

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, 12 July 2011
10 The hearing starts at 9.03 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
15 Good morning to all. Good morning, the accused gentlemen.
16 Mr. Ngudjolo is there, yes. I note as I look on my screen that a
17 courtesy copy of Mathieu Ngudjolo's team's motion has been filed in a
18 timely manner and we thank the team for that. It is the wish of the
19 Bench that all parties and participants will apprise themselves of this
20 motion and make their comments accordingly at 11.30 when we resume our
21 hearings, so that at that time we can hear your oral submissions. And
22 having taken cognizance of this application during the break, the Bench
23 may be in a position to make an oral ruling this morning if possible,
24 except our proceedings will spill over to Thursday morning.
25 In any event, it will be best to settle this matter before we

1 break off, and because we are talking about this thing, Mr. Kilenda, we
2 received in a timely manner the summary of witness statements of the
3 witnesses whom you intend to call. If, as Germain Katanga's Defence team
4 did, you intend to disclose copies of statements, then it would be
5 appropriate to do so regarding the first set of witnesses in a timely
6 manner so that the other parties and the Bench may also be aware or be
7 notified accordingly.

8 We note that in our decision there was an option and the
9 cumulative submission was simply an option.

10 So, Court Officer, please -- Court Usher, would you kindly bring
11 Mr. Logo into the courtroom.

12 (The witness takes the stand)

13 PRESIDING JUDGE COTTE: (Interpretation) Good morning, sir,
14 Jean Logo.

15 THE WITNESS: (Interpretation) Thank you, Mr. President, good
16 morning. Good morning, your Honours.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr. Logo, we shall
18 continue with our proceedings. The Prosecutor was cross-examining you
19 and he will continue.

20 Mr. Prosecutor, you have the floor.

21 MR. MACDONALD: (Interpretation) Thank you, Mr. President.
22 Thank you, Your Honours.

23 WITNESS: WITNESS DRC-D02-P-0258 (Resumed)

24 (Witness answered through interpreter)

25 Questioned by Mr. MacDonald: (Continued)

Witness: Witness DRC-D02-P-0258 (Resumed) (Open Session)
Questioned by Mr. MacDonald (Continued)

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1 Q. Good morning, Mr. Logo.

2 A. Thank you. Good morning, Mr. Prosecutor.

3 Q. Mr. Logo, we are now going to go down another line of questioning
4 and revisit the circumstances in which the student ID of the sister of
5 Witness P-209 (* as interpreted) was obtained. Now, Mr. Witness, in
6 examination-in-chief you provided some information to the Court, the name
7 of the young girl, namely, P-279's -- that that name was mentioned and I
8 do not intend to mention that girl's name again. And I shall be
9 referring to her as the sister of P-279 or the young girl. Do we
10 understand each other?

11 A. Yes, I understand you very well, Mr. Prosecutor.

12 Q. Before appearing to testify before this Court, Mr. Logo, you read
13 the statement of the *préfet* of the Kindia institute; isn't it so?

14 A. Reading the statement, well I don't know. But I think that my
15 team sent me some excerpts of the prefect's statement. Yes, I do
16 remember that.

17 Q. Just to be clear and for the purposes of the record, my reference
18 is being made to DRC-OTP-0156-0056 (* as interpreted).

19 MR. MACDONALD: (Interpretation) We can find that,
20 Mr. President, in the documents number 32. Just a moment, Mr. Hooper,
21 please, let me finish what I'm doing. 0076 number 32. I'm not asking
22 for the statement as such, but I want to simply put it to the witness
23 that some excerpts of that statement were sent to him.

24 THE WITNESS: (Interpretation) Yes, I can confirm that,
25 Mr. Prosecutor.

1 MR. MACDONALD: (Interpretation) For the record, it's number 32,
2 document number 32.

3 It would seem to me that Mr. Hooper wanted to say something.

4 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr. Hooper.

5 MR. HOOPER: We raised an objection to any attempt which would
6 not be proper by the Prosecution to introduce this document in this way
7 into the case, and from Mr. MacDonald's reaction a moment ago my
8 understanding is, indeed from his own expressed statement, that that is
9 not something he wishes to do. So I'm rather puzzled as to the use that
10 he appears to be making of this document now. It's not an admissible
11 document in terms of this witness. This witness has no association with
12 this document. All that we've established through the witness is that he
13 seems to recall having received some excerpts of -- of what may be this
14 statement.

15 Now, the Prosecution have declared that they want to discuss the
16 issue of the ID card of the sister of P-279. They can do so by asking
17 the witness questions and receiving his answers. What they can't do is
18 try and introduce through the backdoor excerpts from this statement. If
19 the Prosecution wanted to rely on this witness in this way, then they
20 should have called him.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
22 That was the understanding of the Bench as well. But we also believe
23 that Mr. MacDonald wanted to clarify matters relating to the obtaining of
24 the ID of the sister of P-279 while upholding the rules that apply.

25 So, Mr. MacDonald, please proceed with the necessary caution in

1 order to avoid any objections. It is clear that Mr. Katanga's team
2 clearly expressed its position on the possible -- the possibility of
3 producing this document at some point, but which may have a prejudicial
4 effect according to that team. So, Mr. Prosecutor, please proceed.

5 MR. MACDONALD: (Interpretation) Thank you, Mr. President.

6 Q. Now, Mr. Logo, it is also correct, isn't it, that you are aware
7 of the testimony of the father of 279 here before this Court, either by
8 reading the transcripts or by listening to the streaming of the
9 testimony?

10 A. Yes, Mr. Prosecutor.

11 Q. Mr. Logo, allow me to remind you of your testimony on this matter
12 on 7 July, reference being made to the transcript 287, page 62, lines 8
13 and 9 to start with. I'll read an excerpt of that for you. Mr. Hooper
14 was questioning you on this matter. French transcript, of course. This
15 is the question he put to you:

16 "How did you obtain the student's ID?"

17 Your answer:

18 "I obtained the student ID -- her student ID or the identity of
19 the student. I got it from the school where she studied. In fact, I
20 went to that school because I was conducting my investigations on ..."
21 then you mention P-279's name. "I went to the school within the context
22 of my investigations to seek evidence. Now, without insisting on the
23 theory of evidence, I was seeking indirect evidence, evidence or
24 something that can be proven based on common knowledge, that is,
25 knowledge that is common to all and sundry. It is therefore within that

1 context that I went to look for documents that could provide references
2 on the age of the young girl" and then of the girl whose name you
3 mention, the girl who is before us, or "who is before us or on the
4 photograph before us. That is the manner in which I obtained the student
5 ID card from the school which now appears before us. Thank you."

6 Mr. Witness, Mr. Logo, do you remember this being your testimony
7 on the 7th of July?

8 A. Yes, I do remember very clearly.

9 Q. It is also correct, isn't it, Mr. Witness, that the Kindia
10 institute is located in Kindia; is that not the case?

11 A. The Kindia institute is indeed in -- located in Kindia
12 neighbourhood in Bunia.

13 Q. You would also agree with me that this neighbourhood is inhabited
14 mainly by Ngitis or Lendu; is that the case?

15 A. No, I would not agree with you. It is true that there are Lendus
16 and Ngitis in this neighbourhood, but they also have Bira, Hema, Alurs,
17 Nande, Kakwa, Logwara (* phon), and Nyalis. So your theory, I cannot
18 accept it.

19 Q. Do you recall, Mr. Logo, the date on which that student ID and
20 not the identity card, the student card, was issued?

21 A. Well, he used the term "created," Mr. Prosecutor, but I would say
22 that it was issued in the month of May around the 20th or 21st of May,
23 2010, if I'm not mistaken.

24 Q. Do you remember your testimony, if I'm not mistaken, at which you
25 were not able to give the date on which this ID card or this card was

1 created?

2 A. Mr. Prosecutor, I have come here to testify, and when I go back
3 to my room no one can stop me to remember or think about what I testified
4 on during the day. It is good to sleep on an issue, and so there are a
5 number of things that I can still remember. And right here there are
6 some that I can remember and there are some that I will remember when I
7 go back to my country. So I don't think that you can stop me from
8 thinking about these issues, Mr. Prosecutor.

9 Q. Mr. Logo, do you have any documents in your room when you go back
10 to your room? Do you have any documents in your room, documents relating
11 to your investigation in your room that you consult which you can look
12 into?

13 A. Yes, I have some documents. For example, I have a document
14 dealing with international criminal investigations. I also have other
15 books which I can read. I can some scientific material, I have a Bible,
16 I can read those documents.

17 Q. But do you have evidence, do you have access in your room to
18 material relating to this case, material that was disclosed by the
19 Prosecution?

20 A. I don't think so, no, no, no. I don't think so.

21 Q. You don't think so?

22 A. Mr. Prosecutor, I would answer the way I wish to. So I've told
23 you that I don't have the documents. I don't have material disclosed by
24 the Prosecution and I don't see why I should be going about with it.

25 Q. Mr. Witness, the metadata on the identity card points out --

1 points to the fact that it was obtained from the school on the 21st of
2 May, 2010. Let me remind the Chamber that Witness P-279 testified before
3 this Court from the 20th to the 11th of June, 2010. Mr. Logo, wouldn't
4 it be correct then that you obtained this card while Witness P-279 was
5 testifying?

6 A. Well, as for the date, I do not at all -- well, I am not very
7 sure about the dates on which witnesses testified, so I'm sorry about
8 that. I did my work according to a schedule. I started my
9 investigations on this girl independently of the witness whom you have
10 referred to, independent of that witness's testimony. So there might
11 have been a mere coincidence, and I therefore would urge you not to delve
12 too much into that aspect because it has nothing to do with my job as an
13 investigator.

14 Q. Witness P-279, to make the matter very clear, testified from the
15 20th of May to the 11th of June. Now, once again, Mr. Logo, question,
16 you told the Court that you have access to -- that you had access to
17 witness testimonies through internet streaming. You also said that you
18 received transcripts of witness testimonies before this Court. Isn't it
19 correct that you are fully aware that on the 20th of May, while you were
20 at that school, Witness P-279 was before this Court and had started his
21 testimony?

22 A. Mr. Prosecutor -- well, five seconds, five seconds, the
23 five-second rule. Now, Mr. Prosecutor, let me remind you once again that
24 my job or the schedule for my investigations does not depend on witness
25 testimonies. If there was a coincidence, then there is no problem with

1 that. It has nothing to do with the witnesses testifying before this
2 Court. Mr. Prosecutor, I don't know what impossible kind of connection
3 you want to establish. My job has absolutely nothing to do with the
4 testimonies before this Court in my absence.

5 Q. Mr. Logo, don't be worried about the connections I want to
6 establish; I'll do that later on. I'll now proceed with my questions.

7 A. That is your right.

8 Q. You met the father of P-279 and you put questions to him about
9 the date of birth of his children; is that correct?

10 A. Mr. Prosecutor, I think it is legitimate that I put all manner of
11 questions during my investigations. Those are not the only questions I
12 put. I put a host of questions and that is only normal within the
13 context of any investigation, quite normal questions. I have a
14 questionnaire.

15 Q. Mr. Logo, wouldn't it be correct that you met the father of 279
16 and put questions to him on the date of births of his children before
17 obtaining the student ID of his daughter?

18 A. No, no, absolutely incorrect. Now, Mr. Prosecutor, let me
19 clarify matters for you because I am the one who conducted the
20 investigations. This is how things happened. I left, I went to that
21 school, and I did not even know the father of that girl at that time. I
22 went to that school I believe some eight times. On the 4th -- on four
23 occasions I met the authorities of the school and on four occasions I was
24 not received. During one of my working visits to the school I saw the
25 father, but I did not even know him. It is the student's prefect who

1 pointed out to me that such an individual was the father of the girl
2 whose ID you were looking for. So that is how I was informed of that
3 relationship initially. I had not intended to meet the father of that
4 girl. I hope that we have understood each other very well and I
5 therefore dismiss in its totality your theory.

6 Q. Who pointed you to that school? Can you explain to the Court how
7 it happened that you went to the Kindia institute? A brief answer will
8 be sufficient.

