

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and Judge

4 René Blattmann

5 Situation in the Democratic Republic of the Congo - ICC-01/04-01/06

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

7 Wednesday, 27 January 2010

8 (The hearing starts at 2.35 p.m.)

9 THE COURT USHER: All rise. The International Criminal Court is now in
10 session. Please be seated.

11 PRESIDING JUDGE FULFORD: Good afternoon. Before Maître Mabilie opens the
12 case for the Defence and before we deliver a short oral ruling on disclosure
13 between the Defence and the legal representatives of victims, there are two issues
14 that should be resolved now (I think not least for the convenience of principal
15 counsel for the Office of Public Counsel for Victims).

16 The first of those issues is that we have had a request to grant protective
17 measures for the first Defence witness, Defence Witness 02. Insofar as there has
18 been distribution of the relevant email requesting those measures, are there any
19 objections to what is proposed? Mr Sachdeva?

20 MR SACHDEVA: None, Mr President.

21 PRESIDING JUDGE FULFORD: Thank you.

22 MR WALLEYN: (Interpretation) Your Honour, we have read the request of the
23 Defence. I didn't see any substantiation thereof. I would like the Defence to
24 further explain its position with respect to the presence of victims.

25 PRESIDING JUDGE FULFORD: You're putting the cart slightly before the horse,

1 Mr Walley. We're not dealing with the second application, which is to exclude
2 some representatives of victims. We're dealing at the moment with the simple
3 request for what have become, perhaps regrettably, rather standard protective
4 measures in this trial to be applied to the first witness.

5 Now, do you have any objections to that proposal?

6 MR WALLEYN: (Interpretation) I thought that we were talking about
7 protective measures, but we really have no objection.

8 PRESIDING JUDGE FULFORD: Maître Mabil, for the reasons that have been
9 outlined in the request, it is granted and the first witness will give evidence
10 with the protection that you have requested.

11 Now, focusing on issue -- on the second issue, which is to exclude from the
12 body of the Chamber those representatives of victims who have not been granted
13 permission to question Witness 2, the Bench would like a little bit of additional
14 assistance.

15 The application is advanced on the basis of the security concerns which were
16 set out in your email to the Chamber. Without specifying them, they are very
17 particular security concerns which that witness has if it becomes known generally
18 that he has given evidence.

19 The application, as it seems to us, but we'd like your assistance, is
20 effectively tantamount to suggesting that if non-participating lawyers are allowed
21 to be within the Chamber, that they are going to contribute to revealing in the DRC
22 the kind of information which Witness 02 has expressed his concern about.

23 Now, if that is the suggestion, we require assistance from you as to what the
24 foundation is for alleging that lawyers appearing before this court are going to be
25 minded, or there's an appreciable risk that they would be minded, to behave in that

1 way.

2 And you ought to bear in mind that the section of the transcript that has
3 been quoted in the email in fact is taken from a transcript of 8 April 2009,
4 Transcript 167, in which the Chamber was exclusively focusing on the issue of
5 disclosure of documents to participating victims and, in particular, providing
6 advance notice of those documents to the representatives of victims. The section
7 quoted had nothing at all to do with the presence of lawyers in court during the
8 course of a hearing.

9 Now, we would request your assistance, please, on the issue that I have just
10 raised. If you feel you're not able to deal with it in public session, we will go
11 into private session.

12 MR BIJU-DUVAL: (Interpretation) Yes, your Honour. It goes without saying
13 that the Defence considers the Court to be a common courtroom for all lawyers and
14 so it is not with pleasure that we raise this matter. We raise this difficulty
15 because we bore in mind the fact that protection is granted to this witness and we
16 wanted to ensure coherence in the management of issues of disclosure. For the
17 obvious reasons which have been recorded by the Bench in its previous decisions,
18 the revelation of disclosure of the identifying information of a witness to all the
19 victims tantamounts to making such information public - such confidential
20 information public. Given the number of victims who are participating and the fact
21 that it is sometimes difficult to control the disclosure of information, we have
22 certain difficulties with respect to Defence witnesses and it is for this reason
23 that we feel that the disclosure of confidential information, especially the list
24 of Defence witnesses, should be limited only to victims who are authorised to put
25 questions to the protected witness. That is our understanding of the decision of

1 the Chamber issued on 9 November last year.

2 Contrary to what we expected our first witness feels that his identity should
3 be shielded and, given this situation, we think that to implement your decision of
4 9 December we believe that unfortunately it is necessary to request the victims, or
5 those who represent the victims, to stay out of the courtroom. Otherwise, the
6 protection of the identity of this witness would not be ensured.

7 And so the question that arises is could we prohibit disclosure of this
8 information by counsel? Well, to answer that question we rely on the determination
9 of the Chamber.

10 (The Trial Chamber confers)

11 PRESIDING JUDGE FULFORD: We needn't trouble you for the moment, Mr Walley.

12 The Defence has raised an issue as regards the presence of representatives of
13 victims during the course of the evidence of Defence witnesses for whom the Bench
14 has granted protective measures and, in particular, the protection of anonymity.

15 The Defence suggests that non-participating lawyers representing victims -
16 put otherwise, those lawyers who have not been given permission to question the
17 witness - should be excluded from the body of the court, because it would mean that
18 they would hear material and discover information that is potentially confidential
19 and which may place the witness at risk, and which they are not (pursuant to the
20 Chamber's orders on disclosure) entitled to receive.

21 This is, in our view, an issue of significance that requires mature
22 consideration and careful deliberation. We were apprised of the application at a
23 quarter to midday today; some three hours ago. If this issue, as we anticipate, is
24 going to arise in relation to other witnesses, the Defence must set out their
25 principal objections in writing and we give them until 4 p.m. on Friday of this

1 week to do so. Any responses must be with the Chamber from the Prosecution and the
 2 representatives of victims by 4 p.m. of Tuesday of next week.

3 As regards the first witness, Witness 02, we have considered carefully the
 4 particular reasons which he has advanced for wanting protective measures, and in
 5 our judgment (without in any way prejudicing the ultimate decision that we will
 6 make on this issue in principle) there are, viewed pragmatically, no significant or
 7 material reasons for believing that his security will be endangered if
 8 non-participating legal representatives are present in the body of the court during
 9 the course of his evidence. Accordingly, the legal representatives can remain for
 10 his evidence and we will determine this issue in principle in due course.

11 Now, that said, is there anything else that anyone wishes to say on this
 12 issue? Yes, Ms Massidda?

13 MS MASSIDDA: I am very sorry, your Honour. My apologies. With the
 14 indulgence of the Chamber, for the response by the legal representatives would it
 15 be possible to have a deadline on Wednesday instead of Tuesday? Thank you very
 16 much. The reason is that I will be unable to access my email. Thank you.

17 PRESIDING JUDGE FULFORD: Yes, Wednesday, 4 p.m. It means that we will have
 18 to take - or we will potentially have to take - individual decisions, such as the
 19 present one, until such time as we have been able to resolve the issue in
 20 principle. Thank you, Ms Massidda.

21 We now deliver the Chamber's:

22 **Oral ruling on disclosure between the Defence and the legal representatives**
 23 **of victims.**

24 **The Issue**

25 An issue has arisen as to the arrangements for service on the legal

1 representatives of victims of the documents and other paper or electronic materials
2 that the Defence intends to use in the questioning of its witnesses.

3 It is to be observed that certain material has been provided to some of the
4 legal representatives of victims in accordance with the Trial Chamber's order of 9
5 December 2009 (Transcript 222): see, for instance, the email of 11 December 2009
6 from the Defence, sent at 2.38 p.m., communicating the identities and the summaries
7 of evidence of various witnesses to Mr Walley and Ms Massidda. The Defence had
8 determined that these victims are personally affected by the anticipated testimony
9 of certain identified witnesses.

10 On Friday 22 January 2010 the Bench asked the Defence and the legal
11 representatives of victims to establish an acceptable *modus operandi*, but it was
12 informed in an email from principal counsel for the Office of Public Counsel for
13 Victims on Monday 25 January 2010 that agreement was not achievable.

14 **The submissions**

15 Principal counsel for the OPCV on 25 January 2010 (in an email sent at 9.13
16 a.m.) set out her submissions on disclosure in these circumstances. First, the
17 Chamber was referred to some of the earlier occasions when this issue has been
18 generally considered, as rehearsed extensively hereafter.

19 The legal representatives set out that they have been provided by the
20 Prosecution, via an email dated 20 January 2010, with the list of documents counsel
21 may use when questioning the first Defence witness. However it was observed that,
22 as of 25 January 2010, only two out of the six documents are accessible to the
23 legal representatives in the Court's electronic document-management system,
24 Ringtail. This problem has been brought to the attention of the Prosecution and we
25 interpolate to observe that we have been informed by email this morning from the

1 Prosecution that access to the outstanding four documents was facilitated on 25
2 January 2010.

3 On the main issue, by way of summary, the legal representatives submit that
4 the jurisprudence of the Court has established that the Defence is obliged to
5 disclose to the participating victims any document and materials that are to be
6 used for the questioning of witnesses at least three days in advance of the
7 relevant testimony. Furthermore, it is suggested that participating victims are to
8 be provided with the list of witnesses, the documents and any other tangible
9 objects that are going to arise during the evidence of the Defence witnesses at
10 least seven days in advance of the relevant testimony, and that a list should be
11 provided within the same timeframe as regards any material that the Defence propose
12 to introduce from the Bar table.

13 The Prosecution, in its response submitted by way of an email of 25 January
14 2010 at 1.23 p.m., referred particularly to the Chamber's decision of 9 December
15 2009 (discussed hereafter). Counsel for the Prosecution set out their submissions
16 as follows:

17 "The Prosecution's position is that in order to minimise requests for
18 adjournments or last minute applications that could only be legitimately brought
19 once a Defence witness appears - and the legal representative is apprised of the
20 testimony of that witness and has analysed whether a victim's personal interests
21 are affected by it - the Prosecution proposes that, to the extent possible,
22 documents to be used in examination of Defence witnesses should be transmitted to
23 the legal representatives three days in advance of their anticipated use in court
24 as a professional courtesy, rather than as a legal obligation. There is unlikely
25 to be significant risks to the security of a witness, or to his or her willingness

1 to testify, since by this three day period he or she is likely already in The Hague
2 under the care of the Victim and Witnesses unit."

