

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra, and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and Mathieu
7 Ngudjolo Chui
8 Trial Hearing
9 Monday, 22 February 2010
10 The hearing starts at 9.34 a.m.
11 (Closed session)
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23 (Open session at 9.35 a.m.)
24 (The accused entered court)
25 PRESIDING JUDGE COTTE: (Interpretation) The accused are

1 therefore with us, and we are now in open session.

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

4 PRESIDING JUDGE COTTE: (Interpretation) We are in open session.
5 Good morning, Witness. Before giving the floor to the Defence team of
6 Mathieu Ngudjolo, we would like to introduce an oral decision on the
7 application of the Prosecutor number 1883, and on the Prosecution's
8 application 1891. The first application 1883.

9 In the application 1883 of the 17th of February, 2010, addressed
10 to the Defence teams, the Prosecutor has asked the Chamber for leave to
11 disclose the transcripts of an interview with Witness 157. The
12 Prosecutor refers to regulation 35 of the regulations of the Court. He
13 indicates that this disclosure is based on the provisions of Rule 77 of
14 the Rules of Procedure and Evidence, and he clarifies that he considers
15 having to redact on the basis of Rule 81(4) of the Rules and for the
16 length of the trial different mentions of the place of the residence of
17 the witness currently who is in the witness protection program of the
18 Court, to the names and the places where members of the family of the
19 witness are, as well as a reference that is made to what the identity of
20 Witness 169 could be. The Prosecutor adds that the redactions made do
21 not prejudice either the Defence or the accused. Where it concerns the
22 grounds for this disclosure, the Chamber would like to stress that the
23 interview in the case in point concerns a Prosecution witness. Its
24 disclosure, therefore, firstly comes under Rule 76 of the regulations and
25 not only Rule 77.

1 Where it concerns the application of regulation 35 of the
2 regulations of the Court, the Bench will limit itself to recalling that.
3 Until this point it has granted requests for disclosure to the Defence of
4 information or evidence, even if the conditions of application of
5 regulation 35 were not met when they came under Article 67(2) of the
6 Statute or Rule 77 of the Rules of Procedure and Evidence.

7 The Chamber notes that in the case in point the Prosecutor is not
8 asking for the adding of this interview to the list of Prosecution
9 evidence, but only its disclosure under Rule 77. Nothing is therefore
10 considered an obstacle to the disclosure of this document. Where it
11 concerns the redactions, the Bench considers that it is appropriate,
12 having reclassified annex C of the application of 17th February 2010
13 above, a reclassification which is a response to a request made on the
14 19th of February by -- mailed by Counsel Hooper, which afterwards --
15 after the reclassification of this annex that would be possible to
16 transmit from now this document to the Defence teams with the redactions
17 that the Prosecutor proposes. The Defence teams with this annex C would
18 therefore receive the redacted version of this interview and they are,
19 however, invited to pass on to the Chamber the comments that they would
20 have with regards to these redactions and to do so by the 25th of
21 February, 2010, at 4.00 at the latest.

22 The Bench will therefore examine, with regard to the comments
23 that might be made, if it is appropriate either to confirm or to reduce
24 the envisaged redactions on the part of the Prosecutor. With regards to
25 a more general level and with a view to simplification, the Chamber when

1 there are similar circumstances to those which we find in the current
2 decision, the Bench intends to adopt the procedure which has today been
3 implemented. It is for the Prosecutor to directly disclose to the
4 Chamber and the parties those -- information or evidence under Article
5 67(2) of the Statute or Rule 77 of the Rules. In the scenario where the
6 Prosecutor would have considered having to carry out redactions of
7 evidence or documents that are transmitted, the Defence teams will have a
8 five-day dead-line from this communication in order to give their
9 possible comments. If the comments are made by the Defence, it will be
10 for the Prosecutor to address to the Bench a table providing the grounds
11 for these redactions, with a view to making it possible for the latter to
12 assess if it is appropriate to maintain, reduce, or to decrease the
13 redactions carried out on the initiative of the Prosecutor. This is done
14 with a concern of simplification.

