

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and
4 Judge René Blattmann
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
6 In the case of the Prosecutor versus Thomas Lubanga Dyilo
7 Trial Hearing
8 Thursday, 25 November 2010
9 The hearing starts at 9.31 a.m.
10 (Open session)

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

13 PRESIDING JUDGE FULFORD: Good morning.

14 Yesterday, our attention was drawn to a letter dated 19 November
15 that has been sent by the Prosecutor of this court. It is, insofar as it
16 concerns Defence advocates, very general in nature, and to the extent
17 that it can be said that it has at least the appearance of denigrating
18 those appearing for accused before this court, we intend wholly to ignore
19 it. It seems to us that given its very general nature, it is not of
20 assistance as regards either this abuse of process application or the
21 issues that we may have to consider as regards the charges the accused
22 faces.

23 The deposition taken for Witness 0582 is to be uploaded on to the
24 court's case management system, and is to be provided with an EVD number
25 once the edited transcript has been prepared. Any documents shown to

1 Witness 0582 or used during the deposition process are also to be
2 uploaded, unless there are particular objections to any documents that
3 are brought to our attention by Friday, 4 p.m., next week.

4 The witness statement of 0583, if it hasn't already been uploaded
5 on to the case management system, should be uploaded, and it needs to be
6 provided with an EVD number.

7 On the 27th of October, there was an *ex parte* Defence and Victims
8 and Witness Unit only hearing, during which the Chamber requested an oral
9 report from the Victims and Witness Unit. No report has been
10 forthcoming.

11 Therefore, we order the VWU to appear before us at 2.00 p.m. on
12 Tuesday of next week, that is the 30th of November, to provide the report
13 that we requested on the 27th of October.

14 The Prosecution seeks redactions to the names and other
15 identifying information which appears on document 526. These two
16 individuals were seen by investigators, but a decision was made not to
17 call them. The material relating to these individuals does not cross the
18 Article 67(2) or the Rule 77 threshold for disclosure. Since information
19 relating to these two individuals is irrelevant in this case, and there
20 is a material, though unexplored, risk to their safety on account of
21 their involvement with the court, the redactions to their names will
22 remain in place.

23 The court needs to finalise the schedule for submissions on the
24 abuse of process application. The Defence has requested a variation of
25 the original indication that we had given, the original indication being

1 that the Defence submissions should be filed by 4 p.m. on the 10th of
2 December. Maître Mabilie has requested two or three additional days
3 because Witness 0598 is now to be called, purely as a replacement for
4 0555. In our judgement, given that the additional testimony from 0598
5 will not add in any significant way to the matters already known by the
6 Defence, and given the strong need for there to be an English translation
7 of the Defence submissions before the Christmas and New Year break, we
8 hold the date of the 10th of December at 4 p.m. for the filing of the
9 Defence submissions.

10 With a considerable degree of reluctance, we accede to the
11 Prosecution's submission that their submission should be filed on Monday,
12 the 31st of January. We say that it is with a considerable degree of
13 reluctance, not in any sense as a criticism of the Prosecution, but
14 because of the need to ensure that this trial remains on track. However,
15 we recognise that there are almost undoubtedly going to be a very large
16 number of complicated factual issues for the Prosecution to address.
17 That date is a final one. The Prosecution submissions must be in on that
18 date. We give leave for the Representatives of Victims to file any
19 relevant submissions by the same deadline. There can be, if the Defence
20 wish, a Defence response to those submissions by 4 p.m. on Friday, the
21 11th of February. Once again, that is a final, unbreakable deadline
22 unless something wholly exceptional occurs.

23 We intend to deal with this abuse of process submission on the
24 basis of the written submissions by counsel, unless the Chamber decides
25 to hold a hearing because there are matters of clarification that we seek

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1 from the parties.

2 Otherwise, you should all anticipate that this will be done on
3 the basis of your written submissions.

4 Finally, before the witness comes in, we ask that the Prosecution
5 ensures that we receive an answer as soon as possible to point 1(iv) on
6 document 51 as regards the individual whose circumstances were unknown.
7 It's clearly desirable, if there is going to be disclosure in relation to
8 him, that that is effected as soon as possible.

9 Unless there are any other matters, we'll go into closed session
10 so the witness can come into court.

11 Mr. Sachdeva?

12 MR. SACHDEVA: Thank you, Mr. President, just in relation to the
13 deposition of 0582, my understanding is that at the moment it would be
14 uploaded confidentially and we would seek leave to impose certain
15 redactions before it is publicised.

16 PRESIDING JUDGE FULFORD: Thank you for raising that. That must
17 be right. Closed session, please.

18 *(Closed session at 9.42 a.m.) Reclassified as Open session

19 COURT OFFICER: We are in closed session.

20 PRESIDING JUDGE FULFORD: Yes. The witness, please.

21 (The witness takes the stand)

22 WITNESS: WITNESS DRC-OTP-WWWW-0038 (Resumed)

23 (Witness answered through interpreter)

24 PRESIDING JUDGE FULFORD: Public or private, Mr. Desalliers?

25 MR. DESALLIERS: (Interpretation) Private session.

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1 PRESIDING JUDGE FULFORD: Private session, please.

2 *(Private session at 9.44 a.m.) Reclassified as Open session

3 COURT OFFICER: We are in private session.

4 PRESIDING JUDGE FULFORD: Good morning, sir.

5 THE WITNESS: (Interpretation) Good morning.

6 PRESIDING JUDGE FULFORD: Now, Mr. Desalliers, you are both going
7 to be speaking in the same language. And I don't want to spend the
8 morning having to interrupt you and the witness because messages are
9 coming up on the French transcript that catastrophe is repeatedly
10 interrupting these proceedings. Please, will you both speak slowly and
11 make sure that once one speaker has finished, there is a substantial gap
12 before the next one starts. Otherwise, I'm going to be very annoying and
13 I will be continually interrupting you. So, please, both of you remember
14 this. Right.

15 QUESTIONED BY MR. DESALLIERS:

16 Q. (Interpretation) Good morning, sir.

17 A. Good morning.

18 Q. I will introduce myself, my name is Marc Desalliers. I am
19 counsel and I will be asking you questions on behalf of the Defence of
20 Mr. Thomas Lubanga.

21 A. All right.

22 Q. Yesterday you indicated that the first name of 0316 was (Redacted).
23 Could you tell us what his full name is?

24 A. Yesterday I said I don't know his full name, but the name that
25 I called him was (Redacted).

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1 Q. Thank you.

2 MR. DESALLIERS: (Interpretation) Could we give the binder back
3 to the witness, please?

4 PRESIDING JUDGE FULFORD: Prosecution's binder or your binder?

5 MR. DESALLIERS: (Interpretation) Our binder, your Honour.

6 PRESIDING JUDGE FULFORD: Black binder, then, please. Thank you.

7 MR. DESALLIERS: (Interpretation)

8 Q. And I would like you to start by going to the document that is
9 under tab 3. You have tabs on the right-hand side, little bits of paper
10 with the numbers marked on them on the right-hand side, and I'd like you
11 to please take the one that has the number 3 on it. So this is
12 DRC-OTP-0232-0226. And this, sir, is your interview, so the statement
13 that you gave when you came to The Hague in September 2009. So your
14 interview with the investigators from the Office of the Prosecutor.

15 Could you go to page number 7 of this document? So the questions
16 begin on page 6. You were asked how you came into contact with the
17 investigators of the International Criminal Court, and your answer is
18 located on page 7, and I'm going to quote part of it in English:

19 (In English) "He told me that there were people from the court
20 because he himself had contact with a friend called (Redacted) was
21 working for the court, and these court people, these people from the
22 court, were looking for persons who participated in the fights of
23 Mongbwalu and Kobu." (Interpretation) End of quote.

24 Therefore, in September 2009, when the questions were asked of
25 you regarding 0316, you did not refer to him as being (Redacted). You

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1 referred to him as (Redacted).

2 Now, does that help you to remember his full name?

3 A. Yes. Now I remember his full name. So I called him (Redacted)

4 (Redacted), but when he answered on the phone, it was (Redacted). But

5 (redacted) is also his surname.

6 Q. Thank you.

7 MR. DESALLIERS: (Interpretation) Mr. President, I think we can

8 go back to an open session.

9 COURT OFFICER: Do you wish to assign an evidence number to the
10 statement? The statement shall carry the evidence number EVD-D01-00394.

11 (Open session at 9.51 a.m.)

12 COURT OFFICER: We are back in open session.

13 PRESIDING JUDGE FULFORD: Yes.

14 MR. DESALLIERS: (Interpretation)

15 Q. So now we are back in open session, so we will no longer refer to
16 the name of the person we have just mentioned. We are again going to
17 talk about 0316.

18 A. Yes.

19 Q. Is your relative, whom we spoke about yesterday, the person who
20 introduced you to 0316 for the first time?

21 A. Yes.

22 Q. When 0316 introduced himself to you, the first meeting, what did
23 he tell you about his work?

24 A. He didn't explain very broadly where he worked, but he asked me
25 questions to find out if I was a soldier. I presented all my documents,

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1 and he said he worked for the court, but he didn't explain what section.
2 He simply said he worked for the court, and that he was looking for
3 persons who had fought in Mongbwalu and Kobu. He could introduce to
4 another person to speak to him. He didn't explain what section of the
5 court he was working for. He simply said that he worked for the court.

6 Q. Did he tell you that he worked for the International Criminal
7 Court?

8 A. Yes.

9 Q. You explained to us yesterday that 0316, during that first
10 meeting, gave you the names of commanders and asked you for each one if
11 you knew them and that you answered that you knew them. Could you tell
12 us the names of the commanders that 0316 gave to you?

13 A. He said Bosco Ntaganda and Kisembo. General Kisembo and Salumu
14 and lots of others. I gave you the big ones here, Bosco, Kisembo,
15 Salumu.

16 Q. You've given us three names but actually 0316, did he suggest
17 other names?

18 A. Yes.

19 Q. You don't remember which ones today?

20 A. I gave you the three names, the big ones, the three big ones.
21 And he also gave other big names, Chief Kahwa and there are other names.
22 I have forgotten. Here I'm just giving you the names of the
23 highest-ranking of the FPLC, those who had major functions, but he also
24 gave the names of Abelanga, those were also officers who had a large
25 amount of influence in the FPLC, I know, and lots of others' names.

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1 There was a lot of talk about -- but he asked me if I knew the major
2 leaders I mentioned here and he also asked questions to find out if I
3 knew who had fought or worked in the same fields and I had answered yes,
4 that I had knew them very well. I had several opportunities to fight
5 with them in the same battlefield. But he gave lots of other names that
6 I have forgotten maybe.

7 Q. Yesterday you indicated that 0316 had given money to members of
8 your family at the first meeting for his transportation. Do you know
9 what amount 0316 gave to the members of your family?

10 A. I don't have details regarding the amount of money he gave to the
11 member of my family, but I just know he gave money to pay for the
12 transportation. I don't know the amount because, if you give it to --
13 money to one person, I wasn't concerned by it because for a long time
14 they had already been in contact. I met (Redacted), the same
15 day, but I did not know how they met. I didn't interest myself in that
16 until today. I didn't know what relationship they had, how they knew
17 each other, and how they had the opportunity of getting to know one
18 another. I don't have details on that. I don't know. I was surprised
19 to see my relative in relations with -- in contact with somebody from the
20 court.

21 Q. We would like to --

22 MR. DESALLIERS: (Interpretation) My attention has been rightly
23 drawn to the fact, your Honour, that a name has been mentioned. We would
24 like to ask for a redaction.

25 Q. It's a difficult exercise, sir, let's try and remember not to

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1 mention names but to mention 0316. Thank you.

2 A. Yes.

3 PRESIDING JUDGE FULFORD: Certainly. Redaction, please, Court
4 Officer.

5 MR. DESALLIERS: (Interpretation)

6 Q. Therefore, you indicated to us you do not know how your relative
7 came to know 0316.

8 A. I do not know how they got to know one another, but what I do
9 know is that my relative also works at MONUC. I don't know in what
10 section but he works at MONUC. So maybe they got to know each other at
11 the headquarters of the MONUC or at work but because my relative works at
12 the MONUC, perhaps they met there, but I don't have any details on how
13 they got to know one another. I don't know.

14 Q. I apologise, sir, if I do this, it's not to interrupt you, it is
15 merely to ask you just to slow down slightly, just for the transcription.
16 Thank you very much. So your relative worked at the MONUC.

17 MR. DESALLIERS: (Interpretation) So perhaps, Mr. President, we
18 could move to a private session.

19 PRESIDING JUDGE FULFORD: Private session, please.

20 *(Private session at 10.00 a.m.) Reclassified as Open session

21 COURT OFFICER: We are in private session.

22 MR. DESALLIERS: (Interpretation)

23 Q. Could you explain what his job was at MONUC?

24 A. He was (Redacted) at MONUC. I
25 don't know more precisely exactly where he worked but I know he was a

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1 guard.

2 Q. Do you know whether your relative had another job?

3 A. No. I know only that he was (Redacted). I don't know where else he

4 might have worked. I don't know. We didn't live in the same place.

5 I wasn't even living at home. I was living at boarding school. I wasn't

6 living at home. So it wasn't easy to be in contact with him regularly.

7 I only saw him on the weekend, and again not even every weekend.

8 I didn't go home every weekend. I was devoting my energy to my studies.

9 I didn't have time to go home to find out or to ask him what he was doing

10 or who was doing what. All I know is that he was working at MONUC. I

11 don't know any more details about that.

12 Q. But yesterday you told us that you knew him well and that you saw

13 him frequently. So I'd like to ask the following question. Did you have

14 knowledge of the fact that he was working or had worked for the (Redacted)

15 (Redacted)

16 A. I don't understand who you're referring to. Members of my

17 family, my relative? Or 0316?

