

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 - Closed Session
6 Friday, 20 February 2009
7 The hearing starts at 9.36 a.m.
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13 Page 2 - Expunged - Closed session.

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Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Procedural Matters

Page 3

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7 (Open session)

8 PRESIDING JUDGE FULFORD: Sir, I'm going to ask you to read out
9 loud the words on the piece of paper in front of you. Could you read
10 them out loud, please.

11 THE WITNESS (interpretation): I solemnly swear to tell the
12 truth, the whole truth, and nothing but the truth.

13 WITNESS: WITNESS DRC-OTP-WWW-0213

14 (Witness answered through interpreter)

15 PRESIDING JUDGE FULFORD: Excellent. Thank you very much.

16 Now, Ms. Bensouda, this initial stage, in open session or closed
17 session?

18 MS. BENSOUDA: In closed session, please, Mr. President.

19 PRESIDING JUDGE FULFORD: Thank you. Can we then please return
20 to closed session.

21 (Private session)

22 (Expunged)

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Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 4

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13 Page 4 - Expunged - Private session.

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Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 5

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Page 5 - Expunged - Private session.

Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 6

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Page 6 - Expunged - Private session.

Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 7

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13 Page 7 - Expunged - Private session.

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Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 8

1 (Expunged)

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5 (Open session)

6 PRESIDING JUDGE FULFORD: Right. We are in open session.

7 Ms. Bensouda.

8 MS. BENSOUDA:

9 Q. Mr. Witness, you said you were enlisted into the army. What army
10 is that?

11 A. It was the UPC.

12 Q. Do you know what the UPC stands for?

13 A. UPC means Union Patriotiques Congolais.

14 Q. Mr. Witness, can you explain to the Court the circumstances under
15 which you were enrolled in the UPC army?

16 A. Yes. We were coming from school with friends, and while we were
17 walking home we met soldiers from the UPC and they took us in their
18 vehicle and they took us to the training camp. When we got there we
19 began training and we finished it and we stayed there for awhile. And
20 then I escaped and I went home. When I got home, I stayed at home and
21 they came to get me again, for a second time, and I again went through
22 training a second training period in Bule. And I worked in Bule for

23 (Expunged)

24 (Expunged)

25 Can I continue?

1 Q. You can, Witness.

2 A. The training in Lopa, well, I was trained in Lopa, and when I
3 finished that I stayed for awhile and then I went to Molabo. I didn't
4 stay very long. I went back to Lopa. And then from Lopa they took me to
5 Bunia, and in Bunia I was based at the residence of our president. And
6 we stayed there, we stayed at the residence, I'm not quite sure how long.
7 I don't remember. But then there was a battle with the Ugandans and UPC,
8 and when we left that place, Mr. Thomas Lubanga went to Bunia -- sorry,
9 Lubanga went to Bule and we went to Lopa.

10 When we got to Lopa, we prepared the battle with UPC, and when we
11 went to Bunia to fight the Ugandans, we fought with them until I was
12 injured and then I was taken in a vehicle and I was taken back to Lopa.

13 When I got back to Lopa, I got medical care because I'd been
14 injured, until I was well. And then I abandoned the military service
15 until this day.

16 Q. Mr. Witness, I'm just going to ask you a couple of questions
17 about what you've just told the Court to understand better.

18 A. Okay.

19 Q. How many times were you enrolled or abducted in the UPC?

20 A. I was taken three times.

21 Q. I'm going to take you back to the first time that you were
22 abducted by the UPC. If you can just focus on that first time and tell
23 us what happened.

24 A. The first time we were coming from school. We were abducted by
25 the UPC soldiers and they took us to the training camp. We were trained

1 in Lopa for awhile and then we finished the training and we stayed there,
2 and I left the service. That was the first time I was abducted.

3 Q. You said "we were coming from school." Who were you with? Were
4 you with other people? And please don't give names. If you need to give
5 names, I will give you a paper to write on, the names. Who were you with
6 on this first time that you were coming from school?

7 A. I was with my schoolmates.

8 Q. How many were you?

9 A. There were five of us.

10 Q. Were you all in the same class?

11 A. No, we were in different classes, different grades.

12 Q. Were you all boys?

13 A. Yes.

14 Q. Do you remember the age range that you were? How old were you?

15 A. At the time I don't remember my age.

16 Q. The UPC soldiers that stopped you on the road, how many were
17 they?

18 A. There were eight of them.

19 Q. How were they dressed? Can you remember?

20 A. They were wearing combat fatigues.

21 Q. Were they armed?

22 A. Yes.

23 Q. Can you remember the type of weapons they had?

24 A. They had SMGs.

25 Q. Did they tell you anything when they stopped you and your

1 friends?

2 A. They didn't say anything. They came and they took us and we went
3 with them.

4 Q. How did you go with them? Did you go by car or did you walk?

5 A. We were in a vehicle.

6 Q. Did you try to resist being taken away?

7 A. Yes. We tried to resist, to run away, but they encircled and us
8 and it was impossible to get away.

9 Q. And where did they take you?

10 A. They took us for training.

11 Q. Witness, can you recall just approximately when this happened?

12 A. I don't remember the year and I wasn't -- I didn't intend to
13 remember the dates or the years at the time.

14 Q. But you were in your third year in primary school?

15 A. Yes.

16 Q. You said they took you for training. Where did they take you for
17 training?

18 A. It was training in Lopa.

19 Q. What place in Lopa?

20 A. It was the same place in Lopa.

21 Q. Do you know the name of the place?

22 A. Yes.

23 Q. Can you give us the name of the place?

24 A. It was called Centre de Ballon, Ballon Centre. It was a place --
25 it was a football ground and it had been turned into a military camp.

1 Q. Can you tell us, Witness, when you got to this training camp with
2 your friends, what happened?

3 A. We started the training directly. They asked us to start the
4 training, and they said if anyone tries to run away and he's caught,
5 he'll be killed immediately. We started training by running races and
6 then they gave us weapons. And we stayed there for the training.

7 Q. When you got to the camp, were there other children there as
8 well?

9 A. The children were there, the children who'd already been given
10 weapons.

11 Q. Do you know what is the age range of these children who were
12 there?

13 A. I didn't really know how old they were. Some were taller than me
14 and I was taller than others, so it was difficult for me to imagine how
15 old they were.

16 Q. Did you find children who were the same age as yourself?

17 A. Yes. There were some who were the same age as me and some were
18 younger.

19 Q. Was it a big camp?

20 A. Yes, it was a big camp.

21 Q. Do you know approximately how many children were in the camp?

22 A. I don't know how many there were. There were lots of them, but I
23 don't know how many exactly.

24 Q. How long did you stay in this camp?

25 A. I didn't hang around too long. I ran away.

1 Q. And after how long did you -- after how many days or weeks did
2 you spend in the camp before running away?

3 A. When I finished the training, I spent three and a half weeks
4 there and then I ran away after that, if I'm not mistaken.

5 Q. Witness, can you just briefly explain how you managed to run away
6 from the camp.

7 A. Running away was really difficult to do. I went out. They'd
8 sent us to get the girls from the river, to get them to bring water back
9 to the camp, and it's then that I ran away.

