

1 International Criminal Court

2 Trial Chamber I

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

4 Case against Thomas Lubanga Dyilo

5 Hearing - *Closed Session Reclassified as Open session

6 Friday, 19 June 2009

7 The hearing starts at 9.00 a.m.

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

10 PRESIDING JUDGE FULFORD: Good morning.

11 Mr. Sachdeva, you've very helpfully had a message sent through
12 that there are some administrative matters that you want to raise. I
13 want to reflect quickly on the timing of those because we're now in
14 closed session and the witness is waiting to come in. So rather than
15 keeping him waiting I would, if possible, prefer to deal with these
16 later. However, are there any that need to be dealt with now before the
17 witness commences his evidence?

18 MR. SACHDEVA: Mr. President, good morning. With respect to the
19 issues the Prosecution wants to raise on their part, those can perhaps
20 wait until later. I understand there may be an issue that my learned
21 colleague might raise and I leave it up to the Defence for that.

22 PRESIDING JUDGE FULFORD: Thank you.

23 Yes, anything from the Defence at this stage?

24 MR. DESALLIERS (interpretation): Your Honour, just to know what
25 we're talking about, are you alluding to the mail sent by Mr. Sachdeva on

1 the new document which has to be sent? Your Honour, I don't know what
2 you are alluding to what you are referring to.

3 PRESIDING JUDGE FULFORD: I'm afraid neither do I, Mr.
4 Desalliers, in that I'm simply referring to what Mr. Sachdeva has just
5 referred to. Mr. Sachdeva has suggested that you might have something
6 that you want to say and I'm asking you whether you do have something you
7 want to say?

8 MR. DESALLIERS (interpretation): Well, your Honour, maybe my
9 colleague should confirm whether he is referring to the position of the
10 Defence with respect to the two documents which were added to the list.
11 If that is the case, then the Defence has something to say.

12 MR. SACHDEVA: Actually, it wasn't that, Mr. President. So in
13 that case -- in that case I'm mistaken. Perhaps the Defence does not
14 have anything to raise.

15 PRESIDING JUDGE FULFORD: Right. If Mr. Desalliers doesn't have
16 a burning issue that he wishes to raise, witness into court, please.
17 Thank you.

18 (The witness entered court)

19 PRESIDING JUDGE FULFORD: Good morning.

20 THE WITNESS (interpretation): Good morning.

21 PRESIDING JUDGE FULFORD: Please do not at all be nervous about
22 the day's evidence or the few hours' evidence you're about to give. Can
23 I ask you to make sure that you take things slowly, think about your
24 answers, don't speak too quickly, and make sure that when someone asks you
25 a question you leave a little gap before you come in with your answer

1 because everything you say is being typed down and it's being interpreted
2 from your own language into French and into English, so that it's
3 necessary that we take everything in a very calm and measured way.

4 We've taken considerable steps to make sure that your identity is
5 kept from the public, and that will mean that we will go from public
6 session, when what you say can generally be heard, into private session,
7 when only those sitting in this courtroom will be able to hear what you
8 say. And whenever something comes up that may reveal your identity, we
9 will deal with it in private session. If there's any answer that you're
10 going to give which you think may reveal who you are, please don't
11 hesitate to tell me and we will immediately go into private session. So
12 just say you'd prefer to give the answer in private session. If
13 something is said in public session that should really have been said in
14 private session, don't worry, because there's a half-an-hour delay on the
15 broadcast of your evidence to the public and that gives us 30 minutes in
16 which to correct any mistakes that may have been made.

17 Now, in a moment I'm going to ask you publicly to take the solemn
18 undertaking. We will do that, as I say, in public and what will happen
19 is that the gentleman sitting to your left will read out some words from
20 a card and I will ask you to repeat what he says out loud.

21 So can we go into public session, please. Can we go into public
22 session, please.

23 (Open session at 9.07 a.m.)

24 COURT OFFICER: Open session.

25 PRESIDING JUDGE FULFORD: Now, I'm going to address the

1 interpreter. Can you just take a few words at a time and then we'll ask
2 the witness, please, to repeat what you've just said. All right.

3 THE WITNESS (interpretation): I solemnly declare that I will
4 speak the truth, the whole truth, and nothing but the truth.

5 PRESIDING JUDGE FULFORD: Well done. That was perfect.

6 Now, Mr. Sachdeva, I imagine that you will want to ask your first
7 questions in private session; is that correct?

8 MR. SACHDEVA: That's right, Mr. President.

9 PRESIDING JUDGE FULFORD: Good.

10 The interpreter can now return to the booth, but in order for
11 that to happen we're going to need to go into closed session. Closed
12 session first of all, please.

13 *(Closed session at 9.09 a.m.) Reclassified as Open session

14 COURT OFFICER: Closed session.

15 PRESIDING JUDGE FULFORD: Yes. So if the interpreter could
16 return upstairs, please. Thank you very much. Thank you for your
17 assistance.

18 Private session.

19 *(Private session at 9.09 a.m.) Reclassified as Open session

20 COURT OFFICER: Private session.

21 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

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

23 WITNESS: WITNESS DRC-OTP-WWWW-0089

24 (Witness answered through interpreter)

25 Questioned by Mr. Sachdeva:

Witness: Witness DRC-OTP-WWW-0089 (Private Session)
Questioned by Mr. Sachdeva

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1 Q. Good morning, sir.

2 A. Good morning.

3 Q. My name is Manoj Sachdeva and I'm a member of the Prosecution and
4 I'm going to be asking you some questions today. If you need me to
5 repeat a question, please let me know. I'd like to start off by asking
6 you questions about your identity, and to that end can I ask you to tell
7 the Court your full name, please.

8 PRESIDING JUDGE FULFORD: Try again, Mr. Sachdeva. I think the
9 witness is having difficulties hearing.

10 MR. SACHDEVA:

11 Q. Sir, could I ask you to tell the Court your full name?

12 A. My name is (Redacted).

13 Q. Do you have any other names or nicknames that you're known by?

14 A. The names I have just given are my names. I am often referred to
15 as (Redacted).

16 Q. Have you ever used another name in your personal or professional
17 activities?

18 A. I am often called (Redacted) but the names I have given are my names.

19 Q. Sir, did you go to school?

20 A. Yes.

21 Q. Before I ask you about that can I just ask you to tell the Court
22 your date of birth.

23 A. I was born on the (Redacted) 1985.

24 Q. Where were you born?

25 A. I was born in (Redacted).

Witness: Witness DRC-OTP-WWW-0089 (Private Session)
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1 Q. And where is (Redacted), in which town or region?

2 A. (Redacted) is located in the Orientale Province. I have forgotten the
3 name of the district.

4 Q. What is your father's name?

5 A. (Redacted), that's my father's name.

6 Q. And your mother's name, please.

7 A. (Redacted)

8 Q. Let's now turn to your schooling. Can you tell us about which
9 schools you attended?

10 A. I attended primary school in (Redacted) in Bunia.

11 MR. SACHDEVA: Mr. President, I'd like to have these names
12 precisely recorded and I'm wondering if I could ask the witness, if he's
13 able to, to write them down on a piece of paper or spell them out for the
14 interpreters.

15 PRESIDING JUDGE FULFORD: I had understood there was a problem in
16 that regard, Mr. Sachdeva.

17 MR. SACHDEVA: Perhaps if I could ask the witness to -- just to
18 tell the names slowly and pronounce it carefully. It might be easier for
19 the interpreters.

20 PRESIDING JUDGE FULFORD: Well, you must take your own course.

21 MR. SACHDEVA:

22 Q. Sir, could I possibly ask you to repeat the name of the school
23 that you went to that you've mentioned slowly, if possible, so that it's
24 accurately recorded.

25 A. (Redacted)

Witness: Witness DRC-OTP-WWW-0089 (Private Session)
Questioned by Mr. Sachdeva

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1 Q. And how long were you at that school?

2 A. In primary school I had to repeat two classes successively.

3 Q. And did you go to secondary school?

4 A. Yes, I attended secondary school.

5 Q. What was the name of that school?

6 A. (Redacted)

7 Q. Where was it?

8 A. In Bunia, in the neighbourhood called (Redacted).

9 Q. How many years did you spend in that school?

10 A. I attended right up to the second year and I passed to go to the
11 third year of primary school -- sorry, of secondary school.

12 Q. How old were you when you left the secondary school?

13 A. I was aged 15.

14 Q. When you left the secondary school what did you do?

15 A. When I left secondary school, that was towards the end of the
16 year 2000. I went to the training centre run by the Ugandans in
17 Rwampara.

18 PRESIDING JUDGE FULFORD: You'll keep an eye on what needs to be
19 public and private, Mr. Sachdeva.

20 MR. SACHDEVA: Mr. President, at this stage I believe we can move
21 into open session.

22 PRESIDING JUDGE FULFORD: Thank you very much.

23 Open session, please.

24 (Open session at 9.20 a.m.)

25 COURT OFFICER: Open session.

Witness: Witness DRC-OTP-WWW-0089 (Open Session)
Questioned by Mr. Sachdeva

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1 PRESIDING JUDGE FULFORD: Yes.

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

3 Q. Sir, how long did you spend in the training centre at Rwampara
4 run by the Ugandans?

5 A. I spent six months in Rwampara.

6 Q. And at that centre what were you trained in?

7 A. We underwent military training at the centre.

8 Q. What did that military training entail, what did it include?

9 A. We were taught everything relating to the profession of a
10 soldier.

11 Q. Well, did that include anything in relation to weapons?

12 A. Yes.

13 Q. And what was it that you were taught in relation to weapons?

14 A. With respect to weapons we were taught as follows. We learnt
15 everything about SMGs. We were told that this was a weapon manufactured
16 by the Russians. They also told us that the SMG is a weapon which has
17 three parts and they taught us everything related to the parts of the
18 SMG, and they taught us how to shoot, how to assemble or disassemble this
19 weapon.

20 MR. SACHDEVA: Mr. President, for my next question, with your
21 leave, can we move into private session?

22 PRESIDING JUDGE FULFORD: Certainly.

23 Private session.

24 *(Private session at 9.23 a.m.) Reclassified as Open session

25 COURT OFFICER: Private session.

Witness: Witness DRC-OTP-WWW-0089 (Private Session)
Questioned by Mr. Sachdeva

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1 MR. SACHDEVA:

2 Q. Sir, you said that you spent six months at the training camp in
3 Rwampara. What did you do after six months? Where did you go from
4 there?

