

Witness: Witness DRC-OTP-WWW-0030 (Resumed) (Closed Session)
Questioned by Mr. Biju-Duval (Continued)

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1 International Criminal Court
2 Trial Chamber I
3 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
4 Case against Thomas Lubanga Dyilo
5 Hearing - * Closed Session - Reclassified as Open session
6 Thursday, 19 February 2009
7 The hearing starts at 9.31 a.m.
8 COURT USHER: All rise. The International Criminal Court is now
9 in session. Please be seated.
10 PRESIDING JUDGE FULFORD: Witness, please.
11 (The witness entered court)
12 WITNESS: WITNESS DRC-OTP-WWW-0030 (Resumed)
13 (Witness answered through interpreter)
14 PRESIDING JUDGE FULFORD: Good morning, sir.
15 Are we in public or private session, Mr. Biju-Duval?
16 MR. BIJU-DUVAL (interpretation): We can go into public session.
17 PRESIDING JUDGE FULFORD: Public session, please.
18 (Open session)
19 PRESIDING JUDGE FULFORD: Yes, Mr. Biju-Duval.
20 Questioned by Mr. Biju-Duval:
21 Q. (Interpretation) Good morning, sir.
22 A. Good morning.
23 Q. I will continue with my questions. During my examination I will
24 touch upon the activities (Redacted), but I have to be
25 careful not to identify you. So I will not refer very precisely to what

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1 you have done but I will try to refer to (Redacted), generally
2 speaking. And I would like to ask you to also be prudent in your answers
3 (Redacted) to avoid
4 identifying you.

5 (Redacted)

6 (Redacted), you stated -- I'll start again.

7 When the Prosecutor asked you (Redacted)

8 (Redacted)

9 (Redacted); correct?

10 A. Yes.

11 PRESIDING JUDGE FULFORD: Before you answer, sir, Mr. Biju-Duval,
12 you're being very careful, entirely appropriately. I fear that the
13 questions, when combined with the answers, are almost inevitably going to
14 reveal too much about the witness's identity. We're very close now and
15 we're going to be cautious about this, and I think for this sequence
16 we'll go into closed session, and as soon as we're in clearer waters,
17 we'll return to public session.

18 So can we pull the lead, please, and keep the blinds up.

19 *(Private session) Reclassified as Open session

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

21 MR. BIJU-DUVAL (interpretation): Thank you, President.

22 Q. So now we're in closed session and I can be more precise in my
23 question and you can answer in more detail, too. Can one consider that
24 the fact that (Redacted)
25 (Redacted)

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1 (Redacted), as you mentioned?

2 A. Yes, what you have just said.

3 Q. Just to be clear, do I understand that what I have said is
4 correct?

5 A. Yes, correct.

6 Q. When sometimes (Redacted)

7 (Redacted), I have some questions about

8 this. Am I correct in saying that the premises of (Redacted)

9 (Redacted), on the
10 side of the street?

11 A. Yes, you're correct. It was along the road.

12 Q. (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 1 (Redacted)
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1 (Redacted)

2 Q. Are you talking about Mr. Thomas Lubanga's house?

3 A. Yes, the house of Mr. Thomas Lubanga, because there were three
4 houses. In the beginning he was in the second house and then when he
5 finished setting up the third house, he moved into the third house and
6 left the house in the middle to the soldiers and guards.

7 Q. When you talk about Mr. Thomas Lubanga's new house, do you mean
8 the building which is situated just a little bit further after crossing a
9 road or a street?

10 A. No, no, not a street or a road. But what I would say, to help
11 you understand is--- for example, when you showed the images yesterday---
12 it was the house in the middle. When we were received at the house upon our
13 return from Ngongo, it was in the third house. I think I have said so.

14 Q. Thank you. Yesterday in your evidence, or the day before
15 yesterday, you talked to the Court about the houses the guards lived in.
16 You talked about five houses; correct?

17 A. Yes, five, five houses, so five houses in general in the
18 residence.

19 Q. If one goes to the premises of the Ministry of Information --

20 MR. BIJU-DUVAL (interpretation): President, maybe we can go back
21 into public session.

22 PRESIDING JUDGE FULFORD: Public session, please.

23 (Open session)

24 PRESIDING JUDGE FULFORD: Yes, we're now back in public session.

25 Thank you very much.

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1 MR. BIJU-DUVAL (interpretation):

2 Q. So let me ask my question again. If we look at the premises of
3 the Ministry of Information, is it correct to say that between those
4 premises and the five or six houses that belonged to the guards, that
5 approximately 200 metres separates the two? I'm talking now about the
6 house where the guards that protected the residence lived.

7 A. I don't think there is a distance of 200 metres, no. I think
8 from the first house to the second house the distance is 20 metres, I
9 would say. So they are spaced out; there's approximately 20 metres
10 between them.

11 Q. I would like to ask you whether or not you're mixing the houses
12 up with the house of the chief escort.

13 A. Well, I said that he changed homes twice, so the residence --
14 between the office and the residence, before they were next to each
15 other, and then when he took the other house, the third house, there was
16 one house between them. So there was one house, two houses, and a third
17 one.

18 Q. Thank you. Now, regarding the president's bodyguards, you talked
19 about the president's bodyguards and you made a distinction between, on
20 the one hand, those accompanying the president everywhere outside and
21 those that stayed at the residence to guard the residence; correct?

22 A. Yes.

23 Q. Do you remember stating with regard to those accompanying the
24 president outside that there weren't any children among the group;
25 correct?

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1 A. Yes, I remember. I remember that and I will justify it.

2 Q. Does that correspond to what you remember?

3 A. Yes. I remember having said that.

4 Q. And that appears correct -

5 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

6 MS. STRUYVEN: Excuse me, your Honours, I think that the witness said that he was
7 going to justify what he had said and he was going to specify what he had said

8 PRESIDING JUDGE FULFORD: He did say that. He says: "Yes, I
9 remember. I remember that and I will justify it." Are you saying that
10 you want him now to have the opportunity to do so?

11 MS. STRUYVEN: Exactly, your Honours.

12 PRESIDING JUDGE FULFORD: All right.

13 Sir, I'm going to ask you, please, when you talk about the guards
14 who accompanied the president when he left the residence, you referred to
15 there being no children amongst the group and you said you were going to
16 justify that answer. Is there something else, then, that you can tell us
17 about who it was that accompanied the president?

18 THE WITNESS (interpretation): Well, first, among the guard
19 service there was a guard very, very close to the president, and those
20 guards have a chief, too, a team leader. It's that leader that chooses,
21 for instance, which group goes with the president on such and such a day
22 and which group goes on another day. And then there's the close guards
23 of the president's and they consist of adults.

24 PRESIDING JUDGE FULFORD: Thank you.

25 Yes, Mr. Biju-Duval.

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1 MR. BIJU-DUVAL (interpretation): Thank you.

