

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra, and

4 Judge Christine Van den Wyngaert

5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07

6 In the case of the Prosecutor versus Germain Katanga and

7 Mathieu Ngudjolo Chui

8 Trial Hearing

9 Tuesday, 8 June 2010

10 The hearing starts at 9.04 a.m.

11 (Open session)

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

14 PRESIDING JUDGE COTTE: (Interpretation) Court is now in
15 session. You can please take your seats.

16 The accused persons are in the room. We can therefore begin our
17 hearing.

18 The Chamber would like to point out that Mr. Gilissen will also
19 be absent tomorrow, Wednesday. I believe I told you yesterday that he
20 has been held back by a case in Belgium that he was not able to postpone.
21 So it is Maitre Julie Goffin who will represent him. Mr. Gilissen
22 apologises to all the parties and participants in this hall.

23 Mr. Prosecutor, I believe that Mr. MacDonald will tell us the
24 dead-line later this morning -- except you will be the one to tell us
25 about the table.

1 MR. GARCIA: (Interpretation) Yes, Mr. President. Mr. MacDonald
2 will be here after the morning break to give an answer to the question
3 put to us by the Chamber.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Mr. Prosecutor.

6 Yesterday we adjourned while Mr. MacDonald (as interpreted) was
7 trying to present a document to the witness, DRC-D02-0001-0113. This was
8 a voter's card, but the Prosecutor indicated that he wished to make an
9 objection, so we are listening to you, Mr. Prosecutor. Please go ahead.

10 MR. GARCIA: (Interpretation) Mr. President, before going into
11 the issue of the voter's card, I know that yesterday Mr. Hooper claimed
12 that this was a strategic tactic of the Prosecution, but the problem is
13 as follows. The Prosecution had clearly stated and notified the Defence
14 that we intended to object to the presentation of this document to the
15 witness, and therefore when Mr. Hooper stood up and immediately asked the
16 Court Officer to present the document, it was difficult for the
17 Prosecutor to react because you have to find the document number on the
18 list, given that the document transmitted to us by the Defence team
19 includes about 20 documents. So we needed a certain amount of time to
20 react. So I will request that if we are dealing with a document that is
21 being objected to by the Prosecution, I would ask that Mr. Hooper or any
22 other Defence team should clearly state that they intend to discuss that
23 document and it would give us the necessary time to identify that
24 document from amongst the lists of documents. We can discuss that and
25 the Chamber will decide before that document is present.

1 In other cases, such as photographs, we would not want such a
2 photograph to be shown before a decision is taken. This is the first
3 point I wanted to make to the Chamber. I believe that it is important
4 for us to proceed in that manner when we are dealing with documents and
5 photographs objected to by the Prosecution.

6 Now, regarding the witness's voter's card, on the 25th of May,
7 that was when the Prosecution received notification from the Defence that
8 they intended to use that voter's card, considering that we did not have
9 any information regarding the authenticity of the card, the Prosecution
10 immediately indicated their intention to object to the presentation of
11 that card to the witness. At the same time, we asked the Defence team of
12 Mr. Hooper to provide us with information relating to the provenance of
13 that document, particularly the person who made that card available to
14 them. It is mentioned on the card "duplicata." It is a voter's card.
15 The eCourt Protocol clearly states that when a party intends to provide
16 evidence or to produce evidence, the adverse -- the other party has to be
17 given the full chain of custody, and this includes the name and first
18 name of the person who provided that card to the Defence.

19 We sent a mail to the Defence in this regard so that we could
20 start an investigation. We received a reply yesterday from the Defence,
21 and what we received yesterday is not sufficient. Mr. Hooper limited
22 himself to giving us the first name of the technician in question, and in
23 the sheet sent to us by Mr. Hooper's team, under "source identity" we
24 simply have a technician of the Independent Electoral Commission of
25 Bunia.

1 Yesterday we received only the first name of that person and we
2 need the full name, and the Defence is fully aware of that, before we can
3 carry out our investigations. We sent a second mail yesterday asking for
4 the full name and except I am mistaken or except an answer was sent while
5 I was already here in the courtroom, we have not yet received a response
6 from the Defence team.

7 Mr. President, the second point relating to the voter's card is
8 as follows. It is important for the Chamber to be informed, and it is
9 for that reason that we referred you to the Law on Enrolment, or rather,
10 Registration of Voters in the Democratic Republic of Congo. When you
11 look at that law, it states in Article 27 that there are certain
12 provisions to be fulfilled before obtaining a card bearing the indication
13 "duplicata," and it is only the owner of that card who can have that
14 card, who can be issued the card. And I realise that the card was given
15 to the Defence team. And following discussions with the spokesperson of
16 the Electoral Commission, we were told that it is possible to have a
17 "duplicata" when the owner of that card is not present, but obviously
18 this should happen only if the owner of the card is in the hospital, for
19 example, where he is incapable of going to fetch the card himself. But
20 there has to be a mandate from the owner of the card himself. There are
21 sanctions in Article 50 of that law that punish people for noncompliance
22 with these provisions. So I believe the Chamber has to be fully informed
23 about what is happening and to be informed regarding the authenticity of
24 the process or the procedure that was used to obtain this "duplicata."

25 This is the information I wanted to provide to the Court today

1 concerning the voter's card.

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

4 Mr. Hooper, in reaction to the Prosecutor's statement, can you
5 provide us with details about the chain of custody that enabled you to
6 obtain that "duplicata" of the voter's card that you would like to
7 present to the witness. So please provide us with information about the
8 source and authenticity of that document.

9 And yesterday at 7.20 p.m., your team sent a mail to all the
10 participants and you attached a document from the Independent Electoral
11 Commission. So we would also like to have further information of --
12 about that so that we can decide in full knowledge of the facts regarding
13 the admissibility of this document.

14 Mr. Hooper, you have the floor.

15 MR. HOOPER: Yes, thank you.

16 Well, I understand my friend's objection to the admission or
17 referring by the Defence to this document to be based on the fact that
18 the Prosecution lack "any information regarding authenticity."

19 In other words, that their concern and their objection this
20 morning is based on a failure or a lack of information received by them
21 as to authenticity of the document. The position is this in terms of
22 chain of custody and my understanding and belief is that some weeks ago,
23 two or three weeks ago, the person who serves us as investigator went to
24 the "Commission Electorale" based in Bunia and requested information
25 relating to this witness. Now, the Chamber will be aware that the

1 Defence was, of course, aware and alerted as to the existence of this
2 kind of document in the course of the evidence of Witness 132, who gave
3 evidence, you may recall, about her details and in fact produced through
4 the Court and through VWU an electoral card. So it was in response to
5 that that our inquiries were made with the surprising result that we had.

6 The nature of the document will therefore first of all be one
7 familiar to the Prosecution and to the Court, and on the face of it, its
8 similarity to the previous document that you've seen in its content and
9 layout and the rest in itself affords indicia of reliability and
10 authenticity.

11 When this was served on the Prosecution, in conformity with the
12 eCourt Protocol, the Defence provided the Prosecution with the
13 information that it had available to it and essentially that it remains
14 the position. We provided the chain of going back, as it were, from us
15 through to the investigator and from him to the Electoral Commission.
16 And we nominated the person there as a technician working at the Bunia
17 Electoral Commission.

18 Just pausing there, this is rather similar, is it not, to a
19 situation that might arise where you have company records and where the
20 name of a particular individual is far less significant and important
21 than his function. In this particular case, we didn't have the second
22 name, as I discovered last few days. We had just the name that's been
23 provided to the Prosecution, the first name. I don't pronounce that in
24 open Court, particularly in the light of what the Prosecution have just
25 said or threatened.

1 So that's the position. So in our submission, we've provided the
2 Prosecution with full and adequate disclosure in line with the eCourt
3 Protocol. They'll not be further assisted by -- particularly much by the
4 first name. The importance for them would be that presumably this is a
5 resource that they themselves can chase up and follow if need be.

6 But let me come to the other document that you've referred to,
7 Mr. President, and that is the document -- and can I call it up, please,
8 DRC-D02-0001-0118. If that can be produced on screens or we may have
9 hard copies of it -- we have hard copies and I'll distribute them in any
10 event because they are helpful to you, the Judges, sometimes, these hard
11 copies. Can I pass these up, please, to you, the Judges.

12 You have a copy.

13 This is exactly the same as the copy that you have and let me
14 take you to it. Now, you'll see from this document, this is a document
15 that I'm astounded - and I use that word without, I hope, being over
16 dramatic about the situation - astounded that the Prosecution hasn't
17 brought to your attention, neither yesterday nor this morning. This is
18 not our document. This is a document that was served on us by the
19 Prosecution on Sunday, and you'll see it was a document received by them
20 I think on the 2nd or the 3rd of June. Now, it's signed by Abbe
21 Apollinaire Muholongu Malumalu, who is director of the "Commission
22 Electorale Independante." It's addressed to the vice prime minister, the
23 minister of the interior, the minister of justice, and all at
24 Kinshasa/Gombe. It's addressed in particular to Monsieur le Procureur
25 General de la Republique, and it's obviously a response to Monsieur le

1 Procureur General de la Republique that was initiated by the Prosecution.
2 During week's adjournment that we have had, the Prosecution have been
3 busy and they've been making inquiries about the documents that they've
4 been served.

5 And what does this document, this response, show? It says
6 essentially - and I won't attempt to read the French - but looking at it
7 and translating it loosely it reads that: Following your requisition,
8 and gives a very long number, of the 1st of June, 2010 -- just pausing
9 there. We served the Prosecution with this about the 20th of May. It
10 was -- we received then this e-mail that's been referred to by the
11 Prosecution this morning that they objected, not to this document but to
12 all our documents in general. That was received on the 26th of May. So
13 this document has come to us from the Prosecution between that e-mail,
14 stating that they were raising an objection generally, and today.

