

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 - Closed Session
6 Friday, 15 May 2009
7 The hearing starts at 9.01 a.m.
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Witness: Witness DRC-OTP-WWW-0055 (Resumed)(Closed Session)
Questioned by Mr. Sachdeva (Continued)

Page 4

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

Page 5

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13 Page 5 - Expunged - Private session.

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

Page 6

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Page 6 - Expunged - Private session.

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

Page 7

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

Page 8

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13 Page 8 - Expunged - Private session.

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

Page 9

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13 Page 9 - Expunged - Private session.

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

Page 10

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Page 10 - Expunged - Private session.

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

Page 11

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13 Page 11 - Expunged - Private session.
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Witness: Witness DRC-OTP-WWW-0055 (Resumed)(Private Session)
Questioned by Mr. Sachdeva (Continued)

Page 12

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10 (Open session at 9.40 a.m.)

11 COURT OFFICER (interpretation): Public session.

12 PRESIDING JUDGE FULFORD: Yes.

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

14 Q. Sir, with respect to the funds that came from customs, to your
15 knowledge can you describe how that process functioned? How did it work?

16 A. In all truth, I cannot give you a specific answer regarding
17 customs duties, because I was not involved in financial matters within
18 the organisation. The only border I was at was the border in Aru.

19 (Expunged)

20 returned. But the businessmen, the businessmen had the -- their
21 chairman, the chairman of the businessmen of Congo, and he is the one who
22 worked it out with President Lubanga. Personally speaking, I don't know
23 what happened between the two of them.

24 Q. Do you -- do you know the name of the chairman of the businessmen
25 that would work it out with Mr. Lubanga?

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

Page 13

1 A. Yes, I know it.

2 Q. Are you comfortable telling us in open session, or would you like
3 to say this in private session?

4 A. In private session.

5 PRESIDING JUDGE FULFORD: Private session, please.

6 (Private session at 9.43 a.m.)

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

Page 14

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Page 14 - Expunged - Private session.

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

Page 15

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Page 15 - Expunged - Private session.

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

Page 16

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- 25 (Open session at 9.54 a.m.)

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

Page 17

1 COURT OFFICER: Open session.

2 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

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

4 Q. Sir, you mentioned Mr. Kisémbó, and you mentioned Rafiki. Do you
5 recall other persons who were members of the main staff in the UPC?

6 A. The people in the UPC main staff were Kisémbó -- well, I don't
7 know. I don't know -- in which type of session are we now?

8 PRESIDING JUDGE FULFORD: Private session, please.

9 (Private session at 9.55 a.m.)

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

Page 18

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Page 18 - Expunged - Private session.

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

Page 19

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Page 19 - Expunged - Private session.

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

Page 20

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Page 20 - Expunged - Private session.

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

Page 21

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Page 21 - Expunged - Private session.

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

Page 22

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Page 22 - Expunged - Private session.

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

Page 23

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Page 23 - Expunged - Private session.

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

Page 24

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Page 24 - Expunged - Private session.

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

Page 25

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Page 25 - Expunged - Private session.

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

Page 26

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Page 26 - Expunged - Private session.

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6 (Open session at 10.26 a.m.)

7 COURT OFFICER (interpretation): Public session.

8 PRESIDING JUDGE FULFORD: Ms. Pellet, there was a discussion in
9 court yesterday that concerned the seven new applications. There has
10 been brought to our attention this morning an e-mail in French from Fiona
11 Mckay. Am I right in anticipating that you and indeed Mr. Mulamba, maybe
12 Ms. Bapita, would wish to have the opportunity of commenting on the
13 matters raised by Ms. Mckay.

14 MS. PELLET (interpretation): Yes, thank you. It could be very
15 short.

16 PRESIDING JUDGE FULFORD: Right. Shall we say 4.00 p.m. on
17 Monday?

18 MS. PELLET (interpretation): Yes, your Honour. However, I do
19 believe that this has an impact on the deadline that you had set during
20 the hearing on the 8th of May regarding the observations, regarding such
21 applications.

