

Trial Hearing
Witness: DRC-OTP-WWWW-0321

(Closed Session)

ICC-01/04-01/06

- 1 International Criminal Court
- 2 Trial Chamber I - Courtroom 1
- 3 Situation: Democratic Republic of the Congo
- 4 In the case of The Prosecutor v. Thomas Lubanga Dyilo - ICC-01/04-01/06
- 5 Presiding Judge Adrian Fulford,
- 6 Judge Elizabeth Odio Benito and Judge René Blattmann
- 7 Trial Hearing - Thursday, 4 November 2010
- 8 *(The hearing resumes in closed session at 2.30 p.m. from Courtroom 2) Reclassified
- 9 into Public
- 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: Private session, please.
- 14 *(Private session at 2.32 p.m.) Reclassified into Public
- 15 THE COURT OFFICER: We are in private session.
- 16 WITNESS: DRC-OTP-WWWW-0321 (On former oath)
- 17 (The witness speaks Swahili)
- 18 PRESIDING JUDGE FULFORD: Good afternoon, sir.
- 19 THE WITNESS: (Interpretation) Good afternoon.
- 20 PRESIDING JUDGE FULFORD: Mr Sachdeva.
- 21 MR SACHDEVA: Thank you, Mr President.
- 22 QUESTIONED MR SACHDEVA:
- 23 Q. Good afternoon to you, sir.
- 24 A. (No interpretation).
- 25 Q. I know that you were asked -- you were asked questions by my colleague,

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1 Ms Samson, and she's now no longer here, but I will be -- but I will be asking you
2 questions on behalf of the Prosecution and my name is Mr Manoj Sachdeva.
3 In your evidence you were asked questions about the contact you had with -- whether
4 you had any contact with the children who had spoken to the investigators, and you
5 answered that it was against your work ethic to have discussions about the content of
6 those interviews and I would like you to explain a bit more about what you mean that
7 it was against your worth ethic to have those discussions?
8 A. Thank you. When I said that asking questions to the children on the substance
9 of the interviews is against my work ethic, it simply meant the following: You can
10 have a child who has information that he can give me, but which he cannot give to
11 someone else. Let me give you an example. Say I am A. The child who has
12 information cannot give that information to B, X, Y, or Z. As you can see, it depends
13 on the information to be given to one person or the other.
14 Let me clarify by giving you the following example. There was a child who told me
15 the following, "When I was doing my military service, one of my superiors had asked
16 me to rape a woman; to rape that woman in the presence of several people." There
17 was a child who gave me that information.
18 Subsequently, that child went and met with another friend with whom we were
19 working and he gave him the same information, but added that the woman that he
20 had raped was the daughter of my maternal aunt and that was true. That woman
21 that he had raped was indeed the daughter of my maternal aunt.
22 So, you see, if I continued asking the questions to that child regarding the person that
23 he raped and if he had told me that, "That person is your sister," that is the daughter
24 of my own aunt, what would have been my reaction? I could have reacted very
25 badly.

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1 That is why in my work, in the child protection domain, it is not allowed to ask the
2 child detailed questions about any information that he may have. That is because if
3 you ask the child detailed questions and he gives you all the detailed information,
4 then you can react badly and act against the work ethic. Thank you.

5 Q. During the course of the last three days, you have regularly stated that your
6 memory is not perfect and that there are some facts that you can't recall perfectly. I
7 want to refer you to some parts of your statement that you gave to the [...] Prosecutor
8 this year and if I could first refer you to the document in tab 9 - and for the purposes
9 of the court officer it is EVD-D01-00347 - and firstly if I could ask you to turn to
10 page 11 and I'm going to refer you to lines 400 to 404.

11 PRESIDING JUDGE FULFORD: Yes, Mr Biju-Duval.

12 MR BIJU-DUVAL: (Interpretation) I'm wondering about the right of the
13 Prosecution to suggest an answer to the witness by referring him to prior statements.

14 PRESIDING JUDGE FULFORD: Well, let's see how it unfolds, Mr Biju-Duval. Yes,
15 Mr Sachdeva.

16 MR SACHDEVA: Thank you, Mr President. Mr President, with your leave, could I
17 ask Ms Struyven to read the French excerpts?

18 PRESIDING JUDGE FULFORD: Certainly, Mr Sachdeva. I'm very sympathetic
19 personally to that application. Yes, Ms Struyven.

20 MR SACHDEVA: Thank you, Mr President.

21 Q. Witness, my colleague, Ms Struyven, will read you the lines that I want you to
22 concentrate on and then I will ask you a question.

23 MS STRUYVEN: (Interpretation) Answer: "In any case, I'm not sure that he
24 entered ... the team. No, I really have no details about the name. It is certain that
25 this small chap... -- in fact, I really do not know him. I do not have any details."

