

1 International Criminal Court
2 Trial Chamber II - Courtroom I
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial hearing - Tuesday, 2 November 2010
9 The hearing starts at 9.05 a.m.
10 (Open session)
11 COURT USHER: All rise. The International Criminal Court is now
12 in session.
13 PRESIDING JUDGE COTTE: (Interpretation) Please take your seats.
14 I see the accused are with us. Good morning, gentlemen.
15 We shall therefore immediately set up contact with the room in
16 which in a few moments time we'll have the witness so that the
17 representative of the Registry who is in the DRC can then take part from
18 the very outset in our session this morning. The Chamber will let them
19 know when it is time for the witness to enter.
20 The Registry sent us yesterday some recommendations concerning
21 the speed with which we speak. We should speak slower than usual, and
22 I'm sure you've all received the same e-mail, which means that we must
23 scrupulously respect the five-second rule, and to be careful to bear in
24 mind the fact that three to five seconds will go by to compensate for the
25 gap required by interpretation. We had realised, according to this

1 e-mail, that the speed was too rapid hitherto, and I will make a sign by
2 raising my hands if I feel that the speed is too fast.

3 If you see the Court Officer rises to her feet, it's not that she
4 has a tick, it's that she's warning us to slow down.

5 Which button should we push, Court Officer, to enter into contact
6 with DRC?

7 COURT OFFICER: (Interpretation) I should like to remind the
8 whole court that you need to push "Witness Cam" on your console if you
9 would like to follow the screen in DRC.

10 PRESIDING JUDGE COTTE: (Interpretation) The Chamber also says
11 that the panel of photos that you see in this -- in this courtroom is the
12 exact identical to the one to be located in the courtroom in the DRC.

13 Thank you, Usher.

14 So the representative of the Registry is already there in the DRC
15 courtroom.

16 Mr. MacDonald -- no, I'm sorry. Mr. Prosecutor, I think that you
17 wanted to say something briefly. It is clear, Mr. Prosecutor, that there
18 is no way that we will come back on the Chamber's decision made
19 yesterday, so we would ask you to please be extremely brief.

20 MR. DUTERTRE: (Interpretation) Good morning, your Honours. I
21 shall try to be brief, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Please do not try.
23 Please make sure that you are.

24 MR. DUTERTRE: (Interpretation) Yes, I shall. Yesterday, we
25 sent an e-mail not so as to petition the courtroom, but, rather, given

1 the importance of the facts and in particular the issue raised at the
2 last minute by Mr. Hooper yesterday, we wanted to issue prior warning and
3 state that we had a difficulty. I think that yesterday's session
4 concerning 323 and his identity requires a few explanations from the
5 Defence, your Honour.

6 We have been told that he could have another name and that this
7 was learned on the 30th of October this year, but it turns out that
8 Witness 287 was asked about this, and therefore I suppose that this was
9 an issue that was already known to the Defence for some time. And when
10 we ask a question to Witness 287, we're not -- it's not just like
11 throwing a ball in the air to see if it falls down. Necessarily, there
12 have to be some elements of information which motivate the questions
13 being asked. All of this leads to us believe that it is important for us
14 to have extra information concerning the source of the information and
15 perhaps more recent sources of information that perhaps Mr. Hooper has
16 been able to access more recently. But we feel that there is a certain
17 vagueness to this issue, which means that the Defence needs to give us
18 further information. That's my first point.

19 Secondly, I think this has all happened rather late in the piece.
20 This is -- yesterday was the first time we heard about this. At the end
21 of August there was a decision from the Chamber clearly indicating that
22 questions to be asked need to be limited to 68, and even if it's an
23 *ex parte*, the Defence should have mentioned that it had questions about
24 the identity of 323 rather than waiting in the eleventh hour to raise
25 this issue. We feel that it would have been better if everybody had been

1 informed, but in any case, an *ex parte* hearing would have been possible,
2 and perhaps, with some reservation, Mr. Hooper could have told us that he
3 was awaiting further information, that it was not certain, but he could
4 at least have indicated that he had some doubts concerning 323.

5 Now, it seems out of fairness for the witness - and this is my
6 third point - that -- that we are -- that it is important to know where
7 the information comes from concerning his identity.

8 Mr. Hooper must expound this before Witness 323. There needs to
9 be a complete explanation, and this cannot be done if the person does not
10 know where the information came from, and we don't know if this came from
11 a third party, from someone from the entourage. There could be a reason
12 for this, but the witness needs to be able to offer an explanation for
13 this. I think the question has to be contextualised and, therefore,
14 information has to be given about the source. I think this is the least
15 we can do out of fairness unto the witness, and I think it's important to
16 go to the bottom of the matter with it, which leads me to my fourth
17 point, your Honour, and that is time, juridical process, and searching
18 for the truth.

19 I'm trying to go rapidly.

20 Necessarily, if I come back to the idea of throwing a ball in the
21 air, there has to be some kind of concrete information upon which
22 Mr. Hooper is basing his argument. And 323 has not been challenged to
23 date on this, which means that we're going to have call 323 once again in
24 order to have explanations about this information, which I think a loss
25 of the Court's -- a waste of the Court's time, and I think that it runs

1 counter to what our activity is all about, which is to get to the truth.

2 Witness 323 is here now. This is -- whether it be a witness
3 called by the Prosecution or by the Defence, it makes no difference, but
4 the fact is this witness is under oath before the Chamber, and it's up
5 to -- and it's important for the Chamber to be able to assess the
6 evidence, to appreciate the credibility of the witness, and this also
7 means clarifying the identity of the witness and knowing where the source
8 of this information comes from. This will enable the Chamber to ask
9 additional questions and get to the bottom of the matter.

10 Another item for the Prosecution is that we have a statutory
11 obligation to expound on any potentially exonerating evidence, and we
12 have always complied with this obligation, and we shall conduct an
13 investigation into this if required, but the fact of withholding the
14 information through redaction leads us to suppose that the -- the fact
15 that you maintain these redactions means that we cannot go and interview
16 potential witnesses or collect documentation, and perhaps this is what
17 Mr. Hooper wants, that we are not able. Perhaps he would like us not to
18 be able to do this, but it's our obligation, and we would rather do this
19 sooner rather than later so as to save time.

20 On top of all this, there have been a few questions. If you look
21 at the closed-session questions put to 287, we were talking about the --
22 we had some indications about a potential brother, the age of that
23 potential brother, which doesn't seem to add up with 323, and there were
24 certain items of information that we could delve into in some greater
25 depth in order to clarify that point.

1 In summary, I don't think that we can limit information given
2 today about the source of this information. I think that it's -- it's
3 important for getting to the bottom of this matter. The identity of the
4 witness is a key issue, and we cannot beat around the bush. I think that
5 it's vital that this is all brought to light.

6 Thank you very much, your Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
8 Mr. Prosecutor. Thank you for having been so brief.

9 The Chamber has a few observations to make.

10 Mr. Gilissen.

11 MR. GILISSEN: (Interpretation) I promise I will not take longer
12 than two minutes. I just wanted to support -- to offer two observations
13 following on from my intervention yesterday. With your leave, Judge,
14 your Honour, I would like to raise these points.

15 Yesterday at 18.31, we received notification from the Defence,
16 and I want to thank the Defence for that. We have received no further
17 information which would enable us to better understand the probative
18 nature of this information. There is relevance with the -- the -- with
19 the information that was received here by the two and we're all aware of
20 that, but there is no *prima facie* probative value to be discerned, and we
21 think that this is a unilateral disclosure of information, and this could
22 be potentially detrimental for us, because as we all know, your Honour,
23 and we all are aware of this, that if -- if we are given information
24 about a victim of Bogoro whose name we cannot know and a date which would
25 not give us enough information in order to identify the person nor how

1 that information arrived, then unfortunately, I think that very quickly
2 this would become unpracticable and things would become impossible for
3 us. And I am hoping that my learned colleague from the Defence will
4 understand what I am trying to say. This is not an attack, but we are
5 given a kind of *fait accompli* which does not respect the time frames, nor
6 the basic admissibility rules concerning information disclosed. And I
7 think that regardless of how important the question of identity is, and
8 we all agree that it is of vital importance, we cannot act in this way
9 without creating a dangerous precedent which I think could hinder the
10 maintenance of good quality of our work. Until this point the Chamber
11 has always been very careful to verify the arguments of each time.
12 Unfortunately, I did not feel that this could be addressed in this
13 manner. We are not trying to avoid the problem.