10 Q. Where did you go when you ran away?

11 A. I went home.

12 Q. Now, Witness, I just want to ask you, back in the camp, were
13 there any girls at the camp?

14 A. Yes, there were girls.

15 Q. And do you know how old these girls would be?

16 A. The girls who were there were older than me.

17 Q. Did these girls undergo training as well?

18 A. Yes.

19 Q. What kind of training? Was it the same as what you did?

20 A. Yes, they followed the same type of training as us.

21 Q. Did the girls have any other functions in the camp?

22 A. No, they didn't have any other functions in the camp.

23 Q. Now, just to ask you a little bit about the training, can you
24 describe to the Court a typical training day at the camp, what you had to
25 do with your -- with the other children.

1 A. In the camp we didn't really do anything. We were playing cards
2 and things like that.

3 Q. Earlier on you talked about you did training, you trained at the
4 camp. Can you please describe what you do when you train. How do you
5 start the training?

6 A. I didn't really understand the question.

7 Q. All right. I will rephrase it. Let me just remind you, Witness.
8 You said you had to run races to train. Was that the only thing you did?

9 A. Well, we ran races and we had to march up and down, left to
10 right. That's all.

11 Q. Did you have a trainer at the camp?

12 A. Yes.

13 Q. Do you remember the trainer's name? You can just answer yes or
14 no.

15 A. No.

16 Q. Apart from running races, marching up and down, did you do
17 anything else?

18 A. Apart from that, they taught us how to shoot. That's all.

19 Q. Did you have a weapon for this training exercise?

20 A. Yes. There were arms there.

21 Q. What did you do with the weapon? How did they teach you to use
22 them?

23 A. They taught us how to shoot, how to dismantle and to clean the
24 weapons, and other things.

25 Q. We're now going back to when you said you ran away and you went

1 home. When you got home, what did you do?

2 A. When I got home, I went back to school immediately.

3 Q. And during the course of that school year, did anything happen?

4 A. The thing that happened, do you mean at home or somewhere else?

5 Q. Yes, let me just explain. Witness, you said that you were
6 abducted by the UPC three times. You just told us that. Is that
7 correct?

8 A. Yes.

9 Q. Now, during the course of that year, did you have to go to the
10 army again?

11 A. When I went home, I went back to school and it was then that we
12 were taken for the second time 'round.

13 Q. I would want you again to explain the circumstances under which
14 you were taken this second time by the UPC.

15 A. I didn't understand the question. Could you repeat it, please.

16 Q. Yes, I will, Witness. Let me try to be more clear. You said
17 that when you went back to school, for the second time you were abducted
18 by the UPC. I just want to explain to you -- you to explain to the Court
19 where you were and how did this happen.

20 A. The second time we were coming from school. The soldiers came
21 along and they took us. We took weapons and ammunition, to take it to
22 another place. Then we went on a long journey from (Expunged) to the place
23 where we had to leave those things.

24 When we arrived at the place where we had to leave those things,
25 we had to go through more training and that was where we had the second

Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 16

1 training exercise. We didn't train for long because we'd already been
2 trained before. And they gave us weapons. I spent some time there.
3 Then we went to get water and I pretended to put the canister down, and I
4 ran away for the second time and I went back home again.

5 Q. Do you remember the name of this place that you went to take
6 weapons from?

7 A. I'd like to try to remember but I -- I think I've forgotten.

8 PRESIDING JUDGE FULFORD: Ms. Bensouda, I think we will break
9 this up this morning. I don't want to put the witness under too much
10 pressure. He's having to remember an awful lot. And I think what we'll
11 do is every three-quarters of an hour or hour, we're going to take a
12 break. And I think now we're into the second incident. I think now is a
13 good time to have a break and we will sit again at a quarter to 11.00.
14 Thank you very much.

15 MS. BENSOUDA: That's all right, Mr. President.

16 PRESIDING JUDGE FULFORD: We're going to have a break now, so
17 you've got an opportunity to relax for awhile.

18 So can we please go into closed session, with the blinds down, so
19 the witness can withdraw, and can Mr. Lubanga withdraw as well. Thank
20 you very much.

21 (Closed session)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Open session)*

4 COURT USHER: All rise. Please be seated.

5 PRESIDING JUDGE FULFORD: Ms. Bensouda, shortly before we came
6 back into court, a message was relayed to the Judges from the Victims and
7 Witnesses Unit informing us that when Witness 213 got back to the room,
8 he asked if he could have an opportunity to read his witness statement
9 again. We have discussed this on a preliminary basis only, can I
10 emphasise, and our initial view is that giving evidence is not an
11 exercise in how good or bad a person's memory is; it's rather an exercise
12 in whether or not someone is telling the truth. And if a witness asks to
13 have an opportunity to refresh their memory from a statement about events
14 which took place a number of years ago, our preliminary view is that,
15 consistent with the decision we've issued on witness proofing and memory
16 refreshing, this is a reasonable application. But it may be that others
17 have a different view, so we want to give you the opportunity of
18 informing us as to whether our preliminary view is right or wrong.

19 What are your submissions, Ms. Bensouda?

20 (Prosecution counsel confer)

21 MS. BENSOUDA: Mr. President, we also think it's okay.

22 PRESIDING JUDGE FULFORD: Thank you very much.

23 Maitre Mabilille?

24 MS. MABILLE (interpretation): Your Honour, he's had the
25 opportunity to do so some days ago, because that was the decision that

1 you handed down then, so we would object to this.

2 PRESIDING JUDGE FULFORD: Thank you very much.

3 Anything from participating victims?

4 MR. WALLEYN (interpretation): We don't have any problem with
5 this, your Honour.

6 MS. MASSIDDA: Thank you. We agree with the suggestion of the
7 Chamber. One additional information, I think that the particular
8 vulnerability of a witness should also be taken into account in deciding
9 whether or not the witness may or may not review the statements, and in
10 consideration of a young age and the fact that the witness is still a
11 traumatised witness, we think that the decision should be that the
12 witness will be allowed to re-read the statement. Thank you.

13 PRESIDING JUDGE FULFORD: Thank you, Ms. Massidda.

14 (Trial Chamber confers)

15 PRESIDING JUDGE FULFORD: Shortly before the court reconvened
16 mid-way through this witness's evidence, we received a message from the
17 Victims and Witnesses Unit indicating that Witness 213 has asked for an
18 opportunity to re-read either part or all of his witness statement. The
19 Prosecution and those victims who are participating consider that this is
20 an appropriate request. Maitre Mabilie, on behalf of the accused, has
21 reminded us that the witness was provided with an opportunity to look at
22 his witness statement some days ago and that in those circumstances, as I
23 understand her submission, it would be inappropriate for the witness to
24 look again at this point in time at his witness statement.

25 We have carefully considered the competing arguments on this

1 point and, in our judgement, giving evidence isn't simply an exercise in
2 one's ability to remember events that occurred some years ago which may
3 themselves have been complicated. We also bear in mind the age of this
4 witness and his potential vulnerability and the difficulties of giving
5 evidence in court for the first time, in all likelihood, in his life.

6 In our view, it would be appropriate for this witness, since he
7 has made the request, for him to have an opportunity to re-read either
8 part or all of his witness statement, certainly whatever sections he
9 wishes to look at, again. Therefore, before he is brought back into
10 court a second time, I'm going to ask the Court Officer to communicate
11 with the Victims and Witnesses Unit to say that this is an appropriate
12 exercise and could the Judges and the parties and participants please be
13 informed when the witness has had a sufficient opportunity to read those
14 sections that he wishes to look at.

15 I'm afraid I can't put a time limit on this. I imagine it will
16 take somewhere between 10 and 20 minutes, but could you all please remain
17 in a position where you are easily contactable. We will sit again when
18 the witness has completed this task. Thank you all very much.

