

1 International Criminal Court
2 Trial Chamber II - Courtroom I
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Monday 15 November 2010 - Trial hearing
9 The hearing starts at 2.01 p.m.
10 (Open session)
11 COURT USHER: All rise. The International Criminal Court is now
12 in session.
13 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
14 The accused are with us. Good afternoon, gentlemen. Good
15 afternoon, everyone.
16 To begin with, we begin with the testimony of Witness 0028. The
17 Chamber wishes to issue a number of rulings and provide a number of items
18 of information.
19 First of all, a response to urgent application 2905 that was sent
20 on the 9th of October, 2010, to Trial Chamber I, and this is as follows:
21 By way of application of 2605 of 9 November 2010, the Defence of
22 Mr. Katanga asked Trial Chamber I for disclosure of the transcripts of
23 testimony given by intermediary 316 while he was appearing before that
24 Chamber, for the most part in closed session. Trial Chamber I provided
25 an oral public ruling on the 12th of November, 2010, in the morning, and

1 with the agreement of parties, that Chamber authorised the disclosure
2 non-redacted and subject to a number of conditions. For example, the
3 Katanga Defence team must use only the transcripts if they are strictly
4 necessary to prepare their arguments; and secondly, to keep a record of
5 people who had access to these transcripts.

6 In accordance with Regulation 42 of the Regulations of the Court,
7 Trial Chamber II is intending to adopt the conditions that were set by
8 Trial Chamber I, and we ask the Office of the Prosecutor to ensure, as
9 quickly as possible, that these transcripts are disclosed. And since
10 this is an urgent matter, their nondefinitive version may be disclosed.

11 Prosecutor.

12 MR. MACDONALD: (Interpretation) Good afternoon, your Honours.
13 The Prosecution apologises. Friday, unfortunately, we were trying to
14 obtain information regarding this ruling and our colleagues had already
15 left. In other words, it was only mid-morning today we heard of the
16 ruling and immediately -- actually, as we speak, our colleagues are
17 reviewing the few transcripts in question with a view to disclosing them
18 by the end of the day on a DVD.

19 Furthermore, just to make this very clear so we are in agreement,
20 the testimony will not be redacted, of course, nor will the objections
21 during testimony of 0316, but if other matters that were dealt with
22 without the witness being present, those parts will be redacted,
23 your Honour, for quite clear reasons.

24 So there you have it, your Honour. If everything goes well --
25 and I apologise for the delay. Technically, the material should have

1 been disclosed this morning. The material will be disclosed by the end
2 of the day.

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

4 Madam Court Officer, before I go any further, I should just
5 mention to you that my left-hand microphone is not working properly. It
6 doesn't seem to be working at all. Could someone check that microphone.
7 The right-hand microphone does work, but because it's off to the
8 right-hand side, I have to make a number of movements that are difficult
9 for me considering my age.

10 Now, some information about the relatives of 0316 (* as
11 interpreted). Now, I believe that the parties and participants received
12 filings from the Prosecution, 2529 and 2531, on the 11th and 12th of
13 November, 2010, regarding the situation of the parents of Witness 0353
14 and the events that occurred at their home on Wednesday, the 10th of
15 November, 2010, in the evening.

16 The Chamber, once again, takes note that an investigation is
17 currently underway with a view to determining the exact circumstances of
18 the event, and once again, we reiterate that we wish to be kept informed
19 of the investigation and how it is going on. We have also reviewed
20 filing 2530, which was filed on the 12th of November, 2010, by the
21 Katanga Defence team. We have reviewed the specific items of information
22 provided by the Defence team about the conditions in which the team's
23 resource person went to the home of the parents of Witness 0353 on the
24 4th and 5th of November, 2010. We also reviewed the suggestions that the
25 Katanga Defence team has made for the conduct of the investigation.

1 Now, we do not know why these events occurred or how they came to
2 be, but the Chamber will refrain from making any suppositions. We can
3 only point out that it would appear that people entered the home of the
4 parents of 0353 and asked if the witness was there as well as the
5 witness's sister, and once again this leads us to stress, if necessary,
6 it is of greatest importance to ensure the protection of witness and
7 their friends and family members. Thus, we will await the end of the
8 investigation and the outcome of that investigation, and we hope that
9 further information can be provided regarding the conditions in which the
10 events occurred, the identity of those responsible and their motivation.

11 Third item of information: The Chamber will have a status
12 conference on Wednesday, the 1st of December, at 9.00, or at 11.30,
13 depending on whether or not the deposition of Witness 0160 has concluded.
14 The status conference will focus on estimating the amount of time
15 necessary to prepare the cases of the two Defence teams. It shouldn't be
16 a long status conference, but it is necessary at this particular stage in
17 our proceedings.

18 Now, before we bring in Witness 0028, the witness -- correction,
19 the Chamber wishes to specify exactly what protective measures the
20 witness will enjoy during testimony in this courtroom. By way of
21 ruling 1667 of the 23rd of November, 2009, which relates to protective
22 measures for certain witnesses, the Chamber has decided that this witness
23 will benefit from the following measures: First of all, he will be
24 referred to by way of a pseudonym. His voice will be altered, and his
25 image will be distorted on the screens.

1 The Chamber is of the opinion that there are no grounds
2 justifying any return to -- or reconsideration of these measures. The
3 witness is within the court's protection programme. His identity must
4 remain anonymous, and only these protective measures will allow us to
5 achieve that goal.

6 Furthermore, the Victims and Witnesses Unit has had an
7 opportunity to discuss matters with Witness 0028, and the last time it
8 did so was on the 10th of November, 2010. The unit informed the Chamber
9 that in light of the impact that the events have had on the person and
10 still are having on the person, this witness should be considered to be a
11 vulnerable witness.

12 Furthermore, we should remind all that under Rule 88, the Chamber
13 may order special measures to facilitate the testimony of a traumatised
14 witness. Consequently, in this particular case the unit recommends the
15 following: First of all, that a curtain be drawn so as to avoid any eye
16 contact between Witness 0028 and the two accused. Let be it known that
17 the accused will see the face of the witness on their screens.

18 Secondly, the unit has recommended that a psychologist from the
19 unit be present in the courtroom, particularly when the witness begins
20 giving testimony. Now, the presence of this psychologist is a
21 preventative measure.

22 Now, do the parties have any observations regarding these
23 recommendations?

24 Mr. Hooper?

25 MR. HOOPER: None at all. Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

2 Mr. Kilenda?

3 MR. KILENDA: (Interpretation) No objection, your Honour.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you, gentlemen.

5 Now the Chamber intends to adopt all the recommendations that
6 were suggested. With regard to visual separation between the witness and
7 the accused, this is fundamentally intended to allow the witness to give
8 testimony in the best possible psychological conditions, which should
9 help with the demonstration of the truth, an objective that we all
10 pursue. The Chamber also wishes to state that we reserve the right to
11 reconsider our position if in the course of the hearing the behaviour of
12 the witness makes such a reconsideration permissible.

13 These measures, particularly the visual separation between the
14 witness and the two accused, will lead the Chamber to order closed
15 session when the witness enters and leaves the courtroom. It means that
16 Mr. Mathieu Ngudjolo - and this is what we did during testimony of
17 earlier witnesses - will be -- have to sit beside Mr. Katanga.

18 And, gentlemen, we remind you that you must not speak to one
19 another during the proceedings. Are we in agreement?

20 These various measures also mean that the witness will enter and
21 leave the courtroom without the accused being present. So they will come
22 in after him and will leave the courtroom before him.

23 Finally, the Chamber notes that the witness wishes to speak in
24 Swahili before the Court.

25 Now, security officers, if you could please -- Mr. Hooper, please

1 proceed.

2 MR. HOOPER: Yes. Prior to that there's two short matters that I
3 wish to -- to raise before this witness commences his evidence.

4 First of all, the Court is aware that exceptionally this
5 particular witness has been provided his own lawyer. P-0028, despite
6 comments to the contrary that he might make in his statement is, in fact,
7 not a victim. He is an incriminating witness and he has only the status
8 of an incriminating witness. Since his lawyer was appointed, and I refer
9 here to Ms. Tah Mbida, T-a-h M-b-i-d-a, counsel from Cameroon, he was met
10 with her certainly here in The Hague and doubtless had perhaps other
11 facilities for conference with her.

12 Insofar as their discussions relate to relocation -- relocation,
13 we, for our part, are not overly concerned, but it seems to us it's very
14 likely that P-0028 has given instructions to Ms. Tah Mbida, or
15 Maitre Tah Mbida, in respect of the events themselves, and we have some
16 indication of that, for example, on one specific and that is the
17 unfortunate death of P-0028's mother. But we suspect in the normal
18 course of any discussion, P-0028 has doubtless mentioned other things to
19 her, and in particular and this is what does concern us and is our
20 interest, related an account of his history of events relevant to this
21 trial.

22 My application now is that we have full disclosure of those
23 discussions, that is, of any account touching upon the history of events
24 that P-0028 has provided to Ms. Mabida Tah or any agent of hers, in the
25 same way as if he'd given such a history of account to the Prosecution,

1 to the OTP, we would natural expect to receive it. There's no privilege
2 that attaches to it that, in our submission, should bypass the normal
3 rule of disclosure in those circumstances.

4 The second matter that concerns us is the continued ambiguity, to
5 our minds, of what it was that P-0028 has been promised by way of
6 relocation after he has given his evidence. There is, to our minds,
7 still a very striking ambiguity in what VWU has been telling us. We know
8 from the very clear terms of the e-mail that we received and which has
9 been referred to on a previous occasion to this Chamber that VWU told us
10 in absolute categorical terms that no promise of international
11 relocation, that is relocation outside Africa, had been made to P-0028.
12 That understanding was immediately contradicted, you may recall, by
13 Mr. MacDonald, and it's quite plain that the Prosecution, for their part,
14 believe that he has been offered international relocation.

15 As a result of the Chamber's order in respect of disclosure, we
16 received document Annex 1 to filing 2528, which is the minutes of the
17 meeting between the OTP, the VWU, and Witness 0028 on the
18 6th of September, 2010, here in The Hague.

19 There are about almost a dozen parties present at that meeting.
20 The meeting was divided into two. There was a meeting without
21 Witness P-0028 but in the presence of his appointed lawyer --

22 MR. MACDONALD: Sorry. Sorry. That is not correct. I'm sorry
23 to interrupt. That is not correct. The counsel wasn't there. Counsel
24 of 0028 was not there.

