

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 Friday, 8 April 2011
10 The hearing starts at 9.05 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 be seated. The
15 accused are here in the courtroom. Good morning, sirs. Good morning to
16 everyone. We will begin with our proceedings, but before we bring in the
17 witness the Chamber will hand down an oral decision on application number
18 2811 conf from the Defence of Germain Katanga dated the 1st of
19 April, 2011, to bring forward the testimony of Witness DRC-D02-P-0176.
20 The Chamber recalls that following its order number 2775 handed down on
21 the 15th of March, 2011, under the powers conferred to it by regulation
22 43 of the Rules of the Court regarding the testimony of witnesses, the
23 Defence of Germain Katanga submitted to the parties and participants by
24 filing number 2786 conf dated the 21st of March, 2011, the final order of
25 appearance of its witnesses. By order of the 18th of March, 2011, by

1 e-mail because of the urgency, the Chamber modified the order of
2 appearance and confirmed its position in oral decision dated 23rd of
3 March, 2011, transcript 238. In its application number 2811 conf dated
4 the 1st of April, 2011, the Defence of Germain Katanga requested a
5 further urgent variation of the order of appearance of the witnesses for
6 security reasons that would bring forward the testimony of
7 Witness D02-176. By e-mail of the same day, the OTP indicated that they
8 did not have any objection to that variation subject to the position that
9 might be taken by VWU. The Chamber in an e-mail of the
10 4th of April, 2011, took note of the position of the Prosecutor and
11 requested the unit to submit to it by the 6th of April, 2011, at noon its
12 observations on the developments in the security situation of
13 Witness D02-176, as well as the possibility of calling that witness to
14 appear in The Hague immediately in case he has to begin testimony
15 immediately after the judicial recess. The Chamber also pointed out to
16 the parties and participants that any objection to the application of the
17 Defence had to be submitted on the same day before 4.00 p.m.

18 The Chamber points out that these dead-lines were set, taking
19 into consideration the fact that if this application is granted the unit
20 would have to be notified by the 8th of April, 2011, at the latest.

21 The Defence of Mathieu Ngudjolo pointed out by a return e-mail
22 that they did not have any objection to that variation of the order of
23 appearance of witnesses.

24 On the 6th of April, 2011, in response to the e-mail of the
25 Chamber, the unit requested an extension of the dead-line that had been

1 given to it to transmit its observations, while pointing out that that
2 report will be submitted *ex parte* reserved for the Registry. However,
3 they gave an opinion on the appearance of Witness D02-176, pointing out
4 that that testimony would be beneficial and the variation would pose no
5 logistical problems. By return e-mail, the Chamber extended the
6 dead-line and pointed out that it will hand down a ruling on the
7 classification *ex parte* of the information contained in the report of the
8 unit.

9 The Chamber informed the parties and participants that the
10 dead-line for their possible objections would be unchanged. The
11 Prosecutor did not react in writing; however, he pointed out during the
12 hearing of the 6th of April, 2011, that he had information to provide to
13 the Defence regarding Witness D02-176 that might help them decide whether
14 to call that witness or not. Considering the urgency of the situation,
15 and particularly the fact that the decision has to be handed down today,
16 the Chamber is not of the opinion that it has to further delay its
17 response to the unit based on considerations that are still hypothetical.

18 In this regard, the Chamber notes that to its knowledge the
19 Prosecutor has not provided the information promised and requests the
20 Prosecutor to do so unless they have already done so urgently by
21 Monday, the 11th of April, 2011, at 4.00 p.m.

22 Regarding the Legal Representatives of the Victims, they
23 submitted their respective observations on the same day in filings number
24 2817 conf and 2819 conf; however, they opposed -- even though they
25 opposed the application of the Defence for reasons linked to preparation

1 time which they felt is insufficient due to the organisational
2 difficulties that would arise as a result of the changes, they are
3 requesting that in case the Chamber grants that application,
4 Witness D02-176 should not -- should begin testifying not before the 2nd
5 of May, 2011.

6 The Chamber also points out that Mr. Luvengika also took the
7 floor during the hearing of the 6th of April, transcript 244, and said
8 that he would like to have access to the *ex parte* report of the unit on
9 the security situation of Witness D02-176, given that his testimony
10 concerns victims that he represents.

11 Lastly, during the same hearing, the Defence of Germain Katanga
12 stated that they felt that, in principle, communications between the unit
13 and the Chamber relating to their witnesses should be classified *ex parte*
14 reserved for that Defence only. The Chamber received the *ex parte* report
15 reserved for the Registry. Considering the position adopted by them
16 during their e-mail of the 6th of April and particularly the information
17 provided in their observations, the Chamber is of the opinion that it is
18 indeed preferable in order to protect Witness D02-176 as required by
19 Article 68 of the Rome Statute to bring forward the testimony of that
20 witness.

21 The Chamber notes that the parties and participants in general
22 did not have any objection as long as that testimony begins only by the
23 2nd of May, 2011, which would allow them sufficient time to prepare
24 within the context of adversarial proceedings. The Chamber points out
25 that the unit made it clear that it is possible to bring that witness to

1 The Hague for that -- for testimony on that date.

2 We, therefore, are of the opinion that we can grant the
3 application of the Defence under Regulation 43 of the Rules of the Court,
4 and therefore that authorisation is granted as requested by the Defence.

5 The modified order will be as follows:

6 The detained witnesses who are three of them D02-236, D03-11
7 whose testimony is ongoing. D02-228 and D02-350, Witness D02-176, and
8 D02-134, D02-501, and so on and so forth. The Chamber request that this
9 new order should be respected because efforts have been made to ensure
10 that the testimony of the witnesses should be carried out in the most
11 useful manner. However, there are problems and intangibles that we all
12 have to deal with.

13 The Chamber requests the Court Officer to ensure that the unit
14 should be immediately notified of this oral decision so that they should
15 take all the measures necessary for the organisation of the transfer and
16 familiarisation of Witness D02-176 such that that witness should be in a
17 position to begin testimony either by Monday, the 2nd of May, 2011, at
18 2.30 p.m. or at a different time.

19 Lastly, the Chamber would like to point out that we will hand
20 down a decision on the *ex parte* nature of the information contained in
21 the report considering your observations and the necessity for the unit
22 to preserve the confidentiality of its relations with the parties.

23 Court Officer, Court Usher, please kindly bring the witness into
24 the courtroom so that the Prosecution can continue his cross-examination.

25 Prosecutor, before the witness comes in?

1 MR. MACDONALD: (Interpretation) Good morning, Mr. President,
2 your Honours. Yesterday, we sent to the two Defence teams a disclosure
3 which was made in the basis of courtesy because the e-mails were sent
4 yesterday, but the formal disclosure which comes through Ringtail or
5 eCourt has not yet been done. We sent the information about
6 Witness D02-176 at 5.54 p.m. yesterday. So I would like to reassure the
7 Chamber that your order has already been complied with by the
8 Prosecution. Thank you.

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
10 Mr. Hooper, please.

11 MR. HOOPER: Yes. I think the Prosecutor indicated he was going
12 to serve something that may, for some reason, affect our decision to call
13 (Expunged), but we've looked at this information and I don't see how he or
14 anyone else would have thought it would possibly affect us calling this
15 witness. We're calling the witness.

16 PRESIDING JUDGE COTTE: (Interpretation) Very well.
17 Yesterday, there was a disclosure made that will be officialised
18 today, but we have duly noted that information as well as the observation
19 of Mr. Hooper, who has indicated that that witness will indeed be called
20 to testify.

21 Court Usher, please bring in the witness.

22 MR. HOOPER: And I think I just mentioned a name that I shouldn't
23 have mentioned. Sorry.

24 (The witness takes the stand)

25 PRESIDING JUDGE COTTE: (Interpretation) Good morning,

Witness: Witness DRC-D02-P-0236/DRC-D03-P-0011 (Resumed) (Open Session)
Questioned by Mr. MacDonald (Continued)

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1 Mr. Witness.

2 THE WITNESS: (Interpretation) Good morning, Mr. President.

3 PRESIDING JUDGE COTTE: (Interpretation) I can see that you are
4 able to hear me.

5 Mr. Prosecutor, you can now continue with your cross-examination.

6 WITNESS: WITNESS DRC-D02-P-0236/DRC-D03-P-0011 (Resumed)

7 (Witness answered through interpreter)

8 Questioned by Mr. MacDonald: (Continued)

9 Q. (Interpretation) Mr. Ndjabu, we are going to start with Bunia,
10 that is before the 9th of August, 2002, in other words before your
11 departure from Bunia, considering that the town had been taken over by
12 the UPC forces. Were you living in Bunia at that time?

13 A. Yes, I was living in Bunia.

14 Q. Just before your departure, during the months prior to that
15 departure, were you married?

16 A. Yes, I was married.

17 Q. Another preliminary question. Now, during the months that
18 followed our departure from Bunia, that is, after August 2002, did you
19 have children?

20 A. After my departure from Bunia, yes, I had children.

21 Q. How old is the oldest?

22 A. You are asking me the age of my oldest son? I believe -- well,
23 he was born in 1991.

24 Q. So your eldest child was born in 1991?

25 A. If memory serves, I believe that is correct.

1 Q. Do you remember the exact date, the day and the month?

2 A. Generally speaking, in Africa fathers do not pay too much
3 attention to dates and months. That is why I cannot tell you precisely
4 the date and the month, but I do remember that it was in 1991.

5 Q. When you fled to Bunia, that would mean that you had at least one
6 child; is that correct?

7 A. You did not understand me. You asked me how old my eldest son
8 was, but the Bunia events took place in 2002. This means that at that
9 time I did not have only one child.

10 Q. I'm sorry, but it is possible that you misunderstood my question
11 but it was as follows: Prior to your flight from Bunia in August of
12 2002, did you have children?

13 A. My answer was yes.

14 Q. And my question now to you is: How many children did you have
15 before you fled Bunia in August 2002?

16 A. Before I fled from Bunia to Beni in 2002, I believe I had four
17 children who were alive, I believe. There is one who had died. This
18 means that I had four.

19 Q. But you are not sure whether you had four -- three or four?

20 A. I said I had four children because one had died. There were five
21 children, one was deceased; so I had four.

22 Q. And did you all leave together during the months before the fall
23 of Bunia in August 2002?

24 A. If you are referring to the children I would say no because I had
25 only two of my children with me. The other two were in my village living

1 with my father at that time.

2 Q. Was your wife living with you in Bunia at the time that Bunia
3 fell in August of 2002?

4 A. Yes, of course.

5 Q. I understand that your wife also left for Beni, is that correct,
6 that is after the fall of Bunia?

7 A. After the fall of Bunia -- well, I have to point out that there
8 was, first of all, a separation through divorce. On the day of the
9 fighting I was elsewhere, and it is for that reason that she, along with
10 one of my daughters, fled to a different destination, given that in my
11 house there were about 200, 300 people. There was a son who was there
12 who fled to the bush with pastor, and so I fled to Beni alone without my
13 wife; she stayed in Bunia with the two children.

14 Q. Are you referring to your eldest son at that time who stayed with
15 the pastor, that is the one who was born in 1991?

16 A. No, it is not him.

17 Q. So it was another son who was younger than the one born in 1991?

18 A. Yes. There are three of them so he was the third boy and he fled
19 into the bush with the pastor.

20 Q. What is that pastor's name?

21 A. Pastor Tchulu.

22 Q. Tchulu, how do you spell that and does he have another name?

23 A. His name is spelled T-c-h-u-l-u. He is from the
24 Protestant church CK 20.

25 Q. Did you say the Protestant church, the CK 20 Protestant church?

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1 A. Yes, that is correct.

2 Q. Did he have another name?

3 A. I do not know any other name for him. I know only that name. In
4 fact, he is my aunt's husband.

5 Q. Very well. In your testimony you, I think, referred -- I think
6 it was on Tuesday -- you said that Dr. Adirodu lived in the same
7 neighbourhood where you lived, the same subregion, I believe; is that
8 correct?

9 A. Yes, that is correct.

10 MR. HOOPER: (Previous translation continues) ... the reference
11 to -- just referred to in the transcript.

12 MR. MACDONALD: (Interpretation) I don't have the reference. I
13 was referring -- I was referring to my memory, but the witness did
14 confirm that there was a Dr. Adirodu who lived in the same subregion as
15 he did. He's confirmed that irrespective of whether it's in the
16 transcript or not.

17 PRESIDING JUDGE COTTE: (Interpretation) Yes. Well, everyone
18 can rely on their memory, but if you are referring to previous statements
19 made by the witness you -- it would be a good thing if you could refer to
20 the appropriate reference in the transcript. That is a discipline we are
21 trying to follow and you should try and respect it. That would make
22 everyone's life easier, but, in the meantime, you may proceed,
23 Prosecutor.

24 MR. MACDONALD: (Interpretation)

25 Q. Did Dr. Adirodu live with his wife as well? Was she present in

1 Bunia before the fall of Bunia in August of 2002?

2 A. Yes, of course.

3 Q. Living in the same neighbourhood, is it also true that

4 Mr. Mathieu Ngudjolo came to your neighbourhood, to your subregion,
5 before the fall of Bunia in August of 2002?

6 A. Yes, I had explained this. I said that I knew Mathieu Ngudjolo
7 at the time because he saw Dr. Adirodu. And as he was a student at the
8 technical medical institute in the general hospital, the general
9 reference hospital in Bunia, it's true that he did see Dr. Adirodu and
10 often he went to treat people in the dispensary in Zumbe.

11 Q. Did you know Mr. Mathieu Ngudjolo for a long time before you saw
12 him in your neighbourhood at the time when he saw Dr. Adirodu before
13 August 2002?

14 A. I said, frankly, before that I did not know Mathieu Ngudjolo.

15 Q. When did you first see Mathieu Ngudjolo? When did you first meet
16 him?

17 A. You're putting the same question in a different form. I told you
18 I saw him at that time often with Dr. Adirodu and while he went to treat
19 people in Zumbe.

20 Q. But are you in a position to be a little more precise? The
21 attack on Bunia is not challenged. It was the 9th of August, 2002, okay,
22 when Mr. Lopondo left Bunia. It was the 9th of August, 2002. My
23 question was: Did you -- you saw Mr. -- did you see Mr. Ngudjolo in your
24 neighbourhood? Was it January of 2002? Was it December of 2001? Was it
25 in April of 2002? How many months or how many years? That's my precise

1 question, Mr. Ndjabu.