14 I think that the Chamber needs to take the responsibility to --
15 to find the way around this problem. I think it was in the Chamber's
16 powers. I think the Chamber could easily ask the witness whether he has
17 an alias or a nickname, and this way I think that it would be more
18 acceptable than if we were to follow the suggestion that we've had until
19 now of how to (* indiscernible).

20 I hope that I have respected my word. I did not check my watch,
21 but I hope that I stuck to my two minutes. Thank you, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) You do not overstep the
23 two-minute line, and you have reformulated what you said yesterday.
24 Thank you, Mr. Gilissen.

25 With your leave, one moment to confer. Thank you.

1 (Trial Chamber confers)

2 PRESIDING JUDGE COTTE: (Interpretation) Very well. As I was
3 saying before Mr. Gilissen took the floor, the Chamber would like to
4 offer a few brief observations.

5 First of all, the Chamber intends to direct all parties and
6 participants to lines 43 to 55 of yesterday's transcript with just a few
7 exceptions. As Mr. Dutertre was mentioning this morning, everything has
8 already been said. The Chamber also wishes to state in the most simplest
9 of terms that there is no way that we are going to ascribe intentions to
10 one party or another, and we want to make sure that each of us stick to
11 the ethical procedures that we've upheld until now. This is the same for
12 all parties.

13 The Chamber is trying to ensure that we maintain a certain
14 distance from all parties and participants because that is our role.
15 What is important to us is to find the truth, and right now what is
16 important is to find out whether in March last year this witness gave his
17 true identity and in whether a few minutes' time he will also be giving
18 us his true identity.

19 Yesterday, we said that the fact that he is brought along this
20 morning and will, as a matter of course, enable us to reveal his identity
21 again will enable us to cross-check the identity that he gave us in March
22 last year with a few brief questions. At least that is what we
23 understood to be the intention from Mr. Hooper yesterday.

24 Contrary to what we thought we understood yesterday, Mr. Hooper
25 does not intent to submit redacted documents, but given what we said

1 yesterday, he intends to pose a few questions to the witness based on the
2 information received on the 30th of October last.

3 No doubt, Mr. Prosecutor, that these questions have already been
4 asked to Witness 287. The Chamber does not intend to -- to assess the
5 intentions but can perfectly well admit that this process might require
6 some time. The Chamber, just like all of the parties and participants,
7 regrets that this is happening in rather a tardy manner, but understands
8 and that if information is not available beforehand, then there is no
9 other way to proceed.

10 We shall, therefore, not re-open yesterday's debate. We shall do
11 as we said yesterday, to bring the witness in, to ask the witness to take
12 oath and to reveal his identity. Next, we will ask the person to
13 recognise the person that he believes is -- is currently at hand. The
14 Prosecutor shall ask a few questions to the witness. And Mr. Hooper was
15 talking about the four questions that he might ask. He will ask four
16 brief questions. The idea is not to ask leading questions or to nudge
17 the witness in any certain -- in a certain direction, just to ask four
18 shorter questions.

19 For the moment can you hear us, Court Officer in the DRC?

20 COURT OFFICER (Via videolink): (Interpretation) Yes,
21 your Honour, I can hear you.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you. This was
23 our first exchange. It enables us to see that we do have a respect a
24 time lag between the videolink and this courtroom.

25 Please bring in the witness.

Witness: Witness DRC-OTP-P-0323 (Recalled) (Private Session)
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1 COURT OFFICER (Via videolink): (Interpretation) Yes,
2 your Honour. I shall do that.

3 Your Honour, he shall arrive in just a few seconds.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

5 Court Officer, could you hear me well?

6 COURT OFFICER (Via videolink): (Interpretation) Yes,
7 your Honour, we can hear you well. We are ready to start.

8 WITNESS: WITNESS DRC-OTP-P-0323 (Recalled)

9 (Witness answered through interpreter)

10 (Witness testified via videolink)

11 Questioned by the Court:

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

13 A. Good morning.

14 PRESIDING JUDGE COTTE: (Interpretation) Witness, we're going to
15 go into closed session so that you can state to us your identity.

16 Court Officer, please take us into closed session -- private
17 session.

18 (Private session at 9.30 a.m.)

19 (Expunged)

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17 (Expunged)

18 (Open session at 9.33 a.m.)

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

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

23 Witness, you are testifying once again before the
24 International Criminal Court. Once again, you should therefore take a
25 solemn undertaking to tell the truth. I am going to slowly read the

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1 formula of this solemn undertaking, so that you can understand it well,
2 you can understand the importance and the scope thereof. Please listen
3 attentively to me:

4 "I solemnly declare that I shall tell the truth, the whole truth,
5 and nothing but the truth."

6 Have you understood me well?

7 A. Yes, I understand you.

8 PRESIDING JUDGE COTTE: (Interpretation) You commit yourself to
9 saying the truth, the whole truth, and nothing but the truth?

10 A. Yes.

11 PRESIDING JUDGE COTTE: (Interpretation) The question (* as
12 interpreted) would ask you once again to listen attentively. You have
13 just stated that you will tell the truth, the whole truth, and nothing
14 but the truth. If during your testimony or in answering questions which
15 shall be put to you in a few moments you do not say the truth, you could
16 be prosecuted before the International Criminal Court for false
17 testimony, and if the facts are demonstrated, you could be subject to a
18 conviction. Have you understood that well once again?

19 A. I hear you very well.

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

21 The Court notes that Article 69(1) of the Statute and Rule 66(1)
22 and (3) of the Rules of Procedure and Evidence have been satisfied in
23 this regard.

24 Witness, you have already given testimony before this Court in
25 March 2010. It has appeared necessary to ask you some additional

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1 questions. You are going to be presented with a board upon which several
2 photographs are affixed. The Court Officer will show this board to you,
3 which we also see, and he will quickly indicate to you the different
4 photographs which are on this board. Please examine this very carefully,
5 examine each of those photographs, and in the first place, you will tell
6 the Chamber if you recognise one or several people who figure on this
7 photo board. If you do recognise one or more line-up from this panel,
8 then please state the identity of this person for the Chamber if you know
9 that person's identity and if you remember that person's identity. If
10 you don't recognise anyone who is on this board, then that's something
11 you will also say quite simply, and the Chamber will take the opportunity
12 to assess if it has to give you additional information in this regard.

13 We're therefore going to go into private session, because the
14 identification that you will possibly make could be of such a nature as
15 to subsequently make it possible to carry out an identification which
16 might be detrimental to the person concerned.

17 We are, therefore, Court Officer, going to go into private
18 session, and once in private session the Court Officer in the DRC will
19 show the photo panel to the witness. The witness will examine that
20 attentively once it has been presented.

21 Court Officer.

22 (Private session at 9.40 a.m.)

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25 (Expunged)

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13 Page 14 Expunged – Private session

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- 1 *Bogoro. It was Ngudjolo who took me there. We fought in Bogoro, and
- 2 that's what I told you. Is that not correct? Ngudjolo took me to Bogoro
- 3 to fight there.
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13 Page 19 Expunged – Private session

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16 (Expunged)

17 *MR. FOFE: (Interpretation) Yes, your Honour. Good morning,
18 your Honours.

19 With regard to this exercise, we have no questions. However, in
20 response to one of your questions, the witness gave an item of
21 information that comes as a surprise to the Defence team of
22 Mathieu Ngudjolo, and we do have a question to ask the witness. It
23 relates to this item of information.

24 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe, I
25 realise that we could go into open session once the photographs are no

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1 *longer being shown.

2 Court Officer, we will go into open session.

3 (Open session at 10.01 a.m.)

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

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

8 Mr. Prosecutor, you wish to -- now, before I give you the floor
9 and before we go into open session, the Chamber would merely like to
10 state, in order to have a clear debate in public, that the witness who is
11 testifying via videolink from the DRC was asked during private session to
12 indicate whether he was in a position to recognise a person from a series
13 of photographs on a board, a person that was spoken of during his
14 previous testimony given on the 17th of March, 2010. The witness said he
15 was not able to recognise this person amongst the ten photographs that
16 were shown to him.

17 After giving that reply, the Prosecutor was asked to ask any
18 further questions, and he said that he would not be asking any further
19 questions. The Legal Representatives of Victims said the same thing.
20 The Katanga Defence team said the same thing, namely, that they had no
21 further questions.

22 As for the Ngudjolo Defence team, Professor Fofe began making a
23 remark, and -- when we decided to go into open session, and now the
24 Prosecutor has asked for the floor, and we will hear from the Prosecutor.