9 A. Brief? Well, I will answer in a manner that will enable the
10 Court to fully understand and I'm sure that the Court will tolerate a
11 lengthy answer if it is useful. I have come here to give all material to
12 the Court and I didn't come here to take some material back with me to
13 Congo. I will not do that.

14 So, Mr. Prosecutor, if I recall properly, during Mr. Hooper's
15 questioning I already answered that question. Now, since matters can be
16 repeated for better knowledge, allow me to repeat. Mr. Prosecutor, I met
17 this girl for the first time at the brother's house, Amos, in Dele, not
18 in Dele ferme, but in Dele village. So it is where I was with Amos that
19 the girl appeared with Amos's wife, and Amos told me that this is his
20 junior sister whose name is so and so, and that is how we met.

21 You see, when somebody is introduced to you, courtesy requires
22 that you greet them. So I greeted her and you know I am an investigator
23 and I could put a number of questions to her. I put some questions to
24 her: How are you? How old are you? Where are you studying? And such
25 questions. And she told me that she was a student at the Kindia

1 institute. And that was already a pointer for me as an investigator. So
2 it is the girl herself who told me. So I don't have a right or ability
3 for divination and that is how all of this happened.

4 Q. Now, you are saying that during that discussion she told you that
5 she was a student at the Kindia institute and your first reaction was to
6 go to school -- to the school -- to the institute rather than to go see
7 her parents to determine whether she had a document indicating her date
8 of birth; is that your position?

9 A. Mr. Prosecutor, let me give you some advice because some day you
10 may have to conduct an investigation. Whenever you want to conduct an
11 investigation, the first thing you need to look for in terms of
12 documentation would require that you go to an official institution. So
13 if I were to proceed by going to a family and asking them for a document
14 here and there, now, Mr. Prosecutor, do you think that that would work?
15 It is better to go to an officially recognised institution, and in this
16 case it is the girl's school and there is no issue about it,
17 Mr. Prosecutor.

18 Q. Mr. Logo, the parents could have birth certificates, isn't that
19 so, because in that case you go and see the parents?

20 A. Mr. Prosecutor, I believe that if you have someone who can help
21 understand then you have to listen to that person. I do not say that you
22 should not go to contact the parents, but it should be after having
23 exhausted all possibilities. If I know that the parents are working in a
24 certain institution, instead of working between individuals within the
25 framework of official information you have to work with institutions.

1 And you know, Mr. Prosecutor, there were a lot of tragic events in Ituri.
2 Many people lost documents. So these people were victims of war and it
3 would therefore be best to contact an institution. That is how I work.

4 Q. Isn't it also correct that you also asked (Expunged) herself whether
5 she had a student's card or not?

6 MR. MACDONALD: (Interpretation) I'm sorry, your Honour, I have
7 just committed an error.

8 Q. I will repeat the question. Just one moment, Mr. Logo. I
9 believe for technical reasons the Bench allows me to rephrase my
10 question. Isn't it correct, Mr. Logo, that you asked the young girl
11 whether she had any identity documents or documents attesting to her date
12 of birth?

13 A. No, no, no, absolutely incorrect. Mr. Prosecutor, I was not
14 dealing with (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged). There was a slip of the tongue there,
18 Mr. President, and I'm sorry about it. I went to look for that student's
19 file in the school because that is a secondary school, and if you are
20 registered in a secondary school - and I studied in Ituri - you are
21 supposed to have a file. And it was that file that I went to look for
22 and it was simply part of my work. I did not do anything contrary to
23 what I was supposed to do.

24 Q. Now, let us come to your efforts to locate the school file of the
25 girl in the Kindia institute. It is clear, Mr. Logo, that you went there

1 with the intention of finding any documents that would have the date of
2 birth of the young girl; isn't that correct?

3 A. Mr. Prosecutor, I went there to look for documents, and amongst
4 those documents, there was indeed the date of birth that I was looking
5 for. And as you have stated, that was supposed to serve as indirect
6 evidence in the ongoing case. I believe that is fair.

7 Q. Mr. Logo, isn't it correct in light of what you told us on the
8 7th of July that you did not find any documents? That was your
9 testimony, wasn't it?

10 A. Mr. Prosecutor, if I said that I did not find any document, maybe
11 that was a slip of the tongue. What I can say is that of course I found
12 the student's card, but what I can add today is that the authorities of
13 that school did not give me any document apart from the student's card.
14 That was the clarification that I wished to make.

15 Q. Mr. Logo, isn't it correct that you did indeed go to that school
16 on at least five occasions; that the school authorities showed you
17 documents of the school file of the young girl; but you did not succeed
18 in finding any document at all that contained the date of birth of that
19 young girl?

20 A. Mr. Prosecutor, once again wrong. Absolutely wrong. And I am
21 telling the Chamber this with a very clear conscience. I did not find
22 any document about this girl at that school apart from the student's
23 card. I do confirm this to you.

24 MR. MACDONALD: (Interpretation) At this point the Prosecution
25 would like to call up the confidential document -- or maybe I'm mistaken.

1 Yes, it is confidential. It is EVD-OTP-00264. And I would like to show
2 that document to the witness as part of my cross-examination --

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

4 MR. MACDONALD: (Interpretation) It is already in evidence and I
5 believe that I have -- in light of the statement of *préfet* and the
6 elements that we are going to argue at the end of the case and also the
7 authority of the Court to call-up evidence, I would like to show this
8 document to the witness and ask him questions, to know whether he has
9 already seen that document and so on and so forth. But to do that I
10 absolutely have to show him because he said that he went to the school to
11 look for documents. That is the purpose. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
13 pull down the blinds.

14 Did you want to take the floor, Mr. Hooper? Very well.

15 MR. HOOPER: Well, strictly speaking, I would submit this is not
16 a document admissible or that can be shown to this witness. It's got no
17 inherent relationship with the witness. It was introduced through the
18 father, 279, by the Prosecution. It's again a, as it were, backdoor
19 document. But in the circumstances, I've got no objection to this
20 witness being shown the document and being asked the very simple
21 question: Have you seen this document before? If that's the limit of
22 the use to which it's going to be put.

23 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, you
24 will begin by asking that question. We will listen to the witness's
25 answer, and the Chamber thinks that it would not be unreasonable to put

1 an end to that discussion on the obtention of documents relating to the
2 age of the sister of Witness 279. The witness is able to answer so many
3 questions and we are going to see whether this document EVD-OTP-00264
4 rings a bell with him. Do you have a hard copy?

5 MR. MACDONALD: (Interpretation) I'm sorry to interrupt, but
6 before showing him the document can I ask some preliminary questions?

7 PRESIDING JUDGE COTTE: (Interpretation) Very well. You can lay
8 the foundation in the most technical and professional manner that is
9 possible. Please proceed.

10 MR. MACDONALD: (Interpretation)

11 Q. I read out an excerpt of your testimony of the 7th of July. I
12 read it out to you earlier this morning. Mr. Logo, when you went to the
13 school, it is clear that your purpose was to obtain a document attesting
14 to the date of birth of the young girl, amongst other things, but that
15 was the main purpose. Isn't that so?

16 A. Mr. Prosecutor, fortunately you added "amongst other things."
17 When I'm looking for evidence, I do an overall search. This girl was
18 introduced to me like the younger sister of the family. It is possible
19 that that might not be true. I could have additional information from
20 the parents. We are dealing with Africa. Yesterday the Judge
21 contributed to this discussion.

22 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, I
23 understand that you want to have a precise answer, but do not interrupt
24 the witness.

25 Mr. Witness, you have to cut to the chase. We have understood

1 that yesterday Judge Diarra helped to explain the African context. So I
2 am sparing you the necessity to revisit that. So answer the Prosecutor's
3 question.

4 THE WITNESS: (Interpretation) Thank you, your Honour.

5 Mr. Prosecutor, let me repeat. It was possible to be told, "This
6 is somebody's sister," whereas it might have been a cousin. I wanted to
7 have all that information including, of course, the date of birth because
8 this is an element on which you are insisting and you know why that is
9 logical. It was part of the work, but do not limit my work to the date
10 of birth only. That is what I wanted to add.

11 MR. MACDONALD: (Interpretation)

12 Q. Mr. Logo, we are going to show you a document. I have a hard
13 copy which was obtained as part of our investigation and it was obtained
14 on the 15th of June, 2010, about three weeks after your last visit to the
15 school when you received the student's card. I have a hard copy. I will
16 ask you to look at that document.

17 MR. MACDONALD: (Interpretation) Please assist, Court Usher.

18 MR. HOOPER: Can I just indicate - I think we raised this
19 earlier - but we have doubts about the authenticity of this document, not
20 least of all because there's no identification number on the document and
21 also the handwriting of the document. I think that was
22 made (overlapping speakers) --

23 MR. MACDONALD: (Interpretation) If Mr. Hooper wants to give the
24 answer in place of the witness, he should do so and I will sit down.

25 PRESIDING JUDGE COTTE: (Interpretation) For the time being let

1 us go with what we accepted a short while ago. The witness will examine
2 that document and tell us whether it reminds him of anything, whether he
3 knows the document. That is where we are at for the time being.

4 MR. MACDONALD: (Interpretation)

5 Q. Mr. Logo, have you already seen this document?

6 A. Mr. Prosecutor, this is the very first time that I am seeing this
7 document.

8 Q. And you can see that the date of birth on this document is the
9 2nd of April, 1993; is that correct?

10 A. I have not yet read that part. Please allow me the time to do
11 so. Mr. Prosecutor --

12 Q. Do you see the date of birth, 2nd of April, 1993, Mr. Logo? That
13 is my question. It is the only question I'm asking you. It can be yes
14 or no.

15 MR. HOOPER: Mr. MacDonald needn't harass the witness in this
16 way. He said he wants to read the document. He said it twice. Let him
17 do it and then he can answer your questions, bearing in mind he's already
18 stated he's never seen this document before.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, we are very
20 much aware of that.

21 So, Mr. Logo, please read that document, the first page which is
22 what is of interest to us, read it calmly. You have just said that you
23 never saw this document before and then you will answer the Prosecutor's
24 question, who wants to draw your attention to the left column number 5
25 box or row. So please take your time to read the document.

1 THE WITNESS: (Interpretation) Your Honour, I have finished
2 reading. I cannot spend too much time on this document, and with your
3 leave I can give you some information on this document after having
4 answered the Prosecutor's answer (* as interpreted).

5 Yes, Mr. Prosecutor, I can see the date of birth. It is
6 indicated place of birth Bunia, date of birth 02/04/1993.

7 MR. MACDONALD: (Interpretation) Your Honour, I will ask this
8 witness to -- the document to be taken -- the document to be taken back
9 from the witness. That was my only question. My colleague can do what
10 he wants to do in re-examination.

11 PRESIDING JUDGE COTTE: (Interpretation) Calmly, please, calmly
12 so that the interpreters and court reporters should be able to follow
13 you, Mr. Prosecutor.

14 Court Officer, have the document taken back from the witness. It
15 is a document that he does not know, that he did not bring, and which, as
16 he has said -- and which you have said, Mr. Prosecutor, was discovered
17 during your investigations. Please proceed.

18 MR. MACDONALD: (Interpretation)

19 Q. Witness, I would now like to refer to confidential document --

20 MR. HOOPER: (Previous translation continues) ... interrupt for
21 one moment. Is there more than one page to this document? Because we've
22 only I think ever seen one page. Was there more than one page to the
23 document that was just produced to -- to the witness?

24 MR. MACDONALD: (Interpretation) There is a front and back. We
25 can also show the back page.

1 MR. HOOPER: (Previous translation continues) ... in the
2 possession of the Prosecution, as I understand it, is the document that
3 was previously marked and is marked DRC-OTP-1056-0009, which was just
4 shown to the witness and what appears to be its other page which is blank
5 in terms of any -- any addition -- any handwritten additions which is
6 1056-0010. Now, is that the entire document that came into the hands of
7 the Prosecution? Because as I understand it, that's the only part of a
8 document that has been disclosed to the Defence, and yet we know from
9 previous experience of such documents that they are normally several
10 pages long. So I'm asking the Prosecution: Has there been full
11 disclosure of this document to the Defence?

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

13 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, please
14 answer the question about the exact composition of that document.

