

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 Monday, 1 November 2010

10 The hearing starts at 2.03 p.m.

11 (Open session)

12 COURT USHER: All rise. The International Criminal Court is now
13 is session.

14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.

15 The accused are with us. Good morning.

16 Prosecutor, you would like to know how tomorrow morning's hearing
17 at 9.00 shall take place, this hearing which is by videolink with
18 Witness 323. Now, as envisaged, we have envisaged things with the
19 Registry, the Chamber would ask that the witness be introduced into the
20 room which, by way of a distance, will make it possible to have the
21 photographic presentation that we wish to see, and once that person has
22 entered into the room, then in closed session he will give his identity.
23 We will then go into open session so that he may take his solemn
24 undertaking. The witness has already given testimony here. At the time,
25 he took a solemn undertaking. This is new testimony with regards to a

1 different point, and it's therefore important for the witness to make
2 formal this solemn undertaking once again at the request of the Chamber.

3 Then the Chamber also intends to indicate to him what the point
4 is of this hearing, make it possible for him to -- giving a presentation
5 of photographs to make it possible for him to say if he recognises the
6 person who he thinks he saw at such and such a period under the -- as a
7 soldier and with a certain identity. Then the representative of the
8 Registry in the room in which this photo presentation takes place shall
9 show the panel of photographs in closed session. We have gone back into
10 closed session in the meantime, and the Registry will present to the
11 witness each of the photographs so that the person has the time to
12 examine them, and then the Chamber shall see whether that person can give
13 us the information that needs to be clarified.

14 Either the witness recognises the photographs or not. Whatever
15 the case, once he has done so, with regards to the Prosecution witness,
16 Prosecutor, I'll give the floor to you, and then once you have asked your
17 questions, then the floor shall be given to the Legal Representatives if
18 they have any questions to ask, and to the Defence teams.

19 While we are clear that there is no question of tomorrow going
20 back into his testimony, but just for focusing on this issue of
21 identification and recognition, which is still a contentious issue and
22 which is the reason for this additional hearing, and that's how we see
23 things.

24 MR. MACDONALD: (Interpretation) Thank you very much,
25 your Honour. Thank you for giving me the opportunities to discuss this.

1 Once again I'd like to thank the Chamber for the concern that it has
2 shown for informing the witness of the reason why he is back once again
3 with us, even if only via videolink.

4 But the Prosecution would like to go back to one particular
5 point, which was his main concern, and to reaffirm what the Chamber would
6 like to ask as a question or at least give as an indication to the
7 witness, and this, your Honour, is the reason why we would ask you if the
8 Prosecution will be able to question the witness before the Defence
9 starts cross-examination for the following reason: We think that it's
10 perhaps too leading to start by indicating to the witness that is perhaps
11 there to identify somebody who he'd saw previously as an introductory
12 question. We think that at this point this incites him to want to
13 recognise somebody and that this is perhaps an overtly leading way of
14 doing so.

15 What we wanted to ask as a question to the witness, perhaps the
16 Chamber could, the concern of the witness of why he's there, and I think
17 it's possible to indicate to the witness by saying, "Listen, Witness,
18 following your testimony there are developments and there is certain
19 additional questions which are going to be put to you and this is the
20 reason why you have been called upon to testify, and to do it in such a
21 short way as possible we decided to do it via videolink." And thereafter
22 the Prosecution or the Chamber will say, "Look, there are certain photos.
23 We're going to ask you to look at these photos, and following that, there
24 are certain questions which will be put by the parties." But the first
25 question -- and I'm going to slow down here. So in other words, it is

1 not mentioned to the witness right at the start that he's there to
2 identify someone. I think that it's rather wise and fair to ask the
3 witness, say, "Listen, we're going to show you some photos firstly.
4 Firstly, are you able to recognise certain people, whoever there might
5 be, on this photo board?" And thereafter if he says no, then it's no;
6 and thereafter if he says yes, well, what is the number of that person,
7 and then the Prosecution will ask questions about these circumstances
8 under which he knows that person and then they will go into that matter.
9 If the witness does not identify anyone, then that's it. I think that
10 it's of no use to go any further with regards to the Chamber, and that's
11 why the Prosecution -- well, after, of course, there are the questions of
12 the Defence, but the concern of the Prosecution is to try and avoid any
13 leading point which would make him think that he's there to recognise a
14 given person, because that would have a leading effect that would become
15 crystallised in the mind of the witness, and from that point that could
16 have an influence with regards to giving answers which could -- I
17 wouldn't say false answers but which could lead to a certain degree of
18 confusion.

19 And it's with that in mind, your Honour, that we would suggest to
20 you in the most general way and most neutral way possible to indicate the
21 way why -- or the reason why he's there and that's why we would propose
22 to go in the direction which we've suggested by saying, "Do you recognise
23 anyone on the photo, the photo panel which is presented to you," and if
24 yes, what is the number of that person. And afterwards, from there the
25 Prosecution can then ask developing questions with regards to the

1 knowledge of persons who he might have been able to identify.

2 Now, once again it's not just to get ourselves mixed up in the
3 discretionary powers of the Registry, but obviously it is to avoid that
4 it becomes a -- an exercise which is useless or at least that it doesn't
5 have the appropriate probative value attributed to the answers.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
7 Prosecutor. At this hearing I would just like to remind everyone I was
8 asked this morning in writing, and this is something that we really do
9 understand very well, we were asked by the Registry that everyone should
10 ensure that they speak slowly and to respect the five-second rule. So
11 after a small interruption of one break, we have to remember this
12 requirement that there is.

13 Thank you very much, Prosecutor, for your intervention. It is
14 clear that the organisation of this videolink has the objective of making
15 it possible for us to make the best progress possible towards the
16 manifestation of the truth. It is not about making this hearing a purely
17 artificial hearing, and certainly it shouldn't be overtly leading. You
18 are right. At the same time, we have to ensure that it is useful. The
19 Chamber, therefore, is certainly in agreement to perhaps go in the most
20 progressive way possible, taking the witness towards the objective that's
21 being pursued, and as you indicated, that does need the asking of certain
22 additional questions to see this photo panel. There will be questions
23 put to him to see if he's able, indeed, to recognise somebody thereon,
24 and if the witness says he's not able to recognise anyone, then I think
25 that despite everything, after these two stages have taken place, we have

1 to get to the purpose of the hearing, which is namely to remind him that
2 he did state on a particular date that such and such a person, the name
3 shall be reminded, that he considers that person to be a soldier, while
4 the Chamber knows that a person with the same name says that they were a
5 civilian.

6 Now, we won't start with that, but we do have to slowly but
7 surely get to that aspect. If the person concerns says he does not know
8 anywhere, perhaps we shed light with our objective in this regard,
9 perhaps that will make him see that slightly differently. Once he has
10 spoken, you will therefore take the floor, and once the Prosecutor has
11 asked the questions that you consider have to be put to him and with this
12 objective in mind, then the Defence teams will also in turn take the
13 floor. We shall have classical cross-examination, but as you said, this
14 has to be done in a progressive manner. This is understood.

15 MR. MACDONALD: (Interpretation) Thank you very much,
16 your Honour. We are very happy with this, and that questions which are
17 neutral and progressive will be asked which go towards the identification
18 of the witness or not of Witness 168.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much.
20 Perfect.

21 Counsel Hooper, I think you, via Madam Menegon, on Friday evening
22 at the end of the day, you stated that you wished to address certain
23 points related Witness 28. We are able to listen to you. If you could
24 go to the heart of your concerns because perhaps it's not envisagable to
25 open a large debate on 28 at the moment, but at least you could perhaps

1 present what you have in mind at this particular juncture. We are
2 listening to you. I would just like to remind everyone that 160 is
3 waiting in a nearby room.

4 MR. HOOPER: Yes, thank you, Mr. President. May I just say --
5 just very briefly raise -- raise another matter, and I will raise it very
6 briefly, and it relates to the video transmission tomorrow and
7 Witness 323. I received certain information last night about 323, which
8 is or may be so fundamental that it would be wrong for me not to raise it
9 with the witness. At the same time, I want to check on the basis of the
10 information that I've received that relates directly to 323, and I won't
11 be able to do that at the earliest now until the break at 4.00, and if I
12 can make the particular call that I hope it make at 4.00 and discuss this
13 matter, I'll be then in a position at least of, I hope, raising the
14 matter perhaps at some convenient point today rather than obstructing the
15 transmission or the ordering of the transmission tomorrow.

16 So what it comes down to is this: I'm flagging up or raising the
17 possibility that I may be asking the Court to raise matters other than
18 the issue of identification with Witness 323, and obviously if I intend
19 to do that, I will need to -- or I intend to, of course, tell
20 your Honours what the nature of my inquiry is, and then we can take it
21 from there. So I'm just raising at the moment this difficulty in a way
22 that has confronted me and the way best that I can see at the moment to
23 deal with it. So I'll make the call at 4.00 or so, find out what the
24 position is, and if I then require or need to come back to the Court in
25 order to raise the matter with the witness tomorrow, I'll raise that, as

1 I say, at some point convenient to the Court today, perhaps shortly
2 before we rise at the end -- end of the session. It's not a matter that
3 will take more than about ten minutes if I do that. I'll let the Court
4 know at 4.30 whether it's necessary to do that.

5 So if I can move to the other matter. The Court will be aware
6 that, as it's just indeed stated, of the e-mail which we sent to the
7 Court relating to some matters that concern us and which really need to
8 be addressed prior to the time when Witness P-0028 gives his evidence.
9 And when P-0028 gives his evidence will be, I suspect, sooner than
10 your Honours, judging by the length of cross-examination hitherto, may
11 have expected, because I don't see that the next witness is going to take
12 very much time for me to cross-examine. There is a very specific issue,
13 of course, with the witness relating to the videolink, and that's not
14 going to take a great deal of time.

15 The next witness, the abducted witness, if I can put it like
16 that, I at present don't have very much cross-examination for her, but of
17 course one never knows what a witness might say in the witness box. And
18 we've had one example of a witness, at least one anyway, departing
19 relatively dramatically from the expected text. So -- and that then
20 brings us to a lengthier witness, P-0028, who is the -- largely the
21 subject of these issues of concern now.

22 The first matter that was raised is the nature of the undertaking
23 given to Witness P-0028 by VWU. Your Honours will be aware that -- well,
24 we are aware that your Honours have been trailing this issue now for a
25 very long time. We only became aware of it relatively recently with the

1 disclosure to us of your decision of the -- of the 28th of -- 28th of --
2 let me get the original date. The 18th of August, which was disclosed to
3 us as recently as the 28th, Thursday of last week. And we're grateful
4 for that disclosure, and we're also, of course, have been -- had
5 disclosed to us as a result of that decision, your decision of the -- of
6 the 18th of August, we also had disclosed to us, though only on the
7 1st of October, we don't know why there was that delay, but a substantial
8 delay, we had disclosed to us a summary of documents relating to the
9 various submissions and telephone conversations with P-0028 and the
10 comings and goings of that issue, and we have, as I say, a redacted
11 document which, if I may remind myself, runs to about 30, 35 pages,
12 setting out that history, and I don't dwell on that history. But what it
13 essentially relates, and this is the Defence perspective, of course,
14 is -- is the efforts by P-0028 to gain himself international relocation,
15 relocation out of Congo. Any African country is not good enough for him,
16 and he wants international relocation, Europe or perhaps the States, we
17 don't know. And we also see a very consistent view expressed by VWU that
18 his perceived risk is not the assessed risk as assessed by VWU, and
19 that's a repeated theme through that document.

20 VWU state that they appreciate that P-0028 is central to the
21 Prosecution case, though what relevance that should have to their view
22 puzzles us.

23 The Chamber was asked to, in effect, assist the Prosecution,
24 suggested P-0028 could make his plea directly to the Chamber, and we
25 notice that and are grateful for the intervention of the Chamber and its

1 decision that the Chamber will, quote -- well, take the decision as to
2 relocation at the -- after the witness had given evidence. And we notice
3 observations made by the Chamber in its decision of the 18th of August,
4 which we -- and concerns, essentially, that we, needless to say, share.

5 What we seem to see is a constant pressure amounting almost to
6 manipulation by P-0028 to a responsive Prosecutor, and we're very
7 disturbed by that, that there should be, however it's expressed, that
8 level of response. P-0028 seems to hold a gun to the head of the
9 Prosecution and say, "Well, if you want me to give evidence, you're going
10 to have to get me internationally relocated." Of course it's never quite
11 expressed as expressly as that, but it's implicit in his behaviour.

12 So a situation seems to have arisen, frankly, where the
13 Prosecution viewing this witness in the way that they do, wanting this
14 witness's evidence in the way that they do, while saying all the right
15 things and appropriate things, nevertheless aid, aid this witness in the
16 pressure that's brought to bear on the VWU.

17 Now, we made some requests of VWU which resulted in a series of
18 answers provided us in an e-mail dated last Thursday, the 28th of
19 October, and coming from an officer of the VWU unit and headed "Urgent
20 request of information regarding response re: Urgent request of
21 information regarding P-0028."

