

Witness: Serge Kilo Ngabu (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

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1 International Criminal Court
2 Trial Chamber I
3 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
4 Case against Thomas Lubanga Dyilo
5 Hearing - Open Session
6 Friday, 8 May 2009
7 The hearing starts at 9.33 a.m.
8 COURT USHER: All rise. International Criminal Court is now in
9 session. Please be seated.
10 PRESIDING JUDGE FULFORD: Mr. Desalliers, thank you for your
11 e-mail communication to the Chamber, I think this morning. Indeed, I
12 think only about 13 or 14 minutes ago.
13 What is the position this morning? We understand that the --
14 that there is an issue over yesterday's transcript, but are the Defence
15 in a position to proceed this morning or not?
16 MS. MABILLE (interpretation): Yes, your Honour.
17 PRESIDING JUDGE FULFORD: Maitre Mabilille, thank you.
18 Can we please have the witness, then, brought into court.
19 (The witness takes the stand)
20 WITNESS: SERGE KILO NGABU (Resumed)
21 (Witness answered through interpreter)
22 PRESIDING JUDGE FULFORD: Good morning, sir.
23 THE WITNESS (interpretation): Good morning.
24 PRESIDING JUDGE FULFORD: Yes, Maitre Mabilille.
25 Questioned by Ms. Mabilille: (Continued)

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1 Q. (Interpretation) Good morning, Witness.

2 A. Good morning.

3 Q. I'm going to begin by putting to you your written testimony so
4 that if I have to refer to it in the course of my questions, you will
5 have a copy of the document before you. It is obviously the same one you
6 had yesterday.

7 PRESIDING JUDGE FULFORD: Yes. Could whatever documents were in
8 front of the witness yesterday be provided to him again, please.

9 THE WITNESS (interpretation): Thank you.

10 MS. MABILILLE (interpretation):

11 Q. Witness, yesterday when we adjourned, I was putting to you a
12 number of questions which were of a general nature concerning your work,
13 the work that you carried out for SOS Grand Lacs. We were dealing, inter
14 alia, with the question to do with the children's needs, particularly in
15 terms of schooling, professional aspects. You said to us in your last
16 answer that the authorities had to take account of the child's past, his
17 or her studies, his or her desires, in order to carry out an evaluation.
18 Do you agree with what I've just said?

19 A. Yes, of course.

20 Q. My question is as follows: When you refer to the authorities,
21 are you talking about your superiors within SOS Grand Lacs?

22 A. Yes. When I'm talking about the authorities here, it's in the
23 context of the body for which I was working.

24 MS. MABILILLE (interpretation): Your Honour, could I put a
25 question in private session, please.

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1 PRESIDING JUDGE FULFORD: Private session, please.
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19 (Open session at 9.43 a.m.)

20 COURT OFFICER (interpretation): Public session.

21 MS. MABILILE (interpretation):

22 Q. Witness, I'm still referring to general issues and questions to
23 do with demobilisation. Are we to understand from your testimony that a
24 demobilisation process, in order to be effective, must take into account
25 the individual specificities of each individual concerned by this

1 demobilisation?

2 A. Of course. Yes, of course. The children -- they're all
3 children, but they don't have the same past. They don't have the same
4 history. Each child has his or her own specific situation.

5 Q. In your work you have to work on a case-by-case basis.

6 A. Yes, case by case.

7 Q. Yesterday, you said that the child's desire could not always be
8 taken into account. You cited an example, a child who came to see you
9 saying that he wanted to open a shop and that you could not accept that.
10 Is that what you said yesterday on that particular point?

11 A. Yes, yes.

12 Q. I'd like to ask you a question. When you refused, for reasons we
13 can fully understand, the desire expressed by the child, did that lead to
14 the child leaving the programme?

15 A. Not at all, because we made other suggestions, proposals to the
16 child, and we would, above all, try to make it clear to the child that
17 schooling, studies, was a better option as regards his or her future. Or
18 if it was somebody who had not started schooling before joining ranks, we
19 made it clear to them that thanks to the acquisition of a trade, things
20 would be better for them.

21 Q. Thank you. I'm now going to move, Witness, to more specific
22 questions to do with the demobilisation of children who came from Uganda.

23 Yesterday, and I refer to the words you used, you said that the
24 demobilisation programme was a failure. You also said that there were
25 not many of you there to carry out the tasks entrusted to you under the

1 programme.

2 Do you think that the programme might have obtained better
3 results if you had had more significant financial resources?

4 A. I don't think so. Let me explain why. As I was saying
5 yesterday, the security situation in Bunia, the social situation, and
6 particularly the -- the family reunion for the children, it was something
7 that was very difficult for many of us. The children in Bunia that we
8 saw and that came to see us, they had everything they needed, everything
9 they needed in order to fit in to society again, and we were always
10 willing to do more. So the failure is not to do with the fact that we
11 didn't have enough financial resources. Obviously, it was somewhat
12 reduced given the importance of the task, but when we're talking about
13 children that we had easy access to, that was the case. I mean, there
14 were other children where access was more difficult, but for those that
15 I'm talking about, if we lost them, it wasn't because we couldn't provide
16 them with what they needed, but because right from the very beginning
17 their families were pushing them back into the arms of the army.

18 Q. You stated yesterday that you began your work in September 2001,
19 and as soon as you took up office, out of the approximately 134 children
20 who had come from Uganda, when you took up office there were only about
21 50 left. And you also stated that the children arrived, and I think this
22 is what you said if I understand correctly, arrived roughly two months
23 before you took up office in Bunia.

24 Could I ask you what has happened -- what had happened to the 84
25 children in that two-month period when talking about September 2001 in

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1 Bunia? This is as far as you know.

2 A. I don't really understand. You're talking about 84 children?

3 Q. Sorry, this was my subtraction. You said that when you arrived

4 in September 2001 --

5 A. Yes, I understand. I understand.

6 Q. You said that in the programme there were 50 children,
7 approximately. And as you also told us that as regards the children who
8 were coming from Uganda, there were 134 approximately. I have taken 50
9 from 134, which gives me around about 84 children. So I was asking you
10 in that course of time, because you said that you took up office in
11 September 2001, and you said, "I think the children arrived roughly two
12 months before that," and I'm asking you what had happened to the 84
13 children in the meantime.

14 PRESIDING JUDGE FULFORD: Sir, just before you reply, Ms. Solano.

15 MS. SOLANO: Mr. President, I'm very sorry to interrupt. I would
16 just like to ask my colleague if she can provide us with the reference
17 from the transcript at which the witness -- which she's exploring.

18 PRESIDING JUDGE FULFORD: Is this particularly in relation to the
19 reference to 50 children?

20 MS. SOLANO: In fact, Mr. President, it's in -- what I want to
21 see in the transcript exactly is where, according to my colleague, the
22 witness said that that was the approximate number that remained in the
23 programme when he arrived, when he first joined the NGO.

24 PRESIDING JUDGE FULFORD: Yes. I certainly have a clear memory
25 of the 130 or 134. I, for my own part, I have no difficulty with that

1 figure. That clearly accords with my memory.

2 I have to say, and this may well be simply a failing on my part,
3 I don't for the minute recall the reference to 50. I don't know whether
4 someone from your team, Maitre Mabilille, could readily supply that. It
5 would be very helpful.

6 Thank you for the intervention, Ms. Solano. We'll just pause for
7 a moment while that information is brought up on screen.

8 Yes. I've in fact found a reference. I'm afraid I don't have
9 the page number. The witness -- this was at the moment when the witness,
10 certainly in the English translation, used the memorable expression that
11 they had a noble mission, and he then went on to say that when he
12 arrived, they only managed to exert control over about 50 of the 130
13 children. "This was because quite a lot," and that was a direct
14 quotation, "had been taken up by the armed group or armed groups."

15 So there -- there was a reference yesterday specifically to 50
16 children, but I'm afraid I don't have a page reference.

17 Now, Ms. Solano, does that help or not or would you still like
18 greater specificity before this continues.

19 MS. SOLANO: That helps, Mr. President. Thank you.

20 PRESIDING JUDGE FULFORD: Sorry you've been interrupted, Maitre
21 Mabilille, please continue. I don't know whether you want to summarise the
22 question again because it's now a few minutes' old.

23 MS. MABILILLE (interpretation): Just to make things clear for the
24 OTP and the transcript. In the French transcript we're on page 50, line
25 15. Excuse me. In English, page 50, line 6.

