

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and

4 Judge René Blattman

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

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

7 Monday, 8 February 2010

8 (The hearing starts at 3.02 p.m.)

9 (Open session)

10 WITNESS: \* DRC-D01-0003 (On former oath)

11 (The witness answers through interpreter)

12 THE COURT USHER: All rise. Please be seated.

13 PRESIDING JUDGE FULFORD: Good afternoon. Ms Samson, if I could address

14 the Bar through you, just a small, a very small administrative change. The Taylor

15 trial is apparently not sitting for the rest of this week and so the only two cases

16 are ours and Trial Chamber II. Trial Chamber II obviously can't sit in this courtroom,

17 so the easiest solution is if we remain here for the rest of the week, sitting normal

18 Lubanga hours. So we'll start at 9.30, have a normal morning session and then a

19 normal afternoon session. I hope that's -- well, I'm not sure whether it's convenient

20 to be in a smaller courtroom, but there we are.

21 Good. Closed session, please, so the interpreter can come in and the

22 witness can come in.

23 \*(Closed session at 3.03 p.m.) f

24 THE COURT OFFICER: We are in closed session, your Honours.

25 (The witness and the interpreter enter the courtroom)

1               PRESIDING JUDGE FULFORD: Closed session. Sorry, not closed. Private  
2 or public?

3               MS SAMSON: Just a few more questions in private session, with your  
4 indulgence, please.

5               PRESIDING JUDGE FULFORD: Thank you. Good afternoon, gentlemen. Thank  
6 you for coming back. Private session, please.

7               \*(Private session at 3.05 p.m.) Reclassified as open session

8               THE COURT OFFICER: We are in private session, your Honours.

9               PRESIDING JUDGE FULFORD: Yes, Ms Samson.

10              Questioned by Ms Samson: (Continued)

11 Q.           Thank you very much. Sir, before the break we were discussing an incident  
12 that you had reported to the Office of the Prosecutor regarding Claude Ndjango.  
13 Correct me if I'm wrong, but you told the Court that you had reported this incident  
14 but that it was a lie?

15 A.           Yes, that's right.

16 Q.           You're not suggesting, are you, sir, that (Redacted) told you to make  
17 this up?

18 A.           Yes, that's right; he told me that.

19 Q.           Sir, you had no contact (Redacted) since you met him in Kisangani in early  
20 January 2008. Can you tell the Court when you would have discussed this (Redacted)?

21 A.           Very well. That was the plan we had with (Redacted). We planned about  
22 what we were going to do. It was (Redacted) who came up with the plan. It was  
23 planned for all the children, and it didn't concern me alone. These children are  
24 going to come here before you.

25 Q.           So, sir, are you saying that (Redacted) told you to tell the Office of the

1 Prosecutor that Claude Ndjango had been questioned by ex-UPC members in  
2 February 2008?

3 A. Yes, it was a plan. (Redacted) had made the plan. He made the plan for  
4 us and for the children. That does not mean that we are different from the children.  
5 We were all together, including Ndjango. All these young people were the same.  
6 We were not different from them.

7 Q. So, you say that in November 2007, when (Redacted) was at (Redacted) home,  
8 he told you that in February 2008 you should tell the Office of the Prosecutor that  
9 Claude Ndjango had been questioned by UPC militia; is that what you're saying?

10 A. Well, it was a plan that (Redacted) had come up with. He planned it slowly  
11 for us. And even when we separated, we had already agreed on the plan. He asked  
12 us to say that. When we went to Kisangani, (Redacted) stayed there, it was a plan  
13 which he had already prepared. At that time Ndjango was not there, but the one  
14 who was supposed to bring Ndjango refused. He said that he could not leave with  
15 Ndjango, but Ndjango really wanted to go along.

16 Q. You say it was a plan he had already prepared. Did he tell you what he  
17 had done to prepare?

18 A. It was between us, but he was the one who was in charge, and he would  
19 come and tell us these things. He told us that he was not concerned. He told us  
20 that even if we left, we would not be together; we would be put up in different  
21 places. He said to tell him so that we could leave together for Kinshasa. We refused.  
22 Well, we did not really refuse. We wanted to go to Kinshasa with him. He was the  
23 one who knew people in Kinshasa. We wanted to go with him and he refused, and he  
24 stayed behind in the home of someone. He is not a Congolese, and I have forgotten  
25 the person's name. He was in Bunia, as well. That is the person who paid for our

1 tickets. (Redacted), I think. (Redacted). The person did not speak Swahili. He  
2 only spoke French.

