

Trial Hearing
Witness: DRC-D02-P-0228

(Open Session)

ICC-01/04-01/07

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Germain Katanga and
5 Mathieu Ngudjolo Chui - ICC-01/04-01/07
6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra and
7 Judge Christine Van den Wyngaert
8 Trial Hearing
9 Wednesday, 20 April 2011
10 (The hearing starts in open session at 9.03 a.m.)
11 THE COURT USHER: All rise. The International Criminal Court is now in session.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated. Good morning,
13 everybody. Good morning to the accused. Court officer and court usher, please would
14 you have Mr Mbodina come into the courtroom. Yes, Mr Hooper.
15 MR HOOPER: Sorry, just before Mr Mbodina gets brought in, can I raise a matter? It
16 will take me just a minute or two. Last night we received Rule 77 disclosure from the
17 Prosecution. This is one of a number of disclosures that have taken place over the past
18 several weeks. You, the Judges, won't have access to the Rule 77 material due to the
19 modalities of disclosure in this particular Chamber.
20 The disclosure falls into two parts, as it were. The first part comprises investigators'
21 reports in respect of Witness 280 and 279, which you will recall were child witnesses, or
22 purported child witnesses. The reports themselves contain information going back to
23 July 2007 through to 2008. They contain matters which we would have submitted - or do
24 submit - should have been made available to us -- should have been made available to us.
25 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper.

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1 MR HOOPER: I'm sorry.

2 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, disclosure inter partes,
3 according to Rule 77, well, the Chamber has no access to those documents. We don't
4 receive them, so you are talking about questions that the Chamber is not aware of. If I
5 understand you properly, what you are saying is that yesterday evening, among the
6 various disclosures that have come in, in the last few weeks, you received the conclusions
7 of an investigation of child soldier witnesses, et cetera. We are unaware and unfamiliar
8 with this. So, what I'm saying to you is that you're talking about something that we
9 know nothing about.

10 MR HOOPER: I appreciate that. In fact, I stated it. It may have got, as they say, lost in
11 translation, but I'm aware that the Court, you the Judges, do not receive the Rule 77
12 disclosure, so -- and the position is this, if I can just come to the nature of the documents.
13 The first are investigators' reports relating to contact with Witness 280 and 279 and with
14 their families, or not, as it may be. These are relevant matters, matters that were relevant
15 when the witnesses themselves gave evidence. There are matters here that I may very
16 well have pursued with the witnesses themselves when they gave evidence in the course
17 of the Prosecutor's case, and yet this disclosure is arriving now.

18 Secondly, we indicated yesterday it was our intention to serve statements by the two
19 fathers of those two witnesses, the fathers of those two witnesses, and we are not now
20 going to disclose those statements, because as a result of receiving this material, we are
21 going to conduct further inquiries in the field which will very probably lead to further
22 statements or, rather, I should say, a reformulated statement, containing and addressing
23 issues that are raised here. And I don't see that that's going to take less than about a
24 week. So, our indication yesterday of disclosure will not now take place today.

25 The second area -- the second documents I received are manuscript documents that

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1 purport to have come from Colonel Matata's office. They are dated 17 February 2003. I
2 understand their provenance is, and Ms Menegon may correct me here, but their
3 provenance is the same as other letters that have, as it were, been somewhat on the
4 sidelines of this case, from time to time. We are at a loss to understand how disclosure
5 takes place last night in respect of documents that we understand were all collected at one
6 and the same time, if that is the case.

7 Secondly, they are documents that contain matters that I, if I'd been in possession of these
8 documents earlier than this morning, I would have raised with Ndjabu, very probably
9 thereafter, first having taken instructions from him, as it were, or having first learned
10 what his position was in respect of particular aspects of the matter of relevance in this
11 letter for me and, indeed, perhaps with the present witness, and perhaps, subject to how
12 matters develop with the next witness and with Prosecution witnesses.

13 And as I say, we deserve and demand from the Prosecutor an explanation as to why this
14 disclosure is taking place now, rather than earlier. We don't mind that that takes place in
15 writing, but we'd like to know today, and it may lead me to again request the Court for
16 access to a witness in respect of newly disclosed material. Thank you.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Hooper. There's
18 perhaps a problem of interpretation. On page 2 of the transcript I read, "I think that the
19 Judges know that had access to Rule 77," and that led me to believe that we, too, had had
20 these documents disclosed to us, but now we have understood the first point you've
21 raised and we do keep in mind that some witnesses, either for your team or
22 Mr Ngudjolo's team, well, their purpose is to -- is relevant to the statements made by
23 witnesses 279 and 280. So we can understand that you want to get hold of additional
24 information.

25 As for your second point, this leads us to turn towards the Prosecutor. Could the

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1 Prosecutor briefly, but completely, tell us why these disclosures are so late, seeing as this
2 brings up issues for the two teams? Both in terms of the first point and the second item,
3 the manuscripts from Colonel Matata's office, why are these disclosures so late?
4 Mr Prosecutor.

5 MR MACDONALD: (Interpretation) Thank you, your Honour, your Honours. There
6 are two quite different points involved and we need to make a clear distinction between
7 the two. Concerning the first point, i.e., witnesses 279 and 280, we received from the
8 Defence team for Germain Katanga the summaries concerning two witnesses that are
9 related to the previous two witnesses, and they are going to come and testify. When we
10 were made aware of the information, in spite of the fact that it's not very fully developed,
11 well, the whole process of reviewing the documents that we had in our databank began.
12 This information that was disclosed relates to the relocation and the acceptance into the
13 protection scheme of witnesses 279 and 280. Now, starting from there, the unit wanted
14 the presence of a number of relatives, a number of members of the family, during the
15 interview so as to assess the request for relocation.

16 In the case of 279, there are a number of allegations made by the latter, and this
17 information comes under -- coming under Rule 77 is now disclosed. This concerns the
18 security of Witness 279 by -- as a precautionary measure, we also disclosed the same
19 material about Witness 279 so as to avoid any confusion when the relative comes to testify
20 in relation to 279. That is why these -- this information was disclosed.

21 Your Honour, you must understand there are 39 witnesses for Defence. The Prosecution
22 needs to prepare cross-examinations, must prepare its disclosures and carry out
23 investigations. Perhaps we do have more human resources than the Defence teams but,
24 in spite of this, all this takes time and we have to sort out documents and then we have to
25 make disclosures and at the same time, on a day-to-day basis, additional investigations

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1 have to be embarked on on the basis of what is said by witnesses.

2 Now, that's one thing, but the second thing, your Honour, we are talking about a seizure

3 that was performed in the Democratic Republic of the Congo - I can't remember the date,

4 in 2005 or 2006, it doesn't really matter - and it is true that some of these documents were

5 already disclosed in the past and indeed some of them are exhibits with EVD numbers. It

6 sometimes happens, your Honour, that in view of the volume, more than 25,000

7 documents, there are errors. There are mistakes. There are some things that are

8 forgotten. It may happen that a document should have been previously disclosed, but

9 wasn't, and of course that is the entire responsibility of the Prosecution.

10 Now, in view of the documents that were disclosed, of course the Prosecution cannot just

11 pick what we like and what we don't like. We try to do our job as honestly as possible,

12 and I'm sure that Mr Hooper and my other colleagues recognise this. When the

13 Prosecution finds when it is reviewing documents things that should have been disclosed,

14 we don't simply brush them under the carpet. We assume our responsibilities and we

15 disclose them. So I am standing here before you, your Honour, to once again say that

16 this type of situation may happen again, because unfortunately our system is not

17 absolutely perfect, but I do believe that the percentage of documents involved is very tiny

18 in relation to the overall volume.

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

20 MR MACDONALD: (Interpretation) Now, continuing about yesterday's disclosure,

21 well, there's going to be the normal notification by the Registry which has been informed.

22 PRESIDING JUDGE COTTE: (Interpretation) Now, we all know that we cannot do the

23 impossible, but that we must try and be -- well, tend towards perfection. Mr Hooper

24 wanted to say something. You have answered him. Anything that can lead to timely

25 disclosure is of course preferable, and we can understand that on both sides from time to

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1 time there can be overloads, as it were, if I may use the expression, but anything that can
2 be disclosed at the right moment must be disclosed so as to encourage work that is part of
3 the obligation of diligence that we are all bound to.

4 Now that we have heard your respective positions, court usher please go and bring the
5 witness into the courtroom. Thank you.

6 (The witness enters the courtroom)

7 WITNESS: DRC-D02-P-0228 (On former oath)

8 (The witness speaks French)

9 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Mr Mbodina.

10 THE WITNESS: (Interpretation) Good morning.

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

12 THE WITNESS: (Interpretation) Yes, I can.

13 PRESIDING JUDGE COTTE: (Interpretation) Well, we can resume. Prosecutor, you
14 have the floor.

15 MR GARCIA: (Interpretation) Your Honours.

16 QUESTIONED BY MR GARCIA: (Interpretation) (Continuing)

17 Q. Good morning, Witness.

18 A. Good morning.

19 Q. Witness, today I will be continuing with a number of questions. Yesterday we
20 began the cross-examination for about 15 minutes, and today I shall be continuing no
21 doubt for the next couple of hours. Before beginning I would simply like to point out
22 that, if you do not understand the question I raise, please feel free to tell me so and to stop
23 me immediately so that I can reformulate my question. Do you understand?

24 A. Yes, I understand.

25 Q. Witness, first of all, I would like to ask you a number of questions about the duties

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1 you fulfilled within the ACR in Beni. You stated yesterday, and the day before yesterday,
2 that you were acting as an intelligence operator, an intelligence agent; is that true?

3 A. Thank you, Prosecutor. Yes, that is right, but there's a difference between an
4 intelligence agent and an intelligence officer. I began as an agent and went on to become
5 an officer.

6 Q. Witness, simply so that we don't lose any time, I can tell you that there's no need for
7 you to actually say "Thank you" at the end of your questions. Do you understand?

8 A. Well -- well, that's me, and I am willing to say "Thank you." I don't think it's a
9 problem.

10 Q. Let's go on, Witness. You just established there's a difference between -- there's a
11 difference between an intelligence agent and an intelligence officer; is that right?

12 A. Yes.

13 Q. During your testimony you said that, when you reached Beni, for some time you
14 didn't fulfil any particular duties. In other words, you were coming from Bunia and you
15 didn't have any particular duties within the ACR at Beni; is that right?

16 A. When I reached -- when I got there to Beni from Bunia, I in the -- well, immediately
17 after that I didn't have any particular duties to fulfil, but that didn't mean that I was not
18 working. An intelligence officer is permanent, is permanently on duty, and in the service
19 of the organisation that calls on him. Thank you.

20 Q. Well, we did understand that your functions were permanent ones, but when you
21 reached Beni you yourself were more or less a displaced person. You had come from
22 Bunia. I can well understand that you had no specific duties in Beni, whether you were
23 an agent or an officer for intelligence.

24 A. That's precisely what I was saying, Mr Prosecutor. Could the court officer please
25 be asked to turn off my monitor, because it distracts me?

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1 PRESIDING JUDGE COTTE: (Interpretation) Perhaps the monitor in front of the
2 witness could be darkened so that he is not disturbed by it. Witness, would you like the
3 Prosecutor to rephrase his question, or do you remember it? I think, Prosecutor, you
4 should rephrase it once the witness has had a drink, if he wishes to have one.

5 THE WITNESS: (Interpretation) Yes, I can go on with the question.

6 MR GARCIA: (Interpretation) I will rephrase it.

7 Q. When you arrived in Beni and that you were -- you occupied that function, what
8 exactly were your tasks, whether as an intelligence agent or officer in Beni?

9 A. Thank you. An intelligence agent first and foremost is any new member that has
10 recently been hired by the organisation. The tasks he fulfils consist simply in collecting
11 information and the sources of information are wide-ranging. There can be contacts that
12 he has with particular people, which we refer to as honourable correspondence, and with
13 other organisations, or in the street, or the newspapers. So they are very multi-faceted
14 sources. But as for an officer, including myself, is also to collect information just like
15 agents, but something else. He is able to compare the information he collects and I did
16 this in Beni. As intelligence officer I would collect information from the various sources
17 and then I worked with the general directorate in the analysis department, and my role,
18 together with many others there, was to cross-check information; in other words, to
19 analyse the information. Thank you.

20 Q. And so that we fully understand the role you played, when you say that you
21 collected information were you talking about information about what was happening in
22 Ituri at the time?

23 A. Thank you. There was no boundary -- there is no boundary for an intelligence
24 agent as far as collecting information is concerned. Ituri was of course perhaps the
25 preferred sector where I could get information, but also about Beni and in anywhere else

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1 any information that was available, and even on an international scale information is
2 always of interest to an intelligence agent.

3 Q. To be sure that we are understanding you, you talked about the fact that you
4 analysed the information; is that right?

5 A. Yes, Mr Prosecutor.

6 Q. Did you do analyses at the same time as you were intelligence officer, or was this a
7 separate function that you had at some other time?

8 A. An intelligence officer is not a position. It's a title. It's not even a function. A
9 function is say the head of a department. A director-general, that is a function, but
10 intelligence officer is a title that is attributed to a person who has been working for some
11 time, or has a high rank in the service, and that's what I was, an intelligence officer.

12 Q. Does this -- is there an analyst function per se, or is it not separate?

13 A. An analyst is a person who is working in the analysis and research department.
14 The department of research and analysis, now that actually depends on the organisation.

15 Q. In contrast with the work of an intelligence officer, the position of analyst is a
16 function per se; is that right?

17 A. Yes, Mr Prosecutor. An analyst is a function within the research and analysis
18 department.

19 Q. And at the time when you're working as an intelligence officer, who were you
20 working for precisely?

21 PRESIDING JUDGE COTTE: (Interpretation) We have a problem, in terms of hearing
22 your voice. We didn't hear your voice, Mr Garcia, we heard another voice. Could you
23 please repeat your question? Perhaps those things are going to work well this time.
24 We're listening.

25 MR GARCIA: (Interpretation)

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1 Q. Well, Witness, I'm going to repeat my question. When you were working as an
2 intelligence officer, for whom were you working?

