

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 1

1 International Criminal Court

2 Trial Chamber I

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

4 Case against Thomas Lubanga Dyilo

5 Hearing - Open Session

6 Wednesday, 4 February 2009

7 The hearing resumes at 11.05 a.m.

8 COURT USHER: All rise. Please be seated.

9 PRESIDING JUDGE FULFORD: Now during the ex parte hearing at which
10 only Mr. Walleyne was present, an application was made for one additional
11 protective measure. Having heard Mr. Walleyne's submissions and having
12 received assistance from the Victims and Witness Unit, the application
13 that he made was refused.

14 Accordingly, the protective measures will be the same as granted
15 by the Chamber earlier in relation to this witness.

16 We therefore need to go into closed session so that the witness
17 can be brought into court.

18 *(Closed session) Reclassified as Open session

19 (The witness entered court)

20 WITNESS: WITNESS DRC-OTP-WWW-0299

21 (Witness answered through interpreter)

22 PRESIDING JUDGE FULFORD: Good morning.

23 THE WITNESS: I speak not English.

24 PRESIDING JUDGE FULFORD: Which language -- which language would
25 you prefer to speak, Lingala, Swahili, or French?

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 2

1 THE WITNESS: Swahili.

2 PRESIDING JUDGE FULFORD: Then please give all of your answers in
3 Swahili.

4 THE WITNESS: Yes.

5 PRESIDING JUDGE FULFORD: Please do not feel at all nervous.
6 Listen to the questions that are put to you and answer them, and I want
7 to reassure you that your identity is going to be protected in relation
8 to anyone outside of this courtroom. Good.

9 Can we then please go into open session so that the witness can
10 take the oath.

11 (Open session)

12 PRESIDING JUDGE FULFORD: Right. Can the usher please go and
13 help the witness to take the oath.

14 Sir, could you please read from the card the words that are in
15 front of you.

16 THE WITNESS (interpretation): (No interpretation)

17 PRESIDING JUDGE FULFORD: Can you read them out loud, please, in
18 Swahili.

19 THE WITNESS (interpretation): Yes.

20 PRESIDING JUDGE FULFORD: Can you read them in your own voice so
21 that we can hear what you -- so that we can hear what the words are,
22 please.

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

25 PRESIDING JUDGE FULFORD: Perfect. Thank you very much indeed.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 3

1 We now need to go into closed session so that the witness's
2 identifying details can be given confidentially. Closed session, please.

3 *(Closed session) Reclassified as Open session

4 PRESIDING JUDGE FULFORD: Sir, in order to provide you with
5 complete protection, we are having to move between open and closed
6 session so as to ensure that any personal details of yours are not made
7 available to the public, and that's why you'll hear the blinds going up
8 and down. Don't in any way be put off by them. It's just a technical
9 device that we're using for your protection.

10 Yes, Mr. Sachdeva.

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

12 Questioned by Mr. Sachdeva:

13 Q. Sir, good morning to you.

14 A. Yes, good morning.

15 Q. The first thing I want to say before I start is my name is Manoj
16 Sachdeva, and I am a member of the Prosecution, and I'm going to be
17 asking you some questions today. Do you understand that?

18 A. Yes.

19 Q. It's very important that your answers are properly and accurately
20 recorded, and so I'd ask you to speak slowly, and if you do not
21 understand my question or if you want me to repeat it, please ask me to
22 do so.

23 PRESIDING JUDGE FULFORD: It's all right, Mr. Sachdeva. I don't
24 think that necessarily called for an answer.

25 MR. SACHDEVA:

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 4

1 Q. Sir, can I ask you to state your full name, please.

2 A. Yes.

3 Q. Please state your full name for the Court.

4 A. (Redacted)

5 Q. Please tell the Court your date of birth.

6 A. Yes.

7 Q. Sir, maybe there's a slight misunderstanding. Can you please
8 answer into the microphone and provide the Court your date of birth.

9 A. The (Redacted)

10 Q. Thank you. And similarly, can you please tell the Court your
11 father's name.

12 A. (Redacted)

13 Q. And your mother's name, please? Can you tell the Court that?

14 A. (Redacted)

15 Q. Where do you live currently?

16 A. At the moment I live in Kinshasa.

17 Q. Who did you live with?

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva, can you pause just a
19 moment, sir? If this witness is in the protection programme,
20 Mr. Sachdeva, is it appropriate that he should be answering these
21 questions as to his present location in front of the accused?

22 MR. SACHDEVA: No, Mr. President.

23 PRESIDING JUDGE FULFORD: No. Don't answer the last question,
24 please, sir.

25 MR. SACHDEVA:

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 5

1 Q. Sir, do you have any children?

2 A. Yes.

3 Q. How many children do you have?

4 A. I have four.

5 Q. What are their names?

6 MR. WALLEYN: Sorry, Mr. President.

7 PRESIDING JUDGE FULFORD: Yes, Mr. Walley. n.

8 MR. WALLEYN: I think this could also be -- is it necessary to
9 give identities of the children?

10 PRESIDING JUDGE FULFORD: Well, Mr. Walley. n, in the witness's
11 statement at paragraph 11, their names and dates of birth are set out,
12 and so everything in that regard is known to everyone inside this
13 courtroom.

14 MR. WALLEYN: Okay.

15 PRESIDING JUDGE FULFORD: Please carry on, Mr. Sachdeva.

16 THE INTERPRETER: Mr. President, the witness answered by
17 mentioning the names of his children.

18 THE WITNESS (interpretation): The first child, (Redacted)
19 (Redacted)

20 MR. SACHDEVA:

21 Q. Sir, you mentioned the first, second, and third. Can you tell
22 the Court the name of the fourth child, please?

23 A. I haven't fully understood your question. Could you please put
24 the question in Swahili that I can understand.

25 Q. Who is your oldest child? What is that person's name?

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 6

1 A. (Redacted)

2 Q. Who is his mother?

3 A. (Redacted).

4 Q. When was (Redacted) born? What was his date of birth?

5 A. The (Redacted), 1991.

6 Q. How do you know that?

7 A. It's my child. He was born in the maternity ward of a hospital.

8 I have the child's birth certificate.

9 Q. When you mentioned the -- you mentioned (Redacted). Did she
10 have any relation to you?

11 A. She's my wife.

12 Q. When did you get married to her?

13 A. In 1986, I think. I can't remember the exact year. It was
14 between 1986 and 1987.

15 Q. I want to ask you at this stage one or two questions about
16 (Redacted). You said he was born on the (Redacted), 1991. Did (Redacted)
17 go to school?

18 A. (Redacted) went to school, and he went to school up until the 5th
19 grade, to primary school.

20 Q. When you say he went to school up until the 5th grade, how old
21 was he when he was in the 5th grade?

22 A. Eleven years old.

23 MR. SACHDEVA: Mr. President, I'm going to ask to move into open
24 session, but I'm going to ask -- I'm going to ask him questions about
25 (Redacted), but I'm going to ask him not to mention the name, the witness.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 7

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

2 We're now going to move back into open session. Mr. Sachdeva,
3 who has been asking you questions, will still ask you one or two more
4 questions about (Redacted), but we're going to be very careful not to mention
5 (Redacted) name so as to protect him. Mr. Sachdeva will refer to him as
6 your eldest son.

7 Would that be convenient, Mr. Sachdeva?

8 MR. SACHDEVA: Yes, Mr. President.

9 PRESIDING JUDGE FULFORD: Yes. So can I ask you, please, to make
10 sure that you don't use (Redacted) name, but you simply refer to him as
11 your eldest son. Sir, did you understand what I've just said?

12 THE WITNESS (interpretation): Yes.

13 PRESIDING JUDGE FULFORD: Open session then, please.

14 (Open session)

15 PRESIDING JUDGE FULFORD: Good. We're now back in open session.

16 Witness 299 is being questioned by Mr. Sachdeva, and we have
17 simply dealt with identifying details in relation to this witness.

18 Please continue, Mr. Sachdeva.

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

20 Q. Sir, you said that your eldest son was at school up until the 5th
21 grade. Did he finish his schooling?

22 A. No, he didn't.

23 Q. Why didn't he finish his schooling?

24 A. He met colleagues of ours while returning from school. He met
25 some soldiers. It was in the Fataki centre. And these men took him to

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 8

1 the training centre in Bule, and this is why he didn't complete his
2 schooling.

3 Q. Sir, I'm going to ask you some -- some questions from that
4 answer, but can you first recall when that was? When was it that he met
5 some soldiers and he was taken, as you say, to the training centre?

6 A. I was a soldier myself. I lived in the town of Bunia, and this
7 happened when I wasn't at home. It happened just before New Year in
8 2002.

