

1 International Criminal Court
2 Trial Chamber II - Courtroom I
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Monday, 22 November 2010
10 (Open session)
11 The hearing starts at 9.01 a.m.
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
15 Prosecutor, you wish to make a communication in private session;
16 is that correct? No. The first was in open session. Well, we are
17 listening to you.
18 MR. MACDONALD: (Interpretation) Your Honour, Judges, I think
19 that I would -- well, I can make my intervention in open session on two
20 points.
21 First of all, I'm going to start with the first point, which is
22 related to Witness 0028, and the other one also relates to the other
23 witness and his arrival. So it's also a question of the agenda.
24 MR. O'SHEA: I have no sound. I think on this bench,
25 your Honour.

1 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, it's
2 strictly forbidden to not allow the Defence of Germain Katanga to have
3 any sound. How can we know if things are improving? Is everything okay?
4 Perfect.

5 Okay. Prosecutor, please go ahead.

6 MR. MACDONALD: (Interpretation) So concerning the first
7 point -- excuse me. Concerning the first point, that of Witness P-0028,
8 on Thursday, if light of the questions of Counsel Hooper, and without
9 naming the place but the school, which was mentioned by the witness
10 during the cross-examination, in Bunia, we have a team which is in the
11 field which is asking questions in order to obtain the dossier. And with
12 regards to the director of this school, on Friday, Friday afternoon, that
13 was, we noted that in the Lubanga case there were exhibits which had been
14 produced which came from that school which, unfortunately, are
15 confidential, but which I think do bring -- or do shed some light, if one
16 wishes, with regards to the testimony of P-0028, because the name figures
17 there, too, and so we've also taken steps with regard to the
18 Trial Chamber I, as well as by copying the teams -- the Defence teams in
19 the Lubanga case and ask for permission of the Chamber, the
20 Trial Chamber, in order to be able to disclose these exhibits to the
21 Defence team, and also the Prosecution is evaluating if it also produces
22 an application, because these dossiers have been produced in the present
23 one, but this is another issue.

24 The first question is that this morning we hope to have an answer
25 from Trial Chamber I in order to immediately disclose this dossier. The

1 reason why I mention that, your Honour, is Counsel Hooper is continuing
2 with his cross-examination, but I wanted to inform him that we,
3 therefore, have the school dossier for the years 2001 and 2002 of this
4 school in Bunia, this secondary school in Bunia, and we hope that we will
5 be able to obtain and disclose these documents, which are currently
6 confidential, this morning. We are therefore expecting a favourable
7 response from the Trial Chamber I.

8 That's the first point, your Honour. I'm ready to answer any
9 questions if the Chamber has any questions to put to me.

10 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper.

11 MR. HOOPER: Well, maybe I've misunderstood the exact position of
12 the Prosecution in relation to these documents, but I fail to understand
13 if they're extant why they haven't been disclosed under Rule 77. We
14 received just a few weeks ago documents that had been in the hands of the
15 Prosecution since June, which were only disclosed a week or two back.

16 We haven't made a great song and dance about it. We made our
17 inquiries of the Prosecutor as to why these services were done so late.
18 We got a reply. I wouldn't say it was a wholly satisfactory reply at
19 all.

20 Now, the next part of my cross-examination is going to deal with
21 schooling, in the next few minutes, and because of the -- well, the
22 chronology, the necessary chronology which I try and maintain as far as I
23 can so that the witness, as much as anyone else, can follow and not get
24 confused and lost. The chronology dictates that I take that part of the
25 cross-examination first.

1 So I have absolutely no idea -- well, I've got very little idea
2 what it is that the Prosecution are going to pull out of their hat now
3 later today. Is it that there is evidence that this witness was at the
4 Bunia school for the academic year 2001/2002? Is that their expectation?
5 At least I could know that much.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
7 Counsel Hooper.

8 Prosecutor, we're not going to spend too much time at the start
9 of the hearing this issue, but despite everything, the first point
10 indeed, is the sectorisation of the Prosecutor or compartmentalisation,
11 has that meant that the team of the Prosecutor before Chamber I has
12 forgotten to provide you with these documents? Have you had them for a
13 long time? So apparently you didn't, because you've asked
14 Trial Chamber I for them, but from what moment did you know that
15 Trial Chamber I was in possession of evidence which could be of interest
16 to the Defence with regards to Witness 0028? That's the first question.
17 Please answer quickly.

18 And with regards to the second point, do we have reasons to hope
19 that Trial Chamber I will disclose these documents in the shortest
20 possible time-frame in order not to handicap the Defence of
21 Germain Katanga in its cross-examination, because it wished that this
22 cross-examination be done in a chronological manner, in a linear manner.
23 Please answer that quickly and then go on to your second point.

24 MR. MACDONALD: (Interpretation) In order to answer the first
25 point, we learnt for the first time that we possibly had school records

1 of this school on Friday, around 1600 hours, and as I mentioned at the
2 start, your Honour, we didn't know that we had it. It was the team that
3 was in the field that went to this school, and as you know, it was only
4 in the fourth statement that was made in October that the witness did
5 re-establish a certain history of these different moves. We have a
6 mandate from the Chamber which was precise. We couldn't go back over
7 certain points, so it was in the hearing when this school was mentioned.
8 Immediately we carried out steps in order to try and see if effectively
9 we could corroborate that, and that is how we learned in discussing --
10 discussions with the director of the school that the Defence team had
11 already met him, and we saw that it was the Defence in the Lubanga case,
12 and immediately afterwards we checked that with our colleagues. And
13 these are documents, quite voluminous documents, with names to be found
14 therein.

15 That's the first question. And of course, that does confirm that
16 the witness was inscribed for 2001/2002 at this school in Bunia.

17 PRESIDING JUDGE COTTE: (Interpretation) In other terms, the
18 Defence team of Thomas Lubanga therefore got these documents, but for how
19 long which -- these documents which concern 0028, have they been in the
20 hands of Trial Chamber I, because the issue that one could ask is that of
21 knowing if the team of the Office of the Prosecutor, which is present
22 before Trial Chamber I, should not have notified you a lot quicker. I
23 think there's liaison which is carried out within the Office of the
24 Prosecutor between the different teams depending on which Chamber they're
25 in front of, and in reality, this is what I thought I heard

1 Counsel Hooper say a moment ago. So please could you give us some
2 clarification in this regard and thereafter tell us if you consider that
3 you will be able to get these documents very quickly.

4 We hope that these aren't too voluminous, and we also hope that
5 they'll make it possible to quickly know what the situation was of the
6 witness in 2001 and 2002.

7 MR. MACDONALD: (Interpretation) Your Honour, I haven't verified
8 these exhibits which were produced by the Defence in the Lubanga case, so
9 I can't tell you since what precise date they've been there, but it's
10 2010, clearly.

11 Now, the problem isn't that. It's not a document which is aimed
12 at P-0028. It's a document which was filed in another framework in
13 Lubanga case, and so it's about school registers for all the secondary
14 years at that school, and another register -- so, it's a particular year,
15 2002/2002, but there is also another register of inscriptions, because
16 there are two different things. One is the school results for a
17 particular year and for all of the school. So you have six levels, and
18 then you also have another register which goes back to '83 with all the
19 pupils figuring thereon when the war broke out. So in the time there may
20 be 800 names. In another documents, well, I can't count them all,
21 perhaps there are 200. So the team at the time, the Office of the
22 Prosecutor, did not look -- or the Lubanga team, in terms of the Office
23 of the Prosecutor, did not receive this document or the name of P-0028
24 with -- of the aim of P-0028. So it's within the framework of -- well,
25 it's just a coincidence. As I said, your Honour. We went to the school

1 yesterday afternoon. We would have obtained this same document if we
2 hadn't obtained this information from the headmaster to say that I've
3 already had people come. So instead of doing it again we thought we'd
4 make an application.

5 Now, the application is pending, and we have on Friday
6 immediately -- we sent immediately an e-mail to the Chamber,
7 Trial Chamber I, and we indicated that this morning there should be a
8 decision, and the difficulty is that the exhibit is confidential. It's a
9 confidential exhibit. They're both documents, confidential exhibits.

10 So it is a shame that it takes such time, but there are people
11 intervening from the Chamber, the Judges, says the Defence, who have to
12 give their opinion. I don't know if it's possible for you, your Honour,
13 and your assistants to carry out the liaison in order to accelerate
14 things, but I can tell you when I sent the e-mail, I was ensured that
15 they were attempting to deal with this issue as fast as possible this
16 morning.

17 PRESIDING JUDGE COTTE: (Interpretation) Very well. Quite
18 simply, what the Office of the Prosecutor could perhaps do, if has
19 obtained satisfaction from Trial Chamber I, is to try to isolate within
20 the document in question what is relevant to the Defence of
21 Germain Katanga such that it does not have to under extreme urgency do
22 too much reading when it's right in the middle of its cross-examination.

23 Now, where it concerns the second question relating to 166 --

24 MR. HOOPER: I'm sorry to just interrupt one moment. I'm just
25 (* overlapping speakers) ...

1 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper.

2 MR. HOOPER: I don't know if the Lubanga team are here. There's
3 probably someone here, and I can probably contact Maitre Mabilille or
4 perhaps one of the others, but it's just possible that I might be able to
5 get access to this document in that way.

6 Can I come back to you in a few moments, because the privilege
7 attaches to the Defence, I would have thought, not to the document
8 per se, unless they've received it on a particular basis.

9 MR. MACDONALD: The document is confidential. The document is
10 confidential.

11 MR. HOOPER: Well, I don't need to be addressed directly.

12 I would have thought that the -- it may be confidential in terms
13 of that Trial Chamber I, but the document itself is a Defence document,
14 and if the Defence want to give it to me, I would have thought they can
15 give it to me.

16 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, take
17 the initiatives which you consider that you can take and should take.
18 For his part, Mr. MacDonald is going to make an effort with the Office of
19 the Prosecution team which is present before Trial Chamber I to
20 accelerate as far as possible the taking position of this Chamber.

21 As far as we're concerned, we shall contact the assistants, or at
22 least the senior legal advisor, who is placed within the trial division,
23 and we hope that we are quickly going to be able to resolve this and have
24 exhibits which will allow us, the Trial Chamber II, in order to better
25 get close to the truth with regards to P-0028. Thank you.

1 Now, Prosecutor, with regards to P-0166.

2 MR. MACDONALD: (Interpretation) Just in order to finish with
3 regards to this point. We have isolated the information and the only
4 reason why we haven't been able to disclose is because the exhibit itself
5 is confidential. So here it's an order of the Chamber.

