

Deposition
Witness: DRC-OTP-WWWW-0582

(Closed Session)

ICC-01/04-01/06

1 International Criminal Court

2 Trial Chamber I

3 Situation: Democratic Republic of the Congo

4 In the case of The Prosecutor v. Thomas Lubanga Dyilo - ICC-01/04-01/06

5 Presided by Stephanie Godart, Legal Advisor to the Trial Division

6 Deposition of Witness DRC-OTP-WWWW-0582

7 Tuesday, 16 November 2010

8 *(The deposition starts in closed session at 9.28 a.m.) Reclassified as open session

9 PRESIDING OFFICER GODART: Good morning, everyone. Before the witness is
10 brought in, I wanted to make a note for the record as to the scheduling for this week.

11 Based on the time estimate for questioning provided yesterday by the parties and
12 participants, it seems that the schedule for this week to complete the deposition is a

13 little bit tight based on three sessions of one-and-a-half hours for four days, and the
14 issue -- we can revisit the issue tomorrow and see whether the Registry would be able

15 on an exceptional basis to extend the sessions, the afternoon session. I'm letting you
16 know now so that you can maybe keep it in mind when asking the questions. No

17 pressure intended, but it's the -- it's the just there may be a scheduling problem.

18 Can the witness be brought in now.

19 (The witness enters the courtroom)

20 PRESIDING OFFICER GODART: (Interpretation) Good morning, sir.

21 THE WITNESS: (Interpretation) Good morning.

22 PRESIDING OFFICER GODART: (Interpretation) I am going to explain to you
23 briefly the purpose of this deposition taking, and I will also like to share with you

24 some basic rules.

25 (Speaks English) The deposition exercise this week is taken with a view to use it as

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1 evidence in the Lubanga case. We will be undertaking this exercise from today until
2 Friday, 9.30 to about 4 in the afternoon with a one-and-a-half hour break at lunchtime
3 and a half-an-hour break in the mid-morning.

4 You are going to be questioned first by the Office of the Prosecutor, then by the
5 Defence. Not -- second, you'll be questioned by the legal representatives who've
6 been authorised to ask questions by the Chamber, and then by the Defence, and again
7 the Prosecution may ask questions again and then finally the Defence .

8 The schedule is for -- is until Friday, so the deposition needs to be completed by the
9 end of Friday afternoon this week. The exercise will be conducted in closed session,
10 which means the public doesn't have access to the transcript or recording at this point
11 in time. Everything you say will be transcribed and interpreted, and the transcript
12 and recording will be provided to the Trial Chamber .

13 Can I ask you to ensure that you do not speak too quickly, because as you know there
14 will be interpretation in French and English; that you keep your voice up so that
15 everything you say is caught by the microphone; and when Counsel asks a question,
16 especially when it's in French, can I ask you to pause before answering or if in English
17 waiting for the interpretation to come through so that everything is properly
18 recorded.

19 The first thing I'm going to ask you now is to take the solemn undertaking, which
20 I think you have in front of you. Will you please read out-loud the undertaking,
21 please.

22 WITNESS: DRC-OTP-WWWW-0582 (Sworn)

23 (The witness speaks French)

24 PRESIDING OFFICER GODART: Thank you. I would now like to ask the Office of
25 the Prosecutor to start examining the witness.

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1 MS BENSOUA: Thank you, Madam Presiding Officer.

2 QUESTIONED BY MS BENSOUA:

3 Q. Good morning, Mr Witness. As you may know, my name is Fatou Bensouda,
4 and I'm the Deputy Prosecutor.

5 Before starting my examination, I just want to make this remark, that if you need to
6 consult documents or you need time to think about a particular question, please
7 indicate it to the presiding officer or to myself and we can ask for a break.

8 I'm going to first deal with the question of your identity. I'll go into full details.

9 And just for the record, can you give your full names to the Court?

10 A. Yes. My name is Bernard Lavigne.

11 Q. What is your nationality?

12 A. I am of French nationality.

13 Q. When were you born?

14 A. I was born on 19 July 1959 in Pamiers, France.

15 Q. Where are you currently residing?

16 A. I currently reside at Amman, in Jordan.

17 Q. I'm now going to deal briefly with your professional background, and I'll just
18 ask you leading questions about that; the Defence has agreed to this, that I lead.

19 And is it correct that after studying -- you said you studied history and law at
20 university. You performed military service in Gendarmerie for one year.

21 A. That is correct, I did military service; that is, I performed my obligations.
22 That's what we used to call it in those years.

23 Q. For one year in the Gendarmerie?

24 A. That is the mountain Gendarmerie, as we call it.

25 Q. And after passing a competitive exam, you became a police detective; that's

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1 correct?

2 A. The exact title at the time, because things have changed, was police inspector,
3 not detective. Detective is a British term which we do not use; it's inspector.

4 Q. Very well. My mistake. Police inspector. And from 1984 to 1998, you held
5 this position within the Paris Criminal Investigation Department.

6 A. When I hear the translation, I think there is an error with the dates. I served in
7 the CID from 1984 to 1988, and not up to 1994 as I heard through the interpreter.

8 Q. Very well. So it's 1984 to 1998 you held this position in the Paris CID.

9 A. 1984 to 1988.

10 Q. 1988. You held this position in the CID Paris.

11 A. That is correct. During that entire period, I served in the CID in Paris.

12 Q. And as such, you took part in several criminal investigations in that capacity.

13 A. I was part of what we used to call the criminal police department, which
14 covered a certain number of Parisian districts, and my duties varied in the course of
15 these years because initially I was part of an investigation team. Later on, I worked
16 in a group which was that of immediate offences, if I can loosely translate it as such.
17 We had to cover a certain territory and try to identify offenders very quickly and
18 have them referred to courts. And later on, I served as a criminal police officer
19 working at night, and I -- during that time, I was preparing to sit the entrance
20 examination to the school of magistrate, which I passed later on.

21 Q. Yes. You did sit to this exam in 1989, l'Ecole Nationale de la Magistrature.

22 A. That is correct.

23 Q. You also studied in Bordeaux for over two years, you said, before you were
24 appointed as juge d'Instruction; that's correct?

25 A. That is correct, for two years. The course lasts for two years in the national

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1 school of magistrature. I spent the first year in Bordeaux and then the next year I
2 did internships in the courts in France. Later on, I was appointed as examining
3 magistrate in Perpignan in the South of France.

4 Q. So am I correct to say that for four years, from 1992 to 1996, you were handling
5 ordinary law and financial law offences but also major criminal cases?

6 A. The French criminal procedure requires that an examining magistrate be
7 appointed when serious offences are committed or cases that require lengthy
8 investigations. So, by definition I had to deal with some of the most serious crimes
9 that were committed in Perpignan.

10 Q. And apart from these major criminal cases that you also -- that you had to deal
11 with, you also dealt with people such as forensic scientists or other experts and legal
12 counsel during this period.

13 A. That is correct. In general, the investigations conducted by the examining
14 magistrate are investigations which put him at the heart of the process, but the
15 principle is that he has to deal with investigators, of course. The investigators -- and
16 he works with the criminal police, the Gendarmerie. He has to work with counsel of
17 the parties or the representatives of victims, civil parties or the accused, if necessary.
18 He has to deal with experts, because he is the one who appoints experts at the request
19 of the various parties or of his own motion and he would deal with forensic surgeons
20 or other experts; it all depends on the nature of the case which is brought to his
21 attention. Well, so to be precise, I worked within this framework. Those were my
22 responsibilities.

23 Q. And in this role you were centred in not only preparation of the cases, but also
24 in decisions to dismiss the charges.

25 A. The French system is based on the idea that, as I said, the most serious offences

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1 are submitted to the examining magistrate. When he completes his activity, when
2 he feels that he has completed his mission, he submits his findings to the state
3 counsel - that is, the prosecutor - who is going to propose a number of solutions
4 which the judge can then implement, and the first would be that the person against
5 whom evidence has been collected is referred to a trial, to a trial court.

6 So in that case, yes, I participated in the preparation of charges against suspects since
7 in general I had indicted them in the first place when notifying the charges to them.

8 I would investigate -- I would carry out investigations to get incriminating and
9 exculpatory evidence, and I stress this because it is really important in that area, and

10 I could find that there was the charges -- there were no charges against the person,

11 and so the charges would be dismissed, or I find that there are charges indeed against
12 this person and then that person would be committed to a trial court.

13 Q. You later on decided to go to Martinique as a -- in the position of juge des
14 enfants, and this was after four years in this role you just described; that's correct?

15 A. Yes. From 1996 to 1999, I indeed performed the duties of juge des enfants, in
16 the main, because I had many other functions as a judge - I handled criminal
17 offences - but my main activity was to serve as juge des enfants; that is, a judge for
18 children. This, in France, means that you have to handle delinquent children, you
19 have to handle delinquent minors and the children who are at risk, and these two
20 categories are not the same but the judge is competent to handle these two aspects of
21 crimes that relate to minors.

22 Q. After this function, you went back to France in 1999 and as president of the
23 tribunal de grande instance or regional court in Péronne.

24 A. Yes. Afterwards, I was appointed as the president of the tribunal de grande
25 instance, the -- of Péronne, and -- it's no longer in existence, unfortunately. I do not

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1 think that that is linked to what I did there, but the fact is that this court no longer
2 exists. At the time, this was a court which had a certain particularity in the sense
3 that it had competence to deal with trade matters and it was also a tribunal de grande
4 instance.

5 As president of that court, I was lucky to work on all types of disputes that have to be
6 handled at trial. We had to deal with civil matters, criminal matters, trade matters.
7 And since the court is a small structure, I often had to replace colleagues. This
8 means that because of this I had to do all -- carry out all the duties which are expected
9 of a magistrate, and I think that was the fortunate thing for me.

10 Q. And --

11 THE INTERPRETER: Microphone, please.

12 MS BENSOUDA:

13 Q. -- in April 2004, you were appointed at the l'Ecole nationale de la Magistrature
14 or in English we say it's national school of magistrates; is that correct?

15 A. That is correct. I was lucky to teach a batch of young magistrates at the time.
16 I was also the most rapid lecturer in the history of that school, if I can put it that way,
17 because I arrived in March and I left in June to work for the International Criminal
18 Court. So I was a lecturer who spent the shortest time, not the most rapid, who
19 spent the shortest time in that institution.

20 Q. In effect, that was your last appointment with the French government before
21 you joined the Office of the Prosecutor of the ICC.

22 A. Yes, indeed.

23 Q. When did you join the Office of the Prosecutor?

24 A. If my recollection is right, it must have been in June 2004.

25 Q. And you applied for this position.

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1 A. Yes, that's correct. The website of the Court proposed positions of heads of
2 investigation teams. I obtained information -- I tried to glean information on this
3 type of job and I was advised to apply, but this took place long before I joined in
4 June 2004. I remember that I had completed the form the previous year in
5 September - that is, September 2003 - that is at the very beginning, at the time the
6 Court was going to start, but it would appear that the recruitment procedure at the
7 time -- I don't know how it is now, but at the time the recruitment procedure was
8 particularly long.

9 So you could apply for a position and for about a year you get no information, which
10 was actually the case and then suddenly you would be called up to join the OTP as
11 soon as possible. But I'm sure all of this has changed.

12 Q. Indeed, it has. So you joined the office in 2004 and you left the office in
13 August 2007.

14 A. Well, my contract came to an end in August 2007. I don't know if it's
15 important for me to say this, but I left the Court and its activities in June 2007 because
16 I had accumulated a certain amount of leave, and so I was able to leave earlier, in
17 June 2007. So with respect to my activities, properly so-called within the Court, I
18 ceased my activities in June 2007.

19 Q. So just to put it clearly, from July 2004 to June of 2007 you were effectively
20 working for the Office of the Prosecutor.

21 A. That is correct.

22 Q. Is it correct that after you left the court - that is, in June 2007 - until
23 November 2009 you held the position of Deputy Prosecutor at the tribunal de grande
24 instance in France, in Toulouse.?

25 PRESIDING OFFICER GODART: (Interpretation) I beg your pardon. One of the

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1 answers of the witness was not recorded, and I think it should be repeated, and it
2 relates to the question of when he left his duties at the OTP. I don't think that's
3 recorded in the French transcript.

4 THE WITNESS: (Interpretation) Do you want me to repeat the answer?

5 PRESIDING OFFICER GODART: (Interpretation) Yes indeed, please, if you can.

6 THE WITNESS: (Interpretation) As I said, my contract came to an -- was supposed
7 to end in August 2007. However, since I took my leave, I left in June 2007. So I quit
8 the ICC and its activities at the end of the month of June 2007.

9 THE INTERPRETER: Message from the English booth: The witness is so fast that
10 the French court reporters have difficulties keeping up.

11 PRESIDING OFFICER GODART: (Interpretation) Mr Witness, could you please
12 observe the rule of five seconds, please. Thank you.

13 MS BENSOUDA:

14 Q. Mr Witness, it's correct that after you left the court - and you said you left
15 effectively in June 2007 - until November 2009 you held the position of Deputy
16 Prosecutor at the tribunal de grande instance, or the regional court, of Toulouse in
17 France.

18 A. That's right. After leaving the International Criminal Court, I became the vice
19 prosecutor at the tribunal de grande instance of Toulouse up to November 2009. In
20 our system, which other countries find surprising, it's possible to move from being a
21 judge to being a prosecutor or to move from being a prosecutor to being a judge,
22 given that the two duties are duties held by magistrates. So in the course of your
23 career, you can move from one to the other.

24 May I add that my duties were very varied, even though in the main I had -- I had to
25 deal with the execution of sentences, enforcement of sentences, and this is a very

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1 delicate duty because you have to see or ensure that sentences are enforced, together
2 with the judges who imposed the sentences.

3 Q. Whilst you were also working in this enforcement section, you were also
4 participating in hearings and acting as a duty judge during this time.

5 A. No. As prosecutor, we conducted investigations and it is up to judges to make
6 rulings. I was no longer playing the role of judge; I was prosecutor. The two are
7 separate and different.

8 Q. Very well. But also during this period you were teaching international
9 criminal justice to -- you call them second year Masters students at the University of
10 Toulouse.

11 A. Yes. For two years, I was teaching a course for Masters students, students
12 doing comparative law and international law, and it related to international criminal
13 justice as a whole and we tried to focus on the various courts that were set up in the
14 Twentieth Century from Nuremberg up to the ICC, and all international institutions.
15 So it was a course which was focussed on historical -- more on historical aspects than
16 on legal aspects.

