

1 International Criminal Court
2 Trial Chamber I - Courtroom II
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and
4 Judge René Blattmann
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
6 In the case of the Prosecutor versus Thomas Lubanga Dyilo
7 Trial hearing
8 Thursday, 14 April 2011
9 The hearing starts at 9.31 a.m.
10 (Open session)
11 COURT USHER: All rise. The International Criminal Court is now
12 in session. Please be seated.
13 PRESIDING JUDGE FULFORD: Good morning. Court Officer in the
14 DRC, are we ready to proceed?
15 COURT OFFICER: (Via videolink) Yes, your Honour. We can hear you
16 loud and clear.
17 PRESIDING JUDGE FULFORD: Good. Then witness, please.
18 WITNESS: WITNESS DRC-D01-WWWW-0037(Resumed)
19 (Witness answered through interpreter)
20 (Witness testified via videolink)
21 PRESIDING JUDGE FULFORD: Good morning, sir.
22 THE WITNESS: (Interpretation) Good morning, your Honour.
23 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.
24 MR. SACHDEVA: Thank you, Mr. President. May I just ask, it's
25 still fine that I remain seated?

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1 PRESIDING JUDGE FULFORD: Of course.

2 Questioned by Mr. Sachdeva: (Continued)

3 Q. Good morning, sir.

4 A. Good morning, sir.

5 Q. In the period end of May/June 2003, it's right that there were
6 complaints and accusations by the international community, the United
7 Nations made against the UPC and FPLC for the use of children under the
8 age of 15, isn't it?

9 A. I was not informed of that at that point in time.

10 Q. Well, you were in Bunia at the time. You were the secretary to
11 Commander Bosco. You've testified that you've seen the demobilisation
12 order in June. You surely must have heard that there had been complaints
13 against the UPC/FPLC in respect of child soldiers.

14 A. Only in the letters which the president of the UPC sent to the
15 commanders.

16 Q. It's right, isn't it, that the decree in June was issued as a
17 result of these accusation and complaints?

18 A. I cannot confirm that, because we only saw the letters I talked
19 about in our office.

20 Q. Well, even in the meeting that you say took place on the 16th of
21 June, 2003, the minutes reflect that there had been complaints by
22 journalists and the international community; isn't that right?

23 A. If we could take a look at that document, maybe it will jog our
24 memory. However, the person who convened that meeting was the
25 administrator general in charge of security who talked about the major

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1 items to be discussed.

2 PRESIDING JUDGE FULFORD: Yes, Maitre Mabilille.

3 MS. MABILLE: (Interpretation) I wanted to say that the -- as the
4 witness said, the document should be given to him so that he can have it
5 before him and be able to answer the questions of the Prosecutor.

6 PRESIDING JUDGE FULFORD: Yes. I think if you want to take this
7 further, Mr. Sachdeva, we must do it by reference to the document,
8 please.

9 MR. SACHDEVA:

10 Q. Sir, you can take a look at the document contained within tab 8
11 of the Defence binder. That is DRC-D01-0003-5900.

12 MR. SACHDEVA: Mr. President, I fear I'm having the same problem
13 as Ms. Samson had earlier, namely, that the screen is not depicting the
14 witness but myself and --

15 PRESIDING JUDGE FULFORD: Thank you, Mr. Sachdeva. Yes. As a
16 matter of course, and I address this to the technicians, when counsel is
17 asking questions, they should have the same screen as the Judges; namely,
18 principally the witness with a small insert showing themselves.

19 Right. Please proceed, Mr. Sachdeva.

20 MR. SACHDEVA:

21 Q. Firstly, sir, you said just now that the administrator general in
22 charge of security convened the meeting, but I see here that he is listed
23 as a guest. Are you sure it was him that convened the meeting or was it
24 the Chief of Staff?

25 A. The meeting was, of course, convened by the Chief of Staff with

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1 the administrator general in charge of security to discuss two different
2 items or points during that meeting.

3 Q. If you turn over the page and cast your eyes halfway down the
4 page, you will see a paragraph, a sentence that starts: "We find -- we
5 find anyone at the microphone of journalists." Do you see that paragraph
6 there?

7 A. Yes, I do see it.

8 Q. This paragraph suggests that the UPC/FPLC wanted to restrict and
9 tightly control the message that was being relayed to the media; isn't
10 that right?

11 A. No. I say no, because within the army, the officer in charge of
12 communication had the responsibility of communicating with the various
13 radios and media. That was office number 5 of the political department.
14 I cannot, therefore, say that the UPC wished to restrict media access.
15 Of course everyone could not have access without prior authorisation,
16 because every structure, every entity has its hierarchy, and so rights of
17 access are reserved in every sector.

18 Q. It certainly wasn't within the responsibility of the G3 to speak
19 and liaise with the press; isn't that right?

20 A. Could you please kindly repeat the question?

21 Q. It was not within the responsibility of the G3 to liaise and
22 interact with the press, was it?

23 A. Normally that was not his responsibility.

24 Q. The fact is, sir, that this demobilisation order was never
25 intended to be implemented, and in order to keep up the pretense, the

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1 FPLC restricted the G5 and the G3 to spin the message to the press so
2 that the UPC could not be blamed for recruiting child soldiers. What do
3 you say to that?

4 A. Here everyone could not take up the responsibility of speaking to
5 the media. That is the first thing. Because even within the FPLC we had
6 different entities in charge of communication as I said yesterday. There
7 is the G5 which is the political department. There was also the
8 communication department which had a transmission officer. They had an
9 officer in charge of transport. So the various entities each had a role
10 to play. We cannot, therefore, say that the UPC was trying to restrict
11 the dissemination of its message and do this through its forces. There
12 were certain officers to whom these responsibilities were entrusted.

13 Here mention is made of the G3. This is because the G3 was asked
14 to assist the G5 in his responsibilities within the FPLC.

15 PRESIDING JUDGE FULFORD: Maitre Mabilie.

16 MS. MABILLE: (Interpretation) The last question put by my learned
17 colleague rather seemed like an argument, not a question, and I find that
18 such a question would be difficult for the witness, especially when the
19 Prosecutor is putting arguments to him instead of asking him questions.

20 PRESIDING JUDGE FULFORD: It was certainly a question that
21 contained a number of different elements, Maitre Mabilie, but in all the
22 circumstances, I think the witness did well in answering it.

23 Yes, Mr. Sachdeva. Where are we going now?

24 MR. SACHDEVA:

25 Q. Sir, yesterday when I asked you the -- the date or the period

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1 that you were proposed to be the G1 -- head of the G1, you said at -- you
2 said, and I quote:

3 "However, there is one event I retain, I can use to situate
4 myself, and this was the defection of Commander Kisémbó who was the
5 General Chief of Staff. When he defected, I was proposed as G1." And
6 for the benefit of my learned friend, that's T-349, page 23.

7 Now, Commander Kisémbó defected in December 2003, didn't he?

8 A. Well, to get a precise recollection of that period, I would like
9 to refer to the time that Bunia was taken over again. Before that war,
10 the G1 did not return to the UPC movement or the FPLC when we returned to
11 Bunia. After that, the ARTEMIS force arrived, and we had to leave Bunia
12 town to go to Centrale, and that position was vacant.

13 The defection I talk about here was the defection of the G1 and
14 others, I believe the G3 as well, who did not return. After that, we
15 were proposed. If I said that it was because I had a poor recollection
16 of the various dates, but this happened after Bunia was recaptured or
17 taken again, after we had withdrawn from the town of Bunia.

18 Q. Sir, my question is simply this: General Kisémbó defected from
19 the UPC in December 2003, didn't he?

20 A. I do not remember the exact month of his defection, but it was
21 indeed in 2003, and it was after we had left the town and gone far away
22 from the town of Bunia. It was after that that he defected.

23 Q. I suggest that in June 2003, or July, or August, you were not --
24 you had not been proposed as the head of G1. In fact, you were proposed
25 as the head of G1 on the 6th of December, 2003. What do you say to that?

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1 A. Since I do not remember the precise date, I can tell you that I
2 carried out those responsibilities because there was no G1. I was
3 already carrying out those responsibilities, even if I was only appointed
4 on the date you mentioned.

5 Q. I'd like to show you a document if I may. It's contained within
6 tab 30 of the Prosecution binder. It is DRC-00016-131, and it has an EVD
7 number, 499.

8 MR. SACHDEVA: Mr. President, it's the last document, but it's in
9 a separate binder.

10 COURT OFFICER: (Via videolink) May I kindly ask counsel to repeat
11 the number, please.

12 MR. SACHDEVA: Certainly. DRC-00016-131. EVD-OTP-499.

13 PRESIDING JUDGE FULFORD: Sorry, Mr. Sachdeva, which binder?
14 We've got your -- we've got that, we've got the Defence binder, and we've
15 got something which has the number 1 on it in a green binder.

16 MR. SACHDEVA: Mr. President, I believe the Court Officer has it.
17 It should have the tab 30 on it, but it's a document by itself, a
18 separate document.

19 PRESIDING JUDGE FULFORD: Well, I don't have anything with "30"
20 on it.

21 COURT OFFICER: (Via videolink) We have it, your Honour.

22 PRESIDING JUDGE FULFORD: Right. We have it now, Mr. Sachdeva.
23 Please carry on.

24 MR. SACHDEVA:

25 Q. Sir, have you looked at this document?

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1 THE INTERPRETER: Your Honour, could the interpreters be given a
2 copy, please.

3 PRESIDING JUDGE FULFORD: Copy for the interpreters, please.

4 THE WITNESS: (Interpretation) Yes, I have seen the document.

5 MR. SACHDEVA:

6 Q. And it's dated the 6th of December, 2003. You will agree with
7 that?

8 A. Yes. That is the date on the document.

9 Q. And this document states that you have been proposed as the chief
10 of G1 and that Mr. Bosco Ntaganda is being proposed as the Chief of
11 Staff; isn't that right?

12 A. This is indeed a proposal made by the commander. These are
13 proposals made by this commander to the hierarchy which was in control at
14 that time.

15 Q. Sir, when you signed the minutes on the 16th of June, 2003, as
16 the head of G1, you, in fact, were not the head of G1, and you had not
17 even been proposed as the head of G1; isn't that right?

18 A. I had not been proposed officially, but these were
19 responsibilities that I was already carrying out from the month of June
20 when we left Bunia because that position was vacant. I was carrying out
21 that responsibility, although I had not yet been proposed for it.

22 Q. So is it your evidence that within the FPLC members could sign
23 documents conveying a certain position when, in fact, they officially
24 were not -- had not been given that position; is that right?

25 A. Well, you have to remember that crucial period we're talking

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1 about. Commander Kisémbó had defected. He left with some troops, and
2 those who were left behind had to take over. That is why these roles
3 were played directly, because the idea was not to leave the army in
4 disorder, without a leader. And this was also to avoid disorder that
5 could arise.

6 Q. For an army to avoid disorder, the first thing it would do would
7 be to ensure that its documents would contain information that is
8 accurate and reliable. Wouldn't you agree?

9 A. If you could explain a bit better what you mean.

10 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I mean, I think you've
11 made the point, haven't you, that there is on the face of it an apparent
12 contradiction which the witness has provided an explanation for.
13 You've -- you've put the contradiction to him, and he has given his
14 answer to it.