2 Q. With regard to the younger bodyguards that you talked about, do
3 you remember telling the Prosecutor -- the Prosecution's investigators,
4 when you were interviewed, that the kadogo that were at the headquarters
5 seemed to be aged between 14 and 15 years? Do you remember saying that?

6 A. Yes, I remember.

7 Q. Do you still maintain that the kadosgos were in that age bracket,
8 those at the headquarters?

9 A. Well, you know, that was a military service. What is a military
10 service? Well, you can take a certain group to go and work with the
11 president. Those that were then with the president could be assigned
12 elsewhere. They were exchanged. It's not precise. Somebody who started
13 with the president could spend one week or one month there. It would
14 vary. There was then a replacement between the soldiers.

15 Q. But concerning the kadosgos, to use the term you used during your
16 meeting with the investigators, concerning the kadosgos you saw at the
17 headquarters - I understood that you hadn't seen them all - but with
18 regard to those you had seen, is that assessment, 14 or 15 years of age,
19 consistent with what you remember?

20 A. Well, I can say, I can justify myself, but the images also speak.
21 If you doubt what I say, I think that by looking at the image that the
22 image can help you see that there were kadosgos. I think you can see on
23 the image that there were certain young men, but the day after you'll see
24 other ones. So I can't say more than that.

25 Q. Thank you. Do you also remember saying to the investigators that

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1 the Bira are generally smaller than the Hema and that their size
2 doesn't always give one a good idea of their age? Do you remember saying
3 this to the investigators of the Office of the Prosecutor?

4 A. Yes, I remember.

5 Q. Can you confirm that judgement today?

6 A. Well, generally speaking, I would say that the Hema are giants,
7 practically all giants, and the Lendu and the Bira are smaller. There
8 are also Bira that are giants and Lendu that are giants, but among the
9 Hema the majority are that size.

10 Q. Thank you. I would now like to ask you some questions about
11 Rwampara camp.

12 MR. BIJU-DUVAL (interpretation): Again, President, I will try to
13 be very careful. If the Chamber finds that I am not being careful enough
14 and that you need a closed session, we can do so. But I think we can try
15 to continue in public session.

16 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, to a very large extent,
17 we're obviously in your hands because you know the questions you're going
18 to ask and we don't. All I would ask you to do is to exercise judgement.
19 If you think that, through your questions about this camp, you are really
20 going to trespass on material that would tend to identify the witness,
21 rather than going through the process of redactions and having given the
22 evidence publicly, it would be preferable for us to undertake -- for us
23 to hear the relevant questions and answers in closed session. But,
24 really, this has to be a judgement on your part rather than ours.

25 MR. BIJU-DUVAL (interpretation): Well, President, very

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1 regretfully I will have to consider that closed session is probably more
2 appropriate, but I do regret it a lot.

3 PRESIDING JUDGE FULFORD: You needn't express your regret. We
4 fully understand the preference of the Defence for as much as possible to
5 be heard in public, and to a very large extent that's a sentiment shared
6 by the Bench. It's simply our decision on the practical realities that
7 we have an obligation to protect the witness. But thank you very much
8 for giving us that indication.

9 We will, therefore, move into closed session, with the lead
10 pulled. Thank you very much.

11 *(Private session) Reclassified as Open session

12 PRESIDING JUDGE FULFORD: Thank you very much. Yes, we're now in
13 private session.

14 MR. BIJU-DUVAL (interpretation):

15 Q. As regards the mission to the Rwampara camp, I'd like to ask you
16 some more precise questions. You stated that you went once to the
17 Rwampara training camp; is that correct?

18 A. Yes, once with the president. Once.

19 Q. Well, I want to be perfectly clear. You said you'd been to the
20 Rwampara camp once in general; is that what you said?

21 A. Yes, exactly, once.

22 Q. Do you remember having told the OTP's investigators that
23 regarding the Rwampara camp, that it was the only UPC training camp that
24 you visited? Do you remember saying that? I'm referring specifically to
25 a UPC training camp and what I'm trying to find out is whether you

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1 confirm that information today.

2 A. Well, if I said that, you have to understand what I was getting
3 at. What I was trying to say, what I meant was I was talking only about
4 Rwampara. It dates back awhile, my talks with the OTP investigator.

5 PRESIDING JUDGE FULFORD: Excuse me, Mr. Biju-Duval. I don't
6 want artificially to extend the length of questioning, but I think we
7 really need to go back to an indication I gave earlier that if a witness
8 is to be asked about something which he said to the investigators on an
9 earlier occasion, he really does need to be shown the passage that you're
10 relying on because otherwise this could turn into an unfair memory test
11 with a witness agreeing with your suggestion when he really doesn't have
12 an accurate recall of exactly what he said to the investigators, now many
13 years ago. And for this material to have any value for us, the original
14 really does need to be put in front of the witness.

15 MR. BIJU-DUVAL (interpretation): Perhaps it would be simpler as
16 follows:

17 Q. Could you tell us whether you visited other training camps? I'm
18 distinguishing between a military camp and a training camp, a training
19 camp where recruits are trained. Did you visit other training camps?

20 A. Well, the training camp that I visited was Rwampara, first of
21 all, and I think the one -- well, I think the Katoto camp wasn't with the
22 president but with another group that I was there.

23 PRESIDING JUDGE FULFORD: I think, Mr. Biju-Duval, there may be a
24 confusion which has been built in because the witness is distinguishing,
25 as I understand it, between visits to camps with the president on the one

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1 hand and visits to camps without the president on the other. And I think
2 we need to be careful in relation to tying the witness down to things
3 that he may have said to the investigators in interview without showing
4 him the precise passages.

5 MR. BIJU-DUVAL (interpretation): Yes, indeed. I'm not going to
6 refer to the statement made to the investigators.

7 Q. But to be absolutely clear on this point, what I'd like to know
8 is whether you, yourself, regardless of the circumstances, whether you
9 visited other training camps other than Rwampara, whether it was with the
10 president, with people from the UPC, or in other circumstances? You
11 mentioned Rwampara camp on the one hand, and then were there other
12 opportunities, other occasions, where you visited a training camp? And
13 I'm emphasising that I'm referring here to training camps in
14 particular as opposed to simple military camps.

15 A. Yes, I visited Rwampara camp, the training camp, and I also
16 visited the Katoto training camp. I also visited a camp in Langu, in
17 Langu.

18 Q. As regards the Katoto camp, when -- what period -- when did you
19 go there?

20 A. It was when the president wasn't there on site. The president
21 was in Kinshasa.

22 Q. Are you referring to the event that we saw yesterday on video?

23 A. Yes. Yes, I'd say yes.

24 Q. And as regards the Langu camp you just mentioned, when were you
25 there?

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1 A. It was, again, when the president wasn't there. I visited it
2 with the commander on site in Largu.

3 Q. Am I to understand that it was around the same period as when you
4 visited Katoto camp?

5 A. Yes, it was the same period because it was at the passing-out
6 ceremony, the award of military ranks.

7 Q. Thank you. Let's go back to your visit to the Rwampara camp. Is
8 it true that that camp was not surrounded by a fence or a wall?

