

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Thomas Lubanga Dyilo - ICC-01/04-01/06
5 Presiding Judge Adrian Fulford,
6 Judge Elizabeth Odio Benito and Judge René Blattmann
7 Trial Hearing
8 Friday, 12 November 2010
9 (The hearing resumes in open session at 2.34 p.m. from Courtroom 2)
10 THE COURT USHER: All rise. Please be seated.
11 THE COURT OFFICER: Good afternoon, your Honours. We are in open session.
12 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.
13 MR SACHDEVA: Thank you, Mr President. With your leave, could my colleague,
14 Ms Struyven, make submissions in respect of Witness 598?
15 MS STRUYVEN: Thank you, Mr President. We just would like to address two
16 points: One point on the lateness and another point on the relevance of the
17 anticipated testimony of 598.
18 Now, on the lateness of the proceedings, your Honours, we are aware of the fact that
19 this request was made quite recently. However, the request of the Defence to
20 demonstrate the allegations they have made against Witness 555 was also made quite
21 recently and, more specifically, on 22 October 2010.
22 In addition, your Honours, it is not as if Witness 598 is unknown to the Defence. 598
23 was mentioned several times in Witness 555's statement, which was disclosed in June
24 of this year and which as we all know has been scrutinised and investigated by the
25 Defence.

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 The Prosecution submits that it is indeed an exceptional request and it is -- that in a
2 sense it is similar to the request that was made by the Defence in March of this year,
3 when they asked to add four Defence witnesses to their Defence witness list, namely
4 Defence witnesses 32, 33, 34 and 35, who upon relatively short notice came to testify
5 by the end of April and the beginning of May.

6 The Prosecution is therefore requesting the same indulgence of this Chamber in this
7 particular instance. Of course, we could ask Witness 598 to come later. I have to
8 slow down. We could ask 598 to testify later, as mentioned in an email earlier today.
9 He is willing to come on 29 November, but of course he's also willing to come after
10 that point in time.

11 Now, on the relevance of his anticipated testimony, your Honours, first of all we
12 would like to remind this Chamber that it is still not entirely clear what the actual
13 allegations are that are put against Witness 555 by the Defence. As you may recall,
14 the Defence has stated that family members would have said he was not a soldier.
15 We do not know who these family members are. The Defence has also said that
16 school records show that he could not have been -- would have not have been in the
17 army but, because we don't know the exact details of these allegations, it is of course
18 difficult for us to know whether or not this witness is going to respond to these
19 allegations.

20 Nevertheless, we believe that the anticipated testimony of 598 is of course relevant.
21 As you may recall, Witness 598 created a foundation in the relevant time period; that
22 was providing schooling to ex-child soldiers, mainly ex-UPC child soldiers. Witness
23 598 will testify that Witness 555 benefitted from his foundation because he had been a
24 child soldier, or at least a soldier in the technical sense. He will explain that
25 verification mechanisms were in place and that he himself, who had a very close

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 relationship with Witness 555, had reasons to believe that Witness 555 was indeed in
2 the army.
3 Secondly, Witness 598 will be able to authenticate an email that 555 sent to him in
4 December of 2008. Now, the relevance of that email, your Honours, cannot be
5 underestimated. The Defence has been alleging that certain individuals would have
6 lied about being soldiers to get benefits from NGOs.
7 At the time that Witness 555 sent this email, namely in December of 2008, he had just
8 finished his university studies and he was returning to his original place of origin and
9 he was supposed to start his life, to get a job and live there with his family members.
10 At that very moment in time there was no reason for 555 to lie about the threats,
11 which were of course related to him being a soldier in the UPC, in order to get
12 benefits from 598 because he already finished his university degree. On the other
13 hand, if he wouldn't have been a soldier, he wouldn't have had threats to report on in
14 the email that he sent to 598. Again, because Witness 598 can and will be able to
15 authenticate that email, we believe that this is extremely important.
16 Thirdly, your Honours, Witness 598 will testify that he himself was threatened
17 because he was seen as an enemy of the Hema community. He will explain that
18 everyone in the Gegere community in Bunia had to act in accordance with the
19 community interests. If not, if they wouldn't act in accordance with the community
20 interest, they would be excluded and punished. He will testify that any cooperation
21 with the Court and any testimony against Thomas Lubanga was seen as treason. By
22 way of example, he will explain that even just visiting ex-soldiers of the UPC would
23 raise suspicion and would eventually lead to accusations.
24 Now, all of this, your Honours, falls squarely into the Prosecution's theory that the
25 Defence witnesses were pressured into giving false evidence in support of the abuse

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 of process. One aspect of the Prosecution's theory is that some Defence witnesses
2 would have been pressured to come here and testify that their members or their
3 family members were not child soldiers, simply to correct these child soldiers' mistake
4 of having testified against Thomas Lubanga.

5 To conclude, your Honours, Witness 598's anticipated testimony is of the same nature
6 as the testimony of 555, or at least the testimony 555 was supposed to give and which
7 was found relevant and admissible by this Chamber. For all these reasons, the
8 Prosecution submits that it should be given an opportunity to call this witness.

9 Thank you.

10 PRESIDING JUDGE FULFORD: Two things, Ms Struyven: The first is - I would
11 just like your observation on this, please - isn't there a risk that we are moving too far
12 away from the real issue? What I mean by that is this: The Defence have called
13 evidence in support of the abuse of process. The Prosecution applied, successfully,
14 to call evidence in rebuttal of that assertion. One of your witnesses, 555, cannot
15 attend, so he is not a witness. However, you are wanting, certainly in part through
16 598, to call evidence to support the credibility of somebody who is no longer being
17 called to give evidence before us. Now, isn't this all starting to stray too far from the
18 real issue before us?

