

1 International Criminal Court

2 Chamber II - Courtroom 1

3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra

4 and Judge Christine Van den Wyngaert

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

6 In the case of The Prosecutor v. Germain Katanga and

7 Mathieu Ngudjolo Chui

8 Trial Hearing

9 Friday, 15 October 2010

10 (The hearing starts at 9.05 a.m.)

11 (Closed session)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 9.06 a.m.)

22 THE COURT OFFICER: We are in open session, your Honours.

23 PRESIDING JUDGE COTTE: (Interpretation) I thank you, court
24 officer.

25 WITNESS: DRC-OTP-P-0012 (On former oath)

1 (The witness answers through interpreter)

2 PRESIDING JUDGE COTTE: (Interpretation) Good morning,

3 Mr Witness.

4 THE WITNESS: Good morning.

5 PRESIDING JUDGE COTTE: (Interpretation) We shall be continuing

6 our hearing in the light of the documents disclosed yesterday. These documents are,

7 if we have understood correctly, documents which come under Article or

8 Rule 54(1) -- I think it's Article 54(1) of our Statute. They fall under this article and

9 mention is made of mentioning in open session, as was done in Chamber I, the -- we

10 need to mention a certain number of details whilst respecting certain conditions.

11 Now, Counsel Hooper will commence unless the Prosecutor has

12 questions to put. You said yesterday that you had no further questions to put.

13 MR MACDONALD: (Interpretation) Good morning.

14 PRESIDING JUDGE COTTE: (Interpretation) Good morning,

15 Mr Macdonald.

16 MR MACDONALD: (Interpretation) I'd like to apologise to the

17 interpreters. I shall not be addressing the Court too much today.

18 PRESIDING JUDGE COTTE: (Interpretation) We hear you and we

19 understand.

20 MR MACDONALD: (Interpretation) I shall leave my colleagues to

21 address the Court. We have no questions to put to this witness in terms -- or,

22 subsequent to the cross-examinations of Mr Hooper or Mr Fofé, on condition of

23 course that nothing is thrown up by the additional questions put this morning by the

24 Defence teams.

25 PRESIDING JUDGE COTTE: (Interpretation) Indeed, we

1 understand.

2 Now, Mr Hooper, before I hand over to you, we have understood, or we
3 have believed that we understood, that in light of those documents that were
4 disclosed yesterday a number of conditions were established by the United Nations,
5 notably forbidding the communication or disclosure of information to third parties of
6 redacted information; secondly, private closure when -- private hearing
7 when -- session when information is made mention of, and also the utilisation of
8 pseudonyms when mention is made of those individuals who are the source of that
9 information mentioned in the documents; and also in addition, were there to be
10 disclosure to third parties, then protective measures would have to come into play for
11 those individuals concerned. However, this does not apply at this juncture.

12 Mr Hooper, please. And, Mr Prosecutor, do not hesitate to intervene if
13 you are under the impression that these conditions have not been strictly adhered to.
14 This is not exactly simple.

15 Mr Hooper, please, over to you.

16 QUESTIONED BY MR HOOPER: (Continuing)

17 Q. Good morning, Mr Witness.

18 A. Good morning.

19 Q. Can I ask you, were you ever paid or received money as a result of the
20 information that you were providing?

21 A. From whom?

22 Q. Well, from anyone; people you were providing information to, or
23 assisting?

24 A. On occasion I was given assignments. I was given a particular work to
25 undertake, to work, as I said previously. Well, I went to Kimango or to Kikingi, and

1 under such circumstances I was given the financial means to do the job that was
2 requested of me. Were I to be requested to fulfil a specific task then or I was -- or
3 was I given a particular piece of information, then I was given the means to do it.
4 However, other information that was requested of me and that might have been
5 deemed useful, well, I was not paid for that.

6 (Expunged)

7 (Expunged)

8 (Expunged). I'm looking at one now.

9 MR MACDONALD: (Interpretation) Mr President.

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

11 MR MACDONALD: (Interpretation) I'm sorry to interrupt,
12 Mr President, but might we avoid the use of the descriptive term talking about the
13 document, and I think that, were we to use such a term, we might need to go into
14 private session, the reason being that we requested leave to redact the transcript
15 yesterday because I had made mention of those documents disclosed yesterday, but I
16 believe that these are part of the conditions established by the United Nations.

17 PRESIDING JUDGE COTTE: (Interpretation) I thank you,
18 Mr Prosecutor. Were we to use the word "message," which is entirely neutral in
19 nature, might we use that?

20 MR MACDONALD: (Interpretation) Yes, if the witness understands
21 what we were referring to then.

22 PRESIDING JUDGE COTTE: (Interpretation) Mr Witness, you have
23 followed the discussion and you remember the term that Counsel Hooper just used.
24 I believe that you have it in mind. We will now use not this term that he used, but
25 the word "message." Have you understood, or would you like us to go into closed

1 session to clarify this point?

2 THE WITNESS: Yes, I would like for us to do that.

3 PRESIDING JUDGE COTTE: (Interpretation) Well, then we shall go
4 into private session for -- or closed session for a brief moment to enable Mr Hooper to
5 work without being interrupted.

6 (Private session at 9.13 a.m.)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Open session at 9.15 a.m.)

5 THE COURT OFFICER: We are in open session, your Honours.

6 PRESIDING JUDGE COTTE: (Interpretation) Well, there we are.

7 We shall resume then. Mr Hooper.

8 MR HOOPER:

9 Q. Right. Can I just pass you this message, and it's 0202-0240. And if you
10 look at the very first four or five lines there's a reference in the message to a promise
11 to you to pay you \$200, which you're grateful as it's going to cover your rent. I'm
12 talking about that kind of money. Did you often receive that kind of money from
13 people you were assisting? That's the question.

14 PRESIDING JUDGE COTTE: (Interpretation) Court officer, usher,
15 please, could you please approach the Prosecutor's office. Were they to have another
16 copy of these four documents, then they could provide them to the interpreters and, if
17 this is not the case, then I shall give them my copy and then I shall listen.

18 MR MACDONALD: (Interpretation) Might we be able to send this
19 by email immediately? I might send it to you, court officer, and then she might be
20 able to send it on immediately?

21 PRESIDING JUDGE COTTE: (Interpretation) Yes, thank you,
22 Mr Prosecutor, and apologies, Mr Hooper.

23 Mr Witness, I believe that it was over to you. You were going to
24 respond and I think that the transcript should be re-established speedily.

25 THE WITNESS: Yes. Could the question be put to me again, please?

1 MR HOOPER:

2 Q. Did you receive sums of money for the assistance that you provided to
3 various people?

4 A. I believed I -- I believe I answered this question. Every time that I was
5 asked to fulfil a task, a specific task, then I was given the financial means in order to
6 do that. I think I already answered that question.

7 Q. Thank you. Can I now go to another document. I'll put it in your
8 hands. Let me see if I can get the number for it. That's DRC-OTP-0043-0086. Can
9 I pass you this copy.

10 MR HOOPER: Thank you very much, Mr Registry.

11 Q. Now, if you look at this message you will see that it's some 11 pages long.
12 Just give me one moment.

13 THE INTERPRETER: Message from the English booth: The
14 interpreters are still trying to locate the document we are referring to. We have
15 received the email, but we now have to traipse through the various attachments.
16 Thank you.

17 MR HOOPER: Yes. I'm sorry, I've gone adrift.

18 Q. In fact, sorry to -- I don't want to confuse you, Mr Witness. It was over
19 the discussions we had a moment ago. Can I just go back to the first message? I
20 don't want to confuse you. I'll give the number again. It's the first one that referred
21 to a sum of money. Do you have that in front of you and, if you have, can you go to
22 it again? That's DRC-OTP-0202-0240. I've got one other question to ask you in
23 respect of it, or maybe two.

24 A. Yes, please go ahead.

25 Q. Now, this message, if we look at the date we see that it's the day that you

1 were arrested. We don't need to go into that. If we go to the second page, you've
2 been talking -- I'll put it in context. You'd been giving certain information in the
3 message and then we get this section, and I'll read it out unless there's any objection
4 to my doing so. It reads, in English, "It is true ..." -- that's the third -- fourth line
5 down for everybody on the second page of this message, and it reads, "It is true that
6 the group of Ndekesiri wanted to take Kasindi on Friday 20th, but unfortunately
7 lacked some money to pay for guns. But the soldiers who were in Namboole ...", or
8 Nomboolo, sorry, that's N-O-M-B-O-O-L-O, "... under Salim Saleh's protection were
9 sent by Salim Saleh to Beni to help Mbusa, but they refused and joined the group of
10 Ndekesiri. They are waiting to go to Kasindi and I think this Tuesday 24th they will
11 move. In my house I keep some of them."

12 And we don't need to go back in detail what you told us about the
13 people who were, you might remember, doing exercises in your garden, attracting the
14 neighbours' attention and your arrest in respect of that, but Kasindi is near Beni; is
15 that right?

16 A. It's not just by, but it's near or towards Beni. It's not located nearby, but
17 it's towards Beni.

18 THE INTERPRETER: Message from the English booth: The
19 interpreters have still not managed to print off the documents. They are still trying
20 to locate precisely what counsel is referring to. Apologies.

21 MR HOOPER: Well, my apologies to be accepted, I hope, in not
22 providing you with copies. I overlooked it. I'm sorry. But we're looking at
23 document 0202-0240, and that message is dated 24 December 2002, and we're looking
24 at the second page of that document, which is 0202-0241, and I've just read from the
25 fourth line from the top on page 2, that section started -- starting "It is true."

