

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito

4 and Judge René Blattmann

5 Situation in the Democratic Republic of the

6 Congo - ICC-01/04-01/06

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

8 Wednesday, 2 June 2010

9 (The hearing starts at 9.30)

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 morning. Ms Samson, what
14 are the Prosecution's proposals.

15 MS SAMSON: Your Honour, the Prosecution was successful in
16 establishing contact with three individuals who could potentially
17 testify as representatives of the Office of the Prosecutor; the
18 discussions with two of them haven't been finalised due to the fact
19 that they are not in Europe and on assignment in yet another country,
20 and we're scheduled to continue those discussions today in order to
21 determine absolutely their availability and the timing of their
22 appearance in court, should they be willing and able to do so.

23 The third person is able to testify. He will testify in
24 relation to intermediary 321, and there are fewer restrictions on his
25 availability since he is currently a staff member of the Office of

1 the Prosecutor; although, not in The Hague.

2 PRESIDING JUDGE FULFORD: All right. Thank you, Ms Samson.
3 A few question, please. The first is this: On 19 March in the Office
4 of the Prosecutor's proposed procedure for dealing with intermediaries
5 at paragraphs 9 and 10, the Prosecution recommend that an appropriate
6 representative should give evidence on the use of intermediaries in
7 this case; someone who can be fully tested by the Defence.

8 And it was suggested that such an individual is the person
9 best placed to provide comprehensive and detailed information about
10 the way in which the office contacted, selected and managed the
11 individuals interviewed during the investigation. And moreover, this
12 individual would be able to explain the precise role of the
13 intermediaries, how they were selected and the task they performed.

14 On 12 May in our decision on intermediaries at paragraph
15 146, we then ordered that the individual identified by the Prosecution
16 and just summarised by me should be called to testify as to the approach
17 and procedures applied to intermediaries, and that that individual
18 should be called following the Defence witnesses on the abuse of process
19 application and prior to the submissions of the parties and the
20 participants.

21 Now, that order, as I've just said, was issued on 12 May
22 and has not been appealed, and so it stands. We, therefore, expect
23 that that individual - who has yet not been identified, nor has there
24 been any kind of statement served in relation to him - to be called
25 immediately after the present witness has concluded his evidence. Now,

1 is that going to be possible, Ms Samson?

2 MS SAMSON: No, it isn't, Mr President, not on the current
3 list of possibilities. The Prosecution is --

4 PRESIDING JUDGE FULFORD: You're going to have to give a
5 very careful and very detailed explanation as to why the individual
6 identified by the Prosecution and ordered by us to attend at this stage
7 in the trial is not now available.

8 MS SAMSON: Your Honour, no particular individual was
9 recommended by the Office of the Prosecutor in its filing; although,
10 we did certainly indicate that a representative could be available.
11 We want to be sure that the person or persons who come - and it will
12 have to be more than one person to deal with each of the circumstances
13 of the two intermediaries at issue - were substantively involved at
14 the relevant time and can provide detail on the workings of these
15 intermediaries, in addition to the general framework within which the
16 office operates for intermediaries.

17 The former team leader of the investigation is an appropriate
18 person. Initially, the office was endeavouring to find someone who
19 could fit the position who was still here working for the Court, but
20 it appears that the better option is to find the team leader or
21 investigator dealing with the individual intermediaries, and these
22 two individuals are no longer here.

23 PRESIDING JUDGE FULFORD: The proposal by the Office of the
24 Prosecutor - around I'm sorry to repeat this - was made on 19 March.
25 Our order was on 12 May. When were the first steps taken, Ms Samson,

1 to attempt to contact the individuals who it is now proposed should
2 be called to fulfil this evidential role?

3 MS SAMSON: The first contact with one of the
4 investigators - who's no longer here - was towards the end --

5 PRESIDING JUDGE FULFORD: Please forgive me interrupting.
6 The first steps taken to attempt to contact. So when did the OTP first
7 try to get in touch with one or both of these individuals?

8 MS SAMSON: Yes, your Honour. I was going to address that
9 exact point.

10 The first attempt to contact the investigator who dealt more
11 regularly with intermediary 316 was, I believe, at the end of last
12 week. The first response that we received was this morning. The first
13 attempt to contact the former team leader, to my knowledge - at least
14 in terms of my direct involvement - was yesterday evening, and that
15 discussion must continue today. And the first attempt to contact the
16 appropriate person to deal with intermediary 321 was either at the
17 end of last week or at the beginning of this week.

18 PRESIDING JUDGE FULFORD: You do appreciate how dispiriting
19 this is, Ms Samson. Certainly to us, the clear indication in
20 March - from the way that counsel drafted the proposals as to
21 intermediaries - was that you had a person in mind who would be able
22 to address all of these issues in relation to intermediaries.

23 We heard nothing from the Prosecution either since the 19
24 March submission, or since our order of 12 May. Because we heard nothing,
25 the Chamber was prompted to send the email, which was communicated

1 to you last week by Ms Guhr on 26 May, in which we sought to assist
2 the Office of the Prosecution by making some discussions as regards
3 people who may properly fall for considerations as potential witnesses.

4 And from what you are saying, it was only after the OTP received
5 that email from the judges that steps were first taken to identify
6 the person who we ordered back in May to appear.

7 Now, if that is the true history, Ms Samson, that is deeply
8 disappointing. Does it fairly reflect what happened?

9 MS SAMSON: Certainly steps were taken internally to
10 identify the appropriate persons in advance of the Chamber's email,
11 but it is correct that steps were taken to speak to or contact appropriate
12 individuals only after the Chamber's email.

13 PRESIDING JUDGE FULFORD: So it was clear that the end of
14 the Defence evidence was looming. Let us say that we hadn't sent the
15 email on 27 May, we would presumably have arrived at today with the
16 Prosecution being completely empty handed, having taken no steps as
17 regards the investigator or the appropriate person who we ordered back
18 on 12 May should be called. That's right, isn't it? There would be
19 no one now to fulfil the role that we ordered on 12 May.