19 MS STRUYVEN: Thank you, Mr President. It is correct that in part this witness
20 would be able to contradict the allegations that have been made by the Defence in
21 respect of 555. That's the first aspect of his testimony, but secondly Witness 598 is in
22 a position to provide similar evidence --

23 PRESIDING JUDGE FULFORD: That's not what I'm asking you in point one. I'm
24 asking you to concentrate on the part of your submission - the part of your
25 submission - where you are seeking with 598 that you wish him to give evidence that

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 supports the truthfulness of a witness who is not being called, who in turn was going
2 to be called but isn't going to be called as rebuttal to a Defence point. So, to put it
3 again, aren't we straying too far from the main issue?

4 MS STRUYVEN: Well, your Honours, the evidence that Witness 555 was supposed
5 to give was found relevant and admissible by this Chamber, because indeed it
6 provides a context in which the Prosecution believes Defence witnesses have come
7 here to support the abuse of process filing, or anticipated filing.

8 PRESIDING JUDGE FULFORD: That was 555.

9 MS STRUYVEN: That was 555, indeed. We believe that 598, and then alone the
10 first -- well, I'll first address the first point of your question. 598 will indeed be in a
11 position to counter the allegations that were made in respect of 555 specifically, and
12 that indeed is a side issue, if we may say, from the actual focus of the abuse of
13 process.

14 PRESIDING JUDGE FULFORD: Exactly. 555, the evidence collected by the
15 Defence in relation to 555 -- well, certainly two purposes: The one that it may be said
16 is still in existence is that there is material there that shows a failure to investigate
17 properly, but arguably the greater reason was to undermine a witness who you were
18 going to call, but you are not now going to call him. And his statement, as a
19 statement of truth in these proceedings, is not going to be before us, and so you will
20 be using 598 to support the credibility of a witness whose statement isn't before us
21 and whose testimony hasn't been given.

22 Now, isn't that too far from the real issue?

23 MS STRUYVEN: That is absolutely correct, your Honours, and two points on that:
24 The first point is that the Defence has requested in its email of 22 October to
25 demonstrate that 555 was not a soldier, even though the Prosecution was not going to

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 call 555 anymore. We have made precisely the argument -- in respect of a disclosure
2 issue related to 555, the Prosecution has made the argument that because he wasn't
3 going to testify, because he wasn't going to be in a position to deny or contradict any
4 allegations, that we should not have even provided further disclosure in respect of
5 555. However, those submissions were overruled, if I may say.

6 PRESIDING JUDGE FULFORD: Okay. That's very clear, Ms Struyven. So you
7 would say, and this is very helpful to get it pinned down, on what I'm describing as
8 my first point, he is -- 598 on this aspect is relevant because he goes to meet the
9 Defence contention that this was inadequately researched by the Prosecution and the
10 suggestion that, as it were, the Prosecution negligently failed to identify that he'd
11 never been a child soldier. So it goes to meet that argument.

12 THE INTERPRETER: Could the parties kindly observe the five-second rule, please.

13 PRESIDING JUDGE FULFORD: 598 does give very -- does give evidence of
14 pressure within the community. I think it's right to say that he doesn't give any
15 evidence of pressure being brought to bear on any of the witnesses called in this case.

16 MS STRUYVEN: No, he does not.

17 PRESIDING JUDGE FULFORD: So, to that extent, it's general.

18 MS STRUYVEN: It is general, but it does relate to this particular case, namely the
19 case against Thomas Lubanga, in that he -- while these threats were being made
20 against him, references were explicitly made to allegations of cooperations with the
21 Court and more specifically allegations related to him providing witnesses in the case
22 against Thomas Lubanga.

23 PRESIDING JUDGE FULFORD: Could you give that last reply again, Ms Struyven?
24 I'm not sure I really follow it.

25 MS STRUYVEN: It is absolutely correct that he does not have information about

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 threats against witnesses who testified before this Court. However, he does indicate
2 that he, as well as other individuals, were threatened because they were perceived to
3 cooperate with the ICC in the case against Thomas Lubanga. So it is true that it is
4 not specific in that it relates to particular witnesses, but it is also not just very broad,
5 general threats in a particular community.

6 PRESIDING JUDGE FULFORD: But the Defence case has now been running for
7 quite a long time, and it is this week that the application is made to call this general
8 evidence on that issue which is in addition to anything that 555 would have said.

9 MS STRUYVEN: Mr President, I'm not sure if I fully understood that, but Witness
10 555 is also saying that he was threatened because he was perceived also to cooperate
11 in the case against Thomas Lubanga.

12 PRESIDING JUDGE FULFORD: I fully understand that, Ms Struyven. That's not
13 the position with 598. 598 -- put 555 to one side for a moment. 598 does not
14 suggest that in relation to particular witnesses or himself in the case of Thomas
15 Lubanga. So you have a witness here who talks generally about pressure in the
16 context of a Defence case that's now been running for many months. Now, isn't this
17 very late to introduce evidence of a general nature, not relating to specific witnesses,
18 that those supporting Thomas Lubanga have been put under pressure?

19 MS STRUYVEN: I'm very sorry to go back to the previous issue, but just to be very
20 clear on the facts, both 598 and 555 were supposed to testify about pressure related to
21 individuals simply because those individuals were seen as cooperating with the Court
22 in the case of Thomas Lubanga. So both of them were going to give similar
23 evidence.

24 The difference in this respect was that Witness 555 received visits at his home and
25 received telephone calls directed to him, specifically mentioned a perceived threat

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 or -- he was basically blamed for cooperating in the case against Thomas Lubanga;
2 whereas, Witness 598, apart from authenticating the emailing which 555 mentioned
3 those facts, had more general information about threats happening vis-à-vis the
4 children of his foundation because of perceived cooperation in the case against
5 Thomas Lubanga.