3 **The Jurisprudence of the Chamber**

4 In its decision on victims' participation (18 January 2008, document 1119),
5 the Chamber set out its general approach to this issue:

6 Victims' access to the record, documents and filings

7 105. As a general rule, the Trial Chamber considers that Rule 131(2) of the
8 Rules provides participating victims the right to consult the record of the
9 proceedings, including the index, subject to any restrictions concerning
10 confidentiality and the protection of national security information.

11 106. Due to the fact that confidential filings within the record often
12 contain sensitive information related to national security, protection of witnesses
13 and victims, and the Prosecution's investigations, the presumption will be that the
14 legal representatives of victims shall have access only to public filings.
15 However, if confidential filings are of material relevance to the personal
16 interests of participating victims, consideration shall be given to providing this
17 information to the relevant victim or victims, so long as it will not breach other
18 protective measures that need to remain in place.

19 107. In accordance with Rule 92(5) of the Rules, victims or their legal
20 representatives shall be notified in a timely manner of all public proceedings and
21 filings before the Court and, if the Chamber determines that a victim's personal
22 interests are materially affected, of any that are confidential to the extent that
23 this does not breach other protective measures that need to remain in place. This
24 will enable victims to identify the parts of the proceedings which may affect their
25 interests. The Trial Chamber reiterates its general approach set out in the order

1 on notification of filings of 19 November 2007 that 'the party or participant
 2 filing a document bears responsibility for determining the appropriate recipients'.
 3 110. Accordingly, confidential filings which include the names of the legal
 4 representatives of the victims on their cover shall also be notified to the victims
 5 by the Registry."

6 In its decision on various issues related to witnesses' testimony during
 7 trial of 29 January 2008 (document 1140), the Chamber observed that:

8 "[t]he parties and participants have the obligation to provide the Registry
 9 with the electronic version, whenever possible, of any evidence they intend to use
 10 at a hearing at least three full working days in advance" (paragraph 34).

11 In a later decision of 20 March 2008 (document 1235) entitled "Decision on
 12 disclosure by the Defence", the Defence was ordered to provide the Chamber, the
 13 Prosecution and the participants with any evidence intended for use by the Defence,
 14 other than the oral testimony of a witness, three days in advance of its
 15 presentation (paragraph 41 (e)).

16 In an oral decision on 8 April 2009, the Chamber made the following
 17 observations (Transcript 167, pages 9 to 15):

18 "As regards the obligation on the Defence to disclose materials to the
 19 representatives of victims, by Regulation 52 of the Regulations of the Registry,
 20 the parties and participants shall provide the court officer at least three working
 21 days before the hearing the evidence they intend to use (in an electronic form, if
 22 possible). In the Chamber's decision entitled 'Decision on various issues related
 23 to witnesses' testimony during trial,' (for which the reference is document 1140,
 24 29 January 2008) the Court observed:

25 '34. [...] Furthermore by Regulation 52 of the Regulations of the Registry, the

1 parties and participants have the obligation to provide the Registry with the
2 electronic version whenever possible of any evidence they intend to use at a
3 hearing at least three full working days in advance. However, the Chamber
4 recognises that the questioning of a witness by a party not calling that witness is
5 to some extent reactionary and as such could entail on occasion the unanticipated
6 use of documents.'

7 Further, the Chamber in its decision on disclosure by the Defence (20th of
8 March, 2008, document 1235) ordered the Defence (in paragraph 41) to 'provide the
9 Chamber, the Prosecution, and the participants (viz. Not just the Registry) with
10 any evidence for use by the Defence other than oral testimony of a witness three
11 days in advance of its presentation.'

12 The question raised on this application is whether these decisions are
13 sufficient for the purposes of a fair and appropriate disposal of these issues or
14 whether the Chamber needs to consider issuing a more wide-ranging order.

15 In our judgment, for those victims who are participating (as regards an area
16 of evidence or an issue), Regulation 52 and the jurisprudence set out above
17 sufficiently caters for their legitimate disclosure requirements.

18 [...]

19 Furthermore, it is provided that the victims representatives are to receive
20 advanced notice of the materials on which the Defence intend to rely (three days in
21 advance). Ordinarily, this should be effected by the court's electronic database,
22 but on occasion - for instance if an issue has arisen late - it may be provided in
23 some other electronic form or by way of paper copies. The precise means of
24 disclosure will depend on a variety of factors, including timing, convenience,
25 cost, and the volume of the materials. However, we stress that in normal

1 circumstances Regulation 52 and the Chamber's decisions on this issue should not be
2 ignored (as has been suggested). It is important, therefore, that victims apply to
3 the Chamber in advance if they wish to participate on a particular issue or area of
4 evidence, and if the application is granted in advance, the Defence will know which
5 of them is entitled to receive the materials that are to be relied on. If these
6 requirements are complied with, the difficulties raised by Mr Walley yesterday
7 will be met.

8 For victims who have not been granted leave to participate as regards a
9 particular area of evidence or issue, we are unpersuaded that there should be any
10 extension to the basic approach set out above, namely that the parties do not bear
11 a responsibility of disclosure to them. Essentially, when evidence or other
12 material does not engage the interests of victims, they are in the same position as
13 any member of the public who is interested in these proceedings, and they will have
14 access to such part of the court's record as is already in the public domain. It
15 is to be stressed that the materials they will have received already from the
16 Prosecution, as described above, means they are well-placed to decide whether or
17 not they have an interest in the evidence or issue.

18 However, common courtesy should encourage the Prosecution and the Defence to
19 provide non-sensitive information whenever this does not raise any significant
20 security or confidentiality issue and it is not unduly onerous to the lawyers who
21 are in court on a daily basis following these proceedings on behalf of the victims.

22 [...]

23 As rehearsed above, the applicants argue that it is only when they have had
24 prior notice of the relevant evidence or other material or non-public filings that
25 they are able to assess whether they engage their interests. Although this

1 submission carries a certain superficial force, on analysis it involves a
2 significant misunderstanding of the basic approach that has been laid down by this
3 Chamber and the Appeals Chamber.

4 It is for the victims to establish their interest in the area of evidence or
5 issue prior to disclosure to them of non-public material and not the other way
6 around. There are profound confidentiality and security considerations that mean
7 that it would be inappropriate to give a potentially unlimited number of victims
8 the right of disclosure of confidential material on a purely speculative basis,
9 namely that it may reveal something in which they are interested. In each
10 instance, there is a proper reason for its non-public designation, and if victims
11 are granted access to material in the possession of either party (regardless of
12 whether it is proposed to use it at trial) for the sole reason of enabling them to
13 decide whether or not it may contain material in which they are interested, it will
14 generally become impossible to control the extent to which confidential material is
15 disseminated. Any victim from a potential pool of hundreds or thousands could
16 suggest that they should receive the non-public information so that they can
17 investigate whether it engages their interests. Accordingly, the essential
18 prerequisite of disclosure of confidential evidence or other material or
19 notification of non-public filings to victims is that the evidence or issue relates
20 to the interests of a particular individual who seeks to participate. With
21 evidence or other material, this approach is correct even if it is proposed to
22 utilise the documentation in due course in court, because, first, it frequently
23 happens that in the event it is not used, and, second, the period between
24 disclosure and use of the material in court can, itself, create material security
25 risks.

1 It is noteworthy in this regard that of the 93 participating victims in the
2 present case, the Prosecution and the Defence are only aware of the identity of six
3 dual-status victims (two of whom are participating 'jointly'). The parties,
4 therefore, have no means of discovering for the overwhelming majority of victims
5 whether they individually have a legitimate interest in the material.

6 While the Chamber accepts the frustration of the participating victims on the
7 miscommunication of filings, it does not consider this discrete problem or any of
8 the other submissions warrants a change to the current procedure as regards the
9 notification of confidential filings as requested given the reasoning as set out
10 above. Nonetheless, the Chamber urges the parties to ensure that all of the
11 relevant recipients are indicated on the cover of any document submitted to the
12 Registry and that the established right to participate on the part of individual
13 victims as regards an area of evidence or an issue has been reflected.

14 Any enduring problems in this regard should be brought to the attention of
15 the Chamber. When the Defence introduces evidence during questioning which has not
16 been disclosed in advance, the victims' representatives have requested the
17 opportunity to examine the witness on that evidence as far as the interests of
18 their clients are affected. This issue is not susceptible to a general ruling, but
19 instead each application of this kind is to be decided on its own merits, weighing
20 in particular the relevant interests of the victims along with the underlying need
21 to ensure the trial of this accused is fair. Furthermore, pursuant to Rule
22 140(2)(d) of the Rules of Procedure and Evidence, the Defence has the right to be
23 the last to examine a witness. This entails a right of response to any issues
24 raised by the victims' representatives at any point in the proceedings."

25 On 5 June 2009, the Chamber in an oral decision indicated that:

1 "... at the very least as a matter of courtesy for those advocates
2 representing victims who are usually present in court, we would expect, unless
3 there are good reasons for another stance to be adopted, they should be provided
4 with copies of the documents so that they can follow the evidence" (Transcript 187,
5 page 25).

6 In its second decision on disclosure by the Defence (and other issues)
7 (document 2192, 19 November 2009) the following was set out:

8 "64. [...] the Chamber is of the view that the obligation on the accused to
9 reveal the documents and other materials that are to be relied on by his witnesses
10 pursuant to Rule 78 of the Rules should be implemented in conformity with the
11 current approach voluntarily adopted by the Defence, coupled with the secondary
12 disclosure requirements that have been imposed on the Prosecution and those
13 contained in Regulation 52 of the Regulations of the Registry. This will secure a
14 fair and proportionate result for both parties, together with effective trial
15 management. Therefore, once a decision has been taken by counsel that a book,
16 document, photograph or other tangible object is to be used by the Defence during
17 the trial, it should be served forthwith on the Prosecution. Further, once the
18 trial resumes, the Defence is to provide the Chamber, the Prosecution and the
19 participating victims with a list of the witnesses to be called seven days in
20 advance of their testimony, together with their anticipated order. Simultaneously,
21 the Defence shall provide the Chamber, the Prosecution and the participating
22 victims with a list of the documents (and any other tangible objects) that are
23 going to arise during the course of the evidence of the witnesses who are to be
24 called, together with a list of any relevant material that the Defence seeks to
25 introduce from the Bar table (therefore, also at least seven days in advance).