17 Q. Thank you, Mr Witness.

18 THE INTERPRETER: Correction from the English booth. Focussed on historical
19 and legal aspects.

20 MS BENSOUDA:

21 Q. Thank you, Mr Witness. You seem to have been very busy with a lot of
22 activities at this time; you were visiting several universities, French and foreign, as
23 guest speaker; invitations from associations or organisations, such as Avocats sans
24 frontières - Lawyers Without Borders, if you want to say it in English - and you were
25 merely talking about your experience at the ICC and the commencement of

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1 investigations during this time.

2 A. When you say that I was very active, I think I would like to put things in
3 context here. What -- my activities with Lawyers Without Borders took place in
4 Toulouse, where I was, so it made sense for me to stay there, but I was fortunate to
5 be invited by an association of Cambridge University who decided to invite witnesses
6 of time - that's the expression they used - and I had to talk about my activities at the
7 International Criminal Court.

8 May I add that they, of their own initiative, created a Wikipedia site that had to do
9 with my activities, but you must understand that I am not responsible for anything
10 mentioned therein as I was not consulted in the creation of this site. I was also
11 fortunate to be involved in a forum in Boston during which we talked about my
12 activities at the ICC. It was a forum on the ICC, but the forum was rather organised
13 to denigrate this institution. So it was important for me to explain to them why I felt
14 that this international justice should be upheld; but I had a job, and my job was to
15 serve as a prosecutor. I could not travel every other day to speak about my previous
16 experiences.

17 Q. I think you also did an audit you said on the quality of the initial investigations
18 that were conducted, the post-electoral violence in Kenya, for the NGO No Peace
19 Without Justice.

20 A. Yes. I was contacted by that NGO just like they contacted other people with
21 experience in this area, so as to work on the initial results of the commission that had
22 been set up after the post-electoral violence in January 2009, I believe. Or was it 2008?
23 I no longer remember. My responsibility was to analyse a certain number of
24 testimonies that had been taken by members of the commission and then audit the
25 quality; this means that I was supposed to give advice on the manner in which the

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1 testimonies had been taken and how the procedure could be improved.

2 Q. Thank you, Mr Witness. I'm now going to ask you questions on your current
3 duties. You said that you -- since November 2009, you're living in Amman, Jordan,
4 on secondment. Can you tell us about your current duties?

5 A. In November 2009 I was indeed seconded from the Ministry of Justice to the
6 Ministry of External Affairs, and the title of my duties was regional attaché for
7 cooperation in justice. It doesn't mean very much, but I am based in the French
8 Embassy in Amman, Jordan and my work is to identify possible cooperation actions
9 between the judicial systems of Arab countries in the area and France, either between
10 France and those countries and/or between European organisations and the United
11 Nations and these countries. So our activities can be bilateral or multilateral.
12 The fact is that most of the countries in that region shared the same judicial system
13 and traditions as France, and those traditions come from Egypt. And during the
14 Ottoman Empire, those systems spread to all the -- almost all the countries of the
15 region, from Egypt to Iraq, from Syria to Yemen, and including the Gulf States, even
16 though I cannot mention all those countries. So there is a total of 13 countries, each
17 very different from the other, and I was very fortunate to meet with the leading
18 judiciary authorities and even academicians (phon) so as to put in place cooperation
19 programmes.
20 So they could be quite simple things. Sometimes we visit -- or we have appeal court
21 judges from a particular country visit the French system; or they could be more
22 original. There could be training in Arabic for Palestinian magistrates, but done by
23 French magistrates who have Arabic. So these very varied activities have enabled
24 me to discover the universality of the legal systems. And after having spent three
25 years in the ICC, it is good to know that the civil law systems continue to survive.

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1 Q. Thank you for that, Mr Witness. Now for the rest of the examination of course
2 I cannot lead you, so I will be asking you questions in a non-leading manner. I will,
3 first of all, start with your tasks within the Office of the Prosecutor. During the time
4 that you worked here, what was your title?

5 A. The title that I had during the three years of my contract was "team leader" in
6 English, which was frequently translated into French by chef d'enquête, responsable
7 d'équipe, and that was my official position.

8 Q. Thank you. And could you explain what your functions were with this title
9 "team leader"?

10 A. I believe that my duties were varied over the years 2004, 2005, 2006 and 7. The
11 duties were not the same. Initially, I had been recruited to lead an investigation
12 team. The Deputy Prosecutor at the time wanted that the first two investigation
13 teams, one for Uganda and the one for the DRC, should each be led by a magistrate,
14 that is anglophone for the first team and a francophone for the second team.

15 This idea to recruit magistrates was linked to the fact that in his opinion and in order
16 not to repeat certain errors that had been committed elsewhere in other institutions,
17 he wished that the investigations should be conducted by magistrates from the very
18 beginning, either prosecutors or examining magistrates in their own countries, so as
19 to ensure the legal control of that work.

20 I believe that the idea by itself was praiseworthy, but nevertheless the work of an
21 investigation team is also the work of a manager - that is, the team leader has to lead
22 the team - so it is not only a magistrate who can do that. So you had to find people
23 who were magistrates and at the same time managers. So I believe that, in his
24 opinion, I fulfilled those criteria; but afterwards, about one year or one-and-a-half
25 years after my appointment, the duties sort of evolved. I started taking care of

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1 aspects related to the protection of witnesses which we identified while I was team
2 leader.
3 This means that from that period, that is 2005/2006 - I really do not remember the
4 precise dates, because it was not official - my activities were no longer specifically
5 those of a team leader. I had other activities, that is to provide security for the
6 witnesses that we had identified; and my second duty, which rather expanded later
7 on, was to locate an individual who was the subject of a warrant of arrest but which
8 was still under seal. That warrant is now official, so I can speak about it more easily.
9 So my work was to use the information we had been able to gather to locate that
10 person regularly, such that an external service -- since the ICC does not have a police
11 force, an external force could arrest that person and hand him over to the Court. So
12 to summarise, my first duties as team leader was to recruit the team. We had to set
13 up something that did not exist.
14 Let me point out that in June 2004 when we arrived, there were two of us on the team,
15 so we had to recruit a lot of people and start planning a certain number of
16 investigations and missions. There was a second part that was dedicated to witness
17 protection and the setting up of a protection programme in the OTP. So in the third
18 part, we had to look for information relating to the location and arrest of Bosco
19 Ntaganda; and the warrant has been made official now, but at the time it was under
20 seal. I do not know whether I have answered your question.

21 Q. Thank you. You have. Who were your supervisors?

22 A. From the beginning to the end, my direct superior was Michel De Smedt and
23 his direct superior was Luis Moreno-Ocampo. I would like to point out -- since we
24 may come back to this I will address it right now - that there was a standard
25 hierarchy: team leader of investigations, head of division and the Prosecutor himself;

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1 but there was another form of organisation with its own hierarchy which was known
2 as the joint team, which brought together people from the three divisions of the OTP
3 who were working on the same investigation or the same situation.

4 So in that joint team, you would have representatives of investigation teams,
5 representatives of prosecution teams and the representatives of the JJCD. I think it's
6 a division for cooperation, coordination and something else. I do not remember
7 specifically. So these are the people that made up the joint team, and the joint team
8 received direct instructions from the OTP, or specifically the Prosecutor, assisted by
9 the division heads known as Excom.

10 So there was a double structure, a standard hierarchical structure, and then,
11 according to the situations, there were the joint teams that would answer directly to
12 the Prosecutor and Excom.

13 Q. At the time you worked with ID, who was the head of the division?

14 A. There were two periods; the first part, there was the Deputy Prosecutor Serge
15 Brammertz, who was responsible for the investigation division, and his assistant was
16 Michel De Smedt. And when Serge Brammertz left, Michel De Smedt officially or
17 unofficially took over that division and was in charge of it - until I left, in any event,
18 and I believe that is still the case.

19 Q. Do you know whether Mr Brammertz had any supervisory role as the head of
20 the division at the time he was there?

21 A. My understanding of the system is that initially he had complete control over
22 all the investigation teams. He was the one who had recruited the team leaders, and
23 Michel De Smedt was more responsible for technical and logistical support to the
24 investigation teams, but as the deputy head of division he also issued orders to the
25 investigation teams.

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1 So there was a double structure: Serge Brammertz, the head, and then his deputy
2 who could both give the teams instructions. After Serge Brammertz left, the
3 situation became clearer, because Michel De Smedt became the only person
4 responsible for the division, and he was answerable to Mr Ocampo.

5 Q. You've talked about the people you reported to. Were there any staff members
6 reporting to you?

7 A. I'm not sure I quite understood your question and nor did the interpreter it
8 seems. Can you kindly repeat? I will listen attentively to the translation.

9 Q. Okay. Let me -- let me try to rephrase it. As team leader within ID, did you
10 have any investigators, say, reporting to you?

11 A. Very well. Initially, as team leader, I did indeed have a team and that team
12 was made up of a certain number of people. As I have stated, we started - very few
13 of us - a single investigator and myself, and then others were recruited later initially
14 by others and then by myself. So during that period as a team leader, I had under
15 my supervision up to 12 people and they had to report to me, 12 people, no more
16 than 12. That figure always seemed to me to be insufficient.

17 Maybe we will come back to this later, but the difficulty of the task was also linked to
18 the difficulty of determining objectives and recruitment has to take into consideration
19 the objectives. This means that we had recruitment procedures which were ongoing
20 but interrupted because the objectives had been changed. So we had to do a little bit
21 of manipulation during that period in the area of recruitment and selection of
22 investigators, because I had the feeling that the foundation of an investigation team
23 should be investigators, that is people who have experience in the police force or in
24 the army; that is, a military police. In any case, they should have a police
25 background.

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1 It was decided, perhaps not always by me, that people with more varied backgrounds
2 should also be recruited. For example, members of former -- former members of
3 NGOs who could provide better open-mindedness to enable the other team members
4 not to limit themselves to their police their backgrounds which may have had a
5 negative impact on the quality of the work. So this was a debate that was frequent
6 and which was quite lively at times, and I still think - maybe incorrectly - that a police
7 team should be made -- made up of policemen to begin with. I do not know
8 whether I've answered your question.

9 Q. Thank you for that. You have. You said earlier on that you joined the office
10 in July 2004, which is quite early on. Can you explain how the investigation team
11 conducted its investigations in the first months, the beginning of your -- of a case at
12 the time -- when you arrived, how were investigations started?

13 A. As I have already stated, and because of the staff strength at the beginning,
14 which was very limited, we started work by searching for information. So to do
15 anything, we had to start by verifying or cross-checking what we knew; and to do
16 that, the best way was to consult what we referred to as "open sources," that is
17 everything that was accessible through internet and the general documentation that
18 we knew about which was accessible to everyone so as to begin to have an idea of the
19 situation. So that search of the open sources led to an analysis.

20 At that time, we had the support of a section known as technical and logistical
21 support section, but that section also had analysts who started gathering all the
22 information available, and we started working on is that information. The second
23 important source is that as soon as the public was informed that the ICC or at least
24 the OTP was interested in the situation in the Democratic Republic of the Congo, we
25 received several reports and documents about that country and that situation.

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1 Those reports came from NGOs, well-known international NGOs, who had worked
2 in the area and who had been appealing to the Prosecutor to investigate the situation
3 in the DRC, but also it was very interesting for us to rapidly receive information from
4 local NGOs which had been created by Congolese human rights activists and who
5 had gathered information throughout the entire territory of Congo.
6 Reports had been drafted and then communicated to us. So during the first months,
7 we had to decide how to begin, because we had to do a lot of reading and
8 understanding. The investigators were not Congolese, with the exception of one of
9 them who acted as an adviser a little bit at the beginning, technical is too big a word,
10 but in any case, someone who was there as a country expert, but apart from that
11 investigation -- or rather, that investigator, the others were from other countries. So
12 we had to increase our knowledge of the local realities, not only through what had
13 happened there, but through what was happening at that time. What was the
14 situation; what were the groups and perspectives involved; what were the tensions
15 that could explode, which were the existing or non-existent institutions? In a
16 nutshell, we needed to have a general idea of the prevailing situation and of the
17 situation that had happened before.
18 From the moment that we felt that we had nevertheless collect sufficient information,
19 we had the possibility to go not to east Congo, but to Kinshasa as part of an official
20 visit during which we started meeting with people who could be useful for our
21 investigations. We had contacts, but it was out of the question to start work in the
22 field itself. So these were preliminary contacts.
23 We were introduced to certain authorities who all assured us of the collaboration of
24 the country. We were also able to meet with officers from MONUC, because they
25 were present in the field. So all of us started having ideas about who would

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1 be -- who we would be dealing with in the coming months. That analysis work was
2 expanded to such a point that at a given time their analysts would be able to propose
3 to the Prosecutor a possibility of investigations. So they used the information that
4 they had to determine the approximate number of alleged people who had been
5 killed during the various events, the parties involved, the situation in the field and
6 also how long the events had been going on.
7 Since the jurisdiction of the Court started in July 2002, we had to work over only a
8 period of two years; so anything that happened before that was to be eliminated, and
9 God knows that there were many acts of violence before that time. So on the basis of
10 the information, the analysts proposed to work specifically in one region of eastern
11 Congo and that is Ituri. So as from the moment that the Prosecutor decided to work
12 on that basis since we needed to make progress, we started looking at the possibilities
13 of that Ituri region. We started identifying the various militia groups which had
14 worked at that time. I think maybe I am being interrupted here.

15 PRESIDING OFFICER GODART: (Interpretation) Once again, can you please
16 observe the five-second rule. And there are transcription problems.

17 THE WITNESS: (Interpretation) Yes. I'm wondering, which five seconds are
18 those because I am the only one who has been talking for a while?

19 PRESIDING OFFICER GODART: (Interpretation) You have to speak slowly as
20 you did in the beginning. It was perfect in the beginning, but you started
21 accelerating after that.

22 THE WITNESS: (Interpretation) Very well. I will try to slow down a little bit
23 more. Where were we at? Well, can I continue?

24 MS BENSOUDA:

25 Q. Yes, please.

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1 A. The next step was to identify the militia groups which seemed to us to have
2 been responsible for a certain number of acts of violence which could come under the
3 jurisdiction of the Court. That work was done and we decided to work on two
4 specific militia groups.

5 PRESIDING OFFICER GODART: (Interpretation) I'm sorry to interrupt you once
6 again. Can you repeat the very beginning of your answer? It was transcribed in
7 English, but not French. (Speaks English) "The next step was to identify the militia
8 groups --"

9 THE WITNESS: (Interpretation) The very beginning, from 20 minutes ago?

10 PRESIDING OFFICER GODART: (Interpretation) -- that part was not included in
11 the French transcript. Thank you.

12 THE WITNESS: (Interpretation) The next step was to identify a certain number of
13 militia groups, so we tried to give the most balanced image possible.