18 Q. I'm referring to your family member, your relative. I'm not

19 mentioning his name because we are not in closed session. The name was

20 (Redacted). Do you know whether or not he was working or had worked at one

21 point in time at the (Redacted)

22 A. I don't know. I don't know if he worked for the (Redacted)

23 (Redacted). I don't have any information about that. And he

24 didn't say anything to me. I don't know. Now that I hear you saying

25 that, perhaps he did. I -- it's the first time I've heard the name of

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1 the (Redacted).

2 Q. Have you or did you have knowledge of the fact that 0316 also
3 worked for the (Redacted)?

4 A. When I was in contact with 0316, the only thing I knew was that
5 he was working for the court. As regards the (Redacted), I didn't hear anything
6 about that. I didn't know whether or not he was working for the (Redacted) or
7 had worked for the (redacted).

8 Q. To be absolutely certain I've understood your answer, at the
9 point in time when you met him, you did not know that he had worked for
10 the (Redacted), but did you learn that, that fact, later on?

11 A. When I was in Kinshasa, I heard things, saying that Mr. 0316 had
12 probably worked for (Redacted), but I don't have any precise information.

13 Q. Who gave you that information?

14 A. Can I give the name now? I've heard that from (Redacted) was
15 the person that (Redacted) sent to me to go and get me at boarding
16 school, and he is the one who told me that (redacted) had changed telephone
17 numbers and that for the time being he was working for the (Redacted). At the
18 time, I was in Kinshasa and the person who called me said, well, (Redacted)
19 is here and that person said, oh, (Redacted) has changed telephone numbers
20 and is working for (Redacted). I was already in Kinshasa. I don't know. It
21 was one of the days when I was in Kinshasa that I found out that (Redacted)
22 was working for (Redacted) but when I was in Bunia, I didn't know anything at
23 all about his working for (Redacted). The only thing I knew at the time was
24 that he was working for the court and I didn't even know which unit he
25 was working for. But at the time, when I was -- according to myself,

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1 when I was in Bunia, (Redacted) was a contact person between the court
2 and witnesses. He was an intermediary. That was the conclusion that
3 I drew.

4 The investigator often told me not to talk about the content of
5 what I said to the investigator, not to discuss it with (Redacted), and
6 that's how I concluded that (Redacted) was simply an intermediary because
7 I was told not to discuss what I said with the investigator with him.
8 I was told not to discuss what I said with this person who was the
9 contact person with the court. That's why I concluded he was an
10 intermediary.

11 PRESIDING JUDGE FULFORD: Sir, you're doing extremely well. In
12 your last answer which was quite long, you started to speed up, rather,
13 by way of delivery. So can you just try to keep it a bit slower to give
14 the interpreters and stenographers the best opportunity to catch what you
15 say.

16 Yes, please carry on, Mr. Desalliers.

17 MR. DESALLIERS: (Interpretation)

18 Q. At what period of time did (Redacted) -- or rather, excuse me,
19 correction, did (Redacted) go to see you in Kinshasa?

20 A. No. He didn't see me. He called me on the telephone. We spoke
21 on the telephone. He didn't come to see me.

22 Q. But at what period of time was it that he called you?

23 A. I don't know precisely. I remember that I went to Kinshasa in
24 April of 2006 -- no, April of 2007. In other words, just after April
25 2007. That's when I was in Kinshasa. But I don't know the exact date,

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1 but we spoke on the telephone frequently.

2 Q. Why did (Redacted) call you?

3 A. We spoke on the phone the way people who know each other -- like
4 anyone else I might call. We would talk. But it had nothing to do with
5 the court. We would call to find out if everything was okay, if he was
6 healthy, and he was also a student and so we would talk on the phone but
7 it didn't have anything to do with the court.

8 Q. Can I therefore understand that he was a friend of yours?

9 A. Yes. Well, perhaps not a friend but someone I knew. I knew (Redacted)
10 through (Redacted) through
11 (Redacted) who called me to go to his place the first to
12 get to know (Redacted), and it was that day that we exchanged our phone
13 numbers. That's when we met. But before that day, I didn't know (Redacted).
14 And then we stayed in contact afterwards. But then when I lost my
15 telephone in Kinshasa, I lost his phone number so I didn't talk to him
16 again after that.

17 Q. Can you tell me what (Redacted) job was?

18 A. I don't know any information. I don't know anything about that.
19 I don't even know where he worked. I don't know what he did. I don't
20 know anything at all.

21 Q. In that case, if I understand correctly, (Redacted) wasn't actually a
22 friend but he was someone that you had exchanged phone numbers with, he
23 called you when you were in Kinshasa to find out about your news, so
24 there was a certain amount of communication between the two of you. You
25 never asked him what kind of job he had?

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1 A. No. I never asked him what kind of job he had. And even if I
2 had asked him, he was saying that he was a student. He was mainly a
3 student.

4 Q. At any point in time, did you hear any talk about his working for
5 (Redacted)

6 A. No, no. In the case of (Redacted), I don't know at all. I have no
7 knowledge of his working for the (Redacted) told me, when I was in
8 Kinshasa, that (redacted) was working for the (redacted) and that he had changed
9 telephone numbers.

10 Q. Yesterday, you stated that you saw 0316 and (Redacted) together, you
11 explained -- or rather, you spoke about the time when (Redacted) went to get
12 you in order to take photographs of your injuries. What were the other
13 occasions when you saw 0316 and (Redacted) together?

14 A. Well, the first time -- the first time I saw (Redacted)
15 together, but I don't remember -- I can't give you any precise
16 information about seeing them again, but maybe I did see them another
17 time but I've forgotten. The one time I remember was when I saw them, it
18 was that day when I saw them together, but I think (Redacted) was his
19 right-hand man, so to speak, his helper, so to speak, a younger person
20 that you send on certain errands, so to speak, as we say where I come
21 from.

22 Q. His right-hand man, you say? Can I understand that he helped
23 0316 in his task working for the ICC?

24 A. Yes.

25 MR. DESALLIERS: (Interpretation) Your Honour, I believe we can

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1 go back into open session at this point.

2 PRESIDING JUDGE FULFORD: Public session, please.

3 (Open session at 10.15 a.m.)

4 COURT OFFICER: We are in open session.

5 MR. DESALLIERS: (Interpretation)

6 Q. You have stated that your relative you knew well, you saw
7 frequently, and in January 2006, you were surprised that he spoke about
8 0316. I would imagine that after the meeting in January 2006, you saw
9 that relative again?

10 A. Yes. I saw him on several occasions where I was living at home,
11 since he was a relative, he would come over to our house and since we are
12 part of the same family I would go to their house. We would -- well,
13 maybe sometimes he was at work but our families would see each other.

14 Q. But you say you were surprised that he spoke about 0316. Why
15 didn't you ask him any questions about that afterwards? You could have
16 asked how he knew 0316, why he was helping him. You didn't ask any
17 questions about that?

18 A. Well, my relative was someone that I knew for a long time. We
19 grew up together. And he would come to our place on vacation, when we
20 were in Bambu, which is near Bunia, about 50, 60 kilometres from Bunia.
21 He used to come when he was a young boy, when he -- he would come on
22 vacation, and I had known him for a long time. And then when we fled the
23 war in Bunia, since we were still together, but then in 2006, when he
24 spoke about the court, I was surprised, and I asked him how he had come
25 into contact with a person from the court? And he said, "Well, that's a

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1 long story." He didn't want to explain very much to me. Everyone has
2 their own business. And some people, when they're going somewhere or
3 there is something going on, he prefers to hide it. Some people don't
4 say, don't want to say, how he knew so and so. At least he didn't tell
5 me how he came into contact with the person from the court. All he said
6 was, "Well, it's a long story. You're too young. You don't need to know
7 that."

8 Q. Thank you. During your testimony yesterday, there was mention
9 made of three meetings with ICC investigators, the first time in January
10 2006, with a woman investigator; a second meeting, a second interview a
11 few days later, with the same woman investigator; and another session in
12 Kinshasa with four investigators for an interview which lasted several
13 days. Were those the only meetings that you had with investigators of
14 the OTP in the year 2006?

15 A. The first meeting was in Bunia, with the investigator, the only
16 investigator I knew until I went to Kinshasa, the one I mentioned.
17 I think I mentioned two or three times. The first time when we were
18 introduced, the second time when she was to give me the telephone, and
19 when she gave me the telephone, thereafter, we spoke on the phone
20 frequently. She would call me to ask me how I was, and she called me
21 frequently on the phone. And she said that she wasn't in Bunia and --
22 well, she would say, "I'm not in Bunia," or, "I'm in Kinshasa," depending
23 on where she was, and if she was in town she would also call me, and she
24 would call me on the phone. We spoke often on the phone. And until
25 I went to Kinshasa, then I had the interview in Kinshasa, but after that,

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1 I didn't see the investigator in Bunia. She just called me a few times
2 afterwards, after the interview. And then she called me occasionally.

3 Q. In other words between the point in time when she gave you the
4 telephone, you were face to face, she gave you the telephone, and later,
5 I understand that you met her in Kinshasa with other individuals, and
6 I've understood that in between those two meetings, you spoke
7 occasionally on the telephone. What I'd like to know is, between the
8 point in time when she gave you the telephone and the time when you
9 actually met her in Kinshasa, did you have any other physical meetings,
10 face to face, with her or not?

11 A. I can't tell you precisely. I don't really remember. I remember
12 the strong points, the important moments, of my meetings with her. That
13 is when she gave me the telephone. But I'm afraid I don't remember
14 whether I saw her again in Bunia, but what I do remember is that we spoke
15 on the phone frequently.

16 Q. There is a particular point that I'd like to make more precise
17 regarding your second meeting with the investigator, that is, when she
18 gave you the telephone. At that point in time, or that particular day,
19 you were at school and your relative came to get you at school?

20 A. Yes.

21 Q. When he came to get you at school, did you know that you were
22 going to be meeting an investigator from the OTP that day or was it a
23 surprise for you?

24 A. Well, I didn't know. I didn't know that I was going to be given
25 the telephone that day, and when my relative came to my school, he took

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1 me on his motorbike and we went to meet (Redacted), and he told me that I was
2 going to be given the telephone that day. It wasn't my relative who told
3 me that. It wasn't my relative who told me that I was going to be given
4 the telephone that day but it was 0316 who gave me that information that
5 I was to be given a telephone that very day.

6 Q. But one further bit of information: That day, when you were in
7 school, had you been forewarned in one way or another that you were going
8 to be meeting the investigator that day?

9 A. No.

10 Q. So your relative took you directly to 0316; is that correct?

11 A. Yes, we went together.

12 Q. And then you went directly from -- rather, you went directly from
13 0316's place to the meeting place with the investigator; is that correct?

14 A. We left 0316's house to go to the hotel, the hotel that I've
15 already mentioned, that was near the MONUC headquarters and near the
16 university. That's where we met often. So we went from 0316's house to
17 the hotel. And that's where the investigator came and we talked to her.

18 Q. Thank you. I'd like to come back to the very first meeting in
19 January of 2006, the day when 0316 took you to the Ndromo camp to meet
20 the investigator. Was that the very first time that you were in contact
21 with ICC investigators?

22 A. Yes. That was the first time. I even can add that it was a
23 Sunday. I was home. I was studying. And my relative came to tell me
24 that there was someone from the court who was looking for someone who had
25 fought in Mongbwalu and Kobu, and I was surprised to hear that, and that

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1 right then we went on his motorbike to the hotel. That's when I met
2 0316. My relative introduced me to 0316 and 0316 introduced himself to
3 me, and I showed him my card. And after a few hours, 0316 called the
4 court's vehicle, the jeep, and took us, we got into the jeep, and we went
5 to the Ndromo camp. So that was the same day, the same afternoon. It
6 was, you know, 1.00, 2.00, 3.00, 4.00. It happened between the hours of
7 the afternoon.

8 Q. So to say it simply, 0316 introduced you to the OTP?

9 A. Yes.

10 Q. During the first meeting, in January of 2006, with the
11 investigator, there was mention made of another meeting with the
12 investigators, but the time and -- or rather, the date and place of that
13 meeting was not decided as of yet?

14 A. I'm afraid I didn't understand your question. Could you repeat
15 it?

16 Q. Yes, of course. When you met the investigator, the very first
17 time, in January, that very day there was mention made of another meeting
18 with the OTP investigators; is that correct?

19 A. Yes, because I was to be given the telephone, and there had to be
20 an interview, so, of course, there had to be further contacts with the
21 OTP.

22 PRESIDING JUDGE FULFORD: Mr. Desalliers, we are going to have
23 the first break soon. Is that a convenient moment? Thank you very much.
24 Sir, we are going to take a break now. Thank you for your assistance so
25 far this morning. We will sit again at 11.00. Closed session, please,

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1 so the Usher can take the witness back to the witness waiting room.

2 *(Closed session at 10.31 a.m.) Reclassified as Open session

3 COURT OFFICER: We are in closed session.

4 PRESIDING JUDGE FULFORD: Yes, thank you, Usher.

5 (The witness stands down)

6 PRESIDING JUDGE FULFORD: Mr. Omofade, just something if you
7 could check, please, over the adjournment that's about to take place, on
8 the 4th of November, and this is transcript 325 at page 17, we ordered
9 the Prosecution to disclose to the Defence the report dated the 20th of
10 July concerning the handover for this witness but there had to be
11 discussions with the Victims and Witness Unit. Can you just ensure that
12 that's happened? We, of course, don't have any knowledge of what is
13 transmitted one side to the other, but it remained a note that I'd made
14 to myself to ensure that it had occurred.

15 MR. OMOFADE: I'm able to inform the Chamber that it did take
16 place. There was a slight delay because we were consulting with the VWU
17 as regards redactions, but it did take place.