19 COURT USHER: All rise.

20 Recess taken at 10.53 a.m. - On resuming at 11.24 a.m.

21 (Closed session)

22 (Expunged)

23 (Expunged)

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Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 20

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15 (Open session)

16 PRESIDING JUDGE FULFORD: Yes, Ms. Bensouda.

17 MS. BENSOUDA:

18 Q. Witness, for this second time that you were stopped by the UPC
19 soldiers and taken away, how many UPC soldiers came?

20 A. There were 20 of them.

21 Q. And were they armed?

22 A. Yes.

23 Q. How were they armed? With what weapons?

24 A. They had different types of weapons, SMGs and other types of
25 weapons.

1 Q. What about your own group? How many were you?

2 A. There were about 22 of us.

3 Q. And where was this? Where did this take place?

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged) is,

8 an area where we used to play football, a football field.

9 Q. How do you know they were UPC soldiers?

10 A. They were wearing combat fatigues, and it was a uniform which was
11 recognised as belonging to the UPC.

12 Q. Were you doing anything in particular at the football field, your
13 group, I mean?

14 A. We were playing football.

15 Q. This group of UPC soldiers, do you know whether they had a leader
16 amongst them?

17 A. Yes, there was a leader with them.

18 Q. Do you the name of the leader?

19 A. No, I do not know his name.

20 Q. That's all right. When they met you playing football at the
21 field, did they tell you anything before taking you away?

22 A. Yes.

23 Q. Can you recall what they told you?

24 A. Yes, I can remember some of what they said.

25 Q. Can you tell us what they told you?

1 A. Yes, they told us that they were looking for young persons who
2 would join the army.

3 Q. And did any of you say anything in return to that?

4 A. Yes.

5 Q. Can you remember who said what?

6 A. Personally, I answered.

7 Q. Can you tell us what you said to him?

8 A. This is what I said, "We are still children and we cannot do this
9 type of activity."

10 Q. After you said that, did they take you anyway?

11 A. They also responded, saying something.

12 Q. Please tell us what they said, what they responded.

13 A. This is what they said, "We think that this job is for our --"

14 THE INTERPRETER: The interpreter didn't hear the last part, I'm
15 sorry.

16 MS. BENSOUDA:

17 Q. I'm sorry, Witness, can you just repeat what you said. The
18 interpreter could not hear you.

19 A. Yes. They said, "This job is for our parents."

20 Q. What did you understand that to mean?

21 A. This meant that we could not refuse to perform this job. It
22 meant that we also had to do the job like them. They were not the only
23 people to do this job.

24 Q. Witness, do you know what job he was referring to?

25 A. He was talking about military service.

Witness: Witness DRC-OTP-WWW-0213 (Open Session)
Questioned by Ms. Bensouda

Page 23

1 Q. And did you eventually go with them, the soldiers?

2 A. Yes, we went with them.

3 Q. Can you remember approximately the age range of your group, those
4 who were taken by the UPC soldiers?

5 A. No, I don't remember the ages. Some were taller than I and I was
6 taller than others.

7 Q. Can you remember how old you were, yourself, at this time?

8 A. No, I don't remember my age at the time, but I remember that I
9 was in the fourth year of school.

10 Q. Were there other members of your group who were in the same class
11 as yourself?

12 A. Yes. Some of them were in the same class with me and others were
13 in a higher class.

14 Q. Were there any amongst your group who were in a lower class than
15 yourself?

16 A. No. If there were some who were in a lower class, I wouldn't
17 remember now.

18 Q. So you said you eventually went with the UPC group soldiers --
19 group of soldiers. Where did you go?

20 A. We went to the --

21 THE INTERPRETER: The witness mentioned a name which the
22 interpreter didn't hear.

23 A. -- but I heard a leader talking with other leaders of the army
24 at the time.

25 MS. BENSOUDA:

1 Q. What did you hear the leader say -- talk to the other leader
2 about? Could you hear what he was saying?

3 A. What I heard was that the chief had called Commander Django and
4 informed him that he had already brought the children together and that
5 he was going to bring the children to the camp, and the commander gave
6 his approval. And after that they took us straight to the camp.

7 PRESIDING JUDGE FULFORD: Just pause a moment, Ms. Bensouda.
8 You'll see at line 13 the witness mentioned a name which wasn't heard by
9 the interpreter. You may wish to clarify that. I think it was
10 indicating where they went to, which was your question.

11 MS. BENSOUDA: Thank you, Mr. President.

12 Q. Witness, just a little while ago you talked about the place that
13 you were taken to. What was that place? What is the name of the place?

14 A. It was in Lopa.

15 Q. And where were you taken eventually?

16 A. Before leaving, Commander Django informed his superior that we
17 were there on the spot and asked whether it would be possible to bring
18 us. Commander Django gave his approval, and when he gave his approval,
19 we were taken immediately to the camp.

20 Q. What camp were you taken to?

21 A. I don't remember the name of the camp, but I know the name of the
22 village.

23 Q. That's okay. Can you tell us the name of the village?

24 A. It was in the village of Lopa. Please ...

25 Q. Can you tell us, Witness, when you got to the village, what

1 happened?

2 A. I am sorry, I was mistaken about the name of the village.

3 Q. That's fine, Witness. You could just tell us the correct name.

4 It's okay to make a mistake.

5 (Expunged)

6 (Expunged)

7 MS. BENSOUDA: Thank you, Mr. President.

8 Q. So you were taken to this camp in Bule. When you got to the
9 camp, what happened?

10 A. When we reached the camp, we immediately started following
11 instructions.

12 Q. When you got to the camp, did you find other children?

13 A. Yes, there were children in the camp, but there were not many of
14 them.

15 Q. You indicated just now that you were given instructions to
16 follow. What instructions were they?

17 A. I didn't fully understand your question.

18 Q. I will say it again to try and make you understand. Just now you
19 told the Court that when you got to Bule camp you started to follow
20 instructions, and I want to know what you were told to do. What were
21 these instructions?

22 A. We immediately started training. That's what I meant. We
23 started training, and after that training, that was it. They didn't give
24 us any further instructions.

25 Q. Did you have a trainer?

Witness: Witness DRC-OTP-WWW-0213 (Open Session)
Questioned by Ms. Bensouda

Page 26

1 A. Yes.

2 Q. Can you recall the name of the trainer?

3 A. Oh, yes. I remember his name. I think he was arrested and he
4 was imprisoned in Bunia, because he was arrested. He had a weapon.

5 Q. And what was his name?

6 A. His name is Seke.

7 Q. What kind of training did you undergo in Bule?

8 A. It was military training that we received in Bule.

9 Q. Can you just explain to us what it consisted of, this military
10 training? What did you have to do?

11 A. At some point they asked us to go fetch water, to do the laundry
12 of our superiors, of soldiers who were older than us. That's what we did
13 very often. And after that, they could even sent us to the market.

14 Q. But, I mean, in respect of the military training, I want you to
15 explain to Court -- to the Court how you were trained in the -- at Bule
16 camp.

17 A. I don't know how I can answer that question. What I can tell you
18 is that we received military training. I don't know how I can explain
19 that to you in answer to your question.

20 Q. That's fine, Witness. Did you have -- were you given any
21 weapons?

22 A. Yes. There were weapons.

23 Q. When were you given weapons?

24 A. It was after we had spent some time in the camp. Then we were
25 given weapons.

1 Q. How long did you spend in the camp until you were given weapons?

2 A. I do not remember the exact time, because this happened many days
3 later.

4 Q. Once you were given weapons, were you given duties as well?

5 A. No, they didn't give us any duties. The only thing we did was
6 carry out patrols and move all over the town. We had no other duties
7 apart from those.