14 In such a situation, it must be surprising to talk about balance, but the Statute of the
15 Court compels us to investigate both incriminating and exculpatory evidence. I
16 myself had always investigated both incriminating and exculpatory evidence so it
17 was a constant imperative that we not limit ourselves to the reports or documents
18 that had been given to us, but we had to always consider that those who were
19 accused had the right to say the opposite of what had been said in these reports.

20 Let me briefly talk here about the NGOs. The objectives of the NGOs are not the
21 same as the objectives of the OTP, and sometimes people tend to forget. In order to
22 exist, the NGOs need to publish certain information, to bring it into the public eye,
23 without that information being discussed as intelligence, but the investigations have
24 to be carried out in a different way. We have to be able of discussing the
25 information to provide to the Court, and we know that that information is going to be

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1 disputed, and I'm saying that because people constantly tried to propose some
2 information to us without our being able to try and cross-check the correctness of that
3 element and -- those elements, and that created problems with the NGOs, between
4 the NGOs and us, and they thought their information was obvious, but we were very
5 cautious with their documents.
6 (Microphone not activated) ... I go back to the fact that the militias were identified as
7 possible avenues and we, therefore, started to determine the objectives. We got
8 information with regard to the make-up, the way in which these militia were
9 organised, their hierarchy, their political organisation, their military organisation.
10 And progressively, in the first months, I would say that in 2004 we started to work on
11 this. Nothing came out before 2005 which was relatively concrete, which was
12 significant, which could justify leading an investigation.
13 Now, this took time, time -- while at the same time there was a certain degree of
14 pressure, not just public opinion internationally, but also at a local level because of
15 the Court, which -- the arrival of which had been announced. Well, it had to carry
16 out investigations and sort out these acts of violence, because we were in 2004 and the
17 militia were still present in Ituri. In Bunia at the time, in some of its neighbourhoods,
18 there was still the presence of militia and the United Nations was not always able to
19 pacify all of this territory. This explains --

20 MS BENSOUDA:

21 Q. I think you can still slow down.

22 A. I will try.

23 PRESIDING OFFICER GODART: (Interpretation) Yes. If you could -- please, if
24 you could speak a bit slower. Thank you very much.

25 THE WITNESS: (Interpretation) Thank you. Okay. So the situation in the field

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1 justified the expectations of the population who thought that the Court was going to
2 get them out of the suffering which they were affected by. This is to say that we
3 were under pressure, under international and local pressure, but at the same time
4 with a view to -- or in view of professionalism, we wanted to get into investigations,
5 missions, interviewing witnesses, et cetera, when we were able to do that under the
6 best possible conditions.

7 I should also say that, despite these precautions, during the first missions we found
8 ourselves exposed to difficulties which I could state really were considerable to the
9 extent that nothing was done to receive us, obviously. On the other hand, the
10 situation was such that the town of Bunia was relatively calm in certain
11 neighbourhoods, but most of -- or, well, all Ituri was still in the hands of militia
12 groups, armed militia groups at that, and the United Nations' forces had significant
13 difficulty in maintaining order in the region.

14 We therefore started -- and here I'm going further, we therefore started during our
15 mission to meet activists who had been pointed out to us and who wanted to meet us
16 in order to present their information. I think that the question which is going to
17 follow during my examination are going to follow the roles of intermediaries, and
18 that's why I'm already speaking about this. This was the opportunity in our first
19 mission, and the first meeting with militant activists, that we identified our first
20 intermediaries.

21 I will therefore go back into this issue, but right from the start we identified people
22 who could help us to the extent that obviously you didn't have to be a great, wise
23 person to understand that there wasn't necessarily the possibility to go
24 definitely -- directly to people who could be potential witness. With a view to the
25 protection of their security, the idea of having an intermediary between them and us

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1 was something that was quickly found to be necessary.
2 I will go back to the issue of the investigations and the way in which we carried them
3 out. The first missions were very difficult, and that for several reasons, varied
4 reasons. Firstly, there was the difficulty with regards to the United Nations which
5 had problems of managing problems of the Court. You have to know that at the
6 time the United States was very hostile to this criminal court and, therefore, had
7 made the higher bodies within the United Nations known that it was out of question
8 that they support the Court's activities in the field, and at the same time in the field
9 the different United Nations agencies were quite on the contrary very favourable to
10 our activities and they were favourable to our approach and steps, and they were
11 doing everything to make things easier for us.
12 There was this contradiction between the local level and the regional level in
13 Kinshasa already, but even more so in New York, and this caused us a massive
14 amount of problems to the extent that we couldn't -- or we could only count on the
15 United Nations for transport and to lodge us in the first instance and protect us. So
16 we had a lot of concerns, whether it was in The Hague or in the field, to manage this
17 difficult relationship with the United Nations. We needed them, but sometimes they
18 refused or sometimes they imposed constraints on us which were excessive. And
19 when it -- they made investigations in the field extremely difficult because we never
20 knew as an investigator if we were going to be able to leave on time or if we were
21 going to be able to meet our meetings, and this was meant that the United Nations
22 were telling us that we couldn't use such-and-such a plane, we had to wait for the
23 next one in two days, et cetera. I'm just giving that as an example to quite simply
24 illustrate the difficulties that there were initially.
25 This meant that, by definition, from the start it was not possible to quickly find

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1 witnesses. We had already had to carry out our own security, we had our own
2 difficulties, and it was difficult to envisage starting to protect possible witnesses.
3 However, following the first exploratory missions, we gathered information,
4 documentation, names of potential witnesses. We therefore wished – I will end up
5 putting myself to sleep. So with regards to the analysis of the documentation, this
6 was something that we had to do, and we had to go further into our areas of work or
7 lines of work.
8 So in 2005, we started to determine the objectives. During that year, these objectives
9 were varied, not due to the investigators, but due to the choices of the Office of the
10 Prosecutor, as such, and the way in which it was carrying out its cases. This had an
11 impact on the investigations themselves, because first of all we were asked to work
12 on two militias, on two incidents and then, taking into account certain discoveries, we
13 were asked to work on just one militia with one incident; and then once again two
14 militia, two incidents; and finish by determining that it was preferable to choose
15 another objective than the one which was stated at the outset.
16 Initially, there were a certain number of elements which might lead one to believe
17 that massacres had been committed by one militia, this gave rise to a collection of
18 evidence, and thereafter the choice was made to prioritise another accusation
19 than -- or charge than that of the one related to the first evidence that we found.
20 And that is basically to say that as an investigator sometimes it was also difficult - not
21 only in the field, but also here in The Hague - to be clear with regards to the
22 objectives and to be clear with regards to the means by which to attain them, because
23 the Office of the Prosecutor hesitated for quite understandable reasons. They
24 hesitated with regards to the objectives to be attained and the steps to be taken.
25 At the end of the day, the choices were made - one charge mainly, the principal

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1 one - and from that therefore the investigation teams, knowing exactly what they
2 should do, had the possibility to progress in the investigation itself and in particular
3 in the identification of witnesses. And it is therefore from that - that the issue of
4 protection - that this took a dimension which was an essential dimension to the extent
5 that the objective was obviously to carry out investigations, but the first objective was
6 to ensure that all the people that we identified and who could be potential
7 witnesses -- well, to in order ensure their security, which is imposed by the Rome
8 Statute.
9 Furthermore, as I also indicated there were objectives which were varied, we also
10 identified a lot of witnesses who according to the choices of the objectives became
11 essential witnesses or, quite on the contrary, they were relegated to becoming
12 accessory ones and they were not used to the same extent. But this utilitarian vision
13 of things was not satisfactory to us, to the extent that the duty of protection was
14 imposed on all witnesses identified by the Office of the Prosecutor, whether they be
15 useful later or whether they not be useful.
16 It is for that reason that this problem of the protection of witnesses became
17 sufficiently significant such that the Office of the Prosecutor choose -- or chose to go
18 further into that area, rather than in the investigation itself, and that is the reason why
19 I think towards 2006 the problem relating to witnesses became a big issue. And
20 that's the answer, somewhat long, with regards to the investigation.

21 MS BENSOUDA:

22 Q. Thank you. Thank you for that. I will just take you back a little for some
23 clarifications. You talked about these militia groups that you concentrated on at
24 the -- during the first months of your investigations. Which militia groups are
25 those?

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1 A. I'm going to try to remember the different militia groups that there were. At
2 the time, there were the militia I spoke about, but around that there were also a
3 certain number of groups that were created sometimes on the instigation of a certain
4 individual, and sometimes it only concerned one certain individual, and sometimes
5 they were also set up or -- due to neighbouring countries or others who wanted to get
6 involved in things that didn't concern them. And furthermore, they wanted to lead
7 certain groups with a simple aim of dividing the previous militia.
8 However, basically, there was one militia, the UPC, and I'm -- I think Union Pour les
9 Congolais. I think. I'm sorry, I can't remember exactly what the UPC stood for, but
10 furthermore -- on the other hand, I will explain why. On the other hand, there was
11 also the FNI/FRPI, which had a slightly complicated existence. Sometimes it was
12 identified as essentially the FNI, then FRPI, then FNI/FRPI, and it was by the majority
13 of Lendu with quite a lot of Alur as well, and the UPC was for the most part from the
14 Hema ethnic group.
15 And it was a situation that behind this political formation there were military groups
16 which were affiliated with these political groups, and the recruitment was aimed at
17 certain ethnic groups. During the acts of violence which took place at the time, the
18 militia used their military apparatus in order to commit a certain number of acts of
19 violence of all types, pillaging, murder sometimes, and so these militia were subjects
20 of our interest to the extent that a certain number of witnesses and
21 documents -- according to those documents, they were responsible for the acts of
22 violence. Now, that meant that it would come within the jurisdiction of the Court.
23 There were also other militia, and I mention to you the two main ones, but there were
24 others as well. I think there was the MRC. If my memory serves me well, there
25 was also branches from the previous ones. There were groups that split from the

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1 UPC or the FNI/FRPI, and they set up their own group.
2 You have to recognise that while the first one had policies which were clear, the
3 others that were created as a result of the division they were increasingly personal
4 and they didn't have very much to do with politics.

5 PRESIDING OFFICER GODART: Right now there's a problem with the English
6 transcript, and everybody is asked to slow down for the purposes of the English
7 transcript. And also the break will be in about ten minutes. Thank you.

8 MS BENSOUDA:

9 Q. Mr Witness, in your presentation you talked about the problems, even at
10 headquarters, of going after one or two militia groups and then changing later on the
11 direction of the investigations. Can you be more specific as to which investigations
12 and incidents you were referring to and eventually changing to each other?

13 A. To be more specific, I'm going to try to go into certain detail. If we believe the
14 literature which is available to us with regards to the events which could fall within
15 our jurisdiction, I remember that there was a massacre in Nyankunde around the
16 hospital and within the hospital in Nyankunde which was meant to have taken place
17 in September 2002.

18 This massacre had been clearly described by a certain number of persons, witnesses,
19 and it was possibly the work of a group under the FNI/FRPI. It's a bit more
20 complicated than that. There were also civilians there of the neighbouring ethnic
21 group who came to support the militia, but behind this there were orders which were
22 given and this gave rise to investigations.

23 We went to Nyankunde with the support of the United Nations for transport, and we
24 envisaged working on this incident. In parallel to this, we had other information
25 with regards to a certain number of massacres. Well, I call a "massacre" the fact that

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1 a certain number of people are killed, often civilians, in sufficiently high numbers for
2 one to go beyond a simple murder and come to another type of act of violence.
3 In the area of Mongbwalu during a -- well, there was a UPC military column. We
4 had information with regards to the fact that soldiers in this column captured around
5 50 villagers and executed them. I say that, quite simply, to go back to your question
6 which is you have an event in Nyankunde which concerns one militia. You propose
7 to investigate this militia and this incident.
8 You, on the other hand, have an incident which is also as serious which is said to be
9 the work of another group, the UPC in this regard, and you also propose to have
10 investigations there. And thirdly, you have the fact that in a more transversal way
11 these militias had systematically used children, very young children, among the
12 militia. This was an element which was documented very quickly. This was
13 something which was known, and therefore we had to investigate on it but it was
14 known as such by the NGOs. They gave us certain evidence in this regard.
15 Just to simplify my answer, on the one hand we had a vision, a vertical version, if you
16 like - one militia, one incident - and then on the other hand we had a transversal
17 vision - some militias - who were using children or a horizontal vision. So when I
18 say that when the Office of the Prosecutor changed objectives several times, what I
19 mean by this is that we sometimes were led to investigate in a vertical way on one or
20 several militia. And I'm saying that so really one and then several, and then several
21 to one again, depending on the events of course or things that were going on with us.
22 And then furthermore the fact of investigating in a horizontal way, that's to say you
23 did that with a dominant focus on child soldiers.
24 This choice, these choices were not always easy to manage in the field. I'll give you a
25 very simple example: When you identify a witness who gives you evidence, either

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1 documentary evidence or oral evidence which is interesting, you collect that – his or
2 her testimony - you inform yourself as to what can be confirmed therein and you put
3 yourself in a situation where a certain number of witnesses note that what they have
4 said does seem to be important and sufficiently important such that one date they
5 will be called upon to testify. This is what we told them every time.
6 Then some time later you make them understand that it's no longer of interest to us
7 exactly what they said in the sense that without wanting to -- well, you can't put it
8 like that, but you let them at least understand that their testimony is a bit aside and
9 would have to be re-evaluated later. So this really was a difficulty in the field, a
10 constant difficulty having to deal with this type of difficulty linked to the fact that in
11 The Hague, in the headquarters of the ICC, the objectives had changed for reasons
12 which were quite understandable.
13 The objectives having changed the way in which witnesses were dealt with in the
14 field also changed. They weren't just witnesses, eyewitnesses, victims as well who
15 were on -- well, on the -- they suddenly discovered that the incident they were
16 involved in is no longer of interest or not as much of interest as it was to the Office of
17 the Prosecutor in the beginning, and that's a precision that I wanted to make in this
18 regard.

19 MS BENSOUDA:

20 Q. Thank you, Mr Witness. Do you remember approximately when the office
21 decided to prosecute Mr Lubanga for child-related offences?

22 A. I would prefer to say that I don't remember exactly the date, because that is the
23 reality of it. The only thing that I remember is that there was a meeting during
24 which it was decided that they would just try to prosecute Thomas Lubanga for the
25 use of child soldiers, but I don't remember the exact date thereof.

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1 Q. And also just to ask, you know, during this -- evaluating the entire process, and
2 selection process, in your view did the office conduct serious and objective
3 investigations before deciding on selecting this particular case?

