

1 International Criminal Court.
2 Trial Chamber I - Courtroom 1
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio.
4 Benito and Judge René Blattman
5 Situation in the Democratic Republic of the Congo -
6 ICC-01/04-01/06
7 In the case of The Prosecutor v. Thomas Lubanga Dyilo
8 Wednesday, 10 March 2010
9 (The hearing starts at 9.30 a.m.)
10 *(Closed session) Reclassified as Open session
11 THE COURT USHER: All rise. The International
12 Criminal Court is now in session. Please be seated.
13 THE COURT OFFICER: Good morning, your Honours. We
14 are in closed session.
15 PRESIDING JUDGE FULFORD: Good morning. Witness,
16 please.
17 (The witness enters the courtroom)
18 PRESIDING JUDGE FULFORD: Public or private,
19 Mr Sachdeva?
20 MR SACHDEVA: Public, Mr President.
21 PRESIDING JUDGE FULFORD: Public session, please.
22 (Open session at 9.30 a.m.)
23 PRESIDING JUDGE FULFORD: Good morning, sir.
24 THE WITNESS: Good morning.
25 THE COURT OFFICER: We are in public session, your

1 Honours.

2 WITNESS: WWW-D01-0016 (On former oath)

3 (The witness answers through interpreter)

4 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

5 Questioned by Mr Sachdeva:

6 Q. Good morning, sir. I'd like to pick up from where we
7 left off yesterday. And you remember that I asked you whether
8 at the meeting in Bunia at the Hellenic Restaurant, whether that
9 was the first time that you had heard about the ICC. And can I
10 just confirm that you maintain your evidence that that was
11 indeed the first time you had heard about the ICC?

12 A. I can say that it was the first time that I had heard
13 of the ICC. Before I had never heard about the ICC.

14 Q. On Monday, when you were answering questions to the
15 Defence, you had said that you had met Mr X before your meetings
16 with the ICC, and he had told you that he was working for the
17 ICC. Now, are you now saying that is not correct?

18 A. Well, I can put it this way: It's not to say that he
19 had told me in the past that he was working for the ICC, no.
20 When I was with him, as I said the day before yesterday, we got
21 to know each other and we would drink beer together up until the
22 day we met with the ICC people. The next day he said to me that
23 the people in question were the ones that I was going to be in
24 contact with and that I shouldn't be afraid. I mustn't be
25 afraid. But he had never told me before that point that he was

1 working for the ICC. No, I never said that, I believe.

2 Q. You had said that you met Mr X in March or April 2005,
3 and that's when you had started to plan the lies that you were
4 going to tell. Is it your evidence that you were planning to
5 tell lies, but you didn't know to whom the lies were going to be
6 told? Is that what you're saying?

7 A. Perhaps I'm mistaken about the month. I said that it
8 was during the period that I met with the ICC people that I met
9 him. I made a mistake about the month. I didn't note the
10 month, the month during which I met him. It was a while before
11 my meeting with the ICC people that I met Mr X. I met him in
12 (Redacted). That is what I

13 said.

14 Q. Very well. And then at that meeting, when you were
15 with Mr X and his wife, he then told you he was working for the
16 ICC, didn't he?

17 A. I will repeat my statement. When I met Mr X -- well,
18 actually, (Redacted)

19 (Redacted)

20 (Redacted)

21 Q. I just would like a very simple answer to a very
22 simple question. At that meeting with Mr X, did he or did he
23 not tell you that he worked for the ICC?

24 A. It was after the meeting with the ICC people, that he
25 told me that they were people who were working for the ICC; in

1 other words the next day, the day after that meeting.

2 Q. When you went to Kampala, when you got there, you
3 knew, didn't you, that the ICC was investigating very serious
4 crimes in the Congo?

5 A. I can reply in this way: Before going to Kampala,
6 that was when we prepared all these plans with Mr X and I was
7 eager to understand everything - that was until we went to
8 Kampala. So I knew about the activities that the ICC was
9 conducting when I was -- when we were -- when we went to
10 Kampala. That is entirely true.

11 Q. And you were aware that the ICC were investigating
12 massacres, rapes, some very serious crimes, weren't you?

13 A. Yes, that's what they told me, but before I didn't
14 know that. They gave me that information. Before I knew
15 nothing about the ICC. They were the ones who gave me this
16 information.

17 Q. And, in fact - as someone from Ituri - you must have
18 been aware of the chaos and the crimes that was being
19 perpetrated in your country; isn't that right?

20 A. I knew that. And, furthermore, I fled the fighting.
21 However, I did not know when the people died, but I knew that
22 there had been victims, that people were dying.

23 Q. In fact, when you started your interview, you told the
24 investigators that you wanted to do something good for the
25 people of Congo. Do you remember that?

1 A. I no longer remember.

2 Q. Would you like me to refresh your memory, or --
3 perhaps I can read it out for you.

4 MR SACHDEVA: Mr President, with your leave, given
5 that my French is relatively poor, could I ask my colleague, Ms
6 Samson, to read out the relevant parts?

7 PRESIDING JUDGE FULFORD: Well, I'm deeply sympathetic
8 to that, Mr Sachdeva. Certainly. Now, where are you taking us?
9 What's the document you're about to read out?

10 MR SACHDEVA: I have some binders that I will
11 distribute to your Honours. Mr President, although I'm going to
12 read out from the statement, this is a statement the witness has
13 given. Perhaps in fairness to the witness, the binder should be
14 provided to him.

15 PRESIDING JUDGE FULFORD: He should have the
16 interpreter, shouldn't he, with him?

17 MR SACHDEVA: Indeed. I hadn't anticipated that I
18 would have required one at this stage.

19 PRESIDING JUDGE FULFORD: All right. Interpreter,
20 please. Closed session while the interpreter comes in. We'll
21 then return to open session.

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

23 THE COURT OFFICER: We're in a closed session, your
24 Honours.

25 (The interpreter enters the courtroom)

1 PRESIDING JUDGE FULFORD: Public session, please.

2 Thank you very much indeed, sir.

3 (Open session at 9.43 a.m.)

4 THE COURT OFFICER: We are in public session, your
5 Honours.

6 PRESIDING JUDGE FULFORD: Mr Sachdeva, obviously
7 you'll explain carefully to the witness precisely what it is
8 that you're about to put to him as part of your questions.

9 MR SACHDEVA: Yes, Mr President.

10 Q. Witness, what you see there in front of you is a
11 transcription of the interview that you gave to the OTP when in
12 Kampala and also in Bunia on 12 November 2005. And what I'm
13 about to do is to -- to show you and also have read out a part
14 of that interview for you to comment on.

15 Now, for the benefit of everyone in the court and your
16 Honours, I'm going to refer to tab 1, page 37, and specifically
17 lines 894 to 896.

18 PRESIDING JUDGE FULFORD: Mr Interpreter, have you got
19 that? If the look at the bottom of the page, you'll see the
20 pagination, page 37. And then if you look in the left-hand
21 margin, you've got the line numbers 894 to 896. Usher, could
22 you pop over, please? Yes. Got it? All right. Then Riaz, it
23 seems that we're there. Good. Now Ms Samson I think is going
24 to read out a passage.

25 MR SACHDEVA: Yes.

1 MS SAMSON: And the passage reads: (Interpretation)
2 "I arrived here entirely of my own free will because I myself
3 wanted -- because I wanted to cooperate so as to help find
4 solutions to the problems in the Congo."

5 MR SACHDEVA:

6 Q. Now, sir, does that help refresh your memory?

7 A. I can respond and say, yes, that does ring a bell.
8 However, I wanted to add something, namely this: I think that
9 before I met the investigators -- I didn't know them before. I
10 didn't know it before. It had to do with the plan that we had
11 prepared which we had implemented. In other words, that I was
12 going to confirm that things had occurred in that manner.

13 Q. Well, let me just clarify one thing. The investigator
14 -- at least two of the investigators in the interview in
15 Kampala, you had met them in Bunia, hadn't you?

16 A. Yes, there were two of them.

17 Q. You, of course, weren't forced to go to Kampala, were
18 you?

19 A. You are correct.

20 Q. And you knew that the information that you could
21 provide to the ICC could assist them in their investigations or
22 indeed hinder them, didn't you?

23 A. I don't know how to answer that question. The person
24 that I was with - and I am repeating this - that person came and
25 told me that we had to leave, and we left. It wasn't by force,

1 and I didn't know. I didn't know that I would be going to
2 Kampala. We sat down and we planned, and we left. I wasn't
3 taken there by force. It was an agreement between Mr X and I.
4 We sat down with Mr X and we prepared, and he cheered me up, and
5 then we left for Kampala. So that's how the events occurred.

6 Q. Witness, during the interview in Kampala when you sat
7 down with the investigators for five days, you were alone, were
8 you not?

9 A. Yes. I went there alone to have those discussions;
10 but as I've been saying for the past two days, I was stating
11 what we had prepared together and we would prepare the answers
12 during our meetings in the evening when I came back from the
13 interviews.

14 Q. During the interview when you were in that hotel, the
15 investigators advised you that you were being interviewed as a
16 suspect; do you remember that?

17 A. No, I don't -- I no longer recall that.

18 Q. Do you remember being advised that you had a right to
19 a lawyer to assist you?

20 A. I no longer recall that.

21 Q. Do you recall that you were told that you had the
22 right to remain silent if you didn't want to answer a question?

23 A. Yes.

24 Q. And you knew that the investigators were only
25 interested in the truth, didn't you?

1 A. Yes, but I can add this --

2 Q. That's fine. It's in answer to your question -- to my
3 question. That's fine. Thank you. Now, the interviews were
4 conducted on 30 September, 1 October --

5 PRESIDING JUDGE FULFORD: I'm sorry, Mr Sachdeva. I'm
6 going to interrupt. You put a question: "You knew that the
7 investigators were only interested in the truth, didn't you?"
8 And the witness said, "Yes, but I can add this," and you then
9 cut across him. That's not appropriate.

10 If a witness -- and this has been the position
11 extensively throughout the examination and cross-examination of
12 prosecution witnesses, that if witnesses wish to add something,
13 so long as the answer is within reasonable bounds, they have
14 been permitted to do so, and you should not interrupt in that
15 way.

16 Now, sir, I'm going to go back to the question that
17 Mr Sachdeva put to you a few moments ago. He asked you whether
18 you knew that the investigators were only interested in the
19 truth, and you said, "Yes," and that you wanted to add
20 something. Would you now like to tell us what it is that you
21 wanted to add?

22 THE WITNESS: Thank you. I wanted to add one little
23 thing. When I was told all of this, they added that I shouldn't
24 answer a question for which I did not have a reply. However, I
25 do think that the essence was that before going there -- well,

1 for me, it was an event that had surprised me. If nobody had
2 filled my head with all that information, I would not have been
3 as able to do it. That is what I wanted to add.

4 PRESIDING JUDGE FULFORD: Thank you very much. Please
5 continue, Mr Sachdeva.

6 MR SACHDEVA: Thank you, Mr President.

7 Q. The interview started on 30 September and it continued
8 on 1 October, 2 October, 4 October, 5 October, and finally it
9 was concluded in Bunia on 12 November 2005. That's right, is it
10 not?

11 A. That is correct.

12 Q. And during the -- well, the interviews lasted during
13 the day. You started early in the morning, you had several
14 breaks. But approximately, it's correct to say that the
15 interviews lasted around five, six hours every day?

16 A. No. In Bunia, I think that we had just one interview.
17 We did not meet again for a discussion. So it was once, after
18 Kampala, if my memory serves me correctly.

19 Q. Very well. But in Kampala, let's stay with Kampala,
20 the daily schedule was that you started at around 8.30 in the
21 morning and concluded roughly at 4.30 in the afternoon, with
22 breaks in between; isn't that so?

23 A. That's correct.

24 Q. And the interview was video and audio recorded; do you
25 remember that?

1 A. Yes, I remember that.

2 Q. Now, you were not given any advance copy of the
3 questions that you would be asked, were you?

4 A. I didn't really grasp your question. A piece of paper
5 that I might have received?

6 Q. You were not told in advance, or you weren't given an
7 advance piece of paper or a copy of the specific questions that
8 were to be asked of you, were you?

9 A. Yes.

10 Q. And during those six days of interviews, you were
11 frequently asked to follow up on previous answers, were you not?