25 Prosecutor.

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1 MR. DUTERTRE: (Interpretation) Your Honours, I certainly see
2 the point that Professor Fofe wishes to explore, and it is by chance that
3 things come up during the hearing, but the decision is very clear. Your
4 decision was quite clear, and you made this clear on several occasions.
5 We are here for one particular objective, and we have met that objective.
6 From the Prosecution's point of view, there is no question of re-opening
7 all this debate during cross-examination. If we proceed in this manner,
8 we will never come to the end of things.

9 Now, this question could have been asked in March or recently
10 when the witness appeared. When the Prosecution took a written
11 statement, the name of Mr. Kilenda's client appeared. Questions could
12 have been asked at that point. So they had the opportunity. Today, this
13 is really not within the framework of today's hearing.

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

15 Professor Fofe, for the time being we don't know exactly which
16 question you would like to ask, but, on the other hand, we are quite sure
17 that you have not forgotten, indeed, the general framework for today's
18 hearing. This may have to do with recognition of a person, and it may be
19 possible that other questions, other matters, could come up, and
20 Mr. Hooper does not want to touch upon these matters at this particular
21 point.

22 Mr. Fofe, if you want to go beyond that framework, I think you
23 realise what your reply will be, but we are listening to what you have to
24 say.

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

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1 proceeding any further, I would like to ask for one moment so I can
2 confer can my colleagues.

3 PRESIDING JUDGE COTTE: (Interpretation) That goes without
4 saying. Please take your time.

5 (Defence counsel confer)

6 (Trial Chamber confers)

7 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofe.

8 MR. FOFE: (Interpretation) Thank you very much, your Honour.

9 Your Honour, we are aware of the specific objective of the second
10 testimony from 323, but the Prosecutor is wrong. He was not correct when
11 he said that we could have asked all our questions of this witness
12 related to his testimony.

13 With all due respect to the Chamber, we are not going to ask the
14 question that we thought would be useful and relevant, the question to be
15 asked this witness, subsequent to what he has just said. However -- but
16 during final arguments we shall reveal this point and stress this point.
17 And I believe the Chamber understands -- will understand our reaction
18 today.

19 Thank you very much, your Honour.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
21 Professor Fofe. We wish to thank the Ngudjolo Defence team. All the
22 same, you are not being deprived of an opportunity to speak. The
23 presentation of this Ngudjolo's case, if it is absolutely necessary for
24 you to obtain further information that might be revealed by the remarks
25 made by this witness this morning, you will have that opportunity to

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1 proceed as we have proceeded today. Technically speaking, everything is
2 possible, as we have seen from this videolink.

3 Mr. Prosecutor, have you any other questions?

4 MR. DUTERTRE: (Interpretation) No further questions,
5 your Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) Legal Representatives?

7 THE INTERPRETER: Inaudible. Overlapping speakers.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, any other
9 questions while the witness is with us?

10 MR. HOOPER: (* Previous translation continues) ... I have two
11 questions.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr. Rojas, can you hear
13 us?

14 THE INTERPRETER: Inaudible.

15 PRESIDING JUDGE COTTE: (Interpretation) Witness, if you could
16 listen carefully. The Katanga Defence team wishes to ask you two
17 questions.

18 Mr. Hooper.

19 MR. DUTERTRE: (Interpretation) Your Honour, could we know what
20 these questions are about? He had said that he had no further questions.

21 PRESIDING JUDGE COTTE: (Interpretation) The Chamber had the
22 impression that there might be some ambiguity. No further questions
23 regarding the recognition of witnesses -- of -- and this is why the
24 Chamber decided to go around the courtroom, so to speak.

25 Mr. Hooper.

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1 MR. HOOPER: Can we go into private session, please.

2 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we'll go
3 into private session for a moment.

4 Witness, Mr. Courtroom Officer, Mr. Rojas, we are in private
5 session, and this will allow the witness to speak very freely.

6 (Private session at 10.13 a.m.)

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Witness: Witness DRC-OTP-P-0323 (Recalled) (Private Session)
Questioned by Mr. Hooper

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13 Page 26 Expunged – Private session

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Witness: Witness DRC-OTP-P-0323 (Recalled) (Private Session)
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13 Page 27 Expunged – Private session

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15 (Open session at 10.23 a.m.)

16 COURT OFFICER: (Interpretation) We are in open session,
17 your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Now for the
19 transcript and for the general public I would just like to point out that
20 we were in private session because the Chamber was reviewing an identity
21 document, and that identity document could have revealed the identity of
22 the witness which we do not wish to do.

23 Witness, we thank you for travelling this morning to answer the
24 additional questions that the Chamber wished to ask you.

25 You are now free to go and resume your habitual activities.

1 Mr. Rojas, the Chamber wishes to thank you as well for your work
2 and for doing such a good job of organising this video-conference, this
3 hearing held by video-conference. From a technical point of view, the
4 hearing has gone remarkably well.

5 The Chamber wishes to stress that we thank the Court Officer. We
6 know that she worked very hard to organise the hearing, and the hearing
7 has been quite successful.

8 Good-bye, Witness. Good-bye, Mr. Rojas.

9 COURT OFFICER (Via videolink): (Interpretation) Good-bye,
10 your Honours.

11 (Witness's evidence via videolink concluded)

12 PRESIDING JUDGE COTTE: (Interpretation) Madam Court Officer, we
13 will return to our Dutch courtroom, which we really haven't left. Now,
14 might it be possible to remove the photo board from the witness box? And
15 once again we thank the Registry for their work, because a number of
16 these procedures have been quite new here in the court, and we have been
17 able to pave the way, so to speak, and this will make the work of our --
18 those who come after us more simple.

19 Now, we do have a problem. Witness 160 is currently attending a
20 medical appointment. This is something that we were informed of
21 yesterday at the end of the afternoon, and the Chamber said that we
22 wanted the medical appointment to be rescheduled to the afternoon, but
23 apparently that was not possible, which is a real shame. We are not
24 reproaching the witness, who probably would not have wanted to have had a
25 medical appointment, but we do make this criticism, because in a city the

1 size of The Hague, one would think it would be possible to make a medical
2 appointment in the afternoon when a witness is giving testimony in the
3 morning.

4 We have been told that the witness should be here for 11.00, but
5 since this is not quite clear, we will suspend for one hour. And our
6 hearings cannot exceed a two-hour period of time, so we suspend until
7 11.30. The witness may be back by 11.30. If that is so, very well. If
8 not, please let us know, but please do not go too far. We will all have
9 one hour to continue our work, and then we will resume at 11.30. Is that
10 understood?

11 Thank you very much. One more unexpected event that we had not
12 provided for in our scheduling. We will suspend -- Mr. Hooper? No?

13 Our hearing is now suspended, and we will resume at 11.30.

14 Recess taken at 10.28 a.m.

15 On resuming at 11.34 a.m.

16 (Open session at 11.35 a.m.)

17 COURT USHER: All rise.

18 PRESIDING JUDGE COTTE: (Interpretation) Kindly take your seats.

19 Court resumes.

20 I think that Mr. Prosecutor wanted to say something about the
21 possible assignment of a number to the photo line-up that we move -- that
22 we used a moment ago with Witness 323. Indeed, the Chamber had forgotten
23 to clarify this issue, so we're ready hear from you.

24 MR. DUTERTRE: (Interpretation) Thank you, your Honours. I
25 shall be brief. I should like to ask for an EVD number to be assigned

1 for -- and also an MFI number for the photograph line-up that was shown
2 to Witness 323 this morning. We need to be able to keep a trace of this
3 in the file so it can be consulted in the future so that -- in case it's
4 useful for the concluding remarks. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
6 Mr. Prosecutor.

7 The potential recognition of a soldier bearing the same name as
8 Witness 268 - was that right? Yes, Witness 268 - was therefore settled
9 this morning, in any case, as concerns the contribution that 323 could
10 have made in this regard. This question led -- stemmed from an August
11 decision from this Chamber. It was decided to have a special hearing on
12 that showing a panel of photos so that we could clarify this point.

13 I think, therefore, Court Officer, the simplest solution would be
14 to have one single EVD number for the whole panel rather than having one
15 number per photo. Could we have one single EVD number please, then.

16 COURT OFFICER: (Interpretation) Thank you, your Honour. The
17 panel of photographs with the ten photographs shall be EVD-OTP-00199.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
19 Court Officer.

20 Let us then move into closed session so that we could have the
21 witness brought in.

22 Mr. Hooper, yes?

23 MR. HOOPER: Can I just add that the panel ran from 1 to 5 from
24 left to right on the top and from 6 to 10 from left to right on the
25 bottom, just so that if anything turned on that.