6 PRESIDING JUDGE FULFORD: I understand that. Thank you very much. Maître
7 Mabilie.

8 MS MABILLE: (Interpretation) It is my colleague, Maître Biju-Duval, who will
9 speak, your Honour.

10 MR BIJU-DUVAL: (Interpretation) Thank you, Mr President. I will be very brief.
11 The Bench has perfectly identified the main difficulties. I will not come back to those.
12 I have only two observations to make:

13 One additional observation regarding the element of lateness, the Prosecutor
14 contends that, for some time now, Witness 555 has allegedly voiced his uncertainty
15 with regard to his ability to testify. When we find ourselves in this situation, that is
16 the risk of a witness being unavailable to testify, there are precautions that have to be
17 taken and, if necessary, plans made for a replacement witness. That was not the case,
18 and it was at the last minute that the Office of the Prosecutor is trying to call Witness
19 598. This is a failure which, in our opinion, is not justifiable.

20 The second observation is that the rebuttal of the Prosecutor consists of the fact that
21 the Defence witnesses are subjected to inappropriate pressure that brought them to
22 the courtroom to make -- or to give false testimony. In light of the anticipated
23 testimony of 598, there is no allegation of putting pressure on Defence witnesses to
24 come and give false testimony. So that raises a true issue of relevance. For the
25 Defence, our priority is to have this trial concluded as expeditiously as possible.

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

- 1 This is our main concern.
- 2 We defer to the Bench when it comes to the issue of deciding whether it is absolutely
- 3 necessary for such-and-such a witness should be called by the Prosecutor so as to
- 4 comply with the fairness of the proceedings, but we insist on the necessity for the
- 5 accused and for all of us to have this trial concluded as quickly as possible. So that is
- 6 why we are very concerned with this new application.
- 7 PRESIDING JUDGE FULFORD: Thank you. Anything else, Ms Struyven?
- 8 MS STRUYVEN: No, Mr President.
- 9 PRESIDING JUDGE FULFORD: Thank you very much for your attendance.
- 10 Protective measures? Are there any more submissions that we've got to hear?
- 11 MR OMOFADE: Your Honour, I believe it was for the Defence to respond to --
- 12 PRESIDING JUDGE FULFORD: You're quite right. I'm looking at the wrong side
- 13 of the court.
- 14 MR OMOFADE: Certainly, your Honours.
- 15 PRESIDING JUDGE FULFORD: I knew that there was something on protective
- 16 measures, but not you Mr Omofade.
- 17 MR OMOFADE: I did wonder, Judge.
- 18 PRESIDING JUDGE FULFORD: Yes. Maître Mabilie, you have a bundle of papers
- 19 for us.
- 20 MS MABILLE: (Interpretation) Mr President, I have a few, very brief observations
- 21 because my colleague Marc Desalliers would like to conclude his cross-examination.
- 22 I would like to inform the Bench, I'm sorry for not having provided the OTP with the
- 23 materials that I am giving to the Judges. I have two observations concerning the
- 24 protection measures requested by Witness 582.
- 25 The first observation, your Honour, is the statement of the witness, and I am referring

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 to Article 8 of his statement, and I will read where it is indicated as follows, "During
2 that period, I was invited by several French and foreign universities as ..."
3 PRESIDING JUDGE FULFORD: Quite right. Private session.
4 MR OMOFADE: Your Honours, you note my observation.
5 PRESIDING JUDGE FULFORD: Yes. Private session, please.
6 *(Private session at 2.59 p.m.) Reclassified as Open session.
7 THE COURT OFFICER: We are in private session, Mr President.
8 PRESIDING JUDGE FULFORD: Sorry to interrupt you, Maître Mabilille. Please
9 continue.
10 MS MABILILLE: (Interpretation) "During that period I was invited by several French
11 and foreign universities, as well as associations such as Lawyers Without Borders, to
12 discuss my experience as head of the investigation with the OTP of the International
13 Criminal Court." That is my first observation. In the witness's statement itself, he
14 says what I have just read.
15 The second observation is that, once again, we consulted the internet, and I have
16 furnished the Chamber with summary of what we found because, based on the
17 observations of the Prosecutor this morning, I thought I understood that the witness
18 had said that his role had been defined on the internet, but in a very general way.
19 I therefore tried to focus on the elements that were extremely clear and precise, and I
20 will mention some of the examples very quickly.
21 On the last page of the document that I have given to the Bench, I gave you the
22 references of the internet sites that we consulted and the name of Bernard Lavigne
23 appears on the public version of the transcripts of the hearings of the Lubanga case on
24 2 February 2006.
25 We can also see that Bernard Lavigne gave statements to the Wall Street Journal as the

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 head of investigations for the DRC situation at the ICC.
2 Third reference, it's indicated that Bernard Lavigne would make a presentation on the
3 issue, investigation within the ICC, an inside overview, and it was during the
4 symposium on the perspectives on international criminal justice, on 14 and
5 15 November 2008.

6 It is also indicated that Bernard Lavigne was one of the first team leaders in the
7 International Criminal Court and I've also provided you with the references thereto.
8 Bernard Lavigne gives statements to the Institute for War and Peace Reporting as
9 former investigator in the Lubanga case. These are some examples that I would like
10 to give to the Chamber and which will make it possible for the Chamber to note that
11 Bernard Lavigne had, on several occasions, quite obviously given -- and also given
12 the fact that in his capacity in which he had worked, and the fact that on several
13 occasions he had intervened to draw conclusions from the work that he had carried
14 out within the International Criminal Court, it's following these comments that the
15 Defence is opposed to the measures requested by the witness.

