

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and
4 Judge René Blattmann
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
6 In the case of the Prosecutor versus Thomas Lubanga Dyilo
7 Trial Hearing
8 Tuesday, 23 November 2010
9 The hearing starts at 9.32 a.m.
10 (Open session)

11 COURT USHER: All rise. The International Criminal Court is now
12 in session. Please be seated.

13 PRESIDING JUDGE FULFORD: Good morning. A number of
14 administrative issues. The experiment as regards the edited transcript
15 has not met with any support from anyone involved in the case.
16 Accordingly, we propose to revert to the original system for dealing with
17 the edited transcripts unless we hear from Mr. Dubuisson by 4.00 p.m.
18 today, asking us to suspend this decision pending representations from
19 him. So if we have not heard from Mr. Dubuisson by 4.00 p.m. this
20 afternoon, we intend to order that the original method of dealing with
21 the edited transcripts is to be resumed.

22 There is agreement that the statements of 0582 and 0583 and the
23 transcripts of their evidence should be provided on a confidential basis
24 to Trial Chamber II.

25 Mr. Sachdeva, do you anticipate that any redactions are going to

1 be necessary or will it be sufficient that they are transmitted to Trial
2 Chamber II subject to the usual order now that we make in these
3 circumstances?

4 MR. SACHDEVA: In respect of the transcripts of the evidence,
5 yes, Mr. President, perhaps there will be some redactions. In respect of
6 the statement of 0583, I understand there will be no redactions.

7 PRESIDING JUDGE FULFORD: And is there a statement from 0582
8 which comes within this category or not?

9 MR. SACHDEVA: Well, I understood that the reason the statement
10 of 0583 is to be transmitted is because it forms part of the evidence
11 in-chief and for 582, that was not the case.

12 PRESIDING JUDGE FULFORD: Well, can you consider redactions at
13 some convenient moment today, perhaps speak to Maître Mabilille about it?
14 In any event, their testimony, that is their oral testimony, should not
15 be provided to Trial Chamber II until the edited transcript has been
16 completed. Given that we are going to revert to the original system, we
17 hope that that will not take long and, in any event, the preparation of
18 those transcripts, transcript of the evidence we are currently hearing
19 and that of the witness last week, should, if possible, be made a
20 priority for the work of those preparing the edited transcripts.

21 MR. SACHDEVA: Thank you, Mr. President. We are guided by that.
22 I anticipate that perhaps there may be a time issue with that, if indeed
23 one has to wait for the edited transcripts in this system, but --

24 PRESIDING JUDGE FULFORD: Well, can you liaise with Mr. McDonald
25 and find out whether waiting for the edited transcripts is going to cause

1 a material problem in Trial Chamber II? We don't know at what stage this
2 material is going to be relevant, presumably for the questioning by
3 Defence counsel in that case. If waiting for the edited transcripts is
4 going to mean that delivery is going to be too late, then it may be we
5 are going to have to reconsider whether or not we provide the unedited
6 transcripts, but if you could liaise with Mr. McDonald.

7 MR. SACHDEVA: Certainly, and I will revert to the Chamber today
8 on that.

9 PRESIDING JUDGE FULFORD: Right. Therefore nothing will be
10 passed on to Trial Chamber II until we've heard back from you on
11 redactions and until we've heard back from you in relation to whether or
12 not we can wait for the edited transcripts.

13 MR. SACHDEVA: Yes.

14 PRESIDING JUDGE FULFORD: Thank you.

15 Now, Mr. Sachdeva, I'd like to turn to the issue of disclosure as
16 regards 0583. We wish to thank the Defence and the Prosecution for what
17 appears to us to have been a highly cooperative stance that was adopted
18 last night in that a substantial number of the problems have been
19 resolved.

20 So that it goes on the court record, point 2, and this relates to
21 the Defence e-mail of Friday of last week, as regards point 2, the
22 Prosecution are to transmit to the Defence a detailed list of the
23 documents sent to Witness 0583. For point 3, the relevant correspondence
24 has now been provided to the Chamber. We will review that during the
25 course of today and make any orders in due course, if necessary. For

1 point 4, the photograph is to be disclosed to the Defence. The linked
2 correspondence has been provided to the Chamber. We will review that
3 during the course of today.

4 Now, point 5, Mr. Sachdeva, if you have got a copy of the
5 document there, at 1(iv). The Legal Officer for the Chamber in court
6 this morning is going to send you an e-mail in a moment which includes
7 reference to a transcript where the first name of the person referred to
8 at point 4 was given during the course of evidence in this case.

9 There is also a question as to whether or not that individual is
10 still alive. We would ask you to bear in mind the particular
11 circumstances in which the name has already come up in evidence. We
12 would ask you to reflect, and not only reflect, indeed try and ascertain
13 whether the witness is in fact alive or dead, and then review the current
14 decision to redact that material because there may be some relevance in
15 relation to Witness 0016.

16 As regards point 2(ii), would you please look at filing 409,
17 which is a confidential ex parte filing, at page 14, and in light of the
18 Prosecution's submissions on that page, review the redaction at that
19 point.

20 Similarly, at point 2(vi) would you please look at decision --
21 sorry, at the ex parte filing 1295, annex C, which is the 24th of April
22 2008, at page 19. In fact, this isn't a filing, it's a decision. And
23 review the Chamber's observations in relation to this individual at that
24 point.

25 MR. SACHDEVA: Mr. President, may I just ask one question?

1 PRESIDING JUDGE FULFORD: Certainly.

2 MR. SACHDEVA: Did your Honour say point 2(vi).

3 PRESIDING JUDGE FULFORD: Yes, sorry, (vii). I can't count.

4 Absolutely right, Mr. Sachdeva, (vii).

5 MR. SACHDEVA: Thank you.

6 PRESIDING JUDGE FULFORD: And then at 2(viii), there is a
7 possibility that although the name remains redacted, a witness code could
8 be given. Could the Prosecution please reflect on that possibility.

9 Otherwise, certainly at present, although we will keep this under
10 review, it seems that the material within that document is not going to
11 be of any material benefit to the Defence. Indeed, even those parts that
12 we've referred to may not at all assist, but we would simply wish to make
13 sure that redactions in this document are consistent with our other
14 disclosure orders, and to make sure that material is not withheld, which,
15 given previous decisions, fall within the category of information that
16 should be provided to the Defence.

17 Finally, at this stage, for reasons that we will explain as soon
18 as there is long enough for us to deliver the oral decision in relation
19 to the issue, Witness 0298 will be called on a restricted basis -- 0598,
20 not 0298. 0598. So he should be brought to The Hague, his evidence will
21 commence at 9.30 on Monday morning, which is the date proposed, and the
22 familiarisation process to the extent that it's necessary should commence
23 immediately.

24 We will, as I say, deliver our reasons as soon as there is a gap
25 in the schedule that enables us to do so. We do not intend to give our

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 6

1 reasons now because Mr. Biju-Duval must continue with his examination.

2 Now, Mr. Sachdeva, in part, our decision in relation to 0598 is
3 dependent on the Prosecution's indication as regards when his evidence
4 should commence. If that is problematic, we will need to reconsider the
5 entire issue.

6 So that is our decision. Thank you. Unless there is anything
7 else by way of preliminary observations we will return to the witness.

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

9 PRESIDING JUDGE FULFORD: No. Good.

10 Witness, please.

11 (The witness takes the stand)

12 WITNESS: WITNESS DRC-OTP-WWWW-0583 (Resumed)

13 (Witness answered through interpreter)

14 PRESIDING JUDGE FULFORD: Good morning, sir.

15 THE WITNESS: (Interpretation) Good morning.

16 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

17 MR. BIJU-DUVAL: (Interpretation) Thank you.

18 QUESTIONED BY MR. BIJU-DUVAL: (Continued)

19 Q. (Interpretation) Good morning, sir.

20 A. Good morning.

21 Q. We are going to continue where we left off yesterday, and I'd
22 like to ask you to examine tab 30 once again, of the binder. In other
23 words, I'm referring to the memo dated January 12th, 2006. Yesterday,
24 you told us that you had knowledge of this memo. It already bears the
25 EVD number D01-00383. It's the document DRC-OTP-0233-0179. You examined

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 7

1 this document rapidly yesterday. Perhaps you'd like to take a few
2 moments to look at this investigator's note once again. And my question
3 will deal with the following: I'm going to ask you whether this document
4 refers to the incident that you spoke about in your written statement.

5 A. I haven't been able to read the document in full, but nonetheless
6 I believe that this probably is the document referring to the incident
7 that took place early in 2006 that my colleagues referred to, complained
8 about, I beg your pardon.

9 Q. Thank you. Could you take a look now at paragraph 2 of this
10 document? This paragraph refers, or, rather, mentions, three former
11 child soldiers of the FNI, the FRPI, who were introduced by intermediary
12 0316. Do you remember our agreement regarding the code used for that
13 intermediary?

14 Is this to mean that 0316, on several occasions, introduced
15 individuals who were presented as former child soldiers to the OTP?

16 A. That's what is stated in the paragraph, that three child soldiers
17 were introduced by 0316. I don't know whether there were others. As
18 I explained yesterday, it was a period of time when I was discovering
19 that this person was being used for other purposes other than the tasks
20 that I asked him to accomplish. So I really can't give you any more
21 detail than what is in this text.

22 Q. Thank you.

23 THE INTERPRETER: Could the witness be reminded not to speak too
24 quickly, please?

25 MR. BIJU-DUVAL: (Interpretation)

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 8

1 Q. You have stated that probably, I believe that is the term you used, this note refers
2 to the incident that you mentioned in your statement. To your knowledge,
3 were there any other incidents related to the work of 0316, either before
4 or after this one?

5 A. Yes, indeed. And that's what I said in my statement. There was
6 an incident that took place before this one, and it
7 related to one of the witnesses that I mentioned in my statement.
8 Perhaps you will give me a moment to take a look. I'm referring to 0035 in
9 paragraphs 40 to 45 of my statement.

10 Q. Thank you. We'll go back to that. Did you yourself have the
11 opportunity to inform your superiors regarding any doubts or concerns you
12 had regarding the work of 0316 or the information, the intelligence,
13 brought in by 0316 to the OTP?

14 A. There were conversations, discussions, which is perfectly normal
15 when you use an intermediary informer, in inverted commas, in this kind of
16 investigation. Unfortunately in the case of 0316, he was more -- playing
17 more the role of an intermediary than an informant, but there are two
18 aspects of this job that must be seen as separate; that is, the role of informant, passing
19 on information, and it is in this area of his work that he, in my view, was very
20 successful and we certainly trusted him. But as regards his role as an intermediary,
21 that is taking care of children or witnesses, to be perfectly honest, this was not a role
22 that suited him particularly. Bringing people into contact, yes, but to
23 follow up on these children, that was not necessarily what he had been
24 prepared for in his career experience, and that wasn't necessarily the
25 most --

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 9

1 THE INTERPRETER: Message from the English booth, could the
2 witness please be reminded to slow down? Thank you.

3 PRESIDING JUDGE FULFORD: Sir, I'm sorry, I've had two messages
4 from the English booth. Could you try and make sure that you don't speak
5 too quickly? We can hear you. It's speed.

6 THE WITNESS: (In English) Sorry.

7 PRESIDING JUDGE FULFORD: Thank you. And Mr. Biju-Duval, you
8 must remember to leave a pause after the witness has finished his
9 answers. You're tending to come in too quickly. Please continue.

10 THE INTERPRETER: The end of the witness's sentence to complete
11 the sentence: It was not the most ideal.

12 MR. BIJU-DUVAL: (Interpretation)

13 Q. Do you remember, during the month of May 2006, having written an
14 e-mail or a note regarding 0316, and in that note or in that e-mail, you
15 would have said the following, and I quote, I'm quoting the English
16 version, I'm -- I beg your pardon, ahead of time.

17 (In English) "Concerning his payment, should be made as soon as
18 possible. Indeed, it becomes more and more difficult to justify the
19 payment of certain expenses. As you will have read, most of the recent
20 information provided by 0316 concerns (French spoken with no
21 interpretation)(In English) some of the information seems bizarre and
22 definitely needs to be cross-checked." (Interpretation) End of quote.

23 Do you remember this exchange, this e-mail, or note dated May
24 2006?

25 A. Not particularly. In other words, I could not give you the exact

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 10

1 date or anything like that, but the content does not seem surprising. As
2 I explained yesterday, perhaps I could divide my answer into two parts,
3 the first regarding the payments. If this message was written in May of
4 2006, that was after he had not been hired for the job that he had
5 applied for, the staff job. At the time we had no particular directives
6 as regards the mode of payment for this type of personnel, and therefore
7 the matter arose within the OTP as to what kind of procedure was to be
8 adopted, what kind of clear procedure was to be adopted as regards
9 payment. Thus far, we had done as best we could, keeping things as
10 transparent as we could, with receipts being drafted, et cetera. And
11 then the idea of cross-checking, that's the basic rule that applies when
12 you work with this type of person, they provide information, the role of
13 an investigator of the OTP is to investigate and to check, and not to
14 take at face value the information that is provided.

15 Now, if at some times there were questions that arose it was
16 perfectly logical and normal to inform the OTP and the hierarchy and to
17 take any measures necessary to cross-check. That doesn't mean the
18 information was bad or not. It just means they needed to be
19 cross-checked. That's perfectly normal and perfectly transparent
20 procedure.

21 So without going so far as to say that I remember this precise
22 message exactly, the message is not at all surprising within the
23 framework of a normal investigation, at least it does not seem surprising
24 to me.

25 Q. When you say it's normal to inform the hierarchy, at that point

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 11

1 in time, who did you inform exactly?

2 A. Given that I don't remember the exact date of the e-mail, nor to
3 whom I wrote it to, perhaps you can tell me who I wrote it to, I myself
4 don't have that information. It would be logical that either I sent it
5 to the joint team or the investigation division.

6 Q. I thank you. With regard to the issue of remuneration and the
7 receipts made out to this effect, you're talking about the legal context
8 associated with this. Now, in this note, you indicate that some expenses
9 cannot or that it is very difficult for you to justify these expenses.
10 Does that not mean that intermediary 0316 himself cannot justify these
11 expenses?

12 A. No. That is not what it means. The way in which I remember it
13 is that it had become difficult to justify to the finance section certain
14 expenses associated with this individual. He was not officially working
15 for the Court, and as a result, we needed rules and regulations in order
16 to explain that we might have recourse to this kind of individual and
17 that he then be paid or reimbursed for his expenses. So we are not
18 talking about excesses on the part of this individual because
19 systematically from the moment when we started working with him until
20 we stopped working with him or until I stopped working with him, each and
21 every expense was accompanied with a receipt which was then recorded by
22 the financial section which as I saw in the folder are readily available.

23 (In English) I will slow down, sorry.

24 (Interpretation) So it is very transparent as a means of checking
25 the situation. The point that I was trying to make is that in my opinion

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 12

1 in this e-mail the finance section has raised more and more problems
2 or -- raised more and more problems or issues in accepting this kind of
3 expenditure, and of course we had to establish rules and regulations in
4 order to use this kind of individual and reimburse them accordingly.

5 Q. I thank you. I have understood your testimony. According to
6 which the natural task of the Office of the Prosecutor is to ascertain
7 the veracity of the information it receives.

8 Now, within this correspondence, you indicate:

9 (In English) "The information seems bizarre."

10 (Interpretation) Now, are we not here in a rather particular
11 situation where verification is necessary because the information
12 transmitted is suspicious in nature?