6 P-0166. Your Honour, P-0166, if everything goes well, should
7 arrive in The Hague on Sunday morning, the 27th or the 28th. I don't
8 have the exact date, but on the Sunday which is coming, 28th. So he's
9 landing in the morning after a night flight, and what I want to go to, we
10 propose that his testimony starts on the Tuesday in order to make it
11 possible for him to have familiarisation which is worthwhile, because I
12 feel that the witness has to be familiarised with this courtroom, this
13 court, this courtroom, and he should also be able to re-read the previous
14 statement, as is provided for in the familiarisation. And the
15 Prosecution had certain questions with regard to whether taking into
16 account these developments, if it was possible to interchange. For the
17 1st there should be a Status Conference. If that can be held on the
18 Monday in order for us not to lose Monday. So on that day the witness
19 can read the statement, and we can continue, because I have to say,
20 your Honour, that the Status Conference, the Prosecution has to review
21 points that it would like to discuss with the Chamber, and it could be a
22 quite long Status Conference, because there are lots of issues that have
23 to be addressed even before the Defence can start with its presentation.
24 So this is just a suggestion that we would make. I think we have
25 to be fair with the witness. These are points to be raised, but one

1 thing is certain as Counsel Hooper made in the cross-examination,
2 shouldn't be very long for this witness. We have very good hope that we
3 can finish with the witness in the four days that follow from Tuesday,
4 and then the following week we'll have the witness 0317.

5 PRESIDING JUDGE COTTE: (Interpretation) What about Sunday
6 morning? Why can't he come for a meeting which is already put back and
7 which was originally set for Monday the 29th? It's not going to take six
8 months. I mean, it is the Chamber that has to adapt itself permanently
9 to the requirements of everybody, and obviously it was set up for that,
10 but it would like to obtain its own programme on certain occasions and
11 its own planning and timetable.

12 Now, the Status Conference was fixed for the 1st. There are a
13 certain number of decisions which we have to issue which we would like to
14 be able to issue quickly.

15 Now, if you have to take up certain issues in this Status
16 Conference such that they can be dealt with in a useful way, this would
17 also be desirable for us to know what you intend to address so that we
18 don't discover everything at the hearing because we can't continually
19 have all of these issues in our head in realtime.

20 Now, with regards to Witness 0166, that person can't come on
21 Thursday of this week. For example, familiarisation on Friday to then
22 come on the Monday? Is that absolutely impossible?

23 MR. MACDONALD: (Interpretation) Your Honour, there is a
24 reality, Congolese reality with regards to the transport situation, which
25 is such that if the Prosecution could bring the witness a long time

1 before, taking into account the date (expunged), it would do that.

2 It would have done that. In Europe, you can take flights on any day.

3 When you live in Ituri, it's something completely different.

4 PRESIDING JUDGE COTTE: (Interpretation) What's the date (expunged)

5 (expunged)

6 MR. MACDONALD: (Interpretation) If I'm not wrong, it was the

7 20th. So today should leave Bunia.

8 PRESIDING JUDGE COTTE: (Interpretation) (expunged)

9 (expunged).

10 MR. MACDONALD: (Interpretation) Yes, but the witness is

11 travelling as we speak, and Congo is larger than half of Europe if you

12 have to move within the country.

13 PRESIDING JUDGE COTTE: (Interpretation) We are perfectly aware

14 of that. We are perfectly aware of that. All I'm noting is that once

15 again it's the Chamber who has to adapt.

16 MR. MACDONALD: (Interpretation) Your Honour, I understand that

17 it's the Chamber that's adapting. We all adapt, and that's the reason

18 why the reason why I mentioned or seized the Chamber a month ago, if not

19 longer, with regards to the issue (expunged)

20 Witness 0166.

21 PRESIDING JUDGE COTTE: (Interpretation) Well, let's not spend

22 any more time on this because we're really wasting time on this.

23 Witness 0166 will start to testify on Tuesday, the 30th, in the morning,

24 so we're going to have to adapt to that, and we will see if we manage to

25 have this Status Conference on the 29th or not. If we are able to hold

1 it on Monday, the 29th, because we also have to prepare the
2 Status Conference, if it is possible to hold it on the 29th, we'll let
3 you know, and we will go with that. If you have some questions that you
4 want to raise during the Status Conference, then let's try and make an
5 effort to make this conference useful, and please do notify us of
6 questions you want to raise so we don't just discover it in the morning.

7 MR. KILENDA: (Interpretation) Please excuse me. I shall be
8 very brief. Having already noted that you will have a Status Conference
9 on the 1st of December, our team was organised to prepare that on the
10 29th. So we would -- well, we wouldn't like for you to adapt, but we
11 would also like you to take into account this fact.

12 MR. HOOPER: I'm sorry, Mr. President, to ...

13 (Trial Chamber confers)

14 PRESIDING JUDGE COTTE: (Interpretation) Go ahead,
15 Counsel Hooper.

16 MR. HOOPER: (* Previous translation continues) ... to add to the
17 discussion. The Status Conference was due to start on the 1st. We would
18 have no particular objection to it starting -- I say starting earlier,
19 because it might be that matters could be raised and one could drift into
20 two Status Conferences, not of equal length but -- I'm not aware of an
21 agenda. It might be that we Could contribute to that agenda, and it
22 might be that matters Would be raised if we had a hearing on the 29th and
23 run across, as it were, gone through, at least initially, and we could
24 still have a Status Conference on the 1st, which would then perhaps help
25 meet Mr. Kilenda's difficulties, too, in terms of preparation.

1 PRESIDING JUDGE COTTE: (Interpretation) So as things currently
2 stand we have a witness who should start on Tuesday, the 30th of
3 November. We also have a Status Conference which we would like to have
4 on the 29th of November.

5 Counsel Kilenda, for you, is it unthinkable to speed up your
6 preparation somewhat?

7 MR. KILENDA: (Interpretation) We're going to do that,
8 your Honour.

9 PRESIDING JUDGE COTTE: (Interpretation) You are very adaptable.
10 Thank you very much.

11 We are now going to have Witness 0028 come in, and before the
12 accused leave the courtroom, I would like to indicate to you that the
13 witness, on Thursday, mentioned the fact that the witness wanted to say a
14 few words right at the start of the hearing, because apparently he
15 remembered information that he wished to share with the Court. We think
16 that they are answers that he wished to add to answers to questions which
17 were put to him. We're going to see that in a moment.

18 Thank you, Prosecutor, for all the information you provided to
19 us.

20 Security officers, if you would be so kind as to escort out for a
21 very brief moment Mr. Katanga and Mr. Ngudjolo.

22 Court Officer, we are now going into closed session in order to
23 have the witness come in, and the two accused will join us as soon as
24 they can thereafter.

25 (The accused withdrew).

1 (Closed session at 9.26 a.m.)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Open session at 9.27 a.m.)

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

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
14 Court Officer.

15 Security officers, thank you for bringing the accused back in.

16 (The accused entered court)

17 PRESIDING JUDGE COTTE: (Interpretation) We are once again in
18 open session, Court Officer, yes?

19 COURT OFFICER: (Interpretation) Yes, we're in open session,
20 your Honour.

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

22 Good morning, Witness.

23 THE WITNESS: (Interpretation) Good morning, your Honour. I can
24 follow you very well.

25 PRESIDING JUDGE COTTE: (Interpretation) Great. Perfect. The

1 Chamber has learnt on Thursday during the afternoon that you wished to
2 bring certain additional complements, clarifications, if we've understood
3 that well, to an answer that you gave last week. Is that the case,
4 Witness?

5 THE WITNESS: (Interpretation) Yes, your Honour.

6 PRESIDING JUDGE COTTE: (Interpretation) It's with regard to
7 which subject that you intend to take the floor spontaneously with this
8 regard?

9 THE WITNESS: (Interpretation) Thank you. When I left, I
10 remembered the date which was put to me, the date which was on my card,
11 my demobilisation card, at well as the date of birth on my electoral card
12 which had been made in Aveba, and I confirm that I do know the dates
13 written on those items.

14 PRESIDING JUDGE COTTE: (Interpretation) So you are now able to
15 ask (* as interpreted) any questions that Mr. Hooper may or may not ask
16 you about the dates and how they coincide. Is that what you are saying?

17 THE WITNESS: (Interpretation) Yes. It was just to offer a
18 confirmation that the dates written on these cards are real, and if he
19 has any other idea about that, I think that that's his business.

20 PRESIDING JUDGE COTTE: (Interpretation) Very well.

21 Mr. Hooper, you may continue your cross-examination. If you feel
22 that you would like to question the witness again about these dates, that
23 is up to you. You have already heard that the witness confirms, it would
24 seem, that these dates are indeed correct. So we leave you the
25 responsibility, depending on whether or not you have a different idea

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

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1 about that. So you may continue with your cross-examination,
2 Counsel Hooper.

3 So, Witness, we are here for an hour and a half now, and then
4 we'll have a half-hour break, and then two further hours.

5 Thank you. Counsel Hooper.

6 MR. HOOPER: Thank you, Mr. President.

7 Questioned by Mr. Hooper: (Continued)

8 Q. And good morning, Mr. Witness.

9 A. Good morning.

10 Q. Now, I haven't asked you about your demobilisation card or your
11 electoral card, so you're coming basically to volunteer some information
12 to us in respect to something that you have not yet been asked. I'm
13 grateful for that.

14 What was the date of birth on your demobilisation card that you
15 remember?

16 A. It is the date that you have in your documents, and I know that
17 you also have my demobilisation card. You have it in your possession. I
18 think that you even have my electoral card. So I confirm that the dates
19 written on those cards are correct.

20 I refer to your previous statements, and I thought about them,
21 and I recalled some events that took place when I was still a child, and
22 I reach the conclusion that you do have reliable, true information that
23 you have received from a reliable source. Unfortunately, you are not
24 presenting that information in the clearest possible manner. That is
25 what I wanted to say. So if you would like us to go deeper into this

1 issue, I am ready to do so, and yet I do confirm that you have a good
2 source of information, but the problem is about the way that you present
3 those sources. You are not presenting me those sources as you should.

4 Q. Very well. Well, maybe there's a little misunderstanding between
5 us and we'll try to sort that out this morning. But am I right in
6 understanding you to say to the Court this morning that you've reflected
7 over the weekend, and if I put to you your date of birth is the
8 8th of August, 1986, that that is something that you now accept? Is that
9 your date of birth, the 8th of August, 1986?

10 A. You're talking about the 8th of August, 1986. I think that the
11 8th of August was mentioned on my demobilisation card.