1 Q. So I'll read it line-by-line again and then pose questions as we go. I've
2 read it once. "It is true that the group of Ndekesiri wanted to take Kasindi on Friday
3 20th, but unfortunately lacked some money to pay guns."

4 Just pausing there, Mr Witness, Kasindi is next to Beni, you told us, and
5 of course Beni at this time was where Mbusa Nyamwisi had his headquarters; is that
6 right?

7 A. I do not know quite what you mean by that. Beni is the main town
8 where the headquarters of Mbusa was to be found. Kasindi is a town at the frontier
9 between Uganda and the DRC. Kasindi is at the frontier.

10 Q. Yes. Well, look, let me put this question to you. These men in your
11 house, they weren't there just doing exercises, were they? They were poised waiting
12 to go and be part of the group who were going to fight and take control of Kasindi.
13 That was the plan, wasn't it?

14 A. This is why I do not like you putting small questions of this nature to me
15 like this, as you have done since the outset. I wanted you to allow me time to
16 explain, and then you say that you will hark back to this at a later stage and you don't.
17 But these soldiers came from Namboole and Ndekesiri sent them to me because they
18 did not have, or he did not have, any place to keep them. These were the soldiers,
19 and the morning whilst I was there, whilst I was outside they started conducting their
20 military exercises, in view of the fact that they were soldiers after all, and the
21 neighbours were suspicious.

22 I didn't say that they came to me and conducted their military exercises.
23 I said they spent the night at my house and in the morning they started to conduct
24 their military exercises. It wasn't just one day. Ndekesiri said that if -- well, they
25 can stay there for one or two days, but they did not spend those two days there.

1 They spent longer than what was hoped and we hoped that they would leave.

2 That's what I said.

3 I repeat, they did not come to me to conduct their military exercises. I
4 kept them there and when they came back from Namboole, because they had
5 nowhere to keep him -- them. He had nowhere to keep them.

6 THE INTERPRETER: Message from the English booth. The witness
7 is speaking extremely fast. Please ask him to slow down, thank you.

8 MR HOOPER:

9 Q. Yes. Mr Witness, you may have heard that. Can you just go a little
10 more slowly. These men were soldiers, is this right, and they were waiting to go to
11 be part of an attack to take Kasindi; is that right?

12 A. I repeat slowly, those people, well, they were two soldiers. They were
13 recruited by General Salim Saleh and they all went to train in Namboole, at
14 Namboole stadium. There were rooms there where they could stay. However,
15 when General Salim Saleh no longer received any money from President Kabila in
16 order to keep those people going, well, he released them. He asked them to go to
17 Beni and they might then go to join Mbusa Nyamwisi's groups.

18 Others, some of them, did not want to go there, and of those who did
19 not want to go there they then joined Ndekesiri, because from the outset they were
20 not in agreement with Mbusa Nyamwisi. I knew that Ndekesiri had a political party
21 which, as I underscored yesterday, deposed Mbusa and they wanted to fight. I
22 knew that they were at the ready to fight. They wanted to dislodge Mbusa from
23 Beni and they wanted to reinstall the RCD-K/ML from Wamba Dia Wamba. I knew
24 that those soldiers who had followed Ndekesiri were not his cousins, they were not
25 his brothers, but I knew that they were due to join his group in order to fight against

1 Mbusa. I was aware of that fact.

2 Q. Thank you very much. Now, can I go to the other document. Now,
3 this document is DRC-OTP-0043-0086 and it's -- this message is dated 1 July 2003.
4 This is the 17 page message and I daresay you haven't seen it for a long time. So if
5 you'd just like to not read it all, but you can just see the general content of the
6 document.

7 And I'm not going to take up time going through it all. We can see the
8 nature of the document, and it would be fair to say, would it not, that it's a -- this
9 message is -- really contains an overview by you of the Ituri situation and we can see
10 that there's specific reference to the various armed groups in Ituri which you
11 mention?

12 Now, I want to take you, if I may, to page 4 - and that's
13 DRC-OTP-0043-0089 - and you've dealt previously with the UPC, the FNI and you
14 come at 4 to the FRPI and I am going to read.

15 THE INTERPRETER: Message from the English booth, and we
16 apologise profusely. We have not been able to lay lands on this 17 page document.
17 Apologies.

18 MR HOOPER: I've got four copies here. Would it be physically
19 possible to -- and I'm speaking to the booths. Would that assist, if those four copies
20 came to you?

21 THE INTERPRETER: Message from the English booth. Yes, indeed,
22 counsel, and we thank you profusely.

23 PRESIDING JUDGE COTTE: (Interpretation) Yes, we have been told
24 that that is the case, so please give them the documents and we thank you.

25 (Pause in proceedings)

1 THE INTERPRETER: Message from the English booth. We now have
2 the documents. Thank you.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, your
4 microphone, please. Thank you.

5 MR HOOPER: I'm going to read section 4. It's not a particularly long
6 passage and, in fairness, I will read it all:

7 Q. "The FRPI, Force de Résistance Patriotique en Ituri, those militias have a
8 lot of leaders. The principal military leader is Colonel Ngudjolo Mathieu. The
9 political leader seems to be Dr Adirodo, who lives in Beni and is a councillor of
10 Mbusa Nyamwisi in the RCD-ML. Meanwhile, they receive direction from their
11 military commanders and not from political ones. They have a problem of united
12 commandment. The military basis is Lendu Bindi. Their headquarters is in Geti
13 locality. They are supplied in guns by Beni and Kinshasa. They are allied. They
14 bought guns from General Kazini - General Kazini, correction, K-A-Z-I-N-I - through
15 Mbusa Nyamwisi. They gave gold in exchange of weapons. Today they loot the
16 cattle of Hema and exchange them against guns from Beni and Kinshasa. They are
17 supplied through the small airport of Geti, Aveba, Zumbe. The political view of the
18 FRPI is to protect all Lendu tribes and to exterminate all Hema. They need to
19 deprive Hema for all their wealth which give them power."

20 It's a long time ago, but do you accept that those are words written by
21 you in this message?

22 A. That is possible, yes.

23 Q. Not possible. Who else would have written this message other than
24 you?

25 A. When you said that it really had been a long time since this message was

1 sent you were right, and I can't remember every document that I ever sent, all of the
2 analyses that I ever did. I cannot recall them all. I have not had time to read
3 through this document as you were reading it as well and that's why I said -- well,
4 when I see what is written here, I could say yes, it's possible. Yes.

5 Q. And we can see there a very clear reference written in July 2003 to the
6 FRPI having been supplied with guns from Beni and Kinshasa. That's in the bit I've
7 just read; is that right?

8 A. I think that everyone can read that.

9 Q. And though this is written in July, on 1 July 2003, and the document
10 continues in detail to review the situation in Ituri, will you accept from me that
11 nowhere here does the name Germain Katanga appear? Would you be willing to
12 accept that from me? Having read the document, will you accept that you don't
13 make any mention of him whatsoever?

14 A. Yes. When I wrote this document I was giving what I would call in
15 English an overview, and this was at the very start of my engagement in Ituri and I
16 didn't yet have a full grasp of the situation that was ongoing. I had been asked to
17 give a general overview of what I'd seen and what I knew, and until that point in time
18 I hadn't met Mr Germain Katanga. I had not met him at that point. I met him in
19 the month of August.

20 Q. Yes, indeed. Now, can I take you to page 8, which is 0043-0093, and to
21 the bottom of that page, the seventh line from the bottom, and it reads "Today Bunia
22 Situation".

23 MR FOFÉ: (Interpretation) The reference, please?

24 MR HOOPER: I don't know if we've all found that, but let me just read
25 it:

1 Q. It's headed "Today Bunia Situation," and it reads as follows and I'm just
2 going to read the one sentence, "The town of Bunia is under the control of UPC and
3 the PUSIC." Was that correct at the time, 1 July 2003?

4 A. Yes.

5 Q. And can I take you to page 13, that's the one marked "0043-0098," and I'll
6 just read the bit under "My conclusion": "The Lendu and their allied want to take
7 Tchomia and Kasenyi because these are the two main entrances where the Ugandan
8 can continue to supply Hema in weapons."

9 Did you write it and is it correct?

10 A. Yes, that was my analysis at that time then.

11 Q. Thank you. I've just got two other references to take you to. The next
12 one is page 15 on 0043-0100 and it's the fourth line from the top of that page 15 and it
13 reads as follows, "The Lendu delegation had only one person named Mr Lobo," and
14 it is spelt L-O-B-O. "Lobo is the political army adviser of Lendu troops (G5). He
15 works also as a double agent for the Ugandans' benefit. He is paid by Brigadier Kale
16 to give all information coming from Lendu side that concerning Uganda."

17 Do you remember -- end of quote. Do you remember writing that in
18 your message and was it correct?

19 A. I don't have any recollection of having written that, but I know that what
20 was written at that time was correct. It was correct. But I don't actually have a
21 recollection of having written that but, even so, I know that it was correct at the time.

22 Q. And where did you get that information from, that he was a double agent
23 working for Uganda?

24 A. Where I got the information from? Well, this was my own analysis. I
25 was always with him and I knew the relations that he had with General Kayihura and

1 I knew that he was there for Kayihura, and in the meeting Kayihura -- the meeting of
2 Hemas, Kayihura invited him and introduced him and he was a friend and he knew
3 everything that was going on on the Lendu side.