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- 1 Question: "Okay. So you really do not remember?" Answer: "Yes, not exactly.
2 I really do not remember."
3 MR SACHDEVA: And the second excerpt I'd like to read out, or --
4 MR BIJU-DUVAL: (No interpretation).
5 PRESIDING JUDGE FULFORD: Yes, Mr Biju-Duval.
6 MR BIJU-DUVAL: (Interpretation) I believe what has been read is incorrect.
7 What is in the transcript is that, "I know him, actually." What the Prosecutor has
8 read is that, "I do not know him." That is actually the opposite.
9 MR SACHDEVA: My understanding, Mr President, is at line 404 the witness is
10 saying that, "I do not remember exactly." I'm reading the -- I'm reading the lines for
11 context.
12 PRESIDING JUDGE FULFORD: Mr Biju-Duval, line 404?
13 MR BIJU-DUVAL: (Interpretation) I was referring to line 400, which was misread
14 by the Prosecutor, and not line 404.
15 PRESIDING JUDGE FULFORD: Line 400 I think, Mr Sachdeva, says, "I know him,"
16 not that "I do not know him," and I think as it was read out it was the opposite of what
17 it actually is.
18 Right. Ms Struyven again, please, perhaps accurately reflecting line 400 this time.
19 Thank you, Mr Biju-Duval.
20 MS STRUYVEN: Excuse me, Mr President. I will start again at line 398:
21 (Interpretation) "In any case, I am not sure that he was between -- of the team. No,
22 really I do not have any details about the name. It is true that that small child -- well,
23 I know him, but really I do not have many details." Question: "Okay. So you really
24 do not remember precisely?" Answer: "Yes, in any case not really precisely. I do
25 not really remember that much."

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1 MR SACHDEVA: And the second excerpt that I would like --

2 PRESIDING JUDGE FULFORD: Right. Well, let's just understand exactly what
3 this extract refers to, Mr Sachdeva, who or what and in what context is being referred
4 to here in the extract you're reading out. So what is it that he is not remembering, or
5 not remembering well?

6 MR SACHDEVA: Mr President, for the purpose of my question, in a sense the
7 context of the reference is not relevant to the question.

8 PRESIDING JUDGE FULFORD: All right. So all you're seeking to establish, then,
9 that during the course of the interviews when asked about certain details he said,
10 "My memory is not very good on the particular issue you're asking me about."?

11 MR SACHDEVA: Precisely.

12 PRESIDING JUDGE FULFORD: Fine. All right. Example 2 then, please.

13 MR SACHDEVA:

14 Q. So, Witness, we'll now move to line 421 to 424, and this is -- my colleague,
15 Ms Struyven, will read out your answer.

16 PRESIDING JUDGE FULFORD: Right, so just check we have got 576 at the bottom
17 of the page, please, usher. Yes, Ms Struyven.

18 MS STRUYVEN: (Interpretation) Answer: "No, as far as he's concerned really I
19 will tell you bluntly that I do not remember. I do not remember because I tried to
20 think about that name, but in any case I do not have details. They are children that I
21 know quite a lot about, but with regard to him I really do not have details."

22 MR SACHDEVA: Thank you. And then the last excerpt is on page 17 and it's
23 line -- it starts from line 600 and at the bottom the ERN is 0581, and again
24 Ms Struyven will read out the excerpt.

25 MS STRUYVEN: (Interpretation) Answer: "You asked me the uncle. In any case,

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1 well, many -- well, now I thought about it during the night. (Expunged) in fact is not
2 the uncle of (Expunged). He is not the uncle of (Expunged), in any
3 case, because I didn't think so much about it."

4 MR SACHDEVA: Thank you.

5 Q. Now, Witness, in listening to those three excerpts where you have expressed
6 that you had to refer overnight, you had to think about things, my question is the
7 following: Even at the time that you were interviewed by the Prosecution, how
8 good was your recollection of the events that we have been discussing?

9 A. Thank you for that question. When I was working with the Office of the
10 Prosecutor, my memory was good. I answered calmly to their questions and I did
11 some thinking before I answered. I remembered several children who had the same
12 name. It was for this reason that I told Mr Biju-Duval that, if you read that excerpt,
13 I would want you to continue reading since I believe that you will see that I gave
14 useful clarifications on the issue. Thank you.

15 Q. Now, in your evidence you have given, you were -- you talked -- you were
16 asked the question why -- about whether you mentioned to the children that you
17 were working for the International Criminal Court, and one of the answers you gave
18 is the following and I'm going to read it out. For the benefit of my learned friend, it's
19 transcript 321, page 19, line -- lines 12 to 23 in the English version. I quote:
20 "I took these decisions on my own initiative. I decided not to talk to them about the
21 International Criminal Court. However, after this work, before we organised their
22 trip to (Expunged) said this to me, 'Before the children go to (Expunged), if there is
23 some way to do so I would like to tell them that they are going to meet agents of the
24 International Criminal Court,' and this is what I answered him. I said, 'In the place
25 where I'm going to fetch these children ...'" --

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1 PRESIDING JUDGE FULFORD: Too fast. Too fast. The French transcript is
2 disintegrating.

3 MR SACHDEVA:

4 Q. "... and this is what I answered him. I said, 'In the place where I'm going to
5 fetch these children, it would be very difficult for me to go back. I would be killed if
6 I did so.'"