8 Q. You said there were other children at the camp. Were they the
9 same age as yourself or younger or older?

10 A. Please, I don't know anything about the ages of children, because
11 I can't remember their exact ages. But I can tell you that there were
12 some who were taller than me and others who were not as tall as me.

13 Q. That's all right, Witness. You said that when you had your guns,
14 when you were given guns, you had to patrol, do patrol duties. Where did
15 you do these duties? These patrol duties, where did you have to patrol?

16 A. We carried out our patrol duty in the bush or sometimes in the
17 village.

18 Q. Whilst you were carrying out the patrol duties, were you armed?

19 A. Yes, we were armed.

20 Q. Did you carry out the patrol duties alone, by yourself, or were
21 you with others?

22 A. We were not doing this alone. We carried out our patrol duty
23 with other persons.

24 Q. The weapons that you carried, did you know how to use them?

25 A. Yes. Yes, we knew how to use them.

Witness: Witness DRC-OTP-WWW-0213 (Open Session)
Questioned by Ms. Bensouda

Page 28

1 Q. What kind of weapon was it?

2 A. Most of the time we used SMGs.

3 Q. How did you know how to use them, these weapons?

4 A. We were taught how to use them.

5 Q. Who taught you how to use them, Witness?

6 A. The first time when we just arrived we were taught how to use
7 them, and later on when we moved to Bule we were still taught how to use
8 them.

9 Q. Do you remember who taught you in Bule how to use them?

10 A. It was Mr. Seke and other military commanders.

11 Q. While you were in Bule camp, did anybody ever ask you your age?

12 A. No, nobody put that question to me.

13 Q. Apart from your patrol duties, did you have any other duties
14 assigned to you?

15 A. There were certain people who were asked to go to the market, to
16 perform certain duties; others went for patrol duties. And apart from
17 those, there were no other duties.

18 Q. How long did you stay in Bule camp?

19 A. I cannot remember how long we stayed there. I have already
20 forgotten.

21 Q. Whilst you were staying in Bule camp, did other commanders of the
22 UPC visit the camp?

23 A. Yes.

24 Q. Do you remember who visited? The names of the commanders?

25 A. Yes.

Witness: Witness DRC-OTP-WWW-0213 (Open Session)
Questioned by Ms. Bensouda

Page 29

1 Q. Can you please tell us the names?

2 A. There was Commander Bosco, Commander Mugisa, Commander Kisémbó,
3 and other commanders whose names I have forgotten.

4 Q. Did they visit the camp on a regular basis?

5 A. Yes, yes, they visited the camp several times.

6 Q. Do you know who Commander Bosco was?

7 A. Yes. Commander Bosco was the Chief of Staff.

8 Q. Do you know, did your camp, the Bule camp, did it have a head of
9 the camp, commander of the camp?

10 A. Yes. It was Maki.

11 Q. Do you know whether Commander Maki was subordinate to
12 Commander Bosco or not?

13 A. Yes, he was subordinate to Commander Bosco, because
14 Commander Bosco was the vice-president and he had a higher rank than
15 Commander Maki.

16 Q. You said Commander Bosco was the vice-president. Do you know who
17 the president was?

18 A. Yes.

19 Q. Can you please tell us the president's name?

20 A. Yes. It was -- the name of the president was President
21 Thomas Lubanga.

22 Q. While you were at the Bule camp, did you ever see President
23 Lubanga there?

24 A. Yes. Lubanga came often there.

25 Q. Do you recall what he came to do there at the Bule camp?

Witness: Witness DRC-OTP-WWW-0213 (Private Session)
Questioned by Ms. Bensouda

Page 30

1 A. I don't know why he came there, but I know that when he came he
2 met with other superiors and they had conversations. But I don't know
3 what they talked about.

4 Q. Do you know the name of the superiors that President Lubanga came
5 to talk to at Bule camp?

6 A. Yes. There was Commander Bosco, there was Commander Django, and
7 other commanders like Mugisa, and there were other commanders whose names
8 I don't remember.

9 MS. BENSOUDA: Mr. President, I want to ask some questions to the
10 witness which I think will require for us to go into closed session.

11 PRESIDING JUDGE FULFORD: Certainly, Ms. Bensouda.

12 The next series of questions will be conducted in closed session
13 but with the blinds up, please.

14 (Public session)

15 (Expunged)

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Witness: Witness DRC-OTP-WWW-0213 (Private Session)
Questioned by Ms. Bensouda

Page 31

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13 Page 31 - Expunged - Private session.

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5 (Closed session)

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9 (Expunged)

10 (Expunged)

11 (Open session)

12 PRESIDING JUDGE FULFORD: I just want to explain to the public
13 that we're giving the present witness a rest and, in fact, we won't be
14 sitting -- hearing evidence again until half past 12.00. But in the
15 meantime, Maitre Mabilie has some submissions.

16 Yes, Maitre Mabilie.

17 MS. MABILLE (interpretation): Mr. President, the Defence, as you
18 can imagine, is somewhat worried about the fact that the witness has had
19 an opportunity to re-read his statement and we have a question for
20 information. During the rest periods, we're assuming that the witness is
21 not re-reading again his statement. We're assuming he did it once but
22 not each time we have a rest break. That's the question that the Defence
23 wanted to ask you, your Honour.

24 PRESIDING JUDGE FULFORD: You're absolutely right,
25 Maitre Mabilie, in that we haven't clarified this point as to what should

1 happen in each break. Will you please give me just a moment.

2 (Trial Chamber confers)

3 PRESIDING JUDGE FULFORD: Maitre Mabilille, thank you for raising
4 the point. Our view is that, indeed, consistent with the decision we've
5 made, we are not opposed, in the right circumstances, to a witness who
6 may be having difficulties with remembering events or the precise order
7 of events having an opportunity to re-read their statement. We
8 understand the Defence doesn't agree with that, but that is our decision.
9 However, we agree with you that the statement shouldn't simply be left
10 available for the witness to read every time there's a break but instead
11 that opportunity should only be granted to him by the Judges, if we think
12 it's appropriate, after he's made a request to look at his statement.

13 So I'm going to ask the Court Officer, please, to indicate to the
14 Victims and Witnesses Unit that when the witness goes back to the waiting
15 room during breaks, that the statement shouldn't be there waiting for him
16 to pick up to start reading again but that he should be told that if he
17 has any difficulties again in the future, he is to indicate that to us so
18 that we can then make a decision as to what should happen.

19 But thank you for the point, Maitre Mabilille.

20 Ms. Bensouda, a few days ago, one or two, I indicated to
21 Ms. Struyven that we seek from the Prosecution a summary of the video
22 extracts that we've seen. I'm not going to go over it again. You'll
23 remember the request we made. I didn't, in fact, put a time limit on
24 this. Can you assist us with what would be a reasonable period to
25 request?

1 (Prosecution counsel confer)

2 MS. BENSOUDA: Mr. President, would Tuesday be all right with the
3 Chamber?

4 PRESIDING JUDGE FULFORD: It certainly will.

5 MS. BENSOUDA: This coming Tuesday. Thank you.

6 PRESIDING JUDGE FULFORD: It certainly will. Thank you very
7 much, indeed.

8 One issue that seems to be a live issue, Ms. Bensouda, is whether
9 or not an individual's appearance, for instance, as seen in videos, is a
10 true reflection of their real age. As we understand the Prosecution's
11 case, given the way that you have asked us to look carefully at
12 particular individuals, we understand that what you are seeking to do, in
13 part, is to invite the Chamber to conclude that there are particular
14 people who, in the Prosecution's submission, are self-evidently below the
15 age of 15.

