

Trial Hearing
Witness: DRC-D03-P-0707

(Open Session)

ICC-01/04-01/07

1 International's 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
5 and Mathieu Ngudjolo Chui - ICC-01/04-01/07
6 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra
7 and Judge Christine Van den Wyngaert
8 Trial Hearing
9 Wednesday, 9 November 2011
10 (The hearing starts in open session at 9.04 a.m.)
11 THE COURT USHER: All rise. The International Criminal Court is now in session.
12 PRESIDING JUDGE COTTE: (Interpretation) Please be seated.
13 Good morning, everyone. Good morning to the accused persons.
14 Mr Prosecutor, you can now continue.
15 MR MACDONALD: (Interpretation) Thank you, Mr President, your Honours.
16 WITNESS: DRC-D03-P-0707 (On former oath)
17 QUESTIONED BY MR MACDONALD: (Interpretation) (Continuing)
18 Q. Good morning, Mr Ngudjolo.
19 A. Good morning, your Honours. Good morning, Mr Prosecutor.
20 Q. I will now continue with my questions and I would like us to speak briefly about
21 Mr Bahati John Talika. If I am not mistaken, that is his full name, isn't it?
22 A. I know the name as Bahati Talika John.
23 Q. You also knew him as Bahati de Zombe, didn't you?
24 A. Yes, Mr Prosecutor.
25 Q. Bahati de Zombe is currently a colonel in the FARDC, isn't he?

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1 A. Yes, Bahati is a lieutenant-colonel in the FARDC.

2 Q. And this is someone that you have known ever since before 6 March 2003, isn't he?

3 A. I have known Bahati since 1999 and it was in Bunia.

4 Q. And you came to know him as from 1999, because he was also in the medical field.

5 He was a dental nurse, wasn't he?

6 A. Yes, when I was a student at ITM (phon) he was teaching.

7 THE INTERPRETER: And the Lingala interpreter did not quite hear what the witness
8 said.

9 MR MACDONALD: (Interpretation)

10 Q. Mr Witness, can you please repeat because the interpreter did not quite get the last
11 part of your answer?

12 A. This is what I said: When I was a student at the ITM, he was our teacher, our
13 instructor in dental health.

14 Q. And this person is also known to Dr Adirodu, if I'm not mistaken, and I'm talking
15 here about Bahati de Zumbe, isn't he?

16 A. Yes, they know each other; that is, he knows Dr Adirodu who was our medical
17 officer - our chief medical officer - in our zone.

18 Q. And which zone are we talking about?

19 A. He was the chief medical officer of the Bunia city urban area.

20 Q. Mr Bahati de Zumbe, as some witnesses have stated, also worked in Zumbe, didn't
21 he?

22 A. Yes, when I left Zumbe he replaced me. He was working at the Zumbe health
23 centre.

24 Q. Despite the fact that he was working in Zumbe, I do understand that his wife and
25 part of his immediate family was in Walendu-Bindi, isn't that correct?

1 A. No. When we were in Bunia, Bahati's entire family, his father, his mother and even
2 his wife, lived in Bunia. On 9 August 2002, when we fled the war, that was when his
3 wife also fled to Gety in the Walendu-Bindi collectivity.

4 Q. And then she moved to Aveba, didn't she?

5 A. As far as I know Bahati followed his wife, but I am not in a position to say whether
6 his wife was in Aveba, or in another village. What I know is that she was in the
7 Walendu-Bindi collectivity.

8 Q. To your knowledge, where was Bahati on 9 August 2002 when Bunia was captured
9 by the UPC?

10 A. Bahati and I were at Dr Adirodu's place. Subsequently, he fled to Zumbe because
11 he had a motorbike. He left before the fall of Lompondo, at a time when things were not
12 looking very good. That is when he left for Zumbe.

13 Q. Are we to understand from your testimony that, prior to 9 August, Mr Bahati was
14 living or was in Dr Adirodu's residence and then he fled to Zumbe before the fall of Bunia?
15 Is that what we are to understand?

16 A. This is what I said: On 9 August, Bahati and I were in Dr Adirodu's residence and
17 from there he fled to Zumbe.

18 Q. Mr Ngudjolo, isn't it correct that Bahati de Zumbe left Zumbe with Faustin's forces
19 and went to Songolo?

20 A. That is correct.

21 Q. Very well. I would like to ask you one question before moving on to something
22 else and this is an open question: Can you please give us your definition of a child? As
23 far as you are concerned, who would you describe as a child?

24 A. There are several categories of children. I can take from zero to one month and
25 they're generally referred to as infants. Childhood begins from one month to 18 years.

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1 Q. Let us talk about your flight from Bunia in August 2002. You told us - and we have
2 discussed this briefly once again - that you were living in Bunia, you were working in
3 Bunia and I believe you were working at the Bunia General Hospital at the time, weren't
4 you?

5 A. I was a student in Bunia and at the same time I was an intern at the Bunia General
6 Hospital.

7 Q. And you were living with your wife and your child in a house belonging to
8 Dr Adirodu, weren't you?

9 A. That is correct, Mr Prosecutor.

10 Q. So Dr Adirodu is also someone that you know very well, isn't he? He was the chief
11 medical officer of the zone. You were renting his house. This is someone that you
12 associated with, that you knew well, isn't he?

13 A. Yes, we knew each other well. I was not his tenant. I was living in his house free
14 of charge.

15 Q. Do you mean that you were the owner of the house?

16 A. Yes, because I was living in that house.

17 Q. Mr Ngudjolo, at that time you were aware that Mr Adirodu, apart from being a
18 physician, prior to 9 August 2002 was involved in the RCD-K/ML? He was a member of
19 that movement, wasn't he?

20 A. Yes, that is correct, Mr Prosecutor.

21 Q. And so this is someone with whom you discussed the political situation prevailing
22 at the time, isn't that correct?

23 A. No.

24 Q. You were close to Mr Adirodu and you are saying that you never discussed politics
25 in Ituri with him at that time; the issue of the Lompondo government, the rise of the UPC,

1 Thomas Lubanga and so on and so forth? Is that what you are telling us?

2 A. Mr Prosecutor, at that time I was not interested in politics. With regard to Thomas
3 Lubanga or the RCD, we followed them in the evening over the radio or the television.

4 Q. Isn't it correct that Mr Adirodu occupied a position within the RCD-K/ML at that
5 time? You are also aware of that, aren't you?

6 A. Yes, I am.

7 Q. What was the position occupied by Mr Adirodu in Bunia in the RCD-K/ML at that
8 time; that is before 9 August 2002?

9 A. I know that Dr Adirodu was an adviser to Mbusa Nyamwisi. At one point he
10 became the Minister of Health of the RCD-K/ML.

11 Q. Was that Minister of Health in the Lompondo government?

12 A. Both Lompondo and Adirodu were members of Mbusa's government.

13 Q. Mr Ngudjolo, you were living with your wife in Bunia, and in the course of your
14 testimony you have told us that you were at the hospital at one point and at about 6 p.m.
15 you returned home and you told your wife to leave because there was a group of Hemas
16 looking for non-Hemas and the members of the population were fleeing; isn't that correct?

17 A. Yes, that is what happened, Mr Prosecutor.

18 Q. And so you heard that the Hemas were preparing to kill all non-Hemas, including
19 the Lendus also; isn't that correct?

20 A. That is what I had heard on that day.

21 Q. You told us that you stayed in your house up 'til about 9 p.m., at which point you
22 saw a group of people armed with firearms and traditional weapons, didn't you?

23 A. Yes, that was my testimony.

24 Q. And they came right up to your house, didn't they? You could hear them outside
25 your house?

1 A. Yes, that is correct, Mr Prosecutor.

2 Q. And still in transcript number 327, page 45, lines 24/25, you heard them say, "Let us
3 go into the house and grab them"; isn't that correct?

4 A. Yes, that is correct.

5 Q. At that time, the expression "Let us grab them" or "Catch them," didn't it mean "Let
6 us catch them and kill them"?

7 A. The way I understood it was that they had come to kill me, because when I started
8 fleeing they shot at me. If they had not intended to kill me, they would not have shot at
9 me.

10 Q. Let me ask you my question again. When, as you have said, you heard them say,
11 "Let us go into the house and catch them," you understood that "to catch them" meant to
12 kill them; isn't that correct?

13 A. No, Mr Prosecutor. They probably caught and imprisoned or killed people, but to
14 catch does not mean to kill necessarily. They are two different things, but what I'm
15 saying is this: Considering that they shot at me, I understood that they had intended to
16 kill me.

17 Q. But before shooting at you, as well as at the two other people with whom you were,
18 you fled, didn't you? It was as from that time that they started shooting at you, trying to
19 kill you; isn't that correct?

20 A. Mr Prosecutor, even the son of God was afraid of death. Even you, if you see
21 people coming who are approaching you with such an intention, you would also flee.

22 Q. You fled to save your skin, if I can use that expression, because you knew that they
23 were coming to eliminate the Lendus; isn't that correct?

24 A. They had come to my house, I was afraid to die and that is why I fled.

25 Q. Mr Ngudjolo, isn't it correct also that, after you fled, the house which belonged to

1 you was destroyed? It was set on fire and you learnt about that later; that is, as from 6
2 March?

3 A. They didn't burn down the house. The house had roofing sheets, but they
4 destroyed it. They went inside and looted property inside the house.

5 Q. So your house was pillaged and destroyed. You fled and you sought refuge in
6 Zumbe, leaving behind your wife who had taken refuge elsewhere in Bunia town; isn't
7 that correct?

8 A. On the 7th, I fled into the bush. I had two wives. Sema was in her family in
9 Yambi-Yaya. I was with the other one --

10 THE INTERPRETER: Whose name the interpreter couldn't quite catch.

11 THE WITNESS: (Interpretation) -- and she fled to the neighbours and on the 8th she
12 found me in the doctor's house and on the same day she went to Zumbe. Bunia fell,
13 while she was in Zumbe. But Sema stayed in Bunia, because she was studying there.

14 THE INTERPRETER: And the second wife's was Ndjangusi, corrects the interpreter.

15 MR MACDONALD: (Interpretation)

16 Q. Let us clarify this point. Your two wives were living with you in Bunia; is that
17 correct?

18 A. Yes, that is correct, but I was not cohabiting with the two wives in the same house.
19 One of them was a student and was living with her family, and as you know co-wives do
20 not always understand each other and it is difficult for them to live in the same house.

21 Q. And just to be certain, how many children did you have at that time, one or several;
22 that is, the children who were living with you in the house?

23 A. I had one child in the house.

24 Q. Who was living with you? Njangusi?

25 A. I'm sorry, (Redacted).

1 Q. And you said that Njangusi subsequently ran away to go to Zumbe with the child
2 and Mrs Sema Kalemi was to stay in Bunia? Is that what you are saying in your
3 testimony?

4 A. Yes.

5 Q. Okay. Well, we will come back to that later. Well, you see, Mr Ngudjolo - and
6 this is what I am trying to get at with these questions - you said that the population of
7 Bedu-Ezekere had no interest in Bogoro. And I would like to look at transcript 328, page
8 55, line 20 -- line 22. Sorry, page 52, line 22, and you said the following: "TThirdly,
9 there was nothing of interest there. The community of Bedu-Ezekere had no interest in
10 Bogoro. There was no reason for going and doing anything in Bogoro. We weren't
11 interested in it. There was no interest in going there."

12 Mr Ngudjolo, you have just said that you left your work behind as -- your work as a
13 trainee. You no doubt left friends behind. You left one of your wives. You left them in
14 circumstances where you were trying to save your life because the Hema were trying to
15 kill you; is that right? This is the situation when you arrived in Zumbe; is that right?

16 A. I was afraid of dying, like any person would be afraid of dying. That's why I fled.

17 Q. And when you were in Zumbe, not only were you afraid of dying and so there was
18 this personal interest in saving your neck, but there was also the general interest for the
19 community of Bedu-Ezekere, wasn't there? That community was also afraid of the same
20 Hema and UPC people; isn't that right?

21 A. People were afraid, there was war, and those who were tough were not afraid.

22 Q. You were hoping to find safety in Zumbe because there was no safety in Bunia, but
23 even in Zumbe, Mr Ngudjolo, you and the Bedu-Ezekere community were not safe, were
24 you?

25 A. There was no security, but these are our villages. I was better off going and dying

1 in my own village.

2 Q. The UPC Hema, or the UPC in general, were around -- surrounding the
3 Bedu-Ezekere groupement at the time, weren't they?

4 A. Yes, they were in the surrounding villages, the villages around Bedu-Ezekere.

5 Q. They were in Bogoro, weren't they?

6 A. They were in Bogoro, in Mandro, in Bunia, in Kasenyi, and Kasenyi-Anaco and
7 Tchomia.

8 Q. Now, to make things clear, they were in Bogoro - you can confirm they were in
9 Bogoro - and they were in Mandro, Kasenyi, Tchomia, Bunia and even
10 Nyankunde -- Nyakire; is that right?

11 A. Yes.

12 Q. You were surrounded, weren't you?

13 A. Yes.

14 Q. And you were attacked on all sides, you and the population of Bedu-Ezekere?

15 A. Prosecutor, there were attacks.

16 Q. And when there were attacks the weakest members of the community, those who
17 couldn't fight, went to seek refuge, went into hiding, didn't they? They tried to survive
18 as best they could, didn't they?

19 A. Those who weren't strong ran away and hid. The braver ones remained and
20 resisted.

21 Q. Were you one of the strong ones, or were you one of the weakest ones? Were you
22 one of the brave ones, or were you one of the people who weren't strong at that time?

23 A. I was strong, I was in good shape, but I was busy doing my work as a nurse.

24 Q. Mr Ngudjolo, wouldn't it be right to say that not only the UPC came and attacked,
25 but is it also right to say that they actually settled in Bedu-Ezekere and stayed there for

1 about 48 hours at the time of an attack which occurred on 15 and 16 October 2002? They
2 came from Mandro, Bogoro, Kasenyi?

