

1 International Criminal Court
2 Trial Chamber II - Courtroom I
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Wednesday, 24 November 2010
10 The hearing starts at 9.01 a.m.
11 *(Closed session) Reclassified as Public session
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
15 Before the witness comes in, the Chamber would like to inform you
16 that it's facing a major difficulty. One of the Judges,
17 Judge Van den Wyngaert, heard yesterday at the end -- at close of
18 business about the death of her father. It happened abroad. The Judge,
19 therefore, has to leave immediately to take care of her mother who is
20 quite aged and who is very much affected, and that is understandable, and
21 to start the formalities for the repatriation of the body of her father,
22 and so the question that arises has to do with the hearings for
23 Witness 0028.
24 The evidence of this witness is coming to an end, and the Chamber
25 is of the opinion that in the interests of good administration of

1 justice, this testimony should not be postponed to a date, which for now,
2 shall remain undetermined. Given the fact that Judge Van den Wyngaert
3 does not know what administrative and consular formalities she will have
4 to undertake, we did not think that it's in the interests of justice to
5 have this witness stay longer in The Hague than expected.

6 The Chamber knows the provisions of Article 39(2)(b)(ii) of the
7 Statute which provides that the functions of the Trial Chamber shall be
8 conducted by three Judges of the Trial Division.

9 It simply notes that today it faces very exceptional
10 circumstances, and so the Chamber would like to inform the various
11 parties and participants that the Judges have unanimously decided to
12 conclude the testimony of this witness in the presence of two Judges
13 only, as provided by Article 15 of the Rules of Procedure and Evidence
14 for the ICTY, which all of you are acquainted with. Well, that Article
15 provides for measures to be taken when a Judge has to be absent for a
16 short while for any reason whatsoever, and I believe that today's
17 circumstance can be placed under that category.

18 The presence of two Judges on the Bench would continue only up to
19 the end of the evidence of Witness 0028, it being understood that
20 Judge Van den Wyngaert can sit with us today right up to 10.45. Please
21 be informed that the hearings are recorded. We have a transcript
22 recording, an audio recording, and a video recording, and this will
23 enable a Judge who is absent to be acquainted with what happened -- well,
24 with the testimony that is going to be given, the re-examination, and any
25 other comments that could come from the parties and the participants.

1 The Legal Officer of the Judge concerned who had not been present
2 at this hearing hereto shall, of course, be present in the absence of
3 Judge Van den Wyngaert, and a new decision will be taken on Monday
4 depending on any additional information that Judge Van den Wyngaert could
5 bring to the attention of the Chamber. We have a Status Conference on
6 Monday afternoon, and next Tuesday and Wednesday, we are going to have to
7 listen to the evidence of Witness 0166, which may extend right up to
8 Thursday.

9 That's it. That's the difficulty we wanted to acquaint you with
10 and the measures we intend to take. If all the parties, I repeat, if all
11 the parties and participants agree, then that is the arrangement we
12 intend to follow. We do not wish to sit, to have a Bench of two Judges,
13 if any of you has any objection to the fact that the testimony of
14 Witness 0028 should be concluded under those circumstances.

15 The Chamber would, therefore, at this juncture want to know from
16 you whether or not you agree with the fact that the testimony of
17 Witness 0028 should be concluded in the presence of Judge Diarra and
18 myself, it being understood once more that Judge Van den Wyngaert, once
19 she returns, is going to make use of the transcripts, the audio and video
20 recordings, and the report that her Legal Officer would provide to her,
21 Legal Officer who is going to be here right up to the end of the
22 testimony of Witness 0028. This will be for a limited period of time
23 until we have a clearer picture of things. That is the situation as it
24 stands.

25 Mr. Prosecutor, could you give us your opinion, or would the

1 parties and participants wish for us to give them ten minutes to discuss
2 with each other?

3 Mr. Prosecutor, you have the floor.

4 MR. MACDONALD: (Interpretation) Your Honour,
5 Judge Van den Wyngaert, on behalf of the Office of the Prosecutor, we
6 extend to you our sincere condolences at this moment for this event which
7 saddens all parties and participants.

8 Your Honour, the Prosecution fully supports this decision of the
9 Chamber. Well, after Judge Van den Wyngaert leaves, we would prefer to
10 have a short break in order to consult our colleagues, but at first
11 sight, we think that your proposal is reasonable, and so long as the
12 other parties and participants agree, the Prosecution does not see how
13 this can undermine the rights of the Defence, but I think the Defence
14 will have to give their opinion, but I'm sure as far as the
15 Legal Representatives are concerned, this shouldn't be a problem.

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

18 This is a point that I should have raised but which I'm going to
19 raise now: It goes without saying that if in the course of the
20 cross-examination, that is the end of the cross-examination of
21 Mr. Hooper -- well, may I say that Judge Van den Wyngaert's going to be
22 with us right up to 11.15 (* as interpreted), that is quarter to 11.00,
23 and of course she may have to listen to whatever questions that may be
24 put by the team of Mr. Ngudjolo and the Legal Representatives. However,
25 if there are any further decisions that have to be taken, the parties and

1 the participants are going to propose their viewpoints, and the Chamber
2 will reserve its decision until Judge Van den Wyngaert returns. And if
3 we can reach an agreement, then we are going to proceed in this manner,
4 but we are not going to take any decision sitting as a Bench of two.
5 Such decisions will be taken when Judge Van den Wyngaert returns next
6 week.

7 Legal Representatives of Victims, you have the floor, please.

8 MR. GILISSEN: (Interpretation) Yes, your Honour. We would like
9 to extend our sincere condolences to Judge Van den Wyngaert. We fully
10 support your decision, and there shouldn't be any difficulty with the
11 arrangement. Allow us to suggest to Judge Van den Wyngaert that she
12 should not even think of sitting this morning. I lost my father, and I
13 know exactly how she feels. It's only a suggestion I'm making.

14 Thank you.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Luvengika.

16 MR. LUVENGIKA: (Interpretation) Your Honour, we rose, both of
17 us, and this was to prove to the Chamber that we really feel for
18 Judge Van den Wyngaert, and we are of the opinion that the hearing can
19 continue it in her absence, and we fully support the decision taken by
20 the Chamber.

21 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, could you
22 please give us your viewpoint on the suggestion which has been made by
23 the Chamber under these very special circumstances.

24 MR. HOOPER: Yes. They are -- they are very special
25 circumstances, and needless to say, our condolences to the Judge.

1 It's a decision that would most touch the interests of the
2 accused. It's a very exceptional situation. It's not specifically
3 provided for, as we know, within the Statute. We have considered it as a
4 team from time to time, because we're all aware of practice in other
5 institutions in terms of absent Judges. I say all this against a
6 background that I think it's within your authority to proceed in the
7 absence of a Judge with the agreement of the participants in the trial,
8 and, in particular, with the agreement of the accused. And in the brief
9 time we've had, I know that I've had the agreement of Germain Katanga to
10 agree to this trial continuing in the absence of Judge Van den Wyngaert.

11 You said that this would be for a limited time, and we don't know
12 quite how long that will be. I merely say this: Again, it's an
13 exceptional situation, but we know that the next witness is Witness 0166,
14 and we don't, at this stage, anticipate that we're going to have a great
15 number of questions of him because he doesn't speak of Germain Katanga
16 directly, and obviously a witness can change, but at the moment our view
17 is that it may be that we can continue on Monday, again with the
18 continued absence of the learned Judge.

19 So, yes, we agree, and I'm on my feet, and you can see that
20 Germain Katanga is aware, and he agrees too. And again, our condolences.

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

22 Thank you, Mr. Katanga.

23 Mr. Kilenda, you have the floor.

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

25 Professor Fofé here seated and myself have both lost our fathers.

1 Therefore, we fully understand what Judge Van den Wyngaert is going
2 through, and we would like, on behalf of the Defence team of
3 Mathieu Ngudjolo, to extend to her our most heartfelt condolences. We
4 believe as Maitre Gilissen suggested that it would even be preferable for
5 Judge Van den Wyngaert to take all measures possible in order to take
6 charge of the formalities she has to fulfil.

7 As Mr. Hooper said, and as our clients are aware of what's
8 happening, we fully endorse all the measures which you have taken. We
9 thank you very much.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
11 Maitre Kilenda. Thank you, accused persons. Thank you, Mr. Ngudjolo.

12 Well, subject to what Judge Van den Wyngaert would like to say or
13 do, if you wish to go now, you may. If you want to sit with us for a
14 while, Mr. Hooper's going to continue with his cross-examination, and you
15 can feel free to continue sitting. In any case, the parties and the
16 participants have freely supported, or, willingly supported the decision
17 taken by the Chamber.

18 Mr. Hooper is going to continue with his cross-examination, and
19 the Chamber would like to reiterate that we are going to sit as a Bench
20 of two only up to the end of the testimony of Witness 0028, and that
21 Judge Van den Wyngaert may have to sit right up to the end of that
22 testimony, but if she's not there, then she will be provided with all the
23 recording so that she will lose nothing with respect to these
24 proceedings.

25 On Monday, depending of -- depending on the information given to

1 us by Judge Van den Wyngaert, we would see whether we are going to hold a
2 Status Conference with or without her, and then we will discuss the
3 situation of Witness 0166.

4 The Chamber would like to thank the parties and the participants
5 for understanding, for the condolences they have extended to
6 Judge Van den Wyngaert, Judge Van den Wyngaert who is, I believe, very
7 moved and will not be able to respond now.

8 I think the accused persons should leave the courtroom first.
9 Security officers, could you kindly lead the accused persons out of the
10 courtroom so that the witness can enter.

11 (The accused withdrew)

12 JUDGE VAN DEN WYNGAERT: (Interpretation) I would like to thank
13 you all for showing such understanding. May I seize this opportunity
14 given to me to leave this courtroom and join my mother who is in Spain.
15 Thank you.

16 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could
17 you and the usher bring in Witness 0028.

18 When we rise, that is after the break, we are going to give two
19 oral decisions, one related to the application of Mr. Luvengika and
20 another relating to the application of the Prosecutor on -- on rebuttal.

21 Mr. Prosecutor.

22 MR. MACDONALD: (Interpretation) Could we start with giving EVD
23 references to the exhibits tendered?

24 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, let's go
25 into open session.

1 (The witness takes the stand)

2 PRESIDING JUDGE COTTE: (Interpretation) Secure officers, could
3 you bring in Mr. Ngudjolo and Mr. Katanga, please.

4 (The accused entered court)

5 (Open session at 9.21 a.m.)

6 JUDGE DIARRA: (Interpretation) Mr. Witness, the third Judge,
7 our colleague, has lost her father and that is why she is not sitting
8 this morning. However, we would like to continue with you. We hope you
9 find no inconvenience with that.

10 COURT OFFICER: (Interpretation) Your Honour, we are in open
11 session.

12 THE WITNESS: (Interpretation) Witness, we can continue. That
13 is no problem at all. This is very sad news.

14 JUDGE DIARRA: (Interpretation) Thank you very much.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Witness.
16 Court Officer, could you, together with Mr. Hooper's team, give EVD
17 references to the various documents which he has used hitherto so that it
18 will be easier to make reference to these documents in the course of the
19 proceedings.