13 A. I believe that there is a difference between bizarre and suspect.
14 I wrote the word "bizarre" and I'm sure there is a reason for that.
15 I didn't use the word "suspect" or "suspicious." So I will continue with the word I
16 used then, bizarre. So when we are talking here about information that is surprising
17 in nature, that is maybe a better term rather than suspicious, surprising, so of course,
18 yes, we have to verify it. Of course, my job was not to take as truth the
19 information that I was given or brought, but my job was to attempt to
20 ascertain the veracity of the information and, if the information was
21 verified and corroborated, then of course -- then I would
22 inform the OTP. So this is an entirely normal and I would say better way of going
23 about things rather than contesting the veracity of the information that we receive.

24 Q. I thank you. After having transmitted these suggestions to your
25 hierarchical superiors, what if any decisions were taken?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 13

1 A. Once again, in view of the fact that I do not have this message
2 and quite honestly, not knowing what the bizarre information was that was
3 received at that moment in time, then of course it's difficult for me to
4 say. But one thing is for certain, and this is reflected in the
5 statement provided, if we refer to the statement of May 2006, this is the
6 time at which we decided to limit the access that 0316 had, or the access
7 that people had to 0316, or the access that 0316 had to two people, that
8 is to say myself and Mr. Lavigne. This was with a view to channelling and
9 authorising verification of information, so in order to respond to your question,
10 the obvious measure to be taken was to strictly control the way in which he
11 was used, in order to avoid having information being bandied around.

12 Q. I thank you. You or any other members of the team, did you
13 reassess the testimony of the witnesses presented or introduced by 0316?
14 Or did you reassess the information or intelligence transmitted or
15 brought in by 0316 subsequent to the concerns you have just voiced?

16 A. Well, to be quite clear, I did not raise any specific concerns.
17 Now, the attempt at verification or corroboration of the contents of the
18 witness statement is quite normal in terms of procedure within an
19 investigation. Now, whether the witness had been introduced by 0316 or
20 not, this way of going about things should be systematic. The assessment
21 of a witness, of his credibility, of the associated evidence, is not
22 uniquely associated with 0316 it was part of the system, but, yes on principle,
23 revisiting issues once new evidence comes to light, you have to compare this with
24 information that has already been received. This is quite logical and normal within
25 the context of an investigation.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 14

1 Q. In concrete terms, do you recall having asked yourself any
2 questions on the subject of information previously brought to you by
3 0316? Or might you have asked yourself any questions associated with any
4 witnesses that were introduced to you previously? And if you have any
5 examples of this, please.

6 A. A specific example to hand right now? No. Once again, what I
7 can say is that the information was checked to the extent possible, and
8 if 0316 put us in contact with a particular witness, the statement of
9 this witness would then be checked. So, of course, checks were
10 undertaken. Now, in detail whether I can give you any examples, it's
11 difficult for me and I'm very sorry.

12 Q. Yesterday, you stated that at the outset, when 0316 started to
13 cooperate with the OTP, he stated that he was still part of (Redacted)
14 (Redacted). Now, during the entire duration of his
15 cooperation or work with yourself and the Office of the Prosecutor, until
16 the time at which you left, did you know that he was still active?

17 MR. BIJU-DUVAL: (Interpretation) Mr. President, I am coming to a
18 stop. I think it might be preferable for us to go into private session
19 for reasons of safety.

20 PRESIDING JUDGE FULFORD: Please.

21 *(Private session at 10.11 a.m.) Reclassified as open session

22 COURT OFFICER: We are in private session.

23 MR. BIJU-DUVAL: (Interpretation)

24 Q. Did you know that during the entire period, that is to say from
25 the beginning of the cooperation with this individual until September

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 15

1 2007, did you know that he occupied a position of responsibility at
2 (Redacted)

3 A. He had introduced himself as a member of (Redacted)

4 (Redacted). When at the beginning of 2006 (Redacted)

5 (Redacted), that is indeed what he

6 wrote down in his CV in terms of information. Now, after the beginning

7 of 2006 I do not remember having put questions to him on the subject as

8 to whether he was still part of that organisation. It would seem to me

9 that at the outset, of course, he did tell me that he was a member of

10 that institution, but I also believe that he added that he was no longer

11 being paid at all by that institution. So he introduced himself as such,

12 but I never saw anything that would enable us to certify this or prove

13 it.

14 PRESIDING JUDGE FULFORD: Mr. Sachdeva, could you scroll up,

15 please, to line 9 of page 14 on the English transcript? Does that need a

16 redaction?

17 MR. SACHDEVA: It does, I'm grateful, Mr. President.

18 PRESIDING JUDGE FULFORD: Thank you. Redaction, please.

19 Please carry on, Mr. Biju-Duval.

20 MR. BIJU-DUVAL: (Interpretation)

21 Q. Let us leave the question of payment by the Congolese authorities

22 to one side, because this is a specific concern within the Congo on many

23 levels. Now, with regard to his function, as to whether it was or not

24 remunerated or paid by the Congolese administration, did you wonder

25 whether, during the period when -- of your cooperation or of his

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 16

1 cooperation, he still continued to work for (Redacted)

2 A. I did not really wonder about this because, as I said yesterday,
3 he had said that he was part of that institution. To my mind it was a
4 guarantee, an item of information that led us to believe that he was
5 capable of providing us with information that we needed in terms of security in order
6 to locate individuals that were of interest to us. It was also a reason, of
7 course, to check the information that he brought to us to the extent possible, because
8 he was part of that (Redacted), and that's what he told us at least.

9 Q. I thank you. So, in your mind, the fact that he was working for
10 (Redacted) did not throw up any particular difficulties?

11 A. It is not really that it was -- it did or did not raise any
12 particular concerns. He was providing us with intelligence and we would
13 check the intelligence he provided. Now as to whether he he worked for and
14 continued to work for (Redacted) or not at the time, the fact that we could check the
15 flow of information to him that he would then bring to us was a means of
16 making sure that there wasn't a flood.

17 Q. I thank you. Would it be true to say that 0316 was using the
18 services of (Redacted) in order to fulfil the missions that were
19 entrusted in him by the Office of the Prosecutor?

20 A. Not to my knowledge. He had somebody who was close to him who
21 would help him in certain cases. I must admit that I do not recall the
22 name of that individual, but to my knowledge, he did have a co-worker who
23 was helping him, but to my knowledge, there was only one such individual
24 or at least I'm only aware of one individual.

25 Q. I shall suggest -- thank you. I shall suggest three names to you

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 17

1 (Redacted). Do you know this individual?

2 A. The name is familiar to me and I believe that this is the
3 individual whom I knew who was indeed working with him. It would seem to
4 me.

5 Q. If I also suggest to you the name (Redacted)
6 (Redacted)

7 A. That name is totally unknown to me. At least I don't remember
8 that name at all, to be quite frank.

9 Q. And lastly, the name (Redacted)

10 A. Unfortunately not. That name does not ring a bell at all.

11 Q. I thank you. Could you please consult tab 20 of the binder?
12 This document already bears document number EVD-D01-00371 and the
13 DRC-OTP-0290-0332. This is a document entitled, "Receipt for
14 Reimbursement" dated the 18th of July, 2006, where your name is mentioned
15 as the individual who made out this receipt, and the name (Redacted)
16 is stated as the individual reimbursed, and in the left-hand column,
17 first -- under the first heading: 1 May 2006, transport, return journey to
18 (Redacted) plus hotel plus food plus communication costs, and in parentheses,
19 (01 to 06, 05/06); that is, the 6th of May 2006, (for (Redacted)). Do
20 you know what this is about?

21 A. No, I do not really remember what this is all about, but this
22 does indeed confirm what I was saying to you previously, that the
23 individual working with 0316, that is to say (Redacted), for transport
24 or for travel costs that were incurred by him where he was trying to
25 locate witnesses or something similar in the zone indicated on the document.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 18

1 Q. Did (Redacted) work on his own when working for the Office of
2 the Prosecutor?

3 A. Not to my knowledge. I was liaising with 0316 solely, and I do
4 not remember having had any relations in particular with (Redacted). Now,
5 this case, because we are talking about this document, I believe that the
6 reimbursement took place on the basis of invoices that were presented
7 to me not by (Redacted) himself but by 0316.

8 Q. I thank you. Could you please refer to tab 32? There are a
9 number of documents under this tab, and I would like to refer to document
10 3 which already bears the EVD number OTP-00601 or DRC-OTP-0216-0019.
11 This is a receipt signed by yourself on the 12th of May 2005, which bears
12 the signature, it would seem, of 0316; is that correct?

13 A. As far as I can recollect, yes, it is his signature.

14 Q. And this receipt mentions, as supporting document for this, for
15 these expenses, transport for co-workers, in the plural. Do you remember
16 who this referred to?

17 A. Honestly speaking, no. Transport for co-workers is indeed
18 indicated on this document, but as to who it was, I could not tell you.
19 May 2005 was the beginning of our relations with 0316. We were in
20 contact with him and nobody else. Now, as to whether he used other
21 co-workers or not, I said it is possible but I can't remember the names
22 of all of them, nor did I want to meet all of them. I preferred to work
23 with one individual, have one focal point, that is 0316, rather than 0316
24 and his co-workers in the singular or plural, it makes no difference.

25 Q. We've just talked about his co-workers or subordinates. Now, my

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 19

1 question has a bearing on hierarchical superiors.

2 MR. BIJU-DUVAL: (Interpretation) Mr. President, I believe -- no.

3 Maybe not. Sorry.

4 Q. I am now referring to the hierarchical superiors of 0316 within
5 (Redacted). My question to you is as to whether at any moment in time you
6 entered into contact with his hierarchical superiors, (Redacted)
7 (Redacted)

8 A. No.

9 Q. Did you have any knowledge of contact established between those
10 in charge of the Office of the Prosecutor and 0316's hierarchical
11 superiors?

12 A. As to whether I was aware of any such contact? No. Well, it
13 doesn't ring a bell, anyway.

14 Q. I thank you.

15 MR. BIJU-DUVAL: (Interpretation) Mr. President, I shall now be
16 referring to a number of names of witnesses, but I do believe that we can
17 continue in open session in the following manner. The -- I shall submit
18 to the witness a document bearing the name of the witness. I will ask
19 him whether he knows this individual, and I will put two or three
20 questions to him, and I think that using such a *modus operandi* we might
21 be able to proceed in open session.

22 PRESIDING JUDGE FULFORD: Certainly. Sir, could you try to avoid
23 mentioning the witnesses' name? Good, open session, please.

24 (Open session at 10.26 a.m.)

25 COURT OFFICER: We are in open session.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 20

1 MR. BIJU-DUVAL: (Interpretation)

2 Q. Could you please refer to tab 3 of the binder? We are talking
3 here of the first page of a witness statement for a witness, and this
4 bears the EVD number EVD-D01-00241, the ERN number is DRC-OTP-0105-0085.
5 Can you see tab 3?

6 A. Yes, indeed.

7 Q. Do you recall having interviewed the individual whose name is
8 mentioned on this page?

9 A. Yes, indeed.

10 Q. I shall ask you who put this individual in contact with the
11 Office of the Prosecutor? Do not provide the name. If you know, say
12 that you do. If you do not know, say that you don't.

13 A. It's quite simple. This is an individual, I do not know when he
14 was put in contact with the Office of the Prosecutor because this was not
15 facilitated by me. I just took over after first contact has been
16 established. And as you can see, these are -- on the occasion of the
17 first encounters I was not there, so I do not know -- so I do not know
18 how he was met for the first time.

19 Q. Very well. Thank you. Could you please now consult tab 4, EVD
20 number D01-01253, DRC-OTP-0066-0002. Do you know this individual?

21 PRESIDING JUDGE FULFORD: Before you answer.

22 MR. SACHDEVA: Mr. President, perhaps it's premature, but I just
23 would like to know what is the relevance of these questions in respect of
24 these witnesses. When these witnesses testified, there was never any
25 suggestion that they had been coached or prepped or that they had given

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 21

1 false testimony. And so in our submission, what is the relevance of the
2 relationship between this witness and, I would imagine, the
3 intermediaries in question in the abuse of process?

4 PRESIDING JUDGE FULFORD: Thank you, Mr. Sachdeva. I imagine
5 that part of the answer is that this has been something of an evolving
6 story, but, Mr. Biju-Duval, what is the justification for asking this
7 witness about, for instance, the witness who appears behind tab 4?

8 MR. BIJU-DUVAL: (Interpretation) The witnesses that I am going to
9 mention -- well, we do not have any information provided by the Office of
10 the Prosecutor with regard to the manner in which they were initially
11 contacted, and in view of the arguments submitted by the Defence, it is
12 important for us to ascertain the -- who the intermediary was for those
13 witnesses. And to date we have not received this information from the
14 Office of the Prosecutor, so I am attempting to obtain this information
15 via this investigator.

16 PRESIDING JUDGE FULFORD: And am I right in understanding that
17 your questions will be confined, certainly in the first instance,
18 essentially to asking if the witness knows who the intermediary was? Is
19 that right?

20 MR. BIJU-DUVAL: (Interpretation) Yes, it is, your Honour.

21 PRESIDING JUDGE FULFORD: (Microphone not activated) [Thank you.
22 Anything else, Mr Sachdeva?]

23 MR. SACHDEVA: Not for the moment, Mr. President.

24 PRESIDING JUDGE FULFORD: All right. You have permission to reopen
25 the issue in due course, if you wish to. Thank you very much. We will take the

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 22

1 longer mid-morning break at this point.

2 Thank you, sir. We'll now have a break. We look forward to seeing you again at

3 11.00.

4 Usher, could you please accompany the witness back to the witness waiting room.

5 (The witness stands down)

6 PRESIDING JUDGE FULFORD: Thank you all. 11.00.

7 Recess taken at 10.32 a.m.

8 On resuming at 11.01 a.m.

9 COURT USHER: All rise. Please be seated.

10 PRESIDING JUDGE FULFORD: Witness, please.

11 (The witness takes the stand)

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

13 Yes, Mr. Biju-Duval, we are in public session.

14 MR. BIJU-DUVAL: (Interpretation)

15 Q. Witness, could you please go to tab 4? I'm going to ask you two

16 questions, but I'm going to ask you first of all not to give the name in

17 your answer because this is in open session. First question: Do you

18 know this individual? Second question: Do you know who put this person

19 in contact with the Office of the Prosecutor? If you know who it is, we

20 will go into a private session to indicate who that is.

21 A. First question, yes, I do know the person. Second, yes, I know

22 how he was put into contact with the OTP.

23 MR. BIJU-DUVAL: (Interpretation) Thank you. Therefore it will be

24 necessary to go into a private session so that we can get more

25 information on the second individual.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 23

1 PRESIDING JUDGE FULFORD: Private session, please.

2 *(Private session at 11.04 a.m.) Reclassified as open session

3 COURT OFFICER: We are in private session.

4 MR. BIJU-DUVAL: (Interpretation)

5 Q. Please, could you indicate who put him in contact with the Office
6 of the Prosecutor?

7 A. For this witness, he was put in contact with me because I was the
8 first contact person. There was no intermediary.

9 Q. In other words, what were the circumstances?

10 A. I obtained his name and his contact details from a person. I am
11 the person who directly established the contact with that person, so no
12 one introduced him to me. I went to contact him first alone. I was
13 given his contact details, that is one thing. But I didn't use anybody
14 to go and meet him for the first time. I contacted him. I introduced
15 myself. He accepted to meet me and that is how we established that
16 contact.

17 Q. Thank you. Could you go to tab 10? I suggest that we remain in
18 a private session for this witness. This is the first page of a written
19 statement for DRC-OTP-0151-0583, so, sir, do you know a
20 (Redacted)

21 A. Yes, this name is familiar to me.

22 Q. Do you know who put this person in contact with the OTP?

23 A. Honestly, I don't remember. Due to his profession, I think that
24 his name had been fairly public at the time. I don't think his name had
25 been communicated to us by anybody, perhaps his contact details, but if

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 24

1 I remember correctly, he was more or less a publicly known person at the
2 time.

3 Q. Thank you. Could you please look at paragraph --

4 COURT OFFICER: The statement just presented has not been
5 assigned any evidence number so far. So the number assigned will be
6 EVD-D01-00385.