7 My question is the following: Why do you say that you would be killed if you went
8 back?

9 A. Thank you for that question. When (Expunged) made the suggestion to me to tell
10 the children that they will be working with the International Criminal Court in
11 (Expunged), I turned down that proposal for the following reason: During a meeting,
12 or hearing, Madam Christine Peduto, who worked in the protection service in
13 Bunia - and I believe you invited her here during a hearing before the Court - we
14 followed her testimony. The entire town was following her testimony and there was
15 high tension amongst the population in Bunia. The population of Bunia was in a
16 state of alert at the end of that testimony, including people of Hema ethnicity with
17 whom we were working in the protection programme in Bunia. The Hemas were
18 very unhappy. They said that people who go and testify in the Court and say such
19 things are not doing anything good.

20 So I did the comparison. I understood that when this lady went and testified the
21 entire population were up in arms, so what is going to happen to me if I testified,
22 because I travel and work in the provinces, in the villages and in the other localities?
23 So what would happen when I go and testify? That is the reason which I say that
24 the tension was not only in Ituri, but in the entire country of Congo. When the
25 people hear about the International Criminal Court, they are in a state of alert; the

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1 population is in turmoil. Thank you very much.

2 Q. You also said earlier today that -- you spoke about an incident when you

3 arrived back (Expunged) and you met one of your (Expunged)

4 to -- to invite you to his place to stay and suggested that perhaps you should not go to

5 the great market where there would be many UPC agents. My question is this:

6 Why would there be a difficulty for you to be in contact with UPC agents?

7 A. Thank you for that question. This is what (Expunged) told me, (Expunged)

8 (Expunged)

9 (Expunged). And why did he say this?

10 Because he knew that I was very well known physically by many people and, if the

11 members of the population could identify me, they would look for me in that hotel

12 and there was a risk that I would be seriously mistreated.

13 (Expunged) added the following: All the children who are saying that I work with

14 the International Criminal Court, those children have had the chance to spread those

15 allegations everywhere, and even the friends with whom I worked at the CTO and

16 who were of Hema ethnicity have already also come to know about my activities.

17 So that is why my friend asked me not to move about in the neighbourhood of the

18 airport, because there were many people there who knew me. (Expunged) advised

19 me to call a certain number of people who could assist me, or better still to go and

20 spend the night in his house.

21 This is how come I contacted VWU in Kinshasa, and they told me to buy a hat and to

22 hide my face and that there would be people sent to come and fetch me. That is

23 what I did. I got a hat and I hid my face, and the workers of VWU in Bunia came to

24 look for me. According to me that (Expunged) really helped me because, if I had not

25 seen him, I would not have had the idea to call the VWU people. You know,

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1 referring to what was happening in Bunia and (Expunged) I realised that he was
2 quite correct in telling me that. That is my answer to your question.

3 Q. What was happening in Bunia and (Expunged)?

4 A. Thank you. The explanation that I have given you relates to Bunia.

5 Regarding (Expunged), I have had the opportunity to tell the VWU officers on several
6 occasions. Even before I travelled here in June, I had occasion to tell the OTP officers
7 that.

8 In (Expunged), there is a child called (Expunged). He's my friend. (Expunged)
9 him in Bunia. If you remember correctly, you will realise that I had told you that
10 there is a man -- that there is a man working in the (Expunged). When that
11 question was put to me I said, "Yes, I know this person and it is (Expunged). I met
12 this person in (Expunged) in May. I met him (Expunged). He called me and I
13 bumped into him at the market. He saw me in the market and he told me the
14 following: 'You are here.' And I told him, 'No, I don't live here. I live in (Expunged).'

15 And he told me, 'No, that is not true, sir. You live here.' And then he added, 'You
16 are my friend. Please come. We are going to have a conversation.' I went and
17 saw him and this is what he told me: 'We know everything that you are doing with
18 the International Criminal Court. You are a friend. Is it possible for you to give us
19 the contacts and the addresses that you have and which made it possible for you to
20 track down all the children that you put in contact with the ICC? And if you do that,
21 we will give you many -- we will give you a lot of money and we will give you an
22 appointment at the (Expunged), which is in (Expunged). I answered him, 'No, I do
23 not work at the ICC or for the ICC.' And then he told me, 'Look, please do not hide
24 anything from me. You are my friend. These are things that are well known. The
25 white people in the ICC will not give you anything. Come with me. Give us the

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1 contact details, the addresses of all the children that you put in contact with the
2 International Criminal Court. If you do that, we are going to give you money.' And
3 told him, 'Very well. Let us fix an appointment for tomorrow in (Expunged)
4 We agreed and I left. I did not honour the appointment on the date that was agreed
5 upon. And as from that time on, I told myself that this person, as he had told me
6 before that he was coming (Expunged), he should be there. So I would no longer
7 pass through the market.

8 A few days later, while I was strolling in town, I met him and he said, 'How are you
9 doing?' And I said, 'Fine.' I told him once again, 'I do not live here. I live in
10 (Expunged). And then he told me again, 'My friend, please be truthful. Tell me the
11 truth.' And I told him, 'What truth do you want me to tell you?'"

12 It's a long story. If you want me to relate it to you, it's going to take us a very long
13 time. I think I will stop at this point.

