

1 International Criminal Court

2 Trial Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and

4 Judge Christine Van den Wyngaert

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

6 In the case of the Prosecutor versus Germain Katanga and

7 Mathieu Ngudjolo Chui

8 Trial Hearing.

9 Monday, 12 July 2010

10 The hearing starts at 3.16 p.m.

11 (Open session)

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

14 PRESIDING JUDGE COTTE: (Interpretation) Our session is now  
15 commencing. Please be seated.

16 The Chamber, and in particular its President, would like to  
17 express its apologies for the delay with which we are starting this  
18 hearing today. Its apologies are, of course, addressed to the  
19 participants, also the people who are in the public gallery and who must  
20 have been surprised to see that we weren't starting with our hearing on  
21 time.

22 May everyone know that we were not just amusing ourselves, but we  
23 were working on the case that brings us all here together.

24 Before Witness 287, we are going to issue two decisions, two oral  
25 decisions. The first decision is related to the request from the two

1        respective Defence teams to file a reply on the basis of Regulation 24 of  
2        the Regulations of the Court. The Court would first of all like to carry  
3        out a brief procedural. Remind you, the witness for the Prosecution,  
4        279, on the 20th of May and the 11th of May, 2010, and the 14th of June,  
5        2010, and the Defence of Mathieu Ngudjolo filed an application with a  
6        view to asking for the starting (as interpreted) of judicial proceedings  
7        for the witnesses with regards to jeopardising the proper proceedings of  
8        justice on the basis of article -- on the basis of Article 71(a), (b) of  
9        the Statute.

10                With regards, the Prosecutor also filed a submission which was  
11        filed on the 8th of June, 2010. The Defence team of Mathieu Ngudjolo  
12        filed a request for authorisation to answer the Prosecution's reply with  
13        a view serenely to replying to the procedure to be followed to the  
14        application. On the same day, the Defence team of Mr. Katanga, which  
15        until then had been silent with regards to this application, filed a  
16        submission with a view to be authorised to reply, mentioned the fact that  
17        the Prosecutor's submission contained remarks which in its words would  
18        jeopardise the integrity of its resource person, and it also provided an  
19        annex supporting its allegations. This is a submission 2248.

20                With regards to the authorisation to reply formulated by the  
21        Defence team, the Chamber does not intend to take a position with regard  
22        to whether the application with regards to starting proceedings on the  
23        basis of Article 70 of the Statute would merit to take up their terms of  
24        the Prosecutor being classified as frivolous. It considers, furthermore,  
25        the Chamber considers that the initial application of Counsel Kilenda

1 makes it possible to have -- or makes it possible for us to have  
2 information which is sufficient in order to be able to rule at the given  
3 time on the follow-up that needs to be addressed thereto without there  
4 being a need to have a reply. The Chamber therefore considers that there  
5 is no reason to authorise this request -- this application for reply.

6 Now, with regards to the authorisation to reply of the Defence of  
7 Germain Katanga, the Defence -- the Chamber notes that the Prosecutor in  
8 his reply notes that he reserves the right to subsequently submit a  
9 submission relating to the conduct of the resource person of this Defence  
10 team. These are paragraphs 3 and 36 of the submission of 2243 named  
11 above. If this should be the case, it was the 6th of July, 2010, then  
12 the Defence of Germain Katanga would therefore be able to have at the  
13 most appropriate time the possibility to reply, to make any useful  
14 comments that it can make with regards to the exact behaviour of its  
15 collaborator, and if it considers appropriate, to defend that person's  
16 integrity.

17 If the Prosecutor does not follow up this intention to make a  
18 submission, the Defence of Germain Katanga can develop far more usefully  
19 during the presentation of its case, then in the framework of a reply it  
20 can set out the observations that it considers to be necessary in order  
21 to set out the role that this resource person played. Furthermore, the  
22 Chamber also does not intend to grant this application for authorisation  
23 to reply.

24 Oral decision with regards to the admissibility of certain  
25 evidence by hearsay.

1           During the testimony of the witness 267 on the hearing that took  
2   place on the 8th of July, 2010, the Chamber ordered the parties to  
3   provide submission -- written submissions with regards to the issue of  
4   the admissibility of evidence, of hearsay evidence. This is page 45, 46  
5   of the transcript, and this is following the objections that were made by  
6   the Defence of Germain Katanga. In the transcript at page 33, 34, and  
7   36, the 9th of July, 2010, the Legal Representatives of Victims, the  
8   Prosecutor, as well as the Defence of Germain Katanga also made  
9   submissions, written submissions. The Defence of Mr. Ngudjolo had  
10  informed the Chamber that it would make no comment with regards to this  
11  issue in an e-mail of the 9th of July, 2010 at 1400 hours.

12           The Chamber also notes, furthermore, that all the parties and  
13  participants, interpreters -- or they interpret the rules contained in  
14  the Statute as in the Rules of Procedure and Evidence, and in particular  
15  the Articles 64(9) and 69 of the Statute and Rules 63 and 64 of the Rules  
16  of Procedure and Evidence, as not excluding evidence by hearsay as such.  
17  It also notes that this means of evidence has also been admitted in the  
18  jurisprudence of this court, in particular in Lubanga, ICC-01/04-01/06,  
19  1389 of the 13th of June, 2008. It also highlights that it was the same  
20  for the testimony received until now in the framework of the presentation  
21  of the case of the Prosecutor without, it is true, objections being  
22  formulated at that time.

23           The Chamber, on the other hand, would like to state that the  
24  admissibility regime governing evidence, which is proper to this court,  
25  does imply a balancing particularly between on the one hand the probative

1 value which includes the reliability of the information obtained by  
2 hearsay, whether it is a direct or by the ricochet effect or otherwise  
3 whether it will harm the fairness of the trial.

4 In the case in point, the Chamber considers that the issue that  
5 the Prosecutor proposes to put to the witness 267 as stated previously  
6 falls within the precise framework of a structured organisation, an  
7 organisation providing account to other organisations which controlled  
8 the demobilisation programme and which financed it as well.

9 Using working methods that are precise and systematic, the  
10 implementation through a team of professionals who were acting under the  
11 supervision of Witness 267, the latter therefore already described the  
12 working methods as well as the links that were between the different NGOs  
13 who were working for this common goal; namely, the demobilisation of  
14 child soldiers.

15 Also, the Chamber is of the opinion that the answers that the  
16 witness 267 could provide to the questions that the Prosecutor would  
17 intend to put and which gave rise to the objections on the part of  
18 Counsel O'Shea were relevant. It is obvious that the Chamber will  
19 determine subsequently and in particular in light of the  
20 cross-examination of Witness 267 that the Defence of Mr. Katanga will  
21 carry out, they will decide on the weight which should be accorded to  
22 these answers, and this, given that these are answers which provide -- or  
23 which state what this person was able to hear directly from the mouths of  
24 child soldiers, or whether it concerns words which were said in their  
25 demobilisation missions by their collaborators who were placed under that

1 authority.

2 Furthermore, with regards to the role of 267 and that person's  
3 activities in the demobilisation of child soldiers, which was notified to  
4 the Defence that he was of the FRPI in a given geographical zone, the  
5 Chamber considers that it was perfectly envisageable that such questions  
6 would be put to the witness.

7 Prosecutor, you can therefore at the given time ask the question  
8 or questions which last week were the subject of the objections made by  
9 Counsel O'Shea.

10 It is now 3.30. This Chamber has to finish at 6.00 today. If  
11 you would do so, we're going to start for one hour and 30 minutes, until  
12 5.00 -- no. We're going to work until 4.45, one hour and 15 minutes  
13 there. We'll have a half-hour break, and we will therefore continue  
14 thereafter until 6.00. No, that wouldn't be enough. I find it difficult  
15 to make these calculations in the hearings. This is one of my major  
16 limits at a personal level.

17 As we said, it's now 3.30. If we work for one hour, it's just to  
18 4.30. Court Officer, we have to have a break. We will have a break for  
19 half an hour; 5.00, 6.00. Okay, we're going to work for two times one  
20 hour.

21 For the attention of members of the public, we're going to go  
22 into closed session very briefly to allow the witness to enter into the  
23 courtroom, and then we're going to go back in the open session  
24 afterwards.

