

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito

4 and Judge René Blattmann

5 Situation in the Democratic Republic of the

6 Congo - ICC-01/04-01/06

7 In the case of The Prosecutor v. Thomas Lubanga Dyilo

8 Thursday, March 18, 2010

9 (The hearing starts at 9.32 a.m.)

10 (Open session)

11 THE COURT USHER: All rise. The International Criminal

12 Court is now in session. Please be seated. Good morning.

13 PRESIDING JUDGE FULFORD: Witness, please. We will need

14 to go into closed session.

15 (Closed session at 9.33 a.m.)

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24 (Open session at 9.38 a.m.)

25 THE COURT OFFICER: We are in public session, your Honours.

1 PRESIDING JUDGE FULFORD: Yes.

2 MR DESALLIERS: (Interpretation)

3 Q. I wish to make a general observation before I start asking
4 my questions. There are a certain number of things which you mentioned
5 yesterday, and I may return to some of those points just to make sure
6 that we clearly understood what you said, or to complete certain things
7 that may not have been reflected completely or in full in the transcript.
8 This is just to make you understand why I may be repeating them.

9 Yesterday you said that when you met the investigator of
10 the OTP for the first time in Kampala, you did not know that he was
11 an investigator of the ICC; is that right?

12 A. Yes.

13 Q. Did I understand you well, that at the outset you refused
14 to talk to him?

15 A. Yes.

16 Q. I would like to get details on what happened at that point
17 in time. Did the intermediary come to convince you that you had to
18 talk with the investigator?

19 A. Does your question relate to the period prior to my meeting
20 with the investigator, or it relates to the period after that meeting?

21 Q. I am referring to the period when you were with the
22 investigator. You said you told the investigator that you refused
23 to answer his questions. Now, what I would like to know is whether
24 it was at that point in time that the intermediary tried to convince
25 you to talk to the investigator.

1 A. Yes, we were on the balcony, and that's the way things went.

2 Q. So the discussion or the interview took place in a hotel
3 room; is that the case?

4 A. That's correct. It was indeed in a hotel room.

5 Q. And when the intermediary spoke to you to convince you to
6 talk to the investigator, he took you to the balcony of the hotel room;
7 is that correct?

8 A. Someone knocked on the door, and the investigator allowed
9 us to go to the balcony so that my identity would not be discovered,
10 and the intermediary spoke to me in Lingala so that the investigator
11 would not understand what he was telling me.

12 Q. Thank you. Now, what did the intermediary tell you in Lingala
13 precisely?

14 A. He told me that I should tell the investigator what I had
15 read on a sheet of paper. He said that I should simply limit myself
16 to what I had read in the document that he drafted in accordance to
17 the plan that we had made together; that is, he and I, at the hotel.
18 He insisted that I should do this so that I could reap some advantage
19 from that.

20 Q. Are you talking about the account that was taught to you
21 or fed to you by the investigator -- sorry, by the intermediary?

22 A. No, the intermediary had prepped me in his hotel room. I
23 read a document. After that he briefed me on what I had to say, and
24 he said that I was to tell the investigator the things that he and
25 I had agreed on in his hotel room.

1 Q. Very well. Thank you. There is one point which I believe
2 was not reflected in the transcript yesterday. I am going to read
3 a passage which does not feature in the transcript, but which we noted
4 down, and I would like you to tell us whether you said that or not
5 yesterday. And it reads as follows: "It was the intermediary who
6 encouraged me to lie. If the investigator had told me right from the
7 start that I had to speak the truth, I would have given a different
8 testimony."

9 Now, what I have just read now, does that correspond to what
10 you said yesterday?

11 A. Could you please repeat what you have just read, because
12 whilst you were reading I was a bit distracted.

13 PRESIDING JUDGE FULFORD: Mr Desalliers, to assist the
14 Bench - and as a matter of courtesy to other counsel - when you are
15 putting particular quotations from particular passages of an earlier
16 transcript, could you give the transcript reference at the same time
17 so that the Bench and Ms Samson can identify quickly the part that
18 you are referring to.

19 MR DESALLIERS: (Interpretation) Yes, your Honour. I
20 jotted these notes in the course of my questioning, and what I have
21 is handwritten; and what I am proposing to the witness is what he said,
22 but which is not reflected in the transcript. So, I cannot pinpoint
23 where it's supposed to feature in the transcript.

24 PRESIDING JUDGE FULFORD: Well, I understand, Mr Desalliers,
25 it may be said there's a deficiency in the transcript, but I'd be

1 surprised if you are wholly unable to identify where approximately
2 within the transcript you say that it falls, but I see from the
3 expression on your face that that is probably the case. It doesn't
4 make it very easy for the rest of us, but all right. Put the question
5 again, Mr Desalliers, but it makes checking this extremely difficult.

6 MR DESALLIERS: (Interpretation) What I would like to
7 propose, your Honour, is that I will ask this question later on and
8 I will do my level best to identify the area where this extract was
9 supposed to have featured, and I will put the question later on to
10 the witness, if it pleases the Bench.