15 Now, with regards to the second application, 1891. In this
16 application, 1891, of the 19th of February, 2010, the Prosecutor asked
17 for leave to disclose an investigator's note in relation to Witness 159,
18 an investigator's note which until this point he had omitted to disclose
19 while he should have accomplished this obligation under Rule 77 of the
20 Rules. The Chamber therefore here intends to apply the procedure which
21 has just described, and therefore authorises this disclosure. The
22 Chamber does, however, note that in the present case the investigator's
23 note that is to be disclosed has not been subject to any redaction on the
24 part of the Prosecutor.

25 I would like to thank you for your attention.

1 Professor Fofe, if it is you who is going to continue with the
2 cross-examination of Witness 250, you now have the floor. We are
3 listening to you.

4 Prosecutor, please.

5 MR. MACDONALD: (Interpretation) I'm sorry, your Honour, it's in
6 relation to -- on the subject of your decision 1891. Is it possible to
7 reclassify annex A to make disclosure possible because I don't know if
8 you mentioned it in your decision. This is just for clarification, so
9 this is disclosure which should be confidential, and obviously to the
10 Defence teams.

11 PRESIDING JUDGE COTTE: (Interpretation) Yes, I only mentioned
12 annex C. So annex A as well. I mentioned annex C. And perhaps I made a
13 mistake. It's on the subject of the investigator's note. For the second
14 one --

15 THE INTERPRETER: Overlapping speakers.

16 MR. MACDONALD: (Interpretation) Reclassification of annex A,
17 the confidential one which is available to the Defence teams alone where
18 it concerns disclosure of evidence but also with regard to the level of
19 confidentiality for annex C of the decision 1883.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor,
21 for having reminded me of that.

22 Professor Fofe, therefore you may stand once again.

23 MR. FOFE: (Interpretation) Thank you, your Honour. Good
24 morning, your Honour. Good morning, Judges.

25 Your Honour, before continuing with another series of questions

1 in public session or in open session, we would respectfully at this stage
2 ask for a closed session, with a view to the protection of the witness.
3 And we would like to apologise to the public. We can't take a risk and
4 we have to be sure that after this closed session we will come back into
5 open session.

6 PRESIDING JUDGE COTTE: (Interpretation) Do you have an idea as
7 to the duration of this closed session, just for the public who are
8 present here? An approximate -- an estimation?

9 MR. FOFE: (Interpretation) It's quite difficult, your Honour.
10 Possibly one hour. It's quite difficult, but we could consider one hour.

11 PRESIDING JUDGE COTTE: (Interpretation) So it's approximately
12 the duration of this first part of the hearing.

13 Court Officer, we're now going to go into private session.

14 (Private session at 9.47 a.m.)

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Witness: Witness P-0250 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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19 (Open session at 11.02 a.m.)

20 COURT OFFICER: (Interpretation) We are in open session,
21 Mr. President.

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

24 The hearing is suspended and we will resume at 11.33 a.m.

25 Recess taken at 11.02 a.m.

1 On resuming at 11.37 a.m.

2 COURT USHER: All rise.

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

4 PRESIDING JUDGE COTTE: (Interpretation) I was reminded during
5 the break that it is absolutely necessary for us to be more disciplined
6 and respect the five-second rule, the five seconds between a change of
7 speakers. So I will remind all of us about this and we will try to keep
8 this in mind throughout the entire trial, and this is very important for
9 our interpreters, without which we cannot operate.