25 So, Court Officer, we're now going to go into closed session, and

1 Usher, if you could be so kind as to escort in the witness.

2 (Closed session at 3.30 p.m.)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Open session at 3.32 p.m.)

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

21 Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

23 Court Officer.

24 For the record, the Chamber would like to point out to it all the  
25 participants that in the absence of Madam Catherine Denis, who is on

Witness: Witness DRC-OTP-P-0267 (Resumed) (Open Session)  
Questioned by Ms. Frolich

Page 8

1 maternity leave and who is a collaborator of Mr. Luvengika, Madam  
2 Anta Guisse from the Paris bar, who is on the list, will now be  
3 Mr. Luvengika's assistant and we believe that she will quickly become  
4 known to all the participants.

5 Good afternoon, Witness.

6 THE WITNESS: (Interpretation) Good afternoon.

7 PRESIDING JUDGE COTTE: (Interpretation) We are going to listen  
8 to your testimony for one hour. Then we'll have a break and then another  
9 one hour. We started late for procedural reasons. You will now answer  
10 the Prosecutor's questions, and we will all be grateful for the  
11 information that you are going to give us. We do not know which of the  
12 Prosecutors is going to continue with that direct examination.

13 Madam Prosecutor. In principle, Madam Prosecutor, you should not  
14 be very long. That is, if I remember correctly, what Mr. MacDonald said  
15 last week.

16 MS. FROLICH: Indeed, Mr. President. I will try to stick to that  
17 estimate from last week by Mr. MacDonald. So 15 to 20 minutes hopefully.  
18 Thank you.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Please  
20 proceed.

21 MS. FROLICH: Thank you, Mr. President.

22 Questioned by Ms. Frolich:

23 Q. Good afternoon, Witness.

24 A. Good afternoon, Madam Prosecutor.

25 Q. Therefore, I will continue along the same lines where

1 Mr. MacDonald left off last week, and in particular, to a question last  
2 week by Mr. MacDonald you -- he asked you about child soldiers that you  
3 spoke to, and he asked you if these child soldiers talked about  
4 Germain Katanga's exploits, and in response you said that in general  
5 throughout the group - and I apologise, I will just give a transcript  
6 reference at this point, this is page 31 of the English transcript and  
7 page 33 of the French transcript, lines 10 to 13, French transcript,  
8 lines 15 to 17 English transcript. And you said:

9 "Throughout the group Germain Katanga was highly thought of and  
10 acknowledged as being a valiant soldier. He was highly thought of  
11 because he defended his community and that is why he was so well known  
12 and respected.

13 Mr. Witness you said in general. Now, my question now is a  
14 little more specific. What were the specific exploits or reasons why  
15 Germain Katanga was considered as valiant soldier?

16 A. Madam Prosecutor, it was the opinion of the entire community and  
17 not only the children. It is everyone that we met, that is people who  
18 discussed with us, that was their opinion. They said that  
19 Germain Katanga was brave and he was a true fighter, because he defended  
20 the interests of his community everywhere in the face of the aggressors,  
21 and so this was a general sort of answer without being specific about the  
22 battles and where they took place.

23 Q. Last week you also said -- you said that the children spoke about  
24 the different battles that they had been involved in, in referring to the  
25 areas in Nyankunde, Bogoro, et cetera, and it depended on the child, of

Witness: Witness DRC-OTP-P-0267 (Resumed) (Open Session)  
Questioned by Ms. Frolich

Page 10

1 course.

2 Now, my question is when you spoke to the children who  
3 participated in the Bogoro battle, what, if anything, did they tell  
4 you --

5 MR. HOOPER: I'm sorry. It's just getting a little -- a little  
6 leading.

7 MS. FROLICH: Mr. President.

8 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, I  
9 believe that at this point of our proceedings, which is quite sensitive,  
10 I believe your questions absolutely have to be as orthodox as possible.  
11 I cannot phrase your questions for you. I am convinced that you are  
12 perfectly able to do that, even if you need a brief moment to reflect,  
13 and you can rephrase so as to elicit the information from the witness  
14 that you wish to have. Please proceed.

15 MS. FROLICH:

16 Q. Mr. Witness, so you spoke to the children who participated in the  
17 Bogoro attack --

18 MR. HOOPER: I'm sorry, an objection, because that's never been  
19 established.

20 MS. FROLICH: Mr. President, respectfully, I am referring to the  
21 transcript of last week and he said those -- Mr. Witness said, page 31 of  
22 the English transcript:

23 "Those who spent a long time in the armed groups. They spoke  
24 about the different battles they'd been involved in referring to the  
25 areas in Nyankunde, Bogoro, et cetera."

Witness: Witness DRC-OTP-P-0267 (Resumed) (Open Session)  
Questioned by Ms. Frolich

Page 11

1 I believe that's established.

2 MR. HOOPER: That may be, but your question, with respect is,  
3 "When you spoke to the children," and it's not been established that this  
4 witness himself spoke to the children.

5 PRESIDING JUDGE COTTE: (Interpretation) From a purely  
6 procedural point of view for the hearings, you have to pause for five  
7 seconds between answer and question, and if necessary, I will interrupt  
8 you.

9 Madam Prosecutor, this is not simply something we do just for the  
10 sake of it, but there is a procedure that you have to comply with, and  
11 you can ask the witness whether he met with the children and what they  
12 discussed.

13 Once again, the Bench is not going to ask those questions on your  
14 behalf, and in order to avoid any further interruptions, you can proceed  
15 stage by stage. You can even go beyond the 25 minutes, and we have no  
16 problem with that. The Registry can assist us.

17 (Prosecution counsel confer)

18 THE INTERPRETER: Correction from the interpreter: We would  
19 understand if you go beyond that time.

20 MS. FROLICH: Thank you, Mr. President.

21 Q. Mr. Witness, in the course of the demobilisation process that was  
22 conducted by your organisation, did you yourself speak to the children  
23 that were being demobilised?

24 A. Madam Prosecutor, that is a question that I think it's slightly  
25 out of place, because I was present myself from the very beginning to the

1 end of the demobilisation. I was the one who prepared the admission, the  
2 registration books, the registers, and as a trainer of the trainers who  
3 assisted in the programme, it was my duty to follow up the discussions.  
4 So I'm wondering why you're asking me the question to know whether I was  
5 present or whether I met the children.

6 PRESIDING JUDGE COTTE: (Interpretation) Do not misunderstand  
7 us, Mr. Witness. There are questions that may seem out of place and  
8 almost obvious, but we are simply following a legal procedure. The  
9 Prosecutor is asking her questions within a context that complies with  
10 the procedures, so please do not be irritated.

11 Madam Prosecutor, you can continue.

12 MS. FROLICH:

13 Q. Now, Mr. Witness, it is important that we -- that maybe -- it may  
14 be apparent to you that you might have responded to this question  
15 already, but if you could just specify if you yourself interviewed the  
16 children.

17 A. Yes, Madam Prosecutor. Regarding the conduct of interviews, I  
18 provided support to those workers who were carrying out the verification  
19 process and who were preparing the documentation. That was the very  
20 purpose of my presence, that is to see that the interviews complied with  
21 the standards set out in the programme. I even tried to assist the staff  
22 members responsible for verification and documentation in asking their  
23 questions correctly. Sometimes there were questions in the questionnaire  
24 that required the children to give an account of their experiences. The  
25 children who had spent longer periods in the groups had a lot to say

1 about their experiences, as well as the battles in which they had  
2 participated. So we were not focusing on specific battles or locations,  
3 but we simply wanted to learn about the experiences of those children  
4 during their life in the armed groups.

5 I therefore confirm that I took part in many interviews.

6 Q. Now, during these interviews -- so children had a lot to say  
7 about the battles in which they had participated. What would they say  
8 about these battles? If you could give us more detail. Which battles,  
9 where, et cetera.

10 A. This is a question that can be answered briefly. There were  
11 specific cases related to each child. We didn't count the number of  
12 children that took part in a specific battle in a specific place. That  
13 was not our purpose. But in the verification forms, these details were  
14 mentioned. For example, the child was in such a such a camp from this  
15 date to this date, and his commander was clearly identified in the  
16 technical a verification forms. So out of the 952 children, I would not  
17 be able to tell you which child took part in which battle in which place.