2 A. When you're speaking of the year or the months, I can't remember.
3 But what I do know is that I saw him during that period when I lived in
4 the same neighbourhood as Dr. Adirodu. And as I said, we were there as
5 members of the RCD. Dr. Adirodu, too, was one of the *commissaires* at the
6 Presidency and I was there for RCD-K/ML. We were there. We lived in the
7 neighbourhood. It was our residential neighbourhood. Now, if you want
8 me to tell you the month, that would be rather difficult for me, but I
9 think it was during the last period that I often saw him because --
10 because between my house and Dr. Adirodu's house there was only, I think,
11 one house separating our two houses. So when Mathieu Ngudjolo went to
12 Dr. Adirodu's house there was -- he took the road which went past my
13 house to get to -- to go to Zumbe. There were two roads from my house,
14 but from my house I could see the roads and that's how I got to know
15 Mathieu Ngudjolo.

16 And, in addition, the driver, Dr. Adirodu's driver at the time,
17 was also my driver -- not my personal driver, but I worked with him for
18 the same employer.

19 Q. Excuse me for interrupting you. I didn't want to do that.
20 But -- because my aim is to let you to answer, but my question was very
21 simple. My question was: As from when -- and now you're giving us
22 information which I have not requested. So don't feel forced to give an
23 answer. Just give -- just give the answer that -- to the question that's
24 asked, that way we can advance more expeditely (* as interpreted). So
25 the question is: Did -- did -- when -- when -- when Mr. Ngudjolo visited

1 Dr. Adirodu, he went past your house and you had an opportunity to speak
2 to him and get to know him?

3 A. You're saying that. I didn't say that.

4 Q. Did you speak to Mr. Ngudjolo personally, the two of you speaking
5 together, prior to the fall of Bunia on the 9th of August, 2002?

6 A. Before the fall of Bunia in August of 2002, the night or the --
7 the evening before, we were stuck in Dr. Adirodu's house and there were
8 various women and children there present. And at that time I spoke to
9 Ngudjolo, yes.

10 Q. Is it correct that at the time of the fall of the Lopondo
11 government, when the governor fled, Mathieu Ngudjolo, himself, as far as
12 you know, fled to Zumbe, his home area?

13 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

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

15 We let the Prosecutor continue. He has put the same question
16 several times to the witness, irrespective of the clear answers given by
17 the witness. He insisted, he came back to the same question, and there
18 he is heading off in a direction which the witness did not take in the
19 witness's answer. He did not speak of that point which the Prosecutor
20 has just raised in his last question. I think it would be better to
21 proceed step by step and to respect the answers given by the witness.
22 You should not try and force things.

23 MR. MACDONALD: (Interpretation) With your permission,

24 Mr. President.

25 PRESIDING JUDGE COTTE: (Interpretation) I think the --

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1 Mr. Fofé, I think the Prosecutor is trying to get details from the
2 witness which he feels are important. And we see that with each
3 reformulation of the question, the witness is giving more information.
4 So I think it's not unreasonable for the Prosecutor to try and get the
5 details he feels are important for his case.

6 So you may proceed, Prosecutor.

7 MR. MACDONALD: (Interpretation) Thank you, your Honour.

8 Q. You say that the day before the fall of Bunia you spoke to
9 Mr. Ngudjolo. My question now is the following: Is it not a fact that
10 as far as you know, you knew that Mr. Mathieu Ngudjolo went back to the
11 region of Zumbé, Zumbé or the grouping -- the *groupement*?

12 A. I said that it was the evening before we were stuck because of
13 the UPC attack, they were firing. So we took refuge in Dr. Adirodu's
14 house. As far as the rest of his route, I don't know where he went
15 because I didn't see him the following morning.

16 Q. Witness, my question was: Did you have an opportunity -- or did
17 you have the possibility of speaking to Mr. Mathieu Ngudjolo? And you
18 said it was the day before. Is it also correct to say that that is not
19 the first time you had had a conversation with him? It wasn't just the
20 evening before you fled from Bunia; you also saw him -- you spoke to him
21 previously, not prior to that eve of the attack or eve of your flight?

22 A. I don't know.

23 Q. So according to your testimony, the first time in your life that
24 you had a conversation with Mathieu Ngudjolo was the day before you fled
25 from Bunia, so it would have been about the 8th of August, 2002; is that

1 your testimony?

2 A. I will repeat that you -- you put the same question to me
3 previously. You asked me whether Mathieu Ngudjolo visited me, whether I
4 chatted to him, and I said no. But just the day before the attack while
5 we were stuck in Dr. Adirodu's house, that's when I spoke to him, and I
6 think now you should have understood my answer clearly.

7 Q. Witness, could you explain to the Chamber then how you knew that
8 Mr. Mathieu Ngudjolo was going to Zumbe as a nurse if you didn't speak to
9 him? Strangely you seem to know what Mr. Mathieu Ngudjolo is doing,
10 where he's travelling, despite the fact that you haven't spoken to him.
11 Are you going to tell me that it was because you discussed this with him
12 the day before when you're under pressure on the point of being attacked
13 on Bunia on the 8th of August, 2002?

14 A. It's the same question which keeps coming back. I tried to
15 explain to you that I lived in the same neighbourhood as Dr. Adirodu as a
16 member of the RCD-K/ML, and if I see somebody in Dr. Adirodu's house then
17 or I see *his vehicle going past my house and I ask somebody and they say,
18 "No, it's them," where's the problem?

19 Q. Did a lot -- did a lot of people went to Dr. Adirodu's home? Was
20 that when you saw people going -- is that when you saw Commander Kandro
21 going past your home to go to Dr. Adirodu's house? Was it under those
22 circumstances that you saw him?

23 A. Commander Kandro had been invited by the governor, the military
24 governor of the time, Jean-Pierre Loponde, and it was during their
25 retreat that in the morning they went to Dr. Adirodu's house, Kandro did.

1 That was the Kandro I saw. That's what I know in relation to that
2 question. So Kandro had been in -- the late Kandro had been invited by
3 the governor together with the other combatants. I think he wanted -- he
4 wanted him to be in the RCD. There was not much understanding between
5 the governor and the Ugandans, so he had been the -- the Ugandan
6 authorities had asked that that combatant should come back. And it was
7 then one morning that I saw Kandro with his fighters going to say --
8 going to greet Dr. Adirodu. That's what I could say.

9 Q. Are you in a position to tell us when that visit was when
10 Commander Kandro visited Dr. Adirodu? Because I had the impression you
11 were saying it was at the same time as the fall of Bunia, but perhaps I
12 misunderstood you.

13 A. It was not at the same time as the fall of Bunia, but these
14 events occurred in the days following the fall of Bunia because Uganda
15 asked for -- for them to leave Bunia to go back to Beni, for Lopondo to
16 leave Bunia and that is -- it was difficult to get support and that was
17 the reason why he called it -- they called in Kandro.

18 Q. I'd like to be quite clear. Sometimes I'm a little hard of
19 hearing. So you said in the days following the fall of Bunia that you
20 saw Kandro at Dr. Adirodu's house. Now, that is a very clear answer.
21 You could sometimes give a straight yes or no answer if you want.

22 A. I said I saw Kandro before the fall of Bunia.

23 Q. How many days prior to the fall of Bunia, how many days?

24 A. I don't know the exact number of days or months, I don't know.

25 Q. Another person in Mathieu Ngudjolo's circle, Dr. --

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1 Commander Kandro who visited --

2 MR. FOFÉ: (Interpretation) It is not acceptable for the
3 Prosecutor to make this association Kandro-Ngudjolo. He put questions on
4 Ngudjolo. We thought that he'd finished. He started a series of
5 questions on Kandro, and now he's introducing an association
6 Kandro-Ngudjolo. It's artificial.

7 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, you
8 can't put yourself in the mind of the Prosecutor when he's making his
9 cross-examination. There are a series of questions about Mr. Ngudjolo
10 and the circumstances under which the witness may have met him once or
11 several times. We tried to follow him and listening to the questions of
12 the Prosecutor. There are questions on Kandro. I don't see why the
13 Prosecutor should not now talk about Kandro and Ngudjolo. We have with
14 us a witness who was in a position -- a position of responsibility, who
15 was in a position to enable the Chamber to better understand -- better to
16 understand certain of -- events. We should, I think, try and get as many
17 details from him as possible.

18 You may proceed, Prosecutor.

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

20 Q. Among Dr. Adirodu's circle -- if I understood correctly,
21 Dr. Adirodu lived very close to you in Bunia before the fall of Bunia on
22 the 9th of August, 2002. Is it also correct that there was a person
23 called Bahatsi John Talika (* phon) who visited Dr. Adirodu; is that
24 correct?

25 A. I don't know that person.

1 Q. You don't know the person who's going to become a commander of
2 the FARDC Coho Bahatsi? I think he was a dentist. Does that mean
3 nothing to you?

4 A. In any case, when I was in the same neighbourhood as Adirodu, I
5 didn't meet this Bahatsi, I don't know him, Bahati.

6 Q. Witness, in Dr. Adirodu's circle at the time or in the same
7 neighbourhood, in your neighbourhood, Francine Katanga, the sister of
8 Germain, she lived in the same neighbourhood, did she not?

9 A. I personally do not know this Francine Katanga you mentioned, but
10 I think -- I think you're referring to his -- the wife,
11 Mrs. Francine Katanga. I don't know Katanga's wife. I don't know. I
12 don't know this Francine at all.

13 Q. Let's come back to what you've just said. You said you didn't
14 know Germain Katanga's wife, you didn't know her name. Let me put you a
15 question, an open question: What is her name?

16 A. No, you asked me if Francine Katanga knew Dr. Adirodu at the time
17 while I lived there, and I said that at that time I didn't even know her.

18 Q. Because it is quite correct to say that you know that
19 Mr. Germain Katanga's wife is called Denise and you even saw her in
20 Makala prison visiting her husband. We agree, do we not?

21 A. You're saying the same thing. I didn't know -- I didn't know her
22 at the time.

23 MR. HOOPER: (Previous translation continues) ... assertions like
24 this, which are baseless, should not be made. Francine -- I'm sorry,
25 Denise, the wife of Germain Katanga, never saw him from the time he went

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1 to Katanga -- to Kinshasa until he came here to prison. It was only when
2 the Registry arranged a family visit that he ever met her. So to make
3 that assertion, what basis is the Prosecution misleading the witness?

4 MR. MACDONALD: (Interpretation) With your permission,
5 your Honour, I would like to make a brief comment. I think it is a
6 comment on objection which may be repeated.

7 PRESIDING JUDGE COTTE: (Interpretation) Please reply.

8 MR. MACDONALD: (Interpretation) Mr. Hooper cannot testify. He
9 cannot say on what basis because I know or I'm saying that
10 Germain Katanga's wife never visited Makala prison. The Prosecution is
11 making its cross-examination. The Prosecution can put questions to the
12 witness which could reasonably be based on the -- be deduced from the
13 cases -- from the case. We can look at the disclosures, the exculpatory
14 points coming under Rule 67. That's my first point.

15 Secondly, there are logical and reasonable inferences which could
16 be developed in the course of a cross-examination, and they are
17 suggestions made to the witness; and the witness is free to accept them
18 or to reject them. I'm not telling him that the earth is flat because we
19 know that scientifically that is impossible, but I'm asking him whether,
20 as far as he knows, Mrs. Denise Katanga visited her husband in prison in
21 Makala, irrespective of whether the Prosecution has any documents on that
22 subject or not. That is something which is reasonable.

23 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.
24 We are indeed hearing the cross-examination. The Chamber agrees with
25 what you have said. Everyone must play his role and only his role.

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1 Should perhaps avoid troubling the witness through questions you put
2 which he doesn't have time to answer. A while ago, there was an open
3 question about the name of Mr. Katanga's wife. You didn't give him an
4 opportunity to answer. I think if you want as much information as
5 possible from this witness for the benefit of the Chamber, I think you
6 should proceed as calmly as possible without upsetting him more than is
7 necessary. If you could tell us in passing on what you're basing
8 yourself to say that Mrs. Katanga visited her husband in prison in
9 Kinshasa, that might be useful as well. But, in the meantime, you may
10 proceed with your cross-examination which has proceeded normally so far.
11 It is for the witness to provide precise answers as possible, as you have
12 managed to do during the direct examination. Don't get lost in lengthy
13 answers. Try, as far as possible, to be clear and concise. This will
14 enable the Prosecutor to avoid asking you the same kind of question
15 several times over.

16 MR. MACDONALD: (Interpretation) Thank you, your Honour.

17 Q. Mr. Ndjabu, something has just been mentioned now. The purpose
18 of my questions is absolutely not to unsettle you. We are here seeking
19 the truth. We are here to help the Chamber to decide on the essential
20 issues in this case, but it may happen that I ask you questions that
21 appear to you difficult but that is normal. It's part of the
22 cross-examination. Pichou Iribi now.

23 Pichou Iribi, he -- I believe he lived in Bunia, did he not,
24 before the 9th of August, 2002?

25 A. Well, I don't know about that.

1 Q. As far as you know, did he have anything to do with Dr. Adirodu?

2 Did you ever see him visit Dr. Adirodu?

3 A. After the fall of Bunia, I did meet with Pichou Iribi on the road
4 where we were going to see another Papa. Now, I don't know whether
5 before that he had any dealings with Dr. Adirodu.

6 Q. Well, I want to be perfectly clear about my understanding of
7 this. There are two things in your answer and I want to elucidate them
8 with your help. You said that after the fall of Bunia you met up with
9 Mr. Iribi on the road. My question is an open question: Which road and
10 at what time, when? So a question relating to geography and to time;
11 where and when?

12 A. I remember it was very close to the residence of commissioner, an
13 RCD commissioner, and that is practically the Pensionnat. I don't know
14 whether you know how Bunia is laid out, but Pensionnat is some distance
15 away from the subregion. That is where I met Mr. Pichou Iribi.