22 The first of the issues that we raised with the VWU -- just give
23 me one moment because I'm looking for the original e-mail request that we
24 made. Well, the first request -- well, the first matter -- bullet point,
25 may I put like this, that the VWU in that e-mail addresses is their

1 statement, first of all, that the unit did not and does not object to
2 disclosure of documents relating to P-0028 and protective measures. It's
3 unclear to us whether that's a general statement, i.e., we can have
4 disclosure, because we haven't had disclosure, we've had redacted
5 disclosure, or whether that's an observation that's made in the context
6 of the redactions that have been subsequently been done by the
7 Prosecutor. So the redactions weren't done by VWU but by the Prosecutor,
8 which may go some way but not, in fact, excuse, in our submission, the
9 delay in service of that report to the 30th of September.

10 We've identified for our part documents that we would ask be
11 disclosed to us as a matter of urgency. The first is document --
12 basically we're asking for the reclassification as confidential or
13 *ex parte* of this matter. So reclassification to confidential or *ex parte*
14 available to the Defence of the filing 2147, which is the confidential
15 *ex parte* Victims and Witnesses Unit's report and new proposed course of
16 action for Witness 28 -- and I'm speaking too fast. I'm sorry.

17 Let me start, then, again. Document 2147, confidential *ex parte*
18 VWU report, "New proposed course of action for Witness 28." We've had a
19 few paragraphs by way of the document setting out the general history.
20 We notice that in the e-mail, for example, we are referred to paragraphs
21 which we don't and haven't had.

22 We ask also for reclassification so the document's available to
23 the Defence of document 2157. That's the Prosecution's response to the
24 VWU report. And also, we'd request reclassification of 2301, 2301,
25 confidential *ex parte* Prosecution's urgent submission of information in

1 relation to Witness P -- P-0028.

2 The report of the 28th of May is a strange document. It states
3 that P-0028 is not at risk but then moves to a position where he is at
4 risk, and the basis for that is that by their report, VWU state that
5 disclosure of the documents above may provide risk, but we don't know
6 what those documents are, and nor have we seen, for our part, any of the
7 information contained in the redacted document that can be said to
8 justify a move from a plain finding on the part of VWU that P-0028 isn't
9 at risk, has -- to the point where they moved into quite another matter
10 where they say he is at risk. And we're all aware, of course, of the
11 Appeals Chamber's review of the nature of relocation and its significance
12 for the witness and its importance in terms of upheaval and the like.

13 So this is quite a significant step, and we can't, for our part,
14 see how VWU juggled it. We can't see how they moved, the footsteps they
15 made to get from that one position to quite the contrary position. It
16 may be, it may be, that we find in the documents that we've requested,
17 particularly the original report from VWU, perhaps some better indication
18 of that, but at the moment we don't see it.

19 The next matter, bullet point, dealt with in that response to our
20 requests by the VWU relates to family.

21 When eventually VWU gave what appears to us, and we'll be dealing
22 with this shortly, with what appears to us to be a guarantee of
23 relocation post-testimony, P-0028's response appears to be, "Well,
24 thanks, but what about my family?" by which he refers to siblings and
25 parents.

1 Our understanding is that VWU in their response have confirmed
2 that they are evaluating that risk to the family. Given that it's now
3 several months since the matter was raised, we would submit that our
4 request as to what result has occurred as a result of that investigation
5 is a request that the VWU is capable of meeting.

6 The next bullet point is the issue of guarantee. Now, by their
7 response, the VWU have made it very plain in their e-mail that they gave
8 no such guarantee. The e-mail's in French, but I'm confident that the
9 last sentence of bullet point -- let me just count it -- bullet point 5
10 of the e-mail which starts: (* French spoken) -- well, let me read it.
11 Forgive my French again.

12 (Interpretation) "On this matter, the unit points out that they
13 did not in any way guarantee protection for the witness after his
14 testimony, but simply reassured him that a new evaluation of the risk
15 will be done after his appearance before the Court."

16 (In English) So that seems pretty plain. So we are concerned to
17 see in the document that we have been served as a result of your Honours'
18 ruling of the 18th of August, the document that I referred to that we
19 received on the 1st of October, at page 25, in the final paragraph of
20 that page, which deals with, as it states at item 27 on that page:
21 "Investigator's report, meeting with P-0028, 6th of September, 2010," in
22 the place designated there. A meeting was organised where P-0028 was
23 present, together with his now appointed counsel. VW representatives who
24 are named, Registry, it would appear, interpreter, and indeed the
25 (expunged)

1 (expunged), and it's a two-hour meeting. And the summary that
2 we have reads:

3 "Ms. Maria Luisa Martinod Jacome, who is designated as a VWU
4 representative, told P-0028 that the VWU was giving a guarantee that
5 after his testimony he would be relocated internationally."

6 Perhaps I should say that P-0028 then goes on to say he was happy
7 to hear that, but then asked, "Well, what about my family, because they
8 will be put in danger."

9 MR. MACDONALD: I'm sorry, your Honour, but there are certain
10 things that cannot be mentioned in public session.

11 MR. HOOPER: Well, I don't know what anyone --

12 MR. MACDONALD: Well, when you don't know then you ask for -- you
13 know, should we go into closed session or not.

14 MR. HOOPER: Well, no. I'm saying I'm not aware of any and I'm
15 giving way to my friend as a matter of courtesy.

16 MR. MACDONALD: (Interpretation) Your Honour, we are in open
17 session, and we should be careful about information concerning
18 Witness P-0028, because this is open to the public, and we are dealing
19 with an issue that concerns the security of the witness and third
20 parties.

21 PRESIDING JUDGE COTTE: (Interpretation) Very well. Mr. Hooper,
22 please proceed, but bear in mind that anything related to Witness 28 was
23 confidential *ex parte* documents, but part of that was communicated to you
24 following the decision of the Chamber of August, and so please be very
25 careful about what you say in public, but there was no other objective to

1 Mr. MacDonald's intervention.

2 Please proceed.

3 MR. HOOPER: I appreciate. I think my friend was seeing what I
4 may have stumbled into and warning me and I'm grateful for that, but my
5 antenna are up and I hope I'm sensitive to obviously this issue, so thank
6 you.

7 Well, there's a marked contradiction between the e-mail that
8 we've received and what is plainly a very carefully composed report, and
9 it's a striking contradiction that goes to the very -- very heart of our
10 concerns.

11 What is meant or what did Maria Louisa Martinod Jacome mean when
12 she said the VWU was giving a guarantee that "after his testimony he
13 would be relocated internationally"? Why would that statement appear in
14 this document? What other record is there of this meeting? If there is
15 a -- a transcript, can we have access to it, or alternatively, can you
16 the Judges review to see what that position might be?

17 And our concerns that we raised in our V -- in our initial e-mail
18 to the VWU on this issue of guarantee, of course, assume that what we saw
19 in the report was correct, and we were concerned, because of course it's
20 plain that a guarantee to that effect given to a witness who might be an
21 untruthful witness, and may I say that by the further statement we
22 received only last Thursday from -- 15 pages, needless to say, from
23 P-0028, he's admitted to being a liar.

24 MR. MACDONALD: Objection, your Honour. Objection. And this is
25 why I sent an e-mail to the Chamber earlier if they wanted to take

1 recognisance of the statement. I highly object to Mr. Hooper's constant
2 attempts to poison the Chamber with information that is simply not
3 relevant. It's been done by way of e-mail copying the Chamber. It's now
4 being done in the courtroom in public session. This is unacceptable.
5 The witness has recognised providing previous information that he's now
6 changing or clarifying. I do not call such a person a liar. It will be
7 for the Chamber to determine this. But stop poison the proceedings with
8 unwarranted comments coming from a barrister that is supposed to be a QC.

9 MR. HOOPER: Well, the last remark was totally uncalled for.

10 PRESIDING JUDGE COTTE: (Interpretation) Just one second,
11 Mr. Hooper. One second.

12 We are indeed in open session. Mr. David Hooper, last Friday
13 evening, wished to inform the Chamber that he would be raising certain
14 concerns relating to the situation of Witness P-0028. We gave him the
15 floor. We asked him to be relatively brief. I believe that he will
16 follow that recommendation.

17 Mr. Prosecutor, you have reacted very sharply. Our concern is
18 that any time we are debating issues that might be sensitive to certain
19 people or parties, everything has to be done in an atmosphere of calm and
20 mutual respect.

21 Mr. Hooper, please proceed. Try not to say in open session what
22 should not be said. You have freedom of speech, of course, to a certain
23 limit, but you should not prematurely characterise a witness in a certain
24 way. We have heard your concerns. Please continue to express them and
25 conclude your intervention, and we are asking you to provide a brief

1 written submission later, but for now please proceed.

2 MR. HOOPER: Well, I don't think these are exaggerated or -- or
3 excessive comments, because they go to the heart of our concerns, and our
4 concern is that if you give a witness a guarantee of something that he
5 wants and seeks, such as international relocation, and if that witness
6 sees that the price of getting that might be to give evidence, then such
7 a witness, it might be the case, could be induced effectively to give
8 false testimony, effectively. That's our concern.

9 Now, I have no objection whatsoever if the Chamber, and I only
10 saw the e-mail this morning, were, in fact, to see this most recent
11 statement, because I'll be coming to that at a later -- now in terms of
12 my submissions. No objection whatsoever, and I think reading that, there
13 will be no question that my comments earlier that caused that reaction
14 were not unfounded and not excessive and, indeed, not inappropriate.

15 Now, the final matter that we dealt with or requested in which we
16 have a concern about, moving from the question of guarantee or no
17 guarantee, is our request that we be given a more specific indication of
18 the sums of money that have been expended on P-0028.

19 VWU, we know, are reluctant to share that information with us,
20 and they've referred us to the appearance before the Court of
21 Mr. Dubuisson, and you may recall Mr. Dubuisson was able to give the
22 Court some very useful -- and all of us very useful information relating
23 to the general issues rather than specifics. He was able to tell us
24 maximum averages, as it were, of sums of money, 6.000 for this, 20.000
25 for that, 60.000 for relocation. You will remember what he said in the

1 transcript.

2 Our concern goes a bit further, though, and in our requests we
3 were asking for what sums of money VWU had expended in terms of any
4 resettlement, in terms of rent and -- and the like, which we know have
5 been expended on that witness and over a considerable period of time,
6 education and the like, and also costs of relocation. And I'm not going
7 to go further than what the Court knows is the position as to his present
8 whereabouts or where his whereabouts may have been over recent months or
9 a year or so.

10 We also wanted the VWU to let us know if any cost estimate has
11 been made over -- and over what period of time effectively, that a
12 permanent relocation would mean. And all that information, of course,
13 goes to the size of the carrot that this witness might see.

14 So those are the various issues that we raised with VWU which we
15 require largely before P-0028 commences his evidence, and that evidence
16 may commence next week.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, are you
18 going to conclude now?

19 MR. HOOPER: Almost. There's one other matter, and that is a
20 matter that we raise with the Court. We all know that there was some
21 matter of clarification that P-0028 wanted to give, and that was raised
22 through his counsel with the Prosecution. The Prosecution sought and
23 received permission to go and see P-0028 in respect of that matter. What
24 concerns us is the extent of the material. Of course, as far as I know,
25 the Court hasn't seen or received service of document OTP-DRC-1058-0110,

1 which is a document -- a statement taken by the Prosecution over four
2 days with -- we're not sure how long the final day's interview was, but
3 the other days amount to over 50 hours of interview and produces a
4 document with 91 -- sorry. Yes, just over 91 paragraphs of information,
5 which provides significant changes. Contrary of what the Prosecution may
6 view, it is our view that there are significant changes, as we'll see in
7 due course with the witness.

8 Two things arise: We'd like leave to provide that document to
9 the Lubanga Defence, because it involves and introduces a substantial
10 issue as to misconduct by intermediaries.

11 Secondly, the Court hasn't seen perhaps this statement. We have
12 no objection to the Court doing so. In the course of this evidence or
13 further alteration, completely whitewashed a moment ago by the
14 Prosecution, may I say, there is a substantial change in the defendant's
15 account. And he also goes on to name about ten possible sources of
16 contact for us, that is to say. There's names he mentions that we would
17 seek to investigate and issues that he raises that we would seek to
18 investigate, and I'm concerned that we won't have the time to do it,
19 because we anticipate this witness will be giving his evidence next week.

20 So in our e-mail to the Chamber, we suggested to the Chamber that
21 the Chamber could arrange for P-0028's evidence to be given as late as is
22 feasible, but we're rather snookered because we have various other
23 problems. The next two witnesses, three if we include the video witness,
24 is not going to be particular problem. We're then due to have P-0028 and
25 only after him do we have 166 and then 317. 166 has the problem with --

1 social problem that we've heard about, so we anticipate it might be
2 difficult to advance, though if that could happen, then we'd ask for
3 that.

4 317 has her own particular dates, as I recall, 6th of December to
5 10th, something like that. So she's locked in there.

6 But what we consider may be the position, and the Court might
7 have very good reason not to accept with confidence what I'm about to
8 say, but I say it with confidence, is that we feel that Witness P-0028
9 could be pushed back if we had non-sitting days after 353's evidence. If
10 we saw, for example, how we go by then. We wouldn't be very far into
11 November by then, and if we could win a bit of time by non-sitting days,
12 then we would time, clear time -- there would be have to be clear time.
13 I know that we'd have to convince you, the Judges, there would be clear
14 time, but clear time between to fit -- to allow us further time for
15 investigations so that we could then deal with 28 and still deal with 166
16 and still reach 317 no later than the 6th of December. I say no later.
17 My understanding is that she's a fixture for the 6th of December, so it's
18 a question of not -- of everything being tidied up by then.

19 So that would be our request and is our request. And as I say,
20 the Court may feel perhaps more open to that suggestion once it's seen
21 where we're going with 160 and 353, and I accept that.

