows: Who started to attack the other side?
23 Who started?

24 A. I have no answer for that question, because I wasn't there in
25 Bunia. This was information that Kiza, Commander Kiza, gave to our

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1 chief.

2 Q. But the Prosecutor stressed this point, and he said that you were
3 in charge of the drafting committee and, as such, you had established
4 contact -- or, rather, you had written reports about various attacks. My
5 question is as follows: The reports that you wrote as part of your
6 activities within the drafting committee, these reports had to do with
7 which particular attacks?

8 A. As I said before, the drafting committee -- our drafting
9 committee was a local organisation that only based itself on the events
10 that actually occurred in our location, Bedu-Ezekere.

11 Q. So that means, and correct me if I'm wrong, that means that your
12 reports only had to do with the attacks on the Bedu-Ezekere groupement.
13 Is that what you're telling us?

14 A. Yes, that's right.

15 Q. Witness, you have told us on several occasions that Kiza, who was
16 a UPDF commander in Dele, came to meet Chief Manu at the Bedu-Ezekere
17 groupement. I would like to ask you this question: Now, Kiza went from
18 Dele to the Bedu-Ezekere groupement to meet with Chief Manu; is that
19 correct?

20 A. According to Chief Manu, he sent other people representing him.

21 Q. So he sent people to see Chief Manu. He didn't go see
22 Chief Manu.

23 A. Yes.

24 Q. Well, the point that I'm trying to shed light on is the following
25 one: Did Kiza telephone chief --

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1 MR. GARCIA: (Interpretation) Objection, your Honour. I haven't
2 objected so far, but all of these questions are leading. I would remind
3 him that this is his witness. Even if he's in redirect, he shouldn't be
4 putting suggestive -- leading questions to the witness. This is the
5 fourth time.

6 PRESIDING JUDGE COTTE: (Interpretation) Understood,
7 Mr. Prosecutor.

8 Now, we are just dealing with these last comments about what may
9 come out of the examination, but please be careful not to put leading
10 questions. Please proceed.

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

12 Q. My last question on this point: How did Kiza get in touch with
13 Chief Manu?

14 A. No, I don't know. That man was a traditional chief, and he was
15 the one who was supposed to know about that.

16 MR. FOFÉ: (Interpretation) I will leave it at that,
17 your Honour, but I'll explain why I put that question. We have seen that
18 there was an error in yesterday's transcript, and I would like to ask
19 leave to put the question directly to the witness. First of all, the
20 passage that is a problem is from yesterday's transcript, transcript 297,
21 page 68, lines 1 to 3. In particular, line 3 where mention is made of
22 the means that were used, the means by which the contact was established.
23 So I will leave it up to you.

24 PRESIDING JUDGE COTTE: (Interpretation) Well, if it is
25 necessary to bring additional clarity to this, we need to do so. So what

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1 is the difficulty that you have encountered, Mr. Fofé? Page 68,
2 transcript 297, line 1, what I read is as follows, and this is an answer
3 from the witness:

4 "If I have to answer you about the Bunia attack, well, I knew
5 about it. Why did I say so? How -- how Basé went to Dele, how within
6 the UPDF had called, telephoned Chief Manu, and Chief Manu also I know,
7 but for the other cases I ... I am not very familiar."

8 Lines 1 to 4. So where is the difficulty exactly,
9 Professor Fofé?

10 MR. FOFÉ: (Interpretation) Your Honour, the witness didn't say
11 that Commander Kiza had telephoned Manu.

12 PRESIDING JUDGE COTTE: (Interpretation) Well, then,
13 Court Officer, could that part of the transcript be listened to again
14 very carefully?

15 Witness, you have just seen that Professor Fofé is telling us
16 that apparently you did not say yesterday that there had been contact by
17 way of telephone between Commander Basé and Chief Manu. Now, do you
18 remember what you said yesterday, exactly what you said? If you don't
19 remember, that is, whether there was or was not a telephone call between
20 the two people. If not, how did the two people get in contact, namely,
21 Commander Basé who was in Dele and Chief Manu? You are under oath, and
22 please answer.

