

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Thursday, 6 May 2010
10 The hearing starts at 9.04 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) The President's Court
15 is in session. Please be seated.
16 The accused persons are in the courtroom with us. Good morning
17 to you.
18 Some general information to begin with before calling the
19 witness. The Chamber would like to inform all the participants and
20 parties that we will not be able to sit on the 24th and 25th of June,
21 that is, on Thursday and Friday, because a member of the Bench will be on
22 mission for the Court abroad. We are informing you in advance so that
23 you should be able to organise your schedules accordingly. We are going
24 to have the possible observations of the Defence team of Mathieu Ngudjolo
25 regarding the delay of the testimonies of two witnesses.

1 MR. KILENDA: (Interpretation) Thank you, Mr. President, that
2 was done this morning.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We are
4 going to look at it later. Regarding the redactions, the motion for the
5 lifting of redactions presented by Mr. Hooper, we debated that yesterday
6 and this was disclosed to you by the Prosecutor. There was his response
7 number 2077 on the * 5th of May, 2010. We thank the
8 Prosecutor for his diligent submission.

9 Regarding Witness 132, there was a certain number of names in
10 paragraphs 11, 12, 13, 14, 15, 27, 128, and 134 of document
11 DRC-OTP-1016-0156. You would have noticed that the Prosecutor was
12 proposing the lifting of all the redactions apart from two family names
13 in paragraphs 12 and 14. And you would have realised that he explained
14 the justifications for the maintenance of those two redactions. Still
15 pending for Witness 249, there is the name of the mother of that witness
16 in statement DRC-OTP-1004-011 (as interpreted). The Prosecutor intends
17 to maintain the redaction of the name of the witness's mother and he
18 provides reasons for that. Regarding new removals of redactions that the
19 Prosecutor has accepted to effect, the Chamber takes due note of this,
20 just like we noted those that were lifted yesterday. We orally asked
21 them to do the necessary and make those documents without the redactions
22 available to the Defence.

23 Regarding Witness 132, Mr. Hooper, do you think that you are in a
24 position to tell us right now - unless you prefer to do that after the
25 break - whether you maintain your application regarding the two family

1 names in paragraphs 12 and 14 in light of the explanations given by the
2 Prosecutor? Secondly, the Chamber may already anticipate your answer,
3 but do you wish to maintain the application to lift the redaction
4 regarding the mother of Witness 249? Do you think you can give us your
5 opinion right now or do you refer to do that after the break at
6 11.30 a.m.?

7 MR. HOOPER: In respect of Witness 132 and paragraph 12 and 14,
8 can I look at that over the break and come back to you very briefly on
9 that after the break? In respect of the mother's name of this witness,
10 coincidentally I received a request from my investigator last night by
11 e-mail asking for information in order that he can make, as he puts it, a
12 "recherche rapide" on the witness, and he's asked me to provide, if I
13 can, the name of the "collectivite d'origine," the "groupement d'origine"
14 and the village or the locality of origin, and names of her parents, her
15 brother and sisters. And that's quite independent of our discussions.

16 And I merely mention that because it supports what I was saying
17 yesterday, that often within these communities, it's that matrix of
18 family connection that often may lead to information about a witness.
19 And the reason why it's of any significance with this witness is that the
20 trail of identification in respect of this witness has necessarily been
21 thrown into some doubt, at least a degree of doubt which provokes me to
22 need to look into it a little more because of the witness's own conduct
23 in terms of the names and other indicia of identification that she's
24 given. So I'm left in that position.

25 Now, I was wondering whether one course that perhaps might find

1 favour with the Chamber might be if, with due consideration at all times
2 for this witness, because I quite accept that she's been the subject of
3 terrible indignities and I'm very alert and aware of that, but
4 nevertheless it may be that if I was to ask the witness, for example,
5 what her mother's name was, she may herself have no difficulty in
6 providing it to me.

7 So as I say, I can reflect on it, perhaps, and let the Chamber
8 know finally perhaps at the end of my questioning of the witness. But at
9 the moment, inasmuch as I'm going to touch on her name and her history
10 briefly, relatively briefly at the beginning of my questioning of her
11 this morning, the identity of her parents does figure in that.

12 So that's my position. So I suppose the short answer is: Yes, I
13 still do pursue a request for the non-redaction of the witness's mother's
14 name. Let me state that clearly as my position.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor.

16 MR. MACDONALD: (Interpretation) With your leave, following your
17 decision, Mr. President, regarding Witness 249, that was the immediate
18 decision, we are going to send an electronic version by e-mail. Maybe
19 Mr. Hooper will be able to assess, particularly on the cover page, apart
20 the redaction that remains on the name of the mother, the removal of all
21 the other redactions relating to places of birth, residence, and other
22 details about the witness, that is, the identification page. The first
23 page of the statement. And also the other lifting of further removals.
24 Without dwelling too much on this, I believe it is easy to send an e-mail
25 with her self-serving evidence.

1 You will have the collectivite and other details, including, once
2 again, the name of the witness's father, even though he is deceased.
3 Maybe in light of the information that would have been revealed,
4 Mr. Hooper will be able to make a decision, but the Prosecution stands by
5 its position regarding the name of the mother. And we respectfully
6 submit that the issue of asking the witness the question, the Prosecutor
7 would like to object to that because the witness is in the witness box,
8 and when you consider the pressure that is put on her through this
9 exercise it is not the appropriate situation to raise this issue. And
10 furthermore, the assessment of risk does not depend entirely on the
11 impressions of the witness. Of course there are subjective criteria, but
12 there are also objective criteria.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
14 Mr. Prosecutor.