22 May I say there was another matter I forgot about in relation to
23 VWU requests, and that was a specific reference to officials in the Congo
24 and money. I won't go into more detail than that. And we asked if
25 that -- we noticed that VWU had said they were going to investigate that.

1 We'd like to know if they have investigated that. It's now many months
2 ago since that complaint was made, and we'd like to know what the result
3 was. Again, that goes to matters or issues prior to cross-examination of
4 P-0028.

5 Those are all the matters on that. And finally, we raised by our
6 e-mail to the Court an issue that arose from the Chamber's decision of
7 the 18th of August, and in particular, paragraph 25 of that decision.
8 And by paragraph 25, it may appear, and what we're saying here is there's
9 an ambiguity that we -- if it were capable of being clarified, would
10 assist us.

11 Paragraph 25 states that the VWU is the sole competent organ in
12 this area of relocation and that where the Prosecutor and the VWU come to
13 an agreement about relocation, then the Court has no place to intervene,
14 much less to make a ruling. And I'm referring to decision 2305 of the
15 18th of August, 2010, by this -- by this Chamber, and paragraph 25, the
16 final sentence of which is the area of our inquiry, which reads:

17 "Thus, in the absence of any disagreement between the Prosecutor
18 and the VWU, the Chamber considers that there is no place for it to
19 intervene, much less to make a ruling."

20 And the ambiguity arises, because 26, paragraph 26:

21 "The Chamber emphasises that the VW must constantly reassess the
22 situation, and that the VWU should undertake a fresh evaluation in depth
23 of P-0028's situation after he's testified, and that the Chamber
24 considered that only that final examination will establish whether in
25 light of the protection that he would be entitled to receive,

1 international relocation is still warranted."

2 And our concern is essentially this: That in paragraph 25, our
3 initial interpretation of it was that the Chamber was stating that it had
4 no legal right, authority, or obligation to overview a decision made by
5 an organ of the Registry, when we would submit that looking at the
6 Appeals Chamber decisions and the general hierarchical nature of the
7 Chamber of the Court, with you, the Judges, up there at the top, that you
8 do have a right of review, whether that is the position or not. So I
9 hope that's -- it would certainly assist us, because if the view is that
10 you don't, then we would seek to seek leave to appeal that. But we see
11 that there is this ambiguity within the decision, if I can put it like
12 that, and it would assist us, and I hope ultimately the Chamber, because
13 it wouldn't then be burdened by a submission by us for leave to appeal if
14 that issue could be, if it's the Court's desire to do so, clarified to
15 us.

16 So those are the matters of concern, and as I say, they are
17 matters that need to be addressed, we submit, before P-0028 gives his
18 evidence, and we feel that that evidence is looming soon. Thank you.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, please
20 make your reply brief, your response to the concerns raised by
21 Mr. Hooper, and if it's about the second to last point raised by the
22 Defence of Germain Katanga, this will be up to you to tell us whether or
23 not you wish to table a new incriminating item of evidence as was just
24 referred to, which indeed the Chamber has not seen, because if you are
25 planning to table it, and you will tell us that, then you must be able to

1 make that application extremely urgently so that the Chamber will
2 therefore be able to see this further statement which apparently was
3 received recently, and we are going to require some clarification from
4 you on that.

5 MR. MACDONALD: (Interpretation) Thank you, your Honour. I will
6 start with that point immediately then, and this is the disclosure of
7 P-0028's further statement.

8 The answer is no, your Honour. On Monday, the 25th, at the end
9 of the day, we disclosed the information. We initially had an audio
10 recording of the statement by P-0028, which later we used the Ringtail
11 system to disclose essentially in the days that followed, and under
12 Rule 67, we followed all the necessary procedures.

13 We don't really have that many incriminating items of evidence,
14 and this is very important to bear in mind, your Honour. And if I was
15 rather vivacious in my intervention before, I'm sorry if I was out of
16 place, but as Mr. Hooper is very well aware, we had to make that now.

17 As with what we have just been asked, we must remember that the
18 sword of Damocles is hanging over us as to whether we are going to submit
19 an urgent application.

20 Everything, as we know, is being done to upset the -- the
21 testimony of P-0028, but P-0028 is ready to testify, your Honour. His
22 counsel has mentioned it to us on the 7th of September, and the
23 additional elements that he wanted to mention with the Prosecution were
24 then followed through. The items that were mentioned -- that -- that
25 came out were submitted in our filing, your Honour. And the new points,

1 yes, do deal with intermediary 183 but in a very limited context. So if
2 Mr. Hooper is saying that the intermediary in question may have incited
3 the witness to tell lies, et cetera, I feel that we need to be cautious
4 about this kind of language, your Honour, because the -- what was said
5 was in a certain context, and necessarily the witness was questioned
6 about all of this information, and any other person who could have
7 influence over Witness 28 or whether the intermediary 183 influenced our
8 witness on a certain point, this is far from certain.

9 Remember that last year, in July 2009, we interviewed P-0028
10 about intermediaries specifically, and the Prosecution would like to know
11 if in July 2009, and the interval between that date and October 2010, if
12 anyone could have incited P-0028 to tell lies, then we would like to know
13 about it. And when I say "any person," I mean any person and not only
14 intermediaries.

15 So this is what we have investigated when we questioned the
16 witness, your Honour. It is false to say that there were so many hours
17 of interview conducted over a period of four days. That is not true.
18 This is what I call an embellishment on the part of Hooper's Defence team
19 in order to exaggerate the facts and -- and try to make a haze over the
20 facts. This is a kind of smokescreen to colour the facts.

21 And I'd like to come back on the two final points, your Honour.
22 The reason behind relocating the witness is very clear and unequivocal.
23 It was disclosed in document of the 1st of October -- this was a document
24 of some 30 pages that Mr. Hooper mentioned. It's a document that the
25 Chamber had in its possession as concerns the reclassification of certain

1 information. The Chamber will recall that at the end of September, a
2 request was made to the Chamber, and that was that the Prosecution team
3 wanted to reclassify the documents which were at that time classified as
4 confidential, and under Rule 67 or Article 67(2), to make them accessible
5 to the Defence. And your legal representatives and legal officers
6 answered us and sent us an e-mail on the 1st of October, this 25-page
7 document, plus the annex to the filings from the unity -- from the
8 Prosecution about P-0028.

9 In that document, your Honour, on the 1st of September, on -- in
10 September, the 6th of September, 2010, the unit was informed for the
11 first time that P-0028 would be having an international relocation. That
12 means outside of the Congo. In the presence of the * prosecution and his
13 counsel.

14 Yes, this operation took two hours, and this was disclosed to the
15 Defence. Considering filings 2147 and 2140 -- or 2301, this can be
16 found. This was about the reclassification of these two documents.

17 Once again, in decision 2305, you picked up on these two filings,
18 2147 and 2157, and it is clearly set out in those that P-0028 was to be
19 internationally relocated, and you noted it in your decision at that
20 time.

21 The Prosecution was to disclose any information under Rule 67 or
22 67(2), which inevitably would reveal that the place of relocation for the
23 witness was going to be, at that time, in Kinshasa. And by doing this,
24 the Prosecution complied with its obligations and that the witness was
25 going to be relocated elsewhere.

1 Given the circumstances and the potential risks for the witness
2 which are both subjective and objective risk for the witness, then it
3 would be better for the witness to be relocated internationally, outside
4 Congo, and this is what was done. This is what is now to be done. All
5 the information concerning the risks have already been disclosed on the
6 1st of October. So before the signed statement from last Monday was even
7 made, this information was already available.

8 And having done this, as your decision 2305 says, then there was
9 no reason to reclassify those two [as interpreted] filings, 2147 and 2157
10 and 2301, because these information will already -- was already
11 disclosed. There was nothing new included in the filings.

12 One final point, your Honour, and here I do think we need to make
13 a distinction between, on the one hand, the security of the witness and
14 the declaration of the witness on the other hand. We must not mix up the
15 two, because these are two completely separate items, information. But
16 Mr. Hooper is mixing all of this together. He mixes it all together in a
17 big melting pot and hopes that we will swallow the soup, but the test --
18 this witness statement is quite separate, and, your Honour, there will
19 be, I'm sure, free spaces of time in the coming weeks. Why? Let me
20 explain. As Mr. Hooper said, it is very likely in accordance with
21 reasonable calculations and usual practice that Witness 353 will finish
22 testifying either the 7th or the 8th. Allow me to rectify. Either the
23 6th -- excuse me. Either the 9th or the 10th of November. I had the
24 wrong month in front of me on the screen.

25 It is true that Witness 28 will be called to testify perhaps on

1 the 10th of November.

2 As the Chamber knows, P-0166 is supposed to come next to testify.
3 Nonetheless, this witness cannot arrive, despite all possible efforts
4 deployed, before the 28th or 29th of November -- 29th or 30th, which will
5 be a Monday or a Tuesday. And after that we'll have P-0317, who should
6 come to testify in the week beginning the 6th of December.

7 So it is clear, your Honour, in light of what we've heard from
8 Mr. Hooper, that the Prosecution shall proceed diligently to have P-0028
9 appear before the Court, but that Mr. Hooper's cross-examination might be
10 rather lengthy. The Prosecution would like to mention that out of --
11 that out of concern for the security of P-0028, that once he has -- that
12 when P-0028 testifies, it would be preferable for us to commence our
13 examination-in-chief on or around the 17th of November. We must recall,
14 your Honour, that the statement of P-0028 was disclosed Monday afternoon,
15 it is true, but since last Monday. So there's practically a week that
16 has gone by in between. And if -- I think I noted that Mr. Hooper was
17 asking for three weeks in one of his e-mails, then if he does appear on
18 17th or 18th of November, I think, unfortunately, this is a holiday, this
19 will be practically the three weeks requested before the witness actually
20 appears.

21 And please also remember, your Honours, that Witness P-0028 is
22 not a stranger to the accused, Mr. Katanga. There is a blood
23 relationship between the two. And we are in public session, so I cannot
24 say which kind of relationship, but his background is much easier to
25 identify than for any other witness. In other words, it can be easily

1 found out by the Katanga team, and this means that additional elements
2 under Rule 77 can be provided, and I would say that one week -- a
3 one-week time frame or situating -- if this witness appears around the
4 17th would actually be appropriate. The Prosecution will be proceeding
5 diligently with the Witness 219, given the subjects mentioned about
6 P-0028 and other similar items.

7 And by way of conclusion, your Honour, many things were mentioned
8 by Mr. Hooper which could be tested during the cross-examination phase,
9 because there were some elements, unfortunately, which could be tested.

10 P-0028 has been known to us for some time, so how is it possible
11 that the Defence suddenly wakes up now and asks two questions about the
12 cost of the relocation or the responsibility for -- on the part of the
13 unit? Why? Why now? Why today? How can we get an e-mail from the
14 Defence at 8.00 in the evening on a Friday? Why did they just wake up
15 now?

16 It's true that it's only been recently that we knew that the
17 witness was to be relocated internationally, but what does it matter how
18 much was spent on that relocation? The witness is going to be here, and
19 he will be able to tell us, "Yes, I was relocated, and, yes, I can answer
20 your questions." And this witness will be treated just like any other
21 witness. He will be here to answer questions.

22 And one more time I would like to say this question of the
23 evaluation of the credibility, to know why the witness at the beginning
24 of his testimony wanted to meet with the Prosecution or to -- and
25 disclose additional information, perhaps that is because he is coming

1 here to tell the truth, and that is the reason why he gave this extra
2 information which is now in the possession of the Defence. And the
3 Defence will have the choice to test any changes in the -- in the
4 statement and the motivations for that during the cross-examination.

5 I am sure that some of our colleagues in the unit could provide
6 useful information. I would like to submit that it's not useful to
7 say -- to find out where that witness is, in which conditions, where is
8 he located now. How is that information relevant? I don't think that it
9 is relevant. It makes no difference whether the witness is going to be
10 relocated in Europe or in Asia or wherever. But if there is one thing to
11 bear in mind, and I agree with my colleague, why did the unit get into
12 details such as the witness is central to the Prosecution's thesis or
13 hypothesis? Why would -- why would the unit offer information about the
14 credibility of -- sorry. Why would the -- why would the unit offer
15 information about the need to be relocated? No. It's because the
16 Prosecution had disclosure obligations under Rule 77, under Rule 67(2),
17 and by doing this, the information that the witness was to provide could
18 create risks and reveal further information about the relocation.

19 It's true that this could cause confusion, but the Prosecution
20 knows that it is clear that the witness has been relocated because there
21 was a risk for his security, and the risk was a real risk, both
22 subjective and objective risk, and the information has been submitted to
23 the Defence.

24 Thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) Would you like to take

1 the -- the floor?

2 MR. KILENDA: (Interpretation) Yes, your Honour. This was a
3 very useful exchange. We prefer to hand over to you, Judge Cotte.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Counsel Kilenda.

6 We're not going to play ping-pong now, so please be very brief.

7 MR. HOOPER: No ping-pong. We will -- we're surprised that the
8 Prosecution aren't seeking to add this statement to their material as an
9 act of fairness essentially to the accused, but we, of course, will rely
10 on it and make reference to it in the course of a cross-examination, and
11 so it's not inappropriate and indeed entirely appropriate in conforming
12 with the procedure that we add this document to the documents that we may
13 refer to in cross-examination. So you'll get this document, and it's
14 being e-mailed now so that you have access to this document. As I say,
15 when you see that, the two concerns that we have are the details,
16 obviously, that you will see in that document, and the reference to
17 intermediaries. Those are the two matters.

