

1 International Criminal Court

2 Trial Chamber I

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

4 Case against Thomas Lubanga Dyilo

5 Hearing - Open Session

6 Monday, 9 February 2009

7 The hearing starts at 12.33 p.m.

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

10 PRESIDING JUDGE FULFORD: We're now in open session. A little
11 earlier this morning, at the invitation of the Defence, an ex parte
12 hearing was held with only the Defence present. It was entirely
13 appropriate that the hearing was called by Maitre Mabilie in that way,
14 and the information that was provided to the Judges was information which
15 at this stage should be given to us alone.

16 It is absolutely essential, as regards ex parte hearings, that
17 only those who are involved in the hearing are provided with information
18 about it during the hearing itself and afterwards.

19 Shortly after we had risen, having concluded the ex parte
20 hearing, we were told that for the second time in a fortnight the
21 Prosecution had been provided with access to the contemporaneous
22 transcript of what happened during the course of the ex parte procedure.
23 We have been given an undertaking by the Prosecution that the transcript
24 wasn't read, but that is wholly beside the point.

25 The point is that it is of fundamental importance to the proper

1 functioning of this court that the Judges and the parties and the
2 participants can have full confidence that those matters which are
3 supposed to be kept private are kept private.

4 That this should have happened twice in two weeks is not only
5 lamentable, but it strikes at the very heart of this court's ability to
6 function properly. We take this so seriously that there will be no more
7 ex parte hearings during this trial until we have been given a
8 sufficiently strong assurance by the Registrar herself that what is going
9 to occur during the ex parte hearing will truly remain confidential to
10 those who participated. Until we have that assurance, this trial may
11 therefore, in the relatively near future, be unable to proceed further
12 and that will be the responsibility of the Registry.

13 We repeat: This is a matter of extreme concern. Lives could be
14 lost if confidentiality in these circumstances is breached. Unfairness
15 could result to the party concerned, and the whole necessary
16 underpinnings of these -- of this trial proceeding in a way which is in
17 accordance with the interests of justice are endangered if this kind of
18 fault is ever to be repeated.

19 We are having a meeting with the Registrar herself at 5.30 this
20 afternoon, and during that meeting we will raise with her our profound
21 concerns about what has happened today.

22 Now, Mr. Sachdeva, are we ready to proceed with the witness?

23 MR. SACHDEVA: Yes, Mr. President.

24 PRESIDING JUDGE FULFORD: Good. Before we do, at an appropriate
25 stage this afternoon we will want to raise with the parties and the

1 participants two matters about which you've been put on notice. First, a
2 set of proposed protective measures for Witness 298; and second, your
3 application in relation to the way in which video evidence should be
4 handled. We will not address those now, but we will turn to them before
5 the end of the afternoon.

6 MR. SACHDEVA: Mr. President, thank you. May I just inquire,
7 would it be at the end of the witness's testimony, just so I can have all
8 the necessary preparation?

9 PRESIDING JUDGE FULFORD: Yes. I see there could be advantage to
10 you in having this resolved before the break. Is this in relation to the
11 introduction of video evidence?

12 MR. SACHDEVA: In relation to both aspects, but it's -- if it's
13 in the afternoon, it's also not a problem.

14 PRESIDING JUDGE FULFORD: Yes. We will -- we will not be turning
15 to the evidence of Witness 298 today. Depending on what time questioning
16 of the current witness finishes, we may begin the evidence of Witness 41
17 and then intervene Witness 298 at an appropriate stage. So of the two
18 issues, I suspect the one which is more pressing is that that concerns
19 the presentation of video evidence. So we will try and do that -- deal
20 with that before the break, Mr. Sachdeva.

21 MR. SACHDEVA: Very well. Thank you, Mr. President.

22 PRESIDING JUDGE FULFORD: Good. Can the witness then please be
23 brought back into court, and we need briefly to go into closed session.

24 *(Closed session) Reclassified as Open session

25 MR. DESALLIERS (interpretation): Your Honour, may I take the

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

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1 floor? I simply wanted to say that while we are in closed session, I
2 would like to remind you that we were in closed session when we
3 interrupted the proceedings. So just to avoid having to re-establish a
4 closed session later.

5 (The witness takes the stand)

6 PRESIDING JUDGE FULFORD: Very helpful, Mr. Desalliers. Thank
7 you very much indeed. Let us therefore continue in closed session for
8 the questions that you have.

9 WITNESS: WITNESS DRC-OTP-WWW-0299 (Resumed)

10 (Witness answered through interpreter)

11 PRESIDING JUDGE FULFORD: Sir, good morning. I'm sorry we've
12 kept you waiting, and for your information there are now going to be
13 some -- there will now be some questions put to you in closed session.

14 Yes, Mr. Desalliers.

15 THE WITNESS (interpretation): Very well.

16 Questioned by Mr. Desalliers: (Continued)

17 Q. (Interpretation) Good morning, sir.

18 A. Good morning.

19 Q. You might remember that when we left each other last week, we
20 were talking about the ways in which -- or the ways in which you had your
21 sons released the second time that he was arrested. To be more specific,
22 we had begun talking about the identity of the person to whom you gave
23 money when you asked him to assist you in finding your son. Do you
24 remember all that?

25 A. Yes.

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1 Q. You mentioned that the first name of the person who you asked to
2 help you and who you gave money to was (Redacted). Do you remember today
3 his surname?

4 A. I've already answered you. I said this: We know each other,
5 without any further detail. As regards knowing his full identity, I'm
6 not in a position to tell you what it is at this point in time. I can
7 only tell you that his name is (Redacted), that's all. I have nothing
8 further to add apart from that. And to this point in time I can't give
9 you any additional name.

10 Q. At the very point in time that we suspended proceedings last
11 week, I was asking you how long you had known that person when you gave
12 him the money; that is to say, how long you had known him when you gave
13 him the money.

14 A. It's not a question as to whether I knew him or met him two or
15 three years before -- days before. He's somebody that I have known in
16 Bunia. We lived together for several years in Bunia. It's somebody who
17 I've known in Bunia for quite some time.

18 Q. You've said for quite some time. What do you mean by that? Had
19 you known him for ten years already or just one year?

20 A. I knew -- I met him several days previously. I had known him
21 since -- for several days.

22 Q. So at the point in time when you asked him to help you find your
23 son, you had known him several days; is that right?

24 A. Yes, that's right.

25 Q. Had you known him for less than a year?

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1 A. I have no exact answer to give you. It's somebody who I know
2 well and somebody who knows me well. That I can say.

3 MR. DESALLIERS (interpretation): Your Honour, we have finished
4 with the matter of identity, so I think that we can return to open
5 session.

6 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Desalliers.

7 Open court then, please.

8 (Open session)

9 PRESIDING JUDGE FULFORD: We're now back in open session. Thank
10 you, Mr. Desalliers.

11 MR. DESALLIERS (interpretation):

12 Q. So this person who we were just talking about, what exactly did
13 you ask him?

14 A. That person's job is digging for diamonds, and he knows my child
15 well. It's a man who has a lot of money, a trader, a diamond trader. He
16 was involved in diamond and gold mining. So I asked him, "Do you know my
17 son?" He said, "Yes." And I said to him, "When you go there, when you
18 see him, give him this money and tell him I'm looking for him." That's
19 quite simply what I said to him.

20 Q. How much money did you give him?

21 A. I don't know the exact sum of money that I gave him. In our
22 country money is -- becomes devalued very rapidly. I don't know exactly
23 how many francs it was. Often there's monetary devaluation in our
24 country, but I can tell you it was a small sum of money, just enough to
25 pay what was needed to pass the various road checks along the road. It

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1 wasn't a large sum of money. I can't say if it was 10 or 50 francs, just
2 a small amount of money to pay one's way through road checks.

3 Q. What do you mean by "road checks"?

4 A. In Ituri, after 100 metres you have to pass a check-point. There
5 are people who are located there, and you have to pay a small amount of
6 money for the road to be opened. Then 200, 300, 400 metres further you
7 will see another point and there, too, there are people posted, and you
8 have to pay again to move forward. That's what we call a barriere or a
9 check-point.

10 Q. And how did this person find your son?

11 A. I sent the money to my son through this man. This man knew my
12 son. I provided the money directly to this man asking him to give it to
13 my son so that my son could come and join me in Nizi so that we could go
14 together from there to Bunia.

15 Q. But at that point in time your son was in military camp; is that right?

16 A. My son was in a military camp. It wasn't a fenced-in military
17 camp, and it wasn't -- and one could enter the camp. People could easily
18 leave the camp by requesting permission. It was a military
19 camp, but everybody was there freely and could leave when they wanted 20
20 It was, nonetheless, a military camp. There were very small -- a number
21 of small houses made of tarpaulins or plastic. They were kind of
22 like plastic tents. There was no fence as such to show that it was a
23 camp. These were rebels that were living there.

24 Q. So if I understand well, the person who helped you simply went to
25 the camp, found your son, asked him to leave with him and they left

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Questioned by Mr. Desalliers (Continued)

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1 together. Is that how things went?

2 A. That man is a man with a lot of money, and he knows a lot of
3 commanders over there. He's not just an ordinary man. He's a man
4 involved in gold mining and gold trading. He had all the means possible
5 to meet my child. If -- when he would go there all the commanders would
6 go to him and say, "Hey, how are you? How are things in Bunia?" And
7 they would be looking for money for cigarettes. He was somebody who was
8 regularly in contact with these commanders and had a green light to go
9 where he wanted.

10 During the rebellion, businessmen, people with a lot of money,
11 had a very great influence on soldiers. If anyone -- if a person had a
12 lot of money, they were highly respected by military men. Why so? Well,
13 because soldiers were not paid. It was businessmen, people with a lot of
14 money, who would give a little money to the soldiers, and the soldiers
15 would say, "Thank you," if they received money from businessmen such as
16 him. And that is how it was that men such as he had the green light to
17 go into such camps and to drink a beer with them, et cetera. He was well
18 known by the soldiers and feared.

19 Q. So a man of that stature, of that importance, you say today that
20 you can only remember his first name? You can't remember his full name?

21 A. He's known by that name. He's very -- he's popularly known by
22 that name. What more can I tell you? You want me to find out his full
23 identity? What plan do I have to find out his full identity? What plan
24 do I have? I'd have to have a plan to find out his identity.

25 Q. And when that gentleman brought back your son, where exactly did

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1 you meet him?

2 A. I met my son in the commercial centre of Nizi, the shopping area.

3 Q. Sir, I'm now going to put questions on a very different event.

4 The first day that you came to testify at the court, you said that you
5 had heard about an incident which you had not witnessed yourself, an
6 incident when a commander was gunned down in Mandro for having stolen a
7 weapon. Do you remember that episode you described to us?