11 Q. Mr Witness, I will return to that question later on.
12 Yesterday you said - French transcript, page 63, line 11 - that after
13 your first interview with the investigator in Kampala the intermediary
14 stayed on the premises and discussed with the investigator. Do you
15 remember having said that?

16 A. Yes.

17 Q. Do you know what they discussed with each other?

18 A. No, I am not in a position to know. I waited for him outside,
19 and they were together inside. I do not know what they discussed with
20 each other.

21 Q. And for that interview in Kampala, you received a sum of
22 about 300 or 400 dollars; is that the case?

23 A. I was given money to cover my transportation costs and to
24 buy air time for my telephone. It wasn't compensation money that was
25 paid to me.

1 Q. Very well. Is it true that of this amount - 300 or 400
2 dollars - the intermediary gave you \$100 and kept the rest for himself?
3 Is that what happened?

4 A. That's correct.

5 Q. Later on you saw the intermediary sharing what he had withheld
6 from that money with two other individuals; is that the case?

7 A. That is correct.

8 MR DESALLIERS: (Interpretation) Your Honour, could we go
9 into private session for a few questions?

10 PRESIDING JUDGE FULFORD: Private session, please.

11 (Private session at 9.49 a.m.)

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19 (Open session at 9.55 a.m.)

20 THE COURT OFFICER: We are in open session, your Honours.

21 MR DESALLIERS: (Interpretation)

22 Q. Yesterday you said the following about your first meeting
23 with the investigator, and I am going to cite an excerpt of the French
24 transcript, page 32, line 2: "I met the investigators each morning,
25 and before meeting the investigators I would meet the intermediaries

1 of the investigators."

2 First of all, I would like you to clarify the following:
3 Was there one intermediary or several intermediaries?

4 A. I saw only one intermediary every time I arrived there. However,
5 I believe that (Expunged). I
6 believe that there were other intermediaries. I think there were
7 several of them.

8 MR DESALLIERS: (Interpretation) Your Honour, I think we
9 will need to have a redaction there.

10 PRESIDING JUDGE FULFORD: Absolutely. Yes, please.

11 MR DESALLIERS: (Interpretation)

12 Q. What I would like to know is the following: Before meeting
13 the investigator, did you always meet one intermediary or you met
14 several?

15 A. Very often, I met only one intermediary.

16 Q. Did it ever happen that you met other intermediaries, apart
17 from the one you have been talking about since yesterday? I am talking
18 about other intermediaries; I am not talking about the investigators.
19 I am talking about the intermediaries.

20 A. It's difficult for me to answer your question. In general,
21 I met only one intermediary; and I think I should say at this juncture,
22 that I met only one intermediary.

23 MR DESALLIERS: (Interpretation) Your Honour, could we go
24 into private session, please.

25 PRESIDING JUDGE FULFORD: Private session, please.

1 (Private session at 9.58 a.m.)

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19 (Expunged)

20 (Open session at 10.00 a.m.)

21 THE COURT OFFICER: We are in open session, your Honours.

22 MR DESALLIERS: (Interpretation)

23 Q. So, before you met with the investigators, you had meetings
24 with the intermediary or perhaps other intermediaries. Why did you
25 have these meetings every day before you met with the investigators?

1 A. Well, it's simple. The intermediary knew what I was doing.
2 For me, it was a matter of making false accusations and he was supposed
3 to give me additional details and information with regard to what I
4 was supposed to say to the investigators.

5 Q. Thank you. Now, didn't you say yesterday that it was the
6 intermediary who told you that you had to change your name when you
7 were speaking to the investigators; is that correct?

8 A. That's correct.

9 Q. Was it also the intermediary who suggested that you say
10 to the investigators that you had been a soldier within the UPC?

11 A. Yes, he didn't tell me to say that I was a UPC soldier,
12 but he invented a rank for me. He gave me a rank, or a title, that
13 wasn't mine. So, for him, I was a soldier. I wasn't a soldier, but
14 he even gave me an identity document and made up a rank for me so that
15 people would believe that I had been a soldier.

16 Q. What was this rank that he gave you?

17 A. It was the rank of captain.

18 Q. So, you mentioned to the investigator in 2002 or 2003 that
19 you had been a captain in the UPC army; is that correct?

20 A. That's right.

21 Q. And what identity document did he give you?

22 A. The ID that he gave to me was a state diploma, a government
23 diploma. In actual fact, I did my exam in 2002/2003 and I did my
24 government exams under difficult conditions. There was gunfire all
25 around, and I was not able to get my government diploma but, to convince

1 our intermediaries or counterparts, we changed the name and I received
2 an original of the state or government diploma.

3 Q. In turn, did you give that document to the investigators?

4 A. When the investigators asked me to produce an identity
5 document, it was the programme, or the witness protection programme,
6 made a photocopy of that government diploma and gave it to the
7 investigators. That happened in Kinshasa, if I remember correctly.

8 MR DESALLIERS: (Interpretation) A moment, your Honour.

9 Q. Do you know how the intermediary was able to obtain such
10 a document?

11 A. In the Congo, anything can be bought. One can buy a document
12 any old way, and when I gave my testimony I said that this man was
13 working with a network; other people who had other motives - other
14 reasons - and he was able to do anything to have these people believe
15 the -- his counterparts that what I was saying or what I had to say
16 was true.

