

1 International Criminal Court

2 Trial Chamber I

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

4 Case against Thomas Lubanga Dyilo

5 Hearing - Open Session

6 Friday, 12 June 2009

7 The hearing starts at 10.02 a.m.

8 *(Closed Session at 10.02 a.m.) Reclassified as Open session

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

11 PRESIDING JUDGE FULFORD: Public session, please.

12 (Open session at 10.03 a.m.)

13 COURT OFFICER: Open session.

14 PRESIDING JUDGE FULFORD: Good morning to everyone. Before the
15 witness returns there are a number of housekeeping matters that we need
16 to deal with. First of all, we would like, please, the assistance of the
17 Defence in a limited sense in relation to document 1941 and document
18 1952. Let me immediately help by explaining what they are. They are the
19 Prosecution's application for authorisation to lift certain redactions
20 relating to Witness 46, and the second application relates to particular
21 suggestions which are made as regards the familiarisation process and the
22 procedure to be adopted in court during the course of that witness's
23 testimony.

24 Maitre Mabilie, if this doesn't catch you too much by surprise,
25 are you able to indicate whether or not the Defence propose to make

1 submissions in relation to that application which will -- or those two
2 applications, one filed on the 9th, one filed on the 10th of July? And
3 do take a minute to discuss the matter with your team if you wish.

4 (Defence counsel confer)

5 MS. MABILLE (interpretation): Your Honour, would it be possible
6 for us to respond to you during the day in the form of an e-mail? I
7 think that would be more appropriate.

8 PRESIDING JUDGE FULFORD: Certainly, Maitre Mabilille. If you
9 could inform us as to whether or not you'll be making representations.
10 Can I take it one stage further? If you are, the proposal that we make
11 is that any response should be filed by 4.00 p.m. on Wednesday, the 17th
12 of June, and perhaps you could indicate in the e-mail, if it's relevant,
13 whether or not that's an acceptable deadline. If it's not, could you
14 propose an alternative. Thank you.

15 The next is just to put down a marker. At a convenient moment
16 today, we will ask the Defence, in accordance with their e-mail, I think
17 of yesterday, to develop any oral submissions regarding the participants
18 application to ask questions of Mr. Garreton. We won't deal with that
19 now but at a convenient time later today.

20 Next, the Prosecution's application dated the 4th of June,
21 document 1932, which is an application for protective measures for five
22 documents.

23 Again, Maitre Mabilille, we would ask you to indicate whether or
24 not there is to be any response to that, and if there is, we suggest the
25 same deadline, and again if that's not convenient if you could make

1 alternative proposals, thank you very much.

2 As regards Witness 31, on the 29th of May, Ms. Massidda, on
3 behalf of the Office of Public Counsel for Victims, and more particularly
4 on behalf of particular victims represented by that office, made an
5 application to question Witness 31. There have been no objections to
6 that application. The Defence, in terms, indicated on the 11th of June
7 that it doesn't object, and we're grateful for that indication.

8 We consider that for the reasons outlined by Ms. Massidda, which
9 we needn't develop given this application is not resisted, that it is
10 well-founded and it is granted.

11 Finally in this series of housekeeping issues, Witness 116 is
12 scheduled to testify on the 25th or 26th of June. The Prosecution, in
13 document 1894, has applied for protective measures.

14 I'm sorry, Maitre Mabilie, to load requests onto the Defence, but
15 we would be grateful in your e-mail whether you could indicate whether or
16 not there is going to be any objection to the application that's made for
17 that witness. If there is, same deadline, and if that deadline is
18 inappropriate in your view, could you suggest an alternative.

19 Thank you all very much indeed.

20 Good. So the public know that we're not about to disappear
21 permanently, we're going to go into closed session so the witness can be
22 brought into court, and we will then go back into public session so his
23 evidence can continue.

24 Closed session, please.

25 *(Closed session at 10.10 a.m.) Reclassified as Open session

1 COURT OFFICER: Closed session.

2 (The witness takes the stand)

3 WITNESS: WITNESS DRC-OTP-WWW-0016 (Resumed)

4 (Witness answered through interpreter)

5 PRESIDING JUDGE FULFORD: Public session, Mr. Biju-Duval?

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

7 PRESIDING JUDGE FULFORD: Open session, please.

8 (Open session at 10.12 a.m.)

9 COURT OFFICER (interpretation): Open session.

10 PRESIDING JUDGE FULFORD: Good morning, sir.

11 THE WITNESS (interpretation): Good morning, your Honour.

12 PRESIDING JUDGE FULFORD: I'm very sorry we've kept you waiting,
13 but there were one or two matters that we had to deal with.

14 Mr. Biju-Duval, forgive my being pedantic, but can I gently
15 remind both you and the witness of the excellent speed of delivery
16 yesterday, generally speaking, and can we please maintain that today. I
17 hope my assessment is right, that the transcripts, generally speaking,
18 looked in very good condition yesterday.

19 Good. Please proceed.

20 MR. BIJU-DUVAL (interpretation): Thank you, Your Honour.

21 Questioned by Mr. Biju-Duval: (Continued)

22 Q. (Interpretation) Good morning, Witness.

23 A. Good morning.

24 Q. I'm going to be giving you a copy, as I did yesterday, of the
25 transcript of your testimony -- or, rather, your previous statement so

1 that you have a copy of it if need be. For the time being, you can just
2 keep it at your side.

3 First of all, I would like to clarify definitively a number of
4 points that you have referred to over the last couple of days, in
5 particular this one point. I would like to come back to the house that
6 you saw on the video extract that we saw yesterday. You said it was the
7 first residence in Mandro. Do you remember that?

8 A. Yes.

9 Q. Do we agree that that house, that building, is situated in the
10 village of Mandro?

11 A. Yes. It's in the village of Mandro.

12 Q. To be absolutely certain that the transcript is clear, the house --

13 A. The house --

14 THE INTERPRETER: The witness speaks at the same time as counsel,
15 unfortunately.

16 PRESIDING JUDGE FULFORD: Right. Cardinal rule, gentlemen,
17 please, can we make sure that we don't speak at the same time. That
18 causes the greatest problems for the interpreters and transcribers.
19 There must be a break between each speaker, please. Thank you.

20 MR. BIJU-DUVAL (interpretation):

21 Q. If I say that this house is situated in the village of Mandro, is
22 that correct?

23 A. As I said, as you see the road and the huts that used to serve like
24 a little market, which was then transformed into a guards' hut,
25 and that reminded me that

1 it was the house where the president came, and when he stayed there
2 that's where he slept and that's why there were guards there.

3 THE INTERPRETER: The witness is too far from his microphone,
4 unfortunately.

5 MR. BIJU-DUVAL (interpretation):

6 Q. You indicated that the training centre was 4 kilometres away from
7 the village; is that correct?

8 A. Yes.

9 Q. Approximately 4 kilometres from the house therefore?

10 A. Well, since the house is in Mandro -- in other words, 4
11 kilometres after the school. The school is at the end of the village, if
12 you will, so from that point it was 4 kilometres away.

13 Q. So the house is a little bit before the school?

14 A. Almost at the beginning of the village.

15 Q. Thank you. You indicated that between the village of Mandro and
16 the training centre you had walked; is that correct?

17 A. Yes.

18 Q. Yesterday, you indicated that from where you were -- or where you
19 were a vehicle could not arrive.

20 THE INTERPRETER: Again, sorry, but the witness started before
21 counsel had finished. Would he repeat the answer.

22 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, we lost, I'm afraid,
23 the entirety of the witness's answer. So I'm frightfully sorry, but
24 you're going to have to put the question again.

25 Gentlemen, I am sorry to repeat this, and it is unnatural and

1 it's difficult and it's not your fault, but we must try to please keep a
2 proper separation between witness and questioner during the giving of
3 evidence.

4 THE INTERPRETER: If the witness could also be seated in front of
5 the microphone that would also be helpful. It's very difficult to hear
6 him.

7 MR. BIJU-DUVAL (interpretation): Your Honour, would you allow me
8 to read out the answer that is in the French transcript and ask him if
9 that is correct?

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

11 MR. BIJU-DUVAL (interpretation):

12 Q. You answered my question a moment ago saying, "Yes, because there
13 was no road. There were only paths that vehicles could not use."

14 Was that your answer to the question a moment ago?

15 A. Yes, that was my answer to the question.

16 Q. Yesterday, when you said, "From where we were vehicles could not
17 drive there," when you refer to the place where you were, did you mean
18 the training centre?

19 A. Yes. We were at the training centre.

20 Q. The training centre where the training took place; is that
21 correct?

22 A. Yes, that's correct.

23 Q. Thank you. I would like to clarify another detail. You had an
24 office in the buildings of the headquarters, the staff headquarters; is
25 that correct?

1 A. Yes.

2 Q. What was the distance between the office of the staff
3 headquarters where you had your office and your home, approximately?

4 A. The office was in town, (Redacted)
5 (Redacted)

6 Q. Thank you. Now, ordinarily --

7 MR. BIJU-DUVAL (interpretation): Your Honour, I think we need to
8 go into private session, and perhaps we need to backtrack just a bit
9 and -- and redact the previous question and answer.
10 I'm sorry. I apologise.

11 PRESIDING JUDGE FULFORD: Don't worry, Mr. Biju-Duval. It's very
12 easy to happen. I'll leave it to the Prosecution team to send an e-mail
13 to the Court Officer if it's felt that there should be a redaction of the
14 last question.

15 Private session, please.

16 *(Private session at 10.23 a.m.) Reclassified as Open session

17 COURT OFFICER (interpretation): Private session.

18 PRESIDING JUDGE FULFORD: And, Mr. Biju-Duval, so everyone knows,
19 the proposal that we have is that we sit for two hours this morning and
20 two hours this afternoon, but for everyone's benefit, at around about
21 11.00 we'll have a short -- a shortish break, long enough for everyone to
22 grab a swift cup of coffee.

23 MR. BIJU-DUVAL (interpretation):

24 Q. At what time did you usually begin your working day at the staff
25 headquarters, at your office?

1 A. Everyone began at 7.30 and 8.00 at the latest.

2 Q. What time did you go back to your place of residence?

3 A. Often at 3.00 in the afternoon if there wasn't anything else to
4 do.

5 Q. Thank you. I'd like to go on to another point. We're still in
6 private session.

7 You stated during your testimony, in answer to the Prosecutor's
8 questions, you stated what your tasks were (Redacted), and amongst those
9 tasks or responsibilities you stated that you, and I quote, "gave
10 instructions to the children, that is, talk about discipline and military
11 regulations."

12 The Prosecutor asked you to give further details as to the meaning of
13 "give instructions to the children," and you stated, mentioning
14 the training, the ongoing training that was given to soldiers. In
15 particular, you mentioned, and I quote: "Each time you have to remind
16 the soldiers about military rules and regulations, otherwise it's
17 sometimes difficult as regards their behaviour."

18 My question is as follows: When you use the words "give
19 instructions to the children," does that mean give instructions to the
20 soldiers, that is, as regards military regulations?

21 A. Well, yes. I did say that.

22 Q. Is it -- is it true that in military parlance the expression
23 "children" could mean the soldiers in some circumstances?

24 A. That's very rare, because -- well, there's a difference between
25 soldiers and the military. If I may, I can explain it to you.

1 Even amongst the rank and file you have various different ranks of officers:
2 generals; senior officers; junior officers; 1st, 2nd and 3rd non-
3 commissioned officers, corporals, and the rank and file soldier. So you
4 see, there's a difference between the military and soldiers. We were using
5 the word "children" because the soldiers, the rank and file soldiers, could
6 be called children because that was our habit of speaking. Even your son in
7 the army is not your son, he's a soldier. So he's a military.

8 Q. Thank you. Could you please turn to the statement that you gave.
9 It's the document which I provided you with. Please turn to paragraph
10 232. I am going to read out a sentence to you.

