

1 International Criminal Court

2 Trial Chamber I

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

4 Case against Thomas Lubanga Dyilo

5 Hearing - Open Session

6 Friday, 6 February 2009

7 The hearing starts at 9.32 a.m.

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

10 PRESIDING JUDGE FULFORD: Mr. Sachdeva, before we have the
11 witness called back into court, I want to address the bar again through
12 you. Is there any support for the proposal made by Mr. Mabanga to expand
13 the role of the Rule 74 advocate?

14 MR. SACHDEVA: Good morning, Mr. President. No, there isn't.

15 PRESIDING JUDGE FULFORD: Thank you. Mr. Walley.

16 MR. WALLEY (interpretation): President, I have experienced a
17 situation previously, and I would like to say that in the client/counsel
18 privilege relationship it's very difficult to avoid certain questions.
19 For instance, the issue of protection measures. And if a witness such as
20 my learned colleague's client intends to make a request for protection
21 measures, it's logical for them to go to the same counsel. So I don't
22 see why that couldn't be applied to all the issues related to his
23 testimony.

24 PRESIDING JUDGE FULFORD: Good. So that would be your
25 observations. Very helpful. Thank you very much, Mr. Walley.

1 Anyone else on this issue?

2 MS. MASSIDDA: Good morning, your Honour.

3 PRESIDING JUDGE FULFORD: Ms. Massidda.

4 MS. MASSIDDA (interpretation): I share in my learned colleague
5 Mr. Walley's opinion. I think it's important for the counsel who has
6 quite a delicate role to play to have access to certain files such as my
7 colleague was asking, witness statements.

8 I have some problems regarding paragraphs 19 and 20, including my
9 learned colleague's application, because I don't quite understand what is
10 meant by "to be able to intervene at the end of the examination to make
11 observations." My learned colleague, paragraph 20, refers to final
12 observations, and I here again share in my colleague's opinion,
13 Mr. Walley, that this role must be a limited one, especially in regard
14 to the assistance the counsel should give the witness under Rule 74.
15 Thank you.

16 PRESIDING JUDGE FULFORD: Well, that's very helpful and those
17 submissions will form our eventual decision which will be given at the
18 beginning of next week regarding Mr. Mabanga's role. Thank you all very
19 much.

20 We'll now need to go into closed session -- Mr. Sachdeva.

21 MR. SACHDEVA: I'm sorry, may Ms. Samson address the Bench.

22 PRESIDING JUDGE FULFORD: Of course.

23 MS. SAMSON: As Mr. Sachdeva had mentioned yesterday in relation
24 to contact with witnesses in this case, I wanted to seek the Chamber's
25 guidance on a similar issue.

1 PRESIDING JUDGE FULFORD: I'm sorry there's a strange crackling
2 noise in my headphones, but please carry on.

3 MS. SAMSON: Thank you. It's in relation to contact with the
4 witnesses in this case in the context of the Katanga case, because it's a
5 common -- because it's a common case in some respects. There are
6 witnesses appearing as trial witnesses in this proceeding who provide
7 information that may be Rule 77 or potentially exonerating in that case,
8 much as we have seen with the Katanga witnesses having a Rule 77 impact
9 on this case, and that team has requested that we make a request of the
10 Trial Chamber that they, in coordination with VWU, be permitted to
11 contact our witnesses where this disclosure may apply for the limited
12 purpose of securing the consent of the witness, or not, to have their
13 identity disclosed in the Katanga case.

14 PRESIDING JUDGE FULFORD: That exercise clearly doesn't involve
15 descending into the detail of the evidence that's been given before this
16 Chamber, does it, Ms. Samson? I think that logically follows.

17 MS. SAMSON: Yes, that's correct.

18 PRESIDING JUDGE FULFORD: Unless there are any objections, I'm
19 sure that's appropriate, Ms. Samson.

20 Any objections, Maitre Mabilille?

21 MS. MABILLE (interpretation): No objections.

22 PRESIDING JUDGE FULFORD: Certainly, Ms. Samson.

23 MS. SAMSON: Thank you very much, your Honour.

24 PRESIDING JUDGE FULFORD: Good. Now --

25 (Trial Chamber and Court Officer confer)

1 PRESIDING JUDGE FULFORD: Mr. Sachdeva, the never-ending wonders
2 of our technological structures, there is apparently a serious
3 malfunction and we are going to have to rise to have it dealt with.

4 I'm told it will take 20 minutes, so do depart for 20 minutes,
5 but could you please make sure you're available in 20 minutes' time.

6 We'll rise.

7 Recess taken at 9.40 a.m.

8 On resuming at 11.16 a.m.

9 COURT USHER: All rise. Please be seated.

10 PRESIDING JUDGE FULFORD: We understand that the problem has now
11 been resolved. However, we require a full written report as to how this
12 has come about given that our understanding is that the equipment is
13 checked every morning at least half an hour before the court sits. It
14 needs to be understood that the consequences of today's delay in which we
15 have lost one of our two-hour sessions are probably fairly considerable
16 in that if we had had both two-hour sessions, it is highly likely that
17 this witness would have concluded his evidence and would have been free
18 to return to wherever he has come from before the beginning of this
19 weekend.

20 As a result of this technical interruption, it is now highly
21 likely that he will have to remain in The Hague over the weekend and will
22 not be able to conclude his evidence until the beginning of next week.

23 In our view that is a very serious matter indeed, and we wish for
24 a full and comprehensive report explaining what has happened.

25 Good. We now go into closed session, and the witness, please, is

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

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1 to be brought back into court.

2 (Closed session)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Open session)

15 PRESIDING JUDGE FULFORD: Mr. Desalliers.

16 MR. DESALLIERS (interpretation): Thank you.

17 Questioned by Mr. Desalliers: (Continued)

18 Q. Good morning, sir.

19 A. Good morning.

20 Q. On the first day you gave your testimony to this Court, you
21 explained that you were informed while you were in Bunia that your son
22 had been abducted and that he was in Bule camp; is that correct?