1 And can I also ask that the photograph taken by the Registry in
2 2010 of the subject of today's inquiries also be admitted into evidence
3 and given an EVD number. I believe the Registry are in possession of
4 that photograph. And we ask that that be done for completeness and in
5 fairness given the dramatic difference in appearance between those
6 photographs.

7 MR. DUTERTRE: (Interpretation) Your Honour.

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

9 MR. DUTERTRE: (Interpretation) We have a categorical objection
10 to giving an EVD number to the 2010 photo. It was not discussed in
11 court. It was not shown separately to the photo. Even if it is
12 different to the ones taken beforehand, there is absolutely no reason to
13 give it an EVD number.

14 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, at one
15 particular date, which I no longer have in my head, but we were
16 discussing today's session and we discussed the physiological differences
17 between the appearance of Witness 268 in the two different photos, and
18 all of the parties and participants agreed that it should be included in
19 the photograph line-up, the photograph of Witness 268 was going to be the
20 2007 photo and not the 2010 photograph which was taken during the time
21 this person came to testify before the Court. This was a point that we
22 all discussed, and we are not going to re-open that discussion. The EVD
23 number will be attributed to the object that we discussed this morning in
24 accordance with the agreement that we arrived at, and I'm sure that we
25 can find it in the transcript of our hearings. I don't remember the

1 date, but we are probably all aware of what I am talking about.

2 When the time comes, it is important to bear in mind all of the
3 different elements made available to the Chamber, and it will be possible
4 to come back to this discussion, but we all remember that the appearance
5 of 268 was not exactly the same in 2007 and 2010. There were some weight
6 gain between these two dates, and that is where the issue shall end for
7 the moment.

8 Court Officer, let us now move into closed session so that the
9 witness can be brought into the courtroom.

10 (Closed session at 11.41 a.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Open session at 11.43 a.m.)

18 COURT OFFICER: (Interpretation) We are in open session,
19 your Honour.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
21 Court Officer.

22 Good morning, Witness.

23 THE WITNESS: (Interpretation) Good morning, your Honour.

24 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me
25 clearly?

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1 THE WITNESS: (Interpretation) Yes.

2 PRESIDING JUDGE COTTE: (Interpretation) Are you well?

3 THE WITNESS: (Interpretation) Yes.

4 PRESIDING JUDGE COTTE: (Interpretation) Very well. We shall
5 pick up where we left off yesterday. It was Madam Prosecutor who was
6 putting questions to you. She is now going to continue her
7 examination-in-chief this morning. Please do not forget that you need to
8 wait for five seconds after each question before giving your answer and
9 that you need to speak clearly, slowly, and into the microphone. Thank
10 you very much.

11 Madam Prosecutor.

12 MS. DARQUES-LANE: (Interpretation) Good morning, your Honours.
13 I should like to take the floor just to say that the Prosecution has no
14 further questions for this witness. Thank you very much.

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

17 Very well. Madam Witness, it is now up to the Victims' Legal
18 Representatives who will have a chance to put some questions to you. The
19 Chamber was petitioned in accordance with its decision 1665 by
20 Counsel Gilissen, who is going to introduce himself and then put some
21 questions to you as he sees fit.

22 Mr. Gilissen, you have the floor. Counsel Gilissen. No.
23 Madam Prosecutor.

24 MS. DARQUES-LANE: (Interpretation) Your Honour.

25 PRESIDING JUDGE COTTE: (Interpretation) Yes.

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1 MS. DARQUES-LANE: (Interpretation) Excuse me. I have the
2 feeling that the witness would like to say something.

3 PRESIDING JUDGE COTTE: (Interpretation) Yes. Please proceed.

4 THE WITNESS: (Interpretation) With your leave, your Honour, I
5 with like to clarify one thing in accordance with a question that was put
6 to me yesterday. I had forgotten the context, and I would like to add
7 some information if I may.

8 PRESIDING JUDGE COTTE: (Interpretation) Yes. We are all ears.
9 Please take your time and speak slowly. Please give us a little bit of
10 background. Please explain the question to us that you have in mind, and
11 then we will hear your clarification. Thank you.

12 THE WITNESS: (Interpretation) Okay. The question was about the
13 first meeting with Germain. I was asked what we had talked about, and I
14 said that we didn't talk about anything -- anything much political, but
15 that I do recall at least one thing that P-0012 had asked, a question
16 that P-0012 had asked of Germain. The question was whether there really
17 was in the mountains of Gety or something like that, whether there really
18 were Ugandan rebels or not. And Germain had said yes, indeed there were.
19 They had come, and once they came to see him and talk with him. And once
20 they were in contact, they even suggested giving him money or some
21 resources to the effect that they could work together, but he had seen --
22 said that he was not yet ready to give them an answer and that he would
23 answer at a later point in time. And P-0012 said to him that he ought to
24 be careful about working with rebels from another country. This would be
25 treacherous for one's own nation, and you should not give the rebels a

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1 chance to work together in your own nation. And that was the end of
2 that. That's one thing.

3 And a second meeting, well, I received -- I was given the
4 question as to why they attacked Bogoro, and I clearly remember that
5 Germain had said that he really wanted to sabotage what had happened in
6 Uganda. The -- the -- this meeting between PUSIC, FNI, and others, this
7 platform, he wanted to sabotage it, and that was the main reason why --
8 or main reason that he gave, and in this context he was to explain why
9 when he went there as their representative that on the way back he was
10 condemned to death. Fortunately, Germain had intervened to step in and
11 stop those who had tied him up to a tree to kill him.

12 It's those additional details that I wanted to answer given the
13 questions that I'd been answered (* as interpreted) yesterday. Thank
14 you.

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

16 Madam Prosecutor, now that the witness had requested the
17 opportunity to offer these additional details to the answers that you had
18 put to her yesterday, would you like to ask any additional questions
19 before we hand the floor over to the Legal Representatives?

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

21 Yes, that is indeed the case. I would like to ask a few additional
22 questions.

23 PRESIDING JUDGE COTTE: (Interpretation) Well, then you may
24 extend your examination-in-chief. We are listening to you. Please go
25 ahead.

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Questioned by Ms. Darques-Lane (Continued)

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1 Questioned by Ms. Darques-Lane: (Continued)

2 Q. (Interpretation) Good morning, Witness.

3 A. Good morning.

4 Q. I would just like to come back to what you have just said as
5 concerns the second meeting. You were talking about someone who was
6 about to be killed on the way back, which I think is in connection with
7 the meeting in Uganda. Could you please clarify that for me, and please
8 tell me who that person was.

9 A. Yes. There is a person that was to be killed, and the person was
10 Didier Angaika. When he returned, the Ngitis were not in agreement,
11 because according to Germain, he had not given the -- he had not handed
12 over to the delegates, and Didier went there himself. He went there,
13 and -- and he went there, and where he was in Beni, I think that was
14 there that he had no mission to be there. He had no remit to be there,
15 and he went there in the name of them and not in the name of the Ngiti,
16 and that's why on the way back they tied him to a tree, and they really
17 wanted to kill him.

18 Fortunately, Germain was passing by by chance. He did not know
19 what was happening, but he was passing by at the time, and as he was
20 passing by, he saw this situation, and he intervened to free this person,
21 because it was also his *beau-frère*, his brother-in-law or stepbrother,
22 and he freed him. That was the detail that I wished to add.

23 Q. And how did you learn of this incident of what happened to
24 Didier Angaika?

25 A. It was Germain who explained the situation to us. He himself and

Witness: Witness DRC-OTP-P-0160 (Resumed) (Open Session)
Questioned by Ms. Darques-Lane (Continued)

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1 Angaika was present as well, and all of the others were there at the same
2 time.

3 Q. When was this story told?

4 A. As I already said, it was in the same circumstances as when we
5 were talking about this union that was to be made between the Lendus and
6 the Hemas, which, as I said, was very difficult and even seemed
7 impossible, and now it was starting to become a reality.

8 Q. Was this in February 2004?

9 A. Yes, yes.

10 Q. Thank you very much, Witness. I have finished.

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

13 Counsel Gilissen, the floor is yours.

14 MR. GILISSEN: (Interpretation) Thank you very much,
15 your Honour. Thank you.

16 Questioned by Mr. Gilissen:

17 Q. (Interpretation) Good morning, Witness.

18 A. Good morning.

19 Q. My name is Jean-Louis Gilissen. I'm a barrister from the Liège
20 Bar. I am here to represent the victims and in particular some the
21 special case of victims, and that is those who had also at the same time
22 been child soldiers. This should enable you to be able to situate me and
23 where I sit in this courtroom.