11 MR. BIJU-DUVAL (interpretation): Your Honour, could we go into
12 private session, please -- into open session, please.

13 PRESIDING JUDGE FULFORD: Yes. Open session, please.

14 (Open session at 10.31 a.m.)

15 COURT OFFICER (interpretation): Open session.

16 MR. BIJU-DUVAL (interpretation):

17 Q. I quote: "It never happened that a female soldier would rape
18 another soldier within the FPLC, to my knowledge."

19 And so my first question is: when you talk about a female soldier,
20 Isn't that an error? Were you not, rather, referring to male soldier?

21 A. I don't know. From the time I started giving my testimony I've
22 been talking about PMF. That is female military staff. So when I talk
23 about a female soldier, I'm talking about PMF.

24 THE INTERPRETER: Sorry. Microphone was off your Honour, I'm
25 sorry. Let me repeat:

1 "I understand from the sentence which I read out that you never had any
2 knowledge of rape perpetrated by one soldier against another with respect
3 to the PMFs. Does that tally with the reality as far as you know it? And
4 this is in paragraph 232 of your statement?"

5 I'm sorry.

6 MR. BIJU-DUVAL (interpretation):

7 Q. In that statement, did you mean that you didn't hear of any
8 cases of rape within the FPLC perpetrated by one soldier against another
9 soldier or a recruit? Is that what you were saying?

10 A. I did not talk about recruits here. I talked about soldiers,
11 about the military, because when you talk about recruits, a recruit is
12 not a soldier, because a recruit has not yet completed his or her
13 training, because we -- for a recruit we don't know whether they are
14 going to complete their training and become soldiers or whether they're
15 going to continue as they are, because for some of them we're not sure
16 whether they're going to complete the training, after spending two or
17 even five months at the centre.

18 Q. Thank you. Could you go to paragraph 268 of the same statement.
19 You say, and I'll read the first sentence of paragraph 268 : "I saw
20 nothing in particular to talk about with respect to drug use within the
21 FPLC. Certain soldiers smoked hemp, but that was absolutely prohibited."

22 Do you confirm that statement today?

23 A. I have always said that in society there is always an exception.
24 I talked about what occurred in general. I never saw any drug users. I
25 saw people smoking hemp. I could not go exaggerating the facts and

1 talking about drug use. I stated that I did not, in general, see people
2 taking drugs, but there were some special cases, because -- well, hemp is
3 also a drug, but I saw some special cases, people who were smoking hemp.

4 Q. And do you, therefore, confirm that this was a habit which was
5 prohibited under the regulations of the FPLC?

6 A. It wasn't only for the FPLC. It was for the entire army. Drug
7 use is prohibited for all soldiers and for all members of the military.

8 Q. Thank you.

9 MR. BIJU-DUVAL (interpretation): May I have a moment, your
10 Honour.

11 (Defence counsel confer)

12 MR. BIJU-DUVAL (interpretation): Your Honour, I think we have to
13 return to private session for this question.

14 PRESIDING JUDGE FULFORD: Private session, please.

15 *(Private session at 10.37 a.m.) Reclassified as Open session

16 COURT OFFICER (interpretation): Private session.

17 MR. BIJU-DUVAL (interpretation):

18 Q. Witness, can you tell us what are your current duties, your
19 profession at the moment?

20 A. I am (Redacted). That is the service in charge of
21 (Redacted) this (Redacted). It's (Redacted).

22 Q. Now, in concrete terms what are your duties? What are your
23 activities?

24 A. I supervise (Redacted). You can add the fact that I
25 supervise (Redacted) within the framework of technical support.

1 Q. And since when have you been carrying out these activities?

2 A. Since the month of (Redacted).

3 Q. What is your rank today?

4 A. I'm a (Redacted).

5 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, forgive me
6 interrupting. I'm sure there is -- is a legitimate purpose for asking
7 the witness about his -- his current role, but can you make sure we only
8 investigate personal and present details of the witness's circumstances
9 to the extent that they really are relevant to the issues that we're
10 going to have to deal with?

11 As ever, I'm not stopping you, Mr. Biju-Duval. I'm just asking
12 you to make sure that we don't investigate matters that really do not
13 need to be canvassed either in public or in private.

14 (Defence counsel confer)

15 MR. BIJU-DUVAL (interpretation): Your Honour, I'm going to ask
16 one last question and that will be all.

17 Q. Witness, you told us at the very start of your testimony that you
18 had 14 children. Can you please give us the birth dates of your
19 children? Is that possible?

20 A. Is that necessary? I think this has to do with my private life.

21 PRESIDING JUDGE FULFORD: Is that necessary, Mr. Biju-Duval? I
22 hadn't detected that there was a dispute as to the identity of this
23 witness, and if there isn't a dispute as to his identity, I can't for the
24 moment see the relevance of the dates of birth of his children. Now, it
25 may be I'm being obtuse, but to say nothing, Mr. Biju-Duval, of the

1 difficulties of asking any father to remember the dates of birth of 14
2 children, well, that's another question. I think I'm really asking you
3 to give a justification for this question, please.

4 MR. BIJU-DUVAL (interpretation): Maybe if I put the question
5 differently by asking the witness to give us the ages of his children,
6 then maybe the Chamber will understand the relevance of my question, it
7 being understood that we don't have any challenge with respect to the
8 identity of the witness.

9 (The Trial Chamber confers)

10 PRESIDING JUDGE FULFORD: Yes, all right. Ages but not dates of
11 birth, Mr. Biju-Duval.

12 THE WITNESS (interpretation): Since you insist, I will say there
13 were six births and 14 children.

14 THE INTERPRETER: The witness was a bit fast and I didn't get the end of
15 his answer. (Redacted), I think, and then the
16 rest of it I lost. I think (Redacted)
17 once, he says.

18 MR. BIJU-DUVAL (interpretation):

19 Q. Can you therefore give us their ages?

20 A. The (Redacted) today aged 18. The second are aged 15.

21 We're talking about (Redacted). The (Redacted)

22 (Redacted)

23 (Redacted), and then the last is a boy.

24 MR. BIJU-DUVAL (interpretation): Thank you, your Honour no

25 further questions.

1 PRESIDING JUDGE FULFORD: Thank you, Mr. Biju-Duval. That's very
2 helpful.
3 Sir, the Judge sitting on my right, Judge Odio Benito, has a few
4 questions for you as well.
5 JUDGE ODIO BENITO: Thank you, your Honour.
6 PRESIDING JUDGE FULFORD: Closed or open?
7 JUDGE ODIO BENITO: Open.
8 PRESIDING JUDGE FULFORD: Open session, please.
9 (Open session at 10.45 a.m.)
10 COURT OFFICER: Open session.
11 Questioned by the Court:
12 JUDGE ODIO BENITO: Thank you.
13 Good morning, sir.
14 A. Good morning.
15 JUDGE ODIO BENITO: Could you assist the Court
16 with whatever information you got about sexual violence committed against
17 the PMF during the training period, especially against the young girls
18 recruited.
19 A. Out of here, being in the centre for the first time, the trainers
20 and other guards in the centre took advantage of the situation and they
21 would rape the recruits.
22 JUDGE ODIO BENITO: Thank you. Could you
23 provide us with details about the possible age of these female recruits
24 and, if possible, names of the centres where this happened, to your
25 knowledge.

1 A. May I remind you that we did not have two centres, so everything that
2 happened, happened at the centre in Mandro.

3 Now, with respect to the ages, I informed you that there were
4 people of all ages. There were some who came from Mandro village to go
5 look for girls at the centre.

6 JUDGE ODIO BENITO: Thank you, sir, but I am
7 asking you to provide us with information about the girls, not about the
8 possible perpetrators, the girls that were allegedly raped in Mandro.

9 A. If I understood your question well, well, this happened in
10 secret. They spoke the same language, and it would happen between people
11 who spoke the same language, people who understood each other well
12 because they spoke the same language, whereas it was strictly prohibited
13 for this to happen in the centre.

14 JUDGE ODIO BENITO: Thank you. To the best of
15 your knowledge, sir, was there or not a common known practice amongst
16 some high-ranked UPC officials to take young girls, recruits, as domestic
17 servants in their private residences?

18 A. In the centre, yes, because the commander in the centre had four
19 of them. The other instructors also used these girls.

20 JUDGE ODIO BENITO: And when you mean used these
21 girls, you are talking about the girls performing domestic duties in
22 their private residences?

23 A. They were used for everything, not just for domestic services.
24 They were used for everything. And I say "they." "They" means the
25 girls.

1 JUDGE ODIO BENITO: I'm sorry, sir, but could
2 you please explain to us what do you mean by "everything"?

3 A. They were domestic servants. They were ladies, madams. So
4 that's what I mean when I say that they were used for all purposes.

5 JUDGE ODIO BENITO: Thank you, sir. Last
6 question, just to clarify my mind. What you explained to us is that
7 these young recruits were taken to the houses, to the private residence,
8 of the commander and, you say, instructors as so-called wives. Exactly
9 what you are trying to explain to me? Thank you.

10 A. It's not what I said, your Honour. I said that when they went to
11 look for the girls to act as domestic servants, well, they combined these
12 elements. They combined cooking and love services.

13 JUDGE ODIO BENITO: Thank you very much indeed, sir.

14 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva -- and there's a
15 question from the Judge on my left, Judge Blattmann. Yes.

16 JUDGE BLATTMANN: Thank you. Sir, during your testimony you have
17 told us about the use of child soldiers in different rebel groups. You
18 have addressed how it was in the UPC. (Redacted)
19 (Redacted)

20 How is the practice and how was the practice of using child
21 soldiers in the national armed forces of the -- of Congo?

22 A. As far as I know -- as far as I know, there are no longer
23 soldiers, child soldiers, in the national army of the Congo.

24 CONADER came and collected all of them.

25 JUDGE BLATTMANN: Now, this would be in the present. How was it

1 in the past time?

2 A. I wasn't in the national army. That's why it's difficult to
3 explain, because I was also called a rebel at the time.

4 JUDGE BLATTMANN: Thank you very much sir.

5 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva. Now, long or short
6 do you think?

7 MR. SACHDEVA: Mr. President, it depends. I would like to remake
8 the submission again about the use of the excerpt, the video excerpt, and
9 that could be a bit longer if granted.

10 PRESIDING JUDGE FULFORD: Right. We'll -- we'll deal with that
11 first. So we'll give the witness a break now, and then we'll take a
12 break after we've heard your submission, Mr. Sachdeva.

13 Sir, we're certainly going to give you until 10 past 11.00, and I
14 strongly suspect it will be longer than that, and we'll send a message
15 upstairs as soon as we're ready. Thank you very much again for your
16 cooperation.

17 Closed session, please, so the witness can withdraw.

18 *(Closed session at 10.56 a.m.) Reclassified as Open session

19 COURT OFFICER (interpretation): Closed session.

20 (The witness stands down)

21 PRESIDING JUDGE FULFORD: What's this all about Mr. -- oh, public
22 session or private?

23 MR. SACHDEVA: Public session, Mr. President.

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

25 (Open session at 10.57 a.m.)

1 COURT OFFICER: Open session.

2 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

3 MR. SACHDEVA: Thank you, Mr. President. Yes, the Prosecution
4 would like to show this added excerpt to the witness. We recognise that
5 indeed the precise excerpt was not provided to the Defence for this
6 witness. Nevertheless, it has been earlier provided to the Defence for
7 Witness 2, and that particular -- those time periods have been given to
8 the Defence. So in my submission the Defence do have sufficient notice
9 of this excerpt, albeit not in relation to this witness.

10 The second reason, Mr. President, is that the issue of Mandro and
11 the location of the training camp and what took place there and also
12 access to the camp are -- are clearly important issues in this case, and
13 in my submission the video and the witness's potential answers could
14 provide clarity to your Honours, and for those reasons I would make the
15 application to show the witness the video excerpt.