23 A. Yes. My son went to Bule camp.

24 Q. You said that you were informed that your son was in Bule and
25 that that information came from a trader. What is the name of that

1 trader?

2 A. The trader's name is (Expunged).

3 THE INTERPRETER: If the interpreter heard right.

4 MR. DESALLIERS (interpretation):

5 Q. The interpreter is saying he is not sure he heard the name right.

6 Is the name version (Expunged)?

7 A. (Expunged).

8 PRESIDING JUDGE FULFORD: (Microphone not activated) ... risks to
9 the witness.

10 MR. WALLEYN (interpretation): Not to my knowledge, your Honour,
11 but maybe we should ask the person concerned.

12 PRESIDING JUDGE FULFORD: I don't think that's appropriate. Out
13 of an abundance of caution we're going to make an order in relation to
14 this name, but perhaps we can just let this run for a few seconds so that
15 we can conclude this part of the cross-examination and so the order can
16 encapsulate everything to do with this name.

17 I'm sorry to have interrupted you, Mr. Desalliers. Please
18 continue.

19 MR. DESALLIERS (interpretation): Your Honour, I was going to ask
20 the witness to give the full identity of the person. I assume once that
21 identity is established and known, then we will continue in open session.

22 PRESIDING JUDGE FULFORD: You want to go further into -- so it's
23 not just his name. You want to ask other questions about who he is.
24 Right. I think the safest course during these questions is for us to go
25 into closed session.

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

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1 Closed session, please. And can we have an order for the name
2 that's been given.
3 (Closed session)
4 (Expunged)
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Witness: Witness DRC-OTP-WWW-0299 (Resumed) (Closed Session)
Questioned by Mr. Desalliers (Continued)

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13 Page 8 - Expunged - Closed session

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

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15 (Expunged)

16 (Open session)

17 PRESIDING JUDGE FULFORD: We're now back in open session. I'm
18 sorry for members of the public who are on occasion seemingly
19 inexplicably excluded, but there we are.

20 Please continue, Mr. Desalliers.

21 MR. DESALLIERS (interpretation):

22 Q. Sir, the trader you were talking about a short while ago, he told
23 you about the presence of your son in Bule camp. Now, did he tell you
24 this in Mr. Lubanga's residence?

25 A. I didn't understand your question well. Can you ask it again so

1 that I can fully understand what you mean?

2 Q. You certainly remember the time when the trader informed you that
3 your son was in Bule camp. Do you remember that, remember that time when
4 he told you that your son was in Bule camp?

5 A. Yes.

6 Q. And where were you at the time?

7 A. I was in Bunia.

8 Q. Where in Bunia?

9 A. I was at the military headquarters.

10 Q. So the trader went to the military headquarters and asked to see
11 you; is that correct?

12 A. Soldiers move around. They go everywhere without uniform on,
13 without weapons. So he came to trade in the main market, and I was
14 strolling around with other soldiers. And so we met somebody from our
15 hometown and we started discussing. So nobody could know that we were
16 soldiers because we were in the market. And I would like to tell you he
17 did not come to the military headquarters. We were moving around. We
18 were free that way. And you know, we did not -- were not wearing our
19 uniforms. When you are in uniform you must remain in military
20 headquarters.

21 Q. So you were not in the military headquarters. You were in
22 civilian clothes in the main market of Bunia; is that correct?

23 A. When I met that trader, we were in Bunia market. We were
24 strolling around, and we were having drinks, and that was the practice.
25 And after that we will go back to military headquarters. When we go back

1 to military headquarters, the tradition was to put our military uniforms
2 back on, to wear our boots, and to take up our weapons. At the time I
3 met the trader, I was in civilian clothes and I wasn't bearing any
4 weapons. And so that was the time I was at the main market and that's
5 the time I met him.

6 Q. When you met him in the market, what precisely did he tell you,
7 this trader?

8 A. I have already told you what he said. How many times do you want
9 me to repeat it? I just told you that he informed me that my son was --
10 had gone for military training. How many times do you want me to tell
11 you this?

12 Q. I would like to know, sir, if you remember well the exact words
13 he used. I don't -- I'm not asking for a general description of what
14 happened. Can you remember the exact words he used?

15 A. The exact words which he used, well, you know, we were speaking
16 in Swahili. How do you expect me to quote verbatim what he said? In any
17 case, he told me, "Your son has gone for military training in Bule." How
18 do you expect me to translate that for you in French. He said something
19 which I deemed important. Then we discussed other things, and I would
20 ask him things like, "Well, you are here. How you things back home?"
21 And he talked about things that happened back home, and then he added by
22 telling me that my son had gone to Bule, to the training camp in Bule.
23 Now, how can I give you all of that in detail? That's it.

24 Q. Did he tell you at that time how your son went to the Bule camp?

25 A. Well, I'm sorry, sir, I would not say he followed my son to Bule

1 camp and knew exactly what happened to be able to describe the process to
2 me, no. He had heard that the child was in the training camp in Bule,
3 and so he told me that there is a rumour: We have heard that your son is
4 in Bule camp. He did not follow my son to Bule camp to be able give all
5 the details you are asking for.

6 Q. So the trader didn't give you any details on how or the reasons
7 why your son was in Bule camp. He didn't give you any details; is that
8 correct?

9 A. He heard that my son had gone to the military training camp in
10 Bule. Do you -- do you expect my son to have told him that, "I was going
11 to a training camp to do such and such a thing"? The child didn't talk
12 to him, and so how do you think the trader would know all these details?

13 Q. How did the trader -- how was this trader informed of the fact
14 that your son was in Bule?

15 A. Sir, you know, information in a town, I'll give you an example.
16 In this city if somebody dies or if somebody disappears, the persons
17 would not know why the person died or why the person disappeared.

18 So they were in the same city, and the news moves around. So of
19 course he would hear. And again, I was a soldier. Of course he would
20 know about things that concern me. So it's something that happened to my
21 son. And everybody in Fataki knew that my son was in Bule. It was
22 common knowledge, so how wouldn't he know?