18 In terms of time, my friend's suggested the 17th. We ask for no
19 more than the 15th. If you can give us whatever time we get between the
20 current witness's schedule and the commencement of Witness P-0028, if he
21 could start on the 15th, which is the Monday, I think we are sitting that
22 Monday, then that would at least start him at the beginning of the week
23 rather than mid-week. And we're confident that will clearly see his --
24 his evidence concluded before -- well, we take it it's the 29th that the
25 Prosecution envisage the start of 166's evidence rather than his arriving

1 here in The Hague. It said he arrives on the 29th or 30th, but we
2 understand that that's when he will be starting his evidence, and between
3 the 15th and the 29th it should be giving us ample time for that.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Counsel Hooper.

6 As Mr. Kilenda has just said, we have just seen a very
7 interesting exchange. Above all, this exchange shows us that on both
8 sides, on the Katanga Defence team and the OTP, the statement of P-0028
9 is of particular importance.

10 The Chamber has just learned that the further statement recently
11 taken from this witness had not been requested to be added into evidence
12 on -- under Rule 77 or Article 67(2).

13 We're going to ask you each to summarise. Mr. Hooper, we would
14 like to have in writing a summary of the various requests you made today.
15 We'd like this by 6.00 p.m. tomorrow. Please be as clear as possible.
16 Tell us how much time you need in order to proceed with an adequate
17 cross-examination of Witness 28. This filing that we expect by 6.00 p.m.
18 tomorrow from Mr. Hooper needs to be -- needs to be then redistributed to
19 the other parties at the same time and not at 9.00 a.m. the following
20 morning. Tomorrow at 6.00 p.m., we will receive it, and by 6.10 this
21 should be -- should be distributed to the others.

22 There will be certain requests included such as the
23 reclassification of documents, disclosure, et cetera. All of those
24 requests need to be in one concise document so that we can follow through
25 with those requests.

1 The other parties are free to give us their observations as well,
2 and we are waiting for those from the Prosecution as well. And we would
3 like this to occur by Thursday at 4.00 p.m. The Chamber would like to
4 have by that time all of the different comments from Mr. MacDonald, from
5 Mr. Hooper, and all of the observations from all of the parties.

6 For now the Chamber should like to recall that, as is the rule,
7 that throughout this discussion about P-0028 everything has been done to
8 act in -- as transparently as possible, and in its decision of the
9 18th of August of this year, the Chamber simply recalled that despite a
10 certain reluctance on the part of the OTP, that the latter had fully
11 complied with its obligations under Rule 77 and Article 67(2). However,
12 when it comes to the confidential *ex parte* documents, the Chamber wished,
13 and this was the motive of its decision, that the modalities that the
14 Prosecution would judge appropriate for the document enabling the Defence
15 teams to establish the credibility of this Witness 28. That was our
16 obligation in terms of the transparency of proceedings. So this on the
17 1st of October, this document was supposed to be an extract of that
18 document still classified as confidential *ex parte* because of the
19 potential security risk for the witness and his family.

20 The Chamber will not pronounce anything more on this subject
21 for now. The Chamber is waiting for the two submissions to be made, and
22 that perhaps will enable us to answer Mr. Hooper's request which was
23 about decision 2305 of the 18th of August, to offer a clarification on
24 this.

25 The Chamber would like to say in that decision of the 18th of

1 August, the Chamber, I think on two separate occasions, perhaps more,
2 referred expressly to the 26th of November appeal ruling in which --
3 sorry, 26th November 2008, in which the particular missions on -- from
4 the Prosecution, on one hand, and the unit, on the other hand, were to
5 bear in mind the protection of the witness. And that in the case of any
6 disagreement, the Chamber had the right to intervene. So we'll come back
7 to this point, however, when we see the submission made by Mr. Hooper.

8 We hope that we have dealt, Mr. Hooper, with your concerns.
9 Obviously Mr. Prosecutor's concerns are not the same as yours. The
10 Chamber is not going to make a decision right now. We are offering you
11 this short time-frame so that we can receive your written submissions,
12 and then we shall announce our position on this subsequently. The
13 Chamber does, however, note that the unit for the protection of witnesses
14 and victims, in its e-mail of the 28th of October at 1.00 p.m., had to
15 respond to a certain number of your concerns, and particular as concerns
16 certain witnesses, and in particular, Witness 28. It was -- it wanted to
17 say that it was not able to disclose any further information over and
18 above a certain level, just what Mr. Dubuisson mentioned on the 30th --
19 on the 30th of August, 2008.

20 So it is important for you to outline the reasons why you would
21 like further clarification on that, which brings us to the end of this
22 discussion then. We are hoping that we have laid the paving for a calm
23 arrival of Witness 28 (* indiscernible). Now we are hoping that we have
24 been able to satisfy your concerns on either side.

25 Court Officer, before calling Witness 160, which we're going to

1 have in a moment, the Chamber would like to have some information with
2 regards to the protection measures which are to be taken and to which are
3 going to be applied to this witness during the testimony.

4 Now, you will remember that as for other witnesses, the Chamber
5 in a decision, namely 116003 -- 1667 with regards to the protection of
6 witnesses, 23rd of November, 2009, had use of a pseudonym and voice
7 distortion and of picture distortion as well.

8 Now, on the 1st of November, today, about a year later, the
9 Chamber considers that there are no reasons which would justify going
10 back on those three measures. Indeed, during a meeting with the VWU
11 which was carried out this morning, the Witness 160 expressed the wish to
12 have such measures accorded to him. The Chamber furthermore noted in
13 August that 160 was in the protection programme of the court and that
14 therefore considered that his anonymity should be preserved and that only
15 these three protection measures, classical measures, would make it
16 possible to do that. This decision would therefore lead the Chamber to
17 order a closed session when the witness enters and leaves the courtroom.
18 However, it is not envisaged to cut the view that can be made between the
19 accused and the witness or between the witness and the accused.

20 The Chamber would also like to state that the witness would like
21 to speak to the Court in French. The Chamber would also like to state to
22 you that the unit has also stated that the witness could perhaps not
23 always understand the question put to him at first for reasons which are
24 perhaps linked to auditive difficulties or perhaps linked to a certain
25 apprehension which will come out during the hearing. So you have to

1 know, everyone has to know, that is not ruled out, this is something that
2 I will say to the witness, that you have to repeat your questions, which
3 is quite normal, I think.

4 So, Court Officer, if you would be so kind, we would like to go
5 into closed session in order to Witness 160 enter, and we would ask him
6 to state his identity in closed session, and then we will go back into
7 open session in order to have the solemn undertaking.

8 (Closed session at 3.34 p.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Open session at 3.36 p.m.)

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

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,

1 Court Officer.

2 Good morning, madam. I am going to ask you to speak directly
3 into your microphone so that we can hear you well. Can you hear me well?
4 Yes?

5 I think that was a yes. Did everybody hear that?

6 THE INTERPRETER: The interpreter did not hear the answer.

7 PRESIDING JUDGE COTTE: (Interpretation) Witness, today we are
8 receiving you here at the court. There will be about 20 minutes in the
9 court, then there will be a suspension, then we'll have two hours
10 together.

11 You have come -- you have come here in order to help us to better
12 understand the facts which have been referred to us, crimes with which
13 the accused -- the crimes which the accused are accused of, and your
14 testimony is important. You know how the different hours in which you
15 are giving testimony will function. The -- Madam Prosecutor or
16 Mr. Prosecutor will ask questions to you to which you will answer, and
17 then it will be the Legal Representatives of Victims, who on your right,
18 who are greeting you at the moment. The Chamber will possibly have some
19 questions to put to you as well, and then it will be the two Defence
20 teams, who are on your left, that of Germain Katanga, which is the one
21 nearest to the gallery, and Mathieu Ngudjolo, which is immediately on the
22 Chamber's right.

23 The VWU has -- should have said to you that everything that is
24 said here in the courtroom should not be repeated outside. What you say
25 here, you keep to yourself, just as what you hear here as well.

1 You will have a pseudonym attributed to you, so we will never
2 call you by your name or your first name, your surname or first name. We
3 will call you "Madam Witness 160." Your voice outside this courtroom
4 will be distorted so that people cannot identify it, and by that can't
5 identify you. And the image of you or the picture of you, because there
6 is transmission of this, that will also be distorted such that people
7 cannot recognise you either.

8 We would therefore ask you, as I have already done, to speak
9 directly into your microphone, to speak loudly. Please do not be afraid
10 of speaking loudly, and speaking slowly. On several occasions, I'm sure
11 we'll have to ask you, remind you, to speak slowly, because the
12 interpreters towards English, because a Defence team prefers the English
13 language, or towards the languages of Mathieu Ngudjolo prefers --
14 Mr. Katanga and Ngudjolo prefer, then it has to be slower for that, and
15 also for the court reporters as well.

16 Please do not change languages. You stated you're going to speak
17 French, so please speak in French, or please notify us if you wish to
18 change language. But it is somewhat complicated for the teams of
19 interpreters to suddenly find that there is a witness who's changing
20 language in the middle of a sentence.

21 And if by any chance you do not understand a question, which is
22 quite possible either because you cannot hear it well or because you have
23 not understood what is asked of you, then please do not hesitate, madam,
24 to ask for it to be repeated to you. For you, this is a matter of
25 understanding what is happening well in order to help shed light on

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1 matters for us.

2 Are we in agreement on that? Perfect.

3 We are therefore going into closed session so that the witness
4 can state her identity to us.

5 (Private session at 3.41 p.m.)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

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22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

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10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Open session at 3.43 p.m.)

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

15 your Honour.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

17 Court Officer.

18 Can we check that the microphone of the witness is working well,

19 because personally I also had some difficulties at the start.

20 THE INTERPRETER: The interpreter notes that the interpreters are

21 also having considerable difficulties hearing what the witness is saying

22 due to the low volume.

23 PRESIDING JUDGE COTTE: (Interpretation) Counsel O'Shea, thank

24 you. People are checking this. If you continue not to be able to hear

25 it well, please point that out to me so that we can accelerate this

1 checking.

2 Witness, we are currently in open session. Before starting your
3 testimony, you should take the solemn undertaking to tell the truth.
4 This is an undertaking which is solemn. I am going to read it slowly so
5 that you can understand the importance and scope thereof. Please listen
6 to me very carefully the commitment is as follows, the undertaking is as
7 follows: I solemnly declare that I will tell the truth, the whole truth,
8 and nothing but the truth.

9 Have you understood me well?

10 THE WITNESS: (Interpretation) Yes.

11 PRESIDING JUDGE COTTE: (Interpretation) Now, you commit
12 yourself to saying the truth, the whole truth, and nothing but the truth.
13 Is that the case?

14 THE WITNESS: (Interpretation) Yes, your Honour.

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

16 The Court would therefore ask you to listen once again. You have
17 just therefore committed yourself to saying the truth, the whole truth,
18 and nothing but the truth. If during your testimony or in answering the
19 questions that are put to you you do not say the truth or do not tell the
20 truth, then you can be prosecuted before the International Criminal Court
21 for false testimony, and if the facts are demonstrated, you could be
22 subject to a conviction.

23 Have you also understood this as well?

24 THE WITNESS: (Interpretation) Yes, your Honour.

25 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you.

1 The Court notes that it has been satisfied with the provisions of
2 Article 69(1) of the Statute and Rule 66, paragraphs (1) and (3) of the
3 Rules of Procedure and Evidence.

4 So once again, I would like to remind you, madam, that you have
5 to speak into your microphone. You have to speak loudly, and you have to
6 speak slowly. We therefore ask you to try to respect another rule, which
7 is to leave five seconds lapse between a question being put to you and
8 the moment when you answer that question. Even if you are able to answer
9 straight away, please count to five before answering. This is a
10 discipline which is somewhat binding but which is necessary for those who
11 are helping us, namely, the court reporters and the interpreters in
12 particular.

13 You have a jug of water next to you. Please feel free to drink
14 whenever you need to. The Court will have absolutely no objection to you
15 having a drink and doing so. That's exactly why we've got the water jug
16 and the glass there. In the same way, I think there should also be some
17 tissues next to you. Please, if you need to use them, please do so. If
18 they're not there, they will come. Just use them if you need. You have
19 to be well installed into the courtroom so that you can give us -- or
20 shed light on matters in the most clear way possible.

21 Well, I think that we are ready to start. We are in open
22 session.

23 Prosecutor, if you are going to intervene, I now leave the floor
24 over to you.

25 MS. DARQUES-LANE: (Interpretation) Your Honour, your Honours,

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Questioned by Ms. Darques-Lane

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1 good morning -- or good afternoon.

2 Questioned by Ms. Darques-Lane:

3 Q. (Interpretation) Good afternoon, Witness.

4 MS. DARQUES-LANE: (Interpretation) First of all, I would ask
5 you to go into private session for just a few moments to then go back
6 into open session thereafter.

7 PRESIDING JUDGE COTTE: (Interpretation) For the attention of
8 those who are in the public gallery, questions which are asked at the
9 start of the examination-in-chief might identify the witness, and it's
10 therefore necessary to go into closed session, and the Prosecutor shall
11 try to make sure that this closed session does not last for too long. It
12 is necessary.

