

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 Thursday, 8 July 2010

10 The hearing starts at 11.34 a.m.

11 *(Open session)

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

14 PRESIDING JUDGE COTTE: (Interpretation) Court is in session.

15 Please be seated.

16 This is a full Bench once again, which is back here in this
17 courtroom, and before we bring in the witness and give the floor to the
18 Prosecutor, we would like to request something from the OTP.

19 Yesterday, in anticipation of the testimony of Witness 30, you
20 communicated to us a list of video excerpts that you would like to
21 produce just like you usually indicate to us which documents you intend
22 to produce. Regarding those excerpts, if you can summarise to us the
23 contents of those projections that you intend to make just like the
24 Defence teams usually do, that would help us to save time, and thank you
25 very much for that.

1 And Defence teams, yesterday you received a list of video
2 excerpts that the OTP wishes to produce during the testimony of
3 Witness 30, and if by any chance before the testimony of that witness
4 begins, if you wish to object to some of the sequences of those video
5 excerpts before the testimony actually begins, then this will assist us
6 to save time. This is a hope that I am expressing.

7 MR. MACDONALD: (Interpretation) There is an obligation of the
8 Chamber based on decision 1665 that the Defence team should inform the
9 Chamber three days before time.

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

11 MR. MACDONALD: (Interpretation) Regarding Witness 267, we have
12 been receiving documents even up till today regarding the testimony of
13 that witness and the documents that the Defence teams wishes to use.

14 PRESIDING JUDGE COTTE: (Interpretation) What the Defence of
15 Katanga has disclosed to us is a list of names, matching numbers, and
16 that should facilitate our proceedings.

17 MR. MACDONALD: (Interpretation) I am talking of documents that
18 were disclosed yesterday and before yesterday, whereas your decision 1665
19 requires three days. I would like to give the floor to my colleague
20 Mr. Dutertre for Witness 30.

21 MR. KILENDA: (Interpretation) I believe that this should
22 normally not be done in closed session.

23 PRESIDING JUDGE COTTE: (Interpretation) No. I believe, if you
24 wish, Court Officer, this part of the discussion can be reclassified
25 after our hearings.

1 MR. MACDONALD: (Interpretation) Before we begin, Trial Chamber
2 I is asking for your leave to -- for the disclosure of certain
3 transcripts, and my colleague and myself would like to discuss with that
4 Chamber on that issue. So we need three minutes to discuss that.

5 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we are
6 going to go into open session to discuss that problem.

7 (Open session at 11.39 a.m.)

8 COURT OFFICER: (Interpretation) We are in open session.

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

11 So it will be Mr. Dutertre who will address the Court.

12 Mr. Prosecutor, please proceed.

13 MR. DUTERTRE: (Interpretation) Good morning, Mr. President.
14 Good morning, your Honours.

15 Regarding P-030, in order to facilitate the work of the Court the
16 Prosecutor prepared about 20 folders, including the following elements:
17 Tab 0 and 0 bis, statement that is redacted according to your
18 instructions. Tab 1 to tab 29 includes documents containing the 29
19 excerpts that the Prosecution intends to produce during the testimony.
20 So for each excerpt we have a table which is similar to the table that
21 was submitted in our previous filing relating to excerpts and the
22 corresponding numbers of the video excerpts, the time stamps, and the
23 relevance of the video-clips, as well as references to the transcripts,
24 and for each excerpt there are the relevant pages of the transcription
25 and the corresponding translation of the videos of the excerpts in

1 question.

2 Right now we can hand over to the Defence teams, the Chamber, and
3 the Legal Representatives those folders which would make it possible to
4 facilitate work, because everybody will be able to look at those
5 documents before time.

6 I would also like to point out that folders have been distributed
7 to the interpreters for them to be able to prepare their work. So if
8 there is no objection, those folders can be distributed during the break,
9 and everyone will be sure or certain about the purpose of our presenting
10 those excerpts.

11 I would like to point out that we are prepared to produce these
12 excerpts in eCourt, and if possible we can have EVD numbers for that to
13 facilitate the handling and examination of those documents. So each of
14 those excerpts will be on eCourt.

15 That is what I wanted to say in order to facilitate the
16 proceedings.

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

19 Mr. O'Shea.

20 MR. O'SHEA: I'm very grateful to my learned friend. I can see
21 he's put an enormous amount of work into the preparation of his witness,
22 and I'm very grateful for those very useful tables which he's provided
23 us, and I just note his suggestion of providing DVDs with the extracts to
24 the parties. We of course have the full DVDs, but I just note his -- his
25 final offer, and I'd like to take him up on it.

1 Thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

3 And, Mr. Prosecutor, if you are indeed able to make those
4 disclosures at the end of the hearing to all parties and participants,
5 then we would be grateful.

6 MR. DUTERTRE: (Interpretation) For the folders, yes, but for
7 the DVDs, it would be in the course of the day that we will distribute
8 them to all the parties.

9 PRESIDING JUDGE COTTE: (Interpretation) Mr. Garcia, please, you
10 can address the Court.

11 MR. GARCIA: (Interpretation) Thank you, Mr. President, your
12 Honours. I intend to be brief.

13 As Mr. MacDonald has said, I wish to talk about disclosure of
14 evidence in order to place the Chamber in context. A few days ago
15 Mr. Hooper had asked Trial Chamber I to order the disclosure of the
16 evidence of Witness 321, who is currently testifying in Trial Chamber I.
17 This issue was discussed, and Trial Chamber I endorsed the proposal of
18 the Prosecution, that is, to disclose to the Defence evidence in the
19 transcripts related to three witnesses, Witness 267, 157, and 131. We
20 are working on these issues right now. We have already targeted certain
21 extracts of the transcript that can be disclosed to the Defence, and I
22 think we can make an initial disclosure this afternoon.

23 Let me point out that the testimony of Witness 321 is still
24 ongoing in Trial Chamber I, and the President of that Chamber asked us to
25 make the disclosure and to explain to you in this courtroom, which is

1 very important to the Defence, that almost all the excerpts were given in
2 private session. So the protection measures relating to that witness
3 have to be implemented, and the Defence has to be reminded that they
4 cannot discuss those evidence -- that evidence in open session when
5 cross-examining other Prosecution witnesses.

6 So with the leave of the Chamber, we are going to disclose the
7 evidence that we have already identified, and as time goes on, we will be
8 able to identify the other parts of the witness's testimony to disclose
9 to the Defence.

10 Thank you.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
12 Mr. Prosecutor. Then you will begin to disclose what it is possible to
13 disclose. Witness 321 is currently testifying, so this is going to be a
14 staggered disclosure, and we have understood that Trial Chamber 1 wished
15 their protection measures to be implemented here and respected by the
16 Defence team of Mr. Katanga.

17 I hope there is no objection here. The disclosure is going to
18 begin, and it will continue because Witness 321 is still testifying, and
19 the protection measures adopted by Trial Chamber I should be respected by
20 Germain Katanga's Defence team if they have to use testimony given in
21 private session in TC I. All that is now on the record.

22 Thank you.

23 Prosecutor, please.

24 MR. MACDONALD: (Interpretation) Just to avoid any confusion,
25 with your leave, Mr. President, it is an information from the decision of

1 Trial Chamber I, and we will disclose only extracts of the testimony that
2 are relevant to Witness 267, Witness 157, and Witness 31. So it is not
3 all the transcripts but only those specific excerpts.