16 THE INTERPRETER: Interpreter's correction: Pensionnat is the
17 boarding school.

18 MR. MACDONALD: (Interpretation)

19 Q. In the boarding school's neighbourhood, when did that happen?

20 A. I said it was after the fall of Bunia.

21 Q. Can you be a little bit more specific, Witness, so as to help us.
22 Was this one or two days? A whole week?

23 A. I can't give you that detail.

24 Q. So it was at a time when Loponde had already left Bunia, is that
25 right, after the fall; in other words, once Loponde had already fled; is

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1 that right?

2 A. I already said that.

3 Q. How many days did you spend in Bunia before you, yourself, left
4 Bunia once Lopondo had fled?

5 A. Once Lopondo had been deposed, I don't know how long I stayed in
6 Bunia but it could have been one or two weeks, the time required to send
7 us an aircraft to take us to Beni.

8 Q. One or two weeks when the aircraft was sent to you. That's your
9 answer. That is the time-period when you would have met up with
10 Mr. Iribi in the Pensionnat quarter?

11 A. You're mixing things up. I said that I met with Mr. Iribi
12 sometime after Lopondo had fallen, whereas I left for Beni perhaps one or
13 two weeks after Lopondo fell.

14 Q. You're quite right, I did make a mistake and I did confuse
15 matters. So did you know him before you met Mr. Pichou Iribi on the
16 road, did you know him before that?

17 A. I knew Mr. Pichou Iribi because we were at the seminar
18 (* as interpreted) together in Fataki.

19 Q. So you went to the same school or you went to the same seminary;
20 is that right?

21 A. No. We were together at the seminary, but I entered the seminary
22 before then.

23 Q. Yes. So you're slightly older than Mr. Iribi, you're almost 40
24 now and Mr. Iribi is younger than you; is that right?

25 A. Yes, I think Iribi is a younger brother.

1 Q. So at Fataki, at the seminary, did you play football? Did you
2 have conversations? Did you fraternise, as you belonged to the same
3 seminary in Fataki before you went to Bunia for your secondary education?

4 A. Your question isn't formulated rightly. The secondary education
5 was indeed the seminary. We didn't go to any other secondary education,
6 me and Pichou Iribi. We were together at the seminary and that -- there
7 I was his elder, and he, too, played football like me, that's true. We
8 played and that's it.

9 Q. Everybody plays football in Ituri, don't they? This is the main
10 sport. That's why I asked this question because that's the best way of
11 mingling with people, isn't it?

12 A. Well, I don't know about that. I don't know whether football is
13 responsible for people mingling, I don't think so. I don't believe that
14 is the case because if football enabled people to mix, there wouldn't be
15 insults being thrown at one another. For instance, insults to
16 Zidane (* phon).

17 Q. I'm going to ask you questions about Charif, but perhaps you can
18 pronounce his last name better than I can. I'm not very good. Whether
19 we're talking about Swahili, Lendu, Lingala, I'm not very good at that.
20 So perhaps you could tell us how Charif's last name is pronounced,
21 Charif. I'm talking about the co-detainee.

22 A. Actually, I only know him by the name Charif. Sometimes he's
23 called Spacharif (* phon) and another name I know is the family name, his
24 father's name, in other words, and that is Dz'na, Dz'na. If you wish I
25 can spell it for you. D-z-'-n-a.

1 Q. Charif, well you know him by his father's name; is that right?
2 Now, this Charif or Charif-- I'll say Charif. Now, before the fall of
3 Bunia in 2002, did you see him go to Dr. Adirodu's home at the time when
4 you, yourself, were living in that neighbourhood?

5 A. All I can say is that I did see him once at Lopondo's place. And
6 I think that day there were several of us. That was the time I saw
7 Charif at Lopondo's place because I practically didn't know him.

8 Q. Was that the first time you met that Charif?

9 A. Before that, I don't remember ever having known Charif. I got to
10 know him afterwards. I did know his father well before I knew him
11 because Charif, in practice, didn't grow up with his parents. He was an
12 Aru back there and that's why I didn't know him.

13 Q. Now, just out of curiosity, why is it you know him more under the
14 name of his father's name? You didn't know him --

15 MR. HOOPER: (Previous translation continues) ... question where
16 in the witness's testimony has he said that? He said he knows him as
17 Charif and then he was asked what other names he knows him by. He said
18 he's sometimes called Spacharif, and we didn't get a spelling for that,
19 by the way, and he has a family name -- knows his family name, his
20 father's name.

21 PRESIDING JUDGE COTTE: (Interpretation) We're around the
22 superficial here, so let's try and do something about this.

23 MR. MACDONALD: (Interpretation)

24 Q. So Charif, before this meeting at the -- Lopondo's residence --
25 well, you hadn't met him in Bunia. Is that what you are testifying here?

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1 A. Well, at least I don't remember meeting him prior to that.

2 Q. When you were living in Bunia in that same neighbourhood before
3 the fall in the -- Dr. Adirodu's environment, in his circle, was there
4 someone else who was also living in that neighbourhood and who had
5 several people at their home under the name of Mateso Nyamwani (* phon)?

6 A. I don't know that name. I don't know who that person is.

7 Q. Mr. Mbusa Nyamwisi, he went to Sun City in April 2002 for
8 discussions on peace, but when he returned from Sun City, as far as you
9 know, he never returned to Bunia, did he, he went to Beni; is that
10 correct?

11 A. I don't remember the route that Mbusa Nyamwisi took at the time.

12 Q. With the -- is there any particular reason that you don't
13 remember this?

14 A. What does that mean?

15 Q. Before he went to Sun City, Mr. Nyam -- Mr. Mbusa Nyamwisi, he
16 was in Bunia, wasn't he?

17 A. Before he went to Sun City for the inter-Congolese discussions, I
18 said that I didn't know what route he took. But if what you're asking me
19 is where the headquarters of the RCD was, perhaps -- but say which route
20 Mr. Mbusa Nyamwisi took, that would be very difficult. We should -- you
21 should perhaps ask someone else who is better placed. It's difficult for
22 me.

23 Q. You said when you met with Mr. Iribi on the road he was with what
24 you referred to as a Papa. Who was that Papa?

25 A. No. You're the one saying this. I didn't say that.

1 Q. Sorry then, I probably misunderstood you. But when you met with
2 Mr. Iribi in the Pensionnat neighbourhood on the road, was he alone or
3 was he with other people?

4 A. Let me just remind you of this. I said that I met Iribi who was
5 going to visit a Papa in the Pensionnat neighbourhood.

6 Q. Who was the Papa he was going to see?

7 A. He was going to see Papa Kalimi Nyasi.

8 Q. Sorry, Nyasi, what did you say? You said the name a bit too
9 fast. I didn't understand. Could you repeat it, please?

10 A. Pichou was going to see Kalimi Nyasi. I can spell it.

11 Q. Yes, that would be helpful. Kalimi is okay but the Nyasi part.

12 A. It's not Nyasi, it's N-y-a-s-i, Nyasi.

13 Q. And that was a relative of Michel Kalimi's, wasn't it? That
14 person was a relative of his.

15 A. I didn't understand. Can you repeat your question?

16 Q. I'm sorry. If I suggest to you that this person is also known as
17 Michel Kalimi, am I right?

18 A. Yes, I believe Kalimi is also called Michel, one of his Christian
19 names is Michel.

20 Q. Could you tell us who Michel Kalimi is just for the -- just to
21 help the Chamber, a brief description of who he was.

22 A. Michel Kalimi was an old -- an elder person, a Papa. He was a
23 Member of Parliament at the time, and at that time he was living in Bunia
24 and now he is deputy for the Orientale province. That is who Kalimi is.

25 Q. And what is his ethnicity?

1 A. He is an Ngiti. That's his ethnic origin.

2 Q. He is considered to be an eminent person, an elder, a wise man;
3 is that right?

4 A. I believe that indeed he was the deputy spokesman for the
5 community.

6 Q. You're talking about the ethnic community, the Lendus north and
7 south, or just the Ngitis?

8 A. As I said last time, you have to avoid confusing these things.
9 There's only one ethnic group. And as regards their organisation, there
10 is one spokesman at the time. Thewi Bati (* phon) was the spokesman for
11 the Lendu community and Kalimi was his deputy, deputy spokesman. Perhaps
12 things changed later on, I don't know, but that's how it worked at the
13 time.

14 Q. Thewi Bati, but he is the same man for who you worked for a few
15 months at his commissioner's office in Bunia?

16 A. Yes.

17 Q. Well, we'll have to get on because we're not going very fast. I
18 want to take you to Rwakitura now and discuss the way in which the FNI's
19 name was adopted. Okay.

20 You mentioned - I don't have the exact reference to the
21 transcription, but please correct me if I'm mistaken - you said that the
22 name, FNI, appeared for the first time in the month of November
23 initially, and later you said -- actually, on the 20th of November, 2002.
24 Now, when I suggest to you the 20th of November, 2002, do you agree with
25 that?

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1 A. I don't understand your question. Could you repeat it so that

2 I'm perfectly clear on this.

3 Q. Is it a fact that the first time that the name FNI came out that

4 it appeared was on or around the 20th of November, 2002?

5 A. Yes, and so ...

6 Q. That was my question. That was my question and is your answer

7 yes?

8 A. I already answered that.

9 Q. You mentioned the fact that you went on a trip with some of your

10 colleagues to Rwakitura which is the farm that belonged to the

11 Ugandan President, Mr. Museveni --

12 MR. HOOPER: (Previous translation continues) ... reference,

13 where my friend makes a point of reference like this in accordance with

14 the manner which we've been conducting these questions.

15 MR. MACDONALD: (Interpretation) Let me formulate this again and

16 I won't make any reference to the transcript. I'll just ask a direct

17 question, if I may.

18 Q. Witness, is it correct to say that together with a delegation of

19 six people, six people in all, you went to Rwakitura in the month of

20 November 2002 to meet with President Museveni?

21 A. Well, you have corrected your question. You were saying that I

22 went to see the Ugandan president with my colleagues, but that wasn't so.

23 It was with a delegation that did not -- that was not part of FNI because

24 that would have made an association between the meeting with -- at

25 Rwakitura and the name FNI, but that's not true.

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1 Q. We'll come back to all this and I can see that you are following
2 where I am coming to very clearly.

3 MR. MACDONALD: (Interpretation) Now, for geographic reasons I'd
4 like to apologise to my eminent colleagues before they jump up, but what
5 I would like to do is just show a Google map, if I may, where you can see
6 Rwakitura, because Rwakitura, as far as I understand, is not a city, it's
7 the name of a farm. And I'd like it to be clear in geographic terms and
8 I apologise to my eminent colleagues because I didn't make it available
9 to them earlier. I can give them a hard copy right now and I am sure
10 that they will appreciate the quality of this map. I can give a copy to
11 all the colleagues and I also have copies, of course, for the Chamber.

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

13 Please, first of all, hand out the maps and then I'll listen to
14 you.

15 Mr. Hooper, go ahead.

16 MR. HOOPER: Yes, I don't see why we couldn't have been provided
17 this, in one form or another, before 10.30 this morning. If I'm going to
18 be impressed by the quality of this map it would be the first
19 Prosecutor's map that has impressed me in that manner. I've got no
20 objection to it at all, but I would respectfully ask my friend not to
21 lose the witness. He introduced this topic as Rwakitura, and, well as we
22 know the case, I think it took some of us a little while to work out what
23 we were talking about in the context of naming of the FNI. And it took
24 this witness to correct him and perhaps assist us as well.

25 So are there other courtesy copies, perhaps, for example, the

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1 accused might like to see this map and I'll give over mine, but that then
2 means I don't have one and they can share mine, but it's not really
3 adequate, may I say.

4 MR. MACDONALD: (Interpretation) Sorry. I just handed out a few
5 copies.

6 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, we are
7 all aware that it would have been preferable for this document to have
8 been produced before so that you could have taken a look at it and that
9 the cross-examination could have been more fluid. It has been brought
10 out at this point. Apparently, it will help all of us and specifically
11 the witness to better understand. Do you see any major objection to
12 that?

13 MR. FOFÉ: (Interpretation) No, I don't see major obstacle to
14 that, but I do regret, as you just pointed out, that this has been
15 presented at such a late stage. I would like this to be recorded as a
16 precedent.

17 PRESIDING JUDGE COTTE: (Interpretation) So, in other words, a
18 precedent that you're against, probably in the case of the Prosecutor,
19 but would like to be able to use for yourself, perhaps?

20 MR. FOFÉ: (Interpretation) Well, if it does happen on our
21 side, we certainly hope that the Prosecutor won't forget what happened
22 today.

23 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, you have
24 the memory of an elephant, don't you?

25 Does everyone have that map? Mr. Ngudjolo? Mr. Katanga? You

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1 will be handed copies.

2 Does the witness also have the map?

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

4 PRESIDING JUDGE COTTE: (Interpretation) Please continue,
5 Mr. Prosecutor.

6 MR. MACDONALD: (Interpretation) Maybe a copy can be displayed
7 on the screens. It is not confidential.

8 Do you have another copy or maybe the copy of the witness? I
9 have another one.

10 PRESIDING JUDGE COTTE: (Interpretation) Let us at least
11 remember to produce any materials in the -- at the appropriate time.

12 COURT OFFICER: (Interpretation) Please press Docu Cam Witness
13 in order to view the document.

14 PRESIDING JUDGE COTTE: (Interpretation) The Judge, please.

15 JUDGE VAN DEN WYNGAERT: (Interpretation) I wanted to say Google
16 maps have to be taken with a pinch of salt. I remember that recently in
17 the ICJ in the case between Nicaragua and another country -- Costa Rica,
18 there was a problem that arose.

19 MR. MACDONALD: (Interpretation) I'm fully aware of that,
20 your Honour, but this is not an issue of the demarcation of borders here,
21 so we cannot refer to Google maps in that context because it is a
22 different matter all together. It is simply in an effort to locate
23 certain areas that may have been mentioned by the witness so that he
24 should try and indicate to us where Rwakitura is.

25 PRESIDING JUDGE COTTE: (Interpretation) Very well,

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1 Mr. Prosecutor, we know your objective so please proceed.

2 MR. MACDONALD: (Interpretation)

3 Q. Mr. Witness you can see a small bubble there towards the south,
4 south-west and it is marked A. Is that the area where
5 President Museveni's farm is located? It is called Rwakitura but it is
6 not in a village. It is there; is that correct?