16 PRESIDING JUDGE FULFORD: Mr Sachdeva. Sorry, Mr Omofade.

17 MR OMOFADE: Your Honours, there is very little to respond to. The submissions
18 made this morning were that Mr Lavigne himself sees the information on the internet
19 which we readily conceded was available. He considers that that information is of a
20 general nature rather than a specific, so as to affect his future employability. That is
21 his view and those are the views that we have conveyed but all of the observations
22 that my friend has pointed out as regards the information available publicly we
23 already concede and there well may be more. Those are the submissions.

24 PRESIDING JUDGE FULFORD: Thank you very much.

25 Mr Omofade, on behalf of the Prosecution, has requested protective measures for the

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 witness who will be providing a deposition to the Court starting on Tuesday next
2 week. This is Witness 582.
3 The application is made under Article 68(1) of the Statute and Rule 87(3) of the Rules
4 of Procedure and Evidence. Mr Omofade applies for the protective measures that
5 have been granted to a number of witnesses in this case in order to afford him
6 anonymity vis-à-vis the public.
7 The background is that he worked for the Office of the Prosecutor as an investigation
8 team leader between June 2004 through to June 2007. Since leaving the Court, he has
9 returned to work for the French government (he was employed by his State before
10 commencing his term at the International Criminal Court) and he is currently
11 working as the regional attaché for judicial cooperation in Amman in Jordan.
12 We needn't go into the full detail of what is currently publicly available as regards
13 both his previous employment but, more particularly, his role within the Office of the
14 Prosecution between the years that we have identified. It is quite clear that, within a
15 number of publicly available internet sites, the nature of this witness's employment
16 with the Court was fully revealed.
17 What is said in support of this application is that if at this stage further information is
18 provided as to his identity, in the context of his previous employment with the Court,
19 and the evidence that it is anticipated he will give next week, that may have an
20 adverse effect on his ability to work in particular regions of the world, in either a
21 similar job to the one he currently holds or potentially other positions.
22 We should add that he has previously worked as an investigative judge for the French
23 judiciary. Accordingly, this argument is put on the basis that his ability to perform
24 future professional roles may be impaired if his identity, in the context of giving
25 evidence before this trial, is revealed.

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Closed Session)

ICC-01/04-01/06

1 Eloquently though the submission was put, we are unable to understand how the
2 employment prospects of this witness could in any material way be prejudiced by it
3 being known that he had fulfilled his obligations to this institution by giving evidence
4 about some of the work which he undertook whilst he was an investigation team
5 leader.

6 It seems to us that that suggestion is wholly without any objective foundation. The
7 Rome Statute at Article 68(1) provides that, "The Court shall take appropriate
8 measures to protect the safety, physical and psychological well-being, dignity and
9 privacy of victims and witnesses." The implementation of these protective measures is
10 governed by Rule 87 of the Rules of Procedure and Evidence, and by Rule 87(3) the
11 Chamber is empowered to grant the witness anonymity.

12 As we have just indicated, on all of the information before us, we can see no basis
13 under the Rome Statute for ordering protective measures, measures that would
14 materially protect or enhance his safety, physical and psychological well-being,
15 dignity and privacy. Everything relevant is in the public domain. Accordingly, this
16 application is refused.

17 Anything else before the witness comes in? Closed session and witness, please.

18 *(Closed session at 3.12 p.m.) Reclassified as Open session.

19 THE COURT OFFICER: We are in closed session, Mr President.

20 (The witness enters the courtroom)

21 PRESIDING JUDGE FULFORD: Public or private?

22 MR DESALLIERS: (Interpretation) First question publicly, your Honour.

23 PRESIDING JUDGE FULFORD: Public session, please.

24 (Open session at 3.14 p.m.)

25 THE COURT OFFICER: We are in open session, Mr President.

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06
ICC-01/04-01/06

- 1 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.
- 2 WITNESS: DRC-OTP-WWWW-0321 (On former oath)
- 3 (The witness speaks French)
- 4 QUESTIONED BY MR DESALLIERS: (Interpretation) (Continuing)
- 5 Q. Sir, are you fluent in Lingala?
- 6 A. I can speak it, but am not fluent in it, t's not my language.
- 7 Q. Are you able to have a conversation in Lingala?
- 8 A. Yes, I can speak a bit, but it's not my language.
- 9 MR DESALLIERS: (Interpretation) Your Honour, with your leave, closed session.
- 10 PRESIDING JUDGE FULFORD: Private session, please.
- 11 *(Private session at 3.16 p.m.) Reclassified as Open session.
- 12 THE COURT OFFICER: We are in private session, Mr President.
- 13 PRESIDING JUDGE FULFORD: Yes.
- 14 MR DESALLIERS: (Interpretation)
- 15 Q. Do you know, sir, a person called (Redacted), and I'm going to spell that.
- 16 (Redacted).
- 17 A. (Redacted) I know is my colleague, my colleague from the (Redacted).
- 18 Q. Do you mean the (Redacted)?
- 19 A: Affirmative.
- 20 MR DESALLIERS: (Interpretation)
- 21 Q. From when did you start working with him?
- 22 A. Firstly, with regard to (Redacted), before I start speaking about having started
- 23 to work with him. (Redacted), well, his father, he worked for the
- 24 (Redacted) authorities, and he grew up in the territory of Mahagi and he also tried to
- 25 work (inaudible).