4 Q. And finally at the bottom of that same page, the very last line on page 15
5 and over to page 16, I will just read the part that I would like to draw your attention
6 to. It reads this -- and this relates, may I put it in context, as we can see just above, to
7 a PUSIC press conference at the Speke Hotel, that would be Sunday 29 June, and we
8 can see that the purpose - the main purpose - was to declare Kasangaki, that's
9 K-A-S-A-N-G-A-K-I, and Chaligonza spelt C-H-A-L-I-G-O-N-Z-A are PUSIC
10 commanders and not UPC's commanders.

11 And then the last line, "The President of PUSIC thanks so much the
12 French troops to disarm all militias in Bunia. He ..." -- and this is the bit I draw your
13 attention to. "He accused Kinshasa to disturb the IPC resolutions and condemned
14 the arrival of Kinshasa police in Bunia."

15 Now, is that right? Is that what Chef Kahwa did; that he accused
16 Kinshasa of disturbing the IPC resolutions and condemned the arrival of the police
17 who had come from Kinshasa? Is that right?

18 A. I shall answer this question, but you read a passage and I would not like
19 that particular passage to remain in the records in public without an explanation of
20 what happened. The conference of Chef Kahwa, well, during that conference the
21 commanders mentioned here had said that they were members of PUSIC, but this
22 was not true.

23 I had seen in the meeting of armed groups the presentation that they
24 made was that Tchaligonza would be coming to introduce the UPC and we needed to
25 confront with that, because we were each representing different parties. We were

1 not from the same party and this became even more apparent in the following days.
2 So that's what he said, but it wasn't actually accurate.

3 As concerns the police that came from Kinshasa, the Kisempia general
4 who had been in Bunia was not part of the Congolese government and he had
5 requested all of the troops to join him. The Ngiti and the Lendu sent about
6 two-and-a-half-thousand people and Misipempe (phon) had been able to give a
7 uniform. When it came to seeking supplies for food, it was Colonel Ngudjolo who
8 had listed the requirements and said that they needed 6,000 in order to be capable of
9 feeding all of the troops, but they said, "You cannot actually militarise Bunia, the city
10 cannot yet be militarised, so I think that it's not right to start recruiting militias in
11 Bunia and that is why I'm not ready to put militiamen at your disposal." This was
12 Chief Kahwa speaking.

13 And the second reason was that when the combat occurred between
14 Hema and Lendu on 12 May, the Lendu had used weapons belonging to the police.
15 The police who had come to Bunia had handed their weapons to the Lendu and this
16 was based on two principles: Firstly, all of the Hema felt that the police there were
17 pro-Lendu and the fact that they handed their weapons to them, or that they handed
18 their weapons to anyone else, was against the principles as outlined by the CPI.

19 PRESIDING JUDGE COTTE: (Interpretation) Please, Mr Witness,
20 may you speak more slowly. Please take your time.

21 Counsel Hooper, please continue.

22 MR HOOPER:

23 Q. We're in open session and I just hope I can put this question, but bear in
24 mind we are in open session. Did the person you were sending this message to, did
25 they know of any particular -- the particular function that you had in a particular

1 organisation, political organisation? Did they know that? I think that's sufficiently
2 obtuse not to identify the witness.

3 MR MACDONALD: (Interpretation) Your Honour.

4 PRESIDING JUDGE COTTE: (Interpretation) If the witness can
5 answer yes or no and if that is sufficient for Mr Hooper, then we can stay in open
6 session.

7 MR MACDONALD: (Interpretation) I am not sure if the question
8 was understood.

9 PRESIDING JUDGE COTTE: (Interpretation) We will see.

10 THE WITNESS: I don't remember whether he knew or did not know
11 him, but he knew of the movement. I no longer recall whether he knew or did not
12 know at the time. I really am not sure, but I think that he knew. I'm not sure.

13 MR HOOPER:

14 Q. I just observe, and perhaps you're going to take my word for it because it
15 is 17 pages long, that there's no reference to that function anywhere in this document.
16 Would you accept that?

17 MR HOOPER: Well, that's an assertion. So, those are my questions.
18 Thank you very much, Witness. I'm sorry to have brought you back in order to be
19 further questioned.

20 THE WITNESS: It has been a pleasure to be able to contribute.

21 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, the
22 floor is yours.

23 MR FOFÉ: (Interpretation) Thank you, your Honour.

24 Good morning, your Honours.

25 QUESTIONED BY MR FOFÉ: (Interpretation) (Continuing)

1 Q. Good morning, Witness.

2 A. Good morning.

3 Q. Witness, initially our team did not have any questions to ask you based
4 on this document but, given the additional questions asked by my learned colleague
5 and your answers to them, I shall ask you some questions for clarification. The first
6 question is as follows: To the best of your knowledge, when did Mathieu Ngudjolo
7 introduce himself as a member of the FRPI?

8 A. This was in April 2003 on Radio Candip.

9 Q. And I shall ask you to go back to the document DRC-OTP-0043-0086.
10 This is the message from 1 July 2003. The pages are not clearly marked. The
11 excerpt in which -- about which you talked a moment ago, page DRC-0043-0089, item
12 4, do you have it? It is where the document talks about the FRPI.

13 PRESIDING JUDGE COTTE: (Interpretation) This is page 4, Witness.

14 THE WITNESS: Yes, I have it.

15 MR FOFÉ: (Interpretation)

16 Q. Yes, this is the passage that you were questioned about a moment ago. I
17 should like to ask you a few questions about this excerpt. Here you talk about,
18 notably, Dr Adirodo as a political leader who was living in Beni and who was a
19 councillor to Mbusa Nyamwisi. My first question is as follows: What was the
20 stronghold of Dr Adirodo? What was his political stronghold?

21 A. He was minister of health in the RCD-K/ML.

22 Q. So he was a political leader of which group of Lendu?

23 A. The Ngiti. Now, I'm giving that particular position because he was the
24 one who helped bring them together into the RCD-K/ML.

25 Q. Did Mathieu Ngudjolo have dealings with Dr Adirodo?

1 A. I don't know that. What I do know is that Mathieu Ngudjolo was just
2 introduced as the Chief of Staff of the FRPI. His dealings with Adirodo, I don't
3 know.

4 Q. Now, in this particular excerpt you speak of the military base, and I'll
5 quote in English.

6 THE INTERPRETER: "Military bases is Lendu-Bindi."

7 MR FOFÉ:

8 Q. (Speaks English) "Their headquarters is in Geti locality." (Interpretation)
9 End of quote. The interpretation doesn't seem to be there. (Speaks English) "in Geti
10 locality."

11 Witness, who was the commander of the FRPI in Geti?

12 A. When I refer to this document, when I wrote it, I said to you I didn't
13 understand very well the relationship, or the dealings, between the Lendu-Bindi and
14 the Lendu of the south -- correction, of the north. I didn't really understand that.
15 After I realised, after having had the experience of living with them, I understood that
16 the great majority of the FRPI were Bindi. They were Lendu from the south and
17 their centre, or their headquarters, was in Geti. It is true that when they formed a
18 coalition Ngudjolo, I believe with his military experience, introduced himself as the
19 chief, but the reality was that he wasn't really able to give orders to the members, to
20 the militiamen of Bindi extraction, without intervention from their direct commander.
21 But, all the same, he did say that he was -- that he performed that function, but when I
22 wrote the document I still thought that he was the only person, the only leader, but
23 with experience I realised that that was not the case.

24 Q. Now, if it wasn't Mathieu Ngudjolo who was the commander, who was
25 the commander? I will say the commander of FRPI in Geti. Who was the

1 commander of the FRPI in Geti?

2 A. At that time, well, I didn't know, but after I learned that the commander
3 of the FRPI in Geti - in Geti - was Matata Cobra, but the general commander of the
4 FRPI in all their localities, in all their localities, Aveba, Geti, Kagaba, was
5 Germain Katanga. That is why during the meeting that we had on the radio, when
6 we asked about the fate of the Hema hostages that had been taken it was said, "No,
7 Germain is not taking care of that." You see, he was their commander in actual fact.

8 Q. Witness, have you been to Zumbe in the past?

9 A. No.

10 Q. Is there an airport in Zumbe?

11 A. I think that on the map that I sketched yesterday I had placed the locality
12 of Zumbe there, but you didn't see any mention of an airport there. I put a cross, an
13 X, where there was an airport. Now, if by mistake I put something on the
14 document -- but, no, in Zumbe there is no airport.

15 MR FOFÉ: Thank you very much, Witness. Your Honour, we have
16 no further questions. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor
18 Fofé. Prosecutor, do you have any final remarks or re-direct after this partial
19 cross-examination? I believe that my colleague Judge Diarra wishes to
20 ask -- correction, Judge Van den Wyngaert wishes to ask a question.

21 JUDGE VAN DEN WYNGAERT: (Interpretation) Did you draft
22 (expunged) yourself, or were they prepared by someone else, because of the English?

23 THE WITNESS: In any event, I don't think it was written in English.
24 I think it was written in French.

25 JUDGE VAN DEN WYNGAERT: (Interpretation) Thank you.

1 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, subsequent
2 to this cross-examination, do you have any further questions? And then the two
3 Defence teams will have the opportunity to move ahead and make final remarks.
4 We await your reply.

5 MR MACDONALD: (Interpretation) We have no questions, your
6 Honour, and I would like to thank the witness on behalf of the Prosecution. I didn't
7 have an opportunity to do so earlier and so now that task has been done.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

9 Mr Hooper, with regard to the entire testimony of this witness, do you
10 have any final remarks?

11 MR HOOPER: No, I haven't. Thank you.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr Kilenda, Professor
13 Fofé, any final remarks?

