

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 Tuesday, 19 May 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: Public session, please.

11 (Open session at 9.32 a.m.)

12 COURT OFFICER: Public session.

13 PRESIDING JUDGE FULFORD: Good morning.

14 Mr. Sachdeva, there are a number of administrative matters that

15 we need to deal with before we re-commence the evidence of Witness 55,

16 and really as a matter of convenience I'm going to address the Bar

17 through you. The first is that before the Easter break an indication was

18 given that there may be some representations made as regards the legal

19 characterisation of facts pursuant to Regulation 55. Having looked at

20 the relevant part of the transcript for that day, the indications were

21 that the filings on this issue, certainly the initial ones, were going to

22 be made during the course of the first half of this month, which is

23 now -- has now been and gone. There needs to be some movement on this.

24 It will be extremely unfair - and do have a seat, Mr. Sachdeva, yes - it

25 will be extremely unfair on the Prosecution and the Defence if this

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1 matter is raised late. It may be said that it's too late already, but
2 the longer that this is left pending the greater the potential for any
3 re-characterisation to lead to injustice.

4 Now, Ms. Massidda, I don't know whether you can speak for
5 participating victims on this. But what, please, is planned?

6 MS. MASSIDDA: Thank you, your Honour. The filing the Legal
7 Representatives intend to submit is actually ready. It has not been
8 filed because as it was said last week, we had certain problems in
9 consulting with other Legal Representatives because of technical issues.
10 This was the reference I made to the submission -- of a joint submission
11 last week. We planned to file the submission at the latest by Thursday
12 this week, which is, I think, the 21st of May, 21st or 22nd, in any case
13 by Thursday this week. Thank you.

14 PRESIDING JUDGE FULFORD: That's abundantly clear.

15 Would it be acceptable to the Prosecution, Mr. Sachdeva, if we
16 were to set a dead-line of seven days for a response or would you wish
17 for longer than that?

18 MR. SACHDEVA: That's fine, Mr. President.

19 PRESIDING JUDGE FULFORD: Thank you. Maitre Mabilille, would seven
20 days give you sufficient time to respond to the submissions of the
21 participating victims on this issue?

22 MS. MABILILLE (interpretation): Seven days after the Prosecutor's
23 response?

24 PRESIDING JUDGE FULFORD: I'm afraid I didn't have quite such a
25 generous idea in mind, Maitre Mabilille. I was hoping that the Prosecution

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1 and the Defence could file simultaneously, so seven days after receipt of
2 the filing by the participating victims.

3 MS. MABILLE (interpretation): Your Honour, this is a very
4 important matter for the Defence and it's difficult for me to respond at
5 the same time as the Prosecution team. We need some time between the
6 response of the Prosecutor and the time we make our own submission.

7 Thank you.

8 (Trial Chamber confers)

9 PRESIDING JUDGE FULFORD: Ms. Massidda, the Court Officer very
10 helpfully points out that you won't be able to file on Thursday because
11 it's Ascension Day. Your filing is to be no later than 4.00 p.m. on
12 Friday of this week. Thank you.

13 The Prosecution, please, to file Friday week by 4.00 p.m., the
14 Defence a week after that, so the following Friday, 4.00 p.m., so this
15 will be done in a way that's staggered and thereby giving the Defence the
16 opportunity of responding not only to the application but also to the
17 views of the Prosecution. Thank you very much.

18 The second issue is that of the extent to which the Legal
19 Representatives -- the extent to which and the form in which the Legal
20 Representatives are to be allowed to cross-examine. Filings were
21 supposed to have been made by close of play yesterday. Can I turn to the
22 Legal Representatives to ensure that all filings that we should expect on
23 this issue have now been made?

24 MS. MASSIDDA: Yes, your Honour, a joint submission was filed
25 yesterday afternoon.

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1 PRESIDING JUDGE FULFORD: Thank you very much.

2 Maitre Mabilille, under the earlier dead-line, the Defence were
3 expected to file a response by tomorrow. That may be slightly
4 unreasonable, given that the joint filing was only made yesterday
5 evening. Can I ask whether the Defence intend to respond on this issue;
6 and if so, how long you would like to have.

7 (Defence counsel confer)

8 MS. MABILLE (interpretation): If the Chamber can authorise us to
9 file on Monday at 4.00 p.m., that will be convenient.

10 PRESIDING JUDGE FULFORD: That's extremely helpful,
11 Maitre Mabilille. Thank you very much. We'll then say, please, that there
12 should be Defence -- a Defence response by 4.00 p.m. on Monday, which is
13 the 25th of May.

14 The third issue concerns the Defence application for the
15 admissions -- for the admission of certain documents that have been used
16 in questioning. This was filed on the 8th of May. It's document 1860.
17 I anticipate, Mr. Sachdeva, that there aren't any objections to this, but
18 could you confer with members of your team to ensure that that is the
19 position.

20 MR. SACHDEVA: That's right, Mr. President, there are no
21 objections.

22 PRESIDING JUDGE FULFORD: Thank you very much.

23 Given, therefore, that these documents were used during the
24 course of questioning and there is no opposition to them now being
25 categorised as evidence in the case, this application by the Defence is

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1 granted. And each of those documents, at an appropriate stage, will need
2 to be given an EVD number.

3 Can I ask, Maitre Mabilie, that an appropriate stage you liaise
4 with the Court Officer to make sure that he is aware of exactly which
5 documents are in question so that they can be given an EVD number in due
6 course.

7 Mr. Sachdeva, on the 16th of April, the Prosecution filed
8 confidentially and ex parte an application - and I'm able to reveal this
9 much in open court without prejudicing anything that needs to be
10 protected - for the non-disclosure of certain sources which were
11 contained in the metadata. Can I ask if there's any reason why there has
12 been no confidential or public version of that filing? And again, please
13 take a moment to consult if you wish.

14 MR. SACHDEVA: Mr. President, I understand we just filed a public
15 redacted version.

16 PRESIDING JUDGE FULFORD: Well, that will teach me not to look at
17 the last version of my e-mails before coming into court then,
18 Mr. Sachdeva. Thank you very much indeed.

19 Is it your -- and again, please consult on this, Mr. Sachdeva.
20 Is it your view that sufficient will have been revealed in the public
21 redacted version for the Defence or any interested participants to
22 respond to the application? Are they provided with sufficient detail to
23 be able to make a meaningful response?

24 (Prosecution counsel confer)

25 MR. SACHDEVA: Mr. President, in our submission, yes.

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1 PRESIDING JUDGE FULFORD: Right. We'll therefore set a dead-line
2 of seven days from today, so Tuesday of next week at 4.00 p.m., for any
3 responses to this application. If having considered the public redacted
4 version it is considered that for some reason that dead-line is
5 unachievable, there is of course liberty to apply to vary it.

6 Final question on this, Mr. Sachdeva: Do I take it that there
7 would be no advantage in filing a confidential version of this filing,
8 presumably because the public version and the confidential version would
9 be the same?

10 MR. SACHDEVA: Yes, Mr. President, that's right.

11 PRESIDING JUDGE FULFORD: Thank you very much.

12 On the 14th of May, the Chamber granted two separate applications
13 for lifting the anonymity of witnesses. The first was Ms. Bapita's
14 application, document 1859, filed on the 14th of May and notified on the
15 15th of May to lift the anonymity of five witnesses -- five victims; and
16 the second was Mr. Walley's application to lift the anonymity of nine
17 victims, document 1816, filed on the 14th of April.

18 Given a matter that we are going to have to consider in a moment
19 in private session, in order to put the accused in the position to which
20 he is entitled, the names and dates of birth of the victims represented
21 by Ms. Bapita should be communicated today to the Defence in some form of
22 schedule. This should be done, please, via the Registry.

23 (Trial Chamber confers)

24 PRESIDING JUDGE FULFORD: The VPRS has sought guidance by e-mail
25 on the 15th of April on the form of disclosure when anonymity is lifted

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1 as regards participating victims. The proposal that has been made is
2 that a schedule should be supplied which sets out, as I understand it,
3 the names and the dates of birth of the relevant victims.

4 Can I first inquire of Ms. Massidda if that understanding is
5 correct.

6 MS. MASSIDDA: Your Honour, this is the first time that I heard
7 about it --

8 PRESIDING JUDGE FULFORD: You need say no more.

9 MS. MASSIDDA: Thank you.

10 PRESIDING JUDGE FULFORD: Thank you.

11 For the time being, disclosure should be made in this limited
12 form as suggested by the VPRS. If there is a suggestion that more
13 complete disclosure should be made, and most particularly if it is
14 suggested that the application forms suitably redacted should be
15 disclosed, then such applications should be made by way of a filing so
16 that the matter can be addressed formally. In the meantime, apart from
17 the five victims represented by Ms. Bapita which we have just dealt with,
18 for all other victims in relation to whom anonymity has been lifted,
19 their details should be supplied by way of a schedule no later than
20 4.00 p.m. on Friday of this week.

21 Finally, as regards public session, we turn to the two experts
22 proposed by Mr. Walleyne as regards the use of names in the DRC. There
23 has only been one filing in response, and that was from the Prosecution,
24 document 1870, in which the Prosecutor indicated that he does not object
25 to either of these proposed experts being instructed. It would be

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1 helpful to us if the parties and the interested participants could
2 provide any questions that they feel ought to be considered during the
3 compilation of the reports of one or both of these experts. And
4 therefore, we seek proposals in that regard by 4.00 p.m. next Monday,
5 which is the 25th of May.

6 Now, unless there are any other matters that anybody wishes to
7 deal with in public session, we will now go into private session.
8 Private session, please -- sorry, it needs to be closed session. That's
9 quite right.

10 *(Closed session at 9.53 a.m.) Reclassified as open session

11 COURT OFFICER: Closed session.

12 PRESIDING JUDGE FULFORD: Ms. Bapita, can I confirm through you
13 that some of the -- that some of the victims on whose behalf you wish to
14 direct questions to Witness 55 have now had anonymity lifted?

15 MS. BAPITA (interpretation): Yes, your Honour. I shall speak
16 for five victims concerning anonymity.

17 PRESIDING JUDGE FULFORD: And those are five victims in relation
18 to whom we have granted the lifting of their anonymous status?

19 MS. BAPITA (interpretation): Exactly, your Honour.

20 PRESIDING JUDGE FULFORD: Thank you very much indeed.

21 Ms. Bapita, on behalf of five victims who she represents, has
22 sought leave to ask questions which concern the participation in
23 hostilities by children who were functioning in an area which is said to
24 have been under the control of Witness 55. Ms. Bapita has founded her
25 application in part on the proposition that these victims, or some of

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1 them, were themselves within that area where hostilities took place under
2 the control or partly under the control of Witness 55. By way of
3 particularity, Ms. Bapita has indicated that she wishes to ask Witness 55
4 for the names of commanders who were under that witness's direction
5 within these areas to the extent that that questioning relates to the use
6 of child soldiers in the hostilities.

7 The Defence oppose this application. It is said that the accused
8 is concerned, first, that the victims or some of them have enjoyed
9 anonymous status; second, that there is no real basis for this
10 questioning; and third, that the proposed areas of questioning, as
11 described by Ms. Bapita, are too vague. In our judgement, the issue of
12 anonymity has now been sufficiently resolved, and during the course of
13 today the Defence will be provided with the relevant personal details of
14 the victims on whose behalf Ms. Bapita is going to be asking questions.
15 We are of the view that the areas that she has indicated she wishes to
16 cover during questions are legitimate, and in particular there is a
17 proper basis for asking Witness 55 about commanders who were under his
18 control who were responsible for the use of child soldiers; and more
19 generally, for her to ask questions about the use of children in warfare
20 within the area under Witness 55's control.

21 We stress that Ms. Bapita must be careful not to ask the witness
22 simply to repeat evidence that has already been given during questioning
23 by the Prosecution. Put otherwise, this should not be a duplicative
24 exercise. And her questions, of course, must always focus on the areas
25 which are legitimately covered by the views and concerns of the victims

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1 she represents within the context of the charges which the accused faces.
2 However, as formulated, in our judgement, this request to ask questions
3 meets the clear test laid down by the Appeals Chamber.

4 Good. Witness 55, please.

5 (The witness entered court)

6 PRESIDING JUDGE FULFORD: Good morning, sir.

7 THE WITNESS (interpretation): Good morning.

8 PRESIDING JUDGE FULFORD: Private or public session,

9 Mr. Sachdeva?

10 MR. SACHDEVA: Mr. President, I'd like to start off in open
11 session; however, if the witness feels he can't answer in open, then I'd
12 seek your leave to move back into private.

13 PRESIDING JUDGE FULFORD: Good. Well, let's first of all go into
14 public session. You can put any questions, and of course if the witness
15 has concerns about what may be revealed in his answers, then of course we
16 will move immediately into private session.

17 MR. SACHDEVA: Thank you, Your Honour.

18 PRESIDING JUDGE FULFORD: Public session, please.

19 (Open session at 10.02 a.m.)

20 COURT OFFICER (interpretation): Public session.

21 WITNESS: WITNESS DRC-OTP-WWW-0055 (Resumed)

22 (Witness answered through interpreter)

23 Questioned by Mr. Sachdeva: (Continued)

24 Q. Good morning, sir. I trust you're well.

25 A. (No interpretation).

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1 Q. I will try to complete my questions today. Firstly I'd like to
2 start off by showing you a document.

3 MR. SACHDEVA: If I could ask that tab 61 -- it's tab 61 in the
4 binder. The DRC number is DRC-00113014.

5 Q. And, sir, if I could ask you to turn to tab 61 in your binder and
6 just let me know when you're arrived at that document.

7 COURT OFFICER: Sorry, we cannot find the document. Could you
8 repeat the ERN number.

9 MR. SACHDEVA: DRC-00113014.

10 COURT OFFICER: This document shall bear the evidence number
11 EVD-OTP-00456.

12 MR. SACHDEVA: Mr. President, may I ask the Court Usher to ensure
13 that the witness is at the right tab, please.

14 PRESIDING JUDGE FULFORD: Certainly.

15 If the usher could please go over to the witness.

16 COURT OFFICER: Is the document public?

17 MR. SACHDEVA: Yes, it can be broadcast.

18 COURT OFFICER: Thank you.

19 MR. SACHDEVA:

20 Q. And, sir, my question is: At the bottom one sees the stamp and a
21 name Saba Aimable and I want to ask you whether you know who that person
22 is.