1 Furthermore, the terms of Regulation 52(2) of the Regulations of the Registry must
2 be strictly followed: Whenever possible, the Defence should provide the court
3 officer with the evidence they intend to use at least three days before the
4 scheduled hearing. The Prosecution should be notified by the Defence
5 immediately whenever this happens.

6 65. However, the Chamber voices one strong note of caution: If the Defence
7 is intending to introduce books, documents, photographs or other tangible objects
8 or other material the authenticity or reliability of which may be disputed by the
9 Prosecution, it is critical that they are provided for inspection under Rule 78 of
10 the Rules in sufficient time to enable reasonable investigations to be undertaken
11 (which may well be considerably in advance of three full working days). The
12 Defence has a clear responsibility to avoid the delays that otherwise may well
13 result from well-founded applications to adjourn, to enable investigation of
14 Defence material following a tardy approach to Rule 78 of the Rules by the
15 accused."

16 On 9 December 2009 (Transcript 222, pages 27 and 28) the Chamber addressed
17 this issue of disclosure as follows:

18 "The principles underpinning this issue [viz. Disclosure of Defence evidence
19 to participating victims] were largely determined by previous decisions of this
20 Chamber. Although the Chamber has accepted that the Rome Statute framework
21 contains "... important provisions ... which define the obligations that can be
22 imposed on the defence in order to secure a fair and expeditious trial and to
23 assist the Chamber in its determination of the truth' (see document 1235, paragraph
24 28), it is of note that the Statute and the Rules of Procedure and Evidence do not
25 expressly provide for disclosure by the Defence to the legal representatives of

1 victims. Any disclosure obligations imposed on the Defence in these circumstances
2 merit a particularly cautious approach.

3 On 8 April 2009 (T-167), the Chamber determined that disclosure of
4 confidential documents was dependent on an antecedent decision granting leave to
5 participate as regards a particular area of evidence or issue; although, as the
6 Chamber acknowledged in that earlier decision, the victims' argument is that they
7 may be unable to assess whether the evidence engages their interests until they
8 have had prior notice of it. Under the approach laid down by the Chamber and the
9 Appeals Chamber, it is for victims to establish their interest in the area of
10 evidence or issue prior to disclosure to them of non-public material and not the
11 other way round.

12 In the context of non-public Prosecution material, the Chamber observed there
13 are profound confidentiality and security considerations that mean it would be
14 inappropriate to give a potentially unlimited number of victims the right of access
15 to confidential material on a purely speculative basis.

16 In the estimation of the Chamber, broadly similar considerations apply to
17 Defence evidence, particularly for civilian witnesses from the DRC. The security
18 implications for them if their identities - together with an outline of the content
19 of their evidence - become known are potentially very grave. If disclosure extends
20 beyond the circumscribed and identified group of victims whose personal interests
21 have been demonstrated to be involved, there is a substantially enhanced risk that
22 attempts will be made to interfere with their testimony.

23 Given the present security situation in the relevant parts of the Democratic
24 Republic of the Congo, the Court cannot assume that the witnesses will be
25 adequately protected by the civilian or military authorities; nor is it reasonable

1 or proportionate to put them in the position of being placed under the protection
 2 of the ICCPP with the considerable disruption to their lives that may well be
 3 involved in that step. Furthermore, even within the protection programme, they
 4 will be exposed to an enhanced level of risk. Under these circumstances,
 5 disclosure by the Defence may undermine the witnesses' readiness to testify at
 6 trial, thereby adversely affecting the Defence right to present evidence in this
 7 trial.

8 Therefore, the Chamber is of the view that disclosure of the Defence list of
 9 witnesses and summaries of their evidence - or their statements - will depend on a
 10 decision by the Chamber, first, that the relevant victims' personal interests are
 11 affected and, second, that it is appropriate to impose these disclosure obligations
 12 against the backdrop of the rights of the accused.

13 In order to ensure that the proceedings do not become bedevilled by
 14 applications to adjourn, because it is only revealed when the witnesses are giving
 15 evidence that the personal interests of particular victims are involved, the
 16 Defence are to consider the position of each of the participating victims and to
 17 disclose the relevant material if there is a prima facie basis for concluding that
 18 any of them may be granted leave to question one or more witnesses. The Chamber
 19 will then be in a position to grant or refuse applications to put questions to
 20 witnesses and to make any necessary additional disclosure orders."

21 **Analysis and conclusions**

22 The Chamber's approach to this issue has developed as problems or issues have
 23 emerged in this wholly new area, which have required resolution. The governing
 24 principles are as follows:

25 (i) The Defence is to provide the Chamber, the Prosecution and the

1 participating victims with a list of the witnesses to be called seven days in
 2 advance of their testimony, together with their anticipated order (19 November
 3 2009, document 2192, paragraph 64), subject to (iii), (iv), (v) below.

4 (ii) Simultaneously (with (i) above), the Defence shall provide the Chamber,
 5 the Prosecution and the participating victims with a list of the documents and
 6 other tangible objects that are going to arise during the course of the evidence of
 7 the witnesses who are to be called, together with a list of any relevant materials
 8 that the Defence seeks to introduce from the Bar table. (Therefore, also, at least
 9 seven days in advance). (19 November 2009, document 2192, paragraph 64).

10 (iii) However, it is for the victims to establish their interest in the area
 11 of evidence or the issue prior to disclosure to them of non-public material and not
 12 the other way around. And accordingly, the essential prerequisite of disclosure of
 13 confidential evidence or other material, or notification of non-public filings to
 14 victims, is that the evidence or the issue relates to the interests of a particular
 15 individual who seeks to participate. (8 April 2009, transcript 167, page 13).

16 (iv) It follows that disclosure of the Defence list of witnesses and
 17 summaries of their evidence, or their statements, will depend on a decision by the
 18 Chamber, first, that the relevant victims' personal interests are affected and
 19 second, that it is appropriate to impose these disclosure obligations against the
 20 backdrop of the rights of the accused. (9 December 2009, transcript 222, page 28).

21 The Defence is to consider the position of each of the participating victims
 22 and to disclose the relevant material if there is a prima facie basis for
 23 concluding that any of them may be granted leave to question one or more witnesses.
 24 The Chamber will then be in a position to grant or refuse applications to put
 25 questions to witnesses and to make any necessary additional disclosure orders. (9

1 December 2009, transcript 222, pages 28 and 29).

2 (v) The Chamber today emphasises that for victims who prima facie may be
3 granted leave to question one or more witnesses (in accordance with (iv) above) if
4 the Defence considers that disclosure of non-public material should not be
5 affected, it is to notify the Chamber so that the matter can be resolved.

6 (vi) The parties and the participants have an obligation to provide the
7 Registry with the electronic version whenever possible of any evidence they intend
8 to use at a hearing at least three full working days in advance of its
9 introduction. (29 January 2008, document 1140, paragraph 34; 19 November 2009,
10 document 2192, paragraph 64).

11 (vii) If the Defence is intending to introduce books, documents,
12 photographs, or other tangible objects or other material, the authenticity or
13 reliability of which may be disputed by the Prosecution, it is critical that they
14 are provided for inspection under Rule 78 of the Rules in sufficient time to enable
15 reasonable investigations to be undertaken (which may well be considerably in
16 advance of three full working days). (19 November 2009, document 2192, paragraph
17 64).

18 (viii) Advance notice to victims of the materials on which the Defence
19 intends to rely ordinarily should be effected by the Court's electronic database
20 but on occasion, for instance, if an issue has arisen late, it may be provided in
21 some other electronic form or by way of paper copies. The precise means of
22 disclosure will depend on a variety of factors including timing, convenience, cost
23 and the volume of the materials. (8 April 2009, transcript 167, pages 10 and 11).

24 (ix) For victims who have not been granted leave to participate as regards a
25 particular area of evidence or issue, common courtesy should encourage the

1 Prosecution and the Defence to provide non-sensitive information whenever this does
2 not raise any significant security or confidentiality issues, and it is not unduly
3 onerous to the lawyers who are in court on a daily basis following these
4 proceedings on behalf of the victims. (8 April 2009, transcript 167).

5 These are not complicated requirements, and the Chamber expects them to be
6 applied without exception unless permission has been granted for an alternative
7 course to be followed. Discrete difficulties are to be raised with the Chamber by
8 way of an application in writing orally or by email, as appropriate.

9 **That concludes this oral ruling.** I will need to have approved it before the
10 perfected version is published.

11 Those, I think, are all of the material matters before Maître Mabilille opens
12 the case for the Defence, but I look quickly around the courtroom to see whether
13 there's anything else that needs to be dealt with. No? Thank you.

14 Yes, Maître Mabilille.

15 MS MABILILLE: (Interpretation) Thank you, your Honour.

16 Your Honour, your Honours, the Defence intends to set out succinctly the main
17 lines of our Defence. While adducing evidence the Prosecutor brought 26 witnesses
18 before the Court, if we set aside the three expert witnesses.

19 First of all, the Defence intend to prove to the Chamber that many of the
20 Prosecution's witnesses came before the Court and testified knowing that they would
21 be giving inaccurate information to the Court. The Defence also intend to show
22 that some of this false testimony was fabricated with the assistance of
23 intermediaries who collaborated with the Office of the Prosecutor. With leave, I
24 will remind you that this trial began a year ago, and the statements made by the
25 first witness were as follows: "The statements that I made before did not come of

1 my own free will. They are statements from another person. I was taught these
2 statements for three-and-a-half years. I don't like this. I would like to tell my
3 version as I swore I would before everyone."

4 In response to the extremely specific question from the Presiding Judge, and
5 I will remind you of this question, I quote, "This morning you told the Court that
6 you had gone home after school and some soldiers from the UPC abducted you, you and
7 your friends. This story that you have told us, is it or false?" The witness
8 answered, "It is false."

9 Even though this witness recanted, this initial statement by the first
10 witness confirmed the investigations done by the Defence regarding the possibility
11 that certain Prosecution witnesses had been manipulated so that they would give
12 false testimony. And I would even go so far as to say that the hearings in which
13 we heard from the Prosecution witnesses, and also thanks to the investigation done
14 by the Defence, this assumption has been confirmed even more.