9 THE INTERPRETER: Just before Christmas, interpreter's
10 correction, 2002.

11 MR. SACHDEVA:

12 Q. You said that he met some soldiers. Which soldiers did he meet?

13 A. Our soldiers from the UPC.

14 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

15 MR. DESALLIERS (interpretation): I apologise. The witness said
16 in his previous answer that he didn't know, that he wasn't there. So
17 quite obviously the questions being put to him are a matter of hearsay,
18 so the Defence would like to repeat that he can only testify with regard
19 to what he himself experienced. He said that he wasn't there at the time
20 of the events.

21 PRESIDING JUDGE FULFORD: Mr. Desalliers, if you wish at this
22 stage to ask us to revisit our decision on hearsay, you will have to do
23 so in a formal way. It is quite inappropriate to seek to question a
24 ruling that the Chamber has already given on hearsay in this way during
25 the course of a testimony of a particular witness. We have said that we

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 9

1 will admit hearsay evidence so long as we are persuaded that it's in the
2 interests of justice and it has sufficient probative value.

3 MR. DESALLIERS (interpretation): Mr. President, I apologise if I
4 misunderstood the scope of the decision. I apologise if I haven't
5 understood it well, but here we are dealing with very concrete matters in
6 relation to the charges. The witness said, "My son was taken away by
7 soldiers." Therefore, we are dealing with crucial elements in relation
8 to the charges, and if an element is so important, we should emphasise
9 the fact. It's not just a matter of context. This goes to the heart of
10 the matter.

11 PRESIDING JUDGE FULFORD: Mr. Desalliers, if in due course you
12 wish during your questions to highlight the fact that the witness was not
13 present when these events occurred and he is dependent on what he was
14 told by others in order to give this evidence, that is a point that you
15 can properly make. And, in due course, it will be wholly open to the
16 Defence to make such observations as they feel appropriate as to what
17 weight, if any, we should accord to evidence that has come into existence
18 in this way. What is undesirable is that during the course of a
19 witness's evidence there are serial interruptions which are undoubtedly
20 going to destabilise him.

21 Now, thank you for the observation, but for the time being this
22 questioning can continue. Thank you very much.

23 Yes, Mr. Sachdeva.

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

25 Q. Sir, I'm sorry for the interruption. You said -- just going back

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 10

1 to your answer, you said -- you use the term, if I can recall, "our
2 soldiers." Why do you use that term?

3 A. I'm here to tell you the truth. I'm only afraid of God. I am
4 not afraid of any humans.

5 Q. And it's important that you do tell the truth. And I want to ask
6 you, you said "our soldiers from the UPC." Why do you use the word "our
7 soldiers from the UPC"?

8 A. I myself was a UPC soldier, but I was in the town of Bunia.

9 Q. Now, what do you know about the circumstances of how your eldest
10 son was taken to the training camp in Bule?

11 A. They took him there to train him to become a child soldier. This
12 hurt me. I was in the town of Bunia, and I wondered why a school child
13 who was attending primary school was taken there to be trained. This
14 really upset me very much.

15 Q. Why did it upset you?

16 A. The child was at school. He was only 11 years old, and being
17 a soldier's very hard. So this was spoiling his life. The child thought
18 it was the best kind of profession and forgot about school. Right up to
19 today, he has forgotten about school. So I think that he thought it wasn't
20 good. We don't get along anymore, he has become completely bad.

21 Q. How did you come to know that your eldest son was taken to the
22 training camp?

23 A. (Redacted). The salesmen, tradesmen in Fataki came to
24 the town of Bunia. They came to talk to us in our place of residence, at the
25 residence of Mr. Thomas Lubanga. They provided me with

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 11

1 this information, and it made me angry.

2 Q. Sir, for the moment I'm just going to ask you this question: What were you
.3 doing at the residence of Thomas Lubanga?

4 A. We were his bodyguards.

5 Q. And at that time who did you understand Thomas Lubanga to be?

6 A. At the time he was the minister of defence. He hadn't yet become the
7 president. He was the minister of the defence. I apologise. He had already
8 become the president, because -- I was assigned to him when he was Minister
.9 of Defence, but when my child was taken away to be trained
10 he was already president at that time.

11 Q. President of what?

12 A. President of the UPC party.

13 Q. We'll come back to -- to that time when you were at Thomas Lubanga's
14 residence, but I want to go back to your eldest son. You said that he was
15 ..only 11 years old and a soldier's life -- and being a soldier's very hard.

16 When he was taken to Bule, what did your eldest son do in Bule?

17 What was he doing there?

18 A. He was taken to the training centre. That is to say, he was
19 given training in the training centre. So when you arrive at the
20 training centre, what else can you do? It's a military centre. So he
21 followed military training.

22 He was a child, and he was not the only one. There were other
23 children, too, who were taken to that centre.

24 Q. When you say "there were other children, too, that were taken to
25 the centre," what ages were these other children?

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 12

1 A. I'm not in a position to know. I can estimate or evaluate the
2 age of my child at the time. Children who were a little older than him
3 were taken.

4 Q. And you said that your son followed military training. Just help
5 us a little bit. What -- what does military training entail?

6 A. I can't answer that question. For us a soldier is a member of
7 the army. It's just that word, "a soldier."

8 Q. What type of training did your eldest son receive when he was at
9 Bule?

10 A. He was trained to become a soldier, to bear weapons.

11 Q. And how was it that he was trained to bear weapons? How was that
12 taught?

13 A. Listen, how can I answer that? The training for a civilian to
14 become a soldier involves, first of all, physical exercises, then they're
15 shown how to dismantle and reassemble a weapon. Afterwards, they are
16 taught war tactics, and after that phase, they are issued with a weapon.
17 That is military training.

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva, we've got to remain
19 sensible about this. We haven't -- we haven't in any way opposed that
20 the general matters going in by way of hearsay, but unless this witness
21 was actually present when the training took place, as he has said, how
22 can he help us with the precise form of training which his son received?

23 You have got to be realistic about the areas that you attempt to
24 deal with by way of hearsay. It's not going to help us to have a witness
25 speculate as to what may or may not have happened to his son during

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 13

1 training.

2 MR. SACHDEVA: Mr. President, I understand that, however -- but
3 I'll move on.

4 PRESIDING JUDGE FULFORD: But Mr. Sachdeva, it's not included in
5 the witness statement which is in front us, and I don't see at the moment
6 the foundation for you suggesting that this witness is able to help us
7 with the detail of the training that his son received in his absence.

8 MR. SACHDEVA: I was going to get to the foundation thereafter.
9 I'll do so now.

10 PRESIDING JUDGE FULFORD: Let's move straight to it then.

11 MR. SACHDEVA:

12 Q. Sir, you said that you were in the UPC. What did you do in the
13 UPC?

14 A. I was a UPC soldier.

15 Q. When did you join the UPC?

16 A. When the UPC was set up, I was already there. Initially, I was a
17 bodyguard to Mr. Thomas Lubanga; before the UPC was created, in fact. He
18 was the Minister of Defence of Mbusa Nyamwisi. There was no UPC as such.
19 The UPC was created while I was present. The UPC was set up in 2000. I
20 went to his residence in 2001. Before Christmas 2001.

21 Q. When you -- when the UPC was created, what was your role once it
22 was created?

23 A. I was a simple unranked soldier. I was old, and as you know,
24 military service is tough. And so I was at the residence to ensure his
25 security.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 14

1 Q. Apart from the -- the residence, was there anywhere else that you
2 were positioned or located while you were with the UPC?

3 A. Yes. In addition to that I could be sent to Mandro. We would go
4 to Mandro where other training was given.

5 Q. What -- what was Mandro. What took place there?

6 A. Mandro is a training centre, a military training centre.

7 Q. Are you able to recall when you went there?

8 A. I went to Mandro. I went to Mandro after the incidents of
9 Mandro, and one week later I returned. Subsequently, we returned to
10 Mandro about three times. It was around July, August 2002.

11 Q. And when you went to Mandro, what did you do there?

12 A. It was to bring supplies, food supplies to the recruits and the
13 instructors, because we had to bring supplies, food, from Bunia to Mandro.

14 Q. When you say bringing food supplies to the recruits, who were
15 these recruits?

16 A. The recruits are people who have been recruited, enlisted to
17 become soldiers like us.

18 Q. And while you were there at Mandro, are you able to -- to say or
19 to tell the ages of these recruits that enlisted to become soldiers?

20 A. As regards determining their age, it's difficult for me. I would
21 say that they were children of 15 years and even younger than 15 years.
22 There were also children over the age of 15, also 25 years old, 35 years
23 old. There were many of them and all a mix. My job was not to identify
24 them but simply to bring supplies and then to return from whence we came.