23 THE WITNESS: (Interpretation) Thank you very much, your Honour.
24 No, I didn't talk about a telephone call. Rather, I said that
25 Commander Kiza, who was based in Dele, went and contacted Chief Manu.

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1 That is what I said. I used the word "contact."

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

3 At the same time, this will allow us to clarify yesterday's transcript so that it indicates
4 that Commander Kiza, not commander Basé, was based in Dele. "

5 Please continue, Professor Fofé.

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

7 Q. Witness, we will once again hark back for the last time to this
8 infamous letter, the letter of the 4th of January, 2003, and I will ask
9 you some questions, and please just answer simply. Some questions may
10 seem to be odd, they may even upset you, but, please, it is just for us
11 to gain the necessary clarity.

12 Witness, when you drafted this letter on the 4th of January,
13 2003, the 4th of January, 2003, were you personally at that time, were
14 you aware of the existence of the International Criminal Court?

15 A. No.

16 Q. When you drafted this letter on the 4th of January, 2003, did you
17 know that this letter would end up here at the International Criminal
18 Court?

19 A. No.

20 Q. Witness, in this letter were you asking for weapons and
21 ammunition?

22 MR. GARCIA: (Interpretation) Objection. Once again, this is
23 redirect. Professor Fofé -- if Professor Fofé wanted to ask such a
24 question, he should have asked that question during examination-in-chief.
25 None the other parties raised that matter. I would remind you that

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1 you've already asked a question about soap, and now this particular
2 question really is clearly outside of the boundaries of what is
3 acceptable during redirect.

4 MR. FOFÉ: (Interpretation) Your Honour --

5 PRESIDING JUDGE COTTE: (Interpretation) Indeed, this question
6 really does come as a surprise.

7 MR. FOFÉ: (Interpretation) Perhaps I should ask another
8 question first.

9 PRESIDING JUDGE COTTE: (Interpretation) Well, try, try. It is
10 true that the framework or the boundaries of redirect are quite limited.

11 MR. FOFÉ: (Interpretation) You see, our concern is to counter
12 the allegations of the Prosecution.

13 PRESIDING JUDGE COTTE: (Interpretation) Of course, of course,
14 but we all depend on what the witness has said. We can't have him say
15 something that he couldn't or didn't want to say when he was being
16 questioned earlier. We can't re-open the debate, so to speak, and have a
17 new examination-in-chief about things that the witness couldn't or didn't
18 want to talk about.

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

20 Q. Witness, in response to a question from the Prosecutor yesterday,
21 and unfortunately, the reference -- this is page 45, lines 23 to 25.

22 Unfortunately, I didn't make note of the references in the final
23 transcript. I believe it was page 45, lines 23 to 25 of the realtime
24 transcript. If the Prosecution objects, we will check this reference.

25 Now, Witness, in reply to a question from the Prosecutor

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1 yesterday, you said that your aim was to go get some soap. You wanted to
2 get some soap. And furthermore, my learned friend Mr. Hooper touched
3 upon this as well.

4 Witness, you yourself said -- well, I won't repeat what you said,
5 but please slowly explain to the Judges. Under these circumstances, in a
6 time of war, what was the importance of soap? Please calmly, slowly
7 explain this to the Judges.

8 A. Thank you for the question. When I was asked this question, I
9 tried to answer, and when the Presiding Judge spoke, my memory was
10 refreshed. Well, I meant -- if I answered in a nasty way to the question
11 put by Mr. Hooper, well, it was because I was aware that Mr. Hooper knew
12 just how important soap is. Soap is for hygiene, a person's hygiene.
13 And I would also like to say that when I wrote the letter, the main aim
14 was to ask for some soap. There was no other objective, no hidden
15 agenda.

16 The Prosecutor and Mr. Hooper asked all these questions about the
17 soap, and I answered in the same way.

18 Professor, the aim, the purpose was to buy some soap. There was
19 no other objective.

20 PRESIDING JUDGE COTTE: (Interpretation) Professor, just for the
21 clarity of our transcript, today's transcript, in yesterday's transcript,
22 297, this is page 36, lines 18 and 19 in the final version of transcript
23 297. It is written:

24 "I wanted to get soap from Oudo. I did not have any other
25 thoughts in that regard."