15 Now, it's a very general question that you've just put, which has
16 been met with the answer the witness has given. Now, if you want to
17 explore any particular avenue, please do so, but I don't think that kind
18 of generality is likely to provide us with a lot of assistance.

19 (Prosecution counsel confer)

20 MR. SACHDEVA:

21 Q. Sir, is it thus the case that with documents that emanated from
22 the FPLC -- or, rather, I suggest to you that it is the case that with
23 military documents coming from the FPLC, there are inaccuracies and
24 information that is unreliable, just as with the one that you signed on
25 the 16th of June, 2003. What do you say?

1 A. This document -- or these documents -- sorry, this document, you
2 claim, is not reliable, but we would assert that this document is
3 something -- is one we know. We wrote it ourselves when we took part in
4 a meeting, we ourselves in person, and we don't believe we can give you a
5 wrong confirmation, a false confirmation.

6 MR. SACHDEVA: That's the cross-examination, Mr. President.

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

8 Anything, Maitre Mabilille?

9 MS. MABILLE: (Interpretation) Just a moment, please, your Honour.

10 PRESIDING JUDGE FULFORD: Of course.

11 (Defence counsel confer)

12 MS. MABILLE: (Interpretation) No more questions, your Honour.

13 PRESIDING JUDGE FULFORD: Sir, that now concludes your evidence.

14 I want to express the thanks of the Judges of this Chamber for the
15 contribution that you have provided to this trial. It is absolutely
16 critical for us to be able to determine the overall truth in this case
17 that witnesses from both sides are prepared to testify so as to enable us
18 to gain a complete picture of all of the relevant events and issues. We
19 are acutely aware that this will, at the very least, have been
20 inconvenient for you, and it may have involved a real element of danger,
21 so you now finish your evidence with our thanks for your assistance to
22 us.

23 THE WITNESS: (Interpretation) Thank you.

24 PRESIDING JUDGE FULFORD: Court Officer - this is Court Officer
25 in the DRC - I understand that the position is that the next witness is

1 going to be unable to commence his evidence until 1.30 our time. In
2 fact, that will be 2.00 our time, and so if you please could make
3 arrangements for Witness 0036 to be ready to commence testifying at
4 2.00 p.m. Thank you very much.

5 We can now terminate the video connection with the DRC.

6 (Witness's evidence via videolink concluded)

7 PRESIDING JUDGE FULFORD: Mr. Sachdeva, not necessarily to
8 litigate the matter now, but just to put down a marker, it's been
9 indicated to us that the Prosecution have in mind at least the
10 possibility of using some screening notes dated the 22nd of September,
11 2010, when questioning the next witness. I want to draw your attention
12 to the following consideration: There's clearly no difficulty -- ah, all
13 right. I think there's a reason for intervening. Yes, Mr. Sachdeva.

14 MR. SACHDEVA: I apologise, Mr. President, but the Prosecution
15 does not intend to use the notes.

16 PRESIDING JUDGE FULFORD: All right. Good. That saves me from
17 giving a lecture on exactly what documents should be used in
18 cross-examination. Thank you very much.

19 Private session, please.

20 (* Open session at 10.08 a.m.)

21 COURT OFFICER: We are in private session. *Reclassified as Open session

22 PRESIDING JUDGE FULFORD: This is the Chamber's oral ruling on
23 Article 70 proceedings.

24 The submissions.

25 1. An issue has arisen in this case concerning the security of

1 various Defence witnesses, and although the suggested problem has a
2 number of different facets, the particular elements relevant to this
3 decision are, first, the claim by several Defence witnesses that victim
4 a/0270/07 has been the source of threats to them and, second, that the
5 identities of one or more witnesses have been stolen by victims
6 participating in this trial. The merits and the detail of those
7 allegations are not under consideration in this decision (Maitre Mabilie
8 having made it clear that she does not seek to call further
9 evidence: T-339-CONF-EXP, page 10, lines 16 - 19 and page 11, line 24 to
10 page 12, line 6); instead, we have been asked to determine the procedure
11 that should be followed in order to ensure a satisfactory investigation
12 into and resolution of, the matters that have been raised, namely whether
13 the Prosecutor alone is entitled to initiate and conduct Article 70
14 investigations into alleged offences against the administration of
15 justice. Additionally (to the extent to which it is relevant to this
16 issue), the Chamber, by e-mail on the 29 March 2011, asked the parties
17 and participants to address the relationship between Article 70 of the
18 Statute and Rule 165 of the Rules of Procedure and Evidence. As part of
19 the relevant history, it is also to be observed that the Registry in its
20 Report of 26 November 2010, document 2645, asked (at paragraph 69) for
21 guidance from the Chamber as to how any possible offences against the
22 administration of justice on the part of victim a/0270/07 should be
23 conducted, and it suggested that an entity other than the VWU should bear
24 this responsibility.

25 2. Although it is unnecessary to reverse in the present Decision

1 the background facts which caused the Chamber to consider this issue,
2 they are set out, at least in part, in the Registry's two *ex parte*
3 Reports of 29 November 2010 (documents 2645 and 2648).

4 3. The Prosecutor submits that, unless the Court requests a
5 State Party to prosecute these offences, his Office alone is endowed with
6 investigative powers under the Statute, and in his written submissions
7 (document 2716, 1 April 2011) he relies on the overall scheme of the
8 Statute in this regard: it is argued that Part V of the Statute contains
9 provisions that are consistently directed at his exclusive responsibility
10 for and authority over any crimes under the jurisdiction of the Court
11 (document 2716, paragraph 2 and see Articles 53 - 55 of the Statute).
12 Additionally, the Chamber is reminded of the different statutory
13 responsibilities of the Prosecutor and the Registrar, as well as the
14 particular resources and expertise that are found within the Office of
15 the Prosecutor as a result of its particular functions (document 2716,
16 paragraphs 3 - 5).

17 4. The Prosecution argues that Article 70, together with Rules
18 162 - 169 of the Rules of Procedure and Evidence, comprehensively define
19 and regulate the six offences against the administration of justice, and
20 it is submitted that the overall scheme of the Rome Statute framework
21 makes it clear that those offences are to be investigated and prosecuted
22 by the Office of the Prosecutor alone, and that in this regard they are
23 to be treated in the same way as the offences in Articles 6 - 8 of the
24 Statute. The sole exception, as already mentioned, is expressly set out
25 in Article 70(4)(b) and Rule 162(4), which together, it is submitted,

1 enable the Court to request a State Party to prosecute these offences, if
2 the latter has (independent) jurisdiction (document 2716, paragraphs 6
3 and 7).

4 5. The Prosecution relies on certain jurisprudence from Trial
5 Chamber II to the effect that the Prosecutor has sole power to begin an
6 investigation into Article 70 offences (save when the Court invites a
7 national authority to undertake this role): see Trial Chamber II's Oral
8 Decision of 22 September 2010, transcript T-190, pages 1 - 5 and document
9 2731, paragraph 18.

10 6. The Chamber is reminded that it determined that
11 responsibility lay with the Prosecution for taking a statement from
12 position witness 15 when he indicated he had provided false information
13 (document 2716, paragraph 10).

14 7. Should a conflict of interest arise because of the
15 Prosecution's involvement in the issue, the Prosecutor accepts that the
16 investigation should be delegated either to an uninvolved member of staff
17 or to wholly independent counsel, depending on the circumstances. It is
18 suggested that it would never be appropriate for the Registry or an
19 *amicus curiae* to take over this prosecutorial function, even if the
20 Prosecutor declines to investigate or prosecute an alleged Article 70
21 offence (document 2716, paragraphs 11 and 13).

22 8. Broadly, the Legal Representatives of Victims, in a joint
23 submission (2714), agree with the Prosecution that the power to
24 investigate and prosecute these offences is statutorily based rather than
25 found on an "inherent power" (as is the position at the *ad hoc*

1 tribunals). Accordingly, it is submitted that the Chamber is
2 circumscribed by the requirements of Article 70 and Rules 162 - 169.
3 Furthermore, it is argued that save as expressly or necessarily exempted
4 (e.g. by Rules 163 and 165, the exceptions relating to Part II of the
5 Statute and the rules that govern challenges to admissibility and
6 jurisdiction) it is clear that the Rome Statute and the Rules of
7 Procedure and Evidence - including the general principles of criminal law
8 in Part III of the Statute - are applicable when Article 70 offences are
9 investigated and prosecuted, and when offenders having been convicted are
10 sentenced.

11 9. The Legal Representatives submit that although the Court's
12 exercise of jurisdiction pursuant to Article 70 is discretionary, the
13 availability and effectiveness of a prosecution by the relevant State
14 Party needs to be taken into consideration. The Legal Representatives
15 appear to suggest that these alleged offences should be dealt with,
16 certainly in the first instance, by the relevant State Party (document
17 2714, paragraph 13).

18 10. The Legal Representatives indicate that contrary to the
19 regime established by the two *ad hoc* tribunals, the statutory provisions
20 of this Court do not provide for Article 70 proceedings to be undertaken
21 by the Chamber itself and they note that instead the Chamber, or any
22 "reliable source", can communicate to the Prosecutor information relating
23 to Article 70 offences (document 2714, paragraph 17).

24 11. The Defence (document 2715) accepts that by virtue of Rules
25 163 and 165, in principle it is for the Office of the Prosecutor to carry

1 out the investigations under Article 70. However, it is argued that the
2 Chamber is entitled to order an alternative approach in order to ensure a
3 fair trial and to determine the truth. In support of this proposition,
4 the Defence relies heavily on the approach in this area at the ICTY and
5 the ICTR. Given the context in which these allegations have been made,
6 the Defence suggests that it would be inappropriate for the Office of the
7 Prosecutor to be entrusted with these investigations. In all the
8 circumstances, it is submitted that the Prosecutor is in a position of
9 conflict of interest and it is said that he lacks the necessary
10 impartiality, and the Defence invites the Chamber to appoint an
11 independent investigator.

12 Analysis and conclusions.

13 12. Article 70(1)(c) gives the Court jurisdiction over the
14 offence of "[...] corruptly influencing a witness, obstructing or
15 interfering with the attendance or testimony of a witness, retaliating
16 against a witness for giving testimony [...]". The powers of
17 investigation under the Rome Statute are enshrined in Article 15, and
18 they are given to the Prosecutor alone. Furthermore, the rules of
19 procedure and evidence have created an apparently definitive scheme for
20 the operation of Article 70: as previously determined by
21 Trial Chamber II, in its oral decision of 22 September 2010 (T-190, page
22 2, lines 14 - 22) and in paragraph 18 of its later decision of 24
23 February 2011 (document 2731), by Rule 165 it is for the Prosecutor to
24 initiate and conduct investigations into Article 70 offences, on his own
25 initiative, or following information from a Chamber or any reliable

1 source. Before jurisdiction under the Article is exercised, the Court
2 has the option, pursuant to Rule 162(1), to consult with any State Party
3 who may have jurisdiction over the alleged offence or offences. It
4 follows that following a Rule 165 investigation by the Prosecutor and
5 before jurisdiction is exercised, the Pre-Trial Chamber would need to be
6 asked whether or not it wishes to consult with any relevant State Party.