13 And now please take us into private session, Court Officer.

14 (Private session at 3.49 p.m.)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-OTP-P-0160 (Private Session)
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12 Page 43 expunged – Private session

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Open session at 3.53 p.m.)

6 COURT OFFICER: (Interpretation) We are in open session,
7 your Honour.

8 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

9 MS. DARQUES-LANE: (Interpretation)

10 Q. Witness, if you could tell us what your ethnic origin is.

11 A. I am of Dinga ethnic origin.

12 Q. Where were you at school?

13 A. In Bandundu, in Kinshasa as well.

14 Q. Now, I'm going to ask you certain questions with regards to
15 events that took place several years ago. Have you already had the --
16 have you already met Germain Katanga?

17 A. Yes. I already met him twice but on several occasions.

18 Q. If you would allow me, maybe we could start with the first
19 meeting.

20 JUDGE DIARRA: (Interpretation) I didn't understand the answer.
21 "I met him twice but on several occasions."

22 PRESIDING JUDGE COTTE: (Interpretation) Witness, if you could
23 state this: Did you meet this person twice or more than twice?

24 THE WITNESS: (Interpretation) I wanted to say the following: I
25 met him on two occasions, two occasions, but on several times. We were

1 together a lot of times but on two different occasions. Two, two, one,
2 two. Once, twice, but on several occasions.

3 PRESIDING JUDGE COTTE: (Interpretation) The first time you saw
4 him several times, and the second time in the same way.

5 THE WITNESS: (Interpretation) Yes.

6 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

7 MS. DARQUES-LANE: (Interpretation) Your Honour, I wonder if
8 perhaps we should have a break now before going into the details of these
9 meetings. Otherwise, I will have to cut it up.

10 PRESIDING JUDGE COTTE: (Interpretation) You are right,
11 Prosecutor.

12 Witness, I said to you that we had a first 20-minute session.
13 That's exactly what happened. That's also made it possible for you to
14 see how our courtroom works and to start to see the different people
15 around here.

16 We are going to take a break for half an hour, and then we will
17 be back at 16.30 for two hours. You will leave the courtroom in closed
18 session so that you can leave discreetly.

19 Court Officer, please take us into closed session.

20 (Closed session at 3.56 p.m.)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Open session at 3.57 p.m.)

5 COURT OFFICER: (Interpretation) We are in open session,
6 your Honour.

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

8 We only have three minutes left. Counsel, Hooper, you don't have
9 any new elements with regards to 323 at this time? It's after the break
10 that you would like to do that.

11 MR. HOOPER: (* Microphone not activated) half past 4.00. We've
12 had a response, but I want to discuss it.

13 PRESIDING JUDGE COTTE: (Interpretation) We will speak about
14 this at 16.30.

15 The hearing is therefore suspended. We will be back at 16.30.

16 Recess taken at 3.58 p.m.

17 On resuming at 4.33 p.m.

18 (Open session)

19 COURT USHER: All rise.

20 PRESIDING JUDGE COTTE: (Interpretation) The hearing is
21 reconvened. Please be seated.

22 Mr. Hooper.

23 MR. HOOPER: (* Previous translation continues) ... start. The
24 issue concerning your paragraph 25 in the decision of the 18th of August.
25 If the -- if the ambiguity is, as it were, not clarified in terms that --

1 with which we are in agreement, then there would be an application for
2 leave to appeal, and that application would normally have to be in by
3 Wednesday. Can I ask in the circumstances, given that we're putting in a
4 keynote, as it were, submission tomorrow by 6.00, it would be a
5 pointed -- pointed motion and you'll have that by 6.00, and then there
6 maybe some responses. Can I ask for a deferment, an extension, as it
7 were, of the normal time period within which we must ask for leave to
8 appeal to, say, Wednesday. Or, no, I shouldn't ask for that. I should
9 ask for a deferment up to -- to allow us to receive your decision and
10 possible clarification, because if the ambiguity is clarified in one way,
11 then there won't be an application to appeal. If it goes against us, as
12 it were, in terms of section -- article -- paragraph 25, then we will be
13 asking for and having to put in a motion in respect of that.

14 So in short, you'll get your motion tomorrow, and we're just
15 asking for time to -- to formulate possible grounds of appeal in respect
16 of that one issue where grounds would normally need to be in by tomorrow
17 or leave would normally need to be in by Wednesday, we're asking for a
18 deferment until, say, a day or two days after we receive your -- your
19 decision, if you're minded to give us one.

20 Sorry if that got a bit confusing.

21 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper,
22 irrespective of the filing that you will submit tomorrow, can you at this
23 particular time very briefly remind us of the difficulty that you
24 identified in paragraph 25 of the Chamber's decision of the 18th of
25 August. You quoted from that paragraph 25 a short while ago. Can you

1 briefly tell us what problem you have with it and what sort of
2 clarification you wish to have, because when we read this paragraph 25,
3 it does not seem to us to raise any particular difficulties. So can you
4 tell us the problem right now very briefly, and we don't have to use all
5 our time for that.

6 MR. HOOPER: Yes, very briefly. The last -- sorry. Very
7 briefly, the last sentence of paragraph 25 reads:

8 "Thus in the absence of any disagreement between the Prosecutor
9 and the VWU, the Chamber considers that there is no place for it to
10 intervene, much less to make a ruling."

11 Now, our position is -- or we would submit that the Chamber does
12 have an authority to intervene in any situation where a decision of the
13 Registry may affect the fair trial rights of an accused and that this is
14 capable of falling within that -- within that area. And there is -- I
15 won't take you to the necessary authorities here, but we would submit
16 that if that is a statement fully reflects the view the Chamber, we would
17 say that it's a misreading of the Appeals Chamber judgement that
18 concerned this Court in relation to a slightly different situation where
19 there was a lack of agreement between the OTP and the VWU on an earlier
20 occasion, but that there is a hierarchal structure at this court that's
21 been clearly enunciated by the Appeals Chamber in a Lubanga decision
22 where basically you are -- you are the top of that structure and you
23 therefore have, we would say, both in terms of the Statute and your
24 natural authority, you would have the right to intervene and review all
25 Registry decisions that touch upon the fair trial rights of an accused.

1 So that's -- that's one thing. And when we go to paragraph 26,
2 we see that despite that last sentence in paragraph 25, in paragraph 26
3 we do see an intervention, because, for example, if there had been a
4 decision by the Registry -- not by the Registry, by the VWU to grant in
5 this particular case international relocation, then your paragraph 26 of
6 the decision of the 18th of August asserts there, quite clearly, a
7 direction to review the position after the witness has given evidence.

8 We're also aware that the last sentence of paragraph 25
9 contradicts the original view of the Chamber that it had the power to
10 intervene because it said it would be the arbiter of this later in the
11 day. I think that was in May, possibly at an *ex parte* hearing. So it is
12 an important matter of principle. Is what is contained in the last
13 sentence of paragraph 25 an assertion by the Chamber that it lacks the
14 power to intervene, because we would say that that can't be right. You
15 have an explicit authority to intervene in all matters affecting fair
16 trial rights.

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

18 MR. MACDONALD: (Interpretation) On the issue of deadlines,
19 there is jurisprudence in this Chamber that the five-day time limit
20 cannot be extended. I believe this is not the first time that Mr. Hooper
21 requested an extension, and I believe that in a similar case the Chamber
22 reminded the parties that the time should not be extended.

23 PRESIDING JUDGE COTTE: (Interpretation) What is the time from
24 which the delay starts to run?

25 MR. MACDONALD: (Interpretation) The time starts to run when the

1 Defence has been notified. So this -- and this relates to the opinion of
2 the Registry regarding reclassification of the decision.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, in your
4 filing you should indicate what is the time from which the period begins
5 to run. That is, in relation to the date of notification of this
6 decision and without examining the issue regarding grant for leave --
7 granting of leave to appeal a decision which was handed down a long time
8 ago given that there are fair trial issues here, this could make it
9 possible to assess the credibility of the victim. That is, the
10 conditions in which the decision was handed down and reclassified can
11 constitute grounds for an application to appeal if there are
12 contradictions that are identified in this decision. So there are no
13 obvious answers right now.

14 MR. HOOPER: Very well. Well, we -- our time would expire
15 normally on Wednesday, 4.00, but if there is that uncertainty and it -- I
16 was merely suggesting a more practicable course for everyone, I would
17 have thought, but then we will put in an application by Wednesday seeking
18 leave to appeal on paragraph 25. We'll do that, and it may be that the
19 Court will say that we've perhaps misinterpreted paragraph 25 and we get
20 there perhaps the same way; or it may say, "No. We've interpreted it on
21 the face value of the sentence."

22 So, yes. So we won't complicate matters further, your Honour.
23 We'll put in application by Wednesday. So we'll deal with that matter,
24 as it were, separately to the other matters that will come your way in
25 the 6.00 filing tomorrow.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
2 And we are fortunate to have right up to Wednesday, 4.00 p.m., and not
3 tomorrow 4.00 p.m.

4 MR. HOOPER: Indeed. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) And this allows all of
6 us time for reflection.

7 Now, regarding 323, do you have any particular details to provide
8 to us?

9 MR. HOOPER: Yes. We've received information that he has another
10 name, and the consequences of this, it's unclear. If he does have the
11 other name, it would mean he wasn't in Bogoro when he claims he was.

12 Now, that information -- well, it's come to us, and I'm raising
13 it now and sharing our concerns, obviously, with the Chamber about that.
14 It's such a significant matter that if there's going to be a videolink
15 tomorrow, I request leave to ask questions of the witness relating to
16 that if I feel it appropriate to do so.

17 I mean, now I've said that, it may well be the Chamber would feel
18 itself might want to ask certain questions irrespective of what the
19 Defence view is, but that would be the area of our request. And there
20 wouldn't be many questions relating to that. I identify possibly four,
21 and they -- four questions. Each with one verb.

22 MR. MACDONALD: (Interpretation) Mr. President.

23 PRESIDING JUDGE COTTE: (Interpretation) Before giving you the
24 floor, Mr. Prosecutor, the Chamber would like to remind you that we
25 forgot to say a short while ago we are not sure when the witness will

1 come into the room. Tomorrow the Chamber will ask the witness to state
2 his identity once again, that is, identity, name and place of birth, and
3 profession.

4 Mr. Prosecutor.

5 MR. MACDONALD: (Interpretation) Once again we have to go back
6 to square one to define the legal context, because they are talking about
7 re-opening a cross-examination with new information. So this is not a
8 situation of a three-day disclosure and so on and so forth. The
9 Prosecutor wants to know what that information is in order to be able to
10 make our submissions, and this should be done in open session -- rather,
11 in closed session so that the persons concerned should not know what we
12 are talking about. But in this case, it is an application to re-open the
13 cross-examination. This can be done in the appropriate manner, orally or
14 in written form, but we need to know what the details are in order to be
15 able to react. We do not know what the information is. We do not know
16 the sources. And that needs to be known before the Chamber can even take
17 a decision granting leave to the Defence to ask questions, or the Chamber
18 itself can ask the questions. Why is it that this suddenly becomes
19 relevant? The fact that that person is known under another name does not
20 mean that he was not in Bogoro. We are jumping to conclusions, giving
21 details that are not supported by any evidence.

22 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, you
23 probably know that the Chamber had realised and pointed out that there is
24 a very specific theme for the videolink of tomorrow. The questions by
25 Mr. Hooper can constitute a re-opening of cross-examination that has been

1 concluded. However, if there is serious doubt on the real identity of
2 the witness, then we have to clear that ambiguity or clear the doubt.
3 However, you are correct. We cannot have a surprise produced to us
4 tomorrow morning.

5 So, Mr. Hooper, if you have information that justifies or that
6 casts serious doubt on the identity of the witness, which he will state
7 again himself tomorrow, then you have to provide that information to the
8 Chamber and the parties and participants so that the videolink of
9 tomorrow should be useful.

10 It is possible that we will discover that the identity stated a
11 few months ago, and if it is stated again tomorrow, maybe we will realise
12 that it is not the correct identity. Maybe we can find out that the
13 witness has a pseudonym. We are not sure of that. But we believe that
14 for the proceedings to be adversarial tomorrow morning, we believe you
15 have to disclose that information that you have this evening. Tomorrow
16 the hearing will start at 9.00 a.m. with the witness being asked to state
17 his identity, and if the information that you have and which you would
18 have disclosed to the parties and participants and Chamber, if you think
19 that those questions have to be asked on the identity of the witness,
20 that is after we have completed the first part, then you can do so.

21 You have said it is four questions, and the Prosecutor will also
22 ask questions, but you cannot suddenly ask those questions tomorrow when
23 we do not have the information that you have. The witness may provide
24 you with answers, or he may not. We are not sure, but we have to be very
25 clear about that. Are we understood?

1 MR. HOOPER: Yes. Yes. Thank you very much. I'll disclose my
2 source to you, the Judges, but I'll ask for the name to be redacted for
3 protection of that witness, and it will be self-evident why that may be
4 the course that -- of that person, I should say.

5 May I also ask, given that this is an issue that's suddenly
6 appeared, and it's only appeared because of information I received within
7 the last 24 hours, may I also ask to see or have sight of a copy of the
8 witness's passport and any other identification document, perhaps the
9 electoral card or some other document that presumably came into the hands
10 of the VWU in order to be able to negotiate his travelling here to
11 The Hague, and could I have sight of that by your Judges' -- by your
12 Honours' order from VWU in copy form by tomorrow? I shouldn't think that
13 would pose a problem for them. If they don't have any material, then
14 obviously they can't fulfil that requirement; but if they do, I'd seek to
15 see it.