20 COURT OFFICER: (Interpretation) Thank you, your Honour. The
21 document DRC-OTP-0171-1827 shall bear the EVD number EVD-D02-00083.

22 The document DRC-OTP-0171-1826 shall bear the reference
23 EVD-D02-00084.

24 The document DRC-OTP-1056-0039 shall bear the reference
25 EVD-D02-00085.

1 The document DRC-OTP-0001-0352 shall bear the reference
2 EVD-D02-00086.

3 The document DRC-D02-0001-0007 shall bear the reference
4 EVD-D02-00087.

5 The document DRC-D02-0001-0013 shall bear the reference
6 EVD-D02-00088.

7 The document DRC-D02-0001-0017 shall bear the reference
8 EVD-D02-00089.

9 The document DRC-D02-0001-0366 shall bear the reference
10 EVD-D02-00090.

11 The document DRC-D02-0001-0383 shall bear the reference
12 EVD-D02-00091.

13 The document bearing the list of names distributed by Mr. Hooper
14 shall bear the reference EVD-D02-00092.

15 All these documents are classified as confidential.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
17 Court Officer.

18 Mr. Prosecutor.

19 MR. MACDONALD: (Interpretation) I am taking the floor,
20 your Honour, to talk about an additional document, a document which was
21 shown yesterday which was not included in the e-mail sent by Ms. Menegon.
22 It is the result -- or the *Palmares* she ordered for the year 2001/2002,
23 and the enrollment register or *Registre Matricule*. The Prosecution would
24 like that EVD references should be given to –

25 PRESIDING JUDGE COTTE: (Interpretation) I don't think that the

1 Defence team of Germain Katanga has any problem with that. He's talking
2 about the two documents shown yesterday.

3 MR. HOOPER: Only one document, as I recall, was shown, and that
4 relates, in fact, to the primary school, and there's only one of those
5 documents which I think would bear a number. So the -- we're not asking
6 for numbers there.

7 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor.

8 MR. MACDONALD: (Interpretation) I beg your pardon, your Honour,
9 I was looking at the wrong numbers. I was looking at the numbers from
10 the Lubanga case. I think that the Court Officer rightly give the
11 references to this document and I wish to apologise to the Chamber.

12 PRESIDING JUDGE COTTE: (Interpretation) No problem. Just as
13 Judge Diarra said a short while ago to you, Mr. Witness, Witness 0028,
14 the Chamber would like to inform the public in the courtroom and the
15 public which is listening to the broadcast of this hearing that we have a
16 Bench of two Judges sitting today, two Judges only, the reason being that
17 there have been exceptional is circumstances related to the fact that
18 someone passed away in a foreign country, and that person was the
19 relative of the third Judge who is not sitting, and so the testimony of
20 Witness 0028 is going to conclude -- to be concluded before a bench of
21 two Judges, and any decision to be taken on this testimony will be taken
22 in consultation with the third Judge, that is all three Judges sitting
23 together.

24 So the fact that we are sitting as a Bench of two is not a
25 disadvantage, because the Legal Officer of the other Judge is present in

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1 the courtroom, and she's following the proceedings on her behalf.
2 Moreover, we have audio, video, and transcript recordings which will
3 enable the Judge who is not sitting to remain acquainted with the
4 evolution of these proceedings.

5 We discussed this matter in the presence and -- in the presence
6 of the parties and the participants, and they have all said they have no
7 objection. The Defence teams have also consulted with their clients,
8 because their interests are at stake, and so the accused persons,
9 Mr. Katanga -- Mr. Katanga and Mr. Ngudjolo, have stated that they see no
10 objection, no problem, with having the testimony of Witness 0028
11 concluded under these exceptional circumstances.

12 Mr. Hooper, you may proceed.

13 Mr. Witness, we welcome you once more to the courtroom.

14 WITNESS: WITNESS DRC-OTP-P-0028 (Resumes)

15 (Witness answered through interpreter)

16 QUESTIONED BY MR. HOOPER: (Continued)

17 Q. And good morning, Mr. Witness.

18 A. Good morning.

19 Q. Now, I'd like you to have as we start the various documents that
20 we've provided you, because we'll be looking at those again. That's the
21 list with the EVD number 92, the first statement and the second
22 statement. We've got copies here, and you're familiar with these
23 documents, Mr. Witness, and I'm going to look at the first one first.
24 Let me open it at the appropriate bit, which is 91 -- 92, actually, which
25 deals with the attack on Mandro.

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1 So looking at the first statement. That's the 2006, April,
2 statement. And I'm going to refer you to the paragraph 92, which refers
3 to your participation in the battle of Mandro, and the subsequent
4 paragraphs, 93, 94, 95, 96, relates there what you have to say in 2006,
5 and you say how it was a mixed group of FRPI and FNI under command of
6 Dark and Kute, respectively.

7 Nowhere in this account do you mention Germain Katanga. That's
8 right, isn't it? Nowhere in this account in 2006 do you mention him.
9 Indeed, you have earlier said how he's gone back to Aveba after Bogoro.
10 And if we look at paragraph 96, you say:

11 "After the conquest of Mandro, I returned to Aveba via Zumbe and
12 Bogoro. Once I got back to Aveba camp, I restarted my work (expunged)
13 (expunged) up until the day he left for Kinshasa."

14 So my question really is: Do you accept that in that account you
15 didn't mention Germain Katanga at all in relation to the attack on
16 Mandro?

17 A. If you read on these pages and you do see -- and you see that I
18 have not mentioned Germain Katanga, then that is because I did not
19 mention him.

20 Q. Fair enough. Now, let's come back to that area that we were
21 looking at yesterday, and that is the things that took place that were
22 preparatory to the attack on Bogoro, and we looked yesterday at your
23 first statement and the account you gave there of the meeting at Bavi. I
24 don't return to that. And the absence of any reference to either any
25 meeting of commanders at Aveba, FRPI commanders at Aveba, nor any

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1 reference at all to any meeting between FRPI in Aveba and a delegation or
2 a group of militia from Zumbe.

3 Now, the first time we see any reference to any delegation or any
4 group arriving from Zumbe is in your second statement made almost a year
5 after the first. Your second statement, you've got that there with a
6 number 2 on it. It was a statement that was taken over, again, several
7 days, the 23rd of February, the 24th of February, the 25th of February,
8 and the 26th of February, this time with Mr. MacDonald but also
9 (expunged), who had been present at your first interview. So a lengthy
10 interview of some 20 hours, over 20 hours, and you refer there to various
11 things, including under the heading of the "Visit of the FNI" to Aveba
12 camp, this delegation.

13 Now, my first question is this: You've been asked on previous
14 occasions whether you can recall when that delegation arrived at Aveba in
15 relation to the attack on Bogoro. Can you help us this morning as to
16 when that delegation arrived, or are you still in a position where you
17 can't remember how many days or weeks or even months it was before the
18 attack on Bogoro? What's the position today?

19 A. I think that I have already answered this question. I did so
20 yesterday. I said that I had no further details on that. I cannot say
21 whether it was a few days prior, but I know that it was a few days before
22 the attack, but I did say to you that I did not know if I would be coming
23 to testify, and I said that I was not God. I could not retain all of
24 this in my head. I cannot magically produce the details that you seek
25 about a given day as concerns these events.

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1 Q. Very well. We understand. These are now events seven years ago,
2 and if you can't remember, you can't remember. You don't need to excuse
3 yourself.

4 But let me ask you this: How long did this group of people
5 remain in Aveba?

6 A. I don't know, but I know that they didn't stay a long time.

7 Q. All right. Now, you told us at 217 transcript, 44, 14, that's
8 page 44, line 14, you say:

9 "The delegation was led by a commander from Zumbe. His name was
10 Boba Boba."

11 And I just want to ask you this, because if we look at -- you
12 pick up your second statement there that you've got, and if you turn to
13 paragraph 27 dealing with this, and you look at the last sentence of that
14 paragraph, you're asked there -- we can see that you're asked, because
15 it's a part of the way that the statement is formulated. I'll quote it.
16 The last sentence reads as follows -- this is last sentence of
17 paragraph 27:

18 "I am asked if I have heard of Commander Boba Boba. I have
19 never heard anyone of that name."

20 And is that right? Had you never heard of anyone called
21 Commander Boba Boba when that question was put to you in 2007, just three
22 years after these events?

23 A. Could you please repeat your question.

24 Q. Well, you can see the bit I'm looking at. I'll quote it again.
25 I'll read it again:

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1 "I'm asked if I've heard of Commander Boba Boba. I have never
2 heard anyone of that name."

3 And my question is: Is that right? Had you never heard of
4 someone called Boba Boba when you made this statement?

5 A. I would say as follows: This name did not ring a bell with me at
6 all, the name Boba Boba.

7 Q. All right. Now, in your -- looking at transcript 44, you refer
8 to someone called Gongga Gongga, and you refer to someone called
9 Gongga Gongga in your interview, in your second interview. Who is
10 Gongga Gongga?

11 A. I should like to say the following: The person that you have
12 called Boba Boba -- no, Gongga Gongga, it was him who bore the name
13 Boba Boba.

14 Q. You're saying he had both names? Are you saying that Boba Boba
15 was also called Gongga Gongga?

16 A. That's you who is saying that. I don't know if the man had two
17 names. You are saying that, not me.

18 Q. Can I just ask you this: What does "*gonga*" mean in Swahili?

19 A. I don't know how to explain it. Sometimes it means to strike or
20 to hit or to beat.

21 Q. So would it be fair to say that -- I don't know how this will
22 work on translation, but Gongga Gongga means Hit Hit, Commander Hit Hit?

23 A. That is your interpretation. I did not know if I would adopt the
24 same interpretation. That is your interpretation.

25 Q. Well, what interpretation would you like to offer us?

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1 A. I have no particular interest in interpreting this name one way
2 or another. I don't know why I should interpret his name.

3 Q. Well, you don't have to if you don't want to, and thank you in
4 any event.

5 Now, you've told us in evidence, and I'm looking at page 44 of
6 your transcript and I'll read it so that you, yourself, have it.

7 MR. HOOPER: For those following the transcript, 44, line 17 of
8 217.

9 Q. You see:

10 "Other than those people I've just mentioned --"

11 So I quote:

12 "Other than those people I've just mentioned, there was also a
13 boy whom I knew well. I knew him quite well even before the conflict.
14 His name was (expunged)."

15 Is that right, you knew this (expunged) before the conflict quite
16 well; is that right?

17 A. Yes. Yes, I knew him.

18 Q. And did you know him after the conflict?

19 A. It was before the conflict. I knew him in Bunia, when I was
20 living in Bunia, before I went to Oicha.

21 Q. All right. So we know when that was. But after the conflict,
22 I'm asking you. Did you also know him then? Did you meet him again
23 later?

24 A. We met up again in Bunia afterwards. To whom are you referring?

25 Q. If you look at the piece of paper with names on it, I'm referring

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1 to the person at number 4.

2 A. The person found under number 4 has three names. His first name
3 doesn't ring a bell with me. The second name, (expunged), doesn't ring a
4 bell, and the third name doesn't ring a bell either.