10 So the Prosecutor and the Defence of Mr. Ngudjolo will have
11 exchanges in that regard.

12 Now, first of all we would like to note where it concerns the
13 delay with which the Prosecutor would have presented his objections,
14 first of all, in his initial drafting paragraph 108 of the decision 1665
15 on the 1st December 2009 relating to Rule 140 did not envisage
16 notification to the parties or participants. This requirement, this
17 obligation, was -- we were reminded of verbally on the 12th of February,
18 and we indicated that it was appropriate to insert the words "to the
19 parties and the participants and the Court Officer" into that. So it's
20 only from the 12th of February, 2010, that the Defence of
21 Mathieu Ngudjolo which could not respect an obligation which did not
22 exist at that time was able to implement it and we are -- certainly the
23 22nd of February, 2010, the Prosecutor perhaps could have done so
24 earlier, but in paragraph 108 for a certain time was uncertain. Now it
25 is clear. We have no difficulty of the same type. This is the first

1 comment that I'd like to make, we have no more difficulties of this kind.

2 A second comment that I would like to make is that Professor Fofe
3 did remind us - and I would also like -- or the Bench would also like to
4 go back to this point because it was pointed out - that he did express
5 with the Defence team of Mathieu Ngudjolo that he wanted to proceed with
6 a confrontation. The -- we replied that we are in an ex parte
7 proceeding, but it was just to confirm that was expressed. This
8 wasn't -- did not have its place in the type of proceedings which had
9 been set up, and anything that could come out of a confrontation is
10 likely to come from a good cross-examination which has been envisaged to
11 that effect and also with regards to the examination-in-chief or the main
12 examination of the Defence if the person who you wanted to confront the
13 witness with were called as Defence witnesses.

14 The third comment or observation, the Chamber would like to go
15 back to paragraph 98 of its decision. I will read it shortly even if the
16 Prosecutor has just read it that:

17 "The documentary evidence other than written transcripts of a
18 testimony can be submitted with the -- without the witness being
19 involved, without having called a large number of witness, with a view of
20 presenting this document."

21 The three documents which have the Swahili or the references 273,
22 2073 and 274 and 276 and 278, 279, for the Chamber these are similar or
23 equal to testimony, and in applying the paragraph 98, they can be
24 submitted to the witness -- they cannot be submitted to the witness. And
25 this is what makes them different from the letter of the 4th of January,

1 2003, which was cited on several occasions in your exchanges a few
2 moments ago.

3 On the other hand, Professor Fofe and Counsel Kilenda, the
4 Chamber considers that you have perfectly the possibility to go into
5 these declarations, to take extracts from them, with a view to providing
6 material for the questions you intend to put to the witness. And this
7 approach is possible for you. However, I would like to state that
8 paragraph 109 and 102 of the instruction of December 2009 relating to
9 Rule 140, unless we are mistaken, this would seem not to have been fully
10 followed by your team. And I would like to re-read paragraph 101.

11 "When a party wants to provide several documents for the
12 proceedings without the witness, it shall submit a table presenting for
13 each document a description of its content, a list of the most relevant
14 passages, as well as a demonstration of its relevance and probative
15 value."

16 Before submitting -- paragraph 102:

17 "Before submitting to the Chamber its application accompanied
18 with a table, the party concerned will send it to the opposing party
19 which can insert into the table its observations concerning each
20 document. It is up to the party presenting the document to ensure that
21 the opposing party does have sufficient time in order to formulate its
22 observations. However, the party presenting the document can ask for the
23 observations to be submitted in a reasonable time-frame. Paragraph 101
24 and 102, as paragraph 100 explain and list the way in which this
25 paragraph 98 should be implemented."

1 This is just a reminder I would like to make.

2 Now, given the different observations that have been made, the
3 Chamber has a great concern for the equality of arms and for these
4 proceedings to be fair, and the Bench considers that paragraph 98 applies
5 here too, but it also thinks that the rights of Mathieu Ngudjolo are not
6 affected to the extent that its Defence cannot only draw inspiration from
7 but can draw from the documents in -- that it intends to submit from the
8 witness. So the Defence can ask the questions, it can
9 inform (as interpreted) its questions, and it can ensure that it gets
10 answers that it wishes to obtain.