12 A. Yes.

13 Q. You were asked to clarify areas that needed
14 clarification, weren't you?

15 A. Yes. I was asked to do that.

16 Q. You were given -- you were giving answers
17 spontaneously, were you not?

18 A. Yes. That is, as the interview went on.

19 Q. Every morning you came back voluntarily; isn't that
20 right?

21 A. Return from where?

22 Q. Yes, let me be more clear: Every morning when you
23 came back for the interview, you came back voluntarily? You
24 were asked if you were coming back voluntarily and you agreed;
25 isn't that so?

1 A. Yes. I used to go there with Mr X. Well, the
2 following day he came to take me and, in order for me to return
3 home, he would come with a driver, who would take me back to the
4 hotel. That's what he did every day. And we had agreed that we
5 had to conclude our work over those few days so that we could
6 return to Bunia. So, I had to finish my work. After a working
7 day, I was asked if I was ready to return the next day, and I
8 said -- and I agreed.

9 Q. I just want to be clear, sir, that at no point during
10 the interview with the investigators was Mr X present.

11 A. Since yesterday I have been telling you that he has
12 never participated in any of the interviews. However, where I
13 was spending the night, because we were in the same hotel, we
14 would go to the restaurant together. He would come to my room,
15 and he would ask me about the questions that were put to me and
16 the answers that I gave. Together, we would attempt to guess the
17 questions that would be put to me and find answers to them. We
18 would conduct this exercise every evening before I attended an
19 interview the next day.

20 Whenever I ran out of ideas, I would find an excuse; I
21 told Mr X that I wished to return to Bunia, to go and see my
22 family, because my wife was ill. It was because I had run out
23 of ideas and that I had no other answers to give, and I wished
24 to return to Bunia. So, I was taken back to Bunia.

25 Q. Sir, you would agree that the interview that you

1 conducted for five days in Kampala, and one day in Bunia,
2 produced -- well, it contained roughly 36 hours of interview;
3 that's fair to say, isn't it?

4 A. Yes, that's correct. Questions were put to me in
5 Kampala, and in Bunia once. I agree with what you've just said.

6 Q. And you've seen the transcriptions in front of you.
7 Those interviews produced some 1,000 pages, didn't they?

8 A. I cannot tell you how many pages there were. I don't
9 know how transcripts are prepared. I gave them answers. I did
10 not write anything down. Even if a student is able to remember
11 and repeat what he is taught, he might forget things if he
12 doesn't write anything down.

13 PRESIDING JUDGE FULFORD: Mr Sachdeva, can we move to
14 the heart of this. I think quizzing the witness about the
15 length of the interviews is really not very helpful.

16 MR SACHDEVA:

17 Q. And so during the times of the interview when you were
18 asked substantive questions about the UPC, you were lying,
19 weren't you?

20 A. Yes.

21 Q. Do you remember being asked questions about your
22 recruitment into the UPC?

23 A. I have forgotten. I have forgotten.

24 Q. Do you remember talking about a commander called Romo
25 (phon) Charlie?

1 A. Well, with respect to all those interviews, these were
2 things that we made up, and it was all lies. As I didn't write
3 anything down, I can't remember. I can't even remember the names
4 I mentioned. And as I knew certain members of the army, I would
5 mention their names randomly. I can't even recall any of the
6 names I mentioned on that occasion, even if I was asked to,
7 because this happened a year ago.

8 Q. I'd like to take you to another section of the
9 interview. Mr President, I'm going to refer to a section in
10 tab 2, page 9, commencing lines 213 to 225. And again,
11 Mr President, with your leave, could I ask Ms Samson to read out
12 the relevant parts?

13 PRESIDING JUDGE FULFORD: Certainly. Just before you
14 do, Mr Sachdeva, I'm just thinking what we need to do with the
15 interviews. The passages you're relying on are being read out
16 into the record, and that's probably sufficient, isn't it? I
17 was wondering whether we need to give an EVD number to the
18 section in the paper copy that you've read out but it seems to
19 me that's probably unnecessary, isn't it?

20 MR SACHDEVA: Yes, Mr President. I had thought about
21 that and, because it has been read out into the record, it
22 should be sufficient. However, there may be instances where
23 parts of it need to be given an EVD number.

24 PRESIDING JUDGE FULFORD: It's just to give guidance
25 to the court officer, that's all, and I'm very glad you thought

1 about it, Mr Sachdeva.

2 Yes, Ms Samson. Could you read your next passage,
3 please.

4 MR SACHDEVA: I apologise, I am reading -- Ms Samson
5 is going to read from line 208.

6 MS SAMSON: (Interpretation)

7 "NS: From what I have understood, when he caught you
8 in your home they took you away in a vehicle. They
9 took you to Romeo -- they took you to Romeo Charlie's
10 home.

11 Interpreter: Yes.

12 NS: What type of vehicle was this?

13 Interpreter: 82. 80, is that not it?

14 NS: Ah, yes, I think I've understood. Yes.

15 Interpreter: Yes, 4WD.

16 NS: For the record, it is a 4WD. Do you know what
17 4WD means?"

18 MR SACHDEVA:

19 Q. Now, sir, was that another one of your lies?

20 A. Yes. As I said earlier, I have never served in the
21 army. These were plans that we had made, lies that we had
22 fabricated, and I had to repeat them. Well, unless you jog my
23 memory, I cannot remember everything I said because these were
24 things we planned. I didn't put anything down in writing. In
25 any case, in the morning before I left I was told what I had to

1 say in answer to questions. I can't recall all of that, but
2 they were all lies.

3 Q. Do you remember on 1 October providing a very specific
4 example of punishment that was handed out at the Mandro camp,
5 whereby a soldier was tied to a tree and shot? Do you remember
6 that?

7 A. Could you please repeat your question?

8 Q. Certainly. During the interview on 1 October you
9 volunteered an example of punishment that was handed out in the
10 training camp, and the example you gave was of soldiers being
11 tied to a tree and shot. Do you remember giving that
12 information to the investigators?

13 A. I do remember.

14 Q. And you remember that the investigators asked you
15 follow-up questions, what was the basis of your knowledge, and
16 you told the investigators that you heard it from two commanders
17 named Rengo (phon) and Kato (phon). Do you remember giving that
18 information?

19 A. Yes.

20 Q. And was that another lie that you made up?

21 A. That's right. That was a lie which we made up. That
22 is what I said, and so I was telling lies. I have never been a
23 soldier. I have never been a witness to such events. These
24 were just plans, or lies, we had made up. We had reached an
25 agreement with Mr X to tell such lies. I was to fulfill my

1 mission and execute the plan that Mr X and I had concocted.

2 MR SACHDEVA: Mr President, I just would require one
3 minute of your indulgence. Thank you.

4 PRESIDING JUDGE FULFORD: Absolutely, Mr Sachdeva.

5 MR SACHDEVA: Mr President, at this stage I would like
6 to try and play part of the video excerpt of the interview. I
7 just would like, with your leave, to check if it's been uploaded
8 in eCourt with the court officer.

9 PRESIDING JUDGE FULFORD: Just some assistance,
10 Mr Sachdeva. We have obviously got the written record. The
11 advantage of this being, what? To see the witness's demeanour
12 during the course of the interviews, or what?

13 MR SACHDEVA: Not the demeanour, Mr President, but in
14 terms of a particular transaction I'd like it to be shown to the
15 witness.

16 PRESIDING JUDGE FULFORD: All right. We'll rely on
17 you. Now, you've got an enquiry then of the court officer
18 whether he's got available to him a particular section of the
19 interviews. Can I ask the court officer whether this has been
20 communicated to you?

21 MR SACHDEVA: I can read out the ERN. Perhaps that
22 might help? 0121-0009. Mr President, I see that it's not yet
23 ready. I can continue with some questions just before this.

24 PRESIDING JUDGE FULFORD: Good. All right. Well,
25 we'll come back to this in due course.

1 MR SACHDEVA:

2 Q. Now, sir, yesterday you remember we were talking about
3 the money that was provided to you for your loss of earnings and
4 also money for the cover story for your protection concerns.
5 You remember?

6 A. Yes, that's correct. I was given money to buy
7 articles for work. I do agree.

8 MR SACHDEVA: Mr President, I think there should be a
9 redaction to that answer, with your leave.

10 PRESIDING JUDGE FULFORD: Yes, I agree. Lines 14 and
11 15, please, to be redacted.

12 MR SACHDEVA:

13 Q. Now, you told us that you had not received the cash,
14 but that it was given to you by Mr X; isn't that so?

15 PRESIDING JUDGE FULFORD: Before you answer that, sir,
16 yes, Mr Biju-Duval?

17 MR BIJU-DUVAL: (Interpretation) The question, such as
18 it was translated into French, could cause some confusion. In
19 any case, that's not what the witness said. I think it would be
20 preferable for Mr Sachdeva to --

21 PRESIDING JUDGE FULFORD: I agree. Mr Sachdeva, the
22 question in fact involved a complete contradiction; on the one
23 hand suggesting that he wasn't given cash and on the other hand
24 suggesting that it was given to him by Mr X. I think you need
25 to put it again.

1 MR SACHDEVA: Yes. Yes, Mr President, and thank you
2 to my learned friend.

3 Q. Sir, it's your evidence that you did not receive the
4 cash, isn't it?

5 PRESIDING JUDGE FULFORD: Yes, Mr Biju-Duval? Is your
6 point that the witness's evidence was that he did receive cash?

7 MR BIJU-DUVAL: (Interpretation) Yes, absolutely.

8 PRESIDING JUDGE FULFORD: I think that's right,
9 Mr Sachdeva. The witness's evidence yesterday was that he did
10 receive cash.

11 MR SACHDEVA: Mr President, I -- perhaps I can refer
12 to transcript 257 from yesterday, lines -- on page 20, lines 15
13 to 17, and at least in the English translation it says, and I
14 quote:

15 "A: It is not the money that was given to me
16 directly. We went to make some purchases and I got the
17 products. I did not receive cash. I received products that we
18 bought with Mr X."

19 PRESIDING JUDGE FULFORD: Mr Biju-Duval, are you
20 relying on any particular passages to say that it was -- that
21 there was money given, as opposed to items given?

22 MR BIJU-DUVAL: (Interpretation) Your Honour, in order
23 not to cause confusion in the mind of the witness, the
24 Prosecutor should state that he is referring exclusively to the
25 purchase of certain items. There were other occasions during

1 which money was handed over to the victim -- sorry, to the
2 witness, but I think that the question was a bit too open-ended;
3 the question put by the Prosecutor.

4 PRESIDING JUDGE FULFORD: Yes. I mean, Mr Sachdeva, I
5 don't have the references immediately at my fingertips because I
6 didn't know this was going to be an issue, but I thought we
7 heard evidence yesterday to the effect that on certain occasions
8 the witness did receive payments in cash. Now, maybe my memory
9 is completely wrong on that, but are you saying that the witness
10 never said that ever he received any cash?

11 MR SACHDEVA: No, Mr President, I am not saying that.

12 PRESIDING JUDGE FULFORD: Well, you must be careful
13 then, Mr Sachdeva. Let's focus on the particular issue that
14 you're dealing with and then put the question in a fair way,
15 please.

16 MR SACHDEVA: Mr President, I will, although I had
17 premised my question with respect to the cover story and it is
18 in that regard that I'm asking this question.

19 PRESIDING JUDGE FULFORD: It may appear logical and
20 correct to you. You've got to remember that we're dealing with
21 a witness who is not used to our proceedings, Mr Sachdeva, and
22 if you're going to put a particular question about a particular
23 issue it must be introduced in a way that is not going to cause
24 him confusion.

25 MR SACHDEVA: I'm guided, Mr President.

1 Q. Now, sir, with respect to the \$200 that you -- with
2 respect to the purchases that you made for your cover story, is
3 it your evidence that you did not receive directly the cash for
4 that purchase?

5 A. Well, this is what I said: I went together with Mr X
6 to purchase certain items. I then gave him the receipts which
7 he handed over.