7 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva?

8 MR. SACHDEVA: Mr. President, I'm just wondering whether the
9 statement, or the statement in its entirety, needs to be given an EVD
10 number because the question just referred to the name.

11 PRESIDING JUDGE FULFORD: That's right, isn't it, Mr. Biju-Duval?
12 You're not introducing anything from the statement. This is purely a way
13 of identifying the individual. It seems unnecessary, in those
14 circumstances, isn't it, for the statement to go in. All we need is the
15 name of the witness who provided a statement.

16 MR. BIJU-DUVAL: (Interpretation) The name of the witness, and for
17 this witness, I would like to refer to paragraph 89, 100, and 101 of this statment
18 which could be looked at by the Chamber within the examination of this file,
19 because in this paragraph, this is the question that I wanted to ask --

20 THE INTERPRETER: Correction from the interpreter: Paragraph 99,
21 100, and 101.

22 MR. BIJU-DUVAL: (Interpretation) So it's regarding
23 (Redacted), and so I had a question regarding those three paragraphs.

24 PRESIDING JUDGE FULFORD: (Previous translation continued)... [If you have
25 any questions] for the witness in relation to those paragraphs, so be it. Then that

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 25

1 changes the position. But if the statement is purely being used as a way of
2 identifying the witness and no further questions are asked about it,
3 there surely can't be a justification for introducing the statement.
4 Now, are you saying that you're going to be asking this witness about
5 paragraph 99?

6 MR. BIJU-DUVAL: (Interpretation) Yes, your Honour.

7 PRESIDING JUDGE FULFORD: (Previous translation continued)...
8 retain its EVD number and we'll see where we go. Right.

9 Please carry on, Mr. Biju-Duval.

10 Except Mr. Sachdeva is on his feet again. Yes, Mr. Sachdeva?

11 MR. SACHDEVA: Perhaps again a technical objection, but on the
12 face of it, there is no basis to relate this statement to the present
13 witness. He was not involved in the interview.

14 PRESIDING JUDGE FULFORD: All right. All right. Good.

15 Mr. Biju-Duval, how did -- what is the question that you're
16 seeking to put to this witness on the basis of someone else's statement?
17 Could you formulate it? And sir, could you not answer it for the time
18 being? What's the question?

19 MR. BIJU-DUVAL: (Interpretation) The question is the following:
20 Paragraphs 99 and 101 of this statement mention the name of (Redacted)
21 (Redacted), an intermediary of the Office of the Prosecutor who was
22 presented as being a friend of the witness. My question is will this
23 refresh the memory of Mr. Sebire regarding the question of knowing
24 whether or not it would be (Redacted) who will have introduced him.

25 PRESIDING JUDGE FULFORD: I'm sorry, Mr. Biju-Duval, but someone

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 26

1 else's statement isn't going to refresh this witness's memory. He's had
2 nothing to do with this document. Now, you can ask the witness about
3 (Redacted) and connections between (Redacted) and other people,
4 but given that this witness is completely unfamiliar with this document,
5 you can't get in those paragraphs simply by using them as a basis for
6 your question. So unless there is anything you wish further to say on
7 the matter, EVD number deleted, please, and, of course, ask this witness
8 about (Redacted), you're perfectly entitled to do so, but not on the
9 basis of those paragraphs, I'm afraid.

10 MR. BIJU-DUVAL: (Interpretation)

11 Q. I will therefore remove the question regarding those
12 paragraphs. I would like you to go to tab 11. This is a document for a
13 reimbursement receipt that has the number DRC-OTP-0205-0274. The first
14 document of tab 11. So a receipt established by yourself for
15 (Redacted) that mentions as a justification for the
16 reimbursement, (Redacted) for four days.

17 My question is: Do you recall having entrusted the mission of
18 taking photos to (Redacted)

19 A. No, the document is exact. It was (Redacted), but it
20 was not at all to go and take any photos anywhere.

21 Q. What was the reason?

22 A. The reason was quite simple: I think it was during a mission in
23 Bunia, we needed to have him make (Redacted) so they could be
24 studied afterward here in The Hague. So the use of a (Redacted) had
25 been intended, if I remember correctly, to enable a copy to be made of

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 27

1 (Redacted) that he had because he didn't have a (Redacted), or at
2 least that's what I remember.

3 Q. Thank you.

4 COURT OFFICER: Assigned to the receipt is EVD-D01-00385.

5 MR. BIJU-DUVAL: (Interpretation).

6 Q. As regards the intermediary (Redacted), is it true that he
7 had worked previously for an (Redacted)
8 (Redacted)

9 A. As I explained yesterday, I did not work particularly with (Redacted)
10 (Redacted). Honestly as regards his professional past, I can't answer
11 your question. No, I don't know his professional background.

12 Q. Thank you. Could you -- excuse me, I'm going to ask you a
13 question in the following manner. Do you know a person named (Redacted)

14 A. The name is familiar to me, yes, but under what circumstances
15 exactly, it's hard for me to try and situate that name.

16 Q. If I were to suggest it were a potential witness or a witness
17 contacted by the Office of the Prosecutor?

18 A. Once again, yes, the name is familiar to me but, no,
19 unfortunately, unless you provide me details, I couldn't tell you any
20 more than the fact that the name is familiar. I'm sorry.

21 Q. I will go ahead and ask the question. Do you know how he was put
22 into contact with the Office of the Prosecutor?

23 PRESIDING JUDGE FULFORD: Don't answer for a second, sir.

24 Yes.

25 MR. SACHDEVA: Mr. President, just to follow up perhaps on my

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 28

1 previous objection, our understanding is that the identities of 0143,
2 0321, 0316, were necessary to be provided to the Defence because the
3 apparent inconsistencies between the witnesses, the child soldier
4 witnesses, and the witnesses that the Defence have brought in this case;
5 in other words, the abuse of process. The witnesses now that the Defence
6 is asking this present witness about, there has been no suggestion that
7 their account was falsified, that they were not who they said they were,
8 and so to seek a question -- to seek an answer or to seek information as
9 to the intermediary that -- whether or not someone was involved in
10 introducing that witness to us, in our submission, is irrelevant to the
11 present abuse of process, at least as stated by the Defence and as led by
12 the Defence in their defence. So that's why the Prosecution believes
13 that these questions are irrelevant and waste the court's time, in our
14 humble submission.

15 PRESIDING JUDGE FULFORD: Thank you very much.

16 Mr. Biju-Duval.

17 MR. BIJU-DUVAL: (Interpretation) Mr. President, I wouldn't ask
18 these questions if the Office of the Prosecutor had communicated to the
19 Defence a full table with the intermediaries, explaining to the Defence
20 how these witnesses had initially been contacted. The Prosecutor did not
21 provide that information. This information is relevant regarding the
22 issue of intermediaries, and therefore I have to ask this in the fastest
23 way possible, with this investigator of the OTP.

24 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

25 MR. SACHDEVA: Well, just to provide an example, the Office of

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 29

1 the Prosecutor in their intermediary chart indicated that the contact
2 with respect to Witness 14 was indeed an OTP person and that has been
3 confirmed just now in evidence. So it's incorrect to say is that we did
4 not relay the information to the Defence, according to the records that
5 we have, as to the persons who introduced trial witnesses to the office.

6 PRESIDING JUDGE FULFORD: Thank you, both.

7 (Trial Chamber confers)

8 PRESIDING JUDGE FULFORD: Mr. Sachdeva has objected to questions
9 by Mr. Biju-Duval when he has asked the present witness how it came about
10 that certain witnesses were put in contact with the Prosecution, and
11 specifically whether it was the result of the intervention of one of the
12 intermediaries who the Prosecution have used in this case. Mr. Sachdeva,
13 in essence, submits that when there has not been an allegation that the
14 particular child soldier under consideration is not the person who he or
15 she has claimed to be, there is no justification for pursuing this line
16 of questioning.

17 The Defence submissions, as regards abuse of process, have, to a
18 very large extent, been dependent on the emerging evidence during the
19 course of this trial. They are not artificially fixed by reference to
20 the particular examination employed by the Defence much earlier in this
21 trial, when individual alleged former child soldiers were called to give
22 evidence.

23 Given there is an issue to be resolved by this Chamber as to the
24 role of intermediaries in this case, we consider that it is fair and
25 proportionate and most importantly relevant for the Defence, to the

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 30

1 extent that this witness is able to assist, to ask questions as to how
2 relevant witnesses came into contact with the Office of the Prosecutor
3 and whether it was via an intermediary.

4 You may continue, Mr. Biju-Duval, putting these questions in a
5 suitably short way.

6 MR. BIJU-DUVAL: (Interpretation) Thank you, Mr. President.

7 Q. So this is a private session. I'd like to ask my question again
8 regarding (Redacted). Do you have any information to give us
9 regarding how the Office of the Prosecutor entered into contact with him,
10 through whom?

11 A. Unfortunately, no.

12 Q. Thank you. You personally handled this witness?

13 A. As I indicated a bit earlier, the name is familiar to me, as
14 I said, but other than that, I don't have any other recollection
15 regarding this person. I indicated that other than the name, yes, I know
16 the name, but I couldn't tell you whether I met him or not. I really do
17 not recall that at all.

18 Q. Thank you. Now I'm going to ask you a certain number of
19 questions regarding (Redacted), whom you spoke
20 about in your statement and whom you brought up yesterday. This witness
21 has code 0035. So I would suggest that during these questions that we
22 can have, during the open session, that we use the code 0035 or we say
23 Witness 0035 when we are talking about (Redacted) and to say the
24 intermediary 0316 when we are talking about (Redacted). Is this --
25 does this suit you?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 31

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

2 (Open session at 11.25 a.m.)

3 COURT OFFICER: Open session.

4 MR. BIJU-DUVAL: (Interpretation) You indicated yesterday that

5 Witness 0035 was introduced to you in Bunia through 0316, intermediary

6 0316, during the evening. Did you know about the existence of

7 Witness 0035 before you met that person during the evening in Bunia,

8 which you described to us?

9 A. 0316 had told me about his existence, and so as I requested he
10 arranged for an initial encounter.

11 Q. This initial meeting of a brief one during the evening, did it
12 take place in the Hellenique restaurant?

13 A. Near the Hellenique restaurant.

14 Q. Thank you. You tell us that intermediary 0316 had informed you
15 of his existence previously. How was he introduced to you? How did
16 intermediary 0316 introduce, describe, explain, who it was as regards
17 Witness 0035?

18 A. As far as I can recall, the information that was relayed to me
19 was that it was an officer in the UPC, a commander, who had participated
20 with his troops in a number of attacks.

21 Q. Thank you. When you met Witness 0035 for the first time in
22 Bunia, at this meeting, did he accept an interview -- that an interview
23 could take place later?

24 A. At this first meeting, as I explained in my statement, it was
25 clear that he did not understand the aim of what I was doing, and as

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 32

1 I did not have an interpreter with me, a sworn interpreter, who could do
2 the work properly, explaining who I was and what I wanted to obtain,
3 I decided to fall back on the solution of asking whether or not he would
4 be willing to meet me at a later point of time outside of Bunia, which he
5 accepted.

6 Q. Thank you. Between this first meeting in Bunia and the moment
7 when the interviews would take place later, were there discussions between
8 you and your superiors, your team, regarding the issue of the opportunity
9 of being able to carry out an interview or obtain a statement, detailed
10 interviews or statement?

11 A. To be able to go out into the field to interview him, I needed to
12 prepare that, I needed to prepare a request for the mission, to explain the reasons
13 why it would be useful to go and meet that person, at least to verify the
14 original information, and so I didn't decide alone to go out into the
15 field to meet this person and take down his statement. It was approved by the office.

16 Q. Thank you. In this request to carry out this mission, did you
17 explain the introduction that had taken place with intermediary 0316
18 regarding that person?

19 A. In the mission report itself, I don't remember -- I do remember
20 that I drafted a report that was sent to the team, to my superiors,
21 regarding the initial information. Now, I don't remember whether or not
22 this initial information was in the final mission report. I don't -- I'm
23 not able to say that at this point.

24 Q. Well, I was speaking about the initial request to go on the
25 mission. You have stated that interviews were to take place in Kampala.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 33

1 If I were to suggest that those interviews took place on September 30th
2 until October 5th, 2005, does that correspond to your recollection, just
3 to give us an idea of the chronology?

4 A. It's quite probable but I don't remember the exact dates of the
5 interview with that person, but it was probably during that period
6 indeed.

7 Q. Who arranged the formalities and the organising of the travel,
8 that is for Witness 0035 to go to Kampala?

9 A. As I stated in my witness statement, I used 0316 to assist us for
10 these practical matters, and to accompany the witness to Kampala. He
11 accompanied him the morning to where the interview took place, he came to get
12 him at the end of the day, took him to the hotel, so indeed 0316 did play that role
13 during that interview.

14 Q. Let's deal with the travel between Bunia and Kampala. Did
15 Witness 0035 have a passport which made it possible for him to travel?

16 A. Quite honestly, I don't remember. Perhaps he presented an
17 identification card during, at the beginning of the interview, we could verify this but
18 frankly I don't remember if it was a passport.

19 Q. Did intermediary 0316 take care of collecting the necessary
20 documents or obtaining the necessary documents to go from Bunia to
21 Kampala, in particular to cross the border?

22 A. That aspect was not discussed. The travel conditions -- well, we
23 discussed the best way to enable the person to travel. I asked the
24 person if he was agreeable with the idea of travelling, and I assumed
25 that if that person accepted the idea of going to Kampala, that is

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 34

1 Witness 0035, was able to do so. In other words during the initial
2 meeting, as I mentioned previously, the question was put to him, "Do you
3 agree or not to meet with me elsewhere?" "Elsewhere" being Kampala. The
4 witness accepted to go there, and therefore I assumed that he was able to
5 do so, that the necessary conditions were satisfied. We then assumed responsibility
6 for the practical considerations, paying for
7 transportation and accommodation, et cetera.

8 Q. Thank you. Could you now turn to tab 15? In particular document
9 3 which bears the reference DRC-OTP-0216-0033. It's number 3 under this
10 tab. There are two different documents on the same page. I'd like to
11 refer to the one at the top, which is a receipt dated September 28th,
12 2005, issued by the embassy of the DRC, mentioning the name of
13 Witness 0035, and at the bottom of the document, there is a reference to
14 three certificates. There is a certificate of NAT, NAIS which probably stands for
15 'birth' – naissance in French -, and BYM. Do you see this document?

16 A. Yes.

17 Q. Who took care of this at the DRC embassy, if you know?

18 A. I can't answer with 100 per cent certainty, but I believe 0316
19 was used to facilitate the travel. And let us be perfectly clear, I was
20 not present so I can't say with certainty, but it does seem logical that
21 0316 carried out the necessary procedures with the embassy.

22 PRESIDING JUDGE FULFORD: Too quick.

23 THE WITNESS: Sorry.

24 MR. BIJU-DUVAL: (Interpretation).

25 Q. Did Witness 0035 or intermediary 0316 then give these documents

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 35

1 to you?

2 A. (Interpretation) Honestly, I don't remember. I can't say "yes"

3 or "no" to that.

4 MR. BIJU-DUVAL: (Interpretation) Could we have an EVD number?

5 COURT OFFICER: The receipt shall receive the evidence number

6 EVD-D01-00386.

7 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

8 MR. SACHDEVA: I'm sorry, but I think the initial ERN

9 reference -- I just have difficulty finding the document. I think the

10 ERN reference initially was incorrect.

11 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, could you give the ERN

12 number again, please?

