

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford,

4 Judge Elizabeth Odio Benito and Judge René Blattmann

5 Situation in the Democratic Republic of the Congo -

6 ICC-01/04-01/06

7 In the case of The Prosecutor v. Thomas Lubanga Dyilo

8 Monday, 31 May 2010

9 (The hearing starts at 2.31 p.m.)

10 (Open session)

11 THE COURT USHER: All rise. The International Criminal

12 Court is now in session. Please be seated.

13 PRESIDING JUDGE FULFORD: Good afternoon. The first point

14 is the court officer is going to read out two EVD numbers that got
15 overlooked last week.

16 THE COURT OFFICER: Yes, Mr President. Documents

17 referenced and presented by the Defence as DRC-OTP-0228-0098 are going
18 to be referenced as EVD-D01-00190. And document referenced as
19 DRC-OTP-0228-0122 is going to be referenced as EVD-D01-00191. These
20 documents were presented through -- were submitted through Witness
21 297 and corresponds to tab 9 and 10 of the Defence Excel list. Thank
22 you.

23 PRESIDING JUDGE FULFORD: Thank you very much, indeed. Next,

24 I think certainly the Prosecution and the Defence, and I hope those
25 representatives of victims who are interested, have been informed by

1 the Registry that the latter's attempts to arrange an interview with
2 Witness 3 have failed because of a clear apparent disinclination on
3 his part to cooperate in any kind of interview process. That fact
4 needs to go onto the public record, which is why I'm making this
5 announcement now.

6 In due course, if anybody who is interested in this wishes
7 to suggest further steps that should be taken by the Registry or by
8 the Chamber, please raise the matter in the first instance by way of
9 an email to the legal adviser to the division.

10 Third, on two occasions recently, principal counsel for the
11 Office of Public Counsel for Victims has had cause to complain that
12 she has not been copied on email exchanges between the Prosecution
13 and the Defence. I leave it to her or Ms Pele to provide details of
14 those instances if they're required; but having seen the details, we
15 remind counsel for both the Prosecution and the Defence, please, to
16 remember that there are issues in relation to which both principal
17 counsel and other representatives of victims need to be kept up to
18 speed on. So, please, remember your obligations in that regard.

19 Fourth, we need to deliver a short oral decision on interviews
20 with intermediaries 316 and 321 because we've been informed they may
21 occur this week.

22 On 26 May 2010, the Prosecution informed the Chamber that
23 it intends to speak with intermediaries 316 and 321 in advance of their
24 testimony. It seeks leave to re-interview them under the same
25 conditions as applied to earlier interviews - without the Defence being

1 present - in order to put to them the precise allegations advanced
2 during the evidence. It indicates that the interviews will be audio- or
3 video-recorded, and the record will be provided to the Defence
4 immediately after the interview.

5 As to the parties interviewing witnesses they intend to call
6 prior to their testimony, the Chamber has generally prohibited meetings
7 between a party and its witnesses outside of Court once the process
8 of witness familiarisation has commenced and it has specifically
9 prohibited the practice of "witness proofing" as defined by the
10 Prosecution. (Decision Regarding the Practices Used to Prepare and
11 Familiarise Witnesses for Giving Testimony at Trial, 30 November 2007,
12 Document 1049, paragraphs 56 and 57).

13 In an oral decision of 16 January 2009, the Chamber indicated
14 that the familiarisation process begins when the witness arrives in
15 Holland or at the location of the video-link. (T-104, page 24, lines
16 9 to 11).

17 In an earlier decision of 21 November 2007 (Decision on
18 "Prosecution's Request for the Preservation of Evidence",
19 Document 1040, paragraph 35) on a separate matter, the Chamber held
20 that:

21 "The Chamber accepts as a matter of principle that if
22 something emerges that reasonably requires further assistance
23 from a witness, the Prosecution should be able to take a further
24 statement or statements, so long as this does not endanger the
25 safety or physical or psychological well-being of the witness.

1 “However, it should ensure, whilst putting additional
2 questions in their appropriate context, that the interview is
3 not used - either directly or indirectly - for witness proofing
4 (to the extent that the Chamber may prohibit that procedure in
5 its decision on the issue).

6 “Interviews in this category should always be recorded by
7 appropriate audio/visual equipment so there will be a permanent
8 record available to the opposing party and the Chamber, should
9 issues arise in relation to what occurred during the
10 interviews ...”

11 In the exceptional circumstances that arose when Prosecution
12 Witness 15 indicated that his previous statements were not true or
13 accurate at the beginning of his testimony on 16 June 2009, the Chamber
14 ordered the Prosecution to take a fresh statement. The parties agreed
15 that the Defence should be present as an observer during the interview,
16 but it should not ask questions or otherwise intervene. The interview
17 was also to be audio- and video-recorded. (T-192, page 12, line 9
18 to page 13, line 2).

19 On 24 March 2010, the Chamber ordered that a similar approach
20 and procedures should be adopted with Prosecution Witness 297 as applied
21 to Prosecution Witness 15, including the circumstances of any
22 pre-testimony interviews (T-271, page 9, lines 8 to 16). The
23 Prosecution interviewed the witness on his arrival in The Hague, in
24 the presence of the Defence.

25 As regards former Prosecution Witness 3, who became a

1 potential court witness following an indication that he did not wish
2 to cooperate further with the Court, on 11 May 2010, the Chamber issued
3 an oral ruling in which it authorised a meeting between the witness
4 and the Prosecution in the absence of the Defence, with disclosure
5 of the record of the interview to follow immediately afterwards. (T-284,
6 page 13, line 10 to page 17, line 11).

7 The Defence was excluded solely because of a concern that
8 Witness 3 may reveal the identity of one or more intermediaries whose
9 identities are currently protected. The Chamber then emphasised that
10 in light of the present issue as to the role of some intermediaries,
11 the Defence was to receive early and comprehensive disclosure,
12 excluding the identities of protected intermediaries. (T-284, page
13 16, line 14 to page 17, line 1).