4 PRESIDING JUDGE COTTE: (Interpretation) We have understood you
5 perfectly. Mr. Garcia confirmed that, and the information that we
6 informally received from the legal assistants in Trial Chamber I is quite
7 consistent with what you have told us. So Trial Chamber I authorised the
8 disclosure of the relevant excerpts of the testimonies of Witness 321,
9 157, 237, and 31, and this is subject to the respect by the Katanga
10 Defence teams -- team of the protection measures implemented by TC I.

11 We hope our statement is clear.

12 Mr. Hooper, please.

13 MR. HOOPER: Given the circumstances, can we hope that we'll get
14 those transcripts relating to the current witness today because we will
15 need them, in any event, before we cross-examine the witness, which we
16 anticipate will start tomorrow.

17 That's the first thing I'd like to mention. The second thing is
18 as the Trial Chamber may be aware, there are decisions concerning
19 intermediary 143 that have been taken over the last weeks and yesterday,
20 indeed, or the day before yesterday by Trial Chamber I that directly
21 relates to disclosure of events -- of matters relating to him, which
22 again are matters of importance for the Defence.

23 I understand that those orders are recurrent orders, are being
24 opposed by the Prosecution in Trial Chamber I, but in any event, as soon
25 as there is any movement on that matter we would be very grateful to have

1 forthwith the same disclosure as is being made or proposed to be made in
2 the Lubanga case.

3 Final two matters: In relation to those admissions that we've
4 been mentioning and discussing with the Ngudjolo team, the Ngudjolo team
5 opposed those admissions being made. We will move for an inter partes
6 agreement as between the Prosecution and the Defence to have those
7 matters admitted, or failing that, the two statements to which they
8 relate admitted and given EVD numbers.

9 I would submit that that matter can wait until next week at a
10 convenient moment after this witness has been concluded.

11 There's a final matter of a request for disclosure which has not
12 been met by the Prosecution. We'll raise that with the Chamber in
13 writing, very short motion, this afternoon. Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, regarding
15 the beginning of the disclosure of the relevant parts of the testimony of
16 Witness 321 in TC I, the Chamber understood that this will begin
17 immediately, that is, this afternoon, with the understanding that
18 tomorrow we will take out time from the hearings to devote that time to
19 Witness 418, that is, Dr. Baccard who has been recalled. We are not very
20 sure about how long this will take. Then we have the continuation of the
21 cross-examination of Mr. Kilenda, as well as other procedural issues, and
22 considering also the questions to be put by the Legal Representatives.

23 I think, Mr. Hooper, your cross-examination might only begin on
24 Monday afternoon except there is a pleasant surprise.

25 Regarding intermediary 143, we know that in TC I there are still

1 problems linked to the protection of that person. So this issue is still
2 pending. And regarding the request for disclosure that you have just
3 mentioned, maybe the Prosecutor will give us an answer right now.

4 Mr. Garcia, you can address the Court.

5 MR. GARCIA: (Interpretation) With your leave, Mr. President,
6 regarding Mr. Hooper's questions about disclosure today, yes, we can
7 disclose today what we actually have, but the examination-in-chief of
8 that witness has been concluded. The representatives have asked their
9 questions. The cross-examination has started but is not yet concluded.
10 So we are going to disclose what we have today.

11 Now, regarding admissions, we are going to discuss this matter
12 with Mr. Hooper to determine whether we should make those admissions or
13 not.

14 Thank you.

15 PRESIDING JUDGE COTTE: (Interpretation) The last point of
16 Mr. Hooper's intervention was that he made a request for disclosure which
17 was not satisfied and that he will file a brief motion in this regard. I
18 do not know whether you can react to that.

19 MR. MACDONALD: (Interpretation) Maybe Mr. Hooper did not dare
20 to mention that we were talking about Witness 219, but without
21 anticipating anything, Mr. President, we would like to recall that the
22 Chamber asked for a summary statement to be signed by the witness because
23 he was interviewed twice and recorded on audio and video. He had these
24 interviews with the OTP. We met with that witness, 219, and a statement
25 of about 50 pages was signed by the witness. We had a video recording,

1 and we actually do not have a transcript of that recording. We informed
2 the Chamber of that, because the summary statement is authentic.

3 They also wanted to have the recording, and we told them to raise
4 the issue with the Chamber and the Chamber will make its determination
5 because we have to know what the limits are. We receive an order from
6 the Chamber, and we have to provide a summary statement.

7 I should be careful about the transcripts, because I might be
8 going too fast, but are we going now as far as disclosing the recordings
9 also? That is the issue.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well. We will
11 wait for the motion of the Katanga Defence team, and we will make our
12 determination.

13 It is now time to bring in Witness 267. Court Officer, let us go
14 briefly into closed session to allow that witness to be brought into the
15 courtroom before returning to open session. So let us go into closed
16 session.

17 And, Court Usher, please, you can go and fetch the witness.

18 (Closed session at 11.57 a.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Open session at 11.58 a.m.)

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

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

7 Good morning, Mr. Witness.

8 THE WITNESS: (Interpretation) Good morning.

9 PRESIDING JUDGE COTTE: (Interpretation) I see that you can hear
10 me well.

11 Mr. Witness, our hearing could not continue yesterday and this
12 morning because of circumstances beyond our control. You must have been
13 wondering about that delay, but now we will continue with our
14 proceedings.

15 Mr. Prosecutor, please.

16 Questioned by Mr. MacDonald: (Continued)

17 MR. MACDONALD:

18 Q. (Interpretation) Good morning, Witness.

19 A. Good morning.

20 Q. This morning I would like to come back to a few points that came
21 up during your testimony on Tuesday, last Tuesday, and I'd also like to
22 deal with some new subjects. So I think this will take between 30 and 45
23 minutes.

24 I would like, first of all, to come back to this community effort
25 that you had mentioned which started in 2002 in the Walendu-Bindi

1 community, this community effort to defend the Ngiti interests. This was
2 when we were talking about the question of child enlistment. Was this
3 forced enlistment or voluntary enlistment. And when we were talking
4 about the voluntary enrollment you gave three examples.

5 I should like now to ask was there any forced enlistment, to your
6 knowledge?

7 A. Mr. Prosecutor, to the best of our knowledge and given the
8 elements that came to hand to us during the occupation of the Ngiti
9 people by the Ugandans, there was a general and community mobilisation,
10 and not everybody could escape this. They had to respond to the call
11 launched by the leaders. One could not escape this. Otherwise they
12 might be considered conspirers -- as conspiring with the occupiers.

13 This shows that there was enforced recruitment among certain
14 cases.

15 Q. Thank you. Now I should like to come back to the more specific
16 question of determining the children's ages. You mentioned the fact that
17 you had questionnaires or sheets which had to be filled in by the FRPI
18 when they sent children to you, and so you called these sheets A, sheets
19 B, sheet C, et cetera. And you said that it was thanks to these
20 questions that you were able to establish the approximate age of the
21 children. So you had written down certain criteria, and I would like to
22 come back to one of these criteria which might not have been addressed as
23 yet?

24 One of these assessments was that you quite simply visually
25 assessed the child in question.

1 A. During the interview, when the child disclosed his or her
2 identity by answering the questionnaire on sheet B with crossed words,
3 first we asked the place of birth, the year of birth, and the studies
4 completed by the child, the time that the child had spent in the armed
5 groups, and by observing and looking at the person in front of us, we
6 could assess the approximate age of the child. And it was in the answers
7 given by the child that we could assess their level of maturity. This
8 was among the criteria for assessing the age.

9 Q. Very well. I shall now change slightly, but we're still talking
10 about registration and demobilisation of children. You mentioned, and
11 the notebook attests to this, that there had been 952 children come
12 through. My question is the following: To the best of your knowledge,
13 did you demobilise all of the child soldiers from the FRPI movement?