15 After the break at 11.00, at 11.30, Mr. Hooper will tell us his
16 position regarding Witness 132 and whether he maintains his application
17 for the removal of the suppression of the redaction on two patronymic
18 names in paragraphs 12 and 14 in a document whose reference I've just
19 given to you. He's just said that he maintains his request to remove the
20 redaction on the name on Witness 249's mother.

21 Mr. Prosecutor, you have just said that a certain number of
22 redactions have been removed in Witness 249's statement and this might
23 facilitate the investigations on the field by the members of the team of
24 the Defence of Mr. Katanga. Is that correct?

25 MR. MACDONALD: (Interpretation) Yes.

1 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper has also
2 understood that any attempts to ask questions to the witness regarding
3 the identity of the mother will be objected to by the Prosecutor. So we
4 will hear that opinion at 11.30.

5 Regarding the disclosure of photographs and other items, such as
6 voter's cards and identity cards, yesterday you were sent a copy of a
7 consultation that was sent by the Chamber to the VWU, requesting the unit
8 to provide the Chamber with a certain number of observations by next
9 Monday at noon. Before we call in Witness 249, you will remember that
10 during the hearings for the 4th of March for Witness 161 and the
11 24th of March for Witness 159, the Chamber considered that the prejudice
12 that the Defence teams mentioned regarding the spontaneous statements
13 made by the witnesses in the hearing might lead to a re-call of those
14 witnesses, but it will depend on the investigations that you feel you
15 have to carry out on this situation. And on the 4th of March, for
16 Witness 161, and on the 24th of March for Witness 159, the Chamber told
17 you that we simply wanted to discuss this situation with you on the
18 3rd of May, 2010. We postponed that review to today's hearing, that is,
19 the 6th of May, 2010.

20 So can the Defence team briefly tell us at what stage they are?
21 We are not putting too much pressure on you. Just tell us what the
22 situation is. Mr. Kilenda or Mr. Hooper can begin.

23 Mr. Hooper, can you give us further clarification?

24 MR. HOOPER: There's nothing that I've learned since that would
25 lead me to make a request for re-call of that witness, and I say that now

1 with the reservation that there are still investigations into that area.
2 It's difficult to concentrate or for us -- we've just got one person of
3 resource, as I think the Chamber's aware. It's difficult for him to
4 allocate all his energies, as it were, at one particular time or over a
5 necessary period of time to complete all those inquiries expeditiously.
6 So they are still going on. But at the moment I can indicate that
7 there's nothing that would move me at the moment, and I -- certainly not
8 move the Chamber to order the witness's re-call.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
10 Mr. Kilenda or Professor Fofe, as you wish.

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

12 Mr. President, your Honours, good morning. The Defence of
13 Mathieu Ngudjolo is continuing its investigations on Witnesses 161 and
14 159. We are not yet in a position to give you an opinion regarding
15 Witness 161. On the other hand, we do have some information that
16 establishes that Witness 159 was not in Bogoro.

17 MR. MACDONALD: (Interpretation) Objection, I am objecting,
18 Mr. President. My learned friend has to tell the Chamber whether he
19 intends to re-call the witness. He does not need to plead right now.

20 MR. KILENDA: (No interpretation)

21 MR. MACDONALD: (Interpretation) The issue was to inform the
22 Court whether they have any contrary information and they should present
23 that. I understand that I'm interrupting my learned friend while he is
24 pleading, but that is what the Prosecution has to do. We have to respect
25 the procedure for presenting evidence without pleading a case.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 Mr. Prosecutor. So far the Chamber did not have a feeling that
3 Professor Fofe had started pleading, that is, within the meaning of the
4 French Judges' understanding. We felt that Professor Fofe simply wanted
5 to provide some observations.

6 Professor Fofe, please give a general observation. You have
7 understood that the decisions taken regarding 161 and 159 are not
8 time-barred. We want to be fair. Mr. Hooper has just expressed himself.
9 This is your turn to do that. You do not exclude the fact that
10 Witness 159 may be requested to come back, given the investigations that
11 are still going on. Isn't that so?

12 MR. FOFE: (Interpretation) Yes, indeed, Mr. President. I
13 regret those interruptions by the Prosecutor because I was actually going
14 to tell the Chamber that the Defence is currently cross-checking this
15 information regarding Witness 159. That is what we are doing,
16 cross-checking that information relating to Witness 159. If that
17 information is confirmed, then the Defence will file a motion for the
18 purpose of re-calling this witness. At the same time, the Defence is
19 continuing with its investigations regarding testimony given in the
20 courtroom which was unexpected, and that testimony was given by
21 Witness 161.

22 Mr. President, your Honours, that is what we can say at this
23 current stage of our investigations. Thank you.

24 PRESIDING JUDGE COTTE: (Interpretation) We thank you,
25 Professor Fofe.

1 We thank you, Mr. Hooper. And if you wish, we will set another
2 date for you to update us on this issue, Monday, 21st of June. I
3 believe, Court Officer, that we are sitting on that Monday, 21st of June?
4 And if not, then we will do this on the 22nd of June, that is, Tuesday.
5 There is no reason to rush too much, but we have to review the situation
6 regarding these issues with each of the Defence teams.

7 We have now concluded our discussion on these issues. Thank you
8 for the information that you have given us. Mr. Hooper will give us
9 additional information at 11.30 a.m., and we are going to now go briefly
10 into closed session to allow Witness 249 to come into the courtroom.

11 Madam Court Officer, please.

12 (Closed session at 9.26 a.m.)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Open session at 9.27 a.m.)

23 COURT OFFICER: (Interpretation) We are in open session,
24 your Honour.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

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1 Court Officer.

2 Good morning, Madam Witness.

3 THE WITNESS: (Interpretation) Good morning, Mr. President.

4 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me very
5 well, Madam Witness? Is everything okay?