18 PRESIDING JUDGE FULFORD: Thank you. Excellent. 11.00.

19 Recess taken at 10.31 a.m.

20 On resuming at 11.00 a.m.

21 COURT USHER: All rise. Please be seated.

22 PRESIDING JUDGE FULFORD: Witness, please.

23 (The witness takes the stand)

24 PRESIDING JUDGE FULFORD: Public or private, Mr. Desalliers?

25 MR. DESALLIERS: (Interpretation) Public, Mr. President.

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1 PRESIDING JUDGE FULFORD: Public session, please.

2 (Open session at 11.03 a.m.)

3 COURT OFFICER: We are in open session.

4 PRESIDING JUDGE FULFORD: Sir, we are now in open session, so,
5 sir, if you could be careful about the names of the people who we've
6 agreed to use a number for.

7 Yes, Mr. Desalliers.

8 MR. DESALLIERS: (Interpretation)

9 Q. When we broke off just before the break, we were discussing your
10 first encounter with the investigator from the Office of the Prosecutor,
11 and I was putting questions to you on the possibility of another meeting.
12 What I would like to ascertain is whether, on the first -- on the
13 occasion of the first meeting with the investigator, did the investigator
14 ask you whether you would accept to meet again with the Office of the
15 Prosecutor in order to ask -- answer questions?

16 A. Yes. The investigator did put the question to me as to whether
17 I would accept to sit an interview and answer a number of questions that
18 would be put to me, whether I would accept to go through an interview
19 process with the Office of the Prosecutor. That's the question that she
20 put to me, and I accepted.

21 Q. On the occasion of that first meeting, do you recall having said,
22 to the investigator, well, you told us that you accepted, but do you
23 remember having said that you wanted to be accompanied by counsel of
24 French nationality for that interview?

25 A. I did not make such a request, but this is the way they do

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1 things. If you accept to speak to the Office of the Prosecutor, then you
2 automatically have the right to counsel, and you are furnished with the
3 list of names and numbers of counsel, the list is given to you with the
4 names and contact numbers, and you are given air time in order to call
5 the counsel or counsel of your choice. So you're provided, as I said,
6 with a list of counsel and it is up to you to choose. You have the list,
7 and you choose counsel of your choice. And then you will call that
8 individual and request that they accompany you on the occasion of the
9 interview.

10 Q. Within this very context of the first meeting in January 2006, do
11 you recall having said to the investigator that you had some notes on the
12 events that you would allegedly be put questions to about?

13 A. Yes.

14 Q. Were these notes that you had taken yourself?

15 A. Yes.

16 Q. Did you take these notes down during the events in question in
17 2002/2003?

18 A. I cannot specify, but I had taken a number of notes, some of
19 which I took at the training centre, not in the Congo, in Rwanda, and we
20 were all given a notebook. We were told -- we were receiving training in
21 the army, but we had to write things down. Unfortunately, I lost that
22 notebook. When the Ugandans drove us out, all of my things,
23 unfortunately they were at my house, and we -- this -- the military
24 attire, et cetera, was thrown away, and the notebook that I wrote down
25 the list of weapons, et cetera, well, I also lost that. Everything was

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1 thrown out. Because the Ugandans and the Lendus were going from door to
2 door attempting to ascertain whether they found any military things,
3 whether you were a military individual.

4 THE INTERPRETER: Inaudible.

5 THE WITNESS: (Interpretation) And I lost those notes. I found
6 some of those notes. Some of those notes I stuffed in various places and
7 I found them by chance.

8 MR. DESALLIERS: (Interpretation)

9 Q. But in January 2006, you told the investigator that you had notes
10 on the events. Now, these notes that you had at that moment in time in
11 2006, January 2006, when did you take them? When did you note them down?

12 A. These notes are notes that I took down. These are things that
13 I noted down from my own head. There was another note with land-mine
14 sweeping activities that I did not find but the ones that came -- that
15 I wrote down, that were of my own inspiration, I did not find.

16 Q. I think I'm going to come back on your last answer because one of
17 your utterances was not noted down. You said that: "I noted this down
18 from memory and I saw some of these recruits." I think this part might
19 not have been understood of what you said. I would like to know, sir,
20 the notes that you still have in your possession, did you write them down
21 at the time of the events in 2002 and 2003; and if this is not the case,
22 at what time did you note them down?

23 A. I did not write that in 2003. These are the notes that I no
24 longer have in my possession, and when the investigator asked me whether
25 I would be able to know the names of the generals with whom I fought, he

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1 asked me whether I knew those names, whether I could write them down, and
2 it was then that I said that if I did remember, I would write them down.
3 So those were the notes that I made during that period. It wasn't in
4 2002/2003. It was afterwards, when I was talking to the investigator.
5 He asked me whether I knew the names of the individuals and it was at
6 that moment in time that I wrote that information down. I wrote this
7 down in order not to forget matters.

8 THE INTERPRETER: Could the witness please be requested to slow
9 down and to speak clearly. Thank you.

10 PRESIDING JUDGE FULFORD: Mr. Desalliers, we've had a message
11 from the English booth.

12 Sir, I repeat you're doing very well, you're listening to
13 counsel's questions and you're clearly answering them. But there is a
14 slight problem with speed on occasion. So if you could keep it slower,
15 that would be enormously helpful.

16 Please continue.

17 MR. DESALLIERS: (Interpretation)

18 Q. So if I understand you correctly, sir, when you talked about
19 notes to the investigator in January 2006, these notes were not yet in
20 existence, you were going to compile them. Have I understood you
21 correctly?

22 A. Yes, but she put the question to me as to whether the notes that
23 I had taken in Rwanda might be in my possession. I said I'd look for
24 them. So when I mean notes, I mean the various notebooks. The notebook
25 was quite full, and she asked me whether I could look for that notebook.

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1 I said yes. I can look for that notebook and if I find it, very well.
2 And I explained to her that I did have such a notebook in which I had
3 noted down details on the army, et cetera. And I think that at that
4 moment in time, unfortunately I looked for them subsequently, I put
5 questions to the family member who had remained there after our flight,
6 the person who had remained there at the house, and she then told me that
7 all of my personal effects had been thrown out. And that is when
8 I understood that the notebook had been lost. And the notebook that
9 I talked to the investigator about was not found.

10 Q. Do you recall having said to the investigator, and I'm still
11 talking here about the meeting in January 2006, do you recall having
12 indicated to the investigator that you were ready to show them your notes
13 but that you would be ready to do so in a foreign country?

14 A. Yes. These notebooks, these were notebooks and I believe that at
15 the time when she was talking or asking me questions about these
16 notebooks, I think it must have been in my things somewhere or maybe up
17 in a ceiling where people often hide things, but I hadn't had the time to
18 look for it. And I thought that if I had time to look up in the ceiling,
19 I might find my things hidden there, and then I would be able to show her
20 the book. But as a precautionary measure, as always in Bunia, I do not
21 like sitting interviews there. I was told to testify in Bunia and I'd
22 refused to do so. I was not in the habit of undergoing interviews in
23 Bunia for reasons of personal security.

24 Q. What I would like to understand is why it is that you told the
25 investigator that you wanted those notebooks to be discussed in a foreign

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1 country. Why not elsewhere in the DRC apart from Bunia? I'm trying to
2 ascertain why it is you told the investigator that you wanted those notes
3 to be discussed in a foreign country?

4 A. Well, it was to do with security issues. As I have often said.
5 And when I was told that I was to undergo an interview in the year 2006,
6 the investigator suggested to me that it would occur in Bunia, to which
7 I refused. I said I wanted to undergo an interview elsewhere, not Bunia,
8 i.e., in a foreign country. I did not know that the court was
9 functioning in Kinshasa. I knew that it was functioning in Bunia. Had
10 I known that it also worked in Kinshasa, that's -- well, it would have
11 been different. That's why I suggested that we look for another country
12 such as Uganda, Kenya, elsewhere. So I did not realise that the court
13 also worked in Kinshasa. I saw Kinshasa as a far away place from Bunia.
14 I could see that Kenya or Uganda was close, close by to Ituri, that was
15 the idea that I had in mind.

16 PRESIDING JUDGE FULFORD: Mr. Desalliers, absolutely
17 understandably, the witness faces the person who has asked him the
18 questions. You, like us, will observe when during some answers he, for
19 totally understandable reasons, speeds up. Given he is looking at you,
20 as and when that happens, can you please, by a motion of your hand, since
21 you are asking him questions, slow him down? It's difficult for me to
22 attract the witness's attention without interrupting him, which I don't
23 want to do because it's important that his evidence is given without
24 being pestered by Judges continually. So the witness has heard what
25 I said, so if you see Mr. Desalliers move his hand in this way, just slow

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1 down slightly. So the French transcript is now becoming littered with
2 examples where there have been difficulties because it's going too fast.
3 So this is your responsibility.

4 MR. DESALLIERS: (Interpretation)

5 Q. I would like to ask you to consult the binder that was handed to
6 you and to consult the end of the binder. At the very last tab, that is
7 to say, tab 43, this is a document bearing the reference number
8 DRC-OTP-0147-0333 and this document shall remain confidential.

9 COURT OFFICER: (Interpretation) Might I immediately provide it
10 with an EVD reference number, counsel? (In English) The evidence number
11 of the document shall be EVD-D01-00395.

12 MR. DESALLIERS: (Interpretation)

13 Q. Can you see these notes, sir, under tab 43?

14 A. Yes.

15 Q. Are these notes that you handed to the investigator?

16 A. Yes.

17 Q. Did you hand these notes over to the investigator on the very
18 same day that a telephone was handed to you?

19 A. No.

20 Q. So at what moment in time did you hand over these notes to the
21 investigator?

22 A. This was after the telephone was handed over.

23 Q. Could you now explain these notes to us, the notes figuring at
24 tab 43? Could you tell us when you drafted them?

25 A. This was after my first encounter with the investigator, when she

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1 put the question to me as to whether she could have the larger notebook,
2 and I hadn't found it. She asked me the question about the large
3 notebook and then she asked me whether she -- whether I could -- or
4 whether I was aware of the names and precise dates of the fighting in --
5 on the Mongbwalu-Kobu axis, and I said, yes, I do have specific
6 information as to dates because that's where I personally took part.
7 This is an event that I'm aware of only too well. I do have specific
8 information in this regard.

9 And she asked me whether I could jot this down, and I said, "Yes,
10 I shall take my time, and when I have the opportunity I will take the
11 time to write this down." So I would then provide a list of the
12 individuals with whom I fought on the Mongbwalu-Kobu axis, the names of
13 the commanders that I was aware of. I said that I would be able to write
14 that down, that I was only too aware of their names and the dates at
15 which we fought. I would -- I said I knew the names. I said I knew the
16 names, that I could write the dates down, and generally speaking, I could
17 provide a conclusion as to what unfolded in Mongbwalu and Kobu.

18 Q. I thank you. I would like you now to please consult tab
19 number 29 of the binder. For the record this document bears the
20 reference number DRC-OTP-0149-0089.

21 COURT OFFICER: The document shall have the evidence number
22 EVD-D01-00396.

23 MR. DESALLIERS: (Interpretation)

24 Q. I would like to draw your attention, sir, to the second page of
25 this document, entitled, "Agreement on a document for limited usage,

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1 agreement on a statement for limited usage." Do you recognise your
2 signature on the second page of this document?

3 A. Which page?

4 Q. Second page. That is to say, under tab 29. I believe that you
5 are there. Stay with this document. That is to say, the one entitled,
6 "Agreement on a statement of a limited usage." And if you turn the page
7 over, do you recognise your signature?

8 A. Yes.

9 Q. This is a document that you allegedly signed on the 20th of
10 March, 2006, in Kinshasa at the time when you went to meet and hold
11 discussions with the four investigators. I would like to ask you to take
12 a moment to cast your eye over this document, familiarise yourself with
13 it, and tell me whether you remember it.

14 A. Yes.

15 Q. Could you explain to us what understanding you had of this
16 agreement reached with the Office of the Prosecutor?

17 A. Could you please put your question again?

18 Q. Yes. Could you explain to us why this agreement existed,
19 according to your understanding?

20 A. The reason for this agreement was for me to tell the truth, the
21 whole truth and nothing but the truth. That is to say, to speak quite
22 simply about things that I did and that I was aware of or had knowledge
23 of.

24 PRESIDING JUDGE FULFORD: Yes, Mr. Omofade.

25 MR. OMOFADE: Your Honours, I hesitate to interrupt my friend's

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1 flow. I notice that the witness has already responded to part of the
2 question. The concern the Prosecution has here is that this was a
3 document available to my friends when this witness testified back in
4 January 2009. It relates to the statements he gave at that time. This
5 question or this issue was not raised with him then. It begs the
6 question: Why is it being raised now?

7 PRESIDING JUDGE FULFORD: Thank you, Mr. Omofade.

8 Mr. Desalliers, this is certainly something I've been keeping an
9 eye on so far this morning during your questioning. This obviously
10 shouldn't be used as an opportunity to have a rerun, as it were, of the
11 general questioning of this witness, which was conducted a considerable
12 time ago. He's been recalled for a very particular purpose, which, of
13 course, you're entitled to ask questions on. Can you bear that in mind,
14 without making a definitive ruling on this intervention by Mr. Omofade,
15 can you make sure that you confine your questions to the new issues that
16 we are now investigating rather than trawling over matters which either
17 were dealt with in 2009 or should have been?

18 And Mr. Omofade, you are fully entitled to intervene again if you
19 believe that we are departing from the reasons why we are here today.

20 MR. OMOFADE: I can only imagine that my friend Mr. Desalliers
21 has taken the cue from your Honours.

22 PRESIDING JUDGE FULFORD: We'll wait and see, Mr. Omofade. Thank
23 you very much, indeed.

24 Yes, Mr. Desalliers.

25 MR. DESALLIERS: (Interpretation) Yes, Mr. President, I'd like

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1 to reassure the Chamber and my friend that this is something that I have
2 been bearing in mind, that I'm still bearing in mind. However, I would
3 like to specify that information that could be -- that could have been in
4 our possession at the time of the first interview might not have had any
5 meaning until we had been informed of what happened subsequently. So
6 I just wanted to add that.