15 MR. MACDONALD: (Interpretation) The Prosecution went to the
16 office of the *préfet*. There were two investigators assisted by the
17 Prosecutor of the Bunia high Court. I will give the details that my
18 learned friend asks. We received several documents from that Kindia
19 institute about that young girl and they are identified in the statement
20 of the *préfet* as disclosed to my learned friends of the Defence. All the
21 documents that we received have been appended, identified, and fully
22 disclosed. So there is no doubt there. This is the situation of the
23 disclosure, Mr. Hooper.

24 PRESIDING JUDGE COTTE: (Interpretation) And we remember that
25 the document -- the witness was shown the back page of that document

1 identification form and school profile. It is OTP-00264. And we are not
2 going to dwell on this because we have already seen this document when
3 you presented it, and at this point I think it would be best leave it at
4 that.

5 Please proceed, Mr. Prosecutor.

6 MR. MACDONALD: (Interpretation) Thank you, Mr. President. If
7 I'm not mistaken, the back of that page is part of my copy and I would
8 also want it to be included in the evidence if that was not done before
9 because it is clear, Mr. President, that the Prosecution has absolutely
10 nothing to hide. Let me continue.

11 PRESIDING JUDGE COTTE: (Interpretation) Proceed.

12 THE WITNESS: (Interpretation) I did not see the back page.

13 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, if you
14 want to see the back page, it will be shown to you.

15 THE WITNESS: (Interpretation) Thank you, Mr. President. I
16 really do not want to leave your august Court with the feeling that I
17 have not completed my job. What I want to say is that I did not come
18 here as an expert, but I have some qualification to give information
19 about this document. I have evidence about this document. I do not want
20 your Court to make an error.

21 MR. MACDONALD: (Interpretation) I object to the witness's
22 comment, your Honour, and I will tell you why. There are witnesses who
23 are much better placed than Mr. Logo to come and attest to the
24 authenticity and contents of the document.

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

1 cannot show a witness a document, ask him questions on that document, and
2 then prevent him from expressing himself on that document. So the second
3 page is going to be shown to him because the witness does not wish to
4 leave The Hague with the feeling of not having completed his task, and
5 then he will give us his point of view which will be just his point of
6 view.

7 MR. HOOPER: Is there a copy for the Judges? Because I've got a
8 spare one here I can pass up. Oh, you have one there. All right. Thank
9 you. Where one can actually see the back page.

10 PRESIDING JUDGE COTTE: (Interpretation) We have a copy.
11 Madam Van den Wyngaert has just received one and Madam Diarra is going to
12 look at page 2.

13 Mr. Witness, very briefly, please tell us what you think about
14 page 2 or the back page. And if you have any opinion to give about page
15 1, then give it to us because you are present here and that is your
16 opportunity.

17 THE WITNESS: (Interpretation) Thank you, your Honour, for that
18 opportunity that you have given me. I just went through this document,
19 but it is a document that is incomplete and even false. Your Honour, I
20 studied in Ituri. A student is not identified in the higher classes.
21 This shows fourth year. A student is identified when he or she comes
22 into the first year of secondary school. Now, if we go back in 2010 and
23 the student was in the fourth year. The information is on the first
24 page, and secondly you have the permanent numbers, the permanent record
25 numbers. This is something that happens everywhere in Congo. Each

1 student has a number. This student does not have a number, and
2 particularly there is the date of the identification of the student. I
3 do not see that, signature, photos, and the seal of the school. We do
4 not know the provenance of this document. Maybe it was picked up on the
5 road and somebody asked to fill that up. So this document -- it may be
6 contradicted, but this document is false. I cannot mislead your Court.
7 This is what I can say briefly on this document.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
9 That was your personal comment.

10 Mr. Prosecutor, please proceed.

11 MR. MACDONALD: (Interpretation) If I can have the document
12 back, please.

13 PRESIDING JUDGE COTTE: (Interpretation) Court Usher, please
14 hand the document back to Mr. MacDonald. And if we have ended discussion
15 on this document, Court Officer, please pull the blinds back up behind
16 the witness unless another confidential document is to be shown shortly.

17 MR. MACDONALD: (Interpretation) I would like the blinds to
18 remain down because of the next document, which is EVD-D02-00033.

19 PRESIDING JUDGE COTTE: (Interpretation) And it is on your list
20 of documents?

21 MR. MACDONALD: (Interpretation) At number 31, I believe.

22 PRESIDING JUDGE COTTE: (Interpretation) No.

23 MR. MACDONALD: (Interpretation) At the very beginning.

24 PRESIDING JUDGE COTTE: (Interpretation) Yes, it is at number 2.

25 Thank you, Mr. Prosecutor.

1 Court Officer, we have document EVD-D02-00033 which has to be
2 displayed on the screen. This is a document that we are already familiar
3 with.

4 COURT OFFICER: (Interpretation) You can view that document by
5 pressing PC 1.

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

8 Can you see the document on the screen, Mr. Logo?

9 THE WITNESS: (Interpretation) Yes. I wanted it to be placed at
10 the centre of the screen. I can see the document.

11 PRESIDING JUDGE COTTE: (Interpretation) The accused persons
12 also? Very well.

13 Mr. Logo, look at the document and then the Prosecutor will ask
14 you questions.

15 MR. MACDONALD: (Interpretation)

16 Q. Mr. Logo, on the 7th of July you testified on the circumstances
17 in which that photograph was taken, that is the photograph on that card.
18 Please remind us how it happened.

19 A. Mr. Prosecutor, this is how it happened. I went to that school
20 and the school was incapable of providing any documents to me, and as
21 required by the law of my country I demanded that the student be
22 identified by an identity card. The student was called and she said that
23 she did not have any photograph and that she did not have a card. I
24 handed over money to the student to go and take a photograph and to also
25 buy this card because she is the one who knew where the student card

1 could be bought. So I gave her money because she told me she did not
2 have money. She went and had a photograph taken and then she returned.
3 I believe two days later I went back there and it was on that day that
4 this card was issued in the presence of that lady. Your Honour, I'm the
5 one who gave the money for the card and for the photograph.

6 Q. Mr. Logo, P-279, P-279, is it correct that one of the -- one of
7 your objectives as a member of the Defence team was to show that there
8 was a mistake with regard to the date of birth. It was one of your
9 objectives and in the course of your investigation you found or tried to
10 find documents which could call into question her credibility in this
11 regard. Is that not correct, Mr. Witness?

12 A. You are the one who is talking about calling credibility into
13 question. You can interpret that as you will, but, Mr. Prosecutor,
14 investigations are there to turn out -- turn up evidence. It's not just
15 a walk in the park. You are there for a specific purpose, to find
16 evidence. So anything we found was for my team to assess. I was not
17 qualified to assess the evidence I found myself. I referred it on to my
18 team. That's all. I left it at that. There is a scientific work that
19 is conducted between myself and my team.

20 Q. Mr. Witness, is it not true that without your intervention,
21 without your acts, this student card would never have been created
22 because it did not exist before your intervention; is that not true,
23 Mr. Logo?

24 A. Mr. Prosecutor, perhaps you should be praising me rather than
25 blaming me because I made it possible for a student to be identified.

1 Mr. Prosecutor, supposing that this student here had a problem in the
2 city of Bunia, how would we identify that student? How would the student
3 be identified? Because there was no documentation concerning her. This
4 card helped me in my investigations, that is true; but this card was
5 created, as you say, for the girl, not for me. Afterwards it could
6 become a piece of evidence, all right. But first and foremost, the card
7 was created for the girl, Mr. Prosecutor.

8 Q. Mr. Logo, is it not true that this card was created at your
9 instigation to help Mr. Hooper to confront Witness 279 during the
10 examination of that witness? Is that not what happened on the 21st of
11 May, 2010?

12 A. Mr. Prosecutor, I will never stop saying this. I did work that
13 was important here. Now, if this card served a purpose for this work
14 further down the track, then so much the better. But I'm not the person
15 who made the card. The card was made by the school authorities, which is
16 the only authority that is qualified to do so, not me, Mr. Prosecutor.

17 MR. HOOPER: (Previous translation continues) ... if -- perhaps
18 this particular issue may not have been exhausted. I'm wondering whether
19 my friend is going next to move on to EVD-124, 5, and 6, which was of
20 course the birth certificates and accompanying documents of 279 that
21 Mr. Logo also obtained.

22 MR. MACDONALD: (Interpretation) Your Honour, I am conducting my
23 cross-examination. I am completing this point. I believe that the
24 Chamber will understand the conclusion that we will be advancing at the
25 end of our case, but I would submit that Mr. Hooper has every opportunity

1 to come back to this in re-examination if he so wishes or later in the
2 context of the discussions. But I need to establish a factual basis, and
3 that does take a certain amount of time. I am reaching the end of my
4 process, however.

5 PRESIDING JUDGE COTTE: (Interpretation) All right,
6 Mr. Prosecutor, you may proceed. But do not forget what we have been
7 regularly -- or what Mr. Logo has regularly been repeating, and that is
8 that he is that he was the resource or he is the resource person of the
9 Defence team, and his activity involved conducting investigations under
10 the authority of that Defence team. You may continue.

11 MR. MACDONALD: (Interpretation)

12 Q. Is it not a fact, Mr. Logo, that you had the young girl called
13 into the prefect's office and that at that time under a certain amount of
14 pressure she gave as her birth-date the month of August 1988?

15 A. Mr. Prosecutor, that is false, completely false. First of all,
16 what authority would I have over a student who is in her school class, to
17 pull her out of class and take her off to the authorities? No. It is
18 the prefect who decided to send his assistant to fetch that student at
19 school, and he went to fetch her in her classroom twice. My action did
20 not involve calling the student, no. It was the prefect himself who did
21 so. I was conducting my work as investigator. It was the prefect who
22 felt it was worth calling the student, and he asked the question of the
23 student in my presence and he was present too.

24 Q. But, Mr. Logo, you knew the student. You even knew her very well
25 because this was not the first time that you had met her. Is it not a

1 fact that the purpose was to create an identity card with a birth-date
2 which could discredit the brother of 279, and that was your objective?

3 A. Mr. Prosecutor, once again I will tell you that I was doing work.
4 Now, don't make suppositions about the work that I did because I was not
5 doing it in your presence. I think in the name of reciprocity that must
6 be observed. Mr. Prosecutor, once again, I was conducting my
7 investigations and I have told you it is the girl who gave the birth-date
8 which is written on this card. When the prefect asked the student the
9 question, I was silent as the grave, I said nothing. They concluded
10 their conversation, and then the prefect drew up the student's card in my
11 presence, she was there as well, he handed the card to the student. And
12 then I asked the student to give me the card in front of the prefect. I
13 said, "Please give it to me," and I promised her that I would return her
14 the card after scanning it. That's what I can tell you.

15 Q. And you sent it immediately to the Defence team on the very day
16 that you obtained it; is that not correct?

17 A. Mr. Prosecutor, the Court's time is precious. We have no time to
18 waste here. I don't know. How long did you think that I should keep the
19 card at my home with all of the attendant risks that it might get lost?
20 Of course indeed I did send it immediately, not only the card. I also
21 sent the attestation sent by the head of the establishment, recognising
22 that the card had been created, and that attestation was signed by high
23 authority.

24 Q. And that attestation is contested by that same authority in its
25 statement. Mr. Witness, I am going to quote to you what you said and I

1 will end on this note with regard to the card.

2 "My main role," and this is transcript D -- T-286, page 14, lines
3 20 to 22, at the very beginning -- at the very beginning of your
4 testimony you were asked what was your role as resource person and you
5 said the following:

6 "My main role was to carry out investigations, that is, to look
7 for evidence that could help this Chamber to hand down a judgement one
8 day."

9 Mr. Logo, would you agree with me that any good investigator
10 would simply have written a report: I found nothing at the school, there
11 is no document attesting to the birth-date of the young girl, but he
12 would never have asked for a student card to be created. Would you not
13 agree with me on that point, Mr. Logo?