17 MR DESALLIERS: (Interpretation) Your Honour, could we go
18 into closed session for a moment.

19 PRESIDING JUDGE FULFORD: Private session, please.

20 (Private session at 10.06 a.m.)

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1 (Open session at 10.14 a.m.)

2 THE COURT OFFICER: We are in open session, your Honours.

3 MR DESALLIERS: (Interpretation)

4 Q. So, within this network that the intermediate belonged to,
5 could you tell me what was the role of people within MONUC within this
6 network? What did the MONUC people do within the network?

7 A. Some were drivers. Initially, when MONUC was recruiting these
8 local employees, the people who applied were people who already had
9 some responsibilities. They would recruit people for a day or two
10 of work. Others were guides, they would go along with people in armed
11 vehicles. So, many people took advantage of the MONUC's presence.
12 They were well aware. Pardon, they knew (Expunged)well.

13 Q. So, the people -- I beg your pardon, let me rephrase my
14 question. So, there was cooperation between these people at the MONUC
15 and the intermediaries, helping them with the intermediaries'
16 activities?

17 A. Well, there were local agents who had grown up in Ituri,
18 natives of the Ituri region, so they worked in various departments
19 at the MONUC mission. Others had contracts as drivers. So, they worked
20 there and they took advantage of that privilege so they could do as
21 they wished.

22 Q. Now, if we could go back to the intermediary himself now.
23 Other than bringing witnesses to the OTP, what were his other activities?
24 What else did he do?

25 A. Really, not to tell a lie, I didn't know him before he told

1 me, because I was curious.

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13 PRESIDING JUDGE FULFORD: Can you pause for a moment.

14 Redactions. Yes, okay. Can we have redactions, please, to the roles
15 fulfilled by the intermediary. It's really page 20 in the English,
16 line 4 through to line 15.

17 Please continue, Mr Desalliers.

18 MR DESALLIERS: (Interpretation) Thank you, your Honour.
19 For a few questions I believe I need to go into closed session, and
20 I also need to provide some documents that we will be making reference
21 to for this upcoming series of questions.

22 PRESIDING JUDGE FULFORD: Right. Private session, please.
23 We need to wait for the usher to come back.

24 (Private session at 10.20 a.m.)

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16 A. Yes, indeed, because the name Matondo is not a name borne
17 by Iturians or by people of Hema ethnicity.

18 MR DESALLIERS: (Interpretation) Your Honour, I think the
19 same thing applies.

20 Q. Mr Witness, I would like to inform you that when we are
21 in open session, well, it's understandable that we may make errors,
22 but please do not give any names that would identify you or identify
23 the intermediary, please.

24 PRESIDING JUDGE FULFORD: Redaction, please.

25 THE WITNESS: I am sorry. I forgot that we were in open

1 session.

2 MR DESALLIERS: (Interpretation)

3 Q. The intermediary also asked you to talk about Commander
4 Claude; is that not the case?

5 A. Yes.

6 Q. Could you please tell us why he wanted you to talk about
7 Claude, in particular?

8 A. It was because Claude was already deceased and he was from
9 the Kivu province and it would have been difficult to trace his past.
10 The idea was to hide the information relating to where I had had military
11 training, my identity and any other aspects relating to my identity.
12 That was the purpose. Claude was already deceased at that point in
13 time.

14 Q. Was it also in order to hide your identity that he asked
15 you to tell the investigators that you had studied at Isiro?

16 A. Yes.

17 Q. Yesterday you said, page 26, line 2, of the French transcript,
18 you said yesterday, as I mentioned a short while ago, that the
19 intermediary asked you to pretend that you were not able to read, or
20 to pretend that you had problems of vision. Do you remember having
21 made such a statement yesterday?

22 A. It was indeed what I said.

23 Q. Why did the intermediary ask you to tell that to the
24 investigators?

25 A. I don't know why he asked me to give them that information.

1 It was later on that I understood -- I understood that if I met with
2 the investigators, and if delicate questions were put to me, I was
3 supposed to tell them that I did not understand. I think that was
4 the general idea, but he did not tell me explicitly why I had to lie
5 in that manner.

6 Q. Whereas at that particular point in time you were able to
7 read and read very well; is that not the case?

8 A. Yes, of course. I know how to read.

9 MR DESALLIERS: (Interpretation) Your Honour, could we go
10 into private session for a few questions?

11 PRESIDING JUDGE FULFORD: We can. Private session, please.

12 Mr Sachdeva, is your point a short one or a long one?

13 MR SACHDEVA: A short one, Mr President.

14 PRESIDING JUDGE FULFORD: Thank you.

15 (Private session at 10.37 a.m.)

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6 (Open session at 10.39 a.m.)

7 THE COURT OFFICER: We are in open session, your Honours.

8 MR DESALLIERS: (Interpretation) I would like to say that
9 these documents should not be displayed on the public screens.

10 Q. However, the document I have just shown you, the school
11 progress report card, is it indeed your school progress report card,
12 Mr Witness?