6 THE WITNESS: (Interpretation) Yes.

7 PRESIDING JUDGE COTTE: (Interpretation) We are happy to see you
8 again this morning, for you to continue with your testimony. As I told
9 you yesterday, it is now the turn of the Defence teams of the two accused
10 persons who are going to put a certain number of questions to you. And
11 as you have done so far, we are asking you to speak very slowly while
12 giving your answers. Even though from time to time you feel like
13 speeding up your answers, it is important for the interpreters to
14 interpret you properly so that the Chamber and all the participants can
15 fully understand what you are saying. If from time to time you see signs
16 such as this, it means you have to slow down. Judge Diarra does this
17 from time to time and she looks at you while you're testifying, so you
18 can look at her also.

19 Mr. Hooper, it is now your turn to begin with your
20 cross-examination.

21 WITNESS: WITNESS P-249 (Resumed)

22 (Witness answered through interpreter)

23 Questioned by Mr. Hooper:

24 Q. Good morning, Madam Witness.

25 A. Good morning.

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1 Q. Now, I'd like to ask you this, if I may: How did you first come
2 to be in contact with the International Criminal Court?

3 A. I met with personally for the first time.

4 Q. All right. But how did that happen? Did you go to them and say,
5 "I'd like to be a witness?" Or did someone come to you and say -- invite
6 you to be a witness?

7 A. Nobody invited me to be a witness.

8 Q. Well, how did you come to be -- how did you come to be a witness
9 then?

10 A. I was a witness because I experienced a situation. There were
11 events which I endured which made me suffer, and it is because of these
12 events that I experienced and which made me suffer enormously that I am
13 here to come and testify. I therefore came to testify, above all, as to
14 the fact that I have suffered very, very much in my life because of these
15 events.

16 Q. Yes, thank you, Madam Witness. Can I make it very clear to you
17 right at the beginning of our discussion this morning that I fully
18 accept, Madam Witness, that you have been subjected to the most terrible
19 indignities and I've been very sorry and saddened to hear about them.
20 Now, I'm not going to this morning ask you very much, if anything, about
21 those indignities that you suffered. My question at the moment is - and
22 I appreciate that you suffered badly - was: Is it the case that someone
23 came to you one day and asked you to get in touch with people from this
24 court who were investigating things? Is that how things happened?

25 A. Counsel, which person are you referring to that I met?

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1 Q. Someone called (Expunged)

2 MS. LUPING: Objection, Mr. President. This sort of information
3 could potentially be identifying, if we could move into private session.

4 MR. HOOPER: Well, identifying of whom, the intermediary or is it
5 identifying the witness? Because I don't see the latter.

6 MS. LUPING: Of the intermediary, Mr. President. I mean, we're
7 in public session now and whatever information may be provided to the
8 Defence, it's another issue as to what can be disseminated by public
9 transmission to the wider public.

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

11 Given the procedural developments which are common with
12 Trial Chamber I and II where it concerns possible disclosure of the
13 identity of intermediaries, procedural developments which are not yet
14 finished, it is preferable for the moment to go to private session so
15 that the witness may respond -- reply if the witness is able so to do and
16 can reply to Counsel Hooper with regard to the persons what might have
17 asked her to come and testify or not.

18 Please let us go into private session. I would ask everybody to
19 be very careful. When we go into open session, we have to do that as
20 soon as possible and we shouldn't just continue in private session.

21 MR. HOOPER: Can I just say for those members of the public who
22 are here today and others listening perhaps that if we're going into
23 closed session, I think we'll be in closed session for a substantial
24 period of time because most of my questions will deal not so much with
25 the subject of an intermediary but with personal details of Madam Witness

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1 which we understand and appreciate she doesn't want broadcast.

2 PRESIDING JUDGE COTTE: (Interpretation) The Chamber therefore
3 addresses the public.

4 Ladies and gentlemen, you know that hearings are public. This is
5 one of the guarantees of all legal systems, but at the same time this
6 court, as all criminal courts, have to take a certain number of
7 precautions in order to ensure the security of witnesses as well as their
8 identity to make sure that it is not put in danger. This means we
9 sometimes have to sit sometimes for long sessions in private session or
10 closed session. A certain number of questions that come up often address
11 the personal life of the witness. This sometimes means we have to sit in
12 private session, as Counsel Hooper said. He alone knows the questions
13 that he's going to ask the witness. If these questions need a long
14 private session, you have to know that because for a certain time you
15 will not have the possibility to follow the proceedings. The Court just
16 wants to make this explanation to you.

17 Court Officer, please can we now go into private session.

18 (Private session at 9.37 a.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

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Page 38 expunged. Private Session.

Witness: Witness P-249 (Resumed) (Closed Session)
Questioned by Mr. Hooper

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- 23 (Closed session at 10.51 a.m.)
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8 (Open session at 10.52 a.m.)

9 COURT OFFICER: (Interpretation) We are in open session,
10 Mr. President.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

12 Madam Prosecutor, Mr. Hooper, we have five full minutes for the
13 exchanges that are going to take place. We are listening to you,
14 Madam Prosecutor.

15 MR. HOOPER: We're in open session now. We can be in open
16 session. There's no problem with that.

17 MS. LUPING: Mr. President --

18 PRESIDING JUDGE COTTE: (Interpretation) There is no objection
19 on your part also? We stayed for a long time in closed session, so this
20 exchange can take place in open session.

21 Please go ahead.

22 MS. LUPING: I believe this exchange can take place in open
23 session. The point I'm wishing to raise is simply an issue of procedure
24 and fairness to the witness. When the witness is asked questions in
25 relation to her prior testimony from her first interview, before she is

1 asked the question she should be given an opportunity and should also be
2 presented with the information on the same topic she provided in her
3 second interview, because she has provided clarifications in her second
4 interview in relation to each of the questions my colleague has in a
5 series of questions put to her in relation to her first interview.