16 PRESIDING JUDGE FULFORD: Mr. Sachdeva, what you've got to
17 remember is that I -- I assume that both you and Mr. Biju-Duval know what
18 you're talking about. We don't. We don't know what the section is that
19 you wish to show, so at the moment we're completely in the dark.

20 Now, what does this section of video depict so that we can
21 understand what it is that you're now seeking to introduce, because we've
22 seen a number of video-clips over the last few months and we don't
23 instantly recall the ones -- the one or the ones that were shown to
24 Witness 2. So which is this?

25 MR. SACHDEVA: Yes, Mr. President. The excerpt purports to show

1 the area of the training camp in Mandro. It shows recruits purportedly
2 lined up in a parade, and it, in our submission, shows a vehicle that is
3 allegedly present at the training camp, and therefore my sole reason
4 would be -- to show the witness would be to ask him if he recognises the
5 location, what was taking place there, and I would like to take him to
6 the -- to the vehicle and ask him to clarify in relation to one of his
7 earlier answers he gave today in cross-examination.

8 PRESIDING JUDGE FULFORD: Can we just break this down. Location
9 I can understand. You want him to confirm one way or the other whether
10 this is somewhere where he had been at a relevant time. I understand
11 that.

12 You then went on to say what was taking place there. Well, is it
13 alleged that he was present during the scene shown in the video,
14 Mr. Sachdeva, or is there any evidential basis for exploring that with
15 him that he was present then?

16 MR. SACHDEVA: Perhaps, Mr. President, I wasn't clear. I don't
17 know if the witness was present at this stage. The Prosecution does not
18 know. However, there -- there does appear to be a parade taking place,
19 and I would ask him questions as to whether that is similar to what he
20 has experienced during his time in Mandro.

21 And lastly with respect to the vehicle, the witness has said that
22 vehicles could not access the training camp, and I would like to -
23 depending what the witness answers - show him the vehicle and ask him
24 to -- if he had any further comments in relation to that answer he gave
25 cross-examination about the access to the training camp.

1 PRESIDING JUDGE FULFORD: Good. Thank you.

2 Mr. Biju-Duval.

3 MR. BIJU-DUVAL (interpretation): Yes, your Honour. The Defence
4 doesn't object to this as a matter of principle because this -- we don't
5 object to this excerpt being shown to the witness, but things must be
6 very clear. The Defence absolutely contests the claim that this video
7 shows the Mandro training centre. Therefore, one must be cautious and
8 make sure that the witness is in no way confused when he is shown this
9 video footage.

10 And there's one other thing I would like to point out. In order
11 to ensure that the witness is in no way confused, we believe it would be
12 desirable to turn off the sound of the video footage. Why? Well,
13 because it includes an external commentary that provides certain
14 indications that might suggest certain answers to the witness, or it
15 might confound the witness.

16 PRESIDING JUDGE FULFORD: I think you needn't elaborate on
17 the audio because nothing that Mr. Sachdeva has said would tend to
18 indicate that it has any relevance for the three purposes he's
19 identified, Mr. Biju-Duval.

20 So in summary, you don't object to this being shown, but you
21 would wish for it to be made abundantly clear to the witness that there
22 is no agreement between the parties as to whether or not this shows
23 Mandro at all, that the Prosecution are going to be suggesting to the
24 witness that it is Mandro but that he should understand before he answers
25 any questions that that isn't a given or an accepted fact before this

1 court, and in those circumstances you wouldn't object; is that right?

2 (Defence counsel confer)

3 MR. BIJU-DUVAL (interpretation): Yes. That summarises the
4 situation, and I suggest that this excerpt could be shown without the
5 audio to the witness, and the only question should be, "Do you recognise
6 this place?" No suggestions should be made with regard to the matter
7 though.

8 PRESIDING JUDGE FULFORD: Right. Mr. Sachdeva, there's agreement
9 that you can show the excerpt. You can ask the witness whether he
10 recognises the area that's displayed. If the witness says that he does,
11 then that will engage your vehicle question, because if the witness says
12 this is Mandro, then it becomes a live issue in relation to whether or
13 not a vehicle could gain access.

14 As regards parades, as I understand it, you wish, generally
15 speaking, to ask whether the configuration and general positioning of the
16 people as shown in the video corresponds with what he has been describing
17 by way of parades, and I would have thought that that is a question which
18 really exists independently as to whether this is Mandro or not.

19 Now, are you content with proceeding that way?

20 MR. SACHDEVA: Yes, absolutely. And in fact, of course, I would
21 not suggest that this was Mandro. I would ask him the open question as
22 before, if he recognises the location.

23 With respect to the parade, indeed it doesn't matter that it's
24 Mandro or somewhere else, but if I could then point him to the
25 configuration of the soldiers and ask him yes, does it correspond to what

1 he said before.

2 (The Trial Chamber confers)

3 PRESIDING JUDGE FULFORD: Within that framework and on that

4 basis, Mr. Sachdeva, your application is granted.

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

6 PRESIDING JUDGE FULFORD: We will then have the witness back to

7 complete his evidence at 25 past 11.00, which I hope will just give

8 everyone sufficient time to get some refreshment.

9 We sit again at 25 past 11.00.

10 COURT USHER: All rise.

11 Recess taken at 11.07 a.m.

12 On resuming at 11.25 a.m.

13 COURT USHER: All rise. Please be seated.

14 PRESIDING JUDGE FULFORD: Closed session and witness, please.

15 *(Closed session at 11.26 a.m.) Reclassified as Open session

16 COURT OFFICER: Closed session.

17 (The witness takes the stand)

18 PRESIDING JUDGE FULFORD: Public or private?

19 MR. SACHDEVA: Public session, Mr. President.

20 PRESIDING JUDGE FULFORD: Public session, please.

21 (Open session at 11.27 a.m.)

22 COURT OFFICER: Open session.

23 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

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

25 Further questioned by Mr. Sachdeva:

1 Q. Good morning, sir. I have a few more questions for you. The
2 first is going to be a similar procedure to my examination. I'm going to
3 play you a video, and I want you to look at it very carefully and at the
4 end I'd like you to tell the Court whether you know what is depicted in
5 that video. So I'm going to start now.

6 (Video-clip played)

7 MR. SACHDEVA:

8 Q. Sir, do you know where this was filmed?

9 A. The place is not really clear. It's a military parade. I saw
10 Kisémbu, the Chief of Staff. I saw -- I saw President Lubanga in
11 uniform, but the place itself is not clear to me.

12 PRESIDING JUDGE FULFORD: Pause a moment, Mr. Sachdeva.

13 (Trial Chamber and Court Officer confer)

14 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva. Sorry.

15 MR. SACHDEVA:

16 Q. Sir, if it was played again and you were able to see it, would
17 that help you remember?

18 A. Perhaps, yes.

19 PRESIDING JUDGE FULFORD: Back to the beginning. Play it again.

20 Sir, you're going to be asked some questions in a moment,
21 particularly about the way that the various people in uniform are lined
22 up on the grass area, so could you -- I mean, focus on all of it,
23 obviously, but pay particular attention to the way that they are arranged on
24 that grass area, because Mr. Sachdeva will have some questions about
25 that.

1 Before it's played again, can we give this an EVD number, please.

2 MR. SACHDEVA: It's DRC-OTP -- if I may, it's the same ERN as the
3 last excerpt, but I can give you the minutes. It's from minute 7:00 to
4 9:00. Thank you.

5 COURT OFFICER (interpretation): This extract will be
6 EVD-OTP-00468.

7 MR. SACHDEVA:

8 Q. Okay. Sir, it's going to be played now.

9 (Video-clip played)

10 MR. SACHDEVA:

11 Q. And, sir, can you help us with that? Do you know where that
12 location is?

13 A. Well, now I think yes. Where -- I think it's -- it was where we
14 spent time for the ideology. There's a lot of grass there now. I think
15 it's Mandro. The instruction centre, the training centre in Mandro, if I
16 remember correctly.

17 PRESIDING JUDGE FULFORD: All right. Mr. Sachdeva, on that basis
18 you can proceed. You were in any event you were going to ask about the
19 disposition of individuals but you can ask the other questions that you'd
20 indicated to us earlier that you wished to investigate.

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

22 Q. Sir, actually on the screen we have now you will see a group of
23 soldiers, and also during the excerpt there were soldiers formed in a
24 particular way. Was the formation of those soldiers similar to what you
25 have told us in evidence while you were at Mandro?

1 A. Yes, because they're in a U shape. The commander's in the
2 middle. You can see the giants, the big ones here. That's what I said.
3 The smaller ones are in the back. I can see two, even more, more than
4 that, behind the others.

5 PRESIDING JUDGE FULFORD: Now, for that Mr. Sachdeva, it may be
6 useful to see whether the technology is going to enable the witness to
7 indicate with this frame on the ELMO the individuals he's referring to.
8 I don't know whether this has been set up. We canvassed this yesterday.

9 MR. SACHDEVA: Yes, Mr. President. In fact, as I understand it,
10 the only way is for a still to be taken of this frame, for it then to be
11 either put on the e-court or, of course, on the ELMO, and for the witness
12 to mark it.

13 PRESIDING JUDGE FULFORD: Is that something that will take 30
14 seconds or three days?

15 (Trial Chamber and Court Officer confer)

16 PRESIDING JUDGE FULFORD: Right. You'll need to provide the
17 still, Mr. Sachdeva, which I imagine you haven't got in your back pocket,
18 have you. No.

19 MR. SACHDEVA: No, Mr. President.

20 PRESIDING JUDGE FULFORD: Right. What I'm tempted to do,
21 Mr. Sachdeva, is to ask the witness to point on a screen to the -- to the
22 area that he's describing, and then someone can indicate to us where it
23 is that he's -- that he's pointed at.

24 What I -- what I suggest is that you and Mr. Biju-Duval leave
25 your current places and go over to where the witness is sitting, and the

1 question can then be asked, and he can point to the position where he
2 says these particular individuals were standing. So can you put the
3 question again, the question that you want him to deal with by way of
4 pointing, and can you both then go over to where the witness is seated so
5 that he can then indicate on the screen. So your question first, please.

6 MR. SACHDEVA:

7 Q. Sir, I'd like you to indicate on this still where the young
8 persons are located in this formation.

9 PRESIDING JUDGE FULFORD: Right. If you and Mr. Biju-Duval could
10 go over, please, to where the witness is sitting, and so the witness can
11 then point on the screen and you can see where he's pointing at.

12 Let me ask the question again. Sir, you've indicated that the
13 young people in this particular frame are at a particular point. So I'm
14 going to ask you to lean forward and with your finger point on the screen
15 to where you are suggesting that we can see the position of the young
16 people.

17 THE WITNESS (interpretation): Your Honour, I didn't say the
18 young people were on one side. I said they were arranged according to
19 size. They were all recruits.

20 PRESIDING JUDGE FULFORD: Right. This is not going to help. Thank you,
21 Mr. Sachdeva. Thank you, Mr. Biju-Duval. We will revert to as we were.

22 Back to you, Mr. Sachdeva.

23 MR. SACHDEVA:

24 Q. For the moment, sir, I want to take you to another portion of
25 this excerpt, and if you would just bear with me.

1 I'm just pausing the excerpt at 8:48.

2 Now, sir, in this excerpt do you see a vehicle?

3 A. Yes, I can see a vehicle.

4 Q. And given the vehicle in this screen and in relation to your
5 answer earlier today that vehicles could not use -- that there were only
6 paths which the vehicles could not use to the Mandro training camp, do
7 you have anything to say?

8 A. Yes, I have something to say, because when I was there there were
9 no vehicles that could get there because the roads were not very good.
10 But a road can be created.

11 Of course, you could always ask the recruits to prepare a road so the
12 president can arrive, that's simple. It's going to take maybe a couple
13 of days for so many people like that.

14 I'm surprised, because I don't know what road they took because
15 there's really a rough valley to get through where the vehicles couldn't
16 drive. I don't know how they -- I don't know how they managed.