7 A. No, I cannot see Rwakitura. You are the one saying that.

8 Q. I am sorry. I did not hear what you said.

9 A. You are the one saying that Rwakitura is here but I cannot see it
10 there.

11 Q. Mr. Witness, do you agree that Rwakitura is not a village, it is
12 not a town, but it is the name of Mr. Museveni's farm?

13 A. Yes, it is a farm, but I am not a specialist in Ugandan
14 geography. I know that it was a farm in Uganda, but if you tell me to
15 locate it here I won't be able to know so -- I wouldn't be able to do so.

16 Q. Why is that? Are you unable to understand geographical maps or
17 is there another reason?

18 A. I am not very familiar with the geography of Uganda.
19 Furthermore, I went to Rwakitura only once, and even if you ask me today
20 to lead somebody or to drive somebody to Rwakitura, I would no longer
21 know where to go. It is true that on the map there is a red bubble and
22 you are saying that that is the farm, but I do not know Ugandan
23 geography, so how do you expect me to tell you whether that is Rwakitura
24 and how do you, yourself, know that it is Rwakitura?

25 Q. Is it not correct that Mr. Museveni's farm is in the south-west

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1 of Uganda? And we are going to find the -- we found the reference in
2 your testimony.

3 A. In relation to the map, I can say that Rwakitura is not shown
4 here, but I know that the geographical location, as far as I am
5 concerned, was not very important. And in my testimony, I said that
6 President Museveni had to receive us in Gulu not even in Rwakitura. So I
7 do not have many observations to make about that.

8 Q. In any case, can you tell us where Gulu is located on that map,
9 Mr. Witness?

10 A. If it is written, then we will see it, but let us just find out.

11 I can see Gulu.

12 Q. According to you is Gulu indeed in the Atchuli territory in the
13 north of Uganda at that specific location?

14 A. Well, I think so but I don't know much about all the Atchulis
15 that you are talking about.

16 Q. Can you indicate with a dot on the map so we can see where you
17 locate Gulu?

18 MR. MACDONALD: (Interpretation) Can the witness be given a
19 marker, please.

20 PRESIDING JUDGE COTTE: (Interpretation) Yes, of course.

21 MR. MACDONALD: (Interpretation)

22 Q. I understand that you can see Kampala also very well on the map.
23 Can you tell us where it is.

24 A. Yes, I can see Kampala.

25 Q. Please circle it for us, the name "Kampala."

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1 When you were in Uganda for your meetings with
2 President Museveni, you met with him either in Gulu, Kampala, or
3 Rwakitura, is that correct, that is during your entire political career?

4 A. Please repeat the question.

5 Q. What is confusing you, the term "political career" or the
6 locations?

7 A. The fact that you ask several questions at the same time. You
8 asked about the meetings of Rwakitura, Kampala, and others, so please
9 elaborate.

10 Q. During your entire life -- let us keep aside Rwakitura. Talking
11 about all your meetings with President Museveni, it was either in Gulu,
12 Kampala, or in his farm Rwakitura; is that correct?

13 A. That question is still ambiguous. I met Museveni only in Kampala
14 and Rwakitura, of course, but also once in Gulu.

15 Q. That was my question, indeed, Mr. Witness. There was no trap
16 there. I simply asked you whether you met him in those three areas. Did
17 you meet him anywhere else other than in Gulu, Kampala, Rwakitura?

18 A. No.

19 Q. Very well.

20 MR. MACDONALD: (Interpretation) I would like to ask for an EVD
21 to be assigned to this document.

22 PRESIDING JUDGE COTTE: (Interpretation) Court Officer.
23 (Trial Chamber and Court Officer confer)

24 PRESIDING JUDGE COTTE: (Interpretation) It is the annotated
25 document that was displayed on the screens, that is, it was annotated by

Witness: Witness DRC-D02-P-0236/DRC-D03-P-0011 (Resumed) (Open Session)
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1 the witness?

2 MR. MACDONALD: (Interpretation) Yes, indeed. I'm sorry.

3 COURT OFFICER: (Interpretation) Thank you, your Honour. The
4 map that was marked by the witness will be EVD-OTP-00250.

5 MR. MACDONALD: (Interpretation) Thank you. That document can
6 be taken away from the overhead projector.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes. Please proceed.

8 MR. MACDONALD: (Interpretation)

9 Q. Before the founding - and maybe that is not the appropriate word.
10 After the first use of the words FNI, I believe you had gone with a
11 delegation of six persons to meet with President Museveni, that is,
12 before that; is that correct?

13 A. I believe so.

14 Q. Can you once again tell us who were the members of that
15 delegation, what are the names of those six people, that is, the five
16 other people in addition to yourself.

17 A. If I remember correctly, we went to Rwakitura in a group
18 including myself, Jérôme Ndalo, Muka Safari, there was another person
19 known as Mawa, as well as René Ndjabu, I believe. There is another
20 person that I can't remember.

21 Q. Was it Lobho?

22 A. Yes, Augustin Lobbo.

23 Q. Just to summarise, there was Jérôme Ndalo, Muka Safari,
24 René Ndjabu, a certain Mawa, M -a-w-a, is that correct, and
25 Augustin Lobbo. Just for the record, given that it is the first time

1 that this name appears, let us leave aside Augustin, how do you spell

2 Lobbo?

3 A. Augustin Lobho is spelled L-o-b-b-o, Lobbo; and his second name

4 is N-y-i-n-g-a, Nyinga, Augustin Lobbo Nyinga.

5 Q. Mr. Ndjabu, I put it to you that this meeting with

6 President Museveni took place on the 19th of December, 2002, and it was

7 on a Tuesday, and I will continue. On Sunday, 17th -- correction, it was

8 19th November, not December. And I will say that on the 17th there was a

9 meeting between the RCD and the UPC, the RCD-K/ML and the UPC, and they

10 split Ituri into two -- into two parts, the north and the south, and each

11 of them had one part. Do you agree with that suggestion that I have

12 made?

13 A. If the UPC and the RCD split up Ituri between them in relation to

14 the meeting in Rwakitura, I believe your intention was to point out that

15 there is a contradiction between the dates; is that correct? Well, if

16 there was a problem between the RCD-K/ML and the UPC, I believe I already

17 spoke about that. It is not new.

18 Q. Mr. Witness, I would like to reassure you. My intention here is

19 not to confuse you, to get you to contradict yourself. I'm simply

20 presenting facts for the benefit of the Chamber. We are trying to be

21 clear about the meeting. I am trying to jog your memory by giving you

22 dates and other facts. Obviously you are not compelled to agree with me.

23 You can disagree, but if you agree with what I am saying then the Chamber

24 would appreciate knowing that what I'm suggesting to you is the true

25 situation. That was the purpose of my question. I want to reassure you

1 about that.

2 So, once again, I'm going to ask you my question. You have
3 confirmed that there was a delegation of six people whose names you have
4 given and you went with them to meet President Museveni in Rwakitura. My
5 question was simply this: To your knowledge, two days before you
6 arrived, or even one day before you arrived, there was a meeting between
7 the RCD-K/ML, the UPC, and President Museveni. And at that time Ituri
8 was split into two, north Ituri for the UPC and south Ituri for the
9 RCD-K/ML. So there was a demarcation made there. Ituri was shared
10 between those two organisations and your delegation. When you learnt
11 about that two days later, you were not very happy about that because in
12 Kpandroma you would become the subjects of the UPC, you would come under
13 the authority of the UPC?

14 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper.

15 MR. HOOPER: Well, that was quite a lot of information. Wouldn't
16 the appropriate question be: Did he know about this meeting and did he
17 know about this division, and the consequence, therefore, that it had
18 rather than the assertion? I don't know where this has come from.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, I believe
20 you are able to sift through what the Prosecutor has said, and you are
21 able to answer his question as to whether there was a meeting on the
22 17th of November to divide Ituri; is that correct or not? What do you
23 think about that? Please answer.

24 THE WITNESS: (Interpretation) Very well. I remember only one
25 thing. There was a statement over the radio which was made by one of the

1 members of the RCD of Mbusa Nyamwisi, and he said that the RCD was no
2 longer bound by the agreement that had -- they had just signed in
3 Kampala, that he was not in agreement with that accord. I also remember
4 that at the hotel one evening there was another member of the RCD who
5 came and repeated the same thing to us. If I remember correctly -- well,
6 I can no longer remember his name, Boambebe (* phon), well, I am not
7 sure, but I will remember the name. He came and told us that he had
8 heard we had been there and as we had heard over the radio the signature
9 of the RCD on that agreement was null and void. And now I remember it
10 was Kakolele who visited us in the evening and told us that. I do
11 remember this, but as to the substance of that agreement, that is, the
12 division of Ituri into two parts, well we were not aware of that.

13 Q. Mr. Witness, during that meeting at Rwakitura, is it correct to
14 say that at one point Augustin Lobbo confronted President Museveni about
15 that agreement, that is, that division of Ituri into two parts? You do
16 remember that; is that correct?

17 A. That was not the context. Augustin Lobbo had reacted to what
18 Museveni had said, and this is what Museveni had said. He said that the
19 international community was asking him to leave Ituri, that he should
20 withdraw. But the people of Ituri who were not in agreement with the
21 UPC, what did they think about their future? And that is why
22 Lobbo Nyinga confronted him by saying that during the Berlin Conference
23 Africa was divided, was partitioned, without Africa being present. He
24 added that once again the international community handed over Ituri to
25 you and now they are saying that you should hand it back to Congo. That

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1 is not a good thing. I remember that that is the reason why Lobbo Nyinga
2 reacted. It was after that that President Museveni nicknamed him the
3 Berlin Conference. That was the context. He did not mention the fact
4 that the RCD-K/ML and UPC had shared Ituri between them. He never
5 mentioned that.

6 Q. But that was known at the time of the meeting with Museveni when
7 Augustin Lobbo mentioned the Berlin Accord, and I can quote to you
8 precisely what he said, if you want?

9 A. To my knowledge, that is what was said in my presence. If they
10 went to another meeting with Lobbo Nyinga, then I'm not aware of that.

11 Q. Let me read - and it is in English --

12 MR. HOOPER: This is --

13 PRESIDING JUDGE COTTE: (Interpretation) (No interpretation)

14 MR. HOOPER: I'm not entirely clear what is going on. I get to
15 my feet because it seems to me that what my friend's now going to put is
16 quoting something that's not from this accused. Is that right? Is he
17 going to try and put in his question some statements from some source
18 that's not the accused and how can he justify that?

19 MR. MACDONALD: (Interpretation) With your leave.

20 PRESIDING JUDGE COTTE: (Interpretation) At the same time,
21 Mr. Prosecutor, in light of the answer that the witness has just given,
22 which was really well thought out, do you think it is necessary to go
23 beyond that to ask him what he knew specifically about that partitioning
24 of Ituri, and particularly since you want to mention documents that
25 apparently the other parties are not aware of? Be brief and be careful

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1 because we have only three minutes left before the break.

2 MR. MACDONALD: (Interpretation) What I'm proposing,
3 Mr. President, is that the witness should be allowed to go out and we
4 should take those three minutes to give you those references. The
5 Chamber can look at the documents. It would be preferable that that is
6 done in the absence of the witness.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes, we will break for
8 30 minutes. Mr. Witness, you can address the Court.

9 THE WITNESS: (Interpretation) Thank you, your Honour. I wanted
10 to make a request. If during the break it is possible for me to meet
11 with my lawyer, then I would like to do so.

12 PRESIDING JUDGE COTTE: (Interpretation) I believe that is
13 possible at all times. I will now tell the Court Officer.

14 And, Court Officer, if the lawyer designated by the Registry is
15 physically available, then the witness should be able to meet with him;
16 and if that is not possible then he should be able to contact him by
17 telephone.

18 MR. HOOPER: I know that Mr. Mabanga is in the building and in
19 fact on our way out our paths, I think, may cross. So if I see him I'll
20 certainly -- at least I knew where he was an hour or two ago and he told
21 me he was remaining here certainly through much of this morning.

22 PRESIDING JUDGE COTTE: (Interpretation) Very well. Let us have
23 the usher accompany the witness outside of the hall and you will be
24 allowed to meet with your lawyer, Mr. Witness.

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

1 (The witness stands down)

2 PRESIDING JUDGE COTTE: (Interpretation) We have one minute of
3 recording left.

4 MR. MACDONALD: (Interpretation) On the list of the Prosecutor,
5 that is the first list, it is item number 5 and that is
6 DRC-OTP-0126-0478. It is item number 5 and I would suggest that the
7 Chamber look at that document. Maybe we can come back before bringing
8 back the witness and then there's some information that will enable the
9 Chamber to understand.

10 PRESIDING JUDGE COTTE: (Interpretation) Very well. That is
11 important. It is a document that was disclosed in a timely manner and
12 you are all invited to look at it during the break. So we will suspend
13 this hearing and we will reconvene at 11.30 a.m. Court is suspended.

14 Recess taken at 11.01 a.m.

15 On resuming at 11.33 a.m.

16 (Open session)

17 COURT USHER: All rise.

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

19 Perhaps before the witness comes back in.

20 Prosecutor, the document DRC-OTP-0126-0478, is this one of the
21 documents which the Chamber examined in the context of what was called a
22 bar table motion in our decision 2635 of the 17 of December, 2010,
23 paragraph 36 had set aside this document. We had not accepted it. We
24 felt it did not have evidentiary value in as far as it appeared that this
25 document drafted by Augustin Lobbo Nyinga only reflected his position.

1 When the witness comes back in, you can present -- you can show him the
2 cover page of the document to see whether he's familiar with the
3 document, whether it's a document he is familiar with.