4 A. I think that the choice that was made of selecting such-and-such a militia was
5 done after an evaluation, a professional evaluation, of all these sources of
6 documentation that were available at that time. That is to say, that in accordance
7 with the documentary resources that we had, the analysts simply, I would like to say,
8 concluded that Ituri in this period, the period which was of concern to us, had been
9 the place of the most significant acts of violence and that these acts of violence
10 were -- according to the documentation that we had available to us -- that these were
11 said to have been committed by one, two or three militia among the most significant
12 thereof.

13 I think that the choice that was made at the start of choosing these militia -- and then
14 when that was done, to choose the issue of child soldiers, this was done in accordance
15 with documentary imperatives firstly; and secondly, strategic imperatives secondly.

16 And what I mean by this is that the choice of child soldiers came under an issue
17 which had something to do with investigations, but above all it was with regards to
18 the perspectives for the Office of the Prosecutor in terms of trial, in terms of
19 continuation of their activity. I think that was it.

20 With regards to -- I have to be careful with words used, but I think there was, yes, a
21 criminal policy on the part of the Office of the Prosecutor with regards to which I
22 have no means of answering you. As a -- an investigator, I gave a certain number of
23 elements and in accordance with that it was up to the Prosecutor to decide what type
24 of prosecution to carry out and against whom. I think from my perspective the first
25 part of the process was done in a very professional way.

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1 MS BENSOUA: Perhaps we can stop for the break.

2 PRESIDING OFFICER GODART: Yes. We'll have the break now and the session
3 will start again at 11.30 sharp. Thank you.

4 (The witness stands down)

5 (Recess taken at 11.01 a.m.)

6 *(Upon resuming in closed session at 11.32 a.m.) Reclassified as open session

7 (The witness enters the courtroom)

8 PRESIDING OFFICER GODART: (Interpretation) We are going to resume. Ms
9 Bensouda, you have the floor, please.

10 MS BENSOUA: Thank you.

11 Q. Mr Witness, just before the break, I asked you the question, which I think
12 you've already answered but I just want to clarify the last answer and to ask for your
13 confirmation whether you think that, after an objective and a serious investigation,
14 we had reason to believe in the office that child-related offences were committed by
15 the UPC of Mr Lubanga at that time.

16 A. I will try to answer, since you have asked the question. The question is: Is
17 it -- am I the right person to answer a question of that nature? The principle of an
18 investigation is that investigators propose to the Prosecutor a certain number of
19 options, and it is up to the Prosecutor, for reasons which are known to him, to choose
20 what form of prosecution he wishes to initiate. And so this brings me to saying, as I
21 said earlier, that just as I think that the choices proposed to the Prosecutor were made
22 in the most professional manner possible, as far as I am concerned, I will not give an
23 opinion on the choice which he made subsequently. And it is up to him to say,
24 based on criteria which is well-known to him, to determine what form of prosecution
25 he has to initiate. Of course, I may give my viewpoint, but that would be a personal

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1 viewpoint which may well not be relevant in the instant case.

2 Q. That's perfectly fine. I just want to ask you some little questions on witnesses
3 that the office contacted. But let me ask you this question first. You explained the
4 different steps of the investigation. Did the office keep records of the investigations?

5 A. The Office of the Prosecutor, right from the start in the early days in this
6 building - which was almost empty at the time - the Prosecutor thought about the
7 need to conserve the material which we collected and the documentation which we
8 were going to receive. The technical services maybe did not evolve at the same
9 speed as investigators did with respect to collection of documents. This probably
10 gave rise to the feeling that we had a certain number of documents which were not
11 recorded, or the feeling that all resources were devoted to the recording of these
12 documents. There was a lot of collaborative activity that took place, but at the time
13 that I served within the OTP the hierarchy had a high resolve to ensure that every
14 document was immediately scanned, recorded, and stored in a database, to ensure
15 that subsequently these documents could be identified as potentially exculpatory
16 material for the Defence.

17 I would like to underscore the fact that this idea of potentially exculpatory documents
18 was something that was insisted upon on several occasions by the hierarchy and by
19 the Prosecution's department. The assistant prosecutor, the trial lawyers in charge
20 of each case, or each file, constantly insisted on the need to record evidence, to record
21 documents, and this gave rise to a lot of discussions.

22 I think we are going to talk about this in detail later on, but when you receive a phone
23 call from someone who explains to you that the airport of Bunia will be closed on
24 such-and-such a day, he sends you an email to provide you with this information,
25 such information has an obvious impact on the security evaluation of our -- or,

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1 assessment of our witnesses.

2 However, it strictly has nothing to do with the need to include within the database
3 documents which could turn out to be exculpatory material for the Defence, or in any
4 event, elements of the investigation. It's not information which is relevant for
5 investigation; it's just information which is provided, information which is useful in
6 the short-term, that is, information which is given just to acquaint us of the security
7 situation in the field.

8 I have given this example to explain to you that very often we had intensive
9 discussions on the principle of the precaution adopted by the OTP, which ultimately
10 led us to record everything, at the risk of burying essential information under an
11 avalanche of secondary data. And to answer your question clearly, the hierarchy
12 within the OTP very rapidly insisted on the need to record and keep within the office
13 all documentation that was processed, collected, or received, all types of information
14 that came into the possession of our team.

15 Q. Thank you, Mr Witness.

16 THE INTERPRETER: Microphone, please.

17 MS BENSOUDA:

18 Q. I now want to just ask you a few questions on witnesses and security issues.

19 You explained before that you had started interviewing witnesses from the field. Do
20 you remember when was the first time that the office managed to go to the field in
21 Bunia?

22 A. Let me try to recall. I think that witness interviews in Bunia, that is in the field,
23 did not start before 2005. I am sure of that. Now, it remains to be seen whether the
24 first witnesses were those we described at the time as crime-base witnesses, that is,
25 witnesses who describe the crimes that were committed, or whether they were, rather,

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1 witnesses who could have been suspected of having participated in some of these
2 events. I do not remember whom we started with. But I would like to underscore
3 here that we ran into logistical problems and security problems such that the initial
4 interviews were very few in number because we had concerns about the conditions
5 under which these interviews were to be conducted. I cannot give you a clear
6 answer as to who was the first witness and when exactly this was done. I think
7 you'd have to find that in the documentation.

8 Q. You talked about the security situation at the time. Why was there such
9 insecurity, in Ituri, at the time? Can you explain this?

10 A. We do agree that we are talking about the situation in 2004/2005. In the course
11 of those years, the security situation evolved. In 2004/2005, when we started
12 envisaging the interview of witnesses, the security situation in Bunia was different
13 from the situation that prevailed in the rest of Ituri where we had other interlocutors,
14 but then it remained a very difficult one.

15 Let me give an example which will give you an idea of how things were. During my
16 first visit to Bunia, I remember having heard in the neighbourhood of Mudzipela,
17 which is one of the neighbourhoods of Bunia, I heard the sound of gunfire, AK-47s,
18 towards evening, and this happened every evening in the course of that mission.
19 We would hear the sound of gunfire.

20 Of course, some of you may be wondering whether -- how I could determine that this
21 was the sound of AK-47s. The person I was with was a former soldier and he was
22 able to determine the origin and the nature of the gunfire, so the situation was
23 extremely tense.

24 MONUC had a service in Bunia, which also conducted a security assessment, and we
25 were able to communicate with that service. That service imposed a certain number

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1 of constraints on us because of the security situation. We could not move outside a
2 certain perimeter, which was where the central base of the UN was located. We
3 could not travel out of Bunia in the day or at night, and even within Bunia we could
4 not move around at night.

5 At that time I also had contacts with the justice and police officials of the province,
6 and they confirmed to me that armed groups were still active either in Bunia and
7 especially around -- on the outskirts of Bunia and within Ituri.

8 Of course, this had a security impact. It also had or it also generated economic
9 effects, because these armed groups would set up roadblocks on the roads linking
10 Bunia to other towns, or to the border, and they would collect taxes from lorries and
11 other transport vehicles, and given this situation, when lorries reached a roadblock
12 they preferred -- the drivers preferred to turn back and not deliver supplies to Bunia.
13 The only means of obtaining supplies was by air, and I do remember that during that
14 period one of the UN planes was fired at by a gunman close to the airport.

15 What I'm trying to describe to you, what I'm trying to say, is that the security
16 situation at that time was quite serious, and so this had an impact on our duty of
17 protection and because of this we adopted a policy which was in three phases.

18 On the one hand, we had to constantly assess the security situation. Furthermore,
19 an initial response system - I don't like that expression, but that is what it was called
20 in English, initial response system - had to be maintained, and the third phase was
21 what we call a secondary response and this was -- this entailed the Registry and its
22 Victims and Witnesses Unit carrying out certain activities.

23 Can I continue to describe the process, or would you like me to move on to something
24 else?

25 Q. No, we are still in the same area, but I just wanted to ask you specifically if you

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1 know whether the UPC had -- what role, if any, did the UPC have in these security
2 issues that you've just discussed?

3 A. I think I'm going to be very clear on this point. From the information we
4 obtained, and according to the person who provided us with information, the militias
5 in question were the UPC, the FNI or the FRPI. These were never people from the
6 militia which the people were part of.

7 Now, what I mean is by definition the information that was communicated to us had
8 an agenda; that is, we were guided in our interpretation of this information. The fact
9 is that armed groups - and I have chosen this term carefully, armed groups - created a
10 systematic insecurity. Of course, I'm not telling you anything new, that Mudzipela
11 is a Hema dominated neighbourhood and the UPC had easier access to this
12 neighbourhood than other armed groups, so it is highly probable therefore that UPC
13 soldiers contributed to the security situation that prevailed in the town.

14 When I talk about the security situation in Ituri, you must understand that the
15 militias were not the same in various regions. Certain roads were controlled by the
16 FNI militia, or the FRPI militia, militia dominated by the Ngitis I believe, and in other
17 sectors dominated by the Hemas the UPC was in control.

18 The assessments that were provided to us came from the United Nations very often,
19 and the United Nations itself obtained these assessments from the village chiefs who
20 reported to them acts of violence or pillaging committed by armed groups.

21 So you have to be very cautious. You have to be very careful about saying who was
22 doing what at that time, or to say that one armed group was better organized or
23 armed than the other to perpetrate these crimes. Personally, my concern was to enter
24 all this information into -- that is included in my scope of work for the protection of
25 witnesses, and I did not focus on any particular militia group more than I would on

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1 another.

2 Q. It may sound as an obvious question to you, given what you have already said,
3 but I want you to tell us whether, as a result of these security issues that you are
4 talking about, it affected your decisions concretely of interviewing people in the field?

5 A. I think I have already said this earlier. It was almost impossible to operate in
6 the open, first of all because the ICC was expected by the population. Everyone
7 knew through the media that investigators were going to come, or that they were
8 already operating within the area.

9 It sufficed for the police force - or the alleged police force - of the United Nations to
10 question somebody and everyone would start saying that the ICC was already
11 operating in the area. Furthermore, these great expectations harboured by the
12 population made it such that anyone who was a stranger, a foreigner, who was found
13 moving around say on the main street of Bunia, could be taken to be an operative of
14 the Court.

15 May I also add - and the local population did not know this - that the Court is not
16 limited to the OTP. At the time the Registry also had to carry out an inquiry - maybe
17 not an investigation, an inquiry - in order to set up a reliable protection system.
18 Within the Registry there were also people who were supposed to recruit interpreters,
19 others were supported to conduct outreach activities with the local population for the
20 Court, and all of this made our job a little more delicate. Everyone knew that we
21 were present and of course this gave rise to certain risks, and yet we were trying to do
22 everything possible to hide the fact that we were coming, that we were operating and
23 to hide the fact that we were conducting an investigation.

24 I'm trying to describe to you the context in which we were working; a context which
25 was not made any easier by the many other activities that were conducted on behalf

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1 of the International Criminal Court. The local population could not make a
2 distinction between those who were coming from the Registry and those who were
3 coming from the OTP, or indeed from other services of the Court.

4 Q. Can you explain - I'm sorry to bother you with this again - but can you explain
5 the concrete risks that the investigators were facing, investigators and witnesses?

6 A. Just as I have told you that the Court was expected, those expectations were not
7 always positive. At the time the UN soldiers of MONUC were being directly
8 attacked by the militia groups, and in 2005 I believe they lost more than a dozen men
9 after skirmishes with the militia groups.

10 When the investigators wished to visit sites outside of Bunia, we did that with the UN.

11 On one occasion, one of the investigators told us that his vehicle, which was escorted
12 by armoured vehicles of MONUC, was hit by bullets during a mission to one village.

13 Since you've talked about risk, the first risk for the investigators was to be attacked
14 during their investigations or caught in the middle during skirmishes between

15 MONUC troops, which also accompanied regular Congolese soldiers of the FARDC,
16 and armed groups opposing them.

17 The second risk was linked to the insecurity in Bunia, and by insecurity, here I mean
18 absence of any police force that is capable of maintaining law and order. This means
19 that our investigators could be attacked by any armed person and would be unable to
20 call the police, which did not exist as such.

21 The third risk which was more specifically linked to the status of the investigator in
22 the Court, related to the fact that, as I have told you before, the Court was not always
23 welcome to do its work in Ituri and the groups could actually target a specific
24 investigator, try to carry out surveillance about his movements, attack him or even
25 abduct him. And the reason I'm saying this is because the situation of the

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1 investigators at the beginning extended to victims-- to witnesses, and also I remember
2 a very specific and well-documented threat that we received and which concerned a
3 defence counsel, who I believe has long left the Court.

4 We received information which we, of course, disclosed to the Court and I came to
5 testify before the Court on this issue, and this concerned information that we could
6 characterise as serious, according to which a lawyer, during a trip to Bunia, ran the
7 risk of being threatened by extremist elements of the UPC. Obviously, all those risks
8 were multiplied when it came to the case of victims -- or, rather, of witnesses.

9 The witnesses very quickly expressed their fear regarding the possibility of their
10 identities being disclosed, or in case people got to know that we were in contact with
11 them. All those risks justified the adoption of a very specific and rigorous policy in
12 their benefit.

13 Do you want me to elaborate?

14 Q. Yes, I would want you to elaborate on that, especially whether the realities of all
15 these security issues that you're discussing now, whether the impact, you know, the
16 impact -- did they have an impact on the importance that was given to it in the office,
17 in the OTP?

18 A. Yes, indeed. The problems of security, for both investigators and witnesses,
19 sort of slowed down the work of the OTP because it reached such a level where the
20 work of investigating itself almost became secondary. The priority of priorities was
21 the security of our witnesses and investigators. I have an example that I can give
22 you relating to an investigator.