5 A. When we completed our training in Rwampara we stayed there. My
6 (Redacted) to Barriere, 25 kilometres away from Bunia.

7 Q. And what did you do in Barriere?

8 A. (Redacted) cigarettes for me to sell, so that was my job
9 in Rwampara, to sell cigarettes in the market.

10 Q. Just a slight clarification, sir. Was it your job to sell
11 cigarettes in Rwampara or in Barriere?

12 A. In Rwampara I was at the training centre. When I was taken away
13 from Rwampara to Barriere, it was in Barriere that I sold cigarettes at
14 the market.

15 Q. Why (Redacted) your (Redacted) take you from Rwampara?

16 A. When we completed training in Rwampara we remained there without
17 doing anything. There was a lot of suffering in the camp. That is why
18 (Redacted) took me away from that place.

19 Q. When -- in addition to your time in Rwampara camp and training
20 with the Ugandans, was there another armed group that you joined?

21 A. Yes.

22 Q. And what was that group?

23 A. UPC.

24 Q. When did you join that group?

25 A. It was when I was in Barriere. That is where I joined the group

Witness: Witness DRC-OTP-WWW-0089 (Private Session)
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1 UPC.

2 Q. Are you able to tell the Court a month or a year as to when you
3 joined the UPC?

4 A. I spent several days. It was in 2002 when I left Rwampara. In
5 2002 I was already in Barriere, I was living in Barriere in 2002.

6 Q. Is there a particular event or incident that you recall that took
7 place in or around the time that you joined the UPC?

8 A. Could you please repeat your question?

9 Q. Certainly. Let me ask you it this way: Do you know when the --
10 or in your knowledge when the UPC started?

11 A. To my knowledge, the UPC started in 2002. Because before the UPC
12 there had been several other groups, the group of Mbusa, the group of
13 Wamba and the group of Bemba. As far as I know, the UPC started in 2002.

14 MR. SACHDEVA: Mr. President, for these questions, with your
15 leave, we can move into open session.

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

17 Open session, please.

18 (Open session at 9.29 a.m.)

19 COURT OFFICER: Open session.

20 MR. SACHDEVA:

21 Q. At the time that you joined the UPC, which group was in control
22 of Bunia?

23 A. When I joined the UPC, at the beginning we called them the -- or
24 we called them Thomas's soldiers, not the UPC. At the beginning, as far
25 as I know, the UPC was not very well-known. We called them Thomas's

Witness: Witness DRC-OTP-WWW-0089 (Open Session)
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1 group.

2 Q. When you refer to Thomas's soldiers or Thomas's group, who are
3 you referring to?

4 A. I would say this: At the beginning when the UPC was just
5 starting, Thomas was in Kinshasa. We were waiting on information and
6 what we heard at the beginning was Thomas's group.

7 Q. Do you know the full name of Thomas?

8 A. I'm telling you what I know.

9 Q. Why did you refer to the group as Thomas's soldiers or Thomas's
10 group?

11 A. At the beginning, before he went to Kinshasa, we were informed
12 that he was Mbusa's minister. At the beginning we would talk about
13 Thomas's bodyguard, Thomas's soldiers. That was before he went to
14 Kinshasa. That was the information we had at the start.

15 Q. And who did you get that information from?

16 A. I was at Barriere. I was supposed to have that information, but
17 when Thomas's soldiers fought the APC we received that news. For
18 example, we might go into town one day and there was no market, there was
19 fighting and we would hear talk of Thomas's soldiers.

20 Q. And when you joined the UPC was Thomas in Kinshasa or was he
21 somewhere else?

22 A. When I was with the UPC Thomas was in Kinshasa.

23 MR. SACHDEVA: Mr. President, with your leave, can we move into
24 private session?

25 PRESIDING JUDGE FULFORD: Private session.

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1 *(Private session at 9.33 a.m.) Reclassified as Open session

2 COURT OFFICER: Private session.

3 MR. SACHDEVA:

4 Q. Sir, I want to ask you how you came to join the UPC. Can you
5 tell the Court the circumstances in which you joined the UPC?

6 A. I was at Barriere. There we had the Chief Kahwa Panga Mandro.
7 He arrived in Barriere with his soldiers. It was on market day. When he
8 arrived I was heading towards the market. At the centre of Barriere
9 there is a place where all of the authorities usually hold meetings. I
10 remember having -- I remember Thomas was having a meeting there. There
11 is a crossroads. When I went past, Panga was passing in his car which
12 was a luxury white vehicle. His bodyguards were there and there was
13 soldiers among them, soldiers I had been with before. They recognised me
14 and (Redacted) arrested me.

15 Q. Sir, just going back to what you said about the authorities
16 holding meetings, did you say that you recall Thomas having a meeting
17 there or Kahwa having a meeting there?

18 A. When I joined the UPC, Thomas was in Kinshasa. I was in
19 Barriere. Kahwa arrived. I was going to the market. (Redacted)
20 (Redacted) who recognised me because we had been with them somewhere.
21 This was at the beginning when I joined the UPC.

22 THE INTERPRETER: The Swahili interpreter said he could not hear
23 the last part. The witness was speaking very quickly.

24 PRESIDING JUDGE FULFORD: Sir, you're doing extremely well, but
25 can I ask you to try to make sure that you don't speak too quickly.

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1 Sometimes the Swahili interpreters up in the boxes up there are having
2 difficulty in following you because the words are coming out very
3 quickly. So if you could just slow it down slightly that would help.
4 Thank you very much.

5 Yes, Mr. Sachdeva.

6 MR. SACHDEVA: Thank you, Mr. President, and with your leave, we
7 can move into open session.

8 PRESIDING JUDGE FULFORD: Open session, please.

9 (Open session at 9.37 a.m.)

10 COURT OFFICER: Open session.

11 MR. SACHDEVA:

12 Q. Sir, you said that there would be meetings held where the
13 authorities would have meetings. What types of meetings were they?

14 A. I would say this: I was giving details about the place where
15 Kahwa usually went. I also said that this is a place where all of the
16 authorities usually gave speeches. It was in the centre of the town.

17 Q. What kinds of speeches?

18 A. I would -- I said this, I repeat it again, it is a place where
19 meetings are usually held. Several meetings were held there. Even
20 Thomas himself held a meeting there. I don't know where he came from,
21 but he did go to that place to hold a meeting.

22 Q. That day that you've just described, did you find out the purpose
23 of Chief Kahwa's visit to the town?

24 A. When we were arrested we went with the bodyguards. It was
25 afterwards that I was told that Kahwa had held a meeting at that place

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1 and had spoken to the population. I had already left. I was no longer
2 there.

3 Q. And what did you hear about that meeting?

4 A. That meeting had been held at a time when we had already left.
5 Other people told me that there had been a gathering there, and what had
6 been said at that meeting is that he had -- he had told people to bring
7 young people into the army.

8 Q. And who was he telling this to?

9 A. When we were arrested there had not been a meeting. It is after
10 his departure that people informed me there had been a gathering or a
11 conversation with the population, during which he informed them or
12 encouraged them to bring young people into the army.

13 Q. Sir, I do appreciate that you're -- you found out about this
14 later. I'm just wondering whether you found out who was Kahwa speaking
15 to to encourage young people to join the army?

16 A. Kahwa was talking to the population, talking to the population,
17 but also to certain authorities who were there in Barriere. This is
18 information that was given to me once I had already left.

19 Q. You said that young people were encouraged to join the army.
20 Which army do you refer to?

21 A. At that time there was a training centre in Mandro. It was the
22 UPC Army.

23 Q. You said that "we were arrested and we went to the bodyguards."
24 How many other people were arrested that day?

25 A. There were quite a few of us but not too many. We were taken in

Witness: Witness DRC-OTP-WWW-0089 (Open Session)
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1 a car and we went to Bunia, and it was the bodyguards who did this.

2 Q. Sir, may I push you a bit further. Can you help us with a
3 figure? Was it 20? Was it 50? Was it over 50? If you can give us a
4 rough figure that would be very helpful.

5 A. I do not have precise knowledge of the number of people because
6 there were other people who were arrested. A vehicle came and took them.
7 We were called deserters. They identified us. There were not that many
8 of us, but there were also other people who were forcibly arrested and
9 they arrived afterwards.

10 Q. Why were you called deserters?

11 A. We were with these bodyguards who recognised us, we were with
12 them in Rwampara, and they are the ones who arrested us. They considered
13 us deserters. They put us into a vehicle, they took us away, and those
14 who were forcibly taken were put onto another vehicle which came and took
15 them to Centrale, to Katoto, and to Mandro. We were taken to Bunia.

16 Q. At that time that you were taken, do you recall how old you were?

17 A. It was in 2002 and I was 17.

18 Q. And amongst the other persons that were taken that you recall
19 being taken that day, were they your age, younger than you, older than
20 you? Can you help us with that?

21 A. Among those who were with me, some were older than we, others
22 were the same age, others were younger.

23 Q. And with respect to the others that were younger, do you know
24 what ages they were?

25 A. I couldn't tell you exactly. I saw them as they were.

Witness: Witness DRC-OTP-WWW-0089 (Open Session)
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1 Q. I understand that you can't say exactly, but as you saw them,
2 what ages could you conclude they were?

3 A. The first group that was with me at Bunia, I did not ask them how
4 old they were; but with regard to those who were at Mandro, some were
5 younger than me.

6 Q. When you say some were younger than you, do you mean -- well, can
7 you tell us the age-range? Is it 16? 15? 14? 13?

8 A. I told you that those who were younger than me -- or rather, I
9 cannot tell you that they were younger than me, but I was looking at
10 their size and some of them were smaller than me. Others were taller
11 than me.

12 PRESIDING JUDGE FULFORD: Mr. Sachdeva, Mr. Desalliers, in my
13 view, quite correctly got to his feet. You'd asked a very specific
14 question in relation to the ages, particularly of those who were younger
15 than the witness, and I think in those circumstances it's then
16 inappropriate, really, to go suggesting particular ages to the witness.
17 There is a real potential for leading. So can you please be more
18 cautious in relation to this.