5 The name, as it is written, this middle name, I don't recognise
6 it as it is written.

7 Q. It's the way it's also written in the transcript, but can you --
8 can you give us your spelling of that name?

9 A. This name is written on which page of my statement?

10 Q. I'm sorry, you don't have it. It's the way it's been spelt in
11 the transcript, so it's a phonetic, if you like.

12 You say -- you say that there was a young man you knew from
13 before called (expunged) and we've been talking about him,
14 but you don't recognise this spelling. Can you tell me -- it's fair
15 enough. I understand that words can be spelt different ways.

16 Can you give me your spelling of your friend (expunged)?

17 A. It's you who have the names. You have them. I can pronounce the
18 name, and it's up to you to spell it. I know that perhaps I pronounce it
19 poorly, but I know his name is (expunged).

20 Q. All right. Would you like to -- I'll give you a piece of paper
21 here. Would you like to spell it for me. Is that possible? You need a
22 pen as well. I'll give you a pen, pen and paper.

23 THE INTERPRETER: Excuse me, can we ask the Defence team to turn
24 off the microphone.

25 THE WITNESS: (Interpretation) I don't know how to write it

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1 properly, but I'm going to write it as best I can.

2 PRESIDING JUDGE COTTE: (Interpretation) We shall put this on
3 the overhead projector what Witness 0028 has just written, with the
4 spelling he has just provided.

5 MR. HOOPER: (* Microphone not activated)... private -- can this
6 be a private document perhaps?

7 COURT OFFICER: (Interpretation) Please press "Docu Cam Witness"
8 if you wish to see the document.

9 MR. HOOPER:

10 Q. Thank you very much. Now, it's not on my list of photograph --
11 (Defence counsel confer)

12 MR. HOOPER:

13 Q. All right. Unless there's any ...
14 (Trial Chamber confers)

15 PRESIDING JUDGE COTTE: (Interpretation) We shall just let
16 Mr. Hooper finish with this recognition of the spelling. I see that the
17 Prosecutor would prefer there to be a brief suspension of the hearing.
18 We shall suspend in a minute, but, please, Mr. Hooper, please just finish
19 this particular part of your cross-examination, because it's on the OHP
20 already.

21 MR. HOOPER: We can see the spelling there. It's (expunged)
22 (expunged). And on this issue, when you say finish
23 this bit, I now want to show the witness a photograph and ask him if he
24 recognises who it is, and the photograph is DRC-D02-0001-0354. So if I
25 can deal with just this aspect and then that would be an appropriate

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 moment to -- to interrupt for whatever that is for. So we're having --
2 just before that happens, let's just --

3 MR. MACDONALD: (Interpretation) With your leave, your Honour.

4 PRESIDING JUDGE COTTE: (Interpretation) Yes.

5 MR. MACDONALD: (Interpretation) Just so the different parties
6 are aware, the Prosecution has submitted an e-mail to the Chamber
7 requesting a brief suspension given that we have a two-Judge bench, and
8 we should like to hear of decisions issued from other Chambers about
9 similar situations.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes, we will suspend,
11 but we need to look at this extremely carefully to find what were the
12 contexts surrounding those other decisions. This is very important.
13 This is very important. We need to see which were the circumstances that
14 led other Chambers to issue such decisions similar to the one that we
15 took a moment ago.

16 MR. HOOPER: We are rather surprised at this particular viewpoint
17 being expressed. We are in a situation here, quite an exceptional
18 situation, and it's being treated exceptionally and appropriately by the
19 Judges, and we have given, and we can't underscore this more, our full
20 consent for the absence of a Judge during our cross-examination, but the
21 Prosecution works in mysterious ways.

22 MR. MACDONALD: (Interpretation) Your Honour, I should like to
23 reassure the Chamber is that I did say that --

24 THE INTERPRETER: Overlapping speakers.

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

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
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1 obviously we would all like to find the best solution, and before
2 entering into the courtroom this morning at 9.00, the Chamber wanted to
3 be as sure as possible of any other decisions taken by other Chambers,
4 but this particular aspect of Mr. Hooper's cross-examination we feel
5 could be concluded, because its unpleasant to interrupt him in the middle
6 of this part of his cross-examination, and then we will suspend for 15
7 minutes or so before resuming.

8 So, Mr. Hooper, you were about to ask your witness whether he was
9 able to recognise the person from a photograph, in addition to the
10 elements that you had just reminded him of. If you could please remind
11 us of the DRC number of that photograph, and once you have finished with
12 this issue of recognition by the witness of the photograph or otherwise,
13 then we shall suspend.

14 Thank you.

15 MR. HOOPER: I just cannot understand with the team that the
16 Prosecutor have and the assets they have got available why it's necessary
17 to actually break off proceedings at 10.00 when we're sitting until 11.00
18 on a break, but there we are. And it's an interruption, not only
19 inconvenience to me, but, of course, to their own witness, this poor chap
20 sitting here. I'm sure he'd much rather be somewhere else.

21 Q. Well, Mr. Witness --

22 MR. KILENDA: (Interpretation) With your leave, your Honour.

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

24 MR. KILENDA: (Interpretation) This morning you informed us of
25 exceptional -- exceptional circumstances, and you asked each and every

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 one of the parties and participants to offer our feedback on this
2 situation. We all did so, and you made a decision to continue with the
3 proceedings in the absence of Judge Van den Wyngaert. We think that this
4 decision has now already been taken and that proceedings will continue
5 with a bench of two Judges.

6 If the Prosecutor feels that there are legal grounds for
7 questioning the make-up of the Chamber, then we would say that that is
8 head (* as interpreted) right, but we feel that this request for a
9 suspension in proceedings is unjustified. This is our opinion. And it's
10 coming at the very point in time when Mr. Hooper is proceed with a very
11 important part of his cross-examination.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Counsel Kilenda. We have just noted that the Chamber would like
14 Mr. Hooper to complete this particular part of his cross-examination,
15 which is already partly completed, and then once he has completed that
16 part, we will break, perhaps for 10 minutes, perhaps 15 minutes, and then
17 we shall resume, because obviously Witness 0028 is not to be
18 inconvenienced by -- by these events which are above and beyond our
19 control.

20 So we were about to hear the number DRC-D02-0001-0354; is that
21 correct?

22 MR. HOOPER: Yes, please. It's a private document, and it will
23 come on the screen.

24 Q. Mr. Witness, we'll get it up on the screen.

25 COURT OFFICER: (Interpretation) To see this document, please

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 press the button "PC 1" on your console.

2 PRESIDING JUDGE COTTE: (Interpretation) Do you all have the
3 photograph on your screen? The accused persons, everyone? Fine.

4 Mr. Hooper, you may proceed.

5 MR. HOOPER:

6 Q. And may I say I understand this was a photograph taken of this
7 person about 2005, early 2005, maybe end 2004. Do you recognise that
8 person? Do you recognise the person in that photograph?

9 A. No.

10 Q. All right. Now, this person (expunged) that you've spoken about,
11 have you seen him? You said you knew him before in Bunia, before the
12 conflict. He's the man who comes with the Zumbe delegation, a young man,
13 your friend there. Did you meet him after the conflict? Did you meet
14 him after the conflict at all?

15 A. Yes. I did say that we saw each other again. We saw each other
16 in Bunia.

17 Q. And indeed you met in between your first and second interview,
18 didn't you? You met him between April of 2006 and February of 2007.
19 Isn't that right? You met him in the street in Bunia; is that right?

20 MR. HOOPER: Oh, another intervention.

21 MR. MACDONALD: (Interpretation) Your Honour, I would like to
22 raise an objection. I think the witness should be taken out of the
23 courtroom, because I have information to disclose to the Chamber in the
24 absence of the witness, and it relates to the question which Mr. Hooper
25 has asked the witness and which relates to the chronology of events that

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 concern the witness.

2 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, we are
3 trying to recognise an individual from a photograph, a photograph that
4 apparently has a lot to do with the cross-examination of Mr. Hooper. So
5 what is the difficulty you wish to raise there?

6 MR. MACDONALD: (Interpretation) Your Honour, I beg your pardon.
7 I would like to submit that the question which Mr. Hooper is asking is
8 illegal, and I wish to demonstrate why that question is illegal. And I
9 cannot do that in the presence of the witness, unfortunately.

10 PRESIDING JUDGE COTTE: (Interpretation) Well, we are going to
11 request the security officers to escort the accused persons out of the
12 courtroom briefly.

13 (The accused withdrew)

14 THE WITNESS: (Interpretation) Your Honour. Your Honour.
15 Your Honour. I would like this photograph to be enlarged.

16 PRESIDING JUDGE COTTE: (Interpretation) Court Officer -- that
17 is what will be done in a short while.

18 Court Officer, could we go into closed session, and we will try
19 to resolve this problem concerning the photograph.

20 We will go into closed session in order to enable the witness to
21 leave the courtroom.

22 MR. HOOPER: Just before the witness leaves, can I proffer him to
23 take out so he can look at that while he goes out? It's a printed
24 photograph -- or it's the same photograph. It's just been printed out.

25 (Closed session at 10.06 a.m.)

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- 17 (Private session at 10.07 a.m.)
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1 (Open session at 10.24 a.m.)

2 COURT OFFICER: (Interpretation) Your Honour, we're in public
3 session.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

5 Prosecutor, we are listening to you. Be brief, please.

6 MR. MACDONALD: (Interpretation) I wish to apologise for being
7 late a few minutes. We were held up in the lift, and we had to run down
8 to the courtroom using the stairs.

9 PRESIDING JUDGE COTTE: (Interpretation) You should at least try
10 not to sustain a fracture, a leg fracture, otherwise, this is going to
11 delay the proceedings further.

12 MR. MACDONALD: (Interpretation) Your Honour, I would like to
13 address the Chamber in English, and I apologise for that in advance.

14 We understand the existence of Decision 1349, a decision issued
15 by Trial Chamber I. That Chamber faced the same problem at some point in
16 time.

17 (In English) The Prosecution -- the Prosecution supports the
18 Chamber's proposal and the right of the Defence to conclude without
19 further delay the cross-examination of Prosecution witness number 0028,
20 but the Prosecution would propose a small amendment to your decision in
21 order to avoid any future debate.

22 As the Chamber noted before -- before Trial Chamber I, it decided
23 that all three members of the Chamber shall be present throughout the
24 trial, and that's like I mentioned earlier, your Honour, Decision 1349.
25 However, the same Trial Chamber received the deposition of a witness in

1 the presence of the Senior Legal Officer and after incorporated this
2 deposition into the record.

3 Therefore, in this case the Prosecution would propose for the
4 Chamber to continue receiving the evidence of this witness but treat the
5 remainder of his testimony as a deposition, after which, later on, once
6 Ms. Van den Wyngaert becomes available, the statement can be incorporated
7 as evidence into the record. In this way, your Honour, the proceedings
8 can move forward, the Defence can continue to exercise his right to
9 cross-examine the witness, and the process will be, therefore, in full
10 agreement with the text of the Rome Statute.

11 So the Prosecution's (* Indiscernible) to continue the
12 cross-examination, continue hearing the deposition of the witness, and
13 then, at the end of his testimony, then the Chamber can rule on how to
14 incorporate this testimony into the record.