22 PRESIDING JUDGE FULFORD: Well, that's a tragedy, Ms. Pellet,
23 which we'll have to try to resolve. I will see if I can think of some
24 amended dates over the break and come back to you with them.

25 4.00 p.m. on Monday convenient, Mr. Mulamba, Ms. Bapita?

1 MS. BAPITA (interpretation): Yes, your Honour. We'll try and be
2 on time.

3 PRESIDING JUDGE FULFORD: Thank you very much. And I take it
4 from Mr. Mulamba's silence that he agrees. Good.

5 The subject of holidays. The court is not sitting on Thursday of
6 next week because it's Ascension Day. A rumour has reached me that some
7 members of the bar would appreciate it if we didn't sit on Friday for
8 reasons that I need not spell out. We are sympathetic to that rumour if
9 it's true, and I see from the smiles of some counsel in court that it may
10 be. So we will not be sitting on Friday of next week.

11 Consistently with the indications that we've given to the Defence
12 as to time that in any event the Bench will grant for the preparation of
13 the Defence case, the court recess commences on the 17th of July, and our
14 intention at the moment is that we will not sit again until, and this of
15 course is subject to any application that may yet be made by the Defence
16 for further time, but pending any such application, we will not sit again
17 until Tuesday, the 1st of September. That is not set in stone. I wish
18 to make it clear it is subject to any further application by the Defence
19 and, indeed, any observations from anyone else, but that is our current
20 proposal subject to amendment based on submissions.

21 Can we now go, please, in -- no. Before we rise, Ms. Samson, can
22 I thank you for the review that you carried out in relation, I think, to
23 Witness 12, which was of considerable assistance.

24 Closed session, please, so the witness can withdraw.

25 (Closed session at 10.32 a.m.)

Witness: Witness DRC-OTP-WWW-0055 (Resumed)(Closed Session)
Questioned by Mr. Sachdeva (Continued)

Page 29

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- 13 (Private session at 11.09 a.m.)
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Witness: Witness DRC-OTP-WWW-0055 (Resumed)(Private Session)
Questioned by Mr. Sachdeva (Continued)

Page 30

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Page 30 - Expunged - Private session.

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

Page 31

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Page 31 - Expunged - Private session.

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

Page 32

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Page 32 - Expunged - Private session.

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

Page 33

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Page 33 - Expunged - Private session.

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

Page 34

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Page 34 - Expunged - Private session.

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

Page 35

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Page 35 - Expunged - Private session.

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

Page 36

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13 Page 36 - Expunged - Private session.
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Witness: Witness DRC-OTP-WWW-0055 (Resumed)(Private Session)
Questioned by Mr. Sachdeva (Continued)

Page 37

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13 Page 37 - Expunged - Private session.
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Witness: Witness DRC-OTP-WWW-0055 (Resumed)(Private Session)
Questioned by Mr. Sachdeva (Continued)

Page 38

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Page 38 - Expunged - Private session.

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

Page 39

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Page 39 - Expunged - Private session.

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

Page 40

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Page 40 - Expunged - Private session.

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

Page 41

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Page 41 - Expunged - Private session.

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

Page 42

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Page 42 - Expunged - Private session.

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

Page 43

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Page 43 - Expunged - Private session.

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

Page 44

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- 25 (Open session at 12.06 p.m.)

1 COURT OFFICER: Open session.

2 PRESIDING JUDGE FULFORD: Yes.

3 MR. SACHDEVA:

4 Q. What was the -- well, what was it that the Signoras operated?

5 What was the name of the machine they operated?

6 A. I said Manpacks.

7 Q. And the Signora at the brigade level, is it your evidence that
8 they operated Manpacks at that level? I'm just trying to get a
9 clarification.