16 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, you are
17 talking about trans-border documents that are supposed to have been used
18 when the witness came to testify before this court during the course of,
19 I believe, last April or May. I am no longer very sure.

20 Mr. Prosecutor.

21 MR. MACDONALD: (Interpretation) I think he testified in April,
22 but I did not have the date. We want to talk about redactions. We have
23 an important submission to make on that issue. Are those reactions by
24 the Chamber, that is in relation to the Prosecutor not mentioning it to
25 the witness? Well, there is a margin here, but the Defence have to

1 reveal the identity of that source inevitably at one point or the other
2 if they think that the person who is appearing before us does not have
3 the right identity. So one cannot cross-examine the witness in this case
4 without providing the sources of that information and cross-checking that
5 information in order to prove a fact.

6 So what is the interest of the Prosecution going to the field and
7 threatening witnesses? There is no equality of arms in this matter. And
8 I'm coming back to that, because in the past the Chamber decided that the
9 parties have to be on an equal footing. There are times when the
10 Prosecution can receive information because they have firm obligations.
11 Article 68 is applicable in that case, and we have obligations to protect
12 people. But in this case what is the risk, that the Prosecution is going
13 to threaten people or they are going to reveal the identity? I do not
14 see why that information has to be redacted.

15 Your Honour, I have talked about our obligations under the
16 Statute. If there is information provided to us -- if information is
17 provided to us as we did with 159, we will investigate. We have to
18 ascertain the truth. So if it is possible that Prosecution witnesses
19 appeared under false names, I believe the Prosecutor also has to be
20 informed under 54, because we have to check what the source is before
21 starting any investigation.

22 We have a Statute that is a bit special. We are supposed to be
23 the right hand of the Chamber so as to ensure that there is no false
24 testimony or false identities before the Court.

25 PRESIDING JUDGE COTTE: (Interpretation) Given that we do not

1 have a lot of time tomorrow because we are doing the videolink, we have
2 to sort out the preliminary issues right now.

3 Mr. Hooper, in order to answer the Prosecutor, do you think we
4 can go into private session if that will facilitate your task, because in
5 any case you have to disclose this evening the information that you want
6 to use tomorrow.

7 MR. HOOPER: Well, what I submit is this: See, for me to put to
8 a witness -- and I would have put the matter to the witness when he gave
9 evidence but I didn't have the current information available to me. I
10 would have just put it to the witness by way of a question. That
11 question is an -- could be an assertion or a simple inquiry. It is not a
12 fact and it is not proof. The response of the answer from the witness
13 is -- is the fact. The witness can say, "Yes, that is another name I
14 have," or the witness can say, "No. I don't know that name at all."

15 There's the fact. So it's not an issue, as the Prosecutor has
16 just said, of my proving something. I'm making a question, posing a
17 question, and in those circumstances I wouldn't be revealing necessarily
18 all my sources. I'm bound by the answer that I receive from the witness.

19 Now, if I want to prove that, then I would have to call a witness
20 in due course. The other way of proving it, of course, is for the
21 witness just to agree the fact in which it's proved through the mouth of
22 the witness.

23 So there's a misunderstanding, I would respectfully suggest, on
24 the part of Mr. MacDonald as to the function and purpose of this
25 exercise.

1 Now, may I say that normally I wouldn't be in the position of
2 saying -- of asking the question at all of the witness, but if he's
3 coming into our view and into the view of you, Judges, it would be wrong
4 for me, frankly, not to raise this issue as I have with you, the Judges,
5 and saying quite simply, "Look. This isn't a long and involved issue. I
6 can ask the question and he can confirm or deny." Or disagree, shall I
7 say, confirm or disagree. And the implications, of course, are
8 substantial.

9 MR. MACDONALD: (Interpretation) Mr. President. Your Honour, we
10 have understood what Mr. Hooper wants to do, but remember that in
11 accordance with the Rules, this would be a re-opening of the
12 cross-examination.

13 THE INTERPRETER: Overlapping mikes.

14 PRESIDING JUDGE COTTE: (Interpretation) A moment ago I went to
15 the trouble of saying that tomorrow this witness would be coming back and
16 that he will be asked to identify himself again. He will be asked again
17 to undertake the solemn oath to tell the whole truth.

18 We would not like to see a re-opening of the cross-examination
19 about what was already covered in his statements made on 15th to the
20 18th of March. We have limited the scope and content of this videolink
21 conference for tomorrow.

22 Having said that, from the moment in which the witness, and this
23 is in accordance with the Rules, if the witness, when he gives his
24 identity, obviously there is room for a potential question about his
25 identity. Now, if before there were no elements in the Defence's

1 possession to contest that identity but now that they have this
2 information, then I think it's appropriate that this information be
3 disclosed this evening to the Chamber, the parties, and participants.

4 That is where we are at at the moment. We will be hearing from
5 the Germain Katanga Defence team tomorrow, and we don't know yet how the
6 witness will respond to the question put to him, but we shall see that.

7 So yet again the witness will reveal his identity, and we all
8 have to accept that this identity can be verified. That is where we are
9 at for the moment.

10 The Chamber is trying to foresee all possibilities, but we cannot
11 foresee everything. And so now the question is going to be asked, and
12 this might enable us to solve the problem.

13 MR. MACDONALD: (Interpretation) Yes, but you were talking about
14 the disclosure of this information to the parties and participants
15 tonight. I understand that the Defence may not ask additional questions,
16 but remember that you cannot ask questions on basis of false information,
17 and that is why we want to understand the source of this information.
18 We're not trying to say that we would accept a suggestion that the
19 information is false. We would like to make an objection if this is
20 based on false information.

21 A very simple example: You cannot suggest to a witness that the
22 earth is not round if you know perfectly well that it is round. So we
23 cannot go and question the presumption that the information we have to
24 hand is true. So if the Defence is going to question the identity based
25 on false information, we would like to know the source of that

1 information.

2 PRESIDING JUDGE COTTE: (Interpretation) (* Previous translation
3 continues) ...

4 THE INTERPRETER: Overlapping mikes.

5 MR. GILISSEN: I would just like to try to find a way to regain
6 calm here, because if you like, we re faced with rather an urgent
7 situation. It is obvious that this information is of vital importance to
8 Mr. Hooper's team. Apparently there is one vital prerequisite and that
9 is that we know the date at which this supposedly new information was
10 received. This would be important -- this would be important for the
11 Chamber to know.

12 I feel it would more likely be the Chamber's responsibility
13 rather than the Defence's responsibility to ask the question about the
14 identity if the Chamber so feels that this is necessary. I think that
15 otherwise it is a very sensitive issue.

16 Perhaps I have taken too long to express this, and I hope that I
17 am not out of place, but that is what I wanted to say. Thank you very
18 much.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you. So at this
20 stage in our discussion the Chamber is asking Mr. Hooper to disclose the
21 information that the team has at its disposal but which could tomorrow be
22 the basis of some questions that would be put to the witness and which
23 would enable or would lead him to feel that the witness's identity, as
24 revealed upon first appearance, would not actually be the correct
25 identity, the true identity.

1 As concerns the date at which this information came to his hand,
2 we are to understand that it was after the testimony given from the 15th
3 to 18th of March. If you are able to give us the exact date, Mr. Hooper,
4 please do so.

5 Next, as concerns the end of Mr. Prosecutor's intervention, the
6 Chamber obviously depends on the ethics of Mr. Katanga's Defence team so
7 as not to have any deviation from the course that we have set. We are
8 hoping that the elements which they have in their possession are relevant
9 enough to justify this discussion.

10 So the idea is not to undermine the Court or undermine the trial
11 proceedings. The idea is to arrive at the truth and nothing more than
12 that. Once we have found out what the truth was, remember that we would
13 not appreciate it if any of this turned out to undermine the -- the
14 Defence team's hypothesis, but we would therefore ask Mr. Hooper to
15 communicate these elements of information to the -- to the Chamber and
16 the parties as clearly and as transparently as possible during the
17 testimony of Witness 160.

18 When we say we're having an adversarial proceedings, we want to
19 understand that we say adversarial in the true juridical sense of the
20 word and not in a sense of undermining one another's activities.

21 (Closed session at 5.08 p.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)
2 (Expunged)
3 (Expunged)
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14 (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged)
18 (Expunged)

19 (Open session at 5.11 p.m.)

20 COURT OFFICER: (Interpretation) Your Honour, we are in open
21 session.

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

24 Madam Witness, do you hear me clearly?

25 THE WITNESS: (Interpretation) Yes -- yes, your Honour.

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1 PRESIDING JUDGE COTTE: (Interpretation) The microphone appears
2 to be working. Thank you.

3 Over to Madam Prosecutor.

4 THE INTERPRETER: The interpreter would like to say that the
5 witness's microphone is far from clear.

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

7 Q. Good afternoon, Witness.

8 A. Good afternoon.

9 Q. A moment ago you said that you had met with Germain Katanga upon
10 two occasions, and on each of those occasions at -- several times. Is
11 that correct?

12 A. Yes.

13 Q. We're going to start with your first meeting with Mr. Katanga.
14 Could you please give us the date and circumstances of that meeting.

15 A. I wouldn't be able to give you the exact date, but if my memory
16 serves me correctly, it was in the month of October, about late October
17 2003, and the circumstances -- and he came to Kampala with
18 Witness P-0012. P-0012 went to go and greet him at the request of the
19 Ugandan officers. And they arrived, and I went to go and pick them up at
20 the entrance to the town when they arrived on the bus, because I knew
21 when the Bunia and Beni trip -- and from Bunia and Beni to Kampala trips,
22 I knew when they would arrive. So I knew when to go and meet them, and I
23 went to do that at the entry to the town, and we went together to the
24 hotel where they were to stay. I dropped them off there.

25 Q. When you mentioned "them," can you please tell us who those

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1 people were?

2 A. Yes, Madam Prosecutor. There was P-0012 who had gone to go and
3 get them. There was Germain, and there was Pascal, and the -- and Alezo,
4 who was his political advisor.

5 Q. How did Germain present -- introduce himself to you at that time?

6 A. He introduced himself as, quite simply, Germain, as Germain. And
7 it was P-0012 who said to me, "This is Germain, and the other person here
8 is Pascal," and we greeted one another. But for me, personally, I felt
9 curious, curious to meet Germain and to have contact with him, because of
10 everything that I had heard about him and about them.

11 And when I say "them," I mean the Lendu people in general. And
12 so I had been wondering what kind of person he could be, because I heard
13 that they would eat people, or how they killed people in barbaric
14 manners. I had been told that all the Lendu were like that, and I
15 wondered, how could a man become like that? So I was rather struck by
16 that --

17 THE INTERPRETER: The interpreter would like Prosecution to turn
18 off their microphone, please. It's destroying the clarity of the sound.

19 MS. DARQUES-LANE: (Interpretation)

20 Q. Madam Witness, I'd like you to make a pause, and I'd like to come
21 back to some of the information that you have just given us.

22 Why did -- Germain Katanga, Pascal Alezo, and P-0012, why were
23 they in Kampala?

24 A. At the request of the president, Museveni, and through the
25 minister of internal affairs, minister of external affairs and Polcol.

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1 They wanted him to meet with the president. The president wanted to meet
2 them, and apparently there was some problem because the Ugandan rebels on
3 Germain's side were under his responsibility over at that part where he
4 was living, and so they wanted to discuss this with him. They wanted to
5 talk about that kind of thing. I don't really know the content. I don't
6 have all of the information, but it was something like that. And P-0012
7 had said to me that he was going on his -- on this mission to deal with
8 this, something like that.

9 Q. What was Germain Katanga doing at that time?

10 A. At that time he was the head of FRPI.

11 Q. And what is the FRPI?

12 A. It was a military movement, an armed movement.

13 Q. You gave us the reasons that led the authorities to bring these
14 people to Kampala. How did you learn of these facts?

15 A. As I have said, it was P-0012 who told me, because he needed to
16 go away. He was told that this was a mission that he was to conduct, so
17 he was given this task by Emmy, who was a journalist but who worked with
18 Polcol, and he worked with Polcol on these issues. And so he was asked
19 to go there, P-0012, and go to bring back Germain. The authorities
20 needed him to do this, and they wanted to speak with him. And --

21 Q. Please take a break, Witness. The Ugandan authorities wanted
22 Germain to come. Were there any other people present during these
23 meetings apart from Pascal Alezo and Germain?

24 A. From the hotel, they left the hotel and I saw that a car came to
25 pick them up, and I think they came -- I think they left with Emmy and

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1 P-0012. They all left to go to meet with the president in
2 Banlara (* phon). They spent two nights there, and the third day they
3 came back, and I saw that there was a car that had come to pick them up
4 and they left, but there was -- those were the people there, P-0012,
5 Germain, and Pascal.

6 Q. Did you see them leave?

7 A. Yes, I saw them.

8 Q. You talked about the hotel. When Germain Katanga, P-0012, Pascal
9 Alezo left the hotel where they stayed, where were you at that time?

10 A. I was also at the hotel, because P-0012 was also there. So I
11 spent time there as well. And if I wanted, I could come and go as I
12 wished, to and from the hotel. I could spend time with them at the
13 hotel. But not only the hotel, because I wanted them to get to see
14 something of Kampala. It was the first time they'd been there, so I
15 wanted to go out about with them so that they could see Kampala, and so
16 in all we made quite a few excursions out of the hotel.