3 A. Thank you. Well, I was working for the RCD-K/ML. That was a rebel movement
4 headed by Mbusa Nyamwisi.

5 Q. For how long did you work as an intelligence officer, how many months?

6 A. Thank you. As I said yesterday, I stopped working for the RCD-K/ML when I was
7 made or given a position within the temporary provisional administration set up by the
8 commission for the pacification of Ituri and, at that point in time, we were banned from
9 any kind of work for another organisation, with the exception of being a member of the
10 interim assembly of Ituri. So when I became a member of that assembly, I stopped
11 working as an intelligence officer, as I had up until then.

12 Q. In which month was that?

13 A. I cannot say precisely after all that time. Well, since 1999 until 2003, 2004.

14 Q. Precisely, do you have a specific date, a year, a month?

15 A. Thank you, Prosecutor. It's difficult for me to give you an exact date.

16 Q. If you took the time to think it over could you tell us in which year that happened?

17 A. Yes, 2004.

18 Q. You also talked during your testimony of the fact that you held the position of
19 territorial director for Kanyabayonga, is that true?

20 A. Thank you, Prosecutor. I was a territorial director of Kanyabayonga. I said
21 yesterday that I could not take up my position because of the insecurity that prevailed in
22 the field, so I was appointed territorial director but I was working in Beni.

23 Q. Precisely, I wanted to ask you a question about that. You initially said it was for
24 Kanyabayonga and now you said for Beni. Who changed your position?

25 A. Thank you. I didn't change. As I said yesterday, and I'll repeat this today, I was

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1 appointed territorial director of Kanyabayonga. Given the insecurity that prevailed in
2 Kanyabayonga at the time, and security resulting from the advance of the RCD-Goma, I
3 did not take up my position in Kanyabayonga but, in fact, I was a territorial director in
4 Beni.

5 Q. Who precisely appointed you to that position of territorial director in Beni?

6 A. Thank you. I was appointed by a decree by the President of the RCD-K/ML Mbusa
7 Nyamwisi.

8 Q. Could you give us an exact date?

9 A. Well, I did everything to obtain the document through which I was appointed.
10 Unfortunately, I've not been able to get it - it's a shame - and, therefore, I can't tell you
11 what the date was but there are references in the intelligence agency in Beni and that
12 information can be found there.

13 Q. As far as you remember, could you tell us in which year you were appointed to that
14 position?

15 A. Thank you. Unless I'm mistaken, I was appointed in late 2002, I believe, because I
16 can remember very well of the reception that was held for that opportunity, on that
17 occasion, in December 2002. So I believe I was appointed to that position slightly before.

18 Q. Witness, what did your task consist in, as the territorial director in Beni? Could
19 you give us a brief description?

20 A. Thank you. The task assigned to a director, who is first and foremost an
21 intelligence officer, consists first of all in guaranteeing the correct operation of the
22 intelligence department. He works in cooperation with the administrative authority in
23 place and he helps it fulfil its tasks by steering its decisions, by providing information
24 gathered by other people, the information.

25 Another concern is ensuring security as well as protecting administrative authorities, and

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1 so forth. He's a member of the Security Council of that, the body, and he takes a
2 proactive part in its meetings. He works with all the other bodies. He reports to his
3 hierarchical superior and he reports back to him. That's more or less the role by such a
4 director.

5 Q. Well, Witness, we're going to change subjects for the time being and we're going to
6 move on to questions I'm going to ask you about the creation of the FRPC. You talked to
7 us yesterday and the day before yesterday about a meeting held in the Casino Hotel in
8 Beni. Can you remember that?

9 A. Yes, thank you.

10 Q. Just before I start this series of questions, is it exact to say that you were domiciled in
11 Beni at that time?

12 A. Yes, that's right.

13 Q. Does the name Angaika Didi mean anything for you, Witness?

14 A. Yes, I know him perfectly well.

15 Q. If I understand well, Mr Angaika Didi is somebody who, among others, was in
16 touch with the ISP in Bunia; is that true?

17 A. Yes, it is Prosecutor.

18 Q. In fact, Witness, you both went to the ISP, this educational institute at the same time;
19 is that true?

20 A. Thank you. It's not quite exact, because I met him when he was finishing his
21 studies. And, in fact -- in fact, well, yes, yes, when I met him he was finishing his studies
22 and I was starting my first year.

23 Q. Did you know him from beforehand, before you enrolled in the ISP in Bunia?

24 A. Yes, apparently I knew him. I can't remember but I know that as an older student
25 of the ISP we probably had a relationship that dated to before the ISP. It's quite possible,

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1 but I really cannot remember.

2 Q. Did Mr Angaika Didi also -- was he also in Beni in 2002 just before that meeting was
3 held in the Casino Hotel?

4 A. Thank you. I can tell you that Mr Angaika Didi was not at the Casino Hotel
5 meeting.

6 Q. Maybe I wasn't very clear, but my question was: Was Mr Angaika Didi in Beni
7 before this meeting in the Casino Hotel? We have not yet talked about the Casino Hotel
8 meeting?

9 A. Thank you. Didi, I can't remember seeing him; I can't remember him being in Beni
10 at the time. I did not see him and I never met Didi in Beni, apart from a later period but
11 you are not yet -- you said we weren't talking yet about that meeting, but I met him when
12 we went to Kampala. That's where I met him.

13 Q. Well, Witness, let's shed some more light on this issue. You met him when you
14 went to Kampala, but I'm right to say that when you left Kampala Angaika Didi was in
15 Beni; am I right to say so?

16 A. Thank you. Yes, Prosecutor, you are right to say so.

17 Q. So he was in Beni at some point in time?

18 A. Yes, he was in Beni, I can remember very well, but I did not meet him.

19 Q. Let's try and clarify this issue. You are asserting that you left with Mr Angaika
20 Didi to Kampala and, if I understand you well, that's when Mr Floribert Ndjabu had
21 called you; is that true?

22 A. Yes, that's right.

23 Q. And you are also telling us, Witness, and tell me if I am wrong, that from
24 August 2002, in August 2000, when you got to Beni and then until you left for Kampala,
25 you never saw Mr Angaika Didi in Beni, is that what you are saying today?

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1 A. Thank you, Mr Prosecutor. Let me clarify my thought here. I said that I was in
2 Beni. I had a home in Beni. I met Didi, that's true, and that enables me to say that he
3 was in Beni, but I met him before going to Kampala. That's what I think.

4 Q. Sir, but the question I'm asking you is: Is it not true that you had already met him
5 even before the meeting held in the Casino Hotel?

6 A. Well, at this point I have to say that I did not meet Didi, I cannot remember meeting
7 Didi before the Casino meeting, and if I did, I don't believe it's a problem but I just cannot
8 remember meeting Didi before the Casino meeting. I can't remember that, sincerely.

9 Q. So, you're using words like "I can't remember," and you also say that it would not be
10 a problem if you had met Didi, Angaika Didi, so, can I assume that you possibly met
11 Mr Angaika Didi before the Casino meeting, but because several years have gone by, you
12 have forgotten; is that possible?

13 A. The contrary, the opposite, could be true. I might very well not have met
14 him - that's also possible - and I can't see any problem there. When I think about this
15 question, I am certain that Didi is a brother, an older brother, a friend. I might have met
16 him, I can't see any problem in that, and the Casino meeting, as it is possibly the main
17 focus of your question, I have said that I did not meet Didi before the Casino meeting, and
18 even less during the Casino meeting.

19 Q. You agree with me, Witness, that Angaika Didi was also yet another displaced
20 person who was in Beni at that time?

21 A. Thank you for your question. Well, here, I really can't see how Angaika Didi
22 would have been a displaced person in Beni, instead of going home to Aveba where he
23 would have been really safe whereas I, for instance, had lost everything in Bunia, and I
24 went to Beni because there was nowhere else I could go. So I just can't see how Angaika
25 Didi would have ended up as a displaced person in Beni instead of being in Kagaba or

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1 Aveba, places where he would have been very safe.

2 Q. Well, Witness, I'm going to try and jolt your memory. Is it not true that a few days
3 before this meeting in the Casino Hotel, that you met Mr Angaika Didi in the street in
4 Beni and you mentioned to him the fact that --

5 MR HOOPER: Again, we're back into this world of assertions, when it would be more
6 appropriate for my learned friend to ask neutral questions, because any basis for an
7 assertion may never see the light of day, even if it has -- or it's got a proper basis, that is.

8 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, continue, but your last
9 question resembled a question but, please, if you could put an end to having to do with
10 this possible meeting, or meeting that the witness forgot that he had with Mr Angaika
11 Didi, that would be a good idea. So please ask your last question on this issue.

12 MR GARCIA: (Interpretation) Please, could I have a moment, your Honour.

13 Q. Well, Witness, let's talk about Angaika Didi once more. Is it not true, Witness, that
14 a few days before this meeting in the Casino Hotel, that you met Mr Angaika Didi in Beni
15 and you talked to him about the fact that a meeting was going to be held precisely in the
16 Casino Hotel; is that exact?

17 A. Thank you, no, that's not true. I said no, that's not true.

18 Q. Would it be exact to say, Witness, that when you were in that meeting in the Casino
19 Hotel, two points were being debated: The first was the issue of whether -- or how
20 combatants were to be called and the second was the question of whom among you,
21 Mr Sharif Manda, Mr Sambidhu, and Mr Floribert Ndjabu Ngabu, was going to be the
22 official contact person with the RCD-K/ML, i.e., the authorities in place in Beni. Is that
23 exact?

24 A. No, it's not absolutely true. I can shed some light on this and say precisely as I
25 already explained yesterday what happened at that meeting. The problem of the name

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1 to be given to a new structure was a real problem, given the high number of proposals
2 that were put forward. And the fact that there's so many proposals had been made, as I
3 stated yesterday, resulted first and foremost from the fact that there were existing
4 organisations, such as BOB at Mongbwalu and also the Lendu Liberation, so there were
5 many names and Dr Adirodu set himself through with the FRPI. He argued that the
6 name was already known in Kinshasa. And this was not a major debate, but nonetheless
7 he was to become the coordinator, and that wasn't simply being the contact person with
8 the RCD-K/ML because we were all in touch with the RCD-K/ML: Ndjabu Floribert,
9 who was an official trained by the RCD-K/ML, just like I myself, and of course venant du
10 AFDL Adirodu, who was a member of the transition parliament and already a member of
11 the RCD-K/ML. We did not really need a contact person with the RCD-K/ML. What
12 we needed was having representative. So the consensus was forged on the name of
13 Floribert Ndjabu, rather than on Dr Adirodu, who wanted Sambidhu to be appointed. I
14 personally had no interest, Sharif even less. He wasn't even at the meeting.

15 Q. Witness, let's go back a little bit, please. When you got to Beni, would I be right to
16 say that you, from the very outset, helped deal with problems that had arisen with respect
17 to displaced persons in Beni; am I right on this point?

18 A. Thank you. Well in fact, that's the very reason behind the FRPI.

19 Q. We're going to get to the FRPI, but on the point I've mentioned, you agree with me:
20 You started helping displaced people who were in Beni, who came from Bunia and other
21 locations in Ituri; is that right?

22 A. Thank you for your question. I don't know what you mean when you say, "you
23 started helping." Personally, I could help all these refugees. We were carrying out
24 some interventions but it was the RCD-K/ML, in fact, that was providing assistance for the
25 displaced people, and we were there to help them do so.

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1 Q. So, in a way, you were acting in favour of the displaced people with the authorities;
2 is that true?

3 A. Yes.

4 Q. You said "we." Who else was acting as intermediary or carrying out this work with
5 you?

6 A. Okay. Well, first of all, we would need to identify the kind of assistance we're
7 talking about but that's -- your question is very ambiguous. Could you -- I mean, you
8 want me to specify what, what kind of work I was carrying out with these people? Then
9 I'll be able to answer your question.

10 Q. Well, you were there at the time. The question I'm asking you for the time being
11 since you've just described how you acted as an intermediary with the authorities, when
12 you did so, you talked about "we." So there are other people. Could you give us some
13 names in this respect?

14 A. Thank you. I might not remember all the names. I know that, first of all, the FRPI
15 had been created. Floribert Ndjabu was there, and then there was also Sambidhu who
16 was there, as well as somebody called Lobilo (phon) he was there too, and I could add
17 later when the chiefs arrived, I could increase the number of people, with, for instance,
18 Sharif. It's rather tough right now but I know there are a lot of other people who were
19 helping these displaced persons integrate within the North Kivu environment.

20 Q. To make sure that I've understood, the last you mentioned was Sharif, is that true?

21 A. Yes.

22 Q. So, this is indeed Sharif Ndaza; that is his name, isn't it?

23 A. Yes, that's his name, but he arrived afterwards in North Kivu.

24 Q. With respect to Sambidhu, we are talking about Jean-Pierre Sambidhu Muganga; is
25 that his name?

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1 A. I don't know Jean-Pierre's name. I know that that is his wife's name, but I'm used
2 to calling him Sambidhu, or even Sammy.

3 Q. You also talked about Floribert Ndjabu, who was acting as an intermediary with the
4 authorities; is that true?

5 A. Yes, that's right.

6 Q. Well, there were at least four of you carrying out this kind of work, acting as
7 intermediaries with the authorities in Beni at that time; is that right?

8 A. Thank you. I did not mention only four names. I mentioned more than four and I
9 added that there were many people involved. I probably no longer remember the
10 names.

11 Q. If I understand you well - and please correct me if I am wrong - when you acted as
12 intermediary it was in relation to displaced persons, that is civilians in their relations with
13 the authorities; is that correct?

14 A. No, it was a purely humanitarian mission and you really did not need to have any
15 position to carry out those missions. So it is only human to have pity for people who are
16 suffering, so you do not necessarily need to hold any position. That was not part of my
17 responsibilities. It is true that it could actually have been part of my attributions or
18 duties as an intelligence officer, but it was not only that. I did it on my own free will.

19 Q. Would I be correct, Mr Witness, to say that before that meeting at the Casino Hotel
20 there was an argument between you, Floribert Ndjabu Ngabu, Sambidhu and Sharif when
21 you were trying to determine who would act as the main intermediary with the
22 authorities in Beni?