19 MR. SACHDEVA: Yes, Mr. President.

20 Q. Amongst the people that were taken that day, were there just boys
21 or were there also girls?

22 A. Among those who were arrested, I only saw girls; however, at the
23 training centre I -- there were girls. At Barriere, however, I only saw
24 boys.

25 THE INTERPRETER: The interpreter makes a correction. The

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1 witness said he only saw boys among those who had been arrested with him.

2 MR. SACHDEVA:

3 Q. The -- Chief Kahwa and the bodyguards, on that day how were they
4 dressed?

5 A. The bodyguards of Kahwa were wearing green clothing.

6 Q. Were they carrying weapons or not?

7 A. Yes, they were armed.

8 Q. Did you learn that day whether there were persons that -- I'll
9 rephrase that question. Did the persons who were arrested -- what was
10 their reaction when they were being arrested?

11 A. When we were arrested, I didn't see their reactions. I met them
12 all in Mandro. I saw them when we were all already at Mandro.

13 Q. Did you know whether anyone tried to refuse being taken by
14 Chief Kahwa and his bodyguards?

15 A. When a soldier arrests you, you cannot resist. They were
16 arrested.

17 Q. I'm going to get to Mandro in a moment, but I think you said that
18 you were initially taken to Bunia. Where were you taken to in Bunia?

19 A. I said that I was arrested in Barriere, not Bunia. But we were
20 taken to Bunia from Barriere.

21 Q. And where in Bunia were you taken to?

22 A. They took us to the UPC Chief of Staff headquarters in Bunia.

23 Q. And do you know where that was?

24 A. The UPC headquarters are next to the Caritas building. It's a
25 building belonging to the Greeks. That's where you find the

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1 headquarters.

2 Q. And when you got there was anyone there to receive you or not?

3 A. When we arrived there we were taken in by whips and then we were
4 taken to our rooms.

5 Q. Sir, you said that when you arrived there you were taken in by --
6 what were you taken in by?

7 A. There there were a lot of commanders, there were many of them at
8 the headquarters.

9 Q. Did the commanders do anything to you as you were being taken in?

10 A. When we arrived at that place, we were offloaded from the vehicle
11 and we were whipped, and there was a word they used. They said, We have
12 to hurt all of the people who were trying to get away, so we were
13 whipped.

14 Q. And where in the headquarters were you whipped, if you recall?

15 A. It was inside the compound where we were whipped. I'm talking
16 about the headquarters compound.

17 Q. Do you remember any of the commanders' names?

18 A. I don't remember their names. This was a long time ago. There
19 were many commanders, so I've forgotten their names.

20 Q. That's fine, sir. How long did you spend in the headquarters?

21 A. We stayed in the headquarters for some days.

22 THE INTERPRETER: For two days, corrects the interpreter.

23 MR. SACHDEVA:

24 Q. And you said that you were taken to your rooms. Where -- where
25 were you staying in the headquarters?

Witness: Witness DRC-OTP-WWW-0089 (Open Session)
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1 A. There were many rooms in the headquarters compound, and we were
2 considered like prisoners. We slept on the floor.

3 Q. Why do you say you were considered like prisoners?

4 A. I said, rather, that we were imprisoned.

5 Q. How were you imprisoned?

6 A. We were taken inside, and then they made sure that we could not
7 get away.

8 Q. And how did they do that?

9 THE INTERPRETER: The Swahili interpreter says that he did not
10 hear the witness's response.

11 MR. SACHDEVA:

12 Q. Sir, I'm sorry, but would you mind repeating the answer to the
13 question. How did -- and the question is: How did they make sure that
14 you could not get away?

15 A. We were locked into the rooms, and there was a guard there to
16 make sure that we could not get away.

17 Q. Now, you've told us that after some days you went to Mandro. How
18 did you travel to Mandro?

19 A. After two days the person who arrested us in Barriere, Kahwa,
20 came to see us and he spoke with us. He told us that we needed to go to
21 Mandro to receive our training as recruits.

22 MR. SACHDEVA: Mr. President, might I have one moment.

23 (Prosecution counsel confer)

24 MR. SACHDEVA: Mr. President, with the Chamber's indulgence could
25 I ask for a five-minute break. There is an issue that -- unrelated to

1 the evidence of the witness that I would like to raise with the Chamber.

2 PRESIDING JUDGE FULFORD: Yes. All right, Mr. Sachdeva.

3 Sir, we're going to have a short break now.

4 Mr. Sachdeva, are you confident this is only going to last five
5 minutes? Should the witness go to the rather dismal room immediately
6 outside this door or should he go back up to the witness waiting-room?

7 MR. SACHDEVA: Mr. President, it's probably going to last a bit
8 longer, yes.

9 PRESIDING JUDGE FULFORD: Good.

10 You'll be taken by the usher back up to the witness waiting-room.
11 I'm sorry we're interrupting your evidence.

12 Closed session, please.

13 *(Closed session at 10.05 a.m.) Reclassified as Open session

14 COURT OFFICER: Closed session.

15 (The witness stands down)

16 PRESIDING JUDGE FULFORD: Public or private? Or do you just need
17 an adjournment?

18 MR. SACHDEVA: Mr. President, if we can do this in private
19 session, with your leave. It's -- I can tell the Chamber it's regarding
20 the current interview that's taking place with Witness 15.

21 PRESIDING JUDGE FULFORD: Right. What, this is something that we
22 need to be told? Is this something that the Defence need to be told? Do
23 you need to think about it, Mr. Sachdeva?

24 MR. SACHDEVA: Mr. President, it's an issue that the Prosecution
25 believes should be raised in front of the Chamber, absolutely.

1 PRESIDING JUDGE FULFORD: Right. Well, we're in closed session
2 and there's no difference between closed session and private session in
3 reality, so please continue.

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

5 Earlier on this morning I had alluded to an issue that I had
6 understood the Defence might want to raise, and that is the presence of a
7 particular investigator during this current interview. And the Defence
8 did not state anything in court, and therefore we understood that we
9 could proceed as is. However, I have been led to know that lead counsel
10 has again raised the issue during the interview and it is regarding the
11 presence of an OTP investigator in that interview. And I don't know --
12 I'm quite happy to move forward with the details, but I'm wondering
13 whether the Defence want to say anything about it before I do.

14 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, we're entirely in your
15 hands. If this is something that requires intervention from Maitre
16 Mabille, because as I understand it she's the person present, we will of
17 course give you an opportunity to bring her to the Chamber; on the other
18 hand, if you're in a position to deal with this now, indeed if you wish
19 to deal with this now, that's a matter entirely for you. So it's your
20 choice as to whether you deal with this now, whether you deal with it in
21 person, or whether you leave it to Maitre Mabille. We're in your hands.

22 MR. BIJU-DUVAL (interpretation): Yes, your Honour. I think that
23 I can speak for Maitre Mabille on this issue. I thought that the
24 difficulty here could have been resolved quite simply between the
25 Prosecution without petitioning the Chamber, but it appears that the

1 Prosecutor prefers to petition the Chamber.

2 The situation is the following. We noticed last night after the
3 interview had commenced that one of the investigators from the OTP,
4 Mr. Badibanga had taken the floor several times in the Lubanga case
5 during the hearing or the interviews with a certain number of witnesses,
6 and in particular during the interview with a certain witness who has
7 appeared before the Chamber, not under the control of the Prosecutor but
8 I think that that is correct. Indeed, the Chamber had given a clear
9 order which was that investigators from the OTP who were going to
10 undertake any new interviews should not have had any link with the
11 Lubanga case.

12 After having become aware of this difficulty, Maitre Mabilille had
13 contacted the OTP so as to ensure that this anomaly be cleared up before
14 the next hearing at least. The response is the following. It's
15 important for this anomaly to stop; in other words, that this
16 investigator in the Lubanga case be removed from this hearing and be
17 replaced by someone else. This is necessary.

18 Secondly, we should not delay the hearing of this witness. As a
19 result, we would suggest that the interview was to take place last night
20 should take place ab initio, there should be no delay, which means that
21 the interview taking place today will thus be in conformity with the
22 rules of the Chamber; in other words, that Mr. Badibanga should not be
23 present in the courtroom, he should be replaced by someone else.

24 So that is how I would present this difficulty to the Chamber as
25 a spokesperson for Maitre Mabilille.

1 PRESIDING JUDGE FULFORD: Just a couple of questions,
2 Mr. Sachdeva, so I can understand the position.

3 This is probably a problem with translation. Do I understand it
4 that Mr. Badibanga is present during the re-interview of Witness 15? And
5 second question: Is he someone who has been involved as an investigator
6 in the Lubanga case?

7 MR. SACHDEVA: Mr. President, he is presently involved, but not
8 as lead investigator. There is a lead investigator. And secondly, he
9 has up until 2006 been involved in some way or another in the Lubanga
10 case.

11 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I obviously don't have it
12 at my finger-tips because I was unaware that this was going to be raised,
13 but my memory is, there's always the potential that it's faulty, but my
14 memory is that we had said that this re-interviewing should be conducted
15 by a team that was unconnected with the Lubanga case, within the OTP, but
16 separate. Now, prima facie, the presence of an investigator, albeit not
17 the lead investigator, during the interviews who has been involved with
18 the Lubanga seems to be a breach of that order, doesn't it?

19 MR. SACHDEVA: Mr. President, if your Honours will permit me to
20 elaborate on that. It's correct that your Honours suggested to the
21 Prosecution that -- and if I may quote: "... that it may be a wise
22 course, for reasons of appearance only, that it should not be taken by
23 somebody within what I'm going to broadly describe as the Lubanga team
24 but from someone within the Office of the Prosecutor who has experience
25 taking witness statements from a team wholly unconnected with this case."

1 And in our submission, Mr. Badibanga is currently not involved in this
2 case whatsoever.

3 In response, the Prosecution made the following submission.

4 On discussion with the Defence and by suggestion raised by the
5 Defence, what the Prosecution is now proposing that it indeed be a
6 Prosecution investigator, not one of the individuals currently involved
7 in the case, who would lead the questioning having had of course
8 discussions with the team in terms of this witness or previous contacts
9 and that a member of the Defence team be present but not be taking -- but
10 not be asking questions or otherwise providing input.

11 And this suggestion was not objected to by the Defence and there
12 were no further questions raised by the Chamber. And indeed,
13 Mr. Badibanga is not currently involved in the Lubanga case. In fact, he
14 was only involved -- the last time he was involved, as I understand it,
15 in the crime base of this case was in 2005. And in 2006 he was taken off
16 the DRC I, the Lubanga case, completely and is currently a team leader of
17 a completely unrelated case.