17 Q. A moment ago you said that during that first meeting you had the
18 occasion to see Germain Katanga at several times. Could you please tell
19 us what the meeting was like. How did it occur?

20 A. Well, as I said at the beginning, I was curious to see who
21 Germain was, and the way that he introduced himself, I saw that he was
22 normal. He looked normal. He spoke normally. He was normal.

23 MS. DARQUES-LANE: (Interpretation) Just a few minutes with your
24 leave. Your Honour, with your leave I shall consult with my colleague.

25 (Prosecution counsel confer)

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1 MS. DARQUES-LANE: (Interpretation)

2 Q. And so at the hotel, Witness, did you have the chance to talk
3 with Germain Katanga?

4 A. Yes. Yes. We spoke not only at the hotel, because we also went
5 out. We would go to restaurants or to the Munyonyo, which is a kind of
6 family park area. We went to restaurants, to clubs. We had the chance
7 to chat, and it was a pleasant discovery for me.

8 Q. Can you please tell us who the other people were that were
9 present with you at the hotel or when you went out?

10 A. There was only one other person. That was a friend of P-0012,
11 (Expunged).

12 Q. Excuse me, Witness. I just wanted to remind you that we are in
13 open session, so please do not mention any names out loud unless we go
14 into private session. Excuse me, please continue.

15 A. Okay. As I said, this was the only other person who was there in
16 the group.

17 Q. And when you went out and also the time that you spent together
18 at the hotel, what was the subject of your conversations, conversations
19 between you and the other people present, including Germain Katanga?

20 A. I no longer recall exactly, but we didn't exactly talk politics.
21 We talked about our lives in general. There was no particular topic that
22 was discussed at that particular point in time.

23 Q. Now I should like us to talk about the second meeting with
24 Germain Katanga. When did this occur?

25 A. The second time we met was in February, I think. Late January,

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1 early February of 2004.

2 Q. Can you please tell us the circumstances in which this meeting
3 took place?

4 A. Yes. The circumstances, P-0012 had gone to a meeting near
5 Budiba, in a village near Budiba, and on the way back he called me to
6 say, "Well, here we are. I'm with Germain. Not only with Germain, but
7 now we're going to go directly to the hotel, because we have to get ready
8 to meet with the president."

9 Q. Excuse me, Madam Witness. And in Budiba, what was happening
10 there? Why did these people -- why were these people going there?

11 A. I don't remember exactly why, but I think that he wanted -- well,
12 there were lots of problems near the lake. There had been disturbances
13 there, and they wanted to meet to see how they could resolve the problems
14 and how to find a solution to the problems in the lake area. They wanted
15 to see what they could do exactly. I think it was something like that.

16 Q. When you say "they," that they wanted to meet with them, who do
17 you mean? What do you mean by "they"?

18 A. What I mean is that the people from PUSIC went there, and my
19 husband, P-0012, and the Ugandan people, and the people from the -- for
20 (* indiscernible) Germain.

21 Q. And so who organised this meeting in this village?

22 A. If my memory serves me correctly, I think it was the Ugandan
23 officials, but I'm not entirely sure. There's one other thing I should
24 add. P-0012 also said to me that they also went there to help them, help
25 one of the commanders. One of the commanders had been dead -- had been

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1 killed, and the family was there, and so that was one of the reasons that
2 they also went there, if my memory serves me correctly.

3 Q. When you say there were problems near the lake, can you please
4 explain to us a little bit more about these problems?

5 A. Yes. On the lake there were -- there was a lot of killing. The
6 lake separates Uganda and Congo, and every single day there are people
7 who make a crossing from Uganda to Congo and vice versa. So a lot of
8 times when people left Congo or Uganda, they would go through part of it
9 which they called Semliki trois. This place, they would go through this
10 place, Semliki trois, they would go through there. It was controlled by
11 Germain's people. So a lot of times when a canoe when through that area
12 there were attacks. People would come out and follow them. They would
13 follow these people in canoes, and if they captured you, then you would
14 be a victim; and if they didn't capture you, you were lucky. That's the
15 way it was.

16 Q. Excuse me for interrupting you. When you say soldiers captured
17 you, who were these soldiers?

18 A. It was the soldiers, the F -- the soldiers of Germain Katanga, of
19 the FRP.

20 Q. Witness, if you could confirm to us, when you speak about the
21 lake, is that Lake Albert?

22 A. Yes, yes.

23 Q. Do you remember people who went to Budiba?

24 A. I know that P-0012 was there. I know that Ngoma was there. I
25 don't know who, but there, when they arrived in Budiba, they also needed

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1 people from Germain. And somebody had been sent in order to tell them to
2 wait -- meeting -- or that they were waiting at the meeting, and that's
3 why Germain was at that time returned -- or he had returned to the
4 lakes -- or he was surrounded at the lake area and he was seized -- or he
5 got the message at least, and he was found in Budiba, or they managed to
6 reach him in Budiba and then went back to Kampala.

7 Q. These different people, after going to Budiba, went to Kampala
8 and why?

9 A. They came to Kampala because they should meet the president, and
10 the president wanted these people -- or this area to be pacified, this
11 area to be pacified, because everybody was complaining in Congo and in
12 Uganda. It was a serious problem. He wanted to see how to do it. He
13 could put these people together. If he did that, perhaps they could find
14 an area which could be controlled together, and that's a way calm could
15 return to the lake area.

16 Q. You speak about President Museveni here?

17 A. Yes.

18 Q. So taking your time, do you remember people who were present in
19 Kampala, in the hotel?

20 A. I don't remember everyone, because from Ngoma -- apart from
21 Ngoma, there were also some people from their group, a couple of people
22 who I didn't know well. I've forgotten their names. But on the other
23 side there was Germain, Pascal Alezo and Didier Angaika, Mohito. There
24 was Cobra Matata.

25 Q. And P-0012 also stayed at the hotel or not?

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1 A. No, he wasn't at the hotel. He was at home.

2 Q. You, Witness, where were you at that time?

3 A. I was also at home.

4 Q. For how long approximately did these people stay in Kampala?

5 A. I think for a week and a half. There was a second meeting that
6 was meant to take place, but the president told them to wait, but they
7 were impatient. I think a day had passed, and as they came in haste,
8 they hadn't prepared matters in coming to Kampala. They thought they
9 could do it quickly, and they made arrangements to go back without
10 meeting the president for a second time.

11 Q. During their stay for a week and a half, did these people manage
12 to meet President Museveni?

13 A. I think when they arrived, directly he met them. I think so.
14 That's what I heard. He met them as soon as they arrived, I think. I've
15 forgotten. I don't know that precisely, but that's what I think.

16 Q. During this meeting where were you, if you remember?

17 A. I was at home. I was at home.

18 Q. So from whom did you hear about this meeting?

19 A. I heard about that from P-0012. And P-0012 also asked me to
20 prepare the clothing for the -- for Germain -- for Germain's group, so
21 clothing and footwear for that group. And as I had a stock of clothing
22 and footwear that I was selling, I prepared that, and there were jackets,
23 there were shoes, and as such they could wear them for the meeting.

24 Q. Apart from the meeting with the President Museveni, were there
25 other meetings between the persons who were present at the hotel?

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1 A. Excuse me, between them or with a third party?

2 Q. You're absolutely right. I wasn't very clear in this regard.

3 Were you present during meetings between these persons and yourself?

4 A. Yes. Several times I was present.

5 Q. In what place did you meet these different people, one of whom
6 being Germain Katanga?

7 A. At the hotel, also at home.

8 Q. Could you tell us what subjects were addressed during these
9 meetings.

10 A. A lot of subjects which were addressed, but the main subjects
11 were peace and everything related to that. How could peace be
12 re-established. How could things be rearranged so that we could get back
13 to normality. Everything was based on that. When we were speaking, you
14 can't really be surprised that things change so much. Now we can talk
15 about that, things can change, and today the Hema, the Lendu can come
16 together to have a common project, because we asked them to do a joint
17 project on fishing on the lakes, and in that way Uganda was going to
18 finance that project. If they did that, that could help them, and it
19 could also be a basis in order to unite them.

20 We -- well, a lot of things were spoken about. When you had
21 these surprises as to what was occurring, he would behave in a particular
22 way with regards to the Hema, and the -- one couldn't believe that the
23 Hema could collaborate with the Hema (* as interpreted). This was
24 something that couldn't be explained. And this was one thing --

25 Q. If you would allow me. I'd just like to have a break. You spoke

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1 about "they," they were surprised to be able to refer to the Hema. Who
2 were you referring to here?

3 A. I'm referring to Germain, Germain. Germain spoke, and he said,
4 "Today this is really the history. The Hema, the Lendu together, that is
5 a new history." He was welcoming that, that such moments had occurred,
6 while just a few months before that, it was impossible to think that such
7 an event could occur.

8 Q. Why was it impossible to think a few months before that you could
9 have such a moment?

10 A. Because the Lendu were completely the enemy of the Hema. Since
11 the Hema attacked the Lendu, war started. And bit by bit that
12 intensified. It became a massive thing, in Ituri, Bunia, everything.
13 They were real enemies.

14 Germain said that he almost lost his skin when they attacked. He
15 said he jumped over a wall in order to flee. It was terrible.

16 It was under these sort of circumstances.

17 Q. There you're referring to fighting.

18 A. There was always fighting. There was always fighting between the
19 Lendu and the Hema.

20 Q. Did Germain Katanga mention some of these battles?

21 A. Yes, he did mention them. He spoke about fighting in Bogoro,
22 spoke about the battle of Mandro. He spoke about the battle of Bunia.
23 When the Hema had attacked them and he -- he was very pleased with the
24 Hema organisation, and he said that at this time it was terrible. The
25 Hema really managed to defeat us, and it was after that --

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1 Q. And you said that he mentioned fighting in Bogoro, in Mandro, and
2 Bunia. Could you say with regards to the fighting -- could you say
3 something with regards to the fighting in Bogoro, as to what he said in
4 that regard?

5 A. With regard to the fighting in Bogoro, Germain said that -- well,
6 he was very pleased with the plan that he had organised. He was
7 congratulating himself with regards to how these little ones had taken
8 Bogoro, how they had fought. This was something difficult, but they had
9 really taken Bogoro with much ease, more than they were expecting.

10 Q. And when you say that he was congratulating himself or that he
11 was pleased with the organisation -- when he was -- when you say that he
12 was pleased with what he had organised, what had he organised, and why
13 did he organise it?

14 A. The plan -- well, he had made the battle plan, drawn up the
15 battle plan. And I asked, "Did you do it yourself?" He said, "No. It's
16 my little ones, but I made the plan. I did that, and I gave the orders,
17 and they went. They went."

18 Q. How could he give the order?

19 A. He was the military commander of the Lendu, but on the Ngiti
20 side. But he also said that the Lendu on Ngudjolo's side had helped him.

21 Q. You're speaking about a plan which had been given to these little
22 ones or to these forces; is that right?

23 A. Yes.

24 Q. Could you tell us what this plan was?

25 A. I do not know exactly. I don't have an exact idea of the plan.

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1 I didn't pay attention to the way in which this was explained. I didn't
2 pay attention in order to understand exactly how he explained it. There
3 were different things that he explained, how it was organised. Some of
4 this was lost on me, and it's still lost on me.

5 Q. What were the reasons for this attack?

6 A. The reasons, firstly, there was this hatred between the two
7 camps. They were looking for opportunities to attack each other. There
8 were two enemy camps. They didn't tolerate each other. That was mainly
9 the point.

10 Germain, he spoke about how he was angry with the Hema when he
11 thought how -- well, thought about the time that they had attacked Bunia.
12 Ndromo camp, the Ugandans really attacked the Lendu, the Ngiti. When you
13 think of that -- when he thinks of that, he does not pardon the Lendu --
14 as well.

15 Q. Who was living there at the time of the attack?

16 A. It was the Hema who were living in Bogoro.

17 Q. Civilians or soldiers?

18 A. Civilians and soldiers both. Both civilians and soldiers.

19 Q. And what did he say with regards to that attack? What did he say
20 with regard to the village?

21 A. He was pleased with -- it was a success. That they were pleased
22 with how they managed to defeat these soldiers who were there, how easy
23 it was to take possession of Bogoro.

24 Q. And how did they take possession of Bogoro once the soldiers had
25 left?

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1 A. I think when there's a war there's fighting, and those who feel
2 strong, they stay and the others flee. The people who were there fled,
3 and they stayed, and they established themselves there, and it's in that
4 sense --

5 PRESIDING JUDGE COTTE: (Interpretation) Witness, quite simply
6 when you answer the Prosecutor, please do not forget to wait five
7 seconds. I know that I'm annoying you with this, but you've got a lot of
8 things to say. You want to say them straight away. Please take time in
9 order to facilitate the work. I'm not criticising you. I said that I
10 would repeat that often, and we all repeat it to each other mutually.
11 Thank you very much.

12 THE WITNESS: (Interpretation) Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

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

15 Q. Madam Witness, do you remember the direction from which
16 Germain Katanga's troops were coming in accordance with what Mr. Katanga
17 told you?

18 A. I think that they said that they came from the road -- from Boga
19 road. I don't know very well, but it was something similar to that.
20 They came from one place and others came from another part. The Lendu
21 came down another part; the Ngiti from somewhere else. There was
22 something like that.