12 Q. 1986, that's your date of birth. Do you accept that?

13 A. No, I do not confirm that. I cannot confirm that, but this date
14 of 1986, I do not know that year. Nonetheless, I should like to add
15 this: I am not here to convince you of whether I was small or big.
16 That's not my objective here. So if you want to think that I was born in
17 1986, I see no problem with that, but to my knowledge, 1986 was a year
18 when I was not around.

19 Q. Very well. So we -- we hold our course, as it were.

20 Now, what do you recall the date to be on your demobilisation
21 card? What's the date that you recalled over the weekend?

22 A. I would say the following: The date of the 8th rings a bell, the
23 date of the 8th, and it does remind me of something written on the card.
24 The figure 8 rings a bell. I'm sure that's written on the card.

25 Q. Well, of course you're -- you've told us that, as far as you

1 could remember, when you gave evidence on Thursday that your date of
2 birth was the (expunged). So there's a couple of 8s there
3 already.

4 I'm talking about the month 8, the eighth month, August. Is
5 August a date that you've -- that's on your demobilisation card? Is that
6 the month that's stated there?

7 A. Could you please repeat your question.

8 Q. As far as you can remember, does your demobilisation card give as
9 your month of birth, forget the year for a moment, your month of birth,
10 August, the eighth month?

11 A. I have already told you this: The number 8 rings a bell with me.
12 And would I like to ask you the following: You have the source of
13 information, so why don't you show it now in front of everybody?

14 I should clarify that the number 8 does ring a bell with me as
15 concerns my demobilisation card and my electoral card.

16 Q. All right. Well, let's -- let's get on course. Did the
17 Prosecutor ever ask you to prove -- to produce evidence of your age?

18 A. You know, the days when I met with members of the OTP, they asked
19 me questions, and I answered those questions to the best of my knowledge.
20 If there were any further information, I could say that I had forgotten
21 that information. Maybe this was because I was so young.

22 Let me remind you of one thing, and I said this before, I am not
23 here to tell you that I was young or very young at the time. That is not
24 my aim of being here.

25 Q. Now, we'll go into the -- the meetings you had with the

1 Prosecution in detail as we go along, and I'll produce documents for you
2 so that you can follow and see what you agreed on previous occasions and
3 what you stated on previous occasions, but just so that we can remind
4 ourselves of the general chronology here, let me just very briefly refer
5 to the history.

6 You were first seen in December 2005 by investigators. You were
7 seen again in January, a month later, in 2006. You were interviewed over
8 five days in April of 2006. The first interview I'm going to call
9 that -- or the first statement, rather, I'd call that. There's a further
10 interview, that is, a further statement is taken just under a year later
11 in February of 2007, and you're seen more recently last year in July by
12 Mr. MacDonald and others concerning the person who put you in touch with
13 the Prosecution. And then you're seen again at your request in October
14 over four or five days together with the lady who by then had been
15 appointed your lawyer, you may remember that, and there you change your
16 account your, story, in respect of the previous history that you'd given.

17 So there's quite a long history here, and I don't want any of us
18 to try and get confused and I'm certainly not going to try and confuse
19 you, so let's take it step-by-step. I'm dealing here with your age. You
20 may recall on Thursday I asked you how old you were. You said you were
21 21. I pointed out you're not 21 yet. (Expunged)
22 (expunged). And I've suggested, in fact, that you were three years older than
23 you claim, having been born, I suggest, in August of 1986. So this is
24 where we are.

25 Now, in your second interview, and you should be provided that.

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

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1 I'm going to give you your second interview at this stage, because I'm
2 dealing with it, but this is not your first. It's your second long
3 interview, let me put it like that, where a statement is taken, and this
4 is the interview that took place in 2007, and we've got copies for you,
5 hard copies. And let me just provide the formal reference for that
6 interview. It's DRC-OTP-0171-1828.

7 MR. HOOPER: Mr. Greffier, if you could be good enough to put
8 that into the witness's hands. It's an unmarked copy in French of the
9 French interview.

10 COURT OFFICER: This is a confidential document; right?

11 MR. HOOPER: In fact, I -- yes. All these interviews would be
12 confidential documents.

13 COURT OFFICER: (Interpretation) Please press "PC 1" on your
14 console to view the document.

15 MR. HOOPER:

16 Q. Now, there's been a long interview and statement had been taken
17 from you the year before, and if we go to paragraph 8 of this interview,
18 and I'm not going to speak it in French unless it's necessary. You can
19 follow it there in French if you look at paragraph 8.

20 MR. HOOPER: And, Mr. Greffier, and if you could just -- at this
21 stage just ensure, please, thank you, that the witness is looking at
22 paragraph 8, because it's sometimes difficult to -- so we find paragraph
23 8 there.

24 Q. And while I read it, I've got to make sure I don't mention names
25 that may identify you. So I'm not -- so if you hear me read something

1 and I miss something out, it's, I hope, for that reason only. All right?

2 And you can see paragraph 8, and this, I remind you, is your
3 second interview, and you can see at the beginning that it's dated
4 between -- on the 23rd and the 24th, the 25th, and the 26th of February,
5 with (expunged), who you had met before, and Mr. MacDonald. And right
6 at the beginning, paragraph 8, obviously they're concerned about your
7 date of birth, and this is what you say, you say:

8 "My date of birth is the 8th of December, 19 --" we're in open,
9 aren't we. Yes.

10 You give your date of birth. We can see what's said there. You
11 said:

12 "My parents gave this date when I was registered at school, and
13 subsequently that was the date on my reports. I was six years old at my
14 first year at primary school. I also had two reports indicating my
15 birthday. On my report, the name inscribed is," and we can see the name,
16 and we know that that is the final version of your name that you've
17 given.

18 And you add:

19 "It is my true family name."

20 And you add:

21 "My father always called me by the name," and you produce that
22 name, "the name used at home. I provide the investigators with these
23 reports."

24 And then you say:

25 "In the Congo, AIDS day is always," such and such a date, "and

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

Page 22

1 that helps me recall my birthday. I've been told that this day is
2 December the 1st, but for me it's always been --" so there's an issue
3 there. You're being told by the Prosecutors it's a different day, but
4 there we are.

5 Now, I now want to show you the two documents that you produced
6 on this occasion, the reports. These reports are variously
7 DRC-OTP-0171-1827, and DRC-OTP-0171-1826. And again we've got them in
8 hard copy for you, which they appear on the screen, but if you're like
9 me, you'll prefer them in hard copy because you can see it much more
10 easily, and ...

11 Just excuse me one moment.

12 Two unmarked copies.

13 MR. HOOPER: Sorry, I only have one copy for the Bench if they
14 wish to see it. There are some hard copy there if any of you Judges wish
15 to see the hard copy. It's sometimes easier.

16 Q. Right. So what's happened here at this second interview is
17 you've -- you've given that date of birth, and then you produce these two
18 school reports. And we can see by looking at the bottom right-hand
19 corner of the report, and I can mention this, this isn't, as we'll see,
20 something that's going to identify you, but they were drafted or they
21 purport to come from the school at Songolo, S-o-n-g-o-l-o, and they
22 relate, again if we look towards the top right hand, a few centimetres
23 down, we can see that they are relating to the school year. 1827 relates
24 to 2001/2002. And the other document, 1826, we can see is -- it jumps a
25 year. It's not 2002 to 3, it's 2003 to 2004. And we can see the name

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

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1 that appears there is your true name, and we see your date -- your place
2 and date of birth is given there. We can see it's a (expunged)
3 of birth. And you produced these --

4 MR. MACDONALD: Your Honour.

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

6 MR. MACDONALD: We just have to be mindful of identifying
7 information at this stage. I'm just reminding my colleague.

8 MR. HOOPER: Well, I think if I keep it at least as general as
9 (expunged), that's not going to bring the people beating their way to
10 a conclusion as to who this person is, particularly as we are asserting
11 it's his incorrect date of birth.

12 Q. And so you produced these two reports to your interviewers on
13 that occasion, indicating, as you've said in paragraph 8, "my birthday,"
14 and then explaining why the name is what it is, and that's the first use
15 of that name as we know.

16 Now, can we go to paragraph 9. Rather strangely, you then say:

17 "I must make clear that these school reports have been arranged.

18 The results of these two school reports have been falsified," and you
19 name the person whose name appears on the documents, as we see.

20 And you go on to say, and this is -- we remind ourselves back in
21 February 2007 you say:

22 "I'm now in the third year of secondary," and that the person who
23 made the reports is a préfet at that school, and that's why the reports
24 come from the school. And then you say:

25 "I've never been --"

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

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1 MR. MACDONALD: Objection, your Honour.

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

3 MR. MACDONALD: (Interpretation) What Mr. Hooper is doing is
4 taking us through a lengthy overview of these documents that the witness
5 might have been able to have submitted during his declaration, but there
6 is no question as such. Here we're having a presentation of these
7 documents looking at paragraph 8 and paragraph 9, and with his time
8 60 per cent of the overall examination I'm wondering where the use of
9 this is.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes. We have the time
11 limit in mind. Now, given this overview, we're just wondering if it is
12 vital for the Defence team of Katanga to actually -- to paint this
13 background information. It is true that this background information is
14 coming through very slowly, and we are sure that the idea is to enable
15 the witness to situate himself with these declarations, and I'm sure that
16 if we were in a national courtroom this would be fine. You could take
17 all the time in the world. But this is not the case. We have
18 interpreters.

19 So now you have painted the background, Mr. Hooper, please ask
20 your question. I do think it is important for the witness to be able to
21 provide useful elements in his answer which will -- and it's important to
22 give us the background so that the witness can give this information.
23 That causes us no problem, but we are ready for you to move on now,
24 Mr. Hooper.

25 MR. HOOPER: Yes. I'm sorry. It's just that the history of this

1 document is sufficiently strange to require a little elucidation, I'd
2 thought or hoped, but --

3 Q. So what it comes down to, Mr. Witness, is this: In order to give
4 or provide some proof of your date of birth being as it appears on these
5 documents, you produced forged documents. That's right, isn't it?

6 A. Your Honour, I am ashamed. I am really ashamed,
7 Mr. Presiding Judge. I wanted to ask you the following question: What
8 is the ICC's work? What is the aim of this court? What motivates the
9 court? Because I do not know what the objective of the ICC is. The only
10 thing that I do know is that the International Criminal Court does exist,
11 but I don't know what the objective of it is. I don't know what its aims
12 are. If you could please tell me, your Honour, what the ICC does.

13 PRESIDING JUDGE COTTE: (Interpretation) Witness, in the very
14 first hearing, I think I recalled that it's normally not up to the
15 witness to ask questions, but the witness, rather, has questions put to
16 him or her. Having said this, I shall now answer some of your questions.
17 I am now going to answer the question you are asking now.