10 A. I don't know why you don't understand when I say Manpack. It's
11 an English word. It's a type of radio which is used for communicating
12 over long distances. Sector commanders and brigade commanders had
13 Manpacks. It all depended on where a sector was located. If it was a
14 sector which was established at a remote location, they had Manpacks and
15 Signoras.

16 Q. Thank you for that helpful clarification. And the messages that
17 were transmitted through this machine, this Manpack, how were they
18 recorded?

19 A. I don't know whether they had tape recorders, you know. Signoras
20 had what we would call signals, maybe. See -- correction -- if you
21 haven't learned what these signs mean, you couldn't decipher them. So
22 the Signoras would communicate in signs and then these signals were
23 interpreted, so they had their own expertise, the Signora, I mean.

24 Q. And were these signs and signals communicated orally or were they
25 written? Can you help us with that?

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

Page 46

1 A. These were written signals or signs. When a Signora would write
2 these signs down, he would decipher them or -- and send them to the
3 addressee.

4 Q. During your time with the UPC, did you ever see such written
5 signals or signs?

6 A. Yes. Yes, I saw them.

7 Q. And --

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

9 PRESIDING JUDGE FULFORD: Private session.

10 (Private session at 12.12 p.m.)

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2 (Open session at 12.14 p.m.)

3 COURT OFFICER: Open session.

4 PRESIDING JUDGE FULFORD: I would like to welcome the members of
5 the public who are now sitting in the public gallery. However, I would
6 wish to emphasise that this is a court of law, not some kind of public
7 spectacle or entertainment, and can I ask you, please, not to sit there,
8 pointing at individuals in the court, and in particular pointing at the
9 accused who is entitled to be treated with greater respect.

10 Regrettably, the who person who I'm most directing these remarks
11 at is not wearing his headphones and doesn't appear to be paying
12 attention to what I'm saying, and could somebody please indicate to him
13 that his behaviour over the last five or ten minutes has been completely
14 inappropriate for a criminal trial.

15 Now, you're very welcome to be here, but would you please not
16 treat this as if it is a zoo where the people inside are to be pointed at
17 and laughed about in the way that's happened over the last five or ten
18 minutes.

19 Now, can we please return to private session.

20 (Private session at 12.15 p.m.)

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

Page 48

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Page 48 - Expunged - Private session.

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10 (Open session at 12.20 p.m.)

11 COURT OFFICER: Open session.

12 MR. SACHDEVA:

13 Q. You said that there were Signoras at the main staff. Do you
14 know if there was a Signora at the Presidency?

15 A. I do not remember. I don't know whether the president had a
16 Signora. I don't remember.

17 (Expunged)

18 (Expunged)

19 Q. And do you recall when you would look at this logbook whether you
20 saw messages from or to or copied to the president, President Lubanga?
21 And when you answer this question, please don't refer to your role.

22 A. I declare that when I used to receive a message, it was a
23 personalised message. It was my message. It was meant for me. I could
24 read a message from such and such commander, but I could only read the
25 messages that were meant for me.

1 MR. SACHDEVA: Mr. President, may I have one second, please?

2 PRESIDING JUDGE FULFORD: Certainly.

3 (Prosecution counsel confer)

4 MR. SACHDEVA: Thank you, Mr. President. I'm now going to move
5 on to a different topic for the moment?

6 PRESIDING JUDGE FULFORD: And we'll do so at 2.00 p.m. Thank
7 you, Mr. Sachdeva.

8 Ms. Pellet, we need to return to the issue of timetables. On the
9 8th of May, we set a deadline in relation to service of submissions as
10 regards the form of disclosure of the reports from the VPRS. That
11 clearly now needs to be amended to the extent that we've already given an
12 indication earlier today that you have got, I think I said earlier this
13 morning, until 4.00 p.m. on Monday. I see you nod. So I want to make it
14 clear that that earlier deadline, of course, now disappears.

15 It's been brought to my attention that Ms. McKay's message has
16 not been generally distributed. Can I please give you the responsibility
17 of liaising with her over lunch to request that everybody concerned, and
18 that includes the Prosecution and the Defence, are copied unless there
19 are reasons for them to be excluded, and in that event we will require a
20 short e-mail justification for their exclusion.