13 MR. BIJU-DUVAL: (Interpretation) The ERN number is

14 DRC-OTP-0216-0033.

15 MR. SACHDEVA: Thank you.

16 MR. BIJU-DUVAL: (Interpretation)

17 Q. You have stated, I believe, in your statement, that Witness 0035

18 was accompanied by intermediary 0316 for the trip; that is, between Bunia

19 and Kampala. As far as you know, was he also accompanied by any other

20 persons who worked with 0316 or who 0316 knew?

21 A. Not to my knowledge.

22 Q. Could you now go to tab 32? And then document 9 under that tab.

23 The EVD number is EVD-OTP-00611, and the ERN number is DRC-OTP-0216-0016.

24 This is a receipt for reimbursement written out by yourself, drafted by

25 yourself, and it bears the code number of the intermediary 0316. Do you

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 36

1 recall this document?

2 A. This one in particular, no, but clearly I established it and it
3 does seem to correspond to the reimbursement for payments made in order
4 to accompany Witness 0035 by 0316. I believe that is what is referred to
5 here.

6 Q. Thank you. Under description, there is mention of the DSA, a
7 period of 11 days from September 25th, 2005, until October 5th, 2005.
8 Can you confirm that this is indeed the period during which Witness 0035
9 was taken to Kampala for interviews with yourself?

10 A. The dates indicated were the dates when 0316 was travelling and
11 was present.

12 Q. Thank you. Now, this document is dated September 28th, 2005.
13 The amount is \$1,690 US dollars. Does this document in fact mean that
14 this amount in dollars was paid to intermediary 0316 at that point in
15 time?

16 A. Well, as regards the date itself, I don't know, but I know that
17 the money was given to him before the trip so that he could finance the
18 travel expenses.

19 Q. We are referring here to \$880 in DSA – daily living expenses. Was that amount
20 given to intermediary 0316 on the day when the receipt was written out?

21 A. I really cannot confirm that regarding exactly at what point in
22 time the money was paid to the individual for his living expenses in
23 Kampala. I frankly do not remember at which point in time that took
24 place.

25 Q. Thank you. Could you turn now to tab 15, and document 2 of tab

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 37

1 15, which is D01-00114, and it's DRC-OTP-0216-0027. This is a receipt
2 made out by yourself for Witness 0035, which mentions the payment of DSA.

3 I see that you're searching for the document.

4 A. You mentioned document 15?

5 Q. It's tab 15, document 2, document 2 of tab 15.

6 This receipt is dated September 28th, 2005. The amount is \$400
7 for DSA for Witness 0035; is that correct?

8 A. Yes, indeed.

9 Q. This amount of \$400, who was it actually paid to in reality?

10 A. According to my recollection, it was paid either daily or every
11 two days to the witness.

12 Q. Thank you. You're still under tab 15. I'd like to turn now to
13 document 5. The EVD number is D01-00115 and the ERN is
14 DRC-OTP-0216-0028. This is a similar document to the previous one, same
15 type of document, which seems to be dated September 30th, 2005, but the
16 date is not perfectly legible as regards the actual day.

17 And here, there is a reference to a payment of \$700 for DSA but also to
18 summarise, travel expenses. Do you remember having prepared this receipt?

19 A. Well, it seems to correspond, yes.

20 Q. The person who signed at the bottom of this document, is it
21 Witness 0035?

22 A. I would say that *a priori*, it should be, but there is no reason
23 to have a document regarding a particular witness and that the signature
24 be the signature of someone else. Each time I had someone sign such a
25 receipt, it was the individual himself who signed. Even though I may not

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 38

1 remember the actual point in time when that person signed the document,
2 I would say that it's highly probable that this indeed be the signature
3 of the witness.

4 Q. So this fact this amount of \$700, September 30th 2005, who was it
5 actually paid to?

6 A. Regarding the DSA, as I explained a moment ago, according to my
7 recollection, either DSA was paid every day or every other day when the
8 witness was in Kampala, and as regards travel expenses, I imagine, at
9 least according to what I remember, the money was given -- now we are
10 talking about Entebbe-Aru, I believe that for the return trip the money
11 was given to himself. The amounts here correspond to the return trip, so
12 I would think that the money was given to him on site in Kampala.

13 Q. Regardless of what is stated here in the document, I'd like to
14 ask you what you actually remember as to what occurred. At that point in
15 time, did you give \$700 to Witness 0035?

16 A. In light of my previous answers, the answer is no. I've told you
17 that the money was given either on a daily basis or every other day, and
18 perhaps to add to my answer, you want it to be as accurate as possible, and of course
19 this is in the interests of all, remember the incident regarding Witness 0035.
20 I can't really give you a clear "yes" regarding the amount that was given
21 each day to Witness 0035, but if you look at the details of the incident
22 that occurred, perhaps you -- we can all better understand that at a
23 given point in time, the money, if only for hotel expenses and daily
24 expenses, the money was given to intermediary 0316 because of an incident
25 that occurred and the money was, in fact, used for a purpose other than

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 39

1 to pay for the hotel. I think, therefore, that it's very important to
2 mention this aspect, and in answer to the question was \$700 given in one
3 fell swoop to the witness, the answer is no.

4 Q. Thank you. I'd like to ask you to take the other binder. This
5 binder contains the transcripts of the interviews which took place in
6 Kampala on September 30th, 2005, till October 5th, 2005. I would like to
7 ask you to turn to tab 10 of this binder. This document bears the number
8 EVD-OTP-00542. You will see that on the second page, we are referring to
9 the interview which took place on the 2nd of October 2005, and I would
10 like to refer to an extract which can be found on page 13 of this
11 document, which bears the reference DRC-OTP-0161-1669.

12 With the permission of the Chamber, I would like to read the
13 passage which begins on line 306 -- line 306 up to page -- up to line
14 537.

15 MR. BIJU-DUVAL: (Interpretation) This is an exchange between
16 yourself and Witness 0035. I believe it's going to be somewhat
17 complicated to read this extract in open session. I think it's
18 preferable to go into private session, your Honour.

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

20 *(Private session at 11.54 a.m.) Reclassified as open session

21 COURT OFFICER: We are in private session.

22 MR. BIJU-DUVAL: (Interpretation)

23 Q. I quote here:

24 "Q. (Redacted), when you arrived this morning on site at the
25 place of the interview, you again asked me the question regarding your

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 40

1 loss of income during your presence in Kampala. In addition, you
2 mentioned the fact that you would need to buy items for your
3 (Redacted) in order to justify and explain your presence in
4 Kampala when you go back home to Bunia. Can you confirm that we
5 discussed that fact this morning when you arrived?

6 "A. Yes.

7 "Q. During the discussion, I informed you of the fact that in
8 order to cover your loss of income, I was proposing to pay you an amount
9 of \$100 in compensation for a period of 11 days. In other words, from
10 the date of your arrival in Kampala, which was September 25th, up to
11 October 6th, date at which you are to travel back to Bunia. Can you
12 confirm that?

13 "A. Yes.

14 "Q. Does that seem like an honest amount in compensation?

15 "A. Yes, yes. A few days ago, the day when I arrived here,
16 I was entitled to \$800 -- I mean, \$80. At that time I signed papers but
17 thus far I have not received those francs or that money.

18 "Q. Okay. What we are talking about here is compensation for
19 loss of income.

20 "A. Yes.

21 "Q. The lump sum of \$80 that you're referring to is an amount
22 that is to be used for your daily subsistence, that is to cover hotel
23 expenses and also other subsistence expenses such as food, beverages that
24 you may need during the day. Do you understand that this is not a
25 salary?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 41

1 "A. Yes.

2 "Q. You thought that this money was simply for your subsistence
3 and nothing else?

4 "A. Yes. But I did not receive that money. And (Redacted)
5 did not give it to me.

6 "Q. Okay. One more small question. We are going to discuss
7 that a little bit in more detail because this is a subject you seem to be
8 interested in.

9 "A. Yes.

10 "Q. Regardless, I would like to first deal with two issues, two
11 questions that you put to me this morning.

12 "A. Yes.

13 "Q. That is your loss of income.

14 "A. Yes.

15 "Q. I explained to you that I could compensate you for a period
16 of 11 days for an amount of \$100. Can you tell me whether or not this
17 compensation is satisfactory to you?

18 "A. The way you told me about it, it's fine with me.

19 "Q. Then are you satisfied with the fact that of knowing whether
20 or not you are being compensated for \$100, whether you're satisfied with
21 that in terms of loss of income?

22 "A. Yes, that's fine.

23 "Q. In addition, when you came to Kampala, you gave an
24 explanation to your family and to your friends for the reason of your
25 trip. You said that you came to buy some items for your (Redacted)

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 42

1 (Redacted)

2 "A. Yes.

3 "Q. You told me this morning that the products you needed
4 corresponded to the amount of \$475?

5 "A. Yes.

6 "Q. But isn't it correct that I told you that amount was too
7 high, as far as I was concerned?

8 "A. Yes.

9 "Q. Did I indicate that in order to justify your return to Bunia
10 and the actual purchase of certain products, the maximum amount I could
11 justify would be a purchase for \$200 of such items?

12 "A. Could you repeat, please?

13 "Q. Well, in order for you to go back to Bunia with these items
14 for your (Redacted) and to be credible in your explanation of
15 your trip to Kampala, to your family and friends, I offered to pay for a
16 maximum amount of \$200 in such items. Can you confirm that or not?

17 "A. This is not the first time that I have bought products of
18 this type. Well, they know that I'm an intelligent person, that I use my
19 intelligence. If many products -- well, they will be surprised. I told
20 them that I would buy many products (Redacted). So I left, I arrived
21 here, and (Redacted) also came to our place and he said to them, he is
22 not -- he also said to them that he left there with (Redacted) in order to
23 buy products (Redacted)

24 "Q. Very well. So you informed your family that you were coming
25 here to buy products which is a good explanation in order to justify your

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 43

1 presence here. How much money did you take with you or bring with you in
2 order to come to Kampala and buy your products?

3 "A. I did not leave with money. I hid my money in another
4 location, but they know that I have come here in order to buy products.

5 "Q. Did you come here to Kampala without any money in order to
6 buy products; is that correct?

7 "A. Yes.

8 "Q. And in coming here, were you under the impression that
9 I would pay for everything that you wanted to buy?

10 "A. Yes. (Redacted) told me that you would be paying for all
11 the products that I needed.

12 "Q. When did he tell you that? And where?

13 "A. He told me five days, yes, yes, he told me that a week
14 before leaving, five days before leaving.

15 "Q. Very well. I believe we shall have to have a discussion on
16 that subject with this (Redacted)

17 Should we understand that on the 2nd of October 2010 -- I correct
18 myself. I do apologise. I believe that we might move back into open
19 session, Mr. President.

20 PRESIDING JUDGE FULFORD: Yes, public session, please.

21 (Open session at 12.03 p.m.)

22 COURT OFFICER: Open session.

23 MR. BIJU-DUVAL: (Interpretation)

24 Q. Should we understand that on the third day of the interview, that
25 is the 2nd of October, 2005, Witness 0035, who signed receipts,

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 44

1 was not in possession of the money which appears on those receipts?

2 A. The receipt is a receipt of a general nature which covers all of
3 the expenses incurred, and the date indicated on this is something else.

4 I'm talking about the date. I don't remember the date. And as

5 I explained previously, the money was paid out piecemeal, and the receipt
6 that you have in your possession covers all of the expenses. This does
7 not mean that the -- all of the money was paid at that moment in time.

8 This is a receipt of a general nature.

9 Q. Are we in agreement to the effect that Witness 0035 already
10 signed papers and that they were receipts, were they not?

11 A. The paper that we were referring to previously was the paper
12 returning -- referring to the return, and there was another piece of
13 paper which corresponded to the outward or outbound journey. Now, of
14 course I did not give him the money immediately upon his arrival for his
15 return journey.

16 Q. Let's talk about the DSA.

17 PRESIDING JUDGE FULFORD: You can do that, Mr. Biju-Duval, after
18 a short break. Thank you.

19 Sir, we'll give you a few minutes.

20 We will sit again just after quarter past 12.00.

21 Usher, could you assist the witness back to the witness waiting
22 room, please?

23 (The witness stands down)

24 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva?

25 MR. SACHDEVA: Mr. President, with your leave may I just seek a

1 point of clarification of your Honour's previous ruling, or perhaps I can
2 do it when we come back into the court, but if I could do it now that
3 would be --

4 PRESIDING JUDGE FULFORD: Put the question and we'll see whether
5 we can give you the clarification you need when we come back,
6 Mr. Sachdeva. What's the points?

7 MR. SACHDEVA: The point is as follows: When I -- my second
8 objection was in relation to questions, Mr. President, perhaps with your
9 leave could we move into private session for this?

10 PRESIDING JUDGE FULFORD: Private session, please.

11 *(Private session at 12.07 p.m.) Reclassified as open session

12 COURT OFFICER: We are in private session.

13 MR. SACHDEVA: My objection was in relation to questions being
14 asked about (Redacted), if your Honours recall, (Redacted) was
15 Witness 55, and, in fact, was (Redacted)
16 Mr. Lubanga's main staff. And it was in that regard that I was making
17 the point that there were no allegations made to (Redacted)
18 allegations which the accused in my submission would clearly know about
19 since (Redacted), and of course
20 the Defence did not put those allegations to (Redacted). And therefore
21 I realise that perhaps there may have been a misunderstanding and perhaps
22 it was my fault when your Honours ruled that I had made a submission that
23 that -- where there had not been an allegation against a particular child
24 soldier, and in fact I was referring --

25 PRESIDING JUDGE FULFORD: I think that's what you said, wasn't

1 it, Mr. Sachdeva?

2 MR. SACHDEVA: I had said that, but I was attempting to explain
3 that the abuse of process referred to the apparent inconsistencies with
4 the child soldier witnesses and, of course, the Defence witnesses that
5 have been brought to contradict the child soldier witnesses. But in
6 respect of Witness 0055 who was in the main staff of Mr. Lubanga's army,
7 there has been, therefore, no allegations made against him. And it was
8 in that context I objected to the line of questioning because the fact
9 that he may have been introduced or not by an intermediary, in our
10 submission, is not relevant to the Defence's abuse of process.

11 PRESIDING JUDGE FULFORD: Well, Mr. Sachdeva, that goes very
12 considerably further than the submission you made on page 27, which
13 was -- this is very specific, that was much more general, where your
14 submission was -- well, you linked your submission to whether or not
15 there was a suggestion that their account was falsified or whether they
16 were -- whether there has been a suggestion that they were someone other
17 than the person that they said they were going to be. Right. Thank you
18 for that. Let us see how much further we are going with this.

19 Mr. Biju-Duval, do you have any more questions of this witness
20 similar to the one that Mr. Sachdeva objected to? Are you going to be
21 taking this witness to other witness statements, putting a similar
22 question?

23 MR. BIJU-DUVAL: (Interpretation) No, Mr. President. The
24 questions will now essentially have a bearing on Witness 0035 and
25 Witness 0015.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 47

1 PRESIDING JUDGE FULFORD: Thank you. Mr. Sachdeva, should this
2 come up again, we will of course now have in mind the precise way in
3 which you put it. However, I think this is now moot, given -- you raised
4 your objection, we ruled on it on the basis of your submission, the
5 question has been put, and this is essentially trying to close a stable
6 door after the horse has bolted, I think, but thank you nonetheless. We
7 will sit again at 20 past.

8 MR. SACHDEVA: Thank you.

9 Recess taken at 12.10 p.m.

10 On resuming at 12.21 p.m.

11 (Open session)

12 COURT USHER: All rise.

13 PRESIDING JUDGE FULFORD: Witness, please.

14 (The witness takes the stand)

15 PRESIDING JUDGE FULFORD: Yes, Mr. Biju-Duval. Thank you, sir.

16 MR. BIJU-DUVAL: (Interpretation).

17 Q. I would like to come back briefly to this incident associated
18 with the interviews. Now, on the third day of the interviews, on the 2nd
19 of October 2005, Witness 0035 says, "I have signed papers. I was
20 entitled to \$80. I have not received anything. I have not received this
21 money. (Redacted) has not given it to me."