14 A. No, Mr. Prosecutor, because in the initial interviews when the
15 person answered, number 9, she said that there were approximately 3.000
16 children according to her estimates, and therefore when I wrote this
17 report and sent this report to my partners, I had prepared in the
18 programming of these operations a -- an exit kit, a demobilisation kit,
19 for about 3.000 children that we expected to demobilise, and I underlined
20 the fact that the process had later become more difficult because there
21 was one -- there was some reluctant commanders who preferred to keep the
22 child soldiers in their groups.

23 We had demobilised the 900 children who came to the FRPI office,
24 and they escorted them to us.

25 Q. Thank you. You talked about person number 9, and I understand,

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1 then, that this person also was an important member. You mentioned the
2 organisation mentioned by E, is that so?

3 A. Yes, that is so, Mr. Prosecutor.

4 Q. Now let us focus on the question of the reluctance that you
5 mentioned. Last Tuesday, you mentioned your kidnapping, but what
6 happened to the other members of the organisation that goes and -- known
7 as D, set up in the area known as AA? What happened to the other
8 members?

9 A. As for the make-up of the team working in my organisation which
10 worked in the locality known as AA, there were three officers, including
11 myself, who came to headquarters, but the 15 others were personnel who
12 had been trained and recruited locally.

13 Obviously, during the operations they had also received threats
14 from these reluctant commanders.

15 THE INTERPRETER: The interpreter apologises. There appears to
16 be a sound problem.

17 PRESIDING JUDGE COTTE: (Interpretation) Is there some problem,
18 sir?

19 THE WITNESS: (Interpretation) There have been breaks in the
20 sound.

21 The others had also been threatened by these reluctant
22 commanders. In the programme there was a kind of monthly incentive for
23 the agents who were working on this, and these agents lived locally, and
24 they had to pay a kind of fee, because otherwise the reluctant commanders
25 who were -- who had refused to participate in the programme had requested

1 money in exchange for their safety. They were local staff. But as for
2 the others, the two others, they were not able to leave the site. They
3 were permanently located there day and night, because they were awaiting
4 the arrival of children.

5 MR. MACDONALD: (Interpretation)

6 Q. What about the site itself? Did that receive threats or
7 intimidation?

8 A. Mr. Prosecutor, when Mr. Katanga was there, there was relative
9 security, because his men showed respect. Once he left, that is when we
10 started receiving continuous threats. Because we were side by side with
11 his Chief of Staff headquarters, we received stones that were thrown.
12 Some remained behind after his departure, and every night stones were
13 thrown at us on our site.

14 Q. Just to finish with this item, the organisation known as the name
15 of D, did it relate these attacks or threats to individuals within the
16 FRPI in the area known as AA?

17 A. Obviously, because to this effect Commander Germain Katanga, once
18 he entered the site, was followed by his officers who had accepted the
19 idea of demobilisation, and they were people who lived side-by-side with
20 him.

21 Q. Excuse me, but my question was something different. I'll
22 reformulate it. Did you make a direct link between these incidents and
23 an individual within the FRPI?

24 A. Mr. Prosecutor, I was getting there, just to be able to
25 understand these -- how these people had to take action. They had agreed

1 to demobilisation, and when Katanga became a general, once he became
2 Bahati (as interpreted), once he became commander or colonel, then it was
3 to him that we went to report after each of these attacks. We reported
4 to the site and there were soldiers from the UN, MILOB from MONUC, and
5 they noted our security reports.

6 Q. What do you mean by MILOB, military observers?

7 A. Indeed.

8 Q. Colonel Bahati. Do you know the full name of this
9 Colonel Bahati?

10 A. I don't remember any other names, except I do remember from the
11 past he was intellectual, and he had been a nurse at some point.

12 Q. Do you happen to know when he had been a nurse?

13 A. I am not able to give any further details.

14 Q. But this was a certain Bahati who had been a nurse and who was
15 now a colonel?

16 A. Within the FARDC.

17 Q. Now he is a colonel in the FARDC; is that right?

18 A. Yes. Given his degree of understanding, he tried to dissuade
19 others from continuing the attacks on us.

20 Q. Witness, we shall --

21 MR. HOOPER: A bit of confusion has arisen which perhaps my
22 friend could address. In the English it reads to the effect that Germain
23 Katanga became a Bahati, and then a Colonel, but it appears that we are
24 talking of an individual, obviously quite separate from Germain Katanga,
25 and could that be made clear on the transcript. Thank you.

1 MR. MACDONALD: (Interpretation) I shall deal with this, your
2 Honour.

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

4 Yes, it is important for the English transcript to be faithful
5 and apparently there is a problem. So either when we read through the
6 transcripts again we will enable the English to catch up with the French
7 or we can --

8 MR. MACDONALD: (Interpretation) I think we can deal with this
9 now, your Honour.

10 Q. Mr. Katanga was named general, and he left for Kinshasa around
11 March 2005; is that correct?

12 A. Yes.

13 Q. And his replacement at that time?

14 MR. HOOPER: My friend's leading, and, in fact, Germain Katanga
15 went on the 4th of January, 2005, not March. It's very important to get
16 that right.

17 MR. MACDONALD: Sorry. Sorry.

18 PRESIDING JUDGE COTTE: (Interpretation) Let us try to simplify
19 things and let's avoid undue complications.

20 Mr. Prosecutor, if you could please clarify this question of the
21 discrepancy between the transcripts, please do so. If not, then I would
22 recommend that this be done during the editing of the transcripts to make
23 sure that the English transcript listens -- is put up-to-date, and please
24 be careful with the dates. Thank you.

25 MR. MACDONALD: (Interpretation) I think there might be a

1 problem with the English transcript. It is unreadable. There is a whole
2 series of letters, at least that's what's on my transcript. I don't know
3 if it's the same for my learned colleagues.

4 PRESIDING JUDGE COTTE: (Interpretation) The court cannot
5 imagine that there has been some kind of illness on the English
6 transcript. What is going on?

7 MR. HOOPER: The description a whole lot of letters is what I
8 often find when I look at the French, but, in fact, the English
9 transcript is running smoothly on my screen. The one problem, as I say,
10 is the simple confusion that the word "Bahati" appears to have been used
11 or synonymous with colonel; whereas, I think we are talking, as
12 Mr. MacDonald appreciates, of somebody else, and I appreciate
13 Mr. MacDonald's trying to get the separation clear. So perhaps he can
14 continue with that effort.

15 MR. MACDONALD: (Interpretation) Yes, I shall continue with
16 this. We have been able to disconnect and reboot and now we are
17 connected again.

18 PRESIDING JUDGE COTTE: (Interpretation) You may continue then.
19 Please try to clarify.

20 MR. MACDONALD: (Interpretation).

21 Q. Let's forget the dates for the moment, even though I'm prepared
22 to accept that it was the 4th of January, 2005. Quite simply, when
23 Mr. Katanga went to take up his post as general in Kinshasa, who took his
24 place in (Expunged) when the organisation -- with the organisation D?

25 I shall ask my question again.

1 You mentioned that Mr. Katanga was appointed general, and we knew
2 that he was going to take his leave from the region. Then you talked
3 about Colonel Bahati. When you met with Colonel Bahati, it was to him
4 that you made your reports about these security issues?

5 A. Yes.

6 Q. And which group did Colonel Bahati belong to?

7 A. Bahati was an officer of the FRPI.

8 Q. And today?

9 A. Today he is a colonel in the FARDC. He was reintegrated into the
10 army.

11 PRESIDING JUDGE COTTE: (Interpretation) Well, now I think that
12 we have established the chronology, the departure of Mr. Katanga,
13 replacement by Mr. Bahati, and then Mr. Bahati made a colonel who is now
14 in the FARDC.