15 Today, the Defence intend to provide the Chamber with the results of our
16 inquiries, in particular, we intend to demonstrate that all the individuals who
17 were presented as child soldiers, as well as their parents in some cases,
18 deliberately lied before this Court. The Defence intend to show that six of them
19 were never child soldiers. The seventh lied about his age and the conditions in
20 which he enrolled and the eighth never belonged to the UPC.

21 Furthermore, the Defence intends to show that the witnesses were encouraged
22 to lie on a number of very specific points. In particular, their name, the names
23 of their parents. The schools that they said that they had attended, and this was
24 done so it would be more difficult to verify the information relating to them.
25 They were encouraged to lie about their age and the fact that, allegedly, they

1 belonged to an armed group so as to qualify for the charges against Mr Lubanga.
2 The fact that their parents were dead, where in actual fact they apparently are
3 still alive, the fact that they were subjected to cruel treatment, and that they
4 were abducted, and this was done to make their accounts even more dramatic. They
5 were also asked to claim that they could not read and that they did not remember
6 specific details so as to make any possible verifications or comparisons extremely
7 sensitive and extremely difficult to carry out. In our view, this situation is of
8 the most grave concern.

9 The Defence intend to begin its case by hearing from witnesses who will show
10 that this false testimony was indeed fabricated. In particular, the Defence will
11 call the parents and friends of these so-called child soldiers, representatives of
12 various schools, as well as people who themselves took part at a particular point
13 in this process of fabricating false testimony.

14 And for the Defence I would say that the demonstration of this fraudulent
15 process of preparing false testimony affects not just the evidence relating to
16 child soldiers, but also this demonstration will lead us to ask significant
17 questions about the credibility of all the testimony that has been heard before
18 this Court.

19 Of course, the Defence are aware that they themselves could have been
20 manipulated. It would appear that some witnesses may have come and given us false
21 information for all kinds of reasons. The Defence have endeavoured, with the means
22 at their disposal, to corroborate the various sources of information. We have
23 endeavoured to verify all the extrinsic and objective aspects of the testimony. We
24 have done systematic verifications by visiting the schools where the alleged child
25 soldiers said they had been educated.

1 Our evidence will be subject to judicial scrutiny and the Defence hopes,
2 insofar as possible, that the scrutiny will be done in public. After hearing the
3 16 initial witnesses, the Defence -- the 16 initial witnesses -- the Defence
4 intends to ask the Chamber to draw the relevant legal conclusions of the situation,
5 and they can be summed up as follows:

6 There can be no true justice if the very substance of the judicial process
7 has been vitiated. If it is gangrenous in its most fundamental aspects, how can
8 one ensure a fair trial when such a significant part of the trial is based on
9 fabricated evidence? How can judges carry out their role, that is to say, seeking
10 out and establishing the truth if the testimony that they have heard are the result
11 of concerted efforts to deceive them? Is this not a fundamental attack on the
12 integrity of the judicial system?

13 Did the Prosecution fail to carry out their duty, their duty to provide
14 proper control and oversight over its intermediaries and, in particular, did the
15 Prosecutor fulfil his statutory obligation to investigate exculpatory evidence,
16 particularly from his own witnesses? Was the Prosecutor not reckless by creating a
17 situation whereby giving testimony before the Court would mean receiving
18 substantial material advantages? What are we to think of a judicial process in
19 which a witness giving false testimony receives assurances that his identity will
20 not be revealed to the public, right from the very beginning of his cooperation
21 with the Prosecution?

22 At the appropriate time, after hearing the first 16 witnesses, the Defence
23 shall examine the possibility of bringing these serious matters before the Chamber
24 and will strive to determine whether the proceedings should continue. Are these
25 proceedings in keeping with the fundamental objectives of criminal justice or are

1 they not? If the judicial process continues, the Defence intends to indicate that
2 we will not endeavour to show that there were no minors amongst the ranks of the
3 FPLC, but the realities of that time must not be distorted outrageously as they
4 were by the Prosecution at the very outset when the Prosecution made its opening
5 remarks.

6 One of the objectives of our defence will be to examine the causes and the
7 circumstances of the situation in a precise manner. We shall hear from the Defence
8 witnesses and thus, it will be possible to review the various aspects of these
9 matters and take stock of this phenomenon. The Defence witnesses shall also shed
10 light on these issues for the Chamber, particularly the role and the place of
11 Thomas Lubanga with regard to the presence of minors amongst the soldiers of his
12 organisation. At this stage the Defence will endeavour to answer two fundamental
13 questions:

14 First, did Thomas Lubanga initiate the recruitment of minors in the UPC
15 forces? Did he help recruit minors in one way or another? The Defence witnesses
16 will tender evidence to the effect that Thomas Lubanga, the political leader,
17 played no active role in the creation of the UPC military forces, and in no way did
18 he take part deliberately in a common plan to recruit minors. And our second
19 question is as follows:

20 What was the attitude that Thomas Lubanga took to the presence of minor
21 children amongst the UPC troops? The Defence witnesses shall provide evidence to
22 the effect that Thomas Lubanga, during the few months where he did have
23 responsibilities, did all he could to demobilise the minors who were present
24 amongst the ranks of the FPLC. The witnesses shall also speak of the difficulties
25 in implementing this policy of demobilisation. These are, your Honour, the major

1 thrusts of the defence of Thomas Lubanga.

2 PRESIDING JUDGE FULFORD: Thank you very much, Maître Mabilille, for that
3 introduction.

4 Yes. We're now going to hear the evidence of the first of the witnesses
5 called by the accused, or on his behalf. We will go into closed session briefly
6 whilst he is brought into court and then I imagine, Maître Mabilille, your first
7 questions will be in private session, apart from given the solemn undertaking
8 because of security issues.

9 MS MABILLE: (Interpretation) Yes, indeed, Mr President, and it will be my
10 learned friend, Mr Marc Desalliers, who will be leading this first examination of
11 the witness.

12 PRESIDING JUDGE FULFORD: Thank you for that indication. Closed session,
13 please.

14 *(Closed session at 3.30 p.m.) Reclassified as open session

15 THE COURT OFFICER: We're in closed session, your Honours.

16 (The witness enters the courtroom)

17 PRESIDING JUDGE FULFORD: Good afternoon, sir.

18 THE WITNESS: Good afternoon.

19 PRESIDING JUDGE FULFORD: Can you hear me well?

20 THE WITNESS: Yes.

21 PRESIDING JUDGE FULFORD: Now, don't be at all nervous by the rather strange
22 arrangements in this courtroom, which I understand have already been explained to
23 you. Listen, please, carefully to the questions that are put to you by counsel and
24 focus on them in your answers. If at any stage you need a break, please address me
25 directly, ask for one and I'm sure we'll grant it and I can tell you that in 25

1 minutes' time we will be having a short break in any event.

2 We will deal with some of your evidence in private session, so as to preserve
3 your anonymity. You have asked that only those inside this courtroom should know
4 who you are and particularly that there shouldn't be any kind of broadcast of your
5 identity, where you're living, or matters of that kind, and so we will ensure that
6 the public parts of your evidence are only those parts that will not reveal your
7 identity.

8 Now, the first thing that needs to happen is that you will need to read in
9 public session the solemn undertaking, with the assistance of the usher, so could
10 you sit quietly for a moment and we'll just have the blinds lifted.

11 Public session, please.

12 (Open session at 3.35 p.m.)

13 THE COURT OFFICER: We are in public session, your Honours.

14 PRESIDING JUDGE FULFORD: Can you now please read out loud the words on the
15 card in front of you.

16 WITNESS: WITNESS DRC-D01-002 (Sworn)

17 PRESIDING JUDGE FULFORD: Excellent. Thank you very much indeed. Private
18 session, please.

19 *(Private session at 3.36 p.m.) Reclassified as open session

20 THE COURT OFFICER: We are in private session, your Honours.

21 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

22 MR DESALLIERS: (Interpretation) Thank you.

23 Questioned by Mr Desalliers: (Interpretation)

24 Q. Good afternoon, witness.

25 A. Good afternoon.

1 Q. My name is Marc Desalliers, I am a lawyer and I am going to be putting a
2 number of questions to you today for the Defence of Mr Thomas Lubanga. So, the
3 first questions that I shall put to you, Mr Witness, and the answers that you shall
4 provide, will not be heard by members of the public. Could you please begin by
5 giving us your full name?

6 A. Yes.

7 Q. Could you please give them to us?

8 A. My name is (Redacted).

9 Q. And what is your date of birth?

10 A. I was born on (Redacted) 1972.

11 Q. And where were you born?

12 A. I was born in the Badima (Redacted) Collectivité.

13 Q. And are you married today, "Yes" or "No"?

14 A. Yes, I am married and we have children.

15 Q. Could you please give us the name of -- the full name of your wife?

16 A. Yes, her name is (Redacted) and her name is also (Redacted).

17 Q. I apologise, Mr Witness. Just to make sure that I've understood you
18 correctly, did you say (Redacted)?

19 A. (Redacted).

20 Q. Very well, thank you. When did you marry Madam (Redacted)? How long have
21 you been married for?

22 A. We were married in the year 1992.

23 Q. And how many children did you and Madam (Redacted) have?

24 A. We have seven children.

25 Q. Could you please give us their names from the eldest -- well, beginning

1 with the eldest child?

2 A. Yes, I can. The eldest child is a girl by the name of (Redacted); the second in
3 line is a boy by the name of (Redacted); then there is a girl by the name of
4 (Redacted) the fourth is a boy called (Redacted); and then there's a girl by the
5 name of (Redacted); the sixth child is a boy by the name (Redacted); and the
6 seventh is also a boy by the name of (Redacted).

7 Q. Thank you. Could you tell us what age your eldest daughter is today?

8 A. My eldest daughter was born in 1993. I believe that she is approximately
9 16 years of age, because she was born on (Redacted) 1993.

10 Q. Thank you. And could you tell us the age of your youngest child?

11 A. The youngest child was born on (Redacted) 2008.

12 Q. Thank you. Before you and Madam (Redacted) were married, were you
13 previously married?

14 A. No.

15 Q. And had Madam (Redacted) been previously married?

16 A. When we were married, she had two boys.

17 Q. Do you know the name of the father of those two boys?

18 A. No.

19 Q. Could you give us the name of those two, or the names of those two boys?

20 A. Yes, the first boy is called (Redacted).

21 Q. (Redacted). And, to your knowledge, does this boy bear any other
22 names?

23 A. I only know those three names, (Redacted).

24 Q. Thank you. Could you please give us the name of the other boy?

25 A. Yes, the name of the second boy is (Redacted).

1 MR DESALLIERS: (Interpretation) Thank you. I shall now show you a
2 photograph. I have a number of hard copies. So, Mr President, if we might hand
3 out the hard copies and for the record this document bears the reference number
4 DRC-0TP-0214-0362.

