

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and
7 Mathieu Ngudjolo Chui
8 Trial Hearing
9 Tuesday, 19 April 2011.
10 The hearing starts at 9.02 a.m.
11 (Open session)
12 COURT USHER: All rise. The International Criminal Court is now
13 in session.
14 PRESIDING JUDGE COTTE: (Interpretation) Please sit down.
15 Good morning, everybody. I would like to say good morning to the
16 accused, officer of the Court, and we're going to resume our debates
17 where we cut off yesterday. So we shall now ask Mr. Mbodina to come
18 back.
19 (The witness takes the stand)
20 PRESIDING JUDGE COTTE: (Interpretation) Good morning,
21 Mr. Mbodina.
22 THE WITNESS: (Interpretation) Good morning.
23 PRESIDING JUDGE COTTE: (Interpretation) I see that you can hear
24 me well, so we can resume our debates, and it is now counsel for Defence
25 that will continue his questioning.

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Questioned by Mr. Hooper (Continued)

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1 Counsel, you have the floor.

2 MR. HOOPER: Thank you. Before I start my questioning this
3 morning, Mr. President, can I just say - and this is no criticism of
4 anyone - but I haven't received the English transcript from yesterday so
5 I haven't been able to review matters and quite a few matters we touched
6 on yesterday afternoon and -- well, some may have needed further
7 clarification. Now, what I thought I'd do is continue and see how far I
8 go, but I -- if I don't reach the point or if I conclude before I have a
9 reasonable opportunity to examine the transcript, then perhaps these are
10 matters I can, if necessary, pick up on in re-examination in due course.
11 So good morning --

12 PRESIDING JUDGE COTTE: (Interpretation) Simply, I can -- would
13 like to point out that this is the problem when hearing is held the
14 morning after the -- a hearing held in the previous day's afternoon. I
15 must say that at six to 8.00 we received a French transcript. I am sorry
16 that you did not receive the English version. That would be more urgent
17 in this case, in fact. Therefore, press ahead and I hope it will get to
18 you before you close so you can ask some relevant questions. You have
19 the floor, counsel.

20 WITNESS: WITNESS DRC-D02-P-0228 (Resumed)

21 (Witness answered through interpreter)

22 Questioned by Mr. Hooper: (Continued)

23 Q. Good morning, Mr. Mbodina. So yesterday, you may recall that we
24 were talking of the first of the two visits you told us you had paid to
25 Aveba in more recent years, as you expressed it, and in particular, you

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1 were telling us how you had got there, you'd flown there with arms and
2 you were with some ten soldiers, five of whom you designed as important,
3 and you named them. Now, let me ask you this: Do you know who had sent
4 those soldiers?

5 A. Good morning, counsel. I recently carried out two visits to
6 Aveba. During one of these visits I was on a plane, the Across Airline,
7 with about ten APC soldiers, five of whom were high-ranking. Yesterday,
8 I named some of them. They were sent by the integrated operational
9 Chief of Staff, i.e., by EMOI.

10 Q. And what was their function? What were they sent there to do?

11 A. The mission or the assignment they had been given by the Chief of
12 Staff, as I started explaining yesterday, was to organise the fighting
13 troops around Aveba and its surroundings. And in order to offset the --
14 once the lack of resistance put up by the troops, we were at Komanda --
15 at Komanda, they -- there was talk of these troops who were there who
16 were not able to resist after having captured this centre that opened the
17 way to Mambasa and Kisangani, soldiers who were unable to resist. And
18 every time they were driven out of their positions by the assailants, in
19 particular the MLC and the UPC.

20 Q. (Previous translation continues) ... intervene there.

21 MR. HOOPER: Can we have --

22 Q. Do you have copies of the two maps that we provided you? I think
23 not, so let me arrange that happens again.

24 MR. HOOPER: Can the witness please be given these plans, and can
25 I, for the rest of us, call up EVD-D02-00118, which is, as we recall, the

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1 brown plan we saw yesterday.

2 COURT OFFICER: (Interpretation) If you want to see the map,
3 press on PC 1.

4 MR. HOOPER:

5 Q. Again, thank you for touching upon this again. You touched on it
6 yesterday and this relates to, as it were, perceived weakness in the way
7 that military matters were being handled. Now, Komanda, if we look at
8 our map with Beni there at the bottom and we see a clear road there to
9 Bunia, and two-thirds of the way from Beni to Bunia we see Komanda.
10 Looking at the plan, it would appear that at Komanda the road divides,
11 i.e., the road from Bunia divides with one -- the left-hand part going
12 down to Beni, and if you turn right you reach Mambasa and presumably
13 after Mambasa, Kisangani. Would that be correct? Is Komanda at the
14 point of the junction between those two roads? I think you referred, in
15 fact, to that yesterday, so I'm just picking up on your theme of
16 yesterday.

17 A. Yes, that's precisely the case. Komanda is indeed on the Beni
18 road when you come from Bunia.

19 Q. Now, you've been speaking about Komanda. What was the problem
20 that happened at Komanda that you've been telling us about? What was
21 that?

22 A. Well, when answering the question as to what were the missions
23 that had been given to these soldiers I brought from Beni to Aveba --
24 well, as far as I know, they had been given two missions; one in respect
25 to controlling Komanda and the second consisted in attacking Bogoro.

1 And, of course, I'll perhaps talk about the second aspect later,
2 afterwards. However, I'd like to point out at once that with respect to
3 Komanda, the fighting troops that were there were unable to resist. So
4 these troops, these officers who were experts, were sent precisely to
5 Aveba to organise these troops. What I mean is give them military
6 training to enable them to be able to fight back.

7 In addition to this assignment, they also had another mission
8 that consisted in preparing the attack of Bogoro.

9 Q. I'm asking you at the moment about Komanda. Now, yesterday, you
10 referred to a problem in holding a position. What was the problem in
11 holding or not holding a position?

12 A. Well, as I said, the problem was the amateurism, or rather, lack
13 of experience of the fighters who were controlling Komanda. One anecdote
14 illustrates this total lack of organisation, in terms of military
15 practice, was blatant. I mean, that's the problem. This group of
16 experts was sent in order to overcome such problems.

17 Q. And, sorry, what was the anecdote that was -- is a blatant
18 example of that?

19 A. I don't really know what you mean by an anecdote. Maybe you want
20 an example. Could you explain to me what you mean.

21 Q. It's the translation I received, so I was just using, I thought,
22 the same word as you had. What -- well, let me put it like that, yes.
23 Is there an example of this lack of organisation that these officers had
24 been sent to try and cure?

25 A. Well, this lack of experience concerned, above all, these troops

1 who were in Komanda and there were lots of examples. You had this armed
2 conflict that was raging in Komanda and they were occurring internally;
3 in other words, the same position, there was a crisis in terms of
4 discipline, lack of respect for fellow soldiers. As a consequence,
5 everybody relied on himself only, and as a result, frequently people shot
6 at one another with the regrettable consequence of people killing one
7 another savagely. And in an army, that is undeniably unacceptable, I
8 mean, and cannot occur if it is a real army, as is to be demanded.

9 Q. Now, at Komanda what group or troops were involved at Komanda, do
10 you know?

11 A. Well, yes, I mean I do because I was in charge of bringing
12 weapons from Beni to Komanda by motorbike or even by plane. Now, the
13 last flight took me to Lolwa, and at the same time there was a commander
14 who was shooting at people and he was a real threat for anybody who was
15 there. You had lots of blatant cases of indiscipline that characterised
16 some of the commanders in this area, who, instead of ensuring security,
17 spent their time committing acts of vandalism or plundering. I could
18 give you, for instance, the example, the theft of cattle around Boga. A
19 lot of commanders were involved. Another example would be Bahati who's
20 the colonel of the FARC. A lot of people could also be named. There was
21 real anarchy at the time, and it was created by the very people who held
22 the position and that reflected their lack of experience in the military
23 field.

24 Q. And, again, looking at our plan we can see Boga indicated a
25 couple of centimetres below Irumu. You can see that. Right. Now, I'll

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1 come to Bogoro in a short while and I just want to stay for a moment with
2 this visit that you paid to Aveba with the soldiers that you've
3 mentioned. Now, how long did you, yourself, remain in Aveba on that
4 mission, that first of the two missions?

5 A. I spent only a few hours that first mission to Aveba. It was a
6 quick return trip, Beni-Aveba-Beni in a few hours' time.

7 Q. Now, as far as the soldiers who travelled with you, and in
8 particular, the five that you named, do you know what happened to them
9 when you left, where they went?

10 A. I didn't understand your question very well. You're talking
11 about whom?

12 Q. Yesterday, you mention Mutombo, Blaise Koka, Bipe, Kasereka,
13 otherwise Mike-4, and someone who's first name is Roger. You stayed just
14 a relative short time in Aveba and returned to Beni. Do you know what
15 happened to those men? Do you know, after you left, where they went, for
16 example, where they stayed?

17 A. Yes, they arrived at Aveba to carry out a mission, and, as is
18 compulsory in military regulations, they had to carry out this mission.
19 As far as I know, they completed their mission, first of all, in Aveba
20 where they found out about the environment, the terrain, and also the
21 people who were there. And I learned that they spent some time in Aveba
22 itself to do so, and later I heard that they came back to Kagaba to
23 prepare the attack of Bogoro. And at Kagaba I know that they got in
24 touch with a lot of officers who were positioned there and the troops who
25 were based in Kagaba at that time.

1 Q. All right. And I'll return to that in a very short while. Now,
2 can I just ask you about Germain Katanga, who you identified as someone
3 you knew at the commencement of your evidence yesterday. Can I ask you
4 this: When did you first meet Germain Katanga? When and where did you
5 first meet him?

6 A. I met him, Germain Katanga, for the first time in Beni, in north
7 Kivu, during a mission he had to carry out in Beni with the RCD-K/ML
8 officials. That's the first time I met him. And in fact, subsequently,
9 we slept in the same hotel, the Bashu (* phon) hotel, that is in the
10 middle of Beni, at the very heart of Beni -- in the very heart.

11 Q. And at the time you met him, can you remember when that was,
12 approximately?

13 A. I don't remember the exact date of my first meeting with
14 Germain Katanga. I believe it was in late 2002 in December, slightly
15 before the end of 2002. That's what I believe.

16 Q. Now, when you met him, did he hold any position at all?

17 A. My very first meeting with Germain did not enable me to know
18 precisely what the man represented. I came from Mahagi via Bunia --
19 Mahagi via Bunia, and I'd have heard about him. And oddly enough, I
20 didn't know that much about him. So my first meeting with him did not
21 allow me to understand directly what he was, but afterwards, after
22 meeting him, of course I learned that he was in Aveba and he was in
23 charge in Aveba of the troops located there.

24 Q. Did you at that time, or any time, ever hear him addressed as
25 "president"?

1 A. Well, president of which organisation? I don't know. I heard
2 Germain Katanga referred to as president after 2004, I believe, after
3 meeting -- meeting during the MONUC period when a statement was published
4 in which he, himself, and his friends Lieutenant-Colonel Sipu as well as
5 Colonel Muhito had declared that they were separating from the FNI. For
6 our part, we were among those who had always sought to promote unity
7 between the FNI and the FRPI, and that's why we had at the FNI/FRPI --
8 because you have to understand that a lot of people believed the FRPI was
9 Ngiti organisation and the FNI as a Lendu organisation. So we didn't
10 want that to be the case and that's why the FNI was like a political arm,
11 whereas the FRPI was the military wing and around -- since 2004, I
12 believe, late 2004/early 2005, during a meeting that Germain Katanga
13 declared that he was splitting off from the FNI. And at that point in
14 time, in fact, I was in Butembo where I had sought shelter for a while.
15 Therefore, it is only after that period and I heard that statement that I
16 heard Germain called "president," before, as far as to my knowledge, that
17 never happened as long as I knew him.

18 Q. All right. Now, let's come to Bogoro itself. When Bogoro was
19 attacked, where were you, what were you doing?

20 A. Thank you. When Bogoro was attacked I was in north Kivu in Beni.
21 I was the intelligence officer in the territory under the control of the
22 RCD-K/ML. I was also the territorial director responsible for
23 intelligence in Kanyabayonga and I was unable to occupy that position
24 because of insecurity. So I was in Beni when the attack took place
25 working as intelligence officer of the RCD-K/ML in that territory.