11 So we are now going to ask the security officers to escort
12 Mathieu Ngudjolo and Germain Katanga outside of the courtroom, and the
13 time for the witness to enter.

14 Court Officer, we are now going into closed session for the entry
15 of the witness.

16 (The accused withdrew)

17 (Closed session at 11.46 a.m.)

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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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11 (Open session at 11.57 a.m.)

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

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

16 The Court notes that the public is -- well, there are quite a lot
17 of people in the audience for this hearing currently, and it would just
18 like to say to those people who are in the public gallery that the
19 cross-examination which is currently being carried out by the Defence of
20 one of the two accused may highlight certain information relating to the
21 identity of a protected witness. The security of this witness is
22 therefore affected and we are obliged currently to be in private session,
23 which means that you won't be able to follow this hearing as you would
24 have perhaps wished to do and that's something that we regret. The
25 Defence of the accused would have liked to have been able to ask

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1 questions which would have made it possible for you to follow the
2 proceedings, but in the current Defence dynamics and set-up, to their
3 great regret, they are unable to do so. So by way of courtesy, the
4 Chamber just wanted to say that we are now going to go back into private
5 session. By chance you have come at a bad time for the public, and the
6 Court would like to take this opportunity as well as all the participants
7 to welcome you, while also expressing our regrets.

8 The Court Officer is now going to take us back into private
9 session.

10 (Private session at 11.59 a.m.)

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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Closed Session)
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Witness: Witness P-0250 (Resumed) (Closed Session)
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3 (Open session at 12.58 p.m.)

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

5 Mr. President.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

7 Court Officer.

8 We are going to break now and we will re-convene at 2.30 p.m. for

9 one and a half hours. Court is suspended.

10 Luncheon recess taken at 12.59 p.m.

11 On resuming at 2.36 p.m.

12 (Closed session)

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5 (Open session)

6 COURT USHER: All rise.

7 PRESIDING JUDGE COTTE: (Interpretation) Our hearing will now
8 resume. You may be seated.

9 Before Witness 250 returns to the courtroom, and the Chamber does
10 hope that will be the case, I do have a little explanation insofar as --
11 well, I did take the initiative -- it may be a bit unusual, but this is
12 too ensure that Witness 250 completes his testimony. I took off my
13 Judge's robe and I met him in civilian clothing in the presence of the
14 psychologist and another representative from the Victims and Witnesses
15 Unit, not to discuss the topics that we have been questioning him about,
16 but to explain to him that it would be very responsible for him to
17 conclude the task he began in 2006 when he first began answering
18 questions from the Prosecutor. So I do hope that the witness will be
19 back in the Courthouse -- courtroom, pardon me, in five minutes.

20 Now, this witness - rightly or wrongly - has the impression, the
21 feeling, that the contract, I'm not speaking in a legal way, but the
22 contract with him is not being respected. He was not expecting in any
23 way to be here for such a long time far away from his home, that is to
24 say here in The Hague. He did not expect the questioning and the
25 cross-examination to be as long as what it has been, and so on behalf of

1 the Chamber I will ask the Ngudjolo Defence team and the Prosecutor and
2 the two Defence teams after if the witness is present tomorrow to please
3 get to the heart of matters during your questioning because our witness
4 is somewhat volatile in terms of presence in the courtroom.

5 Now, I don't think I can say any more than that. He should be
6 with us in a few moments. I think he has understood that what he is
7 doing other than the -- well, as part of the initiative to determine the
8 truth, is really a unique experience for a young person and this is a
9 task he must not set aside.

10 Professor Fofe, Mr. Kilenda, I think you'll realise just how far
11 you should go, particularly in terms of duration; and, Mr. Prosecutor, in
12 turn you will have to make that judgement call yourself, just how far you
13 can go. And then finally the Defence teams will have the last word, and
14 they will have to make their own assessment. And we just to ensure that
15 the witness does not halt his testimony halfway through. You have nearly
16 finished, then the Prosecution will re-direct, and the Defence teams will
17 have the final opportunity. The witness should be coming into the
18 courtroom in a few moments.