23 A. I do not know this person. I don't know him.

24 Q. And what about the function that we see here, do you know
25 anything about this function?

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1 A. It says here of judicial police officer. Is that it?

2 Q. Yes, yes. And also if you move to -- to the first two lines of
3 the document after Saba Aimable it says: "Officier de Police Judiciaire
4 a competence generale" and it continues. And I wonder if you could
5 explain what that function is in the UPC.

6 A. Well, according to what I see there, it says judicial police
7 officer, and as regards police in the UPC, I'm -- don't know how the
8 police used to operate and I am not able to explain this function and
9 what it implies.

10 Q. And after that you'll see "Administrateur General de la Securite
11 de l'UPC." Do you know who fulfilled that role in the UPC?

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 Q. And, sir, my last question on this document: Does this document,
16 given your experience and to your knowledge, does it appear to you to be
17 an authentic document emanating from the UPC?

18 A. In fact, this document doesn't look like the other documents that
19 I knew from the UPC. If you compare it with the one you showed me the
20 day before yesterday, it looks different.

21 Q. Leaving aside the comparison with the document I showed you the
22 other day, concentrating on the top of the page with the header and the
23 stamp at the bottom, what if anything can you say about the -- those --
24 the top and the bottom of the page, what can you say about them?

25 A. As I said, I think this document comes from the police, but I

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1 can't tell you whether this is typical of the documents that the police
2 used. (Redacted)

3 (Redacted)

4 (Redacted)

5 Q. Does the header at the top appear to you to be the header of the
6 UPC?

7 A. As I just said, this document is different from those I used to
8 know.

9 Q. On Friday -- thank you, sir, we're finished with that document.
10 On Friday we were speaking about the G5 and the G5's
11 responsibility with the administration, and in particular mobilisation.
12 During your time with the army, did you ever see reports submitted by his
13 department?

14 A. (Redacted)
15 (Redacted) I couldn't control their work and they
16 had somebody that they had to file their report to and I couldn't ask for
17 this or that report. It was confidential and I couldn't break the
18 confidentiality of their work.

19 PRESIDING JUDGE FULFORD: Mr. Sachdeva, could you look, please,
20 at page 12, lines, really, 23 to 25 and the last answer that the witness
21 has given. Aren't they getting rather close to revealing the kind of
22 position, the sort of status held by this witness that may be revealing?

23 MR. SACHDEVA: Yes, they are, in particular the last answer, yes.
24 Perhaps we should move into open -- private session, I apologise.

25 PRESIDING JUDGE FULFORD: We should. There should be redactions,

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1 please, to both of those passages and we must go into private session.

2 *(Private session at 10.13 a.m.) Reclassified as open session

3 COURT OFFICER (interpretation): Private session.

4 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

5 MR. SACHDEVA:

6 Q. Sir, I appreciate that you say you didn't see G5 reports, but can

7 I take it from your answer that indeed the G5 did submit reports (Redacted)

8 (Redacted)

9 A. Yes, I think so. I think that he submitted reports, (Redacted)

10 (Redacted). But I had no control over what he did. (Redacted)

11 (Redacted)

12 can't confirm that he drafted reports, but I know that as a rule one

13 would draft reports.

14 Q. I'd like to show you a document and in the binder it is tab 60.

15 MR. SACHDEVA: And for the Court Officer the ERN is DRC-00109136.

16 COURT OFFICER: The document shall be assigned an evidence number

17 EVD-OTP-00457. And it's a public document?

18 MR. SACHDEVA: It is, yes.

19 COURT OFFICER: Thank you.

20 MR. SACHDEVA:

21 Q. And, sir, take your time if you need to and please have a look at

22 the bottom, at the end of the document.

23 A. Do you want me to read through the document to the end or do you

24 just want me to have a look at the very last part?

25 Q. Well, first let me ask you: Have you seen this document before?

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1 A. No, I haven't.

2 Q. And if you go to the end you'll see a name and a signature. What
3 can you say about that?

4 A. I can see a signature here and there's also the name of Commander
5 Eric Bambazi, commander, G5 leader, chef, and then it says EMG/FPLC.
6 This is a document, as far as I can see, signed by Eric. I think Eric
7 was the G5.

8 Q. And again, not necessarily comparing it to what we discussed
9 beforehand, but does this document appear to you to be an authentic and
10 valid document emanating from the UPC?

11 A. Well, look, the author of this document is Eric, he drafted it.
12 As I have said, I'm not familiar with G5 matters with G5 reports. I was
13 never provided with a report from his office by him, so I can't confirm
14 that this is in fact a document that comes from the G5. Perhaps the
15 chief who received this document knows more about the matter.

16 Q. Sir --

17 PRESIDING JUDGE FULFORD: Pause, please, Mr. Sachdeva.

18 Mr. Biju-Duval.

19 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. The
20 Defence would perhaps like to receive instructions from the Chamber with
21 regard to how we should proceed. We are all concerned by the question as
22 to admitting this document into evidence. I was thinking of showing
23 document after document, objections after the hearing, I don't think this
24 would be the right way to proceed because we would then have to interrupt
25 this testimony for a lengthy period of time. But I would like the

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1 Chamber to note that the Defence has objections to the admission into
2 evidence of this document for reasons that are obvious to me. I can do
3 this right now, but we could proceed a little later, after the witness's
4 testimony has been completed and we could submit our objections in
5 writing.

6 (Trial Chamber confers)

7 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.
8 We are very keenly aware of your concern. We consider it absolutely
9 appropriate that you have raised the issue. And what we would suggest,
10 if this is convenient for you, is that once the witness has completed his
11 testimony, at that point in time we will then look, with your assistance
12 and that of Mr. Sachdeva, at each disputed document to see whether the
13 answers provided by the witness have laid the foundations for the
14 admissibility of the documents in question.

15 Now, there may be a separate issue as to whether or not on a
16 free-standing basis the Prosecution is entitled to ask us to admit these
17 into evidence under the bar table principle, and of course we will engage
18 in that exercise if requested as well. But on the particular point which
19 you've highlighted, if it's convenient with you we will look at these
20 compendiously at the end and you needn't, as far as we're concerned, on
21 each occasion rise to your feet to say that admissibility is an issue.
22 Good.

23 Happy with that, Mr. Sachdeva?

24 MR. SACHDEVA: Yes, Mr. President.

25 PRESIDING JUDGE FULFORD: Please proceed.

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1 MR. SACHDEVA: Thank you.

2 Q. Sir, we started talking about the training camps on Friday, and
3 part of this session and the next session will be confined to that topic.
4 But before I move there I want to just ask a few further questions with
5 respect to recruitment. Now, on I think it was the first day of your
6 testimony we were talking about somebody called Mafuta. I don't know if
7 you remember that. And I just want to read out one of your answers and
8 then I have a few further questions. I had asked you whether Mafuta had
9 met with Mr. Lubanga and your answer was the following:

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 And my question is this: I'm not talking about an official
14 meeting, a pre-arranged meeting, but can you elaborate on that time where
15 you say (Redacted) Just if you can describe the
16 circumstances of that rendezvous, let's say.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 them, what -- what took place? What was being discussed, if you know?

24 A. What was discussed with the elder Mafuta, is that what you are
25 asking me about?

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1 Q. Yes, whether there was an occasion where you either was involved
2 or you came to know what was discussed.

3 A. Well, I really couldn't tell you what he talked to the president
4 about. They weren't really meeting strictly speaking. They weren't
5 meetings in the real sense of the term. Mr. Mafuta was an influential
6 elder amongst other elders. Often I would see him go to Lubanga's to
7 provide him with advice, to advise him. Often they spoke to each other
8 in their mother tongue, which I don't understand. Sometimes they would
9 go and speak in another room. Often -- well, if there were subjects that
10 concerned me, I could participate in the discussions, I could listen to
11 what was being said.

12 Q. Very well. Let's start with that then. Again, I'm concentrating
13 on -- I want you to concentrate on the meetings or the gatherings that
14 (Redacted)
15 (Redacted). What types of subjects
16 were discussed that you recall?

17 A. Well, the subjects (Redacted) that were discussed between
18 Lubanga and Mafuta, (Redacted) Mafuta at
19 President Lubanga's place Mafuta (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted). The conflict
24 wasn't at that stage an open one, and that day Kisémbu, the Chief of
25 Staff, was present. That's what I can recall, at least as regards

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1 (Redacted). And I'd like to point out that they did meet several times.

2 Q. And just to be clear, when you say "they," you mean Mr. Lubanga
3 and Mafuta; is that right?

4 A. Yes, yes, that is what I meant. (Redacted)
5 meaning that it was in the presence of Mafuta and Thomas Lubanga.

6 Q. You've told us about three occasions on -- (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted) Was it simply an introduction
10 or a meet-and-greet meeting or were there topics discussed at that
11 initial meeting, first meeting?

12 A. So you want to know what happened as regards the first encounter?

13 Q. Yes, sir. I'm asking whether -- was it just an introduction or
14 were there topics discussed in that first encounter that you recall?

15 A. Well, I said that (Redacted)

16 and (Redacted) at that time. (Redacted)

17 Mr. Lubanga as well and to Mr. Mafuta. And then Mafuta said, Is this the
18 person you were talking about? And the answer given was, Yes. (Redacted)

19 (Redacted) I'm pleased to see you and I'd like to thank

20 you for the assistance you're providing. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 case, he had heard that a commander had come to help us. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted). You know, I said that the battle of

6 Bunia was an inter-ethnic battle between the ethnic groups and he knew

7 that I had come to help them in that war. But at that particular moment

8 I did not occupy that function.

9 Q. I appreciate that you've told the Court that (Redacted)

10 (Redacted) and that was it. (Redacted)

11 well, what was discussed, if you recall, between Mafuta and Lubanga at

12 (Redacted)

13 A. Would you please repeat your question. You say that Lubanga and

14 Mafuta were talking. You want to know what they were discussing in

15 that -- (Redacted) That wasn't the first time that Lubanga

16 and Mafuta met, (Redacted)

17 (Redacted)

18 Q. Yes. And thank you for that clarification. That's why I want to

19 concentrate on that time where (Redacted). And, sir, you've told

20 the Court the matters which were discussed that concerned you and your

21 work, your work to come in fact. And what I'm interested now is: What was

22 discussed between President Lubanga and Mafuta at that encounter (Redacted)

23 (Redacted)

24 A. I told you that on that first occasion I can't really tell you

25 what Lubanga and Mafuta were discussing on that particular day because

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 there wasn't, strictly speaking, a meeting that was going on. (Redacted)
2 (Redacted)
3 (Redacted). And on that
4 day he was with Mafuta, and (Redacted)
5 about the UPDF and UPC fighting and he was also present then. That's
6 what I told you.

7 (Redacted) I

8 don't really know whether you've understood what I'm saying. But on that
9 day there was not a discussion with the president on any other matters.

10 Q. You said that Mr. Mafuta would advise the president. What would
11 he advise the president on?

12 A. Often it was advice to do with the UPC movement. I told you that
13 to a certain extent he was his advisor. I told you that when I went to
14 see the president, to tell him something, that was the subject of their
15 discussions. And that's the reason why I said that he went to see
16 Lubanga so often and that he gave him advice. (Redacted) at
17 Lubanga's place, the president's place.

18 Q. Yes. And the -- you said it was advice as to what to do with the
19 UPC movement. Do you know what specifically was discussed or said to
20 Mr. Lubanga or did you find out later perhaps?

21 A. Perhaps I could give you an example because I think we're having
22 problems understanding each other. Well, as to whether I knew what sort
23 of advice he gave him, no, (Redacted)
24 (Redacted), I would go, and on that occasion I
25 spoke to him about the situation (Redacted)

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 (Redacted)

2 I went to the hospital to see the victims, and when I saw the

3 injured (Redacted), Lubanga, about this so that he knew

4 what was happening there. (Redacted), he was -- or

5 I found him with Mr. Mafuta. (Redacted)

6 (Redacted)

7 (Redacted). Instead of Lubanga

8 answering me, it was Mafuta who answered; and he said -- well, he called

9 me (Redacted) and this is (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 So you can see that it was Mafuta (Redacted), and the

16 president basically said he agreed. That was the discussion that they

17 were having.

18 After that, after discussing things with him, (Redacted)

19 (Redacted). I called him up on

20 the radio and asked where he was and I went to find him and he said, Did

21 you see what has happened? There are a lot of injured people in the

22 hospital. And Bosco actually said the same thing, he said, (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted) It was obviously -- it was

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 something that was in their programme, in their plan.

2 Q. When you say that the president was following this and he added
3 that he was often trying to convince people to make youngsters available,
4 available to whom?

5 A. It was to follow training and join the army.

6 Q. And you said -- in addition you said that:

7 "So you can see it was Mafuta (Redacted) and the president
8 basically said he agreed."

9 What did the president agree with?

10 A. I said that he reinforced or confirmed what (Redacted) was saying; in
11 other words, the civilians had learnt a lesson because they had refused
12 to make youngsters available to help them. And the president said in
13 addition, we asked those people to do that and there they've been
14 attacked by the enemy. (Redacted)

15 Q. And, sir, I'm sorry to persist. I just want to be clear. When
16 you say youngsters were being made available for the army, do you mean
17 the UPC?

18 A. Yes, the UPC Army. There was no other army.

19 Q. Now, for the moment let's move on to the training, and, sir, I'm
20 going to ask you general questions about the training and about some of
21 the camps. Are you happy to answer those questions in open session?

22 A. I don't know -- I don't know how you're going to formulate your
23 questions. I can't give you an answer to that question.

24 PRESIDING JUDGE FULFORD: That's not a bad answer, Mr. Sachdeva,
25 is it really. I think we'll give it a go. Open session, please.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 (Open session at 10.51 a.m.)

2 COURT OFFICER: Public session.

3 MR. SACHDEVA:

4 Q. You mentioned Rwampara training camp, you mentioned Aru, Bule,
5 and Bunia, if I recall correctly. Generally speaking, what types of
6 activities formed part of the training in the UPC?