20 MS SAMSON: Your Honour, I think we would be in the same
21 position that we're in now, which is that further internal discussions
22 would have taken place to identify the correct person. Whether -- I
23 don't expect that today we would actually have had a name without the
24 Chamber's email.

25 PRESIDING JUDGE FULFORD: I mean, how long does the

1 Prosecution need to discuss these things internally, Ms Samson?

2 You've raised the suggestion back in March. We've made the order in
3 May. There has to be some kind of limit, doesn't there, to how much
4 internal discussion needs to take place before something happens?

5 Now, this is absolutely catastrophic. We are now faced with
6 a completely unjustified delay because we have no intermediaries. Now,
7 that is not so much your fault because there are problems with passports,
8 but the lack of any individual or individuals to meet our order of
9 12 May is the responsibility of the Office of the Prosecutor.

10 Now, we're going to say no more about it now, but something
11 very, very speedy has got to take place today. And at 9.30 tomorrow
12 morning the Prosecution must be in a position to provide us with a
13 schedule which is acceptable, as regards when one or more individuals
14 will attend to deal with what we set out, both at paragraph 146 of
15 our decision, and in the email of 27 May. Real steps must be taken,
16 Ms Samson.

17 Now, I strongly suspect that you may not be in fact at all
18 responsible for this, and I'm afraid it is one of the unfortunate aspects
19 of being counsel that you have to bear the wrath of judges when, in
20 fact, you are having to front decisions that you personally have not
21 taken. But would you please convey back to whoever has failed to take
22 the appropriate decisions in relation to this that the Chamber is
23 extremely displeased as to the wholesale lack of activity in relation
24 to this issue which we expect to be rectified immediately.

25 Thank you very much. Witness, please.

1 MS SAMSON: Thank you.

2 (The witness enters the courtroom)

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

4 (The witness answers through interpreter)

5 PRESIDING JUDGE FULFORD: Good morning, sir.

6 THE WITNESS: Good morning, your Honours.

7 PRESIDING JUDGE FULFORD: Mr Sachdeva, did you make peace
8 with Mr Desalliers about asking some additional questions?

9 MR SACHDEVA: I did indeed, Mr President.

10 PRESIDING JUDGE FULFORD: Well, it may be best for you to
11 ask those now before Mr Diakiese asks his questions, unless you've
12 come to a separate arrangement with Mr Diakiese; it's really a matter
13 for the Bar rather than us as to who goes next.

14 MR DIAKIESE: I'm happy for Mr Diakiese to go first, if he's
15 happy to do so.

16 PRESIDING JUDGE FULFORD: All right. Let's not steal Mr
17 Diakiese's thunder then. Mr Diakiese.

18 MR DIAKIESE: (Interpretation) Thank you for the
19 opportunity, your Honour.

20 QUESTIONED BY MR DIAKIESE: (Interpretation)

21 Q. Good morning, Mr Witness.

22 A. Good morning.

23 Q. My name is Hervé Diakiese. I represent victims in this trial,
24 and it is on their behalf that I'm going to put a certain number of
25 questions to you. I would like to appeal to you to help me, as you

1 have been doing so far. Please ensure that we observe a pause between
2 my questions and your answers to my questions. This will enable the
3 interpreters to interpret for those who are not French speaking like
4 you and I.

5 A. Thank you.

6 Q. I would like to suggest to you that you should make a mental
7 count of one to five between my questions and your answer; do you agree?

8 A. Yes.

9 Q. Could you please answer after making a mental count of one
10 to five?

11 A. That's quite easy to do.

12 Q. I do understand that it is from the month of September 2009
13 that you have been serving as chef d'antenne of SECOPE in Bunia; is
14 that the case?

15 A. Yes, indeed.

16 Q. Please do not forget to do the mental count of one to five.

17 A. Yes, indeed. Thank you for the reminder.

18 Q. In the Democratic Republic of the Congo, is there a law
19 that sets up and governs the operations of SECOPE?

20 A. Yes, indeed. There is one -- there is a law.

21 Q. Do you have an idea of the title of that law? Well, if you
22 do not remember the title of the law, there's nothing wrong with that?

23 A. Well, it's difficult for me to give you an answer right
24 now.

25 Q. Thank you.

1 MR DIAKIESE: (Interpretation) Your Honours, with your
2 permission, I would like to submit to the witness, and to the parties
3 and the participants, as well as to the Bench, a document which bears
4 the reference DRC-V01-0001-0098.

5 PRESIDING JUDGE FULFORD: We have copies of that, Mr
6 Diakiese.

7 MR DIAKIESE: (Interpretation) Yes, indeed, your Honour.

8 PRESIDING JUDGE FULFORD: Excellent. Thank you very much.
9 Yes, Mr Diakiese.

10 MR DIAKIESE: (Interpretation)

11 Q. Mr Witness, could you please turn to tab 8, please. This
12 is the document with the reference DRC-V01-0001-0106. That is page
13 343; is that correct?

14 A. I have page 219 under tab 8.

15 Q. Could you look at the next page, please. It should be page
16 343. Are we on the same page now?

17 A. Yes.

18 Q. At the bottom of that page could you look at the title that
19 starts with "arrêté ministériel" in French, which is "ministerial
20 order" in English?

21 A. Yes.

22 Q. Could you please move to tab 11. That is, page 346. And
23 the reference on that page is DRC-V01-0001-0109?

24 A. I am on page 346.

25 Q. Could you look at the bottom of the page. Do you see the

1 name of the person who signed the document?

2 A. Yes.

3 Q. Does this document mean anything to you?

4 A. If you can give me some time to look through the document,
5 to read the document, I will be able to tell you something.

6 Q. Fine. All I wanted to know was whether this document relates
7 to the functioning of SECOPE?

8 A. Yes, I see that it is the secretary who signed this document.

9 Q. So this is the order that sets up and organises the functioning
10 of SECOPE in the Democratic Republic of the Congo; is that the case?

11 A. Yes, indeed.

12 Q. Could you please go to tab 10, and that will be page 344?
13 The document bears the reference DRC-V01-0001-0108? Have you seen
14 the page?