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

2 Q. Witness, yesterday you said, and you repeated it today that you
3 had written this letter of the 4th of January, 2003, at the suggestion of
4 Oudo so that he could use it as a cover, and Mr. Hooper touched upon
5 this. Could you please calmly explain this point? Please calmly and
6 slowly explain to the Chamber how this letter could be used by Oudo as a
7 cover? Could you explain that slowly and clearly?

8 A. He had said that when there was a check, this letter could be
9 used as a verification. So that is the reason he gave me.

10 Q. Thank you very much. Yesterday, you added that this request
11 couldn't be dealt with as a family matter. You said that. You put it
12 that way. The letter couldn't give the impression that it was some kind
13 of family matter.

14 Could you explain as well what you meant by that? Could you
15 explain that slowly?

16 A. I said that Operator Oudo asked for the letter, and he wanted to
17 cover himself and be able to justify his accounts. I believe I said that
18 yesterday.

19 Q. I did have a question that Mr. Hooper actually asked, and you
20 explained the relationship between you and Oudo, so I will not go back to
21 that.

22 THE INTERPRETER: Interpreter's correction: The witness said
23 that the letter could be used by Oudo as a justification.

24 MR. FOFÉ: (Interpretation)

25 Q. Now, the stamp on this letter, this infamous stamp that we see

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1 here between your name and the name of Martin Banga, we've talked about
2 this stamp or this seal yesterday, and we also discussed it today, I
3 believe. My question is as follows: The seals of the Bedu-Ezekere
4 groupement, is this the seal of the groupement that we see here on this
5 letter, this stamp or seal between your name and the name of
6 Martin Banga?

7 A. No.

8 Q. Witness, one last question -- well, one last request, rather.
9 The Prosecutor asked you questions about the accused, and my question in
10 this regard is as follows: In this courtroom, do you see
11 Mathieu Ngudjolo right now?

12 A. Yes.

13 Q. Could you point out the person who you say is Mathieu Ngudjolo?

14 A. He is over there, behind you.

15 Q. The one standing up?

16 A. Yes.

17 MR. FOFÉ: (Interpretation) Thank you very much. Thank you very
18 much, Witness. I have no further questions. I thank you. Thank you
19 very much for being so patient and answering all the questions from all
20 the various parties. I thank you very much. Thank you for agreeing to
21 come and give testimony before the Court, and in a few moments, if the
22 Presiding Judge agrees, we'll have an opportunity to speak to you and
23 thank you personally with the agreement of the Bench.

24 I thank you very much, your Honours.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

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1 Professor Fofé.

2 Witness, your testimony has now come to an end. The Court thanks
3 you for travelling all the way to The Hague. We would like to ask you to
4 keep everything to yourself, everything that has been said here at these
5 hearings. Do not talk about the hearings outside of this courtroom.
6 Please keep it all to yourself. We wish you a pleasant trip home to your
7 place of residence. We hope that your health improves and that you're
8 feeling better very soon if you are feeling unwell right now. Farewell,
9 Witness.

10 We will now go into closed session so that the witness can leave
11 the courtroom.

12 And, indeed, at 1.30 you will have an opportunity to meet with
13 Mr. Ngudjolo and his Defence team very quickly, because they would like
14 to thank you. You have travelled all this way.

15 Madam Court Officer, if you could.

16 (Closed session at 1.00 p.m.)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Open session at 1.01 p.m.)

3 COURT OFFICER: (Interpretation) Your Honour, we are in open
4 session.

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

7 The Prosecutor has just informed us that the OTP team due to take
8 over is now available. Before the witness comes in, however, we will
9 have a brief exchange concerning the OTP's objection as regards the use
10 of the video. That is our understanding concerning the presentation made
11 by the upcoming witness of a sketch he himself has produced. So we'll
12 have a discussion and hear the Ngudjolo Defence team's view. This is a
13 matter has to be clarified before the witness is brought in. If we can
14 bring the witness in today, at least to hear his identity and refer to
15 Article 93 and Rule 74, which is always somewhat fastidious, then we
16 shall do so this morning, which would be a good thing. But it's not
17 absolutely certain we'll manage to do so.