9 A. No, there was no fence around the camp.

10 Q. Did you know where the families of the military instructors
11 lived?

12 A. No, I didn't know where they lived.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 Q. When you got to the Rwampara camp, the people who were there,
24 were they all spread out or were they united? Were they already standing
25 in the U-shaped formation that we saw in the video?

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1 A. I'm afraid I don't understand your question.

2 Q. I guess my question was too long. I apologise. When you arrived
3 with the convoy to the Rwampara camp - I'm referring specifically to the
4 point in time when you arrived - were the soldiers and the other
5 individuals on site, were they all standing already in rows or in the
6 U-shaped formation?

7 A. Yes. In fact, Commander Bosco was already there. He got there
8 before us and then the president arrived when everything was ready.

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 Q. You have stated that, in your opinion, no civilians could enter
18 the camp; is that correct?

19 A. Yes, of course.

20 Q. Therefore, according to your understanding, only soldiers or
21 recruits in training could be there in the camp; is that correct?

22 A. Yes. Yes, of course.

23 Q. Is that the reason why you thought that all of the people who
24 were present were necessarily the soldiers or recruits? (Redacted)

25 (Redacted)

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1 A. Yes, I can confirm that at Rwampara they were soldiers, they were
2 military people.

3 Q. I'd like to ask you a few questions about the Katoto ceremony
4 that we saw some images of yesterday. Is it correct to say that this was
5 the passing-out ceremony?

6 A. Well, it was a celebration that was organised at the
7 passing-out -- in fact, the passing-out ceremony had already taken place.
8 This was the party, so to speak, the celebration.

9 Q. Thank you. Do you remember the image where we saw Commander
10 Bosco with an epaulette on his shoulder?

11 A. Yes, I remember.

12 Q. You stated that this happened when President Thomas Lubanga was
13 already in Kinshasa.

14 A. Yes, that's true.

15 Q. Can you tell us more precisely in terms of time when that event
16 took place?

17 A. I'm afraid I don't have an electronic brain. I remember that
18 there was a date on the video.

19 Q. If I said July 31st, 2004, would that help you remember?

20 A. Well, if that's the date that was on the video, that is the
21 correct date.

22 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, so far that exchange of
23 question and answers doesn't really provide us with any assistance at
24 all, so don't carry away from that short sequence that we're going to
25 conclude it was the 31st of July, 2004, because you could suggest any

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1 date. I mean, Mr. Biju-Duval, if it's on the camera, fine; but just as a
2 date given in open court without linking it to what we see on the camera,
3 it's not really of very much assistance to us.

4 MR. BIJU-DUVAL (interpretation): Well, it seems to me that that
5 date was on the video but I'm not a hundred per cent certain, so I'm
6 going to ask another question to the witness.

7 PRESIDING JUDGE FULFORD: Before the question, can we separately
8 check, please, the date for the video for this particular visit to
9 Katoto?

10 MS. STRUYVEN: Your Honours, I can actually confirm that there is
11 a date on the video. It is the 31st of July, 2004.

12 PRESIDING JUDGE FULFORD: Grand.

13 MS. STRUYVEN: And I think that the witness even confirmed that
14 when I asked the date when we were playing the video.

15 PRESIDING JUDGE FULFORD: Right. Well, I'm not going to enter
16 the debate as to whether or not you asked the question. I'm going to
17 have look back over my note.

18 There you go, Mr. Biju-Duval. That is the date on the video, so
19 you can certainly base questions on that premise.

20 MR. BIJU-DUVAL (interpretation): I would simply like to confirm
21 the context of the event, the situation, if you will, and I have an
22 additional question for the witness to confirm the date that's on the
23 video.

24 Q. As far as you remember, did this event take place -- or, rather,
25 how much time after President Lubanga left to go to Kinshasa did this

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1 event take place? Well, I'm not really asking you for a precise answer,
2 but was it several months or do you have any idea? Can you evaluate,
3 approximately, the amount of time that elapsed between the two events?

4 A. Well, he was already away from Bunia. I can't really answer more
5 precisely than that.

6 THE INTERPRETER: Interpreter corrects: He was absent "in"
7 Bunia, perhaps.

8 MR. BIJU-DUVAL (interpretation): I believe we are still in a
9 closed session. Perhaps we can go into open session for a few questions.

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

11 MR. BIJU-DUVAL (interpretation): I have a few questions which
12 are not of essential nature. Unfortunately, the most useful questions
13 have to be put in closed session, unfortunately.

14 PRESIDING JUDGE FULFORD: Open session, then, please.

15 (Open session)

16 PRESIDING JUDGE FULFORD: We're now in open session,
17 Mr. Biju-Duval.

18 MR. BIJU-DUVAL (interpretation): Thank you, your Honour.

19 Q. I have a few questions now regarding the presence of the Ugandan
20 troops, the UPDF, both in Bunia and in Ituri, and I'm particularly
21 interested in the period which began in September of 2002, or the weeks
22 just before, and which extends through to June of 2003.

23 Is it true, according to your own knowledge, that the Ugandan
24 troops, Ugandan soldiers, withdrew from Bunia, starting from the
25 6th of May 2003?

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1 A. Yes, I remember that date.

2 Q. Therefore, is it true that up until that date the Ugandan
3 soldiers, the Ugandan military, were present in Bunia and in Ituri?

4 A. You asked if they withdrew. Well, now you're asking me if
5 they're present.

6 Q. Well, I'll make it more precise. Is it true that the Ugandan
7 soldiers, before May 6th, 2003, were present and visible in Bunia and in
8 other regions of Ituri, before they withdrew on May 6th, 2003?

9 A. Of course before they withdrew, yes, they were visible.

10 Q. You mean you could see them in military uniforms?

11 A. Yes, yes, they were wearing military uniforms.

12 Q. Another question about a particular point. Yesterday you spoke
13 about a person that we saw in a video that you identified as Eloy Mafuta;
14 is that correct? Do you remember that?

15 A. Yes, I remember.

16 Q. If I were to suggest that Eloy Mafuta is a friend of the Savo
17 family but is not a member of the Savo family, and if I said he didn't
18 bear the name "Savo," would that seem more in keeping with reality?

19 A. Well, the Savo family and Mafuta -- well, if he's not part of the
20 Savo family, I can't have knowledge of that. I think it's the opposite,
21 or maybe I made a mistake. To my knowledge, I thought he was part of the
22 Savo family. There's many of them. It's a big family. I could give you
23 several names, if you want me to do so.

24 Q. Thank you. You stated that that person was the advisor to the
25 president and military advisor for UPC. Do you remember saying that?

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1 A. Yes, yes, I remember.

2 Q. Is it true that if you stated that that was his function, it was
3 because, and only because, he presented himself as such or, rather, that
4 he introduced himself as such at the Katoto ceremony; that you didn't
5 really have personal knowledge of what his exact function was?