8 A. The soldier who was killed was killed in my presence. I was
9 present. What I heard with my own ears was the following: Two soldiers
10 had fled. They had deserted their camp. They fled from the war in
11 Nyakunde, because the war was becoming violent and it was a war which had
12 cost many lives. Those two soldiers had taken off their uniform, taken
13 their weapon and their uniform and hid them at the place where they
14 slept, and they fled. They fled in the early hours of the morning when
15 nobody could see them leave. When there was the roll-call, people were
16 sent to try and find them, in their house, but they were not found. Only
17 their weapons and uniform were found.

18 Afterwards, other soldiers went to find them and arrested them
19 and brought them to the camp. When they handed them over in Nyakunde,
20 the commanders in Nyakunde had a conversation with the general commander
21 in Bunia, Mr. Kisémbó, and informed him that they had two soldiers who
22 had deserted and who had fled the camp. Kisémbó's answer was as follows:
23 "If that has happened as you say and if things continue in that fashion,
24 we will lose all the soldiers. Those soldiers have to be killed to serve
25 as an example to all other soldiers, to show them that anyone who

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1 attempts to flee will be treated like that," and those two soldiers were
2 shot dead in Nyakunda.I heard this story. I did not see it happen. But I was
3 present at the event in Mandro.

4 Q. Now, the event which you've just described was not discussed in
5 in the first part of your testimony. I am referring to the stealing of a
6 weapon. You spoke of a commander who
7 had stolen a weapon, and I am referring to that event. Do you remember
8 that episode when a commander stole a weapon?

9 A. I've already given an answer to that question. I said that I
10 myself was there. I answered that question in your presence. You put
11 that question to me and I answered it. And I think that you took notes.
12 Look back at your notes. I've already answered this question.

13 Q. Well, with regard to that event, and you answered questions about
14 it, with regard to that event you said that the soldier who was surprised
15 when stealing a weapon was shot pursuant to an order from Commander
16 Bosco. Is that correct?

17 A. It's true. That's in my statement. If you check the statement
18 of the 13th of January that I gave to the Kinshasa investigators, you'll
19 find this information there.

20 Q. Very well. Let's see the reference, because -- could we see
21 MFI-D-0005. We have a Lingala version for the gentleman.

22 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

23 MR. SACHDEVA: Mr. President, just -- I note that we're in open
24 session and if a document is going to be brought up on the screen which
25 may have the witness's signature we should perhaps move into closed

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1 session, if that's the intention of my learned friend.

2 PRESIDING JUDGE FULFORD: Does the document bear the witness's
3 signature, Mr. Desalliers?

4 MR. DESALLIERS (interpretation): No, it doesn't, your Honour.

5 PRESIDING JUDGE FULFORD: Well, no, it seems that there's no
6 problem. Document on the screen, then, please.

7 MR. DESALLIERS (interpretation): I have the Lingala version for
8 the witness.

9 Q. Have a look at paragraphs 28, 29, and 30, please.

10 PRESIDING JUDGE FULFORD: I think we need to introduce the
11 document, Mr. Desalliers. I think the witness needs to know what it is
12 that he's being asked to look at.

13 MR. SACHDEVA: I think it needs to be done in closed session
14 because the witness's -- at least what I can see on the screen his name's
15 up there.

16 PRESIDING JUDGE FULFORD: Right. Closed session, please.

17 *(Closed session) Reclassified as Open session
18 (Trial Chamber and Court Officer confer)

19 PRESIDING JUDGE FULFORD: Fortunately, Mr. Desalliers, the
20 Court Officer anticipated the problem and the document hasn't been
21 broadcast, but looking at what's up on the screen, which I understand is
22 the document that you are requesting, it has in it right at the top clear
23 identifying details. This should not have been -- this should not have
24 been displayed publicly, Mr. Desalliers.

25 We can't second guess all the time what counsel are

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1 seeking to do, and this really is your responsibility to make sure that
2 only those documents which really can be made public are made public.
3 So this is a real lesson for the future, please.

4 Right. Now, can we explain to the witness, please, in closed
5 session, what it is he's being asked to look at.

6 MR. DESALLIERS (interpretation): Yes, Mr. President.

7 Q. Sir, before you you have a document which is the transcription of
8 your interview conducted by OTP investigators. The date is the 11th of
9 January, 2008.

10 Have you had the time to have a look at paragraphs 28 to 30?

11 A. I've read paragraphs 28 and 29 but not paragraph 30.

12 Q. In fact, the paragraphs 28 and 29 are the most relevant ones,
13 because my question is as follows: I'd like you to explain to us why on
14 the 11th of January, 2008, you told OTP investigators that Mr. Kisémbó
15 had ordered this person to be shot and not Mr. Bosco?

16 A. I think you're confusing something in my statement. I said that
17 at Nyakunde Commander Kisémbó issued the order. Bosco was his deputy and
18 he was there in Mandro. He was there. Kisémbó was in Bunia. Given the
19 distance between Mandro and Bunia -- well, the residence -- Kisémbó's
20 residence was there. When the weapons were air dropped, Bosco and Safari
21 asked whether they should pass through Mandro. Everything done in Mandro
22 was under the responsibility of Bosco, and Bosco ordered the shootings in
23 Mandro. The shooting in Nyakunde, the shooting of
24 the deserters, well, this was done pursuant to an order
25 from Kisémbó. I think that you can

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1 understand things clearly, but if there is a mistake, perhaps the
2 person -- perhaps there was a typing mistake made. The person who
3 drafted this may have confused the two names, Bosco was in charge and
4 Kitembo was his deputy. Both of them issued orders, but as far as Mandro is
5 concerned, Bosco was in charge. As far as Nyakunde is concerned, and the two
6 men shot there, the order was issued by Kitembo in person.

7 Q. But, sir, just before paragraph 20, you can see that all the
8 following paragraphs, and that includes 28 and 29, deal with the
9 structure of the camp in Mandro. They don't deal with Nyakunde. So
10 we're dealing with Mandro here. You discussed the subject of discipline
11 in the Mandro camp, and you told the investigators that Kitembo, and this
12 is with reference to a soldier who was caught selling a weapon,
13 well, he was shot because of an order issued by Kitembo. So what is
14 giving rise to confusion, sir?

15 A. Matters have been confused. If I said Kitembo, if I said Bosco,
16 well, everything that happened involved high-ranking men. Kitembo was a
17 general. Bosco was second in command. If an order came from the office,
18 it was the same order, not two distinct orders. It was one order issued
19 from the very same office.

20 MR. DESALLIERS (interpretation): Could we show another document.
21 Could we have another document on the screen. I don't think that this
22 document has been shown yet. The number is DRC-OTP-0188-0487. This
23 document is one of the transcripts of an interview conducted with the
24 witness by OTP investigators, dated the 13th of January, 2008. It's a
25 transcript of the video of the interview.

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1 Q. Is it a confidential (French spoken) -- it's confidential because
2 the witness's identity might be revealed, but could we show page 0482.

3 COURT OFFICER (interpretation): MFI-D-0010 is the number of the
4 document, isn't it? Page 482 isn't -- doesn't exist.

5 MR. DESALLIERS (interpretation): 0482.I apologise. I think I gave
6 you the wrong first page. The first page is 188-0469. 188-0469. For
7 the file it's DRC-OTP-0188-0469, MFI-D-00010. Thank you.

8 Thank you, and I apologise again. I hope I will improve with
9 practice.

10 Q. You should now see page 188-0482 in the document. Sir, so that
11 you know which document we're dealing with here, this is the second part
12 of the transcript. These are the transcripts of a video recording, an
13 interview conducted by the OTP investigators, an interview with you
14 conducted by OTP investigators. It's dated the 13th of January.

15 Line 465, it's 462 in the Lingala version, you said -- and it's a
16 transcript of the video recording. You said that Kisémbó gave the
17 orders. Is it true that that is what you told the investigators? You
18 said that it was Kisémbó who ordered that this soldier be shot, be
19 executed?

20 A. Yes. Kisémbó was in Bunia. Bosco said the following: "Shoot
21 these soldiers," and this was done in Bosco's presence. Kisémbó wasn't
22 there. Kisémbó gave orders from Bunia by using a Motorola or telephone.
23 I didn't hear this, but the order came from Kisémbó, who was the
24 superior. But he carried out the order. The person who carried out the
25 order in my presence was Commander Bosco. He said, "Tell him that it's

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1 not permitted to sell weapons. Shoot him." Bosco did that in my
2 presence.

3 Q. You said he said that in your presence. So you were right next
4 to Mr. Bosco when this conversation took place; is that correct?

5 A. What would I do next to him? His bodyguards and other commanders
6 were next to him, but I, I was there when this took place. It was in
7 Mandro. I was at the site in Mandro. I wasn't right next to Bosco.
8 What would I do there? He has his own bodyguards. And there were
9 several other commanders.

10 I'm a soldier without rank. What would I do next to him? He was
11 a very high-ranking person.

12 Q. I'll move on to another subject, sir. I'll go back to something.
13 In fact, I'd like you to explain something about your elder [as
14 interpreted] son --

15 PRESIDING JUDGE FULFORD: I was going to ask whether in public or
16 closed session, Mr. Desalliers. Is this closed session? It is. All
17 right. Please continue.

18 MR. DESALLIERS (interpretation): Yes, in closed session for
19 certain questions.

20 Q. Your elder son, (Redacted), does he live with you?

21 A. As of which date, now or when?

22 Q. Did he live with you throughout the year 2008?

23 A. He arrived in 2008. Yes, I can confirm that. He was there
24 throughout the year 2008. We lived together throughout that year.

25 Q. Would it be correct to say that you told OTP investigators when

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1 you met them on the 11th and 13th of January, 2008, that the mother of
2 your older son, (Redacted), had died.

3 A. That's what I told them, because before I arrived in (Redacted) I
4 knew that she had already died.

5 Q. Did your eldest son have the same impression that you did?

6 A. How can I answer that question? He has his own mind. I can't
7 see into the depths of his heart, but if something happened or if some
8 events happened and he heard about it and I also heard about it -- well,
9 how can I answer that question? He heard about this, and I also heard
10 about this. I can't look into his heart. He can't do that in my case
11 either, although he's my child.

12 Q. I'll ask another question. Did you inform him of the fact that
13 his mother had died in 2003?

14 A. Sorry?

15 Q. Did you inform (Redacted) of his mother's death in 2003?

16 A. Sir, the war had dispersed everyone. He has his own ears. I
17 have my own ears. (Redacted) heard about this himself, and I heard about
18 it myself. What do you want me to tell you?