25 Q. When you went to Mandro, how long would you normally stay there?

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 15

1 A. When we arrived in Mandro, when weapons had to be unloaded, we
2 had to stay there to guard the weapons and also to consign them somewhere
3 and take them back to Bunia. It could take a full day or two days, and
4 afterwards we returned to Bunia.

5 Those who were in the training centre always stayed there, but
6 we, we were a team that came from Bunia to bring them supplies. When
7 weapons were dropped we had to stay there, wait there. When there were
8 no weapons, we would return to Bunia.

9 Q. And how often would you do that? How often would you take
10 weapons to Mandro?

11 A. I'm not in a position to tell you how much time. The weapons
12 were dropped from time to time. It might be one day, and sometimes there
13 would be a relay where one group would relieve another group. For instance,
14 when we were exhausted, one group would relieve another the day after.

15 Q. Let me ask you another way. Are you able to recall roughly how
16 many times you -- you yourself went to Mandro undertaking this exercise
17 you've just explained?

18 A. I went to Mandro three times to bring supplies and to return with
19 weapons to Bunia. So it was three times.

20 Q. And I'm going to -- well, you said the recruits were trained in
21 Mandro. Are you able to say what type of training these recruits
22 received?

23 A. The recruits were trained while the weapons drop was taking
24 place, and after their training recruits received weapons and became
25 soldiers.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 16

1 Q. And, sir, I'm sorry. I'm going to have to ask you if you can
2 specify. You said the recruits were trained while the weapons drop was
3 taking place. What kinds of training? What types of training did the
4 recruits receive?

5 A. Excuse me, for your question, if we are talking about training of
6 civilians to become soldiers, initially when the civilian is received he
7 is taught military gymnastics so that they learn to march well. After
8 that exercise they were taught to dismantle a weapon and to reassemble
9 it. Afterwards, they also had to be taught to shoot and to aim well.
10 They were also taught combat tactics. After that exercise, they were
11 issued with weapons and uniforms, and that was the end of the training.
12 So that is what military training was.

13 Q. Do you know or are you able to tell the Court roughly how many
14 recruits were at the Mandro training camp? It doesn't have to be exact,
15 but if you have a rough figure that would suffice.

16 A. Those recruits were with their superior who had enlisted them and
17 had to train them, so there was a large number of people. In -- on a
18 service area of more than 300 square metres, there were a lot of people.
19 I would say 5.000, at least, without being more specific than that.

20 Q. And amongst the 5.000 were there -- well, did it comprise men,
21 women? Did it include both sexes?

22 A. Yes. There were women, young girls, and they were called PMF.

23 Q. I'm sorry, sir, can you tell the Court what PMF stands for?

24 A. It means girl soldier. It is a term which we used in the
25 rebellion.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 17

1 Q. What did -- what did the girl soldiers do at Mandro? What was
2 their role?

3 A. They were soldiers. What else can be said? A soldier is a
4 soldier.

5 Q. And as I asked you before, what -- if you can, what were the ages
6 of the girl soldiers that you speak about?

7 A. It was the same as for male soldiers. There were women of all
8 ages, a mix of ages, like in the case of men.

9 Q. Now, at the camp was there -- well, can you describe the
10 discipline at the camp?

11 A. No. I don't know. The ethics of the camp were not a matter for
12 me. It was a matter for their superiors. I don't know what was done
13 there, so I can't describe it to you.

14 Q. Were there any rules in the camp?

15 A. Yes. Wherever there are people there have to be rules, if I'm
16 not mistaken. So, yes, there were rules. Where there are a lot of
17 people together rules are necessary, but I don't know what they did
18 because it was of no concern to me. I simply saw them when they were
19 there, when they came.

20 Q. And what were the -- what were the rules? Do you know what types
21 of rules existed at the camp?

22 A. No. All I can say about the rules is -- the rules that we had in
23 the camp in Bunia. When we went to the market, for instance, we did not
24 wear a uniform, and we did not carry a weapon. But when we were working,
25 we did have to carry -- or wear our uniform and carry a weapon. That was

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 18

1 a rule that we had. We weren't allowed to steal nor be violent to women
2 at all. Those were rules where I was, but this camp was 10 kilometres
3 away, so I can't tell you what the rules were there.

4 Q. You said that in respect to the weapons, that your role was to
5 guard the weapons. Why did you have to guard the weapons?

6 A. Any warehouse has to be guarded. In this case it was a UPC arms
7 depot, and therefore it had to be guarded.

8 Q. Who -- while you were guarding the weapons, who would -- who
9 would the weapons be guarded from?

10 A. No. The general rule is that even a trader's warehouse has to be
11 guarded, and therefore that depot had to be guarded.

12 Q. And to your knowledge was that general rule, when you were
13 guarding the weapons, broken?

14 A. I'm afraid I haven't understood your question well.

15 Q. While -- let me ask you another way. While you were guarding the
16 weapons, were there particular persons who were permitted to take the
17 weapons?

18 A. Listen, permission to take weapons and to take them where?

19 PRESIDING JUDGE FULFORD: What are you driving at, Mr. Sachdeva?
20 I have to say I do share the witness's difficulty in being able to answer
21 these questions. What's the area that you're dealing with? Can you
22 refer me to a paragraph of a statement or something that indicates what
23 this is all about?

24 MR. SACHDEVA: Mr. President, I can. And I don't want to say too
25 much. I don't want to prejudice the witness.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 19

1 It's paragraph 28 and 29. I'm trying to get to that area.

2 PRESIDING JUDGE FULFORD: Well, I think you can be reasonably
3 direct about it, Mr. Sachdeva, in the sense of asking whether there
4 were -- there was ever a particular event that related to something that
5 went wrong with the way weapons were held or looked after. Otherwise, by
6 generality, the witness is simply not going to know what you're talking
7 about.

8 MR. SACHDEVA: Mr. President, that's correct, and I'm finding it
9 a little bit difficult because of the -- I'm mindful that I cannot lead
10 on anything, and therefore I'm trying to go about it this way, but I will
11 ask that question.

12 PRESIDING JUDGE FULFORD: Yes. All right.

13 MR. SACHDEVA:

14 Q. Sir, with respect to the weapons that you guarded, do you recall
15 an incident or a particular event that took place with -- when something
16 went wrong in respect of your job?

17 A. I beg your pardon. I'd need to ask you to be more specific with
18 a view to giving you a proper answer.

19 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I'll deal with this.

20 Sir, we want to ask whether there was ever an occasion when
21 someone was punished for doing something wrong in relation to a weapon.
22 THE WITNESS (interpretation): Yes. A commander coming from a remote bush
23 area came to the depot, and he sold two weapons to -- he got them from two
24 soldiers under his supervision and then resold them.

25 He resold the weapons, and

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 20

1 he pocketed the money, and this information reached headquarters. And then
.2 this soldier was arrested and taken to Mandro. He was questioned. He
.3 admitted that he had sold the weapons. He was asked where he had taken
4 those weapons, and so an order was given to shoot this commander. First
.5 of all he was taken away from the recruits and only the soldiers shot him. He
.6 died and was buried on site.

7 I witnessed this when I was in Mandro. It was not a soldier from
8 the camp. It was someone coming from outside of the Mandro camp.

9 MR. SACHDEVA:

10 Q. Firstly, when did this happen?

11 A. It's difficult to answer the question. This incident took place
12 while the UPC weapons were being dropped and while training was taking
13 place. I cannot really give you a specific date for that event.

14 Q. You said that the soldier was questioned. Do you know who he was
15 questioned by?

16 A. His higher commander, Bosco Katanga -- Ntaganda. The current rumour now
17 is that he is in North Kivu, He is the general of Laurent Nkunda.
18 He gave the order.

19 Q. You said the soldiers shot him. How many soldiers shot him?

20 A. Twelve soldiers were lined up and an order was given to shoot so
21 that other soldiers would not commit the same error.

22 Q. Are you able to say whereabouts in Mandro, in the Mandro camp,
23 this took place?

24 A. In the Mandro training centre. When the weapons were dropped, they were
25 dropped 3 kilometres away in the bush, and this took place 3 kilometres away

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 21

1 from the Mandro centre.

2 Q. You said that you witnessed the incident. Was there anybody else

3 present when this happened?

4 A. Listen, it's difficult to answer the question. All of the UPC

5 headquarters, I wasn't the only one. I was present, not a witness. It was

6 all of the headquarters. There were all of the recruits and the soldiers.

7 There was an unappreciable number, a large number.

8 Q. Who from the headquarters was there?

9 A. Bosco Ntaganda. He's a general. Imagine the situation where a

10 general arrives here. You can imagine how many people would be present.

11 Q. You said all from the headquarters. Apart from Bosco Ntaganda,
12 were there anybody else?

13 A. This is a difficult question for me to understand. I'm not in a position

14 to give you a description. It was a Bahema collectivité, and there was a

15 large number of people in this collectivité and the town centre was in the

16 capital. So there was a large number of people from the town and soldiers

17 and recruits that were located 3 kilometres away. So I can't really give you

18 an answer.