15 I -- (Interpretation) I would like to state that Witness 0582
16 gave testimony before Trial Chamber I, and this procedure was adopted,
17 and you'll find it in transcript 33, page 22 of the English version. I
18 can give you the date of that decision, and that is the only reference I
19 have. I cannot give you the date. It's transcript 333, page 22. I
20 don't know whether this was the realtime version or the edited version.
21 That is the proposal which we wish to suggest to the Bench, but as you
22 said -- as I said at the beginning, the goal is to co-operate with the
23 Chamber, to continue with the evidence of the witness, but to ensure that
24 there is no subsequent debate about this.

25 (Trial Chamber confers)

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor,
2 for your contribution.

3 The Chamber is very aware of the decisions taken by the other
4 Trial Chamber, Trial Chamber I. And at several occasions we have
5 referred to decisions issued from Trial Chamber I, and we are aware of
6 the interferences between these two cases which have meant that we have
7 had to follow Rule 42 and to abide by decisions issued by
8 Trial Chamber I.

9 Trial Chamber I has experienced a similar context and adopted a
10 similar procedure, and a few days ago it was this -- this was the
11 procedure that you refer to, Mr. Prosecutor, in suggesting that we modify
12 our decision issued at the start of today's audience. This is a
13 suggestion which comes rather late.

14 Just before we broke, the members of the Defence team did feel
15 that these exceptional circumstances meant that everybody should be able
16 to accept the conditions as stated at the outset of this -- this hearing
17 that we would accept to have a Bench of two. If I refer you to
18 transcript pages 1 to 15 of the transcript of this morning's hearing,
19 then you will see that this was the case.

20 Everywhere around the world when it comes to the participants in
21 the trial, be it lawyers, counsels, or members of the Bench, we have to
22 refer to what we call good faith. In other words, if the members and
23 participants have been duly informed of the conditions under which we
24 shall very provisionally be sitting as a Bench of two, then we should
25 abide by that decision. Agreement was reached this morning by all

Witness: Witness DRC-OTP-P-0028 (Resumes) (Closed Session)
Questioned by Mr. Hooper (Continued)

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1 members around the room in the light of these exceptional circumstances.
2 Therefore, we have agreed to abide by these exceptional circumstances,
3 and what you have just said shall be taken as a suggestion. To the best
4 of our knowledge, your suggestion is based on a very different
5 circumstances to that which we informed you of this morning in the
6 presence of the Judge in question.

7 For now we shall continue with our work. Let us then remain
8 within the framework of the decision issued this morning.

9 The accused, I'm afraid I have to ask you to leave the courtroom
10 once again. This is going to give you even more exercise.

11 (The accused withdrew)

12 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, may we
13 please move into closed session so that the witness can be brought into
14 the courtroom again. May we also have a zoomed version of the
15 photograph.

16 Mr. Usher, would you please also ensure that the hard copy of the
17 photograph is also available.

18 (Closed session at 10.33 a.m.)

19 (Expunged)

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25 (Expunged)

Witness: Witness DRC-OTP-P-0028 (Resumes) (Closed Session)
Questioned by Mr. Hooper (Continued)

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1 (Expunged)

2 (Expunged)

3 (Open session at 10.35 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 The accused are with us.

9 Mr. Witness, we had a slightly longer break than we envisaged.
10 We shall now resume for 25 minutes, and then we'll have our usual
11 mid-morning break. You have a hard copy document in front of you of the
12 photograph, and I think the usher is going to do all that he can to
13 create a zoomed version of the photograph on the screen as you requested
14 so you can see a bigger version, and this may assist you in trying to
15 recognise the photo as Mr. Hooper has requested you to do.

16 Court Officer, are these photographs able to be viewed?

17 COURT OFFICER: (Interpretation) Yes. You can see these
18 photographs by pushing "PC 1" on your console.

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

20 We see that the accused can see it.

21 Mr. Witness, can you see the photograph both on the screen and on
22 paper? Please take your time. It's important for you to be able to see
23 them. Take your time, and then you shall answer Mr. Hooper's questions.
24 You gave an answer a short while ago, but maybe after having looked at
25 the photos more closely, you might wish to come back on your previous

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 answer.

2 THE WITNESS: (Interpretation) Your Honour, I do not know if
3 this is linked to the health problems or if this person has changed
4 physically, but this is probably (expunged) if this person has not had any
5 health problems.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, I shall let
7 you continue with your cross-examination. You might wish to go deeper.
8 In any case, you have the floor.

9 MR. HOOPER: All right.

10 Q. Let me ask you this: The -- the person that you're talking
11 about, and I think this is a question I can ask in open session, but just
12 pause a moment before you answer it. In the circumstances, I'm
13 interested in what you know, all right, rather than fact, what you know
14 and think.

15 (Expunged)

16 (Expunged)

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19 (Expunged)

20 PRESIDING JUDGE COTTE: (Interpretation)

21 MR. HOOPER: Well, that let's the cat out of the bag, doesn't it?

22 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, I think the
23 most important thing is to proceed. So if this means we have to go into
24 private session, we go into private session. But the most important
25 thing is to continue.

Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
Questioned by Mr. Hooper (Continued)

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1 Court Officer, let us move briefly into private session and then
2 Mr. Hooper shall continue with his question and the witness will be able
3 to answer in due time.

4 What is most important is the answer in public session, be it in
5 public session, in private session. The most important thing is the
6 answer.

7 (Private session at 10.39 a.m.)

8 (Expunged)

9 (Expunged)

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
Questioned by Mr. Hooper (Continued)

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7 (Open session at 10.41 a.m.)

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

10 PRESIDING JUDGE COTTE: (Interpretation) Very well.

11 Counsel Hooper.

12 MR. HOOPER:

13 Q. Now, I'm going to read part of your second statement at
14 paragraph 34, and you refer there to meeting a certain person, and it
15 reads as follows:

16 "I saw that person at -- at Bunia once after I left the FRPI. I
17 saw him frequently in the street at Bunia. We greeted each other. Once
18 I also saw two ladies with him. We spoke of our respective experiences
19 in the militia. He was saying that the Lendu were stronger, and I was
20 saying that the Ngiti were the stronger. I was telling him also that
21 when we met sorcerers we would kill them, and he said they would do the
22 same thing."

23 Now, that bit that I've read out, the contents that I've read are
24 correct; is that correct?

25 A. I should remind you that all of this is part of a bigger story.

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 If I met any person, we would still be able to talk about this then. To
2 be able to confirm to you whether I met with him, I can say indeed, I
3 made checkers with that person. That is true.

4 Q. And when you saw him with two ladies, were those white ladies or
5 not?

6 A. No, I didn't see him in the company of two white women. When I
7 spoke of two women, well, I was talking about people from Bunia. Either
8 they were his friends or they were members of his family.

9 Q. Did you see him in Aveba? I'm not talking about when he came
10 before Bogoro calling to you, but later. Is it right that he was working
11 as a driver and was visiting Aveba?

12 A. Yes. There was a vehicle at his disposal. I don't know if the
13 driver or convoyist was -- I don't know if he was a driver or a
14 convoyist, or maybe a driver.

15 Q. Was he then going to school in Geti?

16 A. I don't know if he went to school in Geti.

17 Q. Now, aside from Bunia, have you ever met him in Kinshasa?

18 A. I did not meet with him, but I remember that I did see him at
19 some point in time, but I avoided him. The first time that I met with
20 him and we greeted one another, I met with people from the protection
21 unit and I said that I had seen someone who was living in my
22 neighbourhood, and I said that I did not want to meet with that person.
23 So I notified the people from the protection unit.

24 Q. You see, he's on record as saying he saw you in 2009; is that
25 correct?

Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
Questioned by Mr. Hooper (Continued)

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1 A. He said that he saw me doing what, Counsel?

2 Q. Saw you in 2009 in Kinshasa. From what you say, that's correct.

3 So it appears you saw one another, but you didn't talk to one another.

4 Is that what you're saying? You old militiamen, you didn't have a

5 *tête-à-tête*?

6 A. I shall answer this: When I met him for the first time, and I

7 confirmed that I saw him, and we greeted one another, but when I saw him,

8 he was in a group of people who were taking drugs, and I said to the

9 protection unit that I had seen someone from my village but that I was

10 afraid of him and that I would not like to see him. I notified the unit

11 members very clearly. And they said to me that if I did see him, I

12 should ignore him and keep about my business. In other words, I did not

13 talk with him.

14 Q. And who did you tell this to in VWU?

15 PRESIDING JUDGE COTTE: (Interpretation) Let us move briefly

16 into private session, please.

17 (Private session at 10.50 a.m.)

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
Questioned by Mr. Hooper (Continued)

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13 Page 39 expunged. Private session.

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
Questioned by Mr. Hooper (Continued)

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
Questioned by Mr. Hooper (Continued)

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
Questioned by Mr. Hooper (Continued)

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13 Page 42 expunged. Private session.

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Closed Session)
Questioned by Mr. Hooper (Continued)

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13 (Closed session at 11.02 a.m.)

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20 (Expunged)

21 (Open session at 11.03 a.m.)

22 COURT OFFICER: (Interpretation) Your Honour, we are in open

23 session.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

25 We stand adjourned, and we will meet again at 11.30.

Witness: Witness DRC-OTP-P-0028 (Resumes) (Closed Session)
Questioned by Mr. Hooper (Continued)

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1 Recess taken at 11.03 a.m.

2 On resuming at 11.33 a.m.

3 (Closed session)

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15 (Expunged)

16 (Open session at 11.35 a.m.)

17 COURT OFFICER: (Interpretation) We are in public session,

18 your Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) We are resuming with

20 our proceedings with you, Mr. Witness.

21 Mr. Hooper, you have the floor.

22 MR. HOOPER:

23 Q. You spoke on Wednesday of last week of this separate meeting of

24 the FRPI commanders held in Aveba as a preliminary to the Bogoro attack.

25 I just want to ask you today, if having perhaps reflected on it, can you

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 tell us when that meeting took place in relation to the attack on Bogoro?

2 A. Counsel, I have already answered that. You have asked me many
3 questions. You have asked me when, and I told you that it occurred
4 during a certain period. Please do not insist that I should tell you
5 when, because I risk giving you an answer which is not accurate.

6 Q. All right. Thank you. So let's come to the battle itself. Just
7 give me one moment.

8 So transcript 217 at page 49. You don't have this, Mr. Witness,
9 I know. And you were asked this at line 23:

10 "Before travelling to Kagaba, you personally, where were you?"

11 Your answer:

12 "I was in Aveba. Our group left on foot. We left at night. We
13 went by way of Mogadu, and we arrived in Tchekele. We arrived in
14 Mogaduvu, and we went all the way to Kagaba."

15 Is that correct?

16 A. Could you please repeat your question.

17 Q. Is what I've just read to you indeed what happened? Can you
18 confirm that? Let me read it again, and listen with that question in
19 mind:

20 "I was in Aveba. Our group left on foot. We left at night. We
21 went by way of Mogadu, and we arrived in Tchekele. We arrived in
22 Mogaduvu, and we went all the way to Kagaba."

23 Is that right?

24 A. Those are sentences or statements that are similar, but that is
25 not exactly so.

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 We were in Aveba, and after that we left to go to Tchekele. From
2 Tchekele, we went up to a certain place called Mogaduvu where we spent
3 the night. We spent the night there. Since there were many of us we
4 could have continued all the way to Kagaba, but we spent the night in
5 Mogaduvu in order to have something to eat and carry on with the journey
6 the next day.