3 A. Prosecutor, let me help you. What you've said is correct, because you're trying to
4 say that the problem in Ituri was an interethnic conflict. At the beginning it was the
5 Hema and the Ugandans who came to attack us, and after that, Prosecutor, I heard
6 that the -- well, the Hema, Lendus, no one could tell you exactly why they were fighting.
7 When the Ugandans came they had their programme and they said that their enemy was
8 in the Monts Bleus, and so they used Hema, UPC members, so that they could show them
9 where the Monts Bleus were and that is why the Hema were with the Ugandans and took
10 them to Monts Bleus. The Monts Bleus was Lendu territory and the Hema accompanied
11 the Ugandans to get them closer to the enemy, but the Hema did not know the hidden
12 agenda of the Ugandans. That was what the situation was.

13 Q. Mr Ngudjolo, could we come back to my question? You said that you agreed with
14 me when I said that the UPC fighters came and settled in the Bedu-Ezekere groupement
15 for a period of 48 hours on 15 and 16 October 2002. That's right, isn't it?

16 A. That's right.

17 Q. Isn't it also right to say that during that attack they killed civilians, they looted
18 houses, they burnt houses, they destroyed houses?

19 A. There were fatalities. There were land-mines they put down. The houses burnt.
20 There was property destroyed.

21 Q. More than that, Mr Ngudjolo, isn't it right to say that the attackers asked the
22 victims - the civilian victims - to come out of hiding, leading them to believe things, and
23 when they came out they killed them? Isn't that right? Isn't that what happened during
24 the attacks and in particular on 15 and 16 October 2002?

25 A. Prosecutor, on 15 and 16 October I had also run away. I had gone into hiding near

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1 the mountains, and I only came back at 2 p.m. and they'd already left and I don't know
2 what happened when I wasn't there.

3 Q. Mr Ngudjolo, isn't it right to say that when the attacks occurred, the fathers, the
4 mothers, the children were asked to come out of hiding and they were killed?

5 A. It's true there were fatalities, but I heard things -- well, I'd also run away. I fled on
6 the 15th. I'd gone into the bush, because I had medication and I had to hide it, and I just
7 came back the next day at around 2 p.m. and when I came back I heard that there had
8 been people killed.

9 MR MACDONALD: (Interpretation) If I may just have a moment.

10 Q. Mr Ngudjolo, for the benefit of all concerned, we have the document in English 62,
11 which is EVD-D03-00098, a letter of 15 November 2002. This was the document of Chief
12 Manu, presented by Chief Manu. What has been shown here, your Honour, on the
13 bottom left, "DRC-OTP-0194-0348," and I shall read this, this is paragraph number 9:
14 "Tuesday, 15 October 2002: Unprecedented attack on the locality of Zumbe launched by
15 the same army."

16 PRESIDING JUDGE COTTE: (Interpretation) Could you please specify what page it is.

17 MR MACDONALD: (Interpretation) It's page 3 at the top. You have it at the top.
18 It's paragraph 9 and on the bottom left I'm referring to this -- it's 0348.

19 PRESIDING JUDGE COTTE: (Interpretation) Perfect. Thank you, I've found it. It is
20 indeed page 3, paragraph 9. We are listening.

21 MR MACDONALD: (Interpretation)

22 Q. "Unprecedented attack launched on the locality of Zumbe by the same army. The
23 Kambutso, Likoni, Masu, Zaba, Buy-Hu ...", that's H-U for the interpreters, "... Zumbe
24 have been ransacked. 215 civilian victims, 62 wounded by firearms and land-mines.
25 Systematic looting and two health care centres burnt down, six schools, four churches, all

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1 the houses in the localities. Eighty-three bicycles, 15 motorbikes, 19 sewing machines.

2 Two health care centres -- two health care centres were destroyed, and at that

3 time ..." -- well, then, Mr Ngudjolo, you've got a -- you've got a health care centre in

4 Zumbe and one in Kambutso? They're the only health care centres, aren't they?

5 A. At the time, there was a Zumbe health care centre and one in Kambutso.

6 Q. Was the Kambutso one destroyed, because you forgot to mention that in your

7 testimony in the examination when you talked about the record of your trainee period

8 and you said that you -- didn't you say that you couldn't work as a nurse - as a trainee

9 nurse - because the Kambutso health care centre had been destroyed?

10 A. No, Mr Prosecutor, the Kambutso health care centre was made out of sheet metal.

11 It wasn't a straw building. So when the attack came there were some things that could

12 not be taken, so there were things that remained there. When they came, they broke

13 down the door and they destroyed the property that was inside. That was in Kambutso,

14 whereas the house in -- the health care centre in Zumbe was made out of straw. It had

15 been built by NGOs using durable materials. Now, the Kambutso one was in straw and

16 was burnt down and the one --

17 THE INTERPRETER: The Lingala booth would like the witness to repeat his last

18 statement.

19 PRESIDING JUDGE COTTE: (Interpretation) Mr Ngudjolo, could you please repeat

20 that because the interpreters didn't follow exactly which of the two health care centres

21 was made of straw and which was made out of durable building materials. Could you

22 please stipulate. Now, first Kambutso. What was the Kambutso health care centre

23 made out of and then the Zumbe one? We are talking about the two health care centres,

24 please.

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

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1 care centre was made out of sheet metal. I had taken medication with me, but other
2 material had remained, other equipment. There were beds that couldn't be taken away
3 and that was destroyed. That was at the Kambutso health care centre. The Zumbe
4 health care centre was made out of straw and it was burnt down. That's how things
5 happened, your Honour.

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

8 MR MACDONALD: (Interpretation)

9 Q. I'd just like to clarify one point, Mr Ngudjolo. Didn't you say yesterday that the
10 Kambutso health care centre was built or came into operation only in late October? I
11 don't know how you could take property from the Kambutso health care centre to avoid it
12 being looted if there wasn't a health care centre.

13 A. Prosecutor, the Kambutso health care centre was made out of sheet metal and it's
14 still there made out of sheet metal, but I had just taken medication from it which I had
15 taken with me into the bush. And I pointed out here that the Kambutso health care
16 centre had only taken a month to build, it was done quickly, and the attack occurred just
17 as we'd started working on it.

18 MR MACDONALD: (Interpretation) Now, your Honour, we have article -- we have
19 evidence number 28 and specifically paragraph 63. This is EVD-OTP-00206.

20 MR O'SHEA: We have registered an objection to this document. I'd just like to take a
21 moment to consider our position on it, if I may.

22 MR MACDONALD: (Interpretation) If I can reassure my learned colleague, I'm not
23 going to make any reference to Mr Katanga in any way at all when I refer to paragraph 63.

24 PRESIDING JUDGE COTTE: (Interpretation) So it's paragraph 63 that you are
25 interested in, Prosecutor?

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1 MR MACDONALD: (Interpretation) Yes, your Honour.

2 MR KILENDA: (Interpretation) Your Honour, it's just that we shall be attentive to the
3 way the Prosecutor may wish to use this document.

4 PRESIDING JUDGE COTTE: (Interpretation) This is well-noted. This means the
5 Defence is extremely attentive and vigilant. We know that Germain Katanga's Defence is
6 on the alert and we have noted this.

7 So, Prosecutor, we have noted that in this exhibit there are indeed paragraphsh 64, 66, 72,
8 which may refer to Germain Katanga, but it appears that it could be difficult for Mathieu
9 Ngudjolo to give answers in relation to Germain Katanga, but you have pointed out that
10 you are interested in paragraph 63. So please proceed. You may ask your questions.

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

12 PRESIDING JUDGE COTTE: (Interpretation) Noting that Mr Kilenda is extremely
13 attentive.

14 MR MACDONALD: (Interpretation) I shall read this, and unfortunately the EVD
15 version is in English. Perhaps we could also accept as evidence the French version and
16 this could help all of us. If I am not mistaken, there is a French version of this and this is
17 a question of having the two versions tendered into evidence.

18 PRESIDING JUDGE COTTE: (Interpretation) Well, if there is a French version it would
19 be very welcome. That's quite obvious. Fine, it's paragraph 63. Please go ahead.

20 MR MACDONALD: (Interpretation)

21 Q. Mr Ngudjolo, you see the United Nations through their mission in the Congo did a
22 report which was submitted to the Secretary-General -- sorry, it's by the Secretary-General
23 of the United Nations, which was sent to the President of the Security Council on 16
24 July 2004. That was a special report on the events in Ituri between January 2002 and
25 December 2003, and in paragraph 63, as you just stated, they say as follows: (Speaks

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English) "In 2002 and 2003, the groupement experienced a total of 11 attacks with 445 civilian victims of killing, according to a Lendu teacher who took notes of each event. The most serious attacks occurred on 15 and 16 October 2002 when Hema militias, together with UPDF from Bogoro, attacked Zumbe and stayed there for 48 hours. From Zumbe, the attackers burnt all the surrounding villages, killed around 125 civilians and planted several anti-personnel mines."

(Interpretation) Now, we are in agreement we are talking about the dates of 15 and 16 October 2002. We have the document which is signed by Chief Manu. We have the report by the United Nations on this matter, and I quoted this and I shan't refer to it. In English there's 63, EVD-D03-0099, but this is a document from the base committee where we just have a few indications. With reference to 2002 we see the date of 2005, which leads me to believe that this document was written, as we'll see later, for other reasons than those it may have been initially done for. But regardless of that, Mr Ngudjolo, isn't it right to say that during these attacks the attackers also killed civilians using machetes? They dismembered bodies using machetes?

A. Prosecutor, the UN report and the Chef Manu report are not the same. The UN report said there were 125 dead, whereas here it says 215, but it's the same date. What I noted was that there were deaths, there were people killed by firearms and people who'd walked on land-mines, but I hadn't seen any killed by bladed weapons.

Q. Mr Ngudjolo, later on, in the days and weeks afterwards, is it not true that you were in a position to learn that people had been hacked down with machetes?

A. No.

MR MACDONALD: (Interpretation) May I now draw your attention to exhibit EVD-D03-00099, which in English is number 63 -- I beg your pardon, in the column 63. This is the exhibit I did not intend to call up... but I shall. And this is on the last page,

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1 entry 16, on the final page of the document, if we could call this up on to the screen, please.

2 We are talking about DRC-D03-0001-0089.

3 PRESIDING JUDGE COTTE: (Interpretation) Court officer, please.

4 THE COURT OFFICER: (Interpretation) You can see this document on "PC1."

5 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, we are all looking at the
6 final page.

7 MR MACDONALD: (Interpretation)

8 Q. We can see here, "The biggest attack on Zumbe for 48 hours. The inhabitants were
9 massacred, over 261 or 281, including some who were shot, others killed by machete,
10 bombs and other means, particularly children, died of hunger." There is also mention
11 made of houses being destroyed and so on. "The health centre in Zumbe burnt down.
12 Three schools were burnt down. Roughly twenty killed. Property killed -- property
13 burnt and looted."

14 Now, Mr Ngudjolo, we can see from this document - and this comes from the testimony of
15 Chief Manu - this would seem to be a compilation of information from the base committee
16 and we can see that apparently people were killed by machete.

17 A. Mr Prosecutor, let me tell you this: The bodies which I saw were those of people
18 who had been shot. Others had been killed by mines. Perhaps some people had been
19 killed by machetes, but I did not see any of those. As for people who died there, they did
20 not all die on the same day. I would say others were shot and others died because of the
21 mines. So that is what I know. If some people were killed by machetes then that is
22 possible, but I did not see any of them.

23 Q. Mr Ngudjolo, the fact is that the UPC were in Bogoro at the end of 2002, the
24 beginning of 2003, ensuring that the families were separated. Is that not the case,
25 Mr Ngudjolo? The families in fact could not travel around? They found it very difficult

1 to leave Bedu-Ezekere, unless they did so at the risk of their lives?

2 A. Mr Prosecutor, the population was suffering. It was extremely difficult to go
3 outside and that is why people stayed in their homes. They resisted.

4 Q. The members of the Lendu families who were in Walendu-Bindi, who had taken
5 refuge there in Walendu-Bindi, had lost contact with their families in Bedu-Ezekere; is
6 that not true?

7 A. For the people who were in the Ezekere groupement, they found it very difficult to
8 meet up with those who were in the other localities. However, it was possible to meet
9 them, because people were travelling a bit in order to buy food and they would go out to
10 work in the fields as well.

11 THE INTERPRETER: Correction from the interpreter: "They would take the forest
12 paths in order to move around."

13 MR MACDONALD: (Interpretation) Mr Ngudjolo, may I now come back to the video
14 with Dark.

15 This is EVD-OTP-00173, 30 March 2003, and this is in box 35. We have the transcript
16 DRC-OTP-1019-0237_EX04, extract 04 therefore, version R01 and the first page. Now, the
17 lines which we want to look at are lines 605 to 616. This is quite a short excerpt,
18 Mr President. I would be very grateful if we could view the whole excerpt and then I
19 will come back with my questions.

20 PRESIDING JUDGE COTTE: (Interpretation) Court officer, could you please organise
21 it so that we can watch this short excerpt from the video.

22 THE COURT OFFICER: (Interpretation) You can watch the video on "PC1."
23 (Video excerpt played)

24 PRESIDING JUDGE COTTE: (Interpretation) Maybe we should just rewind slightly.
25 Court officer, let's rewind because we didn't have the sound to start with.

1 (Video excerpt played)

2 THE INTERPRETER: "My question was whether in the two parts of the war, the war in
3 Ituri, which -- war which is sowing desolation in Ituri, which of the two do you want to
4 see finished and the other not finished, because, as the Colonel just said, people sign one
5 thing today, and then return to the same way of behaving again. tToday opinion would
6 like to know if you really want to finish with war in Ituri and for peace to come back to
7 Ituri?