7 13. The Registrar is not given any authority to investigate
8 alleged offences in this or any other context and the role of the
9 Pre-Trial and Trial Chambers as regards Article 70 offences, is
10 essentially limited to the opportunity to communicate relevant
11 information to the Prosecutor for his consideration. Given the extent to
12 which this scheme has been regulated in the Rome Statute framework, it is
13 clear that the Judges have not been given power to remove responsibility
14 from the Prosecution by appointing an independent investigator. Clearly,
15 if a team prosecuting a case were to find itself placed in a position of
16 conflict when investigating or prosecuting alleged Article 70 offences,
17 it would then be necessary to refer the issue either to members of the
18 OTP who were uninvolved with the proceedings or, in an extreme situation,
19 to an independent investigator.

20 14. Given the Defense has indicated that it does not seek to
21 introduce any (additional) evidence on this issue in this trial, it would
22 be inappropriate for the Defence to continue "investigating" these
23 matters solely for the purposes of an Article 70 prosecution. Rather,
24 they should provide the Prosecutor with any relevant material so that he
25 can make a decision under Rule 165(1), namely whether or not to initiate

1 and conduct his own investigations. Possible continued intervention by
2 the Defence may constitute interference with the collection of evidence
3 for any future prosecution. However, it is important to stress that this
4 direction should not deter the Defence from establishing a comprehensive
5 understanding of the security situation of its witnesses, so that
6 appropriate steps can be taken, particularly when, as here, there have
7 been suggested causes for concern. In this regard, the VWU needs to
8 cooperate with the Defence to ensure that any necessary protective
9 measures are in place to meet material threats to the witnesses. The
10 Defence has provided the VWU with information concerning certain of its
11 witnesses - most particularly in its Response of 20 December 2010,
12 document 2661 - and the Chamber stresses the need for the VWU to ensure
13 that the anxieties thereby expressed about the security of identified
14 Defence witnesses have been properly addressed.

15 15. Clearly, if the Defence was still investigating evidence for
16 use in this trial, different considerations would apply and it would be
17 irrelevant if, coincidentally, those investigations involved researching
18 evidence that may be relevant to an Article 70 prosecution. However,
19 that is not the position and the Prosecutor alone should take any steps
20 that are necessary in the context of Article 70 proceedings.

21 That concludes our decision on that issue. * Private session

22 Now, we're going to sit again at 2.00 to continue with the
23 evidence. Are there any other matters that anybody wishes to raise?
24 You're on your feet Mr. Sachdeva.

25 MR. SACHDEVA: Thank you, Mr. President. The Prosecution wishes

1 to make an application for the admission of evidence, and we can make
2 that application now or whenever it's convenient for your Honours.

3 PRESIDING JUDGE FULFORD: Well, Mr. Sachdeva, this is an issue
4 that has been alluded to over the last weeks or months, and we have
5 indicated, perhaps slightly elliptically but in a way that I'm sure you
6 fully understood, that we were waiting to hear whether any application
7 was going to be made. We have, over the last two or three weeks, with
8 the assistance of counsel on both sides and the participating victims,
9 been establishing the agenda for the closing stages of the trial. We
10 even sent the Prosecutor a draft agenda, along with the Defence and the
11 Legal Representatives of Victims, so that you could have an opportunity
12 then to raise with us any aspect of that agenda which did not accord with
13 what you saw as being the course that this Chamber should take in the
14 concluding stages of this trial.

15 Now, we would have expected for any suggestion of additional
16 evidence to be raised at that point in time, and I certainly speak for my
17 service, and I may well speak for my colleagues, when I indicate now that
18 it is possibly very surprising that you rise now for the first time to
19 indicate that there's to be an application for additional evidence.

20 Now, you're going to have to address two things. You're going to
21 have to address precisely what this evidence is; and secondly, why at the
22 59th second, et cetera, et cetera, you are making this application.

23 MR. SACHDEVA: Mr. President, I can certainly do so. The
24 application is for the admission of a transcript of an audio-conducted
25 interview with Court Witness 0005 that was conducted on Monday this week.

1 Your Honours --

2 PRESIDING JUDGE FULFORD: Have we seen that document?

3 MR. SACHDEVA: I do have copies, albeit in draft form, for the
4 Chamber to peruse prepared for this submission, and with your leave I
5 could hand them to your Honours. The Defence are aware that these have
6 been prepared for the purposes of this submission.

7 PRESIDING JUDGE FULFORD: How many pages is it?

8 MR. SACHDEVA: It's four pages, Mr. President.

9 PRESIDING JUDGE FULFORD: Right. Can those be distributed now.
10 We are going to take a half an hour break. We will have a look at this
11 transcript over the break. Is it in English or in French?

12 MR. SACHDEVA: It's in English.

13 PRESIDING JUDGE FULFORD: Right.

14 MR. SACHDEVA: May I just --

15 PRESIDING JUDGE FULFORD: (* Overlapping speakers)... a look at
16 it over the break, and then you can make your application once we've had
17 an opportunity of considering its contents.

18 MR. SACHDEVA: Thank you. I just wanted to stress that this is
19 an OTP confidential draft transcription. It is not an official
20 transcription.

21 PRESIDING JUDGE FULFORD: Helpful indication, thank you. Can we
22 have those copies now, please.

23 Well, we'll meet in 25 minutes' time, at 11.00. Thank you all
24 very much.

25 COURT USHER: All rise.

1 Recess taken at 10.34 a.m.

2 On resuming at 11.01 a.m.

3 (Open session)

4 COURT USHER: All rise. Please be seated.

5 PRESIDING JUDGE FULFORD: Two immediate questions, Mr. Sachdeva.

6 The first is that: We note from the top of this piece of paper that
7 there was an interview of this individual on the 11th of April, so Monday
8 of this week in Courtroom II with many of those present in court today
9 present then. Has there been a parallel trial going on in this case of
10 which we've been unaware, with evidence being given? I'm joking mildly,
11 this is all. It would be interesting to know what exactly the purpose
12 was of that interview, how it came to be conducted on Monday.

13 The second question is: It's not immediately clear to us as to
14 whether or not this individual was here or in the DRC, and if he was in
15 the DRC, indeed if he's here, is he still available?

16 MR. SACHDEVA: Mr. President, may I answer the second first? The
17 interview was conducted here in The Hague, and the witness was here in
18 The Hague. At this stage, I do not know for certain whether the
19 witness -- he's clearly not available here, but whether by videolink, I'm
20 not certain about that.

21 PRESIDING JUDGE FULFORD: Well, why? If he was here -- I mean,
22 we know nothing of the reasons why he was here. One, I hope reasonable
23 assumption, is that he was here because he might be called to give
24 evidence, and indeed he was interviewed in relation to issues that are
25 potentially of considerable importance in relation to this trial. So how

1 come we have him here and available on Monday but not here and available
2 on Thursday? *Prima facie*, that seems rather surprising Mr. Sachdeva.

3 MR. SACHDEVA: Mr. President, for our preparation into the
4 Defence case, we had sought leave of the Court to interview and speak to
5 various witnesses that had been deemed court witnesses pursuant to your
6 Honours' decision 1986. Because these witnesses were under the
7 administrative control of the Registry, it required the Defence also to
8 be present, and your Honours permitted the Prosecution to interview this
9 witness with the Defence present on issues that -- on issues that related
10 to the Prosecution's preparation for cross-examination. In our
11 submission, that did not foreclose the possibility that any evidence or
12 any information elicited would become relevant in this case.

13 The interview was conducted on Monday. The Defence were present.
14 The Prosecution sought to elicit information regarding self-defence forces.

15 ** Private session – Reclassified as open session.

16 Additionally, Defence Witness 0019 had testified not so long
17 before that this witness, Court Witness 0005 that he was his supervisor
18 and that he was also (Redacted) of the executive wherein there had been
19 meetings where the issue of demobilisation had been discussed. *Open session
20 This is the evidence of, and of course I'm paraphrasing, but this is the evidence
21 of Defence Witness 0019. Consequently, the interview Court Witness 0005
22 potentially took on a further importance. The Prosecution had, of course,
23 interviewed this witness some time ago. He had provided a very thorough
24 and detailed statement, and in that statement he had specified, albeit in a more
25 general manner, that he had not been privy to information regarding

1 demobilisation. Given this -- given Court Witness 0005's role in the
2 executive committee, the Prosecution felt it necessary to ask the witness
3 who would have been in the prime position to know whether indeed these
4 discussions on demobilisation occurred during the time that he was the
5 coordinator of that meeting.

6 PRESIDING JUDGE FULFORD: Mr. Sachdeva, we don't doubt any of
7 that. What -- what I'm grappling with at the moment is you had a
8 witness -- a potential witness, in The Hague, certainly somebody who
9 could provide you with information for the purposes of the preparation of
10 your case, on Monday. Reading the content of these four pages, one can
11 readily see that from your point of view the issues that he raises are of
12 considerable importance as regards the matters that have been canvassed
13 by the witnesses called by the Defence in this part of the presentation
14 of the Defence case.

15 What I don't understand is given that position and your
16 application today to introduce this material, why this individual has
17 been allowed to go.

18 MR. SACHDEVA: Mr. President --

19 PRESIDING JUDGE FULFORD: Why isn't he still here?

20 MR. SACHDEVA: Mr. President, in our submission, the application
21 is being made pursuant to Rule 68. Rule 68 of the Rules of Procedure and
22 Evidence permit the introduction of documents or transcriptions of
23 interviews.

24 PRESIDING JUDGE FULFORD: Come, Mr. Sachdeva. We really -- feet
25 on the ground, please.

1 This material in -- over these four pages is potentially of high
2 relevance to the issues raised by the Defence witnesses. It tends, if
3 true, to undercut some of the evidence which we've heard. It's highly
4 likely that Maitre Mabille might wish to ask one or two questions about
5 this material that goes so directly to the matters that are being
6 canvassed in this court over the last few days and weeks.

7 Now, there may be an opportunity, of course there is, for the
8 discretion of the Chamber introducing documents, but on something like
9 this, it might be said that the preferred course in terms of determining
10 the truth is for the individual to give evidence live so that both sides
11 can ask him questions.

12 MR. SACHDEVA: Mr. President, of course that would be the
13 preferred course of action. However, and with respect, Rule 68 does
14 foresee the possibility of the Defence and Prosecution asking questions
15 of a witness even if the witness is not testifying in the court, and in
16 our submission, the Defence were present. They did indeed have the
17 opportunity to ask questions. The fact that the Defence could not ask
18 questions was never -- it was never our position that the Defence could
19 not ask questions of the witness during that interview.

20 PRESIDING JUDGE FULFORD: Now, why isn't he still here? If you
21 brought him all this way to assist you, is it - and think carefully about
22 this - is it your submission that you had never had it as a possibility
23 in your mind that you would apply to call him by way of rebuttal
24 evidence? Is it the position that you're saying that you had only
25 brought him all the way to The Hague so that you could interview him for

1 the purposes of gaining information from him so as to help you prepare
2 your, as it were, general response to the Defence case, and where is he
3 now?

4 MR. SACHDEVA: Mr. President, speaking -- well, the application
5 to speak to this witness, at the time the application was made was for
6 the purpose of preparation for cross-examination. Now, it is right that
7 once the Defence case -- the second phase of the Defence case commenced
8 and the evidence of Defence Witness 0019 unfolded, the Prosecution of
9 course had considered the potential possibility of this witness becoming
10 a rebuttal witness. That's the answer to the first question.