24 Yesterday, Madam Witness, you said to us in transcript 210,
25 page 63, lines 9 and following -- if you allow me, I shall quote the

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1 excerpt that is of interest here.

2 "On the subject of the Bogoro battle, Germain had said that he
3 was pleased with what he had organised. He was happy with the plan that
4 he had made. He really pleased with himself."

5 And here is the point that I'm interested in:

6 "He was very pleased with how his little ones had gone into the
7 battle and how they had fought."

8 I have just quoted what you said yesterday, and I'm interested in
9 this concept of these little ones, in French "*les petits*." My question
10 is relatively simple. When you're talking about these "*petits*," these
11 little ones who had fought, and you mentioned that they had given full
12 satisfaction to Mr. Katanga, who did you mean by that? Could you please
13 give us some further information so that we can better understand what
14 you meant by those words?

15 A. Thank you, Judge (* as interpreted). When I talked about "*ses*
16 *petits*," his little ones, I was not referring to little children. I was
17 referring to his combatants. I do not exactly the make-up of his
18 combatant forces, but I was referring to that, not to his little
19 children.

20 THE INTERPRETER: The interpreter corrects: Not to little
21 children.

22 MR. GILISSEN: (Interpretation)

23 Q. Thank you very much for your answer, Madam Witness. This would
24 avoid any misunderstanding, and I think it's important to always try to
25 understand as clearly as possible.

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1 Within the FRPI you had a role which you described to us
2 yesterday. And to the best of your knowledge, madam, within the FRPI as
3 a military movement in February 2003, late January or during the month of
4 February 2003, was there or were there any people fitting the description
5 of what I would call child soldiers, people of a very young age, fighting
6 within the ranks of the FRPI, less than 15 years of age?

7 A. At that point in time I was not yet in contact with Germain, and
8 I had not yet met these combatants or anything else like that. I would
9 not be able to say whether there were little children present or not, but
10 what I do know is that the Lendus in general, just like the Hemas in
11 general, used everybody, whether they be small or big. Everybody was
12 involved, because this was a tribal conflict. Everybody was involved.
13 But I would not be able to offer details about what I saw in Germain's
14 ranks. I would not be able to specify that I'd seen people fitting that
15 description there.

16 Q. With the leave of the Chamber and all other parties, when you say
17 that in each of these camps everybody was involved, what do you mean, and
18 you said "*les petits comme les grands*," "little ones like big ones," are
19 you referring to the concept of the people's war, a popular war? Is that
20 what you mean and can you explain if that's what you mean?

21 A. I know that when the Lendus went to attack, everyone, men, women,
22 and children, everybody had to be ready to go to the front. Women with
23 children on their backs even had to go to the front to defend their
24 interests. And there were many of them in the bush suffering there, and
25 when they had the chance, they would come out of the bush to go to the

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1 attack. And it was everybody who could make a contribution in this way.

2 And we all know that.

3 Once we were going through a Lendu area and our vehicle broke
4 down, and we saw Lendus coming towards us to come and see what was going
5 on. They were hidden in the bush. They were no longer living in the
6 village, but when they saw us there in the vehicle, they came out. But
7 when they came out, it was everybody who came out. There were children,
8 there were adults, there were young people. Everybody came out to see
9 what was going on. And there were some who had machetes; others who had
10 sticks. And fortunately -- but not everybody came to where we were.
11 There were a few leaders to come towards where we were to see what was
12 happening, and they checked what was happening, and we explained to them
13 what was happening, and then they went back. But at least that I could
14 see with my own eyes.

15 But from there to say that I saw them directly involved in the
16 fighting, no. There -- I would not be able to say that, because I had
17 not seen that directly with my own eyes.

18 Q. Thank you very much. There you have provided information which
19 is interesting to me, because outside the combat scene or an assault
20 environment, you're speaking about a common incident, a breakdown of a
21 vehicle, and immediately you say, if I understand you well, there are a
22 lot of people who came who were armed. And among these armed people, my
23 first question concerns those who you said were children yourself. Were
24 there children who were armed, and if they were, how were they armed?

25 A. Everybody. The children, they had sticks. They had batons.

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1 Adults had them as well, and machetes. It was something similar to that.

2 Q. I'm trying to understand. I wasn't there, like most of us, and
3 your testimony can shed light on this in a very clear way for us.

4 On the basis of this -- of this incident or other information, do
5 you have the feeling that the area -- well, let's say where this
6 population was, this armed population of all ages, that these people
7 were --

8 MR. HOOPER: (* Previous translation continues) ... it's a bit of
9 meander this, isn't it?

10 PRESIDING JUDGE COTTE: (Interpretation) Mr. Gilissen, please
11 continue, but please focus your question.

12 MR. GILISSEN: (Interpretation) We are in an agreement. I just
13 wasn't managing to go say -- or the transcript wasn't -- I didn't have
14 the transcript part of that intervention. Well, I understood the sense
15 of the intervention, but I didn't understand the other part but I'll try
16 to focus thereon.

17 Q. So I would like to repeat. Here I represent the interests of
18 children. You have described them as participants in this intervention.
19 Well, they were armed themselves.

20 The object of my -- the object of my intervention is not to
21 displease you but to basically say I would like to see if you had the
22 impression on the basis of this incident or on the basis of other
23 information that you could have had if -- that -- whether children were
24 participating in this type of activity, for example, as observers. This
25 is the nub of the question. I'm trying to get to the role of children in

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1 this type of activity.

2 A. Perhaps an observer -- well, what I heard is that when the Lendu
3 went to attack, sometimes they burnt villages. It was the small children
4 who had to do that. Tasks were distributed, and the small children had
5 to go to burn. They fled. This is what I heard people speak about. I
6 don't know if it was exactly like that, but that's what I heard people
7 speak about. And I think that it's good to understand that war was
8 really tribal. It concerned everyone, because with the others, everybody
9 was participating. Everybody, both sides. Everybody was a participant
10 in one way or another. It was difficult. There was tension between the
11 two. Above all for the Lendu, because they -- they were attacked. They
12 were attacked at the start, and they were in a defensive position. They
13 could organise attacks and then flee into the forest. They didn't have
14 an army at that time.

15 Firearms I'm speaking about, but arms such as machetes, weapons
16 such as machetes, batons, they had those type of weapons at the time it
17 started.

18 Q. In this total war which you speak to us about, where everybody is
19 involved, to your knowledge, in this war in which children were
20 participating, and certainly children under the age of 15 years, in this
21 tribal war, to your knowledge, how did things take place? By this I mean
22 when there was an attack, was it also a total attack in which the
23 children were participating, or were just soldiers attacked or were all
24 others -- were people attacked from the other ethnic group, from the
25 other tribe?

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1 MR. HOOPER: I'm sorry, before the witness answers the question,
2 the witness has already very plainly told us that she -- she wasn't an
3 eyewitness at all to any of these events. She wasn't even living in
4 Ituri. What value has these questions? And it was a very leading
5 question, yes.

6 PRESIDING JUDGE COTTE: (Interpretation) Witness, you will
7 answer Counsel Gilissen in terms of what you have seen, heard, and
8 experienced. So provide your answer. Try not to use or make recourse
9 too much to things that were told to you. What we're particularly
10 interested in is what you were able to see yourself. So please answer
11 the question frankly, the question that was put to you. We are listening
12 to you.

13 THE WITNESS: (Interpretation) Please excuse me. Could you ask
14 the question again.

15 MR. GILISSEN: (Interpretation)

16 Q. That's not easy. We were going from your statement with regards
17 to what I would call total war as opposed to popular war, to try and make
18 a difference between that in our discussions, and I would ask you in
19 these assaults, in these attacks in which child soldiers were
20 participating -- the other attacks didn't -- aren't of -- interested in
21 and I'm not allowed to be interested in anything else. My role is to be
22 interested in that. I wanted to know to your knowledge -- or you have
23 understood that hearsay is admissible. It's all dependent on the quality
24 thereof. Fortunately, we don't limit ourselves to just what has been
25 seen.

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1 What was the way of fighting? Were these assaults only carried
2 out on militia, on soldiers of the other group, or to your knowledge, did
3 this also concern all the population of the other group? The children,
4 did they participate in these assaults? Did they see the fighting of
5 such a scope that that could concern absolutely everybody?