25 MR. HOOPER: That was a very speedy --

1 PRESIDING JUDGE COTTE: (Interpretation) Ask for leave before
2 intervening, please. You got up, you began speaking. Mr. Hooper was
3 speaking. Personally, I cannot listen to two people speaking at the same
4 time, so let us show some discipline right from the very beginning of
5 this hearing.

6 MR. MACDONALD: (Interpretation) I apologise to the Chamber.
7 It's just that Mr. Hooper just mentioned something that was incorrect,
8 and I don't know where he got that item of information from, but we wish
9 to mention that the counsel of P-0028 was not present when there was a
10 meeting on the 6th of September before the meeting began with P-0028.
11 His counsel was not with the unit -- or was not in the presence of the
12 unit or the Prosecution.

13 That's what I wanted to make clear, but up until now I am -- so
14 far I'm continuing to listen to my colleague regarding the rest.

15 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

16 Mr. Hooper, had you concluded your second point?

17 MR. HOOPER: Not quite. The meeting was divided into two, and
18 with that intervention I accept that Ms. -- Maitre Tah Mabida was not
19 present in the very first part of that meeting which took place between
20 the VWU and the OTP, and my note -- or not my note, the minute that I
21 hold reads as follows:

22 "VWU will relocate him outside Africa. However, VWU recalled
23 that the Chamber had stated that DRC-028 should be reassessed after his
24 testimony (for instance, if he testifies for the Defence, this might
25 change the VWU assessment)."

1 It's not my main concern, but reading those last lines does raise
2 a degree of concern. We're unclear what is meant by the words "for
3 instance, if he testifies for the Defence." And also why that should
4 necessarily have an affect on what has been a stated position of
5 relocation.

6 The second part of the meeting then takes place with
7 Witness 0028, and for what Mr. MacDonald says, I accept that this was the
8 point when his lawyer joined the meeting as well. And in the course of
9 this meeting we find that -- I'm looking at page 5, the last paragraph of
10 item 7:

11 "VWU explained to the witness that he will be provided with
12 solutions for the future. VWU guarantees that after his testimony the
13 witness will be internationally relocated."

14 Now, those words stand in obvious contradiction to the very clear
15 statement that we received by way of e-mail last week from VWU, and we
16 seek clarification as to what VWU -- what VWU's position is, because of
17 course we haven't lost sight of the fact that last year this Chamber
18 intervened to the extent that it stated that it would be an overseer or
19 arbiter of the position, at least if there was conflict or disagreement,
20 as I understand it, between VWU and the OTP.

21 Now, I don't know today as this young man comes in to give
22 evidence what is in his head, but I assume that what is in his head is
23 that he has won for himself international relocation. Not just outside
24 DRC but also outside Africa. That appears to be on the rather tenuous
25 ground - this is his subjective view - that no country in Africa can, in

1 fact, uphold his human rights. And we're concerned that that statement
2 appears to have been generally adopted to the extent of offering this
3 young man the huge prize of international relocation.

4 So what is the position? In sum, what is VWU's position, and why
5 did we get such a contrary statement last week by e-mail in contradiction
6 of what is clearly contained in the minutes of the September meeting?
7 And what is in this young man's head?

8 Now, the latter might be something that, with respect, you, the
9 Judges, can explore with the witness as to what his understanding of the
10 position is, but we'd certainly also wish to have this ambiguity removed
11 and the position wholly clarified by VWU.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
13 If we could just have a few moments, please.

14 (The Trial Chamber confers)

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, you had
16 an observation to make, did you not? Briefly, please, because we would
17 like to now move on to the objective of this hearing.

18 MR. MACDONALD: (Interpretation) Now, the Office of the
19 Prosecutor wanted to suggest to the Chamber that we did not put off the
20 beginning of P-0028's testimony. I'm going to start by covering the
21 second point raised.

22 The OTP recalls that when the VWU filed its filing 2513 in a
23 confidential form and also the other filing, 2512, in a confidential
24 form, and when we also refer to the response that was provided in the
25 month of October to an e-mail exchange between Mr. Hooper and the VWU,

1 the VWU, on responding, goes back to the month of December 2009, and this
2 is what the OTP was attempting to clarify in its filing 2512 of the
3 4th of November, in paragraph 24 thereof. And the VWU goes on to confirm
4 this in its filing 2513, Mr. President, when it says -- when it explains
5 the chronology of events which unfolded with the arrival in the month of
6 November 2009 of P-0028. He was supposed to testify in second or third
7 position in the list of appearances, and it was only at that moment in
8 time, Mr. President, when we refer to the documents under Rule 67 and
9 67(2), which was disclosed on the 1st of October by the OTP, this was
10 clarified by the VWU.

11 It has also been made clear that on the 6th of September, 2010,
12 whether it be *viva voce* or *de facto*, the witness, since the beginning of
13 the month of September had left the DRC and was informed that he would
14 not be returning to the DRC. Also, he was told clearly during that
15 meeting, and the shade of meaning here is important because a number of
16 things were said in the meeting between the OTP and the VWU and
17 Witness P-0028. These things were not repeated. I'm referring here to
18 the additional filing on the subject of the minutes which we filed last
19 Friday for which the number escapes me, but last Friday it was clearly
20 established that Witness P-0028 would be relocated on an international
21 basis after his testimony, and this would be independently of the
22 contents of his testimony, because never was such a detail mentioned to
23 the witness, and especially not in the presence of the OTP, because they
24 were making sure that this would not be mentioned to him.

25 We did not want to give the impression to the witness that his

1 testimony would influence or could be influenced in any manner by this
2 relocation.

3 I believe everything is crystal clear now, Mr. President. When
4 you read the minutes provided by the OTP, the minutes provided by the VWU
5 and the additional filings filed last Friday by the OTP in this regard,
6 in addition to 2512 and 2513, both filings submitted at an earlier date,
7 well, firstly, I would say, and also with regard to the second, it's a
8 shame that on the morning itself when the witness is due to testify that
9 we come forward or have to come forward, indeed, with an application of
10 this ilk.

11 Mr. President, counsel for P-0028 is here as a legal advisor, and
12 there are -- of course, we are bound to disclose certain matters and we
13 know that professional secrecy here or client privilege applies here as
14 it does for victims. We also know that Mr. Hooper represents Mr. Katanga
15 and Mr. Kilenda represents Mr. Ngudjolo, but of course, we do have
16 disclosure obligations, and it is very unfortunate that on the day itself
17 of the testimony of P-0028 such an application is brought forward,
18 because in the month of October, or maybe even in the month of September,
19 we informed the parties and the Chamber that we wanted to question the
20 witness again in the light of the information that had been transmitted
21 to us by the counsel for P-0028, and that is what we did. Mr. President,
22 we presented an application, leave was granted, and then we moved on to
23 the fourth statement by Witness P-0028.

24 Of course, the OTP does have obligations. Counsel for P-0028 is
25 here to represent the interests of its client -- of his client, but he is

1 not here to represent the interests of the OTP in disclosing or its
2 disclosure obligations.

3 I would like to refer once again to the Code of Conduct for
4 counsel. It is clear that when the Chamber gives over a witness to a
5 certain counsel, then the client/counsel privilege applies. Legal
6 Representatives for Victims will certainly have their word to say in the
7 matter and they will be able to describe the decision by the Chamber of
8 Appeal or this Chamber with regard to the disclosure of information. But
9 when the Legal Representatives do tell us certain things that come under
10 Rule 67 or 67(2), notably with regard to Witness 0059, then the OTP does
11 take its responsibility and conducts its investigations. That's what we
12 did in both situations, Mr. President. And I submit respectfully --
13 respectfully, Mr. President, I shall use a little image here, I think
14 he's pulling the cat out of the bag here before the beginning of the
15 testimony in order to slow things down, and I think he's also playing on
16 the psychological effect that this might have in delaying the testimony
17 of P-0028. Of course, it is a little bit late in the day.

18 MR. GILISSEN: (Interpretation) Mr. President.

19 PRESIDING JUDGE COTTE: (* Previous translation continues) ...

20 THE INTERPRETER: The interpreter cannot interpret two speakers
21 speaking at the same time.

22 MR. GILISSEN: (Interpretation) I shall be extremely brief,
23 Mr. President, and I shall give you five points, one minute per point.

24 The first is the tardy nature of this new application brought
25 forward by the Defence. It's becoming a habit. Of course, we are under

1 the impression that it is rather an ambush trial, and it is not at all
2 normal for things to unfold in such a matter -- in such a manner. This
3 should be on an exceptional basis, but it is becoming -- it is becoming a
4 current matter or it occurs often.

5 Now, secondly, Mr. President, because of course I am also
6 expressing myself on behalf of Maitre Luvengika, this concerns the
7 confidentiality element, and I am not following the International Bar
8 Association Code here or the CCDE Code. I'm talking about the Code of
9 Professional Conduct for Counsel within the International Criminal Court,
10 and Article 2 thereof states that one should understand the term "client"
11 as designating any individual who is "assisted or represented by
12 counsel."

13 We fall precisely within this example, Mr. President, and from
14 the moment in time when the relation between the person representing the
15 bar and -- and the -- and Article 15 should apply.

16 I believe that, of course, it is impossible -- it is a
17 fundamental right and obligation for any representative of the bar. The
18 witness has a right to this element of confidentiality, and the
19 representative who is representing his national bar will, of course, feel
20 that this fundamental obligation has been attacked, this fundamental
21 obligation that is outlined in the texts of -- and documents of the
22 court. There is no exception to this. There are a few basic principles
23 in life to which there are not any exception, notably that of
24 professional secrecy.

25 I think I have been brief, and I think I have summarised things.

1 This is the way I wanted to proceed, and I thank you.

2 PRESIDING JUDGE COTTE: (Interpretation) I thank you,

3 Maitre Gilissen. Your words were brief but very dense in nature.

4 Now, Counsel Hooper, are we talking about rabbits -- or rabbit or
5 not rabbit. That is the question, I quote. Very briefly, Mr. Hooper,
6 please. Let us not get back into the terms of the discussion as to the
7 nature of the ambiguity. We have understood you on that matter. I'm
8 listening. Please proceed.