15 We may continue.

16 MR. MACDONALD: (Interpretation)

17 Q. I should now like to come back to your concrete activities in
18 June 2005. You said that you coincided with the PNDDR DRC programme; is
19 that correct?

20 A. In June 2005, all of the five sites of the NDDR programme shut
21 their doors. We who had come from headquarters returned to headquarters.

22 Q. Why did the PNDDR DRC programme end at that point in time? What
23 was the reason?

24 A. It was planned, as I mentioned before, that DRC was to be a pilot
25 programme in the PNDDR. The initiators had thus and decided to make an

1 assessment at the end of six months to see where we were at, what
2 difficulties had been encountered, what needed correcting before
3 continuing. So it wasn't a whole final project. This was how it was
4 planned. It had been part of a long-term plan, and it was after this
5 point in time that we started making the assessment.

6 Q. And you explained to us a little bit some of the continuity of
7 the activities in Bunia in this same period of 2005. If I can take you
8 back to 2006 just for a moment, I have a question. CONADER, was CONADER
9 active, to your knowledge, in 2006, and if so, could you please tell us
10 when? Could you name a date or a month, if you know it?

11 A. In 2006, we came under the framework of the PNDDR. And as
12 concerns child protection, this was part of DDR 3. So it was CONADER who
13 took over the activities, because there had -- because there were still
14 among adults and the children group -- armed groups who had not yet
15 demobilised in 2006, and this was true for the whole of our subregion.
16 We relaunched in June 2006 the DDR 3 programme to recover all of the
17 remaining cases, all of the non-demobilised cases from 2003, 2005.

18 Q. So if I've understood correctly, there was a DDR 1, DDR 2
19 programme, and finally DDR 3 programme which was the last chance for
20 demobilising, and this was in June 2006; is that correct?

21 A. That is correct. It was the last chance. It was the last chance
22 under the PNDDR as part of the government between the government and
23 armed groups.

24 Q. Let us change register for a moment. Let us come back to the
25 military structure briefly.

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1 Last Tuesday you described the structure by giving us the names
2 of the battalions, and would I like to show you one item.

3 MR. MACDONALD: (Interpretation) And I shall call on item
4 DRC-OTP-1000-0045. It's annexed to your declaration. And with the leave
5 of the Chamber, I think it would be preferable for this item to be
6 considered confidential because of some identifying marks.

7 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could
8 you please bring up this item on the screens in such a way that it can be
9 kept confidential.

10 COURT OFFICER: (Interpretation) Please press "PC 1" on your --
11 your tablet if you want to see this on the screen.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Court Officer.

14 Prosecutor, you may continue.

15 MR. MACDONALD: (Interpretation)

16 Q. Witness, can you see this item?

17 A. Yes, Mr. Prosecutor, I can see the item.

18 Q. Do you recognise this map? Do you recognise the writing made on
19 this map?

20 A. Yes, I recognise it, Mr. Prosecutor.

21 Q. I am to understand that it was you that had added these
22 clarifications to the map?

23 A. Yes, it was me.

24 Q. Briefly, we're going to ask you to mention the different
25 battalions and the different towns or villages where these battalions

1 were located; is that correct?

2 A. Yes, Mr. Prosecutor.

3 MR. MACDONALD: (Interpretation) I would ask, your Honour, that
4 an EVD number be attributed to this item.

5 PRESIDING JUDGE COTTE: (Interpretation) Court Officer.

6 COURT OFFICER: (Interpretation) Thank you, your Honour. The
7 document which was known by as DRC-OTP-1000-0045 shall have the EVD
8 number EVD-OTP-00122 and shall be listed as confidential.

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

11 To the Defence, the accused, are you able to see the document on
12 your screens? Thank you.

13 Mr. Prosecutor, you may continue.

14 MR. MACDONALD: (Interpretation)

15 Q. On this map where you have -- where you have drawn on the names
16 of the battalions and the names of the commanders that you had mentioned
17 before, does this cover all of the FRPI camps in the region?

18 A. It does not cover all of the camps. Here we have mentioned the
19 battalions, but there were other camps that we did not mention as we did
20 not have full knowledge of the whole structure.

21 Q. To your knowledge, how many camps were there in total in the
22 Walendu-Bindi community at the time when you were operating?

23 A. We had been told there were 22 camps.

24 Q. For six battalions, if I understand correctly?

25 A. Indeed.

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Questioned by Mr. MacDonald (Continued)

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1 Q. Thank you.

2 MR. MACDONALD: (Interpretation) We have now finished with this
3 item. It may be removed.

4 May we please have the item removed.

5 PRESIDING JUDGE COTTE: (Interpretation) Yes. That has -- that
6 has been done. Thank you.

7 MR. MACDONALD: (Interpretation).

8 Q. I'm going to ask you about another item. You spoke to us about
9 the FRPI commanders saying that some were reluctant, others who were more
10 willing to go along with this. Now I'm going to ask you, with the
11 permission of the Bench, whether we can call up, and it would seem that
12 it's rather difficult. It's a 30-second extract from a video film that
13 we have on our list. The video is DRC-OTP-1017-1482. And more
14 specifically, the following minutes, 01:24:50 to 01:25:20.

15 MR. MACDONALD: (Interpretation) And I've been told that there
16 is a noise problem in the headphones. There is a problem for the
17 interpreters?

18 PRESIDING JUDGE COTTE: (Interpretation) The first thing,
19 several of us do indeed have this whistling in our ears, so we'd like
20 that to be eliminated. And second question, the video excerpt, could we
21 please have it called up on the screen.

22 COURT OFFICER: (Interpretation) I beg your indulgence for a
23 moment, please.

24 MR. MACDONALD: (Interpretation) While we're waiting, perhaps I
25 could say a few words to the Chamber. When we show the extracts of the

Witness: Witness DRC-OTP-P-0267 (Open Session)
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1 video to Witness P-30, we'll be doing it from the Prosecutor's seat in
2 order to facilitate things as it's possible for us very quickly to
3 identify the minutes from these very lengthy, over one-hour sections. So
4 I was just telling you that it can be done by the Registry, but that's
5 somewhat more difficult, perhaps, from a technical point of view, because
6 we're more familiar with dealing with this.

7 And also, your Honour, in view of the delay, I think we ought to
8 start wondering about the actual appearance of Witness 30, P-30.

9 PRESIDING JUDGE COTTE: (Interpretation) If I'm not mistake, the
10 witness is already in The Hague, and if I'm not mistaken, knows that
11 there's likely to be an interruption in his testimony before its resumed.
12 Well, we'll see. We'll see what the situation is tomorrow when the time
13 comes.

14 Court Officer.

15 COURT OFFICER: (Interpretation) Yes. Thank you, your Honour.
16 Could you confirm the level of confidentiality for this extract?

17 MR. MACDONALD: (Interpretation) Public.

18 COURT OFFICER: (Interpretation) Please press "PC 1" in order to
19 view the video.

20 MR. MACDONALD: (Interpretation) Just the image, please.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Court Officer. Does everybody see the image on the screen? The accused,
23 do you see it? Both of you, Mr. Katanga, Mr. Ngudjolo? Yes. Very good.

24 Please proceed, Mr. Prosecutor.

25 MR. MACDONALD: (Interpretation)

Witness: Witness DRC-OTP-P-0267 (Open Session)
Questioned by Mr. MacDonald (Continued)

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1 Q. I'll ask you to take a look at this excerpt of 30 seconds,
2 please, Witness, and then I would put questions to you. Thank you.