13 A. Yes, indeed, it's my school report card.

14 Q. So, for the year 2002/2003 you did study; is that correct?

15 A. I think I studied in this school for three academic years.
16 That was during the war, and this academic year was the last that I
17 spent at that school.

18 Q. And did you complete the academic year 2002/2003; that is
19 the last academic year you spent at that institution?

20 A. Yes, it was in the course of that year that I stopped my
21 studies.

22 MR DESALLIERS: (Interpretation) Thank you.

23 PRESIDING JUDGE FULFORD: Document number.

24 THE COURT OFFICER: Your Honours, the document under tab
25 5, which is identified as DRC-D01-003-1743 will be assigned

1 EVD-D01-00123 and marked as confidential.

2 MR DESALLIERS: (Interpretation) Thank you.

3 Q. I would like to return to the statement made in
4 October/November 2005. We talked about it a short while ago. It's
5 under tab 4. Could you please take the binder, turn to tab 4, and
6 please go to paragraph 51 of your statement of 2005. It's the document
7 that received the reference EVD-OTP-001 -- or, rather, 319. I am going
8 to read an excerpt of paragraph 51 from the second sentence: "Bosco
9 was helped in military training by a certain Safari who was a Rwandan
10 soldier who came to the camp very often." Did you indeed say that
11 to the investigators in the year 2005?

12 A. Yes.

13 Q. Let's now turn to tab 2, please - it is your statement of
14 the year 2009 - and could you please turn to paragraph 89, the document
15 which bears the reference EVD-OTP-00553. I am going to sit -- sorry,
16 I am going to quote an excerpt in paragraph 50:

17 "I mentioned someone by the name of Safari, and I said that
18 I saw him in Mandro. That was not true. I have never -- I never saw
19 Safari in Mandro. I know that he was in Mandro, but I never saw him
20 there. That's what I said. You are in the truth, but somebody is
21 trying to deviate you away from that truth. And when I talk about
22 somebody I am referring to ..." and it mentions the intermediary?

23 Is that correct?

24 A. Yes, indeed. Well, in fact, I have never been to Mandro.
25 I have gone to Mandro, but I have never gone to the camp of Mandro.

1 I was not in the position to know all of what was happening in the
2 camp. I knew there was someone by the name of Safari. There was someone
3 by the name of Bosco. These are people I knew. So, I didn't say what
4 I knew; I was trying to play around with the truth. I wanted them
5 to understand that I was there, I was present and I was such-and-such
6 a person, or an official.

7 Q. In 2005, you told the investigators that Safari was in charge
8 of the operation for the airdropping of weapons in Mandro; is that
9 correct?

10 A. Yes.

11 Q. And this point about arms being airdropped, was it the
12 intermediary who told you to talk about that?

13 A. The intermediary told me nothing about the airdropping of
14 weapons; it was my friends who used to talk about it. I heard talk
15 of that from my friends.

16 MR DESALLIERS: (Interpretation) Thank you. Could I have
17 a moment, your Honour?

18 PRESIDING JUDGE FULFORD: Something is making a very
19 irritating repetitive noise. Could --

20 MR DESALLIERS: (Interpretation) I have been informed that
21 I am the cause of the noise, your Honour. It would appear that one
22 of my cables is acting up. I do apologise.

23 Q. Sir, yesterday you said the following with respect to the
24 motives of the intermediary. I am referring to an excerpt of the French
25 transcript, yesterday's transcript page 63, starting from lines 21:

1 "Then he gave me \$100, and I started thinking, and deep-down I told
2 myself that this was very odd, because the intermediary -- maybe his
3 motive was money, but he had other motives."

4 I would like to understand what you said yesterday. Is it
5 your evidence that money was one of the motives driving the intermediary
6 to act the way he did?

7 A. I believe that money was his second motive. That's my opinion,
8 my very personal opinion. Well, if you give it some thought, and you
9 take into consideration what he said, you would find that it was difficult.
10 Let's be realistic. It wasn't money or dollars that could change the
11 life of the intermediary. I think he had something, some passion
12 driving him.

13 It is not possible to hold someone hostage and ask them to
14 say certain things. He virtually took me hostage, and he was making
15 a certain number of accusations. The intermediary knew very well that
16 I was of Hema ethnicity, and he was making false accusations against
17 the Hemas. If I am saying today that all of what he did to me has
18 made me lose my way -- because today many families are suffering from
19 the situation. He was older than me, he was more of an intellectual
20 than I, and he had all of the requisite qualities -- well, excluding
21 the quality of telling the truth.

22 Q. I would like to understand what you mean by motives other
23 than money. Should I understand that the motive was to have people
24 arrested?

25 A. His motive was not to have people arrested. His motive was

1 to make a mockery of people, to make a mockery of a particular ethnic
2 group. You know, that in Congo we have tribal problems, intertribal
3 problems everywhere. At some point in time, the UPC was in control
4 of Ituri. The UPC was in control. And that shocked certain Iturian
5 intellectuals.