15 A. Yes, indeed. Page 344.

16 Q. On the left of the page, do you see Article 2?

17 A. Yes.

18 Q. If I give you a minute to browse through this page, would
19 you be able to tell me whether or not these are the duties of your
20 service?

21 A. Yes.

22 Q. Is this an exhaustive enumeration of the duties of SECOPE
23 in the DRC?

24 A. Yes, indeed.

25 Q. Could you please explain which of these duties guided you

1 to go and secure documents from various schools?

2 A. Very well. Well, to answer your question, I would say the
3 following: Considering my seniority, given my experience, the Defence
4 team asked us to prepare the documents that they needed, and that is
5 what I did. And it doesn't have any bearing on the activities of SECOPE
6 as enumerated here. It was at the request of the Defence team that
7 I went to the various schools in order to collect documents, schools
8 that they identified themselves, and that's exactly what I did.

9 Q. Should I understand, therefore, that it wasn't in your
10 capacity as the chef d'antenne of SECOPE that you collected these
11 documents from the various schools?

12 A. Since we -- or since I assumed that responsibility, since
13 I am the chef d'antenne of SECOPE, my position made it easy for me
14 to contact the various schools and obtain these documents; otherwise,
15 I would not have been able to do so. These are schools which are under
16 my management, and I have the possibility of going there to carry out
17 activities that are requested of me.

18 PRESIDING JUDGE FULFORD: Mr Diakiese, please forgive me
19 interrupting. I'm conscious that we intervened yesterday when a
20 similar point, I think, was raised by Maître Bapita.

21 The Chamber has before it a number of documents - quite a
22 lot, in fact - that appear to be, are said to be the originals of records
23 which will potentially - and I underline that word,
24 "potentially" - assist as regards the age of particular relevant
25 individuals and the dates which they first went to various schools

1 and possibly the dates when they left.

2 Generally speaking, it is better for a Court, particularly
3 when there is a dispute, to see the original, rather than a photocopy,
4 and to see the original in its entirety.

5 Now, unless it is going to be said that these originals are
6 inadmissible, that we simply shouldn't be considering them at all
7 because there has been some form of illegality in bringing them here,
8 it doesn't seem to us at the moment to be fruitful at all to investigate
9 exactly under what authority the current witness went and gathered
10 the documents in order to bring them here. The fact is, the documents
11 are here; he was requested to bring them, and they are potentially
12 of assistance to us.

13 So, please, forgive my rudeness at interrupting you, but
14 we're not at all persuaded at the moment that this is a fruitful line
15 of questioning.

16 MR DIAKIESE: (Interpretation) Thank you, your Honour. I
17 am guided.

18 Q. Witness, you revealed that either by mistake, negligence
19 or laziness a number of headmasters or people assisting them may have
20 forgotten to fill out various registers properly - in particular, the
21 enrolment registers - and you told the Chamber about -- or you confirmed,
22 rather, a series of irregularities in the filling out of these registers.

23 Today can we believe that the fact that a school child is
24 not to be found in a register is due to these -- this negligence, this
25 laziness or these omissions? Can we reasonably draw this conclusion?

1 A. Thank you for your question. I know that in most cases,
2 if you noticed an error, well, we all noticed the error on the spot.
3 And, well, if such an error occurred at the time of allocating a
4 registration number to a child, such errors are to be found in nearly
5 all the documents. In one single document, as I said previously, with
6 the various changes, the one headmaster replacing another, one
7 headmaster may have to come in and pick up the reigns immediately and
8 deal with a situation. He may not have all the information; that sort
9 of thing can happen, too. The headmaster may inadvertently record
10 a child's name twice, as we've seen.

11 So I think that these mistakes and these problems with
12 attributing numbers to the children -- well, as was pointed out yesterday,
13 I think you yourself saw how these mistakes occurred. We saw how you -- we
14 jumped from number 349 to 400. I myself made that mistake. So a
15 name -- the name of a child can be omitted.

16 I think you also saw that some children were forgotten, their
17 names may have been recorded on a rough draft, but then the names of
18 the children may have been left on these rough drafts; and years may
19 have gone by, perhaps in the 1990s - for example, in 1995 - years may
20 have gone by before the information is carried over to the proper form.
21 It's a matter -- it's human nature to make such mistakes.

22 Now, these rough copies are not the usual documents, but
23 when the new school year begins, he fills out the various registers,
24 but he may not deal with these rough drafts on a daily basis.

25 Q. So it is possible.

1 A. Anyone can forget something; one may not have forgotten
2 something on purpose, it may be an inadvertent error. People do not
3 work like machinery. So even though these mistakes may have occurred,
4 we cannot necessarily totally reject or dismiss the work.

5 Q. If I've understood you properly, you said that the
6 certificates are issued to the child in question or to his or her parents.
7 Is a photocopy of a certificate valid, a photocopy that is produced
8 by someone - not the child, not the child's parent - for which there
9 is no signature in the certificate register?

10 A. If you saw that, well, it was an anomaly. It is not proper.
11 As managers of schools, we must manage them properly. We mustn't play
12 with the lives of these children. Whoever made this mistake is in
13 the wrong.

14 Q. Thank you, Witness. This may be my last question. Is it
15 possible that some primary students may know their teacher by a nickname
16 or by another name that is different from the official name of the
17 teacher, the teacher's official identity according to civil registries?

18 A. Thank you for your question. I believe that in the field
19 of civic education one must teach children the names of all the teachers
20 at the school, beginning with the name of the headmaster. So the school
21 children must know the correct name of the teacher, not a nickname.

22 If the child calls a teacher by a nickname, what kind of
23 authority will that teacher have over the child? Even at home, parents
24 may ask the child: What is the name of your teacher? And the child
25 must give the name, the proper name, or give the name of his friends,

1 his schoolmates. The child must know those names, just as a teacher
2 must know the name of all the children in his classroom, that is necessary,
3 too, because these are names that are used at all times.

4 You ask a question and you say: What about this person?
5 You can't just give any old name. The child must know these names
6 so he can answer these questions properly. The child must know the
7 name of his teacher. One mustn't allow a teacher's authority to be
8 diminished.

