

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 Tuesday, 3 February 2009
7 The hearing starts at 9.33 a.m.

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

10 PRESIDING JUDGE FULFORD: I want to begin by apologising to
11 everyone in relation to what happened yesterday. Although the Judges at
12 this court have fairly considerable authority, I'm afraid it doesn't
13 extend over blizzard conditions in the south-east of England, and the
14 plane that I was suppose to be on at half past 6.00 yesterday morning
15 simply never left. I was then imprisoned in Stansted until midday while
16 they to work out how passengers', whose flights had been cancelled, could
17 be allowed out of the building, but you were all inconvenienced and I
18 apologise.

19 Before we continue with the witness it's appropriate that
20 everybody should be informed that at some stage after he completed his
21 evidence on Friday, Witness 38 made a request to be allowed to see
22 Mr. Mabanga who had spoken to him a little earlier in the day about
23 Rule 70 issues. The direction was given that a conversation should only
24 be permitted if it concerned self-incrimination. It didn't, and so no
25 meeting took place, but it's simply to inform everyone that the request

1 was made and denied.

2 Mr. Sachdeva, as far as you're aware are we now ready to proceed
3 with the witness?

4 MR. SACHDEVA: Good morning, Mr. President; good morning, your
5 Honours. Indeed, I just have two issues I would like to discuss if I
6 may. The first is with respect to the maps that were shown to the
7 witness on Friday. I understand that they were given an MFI number, and
8 my understanding is that means they are not formally admitted into
9 evidence, and if that's the case, I would thus formally seek to have
10 those maps admitted into evidence.

11 PRESIDING JUDGE FULFORD: Well, let's not take time with it now,
12 Mr. Sachdeva. At the next break can you discuss this with the Court
13 Officer and to see what should happen to exhibits so as to ensure that
14 they formally become exhibits in the case.

15 MR. SACHDEVA: I will, Mr. President. And the second issue is
16 again related to map. Given what happened on Friday I have asked for an
17 electronic version of that map, albeit expanded somewhat, to be hopefully
18 uploaded onto e-court so I can use that with the witness. I understand
19 the Defence do not have an objection.

20 PRESIDING JUDGE FULFORD: And is that both versions of map; the
21 one that the witness marked the plain version, Mr. Sachdeva, or only the
22 plain version?

23 MR. SACHDEVA: It's going to be a separate plain version I'm
24 going to ask the witness --

25 PRESIDING JUDGE FULFORD: All right.

1 MR. SACHDEVA: -- further questions.

2 PRESIDING JUDGE FULFORD: Well, whatever is convenient. If the
3 Defence don't object, you must take your own course, Mr. Sachdeva.

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

5 PRESIDING JUDGE FULFORD: Good. Are we ready to proceed then?

6 MR. SACHDEVA: We are.

7 PRESIDING JUDGE FULFORD: Thank you. Can we then please go in,
8 for a moment or two, go into closed session with the blinds down so that
9 the witness can be brought into court.

10 (Closed session)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Open session)

19 PRESIDING JUDGE FULFORD: We are now back in open session.

20 Witness 38 has returned to the witness box. We are going to continue
21 with the questioning of him by Mr. Sachdeva. And, sir, I need to remind
22 you that you are still bound by the oath that you gave last week to tell
23 the truth.

24 Yes, Mr. Sachdeva.

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

1 Questioned by Mr. Sachdeva: (Continued)

2 Q. Good morning, sir.

3 A. Yes.

4 Q. I trust that you were able to rest over the weekend.

5 A. Yes. Yes.

6 Q. Very good. So let's continue. On Friday where we left, you were
7 speaking about the flogging. I don't know if you recall that. And I
8 wanted to ask you who would administer the flogging?

9 A. The trainers.

10 Q. Where would that be done?

11 A. In Mandro.

12 Q. And within Mandro, where would the flogging take place? Would it
13 be in open space? Would it be in a building? Are you able to tell the
14 Court that?

15 A. There were no buildings in Mandro. There were only houses who --
16 which were built by the newcomers to the military. Little houses.
17 They're called manyata (phoen). That's the word used by the soldiers to
18 describe little houses which are built by soldiers so that they can spend
19 time there. There were manyatas for the officers. There were manyatas
20 for the trainers. There were manyatas for the Nembe, where the
21 ammunitions were stored for the guards and the centre. And there were
22 fences. That is say there were houses for the Nembe. And when you had
23 difficulties or if you left to go to the village without permission, you
24 would be taken into the fenced-off area, that is to say behind the
25 houses.

1 Q. And was it at this fenced-off area that the flogging took place.

2 A. Yes. It was behind, in the fenced-off area.

3 Q. How long would the flogging last for?

4 A. Oh, I wouldn't say -- just three or four minutes.

5 Q. Were there soldiers present when the flogging took place?

6 A. Yes. There were trainers who were in charge of that.

7 Q. Apart from the trainers were there recruits present when the
8 flogging took place?

9 A. No.

10 MR. BIJU-DUVAL (interpretation): Mr. President.

11 PRESIDING JUDGE FULFORD: (Previous translation continues) ...

12 MR. BIJU-DUVAL (interpretation): I would like to intervene
13 immediately on the form of the questions. In his questions, the
14 Prosecutor asks, Were there soldiers, then, Were there recruits. I think
15 that one should be quite demanding as regards the form of the question.
16 It is sufficient for the Prosecutor to ask who was present at that event.
17 That would leave the matter open. The question would be open and leave
18 it open to the witness to respond.

19 PRESIDING JUDGE FULFORD: Well, I think, Mr. Biju-Duval, this
20 does actually raise a number of issues. I don't want to spend a lot of
21 time on it now, but the extent to which leading questions are appropriate
22 or not will, in part, depend on what are the real issues in the case. If
23 Mr. Sachdeva is dealing with areas of evidence where really there's no
24 dispute, there is an argument that the rigors in relation to leading
25 questions do not apply.

1 The other issue is that of course it may be very helpful for the
2 first question to be an open one in the sense of who was present in the
3 way that you have suggested, but that isn't necessarily the only question
4 that the questioner is allowed to ask. It may be that there is -- that
5 there are a very obvious number of categories of people who may have been
6 present and in a very general and open way it is probably appropriate for
7 the questioner to go through the categories without leading the witness
8 to a particular answer.

9 It's of interest here that although Mr. Sachdeva positively
10 suggested recruits, that doesn't produce the answer yes. It produced the
11 answer no.

12 So I think what I'm going to say at the moment, Mr. Sachdeva,
13 once again certainly begin, if you can, in these areas with a truly open
14 question. If you need to focus on specific groups to use this example,
15 can you make sure, please, that you -- that you do that in a way that
16 does not suggest the answer. So if you're putting -- if you want to
17 raise the issue of whether or not the cooks in the camp were present,
18 it's not, "Were the cooks there," but, "Were the cooks there or were they
19 not there." So both answers are suggested by the question rather than
20 seeming to suggest to the witness the answer that you want. All right?

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

22 Q. Sir, on Friday you talked about the training that you went to in
23 Rwanda. When -- when did that take place?

24 A. It was from September to November.

25 Q. Can you tell the Court which year that was, please?

1 A. We departed in September 2002, until November 2002.

2 Q. How many were you that departed to the training in Rwanda?

3 A. Altogether we were 107. We were the first convoy, and there were
4 23 of us. The others came in batches of 30 until 107 people were there.

5 Q. Apart from the 107 that went for the training, were there or were
6 there not anybody else with you?

7 A. I haven't understood your question properly.

8 Q. Apart from the 107 people that went for the training in Rwanda,
9 were there other people present?

10 A. No. We were all Congolese, and there were 107 of us who
11 departed.

12 Q. And when you arrived in Rwanda, who was it that conducted the
13 training?

14 A. We were given instruction by Rwandans.

15 Q. What were those instructions?

16 A. We were taught to use heavy weapons. That was the first stage.
17 And the second stage was when we were taught how to salute the president
18 and the various commanders. That was the second stage. But during the
19 first stage we were just taught how to use heavy weapons. We were given
20 lessons on the blackboard, then we were given demonstrations, and we
21 drew. This went on until the evening. When we had completed the -- the
22 learning, that's when we left and we used the weapons. We used them for
23 target training. That was part of the training which consisted in using
24 the arms which you had studied.

25 Q. What kinds of heavy weapons were you trained in?

1 A. Twelves, mortars, B-10s, recoilless, and RPGs, machine-guns,
2 GPG -- or JPG, and how to plant mines, anti-personnel mines and anti-tank
3 mines.

4 Q. Amongst the 107 persons that went for the training, what were
5 the -- what was the age range amongst the 107 people, if you can answer
6 that question.

7 A. Amongst those who were the youngest there was me, and I was 18
8 years old, and I was considered to be the youngest in Rwanda. They
9 called me the kadogo, that is to say the youngest in the group. So the
10 ages ranged from 18 upwards.

11 Q. And after the training was completed, where did you return to?

12 A. When we completed the training we went back to the airport of
13 Rwanda, the airport in Kigali, and we departed for the Congo, for Bunia
14 to be exact.

15 Q. When you departed for Bunia and when you arrived in Bunia was
16 anybody there?

17 A. Yes. At the airport there was the Chief of Staff who was waiting
18 for us at the airport, because we were told that if the Ugandans knew
19 that we had come from Rwanda they would attack us, and that's why there
20 was -- we were armed in Kigali airport. We were given AK-47s and
21 sufficient munition and bombs so that upon arrival at Bunia airport if
22 the Ugandans were to attack us that we would be able to open fire and
23 exit Bunia airport. Fortunately when we arrived in Bunia aport they
24 didn't attack us but at the airport there was the Chief of Staff and
25 other commanders who were waiting for us and who had trucks to transport

1 us to town.

2 Q. You said other commanders. Do you recall who, which commanders
3 they were?

4 A. I could mention Pigwa. There was a commander called Aleksi, and
5 a large number of other leaders who I didn't know at the beginning who
6 were from other brigades or from headquarters in Bunia, but of those who
7 I knew there was Kisémbó who was with us at the airport, and he told us
8 to board the trucks, and who brought us to his residence in Bunia.

9 Q. And when you arrived at his residence in Bunia, what did you do?

10 A. When we arrived there we alighted from the trucks, and we were
11 given a place where we were to rest. We waited. The first day went by
12 and there were no visits. The following day we were told that there
13 would be the president, that is to say Mr. Thomas Lubanga, who would come
14 to see us with the Chief of Staff, Kisémbó. He was to come and assist.
15 We waited until the afternoon, and then at around 1.00 p.m. the Chief of
16 Staff and President Thomas Lubanga came to see us.

17 Q. Do you know how President Thomas Lubanga arrived?

18 A. He arrived in vehicles. There were vehicles that were his.
19 There were jeeps, his jeep, and there were his bodyguards. The Chief of
20 Staff was also -- also had his jeep, and there was the body -- or the
21 bodyguards of the Chief of Staff too.

22 Mr. Thomas Lubanga arrived, and he was wearing military attire,
23 the same uniform as we had on.

24 Q. And when he arrived what -- what did he do or what did he say, if
25 he said anything.

1 A. Yes. The first to take the floor was the Chief of Staff, and he
2 explained to us that the president would speak to us. He then gave the
3 floor to the president, that is to say Mr. Thomas Lubanga, and he spoke
4 to us and told us that we would be deployed to different brigades in the
5 field and that we were to take care of the weapons that we were going to
6 use in the field, and also to obey combat instructions or orders, and
7 also to fight the enemy.

8 Q. You said that he told you that you would be deployed to different
9 brigades in the field. Did he say where in the field you would be
10 deployed?

11 A. That is to say he didn't cite the place to which we would be
12 deployed, but he said that we would be deployed to the various brigades
13 and battalions but within the UPC, because we were part of the UPC. So
14 it was always in Ituri.

15 Q. And is that what happened? Were you deployed to the field
16 thereafter?

17 A. Yes.

18 Q. And where were you deployed to?

19 A. I went towards Mongbwalu. It was to go to Mongbwalu. There were
20 12 of us on route to Mongbwalu. We had heavy weapons with us.

21 Q. Now, on Friday when you were speaking about -- I asked you if
22 there were children under the ages of 15, and your answer, you said that:

23 "I saw children even in Mongbwalu, and there were child soldiers
24 who were trained in Mongbwalu." I would like you to describe to the
25 Court what exactly did you see and learn; what were the circumstances of

1 that training, if you can.