9 MR. HOOPER: In which case I'm only concerned with the latter
10 matter. Victims' counsel are in a different and to a great extent now
11 settled position because of previous submissions and decisions that have
12 been made and indeed been considered by the Appeals Chamber. Now, I'm
13 not concerned with their position here, and in my respectful submission,
14 it's always helpful to have, of course, others contribute to the
15 discussion. The position here is -- is quite different because of the
16 nature of the witness. This is not a victim. It's an incriminating
17 witness. And if this incriminating has or may have provided information
18 to someone who's been appointed to advise him, that is at odds with the
19 account, for example, that he's given previously, and we, the Defence,
20 would be the best judge of that, particularly given the recent
21 appointment of his counsel, and in my submission, it's a matter which in
22 fairness to the accused we should have access to. It's as simple as
23 that. It's a question of fairness to the accused.

24 And I notice that this issue of professional secrecy and
25 confidentiality that has been raised by way of Article 8 of the Code of

1 Professional Conduct for Counsel, we see that there's an exception there,
2 "Unless ordered by the Court." The Court is to be the final arbiter in
3 this.

4 PRESIDING JUDGE COTTE: (Interpretation) I thank you,
5 Mr. Hooper. One second, please, in order for us to be able to refer to
6 our respective Bibles.

7 Very well. Mr. Hooper, you raise two points. Firstly, notably
8 with regard essentially to the fact that the witness has counsel in the
9 form of Maitre Mbida. This will make things easier if we refer to this
10 person as Maitre Mbida. The Chamber notes, first and foremost, that
11 Maitre Mbida was designated or appointed by the Registry, from memory, at
12 the beginning of this year, year 2010, but it is true that before coming
13 to the hearing, we did not avail ourselves of the contents of the file
14 referring to the conditions under which Maitre Mbida was appointed. But
15 one thing is sure, Maitre Mbida was appointed in compliance with the
16 texts in force within the court, and also in respect of Rule 88 of the
17 Rules of Procedure and Evidence which enables counsel to be designated or
18 appointed to a witness or to a victim, and P-0028 is a witness.

19 Now, during your cross-examination, and I'm sure you've already
20 thought about this, you will be able to refer to the additional statement
21 for Witness P-0028 as provided in the document of the 25th of October,
22 2010, that we all have in our possession, and in this document, notably,
23 Witness P-0028 mentions the circumstances of his mother's death. That's
24 point number two.

25 Point number 3: It is not counsel for P-0028 who is coming to

1 testify today. It is P-0028 himself who will be testifying today,
2 tomorrow, and the day after. So it is up to him to put all useful
3 questions with regard to the changes in terms of the presentation of
4 various events between his original statements and his additional
5 statements.

6 Now, from memory, the Chamber believes that it recalls that the
7 appointment of counsel for P-0028 did, at the time, respond -- or was in
8 response to a number of concerns raised by Witness P-0028 with regard to
9 his protection.

10 Now the Chamber is somewhat taken aback that, Mr. Hooper, you
11 request the disclosure, if we have understood you correctly, that is, of
12 information or the contents of conversations that were held between
13 counsel and their client. Maitre Mbida is counsel for his client, and
14 any discussions that might occur between counsel and their client are
15 discussions that are not to be disclosed. That is, if we have understood
16 your application correctly.

17 Now, with regard to the second point that you've broached, the
18 Chamber understand only too well that you constantly return to this
19 point. You once again said that you thought that the position of the
20 Office of the Prosecutor with regard to the VWU or VWU with regard to the
21 Prosecutor was ambiguous. More simply put, with regard to the position
22 between VWU and the witness.

23 Now, the Chamber intends to -- to stick with the terms of its
24 decision of the 18th of August, 2008, where it clearly indicated its
25 viewpoint in respect of some of the positions that you deem -- this is

1 not the case for Mr. Prosecutor -- that you deem, Mr. Hooper, to be
2 ambiguous.

3 Now, the Chamber said last week that it wanted there to be
4 maximum transparency in order to enable you to have all the necessary
5 information to prepare your cross-examination in the best possible
6 conditions, and this cross-examination is necessary, of course, for both
7 accused. By affording maximum transparency, the Chamber also recalled
8 that it was bearing in mind the application for an *ex parte* proceedings,
9 because you have, after all, requested it. So we need to respect these
10 *ex parte* proceedings, and we need to be able to overcome them whenever
11 this is in the interests of the Defence, and this is what the Chamber has
12 attempted to do.

13 Thirdly, if you are of the opinion, and of course this is your
14 right absolutely, if you are of the opinion that ambiguity persists, then
15 the Chamber is of the opinion that you will be able during your
16 cross-examination to test the credibility of this witness if you deem it
17 necessary. In the same vein, the Chamber is of the mind that if you
18 believe it indispensable at this moment in time, you will be able to put
19 the necessary questions to them as to what was, is, and will be the
20 witness's true intentions.

21 I think we should now put a stop to discussions that are not
22 uninteresting in nature but which should lead us to the actual matter at
23 hand, that is, the factual testimony of this witness and the manner in
24 which he will respond to the questions put to him by the OTP, and then to
25 those put to him by the Legal Representatives for Victims, and then to

1 those put to him by Counsel Hooper for Defence for Germain Katanga, and
2 the Defence for Mathieu Ngudjolo.

3 Now, could Mr. Katanga and Mr. Ngudjolo please be shown out by
4 the security officers before we show Witness P-0028 into the courtroom.

5 (The accused withdrew)

6 MR. MACDONALD: (Interpretation) With your leave, Mr. President,
7 and in the presence of the accused. I just wanted to make sure that the
8 curtain is brought forward as far as is physically possible, or might it
9 be possible to bring it forward yet a little -- a little further forward.

10 PRESIDING JUDGE COTTE: (Interpretation) Could we please make
11 sure that everything is in place as fast as we can.

12 THE INTERPRETER: Message from the English booth. Could speakers
13 please be requested not to overlap. It makes interpretation very
14 difficult.

15 PRESIDING JUDGE COTTE: (Interpretation) We are now going to go
16 into closed session briefly in order for the witness to be shown into the
17 courtroom, and then the accused will be shown in subsequently.

18 (Closed session at 2.53 p.m.)

19 (Expunged)

20 (Expunged)

21 (Expunged),

22 (Expunged).

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

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6 (Open session at 2.55 p.m.)

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

8 Mr. President.

9 (The accused entered court)

10 PRESIDING JUDGE COTTE: (Interpretation) I thank you,

11 Court Officer.

12 Good afternoon, Witness.

13 THE INTERPRETER: The Swahili interpreters cannot hear the

14 witness.

15 PRESIDING JUDGE COTTE: (Interpretation) It is important for you

16 to speak audibly, loud enough for the interpreters to be able to hear

17 you.

18 Can you hear me?

19 JUDGE DIARRA: (* Microphone not activated)

20 PRESIDING JUDGE COTTE: (Interpretation) I'm going to suggest

21 that you sit in the next-door seat where you will have access to the

22 middle microphone.

23 Court Officer, why could that not be done? Would it not be

24 possible for us to seat the witness in the centre of the desk, at the

25 centre of the desk? Is it not possible because of the curtains, perhaps?

1 Please make sure that the witness is separated, that there is no
2 visual contact between the witness and the accused, and may he be seated
3 comfortably with the microphone just in front of him, please.

4 Thank you, Witness. We've already asked you to conduct a little
5 exercise here. Thank you. Do you -- can you hear me properly?

6 THE WITNESS: (Interpretation) Yes.

7 PRESIDING JUDGE COTTE: (Interpretation) The Court would like to
8 welcome you, Mr. Witness. We shall hear your testimony, and you have
9 come here in order to enable us to better understand the charges levelled
10 against Mr. Katanga and Mr. Ngudjolo. So your testimony is important to
11 us.

12 You know, because I'm sure this has been explained to you, that
13 the Office of the Prosecutor will start by putting questions to you,
14 questions that you shall answer, and then the Legal Representatives for
15 Victims to my left here, that is to your right, will put a number of
16 questions to you. The Court might also put some questions to you. Then
17 counsel for both accused will successively put a number of questions to
18 you. They are seated to my right, that is to say, to your left.

19 The representatives of the VWU have probably told you what
20 happens in this courtroom with regard to what you are going to talk
21 about, notably that what you shall say and the answers that you shall
22 give shall not be repeated elsewhere. You should not talk about your
23 testimony outside of the courtroom. You shall reserve the contents of
24 your testimony for the Court, and we thank you for taking good note of
25 this fact.

1 We will never call you by your name. We shall use a pseudonym.
2 We shall either say "Mr. Witness," or "Witness 0028." Your voice will be
3 distorted so that it may not be recognised from outside, and your voice
4 (* as interpreted) will also be fully distorted, thereby making
5 identification impossible, so that you may not be recognised outside of
6 the court. The Chamber will then order private session whenever this is
7 deemed necessary in order to make sure that you are not identified when
8 responding to certain questions. All peoples present, whether it be the
9 members of the Office of the Prosecutor, the Legal Representatives for
10 Victims, or counsel for Defence for the accused, and the Court will be
11 very attentive in order to make sure that no question makes mention of
12 any detail that might have a bearing upon your identity.

13 The Chamber wished to give you all these clarifications which are
14 important and which, to our opinion, will reassure you and enable you to
15 give your testimony under the best psychological conditions possible.

16 As I did a short while ago, we are going to request you to speak
17 clearly, speak into the microphone. Try to raise your voice and speak
18 slowly. You should speak slowly because the interpreters have to
19 interpret or translate the Swahili you are speaking into French and then
20 into English, and it is important that what you say is clearly expressed
21 so that they can translate well and so that we can understand.
22 Otherwise, your presence will not be relevant. We wish for your presence
23 to be useful, to be relevant. Do you understand?

24 THE WITNESS: (Interpretation) Yes.

25 THE INTERPRETER: The Swahili interpreters would like to say that

1 the witness is not very audible.

2 PRESIDING JUDGE COTTE: (Interpretation) Witness, well, usually
3 at the beginning it is difficult to speak out. I told you to speak
4 slowly, but raise your voice so that the interpreters will not have to
5 strain to hear you. You should raise your voice, please. And do not
6 change your language. You stated that you wished to use Swahili, but
7 speak Swahili, but -- and do not change languages, because when you
8 change languages, you make things complicated for the interpreters, and
9 consequently, we will not be able to understand what you are saying,
10 whereas what you have to tell us is, in our opinion, very important.

11 Before the Prosecutor starts with your examination and before you
12 make your solemn undertaking, we are going to go in a private session so
13 that you can state your identity. Everything relating to your identity
14 will be done in private session, as I said earlier.

15 Court Officer, could we go into private session, please.

16 (Private session at 3.04 p.m.)