18 We are here, and you know, to try two accused persons who have
19 been accused of a certain number of crimes. And as I told you some time
20 ago, that is important, and I think you understood me. But let me remind
21 you. These two accused persons have a right to a legal defence. That is
22 the situation in which all accused persons should be before all criminal
23 courts in the world when we are in a democratic country, and within the
24 framework of the legal defence of an accused person, the counsel for that
25 accused person can ask a certain number of questions. Those questions

1 are asked not to persecute the witness, but, rather, to ensure that a
2 certain number of statements made by the witness in the course of his
3 interviews before the OTP are correct.

4 What Counsel Hooper is trying to do now is -- he's trying to
5 understand why different dates of birth appear in documents which purport
6 to be your documents. He's trying to clarify this, because he feels that
7 this is important for the defence of his client. He has just asked you
8 whether or not you falsified certain identity documents, and apparently
9 you are shocked by these questions, because you probably feel that you
10 are being accused of committing an offence.

11 The only thing that is requested of you, Mr. Witness, is to
12 answer. If you feel that falsification did not take place, say so. You
13 should simply tell us what you deem to be the truth. However, this
14 counsel or the counsel from the other Defence team do not intend to
15 deliberately put you in difficulty. They are doing their job, and you
16 have to understand that. They are doing their job, and you should answer
17 the questions spontaneously, and you should say things to the best of
18 your knowledge.

19 We have already gone over this territory, but I have to repeat
20 these things to you, because I see that you are shocked. You should
21 answer. You should tell the truth. That's what you promised to do. You
22 should speak the truth. That's the only thing we request of you.

23 JUDGE DIARRA: (Interpretation) Your Honour, with your
24 permission I would like to add that knowledge of the exact -- of your
25 exact date of birth is very important for the job that counsel is doing.

1 Counsel has to know the exact date of -- your exact date of birth. This
2 is of absolute importance to him. That is why he wishes to get this
3 information.

4 Thank you. I just wished to add this to what the Presiding Judge
5 just said. And you should try to remain polite and courteous as you have
6 been so far, and as we have been polite with you. And you accepted to
7 come here before the ICC, and so you have to play along and do your
8 responsibility of speaking the truth, and all the while you should remain
9 polite with everyone.

10 He is asking you questions, but the answers you provide are for
11 the Bench. Your answers will enable the Judges to understand the events
12 that took place and to be able to make the right determination.

13 Thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, I know it
15 is difficult to give testimony. You have opted to take up this
16 responsibility and should carry it to the end.

17 Mr. Hooper, the floor is yours, sir.

18 MR. HOOPER:

19 Q. Let me put a simpler question to you. Do you agree that the two
20 reports you produced in the course of this interview, or prior to this
21 interview, had been forged, were false, false documents? Do you agree?

22 A. You talk about forgery. What are you talking about? Do you mean
23 that I falsified or forged some of the information in this report card,
24 or I have forged the entire report card?

25 Q. Do you agree that these two documents are false documents?

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

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1 A. Well, this is what I'm telling you: I would say yes, because I
2 have never attended the Songolo school as indicated here. I never
3 attended that school. This is to say that these reports were prepared
4 simply to help me to attend school in the locality where I was living,
5 but it does not mean that I attended school in Songolo.

6 Does that answer your question?

7 Q. Now, we can recall from last week that you told us that you
8 graduated from your second year secondary in Bunia in July --

9 MR. MACDONALD: Okay.

10 MR. HOOPER: I'm sorry. I don't know if I require these
11 interruptions.

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

13 MR. MACDONALD: (Interpretation) Your Honour, I would like us to
14 go into private session, otherwise, we'll have redactions. We discussed
15 this matter last Thursday in private session, that is, when we discussed
16 the various localities in which the witness attended school.

17 I apologise, your Honour, but I think that Mr. Hooper is
18 disclosing information, and we have to be redacting all the time. That
19 is why I would prefer for us to go into private session, especially when
20 he is talking about reports. I think we should proceed as we did last
21 Thursday.

22 PRESIDING JUDGE COTTE: (Interpretation) You have to understand
23 that for the past few minutes no entire -- no date of birth has been
24 given. Either we talk about the month or the year, but so far no date of
25 birth has been given in full.

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

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1 We have to be very careful, but I think we will be even more
2 careful to the detriment of those who are listening from the public.

3 Court Officer, could we go into private session.

4 (Public session at 10.08 a.m.)

5 (Expunged)

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

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

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

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

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

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

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

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6 (Open session at 10.53 a.m.)

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

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

10 Mr. Hooper, you may proceed.

11 MR. MACDONALD: (Interpretation)

12 Q. I'd like to turn to the various interviews that you've had with
13 the Prosecution, and I'd like to start with the first screening note
14 which is -- relates to the meeting with you on the 13th of December,
15 2005, and its reference is 1016-0049. I can provide you a document,
16 Mr. Witness, but it's in English. It's not a very long document in any
17 event, and what I read will be translated to you. I'll get a copy to you
18 anyway. And I want to see -- I want to see how your story develops over
19 the years. So let's start at the beginning.

20 MR. HOOPER: This is a private document, as all these documents
21 will be private documents.

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

23 MR. MACDONALD: (Interpretation) We have a Swahili translation
24 which was produced within the framework of the familiarisation. Maybe
25 after the break we can provide the witness with a copy since the witness

1 does not understand English.

2 MR. HOOPER: (* Previous translation continues) ... I've not seen
3 it. It's never been disclosed to us.

4 PRESIDING JUDGE COTTE: (Interpretation) Well, I think it's
5 going to be disclosed now.

6 We have to rise. I apologise, Mr. Hooper, but we will reconvene
7 and continue at 11.30.

8 May I ask the security officers to lead out Mr. Katanga and
9 Mr. Ngudjolo.

10 Gentlemen, we will meet again at 11.30.

11 (The accused withdrew)

12 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, could we
13 return to closed session so that the witness can leave the courtroom.

14 Mr. Witness, we will meet again in 30 minutes.

15 (Closed session at 10.56 a.m.)

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22 (Expunged)

23 (Open session at 10.57 a.m.)

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

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Well, the
2 accused persons are not here, but considering what the Prosecutor said at
3 the beginning of the hearing, the Chamber noticed in the course of the
4 hearing that -- that Trial Chamber I gave its agreement for the
5 disclosure of school documents, and we should therefore remember that
6 these documents are confidential. Consequently, we have to comply with
7 the conditions set by Trial Chamber I, conditions which we are not aware
8 of yet.

9 Mr. Prosecutor, we have two minutes -- or, rather, one minute.
10 Can you please say very rapidly.

11 MR. MACDONALD: (Interpretation) We have copies which we wish to
12 disclose immediately. The second document is a relevant copy of a
13 document which is on DVD and which was very heavy to send by e-mail.

14 And to answer your question, Mr. Hooper, concerning the screening
15 notes, the Swahili version was disclosed to you, and the ERN number is
16 1050-0893.

17 Thank you.

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

20 Mr. Hooper, we are going to rise now. You are going to tell us
21 later on how much time you still have to take for this cross-examination.

22 So we stand adjourned.

23 Recess taken at 10.59 a.m.

24 On resuming at 11.35 a.m.

25 (Closed session)

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13 (Expunged)

14 (Expunged)

15 (Expunged)

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18 (Open session at 11.37 a.m.)

19 PRESIDING JUDGE COTTE: (Interpretation) And, security officers,

20 may you please lead in the two accused.

21 (The accused entered court)

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

23 your Honour.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

25 Counsel Gilissen, you have the floor.

1 MR. GILISSEN: (Interpretation) Thank you very much,
2 your Honour. Your Honour, Madam Judges, in -- under Article 67(2) and
3 Rule 77, we would like to make a point. The counsel had just completed
4 his obligations as concerns communicating on -- on documentation and
5 disclosing documents. Your Honour, I'm not sure that -- that anything
6 could be said against the application itself. We should like, with
7 Mr. Luvengika, to be able to benefit from this kind of communication,
8 which is obviously of interest as it is a part of the core material of
9 the debates. And that was essentially what I wanted to say, but
10 obviously we're in your hands. I'm not expecting an off-the-cuff
11 decision but if it could be thought about. Thank you very much, sir.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Counsel Gilissen. Up until now, have you received these kind of
14 communications under 67(2) and/or Rule 77 of the RPE, ever since this
15 Chamber has been sitting?

16 MR. MACDONALD: (Interpretation) I think you're talking about
17 the document this morning.

18 PRESIDING JUDGE COTTE: (Interpretation) No. I'm just
19 wondering. Is this something new? Ever since this Chamber has been
20 sitting, were the Legal Representatives in copy for this kind of
21 documentation under Article 67(2) or Rule 77, or is this a new request
22 that they have just brought to our attention? I understand that we are
23 talking about the documents that we referred to at the start of today's
24 hearing, but I just wanted to know.

25 MR. GILISSEN: (Interpretation) Your Honour, with a small

1 reservation, I -- I think we could say that we have not yet benefitted
2 from this kind of notification, and that is why I took the floor this
3 morning. But if there is to be some disclosure, or if there was any
4 disclosure of this kind at some point, then I'm not quite sure that I can
5 remember it off the top of my head.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you. That's what
7 I was expecting. Article 67(2) and Rule 77 do mention communication to
8 the -- from the Defence.

9 MR. MACDONALD: (Interpretation) Yes. There is one exception to
10 that, your Honour, and that is when it is to do with information under 76
11 which had been communicated in accordance with Rule 77, and there I'm not
12 sure whether Counsel Gilissen -- and he's nodding his head, so I guess
13 that he agrees, but this document from this morning I think is one of the
14 ones that had not been covered by that Rule.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well. With the
16 documents that Mr. Gilissen was talking about a moment ago, we should
17 bear in mind that we're talking about documents that are classified as
18 confidential by TC I and must be treated as such. Therefore, any
19 decision or opinion about those communications issued from TC I needed to
20 be borne in mind.

21 For the moment we will shall continue with Mr. Hooper's
22 cross-examination. You have the floor, sir.

23 MR. HOOPER: Can I indicate that certainly relevant portions of
24 those documents will sought to be admitted in the usual way by the
25 Defence, and so it will take a while to get them into Ringtail, but we'll

1 have that done, and the parties can have them, probably later today, and
2 I'll refer to them or introduce them more formally tomorrow briefly,
3 because I don't want to go back on this area.