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1 Q. Sorry, Mr. Witness, for all this. I'm going to put the question
2 to you again.

3 Yesterday, you said that when you took up office in September
4 2001, you took responsibility for around 50 children. You said that
5 among the children coming back from Uganda there were around 134, and I
6 was asking you, after I'd made my subtraction, what happened to the 84
7 remaining children during -- after those two months.

8 A. As I said, the organisation where I was working, at least what it
9 was doing when I joined, was already in process. They had opened the
10 office in Bunia, so they had already taken responsibility for those
11 children, and the first thing they did was family reunion, because when
12 we brought those children back from Tchaquanza, according to what I was
13 told since I was new but my friends told me, many of those children were
14 approached by the armed groups, and the Hema community was feeling the
15 first signs of an incipient UPC movement, and I imagine that at that time
16 children would be deemed useful for such a movement, since they come --
17 or came from that community.

18 So I can't be very specific, but I can certainly guess that if
19 they had been approached, it wouldn't have been by Lendu combatants but
20 by UPC or by RCD who had first enrolled them.

21 Q. For matters to be quite clear, in September 2001, who was in
22 charge in Ituri?

23 A. In September 2001, I think it was RCD.

24 Q. And as far as you know, in July?

25 A. In July 2001, it -- well, let's say June or July 2001, we were at

1 the end of the reign of FLC, the Forces of Liberation of Congo, which was
2 a -- merged new movement between RCD and MLC of Jean-Pierre Bemba.
3 Jean-Pierre Bemba was the president of this front that had been created.

4 Q. I would now like to turn to the 50 children that you had taken
5 care of personally and with the other people of the team of SOS Grand
6 Lacs.

7 Yesterday, you stated that at the end of the programme, when you
8 left, there were still seven or eight children. I would like to know
9 with those 50 children in September 2001 and then up to November 2002,
10 what happened? Did they leave the programme little by little so that we
11 get to the end that you mentioned when only seven or eight children are
12 left?

13 A. Yes. As I said yesterday, the situation was getting worse and
14 worse in Ituri, and there were threats on those children, and the
15 children who went back to the militia, who had already gone back,
16 represented a danger for those who were still in the programme. The --
17 they were threatening them. And you can read in some of the reports of
18 various organisations about this.

19 So those who'd gone back to the armed groups threatened those who
20 were still in the programme. And the children didn't even know where to
21 hide, even at home. So UPC was getting more and more powerful and
22 occupying more and more territory.

23 Q. Sir, I would like to ask you for what do you think about when the
24 demobilisation process was complete. When do you consider that your
25 mission concerning demobilisation of a child is finished, has come to

1 completion?

2 A. Our role consisted in helping children. I don't know how else to
3 say it. Help children until they are able to fly alone. So if we place
4 a child in a school and we find that he is getting used to it and being
5 integrated at school and at home, this is a state of stability and
6 considered good, but it's the parents who have to accept to take in their
7 children. It's not all on the shoulders of the association, and we
8 therefore had to also work with the parents and make them aware.

9 Q. We are still talking about those Ugandan children. And do you
10 consider that for many of them you were successful in achieving the
11 demobilisation process?

12 A. This is to be viewed in relative terms. Let me take one case,
13 for example. One child, you can probably manage to get him into school.
14 The child -- but you find after a short while -- and you find that he has
15 fitted in well after a while, so the result is good. Unfortunately, the
16 problem is in the family. The family doesn't want the child. So the
17 child goes to school but is based in a hosting family. So the problem is
18 still -- there's still a problem. The family integration isn't
19 completed.

20 And another one might be -- might fit in well in his family, so
21 social integration is achieved. The parents are even sometimes in a
22 hurry to get their child back. It -- it might have happened that he was
23 forced into the army, and the family is happy to have the child back. So
24 that's when you felt good. You felt successful.

25 So the cases were different. Unfortunately, most of them did

1 pose problems, and the main problem was family reunion. The families
2 didn't always want them, because families tended to want their child to
3 be in the armed forces to achieve protection.

4 Q. My last question on this point: In your statement you said that
5 the project was -- had long-term objectives. Is this what you just
6 explained? Did you mean that demobilisation project has to be viewed
7 long term?

8 A. Can you give me the context when I mentioned long-term projects?

9 Q. Yes, very much so. And if you like, you can turn to paragraph
10 29, and I'm going to read the four lines where you mentioned this. Just
11 the last line, in fact, of paragraph 28:

12 "Because of this, as a social agent of SOS Grand Lacs, I met a
13 lot of resistance, but in -- and in time it led to many dropouts of the
14 programme. Children tended to be rejected by their family."

15 And that is the sentence that -- now comes the sentence:

16 "The project had some long-term objectives. Children needed
17 sustained follow-up."

18 So my question is about this long-term project or these long-term
19 objectives. So my question is whether the demobilisation process is a
20 long-term process.

21 A. The programme was called DDR, demilitarisation, demobilisation,
22 reinsertion. And that meant social reinsertion of the children.

23 As I said yesterday, we viewed our activities twofold. First,
24 prevention; and secondly, curative or remedy. So when I talk about the
25 long-term goals, I am referring mainly to the prevention that should be

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1 ongoing even if families were integrating their children and supporting
2 them. We still had to keep on with our sensitisation activities in
3 schools, in churches, in communities so that similar cases would not
4 occur again.

5 Q. Thank you.

6 MS. MABILILLE (interpretation): Your Honour, I have a few
7 closed-session questions.

8 PRESIDING JUDGE FULFORD: Thank you, Maitre Mabilille.

9 Private session for the time being, please.

10 (Private session at 10.10 a.m.)

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16 (Open session at 10.16 a.m.)

17 COURT OFFICER: Open session.

18 PRESIDING JUDGE FULFORD: Yes, Maitre Mabilille.

19 MS. MABILILLE (interpretation):

20 Q. Witness, I would like now to ask you a few questions regarding
21 the moment when you were arrested by UPC in October of 2002. You
22 indicated yesterday that you were arrested and detained in very difficult
23 conditions or under very difficult conditions; is that correct?

24 A. Yes.

25 Q. And you also indicated that after having been released, that you

1 had gone to Chief Kahwa's.

2 A. To his office. I don't know whether that was where he resided,
3 but that's where he worked.

4 Q. Did you go to Chief Kahwa's right after you were released,
5 immediately after?

6 A. Yes. That is where my release was to be formalised. I was to be
7 given a document that would allow me to circulate freely, to move around
8 freely in the future, circulate freely around town.

9 Q. This might be a detail, but in your statement you say that it was
10 Chief Kahwa who at the time was the Minister of Defence of UPC who came
11 to your house to visit you and to ensure that you were well. This is the
12 expression you used.

13 I just have one first question. Do you remember whether it was
14 Chief Kahwa who came to your house, as you said in your statement, or
15 whether it was, because you might not have remembered correctly, whether
16 it was you who went to Chief Kahwa's home or office?

17 A. Well, I would like us to be more specific. I said this, and in
18 my statement I don't think I'm going to contradict myself.

19 As soon as I was released from -- from the place I was detained,
20 my colleague, my former colleague, took me to the office where my release
21 was to be formalised, and because it took some time he had to make
22 contacts here and there, it took some time, but in the evening he brought
23 me back home where I -- where I lived in the neighbourhood of Chem-Chem
24 Bakuk (phoen).

25 First of all, the day after he came alone so that we could go and

1 take a medical examination, because I had been beaten. So I saw a
2 doctor, and thank God I had no broken bones. So after that he took me
3 back home, and the following day or maybe two days later, Chief Kahwa
4 himself, accompanied by the former colleague this time, came to my house.
5 He did not step in. He stayed in the car outside, and my friend comes
6 into the house and asked me whether I accepted to talk to the minister of
7 defence, and I said that's not a problem. So I come out, and that is
8 when he told me about his programme, some kind of reconciliation
9 programme or pacification with my community.

10 What he wanted and what he asked is that I establish contacts
11 with dignitaries in my community so that we could discuss some kind of
12 reconciliation or pacification in Ituri. Because the people of my
13 community or dignitaries were in hiding, I said I wasn't sure I would be
14 able to do so, but I would do my best. So he left, and he said, "If you
15 can bring those people together, pass the message on to me through your
16 colleague here." Unfortunately, soon after, very soon after, we heard
17 over the radio that there had been problems between he and his superior
18 and he had to step down. He had to resign.