17 Q. And, sir, during your time in the FPLC did you know of occasions
18 when recruits did construct roads?

19 A. Yes, because we worked on the pathway to the little stream where
20 we would bathe, and there were various work sites which led to the
21 training area. We -- instead of a path, it became a road. It was wider
22 than 2 metres.

23 Q. Thank you. I'm -- I'm finished with that excerpt.

24 PRESIDING JUDGE FULFORD: Could it then be removed from the
25 screen, please.

1 MR. SACHDEVA:

2 Q. Sir, in answer to my learned friend's questions in cross-examination
3 with respect to the smoking of hemp, I think you said that there were
4 special cases where that was done. What did you mean by that?

5 A. If I remember well, I stated as follows: I said that in
6 everything there is an exception, that is, a law can be passed or an
7 instruction given to everyone, but there will always be people who will
8 infringe on that law or that regulation. So there were soldiers who
9 effectively smoked hemp. Amongst the officers, I didn't see, but I found
10 that there were members of the military, soldiers who smoked hemp.

11 Q. And may I ask you within the -- well, amongst the soldiers that
12 smoked hemp, was it -- what rank were they?

13 A. I could not determine the rank, because I said they were soldiers and
14 the military. What I mean is that everybody, that there were soldiers of
15 various ranks, and again as I said, in every situation there are exceptions.

16 Q. In answering questions to Her Honour's Judge Odio Benito's
17 questions about female soldiers, you said that some female soldiers were
18 raped, and my question is the following: Did you come to know by any
19 means the ages of these female soldiers that were raped?

20 A. Well, sir, Mr. Prosecutor, I think I told you that many of the
21 recruits -- I don't know whether it was because -- well, they came from
22 the village, but their height was difficult to assess. When I told --
23 talked about the fact that the girls were all beautiful - I said that
24 yesterday - what I mean is that you couldn't determine their ages from
25 their appearance. They didn't look their age. Some of them may have been

1 "dis-virgined" - pardon me the term. There were several cases.

2 Q. And when you provide that answer, you -- are you referring to the
3 girls that were raped?

4 A. Yes. I clearly said that there was rape. That is, carrying out
5 sexual intercourse with someone who is not willing, or doing so by force.
6 That is what I qualify as rape.

7 Q. You said that the trainers and other guards in the centre took
8 advantage of the situation and they would rape the recruits. Was it just
9 the trainers and the guards that raped the recruits, or did other persons
10 in the centre rape the recruits?

11 A. In the centre it wasn't other people, because in the centre the
12 other people were only the recruits and those of us who came for
13 ideology. And we could not do that. A recruit could not rape, and we,
14 too, could not rape.

15 Q. And while you were in the centre did you -- do you know if the
16 commander of the centre and other senior officers in the centre were
17 aware that this was taking place or not?

18 A. Well, it was in the same place. How couldn't they realise that
19 this was taking place?

20 THE INTERPRETER: Or I think the witness said: "If he himself
21 was the perpetrator, of course, he couldn't be unaware that this was
22 taking place."

23 MR. SACHDEVA:

24 Q. When you say "he," who do you mean?

25 A. I am talking about the commander of the centre, because the

1 question related to the commander of the centre.

2 Q. Just so we're -- we're clear, sir, are you saying that to your
3 knowledge the commander of the centre committed the rapes, or are you
4 saying something else?

5 A. That is what I'm saying, because the women they took were not his
6 girls. These were recruits, and he didn't have the right to make use of
7 these recruits. They were recruits like any other recruit, and he
8 shouldn't have done that.

9 Q. I want to ask you a question. My learned friend put a question
10 to you ...

11 I'm sorry. My learned friend put a question to you, and I'll
12 repeat the question.

13 "Is it true that in military parlance the expression 'children'
14 would mean soldiers in some circumstances?"

15 That was the question, and there is a discrepancy between the
16 French and English recording of your answer, so could I ask you to answer
17 that question again.

18 A. I told Mr. Biju that these were not synonyms, that it was -- that
19 "children" was not synonymous with "soldiers." Now, the small soldiers
20 were called children because of their age. When a child is underaged.
21 For example, I said -- I referred to (Redacted). I called him a child. I
22 made use of them because they were young. I wanted to train them so that
23 they would not develop bad ideas or have bad thoughts in their minds.

24 MR. SACHDEVA: Mr. President, that's the re-examination. Thank
25 you.

1 PRESIDING JUDGE FULFORD: Thank you very much.

2 Mr. Biju-Duval, anything finally arising out of the matters
3 raised by either of the Judges or Mr. Sachdeva?

4 MR. BIJU-DUVAL (interpretation): Yes, your Honour. We are in a
5 rather peculiar situation considering the manner in which the second
6 footage was presented. I would like to ask the Chamber to give me a
7 short time before I ask my last questions. It is possible that I may
8 have to ask to see another excerpt of the video footage again, so I will
9 need some time. Not a very long time, but at least some time in order to
10 take care of that.

11 PRESIDING JUDGE FULFORD: This is, in fact, extremely fortunate
12 timing, Mr. Biju-Duval. We're just about to run out of the two-hours of
13 this session. So you're now going to have two hours in which to, I hope,
14 get some lunch, but also to select any further passages that you'd wish
15 to show to the witness. So we'll sit again at 5 to 2.00, so 1.55, when
16 we hope you'll be able to complete your examination. Thank you very
17 much.

18 Is that satisfactory? Good.

19 Closed session, please, so the witness can withdraw.

20 And I think the next session, sir, will be the last time we'll be
21 asking for your assistance.

22 Good.

23 *(Closed session at 11.57 a.m.) Reclassified as Open session

24 COURT OFFICER: Closed session.

25 PRESIDING JUDGE FULFORD: Let me make it clear. It's 1.55, not

1 2.05, as appears in the French transcript at the moment.
2 (The witness stands down)
3 PRESIDING JUDGE FULFORD: 1.55.
4 COURT USHER: All rise.
5 Luncheon recess taken at 11.58 a.m.
6 On resuming at 1.55 p.m.
7 COURT USHER: All rise. Please be seated.
8 PRESIDING JUDGE FULFORD: Witness, please.
9 (The witness takes the stand)
10 PRESIDING JUDGE FULFORD: Public or private session,
11 Mr. Biju-Duval.
12 MR. BIJU-DUVAL (interpretation): I believe it can be in open
13 session. My questions will deal with the Mandro camp.
14 PRESIDING JUDGE FULFORD: Public session, please.
15 (Open session at 1.57 p.m.)
16 COURT OFFICER (interpretation): Open session.
17 PRESIDING JUDGE FULFORD: Yes, Mr. Biju-Duval.
18 Further Questioned by Mr. Biju-Duval:
19 Q. (Interpretation) Good afternoon, Witness. I'm going to be asking
20 you some additional questions.
21 Do you remember that yesterday the Prosecutor asked you a
22 question about a house that could be seen in the video-clip, and he asked
23 you whether that house was part of the training camp or not. You
24 answered saying: "That house does not represent the training camp
25 because we were in the bush. There were only seven huts, two that had a

1 fence around, that were for the instructors, and five others for the
2 recruits and us who occupied the other two."

3 I've just quoted the answer you gave yesterday to that question.

4 Today could you tell us more precisely what those huts were made
5 of, the huts in the training camp?

6 A. I'm very sorry. I believe you do speak French. When you talk
7 about a hut, is a hut made of straw or it's -- or wooden sticks with
8 straw? But I'd like to contradict what you said, because you said that I
9 said there were two huts surrounded by a fence for the instructors. No.
10 There were two huts for the commanders of the centre and the deputy, and
11 the others, there was just a little fence for the recruits, we --
12 we were in an area that was not fenced in. We were in instructors'
13 houses that were not fenced in.

14 Q. Thank you for that explanation. I understand, therefore, that
15 these huts, these various huts were built with wood and straw. Is that
16 it?

17 A. Well, there was a straw on top and the walls -- well, the whole
18 thing was made of straw but there were wooden poles to hold up the walls.

19 Q. Thank you. As regards the parades that took place at the
20 training camp, did they take place near these straw huts?

21 A. It wasn't far from the straw huts, not even 20 metres away.

22 Q. You have indicated, and I'm quoting you: "We were in the bush."
23 Should I understand that this was an area that was not inhabited by
24 villagers?

25 A. Well, 10 metres from the centre, there were also four huts with a

1 few --

2 THE INTERPRETER: "Bouvier," says the witness.

3 MR. BIJU-DUVAL (interpretation):

4 Q. Were there also straw huts?

5 THE INTERPRETER: Interpreter adds correction: "Bouvier" was
6 "herdsmen."

7 MR. BIJU-DUVAL (interpretation):

8 Q. As regards the houses that were built in stone or in -- with clay
9 and with tin roofs, were they in the village?

10 A. Yes, in the village of Mandro, but not in the training centre.

11 Q. Thank you. You referred to a 4 kilometre walk from the village
12 of Mandro to the training centre?

13 PRESIDING JUDGE FULFORD: Before you formulate the question,
14 Mr. Biju-Duval. I think Mr. Sachdeva has an observation to make.

15 MR. SACHDEVA: Mr. President, it may be pedantic, but I believe
16 that these questions arise out of my examination-in-chief and not
17 strictly my re-examination. I understand there's a slight difficulty
18 because my application to play this second excerpt was made during the
19 examination-in-chief. Nevertheless, the -- the issue with respect to the
20 parades was discussed in the second excerpt solely in relation to a
21 comparison to be made, and I just -- I'm just gently inquiring as to
22 whether they -- they do arise out of my examination-in-chief.

23 PRESIDING JUDGE FULFORD: Mr. Sachdeva, you -- you re-introduced
24 the whole issue of the camp at Mandro in your re-examination as an
25 exceptional indulgence by the Chamber. Mr. Biju-Duval, in those

1 circumstances, is fully entitled to explore Mandro-related issues at this
2 stage in his questioning, but thank you for the intervention.

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

4 PRESIDING JUDGE FULFORD: Please continue, Mr. Biju-Duval, and
5 you may wish to start the question again.

6 MR. BIJU-DUVAL (interpretation):

7 Q. You spoke about a distance of 4 kilometres on foot between the
8 village of Mandro and the training centre, and you said, "I went there on
9 foot." Is that the distance which approximately separates the straw huts
10 from the training camp, that is, the first houses with stone walls and --
11 and roofs?

12 A. No, I would say because the last stone houses -- actually, it's
13 the schoolhouse, because the other houses are a bit further from the
14 school, and then you have the camp where the teachers live. You
15 understand what I mean, the teachers. So it was from the area where the
16 teachers live. From there it's about 4 kilometres.

17 Q. I'd like to be certain that I've understood your answer. Did I
18 understand that the teachers' camp, that is where you have the last
19 houses, that is the stone or clay houses? Is that what you meant?

20 A. Yes.

21 Q. And as from that area until the training camp, how many
22 kilometres would there be approximately?

23 A. I said that from the school -- it wasn't very big that camp, from
24 the school, and right next to the school there's the teachers' camp, and
25 then there's the valley. To go all the way to the training camp it's

1 about 4 kilometres.

2 Q. Thank you. That's perfectly clear.

3 You mentioned a valley, and before the break you said something
4 about the valley which a vehicle could not drive through, could not go
5 down into. Is that -- is it in that valley that the training camp was
6 situated?

7 A. No. First of all, I don't agree with what you said. I didn't
8 say that the vehicles couldn't go down into that valley. I said that it
9 was the condition of the road that was such that a vehicle could not
10 drive through there. There were bumps and difference in levels. It was
11 very difficult. You had to have a four-wheel drive vehicle to get
12 through there. And then after the valley that's where you reach
13 to the training centre.

14 Q. Thank you. You have explained, I believe it was yesterday or
15 perhaps the day before, that at the end of the training the uniforms were
16 handed out in the training centre and that weapons were distributed in
17 the village of Mandro.