18 We did not have as objective to focus on the battles. We simply  
19 wanted to learn about the experiences of the children after they were  
20 associated with the armed groups.

21 Q. Again, I'm not interested in the numbers of children that might  
22 have participated in each battle. I am -- my question is -- you said  
23 specific battle. Which specific battles? If you could list us or name  
24 to us the battles or at least some of the battles that the children  
25 mentioned to you.

1 A. Amongst the battles mentioned, there was Bogoro and Nyankunde.

2 Q. Now, I am interested in the Bogoro attack. What did the children  
3 or one child, however many children, tell you about the Bogoro attack?

4 A. It would not be possible for me to give you any further details  
5 about the battles or what happened. That is beyond what the children  
6 told me. For example, they said that after the fall of Bogoro, they  
7 acquired a lot of weapons because their enemies had stockpiled a lot of  
8 weapons in Bogoro. So that is what -- one of the things that they gained  
9 from Bogoro.

10 Q. Now, Mr. Witness, how would you obtain information from your  
11 agents about the course of their work, daily work, the interviews that  
12 they conducted with the children? You said you supervised them. So how  
13 did -- you supervised them. How did they provide information to you?

14 A. Everything that happened happened in my presence. We had several  
15 stages. There was the admission, verification, and documentation, and  
16 before each file was completed, I had to be sure that all the spaces had  
17 been filled. If there were blanks or spaces that were not filled, that  
18 would prove that the interviewed had not been well conducted. So I had  
19 to cross-check all the forms to ensure that they were properly filled  
20 before the children could be transferred from the site to the CTO. And  
21 if those forms had not been properly filled, the child was still there  
22 with us.

23 And as I have said before, we could not compel the children to  
24 tell us what they didn't want to tell us. If they did not want to talk,  
25 we would make an annotation on the form to indicate that that child did

Witness: Witness DRC-OTP-P-0267 (Resumed) (Open Session)  
Questioned by Ms. Frolich

Page 15

1 not speak very much or preferred to be silent. That would make it  
2 possible for the other people on the other side to know what was  
3 happening and how to go about dealing with that child. So I had to be  
4 sure that we did not draw out information that was not coming from the  
5 child himself. So it was my duty to cross-check all the technical forms  
6 and ensure that they had been properly filled.

7 Q. Thank you, Mr. Witness.

8 MS. FROLICH: Mr. President, I don't have any more questions at  
9 this time for this witness. Thank you, Mr. President.

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

12 I believe it is now the turn of Mr. Gilissen to ask the witness  
13 questions.

14 Mr. Gilissen, Mr. Luvengika, the Court would like to remind you  
15 to stay within the scope of legal representation of victims. Regarding  
16 filing number 2228 sent in by Mr. Gilissen on the 29th of June, 2010, the  
17 Chamber does not have any specific observations to make. We will allow  
18 you to proceed with your questions. You will yourself determine which  
19 questions to ask, and you have very little time, and so we would like to  
20 ask Mr. Luvengika to review the questions that he would like to ask the  
21 witness.

22 The Chamber felt that questions 1 and 2 and question 4, except it  
23 is rephrased, will not be accepted in the course of these proceedings.

24 Mr. Gilissen, you can begin.

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

1       you, your Honours.

2               Questioned by Mr. Gilissen:

3       Q.    Good afternoon, Mr. Witness.

4       A.    Good afternoon.

5       Q.    My name is Mr. Jean-Louis Gilissen, and I am of the Liege Bar in  
6   Belgium, and I am the representative of child soldiers in this trial. I  
7   will not, of course, remind you about the procedure to be followed when  
8   answering questions. You already know about that. But I would like to  
9   underscore the fact that your testimony is very important to us because  
10  you are providing information to us that we are hearing for the very  
11  first time. I can assure you that neither the members of the Bench nor  
12  ourselves were in the field. We have only a theoretical knowledge at  
13  best of what actually happened, and everybody who has listened to you  
14  greatly appreciates the information that you are providing.

15           And what is of interest to us is the child soldiers and the work  
16  that you have been doing with them on the field. Those children are  
17  victims, and that is because they are of interest to us, they are of  
18  interest to the Chamber, and they are of concern to the international  
19  community. So please do not be irritated if you have the feeling that  
20  I'm being repetitive. It is simply because we wish to have all the  
21  information that we need to have so as not to be mistaken. And  
22  irrespective of the decision or the judgement that will be handed down at  
23  the end of this trial, it has to be handed down in an objective and  
24  credible manner.

25           And I believe the Bench and the Defence teams will agree with me

1       that my purpose is not to assist the conviction of anyone. I simply --  
2       I'm here to represent the child soldiers. And if I make the mistake of  
3       asking inappropriate questions, you can count on the Defence counsel to  
4       call me to order, and I have no doubt about the ability of the members of  
5       the Bench to do the same.

6               So this was the foundation that I wanted to lay down before  
7       asking my questions. Some of the questions I intended to ask are now  
8       moot either because I have already received some of the answers. I would  
9       have to rephrase some of the questions in light of the answers that the  
10      witness has already given, so I tried to avoid duplication, and I tried  
11      to make sure that we understand each other. And there are people from  
12      all the corners of the world in this courtroom, and sometimes we may  
13      think we are understanding each other, whereas things are a little bit  
14      more complex than that.

15             Mr. Witness, in transcript 163, and I'm referring to pages 36 and  
16      39, you testified that within the context of your activities you provided  
17      assistance to children and vulnerable people who were victims of the  
18      conflict, and on page 39 you say these were victims of the war.

19             You carried out your activities in several territories and  
20      districts, and my question to you in light of the information that you  
21      have is as follows: As from when were children integrated into the armed  
22      groups? I am not talking about any specific armed group. I am simply  
23      trying to understand how everything happened. Within the context of your  
24      work, did you receive any information about that time, which is a crucial  
25      time in the process?

1           A.    As far as I know -- and here I am concentrating on the year 2002,  
2           because before the year 2002 there were always children recruited that we  
3           termed "kadogo" before 2002, and here I stand before the Court, and (Expunged)  
4           (Expunged)  
5           (Expunged)  
6           (Expunged)

7                     In 2002, 165 children were demobilised in Uganda from Ituri, and  
8           they were taken by an NGO with the help of UNICEF, and we were able to  
9           see their behaviour, and this already awakened our awareness, because  
10          these children were arriving in Ituri. We brought them together, and at  
11          the same time our partner set up a task force. In other words, the  
12          process, the programme that the government at the time was setting up in  
13          1997, programme for the demobilisation of our children, that programme  
14          was interrupted by the second rebellion.

15                    I'm sorry for being so lengthy, but it's very important.

16                    So in 2002, you can see 160 children who were demobilised in the  
17          camp in Uganda, and our partner said, "Even before we begin this  
18          programme, we have to examine the situation in this camp from Uganda."  
19          And our partner began pleading with an armed group on site that was  
20          occupying our region, and gradually we began. There were conflicts,  
21          various conflicts, and we began seeing children leaving of their own  
22          volition. We called them the self-demobilised, because at the time there  
23          was no real programme, no framework, if you will, and it was thanks to  
24          MONUC that had -- MONUC child protection that had a mandate and that  
25          developed awareness so that we began recording all of the cases of

1 children who were fleeing from the war.

2 Since there was no formal structure, we had to collect all of the  
3 various cases that we saw and inform the MONUC about these cases, and  
4 that was how we were involved.

5 We -- things went on. Then came 2003 with the events, until 2004  
6 when we actually began an official DRC programme.

7 So you see, Counsel, you can see those were the dates were the  
8 dates where we became involved with child soldiers.

9 Q. Indeed. You have defined the various periods very clearly, quite  
10 admirable, in fact, because in fact you have given me more in this  
11 response than what I hoped for. If I may, I'm going to go back to the  
12 beginning of the chronology that you yourself have just presented.

13 If I understood correctly, and I'm not absolutely certain that  
14 I've understood and I need your help to better understand, the first  
15 child soldiers in the region -- that were seen in the region date back to  
16 around the year 2000. In fact, 1996, if I understand correctly, but they  
17 were not considered officially in the -- they were not included amongst  
18 the victims, amongst the fighters in the various communities.