15 I continue: Following your request, I have the honour to
16 transmit to you and annex the present extract of the identity of the
17 carrier of the card - and it gives the card number - (Expunged)
18 (Expunged)
19 (Expunged)
20 (Expunged). So -- and if you look then at
21 the reverse of the paper document or further down on the eCourt document,
22 you'll see that what you have there is very similar to the card, it's in
23 a different layout, but that's the format that the details that appear on
24 the card itself are retained within the computer, the national computer,
25 for the electoral register and the details are the same. There's no

1 departure in the details. The details on the card and the details here
2 are the same.

3 So I'm extremely surprised that the Prosecution have chosen not
4 to refer you, the Judges, to this. One couldn't get clearer, clearer
5 indicia of reliability in terms of what is on the face of this card.

6 The objection remains in our submission specious and wholly
7 unnecessary. This is a document, the Defence maintains, is quite clearly
8 appropriate to show to this witness, to produce again for his evidential
9 response to the matters that are contained in it. It's further - and
10 that's in terms of an application to produce for evidential response from
11 the witness - that further it's -- clearly falls within the category of
12 documentary evidence that can be admitted. It has an inherent
13 correlation on the face of it with the witness. And in any event, due to
14 its relevance, the indicia of authenticity and general reliability that
15 it carries, particularly with the document produced by the Prosecution
16 itself, the lack of prejudicial effect, given that the Prosecution have
17 had and used the opportunity to investigate the document, the fact that
18 it's important that the witness have the opportunity to deal with it and
19 to give us his evidential response.

20 I remain at a loss to understand why the Prosecution have chosen
21 to object in the manner and the timing that they did. Those are my
22 submissions.

23 MR. KILENDA: (Interpretation) Mr. President, sir.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.

25 Mr. Prosecutor -- I'm sorry, Mr. Kilenda, I had not seen you.

1 MR. KILENDA: (Interpretation) Thank you, Mr. President,
2 your Honours. I admit that throughout last night I was wondering what
3 was the objection of the Prosecutor. I also admit, like Mr. Hooper, that
4 I am very surprised by the nature of this objection. And if I fully
5 understood the Prosecutor, he is claiming that the -- Mr. Hooper produced
6 a "duplicata" of that card because under Article 27 the Katanga team is
7 not the owner of that card.

8 This is surprising to us because, as you know, this witness who
9 has many different birth-dates based on what we have heard during his
10 testimony, he has mentioned many different birth-dates. And we realise
11 that based on those birth-dates, he invented the capacity of a child
12 soldier so as to accuse our clients. As Defence teams, it is our duty to
13 look for any information that can contradict that theory, and the Defence
14 team of Mathieu Ngudjolo strongly believes that by proceeding in that
15 manner, the Defence team of Germain Katanga didn't perpetrate any
16 sacrilege because it is their right to defend their client to the very
17 end and honestly.

18 I have heard from the Prosecutor that the Chamber has to ask
19 itself the question with regards to the legality of the steps which have
20 been undertaken, but how can you say this when from all the examination
21 here it would appear that this witness has several different birth-dates
22 and that he himself can address the Independent Electoral Commission to
23 produce a document which could go against these objectives and objectives
24 which consist of trying to pass oneself off as a child soldier, recruited
25 to participate by our client in the hostilities.

1 And I would also like to draw the attention of the Chamber to the
2 fact that when you ask yourself the question with regards to the legality
3 of the steps undertaken by the Katanga team, to remind you at the same
4 time that in the Lubanga case, at least with regards to the decision on
5 the confirmation decision confirming the charges, the pre-Trial Chamber
6 admitted into evidence a document which was obtained in the Congo
7 following an illegal search, and despite the fact that there was an
8 appeals judgement in Kinshasa which declared that this search was
9 illegal. But here we are not within this framework. Here there is no
10 illegality which can be made against the Katanga team. They have been
11 very transparent in the production of the document. And as
12 Counsel Hooper stated, the Prosecutor himself has come to undertake steps
13 in order to verify the authenticity of this document; and as such, I
14 understand that the Prosecutor has this card. If he -- no. If he's not
15 the bearer of this card, so why should he take steps in that regard in
16 order to verify its authenticity? And as such, your Honour,
17 your Honours, I think there is no illegality, no irregularity which can
18 be made against the Katanga team.

19 And I would like you to note that the document which has been
20 produced and which Counsel Hooper would like to show to the witness who
21 is before us is a document which is relevant because it will make it
22 possible for you to judge it and you to verify all the different
23 allegations which are made here which consist of saying that this witness
24 who is testifying before you today was a minor at the time of the facts
25 and that he was recruited by our clients in order to participate in the

1 hostilities.

2 The Mathieu Ngudjolo team supports without any reservations the
3 objectivity and the steps which are being undertaken by the Katanga team,
4 and we think that, as our esteemed colleague Counsel Hooper has said,
5 that the objection of the Prosecutor has no sense. Thank you,
6 your Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
8 Counsel Kilenda.

9 Prosecutor, you have the possibility to give us your point of
10 view, very briefly, and then the Chamber will rule. We are listening to
11 you.

12 MR. GARCIA: (Interpretation) Very briefly, your Honour. I'm
13 going to start by saying the following. It is not up to Counsel Hooper
14 to decide when and if he wants to respect what has already been decided
15 in the eCourt Protocol. It is clearly said in the eCourt Protocol that
16 you have to provide the name, the first name and the surname of the
17 person, you have to give sufficient information such that you can
18 investigate as to where the document comes from, what's the source of the
19 document, under which circumstances was the document provided. The
20 Prosecution respects the eCourt Protocol. All parties should respect it.
21 It is not up to Counsel Hooper to decide when he wants to provide it and
22 when he does not have the intention to do so when it does not serve his
23 intentions to not provide the name.

24 Now, if Counsel Hooper has the name of the person, the full name
25 of the person who provided this document, then he must disclose it to the

1 Prosecution. If there is no particular reason why he doesn't want to
2 disclose it or why he -- or whether he claims there are justified reasons
3 for redactions thereof, he also has to give these reasons as soon as
4 possible. But from what I've seen from his pleadings, Counsel Hooper
5 does not have the intention today to respect what is clearly indicated by
6 the protocol -- by the eCourt Protocol. And the Prosecution therefore
7 ask for the -- that if Counsel Hooper has the full name, that that be
8 given to the Prosecution as soon as possible.

9 I don't have the intention of going into the details where it
10 concerns the investigation of the Prosecution concerning this document,
11 but what I can tell you, your Honour, is that we continue today to follow
12 these investigation. It is not finished. Counsel Hooper states that the
13 document was transmitted to us on the 20th of May, and in accordance with
14 the information that we have, it was the 25th of May that it was
15 transmitted to us. And it was not the Sunday, it was the following day,
16 having received the information from Kinshasa that the Prosecution
17 transmitted this information immediately to the Defence.

18 So the Prosecution has conformed with its obligations. It has
19 done so speedily and it has done everything such that the Defence can
20 continue with its cross-examination in an efficient way. But I'm not
21 going to go into the issues concerning the ends or the conclusion of the
22 investigations because they are not finished as yet. But I would also go
23 back to my first point, namely, that Counsel Hooper cannot decide himself
24 arbitrarily when he wishes to provide full names or not. If he has them
25 in his possession, he has to provide them today.

1 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, so an
2 ultimate reply to that.

3 MR. HOOPER: Yes. There's been a misunderstanding, I think, on
4 the part of Mr. Garcia or perhaps a misinterpretation. But I've never
5 said that I'm withholding information; that's not the position. We asked
6 our investigator for the name. (Expunged)
7 (Expunged). May I say that the Prosecution's
8 own disclosure information in documents is littered with examples where
9 there's inadequate information, presumably because the Prosecution don't
10 have it.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
12 Counsel Hooper. We would ask for a few moments.

13 (Trial Chamber confers)

14 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor,
15 Counsel Hooper, Counsel Kilenda, the Chamber has not asked for the
16 Legal Representatives of Victims to make their contributions. They
17 haven't shown their interest in doing so yet. So what we would firstly
18 do is to provide you with our point of view.

19 Following the exchanges that have taken place between the
20 different parties, it would seem that certain major words used, sacrilege
21 was spoken about, there are other legal terms that are perhaps to be used
22 here. The Chamber considers that it is imperative for it to come to its
23 manifestation -- come to the manifestation of the truth; that is its
24 mission. And as such, there is a witness who is said to -- allegedly a
25 child soldier. It is crucial for the Chamber to know if it really was or

1 is a child soldier. Everything that will help it to see that more
2 clearly should be received, and in the case in point, this copy of the
3 election -- of the elector's card, it seems relevant. It is evidence
4 which is linked to the case before it. The information which has been
5 provided to it with regards to the conditions under which this copy was
6 obtained do seem at this stage of the proceedings to be sufficient to
7 declare it as admissible.

8 Counsel Hooper, you can therefore present this photocopy to the
9 witness when he comes into the courtroom. The Chamber notes, as you
10 yourself make reference to, Counsel Hooper, that during the testimony of
11 Witness 132 a photocopy of an elector's card of the same kind, of the
12 same look, was discussed before this Chamber. And it is therefore
13 important to be able to continue to obtain assurances with regards to the
14 exact age of this witness, having stated that it is only at the end of
15 our proceedings that the Chamber will have sufficient information to make
16 it possible to assess the exact weight of this evidence.