1 Q. And did you remain in Beni after Bogoro was attacked or not?

2 A. Immediately after the Bogoro attack, I travelled to Kampala where
3 there were meetings with Ugandan officials --

4 Q. Right, just so we have the sequence. So we'll come to that in a
5 moment. Let's step back to Bogoro itself. Do you know who organised the
6 Bogoro attack?

7 A. Thank you. The Bogoro attack was organised in north Kivu by the
8 integrated operational general staff. That general staff was an
9 initiative of Kinshasa, as I have said. They organised many meetings in
10 their headquarters in Beni which was located near the Beni airport, known
11 as the NRA airport. We went there frequently and we attended some of
12 those meetings during which the commanders-in-chief of EMOI brought
13 together the staff and showed them a map of Ituri while explaining how
14 Bogoro could be captured. In one of these meetings, and maybe even more,
15 I actually was a witness to that. This is simply to confirm that the
16 planning itself was done at the EMOI headquarters at Beni.

17 Q. Do you know who participated in the attack on Bogoro, how the
18 attack took place?

19 A. Thank you. I, myself, did not participate in that attack. I
20 heard that there was several forces which participated in the Bogoro
21 attack. There were combatants from the force which was in Kagaba under
22 the command of the one who was known as Yuda, may his soul rest in peace,
23 and also Dark, who was his deputy. There were also forces from the
24 neighbouring areas; however, I have to point out that there was really no
25 conventional attack strategy as we know usually happens with armies. And

1 how did these forces fight? Well, it was enough for a day to be set and
2 wherever a force was they could easily come and take part in the war. It
3 was something like going to a feast or a ceremony. People are not really
4 invited. That is how the war took place, how the Lendu fighters
5 participated in the war. There were many people there who had not been
6 specifically invited to take part. There were people from Kagaba, people
7 from Zumbe, people from Olongba, and others who came there without having
8 been invited to that war. So to give you a clear answer to your
9 question, the Bogoro attack was not carried out in a conventional manner
10 such as happens in wars; that is, planning the time of attack, assault
11 weapons, and so on. People simply met up as they do when they go to a
12 feast, and Bogoro was attacked by forces from several places. Some
13 people heard gun-shots and they came along.

14 Q. Now, I'm particularly interested in what you may know of
15 Germain Katanga's role. Do you know if he participated in the Bogoro
16 attack?

17 A. Thank you. As I have already said, I was not present there, but
18 I heard that Germain Katanga did not take part in the Bogoro attack.
19 Those who were there told me. He arrived Bogoro one day later and a few
20 days after that, they went towards Mandro. But regarding the Bogoro
21 attack, I am not aware that Germain Katanga participated; that is, basing
22 myself on the information from those who were at that attack.

23 Q. Do you know why it was that he -- or may have been that he did
24 not participate?

25 A. Thank you. I was also told that he did not take part in the

1 Bogoro attack because there was insecurity prevailing in Aveba and the
2 neighbouring areas. The forces rebelling in the vicinity including
3 Kisoro's forces were opposing him, and this is justified by the frequent
4 attacks that Kisoro carried out at that time in Aveba and in the
5 vicinity. So it was for reasons of his own security that he did not go
6 to the Bogoro attack. He wanted to be sure that the situation in Aveba
7 was calm.

8 Q. Now, you mentioned Yuda. Do you know what the relationship was
9 between Yuda and Germain Katanga at that time?

10 A. Thank you. At that time the relationship between Germain and
11 Yuda was like the relationship between Germain and many other commanders
12 in the area. Germain Katanga was not quite accepted in that region
13 because he had come from elsewhere. He was regarded as someone who has
14 just arrived and possibly even a stranger. So people found it difficult
15 to accept the fact that Germain Katanga assumed a position of power in an
16 area from which he did not hail. Of course his mother was from there,
17 but for many of those who came from Aveba, they found it difficult to
18 accept him. This means that from the very outset Yuda also found it
19 difficult to accept Germain. That is justified by what I have just said,
20 but also by the fact that before Yuda arrived -- Kagaba, he was in
21 Avenyuma, and Avenyuma is indeed my village of origin, and Kandro was the
22 military commander there. After Kandro's death it would normally have
23 been his junior brother, Safari, who was supposed to succeed him. But
24 because of the conflict between commanders, there was an attempt to
25 impose Yuda, and Germain Katanga was accused of supporting Cobra Matata

1 against Yuda. And during that pointless attack that killed many people
2 in Avenyuma, Yuda was compelled to leave Avenyuma and go to Kagaba, where
3 he set up his own territory. This was not easy because Yuda hailed from
4 Kagaba just like Dark, but Germain was from Aveba and he felt more secure
5 in Aveba. Cobra Matata also felt more secure in Olongba which was also
6 his place of origin. So the relationship was tense between the various
7 commanders, particularly when it concerns Germain and Yuda. This was
8 because of two reasons, the first people the battle for the control of
9 Avenyuma, that is, to succeed Kandro. That is my answer to that.

10 Q. Now, I want to ask you about Uganda and Ugandan forces. Do you
11 know if Uganda, Ugandan forces, played any role in the attack on Bogoro?

12 A. Thank you. Directly, no. Uganda did not play any direct role in
13 the Bogoro attack because those who were directly involved were the
14 forces present in the area which I have identified alongside the
15 involvement of EMOI. After Uganda split with the UPC, they started
16 developing some interest in the FRPI. They provided intelligence on the
17 presence of the UPC forces there, but with regard to participation in the
18 battle itself, I am not aware of that.

19 Q. Now, can I come back to your own movements, and you told us a
20 short while ago that after the Bogoro attack you had gone to Kampala.
21 What was your reason for going there?

22 A. Thank you. I went to Kampala and met up with Floribert Ndjabu
23 and other members of the FNI who were involved in negotiations with other
24 armed groups, including the FPDC, PUSIC, FRPC, and others. And these
25 negotiations were related to the creation of FIPI, a platform bringing

1 together the above-mentioned armed groups with the objective of
2 establishing peace amongst them and creating an alliance to put the UPC
3 out of commission because the UPC had resisted all attempts to negotiate
4 at that time. I went there to reinforce the negotiating team, and in the
5 instrument creating the NFI, I was appointed deputy commissioner in
6 charge of defence and it was in that capacity that I joined the
7 negotiating team. And the negotiations, in fact, did not succeed and
8 FIPI was actually stillborn. It did not last for long as a result of the
9 conflicts of interests and incompatible ambitions.

10 Q. Now, we know from your detailed evidence yesterday that you were
11 an intelligence officer for the RCD-K/ML. Were you still in post as an
12 intelligence officer when you went to Kampala?

13 A. Thank you for the question. Yes, of course, I was still
14 occupying that position because I had the support of the RCD-K/ML, the
15 movement that I worked for. Furthermore, the activities of the FNI or
16 the FRPI were of interest to the RCD-K/ML, and I reported to them on all
17 my activities and on all the events that took place at that time. So I
18 was still operational. I left that position when I joined the interim
19 administration, that is, the administration that was instituted by the
20 Ituri pacification commission. So I joined the administration as a
21 deputy or Member of Parliament, and it was then that I stopped my
22 activities as intelligence officer of the RCD-K/ML.

23 Q. Can you give us an approximate date when that was or perhaps
24 relate it to an event? Just give us some idea when you stopped being an
25 intelligence officer.

1 A. Thank you. I no longer remember the precise date. In any case,
2 right up till the end of 2004, or in any case, in mid-2004.

3 Q. Now, let's get back to Kampala and events there. You mentioned
4 Ndjabu. Who else do you recall participated in the discussions there?
5 I'm talking of FIPI, in the context of FIPI.

6 A. Thank you. Amongst the members of the FNI in addition to Ndjabu
7 and myself, there were many others and I can mention Butchu, who was the
8 commissioner for defence, may his soul rest in peace also; there was also
9 Lobbo Nyinga who was in charge of external relations for the movement at
10 the time; and many others whose names I don't remember. Now, with regard
11 to the other armed groups, there was PUSIC, the president of PUSIC was
12 there; Chief Kahwa who was accompanied by Kitembo Bitamara. With regard
13 to the FPDC there was a certain Unencan, who was the president, and he
14 was there with many of his collaborators. Those are the people that I
15 can mention as having participated in the various Kampala meetings.

16 Q. Do you know if the FRPI was ever represented in any discussions
17 there?

18 A. As an independent group, no, the FRPI was not present in those
19 meetings. In fact, this was also one of the reasons for that meeting,
20 because, as I said at the very beginning, some people still thought of
21 the FRPI as a group of the south, that is, belonging to the Ngitis, while
22 the FNI was thought of as a group belonging to the north, that is, the
23 Lendus. So there was need to show proof of unity between the north and
24 the south, and that is why Floribert Ndjabu called us to attend because
25 people did not believe that some of us were also members of the FNI. We

1 travelled to attend the meeting, so did Dr. Adirodu, who, as a member of
2 the RCD, wanted to show everyone that the FRPI was not just a movement
3 for those in the north but that he was the one representing the FRPI. So
4 in the course of that meeting, we made it known to the Ugandan officer
5 who was the facilitator of those meetings that the FRPI was the armed
6 wing of the FNI, which, in turn, was the political movement. During that
7 meeting, such a declaration was not accepted by Dr. Adirodu who, in fact,
8 attacked me because of that. At the end, those who were responsible for
9 the facilitation understood that the FNI and the FRPI was indeed one and
10 the same thing. That is why we started referring to it as the FNI/FRPI,
11 so as to oppose those people who wanted to separate these movements
12 united by nature.

13 Q. And how long did you remain in Kampala for?

14 A. Well, I didn't spend much time in Kampala because immediately
15 thereafter we went to Bunia on the 18th of March for the signature of the
16 cessation of hostilities. So my stay in Kampala lasted about half a
17 month, two or three weeks.

18 Q. Right. Can I ask you -- and did you participate in the signing
19 of the cessation of hostilities?

20 A. Yes, on the very same day that we went to Bunia from Kampala, in
21 fact in the same plane together with the Congolese officials, we prepared
22 the event and I signed but the instrument that comprised the cessation of
23 hostilities.

24 Q. And did Dr. Adirodu -- was he with you? Did he travel with you
25 from Kampala? What happened to him?

1 A. No, he didn't go there with us from Kampala to Bunia; instead, he
2 went back to Beni after the meetings in Kampala.

3 Q. Do you know why he didn't go with you?

4 A. Quite frankly, no, I don't know the reasons that he went back to
5 Beni.

6 Q. Did he agree that the FRPI was, as it were, a part of FNI? What
7 was the debate there in Kampala about that?

8 A. Naturally, no, he didn't agree that the FRPI was part -- an
9 integral part of the FNI. The reasons were purely political. I think
10 that he, himself, would wanted to be the actual representatives of the
11 FRPI with national or international authorities, and it was for that
12 reason that naturally he did not agree with the position supported by
13 many people in Kampala. So the debates in Kampala were very extensive
14 and the various groups with whom we were negotiating about the formation
15 of FIPI said that by accepting this form, FNI/FRPI, well that would be --
16 in a way give it more weight. The question was to find out who would be
17 at the head of FIPI. That was fundamental. PUSIC said that it
18 controlled a lot of Bunia and Ituri, so that it should have been the
19 leaders -- in the leading role. And when Bogoro was taken over -- but
20 that was challenged. FPDC said, "We are in Mahagi and we have part of
21 Aru, so we, too, cover as large a space so we are entitled to the
22 presidency of the platform." The FNI would reply, "No, we should be in
23 that position, we control most space," and this rotational presidency --
24 well, I should occupy it in the first place.

25 Now, all this took a lot of time, all these discussions took a

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1 long time, and FIPI never came about because it was becoming simply a
2 contest of trying to occupy the presidency. So this was the -- this was
3 the discussion about the creation of FIPI in Kampala.