18 MR. GARCIA: (Interpretation) If I may, your Honour, we will now
19 leave the courtroom and allow Mr. MacDonald and his team to come in.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, indeed. And
21 thank you for the role you have played in the hearing of the testimony of
22 Witness 0066.

23 Good day to you, Prosecutors.

24 Professor Fofé or Mr. Kilenda, because I don't know which of you
25 is going to be speaking, you have seen Mr. MacDonald's submission of the

1 23rd of August, at 14.41, in which he indicates that the Prosecution
2 objects to your showing the video. On several times we have already
3 referred to this video. We would like to hear your observations, because
4 you are the main party concerned, the Defence team, and then the Bench
5 will give its ruling as to the possible showing during the hearing of the
6 video footage. We must have finished dealing with this by 13.30. Please
7 proceed.

8 MR. FOFÉ: (Interpretation) Thank you, your Honour.
9 Your Honour, I'd like to begin by saying that we weren't born yesterday.
10 In other words, we know how it is intended to use this video. We would
11 like to use the video footage, not before but after having put questions
12 to the witness on a number of different subjects that are of interest to
13 us. We shall, therefore, begin by an examination-in-chief and put
14 questions to him on the different subjects. The answers of -- the
15 answers will be given by the witness. The witness will answer. In other
16 words, we will be respecting the principle of the oral nature of the
17 proceedings. It's only after that that we will come back to the video
18 and ask a number of questions for clarification on points that we see as
19 being essential for the defence of Mathieu Ngudjolo.

20 In no way are we suggesting that we begin the
21 examination-in-chief by showing the video out of the blue. We will
22 proceed as we always do, and subsequently we'll come to the video,
23 because, your Honour, the video is an essential, a very important element
24 in the defence of Mathieu Ngudjolo. I'm not telling you anything you do
25 not already know, your Honour. The video footage is a little bit like a

1 written document. You will have the possibility, therefore, of having
2 the deposition during the hearing and a support document to back up the
3 testimony of Witness 0088. So it's tantamount to having a written
4 submission in support of the witness's statement.

5 This being said, we are somewhat surprised at the reaction or the
6 objection on the part of the Prosecutor. We are surprised. You know how
7 it is we have obtained this document. It was as a result of considerable
8 insistence. If we had not written to the Prosecutor starting from, I
9 think, if I'm not mistaken, the 27th of June, we wrote, we insisted, and
10 if we had not done that, we would not have received this item,
11 your Honour. So we are entitled to make use of it, which anyhow is a
12 document, an element that we see is vital to the defence of
13 Mathieu Ngudjolo.

14 Your Honour, it was said in the past that the Defence already had
15 a table, the sketch that everybody is familiar with. Having now seen the
16 video, and I think other parties and participants have done so, too, we
17 have drawn the conclusion that there is a huge difference between the
18 table and the film, which is a living document in which the witness
19 provides explanations, illustrations. As an essential element in the
20 defence, as I've already said, and I would like to thank your Honours for
21 their attention.

22 MR. MACDONALD: (Interpretation) Very briefly, if I may.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, please.

24 MR. MACDONALD: (Interpretation) As we have the opportunity to
25 correct certain facts -- first of all, I greet the Bench. One thing is

1 the way and perhaps rather the tardy manner in which the video has been
2 provided, but that's nothing to do with the legal argument and how and
3 whether indeed one can use the document, and we can't mix things up.
4 You've made it possible for the Defence to prepare and to meet the
5 witness, which is in itself an exceptional measure. That has been done.
6 The video footage is no more, no less than an interview of the OTP of the
7 witness, and it's a filmed interview. These are prior statements made by
8 the witness that have been filmed. It's not been taken down in writing.
9 It has been filmed using audio-video equipment.