17 In order also to answer at a more general level with regards to
18 what the Prosecutor has said, the Chamber is in agreement with him, it
19 thinks that it is important, whenever a party envisages producing before
20 a witness a document or a photograph, the Chamber considers that it is
21 important that the parties in the case in point ensure that they have not
22 previously received correspondence which states that there is --
23 expresses an objection and leaves it to the party behind this original
24 objection the minimum amount of time in order to be able to react before
25 the document be presented to the witness.

1 This is an issue of housework here between us, but we are sure
2 that we have to ensure that we pay great attention to this.

3 Now, the security officers, please, could you escort out the two
4 accused from the courtroom so that the witness may come back to us.

5 (The accused withdrew)

6 PRESIDING JUDGE COTTE: (Interpretation) We are now going into
7 closed session in order to allow the witness to come in.

8 (Closed session at 9.46 p.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Open session at 9.47 a.m.)

20 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Witness.

21 THE WITNESS: (Interpretation) Good morning.

22 PRESIDING JUDGE COTTE: (Interpretation) You can hear me well
23 therefore, Witness?

24 THE WITNESS: (Interpretation) Yes.

25 PRESIDING JUDGE COTTE: (Interpretation) So we can therefore

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 17

1 continue with our work together. It is ten to 10.00, Witness. We have a
2 good hour and ten minutes of hearing, and then we'll take a break at the
3 normal time, 11.00.

4 Counsel Hooper, you can continue with your cross-examination, you
5 have the floor. We are in open session for the moment.

6 WITNESS: WITNESS P-0279 (Resumed)
7 (Witness answered through interpreter)
8 Questioned by Mr. Hooper: (Continued)

9 Q. Good morning, Mr. Witness.

10 A. Good morning.

11 Q. Now, yesterday I showed you a photograph, a large coloured
12 photograph, of someone who we say was your sister, your younger sister.
13 Do you -- having reflected on this overnight, do you have anything to
14 add, having seen that photograph? Do you think that photograph was a
15 photograph of her or not?

16 A. I'm reflecting on this photograph because I have seen the card on
17 which this photograph is, the last card that I was shown, and I am
18 reflecting with regards to this photograph.

19 Q. And where do your reflections lead you?

20 A. What I've understood -- well, it is in relationship to my card,
21 what I have been -- or the last card that I was shown here. I have
22 understood that it was my younger sister. And where it concerns the age
23 at the time of enlistment when one didn't have this card, it wasn't good
24 for the person who was enlisted. So an age was invented to try and
25 obtain a card, and that is why you have the age on the card that you

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 18

1 showed me yesterday.

2 Q. Yesterday. Well, I think you may be talking about another card
3 which we were not committed to discuss with you yesterday. You've
4 obviously been thinking about it overnight in the time that you've had
5 available to you. Let's go to that card and let's discuss it. So let's
6 call up the last card I showed you last night but didn't get the
7 opportunity to discuss with you because we got interrupted, and that's
8 DRC-D02-0001-0113. This of course is private.

9 COURT OFFICER: (Interpretation) In order to be able to view
10 this document, please press "PC 1" next to your screens.

11 PRESIDING JUDGE COTTE: (Interpretation) I would just ask the
12 people whose screens are turned towards the public possibly to be
13 careful, to ensure that the public doesn't see this document. It has
14 identifying elements which the public should not see when we are in open
15 session.

16 MR. HOOPER:

17 Q. Mr. Witness, it's important for you to remember, we are in public
18 session. So don't mention out loud any names. We can avoid that because
19 I'm only going to refer to things on the card.

20 So let me start off by asking you this: Is that a photograph of
21 you on the card that you see on the screen?

22 A. Yes.

23 Q. And does that card have your full names? Don't repeat them.
24 Just yes or no.

25 A. They are my names.

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 19

1 Q. Does the card have your correct address at the time, yes or no?

2 A. The address is there.

3 Q. Does it have the correct name for your father, yes or no?

4 A. Yes.

5 Q. Does it have the correct name for your mother, yes or no?

6 A. The answer is yes.

7 Q. Is that your finger-print on the card?

8 A. Yes.

9 Q. Is it right that you obtained that card in August 2005? I have
10 that information from another document. I can show you that document, we
11 can call it up.

12 MR. HOOPER: Can I call up DRC-D02-0001-0118, and it's the second
13 part of the document, the one showing the computer details.

14 COURT OFFICER: Can you please confirm the level of
15 confidentiality.

16 MR. HOOPER: Private.

17 And so can someone ensure that the witness is seeing that
18 particular card rather than the earlier one -- or print-out, I should
19 say.

20 Q. I don't know how clear it is on your screen, but if you look at
21 that card, on the right-hand side below your photograph we have "ID" and
22 then we have date created. And as my eyes serve me, I think that's the
23 (Expunged). That's the date that's
24 retained in the computer for that creation of the document.

25 Do you accept that it was in (Expunged) that you obtained that

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 20

1 card?

2 A. I do not remember.

3 Q. Now, can we go back then to the original card that we were
4 looking at, that's 0001-0113. Is that up on the screen? All right.

5 Now, this document is a document produced in a computer-readable format
6 issued by the Democratic Republic of Congo to you in order that you can
7 exercise a right to vote in the national elections.

8 Did you yourself get this document?

9 A. Yes.

10 Q. The date of birth that we see on there gives a date in 1984. I
11 won't specify it any more than that. And that's your correct date of
12 birth, isn't it? And before you answer, I'd like you to think long and
13 hard about the answer you're about to give. As the Judge told you right
14 at the beginning of this trial, you're here to tell the truth.

15 Now, is that date of 1984, in fact, your date of birth?

16 A. No.

17 Q. Okay. Can you just remind us, please, again what you say your
18 date of birth is. And please don't get up.

19 MR. GARCIA: (Interpretation) We are in open session.

20 MR. HOOPER: Well, that's a point, actually --

21 PRESIDING JUDGE COTTE: (Interpretation) Do you really think
22 that a date of birth given in a totally fluid way could be helpful in
23 identifying the person? I'm just asking you the question. The simple
24 fact of giving a date of birth without attaching it to an identity, does
25 that pose a problem? I'm asking you the question because we'd like to

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 21

1 know the answer.

2 (Prosecution counsel confer)

3 PRESIDING JUDGE COTTE: (Interpretation) In the meantime, I
4 would ask the witness to think about the answer, as Counsel Hooper asked
5 him to do.

6 MR. GARCIA: (Interpretation) Your Honour, yes, indeed. When
7 you look at the date of birth independently, you are right; but I think
8 that if you look at all the testimony, the date of birth could indeed
9 lead to the identification of this witness, and that is information that
10 was redacted some time ago. I do not think that Counsel Hooper has any
11 objection to us moving into private session. I think that we have to
12 bear in mind that the witness is currently in a witness protection
13 programme.

14 MR. HOOPER: (Previous translation continues) ...

15 MR. GARCIA: (Interpretation) And so rather than taking any
16 chances, I think it would be wise to immediately move into private
17 session in order to get that answer to this question; and afterwards,
18 Counsel Hooper can continue with his questioning.

19 MR. HOOPER: (Previous translation continues) ... question,
20 Mr. President. I'll rephrase my question.

21 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, we
22 agree that the date was mentioned. We will no longer talk about the date
23 in numbers. We know what we are dealing with here. We know what year
24 you are referring to and the witness understood it as well. If he had
25 not understood, in that case we would move into private session so that

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 22

1 things could be made clearer. But I think right now it is important to
2 remain in open session, and so I would ask you to phrase your questions
3 bearing that in mind. Thank you.

4 JUDGE DIARRA: (Interpretation) You can replace the date that
5 you say in numbers by simply saying "this date." It is very important
6 for these proceedings to be in open session.

7 MR. HOOPER:

8 Q. So which date is your correct date of birth, do you say? Is it
9 the date you gave the investigators, a date in 1991; or is it the date
10 you gave in your evidence, at the beginning of your evidence, a date in
11 1990; or neither of those dates? What do you say? Is it 1990? 1991?
12 1984, as shown on the card? Or another date? Don't give us the full
13 date, just the year.

14 A. It's in 1990.

15 Q. And just remind us how old you are today. How old are you today?
16 Have you forgotten again? How old are you today?

17 A. With regard to my age, given the date that I gave you, in that
18 case I would be 20 years old.

19 Q. No, I think you're 19, actually. But I accept it's probably
20 difficult to remember in your situation. You, I suggest, were born in
21 1984. That's right, isn't it?

22 Let me ask you this: Tell us how you got this card and tell us
23 why the date on it is August -- sorry, is 1984. Why is the date on this
24 card 1984?

25 JUDGE DIARRA: (Interpretation) You are doing nothing to

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 23

1 encourage this debate in open session. We told you why there is that
2 date on the voter's card. Everybody understood. Everybody knows what
3 date is on the voter's card, but you did not take our wishes into
4 account. You are going on and on and you're going to oblige us to go
5 into closed session.

6 The question as to whether that date on the voter's card is not
7 the real one, he answered that. We answered that question. We heard it
8 once. We understood. And we know why the numbers themselves are to be
9 avoided. We do not want to move into closed session because of this.

10 PRESIDING JUDGE COTTE: (Interpretation) In fact,
11 Counsel Hooper, we will go into paraphrase mode. We will look at the
12 date that was given to the investigators, I think the witness knows what
13 that is about; the date that is on the passport and that was presented to
14 this Court when the witness arrived for the first time; and the date that
15 appears on the voter's card. And if we can manage to work with these
16 three different things, perhaps we will be able to remain in open
17 session. There. But we know that this is awkward for you. In fact,
18 it's not easy for anyone.