23 During a mission, two female investigators had to stay in a MONUC military camp in
24 Bunia. When they arrived there, the MONUC command had received an instruction
25 to refuse those investigators access to the camp, for reasons that I've already

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1 mentioned; that is, the difficult relationship with the United States and the command
2 in Kinshasa. So, if you can imagine a situation where two female investigators, with
3 their travelling bags, find themselves without any place to stay at the entrance into
4 the camp, without even knowing where they were going. So, this means they would
5 be exposed to possible attack. I hardly need to stress this. It was obviously necessary
6 to find a solution, make sure that the MONUC soldiers should find a protected place
7 of lodging for those investigators so that they could carry out their mission properly.
8 That is simply to give you an idea of the weight that security represented for all those
9 who were participating in the investigation, whether they were investigators or
10 witnesses. Yes, the fact that security was the top priority probably delayed the pace
11 of investigations, given that we were not always certain. To ensure the security of
12 any of the people involved, we preferred to delay the mission and to delay our
13 investigations.

14 Q. Thank you for that. I just want to take you back to what you said in your
15 previous answer about the lawyer who you said was at risk of being threatened by
16 extremist UPC elements. To your knowledge, why do you think this was
17 happening?

18 A. I suppose that I must have been more detailed than the testimony that I gave at
19 that time than I am going to be now, because a lot of time has passed. When that
20 incident took place, I believe it was already in 2007 - I think it was end 2006, early
21 2007 - counsel for Mr Lubanga had wished to travel to Bunia, in order to make
22 contacts and meet potential witnesses. Obviously, the situation of the OTP was to
23 ensure the security of everyone, but we were fully aware that telling Mr Lubanga's
24 counsel, "You cannot travel to Bunia," that would be interpreted as an act that aimed
25 to prevent the Defence from doing its job.

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1 The fact is that the information that we had, which had been given by not just one but
2 two informers, was that -- and, in fact, when I say "extremist," if I remember correctly,
3 these were members of the UPC who were hostile to Mr Lubanga and who wanted to
4 change things within the UPC and wanted to seize the opportunity of his absence to
5 do so. The means that would have been used was poison, and the visit of defence
6 counsel meant that there would be some meals during which the counsel will meet
7 with certain people from the UPC who might have been going to try... and that was
8 the intelligence that we received.

9 There were two possible solutions: either to say nothing because we believed that it
10 had no value and did not mean anything, or to say something. So, the best thing to do
11 was to speak about it, and to tell the Court so that the Defence, with our assistance of
12 course, could take the necessary measures, rather than just keeping quiet. This is
13 just an example. I have other examples, if that is necessary, but the fact is that all the
14 witnesses - not just the OTP witnesses - were liable to receive credible or non-credible
15 threats.

16 As time passed, the threats changed and it was necessary to determine the
17 seriousness of those threats. Insofar as it is known in Bunia that if you are a
18 threatened witness, you can be relocated somewhere, it became obvious that some
19 wanted to become witnesses late in the day which would have made it possible for
20 them to request free relocation outside of the area. So there was also a constant
21 threat, but which led to other events - other facts - that had to be managed within the
22 area of witness protection, but I will come back to that maybe.

23 Q. Thank you, Mr Witness. You have emphasised the importance, I think you call
24 it the priority of priorities, about security issues for the office. Was there a specific
25 section within the Office of the Prosecutor that was dealing with security issues?

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1 A. Things also evolved in that area. Since security had become the top priority,
2 most of the new recruitments favoured those people that were responsible for witness
3 protection. As a result, there was a team that was set up, I believe it was the GCU,
4 which was responsible for dealing with the problems of witnesses in general.
5 The DRC was my area, and I would like to point out that what happened there
6 probably did not correspond to the needs raised by the team leader in Sudan, or
7 Uganda, or in other countries. What I mean by that is that there was indeed a
8 service responsible for coordinating a certain number of activities aimed at protecting
9 witnesses.
10 Nevertheless, the investigators were the ones in a position to identify possible threats
11 in the specific regions in which they operated. So there was a specialised service but,
12 since this was a priority of priorities, the investigators collaborated with that service.
13 They provided information. For example, every morning there was a meeting at the
14 investigation office at 9 a.m. on the situations in the various countries. The
15 gathering of information was done by that service and, to the extent possible, the
16 chiefs of investigations, or rather the team leaders provided any supplementary
17 information that they had obtained in their areas of operation. These meetings were
18 crucial, because it was the best time to exchange information about the various
19 situations on the field, the situations of the investigators in their various missions and
20 the potential threats against our witnesses.
21 If I remember correctly, that service was also responsible for the setting up of specific
22 offices for the countries in question which would host investigators, or any other
23 concerned people from the Defence, victims, and from the Registry who wished to
24 visit the field. So it was the OTP that was responsible for this service.
25 Q. You talk about that service. What's -- do you know the name of the service?

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1 A. I believe it was GCU, or JCU. I can give you the names of the people who were
2 in it, but I think JCU was something else. GCU. Actually, it was Gender and
3 Childrens Unit. This was a unit that was also responsible for witnesses, but in the
4 areas of psychological support and specific assessment to children, so their objectives
5 were different even though they were still related to witness protection. I do not
6 remember the name of the other unit. I know that it existed, but I cannot give you
7 the precise name.

8 Q. Do you recall whether there was a unit called the OSU?

9 A. Yes, indeed. It was the OSU, Office and Support Unit, Official Support Unit,
10 which was the unit responsible for support.

11 Q. Can you recall when OSU actually became operative?

12 A. If you are referring to the OSU as a unit specifically dedicated to witness
13 protection, I will say it was not before 2005, or mid-2005. Prior to the creation of that
14 service I think maybe it was existing, but it was in an embryonic state and its
15 responsibilities were limited to providing logistic support for investigations on the
16 field, but the duties of witness protection per se and the assessment of security was
17 instituted in 2005 - mid-2005.

18 Q. Thank you, Mr Witness. We also know that the VWU deals with security.

19 Can you recall when the VWU became operative in Bunia?

20 A. I observe that there are a few things missing in the transcript, so I am going to
21 try to speak even more slowly. The VWU, that is the unit of the Registry, was
22 existing from the very beginning. That unit and the unit of the investigation team in
23 Congo increasingly worked together in Bunia. I particularly remember a joint
24 mission that we carried out with them, that is with the head of the Victims and
25 Witnesses Unit of the Registry, to Bunia, but also to Beni and Butembo, which is

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1 further south.

2 As I have already explained to you, the system that we had proposed, that is to assess
3 the security situation and in case of risks or threats, there would be an initial rapid
4 response of the OTP and then conclude with a direct intervention of the Witness
5 Protection Unit of the Registry.

6 That entire system would suppose that the unit of the Registry should be in
7 agreement with the manner of working. My work - and particularly in 2006 - was to
8 sort out any difficulties that could arise between the OTP and the unit of the Registry
9 in the area of witness protection.

10 There were times when, based on information received, we were of the opinion that a
11 witness had to be immediately evacuated from his or her residence, transferred to a
12 secure location and from there we would reassess the person's situation in greater
13 detail which could lead to an application to the VWU for them to take over
14 responsibility for that witness in a more or less permanent manner so that people
15 should not have access to that person as from that time. So there were many
16 applications submitted by our team, but also by other teams, and this led to protests,
17 to difficulties, and that is always the case because the person who is on the field
18 always feels that they have perfectly understood the situation and, when they ask the
19 VWU to take over responsibility for the witness, it is legally an application, but it is
20 almost practically an order, "Please hurry up and do that."

21 And yet the way the VWU worked was not always to say yes to those applications of
22 the Prosecutor, and so this led to some very thorny discussions sometimes which
23 were made even more difficult because on the other side there was the situation of a
24 witness that we felt was at risk, whereas the VWU in our opinion was delaying its
25 action, or simply refusing access to its programme for that particular witness. So

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1 that created serious difficulties for us, because sometimes we had to evacuate the
2 person as a matter of urgency and relocated them to another site and this meant that
3 the situation was very fragile leading to even more danger and risk.
4 However, to be frank, if indeed there were conflicts of interpretation of the facts
5 between the investigators and the Victims and Witnesses Unit, I would like to point
6 out that most of the time our ideas were similar.
7 However, VWU had certain ideas that we do not agree with but which we had to
8 accept. I have talked about evacuations. As our protection programme was
9 progressively put in place, a problem arose as to who would evacuate those people if
10 the OTP officers were not present. We identified four zones in which our witnesses
11 were located. There was Bunia, Ituri, Kinshasa, and Kampala in Uganda.
12 We made it such that in each of those three territories, Kinshasa, Bunia, in Ituri, and
13 Kampala, we had to find reliable contacts who could, through local legal and police
14 services, would be able to evacuate witnesses to a secure location.
15 We therefore concluded arrangements, agreements, with the Kinshasa police, with
16 the police - there was a name I don't remember - Rapid Intervention Police, PRI, in
17 Bunia, and we didn't conclude an agreement with the authorities of Kampala. I
18 think that they were sufficiently aware of what was going on. They didn't have to
19 be informed any more in that regard. Nevertheless, the agreement that we had with
20 the Bunia police, as that of Kinshasa, authorised them to recuperate an individual
21 whose identity they didn't know - so they didn't know where that person was
22 from - to transfer that person to a safe place. And I remember perfectly that within
23 the framework of Bunia everything went through the Prosecutor of that tribunal.
24 Where there were threats, the witness would contact the intermediary, or if the -- if
25 the threat was sufficiently large, this would be done immediately. This intermediary

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1 would then notify the investigator who was responsible, or when this was possible,
2 the office in Bunia, which then called upon the Prosecutor, with a view to the latter
3 giving the order to the police to go and find the individual.

4 So, obviously, as I have described, this is a long process. When you speak about an
5 emergency, you have to go faster. But I think that the system, despite everything,
6 did function, at least to my knowledge, to the extent that the risk that our witnesses
7 were undergoing - fortunately, in one way - were no longer potential future risks but
8 immediate risks, which gave us the possibility to respect this course of actions and to
9 ensure that the Congolese authorities would help us in this management of witnesses,
10 possible management of witnesses.

11 I cannot tell you how many times the system was used. We made a trial to see how
12 things worked; I remember they did. Often, it was a situation that the
13 intermediaries would point out a situation to us which did not require intervention
14 on the part of the police. The witness went to a safe place himself and that also
15 avoided the presence -- well, that that person's identity be too known in that area
16 where he went.

17 We were well aware that this system risked causing problems to our witnesses, in the
18 sense that when they had been seen, there was a risk. Well, we could no longer have
19 the same protection for them thereafter.

20 Q. Mr Witness, thank you for that. I'm coming to -- in a moment I will ask you
21 specific questions about intermediaries, but I just want to ask you first this general
22 question before we leave this area. You talked about danger; you talked about
23 relocation; you talked about VWU and the threats to witnesses. Did you know who
24 was threatening these witnesses?

25 A. As I stated, we investigated on several militia, several armed groups. We

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1 therefore identified witnesses, in particular victims who came from populations that
2 had been attacked by these groups, these different groups. When these persons
3 were subject to threats, they came from the militia or from a militia environment.
4 Well, according to their statement, according to their statement they came from
5 militias, armed militia who had already attacked them before. They'd already seen
6 something, or testified to something previously, and it would seem that they were
7 identified by these militiamen as having worked with the Court and therefore they
8 had to be put in such a state that they could no longer cause harm.
9 Now, on the basis of what they told us, but also with regards to the verifications that
10 we had to carry out, we considered that the fears that they were addressing really
11 were justified, but the real threat wasn't really from an individual group, it was rather
12 the fact of being identified in one's community, in the village, in the family, as
13 someone who was cooperating with the Court. I think that it was more that the real
14 threat because, despite our precautions, despite everything that we were doing to
15 avoid direct contact, something was not right, and because of that the person felt a
16 threat because they feared being identified by the people that they had spoken about.
17 And I would just like to make a clarification here: As you know, most of the
18 witnesses mentioned the militia command, they mentioned the names of those who
19 led them, whatever militia it was, and, as such, with the exception of certain persons
20 who were arrested, who no longer had the power to threaten anyone, a lot of them
21 were still around, moving freely, and on the basis of what the witnesses were telling
22 us, they did not want the witnesses to implicate them in any way. So these
23 witnesses legitimately were afraid of having their identity revealed, or their
24 testimony revealed, that it would come to be heard of by these chiefs who were still at
25 large and they would be directly threatened.

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1 So the reality of the threat was linked, as I said, to the perception of the witnesses
2 themselves but also to objective elements, which was that the chiefs that they had
3 denounced, most of the time, were still able to threaten them again.

4 Q. Thank you. You have, during the course of your testimony, mentioned several
5 times intermediaries, and obviously you worked with intermediaries during your
6 investigations. Can you explain why, why there was the need for the office to work
7 with intermediaries?

8 A. I'm afraid I might end up repeating myself a bit here. That's normal. The fact
9 is that, right from the start, there were human rights activists, who, first of all, were
10 the first in the field, and gave us possible names of witnesses, first of all because they
11 had gathered their own testimonies, so they had seen these people and they knew
12 what they were going to say and also because their condition as an activist was
13 known by everyone. They were already in the field before the events. They were
14 working as human rights activists, and they had been during the events, sometimes
15 with difficulties, and they continued to be that thereafter. So there was an
16 advantage, a massive advantage, with them compared to us, and this was that they
17 were really implanted in the population. They were recognised as being activists,
18 and that surprised nobody that they could also participate or have discussions with
19 MONUC or other people who people didn't know, while continuing to go back to the
20 villages and have discussions with the villagers.

21 So, it was natural, as we did not have the status in that we couldn't just move freely
22 without being threatened. Well, we could ask these people to be our intermediaries,
23 between the witness and ourselves, witnesses and ourselves; that is,
24 furthermore -- well, for some amongst them, themselves, they proposed becoming an
25 intermediary to us and they explained to us that we shouldn't try to discuss before

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1 everybody, have discussions directly with a particular witness, because that would
2 put any given witness in danger.
3 I would add that very quickly, even with these intermediaries, we ended up with
4 constraints, and what I mean by that is that meeting them couldn't be done anywhere
5 at any time. The telephone made it possible to come up with a discreet place to meet,
6 even within the UN base, for discussions to be held in conditions which were
7 relatively discreet. So even with the intermediaries, we had a tendency to protect
8 our meetings and our place of discussion with them, these intermediaries, and
9 furthermore there weren't that many of them, but I would just like to classify them, as
10 I think I did in my statement, from my point of view, in two categories:
11 The first is intermediaries who made it possible to identify witnesses, who put us in
12 contact with the witnesses and who organised throughout our investigations the links
13 between these witnesses and ourselves.
14 It is the same intermediaries who pointed out to us that there were certain difficulties;
15 for example, health problems; for example, problems related to threats; for example,
16 too, problem of a lack of understanding. Some witnesses mentioned to the
17 intermediaries that they hadn't understood who we were. They didn't know what
18 we wanted. As these people, these intermediaries, were often activists as well, they
19 were quite professional in their management of their safety and security and that of
20 witnesses as well.
21 It was necessary, despite everything, it was necessary to eliminate, in inverted
22 commas, but to eliminate some of them who were proposing themselves as
23 intermediaries but who clearly were not serious. We had to get rid of those, and
24 who were trying to gain a certain degree of publicity, even probably money, by
25 proposing witnesses to the Office of the Prosecutor.