7 PRESIDING JUDGE FULFORD: Certainly, Mr. Desalliers. That's a
8 subtlety that does not escape us, but nonetheless, only present issues,
9 please. Even if it's present issues on the basis of material that you
10 had before, the significance of which wasn't apparent until later
11 developments occurred. But please continue.

12 MR. DESALLIERS: (Interpretation) Yes. Thank you.

13 Q. You indicated yesterday that after your motorbike accident, 0316
14 had sent someone to bring you to his house because he had received the
15 order to take a picture of you. Did he tell you whether it was the
16 International Criminal Court or representative of the Office of the
17 Prosecutor who had given those instructions?

18 A. When I got to his house, when we got to his house, what he told
19 me is simply that he had received the order to take my photo, and as
20 I already knew that he worked for the court, for me it was the court who
21 wanted him to take the photo.

22 Q. You indicated that at that time, you had spent between one and
23 two hours at 0316's residence. However, as 0316 only took approximately
24 five photos of you, could you explain what you did the rest of the time
25 at 0316's house?

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1 A. We were at his house, we stayed like at home, we watched
2 television. His wife was there, prepared something for us. We were at
3 his house as friends. We didn't talk about anything. We watched
4 television, just to pass time. We didn't speak about anything because
5 this is when I had come back from Kinshasa, when I had already gone
6 through the interview. I didn't have much to talk to him about.

7 Q. Thank you.

8 MR. DESALLIERS: (Interpretation) Mr. President, could we move
9 into private session, please?

10 PRESIDING JUDGE FULFORD: Certainly. Private, please.

11 *(Private session at 11.35 a.m.) Reclassified as Open session

12 COURT OFFICER: We are in private session.

13 MR. DESALLIERS: (Interpretation)

14 Q. Could you tell us where 0316's residence was located?

15 A. Yes. As I've always said, I don't know the numbers or the avenue
16 precisely, but I know where the house is located. Across from the (Redacted)
17 office in Bunia, the (Redacted). I don't know the name of the avenue.
18 I just know where the house is located. I don't know precisely which
19 avenue it is, but because I went there -- I didn't know the number, but I
20 know the references, how -- that it was next to the (Redacted) office. (Redacted)
21 (Redacted). Near the town centre. I know the house
22 but I don't know precisely the avenue or the number.

23 Q. Very good. So the (Redacted), you also
24 mentioned an acronym, it's (Redacted). Is that it?

25 A. Yes.

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1 Q. Is it also in the same location where we can find the office of
2 (Redacted)

3 A. (Redacted) is near 0316. You go down, it's about four -- maybe
4 about a hundred metres away. So if you go up along the boulevard next to
5 it, you have the (Redacted) office and right next to that, you have 0316's
6 house, and maybe ten, 20 metres away, you have the boulevard where you
7 have the -- where you have (Redacted), and (Redacted)
8 (Redacted)
9 (Redacted)

10 Q. Just to specify a point, you spoke about the office of 0316.
11 That is what I see in the transcript. Was there -- 0316 have a residence
12 and an office or were they one and the same?

13 A. No, did I not speak about an office of 0316. The office of (Redacted)
14 (Redacted)

15 Q. Thank you. You just mentioned, didn't you, that you went to
16 0316's house often. Is that what you said?

17 A. Yes.

18 MR. DESALLIERS: (Interpretation) Your Honour, I think we can go
19 back to public session, please.

20 PRESIDING JUDGE FULFORD: Please.

21 (Open session at 11.39 a.m.)

22 COURT OFFICER: We are in open session.

23 MR. DESALLIERS: (Interpretation)

24 Q. Could you tell us how many times you went to the residence,
25 approximately, how many times you went to 0316's residence?

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1 A. I don't have the exact number. I don't have the exact number how
2 many times I went to 0316's house. I know simply that when he had
3 information to give me, coming from the investigator, he called to let me
4 know on the phone, or he told me to come by the house, saying, "I have
5 news to give you." It wasn't every day. I said often. That is not
6 every day. It is when the investigator or the Office of the Prosecutor
7 had something to tell me or the case, for example, of taking the photos
8 when I went there personally, to sign documents, I had to go there
9 personally for the travel documents. I went often.

10 The time we spent speaking, he didn't call me to -- out of
11 politeness or just to talk about things, because personally I did not
12 have the time. I was preparing my state exams and he was working. So we
13 didn't often have the time to see one another. If we saw one another, it
14 was for something very precise or things or information he had to give
15 me, not just to spend time together, because I was preparing my state
16 exams. I had to take enough time for my studies. And when I finished,
17 when I passed the state exam, I went away on holiday. I didn't really
18 have the time. I didn't go to see him every day. But on very specific
19 occasions.

20 Q. I'd like to come back to one of the occasions that you described
21 yesterday. When you returned from Kinshasa, after having met with the
22 four investigators of the Office of the Prosecutor, you indicated, didn't
23 you, that 0316 had called you to ask you to go to his residence.
24 I understood that correctly?

25 A. Yes.

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1 Q. So you went to 0316's residence. Do you remember how long that
2 meeting lasted, approximately?

3 A. I can't give an exact details. One or two or three hours. He
4 called me, he asked if I had had a nice journey, if I hadn't had any
5 problems, if everything had gone well, if there hadn't been any problems
6 on the outward journey, or if I had been sick. He just wanted to know if
7 I was doing well, if there hadn't been any other problems,
8 health-related, or related to the travel. He just spoke to me to find
9 out if everything had gone well. That's all. There was not a lot of
10 time. I did not spend a lot of time. It was just for a few hours, and I
11 don't have any details.

12 Q. Thank you.

13 MR. DESALLIERS: (Interpretation) I apologise. Just one moment.
14 (Defence counsel confer)

15 MR. DESALLIERS: (Interpretation)

16 Q. Could you please take the binder that was given to you, and this
17 time go to the beginning, to the tab number 2. It is DRC-OTP-0215-0019.

18 COURT OFFICER: Number EVD-D01-00397.

19 MR. DESALLIERS: (Interpretation)

20 Q. To help you, sir, this is the witness statement that you signed
21 in September 2009, when you were in The Hague. Do you remember this
22 document?

23 A. Yes.

24 Q. I'd like to draw your attention to paragraph 49. I'm going to
25 read and this is a document in English.

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1 (In English) "On several occasions I have been given money by the
2 court. Every time I received money, I signed a document. I never
3 received any money without a document being signed. From May 2007 until
4 February 2009, I was under protection of the court. As a consequence,
5 I received money from the court for my food. I received this in cash.
6 For my accommodation, I signed a document and the court paid the owner
7 directly."

8 (Interpretation) Therefore, sir, over a period of roughly two
9 years, namely from the month of May 2007 until February 2009, all of your
10 expenses related to your accommodations and your food were covered by the
11 court, weren't they?

12 A. Yes.

13 Q. Were your medical expenses also reimbursed by the court?

14 A. Yes. The court paid. It took me to the hospital and they paid
15 for everything there. I didn't receive any money. If it was the
16 hospital, they were the ones who paid everything to the hospital. For
17 the hotel, they paid the hotel. But for food, and only for food, they
18 gave money to me because I needed to choose something that I would
19 prepare myself to eat.

20 Q. And during this period, you were studying at university, weren't
21 you?

22 A. Yes.

23 Q. And your school expenses were also paid by the court?

24 A. Just for one year, since it had to pay, the court only paid for
25 one year only. The remainder of the expenses were paid by my parents.

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1 So they just paid for one academic year, and the rest was paid by my
2 parents.

3 Q. And did the court pay any other expenses other than the ones that
4 we mentioned now over that period of time?

5 A. Such as? Can I have more details? Such as?

6 Q. Any other expenses. Do you remember having the court pay any
7 other types of expenses than food, accommodations, medical expenses,
8 school expenses, did the court pay for anything else?

9 A. When I went from Bunia to Kinshasa, they paid for the flight,
10 which I mentioned. Other than that, no. In any case, I didn't have any
11 other expenses other than paying for the flight from Bunia to Kinshasa,
12 accommodations in Kinshasa, the food in Kinshasa, over a set period of
13 time. For the protection. I can't think of any other expenses without
14 signing a document. All of those expenses for the food, I always signed
15 a document. The hotel, after paying the hotel, the hotel owner gave me
16 the bill to sign and the court paid for it. For the academic expenses,
17 I gave the bill for the academic expenses to the court, a photocopy to
18 the court, because I needed to keep the original. The photocopy of the
19 academic expenses, I signed. I didn't receive any sums of money without
20 signing a document.

21 Q. And after the month of February 2009, did the court pay any other
22 expenses for you, or remit any other sums of money to you?

23 A. After February 2009, I did not receive any money. After
24 February 2009, when I returned, after the testimony. Just over the space
25 of a few days, when I was in Kinshasa, and then when I returned to the

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1 university, I was not entitled to anything else, any packages or
2 envelopes. I did not receive anything else. I wasn't wondering how many
3 months I was going to receive this or that. I simply received money that
4 was given to me and I signed receipts. I did not receive anything after
5 February 2009. I -- my parents paid for my expenses. I live off of
6 that. I don't have any other money, any packages or envelopes.

7 Q. Thank you. Therefore, this period when your expenses were
8 covered for the relocation, before all of this occurred, I imagine
9 members of the court personnel explained to you what would be allocated
10 to you in terms of the relocation, in terms of expenses, in terms of
11 money. Was all of this explained to you ahead of time?

12 A. Yes. The day I left Bunia, because we left Bunia to go to Beni,
13 when I arrived in Beni, the time to wait for the flight for Bunia -- for
14 Beni-Kinshasa, I wasn't given the money. Everything had been paid at the
15 hotel. I had to eat at the hotel. I was staying at the hotel. I was
16 not supposed to leave the hotel, so I did not receive any money.

17 When we arrived in Kinshasa and I had accommodations there, it
18 just lasted a few days. They paid everything to the hotel. But after
19 that, they said they were not going to pay it to the hotel. They would
20 give me money. They gave me \$10 per day. They said, "You are entitled
21 to \$10 per day for your food, for the hotel, we are the ones who will pay
22 it," meaning the person would go and pay it directly at the counter of
23 the hotel. "But for the food, we'll give you the money, but after
24 receiving the money, you need to sign a receipt." That was for \$10 per
25 day. There is no time period given because I didn't know how long I was

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1 going to be staying there. So the person came to give me the money, but
2 said, "We don't know how many days you'll be here in Kinshasa." I wasn't
3 told. But for the time being we'll give you \$10 per day. We'll give you
4 \$10 per day while we wait for the decision from the court, what the court
5 is preparing, and they don't know, so you are entitled to \$10 a day.

6 PRESIDING JUDGE FULFORD: Mr. Desalliers, are you nearly at an
7 end of expenses because if you are, we will give the witness a break once
8 you've finished, or if you have got a little way to go we will take the
9 break now and you can continue after the break.

10 MR. DESALLIERS: (Interpretation) Mr. President, yes, we could
11 take a break now. I will continue after the break.

12 PRESIDING JUDGE FULFORD: Certainly. We will give you a second
13 short break now. We will sit again just after 5 past 12. Closed
14 session, please.

15 *(Closed session at 11.56 a.m.) Reclassified as Open session

16 COURT OFFICER: We are in closed session.

17 (The witness stands down)

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

19 MR. SACHDEVA: Mr. President, just a small matter.

20 PRESIDING JUDGE FULFORD: Certainly.

21 MR. SACHDEVA: In relation to the transcripts of 0582 and 0583
22 that are being disclosed to the Defence in the Katanga and Ngudjolo case,
23 is our understanding correct that it would also include the exhibits that
24 are an integral part of the evidence if necessary.

25 PRESIDING JUDGE FULFORD: We hadn't addressed that. It would

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1 certainly make sense, wouldn't it? It would be illogical, really, to
2 give the oral testimony without the documents that are being considered
3 by the witness. Do you apprehend any difficulties if that course is
4 taken with suitable redactions?

5 MR. SACHDEVA: Not at all. We just thought it appropriate to
6 seek leave for that to happen.

7 PRESIDING JUDGE FULFORD: Quite right, Mr. Sachdeva.

8 Done.

9 MR. SACHDEVA: Thank you.

10 PRESIDING JUDGE FULFORD: 10 past 12. Thank you.

11 Recess taken at 11.58 a.m.

12 On resuming at 12.10 p.m.

13 COURT USHER: All rise. Please be seated.

14 PRESIDING JUDGE FULFORD: Witness, please.

15 (The witness takes the stand)

16 PRESIDING JUDGE FULFORD: Public session, please.

17 (Open session at 12.14 p.m.)

18 COURT OFFICER: Public session.

19 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

20 MR. DESALLIERS: (Interpretation)

21 Q. Just before the break, sir, we were discussing the way the ICC
22 took care of you, that is around your first deposition before the court.

23 A. Yes.

24 Q. Regarding this first deposition before the court, do you consider
25 that the court did what they had told you they would do, that is, taking

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1 care of you and relocation?

2 A. I'm afraid, I didn't understand your question. Could you repeat
3 it, please?

4 Q. Yes, of course. Before you came to the court for your first
5 deposition, the court explained to you what would be done for you when
6 you were taken into the court's care. Do you consider that they
7 respected what they had told you previously?

8 A. Yes.

9 Q. Now, this time, which is your second time before the court, did
10 you make any particular requests regarding how you would be taken care of
11 or how you would be relocated?

12 A. I'm afraid I didn't understand your question. Could you rephrase
13 it, please?

14 Q. I'm very sorry. I will try again. I would like to know whether,
15 when you were asked to come back before the court to testify a second
16 time, did you make any requests to the OTP or to any other organs of the
17 court, that is, compensation or any particular care or relocation or any
18 particular request of that nature?