14 MR FOFÉ: (Interpretation) No observations, your Honour. We
15 have concluded, and we would take this opportunity to once again thank the witness
16 for travelling here to provide this useful information to the Chamber. Thank you,
17 Witness. Thank you, your Honour.

18 PRESIDING JUDGE COTTE: (Interpretation) Witness, the Chamber
19 would like to join in with other parties and thank you, thanks from the Prosecution,
20 the legal representatives, Mr Hooper. Thank you. You have spent many long
21 hours before this Court helping us better understand -- as I said at the beginning of
22 your testimony, helping us better understand the events that have been brought
23 before us. We thank you for attending court, for your efforts to recall past events.
24 Thank you for being so patient, and we wish you a safe and pleasant trip back home.
25 Thank you very much. Goodbye, Witness.

1 THE WITNESS: Thank you. And I remain at your disposal if you
2 require my services.

3 PRESIDING JUDGE COTTE: (Interpretation) We will go into closed
4 session so the witness may leave the courtroom. Before the --

5 THE INTERPRETER: Overlapping speakers, five second rule not
6 respected.

7 MR MACDONALD: (Interpretation) The Prosecution wishes to have
8 a discussion regarding the photographs and a number of other matters. We could
9 do that in private session, if necessary please, and then after that we would like to
10 discuss a few matters dealing with Witness 219. We have a few important matters to
11 deal with. Those would be in open session.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, please,
13 before the witness --

14 MR HOOPER: I am sorry, EVD numbers for two documents that we
15 dealt with today, if that could be done, and the two documents are 0202 --

16 MR MACDONALD: (Interpretation) The Prosecution wishes to
17 make a preliminary objection. Why is it that my colleague opposite wishes to
18 attribute EVD numbers to these documents? The Defence cross-examined the
19 witness, he provided answers and various passages were read out. What is the
20 objective being pursued? What is the point of tendering these documents?

21 PRESIDING JUDGE COTTE: (No interpretation).

22 THE INTERPRETER: Overlapping speakers.

23 MR FOFÉ: (Interpretation) The Defence team of Mr Ngudjolo also
24 opposes to these documents being tendered into evidence. We are of the opinion
25 that they are not relevant. Given that the witness has just provided additional

1 information and the information has been recorded in the transcript, we do not see
2 the point of tendering these documents into evidence and attributing EVD numbers
3 to them. It is not relevant.

4 MR HOOPER: I don't need the documents in evidence.

5 PRESIDING JUDGE COTTE: (Interpretation) Please, Mr Hooper, go
6 ahead.

7 MR HOOPER: I've read the extracts from them and that's in the
8 transcript, so -- just if there's any difficulty about them, but I've got no problem.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well, we will
10 leave it at that. Madam Court Officer, we can go into closed session now so that the
11 witness can leave the courtroom. Once again, Witness, thank you very much.
12 Farewell.

13 Mr Court Usher, I would also like to give you this particular order.

14 (Closed session at 10.15 a.m.)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Open session at 10.17 a.m.)

25 THE COURT OFFICER: We are already in open session, your

1 Honours.

2 PRESIDING JUDGE COTTE: (Interpretation) We will go back -- I'm
3 afraid I'm entirely mixed up. We'll go back into private session.

4 MR MACDONALD: (Interpretation) Private session.

5 PRESIDING JUDGE COTTE: (Interpretation) That was an error on
6 my part.

7 (Private session at 10.18 a.m.)

8 (Expunged)

9 (Expunged)

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16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Open session at 10.30 a.m.)

21 THE COURT OFFICER: We are in open session, your Honours.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you. As I said
23 earlier, on behalf of the entire Chamber we wish to give you some information about
24 the time that was used so far during our hearings.

25 In ruling 1665 regarding Rule 140 of 1 September 2009, and I think you

1 will recall this point, in the ruling it was quite specific in the introductory paragraphs
2 8, 9 and 10 that, "The Prosecution will have approximately 120 hours for
3 examinations-in-chief of all their witnesses and that the Prosecution is free to allocate
4 their time amongst the various witnesses that they intend to call." And this ruling
5 also specifies that, and I quote, "For information purposes, the Chamber wishes to
6 inform the parties that for the purposes of cross-examination each Defence team will
7 be allocated approximately 60 per cent of the time used by the Prosecution for
8 examination-in-chief."

9 Now, in the same ruling we find at paragraph 10 of the decision of the
10 main part of the section in a paragraph entitled "Duration of each phase," the
11 paragraph specifies, and I quote once again, "The Chamber shall closely monitor the
12 progress of the proceedings. The Chamber shall determine the duration of each
13 phase and will ensure that each party keeps to the amount of time that has been
14 granted to them. Other than in extraordinary circumstances, the Chamber will not
15 authorise the parties to go beyond the total number of hours that was allocated to
16 them to present their evidence and arguments."

17 At the request of the Chamber, in accordance with paragraph 11 of this
18 same ruling, ruling 1665, the court officer has informed you on a very regular basis of
19 the amount of time that you have used, the amount of time used and the amount of
20 time remaining by the exercise of subtraction. By so doing, the Chamber intends to
21 comply with the obligation that it has under Article 64 of the Statute; namely, to
22 ensure expeditious conduct of the trial.

23 Now, in a document that was sent yesterday on 14 October by the court
24 officer, of the 120 hours allocated the Prosecution has used 89 hours and 8 minutes.
25 In other words, the Prosecution still has for upcoming witnesses a total of 30 hours

1 and 52 minutes, or in other words approximately 31 hours.

2 With regard to Witness 219, Prosecutor, you have allocated 12 hours and
3 you were assuming a total of 200 hours of examination-in-chief. Now this has been
4 reduced to 120 hours, so you will have to allow approximately 7 hours and
5 10 minutes for 219 unless you go beyond this figure, but if you do that can only be
6 charged so to speak on your time that you intend to use for upcoming witnesses.

7 Your office, more specifically the representative of your office, during
8 the status conference of 9 July 2010 made a commitment not to go beyond the number
9 of hours that had been allocated to the Prosecution case.

10 As concerns the legal representatives, they were very reasonable and
11 said that they will -- and it would be worthwhile them continuing in the same vein.

12 As concerns the Defence teams, the Bench notes that Germain Katanga's
13 team has 60 per cent of the 120 hours allocated to the Prosecution, in other words
14 72 hours. Indeed, the team has already used 71 hours and 18 minutes, with on many
15 an occasion durations of cross-examination which went well beyond those of the
16 examination-in-chief of the Prosecution, particularly for witnesses 159, 279, 267 and
17 12.

18 The team of Mathieu Ngudjolo has used 42 hours and 43 minutes,
19 which means that it has some 30 hours remaining. This has no doubt meant that the
20 cross-examinations conducted by Mr Hooper and Mr O'Shea have had the greatest
21 benefit so far, which means that the two teams might need to consult and see if they
22 can reduce their questioning time by eliminating overlaps.

23 So it would be worthwhile examining whether Maître Kilenda might be
24 able to hand over some of his speaking time in order to compensate for the fact that
25 he has the benefit of going second in the cross-examination process. We are not

1 asking for discussions to start at this very point in time, but the Bench would request
2 that the two Defence teams discuss this together and attempt to find an agreement on
3 this issue and that you let us know by email if you wish if you do come to a solution.

4 In any case, whatever the result of those negotiations, the Chamber
5 should like to hereby request the Germain Katanga Defence team to comply strictly
6 with the rule of applying 60 per cent of the time used by the Prosecution for each of
7 the witnesses that are yet to come, the Prosecution witnesses that are yet to come.

8 As for the presentations made by the Prosecutor, without infringing on the rights of
9 each one of us and to ensure the quality of our (indiscernible), this must not spill over
10 into the year 2011.

11 One further point. The process of the discussion of the merits, the
12 presentation of documents, can give rise to legitimate objections. We would simply
13 request that when you do take the floor on procedural matters we would like you to
14 keep your presentation as brief as possible and stick to the essential issue at hand.

15 If the Chamber requires further information, it will ask that of you, but
16 as far as possible, Mr Prosecutor, all other parties, please we would ask you to keep
17 your interventions as succinct as possible unless there is an obvious necessity to offer
18 further information to the Chamber because you feel that it is vital. If not, we shall
19 evaluate the situation - over time we are getting better at doing this - and this way we
20 will proceed as rapidly as possible. So we are talking in particular here about
21 procedural or administrative matters.

22 Mr Prosecutor, before Witness 219 enters the courtroom, you wanted to
23 raise an issue and I ask you to do so as briefly as possible. The floor is yours.

24 MR MACDONALD: (Interpretation) Yes, as rapidly as possible.
25 We would ask you to put off until Monday morning the initial examination of

1 Witness 219, if that is possible, sir.

2 The Prosecution -- as you have seen, I have just caught up with -- as you
3 can hear from my voice I've picked up a bug from my wife, and I only got back
4 yesterday at 6 p.m., my colleagues came back earlier, and we saw what had been sent
5 by the Katanga team this morning.

6 So I think that these annexes are very important for the witness and
7 these three days, I think these three days were actually perhaps the shortest time
8 frame in which we've ever received documents from the Katanga team, but it's been a
9 long time that we wanted to get our documents, our hands on these documents, on
10 these conversations, and we managed to do that through -- with oral decisions,
11 ex parte hearings and now what we've done in the public session, but the reading that
12 we made of this conversation led us to the understanding that -- and I should not hide
13 the fact that the Prosecution has to make a decision on this, concerning the contents of
14 its examination-in-chief and this -- and even the witness has already taken the oath,
15 but we're even considering whether this witness should even be presented as a
16 Prosecution witness. And these kinds of assessments cannot be done in five minutes
17 flat.