19 Q. So (Redacted) knew that his mother had died in 2003. You can
20 confirm that?

21 A. Everyone, each and every family, was looking for some of their
22 family members. There were a lot of dead people. Many people died. If
23 someone wasn't found, that just meant that the person had died, that's
24 all.

25 What would you like me to tell you? I can't tell you anything

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1 else, because there were many dead. There were many corpses. If someone
2 wasn't found, that simply meant that the person had died.

3 Q. Very well. You said that you found out about this, or you found
4 out that (Redacted) mother had not died. That was in November 2008, and
5 you certainly informed (Redacted) of the fact, didn't you?

6 A. I said the following: Since I started with this affair, well,
7 I'm not -- I haven't been in contact with (Redacted)
8 behaviour has changed. I don't have frequent contact with (Redacted). No,
9 I don't. However, if (Redacted) is informed of a problem, for example,
10 when I listened to the conversation on his phone, well, he had his own
11 way of listening about his mother, about whether his mother was in a
12 certain village or in another village. I didn't provide any explanations
13 to (Redacted). If he found anything out on his own, well, he found
14 things out on his own.

15 Q. You, sir, did you or did you not tell (Redacted) that his mother
16 was still alive?

17 A. How many times do I have to answer this question? I said the
18 following: I did not have a conversation with (Redacted) telling him
19 that his mother was alive or not, because I hadn't yet checked the
20 information. It was necessary for me to check the information. I can't
21 say just anything. I have to check certain things. I had to check to
22 see whether his mother is alive or not. I can't leave (Redacted) and
23 check. There was no means of doing that. That's why I decided not to
24 speak to (Redacted) about the matter.

25 Q. But you have family who live in the area. Didn't you ask them to

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1 check the information?

2 A. This information came from family members. They told me about
3 this.

4 Did I personally go to Ituri? I received this information from
5 family members.

6 Q. Very well. I would now like to deal with the subject of
7 demobilisation, the demobilisation of (Redacted). First I'll ask you a
8 simple question, and then you can explain how he was demobilised, how and
9 when.

10 A. Your question -- well, I think you have a lot of documents on
11 your table. I only have my own head to use -- to think. I'd like you to
12 put questions to me from your memory, because you have a lot of
13 documents.

14 (Redacted) was demobilised, as was the case with many other
15 children. There is an NGO in Bunia called (Redacted). This NGO
16 receives all children, all former soldiers. The NGO had staff members.
17 They'd go everywhere, into the streets to inform former soldiers and to
18 tell them they could be received by the NGO. The NGO would receive all
19 these children, and this is how they also took (Redacted) in.

20 They put a certain number of questions to him, asked him whether
21 he was a soldier. They put these questions to him in my absence.
22 (Redacted) answered their questions, and (Redacted) stayed in a group of
23 former soldiers there.

24 They used the same system that they used in my case. They
25 received a certificate of demobilisation, and after this procedure had

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1 been completed, they started instructing (Redacted) and his friends.

2 There were psychologists and other people.

3 I was absent. I wasn't there.

4 Afterwards, there was an NGO called (Redacted)

5 (Redacted) and they arrived at the site. I was summoned.

6 I asked about what was going on. They said that my child had to go to

7 the ICC. The documents are here. So this is how things transpired.

8 (Redacted) was demobilised by (Redacted), and this is what was
9 done in the case of all the other children. This NGO is still on site,
10 and it is up and functioning.

11 Q. This NGO is based in Bunia. Isn't that right?

12 A. I don't know how to start answering that. This NGO is still
13 operational in Bunia. (Redacted) is still there.

14 THE INTERPRETER: "(Redacted)" says the witness in
15 French.

16 THE WITNESS (interpretation): It's a well-organised NGO. Even
17 now if you go to Bunia you can find the children there. You will find a
18 lot of children who are being instructed there. Some learn how to work
19 as mechanics. Others learn carpentry, tailoring. They have instructed a
20 number of children in this NGO. (Redacted) was provided with instruction
21 in this NGO.

22 MR. DESALLIERS (interpretation):

23 Q. To be more precise sir, you said that (Redacted) the
24 organisation, went to the villages, and they invited children to join them
25 them whether they were soldiers or not. Is that what you said?

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1 A. Yes. (Redacted) was picked up in the street. He didn't go to
2 them of his own accord. He was found in front of his house. Staff
3 members from the NGO went to seek out these children.

4 Q. What was the date on which he was taken by the NGO?

5 A. Well, I don't have the date exactly. I remember the day the
6 events happened, but I can't remember the date. There are documents,
7 however, in which you'll find the date on which he was demobilised. The
8 references are in Bunia. You can request the documents in Bunia, and
9 there'll be more information there. Actually, if you find the documents,
10 you'll find the references there in the offices. You can ask (Redacted)
11 (Redacted)

12 How would I remember the date on which the events occurred? All
13 I remember is that the events happened, but I can't remember the date. I
14 don't have the date.

15 Q. Well, without giving us the exact date, could you tell us perhaps
16 if it was at the beginning of -- at the end of 2004, at the beginning of
17 2005, just to gave us a vague idea?

18 A. Well, I think it was right in the middle of 2005, but I don't
19 have the exact date.

20 Q. And how long did the demobilisation take? For how long was he
21 taken care of by the NGO?

22 A. Well, it's important to understand that their demobilisation
23 wasn't like ours. Ours only took one week, and then after that week
24 you'd go home and you were a civilian. But their troops were
25 demobilised. Then there was the support moment after the demobilisation

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1 which during this time they were given training. Mechanics, for
2 instance, for six months for (Redacted). And then after the
3 demobilisation they were signed up in secondary schools. He was there
4 for one or two months, and then he gave up his school, his studies, and -
5 and they wondered what to do with the child, so they went to get him back
6 after a couple of days or a couple of months, and then afterwards they
7 sent him to a school for mechanics and he studied there for six months.
8 He has a brevet, and you can find the diploma he got, the certificate he
9 got, at the NGO.

10 They demobilised him and took care of him until we arrived in
11 (Redacted).

12 Q. And when did you arrive in (Redacted)?

13 A. I arrived in (Redacted) on the 8th of January, 2007. So I've
14 been in (Redacted) two years now.

15 Q. And you mentioned that he had been signed up in a secondary
16 school which he went to for two months. What was the school called?

17 A. Well, I think he went there for two months, but I'm not sure
18 because he had given up school. The school's name was (Redacted).
19 (Redacted)

20 place has a very specific address. (Redacted) I don't know how long
21 he stayed at school before dropping out, but when he dropped out, we went
22 to school to pick him up and I asked him, "Why did you drop out of
23 school? We wanted to train you." And then they signed him up to the
24 school for mechanics and that's where he finished, and succeeding, he
25 obtained his certificate with, I think, 62 per cent, between 62 and 68

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1 per cent. He's a very smart child.

2 Q. Was he taken care of by other NGOs than (Redacted)? Were
3 there any other NGOs that supported him or assisted him in any other way
4 that you know of?

5 A. There isn't any other NGO helping children in Ituri. The only
6 NGO there is (Redacted). He wasn't given any assistance from any
7 other NGO.

8 Q. Now, sir, can you tell us the name of the -- or the person or
9 persons who helped your son?

10 A. Yes. I'll give you the name. I'll give you one name even. So
11 you want to have the name of a person -- well, I don't know their other
12 name, but I know the name of the person in charge of the child support.
13 Their name is (Redacted). There was another one who had to come to visit
14 the child at home, call him, bring him to school. That person's name was
15 (Redacted). I can spell it to you, (Redacted).

16 Q. And over and above those two people, (Redacted), was there
17 anybody else?

18 A. Well, the NGO has a lot of staff, and I don't know the name of
19 all of them. I don't work in the NGO. There -- a lot of people work
20 there. I only know the two people I gave you the names of. There are a
21 lot of people working there. For instance, the day there was a car
22 accident when they were on an outing with their children, they wounded a
23 child, and the child died, and on that day, on that occasion the drivers
24 and mechanics instructors and NGO staff came. A lot of them came to give
25 explanations. However, I only know their -- the chief's (Redacted). And I

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1 know another one in charge of awareness-raising, (Redacted), but there
2 was a lot of staff there. It's a big international NGO. Probably has a
3 lot of people working for it.

4 Q. Thank you. Now I would like to move on to a very different
5 question. I would like us -- you to tell us whether you know someone
6 called (Redacted).

7 A. It was a friend. I lived at his place. I know him. I lived
8 with him. I know him.

9 Q. Could you explain who this person is?

10 A. A friend. I lived with him at his home for several days. What
11 is a friend? Who can give us the definition of the word "friend"? He's
12 a friend. He wasn't a member of my family. He was a friend.

13 Q. And you lived with him from when to when? Could you give us the
14 dates?

15 A. Well, there's no relation between him and me and what I'm telling
16 you about. I just lived at his house, that's all, full stop. There
17 aren't any problems with him.

18 Q. What year did you live with (Redacted)?

19 A. I lived with him after deserting the army, after deserting the
20 army and after being demobilised in 2003. I stayed at his home until I
21 left for (Redacted). I left his home in 2006, before the Christmas
22 celebrations. I think it was two months before Christmas. After I
23 deserted the army I went to live at his home. He was a friend. There's
24 no other relationship between him and me.

25 Q. Did (Redacted) live with you during that period at (Redacted) home?

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1 A. Yes. (Redacted) lived with me over there.

2 Q. Have you previously worked for (Redacted)? Have you been one of
3 his employees?

4 A. No. He's a friend. I lived at his home, that's all. At times
5 sometimes I may have helped him do some work, but that was only to help
6 him.

7 Q. And in what area did (Redacted) work at that time?

8 A. Well, sometimes he sent me left, right. He said go to see such
9 and such and person and do this. He had a building site at home. He was
10 building his home. So, for instance, if I didn't have anything to do, I
11 could help the workers, the builders. If he sent me to do something, I
12 would do it. I did it.

13 I wasn't one of his employees. I was living at his place as a
14 friend, full stop.

15 MR. DESALLIERS (interpretation): President, if you may, I would
16 like to take a couple of minutes to look at something.

17 (Defence counsel confer)

18 PRESIDING JUDGE FULFORD: Certainly. Yes, Mr. Desalliers.

19 MR. DESALLIERS (interpretation):

20 Q. I just have a question, sir. Are you able to recognise your
21 son (Redacted) signature?

22 A. Well, young boys nowadays have a lot of problems. He has never
23 signed in front of me. He's never written me a letter, so I won't be
24 able to identify his signature because I've never asked him to sign
25 anything for me, and he's never written me a letter in which I could

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1 identify his signature. So I couldn't recognise his signature.