19 MR. HOOPER: (Previous translation continues) ...

20 Q. So let's come back to the question. Tell us how you got this
21 card and why the date of birth on it is what it is.

22 A. That card, I did everything to get it because of my safety and
23 because the year that is there -- I decided to increase the number of
24 years so that I could get that card.

25 Q. Tell us about your concerns about your safety that provoked --

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 24

1 prompted you to get the card. What do you mean? What were your concerns
2 that caused you to get the card?

3 A. No. It was when they came to do the enlisting. The reason I was
4 asking for this for my own safety was because they were saying that when
5 enlisting, if somebody didn't have this card, well, when they started to
6 check, then the person who didn't have that card, then he would have
7 problems. He would be arrested or put into prison, and that is why I got
8 that card made. That is a reason I had that card made.

9 Q. Forgive me, but I don't understand what you are trying to say
10 there. What do you mean "when enlisting"? Enlisting in what?

11 A. It was when those cards were being issued.

12 Q. I understand. So -- all right. So let's start really at the
13 beginning. They start issuing these cards for the purpose of the
14 elections. Now, you go and get one and you said that it was for your own
15 safety. Can you explain how they helped your safety, how getting this
16 card helped your safety?

17 A. It helped with my safety in that wherever I wanted to go, I could
18 go easily. It was that card that helped me. That is how that card could
19 help me.

20 Q. But how would that card help you -- help your safety?

21 A. (No verbal response)

22 Q. Do you have an answer? How did it help your safety, having that
23 card with those details on it?

24 A. I've just told you. It is when I moved about, it was then that
25 that card helped me. It was when I moved about, when I met with

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 25

1 soldiers, if they asked me for my card, then I was able to show them that
2 card. It was that card that helped me with my safety.

3 Q. But according to you, at that time you were only 15. What
4 advantage was it to you to say you were 20?

5 A. I didn't fully understand your question.

6 Q. According to you and your correct date of birth, you were just
7 15. So what advantage was it to you to show a card to soldiers that
8 stated you were 20, that you were older than you were? How does that or
9 would that help your safety?

10 A. (No verbal response)

11 Q. Well, again that's a long pause. Do you have an answer to it, to
12 the question?

13 A. I do not have any answer to that question.

14 Q. Now, when you went along to the Electoral Commission to get a
15 card that clearly was regarded as very important by everybody, what
16 document did you produce to show that you were born on the year that
17 appears on that card?

18 A. I didn't have any other documents. What I showed them there --
19 well, it was my big brother who had written something on a bit of paper,
20 it was written by my older brother, and that is what I presented where
21 you had to register.

22 Q. And you went along yourself, did you?

23 A. Yes.

24 Q. As a 14-year-old and you said, "I'm 20"; is that right?

25 MR. GARCIA: (Interpretation) Your Honour, if I may, I don't

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 26

1 really want to intervene at this particular point in the
2 cross-examination, but I would just like to have a clarification as to
3 whether it is 14 years of age in his question. I think that he mentioned
4 a different age before that.

5 MR. HOOPER: I'll repeat my question.

6 Q. You go along and you're -- you say you're 14 -- you're 14, but
7 you claim to be 20. That's my question.

8 MR. HOOPER: And if I'm wrong, you can correct it -- Prosecution
9 can correct me in re-examination, but my maths, I think, have led me to
10 that.

11 Q. Is that right?

12 MR. GARCIA: (Interpretation) Your Honour, I think that we have
13 to clarify this question at this particular time in order not to mislead
14 the witness. Counsel Hooper referred to 15 years of age on a number of
15 occasions.

16 PRESIDING JUDGE COTTE: (Interpretation) Well, it all depends on
17 the starting date that we want to take, and that is a problem that we are
18 dealing with. The steps were taken -- I apologise.

19 Counsel Hooper, go ahead.

20 MR. HOOPER:

21 Q. If you take the date that you've given this Court as your
22 birthday and we look at the date the card was issued, you were 14. So
23 I'm not asking you to do the maths; I've done it for you. So you turn up
24 and you say, "I'm 20 years old," when in fact you were 14, and they give
25 you a card. Is that what you're saying?

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 27

1 A. I didn't say anything. I gave them the piece of paper that I
2 had. That is when they made this card for me. I didn't say anything to
3 them. The 14 years of age that you are referring to, I did not talk
4 about that. I didn't say anything about 14 or 15 years of age.

5 Q. What was the piece of paper that you provided them? What was
6 that?

7 A. It was the piece of paper on which you see what is written on the
8 card.

9 Q. What was the document you gave them as proof of who you were and
10 how old you were? What was it?

11 A. I have just told you, the document I gave them, it was
12 information written on the piece of paper. That is the information that
13 they wrote on the card.

14 Q. You see, I have a copy here of the relevant law in the Congo,
15 dated December 2004, and I'm looking at Article 10. Just one moment.
16 This was provided, I think, by the Prosecution. It hasn't yet been given
17 an EVD number. In due course, we'll submit it. So let me just
18 paraphrase, loosely translated, what Article 10 says. And what it says
19 is:

20 "To prove the identity and age of an elector," someone who wants
21 to be put on that list of electors, "consideration will be taken of one
22 of the documents below ..." and then it lists documents, and they're the
23 kind of documents you would expect. It starts with certificate of
24 nationality, citizen's card, national passport, driving licence, pension
25 document, "carte de l'eleve," "carte de service." And it says:

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 28

1 "In the absence of one or other of these documents, consideration
2 will be given of evidence placed in front of the bureau of the centre of
3 inscription by five witnesses already on the list of electors and
4 resident for five years in the place of the centre of inscription."

5 From what you say, Mr. Witness, you didn't have any of those
6 documents with you, did you?

7 A. That is correct, and I was not the only one. I did not have
8 those documents. There are other people who arrived with bits of paper
9 that they would present, and they were registered and they were given
10 cards. And I proceeded in the same manner.

11 Q. All right. Now, let me return to the issue of the other
12 photographs that you were shown yesterday, which I began to ask you
13 about. Let me go back to that. There was a photograph I showed you of
14 your younger sister. Do you accept that that was your younger sister in
15 the photograph I showed you?

16 A. Yes.

17 Q. I --

18 MR. GARCIA: (Interpretation) Mr. President, just so that the
19 transcript should be clear, Mr. Hooper has to specify the photograph that
20 he's referring to because two photographs were shown to the witness
21 yesterday. To be clear about the issue, we have to know which photograph
22 specifically is being referred to now.

23 PRESIDING JUDGE COTTE: (Interpretation) That is well taken,
24 Mr. Prosecutor. Most of us would not hesitate, but for the record,
25 Mr. Hooper - or I can do it myself - DRC-D02-0001-0105. I believe that

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 29

1 is the reference. Now that is in the record so that there should be no
2 ambiguity.

3 You can proceed, Mr. Hooper.

4 MR. HOOPER: Thank you.

5 Q. And I also showed you an identity card in the name of your
6 sister, a student identity card. And on that there was a photograph.
7 And do you accept now that that is your sister as well?

8 A. (No verbal response)

9 Q. All right. There's a long pause, so let me ask the question
10 again. I showed you an "identite de l'eleve" card, a student identity
11 card, in your sister's name and with your sister's photograph on it. Do
12 you accept that that was a photograph of your sister on that card?

13 A. This is what I can tell you about that card. To begin with, I
14 would like to ask you to produce the registration card and not the
15 student's card. And coming back to your question, it is indeed her
16 photograph, but I would like to ask you to show us the registration card.
17 Otherwise, we will not understand each other if we use that student's
18 card.

19 Q. So both photographs are of your sister. Why were you not able to
20 identify her yesterday, but you can do so today?

21 A. I'm able to identify it because yesterday, at the end of the
22 hearing, you showed us the card that you have produced a short while ago.
23 At one point we adjourned.

24 Q. All right. So as I understand it, you're being able to recognise
25 her was provoked by being shown your own identity card; is that right?

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 30

1 A. Yes.

2 Q. Now, this younger sister of yours, on the card we saw a date of
3 birth in 1988. Do you accept now that that is her date of birth, 1988?

4 A. No, that is not her true date of birth.

5 Q. Do you have any possible theory why a date of birth of 1988 would
6 appear on the card? Would she have perhaps given a false date of birth?
7 Have you got any personal theory on that?

8 MR. GARCIA: (No interpretation)

9 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, you are
10 going to tell us that the witness is being asked to speculate on an issue
11 that he cannot speculate on. Is that correct?

12 MR. GARCIA: (Interpretation) Yes, indeed, Mr. President. Even
13 if the witness gives us his theory as to why that date is on the identity
14 card, it is not helpful to the Chamber.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, maybe
16 this question could have been phrased in another way, but you cannot tell
17 us that it is not important for the Court to try to look at the various
18 dates of births and the position of the witness in his family in relation
19 to his sister.

20 Mr. Hooper, please proceed.

21 MR. HOOPER:

22 Q. Well, I'm asking you because she's your sister, you know her.
23 And can you help us think of any reason why she might be giving a date of
24 birth that is making her much older than she is?

25 A. I'm asking you to follow the example that I gave when I was

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 31

1 speaking about myself.

2 Q. Well, I don't understand that, but perhaps the Prosecution can
3 take that up with you in due course.

4 Now, I want to show you something -- another document. It's a
5 "contrat de travail," and this is DRC-D02-0001-0107.

6 MR. HOOPER: Before that's put up on the screen, I give the
7 Prosecution an opportunity to raise their usual objections.

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

9 MR. GARCIA: (Interpretation) Just for purposes of information,
10 this is a work contract that includes information relating to the
11 witness's family members. There is no photograph on this document. It
12 is a document from or of a third party, and I would leave it up to you,
13 Mr. President, to determine whether such a document used in
14 cross-examination can allow us to advance.