7 A. Can you please repeat your question. I didn't understand it
8 well.

9 Q. Certainly. On Friday you told us about several training camps in
10 the UPC, Rwampara, Bule, Bunia, and Aru. And my question is: At these
11 training camps, what types of activities formed part of the training
12 routine for the new recruits?

13 A. You talk about activities. I don't understand the type of
14 activities you are referring to. Normally when recruits arrive they are
15 received and registered, and after they have been registered they start
16 their military training right up to the time when they complete such
17 training.

18 Q. And -- and that's right, sir. I want to talk about the military
19 training. What did that military training involve?

20 A. I don't know how to answer you. The training was conducted in
21 the way that recruits are training -- are trained. First of all, there
22 is a first part, an introductory part, which is to eliminate fear of
23 civilians in order to prepare them for the military life. Later on they
24 learn how to march, and they are taught combat tactics and the use of
25 weapons. Later on they are taught how to shoot, how to shoot at their

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 target. That is in a nutshell the type of training provided to them.

2 Q. Let's take these activities or these subjects that were taught to
3 new recruits in turn. When you say they were taught how to eliminate
4 fear, what -- how was that done to your knowledge?

5 A. Your Honour, I would like to say something.

6 PRESIDING JUDGE FULFORD: Thank you. Please do, sir.

7 THE WITNESS (interpretation): I would like this question to be
8 put to me in private session.

9 PRESIDING JUDGE FULFORD: Private session, please.

10 *(Private session at 10.56 a.m.) Reclassified as open session

11 COURT OFFICER: (No interpretation).

12 PRESIDING JUDGE FULFORD: Right. So the question is: How were
13 the recruits taught how to eliminate fear.

14 THE WITNESS (interpretation): Well, the way of eliminating fear
15 depended on the type of exercise that they were made to carry out. I
16 give you an example. After learning how to use weapons, the recruits are
17 taught to withstand the noise of gun-fire. You know, it produces a lot
18 of noise. So they are taught not to panic when a fire-arm is used, when
19 shooting is being done. They are taught certain tactics that they can
20 use during combat.

21 It's really difficult for me to explain to you everything they
22 did in the course of their training because they were made to carry out
23 many things, to do many things to eliminate fear. I think that this
24 brief explanation I have given will make you understand what I am talking
25 about.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Closed Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA:

2 Q. Yes. Thank you. And amongst the different activities that
3 you've described, what was the most important component of the training
4 schedule for new recruits?

5 A. Could you please repeat your question.

6 Q. Yes. You have told the Court that training consisted of
7 eliminating the fear, firing weapons, marching. What was the most
8 important component, to your knowledge, of that training routine?

9 A. The most important component was the use of weapons. I told you
10 that this was a rebel movement. It wasn't a conventional army. It
11 wasn't the type of training that government soldiers would undergo. This
12 was short-term training, so the most important thing was to learn how to
13 use weapons. That is, to assemble and disassemble weapons, how to fight,
14 target practice, and after that the recruits would be ready for combat.

15 PRESIDING JUDGE FULFORD: Thank you very much, sir. We're going
16 to have a midmorning break now. As ever, thank you for your assistance.
17 We'll sit again at half past 11.00.

18 Closed session, please.

19 *(Closed session at 11.01 a.m.) Reclassified as open session

20 COURT OFFICER (interpretation): Closed session.

21 (The witness stands down)

22 PRESIDING JUDGE FULFORD: Half past 11.00.

23 Recess taken at 11.02 a.m.

24 On resuming at 11.32 a.m.

25 COURT USHER: All rise. Please be seated.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Closed Session)
Procedural Matters

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1 PRESIDING JUDGE FULFORD: Witness, please.

2 While the witness is coming in, can we use the time to indicate
3 that Ms. Coomaraswamy has indicated that she would wish to be given the
4 specific designation of expert witness. We therefore direct the
5 Registry, please, to ensure that the relevant steps are undertaken so
6 that she, if it's appropriate, can be entered onto the list of expert
7 witnesses for the Court. We are seeking to arrange a date in June when
8 Ms. Coomaraswamy can come to give evidence; however, there may be a
9 difficulty about this and as a back-up position, she may give her
10 evidence on the first day that we sit again in September.

11 (The witness takes the stand)

12 PRESIDING JUDGE FULFORD: Thank you very much, sir.

13 For the benefit of the interpreters and the stenographers, the
14 spelling is C-o-o-m-a-r-a-s-w-a-m-y.

15 Private session, please.

16 MR. SACHDEVA: Mr. President, I --

17 PRESIDING JUDGE FULFORD: We move to open session.

18 MR. SACHDEVA: Open session.

19 PRESIDING JUDGE FULFORD: Sorry, my mistake.

20 Open session, please.

21 (Open session at 11.34 a.m.)

22 COURT OFFICER: Open session.

23 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

24 MR. SACHDEVA: Thank you, Mr. President.

25 Q. Sir, with respect to the training, were there differences between

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 the training the adult recruits received and the training the child
2 recruits received, or was the training the same?

3 A. There was no difference. It was the same training.

4 Q. And you had mentioned that amongst the recruits there were
5 females and males, and the same question: Did the training differ
6 between the sexes or did it remain the same?

7 A. The training was the same. There was no difference between males
8 and females. The training was the same. There was no difference.

9 Q. Typically how long would the training last for?

10 A. The training did not last for long, two or three weeks.

11 Q. In the training camps and while the training was being given, are
12 you aware of the type of discipline, if at all, that was instituted in
13 the camps?

14 A. I did not fully understand the term "discipline." Can you
15 please rephrase your question. What type of discipline are you referring
16 to? Yes, there were exercises or training on discipline.

17 Q. Can you elaborate on that, please.

18 A. I will give you some explanation, that is, according to my
19 understanding of the life of a soldier. When you ask the question to
20 know about the type of discipline we had, I can't answer that question
21 because I was not a military trainer so I can't talk about the type of
22 discipline that we had. If you wish to get information on that question,
23 then I will tell you -- I will give you information based on the general
24 knowledge I have of the army. I can't give you precise information
25 because I was not a trainer.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

Page 29

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 Now, if you want me to give you information on general discipline
6 within the army, then I'm going to give you some explanation.

7 Q. Well, why don't we start with that. If you please give the Court
8 some general information about discipline.

9 A. In general, within an army discipline is very important. When
10 there is military training, when you are taught about the military life,
11 especially if you are coming from -- if you have a civilian background,
12 there are certain domains relating to discipline that are taught to you.
13 For a soldier to behave in an orderly manner to respect military
14 regulations, there has to be some discipline. If someone tries to
15 infringe disciplinary regulations, then there are certain forms of
16 punishment which are meted out to that person to get them to be more
17 disciplined. That's the explanation I can give.

18 Q. And to your knowledge, within the UPC when those regulations were
19 violated what types of punishments would be meted out?

20 A. There are military sanctions in existence and there are different
21 types of sanctions within the army. There are minor disciplines such as
22 being able to do a cartwheel but there's other things like being able to
23 do a particular task such as having to cook for one week for the troops,
24 if they want to give you that as a sanction. And another form of
25 punishment is you're asked to mow the grass. Another one is -- well,

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 there are various types that exist to punish unruly persons. You can be
2 arrested as well. There's a whole set of forms of discipline.

3 Q. What do you mean by a cartwheel?

4 PRESIDING JUDGE FULFORD: Could you try again, Mr. Sachdeva. I
5 don't think your question came through on the system. I heard you, as it
6 were, directly, but your question wasn't picked up so that I could hear
7 it on the headphones.

8 MR. SACHDEVA: Yes.

9 Q. Sir, I asked you what you meant by a cartwheel. You said that
10 one type of punishment would be to do a cartwheel. What do you mean by
11 that?

12 A. The word I used was "viringita" in Swahili and it's not
13 cartwheels, it's press-ups, rolls. I'll give you another example --
14 push-ups. Look, I'll show you how it's done. I hope you've understood
15 what I meant, but I'm giving this as an example. This is a person, this
16 glass, you're lying down, that's the man lying and the word means
17 rolling, rolling over and over but fast. You're forced to do them very
18 fast and there's a man with a whip behind you and -- or else they pour
19 water onto you while you're doing those rolls. That's what I mean and
20 you have to do them over and over until you're very tired.

21 MR. SACHDEVA: Mr. President, for the sake of the record, the
22 witness was pushing his glass along the table, rolling it along the
23 table, to describe that process.

24 Q. Sir, you said that there would be a man behind with a whip.
25 Would that -- would that man use the whip?

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 A. Yes. The whip was used. We usually had to insist on the person
2 doing the rolls very fast and the whip was used as a threat.

3 Q. Who would be the persons carrying the whip or administering
4 punishment?

5 A. I'll give you a full explanation. There's a word in Swahili,
6 "Mkongoto." "Mkongoto" means a whip and each instructor has a whip.
7 There are several instructors or trainers, each have a specific task.
8 For example, if you've committed an error, any of the instructors can
9 punish you.

10 PRESIDING JUDGE FULFORD: Yes, sir.

11 THE WITNESS (interpretation): I wanted to add some further
12 explanation.

13 PRESIDING JUDGE FULFORD: Certainly. Please do.

14 THE WITNESS (interpretation): In the army there are people
15 called RP. RP means militaries in charge of discipline within military
16 instruction, and if a soldier commits an error, the RPs are those who
17 apply a sanction. So these RPs are in charge of sanctions during
18 military training. I think you've understood now.

19 MR. SACHDEVA:

20 Q. And with respect to the punishments, with the recruits during
21 military training, did the punishments differ for children and adults or
22 were the punishments the same?

23 PRESIDING JUDGE FULFORD: Can you pause for a moment, please,
24 before answering that question.

25 Mr. Biju-Duval.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. BIJU-DUVAL (interpretation): Your Honour, I feel we're
2 having trouble with this type of question because the witness has clearly
3 indicated a moment ago that he would not be able to provide explanation
4 on what was going on in the training camps. Then he embarked on general
5 explanations on discipline within the army, but initially he clearly
6 stated that he wouldn't be able to provide the explanation as regards
7 what went on in training camps. Therefore, I think it's a little
8 dangerous to ask him to speculate on matters he doesn't know fully, as he
9 himself stated.

10 (Trial Chamber confers)

11 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I think it's fair to
12 observe that when the witness embarked upon this particular sequence of
13 answers, he introduced them in - to put it really at its lowest - in an
14 equivocal way in terms of whether or not he was going to be giving his
15 answers on the basis of real useful knowledge on his part or whether he
16 was just talking in a very general way about what he knows to be the
17 position within the military in the broadest sense. Given the Defence
18 have now objected to this, our view is it would be helpful before we go
19 any further to establish exactly what the basis is for the witness
20 providing us with details on this subject. Does he really have knowledge
21 as to what was taking place at the camps at the relevant time, or is this
22 just a general description of what he understands takes place within the
23 military at any time and at any place. So can we have a bit of
24 specificity, please, in that regard before we deal with this particular
25 area.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA:

2 Q. Sir, my question initially which prompted your answers was: "And
3 to your knowledge, within the UPC when those regulations were violated,
4 what types of punishments would be meted out?"

5 And the question following that is: "How did you know that these
6 were the punishments that were meted out in the UPC?"

7 A. (No interpretation).

8 PRESIDING JUDGE FULFORD: Can we have a translation, please, of
9 the witness's answer.

10 THE WITNESS (interpretation): Could you reframe the question,
11 please.

12 MR. SACHDEVA:

13 Q. Yes, certainly. I had asked you to your knowledge what types of
14 punishments were meted out when violations occurred in the UPC. And you
15 told the Court -- you gave examples of those punishments. And my
16 question is this: How do you know that? On what basis -- what's the
17 basis for your knowledge?

18 A. (No interpretation).

19 PRESIDING JUDGE FULFORD: We need interpretation, please.

20 THE INTERPRETER: Sorry, the interpreter lost the sound but it's
21 back now.

22 PRESIDING JUDGE FULFORD: Sir, I'm very sorry about this but
23 we're having -- so can we go back to the question and I'll ask you to
24 give an answer again. Can you describe to us, please, what the basis is
25 of your knowledge and understanding of the punishments that were

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 sometimes delivered when there were violations within the UPC. How do
2 you know what the punishments were?

3 THE WITNESS (interpretation): Your Honour, I think that I tried
4 to give you explanation about this subject, and what I was saying was
5 that if you want my explanation on the sanctions within the army, if
6 that's what you want, I gave you some general answers. We were talking
7 about training camps, and you asked me what had been going on as regards
8 discipline in the camps and what type of disciplines they were, and I
9 gave you all the different types that exist. And you just asked me a
10 question that's out of the ordinary because you've asked what sort of
11 sanctions happened in all the armies of the world and not just within
12 UPC, and I wanted to get extra -- something more specific, whether you
13 wanted to know for the UPC or generally what military sanctions are.

14 PRESIDING JUDGE FULFORD: I clearly haven't been as clear as I
15 should have been. We certainly don't want you to deal with all the
16 armies in the world. We want you to deal solely with the UPC and the
17 question is this: You have been able to describe some of the sanctions
18 within the UPC at the training camps. Now, how is it that you know what
19 the -- what sanctions were used at the training camps? Did you see that
20 happen yourself? Were you told about it at the time? Were you told
21 about it sometime later? How did you -- how do you have that knowledge?

22 THE WITNESS (interpretation): Yes, very well. I think what I
23 said was that I am not a trainer * and I was telling you all this, which
24 is what I know generally about the army. What I've just given is
25 explanation of things I've seen in other armies, not only in the training

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 camps that we're talking about. The explanation I gave concerns what
2 goes on ordinarily, because in a training camp things happen where people
3 are -- and people are really suffering. I'll give you an example.
4 Someone might be hiding because he's tired --

5 PRESIDING JUDGE FULFORD: What we want you to do, please, is to
6 make sure that you only talk about the UPC training camps rather than
7 training camps generally, possibly in other countries, possibly at other
8 times. So please only deal with what you know about the UPC training
9 camps.

10 And, Mr. Sachdeva, I'm going to ask you when these answers are
11 given from now on, to make sure that we establish that the witness is
12 speaking about either things that he has seen or that these were things
13 that were being talked about contemporaneously. It's really not going to
14 be of any value to us to have the witness giving evidence about things
15 that he simply heard about at some much later stage. So this has to
16 be -- more or less contemporaneous knowledge, either because the witness
17 saw it or because this was the kind of thing that was being talked about
18 when the witness held the position that he did within the UPC.