19 Could the Court Usher go to the room where he is waiting.

20 Now, first of all, Madam Court Officer, we'll have to go into
21 closed session and the two accused will have to leave the courtroom while
22 the witness is being brought in.

23 (The accused withdrew)

24 (Closed session at 3.09 p.m.)

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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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Witness: Witness P-0250 (Resumed) (Private Session)
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23 (Open session at 3.36 p.m.)

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

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

Witness: Witness P-0250 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

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1 Court Officer.

2 Please proceed, Mr. Fofe.

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

4 Q. Witness, we are now in open session, so please do not refer to

5 anything that we discussed in closed session. Do not mention any names.

6 Witness, would it be correct to state that from 1999 to 2004 you attended

7 school regularly?

8 A. Yes. I was studying, but I had to work in the farms of the

9 teachers which made it possible for me to pay my school fees.

10 Q. This, therefore, means that you were never a member of an armed

11 group, you were never a soldier; is that correct?

12 A. Those who went to Nyaleke, yes, they became soldiers. I never

13 said that I was registered as a soldier in the Congolese government. I

14 do not have a force number. I do not have an army force number.

15 Q. And so you never received any military training; is that correct?

16 A. I did not receive military training. No, I did not receive

17 military training during which I could have been given weapons, no.

18 Q. So you were never a soldier. You have to tell the truth to the

19 Judges. You were never a soldier?

20 A. I lived with the DSP soldiers. At that time I received some sort

21 of training. It was not real training per se. When I was with the DSP

22 soldiers and with the commanders in Bogoro, I received some elementary

23 training.

24 Q. Witness, from 1999 to 2004 you were attending school and

25 therefore you were never assigned to guard a so-called radio transmission

1 equipment, which you talked about on Thursday, 18th February 2010?

2 A. And which year are you referring to, please?

3 Q. I'm going to repeat that question slowly so that you may
4 understand. Considering that from 1999 to 2004 you were attending
5 school, this therefore means that you were never assigned to guard the
6 radio equipment that you talked about on Thursday, the 18th of February,
7 2010; isn't that so?

8 A. When I talked about monitoring the radio transmission in --
9 equipment, there were times that I had to keep secrets, secrets that are
10 normally kept by someone who has worked in the Democratic Republic of the
11 Congo.

12 Q. Witness, everything you said about the presence of a so-called
13 radio communication set in Zumbe in 2000 (as interpreted) and 2003 is
14 false because you were attending school elsewhere. I'm not going to
15 mention the place. You were attending school elsewhere, so you were not
16 in Zumbe to monitor or guard that communication equipment. Isn't that
17 so?

18 A. Ever since the fall of Lopondo I was in Zumbe. I do not know.
19 There is no way you can refer to that as a military training because we
20 were being referred to as combatants. That is why I was assigned to
21 guard that location because my superior sent me there. That is where the
22 position was and I was assigned to guard it.

23 Q. Witness, considering all the materials that we discussed in
24 closed session, I am putting it to you that you never were a combatant.
25 You were a student. You were not a combatant. What do you say to that?

Witness: Witness P-0250 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

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1 A. When I fled Zombe, I was not a student. I was a war-displaced
2 person and I lived as a war-displaced person.

3 Q. I also put it to you that you never were (Expunged)

4 (Expunged)

5 (Expunged) where Lone Nyunye was

6 the company commander.

7 Q. Witness, everything that you have said concerning your travel to
8 Aveba as a member of a delegation led by Boba Boba, who is supposed to
9 have gone to Aveba to plan the attack on Bogoro, all that is false; isn't
10 that so?

11 A. It is false, yes, because I did not go with Boba Boba to the
12 Tatsi collectivite to fight. We simply went to see how our brothers were
13 living there and to find a solution to see how we could free up the road.