6 A. Well, you say it quite well. Indeed, that's how he introduced
7 himself.

8 Q. Thank you. Let me just mention one more detail. Is it correct,
9 to your knowledge, that the first cell-phone network was installed in
10 Bunia after March of 2003? Does that sound like it's correct to you?

11 A. Well, March 2003. 2003. 2003. Well, in any case, if I said
12 that, that must be the case.

13 MS. SAMSON: Your Honour, if, in fact, the suggestion by the
14 Defence is that this witness ever said that, I think it should be put to
15 him in that way. In this instance the witness seems to be labouring
16 under the confusion that he may have provided information on this
17 himself.

18 PRESIDING JUDGE FULFORD: Yes. In fairness to Mr. Biju-Duval, he
19 hasn't put it that way, but we have an answer which gives the impression
20 that the witness may think that he's said that.

21 Mr. Biju-Duval, can we clarify this slightly? Because at the
22 moment, the answer isn't of enormous assistance to us, really. First of
23 all, are you suggesting the witness has ever said that? I don't think
24 you are, are you?

25 MR. BIJU-DUVAL (interpretation): That's not how I asked the

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1 question, but in reality, indeed, the reality is not far from what the
2 Prosecutor has just suggested.

3 PRESIDING JUDGE FULFORD: Let me ask the question directly. Do
4 you in fact know when the first cellular network was installed in Bunia.

5 THE WITNESS (interpretation): I don't remember the precise date.

6 PRESIDING JUDGE FULFORD: I think you will have to establish that
7 through other means, Mr. Biju-Duval.

8 MR. BIJU-DUVAL (interpretation): I'd like to conclude my
9 questioning here with a few questions about an extract of a video that we
10 saw yesterday, a very brief extract, which I think we can view in open
11 session. It's MFI-P-00033. The video was DRC-OTP-0202-0003, and I would
12 like to view with the soundtrack the extract at minute 00:00:55 up to
13 00:02:15. It's the beginning of the video that was taken in the village
14 of Shari.

15 PRESIDING JUDGE FULFORD: We can certainly do this,
16 Mr. Biju-Duval. I just want to clarify that this was a video that was
17 shown -- this is a part of a video shown yesterday in public session; is
18 that right?

19 MR. BIJU-DUVAL (interpretation): I think so. I believe so.

20 PRESIDING JUDGE FULFORD: That is my memory.

21 Correct, Ms. Struyven?

22 MS. STRUYVEN: Yes, that's correct, your Honour. The only
23 portion that we did not show in public was somewhere in the middle of the
24 video.

25 PRESIDING JUDGE FULFORD: Right. Can we find -- I think

Witness: Witness DRC-OTP-WWW-0030 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

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1 Mr. Biju-Duval has now given the counter references. Now, your
2 technician is not here.

3 MS. STRUYVEN: No, your Honours, but I've understood that the
4 Defence is going to play it.

5 MR. BIJU-DUVAL (interpretation): Well, I thought that the
6 Registry could.

7 PRESIDING JUDGE FULFORD: Yes. It seems as though somebody can
8 do this, Mr. Biju-Duval. Yes. Can we make sure that the witness's
9 screen -- yes, good, thank you.

10 (Trial Chamber and Court Officer confer)

11 PRESIDING JUDGE FULFORD: We're going to have to pause for a
12 moment. What is coming up on the Judges' screens is the French
13 translation of the record. It's now changed, thank you. Try again.

14 Right. You'd like the scene played first, Mr. Biju-Duval?

15 MR. BIJU-DUVAL (interpretation): Yes, I would like this scene, a
16 very short scene, to be shown to the witness.

17 Q. Sir, I would like to draw your attention to the song, because
18 it's about a song, and to the people singing, so ...

19 (Video-clip played)

20 PRESIDING JUDGE FULFORD: Yes.

21 MR. BIJU-DUVAL (interpretation): Thank you, President.

22 Q. Sir, you've now listened to the singing.

23 A. Yes, continue.

24 Q. Is this song a military song?

25 A. Yes, it's a military song.

Witness: Witness DRC-OTP-WWW-0030 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

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1 Q. Am I correct in saying that this song is sang by the civilian
2 population, as we've just watched?

3 A. No, it's not sung by the civilian population. It's first the
4 civilian population but then the soldiers.

5 Q. But the civilian population was singing this song; correct?

6 A. Yes, of course. But I would like to say that this was in Shari.
7 It was in Shari.

8 Q. Did, in your mind, the civilian population already know the song
9 before singing it during this scene?

10 A. Well, if you look at the meaning, the population is singing what
11 the man, who has just sang before them, sang. So he starts singing and
12 then they follow.

13 MR. BIJU-DUVAL (interpretation): No more questions, President.

14 PRESIDING JUDGE FULFORD: Thank you very much, indeed,
15 Mr. Biju-Duval. Thank you.

16 Any further questioning, Ms. Struyven?

17 MS. STRUYVEN: Your Honour, if we could have five minutes to
18 discuss with my colleagues before we decide whether or not to re-examine
19 the witness.

20 PRESIDING JUDGE FULFORD: Ms. Struyven, on this occasion we will
21 grant that indulgence. Generally speaking, however, counsel should be
22 ready to proceed with further questioning at the conclusion of the other
23 party's questions, unless something exceptional has arisen. I'm not
24 going to say this is a hard and fast rule, but I don't expect us, please,
25 to build in, as a matter of course, breaks between each series of

Witness: Witness DRC-OTP-WWW-0030 (Resumed) (Closed Session)
Procedural Matters

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1 questions so that discussions can take place. You should be preparing
2 for it during the questions of the other counsel. But on this occasion
3 we'll give you five minutes and we will rise until ten to 11.00.

4 MS. STRUYVEN: Thank you very much, your Honours.

5 COURT USHER: All rise.

6 PRESIDING JUDGE FULFORD: This means -- I'm sorry, this means the
7 witness is going to have to leave court. We're going to have to go into
8 closed session.

9 MS. STRUYVEN: Your Honours --

10 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven?

11 MS. STRUYVEN: We were just thinking of literally less than five
12 minutes. So we don't know if it's really necessary to take all the
13 measures to --

14 PRESIDING JUDGE FULFORD: Well, Ms. Struyven, we're not going to
15 sit here like silent dummies for five minutes. If you want a five-minute
16 break, you'll have a five-minute break and that means we'll have to rise.

17 MS. STRUYVEN: Okay. Sorry, your Honours.

18 *(Closed session) Reclassified as Open session

19 (The witness stands down)

20 COURT OFFICER: All rise.

21 Recess taken at 10.45 a.m.

22 On resuming at 10.55 a.m.

23 COURT USHER: All rise.

24 PRESIDING JUDGE FULFORD: Witness, please.

25 (Trial Chamber and Court Officer confer)

Witness: Witness DRC-OTP-WWW-0030 (Resumed) (Closed Session)
Further Questioned by Ms. Struyven

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1 COURT OFFICER: The video presented by the Defence shall carry
2 the number MFI-D-00042.