11 The --

12 PRESIDING JUDGE FULFORD: No. No, it's not. You considered the
13 possibility of calling him. Right. We now find ourselves in the
14 position of rather than calling him, you're seeking to introduce four
15 pages of paper.

16 Why haven't you kept him here to see whether or not the reaction
17 of the Chamber was that rather than introduce a few questions and
18 answers, the witness should instead testify so that there's an
19 opportunity for his account to be tested by counsel on both sides? By
20 sending him back, Mr. Sachdeva, you may have precluded that opportunity.
21 Now, why was that decision taken?

22 MR. SACHDEVA: May I have one moment.

23 (Prosecution counsel confer)

24 MR. SACHDEVA: Mr. President, the witness's movements and his
25 return to the place where he resides was under the responsibility of the

1 Registry, and we were made to understand that the witness had to return
2 the day after the interview, but, of course, we -- it is right that we
3 had not specified with the Registry for the witness to remain here. We
4 had not -- we were digesting the information the witness was providing,
5 and we had not determined whether, firstly, we would even seek to tender
6 this transcript, and secondly, to call him as a rebuttal witness. Much
7 depended on the outcome of the evidence of the remaining Defence
8 witnesses, but it is upon further reflection that we have decided to make
9 this application pursuant to Rule 68 and indeed pursuant to
10 Article 69(3).

11 PRESIDING JUDGE FULFORD: Now, as to the content, Mr. Sachdeva, I
12 think you probably need say little about it. I'm not going to stop you,
13 but I think the content is in itself self-explanatory. It includes a
14 number of issues that have been dealt with over the last little while,
15 and some of them may be of importance.

16 Right. Is there anything else you want to say to us on this?

17 (Prosecution counsel confer)

18 MR. SACHDEVA: Yes, Mr. President. I -- there is no indication
19 that the witness would not be willing to return, and, in fact, we had
20 initially wanted to conduct the interview via videolink, but our
21 understanding was that he preferred to come to The Hague. So if your
22 Honours would deem it necessary for the witness to -- to come here, I
23 can't see any obstacle to that, at least from the witness's point of
24 view, as far as I understand.

25 PRESIDING JUDGE FULFORD: Thank you.

1 Well, Maitre Mabilie, relevance probably isn't in doubt, but what
2 else would you wish to say to us about this?

3 Mr. Biju-Duval.

4 MR. BIJU-DUVAL: (Interpretation) Thank you very much,
5 your Honour. Firstly, a clarification, a factual clarification, and here
6 I'm speaking under the control of my colleague.

7 Thursday, 7th of April at 10.31, the Registry, in the person of
8 Mr. Dahirou asked the Office of the Prosecutor if the Office of the
9 Prosecutor intended to call as a witness Witness 0005. That is to say
10 that the Registry at that time was finding out the need to keep the
11 witness at the disposal of the Court. This is by way of indication that
12 the question was clearly put by the Registry itself to the Office of the
13 Prosecutor on the 7th of April. This is a clarification.

14 Now, with regards to the issue as a whole, I think that just in
15 terms of law the solution's very simple. The Chamber's already had the
16 opportunity on several occasions to indicate that it would not admit as
17 evidence statements which were taken within the framework of the
18 investigation of the Office of the Prosecutor which had not been taken
19 under oath and where the person interviewed was not heard by the Chamber.
20 On this issue there are several decisions which are very clear and which
21 are to be applied. The only difference, the only difference, is that on
22 Monday, during the interview, the Defence was present. That is the only
23 difference.

24 Now, does the fact that the Defence were present at this
25 interview, does that mean that it creates a possibility opened by Rule

1 78 -- 68? Obviously not. And why not? Firstly, because at no time did
2 the Office of the Prosecutor indicate to the Defence and to the Chamber
3 that it intended to use this interview as evidence, nor that it intended
4 to call the witness himself in order to testify, and in this regard the
5 Chamber will note that in its decision, it's guide-lines concerning this
6 witness and its holding, it authorise the presence of the Defence but in
7 no way the possibility for the Defence to ask questions. Furthermore,
8 the Defence didn't ask questions during this interview, for obvious
9 reasons.

10 The Defence would have been able to ask questions if it had been
11 informed that we were within the framework of 68, taking of statements,
12 as we have done for other witnesses, 0582 and 0583, but we're not within
13 the framework of such a situation.

14 Now, it is just a matter here of gathering information in order
15 to prepare the cross-examination of the Defence witness.

16 With regards to the legal aspects, I think it's -- it's closed.
17 It's obvious. It would be obviously unfair. And that's what I have to
18 say, your Honour.

19 PRESIDING JUDGE FULFORD: Now, that's not entirely the end of the
20 question, Mr. Biju-Duval. Without in any way at this stage indicating
21 any final conclusion on an application to admit these four pages, given
22 the potential importance of the content in terms of enabling this Chamber
23 to arrive at the truth as regards those matters that are dealt with, what
24 would your submission be if this witness could be secured in the very
25 near future to give evidence either from the Hague or via a videolink

1 from the DRC?

2 MR. BIJU-DUVAL: (Interpretation) If you would allow me to speak
3 to my team, your Honour.

4 PRESIDING JUDGE FULFORD: You most certainly can, Mr. Biju-Duval.
5 (Defence counsel confer)

6 (Trial Chamber confers)

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

8 MR. BIJU-DUVAL: (Interpretation) Thank you very much,
9 your Honour.

10 So with regards to the issue of the administration of the
11 interview, leaving that aside for a moment, I'd just like to go to the
12 issue of whether the Prosecutor has grounds to ask for this witness to
13 come and testify by way of reply.

14 Now, the two subjects that the Office of the Prosecutor wishes to
15 address with Witness 0005, which appear in the four pages of the
16 interview are, firstly, the issue of the self-defence forces; secondly,
17 the issue of the demobilisation policy or the decisions with regards to
18 demobilisation of children, of minors, who had been taken by the UPC
19 executive. These are the two subjects.

20 Yes or no, did -- does the Prosecutor today have grounds in --

21 PRESIDING JUDGE FULFORD: Forgive me, Mr. Biju-Duval. It's a
22 very, very bad habit of mine.

23 Isn't there at least one additional element to this? And

24 Witness 0005 has set out that he was the equivalent of the Prime Minister
25 of the UPC, and he talks about the extent to which the self-defence

1 groups were separate from or incorporated into the UPC, and if that
2 happened, the date at which it happened.

3 Now, if young people under the age of 15 were in those
4 self-defence groups which were incorporated into the UPC, isn't that
5 potentially an issue of relevance for us to consider in this trial?

6 MR. BIJU-DUVAL: (Interpretation) Yes, your Honour. It is a
7 relevant issue, a relevant question. The Defence doesn't contest the
8 relevance of the subject, none of the subjects which would be potentially
9 addressed by this witness. The question isn't a question of relevance.
10 That is not being challenged here. However, we consider that all of
11 these relevant subjects are not a surprise. They're not a new element
12 for the Office of the Prosecutor. They have been addressed right from
13 the interviews of the Prosecution witness, and they are part of the
14 subjects that are mentioned by the opening statement of the Defence, but
15 above all they were addressed during the interview -- examination of
16 Prosecution witnesses.

17 The Chamber will understand that in the previous minutes we
18 haven't had the time find all the different passages or moments when
19 these issues have come up, but just by way of example, and here are two
20 of them: There was the issue of self-defence forces. This was taken up
21 by Witness 0017, and it was addressed also by Witness 0015. And with
22 regards to the issue of demobilisation, this is a subject that came up,
23 and the Office of the Prosecutor has been talking about that right from
24 the very beginning. We consider today that this request -- or
25 application which would have Witness 0005 testify by way of rebuttal

1 has -- is not rebutting new subjects or going into that but is to add to
2 evidence which it has already presented or presented initially, and we do
3 not find that correct.

4 PRESIDING JUDGE FULFORD: Again without any -- in any sense
5 giving any indication on anything, it may be important for us to look at
6 the extent to which the Prosecutor is, in this material, addressing
7 something at that has really only arisen during the course of the
8 testimony of the last few witnesses as against seeking now to introduce
9 evidence on a subject that was already a live one in the trial.

10 Given that you have only recently been provided with notice of
11 this application, Mr. Biju-Duval, I think this needs to be researched
12 properly. If we were to give you until midday tomorrow to research what
13 you now submit are the instances where this has been revealed as a live
14 issue in the case, would that be sufficient?

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

16 PRESIDING JUDGE FULFORD: Right. Mr. Biju-Duval, I have
17 hideously interrupted you. Bearing in mind your focus now on whether or
18 not this is a new issue and our encouragement to you to assist us by way
19 of written but e-mail submissions, is there anything else that you would
20 like to say to us orally? And I repeat, I don't want to cut you off
21 artificially.

22 MR. BIJU-DUVAL (interpretation): One moment, your Honour.

23 (Defence counsel confer)

24 MR. BIJU-DUVAL (interpretation): Your Honour, since the Chamber
25 has given us time to reflect about this, we think it would be appropriate

1 for us to stop here at this juncture for now.

2 PRESIDING JUDGE FULFORD: Thank you.

3 Right. You can have the same opportunity, Mr. Sachdeva. You
4 have until midday tomorrow to set out your submission as to the extent to
5 which this is an existing issue in the case and the extent to which this
6 is a new issue in the case only really brought into focus by the
7 witnesses that the Defence have called since the close of their last
8 abuse-of-process submission. But you have an additional task, and this
9 is not in any way to give an indication as to what we will do in relation
10 to this application overall, but it might be sensible for you to find out
11 where this witness is and what his availability is, because that might be
12 something that at some stage we look at.

13 Now, do you accept that at 10.31 on the 7th of April you were
14 asked whether Witness 0005 was going to be or may be a witness, to which
15 the Prosecution said, "No"?

16 (Prosecution counsel confer)

17 MR. SACHDEVA: Mr. President, we accept that that is right. We
18 were asked that question from the Registry. As to -- as to -- as to our
19 response, we had not decided -- we had not intended to call this witness
20 or call rebuttal evidence.

21 PRESIDING JUDGE FULFORD: I'm going to give you a last chance on
22 this, Mr. Sachdeva, because it may be important.

23 By the close of the interview with the witness on the 11th of
24 April, you may not at that stage have made a final decision as to whether
25 or not you were going to seek to introduce material from Witness 0005,

1 but given the developments by then in the Defence case and given what
2 Witness 0005 said to you on the 11th of April, did it not occur to you at
3 that point in time that an application to call Witness 0005 may be
4 necessary both to enable the Prosecution to introduce rebuttal evidence
5 but to ensure that the Chamber was put in the best position in relation
6 to that rebuttal evidence by having questions put to the witness under
7 oath from both sides?

8 MR. SACHDEVA: Mr. President, perhaps, of course, erroneously,
9 once the information had been received from this witness, of course the
10 Prosecution realised that the information was highly relevant to this
11 trial. However, and again perhaps erroneously, our position was that
12 Rule 68 permitted this type of evidence-taking format and permitted the
13 introduction of this type of evidence where the weight would be afforded
14 to it once a complete analysis of the evidence had been undertaken.

15 The -- we also relied on your Honours' decisions in this trial,
16 Decision 2702, wherein the -- contrary to what my learned friend has
17 stated, the statement of Witness 0555, and indeed the transcripts of
18 Witness 0028's testimony, were admitted by this Chamber. Of course,
19 Witness 0028 testified in Trial Chamber II, but this witness was not
20 heard before this Chamber.