14 A. No, no, no, Mr. Prosecutor. I do not agree with you in any
15 regard. First of all, I do not carry out my investigations with the aim
16 of attacking the Prosecution. Secondly, I am someone who finishes what
17 he starts. I will stick with things to their natural conclusion. As I
18 looked for this evidence, if I found nothing was I going to leave it
19 there? No. I think before you allow yourself to become discouraged, you
20 should exhaust all of the avenues that are open to you. That is how I
21 believe that you should work; otherwise, you will only leave things
22 half-baked.

23 MR. MACDONALD: (Interpretation) Your Honour, would you allow me
24 a couple of seconds.

25 (Prosecution counsel confer)

1 MR. MACDONALD: (Interpretation)

2 Q. Mr. Witness, let us now move on to your meeting with P-219 and I
3 will end on this final subject. I will be much quicker on this than on
4 earlier issues.

5 A. With the permission of the Chamber, could we please remove the
6 student card from the screen in front of me.

7 MR. MACDONALD: (Interpretation) And we can raise the curtain as
8 well.

9 PRESIDING JUDGE COTTE: (Interpretation) Mr. Usher, could you
10 please remove the card from the witness desk and restore it to the
11 Prosecution.

12 Court Officer, you may raise the curtain.

13 MR. MACDONALD: (Interpretation)

14 Q. Perhaps just an intermediate question before we move on to the
15 matter of P-219. Mr. Witness, the father of 280, the witness who came to
16 testify who's known for us as 202-P-0146 (* as interpreted) that father
17 who has not seen his son for several years, is it not true, Mr. Witness,
18 that you said to him:

19 "If you come to testify here, if you co-operate with the Court,
20 if you testify for Germain Katanga, you will be able to see your son
21 again."

22 Do you remember saying that to that father?

23 A. Mr. Prosecutor, that is false, completely false. I have never,
24 never, never said something like that. That is not how we conduct an
25 investigation. You speak as though you were by my side and you heard me

1 say something like that. That is not true, Mr. Prosecutor. In the
2 documents I have signed, that does not appear. This father of whom you
3 are talking, that is not when I met him. My Defence team would not allow
4 me to ask questions of that kind or approach a witness in that way. No,
5 I never said anything like that, Mr. Prosecutor. Please do not put such
6 words in my mouth. Quite frankly, I would ask you not to do that.

7 Q. Mr. Logo, don't involve Mr. Hooper and his team in this. You
8 were alone with the father of 280. Is it not true --

9 MR. HOOPER: I must interrupt. We spent, I don't know, four or
10 five hours overall as a team with that witness and his son's position was
11 discussed, and no one in the team, certainly not Mr. Logo and certainly
12 none of us, ever held out that causal connection. It's a ridiculous
13 suggestion.

14 MR. MACDONALD: (Interpretation) It is not a ridiculous
15 suggestion, given the testimony of the father of that witness. The
16 Chamber has his testimony, and now I would like to pursue the question
17 with Mr. Logo.

18 PRESIDING JUDGE COTTE: (Interpretation) You may continue,
19 Mr. Prosecutor.

20 THE INTERPRETER: Interpreter's correction: Transcript English
21 page 29, line 20, it should be "I am not the only one who met him."

22 MR. MACDONALD: (Interpretation)

23 Q. P-219, transcript 287 in the French version as edited -- I
24 apologise, that is transcript 288 in the edited version of the 8th of
25 July, 2011, Mr. Logo, I am referring mainly to page 5 and 6 of your

1 testimony, where you describe - because I won't read all of your answer
2 which stretches over virtually two pages - I will summarise. In what you
3 said was your second encounter with Mr. P-219, he did not want to talk
4 with you because he did not believe you when you said that you were
5 working -- when you said you were a member -- when you said you were a
6 resource person, whatever it may have been, of the Defence team of
7 Germain Katanga. Is that not true?

8 A. Well, in any event, I don't know if I don't know if he didn't
9 want to or if he was just hesitating. I think that certainly he was
10 hesitant, he didn't want to speak freely perhaps, but he demanded that I
11 give him proof that I worked for Germain Katanga's Defence team.

12 Q. And despite the fact that you were asking him questions, he did
13 not want to answer you until he had such confirmation; is that not true?
14 He was not ready to open up. He did not open up to you until he got such
15 confirmation?

16 A. I can't think for him, but if you want me to make a contribution
17 here I can say that I fell into the trap that he laid for me. That's
18 all.

19 Q. Please explain this to us, P-219 trapped you. But how exactly
20 did he trap you? How was he able to trap you?

21 A. Mr. Prosecutor, you can see that I was faced with someone whom I
22 had to investigate. This person, first and foremost, was hiding from me
23 the main piece of information, and that was that he had already been
24 contacted by your office. Now, that was a fundamental question that I --
25 it is a fundamental question that I ask of everyone I meet. So that

1 things are clear, I say: Have you already spoken with other people about
2 the case that we are dealing with? And he told me: No.

3 Now, I didn't want a situation to arise where he would open up to
4 me and go back to his own office afterwards and say things that were not
5 true. He, in fact, obtained information from me and then he went and
6 gave that information to the opposite camp. Mr. Prosecutor, that was
7 clear.

8 So quite honestly I cannot take information from Mr. Hooper and
9 then bring it across and give it to you. That's not something that I
10 could do. But he laid a trap for me and I fell into that trap. I
11 acknowledge it. The work of an investigator is not very easy. So there
12 you have it. He laid a trap for me and I fell into it. We did things as
13 he wanted to do them, and there you have it, I fell into them.

14 Q. Mr. Logo, do you -- can't you see that the Prosecutor would give
15 a witness instructions that they should perhaps not reveal certain
16 information for the sake of their own security? Do you not believe that
17 it was in that context that Witness 219 spoke to you? He was -- wanted
18 to protect himself and he had already spoken to the Prosecution, he
19 didn't tell you, you didn't know that already?

20 A. You are trying to answer in P-19's (* sic) place. There are
21 several ways of maintaining confidentiality without revealing
22 information. The easiest way for 219 would be to do this: No, I am not
23 prepared to speak to you, and it could have been left at that. Because I
24 am not going to pry someone's mouth open. He could have said: No, I am
25 not prepared to speak to you, and in that way confidentiality would be

1 fully preserved, and the way he proceeded was dishonest.

2 Q. Mr. Logo, I'm going to read the part of the transcript that
3 begins at line 27 on page 5 -- line 26, excuse me. You say in the
4 preceding lines that Mr. P-219, given that he appeared to acknowledge
5 that you were from a different tribe, according to your testimony, from
6 that of Germain Katanga, did not believe that you were his resource
7 person. And then I'm reading line 26:

8 "... and then he said he could not believe it unless it was
9 confirmed by Germain Katanga. And then he told me that he had a lot of
10 information to give me. He began to talk to me, indeed, about a lot of
11 different subjects and so on. He knew this information, he knew that
12 person." I will stop there.

13 Mr. Logo, from the outset the witness doubted your position as
14 resource person. He wanted confirmation from Germain Katanga. But
15 despite that, according to your testimony, he opened up immediately
16 afterwards. You said: "Then he told me he had a lot of information to
17 give me. He indeed began to tell me all about a lot of different
18 subjects and so on. He knew this thing, he knew that person."

19 And then you added: "And then that was like baiting me, like
20 dangling bait in front of me."

21 So is that your testimony, that he opened up to you?

22 A. Mr. Prosecutor, may I be so bold as to point out that I am the
23 one who was present there, and not you. This was our second meeting with
24 P-219. The previous day we had already had prior contact, and when he
25 issued this demand he was obliged to justify making that demand. And as

1 I have already said to you I fell into his trap. I was tricked. I fell
2 into the trap as I said.

3 Q. And I continue still on page 6, line 2:

4 "He told me no. If I have the means to make contact with
5 Germain Katanga, then it is only then if Germain Katanga agrees to speak
6 to me, it is only at that price that he will agree to speak to me. But I
7 needed this useful information for my work on the one hand, and on the
8 other hand I was -- I was conflicted by the idea that I could not contact
9 Germain Katanga."

10 And then you say:

11 "I did not want to miss this opportunity because the man was
12 truly presenting himself as a very worthwhile mine of information, very
13 important in the context of my work, and so in this context I rang up
14 Mr. Germain Katanga's number, I called him, as I usually did, and then
15 sometime later the communication service at the prison in The Hague put
16 Mr. Katanga through to me. And I put Mr. Katanga in contact with 219,
17 they spoke together very successfully in a climate of brotherhood and
18 great friendship that was quite beyond the ordinary."

19 Mr. Logo, please explain to the Chamber why you could not put him
20 into contact with Mr. Germain Katanga. You knew that it was illegal --
21 did you know that it was illegal to do that? Did you know that you were
22 violating the rules of the detention centre?

23 MR. HOOPER: There's nothing wrong or illicit about that. It was
24 only subsequently that the Registry introduced rules related --

25 MR. MACDONALD: I checked the law on it --

1 MR. HOOPER: And I'm sorry, I'm not having a direct conversation
2 with my friend.

3 MR. MACDONALD: And on the 9th of June it was illegal.

4 MR. HOOPER: And it was not illegal and that's been my advice to
5 my investigator.

6 MR. MACDONALD: (Interpretation) May I continue, your Honour?
7 It doesn't matter. It doesn't matter, because I want to come back to
8 this.

9 Q. You said that "I was in a state of conflict because I couldn't
10 put him into contact with Mr. Katanga." Why were you conflicted? Why
11 were you torn between two things? You knew that there were rules
12 regarding the detention centre and three-way phone calls, didn't you?

13 A. Mr. Prosecutor, Mr. Prosecutor, first of all, concerning
14 telephone calls, I was never told that I could not make telephone contact
15 between this and that person. That's the first thing. Secondly, I was
16 torn because I was carrying out investigation work. Logically speaking,
17 when I am involved in my investigations I cannot afford to waste my time
18 putting people into contact with detained people. Now as I was before a
19 dilemma, as I was in a difficult situation, I made a choice. I had to
20 make a choice, and as they say between two difficult situations you have
21 to choose the lesser evil. The lesser evil for me, and I will say this
22 before the Court, for me the lesser evil was to put him into contact with
23 Germain. And after that if I got the information it would be good for my
24 work. I can tell you that most sincerely in all honesty this is what I
25 did.

1 Q. Mr. Logo, is it not true that you were torn and that is why --
2 you testified to this effect you were torn between the important need --
3 this is what you said: On the one hand I needed this information which
4 was useful for my work and on the other hand I was torn because I could
5 not put him into contact with Mr. Germain contact (* as interpreted) -- I
6 could not -- is it not a fact that you could not put him in contact with
7 Mr. Germain Katanga because P-219 was not on his contact list and that is
8 the true reason, Mr. Logo, why you answered in this way and why you are
9 trying to justify yourself?

10 A. Once again, Mr. Prosecutor, no, I am not trying to justify
11 myself. I am telling you what I did. Do not attribute motives to me. I
12 said I was torn because in the course of my investigation work at the
13 time when I'm investigating someone I cannot hand-over a telephone to him
14 so that he can speak with detained persons. That's why I was torn.
15 There was no ban that had been placed on me to telephone anybody at all.
16 So that is what I was doing. And that is fairness.

17 MR. MACDONALD: (Interpretation) Just one moment, if I may, your
18 Honour.

19 (Prosecution counsel confer)

20 MR. MACDONALD: (Interpretation)

21 Q. If according to you putting P-219 in contact with Mr. Katanga did
22 not breach any rules on the detention centre at the ICC, that was not the
23 only occasion on which you put witnesses in contact with
24 Mr. Germain Katanga. P-219 was not the only witness. There were others.
25 Not so, Mr. Logo? In all honesty you can admit that to the Court, isn't

1 that the case?

2 A. Mr. Prosecutor, I am speaking here under oath and I have repeated
3 to you over and over that before coming here I was already a very honest
4 man. So this is not new. So I will tell the Court that, yes, that was
5 not the first person whom I put into contact with Germain who is in
6 detention here, the reason being that it was not prohibited. But once
7 the prohibition set kicked in, I complied. So clearly before 219 there
8 were others, as witnesses or in other capacities, whom Germain talked to
9 as I established that contact. So I do admit that such is the case. I
10 have not come here to lie to the Court.