7 Q. Why you were in Tchekele? Why did you go through Tchekele?

8 A. Well, you see, when you are in Aveba and you have to go to
9 Kagaba, the best shortcut is to pass through Tchekele. You leave Aveba.
10 You go to Kaswara. From Kaswara, you go to Nyaga, and then you go up to
11 Tchekele. And then you take a shortcut and you get across to ridge
12 Mogaduvu, and from there you continue to Kagaba.

13 Q. Now, at page 50, it reads as follows:

14 "We didn't leave --" line 10:

15 "We didn't leave the day before the fighting from Aveba to
16 Kagaba, but, rather, we left -- we left two days before. I'll give you
17 an example: The fighting that was to be held on the Thursday, we left on
18 Tuesday afternoon, because we'd spent one night along the way during the
19 trip. The next day, in the morning, we entered Kagaba, and we rested.
20 And in Kagaba, that is where we did all our preparations."

21 So it's clear what you're saying, and you give an example to make
22 it even clearer, that it took you two days to get there.

23 Now, you have your interview number 1, the first interview from
24 2006, in front of you. I'm not going to turn to the page. You remember
25 what we've said about Bavi. And in that interview you're talking about

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
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1 going directly from Bavi to Kagaba, and we -- we've seen that, and I
2 don't need to go into it and spend time on that.

3 Let's look at your second interview, and just pausing there. In
4 your first interview at paragraph 83, you refer to, as agreed, about
5 1900, everyone assembled in Kagaba. As I say, that's in the context of
6 that account, and I don't need to remind us of that.

7 In the second interview, in 2007, at paragraph 41 -- can I just
8 take you to that. Say, if you turn up the second -- have you got it
9 there? I hope you have. It's the second -- it's got the 2 on it. And
10 if you look at paragraph 41 there, you'll see -- so this is your further
11 account, and by the end of this interview you've spend 48 hours -- no,
12 sorry. Yes -- yes, 48 hours discussing your story. And if we look at
13 this interview, we can see that from the previous paragraphs you're
14 talking of the preparations and how you go to two assembly points, one at
15 Medhu and the other at Kagaba.

16 And then at 41, and this is the bit I want to refer you to, it
17 reads this:

18 "The day before the attack on Bogoro, I went to Kagaba. We
19 arrived at about 1700 at the camp."

20 So that's a different account, isn't it, than the one you've
21 given us about the two days and getting there in the morning? Why is
22 there that difference?

23 A. Start reading sentence by sentence so that I can understand what
24 you wish for me to understand.

25 Q. Certainly. Paragraph 41, you have it in front of you in French:

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 "The day before the attack on Bogoro, I went to Kagaba. We
2 arrived about 1700 at the camp."

3 So where's the two days, the night spent elsewhere, the arrival
4 in the morning? Why are your two accounts so different?

5 A. Well, as far as I am concerned, I don't see any disparity, any
6 difference. Let me remind you that I was not someone who was supposed to
7 sell information, to sell intelligence. I was not the superior or the
8 boss who could give all information. I could not sell information. I
9 had to weigh matters, and I couldn't go just like that to sell
10 information. This means, therefore, that I was responding to the
11 questions put it me by the investigators, and I was answering to the best
12 of my knowledge, and if there are any differences, if there are any
13 discrepancies, well, it's written, and all I can say is that it's
14 basically the same idea.

15 I did not have a stock of information to sell, because before you
16 sell, you have to weigh whatever it takes; two kilos, ten kilos, a
17 hundred kilos and then decide how much you're going to sell that
18 information for. So you should not condemn me for these things.

19 Q. Right. Now, you've told us that during the battle, at 9.00 in
20 the morning, you saw fighters coming from the Zumbe side. Where were you
21 when you saw those fighters? Where were you?

22 A. I have already answered that question. Let me answer again.
23 When the fighters were coming from Zumbe, I was standing at the
24 crossroads. There are two roads there, one coming from Kasenyi and
25 another coming from Kagaba, and the two roads meet at a junction to form

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 the road going to Bunia. I think you can call it a junction or a
2 triangle. I was at that spot, at that location.

3 Q. And was the battle still on?

4 A. Yes. The war continued.

5 Q. And how far were you aware from the camp at that point?

6 A. I can tell you that I was not very far away. I don't know how I
7 can estimate the distance, like how many metres, but I don't think it was
8 up to 100 metres, 100 metres away from where the camp was located. The
9 camp was like somewhere there. You could see it. I could see it,
10 because I was the one who could see it at that time.

11 When the reinforcement came, we could see the combatants. They
12 were coming down the hill.

13 We tried to flee. We wanted to flee. However, the fact that
14 they were coming to fight, they were shouting at the top of their voices.
15 They were saying, "*Bunjanga, bunjanga* (* phon)," and they came to
16 reinforce our strength. They came as our reinforcement.

17 The others took another road. They split up. One group went to
18 the spot where we were, to the front line where we were.

19 Q. How long after that did the camp fell? Did the camp fall,
20 rather. How long before the UPC abandoned the camp?

21 A. I can tell you that when the reinforcement came from Zumbe, it
22 did not take much time. The attack did not take much time. I can
23 estimate it at about four minutes, because the war did not last for long.
24 At the time when the reinforcement came from Zumbe, it did not take much
25 time.

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 Q. And how long after that, sort of, four minutes and the collapse
2 of the camp was it before you, yourself, went into that camp and saw the
3 bodies in the room? How long was that?

4 A. When we noticed that those who were shooting had gone, had gone
5 away, we continued walking towards the camp. We went into the camp.

6 Q. And are we to understand on your account that when you went in,
7 those bodies, the people you saw in the room, they were already dead?

8 A. Yes, they were already dead. There were dead bodies, dead
9 bodies.

10 Q. So it wasn't, to your recollection, the case of you, the militia,
11 going in and finding live people and murdering them. When you went in,
12 all the bodies you saw were dead; is that right?

13 A. Well, I'll say the following: The people who were in the various
14 classrooms were -- had already been killed. To the best of my knowledge,
15 it was those who got into the classrooms first that killed these people.

16 Q. All right. Now, I'm looking at your first statement, and I'm
17 going to ask you about another area, and that is what happened after
18 Mandro and the period after that. And paragraph 97, under the heading
19 "My demobilisation," it reads as follows -- just listen, and I'm going to
20 ask you if this is correct and still your position. Quote -- and you're
21 talking about the events after Mandro:

22 "Since I returned to Aveba from Mandro, I did not go to the
23 front again."

24 Is that right? So after Mandro, you didn't participate in any
25 other fighting or battles; is that right?

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 A. I would say the following: After Mandro, I no longer
2 participated in any attacks against the enemy. However, I participated
3 in other operations which had to do with cattle. These were not attacks
4 or battles against the enemy.

5 Q. All right. Okay. Now, I want to ask you briefly about any other
6 battles you were in. Any other battles you were in, or not, other than
7 Bogoro and Mandro?

8 A. I fought in Singo. When we were attacked in the village, I
9 participated in the battles, therefore, that took place (expunged).

10 Q. All right. Now, I just want to ask you about the battle of
11 Nyankunde, which took place on the 5th of September, 2002. Now, I'm
12 going to read paragraph 12 of your first statement, and again I just want
13 to know whether you consider what you say here to be true or -- or not.
14 Quote -- and you've got it in front of you, so if you want to look at it,
15 it's your first statement.

16 MR. MACDONALD: Sorry, it's the second, Mr. Hooper. It's the
17 second statement.

18 MR. HOOPER: You're quite right.

19 Q. It's your second.

20 MR. HOOPER: Thank you very much, Mr. MacDonald.

21 Q. It's the second statement. I'm sorry, I've confused myself and
22 on my way to confusing you, I'm sure. So it's the -- paragraph 12 of
23 your second statement, the 2007 statement, and -- there you go. And it
24 reads as follows:

25 "I learnt the details of the first attack at Nyankunde when I was

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 at Aveba and was waiting to start the academic year. I saw many
2 combatants leave Aveba to repulse the UPC who had made an offensive
3 against Singo. Among them were Commanders Besto, Benjamin, Abala, Move,
4 and Doppel, commander of Germain Katanga's escort. I recognised these
5 Ngiti fighters, because in Aveba village, they were known figures."

6 So just pausing there. Is that correct? Because I understood
7 from your evidence that you were, in fact, in Oicha when that big attack
8 took place on Nyankunde. So what's correct, this version or your
9 evidence?

10 A. I shall re-read the phrase that you just read. I see mention of
11 the name of the school. I see that there is mention of the academic
12 year.

13 As I said on my first day of testimony here, that at that point
14 in time I was not in Aveba, and I said to you that I had never been to
15 school in Aveba.

16 Q. But you're willing to name people that you claim you saw leaving
17 Aveba to go to Nyankunde; is that right? You're willing to implicate
18 people in that way?

19 A. I will say the following: It is true that all of those elements
20 are written in this statement, but all of the statements relating to the
21 Nyankunde battle, I knew about this when I was -- I learned about this
22 village. I could cite Aveba, Avenyuma, or other place names, but at that
23 particular point in time I hadn't seen them. There were people who took
24 part in this battle who told me of it.

25 Q. All right. Now let's go to a different area. Right at the

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 beginning of your evidence you were asked a question about who was the
2 commander of the camp at Aveba, and you said, "I'll say this, and it's
3 not out of revenge," and you went on to name Germain Katanga.

4 My question is this: Do you harbour any revenge against
5 Germain Katanga? Do you have any reason to feel revenge against him?

6 A. If I said that, all of these statements relating to
7 Germain Katanga, if I did say that, then I was addressing you and the
8 members of your team who are used to coming to where we live to gather
9 information. You had the intention of saying that I was a combatant
10 because combatants had killed my mother, but this is completely unrelated
11 to Germain. And that is why I said that I am not trying to get revenge.
12 I was addressing you and members of your team on the subject, and I was
13 trying to get across that I'm not here to get revenge.

14 Q. Very well. Let me ask you this: Has Germain Katanga done
15 anything to you, anything that you hold against him or not?

16 A. Up to now I could say Germain is a good person. He has never
17 done me any wrong. He's someone upstanding, in my opinion.

18 Q. Indeed. Now, I'm holding here an investigator's report.

19 MR. HOOPER: Can we just see if it's on the ...

20 (Defence counsel confer)

21 MR. HOOPER:

22 Q. Again, it's in English and not actually a document you need see,
23 but can I just give the reference to it, and it's DRC-OTP-1059-0060, and
24 it's a report, an investigator's report, Prosecution, that is, dated the
25 6th of September -- or relating to a meeting held on the 6th of September

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 this year, so just two months ago, held here in The Hague and one where
2 you took part. You were present with a lawyer called
3 Maitre Mbida Kanse Tah and there were members of the Registry staff and
4 members of the Prosecution there and members from the Victims and
5 Witnesses Unit.

6 You may remember in that meeting you were told that you were
7 going to be relocated after you gave your evidence and that you would be
8 relocated outside Africa. Do you remember that?

9 A. Thank you for that information, but, to my knowledge, I requested
10 some protection measures. But if you're telling me this information,
11 then I am delighted. I simply requested protection measures, but if they
12 relocate me, that's not my problem. Personally, I requested protection
13 measures. If you know what's going on here, then perhaps you could ask
14 for these measures for me. But if you were in my position, perhaps you
15 would make that request.