21 So in our submission there is precedent for the admission of
22 statements that have not been taken under oath to be admitted in evidence
23 and for the weight to be afforded to it thereafter.

24 We understood Rule 68 to go one step further. The Defence were
25 present, and of course now this is -- this may become a discussion

1 between the Defence and Prosecution as to what happened at the time, but
2 I do recall having informed the Defence the possibility of Rule 68 being
3 invoked by this type of interview.

4 PRESIDING JUDGE FULFORD: We don't want to hear out-of-court
5 discussions between counsel, particularly if you are not confident of the
6 basis of what you're saying, Mr. Sachdeva. If you're going to start
7 telling us what was said between counsel, you must first speak very
8 carefully to Maitre Mabilie. So no more, in light, please at the moment.

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

10 PRESIDING JUDGE FULFORD: Right. Anything else, Mr. Sachdeva?

11 MR. SACHDEVA: That's it, Mr. President.

12 PRESIDING JUDGE FULFORD: All right. We will adjourn now until
13 2.00 p.m. when we will hear the evidence of Witness 0036, and in the
14 meantime, can the parties please start preparing their submissions in
15 relation to the matters that we have already identified. We don't limit
16 you precisely to the particular points that have been identified during
17 discussion in this Chamber. If there are other issues which occur to
18 either side which you feel are relevant to the point, you are free to
19 raise them.

20 Mr. Keta and Mr. Diakiese, we feel very conscious that we have
21 not turned and asked you whether you have anything you would wish to say
22 on this issue, but now's the moment if either of you would wish to say
23 something.

24 MR. DIAKIESE: (Interpretation) Thank you, your Honour. At this
25 stage in the proceedings we have no observations to make.

1 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Diakiese.

2 We'll rise. 2.00 p.m.

3 Luncheon recess taken at 11.38 a.m.

4 On resuming at 2.17 p.m.

5 (Open session)

6 COURT USHER: All rise. Please seated.

7 PRESIDING JUDGE FULFORD: Good afternoon.

8 Mr. Desalliers, if I can address the bar through you. The

9 witness has raised some slight problems with the solemn undertaking.

10 There are two words that he's had difficulty with. The first is the word

11 "declare," and it has been suggested and he's happy for that to be

12 changed to "swear." So it would be "I swear that I will speak the truth,

13 the whole truth, and nothing but the truth." After that he indicated

14 that he difficulties with the word "solemnly." Now, one option would be

15 simply not to use that word at all, so what the witness would say is "I

16 swear that I will speak the truth, the whole truth, and nothing but the

17 truth."

18 Would you have any objection to that slightly amended form of

19 words being used, given I anticipate there are probably some difficulties

20 in, as it were, translation from French or English into Swahili.

21 MR. DESALLIERS: (Interpretation) Your Honour, that's perfectly

22 all right as far as we're concerned. We believe what is crucial is that

23 the witness should perfectly understand the oath he takes, and I

24 translate "swear," the French word, that in fact is perfectly equivalent

25 to "swear" in English.

1 PRESIDING JUDGE FULFORD: Ms. Samson.

2 MS. SAMSON: Thank you. We have no difficulty with that wording.

3 PRESIDING JUDGE FULFORD: Thank you. This does concern the

4 participating victims because there has been an application by

5 Mr. Walleyne to question this witness. Any problems, Mr. Desalliers?

6 MR. DIAKIESE: (Interpretation) No, your Honour. I would just

7 like to confirm that in Congo the legal system uses exactly the words the

8 witness is going to use, I swear to tell the truth.

9 PRESIDING JUDGE FULFORD: Court Officer in Bunia, have you

10 overheard that exchange?

11 COURT OFFICER: (Via videolink) Indeed, your Honour, I did.

12 PRESIDING JUDGE FULFORD: Right. Now, is it going to be easy for

13 you to provide him with a version of the oath in which the beginning is

14 "I swear that I will speak the truth," et cetera?

15 COURT OFFICER: (Via videolink) It will be --

16 PRESIDING JUDGE FULFORD: Sorry, have you just said that that

17 will be possible?

18 COURT OFFICER: (Via videolink) Yes.

19 PRESIDING JUDGE FULFORD: Good. Fine. Well, if that's -- if

20 that's all sorted out at your end, can the witness then please come and

21 take his seat.

22 WITNESS: WITNESS DRC-D01-WWWW-0036

23 (Witness answered through interpreter)

24 (Witness testified via videolink)

25 PRESIDING JUDGE FULFORD: Good afternoon, sir.

1 THE WITNESS: (* No interpretation)

2 PRESIDING JUDGE FULFORD: Now we have an immediate problem.

3 There's been no English interpretation.

4 THE INTERPRETER: The French interpreter is saying there doesn't

5 seem to be an English interpretation.

6 PRESIDING JUDGE FULFORD: Now, can the interpreters please tell

7 me what the witness said in response to me saying, "Good afternoon, sir"?

8 THE INTERPRETER: The witness said, "Good day," your Honour.

9 PRESIDING JUDGE FULFORD: Good. Well, can we please make sure
10 everything's interpreted. Thank you very much.

11 Sir, the -- there are a few things that I need to say to you
12 before you commence your evidence. The first of those is that because we
13 are dealing, as I understand it, with English, French, and Swahili, it is
14 important that none of us speak too quickly and that we leave a long
15 pause between any question that is asked and any answer that is given.
16 So when Mr. Desalliers and Ms. Samson complete their questions to you,
17 with each and every one of them, can you please leave a pause before you
18 start your answer and try, if you can, not to speak any faster than I am
19 speaking now.

20 Is that clear?

21 THE WITNESS: (Interpretation) I have understood.

22 PRESIDING JUDGE FULFORD: Excellent. I'm now going to ask you to
23 solemnly undertake to tell the truth, and as I understand it, the
24 Court Officer will pass you a card which I'm going to ask you to read out
25 loud.

Witness: Witness DRC-D01-WWWW-0036 (Open Session)
Questioned by Mr. Desalliers

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1 THE WITNESS: (Interpretation) Thank you. I swear that I will
2 say the truth, all the truth, and nothing but the truth.

3 PRESIDING JUDGE FULFORD: That was excellently done. Thank you
4 very much indeed, extremely clear, and make sure you give the rest of
5 your evidence as straightforwardly as that.

6 Mr. Desalliers, a solemn injunction to you to make sure that you
7 build in pauses as well. Good. Please start.

8 Questioned by Mr. Desalliers:

9 Q. (Interpretation) Good day, sir.

10 A. Good day.

11 Q. We have already met. I would like to introduce myself again. My
12 name is Marc Desalliers. I'm a lawyer, and I'm going to ask you
13 questions today on behalf of the Defence of Thomas Lubanga. Can you hear
14 me correctly?

15 A. Yes. I can hear you, and I'm perfectly happy.

16 Q. Could you please start by telling us your entire name, your full
17 name.

18 A. Yes. I'm ready to do it. My name is Mateso Lona.

19 Q. Could you tell us your date of birth?

20 A. I was born on the 12th of December, 1976.

21 Q. And where were you born?

22 A. In Nyankunde.

23 Q. And where do you live currently? Where do you live currently?

24 A. I live in Bunia, in the Simbiliabo district, avenue Lopidi II --

25 THE INTERPRETER: Sorry, the Swahili interpreter

Witness: Witness DRC-D01-WWWW-0036 (Open Session)
Questioned by Mr. Desalliers

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1 corrects: Lopidi I.

2 MR. DESALLIERS: (Interpretation)

3 Q. Thank you. Could you explain to us -- describe to us what do you
4 do.

5 A. I am the head of an avenue.

6 Q. You're the head of which avenue precisely?

7 A. I'm the head of the Lopidi I avenue in the Simbiliabo district.

8 Q. Therefore, in the town of Bunia. Is that the case?

9 A. Yes.

10 Q. Could you tell us how long have you been the head of the Lopidi I
11 avenue?

12 A. Since the year 2003.

13 Q. Do you know more or less how many heads of avenue are there all
14 in all in Bunia?

15 A. I can't give you an exact answer. We were about a hundred, but
16 now I don't know how many heads of avenue there are.

17 Q. Very well. Could you explain to us what your functions are as a
18 chief or head of avenue.

19 A. First of all, I grow crops, I'm a farmer. I'm also a cattle
20 breeder with small cattle. I also have poultry and goats as well.

21 Q. Thank you. Now, where it concerns your work as the chief of the
22 avenue, could you explain to us what this means as the chief or head of
23 an avenue. What are your exact functions in that regard?

24 A. Yes. As a chief of avenue, firstly I have to ensure the security
25 or safety of people and property in my avenue. Secondly, I try to see

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1 what is not working in my avenue in terms of security and to report on
2 that to submit to the hierarchy.

3 Q. And what is that hierarchy?

4 A. Firstly, there is the neighbourhood -- or you have the
5 *chef de quartier*, and then you have the *chef de cité* and those who are
6 responsible within the town council.

7 Q. Thank you.

8 MR. DESALLIERS: (Interpretation) Could we go into private
9 session, please.

10 PRESIDING JUDGE FULFORD: Private session, please.

11 *(Private session at 2.33 p.m.) Reclassified as Open session

12 COURT OFFICER: We're in private session, your Honour.

13 PRESIDING JUDGE FULFORD: Thank you.

14 MR. DESALLIERS: (Interpretation) Your Honour, I'm going to show
15 certain photographs to the witness. Unless I'm wrong, the Registrar
16 there has the Defence binder in order to show a paper version of each of
17 the photos, and I would wish, if possible, for us also to have these
18 photographs appear on the screen once the number is called so it is clear
19 as to what image we are showing.

20 PRESIDING JUDGE FULFORD: All of that is possible,
21 Mr. Desalliers, but we will first of all have to lower the blinds in this
22 courtroom. So blinds down, please.

23 Yes, Mr. Desalliers. So which divider first?

24 MR. DESALLIERS: (Interpretation) The first, the first photograph.
25 That's in tab 2 of the Defence binder, and it has the code

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1 DRC-OTP-0214-0362. And it's already been attributed an EVD number,
2 namely EVD-D01-000106.

3 PRESIDING JUDGE FULFORD: Now, I understand what you're asking,
4 then, is that on all of our screens, including the screen in front of the
5 witness, this photograph should now appear.

6 COURT OFFICER: In order to view the photograph, please press on
7 "PC 1" next to your computers.

8 PRESIDING JUDGE FULFORD: And it worked. Good.
9 Please carry on.

10 MR. DESALLIERS: (Interpretation)

11 Q. So, sir, do you see the photograph on paper as well as on the
12 screen?

13 A. Yes. I can see the photograph, and I recognise it.

14 Q. Can you tell us who the person is who you can -- that you can see
15 on the photograph?

16 A. Yes. It's a boy from my avenue called (Redacted).

17 Q. How long have you known him for?

18 A. I got to know him a long time ago. It must have been 1997, 1998,
19 during that period that I went to Simbiliabo, and that was how I got to
20 know him.

21 Q. Do you know where (Redacted) lived in 2002 and 2003?

22 A. I knew him from the year I said, and he came to visit members of
23 his family. His uncle was in our neighbourhood, and another relative of
24 his was living in the neighbourhood as well, but I've forgotten that
25 person's name. But he did come to our neighbourhood. This was somebody

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1 who we saw moving around there.