21 As regards deadlines for the seven applications, we suspend the
22 current deadline, and we will set a fresh one once we have seen the
23 submissions on Monday and Wednesday, and so I hope -- I hope that
24 comprehensively deals with the timetable for that issue.

25 Now, reflect for a moment, Ms. Pellet. Have I -- have I missed

1 something out, or does that deal with it?

2 MS. PELLET (interpretation): Thank you, your Honour. No, I
3 think that's all. If ever I had second thoughts about the matter, I
4 would come back to you about these at the same time as Fiona McKay.

5 PRESIDING JUDGE FULFORD: Thank you very much. Thank you,
6 Ms. Pellet.

7 It seems to me it would be extremely helpful, given the questions
8 today, about whether or not we are in public or private session for there
9 be a light system instituted of the kind that I indicated a few days ago.
10 We have, I think, received no submission indicating that this suggestion
11 is opposed nor has any other alternative mechanism been suggested to me.
12 So I direct the Court Officer, please, to investigate as quickly as
13 possible with the relevant person who has control over IT systems in this
14 court to see whether a red and a green light can be installed immediately
15 in front of the witness that everyone, but most particularly including
16 the witness, can see so that it is immediately apparent as to whether or
17 not we are in private or public session. And I would like a timetable,
18 please, in which that work can be completed.

19 At half past 1.00, I would wish to see whoever is in charge of
20 security for the public gallery in my room on the 14th floor.

21 We shall now go into closed session so the protected witness can
22 withdraw. We'll sit again at 2.00 p.m. Thank you.

23 (Closed session at 12.28 p.m.)

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- 23 (Private session at 2.02 p.m.)
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Witness: Witness DRC-OTP-WWW-0055 (Resumed)(Private Session)
Questioned by Mr. Sachdeva (Continued)

Page 53

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Page 53 - Expunged - Private session.

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

Page 54

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Page 54 - Expunged - Private session.

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

Page 55

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Page 55 - Expunged - Private session.

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

Page 56

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14 15 (Open session at 2.18 p.m.)

16 COURT OFFICER: Public session.

17 MR. SACHDEVA:

18 Q. Now, sir, I want to talk about recruitment, and we touched upon
19 this earlier on in your evidence, and you had told the Court that a
20 certain village elder would be involved in encouraging young men to join
21 the army, and just so you can understand where I want to go, I'll read
22 one of your answers and then tell you what I want to focus on. You said:
23 "It was not him who would go and get them. For example, if he
24 had the intention of going to get these people, he would find them. He
25 would send out into the villages to mobilise the young people so that

1 they would be integrated into the army, undergo training, and be able to
2 ensure the security of their relatives and of their possessions."

3 And what I want to do is to ask you firstly questions on the
4 mobilisation process, then the integration into the army, and then the
5 training. Do you understand where I want to -- what I want to ask
6 questions about?

7 A. Yes, I understand.

8 Q. Let's start with the mobilisation. Firstly, just describe the
9 process by which that occurred.

10 A. I think that we talked about this a few days ago, and this is
11 what I said -- I'm sorry, first I want to know whether we're in closed
12 session or public session.

13 PRESIDING JUDGE FULFORD: We are in public session at the moment.
14 We will go into private session.

15 (Public session at 2.21 p.m.)

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

Page 58

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Page 58 - Expunged - Private session.

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

Page 59

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3 (Open session at 2.29 p.m.)

4 COURT OFFICER: (No interpretation)

5 THE PROSECUTOR:

6 Q. You said the recruitment process did not happen in one go. It
7 was a process in various stages. Which -- in which stages would the
8 recruitment process take place?

9 A. I told you that this -- when the specific time to recruit. I
10 don't know how I can answer your question. It was a practice which was
11 not planned. There wasn't planning. They were not planning to recruit
12 at any given time. It was an activity that might take place at any time.
13 I refer to the Kadazes who's job was to recruit. If they found
14 youngsters, they would send us to them -- send them to us, sorry, to
15 enlist in the army.