16 Q. So you didn't know you were going to be relocated; is that right?
17 Is that what you're telling this Court?

18 A. It's you who are giving me this information. I know one thing,
19 and that is: That if you say that I have a lawyer, that much is true.
20 Yes, I have a lawyer. That lawyer is assisting me with my security.
21 Personally, I requested security measures, protection measures, and my
22 lawyer is there for that reason.

23 Q. Well, let me just read, then, part of paragraph 10 so that you
24 can comment on it.

25 MR. MACDONALD: Just a second, Mr. Hooper.

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 (Interpretation) With your leave.

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

3 MR. MACDONALD: (Interpretation) I just wanted to be sure that
4 Mr. Hooper is referring to the same -- the right document, because he
5 referred to an ERN number, and I'm not sure if I got it mixed up, but I'm
6 sorry, I apologise to my learned friend if that is not the case, but
7 I'm --

8 MR. HOOPER: DRC-OTP-1059-0060, paragraph 10.

9 MR. MACDONALD: (Interpretation) Thank you, Mr. Hooper. I just
10 wanted to clarify that, because we've also got the number 0058 on -- on
11 this other document, and I didn't want these two documents to be mixed
12 up.

13 Thank you, Mr. Hooper.

14 PRESIDING JUDGE COTTE: (Interpretation) Very well. So we are
15 not looking at 1058, but, rather, 1059.

16 Please continue, Mr. Hooper. This is the report from the meeting
17 on the 6th of the 9th. Please proceed.

18 MR. HOOPER: And that's the one and the only one I've been
19 talking about so far.

20 Q. And you'll see at paragraph 10 it reads -- the Prosecution had
21 said that you had exposed your security concerns and that concerning two
22 other points, the Victims and Witnesses Unit could answer.

23 Ms. Maria-Luisa Martinod-Jacome, told you, so she's talking to
24 you: That the VWU was giving a guarantee that after his testimony you
25 would be relocated internationally. You said that you were happy to hear

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 this.

2 All right? So why are you sitting there now suggesting that the
3 first time you heard this was from my lips this morning?

4 A. Did I sign that document? If this is the decision taken by the
5 lawyers, well, I think that I've just heard this information for the
6 first time from you.

7 I know that I requested protection measures in order to guarantee
8 my security, my physical security, because my soul has already been
9 destroyed. Thank you for this information you have just given me.

10 Q. You've been chasing this prize of relocation outside Africa for a
11 long time, haven't you? You keep saying, "What's in it for me?" I'm
12 telling you, this is what's in it for you. This is what's in it for you,
13 isn't it? This is your big prize. This is your interest. This is what
14 has led you to come and tell a false story in front of this Court; isn't
15 that right?

16 A. If you knew what you were saying -- I'm not sure if you realise
17 exactly what you're saying. May God have mercy on you.

18 Q. Let's just read on here. Oops, we're in open session. You said
19 you were happy to hear this, but it didn't solve the security problems
20 related to your family and that you were still in the position where
21 testifying would put your family in danger.

22 You went on to clarify what you meant by your family, which is
23 your father, his present wife, and two or three brothers "... who were
24 still in the Aveba region close to where Cobra and his group operated."

25 A little earlier, at paragraph 7, you said this -- you said:

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 57

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 A. I shall say the following: If the war is continuing, it's

10 because of people like you. Whether there is war or not depends on

11 people like you. You have this unfortunate custom of killing people. I

12 clearly said that the reason there is war back home is because of you.

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 JUDGE DIARRA: (Interpretation) Mr. Witness, he just asked a

18 question. He asked, Is it true, yes or no? You would like to give a

19 full speech, but we need to know the answer to this question.

20 (Expunged)

21 We'd like to have that answer before we can proceed.

22 PRESIDING JUDGE COTTE: (Interpretation) First we shall hear

23 from the witness before giving you the floor, Mr. Prosecutor.

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 I thought that I could ensure my safety and that of my parents.

9 I was wondering how I could focus this, and he saw that as a question of
10 me.

11 JUDGE DIARRA: (Interpretation) No, no. When these people --
12 when did these people telephone you? That was the second part of the
13 question.

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 JUDGE DIARRA: (Interpretation) Thank you very much,

21 Mr. Witness.

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

23 MR. MACDONALD: (Interpretation) It was just to ask that we go
24 into private session because some parts of what was just said are
25 identifying, and so I should respectfully submit that we go into private

Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
Questioned by Mr. Hooper (Continued)

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1 session. And if we are going to continue on this subject, then I think
2 we should go into private session out of concern for those potentially
3 identifying elements. Thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper.

5 MR. HOOPER: I'd just stress that it is, in our view,
6 unnecessary. After all, they've caused themselves a true -- they know
7 who he is, and one has to look at his present situation in terms of risk
8 to him, the subject. And he is now relocated. And my understanding is
9 he's been here in The Hague for over a year. I see a shaking head.
10 Well, perhaps Mr. MacDonald could help me, or I can ask the witness how
11 long he has been here because the last year's events have been a little
12 unclear.

13 MR. MACDONALD: (Interpretation) (* No interpretation)

14 PRESIDING JUDGE COTTE: (Interpretation) (* No interpretation)
15 And it's always difficult to keep a balance between the open nature --
16 the public nature of the trial and -- and the need for witness security.
17 Then we're going to have to bear this in mind.

18 So please continue, Mr. Hooper.

19 MR. HOOPER: Very well. And I'm alert. As I said, Mr. MacDonald
20 calls out closed session, I understand.

21 (Private session at 12.25 p.m.)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
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13 Page 60 expunged. Private session.

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
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13 Page 61 expunged. Private session.

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
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13 Page 62 expunged. Private session.

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
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13 Page 63 expunged. Private session.

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Witness: Witness DRC-OTP-P-0028 (Resumes) (Private Session)
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16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 12.37 p.m.)

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

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
Questioned by Mr. Hooper (Continued)

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1 your Honour.

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

4 The Court had to go into private session because certain
5 questions could be identifying. Mr. Hooper asked the witness why he came
6 to give evidence, and, in summary, the witness answered saying that the
7 International Criminal Court has as its mission trying -- that is, to try
8 accused persons, and he wanted to lend assistance to the International
9 Criminal Court and that he is not against anybody in particular, that in
10 accepting to give testimony, he has destroyed his life and that he has
11 even become an object or subject of mockery for certain people and that
12 he has not earned anything from giving evidence and that on contrary --
13 on the contrary, giving evidence has destroyed his life.

14 That is what the witness said in a nutshell, an answer that the
15 witness gave in private session, but the Court was not in a position to
16 know what that answer was going to be, and that is why we went -- or we
17 received that answer in private session, but I have summarised in public
18 session for the attention of the public.

19 Mr. Hooper, you may proceed, sir.

20 MR. HOOPER: Just a couple more questions, really, on this area
21 and then one brief matter relating to a map and then I'm finished.

22 Q. You say in this report that the Defence -- paragraph 7. The
23 Defence had phoned you, asking you to change sides.

24 Who phoned you and asked you to do that?

25 A. Could you please repeat your question?

Witness: Witness DRC-OTP-P-0028 (Resumes) (Open Session)
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1 Q. In the course of this meeting on the 6th of September, according
2 to the report from the Prosecution that I have in my hand, you said
3 various things, and one of the things you said was that you were phoned
4 by the Defence who asked you to "change sides and to start working with
5 them." That's what you said in this meeting. And my question is: Who,
6 and when, phoned you?

7 (Expunged)

8 (Expunged)

9 I am tired. I'm stressed out by your questions.

10 Q. My question's simple. Who was it who phoned you and asked you
11 that?

12 A. The person did not identify himself. The person was one of your
13 colleagues at work.

14 Q. Well, it certainly wasn't anyone who works with me, I can assure
15 you of that.

16 Did that telephone call ever take place, or is it a story you've
17 made up?

18 PRESIDING JUDGE COTTE: (Interpretation) Witness, just give a
19 short answer.

20 THE WITNESS: (Interpretation) That's right. It's the truth.

21 MR. HOOPER:

22 Q. Did you keep a record of the number that phoned you?

23 A. The number was hidden. It did not show up on screen.

24 Q. Who phoned you telling you of this threat regarding your family
25 if you testify on behalf of Cobra Matata? Who phoned you to tell you

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1 that, do you know?

2 A. I do not know the person who called me. I was not able to
3 identify the person.

4 Q. In your later statement in October, you -- and I hope you've got
5 at that statement in front of you. I think it's the one I wrote the
6 number 4 on. Yes, it is. There should be a number 4 on that. And I am
7 going to ask you briefly about some matters that you relate in this
8 October -- that's just a few weeks ago, some things that you say here.

9 PRESIDING JUDGE COTTE: (Interpretation) This is the additional
10 statement of the witness given on the 25th of October, 2010. I take it
11 this is the statement that you're talking about.

12 THE INTERPRETER: The interpreters do not have a copy. Can a
13 copy be sent up to the booths, please.

14 PRESIDING JUDGE COTTE: (Interpretation) We may proceed.

15 MR. HOOPER: The document's been sent to everyone, by e-mail, at
16 least.

17 Q. I'm looking at paragraph 58, and let me read it:

18 "When I went to register --" all right? First of all, paragraph
19 58 says:

20 "When I went to register for the university," and then there's
21 the name of a place, did you register for the university, a university?
22 Just yes or no.

23 A. Could you please repeat your question.

24 Q. Yes. I'm not going to name the place, but there's a reference
25 there, that first line, paragraph 58, "Recently, when I went to register

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1 for the university," at such and such a place. My question is: Did you
2 go to register at a university? Yes or no?

3 A. Yes.

4 Q. You talk about persons there you met and people telling you not
5 to go and testify against "my chief," as it's expressed, and then they
6 say you say this:

7 "They told me that until now, the persons who went testifying
8 were people who were not there. Some of them were refugees."

9 What do you mean by you were told that some people who were
10 testifying were people who were not there? What did you mean by that?
11 Can you briefly explain?

12 A. Could you please repeat your question?

13 Q. In this statement, you say that people at the university from the
14 village, that you talked with them, and, "They told me that until now,
15 the persons who went testifying were people who were not there." What do
16 you mean by "not there"?

17 A. I believe that that is your strategy. I made this statement
18 because of the information which I received from our village.

19 Q. Paragraph 66:

20 "People from the village have told me that if it was necessary to
21 buy me, they would buy me, but they've never made any concrete
22 proposition."

23 And this is the bit that's -- I'd like to ask you about:

24 "This person who said that is an old sage. It is Mbakama. He
25 does not live in the village as such. He used to live in the refugee

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1 camp of Kindia in Bunia, but I don't know where he lives today."

2 Is that true? Did this man Mbakama call you and make that -- and
3 told you that if it was necessary to buy you, they would buy you? Is
4 that true?

5 A. I do confirm that that is the truth.

6 Q. Okay. I'm going to show you a photograph, just so that we can
7 understand if we're talking about the same person. I'm pretty sure we
8 are. And the photograph is -- thank you. DRC-D02-0001-0351. And
9 there's a hard copy for you as well.