3 (Video-clip played)

4 MR. MACDONALD: (Interpretation)

5 Q. My question is as follows: Do you recognise that individual, the
6 person we see on the screen with the beard?

7 A. Yes, Mr. Prosecutor, I do recognise him.

8 Q. What's his name, please?

9 A. Commander Dark.

10 Q. I would ask that an EVD number be given to this excerpt, please.

11 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please.

12 COURT OFFICER: (Interpretation) Thank you, your Honour. It's
13 the extract from the video DRC-OTP-1017-1482, going from 01:24:50 to
14 01:25:20. It shall bear the EVD reference as follows: EVD-OTP-00123 and
15 will be registered as a public document.

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

18 MR. MACDONALD: (Interpretation) With your indulgence, your
19 Honour, I'd now like to show the witness a photo which is on the list of
20 documents that we intended to show to the witness with the following
21 reference: EVD-D02-00026.

22 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
23 have this brought up on eCourt.

24 MR. MACDONALD: (Interpretation) Public.

25 COURT OFFICER: (Interpretation) In order to view this document,

1 please press "PC 1" next to your computers.

2 MR. MACDONALD: (Interpretation) Could we zoom in on the photo,
3 please, so that we can have a better view, particularly of the person's
4 face.

5 Q. Witness, do you recognise this individual on the photograph?

6 A. No.

7 Q. You do not recognise that person?

8 A. No, I don't.

9 Q. Very well. Thank you.

10 MR. MACDONALD: (Interpretation) We can remove this item.

11 Q. Witness, I'm now going to put questions to you about the women,
12 the women either as child soldiers or female soldiers. Female military
13 personnel, did they have a special name?

14 A. The women soldiers were referred to as PMF.

15 Q. And what does that stand for?

16 A. It must come from English. It must be personnel military
17 feminine. This was, anyhow, the most frequent term used to refer to the
18 women soldiers in the armed groups.

19 Q. Were you able to see how these women came to be female military
20 staff?

21 A. I cannot say in what circumstances they did become soldiers, but
22 as for their state, their behaviour when they were in the armed groups, I
23 would say that it was not the normal behaviour you would find of women or
24 girls in civilian life. They were far more excessive in their behaviour
25 and more violent. That is what I saw.

1 We lived with those women in the armed groups. We saw them.

2 Q. Were you able to see whether the soldiers had wives?

3 A. During demobilisation, out of 952, there were 118 women or girls
4 out of this total of 952, and out of the 118 there were child mothers, in
5 other words, women who came -- who lived with soldiers. At the start of
6 the programme it was somewhat confusing to find out who was actually a
7 soldier, whether the woman concerned bore arms or not, but after
8 clarification, we were asked to include any girl or woman soldier,
9 whether or not she was bearing arms, who was taken was deemed to be
10 eligible under the programme.

11 Q. Now, let's leave aside the issue of the female military
12 personnel, and let's come back to the question as to whether the
13 soldiers, aside from the military personnel, the female military
14 personnel, had wives or women in the region of AA when you were there.

15 A. When we went for the very first time to the staff headquarters,
16 we saw that there were wives and children in the camp, and as part of our
17 training, we were told to differentiate because there were wives and
18 children who were termed dependents. In other words, if a soldier had
19 his family there, then those wives and children were referred to as the
20 soldier's dependents.

21 Q. And as for these wives, these women, what was their ethnicity?

22 A. They were from the same tribe.

23 Q. Were there wives from any other tribes?

24 A. I'm not absolutely certain, but I would say that they were all
25 from the same tribe, and I'm saying that with about 99 per cent

1 certainty.

2 Q. As -- were you informed of the situation of women from other
3 tribes during the time you spent there?

4 A. Within that locality I can say that among my staff there was one
5 nurse whose husband came from that area, and she was from a different
6 tribe.

7 Q. Witness, about -- I'm talking about the soldiers, the soldiers of
8 the FRPI. Did they have wives from other ethnic groups?

9 A. Personally, I didn't meet any women from other tribes.

10 Q. I'm now coming to the final area of questions, or perhaps I could
11 first of all put a question for further clarification. I'm not entirely
12 sure whether I've covered this already.

13 In June 2006, under DDR 3 there was the CONADER. So you had
14 DDR 3. I'd like to know how long this operation DDR 3 was running for.

15 A. Our intention was that it would cover a period of 90 days. It
16 was a 90-day programme.

17 Q. And do you know whether that did run for the 90 days?

18 A. We started it, but we had to keep extending it because of the
19 reluctance of the warlords. They had retrenched their position and they
20 didn't want to go along with this programme, so we were still involved
21 with -- in negotiations, and every time it was realised that they weren't
22 demobilising we had to postpone things. So we constantly had to
23 renegotiate. That was the difficulty that we were facing under DDR 3.

24 Q. Witness, on the first day of your testimony you referred to a
25 trigger event that led to your activities, and that was the capture of

1 Bogoro. You said it was by the FNI and the FRPI. As far as you know,
2 according to the information have, during that attack where was Germain
3 Katanga to be found?

4 A. He had to be in his stronghold. He had to be in his stronghold,
5 in his own area.

6 Q. But where was he during the attack against Bogoro on --

7 MR. HOOPER: Please don't answer, Mr. Witness. Sorry, there's a
8 formal objection taken to the nature of the evidence that's being sought
9 from this witness.

10 As I indicated last week, the general full and formal objection,
11 if I can put it like that, is being taken by Mr. O'Shea, and -- I see
12 it's eight minutes to 1.00.

13 MR. MACDONALD: I will reformulate, Mr. Hooper.

14 MR. HOOPER: Well, just one moment. Just so I'm not getting up
15 and down, I want to make it quite plain that we object to any hearsay
16 element that's -- appears to me to be the objective of this question in
17 the light of the evidence that we've heard so far and the dangers it
18 presents.

19 Now, I think my friend may appreciate that problem, and if he
20 withdraws the question, then obviously I don't need to take up more time.

21 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, you must be
22 very careful not only as regards what Mr. Hooper has just said, but also
23 as regards line 20 of page 36 of the transcript, in other words, the
24 question that you were putting. The witness answered, "He had to be in
25 his stronghold." The way in which that answer was given should encourage

1 you not to take things too much further.

2 Do you still wish to put that question, or don't you think that
3 it would --

4 MR. MACDONALD: (Interpretation) I will withdraw my question,
5 your Honour. We don't need to have a legal argument here. I'd just like
6 note to be taken of our objection, the fact that hearsay is not
7 admissible in this Chamber. We obviously disagree with that argument,
8 but we don't need to have that discussion here and now, because we've got
9 certain cases of hearsay that have been admitted into evidence. So we're
10 not talking about that. But anyhow, I will reformulate my question.

11 PRESIDING JUDGE COTTE: (Interpretation) Okay. If we can get
12 things clear. As far as you're concerned, you don't want at this moment
13 in time for us to embark upon a discussion on hearsay; is that correct?
14 Fine. In that case, please reformulate your question carefully so as to
15 avoid prompting a further objection immediately.

16 MR. MACDONALD: (Interpretation)

17 Q. I understand that you had discussions with Mr. Germain Katanga
18 during your activities.

19 A. Prosecutor, we had exchanges, and everything was to do with the
20 programme that we were working on and the withdrawal of the children. We
21 didn't go any further than that, nothing to do with his private life. It
22 was quite simply limited to the framework of our programme.