16 Q. And did you come to know of any specific locations where
17 recruitment would take place?

18 A. Recruitment did not happen in one single place. It would happen
19 at different places, different locations throughout the region that UPC
20 had control over. It's a wide region that was controlled by UPC and
21 where recruitment was happening. I'm not in a position to tell you which
22 specific location was recruitment on because it was a process that would
23 occur at very different places. And then not all parents would agree
24 with this idea that UPC had to surrender children to the army. Some
25 parents refused to hand over their children to the army, but others

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

Page 61

1 accepted.

2 Q. And to your knowledge, when the parents refused to hand over the
3 children would anything happen?

4 A. To my knowledge -- let's take an example. Suppose at a given
5 location -- let me give you this example. I'm not sure that you'll be
6 able to understand what I'm saying.

7 PRESIDING JUDGE FULFORD: Do give an example if you think that
8 may help.

9 THE WITNESS (interpretation): So this is the example I'm going
10 to give: For instance, the city of The Hague. If The Hague as a city
11 refuses to hand over their children to the army, if the city of The Hague
12 refuse to make a contribution to the army, the city will be left alone.
13 And if they are attacked, nobody will defend them.

14 So this is something that I'm saying as an example. If the city
15 of The Hague refuses to hand over children for -- for recruitment, the
16 city will be left without any protection.

17 MR. SACHDEVA: Mr. President, for my next question I would ask to
18 move into private session.

19 PRESIDING JUDGE FULFORD: Private session, please.

20 (Public session at 2.34 p.m.)

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

Page 62

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8 (Open session at 2.36 p.m.)

9 COURT OFFICER: (No interpretation)

10 MR. SACHDEVA:

11 Q. In addition to the -- the Kadaze that was involved of in the
12 recruitment, were there other parts of the military that had a role in
13 recruitment?

14 A. Yes. The army itself would recruit. They would do this in their
15 camps and in their barracks in order to recruit new soldiers.

16 Q. And was the recruitment overseen by a particular department in
17 the military?

18 A. I told you this. It was a process, a practice. Practice would
19 occur. If someone found a youngster, they would enlist them; they would
20 recruit them. They would receive these young people from the elders.
21 The elders would bring young people to the closest battalion for
22 enlistment purposes.

23 Each commander, when he would receive a group of young people,
24 was to send them to the training camp. Other commanders, brigade
25 commanders whose task was to the recruitment and themselves in order to

1 have larger number of persons. They would train them themselves in order
2 to enlarge number of persons in their battalions.

3 Q. And that process of enlarging the numbers of persons in the
4 battalions, was that reported up the chain of command?

5 A. I told you that it was a practice, a procedure how -- I don't
6 know how I can explain these words. I'm not sure whether the interpreter
7 is going to understand the word "shuguli" I'm going to say in Swahili.
8 It was a practice for which they didn't habit to be in report. It was
9 decision-based. Each commander would make up his mind and make sure that
10 he would have as many people as possible as the headcounts in his group.
11 There was no report on this activity, because they might have been
12 detained or arrested, had been noticed that he had done the recruitment
13 on his own initiative.

14 Q. What effect, if any, would the enlargement of the battalions have
15 on logistics, for example?

16 A. Could you ask your question again, please.

17 PRESIDING JUDGE FULFORD: It's a hugely open-ended question,
18 Mr. Sachdeva. I -- not your best.

19 MR. SACHDEVA: Yes, Mr. President. I'm trying desperately not to
20 suggest anything.

21 Q. Sir, let me ask you this way: Would the main staff -- well, let
22 me start with this: The Kadaze that you've spoke about, to whom, if
23 anyone, would they report to on their mobilisation efforts?

24 A. I told you this. I think this was last week. I am not one of
25 the founding members of the UPC. However, I found UPC as established.