18 A. Well, it's almost that, but there's a difference. While we were
19 in Mandro, our group received uniforms at the centre and weapons in the
20 village of Mandro. It wasn't the same for everyone.

21 Q. When you received weapons in the village of Mandro, was there a
22 parade to hand out the weapons?

23 A. No. There isn't very often a parade when weapons are handed out.
24 You call up the company that's going to be receiving weapons. There's no
25 real parade. It's during exercises, and they just throw the weapon

1 to you and that's it.

2 Q. Where exactly in the village of Mandro did the distribution of
3 weapons take place, as far as you are concerned?

4 A. It was at the -- the square in front of the school. Right near
5 the flag pole.

6 Q. Thank you.

7 MR. BIJU-DUVAL (interpretation): May I have a moment, your
8 Honour?

9 PRESIDING JUDGE FULFORD: Pause, Mr. Biju-Duval.
10 (Defence counsel confer)

11 MR. BIJU-DUVAL (interpretation): Your Honour, I would like to
12 now ask the witness to watch a video-clip which is in fact the very same
13 one that the Prosecutor presented.

14 PRESIDING JUDGE FULFORD: You needn't
15 justify it any more, Mr. Biju-Duval. It can be shown.

16 MR. BIJU-DUVAL (interpretation): The Prosecutor has kindly
17 accepted to manage the technical aspect of things for our re-examination.

18 PRESIDING JUDGE FULFORD: I'm glad to see that the spirit of
19 cooperation is alive and well, Mr. Biju-Duval.

20 Yes, Ms. Struyven.

21 MR. BIJU-DUVAL (interpretation):

22 Q. Witness, I'm going to ask you first of all to look at this video
23 carefully, and you will see at the very beginning of the extract you will
24 see a building, and I would like to ask you to look at it closely,
25 carefully, to tell us whether or not you recognise it.

1 Secondly, you indicated this morning that you had identified on
2 the video-clip Mr. Thomas Lubanga wearing a uniform, and therefore I
3 would like to ask you to take a close look and that you indicate exactly
4 when you believe you can identify Mr. Lubanga. I would like to suggest
5 that when you believe you can identify him, please raise your hand so
6 that we can stop the tape.

7 Now, we're going to be starting at minute 7:15, and I would like
8 to ask that we stop it at 7:37.

9 (Video-clip played)

10 MR. BIJU-DUVAL (interpretation):

11 Q. Witness, on the screen we can see a building. Is this in fact
12 the building that you identified as the first residential building -- the
13 first residence in Mandro?

14 A. The first residence in Mandro had a flag. There's no flag here.
15 Eithere I can't see well, or there is no flag or maybe it is behind the
16 trees. But there were two houses of that
17 shape. There were no other houses like -- like this one.

18 Q. Apart from the flag, does this building resemble the one that you
19 identified yesterday as the first residence? The image isn't very
20 good, I know but...

21 A. I don't see very well. That's the problem. But I realized it
22 was a building because I saw the flag pole. I told you I wasn't very
23 familiar with Mandro. I only went there twice, the first time and then
24 the second time when I left, so I only saw it for a few seconds.

25 Q. Very well.

1 MR. BIJU-DUVAL (interpretation): If we could continue showing the video
2 excerpt to the witness, and I would like to stop at minute 8:41, 8:41.

3 (Video-clip played)

4 MR. BIJU-DUVAL (interpretation):

5 Q. Sir, you have an image in front of you which depicts two
6 individuals. Do you know the person to the right?

7 A. In my opinion I know he was a minister. He was addressed as His
8 Excellency, His Excellency, but I don't know what he did exactly.

9 Q. Isn't this the person you believe to be Mr. Lubanga?

10 A. It's the person to the left who made me believe that it was Mr. Thomas,
11 or it was the people passing to the left who made me believe it was Mr.
12 Thomas. If that's him, he should be to the right of the other person.

13 Q. If I have understood you correctly, you thought that the person
14 to the left, in fact, was Mr. Lubanga; is that correct?

15 A. Yes, given the height of the person, but the image isn't very clear.

16 Q. Having had a look at the still image, can we agree that it isn't
17 Mr. Lubanga?

18 A. That's what I'm saying.

19 Q. We can see behind the two men a building with a wall that seems
20 to be made of stone or of earth, and the roof seems to be corrugated
21 iron; is that correct?

22 A. Yes.

23 MR. BIJU-DUVAL (interpretation): Could we please continue
24 showing the video footage to the witness.

25 (Video-clip played)

1 MR. BIJU-DUVAL (interpretation):

2 Q. Having had another look at this document, could we agree that the
3 events unfolding there are not unfolding in the Mandro training centre
4 but probably in the village of Mandro?

5 A. It was at the school. That's where we were equipped. I know
6 that now. I saw that clearly.

7 Q. To be quite clear, you're stating that it is at the Mandro school
8 in the village of Mandro; is that correct?

9 A. Yes.

10 Q. So it's not at the training centre that is at a distance of 4
11 kilometres from that location.

12 A. If I said at 4 kilometres -- if I said at 4 kilometres away, it was
13 from the centre where I was--- I don't know whether another centre was
14 created after I left --- but that is a school there. However, that is a
15 violation, because that is a school and children have a right to education.
16 If you have a military training centre there, it will prevent the children
17 from studying. Hence, this means that they did this after me.

18 THE INTERPRETER: The interpreter didn't clearly hear the witness's answer.

19 MR. BIJU-DUVAL (interpretation):

20 Q. Thank you.

21 THE INTERPRETER: The interpreter adds that the witness said that
22 the children had the right to an education.

23 MR. BIJU-DUVAL (interpretation):

24 Q. You told us that after you had joined the UPC, and I won't
25 provide any specific details, please don't be worried, but you said that

1 after you had joined the UPC you were not at all concerned or involved in
2 the training of the recruits, and you said that you did not visit the
3 camps. Is that right?

4 A. If I had done that, I would easily notice that the centre was not
5 where we were; the centre was already on the
6 school site. I would be able to notice that easily. But I didn't visit
7 any centres, and I never returned to Mandro?

8 Q. Thank you. Should I take it that -- that the information that
9 you had on life in the training centres was information that was based on
10 the days you spent in Mandro alone, on the ten days that you spent there,
11 or did you have this information from any other sources?

12 A. As some one who had some responsibilities - I wasn't fully in
13 charge, I only had some responsibilities - whenever the deputy chief of
14 staff in charge of operations returned from Mandro - he went there quite
15 often - he would come to the office, to the waiting-room, and he would tell
16 us what was going on, and from him and his bodyguards, we learnt about
17 everything that was taking place in Mandro.

18 MR. BIJU-DUVAL (interpretation): Just a second, your Honour.

19 (Defence counsel confer)

20 MR. BIJU-DUVAL (interpretation): Thank you very much, Witness.

21 I have no further questions.

22 PRESIDING JUDGE FULFORD: Out of an abundance of caution, we're going to
23 give the particular sequence shown during this questioning its own EVD
24 number so there's no confusion hereafter. Let that happen now, please.

25 COURT OFFICER (interpretation): There were three excerpts that

1 were shown. The first one will have the -- will bear the number
2 MFI-D-00136, the second one MFI-D-00137, and the third excerpt shall bear
3 the number MFI-D-00138.

4 PRESIDING JUDGE FULFORD: Did I see you rising to your feet out
5 of the corner of my eye, Mr. Sachdeva?

6 MR. SACHDEVA: Yes, Mr. President. In my submission, the answer
7 from page 41, lines 5 to 7, as the interpreter indicated, has not been
8 completed, and I would submit that for clarity the witness can be asked
9 to complete that answer. It stops at: "If you had military training
10 centre it was to prevent the children," and thereafter it has stopped,
11 and in my submission the addition the interpreter has provided does not
12 appear to follow on from that previous answer.

13 PRESIDING JUDGE FULFORD: Is the French transcript any better
14 than the English on this, Mr. Sachdeva?

15 MR. SACHDEVA: Apparently not, Mr. President.

16 PRESIDING JUDGE FULFORD: Sir, at one point in your evidence and
17 not very long ago when you were dealing with the 4 kilometre distance,
18 and in particular the locations of Mandro school and the training centre
19 were being focused on, the question was put to you: "So it's not at the
20 training centre that is at a distance of 4 kilometres from that
21 location," to which you replied: "If I said 4 kilometres away, it was
22 from the centre where I was, but there was the school there. If you had
23 a military training centre, it was to prevent the children," and at that
24 point the transcript breaks off.

25 So the question, sir, I have of you is this: When you were --

1 when you were saying that the military training centre was to prevent the
2 children from doing something or whatever it was, was it in fact the end
3 of the sentence? Could you finish that sentence for us?

4 THE WITNESS (interpretation): First there's something that's a
5 little contradictory. I did say that the centre, the training centre,
6 where I spent ten days was not the one that we saw at the school. It's -
7 the school in the valley is 4 kilometres away.

8 And then I said
9 that it would have been an act of violence to have a centre in the school,
10 because that would not allow the children to obtain an education there.

11 PRESIDING JUDGE FULFORD: Sir, that finally concludes your
12 evidence. Before you leave us, I want to express the Court's profound
13 and sincere thanks for your attendance at this trial to give evidence.
14 This court can only function if witnesses such as yourself are prepared to
15 travel a very long way, often at considerable personal inconvenience, if
16 not danger, in order to assist us in the search for the truth.

17 We are acutely aware of the difficulties which can be presented
18 to individuals by coming to fulfil this duty of giving evidence before
19 this court, and you therefore leave here, as I say, with our profound and
20 sincere thanks.

21 Can we now please go into closed session so the witness can withdraw.

22 *(Closed session at 2.33 p.m.) Reclassified as Open session

23 COURT OFFICER: Closed session.

24 PRESIDING JUDGE FULFORD: Public session, please.

25 (Open session at 2.34 p.m.)

1 PRESIDING JUDGE FULFORD: Now, Mr. Walley, the invigorating
2 topic of the extent of the obligation on you to produce the relevant
3 metadata which should accompany documents that the Registry have received
4 from you. We have unburdened ourselves at least twice on this subject I
5 hope comprehensively. Thus far, the recent documentation received from
6 you by the Registry doesn't comply with the instruction that we gave, and
7 I can give you, if necessary, the relevant document numbers, the
8 instruction we gave as regards the provision of metadata.

9 Now, it may be for the most understandable reasons this is simply
10 an oversight. On the other hand, there may be a reason behind it which
11 either in public session or in closed session or ex parte we need to be
12 apprised of.

13 Now, you may want to respond now. You may want to reflect on
14 this and discuss the issue with the Court Officer after we've risen this
15 afternoon with the opportunity of coming back to it perhaps on Tuesday of
16 next week, but it has to be resolved.

17 MR. WALLEYN (interpretation): Thank you, Your Honour. It's a
18 question which is a bit complicated for us because we do not yet have the
19 habit of introducing documents into the e-court system, and I think that
20 we still have to discuss on certain technical aspects with the
21 Registry -- the relevant Registry services.

22 PRESIDING JUDGE FULFORD: Could I commend a tutorial at some
23 stage between now and Tuesday morning with the relevant officer from the
24 Registry so that we can make sure that every document entered into the
25 system has the -- has the appropriate accompanying information. Not to

1 blame you, Mr. Walley. This is quite a byzantine procedure, so it's
2 entirely understood. Thank you.

3 MR. WALLEYN (interpretation): Very well, your Honour.

4 (The Trial Chamber confers)

5 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, we need to go back to
6 the agreement that has been reached with the Defence as regards providing
7 paper copies of documents in advance of their introduction during Defence
8 questioning, and I need to ask you whether as regards participating
9 victims, so those who have been given authorisation to question the
10 relevant witness, you are prepared to continue providing paper copies to
11 those representatives.

12 MR. BIJU-DUVAL (interpretation): Your Honour, it is solely a
13 question of material feasibility and not a question of principle. The
14 documents will be put into the e-court system three days in advance.
15 Now, if there is even the least technical difficulty which arises and
16 which prevents the Legal Representatives from printing the document
17 themselves, then we are going to do our level best to provide them with
18 those documents. As you must have understood, it's just a matter of
19 sharing the responsibility of printing.