19 A. No. I didn't make any request before my participation. I didn't
20 ask for this or for that. I never made any kind of request. Nor did
21 I say before I accept to testify, you have to respect this or that
22 condition. No. I never said anything like that. Or if you ask me -- if
23 there were something signed between myself and anyone, I can tell you
24 there was never any sort of contract between myself and anyone.

25 Q. Thank you. We've already mentioned on special -- on several

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1 occasions the fact that you met someone from the OTP in January of 2006
2 and you had several contacts with the OTP. After the first meeting with
3 the OTP investigators in January of 2006, did you, at any point in time
4 after that meeting, rejoin an armed militia?

5 A. No.

6 Q. Could you tell us what your ethnic origin is?

7 A. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 PRESIDING JUDGE FULFORD: Same point, Mr. Omofade?

16 MR. OMOFADE: Certainly, your Honour.

17 PRESIDING JUDGE FULFORD: Good. With an addition?

18 MR. OMOFADE: The point is really, the information being elicited
19 now appears to give us some difficulty, and the witness.

20 PRESIDING JUDGE FULFORD: Mr. Desalliers, why now? This was
21 general information of a kind that could have been asked in 2009. What's
22 happened that's suddenly made this relevant, when it wasn't relevant
23 before?

24 MR. DESALLIERS: (Interpretation) Your Honour, it is the
25 deposition of the witness two weeks ago that leads me to asking these

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1 questions, a witness that I myself examined, but I do not intend to go
2 any further.

3 PRESIDING JUDGE FULFORD: All right. I'll make it clear, I'm not
4 at the moment stopping you. It was an inquiry rather than a prohibition,
5 but if that, in fact, happens to end the point, please move on.

6 Mr. Omofade?

7 MR. OMOFADE: Your Honours, the more significant point also
8 appears to be that some of the information elicited might need to have
9 been done in private session.

10 PRESIDING JUDGE FULFORD: Quite right. The Court Officer has
11 been looking at me anxiously. Redactions, please, I think the areas that
12 need to be redacted are clear. Please carry on, Mr. Desalliers.

13 MR. DESALLIERS: (Interpretation) Your Honour, for the next
14 question, I would like to go into private session.

15 PRESIDING JUDGE FULFORD: Certainly.

16 *(Private session at 12.22 p.m.) Reclassified as Open session

17 COURT OFFICER: We are in private session.

18 MR. DESALLIERS: (Interpretation)

19 Q. In addition to your meetings with the investigators of the OTP
20 that we've discussed yesterday and today during your deposition, did
21 (Redacted) put you in contact with any other investigators of the OTP,
22 in particular someone of (Redacted) nationality by the name of (Redacted) and
23 a (Redacted) police officer? Does that remind you of anything?

24 A. I don't know those people. The only people I know -- can I give
25 the names?

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1 Q. Yes.

2 A. I only know the following investigators: It's (Redacted). The
3 others I don't know. (Redacted).

4 (Redacted) put me in contact with (Redacted), and he is the only
5 investigator that I have known until today. Only (Redacted).

6 Q. Thank you. Yesterday, the representative of the OTP asked you on
7 several occasions whether you had told the truth to the OTP and to the
8 Chamber, and you answered in a very regular fashion in saying that you
9 had stated the things you had knowledge of. What I would like to know is
10 as follows: Amongst those things that you had knowledge of, were some of
11 those things taught to you? Is that how you had knowledge of them? Did
12 someone else teach you those things?

13 A. I didn't just talk about things that I had knowledge of.
14 I talked about things that I had done, that I knew well, and that
15 I remembered. Perhaps there is some things I did that I don't remember
16 but I have spoken here about things that I did myself and that I have
17 knowledge of. It's not something that I read about in the newspaper or
18 that someone else told me or that -- or the names of individuals that
19 someone told me about. These were people that I knew, that I had seen,
20 that I had worked with, or that I had fought with on the same
21 battlefield, or people that I knew very well. And if you were to show me
22 a photograph, I could say, "This is so and so, this is so and so" amongst
23 the individuals I knew, and those that I didn't know, I didn't mention
24 their names. I have spoken about things that I did myself, where I was,
25 what I did, what I had lived through. I didn't learn anything by the

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1 radio or by telephone or by anything else.

2 MR. DESALLIERS: (Interpretation) If I may have a moment, your
3 Honour?

4 (Defence counsel confer)

5 MR. DESALLIERS: (Interpretation) I have no further questions,
6 your Honour.

7 PRESIDING JUDGE FULFORD: Thank you very much, indeed,
8 Mr. Desalliers. So that then concludes your evidence. We are
9 extremely -- public session, please.

10 (Open session at 12.27 p.m.)

11 COURT OFFICER: We are in open session.

12 PRESIDING JUDGE FULFORD: Sir, that now concludes your evidence.
13 We want to thank you for having taken the time and trouble to return to
14 this court to assist us with the new matters that had arisen since your
15 first attendance here.

16 We have appreciated, and are conscious of the fact that this has
17 not been easy for you, and that not only is there a real element of
18 inconvenience in having to come to The Hague, but there is potentially
19 some potential risk for you on account of your continued cooperation with
20 the court. Therefore, you leave now with our profound thanks for your
21 assistance.

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

23 Mr. Omofade?

24 MR. OMOFADE: Your Honours, I rise mainly because, in fact, I did
25 not have any re-examination, any questions to pose in re-examination, but

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1 I did want to point out that in cross-examination, my friend,
2 Mr. Desalliers, raised a number of issues, particularly relating to
3 Witness 0316 and suggested, in the questions posed, a number of
4 possibilities. We think it is only fair that these ought to have been
5 put to the witness in square terms and he given an opportunity to at
6 least respond to them robustly in whatever fashion he proposed to do.
7 This was a point I probably ought to have raised but I did think
8 your Honour would call on me to inquire whether I was going to re-examine
9 or not.

10 PRESIDING JUDGE FULFORD: I'm sorry, Mr. Omofade. No disrespect
11 was meant by the fact that I didn't turn to you. As you will be aware,
12 there is a real tendency for examination of witnesses to turn into tennis
13 matches with the ball constantly going across the floor of the court
14 unless one is careful because, of course, the Defence have the right
15 always to ask questions last. Given this evidence was on very focused
16 issues, I hadn't anticipated there would be any re-examination by the
17 Prosecution, but of course, you're always entitled to get to your feet if
18 you wish to. Fortunately, you had no questions.

19 Now, Mr. Desalliers, you will, of course, appreciate that if
20 during the course of submissions to come, robust suggestions are to be
21 made, either to the detriment of 0316 or to the detriment of this
22 witness, which, in fairness, should have been put to this witness, you
23 have a duty to do so whilst he is before the court, and that if you have
24 failed to do so, the fact that the witness has not had an opportunity of
25 dealing with the robust suggestion will play a part in our consideration

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1 of whether or not the point that you are seeking to make is a good one.

2 Now, we do not compel you to put any suggestion, but bearing in
3 mind Mr. Omofade's intervention and what I've just said, do you want to
4 have a quick discussion with Maître Mabilie and Mr. Biju-Duval to see
5 whether there are any robust suggestions that ought to be made?

6 (Defence counsel confer)

7 MR. DESALLIERS: (Interpretation) Mr. President, I am afraid
8 that the follow-up to what my colleague has just stated may seem somewhat
9 artificial, at least this is how the Defence sees the situation. The
10 position of the Defence is quite simple, and if this can help clarify
11 things and make the situation more understandable, I would make one
12 suggestion to the witness and that would perhaps clarify everything.

13 PRESIDING JUDGE FULFORD: Clarity is always best, Mr. Desalliers,
14 so let's have clarity. If there is a point that you are going to seek to
15 establish later, that in fairness ought to be put to the witness so he
16 can deal with it, let's have it put. Please continue, then.

17 MR. DESALLIERS: (Interpretation)

18 Q. Sir, if I were to suggest to you that 0316, and perhaps the
19 individual who came to get you on a motorbike following the motorcycle
20 accident, as well as your relative, who was working with 0316, if I were
21 to suggest that they had at some point in time encouraged you to say
22 things that were incorrect, untrue, to the OTP or before the Chamber,
23 what would you say to that suggestion?

24 A. I would say that I did not receive any advice or any
25 encouragement to say anything that I did not have knowledge of. In other

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1 words, my relatives, might say I should say this or talk about this or
2 that, but I was never encouraged by the part of my family members, nor by
3 0316. 0316 never told me to lie or never told me to say this or to say
4 that. 0316 never told me such things. He never told me to lie. He
5 never said I should say this or to say that or he never told me to talk
6 about this or that.

7 I myself know what I have done. I am confident in myself and I
8 am not going to accept encouragements from family members or schoolmates
9 or anyone that I know. I'm not going to let myself be bribed, if someone
10 says, "I'll give you this if you do that," no, I -- I have a clear
11 conscience. I did not receive any encouragement to lie. It's not --
12 well, I could say it's not my style but it's also a question of my
13 beliefs, my own personal beliefs. I grew up in a Christian family.
14 I was not taught to lie. Ever since my childhood, I have received
15 religious training, and in my family it is not -- lying is not thought
16 well of, and it's the worst -- one of the worst sins that exists.
17 Amongst Christians, it's not the right thing to lie about things. And
18 even if you talk about sometimes -- you talk about things that you aren't
19 familiar with, but if you do that, there might be someone who was really
20 there and then you find yourself in a contradiction.

21 So I don't know -- well, if I were in sort of coalition with
22 someone who was on site, for example, in Mongbwalu or Kobu, if that
23 person were to say that I wasn't there, well, that means he wasn't there.
24 I'm trying to clarify because people say a lot of things. Personally
25 these are things that I heard in Kinshasa, people were saying we'd

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1 received thousands of dollars -- or rather, correction, millions of
2 dollars. I don't know. I don't know how to explain that if I had
3 received so much money I wouldn't be living in Kinshasa, and people say,
4 oh, you've been talking, you've received a lot of money, you're put up in
5 the big hotels in Kinshasa, you lied. And personally, I say, well, if
6 I lied, well, whoever accuses me of lying, let him come here so I can
7 talk to him. If he was in Mongbwalu, then I wasn't. If I -- I was
8 there, then he wasn't. And if he's claiming I wasn't there, well, let
9 him come and say this to me face to face. And I say this to clarify
10 things.

11 I have always spoken about things that I know about, in
12 Mongbwalu, for example. I can't say anything about Aru or Mahagi because
13 I wasn't there, I didn't go there, I didn't fight in Mahagi, I was never
14 there, I know nothing about what happened there. Our soldiers were also
15 in Aru but I wasn't there. I don't know what happened there. Our
16 soldiers were on the road to Beni but I never fought on that road.
17 I only went there once. And I don't know what happened there. I don't
18 know what happened in other villages. I have spoken about things that
19 happened in Kobu, in Mongbwalu, and I don't know what -- as to what
20 people say. If they say I'm lying, well, if they have proof, let them
21 show me the proof that I wasn't in Kobu or wasn't in Rwanda, because I
22 have a whole series of colleagues who were with me there.

23 To clarify again, I never received promises that I would get
24 money or that someone told me after the trial, "You will get millions."
25 No. Why would I live the life of a rich man but a sinner? That would

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1 be -- because after all, I will die some day and I'm more interested in
2 life after death. And I fought but I -- I was just a foot soldier.
3 I wasn't an officer. If I'd been an officer might have known other
4 things. If I had been an officer, I might have known other things that
5 had happened amongst the leaders. But to say that I am telling things
6 that I have no knowledge of, no.

7 Well, there are things that I did that might be in some of the
8 documents. Even in ten years' time if I'm asked questions, I'll say the
9 same thing without even being shown documents because I know what I did.
10 I'm talking about what I'm familiar with. It doesn't matter even if
11 I don't look through all those documents, if I'm asked to go through
12 various documents, I can -- I don't have to refer to the documents
13 because I'm familiar with these things. I lived through it. It's not
14 like book knowledge. You know, as we say, if you understand something
15 clearly, you express it clearly, that's a famous French saying. And it's
16 not as if someone wrote something down and told me to learn it and that's
17 what I was supposed to say. We could repeat the same questions in three
18 years' time and I would repeat the same answers because it's something I
19 know.

20 I hope that I've clarified the situation. I did not receive
21 millions. And I have no personal interest here. I'm concerned about my
22 moral honesty. And even if someone were to give me something, I don't
23 know, sometimes I have regrets about what people say. People talk a lot.

24 PRESIDING JUDGE FULFORD: Mr. Desalliers, was that the essence of
25 it?

1 MR. DESALLIERS: (Interpretation) Yes, your Honour. I believe
2 so.

3 PRESIDING JUDGE FULFORD: Mr. Omofade, content?

4 MR. OMOFADE: Certainly, your Honour.

5 PRESIDING JUDGE FULFORD: Thank you very much. Closed session,
6 please.

7 *(Closed session at 12.44 p.m.) Reclassified as Open session

8 COURT OFFICER: We are in closed session.

9 PRESIDING JUDGE FULFORD: Thank you very much, sir. Could you go
10 with the Usher now, who will take you back to the witness waiting room?
11 Thank you very much.

12 (The witness withdrew)

13 PRESIDING JUDGE FULFORD: We will sit at 2.45 so that we can
14 deliver the Chamber's decision on 598 and deal with any other
15 administrative matters that counsel wishes to consider prior to 598's
16 evidence next week. It would be very helpful if counsel, during the
17 adjournment now, could reflect on the extensive disclosure requests that
18 were made by the Defence in an e-mail on the 19th of November. Just
19 putting the matter generally, with a number of those requests it is, as
20 matters stand, almost impossible for the Chamber to rule on them because
21 we are not in possession of the underlying information, and that really
22 heightens the need for counsel to have realistic discussions about the
23 issues, to see whether there is any information that falls within the
24 category that the Chamber needs to look at. And those are documents or
25 other evidence which involve a real element of uncertainty as regards the

1 Prosecution's disclosure obligations. So could the parties please
2 reflect on this over lunch so that rather than dealing with a long, very
3 varied list of requests, our attention is drawn, if necessary, to those
4 where there is a real outstanding issue that we need to resolve. 2.45.