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

- 1 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.
- 2 MR SACHDEVA: Mr President, the answer to the question, "Do you mean the
3 (Redacted) is not recorded at least in the English transcript.
- 4 PRESIDING JUDGE FULFORD: Yes, you're absolutely right. The interpreter didn't
5 hear the answer to that. I don't know whether it's in the French transcript,
6 Mr Desalliers. Yes, it is. The answer is, yes. Good. This will be sorted out in due
7 course. Please continue.
- 8 MR DESALLIERS: (Interpretation)
- 9 Q. During the years 2004, 2005 until 2008, (Redacted), was he an officer of the
10 (Redacted) at the same time as you were?
- 11 A. Yes.
- 12 Q. Was he under your orders?
- 13 A. He was responsible for a division. He was in charge of human resources.
- 14 Q. Was he based in Bunia?
- 15 A. During the rebellion, firstly, with everybody he knew, he fled to Beni. He
16 worked in Beni in the ACR (phon) and then he progressively -- as the service became
17 more organised, he returned to Bunia. And when I came back from (Redacted), I
18 found him, he was in Bunia. Myself, I had a separate office. He also had his office.
- 19 Q. (Redacted), did he help you in any way whatsoever within the framework of
20 your cooperation with the International Criminal Court?
- 21 A. All I know is that my children tried to stay in Bunia and it was on this
22 occasion -- well, first of all, with him I would say that, as our tradition requires in the
23 service level, it's not a service to be asked. And when I had to leave, it was he who
24 stayed. And we were in contact with him with regards to my family who stayed
25 behind.

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 Q. Has he helped you to carry out the work of identification of -- or presentation of
2 witnesses to the International Criminal Court?

3 A. No. Even when we were with him, at the beginning he didn't know that I
4 worked for the Court.

5 Q. You say "at the beginning," but at a certain time did he learn that you were
6 collaborating with the Court?

7 A. I do not remember because even at the last minute he didn't know, and even
8 when the office delegates went to meet the children who were at his house, not once
9 did they introduce themselves and say that they were there from the Court, I don't
10 think so. He didn't tell me, and I wasn't informed about that either.

11 Q. In your knowledge, (Redacted), did he help (Redacted) for any type of work,
12 assistance for the International Criminal Court.

13 A. I don't know. All I know is that he was in the (Redacted). He was responsible
14 for human resources within the framework of the splitting up. He could use it in the
15 (Redacted), but I didn't know because even (Redacted) -- I don't know if he worked
16 with another service. I don't know that. But I can't say that he helped (Redacted)
17 or anyone. That's something that I don't know. All I know is that my children
18 stayed at his home.

19 Q. Thank you. Do you know a person called (Redacted) (phon)?

20 A. Yes.

21 Q. Is it correct that you introduced this person to the investigators of the Office of
22 the Prosecutor in or towards the month of January 2006 in Bunia?

23 A. I do no longer remember, but all I know is that (Redacted) was firstly -- well, he
24 was one of the UPC commanders when we put him on our books. And even when I
25 met him, he was already in contact with the investigators of the Court, and it was

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 only at a certain time when he had also disappeared. Why? Because he had
2 learned, according to the information that we had, if I still remember, that he had
3 joined, I do not know if he had joined the armed group again, but on that occasion we
4 had lost trace of him. So within this context, I was asked to try and find him and
5 find his contact details for the investigators of the Court. But personally, I never
6 introduced him.

7 Q. Did he return to an armed group, having met the investigators for the first time?

8 A. Yes, when he met the investigators, when he had met the investigators, he
9 returned. He was appointed, I think, as commander somewhere near Iga-Barrière.
10 I don't have the whole story, but I know that he had achieved that. He was
11 demobilized, he was re-enlisted, and then he left again. And then after that, I didn't
12 know where he went. And to date, I haven't had any news of him.

13 Q. Was it you who found him?

14 A. What do you mean by that?

15 Q. That means that when he joined an armed group having met the investigators
16 once, do I understand that the investigators asked you to find him again and it was
17 you who did find him?

18 A. I found his aunt's contact details, because the name says it all – (Redacted) - ,
19 he's from my tribe, and finding him in an area like Bunia, personally, it wasn't
20 difficult for me. And I think that I found the telephone number of his aunt, which I
21 passed on and on that number he could be reached.

22 PRESIDING JUDGE FULFORD: Mr Desalliers, if you look at the French transcript, it
23 seems to reflect that interventions are too quick.

24 MR DESALLIERS: (Interpretation).

25 Q. So what tribe does (Redacted) belong to?

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Closed Session)

ICC-01/04-01/06

1 A. Firstly, from the name (Redacted), that is a name that is Alur. The name (Redacted),
2 this is a common name. I know that he is - please excuse me for the term - but he is
3 the fruit of mixed origins, of Alur and Gegere origin, or Hema, Hema-Gegere. So he
4 spoke both Kilendu, he also spoke Alur, but the Alur phonetics, well, from that you
5 can feel that he learnt Alur but he didn't grow up among the Alur by the phonology.

6 Q. Yourself, which tribe are you from, sir?

7 A. I have already said that from my name you will find that I am of Alur ethnicity.

8 PRESIDING JUDGE FULFORD: Mr Desalliers, we've been going for an hour now.

9 I'd like to give everybody a ten-minute break. We'll sit again at 20 to. Closed
10 session, please.

11 *(Closed session at 3.31 p.m.) Reclassified as Open session.

12 THE COURT OFFICER: We are in closed session, Mr President.

13 PRESIDING JUDGE FULFORD: Just after 20 to.

14 THE COURT OFFICER: All rise.

15 (Recess taken at 3.31 p.m.)

16 *(Upon resuming in closed session at 3.40 p.m.) Reclassified as Open session.

17 THE COURT USHER: All rise. Please be seated.

18 PRESIDING JUDGE FULFORD: Public session, please.

19 (Open session at 3.41 p.m.)