14 Under normal circumstances, a party is entitled to meet with
15 potential witnesses in the absence of the other party, prior to the
16 commencement of the familiarisation process, provided the interview
17 does not constitute witness proofing. The Chamber recognises that
18 an opportunity for the Prosecution to explore with the intermediaries
19 the allegations that have been made against them will assist the
20 preparation for their questioning. However, the intermediaries are
21 to give evidence at the express request of the Chamber, and they are
22 not otherwise witnesses who are being called by either party (although
23 the Defence asked the Chamber to call them).

24 Furthermore, given of the recent developments as regards
25 the position of intermediaries generally, and these two intermediaries

1 in particular, the Defence has a substantial interest in witnessing
2 the interviews that will in all likelihood take place shortly before
3 their testimony. The identities of intermediaries 316 and 321 have
4 already been disclosed to the Defence and no other circumstances have
5 been brought to the attention of the Court justifying an order to exclude
6 a defence observer.

7 Accordingly, a defence representative may be present, under
8 the conditions that hitherto have applied to Witnesses 3, 15 and 297,
9 if the Defence chooses to attend and has the necessary means. The
10 audio or video recording of the interview is to be disclosed to the
11 Defence immediately after the interview, regardless of whether or not
12 a representative was present. The Prosecution is to liaise with the
13 Defence accordingly.

14 That concludes that ruling. If the interpreters and
15 stenographers did not - as I hope they did - have a copy of my draft,
16 please let me know in due course before the perfected transcript is
17 completed and I will have a copy sent to you.

18 Witness, please.

19 (The witness enters the courtroom)

20 WITNESS: WWW-D01-0029 (On former oath)

21 (The witness answers through interpreter)

22 PRESIDING JUDGE FULFORD: Good afternoon, sir. I'm very
23 sorry to have kept you waiting. Yes, Mr Sachdeva.

24 MR SACHDEVA: Thank you, Mr President.

25 QUESTIONED BY MR SACHDEVA:

1 Q. Good afternoon, sir. We met roughly a week ago. My name
2 is Manoj Sachdeva, and I am going to be asking you some questions on
3 behalf of the Prosecution. I'd just like to start with some questions
4 regarding your current employment. You told the Chamber that you work
5 for the association called SECOPE.

6 A. Yes.

7 Q. And does that stand for, and please excuse my French, Service
8 de Controle et de la Paie des Enseignants?

9 A. Yes, indeed, that's what it is.

10 Q. And the association falls within the ambit of the ministry
11 de l'Enseignement Primaire, Secondaire et Professionnel; is that right?

12 A. Yes, indeed.

13 Q. And, as such, you are ultimately responsible to that
14 ministry?

15 A. Yes, I am the area head. In other words, I am in charge
16 of a specific area in the town of Bunia. That is the locality in which
17 I operate.

18 Q. And is the exact title of your job chef d'antenne or, in
19 English, the chief of the satellite office in Bunia?

20 A. Yes. It's some sort of a roving inspector and our role is
21 to go from school to school. We are roving inspectors. So what do
22 we call the antennae, or the area, is a specific geographical area in
23 which we operate. We have the head of -- that is chef d'antenne for
24 each -- for the territories of Irumu, Mahagi, Aru, Djugu and Mambasa,
25 and I am solely responsible for the town of Bunia alone.

1 Q. And the territories that you've just described, do they
2 fall within the Province Oriental No. 2; is that right?

3 A. The territories which I have just mentioned are located
4 within Ituri district. You know, education became autonomous so we
5 talk of Province Oriental 2, from the administrative standpoint.

6 Q. So, as you've just told the Court, you're responsible for
7 the area of Bunia. And do I take it then that the schools that fall
8 outside of Bunia in the other territories that you mentioned are not
9 officially within your competence?

10 A. Well, under the orders of my supervisor, they can send me
11 out to go and work. We are roving inspectors. We do not stay in the
12 office. I could be sent out to go and work in a given territory. It's
13 the same activity that we carry out, and I can do this under the
14 recommendation or on the recommendation of my supervisor. He could
15 send me to go and work elsewhere.

16 Q. Understood. But it's right, isn't it, that just as you are
17 the chef d'antenne for Bunia, the other territories also have chef
18 d'antennes?

19 A. Yes, indeed, that is correct. However, we work in
20 collaboration with each other. If there are certain activities to
21 be carried out, other chef d'antennes could be called upon to come
22 and help me, to work with me, so that we gain time. And it can also
23 happen that I could go to their territories to work with them, to help
24 them.

25 Q. Is the director of SECOPE, is his name Alexis Yoka La Pulinangu

1 (phon)? Excuse me for my pronunciation.

2 A. The director of SECOPE where? In what locality? In Bunia
3 or which locality are you talking about?

4 Q. I'm referring to the director in Kinshasa.

5 A. Well, the director of SECOPE in Kinshasa, well, the person
6 who was there is no longer in that position; he has been replaced.
7 It is our director of Province Oriental 2 who is better placed to
8 collaborate with him. We are the subordinates and our activities are
9 limited to the provincial level. It is this gentleman who has to
10 coordinate everything and send a synthesis or a summary of our reports
11 to Kinshasa.

12 Q. I'd like to show you a document, and I'd just like you to
13 confirm for the Court whether the information contained therein is
14 correct. Mr President, if I could refer -- if I could ask court officer
15 to bring up DRC-OTP-0226-0790, and it is contained in tab -- I believe
16 it's tab 35 of the OTP binder.

17 PRESIDING JUDGE FULFORD: Yes, thank you very much,
18 Mr Sachdeva. They are just landing now.

19 MR SACHDEVA:

20 Q. Sir, in that binder could I ask you to turn to the document
21 in tab 36. And just let me know when you're there. Thirty-five; I
22 apologise. For the court officer, it's tab 35, for the court officer.
23 Now, sir, looking at this document, you would agree that this is -- this
24 document emanates from the ministry, doesn't it, in Kinshasa?