23 A. That is not correct. I have already said that here it is not correct. Personally, I did
24 not even have any interest. Indeed, Manda was not even there. He arrived after the
25 creation of the FRPI.

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1 Q. Just to be clear, Mr Sharif Manda was not there and he was not acting as
2 intermediary with the authorities, that is before the creation of the FRPI; is that your
3 testimony?

4 A. Thank you. Manda arrived after the organisation had been created and he started
5 acting inside the FRPI as my deputy. He was not present during the discussion on the
6 creation of the FRPI, so this means that he did not have any intention of being the leader
7 of the organisation. That is because he was not even present when the organisation was
8 created.

9 Q. Mr Witness, during the meeting at the Casino Hotel, was a decision made as to who
10 would hold the positions of Commissioner for Finance, Commissioner for
11 Communications and so forth and so -- and so on and so forth? Were those positions
12 filled?

13 A. No, that is incorrect. Absolutely wrong. There were no commissioner appointed.
14 There was the coordinator, his deputy and the advisers. In fact, those who were
15 responsible for security, everyone knew that I was an intelligence officer and so they
16 simply proposed me to that position. This did not lead to any discussion at all. On the
17 contrary, the post of coordinator and deputy coordinator was the post that was disputed.
18 In fact, it was only Dr Adirodu who did not want Ndjabu to be there. He wanted his
19 brother, Sambidhu, to be there. Everyone else was agreed that Ndjabu should be there.
20 That was the only point of argument. There were no other disputes.

21 Q. Mr Witness, let us accept your version, but at that point a coordinator and a deputy
22 coordinator was appointed on that day; is that correct?

23 A. Thank you. Nobody was appointed. Everyone was elected. Ndjabu was elected
24 as coordinator and Sambidhu was elected as his deputy.

25 Q. How many people were there in that meeting at the Casino Hotel?

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1 A. There were about 30 of us and, if you go and look at the room in which the meeting
2 was held, there could not have been up to 50 people. There were about 30 of us and
3 most of the participants were displaced persons.

4 Q. And you yourself, Mr Witness, is it not correct that you were elected and you took
5 over the position of commissioner responsible for relations with the soldiers?

6 A. That is not correct. I was elected as officer responsible for defence and not
7 commissioner responsible for relations with armed groups, so this was after the creation
8 of the FRPI.

9 Q. Is it not correct, Mr Witness, that after that meeting, and probably before, you had
10 the duty to act as intermediary and to speak with the APC soldiers, who had sometimes
11 arrested displaced persons who had come to sell their animals in Beni? Is that not
12 correct?

13 A. Thank you. We did that just as part of our humanitarian duties. I was not the
14 only one doing that. There were many of us who did that. This resulted from the fact
15 that we occupied certain positions.

16 Q. You are indeed confirming that you played that role. You went and discussed with
17 APC soldiers in Beni who had arrested certain people, or who had had problems with the
18 people they had arrested; is that correct?

19 A. Yes.

20 Q. Would I be correct to say that Mr Sharif Ndaza was elected Commissioner for
21 Finance during that meeting?

22 A. That is not correct. Which finances were we going to manage there? We did not
23 have any.

24 Q. But you yourself, Witness, you said that your position was Commissioner for
25 Defence; is that correct?

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1 A. Yes.

2 Q. The defence of what? Were you talking about the troops that were in the
3 Walendu-Bindi area? Which fighters, or combatants, were you referring to at the time?

4 A. Thank you. That concept of defence is not the conventional notion that applies to
5 the Ministry of Defence of a country which promotes the policy of the country, no. The
6 FRPI did not have combatants. We talked about defence, because those who were there
7 were also combatants who had taken part in certain attacks, for example in Mongbwalu,
8 and in order to enable them to integrate the APC and to defend certain interests, that is
9 why defence and security was proposed. It did not relate to the management of soldiers,
10 no.

11 Q. If I understand you correctly, Mr Witness, you were Commissioner for Defence and
12 Security, but you are saying that at the same time there was no army? You say there
13 were no combatants and so your title was completely fictitious. It had raison d'être. Do
14 you agree with me?

15 A. Yes, I agree with you. It was fictitious. It was really not important, in the sense
16 that there was no raison d'être for it. We talked about defence in relation to helping
17 those people who were there to integrate themselves into the military circles in Beni.
18 That is all.

19 Q. If I understand your testimony, the 30 or so people who were present elected you to
20 a position without any real duties because according to your testimony there were no
21 troops?

22 A. I have explained the duties that I had in that capacity. It was not the notion of
23 defence as applies in a ministry. That is why I agree with the term "fictitious" that you
24 used. It was rather to provide assistance to enable those combatants to integrate
25 themselves into the military circles in North Kivu and, since the people we were dealing

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- 1 with were combatants, or soldiers in quotes, we proposed that term of Officer in Charge
2 of Defence, but it was not commissioner. The commissioner was applied within the FNI,
3 but in the FRPI I was an adviser responsible for. I was not a commissioner.
- 4 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, we have to first of all
5 comply with the five-second rule and, secondly, I believe that the witness has made an
6 effort to answer your question by explaining the precise scope of that title, Officer
7 Responsible for Defence, which was conferred on him. He has told you what that meant
8 in the context of the time. So we have to make progress. Otherwise, the witness will
9 simply be repeating himself. He has explained to you the precise scope of that position,
10 so please let us try to move forward.
- 11 MR GARCIA: (Interpretation) Thank you, your Honour.
- 12 Q. Mr Witness, as you have just confirmed to us, Floribert Ndjabu Ngabu was
13 appointed to the position of coordinator; is that correct.
- 14 A. He was elected, not appointed.
- 15 Q. You also had Dr Adirodu, who was present in that meeting at the Casino Hotel; am I
16 correct?
- 17 A. Yes, that is correct.
- 18 Q. Am I also correct to say, Mr Witness, that after that meeting Dr Adirodu became the
19 spokesperson of the FRPI?
- 20 A. Maybe, but he was the self-proclaimed spokesperson. We only recognised that
21 position because he talked about it, but during the meeting we did not elect a
22 spokesperson.
- 23 Q. But if I understand correctly, after that meeting Dr Adirodu was, indeed, the only
24 spokesperson for the FRPI?
- 25 A. You are the one saying so. I can say that that position did not exist. The FRPI did

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1 not elect a spokesperson. He proclaimed himself spokesperson, and that is his problem.

2 On that day we did not elect a spokesperson.

3 Q. Mr Witness, am I correct to say that Dr Adirodu, who was present, proclaimed
4 himself as the spokesperson of the FRPI and he explained to those who were present the
5 reasons why he was the spokesperson; am I correct.

6 A. You are not correct because that position was not discussed during the meeting.

7 Q. Let us forget the issue of the discussion. Dr Adirodu spoke about his being the
8 spokesperson of the FRPI. Do you agree with me that he mentioned that in the course of
9 that meeting?

10 A. Thank you. I do not know the exact words to use, but I must repeat that the
11 position of spokesperson was not discussed. I do not deny the fact that Adirodu
12 proclaimed himself the spokesperson, but that title was not discussed and was not given
13 to him during that meeting on that day.

14 Q. Mr Witness, when we talk about the spokesperson of the FRPI, you will agree with
15 me that it refers to being the spokesperson of a group of combatants; do you agree with
16 me on that?

17 A. That is something else. We also have spokespersons for communities. The Lendu
18 community had a spokesperson who was known. Maybe that is the one who should
19 bear the title, but I'm not aware of any spokesperson for the combatants. Please spare me
20 that intellectual gymnastics.

21 Q. Mr Witness, I talked about the spokesperson of the FRPI, not the community of the
22 Lendus. You agree with me that this refers to representative or spokespersons of a group
23 of combatants, the FRPI. I'm not referring here to your group of four people, a
24 coordinator and his deputy and the other two.

25 A. Thank you. Since we are talking of the spokesperson for the Lendu combatants, I

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1 will tell you that I do not know who is the spokesperson for Lendu combatants.

2 Q. But you agree, Mr Witness, that there were Ngiti combatants in the Walendu-Bindi
3 collectivity; do you agree with me?

4 A. Yes, I agree with you that there were Ngiti combatants.

5 Q. We will come back to that later, Mr Witness. Let me ask you some other questions.

6 You do agree with me that one of the items debated during that meeting at the Casino
7 Hotel was whether the group should be called the FRPI or the FNI; that is, to refer to all
8 those combatants in the Walendu-Bindi region. Do you agree with me on that?

9 A. Yes. At that time, we were not even talking about the FNI yet. You talked about
10 the FNI and the FRPI, but the FNI was not even under discussion yet.

11 Q. If I understand you well, at that time you knew Mr Floribert Ndjabu Ngabu
12 reasonably well; right?

13 A. Yes, that is correct, I knew Floribert Ndjabu.

14 Q. Certainly during your discussions with Mr Floribert Ndjabu Ngabu, he must have
15 talked to you about that movement which was founded in the Lendu North area and
16 which was known as the FNI. He must have talked to you about that at the Hotel
17 Casino?

18 A. No, that was not discussed. He himself did not know whether the FNI was going
19 to be founded at that time of the meeting at the Hotel Casino. The FNI was not even
20 being thought about.

21 Q. Mr Witness, am I correct to say that the appellation FNI came into existence on
22 20 November 2002. Can you confirm that?

23 A. No, I disagree categorically. At that time, the FNI did not exist.

24 Q. If I understand your testimony correctly, Mr Witness, you are telling us that prior to
25 that meeting at the Casino Hotel, you yourself -- let us forget about discussing with

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1 Floribert Ndjabu Ngabu, you yourself had never heard about the FNI; is that your
2 testimony?

3 A. Thank you. Never. That is my testimony.

4 Q. Can we say that it was during that meeting at the Casino Hotel that you heard about
5 the FNI for the first time?

6 A. In the meeting at the Casino Hotel, we did not discuss the FNI; we discussed the
7 FRPI.

8 Q. During that meeting at the Casino Hotel, Mr Floribert Ndjabu Ngabu never
9 mentioned that in Kpandroma, the north Lendus had created a movement known as the
10 FNI, a political/military movement?

11 A. Thank you. Never.

12 Q. Mr Witness, when did you learn that the FNI had been created?

13 A. I was aware of the negotiations in Kpandroma at the end of 2002. There were talks
14 or discussions in Kpandroma and, at that time, the idea was to find a discussion forum to
15 negotiate. And the author, or the creator, of that name from the Nationaliste Integriste
16 was not Floribert Ndjabu; it was Pastor Kwani (phon) who posed that meeting, that
17 appellation, during the discussion. It was subsequently that Ndjabu left Beni to go to
18 Kpandroma on an FRPI mission; that is where he participated in that meeting, and it led
19 to the creation of the FNI. That was after the creation of the FRPI.

20 Q. If I understand you correctly, Mr Floribert Ndjabu Ngabu was in the Casino Hotel
21 meeting and it was only later on when he went to Kpandroma that he realised that there
22 was a discussion going on about the FNI; is that your testimony?

23 A. It is possible that Floribert Ndjabu was aware of the discussions. There was some
24 time that passed between the creation of the FRPI and the FNI. Regarding the FRPI,
25 Ndjabu was present; he participated in the meeting to create the organisation. He

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1 carried out missions on behalf of the FRPI as its coordinator and then, subsequently, he
2 went to Kpandroma on an FRPI mission.

3 Q. I'm sorry to interrupt you, Mr Witness. I did not ask you about Floribert Ndjabu
4 Ngabu's missions. In fact, you are not here to testify to that. I asked you a precise
5 question.

6 A. Is that so? Well, I think that it is my duty to clarify things for you, because you are
7 asking the same questions and each time I have to clarify the context for you; so that you
8 should not come back to the same questions, with all due respect, Mr Prosecutor.

9 PRESIDING JUDGE COTTE: (Interpretation) Please answer the question, Mr Witness.
10 If you find that there is a need to go back to the context, then please do so; but the
11 Prosecutor understands your logic, but try to stop turning around in circles.

12 MR HOOPER: Yes. I'm rather concerned by this questioning, because it's essentially
13 misleading the witness, and it's misleading us. Now, I don't know if the Prosecution has
14 got the wrong end of the stick, but is the Prosecutor, as he is asserting repeatedly here, is it
15 his case that the FNI was created after the FRPI? Because that's been the thrust of his
16 questions to this witness and, essentially, destabilising really perhaps the witness. We've
17 had no contrary evidence. All the evidence, we know how it stands from throughout
18 the Prosecution's case and throughout the evidence to date. Now, if the Prosecution --

19 PRESIDING JUDGE COTTE: (No interpretation)
20 Sorry, I'm talking over you because I haven't finished. If it's the Prosecutor's case that the
21 FNI was established before the FRPI, that at the FRPI meeting, the FNI was discussed,
22 then let's hear that clearly from the Prosecutor, if that's his case.

23 PRESIDING JUDGE COTTE: (Interpretation) We have heard you, Mr Hooper, but that
24 is not really the concern of the Chamber. There are, of course, issues of chronology that
25 the Prosecutor seems to be interested in. He is legitimately asking questions about that,

1 but the Chamber feels that the witness has already answered and given his testimony
2 about the creation of the FRPI, on the one hand, and the FNI on the other. We can
3 continue discussing about that but I think we should move on to another line of
4 questioning. The witness has stated clearly what he had to say, and it seems that he
5 cannot go beyond that. Mr Prosecutor, please proceed.

6 MR GARCIA: (Interpretation)

7 Q. Witness, prior to the meeting in the Hotel Casino, is it right to say that you did have
8 frequent contact with Floribert Ndjabu Ngabu, that he is a friend of yours; is that right?

9 A. Thank you. Yes, indeed. We even slept in the same bed in Beni.

10 Q. Is it right to say that Mr Floribert Ndjabu Ngabu, as far as you know, did have
11 telephone contacts and communication with people, the Lendus who were in Kpandroma,
12 the dignitaries there; is that right? Since you say that you even slept in the same bed as
13 him, are you in a position to answer my question, I think? I think so.