6 This procedure was also adopted in relation, for example, to
7 Witness 250. So it's a question of fairness. That's all I'm raising,
8 that when she is put and asked questions on a passage from her first
9 interview, in fairness to her she should also be presented with
10 information from her second interview before being asked to clarify what
11 is the correct information. That is all.

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

14 Mr. Hooper, regarding fairness of the proceedings and the need to
15 provide full information when you are seeking information from the
16 witness and to raise contradictions, possible contradictions, what is
17 your view on this?

18 MR. HOOPER: Well, the suggested procedure introduced by my
19 friend, that's certainly not been employed at all before, is utterly
20 unworkable. In fairness to this witness -- well, I hope I am going to
21 treat and am treating this witness fairly. I will point out to the
22 witness and it was my -- not my intention to do otherwise, that she gave
23 essentially a substantially different story, of course, as we're going
24 through and we're seeing as a result of these current questions. And
25 she's later interviewed, as we know, in February of 2009. And there she

1 changes her story in line or more in line with the account that she gives
2 from the witness box.

3 Now, my function at the moment is merely to draw to the attention
4 of the Court, fairly and squarely, previous inconsistent statements. I
5 was very surprised that this witness was presented to this Chamber by the
6 Prosecution with no reference to these previous and inconsistent
7 statements. It was almost as if the witness was presented in a
8 white-washed way. Now, if the Prosecution wanted to deal with this
9 difficult -- or this difficulty that the Prosecution have, the proper and
10 appropriate way to have dealt with it was for the Prosecution in their
11 examination-in-chief to have raised these inconsistencies with the
12 witness and gained her explanation for them. They didn't do that, and as
13 a consequence, neither you, Mr. President, nor your fellow Judges came to
14 hear a word about this different story.

15 Now, I'm going to present the witness, fairly and squarely, with
16 the opportunity to recognise the inconsistencies and to present us, if
17 she can, with an explanation. The explanation, as I understand it, that
18 she's going to give is that these were misunderstandings, but as a matter
19 of common sense, that cannot be so. If the Prosecution are going to
20 suggest otherwise, then they will have to call those who interviewed her.

21 It's quite apparent from the 2009 interviews, which extend over
22 almost 300 pages of transcripts, that the interrogators themselves are
23 obviously taken aback by the change in story. And you can see the
24 interrogators themselves clearly facing a difficult situation and
25 expressing their incredulity as the story develops.

1 Now, it's a matter of fact at the end of the day for you, the
2 Judges, that these inconsistencies as a matter of fairness to the accused
3 are going to have to be laid fair and square before the Court. It's not
4 part of my role to then show a consistent account in a later interview
5 when the witness for one reason or another has decided to change her
6 story. I'm dealing here, appropriately, with inconsistencies. It's not
7 for a party who calls a witness to show consistency. So this isn't an
8 avenue open to the Prosecution. It's fairly being done, I hope, by the
9 Defence. And I will point out to the witness, and in doing so to you,
10 the Judges, that in 2009 she did change her story and it's a story that
11 is more in line, more consistent, that is, with the story she now
12 presents you, that she was living in Kasenyi, visiting Bogoro, mom didn't
13 live there, et cetera, et cetera. That's not the story she told when she
14 was first interviewed.

15 So there's a question mark over the reliability and even
16 credibility of this witness. We don't dispute that she suffered at some
17 point indignities. We are -- because of these difficulties that we're
18 confronted with we're necessarily having to explore the position.

19 And thank you very much.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
21 Madam Prosecutor, you have 30 seconds.

22 MS. LUPING: Very briefly, Mr. President, I know time is short.
23 Just simply to come back on my colleague's comments. In the 2006
24 interview there could have been interpretation problems. We're not
25 saying that it's inappropriate for the Defence to clarify any of the

1 issues in terms of information provided. We're simply stating that as a
2 matter of fairness to the witness, when she is asked a question she be
3 presented with the information provided in 2006 as well as information
4 provided in 2009 before she's asked to answer the question. It's simply
5 a question of fairness, and this procedure has been adopted previously
6 with Witness 250. And we would also strenuously object to any suggestion
7 that there has been any impropriety on the part of the Prosecution.
8 There are transcripts, making it extremely clear as to the questions and
9 the answers during that interview of 2009.

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

12 We will break now and resume at 11.30. Prosecutor, at the very
13 beginning of the next hearing and before Mr. Hooper talks about the
14 removal of redactions, you can provide us with information about the
15 objective risks that the mother of Witness 249 may have where she is now.
16 So it will be useful to us to have that information.

17 MR. MACDONALD: (Interpretation) I cannot do that. It should be
18 in an ex parte session with the Prosecution only.

19 PRESIDING JUDGE COTTE: (Interpretation) Very well. Then we
20 will listen to Mr. Hooper regarding paragraphs 12 and 14.

21 Thank you to our support staff for their patience. Court is
22 suspended. We will resume at 11.30.

23 Recess taken at 11.02 a.m.

24 On resuming at 11.31 a.m.

25 (Open session)

1 COURT USHER: All rise.

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

4 Mr. Katanga and Mr. Ngudjolo are with us. Before, once again,
5 bringing in Witness 249, Counsel Hooper, have you been able to reflect on
6 the issue of whether you keep your request to lift the redactions on the
7 patronymic names in paragraphs 12 and 14 of the statement of the witness
8 132, DRC-OTP-1016-0156?

9 MR. HOOPER: Yes, thank you, Mr. President. And we don't require
10 the redactions to be lifted.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
12 The Chamber notes that the initial application of Counsel Hooper is
13 modified in the sense that the two patronymic names which figure in
14 paragraphs 12 and 14 of the statement of Witness 132, which I've just
15 provided the reference of, remain therefore redacted. We are in
16 agreement on this?