19 A. Well, we referred to a phenomenon. It was referred to as a  
20 phenomenon because it was not a custom. It was not usual to use child  
21 soldiers. So it was referred to as a phenomenon. And these were small  
22 children that we call kadogo in Swahili.

23 Q. And everybody will intervene if need be. You have used a word  
24 that has led to a lot of discussion in this very courtroom, the word  
25 "kadogo." You are from Ituri. You're familiar with the region. You're

1 very familiar with the phenomenon of child soldiers. What can you tell  
2 us about this term that you've just used? You're not a university  
3 professor. I don't want you to give us a long lecture, but how were  
4 these children referred to, children who became child soldiers starting  
5 in Ituri in 1996? Is that the meaning that you give to the word  
6 "kadogo"? What can you tell us about the meaning of that word?

7 A. Kadogo is a child who takes up weapons to fight. With or without  
8 a uniform. And going a step further, and this caused a lot of harm  
9 because these kadogos were kept on the outside, so to speak, in other  
10 words, their behaviour had nothing to do with so-called normal children,  
11 normal childhood, because a child is a person who must obey their  
12 parents, obey their teachers, obey their elders in the community, but  
13 when you call a child a kadogo, it was synonymous with a person who has  
14 been ruined, destroyed, a person who -- whose morals and customs are  
15 completely deformed.

16 Q. Well, you're speaking about a very essential aspects in the  
17 meaning of -- in the phenomenon of child soldiers. It's difficult to use  
18 the term "on the average," and I don't like the term "on the average,"  
19 but on average in statistical terms, and regardless of the conditions, a  
20 child who had to leave his family, leave his village, go to some sort of  
21 training, however long, however short, and become then a child soldier,  
22 when the child then goes through a demobilisation programme which is well  
23 organised and well applied, does that child become a source of problems  
24 for his community of origin?

25 A. Generally speaking, when a child is already in the armed forces,

1 it is rejected, because their behaviour is such once they've taken up  
2 weapons that the adults, the brothers, the authorities, become a subject  
3 of ridicule to that child, and the community was disgusted by these  
4 children. And therefore, during the demobilisation, we had to mediate.  
5 We had to make an effort vis-à-vis the parents and the community of  
6 origin of these children to see whether or not the child had committed  
7 crimes and how the child had left its community of origin to join the  
8 armed groups.

9 Now, if -- depending on the reasons, we had to negotiate, so to  
10 speak, so that the parents would accept the child back, because generally  
11 speaking the community no longer wanted to take the child back in and  
12 that was one of the problems. How could we reunify the child with his  
13 community after the demobilisation process? This was often -- this was  
14 always a very difficult task.

15 Q. Witness, this is perhaps going to be a difficult question, but  
16 I'm certain that you will be able to deal with it.

17 In order to help us understand, and you've been very clear to  
18 explain that a number of children joined the militia for community  
19 reasons, for -- because they were mobilised, the community was mobilised.  
20 You've said that. And then you've also stated that in parallel, at a  
21 later stage, those same children were rejected, and yet the community had  
22 let those children join the militia. In order to avoid any  
23 misunderstanding amongst those who are listening, in order to avoid  
24 people thinking that there might be a contradiction, can you explain the  
25 process whereby the very same community that sends these children, and

1     you explained it quite clearly, some were forced, others in a slightly  
2     different fashion, we can go back to that, and then at the same time  
3     later on the same community rejected these children. Can you explain  
4     this complex aspect more clearly?

5     A. Well, sir, there was certain complicity. During the mobilisation  
6     period, everyone was called on to resist, but resisting does not mean to  
7     commit abuses against one's own community, and yet these children, once  
8     they were members of the armed forces, the armed militia, they were  
9     fighting side by side with adults whose behaviour was very violent, and  
10    these children began imitating what the adults were doing. And not to go  
11    much further, if you will, since they were from the same community, if  
12    they were going to steal, well, they would see this armed robbery take  
13    place, and the children would do the same thing, or they would do it in  
14    their own community.

15           You see, that's where the contradiction lies. So a parent, an  
16    adult, who sees a child who was supposed to obey his parents or elders,  
17    come back and the parent is then intimidated by this child -- so you see,  
18    this was the feeling, and the parents realised they could no longer count  
19    on this child, this person. And such mobilisation was not in keeping  
20    with normal standards, that is, as regards the age.

21           In other communities, parents were required to make a  
22    contribution by the armed groups. In other words, parents were required  
23    to send all their boys, all their sons, and if you don't do that, you're  
24    asked to give property, to buy back, if you will, the price. And so the  
25    parents were often forced to contribute against their will. It wasn't

1        what they wanted to do. And so you have to consider those cases and  
2        understand once we went to find the families how they were going to  
3        react. We have to find out whether the child left of his own volition,  
4        understand the various conditions, in order to prepare fully the return  
5        of the child to his family.

6                Those were the contradictions and the contradictions we had to  
7        deal with.

8                Q.    Thank you. Thank you, Witness. And what you've just said is new  
9        information for us.

10                Have I understood correctly that they would contribute by sending  
11        one of their sons to join the militia to resist, or you could -- instead  
12        of sending a son, you could pay? Did I understand correctly?

13                A.    Well, in some armed groups that was the case. In the other armed  
14        group, I'm not going to mention the name, you had to send all the boys,  
15        and if you didn't you had to give a certain amount of money. You had to  
16        contribute in kind in order to buy back, so to speak, the fact that you  
17        weren't providing a child.

18                Q.    In other words, if you were poor, if you have no money, and you  
19        don't want to join the militia and become a child soldier, you find  
20        yourself in a rather delicate situation.

21                A.    Well, indeed. This was the -- the fate. It was a question of  
22        fate, if you will. There was nothing much that could be done. The die  
23        is cast.

24                Q.    What were -- what was the level of constraint, if you will? I'm  
25        trying to understand fully. I can imagine that some families might have

1       felt threatened in such a situation, but what about the families who did  
2       not want to contribute, who did not want to provide a child. What was  
3       the level of constraint? Did they pay a fine, was there some sort of  
4       judgement? Were they abducted by force? What was the sanction? I think  
5       we can use the word "sanction." How would a family be sanctioned if they  
6       refused to send off their son? It wasn't an easy decision to see their  
7       children being sent off to war?

8       A. Well, in the beginning it was not really clarified before the  
9       demobilisation of children. It was only afterwards. There were a number  
10      of facts that were reported to us that in one place or the other they  
11      came and found children at school - I'm not mentioning the name of the  
12      town - and all the of the children were abducted, and the parents had to  
13      follow their children, and they were taxed, if you will, if they wanted  
14      to get their child back. This is not necessarily a general situation,  
15      but it is one specific case amongst many others.

16                So there was a way of managing internally the armed groups  
17      without there being any intrusion from the outside. It was only  
18      afterwards, once we had documented the various cases that we discovered  
19      that the parents -- and the parents actually admitted what had happened,  
20      after Artemis took over the situation and the children were sent to  
21      school, and we were told, "Well, this is the situation of my son," for  
22      example. And this helped us understand where the children had been in  
23      school.

24                This is one case. This is one case and not necessarily the case  
25      in hand.

Witness: Witness DRC-OTP-P-0267 (Resumed) (Closed Session)  
Questioned by Mr. Gilissen

Page 25

1           Q.    I understand.  You've mentioned -- I've referred to a case and I  
2           don't want to obtain precise information about this case, and you stated  
3           that the children were picked up, to use the term you used, in a school.  
4           So in other words, occasionally or exceptionally, and this is actually  
5           the point of my question, there were groups of children collectively who  
6           were forcibly incorporated, that is, regardless of what family they were  
7           from?

8                   MR. HOOPER:  (Previous translation continues) ... ranging.  I  
9           understand the witness to be talking about the UPC.

10                   THE INTERPRETER:  Microphone, Judge Cotte.

11                   PRESIDING JUDGE COTTE:  (Interpretation)  I don't know whether  
12           the witness referred to any organisation.  I think he's been very  
13           cautious not to do so thus far, so please proceed, Mr. Gilissen.