4 Q. (Previous translation continues) ... the FRPI. At that time, or
5 at any time, had you ever heard of a group called the FRP, that's without
6 the "I" or not?

7 A. Right now I do not remember of any -- anything about an FRP
8 without the "I." Right now, no, I don't remember anything about that.

9 Q. All right. Let's go back to carry on. And you arrive in Bunia
10 and you participate in the signing of the cessation of hostilities there.
11 And can I ask you to -- can I bring up and ask you to look at, please,
12 the document EVD-D03-00044 which is the cease-fire agreement document.
13 And if we have a hard copy, again it might be helpful if you have a copy
14 of that.

15 COURT OFFICER: (Interpretation) To look at the document press
16 PC 1.

17 MR. HOOPER:

18 Q. Right. Now, I'd like you, please, just to remind yourself of the
19 contents of the document. Don't just turn to the back. Start at the
20 front and we can see that it's -- starts off with:

21 "We, the parties to this agreement under the auspices of
22 MONUC ...," and then there's the introductory principles. And the
23 charter -- United Nations charter.

24 We have reference to the Luanda agreement of the 6th of
25 September, 2002, between the Congo and Uganda, the establishment of a

1 commission of pacification, a declaration by the Ugandan government made
2 at Bunia on the 10th of March, 2003, is referred to, which is a guarantee
3 of the security of civilians and participants of the CPI and the need to
4 return to peace.

5 Page 2 in Article 1, the parties agree to a total stop in
6 hostilities in Ituri and to abstain from aerial attacks and land attacks
7 and sabotage, not to try to take new positions, to stop arms supplies and
8 all aggressive acts and to retire from Bunia to regroup in their general
9 quarters.

10 Article 2 refers to humanitarian principles, to abstain from
11 taking hostages and the like and, 2, to allow free movement; and at 3,
12 not to engage in the recruitment and use of child soldiers in their armed
13 forces.

14 Article 3 are the principles to put into effect. Komanda and
15 Mambasa are to be demilitarised and that's in the agreement of the
16 Gbadolite accord which is referred to as being on the 30th of December,
17 2002. This to be under MONUC supervision and comes into effect the date
18 of the signing. And then we have, over the page, done at Bunia, the 18th
19 of March, 2003, and then we have eight groups of signatories and in
20 addition to MONUC. The first group is the representatives of the Lendu
21 territory from Djugu north of Bunia. We have the representatives of
22 Lendu-Bindi. We have representatives for the FRPI, and the first of
23 those is Germain Katanga, we can see, and he signs on the 22nd of March.
24 We have Pascal Alezo 22nd of March, and at 3 we have Pichou Iribi, 22nd
25 of March, 2003. I'll come back to that in a moment. And then on the

1 other page, facing page, we have PUSIC Kahwa, FNI Ngabu, they sign on the
2 18th of March, we have Unencan with the FPDC and some other people. And
3 we have the RCD-ML. Just pausing there, can you help us, is the RCD-ML
4 the same as the RCD-K/ML, and do you know who signed that on the 18th of
5 March, can you interpret the signature for us just on that one signature?

6 A. I cannot actually decipher the signature. I don't recognise who
7 signed this.

8 Q. In fact, looking at the signature, I think we can see that it's
9 signed illegibly but -- and then we have 1st Sec - is it CAP? - and then
10 RCD/Kis-ML, so it's the RCD-K/ML. Do you know who -- well, I'll move on.
11 The UPC is a blank space. There's no signature there and then we end up
12 with the FAPC and Jérôme Kakwavu-Bokande, 18th of March, and we have a
13 MONUC signature. Can we go back to the bottom of the previous page and
14 the signatures for the FRPI, is that your signature on the document at
15 the very bottom of the page, number 3, for the FRPI?

16 A. Yes, it is indeed my signature.

17 Q. Now, that signature is dated the 22nd of March and all the others
18 are the 18th of March -- nearly all the others. The one just above the
19 19th is unclear. Your signature, what happened, can you remember? Why
20 is your signature dated the 22nd of March?

21 A. Thank you. I recollect quite clearly what happened. Personally,
22 as far as I was concerned, once Floribert Ndjabu had signed the document,
23 I was not supposed to be signing it. He was the senior person as regards
24 the FNI. Now, the signature of the FRPI was imposed by MONUC.
25 Germain Katanga and the others came afterwards and I brought them to the

1 MONUC premises to introduce them, and that is when MONUC asked
2 Germain Katanga to sign the document and also ask us to sign it too, in
3 particular myself and Pascal Alezo. I very well recollect this event. I
4 went to the meeting with MONUC by the political officer at the time,
5 Alexandra Trabattoni, and he was the one who took me to MONUC for this
6 purpose.

7 Q. Now, after the signing, what happened, where did you -- what did
8 you do over the next course of time?

9 A. After the signature of the agreement on the agreement of the
10 cessation of hostilities, the preparatory phase began for the commission
11 of the pacification of the Ituri, and I actively contributed to that. I
12 spent my time preparing the CPI's work meetings. We would meet at the
13 time at the theological institute in Bunia. This is a higher education
14 institution, Protestant theology, in Bunia; and we were there with other
15 representatives of other armed groups under the auspices of the MONUC and
16 we prepared for the work of the CPI.

17 Q. And how long did you remain in Bunia?

18 A. I don't know exactly how long, but very soon afterwards there
19 was -- the work of the CPI began and they took place for about two weeks.
20 After that, we were with General Kisempia. And when the hostilities
21 began again after the CPI agreements -- well, I left Bunia and went to
22 Beni. I couldn't tell you exactly how long that took, but in any case,
23 more or less two months in Bunia before leaving Bunia.

24 Q. And you refer to hostilities. Can you remember when you left
25 Bunia because of those hostilities?

1 A. Yes. Immediately after the agreements on the CPI, well the
2 agreements themselves had the seeds of their own destruction because in
3 private the armed groups took part in the management of the Ituri and
4 would have one believe that they, themselves, were the cause -- or they
5 were themselves the cause of the insecurity and others, the members of
6 the forces that could have led Ituri went -- well, this led to a
7 situation where there was a great deal of hostilities between the armed
8 groups and there was a Kisempia problem. When he reached Bunia, he
9 called on all the armed groups; some responded, some refused to respond.
10 He brought along with him policemen, armed men, and this gave the
11 impression that he was going to militarise Bunia even more.

12 And once again, this caused greater tension between the various
13 forces in the Ituri. And I remember well the UPC was against any
14 initiative taken by General Kisempia giving rise to a situation where the
15 UPC was in direct conflict with the forces that obeyed Kisempia's orders.
16 And we should note the PUSIC and the FRPI in this context; these two had
17 already benefitted from weapons and ammunition and uniforms coming from
18 Kinshasa and they had already set up a front. And the UPC was against
19 that coalition and it immediately proceeded with an attack and through
20 the front out of the city of Bunia, and that was at the time when we went
21 on the road to Bogoro with the final destination of Aveba. That was the
22 situation that prevailed at the time where this open attack against the
23 Kisempia front was made by the UPC.

24 Q. Do you know the date of the UPC attack? It might be that we can
25 help you because it's a date that we, I think, all accept and do not

1 dispute.

2 MR. HOOPER: And if there's no objection, perhaps I can lead on
3 this aspect.

4 Q. The date we have for the UPC attack is the 12th of May, 2003. So
5 you leave Bunia. You go to Aveba. How long do you stay in Aveba?

6 A. Thank you. On that occasion, I spent ten -- maybe maximum two
7 weeks in Aveba.

8 Q. And what can you tell us about what you saw there, for example,
9 the military side of things, particularly, and Germain Katanga? What did
10 you observe during your two weeks?

11 A. At the time in -- well, Aveba represented a lot not only for me
12 but also for many others, many other displaced persons who had taken
13 shelter in Aveba or who had taken the road to Aveba to go to north Kivu
14 by foot. Most spectacular was this in-flow of population that was moving
15 towards the north Kivu, women, men, children, with baggage on their
16 heads, walking with difficulty, painfully, through this terrible forest
17 to go to the north Kivu. Well, I was accommodated close to his house. I
18 was fed by his own wife and his children were there. Not his children
19 but the adoptive children, the children he took care of, they were there
20 and his poor mother. My aunts were there, too. We lived together
21 amicably with this family. His parents were a few kilometres, maybe 20,
22 away. He was in a rather isolated spot quite far from the medical centre
23 of Aveba, and I lived there. There were soldiers with whom we also lived
24 there, Sipa, Muhito, I already mentioned him. In any case, our daily
25 lives were more or less normal apart from the movements of people. And

1 there were a lot of people in his house too. His poor mother who had
2 taken shelter in the camp or close by, close to the camp, the places
3 where they felt secure.

4 Now, as for the other aspects, perhaps we need to specify them,
5 the ones I was familiar with.

6 Q. And while you were there, you mentioned earlier people such as
7 Blaise Koka, those APC men who arrived in the flight with you back
8 earlier that year. Did you see them there at all, do you know what
9 happened to them?

10 A. Yes, some had already gone back to north Kivu. I can give their
11 names. Blaise was already back. Well, others were still there and, in
12 fact, had already gotten married there, in particular Kasereka, Mike-4,
13 who had married a wife there and had a child with that wife. I also
14 found Lieutenant Bipe, he was also there. But others had already gone
15 back to Beni. How? I don't know.

16 Q. And I'd like to ask you in terms of May, what kind of numbers of
17 combatants did you see that were, as it were, Germain's men? Can you
18 give us a -- did you see any and can you put a figure on approximately
19 how many you say there were?

20 A. Well, the MONUC base was on the other side of the road from where
21 Germain Katanga was, and I can give the following information. I was
22 like a child of this -- in this environment, so I didn't pay much
23 attention to this aspect. But clearly, clearly, I didn't see as much as
24 you might imagine because they were dominated by families that had found
25 refuge there. And for other reasons, similar reasons -- and also was in

1 touch with armed men but not more than a hundred men, at the very most,
2 slightly more than a hundred armed men. But where Germain was, the
3 houses are -- touch one another. There are a few houses there. If I
4 have to count the number of troops there, I don't believe you wouldn't
5 even have the hundred I mentioned earlier. So of course there was some
6 others who might have been in the surrounding area around Aveba, and then
7 you could, all in all, have a figure of a hundred.

8 Q. Now, I want to ask you about child soldiers. And for the
9 purposes of our proceedings, a child soldier is a child combatant aged 15
10 or less. And during your time in Aveba, did you see children that you
11 could identify as being child soldiers; that is, children with arms,
12 children in uniform, or children under orders, whatever? As best you
13 can, can you help us as to what you observed at Aveba. I'm concerned
14 only with Aveba.

15 A. Well, thank you for taking into account -- for defining what a
16 child soldier is. This is obviously a controversial issue because for us
17 is -- age is, above all, a secret concept. Only the mother knows really
18 the age of her child, but of course given our morphology - and I'm
19 talking about the size here - it is hard to ascertain somebody's age.
20 One of our fellow Lendu. I've seen a lot of very small people and I
21 don't know their age because I did not ask everybody how old they were.

22 Nonetheless, one point is obvious and has to be acknowledged.
23 The FRPI was not an army, it did not enlist soldiers, it did not have any
24 training camps where people were invited to follow military training in
25 which you could have found child soldiers. In any event, I cannot deny

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1 the following point: In some cases, people who are under 18 ended up
2 there, but you have to realise that if they were there it's because they
3 had realised that given the rampant insecurity they freely decided to
4 take up weapons and resist. We did not summon anybody for that purpose.
5 We told our partners we were opposed to child soldiers, but as you're
6 interested in this aspect -- and in most cases we did not find any
7 under-18 soldiers. Specifically, with respect to Aveba, I did not ask
8 anybody how old they were, so I can't say if there was anybody who was
9 under 18 in Aveba.

10 Q. All right.

11 MR. HOOPER: Now, if we can just go into closed session for less
12 than a minute.

13 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please,
14 we'll move into a private session.

15 (Private session at 10.38 a.m.)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Open session at 10.40 a.m.)