17 Therefore, just currently pending after the efforts of everybody
18 to ensure that the redactions remain the exception rather than the rule,
19 there is just pending the issue of the name of the mother of
20 Witness 14 -- 249.

21 Prosecutor, to the extent that it's not easy for us to organise a
22 brief ex parte session to better focus on the objective reasons which
23 currently go against the redaction of the identity of the mother of the
24 witness, please could you provide us with a submission in writing aimed
25 to the Chamber which could be provided Monday at the end of the morning.

Witness: Witness P-249 (Resumed) (Closed Session)
Evidentiary Matters

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1 Would this be possible for you? The dead-line is not very short, not
2 very long, is it reasonable?

3 MR. MACDONALD: (Interpretation) Yes.

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

5 Now, if we could also have this submission on Monday at 11.00,
6 this would make it possible for the Chamber to also go back to it. Now,
7 it could also provide an answer by the beginning of the afternoon. If
8 not, it will do so as far as possible the following day. So thank you
9 very much to everybody for your understanding and your concern to try and
10 make things progress in a joint way.

11 Court Officer, we are now going into closed session to provide us
12 with time to allow the witness to come in.

13 (Closed session at 11.35 a.m.)

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22 (Open session at 11.36 a.m.)

23 COURT OFFICER: (Interpretation) We are in open session,
24 your Honour.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

1 Court Officer.

2 Good morning, Witness. We are here for a two-hour period. Can
3 you therefore understand me well?

4 THE WITNESS: (Interpretation) Yes.

5 PRESIDING JUDGE COTTE: (Interpretation) So, Witness, you can
6 hear me well, but please, the Usher will ensure that the microphone is
7 closer to you. If you would like to be at the back of your chair, please
8 try and bring the microphone as close to you as possible so that the work
9 of the interpreters can be facilitated and we can understand the
10 interpretation well.

11 Without going back to the lengthy discussions that there were at
12 the beginning of the hearing, Prosecutor, the Chamber would just like to
13 tell you that it has understood the approach that there has been of the
14 Defence team of Germain Katanga and the steps taken by them, and it would
15 appear to us that the additional examination or re-examination which you
16 would carry out in a few hours or maybe on Monday should make it possible
17 for you as it could also take into account everything that came up in
18 Counsel Hooper's cross-examination and then the cross-examination of the
19 Defence team of Mathieu Ngudjolo. This will make it possible to provide
20 input for your re-examination and it will give you the opportunity on
21 that occasion to try to re-establish with the witness what you consider
22 needs to be re-established, given that she has been evasive with regards
23 to the different interviews that were carried out and which happened on
24 successive occasions.

25 Counsel Hooper, you can therefore take the floor and continue

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1 with your cross-examination.

2 MR. HOOPER: Thank you.

3 Q. And welcome back, Madam Witness. So that we put things in
4 context, as you know, I'd been asking you questions based on what is
5 recorded that you said back in December of 2006, in the statement there.
6 And just to remind you what those items were and these, for reasons we
7 now know, won't identify you. You had been recorded as saying at
8 paragraph 11 that:

9 "I'd been staying in Bogoro a long time. My mother and father
10 lived there, which is why I was there."

11 And at paragraph 14 that:

12 "My mother's house was near a primary school in Bogoro."

13 And that:

14 "My family just ran away as soon as we heard the gun-fire."

15 Those are the matters that I'd put to you. Now, we know from
16 your evidence now that you don't accept that you said those things in the
17 interview. Now, I just want to go on, if I may, and just to complete
18 these clarifications with you. Again, at paragraph 14 for those
19 following in any way the statement itself of 2006, paragraph 14
20 continued, I'll give its context:

21 "My family just ran away as soon as we heard the gun-fire. My
22 mother and I ran separately. We couldn't determine which direction was
23 best. We just ran."

24 Now, did you run with -- away with your mother or is that wrong?

25 A. I was living in (Expunged). My family was living in (Expunged).I

Witness: Witness P-249 (Resumed) (Open Session)
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1 didn't live in Bogoro. My family was living in (Expunged) all of us were
2 living in (Expunged) but I was the only person to go to Bogoro.

3 Q. All right. Thank you. And then at paragraph 18, after some
4 other matters it reads - and this is when you're describing your
5 statement being taken before (Expunged) and you say:

6 "(Expunged) questioned me, saying, 'Why are you here?'"

7 And this is the bit that concerns me, and your reply is, in your
8 statement, and you say:

9 "Although I was living in Bogoro, I said that I was only
10 visiting."

11 Let me repeat that:

12 "Although I was living in Bogoro, I said that I was only
13 visiting."

14 Now, can I ask you: Do you remember saying that to your -- the
15 people interviewing you, that you were living in Bogoro but only
16 visiting, that's was something that you'd said to (Expunged)

17 A. Yes.

18 Q. Let me make it clear that what you've said there is that you were
19 living in Bogoro, you see. I understand it you don't accept you were
20 living in Bogoro, do you?

21 A. I wasn't living in Bogoro.

22 MS. LUPING: Mr. President, before the next question is posed, I
23 just wish to remind Counsel Hooper that we are in public session and that
24 names of commanders have been redacted previously, as this might identify
25 the witness. So if we could refrain from referring to the name of the

Witness: Witness P-249 (Resumed) (Open Session)
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1 commander in public session.

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

3 Counsel Hooper, if we can stay in open session, that is
4 preferable. In order to do that, and you do it as often as we can,
5 please try and make reference to people who are not named but who the
6 witness understands who they are.

7 Please continue, Counsel Hooper.

8 (Defence counsel confer)

9 MR. HOOPER:

10 Q. And if I can just again refer to paragraph 22, where you say
11 this:

12 "After the Ngiti overran the village and chased the Hema militia
13 away, the Ngiti militia had a camp in the school in the village. This
14 school was the same Catholic primary school near my mother's house."