5 Luncheon recess taken at 12.47 p.m.

6 On resuming at 2.47 p.m.

7 (Open session)

8 COURT USHER: All rise. Please be seated.

9 PRESIDING JUDGE FULFORD: I'm afraid this oral decision will have
10 to be given in private session. Private session, please.

11 *(Private session at 2.48 p.m.) Reclassified as Open session

12 COURT OFFICER: We are in private session.

13 PRESIDING JUDGE FULFORD: If I go too fast, will the interpreters
14 please let me know.

15 This is the Chamber's oral ruling on the Prosecution's
16 application to call Witness 598 as a replacement for Witness 555, as part
17 of the present Defence abuse of process application.

18 The background.

19 1. Given the present trial schedule (it has been planned that
20 the evidence will close on the Defence abuse of process submissions
21 before the Christmas and New Year recess) the Chamber permitted the
22 Prosecution to advance this application to substitute Witness 598 for
23 Witness 555 by way of e-mail, which was received on the 10th of November,
24 2010, and copied to the Defence and the representatives of victims.
25 These submissions were supplemented by oral argument on the 12th of

1 November 2010 (T-333, pages 1 to 11).

2 2. The Prosecution informed the Chamber (T-330, page 63 onwards)
3 that since the stay of proceedings was lifted on the 8th of October 2010,
4 the Office of the Prosecutor ("OTP") has been in contact or attempted
5 contact with Witness 555 on seven occasions.

6 The Prosecution has sought to discuss "logistical and security
7 arrangements" with 555 in order for the witness to come to The Hague to
8 give evidence or to testify via video link. 555 told the Prosecution
9 that he had either started a new job, or was about to do so, and he would
10 experience difficulties in taking leave from this position. He rejected
11 an offer from the OTP for the latter to liaise with his new employer.
12 Indeed, the Prosecution does not know for whom he is now working, and
13 thereafter the attempts by the Prosecution to contact the witness
14 demonstrate an apparent marked reluctance on his part to speak with
15 representatives of the OTP or to cooperate with the work of this court by
16 giving evidence. The log of these attempts to secure his presence before
17 the Chamber have been disclosed to the Defence and, in all the
18 circumstances, it would appear that a sustained effort has been made to
19 call this witness and, in the event, he is unavailable.

20 3. Notwithstanding his absence, he remains relevant to the
21 current abuse application because the Defence argues that evidence
22 gathered regarding his position reveals the insufficiency and lack of
23 integrity of the Prosecution's investigation. Indeed, on the 4th of
24 November, 2010, (T-325, page 25), the Chamber ordered the Prosecution to
25 disclose his identity because "... the suggested failure by the

1 Prosecution adequately to investigate the reliability and probity of its
2 intermediaries and witnesses is a legitimate area to be explored by the
3 Defence as part of the present abuse of process application and, more
4 generally, during the trial. It forms part of a pattern of an alleged
5 failure to investigate these suggested crimes reliably. On the basis of
6 the material investigated by the Defence ... the Chamber is of the view
7 that in this context evidence relating to 555 has been materially called
8 into question and the threshold for disclosure has been crossed, as
9 regards the detail of the contacts between 555 and the Office of the
10 Prosecutor."

11 A description of the material that had been researched by the
12 Defence is set out in transcript T-325, lines 1 to 9.

13 The account provided by 555.

14 4. 555 set out in his statement that he was visited at the end
15 of November 2008 by two individuals who introduced themselves as
16 important representatives of the Hema community. They suggested that 555
17 had betrayed his community in the sense that he had been delegated to
18 recruit young people to testify for the Prosecution against
19 Thomas Lubanga. They told him forcibly this was a matter he should not
20 be involved with. 555 believed these two individuals to be influential
21 and he noted that one of their telephones was of a kind used by UPC
22 officers. A little later that day, 555 received a telephone call during
23 which he was told that he had betrayed his community and this would cost
24 him dearly. 555 immediately wrote to 598 (by e-mail) describing what had
25 happened. The following day, 555 received an e-mail from 598 who advised

1 him to be careful, whilst also suggesting he should establish the
2 identity of his visitors and to go to see someone called Trionet to
3 discuss the incident.

4 5. During the course of a conversation that occurred shortly
5 afterwards with Trionet, 555 was again called on his telephone and the
6 accusation of betrayal was repeated. Trionet thereafter wrote an e-mail
7 to 598. When other similar calls occurred, 555 reported each of them to
8 598. 555 indicated that 598 tried to help him leave Bunia and, in
9 particular, he successfully found someone who would finance his continued
10 studies elsewhere. In the event, 555 later departed for Lubumbashi.

11 6. When in Kinshasa, 555 spent a considerable amount of time
12 with a national deputy of the UPC, Pele Kaswara Tahigwomu, and he talked
13 to him about the events rehearsed above. During their conversations,
14 Tahigwomu told 555 that the climate in Bunia was very tense. He said
15 there were individuals who acted out of love for Thomas Lubanga and that
16 these members of the UPC could not control everyone. 555 once heard
17 Tahigwomu speaking on the telephone indicating that he knew that a
18 particular individual was going to give evidence for the Prosecution
19 against Thomas Lubanga and that he forbade this. Finally, Tahigwomu
20 asked 555 if he was prepared to find someone coherent who had
21 participated in the events with the UPC who could be a Defence witness,
22 testifying on behalf of Thomas Lubanga. He indicated that there would be
23 advantages for whoever cooperated in this way, implying that this would
24 include 555.

25 The account provided by 598.

1 7. During the week of the 1st to the 6th of November 2010, the
2 Prosecution interviewed 598. The OTP furnished the Chamber with the
3 non-redacted notes of this interview, as well as an e-mail 598 received
4 from 555 in December of 2008. In essence the Prosecution has obtained
5 the following details from or about this new witness. His name is
6 Hervé Cheuzeville, and it is said that he is a French humanitarian who
7 has written a book about child soldiers in Ituri and elsewhere. In 2003,
8 he set up the "Kadogo Foundation" in Bunia that pays for the studies of
9 several ex-UPC child soldiers. 598 had previously put the OTP in contact
10 with 555.

11 8. Against the background of describing his work in demobilising
12 former child soldiers, he expressed his views on the nature of the
13 leadership of the Hema community and particularly the roles of Tibasima
14 and Thomas Lubanga. He suggested that the accused recruited (or
15 re-recruited) individuals from within the northern Hema (the "Gegere").

16 In the process of discussing a pro-Uganda rebel movement, 598
17 states that about 700 young people (adults and minors together) who were
18 transferred to Uganda were guarded at Thomas Lubanga's house in Bunia.
19 They were kept there for several days before being taken to the airport
20 from whence Thomas Lubanga sent them to the Ugandan army. 555 rehearses
21 that Kisembo was an officer under the accused (he had been identified as
22 Thomas Lubanga's military chief) and the former raided colleges to take
23 young people. He recalled being told by some of them that Kisembo
24 organised a raid in December 2000 or January 2001 to snatch older
25 recruits from one or more of the big Catholic schools located in Hema

1 neighbourhoods in Bunia. He referred to a particular young man who had
2 allegedly been a member of the accused's presidential guard and to visits
3 by the accused to Kigali to obtain weapons.

4 9. 598 describes threats and intimidation directed at his
5 organisation by the Hema community or from supporters of Thomas Lubanga.
6 He referred particularly to a recurring theme in Bunia within the
7 extremist Hema milieus that the Kadogo Foundation (598's organisation)
8 had been set up to gather evidence against Thomas Lubanga on behalf of
9 the ICC. He describes one incident when a former child soldier, who had
10 been provided training as a cabinet-maker, was contacted by business
11 people close to Chief Kahwa and who was given money to kill 598 because
12 of his work relating to child soldiers.

13 10. 598 is apparently able to corroborate certain notable
14 elements of the account of 555, including the threats he received because
15 it was understood (incorrectly, it is suggested) that he would give
16 evidence against Thomas Lubanga. He describes an incident when 555
17 assisted a young Lendu (Pascal) in Bukavu who was undergoing surgery, and
18 it transpired that they had fought at the same battle. He can give
19 evidence about other young members of the Hema community who came from
20 the same armed group as 555. The witness indicates that at the time, he
21 was worried 555 would be killed and he contacted the ICC because he felt
22 it was unfair that he was experiencing threats, although he was not, in
23 fact, cooperating with the court at that time. He notes that the message
24 he left with ICC employees went unanswered.

25 11. In general terms, 598 suggests that many children rejoined

1 armed groups at this time under pressure, in that there was an atmosphere
2 that had been created by politicians, such as Tibasima and, later,
3 Thomas Lubanga, which meant that it was almost a duty vis-a-vis your
4 people or tribe to do so.

5 12. 598 contends that in Ituri, for people from the northern
6 Hema, membership of the UPC, whether or not genuine, was almost
7 automatic. He refers to a climate of indoctrination and the linked risk
8 of being considered a traitor.

9 13. He observes that Thomas Lubanga was used by others and he
10 criticised the role of certain religious leaders in these events.

11 The submissions of the Prosecution.

12 14. Against that background the Prosecution particularly seeks
13 to elicit the following evidence from 598.

14 I. Threats were made to 555 and other ex-UPC soldiers, along
15 with the foundation for which the witness works, because of an alleged
16 perception that they had cooperated with the court.

17 II. Details of 555's suggested role as a soldier.

18 III. Material concerning the family of 555 and their possible
19 links with the UPC. The Prosecution submits that he should be able to
20 give evidence about the interrupted schooling of 555 because of his
21 membership in the UPC.

22 IV. Threats 598 received from the Hema community along with the
23 general climate of pressure within the Hema community in which anyone who
24 acts 'against' the community interests is 'penalised.'

25 15. In conclusion the Prosecution submits that the testimony of

1 598 is important to the Prosecution's case and it will help the court
2 establish the truth as regards the abuse of process application, in part
3 because it is relevant to the Defence allegations as regards 555 (who the
4 Prosecution is unable to call) along with the suggested climate of fear
5 and the existence of threats in the relevant area.

6 16. Therefore, it is suggested that 598 is able to give evidence
7 that is in many respects similar to the anticipated evidence of 555 and
8 the Prosecution relies on the Chamber's oral decision of the 29th of
9 June, 2010, in which the Chamber admitted the testimony of 555,
10 concluding as follows:

11 "In all the circumstances, the Chamber is satisfied that this
12 evidence is relevant and admissible at this stage in the proceedings. It
13 is anticipated that Witness 555 will support the Prosecution's contention
14 that some of the witnesses relied on by the Defence who are relevant to
15 the abuse of process application have been put under improper pressure to
16 give evidence in support of the accused. That assertion has a direct
17 bearing on the factual matters that the Chamber is called on to decide,
18 and accordingly, it is appropriate for the Prosecution to call this
19 evidence." (T-307, page 3).

20 17. It's necessary to interpolate, to note that the
21 justification for calling 555 developed and significantly changed.
22 Originally, it was suggested that 555 was to be called for the general
23 reason that he would be able to provide "evidence on the pressure and
24 intimidation applied by Hema supporters on those suspected of involvement
25 with the ICC" (see document 2473-Conf, 16th of June, 2010, at page 9).

1 However, this very general submission was later refined and made
2 substantially more specific. On the 28th of June, 2010, (T-306, page 10,
3 line 5 onwards) the Prosecution submitted:

4 "... 555's evidence is relevant because the Prosecution has
5 maintained a central theme in its response to the Defence abuse of
6 process application and it has been, in our submission, demonstrated
7 through the cross-examination of the Defence witnesses that members of
8 the Defence resource team, other Hema notables, have pressured Defence
9 witnesses to come to the court and testify for Mr. Lubanga and, indeed,
10 lie to the court.

11 "We cite the evidence of Witness 297 who gave testimony that
12 Mr. Cordo - somebody related to Mr. Lubanga - pressured him into stating
13 in court that he was not a member of the UPC. He also said in court that
14 Defence Witnesses 3 and 4 were asked to lie by Cordo and, indeed, his
15 evidence was that 3 and 4 came to the court and gave false testimony.
16 And therefore, in our submission the potential testimony of Witness 555
17 corroborates the evidence heard from Witness 297 and Defence Witnesses 3
18 and 4 ..."

19 The Chamber, on this basis, summarised his relevance as follows:

20 "So the heart of this is really to demonstrate what the
21 Prosecution would say is a real possibility that at least some of the
22 Defence witnesses that we have heard from in support of this application
23 have themselves been brought here as a result of pressure from third
24 parties."

25 The Prosecution agreed without qualification with that summary of

1 his relevance and accepted that it was a fair description capturing the
2 matter (T-306, page 11 onwards).

3 19. Bearing in mind the right of the accused to a timely trial,
4 the Prosecution has established that the witness, who currently resides
5 in Tchad, is able to testify during the first week of December (although
6 it is suggested he could commence his testimony at 2 p.m. on the 1st of
7 December, 2010 - see transcript 335, page 61 onwards). The Prosecution
8 anticipates his evidence will last at most one and a half days. The
9 parties each indicated their examination will be brief.

10 20. The Prosecution relies on the permission granted by the
11 Chamber for certain Defence witnesses to give evidence at short notice
12 and requests the same indulgence.

13 The submissions of the Defence.

14 21. The Defence submissions were submitted by e-mail, received
15 on the 11th of November, 2010. These were supplemented by oral
16 submissions on the 12th of November, 2010.

17 22. In summary, it is argued that the Prosecution's request to
18 replace Witness 555 by Witness 598 is excessively late and the evidence
19 lacks relevance. It is suggested that allowing this witness to give
20 evidence would cause prejudice to the accused, particularly through an
21 unjustified delay to the proceedings. In this regard, it is contended
22 that the Prosecution failed to ensure the availability of 555 when it
23 selected him as a witness. Furthermore, the necessary investigations
24 that would need to be conducted for Witness 598, whose identity and
25 statement were disclosed to the Defence on the 10th of November, 2010,

1 would delay his testimony until January 2011.