22 My question is as follows: Did you yourself or another
23 individual from the team of investigators hand over to Witness 0035 a sum
24 of money before this incident, before Witness 0035 intervened during the
25 interviews?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 48

1 PRESIDING JUDGE FULFORD: Don't answer for a second.

2 Yes, Mr. Sachdeva.

3 MR. SACHDEVA: Mr. President, just a redaction in the question,
4 with your leave?

5 PRESIDING JUDGE FULFORD: Right. Okay. Yes.

6 Sir, could you answer that question, please.

7 THE WITNESS: (Interpretation) As for the date when the document
8 was signed, the interview is not clear as to which document we are
9 referring to. Is it the one you showed me dated back to September 2005?
10 I can't answer that, as to whether there was a correlation between the
11 interview and the document. As I said to you earlier, the document is of
12 a general nature. The fact that he did not receive money immediately
13 upon arrival as I explained previously. The money was not given or paid
14 out in one fell swoop.

15 Now, later on, in his interview, he mentions certain details to
16 do with his salon products and his journey to Kampala. The precise
17 details as to at what moment in time what specific sum of money was given
18 over, well, I must say that after five years, after not having had the
19 luxury of re-reading this document beforehand, it is very difficult to
20 place things in time. My general impression on the matter is that I did
21 give him money, at least for the cover story, enabling him to be present
22 in Kampala, and this transpires in the transcript of the interview. As
23 for his stay at the hotel, this gave rise to a problem. Well, as to
24 whether he received everything or whether part of it was taken by 0316 to
25 make sure that the hotel was paid for or was the money given directly to

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 49

1 him and then 0316 took that money to pay the hotel, well, for that
2 detail, I must say that I don't know. I can't give you the details. I
3 can just justify for the expenses which is -- corresponds to what is
4 indicated on that document of general nature, but as for the everyday
5 happenings, I must say I was concentrating more on the substance of the
6 interview than on the practical aspect. We did broach it because, in effect, he brought
7 it up, we broached this problem so that it would be official; notably, that -- to state
8 that there had been an incident, and there were a number of questions put on
9 the subject in order to be transparent and clear as to the way things
10 unfolded, but we made sure that it was recorded in the interview.

11 MR. BIJU-DUVAL: (Interpretation)

12 Q. I thank you. Let us leave the administrative documents and the
13 payment of sums of money to one side. You say that you remember this
14 incident only too well because you make mention of it in your written
15 testimony. At the time when Witness 0035 raises this incident during the
16 interview, at that moment in time, had you already handed over some money
17 for whatever purposes to Witness 0035?

18 A. I honestly do not remember. I do not recall. Furthermore, I am
19 not certain that the incident that I'm referring to in my statement is
20 this one.

21 Q. In paragraph 43 of your statement, you state, I quote:

22 "During a pause during his interview, 0031 -- 0035 complained
23 about 0316 and the fact that 0316 had taken part of the money I had given
24 him to pay for the hotel and his food."

25 Now, according to your testimony, is this another incident?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 50

1 A. That is what it would seem like to me. To be more precise, when
2 he complained about this, we would have looked back over the
3 transcripts, but he had been invited to repeat the substance of his
4 complaint in the interview that was recorded because he had complained
5 that money had been taken from him by 0316, and, of course, you must
6 remember that this dates back to over five years ago now and I haven't
7 had the luxury to read through the entire interview. Witness 0035 had
8 used the money for other purposes than paying for the hotel.

9 And therefore, 0316 had taken on the responsibility on himself to
10 take the money and therefore to ensure that the hotel and the food would
11 be paid for. For security reasons, I wasn't able to go to the hotel to
12 check on that type of situation, but as I recall that's the incident
13 I was referring to because it mentions what 0035 mentions on the date of
14 October 2nd, the general discussion -- I remember the general discussion,
15 and one of the elements he emphasised was the payment. I don't think
16 that I specified what the purpose was because that would have enabled him
17 to be identified but, rather, the job that he had at the time.

18 Q. For what reason, at the time when Witness 0035 expresses his
19 claim in the quote that I read to you, regarding the \$80, for what reason
20 at that point in time did you not provide an explanation to him? Either
21 by contradicting him or by explaining to him that the money would be
22 remitted to him later? Why didn't you provide an explanation at that
23 point in time?

24 A. Well, the answer comes afterward. You stopped at 1.537 -- rather
25 at line 537. The main piece of information that concerned me at the moment, was to

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 51

1 understand why he wanted me to buy certain items, what the purpose of that was,
2 and whether or not it had an impact on his desire to continue the interview.
3 So that means overall, the payment that he's asking for, was that the condition
4 necessary for him to continue with the interview? What was important for
5 me was to clarify this point which was essential. If he answered yes, then
6 clearly the interview would have been stopped for obvious reasons that I think
7 you can understand as well. So why am I focusing on that important
8 element? Because it explains why we would continue the interview or not.

9 Q. After this incident, did you ask for any explanations from
10 intermediary 0316?

11 A. After that incident, I don't recall. Probably, but I imagine
12 that would have been handled with the second complaint. And as
13 I explained in my statement, 0316 had provided a consistent explanation
14 of regarding the incident that took place at the hotel and the use of
15 money for other purposes. So that discussion took place because the
16 answer was consistent and the fact I couldn't go to the hotel and verify
17 a reality. At the time his answer, his explanation, seemed consistent to
18 me, believable.

19 PRESIDING JUDGE FULFORD: I've had a number of indications: Too
20 fast.

21 THE WITNESS: Sorry.

22 PRESIDING JUDGE FULFORD: I'm sorry to keep on at it but it is
23 important, otherwise the transcript reads very, very poorly indeed.

24 Pause, Mr. Biju-Duval, as well, please.

25 Please continue.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 52

1 MR. BIJU-DUVAL: (Interpretation)

2 Q. You've spoken about the explanations provided by intermediary

3 0316. Did you relay those explanations to Witness 0035?

4 A. (Interpretation) Probably, but I can't recollect. If I did so,
5 when I did so, honestly, I don't remember.

6 Q. Thank you. In the quote that I read to you, Witness 0035
7 indicated that intermediary 0316 allegedly promised to him that you would
8 be purchasing for him all of the products that he needed. Did you ask
9 0316 for any explanations regarding this allegation?

10 A. I must have asked him the question. Honestly, I couldn't give
11 you the details of that response. I would have reminded him that we could not make
any such promise, and if he promised things to people, in any
13 case he shouldn't expect me or the office, for us to be taking
14 responsibility for those promises that he had made outside of that
15 framework. In the remainder of the interview that's what is indicated.
16 I asked the question: "Did I make any promises to you or not, yes or
17 no?" The answer was simple: "No." I said: "Did you want to continue
18 the interview?" And the answer was: "Yes."

19 So if other people make promises that doesn't bind me or anybody
20 else from the OTP. At the time we had a relationship with 0316 that was
21 being put into place and obviously regarding this type of behaviour,
22 I certainly would have indicated to him that was something that could not
23 be done. Now, regarding this precise point, did he make a promise or
24 not, honestly, I don't know. I wasn't there when that happened.
25 I simply rectified the situation in the framework of that interview and

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 53

1 the recordings of that situation could be clear. (In English) Sorry.

2 Q. Thank you. To avoid any chronological ambiguity, perhaps you
3 could go back to the first tab of this statement. So EVD-OTP-00533 and
4 the second page which mentions the date of the beginning of the first
5 interview. And that mentions the date of the 30th of September 2005. Do
6 we agree on setting 30th September 2005 as the beginning of the recorded
7 interviews?

8 A. Yes, indeed.

9 Q. We have seen through the accounting documents we have examined
10 that Witness 0035 and intermediary 0316 apparently were present in
11 Kampala, and this since September 25th. For what reason was there this
12 lag?

13 PRESIDING JUDGE FULFORD: Yes?

14 MR. SACHDEVA: My recollection is that when the witness was shown
15 an accounting document upon which he was asked does this demonstrate that
16 Witness 0035 was in Kampala from the 25th of September to the 6th of
17 October or 5th of October, the witness answered that this receipt related
18 to the presence of Witness 0316, and therefore, to -- I'm not sure that
19 the suggestion that has been put in the question is entirely accurate.

20 PRESIDING JUDGE FULFORD: Thank you.

21 Mr. Biju-Duval, what is the justification for the question that
22 0035 and 0316 were apparently present from the accounting documents, in
23 Kampala from September the 25th?

24 MR. BIJU-DUVAL: (Interpretation) I am referring in particular to
25 the reimbursement receipt of September 28, 2005, which is on tab 15. It's

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 54

1 the second document of tab 15. So it is EVD-D01-00114, dated 20th
2 September.

3 THE INTERPRETER: September 25th, correction from the
4 interpreter.

5 PRESIDING JUDGE FULFORD: This is document 2 in tab 15? Isn't
6 that dated the 28th?

7 MR. BIJU-DUVAL: (Interpretation) Yes, September 28th, 2005.
8 However mentions, a DSA, as of September 25th, 2005.

9 PRESIDING JUDGE FULFORD: Sir, do you accept that that
10 demonstrates or tends to demonstrate that both 0035 and 0316 were in
11 Kampala from at least the 25th of September onwards?

12 THE WITNESS: (Interpretation) Theoretically, yes. Once again,
13 having not had the opportunity to re-read the documents before, it's
14 difficult at five years later to remember every detail.

15 PRESIDING JUDGE FULFORD: With that -- sorry, please carry on.

16 THE WITNESS: (Interpretation) Simply one small thing. There is
17 another document that was used today which was on the following page,
18 number 3, that indicates the presence, if you look at the receipt, on
19 September 28th, if you look at the administrative procedures. So perhaps
20 he showed up ahead of time, before the interview, in order to carry out
21 some of those administrative procedures. If I had the opportunity to
22 have at least the report with the mission request or the details on how
23 that mission would be taking place, perhaps that would enable us to shed
24 more light on that.

25 PRESIDING JUDGE FULFORD: Right. So at least on a theoretical

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 55

1 basis you accept that appears to be the position, that from the 25th of
2 September onwards, 0035 and 0316 were there together. However, you'd
3 like to have a look at the mission request or a related report.

4 Where is that, that document, Mr. Sachdeva?

5 MR. SACHDEVA: Mr. President, I have to find out, with your
6 leave.

7 PRESIDING JUDGE FULFORD: Right. Could somebody in your team
8 please make inquiries, and if it's available, would you have any
9 objections to the witness looking at it over the luncheon adjournment,
10 Mr. Biju-Duval?

11 MR. BIJU-DUVAL: (Interpretation) Yes, Mr. President. But the
12 Defence would also like to be able to take a look at that, naturally.

13 PRESIDING JUDGE FULFORD: Well, we'll come to that second
14 eventuality in due course, Mr. Biju-Duval. Let's see if we find it first
15 and what's in it.

16 Right. Bearing in mind those qualifications, sir, if you could
17 now answer Mr. Biju-Duval's question, which you better put again,
18 Mr. Biju-Duval.

19 MR. BIJU-DUVAL: (Interpretation)

20 Q. So can we agree that several days separate the arrival of
21 Witness 0035 in Kampala, perhaps September 25th, and the beginning of the
22 interviews that began on September 30th in the morning? Could we agree
23 that there are several days between his arrival and the beginning of the
24 interviews?

25 A. Based upon the documents, indeed, yes, theoretically there were

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 56

1 several days before the beginning of the interviews.

2 Q. I'm reasoning on the basis of that five or four-day lag. Could
3 you tell us the reason why the interviews did not begin swiftly after the
4 witness arrived in Kampala?

5 A. Five years later, honestly, no, I can't answer you. There must
6 be a reason. If the papers show that that happened, there must have been
7 a reason, but as I indicated a few moments ago, I don't remember. There
8 most likely is a logical explanation, but I can't answer you for now.
9 I can't remember exactly what happened over those days, why he came
10 early or not. Honestly, I don't -- I can't recall.

11 Q. You, yourself, and the team of investigators, did you show up
12 early? If that was the case, how many days beforehand?

13 A. Once again, I'm going to have to simply tell you, if I had access
14 to the documents that would enable me to give a precise answer, I would
15 give you a precise answer. In this case I've already indicated
16 I remember the interview itself, but the practical circumstances
17 surrounding it, I can't exactly remember the date of arrival,
18 exactly what day it happened, et cetera.

19 Q. Thank you. Just one moment.

20 Perhaps to help you in reconstructing the time-line of those
21 events, could you go to the first tab of the large binder? So EVD-00533,
22 DRC-OTP-0161-1235, and I'd like to ask you to turn to the page 40, line
23 961, where you indicate that the first meeting that you set in Bunia was
24 on 18th of August 2005. So that therefore would be the date of the first
25 meeting in Bunia?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 57

1 A. Yes, indeed. And we even have the answer to your previous
2 question on these pages, which is why it's useful to have access to
3 information that can refresh your memory. When I met him on 18th August,
4 2005, I explained to him, but the witness didn't understand who I was and
5 the reasons why I wanted to see him, and on September
6 27th, apparently, that would be the first meeting with an interpreter
7 capable of clearly interpreting the information that I wanted to convey;
8 namely, who I was, an investigator for the ICC, what I intended to do,
9 why I came to see him, and what I wanted to do, namely to conduct an
10 interview.

11 I imagine I must have informed him that that interview would be
12 recorded, so audio and video, due to his potential status. So over the
13 previous days for this infamous initial contact which could not take place
14 in August in Bunia because I did not have an interpreter enabling me to
15 be understood, so that makes more sense, and I imagine it would be the
16 beginning of the interview, we can understand that once we've done that.
17 So honestly, I no longer need to see the report for the mission request
18 because I have the information in the first pages of this interview.
19 That enables me to provide you with an explanation regarding what
20 happened.

21 Q. Thank you. On the same pages, 40 and 41, you indicated that you
22 had a conversation lasting roughly one hour with Witness 0035 on
23 September 27th, 2005, before the beginning of the recorded interviews,
24 didn't you? So my question is the following: At the end of this meeting
25 of one hour, did you take notes or did you take notes during the meeting?

1 A. The duration that is indicated is approximate. Honestly,
2 I didn't look at the time I started discussing with him. I didn't look
3 at the time when I had stopped that very brief conversation, and due to
4 the circumstances we were in, no, I did not take any notes to avoid any
5 problems, any security-related problems, because as I explained
6 previously, the interview took place in a zone near a restaurant, so
7 standing up even in the shadows with a notebook is not really the most
8 discreet thing.

9 So as I recall, I didn't take any notes. I must have referred to
10 the fact later that I'd seen that person that day. That's all. In
11 addition to this, if you remember what I stated, despite several attempts
12 to use 0316 as interpreter, the message was not being conveyed.

13 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, we are quite close to
14 lunch and there is an administrative matter that I want to deal with
15 before we break off. Would this be convenient to you? Excellent.

16 Thank you very much, indeed, sir. We look forward to seeing you
17 again at 2.45.

18 Usher, could you please accompany the witness back to the witness
19 waiting room?

20 (The witness stands down)

21 PRESIDING JUDGE FULFORD: Now, Mr. Biju-Duval, how are you doing
22 time wise?

23 MR. BIJU-DUVAL: (Interpretation) I think I could finish at the
24 main break, the large break tomorrow morning, meaning I need this
25 afternoon, today, and I think I could finish at the break at 10.30 or

1 11.00.

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

3 Mr. Sachdeva, on the basis that the witness leaves the court at 3.00
4 tomorrow afternoon, that should give you enough for follow-up questions,
5 shouldn't it?