3 (The witness takes the stand)

4 PRESIDING JUDGE FULFORD: Thank you very much, indeed, sir.

5 Yes, Ms. Struyven.

6 MS. STRUYVEN: Thank you, your Honour. First of all, I want to
7 apologise for the break. It's -- we had to check the video, so we're
8 actually going to ask this portion to be played again for only 10,
9 15 seconds, and I will give a sign when we can stop playing it.

10 PRESIDING JUDGE FULFORD: Which portion is this?

11 MS. STRUYVEN: The exact same portion.

12 PRESIDING JUDGE FULFORD: The same portion that's just been
13 played? Certainly.

14 MS. STRUYVEN: Exactly.

15 PRESIDING JUDGE FULFORD: Of course.

16 Further Questioned by Ms. Struyven:

17 Q. (Interpretation) I'd like you to listen to the lyrics of the
18 first part of the song.

19 MS. STRUYVEN: This can be in open session, your Honours.

20 PRESIDING JUDGE FULFORD: Good. Open session, please.

21 (Open session)

22 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

23 MS. STRUYVEN: So we can play the exact same portion. I think it
24 started at 00:55.

25 (Video-clip played)

Witness: Witness DRC-OTP-WWW-0030 (Resumed) (Open Session)
Further Questioned by Ms. Struyven

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1 MS. STRUYVEN (interpretation):

2 Q. Sir, did you recognise a name in the song at the end. You can
3 hear Papa and another name. Did you hear the name?

4 A. Yes, I heard Papa Toms.

5 Q. And who was Papa Toms?

6 A. The abbreviated form of President Thomas Lubanga.

7 Q. Thanks.

8 MS. STRUYVEN: You Honours, I have no further questions.

9 PRESIDING JUDGE FULFORD: Thank you very much, indeed,
10 Ms. Struyven. Can we please have on the screen MFI-P-00029, and can we
11 please find the part at counter number 00:35:44.

12 (Trial Chamber and Court Officer confer)

13 PRESIDING JUDGE FULFORD: Thank you.

14 Ms. Struyven, we're now learning a lesson. Your suggestion to
15 have a technician in court to help play the videos was an extremely good
16 one, but the technician shouldn't be removed at the end of the
17 Prosecution's presentation of its evidence because there might be some
18 other people in court who are interested in returning to some of the
19 scenes that you've shown us. I'm told that we need the technician in
20 court to find the portion that I want to play. But we'll see how we can
21 do without it, all right? Thank you.

22 Questioned by the Court:

23 PRESIDING JUDGE FULFORD: Sir, the question I want to ask is
24 this: You have seen on more than one video vehicles that you have
25 described as being part of the president's guard. First of all, do you

Witness: Witness DRC-OTP-WWW-0030 (Resumed) (Open Session)
Questioned by the Court

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1 remember that.

2 A. Yes, I remember.

3 PRESIDING JUDGE FULFORD: And you'll remember that during the
4 questioning of Ms. Struyven, who sits to your right, you were asked to
5 focus particularly on some of those sitting in the back of the open
6 vehicles and two or three of them had the appearance of being young. Do
7 you remember seeing them?

8 A. I remember where there were two.

9 PRESIDING JUDGE FULFORD: Exactly right. Now, the question I
10 have is this: You have talked about the president -- the particular
11 guard of the president, those who travelled with him when he left the
12 residence, as being adults. When we saw those two young people, as they
13 seemed to be, in the back of the vehicle, were they part of the
14 presidential -- the president's guard, the adult guard of the president,
15 or were they someone else.

16 A. Well, to clarify things, if I said that when the president wanted
17 to travel, he travelled with adults, I'm talking about trips the
18 president made that were quite special, because he could leave Bunia to
19 Goma and there he can't go with a group of people; he had to go with two
20 or three soldiers, for instance, from Kampala to Bunia. But if he went
21 somewhere in the same area, he could go with any other soldier.

22 PRESIDING JUDGE FULFORD: Thank you very much. That answers my
23 question.

24 Ms. Struyven, I should give you an opportunity of asking the
25 questions that you wish arising out of the question that I've just asked.

Witness: Witness DRC-OTP-WWW-0030 (Resumed) (Open Session)
Questioned by the Court

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1 MS. STRUYVEN: Your Honours, we have no further questions on
2 this.

3 PRESIDING JUDGE FULFORD: Thank you.

4 Judge Odio Benito has a question. The Judge on my right is going
5 to ask you a question as well, sir.

6 JUDGE ODIO BENITO: Thank you, sir.

7 Inspired by your question, Judge, I would like to ask you
8 something about -- in one of your answers during your deposition, you
9 said that you don't know how the young boys, the children, joined the
10 army. All you know is that you saw them during your visit to the camps.
11 My question is the following: Did you see only boys or were there girls
12 among them?

13 A. Among the children there weren't many girls. I don't think I saw
14 a great number of girls; however, there were a lot of boys.

15 JUDGE ODIO BENITO: Thank you. But there were girls, or not?

16 A. Well, girls, I couldn't say there were the very young ones. The
17 youngest girl was perhaps 15 or more, I think.

18 JUDGE ODIO BENITO: Thank you very much, indeed.

19 Thank you, Judge.

20 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, any questions arising
21 from those? You don't, okay.

22 So that then concludes your evidence before this court. I want, in
23 the fullest way I can, to thank you for your attendance and for having
24 come this very long way to give evidence at the International Criminal
25 Court. Without the assistance of people such as yourself, this court

1 simply couldn't function. We are acutely aware that we have taken up
2 your time and we have imposed very considerably on you by asking you to
3 come, and you leave here with our sincere thanks for your contribution.
4 Thank you very much, indeed.

5 Can we now please go into closed session so the witness can
6 leave.

7 *(Closed session) Reclassified as Open session
8 (The witness withdrew)

9 PRESIDING JUDGE FULFORD: Ms. Struyven, yesterday the Legal
10 Advisor to the division circulated the Victims and Witnesses Unit's
11 proposals for protective measures. Do you have any comments?

12 MS. STRUYVEN: No, your Honours, we don't have any comments on
13 that proposal.

14 PRESIDING JUDGE FULFORD: Thank you very much.
15 Maitre Mabilille?

16 MS. MABILLE (interpretation): Yes, President, I have several
17 observations, but before I make them, I would like to ask the Chamber or
18 ask the section that transmitted the document to explain the meaning of
the last sentence, (In English) " ... to overstretch his attention span."

20 (Interpretation) Could we just be given clarifications on this.

21 PRESIDING JUDGE FULFORD: A very reasonable question, if I may
22 say so. What we will do, therefore, is to take the break now. I will
23 ask for that particular question of Maitre Mabilille's to be answered and
24 we'll be in a position, I hope, to supply you with an answer when we sit
25 again, Maitre Mabilille, and we will then hear any further observations you

1 have on the proposed protective measures.