8 MR SACHDEVA: Perhaps I can try it this way,
9 Mr President. I'll read the question and the answer.

10 PRESIDING JUDGE FULFORD: Which question and answer?

11 MR SACHDEVA: From my learned friend to the witness
12 yesterday.

13 PRESIDING JUDGE FULFORD: Certainly. If you can
14 identify the transcript in the edited version.

15 MR SACHDEVA: Again, it's page 20 from transcript 257,
16 and I'm going to read from lines 5 to 17.

17 Q. Witness, I'm going to read the question that my
18 learned friend from the Defence put to you and your answer, and
19 I just want you to tell me if that's right.

20 And so I'm going to start: "Witness, if you could
21 turn to tab 19. This is a document entitled 'Receipt for
22 reimbursement' and it reads, 'A lump sum for the purchasing of
23 ... products and this is a matter of coverage.' It also
24 mentions the sum of \$200. Could you identify the signature at
25 the bottom of this document? And whose signature is this, could

1 you specify?"

2 Then your answer: "It is my signature."

3 Next question: "Thank you very much. Now, I know
4 it's difficult and I will ask the same question again: Do you
5 remember receiving this amount of money; the sum of \$200?"

6 Your answer: "It is not the money that was given to
7 me directly. We went to make some purchases and I got the
8 products. I did not receive cash. I received products that we
9 bought with Mr X."

10 That's right, isn't it?

11 A. Yes, that is right. The money was given to Mr X, and
12 we then went to purchase the items; and we were told that he had
13 to provide receipts, so we furnished the receipts and he took
14 them and we packaged our items, and we went back to the hotel.
15 That is exactly what I said yesterday.

16 MR SACHDEVA: Mr President, at this stage, I would
17 like to show the video, but I see that it's two minutes before
18 the break, and I would ask your leave to set up the video and
19 then show it after the break.

20 PRESIDING JUDGE FULFORD: Well, you must have powers
21 of second sight, Mr Sachdeva, because in fact the break usually
22 would be at 11 o'clock, not at half-past 10, because we started
23 at half-past 9.

24 However, you have anticipated exactly what I was about
25 to do, which was to suggest that we take the longer break this

1 morning now - because the witness is having to focus on matters
2 of relatively fine detail - and we'll then have a shorter break
3 a little bit later in the morning. So, well done for powers of
4 divination.

5 MR SACHDEVA: Thank you, Mr President.

6 PRESIDING JUDGE FULFORD: Thank you very much indeed,
7 sir. We're going to give you a break now for half-an-hour.
8 We'll sit again at 11 o'clock. Closed session, please, so the
9 witness can withdraw.

10 *(Closed session at 10.29 a.m.) Reclassified as Open session

11 THE COURT OFFICER: We are in closed session, your
12 Honours.

13 (The witness stands down)

14 PRESIDING JUDGE FULFORD: 11 o'clock.

15 THE COURT OFFICER: All rise.

16 (Recess taken at 10.29 a.m.)

17 (Upon resuming at 11.00 a.m.)

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

19 PRESIDING JUDGE FULFORD: Mr Sachdeva, Mr Biju-Duval,
20 don't either of you stand up, but just before the witness comes
21 back in, something, please, for the two of you to reflect on.

22 One issue that I suspect, having heard the witness of
23 the evidence so far, that we are going to be asked to resolve is
24 whether the witness was telling the truth during the course of
25 these interviews, or whether he is telling the truth now.

1 One of the potential tools for assessing whether he
2 was being honest then or is being honest now is to look at the
3 account given then to see whether it reads like an account, for
4 instance, that could have been a false one, but maintained so as
5 to look genuine.

6 Now, counsel are going to have to decide what they
7 want us to do with these transcripts. Are we simply to confine
8 ourselves to the few passages that Mr Sachdeva is going to put
9 by way of questions, or should they be available to us because
10 it is being suggested by the Prosecution, as I understand it,
11 that the witness was telling the truth at the time that the
12 interviews were taking place? And if that's going to be
13 alleged, shouldn't we be looking at the interviews to see
14 whether that works, or telling the truth in part - I don't know.

15 Anyway, it's a thought, and can you, don't respond
16 now, reflect on it and decide whether or not we should be
17 looking at these because if they don't receive EVD numbers,
18 consistent with earlier decisions we've made, we're not going to
19 be looking at them at all when we reflect on this part of the
20 evidence.

21 Good. Witness, please.

22 (The witness enters the courtroom)

23 PRESIDING JUDGE FULFORD: Public session, please.

24 You're right. No interpreter yet, so wait for a moment. Thank
25 you.

1 (The interpreter enters the courtroom)

2 PRESIDING JUDGE FULFORD: Yes. Just before we go into
3 public session, I probably need to add to what I said earlier.
4 It may not be that the Prosecution is saying that the interviews
5 reflect the truth but lies that were told then which are not the
6 lies which the Defence suggests were being told. I suspect that
7 there is going to be a complicated series of submissions being
8 made as to what the particular truth or falsity was in relation
9 to what was being said during the course of these interviews.

10 Right. Public session, please.

11 (Open session at 11.05 a.m.)

12 THE COURT OFFICER: We are in public session, your
13 Honours.

14 PRESIDING JUDGE FULFORD: Mr Sachdeva, what will be
15 played will inevitably have both the video part, what you can
16 see, but it's also going to have the audio. Now, is there any
17 difficulty with the audio section being played publicly?

18 MR SACHDEVA: No, Mr President.

19 PRESIDING JUDGE FULFORD: Good. So is what you want,
20 that -- is it that this section should now be played in its
21 entirety being interpreted while it's being played? How are we
22 going to deal with this?

23 MR SACHDEVA: Indeed, if it can be interpreted, that
24 would be fabulous. And yes, it should not be broadcast to the
25 public.

1 PRESIDING JUDGE FULFORD: Sorry, it shouldn't be?

2 MR SACHDEVA: The picture, the image.

3 PRESIDING JUDGE FULFORD: Right.

4 MR SACHDEVA: But what's being said can be, if it can
5 be separated. If not then --

6 PRESIDING JUDGE FULFORD: All right. I think that can
7 happen, yes. Now, I don't know whether the speed of delivery is
8 going to be susceptible to interpretation, so we'll have to try,
9 and if the interpreters have difficulties, can you please
10 communicate directly to me and we'll have to find another
11 solution.

12 Is there a section of the transcript that we should go
13 to, Mr Sachdeva, so we can follow it in paper form as well?

14 MR SACHDEVA: Indeed, I was going to suggest that, and
15 I understand the interpreters do have it. It is transcribed and
16 it's at tab 11, and it's essentially commencing from page 2, 3
17 and 4, first one or two pages.

18 PRESIDING JUDGE FULFORD: Very helpful, thank you.
19 Finally, before this starts, it may be of assistance to counsel
20 at some stage if the issue of cash remains relevant that, in the
21 edited version of transcript 257, page 13, lines 10, 11 and 12,
22 I don't want to enter a debate on it, but it's so counsel have
23 that in mind, should this be pursued. And I'm grateful to Judge
24 Odio Benito's legal adviser for having drawn my attention to
25 that part. Right. Can we then play the video so that we can

1 see -- Mr Biju-Duval, yes.

2 MR BIJU-DUVAL: (Interpretation) Yes, I'm sorry, Mr
3 President. I'm somewhat worried about the open hearing because
4 the excerpt that is going to be presented to us contains and
5 refers to the name of the witness and also to his professional
6 activities and to the famous products in question.

7 PRESIDING JUDGE FULFORD: Private session, please.

8 *(Private session at 11.10 a.m.)Reclassified as Open session

9 THE COURT OFFICER: We are in private session, your
10 Honours.

11 PRESIDING JUDGE FULFORD: Right. Can we then play
12 this, please.

13 MR SACHDEVA:

14 Q. Sir, what I'm about to do is to show you -- you've
15 already told us that you remember your interview being video
16 recorded. I'm going to play you an excerpt of that interview
17 and I want you to look at it very carefully and then I'm going
18 to ask you a question once that's completed. Do you understand
19 me?

20 A. (No interpretation)

21 (Video played and interpreted)

22 THE INTERPRETER: "Is it not true to say that before
23 the break ..."

24 Mr President, it's very, very difficult for the
25 interpreters to hear and follow.

1 PRESIDING JUDGE FULFORD: Right. Pause, please.
2 Mr Sachdeva, I don't think interpretation, contemporaneous
3 interpretation is going to work. The witness presumably is
4 going to be able to listen to this section in exactly the same
5 way as he participated in the discussion, so there should be no
6 difficulty with that. And, for the rest of us, we have the
7 written transcript. So I suggest that we play this through
8 without attempting to interpret it and then we'll look at the
9 position at the end to see whether there are any particular
10 passages that do require interpretation; is that acceptable to
11 you?

12 MR SACHDEVA: It is, Mr President.

13 PRESIDING JUDGE FULFORD: Thank you. Thank you for
14 trying, interpreters. Can we carry on, please, from where we
15 paused.

16 (Video played)

17 PRESIDING JUDGE FULFORD: I think we can probably now
18 go back into public session, can't we, Mr Sachdeva?

19 MR SACHDEVA: Yes, Mr President.

20 PRESIDING JUDGE FULFORD: Thank you very much. Public
21 session, please.

22 (Open session at 11.18 a.m.)

23 THE COURT OFFICER: We are in public session, your
24 Honours.

25 MR SACHDEVA:

1 Q. Now, sir, having seen that, do you maintain your
2 evidence that you were not given cash for the cover story and
3 the loss of your earnings?

4 A. Yes, I was given some money, but I had forgotten. You
5 know, I received some money and then I went to buy some products
6 in the company of Mr X and it was Mr X who came back the next
7 day with the receipt for the products purchased.

8 MR SACHDEVA: Mr President, perhaps that excerpt can
9 be given an EVD number confidentially.

10 PRESIDING JUDGE FULFORD: Absolutely. EVD number,
11 please.

12 THE COURT OFFICER: That will be assigned
13 EVD-OTP-00532 and marked as confidential, your Honours.

14 MR SACHDEVA:

15 Q. Sir, you're Hema North; isn't that right?

16 A. That is correct.

17 Q. Now, yesterday you gave evidence about this letter and
18 you had said that it was drafted under a guava tree on the lawn.
19 Do you recall saying that?

20 A. Yes.

21 Q. And where was this guava tree? Which lawn? To which
22 house did this lawn belong to, if it did?

23 A. Well, I spoke about this letter that was written at
24 Mr X's house under a mango tree. So it was at his residence
25 (Redacted) that this letter was drafted and I took it to the

1 person who helped me to travel to Kinshasa. It was this
2 individual who gave me some money before I travelled, and we
3 prepared this letter, as I say, and I took it to that person.
4 That's what I said.

5 Q. And when did this take place?

6 A. With respect to the letter, I believe that it was
7 written when I had returned from Kinshasa. Yes, I do believe
8 that it was after my return from Kinshasa; after my return.

9 Q. Which month?

10 A. I no longer recall the month.

11 Q. Now, you said that Mr X had the pen. What type of pen
12 was it?

13 A. Are you asking me to tell you the manufacturer of the
14 pen? Well, I'm not in a position to know that.

15 Q. And where did he get the pen from?

16 A. Now, how would I know that? How would I know how he
17 got, or where he got, the pen from? I'm not in a position to
18 know that.

19 Q. Did you give him the pen, or did he have the pen?

20 A. No, he already had a pen. It was his.

21 Q. And what about the paper? Where was the paper from?

22 A. He had a sheet of paper himself. He himself had a
23 sheet of paper.

24 Q. Where did the sheet of paper come from? Was it part
25 of a notebook? Was it by itself?

1 A. I no longer recall. He wrote something down, and I
2 went to his side and I reported to him and he said that he would
3 give me an answer. He told me to come back on the next day.
4 The next day was Saturday and I returned to see him, and he told
5 me that we were going to draft a letter together that I would
6 then give to somebody who was giving me money before my journey.
7 I do not know where -- whether he got this sheet of paper from
8 his notebook or not, but he wrote the letter and put it in an
9 envelope before giving it to me. I left with the letter.

10 Q. Was he sitting down on the lawn?

11 A. You say that he was seated where?

12 Q. I'm asking you if he was sitting down on the lawn?

13 A. No, he was sitting on a chair. There was also a
14 table, there was a book and there was a radio set, and I was
15 sitting there smoking whilst he drafted the letter. So, as I
16 say, there was a book and there was a small table before him.