18 Now, it is right that, as I understand it, he was involved as an
19 investigator with the interview of two of the witnesses that have
20 testified, namely, Witness 41 and Witness 43. But, Mr. President, if I
21 may move on to a second point. And of course I don't fully know whether
22 the Defence are raising an issue with respect to impropriety of the
23 interview process, but if they are I would like to make the following
24 comments --

25 PRESIDING JUDGE FULFORD: Well, that has not been made,

1 Mr. Sachdeva. At the moment there is no suggestion before us as to
2 impropriety and we don't want to hear submissions, as it were, de bene
3 esse, when no allegations have been made.

4 Now, I want us to deal, please, with the objection that's raised,
5 namely, that there is someone who the Prosecution are proposing should be
6 present, who has, on your account, up until 2005 been involved in the
7 Lubanga case. Now, is there anything else you want to say on that
8 subject?

9 MR. SACHDEVA: Yes, Mr. President. During the interview
10 yesterday the lead investigator, who as I said joined the ICC in November
11 2008, asked the Defence, who had two persons present, whether they were
12 content with the procedure. And this was midway during the interview.
13 And from what I understand the response was a positive one. And
14 therefore, there appears to be no issue with respect to the manner in
15 which the interview was conducted. The lead investigator was asking
16 the -- predominantly asking the questions, as I understand it.
17 Mr. Badibanga may have asked for a couple of clarifications. But the
18 there was at no stage, at least to my knowledge, any question with regard
19 to the procedure during the interview.

20 And of course, I might add, since it may not be raised in terms
21 of substantive impropriety, but with respect to the appearance, the
22 interview is taking place in the premises of the Registry, it is being
23 video recorded, there are two members of the Defence present, the witness
24 has his counsel present, the lead investigator is not someone who has
25 worked on this case, and indeed, as I said, the Defence thus far, at

1 least halfway through the interview, had not complained about the
2 procedure.

3 And I might add one further point, Mr. President. Before the
4 interview commenced we had asked the Defence whether they would want us
5 to raise particular topics or particular questions to be put to the
6 witness, and for their reasons they declined. Therefore, in sum, in our
7 submission, the appearance of fairness and transparency is wholly
8 abundant and, indeed, substantively, I would say, the same.

9 PRESIDING JUDGE FULFORD: Thank you very much.

10 Mr. Biju-Duval, anything you wish by way of reply of course, but
11 could you focus particularly for our assistance on the suggestion that's
12 been made that the position in relation to Mr. Badibanga was clear. So
13 as I understand Mr. Sachdeva's submission, it's being argued that it was
14 known by the Defence that he had previous involvement in the Lubanga
15 case, no objection was taken initially, but, as I understand the
16 argument, there's now been a change of heart in relation to his presence.
17 Deal with all matters you wish, but if you could include that issue in
18 your reply, I would be grateful.

19 MR. BIJU-DUVAL (interpretation): Thank you, your Honour.

20 The Defence became aware of the fact that Mr. Badibanga had been
21 involved in the Lubanga case last night after the interview had been
22 carried out. And I would say that this is the main point that - to put
23 it mildly - surprised the Defence. Mr. Badibanga was presented by the
24 Prosecutors bureau as somebody who had not been involved in the Lubanga
25 case. The Defence carried out checks after the interview and established

1 that this was not the case. This is the situation we face.

2 The Defence did not accept in full awareness Mr. Badibanga's
3 intervention, in full awareness of the facts. That was the first point I
4 wanted to raise.

5 A second point I'd like to insist upon is that priority for the
6 Defence today should be given to ensuring that these interviews are
7 carried out without any interruption and rapidly so that we can hear the
8 witness again. That is the Defence's priority.

9 Accordingly, we do not wish to upset with untimely objections
10 this process. The situation should be quite clear, really. The witness
11 is being questioned by a lead investigator and that is no problem
12 whatever for the Defence. He is carrying out professional work, what we
13 can tell, and the Defence is not challenging this. But next to this lead
14 investigator you have Mr. Badibanga who apparently is playing a rather
15 inconsiderable role. We therefore believe there shouldn't be any problem
16 whatsoever for the Prosecutor in replacing Mr. Badibanga by anybody else
17 among his investigators.

18 We are struggling to understand why this hearing is leading to
19 such problems. In an extreme case we could admit that Mr. Badibanga
20 should attend these interviews as long as he remains perfectly silent,
21 but in that case there would be no point in him being there.

22 Your Honour, these are the points I wanted to raise.

23 PRESIDING JUDGE FULFORD: Forgive me just asking one final
24 question, Mr. Biju-Duval. I just want to make sure your position is
25 absolutely clear. Your submission, therefore, is: Either Mr. Badibanga

1 goes or he is to remain completely silent throughout the rest of the
2 procedure?

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

4 PRESIDING JUDGE FULFORD: Thank you.

5 (Trial Chamber confers)

6 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, I want there to be
7 no misunderstanding on one issue. I'd understood the -- from the tenor
8 rather than from the detail of your response that you were effectively
9 suggesting that the Defence were aware of Mr. Badibanga's position in the
10 sense that they knew that he had been an investigator who previously had
11 been involved in the Lubanga case, that they agreed to him being present
12 on that basis, and that they have subsequently changed their minds. Now,
13 when in the Prosecution's submission were the Defence first told by the
14 Prosecution that Mr. Badibanga had been involved as an investigator at an
15 earlier stage in the Lubanga case?

16 (Prosecution counsel confer)

17 MR. SACHDEVA: Mr. President, my understanding is - and of course
18 I -- I can't be absolutely clear because it was a conversation that -- at
19 which I was not present - but I understand that lead counsel had
20 identified or recognised the investigator as someone who may have been
21 involved in the DRC I case at the beginning of the interview and the
22 interview proceeded.

23 PRESIDING JUDGE FULFORD: Thank you.

24 When this issue originally arose and it became clear that it was
25 necessary that this witness was going to need to make a further witness

1 statement, the Chamber observed that the fresh statement should be taken
2 from someone who was wholly unconnected with this case. And the words
3 "wholly unconnected" were the words that we used during the course of the
4 hearing when these matters were debated.

5 In fact what has happened is that the Prosecution have deployed
6 two people to take the statement. The first, the lead investigator, is
7 someone who is wholly unconnected with the Lubanga trial, but they have
8 interpreted our original instruction as, in reality it was, as meaning
9 "not wholly unconnected with," but instead "not currently involved with"
10 the Lubanga trial. And the second investigator present and participating
11 in this re-interview process is someone by the name of Mr. Badibanga, who
12 up until 2005 was involved in this trial.

13 There is an unfortunate apparent disagreement between the
14 Prosecution and the Defence as to whether or not, in the Prosecution's
15 submission, the Defence were aware of Mr. Badibanga's involvement. As
16 put most latterly by Mr. Sachdeva, it seems that the Prosecution's
17 conclusions in this regard are based on the fact that they had an
18 understanding that lead counsel had recognised the investigator as
19 someone who may have been involved. It seems to us that that is an
20 unsatisfactory basis for proceeding in a way that was in breach of our
21 original order without having first inquired specifically with the
22 Defence as to whether or not they were prepared to agree to an amendment
23 of the instruction that we have given.

24 We are wholly sympathetic to the Defence concerns in this regard,
25 particularly since the decision taken by the Office of the Prosecutor, on

1 the information before us, appears to be in breach of the clear direction
2 that we gave. Mr. Badibanga is to be removed immediately from any
3 further participation in this interview process, which should continue
4 without interruption being conducted by the lead investigator, who as we
5 understand it is uninvolved.

6 So that message must be passed immediately to those who are
7 involved in this process.

8 Now we will take the midmorning break at this stage and we will
9 sit again at 11.00. Thank you.

10 COURT USHER: All rise.

11 Recess taken at 10.30 a.m.

12 On resuming at 11.00 a.m.

13 COURT USHER: All rise. Please be seated.

14 PRESIDING JUDGE FULFORD: Witness, please.

15 (The witness takes the stand)

16 PRESIDING JUDGE FULFORD: Public or private session,

17 Mr. Sachdeva?

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

19 PRESIDING JUDGE FULFORD: Public session, please.

20 Can I check that the witness can hear what I say?

21 THE WITNESS (interpretation): Yes, I can hear you.

22 PRESIDING JUDGE FULFORD: Excellent.

23 (Open session at 11.01 a.m.)

24 COURT OFFICER: Open session.

25 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

Witness: Witness DRC-OTP-WWW-0089 (Open Session)
Questioned by Mr. Sachdeva

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

2 Q. Sir, before I continue with the questions regarding Mandro, may I
3 ask you how long did you remain in the UPC?

4 A. I left the UPC when the UPC left Mongbwalu. We went to a certain
5 village. Later on the Chief of Staff left the bush, he went to Mabanga.
6 We went to Bunia. We stayed there. When we arrived at Bunia I left the
7 army and I returned home. When the international force arrived in Bunia
8 I had already returned home.

9 Q. And, sir, you mentioned the Chief of Staff. Who was the Chief of
10 Staff?

11 A. Kitembo was the Chief of Staff of the UPC at the time. He -- we
12 used to call him Zulu Mike.

13 Q. Do you know if the army was referred to by another -- the army of
14 the UPC was referred to by another name or not?

15 A. Yes. The UPC Army was called the FLPC.

16 THE INTERPRETER: Interpreter's correction: FPLC.

17 MR. SACHDEVA:

18 Q. Do you know by any chance what it stands for?

19 A. I have to think. I do not know the exact meaning, but I can
20 reflect on it.

21 Q. Certainly. And if you do have more information, please just let
22 me know. When you -- when you went to Mandro -- I think you said you
23 went with vehicles. Do you know where those vehicles came from?

24 A. The tradesmen used to help us with means of transport. There
25 were times when we saw commanders send soldiers to go and take just any

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1 vehicle from vehicle parks. That is how it was carried out.

2 Q. And do you know the names of these tradesmen?

3 A. As concerns the vehicle we used on that day, I do not know the
4 name of the tradesman who owned it; but as with respect to the day Thomas
5 left Kinshasa, there were two trucks that went -- there were two trucks
6 belonged to tradesmen that went to Bunia. I do not know the name of the
7 businessman who owned the truck that took us to the camp.