20 THE COURT OFFICER: We are in open session, Mr President.

21 PRESIDING JUDGE FULFORD: This is the Chamber's decision setting out the rules
22 for the deposition of Witness 582.

23 The Chamber has approved a procedure whereby the evidence of Witness 582 will be
24 received by way of deposition, which will be conducted in courtroom 2, with the
25 participation of the parties, and with questions also being posed by two

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 representatives of victims (the involvement of the latter having been approved by
2 the Chamber earlier today). It is agreed by the parties and participants that this is an
3 appropriate way to take this witness's evidence.
4 The legal adviser to the Division will supervise the process, which will commence at
5 9.30 on Tuesday, 16 November 2010.
6 The legal basis for taking evidence by deposition is clear. Put shortly, the Chamber,
7 under Article 64(6)(d) of the Rome Statute is empowered to "order the production of
8 evidence in addition to that already collected prior to the trial or presented during the
9 trial by the parties," and by Article 64(6)(f) it may "Rule on any other relevant
10 matters."
11 Pursuant to Article 64(8)(b) "the presiding judge may give directions for the conduct
12 of the proceedings..." Although the presumption under Article 68(2) is that the
13 testimony of a witness at trial shall be given in person, exceptions are permitted,
14 which include admitting written transcripts. But most particularly, by Rule 68 of the
15 Rules of Procedure and Evidence, the Chamber, subject to certain conditions, "may
16 allow the introduction of previously recorded audio or video testimony of a witness,
17 or other documented evidence of such testimony, provided that if the witness who
18 gave the previously recorded testimony is not present before the Trial Chamber, both
19 the Prosecutor and the Defence had the opportunity to examine the witness during
20 the recording; [...]".
21 The procedure to be followed is as set out hereafter:
22 1. A suitably abridged familiarisation process should take place (including as is the
23 usual procedure, the witness being given an opportunity to review his statement or
24 statements; in addition the Chamber has permitted the witness to see the transcripts
25 of the evidence of Witnesses 316 and 321) and to review any relevant files (see

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

- 1 transcripts 298, 330 and 331). The legal adviser should be provided with any
- 2 relevant statement or statements made by the witness. However, we understand
- 3 that this last requirement has already been fulfilled.
- 4 2. Mr Lubanga will be present in courtroom 2.
- 5 3. The proceedings will take place in closed session, as opposed to public or private
- 6 session.
- 7 4. The legal adviser and the parties and participants will not be robed. However,
- 8 an appropriate degree of formality should be followed, given these are part of judicial
- 9 proceedings, and the legal adviser should be referred to either by her name or as
- 10 "presiding officer."
- 11 5. The court officer and the usher should be in attendance to perform their usual
- 12 roles.
- 13 6. The legal adviser will ask the witness to identify himself when he enters the
- 14 courtroom and she will explain the nature of the proceedings to all concerned.
- 15 7. Given the close similarity between this procedure, and giving evidence
- 16 conventionally during the trial, it is appropriate for the witness to take the same oath
- 17 as taken by all other witnesses in these proceedings (see Article 69 of the Statute and
- 18 Rule 66 of the Rules of Procedure and Evidence).
- 19 8. The order of questioning will be the Prosecution, the victims, the Defence, any
- 20 final questions by the Prosecution and, lastly, the Defence.
- 21 9. If objections are raised to questions, they are to be recorded, but the legal adviser
- 22 will not rule on the issue; instead, the questions will be put, notwithstanding the
- 23 objection. The Chamber will later decide on the objections that were raised and, if
- 24 the evidence is admitted, the extent to which the disputed material is admissible.
- 25 10. The documents used in the course of questioning will be referred to by their

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 ERN numbers. EVD numbers will be assigned at a later stage as necessary upon
2 review by the Chamber. The list of documents to be used by the parties and
3 participants should be provided following the procedure that is used ordinarily for
4 the testimony of witnesses before the Chamber.

5 11. Given there will be an audio and video recording of the proceedings, there is no
6 need for the witness to "sign" the deposition at the conclusion of the proceedings.

7 Now, that concludes the rules for the deposition of 582. We encourage the parties
8 and the participants to be sensible in relation to what happens next week. We will
9 be reading the transcript very carefully on our return.

10 Earlier today in the oral ruling in relation to protective measures, I made the same
11 mistake as yesterday by referring to Article 69, when I meant Article 68. Can that
12 please be corrected in the edited transcript.

13 Mr Desalliers, at the end of last week I asked the parties whether, if we began the
14 evidence of this witness at 2 p.m. on Monday we would have concluded his evidence
15 by the end of this year. A time estimate was given, and it looks as though we are not
16 going to make it. For the reasons I gave earlier, the Chamber will rise at 25-past-4.
17 That is not to put pressure on you. If you need to continue either on Monday or on
18 Monday week, you are entitled to do so.

19 MR DESALLIERS: (Interpretation) Your Honour, I think I'll be able to complete
20 my examination today within the time which is allotted to me.

21 PRESIDING JUDGE FULFORD: That may be so, but Mr Sachdeva may have other
22 questions, but let's see how we do. Before the witness comes back in, given that we
23 may be pressing on 25-past-4, if we haven't concluded, deposition next week or
24 evidence the week after?