8 'Thank you for that question, Mr Journalist. You're talking about an ethnic war, but this
9 is not what I'm doing. The problem of an ethnic war is you have to find the
10 representatives of the UPC so they can answer this question, and then if you say that the
11 Lendu or the FRPI combatants led an ethnic war, this was because we were hemmed
12 in-- we were surrounded by the UPC and the conditions meant that we did not feel as if
13 we were Congolese any more. We were being separated from our Congolese brothers
14 and we were obliged to break through the barrier So one of the problems of an ethnic
15 war is -- well, the young people in Ituri are happy when they hear me speaking on
16 television, because they see all the efforts which we are making for national reunification,
17 rather than tribal reunification. The Hema and the Gegere, whom we felt and whom we
18 knew were enemies of the Lendu, as many people were aware and as the UPC soldiers
19 had told the population of Ituri, but they can go freely through Bogoro where the FRPI is.
20 Day or night they can circulate freely on foot or by vehicle, and they can carry out their
21 trading activities as well."

22 MR MACDONALD: (Interpretation)

23 Q. Mr Ngudjolo, on line 111, when Dark in your presence says, "We had to break this
24 curtain which was separating us from our Congolese brothers," is it not true therefore that
25 this curtain in fact was Bogoro? Would you agree with me on that point?

1 A. It's true that Dark was talking about Bogoro in this excerpt.

2 Q. Yes, but, Mr Ngudjolo, you were present. You were surrounded in Bedu-Ezekere.
3 You even said that you had fallen back to Zumbe, Kambutso, Masu. The groupement
4 got smaller. It shrank. You were surrounded on all sides. Is it not true that you and
5 the population of Bedu-Ezekere had every interest in order to survive in breaking this
6 curtain which was in Bogoro?

7 A. Mr Prosecutor, you are making things very confused. At that point in time, Dark
8 lived in the Walendu-Bindi collectivity and I said that our major interest was Bunia since
9 the Bedu-Ezekere used to get the food from Bunia in terms of foodstuffs and so on. They
10 did not go to Bogoro. If there was any attack on Bogoro, in Mandro, in Kasenyi or in
11 Bunia, then the population of Bedu-Ezekere had no means of fighting the UPC in Bogoro.

12 Q. Mr Ngudjolo, could we come back to this commercial question and I refer to
13 transcript 328. This is in your testimony, page number 57, from line 27 onwards, and this
14 is in response to an answer -- a question posed by Judge Cotte. Line 23, and I will read
15 the question out to you: "Explain to us why Bogoro was of no interest to the people of
16 Zumbe?", and you said why just now.

17 We can go back further in the transcript. I remember this. You will recall that this was
18 what I read out to you earlier on this morning, at page 52. Your answer, sir, was as
19 follows: "Your Honour, your Honours, we, the inhabitants of the Bedu-Ezekere
20 groupement, if I said that we had no interest in attacking Bogoro, this was because
21 commercially speaking the people of Zumbe would go to Bunia, to the Bunia market, in
22 order to get foodstuffs and so on. We had nothing to get from Bogoro." And then in
23 line 4: "Secondly, we were in a tribal context. The conflict was an interethnic one."
24 Mr Ngudjolo, can you remind us of the distance, take Katonie/Bogoro, is it not true that
25 it's roughly seven to eight kilometres between the two?

1 A. Sir, don't attach any value to Bogoro. It's a small village which has nothing in it
2 which could be of any interest to the population of Ezekere. There's nothing to buy there.
3 It's people of the UPDF and of the government of Kinshasa, these people came to attack
4 because the UPC people were there, at that time. Right up until now, the Ezekere
5 population has been going -- still goes to Bunia to get their food. They never go to
6 Bogoro. The Hema are not farmers, they are cattle breeders and, therefore, the food is
7 actually produced by the Lendu.

8 Q. But let me come back to my question: What is the distance between Katonie and
9 Bogoro? Is it not true that it's roughly seven to eight kilometres at most?

10 A. Yes, I do agree with you, sir. The distance between Katonie and Bogoro is seven
11 kilometres but, Mr Prosecutor, at this time the population of Bedu-Ezekere was in Zumbe,
12 and the distance between Zumbe and Bogoro is over ten kilometres. I would even say 15
13 kilometres.

14 Q. But when there is peace, Mr Ngudjolo, you would agree with me that Bogoro has a
15 market; Bogoro is far closer than Bunia; there is a population living at the foot of the
16 mountains in Katonie, Kavalega 1, 2, right at the foot of the Mount Lagura, the population
17 is there living peacefully and therefore would they actually go to Bunia to buy foodstuffs
18 and so on? Is that what you are telling me whereas there is a closer market in Bogoro?

19 A. Mr Prosecutor, there's also another market in Katonie, and the populations of
20 Zumbe go to Bunia to get their food. I said that on 9 January 2001 there was a battle in
21 Katonie. In parking -- on the car park there was a small market there and the whole
22 population goes to Bunia to get their food. Bogoro is just a small village, economically
23 and commercially speaking. It doesn't represent anything major at all. Bogoro has
24 herds of animals, in Bedu-Ezekere. We have that too in the Walendu-Bindi collectivity.
25 There is no groupement which has any more animals than we do. They have animals

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1 and so do we. We are farmers as well, though, and they are not. The road which goes
2 from Kasenyi to Bunia or
3 Katonie.

4 THE INTERPRETER: Your Honour, comment from the Lingala interpreter: The
5 witness has spoken very quickly, it's difficult to understand what he has said.

6 PRESIDING JUDGE COTTE: (Interpretation) Would you please speak a little more
7 slowly. Thank you. Mr Prosecutor.

8 THE WITNESS: (Interpretation) I apologise.

9 MR MACDONALD: (Interpretation)

10 Q. This may seem a rather stupid question but is the fish fresher in Bogoro or in Bunia?

11 A. Mr Prosecutor, the population in Ezekere buys fish from Katonie, and there are two
12 roads. Let me try and explain this to you: When you leave Kasenyi there is a road to go
13 to Bogoro but there is also another road that you can walk along from Kasenyi. Before
14 you arrive at Mayi Ya Franga (phon), at the bottom, there is a path which you can walk
15 along to go to Katonie, and this is the road that people who buy fish use in order to sell it
16 at Katonie and the population of Ezekere go there to buy fish. They do not go to Bogoro.
17 We have milk, we've got cows, we've got goats, we have everything. I've told you that
18 we have twoProdel. You are Canadian. Go to Quebec and see what we call
19 BPI, -- which was financed by the Canadians. You will find a list of all the farmers who
20 were financed by the Canadians living in the Ezekere groupement. We have two Prodel
21 and you will see the numbers of cattle. We had over 10,000 heads of cattle and this is
22 why I said there was no point going to Bogoro.

23 THE INTERPRETER: Correction from the English interpreter. "We are talking about
24 PRODELS."

25 MR MACDONALD: (Interpretation)

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1 Q. Let me give you a video, 00167. This is in box 17, your Honour. This is an excerpt
2 which, for the purposes of my question, we can actually stop, court officer, at minute 1.32,
3 and for the purposes of the transcription, transcript reference DRC-OTP-0145-0027, and
4 this is excerpt 04, version R01. The lines which are of interest to us are lines 1157 going
5 through to 1175 or even 76 but this takes us up to minute 1.32.

6 PRESIDING JUDGE COTTE: (Interpretation) Court officer, having said this is
7 DRC-OTP-1045 and not 0145-0027.

8 THE COURT OFFICER: (Interpretation) The video can be seen on "PC1."

9 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
10 (Video excerpt played)

11 THE INTERPRETER: "Because we are in the bush and Bogoro is a hindrance because we
12 don't have anything to eat and for us to be at peace here we must be able to go into town
13 and our people need money to bring flour, into town. We're blocked here. It's as if
14 we're not Congolese recognised by the world, and we can't go to Bunia, so we've decided
15 to move out by force because they've already caused us problems; bombing us, tracking
16 us down in our houses. They burnt down villages such as Songolo and other
17 surrounding villages, and even Simbiliabo, there, there are witnesses. In Lipri as well
18 there was fighting. So what we say is that we're going to follow them to where they are
19 and right up to the very last minute we'll be able to go to the pacification meeting using
20 force. We can't stay here doing nothing. Our brothers in the bush can't even go and get
21 any kinds of basic food, salt or whatever. We can't do anything here because we're
22 spending our time trying to avoid the bombs."

23 MR MACDONALD: (Interpretation) Your Honour, there is an excerpt which is part of
24 evidence which has been reviewed, corrected and unfortunately the translation, the
25 interpretation is not following the text at all. I'm just noting this fact. This transcript has

1 an EVD number and all the parties agreed upon this. So I will refer to the transcript in
2 order to ask Mr Ngudjolo certain questions. And let me quote this to avoid any
3 confusion. DRC-OTP-1045-0027, extract D04-R01.

4 PRESIDING JUDGE COTTE: (Interpretation) Just a second, please. I was intending to
5 ask a question, and what the court officer has told me is that knowing that this extract was
6 going to be broadcast, the interpreters listened to it before so as not to lose time. That is
7 why we had a real-time interpretation from interpreters, who were familiar with the video
8 extract. And I tried to compare what I was hearing with what I was reading. Maybe
9 the turn of phrase could have been different, but the main outlines of what is in the
10 written transcription did feature. I think this is important to note.

11 MR O'SHEA: I, of course, agree with my learned friend Mr Macdonald on his point, but
12 I was following in the French and I can say that the translation was pretty good, although
13 of course it wasn't exactly what was on the transcript and, of course, a procedure has been
14 followed, as Mr Macdonald has rightly pointed out, and it would have been helpful if the
15 translation corresponded to the transcript but it was a pretty good translation.

16 I have another issue I'd like to raise, which is the question of the English transcripts and
17 the references to these various exhibits by my learned friend. It is important to us that
18 when we re-read these transcripts we do not become lost by incorrect citations of the
19 various references to the exhibits, and unfortunately, we're entering into that terrain of
20 incorrect references within the English transcript. So it's -- and I am told also the French.
21 So it's important that these transcripts are gone through carefully, so that all the references
22 which my learned friend has highlighted are in fact correct, when we come to re-read
23 these transcripts for the purpose of the preparation of our closing arguments.

24 PRESIDING JUDGE COTTE: (Interpretation) On that issue, Mr O'Shea, the Registry
25 services as usual will make sure that the final documents are easy to identify by tab and

1 reference numbers; both the DRC references and the EVD references. Mr Prosecutor, you
2 will continue.

3 We agree that the interpretation is quite similar to what features on the transcriptions, so
4 you can ask your questions, and I believe there is no cause for lengthy controversy here.
5 Mr Ngudjolo will answer the questions, and I believe they are related to what you have
6 been putting to the witness a moment ago now concerning the interests that Bogoro
7 presented for the population which was said to be surrounded.

8 MR MACDONALD: (Interpretation) I would just want to reassure everybody and
9 point out that those extracts with EVD numbers were cross-checked by the Registry at that
10 time following your instructions. I understand that we are receiving live interpretation
11 and from time to time we may be missing one word or the other but the meaning is the
12 same. However, for the purpose of my questions, I will refer to the documents with EVD
13 references.

14 PRESIDING JUDGE COTTE: (Interpretation) Let us make progress. Mr O'Shea?

15 MR O'SHEA: Yes, Mr President. Just to come back to what you said earlier, about the
16 correction of the transcripts. Of course the English will be compared to the French, but it
17 doesn't follow that the tapes will be listened to. So if the French is wrong and the English
18 is wrong with regard to the references to the exhibits, then that will become a problem.
19 So, we have -- we have certain wrong references in the English transcripts. I'm told that
20 may be the same in the French. If it is the same in the French then we need a direction to
21 the Registry to check the tapes, with regard to today's proceedings, so that we have the
22 correct references. Otherwise, we are going to become completely lost. I am sorry to
23 insist upon the point.

24 MR HOOPER: I am sorry, can I just interject to say that a primary difficulty is it does not
25 appear to us that the English and the French are compared. So when we go through a

1 transcript we get very, very many differences between the English, and the French.

2 There does not appear to be that comparison made that we can see.

3 PRESIDING JUDGE COTTE: (Interpretation) Very well. We are not going to settle all
4 that on the Bench. Court officer, you heard Mr O'Shea and Mr Hooper, and if this relates
5 to the statements that have just been interpreted and called up on the video, these have to
6 be re-listened to, so that the French should correspond to the English, because it would be
7 unreasonable to find that when you read the French and English transcript, you may have
8 points of views that are expressed differently, and in that case we will have problems at
9 the end of the trial.

10 Now, Mr Prosecutor, please proceed.

11 MR MACDONALD: (Interpretation) Very well. In order to avoid any confusion, I
12 will quote and read from line 1167 of the transcript that I referred to previously.

13 "Because of all that, we decided as follows: Since this is the case we are going to pursue
14 them into their territory so as to have a bit of respite, and maybe even at the last minute, at
15 the last stage, we can achieve that pacification by force. We decided to allow free access
16 to Bogoro so that our brothers on the hills could go and fetch potatoes not far away from
17 us, because we do not even have traditional salt, and they can take potatoes back to their
18 homes to eat them, because in the situation in which we find ourselves we no longer have
19 the time to farm the fields because we have to avoid gunfire and shells."

20 Q. Mr Ngudjolo, you fled Bunia. You were being shot at. You left one of your wives
21 behind. You arrived Bedu-Ezekere, Zumbe, Kambutso. You were not safe. The
22 population was being massacred. They were suffering and had difficulties feeding
23 themselves and you, Mr Ngudjolo, you say that you and the population were not
24 interested in Bogoro? Bogoro was of no interest to you? Is that really the testimony that
25 you want us to believe?

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1 A. Mr Prosecutor, let me give you an answer. There is an error there. When they are
2 talking of potatoes, it was really not potatoes but Irish or, rather, but sweet potatoes.

3 PRESIDING JUDGE COTTE: (Interpretation) Mr Ngudjolo, that is not crucial. That is
4 not the essential thing, whether it's potatoes or sweet potatoes. Please simply answer the
5 question. Let us not go into those details.