2 A. Yes. Well, I'd say I was familiar with the last stages of our
3 training and the last stages -- well, the commander would conclude with
4 the last stages of the training. Among the new arrivals, those who were
5 to be trained, there were children under 15 years of age, and there were
6 also bigger children. They were children who were mixed in sections, in
7 platoons, in companies on the basis of this training. There was no
8 precise form of training for all of them. Everyone received the same
9 kind of training. One was trained in how to use AK-47s, light arms, how
10 to deal with prisoners. All the other stages of training were followed.
11 We were taught how to fight against the enemy. And this was the case for
12 everyone in the training camps.

13 Q. You said that you were familiar with the last stages of training,
14 and on Friday you said that you were involved in the last training of
15 soldiers in Mongbwalu. May I ask you, did you yourself train at that
16 time?

17 A. No, I wasn't trained. I'd already been trained. I was already a
18 soldier. We only participated in the training of those who had arrived
19 there. There were trainers, but we came from brigades with the commander
20 of the brigade. It was the last stage of training. The trainers who had
21 been well trained for this, and the commander of the brigade was there,
22 and he came to say that the new arrivals were there to be trained.

23 Q. Now, I do apologise. Perhaps my question wasn't so clear, but
24 what I'm asking you is were you involved in the administration of the
25 training? Did you train the other soldiers?

1 A. Yes. I was always there, the centre of the camp. The training
2 camp was where the brigade was located. I was always with the brigade
3 commander. I participated in this training.

4 Q. And when you say "training camp," are you speaking about a camp
5 in Mongbwalu?

6 A. There were several places in Mongbwalu. Several places I have
7 mentioned. There were the Kaguli (phoen), Apartement (phoen), the Saio,
8 but wherever there were training camps, well, they were close to the
9 brigade command. That's where we took everyone. And the last stages of
10 training were provided there. And then you would go to receive weapons,
11 or you would be assigned weapons after that stage had been completed.

12 Q. Who would assign the weapons?

13 A. In Mongbwalu, well, the chief of the general staff was there. He
14 did it. The Colonel, the brigade commander, said that the training had
15 been completed, then the chief of the General Staff would bring in the
16 new arrivals, those who had completed the training. And that's where we
17 also had weapons depots, and everyone was assigned weapons at that
18 location.

19 Q. I will ask you a few questions on the -- on the weapons depot,
20 but just to go back, you mentioned that this was the last stages of the
21 training. What do you mean by that?

22 A. The last stage of training has to do with how to fight in the
23 field, what should a soldier do when fighting, how should he obey orders,
24 how should the commander deal with his men, and how should the soldiers
25 carry out the orders or obey the orders of the superiors. That was the

1 last stage, and that is what had to be done.

2 Q. And what was it that you were -- what was it that was taught
3 about how to fight in the field? Can you describe that, please?

4 A. The new arrivals, well, they were taught how to fight in the
5 sections. If there was a section of 12 men in the field, you're taught
6 how to fight. And there was the second stage, how should the soldiers
7 fight if they were advancing in the field, if there were platoons of
8 three or six. And then the third stage, how should one fight if there
9 was a company, about 150 men, and that went up until the strength of a
10 brigade. So we started with 12 men, how should one fight if there were
11 12 men, how should one fight if there were more, up to a thousand. So
12 that's how we were taught. What should one do if there were 12 of us,
13 how should one fight if there were 36, how should one fight if there were
14 150 men, et cetera. So the new arrivals were divided on the basis of the
15 number of sections that existed. One tried to define the nature of the
16 enemy, describe the area one should fight in if there were 12 of us, and
17 one was taught how one should deploy in the field.

18 Q. You said that the last stages of training there were children
19 under the age of 15. What -- what would they do after the training was
20 completed?

21 A. When it was completed, when you went to see the Chief of Staff
22 for arms, for weapons, well, that's when our function was completed,
23 because they had to be deployed into companies, into platoons, or
24 sections or other brigades, other battalions. But there were some
25 children who would on occasion remain in our brigade. These children

1 sometimes went into battalions. They were sometimes bodyguards, or they
2 remained in their respective sections.

3 Q. And in your brigade were there children?

4 A. Yes, there were children.

5 Q. So after you were assigned the weapons after the last stage of
6 training, what happened after that in Mongbwalu?

7 A. The weapons were distributed, and then one had to go to
8 battalions, brigades, or sections. And in the case of our brigade, the
9 Mongbwalu brigade, and I spent almost half of the time that I spent in
10 the UPC there, in this brigade the young children remained in -- in the
11 brigade. One prepared the war for Kobu. One was preparing for the
12 battle in Kobu. One was to go there with the children, et cetera. The
13 entire brigade went to Kobu to fight there.

14 Q. Were there any particular criteria or -- let me ask you this:
15 Was there any criteria that was used to assign children in particular
16 brigades that you're aware of?

17 A. There were no particular criteria that we used, as far as I know.
18 The police of the commanders designated children to be bodyguards. Many
19 of them had children as bodyguards. They preferred to have young
20 children. I don't know why. Children were -- children were more
21 desirable.

22 Q. In fact, on Friday you -- you said -- you told the Court that in
23 your opinion children were fearless. What did you mean by that?

24 A. They weren't afraid, because if another commander came, well,
25 they would only listen to the orders of their commander. If a commander

1 said, "Today I don't want any visits," another person, those who were
2 older, if they saw a commander superior to their own commander, well,
3 they might let that commander enter, but for other children, if another
4 commander came they'd say, "No. Our commander doesn't want to have any
5 visits today." So the younger children were more categorical than the
6 older children, and they would strictly obey the orders that were issued,
7 and in such a case they wouldn't let the superior commander visit their
8 commander.

9 Q. And to your knowledge how -- how many escorts or bodyguards would
10 a commander have?

11 A. Well, lieutenants start having bodyguards, lieutenant -- or,
12 rather, sub-lieutenants. The commander, the deputy commander of a
13 platoon had the right to a bodyguard. That was the case in the army. I
14 know the deputy platoon -- the deputy commander could have a bodyguard.
15 The lieutenant had the right to two bodyguards. There was then -- there
16 were then captains. The captain had the right to four bodyguards. And
17 this went up to the brigade commanders who could have 36 bodyguards, but
18 the Chief of Staff could even have a company. That would be roughly 150
19 men. The president had more than the commander. The Chief of the
20 General Staff had at least 300 men or more.

21 Q. And do you know how many bodyguards the Chief of Staff,
22 Mr. Kisémbó, had?

23 A. I also spent some time with General Kisémbó, and I know -- I
24 don't know the exact number of bodyguards, but I knew that there was a
25 platoon of children. There was another platoon of adults. There was a

1 platoon of his people close to him, bodyguards with whom he would travel.
2 So they were men who were close to him. I'd say that he had more than a
3 hundred bodyguards.

4 Q. You said that he had a platoon of children. In your military
5 experience, how many people comprise a platoon?

6 A. A platoon consists of 36 men, 36 men plus the commander of the
7 platoon. That's 37. Plus the bodyguards, plus two of those bodyguards.
8 That's a total of 39. Plus the sub-lieutenant, the deputy platoon
9 commander. That's 40. And the bodyguards of the sub-lieutenant, so that
10 would be 41. You have the 36 soldiers, the two bodyguards of the platoon
11 commander. So that's 39. Then the sub-lieutenant, the deputy commander.
12 The total adds up to 41 if you include all the bodyguards. So even the
13 Rwanda army and the Uganda army had about 41 men in their platoons.

14 Q. Now, on Friday I was asking you questions about the fighting, and
15 I asked you if you ever knew or heard from other sources that a child was
16 killed during fighting in the UPC, and you answered yes. I'd like you to
17 elaborate on that, if you can, for the Court.

18 A. It's not something that was just said. It's something that I
19 experienced. When we went to fight for the second time in relation to
20 the liberation of Bunia in May 2003, in May 2003 when we were in the
21 field in our company -- well, we were with the Chiefs of Staff, but among
22 the children who were the bodyguards of the Chief of Staff I know of one
23 who was killed as a result of shrapnel wounds. So there were children
24 who died as a result of shrapnel wounds. I don't remember the name of
25 one of the children. He was killed. There were others who also had been

1 wounded by shrapnel. Even in Mongbwalu, when we entered Mongbwalu in
2 November 2002, there were children who had been shot and others who were
3 killed. So these are the children I saw who were killed in the
4 battlefield. There were others who were wounded.

5 Q. You mentioned Bunia in 2003 and Mongbwalu in 2002. You also have
6 spoken about Kobu. What took place in Kobu?

7 A. Yes. In 2003, February 2003, we planned a battle in Kobu. We
8 were to attack Kobu, eliminate the General Staff in Kobu and drive out
9 all the men in Kobu, Bambu and Kobu, and any other villages, in order to
10 open up the route to Nizi, Kilo, Mongbwalu so that we could use it to
11 transport our equipment and to transport our soldiers towards Kobu -- or,
12 rather, Mongbwalu. That was the only road to Bunia, the only road one
13 could use to advance towards Mongbwalu.

14 Q. Who was it who planned the attack in Kobu?

15 A. I know it was the Chief of Staff who gave us the orders to leave
16 Mongbwalu. All the brigade men were to leave Mongbwalu and go to Kobu.
17 That was the brigade I was deployed in, and we were to go there with the
18 heavy weapons. We had been provided with such weapons that came from
19 Rwanda, and we had a sufficient amount of ammunition. I don't know the
20 exact number of men, but I know that in our brigade for the Kobu
21 operation there were almost 1.000 of us. Over a thousand, I would say.

22 Q. And what were the orders that the Chief of Staff gave to you?

23 A. We were ordered, because during the last few days when we were
24 supposed to go to Kobu, we were called to the General Staff. There was
25 the commander, our commander with whom we had entered Mongbwalu a long

1 time ago. To those they were to give heavy weapons -- they received
2 orders, rather, to give the men heavy weapons. I was with the Colonel,
3 the Salumu Brigade commander. A Twelve heavy weapon was given to me. I
4 was to use it in Kobu. That's the weapon I was provided with and I was
5 to use it in Kobu. And this weapon, we went to get the weapon with the
6 Commander Salumu, the chief of General Staff. I was told to take this
7 weapon, Twelve, and the Chief of Staff gave the order to the commander of
8 the Salumu Brigade and this commander said I should take this heavy
9 weapon and go to Kobu with it. There were other heavy weapons that were
10 already in Kilo. They'd been taken there together with other friends.
11 They used these heavy weapons. They were in Kilo before me. I was the
12 last to arrive there with this weapon, the Twelve, and I arrived there
13 with the brigade commander. I arrived in Kilo and we were armed or
14 provided weapons in Mongbwalu. The soldiers who had finished their
15 training were armed in Mongbwalu. On the same day, the chief of the
16 General Staff gave us an order according to which we were to advance and
17 the brigade commander was given an order. He gave the order to the
18 battalion commander according to which all the men from the brigade in
19 Mongbwalu should be taken to Kobu, and as I was with the brigade
20 commander he said we should wait to have munition -- ammunition and other
21 heavy weapons that were to go to Kilo. We received the order directly
22 from the chief of the General Staff.

23 Q. And within your -- within your brigade -- well, let me ask you
24 this: How were the orders relayed within your brigade from the brigade
25 commander?

1 A. The brigade commander, the Salumu Brigade commander gave orders
2 to his battalion commanders. There were battalion commanders in Kilo,
3 and there were other battalion commanders in Mongbwalu. He gave orders
4 to the battalion commanders in Mongbwalu. He ordered them to join with
5 battalion commanders together with all the men.

6 Q. And when the brigade commander was giving those orders to the
7 battalion commanders, how was it done?

8 A. Either orally or either by using Motorolas, Motorola devices.

9 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, I'm going to
10 interrupt you now. For the moment I'm not going to raise the issue of
11 the extent to which it's necessary, given the charges against this
12 accused, to be investigating all of these matters. We'll leave that
13 issue at the moment, you can continue. But there's a question that's
14 beginning to emerge in my mind as to the extent to which it's really
15 necessary to go into all this detail. Let's park that. What I'm really
16 going to raise is the issue of repetition between days of examination.
17 We spent a lot of time on Friday dealing with the ways in which orders
18 were given from the Chief of Staff, the brigade commander, to the
19 battalion commander, et cetera, how those orders were given, Motorolas,
20 et cetera.