6 Now, when the ICC intervened, they looked for ways of
7 establishing contact with the ICC and they distorted the reality;
8 and they would say, it's -- so-and-so is committing massacres, and
9 so on. I believe that it was a way of mocking certain people who had
10 gone through a situation of anguish.

11 PRESIDING JUDGE FULFORD: Mr Desalliers, if this is
12 convenient to you, I think we ought to break now so that we can hear
13 Mr Sachdeva's brief submission before the break. Is that
14 satisfactory?

15 MR DESALLIERS: (Interpretation) Yes, indeed, your
16 Honour.

17 PRESIDING JUDGE FULFORD: Closed session, please.

18 (Closed session at 10.53 a.m.)

19 (Expunged)

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25 (Expunged)

1 (Open session at 10.54 a.m.)

2 THE COURT OFFICER: We are in open session, your Honours.

3 PRESIDING JUDGE FULFORD: Yes.

4 MR SACHDEVA: Thank you, Mr President. Very briefly,
5 yesterday when I went to conduct the "meet-and-greet" with Defence
6 Witnesses 23 and 9, I was surprised to learn that they -- the
7 meet-and-greet was done together, they were together during the
8 meet-and-greet session. Of course, the Victims and Witnesses Unit
9 were present, and it was a normal routine meet-and-greet session.

10 However, I would like to ensure through the Court that, given
11 the connection between the two witnesses' evidence, that they are not
12 being familiarised together and they are not being housed together.
13 May it please the Court.

14 PRESIDING JUDGE FULFORD: Right. So, it's not so much the
15 fact that the meet-and-greet session occurred with the two of them
16 jointly, it's more that you are worried about what's happening otherwise
17 and that there may be an opportunity for inadvisable collaboration
18 between them. Is that it?

19 MR SACHDEVA: Indeed, Mr President.

20 PRESIDING JUDGE FULFORD: Excellent. Thank you. Are you
21 able to help on this, Maître Mabilille?

22 MS MABILILLE: (Interpretation) Your Honour, we have
23 absolutely no objection to the separation of the two witnesses when
24 one of them starts giving testimony before the Court.

25 I would like to add that one of the two witnesses only speaks

1 Kilendu, and there is only one interpreter who speaks Kilendu.
2 Consequently, we would like the separation to be done on Monday, because
3 the first witness is coming to give testimony on Monday. From then
4 on, we can start the separation.

5 We are a bit uncomfortable with having them separated over
6 the weekend, because one of them has a serious problem of communication.

7 We don't want that witness to be isolated and be placed in a situation
8 where they cannot communicate with anybody at all. Thanks, your Honour.

9 PRESIDING JUDGE FULFORD: Have they travelled here together,
10 Maître Mabilille? I mean, is the reality that up until this point in
11 time that they have, in fact, been travelling and accommodated together?

12 MS MABILILLE: (Interpretation) They travelled together.
13 Now, as to whether they are in the same hotel, I am not in a position
14 to say, but they travelled together. Yes, it's a man and his son,
15 and I would like to add that the VWU informed us that they had certain
16 difficulties arising from the fact that there is only one interpreter
17 who speaks Kilendu.

18 PRESIDING JUDGE FULFORD: Understood. Anything else,
19 Mr Sachdeva?

20 MR SACHDEVA: Mr President, of course, I am sympathetic to
21 the concerns my learned friend has raised. However, the Victims and
22 Witnesses Unit should be told that there needs to be no substantive
23 discussion between the two witnesses and that only in urgent situations
24 should they be housed together, given the intimate relationship with
25 the witnesses' evidence that is due to come.

1 PRESIDING JUDGE FULFORD: Mr Sachdeva, thank you for
2 raising the issue. Entirely appropriate. We will consult with the
3 relevant representative of the Victims and Witnesses Unit, unless you
4 object, and we'll come back to you on the point I hope a little bit
5 later this morning.

6 MR SACHDEVA: Thank you very much.

7 PRESIDING JUDGE FULFORD: Thank you very much, indeed.
8 Half-past-11.

9 THE COURT USHER: All rise.

10 (Recess taken at 10.58 a.m.)

11 (Upon resuming at 11.30 a.m.)

12 (Closed session)

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14 (Private session at 11.34 a.m.)
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19 (Open session at 11.49 a.m.)

20 THE COURT OFFICER: We are in open session, your Honours.

21 MR DESALLIERS: (Interpretation)

22 Q. Just to make sure that I've understood you correctly, I'll
23 reiterate. The OTP asked you to go out and find witnesses. I'm trying
24 to understand how were the witnesses chosen? Did the Prosecutor already
25 know the name of witnesses, or did they say "Go find witnesses that

1 experienced this or that event"? How did they go about things?

2 A. (Expunged)

3 (Expunged)

4 (Expunged)

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6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 PRESIDING JUDGE FULFORD: Redaction, please.

14 MR DESALLIERS: (Interpretation)

15 Q. So, for a while you were an intermediary yourself for the
16 OTP? You acted as one?

17 A. That's right.

18 Q. And how long did that last for?

19 A. For a rather long period of time, from December 2005 until
20 May 2006. In May 2006 I went to Kampala and I met the intermediary,
21 let's say, the witness, from Goma, and when I went back, returned from
22 Kampala, I believe before I came back from Kinshasa rather, I met -- are
23 we in open session, or in private session?