19 MR. SACHDEVA: Yes, Mr. President.

20 Q. Sir, to your knowledge and while you were in the UPC, did -- the
21 punishments that were meted out, were they different for children as
22 compared to adults or were the punishments the same for all the recruits?

23 A. I've already provided you with explanations about the various
24 kinds of punishment that one encounters within armies. There are no
25 specific punishments for children and other forms of punishment for

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 adults. There's one type of punishment of a general kind within an army.
2 So there are no specific forms of punishment for children or for adults.
3 The punishment meted out is punishment meted out to everyone without
4 distinction.

5 Q. And did that apply to the UPC, to the military in the UPC?

6 A. Yes, it was exactly the same.

7 Q. And how do you know that?

8 A. As I have said, there's only one form of punishment that is meted
9 out. That's what I'm trying to explain to you. I've never heard
10 anything about different forms of punishment that depended on whether one
11 was a child or not, on whether one was a woman. What I said is as
12 follows, with regard to whether I was in the training camp and whether I
13 could see how recruits were punished, well -- I apologise, your Honour,
14 but could we please move into private session?

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

16 *(Private session at 12.04 p.m.) Reclassified as open session

17 COURT OFFICER (interpretation): Private session.

18 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

19 MR. SACHDEVA:

20 Q. Yes, sir, can you please continue. You were saying with respect
21 to the -- with regard to when you were at training camps.

22 A. What I was saying is that with regard to the question about
23 punishment meted out, well, (Redacted), in the army. I've
24 already said that. (Redacted)
25 (Redacted). When I went to visit

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 the recruits, if any punishment was to be meted out to recruits or to
2 members of the military, well, this couldn't be done in my presence. If
3 this were to be done in my presence, naturally I would ask what the
4 individual had been -- had done. If I knew what the individual had done
5 I could perhaps intervene on that individual's behalf. If (Redacted)
6 the Chief of Staff is here or the deputy Chief of Staff, if they are
7 present, well, a member of the military cannot be punished. If, for
8 example, President Lubanga is here, well, you can't punish a member of
9 the military in his presence. It's not permissible to punish a member of
10 the military in the presence of his superior. I think you have
11 understood me correctly.

12 Q. Yes, I have. (Redacted)

13 (Redacted), the

14 information that you have given the Court about the types of punishments
15 that were meted out to the recruits, was -- is that information that you
16 knew at the time, that you learnt about at the time you were in the UPC?

17 A. Information on the punishment meted out to members of the
18 military within the UPC; that's what you're asking me about?

19 Q. Yes.

20 A. Yes, I knew there was punishment in the army, in the UPC. Not
21 all members in the UPC were innocent. Sometimes they would commit
22 errors. That is an ordinary phenomenon in all armies, but if they had
23 committed very serious errors, well, then there was a difference. If
24 serious errors had been committed, then the punishment meted out would
25 also be very severe. But with regard to disciplinary matters, violations

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 of discipline, I have already mentioned the kind of punishment that was
2 meted out in such cases.

3 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I think that makes the
4 position really very clear, that because of the witness's position in the
5 military although he wouldn't necessarily -- he probably wouldn't be
6 present when punishments were meted out, he would nonetheless have had a
7 general overview, I think is probably the fair summary, as to what was
8 happening. So the basis for his knowledge I think has now been
9 appropriately set out. And if you were returning then to further detail
10 on this subject as, for instance, what the more severe punishments were,
11 I think we can do that in open session.

12 MR. SACHDEVA: Yes, Mr. President, and thank you for that. May I
13 just say that my initial question was restricted to the UPC, and given
14 the witness's position and the fact that he had told the Court he had
15 been to the training camps, my submission would be that the foundation
16 had been established. Now, of course the Defence are entirely justified
17 to argue later during closing brief or what type of weight to accord to
18 that evidence. Nevertheless, in our submission the witness is
19 well-placed, in our submission, to give this type of evidence.

20 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I was making it clear
21 that you're entitled to proceed, so you really don't need to argue the
22 point now. And given that on at least one occasion it was unclear as to
23 whether the witness was speaking in a very general way or speaking
24 specifically, it occurred to the three of us that it was an entirely
25 appropriate intervention by Mr. Biju-Duval. Now the witness has made the

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1 basis of his knowledge absolutely crystal clear, and in those
2 circumstances you can continue.

3 Can we go, please, to public session.

4 (Open session at 12.10 p.m.)

5 COURT OFFICER (interpretation): Public session.

6 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

7 MR. SACHDEVA: Thank you, Mr. President.

8 Q. In addition to the push-ups that you described, you said that one
9 form of punishment would be to -- for a soldier to cook all week. And
10 I'd like you just to very, very briefly describe that.

11 A. You referred to push-ups, push-ups is the English term. I don't
12 know if you have understood me correctly when I said to do push-ups. As
13 far as cooking is concerned as a form of punishment, well, it just
14 amounted to doing the cooking. You had to cook for your friends, your
15 recruits, other recruits. You know, in Africa, doing the cooking is not
16 what it is in Europe. In Europe you have everything you need to cook in
17 your kitchen. In Africa we use wood, wood for preparation, wood that
18 burns well. You need to do a lot of work to go and gather wood and to
19 cook for soldiers for a week. It's not easy work. You have to stay by
20 the fire all the time. You have to prepare food for lunch and for dinner
21 for a week. You know, this kind of work is not very easy. It's not easy
22 work.

23 Q. You said that the cooking would be for the other recruits. Would
24 it also be for -- for other military persons in the camp in addition to
25 the recruits?

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 A. Well, it was a form of punishment for the recruits. They had to
2 prepare food for their colleagues, for other recruits. However, members
3 of the military in the camp had people who would help them with the
4 cooking in the camp. There were soldiers whose job it was to prepare
5 food for the trainers because in a training camp you have the leader of
6 the camp, you have his deputy, you have an administrative official, and
7 they have people who work for them, who cook for them. But when I
8 mentioned doing the cooking as a form of punishment, I was talking about
9 preparing food for one's colleagues who are being trained there, for
10 other recruits.

11 PRESIDING JUDGE FULFORD: I think that's enough on cooking,
12 Mr. Sachdeva.

13 MR. SACHDEVA: Yes, Mr. President.

14 Q. We spoke about the punishments. What, if anything, would be done
15 or -- well, if recruits had undertaken activities that were -- let me
16 rephrase that question. I apologise.

17 What about if the recruits did good work in the camps, what if
18 anything would be -- would happen to them if that took place?

19 A. If good work was done?

20 Q. Within the UPC, were military persons promoted?

21 A. There was no promotion in the UPC, no ranks; however -- your
22 Honour, could we please move into private session?

23 PRESIDING JUDGE FULFORD: Certainly.

24 Private session, please.

25 *(Private session at 12.16 p.m.) Reclassified as open session

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 COURT OFFICER: Private session.

2 PRESIDING JUDGE FULFORD: Yes. So people weren't promoted and I
3 think you're now going to add something to that.

4 THE WITNESS (interpretation): I was saying that in the UPC there
5 was no promotion. When I was in the UPC there was no promotion; however,
6 after having left the UPC and having joined another movement, the UPC did
7 start promoting within its ranks. When I was in the UPC, however, there
8 was no promotion. There were commanders and there were no ranks within
9 the UPC.

10 MR. SACHDEVA:

11 Q. Perhaps it's better if I give you a scenario and maybe then we
12 can see if you can answer. Let's say that a recruit had excelled himself
13 or herself during the training. Was there -- would there have been a
14 reward given to that recruit or not?

15 A. A recruit could not be promoted, and in addition the word
16 "recruit" in Swahili means that this individual isn't even a person.
17 It's a person without a position. If you're called "recruit," you don't
18 have a position, whether you work or not, you have to remain a recruit.
19 You are nothing. You can't receive anything. You can't receive any
20 goods and you can't be promoted.

21 However, one might feel that you are working well. You might be
22 nominated, designated, as a supervisor for other recruits, or you could
23 be the leader of a platoon within your group of recruits because within
24 groups of recruits you have platoons and sections. You can be given such
25 work. You can supervise other recruits, because each section, each

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1 platoon, has its superior, its supervisor. So in a certain sense this is
2 the kind of promotion that recruits can have, but within groups of
3 recruits that were present, there were no ranks. I think you have
4 understood my answer correctly.

5 Q. I have. Thank you.

6 MR. SACHDEVA: Mr. President, I think we can move into open
7 session for this.

8 PRESIDING JUDGE FULFORD: Good.

9 Public session, please.

10 (Open session at 12.19 p.m.)

11 COURT OFFICER: Public session.

12 PRESIDING JUDGE FULFORD: Are you staying with sanctions or
13 moving on to another subject, Mr. Sachdeva?

14 MR. SACHDEVA: On to another subject, Mr. President.

15 PRESIDING JUDGE FULFORD: Right. Before we do, sir, you
16 indicated that if there had been serious violations, then there could be
17 more severe forms of punishment within the UPC. So if recruits and I
18 assume those who had become soldiers, if they were guilty of some kind of
19 serious violation, then there may be a serious form of punishment that
20 followed. Could you give just a few examples of what you mean by the
21 more severe kinds of punishment?

22 THE WITNESS (interpretation): The examples I gave you had to do
23 with the army, the UPC. But as far as recruits are concerned, I don't
24 believe that a recruit can commit a serious error or violation. I've
25 never heard about a recruit committing a serious error. What I said was

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
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1 said in general terms with regard to regular members of the military
2 within the UPC. But in the army if individuals committed errors that
3 were not that serious, the punishment meted out would not be very severe.

4 PRESIDING JUDGE FULFORD: That's very clear. Thank you.

5 Yes, Mr. Sachdeva, now we're moving on to another subject I
6 think.

7 MR. SACHDEVA: Yes, Mr. President.

8 PRESIDING JUDGE FULFORD: Good. Thank you.

9 MR. SACHDEVA:

10 Q. Sir, once the training had been completed, the training of the
11 recruits, what would happen to those recruits?

12 A. They were deployed.

13 Q. Where?

14 A. It depends. It depends on the decision taken by the Chief of
15 Staff or his deputy. In other words, after the military training they
16 were sent to different sectors, and the people in charge of the sectors
17 knew how to make up the groups of recruits that were sent to them. They
18 were dispatched to the chiefs of brigade, and each chief of brigade knew
19 what to do with the recruits. As regards the battalion chiefs, it was
20 known what was to be done going down right to the lowest level.

21 PRESIDING JUDGE FULFORD: (Previous translation continues) ...

22 Mr. Sachdeva.

23 I'm -- I am going to mention this because your last question to
24 the witness really was too open. You have recruits generally finishing
25 their training. The witness then says they're deployed. And the

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
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1 question simply is: Where? Now, with 10s, 20s, hundreds of recruits
2 finishing their training and being deployed, simply asking a general
3 question, well, where were they deployed, as the witness immediately
4 said, it all depends. So can you be careful, Mr. Sachdeva, because I --
5 it can be very difficult to ask the witness to answer a question that is
6 put in such broad and general terms.

7 MR. SACHDEVA: Yes, Mr. President.

8 Q. Witness, I take it -- well, you said that the recruits would be
9 sent to the brigades, to the platoons. What would be their duties once
10 they arrived there, once they were integrated into the platoons and
11 brigades?

12 A. I don't really know how to answer you. The first thing is that
13 they finished their military training where they've learned how to use a
14 weapon, how to shoot, and after the training he's deployed into a
15 brigade, he becomes a soldier. That means that when he is sent to a
16 brigade it's to carry out military work. What is the job of a soldier?
17 The job of a soldier means waging war. If there's a battle he has to go
18 and fight.

19 Q. And would that apply to the kadogos, to the children, that were
20 trained? Would they be sent to the brigades for combat?

21 A. I think I've given you an answer to that question several times
22 over. If a kadogo finishes his training, he's deployed, he joins a
23 brigade, he's given a weapon, and obviously he's going to go and fight.
24 He wouldn't be given a weapon if he were then to withdraw. The final
25 decision depends on the commander. The commander might say, No, I think

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
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1 that that kadogo is a minor, he can perhaps fall back. But if that is
2 not the case, then he has to go and fight, he's been trained. He's passed
3 out of the training, he has to be deployed, then, in a war situation.

4 Q. In addition to being sent to the field, to the brigades, would
5 kadogos be sent to the high command, to the main staff?

6 A. No. I'd like you to put that question again.

7 Q. In addition to the kadogos being deployed to the brigades and the
8 platoons, after training would kadogos be deployed to the main staff?

9 A. Right. I'll give you an answer to your question. It's because I
10 was talking about brigades and platoons or sectors, but let me tell you
11 how things happened. When they finished their training, they're deployed
12 to a number of different military functions that will take a group to go
13 to such and such a sector, another one to the staff, to the main staff.
14 That's how it happens. So when a recruit becomes a soldier, he will be
15 deployed within the army of the UPC. There will be a group going to the
16 staff, there'll be another group going to a platoon, another one within
17 the training camp where they'll have carry out certain duties.

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

19 MR. BIJU-DUVAL (interpretation): Your Honour, the answer has
20 been given but I rose to my feet to criticise the leading question that
21 was put by Mr. Sachdeva as regards the staff.

22 PRESIDING JUDGE FULFORD: Yes, I think, Mr. Sachdeva, it would
23 have been very easy to formulate the question in a, as it were, a more
24 general way as to what the various options were for deployment of kadogos
25 without leading the witness straight to one particular area which is

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session) Page 46
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1 obviously of sensitivity as far as the accused is concerned, namely, the
2 high command. So I -- it's obviously a question of judgement, but on
3 areas such as that which are clearly of real importance to the Defence
4 you must please be careful not to phrase the question a way that
5 effectively leads the witness straight to the answer.

6 MR. SACHDEVA:

7 Q. What would be their duties at the main staff?

8 A. They carried out a number of different tasks, as any other
9 soldiers deployed at the main staff. I don't really know how to answer
10 your question.