17 Q. And how long did it take him to write this letter?

18 A. I remained in his company for quite some time. I was
19 smoking cigarettes at his house. This is just (Redacted)
20 (Redacted) at his residence in an enclosure

21 surrounded by cypress trees. He lived there with his wife,
22 and, whilst I went out to buy cigarettes, he drafted the letter.
23 Once he had finished writing the letter, he put it in an
24 envelope and handed it to me. In fact, I read the letter first
25 and then he put it in an envelope and I took it with me. We

1 stayed together for quite some time; I would say until the
2 evening fell.

3 MR SACHDEVA: Mr President, I'd like the witness to be
4 shown a document.

5 PRESIDING JUDGE FULFORD: Our green folder?

6 MR SACHDEVA: Indeed, Mr President, and it's at tab
7 39.

8 PRESIDING JUDGE FULFORD: Thank you. The interpreter
9 has cleverly found it. Hold on, sir.

10 MR SACHDEVA: If I could also have the witness be
11 shown the letter that we're speaking of. And, if I recall, that
12 is EVD --

13 PRESIDING JUDGE FULFORD: It's tab 2 of
14 Mr Biju-Duval's materials from yesterday, I think, isn't it?
15 No? Yes, it's tab 2 of the red folder. Can someone please -- I
16 don't think the interpreter has got that. Can the usher,
17 please, dig out yesterday's red folder. It is that one? Ah,
18 you have got it there. Good. And then have that shown, thank
19 you very much.

20 MR SACHDEVA: If I may just provide the ERN to the
21 court officer for the first document, the document in tab 39 is
22 DRC-OTP-0216-0038 and if I could ask the witness to first look
23 at this document.

24 PRESIDING JUDGE FULFORD: Right, I think the
25 interpreter now has both. Well done, sir. Not easy.

1 Now, what do you want the witness to do, Mr Sachdeva?

2 MR SACHDEVA:

3 Q. Witness, the first document is a document that I
4 suggest to you was produced by Mr X and I want you to look at
5 the writing on that document and look at the writing on the
6 letter.

7 PRESIDING JUDGE FULFORD: Mr Sachdeva, I don't know,
8 but I suspect you're just about to ask the witness to perform
9 the task of expert handwriting comparison, aren't you?

10 MR SACHDEVA: Mr President, in my submission, I don't
11 believe I'm going that far. I'm simply asking the witness to
12 make a simple comparison and agree with a suggestion that I want
13 to put to him.

14 PRESIDING JUDGE FULFORD: I'm sorry, Mr Sachdeva, it's
15 a valueless exercise. If it is going to be alleged that there
16 is a material difference between the handwriting such as to
17 invalidate the suggestion that the letter was written by the
18 same person who wrote tab 39, we're going to have to hear from
19 an expert on that, please. What you certainly can do is to ask
20 the -- I don't know whether it's the case -- you can ask the
21 witness, as you started, whether tab 39 was produced by Mr X,
22 whether he saw him write it, matters of that kind, but not to
23 carry out the comparison, I'm afraid.

24 MR SACHDEVA: Very well.

25 Q. What I can do is, Witness, if you can look at the

1 document from tab 39, in other words, not the letter, and --

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

3 MR BIJU-DUVAL: (Interpretation) I beg your pardon,
4 your Honour. I would like to make sure about the document in
5 question. Is this a document that is entitled "relevé de compte
6 pour le séjour"? Is this the document we're talking about?

7 PRESIDING JUDGE FULFORD: Under tab 39, that's the
8 document.

9 MR BIJU-DUVAL: (Interpretation) Yes, your Honour.
10 Now, in the documents provided I don't think we see anything for
11 tab 39. It's just a matter of -- it's just an organisational
12 problem on our side.

13 PRESIDING JUDGE FULFORD: I'll hold up my copy,
14 Mr Biju-Duval. Have you got that?

15 MR BIJU-DUVAL: (Interpretation) The presentation is
16 a bit different and I couldn't find tab 39. I wanted to make
17 sure that I had the right document. It's all been cleared up,
18 and I apologise, your Honour.

19 PRESIDING JUDGE FULFORD: I'm glad you've caught you
20 up, Mr Biju-Duval. Jolly good.

21 Right, carry on Mr Sachdeva, please.

22 MR SACHDEVA:

23 Q. Now, sir, if you look at the bottom of the page on the
24 right-hand side, you would agree, would you not, that that is a
25 signature of Mr X?

1 A. I can answer you by saying that I didn't see his
2 signature. I never worked with him. I never wrote documents
3 with him, so I don't -- so I wouldn't know his signature. This
4 is the first time I have seen this signature, so I really don't
5 know anything. When he gave me money, he gave me documents to
6 sign, and I signed. As for him, when he signed, I wasn't with
7 him, so I can't be familiar with his signature.

8 MR SACHDEVA: Mr President, I'm hesitating with the
9 next question in light of --

10 PRESIDING JUDGE FULFORD: Well, what do you want to
11 do, Mr Sachdeva?

12 MR SACHDEVA: I want to suggest to the witness that
13 the name at the bottom right-hand corner appears to be (Redacted)
14 -- that needs to be redacted. I apologise.

15 PRESIDING JUDGE FULFORD: Yes, redaction for that,
16 please.

17 I think the problem, Mr Sachdeva, is that the witness
18 said that he had never seen the witness -- seen Mr X put his
19 signature, and so he's going to be no better placed than the
20 rest of us to look at the signature. So I don't think it's a
21 useful exercise. We've got your point as to who you say is the
22 name written there, and we'll see how it develops, but I don't
23 think the witness can assist us on this.

24 MR SACHDEVA: Very well, thank you, Mr President.

25 PRESIDING JUDGE FULFORD: You can move on, please.

1 MR SACHDEVA:

2 Q. Now, sir, when you were back in Bunia, you remember,
3 don't you, that you were given two telephone numbers that you
4 could call in case of an emergency and in case of protection
5 concerns?

6 A. Yes, I remember that.

7 MR SACHDEVA: Mr President, perhaps we can move into
8 private session, with your leave.

9 PRESIDING JUDGE FULFORD: Certainly. Private session,
10 please.

11 *(Private session at 11.39 a.m.)Reclassified as Open session

12 THE COURT OFFICER: We are in private session, your
13 Honours.

14 MR SACHDEVA:

15 Q. One of those numbers was known at the DRC roaming
16 phone and that was a number that you could call 24 hours a day,
17 should you have any emergencies or protection concerns. Do you
18 remember that?

19 A. Yes, I remember that.

20 Q. And this number was connected to the Office of the
21 Prosecutor; isn't that right?

22 A. Up until then, I didn't know. I was told that it was
23 an emergency number. I did not know whose number it was.

24 Q. And you were told that by members of the Office of the
25 Prosecutor; were you not?

1 A. I was told that it was an emergency number. I wasn't
2 told that it was a number for the Office of the Prosecutor.

3 Q. Well, who did you think that number was related to?
4 Who did you think you would be calling if you dialled that
5 number?

6 A. I couldn't know. I was told it was an emergency
7 number. I didn't know whether -- whose number it was. I just
8 -- I didn't know.

9 Q. But in that period from 2007 until 2008, and possibly
10 2009, you dialled that number, did you not?

11 A. Yes, I tried to call that number, I think two or three
12 times, and then after that I lost my phone. I lost the number
13 and all the numbers that I had in the -- on the phone. The
14 phone was lost.

15 Q. In fact, if I suggest to you that you called that
16 number or you called the DRC roaming phone almost 20 times in
17 those -- in that period, would that be correct?

18 A. I no longer remember.

19 PRESIDING JUDGE FULFORD: Does this need to be in
20 closed session, Mr Sachdeva?

21 MR SACHDEVA: Mr President, I feel that we're
22 discussing various mechanisms that the ICC has in terms of
23 protection and, therefore, in my submission, it's probably
24 better to be dealt with in private session.

25 PRESIDING JUDGE FULFORD: An emergency telephone

1 number, is that really going to reveal anything that isn't
2 already blindingly obvious?

3 MR SACHDEVA: Well, Mr President, perhaps that's
4 right. However, for the next one or two questions, may I seek
5 your leave to stay in private session?

6 PRESIDING JUDGE FULFORD: All right.

7 MR SACHDEVA:

8 Q. Sir, you remember having met or you remember speaking
9 to someone called (Redacted) (phon), don't you?

10 A. Where did we meet?

11 Q. Do you remember speaking to by telephone or meeting
12 somebody called (Redacted) in Bunia?

13 A. I don't know Mr (Redacted). The people I met with in
14 Bunia, I don't know the name of (Redacted). It's true that I've
15 forgotten many times, but I don't remember a name such as (Redacted)
16 (Redacted) (phon).

17 Q. You don't remember calling the members of the ICC for
18 assistance in relocation?

19 A. Yes. I could add this: Each thing that we did with
20 Mr X was with a view to getting me moved. Why? Because the piece
21 of news in question was already known, and he had promised to me
22 that he would do the best he could so that I could leave Bunia.
23 And that is what indeed happened.

24 Q. Do you remember in December 2007, do you remember
25 calling the Office of the Prosecutor field office about an

1 incident (Redacted)? Do

2 you remember that?

3 A. (Redacted)? I don't remember that.

4 Q. You don't remember telling the OTP that (Redacted)

5 (Redacted)for one week (Redacted) and that you had to

6 spend (Redacted)? You don't remember those details?

7 A. No, it's not that. I believe that we haven't

8 understood one another. Perhaps it is a problem in French. I

9 said that I had had a family problem, it was a problem with (Redacted)

10 (Redacted)

11 (Redacted), but it's not that (Redacted); I

12 hadn't said that. I think that we have misunderstood one

13 another, but I didn't say that (Redacted)

14 or that I had paid (Redacted).

15 PRESIDING JUDGE FULFORD: Mr Sachdeva, I think we can

16 go back into public session now, can't we?

17 MR SACHDEVA: Yes, Mr President.

18 PRESIDING JUDGE FULFORD: Public session, please.

19 (Open session at 11.48 a.m.)

20 THE COURT OFFICER: We are in public session, your

21 Honours.

22 MR SACHDEVA:

23 Q. You didn't tell the OTP that you had been taken by UPC

24 members to the local police because they knew that you were

25 meeting with the ICC and testifying against Lubanga? You didn't

1 tell the OTP that; is that your evidence?

2 A. I think that he misunderstood me. I'd given the name
3 of each one. I told them that the news on this problem had
4 spread throughout the village, and I cited everyone by name. I
5 said that Dieudonné had told this piece of news, that (Redacted)
6 had approached me on the road - that's my brother-in-law, - and
7 someone else, a merchant came to consult me and I quoted the
8 names. It's not that they had created problems for me at home
9 or that they had created problems for my family. I did not say
10 that. I gave the names of the people who had consulted me. We
11 must agree on that point.

12 Q. What was the name of the merchant that came to consult
13 you?

14 A. His name is (Redacted) He came to see me, and he asked
15 me if everything he had heard about me was true, that I had made
16 false statements about Thomas Lubanga. And I said, no. But when
17 I met the person in question I told him that the matter I had
18 set in motion was already known to my family, that some people
19 came to speak to me about it. I did not say that those people
20 were troubling my family. That is not what I said: I said that
21 Dieudonné had gone to see my family to talk to them about this
22 it. I gave the name of each person.

23 Q. And you reported this to the OTP, did you not, as a
24 threat to you and your family?

25 A. Well, if they thought that it was a threat. I said --

1 I said that there were times when one says the truth, other
2 times when one lies. What is true, Mr X and I were lying, but
3 it did happen at one point, one time. I was living in the
4 village - where they could consider this to be a threat to me.
5 Because when I cooperated with them they told me to tell them
6 any problems I might experience. It was in that context that I
7 told them who approached me or who came to my house. That is
8 what I told them.

9 PRESIDING JUDGE FULFORD: Do we need a redaction for a
10 name that was mentioned two or three times over the last answer
11 or two?

12 MR SACHDEVA: I don't believe so, Mr President.

13 PRESIDING JUDGE FULFORD: All right. If there's a
14 contrary view by the Defence, could they please send an email to
15 the Court Officer? Thank you. Yes. Please, carry on,
16 Mr Sachdeva.