24 PRESIDING JUDGE FULFORD: Open session. Private session,
25 please.

1 (Private session at 11.53 a.m.)

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17 (Open session at 11.54 a.m.)

18 THE COURT OFFICER: We are in public session, your Honours.

19 MR DESALLIERS: (Interpretation)

20 Q. Now, have I understood you correctly? Now, did you say that
21 you had introduced some witnesses to the OTP as well, so that they
22 could understand what was going on with the intermediary? Did I
23 understand what you said correctly?

24 A. No, this is what I'm saying. I brought witnesses because
25 the investigators were looking for specific witnesses regarding

1 particular issues, but myself I wasn't an intermediary. I didn't have
2 any papers that indicated I was one. I was just a witness. But I
3 can say that the investigators used me as an investigator and they
4 gave me money so I could buy credits for my telephone so I could contact
5 and speak to witnesses, but I -- that's -- I acted stupidly. I really
6 didn't understand anything and the witnesses that I brought were well
7 protected, but myself, my identity, well, the whole public could have
8 known my identity and everything I did could have been traced.

9 Q. Now, yesterday you spoke of some witnesses whom you had
10 brought to the OTP and they knew your true identity; is that not so?
11 Or perhaps more than one witness knew your identity?

12 A. The witnesses that I brought knew me as Kisay, but they
13 didn't know all my names. The only witness whom I brought -- whom
14 I had contacted by phone was (Expunged)(phon). I beg your pardon.
15 I mentioned the name. But, generally speaking, the witnesses did not
16 know who I was because I didn't give them my correct name or my complete
17 identity. The witnesses didn't know me and, personally, I told the
18 investigators that I did not want to introduce myself using my real
19 identity. I took on another -- I used another identity. I gave them
20 that other identity.

21 MR DESALLIERS: (Interpretation) Could we go into private
22 session for a few moments?

23 PRESIDING JUDGE FULFORD: Private session, please.

24 (Private session at 11.57 a.m.)

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5 (Open session at 12.00 p.m.)

6 THE COURT OFFICER: We are in open session, your Honours.

7 MR DESALLIERS: (Interpretation)

8 Q. For you to make the trip all the way to The Hague, I imagine
9 that you needed a passport for that purpose.

10 A. Yes.

11 Q. Was that passport issued in the name that you gave to the
12 investigators in 2005?

13 A. Yes, that's correct.

14 Q. Is it a Congolese passport?

15 A. Yes.

16 Q. Did you obtain this passport within the framework of your
17 activities as a witness for the Court?

18 A. Yes.

19 Q. Could you please tell us what documents were used to prepare
20 your passport application? What documents were used to prove your
21 identity; do you know?

22 A. I presented no documents to prove my identity. They used
23 the name I gave them. Later on, someone from the witness protection
24 program asked me to give them a document to prove my identity, and
25 so I presented my state diploma.

1 Q. Are you alluding to the fake documents you talked about
2 a short while ago, documents given to you by the intermediary?

3 A. Yes.

4 MR DESALLIERS: (Interpretation) Could I have a moment, your
5 Honour?

6 (Counsel confer)

7 MR DESALLIERS: (Interpretation)

8 Q. Yesterday you said -- I'm referring to page 46, line 1 of
9 the transcript. You said that in the year 2006 you requested for a
10 lawyer because you wished to give certain explanations, and that these
11 explanations were not being accepted. Did you wish to give these
12 explanations to the Office of the Prosecutor?

13 A. Well, I believe that in 2006 they underestimated my feeling.
14 Why do I say so? I say so because when I said didn't want to go to
15 the place to which they wished to relocate me, that became a problem.
16 It was as if I was trying to provoke them. They tried to harass me
17 and they used language which was unacceptable because I had said "no".
18 So I told them I needed a lawyer, because the only persons I met were
19 the officials from the VWU. They told me I didn't need a lawyer. So,
20 I found myself in a situation where I was alone. When I requested
21 for a lawyer, they thought that it was because I didn't want to go
22 to the place to which they wished to relocate me.

23 I wanted to meet the investigator who had interviewed me,
24 so they said they were going to organise a meeting. Later on when
25 I arrived here at The Hague, they wanted me to discuss with that

1 investigator over the phone, whereas I wanted to have a face-to-face
2 discussion with him. So I believe that it was their way of showing
3 that I was an idiot. I told the investigator that I needed a lawyer,
4 and the investigator told me, "You are not a suspect. You don't need
5 a lawyer." And so I found myself once more in a difficult situation
6 because I couldn't say anything at all. And all of a sudden, I found
7 myself in a situation of insecurity created by the Office of the
8 Prosecutor which had asked me to provide them with witnesses. And
9 this put me in a difficult situation, a situation which I experienced
10 with (Expunged). When I requested for a lawyer, they stifled the problem.
11 In 2007, at the place where I was relocated, I requested for a lawyer
12 by phone. They refused. In 2008, before the start of the trial - I
13 think it must have been in the month of April or May - I said that
14 I still needed a lawyer. I said that once more. The head of the VWU
15 said that I should not take a lawyer from the outside, that the Court
16 was going to give me an lawyer. I reiterated the same request in June,
17 and the head of the unit responded to me very insolently. The head
18 said, "If you want to get a lawyer, then you should use your own resources
19 to get a lawyer." I didn't have any money. I was isolated. And I
20 asked them, "Where do you think I could get the money to get a lawyer?"
21 So I said I was going to wait for the period when I was going to start
22 giving testimony and that I was going to expose the problem then in
23 the courtroom. I didn't have to use such language but then, well,
24 then that's the language I used. That's it.