14 PRESIDING JUDGE FULFORD: I think, Mr Sachdeva, one of the problems, as that
15 was a very open question, "What was happening in Bunia (Expunged)," it can lead
16 almost anywhere. I think it needs to be more focussed, really. So where are we
17 going to next?

18 MR SACHDEVA: Thank you, Mr President. In fact --

19 Q. Witness, you said that this person, your friend, came to see you. Was he by
20 himself or was he with other people?

21 A. When met him at the market, he was alone. But when we started
22 discussing -- well, in fact, he was with other people when I met him in the market, but
23 for our discussion we moved -- we went apart. But one day he came to my home, he
24 was with two young people, and that was before I came here in the month of June.
25 It was in the month of May. They arrived and they asked me questions of the same

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1 nature, and I answered in the negative. I said that -- I said that there was too much
2 sunshine and I wanted the summer to come to an end and I would go back to
3 (Expunged).

4 Later on, I travelled, and I went home. Afterwards, he came to my home again.
5 I don't know whether the VWU (Expunged) told you everything that my wife told
6 them whilst I was (Expunged). When I saw all of that, I realised that my life was in
7 danger. When I returned from (Expunged), I no longer spent the night at the place
8 where I resided. I left two days later and I moved to another neighbourhood.
9 Today I live in another neighbourhood. Thank you.

10 Q. This friend of yours and the other person that he came with, did they have
11 any -- were they affiliated to any particular political or armed groups in Ituri and, if
12 they were, do you know which ones?

13 A. Thank you. My friend (Expunged) worked for the (Expunged) of
14 the (Expunged). I do not deny that (Expunged). At the
15 time I was looking for the addresses of children in order to ensure their family
16 reunification. He (Expunged), but I did not know
17 the persons who accompanied him. He simply said they were friends, friends who
18 helped him (Expunged) Bunia to (Expunged).

19 Q. And did he tell you whether he had come on anyone's behalf? Or was he there
20 in his own capacity?

21 A. Thank you. When he asked me to come and meet his bosses, he said that there
22 were certain people who were (Expunged) and he wanted to put
23 me in contact with those people. He said that everything was going to be fine.
24 That's what he told me.

25 Now, with respect to (Expunged) where I was to meet him, (Expunged)

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1 And now, for somebody who knows (Expunged) well -- maybe one day you will
2 come (Expunged); try to go, out of curiosity, to go to (Expunged). And you will find
3 that the majority of the (Expunged) belong to a certain ethnic group. In fact, most of
4 the (Expunged) there are of Hema ethnicity. Thank you.

5 Q. You mentioned that he asked you to come and meet his bosses and that there
6 were certain people who were (Expunged). Did you find out
7 the names, perhaps, of these (Expunged)?

8 A. Thank you. I asked him to give me the telephone numbers and the names of
9 his bosses. And he said, "No, I cannot give you that information here in your home.
10 Come, first of all, and let us meet at (Expunged)." That is (Expunged) which is called
11 (Expunged). He said, "(Expunged)." When he refused to give me the
12 names and the phone numbers, I asked him, "So, where in (Expunged) are we going
13 to meet each other?" He said, "Well, let's just meet in (Expunged) and then we will
14 together go somewhere." I became afraid and I did not go to (Expunged) to obtain
15 from him the names and the phone numbers of these individuals. Thank you.

16 Q. You've told us about the -- the danger that you were in, and I want to ask you
17 the following question: The children that you helped meet (Expunged) in Bunia for
18 screening and then further on going (Expunged), are you aware if any of those
19 children were ever threatened or put in danger?

20 A. Thank you for the question. There is a child who told me that the house of his
21 parents was burnt down, but the child did not tell me that he had been threatened,
22 and I'm referring here to (Expunged). Another child told me
23 that (Expunged), and
24 that was (Expunged). However, the child in question did not tell me that he had
25 been threatened.

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1 Q. Defence counsel has essentially suggested to you that the -- the threats and the
2 danger that you have told the Court and the security issues that you are facing are
3 lies, and I want to ask you what do you say about that.

4 A. Thank you. When the Defence counsel asked me whether I have spoken the
5 truth, I answered him here, saying that it doesn't suffice to talk. I asked him to
6 accompany me to Bunia. We don't even have to go all over the town. Let's go there
7 together, without anyone knowing what we are going to do there, and they will
8 realise -- they will see the reaction of the people who will see me there. He will see
9 with his own eyes the type of reaction that these people will show to me. He says
10 that I have invented certain things, but I answered him, saying I am not happy to live
11 in conditions which are not pleasing to me.

12 In the past, I had a good life. I was in business and I had no problems, but I have
13 had to leave that area because of threats and I am now living elsewhere. And today
14 someone is telling me I was lying. Is there anyone who would accept to live in a
15 locality where his life would be difficult whereas he was living in another place
16 where he had a better life? That is what I wanted to tell him. Thank you.

17 MR SACHDEVA: Mr President, may I have a moment?

18 PRESIDING JUDGE FULFORD: Of course.

19 MR SACHDEVA: Nothing further, Mr President.

20 PRESIDING JUDGE FULFORD: Thank you very much. Anything else, Mr
21 Biju-Duval?

22 MR BIJU-DUVAL: (Interpretation) No, your Honour.

23 PRESIDING JUDGE FULFORD: Mr Walley?

24 MR WALLEYN: (Interpretation) Could I ask a question, your Honour?

25 PRESIDING JUDGE FULFORD: Have you applied to do so, Mr Walley? I don't

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1 remember having seen an application.