11 Q. Which witness or which witnesses, Mr. Logo?

12 A. What do you mean?

13 Q. Which witnesses did you put in contact with Mr. Germain Katanga
14 before or after P-219? But let's start with this question: When did you
15 find out that it was illegal? When did you find out that you were no
16 longer able to do so? I mean, going by your memory which seems never to
17 fail you.

18 A. Mr. Prosecutor, you yourself said that you had an elephant's
19 memory, but I said I don't have an elephant's memory. Now, once again,
20 you say that I have an unfailing memory. And then you are lying to the
21 Court again, whereas I have already told you that memory does fail me.

22 Now, Mr. President, for now it is impossible for me to remember
23 all the persons whom I put Germain in contact with. I say this with a
24 clear conscience that I did establish such a contact and I have come here
25 to tell the truth. It is true that I put some -- a number of persons in

1 contact with Germain Katanga, maybe not necessarily within the context of
2 the case. And may I even say that the only person with whom Germain may
3 have actually discussed this case might be 219, but I cannot rely on my
4 memory. Within the past two, three years or so I have covered a lot of
5 ground and I might not be able to remember all the persons.

6 Q. Mr. Witness, on what date did you find out that it was
7 impossible, it was henceforth impossible for you to establish a link
8 between Mr. Katanga and third parties? Which year, please? Make an
9 effort.

10 A. Well, before this Court I will have to be sincere and say that I
11 would need the help of my team because they are the ones who told me. So
12 don't ask me to make an effort which I'm unable to make. So in all good
13 faith, I am not able to tell you the date. You see, even for things that
14 happened two weeks ago, I sometimes have a difficulty --

15 MR. HOOPER: (Previous translation continues) ... as long as you
16 don't want the date.

17 MR. MACDONALD: I want the witness to tell us the date.

18 Q. (Interpretation) So you don't know the date?

19 PRESIDING JUDGE COTTE: (Interpretation) Well, Mr. Hooper was
20 about to provide a date but you don't want it, and the witness has said
21 that he does not remember the date. So, Mr. Prosecutor, maybe we will
22 leave it at that, except you wish to put the question to him once again.
23 But I think his answer was very clear. He does not remember the exact
24 date, he doesn't remember the approximate date, be it by year or by
25 month. So if that is the case, then, Mr. Prosecutor, please proceed.

1 MR. MACDONALD: (Interpretation)

2 Q. Mr. Logo, I thank you. And the -- my learned colleagues, the
3 Legal Representatives, may have questions for you now. I have now come
4 to the end of my examination, and under the circumstances I want to wish
5 you a safe trip back to the Democratic Republic of Congo. And once
6 again, as I stated at the very beginning of my questioning and as you
7 have stated yourself, we have jobs that are contradictory in nature and
8 it is only in that context that I put my questions to you, and I thank
9 you.

10 THE WITNESS: (Interpretation) Now I have the opportunity,
11 Mr. President, your Honours, to say a word or two of thanks to the
12 Prosecutor and his entire team. Since I came here and even at the time
13 of the familiarisation exercise they came to greet me and I want to thank
14 them for that. I also thank them for the clarifications that they sought
15 to obtain from me.

16 Mr. President, I would like to say that I hope that I have
17 provided the best answers to the questions to the best of my ability and
18 I want to thank them for the very kind words extended to me. I wish them
19 success in their work as well. Thank you, Mr. President.

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

22 Thank you, Mr. Logo.

23 Mr. Jean-Louis Gilissen, I do not remember that you notified us
24 of any questions you may have intended for Mr. Logo, but having heard
25 Mr. Hooper, Professor Fofé, and Mr. MacDonald, maybe you are now inspired

1 to put some questions to Mr. Logo. You have the floor.

2 MR. GILISSEN: (Interpretation) Thank you, Mr. President. Thank
3 you, Your Honours.

4 Good afternoon, Mr. Logo.

5 THE WITNESS: (Interpretation) Thank you.

6 MR. GILISSEN: (Interpretation) My name is Mr. Gilissen, and I
7 was not lucky enough to meet you at the familiarisation exercise. I'm
8 sorry about that and I wanted to just point this out.

9 Mr. President, your Honours, it is indeed with great interest
10 that I listened to Mr. Logo's explanations, and my position as at now is
11 that mindful of the interests that I defend, I really do not have any
12 questions to put to Mr. Logo.

13 In any event, Mr. Logo, I want to thank you for your assistance
14 to the Court regarding the clarifications and the understanding of the
15 issues. Thank you.

16 THE WITNESS: (Interpretation) Your name might be difficult to
17 pronounce, but I would like to say that I have always enjoyed your
18 oratory on the internet, and I would like to say that I congratulate you,
19 I congratulate all the members of the representatives of victims who came
20 in a very cordial and fraternal attitude -- with a very cordial and
21 fraternal attitude to extend cordial and warm greetings and welcome to
22 me. So I was very happy to meet them again and I would like to say that
23 I acknowledge that. I was deeply touched by those acts of cordial and
24 warm greetings. This was probably not the last time. I am sure that we
25 will meet again and I want to wish you success in your work as well.

Witness: Witness DRC-D02-P-0258 (Resumed) (Open Session)
Questioned by Mr. Luvengika

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1 Thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) Mr. Luvengika, do you
3 have any comments?

4 MR. LUVENGIKA: (Interpretation) Good morning, Mr. President,
5 your Honours.

6 Good morning, Mr. Jean Logo.

7 THE WITNESS: (Interpretation) Good morning, counsel.

8 MR. LUVENGIKA: (Interpretation) We have met on two or three
9 occasions. Do you remember?

10 THE WITNESS: (Interpretation) Yes, counsel, I remember very
11 clearly.

12 MR. LUVENGIKA: (Interpretation) It was indeed a pleasure for
13 me to meet you this time in this courtroom. And following Mr. Hooper's
14 examination-in-chief and the cross-examination by the Prosecutor, I do
15 not have any questions in principle to put to you. However, I have a
16 small issue, a small question, as I seek clarification on this single
17 point, and that is in relation to the Hema ethnic group.

18 Questioned by Mr. Luvengika:

19 Q. (Interpretation) As I read your CV and I listened to you
20 introduce yourself, you say that you are Hema, full stop. Now, from my
21 small experience on the field it would appear that when people say that
22 they are Hema, they usually extend it to another regional connection.
23 Could you then kindly tell us the details about your ethnicity. Is it
24 Hema north? Hema south? They are not the same people, they do not speak
25 the same language. So could you please clarify this point for the Court.

1 A. Thank you, Mr. Fidel, thank you very much. Let me answer your
2 question by addressing the Court, with your leave. Now, Mr. President,
3 indeed, the Hema in Ituri live on two territories, the Irumu territory,
4 and Djugu territory. I am Hema from the Djugu territory. When we say
5 Hema north or Hema south it is in relation to Bunia town because the
6 Djugu is to the north of Buna and the Irumu is located to the south of
7 Bunia. So I am a Hema from the Djugu territory and we are generally
8 referred to as the Hema north people, but in order to avoid any confusion
9 in the minds of the teams, in the Djugu territory there are four
10 collectivities of Hema. So there are the Bahema north collectivity, the
11 Bahema Badjere collectivity, the Bahema Banyagi collectivity, and the
12 Bahema Baguru (* phon) collectivity. So those are the four collectives
13 in Hema north in the Djugu territory. I belong to the Hema
14 Mujeri (* phon) collectivity, and my village is known as Kachele.

15 For your information since you are a Legal Representatives of
16 Victims, I would like to tell you that I am also a victim because on the
17 6th of October, 2003, my village was also attacked, and maybe the Court
18 could also prosecute crimes that were committed in my village. And if
19 that ever were to be the case, I then would be appearing before you as a
20 victim and I am indeed a victim.

21 Q. Thank you, Mr. Jean Logo. Now, as for the language do the people
22 from Hema north speak the same language as those from Hema south?

23 A. Thank you -- Mr. President, I'm sorry, the five-second rule
24 sometimes I forget it. Now, Mr. President, the Hema of the Djugu
25 territory speak Kilendu. It is a language of Sudanese origin. But the

1 Hema of the south speak Kihema which is a nilotic language so that is the
2 detail that I can add. But I can also add that in the Irumu territory
3 all the Hema collectivities are clearly delineated in relation to the
4 Ngiti community; whereas, the Hema of the Djugu collectivity live in a
5 mixed society. So it is very difficult to cross from the Lendu to the
6 Djugu territory. You can leave a Hema village and get straight into a
7 Lendu village as the case may be. As I told you yesterday, we farm on
8 the same hills, we drink from the same springs, and we speak the same
9 language. So that is the detail I can provide and I think that your
10 question is very timely and very useful. Thank you, counsel.

11 Q. I would like to thank you, Mr. Jean Logo.

12 MR. LUVENGIKA: (Interpretation) I have no more questions for
13 the witness.

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

16 Thank you, Mr. Logo for your answers to the questions of
17 Mr. Luvengika.

18 Now, Professor Fofé, if you so desire, you now have the floor for
19 your last comments.

20 MR. FOFÉ: (Interpretation) Thank you, Mr. President, your
21 Honours.

22 Good morning, Mr. Logo, thank you. Well, I had one question only
23 on the language and Mr. Luvengika has clarified that point. Yesterday I
24 noted that you testified that you were a Hema and that you spoke Kilendu.
25 So I had a question on that point. You have provided the clarification.

1 I have no further questions for you. Thank you, Mr. Logo.

2 THE WITNESS: (Interpretation) I thank you, Counsel, and once
3 again let me avail myself of this opportunity to say that I had never met
4 you before the familiarisation exercise, but on that occasion you
5 received me very well and I was very touched by that. I thank you for
6 that. I thank all those who accompanied you on that day, and I am
7 speaking about Andreas, this lady, maybe she is not in the courtroom, but
8 she along with all the other members of your team, I want to wish you
9 success in your work and maybe there would be another occasion to meet
10 again.

11 Now, if I want to make a specific application to the Chamber, it
12 would be the following, that on the day I will be concluding my
13 testimony, I would like along with my team to say hello to you if this is
14 acceptable by Court procedures.

15 MR. FOFÉ: (Interpretation) Thank you, Mr. Logo. I believe that
16 the President has heard your application, and we will be more than
17 pleased to meet you at the end of your testimony. Let me avail myself of
18 this opportunity also to thank you for the clarifications you provided to
19 the Court. Thank you, Mr. Logo.

20 THE WITNESS: (Interpretation) Thank you. I receive your thanks
21 very warmly and I thank you for your confidence.

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

24 Mr. Hooper.

25 MR. HOOPER: Yes, I have no other questions of you, Mr. Logo.

1 Thank you very much. It just remains for me publicly to thank you for
2 coming and making the effort, particularly over the last day or so, and
3 for your unfailing courtesy. We'll have an opportunity shortly to speak
4 more informally, and I look forward to that.

5 THE WITNESS: (Interpretation) Thank you, Mr. Hooper, you have
6 been my counsel, you have been my trainer, I thank you and I thank your
7 team and I'll leave it at that for today.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Logo, we have now
9 come to the end of your testimony. All parties and participants have
10 thanked you, Defence teams, Legal Representatives, the Prosecutor's team,
11 and it is now for the Bench to thank you for the clarifications that you
12 provided. We thank you also for the conditions in which you have
13 testified since yesterday. You will soon be leaving for your place of
14 residence. Now, whatever has been said during these hearings you will
15 keep to yourself. You do not have to speak about these matters to
16 anyone. Your testimony was for the benefit of the Chamber. You have
17 expressed a desire to greet the Defence team for Mathieu Ngudjolo.

18 Now, Madam Court Officer, because Mr. Logo has a special status
19 of investigator, we grant him permission to greet that Defence team as
20 requested and also because the Defence team welcomes such an opportunity
21 as well. So as we do with all other witnesses, you will have the
22 opportunity to greet Germain Katanga's Defence team and Germain Katanga
23 himself briefly. We do not expect that you would have any lengthy
24 discussions and expressions of emotions, but I believe that this will be
25 the opportunity for Germain Katanga and his team to thank you as well.