23 Q. So I'd like to put the following question to you: When you
24 demobilised children, did you discuss with the children the question of
25 fighting they had been involved in?

1 A. During the interview and on the verification sheet, there are
2 areas in which we ask the children when they were recruited whether they
3 had stayed in a single camp for the duration or did they spend a certain
4 amount of time in another camp, and this was clearly defined on the
5 sheet. We knew -- we could see whether the child had moved from one camp
6 to another and, if so, what was the reason for this. That was clearly
7 stated. That was something that was done during the interview with the
8 child.

9 Those who spent a long time in the armed groups, they spoke about
10 the different battles they'd been involved in, referring to the areas in
11 Nyankunde, Bogoro, et cetera. It depended on the child. It depended on
12 how long that child had been in the armed group. If a child had been
13 mobilised in 2003, obviously he didn't know what happened before that
14 date.

15 Q. Well, precisely on that point, during your discussions with the
16 children when you were talking about the fighting, did they also talk
17 about Germain Katanga's exploits?

18 A. Prosecutor, in general, throughout the group Germain Katanga was
19 highly thought of, and he was acknowledged as being a valiant soldier.
20 He was highly thought of because he defended his community, and that is
21 why he was so well known and respected.

22 Q. On the basis still of the discussions that you had with these
23 youngsters, was he well known for a particular battle?

24 MR. HOOPER: (Previous translation continues) ... that question
25 is answered, there's an objection.

1 MR. MACDONALD: Can we do it without the witness being present,
2 please, your Honour? I understand it may be disturbing, but I think it
3 would be wiser in the circumstances.

4 PRESIDING JUDGE COTTE: (Interpretation) Perhaps we could have
5 this discussion if you were to speak in English and the witness could
6 remove his headphones.

7 MR. MACDONALD: (Interpretation) Ah, the witness understands
8 English.

9 PRESIDING JUDGE COTTE: (Interpretation) Do you understand
10 English, Witness?

11 THE WITNESS: (Interpretation) I think I'll have to leave the
12 room.

13 PRESIDING JUDGE COTTE: (Interpretation) You are a very honest
14 man, sir, and we appreciate that.

15 So, Court Officer, we shall quickly go into closed session so
16 that the witness can leave the courtroom while we have a procedural
17 exchange at the request of Katanga's Defence. And also the Prosecutor.

18 (Closed session at 1.00 p.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Open session at 1.01 p.m.)

3 COURT OFFICER: (Interpretation) We in open session,
4 Mr. President.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

6 The Prosecutor's question which prompted the objection was on
7 page 40, line 6, of the French transcript. The question was as follows:

8 "Still on the basis of your discussions with these young people,
9 was he well known for a particular battle?

10 And "he" referred to Katanga.

11 The witness started by answering "To our knowledge --" and then
12 Mr. Hooper stood up.

13 Are you the one taking the floor, Mr. O'Shea, on this objection?
14 If I understood you well, we are not going to enter into a major
15 discussion on hearsay.

16 MR. O'SHEA: I think the first point is this: If I take your
17 Honours to paragraph 48 of the statement of this witness, your Honour
18 will see there the basis of where Mr. MacDonald is leading, and it is, of
19 course, the subject which is giving rise to this contention over hearsay.

20 Mr. MacDonald has tried to sort of come in in another way, as it
21 were, and I think it's important for us to read this paragraph, and I
22 will read it for the record.

23 "(Interpretation) Germain Katanga was --"

24 (In English)(Previous translation continues) ... of putting into
25 evidence.

1 "(Interpretation) Germain Katanga was respected and venerated by
2 his troops, and this was mainly because of his success when he led the
3 Bogoro attack and -- in 2003. I was told this by my workers as well as
4 by other people from the Ngiti community. The Ngiti talked about the
5 exploits of Germain Katanga during the Bogoro attack. This means that he
6 led the attack, and he had recovered a large amount of arms and
7 ammunition."

8 (In English) Your Honour, we need to look not just at the
9 question which has just been asked by MacDonald but also the question
10 which my learned friend asked before that, because what my learned friend
11 has done, in order to get here by another route, is to ask about the
12 interviews with the child soldiers. And then having gotten a response to
13 that answer, has then gone on to ask about the notoriety.

14 Now, the first -- the first difficulty is this before we touch
15 anywhere near the question of hearsay, the first difficulty is the
16 question of notice to the Defence. We're dealing with a very, very
17 sensitive area here, obviously. We're dealing with this witness's
18 hearsay knowledge of the responsibility of the accused at the battle of
19 Bogoro. And when one reads the paragraph which I've just read out, what
20 we've been put on notice of is reports from the agents of this witness
21 and reports from the Ngiti community. We haven't been put on notice that
22 the interviews that this gentleman has been conducting with the child
23 soldiers, which is of course the -- the main part of the evidence of this
24 witness, that those child soldiers that he interviewed had something to
25 say about the responsibility of Mr. Katanga.

1 The problem is that this witness is here to talk about the
2 demobilisation of child soldiers. So if -- if the Prosecution knows
3 something that has been said by the child soldiers who have been
4 interviewed, then the Prosecution must put the Defence on notice that
5 such conversations have taken place with the interviewed child soldiers,
6 because there's a big difference between that and the kind of rumour from
7 the community in general and the agents of this witness which comes
8 through in paragraph 48. So that's -- that's the first problem, in my
9 submission.

10 The second problem we need not, as your Honour rightly points
11 out, come to immediately, which is the question of the admissibility of
12 this kind of evidence which essentially will go to the question of its
13 reliability. I won't go into that argument immediately, but I will
14 invite my learned friend to state his position to us and to your Honours
15 as to what he intends to do from here, because if he wishes to now elicit
16 evidence of what this gentleman has been told by people working for him
17 who interview child soldiers or directly by child soldiers,
18 notwithstanding my point about notice, then -- then we are forced into
19 the argument on hearsay, unfortunately. But I think we need to -- I
20 think Mr. MacDonald needs to put -- place his cards on the table. Is he
21 attempting to adduce hearsay evidence through this witness or not?

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

23 Just one moment, please.

24 (The Trial Chamber confers)

25 PRESIDING JUDGE COTTE: (Interpretation) The Prosecutor, please,

1 you have the floor.

2 MR. MACDONALD: (Interpretation) Thank you, Mr. President. I am
3 on my feet because I was afraid that the Bench would take a decision
4 before we explain ourselves.

5 PRESIDING JUDGE COTTE: (Interpretation) You don't only have the
6 opportunity, but you have that right.

7 MR. MACDONALD: (Interpretation) Mr. President, last Wednesday
8 the Chamber gave us guidance on the procedure to adopt, to deal with such
9 issues. I understand that any such information may have a prejudicial
10 effect, but I believe that the Prosecutor could have presented a
11 foundation; that is, the basis for the knowledge of the witness, but,
12 yes, it is hearsay, but it comes from a source, a direct source, that is,
13 children who took part in the battle.

14 There are other things that were told to him by members of the
15 Ngiti community, but the witness has given information, and the Defence
16 will have the opportunity to cross-examine -- to cross-examine. So the
17 Defence will have the opportunity to test that foundation and that basis,
18 but ultimately the source of that information is the demobilised children
19 who participated in the fighting, and you have guarantees of their
20 demobilisation, and at the end you will be able to determine the value or
21 the weight to give to these answers. I believe that in the search of the
22 truth this question is legitimate and relevant. The answer that will be
23 given will be assessed at the end and within the framework of the overall
24 evidence.