16 Some questioning by the Defence has, again as we've understood
17 it, been directed at the possibility that appearance may not be all and
18 that there may be reasons why someone is small, perhaps why someone has a
19 particular look, which does not necessarily reflect that they are young
20 in that sense.

21 As I understand it, at the moment no expert evidence is to be
22 called before us on this subject as to whether or not one can tell simply
23 by looking at someone as to what their age is approximately or with a
24 certain degree of certainty.

25 Now, obviously, the Chamber, if the Chamber wishes, can

1 commission an expert, but in the first instance, and not now, we would be
2 interested in whether either of the parties, or anyone else, has
3 considered this point; whether or not there is any intention to call an
4 expert to deal with what now appears to be a live issue in the case; and
5 if the parties are not proposing to call a witness, whether this is
6 something that the Chamber ought to contemplate doing of its own accord.

7 So food for thought, Ms. Bensouda, rather than for submissions,
8 but early on next week we would like to know, please, what your views and
9 what the views of the Defence are on this issue, given that it has now
10 arisen.

11 MS. BENSOUDA: Mr. President, we will give it due consideration
12 and make our submissions at the appropriate time.

13 PRESIDING JUDGE FULFORD: I'm very grateful to you. Thank you
14 very much, indeed.

15 One final matter, Ms. Bensouda. I'm afraid it's going to be a
16 longer break for the witness than it is for counsel.

17 At the moment a lawyer, as everyone knows, has been retained
18 effectively within The Hague -- in The Hague to give advice, when
19 appropriate, to witnesses for whom the issue of self-incrimination
20 arises. It has occurred to us that it may be more appropriate for that
21 advice to be given whilst the witnesses are still in the DRC, or wherever
22 it is they are, prior to their departure to The Hague. There are
23 lawyers, for instance - and I only use this as an example - in Kinshasa
24 who are obviously Lingala- or Swahili-speaking lawyers, known to the
25 Registry who would be able to provide effectively the same function as

1 Mr. Mabanga at, in all likelihood, far less inconvenience to them than it
2 is to Mr. Mabanga, who, on each occasion, as I understand it, has to come
3 from Paris.

4 So the thought has occurred to us that we might make slightly
5 different arrangements and have this advice given in the DRC, or
6 wherever, rather than in The Hague. If an issue under 74(10) arises
7 during the trial, we would make separate arrangements for a lawyer to be
8 readily available to come to court to assist if an issue of
9 self-incrimination arises during the trial.

10 Now, once again, I don't ask for an immediate response. Please
11 discuss this with the members of your team, and if anyone else, and of
12 course including the Defence, have any views on this, we will hear
13 submissions at some appropriate stage next week.

14 MS. BENSOUDA: Very well, your Honour.

15 PRESIDING JUDGE FULFORD: Thank you very much indeed. I'm sorry
16 I've cut down on your break. We will meet again in ten minutes' time.

17 COURT USHER: All rise.

18 Recess taken at 12.17 p.m.

19 On resuming at 1.00 p.m.

20 (Closed session)

21 (Expunged)

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Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 37

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13 Page 37 - Expunged - Closed session.

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Witness: Witness DRC-OTP-WWW-0213 (Closed Session)
Questioned by Ms. Bensouda

Page 38

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15 (Open session)

16 MS. BENSOUDA: Mr. President, I don't know if the witness has
17 been informed that he can have some water, if he wants.

18 PRESIDING JUDGE FULFORD: I hope he has, Ms. Bensouda.

19 Usher, is there a glass of water in front of the witness? There
20 is, yes. There's a glass there, Ms. Bensouda. Yes, I'm sure -- I'm sure
21 the witness understands that he can drink water if he wants.

22 MS. BENSOUDA:

23 Q. Witness, how long did you stay in Bule camp?

24 A. I don't know exactly how long I was at Bule.

25 Q. Amongst the children who you said you saw at Bule camp, were

1 there girls as well?

2 A. Yes, there were girls but not very young girls.

3 Q. And when did you leave Bule camp?

4 A. I don't remember exactly when I left Bule camp, but I remember
5 that I left Bule to go home.

6 Q. Can you tell us, Witness, under what circumstances you left, how
7 you came to leave Bule camp to go home?

8 A. I ran away. I escaped because I wasn't happy, and I went home.
9 I was in an uncertain situation.

10 Q. Can you just describe briefly how you were able to run away.

11 A. One day we were getting prepared for combat, and on our way to
12 fight against the Lendus, that is, the UPC against the Lendus, I gave my
13 weapon to a friend and I said to him, "Take this, take this weapon, and
14 I'll come back to get it, because I need to go to the toilet." And so I
15 ran away, and I ran away and I went home.

16 Q. Where were you preparing to go to combat?

17 A. It was a Walendu village. I can't remember the name of the
18 village.

19 Q. And after you escaped, did you go home directly?

20 A. Yes. I went directly home when I ran away.

21 Q. You have told us -- sorry. Did you go back to school when you
22 went home?

23 A. Yes.

24 Q. What class did you go back to?

25 A. I was in the fourth grade.

1 Q. Were you able to complete the fourth grade?

2 A. Yes, I finished the fourth grade.

3 Q. You have told us before that you were abducted by the UPC on
4 three occasions. When was the third time that you were abducted by the
5 UPC?

6 A. The third time, we were going to school and this was when we were
7 preparing for the end-of-year exams. And the UPC soldiers recognised me.
8 The UPC soldiers said, "We know you, we recognise you, because you were
9 in a group." And they took me not too far from there to a commander, it
10 was Commander Django. And Commander Django held me for several weeks in
11 a trench, and then I became a trained soldier and I was given a weapon.
12 And several days later I was sent to Bunia.

13 Q. Why did Commander Django hold you in a trench?

14 A. When I was arrested, it was a kind of punishment. They locked me
15 up in this trench because they accused me of being a traitor to the party
16 and so they kept me in this trench. It was punishment.

17 Q. Did they tell you why they say you were a traitor to the party?

18 A. I don't know why they thought that we were traitors to the party.
19 Perhaps it's because we kept running away from the party and that's why
20 they thought we were traitors.

21 Q. This trench that Commander Django kept you in, can you describe
22 it a little bit for us to understand what it was like?

23 A. It was a very deep trench and I could stand up in it. It was a
24 hole that had been dug and it was closed. It was a very deep hole.

25 Q. Was it possible for you to leave the hole on your own?

1 A. It wasn't possible to get out without somebody else helping you.

2 Q. You said the hole was covered. With what was it covered?

3 A. The hole was covered with something like sheet metal and then
4 bits of wood on top of it. That's how it was covered.

5 Q. How did Commander Django put you in this hole? Were you assisted
6 into the hole, or how -- how did he put you in the hole?

7 A. There were sort of steps and somebody went down into the hole
8 first and then took me down, and then that person came out again and the
9 hole was then closed.

10 Q. Were you alone all the time in the hole?

11 A. No, I wasn't alone.

12 Q. How many of you were in the hole?

13 A. I think that there were five of us, but I'm not sure. I'm not
14 absolutely certain.

15 Q. Do you know whether the others who were in the hole with you were
16 also being punished?

17 A. I don't know whether the others were there because they were
18 being punished, but in my opinion, we were all there because we were
19 being punished.