4 Can I perhaps briefly indicate at this stage -- I don't know if
5 we need to be in huis clos for -- in closed session for this. I think I
6 can safely say they do no more than support what the witness has said
7 about graduating from a particular school for his second year, a position
8 which the Defence supports and agrees. There's a date of birth in the
9 document, which is not the date of birth provided by the witness. I can
10 give that date of birth, because I don't believe it to be incriminatory
11 because, of course, it doesn't --

12 MR. MACDONALD: Just -- just -- can we go in partial closed
13 session for this, with your permission, your Honour, because --

14 MR. HOOPER: Well, I don't need to do that. I'll come back to
15 this tomorrow.

16 PRESIDING JUDGE COTTE: (Interpretation) Please do not overlap.
17 Please do not interrupt one another. In any case, please kindly wait for
18 the floor to be given to you. Otherwise, nothing will be written down by
19 the court recorders. Nothing will be interpreted. Thank you. I'm sorry
20 to remind you again.

21 Mr. Hooper, please proceed. You were speaking. We are ready to
22 hear you out.

23 MR. HOOPER: I'll move on from this subject, and I can return to
24 it briefly, I hope, tomorrow.

25 PRESIDING JUDGE COTTE: (Interpretation) Very well. In that

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1 case, let us continue where we left off this morning. Over to you.

2 MR. HOOPER:

3 Q. So, Mr. Witness, I'm going to go -- if we can have it back on the
4 screen if it's been taken away, DRC-OTP-1016-0049, which is an
5 investigator's note, dated the 12th of January, 2006, and which relates
6 to a meeting, the very first meeting that the OTP investigators had with
7 you, and that took place -- that meeting took place on the 13th of
8 December, 2005. And I want to go through aspects of this which may
9 conflict with your present account. You can have a hard copy of this
10 document, albeit it's in English, but I'm going to read, anyway, the text
11 into -- parts of the text into the -- into the -- into the record.

12 We've already dealt with the name that we see there which you
13 provided. We've already discussed that. We see at 1 the named
14 intermediary who is said to have introduced you that we know by the
15 pseudonym of 316, and it refers to a meeting that the investigators had
16 with you at Camp Ndromo, N-d-r-o-m-o. It says here that your mother, and
17 it names her, had been killed by Hema elements in Singu in 2002. And
18 very simply, just for the record, I need to ask you this: That, we know,
19 is not true; is that right? You would agree with that. That isn't true,
20 and you've told us other circumstances. Is that right?

21 A. I have explained that today when I learned how the ICC worked, I
22 offered explanations. And if I hadn't done it on that day then, I would
23 have done it here now.

24 My mother was not killed by UPC elements, elements of
25 Thomas Lubanga. She was killed by our combatants.

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1 Q. And you say -- this is the first meeting, remember, and you say
2 there that -- and again this is not something that will identify you at
3 all. (Expunged)
4 (Expunged)
5 (Expunged)
6 (Expunged)
7 (Expunged)
8 (Expunged)
9 (Expunged)
10 (Expunged). I do not know how you would
11 define a familial link. That's up to you to decide.
12 (Expunged)
13 (Expunged)
14 (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged)
18 (Expunged)
19 (Expunged)
20 (Expunged)
21 (Expunged)
22 (Expunged)
23 (Expunged)
24 (Expunged)
25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 THE INTERPRETER: Could Mr. Hooper please turn off his
10 microphone, please, because it's causing difficulties for the booth.
11 Thank you very much.

12 THE WITNESS: (Interpretation) Very well. When I was born, my
13 father was already around, and that is obvious. He took a wife, and he
14 had two children with that woman.

15 THE INTERPRETER: Correction from the English booth: He had
16 children from that -- no. Re-correction: Two children by her.

17 THE WITNESS: (Interpretation) And a parent or a sister of this
18 woman was the wife of (expunged). They lived together in a -- in the
19 same village and had done for some time. I was born after that, and we
20 still all lived together. So we were not separated. We lived together
21 during all that time.

22 Now, I am not sure what the Defence counsel thinks of that, and I
23 had a relationship -- family relationship not only with Denise but with
24 other people.

25 JUDGE DIARRA: (Interpretation) As far as I'm concerned, I have

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1 understood your answer clearly.

2 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
3 Witness.

4 Counsel Hooper, you may no doubt continue given this
5 clarification about family ties from the witness.

6 MR. HOOPER: Yes. I don't need to pursue that on this document,
7 but it is our case that he's advanced his relationship to put himself in
8 the most favourable light with the investigators. That's our position.

9 Q. Can I look at item 5 on this, and it states that you'd attended
10 primary school in a certain place, and then it says:

11 "... and the first year of secondary school in Aveba."

12 Was that true or untrue, that you attended the first year of a
13 secondary school in Aveba?

14 THE INTERPRETER: The witness is speaking Lingala, your Honour.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, I'm sorry
16 to bother you again, but remember that we agreed that you would speak
17 only one language so as not to complicate the interpreters' work, and we
18 chose Swahili. From time to time this morning you did switch briefly
19 into French, and now you're switching into Lingala. So as far as is
20 humanly possible, indeed, please make sure that you stick to Swahili.
21 Thank you very much.

22 Please go back to what you were saying. We're ready to hear you
23 out.

24 THE WITNESS: (Interpretation) Your Honour, in fact, I was using
25 a proverb that I know. I wanted to say that I would never like to have

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1 any problems with anyone at all. I want to live peacefully. I would
2 like to be left to live in peace. I'm not looking for trouble with
3 anyone.

4 It is true that this was said, but that didn't come out from my
5 mouth. Also, quite by chance, it's what I said. I wanted to offer a
6 different version here.

7 Now, if per chance I had said what was written in that statement,
8 it was an untruth. I was just letting it out. I just needed to clarify
9 that. Please do not take this as a deliberate contradiction on my part.
10 I came here to tell the truth, your Honour.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well. Thank you,
12 Mr. Witness.

13 Counsel Hooper, please proceed.

14 MR. HOOPER:

15 Q. And then I'm going to read that part of this document under the
16 heading at the bottom of page 1, "Knowledge of the crime." I'm going to
17 read part of this, so please listen, and then I'm going to ask you if
18 it's a true account or not, bearing in mind we've heard your evidence.
19 Your answer may, in fact, be very short.

20 You "... described that he had been conscripted by force. He was
21 on his way from school to home with four other boys when they were
22 kidnapped by FRPI (expunged) and his escort waiting for them to
23 leave school. They were 36 persons in total. On their way, they stopped
24 at different schools to kidnap more children."

25 Just pausing there. Is that true or false?

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1 A. I have already said that this is a statement which does not
2 reflect the truth. I say this because at that time I was never attending
3 school in Aveba. May I add that I have never attended school in Aveba.
4 And even during that period, I did not know the Walendu-Bindi
5 collectivity well.

6 Well, to answer your question, therefore, I will tell you the
7 following: That is an untruth. Someone asked me to say that, and the
8 person who asked me to say that is still alive.

9 Q. I'll come to that in a moment, but I need to put these matters to
10 you, and then because of the formality of courts, I have to ask you
11 whether it's true or untrue so that you can let us know.

12 In the next paragraph, and I'll come back to some other details
13 later, in the next paragraph you say -- after you'd been abducted and
14 received some training, you say:

15 "After that incident, FRPI elements have beaten up his mother in
16 his presence."

17 Is that true or false?

18 A. Who are you referring to? Whose mother was beaten?

19 Q. Sorry. This is a record of what investigators understood you to
20 have told them at this meeting. So this is you saying after you'd been
21 abducted, FRPI elements beat up your mother in your presence.

22 Did you ever say that? Is it true or false?

23 A. I think I have already given you explanations about my mother.
24 My mother died at the time when the population was fleeing from
25 Nyankunde. I was not there. I did not see my mother's dead body.

1 Nonetheless, from the information I gleaned, it was said that my mother
2 had her throat cut. I was not there, and I did not see that with my own
3 eyes. My brothers were there, but personally I was not there.

4 You are asking me a question which relates to my mother. I do
5 confirm that I made this statement. I made this statement because I did
6 not want my chief to have the documents of this nature, and I did not
7 know that one day my chief would be judged side by side with
8 Thomas Lubanga. I did not know that one day he would be accused of
9 crimes or other misdeeds which he allegedly committed. I did not know
10 that he will one day be tried alongside Thomas Lubanga. That is the
11 answer I have for you.

12 I would also like to confirm that what you read out was indeed my
13 statement. Yes, I said so, but I was not present when my mother was
14 killed, because I was in Nyankunde and she was in another village. That
15 is the place where she was killed.

16 Q. And in reference to your functions later, in the third paragraph
17 it reads that after your training, you were (expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 Q. (* Previous translation continues) ... don't say anything more on

1 this subject at the moment. We'll come back to that, but just while
2 we're dealing with the document.

3 Now could I turn to the second screening note. This screening
4 note is the document of the 29th of January, 2006, and its reference is
5 DRC-OTP-0150-0177, and it relates to an interview conducted on that very
6 day, the 29th of January, and I have a copy, again, albeit in English.
7 After this we'll find that the documents are in French and you'll be able
8 to follow them more easily. But if the Greffier could be good enough
9 physically to, as it were, let you see the document. And we'll call it
10 up on the screen. You'll see it on the screen as well. And you can see
11 it's a one-page document in English. And I'm going to read one part --

12 A. I have something to say. I don't want you to give me documents
13 in English, because that is very disturbing. I think that is an insult.
14 I have already told you that.

15 Q. Yes. Very well. I'm going to help you by reading this part, so
16 you'll be able to follow it. It's not very long. So if you can just
17 bear with me for a moment. And I'm going to read for those with the
18 document, many of whom can read English, the third paragraph, "Entry into
19 the FRPI." So this is your second -- a second note relating to what
20 you've said to investigators when you were first seen back then.

21 "When he was in secondary school --" and they're talking about
22 you, yes, as a result of what their recollection is of what you told
23 them.

24 "When he was in secondary school, armed men would come to torture
25 him and his fellow students on the road by detaining and beating them.

1 At night, these armed men would prevent him from sleeping as they came to
2 him and his colleagues to encourage them to join their armed movement."

3 Would I be right in saying that that was an untrue account you
4 were giving?

5 A. Let me put this to you very clearly. I have just confirmed that
6 the information relating to the studies which I allegedly attended in
7 that village is incorrect. I never attended school in that village. I
8 have never set foot in that village. Hence, everything related to my
9 schooling during that period, as you told you, is incorrect. That is
10 false information.

11 Q. Right. Okay. And that's how I understood it to be.

12 Now I'm going to turn to your first interview in respect of these
13 matters, and that's the interview of the -- in April of 2006.