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

16 Now, Mr. Hooper, can you kindly explain to us the relevance of
17 presenting this service or work contract, and you will have to explain
18 that to us bearing in mind that we are in open session. Please proceed.

19 MR. HOOPER: If the -- it's a private document for the reasons
20 that Mr. Garcia's correctly stated, and -- but it can be brought up on
21 the screens or we may have a copy. In fact -- do we have copies for the
22 Judges? In fact, can I hand you up a paper copy? It's again helpful --

23 PRESIDING JUDGE COTTE: (Interpretation) As far as I'm
24 concerned, I have a copy. We have a lot of documents here and this one
25 is for Judge Diarra.

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 32

1 The document is on the screen. It is not very visible on my own
2 screen, but since the beginning of the hearing the contrast on my screen
3 is not very good. But does everyone have a hard copy? If you do, then
4 you can proceed, Mr. Hooper.

5 MR. HOOPER: Can I ask the witness to remove his headphones
6 during the discussion, please, Mr. President? It may be helpful. Very
7 well. Thank you very much.

8 The witness can see the document, but that doesn't really concern
9 us. This is a "contrat de travail," as it's headed, between the diocese
10 of Bunia, the employer, and the witness's father. And you'll see on the
11 third page that it's dated the 7th of December, 2007. As you're aware,
12 the Defence maintain that the defendant's (sic) younger sister, (Expunged),
13 was herself born in 1988, so he has to be older than that. And he's
14 given dates of birth, as we know, 1991 and 1984.

15 So what this goes to is this, that on the first page under the
16 heading "Enfant mineurs legitimes et legalement sous tutelle," we have a
17 list there of three names. And you'll recall that in respect certainly
18 of the first two, the witness recognises them as his younger brothers. I
19 don't mention their names.

20 Now, (Expunged) name does not appear there and her name, of course,
21 would not appear in that list, as according to us, she was then 19.
22 That's according to us. But if the witness is right, you'd expect her
23 name to be there. She'd be a minor. So it goes to support our
24 contention that his sister is older than he says, and that's of, we say,
25 significance when one looks at the hierarchy in age of the family and is

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 33

1 in itself a reasonable basis for doubting what this witness says about
2 that hierarchy and about his place and age in it.

3 And so I'm seeking to introduce this document by presenting it to
4 the witness and again inviting the witness for an evidential response in
5 respect of our position reflected in this document, which I'll express as
6 simply as I can to him.

7 PRESIDING JUDGE COTTE: (Interpretation) You can proceed with
8 your questions, Mr. Hooper.

9 MR. HOOPER:

10 Q. So, Mr. Witness --

11 MR. HOOPER: He's out of contact with us now fully.

12 Q. Thank you very much. Thank you very much. Sorry for that
13 inconvenience, Mr. Witness. It's just that we were discussing things
14 that didn't directly occupy you.

15 Now, you've seen the document that's on the screen and I want to
16 ask you a few questions first. Is it right that your father, in fact,
17 works - can I put it very loosely -- can you read the first line.

18 MR. HOOPER: I'm not sure that the witness is capable of reading,
19 so I hesitate.

20 Can we go into closed session just for the -- if I can't get
21 round the problem. I don't think I can.

22 PRESIDING JUDGE COTTE: (Interpretation) Very well. There I
23 think it would be very complicated to paraphrase, and there is a danger
24 that the witness might not understand questions which would actually be
25 unusual.

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 34

1 So, Court Officer, let us go into private session.

2 For those in the public gallery, we are going into private

3 session because the questions could identify the witness and we do not

4 want to have him run that risk.

5 (Private session at 10.47 a.m.)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

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Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 35

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Page 35 expunged. Private Session.

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 36

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Page 36 expunged. Private Session.

1 (Expunged)

2 (Closed session at 10.58 a.m.)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Open session at 10.59 a.m.)

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

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

13 We will suspend this hearing and resume at 11.30 a.m.

14 Recess taken at 10.59 a.m.

15 On resuming at 11.34 a.m.

16 (Open session at 11.34 a.m.)

17 COURT USHER: All rise.

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

20 Prosecutor, Mr. MacDonald, you have the floor. We are in open
21 session. The accused are with us. Perfect. They will give us
22 clarifications with regards to the possibilities that there are to
23 respond to your request yesterday with regards to the production of a
24 table on the intermediaries.

25 MR. MACDONALD: (Interpretation) Thank you, your Honour, Judges.

1 I would like to discuss two points, the issue -- or the precise issues at
2 stake, but I would also like to go back to the reclassification of an
3 annex as mentioned in an e-mail on the subject of the intermediary 183.

4 Now, first of all with regard to the issue about the time-frame
5 to meet the request of the Chamber as set out in decision of
6 Trial Chamber I, in paragraph 150 thereof. Firstly, we appreciate that
7 the answer of the Chamber yesterday stated that first of all it will
8 start with Prosecution witness and then go on to Defence witnesses
9 because in total, your Honour, there are 122 witnesses -- well,
10 122 witness statements, which we call screening notes, summaries,
11 et cetera, which have been disclosed, exonerating or incriminating. And
12 if we take out the Prosecution witnesses, the 26 ones who have been
13 identified, then we therefore have 96 Defence witnesses.

14 Now, where it concerns the Defence witnesses, we propose a
15 time-frame of a week. If we manage to do so before, we will send the
16 information as soon as we have it, as soon as it is collected. Now,
17 there are witnesses, common witnesses, to both cases, whether it's
18 exonerating or incriminating, and furthermore where you have Defence
19 witnesses, some of them -- well, you have a time-frame of two weeks from
20 today is necessary at least. Once again, if we are able to collect the
21 information before, this is something we can provide everyone with
22 previously.

23 Now, the reason why also I would like to indicate this, if you
24 wish, is that taking into account the organisation of our work within the
25 Office of the Prosecutor, some of our colleagues of the investigation

1 unit are not available in the coming days, for reasons that I'm not
2 mentioning here, but they are working constantly with our team so they
3 won't be here. They're not available. And so they normally help us in
4 this type of research. Now, there are other people within the team who
5 would be less familiar with it, and that is the reason why we would like
6 to find these different pieces of information in our databases.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
8 We are therefore at the 8th of June, Tuesday, the 8th of June, today.
9 Thursday, the 17th of June, would that be okay for you?

10 MR. MACDONALD: (Interpretation) For the Prosecution witnesses,
11 yes.

12 PRESIDING JUDGE COTTE: (Interpretation) So let's say the
13 17th of June, and if you finish before, you will transmit that
14 information then.

15 MR. MACDONALD: (No interpretation).

16 PRESIDING JUDGE COTTE: (Interpretation) Now, when it concerns
17 the Defence witnesses, we are therefore going to propose Friday, the
18 25th of June. If there's a major difficulty, you will tell us, but these
19 are dead-lines which appear very reasonable and make it possible for the
20 Defence teams to have the information which is useful to them and which
21 are also useful to the Chamber. So 17th of June for the incriminating
22 evidence and 25th of June for the exonerating ones, also at 1600 hours.
23 Is that understood?

24 MR. MACDONALD: (Interpretation) Thank you, your Honour, yes.

25 Now, with regards to this last point, one of the pieces of

1 information that the Chamber wishes to obtain concerns possible contacts
2 between the witnesses themselves, it has to be said that in our case if
3 we take the example of Witness 166 and 233, father and son, it is clear
4 that there are contacts. We can't establish the date of these contacts,
5 but what we're going to provide as information is obviously what we have
6 in our possession. And furthermore, this is no secret, but Witness 161
7 knows 166 or 233. So it is evident that certain witnesses knew each
8 other previously, known by the Defence, and now we have to provide
9 information with regards to -- well, we have to provide information which
10 is in the -- or to the knowledge or possession of the Office of the
11 Prosecutor.

12 PRESIDING JUDGE COTTE: (Interpretation) It is you clear that
13 with regards to 166 and 233, if you have this in mind, it is clear that
14 we have to recall the usefulness of the documents to be provided. This
15 is a prior element that we have to state. The frequency of reports
16 clearly cannot be -- sorry, the amount of contacts that there have cannot
17 be 100 per cent known.

18 MR. MACDONALD: (Interpretation) Your legal advisor this morning
19 had an e-mail with regards to a statement which was obtained within the
20 framework of the Lubanga case, but which de facto is relevant to our
21 case. And here I'm referring to submission 2001. This morning everybody
22 received an answer from the Chamber, stating that we can carry out
23 disclosure. I can confirm everything by e-mail with the Registrar, but
24 if from today we could reclassify the annex or the redactions which are
25 already applied to the statement, if they can be reclassified or if the

1 relevant annex can be reclassified of submission 2001 in order to
2 accelerate things. Because if not, obviously then -- well, you know what
3 the Ringtail system is like, it takes 48 hours before being able to
4 satisfy the requests of the Chamber.

5 PRESIDING JUDGE COTTE: (Interpretation) Just to help me with
6 finding this submission, given the very high number of submissions and
7 the issues that we have to deal with every day, we are talking about
8 intermediary 183 for whom during a hearing at the start of the month of
9 February, perhaps on the 12th of February, the Chamber issued an oral
10 decision, indicating on that occasion that it saw no obstacle to the fact
11 that this person's identity be disclosed. But we had on that day
12 disclosure only to the persons present in the courtroom. And if my
13 memory serves as well, I had to draw the attention of everybody to the
14 exceptional nature of this disclosure. From now, you are now indicating
15 to me, if I'm not wrong, that in your submission 2001 you therefore had
16 envisaged disclosure which was wider.