6 A. In fact, the fighting did not only concern the militias. At that
7 time, the Lendu attacked. They attacked the Hema, even the vehicles
8 which went past. They stopped them. And you'd get in, you'd have to
9 show your documents, and if you were Hema, you didn't get back into the
10 vehicle. But it wasn't the children who were doing that. Those were the
11 adults who were doing that.

12 Q. Just to avoid any misunderstanding, madam, how do you define a
13 child? With the Lendu -- we're talking about the Lendu here. This is a
14 person whose age goes up to what limit, until what age, for you, because
15 I'm asking you this question.

16 A. For me a child is under the age of 18, and there are -- that
17 person is still a child, but particularly those under the age of 15,
18 they're even more children. They're real children, and that's how I see
19 things. And I wouldn't be able to determine the age of one particular,
20 but when I see somebody's size and what I can imagine, I could say that
21 person is quite old or not, but I wouldn't know the age.

22 Q. So we don't make a mistake in this regard, the children who you
23 spoke to us a moment ago, the children, the armed children, even with
24 bladed weapons, were these under the age of 15 years?

25 A. I said that there was everybody. There were children, adults,

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1 who could go into the village to see what was happening. That's what I
2 saw.

3 Q. I feel that I don't have any more questions to ask the witness.

4 Thank you, Witness. Thank you for your contribution.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
6 Counsel Gilissen.

7 Counsel Luvengika, you didn't ask in advance to ask questions,
8 but the words of the witness during her answers to the questions put
9 yesterday by the Prosecutor, did they inspire certain questions on your
10 part which you wish to ask now?

11 MR. LUVENGIKA: (Interpretation) Thank you, your Honour, for
12 giving me the floor. Your Honours, Witness, yes, your Honour, having
13 read the statement and the previous statement of the witness, as well as
14 her testimony before this Court, this doesn't allow me to ask questions
15 at the moment. I would like to thank you.

16 Witness, I have no questions to put to you.

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

19 The Chamber has no questions, no particular questions, to ask the
20 witness.

21 Counsel David Hooper, you have, therefore, come to the stage of
22 your own intervention. I therefore shall allow you to introduce yourself
23 to the witness and ask the questions that you wish to ask the witness.

24 Questioned by Mr. Hooper:

25 Q. I can say just about good afternoon to you, Madam Witness. My

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1 name's David Hooper. I'm English, an English lawyer, and as you can
2 hear, I'm speaking English. You will, of course, continue to answer in
3 French. I suspect you probably do understand English quite well. And if
4 you have any difficulty with any of my questions or understanding them,
5 please let me know. Don't -- don't -- don't hesitate to do that.

6 I represent, of course, Germain Katanga. And you met
7 Germain Katanga on these two occasions several times, as you've expressed
8 it. Would I be right in saying that Germain Katanga impressed you as
9 someone who was dedicated to stopping the massacres in Ituri?

10 A. I said at the start that the first time I saw him I had a special
11 way of seeing things, also in terms of what I had heard from them, but
12 with the time that I spent with him, I found that he was normal. He was
13 a person who had feelings. He had a heart, normal. And the second time
14 when we spoke, he was determined to walk the path of peace, and that was
15 the Germain that I saw the second time. That was him. Everything that
16 he said, he wanted to show how he was determined now to change from the
17 worst to the better now for peace, to bring peace between the two tribes.

18 Q. Now, can I ask you this: Have you discussed your evidence at all
19 with P-0012?

20 A. No. This is my testimony. I'm speaking about my situation.
21 P-0012 has his experiences with Germain, myself. These are my
22 experiences with him that I'm speaking about here.

23 Q. But over the several years, have you ever discussed this case
24 with P-0012?

25 A. During any time, no. No, we don't discuss things like this,

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1 because each -- each one has their situation. I also have my situation.
2 Each one has their situation. We can't put ourselves there to say, "What
3 do you think of this or that?" No. Each one has his own opinion, and I
4 respect that, and I also ask that my opinions be respected, and my
5 personality.

6 Q. Indeed, but knowing, as we do, who P-0012 is, it would be very
7 natural for you to discuss the case, perhaps to assist one another in
8 your joint and honest recollection of events.

9 You nod your head as I say that. And are you saying that over
10 the last five years or so, since you first came into the OTP programme,
11 you haven't discussed this case at all with P-0012? Is that what you're
12 telling us?

13 A. I said that I like my opinions and my responsibility and my
14 personality to be respected as I also respect the opinions and the
15 responsibility and the personality of other persons.

16 Q. May I ask -- I'm sorry?

17 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

18 MS. DARQUES-LANE: (Interpretation) Please excuse me for
19 interrupting. Quite simply for the purposes of the record, I think there
20 is a lack of precision, because it states in French -- I see that the
21 interpreter didn't get what the Prosecutor said. The -- for the
22 Prosecution, the head was not nodded when Counsel Hooper was listened to,
23 for the purposes of the transcript.

24 PRESIDING JUDGE COTTE: (Interpretation) So in line 28 of
25 page 52 of the French transcript and in line 1 of page 53, the Chamber

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1 therefore deduces from the respective interventions of Darques-Lane and
2 Counsel Hooper that one believed that he saw a nod of the head and the
3 other did not see a nod of the head. That shall therefore figure in the
4 transcript. What is important is that the witness took the floor to
5 explain. We shall therefore continue.

6 Counsel Hooper.

7 MR. HOOPER: Yes, and replied plainly in the affirmative.

8 Q. May I ask when was the last time you spoke to P-0012 at all? Not
9 about the case, about anything.

10 A. The last time --

11 Q. By telephone or whatever.

12 A. I just spoke to him to talk about my state of health. The
13 assistant was with me when I spoke to him.

14 Q. Was that today or yesterday?

15 A. I said this morning, when I came from the hospital.

16 Q. And I'm sorry if you're in any discomfort at all. I hope you're
17 not, and may I quickly add and endorse what the learned Judge has already
18 told you, if you are in any discomfort at all, please say so. It's no
19 inconvenience to us if we have to stop because you're at all
20 uncomfortable. Do I make that clear?

21 My understanding is that you left Bunia for good in 2002, but
22 that you made some subsequent visits. How many visits did you make, and
23 when were those visits? Can you recall?

24 A. I no longer remember exactly how many visits I made after. I
25 couldn't say that exactly, but I did go back.

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1 Q. Were these relatively brief visits or not?

2 A. It depended on what I was going to do. I know that once I can't
3 say it was a short visit, because I was there for more than two weeks.
4 That's not a short visit.

5 Q. Now, this question will not, I believe, lead to any indication of
6 your identity. My question is this: When were you last in Uganda?

7 A. 2005.

8 Q. And when you were last in DRC?

9 A. In 2005.

10 Q. And when did you enter the witness protection programme?

11 A. I think 2006.

12 Q. Don't worry. This isn't a memory test, and if you're unsure,
13 don't worry about that. That's still several years ago, and I appreciate
14 that. Thank you for your help.

15 MR. HOOPER: Can we go into closed session just for three
16 questions, two or three questions. We won't be very long in closed
17 session. Less than five minutes, I anticipate.

18 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, if we
19 could go into closed session for the questions that Mr. Hooper intends to
20 ask, which can identify the witness.

21 (Private session at 12.30 p.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

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7 (Expunged)

8 (Expunged)

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12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 12.33 p.m.)

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

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

24 Mr. Hooper.

25 MR. HOOPER:

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1 Q. I see in your statement at paragraph 21 that you said this:

2 "Until February 2004, I was not interested in politics."

3 Now, is that correct, that you weren't interested in politics
4 until 2004?

5 A. That is to say, I wasn't involved in political matters before
6 that time.

7 Q. Now, we know that P-0012 was arrested and taken off and kept in
8 custody for two weeks. Christmas Eve, that's 24th of December, 2002, and
9 that at that time there appear to have been about a dozen militia,
10 training militia, who were staying at your house. Is that right? And
11 what do you know of those circumstances that you can help us with?

12 A. I do know that one day the police arrived at the house to search
13 and to arrest everyone who was there. There was -- there was a group of
14 Congolese soldiers who were there in Uganda who were -- who had spent a
15 few nights at our home, at our house, and -- well, to say that they were
16 training, that -- I wouldn't say that. I would say that they were
17 supposed to go to Beni, and they came back. They came. They searched
18 the house. They arrested everyone who was there, and they left.