14 MR. HOOPER: And again, Mr. Greffier, with your assistance, if
15 that could go to the witness.

16 Q. It will also be on your screen.

17 MR. HOOPER: This one is in French, and I think we've given the
18 reference but let me repeat it, DRC-OTP-0155-0106, and it's the interview
19 of -- well, when we get it, we can see it and I'll ask the witness to
20 look at some aspects of it.

21 Q. And I'm looking at this interview now just up to the time, as it
22 were, when you get to Aveba, according to your account, so that we can
23 see what you've said on an earlier occasion.

24 Now, you'll see at the beginning of this interview that it's got
25 your name, and you gave a particular name there that we can see, which

1 you accept is not your real name, and you have you've given us your real
2 name. Also, the name of your father. We've gone through that.

3 We can see the times and dates of these -- this interview. You
4 were interviewed for about 20 hours over five days.

5 And if you turn to the back, the last after paragraph 103, and
6 I'll do this just the once but it's so that you can recall. We have at
7 the end there: "Fin de l'audition, attestation du témoin." And bring to
8 your attention the obvious and that is that you declare on your honour
9 and conscience that the information that you provided from your own
10 personal experience reflects correctly that interview, and you're told it
11 can be used in judicial processes. And it's followed by -- it's followed
12 by a certificate from the interpreter and that you have -- he's
13 translated the document into Swahili, a language you understand, and that
14 you appear to have listened and understood his translation and that you
15 confirmed to him that the contents of the statement were true.

16 Now, we've already dealt with some aspects of that relating to
17 your name and your family. I'm not going to repeat that. I'm asking you
18 to go instead to paragraph 14. You have the document in front of you.
19 If you can turn to that if you want to. Paragraph 14.

20 As I say, this is a document that you've actually compiled over
21 several days and with care. Eighteen, sorry -- 14, sorry. You've got
22 it. And you can see there, I'm summarising it, that you did your primary
23 studies where we all agree you did, and then you say:

24 "Because of the war I had to leave Nyankunde for Aveba and
25 continued my studies, my secondary studies, at the Institute of Aveba. I

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1 was coming to do the second year secondary when I was abducted by the
2 militia of the FRPI."

3 And I don't need to trouble you really with an answer, because
4 we've heard what you said and we know that that was untrue.

5 Now can we go to paragraph 27 --

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

7 MR. MACDONALD: (Interpretation) I think the witness should be
8 allowed to confirm what is said, because otherwise we would be providing
9 the statement as if it were an exhibit. This is an exercise that we can
10 engage in in the final pleadings, and I believe that if we continue in
11 this manner, then counsel should put the question to the witness to
12 confirm. You should give the witness an opportunity to confirm what you
13 have just read out.

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

16 Mr. Hooper, if you were to take the comparison that we used a
17 short while ago, you know, once you have set the context, you should then
18 follow up with a question. You should follow up with a question which
19 the witness is going to answer confirming or disagreeing with what you
20 have just said.

21 Please proceed.

22 MR. HOOPER:

23 Q. So two short questions, Mr. Witness, which I'm going to routinely
24 ask you from now on. The first question is: Did you say it? Is it
25 true? Did you say it? Is it true? Or untrue? So you could say, for

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1 example, "I did say it. It's untrue," or whatever.

2 A. I am ready to answer you, but you should please rephrase your
3 question, because I find that you talk a lot. You say a lot of things.
4 Could you please rephrase the question and I will provide you with an
5 answer.

6 Q. Here's my question. You've just heard me read out paragraph 14,
7 and I'm particularly interested in this:

8 "Because of the war, I had to leave Nyankunde for Aveba, where I
9 continued my secondary studies at the Institute of Aveba. As coming to
10 pass -- it came to pass the second year of secondary when I was abducted
11 by FRPI militia."

12 Did you tell the investigators that? Yes or no, or don't you
13 remember?

14 A. Well, you know, the whole truth is found here on my table. Yes,
15 I do confirm that I said that, but things did not take place in that
16 manner. I think I have already told you that. Right from the first day
17 I appeared before the Court I said it.

18 Yes, these were events that took place during the war, but that's
19 not true, because I did not leave Nyankunde directly to go to my village
20 of origin.

21 Q. All right. Thank you. Can we go to paragraph 27?

22 MR. MACDONALD: (Interpretation) (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 so I believe that there must be -- there must be a problem with the
2 interpreting, and I think the interpreters were trying to sort this out.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, I will
4 turn to the French transcript, page 64, line 28. You said that the
5 entire truth was found there on your table. Page 65 from line 1:

6 "Yes, I do confirm that. I made that statement, but things did
7 not happen in that manner. I think I told you that right from the first
8 day I started giving testimony. I said that, yes, these were events that
9 took place during the war, but that is not true, because I did not leave
10 Nyankunde directly to go to our village of origin."

11 When you say "to go to our village of origin," is that indeed
12 what you wanted to say? What did you intend to say precisely?

13 THE WITNESS: (Interpretation) What I meant was I did not leave
14 Nyankunde to go directly to my village of origin in the Walendu-Bindi
15 *collectivité*.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

17 Mr. Hooper, you may proceed.

18 MR. HOOPER:

19 Q. Reading paragraphs now so that we can see the way in which you
20 presented this story, because it would be maybe relevant to us. So I'm
21 looking at paragraph 27. Now, I'm going to read it all in fairness to
22 you and then ask you particular questions about it.

23 "One day after school, about 1300 hours, as I was going home with
24 my friends, a group of about 36 FRPI militia, (expunged)
25 (expunged), surrounded us and began to hit us with *fouets*. (Expunged)

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1 wore a *tache-tache* uniform like that worn by the UPC and the others were
2 in civil. Some among them had SMGs, and others knives and bows. They
3 were all men. I don't recall if there were child soldiers among them.
4 (Expunged), he didn't carry a weapon. The militia
5 told us that from now on we were soldiers and could not stay in town like
6 women. They tied us up with string and began to march us to the FRPI
7 camp at Bulandjabo, some four hours on foot from Aveba. Once we left
8 Aveba, they untied us where they continued to hit and beat us.

9 PRESIDING JUDGE COTTE: Slowly. Slowly. Slowly.

10 MR. HOOPER: Merci, but they have the French translation upstairs
11 on the statement. So, I hope they've got that. If they revert to that,
12 they don't need to, as it were, directly translate me.

13 Q. "My three comrades tried to escape but were caught. I didn't try
14 to escape, as they beat me and I was scared."

15 You then talk in paragraph --

16 JUDGE DIARRA: (Interpretation) You have to understand,
17 Mr. Hooper, that it's not only about the interpreters. You also have the
18 transcript which has to be produced. Your attention was drawn to the
19 need for you to speak slowly. You thought that this was to make the job
20 of the interpreters easier, but you should understand that you have to
21 bear in mind that the transcript is being produced as well.

22 MR. HOOPER: (* Previous translation continues) ... transcribers,
23 and I apologise to them. Time is of the essence, as you know, so ...

24 Q. Paragraph 28, you talk about arriving at Bulandjabo, and you say
25 towards the last lines:

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1 "At the time, I was between 10 and 11, and my three friends were
2 about my age."

3 Right. That story is untrue; is that right?

4 A. I have already answered that question. This is what I said: All
5 questions related to my schooling during that period, all matters
6 relating to my schooling, are false. They are untrue.

7 Q. You say here that the march from Aveba to Bulandjabo took some
8 four hours. Is that correct?

9 A. I am not in a position to confirm that, because we arrived at
10 night. We arrived at night of the day when we were abducted.

11 Q. Thank you.

12 A. We travelled through the night.

13 Q. Apologies. You say here at the bottom of paragraph 27, you add
14 this detail:

15 "My three comrades tried to escape but were caught."

16 Were you with three comrades? Did they try to escape? Is that
17 true or untrue?

18 A. This is what I said: All information, all statements related to
19 my schooling at that point in time are untrue.

20 Q. Let me ask this question again: Were you with three comrades?

21 A. I no longer recall.

22 Q. You've made a point in your evidence that you were alone. Are
23 you changing that now or not?

24 MR. MACDONALD: (Interpretation) Your Honour, with your
25 permission.

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

2 MR. MACDONALD: (Interpretation) I think we should be careful
3 here. We have to explain to the witness, make a distinction between his
4 previous statement and what he said in the present statement.

5 The first concept is his schooling, and the second point has to
6 do with his abduction. These are two different events which are separate
7 according to what the witness has said here under oath before the
8 Chamber. These two events are not closely related in his previous
9 statements. I think that a distinction should be made between the two
10 events in all fairness to the witness. Are we talking about the
11 schooling, or are we talking about the abduction, because the witness
12 seems to think that the question relates to his schooling.

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

15 The Chamber finds that Mr. Hooper was asking very specific
16 questions on the circumstances that prevailed at the time of the
17 abduction, and the witness answered by referring to questions or issues
18 about the schooling. Maybe there is some confusion, but I do not think
19 that the confusion stems from the manner of questioning.

20 One thing is certain, though, and it is that there were
21 statements that were taken at a given date, and those statements contain
22 a certain amount of information, and you should not forget that there was
23 a subsequent statement which was taken on the 25th of October, 2010, and
24 it contains information, other information.

25 So the counsel wants to get the witness to say exactly what

1 happened, and Mr. Hooper is saying that subsequent statements were made
2 and corrected, but I do not think that there was anything wrong with the
3 questioning. There's probably an issue with the answers.

4 Mr. Hooper, you may proceed.

5 MR. HOOPER: Yes. Thank you.

6 Q. So in this account of your abduction, you say that when you were
7 abducted, you were abducted with three companions, three school
8 companions. I understand you to say that that was not true. "I was not
9 abducted with three companions." Is that right?

10 A. I have clearly stated the following: Everything relating to my
11 schooling is an untruth. I can see you come back again and again to the
12 same questions related to my schooling. I don't know what it is you are
13 looking for by way of answer, because I have said, in summary, that all
14 of the statements pertaining to my schooling at that point in time were
15 not accurate.

16 Please do not push me to say any more than what I have just said.

17 Q. Well, I'm going to ask you this one question, because it's -- as
18 Mr. MacDonald, I think, tried to suggest, there may be a bit of
19 confusion.

20 Forgetting about school for a moment. When you were abducted,
21 were you abducted with three comrades? Yes or no?

22 A. So you're saying let's leave schooling aside for the moment.
23 Given that, I would say this: I was alone. I was walking with some
24 other mamas of tradespeople, but at that point in time I was alone.

25 Q. So it would follow that you made up a story here, also, that

1 three comrades tried to escape but were caught, that that never happened.
2 Am I right in saying that? That never happened. Don't look so
3 bewildered. I think you understand what I'm putting to you. When you
4 say here to the investigators, "My three comrades tried to escape but
5 were caught," that was untrue. That never happened, did it?