19 Q. Thank you for those specifications. In your statement, you are
20 more specific regarding the mission you were entrusted by Chief Kahwa,
21 since it seems that Chief Kahwa asked you to intervene or to speak to
22 members of your community so as to -- the problem -- the water supply
23 problem be solved. That is what I thought I understood from your
24 statement.

25 A. No, not at all. He -- or, rather, his initiative was not to

1 solve the water problem -- or water supply problem. His initiative had
2 another objective, which was the reconciliation of the two ethnic
3 communities. With him, we didn't talk about the issue of water supply in
4 Bunia. That's all.

5 Q. Were you able to complete part of this mission or -- well, I'm
6 asking you this question, because in your statement, and I will read it
7 out because I think that Chief Kahwa had entrusted you with a wide-scope
8 mission, which as it was to try and move towards pacification, but in
9 your statement you said that he had asked you to carry out a specific
10 mission. And I'm referring, sir, to paragraph 51 of your statement. I'm
11 only going to read out the passage after the name of your colleague that
12 I'm not going to read out to avoid moving into private session.

13 "So Mr. X and Chief Kahwa Mandro came to visit me at home to be
14 sure I was well and to ask them to organise a meeting with the delegates
15 of the ethnic communities Lendu, Zumbe, and Ngongo to discuss the issue
16 of water supply in Bunia."

17 I was referring to the paragraph. Of course, we all understood
18 that the mission was a wider scope mission than what Chief Kahwa asked
19 you to do, but the one -- there might have been a more specific mission.
20 You remember -- you remember this?

21 A. Well, here you're asking me to talk about people's intentions and
22 somebody else's intentions. I hope -- well, at least I think that if
23 Kahwa wanted to see us, because with this friend or colleague I had
24 touched upon the -- the problem of our security in Bunia, the fact that
25 many of our people were constantly harassed, abducted, and this situation

1 was not normal, because when President Lubanga arrived in power and that
2 they took Bunia, he tried to set up a government in which he would
3 integrate or take delegates from all ethnic communities in Ituri. That
4 was the positive element. It might have been a first step in the
5 reconciliation of our communities, but unfortunately it did not work as
6 we expected it to work, and that is how when I raised the problem of the
7 security of our people, and I mentioned it to my friend, he told him
8 about it.

9 Of course -- well, that is my opinion. I said that what -- what
10 was important for us, people of the Lendu community. But he, as person
11 with the authority locally, he could have a vision of -- his vision of
12 things which were more important, which was that Bunia be supplied with
13 water.

14 This is why I'm telling you that this part of the declaration
15 appears -- or statement appears as such and in the general course of
16 things, because in the beginning we mentioned water supply, and I might
17 not have been able to state the clear intention on this particular point.
18 That's it.

19 Q. Two questions and I will have finished. Can you tell me whether
20 in the framework of your mission with demobilisation you met or worked
21 with Pastor Boissa?

22 A. I don't know. Does he have another name, because in this mission
23 we would meet many people --

24 Q. I was just wondering whether that name rang a bell, whether you
25 met him in the framework of your -- of your mission.

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1 A. Maybe or maybe not.

2 Q. Very well. And my second question is of the same ilk. If you
3 don't know -- or do you know whether you met somebody by the name of
4 Mbusa?

5 A. Mbusa? You are mentioning Mbusa? Well, personally I never met
6 him, but as I said beforehand, he was the president of RCD movement.

7 Q. I apologise. It's always difficult for me to have the right
8 accent when I pronounce the name. This is somebody who worked in NGOs
9 and who supposedly worked with the demobilisation of child soldiers, and
10 he bears the same name, indeed, as the person in charge of RCD-K/ML, but
11 the person I'm referring to is someone who worked or might have worked in
12 an NGO, and I was wondering whether in your work with the demobilisation
13 of child soldiers you might have met with this person.

14 A. I don't know whether you're talking about somebody who might have
15 been within our team.

16 Q. No, I'm not saying that. I'm just asking you whether you met
17 that person or not. If you haven't met this person just tell me you
18 haven't. That's not a problem.

19 A. Well, as I said I might have met this person, I might have not.
20 I don't know. But since you're not giving me many details, it's
21 difficult for me to answer this question.

22 MS. MABILILLE (interpretation): I've finished, your Honour.

23 PRESIDING JUDGE FULFORD: Thank you very much.

24 Sir, there are now going to be a few questions from the Judge
25 sitting on my right, Judge Odio Benito.

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Questioned by the Court

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1 Questioned by the Court:

2 JUDGE ODIO BENITO: Thank you. Good morning, sir.

3 A. Good morning.

4 JUDGE ODIO BENITO: I would like to seek your help to clarify
5 certain elements of your declaration.

6 Yesterday, talking about the group of boys and girls that came
7 back from Uganda, you said something like this, and I want to be sure
8 about because these are my notes: Boys -- you mentioned that among the
9 group, around 134 child soldiers, there were only two girls, and you said
10 something like this:

11 "Boys were more likely to be effective in battle than girls, no
12 doubt."

13 My question is general: Did you ever hear during your work in
14 SOS Grand Lacs organisation about other tasks or roles performed by young
15 girls, as young as 15 or even younger, when you were part of this -- when
16 they, they, the girls, were part of these armed groups? Did you hear
17 about that?

18 A. As I mentioned yesterday, personally, I saw only one girl who
19 came to the headquarters twice, I believe, before completely
20 disappearing, and I was told that there was another one under the
21 programme, perhaps in an area that was not accessible to us during that
22 period.

23 The one who did come in once or twice at headquarters, well,
24 personally I did not enter into contact with her. All I did was see her,
25 because one girl among all these boys was remarkable. So it's very

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1 difficult for me to say what the girls -- what happened to the girls in
2 these armed groups and where they came from. So I can't give you any
3 details about any particular case of at that type, I'm afraid.

4 JUDGE ODIO BENITO: Thank you. But I was not requesting from you
5 any particular details. I was asking you if you ever heard about other
6 kinds of tasks or roles performed by the girls when they were part of the
7 armed groups in general, if you ever heard about that during your work in
8 that region in Bunia.

9 A. Well, the role of child soldiers was first to be recruited and
10 trained to kill, and people in charge of the armed groups would do
11 everything it took, both in ideological terms -- they would brainwash
12 these children and try to get them to adopt a wrong vision of things.
13 I'm saying wrong, because then the child would no longer be afraid of
14 killing, of committing a massacre. And that could even go as far as
15 making these children take drugs. In fact, most of the children that we
16 supervised smoked marijuana. They smoked marijuana. That's a fact. And
17 of course they were in an altered state of consciousness after taking a
18 good dose thereof, and I don't think they had all their wits about them.
19 So there it is. Those were the types of practices involved.

20 JUDGE ODIO BENITO: Thank you. Some other general questions
21 about your SOS NGO. Did this NGO establish any specific programmes to
22 attend girl soldiers to help them reintegrate to their families and
23 communities afterwards, during the demobilisation programmes? Did you
24 establish any specific programmes devoted to girls?

25 A. Well, the programme was an overall one. It applied to all

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1 children. As I already said, we did this on a case-by-case basis. Every
2 single child might have his or her own particular problems, and we would
3 assess them on the basis of those -- of each particular case. So such
4 and such a child might be ill, for instance, and when he -- or when he
5 came back from the army, he was so heavily traumatised that he needed
6 psychological support. So we did this on a case-by-case basis. It was
7 difficult to apply any general rule to every single child. We -- we
8 looked at this on a case-by-case basis.

9 JUDGE ODIO BENITO: Thank you. That means that you never ever
10 worked with girls in these programmes; is that correct?

11 A. I cannot speak on behalf of the entire organisation. So I have
12 already emphasised the fact that personally I was never in contact with a
13 girl, a girl child soldier. And secondly, when I entered the
14 organisation, I only saw one girl. I saw her twice, and then she
15 disappeared and I never saw her again. There we are.

16 So if out of the 50 or so that were there there might have been
17 any other girls, I might be able to give you a more precise answer,
18 because no doubt if that had been the case we would have taken different
19 steps.

20 JUDGE ODIO BENITO: Thank you very much, sir.

21 Thank you, Judge.

22 PRESIDING JUDGE FULFORD: Ms. Solano, any further questions?

23 MS. SOLANO: Yes, Mr. President, a few.

24 PRESIDING JUDGE FULFORD: Certainly.

25 MS. SOLANO: Yes, thank you.

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1 Mr. President, I'm just scrolling up to find references in the
2 transcript.