2 23. The Defence further doubts that Witness 598 can provide
3 relevant evidence on Witness 555's interrupted schooling due to his role
4 in the UPC as he lacks knowledge of Witness 555's school history during
5 the years 2000 to 2004. Moreover, it is argued that 555's role in the
6 UPC has no bearing on the Prosecution's claim that improper pressure was
7 exerted as regards Defence witnesses.

8 24. It is contended that 598 will, in the main, give testimony
9 as to information he heard from 555 and therefore it would be essentially
10 hear say in nature.

11 25. Finally, the Defence observes that 598 refers to threats he
12 personally witnessed in 2006 that were not necessarily made by the same
13 individuals referred to by Witness 555. Critically, it is submitted,
14 that Witness 598's expected testimony does not contain any allegation of
15 pressure to elicit evidence in favour of the accused.

16 Analysis and conclusions.

17 26. On analysis, the evidence of 555 and 598 overlaps, not least
18 in the sense that 598 was told by 555 of the various threats and
19 criticisms which the latter received whilst in Bunia as described above.
20 Although 598 is able to give a hearsay account of these matters, it is
21 said that the facts were relayed to him on a near-contemporaneous basis,
22 which potentially enhances the value of his evidence. As explained in
23 various earlier decisions, depending on the circumstances, the Chamber is
24 prepared to admit hearsay evidence. Given the Prosecution's focused
25 justification for calling 555 (paragraph 16 to 18 above), it is to be

1 observed that in his interview, 598 does not provide evidence to the
2 effect that Defence witnesses who have been called during this trial
3 (including on this abuse of process application) were pressured to give
4 testimony in favour of the accused. 555, on the other hand, was in a
5 position to give evidence about the suggested influence that was brought
6 to bear on individuals to assist Thomas Lubanga (although he also did not
7 provide direct evidence that the witnesses who have been called by the
8 Defence were put under pressure).

9 27. Otherwise, 555 did not provide similar, extensive and
10 general evidence to that which is now available from 598 (e.g. broadly
11 based testimony about the recruitment of child soldiers; material on the
12 diverse pressure exercised by the Hema community and the UPC; and the
13 role of the accused and, inter alia, Tibasima and Kisembo), although he
14 briefly touches on some of these or related matters. If this
15 significantly wider evidence from 598 is introduced at this stage of the
16 abuse application, it would constitute a marked and very late evidential
17 development going beyond the Prosecution's justification for calling 555,
18 as summarised between pages 1 to 3 of T-307 on the 29th of June, 2010.
19 Furthermore, it is clear that the Prosecution has been aware of this
20 witness for a considerable period of time and independently of the
21 position of 555, it could have applied a substantial time ago to call him
22 as a part of the evidence in this trial, including on this discrete abuse
23 of process application.

24 28. Bearing these matters in mind, and given the importance of
25 the present issue under consideration by the Chamber, fairness dictates

1 that the Prosecution should be permitted to call 598 to the extent that
2 he is in a position to replace the evidence that would have been given by
3 555. However, his account before the Court is to be limited to those
4 areas that substantively reflect or cover the "lost" evidence of 555,
5 including a present challenge by the Defence that 555 lied in an account
6 which in turn has been inadequately researched by the Prosecution.

7 Put otherwise, it is appropriate to allow the Prosecution to
8 replace its anticipated, although now unavailable, witness, but it would
9 be wholly unfair to the accused and unjustifiable to permit the
10 Prosecution (at the very last moment) to broaden its strategy and the
11 issues to be considered on this application by allowing the OTP to
12 introduce the additional wide-ranging evidence set out in the interview
13 with this witness, which exceed the boundaries of the original
14 justification for calling 555. Additionally, as set out above, the
15 Chamber recognises that 598 does not give direct evidence that witnesses
16 have been pressurised to give evidence in this trial in support of
17 Mr. Lubanga.

18 29. The Chamber is conscious that when 598 is called on the
19 1st of December, 2010, the Defence will have had only a little over a
20 week to research his evidence, save to the important extent that it has
21 been able to prepare for the testimony of 555 who he is replacing.
22 Experience in this trial has demonstrated that proper research and
23 investigation into the testimony of witnesses in the DRC is a
24 time-consuming and labour-intensive exercise. Indeed, the Defence has
25 indicated that necessary investigations would delay the evidence of 598

1 until January 2011.

2 30. In order to meet these research difficulties and to ensure
3 the fair trial of the accused, the Chamber orders that 598 is called on
4 the restricted issues identified above and the Defence will conduct its
5 (preliminary) questioning of him during the week of the 29th of November,
6 2010, on the basis of the material then available. However, if following
7 the judicial recess, the Defence seeks to examine 598 further on any
8 relevant matters directed at his testimony or his credibility that are
9 obtained during the Christmas and New Year adjournment, the Chamber will
10 consider any request at that stage on its merits. The legal adviser to
11 the Division should be alerted at the earliest opportunity if this course
12 is to be requested.

13 31. In all the circumstances, the probative value of the
14 elements of the account of 598 which "replace" the unavailable evidence
15 of 555 outweigh their prejudicial effect. They are relevant to the
16 present abuse application; and given the witness will only be permitted
17 to give substitute evidence for a witness who cannot now be called, and
18 the Defence will be given sufficient time to research his testimony,
19 along with his credibility and reliability, it is fair, on this
20 restricted basis, to grant the application.

21 That concludes the ruling. There was one false start at
22 paragraph 4 which, please, should be rectified so as to exclude the false
23 start in the edited transcript. And I think on at least one, if not
24 more, occasions, I forgot to put in the paragraph numbers as I was
25 reading out the narrative. Could those please be inserted so it is

1 numerically correct.

2 Is there anything else that anyone wishes to raise this
3 afternoon? Maître Mabilie?

4 MS. MABILLE: (Interpretation) Mr. President, you asked the
5 question this morning regarding problems related to disclosure.

6 (Defence counsel confer)

7 MS. MABILLE: (Interpretation) Yes, in open session,
8 Mr. President. I have a slight concern I will address in just a moment.

9 PRESIDING JUDGE FULFORD: Public session, please.

10 (Open session at 3.32 p.m.)

11 COURT OFFICER: We are in open session.

12 PRESIDING JUDGE FULFORD: Maître Mabilie, absolutely follow
13 whichever course you think is appropriate, could we ask you to reflect on
14 whether, if there are detailed disclosure complaints, whether they are
15 better dealt with by oral submission or whether they are better dealt
16 with by e-mail so that you can set out the fine detail of it? It's
17 really a matter for you. Take whatever course you would prefer.

18 MS. MABILLE: (Interpretation) Actually I'd like to make a
19 general observation regarding the disclosure issues. The Chamber knows
20 that we sent an e-mail on November 19th, in which we attempted to cover
21 all of the disclosure requests that we had made to the OTP. I would say,
22 in a few words, that the Prosecutor knows perfectly what we are seeking
23 and he knows perfectly what his obligations are. The Defence considers
24 that there were all the opportunities in order to follow up on our
25 request for disclosure -- to follow up on these disclosure obligations.

1 This morning we're in a bit of a race to finish writing up our
2 application and we need to finalise our request for documents, which I
3 will speak about in just a moment.

4 Today have simply decided that the Defence will ask the Chamber
5 to draw the conclusions of the Prosecutor's non-disclosure, and as of
6 today, we no longer have the intention to ask the Chamber to intervene
7 regarding the disclosure issues. I would like our stance to be quite
8 clear. It is not that we consider that the problems are not important.
9 We consider today that it is too late, and I would merely like to give
10 you a very slight example to say that it is important but at the same
11 time it is serious, but it is too late. We have been asking since the
12 beginning of October, and from time to time, I think that I almost could
13 be considered to have harassed the Office of the Prosecutor regarding
14 these disclosure requests for the screening notes that the Prosecutor has
15 on the accounts of (* indiscernible). I would like to specify to the
16 Chamber that for us it is something important, it's extremely important,
17 because the Defence's thesis is that 0321 would have looked for the
18 so-called child soldiers in that neighbourhood and that we know that the
19 Office of the Prosecutor heard these four counts.

20 Now, the Prosecutor has not contested the fact that he heard that
21 and relayed to us the screening notes of one of these (* indiscernible)
22 leaders but we are still waiting for the two others, but Desalliers and
23 myself do not know what happened between September and October before the
24 proceedings resumed. I'm giving this example but I would just like to
25 tell the Chamber today it is too late and I would say that we are in the

1 starting blocks for this application. We can no longer wait for
2 disclosure and therefore we are taking note of this. This is the first
3 point I wanted to bring before the Chamber.

4 The second point is that we have lodged an application for the
5 admission of documents that's before the Chamber. I would like the
6 Chamber for, perhaps, to give a timetable to the Prosecutor for him to
7 respond because we would need to have this materials in our application
8 for abuse of procedure.

9 Now, I'd like to also indicate to the Chamber that we have lodged
10 a final application, we did not do that before, and I'm telling you this
11 because we were still waiting with the hope that a certain number of
12 documents would be relayed to us by the Prosecutor, but as I said, we
13 have decided to conclude this aspect, so we will be relodging a fourth
14 application that will be much smaller in volume than the third but with
15 other documents.

16 I have finished regarding this aspect. There is a last aspect
17 I would also like to speak about. May I do this immediately,
18 Mr. President?

19 We would like to inform our Chamber that we have lodged an urgent
20 application before Chamber II in order to obtain the hearing
21 transcriptions for a witness who has just testified. It is Witness
22 number 28, who presented himself as a former child soldier, and according
23 to the chart submitted by the Prosecutor, Witness 0028 was presented to
24 the Office of the Prosecutor through the intermediary 183, who was
25 presented as being the assistant of the intermediary 316. However, this

1 Witness 0028 indicated that he would have made false statements to the
2 Office of the Prosecutor, thus seriously challenging the -- calling into
3 question the behaviour of 0316 and 0183. The Chamber will understand
4 that this is important, this statement is important, for the Defence in
5 terms of the abuse of procedure. And we -- abuse of process, sorry.
6 Procedure. And I would like to add that we have the intention of using,
7 if applicable, this statement as evidence in this case.

8 I merely at this stage wanted to inform the Chamber of this
9 request made to Chamber II and our team's intentions regarding this
10 point.

11 PRESIDING JUDGE FULFORD: Thank you very much, Maître Mabilie.

12 Mr. Sachdeva, looking at point 1, if as part of the Defence
13 application there are itemised complaints of material non-disclosure,
14 it's going to be necessary, isn't it, for the Chamber, as part of some
15 kind of *ex parte* procedure, to investigate with the Prosecution whether
16 or not there has been material that remains undisclosed which should have
17 been disclosed. At the moment, I can't see how else we could properly
18 determine whether or not the Defence suggestions are right or wrong.

19 MR. SACHDEVA: Mr. President, if I may address that in a moment
20 but perhaps just to perhaps clarify my comments for my learned friend.
21 As I informed the Chamber, when the Defence sent the e-mail to the
22 Chamber on the 19th of November without copying the Prosecution, we had
23 at the same time submitted a consolidated response to the Defence
24 *inter partes* answering each request in detail that had been relayed to us
25 in November and perhaps October. And the issues in our submission were

1 sufficiently dealt with.

2 In respect to the example my learned friend has just raised, in
3 fact what we had said is that we had disclosed material in relation to
4 those persons that we believed was relevant, was disclosable pursuant to
5 our obligations, and we have taken the position that if there has been a
6 screening subsequently followed on with a full statement pursuant to the
7 decision in the Bemba case, the screening note need not necessarily be
8 disclosed if information is contained in the subsequent full statement
9 that has been taken.

10 We have also indicated to the Defence on that date that should
11 there be further disclosable material in relation to those four persons,
12 we will duly disclose that and that is being undertaken.

13 Now, in respect of other items of disclosure, in our submission,
14 many of them have been responded to and, in our submission, sufficiently
15 responded to. If there is a question of discrepancy between the
16 Prosecution and the Defence, then perhaps Mr. -- perhaps your Honour's
17 suggestion is something that one would have to undertake. But as we have
18 submitted before, we have constructed in-depth searches in relation to
19 the issues that we have been told are relevant to the Defence and that
20 our disclosable pursuant to our obligations and pursuant to the decision
21 your Honours have set out in respect of disclosure.

22 That is our obligation and we submit that we have abided by that
23 obligation.

24 The second point my learned friend has raised is the application,
25 I believe bar table application, and --

1 PRESIDING JUDGE FULFORD: Can we stay with disclosure? As I do
2 so, in the edited transcript of the English, page 69, line 10, where it
3 reads: "... is going to be necessary, isn't it, for the Defence ..."
4 I may have used the word "Defence," it should be "Chamber," and that
5 needs to be amended, isn't it going to be necessary for the Chamber as
6 part of some *ex parte* procedure to investigate with the Prosecution as to
7 whether or not there has been material that remains undisclosed.

8 I want to go back to that point, Mr. Sachdeva. We've had various
9 disclosure requests put before us to the extent that we have been able to
10 rule on them because we've had sufficient information, we've been -- we
11 have done so. But it appears that there remain other disclosure requests
12 from the Defence, which, for whatever reason, the Chamber has not ruled
13 on or been invited to rule on.

14 Now, if they are -- if they form part of the abuse of process
15 application, we are going to have to, aren't we, conduct an *ex parte*
16 exercise with the Prosecution so that we can investigate whether or not
17 the assertions made by the Defence are well-founded?