5 Q. So, Mr Witness, you have the photograph before you?

6 A. Yes.

7 Q. Do you recognise the individual in this photograph?

8 A. Yes, it is (Redacted).

9 Q. Thank you. So is this the same (Redacted) that you
10 mentioned; notably the son of Madam (Redacted) from a previous marriage? Is
11 that the same individual?

12 A. Yes.

13 Q. Could you tell us how old (Redacted) is today?

14 A. I would not be in a position to give you his age, but what I do know is
15 that when he came to my home he was going to school and he came to my house in
16 1995. However, it is difficult for me to tell you what year he was born in.

17 Q. Thank you. So at the time when you married (Redacted), who was (Redacted)
18 living with at that time; that is in 1992?

19 A. He was living with my father-in-law, that is where he was born, and before
20 coming and living with me he resided with his brother-in-law.

21 THE INTERPRETER: Correction from the English booth: He resided with his
22 grandfather. Correction.

23 Q. Could you please tell us whether it was his grandfather on the paternal or
24 maternal side?

25 A. Both. That is to say that my mother and father-in-law were still alive at

1 the time. However, my mother-in-law died and my father-in-law is still alive.

2 However, these two grandparents brought him up.

3 Q. Very well. So these were the parents of Madam (Redacted) is that correct?

4 A. Indeed.

5 Q. So from what moment in time did he start to live with you?

6 A. From the year 1995. As I said, it was from that year that he came to live
7 under my roof.

8 Q. Could you tell us where you were living in 1995 when (Redacted) came to
9 live with you?

10 A. At that moment in time I was living in a place called (Redacted). It is in
11 (Redacted) collectivité and --

12 THE INTERPRETER: The Swahili interpreter did not hear the end of the
13 witness's answer.

14 Q. I apologise. The interpreter did not hear your full answer. I am going
15 to read back to you what was heard. You said: At that moment I was living in a
16 place called (Redacted) collectivité and I remained there. Did you add any further
17 detail to that subsequently?

18 A. I shall start again. I said that I was living in (Redacted) which
19 is a localité within (Redacted) collectivité but the name that was the most well
20 known was (Redacted). This was a place where livestock was bred, notably cows, and
21 that is where I resided.

22 Q. Thank you. And when did you reside in this place until?

23 A. I left this place in the year 2002. It was on 9 September.

24 Q. And can you tell us where you went on 9 September 2002, where you went to
25 live?

1 A. From then I then spent two weeks in Bunia in the (Redacted) neighbourhood.

2 Q. Very well. And after those two weeks where did you live?

3 A. At that moment in time there was fighting and associated problems, so
4 leaving (Redacted) with children, well, we spent two weeks travelling. The two
5 weeks previously I spent in Bunia.

6 Q. Very well. So it was a lengthy journey and then you spent two weeks in
7 Bunia. And after those two weeks can you tell us which neighbourhood, in which
8 town, you went to live in?

9 A. I shall repeat. The two weeks -- well, that was the duration of the
10 journey from (Redacted) to Bunia and once in Bunia I stayed in the (Redacted)
11 neighbourhood. Afterwards, I then went to (Redacted) neighbourhood where I spent
12 approximately one month. And this was at a time when the Ugandan forces had gone
13 home. So we left that location in order to set up (Redacted) for a period of two
14 months. After the two months we all went back to Bunia where we set ourselves up.

15 Q. So do you remember in what year you returned to Bunia, to live in Bunia?

16 A. Yes. It was in the year 2003.

17 Q. And have you remained in Bunia ever since?

18 A. Yes.

19 Q. So for the entire duration from 1995 through your various journeys and
20 your return to Bunia, could you tell us where (Redacted) lived during or for the
21 entire duration?

22 A. He was living with me.

23 Q. I shall put the same question to you more specifically with regard to the
24 year 2002 and 2003. For the whole of those two years, could you tell us precisely
25 where (Redacted) lived?

1 A. He lived with me.

2 Q. Thank you. Could you please tell us, if you know, the places where
3 (Redacted) studied, starting with primary school?

4 A. Yes. (Redacted) started primary school at (Redacted) Primary School. This
5 primary school was transferred to (Redacted) localité because it had been
6 destroyed, and when we went to Bunia we stayed there for a certain duration, and we
7 then enrolled him in (Redacted) Primary School. On the occasion of the fighting of
8 6 March 2003, the school was destroyed and he was not able to pursue his studies,
9 so we then went to (Redacted) he returned to live with us and then, a short while
10 later, in view of the fact that he did not have his school reports, and because
11 there were financial difficulties, he did not pursue his studies. We enrolled him
12 in (Redacted) Primary School in September 2005, in the sixth year, and he went to
13 that school for only a month, a month-and-a-half, and then he dropped out.

14 PRESIDING JUDGE FULFORD: We'll carry on with the course of his education
15 after a break. So we're going to take a break now, not least for the benefit of
16 the interpreters and stenographers. Thank you very much for your help so far.
17 We'll sit again in half-an-hour's time at half past 4. Closed session, please.

18 *(Closed session at 3.59 p.m.) Reclassified as open session

19 THE COURT OFFICER: We are in closed session, your Honours.

20 (The witness exits the courtroom)

21 PRESIDING JUDGE FULFORD: Half past 4.

22 (Recess taken at 4.00 p.m.)

23 (Upon resuming at 4.30 p.m.)

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

25 PRESIDING JUDGE FULFORD: Just before the witness comes back, Mr Sachdeva,

1 can you just help me with this? The identity of the individual who this witness is
2 referring to, am I right in recalling that that identity is protected?

3 MR SACHDEVA: Yes, Mr President.

4 PRESIDING JUDGE FULFORD: I just wanted to make sure that it was necessary in
5 reality for the entirety of this evidence to be heard in private. But I think it's
6 going to be impossible to move between public and private session without revealing
7 things publicly which should not be revealed. Do you agree?

8 MR SACHDEVA: Indeed, Mr President, and in fact this issue will arise time
9 and again with subsequent witnesses, yes.

10 PRESIDING JUDGE FULFORD: I suspect that the first 16 witnesses are going to
11 be heard almost, if not completely, in private. But we'll -- let's not make any
12 bold statements now. It may be there will be some opportunities for public
13 sessions as we go along. Good. Witness, please.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE FULFORD: Yes, private session, please.

16 *(Private session at 4.32 p.m.) Reclassified as open session

17 THE COURT OFFICER: We are in private session, your Honours.

18 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

19 MR DESALLIERS: (Interpretation) Thank you, your Honour. Before I continue
20 with the questioning I wish to mention that I forgot to ask that a reference be
21 given to the photograph that was shown to the witness, so could that be done be,
22 please?

23 PRESIDING JUDGE FULFORD: Quite right. I forgot that. The individual has
24 been identified so, clearly, it must be given an EVD number, please.

25 THE COURT OFFICER: The document under DRC-OTP-0214-0362, your Honours, will

1 be assigned EVD-D01-00106.

2 PRESIDING JUDGE FULFORD: Thank you very much. Yes, please carry on,
3 Mr Desalliers.

4 MR DESALLIERS: (Interpretation) Thank you.

5 Q. Witness, just before we went on break, we were talking about the schools
6 attended (Redacted). Could you tell us under what name was (Redacted) enrolled in
7 these schools?

8 A. Yes, in school he was called (Redacted). Even the name (Redacted) was used
9 in the (Redacted) primary school.

10 Q. Thank you. We would like to you shed light on one piece of information
11 which you gave us before the break. We were talking about a time when you were in
12 (Redacted) then you went back to settle in Bunia, where you have lived ever since.
13 Now, with regard that information, I would like you to give us some clarification.
14 Was (Redacted) with you when you returned to Bunia, or not?

15 A. Yes, let me explain. As I said earlier, we left Bunia when Ugandan troops
16 left to go back home to Uganda. On that day, we went to (Redacted) and we lived
17 together under the same roof at my brother-in-law's house; that is in the home of
18 the elder brother of my wife. We lived there for two months. Later on we
19 returned, together with (Redacted) the other children, and we resided in the
20 (Redacted) neighbourhood where I spent about six months. Later on we then went to
21 the neighbourhood where I have lived ever since. For all that time -- when he
22 arrived at my place that was in 1995 and during that entire time he lived with us.
23 He never left home.

24 Q. Thank you very much for that clarification, Witness. Mr Witness, we will
25 now move into public session and, if I allude to (Redacted), I will not mention his

1 name. I will refer to him as your son so that you can understand, so every time you
2 hear me talk about your son, know I'm talking about (Redacted). I will not mention
3 your name and your face will not be displayed on the screens, or to the public. We
4 will not refer to any names, and I would like to appeal to you to be very careful
5 and make sure that you do not reveal your name, or the name of (Redacted). Have you
6 understood?

7 A. Yes, I have fully understood. Thank you.

8 MR DESALLIERS: (Interpretation) Your Honour, I think we can move into public
9 session.

10 (Open session at 4.38 p.m.)

11 THE COURT OFFICER: We are in public session, your Honours.

12 PRESIDING JUDGE FULFORD: Yes.

13 MR DESALLIERS: (Interpretation)

14 Q. In the years 2002 and 2003, could you tell us what was the main or what
15 was the occupation of your son?

16 A. I have not fully understood your question.

17 Q. I do apologise. That was not very clear. Could you tell us what was the
18 professional activities, or the school activities, that were carried out by your
19 son in the year 2002? In the year 2002, could you tell us what type of activities,
20 professional, school or otherwise, were performed by your son?

21 A. In the year 2002, at the end of that year, since the situation became
22 complicated, he was not able to continue with his education. We were fleeing from
23 the region, so he didn't do anything because schools were interrupted. There were
24 certain schools that closed down and displaced persons started living in certain
25 schools. We were at home and he would help us with daily chores and sometimes he

1 would accompany us to the farm. Apart from that, he didn't do anything special.

2 Q. Thank you. My question was about the year 2002. I would like to put the
3 same question to you with respect to the year 2003. What did he do in that year?