25 A. I cannot see the stamp; there is no stamp on this document.

1 An administrative document should bear the stamp and the signature
2 of the issuing authority.

3 Q. But you see at the top left-hand corner the title and the
4 heading and the emblem of the ministry, don't you?

5 A. Yes, indeed.

6 Q. And is the information in this document, is it correct,
7 to your understanding, namely, that on the left-hand side we have the
8 province and the antennes that are listed, and in the middle we have
9 the person who is responsible or who is the chef d'antenne for the
10 particular territories and, at the very end at the right-hand side,
11 we have the matricule number of those persons.

12 A. Normally, that is the case. The letter came from the ministry
13 and it is addressed to the provincial director for Province Oriental
14 2 indicating the deployment of the director himself who is mentioned
15 here, and the chef d'antenne or the heads of the various offices for
16 Bunia, for Irumu, Aru, Djugu, Mahagi and Mambasa.

17 MR SACHDEVA: Thank you. Mr President, could that be given
18 an EVD number.

19 PRESIDING JUDGE FULFORD: Yes, certainly, Mr Sachdeva. Do
20 we need to focus on the fact that there's no stamp, date or signature?
21 Does it matter for the purposes of the point that's being made?

22 MR SACHDEVA: In my submission, no. The witness has agreed
23 with the accuracy of the contents.

24 PRESIDING JUDGE FULFORD: The contents. The contents,
25 right. Yes, certainly. With noting the absence of a stamp, date or

1 signature, EVD number, please.

2 THE COURT OFFICER: Yes, Mr President. That document will
3 receive the following EVD number: EVD-OTP-00564.

4 PRESIDING JUDGE FULFORD: Yes.

5 MR SACHDEVA:

6 Q. Now, we've discussed the geographical scope of your function
7 in SECOPE. I want to talk about the substance of your work, your official
8 work as a member of SECOPE. I think you already told the Court, but
9 if I summarise the precise function of SECOPE is to deal with the salaries
10 of teachers and verify the buildings of the schools, the number of
11 desks. It essentially deals with the logistical and administrative
12 aspects of schools; would you agree? And you can put the binder away
13 for the moment, sorry to interrupt you.

14 A. You're asking me the question?

15 Q. I just wanted to let you know, sir, that you can leave the
16 binder for the moment.

17 PRESIDING JUDGE FULFORD: Yes, thank you, usher. Yes, did
18 you want to put the question again, Mr Sachdeva.

19 MR SACHDEVA:

20 Q. Yes, sir, I'll put the question again: I was asking you
21 that in respect of the function of SECOPE, and indeed your function
22 within that association, you essentially deal with the salaries of
23 teachers, the verification of the number of desks or the school buildings,
24 and essentially the administrative and logistical aspects of schools.
25 It's a rather long question, but would you agree that that summarises

1 your role?

2 A. Well, the role you've said, you've said it in part, but
3 as I said as an inspector, when I go to a school, it's just not a question
4 of logistics, or problems with salaries. I do an overall inspection
5 because, when one speaks of salaries, one speaks also firstly of the
6 general organisation of the school. One must see how many pupils are
7 there, how many teachers, those who are paid, those who are not paid.
8 One has to look at the children to see whether they have been paying
9 their fees, the amounts that have been paid by the government, all
10 that needs to be checked. So, that is what we do. We work on everything
11 so that we can determine how many children there are.

12 Sometimes we go even further. We even look at various
13 registers to see how many children have been registered to look at
14 any differences that there might be between the current year and the
15 past year, the fees that have been paid, those that have not been paid,
16 the infrastructure. So, we look at everything. We inspect all aspects
17 of the school's operation, including -- well, particularly the
18 financial aspects.

19 Q. If I were to suggest to you that the registre matricule,
20 the individual school records, the Palmarès documents related to
21 students, I suggest that it is not within your official duty to gain
22 access to those documents and to inspect them?

23 A. The role of an inspector can be seen. When an inspector
24 goes to a school, he looks at everything that's going on in a school.
25 I was asked for specific information, so an inspector can't limit himself

1 to one particular aspect. He has to look at everything and the objective
2 is to see what's going on in a school. One can't just limit oneself
3 to a single activity. There are several objectives, or aims, when
4 one is carrying out an inspection.

5 Q. But isn't it right that there is in fact a separate - a
6 wholly separate - association, or department, that deals with the
7 inspection of school documents?

8 A. There are some inspectors of teaching who do that but, all
9 the same, we too have access to that work. We do almost the same thing.
10 We can do that sort of thing, or we prepare the various reports for
11 our area and we present them to our director and he is told about
12 everything that goes on in the school, not just one particular aspect.

13 PRESIDING JUDGE FULFORD: Forgive me, Mr Sachdeva, just a
14 moment.

15 Sir, you're doing extremely well. It's very clear, but can
16 I ask you to make sure that with your slightly longer answers you keep
17 the speed of delivery about as slow as I'm going now. It can become
18 very difficult for the interpreters and stenographers if there's a
19 longer answer with the person speaking going at quite a fast rate,
20 so could you bear that in mind, please. Thank you very much.

21 Yes, Mr Sachdeva. Please continue.

22 MR SACHDEVA:

23 Q. We were just talking about, or at least I was asking you
24 about, the inspection service that deals with the school records, and
25 in Bunia there is what is termed the chef de pool, an inspector for

1 the Bunia region; is that right?

2 A. All those people, as I said at the beginning, they are all
3 inspectors and they do almost the same work, but each one has his area.
4 When an inspector who is the chef de pool goes to a school, he also
5 has to look at the financial side of things: The number of students,
6 the number of teachers who are being paid, those who are not being
7 paid. He also has to see how many children have paid their fees, how
8 many have not. So, there's really no limits to what these inspectors
9 check.

10 Q. So is it your evidence that in fact there are two parallel
11 inspection services that deal with the same issues; so a chef de pool
12 can deal with the financial records and a SECOPE employee can look
13 at the individual school records? Is that your evidence?

14 A. If you go into a school and check the staff, without going
15 through the documents that are held by the head of the school, well,
16 you haven't done a proper inspection then. What I do know, you can
17 see or read documents, but the -- there is an objective in mind. If
18 I go, for example, and go see the teachers who are not being paid,
19 well, all the same, that also means I can go look at the registration
20 records. That all is part of the teaching. Once I've finished, I
21 go back and I handle the various responsibilities that I've been
22 entrusted with. I do an in-depth check of the various items and to
23 carry out my work.