23 Q. So what you're telling us is that everyone in Fataki knew that
24 your son was in Bule; is that correct?

25 A. Yes, yes.

1 Q. But you personally heard it for the first time from this trader?

2 A. Yes. I was not in Bule. The -- the distance between Bunia and
3 Bule is 90 kilometres. How could I know? My eyes couldn't see all the
4 way to a distance of about 20 -- or 90 kilometres.

5 Q. But you just said that you were surprised that -- to hear that
6 your son was in Bule, and you didn't bother to ask the trader how he came
7 about this information that your son was in the training camp in Bule?
8 You didn't ask him the question?

9 A. The trader told me, your son is in Bule camp, and I asked him, is
10 that true? He said, "That's true."

11 You know, the way he narrated it to me, you must understand he
12 was somebody from the town. He knew that my son was in Bule. He
13 couldn't deceive me. He told me something which was true, and I was
14 surprised, and I said, I'm going to look into the matter. I didn't tell
15 him what I really thought about it. I just told him, "We will see, look
16 into the matter." My idea was that -- I told myself this child was a bit
17 too young for this, and I will do everything I can to get him out of it,
18 but I didn't let the trader know what I thought deep down about this
19 matter.

20 Q. In the first part of your testimony on the first day, you also
21 said that it was difficult for you to obtain permission to go look for
22 your son. Now, the question I'm going to put to you is the following:
23 Why didn't you start by asking permission from your superior, from your
24 boss, in order to go look for your son?

25 A. You -- your job is different, so you cannot understand how it

1 works in the army. My son was in Bule, in the military camp. He had
2 gone to be trained as a soldier. I asked permission from my boss to go
3 and get my son from Bule. Now, if I were to do that, how do you think
4 they were going to take it?

5 You know, my son was going to be a soldier like me. How could I
6 let on that I was against the fact that my son should become a soldier?
7 But personally, as a father I was against it. Now -- but if I asked for
8 permission, what do you think my boss would have thought, that I didn't
9 want my son to join the army? He was not the only one. There were other
10 children.

11 You know, I'm trying to explain this because you're trying to
12 mislead me. I said certain things on the first day, and I don't think I
13 said everything. I did not ask for permission. If I asked for
14 permission, if I had asked for permission and told my boss I was going to
15 get my son back from training, I could be beaten up because the rules
16 were that we had to pay, that is, pay with your body, as they say in my
17 mother tongue, because your body belongs to the State, so to speak. It
18 is only your weapon that can go to paradise. That was the saying. So I
19 was afraid. I didn't want to be beaten up because of for the fact that I
20 was going to get back my son. So I made a personal decision that I was
21 going to get back my son.

22 You know, I'm a true soldier. I know the rules in the army. I
23 know that if you behave in a particular way you will be treated in a
24 certain way. So I didn't ask for permission.

25 Q. But at the time you were informed, were you told that he was

1 undergoing military training in Bule? Is that what was given to you as
2 information?

3 A. Please, how many times do you want me to answer this question? I
4 have already given you the answer. The information was given to me, and
5 yes --

6 PRESIDING JUDGE FULFORD: (Previous translation continues) ...
7 had that question put three or four times and had the same answer on each
8 occasion. You're grinding this very small indeed. So please, don't put
9 the same points over and over again.

10 MR. DESALLIERS (interpretation): The reason why I was asking the
11 question was I wanted to know why he didn't ask for the permission. Was
12 it because his son wore a uniform and was an army soldier? Because in
13 the first part of his testimony the witness says that once somebody
14 receives a uniform they become a soldier. Well, that's what I understood
15 anyhow. But if you're a soldier, you're not in training. You're either
16 a soldier or in training. So the question I was going to ask the witness
17 was, was he wearing a uniform, was he a soldier, or was he in training,
18 because it has to be either one or the other. In his mind, was he
19 informed that he was in training or a soldier?

20 PRESIDING JUDGE FULFORD: Mr. Desalliers, the question you put,
21 line 19, page 14, "But at the time you were informed, were you told he
22 was undergoing military training in Bule? Is that what was given to you
23 as information?" Now, that's a question that has been covered two or
24 three times already. Now if there are additional matters arising out of
25 it you can, but can you please make sure you don't repeat the same

1 questions that have been put before. Thank you.

2 MR. DESALLIERS (interpretation): Very well. Thank you.

3 Q. So you didn't ask for permission. You decided to leave the camp.

4 So it is true to say that you were deserting the army.

5 A. Well, I made statements. When I did that, I was deserting. Look
6 at the papers if you don't have the answer any more in front of you.

7 Q. So my question is: You believed at the time it was less risky
8 for you to leave the army than to ask the permission from your superior
9 to go and get your son. You thought it was less risky for you to be a
10 deserter?

11 A. Well, you don't know the army we were in during the rebellion.
12 That's why you're putting me to make statements, but please be patient
13 and just listen to my explanations.

14 Look at the army without any money. I have a family, and their
15 money was there in the army. Children were wounded. People died. There
16 was 0.001 money to purchase scissors to cut your hair or a razor. People
17 were amputated. They're limping today. This all leads to expenses. I
18 didn't want my son to endure such suffering.

19 Sorry, you know that we started serving with Lubanga. I was
20 Lubanga's escort. We started when he was a Minister for the Defence. I
21 started, I believe, in November 2001, and then there was Christmas, and
22 we spent time with him whilst he was eating, we were waiting. And then
23 we continued until April 2002. The dates were the 12th or the 3rd --
24 13th. Then there was the war in Bunia. Then there was Museveki (as
25 interpreted) who was a Minister for the Defence, and they fought Thomas

1 Lubanga's troops. There was war, and Musa Nmusi's (as interpreted) men
2 chased us away from Thomas Lubanga's presidency, and the men were next to
3 their residency, the house of Thomas Lubanga. Musa Manu (as interpreted)
4 was then killed. That was right next to the -- the home. People
5 objected to this. They started firing. Bombs were fired, and
6 Mr. Lubanga was in his home, but his secretary, his driver, and Bosco
7 Ntaganda were there, but the situation was very tricky. They -- they
8 went outside. They started discussing what to do, where to go. I was
9 there. I said, "Well, listen, I'm here. Let's go." We asked for the
10 vehicles. The drivers came. Thomas Lubanga and Bosco Ntaganda entered,
11 and we -- what did we do? Well, I was walking in front of the car with
12 my weapon to save his life, protect him. We walked through the whole of
13 town. I was looking out for the enemy to save the life of the president
14 and the minister.