1 The way in which the established -- the group of Kadazes, I cannot tell
2 you how they set up the group. What I know I heard from a commander who
3 explained this to me. The Kadaze were set up -- and he explained to me
4 how they were established and who their chief is. I don't know to whom
5 they would report. Maybe they reported to the elders I've just
6 mentioned, but I'm not sure.

7 Q. The -- when recruitment was done in the brigades and at the
8 battalions, where would the uniforms or weapons come from to be given to
9 those troops?

10 PRESIDING JUDGE FULFORD: Sorry, sir, I didn't see your hand.
11 You have a question.

12 THE WITNESS (interpretation): Yes, your Honour. I wanted to ask
13 you -- to the questions I've just been asked, I wanted to move to private
14 session.

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

16 (Private session at 2.45 p.m.)

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

Page 65

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Page 65 - Expunged - Private session.

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

Page 66

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Page 66 - Expunged - Private session.

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

Page 67

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4 (Open session at 2.53 p.m.)

5 COURT OFFICER: Open session.

6 PRESIDING JUDGE FULFORD: And, Mr. Sachdeva, just before you do.

7 Maitre Mabilille, a completely different topic. The move for the
8 Defence from this building elsewhere is currently planned, as I
9 understand it, not for this coming weekend but the weekend after. A
10 thought for your consideration: Given that we are now not going to be
11 sitting on Thursday and Friday of next week, would it be more convenient
12 to you and less likely to cause disruption if the move was to take place
13 obviously not this weekend we're about to start but the weekend after so
14 that you have those two days without court sittings in which to organise,
15 no doubt, the substantial amount of material that you've got to take from
16 one building to another?

17 I've made some inquiries, and it seems as though this would be
18 entirely possible as far as court support is concerned. Now, you may
19 want to reflect on this, but it's a thought which may help you.

20 MS. MABILLE (interpretation): Thank you, Your Honour. I
21 suggest -- I would like to give this some thought with my -- the members
22 of my team. Then I'll come back to you. Thank you.

23 PRESIDING JUDGE FULFORD: Thank you very much. Sorry to
24 interrupt you, Mr. Sachdeva, but if there's to be a change in
25 arrangements, they're going to have to be put in motion very quickly, but

1 I'm sorry if I've broken your train.

2 MR. SACHDEVA: Not a problem, Mr. President. Thank you.

3 Q. Yes, sir, I was asking you about the training of the recruits.

4 Are you aware of particular locations where that training was undertaken?

5 A. Do you want to know where training was taking place? Yes, there
6 was a specific location for training. We had a training camp.

7 Q. And can you tell us the names of those locations?

8 A. At Bunia there was a training camp, in Kampara (as interpreted)
9 as well, in Bule, in Fataki. There was another training camp near Aru.

10 Q. Would you mind repeating the second location you mentioned? You
11 said Bunia and then another location.

12 A. Bule. I referred to Bule.

13 Q. In the -- in the transcript of your answer that I have in front
14 of me is the word Kampara. Is that what you said, sir, or did you say
15 something else?

16 A. I did say Rwampara, not Kampara, Rwampara.

17 Q. Thank you for that clarification.

18 MR. SACHDEVA: Mr. President, can we move into private session.

19 PRESIDING JUDGE FULFORD: Private session.

20 (Private session at 2.57 p.m.)

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

Page 69

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Page 69 - Expunged - Private session.

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

Page 70

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Page 70 - Expunged - Private session.

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

Page 71

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Page 71 - Expunged - Private session.

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

Page 72

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21 (Open session at 3.13 p.m.)

22 COURT OFFICER: Open session.

23 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

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

25 Q. Now, sir, amongst the troops that were lined up in the Foren

1 procedure, were they adults or did -- were there also children present?

2 PRESIDING JUDGE FULFORD: Yes, sir.

3 THE WITNESS (interpretation): I apologise. I just wanted to --

4 you to ask me to hand me back the paper where I wrote down the name.