6 THE WITNESS: (Interpretation) Thank you, your Honour. Mr Prosecutor, if you
7 follow what Dark was saying carefully, this is what he said: Their village was being
8 attacked, Songolo and other villages, that is why they took the decision to go and attack
9 Bogoro but, in that footage, what Dark is saying, in the presence of General Kale Kayihura,
10 and in the presence of the UPC governor, on 24 February 2003. After the Bogoro attack
11 the UPC accused the UPDF and the Kinshasa government of having attacked Bogoro. In
12 the presence of the UPC governor, Dark could only make that statement so as to cover up
13 for the Ugandans, but the fact of the matter is that Dark was in Bogoro. I cannot deny
14 that. Everything that concerned the road. And I followed him well. This is what he
15 said: Bogoro was an obstacle for them. They had difficulty going to Bunia to sell their
16 goods. Whether it was the Ngitis or the inhabitants of Bogoro, or the inhabitants of the
17 Ezekere groupements, all of us had an interest in going to buy goods in Bunia. Those of
18 us, the inhabitants of Ezekere, we did not have the strength to go and fight in Bogoro.
19 We did not have the adequate or appropriate ammunition.

20 THE INTERPRETER: Correction of the Lingala interpreter: "We did not have adequate
21 weapons."

22 MR MACDONALD: (Interpretation)

23 Q. Mr Ngudjolo, isn't it correct that Chief Manu travelled to Aveba and later on to Beni
24 for the purpose of finding a solution to the problem caused by the UPC to you in
25 Bedu-Ezekere, and also for the people of Walendu-Bindi? Do you remember that trip

1 made by Chief Manu?

2 A. It is a good thing that you have reminded us of this because up to this day you
3 thought that I was the person who was the chief, or the leader in the Ezekere groupement,
4 but you are fully aware that it was Chief Manu who was chief of Ezekere. So everything
5 that related to the Ezekere pacification concerned Chief Manu. He is the one who
6 travelled to Beni. If I had been the leader of the young people he could have taken me
7 along, and if I had been the chief of the Ezekere groupement I would have been the one to
8 prepare the report on pacification in that groupement. He was the one who went to Beni
9 for the restoration of peace in his village. It was not my village. I was just one of his
10 subjects there.

11 Q. Mr Ngudjolo, isn't it a fact that Chief Manu went to Aveba and later on to Beni at a
12 critical time? On 15 and 16 October, your area had just been invaded and occupied for a
13 period of 48 hours. At that time it was crucial to find a solution to the problem that was
14 prevailing in Bedu-Ezekere?

15 A. Mr Prosecutor, this is what I'm saying. It was Chief Manu who was the chief of the
16 Ezekere groupement. He is the one who travelled in order to try and find a solution for
17 his groupement. Now, how is it possible for you to say that I was a chief of that
18 groupement? Where did you get that information? And yet you know very well that
19 Chief Manu was the chief.

20 Q. With whom did he travel, and I'm referring to Chief Manu, when he went to Aveba?
21 Who accompanied him?

22 A. Mr Prosecutor, you know, you know the answer. He told you here.

23 Q. You were there and were a member of that famous committee de base that
24 accompanied him there, were you not? Who did he go with? Please tell us.

25 A. They left. There were four of them. There was Chief Manu, Martin Banga, Adolphe

1 Njaba Luka and Bahati de Zumbe.

2 Q. So you are saying that Bahati was a member of that delegation? Well, we are going
3 to come back to that. In any case, let me ask you the question now. Had Bahati not left
4 Bedu-Ezekere with Faustin to go to Songolo, or had he already returned to the
5 groupement in order to leave again later? Please explain to us.

6 A. Mr Prosecutor, please do not try to trap me. Chief Manu was here and he said that
7 he travelled together with Bahati, and I know that he went there with Bahati.

8 Q. Mr Ngudjolo, I know that you are the very last witness in this case, and you heard
9 the entire evidence. You have decided to testify last you could have chosen to testify first,
10 it was your choice, so you are fully familiar with the testimonies of all the other witnesses.
11 Now, the question I'm asking you is this: Did Bahati travel to Songolo with Faustin?

12 A. Mr Prosecutor, as far as I know, as I already told you, Bahati left with Faustin and
13 Bahati also travelled with Chief Manu to Beni.

14 Q. And so according to you, Bahati was with Faustin and they went and attacked
15 Nyankunde; is that correct?

16 A. Faustin left before the battle of Nyankunde.

17 Q. Yes. My question is this: Isn't it correct that Bahati was with Faustin and Kandro,
18 and together they attacked Nyankunde?

19 A. Mr Prosecutor, from Zumbe, Bahati and Faustin left. Maybe I'm mistaken, but I
20 believe that Bahati returned to Zumbe and then he went on the trip with Chief Manu, but
21 what is certain is that when Chief Manu went to Beni he was not alone; he was with
22 Bahati.

23 Q. Therefore, according to you, Bahati must have returned after his trips with Faustin.
24 When precisely did he return, in order to be able to travel out again with Chief Manu?
25 Please explain that to us.

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1 A. Mr Prosecutor, I'm not in a position to tell you the date.

2 Q. Who was with Bahati when he returned to Zumbe?

3 A. I do not know. I wouldn't know.

4 Q. For how long was Chief Manu gone? How long did he stay away? When did he
5 leave and when did he return? And don't talk about what he said during his testimony;
6 just talk about what you remember about the events.

7 A. As far as I can remember -- well, I cannot tell you the precise date on which Chief
8 Manu left, but I know that he returned from Beni in December 2002. That was after the
9 attack in Lagura, if I'm not mistaken, but Chief Manu returned from Beni in
10 December 2002. I believe he went there in the course of the month of October, but I'm
11 not sure.

12 Q. And that was following the unprecedented attack on the Bedu-Ezekere groupement,
13 the major attack; isn't that correct?

14 A. I cannot tell you whether it was before or after but it was in October.

15 Q. Isn't it correct that everyone knew that he was going on that trip with Mr Banga and
16 Mr Adolphe? It was known to the committee de base, and amongst the members of the
17 population that he was going away to try to help the inhabitants?

18 A. Mr Prosecutor, let me tell you this: Chief Manu left with three people. There
19 were four of them in total. He gave a report of the security situation.

20 Q. My question was simple: It was known amongst the members of the committee de
21 base and the population that Chief Manu and his delegation were going away to find a
22 solution, wasn't it?

23 A. I cannot tell you that the entire population was informed. I know that the members
24 of the committee de base were aware but you cannot say that the entire population knew
25 about this.

1 Q. Isn't it correct, Mr Ngudjolo -- well, let me ask you this question: Did he return
2 with ammunition; yes or no? He says he returned with ammunition but what do you
3 remember of that time? Did he return with ammunition or was he mistaken in his
4 testimony?

5 A. He returned with ammunition.

6 Q. He returned with more than that; isn't that correct? Or was that the only thing that
7 he came back with?

8 A. What I know is that Chief Manu came back with 1,200 AK-47 rounds of ammunition.
9 Apart from that, I have no further information. I know that he came back with money
10 but I never saw that money.

11 Q. Mr Ngudjolo, who carried that ammunition? It was certainly not Chief Manu who
12 carried the ammunition on his back; right? Who carried the ammunition?

13 A. As you know, 1,200 bullets, well, that is not very heavy. You know, there are
14 people who used to go and buy goods, and these are the young people who helped Chief
15 Manu to transport the ammunition. This was a load that could be carried by a single
16 person.

17 Q. Isn't it correct, Mr Ngudjolo, that at that time, with the arrival of that ammunition,
18 Chief Manu informed you, the members of the committee de base, that there was an arms
19 depot in Beni through Aveba which was waiting for you. That there was ammunition
20 like the one he brought that would assist you to survive in Bedu-Ezekere. Isn't it correct
21 that that is what you learnt after the return of Chief Manu?

22 A. Mr Prosecutor, when the chief returned, this is what he told us. As far as I know,
23 he brought back ammunition, and that ammunition was distributed to those who had
24 firearms. That is what happened.

25 MR MACDONALD: (Interpretation) I will continue after the break, with your leave,

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1 your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) It is 10.57. We will suspend this hearing
3 right now. Court usher, please can you kindly lead Mr Ngudjolo back to his seat.

4 The hearing is suspended. We will reconvene at 11.30 a.m.

5 (Recess taken at 10.57 a.m.)

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

7 THE COURT USHER: All rise.

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

9 We shall resume. Prosecutor, you may proceed.

10 MR MACDONALD: (Interpretation) Thank you.

11 Q. Mr Ngudjolo, would it not be right to say that Chief Manu informed you that he had
12 got that ammunition from Aveba? You knew that and he described to you the trip that
13 he made, that he went to Aveba, Beni, Aveba?

14 A. Prosecutor, I shall help you. Excuse me. It's true that when Chef Manu turned up
15 he had 1,200 cartridges. He came back from Beni in December 2002, and in the house we
16 heard that there had been a number of attacks on Bogoro. Now, if the Lendu and Ngiti
17 wanted to attack Bogoro, were we going to wait until 24 February when there were
18 attacks on Bogoro and we had never been involved? But your own witnesses said that
19 people coming from Zumbe had come to bring their support and you said that the
20 munitions depot was in Aveba. Now, what were the weapons and what was the
21 ammunition that we would have had for the Bogoro battle on 24 February,
22 Mr Prosecutor?

23 Q. Mr Ngudjolo, what was my question? Do you remember the question I asked you?
24 Could you answer my question, please?

25 A. I understood your question. Here is the answer: When Manu arrived, he said

1 that he came back with ammunition that he had got from Aveba. That's what he told me.

2 Q. Mr Ngudjolo, wouldn't it be right to say that that's the reason why another
3 delegation went to Aveba for the purpose of getting other supplies of ammunition and
4 also to discuss the problem of Bogoro and to find a solution once and for all of the
5 common problem in Bogoro?

6 A. Prosecutor, your theory for which a warrant for my arrest was issued said that I had
7 sent Boba Boba to organise the attack plan. That's what you said when issuing the arrest
8 warrant for me. In the letter, mention was made of soap. When talking of soap, did this
9 refer to the negotiation of a plan of attack? There was never any delegation, and the letter
10 that you have showing that there was a common plan referred to learned washing powder,
11 but you were attempting to refer to weapons. Nobody left. Even those who, ... and if
12 people did leave, who were these people? In your letter you said that I sent Boba Boba,
13 but it said that the leader of the delegation was Martin Banga who asked for soap; they
14 were with Oudo. In Aveba there was a market; they went to Aveba to get soap..

15

16 MR MACDONALD: (Interpretation)

17 Q. Isn't it true to say there was a delegation that went to Aveba in December 2002 and
18 that a group, including President Jacques and Mr Bukpa Kalango, Martin Banga and also
19 Boba Boba went to Aveba?

20 A. Prosecutor, the name of Jacques has already been presented. You said I sent Boba
21 Boba as the head of the delegation, but what proves that he really went? The letter
22 referred to a common plan and the delegation went, but it was Martin Banga who signed
23 as leader of the delegation. There's not the name of Boba Boba in that letter, so what can
24 now prove that he went?

25 When Bukpa Kalango wrote that Boba Boba went with Martin Banga to ask for soap, now

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1 what proves that Boba Boba went off with them, because according to me the people
2 never went and aside from that I don't know anything about any of that?

3 PRESIDING JUDGE COTTE: (Interpretation) Could you please speak slowly.

4 THE WITNESS: (Interpretation) I'm sorry, your Honour.

5 PRESIDING JUDGE COTTE: (Interpretation) Please. Prosecutor, you may proceed.

6 MR MACDONALD: (Interpretation)

7 Q. Mr Ngudjolo, did a delegation go to Aveba and was Bukpa Kalongo and Martin
8 Banga in that delegation? Was there one, or wasn't there? You know about the
9 delegation with Chief Manu, you were a member of the base committee, according to your
10 version, so if we take your version of the story, isn't it right to say that Bukpa Kalongo and
11 Martin Banga went off for a few weeks and you knew that, didn't you? Now, did they
12 go to Aveba, "yes" or "no".

13 A. No, Prosecutor, no. Aside from Chief Manu and the delegation with which they
14 made the trip to Aveba and then Beni, there was no other delegation. Now, in the letter
15 you say there was a Staff Headquarter in Tatsi and we have all read the manifesto of the
16 resistance and the logo is a bladed weapon; it is not a firearm. And what's more I have
17 seals that were used. I had seals and I used that and my seals were not like those. On
18 the logo which is used for the manifesto of the resistance, there are bladed weapons,
19 notably a machete and an arrow.

20 MR KILENDA: (Interpretation) Your Honour, I would like to complain once more.
21 Could you please ask Mr Mathieu Ngudjolo to speak slowly, slowly, please.

22 PRESIDING JUDGE COTTE: (Interpretation) You can see, Mr Ngudjolo, this is your
23 counsel beseeching you to speak slowly, so even if you have a lot of things to say, and
24 that's good, please speak slowly.

25 Prosecutor, you may proceed.

1 THE WITNESS: (Interpretation) I would ask you all to excuse me, please.

2 MR MACDONALD: (Interpretation) Thank you, your Honour. I'm sorry I'm getting
3 caught up in my long gown here.

4 Q. Mr Ngudjolo, we are going to change subjects now. We're going to come back to
5 this point and given the time this will probably go on to tomorrow on that point, but now
6 I'd like to come back to the agreement to stop hostilities which we can find at reference
7 number 13 dated 18 March 2003. Now, I'd like to start with transcript 329, page 10.
8 When you say that you were in Bunia, that's it, isn't it? You also said that Mr Floribert
9 Ndjabu arrived there or was there. You also mentioned the name of the people. Now,
10 I'll read from page 9 on to give you the background. That will make things simpler.