17 MR SACHDEVA:

18 Q. And who else came to see you? You mentioned other
19 people. Who else were they?

20 A. I said, I even remember the person whom I met. I
21 said, that I was starting to be threatened after this problem.
22 The first person who contacted me was a merchant by the name of
23 (Redacted). This merchant came and asked me whether my name was
24 (Redacted). I was surprised, and he said to me that he had
25 something to tell me; and when he asked me, I denied. I reported

1 this fear.

2 As for the second time, when my family - specifically my mother,
3 my sisters - they started to hold things against me. My mother
4 said that my sisters had said that a certain Dieudonné had come
5 to the house and that he was telling people this and that, I
6 denied it as well. The third occasion, was when my
7 brother-in-law (Redacted) (phon) came; he asked me, and I
8 denied. I said it was a lie.

9 As for the fourth time, I had an argument with my
10 friends who had been soldiers; and they said to me that I was
11 testifying against Thomas Lubanga -- we had an argument. We
12 were in a bistro, but that doesn't mean that I would have said
13 that someone had threatened my family. That's not it.

14 Q. Sir, is it not correct that with these incidents that
15 you've just described and countless others, you called the
16 emergency number and represented to the office that you were
17 being threatened and that you wanted to be relocated? Isn't
18 that right?

19 A. Yes. I had said, listen, I was working with the
20 number that had been given to me. It was a number that I'd been
21 given if I felt threatened. I was supposed to call the
22 emergency so that the emergency would know exactly what to do.

23 And Mr X says, well -- said, when you call this
24 number, what -- well, what -- what will they tell me? And he
25 said, well, you will have trouble communicating. My French is

1 not very strong, but the solution was that I would be moved.

2 Finally, my phone was lost and I gave up.

3 Q. You were not relocated, were you?

4 A. Yes.

5 Q. You met the Defence, I believe, around August 2009; is
6 that right?

7 A. I don't remember the exact date when I met them. I
8 don't remember, but it was last year, yes. I don't remember the
9 exact date.

10 Q. I just want to put one more aspect to you about the
11 relocation.

12 It's true, isn't it, that you not only called the
13 emergency number on the occasions that you've spoken of, but you
14 called them routinely in the middle of the night while you were
15 drunk demanding money; isn't that right?

16 A. Well, if I called -- sometimes I might have been
17 confused -- I don't know. I don't remember.

18 Q. You knew that this number was reserved for very
19 serious emergency situations, and that other people were
20 genuinely trying to use that number, didn't you?

21 A. Well, I lost the number. Well, I don't know what I
22 can tell you. No, this happened many years ago, I am trying to
23 remember how things unfolded. I am thinking about it, I am going
24 over it in my mind, but I cannot remember everything.

25 You were writing things down at the time I was speaking. It

1 happened a long time ago and I cannot remember everything.

2 Q. When you met the Defence last year, who was it that
3 you met first?

4 A. Before I met the Defence, you wish to know the first
5 person I met? Well, it was the lawyers of the Defence team.
6 The lawyers of the Defence team.

7 Q. And how many times did you meet them?

8 A. I believe that I met them once. Yes, indeed, it was
9 once, and after that they departed.

10 Q. You didn't meet them a month ago?

11 A. Meet them one month ago? I met them before I went to
12 Kinshasa, because I had to go get my passport.

13 Q. And who was it that introduced you to the Defence
14 lawyers?

15 A. Well, I would say the person who introduced me to the
16 Defence lawyers -- well, I learned that they were around. I
17 heard that the Defence lawyers were around. Well, up to that
18 moment I was living in my village, and I was not at ease. Why?
19 Because there were certain people who thought that I was still
20 carrying on with the lies about Thomas, and so I had problems of
21 conscience, and I felt that I should speak to the Defence
22 lawyers about the activities I was carrying out with Mr X. I met
23 with them. I believe they were surprised to see me. The person
24 who told me that they were there was my older brother, who is
25 called (Redacted); my own elder brother. That is the only

1 person I spoke to.

2 Later on I called Mr Dieudonné and he informed me of
3 the place where the Defence lawyers were. They started off by
4 asking my name and they asked me what I had come to do, and they
5 put questions to me. I think it must have happened on a Sunday.
6 I had a discussion with them.

7 PRESIDING JUDGE FULFORD: Mr Sachdeva, in honouring
8 the indication I gave earlier, I think we need to give the
9 witness a 10-minute break around about now. Is this convenient
10 or do you want to finish off a point before we rise?

11 MR SACHDEVA: It's convenient, Mr President.

12 PRESIDING JUDGE FULFORD: Thank you very much. So
13 we're going to give you a short break now, the last one this
14 morning before lunch. We'll sit again just after
15 quarter-past-12.

16 Closed session, please.

17 *(Closed session at 12.04 p.m.)Reclassified as Open session

18 THE COURT OFFICER: We are in closed session, your
19 Honours.

20 (The witness stands down)

21 PRESIDING JUDGE FULFORD: Just after quarter past.

22 (Recess taken at 12.05 p.m.)

23 (Upon resuming at 12.17 p.m.)

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

25 PRESIDING JUDGE FULFORD: Witness, please, and

1 interpreter.

2 (The witness enters the courtroom)

3 (The interpreter enters the courtroom)

4 PRESIDING JUDGE FULFORD: Public session, please.

5 (Open session at 12.18 p.m.)

6 THE COURT OFFICER: We are in public session, your
7 Honours.

8 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

9 MR SACHDEVA: Thank you, Mr President.

10 Q. Witness, before the break you were telling us about
11 some threats that you had received after this problem, as you
12 put it. You talked about this merchant that came to see you and
13 you said that he had something to tell you. What was it that he
14 told you?

15 A. Well, this is what I said. The merchant came and he
16 told me that I was telling lies about Thomas. He asked me
17 whether this was true, or false, and I said it was false.
18 However, deep down I knew that it was the truth, that I had lied
19 about him. If I was given an emergency number it was to so that
20 I could call if there was a problem, if somebody approached me,
21 or if there were rumours circulating. That is why I gave the
22 names of all those who came to my house. And that is how I gave
23 the name of the merchant,

24 Q. And how did this merchant know that you had been
25 talking to the ICC?

1 A. I don't know. He simply came and he put the question
2 to me, and when he came to me I was afraid. And what is more,
3 at home this issue was constantly mentioned. I don't know who
4 told him that. I don't know the circumstances under which he
5 got to know about this.

6 Q. You also spoke about some soldiers that came. Do you
7 remember that?

8 A. Yes.

9 Q. And you said that if you testified -- you said that
10 they had told you that if you had testified about Thomas
11 Lubanga. Is that what they asked you?

12 A. Yes, that's right. Well, they put that question to me
13 and this happened in a bar. These were people who had served in
14 the army, but who had been demobilised. They were friends and
15 we had a fight. We had an argument.

16 Q. Which army was that?

17 A. They were soldiers of the UPC.

18 Q. Do you remember their names?

19 A. Yes, I remember their names.

20 PRESIDING JUDGE FULFORD: Mr Biju-Duval?

21 MR BIJU-DUVAL: (Interpretation) If any names are
22 going to be mentioned, your Honour, then I think it would be
23 proper for to us go into private session.

24 PRESIDING JUDGE FULFORD: Private session, please.

25 *(Private session at 12.23 p.m.)Reclassified as Open session

1 THE COURT OFFICER: We are in private session, your
2 Honours.

3 MR SACHDEVA:

4 Q. Please continue, sir. What were their names?

5 A. The names are (Redacted) (phon). It was (Redacted)
6 and I have forgotten the name of the other soldier.

7 MR SACHDEVA: Mr President, we can move back into
8 public session.

9 PRESIDING JUDGE FULFORD: Thank you very much. Public
10 session, please.

11 (Open session at 12.24 p.m.)

12 THE COURT OFFICER: We are in public session, your
13 Honours.

14 PRESIDING JUDGE FULFORD: Yes.

15 MR SACHDEVA:

16 Q. And how did these soldiers know that you had spoken to
17 the ICC?

18 A. As I have been telling you so far, I do not know how
19 they came about knowing this. When you start doing something
20 you could imagine that it will remain a secret, but other
21 persons may get to know about it. They could see you, or hear
22 about it and spread the fact. I don't know how this matter came
23 to their knowledge.

24 Q. There were, indeed, rumours going around the community
25 - especially the Hema community - in Bunia that people were

1 cooperating with the ICC; isn't that right?

2 A. Sorry, could you please repeat? I didn't fully
3 understand your question. I do not fully understand it.

4 Q. Certainly. You had spoken about rumours and it's fair
5 to say - and you would agree - that there were rumours within
6 especially the Hema community that people were cooperating with
7 the ICC?

8 A. Well, as far as I'm concerned, I can only speak for
9 myself. I can only talk about things that happened to me. I do
10 not know whether it happened to others and I am not in a
11 position to know what happened to others.

12 Q. And in addition to the soldiers and the merchant you
13 spoke about, I believe the father of Dieudonné coming to your
14 sisters and your family, what happened then? I'm sorry, you
15 spoke about Papa Dieudonné.

16 A. This is what I said. Dieudonné is the person I
17 referred to as Papa, because he's an elderly person. He came to
18 my home, but he did not come to see me. He came to visit the
19 family and he spoke to my relative.

20 THE INTERPRETER: Or he spoke to my godfather, if the
21 French transcript is to be trusted.

22 MR SACHDEVA:

23 Q. Now, we were talking about your interaction with the
24 Defence and, apart from the meeting in Kinshasa, you said you
25 met them once; is that right?

1 A. We did not meet in Kinshasa. We, rather, met in
2 Bunia.

3 Q. And it was at that meeting that you told the Defence
4 that you had lied to the OTP?

5 A. I went to meet them and I told them the truth, the
6 truth about what we did; that is, Mr X and I. I explained the
7 whole thing to them in detail. In other words, I told them
8 about the lies that we had fabricated; that is, Mr X and I.

9 Q. Since your interview in 2005 with the OTP in Kampala
10 and again in Bunia and the further interview in Kinshasa in 2007
11 and with all the times that you communicated with the OTP after
12 that, not once did you tell the OTP that you had lied to them;
13 isn't that right?

14 A. I believe that our relations came to an end in Bunia
15 and that subsequently they left and I went home and then we did
16 not speak. In Kinshasa, I did not provide them with a
17 statement. They introduced themselves to me and then they left
18 the room and they spoke on the telephone, and then they brought
19 me back to the hotel and subsequently on the next day they gave
20 me my ticket so that I might leave Kinshasa and return to Bunia.
21 So, in Kinshasa there was no discussion as such between myself
22 and the members of the OTP.

23 Q. Sir, are you sure about that; that there was no
24 discussion in Kinshasa?

25 A. Yes, the truth be told, there was no discussion

1 between myself and them in Kinshasa. What they did was quite
2 simply to ask me what my name was, and then they drove me home. I
3 am telling you the truth. I did not remain in their company for
4 longer than 30 minutes. They asked me to provide my name, and
5 then they left the room to talk. Then they took me home. We
6 didn't really have a true discussion as such.

7 Q. In all the opportunities you have had to speak to the
8 OTP since your initial interview, you have never told them that
9 you had lied; and isn't that right?

10 A. I can answer that question by saying that everything I
11 did was not of my own -- under my own steam. I was not the one
12 who contacted them. They are the ones who contacted me and
13 somebody took me to see them, and this individual with whom we
14 invented lies knew them.

15 Q. Can you just answer the question? Did you or did you
16 not tell the OTP that you had lied in the times that you had
17 spoken to them?

18 A. Well, I didn't have the time to tell them so.
19 However, I was in the company of somebody -- I might be
20 repeating myself here, but somebody took me to them and this
21 individual knew only too well what we were doing in terms of
22 concocting lies.

23 I have a headache.

24 PRESIDING JUDGE FULFORD: Then we will not continue if
25 you are not feeling particularly well.

1 Mr Sachdeva, how much longer do you think you've got
2 in your questioning?

3 MR SACHDEVA: Ten minutes, perhaps, Mr President, if
4 that.

5 PRESIDING JUDGE FULFORD: Right. Mr Biju-Duval, very
6 much thereafter?

7 MR BIJU-DUVAL: (Interpretation) I have three or four
8 questions, no more. I think it will be rather brief.

9 PRESIDING JUDGE FULFORD: Right. I think,
10 nonetheless, even on those estimates it's probably fairest to
11 the witness if we conclude his evidence this afternoon, unless
12 there are any strenuous objections to that. No, I see there are
13 not.