5 PRESIDING JUDGE FULFORD: Yes, certainly. Absolutely.

6 Could the usher give that back, please, to the witness.

7 Was any alteration made? No. Thank you.

8 The question, sir, was in the -- in the room was it just adults

9 or were there children present as well?

10 THE WITNESS (interpretation): Could you please reformulate your
11 question, please?

12 PRESIDING JUDGE FULFORD: I think I should, because I think I've
13 introduced the element of a room, which wasn't there before. Sorry.

14 It's probably too late on a Friday afternoon, Mr. Sachdeva. My
15 apologies for this.

16 Nothing to do with a room, sir. My fault. When the troops were
17 lined up in the procedure that you've been dealing with, was it only
18 adults there or were there children present as well?

19 THE WITNESS (interpretation): You mean at the training camp?

20 MR. SACHDEVA:

21 Q. Yes, sir.

22 A. Yes. As I already said, there were children as well as adults.

23 Q. And again I'm not looking for an exact figure, but are you able
24 to say roughly how many children were amongst the adults at that training
25 camp?

1 A. Well, actually there were very few. There were far more adults.
2 There were just a few kadogos. Most of the recruits were adults, people
3 who were ever age to be in the army. There were very few kadogos.

4 Q. And amongst the troops were there females? I apologise, amongst
5 the recruits.

6 A. I told you that the way in which recruitment was performed, when
7 we spoke about young people, we were talking about both men and women.
8 The females that came along, yes, they would be recruited. They were
9 PMFs.

10 Q. Yes, sir. Thank you. And I understand your answer to be of a
11 general nature. But I'm asking you whether at the time -- I'm asking you
12 whether at the camp we are speaking about, at that time were there also
13 females?

14 A. Yes. I already answered that question and said yes.

15 Q. Thank you, sir. I'm sorry to push you. I just wanted to be
16 clear.

17 At the camp was there somebody that dealt with administration?

18 A. Yes. The training camp was very well made, and the person I
19 quoted was in charge of training. There was a local administration, and
20 there was a staff in charge of administration.

21 Q. And what types of activities were done in the administration of
22 the camp?

23 A. Well, I'm not in a position to give you the details. However,
24 (Expunged)
25 sorry. Are we in private session, your Honour?

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

Page 75

1 PRESIDING JUDGE FULFORD: We're at the moment in open session. I
2 take it from your question private session, please.
3 (Public session at 3.21 p.m.)
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Witness: Witness DRC-OTP-WWW-0055 (Resumed)(Private Session)
Questioned by Mr. Sachdeva (Continued)

Page 76

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Page 76 - Expunged - Private session.

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

Page 77

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Page 77 - Expunged - Private session.

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

Page 78

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Page 78 - Expunged - Private session.

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

Page 79

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Page 79 - Expunged - Private session.

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

Page 80

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Page 80 - Expunged - Private session.

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

Page 81

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Page 81 - Expunged - Private session.

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

Page 82

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Page 82 - Expunged - Private session.

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16 (Open session at 3.52 p.m.)

17 COURT OFFICER (interpretation): Open session.

18 PRESIDING JUDGE FULFORD: Ms. Samson, before I ask Maitre Mabilie
19 whether she's ready to deal with the issue that you raised earlier today
20 about the three protected witnesses in this case, and the application
21 that one or more of the Defence teams in the Katanga trial should be
22 provided with some of the closed-session transcripts, you outlined to us
23 that the -- that the procedure is going to be that those teams are going
24 to be bound to precisely the same confidentiality restrictions as apply
25 in this case.

1 As a matter of detail but potentially important detail, how is
2 that to be enforced, because of course we do not have, certainly
3 directly, control over the material once it leaves this Chamber. And
4 really to short-circuit this, is there going to be an appropriate order
5 from the Judges of Trial Chamber II which effectively implements the same
6 protective measures that we've implemented?