18 MR. SACHDEVA: Perhaps after receiving the Prosecution's in-depth
19 response to the assertions by the Defence, because -- I say this because
20 the Prosecution has dealt with the disclosure on an *inter partes* basis.
21 The Defence have raised concerns with your Honours, and as your Honours
22 have just said, when needed, your Honours have ruled, and I might add the
23 last decision ruled in the Prosecution's favour, but I point that out as
24 an aside. Therefore, of course the Defence can make any application they
25 want but I would submit that we are entitled to robustly respond and then

1 should there be the requirement of the Chamber to intervene, of course
2 that would be the preferred solution.

3 PRESIDING JUDGE FULFORD: That's helpful. It may well be you're
4 right, that we should await your written response first, and then, to the
5 extent that it's necessary following your response, it may than we are
6 going to have to look at the underlying material to see whether in our
7 judgement there are items that are outstanding which should have been
8 disclosed or whether, on the other hand, the Prosecution has fully
9 complied with its obligations.

10 Now, on the suggestion that this is now all too late, is there at
11 this point in time anything which in your judgement, Mr. Sachdeva, falls
12 within what I described this morning as the uncertain category, where
13 it's not in your mind clear which side of the line it falls in terms of
14 disclosure, which we ought to consider? Or is your position that on
15 mature reflection you have complied with your obligations and as such
16 there is nothing for to us look at at the moment?

17 MR. SACHDEVA: Mr. President, of course, when your Honours made
18 that point yesterday, we have taken it on board, and that is under
19 review, if I may say so. But at this point, I can't think of anything
20 off-hand, but it is under review certainly. And may I just make one
21 clarification? Of course, your Honours may be required to look at the
22 underlying materials but in our submission, some of the requests
23 itself -- themselves, do not have any legal basis and therefore it would
24 not actually be required to look at the materials because -- I mean
25 I won't make examples now but --

1 PRESIDING JUDGE FULFORD: Don't, Mr. Sachdeva, and you're
2 undoubtedly right. If a request has been made for an item of material or
3 a category of material which the Defence self-evidently aren't entitled
4 to, then it probably won't be necessary for us to spend much, if any,
5 time looking at it, so we'll have to see how it looks in due course. All
6 right, but we've just got to look at what, if anything, the Chamber is
7 called upon to do and should do at this stage given that there is an
8 enduring disagreement between the Prosecution and the Defence. And the
9 Prosecution's position is, at the present time, there is nothing that we
10 need to consider in order to assist the Prosecution in deciding whether
11 or not it's fulfilled its disclosure obligations.

12 MR. SACHDEVA: At this point, that's correct, and I also made add
13 that the Defence and Prosecution have not actually sat down, as we
14 frequently have done, following on from our consolidated response to the
15 Defence's list of outstanding disclosures. And it may be that there are
16 agreements, but I just can't say, but we haven't had that discussion.

17 PRESIDING JUDGE FULFORD: Well, hopefully we are going to rise
18 slightly early this afternoon and that may provide an opportunity,
19 Mr. Sachdeva. Now you were moving on to the bar table documents. Are
20 you intending to respond? And if so, I think Maître Mabilille's real
21 request is whether you would be prepared to do so within a shortened
22 period of time.

23 MR. SACHDEVA: Mr. President, in respect of the second request, I
24 believe it's a second request, our response is due Monday or Tuesday and
25 we are, as I speak, preparing a response to that. The final request,

1 again it's difficult to say at this point how quickly we can respond to
2 it without having seen the extent of the application, but, of course, we
3 understand the time constraints that everyone is under and we will
4 endeavour to respond as soon as possible.

5 PRESIDING JUDGE FULFORD: Once the application that we haven't
6 yet received has been filed, could you please promptly communicate with
7 the legal adviser to the Division as to what time is, in fact, needed for
8 a response, rather than simply assuming that the usual time periods will
9 apply?

10 MR. SACHDEVA: Certainly, we will do so.

11 And if I --

12 PRESIDING JUDGE FULFORD: Witness 0028 before Trial Chamber II?

13 MR. SACHDEVA: Yes. In our submission, it's a premature request.
14 The initial request has gone to Trial Chamber II for obtaining the
15 evidence of Witness 0028. We haven't reviewed that evidence. We can't
16 comment on the relevance to this trial at this stage. What we would
17 submit is that it is potentially a large issue. It's potentially an
18 issue that if accepted the Prosecution would, we submit, have the right
19 for a response, in terms of countering any evidence the Defence suggests
20 is beneficial to their abuse of process case. And therefore we would ask
21 the Chamber to order the Defence to prepare a filing with the legal basis
22 for the application and with the information itself, if indeed the
23 information is permitted to be in their possession from Trial Chamber II,
24 so we can respond in depth.

25 PRESIDING JUDGE FULFORD: The accused in Trial Chamber II are

1 being prosecuted by the same office as the accused in this trial. I'm
2 sure you're able to discuss with Mr. MacDonald, in general terms, what
3 the evidence of Witness 0028 has been. Mr. Sachdeva, do you not at the
4 moment have any notion at all as to whether or not what that witness has
5 said touches on the issues in this trial?

6 MR. SACHDEVA: Of course I do. Of course, we do.

7 PRESIDING JUDGE FULFORD: On a preliminary basis does it seem as
8 though what he has said, at least in part, could have a proper impact on
9 our consideration of these matters?

10 MR. SACHDEVA: Well, it is in relation, as I understand it, to
11 183, and 183, we know, was a colleague of Witness 0316. Having said
12 that, it does not necessarily mean whatsoever that allegations against
13 183 should be imputed to allegations or should be related to allegations
14 against 0316. And there has to be a distinction in our submission, so at
15 first blush, our response would be that it's not strictly relevant to the
16 precise allegations the Defence have made regarding 0316, 0321 and 0143.

17 PRESIDING JUDGE FULFORD: We'll have to wait and see. Obviously,
18 given the time constraints, Mr. Sachdeva, you'll do everything you can to
19 ensure that we have the assistance from Mr. MacDonald in speeding up this
20 process, so that if Trial Chamber II is able to disclose that evidence,
21 it's delivered as speedily as possible. Thank you very much.

22 Is there anything else you wanted to stay at this stage?

23 MR. SACHDEVA: May I have one moment, please?

24 PRESIDING JUDGE FULFORD: Certainly.

25 (Prosecution counsel confer)

1 MR. SACHDEVA: Mr. President, I understand that a response is due
2 in relation to the third intermediary that 0582 referred to during his
3 deposition for which the Defence want the code, and my colleague
4 Mr. Omofade has made submissions to the Court on the Prosecution's
5 position, which is to resist the provision of that code. And our
6 position is maintained. We rehearse --

7 PRESIDING JUDGE FULFORD: Just remind me, Mr. Sachdeva, my memory
8 is no doubt faulty on this. Weren't we awaiting some final submissions
9 on that point or are they now with the Court?

10 MR. SACHDEVA: I believe the Defence relayed some materials to
11 the Chamber yesterday, and we --

12 PRESIDING JUDGE FULFORD: That is absolutely right. There was an
13 e-mail communication setting out what is said to be the evidential basis,
14 and as I recall it, the timetable included the opportunity for the
15 Prosecution to respond, I think, by 4 p.m. either today or tomorrow.

16 MR. SACHDEVA: It was by 6 p.m. today, as I understand it.

17 PRESIDING JUDGE FULFORD: There we are. I was being mean by two
18 hours, Mr. Sachdeva. Right, what's the position? Are we going to get
19 something in writing from the Prosecution by 6 p.m. today?

20 MR. SACHDEVA: Indeed, we will relay something in writing,
21 Mr. President, with your leave.

22 PRESIDING JUDGE FULFORD: Thank you very much. Thank you.

23 Now, Maître Mabilie, putting aside any sense of frustration at
24 having not received in a timely fashion what you believe you are entitled
25 to, I'm sure that you will continue to the extent that it's appropriate

1 asking the Chamber to rule on matters in relation to disclosure that we
2 can still deal with usefully at this stage, if proper inquiries are made.
3 So I would encourage you not simply to down tools but to remain engaged
4 with the Chamber on the issue of disclosure to the extent to which we can
5 usefully assist. Obviously, if in due course you say there are matters
6 that have simply not been handed over that should have been, we will
7 consider those allegations as part of the Defence abuse application. But
8 obviously there is an obligation on you to continue pushing at the door
9 for so long as it is reasonably useful to do so. Now, is there anything
10 else you would wish to say to us on that point?

11 MS. MABILLE: (Interpretation) No, I have no further comments,
12 your Honour, thank you.

13 PRESIDING JUDGE FULFORD: We will have, as I understand it,
14 Mr. Sachdeva's response to the present admission for documents from the
15 bar table by Monday. We will deliver a decision on that rapidly so that
16 you can include or ignore documents for the purposes of your submission.
17 As soon as the outstanding application is received, Mr. Sachdeva is going
18 to indicate, as soon as he can, what the real timetable is for a
19 Prosecution response.

20 We would ask for a message to be communicated to the Judges of
21 Trial Chamber II that we would be very much obliged to them if they could
22 resolve the Defence application for the transcript of Witness 0028 as
23 quickly as possible because we are now under very real time constraints
24 as regards the Defence abuse of process application. So the message,
25 please, from the Court Officer citing this part of today's transcript,

1 but, of course, we understand the time difficulties that they have, but
2 if they were able to resolve this speedily, we would be very much
3 obliged.

4 And Maître Mabilie, as soon as you have it, orally, by e-mail or
5 by way of a filing, you can explain to us how the transcript is relevant,
6 whether it should be admitted simply as it stands, whether further
7 evidence is required, et cetera, et cetera.

8 Anything else? No? Good. Thank you all very much.

9 We will sit, then, at 2.00 p.m. on Tuesday, *ex parte* Defence and
10 Victims and Witness Unit only, for the VWU's oral report of the 27th of
11 October. And we will sit at 2.00 p.m. on Wednesday to commence the
12 evidence of 598. Be warned, we are attempting to secure more time for
13 Wednesday afternoon so do not make any early or late-afternoon
14 engagements because you may be in court.

15 Yes, Mr. Sachdeva?

16 MR. SACHDEVA: Mr. President, I hesitate because it, in fact,
17 relates to an issue that we had had discussions just before we came into
18 court with the Defence. The Defence had informed us that they would
19 think about a request we were potentially going to make to your Honours
20 in relation to 0583, and because we are under -- we are potentially under
21 time constraints, perhaps I will make the application now.

22 PRESIDING JUDGE FULFORD: From that very hesitant introduction,
23 Mr. Sachdeva.

24 MR. SACHDEVA: With your leave, may we move into private session?

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

1 *(Private session at 4.00 p.m.) Reclassified as Open session

2 COURT OFFICER: We are in private session.

3 PRESIDING JUDGE FULFORD: Yes.

4 MR. SACHDEVA: Thank you, Mr. President. When we said our thanks
5 and goodbyes to Witness 0583, he informed us that he had just been made
6 aware that his testimony would be eventually uploaded on to the YouTube,
7 the ICC YouTube directly which is then broadcast to the DRC. Now, of
8 course, 0583 understands your Honour's ruling on protection and there is
9 no issue with his face and name being publicly available, but he did
10 express concern that perhaps the YouTube broadcast would be potentially
11 much wider, would be a much wider distribution of his identity and his
12 concern was that there could be individuals who would otherwise not have
13 seen his image and then associate a particular witness or person with
14 that image, and so it's not -- I guess it's an application to prevent the
15 wider distribution of 0583's image throughout the DRC.

16 PRESIDING JUDGE FULFORD: Sorry, Mr. Sachdeva, I'm being dim.
17 His image is not going to be revealed because it's been distorted. But
18 is it that if his evidence is relayed via YouTube, there are things which
19 he's said and talked about that may lead people to deduce that -- no,
20 that's not it, sorry, I'm being very thick, indeed. What is the real
21 position?

22 MR. SACHDEVA: I apologise. He actually testified without
23 protective measures.

24 PRESIDING JUDGE FULFORD: Of course. I'm sorry, I'm confusing
25 0583 with the previous witness, the witness who just left court. Of

1 course, 0583 does not have any protective measures, right. So are you
2 asking for us to order that the usual course should not be followed with
3 his evidence?

4 MR. SACHDEVA: What we are asking is that the broadcast on
5 YouTube of his evidence with, therefore, his image being distributed in a
6 more wide fashion than would otherwise have been if it was not on
7 YouTube, for that to be prevented. Because 0583 expressed concern that
8 if his evidence or his image is broadcast more widely in the DRC then
9 perhaps there could be persons who would have identified particular
10 individuals associated with 0583 and therefore lead to security
11 implications for those individuals.

12 PRESIDING JUDGE FULFORD: Right. Mr. Sachdeva, I think we are
13 going to need chapter and verse on this. If it's necessary *pro tem*, in
14 order to secure the position, to delay that uploading and that broadcast,
15 we order that now, but if you are going to suggest that there were people
16 mentioned by 0583 or people who could be implicated because his image is
17 seen by a wider distribution, you are in a filing going to have to
18 identify who it is who you say is potentially at risk. This is not going
19 to be done on a general, non-specific basis. You're going to have to
20 demonstrate that there is a real basis for concern.

21 MR. SACHDEVA: We will do so. I was -- we were just expressing
22 the concern raised by 0583.

23 PRESIDING JUDGE FULFORD: Well, you have leave to go back to him
24 so that he can give you chapter and verse, if he is able, of those, not
25 himself, but other people who may be at risk.

1 MR. SACHDEVA: Thank you very much, Mr. President.

2 PRESIDING JUDGE FULFORD: All right. Good. We all meet together

3 again, then, Wednesday of next week. The Defence, Tuesday of next week.

4 Thank you very much.

5 The hearing ends at 4.06 p.m.

6 RECLASSIFICATION REPORT

7 Pursuant to Trial Chamber I's email instruction dated 4 January 2012, the transcript is

8 Reclassified as public after the indicated redactions have been implemented as

9 ordered by the Chamber. All private and closed sessions (*) are now available

10 to the public with the exception of the portions of the transcript that have been

11 redacted.