15 We crossed the main road, and I realized that there were soldiers
16 pointing their weapons at me. I realized that we were in a very tricky
17 situation, but I realized that they were Ugandan soldiers, so I put my
18 hands up and I went up to them, and they asked me, "Well, that's the
19 problem?" And I say, "Well, listen, we're with the minister." And they
20 asked me, "Where are they?" And I said -- and I called the car over.
21 The car came over immediately. Thomas Lubanga came. Bosco Ntaganda was
22 there. We were right next to the Ugandans. We then were next to a home,
23 and I called the civilians. But the war was going on. The bombs were
24 being fired at the time.

25 I called the civilians. They took the vehicle to a terrace. I

1 had asked them to go to the airport, but at that stage we didn't have any
2 problems any more. I was still following the car. The driver stopped.
3 The Ugandans escorted us to the airport, and there at the airport there
4 were several Ugandan soldiers and they stopped me. They took my weapon.

5 Then I left that place. I went back to my home -- to the home,
6 and there were Ugandan soldiers there guarding the home. But I managed
7 to go in a few days later, because I said to the soldiers, "Well, I left
8 my -- my bags in the home," but I couldn't find my bags again. My
9 clothes were gone, my belongings were gone. I couldn't find them any
10 more because war broke out very abruptly.

11 So I went to the town because I knew people in town, but Thomas
12 Lubanga stayed, and I said, "Well, the Ugandans have now taken over your
13 home." That's what I told him.

14 Now, I walked in town. I met some people I knew. They gave me
15 some clothes. Then I went back to my group, and they took us to the
16 headquarters where the policemen were located, and at the time the
17 Ugandan soldiers were encircling us. We had the Ugandan soldiers next to
18 us.

19 Every time we went somewhere we'd bump into Ugandans. If you had
20 uniforms, you had to stay with the soldiers, and you couldn't carry a
21 weapon with you.

22 We waited for two weeks, and then we were given our weapons back,
23 and we went back into the headquarters. But we didn't go to his home
24 anymore.

25 Then he stayed at the airport, I think for about a month, and

1 then went back to his house, because at that stage it was only guarded by
2 the Ugandan soldiers. After that, they took him to the airport. From
3 the airport they went to Uganda.

4 In Uganda it was difficult. He was escorted by bodyguards, and
5 then from Uganda they transferred him to Kinshasa, and there they put him
6 under house arrest. And then Kisémbó and Bosco, who were with us at the
7 headquarters, what did they do? Well, Bosco created a training centre
8 for new recruits. Bosco went to Mandro. It was the first centre that
9 was opened. The first centre was opened in Mandro. And people were
10 trained in the centre. They were pretty well trained. One soldier,
11 Mabusá Mulwýusi Labongo (phoen), who was a district commander in Bunia,
12 in our district, sent the soldiers to get the people from the bush in
13 Mandro, but they opened fire on the children. Some died; some fled.
14 Bosco and the children fled to hide the children somewhere else. And
15 once they had hidden the children, the -- Mbusó Manyanu's (as
16 interpreted) soldiers arrived, and Commander Safari, who you'll see, he
17 then took command with Chief Kahwa.

18 Thomas, you were Kinshasa. You can't know all that. You were
19 under house arrest in Kinshasa.

20 So Safari talked with people back home, and at one stage we heard
21 that the planes were coming to give -- or deliver weapons to Mandro
22 training centre, and it's at that stage that we were sent to go and
23 collect the weapons and ammunition that had just been delivered. So we
24 gathered them and went back to Bunia. And the soldiers being trained in
25 Bunia received weapons. Each soldier received a weapon.

1 Before the training there weren't many soldiers, so the soldiers
2 were given individual weapons, ammunition, bombs, and then Kisembo
3 started chasing the soldiers from Mbusani (phoen) to Bunia. He
4 reorganised the war with Bosco. The group from Nyamwisi fled. They
5 abandoned Bunia, and then Kisembo arrived and he disseminated the message
6 on radio saying, If you have a weapon come and give it to me. If you
7 want to work with me, work with me. My name is Commander Kisembo. All
8 this information was broadcast on the radio. And then at that time all
9 the while the training was going on in Mandro, the weapons were delivered
10 by parachute, were dropped, air dropped. We recovered the weapons, food.
11 And the merchants would collect the food -- the weapons to sell them for
12 food. So the mothers at the market would gather the maize and beans, and
13 all that was sent. And then they had -- they went back with the
14 ammunition, the weapons.

15 And -- and Thomas Lubanga was then freed from Kinshasa. He
16 arrived in Bunia, but when he arrived in Bunia he went directly to visit
17 the training centre that had been opened in Mandro, but he found that
18 there was a different -- different atmosphere there. There were a lot of
19 soldiers there. The soldiers didn't wear a uniform. They had weapons,
20 though, heavy weapons. But he didn't leave all that. He said,
21 "Takolonga (phoen) --" he visited people at the training centre and said
22 "Takalonga," which means we're going to win.

23 And then he saw that weapons were being air dropped, but they
24 were damaged in the process. Sometimes the boxes that were tied up with
25 ropes were cut, and that is how the weapons came to be damaged. And he

1 said, "No. Now we have to be careful. The weapons have to be dropped
2 next to Tchomia. They have to be brought in by plane in the airport next
3 to Tchomia. They can't be dropped anymore."

4 And then the training went on for a while, and we were sent to
5 wait for a plane that was about to land in Tchomia. So we went to
6 Tchomia. The air -- the airplane landed. It delivered the weapons, the
7 bombs, the ammunition, and then the -- the plane took the uniforms and
8 Thomas Lubanga's soldiers started wearing uniforms after we'd been to
9 Tchomia, because the plane delivered weapons and uniforms. So after that
10 time everybody had a uniform and they became real soldiers. But they
11 didn't have shoes yet. The shoes only came later.