2 MR. DESALLIERS (interpretation): President, the Defence doesn't
3 have any more questions at this stage.

4 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Desalliers.
5 What sort of length of further questioning have you got,
6 Mr. Sachdeva, if any?

7 MR. SACHDEVA: Mr. President, I have four or five questions. It
8 could be anywhere between 5 to 25 minutes, but --

9 PRESIDING JUDGE FULFORD: Anything between 5 and 25 minutes
10 that's a pretty elastic estimate, Mr. Sachdeva. Right. But for what
11 it's worth, thank you.

12 Judge Odio-Benito has some questions which may be convenient to
13 put now. I understand less than 25 minutes. Do you want closed session or
14 open session?

15 JUDGE ODIO-BENITO: Open session.

16 PRESIDING JUDGE FULFORD: We can now go into open session.

17 (Open session)

18 PRESIDING JUDGE FULFORD: Yes, we're back in open session, and Judge Odio-
19 Benito has some questions for the witness. Questioned by the Court: JUDGE

20 ODIO BENITO: Thank you. Good morning, sir. At the beginning of your
21 testimony, you told the Court that in Mandro training camp there were women
22 and young girls amongst the 5.000 people that were in the camp at that time.
23 You also said to the Court that there were soldiers, also that these women
24 were of all ages, as were the men. men. My question is: If during the
25 period you were bodyguard for Mr. Lubanga as Minister of Defence or President

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.1 of the Union des Patriotes Congolais, if there were women of all ages
2 working as bodyguards with him.

3 A. Well, I've come here to say the truth. There were women, yes.
4 There weren't any very old women. The ages ranged between 25 and
5 probably even under the age of 25. I don't think I saw many women older
6 than 25, but if there were any, there weren't very many of them, that's
7 for sure. But from 25 to 15, even younger than 15, yes, there were, at
8 the residence where I worked when he was Minister of Defence.

9 When I worked for him as a bodyguard, when he was Minister of
10 Defence, there weren't any women. When the training took place in
11 Mandro, we trained women. I saw -- however, he didn't have any women,
12 female, bodyguards except for one. The one he did have was probably aged
13 over 20, probably even 25. She was the only woman. But she didn't work
14 long at his home, because at his home there were only male soldiers,
15 because he needed strong, experienced soldiers at his home, capable of
16 protecting him. So there weren't any women at the house. The women were
17 sent to other places, but there weren't any women at his home. However,
18 there was one woman who had worked there, but she didn't work for long.
19 She was more than 20 years old.

20 JUDGE ODIO BENITO: Thank you, sir. And when you say that women
21 were sent to other places, what these other places were?

22 A. The commanders were appointed to certain posts, and they had
23 women soldiers behind them. PMF we would call them. The PMFs' job was
24 to take the commander's bags, and their other job was to be their wives.
25 There were women working with each commander.

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1 JUDGE ODIO BENITO: Thank you, sir. And you also said that "PMF"
2 stands for "girl soldiers." Is that correct?

3 A. I -- I don't know the meaning of that word. However, I know that
4 that's how -- well, when we received people from Mbusa, that's what they
5 called the women in their armies, PMF, and from that time on we called
6 them PMF.

7 JUDGE ODIO BENITO: And -- thank you, sir. And you say that this
8 PMF job was to take -- or to guard the commander's back. So I
9 understand -- perhaps I am wrong, but I understood that that means that
10 they were bodyguards of the commanders, and other job for them was to be
11 their wives. Is that what you say?

12 A. Yes.

13 JUDGE ODIO BENITO: There was any other job as soldiers that
14 these PMF performed during the time you know them?

15 A. Well, their main job was -- was that. Under each commander their
16 main job was to prepare food, to wash their commander's clothes. And if
17 the commander had to go to war, for instance, the PMF had to stay to
18 guard the belongings. And when he would come back from war, food would
19 be ready.

20 And I would like to make it clear the PMFs didn't go to war.
21 They didn't go and fight. They were just the soldiers' women.

22 JUDGE ODIO BENITO: Thank you very much indeed, sir. No further
23 questions.

24 PRESIDING JUDGE FULFORD: Mr. Sachdeva, quite soon we've got to
25 give the interpreters and the stenographer a break, so I think we'll have

1 an adjournment in a moment. Before we do, turning to your application in
2 relation to the way in which video evidence should be presented, to a
3 very large extent, as we understand your application, this is really a
4 matter of practicality and convenience that you wish to be able to
5 control exactly what is introduced from counsel's bench rather than
6 having it done by the Court Officer. Subject, of course, to any
7 observations by Maitre Mabille, our initial reaction is that this is
8 really a technical issue that really is a question for the parties to
9 agree sensibly with the legal officer of the Court.

10 What is absolutely critical is that there is a complete and
11 permanent record of exactly what is shown by the Prosecution during the
12 course of its presentation of evidence. So if you play a particular
13 sequence, that needs to be recorded onto the court record so that anyone
14 later can go back, hopefully by accessing TRIM, and can see precisely
15 what it is that you showed. This shouldn't be left to a question of
16 giving counter numbers on a video machine. The actual sequence, it seems
17 to us, should be recorded. So I don't know how easy or difficult that
18 is going to be.

19 Otherwise, you need to ensure that any admissibility issues have
20 been resolved, preferably before the witness is called because it would
21 be highly inconvenient for the witness's evidence to be constantly
22 punctuated by objections in relation to admissibility. But as I say, who
23 actually presses the button to play the record is not a matter that is of
24 any particular concern to us so long as sensible arrangements are made
25 with the Court Officer and so long as there are no objections from the

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1 Defence.

2 MR. SACHDEVA: Thank you so much Mr. President, and in fact
3 that's very helpful to know. And with respect to the detailed question,
4 may I ask Ms. Struyven to respond if need be.

5 PRESIDING JUDGE FULFORD: Yes, certainly. Ms. Struyven, you will
6 have understood the thing that particularly concerns us is that there is
7 a complete and absolute record of what is shown by you as part of your
8 presentation of evidence.

9 MS. STRUYVEN: Yes. And in order to avoid any discrepancies, we
10 intend to play the videos really as they are saved in Ringtail, with
11 exactly the same numbers in terms of minutes and seconds.

12 Now, we always refer to the minutes and seconds as they will
13 appear in Ringtail. That is the -- our intention to avoid, indeed, a
14 discrepancy between the minutes you will see in Ringtail and the minutes
15 that we will show to the witness.

16 PRESIDING JUDGE FULFORD: That sounds good, Ms. Struyven. We
17 have been blighted by technological problems so far, and can you please
18 do everything you can to make sure there is no discrepancy between the
19 two.

20 MS. STRUYVEN: Yes, we will.

21 PRESIDING JUDGE FULFORD: Thank you very much.

22 Maitre Mabilie, is there anything you wish to say at this
23 stage or would it be better for you to discuss the matter with the
24 Prosecution first?

25 MR. BIJU-DUVAL (interpretation): Just very briefly, President.

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1 We just want to insist on the fact that the Defence must be informed
2 sufficiently in advance of the precise extracts that will be shown to the
3 Chamber. However, at present that is not yet the case, and that's what
4 we're worried about. Up until now we've only been informed of the
5 general scenes the extracts will be taken from, but we don't yet know
6 exactly which extracts are concerned. So we insist, once again, on the
7 need to have details about the specific extracts that will be shown.

8 PRESIDING JUDGE FULFORD: Well, what you've just said
9 Mr. Biju-Duval has been translated into English as you insisting on
10 something. I'm sure that's not meant -- not meant
11 impolitely to the Bench.

12 You are certainly entitled forcefully to submit that you should
13 have adequate warning of the sections that are to be played, and I have
14 noticed, as a matter of some concern, that the filing put in by the
15 Prosecution on the 6th of February, filing 1673 on this issue, does not
16 set out the particular sections that are to be played.

17 Now, Mr. Sachdeva, for the Defence to deal with any admissibility
18 issues, they have got to know what is to be played, because otherwise,
19 there is far too great a risk that they are going to be taken by
20 surprise. And so before any of this happens, you need to sit down with
21 Mr. Biju-Duval to explain to him exactly what's coming. And I have to
22 say if this hasn't been done already, absent any really good explanation
23 from the Prosecution now, our view is that this should have happened some
24 time ago so that the Defence had time to prepare.

25 Now, is there anything you want to say now, either you or

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1 Ms. Struyven?

2 MS. STRUYVEN: Thank you, Mr. President. We have communicated to
3 the Defence a list of the scenes of the videos we intend to play. We
4 haven't indicated within the scenes -- which portions within the scenes
5 we intend to play because we're still discussing that, but we will do so
6 as soon as we have them ready.

7 PRESIDING JUDGE FULFORD: Well, Ms. Struyven, this is getting
8 very late. Witness 41, who as I understand it is one of the witnesses to
9 whom this relates, or perhaps not -- no. All right. You're safe then.
10 But it's getting close to the time when firm decisions need to be made
11 about this. So can you, within the Prosecution team, reach finality as
12 regards your own discussions so that you can have meaningful
13 conversations with Mr. Biju-Duval about this.

14 MS. STRUYVEN: Yes, your Honours, we can.

15 PRESIDING JUDGE FULFORD: All right. Thank you very much. We
16 will now have a half-an hour-break and sit again at 25 to three.

17 Sir, I undertake that your evidence will finish this afternoon.

18 MS. MASSIDDA: Your Honour, I'm very sorry.

19 PRESIDING JUDGE FULFORD: Ms. Massidda.

20 MS. MASSIDDA: Can I ask if the list of scenes that the -- of the
21 videos that the Prosecutor intend to play could also be provided to the
22 Legal Representatives? There is one practical reason for this. Myself
23 and also the other legal representative we still have problems in
24 accessing a lot of videos in Ringtail. So if we could have a list of
25 scenes at least we could try to print the transcript of the video and at

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1 least have knowledge of what the Prosecution intend to use at trial.

2 Thank you.

3 PRESIDING JUDGE FULFORD: Ms. Massidda, I think that's a
4 reasonable request in relation to those witnesses for whom you have a
5 legitimate interest. This isn't -- there isn't going to be a general
6 order that you should receive all this information in relation to all
7 witnesses, only those in relation to whom you've made an application to
8 ask questions.

9 MS. MASSIDDA: And this includes also the clients of the legal
10 representative, I guess.

11 PRESIDING JUDGE FULFORD: Yes, that's absolutely right. Those
12 who you wish to question and the witnesses who have dual status who you
13 represent, certainly.