20 Today we have three groups of victims. If tomorrow we have 15 or
21 20, then the situation becomes a bit difficult to manage for the Defence.
22 I'm talking about hard copies here, solely.

23 PRESIDING JUDGE FULFORD: Thank you. Now, Mr. Walley, I need to
24 be -- we need to be clear about this. Am I right in understanding that
25 witness statements or interview records compiled by the Prosecution,

1 entered into the e-court system, available to the Judges, available to
2 the Defence, are not ordinarily available to you even if you're
3 participating in relation to, for instance, a victim who has dual status?
4 Is that correct?

5 MR. WALLEYN (interpretation): Your Honour, we have access to
6 certain documents disclosed to us by the Prosecutor, but we don't have
7 access to all the documents which are available to the Defence, but the
8 system proposed by the Defence is that even if the document coming from
9 the Prosecutor, it is re-filed in a specific folder which contains the
10 documents of the Defence disclosed ex parte to the Legal Representatives
11 of Victims. We have been able to experiment with the system, and it
12 works. So these are documents which originally came from the Prosecutor
13 but which were disclosed to us via the Defence.

14 PRESIDING JUDGE FULFORD: Thank you, Mr. Walley.

15 We've had some assistance by way of e-mail communication on this.
16 I'm going to ask, please, before 9.00 on Tuesday that in detail the
17 scheme, as it's proposed for participating victims, is set out stage by
18 stage, line by line, because if -- if this, to use the vernacular is
19 fudged, I anticipate manifold problems in the days and months to come.
20 So this needs to be absolutely clear as to what the agreement is and how
21 it's going to work, and at the moment, I am of the view that there is
22 insufficient clarity as to exactly what is going to be instituted to make
23 sure that you as participating victims get the material in advance.

24 So further discussion, please. Can this be set out in writing.
25 Can all victims, and particularly Ms. Massidda and Ms. Pellet, contribute

1 to this in their role for the Office of Public Counsel for Victims, so
2 that this is really described with care.

3 Convenient by 9.00 on Tuesday?

4 MR. WALLEYN: That's fine, Mr. President.

5 PRESIDING JUDGE FULFORD: Thank you very much indeed.

6 The -- the next task for us is to deliver an oral decision in
7 relation to the disclosure of redacted application forms to participate,
8 et cetera, which is going to take a few minutes to deliver. We will give
9 everyone a short ten-minute break before we commence that exercise. I
10 anticipate that it will probably take about 20 minutes, and so if some
11 counsel wish to excuse themselves, having done appropriate mathematics,
12 namely half an hour, before the next witness commences, that they may do
13 so. So we will rise now and sit again at 5 to 3.00.

14 COURT USHER: All rise.

15 Recess taken at 2.45 p.m.

16 On resuming at 2.55 p.m.

17 COURT USHER: All rise. Please seated.

18 PRESIDING JUDGE FULFORD: This is our oral decision on, one,
19 disclosure of the redacted application forms to participate to the Legal
20 Representatives of Victims, and two, lifting the anonymity of victims.

21 Issue 1: Disclosure of redacted application forms and
22 supplementary information to the Legal Representatives of Victims.

23 The background.

24 1. On the 8th of May, 2009, the Chamber issued the following
25 oral decision:

1 "On the 16th of April, 2009 (document 1817) the VPRS provided a
2 report with additional information regarding the applications by victims
3 to participate in the proceedings pursuant to the Trial Chamber's
4 decision on this issue of the 15th of December, 2008. Apart from
5 updating the Chamber on the current position as regards victims, the VPRS
6 requested guidance regarding the transmission to the parties of the
7 supplementary information attached as annexes. This concerns,
8 particularly, further information requested in the Chamber's decision of
9 the 15th of December, 2008, and it relates, in essence, to applicants who
10 have been granted the status of participating victims.

11 The Chamber orders disclosure of the information contained in
12 the report (rather than the report itself), together with the annexes to
13 the report which we observe do not include identifying information.

14 "We understand that the material is in a state of readiness and
15 can effectively be communicated immediately, and we therefore order that
16 this work must be undertaken at the latest by 4.00 p.m. on the 11th of
17 May, 2009. Thereafter, if the parties or interested participants have
18 submissions to advance on the form of this disclosure, those observations
19 should be filed by the 15th of May, 2009, at 4.00 p.m. (transcript 171,
20 pages 41 to 42)

21 We turn next to the third report on victims' applications.
22 This is document 1823, filed on
23 the 22nd of April, 2009. This relates to
24 seven new applications to participate. These should be notified to the
25 parties and the participants with redactions as necessary for their

1 comments. We understand that these have been prepared, and accordingly,
2 they should, if possible, be filed today, but in any event, no later than
3 4.00 p.m. on the 11th of May, 2009. Any responses are to be filed by
4 4.00 p.m. on the 18th of May, 2009. The Registrar is to consult with the
5 OPCV concerning representation for the one applicant who is currently
6 unrepresented. (transcript 171, pages 44 to 45)."

7 On the 11th and 12th of May, 2009, the VPRS transmitted to the
8 Defence and the Prosecution the documents relevant to the aforesaid
9 rulings (document 1869).

10 During the hearing on the 13th of May, 2009, the OPCV drew the
11 attention of the Chamber to the fact that these documents had not been
12 transmitted to the Legal Representatives of Victims, and that, in the
13 result, they are left in a position where they are unable to make useful
14 submissions on matters concerning redactions or anonymity. The OPCV
15 requested, therefore, that the redacted standard application forms and
16 the supplementary information are notified to the Legal Representatives
17 of Victims concerned (transcript 173, pages 54 to 56). This request was
18 unopposed. (Transcript 173, page 56).

19 At the hearing on the 14th of May, 2009, the issue was again
20 raised by the legal representative, Mr. Mulamba and the OPCV. On that
21 occasion the Chamber instructed the OPCV and Mr. Mulamba to liaise with
22 the VPRS on this matter (transcript 174, pages 13 to 14).

23 Principal counsel for the OPCV immediately contacted the head of
24 VPRS, who in turn responded in writing on the following day, the 15th of
25 May, 2009 (a copy of the e-mail was sent to the Legal Advisor to the

1 Trial Division). The head of VPRS indicated that in accordance with Rule
2 89(1) of the Rules of Procedure and Evidence ("Rules") and various orders
3 of the Chamber, the VPRS transmits the redacted standard application
4 forms to the Defence and the Prosecution for their observations, but not
5 to the Legal Representatives, because the latter are already in
6 possession of the non-redacted versions of the application forms. The
7 VPRS suggested that this has been the practice of Trial Chamber I thus
8 far, and as a result the Registry does not have a sufficient legal basis
9 to depart from the approach followed hitherto: indeed, the VPRS argues
10 that a material change to this system requires an order from the Chamber.
11 It follows that in the submission of the VPRS, the oral decision of the
12 8th of May, 2009 (quoted above) did not amend the existing practice. The
13 VPRS finally suggested that if there is a change in approach, it will
14 need to be informed as to whether the redacted versions are to be
15 notified to all Legal Representatives or only those whose clients are
16 covered by the relevant filings (see the e-mail from the head of the VPRS
17 to Principal Counsel of the OPCV, 15 May 2009).
18 On the 15th of May, 2009, the Chamber instructed the OPCV to liaise
19 with the VPRS to ensure the e-mail exchange referred to above is
20 transmitted to all parties and participants (transcript 175, page 50).
21 The Chamber suspended the deadline for observations on two of the filings
22 referred to in the oral rulings of the 8th of May, 2009 (viz. documents
23 1817 and 1823). The Chamber stipulated that any observations on this
24 issue view (viz. disclosure of redacted application forms to the Victims'
25 Legal Representatives) were to be filed no later than 4.00 p.m. on

1 Monday, the 18th of May, 2009 (transcript 175, pages 50 and 86).

2 On the 18th of May, 2009, the victims' Legal Representatives
3 filed joint observations (document 1882). They seek notification of the
4 redacted versions of the requests to participate (together with any
5 related documents) that are relevant to their clients, since these
6 documents were compiled by, or with the assistance of, the victims they
7 represent, and they directly involve the latter's personal interest (see
8 paragraph 12 of document 1882). They challenge the argument that there
9 is no legal basis for disclosure of these documents to the Legal
10 Representatives, since in the Trial Chamber's decision on victims'
11 participation, the Bench ordered notification to the Legal
12 Representatives of all documents relevant to the interests of their
13 clients (see paragraph 13 of document 1882). The Legal Representatives
14 referred to the basic principles on the Role of Lawyers, and the case law
15 of the European Court of Human Rights, which, it is said, describe the
16 principle that counsel are entitled to access to those documents that are
17 relevant to the interests of their clients (see paragraph 14 of document
18 1882). The Legal Representatives observed that otherwise when the
19 Defence seeks to lift redactions to the application forms or when the
20 Legal Representatives seek to lift the anonymity of their clients, the
21 Legal Representatives will not be in the position to assist in the
22 process because they have been denied access to the redacted versions
23 (see paragraph 15 of document 1882). The Legal Representatives further
24 argued that under the status quo there may be adverse repercussions in
25 other cases before the Court in which their client's interests are

1 engaged, because they may be wholly unaware of redactions made to
2 documents in other proceedings concerning their clients, along with the
3 relevant document numbers allocated to the redacted versions of the
4 application forms (see paragraphs 16 and 17 of document 1882).

5 As regards the oral rulings of the Trial Chamber on the 8th of
6 May, 2009, the Legal Representatives submitted that their effect was
7 clear, and that the failure of the VPRS to implement the Chamber's
8 orders, without first seeking clarification, is a violation of Regulation
9 29 of the Regulations of the Court. The Legal Representatives suggested
10 that this request by the VPRS should have been made far earlier, rather
11 than four days after the expiry of the deadline set by the Chamber (see
12 paragraphs 18 and 19 of document 1882). Generally, the Legal
13 Representatives submit that the oral decision of the Chamber of the 8th
14 of May, 2009, provides a complete legal basis for the notification they
15 seek. Finally, the Legal Representatives observed that in practice they
16 have always been notified of the redacted versions of documents relating
17 to participation by victims, and therefore the de facto practice of the
18 Chamber - affording notification of these documents to the Legal
19 Representatives - is achievable and appropriate (see paragraphs 20 and 21
20 of document 1882). Therefore, the Legal Representatives request the
21 Chamber to order the VPRS to comply with the orders of the 8th of May,
22 2009, and to disclose the redacted versions of the standard application
23 forms (see pages 9 and 10 of document 1882).

24 On the 18th of May, 2009, the Defence indicated that it did not
25 oppose the level of notification sought by the Legal Representatives

1 (viz. The redacted versions of the standard application forms of their
2 clients). However, the Defence opposes disclosure of the entirety of the
3 standard application forms to all the Legal Representatives, since, it is
4 submitted, in accordance with Rule 89(1) of the Rules only the
5 Prosecution and the Defence have the right to make observations on
6 victims' applications to participate (see the e-mail from the Defence to
7 the Legal Advisor to the Trial Division, 18th of May, 2009).

8 Issue 2: Lifting of anonymity of victims and disclosure to the
9 Defence.

10 On the 14th of April, 2009 (document 1816, confidential,
11 paragraphs 7 to 9) Mr. Walleyne sought leave to lift the anonymity of nine
12 victims he represents. By agreement, this document is to be reclassified
13 as a public document pursuant to regulation 23 bis (3) of the Regulations
14 of the Court. By way of detail, Mr. Walleyne:

15 - Requested permission to lift the anonymity of certain
16 participating victims vis-a-vis the parties and the participants, whilst
17 maintaining anonymity vis-a-vis the public;

18 - Inform the Chamber that his clients each consent to disclosure
19 by the VPRS of an "adapted" copy of their application forms to
20 participate in the proceedings (in confidential form), and if applicable,
21 their reparation forms, to the parties and the Legal Representatives of
22 the participating victims;

23 - Seeks to retain redactions as regards the following (for
24 security reasons): the current address of the victims concerned, their
25 home and e-mail addresses, their telephone and fax numbers, and their

1 current profession or work; and,

2 - Seeks to retain redactions to the identity and contact
3 information of those individuals acting on behalf of the relevant
4 victims, along with the identity, contact information, profession and
5 work place of anyone who assisted the victims to complete the application
6 forms.