3 PRESIDING JUDGE FULFORD: Take your time, Ms. Solano.

4 MS. SOLANO: Thank you.

5 PRESIDING JUDGE FULFORD: Are you ready in please do.

6 MS. SOLANO: Thank you.

7 Further questioned by Ms. Solano:

8 Q. Good morning, Mr. Ngabu.

9 A. Good morning.

10 Q. I have just a few questions arising out of what my colleague
11 Maitre Mabille has been discussing with you today, and my first question
12 is whether you can clarify who was the superior of Chief Kahwa who --
13 whom you have indicated he had problems with and needed to step down?

14 A. Well, his superior was the President, Thomas Lubanga, of the UPC.

15 Q. Thank you. My next question relates to your mention earlier this
16 morning to a document that would allow you to circulate freely, and you
17 explained that you did the paperwork to obtain this document. I would
18 like you to please confirm whether you in fact obtained it.

19 A. Well, let me just point out that I didn't make any request to
20 obtain the document. My former colleague had the opportunity to hand
21 this document over to me so that later on I wouldn't be bothered. And
22 indeed he did hand it over to me, the laissez-passer. That's what was
23 written on it. It was signed by the interim president, I remember. This
24 occurred at a time when the president of UPC had moved towards Uganda for
25 three or four days, and there was an interim president who signed this,

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1 and my colleague brought this to me. The interim president had signed
2 the document.

3 I left Kinshasa in a hurry, and I still have that document, but I
4 didn't bring it here with me today.

5 Q. Thank you. I believe I heard you say that you left Kinshasa, and
6 I wonder whether you in fact meant to say that you left Bunia.

7 A. No. What I said was that I left Kinshasa to come here in a
8 hurry, more or less, and so I didn't have time to prepare my baggage as I
9 should have. So if I'd had a little bit more time, I would have taken
10 time. I probably wouldn't have forgotten to bring those documents with
11 me.

12 Q. Thank you for that clarification. Mr. Ngabu, I would like you to
13 explain to the Court whether despite having that laissez-passer issued by
14 the authorities of the UPC you still felt it necessary to leave Bunia?

15 A. I left Bunia in April 2003. In other words, four to six months
16 after I was released by the UPC. And I left Bunia in a context where the
17 Ituri pacification process was ongoing or being sought for.

18 I didn't flee Bunia. I went to Kinshasa at the invitation of His
19 Excellency, the president of the republic, with other representatives of
20 the other communities, too, and that is why since then have left -- I
21 stayed in Bunia -- sorry, in Kinshasa.

22 Q. After your arrest and release by the UPC, did you feel that it
23 was safe for you to -- to live in Bunia?

24 A. Not at all. Not at all, because even though I was already known
25 to the minister of the defence, who unfortunately very soon left the

1 movement thereafter, even if I had this contact with my ex-colleague, and
2 even though Bagonza, who unfortunately has passed away now, even though
3 he knew me, too, already, because after I got medical care we once met on
4 the road and he stopped me on the road to say hello to me. He even
5 called me his friend. But in spite of all this I couldn't feel I was
6 safe. Let me give you an example of why.

7 Once the UPC combatants came to search my house. They were
8 saying that they had suspicions. Well, I had offered shelter to a lot of
9 people in my house, people who had fled from other neighbourhoods. Some
10 72 people, actually. And the UPC came along -- or I should say the
11 militiamen, the UPC militiamen, came to search my house saying we were
12 hiding weapons.

13 I had just taken a shower. I was getting dressed in my bedroom,
14 and I heard my mother shouting outside, "Everybody's being threatened,"
15 and I came out and asked what's going on. Nobody answered me. I heard
16 they're threatening everybody. And then I saw that among their leaders I
17 could recognise some boys who had been students at Kweb (as interpreted),
18 and I asked them what's going on. They said, "Well, we've come to search
19 because we were told there were weapons hidden here in this house," and I
20 told them to calm down, everybody to calm down, let them do their work.
21 And since they found nothing, they had asked us to go out while they were
22 doing the search, and when we came back in and they left, well, what we
23 saw is actually they'd taken jewellery and money from people's handbags,
24 et cetera, and then left. So I said to their leader, "How can you do
25 this? How can you come and harass people like this? Who gave you this

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1 message?" And he said, "Well, it's not important, particularly since we
2 found nothing at all."

3 Q. Mr. Ngabu, this incident that you have just described, can you
4 say on what date it took place?

5 A. Well, in the same period, just after I was released. I can't
6 tell you the exact date but it is around that period, so more or less the
7 month of November.

8 Q. Would that be November 2002?

9 A. Yes, 2002. That's right.

10 Q. Thank you. I have one last area to explore with you, Mr. Ngabu.
11 You've -- you've explained today that one major obstacle to your
12 demobilisation-related work was the attitude of some Hema families who
13 believed their children should be with the UPC militia. What I would
14 like to ask you is whether in your view, in your experience, the attitude
15 that the UPC itself had towards the recruitment and use of child soldiers
16 played a role and had an influence on how the families felt about sending
17 their children into the militia?

18 PRESIDING JUDGE FULFORD: Pause for a moment, please, before you
19 reply, sir.

20 I'm not sure whether the witness ever specifically referred to
21 Hema families believing their children should be with the UPC militia.
22 There was certainly evidence from the witness that there were children
23 who returned to the militias and that there were some parents whose
24 attitude led to the return of children to the militias, but unless you
25 can take me to a specific line of the witness's evidence today,

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1 Ms. Solano, I think your question has involved a significant element of
2 interpretation on your part rather than being based on what the witness
3 said.

4 Now, before you answer Maitre Mabilille you rose to your feet. Was
5 that the issue.

6 MS. MABILILLE (interpretation): Indeed it was, your Honour. But I
7 admit that if my colleague gives me the precise reference, that would be
8 different, but immediately I didn't find any reference in notes. That is
9 why I rose to my feet.

10 PRESIDING JUDGE FULFORD: If you want to consult with your
11 colleagues, Ms. Solano, you're more than welcome to do so.

12 MS. SOLANO: Thank you for that indulgence, your Honours.

13 (Prosecution counsel confer)

14 PRESIDING JUDGE FULFORD: Ms. Solano?

15 MS. SOLANO: Mr. President, if I could refer your Honours and my
16 colleagues to page 9 of the English LiveNote transcript, at line -- from
17 line 14. There -- there is, in my view, an indirect reference to what I
18 have just said, but perhaps I can read it out. The witness said --

19 PRESIDING JUDGE FULFORD: You needn't. Well, you're absolutely
20 right, Ms. Solano, that -- that there is -- that there is reference to
21 the Hema community. There is reference to the first signs of an
22 incipient UPC movement, and there's reference to his imagining that the
23 children may be deemed to be useful to such a movement, but I still think
24 your question involves a not insignificant development from -- from that
25 reference. So could we try again in a slightly more neutral way, please.

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1 MS. SOLANO: Of course, Mr. President.

2 PRESIDING JUDGE FULFORD: Thank you very much.

3 MS. SOLANO:

4 Q. Mr. Ngabu, I will rephrase my question. What I would like to
5 know is whether in your experience the attitude of the militias that
6 operated in Ituri when you worked for the NGO had or did not have an
7 influence on the families -- on certain families' belief that their
8 children should be sent into the ranks of those militias?

9 A. You're asking me whether our activity had an influence over the
10 families? Could -- could you be more specific in putting this question,
11 please?

12 Q. Yes. I'm sorry. I'll try to make it more clear.

13 PRESIDING JUDGE FULFORD: Ms. Solano, I'm going to do this.

14 Sir, you referred earlier to some children not having been
15 reintegrated successfully with their families, and as a result, they --
16 or some of them returned to the militias. Now, when you gave that
17 general answer, were you simply -- are you simply referring to a number
18 of different militia groups or to one specific militia group, and are you
19 able to identify which militias you are referring to?

20 THE WITNESS (interpretation): Yes. I see that I have to
21 clarify.

22 You know, before the UPC became the occupying force in Bunia, the
23 Hema community and the Lendu community, which were in a situation of
24 conflict with each other, developed what one would refer to as fighters,
25 combatants, as forces of resistance against each other. So in that

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1 context, if I refer to the militia before the arrival of the UPC -- or
2 before the UPC took Bunia as the occupying authorities, then I'm
3 referring to the Hema forces, because the children could not join the
4 Lendu community, whatever that community might be.