14 MS. MASSIDDA: Thank you.

15 (Trial Chamber and Court Officer confer)

16 PRESIDING JUDGE FULFORD: The Court Officer has reminded me that
17 we originally said that we would have an hour's break at this stage and
18 for various reasons we will maintain that, and so we will rise now until
19 five past 3.00, when we will then have another and the final two-hour
20 session this afternoon. Thank you all very much. We'll sit again at
21 5 past 3.00. I'm sorry the witness is still here. Absolutely. Closed
22 session, and the witness to withdraw, please. Thank you.

23 *(Closed session) Reclassified as Open session

24 (The witness stands down)

25 PRESIDING JUDGE FULFORD: Mr. Sachdeva.

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1 MR. SACHDEVA: Mr. President, I apologise, but there's an issue
2 with respect to the potential testimony or the recommencement of the
3 testimony of 298 that the Prosecution would like to discuss prior to a
4 decision as to who the next witness is going to be.

5 PRESIDING JUDGE FULFORD: I've got to give the interpreters a
6 break. Before -- I'm determined that we will finish this -- the current
7 witness's evidence this afternoon. That takes priority over everything
8 else. Once he has finished you can then address us on the order of
9 evidence thereafter.

10 MR. SACHDEVA: Thank you, Mr. President. Thanks.

11 COURT USHER: All rise.

12 Recess taken at 2.09 p.m.

13 On resuming at 3.06 p.m.

14 (Open session)

15 COURT USHER: All rise. Please be seated.

16 PRESIDING JUDGE FULFORD: We need to go back into closed session,
17 please, so the witness can be brought back in.

18 *(Closed session) Reclassified as Open session

19 PRESIDING JUDGE FULFORD: Witness, please.

20 (The witness takes the stand)

21 PRESIDING JUDGE FULFORD: Good afternoon, sir.

22 Open session, Mr. Sachdeva?

23 MR. SACHDEVA: Mr. President, I do have some questions in closed
24 session, so perhaps I can start.

25 PRESIDING JUDGE FULFORD: Shall we deal with those as a discrete

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1 block now?

2 MR. SACHDEVA: Yes. And may I just seek advice. The first set
3 of questions refer to the materials that were shown to the witness.
4 However, substantively they possibly can be done in open session, but out
5 of an abundance of caution, I would like to do that in closed session
6 with your leave.

7 PRESIDING JUDGE FULFORD: I think on -- in this whole area,
8 Mr. Sachdeva, caution is the preferred course.

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

10 Further Questioned by Mr. Sachdeva:

11 Q. Good afternoon, to you, sir, again.

12 A. Good afternoon.

13 Q. I just have a few further questions to ask you, and it won't take
14 very long.

15 Now, at the beginning of the cross-examination --

16 A. (No interpretation)

17 Q. -- you were asked questions about the interview you gave to
18 the Office of the Prosecutor on the 11th of January and the 13th of
19 January, 2008. Do you recall those questions?

20 A. Could you remind me what questions you are referring to so I have
21 an idea what you mean?

22 Q. Absolutely. The counsel for the Defence referred to a statement
23 that was given to (Redacted), and counsel asked you
24 questions about the date of the abduction of your eldest son, the first
25 abduction. Do you remember those questions?

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1 A. I don't have an idea on that.

2 PRESIDING JUDGE FULFORD: I think go straight to the point,
3 Mr. Sachdeva.

4 MR. SACHDEVA:

5 Q. Sir, when you were interviewed by the Office of the Prosecutor on
6 the 13th of January, were you asked questions about the date of your
7 son's abduction, the first abduction?

8 A. Yes. They put that question to me, and I answered as follows:
9 It was in 2002, before Christmas. I was not there, and so I don't know
10 the exact date, but what I do know is it was before Christmas.

11 Q. Now, also during questioning by the Defence you were asked
12 questions about the name of your brother, and you said that his name was,
13 and forgive my pronunciation, you said (Redacted). And also you have
14 told the Court your eldest son's name. And I want to ask you, there
15 appears to be a difference between the names of members of your family, and
16 can you explain that to the Court.

17 A. I gave the name of my elder brother and that is right. When my
18 child was arrested, he was going on holidays to my elder brother. That
19 is when he was abducted for the second time. He was on his way to visit
20 my elder brother, and on the way he came across soldiers. This was in
21 Centrale, and the soldiers took him to Mabanga. And I made efforts to
22 extract him from there.

23 My elder brother who is called (Redacted) did not go to that
24 place because he had some difficulty on the way.

25 Q. Thank you. Thank you for that, sir. If I could ask you just to

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1 concentrate on my specific question, and that is why is there a
2 difference between your brother's name and your name. If you could
3 explain that to the Court. I'm talking about the family name - I
4 apologise - the surname.

5 A. Yes, I've understood well. His name is (Redacted). That is a
6 name from our mother tongue. His name is (Redacted) means the (Redacted)
7 (Redacted) in our mother tongue. (Redacted)
8 (Redacted) and that is why he was given that name. (Redacted)
9 if you like, or the (Redacted)
10 (Redacted)

11 Now, after him, after his birth, other brothers and sisters
12 died and after that I was born and I was given the name (Redacted) and
13 (Redacted). And my
14 name means that (Redacted). That is the meaning of my name in
15 our mother tongue, and that is the difference between the two names, but
16 there are no big differences. My family called him (Redacted) and gave
17 me the name (Redacted). And the name (Redacted) signifies we are not
18 Hema. If you look at my identity card you will see that we are of the
19 (Redacted) (phoen) ethnic group. And that is why we have been given the
20 name (Redacted), and (Redacted) is a name from our tribe. We are not
21 Hema. We are (Redacted). It's --we have our own language, but we have
22 lived amongst the Hema. However, we are not Hema. In our mother tongue
23 and in our, tribe, (Redacted) because there were many more men in our
24 family than women.

25 Q. Thank you.

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1 MR. SACHDEVA: Mr. President, we can move into open session.

2 PRESIDING JUDGE FULFORD: Thank you very much. Let's move into
3 open session then, please.

4 (Open session)

5 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

6 MR. SACHDEVA: Thank you.

7 Q. Sir, last week you were talking about the visit of Mr. Lubanga to
8 the Mandro camp, and you said when Mr. Lubanga came, he was satisfied
9 with what he saw. Why do you say that?

10 A. I have given an explanation of that, but I can do it again. Now,
11 he was Minister of Defence. There was a war in Bunia. The troops of his
12 president, Mbusa Nyamwisi came to provoke us, to provoke us, that is to
13 say, the soldiers of the Minister of Defence. And there was fighting
14 between us. So the battalion commander of Mbusa Nyamwisi died and he had
15 been in charge of that war, and he died when we were giving resistance.
16 There were large number of deaths on their side. When he died,
17 Mbusa Nyamwisi called in reinforcements from Beni, and so it was that
18 there were large numbers of troops, whereas there were only 30 or 40 of
19 us. There were more than 300 of them. Their objective was to
20 exterminate us, but thankfully God was on our side.

21 Thomas Lubanga was in his residence, and because of that war he
22 was unable to leave his residence. The fighting was going on around his
23 house, right around his compound and even in the compound, and that is
24 when he and his secretary and Commander Bosco and his driver left.

25 I accompanied them to the airport. I personally did that. And I

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1 would have given my life for him to live. I defended his vehicle. I
2 walked holding my weapon, and if I saw one of the enemy I would shoot at
3 him.

4 I accompanied him until we came across Ugandan soldiers who helped us. And
5 so we arrived at the airport and he then remained in the airport.

6 After that he returned to his residence, and at that time then
7 Ugandan soldiers guarded his residence. After that, Ugandan soldiers
8 took him somewhere, because at that time Ituri was under the control of
9 the Ugandans. They took him, took him to the airport and took him to
10 Kampala, to Entebbe. After that, he was taken directly to Kinshasa.
11 That is what we learnt. We learnt that he was under house arrest in
12 Kinshasa. But after that, he left about 40 or 30 soldiers. That's the
13 number who stayed.

14 Bosco and Kisembo agreed to set up a training centre in Mandro.
15 That was the first training centre. And they opened it --

16 PRESIDING JUDGE FULFORD: Sir I am going to interrupt you.
17 Please forgive me for doing do. First of all, I want to ask you,
18 Mr. Sachdeva, the question that you put, which is based on the witness
19 talking about the visit of Mr. Lubanga to the camp, Mr. Lubanga saying
20 that he was satisfied with what he saw, now, maybe my memory is playing
21 me tricks, but I seem to remember that that was a question you put and
22 that was an answer that was given to one of your questions.

23 Now, am I -- am I right or wrong with that?

24 MR. SACHDEVA: Mr. President, in fact that was on page 57 on the
25 5th of February, and it was during the -- during the cross-examination.

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1 PRESIDING JUDGE FULFORD: Right. Right. I put it
2 tentatively because I wasn't sure.

3 Sir, can I ask you to -- your answers are extremely helpful, can
4 I stress that, but can I please ask you to -- to concentrate now very
5 closely on what the lawyers put to you to make sure that you just answer
6 the question that they ask. It has an advantage for you in that it means
7 that it will shorten the time you're in the witness box.

8 Now, before we go on, Mr. Sachdeva, Mr. Desalliers was on his
9 feet.

10 Yes, Mr. Desalliers.

11 MR. DESALLIERS (interpretation): Yes, your Honour. The comment
12 which I wanted to make links in with the comments which you have just
13 made, because I, too, was under the impression that the visit to
14 Mr. Lubanga -- by Mr. Lubanga to Mandro camp had been covered by the
15 office, by my learned friend, in the examination-in-chief. Our
16 understanding of the exercise of re-examination is that the Prosecutor
17 can address matters that have been raised only in cross-examination but
18 not matters which were discussed already in chief.

19 PRESIDING JUDGE FULFORD: Well, Mr. Desalliers, I think
20 Mr. Sachdeva has given an answer to that. Your memory and my memory were
21 at fault, and it seems as though this was a matter that you raised during
22 the course of your questioning. And if that's correct and if the
23 reference Mr. Sachdeva has given us is right, and there's no reason to doubt
24 him, he's entitled to ask this question.

25 Yes. So, Mr. Sachdeva, you can proceed.

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1 And, sir, can I ask you to carefully focus on the questions that
2 are put to you. Thank you very much.

3 MR. SACHDEVA: Thank you, Mr. President. I'm happy to give the
4 lines to --

5 Q. Sir, thank you for that answer, but let -- I want you to
6 concentrate on the time when Mr. Lubanga visited Mandro. So thereafter
7 he was in Kinshasa, and you had said that when he came to Mandro at that
8 time he was satisfied with what he saw.