25 MR DESALLIERS: (Interpretation) Your Honour, if it is absolutely necessary, the

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Closed Session)

ICC-01/04-01/06

- 1 Defence would prefer that the examination should continue next week, next Monday,
2 and we take a statement. But we add that we wish to complete our examination
3 today.
- 4 PRESIDING JUDGE FULFORD: How long are you likely to be, Mr Sachdeva.
- 5 MR SACHDEVA: Ten minutes.
- 6 PRESIDING JUDGE FULFORD: Well, there we are. Closed session and witness.
7 But at 25-past, we leave the bench. There is no flexibility in that.
- 8 *(Closed session at 3.54 p.m.) Reclassified as Open session.
- 9 THE COURT OFFICER: We are in closed session, Mr President.
- 10 PRESIDING JUDGE FULFORD: Witness.
- 11 (The witness enters the courtroom)
- 12 PRESIDING JUDGE FULFORD: Public or private?
- 13 MR DESALLIERS: (Interpretation) Private, your Honour.
- 14 PRESIDING JUDGE FULFORD: Yes.
- 15 *(Private session at 3.55 p.m.) Reclassified as Open session.
- 16 THE COURT OFFICER: We are in private session, Mr President.
- 17 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.
- 18 MR DESALLIERS: (Interpretation).
- 19 Q. Witness, before the break we were talking about (Redacted). Could you please
20 tell us whether you've ever had contact yourself personally with this
21 individual.
- 22 A. I said that when I had to locate him through his aunt, I had to make sure that he
23 was there before I could give his contact information to the person who needed him,
24 and that's what I did. So after establishing contact with him and making sure that he
25 could be contacted at that number, I gave the number to the investigator. I don't

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 know whether the investigator succeeded in reaching him by phone or not. I don't
2 know anything about that.

3 Q. Have you ever met him in person?

4 A. Yes, I have already seen him. He is someone I know. Besides, he was one of
5 the students of the institute from where he was recruited while he was a child, and at
6 some point when he had to return to school it was still at that institute called
7 (Redacted) (phon) Institute.

8 THE INTERPRETER: The name is not audible.

9 THE WITNESS: (Interpretation) And for your information, most of the children
10 who were recruited into the army when they were demobilised came from that
11 school.

12 THE INTERPRETER: The name of the school is not audible.

13 THE WITNESS: (Interpretation) And in the report that we -- the reports we
14 received, I read in the intelligence at the time that even at that time the minister who
15 was responsible for education at that period in time had even informed his president
16 that he had noticed with regret that many children were recruited by armed groups
17 from certain schools that were under his supervision.

18 Q. Could you please tell us how often you met him?

19 A. I do not recall.

20 Q. But without giving a precise number, a precise figure, did you meet him once,
21 twice, 50 times? Do you have an idea?

22 A. I have no idea. I do not recall.

23 Q. Do you remember having organised a trip or helping to organise a trip of
24 (Redacted) to Kinshasa to meet the investigators of the Court in the month of
25 February or March 2006?

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 A. I do not recall.

2 Q. Could you please turn to tab -- or, rather, to the accountancy document number
3 20. This document bears the reference DRC-OTP-0210-0153. Do you see your
4 signature on the top of the document, that is receipt for reimbursements of funds?

5 A. Yes.

6 Q. Are you now able to tell us whether you assisted (Redacted) to obtain a
7 laissez-passer and a visa for a trip in March 2006?

8 A. Yes. Based on the document that I signed I obtained a laissez-passer in lieu of a
9 passport for him, as well as a visa. I do remember that. It is indeed my writing on
10 the document.

11 Q. Thank you. Can we give an evidence number to that document?

12 THE COURT OFFICER: The document under tab 20, referenced as
13 DRC-OTP-0210-0153, will receive the reference EVD-D01-00382 and will be marked as
14 confidential.

15 MR DESALLIERS: (Interpretation)

16 Q. Do you know anyone known as (Redacted) (phon)?

17 A. This is also one of the workers of the (Redacted). I know him.

18 Q. Did this person work with you at the (Redacted)?

19 A. There was (Redacted) team. There was (Redacted), there was (Redacted)
20 (phon). I remember that these people worked together with others, obviously. These
21 were people who had come exclusively from the UPC. I remember them very well.

22 Q. Thank you. Do you know anyone by the name of (Redacted) ?
23 (Redacted)

24 A. Pastor? No. I no longer remember.

25 Q. Do you know anyone by the name of (Redacted)?

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 A. (Redacted)? No. I do not remember.

2 Q. Do you know any cameraman in Bunia who is nicknamed Trouble or Trouble?

3 A. Trouble? He has no other name?

4 Q. If I tell you (Redacted), does that ring a bell?

5 A. I do not remember. There were many cameramen, even in the pacification
6 commission, every group had cameramen and even at the radio. there were people
7 who were identified, such as the chief, I don't remember his name now, Umudi
8 (phon)who was from the RTNC, and there were other journalists that I don't
9 remember.

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

11 PRESIDING JUDGE FULFORD: Mr Sachdeva.

12 QUESTIONED BY MR SACHDEVA: Thank you, Mr President.

13 Q. Good afternoon, sir. Over the last two days you have been asked questions
14 about the apparent inconsistency in your answers as to whether you knew (Redacted)
15 (Redacted), from the October interview and from the evidence here today. My
16 question is this: How important, if at all, was the ability to read the testimony of
17 (Redacted) in helping you identify him?

18 A. Reading the statement of (Redacted) and identifying him was not that important
19 but, as far as I'm concerned, I had to be sure that that name was indeed referring to a
20 person from Ituri because the name (Redacted), I had not yet heard about that in Ituri.
21 So I had to be sure whether indeed this person was from Ituri.