7 Mr. Walleyne further indicated that all these requests are subject
8 to eventual suggestions that may be made by the VWU.

9 In due course these submissions were supported on the 14th of
10 May, 2009 by Mr. Mulamba.

11 On the 8th and 15th of May (documents 1859 and 1859 corrigendum,
12 confidential, paragraphs 2 to 4), Maitre Baptista on behalf of five victims
13 made submissions of a like nature to those of Mr. Walleyne. By agreement,
14 these documents are to be reclassified as public documents pursuant to
15 Regulation 23 bis (3) of the Regulations of the Court.

16 On the 14th of May, 2009, following the absence of objections or
17 observations by the parties to these proposals, the Chamber granted the
18 requests to lift anonymity for some of the victims currently
19 participating in the proceedings (documents 1816 and 1859, transcript
20 174, page 11, line 24 to page 12, line 25).

21 On the 14th of May, 2009, the VPRS informed the Chamber via an
22 e-mail to the Legal Advisor to the Trial Division that it was awaiting an
23 order from the Chamber before disclosing the identity of any of the
24 victims to the parties and participants, unless otherwise requested. The
25 relevant section was in the following terms: "Firstly, I would like to

1 draw to your attention that we assume that the Registry is expected to
2 wait for an order of the Chamber before disclosing any identity of
3 victims to the parties and participants, unless otherwise requested."
4 The VPRS indicated that it proposed to effect disclosure by setting out
5 the full name and date of birth of any relevant victim in a table (it was
6 submitted that this approach had been followed in the Katanga/Ngudjolo
7 case).

8 On the 19th of May, 2009 (transcript 175, page 6, line 24 to page
9 7, line 20), the Trial Chamber ordered disclosure to the parties in
10 accordance with the table suggested by the VPRS. The Chamber indicated
11 that if it is to be argued that there should be more complete disclosure
12 and most particularly if it is suggested that the application forms
13 - suitably redacted - ought to be disclosed, submissions were to be
14 formally filed. The Chamber instructed the VPRS in any event to serve
15 the table by 4.00 p.m. on the 22nd of May, 2009.

16 On the 27th of May, 2009 (transcript 179, page 3, line 23 to page
17 4, line 20), Maitre Bapita requested clarification as regards an issue
18 raised by the Defence regarding disclosure of particular material
19 contained in the applications to participate made by the relevant five
20 victims she represents. Maitre Bapita indicated that she seeks to lift
21 anonymity for these victims, but she resists more general disclosure of
22 material from the application forms, save to the extent that it relates
23 to the crimes alleged against the accused and the harm suffered by the
24 victims. Maitre Bapita argued against disclosure of the identity of the
25 victims' parents, their ethnic group and their place of birth, absent

1 adequate protective measures.

2 On the 28th of May, 2009 (transcript 181, page 28, line 20 to
3 page 30, line 16), Maitre Bapita further indicated to the Chamber that
4 she was in a position to provide the identity of her clients to the
5 parties (name and date of birth only), and it would be difficult for her
6 to provide any other information since this issue needed to be examined
7 on a case-by-case basis, bearing in mind particularly the security
8 situation in the field. She identified an additional area of difficulty,
9 due to a lack of understanding by the Legal Representatives as to the
10 detail of the information in the material the Registry (i.e. the VPRS)
11 currently redacts, since the victims are not provided with copies of the
12 redacted forms. In practice, it was suggested this makes it difficult
13 for Legal Representatives to formulate submissions on the extent of
14 disclosure to the parties.

15 Analysis and conclusions.

16 Since these two issues are inextricably related, the Chamber will
17 deal with them jointly.

18 Since confidential documents filed with the court often contain
19 sensitive information (e.g. concerning national security, the protection
20 of witnesses and victims, and the Prosecution's investigations), in its
21 Decision on victims' participation, the Chamber decided that the
22 presumption will be that the Legal Representatives of Victims are to have
23 access to public filings alone. However, the Chamber stressed that if
24 confidential filings are of material relevance to the personal interests
25 of participating victims, consideration will be given to providing the

1 necessary information to them, so long as this step will not breach
2 protective measures that need to remain in place. The Chamber also
3 established that in accordance with Rule 92(5) of the Rules, victims or
4 their Legal Representatives are to be notified in a timely manner of all
5 public proceedings and filings before the Court, and, if the Chamber
6 determines that a victim's personal interests are materially affected, of
7 any that are confidential to the extent that this does not breach
8 protective measures that need to remain in place (document 1119,
9 paragraphs 105 to 108).

10 Furthermore, in its oral ruling of the 8th of May, 2009, the
11 Chamber ordered that the third report on victims' applications (document
12 1823) "should be notified to the parties and the **participants** with
13 redactions as necessary for their comments" (transcript
14 171, pages 44 and 45).

15 As regards the further report which provides additional
16 information on the applications by victims to participate in the
17 proceedings (document 1817), although the Chamber did not explicitly
18 order notification of it to the parties and participants, it nonetheless
19 instructed that "if the parties or **interested participants** have
20 submissions to advance on the form of this disclosure, those observations
21 should be filed by the 15th of May, 2009, at 4.00 p.m." emphasis added]
22 (transcript 171, pages 41 and 42). In view of the fact that participants
23 were requested to make submissions on the form in which disclosure of
24 this information is to be implemented, it is helpful for them to receive
25 the relevant documents (suitably redacted) in order to formulate their

1 submissions. If there was any doubt as to the meaning or effect of an
2 oral or written decision issued by the Chamber, the relevant organ of the
3 Court, party or participant should have sought clarification forthwith.

4 Turning to the substance of this issue, in light of Rule 92 of
5 the Rules and the approach described in the Decision on victims'
6 participation, the Legal Representatives of Victims whose interests and
7 concerns are engaged by filings 1817 and 1823 (viz. those whose personal
8 interests the Chamber has determined are materially affected) shall
9 receive any relevant document, including any confidential or ex parte
10 documents transmitted to the parties in accordance with the Chamber's
11 oral rulings of the 8th of May, 2009, to the extent that this does not
12 breach protective measures that need to remain in place. Other Legal
13 Representatives are unaffected by this decision.

14 It follows that, as a general rule, the Legal Representatives of
15 Victims, whose personal interests the Chamber has determined are
16 materially affected, shall receive notification of any filing concerning
17 their clients, unless there is a contrary order from the Chamber or
18 unless the party or participant filing the document seeks some other
19 order from the Chamber, by way of a written application, whereupon the
20 Chamber will determine the issue. Otherwise, disclosure should include
21 the redacted versions of the application forms of the representative's
22 clients (to participant or to receive reparations), as transmitted to the
23 parties (see Decision on victims' participation, 18th of January, 2008,
24 document 1119, paragraph 107, and Order on notification of filings, 19th
25 of November, 2007, document 1035, paragraph 4).

1 Additionally, once the Legal Representatives of those victims who
2 have requested to lift their anonymity have received the redacted
3 versions of the application forms, they are to liaise with the VPRS in
4 order to ensure that only those redactions that are strictly necessary
5 (for security reasons) are maintained. It follows that the parties and
6 any interested participants are to receive suitably redacted versions of
7 the applications to participate, and any other relevant documents, for
8 those victims who have agreed to lift their anonymity. As regards the
9 present applications to lift anonymity, this material is to be provided
10 within seven days of this decision.

11 Finally, as regards the supplementary information, the Defence
12 responded substantively on the 15th of May, 2009 (document 1874), and the
13 Prosecution have until 4.00 p.m. on the 15th of June, 2009 to file any
14 final submissions. On the seven new applications, the Prosecution
15 responded substantively on the 15th of May, 2009 (document 1880), and the
16 Defence have until 4.00 p.m. on the 15th of June, 2009, to file any final
17 submissions.

18 That concludes this ruling, save to say that Maitre Bapita should
19 be referred to throughout the perfected version of the transcript
20 consistently as Maitre Bapita, and secondly, wherever I have indicated
21 that emphasis was added, it now occurs to me that I will need to be
22 informed as to whether on Transcend it is possible to add emphasis,
23 because I think on the version currently before us, although I've
24 referred to emphasis, none appears, which makes the observations on both
25 occasions meaningless. So could the Court Officer in due course let me

1 know whether emphasis can be appropriately added, and if it can't, there
2 will be a slight adjustment to the way this decision is formulated to
3 reflect that disability. Thank you very much.

4 Maitre Mabilille, now the opportunity for the brief oral
5 submissions that we indicated should be made earlier today.

6 MS. MABILLE (interpretation): Thank you, Your Honour. The next
7 Witness, well, I will be cross-examining, but as regards the expert,
8 Mr. Garreton, it will be my colleague Mr. Biju-Duval, so he will be
9 making comments on that, your Honour.

10 PRESIDING JUDGE FULFORD: Thank you very much. Yes,
11 Mr. Biju-Duval.

12 MR. BIJU-DUVAL (interpretation): Thank you, Your Honour. I
13 would like to make a few brief comments regarding the requests made by
14 the Legal Representatives of Victims regarding asking a number of
15 questions to the expert, Mr. Garreton.

16 The Defence has indicated that it objects to those questions
17 requested. Not for -- because of any aggressiveness vis-a-vis the
18 victims. On the contrary. I'm sure the Chamber has understood that.
19 But because this leads to a major point of law.

20 The Legal Representatives seem to be reasoning as follows: The
21 expert, Garreton, will be dealing with particularly important matters as
22 regards the context. He will be discussing areas which are of major
23 importance for the understanding of this case. He will be dealing with
24 matters of interest to all, and since these matters are of interest to
25 all, quite naturally, these topics are of interest personally to all of

1 the victims, to all of the victims concerned here, and therefore the
2 conclusion is that the victims who have been allowed to participate have
3 an interest in dealing with these matters with the expert.

4 The Defence begins with the same basic idea, but the conclusion
5 we draw is completely opposite. The Defence admits, along with the Legal
6 Representatives, that the matters that will be dealt with by the expert
7 Garreton are important matters and of interest to all, and basically the
8 position of the Defence is that it is because these matters are of
9 interest to all that they are not specifically of interest, particularly
10 of interest to the personal and individual interests of one victim or
11 another, and this leads us and should lead the Chamber to reconsider this
12 point of law as regards the concept of the personal interest of victims,
13 in particular as regards their application to participate.

14 There are three points that I will not deal with in further
15 detail unless, of course, the Chamber so requests.

16 The first point is the principle contained in the statutes which
17 makes it possible for victims to participate is based on the idea that
18 the individual interests, the particular interests of individuals, of the
19 victims as individuals, should not be hidden behind the defence of
20 general interest which is represented by the Office of the Prosecutor,
21 and therefore, we must be cautious that individual personal interests of
22 a very specific nature be able to manifest itself and not be -- not
23 disappear behind the concept of general interest. We admit that concept.
24 But that does presuppose that a specific and personal interest be proven
25 to exist, that it be explained in a specific submission or request to

1 participate.

2 This has -- does not seem to be the case, because the victims,
3 all the victims, without any differentiation, have requested to deal with
4 matters of interest to all matters that refer to the concept of the
5 defence of general interest in this case.