25 We defer to the Chamber without going into that hearsay argument

1 or discussion which will be endless, because we have precedents in
2 Pre-Trial Chamber I and Trial Chamber I also. Such questions and answers
3 are admissible. This was our last question -- is the only question. We
4 can put it to the witness tomorrow morning, or the Chamber can put it to
5 that witness after your decision if you reflect on it.

6 Mr. President, the Bench can ask that question to the witness
7 tomorrow, and we will hear the answer that he's going to give us. But in
8 the ascertainment of the truth, if the Chamber feels that this question
9 and the answer may be important; if the Bench or if the Bench believes
10 that this question or answer is not relevant, then we will defer to the
11 Chamber.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Mr. Prosecutor.

14 Mr. O'Shea, please.

15 MR. O'SHEA: (Previous translation continues) ... to point out
16 that it's entirely clear from what my learned friend has just said that
17 we are bang in the middle of the debate, unfortunately. He says without
18 going into the discussion about hearsay and then explains why this
19 particular hearsay is admissible.

20 So this is -- there is an objection to -- to my learned friend
21 eliciting hearsay information on the responsibility of Mr. Katanga at the
22 Bogoro attack from this witness, and I don't see anyway around it other
23 than that I provide my submissions on that.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. O'Shea.

25 The Chamber would not wish that the decision handed down last

1 Monday afternoon should be interpreted beyond the scope for which it was
2 intended. We said that if the witness himself had discussed with child
3 soldiers during that demobilisation process, and if he himself directly
4 received information about the time spent in the militia group at the
5 site at which those children were demobilised, and this is information
6 about battles in which those children participated, then these questions
7 would be admissible. That is what the witness heard himself directly.

8 Mr. O'Shea, Mr. Prosecutor, we have to recognise that apparently
9 some of the information in the possession of the witness was given to him
10 by his staff members who themselves had received that information from
11 the child soldiers. So this is information received from third parties,
12 and that is what seems to create problems for the Katanga Defence team.

13 Mr. Prosecutor, if you're asking the witness questions about
14 information that was given to him directly, then that is admissible, but
15 if you are asking him what he heard from his staff members who themselves
16 heard that information from the child soldiers, then it would not be
17 admissible.

18 MR. LUVENGIKA: (Interpretation) This issue is of important --
19 of importance to us in more than one respect. The questions that we
20 intend to put to the witness would fall within the same context, the same
21 approach as that adopted by the Prosecutor. I would like to draw the
22 Chamber's attention to the fact that Witness 267 was the boss of that
23 organisation, and his workers were working for him, and the statements
24 received from the children were recorded in -- in forms, in documents.
25 So through that mechanism, the information that might have been

1 accessible to the witness because he had possession of documents filled
2 in by his own workers and that he had to hand over to his partners, I do
3 not think that can be considered as secondhand information.

4 It is true that this is not the time to open the discussion on
5 hearsay, but we believe that the determination of the truth should have
6 priority over certain principles which may be obviously important to
7 Mr. Katanga's Defence team, but here our main concern is to know the
8 truth. He did a lot of work with thousands of children. He has
9 confirmed that they took part in fighting, and on this issue the
10 Legal Representatives find themselves in a bit of a quandary regarding
11 whether or how to ask this witness questions.

12 Thank you.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
14 Mr. Gilissen.

15 MR. GILISSEN: (Interpretation) I think my learned colleague
16 should have the last word, which is why I want to intervene now.

17 We are, of course, beating about the bush regarding the hearsay,
18 but we are in that debate. Either we have that debate right now or we
19 ask the question, but we should not accept any half measures. I
20 personally admit, and I have not practiced law before this particular
21 jurisdiction, but there are reasons. The Legal Representatives have
22 their rights, but do I not know to what extent they can touch on legal
23 issues. But my first observation is as follows: Even without talking of
24 hearsay, the question that the Prosecutor intends to ask and which we
25 also intend to ask obviously does not at all concern the reality of the

1 information that this witness might have received, but it actually
2 concerns whether he did receive information. We are not actually within
3 the realm of hearsay, and I can only refer to Mr. MacDonald in the Tadic
4 case.

5 This is a different scenario. The question being put to the
6 witness is to give us an account of what he came to know personally, even
7 if he's told that Mr. X or Y was en masse, which is a theory that is not
8 credible, this would not be reliable. Irrespective of the reality, this
9 can be the subject of cross-examination.

10 Technically speaking, this is not hearsay. What the Prosecutor
11 wishes to say, and here I'm not playing the role of a subsidiary
12 prosecutor, it is simply because we want to know what the victims know.
13 We want to know what this witness was able to hear, whether he heard
14 anything.

15 He has told us that he heard something, and obviously -- and I
16 can understand the Defence. They do not want to know what he heard.

17 What is of interest to us is what he heard, and depending on what
18 the Chamber determines regarding that is really not our issue. We are at
19 the very heart of the purpose for the testimony of this witness.

20 What are we being told here by the Defence? It is the fact that
21 this person participated in demobilisation. He has told us that these
22 children were given the time to express themselves, particularly those
23 who had had difficulties. So he has knowledge of information that may go
24 from the most frivolous to the most interesting. And what would appear
25 to us to be prejudicial to the good administration of justice and the

1 ascertainment of the truth is that by playing hide and seek our Chamber
2 and the victims will finally not be informed as what happened and what is
3 said. Whether it is Mr. Katanga himself or any other party, we believe
4 we need to have the information that the witness knows. Either he
5 received it through the forms that were filled, or he received that
6 information from his staff members. He certainly has information, and we
7 wish to know that information for what it's worth. And using this
8 technical point of the hearsay, I believe this is an old problem. This
9 is an old issue. In civil law this is accepted, and even in common law.
10 In 127 cases in the United States, there was even a Statute that was
11 adopted on that.

12 So what we are looking for is not hearsay, but what this person
13 received as information, and my learned colleagues would be in their
14 right to challenge whether the witness actually received that information
15 or not, but within the framework of a fair trial, they can actually
16 cross-examine.

17 I am repeating myself, but we have to avoid making a mistake. We
18 have the right to have that information, and I believe that the Chamber
19 particularly has a right to that information. What they will make of it
20 will depend on them.

21 Thank you.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
23 Mr. Gilissen.

24 Mr. O'Shea.

25 MR. O'SHEA: (Previous translation continues) ... provided any

1 argument yet. I've listened to the arguments of the Prosecution. I've
2 listened to the argument of the Legal Representatives and to you,
3 Mr. President, outlining your -- your views on your prior decision, but
4 we -- we -- I'd like it to be understood that the nature of what we have
5 a difficulty with, because I think it's been slightly misunderstood here
6 or there, we don't simply have a difficulty with hearsay evidence coming
7 from sources other than child soldiers. We also have a problem with
8 hearsay evidence coming from child soldiers.

9 Your Honour has quite rightly set out that it's legitimate for
10 this witness to speak about his interactions, his direct interactions,
11 with child soldiers. He is, after all, here to speak about child
12 soldiers and the process of demobilisation, and your Honour has referred
13 to your Honour's prior ruling in that respect. But what we're
14 complaining about here is a specific piece of evidence which my learned
15 friend Mr. MacDonald is seeking to adduce before this Chamber, a specific
16 piece of evidence relighting to the responsibility of Mr. Katanga, and in
17 that specific context we have the right to question the reliability of --
18 of evidence of this nature, even if it comes from child soldiers, which
19 this witness has come here to talk about.