9 COURT OFFICER: (Interpretation) We are in a open session,
10 your Honour.

11 PRESIDING JUDGE COTTE: (Interpretation) Counsel, you have the
12 floor.

13 MR. HOOPER:

14 Q. Bearing in mind we mustn't mention his name, how long had you
15 known that man? And we're talking about May 2003, how long had you known
16 him for by then?

17 A. I had known this gentleman for a long time, and when I was a
18 seminarist in Fataki, I was in the Nyakasanza parish, and that's his
19 parish because he lived in that area. And when I met him, he was one of
20 the leading figures of the parish. And with him, subsequently we
21 became -- well, I wouldn't say friends, but we had a good relationship
22 with him -- I had a good relationship with him. I also knew him when I
23 was working for the security forces at the time of Wamba dia Wamba. He
24 was one of those who was -- collected information as a collaborator and
25 gave it to the Wamba presidency through security officials of the DGM and

1 in particular somebody called Afuti (* as interpreted) who was also from
2 Nyakasanza -- from Nyanya -- from the Nyanya area, neighbourhood. And he
3 used this gentleman, as well as others, to gather information. Of
4 course, this might seem somewhat unimportant, but you need to take into
5 account the fact that this was in the midst of the conflict that was
6 tearing apart the ICKML (* as interpreted) and Mbusa was, first of all,
7 opposed to Wamba dia Wamba and Amety (* as interpreted) was the head of
8 the security services of Wamba dia Wamba. And I met this gentleman again
9 in that second-last visit of Aveba, I met him in Aveba a few times and
10 just a few times.

11 Q. Do you know, when you met him in Aveba, how long he'd been there
12 for?

13 A. Frankly, I wouldn't be able to tell you precisely. I found him
14 there. He had been there for quite a while since the leaders had left
15 Bunia after the 12th of May attack.

16 Q. Now, moving on, you're in Aveba for ten days or two weeks at the
17 most. And where do you go after that and what happens after that?

18 A. Well, in Aveba I was fortunate enough to benefit from what to
19 be -- to transportation -- by missionaries on a route that links Aveba
20 with north Kivu, and I went back to Beni to join my family and my --
21 resume my work.

22 Q. And did you remain in Beni or what?

23 A. Yes, I stayed in Beni for a while, long enough to be recovered by
24 MONUC. MONUC sent the same political officer whose name I mentioned
25 earlier, Alexandra Trabattoni, she's the one I'm referring to. She

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1 arrived in Beni to pick me up and take me back to Bunia, first of all to
2 meet a French general. And initially it was a return trip where I
3 presented the FNI at the first meeting with ARTEMIS. On the same day, I
4 went back, and two weeks later the same officer took me back to Bunia
5 where I stayed definitely in the south of Bunia, to be more precise,
6 where precisely the FNI/FRPI had set up its headquarters before joining
7 Yambi Yaya.

8 Q. And how long did you remain in Bunia for?

9 A. I believe I stayed at Bunia for a long time after that because we
10 started the practical operational part of the agreement of the Ituri
11 pacification committee, and that's precisely the phase of demobilisation
12 and disarmament. And precisely, I was given this role of setting up the
13 various sites where armed groups were to gather, and that occurred after
14 we'd left Kinshasa because that's all we had -- Kinshasa one where I went
15 with other people such as Germain Katanga.

16 Q. Can I ask you to just look at a document which is EVD-OTP-00244,
17 which is a political agreement between political forces and soldiers in
18 Ituri. And I've got a paper copy of that on which it would appear your
19 signature appears.

20 COURT OFFICER: This document is confidential?

21 MR. HOOPER: No.

22 MR. GARCIA: (Interpretation) Your Honour, I've already raised
23 this objection yesterday. Before presenting a document to a witness,
24 preliminary questions should be asked. I understand that the witness had
25 already seen the document, but this is an objection we frequently make,

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1 and I believe that preliminary questions need to be asked.

2 PRESIDING JUDGE COTTE: (Interpretation) Yes, but it's also true
3 that the witness's signature appears, so maybe this enables us not to
4 waste time.

5 Please continue, counsel.

6 MR. HOOPER: (Previous translation continues) ... appears on the
7 Prosecution list of documents. So can we just --

8 MR. MACDONALD: (Interpretation) I feel that I need to
9 intervene, I'm afraid, your Honour. When the Office of the Prosecution
10 presented documents, whether they were signed or not, there was a
11 specific procedure. The fact that the witness has signed obviously has
12 to be taken into account, but sometimes witnesses deny that it is their
13 signature. Secondly, this resembles a statement, and you cannot
14 refreshen up a witness's memory by showing him a document even if he has
15 signed it. So this refers to the fact that the weight will have to grant
16 to this situation -- it's just as false statements this -- the procedure
17 needs to be established beforehand for documents.

18 PRESIDING JUDGE COTTE: (Interpretation) I hear you, but the
19 Office of the Prosecution should not feel that it is being discriminated
20 against in comparison with Defence teams. We do our best to ensure that
21 equity is respected, and therefore, in this case, this document is going
22 to be presented by Counsel Hooper and he will introduce it with two or
23 three preliminary questions to make sure we don't have any more
24 interventions bearing on this issue.

25 Please continue, counsel.

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1 MR. HOOPER:

2 Q. Have you seen this document before?

3 A. Sorry, I don't have it.

4 Q. (Previous translation continues) ... let me ask the question.

5 Have you seen this document before?

6 MR. GARCIA: (Interpretation) I'm sorry to intervene, but just
7 as my learned friend MacDonald pointed out, questions should be asked
8 before the document is given to the witness. Here he is looking at the
9 document before answering questions.

10 PRESIDING JUDGE COTTE: (Interpretation) Please put the document
11 down and the Defence counsel will ask you questions. We need to please
12 stick to the procedure as rigorously as possible. Well, we're waiting
13 for the questions. Have you heard of this document? Let's follow the
14 procedure in -- to the slightest detail.

15 I'm not asking the question; you are, counsel. But I'm just
16 simply being -- acting to make sure that there's no major
17 misunderstanding between the Office of the Prosecution and your team. We
18 want to move forward. So please introduce this document, and if the
19 witness is allowed to hold it, he will be given it. Please, continue,
20 counsel.

21 MR. HOOPER:

22 Q. In the context of the evidence that you've been given, the
23 document in front of you, is that a document which you've ever seen
24 before, yes or no?

25 A. It is frankly difficult to tell you since I don't have the

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1 document and I can't say what document we're talking about. I will
2 recognise this document -- of course I saw something that looked like my
3 signature and at present I -- but that's all I can say. I need to have
4 the document perhaps or maybe you should ask me other questions, such
5 as -- just like the Office of the Prosecution is asking you to do.

6 PRESIDING JUDGE COTTE: (Interpretation) We'll start off,
7 counsel, from the idea that the witness has not seen this document. I
8 know this is sheer fiction, but let's pretend he doesn't have the
9 document and you start your questioning about this document according to
10 the purest procedural orthodoxy. We're listening to you now. You have
11 the floor.

12 MR. HOOPER: All right.

13 Q. In terms of the work that you were doing when you returned to
14 Bunia, did you ever participate in a political agreement between the
15 political and military forces of Ituri?

16 A. When I was carrying out the -- my temporary position, my
17 fundamental objective was to smash down all the barriers that existed
18 that were a hindrance in the way of pacification. Accordingly, we took a
19 lot of initiatives with the forces that were in the field, initiatives
20 that consisted in solving our problems through a dialogue for
21 negotiations. There was several -- a lot of agreements following the
22 contacts we established with various forces in Ituri FPDC,
23 FPI (* as interpreted), and others.

24 PRESIDING JUDGE COTTE: (Interpretation) I'm afraid, counsel, we
25 need to break off because it is just about 11.00. We'll continue at half

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1 past 11.00.

2 Witness, we're having a 30-minute suspension now. You'll be able
3 to rest and relax a little bit.

4 Officer of the Court, could you please lead the witness outside
5 the courtroom.

6 And we will see you later, Mr. Mbodina.

7 THE WITNESS: (Interpretation) Thank you.

8 (The witness stands down)

9 MR. HOOPER: And can I just say while the witness is gone, if
10 there is any --

11 PRESIDING JUDGE COTTE: (Interpretation) Very quickly, please.

12 MR. HOOPER: (Previous translation continues) ... showing or
13 dispute about this document, perhaps the Prosecution can let me know what
14 it is over the break, because in the meantime this seems to me a thorough
15 waste of time, the exercise that's now taken the best part of 15 minutes.

16 PRESIDING JUDGE COTTE: (Interpretation) In -- I had the
17 impression, but the Office of the Prosecutor will answer after the break,
18 but my impression was that the OTP wanted rules to be introduced
19 according to commonly accepted procedural rules. I don't know if there's
20 anything else we said.

21 MR. GARCIA: (Interpretation) The procedure is important. I
22 don't know if we have enough time, but it's very important because it is
23 extremely important in terms of the (* indiscernible) value of the
24 testimony of a witness.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you for reminding

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1 me about that. I mean, the Chamber bears that in mind, but you will
2 understand that according to the way a session unfolds, the way a witness
3 behaves, in our impression in some cases we can skip, or rather, avoid
4 wasting time. But in this case, counsel, please introduce this document
5 as you're supposed to, according procedural rules. If it means spending
6 half an hour, we will. This session is suspended.

7 Recess taken at 11.01 a.m.

8 On resuming at 11.38 a.m.

9 (Open session)

10 COURT USHER: All rise.

11 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.

12 (Trial Chamber and Legal Officer confer)

13 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, please
14 have the witness brought into the courtroom.

15 Thank you, Court Usher.

16 (The witness takes the stand)

17 PRESIDING JUDGE COTTE: (Interpretation) Can you hear us -- can
18 you hear me well, Mr. Mbodina?

19 THE WITNESS: (Interpretation) Yes.

20 PRESIDING JUDGE COTTE: (Interpretation) Very well. We will
21 have a pause at 1.00 p.m. for you to be able to take your medicine.

22 So, Mr. Hooper, there will be a stop -- a pause of about three
23 minutes at 1.00 p.m. for the witness to take his treatment. Mr. Hooper,
24 please ask him the preliminary questions for the presentation of the
25 document.

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1 MR. HOOPER: Yes, certainly. This relates to the document
2 EVD-OTP-00244, which is plainly already admitted into evidence and was
3 admitted as part of the bar table motion introduced by the Prosecution,
4 and I want the witness to -- as a preliminary issue to look at the
5 document in order to identify, or not, the signature that appears on the
6 document.

7 Q. So can you be shown the document?

8 COURT OFFICER: So this is a public document?

9 MR. HOOPER: Yes, this is a public document.

10 Q. That's the document, yes. If you can turn right to the back
11 first and look at the signature that appears there above what appears to
12 be your name. My question is: Do you acknowledge that that's your
13 signature?

14 A. Thank you. I do recognise my signature there, yes.

15 Q. All right. Thank you very much. Now, let's look, therefore, at
16 the contents of this document, and we see that it's headed on the
17 previous page a political agreement between the political and military
18 forces of Ituri. I'm not concerned to ask you about its contents. Can
19 we go back to the conclusion of this document and the date and we see
20 that it's done signed under the date at Bunia, 21st of November, 2003.
21 Just pausing there, seeing that date there, does that accord with your
22 own recollection of when this document was signed?

23 A. Thank you. I would need some time to try to establish the link
24 with the document and the time-line; however, I recognise the signature
25 and I'm familiar with the context in which that document was produced

1 which related to the very difficult situation prevailing at the time
2 amongst the various armed groups. I had just been elected interim
3 president of the FNI and the major objective for us was to overcome all
4 the obstacles in the way of the pacification of Ituri. And it was to
5 that end that with the other partners, UPC and FRPC (* as interpreted),
6 we asked for a meeting in order to reach agreement on the various
7 provisions. One of the other reasons why this document was prepared was
8 the refusal of the Kinshasa government to take into account the
9 aspirations of the armed groups. As included in the other previous
10 agreements, including the inter-ministerial agreement in Luanda and the
11 Kinshasa 1 agreement. So I recognise the letter and my signature.