19 Q. You mentioned Bosco Ntaganda. Are you aware of any other persons who were

20 -- are you aware of the other persons that formed the

21 headquarters of the UPC?

22 A. Could you kindly repeat the question so that I can give you a

23 proper answer?

24 Q. You said earlier on that Thomas Lubanga was the president of the UPC.

25 A. Yes.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 22

1 Q. While you were at his residence did Thomas Lubanga meet other people?

2 A. A president of a certain movement would be surrounded by many
3 people. There were all of the soldiers, the generals, right down to the foot
4 soldiers who were able to speak to him; even me.

5 Q. Who were the generals that he was surrounded by? Can you name
6 them?

7 A. Floribert Kisembo, who was the Chief of Staff, and Bosco
8 Ntaganda was his deputy. There were two generals.

9 Q. And at the -- the camp at Mandro, who was the leader of the camp?
10 Who was the commander of the camp when you were there?

11 A. There were many commanders, many. I reiterate, many. I can
12 simply say there were several commanders. There were more than 5.000
13 people in this camp. So as to the number of people in charge of
14 discipline for all these people, there were quite a few soldiers. It's
15 very difficult to answer the question.

16 Q. Can you -- is it possible for you to name one or two of those
17 people who were in charge of discipline at the camp?

18 A. It was the chief commander who was in charge of discipline. He
19 gave orders.

20 Q. And I'm sorry, who was the chief commander, if you can?

21 A. At the training camp we had Germain, who was the supreme
22 commander.

23 Q. Now, just going back to the weapons, do you know where the
24 weapons came from?

25 A. I don't know specifically where the weapons came from, but the

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 23

1 person who requisitioned the arms was a certain Rwandan. I don't know if
2 they requisitioned them from Rwanda or not.

3 Q. Do you know the names of any of these people that requisitioned
4 the arms?

5 A. Safari.

6 Q. How would Safari requisition the arms?

7 A. They had very large devices like the one you have in front of
8 you. He had a very large apparatus, and he communicated with the other
9 people, and he had an apparatus on his shoulder until an aircraft loaded
10 with weapons arrived.

11 Q. Just a few questions from that answer. Are you able to describe
12 what this apparatus looked like?

13 A. How can I give you an answer? It was a very large apparatus, and
14 he used this large apparatus.

15 You also have devices right in front of you, and I'm not sure how
16 you use them. It's difficult.

17 Q. Did it -- did it have a name that you can recall? How was it
18 referred to?

19 A. One of the apparatuses was Iridium and the other was Thuraya. Iridium and
20 Thuraya.

21 Q. And who would -- you said that he communicated with the other people.
22 Who would he communicate with?

23 A. Who was in the communication? To correctly answer your question, are
24 you talking about Safari, Bosco Ntaganda, Thomas Lubanga ? Who are you
25 talking about?

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 24

1 Q. Well, let's start with Safari. Who was he communicating with in respect
.2 to the -- the aircraft that you said arrived?

3 A. I'm sorry. He had his own personal apparatus. We were far away from
4 him, and he was communicating in another language. It's like you're speaking
5 English which I don't understand. So I don't know what you're saying to
6 someone else when you speak that language.

7 Q. Very well. And where -- where did the aircraft arrive? Where
8 did it land?

9 A. At the camp. It did not land. It dropped weapons in crates.
10 They dropped weapons in crates.

11 PRESIDING JUDGE FULFORD: Mr. Sachdeva, if this is a convenient
12 moment, we're going to adjourn for lunch now.

13 MR. SACHDEVA: It is, Mr. President.

14 PRESIDING JUDGE FULFORD: Good. Thank you.

15 Sir, thank you very much indeed. We're going to break off for lunch now, and
16 we're going to sit again in just over an hour's time at quarter to 2.00. So
17 in a moment you'll be taken from court by the usher and brought back again at
18 quarter to 2.00, but thank you very much for your help so far.

19 Could we now please go into closed session.

20 *(Closed session) Reclassified as Open session

21 THE WITNESS: Yes. (No interpretation)

22 (The witness stood down)

23 PRESIDING JUDGE FULFORD: Mr. Sachdeva, there is a very important
24 difference between leading questions, on the one hand, and taking a
25 witness to the relevant area of evidence on the other. A leading

1 question is when within the question the answer is suggested, such as,
2 "Did you kill your husband in the morning or the afternoon?" Thereby
3 suggesting the answer, that whether it's the morning or the afternoon the
4 person had killed their husband. That is to be distinguished from
5 sufficiently identifying the area that you want the witness to focus on
6 so that he or she can know what you're talking about. And in fact, what
7 happened in court was a -- I think a very good demonstration of how once
8 you take a witness to the right area, then an answer is given which is
9 unaffected by the question that has introduced the topic. So you mustn't
10 feel shy about taking the witness to the relevant topic. What you must
11 be shy about is providing the particular answer in the nature of the
12 question that you ask. Is that clear?

13 MR. SACHDEVA: Absolutely, Mr. President. And in fact, if I
14 might, the question that your Honour asked, I honestly thought that I
15 could not ask such a direct question.

16 PRESIDING JUDGE FULFORD: You can. You must be able to take the
17 witness to the relevant topic, otherwise we'll never get there. If you
18 can't identify the issue, you're asking questions that are so general
19 we'll be swimming around in confusion forever. So you can take it from
20 us, we will be assisted if you identify the topic and the area so long as
21 you don't provide the answers in the questions that you pose.

22 MR. SACHDEVA: Well, thank you. Now that I have that very
23 helpful advice -- thank you.

24 PRESIDING JUDGE FULFORD: Yes. I hoped that was always clear,
25 Mr. Sachdeva. But if there's been confusion, now we're on a firmer

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 26

1 footing. Jolly good.

2 We'll sit again at quarter to 2.00.

3 COURT USHER: All rise.

4 Luncheon recess taken at 12.41 p.m.

5 On resuming at 1.46 p.m.

6 (Open session)

7 COURT USHER: All rise. Please be seated.

8 PRESIDING JUDGE FULFORD: Good afternoon. We'll go into closed

9 session for just a moment so that the witness can be brought back into

10 court.

11 *(Closed session) Reclassified as Open session

12 (The witness takes the stand)

13 PRESIDING JUDGE FULFORD: Good afternoon. Thank you very much

14 for coming back into court.

15 We'll now return into open session.

16 THE WITNESS: (No interpretation)

17 (Open session)

18 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

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

20 Q. Good afternoon, sir.

21 A. Good afternoon.

22 Q. When we spoke earlier on, you told the Court that the recruits

23 would undertake training, and after the exercise they were issued with

24 weapons and uniforms. What I want to ask you is after they were issued

25 with weapons and uniforms, what did they do?

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 27

1 A. They did their work.

2 Q. What was their work?

3 A. Military service involves ensuring the security of people and
4 goods, their goods. Thank you.

5 Q. In addition to ensuring the security of people -- well, can you
6 describe? What do you mean by "ensuring the security of people"?

7 A. When war or massacre of populations happen, soldiers have the
8 right to intervene. If a soldier does not intervene and he flees, his
9 weapon means nothing.

10 Q. How would the soldier intervene?

11 A. When the enemy comes and fires his weapon, then soldiers must
12 intervene. They must act. That's what happens in all countries.

13 Q. Now, when you were at the Mandro camp, did the members of the
14 headquarters of the UPC, did they ever visit the camp?

15 A. Yes.

16 Q. And who from the headquarters visited the camp?

17 A. All of those who were in the headquarters, each person who was
18 there and responsible, visited the camp and then went back to the
19 headquarters and they did so in rotation.

20 Q. You mentioned before Mr. Kisémbé. Did he ever visit the camp in
21 Mandro?

22 A. Yes. And all of the incidents happened under his orders. All of
23 the chaos, all of the disorder which occurred in the camp was because of
24 what he said, because he was the leader of the soldiers. And you can see
25 this. You can judge this on the basis of his rank. General Kisémbé.

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 28

1 Q. Which -- which incidents are you talking about?

2 A. I apologise. I don't understand the question.

3 Q. You had mentioned that incidents happened in the camp under his
4 orders, and you mentioned chaos. Can you describe to the Court which
5 incidents are you speaking about? Can you give an example?

6 A. That is a question which we discussed, and you're returning to
7 it.

8 Q. Very well. Apart from what you've already told the Court, were
9 there any other incidents that you recall?

10 A. No incident occurred whilst I was there.

11 Q. You mentioned people from the headquarters of the UPC visited the
12 camp.

13 A. Yes.

14 Q. Did -- are you aware if Mr. Lubanga visited the camp?

15 A. He visited the camp, and I came here to tell the truth. I'm not
16 going to lie about him. I'm not going to exaggerate anything in what I
17 say. I'm telling you the truth. He did come to the camp.