14                   MR. GILISSEN:  (Interpretation)  I myself was also very careful  
15           not to mention any organisation.  I was very careful so that my questions  
16           not be oriented against one or the other.  I wanted to be perfectly clear  
17           that what I'm interested in is child soldiers and their families, and we  
18           shall go back to that issue directly, Witness.

19                   Were you informed because of your functions, because of your  
20           personal experience, or because of people you employed, of collective  
21           incorporation of groups of young people into certain militia groups?

22           A.    Yes.  We even have proof, and this is why it really upsets us  
23           when you think of the early years starting in 2000 with the agreement of  
24           the heads of armed groups, they would come to villages, and I'm not going  
25           to give you the names, and they recruited more than 50 children, and they

1       took them to a training camp somewhere, and those children were then  
2       taken to the battlefield, and those children were then spread out, and  
3       they told us. We warned the child protection agencies, and we managed to  
4       get back several dozens of children who were registered. We were  
5       informed that they had been enlisted collectively in a school in a  
6       particular community, and they came in, they picked up a number of  
7       children, took them to training camps. And it's almost the same thing.  
8       Those cases were dismantled. The children wandered off and were  
9       retrieved by the protection agents in order to for those children to be  
10      able to return to their native communities.

11               So there were cases of forced enlistment and also voluntary  
12      enlistment. And it's thanks to these registers, thanks to the  
13      information we were given that we were able to verify the cases of either  
14      voluntary or forced enlistment.

15       Q.    I'm sure you understand that the purpose of my question was not  
16      to -- the purpose of this question is not to shock you, but it needs to  
17      be asked very clearly in order to enable you to give an answer to this  
18      question.

19               What was the level of reliability of the information obtained,  
20      the information that you yourself transmitted to others?

21       A.    The source of information, the source of our work, in fact, the  
22      various bodies, the state structures that we were part of, you had this  
23      child protection, you had various protection agencies which collected all  
24      of the information provided, so there would be no slippage or that  
25      information not be invented. We functioned within the law starting from

1       2004. In fact, 2002, 2003 there was the child protection body that  
2       recorded for every single child who was brought in for protection. The  
3       child was registered.

4       Q. Thank you. Thank you, Witness. In page 163 -- or rather  
5       transcript 163, page 39, you said that the fighting in Ituri was an  
6       ethnic conflict. Was the use of child soldiers in the militia -- did it  
7       have the same connotation? In other words, the conflict that you have  
8       termed "ethnic conflict," was it also part of this very special  
9       phenomenon, that is, the use of child soldiers?

10      A. As regards the groups that we worked with, each child was part of  
11      its own community except -- except one group that recruited throughout  
12      the region, but -- well, in the two groups, the children were part of  
13      their own community because they were being mobilised to defend the  
14      interests of their community. They didn't -- there was no interest for  
15      them to fight for another community, and so they tended to stay in their  
16      own community.

17      Q. Thank you very much, Witness. You have referred to three  
18      categories of age groups, 6 to 12, 12 to 15, and 15 to 17, and you stated  
19      that you did that starting in the year 2004. You also said that you had  
20      obtained information regarding how long each child had actually been part  
21      of a particular militia group, and in the transcript 165, page 27, you  
22      stated that some children were members of a militia up to two years, and  
23      in some cases a wee bit more, but as far as you know, other than the  
24      children that were questioned in the groups that we're interested in,  
25      because this is the subject of discussion, and I'm going to try to be as

1       nonsubjective as object, in other words, as objective as I can. In the  
2       Lendu Ngiti groups, whether you're talking about self-defence, groups of  
3       fighters or militia, whatever the name is that you give them, to your  
4       knowledge the initial or the first incorporation of children, when did it  
5       start?

6       A.     In 2002.

7       Q.     Now, if you're able to tell us, was it at the beginning of the  
8       year, the end of the year, throughout the entire year 2002? Was it a  
9       turning point 2002?

10      A.     Well, sir, I'm not sure I can answer that, because in 2002, as  
11      regards the Ngitis, that community had been martyred by the Ugandans and  
12      they had to push the Ugandans out.

13      Q.     Thank you. That brings us back to the chronology you gave us in  
14      direct examination, so I'm not going to go back over that. I think this  
15      is well understood by all. We have the necessary information.

16             Witness, in a community I think that it's true in Africa, as  
17      indeed it is in my country, I'm not African myself as you will of course  
18      have understood, there are always moral authorities. It could be, for  
19      example, religious authorities. It could be the senior, older -- the  
20      elders, for example.

21             In this mobilisation, this general mobilisation of the community  
22      which you spoke to us about, all of these authorities, did they all call  
23      for this mobilisation, including women and children? We're interested in  
24      children here. Or, on the other hand, were there two polar opposites, if  
25      you like, moral authorities on the one hand and among the others those

1       who wanted to resist, those who wanted to fight or save the group?

2           A.     For the specific community, in 2002, the moral authority of this  
3     community was no longer living in that stronghold. It had left that area  
4     to join the chef of the region, the capital of the region, and I pointed  
5     out to you that we had carried out an operation to provide clothing for  
6     children who had none. That was thanks to the authorities, the moral  
7     authority, which was in the main town.

8           Now, the authority, in the presence of the group -- armed groups,  
9     the authority, the moral authority, had no objects because everything was  
10    decided by the militia leaders. The authority, whether religious, came  
11    under or had to bend to the leaders of the militia. That is the answer  
12    I'd like to give you.

13           MR. GILISSEN: (Interpretation) Yes, your Honour.

14           PRESIDING JUDGE COTTE: (Interpretation) We're going to have to  
15    interrupt. The organisation of this hearing was somewhat disturbed.  
16    We're going to interrupt this until 5.00, and then we'll go from 5.00  
17    until 6.00.

18           MR. GILISSEN: (Interpretation) Thank you very much.

19           PRESIDING JUDGE COTTE: (Interpretation) We're going to have a  
20    break now and we'll have a break for 25 minutes. You're therefore going  
21    to have a rest.

22           Court Officer, please could you take us into closed session so  
23    that the witness can leave the courtroom with discretion.

24           (Closed session at 4.34 p.m.)

25           (Expunged)

Witness: Witness DRC-OTP-P-0267 (Resumed) (Closed Session)  
Questioned by Mr. Gilissen

Page 30

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Open session at 4.35 p.m.)

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

12 Honour.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

14 Court Officer.

15 The session is now suspended. We will be back at 5.00.

16 Recess taken at 4.35 p.m.

17 On resuming at 5.05 p.m.

18 (Closed session)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness DRC-OTP-P-0267 (Resumed) (Closed Session)  
Questioned by Mr. Gilissen

Page 31

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Open session at 5.06 p.m.)

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

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you. You have  
10 the floor, Court Officer.

11 COURT OFFICER: (Interpretation) Thank you, Your Honour.

12 I would like to make a correction where it concerns an EVD  
13 number, given on the Friday the 9th of July, 2010, following the request  
14 of the Prosecutor. The reference EVD-OTP-00128 has -- was given to the  
15 photograph DRC-OTP-1028-0061. However, this photograph had already been  
16 admitted with the number EVD-OTP-00104 and will therefore keep this  
17 previous reference. So EVD-OTP-00128 is now available and shall be  
18 attributed to another document. Thank you.

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

21 Counsel Gilissen.

22 MR. GILISSEN: (Interpretation) I would like to thank you, your  
23 Honour, your Honours.

24 Q. Witness, we are now going to try together to make progress and to  
25 finish under the best possible conditions with regards to the time as

1 well. I would like to reassure you of that.

2 Witness, in the transcript 165, page 60, you recognised an item  
3 of evidence, a document as being you stated the compilation of statistics  
4 with regards to children after their passage through a specific site.  
5 These are demobilised children, and we saw that among these children  
6 there were girls, young women, young girls. Could you speak to us  
7 about -- or could you tell us all about the presence of these girls in  
8 the militia and of the role that was attributed to them.

9 A. In the general overall statistics, 952 children were demobilised.  
10 There were 118 girls, girls and mothers. With regards to the role, it  
11 can be defined in two different categories, girls or women fighters and  
12 women wives, those who were taken as wife. That was the two categories.