2 MR WALLEYN: (Interpretation) I questioned the witness in June with your
3 leave, your Honour.

4 PRESIDING JUDGE FULFORD: Right. Well, ordinarily, that would have been
5 your questioning of the witness. Now, what's the subject matter you want to raise,
6 Mr WalleyN?

7 MR WALLEYN: (Interpretation) I wanted to ask the witness -- you know the
8 Defence suggested that the child (Expunged) and others were allegedly contacted by
9 him, whereas he knew that they had never been members of military group, and that
10 he convinced them to invent a story, stating that they had served in the military
11 group. I simply wish to ask the witness whether at that point in time he knew a few
12 or a lot of children who had indeed been members of these military groups, or
13 whether he had to look for them in the street and to invent things.

14 PRESIDING JUDGE FULFORD: That's the question?

15 MR WALLEYN: (Interpretation) Yes, your Honour.

16 PRESIDING JUDGE FULFORD: Mr Biju-Duval, one question so as to help us find
17 the truth. Do you object to one further question being asked?

18 MR BIJU-DUVAL: (Interpretation) I have no objection to the establishment of the
19 truth, your Honour. He may put his question.

20 PRESIDING JUDGE FULFORD: I'm afraid I put my question to you in a rather
21 loaded way, Mr Biju-Duval. Yes, Mr WalleyN.

22 MR WALLEYN: (Interpretation) Your Honour, I think the witness has already
23 heard the question.

24 QUESTIONED BY MR WALLEYN: (Interpretation)

25 Q. What I would like to know from you is whether, with regard to the suggestion

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1 made by the Defence, namely, that you convinced the child (Expunged) others to
2 invent an account, stating that they had been members of a military group, at that
3 point in time did you personally know certain children or many children who had
4 indeed been members of a military group or were you rather in a situation -- found
5 yourself in a situation where you had to convince street children to invent these
6 accounts?

7 A. Thank you for that question. I worked with children for a long time, and
8 during that period of time I knew a lot of children who had gone through our centre
9 whilst I was working for (Expunged). At that point in time, if I had
10 been asked to look for even 500 children, I would have been able to. However, when
11 I am told that these were street children, well, that would be -- or, that is a lie. These
12 were not street children; they were children who had been enlisted into military
13 groups.
14 However, I think you should ask yourself the following question: If someone
15 requests you to look for children who have served in the army and then you go
16 looking for street children, now, in such a case if questions are put to you, questions
17 such as the ones which were asked to me two times, three times, and then you are
18 cross-examined, there are questions which are put to you on the forms that were
19 prepared for these children, do you think that a street child would be able to survive
20 such questioning? Will he be able to answer such questions? Would a street child
21 have a demobilisation certificate showing that he left a military group, an armed
22 group? Can a street child have ID papers? Can a street child know his rights or her
23 rights after leaving the CTO or after leaving military service? All of that is
24 impossible. A street child, if you meet one and you put two or three questions to
25 them, questions relating to child soldiers, that street child will not be able to answer

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1 your questions. That is the answer I have for you, Counsel. Thank you.

2 MR WALLEYN: (Interpretation) Thank you, Mr Witness. And thank you, your
3 Honour.

4 PRESIDING JUDGE FULFORD: Sir, I want to thank you on behalf of the Judges of
5 this Court for the assistance that you've provided us now stretched over rather a long
6 period of time. You have been extremely patient with us. You have listened
7 carefully to the questions and you have given very full and precise answers. What
8 you have said will undoubtedly assist us in our search for the truth in this case. And
9 this Court, as with similar tribunals, can only function properly if people like yourself
10 are prepared to come all this way to give evidence. We, therefore, want to thank
11 you for the help that you have provided.

12 Closed session, please.

13 *(Closed session at 3.22 p.m.) Reclassified into Public

14 THE COURT OFFICER: We are in closed session.

15 (The witness is excused)

16 PRESIDING JUDGE FULFORD: We're going to rise for ten minutes and then come
17 back to deal with some administrative matters before we part for the week. A
18 question for you to think about, please, over the next 10 minutes. 316 had an
19 estimate of four days. If we are -- if we were to sit at 2 p.m. on Monday, giving us
20 Monday afternoon, Tuesday, Wednesday, Thursday and Friday, are we confident
21 that his evidence will be concluded? Don't answer now. Answer in 10-minutes'
22 time. Thank you.

23 THE COURT USHER: All rise.

24 (Recess taken at 3.23 p.m.)

25 (Upon resuming in open session at 3.37 p.m.)

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

2 PRESIDING JUDGE FULFORD: Nearly the whole of this week has involved private
3 sessions and we think that efforts should be taken to publish a redacted transcript of
4 the evidence of this witness.

5 We are very much aware, Mr Sachdeva, that you are operating under a certain
6 amount of pressure at the moment, not least with the departure of Ms Samson.