11 Q. You said some time ago that --

12 MR. SACHDEVA: Mr. President, perhaps we should move into private
13 session for this question.

14 PRESIDING JUDGE FULFORD: Private session, please.

15 *(Private session at 12.31 p.m.) Reclassified as open session

16 COURT OFFICER: Private session.

17 PRESIDING JUDGE FULFORD: Yes.

18 MR. SACHDEVA:

19 Q. You had told us earlier that Bosco Ntaganda had escorts or
20 guards. Did other members of the main staff similarly have such escorts
21 or guards?

22 A. Yes, members of the main staff had escorts.

23 MR. SACHDEVA: Mr. President, we can move into -- I apologise, we
24 can move back into open session.

25 PRESIDING JUDGE FULFORD: Yes. Public session, please.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
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1 (Open session at 12.33 p.m.)

2 COURT OFFICER: Open session.

3 PRESIDING JUDGE FULFORD: Yes.

4 MR. SACHDEVA:

5 Q. Did the escorts at the main staff, did they include kadogos?

6 A. Yes, there were kadogos.

7 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

8 MR. BIJU-DUVAL (interpretation): I would like the questions to
9 be less leading on this sort of matter. It's particularly sensitive.

10 PRESIDING JUDGE FULFORD: Well, certainly, Mr. Biju-Duval.

11 We're at an area of great sensitivity for the Defence,
12 Mr. Sachdeva. Again I think that last question probably could have been
13 put more generally, but could you be careful on these areas, please.

14 MR. SACHDEVA:

15 Q. To your knowledge, sir, which members of the main staff had
16 kadogos as guards? And are you comfortable in answering this question in
17 open session?

18 A. In private session.

19 PRESIDING JUDGE FULFORD: Certainly.

20 *(Private session at 12.35 p.m.) Reclassified as open session

21 COURT OFFICER: Private session.

22 PRESIDING JUDGE FULFORD: Yes, so the question is: To your
23 knowledge, which members of the main staff had kadogos forming part of
24 their guard?

25 THE WITNESS (interpretation): I told you about the structure of

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
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1 the main staff. I think that you have the example that I gave you in the
2 form of a list. All the members of the chief staff had escorts, and
3 among the escorts were kadogos.

4 MR. SACHDEVA:

5 Q. And how about the president, did he have escorts?

6 A. If the members of the main staff had escorts how could you
7 imagine that the president did not?

8 Q. And how many escorts did the president have, if you can remember?
9 Was it five? Was it 20? Can you give us a figure?

10 A. I cannot give you a figure. It would be dishonest of me. The
11 president had a large number of escorts. Perhaps a battalion. There
12 were many of them, but it's very difficult to give you an exact figure
13 but it was like a battalion.

14 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I'm going to put the next
15 matter as generally as possible whilst taking the witness to the subject.

16 Sir, within the escorts who were responsible for the president,
17 were they only adults or were there also some kadogos, to your own
18 knowledge? So what was the position in relation to the president's
19 escort?

20 THE WITNESS (interpretation): I didn't understand the end of
21 what you said but I got the start.

22 PRESIDING JUDGE FULFORD: Just answer the start. That's sufficient.

23 THE WITNESS (interpretation): The president had escorts and that
24 included adults and children.

25 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA:

2 Q. You said -- you used the term "battalion." To your military
3 knowledge, how many soldiers comprised a battalion?

4 A. A battalion is made up -- well, in fact, in the military
5 structure a battalion can be made up of between 300 and 400 soldiers.
6 However, within the UPC a battalion was not made up of 400 soldiers, it
7 was between 150 and 200 soldiers, round about.

8 Q. With respect to the kadogos in Mr. Lubanga's guard, what were
9 their duties?

10 A. Mostly the role of the president's escort -- well, they were
11 there to provide his security, the security and safety of the president's
12 convoy if he were moving around. If he were in a vehicle. That was the
13 task carried out by the members of the escort. So generally speaking, it
14 was to guarantee his security and safety if he were to be moving around
15 in convoy and so on.

16 Q. And amongst the kadogos that were part of his guard, were there
17 boys and girls or just boys?

18 A. There were two PMF.

19 Q. The --

20 MR. SACHDEVA: Perhaps we can move into open session,
21 Mr. President.

22 PRESIDING JUDGE FULFORD: Thank you.

23 Public session, please.

24 (Open session at 12.42 p.m.)

25 COURT OFFICER: Open session.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA:

2 Q. The kadogos at the main staff and indeed with the president, to
3 your knowledge, how would they typically be dressed?

4 A. They wore uniforms.

5 Q. Did they carry arms or not?

6 A. They carried arms.

7 MR. SACHDEVA: Mr. President, I need to ask this question in
8 private session. I apologise.

9 PRESIDING JUDGE FULFORD: Don't worry.

10 Private session, please.

11 *(Private session at 12.42 p.m.) Reclassified as open session

12 COURT OFFICER: Private session.

13 PRESIDING JUDGE FULFORD: Yes.

14 MR. SACHDEVA:

15 Q. Sir, (Redacted), were there kadogos?

16 A. (Redacted). I would like
17 to get some clarifications. (Redacted)
18 (Redacted); however, I would like to know, are we in closed session, in
19 private session?

20 Q. We are, sir, yes.

21 A. (Redacted)

22 (Redacted)

23 (Redacted). Now, if you ask me the

24 question of knowing whether there were kadogos among my escorts, yes, I
25 had kadogos serving in my escort.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 Q. How many did you have serving in your escort?

2 A. I had two kadogos.

3 Q. What were their names?

4 A. There was one kadogo called (Redacted), and (Redacted), a kadogo, who
5 was called (Redacted)

6 Q. Sir, I'd like to ask you to write down the name of the first
7 person you mentioned, (Redacted), if that's possible.

8 PRESIDING JUDGE FULFORD: Yes, piece of paper and a pencil,
9 please, for the witness and an EVD number for the document.

10 COURT OFFICER: The document as annotated by the witness will
11 carry the number EVD-OTP-00458.

12 PRESIDING JUDGE FULFORD: Thank you.

13 (Redacted). Thank you.

14 MR. SACHDEVA:

15 Q. The -- these two escorts, (Redacted), how did they --
16 how was it that they came to be in your guard?

17 A. The members of my escort were deployed -- are we in closed
18 session? I would like to know if we are in closed session.

19 PRESIDING JUDGE FULFORD: We are.

20 THE WITNESS (interpretation): Well, the members of my escort
21 were posted to me (Redacted)

22 MR. SACHDEVA:

23 Q. And just so we're clear, the members of your escort, we're
24 talking about (Redacted); is that right?

25 A. I am speaking in general terms. My escorts, I didn't have only

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 two escorts.

2 Q. Before I ask you this question let me ask you, do you recall
3 roughly how long you spent in the UPC, how many months for example?

4 A. What were you saying?

5 Q. I'd like to -- I'd like to get an idea as to how long -- what was
6 the length of time that you were in the UPC (Redacted)

7 A. Well, as regard to the number of months, I'm not very sure.

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. And the two escorts, (Redacted), did they remain with you
13 during that time or were they there for a shorter time?

14 A. I did not fully understand your question. (Redacted)

15 (Redacted). And

16 when there was fighting with the UPDF I left them there in Bunia.

17 Q. The two kadogos in your escort, how were they dressed?

18 A. They wore the same clothes as their friends, that is, uniforms.

19 Q. Did they carry weapons?

20 A. Yes, they carried arms.

21 Q. Did the -- well, can you describe the uniform, please?

22 A. At the time we had the same uniform, that is, camouflage
23 uniforms.

24 Q. I'd like to show you a document.

25 MR. SACHDEVA: And I'd ask that it's not broadcast. The DRC

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 number is 01850810 and the tab number is 15.

2 COURT OFFICER: Sorry, could you repeat the ERN number of the
3 document.

4 MR. SACHDEVA: 01850810.

5 COURT OFFICER: This document shall carry the number
6 EVD-OTP-00459. The document is confidential I suppose.

7 PRESIDING JUDGE FULFORD: Yes.

8 Usher, can you make sure we're happily at tab 15, please, and the
9 right photograph is there.

10 Right. What's the question, Mr. Sachdeva?

11 MR. SACHDEVA:

12 Q. Sir, do you recognise who is depicted in this photograph?

13 A. Yes, I recognise this person.

14 Q. And who are they?

15 A. Well, excuse me, I would like to know, are we in closed session?

16 Q. We are.

17 A. Fine. On this photograph as you can see the person on the left
18 is Bosco Ntaganda. On the right, right of the screen, you have Salongo.

19 Q. Salongo was the sector commander; is that right?

20 A. Yes, he was sector commander.

21 Q. And the uniforms that Bosco and Salongo are wearing, were those
22 the uniforms that your escorts were wearing?

23 A. Yes, that is the uniform we were wearing in the UPC.

24 MR. SACHDEVA: Mr. President, I see the time and I'm about to
25 embark on a new topic. I wonder if we could adjourn.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Closed Session)
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1 PRESIDING JUDGE FULFORD: Yes, we can. We were looking at
2 tab 15; is that right, Mr. Sachdeva?

3 MR. SACHDEVA: Yes, Mr. President.

4 PRESIDING JUDGE FULFORD: Well, my tab 15 had three people in it,
5 not two.

6 Usher, can I ask was that the photograph -- right. The two
7 individuals are behind my tab 14. So after lunch, could -- I think this
8 is the second time this bundle's been shown to be wrong. I'm going to
9 hand the bundle back and could somebody check, please, over lunch to make
10 sure that mine is accurate. Thank you.

11 Right. Closed session, please -- sorry, yes, closed session.

12 *(Closed session at 1.00 p.m.) Reclassified as open session

13 COURT OFFICER: Closed session.

14 (The witness stands down)

15 PRESIDING JUDGE FULFORD: And the same exercise better take place
16 for the witness's copy because that really would be a potential tragedy
17 if his is wrong. So could mine be checked, please, and the witness's
18 copy checked.

19 Thank you all very much. We'll sit again at 2.45.

20 COURT OFFICER: All rise.

21 Luncheon recess taken at 1.01 p.m.

22 On resuming at 2.47 p.m.

23 COURT USHER: All rise. Please be seated.

24 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, just before the witness
25 comes in, although the usher can go and collect him, please - obviously

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Closed Session)
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1 good afternoon to everyone - we received an e-mail on the 14th of May
2 which I'm going to deal with in a very general way because the subject
3 arose ex parte, Defence only, but as regards the working arrangements for
4 the Defence in Bunia. Just to let you know that we've engaged the
5 assistance of Mr. Desalliers on that issue and we hope tomorrow to be
6 able to at least explain our understanding of what the position is. But
7 just so you know that this hasn't slipped between the cracks and the
8 floorboards but is in fact being addressed.

9 (The witness takes the stand)

10 PRESIDING JUDGE FULFORD: Good afternoon, sir.

11 Public or private, Mr. Sachdeva?

12 MR. SACHDEVA: Public, Mr. President.

13 PRESIDING JUDGE FULFORD: Good.

14 Public session, please.

15 (Open session at 2.49 p.m.)

16 PRESIDING JUDGE FULFORD: So we're in public session.

17 Yes, Mr. Sachdeva.

18 MR. SACHDEVA: Thank you, Mr. President.

19 I -- before I start I have the binder for the witness. And, your
20 Honour, your Honour's binder was checked and in fact it was one document,
21 as I understand it, that was out of place which therefore had an effect
22 on the other numbering, and the Prosecution apologises for that.

23 Q. Good afternoon, sir.

24 A. Hello.

25 Q. We have spoken about mobilisation. I now want to talk about

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session) Page 56
Questioned by Mr. Sachdeva (Continued)

1 demobilisation in the UPC. During your time in the UPC, do you know of
2 any demobilisation of kadogos, any demobilisation programmes of the
3 kadogos in the UPC?

4 A. The demobilisation programmes for the kadogos within UPC --

5 THE INTERPRETER: Interpreter lost a part of the witness's answer
6 in the hearing.

7 MR. SACHDEVA:

8 Q. Sir, may I ask you to repeat your answer, please.

9 A. I said that I wasn't aware of the child soldier demobilisation
10 programme within UPC.

11 Q. Did you ever have -- well, did you ever attend meetings where the
12 subject of demobilisation of kadogos was discussed?

13 A. Within UPC I never joined in such meetings.

14 MR. SACHDEVA: Mr. President, out of an abundance of caution, may
15 I move into private session, please.

16 PRESIDING JUDGE FULFORD: Certainly.

17 Private session.

18 *(Private session at 2.53 p.m.) Reclassified as open session

19 COURT OFFICER: Private session.

20 PRESIDING JUDGE FULFORD: Yes.

21 MR. SACHDEVA:

22 Q. (Redacted), did you ever have
23 discussions with President Lubanga about demobilisation of kadogos?

24 A. No, I never had any conversations with him concerning
25 demobilisation.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session) Page 57
Questioned by Mr. Sachdeva (Continued)

1 Q. And how about with the Chief of Staff, Mr. Kisémbé, did you have
2 discussions with him about demobilisation of kadogos?

3 A. No, not with him either. I didn't have any discussion with him
4 about kadogo demobilisation.

5 Q. And how about with (Redacted) members of the main staff, Rafiki,
6 Bosco, Eric, a G5, did you have discussions with any of them about the
7 demobilisation of kadogos?

8 A. No, I never had any discussion with them concerning
9 demobilisation of kadogos within UPC. The matter was never discussed
10 with them.

11 MR. SACHDEVA: Mr. President, I would like to show the witness
12 some documents and we can move into open session for that.

13 PRESIDING JUDGE FULFORD: Good.

14 Public session then, please.

15 (Open session at 2.55 p.m.)

16 COURT OFFICER: Open session.

17 PRESIDING JUDGE FULFORD: Yes, are these documents in the binder,
18 Mr. Sachdeva?

19 MR. SACHDEVA: Yes, Mr. President. The first one is tab 1 and
20 the ERN is DRC-00029274.

21 Q. And, sir, if I ask you -- if I can ask you to turn to tab 1,
22 please.

23 COURT OFFICER: This document has already been assigned an
24 evidence number. It's EVD-OTP-00047.

25 PRESIDING JUDGE FULFORD: And if the usher could perform his

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 historic role, please.

2 MR. SACHDEVA:

3 Q. Now, sir, I take it you're in tab 1 and here we see a document
4 that purportedly comes from the cabinet of the president, signed on the
5 21st of October, 2002, and it is titled "Enrollement des enfants soldats."
6 Do you see that in the document?