18 I need to discuss this with my other colleagues in the team and
19 unfortunately -- and I say "unfortunately" because we're here in the office the whole
20 time, until 7 p.m., 8 p.m., sometimes later. Last night I didn't even check my
21 private -- my emails. I didn't check my emails at home, but if I had I might have
22 realised that we have an important strategic decision to make.

23 I take this opportunity to say, your Honour, about what you've been
24 saying about the speaking time is that the Prosecution is doing everything possible to
25 keep this brief, and Witness 238 will not even be brought before the Court. He shall

1 not testify.

2 Now, the Court has said that it wants to proceed expeditiously,
3 but -- and I hear that, but this is an exceptional case. We haven't asked for
4 adjournments until now, but given the circumstances of this case we feel that we do
5 need time to prepare. So that is the request that the Prosecution would like to put to
6 you today. Thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, the
8 email from the Katanga Defence team did arrive last night indeed. The document
9 that the team would like to present is a document that you had not actually had in
10 your possession as yet, but that you wanted to get your hands on, and the Chamber
11 made a decision on 23 September last. We have until 12.15, which means one hour
12 to become familiar with the content of that transcript. You have one hour.

13 We shall start again at 12.15 for the Defence team -- sorry, we will start
14 again at 12.15 until 1.30 for the Defence (sic) team represented by Mr Dutertre and
15 Mr Garcia, I think. I am wondering whether it would be possible by that time, 1.30
16 or 1.15, to ask your typical questions for the initial of -- for the initial examination of a
17 witness, about identity, et cetera. So this would give you one complete hour until
18 12.15 to read through that transcript, make the judicial conclusions that you need to
19 make from it and this would mean that we don't have to change the commencement
20 of the examination.

21 You had said that you wanted to receive this document; it's a document
22 that the Chamber made a ruling on as of 22 September and making it open -- making
23 it an open possibility for the Defence team to use it if it wished. So as to respect this
24 time-frame of three days, which is the case, we cannot adjourn until Monday morning.
25 We shall therefore meet again at 12.15. Mr Prosecutor, yes, please be brief.

1 MR MACDONALD: (Interpretation) There are also some redactions
2 in this annex. I would like leave of the Chamber to request the motivation of the
3 Defence for these redactions. If it's based on professional secrecy, then I would ask
4 the leave of the Chamber to revisit those redactions so that we could have -- we could
5 have the fullest of information.

6 There are some items that we don't understand. For example, the
7 name of the interlocutors changes throughout the document even though it seems
8 that they are the same people. We'd like that to be revisited, if possible. I have one
9 further point.

10 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, under the
11 control of Mr Hooper and his colleagues, on the basis of the email received last night,
12 it does appear to us, and I repeat, this is under your -- up to you to verify this, it
13 seems that what has been sent only contains the transcript of a conversation between
14 the witness at hand and Mr Katanga.

15 Nonetheless, since this had not been communicated, the words
16 exchanged between Mr Katanga and the resource team from Mr Hooper's Defence
17 team, that had not been communicated, so we have a partial communication. You
18 know exactly which part you have in your hands; I mean both teams. The Defence
19 team of Mr Hooper for Germain Katanga believes that they do not have to disclose
20 what is essentially a conversation between the accused and the resource person of the
21 Defence team.

22 I recall that the Chamber's decision of 22 September last mentioned, on
23 the one hand, the strategy of the Germain Katanga Defence team and the protection of
24 the private life of this person, of the accused. So for Mr Hooper's Defence team, the
25 interest of this transcript is only to be found in the words exchanged between

1 Mr Katanga and 219 which means that if this -- if this transcript is transmitted it is
2 easy to see who is talking, either Mr Katanga or 219. I hope that this has clarified the
3 point for you.

4 MR MACDONALD: (Interpretation) We should like to request leave
5 of the Chamber to revisit the redacted part and if this could be done within the next
6 hour we would appreciate it. Despite what has just been said we would like then to
7 have the redacted parts revisited in the light of the fact that we are not party to the
8 whole of the conversation.

9 PRESIDING JUDGE COTTE: (Interpretation) By "redacted," you are
10 talking about the part that has not been communicated in the message of last night; is
11 that what you mean?

12 MR MACDONALD: (Interpretation) Yes, precisely. What we do
13 have, your Honour, is we have four or five, maybe six pages of document - we have
14 the seven first pages - and then we have the remaining pages which have been
15 redacted and then the text continues after that. What we would like would be to
16 have the redacted part revisited.

17 So despite what has been redacted, and despite what this might mean
18 for the strategy of the Defence team, we would like to see whether this actually stems
19 from the conversation to which we are party.

20 PRESIDING JUDGE COTTE: (Interpretation) I mentioned Article 64
21 a moment ago as concerns expeditiousness. This also talks about equality of arms.
22 We are doing our best and we are very aware of the need to maintain an equilibrium
23 between the two parties. This is our duty.

24 The Chamber felt, because it was consulted rapidly last night, that as of
25 the time when the Germain Katanga Defence team decided to put paragraph 27 of the

1 decision of 22 September, 2400, that it would be possible to identify the passages of
2 the transcript that they felt they could lift of those redactions and I shall read the
3 paragraph in question: "The Chamber therefore considers that the transcript of the
4 conversation of 8 June 2009 has not been communicated to the Prosecutor and that the
5 ex parte confidential nature of this document needs to be maintained."

6 It nevertheless recalls that if the Germain Katanga Defence team decides
7 to use this transcript during its cross-examination of Witness P-219 it will then have
8 the obligation to disclose it to the Bench and to all the participants at least three days
9 prior to that use in conformity with Rule 140, and paragraph 24 of that same decision
10 mentions that the Chamber had said that this transcript could not be communicated
11 in that the information contained within it are mostly linked to the Defence strategy
12 and the private life of the accused.

13 As of the moment when the Defence team who had this paragraph 27 at
14 their disposal felt that they could lift the embargo on this transcript, it is up to them
15 once, as concerns their strategy of Defence and the private life of the accused, to
16 decide which parts can be disclosed to the other parties and this is what the Defence
17 team has done. Things are clear.

18 Mr David Hooper has partially lifted the embargo, has used passages
19 from the transcript as part of the cross-examination, and because of Rule 140 has
20 given you the documents three days prior, and now it is practically 11 o'clock, so we
21 will meet at 12 o'clock and this would hopefully give you time to think about any
22 further questions.

23 We recall you that for your cross-examination you have some additional
24 time up your sleeve which you may use if you wish, whether this be questions and
25 responses that have caused problems to the Prosecution. If not, I think that we have

1 perfectly respected equilibrium of the case.

2 MR MACDONALD: (Interpretation) We respect your decision about
3 the redactions. We just want -- ask if that could be revisited. I just need to ask
4 you one thing with the greatest of respect. In light of reading this conversation, the
5 previous decision of the Chamber, we did not appeal that decision because we could
6 not know the content but now that we know the content we feel that it is unjust for
7 this not to have been disclosed us before because it undermines the credibility of the
8 witness.

9 The witness is -- the witness is now having their credibility thrown into
10 doubt and we have asked until Monday morning to ask to -- in order to assess the
11 situation because this changes our whole strategy. If we'd had this conversation one,
12 three or six months ago when we first started then we could have spoken again with
13 the witness.

14 We are currently at the end of the familiarisation phase and the witness
15 has already undertaken the oath. I feel that this is grossly unfair, that there has been
16 a great prejudice against the Prosecution because of this non-disclosure on the part of
17 the Defence, and this undermines the whole credibility of our witness. Once again,
18 we respectfully submit that this be revisited.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you for your
20 comments. Even though I feel that we have done our best to maintain balance and
21 fairness in the trial, we cannot suppose that at some given date an issue would arise
22 about a telephone conversation held by Germain Katanga. The Chamber realised
23 too late, because we had not been duly informed early enough, that that conversation
24 had occurred on 8 June 2009 and 219 had not yet been considered a Prosecution
25 witness.

1 I think it's important to recall this; it is even vital to recall this because if
2 we had had that information early enough we would perhaps not have reacted
3 how -- as we did at the end of 2009, but the Chamber explained its reasons in several
4 ex parte confidential hearings in January and February of 2010. This needs to be
5 borne in mind. I feel that it is important.

6 As for the rest, remember that our decision 2400 of 22 September, which
7 comes from the request in response to the request of the Prosecution requesting for
8 evidence relating to Witness 219, had been deliberated upon at length.

9 My forgiveness, interpreter, for going so fast. So the decision 2400 of
10 22 September 2009 had been fully deliberated upon. The Chamber weighed all of
11 the arguments that had been tabled by the different parties and in paragraph 24 it felt
12 that it had reserved a fate for their transcript as had been foreseen, but you will recall
13 that at the same time it also communicated the declaration.

14 It now appears that the Germain Katanga Defence team, which is free to
15 conduct its own strategy, in lifting an embargo that the Chamber felt that the accused
16 had had access to, the Defence team takes its responsibilities and takes it with the
17 benefit -- with the interests of the accused in mind.

18 Here we are now, and the huge advantage of our discussion of the
19 merits is that they are contradictory in nature, which means that there will be an
20 examination-in-chief, then a cross-examination and then a re-examination, which
21 means that with the way the trial is being conducted we will be able to hear and
22 question, all of us, Witness 219, and perhaps what Mr Hooper is hoping for will not
23 happen.