10 Without going into the question of the tardy nature of the
11 divulgence of the elements, the question now is to see whether the
12 Defence can use it, and if so, how. We're proposing a procedure which is
13 what has to be done first of all, irrespective of what and whether the
14 use is going to be made. In other words, there have to be questions put
15 to the witness who then has to answer them.

16 Subsequently, and this is the second point, what we refer to in
17 common law as the theory of self-serving evidence, in French --
18 unfortunately, even in Canada we use the English expression, that is that
19 a party cannot present elements of evidence, a priori evidence, that
20 corroborate what has been said by the witness during the hearing. There
21 are admittedly exceptions to this, but without complicating things, the
22 witness here is going to take the oath, then give evidence and be
23 questioned, and say what he has to say.

24 Defence cannot then come along with a video and show it and try
25 to use it to support what has been said by the witness under oath and

1 saying, "Look, your Honour, the witness said exactly the same thing two
2 years ago. So now he's telling you the truth."

3 That is what we mean by self-serving. It's not possible to
4 increase the credibility of one's own witness in this way. The only
5 possible use that can be made of the video, to my mind, according to your
6 Ruling 1665, is to refresh the witness's memory, but to the extent that
7 he, I mean the Defence team, has to comply with your Ruling 1665 and its
8 criteria, also as amended in the course of these proceedings. But if
9 it's quite simply to show to the witness, "This is just what you've said
10 and it's what you said in 2009," what's the point for the Chamber? It's
11 just a waste of time. That's first thing. And secondly, it's quite
12 simply recalling what's already been stated by the witness previously.

13 So that's the position of the Prosecution, and I'm raising the
14 question of the use of the video, but clearly, if it's a prior statement
15 already made by the witness, then what more can be said? If he says
16 things under oath that contradict what he said previously on the very
17 same subject, then Prosecution could show him the video to remind him of
18 what he said previously in the same way as Mr. Pitchu Iribi came to
19 testify and we showed him a video made in March 2003 in Kampala. It's
20 the same thing. The same principle applies.

21 So that is our submission, your Honour, very quickly, very
22 briefly.

23 The prior statements, if they support what is said here, they're
24 not really of probative value. What is important is what is stated by
25 the witness under oath before the Bench.

1 PRESIDING JUDGE COTTE: (Interpretation) Two minutes,
2 Professor Fofé.

3 MR. FOFÉ: (Interpretation) Yes, indeed, two minutes,
4 your Honour.

5 First of all, the Prosecutor, when presenting his witnesses and
6 in the phase of the examination-in-chief, showed videos here,
7 your Honour. You will recall that. That was during the
8 examination-in-chief, and he made use of video footage here.

9 Secondly, your Honour, you recall the question that we put to the
10 Prosecutor as regards the integrality, the totality of the video. Our
11 first set of questions will be to do with that matter. In other words,
12 the entirety of the video.

13 What the Prosecutor has just said doesn't hold water,
14 your Honour, because a witness, after having testified, well, the party
15 presenting the witness can then support the testimony of the witness
16 using other evidence, perhaps written, perhaps video, which is the case
17 in point here.

18 I don't want to use up your time any more, your Honour. I will
19 leave it at that.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
21 Professor Fofé. We wanted to hear your comments, your observations from
22 the Prosecutor. You will appreciate that we've already given prior
23 thought to the question of showing the video footage and whether it can
24 be used. So let me make a number of preliminary points.

25 We're not going into the question of the tardy, rather late

1 communication of the video. That's already been discussed. We've handed
2 down two oral rulings, one on Rule 35 among the Rules of the court, and
3 the other to authorise a working meeting to be held exceptionally.

4 The second preliminary comment I'd like to make is that we
5 mustn't forget that the witness we are going to be hearing now has
6 already had the opportunity calmly to take a look at the video in the
7 VWU, and if I'm not mistaken, has also, together with the Ngudjolo
8 Defence team, had the opportunity to see it again and also in the context
9 of the working meeting.