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Witness: DRC-OTP-P-0028 (Private Session)
Evidentiary Matters

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12 Page 25 expunged – Private session

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23 (Open session at 3.12 p.m.)

24 COURT OFFICER: (Interpretation) We are in open session,
25 your Honour.

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

3 Mr. Witness, before we start your testimony, you have to make a
4 solemn undertaking to tell the truth. This is an important undertaking,
5 a solemn undertaking. I am going to read it slowly to ensure that you
6 understand its full importance and relevance. Listen to me attentively.
7 The undertaking reads as follows, it is very simple:

8 "I solemnly declare that I will speak the truth, the whole truth,
9 and nothing but the truth."

10 Have you understood me clearly?

11 THE WITNESS: (Interpretation) Yes.

12 PRESIDING JUDGE COTTE: (Interpretation) Well, Mr. Witness, do
13 you undertake to speak the truth, the whole truth, and nothing but the
14 truth?

15 THE WITNESS: (Interpretation) Yes.

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

17 The Court would like you to listen to us very attentively. You
18 have just take an undertaking to speak the truth, the whole truth, and
19 nothing but the truth. However, if in the course of your testimony or
20 whilst answering the questions which are going to be put to you you do
21 not speak the truth, you could be prosecuted before the International
22 Criminal Court for false testimony, and if this is proven, you could be
23 sentenced.

24 Have you understood me well?

25 THE WITNESS: (Interpretation) Yes, I have understood you well,

1 and I have to speak the truth.

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

3 Well, the Court has taken note that the provisions of Article 69(1) of
4 the Statute have been fulfilled and as well as Rule 66, paragraphs (1)
5 and (3) of the Rules of Procedure and Evidence.

6 Mr. Witness, once more I'm going to request you to speak into
7 your microphone. You should speak clearly, raise your voice and speak
8 slowly. When the Prosecutor asks you a question, before you answer you
9 should do a mental count from 1 to 5 in order to facilitate the job of
10 the interpreters and the court reporters. We are all going to strive to
11 stick to this rule of five seconds. You should not change your language.
12 And do not hesitate to serve yourself some water if you are thirsty. We
13 all feel thirsty in this room which is windowless, so feel free to get a
14 drink of water. And if you have a cold, do not hesitate to use the paper
15 serviettes which are close to you. You have to feel comfortable here in
16 this courtroom in order to answer all the questions which are going to be
17 put to you.

18 That's it.

19 Mr. Prosecutor, you have the floor to put your questions to
20 Witness 0028. We are listening to you.

21 THE WITNESS: (Interpretation) I have questions to put to you,
22 your Honour.

23 PRESIDING JUDGE COTTE: (Interpretation) I have heard you. From
24 now, the questions are going to be asked by the Prosecutor and the Legal
25 Representatives of Victims and the Defence lawyers. You are here to

1 provide answers not to ask any questions, but if you have any questions
2 to ask me, well, I am listening.

3 THE WITNESS: (Interpretation) You have just said that I could
4 be prosecuted if I give false testimony. Now, what would happen if I
5 spoke the truth?

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, what we
7 request of you right now as you sit in this courtroom, right now as you
8 are going to answer questions orally, is that you speak the truth, the
9 whole truth, and nothing but the truth. It is from this moment that you
10 have to speak the truth. And if at any moment you have the impression
11 that in your previous statements you were not accurate or that you were
12 not well understood or that you did not tell the whole truth, well, this
13 is your chance to set the record straight. It is now that you have to
14 speak the whole truth. Maybe everything's going to add up, but it is now
15 that you have to speak. And if it turns out that here before the Judges,
16 that is today, tomorrow, on subsequent days, you do not tell the truth
17 and that is proven, well, then you might be prosecuted for false
18 testimony. I think that much is clear to you.

19 The moment of truth is now, today, tomorrow, or subsequent days.

20 JUDGE DIARRA: (Interpretation) Your Honour, his question was
21 very clear. What he wanted to know was -- well, he said, "If I speak
22 the -- if I don't tell the truth I'm going to be prosecuted, but what
23 will happen if I speak the truth?"

24 Well, if you speak the truth, then you will be a worthy citizen.
25 You will be an honourable man, and you would have helped justice,

1 international justice, to ensure that the tragedy that took place in your
2 country, that the culprits are -- are brought to justice. And from the
3 international standpoint, you will enjoy the confidence of the
4 international community.

5 We brought you here in the hope that you are going to tell the
6 truth. We cannot invest all the efforts that were invested in you, all
7 the resources that were invested in you, if we had any idea that you are
8 going to come here to tell a lie.

9 Now, with regard to this dialogue that you have had with the
10 President, that was our privilege. You were given a lawyer to -- so that
11 he can ensure that you have all the legal privileges which the
12 Presiding Judge just recalled to you.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
14 Judge Diarra. I think we would like to thank you, because you have been
15 able to express the words that should reassure the witness and enable him
16 to understand the conditions under which he has to give his testimony.

17 Mr. Prosecutor, we are listening to you, sir.

18 MR. MACDONALD: (Interpretation) Your Honour, I think you should
19 remind the witness that if he tells the truth, he will not be accused of
20 anything at all. In accordance with Statute, if the witness speaks the
21 truth, he will not be prosecuted for any crimes that he might have
22 committed within the framework of the conflict that he's going to give
23 testimony on. That is a guarantee which is reserved for all witnesses
24 who is come before the court and not only Witness 0028, all witnesses
25 co-operate with the court.

1 MR. HOOPER: (* Previous translation continues) ... say more in
2 front of this witness, but that's quite an inaccurate statement. Of
3 course there's no guarantee.

4 PRESIDING JUDGE COTTE: (Interpretation) I think we shouldn't
5 try to complicate the life of our witness further. He was tense enough
6 before he came into this courtroom, and that is very normal. You know,
7 going into a courtroom is not something that happens every day, and it is
8 not something very simple.

9 Now, what the Prosecutor is saying is that if within the
10 framework of your testimony you talk about events that could constitute
11 an offence, then you have to speak the truth today, tomorrow, and
12 subsequent days, and even next week. You should speak freely before this
13 Court, but not -- we don't expect you to say just anything. We expect
14 you to speak the truth.

15 That's it. I think you have the full picture, and you should
16 answer the questions which are going to be put to you. Answer them to
17 the best of your ability, and the Prosecutor's going to start.

18 Prosecutor, you have the floor.

19 MR. MACDONALD: (Interpretation) Thank you, your Honours.

20 Questioned by Mr. MacDonald:

21 Q. (Interpretation) Witness, I am going to address you as
22 "Mr. Witness" all the time. However, as the Judge said, any identifying
23 information or -- or identifying, well, discussion is going to be handled
24 in private session so that the public will not hear your answers. And if
25 at any point in time you feel that what you are going to say is going to

1 lead to your identification, please make this known to us, and we will
2 briefly go into private session.

3 Furthermore, Mr. Witness, in the course of -- in the next few
4 days I'm going to ask you a number of questions. It is important for you
5 to understand my questions. You understand French, and you have opted to
6 give your testimony in Swahili. However, if I put any questions to you
7 which you deem unclear, please let me know and I will rephrase my
8 question, because it is important for you to understand the questions in
9 order to provide answers.

10 I understand now that you may feel a bit tense. That is normal,
11 because it is the first time that you are coming here into this
12 courtroom. We still have about 35 minutes left, and we are going to take
13 our time.

14 Again, it's important for you to answer the questions I'm going
15 to put to you to the best of your knowledge. If you do not remember
16 anything, please let us know that you cannot recall whatever it is.
17 And if you remember anything, let us know, and then -- well, you answer
18 the questions. But you may also be mistaken, but if you are mistaken,
19 you should take time to correct yourself. It's normal to be mistaken or
20 to make an error.

21 You should also understand that a lot of information has already
22 been given by other witnesses who have come to this courtroom to give
23 evidence. It is possible, therefore, that there are certain points on
24 which you may be expecting questions, but I'm not going to ask you
25 questions on those points, simply because those points have already been

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Questioned by Mr. MacDonald

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1 raised with other witnesses, and so we are fully edified on those points.

2 MR. MACDONALD: (Interpretation) Well, to start, your Honour,
3 with your leave, I would like us to go into private session during which
4 we are going to discuss identifying facts which relate to the family of
5 the witness.

6 PRESIDING JUDGE COTTE: (Interpretation) The public has
7 understood we are going to private session because we are going to
8 discuss items which could identify the witness.

9 Court Officer, could we go into private session, please.

10 (Private session at 3.27 p.m.)

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21 (Open session at 3.38 p.m.)

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

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Court Officer.

1 Prosecutor, please go ahead.

2 MR. MACDONALD: (Interpretation)

3 Q. Witness, I'm now going to ask you some questions. We are in open
4 session, and I believe that we can discuss these matters in open session.
5 Could you tell us the town that you grew up in?

6 A. I was born in (Expunged), and I grew up there. I stayed there
7 until the end of my first year of secondary schooling. After that, we
8 fled the war and we went to Bunia. From Bunia we went to Oicha, once
9 again because of the war. From Oicha I went to my village of birth, the
10 collectivity of Walendu.

11 Q. Please don't give the name of the village of your birth, not for
12 the time being. We will get to that point later. If we could go over
13 this information slowly. I'd like to ask you a few more questions to
14 elicit a few more items of information.

15 So you said at the end you finished your secondary schooling in
16 (Expunged) and then you went to Bunia; is that correct?

17 A. I said this: I did primary school in (Expunged), and I had the
18 opportunity to do the first year of secondary school in (Expunged).
19 Towards the end of that year, we fled the fighting, and we went to Bunia.
20 We spent one year in Bunia. The fighting came to that place, and we
21 fled. We went to Oicha. I wasn't in Oicha for very long. I headed for
22 our village of origin.

23 Q. Very well. Now, just to go back to the time when you were in
24 Bunia. You left (Expunged), and you were living in Bunia. Let us remain
25 with Bunia for the time being. It was established before this Court that

1 in August 2002, there was a war in Bunia in the month of August 2002, and
2 the soldiers of the APC, of Governor Lopondo, left Bunia, and so
3 Thomas Lubanga of the UPC was the person who set up operations in Bunia.
4 So I'm giving you that information just to try to understand your
5 chronology, the time-line you just gave us.

6 When you left Bunia to go to Oicha, was that before or after the
7 fall of Governor Lopondo and the flight of the APC soldiers?