4 A. In 2003, we were living in Bunia as war displaced people. He wasn't doing
5 anything. Right up to the time we fled to Lopa, we asked him to participate in
6 daily chores at home like any child who would help his or her parents. He didn't
7 do anything else, apart from participating in daily chores at home.

8 Q. In the course of these two years, 2002 and 2003, did your son absent
9 himself from home for any activity at all, "Yes" or "No"?

10 A. He lived at home for his entire life, apart from the time when he left.
11 Well, I don't remember that he was absent from home for even one day at all.

12 Q. You talked about the day he left. What are you alluding to? What are you
13 referring to?

14 A. This is what I mean that, right up to the day he left home, right up to
15 the day he left the home, that's the house I'm living in with his mother, he left
16 to go and live with his aunty on his mother's side. He went to live with his
17 aunty, because his mother had travelled. Since then, he had never returned home
18 right up to this moment as I speak.

19 Q. Could you tell us the time? When was this? Can you give us the date of
20 his departure?

21 A. I do not have the exact date, but I know that this was in the year 2007.
22 That was the year when he left home and he has never returned ever since.

23 MR DESALLIERS: (Interpretation) Your Honour, I think that it would be
24 proper for us to return to private session in an abundance of caution.

25 PRESIDING JUDGE FULFORD: Private session, please.

1 *(Private session at 4.44 p.m.) Reclassified as open session

2 THE COURT OFFICER: We are in private session, your Honours.

3 PRESIDING JUDGE FULFORD: Yes.

4 MR DESALLIERS: (Interpretation)

5 Q. Witness, could you explain to the Court -- in your own words, tell the
6 Court about what happened in 2007 and explain why your son left home? Could you
7 tell us what happened?

8 A. I beg your pardon, I didn't fully understand your question.

9 Q. I am referring to the time when your son left, because you said in your
10 evidence that your son left your home in the year 2007 and my question to you is
11 could you explain how this came about? Under what circumstances did he leave home?
12 Could you give us an account of what happened, or what took place?

13 A. Yes, I can explain that to you. Well, he left just as I explained. He
14 went to the home of his maternal aunt. His aunt had traveled. After two or three
15 days, he did not wish to return home. His aunty returned from the trip, but he did
16 not wish to return home. After that, I called him to come home and he did not
17 come. One morning, when I left to go to work, the children told me that "Your son
18 was here", but when I called him he didn't want to come. And I learned that he had
19 obtained a job as a (Redacted) and the people who were doing the same type of
20 activity as him --

21 THE INTERPRETER: Well, the Swahili interpreter did not hear the end of the
22 witness's answer.

23 MR DESALLIERS: (Interpretation)

24 Q. I apologise for interrupting you. I have heard that the interpreters have
25 difficulties in following you. I think you are a bit fast in your speech. With

1 your permission, I would like to appeal to you to speak more slowly. You did say
2 that you heard that he had a job as a (Redacted) and then you sent people who were
3 doing the same type of job to go and do something. Will you please tell us what it
4 was?

5 A. Yes, he was asked to go to Kivu, to Beni, where he received a badge and he
6 was recruited to carry out this activity.

7 Q. Could you tell us how you came to obtain this information?

8 A. I received this information when I returned home, and it was his aunty who
9 gave me the information, when I asked her whether my son could return home, and so
10 his aunty told me that he was no longer in her home and that he had gone to Beni to
11 get this badge.

12 Q. Very well. And what happened after that?

13 A. After that they left, and he was forced to travel with somebody. He
14 called someone to accompany him, and I don't wish to mention the name of that
15 person. They went to Beni. Once they reached Beni they were housed; they were
16 separated, and so they could not see each other again. The person he travelled
17 with, in the morning, everyone was summoned to the office and the person who
18 accompanied him asked him about what he was told in the office, but he would not
19 give that person the information.

20 Q. Just to reassure you, Mr Witness, you should know that we are currently in
21 closed session, so what we are saying now is not heard outside this courtroom. Is
22 it possible, therefore, with this explanation, for you to tell us the name of the
23 person who accompanied your son as he made this trip?

24 A. Yes. His name is (Redacted).

25 Q. Could you tell us what the relationship is between (Redacted)?

1 A. Yes. He is his oldest uncle.

2 Q. Is he an uncle on his father's side or on his mother's side?

3 A. He was the older brother of his mother.

4 Q. Thank you. A short while ago you mentioned an aunty, a maternal aunty, in
5 whose home (Redacted) spent a few days. Could you tell us her name, please?

6 A. Yes. Her name is (Redacted).

7 Q. Thank you. Now, let us return to your narrative. Did you hear anything
8 else in addition to what you just mentioned about the journey that your son made
9 together with his uncle?

10 A. Yes. When he made the first trip, at the end of their mission, they
11 returned and my son returned with a telephone. Maybe with other things as well. I
12 tried to ask him to return home; he refused to come. I called him a second time
13 and he refused to return home. After about one week, they returned or they went
14 back to Beni, and from Beni they were taken to Kisangani. From Kisangani -- in any
15 case, they spent one week in Kisangani. Later on they called the person who had
16 received them at the airport. When he arrived at the airport, they asked him why
17 he had taken them to the hospital, but the person didn't give any answer. The
18 person had told them that they were in difficulty and that they should not return
19 to Ituri.

20 Later on they were taken to Kinshasa, and even there they were kept in
21 isolation. They could not see each other. They could not see each other. After
22 three days, the person who accompanied him was summoned to an office where he met
23 two other individuals and these individuals were a white man and an African, but he
24 could not identify these persons or determine where they had come from. The
25 persons asked him whether this child had undergone or had done military service and

1 he said no, the child had never done any military service. And when things got
2 complicated, he deemed it proper to take the decision to return home.

3 He called the young person and asked him to return and other persons, people
4 told him that if you wish to go home you can go home but we have something to do
5 with this young boy. So he asked this young boy whether he wanted to return home,
6 and the boy said he had a job, and he could no longer return home. He asked if,
7 this person who had accompanied him, to return home. So that person returned home
8 and abandoned the boy there. That is what happened in the course of these two
9 trips.

10 Q. Thank you. You said they went to Kinshasa for a second journey. Could
11 you shed some light on this? Could you tell us who went to Kinshasa?

12 A. I'm sorry, I didn't fully understand your question.

13 Q. Yes. You talked about a first trip that was made to Beni by (Redacted)
14 (Redacted). And I am now asking you with respect to the second journey you did not
15 say who made the trip. You said "They went on a journey." Who were "they"? Who
16 went to Kinshasa?

17 A. Yes. I am referring to (Redacted), together.

18 Q. Thank you. You talked about the fact that one of these persons met a
19 white person and an African. Who is the person who met the white person and an
20 African in Kinshasa?

21 A. It was (Redacted)

22 Q. Thank you. Could you tell us who gave you all this information which you
23 are relating to us about the second trip?

24 A. It was (Redacted)

25 Q. Thank you.

1 MR DESALLIERS: (Interpretation) Could I have a moment, your Honour? Your
2 Honour, I think we could return to public session for a few questions.

3 PRESIDING JUDGE FULFORD: Public session, please.

4 (Open session at 4.59 p.m.)

5 THE COURT OFFICER: We are in public session, your Honours.

6 PRESIDING JUDGE FULFORD: Thank you Mr Desalliers.

7 MR DESALLIERS: (Interpretation)

8 Q. We are in open session, Witness, so I will not be mentioning names, but I
9 will be making reference to your son. You explained to us that, during this
10 account of the trip that there was, during the account of this trip, if you don't
11 mind I will just look for the exact wording --

12 PRESIDING JUDGE FULFORD: Mr Desalliers, could you put the question again?
13 Nothing seems to have appeared on our screen. I think there was a problem with the
14 interpretation. So I'd be grateful if you could, as it were, commence again,
15 please. Or recommence.

16 MR DESALLIERS: (Interpretation).

17 Q. That may be a good thing because I did want to make -- refer back to the
18 earlier question and make sure that I put my question as best possible.

19 PRESIDING JUDGE FULFORD: The last two statements from Mr Desalliers have not
20 been interpreted for us. So there's a communication problem that needs to be
21 resolved. Court officer, can you find out what's happening?

22 THE INTERPRETER: Mr President, can you hear me? Yes, I think that we have a
23 problem with our second microphone here, so I shall take over now for a while, and
24 we'll see what we can do with the second microphone. Apologies.

25 PRESIDING JUDGE FULFORD: Not the fault of the interpreters but an equipment

1 fault. Start again, please, Mr Desalliers. Thank you.

2 MR DESALLIERS: (Interpretation) Thank you.

3 Q. I'm sorry, Mr Witness. You mentioned, when talking about the narrative of
4 the second journey, that the African individual and the white person had put a
5 number of questions to ascertain whether the child had completed their military
6 service or not. So my question is as follows: Did your son -- at any time was it
7 possible that he was a member of an armed group; yes or no?

8 A. No, I am sure. Never. Never.

9 Q. Could you tell us, if you could, the date or the time when you saw your
10 son for the last time?

11 A. Could you rephrase your question -- the same question, please?

12 Q. Certainly. Could you tell us when you saw your son for the last time?

13 A. It was during the second trip in the year 2007. I don't remember the
14 exact date.

15 Q. When your son was living with you, could you tell us about your
16 relationship with him?

17 A. In truth, there was no problem. He did nothing wrong; nothing bad against
18 me. We always lived together and got along well and, throughout his entire life,
19 he was a good example for the other children. He was a child -- he was an obedient
20 child.

21 MR DESALLIERS: (Interpretation) With leave of the Chamber, just one moment,
22 please. Thank you, your Honour. I have no further questions.

23 PRESIDING JUDGE FULFORD: Thank you, Mr Desalliers. Mr Sachdeva, before you
24 commence your examination, you of course will be aware that there is an issue over
25 three of the documents that the Prosecution seeks to rely on. I think I'm right in

1 saying that in each instance they are the records of conversations between
2 representatives of the Prosecution and people other than this witness.

3 Now, as I recall it, but because we were only alerted to this issue this
4 morning I haven't had time to research it, we've been in this position before in
5 this trial and my memory is that we have earlier ruled that it is impermissible to
6 question a witness on the basis of transcripts of conversations that occurred with
7 someone else; so things that were said by another person outside of the hearing of
8 the witness in question.