7 A. Yes, I've seen it.

8 Q. Did you in your time with the UPC ever see this document?

9 A. Excuse me, could you repeat what the heading is?

10 Q. I'm reading the fourth line down and it says: "Concerne:
11 Enrollement des enfants soldats." Do you have that there?

12 A. Yes, I see.

13 Q. And so the question is, sir: During your time with the UPC did
14 you see this document?

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 MR. SACHDEVA: Mr. President, may we move into closed session?

23 (Trial Chamber and Court Officer confer)

24 PRESIDING JUDGE FULFORD: Mr. Sachdeva, the Court Officer has
25 very helpfully indicated to me - and I'm grateful to him for it - that

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 it's absolutely critical with each of these documents that when you
2 introduce them, you make it clear whether they're to be broadcast or not.
3 In fact this document wasn't broadcast but nor should it have been given
4 possible designation of this witness. So can we bear that in mind,
5 please.

6 MR. SACHDEVA: Yes, Mr. President. I ...

7 Can I ask if we're in private session? Sorry.

8 PRESIDING JUDGE FULFORD: Private session.

9 MR. SACHDEVA:

10 Q. Sir, I just want --

11 *(Private session at 3.01 p.m.) Reclassified as open session

12 COURT OFFICER: Private session.

13 MR. SACHDEVA:

14 Q. Sir, I just wanted to clarify one thing with you. At the bottom
15 of the document where we have the CCs, the second line says
16 "Administrateur General de la Securite." Do you see that?

17 A. General administrator of security, yes, I see that.

18 Q. And who in the UPC had that function?

19 A. It was Mr. Rafiki.

20 Q. You said that (Redacted) was included in this document. Can you
21 tell us where, if it is included?

22 A. Could you repeat that question about (Redacted) that appears on the
23 document?

24 Q. Yes, certainly. And the -- the transcript of your initial
25 answer, it has your answer recorded as: "And if you look at the list,

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 you can see that it was addressed to the heads of the general staff and
2 also there is (Redacted) written there."

3 And I'm wondering where that is recorded.

4 A. Maybe you didn't quite understand me because I said when you look
5 at the bottom you see that there's the deputy secretary-general for
6 defence and the general administrator for security, and what I said was
7 that I asked whether they could see (Redacted) being there at all. It was
8 a question. It wasn't an affirmation. What I meant by putting that in
9 the form of a question was that I wasn't informed of that document
10 because I wasn't on the list of addressees. I'm not among those that it
11 was sent to.

12 Q. Thank you for that clarification, sir.

13 MR. SACHDEVA: And, Mr. President, it's because of that answer
14 that the document can be broadcast. And I apologise, that was in light
15 of the answer that was initially given.

16 PRESIDING JUDGE FULFORD: Let us broadcast the document then and
17 do we need to remain in private session?

18 MR. SACHDEVA: Yes, perhaps for one or two questions.

19 PRESIDING JUDGE FULFORD: Certainly.

20 MR. SACHDEVA: Thank you.

21 Q. Sir, I thus appreciate that you're not included -- (Redacted) is
22 not included in this document, and I take it -- well, let me ask you this
23 way. In spite of the fact that (Redacted) is not in this
24 document, did you by any other means come to know or see this document
25 during your time in the UPC?

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 A. Well, I know I -- as I said, I wasn't aware of this -- the
2 existence of this document.

3 Q. I now want to show you another document.

4 MR. SACHDEVA: And, Mr. President, we can move into open session.

5 PRESIDING JUDGE FULFORD: Good. Public session, please.

6 (Open session at 3.05 p.m.)

7 COURT OFFICER (interpretation): Open session.

8 MR. SACHDEVA: And for the benefit of the Court the document is
9 with -- under tab 2.

10 Q. And, sir, if I could ask you to move to the next tab. And for
11 the Court Officer the ERN is DRC-00029275.

12 COURT OFFICER: The document already bears an evidence number.
13 It's EVD-OTP-00050.

14 MR. SACHDEVA: Thank you.

15 Q. And, sir, essentially the same questions for this document. Did
16 you ever see this document during your time in the UPC; and if you didn't
17 see it, did you become aware of its existence through other means?

18 A. No, I haven't -- I never saw this document either.

19 Q. And if we look at the date, the 27th of January, 2003, at that
20 time were you in the UPC?

21 A. In 2003? Yes, I was in the UPC.

22 Q. And, sir, I apologise to push you. You said you never saw this
23 document. Did you come to know about its existence, did you hear about
24 the document, did you speak to anyone about this document?

25 A. To tell you the truth, I never came to know about this document.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA: Mr. President, might I have one second, please.
2 (Prosecution counsel confer)

3 MR. SACHDEVA: Thank you.

4 Q. Yesterday you were -- when we were speaking about mobilisation
5 you mentioned a term, a Swahili term, and if I'm right the term was
6 "shugali." Do you recall when you said that, sir?

7 A. I wonder whether we discussed this yesterday.

8 Q. I was asking you about the mobilisation at the brigade level and
9 you spoke about a practice, and I think that you used a term to describe
10 this practice, a Swahili term. And I understand the term to be
11 "shugali." Am I right in that, sir?

12 A. No, I don't know what that means, "shugali." Perhaps that's the
13 way you pronounce this word. How is it written?

14 Q. I think the pronunciation is "shugali."

15 A. In any event, I don't know what this means. I don't know what
16 you're trying to say. Is it "shuguli"? Are you referring to "shuguli"?

17 Q. Perhaps I can -- I'll read you now your answer. Maybe you can
18 explain. I asked you about the process of enlarging the numbers of
19 persons in the battalions and whether that was reported up the chain of
20 command. And your answer was as follows:

21 "I told you that it was a practice, a procedure. I don't know
22 how to -- how I can explain these words. I'm not sure whether the
23 interpreter is going to understand the word 'shuguli.' I'm going to say
24 in Swahili. It was a practice that they didn't have to report. Each
25 commander would make up his mind and make sure we had as many people as

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 possible as the head counts in his group. There was no report on this
2 activity."

3 A. Yes, I understand you now. Yes, perhaps your pronunciation is a
4 little problematic. Instead of saying "shuguli" you said "shugali." One
5 says "shuguli." Yes, I think we spoke about this last week, not
6 yesterday. I remember this. You can proceed with your question with
7 regard to the word "shuguli."

8 Q. Thank you. And what does it mean?

9 A. I tried to explain the meaning of "shuguli" to you. To clarify
10 the matter somewhat I would say that in French it means to get by.
11 That's how I'd explain it, to find a solution. But I used the Swahili
12 word. What does it mean? Well, when a battalion or brigade is in a
13 given area and is looking for young people, to conscript them, each and
14 every commander needs to have numerous troops. So that's where you can
15 find commanders who find a way of searching for young people and for
16 providing them with appropriate training, and this was done at the level
17 of their brigades. And these very same commanders taught them how to use
18 weapons. They did everything they could to have as great a number of
19 such soldiers among their ranks as possible.

20 Q. Thank you, sir, for that clarification. I want to take you back
21 to the discussion we had on the finances.

22 MR. SACHDEVA: And perhaps, Mr. President, we should move into
23 closed session.

24 PRESIDING JUDGE FULFORD: Private session.

25 *(Private session at 3.16 p.m.) Reclassified as open session

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 COURT OFFICER: Private session.

2 MR. SACHDEVA:

3 Q. We spoke about somebody called (Redacted). Do you recall that?

4 A. Yes, I do.

5 Q. And he was involved in (Redacted) for the UPC; isn't that
6 right?

7 A. Yes. (Redacted) for the tradesmen in Bunia within the
8 Federation of the Congo Enterprises.

9 Q. The -- well, what is the or what was the Federation of the Congo
10 Enterprises?

11 A. The Federation of Congolese Enterprises, or FEC, means that
12 the -- well, it's the president of these tradesmen.

13 Q. Did that organisation, was it known an acronym or how was it
14 referred to commonly?

15 A. To tell you the truth, I don't know how to explain this term to
16 you, but I know that it was a term that was used (Redacted)
17 (Redacted). But I couldn't tell you what the meaning of
18 this term is.

19 Q. Sir, in your answer did you use the term "FEC"?

20 A. Yes, I used the term "FEC" because this was the term that was
21 (Redacted)
22 (Redacted)

23 Q. You've spoken about -- you've spoken about Bosco Ntaganda and
24 (Redacted). Are you familiar with his signature?

25 A. If my -- can I remember it? Perhaps, but I'm not sure.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA: Mr. President, when there were submissions made on
2 the bar table documents, one of the documents the Prosecution had wanted
3 to withdraw was, in fact, a document I would like to now show the witness
4 in view of the answers being given.

5 PRESIDING JUDGE FULFORD: Well, let's understand with clarity
6 what's in play, Mr. Sachdeva. This is a document carrying Bosco
7 Ntaganda's signature; is that right?

8 MR. SACHDEVA: Purportedly, yes, Mr. President.

9 PRESIDING JUDGE FULFORD: Right. And you want -- is the purpose
10 of this questioning to ask the witness whether what he sees looks like
11 that signature?

12 MR. SACHDEVA: Indeed.

13 PRESIDING JUDGE FULFORD: Is there at the moment any other
14 purpose in showing the document?

15 MR. SACHDEVA: At this stage, no, Mr. President.

16 PRESIDING JUDGE FULFORD: Right. So this -- we've in a sense not
17 addressed this formally before. I think one has to remember with this
18 that obviously this witness and other witnesses in the position of
19 Witness 55 are not handwriting experts. So the best that can be said is,
20 without giving expert evidence, what they see either does or does not
21 look like what they knew to be someone's signature.

22 MR. SACHDEVA: Yes, Mr. President. And I would also like to
23 direct the witness to a particular term in that document. But I
24 understand that that may be -- that may be difficult.

25 PRESIDING JUDGE FULFORD: Mr. Sachdeva, this is all very

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
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1 mysterious. I don't have the document in front of me. I don't know what
2 the term is that you want the witness to look at. Completely impossible
3 for us to arrive at any kind of decision at the moment.

4 MR. SACHDEVA: The -- for your Honours' consideration, the
5 document is found in tab 21 and it is annex 6 to the Prosecution
6 motion 1703.

7 PRESIDING JUDGE FULFORD: Now I'm worried about asking you about
8 the expression, Mr. Sachdeva, in the presence of the witness because
9 that's immediately going to take to take him to the point in issue. Now,
10 let's be clear then. Are you or are you not, subject to his response in
11 relation to the signature, going to ask him to comment -- would you like
12 to ask him to comment on a particular expression or a particular series
13 of words or letters?

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

15 PRESIDING JUDGE FULFORD: Right. Do we -- does this by any
16 chance have anything to do with the questions that you've just been
17 asking?

18 MR. SACHDEVA: Indeed.

19 PRESIDING JUDGE FULFORD: Right. Okay.

20 I think there's a very limited purpose, Mr. Biju-Duval, but any
21 observations from you?

22 MR. BIJU-DUVAL (interpretation): Mr. President, this is a
23 document referred to by the Defence in its comments on admissibility of
24 documents, the 11th of March, 2009, is the date I'm referring to. And
25 it's one of the documents the Defence object to on the basis of

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
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1 relevance. The Defence stands by this objection.

2 PRESIDING JUDGE FULFORD: A moment, Mr. Sachdeva.

3 (Trial Chamber confers)

4 PRESIDING JUDGE FULFORD: Mr. Sachdeva, we're against you. It
5 seems to us that this is a document, from everything we know about it,
6 that has no connection with this witness. And so if certain words or
7 expressions or acronyms appear in the letter, apart from the witness
8 saying that he happens to recognise those words, letters, or acronyms,
9 it's not going to have any evidential value. And although the witness
10 can say whether or not what he sees appears to be this individual's
11 signature, in fact he is not a handwriting expert; and accordingly, his
12 evidence on that subject would be of low or effectively nil evidential
13 value. So we don't see the purpose of this and we're against you.

14 MR. SACHDEVA:

15 Q. Witness, we were speaking about the Signora and the Manpack and
16 the method in which the messages are recorded in a log-book. You
17 remember that discussion?

18 A. Yes, I do recall this.

19 Q. And you said that when there were messages addressed to you, you
20 would see them. And in addition to those messages, did you also send
21 messages through that means?

22 A. Yes, I did send messages. If there was something urgent,
23 something important, that had to be sent or if there was a situation
24 which required me to speak with somebody, then yes, I did use these means
25 to send a message.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session) Page 68
Questioned by Mr. Sachdeva (Continued)

1 Q. And at those times when you sent messages, were they similarly
2 recorded in the log-book?

3 A. The log-book -- there were two parts to the log-book. When I had
4 to send a message I gave a Signora which sent it or the other part was me
5 coming to read the log-books containing messages that had been sent.

6 Q. When you sent messages, how did you identify yourself?

7 A. Are we in private session?

8 PRESIDING JUDGE FULFORD: Yes, we are, sir.

9 THE WITNESS (interpretation): (Redacted)

10 MR. SACHDEVA:

11 Q. I want to show you a document.

12 MR. SACHDEVA: Mr. President, I understand that we have the
13 original in the courtroom. And for the Court the document is
14 DRC-00017033, and I understand it has an evidence number. And,
15 Mr. President, the -- this document is not contained in your Honours'
16 binders because it was distributed with the previous witness.

17 PRESIDING JUDGE FULFORD: Right. You'll appreciate,
18 Mr. Sachdeva, that our papers for the last witness have returned to our
19 chambers. Now, is this for public distribution?

20 COURT OFFICER: The document has the number EVD-OTP-00409 and it
21 was introduced through Witness 0017 on the 1st of April, 2009.

22 PRESIDING JUDGE FULFORD: Yes, we do have this. This has
23 deliberately been kept behind. Good. Now, do you want a copy of this to
24 the witness or is there one before him?

25 MR. SACHDEVA: Yes, please. The Court Usher has the original.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 PRESIDING JUDGE FULFORD: Fine.

2 MR. SACHDEVA: And I think at this moment we can -- I'd like to
3 ask the questions in private session.

4 PRESIDING JUDGE FULFORD: In private session. All right. Well,
5 copy, then, to the witness, or rather, the original to the witness.