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1 PRESIDING OFFICER GODART (interpretation): Please excuse me: Did you state
2 that the intermediary -- did you say that they were activists or military activists?
3 WITNESS (interpretation): Activists, activists.
4 PRESIDING OFFICER GODART (interpretation): Yes, the transcript says activists.
5 Alright, thank you.
6 WITNESS (interpretation): Activists. These activists were perfectly aware of the
7 mission of the International Criminal Court because they had also called upon the
8 Court. These activists had also given information to the international NGOs and, on
9 this subject, one of the first tasks that we had was to go back up the chain concerning
10 the witnesses and here I will give an example of an NGO, an important international
11 NGO, who communicated a number of witnesses to us, forgetting to mention that
12 these names had been communicated by a local NGO to them, which had worked
13 with activists.
14 So this made it possible, when we identified the chain whereby the witnesses were
15 identified, we could see that these activists, at the end of the chain, were those who
16 had directly had the contact with the witnesses, and so it was a lot more profitable for
17 us to have direct access to them rather than going through the international NGO,
18 even to go through the local NGO, which were considered to be more owners of this
19 information. So these people were perfectly aware of our activities.
20 That did not mean however, and I'd like to stress this, that they were aware of our
21 investigations and the content of our investigations. I can also say, as I already
22 stated, sometimes even we weren't 100 per cent sure of the nature of our
23 investigations, and if we had to extend them, if we had to interrupt them, if we had to
24 continue, so, in the same way as we weren't aware of everything, they were even less
25 aware of them. This had an impact, this had an impact because it was precisely

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1 because some of our intermediaries did not know what we were doing that
2 sometimes they called upon us saying: "Well, where are you? We don't see you
3 any more. You've identified some witnesses and now you are no longer there and
4 the witnesses are impatient."
5 So obviously, we had to work with intermediaries, in order to get them to understand
6 that the testimony of some was no longer such a high priority so that they had to be
7 patient but, at the same time, it was immediately natural for us to be able to count on
8 these intermediaries in order to find out about the security situation of our witness,
9 and what I mean by that is that if they helped us to identify witnesses, the situation
10 with regards to the investigations quickly made them also insecurity intermediaries
11 for the witness, and not just to provide the identity because, obviously, they were the
12 ones who were best able to provide us with information, to inform us, as to the state
13 of the witnesses because, as I already indicated, the notion of protective witness, or
14 witness to be protected, is something we interpreted in a very broad way, right from
15 the very beginning, so that all those who we contacted were able to enjoy the same
16 privileges as our best witnesses, who were identified right from the very start.
17 That's basically the definition. Well, definition, the first part of this, or first group of
18 these intermediaries, I'm just going to very quickly go over the second category, and I
19 would like to say that I was more responsible of them to the extent that I would call
20 them intermediaries in the evaluation that we had to carry out of the security
21 situation.
22 This was the case of some members of MONUC; this was the case of some soldiers of
23 the Congolese armed forces; this was the case of certain (Redacted) from Bunia or
24 elsewhere; this was the case of (Redacted)
25 (Redacted), or from other countries which were present in the region; this

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1 was the case of all persons who could, at a given time, have useful information
2 which - and here I would like to make a precision - which would also link to other
3 information which would make it possible to get an idea of the security situation in
4 Mahagi, in Djugu, the security situation in the south, Mombasa, elsewhere, where we
5 had possible witnesses, who were in a potential situation of danger. So these
6 intermediaries --

7 THE INTERPRETER: The interpreter corrects, Mambasa not Mombasa.

8 THE WITNESS: (Interpretation) So these intermediaries, according to the needs
9 that there were, were people that I contacted either in the field or by telephone in
10 order to find out about the developments in regard to certain problems, and it was on
11 that basis that I proposed thereafter, to the Office of the Prosecutor, certain changes
12 with regards to a certain witnesses because the situation required that.

13 This basis of intermediaries had nothing to do with the purely judicial aspect, as I
14 have already stated. I always wish and I still wish that these people who provided
15 me with information, in a very courteous way, are not mixed up in the legal matters
16 or judicial matters. It was just with regards to evaluating the situation for our
17 witnesses, or our investigators, in fact.

18 So that's it. Those were the two categories of intermediaries, as I understand it, but
19 perhaps the first is more important but, at least for myself, the second was
20 fundamental because this was work which was really done on a daily basis to
21 familiarise yourself with militia movements and then, at the end of my mandate, at
22 the end of my contract, rather, also to use this information or thanks to this
23 information that we had, to investigate the travel of Mr Ntaganda, in accordance with
24 his various movements, and to do, and to see how we could ask MONUC to arrest
25 him.

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1 MS BENSOUDA:

2 Q. Mr Witness, I will just later ask you, perhaps, after the break ask you, go back
3 on the different functions of the intermediaries, but I just want to ask you now, from
4 when you started using intermediaries?

5 A. I would answer that I arrived in July 2004, and I already had the feeling that the
6 method of identifying intermediaries with a view to finding witnesses, was already
7 being undertaken from September 2004, and I would also say that I think I remember
8 that we heard the first witness in The Netherlands through an NGO, which acted as
9 an intermediary, so I think we could already use that term "intermediary" since the
10 summer of 2004. However, the true intermediaries, the ones who we almost
11 proposed contracts to, and that's also another issue we will come back to, they were
12 clearly identified but much later, however.

13 Q. Was there a formal recruitment procedure for these intermediaries?

14 A. No, there was no formal recruitment procedure. By definition, the
15 intermediary was the person who could act as an intermediary. There was no
16 candidacy or application; it was a matter of circumstances which meant that these
17 activists, I think I often say activists, why do I say that? Because I am thinking of
18 two or three of them, who we worked a lot with, they became intermediaries quite
19 simply because they proposed very quickly to identify potential witnesses, thanks to
20 their activities, and they proposed that to us, so there wasn't a recruitment procedure.
21 Nevertheless, over time, when we saw the need there was to make these relations
22 more formal, we did propose some of them in a very limited way, with regards to the
23 number that there were, we did propose contracts for employment.

24 I don't remember the exact term that we used for this type of contract but this was a
25 type of interim contract, if you like, we proposed them, to them, in a -- to work with

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1 us in a slightly more formal way, but we were always split between the need that
2 there was to give an appearance which was more formal to this type of function and,
3 at the same time, the risks that that could make them undergo in the field.
4 We never wanted to privilege the first part, the overtly formal part, with regards to
5 their security in the field, and I would say this as a slight aside, but this dialectic that
6 there was between the requirements of an institution such as the International
7 Criminal Court on the one hand, which requires that the highest standards be applied
8 in investigative terms, Prosecution and judgment, who require that.
9 Sometimes we had difficulties in the field to apply them quite simply because, in the
10 field, that had little to do with this ideal situation that the Statute proposed. In the
11 field, our primary problem, as I indicated, was the security of our witnesses and, plus,
12 the intermediaries were considered to be an integral part of the protection system.
13 Well, I always thought and I continue to think, furthermore, that their security was
14 the primary constraint.

15 PRESIDING OFFICER GODART: (Interpretation) Thank you very much sir.
16 We are going to have a one-and-a-half hour break now. We will all be back here at
17 2.30.

18 (The witness stands down)

19 (Luncheon recess taken at 1.02 p.m.)

20 *(Upon resuming in closed session at 2.31 p.m.) Reclassified as open session

21 (The witness enters the courtroom)

22 PRESIDING OFFICER GODART: (Interpretation) Witness, good afternoon. We
23 are going to continue with the examination by Ms Bensouda.

24 MS BENSOU DA: Thank you.

25 Q. Mr Witness, we were -- just before the break we were talking about the

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1 recruitment procedure and I just want to ask you whether there was any form of
2 verification adopted by the office for these individuals?

3 A. Well, I imagine that you are talking about verification of skills, morals, aptitude
4 of these intermediaries. Well, we indeed conducted some verifications based on the
5 information which we had at our disposal. For some of them their past, their history,
6 was enough, in the sense that these accounts were confirmed by other persons, by
7 other NGOs; that is accounts of their activism in human rights activities, the fact that
8 they took certain risks in the field in order to successfully carry out investigations and
9 the fact that we did not receive any negative information about them.

10 The problem was perhaps different for those who were not human rights activists
11 recognised within their locality; persons who were rather engaged in more secret or
12 may I say more discreet activities. Of course, as far as possible, we tried to get
13 information on these people. I said as far as possible, because trying to obtain
14 information on somebody is risky because it tantamounts to exposing that person as
15 well, and the risk that a person runs may far outweigh the objective which you're
16 seeking to attain.

17 I think that, well, if I may -- if my recollection is right about these recruitments in
18 quotes, because they were not recruitments properly so-called, if I were to talk about
19 this I prefer the term identification of resource persons, I do remember that in the
20 initial months assessments were conducted by three persons in the team most of the
21 time.

22 These persons were two investigators who had been recruited prior to my
23 assumption of service. One of them was already there. So, as I was saying, two
24 investigators with whom I worked initially; two investigators who had the
25 particularity of -- I think I'm uncomfortable to say this, but it has to be said. They

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1 were persons of a certain age and of masculine gender.

2 What I have just said is of importance because, as I said before we went for the lunch
3 break, there were certain standards that were imposed by the Court; standards which
4 turned out to be problematic in the field sometimes. One of these standards, which
5 was logical and coherent within our system, was to say that we had to put together a
6 team of investigators, investigators or rather a team which reflects the diversity of the
7 countries of the ASP that we had to ensure gender balance and that we had to ensure
8 a representation of age groups, so to speak. And this means in short that we were
9 supposed to have a team composed of men and women, people from different
10 professional backgrounds and people of several, or from several, age groups.

11 The difficulty of this approach is that on the field or in the field cultural
12 representations are not the same and, regardless of the quality of the investigators
13 recruited and regardless of the quality of the people we had -- we were dealing with,
14 we were often exposed to the fact that a man of about 50 years, resident in Bunia, will
15 not find it comfortable to be interviewed by a young lady of 25. I am aware, of
16 course, that by saying this I am exposing myself to some criticism, but that was
17 indeed the case.

18 I am also raising this point, because in the first part of our investigations the two
19 investigators and myself, that is the three of us who were working together, were
20 men, men of a certain age, and all of us were or had a background in judicial police
21 activity.

22 What I mean by this is that the manner, the approach we adopted in evaluating our
23 intermediaries, was informed by our experience. If the intermediary was a
24 policeman, or somebody with a police background or a sold -- a military background,
25 if the intermediary was somebody from political circles, they were people of the same

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1 age group as ourselves and so the evaluation which we conducted was based on our
2 own criteria.
3 I am saying this, because the evaluation involved a certain degree of
4 confidence - mutual confidence - between the intermediary and the investigator;
5 confidence which did not, however, exclude control. What I mean by this is that
6 someone like the investigators who were working with me, who had worked in the
7 criminal brigade in Paris on a wide variety of cases and very serious cases, had a
8 certain understanding of the people they were dealing with, a certain understanding
9 which enabled them to exert some sort of control over these individuals, that is
10 control that was characterised by empathy, confidence as well as experience, and this
11 to my mind lent a certain relevance to the evaluation that they conducted. This also
12 created certain conditions, in the sense that these investigators could not be used by
13 order -- that these intermediaries could not be used by other investigators who did
14 not have adequate experience.
15 May I say that if there were misunderstandings sometimes - and I think we're going
16 to talk about this - I would like to say that such misunderstandings probably
17 stemmed from cultural problems; cultural problems which required that these
18 intermediaries of a certain age had to be handled by investigators of a certain age.
19 This was not always the case, and on this point there was a lot of discussion and I still
20 continue to believe that we should have restricted the number of people who were
21 working with such intermediaries. I think that answers the general question of how
22 we assessed the intermediaries, even though I ended up focussing on certain
23 intermediaries.

24 THE INTERPRETER: Microphone, please.

25 MS BENSOUDA:

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1 Q. You mentioned the two investigators that you were working with. Can you
2 give us their names?

3 A. Of course, there was Nicolas Sebire and Bill Wiley. I think that both of them
4 have since left the Court.

5 Q. Thank you, Mr Witness. We are moving to another area, still with
6 intermediaries. Did these intermediaries work voluntarily? I mean, without being
7 paid?

8 A. Well, for the majority of persons whom I can describe as intermediaries, I would
9 like to say that we did not pay them as such, in order for them to carry out these
10 responsibilities. The first reason for this is that they never asked for payment. The
11 second reason is that, in the course of their activities, if they could move from one
12 town to another to meet somebody, regardless of the means of transport, if they could
13 communicate with somebody, or with us, then we would pay for the expense or we
14 would reimburse the expense related to transport or communication.

15 So my answer is very clear: Up to a certain point, I will, of course, come to that, up
16 to a certain point in time, we never proposed to intermediaries that we would pay
17 them for their work. Things were done on a volunteer basis. I would like to use
18 the term that it was done on a volunteer basis, simply because we did not wish to be
19 exposed to a situation where the amounts to be reimbursed to them would end up
20 being far more than the sums effectively spent. And because of this we were very
21 stringent in reimbursements of costs.

22 I do remember that certain intermediaries whom we used at the beginning preferred
23 to cut off all contact with us because they felt that they were wasting their time and
24 their money in helping us.

25 In most cases reimbursement was done in the most transparent manner possible,

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1 because we would either have documents justifying the expense incurred or, if there
2 was no document, there was a certain flat rate that was paid, that was paid based on
3 our understanding of the local situation.

4 What I mean by this is that a trip by motorcycle from Bunia to Mongbwalu, well, for
5 such a trip we would ask officers from MONUC or from elsewhere how much such a
6 trip would cost, and we would double check that against other information. And by
7 so doing we would be able to reimburse the transport costs to the intermediary on
8 that basis.

9 Of course, with time, it became apparent that certain intermediaries had become so
10 important, so indispensable to us, that we had to provide them with some form of
11 compensation, more relevant compensation. That's why almost all court services
12 were involved in the institution of a special contract which enabled investigation
13 teams to secure intermediaries, a contract in which the mission, the duties of the
14 intermediary, were fully spelt out, and one of these duties - I think the first one, or the
15 most important one - was the protection of witnesses.