8 A. I would say this: To my knowledge, it was fighting against the
9 APC, that is to say, the Ugandan soldiers of the Ugandan army who were
10 fighting the APC. Thomas Lubanga, I don't know whether he was
11 co-operating with the UPDF. I'm not so sure of what I just said.
12 However, the fighting that led to our fleeing from Bunia was the fighting
13 against the APC.

14 Q. At that time, you say that you were moving towards the town of
15 Oicha, or the village of Oicha, and that is spelled O-i-c-h-a. Could you
16 tell us -- now, to get to Oicha did you take the Komanda road or the
17 Aveba road?

18 A. When we headed for Oicha, myself personally, with some members of
19 my family, we took the Komanda road. And from Komanda, between Bunia and
20 Komanda we had the luck of getting a spot on a vehicle. We got on that
21 vehicle. From Komanda to Oicha we went by foot.

22 Q. I will come back to the names of the people that you were living
23 with in Bunia and in Oicha before the end of this part of the hearing
24 when we're in private session, but for the time being, are you in a
25 position to tell us how much time you spent living -- or how much time

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1 you spent in Oicha, if you know?

2 A. I can't remember, but the only thing that I do know is that there
3 was a member of my family who remained in Oicha. Myself, I did not
4 remain in Oicha. I went directly to my village of origin. It was
5 impossible -- it's impossible for me to remember the number of days I
6 spent there.

7 Q. Very well. After Oicha, then where did you go? You speak of
8 your village of origin.

9 MR. MACDONALD: (Interpretation) Your Honour, for the purposes
10 of the testimony, it might be safer for us to be in private session. We
11 seem to be going back and forth, and this is the beginning of the
12 testimony. I think once we go a little bit further, we might be able to
13 be in open session, but for the time being, I think it might be better
14 for us to be in private session.

15 PRESIDING JUDGE COTTE: (Interpretation) We'll go into private
16 session, but please be very attentive to this matter. As soon as we can
17 go back into open session, please tell us so.

18 Court Officer.

19 (Private session at 3.47 p.m.)

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- 21 (Closed session at 3.58 p.m.)
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- 7 (Open session at 4.00 p.m.)
- 8 COURT OFFICER: (Interpretation) We are in open session,
- 9 your Honour.
- 10 PRESIDING JUDGE COTTE: (Interpretation) The hearing is now
- 11 suspended, and we shall resume at 4.30.
- 12 Recess taken at 4.00 p.m.
- 13 On resuming at 4.31 p.m.
- 14 (Closed session)
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3 (Open session at 4.33 p.m.)

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

5 Mr. President.

6 PRESIDING JUDGE COTTE: (Interpretation) I thank you.

7 Witness, we meet again to continue with our hearing for a
8 duration of two hours, until 6.30 this evening. Please do not forget,
9 and I will repeat this frequently, please don't let this anger you, do
10 not forget to spoke loudly.

11 Mr. Prosecutor, please.

12 MR. MACDONALD: (Interpretation) Thank you, Mr. President. And
13 I'd like to apologise to the public, because once again, we shall have to
14 briefly go back into private session for identifying questions that we
15 want to put to one side at the outset in order to move on to other
16 things, and we hope to do so in open session subsequently.

17 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, might we
18 move into private session for a moment, please.

19 (Private session at 4.34 p.m.)

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7 (Open session at 4.40 p.m.)

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

9 Mr. President.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

11 Mr. Prosecutor, you may proceed.

12 MR. MACDONALD: (Interpretation)

13 Q. Witness, we are involved in gymnastics here somewhat, musical
14 sessions, if you like. You made mention of the village where you were to
15 be found at that moment in time when we were in private session. Now,
16 without giving us the name of the village, are you able to tell us how
17 long you spent in that village?

18 A. At that moment in time, there was armed conflict between UPC
19 soldiers and those of the FRPI. Upon my arrival, fighting started in
20 (Expunged) the day after. Very early in the morning we had to flee. This was
21 because fighting intensified, and this is how we came to flee. I
22 remember -- if I remember correctly, I did not stay in that location for
23 very long. There was no safety or security.

24 Q. Where did you go?

25 A. From (Expunged) I left in the direction of Avenyuma.

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1 Q. Were you alone when you went to Avenyuma, or were you in the
2 company of somebody else?

3 A. (Expunged) was a well-known figure who lived alone, and I fled and he
4 was left to his own devices. I went in the direction of Avenyuma.

5 THE INTERPRETER: Correction from the interpreter: He was an
6 "aged individual," not a "well-known figure."

7 MR. MACDONALD: (Interpretation)

8 Q. And at that time, what were you doing in Avenyuma?

9 A. I wasn't doing anything in particular. I was just fleeing the
10 war. I did not have any particular activities to pursue. I was fleeing.

11 MR. MACDONALD: (Interpretation) Mr. President, I believe that
12 it would be simpler for us to go back into private session. I'm very
13 sorry. Then we can come back into open session subsequently.

14 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, might we
15 move into private session for a moment, please.

16 (Private session at 4.45 p.m.)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Open session at 4.46 p.m.)

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

9 Mr. President.

10 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

11 Mr. Prosecutor.

12 MR. MACDONALD: (Interpretation) Mr. President, with your leave,

13 could we please assign an EVD number to the sheet of paper bearing four

14 names. Of course, this is confidential in nature.

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

16 COURT OFFICER: (Interpretation) Thank you, Mr. President.

17 This document will bear the number EVD-OTP-00200.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

19 Please proceed, Mr. Prosecutor.

20 MR. MACDONALD: (Interpretation)

21 Q. Did you remain in Avenyuma, or did you move around whilst you

22 were living in Avenyuma?

23 A. I think I remained in Avenyuma. However, I returned to that

24 location on another occasion during the war. When we fled, we did not

25 take our belongings with us.

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1 THE INTERPRETER: The Swahili interpreter did not hear the last
2 sentence uttered by the witness very clearly, Mr. President.

3 THE WITNESS: (Interpretation) I went back to get a vehicle in
4 Avenyuma, and I met a soldier, a combatant. He took the bicycle that I
5 had with me, and he took me hostage. Once he had taken me hostage, we
6 then left together. He held me hostage for two days.

7 THE INTERPRETER: The interpreter could not hear the question
8 because there was overlapping of microphones.

9 MR. MACDONALD: (Interpretation)

10 Q. And then we shall return to the response you have just provided.
11 Is everything all right, Mr. Witness? I think we shall take our time.

12 Where did he take you to, the soldier?

13 A. It was a soldier from Aveba. He wanted to take me to Aveba. It
14 took us two days to get there. He abducted me and treated me like his
15 hostage.

16 THE INTERPRETER: The Swahili interpreter did not hear the name
17 of the location mentioned.

18 THE WITNESS: (Interpretation) And then he said, "We can
19 continue, but this bicycle now belongs to me." Then I went back to
20 Avenyuma, where I remained.

21 MR. MACDONALD: (Interpretation) With your leave, Mr. President,
22 I might attempt to clarify some of the points that were, unfortunately,
23 not interpreted, because I need to come back somewhat in order to shed
24 light on certain points.

25 PRESIDING JUDGE COTTE: (Interpretation) Please proceed. Yes,

Witness: DRC-OTP-P-0028 (Open Session)
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1 indeed, there is a location that will need to be specified.

2 Witness, if you would like to drink some water, please go ahead,
3 and then we shall proceed calmly.

4 MR. MACDONALD: (Interpretation)

5 Q. Witness, you say that you were in Avenyuma. You say that you
6 were living with an individual whose identity you provided in private
7 session, and I was asking you whether you remained in Avenyuma, and you
8 gave a response, parts of which, unfortunately, were not interpreted.
9 You talked about a vehicle, and you also talked about a bicycle. Maybe
10 we can use those items of information in order to back-pedal somewhat.

11 Could you please explain about the bicycle. First and foremost,
12 where did you get it from, and why were you going to get the bicycle?

13 A. I was talking -- or I talked about a vehicle. I did not talk
14 about vehicles. When we talk about a vehicle in my country, we're
15 talking about a bicycle. This bicycle was to be found in the village.

16 During the war, I lived with (Expunged), and I needed to take
17 flight using the bicycle. When I realised that it was no easy feat to
18 flee by bike, well, I still did so a few days later, and that was when I
19 met the combatant -- or the combatants. He took the bicycle, and he
20 asked me to go with him in his company. He did not take the bicycle and
21 leave on his own. I was with him. We walked for two days. And when we
22 arrived in Aveba, he left me. He told me to leave, but he said that the
23 bicycle would stay with him.

24 THE INTERPRETER: And then there's an interruption identified by
25 the Swahili interpreter.

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1 MR. MACDONALD: (Interpretation)

2 Q. And after arriving in Aveba, did you remain there?

3 A. We did not go directly to Aveba. We spent the first day at the
4 Nyabri camp, and then we went to Aveba. And then he told me to leave.

5 Q. And did you indeed leave Aveba?

6 THE INTERPRETER: The Swahili interpreter did not hear the first
7 word uttered by the witness. Technical problem.

8 PRESIDING JUDGE COTTE: (Interpretation) Witness, the
9 interpreter did not hear the first word of your response. If you could
10 try, really try to speak more audibly, you would make their life a lot
11 simpler, and we would then also understand what you are attempting to
12 tell us. It might be difficult for you to say these things if it brings
13 back bad memories, of course, but please speak loudly. You are
14 testifying before the Court, and we really must understand what you are
15 saying to us. So, please, could you start from the beginning of your
16 answer again.

17 MR. MACDONALD: (Interpretation)

18 Q. For us to be able to find ourselves in what we were saying, did
19 you remain in Aveba, or did you leave that place as the soldier asked you
20 to?

21 A. No, I did not remain in Aveba. I started the return journey to
22 Avenyuma. I went back to Avenyuma. I did not remain in Aveba.

23 MR. MACDONALD: (Interpretation) Just one moment, please,
24 Mr. President, I'd like to deal with a number of issues related with
25 private sessions, et cetera, with the members of my team.

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1 PRESIDING JUDGE COTTE: (Interpretation) Yes. Please go ahead.
2 (Prosecution counsel confer)

3 MR. MACDONALD: (Interpretation) I do apologise for these two --
4 those few seconds, Mr. President.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well.