9 Q. In your experience in the world of education, is it absolutely
10 impossible for a child to forget the name of one of his teachers as
11 he makes his way through his schooling?

12 A. I don't know how much time is involved. If the child has
13 left school or, if the school has closed down, the child may have
14 forgotten. It might be difficult myself. I remember the names of
15 the teachers who taught me at primary school. I remember the name
16 of a teacher who struck me, struck a blow that did me harm. I'll never
17 forget his name. I remember his name even now.

18 Q. Thank you very much, sir.

19 MR DIAKIESE: (Interpretation) Your Honour, your Honours,
20 I have concluded my questioning.

21 PRESIDING JUDGE FULFORD: Thank you very much, indeed,
22 Mr Diakiese. You are both to be congratulated on perfect timing and
23 perfect speed. Mr Sachdeva.

24 MR SACHDEVA: Thank you, Mr President.

25 QUESTIONED BY MR SACHDEVA:

1 Q. Good morning again, sir. Could I ask that the document in
2 tab 40 of Defence binder 3 be shown to the witness, please.

3 PRESIDING JUDGE FULFORD: And while that's being found an
4 EVD number is going to be given to Mr Diakiese's documents by the court
5 officer.

6 THE COURT OFFICER: The document presented, referenced as
7 DRC-D01-0001-0098, will be attributed EVD number, EVD-D01-00001.

8 MR SACHDEVA: For the court officer, I'm referring to
9 document DRC-D01-0003-3474.

10 Q. Sir, very briefly, we have this affidavit that is signed
11 by the director of the Soleniama school; is that right?

12 A. Yes.

13 Q. And does this affidavit describe what the director did in
14 terms of the records, or does it describe what you did in terms of
15 the records?

16 A. As I have already spoken about this document, I went to
17 the school. After having a discussion with the headmaster, I asked
18 him to provide me with the documents which I began to review. This
19 school is one of the schools that were identified by the other side,
20 and I went through the various documents from beginning to end.

21 It was a rather large book, a large register that the
22 headmaster found at the school in 1983, and I went through to the end
23 and I couldn't find what I was looking for in the document. And so,
24 in accordance with the director, correction, the headmaster, I provided
25 some phrases here. He spoke and I took notes.

1 It was growing late in the day and, to gain some time, in
2 order to be able to go back, and he, after providing all these affidavits,
3 and what I did myself, the director was able to consequently sign the
4 document. So that is what we did.

5 He was too busy. Myself, I reviewed the documents from
6 beginning to end and, towards the end, when I asked him my question
7 about the pupil mentioned here, he said that he had never known that
8 person, and so, I drafted this affidavit, which the headmaster signed.

9 So the idea was that one day I would go back to get the registers
10 but, you see, that was not possible, and so I drew up this document
11 in the hopes of being able to go back but, unfortunately, I had to
12 come here quickly and I was not able to go back to that school to get
13 the documents.

14 Q. So this is a statement or an affidavit signed by the director
15 but actually refers to your activities in which you have also not signed;
16 is that right?

17 A. Well, I don't know what I could sign. I myself did this
18 work; I myself provided this document. As I said, I had -- I would
19 have had to go back there to get the document. If I had had the time,
20 this document would not have even appeared here and you would have
21 been able to review the register itself. So the fact that I did not
22 go to get the document the second time, well, I did prepare this to
23 show that I had been to the school. But the document does exist.

24 Q. Why didn't you sign it?

25 A. I believe that the headmaster is the one who reviewed. He

1 is the one who directs that school. I prepared the document, but he
2 was the one who had to sign it. I don't see why I would have to sign
3 this. For what purpose? I don't see the point. It's the headmaster
4 who has to sign because he is the one at the school.

5 Q. But when you say he's the one that reviewed, he didn't review
6 the documents, did he? That was you.

7 A. I said I was the one with the purpose; the headmaster did
8 not have the purpose. I had a very specific purpose, and I was going
9 through the documents and not finding what I was looking for. I started
10 to ask questions of the headmaster. On the basis of those questions,
11 I put this down in writing. So I was not the one to sign. He had
12 to review what I did. Myself, I asked the question, which I wondered
13 about the sign. I'm not sure if we're understanding each other. You
14 see, if I had brought the document with my signature, perhaps I would
15 have cheated.

16 PRESIDING JUDGE FULFORD: Mr Sachdeva, I do have to say I
17 think we're going around in ever diminishing circles. Is there really
18 much to be gained by this?

19 MR SACHDEVA: Mr President, no. It just appeared to the
20 Prosecution that this was an affidavit signed by the director in relation
21 to his own activities. And in fact, it describes activities of the
22 witness, and that's all.

23 PRESIDING JUDGE FULFORD: Absolutely. I think the point's
24 now made loud and clearly. Thank you very much. Mr Desalliers.

25 QUESTIONED BY MR DESALLIERS: (Interpretation)

1 Q. Good morning, sir.

2 A. Good morning.

3 Q. Yesterday, when the first questions were asked of you by
4 the OTP, mention was made of the Nyakasanza primary schools and you
5 explained that there were four primary schools, two for boys, two for
6 girls at the present time. You said that, initially, there were two
7 schools and that those two schools had been split in two?

8 A. Exactly.

9 Q. Could you explain to us: Now, the two original schools,
10 was there one for girls and one for boys or were they co-ed schools?
11 What was the situation?

12 A. Well, for a long time the Catholic school system kept certain
13 structures. They wanted some schools to be independent and just for
14 girls and other schools just for boys. And so -- these are large schools,
15 you see. Initially, I think there were even 30 classes. So there
16 was a headmaster, an assistant headmaster, and he would be running
17 a school of 30 classes. That's a great deal of work and responsibility.

18 So the children, at one point children came in the afternoon,
19 but that did not solve the problem. And so there is cooperation
20 activities with Belgium, and they built schools alongside schools that
21 were in difficulty, and so additional premises were provided. And
22 so that is how it came to be that before SECOPE accepted the documents
23 from a school, the school had to have proper infrastructure; equipment;
24 staff; students. And so, the schools, those two schools were split
25 and four schools were created. And now those schools operate in the

1 mornings and in the afternoons, and they are registered. They have
2 proper SECOPE numbers now.