16 I believe that at the time when I participated in the activities of the Office of the
17 Prosecutor three individuals were the beneficiaries of these contracts. To the best of
18 my knowledge, I think there were three, not more than that. I am not in a position to
19 say whether there were more contracts or whether an end was put to this type of
20 collaboration. I can confirm that I am aware that only three persons benefited from
21 this arrangement.

22 Apart from these three, most of the individuals who worked with us as
23 intermediaries were not remunerated as such.

24 Q. Did you have a system in place to monitor and to record these reimbursements
25 that you are talking about?

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1 A. At I said earlier, everything was done on the basis of an expense declaration
2 form. Initially, investigators would pay an advance to the intermediaries, and this
3 justified the institution of a system for justification of the payments made by
4 investigators. Before talking about a system which had to do with the compensation
5 of intermediaries, I would like to say that it all started with reimbursing investigators
6 who paid an advance of their own initiative to intermediaries, and this led to a
7 decision to put in place a nomenclature, a document to justify payments made out to
8 such-and-such an individual, and such documents were appended, supporting
9 documents, such as invoices, statements, or any other form of -- any other type of
10 supporting document. I do recall that all this documentation was recorded in the
11 database of the OTP.

12 Q. Mr Witness, what you've just described, are these the general guidelines for the
13 reimbursement of expenses of these intermediaries, or did you have a specified
14 guidelines for this?

15 A. May I remind you that I'm talking about a period we ran from 2004 to 2007, a
16 period during which the Court was still in its infancy, in early 2004, before it became
17 an operational institution in 2007.

18 What I mean by this is that initiatives were taken, initiatives motivated by certain
19 circumstances, and later on formal decisions were taken by the OTP to formalise
20 certain methods that were adopted in the field. We did not wait for the OTP to
21 propose a certain manner of doing things; that is, a formal way of doing things
22 because we did not always have the possibility or the luxury of waiting for a given
23 form or document or template to be prepared.

24 Furthermore, the difficulty resided in the fact that it was not always very clear for us
25 to know who was in charge of preparing or drafting such guidelines. I do recall that

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1 at one point in time a female investigator from the Gender and Child Unit was
2 requested to prepare a document on reimbursements, reimbursement of costs, a
3 document which could be used by all investigation teams. I am not sure that that
4 document was eventually approved at the time when I left, and this is logical in the
5 sense that the constraints faced by the team in Congo were not the same as the
6 constraints faced by investigators in Sudan, or rather in Chad, since they spent most
7 of their time in Chad, or in Uganda, for that matter. The methods were not always
8 the same, perhaps, and because of this it became difficult to draft guidelines even
9 before investigations had started, guidelines which would have provided for all the
10 difficulties that we were going to face. The fact remains, however, that the Office of
11 the Prosecutor constantly endeavoured to adapt to the constraints faced by
12 investigators, and sometimes they tried to come up with tailor-made guidelines
13 which tried to address the constraints and the difficulties which investigators faced.
14 I imagine that things have evolved, that an investigator who joins a team has a set of
15 documentation, guidelines, available to him which will enable him to know what
16 exactly he is going to do, but that was not the case in the past.

17 I would like to come back to this point of recruitment and I'll say we needed people
18 who were experienced.

19 Q. Thank you, Mr Witness. Earlier on you talked about the two different
20 categories of intermediaries: The one identifying the witness and the other one
21 collecting information for security reasons. I want us to come back on that, and
22 starting with the first category, those who were identifying the witnesses, my
23 question is: Who, or what exactly, would this category of intermediaries be tasked
24 to do? That is the first category.

25 A. I believe I have already said that the intermediaries of that first category had

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1 most of the time contacted us themselves either because they had information in their
2 possession, or because they knew witnesses who could be helpful to us. The basic
3 principle was, therefore, that those people had to maintain contact with the witnesses
4 that they had already identified. I believe I have already said that this meant
5 providing evidence of the witnesses' existence. This also meant assuring their
6 security, health and possibly organising or participating in the organisation of
7 meetings between the witnesses and the investigators.

8 The simplest example of this relates to children who had been identified as likely to
9 provide testimony to us about their experiences relating to their recruitment as child
10 soldiers, or rather recruited by armed groups. The intermediaries who had talked
11 about these people to us had the possibility of going, at our request, to collect these
12 persons from where they lived, organising meetings between them and us, and
13 ensuring that the investigators are not seen with those witnesses, such that statements
14 could be taken from those witnesses and examined and they should be examined by
15 psychologists. So it was important to have a reasonably accurate file on them
16 without raising the suspicions of the family, that is in the broadest sense, broader
17 meaning of the word, or in the village.

18 Those were extremely delicate missions, and by that I mean that the least failure, for
19 example if a child was identified and abducted once again by a militia group, or
20 beaten, or if a child had spread the word that, because of the ICC investigators, the
21 soldiers had been able to track them down, that would have greatly undermined our
22 work. Now things have evolved perhaps, but at that time we did not have the
23 necessary resources for our activities. We did not have a field office, or local office,
24 so fortunately we had those intermediaries who through their professionalism made
25 it possible to introduce to us children in the best possible conditions with whom we

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1 could commence a dialogue and interview.

2 Now, let me come back to their mission. That is a question that you asked me. So
3 it was to establish links between witnesses and investigators on the basis of the needs
4 of each. The instruction or directive was that the intermediary did not know, or was
5 not supposed to know, in any case the objectives of the investigation team.

6 Obviously, once the children identified were known to belong to a militia group, oh,
7 you didn't have to be a genius to know that that militia group was being targeted.
8 So the intermediaries, because they knew that they had to survive in that case, had to
9 avoid knowing too much.

10 I remember one intermediary who did not ask any questions, who did not want to
11 know anything about what we were doing with the children, because the less he
12 knew the better it was for his safety. However, to the extent possible, we tried to
13 give them a minimum of information. Also, it was enough for them to listen to the
14 radio to learn that someone had been arrested and that the procedure was ongoing, in
15 spite of everything, but the applicable policy was not to provide them with any
16 information that would compromise them, that would compromise us, or the
17 witnesses.

18 Q. You talked about giving them minimum information. What kind of
19 information would you give them?

20 A. The first piece of information that we gave them related to the presentation of
21 our activities, our mandate and the mandate of the Court. This was a legal
22 obligation; that is, we had to clearly identify ourselves as employees of the Office of
23 the Prosecutor.

24 The second piece of information that we could give them concerned the overall
25 mission and specifically answers to their own questions. As I have told you, these

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1 were activists, most of whom were fully aware of the activities of international
2 criminal justice, so they were fully aware of what we were trying to do and they
3 consulted internet sites to keep abreast of the progress in the investigations and in the
4 progress of international criminal justice even before our arrival so they were fully
5 aware of this. And I have stated before our objectives were changing and we were
6 even less inclined to communicate about the end results of our activities, because we
7 were not even fully aware of that ourselves, so they were not privy to all the
8 information about us. In any case, we never talked about witnesses who were not
9 introduced, or presented to us, by those specific intermediaries.

10 Q. You mentioned an intermediary who did not want to have -- know information
11 about the investigations. You just talked about that intermediary. Do you know
12 his code? Not his name, his code? Can you recall his code?

13 A. No, I no longer remember any codes. I can mention names to you, to the
14 extent that I remember, but I know that after we assigned them codes, I believe the
15 codes went on to be used here. I don't know... I don't remember the earlier ones and I
16 have no knowledge of the later ones.

17 Q. That's fine. That's fine. The intermediaries and their meetings with the
18 potential witnesses, was it regular, or is it a one-off basis, or were they constantly in
19 contact with the witnesses? How did it happen?

20 A. For the first stage of their activities, that is the identification of the witness, any
21 possible meeting with the witness took part out of our control. We do not know
22 how many times these intermediaries would meet with the witnesses. The fact is
23 that, thanks to them, we would eventually be able to organise a meeting to begin by
24 screening the witness to see whether he or she could be useful. The initial meeting
25 was used for a basic interview that enabled us to determine the potential usefulness

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1 of the witness.

2 Let me point out that the intermediaries did not take part -- take part in these initial
3 interviews. They arranged for the meeting, they arranged for the witness to come
4 but they did not take part in the contact meetings. What happened later was that,
5 once the witness's final interview had taken place and he or she needed to receive
6 protection measures until the trial, their appearance before the Court, that would be
7 the second part. It was my responsibility to find out about the health situation of
8 these witnesses via the intermediaries, hence their usefulness.

9 I tried to prepare a table - a very practical table - in which I would cross-check
10 whether at least once a month I had some information about the witnesses. In that
11 way I would be able to say that at least one month ago that person was still alive, in
12 good health and able to testify, because that was a fundamental question.

13 The intermediary would assist me and keep me informed of the health situation of
14 the witnesses. This is because some of the witnesses were people who had been at
15 crime scenes themselves, who were elderly and lived in remote villages, so it was
16 impossible to dispatch an investigator on-site to check on such a person's state of
17 health.

18 In such cases we used the intermediaries to sort of make the rounds of some
19 witnesses and determine whether everyone was doing well, or whether they had
20 problems. This is very basic, but it required considerable investments.

21 At one point we had about a hundred possible witnesses, so to try and check whether
22 about 100 people are still available and in a good state every month is a very difficult
23 task. Telephones did not always work, and the means of checking on these people
24 were not always the same. Sometimes they would be checked on physically or
25 sometimes the witness himself would visit the town in which an intermediary lived,

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1 so there were various methods of doing this.

2 Q. To your knowledge, were these intermediaries ever given, for example, a
3 photograph to identify a particular individual?

4 A. In the first phase, that is the identification phase, and based on the competence
5 of certain intermediaries, it was possible, and I am saying it was possible - and I'm
6 saying this because I did not do so myself - it was possible that investigators would
7 show photos to ask whether that person was known, whether the person was in the
8 specific region or elsewhere. Yes, I think so.

9 Q. Thank you. How would you describe, in respect of ability to conduct proper
10 investigations, how would you describe the importance, or not, of intermediaries?

11 A. I feel like saying that each investigation has its own specificities and by that I
12 mean that an investigation in a country where there is rule of law, where you have
13 forensic police that are working, that you have forensic methods of identification that
14 are applicable. In such a case the investigator would be able to do a proper job,
15 while using very few testimonies and possible confessions. They would base
16 themselves on more objective and more technical evidentiary materials.

17 At the time that we were working, there were two possible solutions: Either the
18 gathering of documents, whatever documents there were, even if they were in favour
19 of the accused, and these were essentially hard copies of documents, paper
20 documents, and some were even photographs but, given our objective of identifying
21 child soldiers, the focus of the search for evidence was interviews with witnesses.
22 And, in fact, it was a bit frustrating because we all know the value of a testimony.
23 We know that the same person could possibly change his story three months later, for
24 reasons known only to him or her. The fact remains that once the selection was
25 made we had to limit ourselves to the best documentation available. And, in answer

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1 to your question, I can say that the intermediaries were crucial in the constitution of
2 the case files.

3 This is because in the legal system of the International Court, which is not always the
4 same as in national jurisdictions, the act of taking a statement on site is not sufficient
5 to be considered as evidence. The statement has to be confirmed in the courtroom.
6 This means that we need to have a chain that preserves the quality of that evidence
7 until the end of the trial.

8 The intermediaries were always there to enable us to do this. We were not always
9 present there. We were rotating, as part of successive missions, and we needed
10 people in the field. I hope in answer to your question, in your -- to your question,
11 I am being clear because that also limits the investigation in an environment such as
12 the one that we tried to carry out on site when you have a country in which the
13 administration no longer exists, and the authorities really do not exist, and the only
14 authorities that I think existed - and that is a bit surprising - were the legal
15 authorities.

16 I was impressed by the prosecutors and the judges or magistrates in Bunia. One of
17 the reasons was that they were paid well and regularly not by the government but by
18 the NGOs which had understood that rebuilding a country started by rebuilding the
19 legal or judicial systems. And apart from those authorities nothing else worked, and
20 we could only rely on the people who were dependable to try and maintain the link
21 with our witnesses.

22 Q. Very well. I want us to now talk about the other set of intermediaries, the
23 other category, and I would like you to explain - I know you touched on this
24 before - but I would like you to explain their role, the second set that were collecting
25 information for security reasons.

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1 A. I would like to begin by saying that I do not wish to sort of split these people
2 into two mutually exclusive groups, that is, those who helped us identify witnesses
3 and those who gathered information for security. An intermediary who did the first
4 thing could also be responsible for doing the second stage, so someone who identified
5 a child soldier could be the same person that I had consulted during one of my
6 missions to have his opinion on a village that he had visited. However, the people
7 that were mostly in the second category were people who had no knowledge of our
8 activities and, if they did know about some of our activities, it was either through
9 hearsay or through the media or radio stations. Maybe I'm repeating myself; I am
10 sorry about that, but their fundamental role was to help me understand the security
11 situation on the field for our witnesses.

12 In fact, this sometimes led to the gathering of information which was then
13 communicated to MONUC because some of the information involved could be of
14 greater interest to them. For example, members of an armed group present in a
15 particular area, or the fact that a group was intending to attack a village, so such
16 objective and up-to-date information was handed over to the MONUC officers or the
17 legal authorities, if necessary for them to put it to good use.

18 However, this also assisted me to better understand the situation on the field and it
19 also gave us relative credibility with the other organisations responsible for working
20 in the security domain.

21 I do recall that there were meetings with MONUC officers during which we
22 exchanged information on security. We cross-checked the information and this
23 made it possible for all of us to be better equipped to identify any possible risks. So
24 most of this information was gathered in Bunia and in Ituri.

25 There were a few witnesses in Kinshasa who themselves could tell us whether they

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1 were threatened, often politicians, and there were others who were in Kampala, and
2 this created problems for us because of the rather complex role of the Ugandan
3 authorities with regards to the Congolese nationals in Uganda. They recruited some
4 of them as informers and tried to manipulate our information.
5 So, in that work, the first intermediaries were contactable by most of the investigators
6 and the other group could only be contacted if I was responsible for that contact.
7 I had my network which I could possibly share with other persons, but the main issue
8 was to be able to have a rapid assessment of the prevailing situation. So that was
9 my work, and the informers also informed me about the movements of the subject of
10 our latest warrant of arrest. Maybe we will come back to this later.

11 Q. So, with hindsight, do you believe that the efforts that were made in respect of
12 security, including the intermediaries, of course, do you believe they were effective?

13 A. I do recall that when I left, there was a farewell party and during that party I
14 said that the one thing I was proud of the fact that, to my knowledge, none of the
15 witnesses that we had identified had been injured or killed. I believe that the
16 importance that we attached to security, to information gathering, even if it
17 undermined or delayed the investigations themselves, nevertheless made it possible
18 for all those people for whom we were responsible to survive in an environment
19 which had been particularly difficult for them.