18 Q. Are you able to recall approximately when that was? When did he
19 visit the camp?

20 A. It's difficult to recall the date. He came after he was released
21 from house arrest in Kinshasa. Then he went to Ituri. He came to Mandro
22 to visit the camp, and there were many people in the Mandro camp.

23 Q. And when he went to the Mandro camp, what did he -- what did he
24 do there when he went to the camp?

25 A. He was held in Kinshasa. When he came back from Kinshasa, he was

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 29

1 happy, and he wanted to express this happiness in the presence of the
2 people. He wanted to show that he had come back. That's all he did. He
3 came to where training was carried out. He moved amongst the people.
4 The people saw him. That's all he did.

5 Q. You said that he wanted to express his happiness. Do you recall
6 what he said when he went to the camp amongst the people?

7 A. When he came to the camp he showed that he was happy because he
8 sang a song, Toko lola ehh. It's a Lingala word, and it means, "We will
9 vanquish." He sang, and he sang in order to express his joy, and then he
10 went back to Bunia. I don't know what he did afterwards. I saw him only
11 when he came to the camp, and then he left.

12 Q. When you talk about the people that he -- the people that were in
13 the camp amongst -- amongst him, who are these people that you speak
14 about?

15 A. How can I answer that question? He came to the camp because
16 people were there. The people were recruits. There were also soldiers.
17 He came to the camp to visit the camp, to see these people. How can I
18 possibly say that there was one or another specific person there?

19 Q. The song that you just spoke about, "We will vanquish," do you
20 recall whether it -- did it have any other words or verses? Do you
21 recall the full song if there was one?

22 A. No. It's not really a song.
23 The interpretation of the song is "We will win. We will vanquish."

24 MR. SACHDEVA: Mr. President, I would with your leave like to
25 ask -- I'm going to move into an area where I need to go into closed

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 30

1 session for a couple of minutes if that's permissible.

2 PRESIDING JUDGE FULFORD: No, certainly if it's necessary,
3 Mr. Sachdeva. And that's now.

4 MR. SACHDEVA: Yes, Mr. President.

5 PRESIDING JUDGE FULFORD: Good. I apologise to members of the
6 public. I hope we will be able to return to open session in the near
7 future.

8 Good. Closed session, please.

9 *(Closed session) Reclassified as Open session

10 PRESIDING JUDGE FULFORD: We're now in closed session. Yes,
11 Mr. Sachdeva.

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

13 Q. Sir, I'm now going to show you -- you're now going to see
14 something on your screen, and I'm going to ask you questions about that
15 in a moment.

16 MR. SACHDEVA: If I could ask the Court Usher to call up
17 DRC-OTP-0184-0055. And there's a number assigned to it, 930, if that's
18 of assistance.

19 COURT OFFICER: This document will bear the number EVD-OTP-00377.

20 MR. SACHDEVA:

21 Q. Sir, may I ask you, do you see a photograph on your screen?

22 A. Yes.

23 Q. And do you know who that person is in the photograph?

24 A. It's a child.

25 Q. Do you recognise who that child is?

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Sachdeva

Page 31

1 A. The photo is not clear. I can't really identify the person
2 because the photo is not clear.

3 Q. Does it -- does it resemble anyone that you're aware of?

4 A. I cannot give you details because of the photo's lack of clarity.
5 I can see on the basis of this photo that the -- this child resembles my
6 son, but I'm not sure. It's not clear.

7 Q. And which son are you talking about?

8 A. The photo resembles my son, (Redacted). The photo
9 resembles my son, but I can't see clearly. There's a resemblance.

10 MR. SACHDEVA: Mr. President, I'd like to tender this document
11 into evidence.

12 PRESIDING JUDGE FULFORD: If you remember from last night,
13 Mr. Sachdeva, everything is given an evidence number if it's been put in
14 by the person who called the witness, and it only doesn't bear an
15 evidence number if there's objection taken. So if, within the general
16 time period of this witness giving evidence, there's no objection, you
17 don't have to make a specific application.

18 MR. SACHDEVA: Thank you, Mr. President. We can now move into
19 open session with your leave, Mr. President.

20 PRESIDING JUDGE FULFORD: Certainly. Open session then, please.
21 Open session, please.

22 We need to take the photograph off the screens, please.

23 (Open session)

24 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

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

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 32

1 Q. Sir, at the very beginning I was asking you questions about your
2 eldest son, and you told the Court that you learnt that he was taken into
3 the UPC while you were at the residence of Mr. Thomas Lubanga. And I want
4 to ask you, when you learnt of that information, what did you do?

5 A. When I was told, it was difficult for me to obtain an
6 authorisation to leave. The first thing I wanted was to leave
7 everything, my weapon and my uniform, so I could see my son.

8 Q. Why was it difficult for you to obtain authorisation?

9 A. The child was with the authorities; and I was a bodyguard, the
10 bodyguard of my leader. How could I have left my leader to see my child?
11 It's impossible.

12 Q. When -- well, let me ask you this: When did you next see your
13 child?

14 A. I went to see him at the centre in Largo and I saw him. When he was
15 walking around, he was with other soldiers. He was without a weapon and not
16 wearing a uniform *. They were a bit older than he. I saw him; he saw me. I
17 called him and he came. We went to a restaurant; we had something to eat. And
18 I told him to leave Bunia, and that he should leave the military. He was
19 only 11. And it was impossible for him to be in military service. The weapon
20 which he carried weighed 4 kilos. How is it possible for a child who is 11 to
21 carry such a weapon? He was harmless *. How could he confront the enemy? So I
22 took him with me, and we went to Bunia.

23 Q. I just want to ask you some more questions about the time you saw
24 your son in Largo. Firstly, how did you know he was there?

25 A. I went to see him at the Bule camp where he was being trained.

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 33

1 As you know, Bule is a part of our area. And when I got there, my brothers
.2 told me that the child went to Largo with Commander Linganga. So I did
3 everything possible to go to Largo.

4 Q. When you went to the Bule camp, did you speak to anybody there?

5 A. Yes. There were soldiers whom we knew. We'd been together in
6 Bunia and even in Thomas Lubanga's home, so they knew us. When they saw
7 us in Bunia, they knew us.

8 Q. And when you saw your son in Largo, did he say anything to you
9 when you found him there?

10 A. The child only wanted to stay with the others. But when he saw
11 me, he remembered that in my home he was free and that there he was not
12 free. If he wanted to be free to move around, he had to ask for
13 authorisation. But when he was with me, he was free. So with me he was
14 able to do what he wanted to do. When he saw me, he was happy. And I said
15 to him, "Listen, I don't want you to be in the Army. I'm a soldier. We
16 should go back together so that you can resume your studies." And when
17 we got to Bunia, he did indeed resume his studies.

18 Q. Did he tell you what he did at Bule camp?

19 A. No. First of all, he was a child. He was a child in the camp.
20 He didn't have any duties except to move about with his superiors. And
21 when the -- his superiors drank alcohol, he was given sugared drinks. He
22 didn't give me any other information about the camp.

23 Q. Do you recall approximately when it was that you saw your son at
24 Largo?

25 A. Around February 2003. Between February and May of 2003, after

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 34

1 the New Year holiday.

2 Q. And when you saw your son in Largo, what -- what was he wearing?

3 A. He was wearing civilian clothes. He was not wearing a uniform.

4 As I said earlier, when a soldier is moving about to go to the market or
5 to church, the soldier was to take off his military uniform and had to
6 wear civilian clothes in order not to scare civilians.

7 When I saw him in the market, he was wearing civilian clothes.

8 Q. You said that he was carrying a weapon when you saw him. What
9 weapon was he carrying?

10 A. No. You misunderstood me. I didn't say that he was
11 carrying a weapon. He was wearing civilian clothes. He had nothing in
12 his hands, and I seized the opportunity to take him with me. If he'd had
13 a weapon, then he would have had to return the weapon at camp. When I
14 saw him, he was not wearing a military uniform, and he was not carrying a
15 weapon. I'm telling the truth. I'm not adding anything or taking
16 anything away from what I've said.

17 He was small, a small child. He was alone, I believe. He was a small
18 child. They were afraid to give him a weapon. If he had had a weapon,
19 he would have been unable to deal with difficult or awkward situations.
20 He had a weapon when he was in the camp with other soldiers.

21 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I had not understood the
22 witness at his answer on page 32 at about line 14 to be saying that he
23 was carrying a weapon when he saw him in Largo. He was -- he was in fact
24 making a rhetorical point. He was only 11. It was impossible for him to
25 be in military service. The weapon he carried weighed 4 kilos. It was

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 35

1 all a part of a general observation about how inappropriate it was for an
2 11-year-old to be in military service.