15 Now, part I'm interested in is this: Here it's recorded that
16 you're saying, "This school was the same Catholic school near my mother's
17 house." I understand that you say no, my mother's house wasn't in
18 Bogoro, wasn't near the Catholic school in Bogoro, because you lived
19 elsewhere. Is that right?

20 A. No, it's not that. I would like some time in order to express
21 myself.

22 PRESIDING JUDGE COTTE: (Interpretation) Take the time to
23 reflect. You have some time before you.

24 THE WITNESS: (Interpretation) Our house was in (Expunged). This
25 is where we were living, (Expunged)--

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1 MR. HOOPER: (Previous translation continues) ... ask that we go
2 into closed session because it's quite clear that you're -- for you to
3 express yourself freely, we don't want to be bothered about things that
4 might identify you. So the only way to deal fairly with that is if we go
5 into closed session so we have a private discussion. And then you'll be
6 freer to speak your mind.

7 PRESIDING JUDGE COTTE: (Interpretation) Understood.

8 Court Officer, we will therefore go into private session so that
9 the witness is fully free to express herself.

10 (Public session at 11.47 a.m.)

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Witness: Witness P-249 (Resumed) (Private Session)
Questioned by Mr. Hooper

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Witness: Witness P-249 (Resumed) (Private Session)
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Page 53 expunged. Private Session.

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13 (Open session at 11.54 a.m.)

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

16 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

17 Thank you, Court Officer.

18 Counsel Hooper, you can continue.

19 MR. HOOPER:

20 Q. Now, in this interview which was then read back to you in Swahili
21 and which we can see from what you've signed yourself that you
22 acknowledged to be an accurate record of what was said, so not just a
23 question of you saying something and it being written down, it's then
24 read back to you in this form with clear references to your living in
25 Bogoro with your family.

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1 And my question is: Can you explain why this story is so
2 different to the account you gave later and which you give today, where
3 you say you weren't living in Bogoro? How did it happen that this
4 interview got it so wrong, do you think? Do you know?

5 A. Our house that was burnt was in (Expunged) and not in Bogoro. I
6 left (Expunged) and I went to Bogoro. I experienced what I experienced in
7 Bogoro and not in (Expunged). The house that was burnt was in (Expunged) and
8 not in Bogoro. That's what I stated to the investigators. I was the
9 only person to undergo what I underwent in Bogoro. I wasn't accompanied
10 by my family. My father was already dead at the time. I no longer
11 remember the year in which he died, and my husband was alive. When it is
12 said that the house was burnt in Bogoro, that isn't right. I recognise
13 that houses were burnt in Bogoro when there were attacks, but when I was
14 accompanied by my family that was in (Expunged)

15 Q. Well -- and when this interview, this statement, this record was
16 read back to you in Swahili, didn't you notice that it was so wrong?

17 A. What error are you speaking about?

18 Q. Well, all these references to you living in Bogoro, running away
19 with your mother, other family fleeing, the house being next to the camp
20 in Bogoro, being next to -- being your mother's house, your mother's
21 house being burnt in Bogoro, all this. Did you not notice these obvious
22 mistakes when that interview was read back to you that day before you
23 signed it?

24 A. I see that you want to confuse me. I think that we have to stop.
25 Please leave -- let me be. You are confusing me. What you're asking me

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1 as a question, these are things that I don't know. I cannot accept what
2 I haven't said. I have to say what I am doing. Should I accept lies,
3 that I said lies? No. I have to say what I know. That's what I want to
4 say. Do you want me to lie? I have to tell the truth, what I've seen,
5 what I'm saying.

6 Q. All right. Thank you, Madam Witness, and don't upset yourself --

7 A. You see -- so I propose that we stop because these are things
8 that I don't know. I cannot accept lies that I don't know. It's not
9 possible. I cannot tell lies. It is as if you want to cause confusion.
10 You want me to tell lies that I don't know.

11 PRESIDING JUDGE COTTE: (Interpretation) Witness, Witness, you
12 have to put your headphones back on and listen to me. Can you hear me
13 well?

14 THE WITNESS: (Interpretation) I am following you.

15 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Well, we are
16 going to speak for a moment calmly, very calmly. You have stated to us
17 that since you have been with us and you swore an oath in this regard, an
18 undertaking, that you were going to tell the truth, and that before us
19 what you were saying was the truth. We have explained that everybody
20 here has a mission to complete. The Prosecutor has her mission and the
21 two Defence counsel have their mission to defend the accused. This is
22 why they ask questions to you which you make an effort to reply to and to
23 reply as well as possible, telling the truth. This is what is said to
24 us -- what you say to us.

25 Now, for a while now Mr. Katanga's Defence counsel has wanted to

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1 understand why in a 2006 statement you stated certain things, and he has
2 just said that they are different, two statements that you gave on other
3 occasions and what you stated today. He does not want to create
4 confusion. He does not want to confuse you, he just wants to understand
5 and it's important for the Court to understand.

6 It is perfectly possible that witnesses who have experienced the
7 scenes that you have experienced could at a certain time have had a view
8 of things that is different to what they felt afterwards. That's it. So
9 please do not get annoyed by the questions that Counsel Hooper puts to
10 you. He's trying to understand why there were different versions, and if
11 you can answer that, it's good to answer those questions and to do it
12 with the same conscience that you have done in replying to all the other
13 questions, to the questions that I asked you yesterday, that
14 Counsel Gilissen and Counsel Luvengika put, and those that the Prosecutor
15 put to you as well. You are there to speak in the most simple and frank
16 way possible.

17 So Counsel Hooper said to you: Why are there so many
18 differences? If you can answer, that would be good, because perhaps
19 there are reasons. Perhaps you have very good reasons. And if there
20 were good reasons, you have to give them, quite simply.