12 Q. And looking at it, we see that you signed in, it would appear,
13 November, towards the end of November 2003, as interim president of the
14 FNI/FRPI. And what's your recollection of the relationship between the
15 FNI and the FRPI as of November 2003?

16 A. What relationship? Well, I really do not know, but at that time
17 the FNI and the FRPI were one and the same movement. The FNI was
18 considered as the political movement, while the FRPI was considered as
19 the military wing.

20 Q. All right. Thank you. Now, I want finally to come to the
21 subject that we touched on yesterday at the beginning of your testimony,
22 which was the situation you've been in for the past six years in custody.
23 Now -- in fact, you served as well yesterday in your account, you gave a
24 very detailed account, of your difficulties over the last six years and I
25 just want to show you now a series of documents and each one I'll come

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1 to, I hope, in what is an appropriate way. The first document I'd like
2 you to be shown and I'd like you to look at a signature, first of all,
3 before coming to the document that appears in the document is document
4 DRC-OTP-1010-0023. I have a copy here. As I say, I want you first as a
5 preliminary matter to look at the signature that appears on the back of
6 the document or one of those signatures.

7 MR. HOOPER: Thank you very much.

8 COURT OFFICER: Can you please confirm the level of
9 confidentiality.

10 MR. HOOPER: These are public.

11 Q. And as I say, I want to take you, first of all, to the signature
12 that appears on the back. It's the first of the signatures on the
13 left-hand column. And looking at that signature, can you or can you not
14 confirm that that is your signature?

15 A. Thank you. That is indeed my signature.

16 Q. And if we look at the nature of the document we can see that it's
17 dated the 18th of January, 2006. It's signed, as we could see, by you
18 and what are plainly other detainees at the time in the CPRK, where you
19 can see it's come from, from the title at the top, and it's addressed to
20 various political and judicial persons. And it's essentially - and this
21 is the point of this introduction - a complaint by you and others as to
22 the fact that you're being detained and that's the purpose of the
23 document. And I'll come back for an EVD number on that document in a
24 moment. I'd like also next to show you - and that's January 2006 - a
25 document dated the 4th of April, 2006, and again the nature of the

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1 document speaks for itself. And it's a letter from a lawyer in Kinshasa
2 to various party and again relates to your detention. Do you know
3 someone called Maître Boki?

4 A. Yes, I knew him perfectly well. I remember Boki who is one of
5 our lawyers in Kinshasa.

6 Q. I'd like to show you this letter and ask you a question about it
7 once you've had sight of it, a preliminary question, and the document is
8 DRC-OTP-1010-0029.

9 COURT OFFICER: (Interpretation) Please press PC 1 to view the
10 document.

11 MR. HOOPER:

12 Q. There's a hard copy here so you can see both sides at once, as it
13 were, which is convenient. And looking at that document we can see it's
14 from Cabinet Maître Nkuba, and underneath that we see the name
15 Maître Bertin Boki. Is that man named there the lawyer you've just
16 spoken about as being your lawyer?

17 A. Yes, that is the person, Bertin Boki.

18 Q. And again, just casting a brief eye, I hope, over this letter,
19 can you help the Court as to the circumstances which led to the letter
20 being sent to its named projected recipients?

21 A. Yes. That letter is indeed from Maître Bertin Boki, who is one
22 of our legal advisors. At the time through this letter which was related
23 to motion to be freed because the time of detention under the law had
24 been exceeded. At that time, we had spent more than one year in
25 detention without the competent jurisdiction; that is, the supreme

1 military tribunal sitting to try our case in accordance with the military
2 criminal code in Congo in which it is stated if the imprisonment term
3 provided for an offence is more than six months, then jurisdiction should
4 be given to that higher court, military court. And in this case we had
5 spent more than 12 months without the auditor-general referring our case
6 to that jurisdiction and no documents, investigation reports or
7 indictments, none had been issued at that time because those were the
8 documents being awaited by the magistrates. So the legal advisor
9 denounced this state of affairs and was requesting the competent
10 authorities to simply order our release in accordance with the Congolese
11 Criminal Code.

12 When the lawyer denounced that state of affairs and demanded our
13 release by the competent authorities, it so happened that through an
14 application the auditor-general requested that the High Court should rule
15 on the situation which was irregular. And later on, there were various
16 hearings related to the extension of this time-limit and there were two
17 of those hearings that did not arrive at any conclusion because they did
18 not comply with the provisions of the code of procedure. The purpose of
19 this letter was to ask for our release because due process had not been
20 followed. We had spent more than 12 months and more, considering that
21 the time-limit of 60 working days stipulated by the High Court had been
22 greatly exceeded since 2007.

23 Q. Thank you. And we can see that Maître Boki, on your behalf,
24 invokes both Article 209 of the military code and also Article 17 of the
25 constitution of the republic, which he quotes on the final paragraph of

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1 his letter, where detention is an exception to individual liberty which
2 is guaranteed and no one can be prosecuted, arrested, detained, or
3 condemned except by virtue of a law and in the prescribed forms. Now,
4 that letter we see was sent on the 4th of April, 2006, that's five years
5 ago and we know what you say about what has happened since.

6 Can I show you a final document which has already been admitted
7 into evidence and that is EVD-OTP-00230 and that is a document which
8 again I will ask a preliminary question about. So I'd like you to be
9 shown the document in respect of the signature that appears on the end of
10 the document.

11 MR. GARCIA: (Interpretation) Would you allow me?

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

13 MR. GARCIA: (Interpretation) The Chamber has asked Mr. Hooper
14 to follow the procedure that is usual, in other words, the preliminary
15 questions. As regards this document, we object to the fact that the
16 witness should be shown the document before the preliminary questions are
17 asked.

18 MR. HOOPER: (Previous translation continues) ...

19 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, now we are
20 all concerned with not wasting too much time so please do introduce this
21 document without immediately showing the signature to the witness and
22 then go on to ask your questions. Please.

23 MR. HOOPER: I submit this is the proper and appropriate way, and
24 I'll give way to my friend if he wants to tell me what is the appropriate
25 procedure and in what way that would be reflected by questions from me

1 because I dispute the premise on which he's been objecting. The
2 appropriate procedure is the procedure appropriate to the particular
3 document in the situation. We're dealing here with a very specific part
4 of the witness's history. This is not a document that has in any way
5 been challenged. Its provenance, in fact, is one that comes from the
6 Prosecution. It's a document that's already been admitted into evidence.
7 And most significantly, for my purposes, it's a document that on the face
8 of it bears the signature of this witness. Now, if the Prosecution
9 suggest that is not his signature, then that would be indeed a very
10 sufficient objection for me to approach the document in a different way.
11 But if, on the other hand, they accept that that is his signature, or
12 most probably his signature, then the manner in which I'm conducting this
13 examination-in-chief is thoroughly appropriate in terms of the
14 admissibility of the document. One only has to stand back and think for
15 a moment of the alternative questions. In coming to a subject like this,
16 I'm going to sit down and invite the Prosecution, with your Honour's
17 leave, to suggest the kind of question I should otherwise be putting.

18 PRESIDING JUDGE COTTE: (Interpretation) Very briefly then,
19 Prosecutor. I believe your intervention will relate strictly to
20 procedure, but let's listen to you but very briefly.

21 MR. GARCIA: (Interpretation) Essentially, your Honour, when we
22 look at the document that Mr. Hooper's referring to, this is a document
23 that has testimonial value in which certain things are asserted, and the
24 main concern of the Prosecution is that the witness should be allowed --
25 might be allowed to be refreshed -- his memory might be refreshed before

1 asking him the preliminary questions. This is the main concern of the
2 Prosecution and that is why we objected when we talked about document
3 relating to a request for release, et cetera, the Prosecution did not
4 object. But in this particular case, the Chamber can see for themselves,
5 this document has testimonial value and that is why we have made our
6 objection.

7 PRESIDING JUDGE COTTE: (Interpretation) Concerning purely
8 procedural aspects, it seems to me that for some time already the Chamber
9 has asked you, because of the interventions made either by the Office of
10 the Prosecution or by Germain Katanga's Defence team or even
11 Mathieu Ngudjolo's team -- I remember, for instance, last week
12 interventions by Professor Fofé to be sure that the documents that are
13 presented to a witness are first and very briefly, as far as possible,
14 introduced so that the -- to be sure that the witness has knowledge of
15 the document and can usefully answer the questions that are thereafter
16 asked him about the document. It seems to me that that was the practice
17 implemented in this Chamber and on both sides of the bar. It is a duty
18 to refer to this when the opposing party is about to introduce a
19 document. In the present case, Mr. Hooper, the contents of this
20 document -- well, that's up to you. You might rightly believe that it is
21 up to your Defence team to decide whether to ask the witness questions
22 about this document. What is general practice here in this Chamber,
23 which hasn't brought up any issues so far, is that there must be previous
24 assurance that the witness is acquainted with a document. Personally, I
25 thought that the simple presence of the signature of the witness at the

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1 bottom of the document was sufficient, and I do not think it is
2 unreasonable that if we hide page 9, we could present that page 9 to the
3 witness to see whether he actually signed it. And thereafter, you could
4 ask your question.

5 So, Court Usher, please take a piece of blank paper and cover up
6 page 9 up to the bottom, but show the witness the signatures and only the
7 signatures at the bottom of page 9; in other words, the last 10
8 centimetres. If the witness believes that his signature is indeed there,
9 then Mr. Hooper will ask his questions. Court Usher, please proceed with
10 my instructions.

11 Do you have the document, usher? Don't put it on the projector.
12 Simply put a blank page on the last page up to the bottom.

13 Mr. Hooper, although we understand the type of question that you
14 intend to be asking about this situation, we nonetheless would -- in
15 respect to the questions you've already asked, we would ask you not to
16 deviate too much from the factual remit of the Chamber, Bogoro --
17 February 2003. The legal situation and the status as detainee of the
18 witness can be of interest to us, but this shouldn't -- we shouldn't go
19 into too much detail about this with the risk of interventions.
20 Mr. Hooper, we're going to now make sure that the signature at the bottom
21 of this document is indeed Mr. Mbodina's.

22 Mr. Hooper, the floor is yours.

23 MR. HOOPER:

24 Q. And looking at the bottom left-hand corner of the part of this
25 document, do you see and can you confirm your signature?

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1 A. Thank you, counsel. I, myself - well, how to say this? - I have
2 some doubts, personally, about this signature and we did write many
3 documents together. Now, if this is the way I should be recognising the
4 text, well, this signature is not in a position to allow me to do that.
5 Well, there can be signatures of this type, but actually connecting it
6 with a particular document, frankly, that's very difficult for me to do.

7 PRESIDING JUDGE COTTE: (Interpretation) Well, perhaps,
8 Mr. Hooper, you could ask one or two questions. They might, if we
9 conform to the strict Orthodox procedures, enable us to introduce the
10 document and allow, perhaps, the witness to remember that he did indeed
11 sign this document that we shall not name so far.

12 Mr. Hooper, the floor is yours. It seems to me this is a very
13 conventional, traditional way of proceeding in this Chamber and you
14 normally conform to it 99 out of 100 times.

15 MR. HOOPER: Well, you see, my submission a witness would be
16 entitled to look at the general form of a document that has, what appears
17 to be and is undisputed by the Prosecution, his signature on it and
18 should be taken to the signature. He's entitled to see the signature in
19 the context of the document it's on without, in any way, using the
20 document as a memory-refreshing device, or, at that stage, the contents
21 of the document being relevant as part of the question. It's the shape
22 and form of the document that I would submit the witness is entitled to
23 see as a matter of course where it appears -- his signature appears on it
24 and I stress, where it's not disputed by the other party, that it is his
25 signature. And that's the normal and general way, I'd submit, and the

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1 proper way of going about introducing a document that appears to be
2 signed. And instead, as we can see, we've spent a great deal of time
3 this morning on what I thought was an exercise that was going to take a
4 few minutes. And your Honour's right in your Honour's approach in first
5 inviting the witness to look just at the signature. The witness has now
6 said he would like to see the context of the document on which his
7 signature may or may not appear in order to be able to confirm that it's
8 signature. May I stress, I'm not concerned about the details that's
9 contained in this document. This is not a memory-refreshing exercise in
10 terms of the contents of the document.