24 Q. If, for example, the central register, the registre
25 matricule, needs to be reviewed let's say every year, it is in fact

1 the chef de pool of the inspection department, or somebody from that
2 department, that affixes that stamp on the register, not the SECOPE
3 employee; is that right?

4 A. Normally that is the case. The inspector is not -- it's
5 not the chef de pool himself who goes to the schools. He too has roving
6 inspectors who go about to the various schools and they provide the
7 chef de pool with the information. The roving inspectors go out and
8 find the information and they provide it to the chef de pool. There
9 are several roving inspections done, so all these people provide
10 information to the pool. That is how things are done.

11 Q. Incidentally with the central register, the registre
12 matricule, normally how often does an inspection take place of that
13 register? Is it after every school year? After every two years?

14 A. The inspection is not limited. A SECOPE inspection can -- if
15 you look at the various registers, you see that some SECOPE inspectors
16 have signed them in the past. If, for example, this year an inspector
17 went to a school, perhaps soon he will skip over that school and go
18 to another one, so seeing one school doesn't rule out going to see
19 another one. To say that there are various years, no. The
20 inspector -- well, the school is not even advised. The inspector shows
21 up, he gets all the information and he will initial documents to show
22 that he has been by and that he has gotten the data that he -- or the
23 information that he has come to look for.

24 Q. But in your experience, as being a teacher and now with
25 SECOPE, is it not right that the inspector for the inspection service,

1 the chef de pool for example, generally visits the schools and verifies
2 the registers that exist there?

3 A. I don't think I've really understood. Could you repeat your
4 question?

5 Q. Yes. Yes, I can. Would it be normal, in your experience,
6 for the register of a school to have not been inspected for five years
7 or longer?

8 A. It depends on the number of schools. If there are a great
9 many schools it is somewhat difficult to visit them all over the course
10 of a year, and so that is why I'm saying that if, for example, on one
11 given year we visited one school, we may not go back to it for two years.
12 We may go and see other schools; ones that we have never been to. But
13 if you want to carry out the inspection, you may inspect it -- go visit
14 it two or three times a year. That is not prohibited. If the school
15 has problems, you may be going on a -- every semester.

16 So it depends on the scheduling; the planning of the
17 activities. You can't just wake up one morning and go visit a school.
18 You have to plan things, draw up schedules. You go to a school, you
19 do the inspection to see if things are working well or not. If you
20 can see that in one particular school that there has been improvement
21 in comparison with the previous visit, you may set that school aside
22 to go visit a school that you've never been to. That's how things
23 are done.

24 Q. I'd like to now show you another document and it's contained
25 in tab 38 of the binder that you have. And for the benefit of the

1 Court, the ERN is DRC-OTP-0229-0037.

2 Now, here we have, as you will agree I'm sure, that this
3 is another document from the Ministère de l'Enseignement Primaire,
4 Secondaire et Professionnel, and at the end of the document you will
5 see a signature by a minister in that ministry.

6 A. Yes, the letter is there, as well as the signature of
7 the -- that minister; the minister of primary, secondary and vocational
8 education.

9 Q. And if I could ask you to look at the information contained
10 in point 2, so you are going to have to turn over the page, if you
11 just take your time and read what's contained in point 2 and also the
12 last paragraph before the signature and tell me when you've read that
13 and I'll ask you a question.

14 PRESIDING JUDGE FULFORD: Usher, you needn't stay there.
15 Thank you.

16 (Pause in proceedings)

17 THE WITNESS: Okay.

18 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

19 MR SACHDEVA: Thank you.

20 Q. Now, if you look at the last paragraph, it essentially says
21 that SECOPE has no official role in the management and verification
22 of school records.

23 PRESIDING JUDGE FULFORD: Before you answer that, sir -- or
24 before the question is finished, in fact, yes, Mr Desalliers?

25 MR DESALLIERS: (Interpretation) Your Honour, I'd just

1 like to check once again -- I want to make sure I've properly heard.
2 Actually, your Honour, it would appear that my colleague is translating
3 the last sentence. The last sentence - and I'm reading it out - "SECOPE
4 has nothing to do with the establishment and the management of school
5 report cards."

6 Nowhere is there any mention made of "verification" in the
7 document. So if one wants to use this document to say "is it true
8 that", I think we really have to take what the document actually says.
9 It does not talk about verification here.

10 PRESIDING JUDGE FULFORD: Mr Sachdeva, bearing that
11 intervention in mind, can you reformulate the question?

12 MR SACHDEVA:

13 Q. Well, sir, would you then agree with the last paragraph
14 of this document, that SECOPE has no official authority in relation
15 to the management of individual school records?

16 A. I believe that the circular from the ministry is clear,
17 nowhere is mention made of SECOPE having authority over report cards;
18 those are issued by the schools, and that has been delegated to the
19 managers of the schools. And then the report cards are handed on to
20 the management of the school, and the teachers fill them out and that's
21 all there is to it.

22 Q. Yes. Perhaps my question wasn't as clear as I would have
23 liked. Leave aside who issues a specific report card. My suggestion
24 to you is, that you do not - as a member of SECOPE - have an official
25 role in verifying these individual records, managing those individual

1 records and having access to those individual records? Do you agree
2 with that?

3 A. I believe that the powers are clear, if the minister has
4 said that management of report cards is allocated to the head of the
5 establishment and the manager of the school, well, the SECOPE has nothing
6 to do with that.

7 MR SACHDEVA: Mr President, I tender this document into
8 evidence, with your leave.

9 PRESIDING JUDGE FULFORD: Yes, certainly. EVD number,
10 please.

11 THE COURT OFFICER: Yes, Mr President. The document under
12 tab 38 referenced as DRC-OTP-0229-0037 will be attributed reference
13 EVD-OTP-00565. Thank you.