3 MR. SACHDEVA: Thank you, Mr. President. It's clarified.

4 Q. Now, you said that when you saw your son, you went back to Bunia
5 and he resumed his studies. Did he complete those studies?

6 A. Yes. He started sixth year of primary school studies, and he finished
7 this year. However, when he went to visit the family of my older brother who
8 lived some 30 kilometres away, he came across soldiers who had known him in
9 Centrale, and they took him and carried him away to another camp.

10 Yes. They took him further than Centrale, to Mabanga. They
11 stayed there with him for a while. And I was given this information. I gave
12 someone money to get the child back. This money was taken away from
13 the child. I went to Nizi. I took my child back. We went to Bunia. And it
14 was only after that he joined a demobilisation programme and that he was, in
15 fact, demobilised. And then he had the chance to come
16 here. If I hadn't sent him to that demobilisation centre, then he
17 wouldn't have come here. No one knows anything about predestination.

18 Q. When the soldiers took him away for a second time, when was that?

19 A. He stayed with me for about one year, before the end of the UPC
20 movement in 2003. UPC was still there in 2004, 2005 and 2006. After
21 one year when I had him go back to school, at one point in time he went
22 to visit family, and he encountered soldiers who knew me and knew him,
23 and they took him once again to their camp.

24 So after I had taken (Redacted) with me to Bunia, I didn't go back to
25 live with Thomas Lubanga, because with the arrival of the Artemis troops,

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 36

1 they said that they didn't want any APC. UPC troops any more. And so I hid
.2 my weapon, and I never returned to the UPC again.

3 Q. When -- when you say the soldiers who you knew took him once
4 again to their camp, when was that, do you recall? When was your son
5 taken a second time?

6 A. At the end of the sixth year of primary school. Because, in fact,
7 he had his military training after his fifth year. After the sixth year,
8 he received a -- a end-of-year report, and it was during the holidays
9 that he went to visit my brother and that he fell into an ambush.

10 Q. Who was -- who was he ambushed by?

11 A. By UPC soldiers.

12 Q. When was it that you found out that he was taken a second time?

13 A. All of that happened in my region, so the information was
14 circulating. And I got that information two days later. I knew that if I
15 went that I would be arrested, so I was afraid to go.

16 Q. Why would you be arrested if you went?

17 A. Because I was a deserter in the UPC, and there were enemies who
18 had deserted and who were in town and who had cast down their weapons.
19 Those who had cast down their weapons were in town; those who had not
20 were outside of town. And (Redacted) was stopped when he was travelling.
21 So if I also travelled, I also would run the risk of being arrested.

22 PRESIDING JUDGE FULFORD: Sir, can I encourage you to refer to
23 your son simply by the expression "my eldest son," rather than giving his
24 name, because we're now in public session; and for his protection, it's
25 best if you don't mention his name.

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Sachdeva

Page 37

1 Mr. Sachdeva, you should know that on the occasion when the name
2 has been mentioned earlier this afternoon we've made a --

3 THE WITNESS: (No interpretation)

4 PRESIDING JUDGE FULFORD: Good. We've made an order in relation
5 to the non-publication of that section of the transcript, and I'm going
6 to make a similar order in relation to the reference that's just been
7 made.

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

9 THE WITNESS (interpretation): Thank you.

10 MR. SACHDEVA:

11 Q. What would happen to deserters from the UPC if they were found
12 out?

13 A. They were flogged, flogged terribly. And after, the deserter was
14 given a weapon anew and he stayed there.

15 Q. After the second time your son was taken by the UPC, when did you
16 next see him?

17 A. A few weeks later. He didn't spend many days there.

18 Q. And when he left, was he considered a deserter?

19 A. Do you mean when he came to my home in Bunia? I'm afraid I don't
20 understand very well. I can tell you this: When I took him from Largo
21 and took him to my home and he went to school, he was considered a
22 deserter. Later, after his sixth year in primary school, he went to
23 visit a brother and encountered UPC soldiers who arrested him and beat
24 him. He bears a scar, in fact, until this day on his calf.

25 Q. Do you know what he was beaten with?

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Walley

Page 38

1 A. He was beaten with pieces of wood. That's all.

2 MR. SACHDEVA: Mr. President, might I have a moment?

3 (Prosecution counsel confer)

4 MR. SACHDEVA:

5 Q. Sir, I'm sorry for the interruption. You said that you were
6 involved with the weapons delivery and guarding the weapons and that you
7 were a bodyguard with -- a bodyguard at Thomas Lubanga's residence. Was
8 there anything else that you did while you were with the UPC?

9 A. No.

10 MR. SACHDEVA: Mr. President, that's the examination-in-chief.

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

12 Now, Mr. Walley, if my memory serves me well, you had some
13 specific questions to ask about effects and consequences; is that right?

14 MR. WALLEYN (interpretation): Yes, your Honour, indeed. In
15 fact, it seems to me the only matter which has not been addressed and
16 that is whether the stay of his son has left scars, has scarred him.

17 PRESIDING JUDGE FULFORD: I think in a question or two you can
18 probably cover that background.

19 Questioned by Mr. Walley:

20 Q. (Interpretation) Good afternoon. In fact, I only have one
21 question to put; and that is, whether all that has happened with your son,
22 whether it had consequences afterwards? And if so, what type of
23 consequence?

24 A. Before answering that question, your Honour, I would like to be
25 excused for a moment. I would like to have a break outside the courtroom

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Walley

Page 39

1 to visit the facilities.

2 PRESIDING JUDGE FULFORD: Yes, you certainly can. We'll go
3 immediately into closed session so the witness can leave the court. Can
4 you wait just for a moment, please, sir?

5 Closed session, please.

6 *(Closed session) Reclassified as Open session

7 (The witness stands down)

8 (The witness takes the stand)

9 PRESIDING JUDGE FULFORD: Thank you very much. Back into open
10 session, please.

11 THE WITNESS (interpretation): Yes.

12 (Open session)

13 PRESIDING JUDGE FULFORD: The lower shutters are rather more
14 efficient than the upper shutters, but there we are.

15 Do you want to put the question again, Mr. Walley.

16 MR. WALLEYN (interpretation): Thank you.

17 Q. Yes. I think I'll avoid the term "after-effects." I'm not sure how that
18 might be translated. So I would like to know to what extent the son has
19 suffered consequences after leaving the UPC, be it on his health or in
20 other areas.

21 A. I can tell you, quite simply, that he is my first son. All of my
22 hopes were laid on him. I had the capacity to educate him and his
23 schooling was hampered. That is the major consequence. Today his
24 colleagues are in fourth year in secondary school and fifth year in the
25 secondary school for those who haven't repeated a year. I would be

Witness: Witness DRC-OTP-WWW-0299 (Open Session)
Questioned by Mr. Walley

Page 40

1 delighted if today he were in the fourth or the fifth year in secondary
2 school. That is the primary consequence, the one which brings me here
3 today.

4 The second consequence is that he, given his age and given that military
5 service degrades someone, the child was ruined, I think that that is
6 something of capital importance.

7 I, as his father, have these two concerns, which for me are major concerns.

8 Now, as regards any illness, I am not in a position to know. It
.9 is his body that suffers, and thus he has two difficulties. He is ruined.
10 Today he can do nothing in his life. He has abandoned his education. And
11 this is something which affects me greatly.

12 Q. You spoke of degrading. At least that was the word in
13 translation. Could you be more specific? Has he changed? Why do you
14 say that this service -- military service had a degrading effect?

15 A. No. You have misunderstood me. I'll repeat what I said. I said
16 the following: Military service has ruined him. That is to say, he's
17 become more and more headstrong. Secondly, today his contemporaries are
18 in the fourth year of secondary school in the case of those who have
19 repeated a year, and the others are in the fifth year of secondary
20 school, nearing their final year.

21 It would be a source of great joy to me if he were to get his secondary
22 school leaving certificates, but that is not the case.

23 MR. WALLEYN (interpretation): Thank you. I have no further
24 questions.

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

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 41

1 Mr. Desalliers, I understand that although the amendments which
2 were sought to the transcript of the evidence of Witness 298 have been
3 compiled, they haven't yet been put into transcript form; although, it's
4 proposed that that will be done this evening. We can only sit on
5 evidence until half past 3.00, because we've got to deal with certain
6 matters with the Victims and Witness Unit at half past 3.00. Therefore, could
.7 I ask you, please, to ask questions which, as it were, miss the area that you
.8 may want to address by means of reference to 298's transcript.

.9 MR. DESALLIERS (interpretation): Very good, your Honour.