1 So we will now be stopping and the Court Usher will be attending to you.
2 Maybe you can meet during the suspension. If not, that would be during
3 the very brief hearing at 11.30, when we hear the statements of the
4 various parties.

5 Yes, Mr. Prosecutor.

6 MR. MACDONALD: (Interpretation) I would like to suggest that we
7 shift this brief hearing to 12.00, noon. I have not read the
8 application. I have a few ideas on my mind, but we would like to
9 cross-check a thing or two after the break and be given a few minutes,
10 having come to the end of this cross-examination exercise.

11 PRESIDING JUDGE COTTE: (Interpretation) We will resume at noon
12 to deal with the application from Mr. Ngudjolo's Defence team filed at
13 9.00 a.m. this morning, so that we can hear the positions of the
14 Prosecution, of Mr. Hooper, and the Legal Representatives. It is true
15 that it was difficult to look at this application during the proceedings,
16 but it would seem to dovetail with what we had addressed previously. So
17 I believe that if we reconvene at noon we would spend 15 to 20 minutes to
18 deal with these issues.

19 So at this juncture, Mr. Court Usher, please kindly lead Mr. Logo
20 out of the courtroom.

21 THE WITNESS: (Interpretation) Well, Mr. President, before the
22 usher takes me out I would like to sincerely thank you and to pay homage
23 to you, Mr. President. You are a seasoned Judge. I have read writings
24 and material on you. You have dealt with very complicated cases and you
25 have taken -- you have made fair judgements. I know that you have dealt

1 with the contaminated blood issues, the DC-10 plane, the corruption
2 issues, the buildings that were occupied by senior personalities, and
3 what have you. You have a very distinguished career. You as well as
4 the -- your lady -- your Honours the lady Judges who are to your left and
5 right. Some of them started by examining judges and have moved on
6 through several rungs of the hierarchy, the ICC, ICTY, Vice-President of
7 the International Criminal Court, all of you are distinguished persons.
8 Madam Christine was a doctor at 37 (* as interpreted) years and a
9 lecturer in criminal law, comparative criminal law, an expert in her
10 area.

11 So, Mr. President, I want to pay homage to your Bench and it
12 indeed been an honour for me to appear before such eminent personalities
13 that you all are. I wish you success in your work. I know that coming
14 to a judgement is a complex issue, but I know that your wisdom, your
15 competence, your experience will help you to come to a good judgement. I
16 have only made a very small and modest contribution to this case. I know
17 and I feel it within me. And I felt at some point that there are some
18 issues that the Prosecutor may have wanted to ask me but he didn't broach
19 those issues and I will not talk about it. But, Mr. President, if ever
20 you need my services, please do not hesitate to call on me.

21 Once again, Mr. President, I thank you.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Logo.
23 The entire Bench, all three of us, will remember from your very friendly
24 statement that you have encouraged us to come to the delivery of good and
25 proper justice at the right time.

1 So, Court Usher, please take Mr. Logo out of the courtroom and we
2 wish him a safe trip back home.

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

4 (The witness withdrew)

5 MR. HOOPER: Just as Mr. Logo makes his exit, our understanding
6 is that as Mr. Logo is being treated as an exceptional position because
7 of his position in the case, in fact we have effectively carte blanche in
8 terms of contact with him from now on. I don't know how long he's going
9 to be here. Wether -- we understand, in fact, that the funeral may be as
10 early as tomorrow, in which case -- I don't think he knows that, but if
11 that's the case, then I dare say he would want to go today. But whether
12 it's to take him for lunch or an evening meal, we'd like to do that, we
13 plan to do that, and subject to the VWU and his own wishes, I'm sure we
14 can do that. And we expect otherwise he will be going much quicker than
15 the four or five days that we'd originally anticipated he'd be here. We
16 might be able to bring him back, it's subject to costings and the like
17 which impose their own restraint. But in any event, we hope to see him a
18 bit more at length today after he's had a brief meeting with
19 Germain Katanga. Thank you.

20 PRESIDING JUDGE COTTE: (Interpretation) Well, Mr. Hooper, I
21 will refer you to our oral decision of 31 May, further clarified orally
22 on the 1st of June, stating that Mr. Logo's special status as the Defence
23 investigator has enabled the Bench to waive the relevant principles and
24 authorise Mr. Logo to communicate with his Defence team after his
25 hearing. Given that all -- subject to the condition that the content of

1 the testimony will not be discussed. These matters have already been
2 clarified several weeks ago in relation to the organisation of a possible
3 meeting with him before he leaves The Hague. That will be done with VWU.
4 All measures taken accordingly.

5 MR. HOOPER: Our understanding was that it went further than
6 that, in other words, that we have free access to him because of course
7 he's carrying on as an investigator. So we -- in terms of, for example,
8 all the witnesses to come, we're going to be in contact with him, he will
9 be busy, I suspect, in the same way that he has been, and this might
10 continue for several months. But it's in particular in respect of today
11 we'd like the opportunity to see him and take him out basically, if we
12 can, today for lunch or this evening if he's here as long as that. My
13 understanding is that the Chamber would not disapprove of that.

14 PRESIDING JUDGE COTTE: (Interpretation) Maybe I wasn't clear
15 enough or there might have been an interpretation problem. Mr. Hooper,
16 we agree entirely with you. It is possible for Germain Katanga's Defence
17 team to meet Mr. Logo after his testimony, subject to not discussing the
18 content of his testimony. Obviously you still need him as your resource
19 person, and that is a given. So the meeting you may have with him today
20 will not be organised by the Trial Chamber, obviously. The VWU will
21 provide you details as to his availability, and these are matters that
22 are beyond our control. But I think that we are on the same wavelength,
23 Mr. Hooper.

24 So we shall suspend now because it is time to do so. We will
25 reconvene briefly at noon and attempt to deal with Mr. Kilenda's

1 application. I hope that it will be more than an attempt, and that will
2 only happen after we hear comments from Mr. Hooper, from Mr. MacDonald,
3 and Mr. Gilissen, and Mr. Luvengika.

4 The hearing is suspended till 12.00, noon, Court Officer.

5 Recess taken at 11.01 a.m.

6 On resuming at 12.00 p.m.

7 (Open session)

8 COURT USHER: All rise.

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

10 The accused persons are here with us and we are meeting for a
11 brief hearing to listen to the observations of the parties and
12 participants on the oral application made yesterday by Mr. Kilenda and
13 submitted in writing this morning for the purpose of seeking leave to
14 withdraw Witness 0125 and to add a new witness, 0965. Do you wish to
15 intervene first, Mr. Prosecutor?

16 MR. DUTERTRE: (Interpretation) Good afternoon, Mr. President.
17 Good afternoon, your Honours. Your Honour, the Prosecution has a certain
18 number of remarks to make. Within a space of three weeks we had three
19 applications, 3027, 3060, and 3068 from the Defence of Mathieu Ngudjolo.
20 All three applications relating to the variation of the witness list and
21 order of appearance. Today we have this third application, 3068, in
22 which you are being asked for leave to add a witness who will testify on
23 the activities of Mathieu Ngudjolo and specifically on the delivery of
24 the 24th of February, 2003, in which Mathieu Ngudjolo is supposed to have
25 taken part. The Prosecution objects for the following five, six reasons.

1 To begin with, this issue of a delivery is completely new and is
2 a total surprise for the Prosecution. We briefly cross-checked in annex
3 2756 Conf annex 2 of the 4th of March, 2011, which includes the summaries
4 of the expected testimonies in defence of Mr. Mathieu Ngudjolo and there
5 is no reference to that delivery of the 24th of February in any of the
6 witness summaries or even in Mr. Ngudjolo's summary. So this is
7 something completely new.

8 That leads me to mention that the Chamber had set deadlines for
9 the submission of documents and witness summaries. Those deadlines are
10 necessary to enable the Prosecution to prepare for its cross-examination
11 and seek important materials for the ascertainment of the truth, and we
12 realised that today there is a motion which has raised something new
13 despite this delay without complying with Regulation 35 of the
14 Regulations of the Court on the modification of time-lines.

15 If indeed Mathieu Ngudjolo, as he claims, was attending to a
16 delivery on that day, that is something that is not new and that they
17 should have known. It is not something that was suddenly discovered just
18 a few days ago. This is something that the Defence would have known from
19 the witness ever since the beginning of the proceedings. Prior to March
20 2011 there was no information from the Chamber or any applications asking
21 for extension of dead-lines in order to source any witness to discuss
22 this issue and neither was there any mention made of that delivery in the
23 summaries of the witnesses. If this is something that is true,
24 Mr. Ngudjolo must have been aware of it and his Defence must have been
25 aware of it also. So this is an extremely important element which is new

1 and it is being raised at the last moment. And this looks like an alibi
2 defence.

3 I would like to remind you that Regulations 79 and 80 of the
4 Rules -- Rules 79 and 80 of the Rules of Procedure and Evidence
5 establishes dead-lines, and before the trial opened there was a certain
6 number of filings from the Defence on this issue, and we do not remember
7 the defence of Mathieu Ngudjolo raising that issue of delivery at that
8 time. And the text of Regulation 79 clearly stipulates that the
9 Prosecutor should know in advance so as to prepare adequately and respond
10 Rule 79, paragraph 2, of the Rules of Procedure and Evidence. That is
11 where Regulation 35 is important because it sets the stage for everyone
12 to have the materials necessary at the beginning without being ambushed
13 at the last minute. Because such an issue involves two processes:
14 Meeting with witnesses -- and so it would be an ambush to raise an issue
15 of this sort because there is the necessity for a fair and expeditious
16 trial.

17 I'm being told to slow down. The introduction of such an element
18 is contrary to such objectives because it forces the Prosecution to
19 resume investigations, go back to the field, and gather the necessary
20 information for the preparation of their cross-examination. We are even
21 more surprised because last week there was an application to add another
22 witness who was supposed to testify on the events of the 24th of
23 February, and at that time that issue of a delivery was still not
24 mentioned. This means we have an issue that was not raised by the
25 Defence before the dead-line set by the Chamber in March, and the Defence

1 is now ambushing us with it. And I must point out that the information
2 according to which the witness was not known to the Defence before the
3 dead-line set by the Chamber, and that is what the Defence indicates in
4 paragraph 25 of its filing number 3068, that does not seem to correspond
5 to the reality.

6 For those reasons and given that the Defence pursuant to
7 Regulation 35 of the rules and regulations of the Court, considering that
8 the Defence is not able to justify their inability to raise this issue
9 before the dead-line, then the Court has to reject this application
10 because that issue of a delivery was not mentioned even as late as last
11 week.

12 In the alternative, if the Chamber granted the application, your
13 Honours, then we would ask for two things. First of all, the Defence
14 should disclose to the Chamber and all the parties detailed statements of
15 the interviews of this new witness and also of the witness who was
16 announced last week so that the Prosecution should be able to prepare
17 adequately and so that the Chamber and all the other parties should
18 dispose of complete information to ensure the efficiency of our
19 proceedings.

20 I would like to remind the Chamber that when the Defence of
21 Germain Katanga submitted a request to the Chamber in March regarding the
22 three detained witnesses - and this was after the dead-lines - the
23 Chamber also ordered complete signed statements to be disclosed. So in
24 the alternative, we would like to have detailed interview reports or
25 statements as quickly as possible. Furthermore, in the same way as our

1 submissions last week, we would want that this witness be called as late
2 as possible together with the witness introduced last week so that we
3 should have enough time to prepare and to go to the field and gather the
4 necessary information.

5 Therefore, to summarise, we are asking that this application be
6 rejected because it is late and it does not comply with Regulation 35 of
7 the Court, given that the Defence of Mathieu Ngudjolo was quite capable
8 of raising this issue before. And in the alternative, we will need to
9 have detailed statements for the two additional witnesses and their
10 appearance should be scheduled as late as possible.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
12 Mr. Prosecutor, for those observations.