5 When you have the UPC taking power, and in fact amongst others it
6 was those forces that were already fighting on behalf of the Hema
7 community, they then became the UPC soldiers. And in addition, you might
8 take the members of the APC forces or the RCD, which was in a state of
9 demise, and they returned because there had been a change in the UPC
10 situation. So what I'm saying is that when these children were brought
11 back from Tchaquanza, I'm referring there to the Hema combatant forces
12 organised according to region or municipal grouping or whatever. And
13 then when the UPC took over, those people became UPC soldiers.

14 I think that should be a clear answer.

15 PRESIDING JUDGE FULFORD: Thank you very much. Do you want to
16 take this any further, Ms. Solano?

17 MS. SOLANO: No, Mr. President. I have a couple of brief
18 administrative matters to raise with the Chamber.

19 PRESIDING JUDGE FULFORD: In relation to the witness?

20 MS. SOLANO: One of them is, I'm afraid.

21 PRESIDING JUDGE: In the presence of the witness or the absence
22 of the witness?

23 MS. SOLANO: In the presence of the witness is fine, but I would
24 ask, your Honours, if we can please go into private session.

25 PRESIDING JUDGE FULFORD: Right. We haven't entirely concluded

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1 yet. There is, of course, Maitre Mabilie has the opportunity to put
2 questions arising out of those posed by Judge Odio Benito or yourself or
3 indeed the one question by me.

4 Anything else? No. Good. Right.

5 Your administrative matters then, Ms. Solano, are?

6 MS. SOLANO: Mr. President, could we deal with those in private
7 session, please.

8 PRESIDING JUDGE FULFORD: Certainly. Private session, please.

9 (Public session at 11.01 a.m.)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 (Expunged)
2 (Expunged)
3 (Expunged)
4 (Expunged)
5 (Expunged)
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19 (Expunged)

20 (Open session at 11.04 a.m.)

21 COURT OFFICER: Open session.

22 PRESIDING JUDGE FULFORD: Sir, that brings your evidence to a
23 conclusion. You have come to this court and given evidence effectively
24 without any in-court protective measures. That has meant that the
25 public, those that are interested, have been able to follow your evidence

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1 and see it unfold without your voice being obscured or your image
2 distorted. That is a very significant advantage in terms of the public
3 presentation of this trial.

4 We are conscious that the fact that you have not applied for such
5 protective measures may have been a difficult decision for you and one
6 that may have involved a real element of courage on your part. We
7 therefore thank you for your attendance during the course of the last two
8 days, for the evidence that you have given, and for the time and trouble
9 you've taken to come to this court to assist us. Trials before this
10 court are only possible if the Judges receive the cooperation of
11 witnesses such as yourself, and therefore you leave this court this
12 morning with our sincere thanks for the cooperation which you have given.
13 Thank you very much indeed, sir.

14 Can the usher please help the witness back to the witness
15 waiting-room.

16 (The witness withdrew)

17 PRESIDING JUDGE FULFORD: Ms. Solano, I want to address the bar
18 through you really to deal with what we envisage for the rest of the day,
19 and of course any counsel is welcome to make any submissions on the
20 timetable that I'm about to suggest.

21 There are a number of administrative matters that we wish to deal
22 with, and they will include a number of short oral judgements on a number
23 of outstanding issues. We're going to rise in a moment, but I expect
24 that those administrative matters and those rulings will take about an
25 hour, which will in fact after the break take us up to the time when

1 we're going to break for lunch.

2 The proposal is that we then sit this afternoon for two hours and
3 commence the evidence of Witness 55, who has been waiting for a long time
4 now to begin giving evidence, and although there will be an interruption
5 at the beginning of next week because we have the two experts,
6 experience, I think, has shown thus far that it does not have a
7 deleterious effect on the evidence that's given if there are three or
8 four days' break rather than two or three.

9 And so that is the proposal. If anybody has any objections of
10 strength as regards calling Witness 55 at 2.00 p.m. this afternoon, can
11 they please raise those objections when we sit again at 20 to 12.00.
12 Silence will be interpreted as consent.

13 Now, anything that anybody wishes to say now? No. Good. We
14 will break, then, at this point and reconvene at 20 to 12.00. Thank you
15 all very much.

16 COURT USHER: All rise.

17 Recess taken at 11.09 a.m.

18 On resuming at 11.44 a.m.

19 COURT USHER: All rise. Please be seated.

20 PRESIDING JUDGE FULFORD: Mr. Keita has filed an application
21 relating to the appearance in person of three participating victims. The
22 relevant filing is document 1812, filed confidentially on the 2nd of
23 April, 2009.

24 In essence, Mr. Keita has indicated to the Chamber on behalf of
25 three of the victims he represents that they wish, possibly at the close

1 of the evidence of the Prosecution, to make representations as to what
2 they have suffered and, more generally, to present their views and
3 concerns in person. Some information has been provided to the Chamber as
4 to the reasons underpinning this application, but these have been
5 essentially limited to a/270/07, who is the principal of a school who
6 attempted to prevent the abduction of children. It is observed that
7 currently there is no evidence before the Chamber as to these events that
8 relate to a particular region that is set out in the application.

9 The Prosecution's response was filed confidentially consistently
10 with a shortened period for service on the 22nd of April, 2009 (document
11 1824). The Prosecutor particularly emphasises that he cannot ascertain
12 whether the victims wished to:

13 i) lead evidence pertaining to the guilt or innocence of the
14 accused;

15 ii) present views and concerns in accordance with article 68(3),
16 or

17 iii) provide submissions or evidence regarding the damage
18 suffered in view of possible future reparations under Article 75(3).

19 Furthermore, the Prosecution reminds the Chamber that the Appeals
20 Chamber has set out a precise regime which is to be followed as regards
21 any application by victims to tender and examine evidence (see document
22 1432, the 11th of July, 2004, paragraph 104). In summary there needs to
23 be (i) a discrete application by victims ...; (ii) notice to the parties;
24 (iii) demonstration of personal interests that are effected by the
25 specific proceedings; (iv) compliance with disclosure orders and

1 protection orders; (v) a determination of appropriateness; and (vi)
2 consistency with the rights of the accused and a fair trial.
3 Additionally the Chamber has set out that if victims wish to express
4 their views and concerns, they should indicate the "nature and detail of
5 the proposed intervention" and "describe the way in which (their)
6 personal interest(s) (are) affected."

7 Finally, on the 12th of January, 1999 (transcript 101, pages 43
8 and 44) the Chamber stressed that the presumption is that individuals
9 will participate through their Legal Representatives rather than
10 appearing in person. Against that background, the Prosecution submits
11 that critical elements of the various tests set out above have not been
12 met, and the Chamber is invited to reject the application.

13 The Defence confidential response (document 1826) filed on the
14 23rd of April, 2009, highlighted the suggested extreme care to be taken
15 with anonymous victims, and in this regard the Chamber was reminded of
16 its decision on Victims' Participation of the 18th of January, 2008. The
17 Chamber was informed that as of the 23rd of April, 2009, victims
18 a/0225/06, a/0229/06 and a/0270/07 were each still anonymous vis-a-vis
19 the Defence.

20 The Defence stress that it has no knowledge (certainly in any
21 detail) of the evidence or the views or concerns that the victims wish to
22 raise. The accused underlines his inability to address any fresh
23 substantive matters raised by the victims at the end of the evidence
24 called by the Prosecution, particularly if this new material is relevant
25 to his alleged culpability. The Defence submits that either the

1 application should be rejected or the Defence should be given three
2 months' notice of the complete materials to be relied on along with the
3 identities of the individuals who are to appear.

4 On the basis of these submissions, the Chamber accepts that the
5 application in its present form is insufficiently informative. Indeed,
6 it considers that it will be unable to reach a decision until more
7 complete information has been provided and, in particular:

8 (i) a detailed account as to the areas that each of the three
9 victims wish to address when expressing their views and concerns (if this
10 is to be the suggested approach);

11 (ii) is it intended that their participation should be within the
12 context of and limited to their entitlement to express their views and
13 concerns as opposed to giving evidence under oath tested by questioning;

14 (iii) why is it considered more appropriate for this material to
15 be presented by the witnesses themselves rather than by counsel on their
16 behalf;

17 (iv) the rationale underlying the suggestion that their
18 intervention should be at the end of the evidence called by the
19 Prosecution rather than as a part of the general submissions at the close
20 of the case;

21 (v) whether it is proposed that any of the victims participating
22 in this way are to remain anonymous vis-a-vis the Defence and, if so, the
23 suggested justification for this approach; and

24 (vi) if any victims are intending to give evidence, what
25 proposals are made as regards disclosure to the parties and other

1 interested participants (particularly if the issues potentially relate to
2 the alleged guilt of the accused).