6 MR. SACHDEVA: Mr. President, I'm terribly sorry. My screen and
7 my transcript has completely frozen --

8 PRESIDING JUDGE FULFORD: Right.

9 MR. SACHDEVA: -- and I would appreciate it, obviously, if I
10 could use it sufficiently.

11 PRESIDING JUDGE FULFORD: Can the -- can somebody go and try and
12 give some help to Mr. Sachdeva. So you don't have any contemporaneous
13 transcript?

14 MR. SACHDEVA: That's right.

15 PRESIDING JUDGE FULFORD: Can you borrow --

16 MR. SACHDEVA: I can for now.

17 PRESIDING JUDGE FULFORD: -- Ms. Bensouda's? Good. Right.

18 All right, where are we going, Mr. Sachdeva?

19 MR. SACHDEVA:

20 Q. Sir, firstly, do you recognise this document that you have in
21 front of you?

22 A. I see that it is a log-book.

23 PRESIDING JUDGE FULFORD: Now, let's pause for a moment,
24 Mr. Sachdeva. This is looking chaotic. Is your screen now working?

25 MR. SACHDEVA: It is. Thank you.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 PRESIDING JUDGE FULFORD: Good.

2 Now, Mr. Sachdeva, the witness has said that this looks like a
3 log-book. Are you seeking to establish whether he's seen this particular
4 version of the log-book before or that he's just seen documents of this
5 kind?

6 MR. SACHDEVA: The initial question was indeed whether he's seen
7 this particular one.

8 PRESIDING JUDGE FULFORD: Right.

9 MR. SACHDEVA: And I then intend to take the witness to various
10 entries and ask him questions on those entries.

11 PRESIDING JUDGE FULFORD: Fine. Well, at that moment we haven't
12 established whether the witness has ever seen this particular log-book
13 before, so you'll need to press that point, Mr. Sachdeva.

14 MR. SACHDEVA:

15 Q. Sir, have you seen this particular document, this book, before?

16 A. This log-book, this log-book was used within the UPC by the
17 Signora. I see places like Mahagi, Aru. I think that it is a log-book
18 that was managed by Signora.

19 Q. And just so we're clear, is this something -- this log-book
20 something that you yourself saw during your time or heard about during
21 your time?

22 A. I really can't give you a satisfactory answer to that. Signora
23 log-books can contain titles. As to whether this log-book belonged to
24 (Redacted), well it should have had a title; and if it had belonged to the
25 main staff, it should have said so. I see something noted here but I can't

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 see whether it belonged to the Presidency or to the main staff. I don't
2 see any title. Perhaps those titles have been removed by somebody, so I
3 really can't give you a satisfactory answer to this question.

4 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, do you want to try
5 this by way of reference to a particular entry so that we can see whether
6 the witness has any personal knowledge of what's entered or whether he's
7 only really going to be giving evidence about what is set out in this
8 log-book in much the same way as any of the rest of us would coming to it
9 for the first time?

10 MR. SACHDEVA: Indeed, Mr. President, I was going to take the
11 witness to specific entries where -- well, I'll leave it at that. I want
12 to take him to specific entries.

13 PRESIDING JUDGE FULFORD: Yes, you can. But at the moment there
14 is only slender justification for this, but let's see where we get to.
15 Now, should this be public or private?

16 MR. SACHDEVA: It's better that it's done in private.

17 PRESIDING JUDGE FULFORD: Certainly. All right.

18 So do you want, therefore, to try and -- yes, Mr. Biju-Duval.

19 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. With
20 your indulgence there are two questions, I believe. There's the question
21 of the admissibility of this document as evidence. I will say nothing on
22 that score for the time being but subsequently. Then there's another
23 matter which is the use to be made now of this document with the witness.
24 And I am concerned by the second of these two questions.

25 This document refers to events. This document must not be used

1 by the Prosecutor to put before the witness indications of information
2 that he would not have spontaneously testified to independently of the
3 document. This should not be an artificial means of putting a leading
4 question on whatever event.

5 PRESIDING JUDGE FULFORD: Right. Now the objection has been
6 taken, Mr. Sachdeva. We need to know where you're going, and I'm going
7 to ask the witness if he would be very kind and be very patient with us
8 and for a moment to leave the Chamber with the usher. I anticipate this
9 will be no more than five minutes or so, but I think we need to discuss
10 where we're going with this material in the absence of the witness so
11 that there is no risk of him later being prompted because of the
12 discussion that we're going to have.

13 So, sir, could you just a moment withdraw from court with the
14 usher and we'll call you back in very shortly.

15 *(Closed session at 3.41 p.m.) Reclassified as open session

16 COURT OFFICER: Closed session.

17 (The witness stands down)

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva, this may easiest be done
19 if you could take us straight away to the first question and the first
20 passage you were intending to show to the witness so we can understand
21 really what the object of all of this is.

22 MR. SACHDEVA: Indeed, Mr. President. If I may, I -- the witness
23 has given evidence that he sent messages, he received messages, he used
24 (Redacted). And I want to take him to individual messages where
25 purportedly they are sent to him, they are sent from him, and also where

1 they have -- they are copied to him. And of course the first questions
2 will be: Do you remember this entry? And depending on his answers, I
3 can then ask, I would submit, further questions as to some of the content
4 if need be. And then that's how I intended to proceed.

5 For example, if we turn to (Redacted) and I speak of the last
6 entry on that page, when I say (Redacted) I mean (Redacted). And at
7 the bottom you see purportedly from February 2003, indeed when the
8 witness has said he was present in the UPC, (Redacted). And if he
9 does remember this message, I intend to ask him about the -- the stand-by
10 class zero. That's just an example.

11 If one then moves to entry (Redacted), in this entry it is purportedly
12 from (Redacted), and the content pertains to
13 information regarding a child. And so if the witness recalls this entry,
14 receiving this entry, I would then intend to ask him various questions on
15 that entry.

16 PRESIDING JUDGE FULFORD: That's -- that's very clear, and so
17 your submission is that on the basis of the evidence so far given by the
18 witness there is a reasonable prospect that he would have received or
19 would have sent messages that are recorded in this log-book because they
20 bear his call-sign?

21 MR. SACHDEVA: Yes, Mr. President.

22 PRESIDING JUDGE FULFORD: Fine. That's very clear, Mr. Sachdeva.
23 Thank you.

24 Mr. Biju-Duval.

25 MR. BIJU-DUVAL (interpretation): Could I ask for a moment, your

1 Honour?

2 PRESIDING JUDGE FULFORD: You certainly can.

3 (Defence counsel confer)

4 MR. SACHDEVA: Mr. President, just one clarification if I may --

5 PRESIDING JUDGE FULFORD: No, Mr. Sachdeva, not while the Defence
6 is speaking. They are entitled to hear.

7 Right, you wanted to say, Mr. Sachdeva, before Mr. Biju-Duval
8 comes back.

9 MR. SACHDEVA: I just wanted to clarify, Mr. President, that it
10 is not because they bear (Redacted) call-sign; it is because they bear the
11 designation of (Redacted) function --

12 PRESIDING JUDGE FULFORD: Sorry, sorry. I was using a sloppy
13 description, Mr. Sachdeva. You're quite right to correct me.

14 Yes, Mr. Biju-Duval.

15 MR. BIJU-DUVAL (interpretation): I think we can accept for this
16 question to be put to him, whether he remembers having received such a
17 message. I think that is possible.

18 PRESIDING JUDGE FULFORD: I think that's a very reasonable stance
19 for you to adopt, Mr. Biju-Duval. Thank you.

20 Witness, please.

21 (The witness takes the stand)

22 PRESIDING JUDGE FULFORD: Thank you very much, sir. I'm sorry
23 we've had to exclude you for a moment.

24 Now, Mr. Sachdeva, I think given the nature of these questions
25 we're inevitably going to have to ask them in private session.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 Private session, please.

2 *(Private session at 3.48 p.m.) Reclassified as open session

3 COURT OFFICER: Private session.

4 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

5 MR. SACHDEVA: Thank you, Mr. President.

6 Q. Sir, I want to take you to an entry in that book.

7 MR. SACHDEVA: And may I ask for the assistance of the Court
8 Usher if entry (Redacted) can be found for the witness I'd be most
9 grateful.

10 Q. Now, sir, if you look at the right-hand side of the -- the
11 right-hand portion of the document and I want you to concentrate on the
12 first message, you'll see that it purports to emanate from (Redacted)
13 Do you have that there?

14 A. Where did you see (Redacted)

15 Q. It is at the top of the page. Do you see the figures there
16 (Redacted) on the right-hand side?

17 A. Yes, you said it was on the right, but I see that it's actually
18 on the left.

19 Q. And just so we're clear that we are looking at the same message,
20 do you see that it says from (Redacted) Do you see
21 that there?

22 PRESIDING JUDGE FULFORD: Usher, can you go over, please, make
23 sure it's page 93.

24 THE WITNESS: (No interpretation).

25 PRESIDING JUDGE FULFORD: Please, can you go and look.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA:

2 Q. Do you have it, sir?

3 A. Yes, I've seen it.

4 Q. Now, taking your time reading that message, that entry, do you
5 recall having seen that while (Redacted) in the UPC?

6 A. I don't know. Can you give me a few minutes to read this
7 document?

8 PRESIDING JUDGE FULFORD: Yes, certainly, sir. I think you only
9 need read the five lines of text immediately below the two references
10 that Mr. Sachdeva has just taken you to, so just those five lines at the
11 top of the page.

12 Usher, can I ask you, please, could you come here for a moment.
13 Can you ask the witness, please, to read just that section there. Thank
14 you.

15 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. Maybe
16 we should take advantage of this to solve a technical problem. The
17 French transcript is blocked. At the moment it's not moving.

18 MS. MASSIDDA: Yes, your Honours, since ten minutes at least.

19 PRESIDING JUDGE FULFORD: Fine. This is an afternoon full of
20 event.

21 Court Officer, can we please try and defrost the French
22 transcript.

23 Yes, Mr. Sachdeva.

24 MR. SACHDEVA:

25 Q. Now, sir, having read that entry, do you remember it during your

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
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1 (Redacted), do you remember seeing it?

2 A. Well, to tell you the truth, I received several messages;

3 however, it may be possible that I received this message because (Redacted)

4 (Redacted). He

5 (Redacted). Of course you will

6 remember that (Redacted). However,

7 given the operation he is describing here, the Lipri operation, this is

8 an operation that I know very well and I can say that this message was

9 addressed to me.

10 Q. And you see that the date of this message appears to be

11 January 2003. (Redacted)

12 A. Yes, I did not look at the date, so I can confirm now that this
13 message was addressed to me.

14 Q. And having seen the content of this message, do you recall that
15 incident?

16 A. Yes, I remember the incident, that is, looking at the names that
17 are written here.

18 Q. And what do you remember about this incident?

19 A. It was at a time when there was this operation to attack
20 Mongbwalu. Before we fought against the APC army that was in Mongbwalu,
21 after the fighting against the enemy which was in Mongbwalu, the enemy
22 fled towards the neighbouring localities of Mongbwalu. For example,
23 Kabakaba as well as Kilo. And so this message was that we had to chase
24 the enemy which had fled to the neighbouring localities because they were
25 inflicting suffering on the local population. So the aim of this

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
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1 operation was to chase out the enemy so that the enemy would no longer
2 attack the army which was based in Mongbwalu, so that the enemy would not
3 block the roads which were used to bring food to our troops in Mongbwalu.
4 That is what I remember about this message. It was a message that was
5 sent at the time of the attack in Mongbwalu.

6 Q. And this message refers to a child. Now, do you remember
7 anything about that part of the message?

8 A. I cannot remember that part of the message. It is written as
9 follows --

10 THE INTERPRETER: And the witness is reading in Swahili.

11 THE WITNESS (interpretation): This was a child who was injured.
12 The child is still alive. However, no mention is made of the part of the
13 body which was injured or in which locality the child was injured. I
14 don't know whether that was in Kabakaba or in another locality; however,
15 this is what is written, that within our forces there is a child who is
16 injured. Personally I do not understand. I don't know if you understood
17 this message when you read it.

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva, before your next
19 question, I wonder do we need to ask these questions in -- so long as his
20 particular position isn't referred to, do we need to ask these questions
21 in private session?

22 MR. SACHDEVA: No, Mr. President, not these ones but I'm now
23 going to a different entry. So perhaps the initial question which would
24 refer to (Redacted) may be asked and then I can move into open session.

25 PRESIDING JUDGE FULFORD: Right.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA:

2 Q. Sir, now I want to take you to another entry.

3 MR. SACHDEVA: And if I could ask the assistance of the Court

4 Usher and this would be entry (Redacted).

5 Mr. President, would you allow me to -- to look at the original,

6 find the page directly for the witness? It might be quicker.

7 PRESIDING JUDGE FULFORD: Certainly, and you can go further than
8 that, Mr. Sachdeva, you can point to the particular section that you wish
9 the witness to look at. So do leave counsel's bench for that reason.

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

11 And for the benefit of the Court, I'm referring to the middle
12 (Redacted).

13 Q. Sir, that entry, do you remember that entry -- sending that
14 entry?

15 A. Give me a few minutes to read this message.

16 Q. Of course. Take as much time as you need.

17 A. Yes, I remember it.

18 Q. You see that there is -- (Redacted) to all units and
19 then there is number 001. You see that there?

20 A. Yes.

21 MR. SACHDEVA: Mr. President, we can perhaps move into open
22 session for this question.

23 PRESIDING JUDGE FULFORD: Public session, please.

24 (Open session at 4.06 p.m.)

25 COURT OFFICER: Open session.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Open Session)
Questioned by Mr. Sachdeva (Continued)

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1 MR. SACHDEVA:

2 Q. Who does the number 001 refer to in that message?

3 A. Number 001 isn't something that I wrote. Those are -- that was
4 written by Signora, not by myself. It wasn't my job.

5 Q. Given your function and given your role, would you know what that
6 referred to?

7 A. Well, as I was saying, this is Signora's job. He is the one who
8 writes in those numbers and I think he did it as an indication for his
9 colleague to be able to remember the number of the colleague. So he gave
10 it a code-name, and so Signora gives those numbers. It isn't anything
11 that I did.

12 Q. Thank you. I now want to take you to another entry.

13 MR. SACHDEVA: And perhaps we could employ the same method. I
14 could take a look at the log-book and find the entry.

15 COURT OFFICER: Just to announce that the document is now
16 confidential. It had been classified public earlier, but given the
17 testimony of the witness today it will be reclassified confidential.