2 We want to discuss with the Victims and Witnesses Unit as to
3 whether or not it's better to call the witness today or tomorrow, given
4 that we only have one, one and a half hour session left today. It will
5 come as no surprise to the parties that my initial reaction is that we
6 should call the witness, but there may be other factors that come into
7 play that mean it would be more desirable to call the witness tomorrow.
8 However, we'll review that at 25 to 12.00 when we sit again. Thank you
9 all very much.

10 Ms. Struyven.

11 MS. STRUYVEN: Excuse me, your Honours. Just maybe a technical
12 question. To move the videos into evidence, or the scenes that we have
13 identified with MFI numbers, do we have to do that formally, or will that
14 be done --

15 PRESIDING JUDGE FULFORD: I think that should be done formally.
16 I think, given it's evidence in the case and in case anybody hereafter
17 wants to be able to see exactly what it was that the Chamber viewed, I
18 think there should be a formal filing attaching the relevant
19 documentation.

20 MS. STRUYVEN: Perfect, your Honours.

21 PRESIDING JUDGE FULFORD: Thank you very much. And I've been
22 told of the proposal, Ms. Struyven, and we're grateful to you having this
23 presented to us in a way that enables us quickly to go to the relevant
24 scenes with the right counter numbers.

25 MS. STRUYVEN: Yes, we will provide that to you.

1 PRESIDING JUDGE FULFORD: Yes. It's extremely helpful. Thank
2 you very much.

3 Twenty-five to 12.00.

4 COURT USHER: All rise.

5 Recess taken at 11.10 a.m.

6 On resuming at 11.39 a.m.

7 COURT USHER: All rise. Please be seated.

8 PRESIDING JUDGE FULFORD: Ms. Bensouda, we're now going to
9 discuss the proposed protective measures for the next witness. We're at
10 the moment in closed session. Do you have any views as to whether or not
11 we can discuss these matters, in principle, in open session?

12 MS. BENSOUDA: In principle, Mr. President, no.

13 PRESIDING JUDGE FULFORD: So in principle we can discuss it in
14 open.

15 MS. BENSOUDA: We certainly can. Thank you, Mr. President.

16 (Open session)

17 PRESIDING JUDGE FULFORD: The court is now in open session and
18 the next topic to be discussed are the proposed additional measures for
19 Witness 213, who is the next witness in the case.

20 Maitre Mabilille, on behalf of the accused, has asked a helpful
21 question, which is what is meant by the final proposal, and I quote, "It
22 is important not to overstretch his attention span."

23 Maitre Mabilille, I've investigated this over the adjournment and
24 the answer has been, perhaps unsurprisingly, that there's no fixed period
25 of time that can be allocated for this. It really all depends on the

1 appearance of the witness during the course of his evidence. If he
2 appears to be holding up well and is answering questions in an
3 appropriate fashion, then, within reasonable limits, clearly we're going
4 to be able to continue with the session.

5 Alternatively, I'm sure that you, as with all the rest of us,
6 have had experience of witnesses who, if I can use the expression, "start
7 to sag," and it's clear from their demeanour and how they're answering
8 questions that they're finding the session burdensome, and in those
9 circumstances we will obviously be sensitive to ensuring that there are
10 breaks that prevent a witness from giving evidence in that way. So there
11 isn't going to be a strict time limit on this. It's going to require all
12 of us to be alive to the need not to overstretch this witness's attention
13 span. Now, I'm sorry that doesn't give you a definite answer.

14 I think you said you had some other submissions on other aspects,
15 or not?

16 MS. MABILLE (interpretation): Your Honour, as regards the first
17 point of the proposal, we have no comments. However, as regards the
18 modalities of the deposition, I do have some comments. But in order to
19 make those comments, I would like to indicate straight off to the Chamber
20 that the Defence has very serious reason to believe that this witness was
21 never a child soldier. Therefore, the Defence will have to check, will
22 be under the obligation to check certain aspects related to his family,
23 the schools he attended, the places he lived in, and his activities.

24 The Defence, as has been the case since the beginning of the
25 trial, is committed to asking perfectly relevant questions; however, the

1 Defence will have to ask certain questions that might contradict certain
2 aspects if the witness maintains his initial statement. Given the
3 measures that have been announced, I must tell you that the Defence will
4 find itself obliged to do so if we are to do our job correctly.

5 The other aspect, your Honours, is that we have been asked to
6 write down certain names on a piece of paper. Now, in the case of this
7 witness, we have quite a few names that need to be verified, and I don't
8 know whether the Chamber wants us to follow that procedure. If so, we
9 don't have a problem with it, but it is going to make things more
10 arduous.

11 And I must say with humility that we, the members of the Defence,
12 wonder whether -- if we're in closed session, what is the advantage of
13 such a measure? And in fact I'd like to say that either we're in public
14 session, which of course is the preference on the part of the Defence, as
15 the Chamber knows, and therefore use this procedure - writing names on
16 pieces of paper - in which case there's meaning to that, otherwise, we're
17 in closed session. And I don't really see the point of proceeding in
18 that way.

19 That's basically what I had to say. I think I have now expressed
20 the position of the Defence team.

21 PRESIDING JUDGE FULFORD: Maitre Mabilille, that's extremely
22 useful, if I may say so.

23 As regards, really, the two points that you've raised, I'm going
24 to take the second of those first. You are undoubtedly entitled, indeed
25 I think it is probably your duty, to contradict or challenge, whichever

1 word is more appropriate, evidence given by the witness which the accused
2 does not accept and so the modalities of testimony that have been
3 suggested are not in any way meant to disable you from fulfilling that
4 function.

5 It is all a matter as to how it is done. As I'm sure you
6 understand, there are a range of options as to how questions can be
7 asked. Some advocates adopt an extremely confrontational, indeed angry,
8 stance with witnesses and you will understand, and I don't think it's
9 your style in any event, Maitre Mabilille, if I may say so, but you will
10 understand that that would be inappropriate with this witness. But you
11 may, in an appropriate way, and indeed I think you should in an
12 appropriate way, challenge any portion of this witness's evidence which
13 is not accepted, as long as it is done in a way that will not upset him.

14 Turning to the identities, the point, if I may say so, is well
15 made. We will, over the adjournment that is going to take place, have
16 this area revisited with the witness, and I think if that portion of the
17 questioning of him takes place in closed session with the numbers in the
18 courtroom reduced in the way that we did with an earlier witness, I would
19 hope we'll be able to reach the position where the witness can be
20 reassured to give the names orally rather than us laboriously having to
21 write them down, and indeed I'm slightly anxious about the process of
22 writing names down, given what the witness has said about not being --
23 not wishing to have to read portions of the evidence as -- or portions of
24 documents as part of the questions.