14 Q. And everything that you said about the reception by you and
15 sachets of ammunition in Aveba is also untrue; isn't that so?

16 A. The person who is not grateful is someone who practices
17 witchcraft. What I have said, that we took with us in the convoy, is
18 true; we left with those things.

19 (Defence counsel confer)

20 MR. FOFE: (Interpretation) Mr. President, I can see that we
21 have ten minutes left. I don't know whether I should continue or we can
22 suspend at this point.

23 PRESIDING JUDGE COTTE: (Interpretation) I think, if you wish,
24 that would be wiser. Do you have an idea of the time that you will need
25 tomorrow?

1 (Defence counsel confer)

2 MR. FOFE: (Interpretation) Mr. President, I will need about 30
3 minutes to conclude.

4 PRESIDING JUDGE COTTE: (Interpretation) Very well. Tomorrow
5 about 30 minutes of cross-examination by Professor Fofe.

6 And you, Mr. Prosecutor, do you have any idea of the time that
7 you will need for your re-direct? You don't have to be extremely
8 precise, just give an approximation to the Chamber and to the witness.

9 MR. MACDONALD: (Interpretation) Everything will depend on the
10 answers and clarifications that we will have, but we intend to conclude
11 as soon as possible. So everything should be completed, that is, the
12 cross-examination and re-direct of the Prosecution, that is, during the
13 first session. So we will need about one hour.

14 PRESIDING JUDGE COTTE: (Interpretation) That is perfect.

15 Mr. Witness, the Chamber thanks you for your contribution this
16 afternoon. We will meet again tomorrow. As you have heard, in principle
17 we sit for four and a half hours tomorrow and this should be enough for
18 us to arrive at the end of the cross-examination and the re-direct of the
19 Prosecutor, as well as the final interventions of the Defence teams.

20 Now I will like to ask the security officers to escort the
21 accused persons out of the courtroom, but bring them back once the
22 witness has left the courtroom.

23 (The accused withdrew)

24 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer,
25 let us move into closed session so that the witness can leave the room.

1 (Closed session at 3.50 p.m.)

2 (Expunged)

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11 (Expunged)

12 (Open session at 3.51 p.m.)

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

14 Honour.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

16 Court Officer.

17 Mr. Prosecutor, we have up until 4.00 p.m.

18 JUDGE DIARRA: (Interpretation) Our accused.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

20 Judge Diarra. There is always a risk with this going back and forth.

21 (The accused entered court)

22 PRESIDING JUDGE COTTE: (Interpretation) The accused persons are

23 once again with us.

24 And so, Mr. Prosecutor, regarding documents 265 to 268, you

25 expressed doubts about their authenticity. So can you explain to us what

1 is the source of your concern so that in light of the originals and the
2 answers provided by the witness, the Chamber will examine your
3 pre-occupation and determine whether these documents should be MFI or EVD
4 documents.

5 MR. MACDONALD: (Interpretation) Thank you, Mr. President. We
6 submit that in light of the cross-examination, which despite the fact
7 that they are allowed to ask leading questions, these questions were not
8 enough to lay a foundation regarding the provenance and the recognition
9 of the said documents. This by the fact that the witness admitted that
10 in certain cases these documents were from (Expunged)
11 (Expunged) but the witness's attention was never
12 drawn to the dates on the documents. The Defence limited themselves to
13 asking whether he recognised the documents and the answers of the
14 witness, in our opinion, are insufficient. We did not have any
15 information regarding the provenance or authenticity regarding those
16 documents. These copies that were made from originals? We do not know.
17 Are those originals themselves? We do not know. Where do they come
18 from? No information was given to the witness about this.