21 MS. LUPING: Mr. President, I'm sorry to interrupt. I simply
22 wanted to bring to the attention of the Chamber the fact that we are now
23 at our limit in terms of redactions, so we need to exercise extreme
24 caution now that we are in public session. And we need to remind the
25 witness but also Counsel Hooper in terms of any questions being put to

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1 the witness subsequently.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
3 Madam Prosecutor.

4 Witness, you should not give any names of people. You can remain
5 very general when you're talking about someone. Now I will give the
6 floor to Counsel Hooper who may be able to rephrase his question or,
7 given everything that was just said, he may move on to a different
8 question.

9 MR. HOOPER:

10 Q. Yes, I'll move on, slightly move on, Madam Witness. So there's
11 what's said in December or what appears to be said. And then in
12 February 2009, you may remember you were interviewed over three days by,
13 again, one of the same interviewers with some others this time, and they
14 asked you about these differences, and you said: Well, these are all
15 mistakes and misunderstandings. That's -- that was your explanation then
16 and I accept, if I may, that that's your explanation now. And in
17 February 2009, you gave an account which is very close to the account,
18 very similar to the account you've given in the witness box. All right.
19 So I fully accept that.

20 Now, can I ask you on another subject, you told us that there
21 came a time when you were fortunate to escape (Expunged) and you went to
22 Bunia. And you were asked yesterday by my friend, or I think it was
23 yesterday, when that was or how long you'd spent at (Expunged). And --

24 MS. LUPING: Mr. President.

25 PRESIDING JUDGE COTTE: (Interpretation) Yes, Madam Prosecutor.

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1 MS. LUPING: Information as to where the witness was staying has
2 previously been redacted on the basis it is identifying. If we could
3 refrain from referring to the name of the place she was being kept;
4 otherwise, if she can be -- if we can please move into private session
5 straight away.

6 MR. HOOPER: Well, for our part we detect an oversensitivity, but
7 we must respond to that and -- by requesting we go into closed session.
8 And I think it will be easier once we go into closed session if I stay in
9 closed session. So I regret that again I'm afraid the public will
10 necessarily be excluded from the evidence, but that's an inevitable step,
11 I'm afraid, in the light of Prosecution's concerns.

12 So can we go into closed session, your Honour.

13 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, do
14 you honestly think that quoting the names of (Expunged) and Bunia, which are
15 at the heart of the entire discussion we have had for a number of months,
16 would be running a risk for this witness? We have continuously used the
17 words "(Expunged)" and "Bunia." Most of our witnesses were hypothetically in
18 (Expunged) and went to Bunia afterwards. And at this particular point - and
19 all of this might change with the next question - but I have the feeling
20 that that is really being a little overcautious. Isn't that correct?

21 MS. LUPING: Mr. President, if we could move to private session I
22 could then explain myself fully the reasons why I believe it's necessary
23 to continue this line of questioning in private session.

24 PRESIDING JUDGE COTTE: (Interpretation) Since the Court cannot
25 take any risk with regard to the safety of the witnesses, we will now

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1 move into closed session.
2 Madam Court Officer, please.
3 (Private session at 12.08 p.m.)
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19 (Open session at 1.12 p.m.)

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

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

24 The Court is therefore back in open session. The Court Officer
25 will give an EVD number to a document that the Prosecutor submitted to us

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1 a moment ago because this came up in the cross-examination of this
2 morning. And the Court Officer will give an MFI number to a photograph
3 which was presented to the witness this morning, having stated that this
4 MFI number is a temporary number and this issue shall be re-examined
5 during the final observations of the Defence of Germain Katanga after the
6 re-examination of the Prosecutor and, therefore, at the end of the
7 examination of this witness, 249.

8 Court Officer, it's over to you.

9 COURT OFFICER: (Interpretation) Thank you, your Honour. The
10 photograph presented by Counsel Hooper with the ERN number
11 DRC-D02-0001-0089 will have the number MFI-D02-00026.

12 Counsel Hooper, can I ask you for the level of confidentiality of
13 this document, of the photograph?

14 MR. HOOPER: Public. Thank you.

15 COURT OFFICER: (Interpretation) Prosecutor, you asked me to
16 give an EVD number to the document DRC-OTP-1028-0100. Can you indicate
17 to us if you wish this document to be given an EVD OTP number or an
18 EVD D02 number?

19 MS. LUPING: An EVD OTP number can be assigned to it and it's
20 confidential.

21 COURT OFFICER: (Interpretation) Thank you, Prosecutor. The
22 document with the number DRC-OTP-1028-0100 will have the reference EVD as
23 follows: EVD-OTP-00109 and it will be classified as confidential.

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

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Questioned by Mr. Kilenda

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1 We are therefore in open session, yes.

2 Counsel Kilenda, Professor Fofe, could you tell us in an
3 approximate way, what is the invisible (as interpreted) duration of your
4 cross-examination? Of course there is a degree of uncertainty when it
5 comes to making such an estimation.

6 MR. KILENDA: (Interpretation) Thank you, your Honour. Thank
7 you, Judges. We will finish our cross-examination in less than ten
8 minutes.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well. Well, we
10 will give you the floor straight away.

11 The Chamber would also like to possibly ask some questions before
12 the re-examination with regards to certain clarifications before the
13 re-examination of the Prosecutor. You see we have ten minutes. Of
14 course you can also extend it on Monday, but the floor is over to you
15 now.