14 PRESIDING JUDGE FULFORD: Thank you very much. Yes,
15 Mr Sachdeva.

16 MR SACHDEVA:

17 Q. When you were examined by my learned friend last week, you
18 were asked a question about the age at which a student can enrol in
19 primary school, and you said that it would not be common practice for
20 a student to enrol at the age of four. And my question is the following:
21 It may not be common practice, but in your experience it occurs, doesn't
22 it?

23 A. I was clear, the instructions are about things that you
24 can't boycott. You can't play with instructions, because really it's
25 the law to avoid young children of three or four years of age coming

1 to the school and making things difficult or making it difficult to
2 run a primary school.

3 The government has allowed the privilege to be given to the
4 schools. The school organises kindergartens; that is for children
5 of three or four years of age. Once they are six, the child goes directly
6 into the first year of primary schooling. That is clear.

7 In my experience -- well, I can't say that during all the
8 time -- well, no. Otherwise, that child -- how will that child learn
9 with the others if he's only three or four years of age? If you register
10 him and put him in with children of six, you'll see that his level
11 will be very low. And if the child -- well, the child would even be
12 neglected, because he will find the studying difficult. You see, it's
13 all properly organised by level, and such a child will have difficulty
14 and become discouraged in life. So there are kindergartens for children
15 of that age to help them.

16 Q. I appreciate your answer and what you said about the
17 instructions - and, in fact, what should occur - but my question relates
18 to what, in fact, happens in reality? And my suggestion is, that while
19 there may be instructions that preclude it, in reality there are
20 occasions where children can join primary school at the age of four
21 or five. Do you agree with that?

22 A. No. No.

23 MR SACHDEVA: Mr President, I'd like to show the witness
24 a document from the Defence binder?

25 PRESIDING JUDGE FULFORD: I think we'll do that after a short

1 break, Mr Sachdeva. Thank you very much indeed. This is a two-hour
2 session this afternoon, so we'll take a break now. We'll sit again
3 at quarter-to. Usher, could you please accompany the witness back
4 to the witness waiting room. Thank you very much.

5 (The witness stands down)

6 PRESIDING JUDGE FULFORD: Quarter-to.

7 THE COURT USHER: All rise.

8 (Recess taken at 3.30 p.m.)

9 (Upon resuming at 3.46 p.m.)

10 THE COURT USHER: All rise. Please be seated.

11 PRESIDING JUDGE FULFORD: Witness, please.

12 (The witness enters the courtroom)

13 PRESIDING JUDGE FULFORD: Thank you very much, sir. Yes,
14 Mr Sachdeva.

15 MR SACHDEVA: Thank you, Mr President.

16 Q. Sir, now I want to show you a document from the Defence
17 binder. And, Mr President, what I suggest, with your leave, is to
18 ask the Defence to hand over the original to me. I will then put a
19 marker on the page that I want to alert the witness to because the -- and
20 I can tell the Court the ERNs for the Court's convenience if that's --

21 PRESIDING JUDGE FULFORD: Yes, certainly, Mr Sachdeva.

22 MR SACHDEVA: If I could ask for the binder -- the document
23 in tab 13 and that's EVD-165. It's the Nyakasanza Registry.

24 Mr President, for the Chamber's convenience I'm going to
25 be referring the witness to the page -- and unfortunately the ERN can't

1 be deciphered from my photocopy, but if I could ask the Court's indulgence
2 to turn to the page where it starts with entry on the left-hand side
3 "7019".

4 PRESIDING JUDGE FULFORD: Right. Does the witness have that?
5 You've given it to him, Mr Sachdeva; is that right?

6 MR SACHDEVA: I have, yes. I just -- he's now moved to a
7 different page.

8 Q. But, sir, if I could ask you to concentrate on the page
9 where there is a red marker, or a red sticky tape.

10 PRESIDING JUDGE FULFORD: Good. Well, we'll catch up, Mr
11 Sachdeva. Put your question.

12 MR SACHDEVA:

13 Q. Now, sir, this is -- as you testified, this is a registre
14 matricule from the primary school Nyakasanza. Do you remember that?

15 A. Yes, indeed. This is the school enrolment register for EP
16 Nyakasanga (phon). It's a boys' school.

17 Q. Sir, if I could ask you to turn over the page. That's it.
18 Now, before I ask -- before I take you to a specific entry, you testified
19 about the form in which this document is supposed to take, and what
20 we see here is on the left-hand side we have the matricule number per
21 student and we have the rows indicated on the top and on the left-hand
22 side you will see a column saying "Entrée". And I take it you would
23 agree that this column indicates the date in which the student was
24 enrolled?

25 A. Entrée here on the right?

1 Q. And does --

2 A. Fine.

3 Q. And that does indicate the date on which the student was
4 enrolled, doesn't it?

5 A. We can only take note of what we find in the document. I
6 am not the one who prepared this document. It was the head teacher
7 of the school and he states that the entry was 1 September 1997, or
8 rather 1987.

9 Q. Very well. So you would agree that this -- forget the content
10 for the moment, but this column indicates -- typically indicates -- the
11 date in which the school, the teacher -- the pupil enters the school;
12 is that right?

13 A. Well, before classes start, head teachers are given time
14 to enrol the pupils. They need about one or two weeks before the
15 effective commencement of classes, so I think that it was on that date,
16 1 September, that the child was enrolled into the school.

17 Q. Very well. And now if we stay with this entry, in other
18 words entry 7019, if we go to the third column from the left we see
19 here the date and place of birth, and you would agree that the date
20 of birth is indicated as 6 October 1982.

21 A. Yes, indeed. 6 October 1982 for the student number 1 on
22 that page.

23 Q. Therefore, on the face of it, this entry suggests that the
24 student enrolled at the primary school even before he had turned
25 five years old; isn't that right?

1 A. I tried to read the name of the pupil. I think the name
2 is Rolima (phon) Mulongowi (phon). Is that the case? Is that the
3 person you are talking about?