3 Q. Could you tell us when these two schools were split up to
4 form a total of four schools?

5 A. I couldn't tell you the exact time; fairly recently.

6 Q. Could you just tell us approximately how many months or
7 years ago it was?

8 A. I believe when they were building -- I think they were building
9 additionally -- nearly all schools in Bunia. It was just after the
10 war; 2005, 2006, that would be the general timeframe.

11 MR DESALLIERS: (Interpretation) Thank you. I have no
12 further questions, your Honour.

13 PRESIDING JUDGE FULFORD: Sir, we would like to apologise
14 to you for the fact that you have been delayed for so long in The Hague,
15 unable to return, as you wished, far more speedily to the DRC to continue
16 your work.

17 It is of the highest importance that all witnesses who can
18 give evidence on relevant issues are prepared to come to the Netherlands
19 to give evidence before us so as to assist in our search for the truth.
20 And your contribution in that sense is valued, and we are very grateful
21 to you for your attendance here.

22 We, as I've just indicated, fully understand that this has
23 been difficult for you, to say nothing of being physically onerous,
24 given the number of kilos of documents that you've had to struggle
25 with in order to come to The Hague. So you leave us now with our profound

1 thanks.

2 Usher, could you please take the witness back to the witness
3 waiting room?

4 THE WITNESS: Thank you very much, your Honour. I too am
5 grateful.

6 When I agreed to appear, it was because it needed to be done.
7 Despite the many questions that I have received here that were somewhat
8 disturbing at time, I understood, because everyone would like to ensure
9 that the truth is revealed, and I wanted to help you all with the work
10 that you are doing.

11 When I arrived, the role that -- the great role that I played
12 was not just to provide the documents; it was to also explain the
13 substance and the form that -- my work was to bring the originals.
14 Now, if you asked for just photocopies, I would not have even come
15 here. I came because I had to come along with these documents, because
16 these documents were signed out by me. If I do not return these documents
17 to the owners, that would, indeed, not be proper. And that could also
18 make things difficult for others, for other people to also provide
19 assistance to the Court.

20 So I am quite relieved to have furnished my testimony. I
21 have nothing further to say. Thank you very much.

22 (The witness is excused)

23 PRESIDING JUDGE FULFORD: Mr Sachdeva, have we resolved the
24 problem with the one document that you identified yesterday? I did
25 overhear discussions in a corridor with a member of the Registry as

1 to whether or not an appropriate camera could be found. Has this
2 happened; do you know?

3 MR SACHDEVA: It has, Mr President. I understand that the
4 Prosecution was asked if we have the necessary equipment, and we do
5 have that. So I'm just waiting for the process to be supervised, perhaps,
6 but it can be done as soon as possible.

7 PRESIDING JUDGE FULFORD: Thank you very much, indeed. Is
8 that why you were rising to your feet?

9 MR SACHDEVA: It was.

10 PRESIDING JUDGE FULFORD: Thank you very much.

11 Ms Buteau, we leave this with you. Obviously, you'll make
12 sure that all of those many documents are reunited with the witness
13 speedily. But can you please make sure that the relevant parts of
14 the document that Mr Sachdeva highlighted yesterday are photographed
15 before we lose, as it were, custody of it? It would be helpful to
16 ensure that Mr Sachdeva is satisfied with the appearance of the
17 photographs before this process is deemed finally complete. Thank
18 you very much.

19 Ms Samson, forgive me. I want to return just for a moment
20 to the one individual who is currently on the staff of the OTP, who
21 you submitted to us a little earlier today may well be in a position
22 to help with 321. For reasons which are entirely self-evident, he
23 or she is clearly going to be much more readily available. Not in
24 The Hague. First question is where is that individual?

25 MS SAMSON: In the DRC, your Honour, in Ituri.

1 PRESIDING JUDGE FULFORD: And has that person been there
2 for some time, or have they only recently left the Netherlands?

3 MS SAMSON: The person has been there for some time.

4 PRESIDING JUDGE FULFORD: Right. I'm sure, therefore, that
5 between now and 9.30 tomorrow morning you will investigate what the
6 speediest time is for that person to return from the DRC to the
7 Netherlands in order to give evidence.

8 MS SAMSON: Yes, that's the intention.

9 PRESIDING JUDGE FULFORD: Thank you very much, indeed.

10 MS SAMSON: Thank you.

11 PRESIDING JUDGE FULFORD: Good. Mr Sachdeva, thus far I
12 think it's right to say that there has been no suggestion from the
13 Prosecution that any rebuttal evidence is to be proposed by the
14 Prosecution on the abuse application. I put aside entirely the
15 possibility of rebuttal evidence as part of the trial proper. But
16 on abuse there has been no indication of an application to call rebuttal
17 evidence. And so, at the moment we are proceeding on the basis that
18 the only outstanding witnesses relevant to this part of the proceedings
19 are 321, 316 and the investigators. Could I have your confirmation
20 that that assumption is right?

21 MR SACHDEVA: At the moment, Mr President, that is right.
22 However, the Prosecution is, indeed, reviewing whether it needs to
23 produce further evidence or call further witnesses for the abuse of
24 process application. Of course, we will endeavour to provide finality
25 on that as soon as possible.

1 PRESIDING JUDGE FULFORD: I'm glad that I have a suspicious
2 frame of mind, Mr Sachdeva. You will have no later than 9.30 tomorrow
3 morning to have your final proposals, if there are to be any, formulated
4 for us with sufficient specificity to enable us to make a decision
5 about it tomorrow. And if those who ultimately bear responsibility
6 for this decision are not currently in this country, they're going
7 to have to be contacted so that an answer can be given to us by 9.30
8 tomorrow morning.

9 MR SACHDEVA: Yes, Mr President.

10 PRESIDING JUDGE FULFORD: Thank you very much. Maître
11 Mabilille?

12 MS MABILLE: (Interpretation) Mr President, we require
13 the Trial Chamber's assistance in respect of a number of issues, and
14 I would like to raise them before the Trial Chamber, if this is a
15 convenient time, that is.