21 Now, you're to try, please, to focus questions in one particular
22 area at one time and not to return to them serially at different times
23 during the examination of a witness. It means otherwise there's going to
24 be a considerable amount of repetition.

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

1 Q. Sir, you spoke about Kobu and Kilo. What happened when you went
2 there?

3 A. Yes, in Kobu -- in Kilo there were men who had been there for a
4 long time; soldiers who had been there for two months already. When we
5 arrive with the brigade commander, we gathered all the men in the
6 morning. We arrived in the evening in Kilo. When we entered Kilo in the
7 evening, well, the attack was supposed to take place on the following
8 day. In the morning at 8.00, the brigade commander organised a general
9 parade, including all the soldiers and all the battalion commanders. He
10 said that we were going to attack Kobu. He showed us the weapons,
11 Twelves, recoilless, machine-guns, other weapons. All the soldiers were
12 armed. They were in the sections, platoons, companies, battalions,
13 brigades, and at 8.00 we -- we set off to attack Kilo -- or, rather,
14 Kobu. I apologise.

15 Q. And what happen in the attack?

16 A. On the first day when we arrived there we attacked Kobu. The
17 enemy wasn't very strong. About 2.00 we'd taken over Kobu. We had our
18 communications centre. We thought perhaps there would be a
19 counter-attack, but this did not occur. And when entering Kobu -- before
20 entering we saw destroyed houses. We attacked by using light weapons
21 first of all, and at one point in time the enemy wanted to respond. We
22 used Twelves, bombs, and other heavy weapons that were there. And the
23 enemy then abandoned the place, and we established our HQ, our brigade HQ
24 there.

25 Q. Were people killed in the fight?

1 A. Yes. We found men, enemy men that had been killed. We didn't
2 really have many casualties, but we found enemy soldiers who had been
3 killed. They were in the area of Kobu, in the streets of Kobu, but we
4 had expelled everyone from Kobu. Only our brigade remained in Kobu.

5 Q. Did your brigade in any casualties?

6 A. Yes. We sustained fatalities we took them to Kilo and Mongbwalu
7 to bury them, and those who had injured were sent -- or, rather, brought
8 to Mongbwalu.

9 THE INTERPRETER: The interpreter corrects: The injured were
10 brought to Kilo.

11 MR. SACHDEVA:

12 Q. And do you recall, roughly, how many people were injured and
13 killed?

14 A. I don't have any exact figures for the number of those killed.
15 There's not just the people who were killed there and who were buried,
16 there are also civilians who died, who were taken to Kilo and injured
17 people to Mongbwalu. They were buried in common graves.

18 Q. And amongst those people who were killed in your brigade, were
19 there children killed or not?

20 A. In Kobu I saw people die, but it was difficult to see whether it
21 was a child or an adult, because you would just see a body in a uniform,
22 and you would see them as you went by. There were also these new
23 trainees in Mongbwalu, so I couldn't specify as to whether they were
24 children or adults, but I know that there were dead people who were taken
25 back, that's for sure. It was upon entering Kobu.

1 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I think I'm right in
2 saying that Mr. Biju-Duval became slightly restless at your last
3 question, "Amongst those people who were killed in your brigade were
4 there children killed or not?" Now, it's absolutely right that you
5 abided by the direction I gave in relation to putting the positive and
6 the negative, but I would imagine that this is likely to be an area of
7 particular interest to the Defence, and might I suggest, therefore, that
8 with an issue like this you put a more neutral question such as, "Were
9 you able to tell the ages of those who were killed from amongst your
10 brigade?" putting it really in a very general way. So please be careful.

11 MR. SACHDEVA: Yes, Mr. President.

12 Q. Now, sir, I want to take you away from the fighting, if I may,
13 and go back to an issue that was discuss on Friday, and you spoke about
14 the fact that there were girls within the UPC, and I wanted to ask you
15 what would -- what role would the girls have within the army?

16 A. Yes, there were girls and children. They were to be bodyguards,
17 but the girls were used, in fact, to prepare food and for sexual services
18 for the commanders. They use girls more for -- for this reason, as if
19 they were their women, their wives.

20 Q. Which -- which commanders had girls as bodyguards, do you know?

21 A. I could mention Abelanga, Ndjabu. Those are the ones who I know.
22 There is Abelanga, who I know well, who had a girl -- a girl of less than
23 15 years at his place. Now, the name of the girl, it slips my mind.
24 There's also Ndjabu who had a girl as a bodyguard, who after that was
25 with the command -- sorry, the brigade commander, but there were also

1 other brigade commanders who had girls as bodyguards.

2 Q. And how do you know about the girl with Abelanga and also with
3 Ndjabu? How do you know about that?

4 A. We fought with Abelanga in Mongbwalu. He's a very influential
5 commander who we met in Mongbwalu. He's a commander who is known to all
6 of the soldiers, very well known. And Ndjabu is a brigade commander who
7 is also very well known. These are the commanders who I know
8 particularly well because they're very influential, and also we are often
9 with them in the battlefield. That's how I know them. And we know their
10 bodyguards because each time a commander such as Abelanga goes to war
11 he's accompanied by his bodyguards. So people I know very well.

12 Q. You said that the girls were used to prepare food and for sexual
13 services. Firstly, how often would that take place?

14 A. I'm afraid I haven't understood the question.

15 Q. Do you know how often the services, the sexual services, of the
16 girls were -- were asked for?

17 A. Abelanga, for instance, from the point in time when he took the
18 girl, I don't know when that was, but all the time that we were there
19 from November in 2002 when we entered Mongbwalu we spent three weeks,
20 because he is a commander and often he was with Commander Bosco. After
21 three weeks he left with Commander Bosco to Bunia with their bodyguards.

22 When we entered Bunia to fight the Ugandans, I found Abelanga in
23 Bunia. He still had his bodyguards with him, including this girl.

24 When the Ugandans drove us out, we left with the Chief of Staff.
25 When I returned to Bunia, once again I met Abelanga, and he was still

1 with his bodyguards and the girl was there.

2 So during the whole period. I didn't spend a full month with
3 him, but any time I did see him or when I spent up to two weeks with him
4 he was always with his bodyguards and the girl was there.

5 Q. How was it that you came to know that the girl was used for
6 preparing food and for sexual services.

7 A. Well, for the food we could see her. For the sexual services you
8 could ask the girl. Often soldiers put questions to each other, and
9 sometimes we said to the girl, "Oh, you didn't go to war because you're
10 the wife of the big commander and you always stay there. You always stay
11 with him, and because of that you don't go fighting."

12 Could you ask. You could put questions to that girl, to girls.
13 And there are bodyguards who could also prove it to us, other bodyguards
14 of Abelanga's.

15 Q. And is that -- you said that you could ask and you could put
16 questions. Is that what you did?

17 PRESIDING JUDGE FULFORD: Well, Mr. Sachdeva -- Witness, don't
18 answer the question.

19 You've asked the question in relation to this and the witness has
20 said that it appeared to him that they were used as wives and didn't
21 fight. He's then said you can, of course, ask the girl soldiers
22 directly.

23 Now, what you're about to quite clearly go into is what the young
24 women said to him as their role. Now, that's going to be hearsay
25 effectively. Do you want to go there? Is it really going to help to

1 hear the questioning of this witness of the girls rather than on his
2 direct experience?

3 MR. SACHDEVA: Mr. President, at the end of the Prosecution case
4 the evidence must be assessed in totality, and I understand that it's of
5 a hearsay nature. However, it is, as your Honours have ruled,
6 admissible, and in that regard it may have -- it may have enhanced
7 relevance given the assessment at the end of the trial.

8 PRESIDING JUDGE FULFORD: All right. Mr. Sachdeva, but we are --
9 we're now noting that -- that this is -- that you are clearly going into
10 the realms of hearsay. We won't stop you for the time being, but it will
11 be assessed in that light.

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

13 Q. Sir, do you want me to repeat the question?

14 PRESIDING JUDGE FULFORD: I think it would be a good idea.

15 MR. SACHDEVA:

16 Q. You were talking about how you could speak to the girl and you
17 could speak to the other bodyguards. Did you in fact do that?

18 A. Yes. I also put questions to the girl and to the commander's
19 guards, because I, too, was quite high ranked, and sometimes I put
20 questions to them. But you could see it, too, and you could also hear.
21 You could listen. There were soldiers who came to say to us, "Oh, the
22 commander this and that happened during the night. We heard this and
23 that girl crying." So they could relate to us.

24 These are things which I heard, and I also saw things myself. I
25 sometimes heard the cries of the girls with my own ears.

1 Q. You said you saw things yourself. What did you see?

2 A. There were girls who made food that I saw, but also sometimes at
3 night there were commanders -- because the commanders had their houses,
4 and there were other soldiers who had their houses, but there was a kind
5 of -- an area, maybe a row of houses for commanders, and you could see
6 the girls prepare the food, and at night you could listen to the girls
7 even saying, "I don't want to."

8 We were not that high ranked that we had any power over this.

9 MR. SACHDEVA: Mr. President, I'd like to -- well, before I get
10 there.

11 Q. Sir, yesterday -- on Friday you were -- talked about the G5. Do
12 you remember talking about that?

13 A. Yes.

14 Q. And do you know when you were in the UPC who was responsible
15 for -- for that section? Who was the commander of the G5 department?

16 A. I knew Lobho, Colonel Lobho, of the G5 department.

17 Q. And what was the -- what was the G5 department? What was its
18 purpose again?

19 A. Often they held meetings. It was a matter of relations between
20 soldiers and civilians, but he often held meetings to raise awareness
21 amongst parents that they send their children for training.

22 Q. How would they do that? How would they raise awareness amongst
23 the parents so they could send their children for training?

24 A. Lobho was the G5, but there were also S5 brigade, that is to say
25 those who were responsible for S5 in the brigades and the battalions.

1 There was a well-defined structure down to the villages. The commanders
2 often were responsible for this -- these awareness activities. Company
3 commanders also sometimes held meetings so that the parents -- if it was
4 a battalion it would be the S5, at the battalion. There were S5s also in
5 brigades. And in our brigade, the S5 was Commander Enan (phoen), and he
6 was responsible for holding meetings in the area that was occupied by our
7 brigade so that parents might send their young people for training.

8 I took part in such a meeting that was held in Sanjo (phoen). S5
9 Mnja (phoen) organised that. There was the brigade commander, the S5,
10 and the others. We were in the camp of Mbidjo with the commander of the
11 camp. The S5 held the meeting just outside the centre, and said to the
12 parents, Send your children to the army because there are a lot of
13 weapons arriving which we want to distribute but we need to train the
14 young people to use the arms. That was a meeting that was held by the S5
15 in Abidjan at which I attended.

16 Q. And when was that meeting?

17 A. That was in January 2003, before we depart for Kobu.

18 Q. How many people were -- how many people participated in that
19 meeting?

20 A. It was the whole village and -- all of the people of the village.

21 Q. And who was the brigade commander who was there?

22 A. That was Commander Salumu. We were in the cortege of Commander
23 Salumu for Mbidjo. Commander Salumu was heading to Aru, I believe.

24 Q. And at that meeting what was -- what was said to the villagers,
25 if you can recall?

1 A. What I remember is that most of what was said was about sending
2 the children so that they could be trained. Now, we spoke of other
3 problems, other matters of a political nature, but I wasn't interested in
4 that. But what strikes me as important is that he said, "Send the
5 children to be trained. Send the young people to be trained." Because
6 we were occupying more and more terrain, we needed more and more soldiers
7 to be trained to occupy that terrain.

8 Q. And at the meeting what did -- what -- did the villagers say
9 anything?

10 A. No. And he finished, he finished his meeting and returned. He
11 stayed in the centre, in the town, to meet with traders, to discuss their
12 problems, which were of no interest to us. We returned to the camp, but
13 he spoke to other people in the village after the meeting.

14 MR. SACHDEVA: May I just have one second, Mr. President.

15 (Prosecution counsel confer)

16 MR. SACHDEVA:

17 Q. Sir, I want to now show you a map. It's the same map that I
18 showed you on Friday, and I want to ask you some questions.