10 Questioned by Mr. Desalliers:

11 Q. (Interpretation) Good afternoon, sir.

12 A. Good afternoon.

13 Q. My name is Marc Desalliers, and I am going to put questions to
14 you as the representative of the Office of the Prosecutor did, but I will
15 be putting my questions on the behalf of Mr. Thomas Lubanga's defence.

16 A. Yes. Okay.

17 Q. I'm going to express the same concern. It's important that you
18 answer my questions if you have understood them well. If you haven't
19 understood them well, please do not hesitate to ask me to repeat them.

20 A. All right.

21 Q. So, sir, is it right that you met the investigators of the
22 Office of The Prosecutor
23 for the first time on the 11th or 12th of January 2008 -- ?

24 A. Yes.

25 Q. During that first meeting with the Prosecution investigators, was

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 42

1 it explained to you what the role and the remit of the International
2 Criminal Court is?

3 A. They didn't explain those things to which you refer, but I know
4 that the International Criminal Court is a world-level court, and it
5 begins from the grassroots, from, for instance, district chief, right up
6 to the International Criminal Court.

7 Now, beyond this court I can be tried by God. It's the same
8 thing. I'm here to say that -- the full truth, and I'm willing to answer
9 all of your questions.

10 Q. So if I understand rightly, those explanations were not given to
11 you, but you have your own idea about what the International Criminal
12 Court is; is that right?

13 A. Yes. To my knowledge, yes.

14 Q. Now I would like to establish whether it was also explained to you during
15 that first meeting with the investigators what the role and the powers of the
16 Office of the Prosecutor are. Were those things explained to you?

17 A. No. I am here. You can tell me here; but there, I was not given
18 those explanations.

19 Q. Very good. Could you explain to us how you were approached to
20 meet with the investigators?

21 A. Might I ask you to repeat your question so that I understand it
22 better?

23 Q. Certainly. Now, you met the investigators of the Office of the
24 Prosecutor for the first time on the 11th or the 12th of January 2008.
25 How did you meet them? Did they approach you?

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 43

1 A. What specifically do you want me to tell you? I was in Ituri --
2 or I was in Kinshasa, and they live here in the Netherlands. How could they
3 be in Kinshasa? What specifics could I give you on that?

4 Q. I'll rephrase. Could you kindly tell us whether the information
5 that you've given the Office of the Prosecutor was information given on
6 your own initiative? In other words, did you take the initiative to go
7 and see them or was it the Office of the Prosecutor who came to you?

8 A. You started to ask your question in a very circuitous fashion.
9 You started your question in the middle, not at the beginning. If you
10 want to cut down a tree and you start with the branches, will the tree
11 fall? You have to cut the tree at the base for it to fall.

12 Q. Thus, you do not understand my question. Is that correct, sir?

13 A. Not at all. I do not understand.

14 Q. On the 11th and the 12th of January, you were in the same room as
15 investigators from the Office the Prosecution; is that correct?

16 A. Yes.

17 Q. Thank you. Here's the purpose of my question: Did this meeting happen
18 because of initiative taken by the Office of the Prosecutor or by you?

19 A. Your question is meaningless to me. I did not go to Kinshasa on
20 the 11th of January 2008. Members of the OTP investigatory team came
21 from The Hague to Kinshasa on that date. Do you know the date on which I
22 left Ituri? So your question, as it was stated,
23 is meaningless. I cannot answer it.

24 MR. DESALLIERS (interpretation): Your Honour, I do not want to
25 get involved in polemics with the witness. Could I ask you, by your

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 44

1 leave, to ask the witness merely to answer the question and not assess or
2 evaluate the nature of the question?

3 PRESIDING JUDGE FULFORD: Sir, I'm going to try and help
4 Mr. Desalliers. When you met with --

5 THE WITNESS (interpretation): (No interpretation)

6 PRESIDING JUDGE FULFORD: When you met with members of the Office
7 of the Prosecutor in Kinshasa, had they contacted you or had you
8 contacted them?

9 THE WITNESS (interpretation): I live in the District of Ituri,
10 in the Orientale Province of the Democratic Republic of Congo. I went to
11 Kinshasa. I went to Kinshasa because I was -- well, members of the
12 Office of the Prosecutor knew me. I went to Kinshasa because they were
13 already aware of my existence. So what is the purpose of the question as
14 it was asked?

15 PRESIDING JUDGE FULFORD: And I'm going to ask you one more
16 question arising out of it. How did the Prosecution become aware of your
17 existence? Did you make contact with them or did someone from the
18 Office of the Prosecutor make contact with you when you first had contact
19 with the Office of the Prosecutor?

20 THE WITNESS (interpretation): This is my answer: The Office of
21 the Prosecutor became aware of my existence in Kinshasa in January 2008.
22 The person who is examining me can ask that question. Have you walked on
23 foot from Ituri to Kinshasa? Do you know how many kilometres there are
24 between Ituri and Kinshasa?

25 He's tormenting me with his questions. My opinion is that this

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 45

1 is not a question as it should be. He should say something else.

2 PRESIDING JUDGE FULFORD: I think Mr. Desalliers you ought to try another --

.3 THE WITNESS (interpretation): My opinion is that this is not a
.4 question as it should be.

5 PRESIDING JUDGE FULFORD: - another topic Mr. Desalliers, I think.MR. .

6 DESALLIERS (interpretation): Thank you very much, indeed. I willpursue my
.7 line of examination. I shall make every effort to be clear in my approach.

8 Q. Sir, when the interview occurred in January 2008, were you told by
9 members of the Office of the Prosecutor about the reasons for which
10 they were asking you questions?

11 A. Well, you speak French. When you use the word "investigator," it connotes
12 the individual who carries out investigations. If a person goes on mission
13 to carry out an investigation, in Germany, for example, are you going to tell
14 everybody about the purpose of your investigation? That's a secret which is
15 jealously guarded. The purpose of investigations is jealously guarded. So
16 the Prosecutor could not tell me the purpose of his investigation.

17 Q. Thank you. However, is it not exact to say that you were told
18 that the interview was carried out in connection with the Confirmation of
19 Charges regarding Thomas Lubanga? Were you not told that?

20 A. No.

21 Q. Thank you. At the first interview held in the presence of members from
22 the Office of the Prosecution, do you recall that your status had changed?
23 Your status had changed because at a specific point in the interview you
24 became, in their eyes, a suspect. Do you recall that happening?

25 A. I'm here. If you think I'm a suspect, say so. Don't tell me

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 46

1 what other people have said.

2 Q. Sir, that was not the purpose of my question. I am not seeking
3 to force you to say that you're a suspect or anything. I simply
4 would like to know if whether or not you remember that during your
5 interview with members of the Office of the Prosecution that at some
6 point in time your status changed and you became a suspect. Do you
7 recall that?

8 A. What do you mean my status changed? The purpose of my giving
9 testimony here today, well, how has that changed? How would that change?
10 Whether my status has changed or not, I have come here and I have come
11 here to talk. You are making reference to what other people have said.
12 I'm here. You need to talk to me.

13 Q. Sir, do you remember that that interview was interrupted and was
14 continued the following day? Do you recall that?

15 A. That is true. I wanted my lawyer to be there so that he could
16 know who these people were. I didn't know. I wanted my lawyer to be
17 with me to determine who these people were. That's the reason why we had
18 a two-day interview. I asked them to interrupt the interview because I
19 said to them, "I don't know who you are."

20 Q. So you interrupted the interview. You broke it off; correct?

21 A. Yes. Yes, because I didn't know who these people were. People
22 to whom they were known had to confirm their identity. That way the
23 interview could continue. The second day,

24 I was rung up. I asked them to give me their telephone number.
25 I got in touch with my lawyer And I told him : " well, "they are

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 47

1 investigators..." He then said : listen, they are investigators from the
2 Office of the Prosecutor. You can certainly have an interview
3 with them," and that is what happened.

4 Q. Was it your lawyer who said that to you?

5 A. Yes.

6 PRESIDING JUDGE FULFORD: Don't forget Legal Professional Privilege.

7 THE WITNESS (interpretation): He said that they were members of the
8 Office of the Prosecutor and that I could talk to them.

9 Q. Amongst all the things that you said in the interview with
10 members of the OTP, do you recall anything regarding your older son?

11 A. No. My son works very far away from me. I'm here and he's very far away.

12 Q. Now, sir, I'm not making reference only to the period following the
13 interviews. Am I to understand that at no point in time did you discuss with
14 your son what you said to members of the Office
15 of the Prosecution; is that correct?

16 A. Well, it's because of my child that I'm in this situation. I'm a well-
17 trained soldier. I was a well-trained soldier. He is an 11-year-old child,
18 and he remembers everything that happened to him. He hasn't told me
19 everything that he's experienced which is inside of him, and I haven't said
20 everything that I have experienced, that's
21 inside of me. And in my statement, I did say that I don't get along well with
22 my son anymore because he's become very headstrong.