17 MR. MACDONALD: (Interpretation) Yes.

18 PRESIDING JUDGE COTTE: (Interpretation) That is the case?

19 MR. MACDONALD: (Interpretation) Yes, exactly, your Honour.

20 PRESIDING JUDGE COTTE: (Interpretation) Perfect.

21 So once again, unless I am wrong, we -- or the legal advisor let
22 you know that as far as the Chamber is concerned, it was possible to
23 apply an accelerated procedure, or rather, a simplified procedure which
24 we had also set up as an agreement in last February. And as -- whether
25 we were dealing with 167 or when we were dealing with the possible

1 redactions within the Defence teams, they had five days, I think, in
2 order to express their views in this regard and without any observations.
3 You can therefore provide the document. Is that right? Well, you had a
4 concern because you thought that acting in such a way which is an
5 effectively accelerated manner could go against what was said in the
6 hearing by oral decision. Is that correct?

7 Okay. Then we've managed to re-establish that because in the
8 e-mail, there was one which I think was addressed to you, I think
9 Mr. de Smet, the legal advisor, this morning said to you -- should have
10 said to you that we had no obstacle to going beyond our oral decision
11 because you are the best judge when it comes to seeing how far you can go
12 with regards to disclosure. So we can confirm to you and we just wanted
13 to know whether it was a reclassification to accelerate that.

14 Thank you for having helped me in reconstituting this procedure
15 and this has been perhaps a useful clarification for other people here as
16 well. So that is understood.

17 MR. MACDONALD: (Interpretation) I will also provide you with
18 the annex, the precise annex, which can be classified -- reclassified.
19 Certain redactions are applied by the Office of the Prosecutor.

20 PRESIDING JUDGE COTTE: (Interpretation) Understood.

21 MR. MACDONALD: (Interpretation) And furthermore, I also
22 understand, as was mentioned in this application, that obviously the --
23 that the Chamber would have no objection to this annex or this statement
24 also being accessible to the Lubanga case as well, according to the same
25 redactions. That's the decision of the Chamber with regards to -- and so

1 that there's uniformity between the two Chambers.

2 PRESIDING JUDGE COTTE: (Interpretation) Yes, if you would like
3 to -- you need to leave us now, I think you can do so, in turn you can
4 undertake other tasks.

5 Now, Court Officer -- or rather, Counsel Hooper, please.

6 MR. HOOPER: Quickly, and it needn't detain Mr. MacDonald unless
7 he -- but it's just that when Mr. MacDonald was making his submissions
8 and using in French the terms "temoin a charge," for example, it was
9 translated as -- into the English transcript as "Prosecution witness"
10 when it should be "incriminating witness." And "temoin a decharge" was
11 interpreted as "Defence witness," and it should be "exculpatory witness."
12 It's no criticism of the translation because -- well, it is, I suppose,
13 but these are terms of art and it would assist perhaps if we, between us,
14 were able to produce, perhaps, some useful document that would be
15 available to those who have the task of finding the bon mot at sometimes,
16 perhaps, difficult moments. So -- but perhaps the transcript can be
17 amended at least to reflect those corrections.

18 The other matter is there are some EVD documents that need
19 nominating and I'm quite happy to do that at the end of the session today
20 or any other time the Court finds convenient.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
22 Counsel Hooper, for your comments.

23 Where it concerns the first, I would turn towards the
24 Court Officer so that good note is taken thereof. These terminological
25 precisions are important. Where it concerns the correct formulation in

1 English, you are the only person obviously who is able to make a
2 contribution in that regard, even if we make an effort to be up to it.

3 Now, where it concerns the second point, I didn't lose that from
4 sight and the Registrar or the Court Officer would like to remind you
5 that there are at least four or five documents which need to have a
6 number attributed to them, EVD number. Perhaps that can be done at 1.15,
7 towards the end of the hearing, so that everything is in order.

8 The security officers, if you could -- so before leaving us, I'd
9 just -- Judge Diarra would like to pay particular attention to
10 Counsel O'Shea, who makes the effort to speak in French. We're very
11 sensitive to that.

12 (The accused withdrew)

13 PRESIDING JUDGE COTTE: (Interpretation) Now, we're now going
14 into closed session so that the witness can join us.

15 (Closed session at 11.48 a.m.)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 45

1 (Expunged)

2 (Open session at 11.49 a.m.)

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

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

7 Witness, I see that you have your headphones on. Can you hear me
8 well?

9 THE WITNESS: (Interpretation) Yes.

10 PRESIDING JUDGE COTTE: (Interpretation) We can therefore take
11 up our work again.

12 Counsel Hooper, you have the floor. We are in open session.

13 MR. HOOPER: Thank you.

14 Q. Mr. Witness, I want to ask you how you came to be in touch with
15 the Prosecution, and that will involve you in mentioning the name of the
16 person who acted as the go-between between you and the Prosecution. Now,
17 you mustn't mention that person's name in Court because it's -- at
18 present time it's a secret, and it's a secret to me officially in any
19 event. So we're going to refer to any persons as Mr. X or Mr. Y. All
20 right, or Mr. A and Mr. B, whatever you'd like to nominate them as.

21 All I know is that the person who acted as the go-between between
22 you and the Prosecution was known -- is known to me as Mr. 143. He's
23 been given a code number. I stress, I don't want you to tell me the name
24 of the person.

25 So let's go back to my original question. How did you come to be

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 46

1 in touch with the Prosecution and why did you get in touch with the
2 Prosecution? Can you tell us, please.

3 A. Yes. How I was in contact with the office ...

4 THE INTERPRETER: Of the Prosecutor, adds the interpreter.

5 THE WITNESS: (Interpretation) There was a person who came to
6 find the children who had done their military service.

7 MR. HOOPER:

8 Q. Right. I think that's your answer. There's been a bit of a
9 pause after you said that, so I assume you finished. So a person who
10 came to find the children who'd done their military service. Well, where
11 did he come to look? Where did he come to? Where did he find you?

12 A. He met me where I was living, at my home.

13 Q. All right. Well done. You didn't mention your home and you
14 mustn't do that. That's well done. We know where you -- your home is.

15 Now, we know that you made your statement to the Prosecution at
16 the end of March 2007. How long before you made that statement were you
17 first in touch with that person who put you in touch -- who came to your
18 home to find you? How long was it before you made your statement that he
19 came to your home and found you?

20 A. You're asking me how much time? I'm sorry, I didn't follow your
21 question very well.

22 Q. Let me repeat it. You made your statement with the Prosecutor at
23 the end of March 2007. How long before you made that statement was it
24 that you first met the man, the person, who came to your home and found
25 you there? Was it a week or a month or several months? How long before

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 47

1 you made the statement did you first meet him?

2 A. In this regard I have forgotten.

3 Q. Without naming that person, can you describe him to us?

4 MR. GARCIA: (Interpretation) Your Honour.

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

6 MR. GARCIA: (Interpretation) The name of the person in question
7 is still confidential, so I also consider that any information with
8 regard to this person should remain confidential as well. Counsel Hooper
9 can continue his cross-examination. He can take up such questions as how
10 the meeting took place, et cetera. But the question that can identify
11 this person should also be prohibited for the Defence. And I think
12 there's a decision in this regard with other witnesses as well.

13 (Trial Chamber confers)

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
15 To the extent that the Chamber yesterday authorised the disclosure of the
16 identity of this intermediary, 143, but only when we have the
17 confirmation that he has protection measures that the Trial Chamber I has
18 attributed to that person, the Chamber sees no obstacle to the question
19 of Counsel Hooper with regard to a description being put, but on the
20 condition that it is in closed session or private session.

21 So either we go into private session and you ask your question,
22 Counsel Hooper, or you continue in open session with the question that
23 you wish to ask. Those are the conditions under which this question can
24 be put. Are we in agreement?

25 MR. HOOPER: Yes, thank you. Well, if we go --

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 48

1 PRESIDING JUDGE COTTE: (Interpretation) Please continue.

2 MR. HOOPER: Can I go to closed session then for just a few
3 minutes.

4 PRESIDING JUDGE COTTE: (Interpretation) We're now going to
5 spend a certain amount of time in closed session because the question of
6 Counsel Katanga -- or the counsel of Mr. Katanga might give rise to
7 certain questions or certain issues which require protective measures.
8 So we would first of all like to go into closed session.

9 (Private session at 11.59 a.m.)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0279 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 49

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Open session at 12.02 p.m.)

8 COURT OFFICER: (Interpretation) We are in open session,
9 your Honour.

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

12 Counsel Hooper, you can continue.

13 MR. HOOPER:

14 Q. In closed session you've given us some description of the person
15 that I asked for and I also put to you the name of someone, and you've
16 said in response to that name that is not a name that you can remember.
17 Now, continuing my questioning about the person who put you in touch with
18 the Prosecution, how many times did that person come to see you at home
19 before you actually met the Prosecution?

20 A. I would say the following. He had the habit of coming to see me,
21 but I don't know how many times he came to see me.

22 Q. And what did he say when he came to see you?

23 A. Here is what he said the day he came to see me: He spoke to me
24 about child soldiers. He said to me that there was a question of keeping
25 those children somewhere. And after that, he said that I would make a

1 statement for them.

2 Q. What do you mean by "keeping those children somewhere"? What do
3 you mean by that?

4 A. I wanted to say the following. When a child makes that
5 statement, from that day onward he will be protected. And any question
6 pertaining to that child will be the responsibility of the safety
7 officers or protection officers.

8 Q. And why did you decide to be a witness?

9 A. What made me want to become a witness is what happened to me in
10 my life. Based on what happened to me, I made the decision to tell the
11 Office of the Prosecutor or to tell the people from the ICC.