19 And if you look at the document that was given an EVD
20 number - (Expunged)
21 (Expunged)
22 (Expunged)
23 (Expunged) whose MFI is 0006, if I'm not mistaken look
24 at the difference between the two documents. Look at papers. Look at
25 how white that paper is ten years after the events. And when you are

1 living in Congo, in a country where there is dust and other things, I am
2 submitting to you that given that there was no
3 authentication (as interpreted) and no proof of provenance and also in
4 light of the answers given by the witness so far, the Chamber should not
5 admit these documents. And the Prosecution also feels -- or also wonders
6 about the necessity for an expert study to determine the authenticity of
7 the documents, and it was for that reason, Mr. President, that we
8 proposed that it should be necessary to given -- to give those documents
9 MFI references, and if necessary the Chamber can amend its decision to
10 admit them into evidence.

11 One other thing regarding year 2002, I am submitting that the
12 witness is confused about dates. And this is not surprising for someone
13 who comes from Congo, who experienced the war in Ituri, and where they
14 had experiences during which the notion of time and space is not the same
15 as in the Western world or here in Europe, and it is not possible to say
16 seven years down the line I'm going to remember that date because I will
17 be called upon to testify at the International Criminal Court. At this
18 point, there are questions that could have been asked but which were not
19 put to the witness to try and reconcile what he says about his presence
20 in Zombe and the fact that there are these alleged report cards. And I
21 do not know how the Prosecution can deal with these issues in re-direct,
22 but it is clear that we are going to look at them. And I am therefore
23 submitting because of the foregoing, Mr. President, that it would be
24 premature for the Chamber to admit these documents.

25 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, please.

1 MR. FOFE: (Interpretation) Thank you, Mr. President. I would
2 like to say that I am - I don't know which word to use - but let me say I
3 am surprised by this submission from the Prosecutor. And that is because
4 as the Prosecutor he is the one who should have provided such materials
5 to us here. That was his duty. When the Prosecutor, while carrying out
6 his investigations has to deal with children of school-going age, he is
7 the one to carry out his work appropriately.

8 Mr. President, your Honours, the witness clearly recognised those
9 report cards. He even stated that: "These are documents that come from
10 my school file." He said that. And if we cut short the number of
11 questions, that was because you, Mr. President, asked us to do so. That
12 is why we went to the heart of the matter. We did not even ask half of
13 the questions that we had planned to ask in our questioning, because our
14 concern was to ensure that the Chamber has access to the truth.

15 The Prosecutor has the time to cross-check the authenticity of
16 that document if he wishes, but he has to want to do so. But in any
17 case, the witness recognised before you all those report cards. And we
18 would like to request that these documents be tendered into evidence as
19 Defence exhibits with EVD references because the witness recognised them.
20 Thank you, Mr. President.

21 PRESIDING JUDGE COTTE: (Interpretation) Regarding their
22 provenance, Mr. Fofe, do you have any additional information to give us?

23 MR. FOFE: (Interpretation) Mr. President, you will recall that
24 we asked concrete questions when we were about to begin our
25 investigations on -- in the field, and in compliance with your

1 instructions we carried out our investigations. (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged) And then the authenticity -- well, at

10 the moment still this authenticity is still at stake.

11 MR. FOFE: (Interpretation) The witness recognised this
12 document. That's the most important point.

13 PRESIDING JUDGE COTTE: (Interpretation) It is you who will
14 close this evidence.

15 MR. KILENDA: (Interpretation) This is a distortion of the truth
16 in a written document, if there's an attempt to cause damage to another.
17 We've presented documents and (Expunged) who provided
18 these documents to the Defence team. The witness has recognised these
19 documents, they're his school reports, he took these exams. We don't see
20 where this doubt is as to the authenticity of this document. That is
21 alleged by the Prosecutor. We brought to the proof to you.

22 Now, with regards to these elements, we feel that it should be
23 filed as evidence for the Defence.

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

1 We would like to thank everybody who's helped with this hearing,
2 different parties, and we will take up our work tomorrow morning at 9.30,
3 and we hope that will be in the presence of the witness. And the session
4 is now adjourned.

5 Excuse me. Court Officer, we will keep the originals for the
6 moment.

7 The hearing ends at 4.03 p.m.

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