9 I'd just like you to explain. Why do you say that?

10 A. You have put that question and I answered as follows: When he
11 arrived in Mandro, he found an impressive number of soldiers. Nobody
12 knows how many. Many. There was much weaponry and also a very large
13 number of recruits, a very high number, and he was very happy. Seeing
14 the status of the camp, he was delighted. He was very happy with it.

15 Q. You also said in answers to questions from the Defence that the
16 camp in Langu had been abandoned by the Ugandans, and my question is:
17 After they were abandoned, who controlled the camps?

18 A. No. I think there is a misunderstanding there. The Ugandans
19 were never in Mandro camp. It's Bosco who created the camp, Mandro camp.
20 And the camp was shut down when Bosco abandoned it. I think there must
21 have been a misunderstanding.

22 Q. Thank you, sir. I think that perhaps there may have been a
23 misinterpretation, but I was talking about the camp in Langu. You had
24 said that the camp in Langu had been abandoned by the Ugandans, and my
25 question is the same. Once they were abandoned, who controlled the camp?

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1 A. When the Ugandans left, the camps fell into the hands or remained
2 in the hands of the Iturians, UPC people.

3 Q. You also said to the Court in answering questions from the
4 Defence that when the soldier was shot for stealing weapons that Bosco
5 Ntaganda was present and you said other commanders were also there. Do
6 you know which commanders were also present at that time?

7 A. What is important is this: The order was given by Mr. Bosco. I
8 think that Ituri is larger than your country here. There was a large
9 number of people, and it's difficult for me to be specific in who was
10 there because there were a lot of people.

11 How can I specify amongst such a large number of people?
12 However, the commander who gave the order for them to be shot was Bosco.

13 Q. You also gave evidence that the Chief of Staff, Mr. Kisémbó, was
14 living at the headquarters in Bunia and that Mr. Lubanga's residence was
15 close to those headquarters. Would, during the time you were there,
16 would Mr. Kisémbó and Lubanga meet?

17 A. To be specific, every day. Every day Kisémbó went to
18 Thomas Lubanga's residence several times, at any time. I think that he came
19 virtually every day. Perhaps one day or another he wasn't able to go, but
20 that doesn't change anything to what I'm saying. He would come
21 constantly.

22 Q. And my last question, sir. To your knowledge, when does the
23 school year end for secondary schools in your region? When would it
24 typically end?

25 A. Usually it's in July. That's the end of the school year. And

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1 everyone goes on holiday. It's in July. And people go back to school --
2 the children go back to school in September, but then it's the following
3 July that the school year comes to an end again.

4 Q. And I'm sorry, I did say that was my last question, but I have
5 one follow-up question. And for primary schools? When does the school
6 year typically end for primary schools?

7 A. On the 2nd of July usually. However, if there is an extension,
8 well, that depends on the school, but usually it's on the 2nd of July.

9 MR. SACHDEVA: Mr. President, that's the re-examination.

10 PRESIDING JUDGE FULFORD: Thank you very much indeed.

11 Mr. Desalliers, have you anything arising out of either
12 Judge Odio-Benito's questions or the few questions just put by
13 Mr. Sachdeva?

14 MR. DESALLIERS (interpretation): No, Mr. President, I have no
15 additional questions.

16 PRESIDING JUDGE FULFORD: Good. Mr. Desalliers, so as to make
17 sure there's no misunderstanding hereafter, although at the commencement
18 of this witness's testimony there were a number of observations made as
19 to his identity and that of his son, no questions have been put to him on
20 the basis that he is not telling the truth when he says that at one stage
21 in his life he worked as a bodyguard to your client.

22 Now, we are making the assumption that that matter has not been
23 raised by you because there is no challenge to that fact, which of course
24 is something which one would expect to be within your client's own
25 personal knowledge because it is suggested that the witness was acting as

1 a bodyguard for Mr. Lubanga. I just want to ensure that it has been a
2 deliberate and considered step on your part not to challenge that
3 evidence.

4 MR. DESALLIERS (interpretation): Mr. President, with your leave,
5 I would like to confer with my team with regard to that comment of yours.

6 PRESIDING JUDGE FULFORD: Of course.

7 (Defence counsel confer)

8 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

9 MR. DESALLIERS (interpretation): Your Honour, I think to
10 answer -- at least I hope I'll be able to answer your question. To
11 answer that question the Defence claims that there are elements in the
12 course of the proceedings, and that was the case in the course of this
13 witness's testimony, there are elements that won't necessarily be
14 explored by the Defence. No questions will be asked about them. But
15 this does not necessarily mean that certain things have been accepted.

16 It will be a little complex to answer questions of this type,
17 because in some cases the Defence might decide to have evidence when
18 presenting its case; and in other cases, they'll try to present its case
19 by putting questions in the course of cross-examination.

20 So what I would like to say in response to your question,
21 your Honour, is that one shouldn't draw the conclusion that this element,
22 this fact hasn't been contested by the Defence. We didn't ask any
23 precise questions about this subject, that's true, but that -- there are
24 certain elements that could be a subject of discussion in the course of
25 the examination of other Prosecution witnesses. But that will certainly

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1 be the case during the presentation of the Defence case.

2 PRESIDING JUDGE FULFORD: Mr. Desalliers, in relation to most
3 areas dealt with by this witness you are entitled to test the
4 Prosecution's evidence, to probe it, and if it is your client's position,
5 to be skeptical about it.

6 On this particular factor, however, as we see the evidence at the
7 moment, the witness has said positively that he acted as one of the
8 personal bodyguards of the accused. So this is something which is, on
9 the face of it, entirely within your client's own knowledge.

10 If later it is to be suggested that the witness is lying about
11 that and on Mr. Lubanga's case he was never one of the accused's
12 bodyguards, in our view, given that this is something potentially within
13 your client's own knowledge, on the face of it something within your
14 client's own knowledge, this ought to be put directly now, and it would
15 be unfair on this witness for a suggestion to be made that he is lying
16 about that when the allegation is never put to him.

17 So I'm not dealing with a general -- this isn't a general point,
18 Mr. Desalliers. This is a very specific point on one thing that, as it
19 appears to the Judges, is particularly and peculiarly within your
20 client's own knowledge, which if it's challenged ought to be dealt with.

21 MR. DESALLIERS (interpretation): Mr. President, the question is
22 a very important one. Could I have five minutes, with your leave, to
23 confer with my team, if possible.

24 PRESIDING JUDGE FULFORD: Do you want us to rise, Mr. Desalliers?

25 MR. DESALLIERS (interpretation): Five minutes at the most, so I

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1 don't think it's necessary to rise. We can discuss the matter very
2 briefly.

3 PRESIDING JUDGE FULFORD: We'll sit here quietly. If you want us
4 to rise, let us know.

5 (Defence counsel confer)

6 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

7 MR. DESALLIERS (interpretation): Thank you, your Honour, for
8 granting me this time.

9 Your Honour, I think that we can say that with regard to what the
10 witness said about being Mr. Lubanga's bodyguard when he was the
11 Minister of Defence, well, with regard to that matter the Defence has no
12 issues. Where the Defence asked more specific questions was where he
13 said he was Mr. Lubanga's bodyguard at his residence
14 when he was the president of the UPC. The Defence believes it has all
15 the information from the witness that allow one to -- that allows us to
16 express our position clearly later on.

17 As far as the period during which the witness says that he was
18 Lubanga's bodyguard while Lubanga was Minister of Defence, well, with
19 regard to that period the Defence has
20 no questions for the witness.

21 PRESIDING JUDGE FULFORD: And so be it, Mr. Sachdeva -- sorry,
22 Mr. Desalliers, but there needs to be, I think, a measure of
23 understanding about this, that if at a later stage it is to be suggested
24 to us that a witness has lied, so if it is to be suggested that the
25 witness told the truth about being a bodyguard during one period but has

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1 lied about being a bodyguard during a later period, and that is something
2 which the accused is able to say is a lie because of what he saw himself
3 and what he knew himself, then that really ought to be put to the witness
4 so the witness has got an opportunity to deal with it.

5 Now, you will know from your own instructions as to how this is
6 or may be put later on, but if it is, as I say, going to be suggested
7 that this witness has lied, then he ought to be given an opportunity of
8 dealing with that allegation. So it's really a matter for you,
9 Mr. Desalliers.

10 (Defence counsel confer)

11 MR. DESALLIERS (interpretation): Very well, your Honour. I could
12 put additional questions to the witness, and it might enable us to
13 clarify the situation somewhat.

14 PRESIDING JUDGE FULFORD: Yes, Mr. -- yes, Mr. Sachdeva.

15 MR. SACHDEVA: I'm sorry, Mr. President, but that, then, does
16 raise an issue as to what right does the Prosecution have in asking
17 further questions.

18 PRESIDING JUDGE FULFORD: None at the moment, Mr. Sachdeva.
19 Let's see where we go to.

20 Now, Mr. Desalliers, I would have thought that you can deal with
21 it on this topic fairly broadly, but it ought to be dealt with one way or
22 another. So formulate an appropriate question, please, to put to the
23 witness.

24 MR. DESALLIERS (interpretation): Mr. President, my questions
25 will be very direct, and let's hope the answers will be very clear to

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1 shed light on the matter for the Chamber.

2 Further Questioned by Mr. Desalliers:

3 Q. (Interpretation) Sir, is it true that -- this is something you
4 said, that you were Mr. Lubanga's bodyguard when he was the Minister of
5 Defence?

6 A. I even explained everything that happened to you. I was his
7 bodyguard.

8 Q. Now, when you stopped being Mr. Lubanga's bodyguard ...

9 (Defence counsel confer)

10 MR. DESALLIERS (interpretation):

11 Q. I apologise. Let me rephrase that question. As of the time that
12 Mr. Lubanga ceased to be the Minister of Defence, did you subsequently
13 continue to be his bodyguard?

14 A. Would I be a bodyguard in a vacuum? He was in Kinshasa in his
15 residence under surveillance. While he was in Kinshasa, all those who
16 were his bodyguards stayed in the General Staff with Mr. Kitembo and with
17 another person who was not identified, who wasn't yet a general. All the
18 soldiers were at the General Staff. Why? Because he was in Kinshasa.

19 MR. DESALLIERS (interpretation): Mr. President, I have another
20 witness -- another question for the witness, and the name of the person
21 mentioned in closed session will be an issue that's raised. So I think
22 we need to put the following question to the witness in closed session.