14 Maitre Mabilie, I understand that there is to be a
15 meeting at one o'clock; is that right?

16 MS MABILLE: (Interpretation) That is correct,
17 Mr President, re-interview of Witness 10025 with the Office of
18 the Prosecutor.

19 THE INTERPRETER: Correction: 0025 with the Office of
20 the Prosecution.

21 PRESIDING JUDGE FULFORD: And that in those
22 circumstances it would be convenient for you if we didn't sit
23 again until 3:00 this afternoon; is that right?

24 MS MABILLE: (Interpretation) I had made that request
25 because I believed that we would be rising at 1:00. But in view

1 of the fact that we are rising half an hour earlier, then we
2 might stay with the original schedule.

3 PRESIDING JUDGE FULFORD: So, if we sit again at
4 quarter to 3, yes. If that is the case, then what I anticipate
5 is that this afternoon we will take the short last evidence from
6 this witness, and we will then deliver some oral rulings that
7 are outstanding. And we then, I think, commence the next
8 witness tomorrow; is that correct?

9 MS MABILLE: (Interpretation) I'm sorry to remind the
10 Trial Chamber of this, but we would also like to have a
11 discussion on the subject of 0025 and the VWU, Mr President.

12 PRESIDING JUDGE FULFORD: You're absolutely right,
13 Maitre Mabilie, and we've in fact requested the VWU to come down
14 at an appropriate stage, which will be during the course of this
15 afternoon. Thank you very much.

16 Good. We sit again then at quarter to 3. Closed
17 session, please.

18 *(Closed session at 12.39 p.m.)Reclassified as Open session

19 THE COURT OFFICER: We are in closed session, your
20 Honours.

21 (The witness stands down)

22 PRESIDING JUDGE FULFORD: Quarter to 3.

23 THE COURT USHER: All rise.

24 (Recess taken at 12.40 p.m.)

25 (Upon resuming at 2.45 p.m.)

1 *(Closed session) Reclassified as Open session

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

3 PRESIDING JUDGE FULFORD: Good afternoon. Witness,
4 please, and interpreter.

5 (The witness enters the courtroom)

6 (The interpreter enters the courtroom)

7 PRESIDING JUDGE FULFORD: Public session, please.

8 (Open session at 2.47 p.m.)

9 THE COURT OFFICER: We are in public session, your
10 Honours.

11 PRESIDING JUDGE FULFORD: Good afternoon, sir. Are
12 you feeling better?

13 THE WITNESS: Yes, I feel better.

14 PRESIDING JUDGE FULFORD: Good. Mr Sachdeva.

15 MR SACHDEVA: Thank you, Mr President.

16 Q. Witness, you have lied to the Office of the Prosecutor
17 for the last four years. You cannot be believed now; isn't that
18 right?

19 PRESIDING JUDGE FULFORD: I'm sorry, Mr Sachdeva.
20 That's counsel's rhetorical flourish, rather than a question.
21 It's up to us to decide whether or not the witness can be
22 believed now. It's not for the witness to make that assessment
23 of himself. Could you move on, please.

24 MR SACHDEVA:

25 Q. Witness, I suggest to you that you are lying now.

1 A. No, I am not lying. I am telling the truth.

2 MR SACHDEVA: No further questions, Mr President.

3 PRESIDING JUDGE FULFORD: Thank you very much indeed,
4 Mr Sachdeva. Very helpful. Mr Biju-Duval?

5 MR BIJU-DUVAL: (Interpretation) Your Honour, I was
6 intending to be even more brief than the Prosecutor, but that's
7 not the case. After reading through the transcripts very
8 carefully, we noticed that there was no need for any additional
9 questions. Certain translation problems will be addressed in a
10 different manner, so I have no further questions for this
11 witness.

12 PRESIDING JUDGE FULFORD: May this be the beginning of
13 a trend that will be maintained throughout this case,
14 Mr Biju-Duval.

15 Sir, that now concludes your evidence. I'm sorry you
16 have been brought back this afternoon effectively for no further
17 questions. It really just remains for me to thank you on behalf
18 of the Judges of this Court for the assistance that you have
19 provided us.

20 We can only go about our task of searching for the
21 truth in this case if people such as yourself are prepared to
22 cooperate and to come to tell us your story and stories of what
23 happened to you during the relevant time.

24 We are well aware that this will have been at some
25 considerable inconvenience to yourself and possibly some danger.

1 Therefore, you leave us now with our sincere thanks for your
2 assistance.

3 Closed session, please, and will the usher take the
4 witness back to the witness waiting room.

5 *(Closed session at 2.51 p.m.)Reclassified as Open session

6 THE COURT OFFICER: We are in closed session, your
7 Honours.

8 (The witness is excused)

9 (The interpreter exits the courtroom)

10 PRESIDING JUDGE FULFORD: I have asked for an enquiry
11 to be made to see if the representative of the Victims and
12 Witnesses Unit can attend quickly so that we can deal with the
13 particular matter which Maître Mabilille has asked us to
14 investigate. They will be here in a moment.

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

16 MR BIJU-DUVAL: (Interpretation) I beg your pardon,
17 your Honour. I was wondering about what we are going to do with
18 the interview transcripts. You raised the issue a short while
19 ago. I don't know whether we have to hold a discussion on that
20 now, or later?

21 PRESIDING JUDGE FULFORD: What's your submission,
22 Mr Biju-Duval?

23 MR BIJU-DUVAL: (Interpretation) Your Honour, the
24 matter relates to the interviews held in Kampala from September
25 to November 2005; that is, the transcripts and recordings of

1 such -- of those interviews.

2 The Defence believes that these are certainly relevant
3 documents, because these statements are material talked about by
4 the witness in his testimony. He says that the declarations are
5 false and he explained himself, telling us the reasons why.

6 In principle, therefore, the Defence does not object
7 to the inclusion of these statements in the court record - in
8 the case record - but we have to be very precise here. What I
9 mean is that it should be made clear that this material -- that
10 these statements will have probative value only on its own
11 merit. They can only be relevant if they pertain to certain
12 things that were said at a particular time in a particular
13 place. I think that is where the probative value of this
14 particular material should -- what it should be restricted to.

15 And we believe that the probative value should not be
16 extended to the events and the facts that the witness mentioned
17 in the interviews in Kampala, because we have absolutely no way
18 of knowing whether these facts are accurate, or inaccurate.
19 There is no way of double checking the accuracy of these
20 statements to ascertain whether they are true, or false.

21 Putting aside the testimony made yesterday and today,
22 during which the witness said that what he said was lies, the
23 Chamber is not in a position to establish the accuracy or
24 otherwise of the statements made by the witness in Kampala.

25 What we could say is that the Chamber could -- could

1 -- well, could somehow determine that there is some appearance
2 of credibility in the statements made in Kampala, but the
3 Chamber knows - and we all know - what a lie is. A lie is a
4 declaration which appears to be accurate, or credible.

5 I would like to end there, your Honour. We should
6 admit this evidence, but strictly within the limits that I
7 mentioned.

8 Furthermore, the Prosecutor - the OTP - has never
9 attributed to this Kampala statement any appearance of
10 credibility, because they didn't prepare any statement that was
11 to be signed by the witness, and so it becomes clear that the
12 Prosecutor himself never attributed any credit to these
13 statements made in Kampala.

14 There you have it, your Honour. Those are the
15 observations I would like to make with respect to the admission
16 of this evidence into the case record. That said, it would be
17 interesting to know -- today to know the position of the OTP
18 with respect to the Kampala statements. Does the OTP consider
19 them as accurate? Does the OTP consider them as inaccurate? We
20 do not know their position, but they could make their position
21 clear in our subsequent discussions.

22 PRESIDING JUDGE FULFORD: Thank you very much,
23 Mr Biju-Duval. Mr Sachdeva?

24 MR SACHDEVA: Thank you, Mr President. Firstly, the
25 interview was conducted pursuant to Article 55(2), in accordance

1 with Rule 112 I believe, and that was the standard procedure
2 with no requirement for the signed declaration that my learned
3 friend is speaking of.

4 Secondly, as I believe was demonstrated in the
5 cross-examination, the procedural aspects of the statement, the
6 components that discussed the -- the loss of salary, for
7 example, and the cover story, in our submission were indeed
8 accurate and true.

9 The purpose of identifying particular portions of
10 substance to the witness was to demonstrate that the lies could
11 have only come from the witness, that this witness was, contrary
12 to what he said in terms of being prepped, in terms of being
13 prepared, answering questions spontaneously, was making up
14 specific details and therefore lying on his own volition, and
15 that's the reason why I pointed to particular portions of the
16 statement.

17 Having said that, the Prosecution does not have an
18 objection for the transcripts to -- to go into evidence, but
19 with that qualification being made.

20 PRESIDING JUDGE FULFORD: Thank you very much.

21 Excuse me. Mr Biju-Duval, can I really put it this
22 way. If the -- if we are going to be asked to investigate, as
23 clearly we are from the witness's evidence, that he was
24 providing a consistent full story over a number of days,
25 delivering pre-prepared lies to the Office of the Prosecutor -

1 and that is a conclusion that, as I understand it, the accused
2 is suggesting that we should reach; I think I am right in my
3 understanding that that is essentially the position - shouldn't
4 we be alive at least to the possibility that it will be
5 necessary for us to look at what was actually said to see
6 whether or not the account that was given over those days is
7 consistent with the suggestion that a full story was being told
8 and sustained over a period?

9 So we wouldn't be looking at the truth, in the sense
10 of finding facts proven as alleged during the course of the
11 interview. We'd simply be looking at it to see whether it
12 credibly coincides with the argument that is being put to us as
13 regards the untruthfulness of the witness at the time.

14 Now, I probably took longer than I should to explain
15 that, but I hope it's clear.

16 MR BIJU-DUVAL: (Interpretation) Yes, your Honour.
17 We agree with that approach by the Chamber.

18 PRESIDING JUDGE FULFORD: Then an ERN number should be
19 assigned to the rather large folder that was handed up, but it
20 needs to be understood that the evidential value of that folder
21 is limited to what I have just described from the Bench. Unless
22 and until there is a submission that we should be using the
23 contents of that folder for any other purpose, our contemplation
24 of it will be limited to the way that I have just described.

25 Now, is that satisfactory to both sides? Mr Sachdeva,

1 content with that?

2 MR SACHDEVA: Yes.

3 PRESIDING JUDGE FULFORD: Good. Mr Biju-Duval?

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

5 PRESIDING JUDGE FULFORD: We are going to pause just
6 for a moment.

7 (Pause in proceedings)

8 PRESIDING JUDGE FULFORD: Right. Let us now turn in
9 public session, if that's acceptable, Maître Mabilles, to the
10 issues concerning Defence Witness 25. Public session, please.

11 (Open session at 3.05 p.m.)

12 THE COURT OFFICER: We are in public session, your
13 Honours.

14 PRESIDING JUDGE FULFORD: Mr Waltenburg, thank you
15 very much indeed for attending. You, I think, have been
16 informed of the concerns which Maître Mabilles has in relation to
17 Witness 25, and there is one important factual matter that I
18 think does need clarification and your assistance.

19 It is suggested that at the end of November or the
20 beginning of December of last year, this individual indicated to
21 a representative of the VWU what his job was and the fact that
22 he would have to justify his forthcoming absence to his employer
23 against the background that he didn't want his employer to know
24 what the true reason was going to be for his absence.

25 It is said that the VWU employee reassured him that he

1 or she would take care of the difficulty.

2 Now, is it accepted that that exchange took place?

3 MR WALTENBURG: Thank you, Mr President, your Honours.

4 At this stage, no, it is not accepted. We would need to speak
5 with the staff member in question to get the full details of
6 what transpired during that conversation before we can shed any
7 further light on that particular aspect.

8 PRESIDING JUDGE FULFORD: When can that conversation
9 take place at the earliest?

10 MR WALTENBURG: It can be arranged today, your Honour.

11 PRESIDING JUDGE FULFORD: Thank you. I will ask for
12 that to happen, please. We need to have an answer to that in
13 clear terms. Thank you. Right.

14 Now, let's move on to the other aspects. Irrespective
15 of the answer to that question, it appears that this individual,
16 not long after whatever the exchange was, lost his job and has
17 been effectively unemployed, I think, since then without income.