10 Third point, you know that we are striving to respect the balance
11 as regards the equitable nature of these proceedings. It's a legal
12 requirement. We're making sure that the principles are complied with
13 including the oral nature of the proceed. That's a legal obligation.
14 There is also an obligation that we have to comply with, and that is to
15 make sure that the proceedings go ahead within a reasonable length of
16 time. Obviously there are practical reasons for that, but there are
17 legal implications as well.

18 So, Professor Fofé, Mr. Kilenda, you were good enough to provide
19 us with an e-mail in which you show that you would like to show a certain
20 amount of footage, which actually boils down to showing the entire video,
21 and then the Prosecutor in writing has indicated that he objected to the
22 showing of this footage to the witness without there being any objection
23 to questions being put to the witness as to the subjects covered by the
24 video.

25 Having listened to you and to the extent that what you have just

1 said is in line with discussions we've had in the past, this allows me to
2 give you an immediate response without our requiring a further meeting.
3 So having listened to you, I can say that the Bench hears the arguments
4 put forward according to which the video could be likened to a prior
5 statement on the part of the witness to the extent that the recording of
6 his words when he was producing the sketch and then commenting on it are
7 clearly linked to the facts at the root of his deposition here.
8 Obviously that is very important that that be complied with, because the
9 witness has to be a useful, a valuable witness to the Court.

10 As regards the fact that this can be likened to a prior statement
11 on the part of the witness, you have just recalled the position of the
12 Bench as to the use made of prior statements during the
13 examination-in-chief and the fact that we do not admit them as evidence.
14 The rule is that the proceedings be oral.

15 As I've just pointed out, the Chamber must, and we know that the
16 Ngudjolo Defence team is very aware of this, is fully aware of this, the
17 Chamber has to make sure that we carefully manage the time allocated to
18 the hearing. The written proposal that you've made would mean that we'd
19 see first of all the entire video, which runs for about 47 minutes, and
20 then a number of excerpts, which, if you bring them all together, is
21 tantamount to seeing the video a second time over, and sometimes the same
22 footage would be seen several times with perhaps one or two seconds
23 difference, and we cannot accept such a way of proceeding. The Bench
24 will therefore not authorise the showing of footage of the statements
25 made by the witness with a view to commenting on these or confirming

1 them.

2 It is important in the witness's testimony that doubtless on the
3 basis of the paper version of the sketch that you have provided to us
4 among the other documents, the Bench considers that on the basis of that
5 sketch the witness will be able to make comments on how that sketch was
6 produced. In other words, the sketch that we see being made when we see
7 video. So the witness will be able to comment on it and if necessary
8 will be able to reproduce it, and you'll be able to put questions. It is
9 essential that in an oral fashion he provide everything that can be said
10 or reiterated as compared to the 2009 video. And let me remind you that
11 he has already had the opportunity on two occasion to see the video
12 again.

13 Professor Fofé, the Bench is not saying at this stage that none
14 of the video can be shown. If you consider that there are certain --
15 there's certain footage that needs to be shown for other purpose, for
16 instance, to make it easier to identify a place or persons, we would not
17 object to this. We would quite simply like to ask you to tell us in
18 advance whether you're intending to show any footage and, if so, what use
19 you intend to make of it, which means that you will considerably have to
20 tighten up your schedule as regards the projection of the video.

21 To summarise, therefore, the principle of showing footage is not
22 in any way called into question, but the Bench does not want the witness
23 and the Chamber to see absolutely everything which boils down to a prior
24 statement on the part of the witness. Here we're talking about the film
25 of his production of a sketch and his comments thereon. All of that has

1 to be dealt with in the context of the oral proceedings of the hearing.
2 If subsequently having gone through it again you think that there is
3 other footage of the video that could shed light on further matters or
4 identify more easily places or persons, then you can do so, but first of
5 all indicating to us which footage you'd like to precisely show. So once
6 again, we would ask that the Ngudjolo Defence team do not misunderstand
7 us. There has not been any difficulty as regards the Rule 55 issue and
8 the exceptional meeting. We're not calling into question in any way the
9 fact that the witness was able to see the video. We're just saying that
10 we have to bear in mind the oral nature of the proceedings and the need
11 to be equitable, and that that is why this is our ruling as regards the
12 showing of the video. We see the video as being quite simply a
13 reiteration of the statement on the part of the witness.