14 A. Well, telephone calls are intimate matters; I'm not aware of that, and as for his -- and
15 the same applies for his contacts in Kpandroma.

16 Q. Do you agree with me in saying that prior to this meeting at the Hotel Casino,
17 Floribert Ndjabu sometimes went to Kpandroma and then would come back again; is that
18 right?

19 A. Thank you. Floribert comes from Kpandroma. And while we were in Beni, he
20 went to Kpandroma twice. The first time, he went there and came back, Mongbwalu,
21 Kpandroma, Beni. And as to his second trip, he went to Kpandroma from Beni, and then
22 never came back until perhaps 2004, or even 2005.

23 Q. So, these trips took place before the meeting in the Hotel Casino; is that right?

24 A. Thank you. After the Casino meetings.

25 Q. Witness, are you in a position to say that specifically today, that it was not before,

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1 but after; is that right?

2 A. I can say this very specifically because the assignment accomplished was the FRPI
3 assignment, so it happened after the creation of the FRPI.

4 Q. We shall return to this later. You mentioned, Witness, that there were at least 30
5 people in attendance at this meeting in the Hotel Casino; is that right?

6 A. Yes, that is right.

7 Q. So, there was Dr Adirodu there, there was you. You asserted that Mr Sharif was
8 not there; is that right? Where was he? What's your testimony on this score?

9 A. That is right. Sharif did not take part in the meeting when the FRPI was created at
10 the Hotel Casino.

11 Q. Was a Mr Sambidhu there? I think he was.

12 A. Yes, he was.

13 Q. Who else was there?

14 A. There were several people, in addition to those four.

15 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, is this not a matter of
16 repetition? Don't you get the impression that a lot of this material has already been said?
17 We let you lead your cross-examination as you wished, but when I talked about spiral or
18 (indiscernible), I think we're getting to a dead end here. We keep going round and
19 round in circles, and I don't think I'm alone in thinking this. So perhaps we should move
20 forwards now and you should not compel the witness to simply repeat what he's already
21 said, unless the particular detail is of very extreme importance to you.

22 MR HOOPER: Can I also come back --

23 PRESIDING JUDGE COTTE: (Interpretation) Mr Hooper, well, if you want to
24 supplement what I was saying, there's no need for you to stand up. I would prefer the
25 Prosecutor to go on, but if you have any new elements, please go ahead. What I'd like is

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1 for us to move forward, and I think the whole of the Chamber also shares that view. Is
2 that right, ladies? Very well.

3 Prosecutor, go ahead. With all my apologies to the court reporters, but unfortunately,
4 sometimes there is a bit of liveliness in the courtroom. This is helpful in awakening
5 people and reminding them of their duties. Let's go on.

6 MR GARCIA: (Interpretation)

7 Q. Witness, I'm going to move on to something else. You also mentioned during your
8 testimony a meeting that you had with Germain Katanga in Beni, is that right?

9 A. Yes, that's right.

10 Q. Am I right in saying that this meeting took place in November 2002?

11 A. Thank you. I don't remember the month of November but, rather, December.

12 Q. Am I right in saying that when Germain Katanga was in Beni, he came not alone but
13 with a delegation?

14 A. Yes, you are absolutely right.

15 Q. Am I right in saying that amongst those people there was Muhito Akobi?

16 A. Yes, you're right.

17 Q. Was Aleso Sipa also amongst those people?

18 A. Yes, you're right.

19 Q. Witness, am I also right in saying that amongst those people there was also
20 Emmanuel de Zumbe?

21 A. No, no, you're wrong. Together with Germain, his delegations, well, we were at
22 Hotel Bashu and I didn't see Emmanuel de Zumbe there. But are you talking about
23 Emmanuel Manu? Oh, Chief Manu. No, I didn't see him. I know him well but I didn't
24 see him in the delegation.

25 Q. Am I right in saying that Germain Katanga arrived with some 12 fighters along with

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1 him?

2 A. I also said that, yes, indeed, Germain did come with a delegation, including
3 combatants. I don't know how many of them there were, but also civilians who were
4 with him too.

5 Q. Am I right in saying that among the people making up this delegation, there was
6 Muganga Leba?

7 A. Thank you. Muganga Leba, who I know very well, I don't remember him being
8 there in the delegation with Germain but it is probable, possible, that he was there on an
9 individual -- in an individual capacity because he wasn't with us in the same room. We
10 were at Hotel Bashu and Germain Katanga's delegation. I do remember the presence of
11 Muganga Leba at the time in Beni, but I don't know whether he was part of Germain's
12 delegation. I really can't say.

13 Q. Do you agree with me when I say that this delegation had two main goals: One
14 part of the delegation was going to see Commander David of the APC and the other part
15 of the delegation was going to see Mbusa Nyamwisi; is that right?

16 A. No, I don't remember there being two delegations. I know Germain's delegation,
17 that arrived with combatants as well and a number of civilians, mostly traders, and they
18 came to make purchases and others came to sell their livestock, but as regards the
19 meetings, well, General Germain arrived and met with North Kivu dignitaries, including
20 Mbusa Nyamwisi, and also the general staff of the APC.

21 Q. So if I understand you rightly, Witness, there were both civilians and military men
22 in the delegation; we both agree on this, do we?

23 A. Yes, I said so. Civilians were there, too.

24 Q. And the civilians were coming to talk about the problems that were encountered in
25 the Walendu-Bindi region?

1 A. I didn't say that. I said that there they were generally traders, businessmen, who
2 had come to make purchases. You know, at the time contact with Bunia had been closed
3 off and communications only took place with the North Kivu. So the traders would
4 come through the forest, on foot, to go to North Kivu, carrying goods on their heads from
5 Beni to Aveba, and there were some of these traders there.

6 Q. I understand, Witness, that you should talk about the fact that some of these people
7 came to talk about their economic problems - they were traders - but do you agree with
8 me that among the civilians that were in this delegation, there were also people such as
9 Angaika Didi, who came to talk about issues relating to schools; is that right?

10 A. No, you are wrong. Didi, how could he come in any capacity to speak about
11 schools? I remember the prefect. There was no authority for him to speak on behalf of
12 schools. He was not a subprefect, or anything like that, so as to be in a position to talk
13 with the North Kivu authorities. In any case, I am not aware of any mission of the type
14 you just described carried out by Didi, or any of the others.

15 Q. On this point, Witness, do you agree with me, nonetheless, that at the time
16 Mr Angaika Didi already he was prefect for schools, had already taken on those duties?

17 A. Yes, he was indeed prefect.

18 Q. And he was prefect for the schools in a village close to Songolo; is that right?

19 A. That's possible. I knew him as the prefect for Bukiringi, which is not close to
20 Songolo, but rather far from Songolo.

21 Q. Am I right in saying, Witness, that Germain Katanga and Aleso Sipa and Muhito
22 Akobi did not stay at the Hotel Bashu, but was -- were found accommodation with
23 Commander David of the APC?

24 A. No, I don't think you're right. Germain was at Hotel Bashu. I even remember
25 which room he was staying in. Sipa Muhito was with him but, of course, sometimes one

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1 or the other - for instance, Sipa - might go and sleep elsewhere in another place. But, in
2 any case, their accommodation was in Hotel Bashu.

3 Q. Do you agree with me in saying that Germain Katanga and Muhito Akobi and Sipa
4 spoke to Commander David of the APC?

5 A. Yes, you're quite right. They did have a meeting with David and many other
6 commanders of the APC; Kasereka, General Kasereka, and many others.

7 Q. Thank you, Witness. We shall now move on to another topic.

8 A. Thank you.

9 Q. During the hearing today, you mentioned the fact that at one point in time you went
10 to Kampala from Beni; is that right?

11 A. Yes, indeed.

12 Q. Am I right in saying that Mr Floribert Ndjabu Ngabu called you to go to Kampala?

13 A. Yes, that's right.

14 Q. Are you in a position to say, Witness, when you received this phone call from
15 Floribert Ndjabu?

16 A. Thank you. Ndjabu called me to go to Kampala. That was in February. I didn't
17 go there immediately, for personal reasons I think, and I didn't go there immediately
18 furthermore because you needed permission. I didn't go there until after that, probably
19 in the month of March or April 2003. No. Yes, 2003.

20 Q. Are you in a position to specify a particular date on which you received that
21 telephone call? You talked about the month of February, is there any particular date in
22 February that you remember?

23 A. I said probably February or March, and this indicates that I do not remember the
24 exact date. I'm awfully sorry about that, Prosecutor.

25 Q. Are you in a position to say to us -- and I do realise that there's difficulty with dates,

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1 but are you in a position to tell us whether this call took place before or after the attack on
2 Mandro?

3 A. No, I'm sorry, I can't. I am thinking aloud here. I arrived in Kampala afterwards,
4 because when Bogoro was attacked I was in Beni and after that I went to Kampala. I
5 think it was during the month of March or April. I didn't go there immediately so as to
6 get the permissions from the authorities. Once I got that permission, I went there and I
7 can't tell you exactly when but it must have been March or April.

8 Q. I know it's rather difficult, Witness, but are you in a position to remember whether it
9 was before or after the fall of Bunia?

10 A. The fall of Bunia, which of the two instances?

11 Q. The 6 March one, 2003?

12 A. I went to Kampala, and then in Kampala there were a lot of issues at stake and on 18
13 March I was in Bunia so I think it was in the meantime, in the meantime, between 6 March
14 and 18 March.

15 Q. Witness, if I understood correctly, you didn't go to Kampala on your own when you
16 went on this visit; you were accompanied, and please correct me if I am wrong, by
17 Angaika Didi and Floribert Ndjabu's wife; is that right?

18 A. Yes, that's right. You're quite right. I was with Didi Angaika and Floribert
19 Ndjabu's spouse.

20 Q. Witness, when Floribert Ndjabu called you so as to ask you to go to Kampala, what
21 type of means of communication did he use? Was it a cell phone; a conventional phone?
22 Could you enlighten us in this respect?

23 A. No. To -- I remember this well. Somebody came from Kampala to inform me.
24 Somebody had come from Kampala and he said to me that there was a need for me to be
25 present in Kampala. This was someone called Martin, who had come from Kampala,

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1 and he had informed me of the need to go to Kampala and, indeed, we went there
2 together. We went to Kampala together.

3 Q. When you mentioned Martin, which Martin was this? Could you give us his full
4 name, please?

5 A. Martin le parsec. Martin Safari -- le parsec Ndjabu. Martin le parsec Ndjabu.

6 Q. Just to be sure, did this Martin go back to Kampala with you?

7 A. Yes. Yes, Martin was with us in Kampala.

8 Q. So as to be perfectly sure, so there was never any question of telephone call, whether
9 by conventional, by cell phone, being made for you to go there. It was simply this
10 Martin who came along and told you that this request was being made; is that your
11 testimony?

12 A. Yes, this is my testimony. Somebody came to tell me so. And after some time to
13 fulfil the usual formalities, I went to Kampala. I don't remember any phone call.

14 MR GARCIA: (Interpretation) Your Honour, perhaps this is a right time to make a
15 break.

16 PRESIDING JUDGE COTTE: (Interpretation) We shall suspend the hearing now.
17 Thirty minutes break, Witness, and we shall return here at 11.30. Court usher, with the
18 security officers, could you please escort the witness out of the courtroom.

19 (The witness stands down)

20 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, without wanting to question
21 the cross-examination that we know little about, please try in the second part of your
22 cross-examination to concentrate on what is really essential.

23 Quite frankly, we have some difficulty in following your rationale, your line of reasoning.

24 No doubt you have this somewhere in your mind, but we need to get some feedback and,

25 I must say, that sometimes we have a little difficulty in following your line of thought.

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1 So perhaps you could refocus and re-centre it, and we'd be very thankful for that.

2 MR MACDONALD: (Interpretation) If I may, cross-examination is something that is
3 built up, established, and it sometimes takes some time and at the end one can apprehend
4 the reasons that the questions have been raised. We set up milestones, as it were.

5 During a cross-examination, it is always difficult to exactly follow the relevance.

6 PRESIDING JUDGE COTTE: (Interpretation) I didn't question the relevance of the
7 questions you asked, I was simply saying that sometimes it's rather hard to follow you.
8 The fact that one realises at the end of a cross-examination what had preceded it is
9 something we all know about; but you must allow the Chamber to make these remarks
10 after two hours of cross-examination, during which we had -- sometimes had difficulty in
11 following.

12 Of course, you are free to conduct your cross-examination as you so wish; there is no
13 pressure on the part of the Chamber. The treatment is the same, there is no deficiency in
14 the application of the procedure. It is very natural for the President and for the Judges to
15 convey this message to you so that we can all follow you more easily and take advantage
16 of the presence of this witness.

17 I wasn't going any further than that. I'm not attempting to destabilise you; the Chamber
18 is not doing that. We are very careful about the efforts made by the respective parties,
19 and Mr Garcia's position now is a difficult one. It is not easy to lead a cross-examination;
20 we know this. For some of us, this is something that we have known for a long time; for
21 others, it's a more recent discovery. The hearing is adjourned.

22 (Recess taken at 11.01 a.m.)

23 (Upon resuming in open session at 11.34.a.m.) *

24 THE COURT USHER: All rise.

25 PRESIDING JUDGE COTTE: (Interpretation) Please sit down. Before the witness

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1 enters the courtroom, we are now going into private session and we are going to hand
2 down our decision on the request for a meeting with Witness D02-P-350. In an email
3 sent on 15 April 2011, the Prosecutor sent a new list of documents that he intends to
4 use during his cross-examination of Witness D02-P-350. This list includes an article
5 titled, I quote, "Revelation transferred to The Hague Sharif Manda blames Kabila's
6 power as responsible for the massacres committed in Bogoro Nyankunde." This
7 article was published on a website. The Prosecutor specified that he had
8 communicated this reference the previous day to the Defence team.