20 Your Honours will remember that I -- I referred a few days ago to
21 the separate opinion of Judge Shahabuddeen in the Nahimana case before
22 the Appeals Chamber and the fact that Judge Shahabuddeen had recognised
23 on behalf of the Appeals Chamber the principle that one doesn't simply
24 look at probative value but one also has to look at the prejudicial
25 effect of evidence, and where that prejudicial effect outweighs the

1 probative value of the evidence then it becomes a difficulty.

2 The Appeals Chamber has recognised in the ICTR, ICTY on several
3 occasions that the question of reliability of evidence goes not only to
4 the weight of the evidence but also to the question of the admissibility
5 of the evidence. So the fundamental question remains: What is the
6 reliability of the evidence that my learned friend is seeking to adduce.

7 Now, there are -- there are several problems. The first problem
8 is this: We are dealing with conversations which are taking place --

9 (The Trial Chamber confers)

10 PRESIDING JUDGE COTTE: (Interpretation) It is not possible to
11 continue for much longer because of technical reasons. I'm sorry to
12 interrupt you, Mr. O'Shea, so we would like to ask you to submit your
13 arguments in writing as quickly as possible on this hearsay issue. We
14 have to continue with the examination of this witness on Monday. I
15 thought we would be able to continue tomorrow, but that might not be
16 possible.

17 We will hear Witness 418 tomorrow, and if we cannot call Witness
18 30 next week, we will not call him but we will resolve the issue of
19 Witness 267.

20 So please make your submissions in writing by 4.00 p.m. tomorrow.
21 I really do not know what else we can do. So that is the only way to put
22 an end to such a discussion. We appreciate that it is very important and
23 relevant.

24 MR. HOOPER: Sorry, Mr. President.

25 (The Trial Chamber confers)

1 MR. MACDONALD: (Interpretation) Just a point of clarification.
2 There was the beginning of your decision. Are we talking about the
3 hearsay of the staff members or the children themselves? We have to be
4 even more focused.

5 PRESIDING JUDGE COTTE: (Interpretation) Mr. O'Shea, I believe
6 that the witness clearly expressed themselves regarding what the witness
7 heard from the children. That is within the framework of their
8 interviews upon their arrival at the site. On the other hand, regarding
9 what he heard from his collaborators or staff members who themselves
10 heard from the children, well, things are not very clear on that aspect.
11 That is what your submissions have to be about.

12 Is it materially impossible for you to make written submissions
13 tomorrow by 4.00 p.m.? I do not think so. You have already started oral
14 submissions. Tomorrow we have a status conference, and the full teams
15 need not be present during that status conference, and I believe we can
16 provide decisions to all the participants on Monday at 2.00 p.m. when the
17 witness will be with us.

18 MR. HOOPER: (Previous translation continues) ... on this. Just
19 very briefly in terms of the programme. Witness 418 is due to give
20 evidence tomorrow. We, for our part, at the most will have one question.
21 We'll have 30 seconds of time with him at the most. That is concerning
22 exactly what it was he found, was it a bullet or not. That's the only
23 thing.

24 I don't know how long the Ngudjolo team, my learned friends
25 intend to be, but if it's not long, I assume we'll be progressing with

1 this witness. If that is the case, then I well understand that you'd
2 want written motions -- written submissions even in skeletal form by this
3 evening, and we can provide those.

4 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, of course,
5 but we didn't even dare to ask whether you could submit this by this
6 evening. Is that possible? If it's possible, then yes.

7 Mr. Kilenda -- I'm hoping that the tape is still running.
8 Mr. Kilenda, do you expect a long cross-examination tomorrow?

9 MR. KILENDA: (Interpretation) Not at all. I think it should
10 take about 30 minutes, and I share Maitre Hooper's idea. I think we
11 could then continue with Witness 267.

12 PRESIDING JUDGE COTTE: (Interpretation) If the Chamber, upon
13 receipt of your submissions this afternoon, if the Chamber in light of
14 those submissions would be able to give you an answer, then we can
15 continue with the Witness 267. If we are not able to offer you an answer
16 there, we will only have Witness 418 in the morning, and we will continue
17 in the afternoon in Witness 267.

18 THE INTERPRETER: On Monday, the interpreter corrects.

19 PRESIDING JUDGE COTTE: (Interpretation) So following on from
20 Judge Van den Wyngaert's suggestion, if everything is in order,
21 tomorrow -- we could have the status conference tomorrow morning, which I
22 think would be a very positive thing.

23 Mr. Prosecutor.

24 MR. MACDONALD: (Interpretation) Yes. I was standing up to
25 suggest exactly that, and I was wondering if we could have the

1 submissions by e-mail.

2 PRESIDING JUDGE COTTE: (Interpretation) I think it would be
3 better to have them in the classical written form, if you don't mind.

4 And Court Officer, would you please make sure that they are
5 registered urgently. So at the end of tomorrow morning's session, then,
6 could we have our status conference following the depositions of Witness
7 Dr. Baccard. For example, if they didn't go beyond 1.30 tomorrow
8 morning, would that meet with counsel's approval?

9 MR. HOOPER: Yes, it would. And again, you may remember I've
10 done this earlier, volunteered team members to a commitment which there
11 is a concern about, because we've also got this protocol which is
12 occupying our time yesterday, and again earlier today, and that is
13 incomplete, but we're going to have to get that in as well. So if we get
14 anything to you today, it may not be within the 4.00 parameter. It's
15 more likely to be the 7.00 or 8.00 parameter, if I can put it like that.
16 But we will do our best to get our submissions in respect of the
17 particular argument with this witness before the Chamber tonight, but it
18 may be in the general circumstances that it be best, perhaps for
19 everyone, to decide now that we continue with this witness on Monday and
20 progress with Mr. Baccard and the status conference tomorrow, so we're
21 not pressing, in other words, for the witness to continue tomorrow.

22 MR. MACDONALD: (Interpretation) Yes, that's why I suggested an
23 e-mail.

24 PRESIDING JUDGE COTTE: (Interpretation) Okay. It's time for us
25 to finish this session. So tomorrow we will meet again at 9.00 for

1 Witness 418. Then if possible, we will have our status conference
2 tomorrow, and if that is the case, we will suspend this session for the
3 afternoon. We will then have Witness 267 on Monday morning, and we will
4 do our utmost to bring in the afternoon or in the -- or in the early
5 evening tonight all of your submissions on hearsay. Is that clear?

6 I hope that the Chamber will be able to indicate by the end of
7 the afternoon whether or not these submissions can be made by -- by
8 e-mail, because apparently the 4.00 deadline imposed by the Registry is
9 actually strict.

10 MR. O'SHEA: Not in a classic form either, because the insertion
11 of footnotes and jurisprudence and all of that takes a considerable
12 amount of time. We will put it in the form of a -- of a skeleton
13 argument.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you to one and
15 all. So the basic outline is to be written -- is to be written down and
16 the rest can be given orally.

17 No, this is no longer being recorded.

18 Counsel Gilissen.

19 MR. GILISSEN: (Interpretation) Honestly, I don't know if it
20 would be wise, given our workloads, to expect this before tomorrow.

21 PRESIDING JUDGE COTTE: (Interpretation) Before 3.00 p.m.
22 tomorrow. The Chamber would like to have the afternoon to work on these
23 respective problems.

24 MR. GILISSEN: (Interpretation) Thank you.

25 PRESIDING JUDGE COTTE: (Interpretation) So tomorrow also by

1 e-mail if you so desire. Thank you.

2 The hearing ends at 1.39 p.m.

3 RECLASSIFICATION REPORT

4 * Pursuant to Presiding Judge's instruction, dated 08/07/2010, the
5 following part of the transcript from p.1 line 11 to p.3 line 7 held in
6 Closed session is reclassified as "Public".

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