18 Now, the Registrar - as we understand it - has a
19 discretion to recompense an individual if in circumstances such
20 as this he or she is at a material financial disadvantage. Are
21 you able to assist with what is, or is likely to be, the
22 approach of the Registrar to this individual, given the history
23 that he has narrated?

24 MR WALTENBURG: Absolutely, your Honour. We will be
25 able to assist, and this was indicated to the Defence team

1 previously. However, on the factual side of the issue, I would
2 like to add one clarification; and that is, as it has been
3 reported to us by our colleagues in the field, the current
4 situation is that the witness, it appears, is without his job at
5 the moment. The matter was discussed with the witness by
6 members of the VWU back in February, and members of VWU
7 suggested to the witness that they could try to assist in the
8 witness regaining his job. And at that moment, back in
9 February, the witness told VWU, no, hold on, because my concern
10 is if I am reintegrated into my job, I would not be free to
11 appear before the Court as scheduled.

12 PRESIDING JUDGE FULFORD: Thank you. And I imagine
13 there is a problem, or a potential problem, in the ICC
14 assisting, because as soon as the ICC contact the employer, it's
15 probably going to become clear as to why it is that the
16 individual has been in contact with the Court. I would have
17 thought that's a risk. Right.

18 And I am sure that we don't need to ask for your
19 reassurance that any concerns that there are as regards this
20 individual's psychological well-being are being fully addressed
21 by the Victims and Witnesses Unit. And I see you nod. You
22 needn't rise, Mr Waltenburg.

23 Now, Maître Mabilie, on that basis that the Registrar
24 is going to assist as regards the period of time that Defence
25 Witness 25 has been unemployed, as I understand it, he is going

1 to provide appropriate compensation for that period, and given
2 that his psychological concerns will be addressed and there will
3 be assistance, if assistance can realistically be provided, in
4 securing, if possible, this individual's job again once he's
5 completed his evidence, is there anything more that you require
6 of the Chamber?

7 MS MABILLE: (Interpretation) I don't wish to return
8 to the past. However, this witness has lost his employment
9 because we asked him to travel at Christmas time, and that was
10 the period when he could be absent from his job. He lost his
11 job because he returned on 20 January after spending time in
12 Kinshasa, and his employer was not given prior notice of his
13 absence. So, I don't wish to know who is responsible for this,
14 but I believe that the Court should know that there was a
15 difficulty and this person, therefore, has to be compensated.

16 What I would like to request from the Chamber is that
17 in discussing with the VWU, I was informed that it was the
18 Registrar who could take a decision, and they added that this
19 could take several weeks. I did not try to look deeper into
20 this expression of "several weeks," but I would like to inform
21 the Bench that I am disturbed by this situation because I have
22 the feeling that I participated in putting the witness in this
23 situation. He has no job, he has no resources, and I have asked
24 him to come and give testimony before the Chamber, so I feel
25 very uncomfortable. My question therefore is, do we really need

1 to wait several weeks before addressing the problem?

2 Furthermore, I know that someone from the VWU has gone
3 to see the employer of the witness. I think that a second visit
4 should be made to that employer when he returns from here, and I
5 think that the Court should do everything possible to ensure
6 that the witness is reinstated in his job. I think this is
7 absolutely necessary.

8 PRESIDING JUDGE FULFORD: Mr Waltenburg, any problem
9 in the financial aspect of this being dealt with effectively
10 immediately, rather than in a number of weeks? I would have
11 thought if a decision has been made, that it's appropriate to
12 assist. Given that this individual has been now unemployed for
13 some time, this could really be dealt with straightaway,
14 couldn't it?

15 MR WALTENBURG: Mr President, it could. As we've
16 recently explained to the colleagues from the Defence, normally
17 we look at this as part of the cooling down protocol, when a
18 witness has finished testimony. We look at, are there any
19 outstanding concerns on the side of the witness's safety and are
20 there any outstanding concerns on the side of the witness'
21 psycho-social well-being, including possible implications,
22 financial or others, from testimony.

23 As soon as this witness is scheduled to finish
24 testimony, we would do the same. If you request us to start
25 preparing the request for the Registrar even before that, we

1 will do that immediately. We will, of course, emphasise to the
2 Registrar the urgency of an early determination and, of course,
3 we will do our utmost to assist the witness in this respect.

4 I would also go so far as to say that I don't see a
5 particular problem with members of VWU approaching the employer
6 of the witness, but again we would need to coordinate this
7 fairly closely with the Defence team because we would not want
8 to expose the witness in -- by risk of doing so.

9 One point I should maybe also stress here is that the
10 normal procedure has been that it is the responsibility of the
11 calling party to ensure that, in consultations with its
12 witnesses, that the situation is such that they can absent
13 themselves for the purposes of the Court. There is a procedure
14 in place whereby the Defence requests an office of the Registry
15 to produce a letter for the employer, which the Defence team
16 then produces to the employer.

17 Now, I understand this has not been done in this case
18 because there was a concern not to reveal that it's a witness of
19 the Court. So, the alternative in this case would be that we
20 fairly coordinate fairly closely with the Defence team as to how
21 this contact should be made to the employer.

22 PRESIDING JUDGE FULFORD: Thank you. We do direct,
23 Mr Waltenburg, please, that the Registrar should consider the
24 financial aspects of this immediately, and our strong
25 recommendation delivered with our respects and compliments to

1 the Registrar is that in this particular instance - given that
2 this person has been effectively indigent now for a number of
3 weeks - this really needs to be implemented straightaway. That
4 is our respectful request to her.

5 Given that Maître Mabilille has indicated that she would
6 positively welcome a further visit to the school, that should
7 happen, please, and we would entirely support your suggestion
8 that this should be coordinated with the Defence so that it's
9 absolutely clear what should and should not be said. So, this
10 is your approach, but it must be an approach in relation to
11 which the Defence has participated assisting you with what is
12 appropriate to be said to the relevant officials.

13 Maître Mabilille, we want to make it clear that we
14 haven't left this issue. Tomorrow I'm hoping that there will be
15 an indication from the Victims and Witnesses Unit as to whether
16 or not an employee did, indeed, say that he or she was going to
17 look after the problem. And depending on the answer to that,
18 there may be some more things that we have to say about this.
19 But it seems to us that we shouldn't jump the gun, and there
20 needs to be an answer on that point before we say anything more
21 on it. Anything else on this?

22 MS MABILLE: (Interpretation) Yes. This problem
23 gives rise to another problem, and it has to do with next week
24 and Witness 0023, who is exactly in the same professional
25 situation. I would like to inform the Chamber that I am very

1 embarrassed because this witness has already travelled to
2 Kinshasa, and so he has been absent from his workplace for some
3 time, and he has the same type of job as the previous witness.
4 I hope the Bench understands me.

5 We have learned that this witness has not received
6 authorisation from his employer. He did not get any
7 authorisation before leaving. We are in direct contact with the
8 VWU, and this has been going on for the past two days. We want
9 to dispatch somebody from the VWU to go and talk with the
10 employer in order to get the employer's authorisation. However,
11 as I speak, we have not yet received the authorisation.

12 And I wish to inform the Chamber that I feel
13 uncomfortable asking the witness to travel without an
14 authorisation because the consequence of having him travelling
15 without an authorisation - the authorisation given by his
16 hierarchal superior - would mean that we risk placing the
17 witness in exactly the same situation as the previous witness;
18 namely, that he may not be reinstated in his job when he
19 returns.

20 I wish to inform or tell the Chamber of the position
21 adopted by the Defence, and it is that if the employer does not
22 give his authorisation, and considering what we have already
23 noticed with the previous witness, then it would be a bit
24 delicate for the witness to travel. And this will also pose
25 organisational problems because this witness will have to travel

1 with another witness, that is Witness 09. Next week, two
2 witnesses have to travel. They have to come and give testimony,
3 and they will not be able to travel as a consequence.

4 If the Bench thinks that we have to take the
5 responsibility of having the witnesses travel even without the
6 authorisation of their employers, then we are ready to accept
7 that approach, but I would like to inform the Bench that we have
8 difficulties with such an approach. We would not be comfortable
9 with such an approach.

10 PRESIDING JUDGE FULFORD: Well, Maître Mabilles, can't
11 we investigate immediately whether authorisation can be obtained
12 from the employers? At some stage, Maître Mabilles,
13 authorisation is going to have to be obtained, is it not? If
14 the witness is to appear before us one day, an approach has to
15 be made for authority to travel. Now, if that's the position,
16 in order to avoid another very significant gap in the Court
17 schedule, shouldn't an approach be made immediately to get that
18 authorisation?

19 MS MABILLES: (Interpretation) I reassure the Chamber
20 that we are in the process, and more than in the process of
21 getting things underway. We have attempted to deal with the
22 problem; that is to say, for four or five days now we have made
23 -- asked for a letter that we could address to the employer. We
24 have discussed the matter with the VWU to ensure that a person
25 is dispatched immediately to see the employer. But I am saying

1 today, at this particular stage, we have not been able to obtain
2 the authorisation.

3 Simply put, the person responsible -- the person is
4 away from Bunia right now. And the second person higher up is
5 away. And the third person says, "I don't want to take the
6 responsibility. You have to wait until the number one or two
7 person is here." So we are in the process of gaining this
8 authorisation, but we don't have it at the current time.

9 So we have a choice: Either we say to the witness,
10 "Come even without authorisation," but we know what the
11 consequences could be for the witness if we tell him or her to
12 come without authorisation. If you ask me, your Honour - and I
13 anticipate your question - when it can be dealt with, I don't
14 know. Perhaps within 48 hours. But for the time being we have
15 not solved the problem.

16 PRESIDING JUDGE FULFORD: Well, Maître Mabilille, of
17 course the Bench is going to be extremely reluctant about either
18 making an order or making a request that may have the
19 consequence of meaning that a person loses his employment. That
20 would be a very grave thing to do. I am not saying it's always
21 going to be an impossibility, but it would be something that the
22 Chamber would undoubtedly approach with reluctance.

23 Mr Waltenburg, it's quite clear that something needs
24 to be done. If what Maître Mabilille tells us is correct, and we
25 have no reason for thinking otherwise at the moment, something

1 needs to be done very quickly in order to ensure that Witness 23
2 can come to the Court without losing his job. So someone in the
3 Victims and Witnesses Unit, I'm afraid, needs to make this an
4 absolute priority so as to ensure that we do not lose any Court
5 sitting days because this has not been dealt with timeously.

6 MR WALTENBURG: If I may, Mr President, in fact, we
7 already are. On the request of the Defence, the letter for the
8 employer was given to us today. We immediately sent our
9 colleagues to go and meet the employers once it was confirmed
10 that the witness had, indeed, consented for this letter to be
11 given to the employers. But as Maître Mabilille says, the
12 practical problem right now is that the VWU colleagues did go to
13 the employer. They only found one of the responsible persons
14 around. We have asked the Defence team if they can assist us.
15 Perhaps their resource person can assist us in trying to reach
16 or locate the two other responsible persons that we are looking
17 for. So I think we can try through joint efforts but,
18 obviously, there's so much we can do. We have until Friday.
19 The planned departure date of the witness in question is Friday.

20 PRESIDING JUDGE FULFORD: Well, there needs to be
21 maximum cooperation between the VWU and the Defence, and
22 everything possible must be done to locate the responsible
23 individual and to get his or her consent. It is really
24 important that we don't lose what is now very valuable time
25 because arrangements haven't been put in place quickly enough.

1 So all we can do is to encourage everybody to be
2 cooperative on this, please. Right. We will look forward,
3 Mr Waltenburg, for a short oral report from you, please,
4 tomorrow as to the one factual matter that I asked you to
5 investigate.

6 Can I thank the various representatives of the
7 Registry and the VWU for your attendance. Is there something
8 that necessitates their presence, Maître Mabilles? All right.
9 Yes. What is it?

10 MS MABILLES: (Interpretation) Yes. I'm sorry, your
11 Honour, but I'll take the opportunity of having the VWU with us
12 just to ensure that the Chamber is informed that there is also
13 another difficulty related to Witness 15, because he didn't know
14 that -- well, apparently only one interpreter has to deal with
15 Witness 9 and Witness 15, which means Witness 15 today doesn't
16 have his passport yet. That was not possible to do because
17 Number 15 speaks only a particular language, and there is only
18 one interpreter, and that interpreter seems to be busy dealing
19 with Witness 9, who is to come next week.