13 Q. Witness, for an observer, an external observer, I'm one of them,  
14 one of the aspects which needs to be clarified and which is troubling is  
15 this aspect of "wife," if you would allow me to use the expression. I'm  
16 trying to approach things in the most neutral way possible, even if the  
17 term can shock some people, but this is what we're speaking about here,  
18 and it's this sexual aspect of it, sexual nature of things. Clearly, you  
19 are telling us that within the militia there wasn't just a fighter  
20 activity. There was also a -- another aspect of a sexual nature, and I  
21 would have wished for you to tell us about that, to provide us with  
22 information about that, to enable us to have clarity in this regard?

23 A. In answer to the question with regards to when a girl or woman,  
24 and he (as interpreted) was talking specifically about girls mothers and  
25 girls mothers who went to the site with their children, most of them

1       stated that they had been taken, that they had been taken and that they  
2       had served as the "wives."

3           Q.    In order to not make a mistake, to help me not to make a mistake,  
4       they were taken. That means -- please allow me to correct myself here.  
5       I'm not expressing myself well.

6                   Should I understand from what you say to me that these young  
7       women were not necessarily consenting to the fate which was allotted to  
8       them. Was there an aspect of lack of will. I would like you to explain  
9       this word "taken" as you used it yourself?

10                  MR. O'SHEA: May I interrupt for a moment. With respect to my  
11       learned friend, I understand his first question and I understand why he  
12       asked it, but with respect, he's now leading the witness into -- into  
13       conclusions from the witness's first answer. He must ask an open  
14       question and not a leading question of that nature.

15                  PRESIDING JUDGE COTTE: (Interpretation) So Counsel Gilissen  
16       will reformulate his question.

17                  MR. GILISSEN: (Interpretation) I will try to do so.

18                  PRESIDING JUDGE COTTE: (Interpretation) Take the time to do so.

19                  MR. GILISSEN: (Interpretation) I hope that the way I do so will  
20       provide satisfaction. I sincerely hope that.

21           Q.    Witness, when you spoke to us about these young women, you used  
22       the word "taken." Some of them had been taken is what you said. Could  
23       you explain to us what we can understand beyond the word itself with  
24       regards to what that means for us to avoid us making any mistake in that  
25       regard?

1           A.    During this period, in which we were, during the demobilisation,  
2   we were already faced with a fait accompli. The presence of women,  
3   girls, with children, and it wasn't easy for us to have this number at  
4   the site, nor with regards to the intervention of the person, I don't  
5   have the list, number 9, who had made a fault with regards to  
6   awareness-raising. The term was used of these militia as these children  
7   that they can release the girls who lived with -- who cohabited with or  
8   without consent. The reason why these women or girls went through the  
9   process, through the command of the FRPI, we, in documenting this, in the  
10  interviews with the women and the children -- or they stated that they  
11  had been taken. So I don't see what other vocabulary I can use if that  
12  is not the term. To abuse, I don't know -- take in what sense. So they  
13  lived without consent. They lived together without consent, but they  
14  found themselves in a situation which was a fait accompli.

15          Q.    I think you have just given us the complexity of the whole  
16  situation.

17               MS. FROLICH: I apologise for interrupting my learned friend, but  
18  I note that the witness said that he does not have the list with numbers.  
19  Perhaps it would be prudent to supply him with the list. Thank you.

20               PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.  
21  You are correct. The list which we used for your cross-examination is  
22  available.

23               Court Officer, if it is available, then it has to be provided to  
24  the witness who is speaking from his memory with regards to person 9. We  
25  have to help him not to usefully -- or without point -- having to use his

1 memory. He could have that next to him.

2 Counsel Gilissen, please continue.

3 MR. GILISSEN: (Interpretation) Thank you very much, your  
4 Honour.

5 Q. Witness, I was saying just now, and I think that you noted there  
6 was a situation that we all felt was complex. This aspect of sexuality,  
7 I'm going to express myself in the most neutral possible way but an  
8 explicit way. That is what we're speaking about. Did it concern, and if  
9 yes, to what extent, child soldiers. Were child soldiers in one way or  
10 another, because they were child soldiers, did they a sexual activity at  
11 a particular time within the militia?

12 MR. O'SHEA: I'm sorry, Mr. President, but Mr. Gilissen really  
13 must try a little bit harder than this. I think he knows the difference  
14 between a leading question and an open question.

15 PRESIDING JUDGE COTTE: (Interpretation) Line 21 of the  
16 transcript. Did -- child soldiers, in one way or another, because they  
17 were child soldiers, did they have a sexual activity at a particular time  
18 within the militia.

19 Mr. O'Shea. Counsel O'Shea, how does this question cause a major  
20 problem?

21 MR. O'SHEA: The answer is in the question.

22 MR. GILISSEN: (Interpretation) Your Honour, if it could help, I  
23 could try to reformulate things.

24 PRESIDING JUDGE COTTE: (Interpretation) Try to reformulate it  
25 because we're trying to ensure that everybody gets satisfaction. Well, I

1 wouldn't put it like that, but at least with regards to these proceedings  
2 we have the feeling that it could be put, but please reformulate it. If  
3 you don't manage it, then put it as you did.

4 MR. GILISSEN: (Interpretation) Thank you very much, your  
5 Honour.

6 Q. Witness, you have just spoken to us about these young women who  
7 were present in the militia. Some of them were said to have had a wife's  
8 role willingly or unwillingly. With regards to that in terms of child  
9 soldiers, what was the situation?

10 A. Counsel, when you consider the programme, the demobilisation  
11 programme, curiously in the kit that the children were provided with  
12 there were condoms which they were provided with in the kit, in the kit  
13 itself, condoms. According to the programme where the people who -- who  
14 made up the programme, from their experience they knew that child  
15 soldiers had sexual relations in an extravagant way, and during the  
16 demobilisation there was a unit, because in the group -- or in the team,  
17 we had a nurse who did the medical screening. The child had the  
18 documentation to do the medical screening. They were asked questions:  
19 "Do you have any problems with regards to your health?" We noted that  
20 there were children who were suffering from sexually transmitted  
21 diseases. So when they were in the armed groups in a activity they had  
22 sexual relations, and we had -- there were child soldiers -- there were  
23 children who were born, the result of a sexual relations that were not  
24 consented to. That's it.

25 Q. Thank you very much, Witness. This is a sensitive issue. I'm

1       aware of that. But I think that's part of the reality of what happened,  
2       and you shouldn't be afraid of that.

3               These relations between the child soldiers and nonconsenting  
4       people, I'm talking about that. Even if in these relations some were  
5       consenting, I would like to focus, with your permission and your  
6       attention, on these relations, sexual relations of child soldiers with  
7       persons who did not consent to it.

8               Was it only young women from the community of these child  
9       soldiers, or could it also include other persons?

10       A. Counsel, these were the children of this community, in this  
11       community. As I pointed out, in such-and-such a community, the -- the  
12       children evolved outside -- well, in their own community outside an armed  
13       group, which I'm not mentioning, and to say these children and women,  
14       when they were demobilised, they brought up the issue, the question of  
15       the responsibility for their children, who would take care of them. And  
16       the children in the programme were independent. We had a -- they were  
17       dependents. We called them their dependents. So there were militia who  
18       would be demobilised, and they would go back to their legitimate spouses.  
19       What would -- they asked what their fate would be.

20               This was a problem that was raised during the demobilisation  
21       process concerning girls, and it also -- they had had children within the  
22       armed groups. And this was a problem to which we had to find a solution.

23       Q. If I understand you correctly, Witness, I have the feeling, and I  
24       would ask you to say where we are in this regard, the problem -- the  
25       problem of child soldiers was, in fact, the consequence of very numerous

1 problems within the community, this destructuring of the community, or is  
2 it less difficult than that?

3 A. If in the programme the -- if A evolved, it was called SPD, the  
4 children who were in a situation, in a very difficult situation, the  
5 SPDs. So you had the category of child soldiers. That was the most  
6 complex and difficult category. It was the most difficult category in  
7 the terminology and the nomenclature of children in a particularly  
8 difficult situation. It was difficult because of the war in  
9 particularly -- in particular concerning the children. And the soldiers.  
10 So the term A also was used. We called them AFGA for children associated  
11 with the armed forces. Not only the children who had taken up arms, but  
12 there were also stress on the girls, the girls who had been taken and who  
13 had to serve as the wives. They were assimilated into this category.