16 The decision of 12 May foresaw a disclosure by the Office
17 of the Prosecutor of a number of materials and, in particular, a table
18 outlining the discussions or interviews with certain witnesses and
19 intermediaries. Now, this decision also outlined the material
20 regarding the career path of the intermediaries, and since this decision
21 was handed down we have requested these disclosures and have not yet
22 obtained them to date. So I would request of the Trial Chamber that
23 we fix a specific precise schedule for this disclosure. Because, as
24 the Trial Chamber will understand, that such disclosure will enable
25 us to work with the new material that shall be presented before the

1 Chamber. So that's the first issue I wanted to raise.

2 Now, the second issue is, of course, the issue of 143, and
3 the consequences of the possible appeal. But it would seem to be that
4 for the time being it is necessary that the Office of the Prosecutor
5 disclose at least --

6 PRESIDING JUDGE FULFORD: I'm going to interrupt you on this
7 point, Maître Mabilles.

8 We are hoping to deliver later this afternoon, in written
9 form, our decision on the Prosecution's application for leave to appeal
10 in relation to 143. And give me a moment.

11 (The Trial Chamber confer)

12 PRESIDING JUDGE FULFORD: And I'm able to tell you that the
13 Prosecution's application is going to be refused. And so, the order
14 that we have made in the decision of 12 May as regards disclosure of
15 the identity of 143 will have to be affected. And we hope - we hope - that
16 steps have been taken to ensure that that order can speedily be
17 implemented and, in particular, of course, certain protective measures
18 need to be implemented.

19 So before you carry on, it was necessary for you to have
20 that information. But please now proceed.

21 MS MABILLE: (Interpretation) I thank you, Mr President,
22 for this information.

23 So the issue of the disclosure of all the information that
24 was outlined in the decision of 12 May, well, it would -- we would
25 need to have this right now, because with this disclosure we can then

1 conduct possibly additional investigations, and we need this
2 information. I would go on to add that we need the de-redacted, or
3 unredacted, or once again redacted versions of the participation
4 requests with regard to these intermediaries. I would like to have
5 this as fast as possible.

6 I would go on to add that we have asked of the Office of
7 the Prosecutor, if I remember correctly, where we were requesting of
8 the Office of the Prosecutor a number of items of information with
9 regard to the intermediaries; notably, their contracts linking them
10 to the Office of the Prosecutor, and other information.

11 Now, today, despite the fact that we have reiterated this
12 request that we made on 18 March, we have received no reply. I would
13 like the Office of the Prosecutor to take a clear position here. We
14 have requested a number of documents. So either the OTP tells us that
15 they do not want to disclose them to us, and then we shall address
16 our request to the Trial Chamber for an order on the matter. But
17 remaining in such a situation where documents are not being disclosed
18 to us and we cannot prepare ourselves properly seems to us to be quite
19 a difficult situation to work with.

20 I would go on to add that -- and I'm sorry to provide you
21 with so much. And as I said, we wanted to apply to the document for
22 further material to be admit into evidence. We cannot submit this
23 application because we are still waiting for the transcripts of
24 testimony that are still with the Office of the Prosecutor, and
25 specifically, transcript 270. I believe that this transcript is

1 necessary for us to be able to move forward and not move or lose any
2 time.

3 Now, when the intermediaries and the investigators have made
4 their appearance, we will then be able to file our application for
5 abuse of process. However, we would need to have all these items
6 beforehand so that we can file our application in due form. I would,
7 therefore, like to insist upon the fact that we need to have a specific
8 schedule for disclosure of material that we require in order to work
9 now.

10 PRESIDING JUDGE FULFORD: Mr Sachdeva, would it be
11 convenient if we were to take a break now so as to give you an opportunity
12 to discuss with other members of your team the date by which you will
13 be able to comply with our order of 18 May, and we would ask you
14 particularly to address the transcripts issue as well, including
15 transcript 270 that has been raised by Maître Mabilie a moment ago.
16 Would that be convenient?

17 MR SACHDEVA: It would, Mr President. I can at this stage,
18 in respect on the transcripts, they are currently being transcribed.
19 Of course, the audio tapes were disclosed to the Defence when asked.
20 The process, as it has been submitted before, does take a long time,
21 and it's not because it's not being done efficiently, and the latest
22 estimate we have is that the transcripts will be ready around 15 June.
23 Now, I will try to speed that process up, but that's the information
24 that we have at this stage.

25 PRESIDING JUDGE FULFORD: Could you use at least part of

1 the half-an-hour break we're about to have to see whether that work
2 can be brought forward, Mr Sachdeva? The cumulative events are simply
3 going to lead to extended delays in relation to this, which are becoming
4 wholly unacceptable. We'll address this then again at quarter past
5 11. Thank you very much.

6 THE COURT USHER: All rise.

7 (Recess taken at 10.41 a.m.)

8 (Upon resuming at 11.11 a.m.)

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

10 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

11 MR SACHDEVA: Thank you, Mr President. Firstly, with
12 respect to the transcripts of 270, unfortunately, I have not been able
13 to speak to the appropriate person in the half-an-hour break, but I
14 can assure the Court that I will do my level best to speed up this
15 process.

16 What I can suggest - it may not be an ideal suggestion - is
17 that I believe we have disclosed draft transcripts to the Defence and
18 perhaps a filing could be made with those draft transcripts and then
19 later substituted by the official transcripts once completed.

20 PRESIDING JUDGE FULFORD: Are the draft transcripts in
21 existence already or not?

22 MR SACHDEVA: I believe so. We're just checking that, but
23 I believe so. And, just to make the point, they are the OTP's internal
24 draft transcripts.

25 PRESIDING JUDGE FULFORD: Can you remind us, Mr Sachdeva,

1 what this relates to? I have a feeling that this has been the subject
2 of inter partes exchanges rather than something that has particularly
3 engaged the Chamber. What is transcript 270?