9 On Monday 18 April, Germain Katanga's Defence team through, via an email first of
10 all and afterwards orally during the hearing, voiced its wish to meet this witness
11 currently in The Hague in order to assess in the light of this article that constitutes a
12 new element, to ascertain whether it should persist in its intention to call this witness
13 for Germain Katanga's team, Defence team. The point is not to call into question the
14 familiarisation protocol that bans any contact between a witness and the party that
15 has called the witness to testify, but simply in order to ensure equity of the procedure
16 and correct demonstration of justice to check whether the witness is indeed the author
17 of the statements found in aforesaid article.

18 It highlighted the exceptional nature of the situation that requires in its opinion an
19 answer that should also be exceptional.

20 For the major part, the Prosecutor is not opposed to holding such a meeting provided
21 that it is hedged with guarantees that enable to ensure that it will not resemble a
22 preparation of the witness. The Prosecutor therefore rules out any question that
23 would concern the substance of the article and considers that the only questions that
24 might be asked are questions relating to the manner in which the interview was
25 carried out and the article drafted.

1 In the Prosecutor's opinion, the meeting of Witness 350 should therefore be
2 conditional on the following formalities: Presence of a Registrar, jurist or otherwise,
3 recording statements made during the meeting. Drafting by this jurist from the
4 Registry other reports certifying that there has not been any kind of witness-proofing.
5 The fact that only that article is to be shown to the witness. The drafting by the
6 representative of the Defence team of minutes but signed by P350 to ensure that the
7 Office of the Prosecutor may usefully get ready for its cross-examination.
8 Lastly, swift information provided to all parties and participants about the decision
9 taken by the Defence whether it will call this witness or not.
10 The legal representatives pointed out for their part that this was a new element and
11 that a fair implementation of the procedure meant that such a meeting was necessary.
12 They furthermore stated that they believed the conditions proposed by the Prosecutor
13 were reasonable. Mathieu Ngudjolo's Defence team likewise adopted a similar
14 stance.
15 With respect to the terms and conditions of the interview, Germain Katanga's Defence
16 team pointed out that it was not opposed to the presence of a member of the unity or
17 otherwise that a recording, as long as it is confidential and ex parte, to be made ex
18 parte Chamber and Germain Katanga's Defence team.
19 It added that it intended to draw up a list of questions that might be put to the
20 witness and would be prior to that submitted ex parte to the Chamber.
21 Lastly, it stated that it did not intend to take any complementary decision while
22 pointing out that it was not held to any new disclosure obligation.
23 The Chamber does not intend to call into question the principle according to which a
24 party may not communicate with a witness that it has -- whom it has called once the
25 witness has entered the familiarisation phase.

1 However, it can -- it is bound to take note that aforesaid article represents for
2 Germain Katanga's Defence team a new element and of specific importance since
3 aforesaid interview in particular mentions the involvement of the two accused in the
4 battle of Bogoro.

5 Therefore, as far as the Chamber is concerned, this is indeed an exceptional situation
6 likely to have a detrimental impact on the rights of the accused and therefore it
7 believes that Germain Katanga's Defence team must be provided with information
8 that would enable it to assess with its client whether it should maintain its decision to
9 call this witness. Furthermore, it notes that in substance this opinion is shared by all
10 parties and participants.

11 Lastly, it notes that in its email dated April -- 18 April 2011 in the morning Germain
12 Katanga's Defence team quotes an oral decision handed down by the Chamber of first
13 instance, one, handed down on 2 February 2010 which under similar circumstances
14 exceptionally authorise Thomas Lubanga's Defence team to meet a witness, although
15 the witness was already in the familiarisation phase to discuss with the witness the
16 content of new evidence that had been belatedly disclosed.

17 The Chamber therefore agrees to authorise the meeting that has been requested under
18 the following conditions: A jurist from the Registry will attend the meeting and once
19 the meeting is finished will send to the Chamber a brief report describing the
20 conditions under which the meeting has unfolded and certifying that the conditions
21 set by the Chamber have been complied with. Only the document with number
22 DRC-OTP-1062-0078, in other words the article mentioned above, can be presented to
23 the witness.

24 With regard to the interview itself, the Defence team shall be able to ask about the
25 conditions under which the interview was carried out, date, location, manner in

1 which the statements made were recorded, existence of preliminary conditions
2 demanded by the person being interviewed, request to proofread the article before it
3 is published by the witness and so forth.

4 With respect to the substance of the interview, Defence team shall be allowed to ask
5 only one question, i.e. whether first the witness confirms he made the statements
6 involving the two accused in the unfolding of the battle of Bogoro of 24 February 2003.
7 Moreover, should he have made these statements, whether he maintains them.

8 The Chamber asked Germain Katanga's Defence team to get in touch as swiftly as
9 possible with the Registry in order to decide, with its competent services, the date and
10 the terms and conditions set for this meeting as Witness 350, who is detained, is
11 planned to testify on 2 May 2011; 2 May 2011. In this respect, the Defence should
12 inform as swiftly as possible the Chamber, the parties and participants, whether it is
13 going to call P350 to testify or not.

14 Finally, the Chamber takes note that the Prosecutor during the hearing held on
15 19 April 2011, that his office had commissioned an investigation on the conditions
16 under which this article was drafted and published and whether it reflects, as is the
17 case in all likelihood, it does not reflect, in all likelihood, the statements made by the
18 witness.

19 The Prosecutor on the same day added that he accordingly intended to withdraw this
20 press article from the list of documents he intended to use during his
21 cross-examination. This investigation report was disclosed this morning to the
22 Defence teams, swiftly, and the Chamber thanks the Prosecutor for doing so.

23 The Chamber would like to emphasise that neither the position taken by the Office of
24 the Prosecutor to withdraw the article from the list of documents it intends to use, nor
25 the communication of the investigation report, would deprive Germain Katanga's

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1 defence team from the possibilities that the Chamber intends to give to, i.e., give to
2 the Defence, that it shall be able to ensure during a meeting held under the stringent
3 conditions defined here above whether it decides to maintain its decision to call the
4 witness, or to forsake this possibility.

5 Please, officer of the Court, we're going to move back into public session and please,
6 court usher, call the witness.

7 MR MACDONALD: (Interpretation) Before the witness appears -- and before the
8 witness appears.

9 PRESIDING JUDGE COTTE: (Interpretation) So we are therefore back in a public
10 session and the witness has not returned.

11 (Open session at 11.47 a.m.)

12 THE COURT OFFICER: We are in a public session once again.

13 PRESIDING JUDGE COTTE: (Interpretation) You have the floor, Mr Macdonald.

14 MR MACDONALD: (Interpretation) Thank you, your Honour. Following the
15 decision you have handed down, I understand that you have used the words "as
16 swiftly as possible." Could you -- could the Chamber be informed whether the
17 Katanga defence team is going to call the witness or not? As you all know, we have
18 busy agendas. They are going to be affected by the upcoming legal holidays. We
19 are already at Wednesday, and for obvious reasons, in terms of preparing the hearing,
20 your Honour, would it be possible - of course with the cooperation of the Katanga
21 Defence team that is also shouldering a heavy workload - could we have an idea
22 maybe of when the decision to call the witness or not will be disclosed, since this will
23 certainly have an impact on the date on which the next witness, whether P350 or D376,
24 will be called. Thank you, your Honour.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you very much,

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1 Mr Macdonald. You will all note that Germain Katanga's defence team's
2 intervention is dated Monday, 11 April, in the beginning of the afternoon. We are on
3 Wednesday, 20 April, at 11.49 a.m. We could not hand down our decision more
4 rapidly. The President of this Chamber drafted this decision yesterday afternoon to
5 be able to hand it down this morning, given the points the Prosecutor had suggested
6 he would disclose as quickly as possible.
7 This decision handed down on Wednesday at 11.49 a.m., with a recess period
8 beginning on Thursday evening should, in all likelihood - and this is a major
9 incentive - Germain Katanga's defence team to rush to the Registry after this hearing,
10 the court officer will transmit as all ready the oral decision to the Registry, to ensure
11 that the meeting, insofar as possible, be held as early as tomorrow, either tomorrow
12 morning - but we have a hearing - or tomorrow in the beginning of the afternoon.
13 The Chamber does not know at this point in time what terms and conditions will
14 seem to be the best for the director of the Chamber's services.
15 The meeting will probably be held in penitentiary premises. All this will have to be
16 decided with the Registry. An ideal solution would indeed be that we should all be
17 able to have this information that you will give us whether you are going to call this
18 witness or not as quickly as possible. Admittedly, there is a recession -- a recess
19 period next week, but in all likelihood, even in the Defence teams there are people
20 who are on permanent duty and will be able to provide the useful information and
21 send it to the Chamber and the parties and participants. But, Mr Macdonald, we all
22 realise that the faster this is done, the better.
23 Mr O'Shea, you have the decision. It's up to you now to reach an agreement with the
24 Registry.
25 MR O'SHEA: Yes I mean, we may be in a position to provide information to the

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1 Chamber and the parties before the beginning of the judicial recess, but of course we
2 have to have the opportunity, even if briefly, to speak to Mr Katanga, having had this
3 interview.

4 Also, there are two matters I would like to draw to your Honour's attention, which is
5 that in the days preceding 2 May, I am on mission; and also, tomorrow afternoon, I'm
6 going to have a difficulty. So, Ms Menegon is trying with the Registry to get an
7 interview this afternoon or tomorrow morning, and I would urge the Registry
8 through you, Mr President, to please assist in that so that we can provide the
9 information to the Prosecution and the Chamber as quickly as possible, given that the
10 witness is starting on 2 May. Yes, and that the VWU - if it's going to be VWU - be
11 prepared to come this afternoon, if possible.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr O'Shea. The
13 Chamber has left the Registrar to determine which jurist will attend this meeting,
14 perhaps one of the jurists from the VWU. That is not ruled out. But precisely, we
15 didn't want to complicate matters more than necessary. The Chamber was
16 also -- also noticed that the Registry had repeatedly been extremely efficient and
17 swift.

18 Therefore, court officer, if you could immediately convey the wish voiced by Master
19 O'Shea that once Germain Katanga's Defence team has been able to have a meeting
20 with Germain Katanga, that the Registry should organise this meeting for today, in
21 late afternoon, or tomorrow. We cannot do anything faster. Everything has been
22 done to ensure that nobody is affected by the detrimental effect of a belated decision.
23 Therefore, we take note of your decision to convey this information as quickly as
24 possible.

25 MR O'SHEA: May I add, Mr President, that for my part -- it may be more difficult

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1 from the Registry's point of view, but for my part, I'm also open to an arrangement
2 this evening.

3 PRESIDING JUDGE COTTE: (Interpretation) Court officer, you will see Mr O'Shea
4 is remembering that he was blocked by an ash cloud over in Italy, so he is trying to
5 make sure that everything is settled before he leaves. We take note of his decision,
6 as well as the Prosecution.

7 We shall now call the witness. Court usher, please go and fetch the witness.

8 (The witness enters the courtroom)

9 PRESIDING JUDGE COTTE: (Interpretation) Witness, can you hear me?

10 THE WITNESS: (Interpretation) Very well, thank you.

11 PRESIDING JUDGE COTTE: So we can resume our debates. We are starting
12 somewhat late, because there was a decision we had to hand down and you did not
13 need to be present.

14 Please, Mr Garcia, you have the floor. Mr Mbodina is listening to you.

15 MR GARCIA: (Interpretation)

16 Q. Well, Mr Mbodina, when we stopped we were talking about the point in time at
17 which you left Beni to go to Kampala.

18 A. That's right.

19 Q. Am I right in saying that you were asked to go to Kampala precisely because
20 you had to go there to confirm that the FRPI was the armed wing of the FNI? Is that
21 correct? Was that the objective of your trip to Kampala?

22 A. Thank you. That was not the fundamental purpose of my trip, nonetheless,
23 this issue was debated at length in Kampala and it was dealt with in the meetings we
24 held in Kampala.

25 Q. Right. I understand, Witness, that you debated this issue when you got to

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1 Kampala, but my question, in fact, is whether when you were asked to come to
2 Kampala, the main reason was because you were told, "You need to come here to
3 confirm that the FRPI is the armed wing of the FNI"?

4 A. No, it was not the fundamental purpose or principal reason.

5 Q. I understand it wasn't the main objective, but it was one of the reasons. You
6 are in agreement with me that you were asked to go to Kampala. You were to
7 confirm this information that the FRPI was the armed wing of the FNI; am I right?

8 A. We talked about it, yes.

9 Q. Am I to understand that Martin Safari arrived in Beni, talked with you and
10 asked you to come to Kampala, and he told you that precisely one of the reasons - or
11 the reason - was that you were to confirm whether the FNI was the armed wing of the
12 FRPI?

13 A. Martin Safari arrived, he informed me that I'd been invited to go to Kampala,
14 but he did not tell me what was going to be debated there. It's only when I got to
15 Kampala * that I found people having serious discussions on the creation of the FRPI
16 of FIPI. And this issue arose around... during the meeting, you see.

17 Q. Is it correct, Mr Witness, that in your statement to the Defence team on page 8
18 you mentioned the following: On the --

19 MR HOOPER: Just one moment here, a question of method. Can he be provided,
20 please, with his statement?

21 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, please have a copy of
22 the statement that you are going to quote presented to the witness.

23 MR GARCIA: (Interpretation) We have a clean copy here, if the usher can come for
24 it.

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

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1 you, court usher, for showing that copy of the statement to Mr Hooper, who will look
2 at page 8 which seems to be the relevant page for now, and then the Prosecutor will
3 quote the extract that is to be used as the foundation for his question.

4 MR GARCIA: (Interpretation)

5 Q. Please look at page 8 of the document, Witness, last paragraph, and the sentence
6 begins with the words "Au contraire," "On the contrary." Mr Witness, have you
7 re-read that extract?

8 A. Yes.

9 Q. Do you confirm that in your statement to the Defence you stated "On the
10 contrary, Jerbo called me to Kampala to confirm that the FRPI was the armed wing of
11 the FNI." Does that jog your memory?

12 A. Yes, that is what I said. The sentence indeed begins with "On the contrary,"
13 which is a preposition used in answer or in relation to the preceding sentence, so the
14 sentence explains what comes before, and that sentence is "Adirodu wanted that the
15 FRPI should be the organisation for the south, while the FNI was for the north, and
16 that it should not be one and the same organisation."