6 A. That was related to the school. Why are you deliberately not
7 understanding me?

8 Q. And when you say at the time you were between 10 and 11, was that
9 true or untrue?

10 A. If it was written down, I accept it. If everything that you are
11 saying there is written in black and white, then I would agree that I
12 gave that statement.

13 Q. You go on in paragraph 29 to say when you arrived at Bulandjabo,
14 "I was trained with my three friends for about five days by Kisoro or one
15 of his *subalternes*, whose name I forget." And you talk about the
16 training. And you say here: "I only had a knife." You say, "I didn't
17 get an arm. I only had a knife, and at my first battle at Singo, I got
18 my first gun."

19 What battle at Singo is this? When was it?

20 A. Yes. I shall give you the confirmation. Everything concerning
21 the training was not only for me. There were many of us. I was not
22 alone. There were several people who underwent the training.

23 I can confirm that I was given a weapon once I was already back
24 in Aveba.

25 THE INTERPRETER: Could the witness please be asked to repeat his

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1 final answer, says the Swahili booth.

2 PRESIDING JUDGE COTTE: (Interpretation) Could you please repeat
3 the final part of your answer, Mr. Witness.

4 THE WITNESS: (Interpretation) Yes. I was saying the following:
5 I was given a weapon once I was back in Aveba. It wasn't while I was in
6 Kisoro, in the camp. I was in Aveba when I got a weapon.

7 MR. HOOPER:

8 Q. And what about this battle at Singo? When was this?

9 A. It was a battle which took place, because there were two or three
10 battles per week. This was just one battle, during which we went as
11 reinforcements, and it was during that battle that I got a rifle.

12 Q. I see. Now, paragraph 31, if I can just ask you a little about
13 that. You're talking about your stay in Bulandjabo, and you say at
14 paragraph 31 -- excuse me one moment. Just read it for yourself and
15 we'll come back to it.

16 So coming to paragraph 31, you say -- while you were at
17 Bulandjabo, you say:

18 "The training of new recruits was in a village called Codeza,
19 which is two hours' march from Bulandjabo."

20 Is that right? Is that where you were trained when you were in
21 Bulandjabo?

22 A. I did not say that I was going to Codeza. I was in the camp, and
23 all of that area was under Kisoro's elements' commands. I could not say
24 that I went there.

25 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, perhaps

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1 we should be very careful because of the issue of redactions. We have a
2 legitimate concern to maintain the open, public session as much as
3 possible, but this is not always compatible with some of the protection
4 measures for this witness. We have already asked for several redactions
5 to be made. Please do not hesitate, unfortunately, that if you feel that
6 your questions are potentially going to elicit a problem of information
7 of an identifying nature, then we can go into private session.

8 Thank you very much for that. Please continue now.

9 MR. HOOPER:

10 Q. So in respect of 31, you never said that, that you were -- the
11 training was done in a place two hours' march from where you were. You
12 never said that; is that right?

13 A. (* No interpretation)

14 MR. MACDONALD: (Interpretation) Your Honour.

15 PRESIDING JUDGE COTTE: (Interpretation) Yes.

16 MR. MACDONALD: (Interpretation) Yes. When you look at the
17 French version of that paragraph, there are two potential places for
18 training. There is the word "aussi" in French, which means "also."

19 PRESIDING JUDGE COTTE: (Interpretation) Indeed. Para 31,
20 line 1, you also see the word in French "aussi" meaning "always."

21 So, Mr. Hooper, if you are making your question based on this
22 paragraph, bear in mind that there is an apparent alternative training
23 site.

24 MR. HOOPER:

25 Q. Well, a simple question: Were you train at Codeza? Two hours'

1 march away.

2 A. Yes, I see that you are trying to confuse me. I would like to
3 clarify this by saying that I was in the Kisoro camp. And, actually, it
4 wasn't even a camp. There were houses and civilians, and -- and the
5 soldiers used the civilians' houses. This was in Kisoro -- it was under
6 Kisoro's control.

7 Q. Can I ask you about paragraph 34? After some months at the place
8 named there, you say you fled the camp. My question is: Did you flee
9 "after some months"?

10 A. No. No, I didn't spend a long time there.

11 Q. In this statement, you say after some months you fled. Is that
12 correct or not?

13 A. What I know is that I didn't spend a long time there. I didn't
14 spend months there.

15 Q. Can I take you to a little further down paragraph 34 where you
16 say:

17 "I decided to go to the camp at Aveba where the main leader of
18 the FRPI, Germain Katanga, was based. At the time --" and this is the
19 bit I'm asking you about, "At the time, (expunged)
20 (expunged)."

21 MR. HOOPER: I'm sorry, yes. I blundered into that.

22 PRESIDING JUDGE COTTE: (Interpretation) Okay.

23 MR. HOOPER: I'll be appropriately redacted, I hope.

24 MR. MACDONALD: Well, we can't. That's the problem. So ...

25 MR. HOOPER:

Witness: Witness DRC-OTP-P-0028 (Resumed) (Private Session)
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1 Q. So let me ask you about that question --

2 MR. MACDONALD: (Interpretation) With your leave, your Honour,
3 may I ask a question?

4 PRESIDING JUDGE COTTE: (Interpretation) Yes, please proceed.

5 MR. MACDONALD: (Interpretation) There is also an error in the
6 translation of the statement. The -- a different term appears in
7 relation to the cousin, and since we're in an open session, I cannot give
8 you any further information on that. Maybe we should just move into
9 private session because we know that this is going to lead to some
10 identifying questions inevitably. Otherwise, we are going to have to
11 redact the whole 30-minute slot.

12 MR. HOOPER: Well, we --

13 PRESIDING JUDGE COTTE: (Interpretation) Very well. Let us move
14 into private session briefly just so that we can ensure the correction of
15 what was said, and it might actually have been a slip of the tongue, but
16 apparently there is a glitch here.

17 (Private session at 12.48 p.m.)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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13 Page 73 expunged. Private session.

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Witness: Witness DRC-OTP-P-0028 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-P-0028 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-P-0028 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-P-0028 (Resumed) (Private Session)
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17 (Expunged)

18 (Open session at 1.02 p.m.)

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

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you. We'll have
22 to depend on the interpreters because we will have to rely on them
23 understand everything.

24 Mr. Hooper, you will therefore have to speak very slowly. You
25 have the floor.

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1 MR. HOOPER: Thank you.

2 Q. Can I pass from that statement, at least at this stage and on
3 this issue, and turn to the second statement provided in February of
4 2007, and which has already been provided you. I hope you've got a copy
5 there of the second statement. And I don't need to give the details, I
6 hope. Here we have it on record. But for your assistance, it is
7 0171-1828. And again at this time, I hope not too ponderously, I'm going
8 through these previous accounts of events up to the time when you get to
9 Aveba, and then we'll troll back over other matters.

10 We've dealt -- we've seen this report earlier today, this
11 statement, dealing with those school reports. Let me go quickly to
12 paragraph 10 of this report where you say this:

13 "I recall the fall of the government of Lopondo. The UPC forces,
14 with the help of Uganda, chased him out of Bunia. At that time, I was at
15 Singo."

16 Were you at Singo?

17 A. Could you please repeat your question.

18 Q. It's been recorded here in a statement which, again, you would
19 have had the opportunity to check and read:

20 "I recall the fall of the government of Lopondo. The UPC forces,
21 with the help of Uganda, chased him out of Bunia. At that time, I was at
22 Singo."

23 A. I have already answered that question. Let me return to what I
24 said. You can look again at what I said.

25 You know, that war, the war of Thomas Lubanga, I do not know

1 whether he was supported by Ugandans or not, but the war occurred at the
2 time I was Bunia, not in Singo. I was in Bunia.

3 Q. Why did you tell the investigators in 2007 that you were in Singo
4 and not in Bunia?

5 A. I no longer recall.

6 Q. A little further down:

7 "I was at that time finishing my first year secondary when I
8 fled," and we have the name of a place beginning with N that we all know.

9 Why did you tell the interpreters you were finishing your first
10 year of secondary?

11 A. Could you please repeat your question.

12 Q. Sorry. In fact, let -- let me step over that, because it's not
13 so important.

14 Paragraph 11. You say:

15 "I went to --" this is having fled the place where you'd been at
16 school, in primary school and first year. You say:

17 "I went to Singo in Bavi with my mother and father."

18 Is that right or not?

19 A. If I remember correctly, I said that this issue of schooling
20 within our locality at that time, well, things did not happen like that.
21 At that point in time, I had not yet started school. I think I have said
22 this on several occasions in this courtroom.

23 Q. Why were you telling them that you went to Singo with your mother
24 and father when we know that you were in a completely different place
25 with different people?

1 A. Well, you know, let me give you a reference. The investigators
2 were not my brothers. They were not anything to me. They were not my
3 uncles or whatever you might imagine, no.

4 I do remember that I did not even have the same skin colour with
5 the investigators. I could not disclose my secrets in that manner and
6 tell them, "Well, this is everything I have to tell you now." I could
7 not start telling them everything because I did not know them very well.

8 So you are asking me certain questions, and you want me to
9 provide you with answers to those questions. Did I know them? Had I
10 known them for a long time?

11 Q. So in terms of these untruths -- let me take you to paragraph 14,
12 for example. Have you found it? Paragraph 14:

13 "I was abducted by the FRPI as I said in my first statement. It
14 was the same time as three friends from school called Douani, Matshi
15 Matatia, and Kadiro Warasi."

16 That's -- Douani is D-o-u-a-n-i. The next name is Matshi
17 Matatia, M-a-t-s-h-i, M-a-t-a-t-i-a. And the last name is Kadiro,
18 K-a-d-i-r-o, Warasi, W-a-r-a-s-i.

19 Now, Mr. Witness, I know you've explained or accepted that your
20 story about abduction from school is such. Who are these three people?

21 A. How can I answer this question? I don't know how to answer that
22 question.

23 Q. In a later statement in October you say, "I made those names up."
24 Is that true?

25 A. I think I have already told you that I was giving information

1 provided by somebody else. It was not my information. I have never seen
2 these individuals. I had never seen these individuals. And I would like
3 to continue by saying that all information related to my schooling,
4 whether we are talking about classmates or schoolmates, well, I would
5 like to tell you that all such information is untrue.

6 Q. Well, let me ask you this: You've never seen these --

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

8 MR. MACDONALD: (Interpretation) I think we have lost both
9 transcripts, the English and the French, and so it makes it very
10 difficult for us to follow the proceedings. Now, I don't know whether we
11 should stop at this point and continue tomorrow.