11 I could ask another question, but it would be -- well, I'll ask
12 this question:

13 Q. Did you ever, together with other prisons, send a memorandum to
14 the attention of the minister of justice and the *Garde des Sceaux* in
15 Kinshasa complaining about the circumstances of your detention?

16 A. The title would have been enough to make me remember -- well,
17 memoranda, we signed two of those, if I remember rightly, in which we
18 denounced the fact that we were in a state of irregular arrest by the
19 Congolese jurisdictions.

20 Q. Now, I'd like -- ask -- invite you to look at the total document
21 here and the signature upon it and to confirm or not confirm that this is
22 one of the two documents of that type sent. Can you look at the
23 document, please.

24 PRESIDING JUDGE COTTE: (Interpretation) Court Usher, you can
25 show the document to the witness who has just said that he did take part

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1 in sending memoranda.

2 And, Witness, you can now answer Mr. Hooper.

3 MR. HOOPER:

4 Q. All right. I simply want you to tell the Court whether or not
5 this is one of the documents you sent and whether it's your signature.
6 Very simply, simple question and a simple answer, please.

7 A. Yes, thank you. Yes, this is indeed one of the memoranda that we
8 signed together with my fellow detainees.

9 Q. Thank you very much. And again, just for the transcript record,
10 we can see that this is a one, two, three, four, five -- nine, nine-page
11 document, setting out the context of arrest and the difficulties in
12 getting before Courts and a general complaint to the minister of justice,
13 *Garde des Sceaux* of your detention, and that is, of course, dated the
14 31st of January, 2007. And those are all my questions and can I just,
15 perhaps, go over those documents that have been referred to this morning
16 that have not received EVD numbers. I think, the first, the second has.
17 Can I have an EVD number, please, for DRC-OTP-1010-0023, which is the
18 document dated the 18th of January, 2006, and addressed to
19 *Monsieur L'auditeur General de Force Armée*, and signed, as Mr. Mbodina
20 has said, by himself together with others.

21 PRESIDING JUDGE COTTE: (Interpretation) Yes.

22 Court Officer, this was the request for provisional release. You
23 have the document before you. Defence is asking for an EVD number.

24 COURT OFFICER: (Interpretation) Thank you, your Honour.

25 Document DRC-OTP-1010-0023 will be assigned the EVD number EVD-D02-00120

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1 Mr. Hooper, would you also like to an EVD number for
2 DRC-OTP-1010-0029?

3 MR. HOOPER: (Microphone not activated)

4 PRESIDING JUDGE COTTE: (Interpretation) Yes, DRC-OTP-1010-0029,
5 yes, that's right, the request for release for exceeding the legal
6 dead-line for custody. So, Court Officer, could you give an EVD number
7 to this document, please.

8 COURT OFFICER: (Interpretation) It will be assigned
9 EVD-D02-00121.

10 MR. HOOPER: Thank you. And that's -- all the other documents,
11 including the two maps, that have been already admitted into evidence.
12 Thank you. Please wait there, Mr. Mbodina, there may be some other
13 questions.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,
15 Mr. Hooper. Before giving the floor to the Defence team for
16 Mathieu Ngudjolo, I would simply like to ask you to ensure that we shall
17 not return or go back on the practices that have been implemented here in
18 this Chamber for some time now. We must be sure that the proceedings are
19 fair. We have established the principle that a document should be shown
20 to a witness in conditions such that we can first make sure that the
21 witness will be in a position to give answers to the questions that might
22 arise from the document. I see that once again that except for
23 exceptions, this practice did not bring up any major issues or very brief
24 exchanges between one party and the other that have always been settled
25 in the simplest of ways. Let us try to maintain that simplicity in our

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1 exchanges with the preliminary presentation of the document with perhaps
2 one, maximum two, questions to make sure that this document is not
3 totally extraneous to the witness. It is by applying this practice that
4 generally the parties, as soon as you have the list of the documents
5 produced, arouse objections for -- on such and such a document. I think
6 this is a pattern that all of us have understood so far and followed. So
7 let's, perhaps, try and maintain that.

8 Mr. Kilenda, are you the one to put questions?

9 MR. KILENDA: (Interpretation) Yes, your Honour. Good morning,
10 your Honours. Thank you very much for giving me the floor.

11 Questioned by Mr. Kilenda:

12 Q. (Interpretation) Good morning, Witness.

13 A. Good morning.

14 Q. My name is Jean-Pierre Kilenda. I'm the lead counsel for
15 Mr. Mathieu Ngudjolo. I will be asking you just a few questions so as to
16 allow the honourable Chamber to fully understand certain facts. I have
17 been following what you have been saying since yesterday and I can see
18 your professional career is an eloquent one. You have had some very
19 important positions and you have experienced many of the facts that you
20 described. What I note in the hearing transcript number 249 yesterday
21 that you spoke to us about the structure -- the co-ordination structure
22 that was established at two meetings that took place in the Hotel Casino
23 in Beni. Transcript -- yesterday's transcript, public, page 45, line 5
24 to 28; and page 46, lines 1 to 22. Could you perhaps specify where
25 this -- to what this structure was originally attached?

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1 A. Thank you, counsel. Before answering your question, will you
2 allow me, your Honour, Mr. President -- well, I might leave here full of
3 bad feelings against myself because it seems that I understand that you
4 are perhaps not sensitive to the fact that I have spent a long time in
5 prison in Kinshasa, six years and soon, in fact, seven years in totally
6 illegal circumstances. I'm almost revolted because I feel very uneasy
7 because the mention of our situation -- well, the reaction I, myself,
8 wanted to go back on this -- on this aspect. It was indeed a condition
9 for me to come here to testify, i.e., subject to my security, that of my
10 family, the reading of the letter of the minister and the fact that I
11 should be accompanied by a lawyer. These three prerequisites -- well,
12 there were only two of those that were actually applied, i.e., security.
13 But that is not fully satisfactory to me so far, because from the
14 contacts that we have with the Registrar and with the protection unit --
15 well, those measures that were granted were never very reassuring to me.
16 And also the letter of the minister, I never read it. Up until now I had
17 decided not to testify because I knew I ran the risk of not being heard.
18 And then I thought about this and I thought that I had already announced
19 to the people who had requested me and that I had to abide by my promise
20 and that's why I did it. But I really would like you to understand the
21 circumstances in which we find ourselves here right now and in the name
22 of the universality of values that this eminent Chamber defends, at least
23 that you should be aware of this extremely long period of unjustified
24 detention because there's absolutely no documents so far that enables
25 such a long prison term -- period of detention to be served.

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1 So when I don't see any awareness of that, well I would like the
2 hearing to be suspended.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness,
4 Mr. Witness, I want to take the floor now. I believe that you have
5 misunderstood me, and I'm absolutely certain that you have misunderstood
6 me, in fact. As President of the Chamber and the Chamber does not want
7 you to have those bad feelings. The conditions under which the judicial
8 investigation is -- are being conducted against yourself and other people
9 in the Democratic Republic of Congo since the year 2005 may be of
10 interest to us, may be of interest to us. The conditions under which you
11 are detained for such a long time in the Democratic Republic of Congo can
12 also be of interest to us. Mr. Hooper, for a period of time, asked you
13 questions about a request for release that you formulated and was just
14 given an evidence number for that document. He asked you questions about
15 a document coming from your lawyer who challenged custody that had
16 exceeded the legal dead-line and he also obtained an EVD number for that
17 document. Then we spent some time on a memorandum that you signed,
18 amongst others, and which also relates to the penal procedure being
19 followed in the Democratic Republic of Congo and relating to your
20 detention too. We have closely listened to Mr. Hooper, who wished having
21 the transcript of this hearing a description of the conditions under
22 which you were prosecuted and under which you are detained in the
23 Democratic Republic of Congo.

24 I simply allow myself, as is my duty, to point out to him that
25 when he started questioning you about the memorandum, I pointed out to

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1 him that the facts we need to ascertain, Chamber II of the
2 International Criminal Court, were the facts committed in Bogoro in
3 February 2003. However, we are not competent in terms of assessing the
4 regularity of the procedure conducted in the Democratic Republic of Congo
5 and your detention. Everything that we are told on this issue may be of
6 interest to us. Do not believe that we are insensitive, by definition,
7 to such information. That's where I believe you have misunderstood me,
8 and that's also why that I stated that everything to do with this
9 procedure and your detention in the Democratic Republic of Congo could be
10 dealt with as part of a separate request that has been submitted to the
11 Chamber. It is gathering information on this request and it will hand
12 down a decision. We talked about it, in fact, yesterday when I was
13 giving you assurances at the outset, that your counsel, Mr. Hooper, had
14 put forward a request on your behalf, as he had explained to you, and I
15 also explained to you the guarantees of R74 that your counsel has asked
16 for and that your counsel has notified you about.

17 Therefore, Witness, I and my colleagues would really want you to
18 renew with your serene composure at the beginning of your testimony. We
19 do not underestimate, we do not underestimate the fact that we are facing
20 somebody who believes he has been unfairly detained for a long time. You
21 believe me -- you must believe me and it is now Counsel Kilenda who's
22 going to start his questioning. I hope you have a bit understood me now,
23 Mr. Witness, I really hope so.

24 THE WITNESS: (Interpretation) I do too.

25 MR. HOOPER: (Previous translation continues) ... reassuring the

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1 witness of the nature of what your Honour's just said to him. I
2 commenced my questioning of Mr. Mbodina yesterday by saying, "I want to
3 touch on your detention just briefly and I'll go into it in more detail
4 at the close of your evidence," and I hope in saying that, I didn't
5 perhaps raise a greater expectation than was realised in the mind of the
6 witness this morning. Because when we came to the subject this morning,
7 I dealt with it solely in the course of dealing with those documents, a
8 course that was somewhat distracted, of course, by the events.

9 But yesterday, in fact, when I gave Mr. Mbodina an opportunity to
10 say a few words, because it's such a heart-felt matter for him, he took
11 the opportunity to -- I thought, in a very articulate and clear way, to
12 expose his feelings to the Court and to give the Court his situation in a
13 manner I assure him I felt was sufficient for this Court. And I'd also
14 take the opportunity perhaps to indicate to the witness that he's not the
15 first and indeed may not be the last to instruct the Court on the
16 conditions under which he's been detained and the fact, not the suspicion
17 but the fact that it's been an unlawful detention for so long. That
18 these aren't matters that have come first to the ears of this Court
19 through this witness. He's articulated his position very well.

20 So I want him to stand assured that, in my eyes, he's articulated
21 his position very well and very clearly. And I appreciate, because of
22 the depth of his feeling on this matter, he might very well want to take
23 the opportunity to say more about it. Perhaps at the close of his
24 testimony your Honour might be perhaps sensitive enough to that to see if
25 there are further matters that Mr. Mbodina has reflected on in that

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1 respect that he wants to bring to the attention of the Court, and he can
2 address that to the Chamber when all is said and done in terms of his
3 testimony. Thank you.

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

5 Mr. Mbodina, I would like you to be reassured, I would like that
6 too. You told us rather fiercely what you had believed you had
7 understood. This did not shock us. Obviously when you have been held
8 for a long time one feels like voicing one's feelings in the way you did.
9 But once more, I would not like you to misunderstand what is the
10 Chamber's approach. It is confronted with a man who has been detained
11 for several years, who claims that this detention is not legal. We do
12 not have the competence to take a decision, but we see you as somebody
13 who believes he has been illegally detained. I believe your counsel was
14 right to take the floor. And, Mr. Mbodina, we are now going to resume
15 with counsel Kilenda. But we listened to you carefully because you are
16 providing us with very useful information in terms of establishing the
17 truth.

18 MR. KILENDA: (Interpretation)

19 Q. Witness, you talked to us yesterday about the co-ordination
20 structure that had been set up at the meeting at the Casino Hotel. Could
21 you also tell us what this structure was linked to originally?