14 Q. Witness, what you've told us with regards to all the militia  
15 could be understood, and in particular with regards to the FRPI and the  
16 FNI, is it valid for both of them?

17 A. If I speak about these two categories, these are two categories  
18 which we worked with.

19 Q. If we stay extremely prudent, we know the difficulty of the  
20 situation and the sensitivity of it. Between the end of 2002 and the  
21 middle of 2003, can we say that at that time within the two militia,  
22 whose names I've just mentioned, there were child soldier in the militia  
23 who were under 15 years old?

24 MR. KILENDA: (Interpretation) Please, your Honour. Please  
25 excuse me for standing up somewhat late, but I thought I heard my -- I

Witness: Witness DRC-OTP-P-0267 (Resumed) (Open Session)  
Questioned by Mr. Gilissen

Page 39

1 thought I heard my colleague speak about the FNI. As far as I'm  
2 concerned there was no issue of that up to now.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you,  
4 Counsel Kilenda. Please continue, Mr. Gilissen.

5 MR. GILISSEN: (Interpretation) Thank you, your Honour. I'm  
6 very sensitive to the intervention of my colleagues, as I'm always  
7 sensitive to the interventions of my colleagues.

8 Q. In the activities that were carried out, were you called upon to  
9 see child soldiers who were in an armed group called the FNI?

10 A. The group FNI came later in our work. After we closed in 2005,  
11 we went back to the headquarters where we had the centre, the day centre,  
12 and in 2006 the DD3 started and this where -- or DDR 3 started, and  
13 that's when we started to receive the children from the FNI. Until that  
14 point we had firstly worked with the FRPI children.

15 MR. KILENDA: (Interpretation) Please excuse me. I don't want  
16 to cut up the cross-examination carried out by my colleague. I would  
17 just -- and I don't want to be disagreeable to the Court either by  
18 distracting it, but I do have the impression that the colleague is --  
19 started going into issues which weren't addressed by the witness, and  
20 there is a risk that will go beyond the framework which was set for the  
21 rules of these proceedings.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,  
23 Counsel Kilenda.

24 I do think, Counsel Gilissen, that until now you remained within  
25 the framework of questions that made it possible to better focus on the

1 activity of this witness, and through that witness's activity what the  
2 phenomenon of child soldiers was, girls or boys. I don't have to go back  
3 to the issues that you've asked and the answers that you've been provided  
4 with by the witness, but Counsel Kilenda did not want to speak earlier.  
5 I don't think that the Court has to say more. Please, if you would, stay  
6 where it concerns a bit outside the crowd, as it were, and please allow  
7 us to better understand what was the object of your representation.  
8 Thank you.

9 MR. GILISSEN: (Interpretation) We totally agree, Mr. President,  
10 my learned friends, because I wanted to be neutral. Like a committed  
11 observer, I wanted to collate the maximum amount of information to try to  
12 understand precisely what happened, but we are not dealing here with  
13 absolutely theoretical matters. We are dealing with a cruel reality  
14 which involved many children between 2002 and 2003.

15 Q. Mr. Witness, you had information in Ituri during the years 2002,  
16 2003. What was the approximate number of child soldiers that were in all  
17 the militia groups, in all the armed groups? How many of them were there  
18 do you think?

19 A. It was after having started the DRC programme that we estimated  
20 the number to be at least 10.000 children. That is from all the armed  
21 groups. Initially we only focused on the children that everybody could  
22 see, that is, in 2002 and 2003, because at that time neither -- or,  
23 rather, the children were not visible neither in the FNI or in the FRPI,  
24 and no one actually went in to see what was happening.

25 Now, when the DRC programme started in the five sites and based

1 on the information available, we could estimate that the number of  
2 children would be about 10.000 in all the groups, and this figure was  
3 reached in 2008. If you look at the statistics, we reached that number  
4 of 9.000 children. And if that figure was not reached in 2000 -- or  
5 before 2008, it is because it was still a process. The negotiations were  
6 going on. There were certain groups that were still reticent. So the  
7 approximate number would be 10.000 children.

8 Q. Mr. Witness, just to give us an idea, 10.000 children in Ituri,  
9 how could you see that in another way? Can you -- does this reflect  
10 about one child per family? I'm just trying to see what the scope of  
11 this evil was.

12 A. The groups involved in the conflict, that is the ethnic groups  
13 involved, there was one child out of ten in such communities involved in  
14 conflicts, because other ethnic groups were not involved in any conflicts  
15 at all. So if I were to estimate, to give an average, it would be a bit  
16 difficult.

17 Now, for the groups involved in conflicts, if there were two  
18 children, then one of them would be involved in the conflicts.

19 Q. You have mentioned the ethnic nature of the conflicts, and you  
20 once again have talked about the nature of groups participating in the  
21 conflicts. Do you believe that the participation of children in the  
22 armed groups contributed in making the conflicts more deadly and more  
23 painful than they would have been without them?

24 A. This evil was perceptible during the evaluation. After each  
25 programme, we were able, through empirical means, to establish the number

1 of children who had dropped out of school. So we were able to establish  
2 this category of children in a difficult situation as well as the adverse  
3 effects of belonging to a militia group.

4 The first effect was dropping out of school. Many children,  
5 particularly those who were enlisted, that is when they were less than 15  
6 years old, during the demobilisation period as you can see on the table,  
7 there were children who were 14 to 15 years old, and if such children had  
8 spent two years in the groups, it means that they were 12 years old in  
9 2002. So on average, these were children who had not completed even the  
10 primary school education. They would attend the second or third year of  
11 primary school. They spent two years away, and after returning they  
12 would stay at the same level. They could not even continue with their  
13 primary education. So this was the first effect. So it -- this conflict  
14 actually caused a lot of social problems.

15 And given that these were times during which conflicts were going  
16 on, no one took much notice. It was only afterwards that people realised  
17 that there had been many adverse effects on both families and the society  
18 in general. So there was a number of children who had to be dealt with  
19 within the programme, for example, children who could no longer continue  
20 with their primary education because of their age.

21 To conclude, therefore, this was a catastrophe, that is, within  
22 the entire community when it came to this phenomenon of child soldiers.

23 Q. Thank you very much.

24 MR. GILISSEN: (Interpretation) Mr. President, I am coming to  
25 the end of my questions. I do not know whether these questions are

1 appropriate at this particular point of the proceedings or whether they  
2 may be more relevant later. I should be interrupted if necessary.

3 Q. Mr. Witness, in light of what is happening in Ituri today, how is  
4 it possible to remedy this situation related to child soldiers?

5 PRESIDING JUDGE COTTE: (Interpretation) This is practically an  
6 expert witness if you consider his experience. So that question is  
7 acceptable, that is, if the witness is able to answer.

8 THE WITNESS: (Interpretation) Counsel, I'm going to try to  
9 answer. It has been more than five years since we have been gathering  
10 statistics related to the age brackets of 6 to 12 years. Out of all  
11 those children, have -- almost all of them have gone back to school as  
12 necessary with regard to the 12 to 15 and 15 to 17 age groups; the most  
13 difficult group was the age bracket between 15 and 17 years.

14 In the programme, the child cannot be allowed to work. That is  
15 according to the ILO convention. At that time in the programme, there  
16 was a phase referred to as IMO, I-M-O, that is within the context of  
17 which organisations and financial backers had to create jobs so as to  
18 occupy those children and provide them with a means of subsistence. This  
19 was done for adult fighters.

20 Now, the children between 15 and 17 years old were not part of  
21 this programme. They felt that they were adults, and they said that they  
22 had fought even more than the elders. And when it came to distributing  
23 benefits, the adults were being favoured, whereas they were only being  
24 given the kits containing soap, blankets, slippers and then told to  
25 return home to their parents. The families had generally been

1        impoverished by the war, which means that those children could no longer  
2        stay in the villages. Many of them went into the mining industry.

3                We realised the programme had not met the expectations that had  
4        been set. We worked for many years, and our role was to gather  
5        statistics or data and transmit such statistics to the CONADER, which for  
6        its part had to prepare a reintegration programme which consisted of many  
7        socio-economic and socio-professional aspects.