23 Q. I think that you've partially answered the following question I should
24 like to ask: Given that your son met with members of the Office of the
25 Prosecutor, did he talk to you about the interview with the Office

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 48

1 of the Prosecutor?

2 A. I didn't need to ask him why he met with them, and he didn't have to tell
3 me what happened. If we had actually made contact, there is the probability
4 that he would have revealed my secrets and I would have revealed his. I
5 didn't want him to reveal my secrets. I didn't want that to happen.

6 I have never asked him to render accounts as to what happened.

7 Q. So the answer is no, you never talked to him about it.

8 A. No. We only talk about problems with food. I invite him to eat
9 with me, and his work is his work.

10 MR. DESALLIERS (interpretation): Your Honour, I should like to ask
11 questions which are of a nature which might risk to reveal the identity of
12 the witness; thus, I would seek your leave to move to closed session.

13 PRESIDING JUDGE FULFORD: Approximately, how long are those questions likely
14 to last, Mr. Desalliers? I'm not tying you to a particular time, it's just
15 so I can tell the public whether or not it's worth them waiting or whether
16 we're likely to occupy the next quarter of an hour with these questions.

17 MR. DESALLIERS (interpretation): Your Honour, I think it's going to take
18 much longer than 15 minutes. This is not a
19 short part of the cross-examination.

20 PRESIDING JUDGE FULFORD: Thank you. We'll go into closed session. I
21 apologise to members of the public, but we're unlikely to return to open
22 session this afternoon. Good. Closed session, please.

23 *(Closed session) Reclassified as Open session

24 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

25 MR. DESALLIERS (interpretation): Thank you, Your Honour.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 49

1 DRC-D-01000-30001 (as interpreted), could you please call those
2 codes and place the items on the screen.

3 COURT OFFICER: I'm sorry. Could you repeat the number one more
4 time. I'm sorry.

5 MR. DESALLIERS (interpretation): DRC-D-01000-30001. Perhaps we
6 have a technical problem. Have I given you the right code? You have it?
7 Thank you very much.

8 Is -- do we see something on the screen? Should we now?

9 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

10 MR. DESALLIERS (interpretation):

11 Q. On this document, could you please indicate the section as from
12 page 003 --

13 A. Yes.

14 MR. DESALLIERS (interpretation): Could you kindly indicate the
15 bottom of the page, if that's possible.

16 Q. Sir, can you see the document clearly?

17 A. Yes, I can.

18 Q. Sir, could you please confirm that this is your signature?

19 A. Yes.

20 MR. DESALLIERS (interpretation): We've got pages indicated from
21 3 to 18. Perhaps we could scroll through the document so as to ensure
22 that the witness can see his signature on the document. Could we scroll
23 from pages 3 to 18?

24 Q. Sir, could I kindly ask that you pay attention to what is shown
25 on the screen so that you can confirm whether or not it's your signature

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 50

1 at the bottom of each page?

2 A. You can continue scrolling through the document. Please
3 continue.

4 Q. Perhaps I could interrupt here. Do you recognise this document,
5 sir?

6 A. Yes.

7 Q. Do you remember having drafted it?

8 A. Yes. That is my signature on it.

9 Q. Did you sign the document because you knew what it contained?

10 A. That is my signature. If my signature is on the document, how
11 could I say otherwise? You are going to ask me questions about the
12 content of the document. I can assure you that signature is mine.

13 Q. Thank you. Thus, you did sign the document because you were
14 aware of what it contained. Is that not correct?

15 A. Let's go back to the first page. The heading indicates
16 International Criminal Court. What does that mean? It means that the
17 person who signs this document is prepared to appear before the
18 International Criminal Court, and that is why I signed it.

19 Q. I'm perplexed. I have a doubt here. Sir, does that mean that
20 this document only -- does this mean that this document represents your
21 willingness to appear before the International Criminal Court?

22 THE INTERPRETER: There's no microphone for the speaker.

23 THE WITNESS (interpretation): Why have you kept this document?
24 If it were meaningless, you would have thrown it away. This document was
25 prepared at the beginning of the investigation and it was kept. If the

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 51

1 document had been meaningless, you would have torn it up and thrown it in
2 the rubbish bin. The document indicates the beginning of the procedure.

3 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

4 MR. SACHDEVA: Mr. President, I was just going to -- perhaps it
5 should be explained to the witness exactly what this document is. I have
6 the impression that he's not understanding exactly what the document is.
7 And before a question can be asked as to whether he has understood the
8 content, he should at least know what the document is.

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

10 I think it would be helpful, Mr. Desalliers, certainly for me to
11 know exactly what the document is. I'm not sure whether I've ever seen
12 it before. I may have done. And for us to ensure that the witness
13 understands what the document is that he's looking at, because before he
14 can confirm whether or not he'd read the contents and understood them all
15 and agreed with them all, we have got to make sure that he knows what the
16 document was.

17 MR. DESALLIERS (interpretation): Your Honour, that is the reason
18 for which I had asked the witness whether he remembered items about the
19 document. I was struck by the answer of the witness; i.e., that he
20 remembered perhaps less than he stated.

21 PRESIDING JUDGE FULFORD: Mr. Desalliers, I'm not terribly
22 interested in whether counsel is struck by things. This has just popped
23 up on the screen in front of the witness. You are aware of the document
24 you were going to ask questions about. He isn't. It needs to be
25 introduced. He needs to know what the document is that he's looking at.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 52

1 We need to know what the document is. And we need very carefully to
2 ensure that the witness understands what he is giving evidence about.
3 All right? So can we formally introduce it, please, so that he knows
4 what the document is.

5 Now, Mr. Walleyne is on his feet as well. What is it,
6 Mr. Walleyne?

7 MR. WALLEYNE (interpretation): Your Honour, perhaps the witness
8 could be given a hard copy of the document. I think that would help him
9 so that he can recognise the document. I'm somewhat reticent, your
10 Honour, that examination and cross-examination has started regarding his
11 status as a participant, which is different. With people who have a
12 double status, there are very specific circumstances that prevail. A
13 request for participation implies a relationship between counsel and
14 client.

15 PRESIDING JUDGE FULFORD: I'm - and Mr. Desalliers will tell me
16 if I'm wrong about this. I think that the questioning is focussed on the
17 accuracy or otherwise of material that is set out in the document. It's
18 nothing to do with the witness's status; it's to do with the
19 information. However, I think it's a very good idea of yours that the
20 witness should be provided with a hard copy. It's much easier for him to
21 deal with it if he's got a copy in front of him rather than having to
22 deal with it on the screen.

23 So have we got a spare copy for the witness, please? And can
24 that be handed to him? Thank you, Usher.

25 THE WITNESS: (No interpretation)

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 53

1 PRESIDING JUDGE FULFORD: Right. The witness has now got the
2 document.

3 THE WITNESS (interpretation): Your Honour. Your Honour, please.
4 Your Honour, please. May I have glasses with 1.5 dioptre so that I can
5 see, because I left my glasses at the hotel.

6 PRESIDING JUDGE FULFORD: Right. We're nearly half past 3.00.
7 We're going to break off now. And can I ask you, sir, please, to bring your
8 glasses with you tomorrow so that you can look at this and any other
9 documents that are given to you.

10 Mr. Desalliers, I think in the future with documents given to
11 witnesses, particularly if they're going to be asked whether when they
12 signed the document they knew for certain that everything inside it was
13 true. They really must be given an opportunity to look at the document so
14 that they can understand what it is you're talking about, and they can
15 remind themselves of the circumstances in which they came to sign it. So
16 the witness should have a proper opportunity tomorrow to look at this
17 before he is asked detailed questions about it.

18 Good. We'll break off now. We'll sit again at half past 9.00
19 tomorrow morning to continue with this witness's evidence. As soon as
20 the Court is clear, the Chamber will sit again for an ex parte hearing
21 with representatives of the Victims and Witness Unit.

22 Can the witness, then, please be accompanied out of court?

23 Thank you very much, sir. We'll see you tomorrow morning.

24 (The witness stands down)

25 PRESIDING JUDGE FULFORD: We'll rise.

Witness: Witness DRC-OTP-WWW-0299 (Closed Session)
Questioned by Mr. Desalliers

Page 54

1 The hearing ends at 3.30 p.m.

2 RECLASSIFICATION REPORT

3 Pursuant to Trial Chamber I's email instruction dated 4th January 2012,
4 the transcript is reclassified as public after the indicated redactions
5 have been implemented as ordered by the Chamber. All private and closed
6 sessions (*) are now available to the public with the exception of the
7 portions of the transcript that have been redacted.

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