12 PRESIDING JUDGE COTTE: (Interpretation) We indeed do not have
13 any transcript, French or English. We are all very patient and calm
14 before this inconvenience, and so I think that we are going to stop the
15 proceedings at this juncture, because it is difficult for us to follow.
16 Although the interpreters are doing an excellent job of providing us with
17 an oral translation, we think it would be more convenient for us to have
18 a transcript before us.

19 We are going to reconvene tomorrow morning, Mr. Witness and the
20 accused persons, but I will have a few announcements to make before we
21 rise.

22 Security officers, could you please lead out Mr. Katanga and
23 Mr. Ngudjolo and then bring them back into the courtroom after the
24 witness leaves, please.

25 (The accused withdrew)

1 PRESIDING JUDGE COTTE: (Interpretation) I have been informed
2 that the English transcript is working. The French transcript started
3 working five minutes ago and then it suddenly stopped again. So I think
4 we are going to continue tomorrow.

5 Mr. Witness, we will resume tomorrow morning at 9.00 and we wish
6 to thank you for your contribution this morning.

7 Could we return into closed session so that Mr. Witness can leave
8 the courtroom.

9 We will see you tomorrow, Mr. Witness.

10 (Closed session at 1.15 p.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Open session at 1.16 p.m.)

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

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

23 Very well. Mr. Hooper, we apologise for the technical
24 difficulties we have encountered and which have led to the unexpected
25 suspension of your cross-examination, but the Bench thought that this was

1 for the very best reasons, because we have to work under ideal
2 conditions.

3 Did you wish to say something, Mr. Hooper?

4 MR. HOOPER: Well, it's really about the issue of time. I'm
5 going to find it difficult to contain myself within the 60 per cent, but
6 of course I know that the Bench would be minded to appreciate that this
7 is perhaps the last of the, what I call contentious witnesses, as far as
8 we're concerned, and that 1665 obviously allowed, from time to time, a
9 flexible -- a flexible arrangement but not one that I would seek to
10 abuse.

11 I'd also note that in this particular case a lot of my questions
12 have dealt with matters of birthday and past record, which, frankly, are
13 matters that should have been dealt with and addressed by the Prosecution
14 a long time ago, but they haven't been, and so a substantial part of the
15 questions I've asked and am asking goes to unravel this worrying history.
16 It's, to us, a severe disappointment that the Prosecution haven't been
17 more scrupulous in their investigations in respect of witnesses in this
18 case, and this, we say, and of course I'm not here to instruct the
19 Chamber, this is what we say here on behalf of Mr. Katanga, has arisen
20 again with yet another witness.

21 We've been having fruitful discussions with Mr. Kilenda and
22 Professor Fofé about time, and we are, between us, of the firm belief
23 that as between us, this witness will be gone by Wednesday, by the close
24 of hearing Wednesday. In other words, we do not expect this Court to be
25 sitting Thursday or Friday. That's our view. And so I hope that that

1 reflects, given the circumstances of this witness, and one bears in mind
2 sometimes despite the occasional or perhaps ponderous question, the
3 length of some of his answers or failing to answer, I hope that closing
4 with this witness by the close of Wednesday reflects an intent on our
5 part certainly not to abuse the Court's patience and not to abuse our
6 positions at all. We wouldn't dream of doing that.

7 Yes, I've got other questions to ask. I'd certainly hope to
8 conclude with this witness by tomorrow. We've lost time today. There's
9 been various interventions and various other matters, but I hope if all
10 goes well that, yes, I will finish with this witness by tomorrow. As I
11 say, we're confident between us that he'll be concluded by Wednesday.

12 (Trial Chamber confers)

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
14 Mr. Prosecutor, just give me one minute.

15 We thank you. You do understand that for the Chamber it's not a
16 question of patience. When Judges take up this profession, they do
17 understand that they have to be patient. They have a life expectancy
18 that coincides with the life expectancy in European countries. It's not
19 a question of patience. It is a question of equity to ensure that the
20 parties have the same conditions, conditions that are in keeping with the
21 rules that prevailed even before this trial started.

22 We could take note that in principle you should end tomorrow,
23 that is after four hours, and that the team of Mr. Mathieu Ngudjolo is
24 going to take over the rest of the time. If they end on Wednesday, fine.
25 If they have to end on Thursday morning, they will end on Thursday

1 morning. And of course, the Prosecution is going to do a re-examination,
2 and this may take more time. Of course, it is clear that if we can have
3 Friday morning, then we'll know what to do with that time.

4 Thank you, Mr. Hooper. We understand, therefore, that as far as
5 you are concerned, your cross-examination is going to end tomorrow.

6 Mr. Prosecutor, did you want to say something on the same topic?
7 You may go ahead.

8 MR. MACDONALD: (Interpretation) Your Honour, systematically for
9 the witness who might be called initiated witnesses, broadly speaking, or
10 witnesses who are victims who might be called key witnesses, Mr. Hooper
11 always exceeds the time that was allotted to the Prosecution team.
12 Before starting today, he had already done two hours, six minutes. I
13 don't know how much time he has already covered. And if you put all of
14 that together, it would give about 4 hours 6 minutes. If he has four
15 extra hours tomorrow, or 3 hours 30 minutes, and that being a
16 conservative estimate, then he would have exceeded the time that the
17 Prosecution took to question this witness. The same applied to
18 Witness 0012, Witness 0219 and Witness 0350 to mention only these few.
19 0279, 0280. So he has systematically exceeded our time. And as I speak,
20 well, because Mr. Kilenda and Mr. Fofé took less time, they transferred
21 the rest of their time to Mr. Hooper. And if you add their various
22 allotments, they take up a lot of time.

23 Now, I don't think that just because the other witness is going
24 to take more time there should be justification. I understand that the
25 Bench is in a situation where they wish to respect the rights of the

1 Defence, but as the Defence said, the rules of the game had been defined
2 in one of your decisions. I think it was decision 1665. And these rules
3 are very clear. These rules were reiterated, and Mr. Hooper therefore
4 cannot complain subsequently.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well,
6 Mr. Prosecutor. We have understood you. We have two witnesses left, and
7 from what we learnt, they are not going to be cross-examined for long by
8 the team of Germain Katanga.

9 It's true as well that the Bench has enacted rules, rules that
10 were forwarded to all parties and participants, but these are not
11 mathematical rules.

12 It's true that the questioning time has been clearly spelt out
13 for various parties and participants, but then a trial is something
14 dynamic. We all know this, and we've known it for a long time. And as
15 you rightly said, the rights of the Defence are a priority. However, we
16 agree with you that this does not mean that your time has to be exceeded
17 substantially or that the Defence has to adopt a systematic practice of
18 exceeding your time.

19 Well, we have fully understood you, Mr. Prosecutor, and the
20 Chamber always tries to avoid giving the impression that we stand behind
21 each and every one of you with an alarm bell to remind you of your
22 responsibilities. In any case, the most important thing is that
23 Mr. Hooper is going to end tomorrow.

24 Mr. Gilissen a short while ago referred or requested to the
25 Chamber, he appealed to the Chamber. Well, Mr. Hooper said that he was

1 going to have the relevant excerpts placed in Ringtail and all parties
2 and participants will have access to them. Well, we are proceeding on
3 the assumption that you do not need the entirety of these documents.

4 Your very legitimate concern is that you wish to participate
5 actively and usefully in this hearing, and I think that that concern is
6 addressed by the commitment which Mr. Hooper has taken. If that is not
7 the case, you should let us know tomorrow. However, I believe that that
8 is an option which addresses the wish or the concern that you raised.

9 Now, before we rise, I wish to broach one general topic, and I
10 would like to thank the interpreters and the court reporters and the
11 various technicians, because this particular hearing today has been very
12 difficult for them. We have not observed the rule of doing a mental
13 count before taking the floor. We wish to appeal to them to understand
14 that a trial is something which can be very dynamic, and we tend to
15 forget.

16 Mr. Prosecutor, Witness 0166 is going to arrive, and you think
17 that your examination-in-chief is going to take about 2 hours 40. Is
18 that the case?

19 MR. MACDONALD: (Interpretation) That is the case, maximum time.
20 When we talk about 2 hours 30 minutes, we are talking about the maximum
21 time that we could take. We could take shorter time.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

23 Now, the Defence teams do not know what the testimony of
24 Witness 0166 is going to be, but considering the examination of that
25 witness's file, could you tell us how long your cross-examination is

1 going to take, especially given that the examination-in-chief is going to
2 take about 2 hours 30 minutes or 2 hours 40 minutes? You do not know
3 yet. Is that the case?

4 MR. HOOPER: It's just that someone on our team suggested that
5 there were just two questions, but there may be more than that. An hour
6 and a half at the outside, and possibly less than that, much less than
7 that.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

9 The Legal Representatives of Victims will certainly have
10 questions to put to Witness 0166.

11 We are asking you these questions because we want to make sure
12 whether we can maintain the Status Conference on Monday, the 29th, or on
13 Tuesday, the 30th. So 0166 may appear on the 1st and the 2nd, but we
14 might end up with a contingency. In any case, we simply want to have a
15 working assumption to proceed on now.

16 MR. MACDONALD: (Interpretation) Your Honour, since we are not
17 going sit on Friday, there's going to be maintenance, I think that the
18 time is a bit short, because there are always contingencies.

19 PRESIDING JUDGE COTTE: (Interpretation) Yes, I do know.

20 MR. MACDONALD: (Interpretation) These things happen. Sometimes
21 a witness may fall ill or other contingencies may happen. So I think
22 that the witness can continue next Monday and we'll be able to finish the
23 testimony of Witness 0317 in time. 0317 is a witness who is going to
24 give his testimony in French, and the Prosecution is going to take a
25 short time with this witness. We are going to be very focused with this

1 witness. He's a witness who is going to be very easy to examine, more
2 easy to examine than other witnesses.

3 PRESIDING JUDGE COTTE: (Interpretation) We are going to tell
4 you tomorrow whether we confirm the date of the 29th for the
5 Status Conference. We have stated that we want Witness 0317 to appear on
6 Monday. We do not want to extend the time of Witness 0166. In any case,
7 we agree that we are going to have a Status Conference on Monday, the
8 29th.

9 You did understand at the beginning that this was not the date
10 that we had decided on. So Witness 0166 is going to give testimony on
11 the 30th and the 1st and, if possible, the 2nd. In that case the next
12 witness will start giving -- that is 0317 will start giving evidence from
13 the 5th.

14 So we are going to stand adjourned, and reconvene tomorrow at
15 9.00 a.m.

16 The hearing ends at 1.31 p.m.

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