4 Q. Precisely.

5 A. Well, if you are talking about Lima (phon) Mulongowi, then
6 you should know that this child was enrolled in the sixth year, not
7 in the first year. The sixth year. He is not enrolled in the first
8 year. You can look at the column "Class". You will find that he is
9 enrolled in Class 6C. The child is indeed in the sixth year. He studied
10 elsewhere and now he came to enrol in the sixth class of EP 1 Nyakasanga.

11 Q. But would you agree that, on the face of it, the age of
12 the child is four-years-and-eleven-months at the time of enrolment?

13 A. Well, I think there is some confusion here. We are talking
14 about -- if we are talking about a child who is being enrolled in the
15 first year he has to be enrolled at the age of six, but this child
16 is enrolling in the sixth class meaning that he has already studied
17 in the first year, second year, fourth year, fifth year and so on.
18 So, here he is being enrolled in the sixth year of that class -- of
19 that school. I really don't know how I can help you, but I see it
20 written here that the fellow was enrolled in the sixth year.

21 Q. So it's possible then that the date of birth, or the age
22 as indicated, is an error?

23 A. Well, if I had been the person who prepared this document,
24 I would have been able to throw light on this for you. The head teacher
25 who prepared this, well, I don't know what documents he used to prepare

1 this information, or I don't know whether he prepared or put this
2 information on the strength of what the pupil said. I think it's the
3 head teacher who should know what to say, because he is the person
4 who provided the birth date of 6 October 1982. He's the one who prepared
5 the document. I really have nothing to say about this. If this document
6 had been prepared by myself I would be able to give you an explanation,
7 but the document is prepared by another person and we are simply taking
8 note of the information provided.

9 Q. Very well. I'm now going to ask you some questions
10 about -- sir, you can now put away the document for the moment.

11 PRESIDING JUDGE FULFORD: Yes, so we don't get in a muddle,
12 usher, could you return it to the Defence, please.

13 Yes, where are we going to now, Mr Sachdeva?

14 MR SACHDEVA:

15 Q. Sir, I'm going to ask you some general questions about the
16 type of school records that we've seen over the last week, and I will
17 begin with the registre matricule and I just want to remind you of
18 your answer in evidence last week when asked to describe how the matricule
19 is compiled. And you said, "A registration number is allocated to
20 a pupil when they enter the school and it follows a certain order,
21 notably the order of the arrival of each child, and if a child gains
22 access to the fifth or sixth year he's also given a registration number
23 and they succeed each other." So --

24 A. Well, you wish to know about the order of arrival of the
25 pupils. When you keep administrative records, in fact the management

1 thereof depends and varies from one head teacher to another. In any
2 case, the essential thing is for the pupil to have a registration number
3 and there is a procedure to follow. The head teacher could jot down
4 his information in an exercise book; that is information for all of
5 the children getting into the first year, followed by the children
6 getting into the second, third, fourth, fifth and sixth years and so
7 on and so forth. And he starts by giving numbers to the children who
8 are entering the first year, then he will carry on to the second, third,
9 fourth, right up to the sixth years, and the head teacher who uses
10 the register could mix things up. He could register a child in the
11 first year, second year, third year, sixth year and so on and so forth.
12 There's nothing wrong with that. The most important thing is for the
13 pupil to have a registration number.

14 Q. Indeed, and so it is based upon the -- the number is based
15 upon the date of arrival, so one could have a child that enters the
16 first year and is given the number 1 and on the same day a child enters
17 the school but in the second year and given the number 2; is that right?

18 A. Yes, that is done. If the head teacher is well-organised,
19 he can arrange the pupils in order of arrival without taking into
20 consideration the class of the child. He can start with the first,
21 go to the second, third and so on and so forth. But there are others
22 who may be more organised and they start by registering the children
23 from the first year, followed by the second year, third year and so
24 on and so forth in a rough book, and he allocates numbers to them following
25 their various classes, in the order of their various classes, so the

1 management thereof, or the organisation, varies from one school to
2 another.

3 Q. But the most important factor is that each student has a
4 separate number? In other words, normally one would not find a student
5 with two registration numbers; is that right?

6 A. Well, with respect to the registration numbers, that cannot
7 happen. A pupil -- each pupil has only one number.

8 Q. If we now move to the registre de certificat, this as I
9 understand it is a register of those students who have completed the
10 six years of primary school.

11 PRESIDING JUDGE FULFORD: I think you need to attach a
12 question to it, Mr Sachdeva.

13 MR SACHDEVA: Thank you, Mr President. I thought I did.

14 PRESIDING JUDGE FULFORD: No. I think it's left as a
15 statement, at the moment.

16 MR SACHDEVA: Very well.

17 Q. Sir, is it right that the registre de certificat contains
18 a list of those children that have completed the six years of primary
19 school?

20 A. Yes, indeed. The certificate's register contains the names
21 of the children who have completed the sixth year and who have passed
22 their exams. Only children who have passed their exams and who are
23 entitled to a primary school leaving certificate, their names are found
24 in the certificate's register.

25 This is to enable them to withdraw their certificates and

1 it enables management to determine which students which have -- which
2 pupils have withdrawn their certificates and which have not. This
3 is because sometimes the children can get confused; they can withdraw
4 the certificate, and if they do not sign out the certificate, they
5 could come back later on and claim that they have not claimed their
6 certificates. And this has given rise to problems. That is why pupils
7 or parents who come to withdraw certificates have to sign in that
8 register.

9 Q. And, of course, it's the parents or the student himself
10 or herself that can take out the certificate.

11 A. Yes. Parents are entitled to withdraw the certificates of
12 their children if the children are not there. If the children have
13 gone on holiday, their parents can claim the certificates. Or the
14 parents can come with the child and they would sign and withdraw the
15 certificate. There's nothing wrong with that.

16 Q. And in the unlikely situation where a child or a parent
17 does not withdraw the certificate, the only person that can withdraw
18 a certificate is someone who has been given the power of attorney or
19 legal permission by the student or the parent; is that right?

20 A. Well, usually the head teachers know the parents of their
21 pupils. If a parent sends an older child or a member of the family,
22 then the head teacher will recognise these people; and if they mention
23 the name of the child, they would allow these people to withdraw the
24 certificate and sign out for them, because most of the time the head
25 teachers recognise them. In any case, nobody can dare to come and

1 collect a certificate without the authorisation of the parents. That
2 is not done.