18 MR. SACHDEVA: Mr. President, for the benefit of your Honours,
19 I'm turning to entry 157 and it is the larger entry at the bottom of the
20 page.

21 Q. And, sir, once you've read that entry can you tell the Court
22 whether you remember seeing that.

23 A. Yes, I've read it.

24 Q. And, sir, do you recall this entry?

25 A. Well, frankly, I had never seen this message and I can't see who

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1 sent it. The identity and the function are hidden. It says "M.E."

2 I don't know what they mean by "M.E." *

3 Q. Do you see at the top that it says it's from command sector OPS

4 NE? Do you see that there, sir?

5 A. Yes, OPS means operations, and after that ME. It's ME and not
6 the word meaning "a little." So -- but I don't know what ME stands for.

7 Q. Do you think it could be NE, sir?

8 A. No, I don't know. As far as I know -- please, your Honour, could
9 you follow me in my questioning. I'm confused by the question that's
10 being put to me.

11 PRESIDING JUDGE FULFORD: Yes, I'm getting concerned,
12 Mr. Sachdeva, as to the utility of this in that the witness has just said
13 that he's never seen this message before and doesn't appear to know very
14 much about it. I'm really not sure whether it's proper in those
15 circumstances to continue asking him questions on the subject, frankly.

16 Before you answer, Mr. Sachdeva, I think the witness would like
17 to say something. Yes, sir.

18 THE WITNESS (interpretation): Before I can answer that question
19 I think we need a closed session.

20 (Trial Chamber and Court Officer confer)

21 PRESIDING JUDGE FULFORD: Right. Private session then, please.

22 *(Private session at 4.17 p.m.) Reclassified as open session

23 COURT OFFICER: Private session.

24 PRESIDING JUDGE FULFORD: Now, sir, I think there was something
25 you wanted to say.

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Questioned by Mr. Sachdeva (Continued)

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1 THE WITNESS (interpretation): This message -- in this message I
2 cannot remember about ME which appears here, but I have to say that it's
3 a long time back and the little that I can remember about this is that I
4 think the message came from Aru. Because according to the information
5 that I read concerning these matters, I think it does concern events that
6 happened in Aru. And if I recollect everything about this area of
7 concern, I see that (Redacted). And I
8 don't know whether you allow me to explain about -- any further details
9 about the message, but having read it, if you do, I remember a few events
10 that had happened around this matter. Do you want me to go further and
11 provide these details?

12 PRESIDING JUDGE FULFORD: Do you, Mr. Sachdeva?

13 MR. SACHDEVA: Mr. President, indeed I'd like to ask the witness
14 a question regarding the first two lines of that message.

15 PRESIDING JUDGE FULFORD: Well, do so.

16 MR. SACHDEVA: Q. Sir, if you look at the first two lines it says: "In the
17 UPC, the person who can give me orders is the President...In the UPC the
18 person who can give me orders is the President, the deputy chief of staff."*

19 What can you say about those two lines?

20 A. Well, in UPC the person who could give orders was the president
21 and the head of staff. And the deputy head of staff as well, Commander
22 Bosco. That's what is mentioned in this document.

23 PRESIDING JUDGE FULFORD: I'm sorry, Mr. Sachdeva. I'm being
24 very slow. We're looking at page 157, the large message at the bottom?

25 MR. SACHDEVA: Yes, Mr. President.

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Private Session)
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1 PRESIDING JUDGE FULFORD: It's in Swahili. You've just read out
2 a French quotation for something that's in Swahili.

3 MR. SACHDEVA: Yes. There should be a transcription of the
4 messages in French -- translation transcription of all the messages in
5 French which was provided to your Honours during the evidence of
6 Witness 17 --

7 PRESIDING JUDGE FULFORD: No, it's quite right. No, it's just I
8 assumed because you appeared to be quoting directly from it that you
9 were, in fact, quoting from something we didn't have in front of us.
10 Right. So that explains that.

11 Mr. Biju-Duval was on his feet. What's the point,
12 Mr. Biju-Duval?

13 MR. BIJU-DUVAL (interpretation): Your Honour, to ask a witness
14 what should be understood by the first two lines of a text is typically
15 an artificial ploy which is not acceptable to ask a leading question. I
16 think we're straying from the authenticity of the document or any other
17 genuine question, and I object to such use of the document. I think
18 we're trying to get the witness to provide an analysis which doesn't have
19 much to do with the document itself.

20 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, you said you wanted
21 to ask some questions about the first two lines. You've done so and an
22 answer has been given. Now are you proposing to go further with this
23 message or not?

24 MR. SACHDEVA: I may ask one more question on this message.

25 PRESIDING JUDGE FULFORD: Well, what's the question before we

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1 allow you to put it?

2 MR. SACHDEVA: The witness has said that -- that the message
3 comes from Aru, if I recall correctly, and my question was going to be --

4 PRESIDING JUDGE FULFORD: That's right.

5 MR. SACHDEVA: -- what was the name of the sector that had Aru in
6 its area of responsibility.

7 PRESIDING JUDGE FULFORD: Right, so really outside of the
8 message, as it were, an independent factor. All right. Put the
9 question, please.

10 MR. SACHDEVA:

11 Q. Sir, what was the name of the sector that had Aru in its area of
12 responsibility?

13 A. Well, the name was Sector Aru and I don't know what the exact
14 name would have been or how it was spelled as regards the call-sign, but
15 all I know is it was the Aru sector.

16 Q. And in terms of direction was Aru north of Ituri, south of Ituri,
17 east or west of Ituri? Can you help us with that?

18 A. Aru was in the north of Ituri, near the border to Sudan.

19 MR. SACHDEVA: Mr. President, I have -- I would like to make a
20 submission and perhaps a suggestion, and I would like to identify whether
21 the Court would deem my suggestion a practical one. And I suspect that
22 it should be undertaken in the absence of the witness.

23 PRESIDING JUDGE FULFORD: All right. How long is this likely to
24 take, Mr. Sachdeva?

25 MR. SACHDEVA: Three or four minutes.

1 PRESIDING JUDGE FULFORD: Thank you.

2 Closed session, please.

3 *(Closed session at 4.25 p.m.) Reclassified as open session

4 PRESIDING JUDGE FULFORD: I'm sorry, sir, we're going to have to
5 do the same thing again. I'm going to ask you for a moment just to step
6 outside of court with the usher and we'll ask you back in in just a
7 moment.

8 THE WITNESS: (No interpretation).

9 (The witness stands down)

10 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

11 MR. SACHDEVA: Thank you very much, Mr. President. The -- this
12 log-book purports to have a series of messages that were sent to the
13 witness, were copied to the witness, and were sent from the witness. In
14 a sense, the exercise is akin to a memory-refreshing exercise. Just as
15 your Honours have in the past permitted witnesses to go over their
16 statements, I would make the submission that perhaps the witness can be
17 given this book and to go through in detail and identify whether there
18 are indeed messages that he remembers, messages of course that were sent
19 to him and that were sent to him for information and that were sent from
20 him. And perhaps tomorrow to come back and identify those messages, and
21 from then, the Prosecution could ask further questions.

22 We are dealing with events that happened some time ago. The
23 witness has not been shown this particular document during the interview
24 by the Prosecution, and it may be that upon -- if the witness was to
25 reach into his memory, he may remember such messages upon further time

1 being given to him. And therefore, I would seek leave for that exercise
2 to be undertaken.

3 PRESIDING JUDGE FULFORD: How many messages approximately
4 comprise the body of material that you would be wishing to ask the
5 witness questions about, Mr. Sachdeva?

6 MR. SACHDEVA: Well, certainly the messages that indicate that
7 they were sent to him and from him, and indeed some of the messages that
8 have him down as a copy.

9 PRESIDING JUDGE FULFORD: Well, I haven't undertaken the exercise
10 of working out how many of those there are, Mr. Sachdeva. Can you give
11 some estimation, please?

12 MR. SACHDEVA: Perhaps 40 or 50, Mr. President.

13 PRESIDING JUDGE FULFORD: All right. The obvious difference is
14 that with a memory-refreshing document one is confident that the witness
15 has seen it before. Usually it's a statement that he or she has compiled
16 or has been intimately involved with the compilation of the document.
17 Here these messages may or may not have been shown to the witness and he
18 may or may not recall them.

19 Mr. Biju-Duval.

20 MR. BIJU-DUVAL (interpretation): Mr. President, I'd like to
21 confer with my team for a minute, please.

22 (Defence counsel confer)

23 MR. BIJU-DUVAL (interpretation): Your Honour, this is a delicate
24 issue. As far as the principle is concerned, the Defence will object or
25 does object to having this document - how should I put it? - submitted to

1 the witness so that he can review it at his leisure in order to refresh
2 his memory. The first point about which there is no doubt is that there
3 is -- it is not legitimate for him to review the entire document because
4 he hasn't recognised the document himself. The second issue has to do
5 with the messages that he allegedly received and allegedly sent.

6 This is a sensitive matter, and given the three examples we have
7 examined, if I'm not mistaken, out of those examples there are only two
8 that the witness remembered. He remembered having sent them or received
9 these messages. So for as long as we do not know, as long as the witness
10 hasn't given us any information that would allow us to know whether he
11 received or sent messages, it would appear to me that it's very -- a very
12 sensitive issue if several years later he takes into account of these
13 messages when reflecting. It's all the more sensitive in that many years
14 have passed since the relevant time-period and he'll have a lot of
15 difficulty in distinguishing between what he in fact does remember and
16 matters that he has in fact no recollection of.

17 So these are the reasons for which the Defence in principle
18 objects to the suggestion made by the Prosecution.

19 PRESIDING JUDGE FULFORD: Thank you very much.

20 (Trial Chamber confers).

21 PRESIDING JUDGE FULFORD: Mr. Sachdeva has suggested that
22 overnight Witness 55 should have made available to him this log-book or
23 extensive extracts from it so that he can take his time in arriving at a
24 decision as to whether or not he saw or had brought to his attention
25 certain particular entries which bear (Redacted). The

1 foundation for the submission is that we have permitted witnesses to
2 refresh their memories from documents such as statements that they
3 prepared in advance of giving evidence in this case.

4 In our judgement, the exercise which Mr. Sachdeva proposes goes
5 well beyond the procedure that we have permitted. It may be that the
6 witness was sent some or all of these messages or was himself responsible
7 for sending them; equally, it may be that he will have a memory of them.
8 But the indications thus far is that, certainly in some instances, he has
9 scant or no memory of entries that have been brought to his attention
10 this afternoon. If that applies more than de minimis, it would mean that
11 the witness would not in reality be refreshing his memory when he reads
12 entries of that kind, but instead he will in effect midway through his
13 evidence have made visible to him new material which he will read and
14 digest which he had no present memory of at all. In our judgement that
15 would be an undesirable thing to happen and would go well beyond, as we
16 have just observed, the scope of our decision on witnesses being
17 permitted to refresh their memories from documents that they prepared
18 prior to giving evidence during the trial.

19 So thank you for the suggestion, Mr. Sachdeva, but we are against
20 you.

21 Now, the alternative - and it will be a very laborious one - of
22 taking the witness through 50 or so entries in the way that you have
23 indicated, if it is to be as unproductive as the exercise has been thus
24 far, we're not likely to allow it to go on for very long. So between now
25 and tomorrow, might I suggest you select those which are most important

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1 to you for the purposes of your questioning and those which for one
2 reason or another you feel it's most likely the witness will remember,
3 and certainly in the first instance direct his attention to those
4 messages.

5 MR. SACHDEVA: Yes, Mr. President. The 50 or 60 were if indeed
6 that procedure was to be permitted, but of course there are specific
7 entries which not number more than ten that I would like to direct the
8 witness to.

9 PRESIDING JUDGE FULFORD: Right. Thank you.

10 All right. Witness back into court, please.

11 (The witness takes the stand)

12 PRESIDING JUDGE FULFORD: Thank you very much, sir.

13 Private session, please.

14 *(Private session at 4.40 p.m.) Reclassified as open session

15 COURT OFFICER: Private session.

16 PRESIDING JUDGE FULFORD: Now, before we rise, Mr. Sachdeva, why
17 don't you try one more and let's see where we go.

18 MR. SACHDEVA: Certainly, Mr. President.

19 If I could ask for the log-book so I can direct the witness to
20 the entry. Thank you. And for the benefit of the Court, it is entry
21 (Redacted), the top one on the page with the number (Redacted) top of it.

22 Q. And, sir, if you could take a moment to have a look at that
23 message and tell us whether you recall seeing it. And I'd like you to
24 concentrate -- well, if you look at the info, information line, it has
25 (Redacted)

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Closed Session)
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1 A. (No interpretation).

2 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I'm afraid we're going to

3 have to continue this exercise tomorrow because this is something of a

4 Cinderella court. On the stroke of midnight everything stops working.

5 Sir, I'm afraid I'm going to have to -- no headphones. Right.

6 Usher, can you ask the witness to put the headphones on, please.

7 Sir, I'm going to ask you to continue reading that tomorrow

8 morning. I'm afraid that after two hours the tapes on which everything

9 in this court is recorded run out, and we're about a minute away from

10 them running out. So thank you for your patience this afternoon, and

11 you'll be able to continue looking at that document tomorrow morning.

12 We'll sit at half past 9.00.

13 Can we go into closed session, please, so the witness can

14 withdraw.

15 *(Closed session at 4.47 p.m.) Reclassified as open session

16 COURT OFFICER: Closed session.

17 PRESIDING JUDGE FULFORD: Yes. Thank you, usher.

18 (The witness stands down)

19 PRESIDING JUDGE FULFORD: Thank you all for your attendance.

20 Half past 9.00 tomorrow morning.

21 The hearing ends at 4.48 p.m.

22 RECLASSIFICATION REPORT

23 Pursuant to Trial Chamber I's email instruction dated 2nd December 2011,

24 the transcript is reclassified as public after the indicated redactions

25 have been implemented as ordered by the Chamber. All private and closed

Witness: Witness DRC-OTP-WWW-0055 (Resumed) (Closed Session)
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1 sessions (*) are now available to the public with the exception of the
2 portions the transcript that have been redacted.

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