24 We do not know how things will go. We cannot second-guess what
25 will be occurring. We will all have the chance to see.

1 Now, it is 11 o'clock. We will meet again at 12 o'clock with Witness 219,
2 whom we have all been waiting for for the longest time.

3 (Recess taken at 11.00 a.m.)

4 (Upon resuming at 12.02 p.m.)

5 (Open session)

6 THE COURT USHER: All rise.

7 PRESIDING JUDGE COTTE: (Interpretation) Court is reconvened.
8 Please be seated. Mr Prosecutor, you wanted to address the Court before the witness
9 is brought on. Please proceed. Everyone is there. The accused persons are there.

10 MR DUTERTRE: (Interpretation) Good morning, your Honours. I
11 will be very brief. I simply want to make an application. It can be debated later
12 during the testimony and possibly in the absence of the witness.

13 We understand that the second sentence of paragraph 28 of your
14 decision 2400, your Honours grant us leave to talk about the conversation of
15 12 September 2009 in the direct examination. I'm not going to quote that sentence.

16 We received notification yesterday evening from the Defence to possibly
17 deal with that issue, and they provided a transcript of the conversation in question
18 and so we could also deal with this issue during the direct examination. This is an
19 issue of fairness for the witness, who must have all the complete information in his
20 possession. It is also a question of fairness for the Prosecution, because this is a
21 substantive matter.

22 Now, let me come to my application. Under the circumstances, your
23 Honours, we would like to request a variation of the list of exhibits for Witness 219 in
24 order to add the statement given to the Prosecution on 12 September 2009 for any
25 purpose that it may serve. The Prosecution feels that this is necessary for the

1 determination of the truth. All these issues must be dealt with from all possible
2 perspectives. It is also necessary to refrain from ambushing the witness.

3 We would like to also request leave to use the transcript disclosed by
4 Mr Hooper yesterday evening and included in the list of evidence for Witness 219.
5 Since we could not make this application before, this does not constitute a prejudice
6 for the witness. The statement of 12 September was communicated a long time ago
7 to Mr Hooper and then to Mr Fofé and Mr Kilenda. The other document comes from
8 the Defence themselves.

9 We can debate this issue now, or postpone it to next week, your Honour,
10 but we would like to have a decision on that before the end of the
11 examination-in-chief. And, after saying that, we can now begin with P219.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Mr Prosecutor. Just one moment, Mr O'Shea. Do you have a brief comment to
14 make? The Chamber would like to call on the parties and participants to read the
15 second sentence of paragraph 28 carefully in decision 2400 of 22 September 2010.
16 Mention is made of the statement given by Witness 219.

17 MR GILISSEN: (Interpretation) I'm sorry to interrupt you, your
18 Honour. I know that this is exceptional for me to do so, but we do not have access to
19 that decision so far. This is a decision that was adopted ex parte and I think it may
20 have legal consequences, but I want to avoid any misunderstanding. Thank you and,
21 once again, I'm sorry for interrupting you.

22 PRESIDING JUDGE COTTE: (Interpretation) It was a good thing for
23 you to interrupt me, Mr Gilissen, but we would like to draw the attention of all the
24 parties and participants to the exact phrasing of this second paragraph, second
25 sentence of paragraph 28, and the document referred to and mentioned in paragraph

1 1.

2 Mr O'Shea, very briefly please. I believe you will be responding to the
3 application of the Prosecutor to be granted leave during his direct examination to use
4 the transcription that your Defence team intends to use, and we are not sure whether
5 you will actually do so during your cross-examination. Is that what you want to talk
6 about? So please be very brief.

7 MR O'SHEA: Yes, indeed, Mr President, and I can be very brief
8 because I perceive that the Chamber has fully understood the parameters of these
9 documents from what your Honour said earlier before the break. So I will be brief.

10 Essentially, we are now at the stage of examination-in-chief. The
11 purpose of examination-in-chief is for the witness to give evidence of what he knows
12 in relation to events that took place in 2003. The Defence has been given notice of
13 that through the interviews and statement of the witness, so that is what -- that is the
14 function of the examination-in-chief.

15 The function - or one of the functions - of the cross-examination, if the
16 Defence deems it appropriate, is to challenge the credibility of the witness, and for the
17 purpose of challenging the credibility of the witness the Defence may use certain
18 documents. Among those documents which the Defence intends to use are
19 documents relating to a collateral matter -- let me be clear about that, a collateral
20 matter which affects the credibility of the witness. That is one of the functions of
21 cross-examination.

22 Your Honours have thought about this very carefully, even before this
23 trial commenced, and in your decision 1665 have been -- have set down the
24 parameters, I'm sure having deliberated quite extensively on the order and nature of
25 questioning. In my submission, in line with what my understanding is of your

1 Honours' understanding of the procedure, the moment for the Prosecution to address
2 documents which are put to the witness in cross-examination is at the time of
3 re-examination and not at the time of examination-in-chief.

4 And the purpose of the Defence giving three days' notice is of course to
5 enable the Prosecution to have sufficient time to prepare, but it's not sufficient time to
6 prepare for the examination-in-chief. It's sufficient time to prepare for the accused's
7 cross-examination, and then the Prosecution deals with that cross-examination in the
8 re-examination.

9 And I'm sorry if that sounds all very basic and as if it doesn't need to be
10 said, but I think sometimes we just need to get back to the basic principles in order to
11 resolve some of these questions. It is not appropriate for the Prosecution to hijack
12 Defence documents simply because they have notice of them at whichever time they
13 have notice of them and, as your Honours have quite properly said, we have
14 complied with the rules set down by this Court. Thank you very much.

15 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, you
16 explained your position to us, Mr O'Shea has explained his own position, the Defence
17 team of Mathieu Ngudjolo is remaining silent, whereas the legal representatives are
18 ill at ease because they do not have access to one of the decisions, so this shows you
19 how complicated the matter is.

20 We would like to recall once again that we are very concerned when it
21 comes to the respect of the fairness of the proceedings. Even though your
22 procedures are different, we all wish to understand what happened during one day of
23 February 2003 in Bogoro.

24 We have two accused persons here who are awaiting justice and we
25 have in the DRC and elsewhere a certain number of victims who are also awaiting

1 justice. We do not want to expose ourselves to any ambush, or give the impression
2 that we are continuing to complicate the life of the witness.

3 We would like to remind you that paragraph 28 of decision 2400 of
4 22 September includes a sentence that must be read very carefully within a specific
5 context. It refers to a statement which can be the basis of questions from the
6 Prosecutor in his direct examination. This document was disclosed and this could
7 give rise to questions.

8 The direct examination has not yet started, and we are not yet aware
9 whether in their cross-examination Mr Hooper or Mr O'Shea will use the transcription
10 that is being debated. Now, they may use it, or they may not. If by chance they use
11 that document, we do not know what will be the reaction of the witness. It is
12 possible that he may be unsettled. We have no idea. Maybe the witness will have
13 an explanation to give us; that is, if it turns out that there is a discrepancy between
14 what he said at one time and what he said at another time.

15 In the event that Mr Hooper or Mr O'Shea uses the document that they
16 disclosed yesterday as part of their cross-examination, the Prosecutor in his
17 re-examination will have the possibility of asking his own questions, asking the
18 witness to explain the moral, physical conditions in which he found himself when he
19 made those utterances.

20 We do not know anything about what the reaction of the witness will be.
21 It is during this hearing that we will find out, because of the oral nature of the
22 proceedings. That is the price we have to pay. There may be surprises. We must
23 not look for them, we must not provoke them, but if they arise we have to seize that
24 opportunity to use them as best as possible for the purpose of our ultimate aim; that is,
25 the determination of the truth.

1 That is where we are at now, and Mr Prosecutor you're going to begin
2 your direct examination and this is a witness according to your words who is very
3 important and who is likely to contribute in his own way to the determination of the
4 truth and that is what concerns us. We will bring the witness in.

5 MR DUTERTRE: (Interpretation) Can you allow me to make one last
6 comment, your Honour?

7 PRESIDING JUDGE COTTE: (Interpretation) Very well, one last
8 comment so as to ensure fairness.

9 MR DUTERTRE: (Interpretation) The Prosecution has duly noted
10 what the Chamber has said, and this includes the possibility for the Prosecution to
11 talk about this issue in the direct examination.

12 PRESIDING JUDGE COTTE: (Interpretation) Based on the statement
13 that was disclosed, or taken on 22 September, but not the transcription because we do
14 not know whether it will be used or not.

15 MR DUTERTRE: (Interpretation) That is well understood. What I
16 would like to point out is that witnesses may behave differently and we do not know
17 whether we will need that hard copy document later on. That is why we want to
18 change the list of evidence.

19 PRESIDING JUDGE COTTE: (Interpretation) The document was
20 disclosed yesterday with partial redactions.

21 MR DUTERTRE: (Interpretation) I'm talking about the statement of
22 22 September.

23 PRESIDING JUDGE COTTE: (Interpretation) Please proceed,
24 Mr Hooper.

25 MR HOOPER: Mr Dutertre mentioned his wish to have the statement

1 of 12 September 2009 added to his exhibit list that I realise that we had omitted it from
2 the list of documents that we intended to put into the system, and Ms Menegon has
3 just sent an email; the effect of which will be to have the statement of 12 September
4 2009 added to that Defence list of documents.