6 MR. SACHDEVA: It does, certainly.

7 PRESIDING JUDGE FULFORD: Good. Can we all, please, then work
8 towards that timetable?

9 Mr. Sachdeva, in an e-mail to the Chamber on Friday, the 12th of
10 November, sent at 10.53 in the morning, the Prosecution indicated that
11 Witness 0598 is available to testify on Monday, the 29th of November,
12 2010. During last week, it was either Wednesday or Thursday, the
13 Prosecution in an appropriately polite way, inquired of the Chamber as to
14 when a decision on 0598 was likely to be delivered, and the response on
15 behalf of Judges included the instruction that given it was a real
16 possibility that 598 would be called, that organisation for his travel
17 and attendance at court should be put in hand. And Mr. Sachdeva, that
18 instruction was given on the basis of the last information that we had
19 received, namely, that the witness had confirmed his availability to
20 testify on Monday, the 29th of November.

21 Now, what is the position this morning, then, as to the first
22 moment when the Prosecution say he can walk through the door of the court
23 to give evidence?

24 MR. SACHDEVA: My understanding, Mr. President -- well, the first
25 or 2nd of December. It's correct that what your Honours have just

1 recalled is absolutely correct and, in fact, on the 18th of November we
2 swiftly informed 0598 of the urgency, obviously with the qualifications
3 that were appropriate, and he then communicated to us that he had not
4 been -- he had not been able to inform his employer at this stage, and
5 therefore the 29th of November may not be the suitable date.

6 But --

7 PRESIDING JUDGE FULFORD: Why weren't we told that? Why weren't
8 we told that the indication given on the 12th of November no longer
9 stood, that he couldn't give his evidence commencing on Monday, the 29th
10 of November, and it was going to be later? Now, Mr. Sachdeva, you've
11 been very much aware, everyone else, that we've been trying to fix a
12 timetable that will ensure that you, as well as the Chamber, have the
13 Defence submissions translated before the beginning of the Christmas
14 break.

15 Now, that's a material change. Why weren't we told?

16 MR. SACHDEVA: Mr. President, I would imagine that we didn't want
17 to be seen as inappropriately attempting to anticipate a decision,
18 because at that point we weren't aware whether the witness would be
19 called or not, and so we had complied with the instructions to liaise
20 with the witness, obviously with the relevant qualifications. And in
21 fact from what I can understand, the witness -- the witness did not
22 concretely confirm he could not be here on the 29th, and in fact at this
23 point we are still trying to contact him to see if it is indeed possible
24 for him to come on the 29th. The sticking point, as I understand it, is
25 that the flight situation from Chad is complicated, but I would ask leave

1 to revert to the court this afternoon as to the earliest date, but it
2 would seem given that the witness would require a day of rest perhaps,
3 once he arrives here, the 1st or 2nd of December would be the appropriate
4 time.

5 PRESIDING JUDGE FULFORD: Well, you should know that the last
6 e-mail communication we had indicates that he arrives in the Netherlands
7 at I think 20 past 9.00 on Monday, the 29th of November. Now, if that's
8 right, I'm afraid speaking for myself, I'm unable to understand why it's
9 said that he won't be ready to commence his evidence until Wednesday or
10 Thursday of this week. Some might have said that having hopefully slept
11 on the plane coming over, he could come into court on either the
12 afternoon of Monday, the 29th or absolutely at the latest at 9.30 on
13 Tuesday, the 30th, having had a night's sleep.

14 Now, Mr. Sachdeva, the indication that we gave earlier, that the
15 Prosecution would be entitled to call this witness, was a very finely
16 balanced decision in all the circumstances for reasons which we will
17 explain in detail in due course. And one of the factors that is a real
18 determining factor is whether or not this is going to further delay the
19 trial in a material way by allowing you, at the last moment, to
20 substitute *0555 for 0598. So I would endorse your suggestion that you
21 investigate this further over lunch and come back to us with a final
22 concrete position, please, at 2.45.

23 MR. SACHDEVA: I will certainly do that, Mr. President.

24 PRESIDING JUDGE FULFORD: We are grateful. Thank you very much,
25 indeed.

1 The final thing, Mr. Sachdeva, is that there is, as I understand
2 it, an outstanding disclosure issue that relates to an exchange of
3 correspondence from May 2006, which has resulted so far in disclosure of
4 an extract to the Defence concerning information provided by 0316, in
5 which the comment is made that the information seems bizarre and
6 definitely needs to be cross-checked.

7 All we would say about that at the moment is, given what is
8 apparent on the face of the extract, the Prosecution must look very
9 carefully indeed at the underlying documents to make sure that everything
10 that is disclosable is disclosed.

11 MR. SACHDEVA: Mr. President, indeed, we are certainly
12 undertaking that, and, in fact, we are -- we have told the Defence that
13 the initial report or the e-mail is going to be forwarded to them with
14 the appropriate redactions.

15 PRESIDING JUDGE FULFORD: I'm pleased to hear that, Mr. Sachdeva.
16 Thank you very much.

17 We sit again at 2.45.

18 (Luncheon recess taken at 1.03 p.m.)

19 (On resuming at 2.47 p.m.)

20 COURT USHER: All rise. Please be seated.

21 PRESIDING JUDGE FULFORD: So, Mr. Sachdeva, estimated time of
22 arrival?

23 MR. SACHDEVA: Mr. President, we have been able to contact 0598
24 and he has expressed the -- he understands the constraints of the Trial
25 Chamber and he would have been able to be here, it appears, but because

1 he was not sure of the final decision and because he was waiting to
2 inform his employers only when a final decision was forthcoming, for
3 security reasons and confidentiality reasons, he informed them on Friday.
4 And at that time, he had arranged a meeting on the 30th, which, if it was
5 just up to him he would be able to -- would be able to withdraw but it is
6 dependent upon other actors, and given this witness's professional
7 obligations he must attend that meeting on the 30th. However, he can fly
8 on the 30th, once the meeting was concluded, arrive as I understand it,
9 in Paris on the 6.00 in the morning on the 1st, be brought to The Hague,
10 and would be ready to testify on that day provided he is -- the court
11 familiarisation takes place and he can have a couple of hours' rest.

12 Therefore in sum he would be ready to testify on the 1st, in the
13 afternoon, I would add, on the 1st of December. I can also add that the
14 Prosecution does not intend to be lengthy with this witness, and
15 depending upon agreements with the Defence, one could lead the background
16 and career of the witness in a leading fashion, therefore saving time.

17 PRESIDING JUDGE FULFORD: What about a video-link?

18 MR. SACHDEVA: I understand that it is possible from Chad. I
19 just am not sure if it could be arranged in essentially a week. But
20 I would -- we can inquire with the Registry to see if it's possible
21 within a week.

22 PRESIDING JUDGE FULFORD: If he's arriving at 6.00 in the morning
23 in Paris, he's not going to be in the best state to give evidence on
24 Wednesday afternoon. Isn't he going to need a night's sleep before he
25 comes into court?

1 MR. SACHDEVA: Of course the Prosecution would prefer that but we
2 are also mindful of the constraints of the Trial Chamber.

3 PRESIDING JUDGE FULFORD: And this meeting is a meeting that is
4 so critical that it cannot be moved even though he's being asked to given
5 evidence before the International Criminal Court so that the meeting in
6 Chad is of such significance that it has to take precedence over this --
7 over his attendance here?

8 MR. SACHDEVA: Well, from what he has communicated to us, it's
9 not up to him to move the meeting. I think there are other actors
10 involved, and he appears to be a key actor in that meeting. As I said,
11 I understand that the witness is attempting as much as possible to be
12 accommodating of the schedule that the court has, and it's just a
13 situation where if he had been -- if there was finality sometime ago
14 perhaps, he may have been able to inform his employers. But in our
15 submission, I mean, the --

16 PRESIDING JUDGE FULFORD: All right. Mr. Sachdeva, I mean, the
17 hint, if there had been finality earlier, we only knew of the
18 Prosecution's position on the 10th of November. We had the written
19 submissions and -- sorry, we had the written submissions on the 10th.
20 The oral submissions on the 12th. Which as I recall was a Friday, and we
21 then gave the indication the following Thursday that every step should be
22 taken to ensure his attendance. Now, given that the Prosecution had been
23 talking about substituting since certainly in October, I don't consider
24 that's slow-moving on the part of the Chamber. Right. So we are in
25 reality looking at Thursday morning. Thank you. We'll reflect on that.

1 The problem Maître Mabilie that you have is that at the moment
2 you don't know the conditions under which we are prepared to allow 0598
3 to give evidence. On the basis that the Chamber intends to limit his
4 evidence, if he is permitted to come, so that he is truly only a
5 substitute for 0555, so that he only covers 0555 areas, to the extent
6 that he is able to do so, do you have any sense as to how long your
7 examination of him is likely to be on the basis of the material that you
8 have prepared for questioning 0555? Because of course you will not yet
9 have researched 598.

10 MS. MABILLE: (Interpretation) Mr. President, I would say that it
11 will be very brief. That's what I can say at this point to the Chamber.

12 PRESIDING JUDGE FULFORD: Well, that's very helpful. Thank you
13 very much. Thank you, Mr. Sachdeva, we will revert to this in due
14 course, but you ought to make your plans for 0598. So what we said on
15 Wednesday -- well, we say more than that. Let me just check what we are
16 going to say. Give me a moment.

17 (Trial Chamber confers)

18 PRESIDING JUDGE FULFORD: Make the arrangements for him to come,
19 discuss with him, please, how realistic it is for him to give evidence on
20 the afternoon of Wednesday, the 1st. If the Prosecution comes back to us
21 and says that you and he are content for him to commence his evidence at
22 2.00 p.m. or 2.30 on Wednesday, the 1st, so be it. And we will await
23 your submission on that. The alternative, which of course adds to the
24 time constraints, is 9.30 on Thursday, the 2nd, but to an extent we are
25 in your and his hands on that issue.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 66

1 MR. SACHDEVA: Yes, thank you, Mr. President, we will come back
2 to the court on that.

3 PRESIDING JUDGE FULFORD: Thank you. Witness, please.

4 (The witness takes the stand)

5 PRESIDING JUDGE FULFORD: Thank you for your patience, sir. Yes,
6 Mr. Biju-Duval.

7 MR. BIJU-DUVAL: (Interpretation)

8 Q. Thank you. Witness, I would like to discuss with you the last
9 answer you gave just before the break, because I fear there was a
10 misunderstanding. Unless I'm mistaken, just before the break, you spoke
11 about the brief meeting that took place in Bunia, near a restaurant, with
12 Witness 0035, whereas my question referred to another brief encounter
13 that took place in Kampala. In order to refresh your memory, I suggest
14 you take a look at tab 1 of the larger of the two binders, on page 40 and
15 41. And this is EVD-OTP-00533. So if you have found page 40, you can
16 see that at the bottom of the page, you mention a second meeting on Tuesday
17 September 27th, 2005. Can you see that?

18 A. Yes, yes, indeed.

19 Q. And then at the next page, you mention that the conversation
20 lasted approximately one hour. Can you see that?

21 A. Yes, yes, indeed.

22 Q. So it was the brief encounter in Kampala, before the actual
23 interviews, that I wanted to ask you a question about. And my question
24 is as follows: After that contact that took place on September 27th,
25 2005, in Kampala, before the actual interviews, did you report to the

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 67

1 team or to your superiors regarding the content of that meeting, that
2 encounter?

3 A. Well, just before the break, as I explained, the meeting that
4 took place on September 27th, 2005, served the purpose of introducing
5 myself to the witness, Witness 0035, so that he understood who I was and
6 the purpose of the interview that I was suggesting to him. Obviously,
7 once I obtained the agreement of Witness 0035, I reported to the office
8 in order to organise the upcoming interview. Based on the witness's
9 agreement, I had to organise the necessary equipment and technicians and
10 actually organise the interview, and that is -- most likely, that is
11 indeed what happened.

12 Q. And this report that you referred to, what kind of report was it?
13 Was it an e-mail? Was it -- did you use some other means of
14 communication?

15 A. I don't remember exactly how I communicated, but I would imagine
16 it was by telephone. That would be the most plausible means of
17 communication.

18 Q. Thank you. This brings me to the actual interview, which was
19 recorded and which took place from September 30th through to October 5th.
20 Is it correct that during that series of interviews at a given point in
21 time, Witness 0035 consulted some notes in a notebook?

22 A. Perhaps, but quite honestly I don't remember.

23 Q. In order to perhaps jog your memory, could you take a look, again
24 in the larger of the two binders -- just one moment, let me find the
25 exact tab for you. You'll find the document at tab 14. The document is

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 68

1 EVD-OTP-00546 and then it's DRC-OTP-0161-1807.

2 And I would like to turn to page 28 to 31. I am going to quote
3 from this passage that is dated October 4th, 2005, and I quote, question
4 from the investigator:

5 "Q. I can see that as you're answering my questions, you're
6 turning the pages of a notebook. Are these personal notes that belong to
7 you? Something to help you remember?

8 "A. I'm the one who arranged that.

9 "Q. What have you written down in this notebook?

10 "A. I wrote other names so as not to forget them.

11 "Q. What kind of names have you written down?

12 "A. Well, here there is Mongbwalu, Kobu, Lipri," Mizi -- "Nizi,"
13 Nizi with an N, N-i-z-i?

14 "Q. Yes.

15 "A. Marabo and that's the end."

16 Question from the investigator:

17 "And what do these various names represent, these names that you
18 have written down in this notebook?

19 "A. These are names of villages where I was the -- I was the war
20 leader before, before leaving. Yes, I wrote those names down to help me
21 remember.

22 "Q. Thank you.

23 "A. To help my thoughts.

24 "Q. Were these places where you fought?

25 "A. Yes.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 69

1 "Q. And when did you write down these notes?

2 "A. Do you mean how did I write them down?

3 "Q. No. When did you write them down? Was it a long time ago

4 or recently?

5 "A. The work yesterday, I did it during the night.

6 "Q. You mean you write things down every other day or from one

7 day to the next, rather? You were preparing yourself?

8 "A. How many days ago did we begin this task?"

9 Question from the investigator:

10 "Several days ago.

11 "A. Yes.

12 "Q. Three or four days.

13 "A. Yes, before arriving here one day I remembered.

14 "Q. Okay. And it was before we began the entire interview or

15 was it --

16 "A. The day when we met at night. The day we met in town.

17 "Q. Here in Kampala or in Bunia?

18 "A. In Kampala.

19 "Q. In Kampala, okay. So after we saw each other in Kampala,

20 you began thinking about it, is that it?

21 "A. And during that night, I did this work.

22 "Q. Would you allow me to consult this notebook? Well, if you

23 don't mind, I would like to consult this notebook during the break.

24 "A. Okay. Fine."

25 End of quote.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 70

1 Before I actually ask you a question, I'd like to present a
2 document which can be found behind tab 34 of the smaller binder. It's
3 the very first document, number 1, behind tab 34.

4 Oh, let me correct what I just said. There is tab 34, and behind
5 that tab there is a 16-page notebook. And, in fact, it's one document
6 but it's a 16-page document, and the pages are numbered 1 through 16.

7 Would you be so kind as to go through these pages and tell us
8 whether this is, indeed, the notebook that Witness 0035 showed to you in
9 Kampala.

10 A. It could be the notebook. I don't really remember, I don't
11 particularly remember. I imagine that in the evidence list,
12 it must indicate that this notebook was handed in during the
13 interview.

14 MR. BIJU-DUVAL: We need EVD numbers for this document. For
15 technical reasons I'm told that, probably for technical reasons, we need an EVD
16 number for each of the pages because each page -- each page has already been
17 recorded as an individual document.

18 COURT OFFICER: We still need to receive the ERN numbers of each
19 and every page in order to assign evidence numbers, pending, of course,
20 that the Chamber approves this.

21 PRESIDING JUDGE FULFORD: You're going to be referring to each
22 page, are you, Mr. Biju-Duval?

23 MR. BIJU-DUVAL: (Interpretation) I'm not going to mention every
24 single page. In fact, this is one single document, one notebook.