12 When Thomas Lubanga went back to Bunia, his policy was the UPC's
13 policy. He said -- or he had been nominated as president of UPC in
14 Bunia, but what happened in Tchomia is that the weapons arrived, and we
15 guarded the weapons, and the weapons were then transported, and people
16 came to get the weapons and bring them into town.

17 I left around November. I left Tchomia around November to go to
18 Bunia. I stayed in Bunia for a while before the Christmas celebrations.
19 But before Christmas I was sent to Beni where children, soldiers, women,
20 died. Some had been cored, others had been amputated. The soldiers were
21 fleeing from that place, but I was sent there. I was sent there, but God
22 protected me. God protected me until the Christmas celebrations.

23 After Christmas, I spent the whole of January and then in -- over
24 there, and in February I went back to Bunia. And I told people it was
25 terrible over there. I arrived in uniform in Bunia. And it's true.

1 When I arrived there, I walked around in the market and I met the
2 merchants and shopkeepers, and they told me -- they were the ones who
3 told me that my son was at the centre. And that was really hurtful,
4 because I had been suffering a lot, and I knew my child had been in --
5 conscripted, and I thought it was terrible. So I did everything I could.
6 I took my weapon, and I went silently to Bule where the children -- where
7 the child was.

8 And then when I arrived I was told that the child had just gone
9 with the commander, and so I went to Largu, and that's where I found the
10 child. And I said, "Listen, it's enough." I had a bit of money by
11 carrying out the operation. I fed the child. I cheered him up. I said,
12 "Listen, I'm your father. Look at my body. My body is torn apart. I am
13 not happy anymore, even 0.00 is not enough." Thomas Lubanga's army had
14 money, but the difficulty was I couldn't let -- I couldn't allow for my
15 child carry out that kind of work.

16 I had to get him away from it, and that's why I went to get my
17 child and take him to Bunia. And when I arrived in Bunia I left the
18 military service because it had done too much harm to me. It's a bad
19 job. It's best -- better to be a soldier for the government, but to be a
20 soldier for the rebels is very hard, because in the rebellion only the
21 chiefs become richer, but the normal soldiers don't. We didn't even have
22 money to buy soap.

23 I arrived in Bunia and then didn't return to the military service
24 anymore. I called them. And one month after I deserted Bunia fell to
25 the Lendus' hands because -- and Hemas' hands because the Lendu were

1 fighting the Hema. And then there was a big war.

2 Thomas Lubanga and the Hema fled to -- because in Bule there was
3 an airport and the weapons were dropped over there or arrived over there.
4 There was a stock of weapons in Bule so he -- that's what he did, he fled
5 to Bule because there were soldiers over there. But I wasn't part of
6 them any more after that. I refused.

7 We all left Bunia. When the mission returned to Bunia, they
8 pillaged Bunia, and the Ugandans, well, the Ugandans mandate ended. The
9 president stated, "You don't have a mandate here anymore. You have to
10 leave the Congo. You have to go back to Uganda. And when the Ugandans
11 left, they said, Well, you, Kisembo, you fled very far away. You were
12 with Bosco. And what did Kisembo do? He actually came back and he
13 reorganised the UPC military, and they chased the Lendu to Bunia. So
14 Bunia was recovered and fell to the UPC. And when the UPC had Bunia
15 again under control, peace returned, however, people in the forest were
16 still living with fear.

17 It was very difficult to stay in the forest because the Lendus
18 were attacking the Hema and we went back to Bunia to live, but we stayed
19 there approximately one month and then the French soldiers arrived.
20 Artemis arrived, and when they arrived they put everything straight with
21 Thomas Lubanga, and they said, "Mr. Lubanga, you have to remove your
22 soldiers from Bunia. They have to go five kilometres away from Bunia,
23 and you have to stay in your home with the soldiers, and you have to say
24 where they are." But I said I don't want to be part of the soldiers
25 anymore so I didn't go there. I said I'm deserting. I can't go back

1 anymore. And so he drew up a list of the soldiers with whom he stayed in
2 his home, but Kisémbó and Bosco went further than five kilometres away
3 from Bunia. Some went to Centrale and other places. So Bunia remained
4 in the French hands, in Artemis' hands. But we as deserters, our
5 priority was to stay in Bunia. Nobody came to bother us, so we stayed
6 there in -- until September.

7 And in September Artemis soldiers packed up and they left, I
8 can't remember if it was September or October but it was around then, and
9 that's when I registered my child for the sixth year in Bunia at school,
10 and the school was called La Foi, Faith, because he had given up his
11 studies because he didn't do well, because he finished his first year in
12 2003, 2004.

13 So after that the child left to go and visit the family, but he
14 was caught again and in Centrale. So he went back to the army, and after
15 that they took him to Mabanga. So I thought, well, if I go over there
16 I'll be arrested. That wouldn't be -- that wouldn't serve any purpose or
17 be very useful. So I did what I could. I spoke to people in town. I
18 had asked them to go and get (Expurged).

19 So they took him from Mabanga to Nizi. And from there I went to
20 Nizi and took a vehicle and we returned to Bunia and that's when he went
21 to the demobilisation centre.

22 You're asking me questions that are -- are losing me a little
23 bit. Now, this is the story why I'm here.

24 PRESIDING JUDGE FULFORD: I'm finally going to interrupt, not in
25 any way to criticise you. Absolutely right that you should give your

1 evidence in the way that you wish, and we completely understand that. My
2 only concern is there are some very brave people who are doing the
3 interpreting, and a very long section like that spoken quickly puts them
4 under a lot of pressure. So we'll just pause for a moment so they can
5 take breath and many thanks to all of you.