8 THE INTERPRETER: The interpreter would like to say that he did
9 not hear the last end of the answer, it was real quick.

10 PRESIDING JUDGE FULFORD: Sir, please forgive me saying it again,
11 but if you could make sure to keep the speed down so you don't speak too
12 quickly that will make life a lot easier for the interpreters upstairs.

13 Yes, Mr. Sachdeva.

14 MR. SACHDEVA:

15 Q. These -- the two trucks that you speak of, did they have
16 anything -- was there anything in particular on them that you recall?

17 A. When we were in Mandro the vehicles went to take soldiers. In
18 the vehicles there were soldiers.

19 Q. Do you know whether they came from -- I understand that you
20 said -- you mentioned the tradesmen and you can't remember the names. Do
21 you know if the tradesmen were known by a particular term or were they
22 part of a particular organisation that you can recall?

23 A. This is what I said. The tradesmen who gave vehicles for
24 collecting vehicles -- for collecting soldiers in Mandro, yes, I know
25 their names. Now, with respect to the vehicles we used to go to Mandro,

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1 I do not know the name of the tradesmen who owned those vehicles. I
2 repeat, with respect to the two vehicles that transported us to Mandro,
3 yes, I know the names of the two owners of those vehicles.

4 Q. And what were their names, sir?

5 A. As concerns the white truck, it belonged to Sagricof Dhego; and
6 the red truck belonged Dembu. There was also another truck that took
7 soldiers to Bunia and it belonged to Wiju (phoen), or rather, to Floribe.

8 Q. Sir, may I ask you to repeat the name -- repeat who did the red
9 truck belong to, the red one?

10 A. Dembu owned the red truck. It was a red truck with a carriage
11 made of wood, varnished wood. Sagricof was the owner of the white truck.
12 And there was a third truck that took soldiers to town and it belonged to
13 Floribe.

14 Q. When you arrived at Mandro, what did you do?

15 A. When we arrived at the centre of Mandro, the vehicle deposited us
16 there. Later on there were some soldiers there and our group went to a
17 certain place at the centre, at the training centre which was located in
18 a small village.

19 THE INTERPRETER: The interpreter did not hear -- or the Swahili
20 interpreter did not hear the name of the village as pronounced by the
21 witness.

22 MR. SACHDEVA:

23 Q. Sir, you said that the training centre was located in a small
24 village. Did you provide a name for that small village?

25 A. It was in the community of Bahema Banagi, that is where the

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1 training centre was. The head of that community -- or rather, the
2 training centre was not there. It was in a small village called Kuya
3 which was some kilometres away from the village. However, the people
4 used to call it Mandro. In actual fact, it was not in Mandro. It was a
5 small village which was located a few kilometres away from Mandro.

6 Q. And what happened when the vehicle deposited you at the centre of
7 Mandro?

8 A. We were taken from the centre of Mandro to the training centre.

9 Q. Who took you there?

10 A. The soldiers with whom we left Bunia. There were other soldiers
11 who were based in Mandro. From the centre of Mandro we were taken to the
12 training centre.

13 Q. When you got to the training centre what happened?

14 A. When we arrived at the centre, the soldiers who brought us
15 introduced us to the commander of the centre and they told him the
16 following. They said the chief had sent them here to this centre to --

17 THE INTERPRETER: And the Swahili booth did not hear the last
18 part of the witness's answer.

19 MR. SACHDEVA:

20 Q. Sir, you were just describing what they said the chief had sent
21 them to do. Can you please tell us.

22 A. The people who brought us to that place introduced us to the
23 commander of the centre, and they said, The chief has sent these soldiers
24 here because they have been trained in Rwampara at the centre managed by
25 the Ugandans.

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1 Q. And the commander and the soldiers that introduced you to the
2 commander, to which military group did they belong?

3 A. There were two sections. It was one of the bodyguards of Kahwa
4 Mandro.

5 Q. And Kahwa was a member of which group?

6 A. At the time Kahwa was one of the founders of the movement. He
7 was a member of the UPC, but at the time Lubanga was not yet in Bunia.

8 Q. Do you recall the name of the commander you were introduced to?

9 A. Yes. His name was Captain Mugisa Mugese. He was the captain of
10 the centre and at the time he ran it as captain. So the name is Mugisa
11 Mulete.

12 THE INTERPRETER: Muleke, corrects the interpreter.

13 MR. SACHDEVA:

14 Q. And when you got to Mandro, were you given any -- were you told
15 what you would be doing there?

16 A. In Bunia before we left Kahwa told us, You are going to train
17 recruits in Mandro. That is what he told us in Bunia before leaving to
18 go to Mandro.

19 Q. And is that what you did, train the recruits in Mandro?

20 A. (No interpretation).

21 Q. Sir, I'm not sure if your answer has been recorded. I'll just
22 ask you again. Is that what you did, did you train the recruits in
23 Mandro?

24 A. Yes. In Mandro we were taught -- we taught. Everybody was given
25 a group that we were to train. We arrived. We did tests, appropriate

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1 exercises. And then we were -- we passed those tests and we were given
2 groups to train.

3 Q. And how long were you in Mandro doing that?

4 A. I spent more than two weeks at the centre, but often I left the
5 centre.

6 Q. You said that everyone was given a group to train. How many
7 persons were in the group you trained?

8 A. There were more than 80 people in my group. We began with more
9 than 80; however, as time went by there were desertions. Others were
10 taken away. There were people who came to take them. And that's why at
11 the end of the training we had only a small number.

12 Q. And did you train the group by yourself or were there other
13 persons training the group with you?

14 A. No, I was the only trainer. With regard to the weapons or war
15 plans there was Mr. Muleke who was the commander of the centre and he was
16 the one used to doing that training.

17 Q. In the group that you trained, the 80 persons, were -- was it
18 just boys or were there also girls?

19 A. I would say this: In my group there were more than 80 people.
20 Not everybody finished because there were desertions, and I would also
21 like to say that there were no girls in my group.

22 Q. Do you know the age-range of the persons in your group that you
23 trained?

24 A. The age of the people varied. There were older people, people
25 older than me; others were younger than me; others were the same age as

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1 me; and there was some even smaller in the group.

2 Q. The smaller persons that you said in your group, do you know what
3 ages they were?

4 A. There were people aged 14 to 20, others even older than that.

5 Q. Were you able to estimate out of the 80 that were in your group,
6 how many of them were 14?

7 A. I would say this: We began the training with more than
8 80 participants, but every day there were desertions. As far as -- yes,
9 I saw people aged 14, but I couldn't really give an answer to your
10 question.

11 Q. You mentioned the desertions and you mentioned that people
12 came -- people came to take them. Who came to take the people away --
13 the people away from Mandro?

14 A. Within my group, one day I saw two "mamans" who came to take
15 recruits from my group.

16 THE INTERPRETER: "Mamans," "mothers."

17 MR. SACHDEVA:

18 Q. And just describe what happened when the two mothers came to take
19 recruits from your group, if you can.

20 A. These two mothers came. I saw two ladies accompanied by
21 soldiers. You had the centre commander with them. I saw these two
22 ladies with a soldier. They arrived where I was, and they pointed out
23 two children and those children went away with those ladies.

24 Q. Do you know how was it that the mothers were able to take their
25 children away?

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1 A. According to what they said to the commander, these women had
2 given money, because within our camp there was a Swahili expression: You
3 can't use the party's money for nothing, because one day you might
4 encounter a soldier who would use that expression and he would arrest you
5 and take you to the camp. These two women had paid.

6 THE INTERPRETER: The Swahili interpreter does not understand the
7 word used by the witness to illustrate this Swahili expression.

8 MR. SACHDEVA:

9 Q. Sir, could I ask you to repeat that particular Swahili expression
10 that you mentioned.

11 A. They would say this in Swahili: "Chakula habakulake bule." So
12 these women paid money on that occasion.

13 Q. Sir, I might come back to that phrase in a moment, but who did
14 the women pay the money to?

15 A. The centre commander received that money, because at the centre
16 the commanders ate very well. They ate meat and other kinds of food,
17 where we only ate corn and beans.

18 Q. Did the children in your group, did they want to leave or were
19 they happy remaining at the camp?

20 A. When they came to take away those children, they were very happy
21 to go home.

22 Q. Why was that?

23 A. The way I see it, there was a lot of suffering at the centre. We
24 were whipped. There was famine. When they came to collect those
25 children, the children were very happy; because if they weren't happy,

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1 they would have refused or run away.

2 Q. You mentioned -- in addition to persons coming to take people
3 away, you mentioned desertions. During your time there in Mandro, are
4 you -- what, if anything, would happen to persons who were caught
5 deserting?

6 A. If you ran away and they managed to catch you, you would be
7 whipped and you would be brought back to the centre.

8 Q. I want to talk -- we'll come back to the punishment of whipping
9 in a moment, but I want to ask you more about the role you had in
10 training the 80 persons. What precisely was your role in respect to the
11 training?

12 A. Do you want to know what work I did or what kind of training I
13 gave?

14 Q. Well, firstly, what kind of training did you give?

15 A. I was in charge of giving the training that I had received myself
16 from the Ugandans, because we had to do this very quickly under pressure
17 from the commanders. Every morning we would wake up and we had to do the
18 daily run, every morning we had to run, and after that we did "drill."
19 After that the common recruits would march and at a certain point they
20 had to rest and then they would continue to do that. We would give a
21 certain lesson one day and then the next day we would change the lesson
22 given.

23 Q. Why was there pressure from the commanders?

24 A. At that time we needed soldiers. There was several fronts. At
25 the centre there were people who would adjust very quickly, after six

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1 days or a week, and would then leave.

2 Q. And so what do you mean by "there were several fronts"?

3 A. At that time the soldiers were sent on missions to attack enemies
4 in different places.

5 Q. And who was the enemy?

6 A. Please could you repeat that question.

7 Q. Certainly. I asked you who was the enemy that were -- that were
8 to be attacked in different places.

9 A. At that time the UPC's enemy was the APC, the Lendu fighters, and
10 the FNI.

11 Q. Now, you mentioned deserters, if they were caught, would be
12 whipped. Were there other, to your knowledge, other infractions that
13 would result in the punishment of whipping?