4 MR SACHDEVA: Mr President, it is the transcript of the
5 re-interview of victim 2, if I recall correctly. And, of course, we
6 disclosed the audio tapes upon an order from the Chamber unredacted
7 and we are now in the process of transcribing the interview. And that's,
8 as I understand it, part of the Defence's application.

9 PRESIDING JUDGE FULFORD: Well, Mr Sachdeva, could you then
10 please disclose, essentially forthwith, the draft transcripts and
11 report back to us at 9.30 tomorrow morning with, as it were, the fastest
12 possible time-scale for completing a perfected draft?

13 MR SACHDEVA: Certainly, Mr President. I do believe that
14 the draft transcripts have been already disclosed to the Defence.

15 PRESIDING JUDGE FULFORD: If that they've already been
16 disclosed then clearly there's no need for an order.

17 Now, Mr Sachdeva, what about the orders that we made back
18 in the middle of May? I have to say we do express some surprise that
19 these have not been complied with already, given that they haven't
20 been the subject of an appeal. It's true there was no time-scale
21 attached to them, but nonetheless. Now, what are the Prosecution's
22 proposals?

23 MR SACHDEVA: Mr President, firstly we have had of course
24 inter partes discussions about the issues my learned friend has raised.

25 With respect to the information on the contact with

1 intermediaries, and intermediaries and their witnesses and the
2 background information, we are conducting a comprehensive review of
3 all the material which has to be verified and eventually presented
4 in a coherent manner, and I can tell the Court that on Monday we would
5 be in a position to disclose that information pursuant to the Court's
6 order, with your leave.

7 PRESIDING JUDGE FULFORD: Now, does that then cover - and
8 I'm looking at paragraph 150 of our order - paragraph 150(v)(ii)?

9 MR SACHDEVA: Mr President, unfortunately I do not have the
10 decision with me but I believe it does.

11 PRESIDING JUDGE FULFORD: Well, it's -- (v) is providing
12 a schedule confidentially by way of a filing to the Defence, setting
13 out the known contacts between the 23 intermediaries et cetera, and
14 (ii) is to disclose confidentially by way of a filing to the Defence
15 a short account of the professional backgrounds of intermediaries 143,
16 316, et cetera.

17 MR SACHDEVA: Yes. Just in respect of the employment
18 background of 316 and 321, that is already contained in the statements
19 that we have disclosed to the Defence for intermediary 143. Once
20 protective measures have been put into place, we should be able to
21 comply with that order.

22 PRESIDING JUDGE FULFORD: You'll remember, of course, that
23 it wasn't only their professional or employment backgrounds; it was
24 also their work, if any, with the Congolese authorities, NGOs and
25 children who were associated with armed groups.

1 MR SACHDEVA: Indeed. If that information is not contained
2 in the statements we will disclose the outstanding information.

3 PRESIDING JUDGE FULFORD: Monday 4 p.m. then.

4 MR SACHDEVA: Yes, Mr President.

5 PRESIDING JUDGE FULFORD: Thank you very much indeed. Was
6 there anything else, Mr Sachdeva?

7 MR SACHDEVA: Mr President, I do not believe so, thank you.

8 PRESIDING JUDGE FULFORD: Thank you.

9 Maître Mabilille, the -- I think the upshot of that, then,
10 is that by 4 p.m. on Monday the Prosecution will have complied with
11 paragraph 150(ii) and (v) of our decision in relation to intermediaries,
12 which I think addresses the two disclosure -- the two separate disclosure
13 elements of that decision.

14 In relation to (i) of paragraph 150, given that the
15 Prosecution's application for leave to appeal is refused, and the
16 reasons for that will be provided today, you will receive disclosure
17 of the identity of 143 as soon as protective measures have been put
18 in place. And it needs to be remembered that in earlier indications,
19 from either the OTP or the VWU or both, it was indicated that that
20 should take, as I recall it, no more than a fortnight to implement.

21 So, hopefully, steps will already have been taken in advance,
22 and that material should be ready to be disclosed to you in the very
23 near future. In any event, I'm going to ask, in the light of our decision
24 in relation to the application for leave to appeal, for us to be provided
25 in court at 9.30 tomorrow morning with the proposals by the Prosecution

1 and the VWU as to when 143's identity will be revealed to you.

2 In relation to the transcripts, you have the draft, as we
3 understand it already, and the Prosecution will report back tomorrow
4 with their proposals for a perfected version.

5 Is there anything else you'd wish to say on the matter?

6 MS MABILLE: (Interpretation) I thought that I understood
7 from my learned friend from the Office of the Prosecutor that he deemed
8 that we already had the material; that is to say, the professional
9 background for 316; that is to say for the two intermediaries, because
10 we had material within the statements themselves.

11 However, we consider that the material that we have access
12 to in the statements does not suffice. We need to have specific
13 information with regard to what was indicated in the order of the Trial
14 Chamber; notably, with regard to the professional background of these
15 intermediaries other than in the form of the statements that we might
16 find in the case file itself. That is how we understood the situation.

17 PRESIDING JUDGE FULFORD: And Mr Sachdeva will tell me if
18 I'm wrong, but I think the Prosecution also understand it in the same
19 way, Maître Mabilille.

20 Mr Sachdeva's submission, as I read it, was simply that there
21 is some information already within the statements, but that it is
22 recognised that you are entitled to additional information which will
23 be provided in schedule form by 4 p.m. on Monday of next week.

24 MR SACHDEVA: That's right, Mr President.

25 PRESIDING JUDGE FULFORD: Thank you very much.

1 Mr Desalliers?

2 MR DESALLIERS: (Interpretation) I thank you,
3 Mr President. I just wanted to follow on to the application that I
4 had made yesterday; that is to say, to extend the review period that
5 was granted for the transcripts. What I would suggest to the Trial
6 Chamber would be that we have a week to do so. Yesterday, we received
7 the equivalent of approximately ten days of testimony, of transcript
8 that is, that we wanted to review.

9 We would like to have a week in which to do that. In order
10 to avoid making this application systematically every time a new
11 transcript comes to light, I would like to request now that we be granted
12 a week every time new transcripts come our way because we are not just
13 checking one element over a specific day of a hearing, but we're actually
14 looking at the evidence throughout the entire day which requires, of
15 course, a lot of time.