23 PRESIDING JUDGE FULFORD: Certainly. Let's go into closed
24 session then, please.

25 *(Closed session) Reclassified as Open session

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1 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

2 MR. DESALLIERS (interpretation): Thank you.

3 Q. You said that one of your friends, acquaintances, was

4 (Redacted). Is it true, sir, that --

5 A. Yes, yes.

6 Q. Is it true that you had already acted as this person's bodyguard,
7 you had already been his bodyguard?

8 A. A civilian, an ordinary civilian, a tradesman. For a soldier to
9 be his bodyguard, well, what would that mean, Mr. Desalliers? What kind
10 of a question is that?

11 Q. Sir, my question is whether you were (Redacted) bodyguard.
12 Have you been his bodyguard?

13 A. A civilian, a tradesman. Me his bodyguard? what would that mean? Did
14 he tell you this? It's his problem. He didn't say the truth. He didn't
15 tell the truth. (Redacted) and many other tradesmen supported
16 Thomas Lubanga. It was a group that financially supported Mr. Lubanga.
17 (Redacted) and other tradesmen financially supported Lubanga. To provide
18 them with security, (Redacted) and other tradesmen went to Lubanga's
19 residence, and each tradesman had the right to two soldiers. It was in
20 the evening, and these soldiers had to stand guard at the residence of
21 these tradesmen, and they had to return in the morning to the place of
22 work. And this was done every night.

23 Can a soldier be a civilian's bodyguard? If that's the case,
24 well, then the rules weren't respected, the law wasn't respected.

25 Q. Sir, I still haven't received an answer to my question. Were you

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1 or were you not (Redacted) bodyguard?

2 A. Never. Never. Never. I, (Redacted), the bodyguard of a simple tradesman?

3 (says the witness in French) Who is he? He's an ordinary civilian. He is

4 not a soldier. What kind of a question is that? (says the witness in French)

5 PRESIDING JUDGE FULFORD: Mr. Desalliers, I'm sorry to interrupt.

6 Our interest is not in relation to (Redacted). It is very simple and very

7 straightforward.

8 Is it challenged that this witness acted as Mr. Lubanga's

9 bodyguard, or one of them, whilst he was president of the UPC, yes or no?

10 If it is challenged, then the challenge ought to be put.

11 MR. DESALLIERS (interpretation): Your Honour, the question is...

12 PRESIDING JUDGE FULFORD: Mr. Desalliers, just simply put the

13 challenge.

14 MR. DESALLIERS (interpretation):

15 Q. Sir, if I say that you were never Mr. Lubanga's bodyguard when he
16 was the president of the UPC, is that true?

17 A. You say whose bodyguard?

18 Q. Thomas Lubanga's, when he was the UPC president. Is it true that
19 you were never Mr. Lubanga's bodyguard during this period of time?

20 A. I've already answered that question. This is what I've been
21 saying since yesterday. When Thomas Lubanga arrived from Kinshasa, when
22 he arrived in Mandro from Kinshasa, we were sent over there. I was sent
23 to Tchomia. A lot of us set off with other soldiers because the weapons
24 were air dropped at an airstrip. Thomas Lubanga returned to Bunia, and
25 we went to collect the weapons where they had been air dropped. It was

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1 at Tchomia.

2 I can't be in Tchomia and at his place of residence at the same
3 point in time. I'm not a ghost.

4 Q. I understand your answer. You weren't at his residence, and
5 therefore you weren't his bodyguard. Have I understood you correctly?

6 A. I think you're bypassing the main subject when putting your
7 questions to me. First of all, to be a bodyguard, well, your work has to
8 have a purpose.

9 I was sent to Tchomia. If I hadn't been sent to Tchomia, I would
10 have remained at his place of residence. I was sent to Tchomia, and the
11 others stayed in Mandro or in the HQ, and others went to Thomas Lubanga's
12 residence.

13 Where was I at that point in time? Well, I was in Tchomia where
14 the weapons were being air dropped. The uniforms that you saw
15 Thomas Lubanga wear, well, they were air dropped, and I was in Tchomia.

16 (The Trial Chamber confers)

17 PRESIDING JUDGE FULFORD: Mr. Sachdeva, we're loathe to allow
18 you further questioning out of this. This was something the Chamber felt
19 needed to be done so as to ensure there was no unfairness to the witness.
20 Unless there is something really vital, we're not encouraging further
21 questions, because that will then lead to yet further questions by the
22 accused and there's got to be some finality of this.

23 MR. SACHDEVA: Very well, Mr. President.

24 PRESIDING JUDGE FULFORD: Can we go back into open session,
25 please.

1 (Open session)

2 PRESIDING JUDGE FULFORD: Sir, that finally concludes your
3 evidence. Can I express in a very fulsome way the gratitude of this
4 court and the Judges of this Chamber for your having been prepared to
5 come to Holland to give evidence about these matters. We are acutely
6 conscious of the inconvenience that this has caused you and the fact that
7 this has taken you away for a considerable period of time from your
8 ordinary daily life. You leave this court with our profound thanks.
9 Thank you very much indeed.

10 We now need to go into closed session so that the witness can
11 leave.

12 *(Closed session) Reclassified as Open session

13 THE WITNESS (interpretation): Thank you very much.

14 (The witness withdrew)

15 PRESIDING JUDGE FULFORD: Open session, please.

16 (Open session)

17 PRESIDING JUDGE FULFORD: Mr. Sachdeva, we now need to go back to
18 the issue of the continued evidence of Witness 298. Before I turn to the
19 particular measures that have been proposed by the Victims and
20 Witness Unit, at the moment when we were asked by the Prosecution to
21 adjourn, Ms. Bensouda, who at that stage was conducting the testimony of
22 this witness, indicated to us that something had happened earlier which
23 may have had an impact on the witness and that there was some other
24 material or information which the Prosecution may wish to bring to our
25 attention. Now, that, as we understood it, matters of that kind led to

1 the application at that point in time for us to adjourn, thereby
2 interrupting the evidence of Witness 298.

3 Now, is there further information which the Prosecution now
4 wishes to bring to our attention?

5 MR. SACHDEVA: Mr. President, may we have a moment to confer,
6 please? Thank you.

7 (Prosecution counsel confer)

8 MR. SACHDEVA: Mr. President, thank you for the time. As I
9 understand it, at the time we asked for the adjournment because it
10 appeared that something may have transpired with respect to Rule 74, and
11 also there were other issues regarding protection that we had been
12 potentially aware of from the past, and it was in that light that we
13 wanted to conduct an analysis or an examination as to whether there had
14 been any situations or incidents in the past, and we have been attempting
15 to compile that information. As your Honours are aware, the
16 Deputy Prosecutor sought leave to speak to -- for a member of the
17 Prosecution to speak to the witness, and understandably that was not
18 forthcoming, and therefore our investigation is -- is as full as it can
19 be.

20 In any event, that does not, in the Prosecution's submission,
21 affect the -- the current schedule of the witness's testimony, and we
22 are -- we are very happy to continue with the evidence of the witness,
23 especially in light of what the VWU have submitted as further special
24 measures.

25 PRESIDING JUDGE FULFORD: I think there's a lesson, however,

1 Mr. Sachdeva. If in future it is going to be suggested that a witness's
2 evidence should be adjourned, perhaps particularly after an answer or
3 some answers which are not favourable to the party calling the witness on
4 the basis of some interference or security concern, there will have to be
5 a firm basis for the application. It was put to us on the basis that
6 there was something that validly merited investigation and that there was
7 some information that was already in the possession of the Prosecution.
8 Nothing said by Witness 298 indicates that he has been in any way
9 threatened, and nothing has been given to us as regards threats in the
10 past, and so we make the observation now, Mr. Sachdeva, that if this is
11 to happen again in the future, it must be well-founded.

12 MR. SACHDEVA: Yes, Mr. President, absolutely. I think it was
13 more rooted upon the possibility that the warning with respect to
14 self-incrimination may have had an effect, in addition to other issues,
15 but the Prosecution is guided by your Honour's ruling, yes.

16 PRESIDING JUDGE FULFORD: Good. Now, as regards the proposals
17 that have been set out in the e-mail circulated today, there's a long
18 introductory section followed by a heading in relation to the setup of
19 the courtroom and the modalities of testimony. Do you have any
20 observations, Mr. Sachdeva?

21 MR. SACHDEVA: Mr. President, the Prosecution is -- submits that
22 the proposals are entirely appropriate for this witness's testimony. The
23 one issue that we would seek advice is with respect to the proposal or at
24 least the suggestion that the witness should be able to recommence his
25 testimony as soon as possible and finish as soon as possible, and in that

1 regard, it is the Prosecution's position that the next witness, if
2 possible, could be Witness 298. That may mean -- I understand that if
3 that was to occur it must occur tomorrow morning. We would prefer that
4 course of action if appropriate.

5 PRESIDING JUDGE FULFORD: Putting to one side the issue of who is
6 the next witness subject to any observations now by the Defence, we would
7 propose to recommence the evidence of 298 at half past 9.00 tomorrow
8 morning. So to that extent we're in agreement, Mr. Sachdeva.

9 What we do with the rest of the afternoon is a subject we'll
10 return to, but I want to get rid of the issues in relation to 298 first.

11 MR. SACHDEVA: Absolutely. And in fact it's in relation to what
12 happens now which is --

13 PRESIDING JUDGE FULFORD: Of concern to you.

14 MR. SACHDEVA: Yes, Mr. President.

15 PRESIDING JUDGE FULFORD: We will address your concerns a little
16 later, Mr. Sachdeva. Thank you.

17 Maitre Mabilille, do you have any observations in relation to the
18 proposals that are made as to how Witness 298 should continuing giving
19 his evidence?

20 MS. MABILLE (interpretation): President, no observations. We
21 don't have anything against either. We explained to him what was going
22 to happen as regards this witness, gave him the modalities we have, and
23 the Defence, as we're suggesting, reducing the number of assistants, we
24 suggest that only Jean-Marie Biju-Duval and Marc Desalliers will be
25 present.

1 I would, however, like to mention something about the incident
2 that just happened. It is difficult for the Defence to accept, because
3 the Office of the Prosecutor said that threats had been voiced against
4 Witness 298, and the press then repeated this, and it was said that the
5 evidence was interrupted because of threats. Now, it's difficult for us
6 to accept this, because either we have specific issues about this, but I
7 think -- and I'm very careful, I don't want any threats to be voiced
8 against a witness, but however, if we don't have any evidence of these
9 threats, it can't be denied that this presents a prejudice to the
10 Defence.

11 Now, in future, I would prefer no assertions to be made if there
12 isn't any evidence supporting it. That is what I wanted to say about the
13 testimony of 298.

14 PRESIDING JUDGE FULFORD: As a matter of general principle,
15 Maitre Mabilie, the Bench entirely agrees with what you've just said.