14 Professor Fofé (* as interpreted), please proceed.

15 MR. KILENDA: (Interpretation) Thank you very much, your Honour.
16 As we always do, we will indeed comply with the ruling of the Chamber but
17 would it be possible during the testimony of this witness to have in the
18 corridor somewhere a table?

19 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. Yes,
20 anything that could make things more effective, more efficient, that
21 would be perfectly possibly.

22 Court Officer, could we have a -- not a table, a blackboard or a
23 whiteboard because sometimes a -- well, a blackboard would have been no
24 good for the previous witness, but a whiteboard with paper and coloured
25 felt pens. We will need that in the courtroom tomorrow.

1 I made an erroneous reference when I referred to Rule 55. It's
2 actually 35, and I would ask that you apologise to Witness 0088 who
3 should have been testifying as of today. In other words, he will have
4 been hanging around waiting for nothing. It does happen from time to
5 time, but whenever we can express our regret to a witness for not having
6 treated him very well, in inverted commas, then we must do so.

7 Mr. MacDonald, you don't have very much time left.

8 MR. MACDONALD: (Interpretation) I just wanted to suggest,
9 your Honour, that we use hard-copy documents. If it's a whiteboard or
10 blackboard, rather, with chalk, as we see on the video, then it might be
11 rather difficult. We've already got tools here available, and I think we
12 ought to make use of those tools for the next stages.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
14 We already have in the case file itself the sketch, which was the upshot
15 of the 2009 Zumbe meeting with Mr. Moreno-Ocampo. So that sketch can be
16 commented on. We can also ask the witness to use a large sheet of paper.
17 So, Court Officer, we will need not just the normal size of paper but you
18 know the sort of paper that we have in our photocopying machines, the
19 larger sheets of paper. We will need that as well, and that may well be
20 enough. But anyhow, just in case, keep in the corridor a whiteboard with
21 large sheets of paper and we can use that if it's absolutely necessary.
22 We would like to thank everybody who, left, right, and centre, has been
23 helping us out as they do every day, and work hard this afternoon. I
24 would ask you all to switch off your computers, which I am doing myself,
25 and we will resume tomorrow at 9.00.

1 Now, as regards 93 and 74, we'll have those guarantees first of
2 all, and then we'll hear the identity, the oath, and the testimony of the
3 witness.

4 The hearing is adjourned.

5 The hearing ends at 1.27 p.m.

6 CORRECTIONS REPORT

7 The Court Interpretation and Translation Section has made the following
8 corrections in the transcript:

9 * Page 7 line 3

10 "allegations that are his allegations or the allegations of the witness"

11 is corrected by

12 "allegations that are either his allegations or the allegations of his witnesses"

13 * Page 10 lines 6 to 8

14 "Witness, am I correct to say that at that particular time the Bunia attack -- Bunia --

15 Mathieu Ngudjolo and the chief of the groupement "

16 is corrected by

17 "Witness, am I correct to say that at that particular time, when the Bunia attack

18 occurred, Mathieu Ngudjolo was the leader of the combattants in the

19 Bedu-Ezekere groupement? "

20 * Page 48 line 13

21 "I don't know whether you can tell him "

22 is corrected by

23 "I don't know whether you yourself can tell me"

24 * Page 63 lines 2 to 4

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

- 1 This will allow us to clarify yesterday's transcript so we will not have this
- 2 misunderstanding about the two commanders and which one was in Dele. "
- 3 is corrected by
- 4 "PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
- 5 At the same time, this will allow us to clarify yesterday's transcript so that it indicates
- 6 that Commander Kiza, not commander Basé, was based in Dele. "
- 7 RECLASSIFICATION REPORT
- 8 Pursuant to Trial Chamber II's email instructions dated 10 October 2012,
- 9 the following excerpts of this transcript are reclassified as confidential.
- 10 *Page 56 lines 18 to 24