6 Now, I'm not going to cut you off.

7 It better be good, Mr. Walley.

8 MR. WALLEY: Some things should (Microphone not activated) I
9 think.

10 PRESIDING JUDGE FULFORD: An order has already been made.

11 Now, you were giving us a narrative from beginning to end. Was
12 there anything else that you wanted to say, as it were, to finish it off,
13 because I have, in a sense, interrupted you.

14 THE WITNESS (interpretation): Your Honour, no. I apologise for
15 speaking so much. It's because I wanted to say everything I wanted to
16 say, but I apologise.

17 PRESIDING JUDGE FULFORD: You are not to apologise. It is
18 perfectly understandable and quite acceptable for you to speak in the way
19 that you have.

20 I think Mr. Desalliers, who is asking you questions, will
21 probably ask you to be slightly shorter in your next answer. So if you
22 could focus now on the questions he's going to put to you and see whether
23 you can address the particular matters that he raises, but you thank you
24 very much.

25 Yes, Mr. Desalliers.

1 THE WITNESS (interpretation): Yes. I am going to answer the
2 questions.

3 MR. DESALLIERS (interpretation):

4 Q. There's something I'd like to come back to in the long
5 explanations you gave us. You said something about Commander Safari, and
6 you described him by saying, "Commander Safari, whom you'll see later."
7 What do you mean, that we're going to see him before this court?

8 A. No, no. That's not how I meant to say it. I think you didn't
9 understand correctly. I said that he was the person who requested
10 weapons, and it was Safari who requested them, a Rwandan. He's of
11 Rwandan nationality.

12 Q. Very well. Thank you. I come back to the time when you went to
13 Bule to look for your son. How did you go to Bule? What means of
14 transport did you use?

15 A. Do you want to know the means of transport I used? Is that your
16 question? I went on board a vehicle. There are vehicles that go to
17 Bule. So these were vehicles of traders, and we would travel on board
18 these vehicles of traders.

19 Q. Did you go directly to the camp in Bule?

20 A. I went with soldiers, the soldiers who were with me in the
21 residence. So I had nothing to fear. These were people I used to drink
22 with. So I was not afraid. I went to the camp directly.

23 Q. So there were certain soldiers who accompanied you then?

24 A. No, the soldiers could not accompany me. I went alone. And
25 there was the commander of the instructors, who was Christian. So I was

1 moving around with Christian. I went to see Christian, and I asked him,
2 "Where's the boy?" And he told me, "The child was here, but he was taken
3 by our commander to Largu." And I told him I wanted to see the boy. So
4 I left Bule to go and see the child in Largu.

5 Q. Just for more clarification, my questions relate to the time when
6 you left Bunia to go to Bule, except I understood -- except I
7 misunderstood, but it looks like you said you were accompanied by certain
8 soldiers, that you left and went together with certain soldiers. Is that
9 true?

10 A. I don't think I said that certain soldiers accompanied me. They
11 would accompany me to go where? I didn't say that.

12 Q. Very well. So who was with you when you left Bunia to go to
13 Bule?

14 A. I went alone. I didn't need to go with anyone to see my son. It
15 was my son, and I had to go alone. So I removed my soldier's uniform. I
16 boarded a vehicle to go to Bule, and I followed the child to go -- I went
17 where he was to go bring back my child. I don't expect other people to
18 accompany me to go get back my child.

19 Q. Very well. On the first day you said that when you went to Bule
20 you spoke to certain people that you knew in the camp. Did these people
21 serve as Mr. Lubanga's bodyguards with you at the time you were working
22 for Mr. Lubanga? Is that correct?

23 A. I don't think you understood me well. I said that the commander
24 of the camp came to Thomas Lubanga's residence, and I was with him at the
25 residence of Thomas Lubanga. From there he was transferred to Bule.

1 He's my friend.

2 Q. I'm sorry, sir. I don't think I understand your answers very
3 well. I apologise. The commander of the camp you're talking about, is
4 that Commander Christian?

5 A. Yes.

6 Q. So Commander Christian goes to Bunia; is that correct? He went
7 to Bunia; is that correct?

8 A. I don't quite understand.

9 Q. Sir, I thought I understood from your answers that you mentioned
10 that the commander was with you in Thomas Lubanga's residence. Are you
11 referring to Commander Christian? Is that the person who was with you in
12 Thomas Lubanga's residence?

13 A. You didn't understand me well. Before he was posted or
14 transferred to Bule and before I was transferred elsewhere and at the
15 time Thomas Lubanga was the Minister of Defence, I was with -- with
16 Christian there at the residence. And at that time we used to move
17 around, and we would drink alcoholic -- take alcoholic drinks together.
18 And then one day he was sent Bule to start a training camp. I think you
19 are confused. You are confusing things.

20 Q. I think I understand you better now. You said that you left --
21 that you went to Bule alone, and when you reached Bule camp you discussed
22 with Commander Christian. Now I understand you perfectly.

23 A. Yes, yes, yes.

24 Q. Was it Commander Christian who informed you that your son had
25 allegedly been transferred to Largu camp?

1 A. Yes. In fact, Christian was the commander of the Bule camp, so
2 he was aware of everything that was happening in the camp. He knew me,
3 he knew my son, and today as we speak he knows my son and my son knows
4 him.

5 Q. The fact that people in Bule camp knew you or could potentially
6 know you, and considering that you had just deserted the army, didn't
7 that make you afraid of going to Bule camp since you were a deserter?
8 Were you not scared to go to Bule camp after deserting?

9 A. I think you're still confused with my answers. In Bule camp I
10 had my friends, and so I couldn't be afraid of my friends. What example
11 do you want me to give you?

12 In Bule, for example, there were people with whom I was friends
13 and so they couldn't hurt me. So I went straight to Bule because I felt
14 safe. I knew they couldn't harm me.

15 And so this person gave me information, told me that the boy had
16 gone to Largu.

17 Q. Very well. So did you leave to go to Largu immediately once you
18 heard that your son had been transferred to that camp?

19 A. Yes. I had nothing else to do in Bule. My target was to go and
20 get my son, because I knew that my son could not undergo such training.
21 He was still a minor. So I did not agree that he should undergo all of
22 this.