3 This additional information is to be provided by 4.00 p.m. on
4 Monday, the 18th of May, 2009; responses by the parties and any other
5 interested participants are to be filed by 4.00 p.m. on Friday, the 2
6 22nd of May, 2009.

7 That concludes the oral ruling in relation to Mr. Keta's
8 application.

9 We next address the application by 15 victims to lift their
10 current anonymous status (document 1816, 14th of April, 2009).

11 Various conditions are proposed in order to minimise the risks to
12 the particular victims that are the subject of this application. We
13 suggest that there should be oral submissions on this issue immediately
14 after the expert witnesses have concluded their testimony next week, on
15 the basis that we make an assumption that at least on the part of the
16 Defence there will be a desire to make observations on the detail of the
17 proposal.

18 Can I first ask, Maitre Mabilille, whether I am correct in that
19 assumption that you will wish to make submissions as regards the
20 protective conditions that are applied for in relation to the 15 victims
21 who wish for their anonymous status to be lifted? And do consult with
22 other members of your team on that question before responding.

23 (Defence counsel confer)

24 MS. MABILILLE (interpretation): Your Honour, we would like to
25 reserve the possibility of making observations.

1 PRESIDING JUDGE FULFORD: Most assuredly, Maitre Mabilille. We
2 would be grateful, however, if by 4.00 p.m. on Tuesday of next week you
3 could inform us as to whether or not there are submissions to be made on
4 this issue, because that would be useful to know in relation to the
5 timetable. Thank you very much.

6 We turn next to the possibility of an expert being called on the
7 use of names within the Democratic Republic of the Congo.

8 On the 8th of April, 2009, Mr. Walleyne helpfully e-mailed to all
9 those who are concerned the name of a possible expert, which I'm not
10 going to repeat in open session. He e-mailed a further name on the 27th
11 of April, 2009.

12 The first question which we have is whether there are to be any
13 submissions on the suitability of either or both of those suggested
14 experts.

15 If you, first of all, Ms. Samson.

16 MS. SAMSON: Thank you, Your Honour. Yes, the Prosecution would
17 like to make submissions on the suitability of the two experts named.

18 PRESIDING JUDGE FULFORD: Thank you. I'm --

19 MS. MABILILLE (interpretation): Your Honour, we have no
20 observations for now, because we don't have much information about the
21 suitability of that person.

22 PRESIDING JUDGE FULFORD: Ms. Samson, how would you like to
23 proceed with this? I've taken you by surprise now, so I think it would
24 be unfair to ask you to develop any submissions immediately. Would you
25 be happy to communicate those in writing, or would you prefer to address

1 the Chamber orally on the matter?

2 MS. SAMSON: Your Honour, we'd like to respond in writing, and we
3 can do so in a very abbreviated period.

4 PRESIDING JUDGE FULFORD: 4.00 p.m. on Tuesday of next week?

5 MS. SAMSON: Yes.

6 PRESIDING JUDGE FULFORD: Thank you very much indeed.

7 Therefore, we impose that timetable, and we're grateful to the
8 Prosecution for their ability to deal with this speedily.

9 Maitre Mabilie, you will of course have the opportunity in due
10 course if a report is prepared by either or both of these witnesses to
11 advance submissions as to their suitability once you have received any
12 report or reports that either of them provide.

13 We turn next to the Defence request for disclosure of a full
14 document that relates to Witness 10. This was an Article 54(3)(e) issue,
15 and the relevant reference is the transcript for the 4th of March, 2009,
16 number 141, which was ex parte, Defence only.

17 The United Nations has been consulted regarding the disclosure of
18 an "individual case story" to the Defence. They have agreed that it
19 should be provided confidentially and in full, subject to certain
20 protective measures.

21 We grant the application for protective measures, and we order
22 disclosure in the full form that has been proposed to the Defence. We
23 will give our reasons for this decision together with similar reasons
24 relating to 12 documents concerning Witness 12, orally next week.

25 The UN letter should be filed formally on the record, as should

1 the relevant information (for instance, concerning redactions) because to
2 date this has been the subject of e-mail exchanges only, and because this
3 relates to evidence it should formally be entered into the court
4 electronic record system. We request that all of this work is undertaken
5 by 4.00 p.m. on the 11th of May, 2009.

6 We turn next to the VPRS request for guidance from the Chamber
7 regarding the transmission of the -- of certain supplementary information
8 to the parties and whether it should be redacted.

9 On the 16th of April, 2009 (document 1817) the VPRS provided a
10 report with additional information regarding the applications by victims
11 to participate in the proceedings pursuant to the Trial Chamber's
12 decision on this issue of the 15th of December, 2008. Apart from
13 updating the Chamber on the current position as regards victims, the VPRS
14 requested guidance regarding the transmission to the parties of the
15 supplementary information attached as annexes. This concerns,
16 particularly, further information requested in the Chamber's decision of
17 the 15th of December, 2008, and it relates, in essence, to applicants who
18 have been granted the status of participating victims.

19 The Chamber orders disclosure of the information contained in the
20 report (rather than the report itself), together with the annexes to the
21 report which we observe do not include identifying information.

22 We understand that the material is in a state of readiness and
23 can effectively be communicated immediately, and we therefore order that
24 this work must be undertaken by the latest by 4.00 p.m. on the 11th of
25 May, 2009. Thereafter, if the parties or interested participants have

1 submissions to advance on the form of this disclosure, those observations
2 should be filed by the 15th of May, 2009, at 4.00 p.m.

3 Mr. Garreton. In the absence of any comments or objections, this
4 witness will be called towards the end of June, and the Registrar is
5 instructed to make contact with him in order to establish a date which is
6 convenient for him.

7 Mrs. Radhika Choomaraswamy. The same applies to this witness,
8 (although the Defence helpfully provided its comments - document 1821
9 - in which no objections were raised to the introduction of this
10 evidence). Similarly, therefore, the Registry is requested to find a
11 convenient date in late June, again following the end of the evidence
12 that is to be called by the Prosecution.

13 An up-to-date list of witnesses. By the end of today, the
14 Prosecution are to file an up-to-date witness list together with the
15 proposed order in which the witnesses are to be called. We note in
16 particular that the position in relation to Witness 4 needs
17 clarification. If that information cannot be provided today, the Chamber
18 wishes today to be notified as to when it is anticipated that the
19 Prosecution's final position as regards Witness 4 will be established.

20 It seems likely, in our assessment, that the Prosecution's
21 evidence will conclude in mid- to late June. If anyone, on considered
22 reflection, dissents from that assessment, they are, please, to indicate
23 their own views and the reasons for them by 4.00 p.m. on Monday of next
24 week.

25 We turn next to the witnesses on the issue of age determination.

1 Mr. Walley (document 1819) and Ms. Massidda (document 1828) have
2 applied to question these experts. Mr. Walley reminds the Chamber that
3 he represents Witness 98 (a/0002/06) who undertook a radiograph test to
4 determine his physiological age, and this test occurred on the 14th of
5 January, 2008. The report is dated the 17th of January, 2008.
6 Accordingly, it is submitted that this victim has a direct interest in
7 the testimony of the expert. It is submitted that the question of the
8 age of witnesses is of potential concern to other victim participants
9 whose age might be or is the subject of challenge, which may lead them to
10 consider undergoing similar tests.

11 By way of specific detail, Mr. Walley seeks to question these
12 two witnesses about the criteria they have applied in determining the age
13 of children, in particular to explain the radio graphical findings, the
14 scientific value of the methods used and their precision, as well as on
15 other questions of interest to the victims that have not been raised by
16 the Office of the Prosecutor.

17 The Defence and the Prosecution do not oppose this request.

18 The interests of victims represented by Mr. Walley, where issues
19 have been raised concerning their age, are undoubtedly engaged by this
20 evidence. The questions suggested by Mr. Walley are all appropriate
21 (they are relevant to the charges the accused faces) save, possibly, for
22 his last "catch-all" category. If he wishes to ask "other questions,"
23 they must be indicated in advance of the questions, even if only orally
24 shortly before the questions are put.