19 MR. SACHDEVA: If I could ask for DRC-OTP-0208-0019 to be
20 uploaded onto the e-court. Excuse me, 0119. My apologies.

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

22 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. We are
23 not against the use of a map, but it must be at the right time. I think
24 that it would be preferable for the witness to answer questions regarding
25 places, distances, or what have you regarding geographical data first and

1 that we then view the map and confirm on the map the information which he
2 would have provided, but it does not strike me as appropriate that the
3 witness be assisted by the map to provide his testimony.

4 PRESIDING JUDGE FULFORD: Where are we going, Mr. Sachdeva, with
5 this?

6 MR. SACHDEVA: Mr. President, in fact I'm only going to ask the
7 witness to mark areas or locations that has already been mentioned in the
8 testimony.

9 PRESIDING JUDGE FULFORD: So this is simply where he's mentioned
10 particular locations in the evidence either this morning or Friday, and
11 you're now wanting him to indicate on the map where they are.

12 MR. SACHDEVA: Precisely, Mr. President.

13 PRESIDING JUDGE FULFORD: I think that's unobjectionable,
14 Mr. Biju-Duval. These are places he's already mentioned. Yes. Good.

15 Please carry on, Mr. Sachdeva.

16 MR. SACHDEVA: Thank you. I'm just -- Mr. President, we have, I
17 think, three minutes before we rise. Perhaps it might be an appropriate
18 moment and hopefully the -- technically it can be resolved after the
19 break.

20 PRESIDING JUDGE FULFORD: Certainly, Mr. Sachdeva.

21 We'll sit again at half past 11.00. Thank you very much.

22 Quite right. For the first time I've forgotten the order. We
23 will sit again at half past 11.00, but before we rise can the blinds
24 please go down so that the witness can withdraw from court.

25 We're going to have a half-an-hours break now, sir.

Witness: Witness DRC-OTP-WWWW-0038 (Resumed) (Closed Session)
Questioned by Mr. Sachdeva (Continued)

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1 Blinds down, please.
2 (Closed session)
3 (Expunged)
4 (Expunged)
5 (Expunged)
6 (Expunged)
7 Recess taken at 10.58 a.m.
8 On resuming at 11.33 a.m.
9 (Open session)
10 COURT USHER: All rise. Please be seated.
11 PRESIDING JUDGE FULFORD: Have you solved your technical
12 problems, Mr. Sachdeva?
13 MR. SACHDEVA: I think so, Mr. President, yes.
14 PRESIDING JUDGE FULFORD: Good. Into closed session. Witness
15 into court, please.
16 (Closed session)
17 (Expunged)
18 (Expunged)
19 (Expunged)
20 (Expunged)
21 (Expunged)
22 (Expunged)
23 (Expunged)
24 (Expunged)
25 (Expunged)

Witness: Witness DRC-OTP-WWWW-0038 (Resumed) (Closed Session)
Questioned by Mr. Sachdeva (Continued)

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1 (Expunged)
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15 (Expunged)
16 (Expunged)

17 (Open session)

18 PRESIDING JUDGE FULFORD: We are now back in open session. The
19 witness has returned to court.

20 Mr. Sachdeva, if you could continue with your questions.

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

22 Q. Sir, before I get to the map, on Friday when you were talking
23 about going and travelling with Chief Kahwa to -- to villages to hold
24 meetings and rallies, you mentioned Katoto and you mentioned Barriere,
25 and you said there were other villages that you went to. Do you recall

1 which other villages you went to apart from Katoto and Barriere?

2 A. When we set off -- when I was at the residence of the
3 Chief Kahwa, I was to travel with him. I was often off to Katoto,
4 Barriere, Mabanga, but we also went to other villages. There were other
5 villages, there were other people who travelled with him on those
6 occasions, though, not myself.

7 MR. SACHDEVA: Very well. If I could now have the map. I
8 understand it's already loaded, uploaded.

9 Q. In a moment, sir, you'll see a map on your screen. Just please
10 let me know when the map appears on the screen.

11 A. I have it.

12 Q. Now, with the assistance of the court usher, I'm going to ask you
13 to mark some locations. I understand that can be done.

14 A. Could you put your question to me again, please?

15 Q. I will. Firstly I'd like you, if you can see it on the map, I'd
16 like you to circle the village of Katoto, please.

17 A. (Marks)

18 Q. And the same, please, for -- for Mabanga. Sir, let me ask you
19 this: If you can't see Mabanga and also Barriere, are you able to mark
20 their location on the map -- on that map?

21 A. I can't really show you here because Mabanga isn't on the map,
22 but there are some villages close to Mabanga that I can recognise on the
23 map, Chele, for example. There are villages that are nearby. There are
24 mother -- other maps, but Mabanga can't be found on a number of maps. I
25 can't see Mabanga on this map, on -- on the Belgian map, but there are

1 some villages in the vicinity that I do recognise.

2 Q. Let's leave those villages for the moment, but irrespective of --
3 irrespective of whether Mabanga is denoted on this map, are you able
4 to -- to mark on the map the rough location of that village?

5 A. What I have marked, that's where Mabanga might be. I have
6 recognised the village of Chele which is close to the village of Mabanga.
7 Should I mark the village of Chela? Can I do so?

8 Q. Before we get there, can you just place an M on top of the circle
9 that you've just marked for Mabanga, please.

10 A. (Marks)

11 Q. Thank you. And I'd like you to undertake the same exercise for
12 the village of Barriere. Irrespective of whether it's marked on the map,
13 can you -- are you able to mark the location of the village Barriere?

14 A. It's where you have this circle. There's another route for
15 Djubu, a road to Nizi, and that is where Barriere is, but you can't see
16 Barriere on the map.

17 Q. That's fine. Can you place a B beside that circle for Barriere.

18 A. (Marks)

19 Q. Now, sir, what I'd like you to do is for each of the circles that
20 you have drawn, I'd like you to place by the side or on top of those
21 circles the letters U-P-C and the letter R for "recruitment."

22 A. (Marks)

23 Q. Thank you. You have also mentioned the -- the battles in
24 Mongbwalu and in Kobu. I'd like you to place circles around those areas
25 as well.

1 A. Kobu isn't on the map, but I can recognise the village of Wadza,
2 which is near Kobu.

3 Q. Sir, can I ask you to look at the map, and do you see a place
4 called Djugu there?

5 A. Yes.

6 Q. And underneath Djugu towards the left do you see Kobu?

7 A. It's a name that resembles Kobu, but the Kobu I was talking about
8 of is on the route to Mongbwalu. One could give an estimate of the
9 location of Kobu from the direction of Kilo, but on the map if it says
10 Kobu, well, I don't know. It would be towards Pimbu. I know the village
11 of Pimbu. It could be another village here that's called Kobu, but the
12 Kobu that I'm referring to -- well, from Kilo, because on the map you
13 have Kilo and you have Wadza. I know the village of Kilo and Wadza. The
14 Kobu I'm referring to is between Kilo and Wadza.

15 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I think we should stay
16 with the witness's evidence. He's specifically referred to the village
17 of Wadza. I think his understanding of where Kobu is by reference to
18 Wadza. I think that needs to be the first port of call.

19 MR. SACHDEVA: I was just going to ask him that question.

20 PRESIDING JUDGE FULFORD: Good. Okay. Thank you.

21 MR. SACHDEVA:

22 Q. Sir, can you therefore mark on the map where your understanding
23 is of Kobu, the place that you've spoken about in your evidence?

24 A. The place of Kobu I'm referring to is between Kilo and Wadza.

25 Q. Can you please write the name Kobu on top of that circle.

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1 A. (Marks)

2 Q. Now, for the circle where you've depicted Kobu and for Mongbwalu,
3 can you place by the side of the circle the letter B for -- for "battle."

4 MR. SACHDEVA: Mr. President, for the sake of completeness, I'd
5 like to ask the witness to mark locations that he marked on the earlier
6 map on Friday so we have it all together.

7 PRESIDING JUDGE FULFORD: Certainly.

8 MR. SACHDEVA: Thank you.

9 Q. Witness, I'm sorry again to ask you this, I know you did it on
10 Friday, but could you please put the letters HQ near Bunia again.

11 A. (Marks)

12 Q. And perhaps you can add to the side U-P-C.

13 A. (Marks)

14 Q. And for the -- the camp Mandro, can you circle it also and place
15 a letter C.

16 A. (Marks)

17 Q. And sorry, sir, I also recall that you circled the area of Bule
18 where there was a camp. Can you do the same on this map, please.

19 A. (Marks)

20 Q. And, sir, earlier on today you spoke about the training in the
21 camp in Mongbwalu. Can you do the same for Mongbwalu as well.

22 A. (Marks)

23 Q. Thank you very much.

24 MR. SACHDEVA: Mr. President, I would like to tender that into
25 evidence.

1 PRESIDING JUDGE FULFORD: Good. The Court Officer will give it
2 an appropriate marking.

3 Yes, Mr. Sachdeva.

4 MR. SACHDEVA:

5 Q. Sir, when we spoke about the -- the training in Rwanda, you said
6 that the instructions were given by -- the instructions were given by
7 Rwandans. Who did you mean when you said that?

8 A. These were instructors whom we found in the centre of training at
9 Gabiro. The trainers, instructors were there. They were Rwandans who
10 trained us. They were either soldiers from Rwanda -- they were soldiers
11 from Rwanda who instructed us at the Gabiro training centre.

12 Q. Do you recall of the names of the instructors?

13 A. I can't remember their names any more, but the most high-ranking
14 member of the military was a captain.

15 Q. Now, on Friday and today we've spoken about children in the UPC,
16 and you've given evidence that there were children under the age of 15.
17 I want to ask you how are you -- how were you able to assess their ages?

18 A. You could see what they looked like. You could distinguish
19 between young children and older children. You could tell what the age
20 was on the basis of the height of the child. It was easy to see who was
21 under 15 and who was over 15. The others had heavier weapons. If you
22 had to transport them, it was problematic. You couldn't carry a AK-47
23 for a long period of time if -- if you were small.

24 Q. You talked about the AK-47. What would the children wear?

25 A. I haven't really understood your question. Could you put it to

1 me again, please?

2 Q. The children that you saw in the UPC, what would they typically
3 be wearing when they were at the camp, when they were at the battles?

4 A. There were clothes distributed to everyone, even to the children.
5 They had uniforms, but sometimes if the clothes were too big for the
6 children you'd take the clothes to a tailor to adjust the clothes. They
7 had AK-47s. They had their weapons. There were commanders who had the
8 names of the men, of the children, and they were noted by the weapon as
9 well as the number of the weapon. So they had the uniform and the
10 weapon. So they had these weapons and uniforms.

11 Q. Can you describe the uniforms?

12 A. We had uniforms that are called camouflage uniforms, the
13 commander uniforms of a green colour. Commanders mostly used them.
14 That's what I saw. But there were green camouflage uniforms, and there
15 were boots, green boots.

16 When we arrived -- well, there were some who didn't have
17 uniforms, but when we came back we saw that uniforms had already been
18 distributed to the soldiers. This included plastic footwear. There were
19 other officers who said that it had been bought from people in Uganda.
20 It was provided to all the soldiers. They were provided with uniforms,
21 footwear, and each and every soldier was provided with a weapon.

22 Q. Were the uniforms that were worn by the commanders and worn by
23 the soldiers, were they the same or were they different?

24 A. They were the same uniforms, but sometimes there were commanders
25 who had APCs. There were Mobutu soldiers had uniforms that they had

1 brought with from their armies, so sometimes you could distinguish them.
2 They had other uniforms from the Mobutu period or the APC, A-P-C, period.
3 But the UPC uniforms were camouflage uniforms. Everyone had the same
4 uniform, and during the war it was said everyone had to have the same
5 uniform. Even if you are an officer you can't change your uniform in the
6 course of combat because you might be confused with someone else.

7 Q. How would one be able to tell if a UPC soldier was a commander or
8 officer?

9 A. Commanders had bodyguards. That was the only way that you could
10 ascertain that the person was a commander, if they had bodyguards.
11 Commanders would always be accompanied, but there weren't ranks. There
12 weren't big differences within the UPC, but often commanders had
13 bodyguards which could allow you to identify that somebody was a
14 commander, for instance. That's how it worked.

15 Q. Sir, before we -- we had a break in the last session, you used
16 the term "kadogo," and I want to ask you, what is your understanding of
17 that term? What does it mean to you?

18 A. "Kadogo "means a child soldier. It is the word that was used
19 above all by soldiers to indicate a child soldier. They used the term
20 "kadogo," that's it.