11 Question -- this is still 18 March: "On that occasion, why did you sign the agreement as
12 the Lendu representative for the Djugu territory?" Answer: "Now, this is what the
13 situation was: There were four of us signing the agreement as part of the Lendu-North,
14 because each community, each group, had to send four people. So the -- Ngabu Ele
15 (phon)" -- unfortunately there was a mistake there in the interpretation. Now, line -- on
16 page 10: " and then there were three others. And at line 2, you reply: "And when they
17 saw me they invited me to sign together with them. That is how I also signed it."
18 So it's just by chance, is that it? According to your story, it was just by chance that you
19 were asked to join the Lendu community group to sign an agreement on the cessation of
20 hostilities? Is that what you are saying in testimony, Mr Ngudjolo? It was just a
21 random chance that you should sign a peace agreement?

22 A. Let me help you. In Djugu territory, there are three Lendu collectivities,
23 Welendu-Pitsi Now, so that you can understand this, just let me say this. If you
24 want me to say it briefly I will, but I have an answer for this. It doesn't mean I don't have
25 an answer.

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1 PRESIDING JUDGE COTTE: (Interpretation) Briefly, but answer because I wonder if
2 this has already been covered, but at this point it is important. If it is important for you
3 to give these preliminary comments, then please go ahead. We are listening to you.
4 There are three collectivities. Go ahead.

5 THE WITNESS: (Interpretation) Ngabu is from the Walendu-Pitsi collectivity. I am
6 from the Walendu-Tatsi (phon) and the Professor is from Tatsi. I can't remember his
7 name. And there is another one who is also from Pitsi. So there were two from the Pitsi
8 collectivity and two from the Tatsi collectivity and we had to have two From Tatsi
9 there was 1, from Pitsi 1 and another from Mabendi, because there were four collectivities,
10 not three. When the ceremony began, there was no one there, and when the three
11 important people were there there was one person missing and I was told that, but I knew
12 that there would be a ceremony for the cessation of fighting, and as there was a person
13 missing I was asked to sign with them, and of course I was interested in peace and having
14 peace and that is why I signed.

15 MR MACDONALD: (Interpretation)

16 Q. You see, Mr Ngudjolo, I will come back to this matter of 7 March 2003 and the
17 meeting with Mr Kale Kayihura, and I'm going to read transcript 328, page 28, lines 24 to
18 27. Here you are referring to Mr Lobo Justin, Saidi and Captain Kiza who went to the
19 airport to meet General Kale Kayihura: "And when they saw me they stopped and they
20 let me know that they were going to the airport. I asked them why? They told me the
21 general was looking for the leader and, as he wasn't there, they were going instead of him
22 and they asked me to go with them. And so I said okay."

23 Mr Ngudjolo, on 7 March too you were just invited with a random meeting in the road?
24 You were invited to go off and meet General Kale Kayihura, and on 18 March as well you
25 were asked to sign an agreement for cessation of hostilities because there was a person

1 missing? You must agree with me that there is a great deal of random chance in your
2 case here?

3 A. I knew about the ceremony of 18 March. I knew that it would happen and I was
4 invited to it because there was a person missing, but the ceremony on 7 March was really
5 a random encounter.

6 MR O'SHEA: Forgive me, sorry to keep harping back to the issue of the transcripts, but
7 I think it is important sometimes to note where there is an important problem during the
8 course of the proceedings so it doesn't get lost. When -- at page 45 of the English
9 transcript, starting from line 3, when Mr Ngudjolo was answering the question of my
10 learned friend, when my learned friend had asked him if -- "was it really just chance that
11 you were asked to sign? Is that your testimony?" And then he starts to give his answer
12 and he refers to I think two places which provide the explanation as to why it was
13 important to fill in the hole where one person was missing, and the English transcript at
14 that point gets a little rough, to put it mildly. We don't know -- I mean I heard it in
15 French, but we don't know from the English, and Mr Hooper is listening in English, we
16 don't know in the English what those places were, perhaps because they weren't spelled
17 out, perhaps because Mr Ngudjolo was speaking fast, I don't know the reason, but in
18 order to make sense of his answer I think it is important that that's clear and it may be that
19 they cannot clarify it afterwards if they don't know what those places are which are being
20 referred to.

21 PRESIDING JUDGE COTTE: (Interpretation) It seems that it is page 46 in the French
22 transcript, because we need to get the pages to match. Yes, Mr Macdonald.

23 MR MACDONALD: (Interpretation) I would like to raise this question, because it is a
24 recurring question, and Mr Katanga's team has asked this a number of times. Perhaps
25 given that this is the testimony of the co-accused the Chamber could suggest that we

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1 review the transcripts as we have done for Mr Katanga. I know that this is an
2 exceptional thing.

3 PRESIDING JUDGE COTTE: (Interpretation) We shall only do this if this is absolutely
4 essential, absolutely essential, because the investment into human time, financial
5 resources and equipment is quite considerable, so we shall only do it if it is absolutely
6 essential. In the present case there is still the possibility of going back and listening to
7 the original sound recording very carefully to make sure that everything has been
8 understood, or during the hearing, provided that this doesn't cause undue interruption,
9 we can check that we have all understood completely.

10 Now, Mr Ngudjolo, we are going to try and clarify this right now. You wanted to say
11 that on 18 March there were representatives of a number of collectivities who had to go to
12 sign the agreement, and that you were taken, almost taken by hand so that you could sign
13 it. Now, could you give us the names and the geographical references of the
14 collectivities of the people who were involved in the signing ceremony, these for the
15 people you knew? You said Ngabile (phon) is from the Walendu-Pitsi collectivity; is that
16 right?

17 THE WITNESS: (Interpretation) Yes, Ngabu is from Walendu-Pitsi collectivity.

18 THE INTERPRETER: The Lingala interpreter did not hear the second name.

19 PRESIDING JUDGE COTTE: (Interpretation) This is page 46, line 21. "I am from
20 Walendu-Tatsi"; is that right?

21 THE WITNESS: (Interpretation) Now I remember the name. Professor Ngulo Bubu
22 Dheneis from Tatsi, like me.

23 PRESIDING JUDGE COTTE: (Interpretation) Could you please spell the name of the
24 professor? You couldn't remember his name before. Now you have the name, could
25 you please spell the professor's name?

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1 THE WITNESS: (Interpretation) N-G-U-L-O, Ngulo. B-U-B-U, Bubu. D-H-E-N-E.
2 Ngulo Bubu Dhene. And we met up, those from the Walendu-Tatsi, the Pitsi and
3 Djadicollectiviies, and as there were two collectivities that were missing, the two others
4 represenedt the two people who were missing, and that's how I was involved.

5 PRESIDING JUDGE COTTE: (Interpretation) So there were two from the Tatsi
6 collectivity and two from the Pitsi collectivity. Okay. Now, we have asked you to
7 speak slowly, but I think that each time you use a proper name which may be a bit
8 complicated please speak even more slowly and articulate very clearly so that everyone,
9 and first of all the court reporters and interpreters, can transcribe your statements. Mr
10 Kilenda.

11 MR KILENDA: (Interpretation) Now, I don't wish to interrupt the work, but it is just to
12 point one thing out. Page 49 in the transcript, line 22 and line 26, with your approval and
13 with the witness's approval, I think we are talking about "Ngabu Wele" and not "Ngabu
14 Willy."

15 PRESIDING JUDGE COTTE: (Interpretation) How do you spell Wele, Mr Ngudjolo?
16 You said Ngabu Wele; how do you spell it?

17 THE WITNESS: (Interpretation) Wele is spelt W-E-L-E, Wele. I don't think there is
18 any problem with Ngabu, N-G-A-B-U.

19 PRESIDING JUDGE COTTE: (Interpretation) Could you also correct line 26 of the
20 same page 29, and put "Wele" instead of "Willy."

21 Mr Prosecutor, I'm sorry, I think that the transcription is -- the French transcription is
22 looking rather strange. I think there has been a heart attack in the French transcription,
23 because all we have is "ne" repeated thousands of times over which means that somebody
24 has stuttered an awful lot.

25 We have the French transcript back. Well, I do still have an awful lot of "ne"s in front of

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1 me, which is a negation, which has been repeated over and over again. All right, we
2 have it back. Thank you.

3 Mr Prosecutor, over to you.

4 MR MACDONALD: (Interpretation)

5 Q. Mr Ngudjolo, following on from this short interlude, as it were, could we call up
6 EVD-D03-00044, and this is the evidence in box number 13?

7 PRESIDING JUDGE COTTE: (Interpretation) You mentioned this just now. I believe
8 that the court officer actually has the document before her. Is there a particular
9 document which you would like to see?

10 MR MACDONALD: (Interpretation) Page 4, please.

11 PRESIDING JUDGE COTTE: (Interpretation) Very well.

12 MR MACDONALD: (Interpretation) Of the document.

13 PRESIDING JUDGE COTTE: (Interpretation) This is the agreement on the cessation of
14 hostilities in Ituri. This is a document we've already seen several times and we were
15 talking about and looking at page 4.

16 THE COURT OFFICER: (Interpretation) You can see this document on "PC1."

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Mr Ngudjolo, can you see
18 the document?

19 THE WITNESS: (Interpretation) Yes.

20 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, you have the floor.

21 MR MACDONALD: (Interpretation)

22 Q. We can see on this page your name under the heading "For the Lendu in the Djugu
23 territory" and listed at number 4 "Colonel Ngudjolo Mathieu." Now, could we look at
24 the next page, please. The next page is up on the screen and for the PUSIC we have Yves
25 Kahwa Banga Mandro; for the FNI, Floribert Ndjabu Ngabu. We also have the

1 representatives of the FPDC, somebody we know well, Mr Unencan, Unencan. We also
2 have at the bottom for the FAPC Mr Jérôme Kakwavu. Now, my question is the
3 following: Is it also purely by chance that you have signed as a colonel on 18 March,
4 because I believe this is an important point. On this document you indicate that you are
5 a colonel?

6 A. Sir, as I said previously, I gave myself the rank of colonel. Signing this document
7 on 18 March I signed as a colonel, but I did not belong to any armed group.

8 Q. Mr Ngudjolo, you are signing as a colonel in the presence of Mr Ndjabu, before
9 Mr Jérôme Kakwavu, also Mr Kahwa. Does that mean that these people I have just
10 mentioned, and all the people who were present, did not realise that you were not a
11 colonel, that you were not a member of any group and that yet you were signing as a
12 colonel?

13 A. Mr Prosecutor, if I belonged to a group, then I would sign in the name of that group,
14 and in addition, on that day the MONUC was identifying the armed groups. I didn't
15 belong to any armed group and this is why I signed as a representative of the community,
16 because when I gave myself the rank of colonel I had my own purpose which was to
17 become a member of the national army.

18 PRESIDING JUDGE COTTE: (Interpretation) Mr Ngudjolo, it is very important for the
19 Chamber that you do answer the Prosecutor's question clearly and the question is: Did
20 the people who were present react in any way when they saw you on that day saying that
21 you were a colonel? Was there any kind of reaction from them, or did they consider that
22 this was completely normal? This is I believe the thrust of the Prosecutor's question, and
23 it is also true for us on the Bench. It's an important question and your answer is very
24 important, so do please answer this question.

25 THE WITNESS: (Interpretation) Your Honour, they did not react, because Jérôme

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1 Kakwavu, for example, who at that time was a major general, and there was also
2 Commander Moyi (inaudible) who was a colonel at the time. Kahwas Panga Mandro was
3 president of his movement, the Pusic. Well, there was no reaction from any of them. All
4 this seemed completely normal to them.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

6 You may continue, Mr Prosecutor.

7 MR MACDONALD: (Interpretation)

8 Q. Mr Ngudjolo, you do see that this is the question of the Chamber. There was no
9 reaction? It was quite normal because you were indeed a colonel of the Bedu-Ezekere
10 forces and you had been for several months. That is what the Chamber is driving at.

11 PRESIDING JUDGE COTTE: (Interpretation) Please do not interpret my question.
12 Let me ask my question and do not interpret them, giving them the meaning that you
13 understand by it. Let the Chamber, or leave the Chamber to ask its questions and please
14 do not try to interpret them in any way.

15 MR MACDONALD: (Interpretation) I apologise.

16 Q. Nobody reacted, Mr Ngudjolo, because you were the colonel and the commander of
17 the forces in Bedu-Ezekere, is that not true? This was quite normal in fact that you
18 should sign the agreement?

19 A. Mr Prosecutor, there were no armed forces in the Ezekere groupement. If ever
20 there were any kind of special force in the Ezekere groupement, then this force would
21 have been identified separately. The MONUC were there in Bunia. Bunia is very close
22 to Ezekere. If there had been any kind of force in the Bedu-Ezekere groupement then it
23 would have been the first force to be identified compared with any others, for example the
24 FNI, the FPDC, the PUSIC. All the others came along together. They came from
25 Uganda and found me in Bunia. If there had been any forces then they would have

1 found me as part of that armed force.

2 Q. Let's continue still on this document, and according to your version you made up
3 the fact that you were a colonel, you were there because you knew there was an
4 agreement about to be signed and you wanted to join the army, but why would you sign a
5 peace agreement whereas in fact you had nothing to do with the conflict, according to
6 what you say, sir? Once again, you were not a member of any armed forces, or anything
7 at all, so why were you getting involved in this peace agreement?

8 A. Mr Prosecutor, all the people who signed this agreement were not all in fact
9 members of armed groups. There were a lot of community members who signed this
10 agreement. This was not an issue that concerned only armed groups but rather the
11 communities and the armed groups., I was part of a community.

12 Q. If we look at page 3, paragraph 3, and I would be grateful if we could have this up
13 on the screen, please: "The parties commit themselves to stopping any recruitment and
14 any use of child soldiers within their armed forces and recognise that such a practice is
15 contrary to international law." So, Mr Ngudjolo, when you signed this agreement you
16 personally undertook to respect this paragraph, this commitment?

17 A. Mr Prosecutor, if it says that the parties commit themselves to stopping any
18 recruitment and use of child soldiers within their armed forces, it is clearly stated. It says
19 "within their armed forces." Now, this means that the communities did not have any
20 armed forces. A community is one thing and armed forces are something else. Please
21 do not confuse the two, sir.