17 So the words "On the contrary" was used to explain what had been said earlier
18 by -- referring to Dr Adirodu. So this does not alone explain my presence in
19 Kampala. I was the commissioner, deputy commissioner, responsible for defence;
20 and when I went to Kampala, it was a mission of the FNI. And I dealt with several
21 issues in the course of that mission, including the aspect related to the FRPI as the
22 armed wing of the FNI. That is the clarification that I wanted to make. You should
23 not look at the sentence out of context. You should look at it from the sentence
24 referring to Adirodu.

25 Q. Mr Witness, we are going to come back shortly to the Kampala discussions.

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1 For the time being, you have mentioned that you were commissioner for defence in
2 the FNI; is that correct?

3 A. Almost correct. I was the deputy commissioner for defence.

4 Q. When did you learn that you had been appointed a deputy commissioner for
5 defence in the FNI? Can you give us a precise date?

6 A. Thank you. I learned about it after my arrival in Kampala. A document was
7 shown to me relating to the creation; there was the Statute and the Constitution, and
8 in the Statute I saw the name Mbodina Iribi as deputy commissioner for defence in
9 the FNI.

10 Q. Are you telling us, Mr Witness, that before travelling to Kampala you had no
11 idea that you had already been appointed commissioner for defence in the FNI? No
12 one told you that?

13 A. No.

14 Q. Floribert Ndjabu Ngabu never called you? He never told you that "Look, you
15 have just been appointed to that position," that never happened?

16 A. No, I was never informed, and in fact it was not Ndjabu who appointed me. I
17 have said that this was in the Statute, and the Statute is a collective document
18 prepared by more than one person and it was those people who designated me to
19 occupy that position and Ndjabu did not tell me about it.

20 Q. Can you tell me on which date you were appointed to that position; do you
21 remember?

22 A. The date on which the Statute was signed was during the month of January. It
23 was then that the document was signed by the founders of that movement, the FNI,
24 January 2004. January 2003, yes.

25 Q. Just for the record, Mr Witness, from January 2003 to March 2003 you went to

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1 Kampala, you were not aware at all that you had been appointed to that position in
2 the FNI; is that correct?

3 A. Yes.

4 Q. Did Martin Safari talk to you about it? Did he talk to you about it? When he
5 arrived to ask you to go to Kampala, did he mention your position within the FNI?

6 A. No.

7 Q. So you must have been surprised upon your arrival in Kampala to find out that
8 not only had you been invited, you also held a position?

9 A. Just like the creation of the FNI itself, it surprised me.

10 Q. Mr Witness, when you arrived in Kampala, if I understand you correctly, you
11 met Floribert Ndjabu who was already there. Do you agree with me?

12 A. Absolutely.

13 Q. You stated that you arrived Kampala around March without specifying the date;
14 is that correct?

15 A. Yes.

16 Q. If I understand you well, this was after the Bogoro attack; is that correct?

17 A. I was in Kampala before the Bogoro attack? No, I arrived Kampala before
18 18 March, because we left Kampala on 18 March to sign the cessation of hostilities
19 agreement and Bogoro fell while I was in Beni. I have been saying that since
20 yesterday.

21 Q. And what about Mandro? When Mandro fell, were you also in Beni; that is, on
22 4 March?

23 A. I'm not very sure regarding the Mandro attack. However, I know that on
24 18 March I was already in Kampala.

25 Q. You arrived Bogoro after the -- or, rather, you arrived Kampala when the

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1 Bogoro attack had already taken place?

2 A. Yes.

3 Q. You were aware, Mr Witness, that a great many civilians had been killed during
4 the Bogoro attack. At that time, were you aware of that?

5 A. I do not know how you know that I was aware, but people were killed in
6 Bogoro. I do not know about civilians, because I rely on the statement issued by
7 Minister Ntumba Luaba who was the Minister for Human Rights of the Kinshasa
8 government. He said that soldiers had been killed in Bogoro over the RFI radio
9 station.

10 Q. But, Mr Witness, you must have learnt that many civilians had been killed,
11 children, women, elderly people; you must have heard later that civilians were
12 massacred in Bogoro, particularly as you said that you were an intelligence officer.
13 So you must have heard this information; am I right?

14 A. Yes, you are correct. I might have heard about this by certain means, but that
15 does not justify the truth of the information. It is true that there was information
16 circulating that people were killed in Bogoro, but I've also talked about the
17 information that stated that soldier had been killed and I mention the source Ntumba
18 Luaba.

19 Q. Mr Witness, why are you avoiding mentioning civilians? You obviously know
20 that civilians were killed during that Bogoro attack?

21 A. Thank you. I have a lot of respect for civilians and for those who died during
22 the events in Ituri, whether they were in Bogoro, Kagaba, Geti, Mongbwalu or
23 elsewhere. I have respect for all those victims, but please do not compel me to say
24 what I did not say. I have said that I relied on information from a public authority
25 who stated that people were killed, but that it was soldiers who had been killed. To

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1 my knowledge, that attack that you are referring to was the second or third attack.
2 The previous attacks had not been successful, but they caused the civilians to flee
3 Bogoro. Many of them left and Bogoro was left only with the UPC soldiers and their
4 allies. I do not know about the rest.

5 Q. If I understand you well, you are not in a position to confirm whether civilians
6 were killed in Bogoro or not during the attack of 24 February?

7 A. I can tell you that soldiers were killed.

8 Q. But you have relevant information. You are aware that there were previous
9 attacks in Bogoro; is that correct?

10 A. Yes.

11 Q. I have reasons to believe that civilians were also killed during those two
12 previous attacks. Do you agree with me?

13 A. Can you specify those previous attacks?

14 Q. Mr Witness, you have talked about previous attacks in Bogoro and I understand
15 that you were an intelligence officer at that time. Do you know the dates of those
16 attacks?

17 A. No, I do not know.

18 Q. I'm sorry I interrupted you. If you want to continue, please do so.

19 A. You asked whether I knew about the previous attacks and I said not entirely. I
20 was aware of the previous attacks, but I was talking here about the attack of
21 24 February 2003.

22 Q. Yes, you are correct, Mr Witness. I was asking you questions about the attack
23 of 24 February 2003, but you told us about the previous attacks and I then asked you
24 whether to your knowledge any civilians were killed, not soldiers. Were any
25 civilians killed during those previous attacks on Bogoro? Is your answer yes or no,

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1 as far as you know?

2 A. Thank you. I have no idea. Thank you.

3 Q. If I understand your testimony well, Mr Witness, everything you know about
4 those previous attacks is that the attacks took place and that people probably fled
5 afterwards. Is that all you know about those previous attacks?

6 A. Thank you. That is absolutely correct. It is possible that people were killed;
7 soldiers and civilians. It is possible, but a statement reporting the death of soldiers
8 concerned the attack of the 24th.

9 Q. Talking about those previous attacks, Mr Witness, are you aware that on
10 9 January 2001 there was an attack in Bogoro during which approximately 110
11 civilians were killed? Are you aware of that information?

12 A. Thank you. I heard over the airwaves that there was an attack in Bogoro at
13 that time. Regarding the number of victims or those who were killed, I do not know.

14 Q. In relation to that same attack, are you aware that the attackers were the Lendus
15 from the north and Ngitis? Are you aware of that?

16 A. North Lendus and the South Lendus attacking Bogoro at that time, yes, that is
17 the information that I received also.

18 Q. To be clear, you have just told us that you learnt that in 2001 there was an attack
19 against Bogoro carried out by the North Lendus and Ngitis; is that correct?

20 A. That is what I said, Mr Prosecutor.

21 Q. Are you aware that in August 2002 there was another attack on Bogoro?

22 A. I also heard about those attacks over the radio and possibly the numbers of
23 people killed, but I cannot confirm that is information that I received like that.

24 Q. In relation to that same attack, were you informed that approximately 30
25 civilians were killed?

1 A. Thank you. My position on that is clear. The attacks that you have been
2 referring to, the first and the second carried out by Lendu or Ngiti combatants, I got
3 to know about them over the radio. I do not know anything about the number of
4 victims. People gave the numbers that they gave and no one was able to verify. I
5 have no comment on that because I have no link with the Lendus and Ngitis that you
6 referred to as having perpetrated those attacks.

7 Q. Mr Witness, let us go back to what we were talking about. You have
8 confirmed, as contained in your statement, that Ndjabu had called you to confirm that
9 the FRPI was the armed wing of the FNI?

10 A. Amongst other things.

11 Q. Amongst other reasons, well, we are going to talk about that shortly. Now,
12 please explain something to us. At that time, given that there was discussion about
13 an armed wing, are we to understand that Floribert Ndjabu was asking you to come
14 to Kampala to confirm for Museveni, for Museveni's people who were there, the
15 Ugandans and the other participants, that the combatants who were on the field were
16 indeed members of the FNI? Was that the purpose?

17 A. Yes. When we arrived in Kampala, we initiated many meetings. The meeting
18 with the Ugandan President, President Museveni, had already taken place. The
19 meeting with the partners, or rather the other groups, the other armed groups, also
20 took place, including PUSIC and the FRPC, the FPDC. The major problem was how
21 to structure the administration in Bunia. FIPI was the preferred platform, because it
22 was supposed to bring together all the armed groups. Those armed groups would
23 be answerable to a single command, politically and militarily, so that initiative did
24 not succeed. So this was the main reason to demonstrate the capacity, or influence,
25 of all those groups which were to participate in the rotating presidency, so the

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1 capacity of each group had to be demonstrated and in the FNI strategy, or rather the
2 FRPI which was not yet the armed wing of the FNI, because the FNI had been created
3 alone, and it was only in Kampala that we started referring to the movements as
4 FNI/FRPI. This for us was also a way of demonstrating unity between the north and
5 the south. I believe I have made myself understood.

6 Q. What I understand from your answer is that it was only after Kampala that the
7 FRPI really became the armed branch of the FNI. Is that your testimony?

8 A. It was as from Kampala.

9 Q. So, Mr Witness, when Floribert Ndjabu called you to Kampala to confirm that
10 the FRPI was the armed wing of the FNI, this was not correct? You were not in a
11 position to confirm that at that time? According to your testimony, you were called
12 to confirm something that did not exist. Was that your testimony?

13 A. No, that is not correct. Please remember that Floribert Ndjabu up to that time
14 was the coordinator of the FRPI. That means that he was considered as the leader of
15 the FRPI.

16 PRESIDING JUDGE COTTE: (Interpretation) Please both of you try to respect the
17 five-second rule, because we are having difficulties for or, rather, with interpretation.
18 Thank you. Please proceed, Mr Prosecutor.

19 MR GARCIA: (Interpretation) I am sorry, your Honour. I will try to be careful.
20 I have been trying ever since the beginning of this second session to comply with the
21 five-second rule.

22 Q. Mr Witness, you have just told us that Floribert Ndjabu was the coordinator of
23 the FRPI. If I understand your testimony correctly, there was already a link between
24 the FNI and the FRPI. What exactly do you mean by that?

25 A. Yes, indeed, there was a link. He was the person responsible for the FRPI at

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1 the time, and even in Kampala nobody removed him from that position. And when
2 he made that proposal, he was correct and he found important support, such as from
3 myself.

4 Q. Witness, please correct me if I'm wrong, but you personally, did you have any
5 connections with the combatants at the time before you went to Kampala?

6 A. Thank you. No, the first contact I had was before Molondo, before Molondo's
7 fall, when I came from Mahagi. It was in -- on the premises of the RCD-K/ML that I
8 came into contact with people like this, with combatants, and we pursued our
9 relations until Beni.

10 Q. But what I was getting at, Witness, was that at the time when Ndjabu asked you
11 to go to Kampala, you did not represent the combatants in the field at Walendu-Bindi,
12 in Ituri. You personally, you didn't represent them at all. You had no competence
13 to go there and confirm something, to confirm that the FNI was the armed wing of the
14 FRPI; is that right? Do you agree with me on this point?

15 A. No, not at all. Not at all, I don't agree with you. I don't know what
16 competence you are referring to in order to represent the FRPI. To represent the
17 FRPI, you had to be a member of the FRPI, and I was one. I took part in its creation
18 And my relationships, my ties with the base, with the rank and file, well, as I just said,
19 that was also an important asset for me, but I think the fundamental reason was that I
20 was a member and I could -- and because I was, I could represent the FRPI.

21 Q. And did you have any ties with Germain Katanga before you went to Kampala?
22 Did you speak to him on a regular basis?

23 A. I said so yesterday. My first contact with Germain Katanga was in Beni before
24 going to Kampala, yes.

25 Q. And before you went to Kampala, did you have any other contacts with

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1 Germain Katanga, Witness? I don't want to know about the content, but I am just
2 asking you a fairly straightforward question: Did you have any further contacts
3 with Germain Katanga? You spoke about the meeting in Beni that we are all aware
4 of, but later on, before going to Kampala, did you meet or have contact with
5 Germain Katanga; yes or no?

6 A. After -- before going to Kampala, yes, well, I was with Germain in Beni, as I
7 already said, and we did continue our ties with Germain Katanga, our relationship in
8 Bunia and everywhere there.

9 Q. Let me ask my question again. I hope -- well, from this meeting with
10 Germain Katanga and up to the point in time when you went to Kampala, was there
11 any other contact? As far as I understood, there was no further contact thereafter.

12 A. No, Germain had come there temporarily, then he went back, and I continued
13 on my own route.

14 Q. Let's go on to something else, Witness. Well, more or less the same time period,
15 but let's talk about something else. You arrived in Kampala and met Floribert
16 Ndjabu there. You also met, if I understood you correctly, Chief Kahwa; is that
17 right?

18 A. Yes, it is right. I did meet Chief Kahwa in Kampala.

19 Q. Did you meet Thomas Unencan (phon) there?

20 A. Could you spell his name?

21 Q. Thomas Unencan. I am sorry, I misled you. Unenchan.

22 A. Unenchan, the President of the FPC? Yes, I did meet him in Kampala.

23 Q. Now, when you arrived there in Kampala, at one point in time, was there any
24 question of having a discussion with Dr Adirodu? Is it right to say that there was a
25 discussion between several people and Dr Adirodu?