21 Q. And when that term was used, what -- what ages of the child
22 soldier would it include?

23 A. Often the term "kadogo" was applied to children under the age of
24 15 years. At the UPC, the term "kadogo" was often used for children
25 under the age of 15 years. However, in other armies -- because when I

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1 went to Rwanda I was 18 years old, but people referred to me as being
2 kadogo because I was younger than the others. However, in the UPCs the
3 term is used above all for those aged under 15 years.

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

5 (Prosecution counsel confer)

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

7 Thank you, sir.

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

9 Mr. Biju-Duval, my understanding is that there are no
10 applications by any of the victims representatives to question this
11 witness, and so the next event in order is questions from the Defence.

12 I'm just going to explain to the witness.

13 Sir, there are about to be some questions put to you by
14 Mr. Biju-Duval, who is one of the counsel acting for the accused,
15 Mr. Lubanga. Can you answer your questions -- can you answer his
16 questions in exactly the same way that you answered the questions from
17 Mr. Sachdeva up until a few moments ago. So there's no difference of
18 approach. Just listen to the questions carefully and give your answer.
19 Thank you very much.

20 Questioned by Mr. Biju-Duval:

21 Q. (Interpretation) Good morning, sir.

22 A. Good morning.

23 Q. I would first like to return to a matter which you addressed last
24 Friday. You told the Court that you allegedly saw Mr. Thomas Lubanga
25 when you were at Mandro training camp; is that right?

1 A. Yes.

2 Q. Is it correct to state that according to you that is when you
3 were an instructor in the Mandro training centre? We have understood
4 that you received additional training, but given that you had already
5 been in the army, you also gave training in Mandro; is that right?

6 A. Yes.

7 Q. And so it was during that period that you allegedly saw
8 Mr. Thomas Lubanga?

9 A. Yes.

10 Q. Well, I would like to go through certain aspects of the time line
11 so that that is clear. According to your testimony, you were sent for
12 training in Rwanda in September 2002. Is that not so?

13 A. Yes.

14 Q. Could you be more specific? Was it at the beginning of the month
15 of September or during the month?

16 A. I don't have any specifics to give regarding the date, but I know
17 it was in September because we spent two months in Rwanda and we returned
18 in November. I don't know if it was the 4th of November. I can't be
19 specific about the dates, but I know it was in November (as interpreted)
20 2002 until November 2002, because we only spent two months in Rwanda.

21 Q. Thank you. If I go further into the past to clarify matters, is
22 it right that before leaving for Rwanda, as you said to the Court, that
23 you were a bodyguard in Chief Kahwa's residence?

24 A. Yes.

25 Q. Is it right that that residence, as you indicated, is located in

1 Mandro village?

2 A. Yes.

3 Q. The training centre is outside of the village; isn't that right?

4 A. Yes. It's referred to as being of Mandro, but Chief Kahwa's
5 residence is where the chefferie also is, where his office is, because he
6 is the chief of the collectivite; and, thus, his residence is also there
7 and his office as chief of the collectivite, and his residence is there,
8 and all his bodyguards are there.

9 Now, Mandro training centre involves crossing a river and going
10 to the other side. It's also Mandro. It's an extension, if you like, of
11 Mandro, but an area that we call Saipa. It's still Mandro, but you must
12 cross the river and it's on the other side of the river.

13 Q. You've given an interesting indication because you said the it
14 was -- the distance between Chief Kahwa's residence and the training
15 centre was one hour's walk in distance; is that right?

16 A. Yes.

17 Q. For how long were you a bodyguards of Chief Kahwa in Mandro
18 village at his residence?

19 A. The UPC training began in 2001, late in 2001. When Chief Kahwa
20 was first involved with training in the training centre in Mandro, all of
21 the soldiers or all the young people to be trained at Mandro training
22 centre knew Chief Kahwa as the leader. At the beginning we knew
23 Chief Kahwa as the leader of the UPC. This is towards the end of 2001.

24 In 2002, before there was the centre in Mandro, some young people
25 were trained towards or near Katoto. It wasn't really a training centre

1 like the one in Mandro, because Mandro is the one that is recognised
2 today as the real training centre where everybody was brought to. The
3 first one in Katoto, people were driven out. There were soldiers,
4 Ugandans. The APC went there and drove people out, but in 2001.

5 In 2002, the second time for having a proper training centre in
6 Mandro so that UPC would have a proper training centre there,
7 Chief Kahwa -- everybody who was driven out was taken to Mandro centre.

8 Q. If I might interrupt for a moment to return specifically to my
9 question. I would like to clarify matters as regards your personal
10 story, what you yourself did, and I'm not seeking general explanations on
11 things you might know.

12 So I return to my question. You explained that before leaving
13 for Rwanda, you were at Chief Kahwa's residence as a bodyguard. Could
14 you estimate the time which you spent, the length of time which you
15 spent, at Chief Kahwa's residence as a bodyguard?

16 A. From April 2002 to September 2002. Right up until I departed for
17 Rwanda.

18 Q. So from April 2002, you say.

19 A. Yes. Before UPC took Bunia.

20 Q. And the period during which you had responsibilities within
21 Mandro training centre was before April 2002?

22 A. Before the training.

23 Q. If we work back in time, before you were a bodyguard at
24 Chief Kahwa's residence you said that you were -- you had
25 responsibilities or activities in Mandro training centre; is that right?

Witness: Witness DRC-OTP-WWWW-0038 (Resumed) (Open Session)
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1 A. Yes.

2 Q. So before April 2002?

3 A. Yes, according to me.

4 Q. A last point to clarify this time line. You have stated that you
5 left your village of Mabanga following awareness-raising activities by
6 Chief Kahwa and that you went to Mandro training centre; is that right?

7 A. Yes.

8 Q. As regards the events which you have described -- excuse me. I
9 will rephrase my question. First another question.

10 You remember, do you not, having been questioned by an
11 investigator of the Office of the Prosecutor before this hearing?

12 A. Yes.

13 Q. In the month of March 2006?

14 A. Yes.

15 Q. The Prosecution's investigator questioned you about Thomas
16 Lubanga's visit; isn't that right?

17 A. Yes.

18 Q. Is it right that during that interview with the Prosecution
19 investigator you stated that at that -- during that event the alleged
20 visit of Mr. Thomas Lubanga to the training centre, that that event
21 purportedly took place after Thomas Lubanga had been detained in
22 Kinshasa?

23 A. Yes.

24 Q. Is it right that you also provided further detail in that you
25 said it was a time when he had been taken hostage?

1 A. Yes. That's what we were being told at the training centre. We
2 were told that the chief, Mr. Thomas Lubanga, was -- had fled the APC,
3 and we were told at the centre that Thomas Lubanga was detained in
4 Kinshasa and that in order for him to be able to return we needed to
5 build up greater strength to have him return to Bunia. And that is why
6 there was a period during which our minister in the government was to
7 come there. He, too, had been taken hostage in exchange for Mr. Lubanga,
8 and that was operation was organised by Chief Kahwa.

9 Q. If I told you that that minister was Mr. Ntuba Alabua, would that
10 be what you remember?

11 A. I do not know the names of the ministers, but I know that a
12 minister was detained.

13 Q. Was he detained in Mandro?

14 A. Yes, in Mandro.

15 Q. And do we agree that you have stated that Mr. Lubanga's visit
16 purportedly took place after that event and that that is what you told
17 the Prosecution investigators?

18 A. Yes, because the minister was to be exchanged for Mr. Thomas
19 Lubanga.

20 Q. Sir, if I were to put to you that the return of Thomas Lubanga in
21 the wake of his detention in Kinshasa and the taking as hostage of the
22 minister in Mandro took place at the end of August 2002, does that assist
23 you in clarifying your memories?

24 A. I haven't understood your question well. Could you repeat it?

25 Q. Is it right that the taking as hostage of the minister in Mandro,

1 which coincided with the return of Thomas Lubanga to Bunia after his
2 detention in Kinshasa, is it right to say that those two events took
3 place in the last few days of August 2002?

4 A. I don't know in what month Thomas Lubanga returned. I have no
5 specifics on the date or on the month.

6 Q. In any case, what you are clear on is that the visit purportedly
7 took place after those events.

8 A. Yes.

9 Q. Sir, you have stated that you had responsibilities at
10 Chief Kahwa's residence from April 2001 (as interpreted); is that right?

11 A. If I remember rightly, that was from 2002, not 2003.

12 Q. Yes, yes. April 2002. You're right. I -- I am mistaken.
13 Please excuse me.

14 You have stated that you went to the UPC camp and Mandro camp
15 before, before?

16 A. Yes.

17 Q. Fine. Sir, I wish to return for a moment to the facts regarding
18 your schooling. Now, I'm going to be very careful not to give any
19 specific indications that would enable you to be identified, and I would
20 also encourage you to be careful in responding in relation to items that
21 might identify you.

22 Could you indicate to us at which date you stopped attending
23 school in the establishment which you mentioned at the beginning of your
24 testimony before --

25 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, the problem with this

1 is although one question giving dates can be innocuous, if there are a
2 number of dates given, possibly combined with locations, the combined
3 effect may end up revealing personal details about the witness which
4 should not be made public.

5 I, of course, don't know where you're doing, and I don't know to
6 what extent there are going to be other questions that may have a
7 tendency to identify him, but I think our view is that we would prefer
8 personal information of this kind to be given in closed session so as to
9 make sure that we fulfil our obligations to witnesses under the Statute.

10 MR. BIJU-DUVAL (interpretation): In fact, the witness has
11 already given specifics at the beginning of his examination on the date
12 at which he ceased being schooled. It already figures in the record, so
13 I can withdraw that question.

14 I will make every effort to be careful. I don't think that my
15 question brings with it a risk of identification.

16 PRESIDING JUDGE FULFORD: All right, Mr. Biju-Duval, but you are
17 to be very careful, please. I'm sure you will. You're experience
18 counsel, and you will understand the real sensitivities that are involved
19 in this.

20 And, sir, can I address you directly. Can you please make sure
21 that although the question you've been asked to give an answer to is in
22 itself acceptable, please make sure that you do not say anything which
23 may identify you to someone outside of this courtroom. It is absolutely
24 crucial that your identity remains undisclosed.

25 THE WITNESS (interpretation): As regards the name of the school,

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1 I think it would be difficult for me to give the name of the school that
2 I left, because everything is mentioned in the roll-call of the school.

3 PRESIDING JUDGE FULFORD: Yes. I think you're not being asked --
4 I'm just going to go back to the question.

5 At the moment you're only being asked to give the date when you
6 ceased going to that school. So you're not being asked to give the name,
7 just the date when your studies there came to an end, and I think in
8 itself that question won't tend to reveal your identity. So you can
9 answer that question, but Mr. Biju-Duval has now been warned by me to be
10 extremely careful.

11 All right. The date, then, when you ceased your studies at
12 school, if you can remember.

13 THE WITNESS (interpretation): The first in 2001. It was during
14 the holidays. I left in November 2001 on holidays. I went to Mabanga
15 village. That is the first time that I stopped going to school until I
16 returned in 2003 to continue my studies until 2006.

17 PRESIDING JUDGE FULFORD: Right. I think there's a lesson there,
18 Mr. Biju-Duval. In future, all questions of that kind will be asked in
19 closed session, because the answers which have been very specific,
20 they've gone beyond the particular year, have within them the real
21 potential to identify the witness. So any personal details of that kind
22 in future are to be asked in closed session.

23 Right. Now, before we keep with any personal detail -- are there
24 any other personal details of that kind that you want to ask now, or are
25 we moving to other issues?

1 MR. BIJU-DUVAL (interpretation): I would like to put one other
2 question on the matter of schooling, and I will not ask the witness to
3 specify the month, for instance. My question relates only to the year.
4 Does the Chamber authorise it?

5 PRESIDING JUDGE FULFORD: Closed session, Mr. Biju-Duval.

6 Closed session, please.

7 (Closed session)

8 (Expunged)

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20 (Open session)

21 PRESIDING JUDGE FULFORD: We're back in open session.

22 Mr. Biju-Duval, if you could continue your questions, please.

23 MR. BIJU-DUVAL (interpretation): Thank you, Mr. President.

24 Q. Is it true that -- no, I apologise. I'll rephrase the question.

25 You said -- I don't think I'm distorting what you said, but you

1 said that the UPC and the Ugandans drove out Governor Lompondo. Is it
2 true that the Ugandan troops and certain armed groups drove out Governor
3 Lompondo from Bunia?