20 Q. How long did you have to stay in the hole?

21 A. I stayed in that hole for about a week or a week and a half.

22 Q. How often were you given food whilst you were in this hole?

23 A. We were given food every evening. Every evening they gave us
24 something to eat, so we spent the whole day without food.

25 Q. You said you spent about a week and a half in the hole. What

1 happened after you left the hole?

2 A. When we came out of the hole, well, I didn't go anywhere. I was
3 immediately given a weapon.

4 Q. Whilst you were in the hole, were you there all the time or were
5 you able to leave the hole from time to time during this one and a half
6 weeks?

7 A. Sometimes we came out of the hole.

8 Q. The others who were with you in the hole, were they younger than
9 you or older than you or the same age? Do you know?

10 A. They were of different ages.

11 Q. Younger than you?

12 A. I don't know.

13 Q. That's all right. After you were given a weapon, were you given
14 any duties to do?

15 A. Yes.

16 Q. What duties were you given?

17 A. I was in charge of security in the kitchens.

18 Q. And as security in the kitchen, what were you asked to secure?
19 What did you have to do?

20 A. In the kitchens there was food.

21 Q. And what were you requested to do as regards the food? Were you
22 requested to do anything as regards the food?

23 A. There were some who were preparing the food that was then shared
24 with the soldiers. They served it to the soldiers.

25 Q. And do you recall, Witness, what was your role as security for

1 the kitchen? What was your role?

2 A. I was there to keep an eye on the kitchen, to make sure that
3 other soldiers didn't come into the kitchen and steal food.

4 Q. How long did you have to do this, these duties?

5 A. I did that duty for a certain length of time.

6 Q. After your duties as security for the kitchen, were you assigned
7 with any other duties?

8 A. No.

9 Q. And do you remember the name of the camp that Commander -- that
10 you were with, with Commander Django?

11 A. We called it the Lopa camp.

12 Q. At the Lopa camp, were there many children?

13 A. Yes, there were children at the Lopa camp.

14 PRESIDING JUDGE FULFORD: Ms. Bensouda, I'm going to interrupt
15 there. The question "At the Lopa camp, were there many children" is
16 highly suggestive of the answer on an issue, I suspect, of importance to
17 the Defence. Can you be more circumspect, please.

18 MS. BENSOUDA: I will be, Mr. President.

19 Q. Can you remember approximately how many children were at the
20 Lopa camp?

21 A. I cannot give you a precise answer as to the number of children
22 because I didn't have time to count the children who were at the camp.

23 Q. Amongst the children, were there both sexes, boys and girls?

24 A. Yes.

25 Q. How long did you stay at the Lopa camp?

Witness: Witness DRC-OTP-WWW-0213 (Open Session)
Questioned by Ms. Bensouda

Page 44

1 A. Well, as regards the number of days or the amount of time, I
2 really ask you to forgive me because I cannot remember. A lot of things
3 have happened and I'm confused about this.

4 Q. That's all right. I'm sorry. I'm also not insisting on the
5 time. It's all right if you cannot remember.

6 Did you at any point in time have to leave -- had to leave Lopa
7 camp?

8 A. No. I didn't have the opportunity to run away from the Lopa
9 camp.

10 PRESIDING JUDGE FULFORD: Ms. Bensouda, if I may, I'm only trying
11 to help, I think you are on reasonably firm foundations here in that
12 earlier in his evidence the witness said that after he had been at Lopa,
13 he was taken to Bunia where he was based at the premises of the
14 president. So I think you're -- given he's given that evidence, you're
15 perfectly entitled to take him back to that part of his account, if I
16 understand correctly what you're trying to do.

17 MS. BENSOUDA: Mr. President, I was just confirming with my team
18 that he, indeed, said that before I moved on to that.

19 PRESIDING JUDGE FULFORD: He absolutely did and you can take him
20 back to that point.

21 MS. BENSOUDA: Thank you, Mr. President.

22 Q. Witness, you said earlier on that after Lopa camp, you were
23 assigned to Bunia, to the residence of President Lubanga; that is
24 correct?

25 A. Commander Django sent us to Bunia. I wasn't on my own.

1 Q. Can you remember how many of you were sent to Bunia?

2 A. No, I don't remember.

3 Q. Can you remember the age range of those of you who were sent to
4 President Lubanga's house?

5 A. I don't know how old the children were. I just know that some
6 were younger than me and others were older than me and there were others
7 of the same age as me. But most of them were older than me.

8 Q. When you were assigned to President Lubanga's house, what duties
9 were you told to do?

10 A. My duty, or our duty, was to guarantee security, his security,
11 security within the residence and around and outside the residence.

12 Q. For these duties were you armed?

13 A. Yes, we had weapons.

14 Q. Did all of you who were sent to President Lubanga's house have
15 weapons on you?

16 A. Yes. Everybody had a weapon.

17 Q. Can you tell us what kind of weapons you all had?

18 A. We had SMGs, and those who were outside had heavy arms.

19 Q. Whilst you were escorted -- whilst you were assigned to
20 President Lubanga's house, did you have cause to accompany him anywhere?

21 A. There was another group, they escorted him when he moved around.
22 But we stayed at home, we stayed at the residence.

23 Q. Are you able to describe to the Court exactly -- not exactly,
24 where President Lubanga's residence was located in Bunia?

25 A. Lubanga's residence was at the headquarters of the subregion of

1 Bunia.

2 Q. Was it only President Lubanga who lived there or were the
3 premises used for something else as well?

4 A. There was his residence. He lived there with his wife.

5 Q. How long were you -- did you stay as a security guard at
6 President Lubanga's house?

7 A. I don't know how long I stayed there because I didn't have time
8 to count the days, so I don't know how long I was there at his residence
9 for.

10 Q. And whilst you were a security guard at President Lubanga's
11 house, how were you dressed?

12 A. We wore combat fatigues, "tache tache."

13 PRESIDING JUDGE FULFORD: Are you happy to carry on?

14 THE WITNESS (interpretation): I could perhaps add something.

15 PRESIDING JUDGE FULFORD: Sure.

16 THE WITNESS (interpretation): This is what I want to say: As he
17 is here and as I'm here before the court, it was a big decision for me to
18 take. I don't have any parents -- well, I don't have my father. I have
19 my mother. My father helped me greatly. He did everything for me but
20 he's no longer alive. I took the decision to come here to testify
21 because of the evil he has done. It's said that everything has a
22 beginning and an end. That's what I wanted to add. I don't know whether
23 I have badly expressed myself. If I have done, then please forgive me.

24 PRESIDING JUDGE FULFORD: You haven't expressed yourself badly
25 and there's absolutely no need to apologise. My concern is to make sure

1 that you're happy to carry on giving evidence for the next 20 minutes.

2 Do you feel well enough to do so?

3 THE WITNESS (interpretation): Yes, I will answer the questions.

4 PRESIDING JUDGE FULFORD: Thank you very much. There's only

5 20 more minutes now and then you'll have a break for the weekend.

6 Yes, Ms. Bensouda.

7 MS. BENSOUDA: Thank you, Mr. President.

8 Q. While you were at President Lubanga's house, where did you sleep?

9 A. We slept outside the house but it was within the compound.

10 Q. Did all of you sleep together in one place or at different places
11 within the compound?

12 A. Well, we didn't really sleep as such because we were in charge of
13 security of the commander, of the big chief, so we didn't really sleep as
14 such.