12 Q. Now, when this person came to meet you and talk to you, is it
13 right that from time to time when he spoke to you, he spoke to you
14 together with another young man who lived in your home area, that the two
15 of you met this man together from time to time? Is that right?

16 A. I've forgotten.

17 Q. Well, it's not a difficult question. Did you meet this man alone
18 or sometimes with somebody else from your home area?

19 A. I don't remember. I've forgotten. I can't give an answer to
20 your questions.

21 Q. Now, earlier, in private session, I put a name to you and you
22 said you didn't remember that name. But isn't it right that that was the
23 person, in fact, that you met this go-between with? Isn't that right?
24 You and the named person who you said you didn't remember, the two of you
25 met this go-between together, didn't you?

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 51

1 A. I do not remember.

2 Q. The person whose name I put to you that you say you don't
3 remember, he lives the same place as you live, doesn't he?

4 A. (No verbal response)

5 Q. Again, a simple question. I'll ask it again. The person whose
6 name you say you don't remember, you live in the same place, you grew up
7 in the same place, didn't you?

8 A. No, that is not true because I do not remember that name.

9 Q. Let me ask you this then - and I appreciate you say that you
10 don't remember the name - the person who I named, didn't you ever see him
11 up in Zombe as a combatant, as a member of the militia?

12 A. I do not remember.

13 Q. When you made your statement to the Prosecution - and I don't
14 think that this in any way identifies you or where you live at the
15 present time because that's a secret - but when you made your statement
16 to the Prosecution at the end of March 2007, where were you when you made
17 that statement?

18 A. Could you repeat your question, please.

19 Q. When you made your statement to the Prosecution at the end of
20 March 2007, where were you? Which town or place were you when you made
21 that statement?

22 A. I was in the city of Beni.

23 MR. HOOPER: If you'll just excuse me one moment.

24 (Defence counsel confer)

25 MR. HOOPER: All right. So it's a problematic area so let me

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 52

1 move away from it. I'll come back to it later.

2 Q. Does the name De Gaulle mean anything to you, De Gaulle?

3 A. You're asking me whether the name De Gaulle means anything to me?

4 Q. Yes, that's the question.

5 A. Yes. I will answer in the affirmative. Yes, that name reminds
6 me of something, that's because De Gaulle is the name of a person, it's
7 the name of a man.

8 Q. All right. Is that a man you knew, personally knew, or what?

9 A. I do not know him, but the only thing I do know is that De Gaulle
10 is the name of an individual, the name of a man.

11 Q. All right. Is this a -- was this a Congolese man or another man?

12 A. I do not have an answer for you. I do not have any answer for
13 you.

14 Q. Do you know someone called Claude or Captain Claude?

15 A. I don't remember.

16 Q. Do you know someone called Katchu, Katchu, K-a-t-c-h-u?

17 A. All of the names that you have given me here do not remind me of
18 anything.

19 Q. Do you know of someone called (Expunged)

20 (Expunged)

21 A. No.

22 Q. All right. Now, let's go to your abduction, and you will recall
23 how you told us - and I hope I summarise it appropriately - how while you
24 were in your home, Boba Boba and numerous soldiers came and seized you
25 and other children; and despite the pleas and cries of your parents, took

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 53

1 you away and up the hill to Zombe. Can you help us, do you remember what
2 time of day that was that Boba Boba came to take you away?

3 A. I don't remember.

4 Q. So that I'm clear, are you saying that your mother and father
5 were present and saw you being taken away?

6 A. I already answered your questions in my statement, and so I would
7 ask you to refer to my statement because right now I have forgotten
8 everything.

9 Q. Well, let me ask you the question simply. When you were taken
10 away by Boba Boba, did your parents witness that, did they see it?

11 A. Yes.

12 Q. Were you taken away in daylight or at night-time?

13 A. It was during the day.

14 Q. Not far from where you lived was a large camp occupied by the
15 Ugandans; isn't that right?

16 A. Yes.

17 Q. Are you saying that Boba Boba was able to come with numerous
18 soldiers and take you away, despite screaming parents, right under the
19 noses of those Ugandan soldiers?

20 A. I would say that we lived a little bit away from it all, and the
21 Ugandans in question lived a few kilometres -- or were a few kilometres
22 away.

23 Q. So I suggest it was just a few hundred metres away, wasn't it?
24 That is, a couple of football-pitch lengths away from where you lived.
25 Isn't that right?

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 54

1 A. I don't know.

2 Q. Were your parents at Zumbe?

3 A. (No verbal response)

4 Q. Again there's a pause, so let me ask the question again. Were
5 your parents at Zumbe?

6 A. Yes, they were in Zumbe.

7 Q. Then why haven't you told us about that?

8 A. I beg your pardon? I did not quite understand you.

9 Q. Why haven't you told us before just now that your parents were in
10 Zumbe?

11 A. I forgot.

12 Q. You forgot. How could you forget that your parents were in
13 Zumbe?

14 A. I am a human being. It may happen that I forget.

15 Q. When did they go to Zumbe?

16 A. At the time they went to Zumbe, there was war in Bunia, but I no
17 longer remember much about that.

18 Q. Well, did they get there, to Zumbe, before you or after you?

19 A. I do not understand when you're asking me whether they went there
20 before me.

21 Q. Well, it's a simple question. You said you were taken to Zumbe.
22 My question is: Did your parents go to Zumbe before that or after you
23 were taken?

24 A. I did not understand your question.

25 Q. When did your parents go to Zumbe?

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 55

1 A. I no longer remember.

2 Q. Is the position this: You went to Zumbe with your parents,
3 didn't you? The whole family, apart from your older brother, all fled to
4 Zumbe, didn't you?

5 A. Yes, that is correct.

6 Q. And your dad took all his goats with him up there, too, didn't
7 he?

8 A. Yes.

9 Q. And all this stuff about Boba Boba taking you away is nonsense,
10 isn't it?

11 A. What did you say? That it was nonsense?

12 Q. Yes. This story of yours of being taken up by Boba Boba is not
13 true, is it?

14 A. It is true. When they came and took me, my parents were in their
15 house. They had left Zumbe.

16 Q. So your parents had gone to Zumbe but had come back to where you
17 lived; is that what you're saying?

18 A. Yes.

19 Q. But they'd left where you'd lived because of the war and the risk
20 that they would be killed; is that right?

21 A. Yes.

22 Q. And when you were in Zumbe, they were in Zumbe too; isn't that
23 right?

24 A. Yes.

25 Q. And they built a little house there to live in; isn't that right?

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 56

1 A. That is correct.

2 Q. And you lived with them too, didn't you?

3 A. I lived with them.

4 Q. And there came a time when the Ngiti people who'd fled to Zumbe
5 left Zumbe, or most of them; isn't that right?

6 A. Yes.

7 Q. And you left with your mother and younger brothers and your
8 sister, leaving your father with the goats at Zumbe; isn't that right?

9 A. (No verbal response)

10 Q. Is that right?

11 A. I do not remember very well.

12 Q. Do you know someone called (Expunged)

13 (Expunged)

14 (Expunged)

15 MR. HOOPER: I'm sorry, can we have that redacted.

16 Q. Do you know that person? Don't name the place.

17 A. Yes.

18 Q. And is it right you were with your family and him with his
19 family, you went to Walendu-Bindi, and then on to Aveba; is that right?

20 MR. GARCIA: (Interpretation) With your leave, Mr. President. I
21 believe that Mr. Hooper is asking questions that might identify the
22 witness because we are talking about people that he knows. I would
23 therefore suggest that the remainder of those questions be put in closed
24 session.

25 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, you alone

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 57

1 know the questions that you intend to put. Do you think we need to put
2 them in closed session or can we stay in open session?

3 MR. HOOPER: I believe we can stay in open session, in my
4 judgement, in terms of the identifying nature of the material. I don't
5 believe it's sufficiently specific in the chaotic circumstances of the
6 time to be identifying.

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

8 MR. GARCIA: (Interpretation) The problem is the following. We
9 have a limited number of redactions that we can ask the Chamber in any
10 given period, and this is information that is clearly identifying because
11 these are people that the witness knows and who did certain things. So I
12 think it would be prudent to go into private session rather than stay in
13 open session.

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

16 For the time being we will leave it up to the wisdom of
17 Mr. Hooper, and he will determine whether we go into private session or
18 that we stay in open session. So we do not want to go beyond the limit
19 of the number of redactions allowed. So we have to go into closed
20 session any time that the issue, the problem, becomes slippery.

21 You can proceed, Mr. Hooper.

22 MR. HOOPER: All right.

23 Q. Let me put it -- let me leave that particular subject,
24 Mr. Witness. I'll ask you this: When you left Zumbe with your mother
25 and the younger children, you went to Aveba. Am I right in saying you

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 58

1 didn't go back to Zumbe after that?

2 A. Yes.

3 Q. And my understanding is that your mother and the younger children
4 with you left Zumbe on the 1st of December, 2002. Is that right? It's
5 before Christmas 2002.

6 A. I no longer remember.

7 Q. Just think back, that's before Christmas and the new year of
8 2002. Does that help you remember?

9 A. I no longer remember.

10 MR. HOOPER: I'm wondering if the Court would give us a
11 ten-minute adjournment so I can consider my position in the light of the
12 answers I've had.

13 PRESIDING JUDGE COTTE: (Interpretation) We will suspend for
14 ten minutes. We will resume at 1.00 p.m., and 1.00 p.m. -- we will work
15 from 1.00 p.m. to 1.20. After 1.20 we will assign EVD numbers to the
16 documents produced.