13 Now, Mr. Hooper, do you have any specific remarks to make about
14 that application?

15 MR. HOOPER: No, thank you, Mr. President.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
17 Mr. Gilissen.

18 MR. GILISSEN: (Interpretation) Thank you, Mr. President.

19 Mr. President, your Honours, this is an important event that we have
20 learned about today because I'm talking about this alibi defence, and any
21 alibi defence is very important because of its nature and its possible
22 consequences. We are trying to deal with the problem objectively and we
23 do not want to allow any subjectivity to creep in here. But it is true
24 that this alibi defence is a new issue which is all the more surprising
25 because we should have received that information several days ago when we

1 said that we were not objecting to the appearance of Witness P-0963. You
2 remember, your Honours, that we had no objection to the addition of that
3 witness to the list of witnesses of the Defence of Mr. Mathieu Ngudjolo.
4 It is obvious that the discussion we are having today would have taken
5 place several days ago if we had information, the information that we had
6 today, that is, to the effect that he would testify to the fact that
7 Mr. Mathieu Ngudjolo attended a delivery.

8 I do not want to remind the Court of Rule 79, but it is obvious
9 that the very nature of this testimony places it at the very limits of
10 fairness.

11 Furthermore, I believe that one has to be extremely cautious when
12 it comes to the conditions of the appearances of such witnesses. We have
13 to look at the issue of fairness and the Prosecutor has dealt with that
14 adequately. I've discussed this issue with Mr. Luvengika, your Honour,
15 and I believe he is of the same opinion, and that is that we are dealing
16 here with a very important issue, and if this had to have an effect on
17 fairness, it will be up to the Chamber to compensate for or to repair the
18 possible prejudice that the late submission of this element could have.
19 Both I and Mr. Luvengika believe that this idea about additional
20 information is absolutely crucial.

21 So I'm simply reiterating what the Prosecutor has said. It would
22 be necessary for those two witnesses, P-0963 and P-0965, to have not
23 summaries but extremely detailed statements to begin with, which should
24 make everybody to be able to familiarise themselves with the situation.
25 And secondly, I think in light of what could happen we will be able to

1 see whether this form of compensation would be sufficient.

2 So to summarise, Mr. President, I think it would not be
3 unreasonable in the opinion of the Legal Representatives to oppose the
4 introduction of such evidence. If Mr. Ngudjolo actually attended that
5 event, then he should have been -- he should be allowed to explain that
6 element of defence. But there has to be a balance of interests here, and
7 this late submission which is a reality for us, all of us, touches
8 probably on the credibility and admissibility of the argument itself.
9 And in light of that, the Chamber should offer the Legal Representatives
10 and also to the Prosecution the possibility of avoiding all problems of
11 fairness. So the efficiency of the work of the parties on this side
12 should not be limited.

13 So I am sorry for being too long, Mr. President, but I hope I was
14 clear.

15 PRESIDING JUDGE COTTE: (Interpretation) You must have realised
16 that the witness congratulated you on your eloquence at the end of his
17 testimony.

18 Now, Mr. Luvengika, I believe that you are of the same opinion as
19 Mr. Gilissen?

20 MR. LUVENGIKA: (Interpretation) Yes, Mr. President, and I have
21 nothing further to add.

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

23 Mr. Kilenda, you can make a brief observation if you wish to
24 clarify your written submission and also to give us your point of view on
25 the request made by the Prosecutor and the Legal Representatives, that

1 is, in the event that the Chamber grants your application. And their
2 request related to the production of detailed reports or statements which
3 would make it possible for them to prepare the cross-examinations much
4 more adequately.

5 MR. KILENDA: (Interpretation) Thank you, Mr. President, your
6 Honours, I will be brief. And my learned friend Professor Fofé will
7 complete my statement.

8 Your Honours, if we had intended to plead an alibi defence from
9 the beginning of the trial we would have informed you according to the
10 rules and regulations of this Court. You know that more than one and a
11 half years ago the Prosecutor invited us to conduct that exercise. The
12 Chamber asked us to answer and at that point we said that we did not have
13 an alibi defence, and that was for several reasons and Professor Fofé
14 will talk about it. What is new here is that it is the first time that
15 that word "*accouchement*" is used, that is, "delivery." But regarding the
16 facts on which Witness DRC-D03-P-0044 will testify, there is this which
17 is written at the end, and I quote:

18 "Will Ngudjolo testify" -- "Will it be stated that Ngudjolo was
19 not in the Bogoro attack because he was with this witness on the 24th of
20 February, 2003, at the Kambutso health centre."

21 Obviously, when you are going to hear that witness you will hear
22 that issue of delivery. I have just come back from a mission. I
23 discussed with those witnesses, and I was trying to find out how he will
24 testify in the chamber, and my investigations led me on the 4th of July
25 to the possibility of the testimony of this new witness. That is why we

1 submitted that application to you because it was only on the 4th of July
2 that we discovered this witness. We believed that his testimony is very
3 important to shed light on the charges against Mr. Ngudjolo.

4 A short while ago when Mr. MacDonald was addressing the witness
5 who have just left -- who has just left, he said that the Prosecution has
6 nothing to hide. Accordingly, I believe that we should be given the
7 opportunity to listen to this witness and you will know much better what
8 happened on the 24th of February, 2003, relating to the activities of
9 Mr. Mathieu Ngudjolo.

10 Now, with regard to the two requests made by the Prosecution and
11 supported by the Legal Representatives of the victims to the effect that
12 if our application to add this witness is granted, we should produce
13 elaborate statements or interview reports for these witnesses as early as
14 possible and that those witnesses should testify as late as possible. We
15 will assess that request and we do not have any objection to those two
16 witnesses testifying last. We believe that the Prosecution has to
17 investigate these witnesses and they will get to know what, indeed,
18 happened on the 24th of February, 2003. I will stop there for now, your
19 Honour, and Professor Fofé will complete what I have said.

20 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, do not
21 go into the substance, into the merits. We have your oral application of
22 yesterday, your written submission of this morning. We had the
23 additional statement by Mr. Kilenda. And if you have any really
24 important new information, give it to us, but we do not feel that at this
25 stage there is need to give an elaborate justification of your

1 application. We have a certain amount of information already. Please
2 proceed.

3 MR. FOFÉ: (Interpretation) Thank you very much, your Honour.
4 I'm not going to go into an in-depth or academic analysis here. Before
5 coming to the most important point, I simply would like to underscore
6 what Mr. Kilenda has said, that is, this element is not as new as that.
7 Given the occupation of Mr. Mathieu Ngudjolo, which everyone knows, from
8 the very beginning there have been several materials that clearly
9 indicate that Mathieu Ngudjolo is a nurse. And in the materials that we
10 disclosed to all the parties in a timely manner, there were documents
11 related to the Kambutso health centre.

12 Mr. President, your Honours, the Defence has a heavy
13 responsibility when it becomes aware of information, the work of the
14 Defence would be to carry out further investigations. This element which
15 came to the attention of the Defence only during Mr. Kilenda's last
16 mission prompted us to apply for leave from your Chamber to add this
17 important witness while at the same time asking to be able to withdraw
18 two witnesses. So we do not want the Chamber to waste time, so we have
19 acted rigorously and we want to demonstrate the non-involvement of
20 Mr. Mathieu Ngudjolo in the Bogoro events. We wish to avoid repetitions
21 but at the same time call to the courtroom witnesses who can provide
22 relevant information.

23 And as Mr. Kilenda has said, these two last witnesses that we
24 wish to call, and particularly the last given that 0963 has already been
25 scheduled in eighth position, and with the proposed withdrawal of the two

1 witnesses, you will realise that on the new list Witness 0963 and 0965
2 will testify last, immediately before the expert witness and the accused
3 person himself. So there is no problem with the order of appearances.
4 The most important point that I wanted to deal with briefly concerns the
5 alibi.

6 Mr. President, your Honours, if the Prosecutor and all the
7 parties and participants remember the various charges against
8 Mathieu Ngudjolo, then they would see that the concept of alibi in the
9 instant case calls for a great deal of reflection. In any case, even if
10 we have to talk about alibi, the Prosecutor referred to
11 Rule 99 (* as interpreted), paragraph 2 of the Rules of Procedure and
12 Evidence. For our part in the Defence we would like to refer the Chamber
13 to the same Rule 79, paragraph 3, which stipulates as follows:

14 "The fact that the Defence does not meet the provisions in this
15 regulation does not prevent them from providing evidence under
16 99(1) (* as interpreted) above."

17 This means even if we had to accept this alibi, then the Chamber
18 under paragraph 3 would allow the Defence to call this new witness that
19 the Defence discovered and that article actually reads as follows:

20 "Failure of the Defence to provide notice under this rule shall
21 not limit its right raise matters with in subtitle 1. That is all.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Fofé.
23 Prosecutor, very briefly, please.

24 MR. DUTERTRE: (Interpretation) Thank you, your Honour. I'll be
25 very brief. Three short comments. First of all, this matter of giving

1 birth is indeed an entirely new element. And if, I repeat if
2 Mr. Ngudjolo participated, then that cannot have escaped his attention
3 and nor can the importance of this attention. However, we have nothing
4 in his summary annex 2 of the filing 756 to this effect, nothing at all,
5 and there is nothing -- no mention of this in other testimony from other
6 witnesses. Under Rule 35(2), we are not dealing with the exchange of
7 witnesses, we withdraw one witness and compensate by introducing a
8 different witness. The Rules are clear. The notification should have
9 been made beforehand.

10 Third comment, paragraph 3 of Rule 79 of course is there, but
11 this does not remove the Prosecutor's right to have enough time to
12 prepare. And subparagraph 4, your Honour, enables you to order the
13 disclosure of any other elements of evidence which requires detailed
14 written precise explanation which is different from the two affidavits
15 which were provided for the appearance of Witness 250, which were quite
16 short. The Prosecution would need, as would the Chamber and other
17 parties, detailed, very detailed, information concerning these witnesses.
18 Thank you, your Honour.

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

20 Mr. Kilenda or Professor Fofé, do you have any final comments to
21 make?

22 MR. FOFÉ: (Interpretation) Yes, your Honour, thank you.

23 PRESIDING JUDGE COTTE: (Interpretation) Very briefly,
24 Professor Fofé.

25 MR. FOFÉ: (Interpretation) Yes, your Honour, very briefly. We

1 maintain that we have properly met the conditions provided for under
2 Rule 35(2) because we were only certain of the existence of this fact at
3 the last interview with Mr. Kilenda. And so this is something of which
4 we were not certain before this latest mission.

5 As you know, your Honour, even if one has a fragment of knowledge
6 one cannot simply bring it to the knowledge of the Court lightly. This
7 element only came to our knowledge with a certain degree of certainty on
8 the occasion of Mr. Kilenda's latest mission. And perhaps what I would
9 like to add at the last moment is that the investigations are ongoing, at
10 least as regards the Defence. We have continued the investigations
11 following the testimony of all of the Prosecution witnesses and following
12 the testimony of all of the witnesses for the co-accused. And we were
13 under an obligation to continue those investigations. These
14 investigations are revealing elements which are relevant to the cause of
15 the Defence of Mathieu Ngudjolo. I do not think that the Prosecutor can
16 continue to object to the production of this element if he recalls
17 Article 54 of the Statute, Article 54 of the Statute, the first
18 paragraph, (a), I believe, of the Statute.

19 PRESIDING JUDGE COTTE: (Interpretation) We do have that text in
20 mind, Professor Fofé. For the Prosecutor, it is his Bible, it is the
21 guide-line for proceeding.

22 MR. FOFÉ: (Interpretation) All right. There you have it, your
23 Honour. I believe that that gives you enough elements of information to
24 take the right decision.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

1 Professor Fofé. All right. During the break the Chamber has been
2 working on this oral request and the written request. We have heard the
3 comments of both sides -- of all sides. We have had the opportunity to
4 communicate, as necessary, with the means at our disposal, and now it is
5 for the Chamber to address you. First of all, we express our thanks for
6 the quality of your respective observations, given that you had very
7 little time to prepare them. That is something that we do not often have
8 occasion to say, but we recognise it fully today. You had very little
9 time. Well done.

10 Concerning the method, you may remember that at the Status
11 Conference the Chamber on several occasions expressed the desire that
12 both the Office of the Prosecutor when it was its turn as well as
13 Mr. Luvengika when it was his turn and the Defence teams when it was
14 their turn should be circumspect in the number of witnesses that they
15 would call and would keep a constant eye on the number of witnesses as
16 well as the usefulness of the witnesses that they intended respectively
17 to call to testify before the Chamber.