14 A. For example, if a recruit ran away, other than whipping there is
15 no punishment. For example, if you ran away and you were not caught then
16 you were lucky; but if you were caught -- because there was soldiers
17 stationed around the camp to keep watch. If you were caught after
18 running away, you would be rolled on the ground and whipped.

19 Q. Was whipping just administered to those that deserted or was
20 whipping administered for other purposes?

21 A. According to what we were told, you train with the whip because
22 if somebody doesn't understand the lesson you needed to whip them.

23 Q. Who would administer the whipping?

24 A. It was the trainers who used to do the whipping. For example, if
25 a recruit ran away and you managed to catch them, he would be whipped; or

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1 if someone wanted to head off somewhere, they would be whipped.

2 Furthermore, the centre commander would enable someone, would authorise
3 someone to be whipped if they had committed some infraction.

4 THE INTERPRETER: The interpreter corrects, the second reason was
5 in the case of theft.

6 MR. SACHDEVA:

7 Q. You've told us that you were a trainer. Did you ever whip the
8 recruits?

9 A. Yes, I used to whip people too.

10 Q. How often would you do that?

11 A. If someone had committed an infraction I whipped them. For
12 example, if they failed to do their exercises, I would whip them too.

13 Q. Where would the whipping take place?

14 A. I would whip them on their buttocks or on their feet.

15 Q. And in which part of the training camp would the whipping take
16 place?

17 A. Each group had its own area for training purposes. If, for
18 example, I was training in X place, then the whipping would take place in
19 that place. If a recruit committed an infraction in a given place, the
20 whipping would take place in that same place.

21 Q. With respect to the recruits that you whipped, do you recall the
22 age-range of those recruits?

23 A. We were trainers at the centre. If we were on parade, what we
24 call a "kurutu" where -- then we would have to reply in Swahili "muju"
25 (phoen) because all of the men there were equals. There was no

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1 distinction between big and small, old or younger, if someone made that
2 call, then you had to respond; if they didn't, then they would be
3 whipped.

4 Q. Do you recall whether the persons that you whipped during your
5 time in Mandro, were they younger than you, older than you, your age?
6 Can you help us with that?

7 A. The whip does not choose its victim depending on their age, be it
8 someone younger or an adult. If the person has committed an infraction,
9 then they will be whipped. And even the trainers, they even whipped
10 adults.

11 Q. Sir, a moment ago you used some phrases. I think the first one
12 was "gurutu" or "kurutu." Can you please clarify that phrase.

13 A. "Kurutu" refers to any person coming to undertake a training. We
14 recognised those people and we called them "kurutu," it's the word for
15 "recruit."

16 Q. Was whipping the only form of punishment used in Mandro or were
17 there other forms that you know of?

18 A. At the centre the only form of punishment was the whip. Anyone
19 committing an infraction would receive whippings. At the training centre
20 there was no prison. The prison was only at the Mandro centre. The
21 training centre at Mandro only used whipping as a form of punishment.

22 Q. You said the prison was only at the Mandro centre. Where do you
23 mean, sir?

24 A. The prison was at the Mandro centre. Nevertheless, I should
25 point out that I have never been there. At the training centre there was

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1 no prison.

2 Q. For which persons was the prison centre -- the prison at the
3 Mandro centre used for?

4 A. It is difficult to know, hard for me to know, because it's true
5 that I did visit the Mandro centre but I did not go to that particular
6 place. Therefore, I can't know that.

7 Q. And what took place at the Mandro centre?

8 A. Do you want to know what happened at the Mandro centre in terms
9 of activities or what?

10 Q. Yes.

11 A. There was a market at the centre of Mandro and there were
12 dwellings. There were the collectivity's offices, there was soldiers
13 living there, and there were schools.

14 Q. The persons that you trained, the 80 persons, at least in the
15 beginning, how did they react, if at all, to the training that was given
16 to them?

17 A. Among the recruits there was some who were happy because they
18 were going to become soldiers. In fact, I cannot know for sure because I
19 carried out orders I was given.

20 PRESIDING JUDGE FULFORD: Pause for a moment, Mr. Sachdeva, if
21 you will.

22 Mr. Biju-Duval, I just want to investigate with you the rest of
23 the morning's session. There are two issues that arise. The first is
24 we've got to resolve protective measures for Witness 116. I think the
25 day before yesterday the Defence, at our request, put in a filing

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1 resisting the application in this case. If we were to deal with that
2 matter shortly after 12.00, would you be able to address us further on
3 the issue in response to any interventions that the Registry wish to
4 make? That's question one.

5 Question two is: We had hoped a little later this morning to
6 have an ex parte Status Conference with the Defence only to discuss
7 matters of timetable. We're aware, obviously, that Maitre Mabilie is
8 involved with the witness statement concerning Witness 15. Is that going
9 to prove an impediment to us reviewing with you today scheduling issues
10 at around 1.00?

11 MR. BIJU-DUVAL (interpretation): Your Honour, on the first
12 point, naturally I agree to intervene on the issue of protection
13 measures. I don't think we have many additional comments to make on that
14 issue. I do also think that we can, whenever the Chamber feels is
15 appropriate, hold the ex parte Status Conference in the absence of Maitre
16 Mabilie. I shall be her spokesperson.

17 PRESIDING JUDGE FULFORD: As long as you and she share a common
18 mind on this issue, Mr. Biju-Duval, that is wholly satisfactory. Thank
19 you very much indeed.

20 Then, Mr. Sachdeva, what we propose, then, is another five or ten
21 minutes now of questioning of this witness. We'll then break off and
22 we'll deal with the administrative matters that you wish to raise and the
23 protective measures for 116. We'll then break at half past 12.00 because
24 it takes half an hour to reconfigure the court, and we'll sit at 1.00 so
25 that we can have the Status Conference with the Defence between 1.00 and

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1 half past 1.00. That's what we propose.

2 MR. SACHDEVA: That's fine with the Prosecution, Mr. President.

3 Thank you.

4 PRESIDING JUDGE FULFORD: I'm very pleased to hear it,

5 Mr. Sachdeva. Please continue.

6 MR. SACHDEVA: Thank you.

7 Q. Sir, you have -- you said that: "Among the recruits there was
8 some who were happy because they were going to become soldiers."

9 Does that mean that there were others who were not happy?

10 A. I replied that to the question when you asked me that question,
11 because that is at least what I was able to observe. Some were happy
12 because they were going to become soldiers.

13 Q. Were you able to observe whether there were others who were
14 unhappy?

15 A. Yes, there were some.

16 Q. Why were they unhappy?

17 A. Some of them said that they had been forcibly taken because when
18 you asked them and you asked where were they arrested, you realised that
19 they were doing everything against their will. They were not happy.

20 Q. Those that had said that they had been forcibly taken, were they
21 just adults or were they also children?

22 A. Yes, there were children and I have already said that among them
23 there was some who were 14 or 15 years of age. There was some who were
24 older than that.

25 Q. During your time as a trainer, were you able to establish the

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1 level of understanding of the recruits as to what they were doing?

2 PRESIDING JUDGE FULFORD: I don't understand that question,

3 Mr. Sachdeva, I'm afraid.

4 Don't answer that, sir.

5 You're going to have to be more precise than that, Mr. Sachdeva.

6 MR. SACHDEVA:

7 Q. Did the recruits know what they were being trained for?

8 A. When a recruit was arrested and brought to the centre, the
9 objective was to undergo training to become a soldier when all was said
10 and done.

11 Q. In your group did the recruits respond well or not so well to the
12 training instructions that you gave?

13 A. Well, you know, people are different. They behave in different
14 ways. If somebody had come out of his own free will, anything you are
15 going to teach him, yeah, he's going to take to it well. But somebody
16 who was forcibly enrolled, even if you train him, you -- and by whipping
17 him, well, you know, it's not going to work out.

18 PRESIDING JUDGE FULFORD: I think we'll call it a day there,
19 Mr. Sachdeva.

20 Yes, sir, I'm very sorry we've only started your evidence and
21 we're not able to take it any further today, and I know that you've been
22 waiting to give evidence for a few days, but we have got a number of
23 urgent administrative matters that we've got to deal with before the day
24 is out, and they're going to take a little while. So thank you very much
25 indeed for your assistance so far. We wish you a pleasant weekend and we

1 look forward to seeing you again on Tuesday at half past 9.00.

2 So that the public gallery understands, what is going to happen
3 now is we are briefly going to go into closed session so the witness can
4 withdraw, and we will then return into public session certainly for a
5 period to deal with some of the administrative matters.

6 Good. Closed session then, please.

7 *(Closed session at 12.02 p.m.) Reclassified as Open session

8 COURT OFFICER: Closed session.

9 (The witness stands down)

10 (Open session at 12.03 p.m.)

11 COURT OFFICER: Open session.

12 PRESIDING JUDGE FULFORD: Mr. Sachdeva, the first matter I want
13 to raise is this: When we inquired yesterday of Ms. Samson of the
14 special measures for the present witness, she helpfully reminded us that
15 this witness was going to require reading assistance. Accordingly, this
16 morning we put in place a procedure whereby a Swahili interpreter was
17 sitting next to the witness to help him when he gave the oath and to save
18 him the embarrassment of not being able to read the words in Swahili on
19 the card on which the oath is written.

20 We had received - and I assume that a similar communication was
21 made with the Office of the Prosecutor - but we had received an e-mail
22 which confirmed what Ms. Samson told us yesterday, that Witness 89 needed
23 reading assistance in the courtroom. Now, shortly after Witness 89 began
24 his evidence, you indicated that you wanted to ask him a question,
25 namely, was he able to write down or to spell out some of the names that

1 he had given.

2 Now, I want to ask, Mr. Sachdeva, whether you were in possession
3 of information that led you to believe that you could ask that question
4 of the witness without causing him embarrassment if his answer was that
5 he is unable to read?

6 MR. SACHDEVA: I did have that information. I --

7 PRESIDING JUDGE FULFORD: What information did you have that led
8 you to believe that he was going to be able, either to spell or to write
9 out the names that he had given?

10 MR. SACHDEVA: Mr. President, my understanding was that the
11 witness was not someone who could not read, but rather required reading
12 assistance. And in my submission, the particular term or name that the
13 witness referred to, I was under the impression that he would be able to
14 spell that name. In any event, I did ask him to repeat the name slowly
15 and that was sufficient, Mr. President.