5 I say that because clearly we need to refer to it and it was a straight,
6 simple omission that it wasn't included. So if and when that witness is asked any
7 questions by the Defence in respect of that issue, the telephone call, my friend can rest
8 assured that that statement will be available to the Court generally through the
9 system, and of course to him as well in due course if he wants to address the matter
10 by way as Mr O'Shea has just indicated would be appropriate, if at all, and that is in
11 the course of re-examination.

12 So the document is not out of the Court, as it were. It's part of the list
13 of material that may be used and which has now been notified.

14 PRESIDING JUDGE COTTE: (Interpretation) Before allowing you to
15 address the Court, Mr Kilenda, I would like to ask the court usher to assist me
16 because my French transcript is frozen. You are dealing here with members of a
17 generation that sometimes have problems with computers. Mr Kilenda.

18 MR KILENDA: (Interpretation) Thank you, your Honour. I really
19 do not wish to intervene in the debate. On page 47, line 17, my learned colleague
20 Mr Hooper talked about the statement of 12 December 2009. I think he was referring
21 to 12 December. He talked about 12 September. I believe it is 12 December; that is
22 all.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
24 Mr Kilenda.

25 MR HOOPER: Yes, it's December.

1 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, did you
2 want to add something?

3 MR HOOPER: I've been corrected. Of course it's December. The
4 document is 12 December 2009. I'm sorry if I confused, or added more confusion.

5 PRESIDING JUDGE COTTE: (Interpretation) Very well. Since the
6 Chamber really has pity on the legal representatives, we would like to remind them,
7 without really revealing anything, that this deals with a statement and a transcription
8 of a phone conversation, and Mr Hooper disclosed extracts of that transcription and it
9 is possible that he will use it in his cross-examination.

10 The statement to the Prosecutor was an additional statement that was
11 given on 12 December 2009, as Mr Kilenda has pointed out. That statement was
12 communicated to Mr Hooper, and the Prosecutor had it of course, and then to the
13 Defence team of Mathieu Ngudjolo. It is that statement that is referred to in the
14 second sentence of paragraph 28 of our decision 2400 of 22 September 2010.

15 If you, Mr Prosecutor, would like to refer to that statement in your
16 direct examination, and this is just a statement given to the OTP just like the other
17 statements given to the members of your office, you can in order to facilitate the
18 proceedings make it available to the witness as we have done several times with the
19 other witnesses who have appeared in this Court.

20 On the other hand, the issue of the transcription is reserved for the
21 cross-examination of Mr Hooper. If he intends to use it, and if he does so, then in the
22 course of your re-examination you can try to set the record straight, that is in
23 re-examination, if you feel the necessity to do so. Are we agreed on that? Very
24 well.

25 MR GILISSEN: (Interpretation) I believe it is useful to inform the

1 Court that we thank the Defence for having disclosed to us the document that we
2 were talking about this morning and also from the Prosecutor we have the witness's
3 statement. What we would request now is for you to reclassify your decision
4 number 2400 so as to allow us to have access to it - this was an ex parte decision - and
5 in that way we will have a full picture of what this is all about, even though we
6 already have some ideas. We are really not complaining, your Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) The Chamber would
8 like to seek the opinion of the Defence of Mr Germain Katanga.

9 Mr Hooper, Mr O'Shea, Mr Gilissen has just requested that the
10 document should be reclassified because it was reclassified -- that is, the decision 2400
11 of 22 September 2010. In fact, it is not a request to reclassify everything that was
12 done during that ex parte consultations linked to telephone conversations, for
13 example, but it is that decision number 2400 that we have been talking about, but they
14 do not have.

15 Do you have any objection that they should be reclassified confidential,
16 but solely accessible only to the Defence teams and legal representatives and
17 Prosecutor so that they should be able to participate in our proceedings, even if they
18 may not take the floor during those proceedings?

19 MR HOOPER: Yes. Can you just allow us some time to remind
20 ourselves of the contents of that, because I can't remember whether it dealt with other
21 issues. As I understand it, we are particularly focussed, are we not, on paragraph 28,
22 or does the Chamber want --

23 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, please take
24 your time. Either you do so before 1.30, but if you are not able to do so it can wait 'til
25 Monday at 2 p.m. There is no problem.

1 MR HOOPER: If reading it, as we will after 1.30, we come to the
2 conclusion that we feel that something should be redacted, we'll address that issue to
3 the Chamber, but we're certainly not standing in the way of the representatives
4 having access, of course, to the document. It's just in case there's things there that
5 obviously may prejudice us in some way. Thank you.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper.
7 You can communicate by email and, please, you can address the email to Madam
8 Pauline Baranes, who is in front of me here to the left. Court officer, let us go into
9 closed session to enable the witness to come into the courtroom and then we will
10 revert to open session.

11 (Closed session at 12.30 p.m.)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session at 12.31 p.m.)

17 THE COURT OFFICER: We are in open session, your Honours.

18 WITNESS: DRC-OTP-P-00219 (On former oath)

19 (The witness answers through interpreter)

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court
21 officer. Good afternoon, Witness.

22 THE WITNESS: Good afternoon.

23 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me?

24 THE WITNESS: Yes, I can hear you.

25 PRESIDING JUDGE COTTE: (Interpretation) We will be with you for

1 scarcely an hour today. This is just the beginning of the Prosecution's
2 examination-in-chief. I would remind you that you need to speak very slowly so
3 that the interpreters can interpret your remarks properly and so that all the various
4 teams here, be they English or French speaking, can benefit from the interpretation.
5 Speak loudly, right into your microphone, and if you have the impression that there is
6 a technical problem that is bothering you, a buzzing sound, a hum, anything like that,
7 poor sound, please raise your hand and let us know. Don't hesitate to do that. You
8 must be in good conditions so that you can help us, so that we can better understand
9 the matters that are before us. Thank you. Prosecutor.

10 MR DUTERTRE: (Interpretation) Thank you, your Honour.

11 QUESTIONED BY MR DUTERTRE: (Interpretation)

12 Q. Good afternoon, Witness.

13 A. Good afternoon.

14 Q. My name is Gilles Dutertre and I represent the Office of the Prosecutor
15 and I am the person who will begin asking questions on behalf of the Prosecution.
16 With me today is Lucio Garcia, my colleague. He's sitting to my left.

17 Now, before we turn to the heart of the matter, a few very brief remarks.
18 Many witnesses have already come before the Court, the Chamber and the parties
19 already know a great deal about the events and it is possible that when you answer a
20 question I may interrupt you because you're touching upon points that have already
21 been dealt with at length. So please don't be offended if I do so. It's just a matter of
22 saving time. We only have a limited amount of time to hear witnesses. For the
23 same reasons, if I touch upon a particular subject, it is possible that I may just ask
24 about one particular detail and not the other details because that information is
25 already known, but you may provide some additional value and this is what we are

1 looking for.

2 Furthermore - and this is an important point - if you don't know
3 something, or if you have forgotten something, just say that you don't know or that
4 you've forgotten. Your protection is important to all of us here in the courtroom,
5 and to avoid having to go into private session too often we have prepared a list of
6 names and there's a letter beside each name, and I would like to ask you to do a little
7 bit of mental gymnastics and please use the letter A or B when you speak about a
8 particular person. For example, "I was at such-and-such a place with such-and-such
9 a person." This is a short list, it has ten names on it, and the court usher does have
10 copies of this short document and furthermore a copy could be tendered into
11 evidence as a confidential document.

12 PRESIDING JUDGE COTTE: (Interpretation) Yes. Not only will the
13 court usher provide an example - a copy - to the witness, but he will also send a copy
14 to the interpretation booths and, if that could be done very quickly, if you could do
15 that sort of thing by email, otherwise the hard copies will be brought to them.
16 Otherwise, they will be experiencing the same documents -- the same difficulties as
17 what they had this morning when they received a 16 page document too late.

18 Now, there you have it, Witness. You have this list. The Prosecution
19 has just explained it to you. There are ten names on this list - you may know these
20 names - and beside each name there is a letter. So each time the Prosecutor speaks of
21 one of these people he will use the letter. And why? Because as much as possible
22 we wish to remain in open session, because justice must be rendered openly, publicly.
23 If we need to ensure your protection we will go into private session. You can be
24 quite sure of that. Prosecution, please go ahead.

25 MR DUTERTRE: (Interpretation) Thank you, your Honour.

1 Q. One last point, Witness. Next week - and I'm telling you this
2 immediately - my colleague Mr Garcia will be replacing me and he will continue with
3 the examination-in-chief. We can -- if we could go into private session so that we
4 can deal with a number of identifying pieces of information?

5 PRESIDING JUDGE COTTE: (Interpretation) Certainly. I hope the
6 public will realise that we will now be discussing a few matters that could identify the
7 witness and we can't discuss these matters in open session, so we'll be briefly going
8 into private session.

9 (Private session at 12.39 p.m.)

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22 (Open session at 12.59 p.m.)

23 THE COURT OFFICER: We are in open session, your Honours.

24 PRESIDING JUDGE COTTE: (Interpretation) Very well, we are in
25 open session. Prosecutor, please proceed.

1 MR DUTERTRE: (Interpretation)

2 Q. Witness, with regard to the officers in Aveba, you said a number of
3 names. Now, are there any other names that come to your mind in addition to the
4 names that you already provided us with? You gave the names of Kachuaki,
5 Garimbaya, Nyarka, Shari and Mbalu. Were there other officers whose names
6 come to mind?

7 A. Yes, there are some other names?

8 Q. Could you give us those names, please?

9 A. Yes. There was Safari; S4; Sipa Pascal; Muhito Akobi; Jean, Germain's
10 younger brother; Safko, the late Kandro's younger brother.