4 You have the floor, Mr. MacDonald.

5 MR. MACDONALD: (Interpretation) I didn't want to interrupt you,
6 your Honour. I can wait until you're finished.

7 PRESIDING JUDGE COTTE: (Interpretation) No, please go ahead if
8 it is to shed additional light on the matter.

9 MR. MACDONALD: (Interpretation) Before showing him the
10 document, your Honour -- I will get there. Obviously I will reach that
11 point, but before I do so, could I crave the indulgence of the Court
12 because the aim is to identify the content of what the witness -- what
13 the witness himself was witness to at the time, because the document is
14 not drafted by the witness himself. I'm trying to authenticate the
15 content of the document. In summary, that is what I am attempting to do,
16 but before I do that, there are several questions I would like to look at
17 and at the same time - here's where I crave the indulgence of the
18 Chamber - at the same time I'm establishing the time sequence for the
19 benefit of the Chamber on the -- the choice of the name, to begin with,
20 and then the -- the setting-up phase in Kpandroma and Arua. In his
21 testimony the witness gave a certain time order which I'm putting to you
22 is not entirely correct. And when I told the witness -- I was not trying
23 to trick him, I'm trying to assist the Chamber in ascertaining the timing
24 which will lead us to Beni, to Kpandroma, to Arua, in autumn of 2002.
25 That is the aim of my questions, and, at the same time, there is the

1 content of the document, yes, but there's also the chronology, the --
2 test the witness's memory of dates which may affect his credibility. But
3 the main aim is to clarify the chronology which is very complex. That is
4 what we are endeavouring to do and we will have to see. I understand
5 that my colleagues -- my distinguished colleagues may object, but this
6 may lead the Chamber to accept the document and give it an EVD. We
7 haven't reached that point yet. Before showing him the document I will
8 have to put several other questions to him so that he is then, perhaps,
9 confronted with the inevitable, but it is the witness who will say this.

10 MR. HOOPER: Yes, I'm still not entirely clear of the exercise it
11 is sought to conduct using this document. First of all, yes, as the
12 Chamber has noted, this is a document that was originally part of the bar
13 table motion sought to be introduced as evidence by the Prosecution, and
14 that particular portal was denied to the Prosecutor for the reason that
15 the Chamber felt it had lack of probative value, lack of evidential
16 value.

17 Looking at the document itself, it is not a document that
18 certainly at the moment has any connection with this accused -- I'm
19 sorry, this witness. It is clearly a document that appears on the front
20 cover to have been authored by Augustin Lobbo Nyinga, and it is perhaps
21 significant of course in looking at a document such as this to see that
22 it is dated in Kinshasa in January 2005, that's three years after the
23 events.

24 And I haven't had time this morning to remind myself of all the
25 contents of the document, but I've had a look at the page that my

1 friend's looking at and both the French and the English, in my
2 submission, are not themselves clear. Now, my friend's has indicated
3 that his purpose, as I understand it, to put this document to the witness
4 subject to some further questioning that he intends to do is in order to
5 establish a chronology and -- certainly.

6 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, with your
7 permission we have not yet -- perhaps we will never reach the question,
8 but we are not yet at the question as to whether this document is going
9 to be - what word did you use? - included in the file -- I don't know
10 what -- tendered as evidence. Sorry, forgive me, I have forgotten the
11 word. We have not yet reached that stage, if I've understood correctly
12 from the end of the previous hearing where it is -- stage where a
13 question may be put which would be based on a section of this document.
14 The chronology of everything that occurred when the FNI was and the FRPI
15 was set up, then going from Bunia to Beni, all that is very important for
16 all of us and the witness has not always been very precise. One could at
17 first sight criticise that but these are events which happened a long
18 time ago. So anything which would help him to be more specific about the
19 timing would be good for all of us.

20 Now, if the Prosecutor is looking at things from this point of
21 view, it seems to me given the questions you're considering putting if
22 you're going to refer to this document you should firstly ask the witness
23 whether he is familiar with the document; and if he is familiar with the
24 document, I think -- we think it should be possible to read out the
25 section you want to read to him. If the witness knows nothing about this

1 document, then we must be fully aware that any comments he could make
2 about this document would be of only relative importance to us. So if
3 you agree, we can now bring the witness back in. You will act
4 cautiously. This is a document which in the past was considered to have
5 no probative value, and then if there is a request from you to tender it
6 as evidence then the parties, the Defence if they see fit, will take the
7 floor again. But, please, let's not participate events.

8 Professor Fofé.

9 MR. HOOPER: Sorry, could I just very briefly come to this.
10 Inasmuch as - and we recognise chronology is important. The problem here
11 is that this particular witness has his own chronology and what I would
12 object to is trying to supplant it with another chronology. I don't
13 think anything I'm going to say, by the way, will, as it were, cast any
14 difficulties, I hope. I see the witness who briefly entered has now
15 exited. So there is a chronology that the Prosecution say they are
16 seeking to establish. What is this chronology? I mean, are they trying
17 to assert this chronology is correct? If they want to do that, they
18 should have called this person as a witness. They're not. Are they
19 trying to supplant any chronology provided by this witness by this
20 account? Well, clearly they cannot. Are they trying to introduce a
21 different account of events to the account that's recollected by this
22 witness through -- using this statement? In my submission, they cannot
23 and there is a clear decision by this Chamber in respect of that which I
24 submit is appropriate -- can appropriately be applied to this kind of
25 this situation, that is, the oral decision of the 22nd of February, 2010,

1 when you were dealing with Witness P-250 at transcript 105, pages 33
2 to 44, which essentially it was decided that the witness statement of
3 others cannot be put to a witness in this way; and that's effectively
4 what's being done. And there, of course, I well appreciate my friends in
5 cross-examination. He has to be very careful also of over-leading
6 questions in terms of things like dates and the rest, as I'm sure he will
7 aware. I'm sorry to have gone on a little bit further about that, but I
8 felt as well that we stated our position, I hope briefly, in respect to
9 our general objections.

10 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, I will
11 give you the floor, of course, but things need to be clear. I think the
12 Prosecutor is a professional, he doesn't intend to impose a chronology on
13 the witness which is not the witness's chronology.

14 Prosecutor, on the basis of the witness's previous declarations
15 you should, if you see fit, ask him to specify certain points of his
16 chronology on the basis of his previous statements. Are we clear about
17 that? Do not impose on him - but I can't imagine that was your
18 intention -- don't impose the chronology of Mr. Lobbo Nyinga, if he's
19 provided one. It is on the basis of the witness's own statement that you
20 can ask him to provide the necessary clarification.

21 Professor Fofé, briefly, please.

22 MR. FOFÉ: (Interpretation) Thank you, your Honour. This
23 question is very important. It's a question of principle, your Honour.
24 We have before us a document which is not written by the witness who is
25 now testifying. And so, your Honour, with all due respect, the Defence

1 would state that this document cannot be presented to Mr. Ndjabu. If the
2 Prosecutor has questions to put to the witness in particular on the
3 chronology of events, he should put them directly to the witness. He
4 does not need to base himself on this document. You will have noted,
5 your Honour, that when the Prosecutor spoke, he said that his aim was to
6 authenticate the content of this document. He cannot authenticate the
7 content of this document with this witness, who is not the author of that
8 document.

9 PRESIDING JUDGE COTTE: (Interpretation) I'm --

10 MR. FOFÉ: (Interpretation) May I finish, please, your Honour.
11 We don't know for what purpose this document was written by its author,
12 we do not know that. The document contains allegations which are
13 incorrect. In any case, your Honour, what we would ask the Chamber is
14 that the Prosecutor, if he has some objective in mind, namely,
15 establishing the chronology, he should put direct questions to the
16 witness rather than referring to this document, which as you said had
17 already been set aside in your decision on the bar table motion.

18 Thank you, your Honour.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Professor.

20 I will say for the last time, and then the witness will come back
21 in, that the Chamber is fully aware that this document apparently was
22 written by Mr. Augustin Lobbo and its only value is that it is a document
23 written by Mr. Augustin Lobbo. If it appears that in order to clarify
24 the witness's own chronology that the Prosecutor needs to make a
25 reference to a comment made in this document and if it emerges that the

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1 witness knows this document, and that is why if you insist,
2 Mr. Prosecutor, you should ask the witness whether he is familiar with
3 this document, the Chamber would have no objection to a question being
4 put on this point.

5 If it emerges that the witness does not know this document at
6 all, I think I've already said that the Chamber feels that there would be
7 very little interest in questioning the witness on a statement made in
8 this document which, once again, reflects the personal views of
9 Mr. Augustin Lobbo who has a degree in international relations and who
10 claims to be a founder of the FNI.

11 Now we will bring the witness back in. Will the Court Usher
12 please bring the witness back in.

13 (The witness takes the stand)

14 PRESIDING JUDGE COTTE: (Interpretation) Can you hear me,
15 Witness?

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

17 PRESIDING JUDGE COTTE: (Interpretation) The Chamber is very
18 sorry that you had to enter and leave again. We are back with you. Were
19 you able to meet your lawyer during the break as you wished?

20 THE WITNESS: (Interpretation) Your Honour, I did indeed meet my
21 lawyer.

22 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Everything is
23 working satisfactorily and the lawyer is fully available. We're very
24 pleased about that. The Prosecutor will continue with his
25 cross-examination.

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1 Prosecutor, we've just had a lengthy conversation that should
2 lead you to focus on the essential and not to lead to -- not to make
3 statements if they're not absolutely essential. You may proceed.

4 MR. MACDONALD: (Interpretation) Thank you, your Honour.

5 Q. Witness, following that meeting at Mr. Museveni's farm and
6 following the conversation of Augustin Lobbo with the president which you
7 referred -- when -- you referred to the Berlin Conference. Now, as I
8 understood it, the six of you in your delegation returned to report back
9 to the elders or the notables in Rethy-Kpandroma who had not travelled
10 with you. Is that the case?

11 A. Yes, they had not travelled with us.

12 Q. But did you go and report to them on the contents of the
13 discussions which your group had had with the Ugandan authorities; is
14 that correct?

15 A. Yes, yes, of course. We -- they were -- they could not go so we
16 went instead of them.

17 Q. And the reason why you went instead of them was that these
18 notables, these wise men, were afraid of going to Uganda, was it not?

19 A. Yes, that is indeed what they had said.

20 Q. Is it not also correct that it was when you were in Rwakitura
21 with Mr. Augustin Lobbo, with Mr. Ndalo, with Mr. Mawa, and the others,
22 that there was a discussion so that the Lendu of your region,
23 Kpandroma-Rethy, should get themselves organised and have a structure for
24 the political organisation. And it was in that context that the name
25 *Front des Nationaliste Intégrationnistes* emerged?

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1 A. You didn't say the same thing that I said. The difference is
2 just that the Ugandan president, Mr. Museveni, did not ask the Lendu to
3 organise themselves. But the appeal was made to everyone who didn't
4 agree with the UPC's policy in as far as -- as far as I know and you
5 know, it wasn't just the delegation of the Lendu. The delegation was a
6 large delegation, and the president did not address himself to the Lendu
7 but to everyone who was there present who did not at all agree with the
8 political ideology of the UPC.

9 Q. Mr. Witness, you say that at that meeting at Rwakitura there was
10 not just your delegation but that there were also other people, is that
11 so, when you met Museveni?

12 A. I've just said that.

13 Q. Yes, it's just to make sure that I'd understood you correctly.
14 There were also -- was it also Alur people from the FPDC; is that
15 correct?

16 A. There weren't any Alur people, but there were participants from
17 the Alur ethnic group but they were not there representing the Alurs
18 because their delegation was mixed as well.

19 Q. But if I understand correctly, they were members of the FPDC; is
20 that correct?

21 A. At the time I think that the FPDC did already exist.

22 Q. Very well. I'd just like to come back so that we are quite clear
23 about your answer. I'm not suggesting to you that it was
24 President Museveni who suggested the name FNI to you, but in Uganda at
25 Rwakitura when you left that meeting, you're still there on the spot,

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1 there was a discussion among the people there present, and it was there
2 that the name FNI was stated for the first time as this possible movement
3 to bring you together to help you to get a structure to respond to the
4 UPC?

5 A. Could you be so kind as to put this question in one sentence so
6 that I can understand it more clearly.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr. MacDonald. I
8 think the witness is right. Please try, as far as possible, to be more
9 succinct so that the witness can answer you as clearly as possible, even
10 if you want the introduction to put himself in context. He may get lost
11 if your question is too long. So, please, if possible, make your
12 questions shorter and please proceed.

13 MR. MACDONALD: (Interpretation) Very well, your Honour, I will
14 do my best. But I think you have understood that I am trying to set the
15 question in context.

16 Q. Mr. Ndjabu, once again then, please rest assured I'm not trying
17 to trick you. I'm trying to establish the chronology. I'm trying to --
18 the Chamber is trying to understand. I put it to you that it was in
19 Rwakitura, during your trip to Rwakitura, that the name FNI was first
20 mentioned?

21 A. Well, I think you've made a big mistake.

22 Q. Why is that? Why have I made a mistake?

23 A. The creation of the FNI has nothing to do with the place
24 Rwakitura. And I do believe I said during my testimony that the FNI was
25 born at Kpandroma. I think I already said that to you and I've also said

1 this here in the days -- in the previous few days. At Rwakitura there
2 was no mention made of the FNI. I think that is a precise answer I can
3 give you there.

4 Q. I understand that there is a shade of meaning -- a subtle shade
5 of meaning between the term "creation," creation of a party or creation
6 of a structure with commissions and ministries and mentioning a name, the
7 name of the FNI, and that is the shade of meaning I am trying to
8 elucidate. That's precisely what I want to know. So I put it to you
9 that Augustin Lobbo in Rwakitura for the first time in the delegation
10 mentioned the term *Front des Nationaliste Intégrationnistes*. Do you
11 agree with that statement?

12 A. I will say -- give you the same answer as I did previously. In
13 Rwakitura, there was never any mention or insinuation made about the name
14 *Front des Nationaliste Intégrationnistes*. That is absolutely wrong.

15 Q. Okay. Then let's go on to Ndruma -- Kpandroma. You leave
16 Rwakitura and go to Kpandroma. You report to the elders who were there
17 about the conversations that you had with Museveni; is that right?

18 A. Absolutely, yes.

19 Q. And as far as I can understand - please correct me if I'm
20 wrong - it was in the next few days that the FNI was created with its
21 three committees or commissions, is that right, as regards the succession
22 of events? You report to your base and in the next few days, just after
23 that meeting, you create the FNI, the name is known, and you create three
24 commissions?

25 A. You are still mistaken in your understanding. The three

1 commissions we are talking about are commissions that existed when there
2 was the agreement in Nambole, *inter alia*, that was so that the notables
3 of Kpandroma could make their amendments or give their opinions on that
4 agreement that they had been invited to attend and also to react to the
5 accusation made against them concerning the Ugandan rebels who were
6 occupying Congolese territory. So to give you a better understanding,
7 well, it was necessary to explain to them what those three commissions
8 were. Those three commissions were not commissions that belonged to the
9 FNI. These commissions were ones that were discussed during the Nambole
10 agreement. That is what I want to make clear to you because what you are
11 saying is that these three commissions were established perhaps by the
12 FNI -- no, that's not the case.