22 Q. Very well. Let's move on to box 23. Now, this is the final report of the ICC and
23 it's EVD-OTP-00195. Is it not true that you were present in the course of the ICC work?

24 THE INTERPRETER: Correction from the interpreting booth, English: "It's the CPI."

25 THE WITNESS: (Interpretation) Yes, I was present.

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1 MR MACDONALD: (Interpretation)

2 Q. Yes. You signed this agreement on 14 April, as we can see on page -- just a second,
3 DRC-OTP-0107-0308.

4 PRESIDING JUDGE COTTE: (Interpretation) Page 21 of the signature.

5 MR MACDONALD: (Interpretation)

6 Q. And under the heading "FNI", FRPI, we can see your signature; is that not correct,
7 Mr Ngudjolo?

8 A. Yes, absolutely. Can I explain this, please? On 18 March --

9 PRESIDING JUDGE COTTE: (Interpretation) Yes, Mr Ngudjolo, please go ahead.

10 THE WITNESS: (Interpretation) I signed on 18 March as representative of the
11 community, and on 22 March, after that, the FNI/FRPI alliance was set up. I joined the
12 alliance. The CPI started when I was part of the FNI/FRPI alliance. I went along to
13 represent the FNI/FRPI. In fact, it was Germain who was supposed to be there, but since
14 Germain was not there I represented the FNI/FRPI and this is why I was involved in the
15 pacification commission meeting for Ituri and I was alone and this is why you see my
16 signature representing the FNI/FRPI. That was the situation.

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

18 MR MACDONALD: (Interpretation)

19 Q. Mr Ngudjolo, you were not exactly alone for the FRPI. Godas was there, wasn't
20 he?

21 A. Godas, Floribert Ndjabu. Who else was there? Represented the FNI. This is
22 where there's a contradiction. In the meeting room the FNI was sat on one side and the
23 FRPI was sitting on the other side. At the beginning of the meeting of the pacification in
24 Ituri, the MONUC was not informed of the FNI/FRPI alliance, and this is why in the
25 meeting room, your Honours, the FNI sat down on one side of the room and the FRPI on

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1 the other side of the room. It was only in the course of the meeting that the MONUC was
2 informed of the FNI/FRPI alliance and that is why afterwards they were sat side-by-side.
3 That was the situation, your Honours.

4 Q. If we look at page finishing with the numbers 0279, under the heading "Protection of
5 the child" or "Protection of children" -- this apparently is a confidential document. I can
6 put it up on the screen, but I can read out the relevant passage where there are no
7 problems in terms of confidentiality.

8 PRESIDING JUDGE COTTE: (Interpretation) Could you simply give us another
9 entrance reference for this document? Is there a page number?

10 MR MACDONALD: (Interpretation) Yes. The problem is that the page numbering
11 changes from one section to another. If you look at the bottom, on the left, and I will
12 quote the ERN number, this is DRC-OTP-0107-0279.

13 THE INTERPRETER: There is a correction from the English booth: When the reference
14 was made to the "CPI," the interpreter said "ICC." It was the Commission for the
15 Pacification in Ituri that was talked about in the previous paragraphs. Apologies from
16 the English booth.

17 PRESIDING JUDGE COTTE: (Interpretation) Would you like us to bring down the
18 curtains?

19 MR MACDONALD: (Interpretation) I suggest I read out the relevant paragraph.

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

21 MR MACDONALD: (Interpretation).

22 Q. There is a heading entitled "The protection of children." First point:
23 "Demobilisation, disarming and social reintegration or reinsertion of child soldiers
24 supporting NGOs and international agencies in training, skills development -- and
25 developing the process of reintegrating and following up child soldiers. Pursuing the

1 culprits, those responsible for enrolling child soldiers in the militia. Updating legislation
2 covering the exploitation of minors in the gold and diamond industries in order to
3 strengthen the ban on the use of child labour." And you sign yourself as "Colonel,
4 member of the FNI/FRPI." You are committing yourself to this paragraph, are you not,
5 Mr Ngudjolo? Through your signature, you are committing yourself?

6 A. Please listen carefully, Mr Prosecutor. The meeting had just taken place and I had
7 just joined the alliance. This movement had already existed for some time. I did not
8 know if there were any children in the FNI or the FRPI. It was a whole process. I had
9 personally attended the meeting, but on the point of whether there were child soldiers in
10 the FNI or the FRPI, I didn't know about that because I had to wait for there to be
11 information given out, regrouping, identification in the presence of the UNICEF or the
12 other NGOs which were in charge of protecting children. I did not participate in any of
13 these stages. It's true that I did participate in the meeting, however.

14 Q. Mr Ngudjolo, is it not true that this phenomenon was well-known to everybody?
15 That there were children who were fighting, who were fighting in the war in Ituri at that
16 time? Whether it be March 2003 when you signed the agreement on the cessation of
17 hostilities, or in April on the 14th when you signed the final CPI agreement, this was
18 something which had been well-known for a long time?

19 A. The person who brought the phenomenon of child soldiers to the Congo was
20 Laurent Kabila. To this very day, the president, Joseph Kabila, has celebrated the
21 introduction of the child soldier phenomenon in the Congo. It was Laurent Kabila who
22 brought the phenomenon of child soldiers to the Congo. Personally, I never used child
23 soldiers in Ituri.

24 Q. You say you 'never used child soldiers in Ituri'. Is it not true, Mr Ngudjolo, that even
25 later, as part of the MRC, your movement, that in your ranks you had child soldiers; and

1 even more than that, you had recruited children who had been demobilised in order to
2 swell the ranks of your MRC movement?

3 A. Mr Prosecutor, the MRC had made an exception on the point of child soldiers. We
4 had signed an agreement with the Kinshasa government in Kambutso in the presence of
5 the MONUC and we agreed. They had asked me if there were any child soldiers in the
6 MRC and I said there were not any. We agreed on the following: That when we went
7 to Bunia --

8 THE INTERPRETER: The Lingala interpreter did not get the date quoted by the witness.

9 PRESIDING JUDGE COTTE: (Interpretation) Could you please repeat the date, please?

10 THE WITNESS: (Interpretation) I apologise. It was 28 December 2006 when the
11 MONUC sent their trucks to take us to the Rwampara centre. The people who were
12 looking after the children, protecting them, were there to see if there were any child
13 soldiers. I had said that there were not any child soldiers. They looked and, your
14 Honour, they didn't find a single child soldier. This is what officially happened.
15 Nothing was hidden or concealed and all this took place in the presence of the MONUC
16 and the MONUC took us to Kambutso. There were no MRC child soldiers.

17 PRESIDING JUDGE COTTE: (Interpretation) Mr Prosecutor, let us not forget that the
18 MRC, if we think back to yesterday's hearing, refers to the year 2005.

19 MR MACDONALD: (Interpretation) Can I ask for the Court's indulgence? You will
20 see very rapidly what I am driving at. Referring to Article 67(2) on this question of
21 credibility, you will see what my point is in just a few minutes.

22 Q. Mr Ngudjolo, do you recall having met the journalist Tristan McConnellin
23 August 2006 in Kambutso? I imagine you do remember that, because we have a
24 photograph of you with him, but I'm just asking you the question anyhow. Do you
25 remember your meeting with this journalist?

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1 A. 2006. In 2006, after the signature of the agreement with the Kinshasa government, I
2 did meet journalists, but I do not remember the name of the person. If I saw him I could
3 remember, but I don't remember his name.

4 Q. The person who was taking the photographs was a lady who was accompanying
5 this journalist, and could we call up the photos which we see in box 57,
6 DRC-OTP-1032-0884?

7 THE INTERPRETER: And correction from the English booth: Page 65, line 27, the year
8 is 2006.

9 PRESIDING JUDGE COTTE: (Interpretation) Court officer, this is a photograph at
10 number 57.

11 THE COURT OFFICER: (Interpretation) Can you tell us the level of confidentiality?

12 MR MACDONALD: (Interpretation) This is this photograph that I am holding up and
13 it is public.

14 THE COURT OFFICER: (Interpretation) Please press "PC1" to view the photograph.

15 MR MACDONALD: (Interpretation)

16 Q. Look at the person on the left, that is Mr Tristan McConnell, and you are the one on
17 the right; correct?

18 A. Yes, I can see a photograph, but I do not know that person's name. The way you
19 are pronouncing his name, it is difficult for me to recognise the name.

20 Q. Do you remember having met with him?

21 A. Yes.

22 Q. Do you remember that there was a lady with him who was taking photographs?
23 She was the one with the camera. You do not remember her?

24 A. No.

25 Q. Mr Ngudjolo, this is not the only photograph that this lady took on that day. Let

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1 me call up another photograph. DRC-OTP-1032-0885, and that is at tab 58. I want this
2 photograph to be viewed in private session, because this is a third party that we would
3 not necessarily wish to endanger subsequent to the Court's activities.

4 THE INTERPRETER: And it is in fact tab 58, corrects the interpreter.

5 PRESIDING JUDGE COTTE: (Interpretation) When was this photograph taken? Do
6 you think it is really necessary for us to go in private session? Did you not say earlier that
7 we were in I can't find.....

8 MR MACDONALD: (Interpretation) It was taken in August 2006.

9 PRESIDING JUDGE COTTE: (Interpretation) Yes, 2006. We are now in 2011. Do
10 you think there is a risk there?

11 MR MACDONALD: (Interpretation) No, your Honour. I am merely mindful of...

12 PRESIDING JUDGE COTTE: (Interpretation) I believe this photograph should be
13 displayed in open session.

14 MR MACDONALD: (Interpretation) Very well.

15 PRESIDING JUDGE COTTE: So, it will be shown in open session. Court officer, this
16 photograph is in tab 58. It is DRC-OTP-1032-0885. Display it on the screen.

17 THE COURT OFFICER: (Interpretation) You can see that photograph by pressing
18 "PC1."

19 MR MACDONALD: (Interpretation) With your leave, your Honour, I would like to go
20 into private session for the upcoming questions, but that photograph can stay on the
21 screen.

22 PRESIDING JUDGE COTTE: (Interpretation) Very well. Let us go into private
23 session, but be vigilant, Mr Prosecutor. Be as brief as possible.

24 Court officer, please.

25 (* Closed session at 12.34 p.m.)* Reclassified as Open Session.

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1 THE COURT OFFICER: (Interpretation) We are in private session, your Honour.

2 MR MACDONALD: (Interpretation)

3 Q. Mr Ngudjolo, do you recognise that person?

4 A. No.

5 Q. You have no idea what his name is?

6 A. No, I do not know his name.

7 Q. I would like to remind you that you are under oath, Mr Ngudjolo. That
8 photograph was taken in Kambutso in the presence of Mr Tristan McConnell who
9 appeared on the previous photograph. I am asking you the question again for a final
10 time in private session and then we shall return to open session.

11 MR FOFÉ: (Interpretation) Your Honour.

12 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé.

13 MR FOFÉ: (Interpretation) You have quite correctly reminded us of the fact that with
14 regard to the temporal jurisdiction we are very, very far away. That was the first thing.
15 Secondly, the witness has just answered the first question of the Prosecutor.

16 And thirdly, and I would like to underscore this point, the alleged author of this
17 document did not appear before this Chamber. We have these photographs today and
18 particularly this one. We were tolerant when it came to the first photograph because we
19 saw that Mathieu Ngudjolo was not -- was on that photograph, but he does not appear on
20 this photograph. There is no material fact linking this photograph to Mathieu Ngudjolo.
21 If the Prosecutor intended to use this photograph, he should have called the person who
22 took the photograph to appear here and be cross-examined. This document does not
23 belong to Mathieu Ngudjolo, so it does not appear to us orthodox to proceed in the way
24 that the Prosecutor is doing because those of us in the Defence would not have the
25 opportunity to cross-examine the author of this document.

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- 1 PRESIDING JUDGE COTTE: (Interpretation) Let us go back to open session.
- 2 MR MACDONALD: (Interpretation) I have one last question in this -- on this
3 photograph.
- 4 PRESIDING JUDGE COTTE: (Interpretation) Just a moment.
5 (Open session at 12.37 p.m.)
- 6 THE COURT OFFICER: (Interpretation) We are in open session, your Honour.
- 7 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer. I will briefly
8 summarise what Professor Fofé said. He got to his feet to challenge the conditions in
9 which this photograph was produced in the course of our proceedings.
- 10 Mr Prosecutor, in answer to your question, Mr Mathieu Ngudjolo stated that he did not
11 know the person on this photograph. It has just been produced. It has been briefly
12 discussed. We are not going to go backwards.
- 13 In due course the Chamber may try to determine whether it was taken on the same day as
14 the photograph that was shown previously showing Mr Ngudjolo with a third party.
- 15 If you have one last question to put to the witness you can do so, subject to what I have
16 just said. The Chamber will make its determination in due course regarding the value to
17 be given to this document. Mr Fofé.
- 18 MR FOFÉ: (Interpretation) Thank you, your Honour. I am on my feet simply to
19 respectfully request the Chamber that my previous statement should be reclassified into
20 open session. Given that the photograph itself is a public document, the discussion that
21 took place on that photograph should be public also.
- 22 PRESIDING JUDGE COTTE: (Interpretation) We agree. Page 69 of the real-time
23 French transcript, that is from line 17 up 'til now, should be reclassified as public because
24 this was a procedural matter which needs to appear in the transcript.
- 25 Your last question, Mr Prosecutor.

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1 MR MACDONALD: (Interpretation) I will go even further, your Honour. I believe
2 that the entire private session segment should be reclassified as open session.

3 PRESIDING JUDGE COTTE: (Interpretation) Very well, that is much better. Court
4 officer, everything that was said in private session should be reclassified as public.

5 Mr Prosecutor, one last question, considering that what Mr Fofé has just said should have
6 an effect on what we do about this document because this photograph has been produced
7 abruptly.