6 MR. MACDONALD: (Interpretation)

7 Q. So you went back to Avenyuma. And once you were back in
8 Avenyuma, what happened?

9 A. In Avenyuma, I met my cousin with whom I stayed. I told her that
10 the bicycle had been taken.

11 THE INTERPRETER: The Swahili interpreter says there's an
12 interruption.

13 THE WITNESS: (Interpretation) But I was not -- I did not feel
14 comfortable. This was a bicycle that did not belong to us, so I had to
15 return it. I remained there. I remained there at that time.

16 MR. MACDONALD: (Interpretation) Mr. President, when the
17 interpreters say there's an interruption, there are technical issues. I
18 think previously this was mentioned and we didn't heed this advice. I
19 think the interpreters might be able to shed light on the matter.

20 PRESIDING JUDGE COTTE: (Interpretation) After having looked
21 into the matter, it would seem that there are no technical hitches but
22 that, Mr. Witness, your voice seems to drop. It has a tendency to drop
23 whilst you are answering. It might be difficult for you to broach such
24 and such a subject, but, of course, it is very important, however, for
25 you to as far as possible to speak at the same level all the time. You

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1 need to speak audibly and keep your voice at a certain level. I know
2 it's difficult, but I'm sure you'll manage. This is the first day of
3 your testimony, and you need to get used to what's going on. Thank you.
4 Please speak audibly.

5 Mr. Prosecutor, please proceed.

6 MR. MACDONALD: (Interpretation)

7 Q. Without giving any names since we are in open session and without
8 our having to return to private session, this cousin you're talking
9 about, this cousin, was she the one married to the gentleman whose name
10 you mentioned in private session a short while ago?

11 A. Yes. She was the wife of the gentleman whose name I mentioned.

12 Q. You just said that you had to return this bicycle that did not
13 belong to you. Did you try to recover that bicycle?

14 A. I made several trips in order to try to recover that bicycle.
15 However, I did not succeed. If my recollection is correct, I went to
16 Aveba twice to get back the bicycle. Each time I went to Aveba, that
17 individual would send me away. He didn't even wish to meet me. On each
18 occasion when that individual saw me, he would send me away, and I had to
19 return.

20 On another occasion when I went there, I met another group of
21 soldiers who stopped me and took me away. I was not able to recover that
22 bicycle, and that has been the situation up to today.

23 MR. MACDONALD: (Interpretation) Your Honour, I would like us to
24 move into private session.

25 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please,

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- 1 could we move into private session.
- 2 (Private session at 5.03 p.m.)
- 3 (Expunged)
- 4 (Expunged)
- 5 (Expunged)
- 6 (Expunged)
- 7 (Expunged)
- 8 (Expunged)
- 9 (Expunged)
- 10 (Expunged)
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- 23 (Expunged)
- 24 (Expunged)
- 25 (Expunged)

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12 Page 58 expunged – Private session

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Questioned by Mr. MacDonald

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Open session at 5.09 p.m.)

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

8 PRESIDING JUDGE COTTE: (Interpretation) You may proceed,
9 Mr. Prosecutor.

10 Thank you, Court Officer.

11 MR. MACDONALD: (Interpretation)

12 Q. Mr. Witness, I will now like to return to what you said
13 previously. I will read out the answer that was written in the French
14 transcript, page 56. You said that you returned to Aveba twice to
15 recover the bicycle. Line 5. Page 56, line 5.

16 "Each time I went there, that individual would send me away and
17 would not want to meet me. Each time he saw me, he would send me away
18 and I would return."

19 Later on you said, and it is on this point that I'm going to put
20 certain questions to you, you said:

21 "On another occasion when I went there, I met another group of
22 soldiers that stopped me and took me away."

23 And then you said:

24 "I have not been able to recover that bicycle right up to today."

25 The question I have for you is the following: Can you explain to

1 the Court in your own words what happened when you met that group of
2 soldiers, the group of soldiers that stopped you, and where did they take
3 you to? Take your time.

4 A. They were the soldiers of (Expunged). (Expunged) was a FRPI commander at
5 that time. I met them, and I was alone. However, I was not the only
6 person who was on that road. There were certain women who were going to
7 the market of Kingolo (* phon) near Aveba. I was with them. When I met
8 the soldiers, they stopped me and they started beating me. They took me
9 away.

10 I went to their camp, and they said thenceforth I was a member of
11 their armed group. At that time, I did not know the name of the village,
12 but I know that it was close to -- or around Bulandjabo near Tseyido.
13 They said that from that point on, I was a member of their group and that
14 I was a soldier therefore. They started giving me military training, and
15 they said that I was going to undergo that training with other persons.
16 It wasn't training, strictly speaking. I would say it was torture. They
17 beat me along the way. And they had goats with them, and they asked me
18 to take the goats. And we went to the camp, and there I started
19 receiving military training.

20 Q. You have just said that you were arrested along that road. You
21 were beaten, abducted, and taken to a camp. When you say you were
22 beaten, how were you beaten and with what were you beaten?

23 A. They beat me with whips and ropes. They had ropes, and they beat
24 me with these ropes and whips. Later on, they asked me to take all the
25 goats they had with them. I was the one who was pulling the goats along

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1 the way during the entire trip.

2 Q. Once you arrived at the camp in question, could you please
3 describe to us what you saw when you arrived at the camp.

4 A. There was a military camp at the place we arrived at, and in that
5 military camp there were prisoners, prisoners who had been combatants and
6 who had been accused of certain crimes. I and other persons underwent
7 military training. Every morning we got up very early in the morning,
8 and we would go into the bush close to the villages, running, and they
9 taught us how to crawl. They taught us how to assemble and dismantle
10 weapons.

11 Q. Could you please tell us how long this military training lasted
12 for you.

13 A. I cannot tell you how long -- for how long it lasted. I would
14 rather say that it ranged from -- the duration ranged from five days to
15 one week.

16 Q. Who provided this training?

17 A. It was provided by either Commander Kisoro or another commander
18 from his camp. Those were the individuals who were in charge of the
19 training.

20 Q. You said that you were taught how to operate weapons. What type
21 of weapons were these?

22 A. They were light weapons such as SMGs and submachine-guns.

23 Q. During the entire time you spent at the camp, how was life in the
24 camp?

25 A. It was not the type of life that could be led by civilians. It

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1 was the life of soldiers. We had to look for our own food. We had to
2 work. And since we were recruits in the camp, we had to carry out all
3 the activities. We had to pound cassava. We had to fetch water and cook
4 food. We could go look for food, and sometimes we will find it. On
5 other occasions we might not find it.

6 Q. When you say you had to go and fetch food, what do you mean by
7 that? Where would you go to fetch this food?

8 A. We could either go to one of the farms to look for food, like
9 cassava leaves, or we could go to civilians to request for food, and the
10 women would give us food, and we would take the food back to the camp.

11 Q. Did these women give the food willingly, or were they forced to
12 give the food?

13 A. I cannot say whether they felt obliged to give us this food. All
14 I know is that we were recruits, and it was our responsibility to go and
15 fetch food. And when we arrived in the home of anybody, we would ask for
16 food and the food would be provided. We were under obligation to bring
17 food to the combatants.

18 Q. What would happen if you returned with no food, if you returned
19 empty-handed?

20 A. It never happened that we returned empty-handed. We did
21 everything possible to bring back food.

22 Q. Mr. Witness, how many fighters were there at the camp where you
23 were recruited, approximately?

24 A. There were many of them, very many of them. I cannot tell you
25 the exact number of fighters there. I cannot know their total or full

1 number.

2 Q. When you were abducted along that road, the commander who
3 abducted you, could you tell us how was he dressed?

4 A. On that day the commander was wearing a camouflage uniform, what
5 we call *tache-tache*, a uniform of the UPC army. The other soldiers who
6 were with him were dressed either in military uniform, for example, they
7 would wear trousers that were military trousers and the shirt would be a
8 civilian shirt, or they wear an army shirt with civilian trousers.

9 Q. Did they have any other weapons apart from the ropes and the
10 whips you mentioned a short while ago?

11 A. Weapons?

12 Q. Yes, indeed, weapons. Could you please tell us whether or not
13 they had weapons at the time they abducted you. Were they armed?

14 A. Some of them were armed. Others were not armed. There were some
15 of them who had bladed weapons such as knives and machetes, and others
16 bore guns.

17 Q. When you were abducted, you said you were abducted along a road
18 and that there were women along that road who were going to the market on
19 that day. On the day you were abducted, were there other persons, other
20 individuals, who were abducted along with you?

21 A. No. I left Avenyuma, and when I arrived at that spot at Chekele,
22 I met some women who were going to Kangolo (*phon) market. I followed
23 these women, and as I was going along with them. I was abducted at
24 Kaswara. I was the only one who was abducted. At that time, young
25 people had difficulties moving around in localities that were under the

Witness: DRC-OTP-P-0028 (Open Session)
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1 control of combatants.

2 Q. You mentioned the name of the camp a short while ago. I will
3 not repeat the name. You talked about young people. You said when you
4 arrived at the camp, you found that it had many fighters. What about
5 young people at the camp? How many were there?

6 A. Could you be more specific in your question. When you talk about
7 young people, what do you mean?

8 Q. When you arrived at the camp, were you the only young person in
9 that camp or were there others? Did you find others when you arrived at
10 the camp?

11 A. There were many young people. I was not the only young person in
12 that camp.

13 Q. Could you please tell us, the youngest person you found in the
14 camp, how old could that person have been when you arrived at the camp,
15 to the best of your knowledge, the youngest person?

16 A. I cannot answer that question with certainty. You know, people
17 grow differently. However, I would say there were many young people of
18 my age. I was not the only young person in that camp. However, I cannot
19 tell you the ages of the various young people who were in the camp.

20 Q. How much time did you spend at that camp, that is, if you're able
21 to remember? Was it a day? Was it a week? Was it a month?

22 A. I have no specific answer. However, I can tell you that I didn't
23 stay there for a long time in that camp. I stayed there for between one
24 and three weeks.

25 Q. Why? Why did you stay only for one to three weeks?

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1 A. The living conditions were difficult. It was hard to find food
2 to eat, and when we made mistakes, we were struck as if we were wild
3 animals, and we were put in the cell. There was also a great deal of
4 work. We might be asked to go draw water or carry various goods, look
5 for firewood to take back to the camp and so on and so forth.

6 Q. Could you describe these cells to us? How were they built?

7 A. There were houses that were well-built, sort of like cabins, and
8 they had fences around them, and it was difficult to get out to go where,
9 actually.