25 As regards Ms. Massidda's application, four victims that she

1 represents have been called by the Prosecution to testify. All four are,
2 it is said, former child soldiers, and they underwent medical examination
3 on the 5th of December, 2007, during which X-rays of their hands and jaws
4 were taken. In December of 2008, the Office of the Prosecutor entrusted
5 Witnesses 358 and 359 with the task of preparing a joint report to
6 determine the skeletal and dental age of a number of witnesses, which
7 included those represented by Ms. Massidda. These resulted in reports
8 relating to those victims. Therefore, it is suggested their personal
9 interests are engaged by the evidence of these two experts.

10 Ms. Massidda seeks leave to question these witnesses, immediately
11 following the conclusion of the Prosecution's examination, on any of the
12 following two areas:

13 First, the methods used for determining the skeletal and dental
14 age of the victims she represents; and second, the possible cause or
15 causes of any apparent discrepancy in the skeletal and dental age of
16 those victims.

17 This application is unopposed. The proposed questions are
18 relevant to the issues in the trial, and they concern the interests of
19 these victims. Therefore, it is granted.

20 We turn next to the third report on victims' applications. This
21 is document 1823, filed on the 22nd of April, 2009.

22 This relates to seven new applications to participate. These
23 should be notified to the parties and the participants with redactions as
24 necessary for their comments. We understand that these have been
25 prepared, and accordingly, they should, if possible, be filed today, but

1 in any event, no later than 4.00 p.m. on the 11th of May, 2009.

2 Any responses are to be filed by 4.00 p.m. on the 18th of May,
3 2009.

4 The Registrar is to consult with the OPCV concerning
5 representation for the one applicant who is currently unrepresented.

6 During the course of questioning by Mr. Mulamba earlier this
7 week, an issue was raised as to whether or not it was appropriate for him
8 representing one or more victims to deploy techniques which within the
9 Anglo-Saxon legal systems are known as cross-examination techniques. The
10 decision of the Chamber at the time, given that that approach was opposed
11 by counsel for the accused, was that the questions should be put in
12 neutral form and that cross-examination techniques should not be
13 deployed.

14 On reflection, the Chamber is unsure as to whether or not that
15 was the correct approach to apply, and we would therefore wish to have
16 this issue ventilated so that we can be sure that for the future the
17 correct principles are being applied to the scope and nature of
18 questioning by victims' representatives. We therefore request that
19 submissions are filed by 4.00 p.m. on Friday of next week, so that in the
20 near future we can conduct what in all probability will thereafter be a
21 short Status Conference to make a final and informed decision on the
22 issue.

23 I am informed, although I haven't, in fact, myself seen it, that
24 during the last adjournment an e-mail was received from the Defence,
25 wholly appropriately, asking for the Chamber to consider the change in

1 designation of certain documents that have been used during questioning
2 so that they become entered as evidence within the court's electronic
3 paper management system.

4 We apologise for the additional work that will be involved, but
5 because this is a matter that relates to evidence, the request should be
6 made by way of a filing rather than simply being contained in an e-mail
7 exchange. There should be a permanent and ready record of this
8 application for others to consider hereafter. So could that please be
9 done in the way that we have just indicated.

10 Finally, next week. On the 13th of May, there is to be a form of
11 memorial service to mark the extremely sad passing of Judge Saiga. As a
12 result of the time at which that event is to occur, the Court will rise
13 at 3.30 in the afternoon.

14 On the 12th of May, it is currently proposed that there should be
15 a meeting of all of the Judges in the afternoon, but it is not yet
16 certain as to whether or not that meeting is going to take place.
17 Accordingly, the parties should prepare for a full day's sitting, but we
18 alert you to the possibility that we may in fact not be able to use the
19 afternoon session. So that is a point of information rather than at this
20 moment being a decision.

21 That concludes the administrative matters that we wish to raise.
22 I'm not seeking submissions, but if there are any other administrative
23 matters that anybody would wish to raise during the ten minutes that are
24 outstanding, do seize the moment.

25 I see Maitre Mabilille say no.

1 Anything from you, Ms. Samson?

2 MS. SAMSON: Your Honour, at the moment just one question from
3 the Prosecution in relation to the direction by the Trial Chamber that
4 the Prosecution file an updated witness list today. The question is
5 whether or not an e-mail to the Chamber and parties and participants is
6 sufficient or if a formal filing is required.

7 PRESIDING JUDGE FULFORD: Given the lateness, an e-mail will
8 suffice, Ms. Samson.

9 MS. SAMSON: And, your Honour, thank you for that. One other
10 observation only from the Prosecution's side in relation to the
11 unfortunate passing of the Judge and the schedule for the memorial next
12 week. The Prosecution just wishes to alert the Chamber to the fact that
13 currently the two witnesses intended to testify on Tuesday and Wednesday
14 of next week are limited in their availability to those two days. The
15 Prosecution recognises that nothing can be done perhaps to accommodate
16 this in light of the unfortunate incident and the services that are being
17 prepared to commemorate the -- Her Honour, but we wish to alert the
18 Chamber to the situation that may arise as a result.

19 PRESIDING JUDGE FULFORD: Well, Ms. Samson, thank you very much
20 for that warning. Now, I just want to be clear on this therefore. At
21 the moment, come quarter to 5.00 on Wednesday, we run out of time. Is
22 that the position?

23 MS. SAMSON: Unfortunately, these experts have a loaded schedule,
24 and they've been fairly difficult to schedule in the past, and these two
25 days are the only two days that they have advised us they are available.

1 PRESIDING JUDGE FULFORD: That may put paid to any possible
2 attendance by these three Judges to a meeting of all the Judges of the

3 court on the 12th, Ms. Samson, but thank you very much for that
4 indication. We're obviously going to have to reflect on what we do in
5 those circumstances, because if we lose the whole of the afternoon of the
6 12th and part of the afternoon of the 13th, there is a real risk that we
7 won't conclude their evidence.

8 Very helpful. Thank you.

9 Thank you all very much indeed. We shall sit again at 2.00 p.m.,
10 where we will commence the evidence of Witness 55.

11 Ms. Samson, two things about that. First of all, are there any
12 unusual protective measures of which the Chamber needs to be aware?

13 MS. SAMSON: No, your Honour. The usual three protective
14 measures associated with protected witnesses but nothing more.

15 PRESIDING JUDGE FULFORD: Repetition isn't always helpful, but
16 I'm going to run the risk on this occasion. Having looked at the fairly
17 substantial file of materials for this witness, individually and
18 collectively they have reinforced the views of the Judges of this Chamber
19 that the absence of an overarching statement pulling it all together
20 increases the workload that needs to be done by way of preparation
21 exponentially and in so far as anything we say has any influence on the
22 approach taken by the Office of the Prosecutor in the future, we would
23 once again strongly urge those who are interviewing witnesses, at the
24 conclusion of the interview process then to extract the relevant
25 materials, to put it into a witness statement, and then to seek the

1 signature of the witness. That would certainly have assisted our work
2 very considerably but, Ms. Samson, we understand that this is a learning
3 curve for everyone so it's not meant critically. It's meant helpfully.

4 MS. SAMSON: Thank you.

5 COURT USHER: All rise.

6 Luncheon recess taken at 12.26 p.m.

7 On resuming at 2.02 p.m.

8 (Closed Session)

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Witness: Witness DRC-OTP-WWW-0055 (Closed Session)
Procedural Matters

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Witness: Witness DRC-OTP-WWW-0055 (Closed Session)
Procedural Matters

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15 (Open session at 2.26 p.m.)

16 COURT OFFICER (interpretation): Public session.

17 PRESIDING JUDGE FULFORD: Sir, I hope there's a card in front of
18 you with some writing on it. Could I ask you, please, to read out the
19 words on that card out loud so that everyone can hear what you say.

20 THE WITNESS (interpretation): I solemnly declare to speak the
21 truth, the whole truth, and nothing but the truth.

22 PRESIDING JUDGE FULFORD: Thank you very much.

23 Mr. Sachdeva, I assume you're conducting the first questioning of
24 this witness yourself; is that right?

25 MR. SACHDEVA: Yes, Mr. President, in closed session.

Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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1 PRESIDING JUDGE FULFORD: I was going to say. And your first
2 questions which relate to the identity of this witness you would wish to
3 conduct in private session; is that right?