2 Q. Do you know with whom he was living?

3 A. Yes.

4 Q. Can you tell us who?

5 A. He was living with (Redacted).

6 MR. DESALLIERS: (Interpretation) I think there must be a
7 difficulty with the translation. I'm just going to check that,
8 your Honour.

9 Q. Did you mention just previously to that the grandfather of this
10 person? Did you speak about the grandfather?

11 A. Yes. The father of his mother.

12 Q. Please could you repeat the name of his grandfather.

13 A. I don't remember his name, but his grandfather's still alive. If
14 you go there, you can see him. He's still alive.

15 Q. Thank you. In 2007, do you know where (Redacted) was living in 2007?

16 A. Yes, I do know. He came to my area as well. I knew where he was
17 living.

18 Q. Could you tell us where he lived then?

19 A. He lived with his father called (Redacted).

20 Q. Today can you tell us if you know if he still lives in the
21 neighbourhood?

22 A. No. For some time he and another young man left, and I haven't
23 seen them in our neighbourhood since then, since 2007.

24 Q. Thank you. I'd like to go back to a question that I asked you
25 previously, and you indicated that he was living with his father,

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1 (Redacted). Could you tell us where he was living, (Redacted), where
2 (Redacted) was living?

3 A. He was living or lives on avenue Lopidi I next to the (Redacted),
4 and he's still living there today.

5 Q. To your knowledge was (Redacted) a soldier, or did he ever follow
6 military training? Is that something that you know?

7 A. I said and repeat a thousand times: (Redacted) was never a soldier.

8 Q. How do you know that?

9 A. I swore that I would tell the truth, the whole truth, and this is
10 something that's known by everyone. I know that (Redacted) was never a
11 soldier. All I know is that he left the neighbourhood. He disappeared.
12 When he left, this was a subject which was discussed in the
13 neighbourhood. Everybody was talking about it.

14 Q. Are you able to tell us in what year he disappeared from the
15 neighbourhood?

16 A. He disappeared from the neighbourhood in 2007. I can't remember
17 what month it was. He left with other people, but the others came back,
18 and they were the ones who told us that (Redacted), and the others
19 had left.

20 Q. Thank you.

21 MR. DESALLIERS: (Interpretation) Could we now show witness the
22 document on tab 3. That should appear on the screen. This document has
23 the number ICC-0001-0182. It's got an EVD number, OTP-00561.

24 Q. Do you see this photograph, sir?

25 A. Yes. I can see the photograph, and I recognise it.

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1 Q. Could you tell us who is the person we see on this photograph.

2 A. It is Django.

3 Q. How did you get to know him?

4 A. I got to know him because he was living with his grandfather,
5 Kasego. I went to the neighbourhood to carry out a survey, and I went
6 from door-to-door in the neighbourhood, also to look after the children
7 who were playing football, and when I went there, I was aware of all that
8 was going on in the neighbourhood. So I saw him with his grandfather
9 Kasego.

10 Q. Can you tell us how long you have known this person for.

11 A. I got to know young Django in 2000. He was with his grandfather.
12 He was still very young.

13 Q. Do you know where Django lived in 2002 and 2003?

14 A. He was with his grandfather in (Redacted), in the neighbourhood
15 (Redacted). That's what I know.

16 Q. Do you know where he was living 2007?

17 A. In 2000 and -- he was living on another avenue, and I saw him in
18 the company of other young people.

19 Q. Thank you. Please could we now turn to tab 4 of the binder. The
20 document has the number DRC-ICC-0001-0183. It's already got an EVD
21 number, EVD-OTP-00562, and if that could also be shown on the screen,
22 please.

23 Can you see this photograph?

24 A. Yes, I recognise the photograph.

25 Q. Thank you. On the photograph, on the left, we'll start with that

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1 person, the one who is not wearing a hat, not a cap. So the person who
2 as on the left, let's start with him. Do you recognise him?

3 A. Yes. That's Joseph. We call him Jeff. And I know him. It's a
4 short form for "Joseph," "Jeff."

5 Q. How did you get to know him?

6 A. How did I get to know him? Well, I knew him, and I was able to
7 call him "Uncle."

8 Q. Can you tell us where he lives?

9 A. His home is on avenue Uba, but during the war he returned to
10 Lopidi I, but his brother, the members of his family, are in Uba. On
11 avenue (Redacted) in Uba.

12 Q. Thank you. And now the person who is on the right in the
13 photograph and who is wearing a cap, do you recognise this person?

14 A. A young man called (Redacted).

15 Q. How did you get to know (Redacted)?

16 A. I got to know (Redacted). He was carrying out his studies with my
17 children in a school in (Redacted). And secondly, I knew him because his father
18 was (Redacted). And his mother --

19 THE INTERPRETER: The interpreter did not catch the mother's
20 name.

21 THE WITNESS: (Interpretation) I also know the home of his
22 parents. His mother is called (Redacted), and his work was in (Redacted),
23 and this was also the work of his father, because the young man was
24 carrying out the same work as his father.

25 MR. DESALLIERS: (Interpretation)

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1 Q. Could you tell us how long you have known (Redacted) for.

2 A. I have known (Redacted) since I arrived in Simbiliabo. I know him,
3 and I've known him for a long time. I haven't -- just got to know him
4 today.

5 Q. If I am correct, what you said is that you arrived in the
6 neighbourhood in 1997, 1997; is that correct?

7 A. No. No. In Simbiliabo, my first child was born there in 1996 --

8 THE INTERPRETER: In 1997, corrects the interpreter.

9 THE WITNESS: (Interpretation) And I arrived in Simbiliabo in 1996
10 from Nyankunde where I was studying. So when I arrived came back from
11 Nyankunde, I went to Simbiliabo in 1996.

12 Q. Thank you for this clarification. Could you tell us where
13 (Redacted) was living from 2002 to 2003.

14 A. Yes. He was in the same place. (Redacted) didn't leave that
15 place, not even during the war. He was still a young boy, and while we
16 were running left and right in this neighbourhood, he was with us. He
17 didn't leave that place.

18 Q. So to be very clear, when you say he didn't leave that place,
19 what place do you mean by that?

20 A. I'm speaking of the neighbourhood of Simbiliabo, avenue (Redacted).

21 Q. And in 2007, can you tell us where (Redacted) was living?

22 A. Yes. (Redacted) was living in his father's -- or his parents'
23 house in (Redacted).

24 Q. And today as we speak, does he still live in your neighbourhood?

25 A. No. I have heard that he is in (Redacted), and later on I heard

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1 that he went to the Netherlands.

2 Q. Up to when did he live in your neighbourhood?

3 A. He lived there up to the year 2007, and it was from that year

4 that a young man came and misled a certain number of young persons, and

5 he left with these young persons to town in Beni. At Beni, they went and

6 said a certain number of things, recounted a certain number of things

7 which were not very clear, and the young people who went together with

8 (Redacted) returned and related to us what had happened, and they talked to

9 us about the trip made by (Redacted) and (Redacted).

10 Q. To our knowledge, has (Redacted) ever been a soldier, or has he
11 ever undergone military training?

12 A. No. He has never been a soldier. If he had been a soldier, how
13 old would he have been by then, and what strength would he have had at
14 that age during the time that the militias were raging? Do you think he
15 would have been able, he would have been of age to serve in the militia?
16 No.

17 Q. Thank you. Could you please tell us when you spoke to (Redacted)
18 for the last time.

19 A. Are you asking me to tell you when I last spoke to him over the
20 phone or when I spoke to him face-to-face?

21 Q. Regardless, could you please just tell us when you spoke to him
22 the last time, whether this was over the phone or face-to-face. Well,
23 the last time you spoke to him, did you talk to him over the phone or
24 face-to-face?

25 A. Well, the last time I spoke to him was at the end of the month of

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1 December, the end of December 2010.

2 Q. And did you speak to him face-to-face or over the phone?

3 A. I spoke to him over the phone. And, in fact, I wasn't the one
4 who called him. Called me himself one day, and it was at night.

5 Q. And what did he tell you?

6 A. He said, "Please, Chief, if you go to the Netherlands, because I
7 have heard that you are going to the Netherlands, do not say that I was
8 not a soldier. You should say that I was a soldier." Because if I said
9 the contrary, he was going to be put in prison. That's what he said. He
10 said that if I come to this country, I should try to meet him. He would
11 want he and I to meet first of all.

12 Q. And what was your answer to that?

13 A. I give him an answer. I told him that I will speak the truth
14 about the things that happened in the village, about the things that
15 happened in the neighbourhood, and that I could not say the contrary of
16 what happened, because the population was there. The public knows the
17 truth, and if I say the contrary, even God would condemn me. That is the
18 answer I gave to him.

19 Q. Was that the only phone conversation you had with him, or did you
20 speak to him on another occasion?

21 A. No. Apart from that in a moment, we spoke again in the year 2007
22 when he left Beni to go to (Redacted). He called me over the phone. And I
23 do not know what their plan was. They disappeared. They left the
24 neighbourhood. And after that, there was a dispute between his father
25 and his mother, and that's how we came to know about their secret. When

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1 they came before me, that is his father and his mother, his parents
2 called (Redacted) and I spoke to him over the phone because the two of them
3 were quarreling, and they used a Vodafone telephone that (Redacted) had given
4 to him in Beni when he went there with (Redacted), who was called (Redacted). It
5 was (Redacted) who had taken these children, and it's because of him that they
6 went and narrated all of what they said.

7 PRESIDING JUDGE FULFORD: Mr. Desalliers, I would like to give
8 the witness a short break at some stage. Would this be convenient?

9 MR. DESALLIERS: (Interpretation) Just one more question,
10 your Honour, to conclude on a point.

11 PRESIDING JUDGE FULFORD: Certainly.

12 MR. DESALLIERS: (Interpretation)

13 Q. Thank you for your answer, sir. We will revisit certain points
14 you have mentioned relating to the year 2007. However, I would like to
15 come back to the year 2010 or 2011, because you said that (Redacted) called
16 you in December 2010. What I would like to know is the following: In
17 December 2010, or maybe in 2011, recently, did (Redacted) call you once or
18 did he call you several times?

19 A. He called me once.

20 Q. Thank you very much.

21 PRESIDING JUDGE FULFORD: Sir, we're going to take just a short
22 break now for your benefit and for that of the stenographers and
23 interpreters. We'll see you again in ten minutes at 20 past 3.00.

24 Thank you very much. We'll rise.

25 COURT USHER: All rise.

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1 Recess taken at 3.10 p.m.

2 On resuming at 3.20 p.m.

3 *(Private session at 3.20 p.m.) Reclassified as Open session

4 PRESIDING JUDGE FULFORD: Thank you very much, sir. Yes,
5 Mr. Desalliers?

6 MR. DESALLIERS: (Interpretation) Could we please now turn to tab
7 6 of the binder. The document bears the reference DRC-D01-0003-2593 and
8 has already been given an EVD reference, D01-00151. Could the document
9 be shown on the screen and a hard copy shown to the witness, please.