7 MS. SAMSON: Your Honour, what the Prosecution can suggest at
8 present is that should this Chamber be willing to vary its order for
9 protective measures such that the two Defence teams who have requested
10 access to closed transcripts in the Katanga and Ngudjolo case have
11 access, then the Prosecution can apply to Trial Chamber II to ensure that
12 the same protective measures are indeed ordered in that case, and that
13 will hopefully alleviate any concerns that this Chamber may have that the
14 information would otherwise be used or elicited in a public hearing.

15 PRESIDING JUDGE FULFORD: Yes. We wouldn't in any way wish to
16 dictate to Trial Chamber II as to what approach they should adopt.
17 Obviously that's a matter entirely for them, and it would be impertinent
18 for us to in any seek to lay down the path that they should adopt.
19 However, I think it would be within our -- very much within our powers to
20 say that, subject of course to anything that Maitre Mabilille says in a
21 moment or on Tuesday, that if we were minded to grant this application it
22 would be -- it would be with the condition precedent that the protection
23 measures -- protection measures at least as rigorous those that we have
24 imposed must be ordered by Trial Chamber II before we would be prepared
25 to say that the material can be released. So that isn't telling Trial

1 Chamber II what to do. It is simply saying what the basic minimum
2 requirements are for us before we make the order of that sought.

3 You needn't respond to that. Thank you.

4 Maitre Mabilille, have you had sufficient opportunity to reflect on
5 this?

6 MS. MABILILLE (interpretation): Yes. Thank you, your Honour. The
7 Defence has no observation to make on this point.

8 PRESIDING JUDGE FULFORD: Thank you very much, Maitre Mabilille.

9 (The Trial Chamber confers)

10 PRESIDING JUDGE FULFORD: Well, Ms. Samson, I'm not going to
11 repeat what I've just said. Given that Maitre Mabilille has given the
12 indication that she has, that this is an uncontested application on the
13 part of the Prosecution, subject to the indication that I've just given,
14 we grant the application that you've made, but we do underline that there
15 would need to be an order in terms as strong, at least as strong as the
16 order that we've made in relation to protective measures emanating from
17 Trial Chamber II directed at all those who would be recipients of the
18 material before we will allow the release of the closed-session
19 transcripts to the Defence teams in that case. We underline we're trying
20 to be cooperative, but we're also trying to discharge our obligations to
21 those who have appeared as witnesses before us.

22 MS. SAMSON: Thank you very much for that, your Honour, and the
23 Office of the Prosecutor will ensure that that is done.

24 PRESIDING JUDGE FULFORD: Thank you very much.

25 Maitre Mabilille, the other matter, and I'm not going to ask you to

1 give an answer now, but if the suggestion that's been made as to a move
2 this coming weekend rather than the last weekend in May is one that is --
3 I was going to say is attractive to you, I think that's an unfortunate
4 way of putting it, if it's the lesser of two evils, then could I ask a
5 member of your team to communicate that to the appropriate person in the
6 Registry as quickly as possible, because if new arrangements are going to
7 have to be made, the longer the warning, the easier it will be to
8 implement the change. So there's no need for you to respond now unless
9 you wish to, but could you please communicate with the Registry if this
10 is the better of the two options. Thank you.

11 Ms. Pellet, I see that Fiona McKay has now circulated everyone.
12 On reviewing what I said to you earlier today, for some reasons wholly
13 unknown to myself, not only did I mention Monday of next week, I
14 bizarrely mentioned Wednesday. Just one of those things, I'm afraid.

15 Monday is the only day. Could everybody who wishes to respond to
16 this have their submissions in, please, by 4.00 p.m. on Monday of next
17 week. Thank you very much.

18 We will sit then unless there are any other matters that anybody
19 wishes to raise at 9.30 on Tuesday of next week.

20 Can we then go into closed session so that the witness can
21 withdraw, and we wish you a pleasant weekend, sir.

22 (Closed session at 3.59 p.m.)

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

Page 87

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10 The hearing ends at 4.00 p.m.

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