8                There was also the case of the girls. There was a unit for them  
9        known as AGR, revenue generating activities. So these girls were split  
10       into groups of five or ten. Then they would be trained in a trade so  
11       that they should be able to generate enough revenues for their needs and  
12       the needs of their children.

13               These were -- these were approaches, these were solutions which,  
14       generally speaking, were not successful. That is why you would still  
15       find active militiamen, because the expectations of the children were not  
16       met. Nevertheless, we are continuing with our efforts. We are  
17       continuing to raise awareness, and there are a few successful cases.  
18       This means that there are structures, humanitarian organisations which  
19       design programmes, for example, involving the handing over of a motorbike  
20       to a group. Fuel is provided. They carry out activities, and then they  
21       share the proceeds amongst them under the supervision of a trainer who is  
22       also a supervisor. But these are solutions that cannot reach all those  
23       children known as the SPDs.

24               Q.    Thank you very much, Mr. Witness. I still have a question to put  
25       to you which seems crucial in these proceedings.

1                   On the basis of information that you received directly or through  
2     your activities, can you tell us whether on the 23rd of February, 2003,  
3     amongst the combatants of all sites, were there child soldiers?

4                   MR. O'SHEA: There's already an answer to this question, I say  
5     respectfully, in the transcripts. The Prosecution has pursued this line,  
6     and at page 13, line 20 of the transcript in English, the witness says  
7     that "It will not be possible for me to give any further details." I'm  
8     sorry, I'm reading from my notes so it might not be exact. "It may not  
9     possible for me to give any further details of what happened at the  
10    battles." Your Honour will have a more exact version of that in French.

11                  MR. GILISSEN: (Interpretation) That was not the purpose of my  
12    question. I think there was a statement that is almost as the one that  
13    Mr. O'Shea read out, but it is not correct. You are close to the truth,  
14    and I was careful to phrase my question in a way that would avoid that  
15    obstacle. I think the transcript, of course, when we refer to it, is  
16    authentic, but this is my last question. I'm not asking the witness to  
17    describe or to explain anything. He was very clear. I am not revisiting  
18    this issue. My question involves a very specific question, whether to  
19    his knowledge, on the 23rd of February, 2004, and we can refer to it as  
20    the day on which Bogoro fell or was captured by a militia group from  
21    another group, were there child soldiers amongst the combatants?

22                  PRESIDING JUDGE COTTE: (Interpretation) Is it possible to read  
23    the transcript referred to by Mr. O'Shea? Which hearing was that, 8th of  
24    July, 7th of July? Can the specific statement of the witness be simply  
25    read out to us?

1                   We have to stop at 6.00 p.m. prompt. We have to suspend the  
2                   hearing at 6.00 p.m.

3                   MR. O'SHEA: Would your Honour like me to read in English so that  
4                   it can be translated into French if there is a difficulty finding that  
5                   part of the transcript? Because I've got the part of the transcript in  
6                   English here.

7                   PRESIDING JUDGE COTTE: (Interpretation) Very well. To save  
8                   time, please read in English. We have excellent professionals.

9                   MR. O'SHEA: "(Previous translation continues) ... for me to give  
10                  you any further details about the battles or what happened. That is  
11                  beyond what the children told me. For example, they said that after the  
12                  fall of Bogoro, they acquired a lot of weapons because their enemies had  
13                  stockpiled a lot of weapons in Bogoro. So that is what -- one of the  
14                  things they gained from Bogoro."

15                  Now, of course, if my friend is allowed to pursue this line we  
16                  would of course be grateful if he did it in a non-leading manner as well  
17                  and not provide details which the witness himself has not provided to  
18                  date.

19                  PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, you heard  
20                  what you yourself said a few days ago. Can you confirm?

21                  MR. KILENDA: (Interpretation) In the French transcript it was  
22                  on page 15. That is the transcript of today, page 15.

23                  PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, do you  
24                  confirm your testimony, that is, in other words, that you could not give  
25                  that details?

1 THE WITNESS: (Interpretation) Mr. President, I do confirm that  
2 testimony.

3 PRESIDING JUDGE COTTE: (Interpretation) Very well.

4 JUDGE DIARRA: (Interpretation) I'm sorry for having a  
5 dissenting opinion, but Mr. Gilissen's question is very different from  
6 that general question, that is, the conduct of the battles and so on and  
7 so forth. What Mr. Gilissen said was very limited.

8 PRESIDING JUDGE COTTE: (Interpretation) Page 52, line 20, that  
9 is where the question of Mr. Gilissen is, and it is as follows:

10 "Thank you, Witness. I have one last question which is crucial  
11 to these proceedings. On the basis of information that you received or  
12 through your activities, indeed, can you tell us whether on the 23rd of  
13 February in Bogoro and in all the armed groups," and the transcript is a  
14 bit confusing here, "were there child soldiers?"

15 So you're being asked to say whether there were child soldiers in  
16 Bogoro in the 23rd of February, 2003. Haven't we had the answer?

17 JUDGE DIARRA: (Interpretation) In my opinion, no. That  
18 question is much more limited.

19 MR. KILENDA: (Interpretation) Mr. President, sir --

20 PRESIDING JUDGE COTTE: (Interpretation) We have some  
21 ambiguities here which have to be resolved. So, Mr. Witness, please  
22 answer Mr. Gilissen's question and that will be it. The question was as  
23 follows: On the basis of information that you gathered yourself as the  
24 person responsible for an organisation dealing with demobilisation, can  
25 you tell us whether amongst the combatants in the various armed groups in

1 Bogoro there were child soldiers?

2 THE WITNESS: (Interpretation) Yes. There were child soldiers  
3 in both camps.

4 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you,  
5 Witness.

6 Mr. Gilissen, do you have any further questions?

7 MR. GILISSEN: (Interpretation) That was my last question, but  
8 thank you for giving me the opportunity to ask questions to the witness.

9 Thank you, Mr. Witness. Your information, your testimony, is  
10 crucial for the witnesses that I represent. Thank you, Mr. Witness.

11 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor.

12 MS. FROLICH: Mr. President, I was merely going to suggest that  
13 what the witness mentioned earlier regarding person number 9, now that he  
14 does have the list in front of him, that we affirm that it is indeed the  
15 person that is listed on that list, the name, or he can just affirm it or  
16 not. That was just my suggestion.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, do you  
18 recall that a short while ago, about 30 minutes ago or so, you referred  
19 to the person at number 9? The Prosecutor would want to make sure that  
20 you were actually referring to that person, number 9.

21 THE WITNESS: (Interpretation) Yes, Mr. President. It was the  
22 person at number 9.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,  
24 Mr. Witness. Tomorrow morning Mr. Fidel Luvengika, who represents the  
25 main group of victims, will also ask you some questions.

1           Mr. Luvengika, do you have an approximate -- can you tell us the  
2       approximate time that you will need?

3           THE INTERPRETER: Mr. Luvengika does not have his microphone on.

4           MR. LUVENGIKA: (Interpretation) Most of the questions that I  
5       intended to ask have already been answered by the witness when he was  
6       providing answers to the Prosecutors and to my learned colleague,  
7       Mr. Gilissen. I will, of course, have about two or three questions to  
8       put to the witness, but I will not go beyond 15 to 20 minutes.

9           PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,  
10      Mr. Luvengika.

11          In light of all the questions that have already been put to the  
12      witness, the Chamber will have only a few questions. This means,  
13      Mr. Hooper, that your cross-examination can start tomorrow, and you can  
14      even continue afterwards.

15          Thank you, Mr. Witness, for your contribution during this  
16      afternoon that was quite shortened. We will meet you here again tomorrow  
17      morning.

18          And we will meet you also here tomorrow morning, accused persons.

19          Let us go into closed session, Madam Court Officer, to allow the  
20      witness to leave the courtroom.

21          And, Court Usher, please lead the witness out.

22          (Closed session at 5 .58 p.m.)

23      (Expunged)

24      (Expunged)

25      (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Open session at 5.59 p.m.)

5 COURT OFFICER: (Interpretation) We're in open session,

6 Mr. President.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

8 Court Officer.

9 We will meet again tomorrow, and we are also expecting the  
10 observations that were requested through an urgent e-mail on Friday  
11 afternoon.

12 Court is adjourned.

13 The hearing ends at 6.00 p.m.

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