22 Q. You were asked by the Defence whether - and I'm going to quote the
23 question - "Did you help or assist or provide assistance with a meeting between
24 (Redacted) and the investigators in Kampala in 2005? Did you help, not necessarily
25 with the meeting with the investigators, but with the fact that he met with the

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Private Session)

ICC-01/04-01/06

1 investigators, did you provide any assistance at all?" And your answer to the
2 Defence was, "I don't recall. I don't think so. I don't recall."
3 I want to take you to a section of your interview that you gave to the Prosecution just
4 before you testified this week. If I could ask you to turn to tab 4 of the Defence
5 binder, ERN DRC-OTP-0234-0123, and this, sir, is the interview you gave on
6 5 November 2010.
7 And if you could turn to page 20, the bottom ERN number is DRC-OTP-0234-0143.
8 And I'm going to start reading from line 660. "Question: (Redacted), is it right you
9 knew him from 2005 through to 2008? Answer: I was not in contact with him in
10 2008. Further answer: I only met him in 2005." If you turn over the next page, sir.
11 "Question: So 5, 6 and 7, you had dealings with him? Answer: No, nothing,
12 nothing, no news from him. Question: So let's narrow down the time-frame. Is it
13 correct you only had dealings with him in 2005? Answer: That -- that was it.
14 Question: Okay. And where was that? Answer: I was with him in Kampala,
15 when we met."
16 Now, looking at that section of your interview before you came and testified, does
17 that help you recall as to whether you met (Redacted) in Kampala or not?
18 A. I had told him that I went to Kampala regularly, but I no longer remembered
19 whether I had the opportunity to see (Redacted) in Kampala. This is because I knew
20 that (Redacted) was in Ariwara, and all I know is that at that time, all those who came
21 from Ariwara came through Kampala and in Kampala there were Congolese families,
22 and people met informally. I no longer remember whether we met, but to say that I
23 organised a meeting between (Redacted) and the investigators in 2005, I would say no,
24 no. But if we met amongst Congolese, then that would be possible because at that
25 time I was the one who was responsible for the Congolese in Kampala.

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Open Session)

ICC-01/04-01/06

1 MR SACHDEVA: Mr President, I believe the last two questions we can move into
2 public, open session.

3 PRESIDING JUDGE FULFORD: Thank you very much, Mr Sachdeva. Public
4 session, please.

5 (Open session at 4.12 p.m.)

6 THE COURT OFFICER: We are in open session, Mr President.

7 PRESIDING JUDGE FULFORD: Yes.

8 MR SACHDEVA:

9 Q. Sir, in October 2009, when you were interviewed by the Office of the Prosecutor,
10 you had a lawyer present; isn't that right?

11 A. Yes.

12 Q. Did you manage to speak to your lawyer before the interview commenced?

13 A. I never had the time to discuss with my lawyer, and in fact even my lawyer
14 regretted the fact that he himself had had no information and that he had been taken
15 by surprise. And even during the interview I think that my lawyer intervened in
16 cases, if we read, when I felt ill-at-ease. You know that in Kinshasa it is extremely
17 hot, but in the room in which we were with the air-conditioning, it was very cold.
18 Sometimes there were questions that were asked over and over again, and my lawyer
19 would intervene, but not to answer any question. All the questions were answered
20 by myself. Even when I came here, I believe the entire time that we had together
21 would add up to no more than a total of one hour, and then he left.

22 Q. Sir, did you deliberately identify false witnesses for the ICC for a financial gain?

23 A. No. First of all, I did not on my own initiative identify any witness at all, and
24 the proof of that is that if I had to identify witnesses and give them to the Court, those
25 would not be the people that I would have sourced. So the choices were not made

Trial Hearing
Witness: DRC-OTP-WWWW-0316

(Closed Session)

ICC-01/04-01/06

1 by me.

2 Q. And I have already asked you about Mr X and Mr Y, but did you ever ask any
3 individual or witness to fabricate testimony before this Court or a story before the
4 Prosecution?

5 A. I did not do that.

6 MR SACHDEVA: Nothing further, Mr President.

7 PRESIDING JUDGE FULFORD: Thank you very much. Sir, that now concludes
8 your evidence. I want to thank you on behalf of the Judges of this Court for having
9 taken the very considerable time and trouble to travel here to give evidence. We
10 fully recognise that you have done this wholly voluntarily, and that some of the
11 questions that have been put to you will have been difficult. This Court can only
12 function properly if individuals like yourself are prepared to make the kind of
13 sacrifice that you have made, to come to give evidence, so that we can successfully
14 establish the truth in this trial. You leave here therefore with our sincere thanks for
15 your cooperation.

16 Closed session, please.

17 THE WITNESS: (Interpretation) Thank you very much, your Honour.

18 *(Closed session at 4.17 p.m.) Reclassified as Open session.

19 THE COURT OFFICER: We are in closed session, Mr President.

20 (The witness is excused)

21 PRESIDING JUDGE FULFORD: EVD number?

22 THE COURT OFFICER: The last document that was shown to the witness
23 referenced as DRC-OTP-0234-0123 will be attributed reference EVD-OTP-00619 and
24 will be marked as confidential.

25 PRESIDING JUDGE FULFORD: Thank you very much. I want to thank everybody

Trial Hearing

(Closed Session)

ICC-01/04-01/06

Witness: DRC-OTP-WWWW-0316

1 for their cooperation in concluding this witness's evidence this afternoon. We will
2 not take it as an indication that we should impose firm time limits in the future.
3 The deposition hearing will commence on Tuesday at 9.30. We will sit together
4 again as a court the following Monday at 9.30. Thank you all.
5 THE COURT OFFICER: All rise.
6 (The hearing ends in closed session at 4.18 p.m.)

7 RECLASSIFICATION REPORT

8 Pursuant to Trial Chamber I's email instruction dated 8th December 2011, the
9 transcript is reclassified as public after the indicated redactions have been
10 implemented as ordered by the Chamber. All private and closed sessions (*) are now
11 available to the public with the exception of the portions of the transcript that have
12 been redacted.