17 Security officers, please escort the two accused out of the
18 courtroom for ten minutes.

19 Court Officer, let us go into closed session so that the witness
20 can leave the courtroom for a brief period.

21 (The accused withdrew)

22 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, we will
23 meet again in ten minutes.

24 (Closed session at 12.50 p.m.)

25 (Expunged)

Witness: Witness P-0279 (Resumed) (Closed Session)
Procedural Matters

Page 59

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Open session at 12.51 p.m.)

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

10 Mr. President.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

12 The hearing is suspended. We will resume at 1.00.

13 Break taken at 12.51 p.m.

14 On resuming at 1.02 p.m.

15 (Closed session at 1.02 p.m.)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Open session at 1.04 p.m.)

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 60

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

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

5 Witness, can you hear us?

6 THE WITNESS: (Interpretation) Yes.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness.
8 Counsel Hooper.

9 MR. HOOPER:

10 Q. So, Mr. Witness, you see my position, so you're clear about it,
11 is this: That you were never in the militia and you were never at
12 Bogoro. Now, I appreciate you are in a difficult situation sitting
13 there, but is that not correct, that you weren't in the militia and you
14 weren't at Bogoro?

15 A. Do you want to say that everything I told you here is not
16 correct? Is that it?

17 Q. Indeed.

18 A. (No verbal response)

19 Q. All right. What I'm saying is you got yourself stuck with this
20 story, but it's never too late to tell the truth. And the truth, I
21 suggest, is that you went up to Zumbe with your parents and you left with
22 your mother and younger brothers and sister and eventually joined your
23 brother in Aveba. And that's right, that's what happened, isn't it?

24 A. I can say that it's not correct. You say that everything I'm
25 saying in my statement is not true.

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 61

1 Q. Well, what I'm saying is not true is that you were in the militia
2 and that you were at Bogoro. Those are the two things I'm saying are not
3 true. And I'm right, am I not?

4 A. Before testifying here, I stated that I was going to tell the
5 truth; and now you say that everything that I have said is false. So you
6 saying that I'm not saying the truth, but you will see how you manage to
7 deal with that. I have no power to say anything else, to add anything
8 else, or to give another answer with regard to what you say.

9 Q. All right. Now, let's talk about your evidence that you've
10 given, then. Now, you will remember that you've said that you got up to
11 Zumbe camp and you underwent training for a week, and that after that, to
12 quote what you said, "There was nothing to do in the camp. We took part
13 in training and we guarded our positions." That's transcript 114 (sic),
14 page 51, line 2.

15 So nothing to do really in the camp. When you were up there you
16 took part in training and you guarded your positions. Is that right? Is
17 that what you're saying?

18 A. You've just stated that everything I have said here is false. I
19 have nothing to answer in that regard. I have no answer to give you.
20 You've said that everything I have said is a lie.

21 Q. Well, I'm looking now at what you have said. Well, let me ask
22 you this: I mean, were you part of a militia or is that something that
23 you were tempted to make up and say perhaps because of the advantages of
24 doing so at the time? Is -- am I right when I suggest to you that you
25 weren't in a militia; is that, in fact, the truth of it?

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 62

1 A. You're asking me questions, but I have no answer to give you
2 because you have just said that everything which I've stated is a lie. I
3 have no answer to give you. I have nothing more to tell you. That's my
4 final word.

5 PRESIDING JUDGE COTTE: (Interpretation) Witness, you cannot say
6 that it's your last word. You are not satisfied with the comments made
7 by counsel for Mr. Katanga because he stated that you perhaps didn't say
8 the truth, and this is something that you find shocking.

9 THE WITNESS: (Interpretation) Yes.

10 PRESIDING JUDGE COTTE: (Interpretation) We can understand this,
11 and in this case you have to answer the questions. And when he asks you
12 a question such as: Have you been part of a militia? If you have the
13 feeling that you tell the truth, you say yes; you have to tell the truth.
14 If, on the other hand, you have the feeling that it's not the truth, then
15 you reply: No. But you have to answer a most precise way, without major
16 phrases, to the points that are put to you.

17 You have the right to be shocked, but when one is shocked and we
18 want to re-establish oneself, one replies and one tells the truth. This
19 mean that you confirm what you have already said, or on the other hand,
20 you say one made a mistake or something else. I am not the person who
21 can give the answer, only you can answer that. But you have to answer
22 that. You can't just say, "I'm not going to answer that." That isn't
23 possible. I am certain that you understand that. So you have to answer
24 Counsel Hooper, please.

25 THE WITNESS: (Interpretation) I do not understand very well.

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 63

1 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper will ask
2 his question again and then you will answer it.

3 THE WITNESS: (Interpretation) I said that I didn't have an
4 answer.

5 PRESIDING JUDGE COTTE: (Interpretation) Witness, I am saying
6 this very seriously. We cannot play for the moment. On the one hand,
7 there is a party which thinks - perhaps it is making a mistake in this
8 regard - that you have not told the whole truth. You, you think that you
9 have told the whole truth. So in response to a question that was put to
10 you, which was: Were you a member of a militia, you reply with your
11 conscience, that is, in telling the truth because that is what you have
12 sworn to tell here. So Counsel Hooper asks you this question: Were you
13 a member of a militia? You have to say yes or no. If it is "yes,"
14 confirm what was said to you; and if it is "no," then go back on what was
15 already said and say why.

16 JUDGE DIARRA: (Interpretation) With your permission, I would
17 just like to add that if Counsel Hooper in confirming that you didn't say
18 the truth, if he shocked you when he said that, we do understand you.
19 But Counsel Hooper asks the question, but the answer you give is no. We
20 are here to listen to the answer because we have done nothing to shock
21 you. We have the right to our answer. We are expecting it and we count
22 on you. You haven't covered this distance to come and refuse to give us
23 the answer that we expect. We are working on the basis of your answers.

24 The Prosecutor asked you questions and the answers that you give
25 are for us. The counsel that you give -- they ask you questions but the

Witness: Witness P-0279 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 64

1 answers are for us. You have no right to deprive us of these answers.

2 Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Witness, this is the
4 last question which is put, so you have to answer it.

5 You can ask your question again, Counsel Hooper.

6 MR. HOOPER:

7 Q. Is it right that while you went to Zumbe you were not in a
8 militia while you were there?

9 A. But you are changing your question. You asked me a question, you
10 are taking it up again. Should I repeat myself when you repeat your
11 question? It's as if you were asking two questions at the same time.

12 Q. Well, that's fair enough. Were you in a militia when you were in
13 Zumbe?

14 A. Yes.

15 Q. Thank you.

16 MR. HOOPER: And looking at the time, I'm about to embark on a
17 different series of questions, obviously with that answer.

18 PRESIDING JUDGE COTTE: (Interpretation) Understood,
19 Counsel Hooper. We are therefore going to stop now the
20 cross-examination.

21 The security officers -- security officers, please could you
22 escort out the accused and they will come back when it comes to
23 attributing a number to different evidentiary items.

24 Court Officer, can you take us into closed session so the witness
25 can leave the courtroom.

1 Witness, we'll be back tomorrow morning at 9.00 to continue the
2 cross-examination of Counsel Hooper.

3 (The accused withdrew)

4 PRESIDING JUDGE COTTE: (Interpretation) You are going to leave
5 us now.

6 The Usher, please could you accompany the witness once the closed
7 session is -- has been implemented.

8 (Closed session at 1.21 p.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Open session at 1.22 p.m.)

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

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

24 So, Court Officer, we are now going to need your help. We have
25 to attribute numbers to different documents which were produced yesterday

1 by Counsel David Hooper. Yesterday we gave an EVD number to an
2 educational card of a witness. There was yesterday presented, and this
3 morning as well, a photograph of a sister of the witness who -- which did
4 not receive an EVD number. It therefore needs one. And another thing
5 that was presented yesterday which was again presented this morning was
6 the photograph, the photocopy of an educational card of the sister of the
7 witness. Therefore, we need the EVD number for that. And there was also
8 a discussion this morning on the photocopy of the electoral card relating
9 to our witness.

10 This was also -- or another document that was also presented this
11 morning was one which was called "Independent Electoral Commission,"
12 which was signed by its president, l'Abbe, and unless I'm wrong, it
13 should also -- or there was another labour contract concerning the father
14 of the witness which was presented this morning. There was also a
15 reference which was made and this was something that we discussed before
16 to a document produced by the Prosecutor which is a copy of the law of
17 the 24th of December, 2004, identifying the -- identifying and listing
18 the voters in the DRC. So I think these are the documents that we had to
19 give a document number to, an EVD number to.

20 We are listening to you, Court Officer.

21 COURT OFFICER: (Interpretation) Thank you, your Honour.

22 The student card of the sister of the witness, ERN
23 DRC-D02-0001-000110 (as interpreted) will have the number:
24 EVD-D02-00033, and this will be registered as confidential. The
25 photograph with the number ERN DRC-D02-0001-0105 will have the number

1 EVD-D02-00034, and that will be filed as confidential. The document
2 entitled "Independent Electoral Commission" with the number
3 DRC-D02-0001-0113 will have the number EVD-D02-00035, and this will be
4 recorded as confidential. The electoral card of the witness with the
5 number DRC-D02-0001-0113 -- or 8 will have the number EVD-D02-00036, and
6 this will be filed as confidential. The labour contract with the number
7 DRC-D02-0001-0107 will have the number EVD-D02-00037. This will be
8 registered as confidential. The law identifying the listing of electors
9 in the DRC, 24th of December, 2004, will have the number EVD-D02-00038,
10 and this will be registered as public.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
12 Court Officer. We are now finishing our hearing. We'll be back tomorrow
13 at 9.00 to continue. The session is now adjourned.

14 The hearing ends at 1.28 p.m.