20 And I'm talking about witnesses in all the investigations, not just the investigation in
21 this case. I'm speaking about witnesses in general, irrespective of their ethnicity, their
22 origin, those who perpetrated attacks against them, or the people that they had
23 attacked, because we also had witnesses who were suspects and so all these people
24 were subject to the necessary measures over time. So my answer is, yes, our work
25 was adequate.

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1 Q. I think in some way you've already maybe mentioned this, but just to
2 specifically ask you whether the security issues that we've been talking about at one
3 time or the other influenced the cooperation of maybe certain individuals?

4 A. If we understand from that that there's an existence of a security programme
5 which made it possible for a witness to come to testify before us in a more confident
6 manner, then I think we're kind of kidding ourselves because the witness does not
7 understand systematically the importance of what he could give us at the time and
8 also we couldn't know ourselves what importance that person's testimony would
9 have. And obviously we would inform them of the possibility of this programme
10 but, as I already said, we didn't want either to bring up a new vocation which was not
11 of interest; namely, for witnesses who were more interested in the relocation
12 measures than in the content of their testimony itself. So we had to be very prudent
13 thereto in the discussions that we could have with the witness in order not to find
14 ourselves in a situation where you had individuals who were just there to get some
15 kind of personal interest therefrom in having the status of witness.

16 Q. What about NGOs? To your knowledge, did any NGO ever refuse to
17 cooperate with the OTP because of these security issues?

18 A. I remember perfectly the discussion that we had with an NGO. (Redacted)
19 (Redacted).

20 THE INTERPRETER: (Redacted)

21 THE WITNESS: (Interpretation) They had the particular aspect - well, they are
22 very known - and they refused to cooperate with anyone in their interest and in the
23 interest of their activities. And I remember that (Redacted)

24 (Redacted), was very concerned because he wanted at the

25 same time to denounce the actions of a militiaman and at the same time he was torn

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1 by the fact that his organisation was refusing to have contacts with the judicial
2 authorities such as ours.
3 So from this point of view I can confirm that certain NGOs did refuse to work with us,
4 which I can certainly understand. That doesn't shock me at all. Others, on the
5 contrary, were very interested in cooperating over time with us either in a formal way,
6 or in the field in an informal way.

7 The fact is that, quite simply, we all had to respect the confidentiality agreements
8 which were imposed on the office at the request of the NGOs not to reveal everything
9 with regards to what was given to us. If we consider the United Nations as an NGO,
10 which perhaps we shouldn't, but nevertheless this organisation also helped us a lot,
11 as I indicated, in contradiction with its hierarchy at times, but with the will
12 particularly in the field that there was and as far as possible to contribute to the fight
13 against impunity. That was their basic issue, the fight against impunity, and we
14 were integrated into their agenda of the fight against impunity. I don't know if that
15 answers your question?

16 Q. It does, thank you. And maybe for the next topic I just want to talk
17 about -- you to talk about some challenges again related to intermediaries and -- just a
18 moment, Madam Presiding Officer. Mr Witness, I believe you already have the
19 binder with you and I want to refer you to the following tabs.

20 A. I have no documents. No.

21 Q. I will give it to you then. Madam Presiding Officer, I have just handed over to
22 the witness document DRC-OTP-0232-0276 and DRC-OTP-0230 and 0451, and the
23 third document, Madam Presiding Officer, is DRC-OTP-0233-0176.

24 PRESIDING OFFICER GODART: Ms Bensouda, I've only received a copy of the first
25 document.

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1 MS BENSOUA: Just a moment, please, if I may verify that.

2 Madam Presiding Officer, this is the binder we received from the Defence. I
3 understand that it has been given to everyone.

4 PRESIDING OFFICER GODART: Not yet, as a matter of fact, because I understand
5 the Defence was going to provide the binder as usual a little bit later.

6 MS BENSOUA: Madam Presiding Officer, perhaps we can come back to this and
7 make copies. We can address this area later. In the meanwhile, we will try to make
8 copies for everyone.

9 PRESIDING OFFICER GODART: Yes, sure, and then you'll proceed with other
10 questions now?

11 MS BENSOUA: Yes, I'll proceed with another -- with other questions.

12 PRESIDING OFFICER GODART: Yes, sure.

13 MS BENSOUA: Thank you.

14 Q. Mr Witness, you did talk about when the office went to the field to interview --

15 A. Yes.

16 Q. -- the first group of witnesses that it was 2004/2005. Was there a field office set
17 up by the Registry at the time?

18 A. At the time of the first interviews there was no field office. The field office was
19 set up very progressively. I think that it must have been working fully in 2006.

20 There were difficulties that were linked to the fact that the United Nations refused to
21 house such an office, but at the same time we could not accept the possibility of

22 having an office which was not protected by an armed force such as MONUC. So
23 this gave rise to a lot of delays, and finally it was admitted that there would be a

24 possibility to be put (Redacted)

25 (Redacted). Everybody was able to save face and we

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1 were able to obtain something, but that took an enormous amount of time. That
2 means that, in the first instance, it was necessary to find premises which were discreet
3 in order to hear witnesses and it wasn't always simple.

4 Q. So without the field office, your only logistical support was coming from where?
5 The UN?

6 A. If you speak about logistical support such as air transport, for example, we did
7 not have the right to use the interior or domestic Congolese airlines; we could only
8 use the secure United Nations flights. So if we talk about logistical support for
9 transport essentially, or even exclusively, the United Nations, it was.
10 Now, with regards to the field, I think -- I think we rented a house at a particular time
11 but, in order to carry out certain interviews we, a short time before the interview, we
12 rented a house and we organised the transport of the witness or suspect to the house.
13 And for five days, six days, the person was interviewed there by a team, but the
14 logistical support from the United Nations was very weak.

15 So, often, we had to work under conditions where we had little certainty as to the
16 support of the United Nations. This is something that I've already explained, but the
17 relationship was complex.

18 Q. Were there issues of health that the office had to deal with?

19 A. Yes. Yes, there were health issues. I myself was a victim at a given time. It
20 wasn't easy. I don't know if I have to give further explanations in this regard. That
21 goes out of my medical record, I think. The fact is that I was a victim of microbial
22 infection in Kisangani. Doctors in Kinshasa treated me in a... let us say 'original'
23 manner. I had to be evacuated into Rotterdam, to the tropical clinic in Rotterdam,
24 where they changed the prescription that was given to me, and my body was pleased
25 with that. It was first said that I had malaria but in fact it was just a microbial

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1 infection, but it was -- it had really shaken me. I know that others were also affected,
2 but I have to say it was quite normal when you are exposed, when your body isn't
3 used to living in a certain region, and sometimes you undertake the consequences.
4 More seriously was the health problems of our witnesses and, as far as that is
5 concerned, I remember having on two or three occasions requested the hospital in
6 Bunia, or doctors or chemists there, to allow certain of our witnesses to have the
7 appropriate care.

8 Q. Sorry about that. Was this common amongst the investigators going out to
9 the field, these health problems?

10 A. No, it was quite rare. I don't remember that other investigators were a victim
11 of this type of infection. There were a certain number of difficulties, stomach-related
12 illnesses, but they were benign. You just had to adapt, that's it.

13 Q. I know you have given example of logistical challenges. Were those the only
14 ones that you can think of now? Were there other logistical challenges?

15 A. The problem with vehicles. Firstly, we rented cars in the field so we could at
16 least drive around the authorised part of Bunia and, above all, in order not to use the
17 vehicles that we could have borrowed from the United Nations to transport people
18 who were at risk. If a car -- well, already having a car that was around Bunia was
19 rare. If it was a United Nations vehicle, you were immediately identified. So we
20 had a possibility to rent a vehicle, which made it possible to be somewhat more
21 discreet, until the Court invested in this office and it purchased vehicles, which were
22 not United Nations vehicles of course, but which made it possible for us to fulfil our
23 mission in the most discreet possible way. Our vehicles at that time were similar to
24 those of the NGOs, which there were a lot of in the region, and they weren't
25 identifiable.

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1 Q. And regarding the length of missions, how long would be the average mission
2 that investigators would be able to stay in the field?

3 A. On average, the investigator stayed ten days. I would say on average because
4 some interviews could last longer and sometimes the interview was cancelled at the
5 last minute; there were varied reasons for that. Other times, a new witness would
6 appear who had to be interviewed urgently, so it's very difficult to give you an
7 average, but I think that ten days for the investigator who was coming for interviews
8 was the average duration, one week, ten days. For the investigator himself, this was
9 difficult because that person would lose motivation; they'd want to go back at the
10 start. It wasn't -- there wasn't a field office, you had to find apartments. Sometimes
11 it was just on the floor with a duvet, so there was no shower sometimes. They
12 weren't the best conditions in the long term. Afterwards, I think things got
13 considerably better, of course.

14 Just a last point: As far as possible we tried, and this was one of our concerns, to
15 have some kind of rotation, and in this way, as often as possible there was somebody
16 from the team in the field, and here I'm talking about the first months. There were a
17 few investigators, which meant that it wasn't possible to have somebody permanently
18 in the field, and this would have been the correct approach, in my view.

19 Q. Mr Witness, you have explained, and despite all of these difficulties, with the
20 help of intermediaries, the office was able to interview witnesses. I'm just going to
21 ask you a couple of questions about interviews; they would be general questions.
22 You talked about screenings and interviews. Could you explain the difference
23 between the two?

24 A. I think I spoke about that before but, screening. I can't even find the word for
25 it in French. Well, anyway, screening consists of identifying what the witness could

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1 tell us. Following the screening - and I would also say together with the Prosecutor,
2 or the Prosecutor's team in the Prosecution's section or division - we had to ask
3 ourselves whether the potential content of this interview would justify presentation
4 in the trial or whether there was no added value, nothing to be added, so we
5 wouldn't go further with that witness.
6 For the screening, this was an interview which was relatively -- yeah, not very
7 significant in terms of the content, but what we tried to do was to go around
8 everything which might be interesting with regards to the witness's personality, and
9 then in agreement with the Prosecutor, if that person was accorded the status of
10 witness, then you'd have a much longer interview. And that would also be put in a
11 database but there would be a possibility to come to trial. So the most significant
12 interview was just carried out on witnesses for whom we considered it was worth it,
13 both for them and for us.
14 Now, the difficulty for me was that, whatever the status of the person on whom we
15 carried out a screening, that person was always a potential witness, and you had to
16 ensure a certain degree of protection for that person, particularly towards the end, I
17 invited investigators to be very attentive to the need or not to take up contact because
18 every time this meant that we had to massively increase the list of people to be
19 protected, without even having an interest in having them at the Court. And this
20 was all the more the case given that the jurisprudence of the VWU, the Registry unit
21 responsible for protecting witnesses, was constantly to tell us in the evaluation that
22 they made of our witnesses, for which we were asking protective measures, they told
23 us, "Is this witness" or "Will this witness really be of use to you before the Court?"
24 So for them it was already a key element of the evaluation. Well, among our
25 potential witnesses, there were people who we knew that we really didn't want to see

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1 them come before the Court, and that's why I wished more prudence in the choice,
2 taking into account the way in which the Registry interpreted the applications that we
3 would submit to it.

4 Q. And the interviews, where normally would they take place?

5 A. That's the whole point; there wasn't normally. There was no normal location
6 systematically. Constantly at least, we tried to identify different places while we
7 didn't have this field office. It could really take place in a lot of different places,
8 particularly when people came from neighbouring villages. I remember that we
9 used certain churches, Presbyterian, but you also had to be careful in that regard
10 because the role of the clergy in the political life of Ituri is very important, and we
11 didn't also want to draw too much attention to that.

12 I remember there was a library, there were schools, there were places which were
13 deserted which we also used or, indeed, houses which we rented and then we could
14 carry out such interviews. But I would repeat, there was no favoured location in
15 which we interviewed our witnesses on a systematic basis.

16 Q. Thank you. And when investigators would meet potential witnesses, how
17 would they present themselves to these witnesses?

18 A. The investigators always introduced themselves as members of the Office of the
19 Prosecutor of the International Criminal Court. They always systematically
20 presented the mandate of the Court and always stated the fact that they were
21 working in Bunia in the interest of the Court. I don't know if I have already said this,
22 but they always stated during the interviews, they expressed the capacity in which
23 they were working. As much as possible, they would give their business cards.
24 They would insist on the fact that they were investigators.

25 MS BENSOUA: I'm sorry, Madam Presiding Officer, just a moment. Madam

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1 Presiding Officer, I don't know whether we're stopping now or it's going to 4.30. We
2 can go -- I'm not sure of the time, I'm just --

3 PRESIDING OFFICER GODART: Today it's 4.00, and we will see tomorrow where
4 we are at midday.

5 (Interpretation) Sir, thank you for your testimony today. Tomorrow, we will
6 reconvene tomorrow at 9.30.

7 THE WITNESS: (Interpretation) Can I make a comment, Madam Presiding
8 Officer?

9 PRESIDING OFFICER GODART: (Interpretation) Go ahead.

10 THE WITNESS: (Interpretation) I would like for us to sit as long as possible
11 because I don't want to spend the entirety of this week in this beautiful city. I have
12 work to do; I'm not on leave, as you know. I do not know the full programme of the
13 examination, whether the OTP wishes to examine me for much longer or if we should
14 launch into the questions from the Defence. Is it possible for me to have a schedule,
15 please?

16 PRESIDING OFFICER GODART: (Interpretation) Yes. We cannot sit beyond
17 4 p.m. today. Those are the normal working conditions of the Registry, of the
18 interpreters and of the stenographers. According to the programme provided by the
19 parties, the OTP has about a day and a half; the Defence, two and a half; and the legal
20 representatives of victims, one hour - one hour, 15 minutes. Now, all of that is going
21 to fill this week of Monday to Friday, and we will be sitting from 9.30 to 4 p.m. or
22 even perhaps 4.30 p.m. on some of the other days because we must finish this week.

23 THE INTERPRETER: The presiding officer is going at breakneck speed and the
24 interpreters cannot keep up.

25 PRESIDING OFFICER GODART: (Interpretation) Today it is not possible to

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1 continue. I do understand the constraints which you face, but I think the parties are
2 aware of this. Thank you. We meet tomorrow at 9.30.
3 (The witness stands down)
4 *(The deposition suspends in closed session at 4.04 p.m.) Reclassified as open session
5 RECLASSIFICATION REPORT
6 Pursuant to Trial Chamber I's email instruction dated 2nd November 2011, the
7 transcript is reclassified as public after the indicated redactions have been
8 implemented as ordered by the Chamber. All private and closed sessions (*)
9 are now available to the public with the exception of the portions the transcript
10 that have been redacted.