7 Would it be unreasonable for us to ask that someone in your team looks at the
8 transcripts of this week, the edited versions, to see whether by excising names we can
9 put together something that can be published?

10 MR SACHDEVA: Mr President, that certainly can be done. It's just a matter of
11 when it can be concluded.

12 PRESIDING JUDGE FULFORD: I absolutely understand. We won't set a timetable
13 at the moment. Perhaps you can come back to us on Monday with a -- at least a
14 tentative proposal as to when that can be done by.

15 MR SACHDEVA: Certainly.

16 PRESIDING JUDGE FULFORD: Thank you very much. Acceptable,
17 Maître Mabilie?

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

19 PRESIDING JUDGE FULFORD: Mr Sachdeva, we're grateful to the Prosecution for
20 the very recent email in relation to document 1814. We very carefully considered
21 your report as to the disclosure that has been effected and we are of the view that in
22 light of what has been given to the Defence as regards the issue that we raised the
23 other day, the Prosecution has fully discharged its disclosure responsibilities.

24 MR SACHDEVA: Thank you, Mr President.

25 PRESIDING JUDGE FULFORD: Turn next to the hand-over report for a particular

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1 witness dated 20 July 2009. We are of the view that this should be disclosed but,
2 before that happens, could you please consider the matter with the Victims and
3 Witnesses Unit to ensure that there are no adverse security implications if it is
4 disclosed in full.

5 MR SACHDEVA: Thank you for that guidance, Mr President. We will certainly do
6 so.

7 PRESIDING JUDGE FULFORD: Thank you very much. Maître Mabilille, I asked
8 you the other day whether it is realistic of us to expect for the Defence submissions on
9 abuse to be available five working days before the Christmas break; is that
10 achievable?

11 MS MABILILLE: (Interpretation) Absolutely, your Honour. In any case, we're
12 going to be making every effort to do that because we would like to submit that
13 request as soon as possible. We will try and respect that deadline.
14 Could I just take this opportunity to indicate two things to the Chamber, please:
15 First of all, we are still not at all satisfied with the disclosure by the OTP of elements
16 concerning our request for abuse of procedure -- abuse of process, excuse me. We are
17 still hopping to obtain a certain number of items. If this is not possible, we would like
18 to include this issue in our request with regard to abuse of process so that the
19 Prosecution knows our position.

20 Our position at the moment is that the Prosecution has in hand a certain number of
21 elements that it is not transmitting to us. We are making a note that if this is not
22 communicated to us we will include it in our request for abuse of process.

23 The second thing that I would like to say to the Chamber is that we had
24 undertaken - I said this at the resumption of the trial - to submit a motion concerning
25 the admission of a certain number of elements. We have not yet submitted that

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1 motion because, as the Prosecution disclosed a certain number of elements along the
2 way, we added them into that motion.
3 We are going to submit it tomorrow. It will be our third motion. And we will have
4 to see whether we submit a fourth motion with regard to elements that the
5 Prosecution ought to be communicating to us as we go along.
6 I'm informing you of this because we are going to meet the deadline we had
7 undertaken to meet. We will submit the motion on 10 December, if the testimony
8 wraps up around 25 November, but we have two things to submit very quickly to the
9 Chamber, applications for certain elements to be taken into account in the file itself.
10 That is what I wanted to inform the Chamber. Thank you.

11 PRESIDING JUDGE FULFORD: Maître Mabile, if there are - as there clearly
12 are - extant complaints about material non-disclosure, I would encourage you to set
13 those out for the beginning of next week, perhaps using tomorrow, so that we at this
14 stage understand exactly what the complaints are to see if we can engage usefully on
15 the issue and so that the Prosecution have had it clearly spelt out in writing for them,
16 so that there is no allegation later that you hadn't sufficiently clearly described what
17 you believe are the outstanding issues or the outstanding material that hasn't been
18 handed over.

19 So I would encourage you, please, perhaps to use tomorrow to provide us with
20 something for next week that we can look at. Thank you very much.

21 We'll now give a very short ruling as regards disclosure concerning Witness 555.

22 On 29 June 2010 the bench gave leave to the Prosecution to call Witness 555 in order
23 to establish that some of the witnesses relied on by the Defence for the abuse
24 application have been put under improper pressure to give evidence in support of the
25 accused. The Defence sought and the Prosecution has agreed to disclose the identity

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1 of the intermediary who put 555 in contact with the Prosecution.

2 The request currently before us is that the Prosecution should reveal the details of all

3 the communications between the Prosecution and Witness 555. By way of

4 justification in an email of 22 October 2010 to the Chamber the Defence suggested that

5 555 had lied about his alleged service in the army as set out in his statement of

6 17 April 2010.

7 The Defence contends that members of 555's family and relevant school documents

8 reveal that he was not in the army at the relevant time. The Defence submits that

9 this is a patently false witness and that the Prosecution failed to carry out proper

10 checks to ensure that they would be calling a witness of truth.

11 The Prosecution in an email response of 3 November 2010 underlines that since the

12 stay was lifted on 8 October 2010 its only contact with 555 has concerned his

13 availability to testify. The OTP has also addressed security issues in anticipation

14 that he may be available to give evidence. The Prosecution suggests that since we

15 now know that 555 will not be called and, therefore, will not have the opportunity to

16 contest any of the allegations that the Defence seeks to advance that this application

17 should be refused. Finally, the Prosecution argues that more complete arguments

18 should be presented by the Defence in a written filing.