25 PRESIDING JUDGE FULFORD: Each time you refer the witness to a

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 71

1 page, can you give the ERN number and we'll then ascribe an EVD number
2 and then in due course we will look to see whether the surviving pages
3 should also be given EVD numbers. So carry on with your questions,
4 please, but with each page, please give the ERN number, as you refer to
5 it.

6 MR. BIJU-DUVAL: (Interpretation)

7 Q. Could you turn to page 2? This is document DRC-OTP-0208-0139.

8 We can see the name Salumu at the top and then Kobu, Komanda. Was this
9 indeed the name of a UPC commander along with two place names?

10 A. Well, regarding Salumu, if I remember correctly, this was a UPC
11 commander. Kobu is indeed a town, a village, where an incident had taken
12 place. And Komanda, with a different spelling, is a village, indeed,
13 according to my recollection.

14 Q. Is it true that in these two places, these two place names, these
15 are places where battles had taken place?

16 A. Yes, indeed, and as I explained to Witness 0035, the reason
17 I wanted to speak to him was because according to information that I had
18 received, he had, as we thought, participated in some of those incidents,
19 and therefore, when I met him briefly, I had warned him that when I was going to
20 interview him I wanted to speak about those incidents.

21 Q. Can you now go to page 4?

22 JUDGE FULFORD: (Previous translation continued)... number for
23 139, please.

24 COURT OFFICER: The number shall be EVD-D01-00387, and we need to
25 know whether you wish to have this evidence classified as confidential or public.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 72

1 [MR. BIJU-DUVAL: The interpreters missed an intervention by the Court Officer.]

2 PRESIDING JUDGE FULFORD: Confidential or public, Mr. Biju-Duval,
3 for this notebook?

4 MR. BIJU-DUVAL: (Interpretation) Given that this document is
5 linked to a witness, perhaps it's preferable to keep it confidential.

6 PRESIDING JUDGE FULFORD: All the pages will be confidential,
7 please.

8 Next document, please, the page?

9 MR. BIJU-DUVAL: (Interpretation)

10 Q. Page 4. This document bears the number DRC-OTP-0208-0141. And
11 on this page, we can see the name Bosco, and then underneath, the names
12 Lipri and Komanda. Is it correct that Bosco is the name of the commander
13 of operations, the deputy chief of staff of the UPC, and that
14 these two names, Lipri and Komanda are places where battles took place?

15 A. Bosco is indeed the first name and not the last name of a person
16 in charge of the UPC. Lipri is the name of the village, a village where
17 fighting did indeed take place, and Komanda, once again the spelling,
18 well, phonetically speaking this does correspond to a village where there
19 were incidents but the spelling is different.

20 Q. I thank you.

21 MR. BIJU-DUVAL: (Interpretation) Yes, we would need an EVD
22 number.

23 COURT OFFICER: Yes. This page shall be EVD-D01-00388.

24 MR. BIJU-DUVAL: (Interpretation)

25 Q. Could you please consult page 8, DRC-OTP-0208-0145. And on this

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 73

1 page, at the top, we can see the name Komanda under which
2 Mugwalu-Kisembo and Bosco. Is it true to say that Kisembo and Bosco
3 are names of military commanders from the UPC and that Mongbwalu is a
4 place where fighting took place?

5 A. Mugwalu - I know the village by the name of Mongbwalu. I think it's the
6 same village. And in fact, yes, Kisembo is the name of a person in
7 charge of the UPC, and Bosco is indeed the first name of another
8 commander of the UPC.

9 COURT OFFICER: The evidence number assigned to this page should
10 be EVD-D01-00389.

11 MR. BIJU-DUVAL: (Interpretation)

12 Q. Could you please consult page 9, DRC-OTP-0208-0146? And this
13 page bears the name Komanda at the top of it, under which is written Nizi
14 and Kiblo. Is it true to say that Nizi is a place name and that Kiblo
15 might be a commander from the UPC?

16 A. Now, yes. Nizi is the name of a village where an incident
17 occurred. Kiblo, as for somebody in charge of the UPC, military person
18 in charge, no, that doesn't ring a bell. Now, as for the name written at
19 the top of the page, Komanda, it might also be the name of a village as
20 I mentioned previously but with a different form of spelling.

21 Q. Is it also possible that the name Komanda as written here, spelt
22 here, it might mean commander?

23 A. As you know, I do not speak Swahili or any other languages.
24 I speak French and English. But I suppose I must have put the question
25 to the witness during the interview, so I suppose that it does figure

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 74

1 somewhere. However, I cannot provide you with an answer here and now.

2 Q. I thank you. Witness 0035's use of these notes, which associate
3 names of places with names of commanders, did this bring you to ask
4 yourselves questions as to the spontaneous and sincere nature of the
5 statements that had been furnished to you?

6 A. As the witness indicated during his interview, he apparently noted
7 down these terms after our encounter in -- on the 27th of September, 2005,
8 in Kampala, and it might be the fruits, if you like, of this first discussion.

9 I asked him to start thinking about his career path in order for us to have an
10 interview that was as chronological and logical as possible.

11 Without being able to recall the exact details, I asked him to start thinking about his
12 past, which was quite normal. And as you note, in the pages, there aren't any details
13 as such. These are quite simply names of villages, and I believe that
14 I asked him the significance of each of these pages.

15 Q. And when you were asking him as to the meaning of each of these
16 pages, would it be true to say that during the interview, you allowed him
17 to refer and to continue to refer to this notebook?

18 A. To be quite clear, it is his property. He told me that he was
19 the one who drafted it. It is his statement and he can use it if he
20 likes, if he needs it, and if he drafted it for that purpose I don't see
21 why I should stop him from consulting it. And if he authorised us to
22 consult it, then there doesn't seem to be -- he authorised us to see it
23 and apparently to photograph it and to photocopy it.

24 Q. I thank you. Did you talk to intermediary 0316 about this
25 notebook?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 75

1 A. In theory, no. I don't see why I would have spoken to him about
2 it. I do not recall having talked to him about it. What is more, as to
3 discussing the contents of an interview with 0316, I don't think this
4 would -- this happened unless, as in the case of this witness, of course there might
5 have been a practical problem with the witness. I've already talked about this with
6 reference to the incident that occurred.

7 Q. After having taken these statements, within the scope of your
8 investigative undertakings with your team, did you seek to ascertain the veracity of
9 the statements made by the witness? I'll be more specific. Firstly, did you
10 specifically interview another witness in order to verify a claim or any
11 claims made by Witness 0035?

12 A. As I explained yesterday, at the outset, I was not really working
13 specifically on the military aspect of the UPC. This was at the end of
14 the year 2005, and I do not believe that at the end of the year 2005
15 I was working on the military aspect. I conducted this interview because
16 I had been there for the first point of contact established, and I would
17 say that in theory, no, I did not continue, but this was the role of the
18 team to continue. Personally, I did not. But before being able to
19 conduct any additional interviews, you have to wait for the transcripts
20 of the interview to be ready and available, and to the best of my
21 recollection, it took a number of months.

22 Q. You stated that in your team there was another investigator whose
23 name we do not need to state, who was specialised in military matters.
24 This testimony, which was presented as being that of a former UPC
25 officer, was it submitted to his analysis?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 76

1 A. I think I might have talked about this or summarised it. The
2 investigator left the tribunal at a date that I do not recall. It might
3 be that when the full transcripts of the interview became available, that
4 he had already left the Court. This is quite possible. You need to bear
5 in mind that there was a limited number of people and we were conducting
6 a lot of activity, so I could not do everything. And when the interview
7 was conducted, of course, it needed following up and there was work of --
8 the corroboration work that I described to you, but I could not follow up
9 each of the aspects as to whether this was done or not. Well, personally
10 I did not undertake it. Is that an agreeable answer to you?

11 Q. You do understand that the pause that I'm observing is for
12 technical reasons.

13 As investigator in charge of the interview with Witness 0035,
14 after the interview, did you come to express an opinion on the
15 reliability of his character, whether it was or was not?

16 A. As to whether I expressed an opinion at the time is on the basis
17 of what we had gathered in terms of information. As for the precise
18 reliability, well it's difficult to say, but I believe that at the time
19 we were in October 2005, the number of interviews we had had all -- or
20 the amount of information we had on military matters, well, it wasn't
21 really my area so it was difficult for me to talk about reliability. But
22 he did cover events that were of interest to us, notably names of
23 villages. This was interesting to us.

24 But still, in view of the fact that I do not have full knowledge
25 of military matters, it is difficult for me to today provide you with a

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 77

1 relevant analysis on the matter. Of course, the interview was very interesting, there
2 was a lot of interesting information for us, but then we had to corroborate and
3 cross-check this information with other information that we already had
4 in our possession or had received previously.

5 THE INTERPRETER: Could the witness please be requested to slow
6 down? Thank you.

7 PRESIDING JUDGE FULFORD: Speed, gentlemen.

8 THE WITNESS: Sorry.

9 MR. BIJU-DUVAL: (Interpretation).

10 Q. Do you remember that Witness 0035 introduced himself as a former
11 sub-lieutenant or second-lieutenant of the UPC? Or at least as an
12 officer of the UPC?

13 A. Yes. As an officer, I think.

14 Q. Do you remember, sir, when you asked him what the acronym UPC
15 referred to, he answered saying that it was a party seeking calm, to
16 restore calm in the Congo?

17 A. No, I do not recall that answer.

18 Q. Do you remember that when you asked him the name of the armed
19 branch of the UPC, he answered you saying that he did not know?

20 A. I do not remember that either, but I -- I'm sure that it is to be
21 found in the transcripts.

22 Q. Do you remember that he was not capable of providing you with a
23 name of the commander of his brigade?

24 A. Once again, I do not remember all the answers, nor all the
25 questions put to him or all the answers that he provided, but I suppose

1 that if you're putting the question to me it is because it is transcribed
2 or written down somewhere.

3 Q. I understood that you were not the specialist in military
4 matters, but at the very least, did you know that at that moment in time
5 that within the armed branch of the UPC in 2002/2003, no rank was
6 attributed as such, apart from that of commander? Did you know that
7 fact?

8 A. No.

9 PRESIDING JUDGE FULFORD: Pause a moment, Mr. Biju-Duval. The
10 French transcript seems to have ground to a halt. We'll give the witness
11 a short break. We'll sit again at just before quarter to.

12 Usher, if you could take the witness back to the witness waiting
13 room, please.

14 (The witness stands down)

15 PRESIDING JUDGE FULFORD: Just before quarter to.

16 (Recess taken at 3.32 p.m.)

17 (On resuming at 3.45 p.m.)

18 COURT USHER: All rise. Please be seated.

19 PRESIDING JUDGE FULFORD: Just before the witness comes in,
20 Mr. Sachdeva, there have been some exchanges today over Witness 0038 and
21 whether or not he should talk to his lawyer and whether his lawyer can be
22 in court. I think the present position is that the lawyer is available
23 to speak to him but, in fact, will not be available to be in court. So
24 the proposal that we would make is that the witness is entitled and
25 should be able to speak with the lawyer before he gives evidence, and if

1 anything comes up during the course of his testimony in relation to which
2 he justifiably requires a consultation, then that will be permitted.

3 Does that make sense to the Prosecution or not?

4 MR. SACHDEVA: It absolutely does. In fact, we had communicated
5 that position to the relevant organs, and also this is in line with what
6 took place when he initially came almost two years ago.

7 PRESIDING JUDGE FULFORD: Good. If the Defence have any
8 observations on this, please let us know, but I think that would be
9 consistent with what happened before.

10 Mr. Sachdeva.

11 MR. SACHDEVA: May I just inform the Court that we have been in
12 contact with 0598, and he has confirmed that he is willing to commence on
13 the 1st of December.

14 PRESIDING JUDGE FULFORD: Therefore, we will be available at
15 2.00. p.m. on Wednesday, the 1st of December. Our thanks to him. If on
16 arrival at the Court he's in a state where he's nearly passing out, do
17 get a message to the Chamber, please, Mr. Sachdeva, and we'll see whether
18 we'll adjourn it until the 2nd, but obviously that's all well and good if
19 we can start on the 1st.

20 MR. SACHDEVA: We will certainly do so, and I just hope that the
21 familiarisation would have taken place by then.

22 PRESIDING JUDGE FULFORD: Absolutely. It may involve foregoing
23 the courtesy meeting with counsel apart from simple straightforward
24 introductions.

25 MR. SACHDEVA: Yes.

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 80

1 PRESIDING JUDGE FULFORD: Good. Thank you.

2 Witness, please.

3 (The witness takes the stand)

4 PRESIDING JUDGE FULFORD: Thank you, sir.

5 Yes, Mr. Biju-Duval.

6 MR. BIJU-DUVAL: (Interpretation) Thank you.

7 Q. Still concerning these interviews from September/October 2005, do
8 you remember that from the beginning of the interviews, Witness 0035 gave
9 three different versions of the period during which he would have joined
10 the UPC?

11 A. Again, unfortunately, as I explained earlier, I don't remember
12 the details of the interview. I haven't had the opportunity to re-read the
13 transcripts. I imagine, if you mention that, that it's in the
14 transcripts, but I do not recall the details of that interview
15 unfortunately.

16 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

17 MR. SACHDEVA: Mr. President, it's a bit tricky but the witness
18 may in fact, upon recollection, if the witness was able to go through the
19 transcript, be able to provide answers that would be helpful for the
20 court and for the Defence and for the Prosecution. I know that we are
21 under time constraints, but I just make a light suggestion that if the
22 witness could be perhaps given half an hour or an hour to go through the
23 transcripts of Witness 0016, then maybe it would focus -- he would be
24 able to be focused in his answers and, in fact, expedite the whole
25 process. I understand the constraints that we are under but --

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 81

1 PRESIDING JUDGE FULFORD: Thank you, Mr. Sachdeva.

2 Mr. Biju-Duval, it's undoubtedly the case that without having had
3 an opportunity to look at the relevant material in detail, the value of
4 the kind of answer that has just been given is likely not to be high
5 because the witness is clearly very uncertain in what he says.

6 Now, I'm not for a moment advocating that we should disappear for
7 a couple of hours so he has an opportunity of reading it, but you should
8 be aware, of course, that the equivocal way in which he answered your
9 last question doesn't really provide any evidence for the bench. But
10 it's a matter for you, so please proceed.

11 MR. BIJU-DUVAL: (Interpretation) Thank you, Mr. President. That
12 was my last question of that type regarding Witness 0035.

13 Q. Witness, do you know, are you aware, of when the Office of the
14 Prosecutor decided not to retain Witness 0035 as a witness to appear in
15 the trial versus Mr. Lubanga?

16 A. No, I don't recall. I'm not even sure I attended a meeting of
17 that type. Meanwhile, I don't remember.

18 Q. Thank you. As far as you're concerned personally, is it possible
19 that at the end of the interviews in October 2005, that you yourself
20 already were convinced that Witness 0035 was not reliable?

21 A. It all depends on what you mean by "reliable." I indicated that
22 the interview had been a difficult one, turned out it was not someone who
23 is easy to follow in his explanations. The least I can say, what
24 I recall is I was not impressed by what he provided.

25 Q. So should we understand that he did not convince you regarding

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 82

1 the facts that he claimed to be sharing?

2 A. Not necessarily. In so far that the content of what he told us
3 should have been verified, but the way that he presented it, the way that
4 he told his story, I wasn't impressed by the way that he conducted
5 himself as a witness.

6 Q. Thank you. Now I'm going to turn to another episode later on in
7 time. Do you remember that at the beginning of September 2007,
8 Witness 0035 had been sent to Kinshasa to meet investigators?

9 A. Well, here I can answer no, for a very simple reason. In
10 September 2007, I was on leave and I had left Congo, or left, rather, the
11 ICC.