13 Q. Let me --

14 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, I'd like to
15 ask the witness something to be absolutely sure that I have fully
16 understood something.

17 Those three commissions already existed before the FNI was
18 created? It seemed to me that I heard you say previously at another
19 hearing that you were not part of the commission that created the FNI,
20 you were in another commission. So these commissions existed before the
21 FNI was created; is that right? I would like your help to be sure I am
22 fully understanding you.

23 THE WITNESS: (Interpretation) Your Honour, this is exactly what
24 I am trying to explain. Yes, indeed, those three commissions were
25 commissions that belonged -- that were part of the Nambole agreement, and

1 the Nambole agreement was entered into in Uganda. Now, the notables at
2 Kpandroma were invited to give their point of view about the -- that
3 agreement, or, more particularly, in relation to those commissions, but
4 they didn't go. They sent us and we went there. When we came back from
5 that mission, we came to explain to them the content of the Nambole
6 agreement. That is how things happened. And during the meeting in
7 question when we were reporting back on the mission, there was this
8 desire to create a structure. So when we were reporting back on that
9 agreement, that is a time when a commission was created that was in
10 charge of creating the FNI. I think that was a rather lengthy way of
11 explaining this, but I think it explains the situation.

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

13 Prosecutor, I'm awfully sorry I interrupted you, but I really did
14 want to take the opportunity. You can go on.

15 MR. MACDONALD: (Interpretation) Thank you, your Honour. You
16 were quite right to do so.

17 Q. Let us delve into this point a little more thoroughly. Witness,
18 is it exact to say that Augustin Lobbo was in charge of the political
19 commission and -- well, that's my first part of the question.

20 A. Well, it should be pointed out that -- well, what period are we
21 talking about?

22 Q. If I put it to you that this was when you returned from Rwakitura
23 and you went to Kpandroma and at that point there was the base, the
24 elders, the notables that hadn't gone to the meeting and this was the
25 time when the responsibilities of the commission -- well, were entrusted

1 to Augustin Lobbo.

2 A. Are you talking about the commission that was in charge of
3 setting up the FNI?

4 Q. Yes, exactly, and I put it to you that it was at Kpandroma when
5 you came back from Rwakitura that this happened.

6 A. Yes, I think indeed Lobbo was a member of those two commissions.

7 Q. To be perfectly clear, I'm sorry to repeat this, but you do agree
8 that this happened upon returning from Rwakitura?

9 A. Yes, it was indeed after Rwakitura.

10 Q. Thank you.

11 A. But it wasn't during Rwakitura because what you said was that
12 Lobbo Nyinga talked about the FNI at Rwakitura, but we must be perfectly
13 clear here. Lobbo Nyinga was a member of the commission that created the
14 FNI after Rwakitura. That happened in Kpandroma.

15 Q. I do understand the answer you gave us earlier on. Now, there
16 was Augustin Lobbo, who was in charge of the political commission. Who
17 were the people in charge of the two other commissions?

18 A. Quite frankly, I don't remember any longer. This goes back to
19 2002. Now, who was in charge of the cease-fire commission? Well, I was
20 a member of it and I don't really remember. And the other commission, it
21 goes back a long way. I don't remember anymore.

22 Q. Rwakitura, Kpandroma, three commissions were set up. Each
23 commission has its own president. You were part of one of those
24 commissions, and, if I understood you correctly, then you go back to
25 Beni, or you take a plane to Beni, in the company of Mr. Moi?

1 A. I'd like to correct that again. No, these commissions were not
2 created. These were commissions under the Nambole agreement. You
3 mustn't try and distort what I am saying. Now, to get back to what you
4 were suggesting, yes, indeed. After that, I did go back to Beni.

5 Q. Fine. Could you explain to us why you went back to Beni.

6 A. I think I have answered that at some length, but to be sure that
7 we have all understood, I shall repeat myself.

8 Q. Well, you can be very brief if you've already answered this
9 question.

10 A. Well, if you have already understood, there's no point in
11 continuing.

12 Q. Just briefly, why did you go back to Beni?

13 A. Well, you seem to feel strongly that I should answer this. Okay.
14 I went back to Beni with the commander who was on the spot, Moi Richard.
15 We would call him Richard. We went to Beni together because once again
16 there was a question of getting reinforcements in ammunitions and
17 weapons.

18 Q. I'm sorry, but you, personally, why did you take that aircraft?
19 I do understand why Richard Moi wanted to get supplies, he was a member
20 of the APC, but you, what about you? Why were you there?

21 A. You seem to have forgotten that I was a member of the RCD-K/ML.

22 Q. And so?

23 A. Well, I went to Beni because I was a member of RCD-K/ML.
24 Moi Richard, who was a commander on the spot in our movement, he went to
25 Beni. The first time I carried out the mission and that time he was

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1 supposed to be there to -- and we went there with him. It's a normal
2 thing to do. If you are asking why I was there, I've already told you
3 that I was one of the senior executives of RCD-K/ML already from Bunia.
4 Perhaps you've forgotten that already, but I don't see why my presence
5 there should have been any surprise to you, when we carried out these
6 missions for EMOI.

7 Q. So if I've understood you properly, you went back to Beni at that
8 time because -- well, this was connected with the EMOI; is that your
9 testimony?

10 A. What's EMOI?

11 PRESIDING JUDGE COTTE: (Interpretation) EMOI.

12 MR. MACDONALD: (Interpretation) EMOI.

13 THE WITNESS: (Interpretation) I'm sorry, I didn't understand
14 you. You said "*émoi*" which means "emotion" in French, so I
15 misunderstood. EMOI.

16 PRESIDING JUDGE COTTE: (Interpretation) Okay. We shall
17 pronounce it EMOI from now on.

18 THE WITNESS: (Interpretation) I think you have already got
19 plenty of information about this and in particular what the assignment of
20 EMOI was. Going back to Beni with commander Richard Moi in the context
21 of the EMOI, well I don't really know what you'd like me to add to what
22 I've already said.

23 MR. MACDONALD: (Interpretation)

24 Q. Witness, in January of 2005 you were in Kinshasa, weren't you?

25 A. No, not at all.

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1 Q. In February 2005, Mr. Witness, were you in Kinshasa one month
2 before you were arrested?

3 A. I was in Kinshasa on the 7th of February.

4 Q. And when you got to Kinshasa, I think there was colleagues,
5 members of the Lendu Ituri communities were there in Kinshasa, weren't
6 they?

7 A. Well, I never saw the Lendu community in Kinshasa, personally.

8 Q. Is it correct to say that during that period just before you were
9 arrested in Kinshasa, Augustin Lobbo was also in Kinshasa?

10 A. I believe that is the case.

11 Q. You met with him, had discussions with him, didn't you, before
12 you were arrested in Kinshasa during the month of February?

13 A. Yes, I remember that Augustin Lobbo came to see me.

14 Q. Augustin Lobbo, in fact, is a good friend of yours, is he not?

15 A. I don't know whether there's any such thing as a bad friend, but
16 in any case Augustin Nyinga -- well, we spent time together over a long
17 period of time. Well, in the area of friendship, I don't really know.
18 Could you please explain what you mean by your question.

19 Q. Just one second. I'm sorry. I shall return to this.

20 MR. MACDONALD: (Interpretation) I apologise to the Chamber. I
21 was searching for a document. I'm sorry. I'm looking for the reference.
22 I must apologise once again.

23 PRESIDING JUDGE COTTE: (Interpretation) Go ahead.

24 MR. MACDONALD: (Interpretation) I found it.

25 Q. Do you remember having made a statement to the Defence team where

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1 you stated that Mr. Augustin Lobbo, a friend of yours, was the
2 commissioner for external affairs, so he was indeed a friend, was he not?

3 A. I don't know how people appointed whether on the basis of
4 friendship or competence. I appointed him commissioner for external
5 affairs but that's not based on friendship.

6 MR. MACDONALD: (Interpretation) With your permission,
7 your Honour, perhaps we could have on the display page -- this is the
8 DRC-D02-001-0617 statement and the page I am interested in, your Honour,
9 is 0622. I believe this is confidential document, unless I'm mistaken,
10 so I don't think we can broadcast it to the outside. But Mr. Hooper will
11 be able to tell us about that. It's his document.

12 MR. HOOPER: No, it's a public document.

13 (Prosecution counsel confer)

14 MR. HOOPER: I think we might be able to find a hard copy for the
15 witness. I've got a signed copy here unmarked.

16 PRESIDING JUDGE COTTE: (Interpretation) Yes, that's good
17 because I was looking for the document and -- actually, I had the non --
18 unsigned document and it doesn't bear the same reference.

19 Mr. Usher, could you please hand me the document that Mr. Hooper
20 has in his hands that we can place it before the witness.

21 Mr. Witness, please keep this document in front of you. It is
22 confidential and must not be allowed to be seen by the public.

23 MR. MACDONALD: (Interpretation) I have a copy, too.

24 MR. HOOPER: (Previous translation continues) ... confidential --
25 it's not a confidential document so it's a (* overlapping speakers)

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1 document.

2 PRESIDING JUDGE COTTE: (Interpretation) In any case, the
3 witness will have the document in front of him because that is how he's
4 going to be able to read it.

5 MR. MACDONALD: (Interpretation) Just one moment.

6 COURT OFFICER: (Interpretation) To see the document, please
7 push the PC 1 document.

8 PRESIDING JUDGE COTTE: (Interpretation) Are you on the right
9 page? Prosecutor, I think you specified the page.

10 MR. MACDONALD: (Interpretation) Well, I was going to do
11 precisely that.

12 Q. Mr. Witness, I would ask you to turn to page 6, and at the bottom
13 on the right you will see the figure 0622 which was added, page 6, just
14 below that 0622. The paragraph that is just above, which begins:

15 "The FNI appeared at the beginning of December but was already
16 created towards the 20th of November, 2002. Others were involved in its
17 foundation. Lobbo Nyinga Augustin, a friend, was the commissioner for
18 external affairs. The commissioner for defence was Butchu Chedya, who
19 passed away in 2006. At Arua, we established the government. I was
20 elected president at Kpandroma."

21 Augustin Lobbo was more than a commissioner, a commissioner for
22 external affairs, he was a friend. Is that not true? It's written black
23 on white. You signed this statement, didn't you?

24 A. I have already answered that question, that Lobbo Nyinga was
25 commissioner for external affairs, but when someone is appointed he is

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1 not appointed on the basis of friendship. So I don't know what
2 friendship has to do with the appointment of Augustin Nyinga. That's
3 what I cannot grasp.

4 PRESIDING JUDGE COTTE: (Interpretation) I'm not quite sure that
5 you are quite on the same wavelength with the witness, Prosecutor. So
6 perhaps one last time you would like to rephrase your question, but if
7 you don't want to do that, let's go on to something else. The reference
8 to the fact that Mr. Augustin Lobbo as being a friend is something that
9 the witness has responded to twice, saying that it was not because he was
10 a friend that he was appointed commissioner for external affairs.

11 Mr. Witness, actually the Prosecutor simply wants to know whether
12 or not Mr. Augustin Lobbo was a friend of yours, which he is entitled to
13 do. But he doesn't want to infer from that that you appointed him as
14 commissioner simply because he was a friend. I hope now that you are on
15 the same wavelength. We need to avoid that because it would take up too
16 much time.

17 THE WITNESS: (Interpretation) Your Honour, I think you have
18 understood everything quite clearly.

19 PRESIDING JUDGE COTTE: (Interpretation) So Mr. Lobbo was a
20 friend of yours, but you did not appoint him because he was a friend but
21 because of his abilities; is that right?

22 THE WITNESS: (Interpretation) Yes, your Honour, that's
23 precisely what I meant.

24 PRESIDING JUDGE COTTE: (Interpretation) Well, in that case,
25 Prosecutor, we can proceed.

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1 Thank you, Witness.

2 MR. MACDONALD: (Interpretation)

3 Q. I want to be quite sure that I've understood this paragraph here
4 that I've just read out because -- and perhaps you should keep it in
5 front of you at the same page because we are coming back to that same
6 paragraph, you say that the FNI appeared at the beginning of December but
7 had already been created on the 20th of November. That's what I was
8 suggesting to you earlier on --

9 MR. HOOPER: (Previous translation continues)... there. There.

10 MR. MACDONALD: (Interpretation) I can read French very well.

11 MR. HOOPER: Yes. Well --

12 MR. MACDONALD: (Interpretation) It said it had been created
13 around the 20th of November.

14 PRESIDING JUDGE COTTE: (Interpretation) Please proceed,
15 Mr. Prosecutor. We are aware of this in the statement "created around
16 the 20th of November."

17 MR. MACDONALD: (Interpretation)

18 Q. But you say that there were other people involved in founding
19 this organisation. That is what you stated; is that correct?

20 A. Yes, Mr. Prosecutor.

21 Q. You mentioned Mr. Lobbo, commissioner for external affairs, and
22 you also mentioned the commissioner for defence, Butchu Chedya. My
23 question is as follows: Does this refer to the 20th of November, 2002,
24 or are we referring to Arua? That is where Mr. Lobbo and Mr. Butchu are
25 known to be respectively commissioners.

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1 A. Yes, I do understand your question. As I said during my
2 testimony, after the creation of the FNI there was no president. I was
3 elected president shortly before the departure from Arua. I also stated
4 that as president I travelled alone but the other appointments of the
5 members or commissioners of the FNI was done in Arua.

6 Q. Very well. That is what I simply want to confirm with you. Is
7 it correct that in Arua Mr. Lobbo was appointed commissioner for external
8 affairs by you while Mr. Butchu was appointed commissioner for defence?
9 That is what I'm asking you.

10 A. The decree appointing them was indeed issued in Arua.

11 Q. Very well. Let us now come back to Mr. Augustin Lobbo and to
12 Kinshasa in February 2005. You can keep aside that statement now.