9 So, really two questions at least. Firstly is my memory right, that we've
10 already dealt with us, and secondly, if my memory is right, do you persist in the
11 application?

12 MR SACHDEVA: Mr President, at this stage the indication of the materials -
13 at this stage, I stress - was to indicate to the Defence a basis for particular
14 assertions to be made. However --

15 PRESIDING JUDGE FULFORD: Fine, no problems with that, Mr Sachdeva. That's a
16 very generous contribution on your part, so that the Defence understand where the
17 questions are coming from and that you've got a proper basis for putting them, but
18 I think you're about to say "but".

19 MR SACHDEVA: Yes, I am. Firstly, I do stress that this is not an obligation
20 of the Prosecution to do this. Secondly, it may be -- well, perhaps this shouldn't
21 be dealt with in front of the witness, Mr President.

22 PRESIDING JUDGE FULFORD: Have you made a firm decision yet, Mr Sachdeva, as
23 to whether or not you wish to put these transcripts of conversations with other
24 people to this witness, or is this something that you want to wait to see how your
25 questions develop?

1 MR SACHDEVA: It's the latter, Mr President, yes.

2 PRESIDING JUDGE FULFORD: Right. Let's cross this bridge, if we need to, as
3 and when we reach that point.

4 MR SACHDEVA: Yes, your Honour.

5 PRESIDING JUDGE FULFORD: Please commence your questioning now.

6 MR SACHDEVA: Mr President, may we move into private session with your leave?

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

8 *(Private session at 5.08 p.m.) Reclassified as open session

9 THE COURT OFFICER: We are in private session, your Honours.

10 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

11 Questioned by Mr Sachdeva:

12 Q. Good afternoon, Witness. My name is Manoj Sachdeva and I'm going to ask
13 you some questions on behalf of the Prosecution. You said that when the fighting
14 erupted on 6 March 2003 in Bunia you went back to (Redacted). That's right?

15 A. At the beginning of the fighting on 6 March 2003, the fighting occurred
16 after we had left the village where we were living.

17 Q. And after you returned to (Redacted) how long was it that your son Jonas
18 joined you?

19 A. I think that I hope I understood. I hope you followed me as well. I
20 didn't go back to (Redacted) What I said was that the first time, the first exile
21 that occurred on 9 September 2002, that day it was the day we began fleeing. We
22 went to Bunia and, once we got to Bunia, the war occurred starting on 9 September
23 2002. We were with that young person then. And on 6 March 2003 I was with that
24 young person and, after that moment, I said that when the UPDF army left the Congo
25 we fled the combat with that young man. We went to (Redacted) We didn't go back to

1 -- we went to (Redacted) and we lived there for two months, and after (Redacted) we
2 went to Bunia where we have lived since that time.

3 PRESIDING JUDGE FULFORD: Can you pause a moment, Mr Sachdeva. Has the
4 witness dealt with the matter that you were going to raise, Mr Desalliers?

5 MR DESALLIERS: (Interpretation) Yes, your Honour. Pardon me, but I just
6 wanted to indicate that that was not what the witness said, but he did clarify and
7 now everything is clear.

8 PRESIDING JUDGE FULFORD: Thank you. Yes, please continue, Mr Sachdeva.

9 MR SACHDEVA:

10 Q. Witness, I want you to concentrate on 6 March, or that period when you
11 went from Bunia to (Redacted) and my question is again how long after you returned
12 to (Redacted) did (Redacted) join you?

13 PRESIDING JUDGE FULFORD: Can you pause a moment, sir, before answering.
14 Yes, Mr Desalliers?

15 MR DESALLIERS: (Interpretation) I'm sorry, your Honour. Twice my learned
16 friend has asked the same question, which would lead one to believe that the
17 witness said that his son went and met up with him. But the question was quite
18 clear during main examination that the trip -- that they did the trip together, so
19 that is why I wanted to intercede the first time and now I am speaking, or making
20 this point, a second time. This is not what the witness said.

21 PRESIDING JUDGE FULFORD: I think that's right, Mr Sachdeva, isn't it? The
22 witness is saying that they journeyed there together, not that he arrived in
23 advance and he was joined there. And I think it is -- unless you disagree with
24 what Mr Desalliers has said about the evidence, I think it is important to describe
25 it accurately.

1 MR SACHDEVA: I absolutely agree, Mr President. However, my submissions are
2 that in the first answer he gave it is at least not clear as to whether when they
3 returned to Lopa that his son came with them, because he did mention -- at least in
4 the transcript it has it as, "So, we went to (Redacted) he returned to live with
5 us", so I wanted to make that clarification with him.

6 PRESIDING JUDGE FULFORD: Well, all right. If you're seeking to distinguish
7 between what -- the answer he's just given and something he said earlier then I
8 think you must do that formally, because the answer he's just given in reply to
9 your question I think is fairly clear, "We went to (Redacted) we lived there for two
10 months and after Lopa we went to Bunia where we have lived since that time." Now,
11 that's what he's saying now. If you want to compare and contrast, well, do so, if
12 you think it's worthwhile, but you're going to have to lay the foundations for it.

13 MR SACHDEVA:

14 Q. Witness, you said in evidence that the (Redacted) school in Bunia was
15 destroyed. Do you know the extent of the destruction of the school?

16 A. Yes, I can reply. I think that we are not understanding each other very
17 well. When I said that the school was destroyed, I beg your pardon, I wasn't
18 talking about the (Redacted) school. I was talking about (Redacted) school, which
19 was destroyed. That school -- well, that school has resumed activities in a
20 neighbouring village. The school that was destroyed was not the (Redacted) It was
21 the (Redacted) Primary School, where the young man began primary school, and after
22 that it was destroyed. Up until now there is nothing, and even in the church where
23 we were praying there are only soldiers. The soldiers live there.

24 Q. Witness, you said - and I'll just tell you what you said - that on the
25 occasion of fighting on 6 March the school was destroyed, and this is when you were

1 in Bunia, and your son was not able to pursue his studies. Are you now saying that
2 the Bunia school was not destroyed? Is that your evidence?

3 A. That's not what I mean. I think that what I'm telling you about, I think
4 it's if we didn't understand each other very well. I said that the child did not
5 continue his schooling because it was war time and (Redacted) school did have some
6 people. After that date, 6 March, we left Bunia and we went to a village called
7 (Redacted) and, after that, we went back together and we continued to live together
8 in Bunia.

9 Q. Now, you said that from 2003 to 2005, or at least after 2003, your son did
10 not pursue his studies; that's right?

11 A. That's right.

12 Q. And he was - and I'm going to paraphrase - essentially assisting you
13 around the house doing various odd jobs; is that right?

14 A. That's right.

15 Q. And, of course, you say that you know this because you lived with your son
16 or your son lived with you during that time; is that right?

17 A. That's what I said. Since -- from the year 1995, that child never lived
18 anywhere elsewhere than my home, the home of my home and that of my wife, with his
19 little brothers and sisters. That was up until 2007. We always lived together. I
20 think that's clear.

21 Q. Yes, it is. I just wanted to understand the evidence regarding your son's
22 schooling, and you've said that he was not at school from the years 2003 onwards.

23 MR SACHDEVA: Mr President, I'd like to show the witness a document.

24 PRESIDING JUDGE FULFORD: This is one of the documents that you've indicated
25 in advance you wish to (indiscernible), Mr Sachdeva, is that right?

1 MR SACHDEVA: Yes, Mr President, yes.

2 PRESIDING JUDGE FULFORD: Good. Then let it be shown to the Bench. I can
3 see that very helpfully it looks like some bundles are being passed forward.
4 Usher, could you help with their distribution, please. And these are private
5 matters, rather than public, Mr Sachdeva?

6 MR SACHDEVA: Yes, Mr President, private. And I'm going to be referring to
7 the document in the last tab. They're not numbered unfortunately, but they're in
8 the last tab.

9 PRESIDING JUDGE FULFORD: All right.

10 *(Private session at 5.22 p.m.) Reclassified as open session

11 THE INTERPRETER: Message from the English booth: Could a bundle be provided
12 to each interpretation booth as well.

13 PRESIDING JUDGE FULFORD: We need, if possible, at least some copies
14 upstairs. I don't know if there are any spares anywhere?

15 MR SACHDEVA: I did arrange for copies for the interpreters. I think they
16 should be -- I don't know how many the Defence have. Perhaps they should be, if I
17 may ask --

18 PRESIDING JUDGE FULFORD: Well, perhaps if the Defence would be prepared to
19 sacrifice one, that would be helpful. Court officer, could you help, please, with
20 the witness. I suggest that we all now number the tabs sequentially. Otherwise,
21 this is going to be chaotic. So can everybody just go through the tabs and put a
22 number on each of them, please. Right. If I can count, we're in tab 8. Good.
23 We're in tab 8, Mr Sachdeva?

24 MR SACHDEVA: The page will be -- there's an ERN on the document. It's
25 DRC-D01-0003-0142.

1 PRESIDING JUDGE FULFORD: It's the last page, I think.

2 MR SACHDEVA: Excuse me, 0040.

3 PRESIDING JUDGE FULFORD: I don't think there is a 0040, Mr Sachdeva.

4 MR SACHDEVA: 0140. I apologise, Mr President.

5 PRESIDING JUDGE FULFORD: 0140, right. Yes.

6 MR SACHDEVA: Can I just inquire whether the witness is at the right page?

7 PRESIDING JUDGE FULFORD: Yes, the court officer helped him.

8 MR SACHDEVA: Thank you very much to the court officer.

9 Q. Witness, if you are on that page, could I ask you to -- you will see on
10 the left hand column there are -- it's a row of numbers. And, if you look very
11 closely at the number that reads 2297, please let me know when you've found that.

12 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

13 MR DESALLIERS: (Interpretation) I'm sorry to interrupt, your Honour, but
14 perhaps it might be a good idea to first explain to the witness what this is all
15 about, what this document is, rather than referring him directly to a line within
16 the document, so that he can find his spot.

17 PRESIDING JUDGE FULFORD: Well, I'm sure Mr Sachdeva is not going to put any
18 questions on a false basis, Mr Desalliers, and I'm sure that Mr Sachdeva will not
19 elicit a question about the document until the witness understands what it is. But
20 thank you for your cautionary intervention.