19 Even I left. I left to go with the police. I wasn't arrested.
20 I came back. But P-0012 and the others were taken to the police, and
21 from the police station they went after -- after we were released the
22 soldiers were released, and they had explained indeed that they were
23 soldiers, but they weren't rebels or anything like that, and they were
24 there. They were living in Nambole. They were living in Nambole for a
25 programme that the government was supposed to do with Uganda. There was

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1 a programme. I no longer know exactly what it was, but they were there.

2 They were there legally.

3 When we had stopped providing them with food, they went on. We
4 went on supporting them, and they were supposed to find a way to go back
5 home, and under those circumstances I -- P-0012 asked (Expunged)
6 (Expunged)

7 (Expunged). We
8 had space, and so he agreed, but they didn't spend -- perhaps it was
9 two -- five days. I no longer exactly recall. That's how it happened.

10 Q. But they were going to Beni to form part of an attack on
11 Mbusa Nyamwisi, were they not?

12 A. I don't know about that. In any event, there were not many of
13 them. How could they organise an attack? I don't know. I don't know
14 about that.

15 Q. Anyway. Now, you mentioned Emmy Allio who we understand to be a
16 journalist working for a Ugandan, Kampala-based newspaper called
17 "New Vision." Am I right in saying that Emmy Allio was, in fact, also an
18 intelligence officer working for the Ugandan government? Is that within
19 your knowledge?

20 A. I couldn't officially -- he was working for the government? It
21 might -- I don't know if that was an official thing. Did he work
22 officially for the government?

23 Q. No. What I'm saying was that his -- his official job was as a
24 newspaper journalist, but, in fact, he was an agent, an intelligence
25 officer who did missions for the Ugandan government. And I'm asking you,

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1 are you aware of that at all?

2 A. What I know is that officially he was working -- he was working
3 for the government. That's what I know. I don't know. He was a
4 journalist. Well, not just a -- he was studying too. He was also
5 studying, studying law. He was studying, but I know that he worked for
6 the government as well.

7 Q. You mentioned in the context of Emmy Allio Polcol. What is
8 Polcol?

9 A. Polcol was the leader of security, security, external security,
10 something like that.

11 Q. And Emmy Allio was given some job to do by Polcol; is that right?
12 Is that right?

13 A. I think that Emmy Allio was working with Polcol. He worked with
14 Polcol, I think. I think that's how it was.

15 Q. Yes. That's how it was. And if I turn it page 64 of your
16 transcript, the English transcript, yesterday, at line 15, let me just
17 read what you said.

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

24 And that's what you said yesterday. So am I right in saying that
25 Emmy Allio effectively gave P-0012 a mission to go and get Germain, bring

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1 him back to Uganda? Is that right?

2 A. I'm saying that Emmy is a journalist, but he worked with Polcol,
3 the minister of their affairs. I don't know if it's exterior or
4 something else. I'm not quite sure how to put it. He worked with him.
5 And he asked -- I know that Emmy had contacted P-0012, for him to bring
6 Germain to Kampala.

7 Q. Now, let's come to the first visit, which was, you told us, in
8 October of 2003. This is a visit by Germain Katanga and Pascal Alezo to
9 Kampala. You may recall you told us yesterday how you met them, together
10 with P-0012, off the bus at the end of their journey to Kampala. You
11 picked them up - is this right? - in a car. Is that right?

12 A. Yes, I went to get them, get them and greet them there.

13 Q. What kind of car was it? Can you recall?

14 A. It was a Mitsubishi.

15 Q. Was this officially a --

16 MR. HOOPER: Let me just ask. There are some papers with 1, 2, 3
17 on them, just to save going in and out of closed session, and I'm just
18 touching on something there.

19 Can I ask that they be distributed. It's not a complicated
20 table, but it just saves running into trouble. And one for the witness
21 and sufficient here for the Judges and a scattering around the court.
22 And one more for me. Thank you very much.

23 Q. So as I said, Madam Witness, it's not a complicated list, but
24 you've -- you've been very good and reliable in respect of your reference
25 to P-0012 in that way, and we can see that 3 is an organisation, and 4 is

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1 a function within that organisation. And my question is this: The car
2 that you collected those three with, the Mitsubishi, was that the
3 official car of the organisation 3?

4 A. It was the official car of the organisation, but who it was, who
5 was asked, was it -- it was the car of (Expunged) P-0012.
6 It was the one -- the car that P-0012 used to use.

7 Q. Understood. Thank you very much. Now, you met Germain. When
8 was the first time you ever heard Germain described or describing himself
9 as president of the FRPI?

10 A. It was when he came the second time.

11 Q. Now, all three gentlemen were then taken to a hotel. Was that
12 hotel called the Valley View Hotel? Do you remember?

13 A. I beg your pardon, which hotel?

14 Q. Something that sounds like Valley View, English.

15 A. I'm wondering which hotel. The hotel the first time or the
16 second time? Which hotel are you talking about? The first time they
17 were at the hotel. The second time they were at the hotel. Which hotel
18 are you talking about?

19 Q. I'm talking about this first visit. You meet them with the
20 Mitsubishi car. You take them to a hotel. Which hotel did you take them
21 to? Can you recall?

22 A. The first time, I think, it was the Olympia Hotel in Muyenga or
23 something like that, if I still recall. It was around there. And the
24 second time, it was on the other side, around Nambole, close to
25 Buyogeregere (* phon) or something like that, over there on that side.

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1 Q. Now, when you say the second time, what do you mean by "the
2 second time"?

3 A. The second meeting. The second time they came to Uganda.

4 Q. So we're clear, the first time is October and second time is
5 February; is that correct?

6 A. That's what I think.

7 Q. It's just for clarification. Can you recall, did they stay in
8 the same hotel the first time, or did they move to another hotel and then
9 another hotel during the two weeks that they were in Kampala?

10 A. I never said that they had spent weeks, first of all, and then
11 when they went -- when they arrived, they spent a few days at the hotel.
12 They left to meet the president, President Mambara (* as interpreted).
13 They came back. They spent the night at the same hotel, and the next day
14 they left. Well, that wasn't a hotel, it was a house. I think it was a
15 private apartment. They were housed there for two days. That was
16 where -- I don't know what they did, but I do know that we went to get
17 them there before they went back. So they were to go back from there.
18 They were to organise themselves to leave from there.

19 Q. And altogether that first visit, how long were they in Uganda, in
20 Kampala, that you remember?

21 A. I don't remember specifically, but it wasn't more than a week, I
22 think. I don't really remember with accuracy. It wasn't really more
23 than one week.

24 Q. All right. That's your recollection. Let me suggest, and that's
25 all I can do, can I suggest to you that it was two weeks that they were

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1 there?

2 A. Well, that I would say no. I would say no, since when we to get
3 them there, they had spent two days on the other side. They had spent
4 two days, and we went to get them. We came. I saw. We gave a Thuraya
5 phone to Germain so that he could stay in touch with them. If there were
6 a problem, if there were -- if there were rebels, he could call them.
7 And they made an arrangement to get a plane, a helicopter. Well, a small
8 plane, rather, that would take them back to the place where they had come
9 from.

10 I saw when they were taken to the airport, but from the airport
11 they didn't leave. I went back. I don't know. If that happened, I
12 don't know.

13 Q. Now, you -- you spoke there about on one or, I think, two
14 occasions you refer to, "when we went to get them," and I assume you're
15 talking about P-0012. But isn't it right that P-0012, as you told us,
16 was staying with them at the hotel?

17 A. P-0012 stayed with them at the hotel. Now, if I said that we
18 went to get them, it wasn't with P-0012, because P-0012 the whole time
19 spent all his time with them. He wasn't at home. I had said something
20 about sleeping with them. I was with a driver, a friend of P-0012.

21 Q. In fact, you were doing the driving most of the time; is that
22 right?

23 A. I didn't say that I was the one who was driving, but I was the
24 one who was serving as a guide.

25 Q. Well, I suggest you were the driver. When you collected them in

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1 the car at the bus station, you were driving. And later, when you went
2 for trips to Munyonyo and the other places, you were the driver the car.
3 Isn't that right?

4 THE INTERPRETER: Laughter.

5 THE WITNESS: (Interpretation) Are you telling me that or asking
6 me that?

7 MR. HOOPER:

8 Q. I'm asking you that. Were you the driver on those occasions?

9 A. I wasn't driving.

10 Q. So there's a driver and you, P-0012, his friend (Expunged),
11 Germain Katanga, and Alezo. Was that the general composition of the
12 party when you went out anywhere?

13 A. Yes, but in not always, since sometimes (Expunged) would go back -- I
14 beg your pardon about the name. He would go back, and we could stay, the
15 four of us, in other places. We could go, the four of us, without him.