15 Q. When did you eventually leave President Lubanga's house as a
16 security guard?

17 A. We left his residence because of the fighting between the UPC and
18 the Ugandans.

19 Q. Did you take part in the fighting between the UPC and the
20 Ugandans?

21 A. Yes. Yes, I took part in the fighting between the UPC and the
22 Ugandans.

23 Q. Can you recall where this fighting took place?

24 A. The fighting started in a district, I don't know what it was
25 called, but there was fighting throughout most of the town of Bunia.

Witness: Witness DRC-OTP-WWW-0213 (Open Session)
Questioned by Ms. Bensouda

Page 48

1 Q. Who asked you to be part of the group that fought the Ugandans,
2 the UPC group fighting with the Ugandans?

3 A. No order was given by anyone other than Thomas Lubanga.

4 THE INTERPRETER: The interpreter apologises. I didn't hear the
5 last sentence spoken by the witness.

6 MS. BENSOUDA:

7 Q. Witness, the -- can you please just go over what you just said?
8 The interpreter could not hear you properly.

9 A. Yes. Please repeat the question.

10 Q. You were explaining to me about the fight between the UPC and the
11 Ugandans in which you took part, and you said Mr. Lubanga asked you to --
12 I mean, ordered you to fight, but you added something which we could not
13 hear properly.

14 A. I don't have anything else to add.

15 Q. That's all right. I'll just ask you this question: What was
16 your role in the fighting?

17 A. We were all there to fight. During a war you have to fight.

18 Q. That is correct. And how long did you have to be part of this --
19 the UPC group fighting with the Ugandans?

20 A. The fighting against the Ugandans started around 1400 -- sorry,
21 1600 hours. We continued to 1700 hours and then fled, and Bunia was in
22 the hands of the Ugandans.

23 Q. During the course of the fighting, did you have to use your
24 weapon, to shoot your weapon?

25 A. Yes.

Witness: Witness DRC-OTP-WWW-0213 (Open Session)
Questioned by Ms. Bensouda

Page 49

1 Q. You said that you fled. Who was winning, winning the -- just a
2 moment.

3 (Prosecution counsel confer)

4 PRESIDING JUDGE FULFORD: Ms. Bensouda, he's already said that
5 Bunia was left in the hands of the Ugandans.

6 MS. BENSOUDA: One moment.

7 (Prosecution counsel confer)

8 PRESIDING JUDGE FULFORD: If it's of any assistance,
9 Ms. Bensouda, because it was evidence given this morning, the witness
10 also said that he was injured and was taken in a vehicle to Lopa, if you
11 want to pick up on that.

12 MS. BENSOUDA:

13 Q. Witness, this morning you told us in your evidence that you were
14 injured. Were you injured during this fight against the Ugandans?

15 A. Yes, I was injured during the fighting against the Ugandans.

16 Q. Where were you injured?

17 A. My leg was wounded.

18 Q. How was it wounded, if you can explain to us?

19 A. It was a bullet injury.

20 Q. You said once you were injured you were taken back to Lopa. How
21 did you get back to Lopa?

22 A. We were taken to Lopa in a vehicle after I was injured. Our
23 superior officer asked that other children who had been injured and other
24 soldiers should be taken, so we were taken in a vehicle to Lopa.

25 Q. These other children, were there many of them?

1 A. There were not many of them. I'm talking about the children in
2 our group. There were not many of them.

3 Q. Yes, I'm also talking about the children you said were injured.
4 Do you remember how many of you were in the vehicle?

5 A. Well, personally, I was in a lot of pain and so I was not able to
6 count the number of people in the vehicle. I can't give you the exact
7 number of people who were with me.

8 Q. That's no problem. Where on your leg were you injured?

9 A. Yes. It was my left leg that was injured.

10 Q. Witness, after -- after this battle in which you were injured,
11 did you go back to the UPC, to the army?

12 A. No, I did not return to the UPC army.

13 Q. Did you go back to school?

14 A. Yes.

15 Q. I'm just going to ask you one or two questions to be clear on a
16 few issues and then I will stop. You remember telling us that when you
17 were abducted with your friends for the second time, the officer or the
18 leader of the group of UPC was talking to a superior commander, I believe
19 Commander Django. Do you remember saying that this morning?

20 A. Can you please repeat your question?

21 Q. Yes. I will just remind you when you told the Court this morning
22 about when you were abducted from the football field, and that the leader
23 of the UPC group who came to take you was communicating with someone else
24 to ask if the children should be taken. Do you remember that?

25 A. Yes, I remember.

1 Q. Can you remember how he was communicating with this other
2 commander? By what means?

3 A. He communicated using a Motorola radio.

4 Q. Witness, after you left -- after you went back, when you were
5 injured in this last fight, you said you went back to school. To what
6 class did you go back to school?

7 A. I started the fifth grade.

8 Q. And did you complete your schooling, primary school?

9 A. Yes.

10 Q. And was it the same school?

11 A. I completed my education in another primary school in Bunia.

12 MS. BENSOUDA: Mr. President, I know it's still five minutes to
13 the time, but if we can have a break now. I will still be asking a
14 couple of questions when we resume, but not many.

15 PRESIDING JUDGE FULFORD: Do I take it, Ms. Bensouda, that
16 essentially what you're asking for is an opportunity over the weekend
17 just to make sure that you've covered all the matters you should, but
18 essentially you've concluded your questioning.

19 MS. BENSOUDA: Exactly, Mr. President.

20 PRESIDING JUDGE FULFORD: Certainly, all right. Well, you can
21 have an opportunity to review matters and to ask any necessary further
22 questions if you need to. Good. Thank you very much, indeed.

23 MS. BENSOUDA: Thank you, Mr. President.

24 PRESIDING JUDGE FULFORD: Sir, thank you very much for your help
25 today. We're now going to have a break for the weekend and we will look

1 forward to seeing you again on Monday morning at 12.00. Good.

2 Can we go into private session, please, so that the witness can
3 withdraw.

4 (Closed session)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

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12 (Expunged)

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15 (Expunged)

16 (Open session)

17 (Mr. Lubanga entered court)

18 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Lubanga. I'm
19 sorry to have to keep on asking you to get up and get down again. It's
20 not convenient.

21 Mr. Walley, my memory is, returning to your application, that in
22 one of our many decisions, no doubt issued long ago, we made some
23 arrangements as regards disclosure of materials from the parties to
24 relevant participating victims. Now, I'm afraid I had other things to do
25 over the short break that we had an hour ago and I haven't managed to

1 uncover the particular decision. Do you by any chance have the relevant
2 quotation to hand, if I'm right in thinking that we have covered this
3 territory before?

4 MR. WALLEYN (interpretation): Your Honour, I think that, indeed,
5 it's a decision of the 18th of January. This problem of the disclosure
6 of materials was touched upon but only in part. I don't remember that we
7 talked about disclosure of documents by the Defence and I also think that
8 we did not talk about documents produced at a hearing. But you called
9 upon the Office of the Prosecutor to disclose to us all documents that
10 concern us directly, so we identified a certain amount of material which
11 is of interest to us and which we thought could be at the disposal of the
12 Office of the Prosecutor. So the Office of the Prosecutor gave us a
13 certain number of documents, and to the other teams as well, following
14 the criteria provided by each legal representative. So we have documents
15 which are not necessarily documents produced before your Chamber. These
16 are documents which are at the disposal of the Office of the Prosecutor
17 and which concern the interests of the victims we represent.