8 MR MACDONALD: (Interpretation) But it was not a surprise.

9 PRESIDING JUDGE COTTE: (Interpretation) It was not really a surprise, but it was
10 produced abruptly.

11 MR MACDONALD: (Interpretation)

12 Q. Mr Ngudjolo, in the previous photograph in which you appear with Mr McConnell ,
13 we saw the house in which you were and here there is this child and the house behind
14 him. According to you, how old is this child?

15 A. Mr Prosecutor, I cannot tell you the age of this person and I cannot even say
16 whether he is a child or not?

17 Q. Doesn't he look like a child to you, based on your experience in Congo and in Ituri
18 as a colonel, as a nurse, as a father? Are you telling us that you cannot give us an
19 approximation of his age?

20 A. No, there is no way of telling his age. What criteria am I going to use to tell you his
21 age? What should I base myself on? I cannot count his teeth to know his age. I can
22 simply see that there is a photograph in front of me.

23 MR MACDONALD: (Interpretation) Your Honour, I would like to ask for an EVD for
24 the photograph of Mr Ngudjolo and Mr Tristan McConnell. That is the photo at tab 57,
25 DRC-OTP-1032-0884.

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1 PRESIDING JUDGE COTTE: (Interpretation) Very well. That is agreed. Court
2 officer, the photograph featuring Mr Ngudjolo and a third party, whose reference number
3 has just been given.

4 THE COURT OFFICER: (Interpretation) Thank you, your Honour. This photograph
5 will be EVD-OTP-00282 and it shall be filed as a public document.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer.
7 Mr Prosecutor, please proceed.

8 MR MACDONALD: (Interpretation)

9 Q. Mr Ngudjolo, the reason why I showed you that photograph of that boy carrying a
10 weapon, and I submit, I put it to you that that photograph was taken during that same
11 meeting with the journalist, Mr Tristan McConnell, that is because you signed the
12 cessation of hostilities agreement of 18 March?

13 MR FOFÉ: (Interpretation) Your Honour.

14 PRESIDING JUDGE COTTE: (Interpretation) Professor Fofé, we don't yet know where
15 the Prosecutor is going.

16 MR FOFÉ: (Interpretation) Yes, we do not know, your Honour, but he is taking the
17 photograph of this young man as the foundation for his question and this is a photograph
18 that we have challenged. We do not know what it represents. The photograph is not in
19 evidence and we cannot accept that that photograph should be admitted into evidence.
20 Therefore, in our humble opinion, your Honours, this photograph cannot be used as a
21 foundation for the Prosecutor's question. He can use -- he can ask the question in
22 another way. Thank you.

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

24 MR KILENDA: (Interpretation) When you look at this photograph carefully, inside the
25 building there is a blackboard with something written on it and we believe that the

1 Prosecutor is not in a position to comment on this photograph. He should have called
2 the author of that photograph so that we can put questions to the person regarding the
3 place and time and conditions under which the photograph was taken. The comments
4 by Mr Fofé are very relevant. We vigorously oppose the admission of this photograph
5 into evidence.

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr Kilenda. You have
7 understood that the Chamber did not at all intend to assign an EVD number to that
8 photograph, but we cannot simply overlook the fact that we have been discussing this
9 photograph for some time. Mr Ngudjolo said that he did not recognise that person and
10 that he was not in a position to tell the age of the person on the photograph. The
11 Prosecutor has presented his theory, which has been discussed, and the Chamber will
12 make its determination when the time comes.

13 Please ask your last question, Mr Prosecutor, which has already been partially dealt with
14 and then move on to something else.

15 MR MACDONALD: (Interpretation)

16 Q. Mr Ngudjolo, you signed the cessation of hostilities agreement, the final CPI
17 agreement, and if I understood correctly you also took part in the CCGA Commission
18 where once again the issue of child soldiers was discussed. Isn't it correct that in 2006,
19 within the MRC, you were still using child soldiers?

20 A. Mr Prosecutor, I know that you are using that photograph to show that child
21 soldiers were being used in the MRC. Mr President, when I was appointed in that
22 movement, upon my return to Bunia, the military parade was public. The armed -- or,
23 rather, my bodyguards had been disarmed in the presence of MONUC. The public was
24 there. Staff members of UNICEF and Save the Children were there. If there had been
25 child soldiers amongst my bodyguards, or in the MRC, that fact would have been known.

1 It would have come to light on that day. This means that I do not know anything about
2 this photograph and I'm not criminally responsible for that element.
3 I know that one of the counts against me relates to child soldiers, but as far as I'm
4 concerned I cannot accept that. Mr President, if those child soldiers were members of the
5 MRC, that fact would have become known because the ceremony that I have talked to you
6 about took place in public and everything could be verified.
7 I am not saying that I am defending myself. I am simply not accepting the fact that that
8 photograph should be used as evidence to show that there were child soldiers. I cannot
9 accept that, Mr President. In Ituri, and in Congo, the phenomenon of child soldiers
10 existed, but that does not mean that everyone used child soldiers. That would be an
11 error to confirm it, Mr President.
12 When people talk about rape and sexual slavery in the charges, Mr Prosecutor, tell me
13 which witness - which girl - was called to this courtroom to talk about rapes and sexual
14 slavery? Charges were confirmed that I know nothing about. I can say that the
15 Prosecutor is trying everything possible to have me convicted. He is trying to find
16 everything to have me convicted. He is protecting Kabila and Museveni who are the real
17 perpetrators of the crimes in Bogoro.
18 The Prosecutor does not want me to be released, and that is why he is doing everything to
19 try and have me convicted. That is the reality. I know that the International Criminal
20 Court has just come into existence, but I am insisting that the Prosecutor should present
21 reliable evidence.
22 Mr President, your Honours, I do not recognise that photograph. I know that to err is
23 human. I can be arrested if I do something, and if there is evidence I can be convicted on
24 the basis of that evidence; but if there is no evidence, I do not see how I should be
25 convicted on the basis of what the international community says and which is mobilized

1 to combat impunity with each suspect being convicted despite the lack of evidence. I do
2 not agree. In 2003, I was arrested on the -- in the Lokana case. He was the Prosecutor of
3 the Regional Court in Bunia. It was said that I had killed Lokana. The Prosecutor was
4 asked to produce the body. There was no evidence. There was no body. I was
5 acquitted at that time because there was no evidence. Had there been any evidence, I
6 would have been convicted.

7 This means, Mr President, your Honours, that I cannot accept that element. If I have to
8 be convicted solely in the name of impunity, then may the photograph be presented,
9 otherwise I reject this evidence. My responsibility lies in the balance.

10 PRESIDING JUDGE COTTE: (Interpretation) Mr Ngudjolo, we have listened to you
11 carefully. It is necessary for you sometimes to express yourself, tell us what you have in
12 your mind, but what is even more important is for you to answer as briefly as possible to
13 the questions being put to you by the Prosecutor, as well as the questions that will be put
14 to you by legal representatives of the victims, as well as the final questions of the Defence
15 teams.

16 You have talked about a requirement for evidence in support of the crimes you are alleged
17 to have committed and the legal representatives are there to represent the victims and the
18 Chamber - the Bench - is there in the middle. We are trying to understand and we will
19 know after the frank and open proceedings.

20 Mr Kilenda.

21 MR KILENDA: (Interpretation) Once again I defer to the Chamber. I have known
22 Mr Ngudjolo for almost four years. I know him sufficiently well. You have understood
23 and you have just said that he has many things on his mind to say, but once again I am
24 appealing to you to ask him to calm down. He has the opportunity to open up to the
25 Judges, to the parties and the participants. We understand the situation within the

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1 Defence team, because we know him really well, but please, we are asking you to ask him
2 to calm down and to answer the questions of the Prosecutor frankly and sincerely.

3 Thank you.

4 PRESIDING JUDGE COTTE: (Interpretation) Mr Kilenda, don't be worried.

5 Mr Ngudjolo, don't be worried. You did not exaggerate. You simply made a point of
6 saying a certain number of things and we listened to you and that is where we are at.

7 It up to you now, the Prosecutor, to continue.

8 MR MACDONALD: (Interpretation) I have fully understood what you said about the
9 photograph, but I would want an MFI reference number to be assigned because we may
10 come back to that photograph later. However, I would like to move on to something else
11 insofar as Mr Ngudjolo is prepared to calm down and answer the questions that I will put
12 to him.

13 PRESIDING JUDGE COTTE: (Interpretation) To begin with, regarding this photograph,
14 we are not going to overlook the discussions that we have had on the photograph. We
15 will merely limit ourselves to what is on the transcript -- in the transcript.

16 Regarding what Mr Ngudjolo has said, I believe that this was not someone who was
17 simply angry or irritated. We heard what you had to say. You were just worried about
18 being confronted with a document dating from 2006, whereas you are facing charges
19 about events that happened on 24 February 2003. This probably explains your expansive
20 response, which is perfectly understandable and acceptable.

21 Mr Ngudjolo, do you want to take one or two minutes to calm down because I can see
22 that you are not in -- you are not very serene right now? Maybe you need to have a
23 drink of water, so let us give you a minute or two on the Bench.

24 THE WITNESS: (Interpretation) Yes, your Honour, let me have a moment.

25 PRESIDING JUDGE COTTE: (Interpretation) Very well. Have a drink of water and

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1 please calm down.

2 MR HOOPER: Your Honour, will you excuse Mr Katanga? And just on the photo, can I
3 make it plain inasmuch as it does touch at all on the Katanga case, we do not accept that
4 that is a child less than 15 in the photograph. That's our position. We want to make
5 that quite clear at this point, but could Mr Katanga take the opportunity of leaving the
6 Court for a few moments?

7 PRESIDING JUDGE COTTE: (Interpretation) The security officers have to accompany
8 him so, officers, can you please accompany Mr Katanga briefly out of the courtroom. We
9 will stay on the Bench.

10 MR FOFÉ: (Interpretation) I would like to seize this opportunity.

11 PRESIDING JUDGE COTTE: (Interpretation) Please go ahead, Professor Fofé. That
12 would be wise.

13 (Pause in proceedings)

14 PRESIDING JUDGE COTTE: (Interpretation) Mr Kilenda, do you think that we could
15 resume and Professor Fofé could come in discreetly beside you?

16 MR KILENDA: (Interpretation) Yes, your Honour.

17 PRESIDING JUDGE COTTE: (Interpretation) Mathieu Ngudjolo, could we resume?

18 THE WITNESS: (Interpretation) Yes, your Honour, we may resume.

19 PRESIDING JUDGE COTTE: (Interpretation) Are you ready for this final half-hour?
20 We have 30 minutes remaining.

21 THE WITNESS: (Interpretation) No problem at all, your Honour.

22 PRESIDING JUDGE COTTE: (Interpretation) Thank you, sir.

23 Prosecutor, you may resume.

24 MR MACDONALD: (Interpretation)

25 Q. Now, Mr Ngudjolo, we haven't asked you direct questions about this and in your

1 questioning by the Defence we were beating around the bush, but what did you on
2 6 March 2003? Could you tell us what you did that day from the time you woke up until
3 you went to bed? What did you do on that day, Mr Ngudjolo?

4 A. Prosecutor, on 6 March when the chief came to my place, we went down to Dele.
5 Sorry, we got there and there was a clash between the UPC and the UPDF. When we got
6 there, Captain Kiza said to Chief Manu "Stay behind." The battle went on, because we
7 got there at about 10/10.30 and the fighting ended at 12.00 and the UPC fled and we left
8 Dele and we went up to Epo Ville. When we got there, when we got to Epo Ville, my
9 home was there and my wife wasn't far and it was a while since we had seen one another.
10 I went home and I stayed there until sunset. That's how it was.

11 On 17 or 21 June 2004, when I was being interviewed at the Public Prosecutor's Office in
12 Bunia, I think that when the judges came from Kinshasa and they asked me about my
13 participation in the operations, I agreed. When I said I was involved in the battle of Bunia,
14 well, in fact when we went down there the battle was almost over, but we didn't really
15 take part in the battle because the UPC was fleeing. That was what had happened. At
16 11.00 or 12.00 I went down to my place and I stayed there until sunset and I spent the
17 night there, and the next morning on the 7th when I wanted to go back I found Lobo and
18 Saidi and we went to the airport. That is how things happened.

19 Q. So, Mr Ngudjolo, we must understand from your testimony that you didn't take part
20 in the fighting on that day; is that right?

21 A. I did not take part in the battle. And I would add, Prosecutor, that if you look at
22 the video, the excerpt which you showed, after that excerpt if you look at the rest - and
23 I think you have the transcript of that video - if you look at the part where General Kale
24 Kayihura is speaking he says: "In Dele, when the fighting was going on, the people were
25 behind them and weren't afraid of being hit by gun-fire, and in their place in Uganda the

1 UPDF is liked by the people because they work for the civilian people. They fought for a
2 long time and you can see that in the video. Now, if General Kale Kayihura said that, it's
3 because he was referring to our arrival when we turned up there, like the population.
4 When he talks about the population, he is referring to us. We followed them from Dele
5 until we reached Yambi. You can see that in the extract of the video.

6 Q. Mr Ngudjolo, now you are talking about the written record of your testimony and
7 you have referred to a piece of evidence which we wanted to use for your
8 cross-examination. It's interesting to mention it here and you have got ahead of us, so
9 that's very good. And I would like to refer to the document number 12,

10 DRC-OTP-0039-0058, and also the fact that quite simply for reasons to -- for simplification
11 of the reading of this, we have a verbatim recording with the errors included of the typed
12 version and this has been given to everyone before we began our cross-examination.

13 Sir, do you recall this? You do remember being questioned on 17 June 2004? It was by
14 a member of the Public Prosecutor's Office. Do you remember that?

15 A. Yes, that's right.

16 Q. And the reason for the questioning was the attack on Tchomia on 15 July 2003; is
17 that right?

18 A. Yes, that's right.

19 Q. You were asked about Mr Gerengo, alias City Train, Patrick and Godas Sukpa. I
20 will spell out Gerengo for the purpose of the recording: G-E-R-E-N-G-O, alias City Train.
21 And could we display the piece of evidence, your Honour? If my learned colleagues do
22 not have any objection, it could be public.