10 The man in that photograph is called Alexis Mbakama. He's a
11 sage. Is that the man that you say phoned you?

12 A. No, this is not the person.

13 Q. It's an interesting coincidence. They have the same name, a
14 sage, and you describe him in your interview as being about the same age
15 as the interpreter who is about 50 years of age, and he's a little older,
16 mid 50s. Not him? Because you say this conversation happened in July or
17 August of this year, but this Mbakama, of course, died last year. We
18 have his death certificate. So what was the name of your sage called
19 Mbakama? What was his name?

20 A. I have clearly stated to you that I do not know this person.

21 Q. Right. What is the name of the sage who you say telephoned you
22 and was called Mbakama? What was his name, his other names?

23 A. Let me state that the name is Mbakama.

24 Q. And what are his other names? People are known by other names.
25 What are his other names?

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1 A. That is the only name I know, Mbakama.

2 Q. And he -- the man who phoned you came from Aveba Bolo; is that
3 right?

4 A. Yes. He was someone I used to meet at Aveba.

5 Q. And at paragraph 68, you say:

6 "I don't know Mbakama very well. He is Ngiti and comes from the
7 villages of Aveba Bolo. I don't know his age. He's about the same age
8 as the interpreter, and the interpreter is about 50 years old. Mbakama
9 must have a family, but I haven't had any relation with his family."

10 There we are. And he's a sage. A sage. But it's not this one.

11 All right.

12 Thank you. Those are all my questions.

13 I think I said a moment ago, Mr. Witness, I certainly don't have
14 any personal feelings for you other than sympathy. As a young man,
15 you've had some terrible difficulties in your life. I'm aware of that,
16 and I hope you get, if I may say so respectfully, the help that I believe
17 you need to help you put the past behind you and so you can fully embrace
18 your future wherever you are. Thank you.

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

20 Court Officer, do we have documents which need to be given
21 references? You have the floor.

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

23 The document on which the witness wrote a name will bear the
24 reference EVD-D02-00093.

25 The document DRC-D02-0001-0354 will bear the reference

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1 EVD-D02-00094.

2 The list of names distributed by Mr. Hooper that is updated with
3 the letter G will bear the reference EVD-D02-00095.

4 The document DRC-D02-0001-0351 will bear the reference
5 EVD-D02-00096.

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

8 Mr. Kilenda, Mr. Fofé, we are proposing that you should start
9 your cross-examination tomorrow. The Chamber is going to issue two oral
10 decisions. This will make it such that we do not interrupt your
11 cross-examination if you were to start it today. So we advise you to
12 start tomorrow.

13 Accused persons, we appeal to you to leave the courtroom briefly
14 in order to enable the witness to leave the courtroom and then you can
15 return to listen to the oral decision which is going to be issued about
16 this trial, your trial.

17 Security officers, lead out the accused persons.

18 (The accused withdrew)

19 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, we are
20 going to meet again tomorrow. And from 9.00 a.m., the Defence team of
21 Mr. Mathieu Ngudjolo is going to conduct your cross-examination.

22 Court Officer, could we go into closed session for that, in order
23 to able the witness to leave the courtroom.

24 (Closed session at 12.57 p.m.)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Open session at 12.58 p.m.)

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

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

13 The Chamber is going to issue a first oral decision on the
14 possibility for the Prosecutor -- well, the accused persons have to
15 return to the courtroom. I apologise.

16 (The accused entered court)

17 PRESIDING JUDGE COTTE: (Interpretation) Gentlemen, the Chamber
18 is going to issue two oral decisions which we discussed; that is, the
19 Bench sitting, as a Bench of three, before this hearing. And the first
20 relates to the possibility for the Prosecutor to present rebuttal
21 evidence.

22 During the hearing of 1st of September, 2010, underlining the
23 fact that this had not been expressly foreseen by the Chamber in its
24 decision on Rule 140 (1665-Corr), the Prosecutor raised the issue of the
25 moment at which rebuttal evidence could be produced. Transcript 182,

1 page 5, lines 2 to 16, and page 19, lines -- line 1, and page 20, line
2 23, on the French transcript.

3 The Chamber invited all of the parties and participants to submit
4 written filings to the effect, transcript 182, page 24. Thus, on the
5 20th of September, 2010, the Prosecutor submitted his observations. This
6 is filing 2398. And on the 6th of October, 2010, in compliance with the
7 shortened deadlines imposed by the Chamber, by e-mail dated, 31st
8 September, 2010, at 5.55 p.m., the Defence teams of Germain Katanga and
9 Mathieu Ngudjolo and the Legal Representatives submitted their own
10 observations, and these are respectively filings 2438, 2436, and 2437.

11 The Prosecutor affirmed that in order to read to the truth in the
12 framework of a fair and equitable trial for all parties and by
13 application of Article 64(6)(d) and 64(8)(b) as well as Article 69(3) of
14 the Statute governing the conduct of the trial, the Chamber is -- or,
15 does have a mandate to admit rebuttal evidence. One, as submitted by the
16 Defence and admitted during the cross-examination of Prosecution
17 witnesses; or, two, on any new issue raised by the Defence during the
18 presentation of incriminating evidence.

19 Rules 79 and 81 of the Rules of Procedure and Evidence, it was
20 added, also imply that he be given the possibility to respond to any
21 important questions raised by the Defence. He further notes that
22 Trial Chamber I authorised its bureau to produce incriminating material
23 rebutting exculpatory material and underlined that the admission of
24 rebuttal evidence is common practice in international criminal tribunals.

25 Bearing in mind that the Chamber has admitted during the

1 presentation of evidence by the Prosecutor a few elements of an
2 exculpatory nature whose reliability and probative value were impugned,
3 the Prosecutor believes that the Chamber should at this point in
4 proceedings, in other words, before the end of the incriminating
5 elements, be authorised to reduce -- to accept rebuttal evidence so as to
6 save time. The Prosecutor reserves the right to request leave to rebut
7 any new questions that Defence may raise during the presentation of
8 incriminating evidence by the Prosecution.

9 The two Legal Representatives follow along the same lines as the
10 Prosecutor's observations; the two Defence teams are against.
11 Mathieu Ngudjolo's Defence team underlines, on the one hand, that the
12 Prosecution did not appeal the decision on Rule 140; and, on the other
13 hand, expressed the desire on the part of those drafting the Court's
14 texts to exclude rebuttal evidence while underlining the exceptional and
15 limited nature of the leave granted to the Prosecutor to respond to this
16 abusive procedure complaint raised by the Defence in the Lubanga case.
17 The Defence of Mathieu Ngudjolo submits that in this case, in our case,
18 the Prosecutor has failed to show the need to be granted leave to respond
19 during the presentation of the incriminating evidence and that he could
20 make any of these submissions during his own re-examination time.
21 Moreover, the Defence recalls the very strict admissibility rules
22 concerning rebuttal evidence that is currently in force in -- that are
23 currently in force in international criminal tribunals.

24 Finally, the Defence maintains that the fairness of the
25 proceedings would -- would mean that if the Chamber were to grant the

1 Prosecutor the -- the opportunity for rebuttal, then it should also allow
2 the Defence teams extra time in order to offer a counter-rebuttal. The
3 Defence of Germain Katanga believes that in -- in the interests of
4 efficacy, it is up to the Prosecutor to submit an application for
5 specific evidence rather than to base the arguments on theoretical
6 observations. The team also recalls that the decision on Rule 140 does
7 not provide specifically for a rebuttal-evidence phase, but, rather, in
8 due time and place, offers the Chamber the ability to call further
9 witnesses to appear on their own initiative or at the behest of parties
10 and participants, the applicable -- to cite the applicable text before
11 the Court unlike those which had governed the work of the ad hoc
12 tribunals which don't allow for the possibility of rebuttals.

13 Moreover, the team also feels that the abuse of progress
14 complaint raised in the Lubanga case at the behest of the Prosecutor in
15 view to rebutting the Defence evidence and admitted during the
16 cross-examination of the Prosecution witnesses. Moreover, and given the
17 obligation of the Prosecutor to disclose incriminating and exculpatory
18 evidence, the Defence believes that the Chamber should recognise its
19 jurisdiction to authorise the Prosecutor to admit rebuttal evidence but
20 only in exceptional circumstances as only on a case-by-case basis per
21 application. Therefore, the Defence would therefore be able to offer a
22 counter-rebuttal.

23 While making a distinction between rebuttal evidence and
24 additional evidence, the Defence maintains that, in any case, if the
25 Prosecutor wishes to present new evidence during the presentation of its

1 case, then it is up to the Prosecutor to justify what is -- what could --
2 what could potentially impact on the Defence as regards Article 67(1)(b)
3 and (c) of the Statute. The Chamber recalls that, in the first case,
4 this procedure does not have a specific rebuttal evidence phase, and this
5 was already mentioned in the hearing on the 1st of September, 2010.

6 There are two phases in the debates on the merit. Firstly, with
7 the presentation of evidence from the part of the Prosecutor and then
8 from evidence from those of the Defence teams. At the end of this second
9 phase, the Chamber has envisaged that it could, itself, call other
10 witnesses to appear *proprio motu* or at the behest of parties and
11 participants. Decision on Rule 140, paragraph (3) to (7).

12 The Chamber submits that the appearance of these unforeseen
13 questions is an inherent phenomena to criminal cases and in exceptional
14 circumstances, however, neither an objection made during the
15 cross-examination of a Prosecution witness nor during the re-examination
16 of that same witness could enable the Prosecutor to answer effectively to
17 new issues raised by the Defence or to incriminating evidence or
18 exculpatory evidence arising through the cross-examination.

19 In such a case, it's up to the Prosecutor to file a specific
20 application and a justified application requesting the production of new
21 evidence, that is, to address new circumstances. The Chamber, however,
22 considers that the question which the Prosecutor has raised in his
23 application is not new and that exceptional measures to address such
24 concerns are already in existence. Indeed, in a bid to arrive at the
25 manifestation of the truth while respecting the principle of a fair

1 trial, the Chamber has already on several occasions, by virtue of
2 Regulation 35(2) of the Regulations of the Court, granted disclosure
3 application, that is for disclosure of additional evidence, and the
4 addition of such evidence to the list of evidence after the expiry of the
5 time limit set for that purpose; that is, when the Prosecutor can prove
6 that he was not able to send his application within the prescribed time
7 limit for reasons beyond his control. And here I would like to refer you
8 to Decision 2325 of 26th of August, 2010, paragraph 14.

9 The Chamber would like to recall, however, that the mere fact
10 that a Prosecutor could not foresee a given Defence question does not, in
11 itself, constitute an exceptional circumstance. The Chamber had already
12 decided that by virtue of Article 64(6)(d) and 69(3) of the Statute, it
13 could accept disclosure or the addition of additional evidence when such
14 evidence contributes to the manifestation of the truth. See paragraph 15
15 of the decision number 2325.

16 On the dual condition that, one, such an exhibit is clearly more
17 convincing than the evidence already disclosed to the Defence, or that it
18 is going to be of crucial importance to the trial and relates to an event
19 which had hitherto not been made known, and that, two, its late
20 disclosure or addition does not undermine the right of the Defence to
21 have the requisite time and means to prepare. The Chamber therefore
22 feels that the filing of such an application can enable the Prosecutor to
23 file into the record of the case additional evidence which constitutes an
24 effective response to the evidence filed by the Defence and admitted in
25 the course of the cross-examination of Prosecution witnesses. And in any

1 case, it should be understood that in this exercise, the Defence is going
2 to have the final word.