11 Q. Thank you. Witness, in the dossier there was an attack in September
12 2002 in Nyankunde with hundreds of -- roughly a hundred deaths. What do you
13 know about that attack?

14 A. When we fled the war in late September, if my memory serves me
15 correctly I think it was 25 September, the UPC was in control of Nyankunde. The
16 UPC attacked the positions of the Ngiti surrounding villages. Soldiers came to
17 Kasenyi; they were soldiers from the 13th UPC Battalion, the APC Battalion, and these
18 forces came into the Bindi territory and they joined forces with other soldiers with the
19 Ngiti.

20 And at the time, it was the late Kandro who was in charge of the army.
21 They formed a coalition, and they arrived within a few metres of Nyankunde, and
22 they arrived there. And about 9.30 the following morning, the UPC forces were
23 attacked in Nyankunde by that coalition. Nyankunde fell after just a few hours of
24 combat.

25 Q. You mentioned a coalition with other soldiers from the Ngiti whose

1 leader was the late Kandro. To the best of your knowledge, who are the other Ngiti
2 officers who took part in that Nyankunde attack in September 2002?

3 A. It was Kandro who spear-headed that force. There was Kandro, Cobra,
4 Nambalonye (phon), Kisoro, Germain, Yuda, Mauve, as well as Bahati from
5 Zumbe.

6 Q. You mentioned a few people, including a person named Germain. Can
7 you please give us his full name?

8 A. Yes, I know his full name. It is Germain Katanga Simba. In the village
9 he was known as Areakbar (phon), which means the same thing as Simba.

10 Q. The word "Simba" is which language? Is it Kilendu, is it Swahili,
11 which language is it?

12 A. Simba is a Swahili word. In French, it would be lion; in English, lion.

13 Q. And Areakbar, what language is that?

14 A. Areakbar is Ngiti language, and these words all have the same meaning.

15 MR DUTERTRE: (Interpretation) Your Honour, I should like to go
16 briefly into private session because this is potentially identifying.

17 PRESIDING JUDGE COTTE: (Interpretation) Court officer, let us go
18 into closed session.

19 (Private session at 1.07 p.m.)

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5 (Open session at 1.08 p.m.)

6 THE COURT OFFICER: We are in open session, your Honours.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

8 Mr Dutertre, you may continue.

9 MR DUTERTRE: (Interpretation)

10 Q. Can you please tell us, Witness, how long after this battle, and you said
11 that the battle lasted a few hours, how long after that you remained at Nyankunde?

12 THE INTERPRETER: The interpreter corrects: How long after that
13 did you go to Nyankunde.

14 A. I went there the day after the attack.

15 Q. Which Ngiti commanders did you see with your own eyes in Nyankunde
16 when you arrived there the following day?

17 A. All the Ngiti commanders were in Nyankunde.

18 Q. Am I to understand then that all of the commanders whose names you
19 gave a moment ago were seen personally by you when you arrived in Nyankunde; is
20 that correct?

21 A. Yes, they were all in Nyankunde.

22 Q. Could you please describe to us what you saw upon arrival? Tell us
23 about the town, the people. What did you observe?

24 A. When they arrived in Nyankunde, the battle had finished. There were
25 non-local tribes people who had gathered in the centre of Nyankunde just opposite a

1 shop. They gathered there and they were APC people who had gathered them there.
2 And then at the hospital there were only combatants who were looting. And when
3 we arrived there, there was looting and they had killed people. There were some
4 people hiding in the houses, but most of the people weren't there. The killing had
5 finished and it was looting that was going on.

6 Q. You talk about killing. Who were the victims of this massacre? What
7 was the ethnic origin of the victims of this killing?

8 A. The killings had targeted the Nyankunde ethnicities, Bira and Hema, but
9 most of the deaths were among the Bira because most of the Hema had fled because
10 they had taken the time to analyse the situation and they had known what was going
11 on. So it wasn't only the Bira who were killed; it was Bira who were from
12 Nyankunde who were killed. So it wasn't all Bira who were killed; it was Bira from
13 Nyankunde who were killed.

14 Q. What age were the victims, as far as you could tell.

15 A. The victims of the war were not selected according to their age.
16 Everyone could potentially be killed. They weren't focusing on a certain age. If
17 you belonged to the targeted ethnic group, then you would be killed.

18 Q. And when you arrived, was this still going on or had it finished?

19 A. The intensity of the killing had diminished, although there was still some
20 killing going on. When Kandro arrived, he went to get the Bira from Nyankunde
21 who had taken refuge there and then he headed towards the town of Kalingi (phon).
22 There were nurses' homes or residences and it was in the fourth house of that nurses'
23 residence that he put all of the people that he had gather from that town and he
24 started bringing out one by one the victims and he killed them and threw the bodies
25 into the latrines. Others were carrying off the spoils of war, such as sheet metal and

1 things that they had looted.

2 Q. Did you see this with your own eyes or is this what you heard?

3 A. I saw this with my own eyes.

4 Q. Can you tell us approximately how many bodies you saw in
5 Nyankunde?

6 A. A lot of people were killed in Nyankunde. There were more than 300
7 victims.

8 Q. Could you please describe, Witness, what people were looting. You
9 talked about looting that was ongoing when you arrived. Could you please briefly
10 describe what you saw?

11 A. When it comes to looting, first of all, the hospital vehicles were stolen.
12 There was Pajeros, Land Rovers, Land Cruisers, and it was mostly the commanders
13 who took these vehicles. There were also motor bikes of the type Honda 250 and
14 then there was looting of various objects from within the houses. After that, they
15 went to the shops. They went into the shops and looted all of the shops in the
16 shopping area, and all of those spoils were taken towards the mountain. That was
17 the first stage of the looting. After having looted the easily transportable items the
18 second phase of looting commenced. Sheet metal was ripped off housing and doors
19 were also removed.

20 Q. You said that all of this loot was taken towards the mountain. What do
21 you mean when you say "towards the mountain"? Which area are you talking about
22 exactly?

23 A. The attack on Nyankunde had been organised by Lendu-Bindi and
24 everybody took their loot back to their own camp. For example, people from Bavi
25 were carrying these things back to Bavi and those from Songolo would take their

1 plunder back to Songolo and those from Aveba took their things back to Aveba.

2 That's how it worked. Everybody took these pillaged items back to their own base.

3 Q. The commanders that you mentioned that you saw in Nyankunde, what
4 were they doing while the killing and looting was going on?

5 A. The commanders themselves were looting. Everybody in situ was
6 undertaking the looting and the commanders targeted the important items. For
7 example, Kandro went into the missionaries' place and he took money. * He was in
8 He took the missionaries' money. He went to the medical centre in Nyankunde to get
9 money too. Each of the commanders targeted a vehicle or other important or significant
10 items and then they would load up the vehicles and head off with the bounty.

11 Q. When you saw Germain Katanga what was he doing, Witness?

12 A. Germain Katanga did not do any looting at that moment.

13 Q. What was he doing?

14 A. He was moving around, around the town. Cobra and other persons
15 were looting but, personally, I did not see Katanga doing any pillaging. Maybe he
16 looted elsewhere but I didn't see it at that time. The only thing he came back with
17 was a motorbike. But in his house some items could be seen. For example, he had
18 taken a Honda 250cc motor bike.

19 Q. What was his exact rank at that time, if you recall?

20 A. He had the rank of colonel.

21 MR DUTERTRE: (Interpretation) With your leave, I'll take a few
22 minutes, your Honour.

23 PRESIDING JUDGE COTTE: (Interpretation) Just to bring to your
24 attention, Mr Prosecutor, that time is running out, so if you have any final questions
25 that you would like to ask, please bear in mind the length of the answers that you are

1 to receive because we are to end at 1.30.

2 MR DUTERTRE: (Interpretation) Your Honour, we were preparing
3 to change topics, which means that perhaps if it's preferable we could put that off
4 until Monday.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
6 Mr Prosecutor. Court officer, let us go into closed session so that the witness can
7 leave the courtroom.

8 Thank you, Witness. We will be back on Monday, but only in the
9 afternoon, at 2 p.m., and the other days of the week it will be in the morning. Thank
10 you very much for your contribution this morning.

11 (Closed session at 1.24 p.m.)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Open session at 1.25 p.m.)

20 THE COURT OFFICER: We are in open session, your Honours.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court
22 officer. Before parting company, Mr Hooper. Mr Hooper. Perchance, have you
23 hidden something or someone from us, given that we see you have a new staff
24 member with you?

25 MR HOOPER: Yes, she's normally imprisoned in the office, some

1 distance away from here, as you know. And may I introduce her. She's Fanny de
2 Beco, and she's a French jurist and intern to us.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Counsel
4 Hooper. This gives us the chance to meet someone new who is contributing to our
5 work. Mr Prosecutor, you will not be with us, it will be Mr Garcia who takes over
6 the baton; is that right?

7 MR GARCIA: (Interpretation) Yes, that is right, sir.

8 PRESIDING JUDGE COTTE: (Interpretation) Very well. We will let
9 your respective teams consult together as concerns their speaking time, and we will
10 be back on Monday morning. Court adjourned.

11 (The hearing ends 1.27 p.m.)

12 CORRECTION REPORT

13 The following correction has been made to the transcript:

14 * Page 62 lines 7-8:

15 "and if he was going to the missionary he would pick up other items, et cetera."

16 Is corrected by

17 ". He was in He took the missionaries' money. He went to the medical centre in
18 Nyankunde to get money too."