16 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, next week I'm going
17 to ask you to provide us with chapter and verse of why it is you have
18 just said to us that your understanding was that the witness was not
19 somebody who could not read, but rather required reading assistance.
20 Because a question of that kind should never be put to a witness in
21 relation to whom there are real reasons to believe it will be
22 embarrassing to him or to her if he is asked to write something down or
23 to spell something out when the witness is illiterate. And we have taken
24 fairly considerable and fairly careful steps to try to avoid that
25 happening.

1 So we'll say no more about it now, but next week I will ask you,
2 please, for chapter and verse as to what the basis is for you having
3 reached that understanding in relation to this witness.

4 Now, can we then turn, please, to such of the administrative
5 matters that you wish to raise this morning that do not need to be dealt
6 with in closed session.

7 MR. SACHDEVA: Yes, Mr. President. The first issue with respect
8 to the scheduling of Witness 46. Witness 46 is scheduled currently to
9 appear from the 3rd to the 7th of July, 2009, and the Prosecution's
10 application is to postpone her testimony to the week 13th to the 17th of
11 July, and the application is for the following reasons. The witness is
12 prepared to testify on those dates; however, the representative, should
13 the Chamber grant the Prosecution's application, who would be attending
14 the testimony with her is, for medical reasons, unable to appear from the
15 3rd to the 7th of July.

16 The witness prefers to testify with the UN representative present
17 for the reasons submitted in the Prosecution's application, and therefore
18 she would prefer to testify from the 13th and the 17th of July, when a
19 UN representative can be present. And it is for those reasons that the
20 Prosecution seeks the postponement of Witness 46's testimony.

21 PRESIDING JUDGE FULFORD: Are there any consequences, adverse
22 consequences, in terms of this creating gaps in the Prosecution's case
23 should we grant this application?

24 MR. SACHDEVA: Yes, regrettably there will be. It is currently
25 scheduled -- the penultimate witness will complete the evidence around

1 the 30th of June or the 2nd of July, and therefore there will be some ten
2 days', 11-days' gap between that witness's evidence and Witness 46's
3 evidence.

4 PRESIDING JUDGE FULFORD: And so to understand it fully, this is
5 simply the witness's preference, to have a particular UN representative
6 present. Presumably there are others who can substitute if your
7 application is refused?

8 MR. SACHDEVA: It's not her preference, it is -- of course the
9 witness would, in the best-case scenario, prefer to testify with a
10 UN representative. However, the UN representative that initially was
11 going to be involved, for medical reasons, cannot. A replacement has
12 been sought, but that replacement is, for professional reasons,
13 unavailable. And therefore, the particular representative that is best
14 suited for her evidence is only available from the 13th to the 17th of
15 July.

16 PRESIDING JUDGE FULFORD: Thank you.

17 (Trial Chamber confers)

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I'm afraid this
19 application is refused. The United Nations is a vast organisation and we
20 would expect the United Nations to be able to provide an alternative
21 individual to accompany this witness when they -- when he or she gives
22 evidence. So accordingly, the scheduling in relation to that witness
23 will remain the same.

24 Next point?

25 MR. SACHDEVA: Mr. President, my colleague Ms. Samson will deal

1 with the issue.

2 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Sachdeva.

3 Yes, Ms. Samson.

4 MR. SACHDEVA: Thank you, your Honour. My submission is very
5 brief. It's simply to alert the Chamber to the fact that Witness 31, who
6 has now arrived at the seat of the Court to commence familiarisation, has
7 raised concerns regarding his security. These were concerns that the
8 Prosecution has been aware of generally speaking for some time. We had
9 spoken to him prior to his arrival in order to determine whether or not
10 the security concerns had escalated to require an application for
11 in-court protective measures, but the discussion was unable to proceed to
12 completion. As a result, we liaised with the Victims and Witnesses Unit
13 upon his -- the witness's arrival, only to advise them to continue that
14 discussion with him. They did.

15 The report we had received yesterday was that the witness
16 continued to express concerns, but that the Victims and Witnesses Unit
17 preferred to discuss it with him in the context of his in-court
18 familiarisation so that he could be familiar with the court surrounding
19 and understand the implications of public testimony versus potential
20 in-court protections better. As we understand it, that discussion is
21 taking place today. I'm not in a position now to update the Chamber. I
22 have alerted the Defence to the possibility of an in-court application --
23 an application for in-court protective measures, but at present we do not
24 know --

25 PRESIDING JUDGE FULFORD: Ms. Buteau (sic), please -- sorry.

1 That's extremely distracting.

2 MS. SAMSON: But at present we do not have the complete picture
3 to be able to make an application to the Chamber as to which, if any, of
4 the in-court protective measures this witness may seek.

5 PRESIDING JUDGE FULFORD: Well, that's -- that's very helpful,
6 Ms. Samson. It's very useful to be alerted to the fact that there may be
7 a problem in due course. As soon as this issue solidifies, as it were,
8 if it does, can the Chamber and the Defence be alerted by way of an
9 e-mail communication, please, so that we know what the position is.

10 Is this witness subject to the position with Witness 15, the next
11 witness?

12 MS. SAMSON: Yes, your Honour, he is.

13 PRESIDING JUDGE FULFORD: Good. All right.

14 MS. SAMSON: But --

15 PRESIDING JUDGE FULFORD: Thank you for the warning. Keep us
16 updated.

17 MS. SAMSON: Yes. If I may add, I've just been advised, through
18 e-mail traffic, we do have confirmation that some -- an application will
19 be submitted, but until I have better details I can't make further
20 submissions now. However, I will follow your Honour's guidance and
21 provide the e-mail.

22 PRESIDING JUDGE FULFORD: Obviously, if this is simply a question
23 of what if any protective measures are appropriate following the
24 discussions, we'll deal with them. If the situation becomes slightly
25 more serious in the sense that it becomes clear that there may be

1 problems over the witness giving evidence at all, then we're obviously
2 going to have to think of -- we're going to have to ensure that there's a
3 substitute witness available who's in a position to testify. So could
4 you keep, as it were, both possibilities very much in the forefront of
5 your mind, Ms. Samson, please. Very helpful.

6 Thank you very much. Apart from the position of 116, are there
7 any other prosecutorial issues?

8 MR. SACHDEVA: Nothing further, Mr. President.

9 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Sachdeva.

10 For 116, I think it's going to be very difficult, isn't it, to
11 discuss those issues in public session. Do you agree, Mr. Sachdeva?

12 MR. SACHDEVA: We do agree.

13 PRESIDING JUDGE FULFORD: Yes. Thank you.

14 Right. Well, my apologies to the public gallery. I'm afraid
15 really for the rest of the day we are about to disappear from view, in
16 that the matters that we've got to consider involve either the security
17 position of witnesses that cannot be discussed publicly or they involve
18 matters at the moment which are confidential as far as the Defence are
19 concerned. So we will now go into closed session. Thank you very much.

20 *(Closed session at 12.18 p.m.) Reclassified as Open session

21 COURT OFFICER: Closed session.

22 PRESIDING JUDGE FULFORD: I'm very grateful for the Victims and
23 Witnesses Unit for having attended at fairly short notice. As I
24 understand the position, the Defence as regards Witness 116 essentially
25 advanced the submission, to use what may be an English expression, that

1 the cat is out of the bag. Put otherwise, that the identity of this
2 witness is well-known as well as the role of the witness in relation to
3 his or her job, and in particular (Redacted) are
4 aware of the identity of the witness. Therefore, it is said that there
5 really is nothing left to protect and so it is inappropriate for there to
6 be the kind of protective measures that are suggested.

7 And, Mr. Vaatainen, we would be grateful for your assistance on
8 that proposition.

9 MR. VAATAINEN: Thank you, Mr. President, your Honours.

10 It very well might be the case that -- the situation is as you
11 describe it. I don't think there is any information around that would be
12 suggesting that the Witness 116's involvement with the Court is known.
13 And from that point of view, to us it seems reasonable the course of
14 action that has been proposed by the Office of the Prosecutor. Obviously
15 our protection officer will be discussing this with the witness once he
16 arrives at the seat of the Court.

17 PRESIDING JUDGE FULFORD: So do I take it, Mr. Vaatainen, if I
18 can just pick up on that, that you're saying at the moment you have in
19 mind that involvement with the Court free-standing may well be an
20 appropriate reason for providing the measures, but you want to review
21 this in discussion with the witness as and when they arrive. Is that the
22 position?

23 MR. VAATAINEN: Yes, Mr. President, that is correct. And if I
24 would like -- I would like to note a further point, which is that --
25 which is a bit of a concern that it is said that this witness is

1 interacting with (Redacted)
2 (Redacted)

3 PRESIDING JUDGE FULFORD: So is this something you wish to
4 discuss with the witness on arrival?

5 MR. VAATAINEN: What I'm saying is that that in our view would be
6 adding to the potential level of risk if it was known that this person is
7 indeed a witness in the Court.

8 (Trial Chamber confers)

9 PRESIDING JUDGE FULFORD: Maitre Mabilie, Mr. Sachdeva, what we
10 have in mind, but please feel free to come back on this, is that given
11 that there is a real possibility that during the familiarisation process
12 the factual basis of the current application may change, it's premature
13 for us to consider this matter today but that we should revert to the
14 issue of protective measures once the familiarisation process has been
15 undertaken and with the VWU returning to Court to update us in detail
16 with what, if any, the concerns are and what the suggested basis is
17 finally for any protective measures that are proposed. Put shortly, our
18 present view is that it would be premature to try to resolve this now.

19 Any views on that, Mr. Sachdeva?

20 (Prosecution counsel confer)

21 MR. SACHDEVA: Mr. President, in principle that is a solution
22 that the Prosecution accepts. I would just note that he is intending to
23 travel very shortly, and it's my understanding that in order to make an
24 informed decision, his employees or he would prefer to know of the
25 outcome of the application. But as I said, in principle, we would accept

1 that of course.

2 PRESIDING JUDGE FULFORD: Our complements to his employers. Can
3 they be told, please, that although we would have preferred to have been
4 able to assist them with a final answer, there is -- there will be no
5 proper judicial basis for us to reach a decision this afternoon.
6 Therefore, we expect the witness to travel to give evidence and they can
7 be assured that we will investigate with very great care any application
8 that is finally made as regards protective measures.