16 Q. Now, you've spoken about visits to Munyonyo and visits to
17 restaurants and visits to clubs. How many clubs did you go to? Can you
18 recall?

19 A. We visited the club called Capital. I think that's the only club
20 that we went to, I think.

21 Q. And did you go there more than once?

22 A. I think we went there twice, if my memory serves me correctly.

23 Q. Did P-0012 always go with you to the clubs or were there times --
24 or the two occasions, or were there -- was there a time when he didn't?

25 A. We were always with P-0012. There was no point in time when

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1 P-0012 was absent and I was alone with them. We were always together.

2 Q. Were you always together on the second trip together or not?

3 A. Together with whom do you mean?

4 Q. Well, were you always with -- GK was with you. Were you ever
5 alone with GK?

6 A. So who is GK?

7 Q. Germain. Sorry, it's my -- my appellation of GK,
8 Germain Katanga. Germain, were you ever alone with Germain?

9 A. During the second visit I was never there alone with Germain. We
10 were there with other members of the party but not with P-0012, but at
11 least always with the other members of the party, which means Pascal and
12 Didier, and so forth. I was never alone with him.

13 Q. Now, this first visit, did you ever visit -- did you ever take
14 them to your home in October?

15 A. I don't think so. I don't think that they came to the house, but
16 maybe just passing by. But as for receiving them as guests at the house,
17 no, we didn't do that. It was only upon the second occasion that we had
18 them at the house, but the first time we didn't really receive them at
19 the house, as far as I recall.

20 Q. Now, you describe Germain as normal. In fact, would it be fair
21 to say that he is a courteous and gentlemanly man?

22 A. I said that I found Germain normal, like any normal man, and we
23 had normal conversations. We laughed, and everything was normal. He
24 came across perfectly normally in contrast to what I could have imagined
25 about him, but I found him perfectly normal. And -- to go so far as to

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1 call him a courteous man or otherwise, well, it's -- it's -- it's just a
2 little -- he showed respect towards P-0012 and me. He called me "mama."
3 He called me "*mère*" in French, and I wouldn't say anything against that.
4 He called me "mama," which is a sign of respect. That's what I have as
5 an impression.

6 MR. HOOPER: Can we just go into closed session for a moment.

7 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could we
8 please go into private session, please.

9 (Private session at 1.06 p.m.)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

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12 Page 62 Expunged – Private session

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13 Page 63 Expunged – Private session

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12 Page 64 Expunged – Private session

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1 (Expunged)

2 (Expunged)

3 (Open session at 1.15 p.m.)

4 COURT OFFICER: (Interpretation) We're in open session.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

6 Court Officer.

7 Please proceed, Mr. Hooper.

8 MR. HOOPER:

9 Q. Now, that first visit, can you recall, did you have to provide

10 Germain and Pascal Alezo with clothes and shoes and things on that -- on

11 that trip? Can you recall?

12 A. The first visit?

13 Q. The October visit, the first visit. Did you have to provide

14 clothes for them?

15 A. I don't remember.

16 Q. All right. So let's move now to the second visit. Your

17 recollection and your evidence, you told us, was that that visit lasted

18 about -- or was one and a half weeks. Again, may I suggest that, in

19 fact, it was just one week, seven days, and not a week and a half? It's

20 not a great difference, but a difference.

21 A. Am I to say something in response?

22 Q. Yes. You told us in evidence -- and it's not a criticism. Your

23 recollection was that it was a week and a half when you gave your

24 evidence, and I'm suggesting it was less than that. It was just a week's

25 visit. On reflection, can you -- what do you say?

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1 May I say that looking at your statement, before you answer that,
2 I see at paragraph 43, just above the bit you just read, it just reads:

3 "They stayed about a week in Kampala."

4 And I think you repeat something along that line later. Yes.

5 You say at paragraph 72:

6 "The FRPI representatives stayed about a week and then they
7 decided to leave."

8 So it's not a big difference, but so that we can get it right, is
9 it right that they were there for about a week?

10 A. In any case, if I knew that one day I would be before the Judges
11 to try to explain these things, then I would have taken the precaution of
12 noting all the details in order to be able to explain exactly what
13 happened, how many days precisely they spent.

14 I know that they spent some time, and after that time, they were
15 tired of waiting for the president, who was meant to receive them,
16 because their president had moved about somewhat. And they said that
17 when they came to Kampala, it wasn't actually programmed for them. They
18 had planned nothing of that sort, and they thought that they would be
19 able to quickly return rather than hanging around. But in any case, it
20 wasn't less than a week. Whether there was a week, I can't recall
21 exactly, but I know that it was not less than one week.

22 Q. Right. And again this is going back many years, and we won't be
23 at all surprised if you can't remember exactly, but may I suggest it was
24 on the third day that they went and met Museveni? So they arrived, and
25 on the third day after their arrival, they went and met Museveni for that

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1 visit. Does that sound right to you?

2 A. In my opinion, that is not correct, because I know that when they
3 came, they were meant to go directly to meet with him. It was meant to
4 be the same evening that they were supposed to go and meet with him. But
5 it wasn't three days afterwards, because three days, we would already
6 have met and spoken, and I just don't know.

7 I don't think it was three days afterwards, because we saw them
8 the day after their arrival.

9 Q. And which hotel did they stay -- stay in on that occasion, can
10 you recall?

11 A. I no longer recall the name of the hotel. I don't remember that,
12 but I know roughly where it was located. And it wasn't only them. There
13 were also people from PUSIC as well. Some people from PUSIC were there
14 as well, not only them alone, but I no longer recall the name of the
15 hotel.

16 MR. HOOPER: Now, I see the time, and, in fact, the next question
17 involves a document with the attendant difficulties that producing
18 documents leads to, so I'm wondering if we can conveniently break now.

19 Can I indicate I have less, I would have thought, than -- I have
20 less than an hour of questions.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Counsel Hooper. Could you give us even a very approximate idea of the
23 time, Mr. Kilenda, in your team, of how much time you will require just
24 so that we can know what kind of planning we need for the next witness.

25 MR. KILENDA: (Interpretation) Maximum one hour, your Honour.

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1 PRESIDING JUDGE COTTE: (Interpretation) In that case we shall
2 suspend for now. We shall turn over to the Prosecutors -- the
3 Prosecution team and the Court Officer. And bear in mind that it is not
4 impossible that the next witness may appear tomorrow. So please bear
5 that in mind.

6 Madam Witness, thank you for this morning that you have spent
7 with us.

8 MR. KILENDA: (Interpretation) With your leave, your Honour. So
9 as not to waste any time, we would like to add that the next witness
10 could even come before the morning break.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
12 Counsel Kilenda. We shall do what is necessary to make sure that the
13 witness is ready as of 10.00 a.m.

14 Madam Witness, thank you, then, for your contribution this
15 morning and for the answers that you have given to the various questions
16 from Madam Prosecutor, from Mr. Gilissen, and from Mr. Hooper. You've
17 heard that we will be meeting again tomorrow morning, and the
18 cross-examination by Mr. Hooper shall be completed in the morning, and
19 then Counsel Kilenda will ask some questions. And then once we have
20 heard potentially from the Prosecution again, then you will have
21 finished. So for now we say good afternoon.

22 JUDGE DIARRA: (Interpretation) And please get well soon.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes. Please take care.

24 THE WITNESS: (Interpretation) Thank you.

25 (Closed session at 1.24 p.m.)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Open session at 1.25 p.m.)

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

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

12 Tomorrow -- I'm sorry. Yes. No, one moment. I was just saying
13 that tomorrow, at the end of the cross-examinations, it would be
14 worthwhile determining the classification of the little chart that you
15 gave us with the three names and three codes. Should we give that an EVD
16 number or should we give it an HLE number so that we can later refer to
17 it if we require so that we can see what the codes were about?

18 Yes, we do have a few moments if you wanted to say something,
19 Counsel Hooper?

20 MR. HOOPER: No. Yes. It's just some, perhaps, misunderstanding
21 as to who the next witness was, but I think we understand it's 353.
22 Yeah.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed.

24 Until tomorrow then, the session is suspended -- adjourned.

25 The hearing ends at 1.26 p.m.

1 RECLASSIFICATION REPORT

2 Pursuant to Trial Chamber II's email instructions dated 10 July 2012, the following

3 excerpts of the transcript are reclassified as public, as ordered by the Chamber:

4 *Page 18 lines 1 to 3.

5 *Page 20 lines 17 to 25.

6 *Page 21 lines 1 to 2.