10 Q. You said that prisoners were mistreated. In what way were they
11 mistreated?

12 A. They were forced to do work. It would begin in the morning.
13 Very early in the morning, people -- well, you had to give tea. They --
14 they hit you before you did any particular chore. They would give you
15 tea, and in the evening before going to bed, they would do the same thing
16 to you. If you resisted, you would have a much harder time of it,
17 because they would beat you.

18 Q. What do you mean by "*bastonnait*" in French? Exactly what do you
19 mean by this beating that was handed out?

20 A. You had to get down on the ground, and you would be hit either
21 with a whip or a piece of rope. So that's what would happen.

22 Q. So people were imprisoned but for what kind of misdemeanours?

23 THE INTERPRETER: The sound has cut out, says the Swahili
24 interpreter.

25 PRESIDING JUDGE COTTE: (Interpretation) If you could repeat the

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1 beginning of your answer, because the interpreter was unable to hear you.

2 Thank you.

3 So the question was just asked of you:

4 "People were imprisoned for what misdemeanours."

5 If you could repeat your answer, please, we would be most
6 grateful. Please repeat.

7 THE WITNESS: (Interpretation) I was saying that people would be
8 put into these holding cells, and to answer the question that was asked,
9 each person would have to undergo his punishment. For example, if
10 someone was accused of poisoning someone, he would be put in a holding
11 cell. If someone owed someone else money, he would be put in the cell.
12 So there are various infractions. There were different kinds of
13 infractions.

14 MR. MACDONALD: (Interpretation)

15 Q. Very well. So after that period of one to three weeks in the
16 camp --

17 MR. MACDONALD: (Interpretation) I beg your part, your Honour.
18 Just to avoid any possible misunderstanding, if I could ask one question
19 in private session and then we will go into open session, and I will have
20 finished with this part of my questioning.

21 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, if we
22 could go into private session for just a moment.

23 (Private session at 5 .36 p.m.)

24 (Expunged)

25 (Expunged)

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Questioned by Mr. MacDonald

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1 (Expunged)

2 (Expunged)

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10 (Expunged)

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12 (Expunged)

13 (Expunged)

14 (Open session at 5.37 p.m.)

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

16 your Honour.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

18 Prosecutor, Mr. MacDonald.

19 MR. MACDONALD: (Interpretation)

20 Q. Where did you go after you spent some time, this period of one to
21 three weeks? What happened then? Where did you go? What did you do?

22 A. I fled, and I went to Aveba. I went to the Aveba camp.

23 Q. Witness, you mentioned the reason why you left the camp. You --

24 I don't want to go back to that point, but my question is, rather, as

25 follows: Why did you go to Aveba? Why did you go to the Aveba camp?

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1 A. During that period, I really wasn't familiar with the place of my
2 village, but you see, there were fugitives who had come from (Expunged),
3 and they were also in Aveba. So I preferred to go to the camp in Aveba,
4 and that is what I did. I opted to go live in the Aveba camp.

5 Q. I would like to go back to a term that you mentioned. In French
6 it was rendered by the word "*fugitif*," "a fugitive." I want to make sure
7 that I've understood, and maybe this question will seem stupid to you,
8 but you said that there were fugitives who had come from (Expunged). What
9 do you mean by "fugitives"?

10 A. I believe I said that I really didn't know the village of the
11 Walendu-Bindi collectivity very well, the Ngiti villages.

12 THE INTERPRETER: Correction: "The Ngiti village."

13 THE WITNESS: (Interpretation) I mentioned some people who left
14 (Expunged) to go to Aveba, that is true. There were some friends whom I
15 lived with in Aveba who had come from (Expunged). So I said to myself
16 that I had to go and live in the Aveba camp.

17 MR. MACDONALD: (Interpretation)

18 Q. I will ask the question one last time. I'll put it in a
19 different way so that we can understand exactly what you mean by
20 "fugitive." These people from (Expunged) were fleeing what? Why do you
21 say that they were fugitives?

22 A. I said that we lived in (Expunged), and because of the war, people
23 in my ethnic group fled our collectivity, and that is why I said that the
24 people who were living in (Expunged) had fled to go live in Aveba, and
25 Aveba was in the Walendu-Bindi collectivity. So our acquaintances who

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1 lived in (Expunged) were already in Aveba, in Aveba. And as I said right
2 at the very beginning, it was because of the fighting in (Expunged) that I
3 went to Bunia, and that it was the same fighting that affected the people
4 of (Expunged) who went to live in Aveba.

5 Q. Very well. So you left the camp that you'd been taken to, and
6 you went to Aveba for this reason.

7 A. Yes.

8 Q. When you arrived in Aveba, exactly what did you do? What was the
9 first thing you did?

10 A. When I arrived in Aveba, I set up operations in the camp, but it
11 really wasn't a military camp exactly. Soldiers were living in houses
12 that belonged to other people. It wasn't a military camp. It wasn't
13 truly a military camp, a proper one. So I was a soldier based in Aveba.

14 Q. When you arrived in Aveba, who was responsible for the soldiers
15 who were to be found in Aveba?

16 A. Well, I will give you an answer, but it's not to take my revenge.
17 I will just give you my answer to that question. The head of the camp in
18 Aveba was Germain Katanga.

19 MR. MACDONALD: (Interpretation) If you allow me just one
20 moment, please.

21 (Prosecution counsel confer)

22 MR. MACDONALD: (Interpretation) Your Honour, with leave, I'm
23 sorry, but I think we need to go into private session for the following
24 questions. I apologise to the members of the public.

25 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, if we

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- 1 could go into private session.
- 2 (Private session at 5.46 p.m.)
- 3 (Expunged)
- 4 (Expunged)
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12 Page 71 expunged – Private session

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Open session at 5.53 p.m.)

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

7 PRESIDING JUDGE COTTE: (Interpretation) You may proceed,
8 Prosecutor.

9 MR. MACDONALD: (Interpretation)

10 Q. Could you please describe the houses that the combatants were
11 living in in Aveba at the time when no military camp had been built?

12 A. Do you want me to describe the houses to you? Well, they were
13 houses to be found in the Atelemba (*phon) neighbourhood. That was
14 before one gets to the Aveba plain. And the main house was the residence
15 of Germain's father. There was also other soldiers, but the fact that
16 there were many commanders was such that other soldiers would spend the
17 night in other houses that were located around the residence of the
18 father of Germain Katanga.

19 Q. And what were these houses made from, the houses that the
20 combatants who were not commanders were living in?

21 A. I must say that they were made of straw, of earth, and reeds.
22 The only house that was made out of bricks and stone and sheet metal was
23 the residence of the father of Germain Katanga. It was a fine house. It
24 had sheet metal, and it was also made of bricks.

25 Q. Now, later was a proper camp built, a real camp in Aveba?

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1 A. Yes. Later, a military camp was built. A military camp was
2 built in two parts. There was the BCA part, and there was the part for
3 the airport.

4 Q. Do you know what BCA stands for?

5 A. I believe so. BCA means *Bureau des combattants d'Aveba*. Aveba
6 combatants' office.

7 Q. Who helped build the BCA camp?

8 A. I know that it wasn't during that time that the war and the
9 rebellion started in our part of the world. In the past, there had been
10 fighting between the Ugandans and the people of my ethnic group, and at
11 that time there was a camp for the combatants. I must say that there was
12 an extension put on this camp. Another part was built thereafter on the
13 BCA side. Members of the population and combatants built those
14 buildings.

15 Q. Who gave the order to build this extension of the camp, this camp
16 that already was in existence?

17 A. It was Germain Katanga, and he lived in the house of his parents.
18 He had to free up that house and have the camp built to house his
19 soldiers and himself.

20 Q. You mentioned that villagers helped build the camp. What was the
21 name of these villagers who helped build the camp, helped build these
22 buildings in a locality? What's the name for that?

23 A. No, they don't have a special name. I just wanted to add that it
24 was a form of assistance at the request of the soldiers. They came to
25 help the soldiers build the camp. The civilians didn't have a specific

1 name to designate -- that they were designated by.

2 Q. I shall rephrase my question. When these soldiers asked the
3 villagers to undertake some work, some construction work, does that work
4 have a name?

5 A. Yes. The word is "Salongo." "Salongo" is what we called it.
6 This was work undertaken for soldiers. The word is "Salongo."

7 Q. How did one go about asking the villagers to take part in these
8 Salongo? How were they informed of their participation in the
9 construction of the BCA camp?

10 A. I believe that this was through communiques there were given out
11 in the market. One would ask everybody to come with something, that is
12 to say, straw or planks of wood, for the construction of the camp.

13 Q. And who would make the announcement?

14 A. It was the presidency. That is to say, the place where we were
15 residing. The announcements or communiques were drafted by the secretary
16 who would then give them to the person in the market, and it was the *chef*
17 *de localité* who was in charge of sensitising the population.

18 Q. When you say the "presidency," what are you or whom are you
19 referring to?

20 A. I was referring to our camp, to the residency of Germain Katanga
21 itself.

22 Q. And who was in charge of this presidency, as you say? In order
23 to avoid confusion, who was in charge of it?

24 A. Germain Katanga was called Colonel Germain Katanga, in fact.

25 Q. And at that moment in time who was his secretary when written

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1 communiqués or announcements were distributed to the population with a
2 view to having them participate in the construction of the camp?

3 A. His name was Manono.

4 Q. And what precisely were his tasks within the organisation or
5 within the presidency or within Aveba itself?

6 A. He was the camp secretary. He was in charge of drafting written
7 documents.

8 Q. Do you remember how the communiqués or announcements from the
9 presidency were identified? Would you be in a position to describe to us
10 what a communiqué looked like, what the distinctive traits of it, of
11 these communiqués or announcements were coming from the presidency?

12 A. There were not any distinctive traits as such, but there was a
13 seal. There was a seal. You know, when a mission order is drafted, a
14 seal is appended to this document.

15 Q. And can you remember what the seal was like, whether it bore any
16 details?

17 A. No, I have no recollection. However, I do remember that the seal
18 represented the face of a lion. There was the image of a lion on the
19 seals.

20 Q. And in order to be certain, because I understand you're using the
21 word "*simba*" in Swahili, are you not? Is that correct?

22 A. Yes.

23 Q. Which tasks did you fulfil when you arrived in Aveba and the camp
24 was not yet in existence? What were your responsibilities?

25 A. First and foremost, I was a soldier, which meant that I was ready

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1 to fight at any time. I was permanently at the ready. Apart from this,
2 we had to undertake other operations, other missions. For example, we
3 might go and arrest somebody.