18 Another aspect which I do not think has been touched upon and I
19 think will be good for us to look at now has to do with documents which
20 are produced during hearings, documents that receive an MFI number and
21 which, therefore, become evidence. I think that such documents which are
22 presented at hearings are documents which we see; we are aware of them.
23 And once they are formally produced, they are in Ringtail and we have
24 access to them; however, we have access to them only at the time they are
25 deposited in the file.

1 Think it's a matter of politeness that all participants in
2 proceedings should not be discovering documents at the same time as the
3 public and that every time a document is filed, it should be filed in
4 advance to the Defence. In any case, we would like that the Defence,
5 every time they produce a document to the Chamber, they should also give
6 us a copy.

7 I think it goes beyond a matter of mere politeness here, because
8 we are potentially concerned or interested in every document which is
9 provided during a hearing. Every piece of evidence can be challenged by
10 participants. You have deemed that participants can challenge the
11 relevance or the admissibility of evidence of the documents which are
12 produced in court. Such documents can be relevant to the interests of
13 our customers, of our clients.

14 We have, for example, noticed that in the videos which have been
15 projected there are certain aspects that may be relevant to the case of
16 victims. You have asked us -- you have permitted us to ask questions,
17 but we cannot request leave to ask questions on a subject if we do not
18 know that such material is going to be presented in court. That is why
19 we made a request to the Court that we should be given leave to question
20 a witness on material that is provided.

21 Also, as concerns documents provided by the Defence, there is
22 also an additional problem. If the Office of the Prosecutor produces a
23 document during the testimony of a witness, we have the opportunity at
24 the end of the testimony to ask questions, that is, seeking leave from
25 the Bench. And when the Defence takes over, we can no longer ask any

1 questions because you have stated that after the Defence finishes its
2 cross-examination, the Prosecution team can do a re-examination but there
3 is no provision for Legal Representatives to put any questions to the
4 witness. And so we think that we should either be given the opportunity
5 to see the material which is going to be produced by the Defence in the
6 course of a testimony, because this can influence the attitude we are
7 going to adopt during the hearing.

8 I give an example. If the Defence produces irrefutable evidence
9 that what we believe to be a useful point for us is no longer useful, if
10 the Defence produces evidence that a witness was not present at a given
11 place, at a given time, contrary to what we believed, then we will have
12 no reason to ask or to put any question in that regard or in that light.
13 Or before we take the floor, it would be proper for us to see all the
14 documents, therefore, which are going to be provided to the Court.

15 Another possibility would be for you to give us the opportunity
16 to put more questions after we have seen these documents. Those are the
17 points we discussed, your Honour.

18 PRESIDING JUDGE FULFORD: Mr. Walley, we're going to reserve our
19 decision on this. I'm going to give Ms. Bensouda and Maitre Mabilille an
20 opportunity to respond now, but I have to say, my own reaction is that
21 through this application you are expanding the position of victims
22 participating fairly dramatically. But thank you for your submission.

23 Ms. Bensouda, is there anything you want to say on this?

24 MS. BENSOUDA: Mr. President, can we make our submissions on
25 Monday, if that is --

1 PRESIDING JUDGE FULFORD: Yes, I think you -- I think you would
2 be sensible, if you want to take time over this, Ms. Bensouda. It is an
3 important issue which does have an impact on, really, the true role of
4 participating victims in this case, because one has to remember, at the
5 end of the day, the right is to express their views and concerns on
6 issues which directly touch upon their clients and there is always the
7 real possibility that some of the evidence that's being canvassed has, in
8 fact, no connection with the views and concerns of the individual victims
9 being represented. But Monday, most certainly.

10 MS. BENSOUDA: Thank you, Mr. President.

11 PRESIDING JUDGE FULFORD: Maitre Mabilille, this afternoon or
12 Monday morning?

13 MS. MABILILLE (interpretation): No, I prefer that we go back to
14 read the decision and take time to make more convincing observations
15 thereon.

16 PRESIDING JUDGE FULFORD: Thank you very much. The only problem
17 that this causes is that if Ms. Bensouda is about to conclude her
18 questions, then the normal order of events would be that Mr. Walleyne
19 would be coming next. It may be that in these particular circumstances,
20 we will change the order and we will have, as it were, the first round of
21 Defence questioning next, once we've heard submissions, to give us time
22 to think about any submissions on Monday, and we may come to you
23 thereafter, Mr. Walleyne, before the last sequence of Defence questions.
24 But that's a possibility that you should have in mind for Monday. Good.

25 Finally, this: So everyone knows, we are -- we are very grateful

1 for the various submissions that have been made as regards how summaries
2 of witness evidence should be dealt with, those that are intended for
3 public consumption. On mature reflection, we agree with, I think, really
4 what is the unanimous position of all counsel that it would be
5 undesirable for the Chamber to produce the summaries and one extremely
6 sensible observation has been made is that unwittingly the appearance may
7 be given that we've reached conclusions on the evidence when, in fact, we
8 have not done so and, indeed, it would be wholly inappropriate to arrive
9 at any conclusions on the evidence at this stage in the case. So that
10 idea, from me, for which I must take responsibility, was a bad one.

11 We are now going to research what the other possibilities are,
12 but it is not easy because it means someone, probably other than the
13 parties and participants, having to troll through each day's evidence to
14 compile a short summary, and that is not necessarily an easy task. We
15 understand that it would be helpful if summaries were prepared for the
16 public and we will try to secure a way in which this can be done. But at
17 the moment an obvious solution has not presented itself.

18 Yes, Ms. Bensouda.

19 MS. BENSOUDA: Mr. President, can Ms. Samson give some
20 information regarding this issue.

21 PRESIDING JUDGE FULFORD: Certainly. If you can throw some
22 illumination on this, Ms. Samson, we'd gratefully receive it.

23 MS. SAMSON: I'm not certain that I'm actually being requested to
24 do that, but the only thing I can suggest is that perhaps given that,
25 indeed, neither party nor participant will be drafting the daily

1 summaries, that much as they are for other courts, if we're guided by
2 what the other international tribunals do, the daily summaries are
3 actually quite brief, and so the information contained, because I believe
4 it's being compiled by a neutral entity, necessarily is more scarce in
5 the information provided and that may be the way to go in this case. Of
6 course, we've proposed - I believe people agree - that the parties and
7 participants ought to have an opportunity to make observations when
8 appropriate, but that would be the suggestion of at least the
9 Prosecution.

10 PRESIDING JUDGE FULFORD: That's very helpful, Ms. Samson.
11 Clearly, the shorter the summary is, the easier it is to compile, really.
12 But yes, we'll bear that in mind. Thank you very much.

13 Is there anything else? Yes, Mr. Sachdeva. Another witness
14 alteration, your usual application at the end of the day?

15 MR. SACHDEVA: No, actually not today. It does involve a
16 witness, however, and I would like ask leave to move into closed session
17 for this. I do apologise. It's simply a matter of information.

18 PRESIDING JUDGE FULFORD: Closed session with the blinds up?

19 MR. SACHDEVA: Yes, they can be up.

20 PRESIDING JUDGE FULFORD: Good. Closed session with the blinds
21 up, please.

22 (Private session)

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Page 59 - Expunged - Private session.

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14 The hearing ends at 2.13 p.m.

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1 CORRECTIONS REPORT

2 * Following the Judges order, the portion of the transcript corresponding to
3 page 17 line 3 to page 19 line 20 has been reclassified as public.

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