13 MR. MACDONALD: (Interpretation) Court Usher, please, you can
14 take the document back from the witness.

15 PRESIDING JUDGE COTTE: (Interpretation) Court Usher, please
16 fetch that statement from the witness. Thank you.

17 Mr. Prosecutor, please proceed.

18 MR. MACDONALD: (Interpretation)

19 Q. Let us now go back to Kinshasa in December 2005 -- I'm sorry,
20 February 2005. I was mistaken. I do not want to mislead you. You
21 mentioned that Mr. Augustin Lobbo came and visited you; is that correct?

22 A. Yes, that was my testimony.

23 Q. Do you remember how many times you met with him?

24 A. After my arrival in Kinshasa I believe I met with him on one or
25 two occasions, but I believe it was only once because for some time he

1 had said that he was no longer a member of the FNI. And so while the
2 founding members had gone on with work on the Statute, we had asked that
3 his name be mentioned as one of the members and that if he agreed with
4 that, he should be allowed to sign. It was for that reason that I called
5 Augustin Lobbo Nyinga and he turned down that proposal. He had his
6 reasons and his reason was that I could not be the president of the FNI.
7 And you will see in the instruments of the party that where the name
8 Augustin Lobbo Nyinga is written, he did not sign, he refused to sign.
9 So, in a nutshell, that is why I met with Lobbo Nyinga.

10 Q. That is correct. We have the Statute. It was produced on
11 Wednesday with an EVD number and, indeed, there is a name of
12 Augustin Lobbo there but there is no signature. My question to you is as
13 follows: To your knowledge, for how long had he been in Kinshasa when
14 you met him in February of 2005 and what was he doing there?

15 A. I cannot tell you with any certainty, but Lobbo Nyinga had been
16 there for quite some time, maybe even one year. I cannot be certain
17 about that, but I believe he had been in Kinshasa for about one year.

18 Q. And do you know what he was doing in Kinshasa?

19 A. No, I was not in contact with him because, if I remember
20 correctly, as early as 2003 while I was in Kinshasa, he had been
21 appointed acting president and I think he abandoned the position.

22 Q. I'm sorry to interrupt you, Mr. Ndjabu, but what was he doing in
23 Kinshasa, do you know?

24 A. I've already answered.

25 Q. And what was your answer, that you do not know?

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1 A. You didn't understand anything at all. This is what I said, that
2 Lobbo Nyinga spent almost a year in Kinshasa, but I do not know what he
3 was doing there.

4 Q. Thank you. That is how to answer the question. If you do not
5 know, just say you do not know. You are not compelled to make a whole
6 discourse.

7 A. I simply did not want you to ask me the question again.

8 Q. Mr. Witness, so he was there since 2004 and that is why he was
9 not in Bunia when this organisation was founded and the Statute was
10 adopted?

11 A. I wanted to explain to you and you did not want me to, but now
12 you're asking me the question again. It was not because he was not in
13 Bunia. He had left, but we thought that we should still give him an
14 opportunity to work together with us in the FNI. That was the
15 recommendation of the other founding members, but I have told you that he
16 refused.

17 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

18 MR. FOFÉ: (Interpretation) I'm sorry, Mr. Prosecutor.

19 Your Honour, I just want to point out that for quite some time the French
20 transcript is not working and that is a problem for us.

21 PRESIDING JUDGE COTTE: (Interpretation) I was expecting your
22 reaction and I was wondering what -- when that would take place. And for
23 your information, I have been having the same problem for some time. The
24 Court Officer had informed me that she has asked the technicians to do
25 the necessary, but the transcript has not been functioning for a while.

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1 It is working again but it begins with what I'm saying right now.

2 So, Mr. Prosecutor, you can proceed.

3 MR. MACDONALD: (Interpretation)

4 Q. Were you aware of the thesis produced by Mr. Lobbo entitled, "The
5 Ituri Conflict -- from the Ituri Conflict to the Creation of the
6 Political Military Movement FNI/FRPI"? Did you read that?

7 A. I have not read it. I have never seen the document before. This
8 is the first time I have seen the document.

9 Q. Very well. So you have never discussed this document with
10 Mr. Augustin Lobbo?

11 A. My answer is the same. It is only here that I saw the document
12 for the first time.

13 Q. Very well. Mr. Ndjabu, let us now go back to Beni when you did
14 that trip with Mr. Moi. That is the person we were talking about a short
15 while ago. Do you remember?

16 A. Yes, I do.

17 Q. Very well. Mr. Ndjabu, I am putting it to you that -- it was
18 when you returned to Beni at that time with Mr. Moi, as you have said,
19 that you had that meeting at the Casino Hotel, during which the FRPI was
20 discussed with Dr. Adirodu. So I put it to you that it was after your
21 return to Beni at that time when you already had the name FNI that you
22 met with Dr. Adirodu at the Casino Hotel. Do you agree with me?

23 A. I do not agree with you.

24 Q. Nevertheless, one thing is clear. You had a meeting with
25 Dr. Adirodu in the Casino Hotel; is that correct?

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1 A. I remember that, yes, Dr. Adirodu had come to the Casino Hotel.

2 Q. I put it to you that during that meeting with Dr. Adirodu there
3 was also Sambidhu. What is his full name, by the way, Sambidhu, that is,
4 for the record?

5 A. All I know is Sambidhu. I do not know his other names.

6 Q. If I say it is Sambidhu Munganga, M-u-n-g-a-n-g-a?

7 A. All I know is Sambidhu, but if the second name is Munganga.

8 Q. He was present with Adirodu; is that correct?

9 A. Yes, I believe that has already been said.

10 Q. Charif was also present; right?

11 A. I believe that Charif was injured and wa receiving treatment. I
12 believe he was not there at that meeting on that day.

13 Q. Tell us more about that injury to Charif. What do you mean by he
14 was injured and not present?

15 A. I told you already about Charif when he went or came to
16 Governor Molondo's house and I told you that I did not see him again
17 afterwards for the simple reason that during the fighting between the UPC
18 forces and the RCD-K/ML which later led to the fall of Bunia, it seems
19 that Sambidhu was hit by a bullet around the Pensionnat area. I do not
20 know specifically where he was taken, but I saw him only in Beni
21 afterwards. Those were the circumstances.

22 Q. Was Pichou Iribi present during that meeting at the Casino Hotel
23 between you and Dr. Adirodu?

24 A. Pichou was present.

25 Q. Ndjalemba was also present?

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- 1 A. I do not know that name, Ndjalenga.
- 2 Q. I will spell it for the record. It is N-d-j-a-l-e-n-g-a?
- 3 A. No, Ndjalenga was not there. The person who was there was
- 4 Ndjalonga. You have confused between the e and the o. It is o and
- 5 not e. It is Ndjalonga, not Ndjalenga.
- 6 Q. Thank you for that correction. So Mr. Ndjalonga was present in
- 7 that meeting with you, Dr. Adirodu, and the others?
- 8 A. That is what I have just said.
- 9 Q. And was the Honourable Shalo Dudu also present during that
- 10 meeting at the Hotel Casino?
- 11 A. I do not remember that at all.
- 12 Q. Was Aleso Sipa (* phon) also present during that meeting at the
- 13 Casino Hotel?
- 14 A. In fact, there were many people that I cannot all remember. If
- 15 you mention them one by one, I may not know but those that I remember, I
- 16 have given you the names. I do not know about the others.
- 17 Q. Maybe by mentioning their names that would jog your memory.
- 18 Angakay Didi, was he also present during that meeting?
- 19 A. I do not know that name, Angakay.
- 20 Q. Do you know anybody called Didi who was present at the meeting?
- 21 A. Didi Mafuta, Didi Floribert, Didi Kalimi, Didi who?
- 22 Q. Angaika Didi.
- 23 A. Now you have changed. Now it is Angaika.
- 24 Q. Spell the name, please.
- 25 A. It is up to you to tell me the person you are referring to.

1 Q. The professor, the person who was in charge of a school at one
2 time, who studied at the ISP in Bunia?

3 A. Very well if you're talking about the meeting in the casino in
4 Beni, well I do not see him there.

5 Q. You do not remember having seen Mr. Angaika Didi?

6 A. Maybe he was in another meeting after me, but while I was there I
7 did not hear any mention of Angaika Didi.

8 Q. I'm referring to the same person who met you and Pichou in
9 Kampala in 2003.

10 A. Yes, that is who I was referring to. During the meeting he was
11 not there. Maybe he came back to attend another meeting after me.

12 Q. I'm putting it to you, Mr. Witness, that during that meeting at
13 the Casino Hotel in the presence of those persons that I have just
14 mentioned and others who were possibly present, it was then that you
15 learned about the existence of that name FRPI for the first time?

16 A. As far as I know, yes.

17 Q. Dr. Adirodu had been in Beni for only a few days; is that
18 correct?

19 A. I remember that he had come from Kinshasa and he had been there
20 for some time.

21 Q. "Some time" is a bit too broad. Can you be more specific?

22 A. I cannot remember precisely, but it was sometime after he
23 arrived, not very long.

24 Q. Now, during that meeting with Adirodu, who came with the name
25 FRPI, at that time also came with the name FNI; is that correct?

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1 A. That is a big lie on your part. It is not correct.

2 Q. I put it to you that the purpose of the meeting was also to
3 structure the issue of the refugees who were in Beni, to create a
4 structure for the resistance that was emerging in reaction to the fact
5 that Ituri was under the control of the UPC?

6 A. That is the question? Well, I think I already said before that
7 that was the case, as you have so well said.

8 Q. I put it to you that there was an agenda for that meeting and
9 that the purpose of that agenda was to harmonise the name to be given to
10 the movement which was being put together in Beni and that everyone in
11 the room had come with his own name. Maybe proposals were made by
12 yourself, Ndjabu, Pichou, Adirodu, and so on and so forth, and that was
13 for the name of the group that was being created.

14 A. I do not remember what you are talking about. All I remember is
15 that Adirodu had arrived and told the group that FRPI was the only name
16 that was recognised in Kinshasa and that all the other organs that people
17 had set up, such as the co-ordination and others, were pointless and that
18 apart from him no one was authorised to deal with political issues. That
19 is what I know. Whatever you said there, well I do not know. It
20 depends.

21 Q. What do you mean by that, "it depends"?

22 A. It depends on you. I have told you what I know.

23 Q. Did you meet with Mr. Didi in Beni before that meeting at the
24 Casino Hotel?

25 A. I do not remember at all.

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1 Q. Once again, to avoid any confusion, when I refer to Didi, I'm
2 referring to the same person who travelled with Pichou Iribi to Kampala.
3 Now, when Mr. Pichou Iribi and Didi went to Kampala to join you, I
4 believe your wife also travelled with them; is that correct?

5 A. Yes. My wife was one of those who travelled with them, but I
6 believe that your question is not complete. I want you to better
7 understand. The delegation in which Didi Angaika travelled, I was not
8 the one who invited that delegation. I only invited the people that I
9 had appointed as the members of the FNI, for example, Pichou Iribi who
10 had been appointed commissioner for defence. It was at the time that
11 they were about to leave for Kampala that others withdrew, and
12 Didi Angaika decided to come with some others. You have to fully
13 understand that.

14 MR. MACDONALD: (Interpretation) I apologise to the Chamber, we
15 are sitting right up to 1.30 and I am trying to look at the time.

16 Q. Let us come back to this meeting at the Casino Hotel. During
17 that meeting, there was a misunderstanding about the leadership of that
18 entity that was being set up; is that correct?

19 A. That organisation or that entity was not being created. He
20 arrived with it already in his pocket, already created. And the
21 leadership that you are talking about concerned the co-ordination organ
22 in Beni. And I have already explained here that my appointment as
23 co-ordinator responsible for all activities was not accepted or approved.
24 And it is for that reason that I left.

25 Q. Mr. Witness, Adirodu arrived with the name FRPI. We agree with

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1 you on that. That is not in dispute, but beyond the name at that time
2 there was no structure. There were no commissioners. There were no
3 organs that functioned on a day-to-day basis. That was the purpose of
4 the meeting at the Casino Hotel, that is, to discuss the name and the
5 various attributions of the members. That is what I am putting to you,
6 Mr. Witness.

7 A. I talked about that before. You should be careful when you ask
8 your questions. You mentioned the time Didi Angaika and the others
9 travelled to Kampala including my wife. I told you that this is in fact
10 true but that I had only invited the FNI members that I had appointed.
11 Didi Angaika was not one of them, but he decided to come at the last
12 moment. That is what I was talking about. Now when we come back to the
13 meeting at the Casino Hotel, I'm telling you what I know. And if you do
14 not understand that, then please do not compel me to simply accept or
15 swallow what you are saying if it is not correct. But I am telling you
16 in order for you to better understand that there was a problem of
17 leadership of the co-ordination in Beni and not differences about the
18 overall FRPI leadership because that depended on Dr. Adirodu alone.

19 Q. Okay. We'll leave that aside for the moment. When you arrive in
20 Beni with Moi, you get off the plane and then you have talks with the
21 people on the spot, your brothers from the FNI, the name which had just
22 been decided upon, and so on?

23 A. I answered that question a long time ago. You're coming back to
24 it again. When I was travelling with Moi there was not yet an FNI, and,
25 if I remember correctly, when Moi and I reached Beni, I -- perhaps it was

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1 on the way when -- because I was lodged together with Moi. And the FNI
2 didn't exist at the time. You keep coming back to this, to say that
3 there was an association between the FNI and the FRPI, and I'm trying in
4 vain to explain to you that I don't know. Perhaps if I spoke in Swahili
5 or Lingala you might understand, but that is what I am saying.

6 MR. MACDONALD: (Interpretation) Your Honour, perhaps you should
7 remind the witness of the rules of behaviour in this hearing. Despite
8 the fact that I am perhaps putting a lot of questions, I am sure that I
9 am polite to the witness.

10 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, you are
11 undeniably polite to the witness. The witness has the impression that a
12 lot of the questions, as he sees it, are repetitive.

13 Mr. Witness, please reply calmly and if you have the impression
14 you've already answered just say, I have nothing further to add. I have
15 already answered that.

16 We will continue.

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

18 MR. MACDONALD: (Interpretation) I'm sorry, I've lost the sound
19 in my headphones -- ah, it's come back now.

20 Q. Did you have an opportunity to read the manifesto from the
21 resistance?

22 A. Yes, I saw that document for the first time from the other lady
23 here, Human Rights, I'd asked her for a copy in vain and she never gave
24 me a copy. I couldn't tell you exactly what the ideology of the document
25 was, what were the bodies, how decisions were taken. I don't really know

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1 about that document, the manifesto of the FRPI.