10 Q. Can you see this photograph, sir?

11 A. Yes, I see the photograph, and I recognise it.

12 Q. Can you tell us who this individual is?

13 A. This is the photograph of (Redacted), (Redacted) mother.

14 Q. You say that she is (Redacted) mother. Is she his biological
15 mother?

16 A. That's correct. That's his biological mother.

17 Q. This person, is she still alive today, or is she dead?

18 A. At this moment as I speak to you, she is in her home.

19 Q. And where does she live?

20 A. She lives in the (Redacted) avenue.

21 Q. Thank you. A short while ago in the course of your testimony,
22 you said that a young man came and misled the young people. Could you
23 please explain further what you mean by that?

24 A. Well, I did explain to you what I meant, because you asked me a
25 question. And I was very pleased to answer that question, because I

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1 would like you to know today that these children have disappeared since
2 the year 2007, and would I like for you describe the circumstances under
3 which these children disappeared.

4 Q. Could you please explain to us what happened. In your own words,
5 what happened?

6 A. Well, one day I met Mr. Jeff. I told you that he is my uncle.
7 But his full name is actually Joseph. And he told me, "Chief, my child,
8 do you know what is happening?" That is the question he asked me. He
9 said: "There's a young man who goes by the name of (Redacted). He has come
10 to see me, and he has said that he is registering children whose parents
11 are poor."

12 He told me that (Redacted) had come to see him and he said, "He gave
13 me a calabash of water," which means beer, "and he started registering
14 the children." And he said, "You are a chief. Are you aware of this?"
15 And I said, "No."

16 Now, what was his objective? That's the question I asked him.
17 And he said his objective was to provide guidance to the children so that
18 they would not end up as street children, so they would not end up as
19 children who had no guidance in life. He told me that the young man in
20 question was called (Redacted).

21 I asked him, "How can I meet this young man who goes by the name
22 of (Redacted)?"

23 I would like to apologise if you find that I'm a bit fast. I
24 could slow down if you like.

25 Q. (* No interpretation)

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1 A. (* No interpretation). (Interpretation) Thank you very much.

2 THE INTERPRETER: Mr. Desalliers informed the witness that he was
3 speaking at good speed and he would carry on.

4 THE WITNESS: (Interpretation) So Mr. Joseph told me that the day
5 you see (Redacted) you should inform me, and I will take measures, and I will
6 try to find out from him what his objective was.

7 What mission order does he have to come and register young
8 children? Is he working for an NGO which is trying to record -- register
9 children? What is his objective? This is because NGOs usually come
10 officially, and they show us documents, and we double-check the documents
11 before they start operating in the field. And so the question was: How
12 come this person, this (Redacted), was operating clandestinely. So I told
13 Joseph if you meet (Redacted), please let me know.

14 At that point, Jeff did not hide anything from me. When (Redacted)
15 returned, he made arrangements for me to meet him. In fact, I did not
16 know him. I met him at a place where a young girl had a small business.
17 She was selling secondhand clothing. Joseph told me, "Well, that is the
18 young man who is called (Redacted)."

19 It must have been at about 1.00 p.m. I was returning from the
20 office, and my boss had just returned to his home. And I asked Jeff who
21 he was, and Jeff said, "Yes, that is (Redacted), and he lives here, and he is
22 the person who is visiting the children because he works for an
23 organisation called (Redacted)." I spoke to him, and I asked him,
24 "If you are indeed an employee of (Redacted), regardless of the
25 organisation you are working for, you have to come and see me as the head

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1 of the neighbourhood. You cannot contact the children without passing
2 through me." He said, "Yes, you are right. I was wrong. I should have
3 asked to come and see you, and so I will come and see you."

4 So we agreed on a day, but right up to this moment I never saw
5 him again. I don't know where he is. Maybe Jeff knows where he lives,
6 because they are friends. God alone knows where he is today.

7 I would like to add that with respect to this young man (Redacted), I
8 got information about him from (Redacted) mother and from his father as
9 well. (Redacted) mother came to speak to me about her husband. (Redacted) father quarreled
10 with his wife about a phone, a Vodafone phone. It is a telephone that (Redacted) sent
11 to his parents so that they could use it to communicate with him while he was in Beni.

12 THE INTERPRETER: Your Honour, the Swahili booth would like to
13 inform the Court that when there was a changeover of interpreters, the
14 interpreter missed the first statement of the witness's answer.

15 PRESIDING JUDGE FULFORD: You'll need to go back.

16 THE WITNESS: (Interpretation) Do you want me to continue?

17 MR. DESALLIERS: (Interpretation)

18 Q. Just one minute, Mr. Witness. We are going to double-check
19 something before we come back to you.

20 MR. DESALLIERS: (Interpretation) Your Honour, it's difficult for
21 me just looking at the transcript to determine where this problem
22 occurred. I would like to propose that we carry on, and later on the
23 interpreters should listen again and reflect this omission in the
24 transcript.

25 PRESIDING JUDGE FULFORD: Agreed. Please continue. And I think

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1 it may be an idea to suggest to the witness speed and length. Some of
2 the answers are getting quite long now, and he's speaking quite quickly.

3 MR. DESALLIERS: (Interpretation)

4 Q. Sir, we are going to ask you to carry on with your explanations,
5 but please remember to speak slowly, and from time to time try to pause
6 in order to give the interpreters time to follow you and interpret what
7 you are saying. Do you understand?

8 A. Yes. Very well.

9 Q. When we interrupted you, you were saying -- let me read the last
10 sentence in order to help you to get your thoughts together. You said:

11 (Redacted) father quarreled about -- quarreled with his wife
12 about a Vodafone phone. It was a phone that (Redacted) sent to his parents
13 so that they could use it to communicate with him whilst he was in Beni."

14 That is where you stopped. Could you please carry on.

15 A. I am ready to carry on.

16 Q. We are listening to you.

17 A. Very well. At that time, I asked his mother, "What is
18 happening?" And (Redacted) mother told me that she could not hide from
19 me the subject matter of their quarrel. She said they were quarreling
20 about a telephone that their child had sent to them for them to use to
21 communicate with him. And I asked her how they obtained the telephone,
22 and she said there was a gentleman by the name of (Redacted) who came with
23 (Redacted), and they took the child and went away with him, that they had said
24 they wanted to register the children of poor people in order to ensure
25 that they have education.

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1 They went to Beni, and once they arrived at Beni, they told the
2 child that they were taking him to (Redacted), and he gave them a
3 telephone, and they asked the child to keep the telephone. The child
4 gave the telephone to his mother to use to communicate with him.

5 That was the cause of the quarrel between his parents.

6 So they called the child and confronted him in my presence, and
7 the child decided that his father should keep the SIM card and that I,
8 the chief or the head of the avenue, should keep the Vodafone phone until
9 he returned. Since then, I as the chief, I have had the courage to raise
10 the awareness of the inhabitants of my avenue to ensure that they do not
11 allow anybody to come to register the children of the neighbourhood on
12 the pretext that they are going to be sent to school.

13 Since then, we have adopted a working procedure. I prepared a
14 report which I submitted to the head of my neighbourhood. I told him
15 that there was an unfortunate practice which was going on in my avenue.
16 The head of the neighbourhood took the report, and he said there was need
17 for follow-up to verify whether or not the organisation (Redacted)
18 was registering the children of poor people in order to provide them with
19 assistance.

20 My chief went to the headquarters of (Redacted), and he
21 returned with (Redacted) who is the representative of (Redacted)
22 (Redacted). They came to the neighbourhood and they called together all
23 the heads of the avenues and asked them to be very prudent. They warned
24 us and said that (Redacted) was not an employee of (Redacted). They
25 asked us to arrest him if we ever saw him. They added that they were

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1 going to register children under the age of 14, and that they would be
2 sent to school at the (Redacted) Institute.

3 And I would like to add the following: Those who went to Beni
4 are still alive at this moment as I speak. They are still living in our
5 avenue. They have not died. I am talking about those who went with,
6 (Redacted), and other young people. They went to Beni, to a hotel,
7 and they were not satisfied with the situation, with the prevailing
8 situation. They said that they did not wish to get involved in politics
9 and that is why they decided to return to their village, that was because
10 at Beni they were asked to pretend to, claim, that they had been child
11 soldiers. They were told that houses would be constructed for them if
12 they accepted to say that they had served as child soldiers.

13 PRESIDING JUDGE FULFORD: Mr. Desalliers, can I just check if
14 it's necessary for us to be in private session for this material.

15 MR. DESALLIERS: (Interpretation) Yes, your Honour. Since it's
16 difficult to anticipate whether or not the name of (Redacted) or the names of
17 the individuals who went to Beni will be mentioned, well, your Honour,
18 with regard to this particular aspect I have no other question. I was
19 preparing to move on to another subject which could be discussed in
20 public session.

21 PRESIDING JUDGE FULFORD: Thank you. And can I just make sure
22 that when we are in private session like this with the blinds down that
23 there aren't images on the screens in front of the witness that can be
24 seen by members of the public in the front row, because I have seen a
25 couple of members of the public leaning forward. But in any event, we

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1 can now go back into open session, please, with the blinds up.

2 (Open session at 3.44 p.m.)

3 COURT OFFICER: We're in open session, your Honour.

4 PRESIDING JUDGE FULFORD: Thank you. Please carry on,
5 Mr. Desalliers.

6 MR. DESALLIERS: (Interpretation) I would now like to show the
7 witness a document which is at tab 1 of the Defence binder, and I think
8 that the original of this document is in -- you can see it in Bunia.
9 This has the code DRC-D01-0003-5903. And this should not be shown on the
10 screen. I shall just ask some questions in open session, but it should
11 not be shown on the screen.

12 Please could we check with the Court Officer in Bunia if the
13 photocopy with the numbered pages and the original are available or in
14 the possession of -- available to or in the possession of the witness.

15 COURT OFFICER: (Via videolink) Your Honour, I can confirm that
16 the original is in our possession.

17 THE WITNESS: (Interpretation) Yes. I can see the photocopy in
18 question.

19 MR. DESALLIERS: (Interpretation) Thank you.

20 Q. Sir, could you, sir, please take the original copy of this
21 document, look at the original copy, and tell us whether you recognise
22 it.

23 A. Yes. This is my rough copy that I drafted.

24 Q. Did you draft the document? Can you confirm that?

25 A. Yes. I drafted this document.

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1 Q. Could you explain to us what it is?

2 A. Could you please repeat your question?

3 Q. Yes. This document you hold right now, could you tell us,
4 please, what it is? Could you explain to us?

5 A. Well, with respect to this document, it is a list we compile of
6 people in the avenue to know how many households there are in our avenue,
7 and this is a task we carry out regularly.

8 Q. Well, how frequently do you have to do this?

9 A. We have -- sorry, we're used to doing this twice a year. In
10 other words, we do it every six months. We carry this task out every six
11 months.

12 Q. And specifically, this document you're holding right now is from
13 which year?

14 A. This document was drafted in 2007.

15 Q. I believe you mentioned earlier this was a rough copy. Is that
16 true?

17 A. Yes. It was an initial draft.

18 Q. And what do you do with this rough copy?

19 A. While we're moving around, we record everything in a rough copy,
20 and then we send the final document to our hierarchy. That's what's done
21 in every district in Bunia, and there are 12 of them in all.

22 Q. Therefore, this document, these notes you've jotted down, could
23 you explain to us when you drafted it?

24 A. I drafted it because every year we have to carry out a census to
25 ascertain whether the population is growing or not, or whether, in fact,

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1 the number of inhabitants is contracting. Therefore, I use this document
2 to check whether it was true what was being rumoured, that these children
3 had been soldiers. These children are from my district, and they've
4 never been child soldiers.