22 THE INTERPRETER: The interpreter points out that it was counsel
23 Kilenda.

24 THE WITNESS: (Interpretation) I am -- was -- your Honour, I'm
25 quite willing to turn a page, and I'd like to ensure you that I have full

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1 confidence in everything you have just told me.

2 As for the co-ordination structure, that's what we were talking
3 about, the FRPI created in Beni at the time, as I said yesterday, was
4 a -- a structure was linked to the RCD-K/ML and its objective, its
5 primary objective, before the changes it underwent that I referred to
6 yesterday -- its prime objective was to recover, regroup displaced people
7 who had come to Beni from various areas that were -- such as Bunia and
8 Mongbwalu, where war was raging. And there were also businessmen and
9 maybe I didn't point that out yesterday. There were businessmen,
10 economic players, who were supplying Beni with staple goods and therefore
11 this structure's first objective was to help these people carry out
12 successfully the operations in north Kivu. When it was set up, there
13 were only four people in the structure, Floribert was the co-ordinator;
14 his deputy was Sambidhu; and I was in charge of defence; and
15 Mr. Mando (* phon) was my assistant. Dr. Adirodu, for his part, had
16 claimed himself spokesman. He did not really know what that meant, but
17 later on he was the connection person between the FRPI and the RCD-K/ML.

18 MR. KILENDA: (Interpretation) Thank you very much --

19 Q. Could you tell us how long this structure operated?

20 A. Within the FRP, there were these four people who held positions
21 and later everybody who came benefitted from the FRPI's services when
22 they were recognised as members of the FRPI. You also had combatants in
23 the structure who, from the very outset, were already under the control
24 of the RCD-K/ML. Because you should not forget, as I said yesterday,
25 that already in Bunia there was this coalition between APC and

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1 FRPC (* as interpreted) combatants before the UPC and the -- drove the
2 APC out of Bunia. The time the FRPI needed, I cannot really say --
3 lasted, I cannot really say. The FRPI lasted even beyond the EMOI
4 because it was later the armed wing of the FNI and there we're already
5 talking about 2003/2004.

6 Q. Thank you very much. Could you tell us how long after the
7 structure was set up Mr. Floribert Ndjabu, as co-ordinator, remained in
8 Beni?

9 A. Well, Floribert Ndjabu, who was first the co-ordinator who had
10 been elected of the FRPI, did not stay very long in Beni, it's true.
11 He -- he moved around while he was in Beni, based in Beni. He came and
12 went and came back only after the FNI had been created -- after the
13 creation of the FNI, as I said. Certainly he did not spend very long
14 there, about two months, one month or two months after the structure was
15 set up. What was his mission? Well, his mission in Kpandroma -- well,
16 first of all, he went to drop off weapons and ammunition -- so he left on
17 an assignment for the FRPI and did not come back. Of course he came back
18 around 2004 once the FNI had been set up.

19 Q. Thank you very much. I would like to offer you a deal, if you
20 would like. I can see that having lived through everything you're
21 telling us about, you certainly have a lot to tell us, but I would
22 suggest that you restrict your answers to specific answers to the precise
23 questions I'm asking. If the question is a bit vague, tell me and I'll
24 reformulate it.

25 A. Yes, counsel. Thank you.

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1 Q. Well, Mr. Mbodina, can you tell the Court what -- how long was
2 there between the creation of the FNI and the FRPI?

3 A. More or less at the same time, concomitantly. There wasn't a lot
4 of time between the creation of either structure. The FRPI was set up in
5 Beni around October, I believe, 2002 while its manifesto talks about
6 January 2003. And of course the manifesto was published one or two
7 months after the structure had been set up, i.e., after the meeting in
8 which it, the structure, was created. So it's in -- around that period
9 that the FNI was also set up in late 2002. The initiative was taken by
10 Kpandroma -- came from Kpandroma and in -- from Arua.

11 Q. And who was the highest authority between the creation of the FNI
12 on the 18th of March when the -- the 18th of March, 2003, when the --
13 when the -- set up?

14 A. As I said yesterday, the FRPI was not a conventional kind of
15 organisation in terms of its organisation. It was a movement that
16 regrouped people, and within it there was a structure, I've talked about,
17 of four people. Otherwise, you had Dr. Adirodu who claims he was the
18 spokesperson, but a supreme body -- I mean, exerted -- exercising supreme
19 authority. I never heard of any such body, at least before the 18th of
20 March agreement was signed. I cannot remember any such body.
21 Nonetheless, I would like to point out that shortly afterwards there was
22 talk of a supreme authority of the Bhale (* phon) forces, and these
23 forces existed thanks to the help of influential people of the Lendu
24 ethnic group. These people I could quote Bernard Kakado for the south
25 and for the north Mbumba (* phon). These were personalities who had a

1 lot of authority in their community in this resistance waged by the FRPI.
2 Well, from an administrative viewpoint, there was no supreme -- nobody
3 holding supreme authority.

4 Q. Thank you. Was it the same situation at the FNI? What was the
5 highest authority or who held the highest position in the FNI at the same
6 time?

7 A. No, the situation was not at all the same when you talk about the
8 FNI. The authorities at the head of the FNI are well-known. When the
9 FNI was set up, Floribert Ndjabu was put forward first to become
10 president, president of the FNI as an armed group. I know the context in
11 which Mr. Ndjabu put forth for this position. Three other names were put
12 forward to hold this position. The other two or absent, somebody whose
13 name I've forgotten, and myself. And, therefore, there was a situation
14 where the wise men who were there to represent the FNI had refused to do
15 so. So Ndjabu helped -- by commissioners held the highest position.
16 These commissioners had different tasks. Some were in charge of external
17 affairs, internal affairs, and so forth.

18 Q. Thank you. Could you tell the Court what was the state of the
19 relationship between Mr. Ndjabu and Mr. Adirodu?

20 A. Well, the relationship between the two, first of all, was one of
21 familiarity. Adirodu was a very well-known person, respect was due to
22 him, and I believe that Ndjabu also had a great interest in this
23 relationship. However, their relationship was dented by either parties'
24 ambitions and needs. For instance, when the Casino Hotel meeting was
25 held, at times there were clashes between the two. I, for one, didn't

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1 want to accept the other party's candidates being appointed at the head
2 of the co-ordination committee. Therefore, they started off with a
3 brotherly relationship, but it was soon floored by their conflicting
4 needs and ambitions.

5 Q. Thank you. Witness, I have to stop here for the following
6 reasons: I had initially planned 152 questions I wanted to ask you. I
7 attentively followed the questioning carried out by my learned friend
8 David Hooper, and I have noticed that he has covered exactly the issues I
9 had planned to look at and before whose questions were the same as those
10 I had planned. So paragraph 72 of decision 1665 of this Chamber
11 stringently prohibits repetitive questions.

12 MR. KILENDA: (Interpretation) That's why, your Honour, your
13 Honours, I'm stopping my -- interrupting my questioning, and I'd like to
14 thank you.

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

16 So the Prosecutor -- Office of the Prosecution is now going to
17 start its cross-questioning at 20 past 1.00 since you have asked for ten
18 minutes to provide information about the request submitted by Mr. Hooper
19 with respect to meeting a witness.

20 You have the floor, Mr. MacDonald.

21 MR. MACDONALD: (Interpretation) Yes, indeed, your Honour, if we
22 could have ten minutes at the end of the hearing, I -- before we start
23 the cross-questioning and maybe the witness could take his medication
24 now. I don't know if it's the right moment because I would like to come
25 back to a procedural issue in the light of the small number of questions

1 that has been asked during the Defence's questioning of Mr. Mbodina.
2 Once more, this is not a comment, Witness. So the Defence team has had
3 its questioning and the Office of the Prosecution is now going to start
4 its cross-questioning but will certainly cover several issues and the
5 Defence -- Prosecution team will ask his questions within the framework
6 of your ruling 1665 and I don't know if the Chamber will give the Defence
7 team to conclude.

8 Now, the Prosecution is now going to cover some issues that might
9 include issues in which Mr. Ngudjolo's Defence team might ask questions
10 if they wish to do so. Now, this is just a question we are raising for
11 the Chamber's consideration to avoid having yet another cross-questioning
12 before Mr. Hooper finishes.

13 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

14 Sir, I believe we need to refer to ruling 1665 of the 1st of
15 December, 2009, in which from para 33 onwards the issue of the
16 presentation of the Defence's resources when witnesses are called by the
17 Defence to take the floor and this refers in para 33 to Germain Katanga.
18 And we can read here that the Defence team of Germain Katanga will be the
19 first party to question any witness it has called. Afterwards, the
20 witness could be questioned by the Defence of Ngudjolo. Afterwards, the
21 Office of the Prosecutor would have the opportunity to cross-question.
22 The next paragraph, should the Defence team wish to ask further questions
23 after the cross-questioning, well the Defence team of Mathieu Ngudjolo --
24 but then the office -- and Germain Katanga's Defence team can question
25 the witness -- should the Legal Representatives of the Witnesses -- of

1 the Victims wish to question a witness under 91(3) after they have been
2 questioned by the Defence, they will -- they shall ask for the Chamber's
3 permission, the Chamber will hand down its decision on a case-by-case
4 basis as to the opportunity of representatives of victims to ask
5 questions and will determine the modalities under which this questioning
6 is to be conducted. Unless I'm mistaken, a few days ago this decision
7 was amended orally since the representatives of the victims were told
8 that they would have to disclose to the Defence the questions they plan
9 to ask.

10 The Chamber also, when the previous witness appeared, decided
11 that more questions than usual could be asked with respect to
12 personalities and witnesses appearing currently -- the contribution they
13 could make to establishing the truth. We asked our questions after your
14 cross-questioning, Prosecutor, and we realise that it is important, as I
15 said in the previous hearing, that it is important to allow you -- should
16 one or two things that had not been covered until now, to give you the
17 opportunity to intervene once more. In his great wisdom, Mr. Hooper had
18 talked about neutral questions. That is the practice we intend to
19 implement once more for the witness we have here today. After the
20 Chamber's questions, you will have the opportunity not to resume your
21 cross-questioning but to obtain some additional information on points
22 that might not have been covered until now and the Chamber might have
23 given rise to and then the two Defence teams will take the floor. So
24 right now and given the intervention you have just made, I need to ask
25 Professor Fofé and Mr. Kilenda if they intend to rechallenge the position

1 they have just taken which consists in saying that their questioning, in
2 their opinion, had to be reduced in -- given the questions orally asked
3 by Mr. Hooper, and since the answers provided by the witness must have
4 satisfied them, otherwise of course they could have, of course, asked
5 more information from the witness.

6 Therefore, Mr. Kilenda, Professor Fofé, you have the floor to
7 answer the Prosecutor's question.

8 MR. KILENDA: (Interpretation) Thank you very much,
9 Mr. President. Our team always tries to fully comply with your
10 guide-lines. We said that the questions that we prepared may appear
11 repetitive and we are saying this very honestly. It goes without saying
12 that if, during his cross-examination, the Prosecutor touches on
13 questions that undermine the rights of our client, then we will
14 intervene. But, for the time being, we feel that we do not want to ask
15 any repetitive questions in order not to bore the witness. That is our
16 position.

17 PRESIDING JUDGE COTTE: (Interpretation) Did you have an answer
18 to your question, Mr. Prosecutor? In any case, we are going to have a
19 quarter of an hour of your cross-examination, then we will allow the
20 witness go, after which we will discuss an issue that is not linked with
21 your testimony, Mr. Witness.

22 MR. MACDONALD: (Interpretation) We have fully understood,
23 your Honour. What we would like to avoid is that they should not --
24 well, they should not wait for the cross-examination of the Prosecution
25 in order to come back to their questions. They want to wait to see what

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1 the Prosecutor is doing. So we do not want a game of hide-and-seek here.

2 We did not intervene with the first witness because that was not the
3 case, but it is more the case here.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
5 Mr. Prosecutor. On the other hand, it is also clear that will the
6 Defence team of Ngudjolo cannot guess what your questions will be.