16 MR. KILENDA: Thank you very much, your Honour.

17 Questioned by Mr. Kilenda:

18 Q. (Interpretation) Witness, good morning.

19 A. (No interpretation)

20 Q. I am Jean-Pierre Kilenda. I am the principal counsel in the
21 Defence team of Mathieu Ngudjolo. I am responsible for asking you
22 certain questions. Our team has followed you attentively and has been
23 doing so since the day before yesterday, because the Prosecutor was
24 asking you questions in the examination-in-chief. Now our team has been
25 following you when the Legal Representatives of Victims also relayed the

Witness: Witness P-249 (Resumed) (Private Session)
Questioned by Mr. Kilenda

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1 Prosecutor to ask their questions, we then -- we followed you religiously
2 when the Chamber, via its President, tried to obtain from you certain
3 clarifications. And since yesterday our team has also been following you
4 really attentively with regard to the questions that our esteemed
5 colleague Counsel Hooper has put to you.

6 We note that in your opinion you have been in Bogoro and you have
7 experienced the facts that you describe. And on several occasions you
8 have said that you didn't come here to tell lies. The Defence team of
9 Mathieu Ngudjolo notes all the answers that you have given to all the
10 parties and participants at this hearing. It has no questions to ask
11 you. It wishes you a good return to the DRC, but it reserves the right
12 to come back to you in the case one or other of the parties asks you
13 questions which affect the interests of Mathieu Ngudjolo. I would like
14 to thank you.

15 MR. KILENDA: (Interpretation) I would also like to thank you,
16 your Honour.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
18 Counsel Kilenda.

19 Court Officer, we are now going very briefly into private session
20 so the Chamber may ask for clarification from the witness on a particular
21 point.

22 (Private session at 1.19 p.m.)

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10 (Open session at 1.22 p.m.)

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

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

15 (Trial Chamber confers)

16 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

17 MS. LUPING: Mr. President, I simply wish to confirm that the
18 Prosecution has no further questions for this witness, and we wish to
19 thank Madam Witness.

20 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you,
21 Prosecutor.

22 So there are five minutes left.

23 Counsel Hooper, where it concerns the request for an EVD number
24 for the photograph that you produced a moment ago, this is a question
25 which we will re-debate during a later hearing. It is possible to do

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1 that without the presence of the witness. If you could on that occasion
2 give us certain clarifications with regards to the conditions under which
3 this photograph was taken or at least how it came into your hands, how it
4 was taken and on what date it was taken, then these would be elements
5 which would be useful to us, but we can delay the answer to that
6 question. We do not forget that it needs to be done -- that it can be
7 done outside the presence of the witness. Are we in agreement on that?

8 MR. HOOPER: Indeed, and we will perhaps e-mail that information
9 over the next few days if that's acceptable.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well, because we
11 will also have both parties involved or all the parties involved in that.

12 So the Defence has the right to take the floor last. While there
13 is no re-examination, is, on your part, Counsel Kilenda or
14 Counsel Hooper, an ultimate taking of the floor that you would like to
15 take at this stage of the proceedings?

16 MR. HOOPER: Thank you, Mr. President, no.

17 Thank you, Madam Witness.

18 MR. KILENDA: (Interpretation) No, your Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you to everyone.

20 The two Defence teams have just taken the floor last. It's
21 difficult now to give the Legal Representatives of Victims the floor, but
22 I would like them to know that we want to know if they had something to
23 say, they could manifest themselves to show it. Yes. Okay. I now see
24 that on the Defence teams there is no problem with regards to this
25 last-minute intervention.

1 Now, we would like -- everybody has thanked you, Witness, the
2 Legal Representatives, the two Defence teams. The Court itself would
3 like to thank you as well. You have given us a lot of your time. You
4 have accepted to come here, which is very far from your home. You have
5 accepted to re-live certain moments which are very difficult for you.
6 You have stated this and you have seen that we have understood that. You
7 will be able to go home. The Court would like to stress the fact that
8 everything that you've said before the Court today and yesterday and the
9 day before yesterday since we met must remain confidential. You cannot
10 reveal what your testimony was today, subject to the reservations that
11 was done -- everything that was said in open court and which everybody
12 knows. Once again, thank you very much, Witness. We are now going into
13 closed session so that you can leave the courtroom with full discretion.

14 Good-bye, Madam.

15 THE WITNESS: (Interpretation) Thank you.

16 (Closed session at 1.26 p.m.)

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1 (Open session at 1.27 p.m.)

2 COURT OFFICER: (Interpretation) We are in open session, your
3 Honour.

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

6 We will therefore be back on Monday at 2.00. That is correct.
7 The Prosecutor will by 11.00 on Monday have provided us with information
8 on the risks undergone by the close relatives of the witness who has just
9 left.

10 The Court would like to thank everybody who had participated in
11 this debate, in our proceedings, the court reporters, the interpreters,
12 technicians, everybody.

13 Counsel Gilissen.

14 MR. GILISSEN: (Interpretation) I just want to take ten seconds
15 of your time. I will be absent, with the authorisation of the Chamber,
16 on the coming week. When it comes to the defence of the interests of
17 child soldiers, it will be carried out by Nathalie Kumps. I wanted to
18 indicate everybody, starting with the Chamber, this fact, but I will also
19 need a confirmation, as it were, official one, to allow her to enter into
20 the courtroom and also into the building of the Court itself. I have
21 written to Madam Saracco in this regard. Counsel Kumps assisted or took
22 part in this hearing, so that's something which I wanted to note to the
23 Court.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel
25 Gilissen.

1 I think the Court Officer should be able to be a useful
2 intermediary in order to enable the entrance of this counsel into the
3 Court building and also into the premises of the courtroom itself. Thank
4 you, Counsel Gilissen.

5 Now, Court Officer, thank you very much in advance for your
6 agreement on that. The hearing is adjourned. We will be back on Monday
7 afternoon.

8 The hearing ends at 1.29 p.m.

9 CORRECTIONS REPORT

10 The following corrections have been made to the English transcript:

11 * Page 2 line 7 "20th of May, 2010" is corrected by "5th of May, 2010"

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