12 Q. Thank you.

13 MR. BIJU-DUVAL: (Interpretation) Mr. President, I would like to
14 move to a private session. So that we could come to an agreement with
15 the witness.

16 PRESIDING JUDGE FULFORD: Private session, please.

17 COURT OFFICER: Just before we pass to private session, the last
18 page of the notebook presented to the witness bearing ERN number
19 DRC-OTP-028-0146 shall bear the evidence number EVD-D01-00390.

20 PRESIDING JUDGE FULFORD: Private session, then, please.

21 *(Private session at 3.56 p.m.) Reclassified as open session

22 COURT OFFICER: We are in private session.

23 MR. BIJU-DUVAL: (Interpretation)

24 Q. Witness, now with you, I would like to turn to the witness you
25 knew under the name (Redacted). This witness bears a code number

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 83

1 0015, and as we've just done for Witness 0035, I would like you to use
2 the expression, "Witness 0015" for (Redacted), and we will continue
3 to talk about intermediary 0316 for (Redacted). Do you agree with
4 that?

5 A. Yes, indeed.

6 (Open session at 3.57 p.m.)

7 COURT OFFICER: We are in public session.

8 MR. BIJU-DUVAL: (Interpretation)

9 Q. You indicated in particular in your written statement, paragraph
10 47, that the existence of this witness had been revealed to you through
11 intermediary 0316 and the first meeting took place in Kampala in 2005. I
12 am going to ask you to go to tab 5 of the small binder. So that is the
13 report on the interview of Witness 0015 that has the number DRC-OTP-0127-0074
14 that has the EVD number OTP-00319. I would just for the time being -- if
15 I could look at the first page that indicates locations and dates.

16 So do these locations and dates correspond to what you remember,
17 that help you to remember this period?

18 A. Yes, indeed.

19 Q. Therefore, there was an initial meeting in Kampala on 3rd October
20 2005, and afterward, in Bunia, between the 8th and 13th of November,
21 2005. There was a series of interviews, wasn't there?

22 A. Yes, indeed. The first meeting took place on 3rd October, 2005,
23 and afterward it was during the month of November.

24 Q. Let's take a look first at this meeting on 3rd October, 2005, in
25 Kampala. In this statement it is mentioned that on that date, at 5.30 --

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 84

1 it was held between 5.30 p.m. to 7.00 p.m. Does that correspond to what
2 you remember?

3 A. Based on what is marked in this witness statement, yes, that
4 would have been the time at which that first meeting took place.

5 Q. Was that your first contact with Witness 0015?

6 A. Yes, I only met him once in Kampala. So if it was between
7 5.30 p.m. and 7.00 p.m., then it was indeed then at that meeting.

8 Q. That was your first contact, was it?

9 A. Theoretically, yes.

10 Q. Could you indicate when for the first time intermediary 0316
11 spoke to you about Witness 0015?

12 A. The date, honestly, I'm not sure what date it was. I -- it would
13 be difficult. Was it before he came to Kampala or in Kampala, it would
14 be difficult for me to say.

15 Q. Thank you. You indicated in your written statement, paragraph
16 47, that intermediary 0316 introduced Witness 0015 to you as being a
17 former intelligence officer who had belonged to the UPC and then to the
18 FNI-FRPI. At that point in time, did 0316 describe the circumstances in
19 which he met Witness 0015?

20 A. I believe that he must have told me. I cannot recall, however,
21 what the explanations were, if he had provided them to me, regarding that
22 topic, but I believe that I had asked him that question; namely, how he
23 met that individual. But his answer, no, I don't know. I don't
24 remember.

25 Q. Thank you. During this brief meeting on October 3rd in Kampala,

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 85

1 before the interviews in November, did intermediary 0316, was he present
2 alongside Witness 0015 when the latter met you?

3 A. The meeting on October 3rd was not a meeting for the interview,
4 so it was the infamous first contact. I think since he is the one who brought the
5 individual, introduced him to me, so he was present when I began
6 that first conversation. I explained who I was and I said that I was
7 interested, in theory, about the information he could provide.

8 Q. Thank you. You indicated in your written statement, at paragraph
9 48, that contrary to what 0316 had initially said, 0015 was unwilling to
10 desert. So is it true that at the beginning of this meeting on October
11 3rd, that he told you that he was not ready to cooperate at that point in
12 time?

13 A. Saying, "not willing to desert" does not mean not willing to
14 cooperate. It means not wanting to leave where he was then, the militia
15 that he was in. That was the impression that I had, that he was ready to, let's say,
16 to leave since he came to meet with me. I was surprised when he said that he
17 had come to discuss, to give information, but for the time being I do not want
18 to leave the militia that I belong to. So it wasn't a refusal to cooperate. It was
19 a refusal to leave. So in theory, at that point in time, the relationship was
20 endangered in so far that I didn't see how we were going to be able to have an
21 interview of an individual not ready to leave the ranks of the militia he belonged to.

22 Q. Thank you. I know that these facts are old. I'm going to try
23 and call upon your recollection of this scene on October 3rd. Do you
24 recall this introduction on October 3rd, in Kampala, in the presence of
25 0316 had to be suddenly interrupted because somebody else entered into

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval (Continued)

Page 86

1 the room or was on the verge of entering the room?

2 A. No. That doesn't bring anything to mind. Could you be more
3 precise?

4 Q. At any point in time, did Witness 0015 perhaps -- out of concern for
5 confidentiality -- have to move so that someone else could go and see who was
6 knocking on the door or was attempting to enter?

7 A. If somebody had come to the location of the interview, if
8 somebody had been about to enter, obviously we would have needed to put
9 that person aside so they wouldn't be in contact with an unexpected individual.
10 Did that take place or not, honestly I... considering the time of day, 5.30 p.m. until
11 7.00 p.m... It's possible but it's not -- I'm not able to recollect that for
12 the time being.

13 Q. Thank you. During that first meeting on October 3, did you give
14 a mobile phone to Witness 0015?

15 A. As the purpose of the meeting and information he was to disclose
16 potentially regarding a delivery of weapons and that he had agreed to
17 furnish that information, I think I would have given him a means of
18 communication. I think that must be documented somewhere.

19 Q. Thank you. Did you give him money?

20 A. Honestly, I don't remember, but that's easy to verify.

21 Q. Thank you. During this introduction, did Witness 0015 introduce
22 himself -- excuse me, I was going to make a mistake. I believe we need
23 to move to a private session.

24 PRESIDING JUDGE FULFORD: Private session, please.

25 *(Private session at 4.08 p.m.) Reclassified as open session

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 87

1 COURT OFFICER: We are in private session.

2 MR. BIJU-DUVAL: (Interpretation)

3 Q. I'll resume. At this meeting on October 3rd in Kampala, did

4 Witness 0015 introduce himself under the title or name of

5 (Redacted)

6 A. He gave me the name of (Redacted), yes. That is the name by

7 which 0316 had indicated him before I met him.

8 Q. And the title of (Redacted)

9 A. As I indicated, that is the way in which 0316 had introduced him.

10 He said, "I know an individual, (Redacted)." That's how he was

11 introduced to me originally. So when I met him on October 3, that

12 individual was named (Redacted). For the rest of the information

13 regarding his identity, I gathered that information later.

14 Q. Thank you. During this interview on October 3 in Kampala or a

15 bit later, did you take notes in order to remember what had been said

16 during that meeting?

17 A. Probably, yes.

18 Q. Did you relay those notes or that report to someone in your team,

19 to your superiors?

20 A. I believe I wrote a report that was sent to the investigations

21 department of the Office of the Prosecutor to describe our meeting with

22 an individual likely to have information on a potential delivery of

23 weapons or munitions.

24 Q. And who was going to decide how the interviews would be organised

25 later?

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 88

1 A. In the time-line of the events, I think it took place fairly
2 quickly. I believe there were problems between (Redacted) and the group he
3 belonged to, and so he decided to desert at that point in time. He
4 contacted us, I think, at the time as you mentioned earlier. If he had a
5 phone, perhaps he tried to contact us directly, and in that case we would
6 have gone to Bunia for the interview to put on paper what had happened,
7 so regarding the interview and then to continue forward with that.

8 Q. Thank you. Just an organisational detail: For the organisation
9 of these meetings in Bunia, how were the instructions forwarded to you
10 from your superiors to give you the green light to organise those
11 interviews?

12 A. As far as I can recall, there were discussions and then afterward
13 the approval was approved through the mission report saying that we would
14 be meeting with that individual in November, bearing in mind what
15 happened in the past between the first meeting with the individual and
16 the interview, the reasons for the interview.

17 Q. Thank you. You indicated that during the first meeting, October
18 3rd in Kampala, that Witness 0015 allegedly provided information to you
19 regarding a delivery of weapons and ammunition. Is it true that at a
20 given point in time afterward, you invited him to meet people from (Redacted)
21 (Redacted) regarding this topic?

22 A. Yes, indeed. I believe it was before the month of November.

23 Q. And this is a private session. Could you explain whom you had
24 recommended that he meet at (Redacted)

25 A. I can't give the name because I don't have it, but it was an

Witness: Witness DRC-OTP-WWWW-0583 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

Page 89

1 (Redacted)

2 Q. Thank you. Could you indicate what happened after this contact,

3 these contacts, between Witness 0015 and this (Redacted) from

4 (Redacted) Had you been informed of that?

5 A. Not at that point of time. I know that they took the

6 intelligence, they met him, and that they took the intelligence that interested them
which they tried to exploit, and that

7 they didn't take any particular measure regarding (Redacted).

8 Q. Did you yourself have any contact with the (Redacted)

9 or with (Redacted) regarding this exchange of information

10 between Witness 0015 and (Redacted)

11 A. Not with their services in Bunia but I did discuss with another
12 officer in Kisangani who was in Kisangani at the time.

13 Q. Thank you, one moment, please.

14 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, we need to break quite
15 soon, but if you want to finish this topic in some way, please do so, but
16 if this is a natural pause, then we'll break off here.

17 MR. BIJU-DUVAL: (Interpretation) This is an appropriate time,
18 your Honour.

19 PRESIDING JUDGE FULFORD: Good.

20 Thank you, sir. Half past 9.00 tomorrow morning, if you could go
21 with the officer now. Thank you very much.

22 (The witness stands down)

23 PRESIDING JUDGE FULFORD: Maître Mabilie, how long is
24 Witness 0038 going to take?

25 MS. MABILLE: (Interpretation) I think it would be reasonable to

1 plan for one day, your Honour.

2 PRESIDING JUDGE FULFORD: Excellent. Do you agree with that,
3 Mr. Sachdeva, overall?

4 MR. SACHDEVA: Including Prosecution questions? Yes, I think the
5 Prosecution will be two to two and a half hours.

6 PRESIDING JUDGE FULFORD: All right. It looks as though we may
7 be able to start his evidence tomorrow, so could he be on stand-by please
8 in case things go quicker tomorrow morning than anticipated?

9 MR. SACHDEVA: Yes.

10 PRESIDING JUDGE FULFORD: Now, I think you were half way on to
11 your feet in any event, Mr. Sachdeva.

12 MR. SACHDEVA: I was. And now that we have some clarity, shall
13 I say, in terms of the schedule for 0598, and given that there are going
14 to be arrangements in terms of Christmas leave or shall I say winter
15 leave, would it be possible to have an idea as to the time-line that's
16 envisaged for the abuse of process filings to be made and any response
17 that's going to be filed, with your leave, Mr. President?

18 PRESIDING JUDGE FULFORD: It's an entirely reasonable question,
19 Mr. Sachdeva. We are hoping that you will receive the Defence
20 submissions with the very least a rough English translation before the
21 Christmas break. We then need to look at how long, reasonably, the
22 Prosecution is going to need to respond to it. I think simply talking in
23 terms of the usual time for a response is not realistic or fair.

24 Now, it may be that you won't know how long until you've seen the
25 filing. On the other hand, I imagine you've been thinking about the

1 evidence that's been given, the points that have been taken, the way that
2 this argument has been developed. And it will be interesting to know
3 from you, Mr. Sachdeva, at this stage as to whether you have any sense as
4 to how long you are likely to be requesting for filing your response.

5 MR. SACHDEVA: Thank you, Mr. President. What we can say is that
6 we would be asking, obviously with the appropriate justification, for
7 more than the required three weeks response time for the application, and
8 another point of clarification, if I may. Is it envisaged that the time
9 will start once we receive the English translation of the application?

10 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I don't want to appear
11 harsh and to say that Christmas eve, Christmas day, Boxing day, New Years
12 day, you should be working, one recognises that the Prosecution is
13 entitled to some sort of break over Christmas. But I think, in terms of
14 making sure that this trial now very much stays on track, there needs to
15 be an element of give and take on this, and that perhaps some of the time
16 that you might ordinarily have hoped would be holiday time may, in fact,
17 need to be spent looking at the Defence application.

18 What would be useful tomorrow morning is really a proposal from
19 you as to when you think, given you're going to get the document before
20 Christmas, when you think you are likely to have the Prosecution written
21 response completed by. Now, you needn't answer that this evening but the
22 schedule is hugely dependent on the filing of the Prosecution response
23 for the most obvious reasons. We can't take any further steps,
24 realistically, until we see how you meet the Defence contentions.

25 MR. SACHDEVA: We can provide a tentative schedule tomorrow

1 morning, Mr. President.

2 PRESIDING JUDGE FULFORD: Good. And we'll have a look at it and
3 see whether we like it, Mr. Sachdeva.

4 Right. Thank you all very much. We'll meet again --

5 Maître Mabilille?

6 MS. MABILLE: (Interpretation) Mr. President, I'm sure that the
7 Chamber has noticed that the schedule has been slightly changed due to
8 the arrival of a new witness, and the Defence is working as best it can
9 in order to complete its submissions, but I must tell you that we had
10 committed to a two-week period starting on the 26th date at which we were
11 to have finished all of the witnesses, and we are now discussing an
12 additional witness. Even though I have understood that this witness is
13 going to be testifying on a precise point, the Defence realises that this
14 is the case, but I do think that it's reasonable to inform the Chamber
15 that we had committed as to the date of Friday, December 10th, and that
16 we will most likely request the following Tuesday as a deadline and not
17 the Friday. In other words, Tuesday, December 14th. In other words,
18 I realise that there will be only three days remaining for the
19 translation, but I think that we have to take account of the changes that
20 have occurred in our own evaluation of the time that will be necessary
21 for our own submissions.

22 PRESIDING JUDGE FULFORD: Well, Maître Mabilille, we'll look at
23 this. The differences that will be made by 0598 should be relatively
24 slender as regards your submissions. For the reasons that you will hear,
25 I hope, tomorrow, we intend to ensure that his evidence is kept within a

1 very tight compass, and it is essentially a substitute for evidence of
2 which you are already aware to the extent that 0598 is able to deal with
3 it.

4 Now, in those circumstances, we are going to look very carefully
5 at whether or not, in reality, additional time is going to be needed by
6 the Defence. Maître Mabilie, I say it for this very good reason: It
7 will be extremely helpful for the Chamber and for the Prosecution to have
8 a translation of your submissions before the Christmas break. It will
9 enable us to have digested them before we receive the Prosecution's
10 submissions and that is a very great advantage for everyone in this case.
11 But you've made the point. Thank you. And we'll make a final
12 determination at the appropriate stage before we break at the end of the
13 evidence.

14 Thank you all very much. Thank you to the interpreters and the
15 transcribers for sitting slightly longer this evening.

16 The hearing ends at 4.25 p.m.

17 RECLASSIFICATION REPORT

18 Pursuant to Trial Chamber I's email instruction dated 2nd November 2011,
19 the transcript is reclassified as public after the indicated redactions
20 have been implemented as ordered by the Chamber. All private
21 and closed sessions (*) are now available to the public with the exception of the
22 portions the transcript that have been redacted.

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