25 Q. Thank you.

1 A. When I arrived here in 2009, before I arrived I reiterated
2 the same request. I asked to have a lawyer, and that request was not
3 acceded to. They said -- well, previous to that I had said I was not
4 going to give any testimony because I felt frustrated. The head of
5 the protection unit told me, "We have placed you in the protection
6 programme so that you can give evidence. If you are not going to give
7 evidence, well, then, we are going to tell the country that has accepted
8 you that you have refused to give testimony."

9 So I told them, "Well, under these conditions, I'm going
10 to give evidence, but before I give evidence, you have to provide me
11 with a lawyer." And that's how they gave me a lawyer, because I had
12 told them that, "If you do not give me any lawyer, then I am not going
13 to give testimony." For me, it was -- I thought they didn't treat
14 me with much consideration. That is the situation that arose from
15 the year 2006 right up to 2009.

16 MR DESALLIERS: (Interpretation) Thank you.

17 Could we go into private session for an additional question,
18 your Honour?

19 PRESIDING JUDGE FULFORD: Private session, please.

20 (Public session at 12.10 p.m.)

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Page 50 expunged. Private session.

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2 (Expunged)

3 (Open session at 12.19 p.m.)

4 THE COURT OFFICER: We are in public session, your Honours.

5 MR DESALLIERS: (Interpretation)

6 Q. I am going to read to you an excerpt of yesterday's transcript;
7 and after that, I will put a few questions to you. And these are questions
8 that were put to you by the Prosecutor. Page 49 of the French transcript,
9 starting from line 15, the question was: "Sir, do you know whether
10 other persons told lies to the Office of the Prosecutor?"

11 You're answer was, "I am not in a position to answer that
12 question. They asked me this question last year, and I refused to
13 answer because, well, I think I can answer now. It was a delicate
14 question. I should have answered it earlier, but I don't think it's
15 very important?"

16 THE INTERPRETER: Mr Desalliers read very fast, I must say.

17 MR DESALLIERS: (Interpretation)

18 Q. I will put that question to you again. Do you know whether
19 other persons told lies to the Office of the Prosecutor?

20 A. I refused to answer this question last year because I had
21 a concern. I had a worry. It was a question that made me uncomfortable.
22 I was afraid to answer it because I was afraid that I would be put
23 in prison, but I think the truth must be told. If I tell the truth,
24 it's going to help all parties to get to know more about these things.
25 I know people. I know children who are involved in this

1 whole thing. And you ought to know that these were children who had
2 never served as child soldiers, children who were -- who joined an
3 NGO. I can give you details on that. (Expunged)

4 (Expunged)

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15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 MR DESALLIERS: (Interpretation) Your Honour, could we go into
21 private session, please.

22 PRESIDING JUDGE FULFORD: Private session, please. And
23 there are a number of redactions from the previous passage.

24 (Private session at 12.24 p.m.)

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Page 55 expunged. Private session.

1 (Expunged)

2 (Open session at 12.33 p.m.)

3 THE COURT OFFICER: We are in public session, your Honours.

4 MR DESALLIERS: (Interpretation)

5 Q. Yesterday you spoke to us a bit about the \$12 for the hotel
6 room; well, for shelter in the place where you were and the person
7 who was providing you with lodging only received \$9. Do you know why
8 the person who was lodging you did not receive the entire amount?

9 A. It was a big con job. There were many people involved. There
10 were even people from the Office of the Prosecutor who already sent
11 me... can you imagine, to get blank bills! And they were trying -- they
12 were looking for receipts, blank bills and the bills were typed sometimes,
13 but I was presented with blank bills when I hadn't received money,
14 and the things really surprised me.

15 Q. So in actual fact, the receipts were to deceive the person
16 who was paying, and then other people would share the extra money;
17 is that right?

18 A. Well, there are two things, I think. The driver got the
19 room for me. He contacted the owner of the hotel and said, "Well,
20 someone is arriving; he comes from such-and-such a place" and he gave
21 details. And he said, "You have to ask for \$12 and then later there
22 would be payment and you will get a bill, but take \$9 and in the final
23 analysis I'll get all the money and I'll give you nine." So the person
24 would take out \$9, give -- \$12, give \$9 to the owner and keep three.

25 After, I asked the owner of the hotel, well, that -- the

1 room is three square meters, and the room is just terrible and we're
2 paying \$12? If I had spoken to the boss, the driver would have lost
3 his job. I wanted to discuss and negotiate to get a good price, and
4 I wanted receive money so I could pay myself. And from that point
5 I started to pay and I paid \$9.