23 My problem was that I didn't want my son to undergo the same
24 suffering that I had undergone.

25 Q. So you left on that same day to go to Largu?

1 A. Yes.

2 Q. What is the approximate distance between Bule and Largu?

3 A. The distance between Bule and Largu is about 30 kilometres, but
4 there are vehicles running between the two places all the time. There
5 are vehicles that go to Mandro, go to Fataki and other places. So there
6 was really no transportation problem there.

7 Q. And once you reached Largu did you find your son immediately?

8 A. No. No. I saw him the next day. I spent the night in a hotel.

9 Q. Fine. Can you tell us the exact spot where you found your son?

10 A. I found him in the market. I took a vehicle on the market day,
11 on the Bule market day, and that was the next day after I had arrived.
12 It was a Saturday. And this vehicle was going to Bule, and the following
13 day, Sunday, was the market day. So from Bule I took another vehicle
14 that took me to Largu.

15 It was difficult for me then to see the child on Saturday because
16 I was afraid. In Largu I had a friend, and the commander who had left
17 with my son had received me. I spent the night there. And on Sunday at
18 about 11.00 p.m., the time when soldiers go out strolling, I stood there,
19 I was watching, and I saw the boy. I called him and he came towards me.
20 We discussed, and he understood what I was telling him. I told him all
21 my problems. We had lunch. We discussed, and after that we boarded a
22 vehicle to Bunia. After we reached Bunia, we settled down.

23 Q. You arrived on Saturday, and I think I heard you say something
24 like you were afraid. What were you afraid of exactly?

25 A. In Bule there was a commander with whom I had served in Thomas

1 Lubanga's residence. I knew that he couldn't harm me, but in Largu there
2 was a commander who could hurt me if he found me, so I was afraid of him.
3 I didn't want him to hurt me. I think I said this earlier.

4 Q. Do you know where the Largu camp is situated in relation to the
5 town of Largu?

6 A. There were many camps in Largu. The camp was -- in question was
7 one that was set up by the Ugandans, and it was set up in a parish.
8 Personally, I didn't go to that part of the town. I stayed somewhere
9 else. There was another camp in Masungwauka (phoen), there was another
10 one in Buka (phoen). There were many camps in any case. And when I
11 reached the town I was afraid. The residence of Linganga was in the camp
12 that had been abandoned by the Ugandans, so I was afraid to go there. My
13 sole concern was to see my boy, and once I saw him my concerns were
14 alleviated.

15 Q. Just to get more clarification, you say there were many camps in
16 Largu. Now, the camp in which your son was found, can you tell us how
17 far away from the town that camp was?

18 A. I repeat that I did not move from camp to camp because I was
19 afraid. As soon as I reached Largu, my main concern was to see my son,
20 and I didn't want anybody to know that I was in town, and there were
21 soldiers all over town. So I was afraid. So what more clarification do
22 you want me to give you?

23 Q. Now, did your son tell you in which of these camps in Largu he
24 was found? Did he tell you?

25 A. I didn't need to ask that question. I had the sole intention of

1 seeing my son, and I was happy to see him, and so I didn't go asking him
2 such questions.

3 Q. Well, I can understand you were happy to see your son and so you
4 couldn't start talking about these things, but I'm sure that in the days,
5 the weeks, and the months after you met you had a discussion with him,
6 and he probably told you in which camp he was found -- or he was
7 precisely.

8 A. It is difficult for me to answer that question. I have provided
9 you with answers. What other answers do you want me to give you? I have
10 given you my answers, but apparently you do not understand them. I have
11 tried to answer your questions sincerely. I have answered in such a way
12 that you would understand.

13 My main concern was to see my son. My concern was not to go
14 looking at the various camps that were in Largu. I knew that military
15 service is not a good thing, and I told my son, "You are still young,"
16 and so my concern was to get my son back and to make him understand that
17 it was not good for him to join the army. I wanted him to go back to
18 school. I wasn't concerned about trying to know which camp he was living
19 in, what he was eating in the camp, and other such details. That was not
20 my concern at the time.

21 So I am giving you answers. The questions you are putting to me
22 now are not questions I put to my son.

23 Q. Fine. So the answer is you don't know in which of the camps your
24 son was; is that correct?

25 A. I have told you this. I was afraid to be seen by the soldiers in

1 Largu. The place where the commander took the child was a camp that had
2 been abandoned by Ugandans, and that was where the soldiers were. And so
3 my concern was not to know whether the child was there or not.

4 Certain commanders had their private programmes. Some of them
5 would abandon the camp and live in a private residence guarded by
6 soldiers.

7 So I did not go asking my child about all these details, because
8 I really didn't need all these details.

9 Q. Very well. Once you left the camp -- or, rather, once you
10 deserted the movement in Bunia, you never again returned to the military
11 headquarters in Bunia; is that correct?

12 A. No, I didn't return to the military headquarters. I deserted
13 once and for all.

14 Q. You mentioned, if I understood you well, that before you left you
15 hid your weapon. Is that correct?

16 A. Yes. I hid my weapon as well as my uniform.

17 Q. Where did you hide them?

18 A. Usually you wrap the weapon in plastic paper and you bury it in
19 the ground. I personally know where I hid my weapon.

20 Q. You say that normally that is what you'd done. So my
21 understanding is that that is what you did. You placed your weapon and
22 your uniform and you buried these items; is that correct?

23 A. Yes.

24 Q. Where precisely?

25 A. In Bunia.

1 Q. Where in Bunia, sir?

2 A. Why do you want me to give you all these details? I deserted the
3 army, and after deserting the army I went back home and I stayed at home.
4 The house was constructed on a large plot of land, so I hid the weapon in
5 my plot of land, and I know the precise spot where I hid that weapon.

6 Q. Sir, I understand that you hid the weapon on your piece of land.
7 Now, tell us, why did you hide your weapon and your uniform if you
8 deserted the army?