16 PRESIDING JUDGE FULFORD: Granted. Anything else? No.

17 Now, we have an oral decision to deliver on the Prosecution's
18 application for disclosure of information. We do not require the
19 serried ranks of counsel to remain for this purpose and we will -- I
20 will not -- we will not consider it a discourtesy if during the course
21 of this oral decision particular individuals quietly leave court. So
22 feel free to abandon your desks if you wish to.

23 This is the Chamber's oral decision on the Prosecution's
24 application for disclosure of information relevant to Witness 297
25 called by the Prosecution, and witness 4 called by the Defence. Excuse

1 me a moment.

2 Can I ask whether the transcribers and interpreters have
3 before them the copies of this that were sent through either yesterday
4 or the day before? Good; I see them being brandished. In those
5 circumstances, save exceptionally, I do not propose to set out matters
6 of punctuation, but could I ask you, please, to follow the draft in
7 the form you have it. And we will need to do this in private session,
8 please.

9 (Private session at 11.24 a.m.)

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22 (Open session at 11.48 a.m.)

23 THE COURT OFFICER: We are in open session, Mr President.

24 PRESIDING JUDGE FULFORD: We will complete the rest of this
25 decision in public session.

1 16. This analysis from these earlier Decisions applies
2 without reservation to the suggested disclosure of the full identity
3 of "Cordo": Applying the reasoning set out above, his real name (if
4 known) is not something that the Defence has indicated it intends to
5 utilise as part of the evidence for the accused, and in the result
6 the Chamber is of the view that there is no proper basis under the
7 Rome Statute framework that would justify an order for its disclosure
8 to the Prosecution. The Defence has been ordered to disclose sufficient
9 information to enable the Prosecution to identify, and conduct
10 appropriate inquiries about, the Defence witnesses. The sole argument
11 raised by the Prosecution, as set out above, is that since the name
12 "Cordo" emerged during evidence that is being introduced by the Defence
13 in support, inter alia, of an abuse of process application, the Defence
14 cannot withhold his full name if it is in the accused's possession.

15 17. The mention of a name, even on more than one occasion,
16 during an interview with, or as part of the evidence of, a witness
17 cannot alone trigger Defence disclosure obligations - as just described,
18 these have essentially been limited to, first, the summaries of the
19 evidence of the witnesses the accused intends to call, and, second,
20 affording inspection of the other evidence he anticipates using during
21 the trial. Absent a contrary indication from the Defence, the name
22 "Cordo", given the circumstances in which this nickname has been
23 mentioned by two witnesses, does not fall into either category and
24 it is not disclosable. Furthermore, it is to be observed that if the
25 Prosecution analysis is correct, the Defence would bear continuous

1 disclosure obligations, triggered each time a witness called by the
2 accused mentions a person, place, event or document (whether in
3 interview or during evidence): Immediately thereafter the Defence
4 would need to effect service on the Prosecution of any additional
5 information thereon in its possession.

6 18. For all these reasons, the Prosecution application as
7 regards the name "Cordo" is refused.

8 Now, Maître Mabilie, we are, therefore, now in the process
9 of considering the Defence abuse of process application, and subject
10 to what we are told at 9.30 tomorrow morning, we are not going to be
11 able to progress that application until the two intermediaries - whose
12 presence we have required - are able to give evidence and until the
13 Prosecution have made the necessary arrangements for the investigator
14 or investigators to testify.

15 Does that summary match with your understanding of the
16 present position?

17 MS MABILLE: (Interpretation) Absolutely, your Honour.

18 PRESIDING JUDGE FULFORD: With very great regret, therefore,
19 this case is adjourned now until 9.30 tomorrow morning when we will
20 require from the Prosecution the update that we have requested, and
21 we will at that stage - doing the best we can - seek to establish the
22 timetable that will be applied to the outstanding issues on the abuse
23 of process application. Is there something, Mr Sachdeva?

24 MR SACHDEVA: Mr President, yes, with your leave. It is
25 in respect of the information the Court requires on possible further

1 rebuttal witnesses. The deadline, as I understand it, is for tomorrow
2 at 9.30. We respectfully seek an extension of that deadline until
3 Friday 4 p.m. The reason for this application is that to provide the
4 Court with finality on whether witnesses should be -- require witnesses
5 to come, are willing and able to come to the Court. For logistical
6 reasons, we would require at least one or two days to ensure that we
7 can provide complete information to the Chamber, if indeed those
8 decisions are made to call witnesses.

9 PRESIDING JUDGE FULFORD: What we're going to do,
10 Mr Sachdeva, is to adjourn this application until 9.30 tomorrow morning.
11 At that stage, we will expect from you a detailed explanation providing
12 dates of inquiries as to why - at this late stage in the evidence,
13 as regards the abuse of process application - the Prosecution has been
14 unable to finally formulate its proposals as regards rebuttal evidence.

15 And so, if there are particular witnesses that the
16 Prosecution have in mind, we will need to know for instance when the
17 decision was first made that a particular individual may be a potential
18 witness and when attempts were first made to contact him or her; and
19 thereafter, all of the steps that have been taken in relation to that
20 individual.

21 So, we will address this potential witness by potential
22 witness, rather than as some kind of global application. And to give
23 the Prosecution more time, we will need detailed background information
24 of that sort. Now, is that more limited request feasible, Mr Sachdeva?

25 MR SACHDEVA: Indeed, it is, Mr President. Thank you.

1 PRESIDING JUDGE FULFORD: Thank you very much. It must be
2 clear, however, that we make no promise at this stage that we are
3 necessarily going to grant further time. It will depend in part on
4 whether we consider that the Prosecution have acted with sufficient
5 timeliness in relation to their investigations and inquiries to date.

6 MR SACHDEVA: I'm guided, Mr President.

7 PRESIDING JUDGE FULFORD: Thank you very much, indeed. 9.30
8 tomorrow morning.

9 THE COURT USHER: All rise.

10 (The hearing ends at 11.58 a.m.)