6 Before that they had me sign a piece of paper saying that
7 I had received 12 and they only paid \$9. The employer of the Court
8 who came from Europe required bills and that man used the current
9 practice -- an ordinary practice in our part of the world. And myself,
10 I saw that he would get a blank bill and he would gather money, and
11 he would bring six receipts and he paid.

12 I'm not stupid to go along with something like that; agreeing
13 to blank invoices. So it was -- it was a con job and it's very common
14 in our part of the world. People do all kinds of things to get money.

15 Q. Now, this driver, was he an acquaintance of the intermediary?

16 A. No, he was a driver who worked for the OTP in Kinshasa.
17 I don't know whether he knew the owner of the hotel, but I know that
18 he was in Kinshasa. I saw him in Kinshasa. But I think it was a very
19 ordinary process or procedure between the intermediary and the driver,
20 and the people who came from Europe saw that practice there. The
21 OTP - pardon me - the witness protection group created a dangerous
22 situation asking -- to ask for money saying that the local
23 officer -- police officers were asking for money. They put people
24 in the programme to get some money. It was a very common practice,
25 and people -- everyone would do that sort of thing.

1 PRESIDING JUDGE FULFORD: Now, Mr Desalliers, how are we
2 doing? Have you got a substantial amount more? I'm asking for neutral
3 reasons of timing, because we're thinking of rising around 1 o'clock
4 and there are -- well, there's one oral ruling that's got to be given
5 substantively. One which I'm going to attempt to deal with in a
6 different way. But that's going to take at least quarter-of-an-hour.
7 Now, how much more, by way of questions, have you for this witness?

8 MR DESALLIERS: (Interpretation) Perhaps three or four
9 questions; I'm at the end. Just a moment, your Honour.

10 (Defence counsel confer)

11 MR DESALLIERS: (Interpretation) Thank you very much, your
12 Honour. I have no further questions.

13 PRESIDING JUDGE FULFORD: I wasn't meaning to put you off
14 your stride altogether. Well, Ms Samson, this raises an interesting
15 issue. The Chamber, as I recall it, in its original ruling, had
16 indicated Prosecution first, Defence last, their entitlement being
17 to go last with the questioning of witnesses. This witness now being
18 although notionally still called by the Prosecution, in effect, a
19 witness who both sides could put questions to.

20 Now, your hand being on the button would tend to indicate
21 to me that you're going to ask leave to ask some further questions.
22 Now, you're going to have to justify it.

23 MS SAMSON: Yes, your Honour, I did indeed want to seek leave
24 to ask some questions in re-examination. I do have the Chamber's
25 decision. I was reaching for it to see if there is actually any

1 pronouncement in it in relation to whether or not re-examination would
2 be permitted. But, given that the witness was recalled as a Prosecution
3 witness and the Defence would thereafter have the ability to ask any
4 questions on the questions that the Prosecution may wish to ask now,
5 there were some additional details that have been elicited in the
6 cross-examination that were certainly not touched upon in any way in
7 the examination of the Prosecution. Some of which I will need to verify
8 the accuracy of, but would like to put contradictions and other points
9 to the witness in a re-examination which I don't anticipate will take
10 a long time; half-an-hour perhaps.

11 PRESIDING JUDGE FULFORD: Thank you, Ms Samson.

12 (Trial Chamber confers)

13 PRESIDING JUDGE FULFORD: On this, Ms Samson, one is
14 reluctant to create any kind of precedent, but on the merits of your
15 application in relation to this particular witness we are persuaded
16 that, given the potential importance of the evidence and the fact that
17 some of the detail that's been given is essentially entirely fresh,
18 you should be given the opportunity of asking further questions.

19 You've kindly indicated that that may take about half-an-hour
20 and there is a very real possibility that once you've concluded, given
21 the Defence are allowed by the Rome Statute framework to go last, that
22 they will have additional final questions thereafter.

23 In those circumstances, we're not going to try and shoe-horn
24 those questions into what's left of this morning's session, and I'm
25 afraid, sir, this means because the Chamber is not sitting tomorrow

1 that I'm going to have to ask you to return finally to complete your
2 evidence on Monday morning of next week. What I can guarantee is that
3 by midday on Monday you will be free to return to the DRC. And I'm
4 sorry this means that you will have to wait a further three days before
5 you can return home, but thank you for your assistance and we look
6 forward to seeing you on Monday morning.

7 Closed session, please, so the witness can withdraw.

8 (Closed session at 12.44 p.m.)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Private session at 12.46 p.m.)

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Page 62 expunged. Private session.

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Page 67 expunged. Private session.

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10 (The hearing ends at 1.04 p.m.)

11 CORRECTION REPORT

12 The following correction has been made into the English transcript

13 Page 19 (Expunged)

14 (Expunged)

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25 CORRECTION REPORT

1 Please note that this transcript has been revised and corrected by
2 the Court Translation and Interpretation Section.
3 Due to a large amount of corrections to be brought to the transcript,
4 these have been implemented directly into the transcript.