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1 A. Thank you. Could you specifically say whether it was between myself and
2 Dr Adirodu, or whether it was us two taking part in an overall discussion?

3 Q. I will rephrase that, Witness. Am I right in saying that when you got to
4 Kampala, you took part in a meeting, a meeting where the moderator was Colonel
5 Noble Mayombo, a Ugandan colonel?

6 A. Yes, we did take part in several meetings and, in particular, that one where
7 Mayombo acted as moderator.

8 Q. I am talking about the first meeting that you attended with Colonel Mayombo.
9 Do you remember that first meeting?

10 A. Yes, I do very well.

11 Q. Am I right in saying that during this first meeting Floribert Ndjabu was already
12 saying before the people who attended at that meeting that the FRPI was the armed
13 wing of the FNI?

14 A. That is true. I accept that.

15 Q. Could you tell us whether Dr Adirodu was there at this first meeting?

16 A. Yes, Dr Adirodu did come. He arrived after the meetings had been held, and
17 during the first phase of the meetings there was the issue of the creation of the FIPI
18 and Dr Adirodu was not there at that point. He arrived later on. And it is quite
19 possible that Ndjabu might have mentioned the fact that the FRPI was the armed
20 wing of the FNI.

21 Q. And am I right that saying that during one of these meetings where Dr Adirodu
22 was in attendance, there was a discussion on this whole issue, i.e., whether the FRPI
23 was the armed wing of the FNI, and that Dr Adirodu clearly indicated that that was
24 not the case? Am I right in saying this?

25 A. Yes, you are quite right in saying so.

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1 Q. Am I also right when I say that when Dr Adirodu came there to this meeting
2 that took place in the CMI, that he appointed himself as the spokesman for the FRPI?

3 A. Thank you. It is true he did appoint himself, but that was his own affair. The
4 accredited structure, the recognised structure, by the founder of the FRPI did not
5 recognise that capacity, which was obtained in the fashion that you know about. He
6 himself self-proclaimed himself to be the spokesman. He said so, but this did not
7 involve any commitment on the part of the FRPI.

8 Q. Witness, am I right in saying that the reason for which Dr Adirodu was there
9 present in Kampala as a participant in these meetings was that Chief Kahwa had
10 made a specific request in this respect because he wanted someone there who could
11 represent the combatants, the Lendu combatants? Am I right in saying this?

12 A. Yes, you are right, and Adirodu was invited thanks to Kahwa, and we know the
13 whys and wherefores for that invitation made by Kahwa, and it was more to lessen
14 Ndjabu and to avoid making -- well, pushing him in the direction of being the
15 President of the FIPI, but he also very well knew that the role of Adirodu was not that
16 of representing the combatants.

17 Q. And you were, no doubt, informed of the fact that Floribert Ndjabu had claimed
18 that they were responsible for the Mandro and the Bogoro attacks, over the radio, at
19 the time?

20 A. Yes. Yes.

21 Q. And you knew full well that that was not right, that he could not himself claim
22 responsibility for those attacks?

23 A. Yes, the attack on Bogoro, he claimed responsibility for that, and I also knew
24 that that was untrue.

25 Q. So you knew he was lying, and he knew that he was not the one who could

1 have represented the Lendu combatants?

2 A. Yes, I knew that.

3 Q. So, all in all, Witness, when you reached Kampala, you were not in a position to
4 confirm anything at all on the issue of whether the FRPI was or was not the armed
5 wing of the FNI?

6 A. Thank you. Through my presence, just my presence was proof enough
7 because we were members of the FRPI.

8 Q. But you yourself, Witness, did not represent the Lendu combatants. You were
9 part of a coordination structure that was involved in settling civilian matters?

10 A. Yes, I said that that was the primary goal to begin with. I also said later on that
11 there were changes in our assignments, the FRPI making it into an important
12 component of the EMOI. That's it.

13 Q. You seem to be changing topic, Witness. Am I right in saying that when you
14 were there in attendance in Kampala at a given point in time the Ugandan
15 government, Museveni, asked Floribert Ndjabu and other participants there to take
16 care of the administrative and military management of Ituri, as well as Bunia?

17 A. Yes.

18 Q. And am I also right in saying that you -- that President Museveni asked
19 you - through his intermediaries asked you - for plans, projects, about the setting up
20 of an administration in Bunia?

21 A. I don't remember that, but I do know that the Ugandan government's wish was
22 at that time, of course, to have a coalition force. As between the various parties that I
23 spoke about in Bunia, I don't know what you mean by an administrative plan exactly.

24 Q. And do you agree with me when I say that when you finally got to Bunia on
25 18 March, according to your own testimony, there was no true plan devised so far, or

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1 any understanding between Floribert Ndjabu, Chief Kahwa, Thomas Unencan, about
2 how Bunia was to be managed or Ituri was to be managed?

3 A. Starting from 18 March, well, this was a new stage that was beginning, because
4 on 18 March this was the beginning of the enforcement of the inter-ministerial
5 agreement, the Luanda agreement, whereby there was to be cessation of hostilities
6 beforehand and before the CPI was to begin its work. The Ugandan government's
7 wish -- well, the Ugandan government had adhered to this plan by signing the
8 agreement.

9 Q. Mr Witness, when you reached Bunia on 18 March, am I right in saying that the
10 military forces there were, on the one hand, Mathieu Ngudjolo with his troops?

11 MR KILENDA: (Interpretation) As far as I know, this witness never mentioned the
12 name of Mathieu Ngudjolo.

13 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, no, indeed.

14 MR GARCIA: (Interpretation) I think this is a legitimate question in view of the
15 circumstances, unless --

16 PRESIDING JUDGE COTTE: (Interpretation) Proceed then.

17 MR GARCIA: (Interpretation)

18 Q. Witness, this is a very simple question: When you -- on 18 March you reached
19 Bunia, is it right to say that in the field there was Mathieu Ngudjolo and his forces, his
20 troops?

21 A. Thank you. When we reached Bunia on 18 March, we found the Ugandan
22 force, the Ugandan force was there in Bunia.

23 Q. Witness, you must have been made aware at some time that the Ugandan force
24 was there with the support of Mathieu Ngudjolo and his troops.

25 MR KILENDA: (Interpretation) Please, your Honour.

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1 PRESIDING JUDGE COTTE: (Interpretation) We shall allow the witness to answer.

2 He had his version and he should give it.

3 MR KILENDA: (Interpretation) I wanted to make an objection. I think we are
4 trying to make the witness say something that he didn't say.

5 PRESIDING JUDGE COTTE: (Interpretation) I'm not quite sure that the witness
6 has ever let himself be told what to do, right from the beginning. Please proceed,
7 Prosecutor.

8 THE WITNESS: (Interpretation) Could you repeat your question?

9 MR GARCIA: (Interpretation)

10 Q. Witness, I will come back later to who was there later on. I can see you smiling,
11 but nonetheless let me ask this question: No doubt, at the time when you were in
12 Kampala, you were made aware of the fact that Bunia had fallen, that the UPC had
13 been chased out and that, indeed, the UPDF - you were quite right - with the support
14 of Mathieu Ngudjolo's troops and Germain Katanga's troops, do you remember
15 getting this information?

16 A. Yes, indeed, I was told that, that the UPDF separated - broke away - from the
17 UPC. And in cooperation with Lendu and Ngiti combatants - I'm talking about
18 combatants - I do not recognise Germain Katanga as being the chief of those
19 combatants. And the other name I didn't mention either.

20 Q. You talked about the combatants, the Lendu and Ngiti combatants, but do you
21 agree with me that the names that were associated with those groups were
22 Mathieu Ngudjolo and Germain Katanga?

23 A. Unfortunately, I won't say that. It may be that that was what was said, but I
24 cannot simply take up such statements. My version of the facts is perfectly clear in
25 this respect.

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1 Q. Witness, am I right in saying that you met with Mathieu Ngudjolo when you
2 arrived in Bunia on 18 March?

3 A. Yes, I did meet him.

4 Q. So if I understood you correctly, you met him at the grande tribune, the great
5 tribune, in Bunia on that day 18 March; is that right?

6 A. I don't remember the precise location where we met, but I do remember that we
7 did meet, that I met with that person in Bunia.

8 Q. That you met Mathieu Ngudjolo?

9 A. Yes, we met. Many people met.

10 Q. And when you met him he was wearing military dress; is that right?

11 A. I really don't remember, frankly.

12 Q. At the time when you met him in Bunia, Witness, Mathieu Ngudjolo was a
13 commander, a chief. He wasn't just an ordinary soldier. You agree with me on that,
14 don't you?

15 A. The organisation of the FRPI as an armed wing as such began starting in Bunia
16 and Ngudjolo, I'm sorry, he may have been there as a military person as you describe
17 him, but as far as I'm concerned I don't know. What I know is that the organisation
18 of the FRPI as an armed wing began starting in Bunia from the point of the meetings
19 with Musafiri.

20 Q. Am I right in saying that that name, Mathieu Ngudjolo, is a name that you were
21 acquainted with? Before when you met him in Bunia, this was not the first time that
22 you'd ever heard of Mathieu Ngudjolo; isn't that so?

23 A. Yes, thank you. I may have heard the name of Ngudjolo, just as many other
24 names, but the way in which you are presenting this, well, I have to object. That
25 identity, well, I heard about that starting from the meetings with Musafiri.

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1 Q. We shall return to this, to the Musafiri Hotel in Bunia, but let me be perfectly
2 clear at this point that right at the beginning of this cross-examination I asked you a
3 lot of questions about what you were doing as an intelligence officer and as territorial
4 director. Now, is it your testimony here today and is it that you did not know
5 Mathieu Ngudjolo until the point in time when you reached Bunia on 18 March 2003?
6 Is that your testimony?

7 A. Thank you. A territorial director does not necessarily know absolutely
8 everything there is to know and I did not deny that I knew the person. I knew him
9 beforehand. I remember that my meeting with this person was when he was a nurse
10 and worked performing vaccines. I remember meeting him in the facilities of
11 Adirodu, who was a physician, the zone chief at the time, medical chief. There's no
12 reason for me to deny that I was acquainted with this person, but what I refuse to do
13 is to adhere to the way in which you are presenting this on my behalf. That is
14 something I am against.

15 Q. So I understand your testimony, that you did meet him or you had heard of him
16 at the time when he worked with Adirodu, but do you agree with me when I say that
17 when you heard his name later on you knew - you were told - that he was a military
18 leader? Mathieu Ngudjolo was a military leader? As an intelligence officer, I
19 imagine that that is something you were aware of?

20 A. Yes, yes, it is something very important, it's a sensitive issue, and that cannot
21 escape the competence of an intelligence officer; but you must accept that an
22 intelligence officer is also just a human being and cannot know absolutely everything
23 there is to know.

24 Now, concerning the person, I have already said this on several occasions. In
25 Kampala, following Kampala, the cessation of hostilities agreement was signed, I saw

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1 him there. I cannot remember whether he was wearing a uniform. What functions
2 he fulfilled, I do not know; these were attributed to him by the UPDR that controlled
3 Bunia at the time, and I don't really know what you want me to say, with all due
4 respect.

5 MR GARCIA: (Interpretation) Can I have a few moments, please, your Honour?
6 (Prosecution counsel confer)

7 MR GARCIA: (Interpretation)

8 Q. Well, Witness, we are going to change our topic for the next few questions.
9 Were you there when the ceasefire was signed in Bunia on 18 March? Were you
10 physically there?

11 A. Yes, I was.

12 Q. So, if I understand well, if you were there you surely saw Mathieu Ngudjolo; he
13 was there.

14 A. Thank you. I was there. I am here as a witness for the defence of the detained
15 accused person and he has been charged with the person you're talking about. So I
16 would rather talk about that other person.

17 PRESIDING JUDGE COTTE: (Interpretation) I'm afraid, Witness, you need to
18 answer the questions the Prosecutor is asking you as part of his cross-examination.
19 The Prosecutor may and even must raise any issue that he needs to; otherwise, he
20 would not be discharging his mission.

21 So you have to answer him as well as you can, tell me what you know, tell him what
22 you don't know, but you need to answer him. Admittedly some questions are
23 difficult, but you need to answer them as you have been doing, in fact, since you
24 started giving us evidence. That's what we expect from you and we would like to
25 thank you for doing so. Mr Garcia, you have the floor.

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1 MR GARCIA: (Interpretation)

2 Q. Witness, I'll simply repeat my question. Did you see Mathieu Ngudjolo among
3 those who were there in Bunia on 18 March?

4 A. I can remember that we got there after the demonstration had started. It's
5 probable that he was there, but was I particularly aware of his presence? No, but I
6 did see him.

7 Q. So you saw him.

8 A. Yes.

9 Q. Were you there when he signed the cessation of hostilities agreement?

10 A. Thank you. I didn't notice that. That document in fact, I mean, is in my
11 possession, I have it here -- or I had it there, but I have not noticed whether his
12 signature is on the document. We can check.

13 Q. I can tell you that his signature does appear on the document dated 18 March
14 under the ranking of "Colonel Mathieu Ngudjolo." Does that refresh your memory?

15 MR HOOPER: If it's a memory refreshing exercise, there's a method and that should
16 be showing the witness the document.

17 MR KILENDA: (Interpretation) The Prosecutor is always telling us, I mean, what
18 we should be doing. Mathieu Ngudjolo did not sign it as colonel. He was not the
19 only one to give his rank. The Prosecution should tell us about the other people who
20 signed with their rank.

21 PRESIDING JUDGE COTTE: (Interpretation) Well, Mr Garcia, at this stage of your
22 cross-examination, you need to be as careful as possible in the way you ask questions
23 and possibly in the way in which you present documents, should you do so. There
24 was an immediate reaction. You may press ahead, but please ensure that there won't
25 be any further interruptions. Could you please continue.

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1 MR GARCIA: (Interpretation) I would rather ask the witness other questions.

2 Q. Witness, were you told or did you learn about the fact that at the point in time
3 after 18 March 2003 Mr Mathieu Ngudjolo claimed he was the head of the FNI? Is
4 that something you heard before or after 18 March 2003?