25 So thank you for alerting us to it. We will go back to it and

1 see if we can find a sensible solution that will enable your questioning
2 to flow in a natural and reasonable way.

3 Any observations on those matters, Ms. Bensouda?

4 MS. BENSOUDA: Mr. President, I just wish to address one matter
5 alone and this is with respect to the pictures, the photographs, that the
6 Defence intends to use under cross-examination.

7 PRESIDING JUDGE FULFORD: We're unaware of these so ...

8 MS. BENSOUDA: Yes. This was submitted to the Prosecution just
9 yesterday, towards the close of business. And, Mr. President, we don't
10 know what they are about at all. No notice has been given. I think the
11 same regulations that applies to the Office of the Prosecutor to give
12 enough notice to the Defence as to documents that we intend to use should
13 apply to the Defence as well.

14 But having said that, Mr. President, I also wish to draw the
15 Chamber's attention to the fact that amongst those photographs there are
16 pictures, pictures of a woman and also of another gentleman. We don't
17 know who they are and we also don't know what the Defence is going to use
18 these pictures for. And we want to already alert the Chamber that these
19 pictures, I believe, should not be used in any way to surprise the
20 witness or to traumatise the witness. I don't know what they are for.
21 I'm just putting this on the table, because we don't know as well.

22 Yes, that's my submission.

23 PRESIDING JUDGE FULFORD: Very difficult for us to determine
24 this, Ms. Bensouda, without having seen them. Could we briefly borrow
25 your copies so that we can at least understand what the subject matter of

1 this point is? Thank you very much.

2 (Trial Chamber confers)

3 PRESIDING JUDGE FULFORD: Ms. Bensouda, we probably need to go
4 back to first principles, then, with this so that we understand clearly
5 what your submission is, and I just want to see if I've interpreted it
6 correctly.

7 Firstly, you want to ensure that by showing the photographs of
8 the man and the woman, that isn't going to have the potential unduly to
9 upset the witness. All right. And secondly, you're suggesting that
10 before this material is used, the Prosecution and the Chamber should have
11 been informed what the purpose is of introducing the documentation.

12 MS. BENSOUDA: Yes.

13 PRESIDING JUDGE FULFORD: Right. Well, the first doesn't really
14 need any statutory basis explained to us. Is there anything more that
15 you'd like to say to us on the law as regards the obligation of the
16 Defence not only to reveal the documents that it wishes to use but to
17 provide the Chamber with an explanation as to why it wishes to use those
18 documents? And if you want a moment to consult with your team, please
19 take it.

20 (Prosecution counsel confer)

21 PRESIDING JUDGE FULFORD: Yes, Ms. Bensouda.

22 MS. BENSOUDA: Mr. President, I just wish to refer the Court to
23 the e-court protocol and the decision on the e-court protocol.

24 PRESIDING JUDGE FULFORD: All right. Can you remind us what we
25 said?

1 MS. BENSOUDA: Mr. President, the main idea of the decision is
2 that the basic metadata of the documents that are intended to be used,
3 for example, the chain of custody, the dates, the type, should be
4 provided. I will not go so far, Mr. President, as to ask for description
5 of those documents, because this is just courtesy that the Office of the
6 Prosecutor is extending to the Defence, but at least the basic
7 information regarding these documents should be provided according to the
8 e-court protocol decision.

9 PRESIDING JUDGE FULFORD: Right. I think that's a slightly
10 different point. I think the point you raised earlier, Ms. Bensouda, was
11 that the Defence should explain the purpose of introducing the documents
12 and what they intend to do with them. Now, do I take it you are somewhat
13 backtracking from that submission?

14 MS. BENSOUDA: No, Mr. President, I am not backtracking. I'm
15 just saying that the obligation to give a fuller description is not
16 really required, but the basic information about the documents should be
17 provided.

18 PRESIDING JUDGE FULFORD: All right. Because, Ms. Bensouda, I
19 think the view of the Bench is that we had a good demonstration yesterday
20 and I think the day before of the Prosecution relying on sections of
21 video material without having provided in advance any notice as to what
22 it was said for each stretch of video the purpose was of introducing it.
23 And I think earlier in this case I've used the expression "what is sauce
24 for the goose is also sauce for the gander." I think if your original
25 submission were to stand, you would be seeking to impose on the Defence

1 an obligation that has not been adhered to by the Prosecution.

2 MS. BENSOUDA: Mr. President, unless I'm wrong, and if I may
3 invite Ms. Struyven to answer, I believe we have given these videos.

4 PRESIDING JUDGE FULFORD: Certainly, if Ms. Struyven wants to
5 take over, she can. Thank you, Ms. Bensouda.

6 Yes, Ms. Struyven.

7 MS. STRUYVEN: I'm sorry, your Honours, I just want to make one
8 clarification. We had provided all the scenes that we intended to show
9 to this witness two or two and a half weeks, I think, before this witness
10 was coming, and we had also provided the exact seconds and minutes we
11 intended to show to this witness a week before this witness started
12 giving evidence to the Defence, with the compilation that you -- that was
13 also provided to your Honours and the other parties -- other parties and
14 participants. Just to clarify that.

15 PRESIDING JUDGE FULFORD: Not my point at all, Ms. Struyven. My
16 point is that Ms. Bensouda is seeking to establish an obligation on the
17 Defence to reveal the purpose for which the documents are going to be
18 used and not when they were disclosed. I cannot address both of you at
19 the same time.

20 MS. BENSOUDA: Sorry, sorry.

21 PRESIDING JUDGE FULFORD: And what you have not provided in
22 advance is notification as to what it is you say the purpose is of the
23 different sections of video which we have sat quietly and watched, and
24 that provoked me, or, rather, prompted me perhaps is a better word, to
25 make the request of you, Ms. Struyven, for that very -- for that very

1 information so we could understand what the purpose is. Thank you for
2 your clarification. You have provided particular details of these
3 videos.

4 Now, Ms. Bensouda, you want to take over again.

5 MS. BENSOUDA: Mr. President, if I may just clarify that it is
6 certainly not for the purpose. Maybe I misspoke. But it is to say that
7 the Defence has not in any way, and in accordance with the e-court
8 protocol, provided the basic information that that decision has said
9 should be provided.

10 PRESIDING JUDGE FULFORD: Right. That's very clear. Thank you,
11 Ms. Bensouda.

12 For my own part, and I suspect I speak for all of us, I would
13 wish to go back to our decision on the e-court protocol and to exactly
14 what it is we've required of both sides to be provided in advance before
15 reaching any firm view as to whether or not the Defence should have
16 provided more information, and I'm just going to pause for a moment.

17 (Trial Chamber confers).

18 PRESIDING JUDGE FULFORD: Maitre Mabilille, I think where the
19 submissions have reached is that the suggestion that you should explain
20 the purpose of the photographs and how you wish to deploy them has
21 effectively disappeared, and if it hasn't disappeared through counsel's
22 submissions, it's certainly disappeared as regards the approach of the
23 Bench. We do not require a view, a detailed explanation in advance, as
24 to precisely how it is you wish to deploy these photographs during your
25 questioning of the witnesses.