23 PRESIDING JUDGE COTTE: (Interpretation) Court officer, could you display the
24 written part and ideally we would have liked Mr Ngudjolo to have a translation of this in
25 front of him. You gave us -- it is not a translation. It's a typed version.

1 MR MACDONALD: (Interpretation) We have that, your Honour.

2 PRESIDING JUDGE COTTE: (Interpretation) On the screen we have the handwritten
3 version and Mr Ngudjolo has the typed version.

4 THE COURT OFFICER: (Interpretation) Your Honour, the document is on the screen.

5 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

6 MR MACDONALD: (Interpretation) Your Honour, I have presented the two versions,
7 handwritten and typewritten, so that Mr Ngudjolo can see that it is the same document.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you, that's perfect.

9 MR MACDONALD: (Interpretation)

10 Q. Mr Ngudjolo, do you remember that when you were asked about City Train, Patrick
11 and Godas Sukpa, you were interviewed? Do you remember that?

12 A. Yes.

13 Q. You were asked where they were at the moment and your answer was: "City Train
14 is in Bunia and Godas is in Mongbwalu and I don't know where Patrick is"; is that right?

15 A. Yes, that's right.

16 Q. You were also asked the following question: "Do you agree that these two had an
17 operation -- ran an operation in July 2003 in Tchomia when you were the Chief of General
18 Staff?" And your answer was: "I couldn't know that, because I was in Beni to see my
19 children who were at school there. I went to Beni in June 2003 and I went back to Bunia
20 around 20 July 2003." Do you remember that, Mr Ngudjolo? Is that right?

21 A. Yes, that's right.

22 Q. You were also asked the following question: "Do you agree that these people led
23 an operation in July 2003 in Tchomia at the time when you were their Chief of General
24 Staff?" And your answer was: "I couldn't know that, because I was in Beni to see my
25 children who were at school there. I went to Beni in June 2003 and I went back to Bunia

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1 in July 2003."

2 Excuse me, I have repeated the same question twice. I would like to apologise. I'm
3 afraid it's a mistake here. Perhaps I should use the typewritten version which you have
4 been given.

5 PRESIDING JUDGE COTTE: (Interpretation) In any case, Mr Ngudjolo has answered
6 you.

7 MR MACDONALD: (Interpretation)

8 Q. The question was as follows: That following question – "Did you ever learn that
9 they had led an operation in Tchomia..."

10 MR O'SHEA: I'm going to intervene at this stage.

11 PRESIDING JUDGE COTTE: Mr O'Shea please go ahead.

12 MR O'SHEA: I'm going to intervene at this stage. I don't want to allow the question to
13 be read out and the response to be read out. At this stage, I don't know what the
14 objective of my learned friend is in using this document. We have registered an
15 objection with regard to its use for the purpose of incriminating Mr Katanga, and we will
16 also object to its admission into evidence on the basis of its level of probative value. The
17 questions and answers which my learned friend has just read out he can continue with
18 questions around those, but if we want to put into the record the following question and
19 the following answer and receive the comment of Mr Ngudjolo on that, I object firmly to
20 that and we have to deal with the legal issue first before that can be done, but if he can
21 overstep reading out the next question and the next answer then he may proceed with my
22 blessing.

23 MR MACDONALD: (Interpretation) Very briefly, your Honour, if I can help the Court?

24 It is quite clear that the Prosecution cannot use the record of the questioning of Mathieu
25 Ngudjolo to incriminate Mr Katanga. That is clear. The Prosecutor agrees not to read

1 the next question for the requirements of my question for this matter of 6 March 2003. If
2 there is to be any debate on this question we'll come back to it, but it is clear that when I
3 read the question the purpose is not to incriminate Mr Katanga in any way whatsoever
4 and I want that to be quite clear and I think it is clear. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) Well, thank you, as that has been said
6 very sensibly. The Bench was expecting Mr O'Shea to leap to his feet very quickly and he
7 has done it. It is obviously quite impossible for the reading to go on with the following
8 part. However, it is clear that Mr Mathieu Ngudjolo referred to this record of the
9 questioning and the Prosecutor has asked questions on and referred to the text which
10 Mr Ngudjolo has in front of him and he has provided his answers, so so far everything is
11 fine, and the Prosecutor has given commitments which appear to be extremely reasonable
12 and we don't see how Mr Ngudjolo could express himself on the role of Mr Katanga on
13 the basis of this written record here.

14 So, Prosecutor, you may proceed now. Everyone has been heard on this.

15 MR MACDONALD: (Interpretation) Well, I shall repeat the question and the answer
16 which is before the disputed paragraph now.

17 Q. "Hadh't you ever heard that they had directed this operation in Tchomia?" And
18 your answer is: "No, they had to talk about this operation. It was Takoa, the G2, who
19 had to talk about these events, because he was the one who was present." And then you
20 were asked the question and I will read the question, because it does not implicate...., but
21 do you remember answering this about Mr Takoa the G2? Do you agree with that? Is
22 that right?

23 A. Yes, that's right.

24 Q. Now, this: "Didn't you hear that Colonel Du Posseau, of the Artemis operation,
25 went to Tchomia to check these facts?" Now, do you remember being asked about this

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1 colonel from the Artemis operation who went to Tchomia to do this? I'm not asking you
2 for the answer; I am just asking you do you remember being asked this?

3 A. Yes, it was Colonel Timuso(phon).

4 Q. Fine, okay. Then you gave your answer to the question and the next question is as
5 follows, and here you have been asked questions about Tchomia and I want this to be
6 very clear here. This is the attack on Tchomia on the 23rd -- no, sorry, 31 May 2003. We
7 are talking about this attack. There was another attack on Tchomia which was on 15 July,
8 it is not to be confused with that, and there were two attacks on Kasenyi on 11 June and
9 23 July. We'll come back to that.

10 Now, you were asked about the attack on Tchomia on 31 May 2003 and you said: "No, I
11 was in Beni".

12 MR FOFÉ: (Interpretation) Excuse me, your Honour, perhaps I'm a bit muddled.

13 MR MACDONALD: (Interpretation) It was 15 July 2003. Yes, that's right, it was about
14 the attack on Tchomia on 15 July. Excuse me, I always get these dates muddled up and I
15 would like to apologise for it, because there are two Tchomia events, two Kasenyi events
16 and we are questioning you about the Tchomia attack of 15 July 2003.

17 Q. Is that right, Mr Ngudjolo? Could you please confirm this that we -- that you were
18 being questioned about the attack on Tchomia on 15 July 2003? Do you remember that?

19 A. Yes, Prosecutor.

20 PRESIDING JUDGE COTTE: Mr O'Shea.

21 MR O'SHEA: Well, can I just point out that the 15th is not mentioned here in the
22 document.

23 MR MACDONALD: (Interpretation) Mr Ngudjolo has just confirmed it.

24 PRESIDING JUDGE COTTE: (Interpretation) Mr O'Shea made his comment and

25 Mr Ngudjolo has had time to think about it and he has confirmed that it was indeed the

1 attack of 15 July 2003.

2 So, Prosecutor, you may proceed slowly. And I know it's not easy, but please don't make
3 things even more difficult for the witness by giving him incorrect dates. It is important
4 for him to be asked very clear and accurate questions. You may proceed.

5 MR MACDONALD: (Interpretation) You are quite right, your Honour, and once again
6 it's just to say that there is only one attack in July 2003 and it was on 15 July and we can
7 see this in a number of reports, but Mr Ngudjolo has confirmed that it was indeed 15 July.

8 Q. Please rest assured, Mr Ngudjolo, that for this date I was not trying to create any
9 confusion, or mistakes. I have a final question, Mr Ngudjolo: "Did you go there during
10 operations times?" And you said: "Yes, I directed the operation on 6 March 2003 in
11 Bunia. That was the only one." Now, isn't that what you said to the OMP at the time?

12 A. Yes, Prosecutor, that is it. And that is why I stated that I needed to say why I said
13 that. Now, you've seen that I am in an emotional state and that is because I went
14 through a lot of things in Ituri. Your Honours, there are things that happened in Ituri
15 and which should be presented here. When I came here this really upset me.

16 Prosecutor, I said that I had just joined a movement so that it would be easier for me to
17 join the army. I had no other reason for taking any action like that, anything else that I
18 might have done, and so that is why I said that. That is why I gave that answer.

19 Now, what was the question? They wanted to know if I had already been involved in an
20 operation, if I had taken part in an operation, and as I have said here, as I have done here,
21 I told the truth insofar as I knew. This was when the magistrates came from Kinshasa.

22 And as I was called the Chief of Staff of the FNI/FRPI, they wanted to know how I came to
23 hold that position, and I didn't have any answer to that aside from saying that I was
24 responsible for the attack on Bunia on 6 March, but the battle of 6 March was not against
25 the UPC. It was the UPC versus the UPDF and I just claimed that to my own credit, but

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1 in fact it was something else and that is why I gave the answer which you have on this
2 document here, Prosecutor. I'm not hiding anything. I have said everything I know. I
3 have nothing to hide, and I shall always give the truth until the Judges give their verdict
4 and this is why I have agreed to stand as a witness.

5 PRESIDING JUDGE COTTE: (No interpretation).

6 MR O'SHEA: Just a question of the transcripts. At page 81, line 23, of the English
7 transcript, it states, "Yes, I directed the operation on 16 March 2003." I assume that
8 should be 6 March 2003.

9 PRESIDING JUDGE COTTE: (Interpretation) Yes, yes. Yes, in the French transcript,
10 well, we have 6 March. We agree on that.
11 Prosecutor, we only have a few moments left.

12 MR MACDONALD: (Interpretation) Yes, I have noted that, your Honour, but I would
13 like to conclude on this point so that we can start on another subject tomorrow with your
14 approval.

15 Q. Now, the question was had you been involved in military operations and your
16 answer was: "Yes, I directed the operation on 6 March 2003 in Bunia, but that was the
17 only one." So you're saying that you were lying to the OMP. Now, isn't it right to say,
18 Mr Ngudjolo, that you didn't lie? You told the truth, because you had in fact take part in
19 the attack on Bunia on 6 March 2003 and that's the truth, Mr Ngudjolo, but today here in
20 front of this Court, because this is part of your reasoning, on 6 March 2003 you were just a
21 nurse?

22 A. Prosecutor, I can't change my story. I can't mislead you and I can't mislead the
23 Judges. On 6 March, we went down there. I told you, in the transcript of the video text
24 General Kale Kayihura confirmed what I am saying here. Perhaps the procedure is such
25 that we cannot introduce this into the hearing, but this is what it was. This is the fact,

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1 because the battle of Bunia on 6 March was between the UPC and the UPDF and
2 everybody knows that. That battle did not concern my group and the UPC. That's
3 what happened.

4 MR MACDONALD: (Interpretation) Thank you. They are all the questions I have,
5 your Honour, for today.

6 MR KILENDA: (Interpretation) I know that we are coming to an end of the recording.

7 PRESIDING JUDGE COTTE: (Interpretation) This legal record is obviously relevant.
8 It's authentic. It has already been commented on by Mathieu Ngudjolo. The Court will
9 give it an EVD number, but it is clear, Mr O'Shea, that the Bench does not consider that it
10 is evidence against Germain Katanga. It is evidence which we are accepting as part of
11 the cross-examination of Mathieu Ngudjolo and I think this is an answer to your concern.

12 MR O'SHEA: Yes, indeed. Thank you very much.

13 PRESIDING JUDGE COTTE: (Interpretation) Court officer, an EVD number for this
14 document, having expressed the reservations for all and as required.

15 THE COURT OFFICER: (Interpretation) Thank you, your Honour. The document
16 DRC-OTP-0039-0058 will have the number EVD-OTP-00283 and will be recorded as a
17 public document.

18 PRESIDING JUDGE COTTE: (Interpretation) Thank you, court officer.

19 Mr Kilenda.

20 MR KILENDA: (Interpretation) Your Honour, last week the court officer referred to us
21 the count of the hours of the questioning of this witness, Mathieu Ngudjolo, and we had
22 seven hours 53 minutes for our questioning and we would ask the Bench to call upon the
23 Prosecutor to comply with the times that were set under your decision 1665.

24 PRESIDING JUDGE COTTE: (Interpretation) Prosecutor, you have 15 seconds. What
25 are you promising for tomorrow?

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1 MR MACDONALD: (Interpretation) I will promise to do my very best. Yes, your
2 Honour, I am well aware of this. I know that my learned colleague said 20 hours and
3 they had much less.

4 PRESIDING JUDGE COTTE: (Interpretation) Yes, 7.59, so eight hours.

5 MR MACDONALD: (Interpretation) Now, it is the accused who chose to testify and
6 I think, given the total number of hours which had been allocated for the Prosecution, we
7 are well below that and of course we don't do it per witness. It is overall accounting, or
8 overall counting of numbers. I am trying to focus on subjects which are relevant to the
9 charges and I am moving ahead as best I can and I hope that it will be completed
10 tomorrow.

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

12 The court usher will take Mr Ngudjolo back to his seat. We shall resume tomorrow,
13 Mr Ngudjolo, at 9 o'clock, and Mr Katanga as well and all the rest of you as well.

14 The session is suspended. We shall resume tomorrow at 9 o'clock.

15 (The hearing ends in open session at 1.31 p.m.)

16 RECLASSIFICATION REPORT

17 Pursuant to Trial Chamber II's instructions dated 9th of November 2011, the excerpt
18 of the transcript page 47 line 25 to page 49 line 3 (*) is reclassified from
19 private session to open session.

20 CORRECTIONS REPORT

21 Pursuant to the Decision ICC-01/04-01/07-3216 issued by the Trial Chamber II on the
22 13th December 2011, this transcript has been revised and corrected. Please note that
23 the corrections have been implemented directly into the transcript.

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