7 Mr. Dutertre, if you are the one doing the cross-examination then
8 you are going to have a quarter of an hour.

9 MR. GARCIA: (Interpretation) Thank you, Mr. President,
10 your Honours.

11 Questioned by Mr. Garcia:

12 Q. (Interpretation) Good morning, Mr. Witness.

13 A. Good morning.

14 Q. I am Lucio Garcia and I am a trial lawyer in the OTP, and I will
15 ask you questions. Today, I will not have the time to ask you many
16 questions because we have a very limited amount of time and so I will
17 very probably continue asking you my questions tomorrow.

18 To begin with, Mr. Witness, I would like to ask you questions
19 which basically -- points of clarification that I would like to have. At
20 one point, you stated that you lived in Bunia in 2002 before the fall of
21 Lopondo; is that correct?

22 A. Yes, that is correct. At one time, before the fall of Lopondo, I
23 was living there. However, immediately before that time I was in Mahagi.
24 So I had come from Mahagi. Lopondo was chased out some 48 hours after I
25 arrived -- Bunia.

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1 Q. When you were living in Bunia, did you have the opportunity to
2 meet with Dr. Adirodu?

3 A. Thank you. I have already said this before. I had been in
4 contact with Dr. Adirodu well before that because he is my nephew, and
5 before I came to Bunia I was associating with him and I was visiting his
6 family. And so we had a family relationship with Dr. Adirodu prior to
7 that period.

8 Q. What was the position held by Dr. Adirodu when you got to know
9 him in Bunia?

10 A. Thank you. I did not get to know Dr. Adirodu in Bunia. I knew
11 him before that. Even in Kinshasa, Dr. Adirodu was a physician and the
12 medical officer in charge of the Ituri area. He worked in Nyankunde,
13 then in Mambasa and then in Bunia as a medical doctor and as the medical
14 officer responsible for the Bunia zone.

15 Q. You also testified that you had known Mr. Floribert Ndjabu Ngabu
16 for some time; is that correct?

17 A. Yes, I knew Mr. Floribert Ndjabu Ngabu well before that period.

18 Q. With regard to Mr. Floribert Ndjabu Ngabu, was he present in
19 Bunia before the fall of Lopondo?

20 A. Thank you for the question and my answer would be yes. Before
21 the fall of Lopondo, he was in Bunia. I also met him in Bunia. In fact,
22 we were in the RCD-K/ML premises and we met each other at that time.

23 Q. Would I be correct to say that at one point
24 Mr. Floribert Ndjabu Ngabu was in Beni after the fall of Lopondo?

25 A. Thank you, Mr. Prosecutor. You would indeed be correct to say

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1 that after that incident he was in Beni and that is where we created the
2 FRPI.

3 Q. For the time being we are not going to go into this issue of the
4 creation of the FRPI on which you have already testified at length, but
5 let me ask you this question: Would I be correct to say that
6 Floribert Ndjabu Ngabu was in Beni in August 2002 after the fall of
7 Lopondo?

8 A. Thank you. Whether that is correct or not there is one thing
9 that is certain. At the time of the fall of Lopondo we were in Bunia,
10 and I have confirmed that I met Ndjabu in Bunia. I was coming from
11 Mahagi when I was head of the service there. After I arrived Bunia,
12 Lopondo was chased out. Personally, I went to Beni and shortly
13 afterwards I saw Ndjabu in Beni and together with him we created the
14 FRPI.

15 Q. I have fully understood that aspect as well as the aspect related
16 to the creation of the FRPI, but my question was: Do you agree with me
17 that Floribert Ndjabu was in that place -- whether Floribert Ndjabu was
18 there in August 2002 after the fall of Lopondo?

19 A. I'm not sure what you want, Mr. Prosecutor, because I've already
20 answered that question.

21 Q. My understanding is, therefore, that you, yourself, were in Beni
22 in August 2002 after the fall of Lopondo.

23 A. I'm sorry. Just a moment. Mr. Prosecutor, I'm sorry I have been
24 answering that same question many times. I am a bit confused -- unless I
25 am not understanding that question. Your question was as follows: Was

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1 Floribert Ndjabu in Beni after the fall of Loponde? And my answer to you
2 was this: I had just come from Mahagi when I met Ndjabu in Bunia. We
3 met in the residence of the RCD-K/ML.

4 Q. I'm sorry, Mr. Witness, for interrupting you. I usually do not
5 do that, but this question is simple. My question to you was: Whether
6 you, yourself, were in Beni in August 2002 after the fall of Loponde. If
7 the answer is yes, say so; if not, then say so. I understand that
8 sometimes the questions may seem to be repetitive, but the answer should
9 be simple. Were you there in August of 2002 in Beni after the fall of
10 Loponde, yes or no?

11 A. Thank you, Mr. Prosecutor. It so happens that my answers to you
12 should also be accepted once because I cannot answer the same question a
13 thousand times. You have already asked that question and I gave you an
14 answer. I told you that shortly after the fall of Loponde I was in Beni
15 and I met Ndjabu there in Beni.

16 PRESIDING JUDGE COTTE: (Interpretation) Apparently everything
17 is clear now, Mr. Prosecutor, you can proceed.

18 MR. GARCIA: (Interpretation)

19 Q. Mr. Witness, just a clarification. You have just said "shortly
20 after" or "sometime after" you were in Beni. Can you give us a precise
21 date?

22 A. Thank you. The fall of Loponde was followed by many unfortunate
23 events in Bunia. Personally, I have some very bad memories of those
24 events because I lost everything in Mahagi. And when I came back to
25 Bunia I almost lost my life, my family and I, that is, including my

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1 father and my mother, were attacked at home. And on that day, once
2 again, we lost everything and we were left in the ashes of that family
3 home. In fact, my certificates were left in the ashes of that family
4 home. We left and sought refuge with a family in the Pensionnat
5 neighbourhood. After the fall of Lopondo, I went to stay with a friend
6 where I remained locked up, and this was in the Pensionnat neighbourhood.
7 That friend hosted me for about two weeks after the fall of Lopondo while
8 I was looking for a way to return to Beni. I took a plane to go to Beni
9 two weeks after the fall of Lopondo. I arrived in Beni and I remember
10 that Floribert Ndjabu arrived afterwards, maybe one week after or a few
11 weeks after. He came to Beni and we met there. This was sometime
12 afterward but not more than a month. Please, Mr. Prosecutor, accept that
13 I'm not in a position to give you precise dates because I have to search
14 in my memory. Maybe as we proceed I may be able to give you specific
15 dates, but with regard to that question I will say at most a month
16 afterwards.

17 MR. GARCIA: (Interpretation) Considering the time, your Honour,
18 I believe that we can stop there.

19 PRESIDING JUDGE COTTE: (Interpretation) We will stop here for
20 now. Mr. Witness, we will meet again tomorrow morning at 9.00 a.m. We
21 wish you a good afternoon so that you should be able to come back in top
22 form tomorrow morning.

23 Court Usher, please escort the witness out of the courtroom.

24 And see you tomorrow, Mr. Mbodina.

25 THE WITNESS: (Interpretation) Thank you, your Honour.

1 (The witness stands down)

2 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, do you
3 have an idea of the time that you will need for your cross-examination,
4 an approximation, of course?

5 MR. GARCIA: (Interpretation) Your Honour, I intend to be as
6 brief as possible, but it will all depend on the witness's answer. But I
7 think I will end tomorrow during the last hearing.

8 PRESIDING JUDGE COTTE: (Interpretation) In other words, you
9 will need about three hours?

10 MR. GARCIA: (Interpretation) I don't want to be very specific,
11 Mr. President, but I believe that is it.

12 PRESIDING JUDGE COTTE: (Interpretation) Mr. MacDonald, you
13 wanted to address the Court regarding Mr. O'Shea's application yesterday
14 regarding the request of the Defence of Germain Katanga to meet with
15 Witness 350 before his testimony. You can go ahead.

16 MR. MACDONALD: (Interpretation) Thank you, Mr. President,
17 your Honours. Without revisiting the points that were mentioned
18 yesterday, I have an important piece of information. Since last Friday,
19 the Prosecution has been investigating the substance of that article.
20 Our investigation is not yet over, but it appears that the content of the
21 article does not reflect the conversation that Mr. Charif would have had
22 with the newspaper *Millénaire Hein Faut Plus*. It appears there were
23 additions to the crucial points, and I'm talking about those responsible
24 for the Bogoro attack. That said, in light of that information the
25 Prosecution is trying to decide whether to even withdraw that document

1 from the list of documents to be used in the cross-examination. So, in
2 fact, let me just say this immediately: We are withdrawing that document
3 from our list. So that article has been published and I don't know
4 whether right now it is necessary for the Defence to meet with
5 Witness 350, given that the Prosecution we will not use the article.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
7 Mr. Prosecutor.

8 Mr. O'Shea, if you are the one speaking, what is the position of
9 your team if the Prosecution is not going to use the article?

10 MR. O'SHEA: Yes, our concern is the witness. So our position
11 has not changed.

12 PRESIDING JUDGE COTTE: (Interpretation) Despite everything, you
13 had questions which arose from your reading an article which we have been
14 told will not be produced in Court. And secondly, apparently it does not
15 reflect the substance of the interview. Is it, therefore, still
16 indispensable for you to maintain that request to meet with a witness
17 who -- who -- which it was claimed he said things he did not say?

18 MR. O'SHEA: The document being on the list of Prosecution
19 documents was not part of factual parameters in which we were arguing.
20 The issue here is what is the position with regard to this document, what
21 is the reality with regard to this document and this witness? Because
22 we, or rather, the accused, with our advice, has to make a decision with
23 regard to this witness. We cannot simply, on the basis of what the
24 Prosecution says about their own investigations, draw assumptions or
25 accept that we don't have a difficulty. We have to conduct our own

1 investigation to reassure ourselves that we do not have a difficulty.

2 Does that make sense, your Honour?

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

4 MR. MACDONALD: (Interpretation) The Prosecution stands by what
5 we have said. At this stage, the Prosecutor will not use the contents of
6 that document in cross-examination, but in light of the reaction of the
7 Defence, we maintain, even more so, our request that a member of VWU
8 should be present so as to avoid witness proofing. Because if they want
9 to still meet the witness when we are not using that document, we are
10 afraid that there might be an intention to prepare or proof the witness.
11 And this is something we should absolutely avoid. The Defence can do
12 what the Prosecution did. We do not need very much to cross-check the
13 content of an article. We can even ask the witness in the witness box
14 and this would be consistent with ascertaining the truth without the
15 witness being influenced.

16 PRESIDING JUDGE COTTE: (Interpretation) Mr. Kilenda, very
17 briefly.

18 MR. KILENDA: (Interpretation) It is well to know that the
19 Prosecutor carried out an investigation. Can we know the result of that
20 investigation, the name of the journalist, the conditions under which
21 that interview took place? We believe that the meeting with that witness
22 is still justified. This night at 1.00 a.m., I saw an article in my
23 e-mail, my spam folder, about that same article.

24 MR. O'SHEA: (Previous translation continues) ... the
25 investigations of the Prosecution. We would like, please, disclosure of

1 the results of those investigations as a matter of exculpatory evidence.
2 That's the first -- that's my first point I'd like to make. And the
3 second point I'd like to make, I'd like to make in private session,
4 please, because I believe there's been some misunderstanding here and I
5 can't express myself fully in public session.

6 PRESIDING JUDGE COTTE: (Interpretation) Before we go to private
7 session, Mr. Prosecutor, concerning disclosure of the outcome of the
8 investigation.

9 MR. MACDONALD: (Interpretation) The investigation is not yet
10 over. At the end, tomorrow or today or tomorrow morning, we will be able
11 to communicate the results, but that investigation is ongoing and for
12 reasons of security of the people involved I cannot disclose any
13 information. And if the need arises, we will ask the Chamber to lay down
14 conditions for the use of those elements.

15 PRESIDING JUDGE COTTE: (Interpretation) You are all aware that
16 time is of the essence because Witness 350 is probably going to start
17 testimony on the 2nd of May and we will end our hearings on Thursday.

18 So, Court Officer, can we go briefly into closed session and we
19 have three minutes left.

20 (Private session at 1.28 p.m.)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

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16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 The hearing ends at 1.30 p.m.

24

25