19 In the judgment of the Chamber, further submissions are unnecessary and the

20 conflicting arguments are clear. The suggested failure by the Prosecution

21 adequately to investigate the reliability and probity of its intermediaries and

22 witnesses is a legitimate area to be explored by the Defence as part of the present

23 abuse of process application and, more generally, during the trial. It forms part of a

24 pattern of an alleged failure to investigate these suggested crimes reliably.

25 On the basis of the material investigated by the Defence (summarised above), the

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1 Chamber is of the view that in this context evidence relating to 555 has been
2 materially called into question and the threshold for disclosure has been crossed as
3 regards the detail of the contacts between 555 and the Office of the Prosecutor.
4 The Chamber will, in due course, bear in mind that 555 has not been called to address
5 any of the relevant issues. This material is to be divulged by 4 p.m. on Monday,
6 8 November 2010, unless during the course of Monday morning we are addressed by
7 counsel for the Prosecution should difficulties in complying with that order need to
8 be brought to our attention.

9 On the basis that we sit at 2 p.m. on Monday, do we anticipate we will conclude the
10 evidence of 316 by 4 p.m. on Friday afternoon? Mr Sachdeva.

11 MR SACHDEVA: The answer is yes, Mr President.

12 PRESIDING JUDGE FULFORD: Thank you. Maître Mabilille.

13 MS MABILLE: (Interpretation) Yes, your Honour.

14 PRESIDING JUDGE FULFORD: I hope I don't need to remind either of you of that
15 at 3.30 on Friday afternoon. Anything else? Certainly.

16 MS MABILLE: (Interpretation) Yes, your Honour. I see that we have 10 minutes
17 left. I would like to raise a problem with the Chamber, and in order to do that
18 I would like to hand up a document to you to which I would like to draw the Court's
19 attention. I have made a copy for the three judges. This is a document which was
20 communicated to us by the OTP.

21 I would add that I have checked, the legal representatives have not had access to this
22 document but this is a document which we are going to use subsequently in the
23 cross-examination of 583, and so the legal representatives will have this document
24 which comes from the OTP when the time comes for 583 to be called.

25 But if the Prosecutor and the Chamber has no objections, I have made copies for

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1 everyone to simplify this quick presentation. Can we give this document to the
2 Chamber?

3 PRESIDING JUDGE FULFORD: Please.

4 MS MABILLE: (Interpretation) Your Honour, your Honours, this is an
5 investigator's note which was communicated to us by the OTP on 1 November 2010.
6 This -- the first page that I have given you is the page that we received at the time of
7 disclosure and which explains how redaction is done and what the applicable rules
8 are for redaction.

9 This note was made as you can see on page 1 through Mr Bernard Lavigne, and
10 I would like to draw the Chamber's attention to page 35, page 35 of this note.

11 THE INTERPRETER: Interpreter correction: Page 35.

12 PRESIDING JUDGE FULFORD: Mr Sachdeva?

13 MR SACHDEVA: I apologise, but perhaps we can conduct this in private session,
14 just --

15 PRESIDING JUDGE FULFORD: That what, we're likely to start mentioning things
16 that the public shouldn't here; is that right?

17 MR SACHDEVA: Possibly, yes, Mr President.

18 MS MABILLE: (Interpretation) I had thought of that. It is my intention to use the
19 numbers of the intermediaries, because we're talking about intermediaries here. So
20 I think that we can remain in public session if I use the numbers when I read the
21 passages out.

22 PRESIDING JUDGE FULFORD: Let's all be careful. Good.

23 MS MABILLE: (Interpretation) Of course. All right. The first passage to which I
24 wanted to draw the Chamber's attention --

25 PRESIDING JUDGE FULFORD: I'm sorry, Maître Mabilille. Mr Sachdeva is on his

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1 feet. Yes, Mr Sachdeva.

2 MR SACHDEVA: I'm sorry, Mr President, but there has been a name mentioned
3 that, at this stage, we would not like to be divulged.

4 PRESIDING JUDGE FULFORD: Right. There we are. Redaction. Private
5 session, please.

6 *(Private session at 3.55 p.m.) Reclassified into Public

7 THE COURT OFFICER: We are in private session.

8 PRESIDING JUDGE FULFORD: Yes, Maître Mabilie.

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

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1 intermediary's version differed significantly raising doubts about their credibility and
2 reliability.

3 (Interpretation) I will stop there, your Honour, and say that as far as we're
4 concerned this note is of great importance. I would like to come back to the first
5 page, your Honour, on which you will see that this note has been redacted. The
6 OTP tells us that these redactions were done. If I read the cover note, the cover page,
7 they were made either in application of Rule 81(1) or Rule 81(2), and then I read and
8 81(4) (speaks English) redaction for which the Prosecution will seek authorisation for
9 the Trial Chamber.

10 (Interpretation) I would like this note to be examined by the Judges and I would like
11 to know -- I would like the Chamber to indicate which redactions may be made and
12 which may not be made. That is my first request concerning this document.