9 MR. SACHDEVA: Yes, Mr. President. Thank you.

10 PRESIDING JUDGE FULFORD: Maitre Mabilille, I had noted a nod or
11 two from your direction, which is why I didn't call on you before I made
12 that last observation. But am I right the Defence are in agreement?
13 Yes, I think that's correct.

14 MS. MABILLE (interpretation): Certainly, your Honour.

15 PRESIDING JUDGE FULFORD: Sorry to have been presumptuous.

16 Mr. Vaatainen, anything else you want to say on this?

17 MR. VAATAINEN: No --

18 PRESIDING JUDGE FULFORD: No reason why there should be. I just
19 want to make sure --

20 MR. VAATAINEN: (Overlapping speakers) ... Mr. President, no.

21 PRESIDING JUDGE FULFORD: -- there's nothing else. No. Thank
22 you very much indeed. Right. Well, thank you all very much indeed for
23 your assistance.

24 We will sit again as usual at half past 9.00 on Tuesday. We look
25 forward, I hope, to seeing Maitre Mabilille in half an hour. Is that still

1 convenient, Maitre Mabilie?

2 MS. MABILLE (interpretation): No, your Honour, because we have
3 another concern with the previous witness, and so we would like to seek
4 the opinion of the Chamber. Now, would it be possible for us to adjourn
5 for five minutes so that I can discuss with the Office of the Prosecutor
6 with respect to new problems that I have -- that have arisen which will
7 then be submitted to the Bench?

8 (Trial Chamber confers)

9 PRESIDING JUDGE FULFORD: Certainly.

10 Please let us know, Maitre Mabilie, as and when you're ready for
11 us to sit again, and you'll have well in mind our preference for these
12 administrative matters being resolved consensually at the bar rather than
13 them needing a ruling from the Chamber. But if you need us back into
14 court in five-minutes' time, we'll come back in. If you resolve any
15 differences between you, there's no need for you to ask us to sit again.
16 We'll simply return into court at 1.00, when we'll have the ex parte
17 hearing.

18 MS. MABILLE (interpretation): Your Honour, it is not a problem
19 between the Office of the Prosecutor and the Defence. This is really a
20 problem which the Chamber has to handle, but I would like to discuss with
21 the Prosecutor so that we can expose this problem to you in as great
22 detail as possible.

23 PRESIDING JUDGE FULFORD: We shall look forward to resolving the
24 matter when you're ready, Maitre Mabilie.

25 COURT USHER: All rise.

1 Break taken at 12.27 p.m.

2 On resuming at 12.45 p.m.

3 COURT USHER: All rise. Please be seated.

4 PRESIDING JUDGE FULFORD: Yes, who's going first on this point?

5 Yes, Maitre Mabilille.

6 MS. MABILLE (interpretation): Yes, the Office of the Prosecutor
7 was not there this morning and so they asked me to sum up the problem
8 that arose. This morning we started the interview of the previous
9 witness, and during that interview he was assisted by a lawyer. When we
10 started discussing substantive matters, the lawyer asked for the
11 interview to be interrupted because he felt that his powers were not well
12 defined. He felt that he had been retained to provide the witness two
13 sources of information, one on self-incrimination and the second on the
14 consequences of false testimony and that he had not been authorised to
15 assist the witness with respect to the merits or the substance of his new
16 statement that he's going to give. He added that he was not aware or he
17 had not read the previous statement of the witness, and so he was not in
18 a position to fully play his role. And so we had to interrupt the
19 interview and to consult the Chamber so that the powers of that lawyer
20 can be clarified with respect to the interview. I think that sums up the
21 problem pretty well.

22 PRESIDING JUDGE FULFORD: Are there any submissions from the
23 Prosecution on this?

24 (Prosecution counsel confer)

25 MR. SACHDEVA: Mr. President, that's entirely correct. That is

1 the situation that has -- that we discussed with the Defence. The
2 witness has -- had expressed a desire to have a lawyer present during the
3 interview, and upon that preference, it was advised that the lawyer could
4 remain with the witness during the interview. And in fact as I
5 understand it, in principle the Defence and Prosecution do not object for
6 a lawyer to be present. It's simply the modus operandi, if you like, as
7 to how the lawyer would be able to advise his client. And if it is to
8 provide the lawyer with the statement so the lawyer can familiarise
9 himself with those statements, then in our submission, it may result in a
10 slight delay but it would be the best possible situation for the witness
11 to be able to provide the information as freely as possible.

12 PRESIDING JUDGE FULFORD: Thank you very much.

13 (Trial Chamber confers)

14 PRESIDING JUDGE FULFORD: Can we just ensure that we've fully
15 understood the position. Really reduced to its essentials, the issue
16 that we're being invited to express an opinion on is whether or not the
17 lawyer is entitled to see the earlier statement so that he or she is in a
18 position to provide advice, particularly on the second matter which is
19 the consequences of giving false testimony. So really am I right in
20 understanding or are we right in understanding that what is being asked
21 is that there should be a delay of however long it takes for the lawyer
22 to read that statement and, if necessary, provide advice before the
23 re-commencement of the interview process? Correct or incorrect?

24 MS. MABILLE (interpretation): Perhaps not entirely, your Honour.
25 Perhaps I wasn't clear enough. I think that the essential problem is

1 that this lawyer wants to know what his mandate is, and that is his
2 essential difficulty. He says, Do I have -- what are the limits of my
3 mandate? Where does it begin? Where does it end? In participating in
4 this interview, am I really playing the role I should be playing? Is
5 this really what the Chamber wanted when it asked for me to be given
6 powers? I think that's the fundamental issue, your Honour.

7 PRESIDING JUDGE FULFORD: Thank you.

8 (Trial Chamber confers)

9 PRESIDING JUDGE FULFORD: Maitre Mabilie, I'm not sure whether
10 the answer we're going to give you will necessarily be the one that you
11 seek. There's absolutely no doubt in our view that the witness is
12 entitled to have advice during this process on the twin issues of
13 self-incrimination and the consequences of giving false testimony; and
14 staying with those two issues for a moment, it seems to us that in order
15 for the lawyer to give meaningful advice as regards those two issues but
16 particularly the second, the lawyer should have had an opportunity of
17 looking at the original statement which is relevant to the issue of false
18 testimony and, if necessary, providing his client, Witness 15, with
19 advice against the background of having considered and digested the
20 statement.

21 As regards the lawyer's other function, if there is any, we would
22 certainly see the lawyer as focusing principally on those two matters in
23 discharging his role during the course of the interview; but there is a,
24 I think, general entitlement of members of the public to have recourse to
25 legal advice as and when it properly arises. And we're not prepared to

1 say that those are necessarily the only two matters which could arise
2 during the course of the interview process that may legitimately engage
3 Witness 15's lawyer in the discharge of his or her professional duties.
4 So we would go no further than saying the undoubted focus for this
5 lawyer's role should be self-incrimination and the consequences of giving
6 false testimony. That should be the focus. But there may be, unknown to
7 us, other issues that may arise which legitimately give Witness 15 the
8 right to consult with the lawyer who is present. And we're not prepared
9 to, as it were, impose a false embargo on discussions on those, to us,
10 unknown issues. So we're not prepared to go further than that.

11 I think the consequences are that the interviewing process is
12 going to have to be discontinued so that the witness statement can be
13 provided, advice can be given, for the lawyer to be undoubtedly informed
14 in an appropriate language of what I've just said, and hopefully the
15 interview can then restart on a sensible footing as soon as is
16 practicable.

17 Now, Maitre Mabilie, I'm afraid that doesn't provide you with an
18 absolute black-and-white answer, but I hope it's sufficient.

19 MS. MABILLE (interpretation): Your Honour, I spoke on this issue
20 as the lawyer of the lawyer who was present, if you like, to try and
21 resolve this because he was asking me questions and I felt that it was
22 somewhat delicate for me to take a position on the point. So that is why
23 I came to give the duty lawyer's position to the Chamber to try and
24 resolve the difficulty. Perhaps we could find a way of communicating to
25 the lawyer in question what the Chamber has just said, and furthermore,

1 could we transmit the statements to him also so that he can carry out his
2 mission. I wanted to say that on this particular issue I don't have a
3 position. I was simply trying to inform the Chamber of the difficulties
4 we were encountering.

5 PRESIDING JUDGE FULFORD: Well, that's very helpful, Maitre
6 Mabilie. I hadn't quite understood the exact reason for your
7 intervention. I wasn't sure whether it was just to provide us with
8 information or whether there was an element of frustration on your part
9 that the process had been interrupted and you've now made that clear.
10 Thank you very much.

11 Can I suggest -- you don't have to follow this, but this may be a
12 helpful way of assisting the lawyer. Can I suggest that the lawyer is
13 provided with the transcript of today from page 59 in the English,
14 line 12, through to page 60, line 19, which I hope sufficiently clearly
15 reflects our position on this and can the statement be provided as soon
16 as possible.

17 We're going to pause for a moment.

18 (Trial Chamber confers)

19 PRESIDING JUDGE FULFORD: As we indicated either yesterday or the
20 day before, for the convenience of the Chamber it was necessary for us to
21 rise today at half past 1.00. Given that it takes 20 minutes to half an
22 hour to reconfigure the machinery so that we can go into an ex parte
23 Status Conference, that means that we're not going to be beginning that
24 meeting until half past 1.00, which I'm afraid causes complications which
25 we're not prepared to endure. I'm very sorry, Maitre Mabilie, but it

1 means we're going to have to return to the issue that we wish to discuss
2 with you next week and we will find an appropriate moment on Tuesday to
3 hold an ex parte Status Conference. No one's fault. You were absolutely
4 right to bring the issue of Witness 15 to our attention, but it means
5 that we're not going to be able to consider it until next week.

6 Is there anything else that anyone else wishes to raise? No.

7 Good.

8 We wish you all, then, a pleasant weekend and we will sit again
9 at half past 9.00 on Tuesday of next week.

10 COURT USHER: All rise.

11 The hearing ends at 1.02 p.m.

12 RECLASSIFICATION REPORT

13 Pursuant to Trial Chamber I's email instruction dated 7th February 2012, the
14 transcript is Reclassified as public after the indicated redactions have been
15 implemented as ordered by the Chamber. All private and closed sessions (*)
16 are now available to the public with the exception of the portions of the
17 transcript that have been redacted.