21 MR SACHDEVA:

22 Q. Witness, before you answer my question which I'm going to ask, I'm just
23 going to tell you that this is a school record from the (Redacted) Primary School
24 in Bunia. You will see on that page the stamp that says that. You see that, don't
25 you?

1 PRESIDING JUDGE FULFORD: Sir, do you see in the middle of the page that
2 Mr Sachdeva is asking to you look at that there appears to be a circular stamp that
3 refers to a primary school, and then there is the word "Sukisa." Do you see that?

4 THE WITNESS: Yes.

5 PRESIDING JUDGE FULFORD: Good.

6 MR SACHDEVA:

7 Q. And I take it that at entry (Redacted) you see the name of your son,
8 (Redacted). Is that right?

9 PRESIDING JUDGE FULFORD: Yes, can you help, usher? I think at the moment,
10 sir, all Mr Sachdeva is actually asking you is whether you see the name (Redacted)
11 (Redacted). Do you see that name written there? Good. Right. Carry on Mr Sachdeva.

12 THE WITNESS: Yes, I see that name. I see it.

13 MR SACHDEVA:

14 Q. And if I could ask you to turn one page back and look at
15 DRC-D01-0003-0142, please. And please tell me when you're there. I'll repeat the
16 number, DRC-D01-0003-0142. It's the penultimate page.

17 MR SACHDEVA: Mr President, perhaps a quicker way would be to just indicate
18 with the witness's binder, where the page is and if I could ask the assistance of
19 the court usher to do that.

20 PRESIDING JUDGE FULFORD: Yes. Usher, could you carry the copy in front of
21 you over to Mr Sachdeva and he'll point to you where he wants the witness to look
22 at. Now, is there a line on this page, Mr Sachdeva?

23 MR SACHDEVA: I just want the witness to --

24 Q. Witness, do you see on that page then, that the years 2003 to 2004 are
25 recorded, don't you?

1 PRESIDING JUDGE FULFORD: I'm sorry, Mr Sachdeva, where do we see that?

2 MR SACHDEVA: In the middle of the page, Mr President.

3 PRESIDING JUDGE FULFORD: All right. All right. Yes. Okay.

4 MR SACHDEVA:

5 Q. You testified that your son is known as (Redacted). So, in fact, do you
6 want to think about your answer as to whether your son was never in school from
7 2003 onwards to 2005, or do you still maintain your evidence?

8 A. I did not quite follow. Could you please help me by repeating what you
9 said again.

10 Q. Certainly. My question is this: Are you sure, upon looking at this
11 school record, that your son did not go to school in 2003, 2004 and 2005? Do you
12 still state that as your evidence?

13 A. Yes, it's true, it's true. 2003, 2004, my child was not studying.

14 Q. Just one more question on this document. If I -- and I apologise for
15 moving back and forth, but if you could go back to the entry where you saw your
16 son's name, 2297?

17 PRESIDING JUDGE FULFORD: Usher, I'm sorry, you're going to have to keep
18 bouncing backwards and forwards.

19 MR SACHDEVA:

20 Q. Are you there, witness?

21 A. Yes, I said that I can see, but what I would like to say, the following:
22 When I tell you that I do not know a piece of information, do not force me.

23 Q. Witness, I would not want to force you to say anything. At the moment I'm
24 simply asking to you have a look at this document and if I could ask you to move to
25 the entry 2297?

1 PRESIDING JUDGE FULFORD: Mr Sachdeva, I'm going to interrupt. I think the
2 exercise has been done. You have pointed out a record, a school register, which
3 appears to cover a particular year and you've identified a name which appears to
4 coincide. Now, you've put that to the witness and he has said that notwithstanding
5 that, his evidence is X or Y. Now, you're about to go around the same circle again
6 and I don't think that's appropriate. If you want to approach the matter from a
7 different way, you can, but I think simply taking the witness back to entries he's
8 already seen and commented, on is really not productive.

9 MR SACHDEVA: Mr President, I wish to draw the witness's attention to another
10 piece of information on that entry.

11 PRESIDING JUDGE FULFORD: All right. If you're going on to something new,
12 then let's have a look at it. All right.

13 MR SACHDEVA:

14 Q. Witness, could I thus ask you to take a look at that entry, 2297?

15 PRESIDING JUDGE FULFORD: Usher, we need your assistance, please.

16 All right he has it. Now, what do you want the witness to look at?

17 MR SACHDEVA:

18 Q. Now, Witness, if I could ask you to look at the sixth column from the
19 left.

20 PRESIDING JUDGE FULFORD: So this is counting from the left six columns over.

21 MR SACHDEVA: Indeed. And in the row -- in the 2297 row, essentially.

22 PRESIDING JUDGE FULFORD: Right. The usher is pointing that out,
23 Mr Sachdeva. And what's the question?

24 MR SACHDEVA:

25 Q. Witness, my question is this: That the name that's indicated there, (Redacted)

1 is a name that your wife has; isn't that right?

2 A. Yes.

3 Q. Do you still maintain your evidence that your son was never at school from
4 2003 to 2005?

5 A. I am not afraid to repeat this. If the child was at school it meant that
6 people had enrolled him, and if the people who were supposed to enrol him say no,
7 then it's better to listen to that person, because these documents were
8 manufactured by men or people, and I believe that it is the same individuals who
9 brought him into this whole story or situation.

10 PRESIDING JUDGE FULFORD: Right, Mr Desalliers. What was your intervention?

11 MR DESALLIERS: (Interpretation) By virtue of his question, my learned
12 friend is suggesting to the witness that during the years 2003, 2004, he said that
13 his son was not studying, but that is not what the witness said because he said
14 that at the beginning of the year 2003 he had to leave school because he was
15 enrolled in the school in year 2003, so putting it to him, or suggesting to him
16 that in the years 2003, 2004 he did not study, well, I believe this is misleading
17 the witness.

18 Another thing, Mr President. My learned friend is or has shown a date at the
19 penultimate page of the register and asked the witness whether he has seen this
20 page and then goes on to ask him whether he is maintaining his testimony. He has
21 done this twice. Notably, that in the years 2003, 2004, he was not at school. But
22 one has to read the register in order. If we read the register the wrong way
23 around, well then, fine. If we read the register in the opposite direction then
24 the question is -- has foundation.

25 But the year 2003, 2004 is actually entered the year after the name of his

1 son appears. So this witness should not be misled here. I believe that if my
2 learned friend has a question to put to him on the subject of the years 2003 and
3 2004 that's fine but I don't believe, Mr President, that he can show him that date
4 and then come back to his name and lead him to believe that that name was put in
5 the list in the year 2003, 2004 because that is not what the list leads us or the
6 register leads us to believe.

7 PRESIDING JUDGE FULFORD: Let's do this in stages, Mr Desalliers. Could you
8 -- I'm afraid I'm going to have to ask you for the moment to look at the English
9 transcript, page 25, line 19, if you would be so kind. Usher, thank you. You can
10 come back.

11 Now, on point one, if you read the answer in English that begins at line 19,
12 my understanding of the witness's evidence was that education effectively came to
13 an end in the year 2002. And, if that's right, then your first objection may be
14 questionable.

15 Now, if there's another entry which tends to suggest from the witness that he
16 was still in education in 2003, can you provide it to me in the English transcript,
17 please?

18 MR DESALLIERS: (Interpretation) Yes, Mr President, I believe that we have
19 identified it in the French version. I shall now find it in the English version.

20 PRESIDING JUDGE FULFORD: Take your time and do the cross-referencing,
21 please.

22 MR DESALLIERS: (Interpretation) Mr President, in order to avoid wasting the
23 Trial Chamber's time, I would suggest that the question be rephrased and ask him
24 whether at any time during the year 2003 he studied, because the question put by my
25 learned friend, unfortunately, I cannot find it again. I cannot find the specific

1 place in the transcript.

2 PRESIDING JUDGE FULFORD: Mr Desalliers, I'm not terribly keen on doing that
3 because if, if earlier the witness did say, as appears to be the position from the
4 portion I've taken you to, that education finished in the year 2002, then
5 Mr Sachdeva is entitled to question on the basis that he has done. If, on the
6 other hand, your memory of the evidence is right, then it may be we have got to
7 revisit the validity of Mr Sachdeva's question.

8 Now, I think it's important, Mr Desalliers, that if there are going to be
9 interventions during the course of questioning there has to be a sure and firm
10 foundation for the intervention, otherwise, we're not going to get very far very
11 fast. Now, unless you've got an answer immediately, let's turn to question two on
12 this.

13 Mr Sachdeva, I don't suppose you have the original of this book in court, do
14 you?

15 MR SACHDEVA: No, Mr President, I have copies that the Defence used. But I
16 --

17 PRESIDING JUDGE FULFORD: Let me put my next question. My next question is:
18 2003 to 2004, which we can see on 0142, as I understand Mr Desalliers's point, that
19 may describe what comes above, rather than what comes below, and are you in fact
20 able, perhaps by reference to other dates within the photocopy of this book, to
21 indicate whether 2003 to 2004 goes down or goes up?

22 MR SACHDEVA: Mr President, I might be. May I have a second, with your
23 leave?

24 PRESIDING JUDGE FULFORD: Certainly. Right, we're not going to do anymore
25 this afternoon. There are two areas over which there is no certainty. These have

1 got to be sorted out overnight. And can we try, please, to avoid repeated
2 interventions -- repeated interruptions of this kind during the course of
3 questioning tomorrow. Of course I accept that sometimes it's absolutely necessary,
4 but it's very unfair on the witness if his evidence is repeatedly interrupted in
5 this way.

6 So thank you very much, indeed, for your assistance so far today. It's
7 extremely helpful to us. We're going to adjourn now for the evening and we look
8 forward to seeing you again at half past 2 tomorrow afternoon.

9 Closed session, please.

10 *(Closed session at 5.49 p.m.) Reclassified as open session

11 THE COURT OFFICER: We are in closed session, your Honours.

12 PRESIDING JUDGE FULFORD: Anything else that anybody wishes to raise? No?
13 Thank you. We sit again at half past 2 tomorrow afternoon.

14 (The hearing ends at 5.51 p.m.)

15 RECLASSIFICATION REPORT

16 Pursuant to Trial Chamber I's email instruction dated 4th November 2011, the
17 transcript is reclassified as public after the indicated redactions have been
18 implemented as ordered by the Chamber. All private and closed sessions (*) are
19 now available to the public with the exception of the portions of the
20 transcript that have been redacted.

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