1 There are two outstanding matters. The first we can deal with
2 today; the second I think we're going to need to adjourn overnight. The
3 one we can deal with today is that obviously the Bench has no idea who
4 the man and the woman are as revealed in the photographs. We ask of you,
5 and of course trust you, to introduce them in a way that doesn't upset
6 the witness. One could imagine a number of scenarios, particularly if
7 either of those people are dead and are closely related to the witness,
8 in which suddenly seeing their photograph could be extremely upsetting.
9 It may be that that -- a scenario of that kind has nothing to do with the
10 questioning, and I'm not asking you to reveal what it is. All I'm urging
11 you to do is, depending on your understanding of who those individuals
12 are, to exercise appropriate caution.

13 Criticism has been made of a lack of technical information about
14 these photographs and possibly, as I understand it, criticism is made
15 about the date on which they've been delivered. Until we, from the
16 Bench, say anything further about this, we would wish to go back to the
17 e-court decision overnight to remind ourselves of exactly what the
18 requirements are. But I don't want to shut you out now if there's
19 anything else that you would wish to say this morning on that issue.

20 MS. MABILLE (interpretation): Your Honour, if I may, I have a question.
21 Madam Bensouda is right as regards one point. Indeed, the e-court protocol
22 provides that we are to communicate those documents three days ahead of
23 time. We were not able to do so and I must add that we're probably going to
24 submit another document this evening. The Defence has done the best it can,
25 and if we had received them earlier, we could have given them to you

1 earlier, we would have done so. That is my first point. Secondly, if you
2 take a look at ringtail today, this morning, you will find that we have
3 indeed filled in the metadata. However, last night we received those
4 documents and my case manager told me that the metadata have been filled.
5 I'm sorry if you didn't get them in time but you will be receiving them. It
6 was a technical matter and we do indeed intend to keep to the obligations
7 related to the metadata. Thirdly, I must say that the Defence understands
8 fully, just like everyone in this courtroom, that the witness has to be able
9 to testify in the best conditions possible, and we will do anything we can to
10 avoid that any information we provide be a cause of shock or trauma for the
11 witness. We have tried, and we will try, to do our job with as much --
12 in the best possible conditions.

13 PRESIDING JUDGE FULFORD: Maitre Mabilille, I think you've just cut
14 down on the amount of preparatory work that we're going to do overnight,
15 in that I think you are accepting that there are certain metadata
16 requirements which either have been fulfilled by the Defence, and, if for
17 some reason the lines of communication have broken down, you will ensure
18 speedily that the Prosecution and the Court is put in possession of all
19 of the relevant information.

20 Secondly, as I understand it, you're saying that the reason for
21 the late delivery of this material is that they have only, in the recent
22 past, come into your possession, or the possession of your case manager;
23 is that correct?

24 MS. MABILLE (interpretation): Your Honour, yes. Yes, indeed.
25 The Chamber knows that I was away and indeed I received these documents

1 very late in the day.

2 (Trial Chamber confers)

3 PRESIDING JUDGE FULFORD: Ms. Bensouda, is there anything else
4 you'd wish to say?

5 MS. BENSOUDA: No, Mr. President.

6 PRESIDING JUDGE FULFORD: Thank you very much.

7 The explanation given to us this morning in relation to this
8 material by Maitre Mabilille, in our judgement, is wholly sufficient. If
9 the Defence have only recently come into possession of these documents,
10 then, in principle, they should be entitled to rely on them, unless an
11 argument can properly be advanced that it in some way places the
12 Prosecution in an irredeemably unfair position. That argument thus far
13 has not been advanced by Ms. Bensouda for the Prosecution.

14 Therefore, Maitre Mabilille is entitled to rely on these documents.
15 If the Prosecution, within their second series of questions, need time to
16 consider the documents, then an application will need to be made to us at
17 an appropriate stage.

18 As regards the metadata requirements, can I ask, please, that the
19 relevant case managers of both teams talk with each other as soon as we
20 have risen to make sure that all of the technical detail is exchanged
21 between the parties and, to the extent that it's necessary, the court
22 manager, or the Registrar, is provided with that information as well.

23 I hope that deals with the outstanding matters in relation to the
24 protective measures for the next witness. Is there anything else that
25 anyone else wishes to say?

1 Mr. Walley.

2 MR. WALLEYN: Just to say, Mr. President, that we will not raise
3 the issue now, but we have the intention to contact the Defence to see
4 how documents that will be used as evidence, or used in court anyway, can
5 be disclosed to Legal Representatives as well.

6 PRESIDING JUDGE FULFORD: Mr. Walley, if you are -- if you have
7 been given leave to question a witness who is to be called, at the very
8 at least, as a matter of courtesy and perhaps as a matter of legal
9 requirement, I think our preliminary view would be that you should be
10 provided also with copies of the documents. If there is any dispute
11 about this, please raise it with us at an appropriate stage tomorrow
12 morning.

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

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

15 Mr. Sachdeva.

16 MR. SACHDEVA: Mr. President, thank you. On another matter, if I
17 may.

18 PRESIDING JUDGE FULFORD: Certainly.

19 MR. SACHDEVA: It's, I'm afraid, another application to amend the
20 schedule of witnesses. This refers to Witness 297. And the information
21 that we have at this stage is that the witness is unable to travel as
22 scheduled and we would therefore seek leave of the Chamber to call that
23 witness at the end of all the former child witnesses, in other words,
24 after Witness number 7. We have discussed this with the Defence. As I
25 understand it, the Defence do not have an objection, and I can undertake

1 to the Chamber that there will be no gaps in the schedule. Therefore,
2 that's the application of the Prosecution.

3 PRESIDING JUDGE FULFORD: Granted.

4 MR. SACHDEVA: Thank you very much.

5 PRESIDING JUDGE FULFORD: Thank you.

6 The final matter, then, is this, is whether we start the next
7 witness now. There is only 50 minutes left this morning. On our
8 instruction, the Representatives of the Victims and Witnesses Unit asked
9 the witness whether he would prefer to start his evidence today for a
10 short period and then continue tomorrow or start tomorrow and to complete
11 hopefully at least a substantial part of his evidence during the course
12 of tomorrow's session. The witness expressed a clear preference for
13 commencing his evidence tomorrow, and in those circumstances, we will
14 rise now and this evidence will begin at half past 9.00 tomorrow morning.

15 Thank you all very much. We will rise now.

16 COURT USHER: All rise.

17 The hearing ends at 12.11 p.m.

18 RECLASSIFICATION REPORT

19 Pursuant to Trial Chamber I's email instruction dated 9 November 2011, the
20 transcript is reclassified as public after the indicated redactions have been
21 implemented as ordered by the Chamber. All private and closed sessions (*)
22 are now available to the public with the exception of the portions of the
23 transcript that have been redacted.

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