5 Q. Thank you. And just to be a bit more specific, could you say
6 when you jotted down these notes, in which year?

7 A. This is a rough copy that I drafted in 2007. I have also have
8 another initial draft from 2006. I'm sure I can find it somewhere, just
9 like the sort of initial draft from 2008. If I look in my files, I'm
10 sure I can find them.

11 Q. All right. Thank you. And once more with respect to the 2007
12 sort of rough copy, can you take the photocopy, the photocopy of this
13 document, and go to page with the number DRC-D01-0003-5954.

14 Can you see the number 5954 right at the top of the page?

15 A. Yes.

16 Q. Could you explain to us in a general manner, without talking to
17 much in detail about the names we can see, but can you tell us what we
18 can see on this page? Could you explain that to us?

19 A. This page was drafted on the basis of sort of the community work
20 we carried out every Saturday called Salongo. So these are the people
21 who were at Salongo carrying out their task that Saturday.

22 Q. Can you see at the very top of the page a column with the mention
23 "Name, post-name"? In the upper left-hand side corner.

24 A. Yes, I can see that.

25 MR. DESALLIERS: (Interpretation) Just to make sure that we have

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1 got the same page and to be even more certain, your Honour, I believe we
2 should now have a -- a private session.

3 PRESIDING JUDGE FULFORD: Private session, please.

4 *(Private session at 3.56 p.m.) Reclassified as Open session

5 COURT OFFICER: We're in private session, your Honours.

6 MR. DESALLIERS: (Interpretation)

7 Q. Can you see clearly the number in the upper left-hand side corner
8 (Redacted) and next to it (Redacted)

9 A. I'm sorry? Let me see.

10 MR. DESALLIERS: (Interpretation) Your Honour, the Court Officer
11 could help the witness to make sure we're talking about the same page and
12 show him the excerpt I'm referring to.

13 PRESIDING JUDGE FULFORD: Most certainly.

14 COURT OFFICER: (Via videolink) Your Honour, for clarification
15 purposes, the page we're currently on is DRC-D01-0003-5904?

16 PRESIDING JUDGE FULFORD: No, 5954. 5954. You should see a page
17 with columns, and the very first name should have the number (Redacted) next to
18 it and the words (Redacted) Well, the first word is (Redacted) Have you
19 got that?

20 COURT OFFICER: (Via videolink) We have, your Honour.

21 PRESIDING JUDGE FULFORD: Good. All right. Well, we're on the
22 right page, Mr. Desalliers.

23 THE WITNESS: (* No interpretation)

24 PRESIDING JUDGE FULFORD: Excellent. All right.

25 THE WITNESS: (* No interpretation)

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1 MR. DESALLIERS: (Interpretation) Thank you.

2 Q. Sir, can you explain to us what we can see on this page?

3 A. Yes. I am delighted to see that this page we're talking about
4 adds some information to the issue. In other words, our census. I'm
5 talking about the census carried out to establish the number of people
6 living in the district, because, in fact, we record names while adding
7 such details such as gender, male, female, boy, girl, and then we write
8 down the number of households on an avenue. And after drafting this
9 document, we send it -- or we send a copy to the head or chief of the
10 area.

11 On this page, I can see another list of parents of these
12 children. For instance, there's the name of (Redacted). It appears
13 on this page. The appearance of (Redacted) and the boys. Higher, we can see
14 one of the parents of (Redacted).

15 PRESIDING JUDGE FULFORD: Mr. Desalliers, it's entirely a matter
16 for you, but do you in some way want him to identify which of those
17 entries -- there are a number ways in which that can be done. You can
18 either do it using the numbers down the left-hand column, or he can mark
19 them, but it may be easier to use the numbers down the left-hand column
20 given the difficulties in us seeing what's being marked.

21 MR. DESALLIERS: (Interpretation) Yes, your Honour. I was going
22 to ask the witness to identify the number of a line on the page.

23 Q. Therefore, sir, you first talked to us about the parents of
24 (Redacted). Could you tell us what is the number of the line on page 5954 we
25 can find them?

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1 A. On this page, DRC-D01-0003-5954.

2 Q. Have you understood my question? Sir, I was asking you -- as you
3 can see, on the left-hand side column there's a list of numbers.

4 Completely on the left you've got numbers.

5 A. Yes, I can see the number, (Redacted).

6 Q. Thank you. So that was for the parents of (Redacted). You also
7 talked about the parents of (Redacted). Can you tell us what's the number
8 of the line we can find them?

9 A. Allow me to have a look at the document first --

10 PRESIDING JUDGE FULFORD: (* Microphone not activated) ... the
11 numbers. Well, all right. They become difficult as we go down towards
12 the bottom. I mean, (Redacted) is probably clear, but after that we're in
13 difficult territory.

14 MR. DESALLIERS: (Interpretation) Yes, I agree, your Honour. I
15 suggest that should it become too difficult, what we could do is count
16 the number of lines starting from the top or the bottom, but I do believe
17 that, indeed, line (Redacted) --

18 THE WITNESS: (Interpretation) Yes. Furthermore, you have page
19 DRC-D01-0003-5959, and number (Redacted) there you have (Redacted).

20 MR. DESALLIERS: (Interpretation)

21 Q. Yes. Thank you very much. (Redacted), who is the father of
22 (Redacted)

23 A. (Redacted). Yes, (Redacted) had two wives. And -- and he had (Redacted)
24 daughters as well as (Redacted) sons.

25 Q. Thank you. Sir, just to make sure (* indiscernible), did you say

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1 that (Redacted) had two wives?

2 A. His -- that was his father. I mean, his father had two wives.

3 (Redacted) is the son.

4 Q. We talked a little bit earlier during your testimony about
5 Django. We saw a photo of him, and you told us that he lived with his
6 grandfather. Can you remember saying that?

7 A. Yes, that's true.

8 Q. Can I ask you to tell us whether we can find Django or his
9 grandfather in this document?

10 A. Yes. Yes. He's on this document -- in this document, as well as
11 his name is. Just give me a few minutes and I'll find it. His name is
12 Dhegro Basikwa (* as interpreted).

13 MR. DESALLIERS: (Interpretation) Your Honour, since the witness
14 has told us which name he's looking for, I suggest we help him. I don't
15 believe it will be a problem should we steer him through the document.

16 PRESIDING JUDGE FULFORD: Right. Let's give the page number to
17 the Court Officer, please, and don't read the whole thing out. What's
18 the last four numbers?

19 MR. DESALLIERS: (Interpretation) It's page 5959.

20 PRESIDING JUDGE FULFORD: 5959. Court Officer, can you help the
21 witness go there, please.

22 And which number, Mr. Desalliers?

23 MR. DESALLIERS: (* No interpretation)

24 THE WITNESS: (Interpretation) Ah, all right. Thank you. That's
25 it. That's it.

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1 MR. DESALLIERS: (Interpretation)

2 Q. Thank you very much, sir. I don't have any more questions about
3 this document.

4 MR. DESALLIERS: (Interpretation) Could we please give it an EVD
5 number.

6 PRESIDING JUDGE FULFORD: (* Microphone not activated) ...

7 COURT OFFICER: Thank you, Mr. President. Document
8 DRC-D01-0003-5903 will bear the following number: EVD-D01-01099 and will
9 be a confidential document.

10 MR. DESALLIERS: (Interpretation) Your Honour, I believe we can
11 have a public audience once more.

12 PRESIDING JUDGE FULFORD: (* Previous translation continues) ...
13 (Open session at 4.13 p.m.)

14 COURT OFFICER: We're in open session, your Honours.

15 MR. DESALLIERS: (Interpretation) Could you please show the
16 witness the document under tab 7 of the folder, Defence folder, with the
17 number DRC-D01-0003-5965.

18 THE WITNESS: (Interpretation) Yes. I recognise this document.

19 MR. DESALLIERS: (Interpretation)

20 Q. Could you tell us what this is.

21 A. It is the prosecutor from the first -- Court of First Instance in
22 Bunia. He summoned me one day, and when I got there he sent me to the
23 magistrate's office to talk a with delegation that had come from the
24 Netherlands. I wasn't on my own. I was with other people. There were
25 four chiefs of avenue, but I represented the others, and I was the first

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1 to be heard. In that case, on that day we remained until the evening,
2 but the prosecutor wasn't there. It was us and this delegation, a
3 delegation made up of three people. We talked with the members of this
4 delegation.

5 Q. Could you tell us how you were given this document?

6 A. That was somebody from the local court that sent me the document,
7 but I did not know why he had sent it, and when I got to the prosecutor's
8 office, I saw that there was a delegation of the office of the prosecutor
9 that had come from the Netherlands, and the members of this delegation
10 wanted to talk with us; i.e., I, myself, and three other chiefs of
11 avenue. So there were four of us all in all. But I was the first one to
12 be called in. They asked me to give additional information about the
13 situation in my district in 2004. I was asked what happened in 2004 in
14 my area, and I explained everything to these people, the members of the
15 delegation, and I told them to come on the ground and check my testimony.
16 They should come to my home, go in the near surroundings of my home to
17 work -- to ascertain what had actually happened in my district.

18 PRESIDING JUDGE FULFORD: Mr. Desalliers, it's time, I'm afraid.
19 The tapes have only got a minute or two left. How much longer have you
20 got in-chief, please?

21 MR. DESALLIERS: (Interpretation) I believe I need about another
22 10 minutes, 15 maybe.

23 PRESIDING JUDGE FULFORD: (* Previous translation continues) ...

24 Ms. Samson, how long will you be?

25 MS. SAMSON: I'll certainly be finished by tomorrow, your Honour,

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1 perhaps by lunch or soon thereafter.

2 PRESIDING JUDGE FULFORD: Right. It would be hugely helpful
3 because of an obligation -- excuse me, please, sir, for a moment.

4 It would be hugely helpful given an obligation at this Court
5 which one member of this Court has if we could possibly conclude this
6 witness's testimony by 1.00 p.m. So could you please all bear that in
7 mind tomorrow morning, and we may have to reduce the length the breaks or
8 some such thing in order to accommodate it.

9 Sir, thank you very much for your help today. I'm sorry we're
10 not quite finished. I'm going to have to ask you to return tomorrow, and
11 we look forward to seeing you again at half past 9.00 tomorrow morning.

12 So we sit again tomorrow at half past 9.00. Thank you all very
13 much.

14 THE WITNESS: (Interpretation) Very good. I'm happy.

15 The hearing ends at 4.19 p.m.

16 RECLASSIFICATION REPORT

17 Pursuant to Trial Chamber I's email instruction dated 18th of May 2011, the excerpt of
18 the transcript page 11 line 20 to page 18 line 21 (*) is reclassified
19 from private session to open session.

20 SECOND RECLASSIFICATION REPORT

21 Pursuant to Trial Chamber I's email instruction dated 3rd of June 2011,
22 the excerpt of the transcript page 22 line 15 to line 18 (* Private session)
23 is reclassified as confidential`

24 THIRD RECLASSIFICATION REPORT

25 Pursuant to Trial Chamber I's email instruction dated 7th December 2011, the

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- 1 transcript is reclassified as public after the indicated redactions have been
- 2 implemented as ordered by the Chamber. All private and closed sessions (*) are now
- 3 available to the public with the exception of the portions of the transcript that have
- 4 been redacted.
- 5