4 A. Yes.

5 Q. Is it true that this event occurred between the 7th -- rather,
6 between the 6th and the 9th of August 2002?

7 A. I don't have a precise date.

8 Q. Let's take this event, something that can serve as a milestone
9 for us. Did you participate in the event?

10 A. I didn't participate in the first war in Bunia, not after
11 liberation. I didn't participate in it.

12 Q. I'll ask you a few questions about the period preceding this
13 event. You told us about Chief Kahwa, and you said he was the leader
14 when it came to recruiting and training soldiers in the UPC.

15 A. Yes. He was responsible to -- for the training, but there were
16 other officers, Bosco and others, Ntaganda, Kisembo.

17 Q. As far as you know, during this period before the fight in Bunia,
18 where did the weapons used come from, the weapons used by the army?

19 A. Before there were weapons bought from Ugandans and there were
20 other weapons that had been delivered by planes. They'd been parachuted
21 into the training camp in Mandro. I don't know where they came from.

22 Q. During this period, before Bunia was taken, as far as you know
23 which leaders were present in Mandro?

24 A. Chief Kahwa.

25 Q. I'm now going to move on to another subject that we'll have to

1 deal with at length. I can move on to this subject immediately if the
2 Chamber so desires, but for the sake of clarity it might be best to have
3 a break.

4 PRESIDING JUDGE FULFORD: (Previous translation continues) ...
5 introductory questions, Mr. Biju-Duval, and then we'll rise. It's a way
6 that you can introduce it.

7 MR. BIJU-DUVAL (interpretation): Yes, Mr. President.

8 Q. In the course of the hearing on Friday, last Friday, you
9 mentioned the objectives of the battle in Mongbwalu. You mentioned the
10 objectives you were informed of.

11 A. Yes.

12 Q. And you told the Chamber that, on the one hand, the objective was
13 to destroy the FNI General Staff in Mongbwalu.

14 A. Yes.

15 Q. And you also said that one of the objectives was to establish an
16 FPLC HQ there.

17 A. Yes.

18 Q. Would it be correct to say --

19 PRESIDING JUDGE FULFORD: Mr. Biju-Duval -- sorry, Mr. Sachdeva,
20 I really don't want this to turn into a tennis match with the witness
21 being in the middle and counsel lobbying a ball across the court in front
22 of him and the Judges. Now, is it critical to intervene at this stage.

23 MR. SACHDEVA: Mr. President, I do apologise. I just would ask
24 that if my learned friend is going to refer back to answers given on
25 Friday or indeed today that if, as much as possible, the direct quotation

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1 can be -- or the direct reference can be given to the Prosecution,
2 because I think previously in the last question there may have been,
3 albeit of course inadvertent, but there may have been an inaccuracy in
4 the question put to the witness. That's all I see it.

5 PRESIDING JUDGE FULFORD: Well, Mr. Sachdeva, you've taken the
6 witness back to a number of answers that he gave on Friday which you
7 summarised to him. Did you give notification of each and every one of
8 those questions to Mr. Biju-Duval in advance?

9 MR. SACHDEVA: Mr. President, I did.

10 PRESIDING JUDGE FULFORD: Yes, well --

11 MR. SACHDEVA: In my submission, I didn't --

12 PRESIDING JUDGE FULFORD: This unrealistic, Mr. Sachdeva. If, if
13 on mature reflection the question has been put on an invalid basis, then
14 bring the matter to our attention, but to expect counsel to provide
15 chapter and verse of each and every part of a witness's earlier testimony
16 that they're going to be taken to would be far too onerous and
17 unrealistic. So I'm afraid you've got a large team. Between you you're
18 going to have to check on the accuracy of the questions that are put.

19 All right. Well, Mr. Biju-Duval, I've tried to fill up the time
20 and failed. We'll rise now, and if it's convenient to you, and sit
21 again -- no, I can see you've got something you want to move on to. What
22 would you prefer, finish off or should we adjourn?

23 MR. BIJU-DUVAL (interpretation): I think it would be best to
24 adjourn. I'd just like to tell the Chamber that my question refers to
25 what the witness said. It's page 48 of the French transcript. So that

1 really shouldn't be a problem.

2 I think we can adjourn now, because I'll be moving on to a
3 subject that I will be dealing with at some length.

4 PRESIDING JUDGE FULFORD: Mr. Sachdeva, if the quotation is wrong
5 at page 48, can you raise it with us, please, at half past 2.00 when
6 we'll sit again.

7 MR. SACHDEVA: Yes, Mr. President.

8 PRESIDING JUDGE FULFORD: Good. Closed session, please.

9 (Closed session)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 Luncheon recess taken at 12.58 p.m.

15 On resuming at 2.30 p.m.

16 (Open session)

17 COURT USHER: All rise please be seated.

18 PRESIDING JUDGE FULFORD: Mr. Sachdeva, two thing before the
19 witness comes back. The first is, I think following a little prompting
20 from my left and right over the luncheon adjournment, I've had a look
21 again at our -- at our decision on hearsay as I'm going to call it, and I
22 think that although the general point that I made perhaps has validity,
23 was it going to be particularly helpful to explore that particular line,
24 I think I need to put something of a health warning on what I said in
25 that what I said should not be taken as a positive discouragement for the

1 use of hearsay, because having looked at our decision - I think it was in
2 the middle of last year - we have expressly opened the door, so that was
3 perhaps more of a United Kingdom intervention than an ICC intervention.

4 MR. SACHDEVA: Thank you for that clarification.

5 PRESIDING JUDGE FULFORD: The other thing, Mr. Sachdeva, is about
6 identification of documents and whether or not they should be given MFI
7 numbers or whether they should become exhibits straight away.

8 I have a proposal to save us constantly having to go back to see
9 whether particular items have become exhibits or not.

10 For the party who has called the witness and who is introducing
11 the document, particularly in those circumstances, there will be a
12 presumption that there has been warning in advance that it's going to
13 come. In fact, there should be a warning anyway, but there will be a
14 particular obligation to the person who calls the witness. The
15 suggestion I make is that in those circumstances, unless objection is
16 raised, the item is immediately given an exhibit number, if that's the
17 right expression, rather than an MFI number. So unless an issue is
18 raised, we needn't go back to it, it's automatically an exhibit.

19 For those documents which are put by a questioning member of the
20 bar who hasn't called the witness, I think it would be wrong to apply the
21 same presumption, because documents can be introduced that the witness
22 then says, "I know absolutely nothing about this," and it may be there's
23 then an issue as to whether or not it's been formally introduced into
24 evidence.

25 So for anyone other than the member of the bar who's called the

1 witness, there will be an MFI number, and there will need to be an
2 application to turn that item into an exhibit in the case.

3 Now, does that -- does that seem to simplify the position?

4 MR. SACHDEVA: It does. Thank you very much, Mr. President.

5 PRESIDING JUDGE FULFORD: Good. Any observations, Maitre Mabilie
6 or Mr. Biju-Duval? It seems like not.

7 I saw you nodding Ms. Massidda. Good. Anything, Mr. Walley, n,
8 Ms. Bapita?

9 MR. WALLEYN: I was just wondering, Mr. President, about the
10 documents that the Office of the Prosecution will produce to the Defence,
11 this Palmares of the school in Bunia. Maybe legal representatives of
12 victims can be interested as we also have children from Bunia. I
13 couldn't check if we have some clients from that particular school, but
14 it would be interesting for us to know that.

15 PRESIDING JUDGE FULFORD: Yes. The witness in the witness box is
16 represented by you -- no. No, he's not. Sorry. I'm jumping out of
17 order. So this is not somebody who you represent. You haven't applied
18 to question. Well, if we have to, Mr. Walley, n, we'll come back to this,
19 but I don't think you're entitled. If he's not your client and you
20 haven't applied to intervene, I -- my initial reaction is that this goes
21 beyond the scope of what you're entitled to, but if you want to press the
22 point, let's do it later in the day. All right. Thank you.

23 Closed session, please, so that the witness can be brought back
24 into court.

25 MR. BIJU-DUVAL (interpretation): Your Honour.

1 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

2 MR. BIJU-DUVAL (interpretation): Please excuse me. I think that
3 to resolve the issue of the document and the missing pages which we
4 looked at in closed session earlier, I think -- and I would suggest that
5 we go into closed session now but that we don't invite the witness in
6 immediately so that he doesn't have to follow a discussion which does not
7 concern him directly.

8 PRESIDING JUDGE FULFORD: Good. Closed session then without the
9 witness unless you want to tell me to do something else, Mr. Sachdeva.

10 MR. SACHDEVA: Mr. President, I would not tell you anything, your
11 Honour. I just wanted to confirm that the -- therefore the maps that I
12 tendered will now have exhibit -- evidence numbers.

13 PRESIDING JUDGE FULFORD: They should all no longer have MFI
14 numbers. Everything that's gone in so far - I don't know if this is the
15 right expression, Mr. Sachdeva - but what I always call an exhibit
16 number. What term do we use at this court? An evidence number. Right.
17 So not exhibits, evidence. Right. It will be given an evidence number.

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

19 PRESIDING JUDGE FULFORD: Fine. Fine. Everything so far except
20 for the school document entered by Mr. Sachdeva -- no, sorry,
21 Mr. Biju-Duval.

22 Closed session, please.

23 (Closed session)

24 (Expunged)

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Witness: Witness DRC-OTP-WWWW-0038 (Resumed) (Closed Session)
Questioned by Mr. Biju-Duval

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20 (Open session)

21 PRESIDING JUDGE FULFORD: We're now back in public session.

22 Mr. Biju-Duval, please continue.

23 MR. BIJU-DUVAL (interpretation): Your Honour.

24 Q. Sir, this morning you told us that the Chief of Staff was present
25 in Mongbwalu and that some time was passed with Mr. Kisembo; is that

1 correct?

2 A. Yes, indeed. The Chief of Staff was in Mongbwalu after we
3 entered Mongbwalu, after the departure of Bosco Ntaganda. That's
4 precisely when the Chief of Staff came to Mongbwalu.

5 Q. Is it correct to say -- is it correct to say that Mr. Thomas
6 Lubanga never went to Mongbwalu during that period?

7 A. No. He never went to Mongbwalu.

8 Q. Is it correct to say that a battle was held in Bunia between
9 the -- amongst the Ugandan forces on the 6th of March?

10 A. Yes. 6th of March, 2002.

11 Q. Is it correct to say that the FPLC attacked the Ugandan troops?

12 A. Yes.

13 Q. Is it correct to say that as far as you know -- I'll rephrase
14 that question.

15 According to your information, is it correct to say that
16 Mr. Thomas Lubanga was against the idea of attacking the Ugandan troops?

17 A. On the basis of what I had heard the commander say, Commander
18 Salumu say, I heard him say that Thomas Lubanga was the
19 Commander-In-Chief. We were amongst the people in his brigade. He
20 participated in the meeting and apparently was very angry after the
21 meeting. The commander was in our camp. At that time he was angry, and
22 he asked the question about why it wasn't possible to attack the Ugandan
23 troops. That's what I understood.

24 Q. On the basis of what you know and on the basis of information
25 which has been collected and in the circumstances which you've just

1 described, is it correct to say that the decision to attack the Ugandan
2 troops was taken by the commanders, the military commanders, and imposed
3 upon them?

4 A. I don't know what they decided in their meeting, but what I am
5 sure of is that the -- in the meeting with the colonel, he was very
6 angry, because the president didn't want the Ugandan troops to be
7 attacked, but I don't know what their decisions were at the meeting.

8 Q. I would like to make reference to the interviews which were held
9 between you and the investigators and of the Prosecution. Obviously, I'm
10 speaking subject to -- correction. I'm talking about the code document
11 DRC/OTP-061-2986 (as interpreted). You said and I quote:

12 "Thomas Lubanga had refused that we attack the Ugandan troops.
13 He said no, he was going to negotiate with the Ugandans whilst the other
14 commanders were angry with this, and then it was accepted that the
15 Ugandan troops be attacked."

16 Is that what you remember having declared?

17 A. Perhaps that was an interpretive comment. I heard Commander
18 Salumu say that the commander was against our not attacking.