3 Q. And the -- once a child has completed the six years of primary
4 school, I take it the certificate is automatically produced,
5 automatically prepared?

6 A. Well, you know, there are a lot of problems with respect
7 to the issuance of certificates. Sometimes there are delays. The
8 certificate could come one or two years later on. I think it all depends
9 on the service that issues the certificates.

10 However, if the certificates are available at the
11 inspectorate of education -- for example, if it is said that the academic
12 year is going to end on 2 July and the certificates are available,
13 they will hand it over to the head teacher who then hands them over
14 to the parents or to the pupils, if they're available.

15 However, if the inspectorate of education does not have the
16 certificates, then we have to wait for the certificates to arrive.
17 And whilst they arrive, the head teacher will make an announcement.
18 And the inspectors can even make an announcement, calling the head
19 teachers to each come and collect the certificates for their various
20 schools. And the head teachers in turn would issue an announcement
21 calling on the pupils or their parents to come and collect their
22 certificates. Well, these delays are not systematic, but that's what
23 happens.

24 Q. And if the student or the parent does not collect the
25 certificate, it then remains in the school under the responsibility

1 of its head master; is that right?

2 A. Normally, that is the case, because they can't give it to
3 just anybody. The head teacher or the inspector would keep the
4 certificate until the student comes for it. In any case, they would
5 issue an announcement, because it's not always convenient to keep the
6 certificates of pupils. When the certificate is available, an
7 announcement is made and the pupils are informed of the availability
8 of their certificates and they would come and withdraw their
9 certificates.

10 Q. When the student or parent comes to withdraw the completed
11 certificate, there must be a signature in the registre de certificat
12 and the certificate number must be identified in that register; is
13 that right?

14 A. Well, you know, people have become lazy. The normal practice
15 is to reflect the serial number of the certificate in the register.
16 This is to enable the head teacher to know or to determine at least
17 the children who have withdrawn their certificates. It is an official
18 document, and a pupil can lose that certificate. And if that
19 certificate is lost, the child can come back to school -- to the school,
20 and they will use the register and use the serial number in order to
21 prepare an attestation for the child. And the attestation does not
22 bear a number.

23 And any number which is put on the attestation is the
24 number -- or the serial number of the certificate that was issued.
25 And that is why the head teacher - if he or she is not lazy - is supposed

1 to put the serial number of the certificate in the register. They
2 put the full name of the child, put the serial number of the certificate
3 and all that information, if the head teacher is doing his or her job
4 correctly. But the unfortunate thing is, there are certain head
5 teachers who may be lazy.

6 Q. And so it's right that the register of certificates - in
7 other words, the register of those persons that have completed the
8 sixth year of primary school - is not as complete a record as the registre
9 matricule in terms of a number of students in the school?

10 A. Well, this question is -- I do not fully understand it.

11 Q. Maybe I can put it another way. If someone wants to find
12 out how many children go to a particular school, it's preferable for
13 them to review the matricule, as opposed to the register of certificates,
14 would you agree?

15 A. Well, the registration number has nothing to do with the
16 school -- with the certificate's register. You will find the
17 registration number in the report cards. If the holder of the report
18 card copies his number well, you will find it on the report card.

19 The certificate's register comes from the inspectorate of
20 education. And we are talking here about a national exam, and the
21 children sit the national exam, and those of them who pass have their
22 names reflected in the certificate's register. And the head teacher
23 has to prepare a list of the pupils in the sixth year, and that list
24 is submitted to the inspectorate of education. The inspectorate of
25 education prepares a list of the children who succeeded in the exam;

1 and at the end, they prepare a results sheet.

2 On the basis of the results sheet, they prepare a
3 certificate's register, which certificate's register is then given
4 to the head teacher of the school. And the head teacher of the school
5 then uses the certificate's register to issue the certificates. So
6 the certificate's register is prepared and used to enable the pupils
7 to sign out their certificates.

8 Q. Thank you for that, sir. I fear that perhaps my question
9 wasn't properly interpreted. My question is this:

10 You have a register of certificates on the one hand, and
11 you have the central register - the registre matricule - on the other
12 hand. And my suggestion is, that if you want to identify the number
13 of students in the school, one should turn to the registre matricule
14 and not the registre de certificat; is that a fair statement?

15 A. Well, let me try to rephrase your question. You have the
16 school enrolment register on the one hand and you have the certificate's
17 register on the other hand. If you wish to know the number of students
18 in a school -- or are you talking about the number of students in a
19 class? Because we are talking about the number of students in a class,
20 then you have the class attendance register which is handled by each
21 teacher. Now, the registre matricule is the school enrolment register,
22 which is kept by the head teacher of the school, and it has nothing
23 to do with the certificate's register. That is another document
24 altogether; it is used for issuing certificates to the pupils.

25 In that register, you can't find number of pupils enrolled

1 in the school. You will find in that register written that this number
2 of students sat the exam in the sixth year, this number passed and
3 this is the number to whom certificates will be issued. And in that
4 register, you do not find the names of the students who failed; you
5 find only the names of the students who succeeded in the exam and who
6 are, therefore, entitled to a certificate.

7 Q. Thank you. I believe you've answered the question. I'm
8 going to now take you to some of these registre matricule, and ask
9 you some questions on them.

10 MR SACHDEVA: Mr President, unfortunately, I'm not going
11 to follow chronologically the order of documents in the Defence binders,
12 because I'm trying to deal with them in categories. So I apologise
13 in advance for having to go from one tab to another. But if I could
14 ask the witness to be given the document in tab 2, please. And I believe
15 the EVD number is 156.

16 PRESIDING JUDGE FULFORD: This is volume 1 of the Defence
17 materials.

18 MR SACHDEVA: Yes, Mr President.

19 PRESIDING JUDGE FULFORD: Good. Thank you.

20 MR SACHDEVA: For the benefit of the court, I'm first going
21 to take the witness to page DRC-D01-0003-3846.

22 Q. Sir, if I could ask you to look at -- to stay with the page
23 with the red marker. Now, on the left-hand side of the register, on
24 the left-hand page on the left-hand side, we see the matricule number;
25 is that right?