4 I would add that within a given period, (Expunged)
5 (Expunged)

6 Q. What precisely does being at the ready for combat mean? I'm
7 sorry, Mr. Witness. Are you okay?

8 A. Yes, we can continue.

9 Q. What exactly does "combat ready" mean? Could you provide us with
10 a description of what this means?

11 A. You know, there was no peace at that time. There was permanent
12 fighting, and in the various villages there were attacks, there was
13 fighting, and as combatants we were ready to go and fight, to fight for
14 our cause, to fight for our country. We were combat ready at any moment
15 in time. At any moment, we were ready. And whenever we received a
16 signal, when we heard that one of our villages came under attack, we
17 would go and fight. We would go and fight with a view to saving our
18 village.

19 We were ready at any time, whether it be in the morning, at
20 night-time. We were combat ready.

21 Q. (Expunged) you were
22 a combatant first and foremost. So you were combat ready, and you were
23 ready also to undertake any missions or arrest individuals. Now, who did
24 you arrest? Are you in a position to provide us with examples of arrests
25 made?

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1 A. We were in the habit of arresting or stopping individuals who had
2 debts. You know, when we were in our military camp, a civilian might
3 approach us and say that, "Such and such a person is in my debt," and
4 they would ask whether we might help them to recover their money. So a
5 mission order was prepared in the camp, and we were tasked with arresting
6 this individual.

7 Another example would be that of witchcraft. For example,
8 someone would come into the camp and say that such and such a person is a
9 witch and has bewitched another individual, and then we would go -- a
10 mission order would be drafted and we would bring that individual to the
11 camp. That is the kind of offence that would occur in our village. We
12 were in the habit of arresting people for the reasons I have just
13 provided.

14 Q. And who would give the mission orders?

15 A. The mission order would come from the secretary, Manono. He
16 would draft the document, and then he would affix a stamp or seal to the
17 document, and we would then go and arrest the individual. He was the
18 secretary of the camp, the camp of Germain, Germain's camp.

19 Q. And who would dictate the contents of the mission orders to
20 Manono? Who would tell Manono what to write?

21 A. I do not have any clarification to bring. I do not know who gave
22 Manono orders. You know, when a civilian would come to the camp, he
23 would provide the explanation for his visit. For example, he would say
24 that, "Such and such an individual is in my debt." And then somebody
25 might say the following, they might say, "Mr. X owes me \$10, and I asked

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1 him for that sum. I asked him to pay me, and he did not want to." And
2 then a mission order would be issued, which we would go and fetch, and we
3 would go and find the individual in question. The individual would then
4 come and see Manono, and Manono was in the habit of issuing a summons.
5 And every time that we went to fulfil a mission of this type, the person
6 summonsed was then to pay our travel costs, and we would then bring that
7 individual to the camp. I do not know whether Manono received orders

8 from anybody. He was the secretary. He was tasked with putting
9 everything in writing.

10 Q. When you went to fetch an individual and brought them back to the
11 camp subsequent to a mission order, what --

12 MR. HOOPER: (* Previous translation continues) ... ask one
13 question. Can my friend just refer me to any previous reference to this
14 area of evidence.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, do you
16 have the transcript reference handy? It should not be too far in the
17 past, but with reference to the question you just put.

18 MR. MACDONALD: (Interpretation) I believe that, Mr. President,
19 Mr. Hooper is possibly referring to a previous statement. I do not think
20 he's necessarily referring to the transcript, but I can refer to both,
21 because both contain answers from the witness.

22 If we refer to the previous statement, I am referring my learned
23 friend to the first document, paragraph 42 thereof.

24 PRESIDING JUDGE COTTE: (Interpretation) Let us consult or take
25 this reference down, and please proceed.

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1 MR. MACDONALD: (Interpretation) Until when can I continue? I
2 can see that it's 20 past 6.00, or 18 minutes past 6.00, depending on
3 which watch you're looking at.

4 PRESIDING JUDGE COTTE: (Interpretation) The only constraint
5 that we have is to assign an EVD number to the document that has been
6 provided by the witness since we resumed. Otherwise, you have free rein
7 until half past 6.00. You know, the time to show the accused out. 6.28
8 or so, until we have to show the accused out of the courtroom. Maybe
9 another six minutes or so.

10 MR. MACDONALD: (Interpretation) Well, maybe I will make the
11 most of the situation in order to assign an EVD number to the document so
12 that we don't forget. I shall carry on with a couple of questions, and
13 then I will seek leave to suspend for this first day of my questioning.

14 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, with
15 regard to the document that the witness referred to yesterday that he
16 wrote down --

17 COURT OFFICER: (Interpretation) Yes. Thank you, Mr. President.
18 It is confidential, this document, and it will bear -- it will bear
19 number EVD-OTP-00201.

20 PRESIDING JUDGE COTTE: (Interpretation) I thank you.

21 Mr. Prosecutor, you have one of two questions.

22 THE INTERPRETER: Correction from the English booth: The
23 document that the witness referred to earlier on today.

24 PRESIDING JUDGE COTTE: (Interpretation) And also, you can give
25 us an indication of the time that you will be spending on the rest of

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1 your examination-in-chief. Over to you.

2 MR. MACDONALD: (Interpretation)

3 Q. Mr. Witness, I would like to refer you to -- and I will come back
4 to the question I was putting when Mr. Hooper intervened. I'd like to
5 put the following question to you: When a mission order was fulfilled or
6 executed, and when an individual was brought back to the camp, what would
7 happen to that individual? Who was that person brought back to, and what
8 would happen to that individual once the mission order had been executed?
9 Could you tell us and give us an example?

10 A. As I said, there were two types of mission orders. The first
11 applied or was applicable when the person summonsed was to due to
12 represent themselves, and when they presented themselves, then a solution
13 might arise from this meeting. Were this person to be in debt or had --
14 if this person had a debt, well, if you received a mission order and you
15 went to the residence of the person who had a debt, then you could seize
16 goods or property to the value of the outstanding debt. And once having
17 seized the property, the individual might then stay at home.

18 The bad thing that might happen was with regard to witchcraft
19 incidences. This was a difficult question, because the procedure was to
20 kill the person who was accused of casting spells or witchcraft. If a
21 person was accused of this, then we were in the habit of killing them, of
22 slitting their throat.

23 But with regard to an individual who had a debt, well, that
24 person might then pay their debt.

25 So in brief, when there were cases of witchcraft we would kill

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1 the individual; and with regards to cases of debt, then the person who
2 had a debt to pay would then easily pay that debt.

3 Q. Was there a court or tribunal within the confines of the camp or
4 the group of soldiers?

5 A. Yes, I do believe that there was something that we might call a
6 court. This court or tribunal was tasked with settling any disputes
7 associated with debt. As I just said, the court or tribunal was in the
8 habit of beating individuals who were accused of witchcraft, and if that
9 individual accused of witchcraft had nobody to defend them, then they
10 might even be killed -- or, rather, the individual accused of witchcraft
11 was -- had their throat slit.

12 Q. Was there a judge?

13 A. When we were in Atelemba camp, the camp was not fully constructed
14 and there was no judge as such. But you know, subsequently when the camp
15 was constructed then there were judges, and the accused could then be
16 deferred or presented to the judges.

17 Q. Atelemba was in Aveba, was it not? And you said this was Aveba
18 earlier on. I'm not sure whether my pronunciation is correct. What I
19 suggest to you, Atelemba? Atelemba?

20 A. Atelemba. This was a neighbourhood of Aveba.

21 Q. Very well. And very last question: What was the name of the
22 judge?

23 A. As I said at an earlier stage, in Atelemba there was no judge as
24 such. Rather, Manono was in charge of this. When the camp was
25 constructed, there was a judge subsequently by the name of Molangi. His

1 name was Molangi or a similar name to the one I just provided. This is a
2 name I have forgotten.

3 Q. Very well.

4 MR. MACDONALD: (Interpretation) Thank you, Mr. President. I do
5 not know whether we're going to come back into open once the witness has
6 left the courtroom in order to answer the question that you put to me,
7 but it might be a good idea to do it once the witness has left the
8 courtroom.

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

10 Gentlemen, the accused, our hearing of this afternoon is coming
11 to a close. I would ask the security officers to please show you out of
12 the courtroom, and we shall meet again tomorrow morning at 9.00 a.m.

13 (The accused withdrew)

14 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, we shall
15 go into closed session for the witness to be able to discreetly leave the
16 courtroom.

17 Mr. Witness, we thank you for your contribution this afternoon,
18 and we shall meet again tomorrow morning at 9.00 a.m.

19 (Closed session at 6.28 p.m.)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Open session at 6.29 p.m.)

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

5 Mr. President.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

7 Court Officer.

8 Mr. Prosecutor, we have one minute to play with.

9 MR. MACDONALD: (Interpretation) On Tuesday and Wednesday, at
10 the current rhythm, I believe that I shall bring my examination to a
11 close on Wednesday during one of the two sessions. To answer your
12 question, in view of the fact that Maitre Kilenda has not filed any
13 submissions before the Trial Chamber I in the light of the order, it
14 would seem that things can only then be applied to Mr. Hooper, but I have
15 heard just now that we can give Maitre Kilenda the transcripts. I think
16 we might have to send an e-mail maybe, or make a filing of some sort.

17 PRESIDING JUDGE COTTE: (Interpretation) Yes, indeed. Briefly.
18 We will have to draw this to a close on Wednesday, Mr. Prosecutor.

19 Now, secondly, when you are informed of the oral decision of
20 Trial Chamber I, the decision only applies to the application made by
21 Mr. Hooper.

22 Now, were the team -- were Mr. Kilenda's team to want to be
23 associated to this, then would I call upon them to seize Trial Chamber I
24 of this application immediately.

25 Well, the third point seems to have escaped me.

1 Now, Mr. Hooper, we really have to draw this to a close.

2 MR. HOOPER: Very quickly. Can I apply for sight of the
3 witness's passport and any other identifying documents that he's produced
4 to VWU in line with similar to previous applications concerning other
5 witnesses.

6 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, if the
7 unit has, as is often the case, a trans-border document or any other
8 identifying document for the witness, then we would be grateful for this
9 to be disclosed and for copies to be made by the Registry so that, were
10 the need to arise, we would not lose any time and we could disseminate
11 them if the request is made.

12 Now, the third point would be that the two accused be informed of
13 the Prosecutor's intentions.

14 So, we shall now be parting company until tomorrow, 9.00 a.m.
15 Court suspended is.

16 The hearing ends at 6.31 p.m.

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