19 PRESIDING JUDGE FULFORD: (Previous translation continues) ...
20 quotations given to the witness of things that he has said on an earlier
21 occasion. I think, generally speaking, he ought to be shown them so that
22 he actually sees what it is that he said and the context of it rather
23 than it simply being read out. We must remember that that was three
24 years ago, and so I think it would be preferable if you could make -- if
25 you could try in advance to work out which passages you want to put to

1 witnesses so that they can be available if necessary.

2 MR. BIJU-DUVAL (interpretation): Do you want me to do this now
3 or in future?

4 PRESIDING JUDGE FULFORD: I think in future, Mr. Biju-Duval. I
5 think if we try to do it now we'll end up in chaos, but in future if you
6 could have it prepared. Thank you.

7 MR. BIJU-DUVAL (interpretation): Duly noted, your Honour.

8 Q. Sir, were you aware of other examples or other circumstances in
9 which decisions taken by military commanders or the Chief of Staff run
10 counter or were opposed to the position of Mr. Lubanga? Are you aware of
11 that?

12 A. No. No, I cannot recall any other occasion where I heard this.

13 Q. I'd like to pursue my questioning in the same time period making
14 reference to Mongbwalu and the area around Mongbwalu and the events which
15 ensued.

16 You've spoken to us about the training camp in Mongbwalu. Who
17 was responsible for that training camp at Mongbwalu?

18 A. Given that the commander brigadier was present in Mongbwalu, it
19 was he who was responsible. He was the leader. He took care of the
20 trainers and those who recently arrived in the camp.

21 Q. You've made reference to awareness-raising activities which were
22 carried out in villages from the base of Mongbwalu and that the purpose
23 was to recruit people. You've told us that the S5 at brigadier level --
24 brigade level, rather, that the S5 at brigade level was responsible for
25 the awareness-raising activities and recruitment.

Witness: Witness DRC-OTP-WWWW-0038 (Resumed) (Open Session)
Questioned by Mr. Biju-Duval

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1 A. Yes.

2 Q. Amongst the S5s, you made reference to an individual called
3 Mr. Dena. Is that not correct?

4 A. Yes, it is.

5 Q. You gave us an example of an awareness-raising activities which
6 was carried out in a village called Mbidjo. Is it correct to say that no
7 child under the age of 15 years was recruited in that village on that
8 occasion?

9 A. When they were there and we had come back, there were young
10 people who came and who had come from Mbidjo. I don't have any details
11 about their age, whether they were over or under the age of 15. They
12 were assigned to various companies.

13 MR. BIJU-DUVAL (interpretation): Your Honour, I'm in a rather
14 difficult situation. I would like to quote very briefly from an
15 interview held between the witness and the Prosecution. Is it possible
16 for me to provide the quote orally or is it necessary that I submit the
17 text?

18 PRESIDING JUDGE FULFORD: Do you have a copy of the text,
19 Mr. Biju-Duval?

20 MR. BIJU-DUVAL (interpretation): Indeed I do. Yes, I have it in
21 French.

22 PRESIDING JUDGE FULFORD: Can you give the reference to the
23 interview, the page number, and the identifying documents so the
24 Prosecution can follow, and can the relevant passage, perhaps marked, be
25 put in front of the witness. And then read it out.

Witness: Witness DRC-OTP-WWWW-0038 (Resumed) (Open Session)
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1 MR. BIJU-DUVAL (interpretation): There are two pages in question
2 here, DRC-OTP-061-2836, and then there's a second page which is coded
3 0161-2837.

4 PRESIDING JUDGE FULFORD: Now, Mr. Biju-Duval, I'm told that
5 these can be shown on the screen so that everyone can see them. I see
6 you've got some lime-green stickers. Can one of those be put on the
7 relevant pages, and they then can be put on the machine.

8 All right. Could you give those to the usher, please, so the --
9 the one you want to go in first, and then the one you want to go in
10 second.

11 COURT OFFICER: The two pages extracted from this document with
12 the numbers DRC-OTP-0161-2836 and 2837 will be marked as MFI-D-00002.

13 PRESIDING JUDGE FULFORD: Right. Which is the first passage,
14 Mr. Biju-Duval?

15 MR. BIJU-DUVAL (interpretation): It's on page 2836, line 822
16 where you'll find the beginning of the passage. Obviously, we could
17 backtrack further in the text; however, I don't think this is necessary.
18 I'm just concerned about the part which pertains to the operation in
19 Mbidjo. I shall read the passage, shall I?

20 The witness stated:

21 "A. I saw, I heard that he was -- he was organizing a
22 meeting in Mbidjo, and when we returned, and when we returned with --
23 together, and when we came back after that, there were children who came
24 on foot.

25 "Q. Coming from where in?

Witness: Witness DRC-OTP-WWWW-0038 (Resumed) (Open Session)
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1 "A. Mbidjo.

2 "Q. Even children under the age of 15 in?

3 "A. No. There weren't very many children who were
4 interested in this from Mbidjo. They were all older.

5 "Q. Okay. How can you distinguish amongst children over and
6 under the age of 15?

7 "A. We didn't draw that distinction. We only knew by the
8 way they looked, i.e., their appearance and their size."

9 That is the quote which I wanted to draw your attention to. Now
10 it is before the witness

11 PRESIDING JUDGE FULFORD: Do you want to ask any questions based
12 on this, Mr. Biju-Duval?

13 MR. BIJU-DUVAL (interpretation):

14 Q. When you said that they were all older, would it be correct to
15 understand that they apparently were all over the age of 15?

16 A. Yes.

17 Q. Thank you. I should like to ask one last question. Is it
18 correct to say that it was forbidden to take drugs in the FPLC?

19 A. What kind of drugs? Could you clarify, please?

20 Q. Well, drugs, hemp, for example, that -- perhaps alcohol? Drugs.

21 THE INTERPRETER: The witness is interrupted.

22 MR. BIJU-DUVAL (interpretation):

23 Q. I'm not making reference to medicines which are meant to heal a
24 wound or an illness. I'm not making reference to that kind of drug,
25 quite clearly. I'm talking about a very particular category. Drugs,

1 narcotics, were they forbidden in the FPLC?

2 A. Well, we weren't told, "You mustn't do that," in so many words,
3 but there were soldiers who took things like that.

4 MR. BIJU-DUVAL (interpretation): This is my last question, and
5 it is the very last time I shall request this, your Honour. I'd like to
6 make reference to excerpts from DRC-OTP-0161-2667. This is the last
7 reference I should like to make to a brief excerpt from an interview.
8 There are five lines I should like to quote. I'd like to mention the
9 lines 470, 474 -- rather, 870, 874.

10 PRESIDING JUDGE FULFORD: (Previous translation continues) ...
11 perfectly acceptable technique of asking questions. So you should not
12 feel in any way restricted in undertaking this task.

13 Have we managed to retrieve that from Ringtail? We have. The
14 Court Officer is extremely good at operating Ringtail. A hard copy
15 please, for the witness.

16 COURT OFFICER: The extract will the number be MFI-D-0003.

17 THE INTERPRETER: The interpreter corrects. It is 470 to 474,
18 the lines which are referred to.

19 PRESIDING JUDGE FULFORD: Then if you would like to read out the
20 section that you want the witness to focus on, Mr. Biju-Duval.

21 MR. BIJU-DUVAL (interpretation): Indeed, your Honour. I should
22 like to start the quote now:

23 "Q. In the UPC, in general was there a policy regarding
24 drugs and alcohol?"

25 The witness's answer is as follows:

1 "A. No, there was not. Therefore, drugs weren't allowed
2 there. UPC really did not authorise drugs. In fact, drugs were
3 forbidden there. There they were really strict. You were not supposed
4 to take drugs."

5 Q. Sir, is that what you had understood?

6 A. Yes, I've understood the question. In looking at the section
7 where you have read, there is a clear comparison between UPC -- there was
8 a difference between UPC and FNI. Nonetheless, there were soldiers who
9 took drugs.

10 MR. BIJU-DUVAL (interpretation): I don't have any further
11 questions, your Honour.

12 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.

13 (The Trial Chamber confers)

14 PRESIDING JUDGE FULFORD: Thank you. Judge Odio-Benito, who sits
15 on my right, has got some questions for you, sir.

16 JUDGE ODIO BENITO: Thank you.

17 Questioned by the Court:

18 JUDGE ODIO BENITO: Sir, on Friday and also today you said to the
19 Court that when you talk about children, there were boys and girls
20 referred; is that correct?

21 A. Yes. Yes.

22 JUDGE ODIO BENITO: And -- thank you, sir. You also explained to
23 the Court that you were a trainer in the camps, and specifically on
24 Friday you explained to us that when you were in Mongbwalu, when the last
25 military training was being given, there were child soldiers who were

1 trained in Mongbwalu and that you also explained that you were involved
2 in the last training of soldiers in Mongbwalu.

3 Could you explain to us if, as part of your duties as trainer,
4 you trained both boys and girls?

5 A. Yes.

6 JUDGE ODIO BENITO: So what were the differences, if any, in the
7 training of girls and boys, or they received the same training?

8 A. They received the same training.

9 JUDGE ODIO BENITO: Does this mean that they use a military
10 uniform, they were given weapons? Did they shoot and fight in combat?

11 A. Yes, indeed. That is correct.

12 JUDGE ODIO BENITO: Thank you. You also explained to the Court
13 that in the camp there were no buildings, there were houses built by the
14 soldiers and the recruit. You live in those houses; is that correct?

15 A. In Mongbwalu I had a house. In Mandro, no. I was in Commander
16 Salumu's house. In Mongbwalu we had smaller houses.

17 JUDGE ODIO BENITO: Thank you, sir. Could you explain to us who
18 cleaned and cooked in the camps in addition to the houses of the
19 commanders or the high officers?

20 A. Could you kindly request a more detailed question, please?

21 JUDGE ODIO BENITO: Yes, sir. You told us that you were living
22 in houses. So my question is: Who was in charge of cleaning and cooking
23 in those houses?

24 A. When we finish the training, that is when we became soldiers, the
25 guard of the camps -- or, rather, the guards of the camps, they were

1 often women, and if a girl was taken as a bodyguard by a commander, she
2 functioned in other respects as well. She prepared food. She was "his
3 wife." But that was at the training centre. But when I had already
4 become a soldier, I wasn't able to live in the camp, in the training
5 camp, that is. As the commander of the brigade, we were lodged in
6 houses.

7 JUDGE ODIO BENITO: Thank you. Thank you, sir. When you talk
8 about women, are you talking about girls under the age of 15 or women
9 above the age of 15?

10 A. When I make reference to girls and women, I'm also making
11 reference to those who are under the age of 15. In Abelanga, there was a
12 girl who was a bodyguard and she was under the age of 15. But there were
13 also other girls under the age of 15, and they were also in the training
14 centre. In addition, there were older girls. They were older than 15
15 years old.

16 JUDGE ODIO BENITO: Thank you. Sir, were they subjected to the
17 same rules and regulations. Specifically, if flogged what would be the
18 main reasons?

19 A. There were indeed girls who been flogged. In Mandro at night --
20 or, rather, there was a day or there was a time when there were girls and
21 there was Commander Nembe present, and the girls were flogged because
22 they had spent the night with trainers. In fact, they were asked
23 specifically what they had done, and they answered that they had spent
24 the night in the houses of the trainers. Commander Nembe punished those
25 girls. When there was the turning out of the troops in the morning they

1 were flogged, and there were girls of all ages. I'm making reference to
2 the girls who were at the training centre in Mandro.

3 JUDGE ODIO BENITO: Thank you, sir. Last question about your
4 personal training in Rwanda. When you were trained in Rwanda, as you
5 have explained to us, did the train -- this training include notions of
6 international humanitarian law? Did someone mention to you the Geneva
7 Conventions and the rules of law?

8 A. No. In Rwanda nobody told us about Geneva rules or United
9 Nations rules. We were only taught about weapons. And at the end of our
10 training day, we were taught their military laws, the Rwandan military
11 law. They didn't teach it to us, but, rather, they read forth on the
12 Rwandan military laws, but we didn't do anything about Geneva laws.

13 JUDGE ODIO BENITO: So that means that when you trained the new
14 soldiers and recruits in the camps, you never ever mentioned to them
15 neither the -- these Geneva Conventions or international humanitarian
16 law.