3 I think we have enough time to give the second oral decision
4 which we reached as a full Bench of three.

5 Oral decision on the application of Maitre Luvengika of number
6 2416 of 24 September 2010 to obtain the statement of a participating
7 victim, a statement taken by the Defence team of Germain Katanga.

8 Having heard the Defence team of Germain Katanga had interviewed
9 the father of Witness P-14 -- 159 and had taken a signed statement from
10 that gentleman, Mr. Luvengika, during the hearing of 29th of March, 2010,
11 stated that this was victim a/0010/09, a victim whom he represented. He
12 therefore requested disclosure of that statement expressing surprise that
13 he was not informed or given notification of that investigation in
14 accordance with Decision 1731 of the Chamber, a decision rendered on the
15 17th of December, 2009. The Defence team in question stated that they
16 did not know the identity of represented victims.

17 In the course of the hearing of the 10th of May, 2010, the
18 Chamber invited Legal Representatives to start by contacting the victim
19 in order to find out what was said during that interview. The Chamber
20 added that unless those necessary informations were obtained he could
21 address the Defence to try to get a copy of the statement. Having
22 received a quest -- request for clarification from the Defence, the
23 Chamber renewed this invitation of the 14th of May, 2010, specifying that
24 this should have been considered part of a simple courtesy and good
25 practices that should govern relations between counsels.

1 On the 23rd of September, 2010, Mr. Luvengika stated to the
2 Chamber that he had contacted his client and that -- and that having not
3 received a copy of the statement could not submit it to him. He also
4 requested the Germain Katanga Defence team to kindly disclose the
5 document to him, saying that it would, that way, be easier for him to
6 assess the relevance of calling potentially the victim to appear as a
7 witness.

8 The Chamber therefore invited the Legal Representative,
9 Mr. Luvengika, to submit this filing in writing. On the 24th of
10 September, 2010, the Legal Representative submitted his application so as
11 to obtain the statement of the participating victim as taken by the
12 Defence team of Germain Katanga.

13 On the 1st of October, 2010, the Prosecutor submitted his
14 observations in support of this application, and at the same date, the
15 Defence submitted an answer opposing this.

16 In this application, Mr. Luvengika renews his request to gain a
17 copy of the statement taken by the Germain Katanga Defence team referring
18 to the decision of the Chamber of the 10th of May, 2010, reiterated in
19 the later audience hearing of 14th of May, 2010. Mr. Luvengika again
20 underlined the importance of this statement, saying that he would like
21 the Chamber to grant leave for this victim to -- in case he had to
22 request that the Chamber give leave for this victim to appear as a
23 witness. He felt that -- that everything said in that statement would
24 enable him to assess his capacity to offer a clear and concise statement
25 before the Chamber and to verify the consistency of statements and good

1 quality of memory of the facts.

2 Finally, he regretted that in the conditions in which the -- he
3 regretted the conditions in which the interview had taken place, saying
4 that the investigator of the Defence team had introduced him or herself
5 as someone working with the court and had asked the victim, who's
6 illiterate, to sign a declaration without having had its contents re-read
7 to him.

8 The Defence stated that it was against the disclosure of the
9 statements, underlining that the counsel/client relationship, as it
10 existed between the Legal Representative and the victims, could not run
11 counter to the trial's fair conduct. The Defence, first of all, stated
12 that the question was sudden -- was submitted to the Chamber's
13 examination and recalled the observations formulated on the issue of
14 protocol. The Defence then underscored that Mr. Luvengika had not
15 communicated to the Defence a statement received from that same victim
16 containing exculpatory material, although they had requested that
17 statement from the same victim as taken by the Defence. Moreover, the
18 Defence recalled that even there is no provision incumbent upon
19 Legal Representatives to disclose to the Defence -- to the Defence any
20 exculpatory material, neither is there any provision incumbent on the
21 Defence when it comes to disclosing information to the
22 Legal Representatives the results of their investigations. The
23 obligations of the Defence were, in the Defence's opinion, covered by
24 Rule 78 and 79 of the Rules. Defence challenges the grounds on which the
25 Legal Representatives -- Legal Representative alleges the disclosure of

1 the statement is necessary in order to decide upon the possible
2 appearance of the victim before the Chamber. They also challenge the
3 allegations that their resource person had failed to correctly conduct
4 the interview with the victim, and unless there is some evidence to the
5 contrary, they confirm that their -- their employee acted correctly.

6 The analysis of the Chamber is that the Chamber notes that the
7 Defence team of Germain Katanga failed to contact Mr. Luvengika
8 represented -- Legal Representative of victim a/0010/09 prior to the
9 interview contact conducted with the latter. The Chamber notes that this
10 Defence team states that it was acting with goodwill and ignorance of the
11 fact that the person was, indeed, a participating victim in the
12 proceedings.

13 The Chamber wishes to underscore that such a situation has only,
14 to the best of its knowledge, occurred once, and would hope that it is
15 never to be repeated and recalls, to this effect, Decision 2571 of the
16 23rd of November, 2010, pertaining to modalities of contact between
17 represented victims and parties in the prescriptions that should be, in
18 the future, strictly complied with. The Chamber further recalls that the
19 obligations for disclosing and communication, to which the Defence is
20 bound, were clearly defined in Decision 2388 of the 14th of September,
21 2010. Therefore, if the Germain Katanga Defence teams intends to call
22 this victim to appear, the team shall be bound to communicate either the
23 statement of this person or a summary of the main points addressed during
24 the testimony. Such disclosure should take place at the end of the
25 presentation of the Prosecution case, or, at the very latest, two weeks

1 prior to the commencement of the presentation of the Defence case.

2 This was the decision on the 14th of September, 2010, Decision
3 2388.

4 As I present, on the one hand the Defence has failed to comply
5 with the obligation incumbent upon it under Article 28 of the Code of
6 Professional Conduct of counsels to make prior contact with the victim's
7 counsel, there's an obligation that was expressed by the Chamber on
8 several occasions, and, on the other hand, that the Defence was not in a
9 position to inform the Legal Representative even of the broad outlines of
10 the impugned interview. And so at this point in time, the Chamber orders
11 the Germain Katanga Defence team to transmit to Counsel Luvengika, under
12 the strictest of confidentiality, a document, which could potentially be
13 redacted or given in summary form, encompassing the key points addressed
14 during this interview. This information can only be used and part of the
15 Legal Representative's advisory capacity. The Chamber further notes that
16 ever since this interview took place, the Legal Representative could have
17 met on several occasion with his client. The Chamber further notes that
18 this victim was recently interviewed by representatives of the Office of
19 the Prosecutor because they have in their possession exculpatory
20 elements, and Mr. Luvengika has stated that these were disclosed. It is
21 therefore -- it would therefore appear -- appear that the Legal
22 Representative currently has the statement taken by the Prosecutor on the
23 16th of September, 2010, which, with the elements that the Defence is
24 about to provide to him, will give him sufficient information to be able
25 to make a decision about the potential appearance of this said victim as

1 a witness if, of course, he continues to intend this to occur.

2 As concerns the allegations relating to the behavior of the
3 resource person during that interview, the Chamber has no evidence
4 enabling it to offer a ruling on this. It can therefore only recall the
5 importance that it places on contact with victims and that such contact
6 take place in the -- in conditions that do bear in mind the specific
7 situation of the victims, and this harks back to paragraph 35 of its
8 Decision 2571 relating to modalities of contact between represented
9 victims and parties.

10 The Chamber therefore hereby is partially -- hereby partially
11 rejects the application of Counsel Luvengika, orders the Germain Katanga
12 to communicate to this Legal Representative a document which could be
13 redacted, or, in summary form, covering the main points dealt with in the
14 interview with the victim a/0010/09.

15 The Chamber would like to thank you for your time. We stand
16 until 9.00 tomorrow morning in this current configuration to enable the
17 Defence team of Mathieu Ngudjolo to proceed with its cross-examination.

18 Mr. O'Shea.

19 MR. O'SHEA: I had the opportunity to read your Honours' decision
20 of yesterday on the modalities relating to contact between the Defence
21 and victims, and I notice that the words which your Honour has chosen to
22 use today, in today's decision, essentially recapture what the Bench
23 decided on in a general level in relation to modalities in the event that
24 the Defence had not sought the -- had not communicated to the
25 Legal Representatives their wish to communicate with the victim. In

1 those circumstances, your Honours indicated that the Defence would
2 provide either a summary or redacted version, if -- if the case be
3 appropriate, of any statement which they had obtained, those words being
4 used today.

5 Your Honour added that -- that the information contained in that
6 summary or redacted or unredacted statement could only be used by the
7 Legal Representative in their capacity as counsel. I'm giving an English
8 translation of what I just heard in the French from your Honours'
9 decision which was just delivered.

10 Am I to understand from the use of that expression that
11 Mr. Luvengika may use the information contained in that statement for the
12 purposes of advising his client and for the purpose of making decisions
13 in his capacity as Legal Representative, but that he may not use
14 information which he has obtained from us in that statement against
15 Mr. Katanga during the trial? Would that be a fair implication from the
16 expression: "He may only use it in his capacity as counsel for the
17 Legal Representatives"?

18 PRESIDING JUDGE COTTE: (Interpretation) Well, Counsel O'Shea,
19 we have very little time left. It is very unusual for a Chamber to
20 interpret and make comments on a decision just issued, because normally
21 the decision is taken to be clear and self-explanatory. However, when it
22 comes to the decision relating to protocol, the general scope in this
23 oral decision about the application of Counsel Luvengika, you have
24 clearly understood that the Chamber would not like to see a repeat of
25 this situation. In other words, that this contact made with a

1 represented victim without that represented victim being able to -- or,
2 rather, that the -- that person's Legal Representative be able to gain
3 information about this meeting prior to the interview taking place. And
4 this, as I said, was in breach of the code of conduct. So the decision
5 made by the Chamber is to have prior consultation, because prior
6 consultation will mean that the legal advisor will be fully capacitated
7 to -- to fulfil his role *vis-a-vis* the represented victim.

8 That is what we understand by this decision. And we have
9 understood that disclosure does not have to be the document in its
10 entirety. It could be in redacted form or in summary form. And the
11 Chamber would like that the interests of the Defence be borne in mind as
12 well. Naturally, as well, as concerns the Legal Representatives, the
13 greatest of care should be taken in terms of precautions.

14 I hope that this is clear enough so that from the future -- in
15 the future this situation will not be repeated. It is important for it
16 to be rendered before the Defence team concludes its investigations and
17 before the conclusion of the Prosecution case. The decision has been
18 given. You should take the time to read it. Read the decision that was
19 rendered yesterday and the oral decision of today and then you try to
20 come up with an interpretation for all of this.

21 So we stand adjourned, and we apologise to the transcribers and
22 interpreters.

23 THE INTERPRETER: Message from the English booth. The first oral
24 decision came in at the last minute and the interpreters did for the have
25 enough time to prepare it.

1 The hearing ends at 1.32 p.m.

2 RECLASSIFICATION REPORT

3 *Pursuant to Trial Chamber II's email instructions dated 26 March 2012, the excerpt
4 of the transcript from page 1 line 11 to page 9 line 5 is reclassified as public,
5 as ordered by the Chamber.

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