9 A. It's difficult to answer that question, but I will try. A
10 deserter is someone who quits his group and flees, and when that person
11 runs away, he cannot take with him certain items because he can be hurt.
12 I hid my weapon, and it was only at the time of demobilisation that I
13 went and I took the weapon and the uniform and then hand them over to the
14 group that was in charge of demobilisation. So I handed over the weapon
15 at the time that demobilisation was being taken -- was taking place. And
16 when I was demobilised, I -- a certain -- sorry, a certain coin was
17 handed over to me. In any case I have it in Kinshasa, and if you wish to
18 see it I will have it shown to you.

19 When I was demobilised, the weapon was taken away from me, and
20 everyone applauded, and the -- a demobilisation slip was printed out from
21 the computer and was given to me at the time when I handed over the
22 weapon.

23 Q. In your previous answers you said that you had a plot of land in
24 Bunia; is that correct?

25 A. I don't think you understood me well. I did not tell you that I

1 had a plot of land. I said I was living in a house built on a large plot
2 of land. As a tenant, when you rent a house and you live under those
3 conditions, the land and space on which the house is and which is managed
4 by the tenant is part of the house, and you can actually build your
5 toilet on that same land and space, because back home you can build your
6 toilet about 5 or 10 metres away from your main house.

7 If you ever go to Congo, you will find that the toilets are
8 within the house for those who are rich, who have money, but those who
9 don't have money build their toilets about 5 or 10 metres behind or away
10 from their houses.

11 So I was a tenant, and I hid the items I had to hide on the plot
12 of land in which I was living.

13 Q. Now I with like us to go back to the episode you described, that
14 is the second abduction of your child. You described the events on the
15 first day of your testimony.

16 Can you tell us where precisely your son was abducted?

17 A. If you have a copy of my statement in front of you, you will find
18 that I didn't say that my son was abducted. That is, if you have a copy
19 of my statement. I, rather, said that during the holidays my son was
20 going to our village to visit his paternal uncle, and on the way he once
21 more met UPC soldiers who arrested him and took him to Centrale. I did
22 not use the term "abduct."

23 Q. Very well. I will restate my question. So where was your son
24 arrested precisely?

25 A. I think I have answered this question many times over. Is it not

1 true that you will find Centrale on the statement in front of you, and if
2 you can find it in the document, what other information do you want me to
3 provide to you?

4 Q. I would just -- I'd just like you to answer to the best of your
5 knowledge, regardless of what is written in any document.

6 As far as you can remember, can you tell us the precise area or
7 place where your son was arrested?

8 A. My son was arrested in Centrale Sulenyama (phoen). The soldiers
9 were -- they came from Bunia. They were going to Centrale, and they
10 stayed in Centrale. In fact, they lived in different places. But the
11 place where the child was arrested was located in Centrale.

12 MR. DESALLIERS (interpretation): Your Honour, there are one or
13 two questions that need to be asked on this indent, and I think I will
14 come back in open session later on. The questions that I have to ask now
15 need to be asked in closed session, but there are not many of them, your
16 Honour.

17 PRESIDING JUDGE FULFORD: (Microphone not activated)
18 (Closed session)

19 (Expunged)

20 (Expunged)

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

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13 (Open session)

14 PRESIDING JUDGE FULFORD: We're back in open session. Yes,
15 Mr. Desalliers.

16 MR. DESALLIERS (interpretation): Thank you.

17 Q. On the first day of your evidence you mentioned that what has --
18 had been translated as an ambush, but now we'll talk about an arrest
19 following the clarifications, you said that your son would have been
20 arrested in your region, and that's how you obtained the information on
21 what had happen. So do you remember saying that on the first day?

22 A. Please actually ask your question again.

23 Q. Is it correct to say that on the first day of your testimony here
24 before the Court you said that you had been informed about your son's
25 arrest because it had happened in your region? Do you remember that?

1 A. Yes. Centrale is about 5 kilometres from Bunia, approximately 5
2 kilometres. It's a short distance.

3 Q. Very well. Who gave you the information about the arrest? Who
4 informed you about the -- your son's arrest?

5 A. The child himself sent the information through a taximan, a
6 taximan who lived close to our home. So he told our -- the taximan who
7 told us. When I met the taximan, he told me, "Listen, a taximan is
8 coming to tell us that the child has been arrested." So it's actually my
9 neighbours who gave me the information. And I asked, "Well, what
10 happened?" And they said, "Well, your son has been arrested."

11 I didn't react. I remained calm. I didn't react.

12 Q. You were told that your son had been arrested and you didn't
13 react?

14 A. Well, the UPC headquarters had been relocated there. He had been
15 arrested in Centrale. How could I go over there?

16 Q. Let's not talk about the headquarters anymore. What I want to
17 know is when you say the taximan informed you that the -- that your son
18 had been arrest and you didn't react, what do you mean by that, that you
19 didn't react?

20 A. Well, the reaction would have been to go and get the child, and
21 it was very risky because there had been UPC soldiers chased out of
22 Bunia, and the UPC was now 5 kilometres away from Bunia. The UPC had
23 abandoned Bunia, and they had removed their headquarters to that other
24 place. So how would I have been able to go to their headquarter?

25 Q. Where was the headquarters exactly?

1 A. Just a minute. I'll give you the answer, because I talked about
2 Centrale. I gave you the information, but you don't understand. So if
3 you understand properly what I said, you would have understood it was
4 Centrale. That -- that was the question. I have nothing to add.

5 Q. Well, what I understood is that your son was arrested in
6 Centrale. That's the answer you gave; right?

7 A. Well, how long am I going to have to give you the same answer?
8 The child was arrested at the UPC headquarter in Centrale. The UPC
9 headquarters had been moved to Centrale. How could I -- well, what do
10 you want me to answer? Sorry.

11 Q. Thank you, sir. You said --

12 MR. DESALLIERS (interpretation): I was going to ask for the name
13 of the taximan. I'm wondering whether I should ask that name in closed
14 session. I'm not sure, President?

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

16 Mr. Desalliers.

17 Closed session, please.

18 (Closed session)

19 (Expunged)

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

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

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

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

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

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

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12 The hearing ends at 1.25 p.m.

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