13 My second request is, your Honour, as we can see it would appear that in 2006, on
14 23 February 2006, the OTP itself expressed doubts particularly concerning
15 intermediary 31. I would like to know whether the Chamber would give the
16 Prosecution an instruction to communicate to us all elements concerning
17 intermediary 31 given what we have been able to hear today and given this very note.
18 So two requests: The issue of redactions and also the issue of communicating to us
19 all documents in the possession of the Prosecution concerning the contact that it may
20 have had with intermediary 31.

21 Your Honour, these are my explanations on this point.

22 PRESIDING JUDGE FULFORD: Maître Mabilie, subject to anything that

23 Mr Sachdeva says on the first point, we of course will go home and do our homework
24 and look to ensure that any redactions on this document are well-founded and if
25 necessary there'll be an ex parte with the Prosecution if there's any elements over

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1 which we have doubts.

2 In relation to the second point, intermediary 31, at the moment I think he or she is not
3 an intermediary in relation to whom disclosure has been ordered. If it's being said,
4 as it clearly is, that the disclosure threshold for intermediary 31 has either completely
5 or in part been crossed, it might be useful to have set out shortly the basis on which
6 the Defence now say material in relation to intermediary 31 is now disclosable.

7 Would that be a -- would that be helpful? Indeed, would that be sensible?

8 MS MABILLE: (Interpretation) Yes. We can send an email to the Chamber with
9 all the information underlying our application about 31, who is both a witness and an
10 intermediary.

11 PRESIDING JUDGE FULFORD: I think it would be helpful for us and for the
12 Prosecution if you -- you needn't go into great detail, but if you could set out the
13 essence of why you're submitting that material in relation to 31 is now disclosable.
14 I think it would be sensible -- just give me a moment.

15 (Trial Chamber confers)

16 Maître Mabilille, I think it would be sensible if at least one member of the front row of
17 your team was in the building tomorrow in case we need to have a hearing after
18 we've received the email communication. So if one of you, please, could be available
19 at relatively short notice in case we have questions to put to you.

20 Mr Sachdeva, do you have any observations on that proposed plan?

21 MR SACHDEVA: Mr President, we don't have observations on the manner of
22 raising this issue. Of course, for such an important issue perhaps a filing might be
23 more preferable. However, I understand that we are -- we are dealing with tight
24 deadlines, but as long as the Prosecution has sufficient time to respond to their
25 application then, yes, that's fine.

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1 PRESIDING JUDGE FULFORD: I'm hoping that Maître Mabilille will have
2 something to us and to you on Witness 31 some time today, over the next two hours
3 or so?

4 MS MABILILLE: (Interpretation) Yes, the team will take charge of that.

5 PRESIDING JUDGE FULFORD: If you could be available or somebody from your
6 team could be available tomorrow. Depending on what's set out, it may be that it
7 will be sufficient for you to respond by email but we will be here, and if you would
8 prefer to address us either inter partes or ex parte, you're wholly free to make the
9 request.

10 MR SACHDEVA: Perhaps what we could do, Mr President, is forward you the
11 document ex parte with the full document so you can see what's been redacted.

12 PRESIDING JUDGE FULFORD: Certainly in relation to this. If it's not available to
13 us already, I would ask please that this is forwarded to us this evening. I'd assumed
14 that we should be able to find it in the Court's paper management system, but
15 maybe -- no, it's not. Right.

16 Please forward it to us in a non-redacted form, and then in relation to 31 if you
17 could -- having seen the Defence application, if you could indicate whether you are
18 content responding by way of an email or whether you would prefer for there to be
19 an inter partes or ex parte hearing.

20 MR SACHDEVA: Certainly, we will do so. And if I may just respond with leave of
21 the Court to the first point my learned friend raised, the Prosecution has disclosed
22 that note on the issue in respect of intermediaries 143 and 316 and the three former
23 child soldiers. That note has been disclosed. So perhaps records can be checked,
24 perhaps we can assist the Defence in identifying that note.

25 PRESIDING JUDGE FULFORD: All right. But I think there is -- there is clearly an

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1 issue as to whether or not sufficient has been disclosed from the form that
2 Maître Mabilie handed up and the second issue is whether or not they're entitled to
3 further details in relation to Witness 31. So those two still need to be addressed. Of
4 course if you can assist Maître Mabilie as soon as we've risen on any aspect of this,
5 that's to be encouraged.

6 MR SACHDEVA: Indeed. I just wanted to respond to that first point.

7 PRESIDING JUDGE FULFORD: Good. All right. Thank you very much,

8 Mr Sachdeva.

9 Well, we may well meet again then tomorrow, but Maître Mabilie we will certainly
10 look at these as soon as the information comes through. So we may meet tomorrow;
11 if we don't, we will meet in Courtroom 2 at 2 o'clock on Monday, 8 November.

12 Thank you all very much.

13 *(The hearing ends in private session at 4.06 p.m.) Reclassified into Public

14 RECLASSIFICATION REPORT

15 Pursuant to Trial Chamber I's email instructions dated 5th April 2011, the redacted
16 version of the transcript with its redactions is reclassified into Public.