4 MR. SACHDEVA: Yes, Mr. President. Thank you.

5 PRESIDING JUDGE FULFORD: Good. I apologise to the members of
6 the public who have been waiting, but for reasons that relate to the
7 security of this witness, there will now have to be a period, which I
8 hope will not be too long, in which certain questions are put and certain
9 answers given privately so that this witness remains anonymous.

10 Private session, please.

11 (Public session at 2.28 p.m.)

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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Page 54 - Expunged - Private session.

Witness: Witness DRC-OTP-WWW-0055 (Private Session)
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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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16 (Open session at 2.40 p.m.)

17 COURT OFFICER (interpretation): Public session.

18 PRESIDING JUDGE FULFORD: I'm afraid for those sitting patiently
19 in the public gallery, we are going to be moving in and out of open
20 session for the protective reasons that I indicated earlier.

21 Yes, Mr. Sachdeva.

22 MR. SACHDEVA: Thank you, Mr. President.

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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5 MR. SACHDEVA: Mr. President, I feel that for the next series of
6 questions we ought to be in private session, with your leave.

7 PRESIDING JUDGE FULFORD: That's perfectly all right,
8 Mr. Sachdeva, but I think as much as possible we must keep the
9 proceedings public. So even if it means having to switch fairly
10 regularly between the two, that is a better alternative than everything
11 being given in private session.

12 So private session, please.

13 (Private session at 2.42 p.m.)

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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2 (Open session at 2.44 p.m.)

3 COURT OFFICER: Open session.

4 MR. SACHDEVA:

5 Q. Between the rank of sergeant and the rank of lieutenant, if any,
6 how many ranks are there?

7 A. After the rank of sergeant you become sergeant major, then
8 adjutant, then chief adjutant, under-lieutenant, and then lieutenant.

9 MR. SACHDEVA: Mr. President, may we move back into closed
10 session -- private session.

11 PRESIDING JUDGE FULFORD: Certainly. Private session.

12 (Private session at 2.45 p.m.)

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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- 22 (Open session at 2.56 p.m.)
- 23 COURT OFFICER (interpretation): Open session.
- 24 PRESIDING JUDGE FULFORD: Yes.
- 25 MR. SACHDEVA:

Witness: Witness DRC-OTP-WWW-0055 (Open Session)
Questioned by Mr. Sachdeva

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1 Q. Sir, what year was it that you came to Ituri?

2 A. I arrived in Ituri in 2002.

3 Q. How was it that you came to be in Ituri? Why did you go to

4 Ituri?

5 A. You want to know whether -- do you mean how could I go there, by

6 what means, or -- what is the question? What means of transport?

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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11 PRESIDING JUDGE FULFORD: Right. Absolutely. And of course the
12 exchanges between you and I just now is going to have to be redacted as
13 well.

14 Closed session, please -- or, rather, sorry, private session,
15 please.

16 (Private session at 3.01 p.m.)

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
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19 (Open session at 3.07 p.m.)

20 COURT OFFICER: Public session.

21 PRESIDING JUDGE FULFORD: Thank you. So the question, sir, is

22 what was said during the conversation between yourself and Bosco

23 Ntaganda.

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Witness: Witness DRC-OTP-WWW-0055 (Open Session)
Questioned by Mr. Sachdeva

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10 MR. SACHDEVA: Mr. President, I would ask for a redaction to line
11 20, page 66.

12 PRESIDING JUDGE FULFORD: Is that sufficient?

13 MR. SACHDEVA: Indeed, yes.

14 PRESIDING JUDGE FULFORD: Certainly. I think it needs to be more
15 extensive than that, Mr. Sachdeva. I will -- I will ask the Court
16 Officer -- don't trouble yourself with it now. We'll deal with the
17 redactions while you continue. I'll ask the Court Officer to e-mail a
18 proposal to Ms. Samson.

19 MR. SACHDEVA: Thank you very much, Mr. President.

20 Q. Sir, are you aware if Mr. -- are you aware if Mr. Ntaganda called
21 anybody else at that time?

22 A. I don't know. I told you what referred to me, personally.

23 MR. SACHDEVA: Mr. President, may we move into private session?

24 PRESIDING JUDGE FULFORD: Certainly. Private session.

25 (Private session at 3.11 p.m.)

Witness: Witness DRC-OTP-WWW-0055 (Private Session)
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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
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5 (Open session at 3.15 p.m.)

6 COURT OFFICER: Open session.

7 MR. SACHDEVA:

8 Q. Sir, you had said that you did go to Ituri. How did you travel
9 to Ituri?

10 A. I took an aeroplane.

11 Q. And again just to be clear, where in Ituri did you land?

12 A. We landed at the aeroport in Bunia.

13 Q. Where did you fly from?

14 (Expunged)

15 Q. Are you aware if anyone had made arrangements for you to take the
16 plane to Bunia?

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Witness: Witness DRC-OTP-WWW-0055 (Private Session)
Questioned by Mr. Sachdeva

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- 8 Can we move into private session, please.
- 9 (Private session at 3.20 p.m.)
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Witness: Witness DRC-OTP-WWW-0055 (Closed Session)
Questioned by Mr. Sachdeva

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11 (Closed session at 3.23 p.m.)

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19 (Open session at 3.50 p.m.)

20 COURT OFFICER: Public session.

21 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I understand that having

22 gone over the -- the transcript so far this afternoon, it's been

23 considered on mature reflection necessary for there to be further

24 excisions to the record; is that correct?

25 MR. SACHDEVA: Yes, it is, Mr. President.

1 PRESIDING JUDGE FULFORD: Right. Well, I think that underlines,
2 therefore, the absolute critical necessity for the Prosecution to have
3 worked out with each witness precisely what the strategy is going to be
4 as regards redactions so that the witness remains protected.

5 In this instance, the public broadcast, as I understand it, had
6 certainly in part been delivered publicly prior to the additional
7 redactions being made to the written transcript, and that is obviously a
8 highly undesirable situation for us to find ourselves in.

9 The party calling the witness knows or should know the areas that
10 are to be covered. You must have your own notes as to the detail of the
11 matters you're going to ask the witness about, and in those circumstances
12 you really must be in a position to make immediate and fine-tuned
13 decisions as to what is appropriate for the public domain and those areas
14 that must remain private.

15 I think there's an important lesson to be learnt from this
16 afternoon, and I hope that we will not be in this position again.

17 I need to stress that although the Bench intervenes as much as we
18 can on this issue because we have a separate statutory duty in relation
19 to witnesses, it really does need to be emphasised that we are in an
20 extremely difficult position. We, unlike you, do not know the areas that
21 you're going to deal with by way of detail in evidence. Furthermore, you
22 are inevitably going to have a better understanding of the particular
23 circumstances of this witness and a better understanding of those matters
24 that could cause him difficulty. So we will continue doing our best from
25 where we're sitting, but our best is always going to be less than perfect

1 because the lack of knowledge on our part.

2 Now, we are nearly 5 to 4.00. I do not intend to call the
3 witness back into court to give three minutes' worth of evidence, so we
4 then adjourn.

5 I wish for the usher, please, in a moment to convey our apologies
6 to him for the interruptions this afternoon, to thank him for his
7 assistance, and to say that we look forward to seeing him again, most
8 probably on Thursday of next week.

9 We have been told during the course of the afternoon that the
10 Judges' meeting proposed for Tuesday has been cancelled. We therefore
11 return to the normal sitting times on Tuesday, and the parties will make
12 an assessment on Tuesday evening as to whether or not it's necessary to
13 sit early on Wednesday. We may make sufficient progress on Tuesday to
14 mean that we can remain with the usual timetable, rising at 3.30 or 3.45,
15 so that all those who wish to can attend Judge Saiga's memorial service.

16 We thank you all for -- Mr. Sachdeva.

17 MR. SACHDEVA: Yes, Mr. President. I just wanted to apologise to
18 the Court for the loss of time, and your Honour's guidance is taken,
19 completely taken. I do apologise.

20 PRESIDING JUDGE FULFORD: That's gracious of you, Mr. Sachdeva.
21 Thank you.

22 We will then resume on Tuesday at 9.30 with the first of the two
23 experts. We wish you all a good weekend.

24 COURT USHER: All rise.

25 The hearing ends at 3.56 p.m.