20 I'm telling the Chamber this because I also think that
21 if this problem is not dealt with, once again we will find
22 ourselves dealing with a time crunch with regard to hearing
23 Witness 15.

24 There you have it, your Honour. I'm very sorry that I
25 only am speaking of problems. I'd much rather be speaking of

1 solutions.

2 MR WALTENBURG: Mr President, I think we do have a
3 solution to that problem. The language assessment of Witness 15
4 has indicated that Witness 15 speaks basic colloquial Swahili.
5 That would be sufficient for the passport arrangements and for
6 the preparations in the field for this witness to travel for
7 testimony.

8 However, if, for other reasons, the Defence maintains
9 that only a Lendu-speaking interpreter will be adequate for this
10 job, which, as I said, is not the assessment of the language
11 assessment nor of the VWU staff, then it is correct. Then there
12 is a resource person in that the Court currently only has three
13 Lendu-speaking interpreters of which two are required up here at
14 the seat of the Court beginning from this coming weekend.

15 PRESIDING JUDGE FULFORD: Well, look. It's not
16 realistic, certainly at the moment, for us to manage this in
17 fine detail. This has got to be the subject of mature and
18 sensible discussions between the Victims and Witnesses Unit and
19 the Defence. We understand it's problematic and not easy, but
20 can there, please, be sensible discussions. And, obviously,
21 bring the matter back to us if they're incapable of resolution.
22 But I'm sure that with a good will it must be possible to find a
23 way of obtaining a passport for this individual.

24 Mr Waltenburg, thank you for your attendance. You and
25 your colleagues needn't remain. Please withdraw.

1 Private session, please.

2 *(Private session at 3.30 p.m.) Reclassified as Open session

3 THE COURT OFFICER: We are in private session, your
4 Honours.

5 PRESIDING JUDGE FULFORD: Maître Mabilles, at one point
6 I used -- we are now in closed session, so I can say it - I used
7 the word "school." I don't think that will sufficiently
8 identify the witness, but I did refer to the fact -- I used the
9 word "employer" generally to begin with, but on one occasion I
10 used the word "school." Does that matter? We can have it
11 redacted if you have any --

12 MS MABILLE: (Interpretation) No, your Honour. I
13 think that there is no problem with that.

14 PRESIDING JUDGE FULFORD: Thank you very much.

15 On 5 March 2010, the Chamber received an urgent
16 request from the Prosecution via email for an order for
17 protective measures so as to enable the Prosecution to disclose
18 information in a document that may be of relevance to the
19 evidence of Defence Witness 5. If granted, the Defence would
20 receive the relevant information with fewer redactions than in
21 the version of the document previously disclosed, which has been
22 the subject of previous rulings.

23 On 5 January 2009, the Prosecution applied for
24 protective measures as regards information relevant to
25 Witness 10 (document 1579) and requested an essentially

1 identical order in relation to this document, which is of about
2 70 pages, and is referred to as an "Individual Case Story". It
3 had been provided to the Prosecution (Redacted). The author is
4 a witness who has given evidence in the case (Witness 46).

5 (Redacted)

6 (Redacted). The application for protective measures
7 was granted on 16 January 2009 (transcript 104, page 10 onwards)
8 and a two-page redacted portion of the document was disclosed to
9 the Defence.

10 On 8 May 2009, the Trial Chamber delivered an oral
11 decision (see transcript 171, pages 40 to 41) granting an
12 application of the Defence for disclosure of this document in
13 full, subject to a number of protective measures (Redacted)
14 (Redacted), including redactions.

15 In its filing of 11 May 2009 (document 1868) the
16 Prosecution informed the Chamber that, (Redacted)
17 Redacted), the provider of
18 the information sought redactions because of the sensitive
19 nature of the information, which, if revealed, may endanger the
20 security and safety of certain individuals who have provided
21 information (Redacted). The proposed redactions ensured that
22 the Court had access to the document itself.

23 Moreover, in order to secure this objective, (Redacted)
24 (Redacted) requested a number of protective measures necessary,
25 in its view, to guarantee the security and safety of

1 all those identified or who are identifiable from the document
2 as follows:

3 (i) a general order to the effect that any recipient
4 of the parts of the documents that are the subject of redactions
5 previously required (Redacted) is obliged not to
6 undermine their confidential status;

7 (ii) that if the material, or part of it, is used in
8 evidence, only copies redacted as previously required (Redacted)
9 (Redacted) form part of the public record;

10 (iii) that anything contained in the redacted material
11 is only referred to in closed session, and the distribution of
12 the Court record appropriately reflects that restriction; and

13 (iv) the two sources of the information are referred
14 to in open session by pseudonyms only.

15 Upon full review of the application on 29 May 2009,
16 the Chamber granted the requested protective measures (that is
17 to say, the redactions and the conditions set out above)
18 pursuant to Article 68(1), 64(2) and 64(6)(e) of the Statute.
19 For ease of reference, the reason for the Chamber's decision are
20 set out in transcript 182, page 67, line 10, to page 70, line
21 23.

22 Following notification by the Defence of the names of
23 its witnesses, and pursuant to its ongoing disclosure
24 obligations, the Prosecution undertook a further review of its
25 materials in order to identify potentially relevant information

1 for disclosure.

2 During this review, the Prosecution identified
3 particular information within the individual case story that may
4 be relevant to the testimony of Defence Witness 5.

5 On 21 December 2009, the Prosecution made a request to
6 (Redacted) to lift the redactions imposed on this
7 material and for permission to disclose the relevant information
8 to the Defence.

9 On (Redacted) March 2010 (Redacted) replied by email,
10 attaching a letter dated (Redacted) February 2010, agreeing to
11 lift a number of redactions and to disclose the material subject
12 to the Trial Chamber granting an order for the same protective
13 measures previously granted.

14 The Prosecution, therefore, now seeks an order for the
15 following measures:

16 (i) the accused and his legal team in these
17 proceedings are prohibited, subject to any exceptions set out
18 hereafter, from disclosing remainder of the document to anyone
19 not expressly authorised by the Chamber;

20 (ii) in the event that the accused and his legal team
21 in these proceedings seek to use the remainder of the document
22 in proceedings before the Chamber:

23 (a) copies of the remainder are to be subject
24 submitted into evidence during closed session;

25 (b) any parts of the proceedings in which the contents

1 of the remainder are discussed are likewise to be held in closed
2 session;

3 (c) the non-redacted transcripts and the recordings of
4 any parts of the proceedings which include these materials are
5 to be restricted to the Chambers and their staff in the case of
6 the Prosecutor v. Mr Thomas Lubanga Dyilo, to the Office of the
7 Prosecutor and its staff, and to the accused and his legal team
8 in these proceedings.

9 The information provider, (Redacted), has now
10 authorised therefore greater disclosure of parts of the
11 individual case story that is relevant to Defence Witness 5
12 (see document 1868).

13 The Chamber approves this course of action, and under
14 Article 64(3)(c) and 64(6)(e) and Rule 84 of the Rules of
15 Procedure and Evidence, orders that this information is
16 communicated to the Defence subject to the protective measures
17 which we have just outlined.

18 The Chamber notes, however, that the Prosecution
19 considers that further information, which is still the subject
20 of limited redactions, is relevant for the Defence.

21 The Prosecution indicates to the Chamber that it has
22 already reverted (Redacted) to seek removal of the remaining
23 redactions and it provides the full information to the Chamber
24 in accordance with paragraph 48 of the Appeals Chamber decision
25 of 28 October 2008 (see document 1486) relating to

1 non-disclosure information obtained under Article 54(3)(e).

2 The Appeals Chamber held at paragraph 48 "... the
3 Chamber will have to determine in ex parte proceedings open only
4 to the Prosecutor whether the material would have had to be
5 disclosed to the Defence had it not been obtained under Article
6 54(3)(e) of the Statute.

7 If the Chamber concludes that this is the case, the
8 Prosecutor should seek the consent of the information provider
9 advising the provider of the ruling of the Chamber. If the
10 provider of the material does not consent to the disclosure to
11 the Defence, the Chamber, while prohibited from ordering the
12 disclosure of the material to the Defence, will then have to
13 determine whether, and if so which, counter-balancing measures
14 can be taken to ensure that the rights of the accused are
15 protected and that the trial is fair in spite of the
16 non-disclosure of the information."

17 The Chamber has reviewed the remaining redactions and
18 concludes that the additional information identified by the
19 Prosecution should be disclosed to the Defence. The Prosecution
20 is, therefore, instructed to inform (Redacted) of the potential
21 high relevance of this material to the Defence and our views on
22 it and to seek a resolution by the United Nations as soon as is
23 practicably possible.

24 The (Redacted) letter, along with this more
25 comprehensive version of the individual case story, is to be

1 entered formally into the Court's record system. Disclosure and
2 the necessary filings are to be effected by 4 p.m. on 12 March
3 2010.

4 If (Redacted) consents to lifting these additional
5 redactions, disclosure of the non or less redacted document is
6 to be effected forthwith.

7 In future, applications of this type should be the
8 subject of a formal filing at the earliest opportunity, with
9 adequate notification to the Defence in redacted form if
10 necessary.

11 Can we just reflect for a moment on the agenda,
12 therefore. We have, as I understand it, tomorrow the evidence
13 of Witness 25, which on your best estimate, Maître Mabilille, will
14 last how long?

15 MS MABILLE: (Interpretation) As far as we are
16 concerned, your Honour, very short. I would say barely an hour
17 of examination-in-chief. Barely an hour.

18 PRESIDING JUDGE FULFORD: You, Ms Samson?

19 MS SAMSON: Similarly, your Honour, I expect that the
20 cross-examination will be brief. An hour, hour-and-a-half,
21 perhaps less.

22 (Trial Chamber confers)

23 PRESIDING JUDGE FULFORD: Maître Mabilille, if that is
24 the case then there is an ex parte oral ruling which we also
25 need to give, but that will require a half-an-hour delay before

1 we can give it and, given that there is only an hour or so's
2 evidence tomorrow, it seems clear that we are going to have time
3 tomorrow to deliver that judgment during the course of the day.
4 So, we will build that into tomorrow's schedule.

5 Looking then to Monday, as we understand it there is a
6 problem in the morning, but the next witness could be available
7 - certainly we were informed - to give evidence in the
8 afternoon. If that is the case, I've made enquiries and Sierra
9 Leone have cancelled their sitting on Monday, and the suggestion
10 we have is that we don't sit in the morning, but we sit in the
11 afternoon instead to commence the evidence of Witness 5. Would
12 that be convenient for you?

13 MS MABILLE: (Interpretation) We have no problem with
14 that, Mr President, apart from the fact that for now I have not
15 received confirmation that the witness will in fact be here on
16 the Monday. That is the only issue at hand.

17 PRESIDING JUDGE FULFORD: Right. I allowed the
18 Victims and Witnesses Unit to go too early then, if that is the
19 case. The information we had had a little bit earlier in the
20 week, Maître Mabilille, was that the problem was really for Monday
21 morning and that we should be able to commence the evidence in
22 the afternoon.

23 So I think we'll proceed on the basis of optimism, for
24 the time being, and we will for the moment say that the Chamber
25 will sit at 2.30 on Monday. Could I ask your team, please, to

1 investigate overnight with the Victims and Witnesses Unit as to
2 whether or not that in fact is a sensible proposal.

3 Now, is there anything else that we can do usefully
4 this afternoon? Anything that anyone else wishes to raise?
5 Mr Sachdeva?

6 MR SACHDEVA: Nothing, Mr President.

7 PRESIDING JUDGE FULFORD: Thank you. Maître Mabilille?
8 No, right.

9 We will therefore sit tomorrow at 9.30 in the morning.
10 Thank you all very much for your attendance.

11 THE COURT USHER: All rise.

12 (The hearing ends at 3.49 p.m.)

13 RECLASSIFICATION REPORT

14 Pursuant to Trial Chamber I's email instruction dated 25th
15 January 2012, the transcript is Reclassified as public after the
16 indicated redactions have been implemented as ordered by the
17 Chamber. All private and closed sessions (*) are now available
18 to the public with the exception of the portions of the
19 transcript that have been redacted.

20