1 A. Yes.

2 Q. And on this particular page you'll see that it starts at
3 7131 and it continues sequentially; doesn't it?

4 A. Yes.

5 Q. And on the right-hand page we see here, in the column "date,"
6 we have the date "entree" of entry, and the date "sortie" of exit;
7 is that right?

8 A. Yes.

9 Q. I'd like you to move to, on the left-hand side I'd like
10 you to go down to the entry starting 7149, by the name of Kiza. And
11 please just tell me when you're there.

12 A. Yes. Yes, I'm there.

13 Q. And if I read this correctly, the date of entry is recorded
14 as 20 May 2003; is that right?

15 A. Yes, 20 May 2003.

16 Q. And if we continue going down the list, 7150 is also recorded
17 as entering the school on 20 May 2003. But if we move to entry 7151,
18 7152 and so on, until 7158, the date of entry is almost a year before.
19 It's backdated, isn't it?

20 A. Yes. So I think, as I told you earlier, the headmaster has
21 presented what he's done. Can you see Kisando, the child you mentioned
22 here, he came in on 20 May 2003 for the fourth year class. So he had
23 already started studying somewhere else and he finished his fourth
24 year at this school.

25 So what I said to you, everything is possible. Sometimes

1 the headmasters, even the dates here, they may mention them afterwards.
2 It depends on the availability of the various people. When the children
3 come in there, it's very busy, they have lots to do. So the headmaster
4 has to register all these children and so he may have students come
5 later. Sometimes he may record the registration on a draft copy, a
6 rough copy, and then transfer the information to the register later;
7 that is possible. That doesn't contradict with this logic of assigning
8 registration numbers to the children. A headmaster, in our part of
9 the world, can manage a school in different ways.

10 Sometimes there may be two, three, four hundred students,
11 and it's not easy, you know, to keep all these records. Some people
12 don't fill out all the records properly. Sometimes they just have
13 a rough copy and they transcribe the information later. But sometimes
14 they just jot down the information in a rough book and then transfer
15 the information over later. The name of these children is found -- was
16 found in the rough copy, or the rough book, and now the information
17 has been transcribed later; 1, 2, 3, 4, 5, 6, 7. And then he added
18 the other dates later.

19 So the names were already put in the rough version and now
20 he's put them in the proper register because you can see here it's
21 very -- it's done in a very proper way.

22 Q. Can I ask you this: It's my understanding that the central
23 register is compiled contemporaneously. In other words, when a child
24 comes to a school, irrespective of the year he or she joins, that person
25 is given a matricule number on the date of entry?

1 A. Yes, that is what I've said.

2 Q. And therefore, in your view, is it -- is it normal to have
3 somebody entering the school in May 2003, with a matricule number of
4 7149, and then somebody who entered the school almost a year before,
5 with a matricule number succeeding that of the previous child; is that
6 right?

7 A. Normally, that's not the proper way of doing things. What
8 I've been saying is the document here, the headmaster may have these
9 records or maintain these records directly. Sometimes he has a rough
10 copy. Men are fallible.

11 Now, he may have the information and record the children
12 without any difficulty. When school resumes he may take the information
13 and he records the information later and then, at a later time, he
14 transfers the information to the good copy. He may have to keep track
15 of more than 300 pupils and register them all by himself; it's a difficult
16 task.

17 Some of that power, or those duties, are attributed to the
18 teachers and then later he transcribes the names of the children, or
19 he may give the registers to one particular person if he's busy. So
20 he's not necessarily the one who maintains these records. He may give
21 that task to the assistant headmaster. He may have skipped over the
22 names of the children and then put them back later. The important
23 thing is to have the registration numbers here, the enrolment numbers,
24 to make sure that all the children are registered.

25 Now, there are a few exceptions, such as the children who

1 may have come in February, children who were studying elsewhere and
2 who joined in the course of the year, and then all the information
3 is transcribed, but it's not an easy task. But for children who come
4 later on that can be done, because many children register the week
5 in September when they come back to school. For example, here we see
6 00 instead of the specific day.

7 PRESIDING JUDGE FULFORD: Mr Sachdeva, the tape is only two
8 hours, and I'm afraid we've just about run out of time. We're going
9 to have to break off there.

10 MR SACHDEVA: Indeed. Thank you, Mr President.

11 PRESIDING JUDGE FULFORD: Sir, we're going to continue your
12 evidence tomorrow morning. Thank you very much indeed for your
13 assistance this afternoon. We will sit at 9.30.

14 Usher, could you please accompany the witness back to the
15 waiting room.

16 THE WITNESS: I beg your pardon. Your Honour, I beg your
17 pardon. I could ask for an exception. If you could go quickly because,
18 as you know, we are coming towards the end of the year and we are very
19 busy. Each person has to provide his official report.

20 If I am here for a great deal of time, I don't know how I
21 am going to manage and provide my reports to my bosses. So if we could
22 speed up the proceedings. That is a request I am making. I am sorry.
23 I don't -- it's an exception that I'm asking. Work is work, and if
24 we could move forward a bit more quickly, that would be very convenient
25 for me.

1 PRESIDING JUDGE FULFORD: Sir, you touched on a subject dear
2 to my heart, the length of time that things take. Between now and
3 tomorrow morning, when you come back into court, I will have discussed
4 this with counsel to try to ensure that we release you as quickly as
5 we possibly can. But thank you very much for this afternoon.

6 THE WITNESS: Thank you.

7 (The witness stands down)

8 PRESIDING JUDGE FULFORD: Not this afternoon, Mr Sachdeva,
9 but first thing tomorrow morning, we would be grateful for an indication
10 from you as to how long you think you're likely to be.

11 MR SACHDEVA: Certainly, Mr President.

12 PRESIDING JUDGE FULFORD: Thank you very much. We're in
13 this court all of this week. 9.30 tomorrow morning.

14 (The hearing ends at 4.30 p.m.)