17 A. No. No. It was not even in the training programme at the
18 training centre.

19 JUDGE ODIO BENITO: Finally a question, sir, if I may. You
20 explained to us how on many occasions the officers and Chief Kahwa and
21 another officer went to the towns to ask the people and parents to send
22 the children to be trained and to be part of the army. Did girls
23 volunteer this? They -- my interest is knowing if the parents sent girls
24 as well, or the girls themselves volunteered to be part of the army.

25 A. Yes, there were girls who volunteered.

Witness: Witness DRC-OTP-WWWW-0038 (Resumed) (Open Session)
Further questioned by Mr. Sachdeva

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1 JUDGE ODIO BENITO: Thank you, sir. Thank you very much.

2 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, anything arising out
3 of the -- out of the questions either of Mr. Biju-Duval or
4 Judge Odio-Benito?

5 MR. SACHDEVA: Yes, Mr. President, two questions if I may.

6 PRESIDING JUDGE FULFORD: You may.

7 Further questioned by Mr. Sachdeva:

8 Q. Sir, I will be very brief and I hope to finish very soon. The
9 last answer to the Honourable Judge about the girls volunteering, can I
10 ask you when Chief Kahwa went to the villages, what was he wearing at the
11 time?

12 A. In some days he was in military attire, and in other days he was
13 in civilian clothing.

14 Q. Was he armed?

15 A. Yes, but he had bodyguards to carry his weapon.

16 Q. Thank you. And in answer to my learned friend with respect to
17 the drugs, you said that it was said that it mustn't be done or, "You
18 mustn't do that," but you said that soldiers, nevertheless, took drugs.

19 A. Yes.

20 Q. Could you please elaborate on that?

21 A. There were soldiers who took drugs, who took hemp; that is to
22 say, they took drugs but it wasn't authorised. Nonetheless, there were
23 soldiers who took drugs but they weren't sanctioned for it. They could
24 take drugs but they weren't punished for it.

25 Q. What level were these soldiers that took drugs?

1 A. Of all ages, including the little ones. I remember a child who
2 we called Rasta, and he took drugs.

3 Q. And when you say the soldiers took drugs -- well, let me ask you
4 this: At what level in terms of military hierarchy would these
5 soldiers -- would these soldiers be when they took the drugs?

6 A. I only know of the people who took drugs. There were also
7 officers and even captains and majors who took drugs.

8 When we were Colonel Salumu, there were Sibas (phoen) in his
9 bodyguard who also took drugs. There were also escorts who would talk
10 among themselves and say, "Our colonel, too, he sometimes takes drugs."
11 Because somebody who has taken hemp, you can see. You can observe that
12 they have taken hemp.

13 Q. When you say you can see someone who has taken hemp, what
14 would -- what could one see?

15 A. Your eyes are red. On the inside you see the red. If someone
16 has taken drugs, for instance hemp -- I know hemp, so I can very easily
17 recognise somebody who has taken a drug, and if they have taken hemp, I
18 can recognise it. I can identify it. I can tell the difference between
19 somebody who has taken hemp and somebody who has not, because I've spent
20 enough time with people who took it. And there are people who take
21 drugs.

22 Q. Thank you. And you said that officers would take drugs. Do --
23 do you know which officers in your time took drugs?

24 A. What I know is that there is an officer called Aigles Vperes who
25 took drugs. We were always with him. There are friends of mine who came

1 from Rwanda who took drugs, who were also officers like me, captains who
2 took drugs. And Aigles Vperes, he was a major, but I knew he took drugs.
3 There were many officers who took drugs who I knew. Abelanga, I knew
4 that he took drugs, and also so many other. I don't know their names but
5 I certainly know their faces.

6 MR. SACHDEVA: Nothing further, Mr. President. Thank you.

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

8 Mr. Biju-Duval, strictly speaking the Defence are allowed to go
9 last. I think that your questions, if you have any further questions,
10 should be confined to those raised by Judge Odio-Benito or Mr. Sachdeva
11 in his last questioning just now.

12 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. No
13 further questions.

14 PRESIDING JUDGE FULFORD: Thank you very much indeed.

15 Sir, I want to thank you very much for having come to give
16 evidence before this court. We well understand that it will have been at
17 some very considerable inconvenience for yourself, and so you will leave
18 in a moment with the heartfelt thanks of the Court for your cooperation.

19 Good. Can we please go into closed session so that the witness
20 can withdraw.

21 (Closed session)

22 (Expunged)

23 (Expunged)

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6 (Open session)

7 PRESIDING JUDGE FULFORD: Now, Mr. Sachdeva, we need to address
8 where we're going to go next. What you will almost definitely not know
9 is that the Victims and Witnesses Unit has furnished us with a report on
10 the overall condition of the first witness who was called, and we are
11 proposing at a convenient time tomorrow, in the first instance, to have
12 an ex parte hearing with the representatives of the Victims and Witnesses
13 Unit so that we can work out what the best measures are that are going to
14 be proposed. We will then return at an appropriate stage when we come to
15 his evidence to debate those in open court. So both yourself and
16 Maitre Mabilille will have every opportunity of knowing what is proposed
17 and being able to make submissions on the proposals.

18 It follows that it would be premature at this point in time to
19 try to return to his evidence. I anticipate that the second witness who
20 was going to be called is present in The Hague and is available to give
21 evidence. Is that right?

22 MR. SACHDEVA: That's our understanding, Mr. President, yes.

23 PRESIDING JUDGE FULFORD: Good. And subject to the issue in
24 relation to Mr. Prunier and given we can't call the first witness, you
25 would therefore propose that we deal with his evidence next.

1 MR. SACHDEVA: Yes, Mr. President.

2 PRESIDING JUDGE FULFORD: Good. Was that what you were going to
3 rise your feet to deal with, Mr. Sachdeva?

4 MR. SACHDEVA: It wasn't.

5 PRESIDING JUDGE FULFORD: It wasn't. Right. Well, what were you
6 going to deal with, Mr. Sachdeva?

7 MR. SACHDEVA: What I was wishing to ask is I understand the
8 ruling from the Chamber that the Prosecution can't discuss the evidence
9 with the witness post-testimony, however, I seek permission for a member
10 of the team to -- to simply thank the witness for coming.

11 PRESIDING JUDGE FULFORD: None of our rulings should be an
12 impediment to good manners, Mr. Sachdeva.

13 MR. SACHDEVA: Thank you for the clarification.

14 PRESIDING JUDGE FULFORD: The proposal, therefore,
15 Maitre Mabilille, is that the next witness to be called is -- I apologise
16 for this slightly odd terminology, but the second witness in the case.
17 Do you have any objections in all the circumstances to him being called
18 next?

19 MS. MABILILLE (interpretation): I have no objections, your Honour.

20 PRESIDING JUDGE FULFORD: There we are, Mr. Sachdeva. That will
21 happen, therefore, at 9.30 tomorrow morning. I think it would be
22 unhelpful to start his evidence only immediately to adjourn, so we'll do
23 that -- we'll deal with that then.

24 We need to rule on whether or not the document produced by
25 Mr. Biju-Duval should be given an evidence number or not.

1 Mr. Biju-Duval, do you want to reflect on this overnight or are
2 you happy -- you'd like to reflect on it overnight. You may, and at an
3 appropriate stage tomorrow we'll hear your submissions on whether or not
4 this should become evidence in the case.

5 Anything else for this evening, Mr. Sachdeva?

6 MR. SACHDEVA: No, Mr. President. Thank you.

7 PRESIDING JUDGE FULFORD: I think the legal advisor is about to
8 remind me that I've forgotten something. Ah, yes. Thank you very much
9 indeed. Very helpful.

10 Mr. Walley, you've raised a self-incrimination issue as regards
11 Witness 299. Am I right in understanding that you are not seeking a full
12 order under Rule 74? Instead, you are asking for a firm indication from
13 the Chamber that his evidence, insofar as it has a tendency to reveal his
14 identity, will be appropriately covered by the devices that we've
15 deployed so far of, for instance, moving in and out of closed and open
16 session so as to ensure that nothing is made public as to who he is?

17 MR. WALLEYN (interpretation): Your Honour, I have confidence
18 that the measures that have been taken will provide sufficient assurances
19 vis-a-vis the public. The concern is more so that in certain
20 circumstances the Court or the Office of the Prosecutor may need to
21 provide information to States, even information regarding a specific
22 individual. I'm thinking in particular of the situation in which a
23 protected person who has been relocated to a different country. Now, in
24 such circumstances that country could ask of the court to be provided
25 with the statements made by the witness, and it is in this connection

1 that my client would like to have assurances.

2 Now, this does not mean that such statements could not under any
3 circumstances be made available to a State. I think that a State in such
4 circumstances should grant the same protection, that is to say, that the
5 court would not provide the statements together with the name of the
6 witness to any -- just any State; that is to say, not unless that State
7 had firmly undertaken not to use it against him.

8 PRESIDING JUDGE FULFORD: Mr. Walley, thank you. I think the
9 short answer to this is to, by analogy, build on the rule or the - excuse
10 me - the decision that we've handed down in relation to the disclosure of
11 application forms. I'm sorry. If we were to say that disclosure to
12 other nation States should not take place without you first being
13 consulted and, if you have objections, being entitled to come to the
14 Chamber to make representations, would that suffice to allay your
15 concerns?

16 MR. WALLEY (interpretation): I think that that would be
17 acceptable, your Honour.

18 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Walley.
19 Mr. Sachdeva, any difficulty with that?

20 MR. SACHDEVA: No, Mr. President. I just would like to also
21 refer the Court to Article 93(10)(b)(ii)(b) where it states that:

22 "If statements, documents, or other types of evidence have been
23 provided by a witness or expert, such transmission shall be subject to
24 the provisions of Article 68."

25 PRESIDING JUDGE FULFORD: Fine. Well, the practical application

1 of Article 68, therefore, is that before such transmission occurs, you
2 should have discussed the matter with Mr. Walley, so he has the
3 opportunity of raising it with the Chamber should he wish to. Well, that
4 then will be our ruling. Thank you very much.

5 Mr. Prunier, Mr. Sachdeva, I don't want to go into the detail of
6 it. I don't think the reasons for him not being the third witness have
7 been entirely consistent, but I think there are personal reasons now as
8 to why he will not, in the Prosecution's application, being called to
9 give evidence as the third witness in the case. Is that right?

10 MR. SACHDEVA: That's correct, Mr. President.

11 PRESIDING JUDGE FULFORD: All right. Thank you. Do you have
12 anything to say on this, Maitre Mabilille?

13 MS. MABILILLE (interpretation): Nothing to say, your Honour.

14 PRESIDING JUDGE FULFORD: Well, it's not -- yes, Mr. Walley.

15 MR. WALLEYN (interpretation): Just a little detail, your Honour.
16 Is the Court going to inform my client of this? If not, I believe that
17 it is important that he be informed of your decision before testifying.
18 I can inform him if you so wish.

19 PRESIDING JUDGE FULFORD: Well, presumably, Mr. Walley, you will
20 be undertaking the role that we've defined for you in relation to
21 self-incrimination and the need to tell the truth. I think it would be
22 appropriate if you were to also reassure him that he needn't worry, as it
23 were. It will be a Chamber-controlled exercise to ensure that Article 68
24 is fully upheld as regards his protection.

25 MR. WALLEYN: Okay. That's fine, Mr. President.

1 PRESIDING JUDGE FULFORD: Mr. Sachdeva, there's no need for us to
2 give a -- any kind of lengthy ruling, although we would strongly have
3 preferred Mr. Prunier to have given his evidence very early in this case.
4 We will accede to the application that you've made that he is not called
5 until, I think it's some date in March.

6 MR. SACHDEVA: Thank you, Mr. President. I regret the
7 inconvenience.

8 PRESIDING JUDGE FULFORD: All right.

9 Any other matters before tomorrow morning? So I think that means
10 that we should be able to move straight into the evidence of this
11 witness. Can anybody think of any reason why not? No.

12 Can I ask, please, that if it's convenient to the Victims and
13 Witnesses Unit that we arrange the ex parte hearing for half past 3.00
14 tomorrow afternoon so we will interrupt his evidence at half past 3.00
15 and the Chamber will deal with the protective-measure issues at half past
16 3.00.

17 Thank you all very much. Half past 9.00 tomorrow morning.

18 COURT USHER: All rise.

19 The hearing earned at 3.56 p.m.

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