16 So that the record can be absolutely clear, I have looked at the
17 transcript of what occurred at the moment that we adjourned the evidence
18 of Witness 298, and in fairness to Ms. Bensouda, although she referred to
19 the issue of protective measures, although she referred to the sequence
20 of events that had taken place a little earlier on the 28th of January,
21 and although she spoke about security and protective measures, I in fact
22 haven't been able to find any express reference by her to threats. So
23 although this was interpreted by the press, I think in fairness to
24 Ms. Bensouda, certainly on the basis of my inquiries, that that was not a
25 word that she used.

1 The general point, though, is one that we agree with you on. If
2 there is to be a suggestion that something improper has taken place
3 either in court or out of court, the suggestion must have foundation
4 which can be explained to the Judges either in open court or ex parte.
5 We should not be the recipients of allegations which cannot be
6 substantiated.

7 Now, Mr. Sachdeva, I think it would be helpful if we very quickly
8 go through the suggestions that are made. The witness, therefore, will
9 continue his testimony in this court. The current protective measures
10 will be in place. The number of people in the courtroom should be
11 reduced to the bare minimum, and each team must do everything they can to
12 abide by this.

13 Maitre Mabilille has indicated that there will only be two members
14 of the Defence team. We would not expect there to be more than two for
15 the Prosecution.

16 Mr. Walley, you can be here. We asked Ms. Bapita and
17 Ms. Massidda and her assistant to reflect on whether it's necessary for
18 them to be in court. We suspect the answer is no.

19 We will reduce the number of legal officers in court and
20 representatives of the Registry.

21 The curtain around the witness seating area will be slightly
22 extended so that the witness will not be able to see the accused or the
23 accused the witness directly, although Mr. Lubanga will have a screen in
24 front of him which shows him in realtime the witness, and the witness
25 will come into court when the accused is outside of the courtroom. He

1 will take his seat and then Mr. Lubanga will come and join us and then
2 the reverse will happen when the witness leaves.

3 A name has been suggested to be used for the witness.
4 Questioning to the maximum extent possible should be non-confrontational
5 and should not be pressurising.

6 At the commencement of the witness's testimony, I propose to ask
7 the witness directly from the Bench to return to the point at which he
8 left, and I will seek to clarify whether his account is the very last one
9 he gave or whether he has returned to the original account that he gave.

10 Any names, particularly of his friends, should be written down
11 rather than given orally. Although we are not going to forbid the
12 parties and particularly the Defence to use computers or to make notes,
13 we ask that this is done as discreetly as possible so that the witness
14 isn't disturbed by it, and the in-court assistant will be present again.

15 It would be artificial for us to impose an absolute deadline on
16 the witness's evidence, but if it is possible for us to conclude his
17 evidence tomorrow, then that is something that we would very much
18 appreciate. We are not artificially going to limit the Defence in their
19 questions, but if it is possible to make sure that questions are focussed
20 so that this complete exercise can be finished tomorrow, that is highly
21 desirable.

22 Now, Mr. Sachdeva, that leaves us with 40 minutes this afternoon.
23 Do I take it that you have a marked reluctance to call Witness 41 now?

24 MR. SACHDEVA: Mr. President, indeed. I understand that court
25 time is incredibly valuable, but the Prosecution would prefer that

1 41 testifies in his entirety and that he is not interrupted, and to have
2 a situation whereby the testimony commences for half an hour and then
3 continues possibly on Wednesday, in our submission that would be
4 undesirable. But of course we understand that court time is valuable and
5 as such we are in the hands of your Honours.

6 PRESIDING JUDGE FULFORD: On this occasion, and I suspect on this
7 occasion only, Mr. Sachdeva, your application in this regard is granted.
8 But everyone must understand that ordinarily if for some reason a witness
9 cannot start until the following day, we will expect there to be a
10 witness at court so that time that would otherwise be wasted can be used.
11 But in fact there are a number of reasons why it would be desirable for
12 us to rise now today, and you are the fortunate beneficiary of matters
13 outside of your control, Mr. Sachdeva.

14 MR. SACHDEVA: Well, I'm grateful, Mr. President. Thank you.

15 PRESIDING JUDGE FULFORD: Now, are there any other matters that
16 you wish to have clarified this afternoon?

17 MR. SACHDEVA: There are, and in fact it is -- it is an
18 application to -- to postpone or to -- to bring one of the witnesses,
19 Witness 10, to possibly bring that witness later as scheduled. The
20 witness is currently scheduled to testify after Witness 30, and the
21 reason why the Prosecution makes the application is because there are
22 travel issues and administrative issues in relation to the witness which
23 are beyond the Prosecutor's control. And therefore, the scheduled date of
24 testimony is -- we have been instructed is not possible.

25 PRESIDING JUDGE FULFORD: Have you alerted the Defence to your

1 difficulties in this regard, Mr. Sachdeva?

2 MR. SACHDEVA: We were just receiving the information today and
3 we clearly will do that with the Defence once we have the final
4 situation. What I can say now is that to commence as scheduled in the
5 Prosecution's list is not going to be possible. We hope that the witness
6 can testify after Witness 11. In other words, in four witnesses time,
7 let's say. But again, we as yet do not have a final -- we don't have
8 final information as to when the witness is able to travel.

9 PRESIDING JUDGE FULFORD: Right. I would prefer us not to deal
10 with this this afternoon. The Defence have got to be given an
11 opportunity to digest the proposal that you've just made. Can you please
12 discuss this with Maitre Mabille when we rise, and if this causes any
13 difficulties for the Defence, we would like to hear about those at a
14 convenient stage, if not tomorrow, the day after. I'm keen for us to use
15 as much of tomorrow as possible for Witness 298's evidence rather than
16 dealing with ancillary matters. So if necessary, you can return to this
17 subject on Wednesday, Mr. Sachdeva.

18 MR. SACHDEVA: Very well. Thank you, Mr. President.

19 PRESIDING JUDGE FULFORD: Do I see you about to get to your feet,
20 Mr. Biju-Duval?

21 MR. BIJU-DUVAL (interpretation): Yes, indeed, President. Thank
22 you. As regards Witness 41, very briefly, I don't want my intervention
23 to appear as impolite due to a translation problem or other, however, we
24 are very worried about the following: Witness 41, that will come after
25 298, has had a number of different posts and functions in Ituri, and his

1 testimony will be based on those functions. Quite a high level in Ituri.

2 We understood that the -- that the person had protective measures
3 to protect their identity. However, I fear that we might find ourselves
4 in a situation in which most of the issues which will be related to the
5 posts and functions or political activities of this person will have to
6 be dealt with in closed session, which is paradoxical, because this
7 person, for a long part of their life, held these posts and this was
8 public.

9 So we are aware of the Chamber's decision. However, as regards
10 this specific witness, we believe that this is problematic, and we were
11 wondering whether it wouldn't be perhaps appropriate to ask the witness
12 again, through the witnesses protection unit, whether or not it is
13 absolutely necessary for us to protect his security by keeping this
14 information confidential. So perhaps we could ask him the question
15 again, and perhaps the Chamber also could reconsider these protection
16 measures which could change this testimony into evidence which is taken
17 in closed session for the entirety of the evidence.

18 Thank you.

19 PRESIDING JUDGE FULFORD: Any thoughts about this, Mr. Sachdeva?

20 MR. SACHDEVA: Mr. President, might I invite Ms. Samson to
21 address your Honours.

22 PRESIDING JUDGE FULFORD: Certainly. Ms. Samson.

23 MS. SAMSON: Thank you, Mr. President. We do, in fact, have some
24 thoughts on this suggestion by our learned friends from the Defence.
25 This particular witness has been assessed to be eligible for entering

1 into the ICC Protection Programme and the Chamber has granted such
2 matters as are appropriate for witnesses who have that level of
3 protection afforded to them.

4 In terms of the substance of the witness's testimony, what we
5 intended to do was go over his employment history, including his
6 political involvement for the duration of the period that he was involved
7 in politics in Ituri, relatively quickly and in an initial closed-session
8 hearing section, following which we would only in very limited
9 circumstances have to go into closed session by reminding the witness
10 not, of course, to mention his own name or any specifics of his titles,
11 like to refer during delicate areas to -- "Because of my position I knew
12 X and Y." That's a suggestion that we, the Prosecution, have at the
13 moment and hopefully that would be sufficient for us to then refer to
14 the moment in his employment history during which time he had that
15 particular title.

16 In sum, we're hopeful that it actually will not be too
17 problematic to continue with this witness's evidence as it has been
18 anticipated to be given with full protective measures and limited
19 closed-session testimony.

20 PRESIDING JUDGE FULFORD: I haven't recently looked at the
21 statement of this witness, so please help me, Ms. Samson. Is the
22 position that the burden, the bulk of his evidence, is not going to
23 reveal who he is so long as those discreet matters that you've referred
24 to are dealt with in closed session?

25 MS. SAMSON: That, your Honour, is my submission. The titles and

1 the duties that he held in political involvement can be dealt with early
2 on in the closed-session section of his testimony, following which I
3 would then simply ask him to refer to his position in more general terms
4 and not in terms of the title he held. So the answer is yes.

5 PRESIDING JUDGE FULFORD: Well, can you, once we've risen, can
6 you talk about these matters with Mr. Biju-Duval? Can you perhaps with
7 greater specificity show him exactly what you propose to deal with in
8 closed session and see whether you -- whether the two of you can achieve
9 a measure of agreement as to what is acceptable, making an assessment as
10 to whether or not this is going to remain sufficiently public for the
11 purposes of this trial and for the purposes of the general public
12 understanding, you know, really what is going on during this witness's
13 evidence.

14 If there's a continuing problem, can you alert us to -- alert us
15 to that problem at some stage tomorrow so that we can deal with it first
16 thing on Wednesday?

17 MS. SAMSON: Yes, your Honour. I will do so. And I don't
18 suggest that my friends don't have a valid point when it comes to
19 individuals who will come to testify who are closer to the accused, for
20 instance, or to the movement. Obviously the concern is a valid one in
21 that sense. For this particular witness I think it can be taken care of,
22 and I will endeavour to do so with Maitre Biju-Duval today.

23 PRESIDING JUDGE FULFORD: So can we see if we can reach
24 agreement?

25 MS. SAMSON: Yes, your Honour.

1 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Samson.

2 Mr. Biju-Duval, please raise this with us again if the results of
3 your discussions with Ms. Samson are not satisfactory. Thank you.

4 We will sit again, then, at half past 9.00 tomorrow, and our
5 intention will be to go straight into the evidence of Witness 298.

6 Thank you all very much. We'll rise now.

7 COURT USHER: All rise.

8 The hearing ends at 4.28 p.m.

9 RECLASSIFICATION REPORT

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

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