18 In this regard last week we stressed that the Defence of
19 Mathieu Ngudjolo as others, but specifically the Defence team of
20 Mathieu Ngudjolo, should conduct that reevaluation process. We know that
21 that team unfortunately lost one witness who is deceased, but that the
22 team withdrew four witnesses and last week was authorised to add one
23 witness, and today is asking for authorisation to add a second witness.
24 Regulation 35(2) of the Court - and we know how it is drafted, but you
25 also know the jurisprudence of the Chamber concerning the application of

1 that regulation, 35(2), and the fact that the Court reserves the right
2 when time-limits are not observed to bring Rule 35(2) into positive play
3 when the late addition of a witness demonstrates a certain benefit. I
4 don't have the exact wording in head -- in my mind, but where that
5 addition of a witness does offer a clearly evident benefit.

6 Do not forget that last week, I believe it was on the 7th of
7 July, we authorised the addition of Witness 963 by the application of
8 that very rule, 35(2). The decision concerning Rules 68, 69, which was
9 handed down on the 14th of September, 2010, and the question of alibis as
10 the occasion presents itself, I would simply like to recall to all of you
11 that in that decision in paragraph 38, and supposing that an alibi
12 exists, it states -- excuse me, that is paragraph 48. It states --
13 excuse me, paragraph 45, that the Chamber was informed on the occasion of
14 the conference -- of the Status Conference on the 2nd of October, 2010,
15 that the Defence indicated to the Prosecution that it did not intend (the
16 Defence of Mathieu Ngudjolo having specified "at this point") advancing
17 an alibi or exoneration from legal liability in application of Article
18 38(1) of the Statute.

19 In paragraph 38 we also recalled that if an alibi were to be
20 invoked then information would need to be provided sufficiently early to
21 permit the Prosecution to prepare adequately and respond. But at the
22 current state of play and given the information that we have just
23 received and the comments we have just heard, it would appear that
24 however important the simple presence or absence in Bogoro of
25 Mathieu Ngudjolo on the 24th of February, 2003, may be, it does not

1 *ipso facto* exonerate him of all criminal liability according to the
2 thesis advanced by the Prosecution. So it is not at all certain that we
3 are facing an alibi in the sense of Rule 69 here.

4 But even supposing that we were, the information has been
5 provided on the 12th of July for a hearing which would take place ninth
6 in line, that means in several weeks' time. That does allow the various
7 parties and participants enough time to prepare because apparently and
8 particularly for the Prosecution, cross-examination might turn out to be
9 useful. As the Prosecutor said himself a moment ago, this presence in
10 Bogoro on the 24th of February, 2003, because of a birth might appear
11 surprising. The cross-examination will serve the purpose of clarifying
12 that.

13 However, we believe, nonetheless, the Defence of Mathieu Ngudjolo
14 that it would perhaps have been desirable at the time of the presentation
15 of the request for addition of the witness last week to be more explicit.
16 Now, even if on the last line of what you have called document on the
17 identity, the themes, and the substantive facts of the statement, you did
18 say the Defence will explain their -- the activities on the 24th of
19 February, 2003. You have made reference to a Witness 44 that we do not
20 have clearly in mind at the beginning of this hearing.

21 The Chamber observes at this point that the addition of a witness
22 requested is an addition which is along the lines of the request which
23 took -- which was submitted a few days ago concerning Witness 963 who
24 will perhaps, perhaps, corroborate the authorised witness of -- the
25 authorised testimony of Witness 963. The Legal Representatives and the

1 Prosecution will have every freedom to cross-examination and the various
2 parties - I'm referring to the Legal Representatives - within the scope
3 of their mandate to question that witness. But it remains that as the
4 Prosecutor said a few moments ago, it is very important to maintain that
5 witness in ninth place so that several weeks' time are provided - and I'm
6 coming back to that point - will allow the Prosecution and the witness
7 representatives and Legal Representatives to prepare.

8 Mr. Kilenda, Professor Fofé, we would ask you also to submit a
9 copy of any statements that you have been able to take to the
10 participants and to the Chamber so that given the date on which this
11 addition is authorised, everybody will have the best possible opportunity
12 to prepare so that the debates will be of benefit to the Chamber so that
13 the dates will be better informed, richer, in a word, more useful.

14 Concerning the order, Regulation 43 of the Rules of the Court gives the
15 Presiding Judge in consultation with the other Judges the power to decide
16 on this question. Therefore, this witness will be in the ninth place.

17 At this time the witness -- the Chamber authorises the withdrawal
18 of the two witnesses that you have decided no longer to call. The
19 Chamber authorises the addition of Witness 965 on two conditions: that
20 this witness will testify in ninth place, that there will be no further
21 changes, and that the statements which must have been taken from those
22 witnesses will be communicated. All documents enabling the various
23 participants to prepare themselves usefully are disclosed.

24 I think that the situation is now clear. We are now going to
25 rise for a period of three weeks. I will not dwell on the fact that

1 certain among us will be on holidays, but under a system of
2 rotation - and this to the intention of the accused people -- accused
3 persons - you can be sure that the Court will continue its work.
4 Mathieu Ngudjolo, it is your Defence that will begin three weeks from
5 now. You have been waiting a long time. Your turn will come up shortly
6 and we will hear the witnesses that Mr. Kilenda and his co-counsel,
7 Professor Fofé, will call at that point.

8 Mr. MacDonald expressed the wish, as he is our spokesperson for
9 these kinds of questions, please limit your filings to the most urgent
10 matters between the 7th of July and the 8th of August and as far as
11 possible please try and limit your requests to what is undeniably of an
12 urgent nature. We will rise -- excuse me.

13 MR. HOOPER: (Previous translation continues) ... a brief word
14 because obviously we've now concluded a significant part of the
15 Germain Katanga Defence case and we have done so, I hope, in a timely
16 manner, and we recognise that we've done that within the context of the
17 courtesy of the Court and the professionalism of our colleagues in this
18 Court and indeed their unfailing courtesy and we're grateful for that.

19 And I'm glad to report, Mr. President, that even at this stage
20 there is still amicable relationships between all the parties, as you
21 would hope and perhaps expect, and I would like to pay a particular
22 thanks to the Registry staff, to Ms. Toumaj and to Mr. Ndugu who, of
23 course, had to more recently weather a storm of EVD numbers and the like,
24 we're grateful to them. And I hope that we've given our interpreters and
25 our stenographers, indeed, a good run for their money. We apologise for

1 the difficulties that sometimes we've caused them. It's not through
2 thoughtlessness, but rather perhaps, from time to time, an
3 over-concentration on other matters. And if that's a lawyer's
4 distinction, then so be it.

5 But the final matter is this, if I can just briefly touch on it.
6 This morning I understand that the Registry were to provide, presumably
7 *ex parte*, observations in relation to the detained witnesses, that is,
8 the Kinshasa four, and the accused persons. And the difficulty is this,
9 that it may appear in our submission that over the last weeks there's
10 been really, perhaps, a demonstration that because to some extent their
11 hands are tied the Registry have had difficulty putting into effect
12 perhaps the spirit of what this Chamber wished.

13 Now, we are about to recess and we leave the accused here and
14 indeed the detained persons here. And of course the weight of the
15 problem falls on their shoulders and they share it between them at the
16 moment. And in those circumstances and having experienced perhaps and
17 seeing the difficulties that the Registry have been confronted with in
18 which they, because their hands are tied, have had difficulty in
19 addressing, we would respectfully invite the Chamber to consider whether
20 the detained and the accused, whether they can be permitted to associate
21 so that on an undertaking that they do not in any event discuss the
22 evidence of the case and whether by doing so the knot that's beset this
23 problem can be, as it were, untied.

24 I don't need to rehearse the arguments, nor do others, because
25 the Court is very familiar with them, but the last weeks or so have

1 perhaps demonstrated the depth of a problem which the Registry and the
2 Detention Unit have difficulty addressing and we would move the Chamber
3 to consider whether in those circumstances, quite exceptional
4 circumstances, the regime can be further relaxed with your consent.

5 Thank you, Mr. President.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, you have
7 been able to observe that last Friday we investigated in a long e-mail,
8 which must have been sent about 7.20 p.m., concerning the exact situation
9 of these three detained witnesses at the detention centre because we had
10 received a report from the Court Registry asking us about them. We did
11 indeed this morning during the first part of the hearing receive a
12 certain number of answers to the questions that we asked. We have not
13 yet reviewed those answers. We will study them, our concern being to
14 reconcile many things that are hardly reconcilable; that is, the
15 simultaneous presence in the same area, which does not have a great
16 number of supervisors, of three categories detained persons, our two
17 accused persons, the three detained witnesses, and the other accused
18 persons who are currently appearing before the International Criminal
19 Court or even before another jurisdiction.

20 You have observed that we have authorised contact between the
21 three detained witnesses and done everything to foster that and the other
22 accused persons appearing before the Court and before other
23 jurisdictions. We believe that we could obtain longer periods out of the
24 detention cells. We have done this during the hearing period such that
25 the three detained witnesses could meet the other accused persons while

1 our two co-accused persons are here in this courtroom with us. We will
2 see what we can do to further improve the situation of the three detained
3 witnesses, but without that excessively prejudicing our two accused
4 persons. I say "our two accused persons," not because they are property
5 but they are accompanying us every day in our hearings here. It's a very
6 complex situation for the three detained persons who are currently
7 waiting to hear the decision on their request for asylum, the situation
8 is paradoxically even less simple than in the prison in Kinshasa. We
9 will need to try to find the most balanced solutions possible and we are
10 working to that end.

11 Mr. Kilenda, we are not going to part that quickly. I wanted the
12 various parties and participants to have a copy of the statements that
13 you have been able to take from the two witnesses added, the first on the
14 7th of July and the second today; or if you do not have sufficiently
15 detailed documents or statements to satisfy everybody, then you will have
16 to make sure that you communicate such documents for the 8th of August.

17 I think that we will now be able to part. Mr. MacDonald had
18 something to say.

19 I think that Ms. Van den Wyngaert has another engagement. Would
20 you authorise us to part if both of my co-Judges have constraints, then
21 would you authorise me to remain behind for five further minutes and I
22 will free my two co-Judges. "Free them" is perhaps not the best choice
23 of words.

24 MR. MACDONALD: (Interpretation) Time stretches ahead of me.

25 Well, without expressing myself with the eloquence of the last

1 witness, we do not have any filings to submit next week or in the coming
2 weeks other than those that have recently been submitted. And so from
3 the point -- from our point of view nothing remains but to thank the
4 Chamber and our colleagues, including, of course, the members of the
5 Defence team of Mr. Hooper. Of course we have now concluded one stage.
6 We have a new stage beginning on the 15th of August. I would like to
7 thank each and every person, the interpreters, the stenographers, the
8 members of the Registry who are working on this case, and I hope that
9 they will be able to take time, breathe, rest over the next month, so
10 that we come back refreshed on the 15th of August. Thank you.

11 PRESIDING JUDGE COTTE: (Interpretation) All right.

12 Mr. Hooper, you observed that your case has now been presented,
13 subject of course to the statement to be made by Germain Katanga in a few
14 weeks' time. And now of course I think that I can speak on behalf of the
15 full Bench when I say that we have appreciated the conditions and the
16 atmosphere in which the presentation of your case has unfolded. There
17 have been a few inevitable moments of tension, but 98 per cent of the
18 time calm has presided over our debates. And of course this is very much
19 in the interest of justice. So in that regard, thank you to you, thank
20 you to the Office of the Prosecutor, thank you to the Legal
21 Representatives, thank you everybody, thank you also to the Defence team
22 of Germain Katanga. I join in thanking everybody who is assisting us. I
23 don't thank them every day, but they know that we could not accomplish
24 anything at all without them. Their job is not always an easy one. That
25 also applies to our Court Registry and our usher.

1 Now the final words of this period are addressed to the Defence
2 team of Mathieu Ngudjolo. We will meet again on the 15th of August.
3 Mathieu Ngudjolo, once again, it is your Defence that will begin on that
4 day. We will now adjourn.

5 The hearing ends at 12.59 p.m.

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