23 Q. Do you remember if anybody mentioned the civilian population?

24 A. Germain did not speak about that. He didn't say who was dead or
25 anything like that, only I heard from third parties. That is to say, for

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1 example, from a woman or a couple who were victims who were there at that
2 time, and when it was attacked how they survived and how they lost
3 members of their family. Just that.

4 Q. And when you heard the words said by Mr. Katanga, where were you
5 at that time?

6 A. We were at my home when he told us these things. There was this
7 matter of Bogoro, Mandro, and the story of Angaika Didier. All these
8 little stories, that was at my home.

9 Q. Who was present at your home?

10 A. There were the people with whom he was, P-0012. There was
11 P-0012, but in certain episodes there's one of our little ones who was
12 there who had also heard certain episodes because he was in the bedroom.
13 I remember when we left to accompany them, he told me, "Mother, these
14 people are really terrible." He said things like that. These people are
15 really terrible people.

16 Q. Please excuse me for interrupting you. I just want to go back to
17 some of your comments. When you tell us these -- when you say "these
18 people," who are you referring to when you say "these people"?

19 A. I'm referring to Pascal, Pascal Alezo. I'm referring to
20 Didier Angaika. I'm referring to Alezo -- or, rather, Mohito. And I'm
21 referring to Cobra.

22 Q. And when were these words said?

23 A. We were at home. P-0012 was meant to write a political
24 declaration, because they had just split from -- they had just separated
25 from the Lendu.

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1 Q. Just a break. When you refer to "they had just split," could you
2 tell us who you are speaking about. They had just separated themselves.

3 A. I'm speaking about the Ngiti. Germain -- on Germain's side. The
4 Lendu on Ndjabu's side and Ngiti on Germain's side. All of them in
5 general they were called Lendu, but we know that the Lendu -- you have
6 those in the north and those in the south. Those are the Ngiti.

7 Q. Please excuse me. So P-0012 drafted a political statement or
8 political declaration with these people.

9 A. He helped them. They drafted that and P-0012 had to help them.
10 Using his computer, he had to print out lots of versions of it, and in
11 that way they could sign and give it to those people concerned to show
12 them that now they were a political party, a separate political party.
13 It wasn't just an armed wing but a political party as well.

14 Q. And, Witness, you're referring to the people from the FRPI?

15 A. Yes, Prosecutor.

16 Q. And this meeting when Mr. Katanga spoke about the attack on
17 Bogoro, was this in the morning, afternoon, evening?

18 A. I no longer remember.

19 Q. A moment ago you told us that Germain Katanga had also mentioned
20 the attack on Mandro. Could you tell us what he said on that occasion?

21 A. Yes, Prosecutor. He said they had attacked Mandro in order to
22 give a lesson to Chef Kahwa.

23 Q. Please excuse me for interrupting. When you said "they," are you
24 referring to the soldiers of Germain Katanga?

25 A. Yes, yes. They had attacked Mandro in order to give a lesson to

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1 Chef Kahwa and to discourage him with regards to the meeting he wanted to
2 carry out to put the Hema and the Lendu together. He wasn't in agreement
3 at that time.

4 Q. So the reason for the attack was to show disagreement with the
5 possibility to bring together the different communities.

6 A. That's what he said. That is what he said, because he said that
7 that to show Chef Kahwa that he wasn't in agreement, they were going to
8 take the bones of his father out of his tomb.

9 Q. Who was Chef Kahwa?

10 A. Chef Kahwa was the president of PUSIC. That is the party of
11 P-0012.

12 Q. And what did Germain Katanga say about the Mandro attack?

13 A. He said that in Mandro the people had fled. They had already
14 left the village when they heard that the Lendus were coming given what
15 had happened in Bogoro. It was just a few days after that, so given what
16 had happened in Bogoro, everyone had fled. That is how come they went
17 with their anger to indicate to the chef that they were not agreed and
18 went as far as removing his father's remains from the grave.

19 Q. Did Germain Katanga talk about his role during that attack?

20 A. I believe that he said that he himself was in Mandro but that in
21 Bogoro it was his soldiers.

22 Q. Who was present when Germain Katanga spoke about the Mandro
23 attack?

24 A. Everyone whose names I mentioned before were witnesses to this.

25 Q. And was this on the same occasion as the statements made about

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1 the Bogoro attack?

2 A. Yes. It was the same occasion. We spoke a lot during that
3 occasion. We were at home. We were comfortable, we ate, and we stayed
4 there for a long time. So during that occasion, we had a lot of
5 conversations.

6 I believe these were two consecutive days. On the first day we
7 had not completed what was supposed to be done, and then we continued the
8 following day.

9 Q. And these discussions were still there at your home?

10 A. Yes.

11 Q. That is during the two days?

12 A. Yes.

13 MS. DARQUES-LANE: (Interpretation) Just one moment, please.

14 (Prosecution counsel confer)

15 MS. DARQUES-LANE: (Interpretation)

16 Q. Madam Witness, talking about the attacks on Mandro and Bogoro,
17 that is, regarding what Germain Katanga said, did he say this somewhere
18 else other than your home?

19 A. I do not believe so. I do not believe so, because at that time
20 we were either in my home or at the hotel, and at the hotel such
21 discussions did not take place. We did not talk about that.

22 Q. After that second meeting with Germain Katanga, did you stay in
23 contact with him subsequently?

24 A. I was in telephone contact with him. I spoke with him twice on
25 the telephone and that is all. We never saw each other again.

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1 Q. And why were you on the telephone with Germain Katanga?

2 A. At one time he was already in Kinshasa. He had been appointed
3 general in the national army, and he was together with P-0012 having a
4 drink. So there were congratulations, and P-0012 handed him over to me
5 on the phone. We had a conversation. I congratulated him, and that was
6 it. That was the first time.

7 The second time, Germain had called. He wanted to contact
8 P-0012, but he wasn't able to reach P-0012, so he called me, and he told
9 me to tell P-0012 that if it was possible, he should look at the
10 situation of customs revenues in Tchomia, because it had been agreed that
11 the customs revenues from there would be split into three. The people of
12 PUSIC, the people of FNI, and Germain's people would be the
13 beneficiaries, so he wanted to know whether there was a share for the
14 FRPI, and in that case the amount would be sent to him in Kinshasa to
15 assist him there.

16 Q. Why were you in contact with him on that particular issue?

17 A. About the money?

18 Q. Yes, the customs revenues.

19 A. Gave me a message to give P-0012. I do not know whether P-0012
20 even remembers that, but he gave me a message to give to P-0012, because
21 he was involved in those customs operations. And when I told P-0012, he
22 told me, in any case, I wouldn't know anything about it, because the rule
23 was not interfere in the financial matters of those people, because it
24 was risky.

25 Q. Madam Witness, were you ever a member of the FRPI?

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1 A. Yes, I was a member of the FRPI. The second time that Germain
2 came with the others, after the meeting they needed someone who could
3 represent him in Kampala, and he proposed me. He asked me whether that
4 was possible.

5 When I saw P-0012, he told me that he had discussed that
6 particular issue also, and he asked me to do what I believed was the
7 right thing and to take a decision.

8 Q. And what were your responsibilities as a member of the FRPI?

9 A. As a member, he told me, and that is Germain, the president, he
10 told me that (Expunged) and that if there was
11 an emergency, for example, and that he could not be reached, then I could
12 step in and represent him.

13 Secondly, he told me that I would be (Expunged)
14 (Expunged), and I was quite flattered by that, because I knew that this was
15 a possibility for me to come into contact with the population,
16 specifically the Ngiti women and the children, and I would be able to
17 find a possibility to help them, to educate them, to share with them what
18 I had, to assist them.

19 Q. And did you have the opportunity to (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 Q. Which was Jérôme Kakwavu's group?

5 A. I can't seem to remember the name. FAPC or something like that.
6 I forget. I'm sorry, Madam Prosecutor.

7 Q. That is not a serious matter. Anyway, was this group, Jérôme's
8 group, was it a militia group?

9 A. Yes.

10 Q. A short while ago you told us about the split between the Lendus
11 and the Ngitis. At the time that you went to Aru, had this split already
12 taken place?

13 A. Yes. At the time I went to Aru, there was already a split
14 between the Lendus and the Ngitis. When Germain arrived Kampala, he had
15 already stated the separation. And when he came to Kampala, he made a
16 public declaration, and I actually distributed the declaration in the
17 embassies to notify them that the Lendus and the Ngitis had split up and
18 that the FRPI had become a political party rather than just being an
19 armed group. It had become a political party.

20 Q. You say this was in Kampala. Was this at the time that the
21 second meeting with Germain Katanga took place, that is, with him and the
22 other members of his delegation?

23 A. Yes.

24 Q. Madam Witness, for how long were you a representative or a member
25 of the FRPI?

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1 A. From the moment that they separated, that is, when he proposed
2 that I should represent him, I accepted, and after that not much progress
3 was made. We had agreed that we would meet after one month in Germain's
4 place or in Bunia. The decision was not taken on that because we had to
5 prepare the statute and the bylaws of the party, because since it had
6 become a party now, we had to sort out those things. But we never got to
7 meet, and after one month things changed and we never met again. In the
8 meantime, Germain had also gone to Kinshasa.

9 Q. What was the relationship at that time between Germain Katanga's
10 people in the FRPI and the Lendus?

11 A. The relationship at that time was a bit tense, and I will tell
12 you what I mean. According to what Mohito said, the Lendus -- it was as
13 if the Lendus were looking down on the Ngitis. They didn't have much
14 respect for him, and sometimes in meeting -- when they went to meetings,
15 there would be about three of them, and then they would take only one
16 Ngiti. So those were the type of things that they did. They did not
17 give of much weight to the others like they gave to themselves, whereas
18 they were supposed to be allies. Some people were not in agreement with
19 that, so that tension existed.

20 Q. At the time of the second meeting, that is in 2004, the second
21 time you met with Germain Katanga, who introduced the members of his
22 delegation?

23 A. It was the president himself who introduced the others, because
24 we already knew each other, that is, myself and him. And apart from
25 Alezo, I did not know the others, so he was the one who introduced

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1 everyone to me with their different responsibilities.

2 Q. And when you talk about the president, you're referring to
3 Germain Katanga?

4 A. Yes.

5 Q. And during that meeting, did Germain Katanga tell you the
6 position or the role of each member of the delegation?

7 A. Yes. He introduced each of them to me and told me their
8 responsibilities. Pascal Alezo was the political advisor.
9 Didier Angaika was in charge of relations, that is, responsible for
10 diplomacy. Mohito was the secretary-general, and Cobra was the army
11 chief.

12 Q. Did you know another name for Cobra? Did he have a second name,
13 whether you heard it or not?

14 A. Yes, Cobra Matata.

15 Q. Madam Witness, did you ever travel to Bogoro?

16 A. Yes. I passed through Bogoro on my way to Bunia.

17 Q. And what did you see there at that time?

18 A. Sincerely, what I saw was distressing. It was painful to see.
19 Bogoro was a small village. It was quite lively, but at that time it was
20 really very calm. There was no sign of life there. Many times when we
21 passed through there to go to Uganda we would stop there. There were
22 restaurants. We would rest there. It was a good place. But at that
23 time I realised that all those things no longer existed, because that
24 town was no longer there. Many houses had been looted. The roofing
25 sheets had been removed. I saw many small houses on the road, and the

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1 general atmosphere was very different from the usual atmosphere before
2 the war. There was also a military post where people were checked.
3 Before you crossed through that, you had to show your identity documents.
4 That is what I saw.

5 Q. Madam Witness, what period was this?

6 A. It was 2004 or 2005. I think it was late 2004 or early 2005, but
7 I passed by there on two occasions.

8 Q. When you say that it was calm, were you able to see many
9 villagers?

10 A. Yes. There were people, there were many people, because
11 afterwards -- well, I do not know what happened -- what inside the
12 village was like. I'm telling you what I saw by the roadside. I never
13 entered inside the village itself. I just passed through the centre of
14 Bogoro, and there were people there.

15 Q. When you say that before the war it was a lively town, a lively
16 village which became much calmer after the war, what war are you
17 referring to?

18 A. I'm talking about the Bogoro attack, the last Bogoro attack. I
19 do not know whether there had been an attack before that, but the attack
20 that I am aware of is the one that Germain had talked to us about.

21 MS. DARQUES-LANE: (Interpretation) With your leave,
22 your Honour, I'll stop here for today, and tomorrow we will only have a
23 few questions to ask, a few minutes.

24 PRESIDING JUDGE COTTE: (Interpretation) In other words, your
25 direct examination will be concluded tomorrow after 323.

1 MS. DARQUES-LANE: (Interpretation) Yes.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

3 Madam Prosecutor.

4 Madam Witness, we are going to separate. We will meet you again
5 here tomorrow morning. We thank you for your contribution this
6 afternoon, and see you tomorrow.

7 Court Officer, let us go into closed session to allow the witness
8 to leave the courtroom.

9 Thank you, madam.

10 THE WITNESS: (Interpretation) Thank you, Mr. President.

11 (Closed session at 6.27 p.m.)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 6.28 p.m.)

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

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

24 Court Officer.

25 We will meet again tomorrow at 9.00 a.m. with Witness 323. See

1 you tomorrow, accused persons.

2 Court is adjourned.

3 The hearing ends at 6.28 p.m.

4 CORRECTION REPORT

5 The following correction has been made to the transcript:

6 * Page 25 line 12:

7 "In the presence of the accused" is corrected by

8 "In the presence of the prosecution"

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