2 Q. Did you read it or not? Did you read it?

3 A. As to reading it, I saw it -- I just leafed through it.

4 Q. You're a man who is experienced. What does army Pipa (* phon)
5 mean?

6 A. I don't know a lot about the FRPI. As I said, I can't comment on
7 it.

8 Q. But when I say Pipa army, you know that that refers to the FRPI,
9 don't you? You do know that?

10 A. I don't think you're right because I heard talk of the Pipa army
11 when I was back in primary school and that was essentially during the
12 period of hostility too where there must have been resistance. But
13 Pipa army, as I -- I'd already said, I don't want to lie. I don't want
14 to commit myself or to comment on a document that I'm not familiar with.
15 That would be dishonest of me.

16 Q. Mr. Ndjabu, let's leave Beni aside. You go back to Rethy or
17 Kpandroma. You said you left on the 21st of December for Arua; is that
18 correct?

19 A. I think I said on the 24th of December.

20 Q. 24th of December, the day before Christmas, 24th of December,
21 2002. And then the day before that you said it was the day before the
22 23rd that you had been elected president; is that correct?

23 A. Yes, of course.

24 Q. I put it to you that before being appointed president you had not
25 been back for long in Kpandroma from Beni, just a few days?

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1 A. I don't remember exactly, but it's true that I had returned from
2 Beni.

3 Q. Then I put it to you that you returned from Beni as from
4 mid-December 2002, you returned to go back to Kpandroma and then you were
5 elected president in the following day and you went to Arua on the 24th;
6 is that correct?

7 A. Irrespective of how long it took, I think that what is important
8 is that indeed it was when I -- when we returned from Beni with
9 Richard Moi that I was elected president of the FNI.

10 Q. And as you said earlier today, the FNI government was not set up
11 in Kpandroma but in Arua when this Augustin Lobbo and Butchu Chedya, and
12 so on?

13 A. I think I've already explained that as well. I was elected
14 president on the 23rd, then there was a day when we travelled, so you
15 would understand that the president could not be there to take the
16 decision by himself. It was necessary to set up a team and that was
17 what -- is what was done in Arua while we were in negotiations or in
18 discussions.

19 Q. Mr. Witness, I understand that in Kpandroma on the 24th of
20 December, the Ugandans sent a helicopter to get -- fetch the delegation,
21 did they not?

22 A. On the 24th of December Uganda sent a helicopter. To be quite
23 clear, it was not to come and fetch us. They came to fetch the notables.

24 Q. Thank you for that clarification. That is what I was aiming at.
25 So the helicopter came to fetch the notables, but the notables didn't

1 want to travel; is that correct? They were afraid, just as they had been
2 afraid to go to Rwakitura one month earlier; is that correct?

3 A. They may have been afraid, but their reasons lay elsewhere. For
4 them -- because in Arua they were told that it was a discussion about
5 peace and they didn't want that, and that is the reason why once again
6 they said no they didn't want to go and they had nothing to talk about
7 with the Ugandan Presidency and they refused.

8 Q. Before your departure, you get to Beni, you're elected president,
9 you go to Arua. During that period, isn't it correct that you reported
10 to the notables and to the -- stated what had happened with the
11 Aridu (* as interpreted) in Beni. You reported back to them. You told
12 them: They are setting up this movement which comes from Kinshasa; is
13 that correct?

14 A. I don't remember having told them that.

15 Q. You have no recollection of it? You were at a meeting at the
16 Casino Hotel. Dr. Adirodu is present, Sambidhu, Iribi, and so on and so
17 forth, and did you never reported back to your grass roots, your
18 notables, your old wise men in Kpandroma what happened and what was
19 developing? Is that your testimony?

20 A. It is -- it's true that there may have been discussions between
21 me and Dr. Adirodu. I didn't think that it was important to go and
22 report this to the notables. I didn't need to. I didn't think there was
23 any sense in it.

24 Q. Who are the people, the brave, the courageous people who were
25 going to get into the helicopter with the Ugandans? Describe for us who

1 the delegation was.

2 MR. HOOPER: I didn't understand that fear or bravery was an
3 element. In fact, the witness had declared that -- when it was put to
4 him that they were afraid he said, Well, they may have been but their
5 real reasons lay elsewhere, and that is that they didn't want peace.

6 MR. MACDONALD: (Interpretation) I will rephrase that.

7 Q. Who were the people, sir, who travelled with you on the 24th
8 of December, 2002, to go to Arua?

9 A. In fact, the journey was so -- was very complicated because when
10 the plane arrived the notables were asked to come and they said they
11 wouldn't go. And when they said that, there were already a lot of people
12 at the airport -- well, at the airstrip, whatever you call it, an
13 airstrip, *aérodrome*. And it wasn't a question of bravely or anything.
14 It was that the old -- the wise old men refused to go to attend a meeting
15 where peace was going to be discussed. And that's why we got into the
16 plane and, frankly, we picked up the people who happened to be at the
17 airport and we said:

18 "The old people have refused to attend the meeting, but I agree
19 to go and talk of peace and anyone who wants to come with me can come."

20 And people came; they got on the plane. They got on the plane.
21 I didn't appoint people. I think there were perhaps 12 of us, including
22 myself.

23 Q. Let me suggest some names to you, Itu (* phon). Perhaps I've
24 mispronounced it, as you know my pronunciation is not very good. Itu,
25 he -- who is Itu? Do you know somebody called Itu?

- 1 A. Yes, Itu is my big brother, he is a tradesman.
- 2 Q. What is his second name? How does one pronounce his second name?
- 3 A. Well, we just called him Itu. I don't know what his surname was.
- 4 We -- everyone called him Itu.
- 5 Q. Tshachu, T-s-h-a-c-h-u?
- 6 A. Well, that's possible but the person is better known as the name
- 7 of Itu.
- 8 Q. So Itu was with you. Muka Safari, he was with you, was he not?
- 9 A. Yes, Muka Safari.
- 10 Q. Jérôme Ndalo, was he there?
- 11 A. Jérôme Ndalo, yes.
- 12 Q. Lonamu (* phon) Benjamin?
- 13 A. I think, Lonamu Benjamin, yes.
- 14 Q. Tchirbulu (* phon) as well?
- 15 A. Yes, Tchirbulu was there.
- 16 Q. Butchu Chedya, your minister of defence, who you were going to
- 17 appoint in Arua?
- 18 A. Yes, he was there.
- 19 Q. Jean-Claude Ngoma or Angoma, was he there?
- 20 A. Jean-Claude Ngoma, I don't know that name.
- 21 Q. Was there a Jean-Claude?
- 22 A. As far as I know, no.
- 23 Q. Was there also the person who becomes your private secretary,
- 24 Martin Safari?
- 25 A. Yes, Martin Safari was there.

1 Q. Also a person called René was there?

2 A. Yes, René Njabu was there.

3 Q. And you said was also Mawa there as well?

4 A. No, here not. We need to explain Mawa was not there with us. If
5 you see a Mawa somewhere it was a different Mawa. He will come later
6 with the -- it was Mawa Olimani. He was advisor to President Mbusa and
7 he was in charge of strategy. Mawa Olimani will come later to Arua.

8 Q. I'm just citing from your statement, page 0622, the same page as
9 we read earlier, just the paragraph above that you say:

10 "There were some people. I went with a delegation of a number of
11 people, Jérôme Ndalo, Muka Safari, Mawa," and so on.

12 So the Mawa, just so we're clear, who was this Mawa?

13 A. I understand your problem. The first Mawa with whom I was in
14 Rwakitura was not -- was not with us when we went to Arua. It wasn't the
15 same Mawa.

16 Q. Mr. Witness, Augustin Lobbo went to Arua as well?

17 A. Yes, we've already cited his name.

18 Q. Charif went to Arua as well, didn't he?

19 A. No, no, that's not true.

20 Q. On the 24th of December, 2002, when you left, Charif -- was
21 Charif in Kpandroma? He was on the spot?

22 A. I said that Charif was not there. He wasn't even in Kpandroma.

23 Q. Was Mr. Kiza also with you? Did go -- did he go to Arua?

24 A. He was not with us in Arua.

25 Q. I understand that it was Peter Kerim, the Ugandan commander, who

1 had sent his helicopter but it was his *aide-de-camp* who came to fetch

2 you; is that correct?

3 A. That's wrong.

4 Q. Then what was the name -- who came? Who was the Ugandan
5 commander in the helicopter? Who was the Ugandan authority in the
6 helicopter accompanying you?

7 A. I now remember. Peter Kerima sent the helicopter, but the person
8 who fetched us from Kpandroma introduced himself and his name was Major
9 Madi.

10 Q. M-a-d-i. So Major Madi is the *aide-de-camp* who came and fetched
11 you; is that correct?

12 A. No. I don't know whether Major Madi is anyone's *aide-de-camp*,
13 but he took us to Arua to the airport and he left -- he handed us over
14 then to the *aide-de-camp* of Salim Saleh, major -- or Captain Maguru.

15 Q. Yes, it was indeed Captain Maguru who received the delegation,
16 and you went to the Pacific Hotel, if I have understood correctly?

17 A. Yes, of course.

18 Q. Before meeting the UPC delegation which was on the spot, I
19 understand that your little group, those who decided to get -- to board
20 the helicopter, that's where you had meetings to decide on an FNI
21 structure, was it not, to appoint a defence commissioner, foreign affairs
22 commissioner, and so on; is that right?

23 A. Before that, I think that Captain Maguru wanted to know what was
24 the difference between the FNI and the Lendu and what was the role played
25 by the notables because they were absent, and we explained to him the

1 position. That was the preliminaries because it was necessary to
2 understand the situation, if the FNI was an association of Lendu or
3 whether it was a political military movement and what its objectives were
4 and so on. And it was after that, after having explained all of that
5 that we did indeed come together to decide who could fill given
6 positions, and that is what was done.

7 Q. Is it possible that Commander Maguru asked you what was the
8 distinction between you, the FNI, and the FRPI or was it just a
9 difference between the Lendu community and you?

10 A. No, you mention the word "FRPI." That did not come into the
11 discussions. He just wanted to be sure that the FNI, as well, was indeed
12 a political military movement, that is, a movement with clear goals and
13 what our action plan was. For example, he wanted reassurance about the
14 structures and the bodies in the FNI so that -- so that we would be in a
15 position to have discussions with the UPC, which would also be putting
16 forward its action plan and that was necessary. It was for that purpose.

17 Q. So if I understood correctly - and we can wind up with this - the
18 Ugandans ask you to organise yourselves to adopt a structure so that you
19 can better participate in the meeting with the UPC; is that correct?

20 A. What you said -- it's different from what you said. The Ugandans
21 did not try to organise us. They wanted to ascertain whether we were
22 what we claimed to be, a political military movement, and what its
23 objectives were. It was not for them to organise us, no.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Witness, for
25 your contribution this morning. We will now conclude this hearing. We

1 will meet again, Witness, on Wednesday at 2.30 p.m.

2 Prosecutor, are you in a position to give us an estimate about
3 the time your cross-examination will last?

4 MR. MACDONALD: (Interpretation) I'll try and be as succinct as
5 possible, your Honour, but I think it would be judicious perhaps to
6 display -- to move Mr. Iribi for the second session. I didn't think it
7 was going to take so long, but I'm not the one who's answering the
8 questions.

9 PRESIDING JUDGE COTTE: (Interpretation) Very well.

10 MR. HOOPER: (Previous translation continues) ... say that this
11 movement of prisoners, I'm not entirely sure what accommodation they have
12 when they're moved here. I know our own prisoners are not particularly
13 comfortable in the very limited space that's provided for them behind me.
14 So when my friend says that Mr. Iribi can be moved here, I hope he
15 appreciates that it may be that he be moved to a place that's not the
16 most comfortable. And if he is to be moved and he is not reached, that
17 would be a disservice to him, to the next witness. So I hope my friend's
18 estimate is noting how long it has taken so far is realistic when he
19 says: Effectively, I will conclude in the first two hours of next
20 Wednesday.

21 PRESIDING JUDGE COTTE: (Interpretation) And Mr. Luvengika might
22 be asking questions as well as the Judges on the basis of the
23 Prosecutor's last questions. So, Court Officer, it is unlikely that 228
24 should arrive before the break and we shall see during the hearing
25 whether or not he can actually begin his testimony on Wednesday or

1 whether accommodation, most comfortable accommodation possible can be
2 arranged for him.

3 Court Usher, would you please accompany the witness?

4 Yes, Witness, go ahead.

5 THE WITNESS: (Interpretation) Yes, your Honour. Perhaps I'm
6 not entitled to address you in this way, but I would like to apologise to
7 the Prosecutor if, from time to time, perhaps under the influence of some
8 irritation due to tiredness, I didn't answer him in a manner that he
9 thought was reasonable, and for that I would like to apologise.

10 PRESIDING JUDGE COTTE: (Interpretation) It is indeed not only
11 something you're allowed to do but you should be doing, to apologise to
12 the Prosecutor in this way. I'm sure you will now have an opportunity to
13 rest before we meet again on Wednesday, when you should be ending your
14 testimony. Thank you, Witness.

15 Mr. Usher, please escort Mr. Ndjabu out of the courtroom.

16 (The witness stands down)

17 PRESIDING JUDGE COTTE: (Interpretation) We are no longer on
18 record.

19 On behalf of the victims, Mr. Gilissen.

20 MR. GILISSEN: (Interpretation) At the beginning of the hearing
21 we talked about inter-party documents and I just want to be sure that the
22 Prosecutor's documents should also reach us, the two documents that the
23 Prosecutor is going to disclose to the Defence.

24 PRESIDING JUDGE COTTE: (Interpretation) We're talking about
25 documents relating to the movement of Witness 276. Thank you.

1 The hearing is adjourned. Please rise.

2 The hearing ends at 1.33 p.m.

3 CORRECTION REPORT

4 The Court Interpretation and Translation Section has made the following corrections

5 in the transcript:

6 *Page 15 lines 17

7 "or I see somebody going past my house"

8 is corrected by

9 "or I see his vehicle going past my house"

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