6 My second point is as follows: If we were to allow the victims
7 to intervene on these matters of general interest, then we would find
8 ourselves in a situation where the general interest, which is ordinarily
9 represented by the Office of the Prosecutor, would also be represented by
10 a second body aimed at defending general interest, that is, through the
11 Legal Representatives of Victims. In other words, we would find
12 ourselves in a situation -- and I'm having trouble finding the precise
13 word that I'm looking for. You would have, in a way, a dual -- a dual
14 prosecution, if you will, as regards these matters of general interest.

15 Those were the first two reasons for which the Defence is against
16 this application. The second reason is as follows, which is a separate
17 reason: The Chamber shall note, at least this is the position of the
18 Defence, that some of the questions or some of the matters that the Legal
19 Representatives would like to deal with with this expert, some of these
20 questions of these areas have not been dealt with by the expert in his
21 report.

22 To be brief on this matter, I would like to refer to the
23 submission 1939, dated June 8th, filed by Mr. Luc Walley on the
24 matter -- on questions 6(d) and 7(c). Those questions were not dealt
25 with by the expert in his report. One of those questions in particular

1 deals with the living conditions in the training camps for child
2 soldiers. The expert, Mr. Garreton, does not at any time deal with those
3 matters as regards the facts of the case and the period of time that
4 we're interested in, and certainly not as regards the organisation that
5 we're interested in, that is, the UPC. At no point in time does the
6 expert deal with the UPC in his report in any way, and certainly not in
7 the form of a -- of an armed group having integrated child soldiers
8 within its ranks.

9 As regards the other submission presented by my learned colleague
10 Joseph Keta, and here I'm referring in particular to question -- well,
11 the question which is in paragraph 12, Mr. Keta requests more precise
12 information as regards the victims of the acts committed by the UPC.
13 Again, the Defence notes that the expert Garreton did not mention these
14 matters at all in his report. Therefore, these questions were not dealt
15 with in the expert report, and therefore to introduce such topics through
16 the form of these questions would put the Defence ill at ease as regards
17 its preparation, and therefore, your Honour, this is why we object to
18 this submission.

19 Thank you for allowing us to express this orally.

20 PRESIDING JUDGE FULFORD: Very clear as ever, Mr. Biju-Duval.

21 Thank you.

22 Now, Mr. Walley, I imagine you'd like to respond to this.

23 Ms. Pellet, do you wish to make submissions on this or not? Mr. Keta,
24 are you going to wish to make observation? You are.

25 MR. WALLEYN (interpretation): Your Honour, would it be possible

1 for us, the two legal representatives, to have one minute to confer?

2 PRESIDING JUDGE FULFORD: You most certainly can. Yes, of course.

3 (Legal Representatives confer)

4 PRESIDING JUDGE FULFORD: Just before you start, Mr. Walley.

5 We're now nearly quarter to 4.00. Can somebody please extend our sincere
6 apologies to the witness who was to be called this afternoon, Witness 15.
7 By the time this exercise is concluded and we have dealt with certain
8 other outstanding housekeeping matters, it's simply not going to be worth
9 bringing the witness down almost immediately to adjourn. So I repeat,
10 can he be told emphatically that the Judges apologise to him for the fact
11 that he has been kept waiting all day and in the result has not been
12 called, but we, unexpected emergencies aside, can guarantee that he will
13 begin first thing on Tuesday.

14 Mr. Walley.

15 MR. WALLEY (interpretation): Thank you, Your Honour. Thank
16 you, Your Honours. We filed applications to be allowed to examine a
17 witness who is a contextual witness. An expert on context is someone who
18 doesn't appear here to provide direct evidence of guilt or -- of the
19 guilt or innocence of the accused. He comes here -- he appears before
20 the Court to provide the Chamber and everyone else participating in the
21 proceedings with information on the context within which the crimes that
22 you have to examine occurred or were committed.

23 This context may be of interest from a legal point of view. I
24 have in mind the aspect of an armed conflict. So this is a contextual
25 element that might be of legal interest, but in general, the context

1 doesn't have a direct influence on the question of guilt or innocence.
2 It has to do with comprehension. It's an element of comprehension, and
3 naturally this comprehension, this understanding, is of general interest.

4 It's true that the people in the Congo, the international
5 community, everyone may be interested in finding out what in fact took
6 place in Ituri. That is what Maitre Biju-Duval has said when referring
7 to the fact that everyone is interested in this context. But if we are
8 interested in this context, it's not for the same reasons as everyone
9 else, it is because we have a personal interest which is at stake in the
10 matter, and I therefore note that when the Rome Statute was quoted by my
11 learned friend, it was somewhat truncated. Article 68 doesn't refer to
12 the individual interest of victims. It refers to personal interests, and
13 we have clients who have a personal interest in the context. It's not a
14 matter of academic or scientific interest. It's not matter of pure
15 curiosity that drives them. It is because they were personally affected
16 by the crimes in question that they are interested in the matter.
17 The facts which we have been discussion over the last few months here, the
18 enlistment of children under the age of 15 years is something that they
19 personally experienced. They experienced it physically on occasions. When
20 they say they are interested in the context within which these crimes
21 occurred, well, they're expressing their interest in the context with which
22 they lived a good part of their lives.

23 In my opinion, this is a matter of personal interest which has to
24 be distinguished from general interest that is represented by the OTP.
25 It's not matter of general interest, the kind of interest that everyone

1 has in such a case. We have a personal interest in the matter. Our
2 clients have a personal interest in the matter when it comes to
3 determining how things unfolded. They know what happened to them. They
4 know that they were abducted, that they were recruited, that they were
5 sent into combat, but in fact they know a lot less than anyone else.
6 Even at the time that they were involved in fighting, they knew less than
7 we do about the context within which they were playing the roles
8 allocated to them. They had 10, 11 or 12 years -- they were 10, 11, or
9 12 years old. They knew nothing about the conflict, about the forces
10 that were present there. They knew nothing about what was behind the
11 conflict, and this is something that they are interested in. They are
12 interested in this because it's a matter of personal interest, and,
13 therefore, I think that one should not play with words.

14 Our clients do have a real personal interest when it comes to
15 learning about the context within which what happened happened. As far
16 as the specific questions are concerned --

17 PRESIDING JUDGE FULFORD: Mr. Walley, forgive me interrupting, just a
18 moment. We are under constraints of time in that the tape will run out at
19 5 to. We are very interested in having these submissions, if possible,
20 concluded this evening so that we can reflect on the matter over the
21 weekend, because this is obviously looming early-ish next week. So I don't
22 want artificially to cut you short, because these are obviously important
23 matters, but if you and Mr. Keta could, as it were, condense what you
24 have to say so we have the main points, that would be very helpful.

25 MR. WALLEYN (interpretation): I'll conclude with my submissions

1 now and give the floor to my learned friend Maitre Keta. But as for the
2 specific questions, they were questions put to the expert even if he
3 didn't answer them in a comprehensive manner.

4 MR. KETA (interpretation): Thank you. I'll just take five
5 minutes to respond to what my learned friend stated.

6 Everything depends on what Maitre Biju-Duval means by the
7 Prosecution's general interest and by the individual interests of the
8 victims. In a criminal case like this one it's impossible to distinguish
9 the two because when you read the provisions of the Rome Statute there
10 are several stages, and at one point in time we, the Legal
11 Representatives of Victims, will be more active when it comes to
12 reparation. And what do we have to demonstrate before the Judges at that
13 point in time? It's the general interest of the Prosecution. They have
14 to demonstrate that crimes were committed, but individual interest for us
15 has to do with damage caused and reparation and at that stage, at the
16 stage of reparations, we have to find a causal link between the crimes
17 committed and the damage caused.

18 In this particular case, we believe that before addressing the
19 issue of damage, of reparation, we must necessarily discuss the matter of
20 a general interest, and in order to understand the Prosecution's
21 submissions, we must be familiar with the context. That's our
22 obligation. And context, as represented in the Garreton report, well, my
23 learned friend only commented on paragraph 12, but I raised a few issues
24 with regard to the Garreton report, and I assure the Chamber that I won't
25 go beyond the scope covered by the Garreton report.

1 When reference is made to paragraph 12 that I am personally interested in,
2 and there I spoke about psychological damage caused, well, when you have a
3 look at the Garreton reports, page 22, he quite clearly states that the
4 children were the victims of mutilation. They -- they had to abandon their
5 education. Well, I represent 47 victims, 20 of which are children who were
6 pupils. And so that concerns the children here.

7 And then Mr. Garreton speaks about the context in Ituri in
8 general. He didn't address any specific points, but the victims that I
9 represent were concerned by the fact that their education was
10 interrupted, by the fact that they were forcibly recruited. So this is
11 important. It's important that when Mr. Garreton appears before the
12 court that he tell us about all the damage caused, psychological and
13 material damage. He also said somewhere that it was on the road to
14 Uganda. And if you are familiar with the layout of Ituri, well, that is
15 in fact where the events took place.

16 In my case, school was damaged and children abandoned their
17 education. So damage was caused. And it's important that Mr. Garreton
18 tell us about the context in Ituri and that he tells us about the places
19 when questions are put to him.

20 So the victims I represent are concerned about these matters.
21 They are numerous, and this concerns the pupils I've mentioned.

22 On page 22 when he says that there was mutilation, that the
23 education was interrupted, and there was psychological damage, well, this
24 is something that we are interested in.

25 So to summarise, to speak about the Prosecution's general on the

1 one hand and on the other hand to speak about individual interests, well,
2 we can't make a distinction between the two. We are in -- in a case that
3 will have different stages, and we would like to reassure the Chamber
4 that we won't go beyond the scope of the Garreton report. As far as I'm
5 concerned, I don't want to make use of any other documents. Perhaps I
6 could use the documents in the case, the statement from the expert
7 Prunier. When you take the Prunier and Garreton reports, certain things
8 are contradictory, and this might be in favour of the accused. We're not
9 here to accuse the accused, but there are many things that might be of
10 interest to the accused as well.

11 I thank you very much for your attention.

12 PRESIDING JUDGE FULFORD: Now, gentlemen, I'm sorry you've been
13 squeezed in slightly at the end of the afternoon. Are you both sure that
14 the central points you would wish to get across have been expressed?
15 Good. All right. Thank you very much, Mr. Walley.

16 Anything finally, Mr. Bijou-Duval, or not?

17 MR. BIJU-DUVAL (interpretation): Just one word, one matter of
18 concern. It's not a response, but we are concerned by the fact that the
19 use of one document or particular documents were -- was mentioned with
20 regard to the expert Garreton. As far as I know, if I'm not mistaken, we
21 haven't been informed of the fact that the Legal Representatives had the
22 intention to use such and such a document. This isn't something that was
23 referred to in their application, and this is a different matter. It's a
24 matter of using a piece of evidence that we are not familiar with at
25 present. So it is a distinct legal issue.

1 PRESIDING JUDGE FULFORD: That's helpful, Mr. Biju-Duval. Now,
2 you're sure you've covered all the areas you'd wished to? Good.

3 Thank you all very much.

4 Maitre Mabilille, I think with the other housekeeping matters that we
5 raised, it will be convenient for you to deal with all of them by way of e-
6 mail with the legal advisor to the division. Having had a quick look at
7 them, I think that they can all be dealt with in that way; is that right?

8 MS. MABILLE (interpretation): Absolutely, your Honour, and I
9 would suggest -- I don't know whether it's possible for us to do this
10 this evening, because at 6.00 all the offices must be closed, but on
11 Monday you'll have an e-mail in which the various points will be
12 addressed.

13 PRESIDING JUDGE FULFORD: Thank you very much indeed.

14 We wish you all an extremely pleasant weekend, and we meet again
15 at half past 9.00 on Tuesday next week.

16 COURT USHER: All rise.

17 The hearing ends at 3.55 p.m.

18 RECLASSIFICATION REPORT

19 Pursuant to Trial Chamber I's email instruction dated 27th January 2012,
20 the transcript is Reclassified as public after the indicated redactions
21 have been implemented as ordered by the Chamber. All private and closed
22 sessions (*) are now available to the public with the exception of the
23 portions of the transcript that have been redacted.