5 A. No, I can't remember that; I really can't remember that. However, we got there
6 with the President of the FNI, Floribert Ndjabu. And can I remember that Ngudjolo
7 said he was the President of the FNI? No, I can't.

8 Q. Am I right in saying, Witness, that Floribert Ndjabu was afraid of
9 Mathieu Ngudjolo?

10 A. Was what?

11 Q. Am I right in saying that Floribert Ndjabu was afraid of Mathieu Ngudjolo at
12 that point in time?

13 MR HOOPER: Can I just interrupt here to say that was not a matter put to Ndjabu,
14 as to what he thought or what his sentiment was. It seems inappropriate the
15 Prosecution not having put it to one witness to now ask this witness what another
16 witness may or may not have felt.

17 MR GARCIA: Monsieur President.

18 MR KILENDA: (Interpretation) I can see that there are a lot of indefinite pronouns;
19 I mean, a lot of, indeed, undefined statements: "Have you been told?" "Did you
20 hear about?" The Prosecution should give precise -- ask precise questions. I'm
21 afraid he is flustering the witness here or tricking him.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda. Thank you,
23 Mr Hooper. I will not talk about paragraph 73 of decision 1065 -- or 1665, but, yes,
24 Mr Garcia, it is not easy for the witness to tell you what Floribert Ndjabu thought
25 about Mr Mathieu Ngudjolo, or could you try and elicit information in another way

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1 than the question you put to him?

2 Asking is it true that Floribert Ndjabu was afraid of Mathieu Ngudjolo, how can he

3 answer? Our witness is not him. Can you say anything about that?

4 THE WITNESS: (Interpretation) I can't answer on behalf of Floribert Ndjabu.

5 PRESIDING JUDGE COTTE: (Interpretation) Press ahead, Mr Garcia.

6 MR GARCIA: (Interpretation)

7 Q. To your knowledge, when Floribert Ndjabu arrived, you were all in Bunia.

8 Would I be right in saying that there were some hostility shown by Mathieu Ngudjolo

9 towards Floribert Ndjabu as far as you know, I mean, or did you hear about that?

10 Did you learn about that?

11 A. Once more, that's the same kind of question. I don't know anything about that,

12 the way in which the two follow one another.

13 PRESIDING JUDGE COTTE: (Interpretation) No. Simply, Witness, Mr Garcia

14 was trying to give you a more nuanced question. He's talking to the former

15 intelligence officer, you are, who might have heard about such information. So let's

16 be fair to the Prosecutor, he had changed his question in such a way that should allow

17 you to answer it if you have the information to do so, but apparently that is not the

18 case.

19 MR GARCIA: (Interpretation) I'll change subjects.

20 Q. Witness, I am going to change topics. We are going to drop Kampala and we

21 are going to go back to your testimony yesterday when you talked about child

22 soldiers. Yesterday, when Mr Hooper asked you a question about child soldiers,

23 you answered - this is on page 23/24 of transcript 256 in French -- first of all, you said

24 "Thank you for your question and for defining what a child soldier is, because such a

25 definition is always controversial because age is secret information in my country.

- 1 Only a child's mother knows the age of her child. And moreover, given our
2 morphology - and I am talking about our size - it is often difficult to ascertain how old
3 a Lendu, a fellow Lendu, is."
- 4 And you continued by asserting "I saw a lot of short people there and I don't know
5 their age and that's because I didn't ask everybody how old they were. I didn't ask
6 everybody how old they were."
- 7 Can you remember answering in this manner Mr Hooper's questions yesterday when
8 he asked you if you had seen child soldiers in Aveba when you went back, when you
9 went to Aveba after Bunia, after the UPC attack on Bunia?
- 10 A. Yes, thank you. I know -- I admit that that statement was part of my answer.
- 11 Q. I'm simply addressing this issue from the very start. If I understand your
12 testimony well, you remained in Aveba for around a fortnight; is that the case?
- 13 A. That's what I said yesterday, yes.
- 14 Q. So, approximately, two weeks. I can easily understand that during these two
15 weeks you had the opportunity to look at what you could see in Aveba? Am I right
16 on this point?
- 17 A. Yes, you are right. I was there and I was also there to observe what was going
18 on there, yes.
- 19 Q. Well, with respect to your answers yesterday, you will nonetheless agree with
20 me that it was not necessary for you to go and ask questions to work out how old
21 children were. Just by looking at them, surely you could draw a distinction between
22 a child and an adult. You would agree with me on that point.
- 23 A. The answer is precisely in the excerpt you read out.
- 24 Q. But I am asking you another question. I know what you answered yesterday,
25 and to be fair with you I read out your statement yesterday, but now I'm asking you a

1 more specific and straightforward question. You, when you arrived in Aveba, surely
2 you could see whether there were children? You could draw a distinction between
3 children and soldiers? You didn't have to go and ask their mothers questions to
4 work out how old they were? You can certainly determine who is nine or eight
5 years old in comparison with somebody who is 15, 16 or 17 years old. Do you agree
6 with me?

7 A. Yes, I agree with you on that point.

8 Q. Therefore, contrary to what you asserted yesterday, you didn't have to go and
9 ask questions to the mothers to work out whether they were children or not and how
10 old they were - these children were?

11 A. Thank you. I said precisely yesterday that it is tough to determine somebody's
12 age given the morphology, or the typical morphology, in my homeland. It is
13 difficult and to do so it is better to ask somebody a question, ask them how old they
14 are.

15 Q. But you, as an Ngiti, you surely, you know what a child looks like, an Ngiti
16 child, and you can make a difference between a child that's fairly obvious, who is
17 aged say six or seven, and a child who is aged 15 or 16 years old?

18 A. Unfortunately, as an Ngiti, precisely I am unable to do so unless I ask the
19 question to that person, "How old are you?"

20 Q. Well, if I understand you correctly, you don't know if there were child soldiers
21 because you would have to go around asking people questions about their age. Is
22 that what you are saying?

23 A. I said yesterday that there might have been child soldiers there in Aveba, but as
24 I did not ask them the question about their age I cannot say. The children who
25 ended up in Aveba were not asked to take up weapons. There was a conflict in Ituri,

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1 but that was no reason to ask children to come and fight a war. They had to ensure
2 their security and so to say my answer remains unchanged from yesterday what you
3 read out today.

4 Q. Let's leave aside the issue of child soldiers in Aveba, but you will agree with me
5 that there were child soldiers, children under the age of 15, who were enlisted in the
6 militias in, or the armed groups that were operating in the Walendu-Bindi region and
7 took part in the attacks that were carried out in Ituri? You will agree with me surely
8 that there was such a problem?

9 A. Yes. I mean, this occurred at a national level in fact, not specifically in Aveba,
10 and kadogo is in fact just (indiscernible) from.

11 Q. So you will agree with me that children were taking part in these attacks?

12 A. I agree with you. I have confirmed that point.

13 Q. Is it also right to say that in Aveba itself in November 2004 a demobilisation
14 centre was set up precisely for child soldiers?

15 A. Could you repeat the question, please? Could you repeat the question?

16 Q. I will simply repeat that question. Do you agree with me that there was a
17 demobilisation centre in Aveba in November 2004, roughly speaking?

18 A. Yes, I agree there was a recruitment site in which there were several
19 departments including the one that was in charge of demobilising children.

20 Q. You also talked to us -- well, in fact Mr Hooper asked you questions about that,
21 as to whether to your knowledge Germain Katanga had taken part in the attack on
22 Bogoro and you answered, unless I am mistaken, that it was only the next day that he
23 went to Bogoro; is that right?

24 A. Yes, that's what I said yesterday.

25 Q. What I find interesting, Witness, in your statement yesterday, is that you also

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1 mentioned a point relating to Kisoro. You justified the fact that Germain Katanga
2 could not take part in the attack because there were problems with Kisoro; is that
3 true?

4 A. Thank you. I focused on -- only on the Kisoro aspect. I did talk about that
5 yesterday, the Kisoro aspect, and also I may have not said that yesterday, but there
6 could have been other reasons.

7 Q. I simply, to be fair with you, and I am referring to transcript 256, page 11, lines 3
8 to 10, for the Chamber and the participants, but yesterday at line 1, you
9 asked -- Mr Hooper asked you "Why, do you know why he did not take part?"
10 Referring to Germain Katanga, and you answered, "I was told he'd not taken part on
11 the attack on Bogoro because it's a situation of insecurity was prevailing in Aveba and
12 the surrounding area and the troops in that area, in particular Kisoro, was what do
13 you say? That Kisoro led several attacks on Aveba and the surrounding area." So
14 in a nutshell, what you are saying is that Germain Katanga could not take part in the
15 attack on Bogoro because there were safe -- security problems linked to Kisoro?

16 A. Yes, I have said that. I said that exactly yesterday, but I would like to add if I
17 may that the reason I was given by the source I quoted --

18 Q. That's not the question I'm asking you. Simply, is that what you said yesterday
19 and you have just confirmed that that is so. So if I understand your question well,
20 Germain Katanga --

21 MR HOOPER: I am sorry, the witness was interrupted in the course of his answer
22 there.

23 MR GARCIA: (Interpretation) That was not a question. I have been careful in
24 terms of the questions I have been asking the witness.

25 PRESIDING JUDGE COTTE: (Interpretation) I believe the questions were perfectly

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1 precise as to Germain Katanga arriving there just one day after the insecurity that
2 prevailed around Aveba. Please continue, Mr Garcia, and Witness, please answer.

3 MR GARCIA: (Interpretation)

4 Q. I will finish with this question: Germain Katanga could not go and take part in
5 the attack on Bogoro because of the insecurity that prevailed or was prevailing in
6 Aveba, but he went the next day; is that what you stated? Is that your testimony,
7 Witness?

8 A. Mr Hooper is right; you interrupted me. Yesterday precisely I mentioned the
9 reason you have just talked about, i.e. that Germain Katanga did not go to Bogoro
10 for -- because of the insecurity that was prevailing due to precisely those attacks
11 carried out by Kisoro, but there were other reasons also that lead to say, and I did not
12 say this yesterday, I can add that now. May I?

13 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead. You have two
14 minutes. Please add any information.

15 THE WITNESS: (Interpretation) There were also reasons within his own
16 household and reasons that kept him in Aveba. There were problems at that time
17 between -- between his wife, I can remember well, and somebody else, I'm sorry to
18 talk about this, the same sort of thing. I mean, I have just thought about that. There
19 was an incident at that time in -- that occurred in Aveba, an incident during which
20 somebody called Mary, a woman who was beaten up by a group of women, and this
21 problem -- I mean, it mystically forced Germain to abstain from going there, and I
22 was told about this by a third party as well, and the reason why Germain could not
23 go to Bogoro.

24 PRESIDING JUDGE COTTE: (Interpretation) Mr Garcia, we are going to cut off
25 here for today. Thank you very much, Witness, Mr Mbodina, for your contribution

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1 throughout this morning. We'll meet again tomorrow morning. Enjoy a good
2 afternoon. The court usher is going to escort you.

3 THE WITNESS: (Interpretation) If I may, we're getting near the end. There might
4 be a few days before the end of the week left and I would like to ask you to be so kind
5 as to grant me a few minutes at the end of my airing to -- testimony, to talk to you
6 about a few grounds for concern.

7 PRESIDING JUDGE COTTE: (Interpretation) At the end of your testimony you
8 will be granted a few minutes, sir. You are now going to leave us. The court usher
9 is now going to escort you from the courtroom and we will see you again tomorrow
10 morning.

11 THE WITNESS: (Interpretation) Thank you very much.
12 (The witness stands down)

13 PRESIDING JUDGE COTTE: (Interpretation) I would simply like to tell the parties
14 and participants that the Registry and Mr Hooper have worked with such zeal that
15 they should be able to hold that meeting this afternoon and therefore, if
16 Mr Germain Katanga has enough time to talk with his Defence team, and that should
17 enable Germain Katanga's Defence team to tell us what its decision is.

18 Mr Garcia, tomorrow we have four hours of -- for our hearing. It would be
19 preferable by far if we did not interrupt this witness's testimony and we should have
20 to be forced to call him back after the recess. Some representatives of victims have
21 planned to ask a few questions. They will obviously discard some questions
22 according to the questions you will have asked. The Chamber has also got some
23 specific information it would like to ask the witness to answer about, and the
24 Chamber will therefore need about 45 minutes and then there will be the last
25 observations by Mr Kilenda and Mr Hooper, plus the few minutes the witness has

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1 asked he should be granted to talk about his grounds for concern. How long do you
2 believe you need, taking into account also that we will need to hand down an oral
3 decision?

4 MR GARCIA: (Interpretation) I can assure you, your Honour, that I will try and be
5 as efficient as possible tomorrow. I will be able to review everything that was
6 discussed today. I will try and complete my cross-examination in an hour, an
7 hour-and-a-half at the very most.

8 PRESIDING JUDGE COTTE: (Interpretation) Please try not to exceed an
9 hour-and-a-half. In fact an hour, an hour-and-a-quarter would be better, Mr Garcia,
10 and we'll also review their questions and try and be as precise as possible, because as
11 we have seen our witness has some -- a lot to say and we are not always sure that his
12 answers will be as brief as the questions.

13 I would like to thank everybody. I would like to thank our colleagues I forgot
14 yesterday. Mr Garcia? No, okay. Well, we will now end and meet again
15 tomorrow morning.

16 (The hearing ends at 1.31 p.m.)

17 RECLASSIFICATION REPORT

18 Pursuant to Trial Chamber II's oral order dated 21st of April 2011, the
19 Oral decision of the transcript page 35 line 23 to page 40 line 10 (*) is reclassified
20 from private session to open session.

21 CORRECTION REPORT

22 The Court Interpretation and Translation Section has made the following corrections
23 in the transcript:

24 *Page 44 lines 15 to 16

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- 1 “that people were in the middle of debates relating to the creation of the FRPI and
- 2 this issue appeared during these meetings.”
- 3 Is corrected by
- 4 “that I found people having serious discussions on the creation of the FRPI of FIPI.
- 5 And this issue arose around... during the meeting, you see.”