3 Q. Sir, taking you back to the moment when you reported this incident involving  
4 Claude to the Office of the Prosecutor, it's right, isn't it, that immediately  
5 thereafter the Office of the Prosecutor took steps to move you to Kinshasa?

6 A. That's right.

7 Q. Before you moved, however, it's right, isn't it, that (Redacted)  
8 (Redacted)

9 A. They went to Kinshasa earlier. I stayed behind in Bunia at the time.

10 Q. Yes. And if I were to suggest that they moved in early March 2008, would  
11 you accept that?

12 A. Yes, I agree.

13 Q. And you must have discussed this story at length with Claude Ndjango,  
14 did you?

15 A. Yes, we discussed. We discussed about this.

16 Q. And thereafter (Redacted); is that right?

17 A. Yes, that's right.

18 Q. While (Redacted), you must have discussed the  
19 various details involved in your lies to the Office of the Prosecutor; is that right?

20 A. On the second occasion I was called to the interviews on my own. They  
21 did not ask me any other questions. They just asked me one question; they wanted  
22 to know if I was willing to work with them. I said it was a difficult question,  
23 I did not know. I said I could work with them only if my family was with me. But  
24 my family was not with me, and so I said I could not work with them. That's the  
25 answer I gave them. And then they told me, "Well, we will give you an answer later

1 on." So I waited. Some days later, after two months and a few days, because when  
2 I arrived in Kinshasa, I spent a week in Kinshasa in (Redacted), which is found  
3 in the Kalamu (phon) neighbourhood. I spent a whole week there alone without seeing  
4 my children. Later on (Redacted)

5 (Redacted)because

6 I said I was wondering how my family was living, and that I was ready to return.,  
7 even if I was to die. And they asked me, "Really, you're going to go back?" I answered  
8 "Yes, I'm going back". They said "If something bad happens to you, who will be  
9 responsible?" And I answered and I said, "It would be my problem and the problem  
10 of my family. And if I'm ill treated, I wouldn't mind about that." And they told  
11 me that if I went back, and I had betrayed them, I would be imprisoned. They wrote  
12 a letter, and I said I was ready to sign the letter and return home, and so I did  
13 sign the letter.

14 Q. I do want to get to that letter, but first, sir, I'd like you to answer  
15 my question. When you (Redacted),

16 I imagine you must have spent quite some time discussing the various lies that you  
17 had told to the OTP so that you all had your stories straight. Is that right?

18 A. We didn't even discuss about this. We were calm. We kept our cool. We  
19 didn't even know where the situation would lead us. We stayed there. The children  
20 were worried, and it was not possible to discuss with the children. We had discussed  
21 this for a long time, and it was because of these lies that we had gone to Kinshasa.  
22 We had discussed these issues earlier, and so what else could we have said to the  
23 children about the lie? Moreover, it was adults who had planned all these lies.  
24 And in any case, lies remain lies.

25 Q. Sir, I'd like to take a look with you at a document. I believe it's the

1 letter that you've been referring to. It's in your binder at tab 31, and the ERN  
 2 of the document is DRC-OTP-0198-0016. If I could ask the interpreter to read the  
 3 document, please. Perhaps before that, I would just like to confirm with the witness,  
 4 at the very bottom of the document is his signature? Sir, is that your signature  
 5 in the bottom right-hand corner of the document?

6 A. Yes, it is indeed my signature.

7 Q. And on the reverse side of the page? Sir, do you remember that an interpreter  
 8 was there at the time that you signed that document?

9 A. Yes, there was an interpreter. And even the individual we came with,  
 10 that is, (Redacted), spoke Swahili. He spoke Swahili well, but he came with another  
 11 individual.

12 MS SAMSON: Now I would ask the interpreter, please, to read the document  
 13 for the witness.

14 THE WITNESS: I, Basara Muhito --

15 THE INTERPRETER: The Swahili interpreter did not understand well. Could  
 16 you please repeat?

17 THE WITNESS: I, the undersigned, (Redacted), a resident of  
 18 Bunia in Ituri, the Democratic Republic of the Congo, hereby attests that I intend  
 19 to return to Bunia, leaving the guardianship of (Redacted),  
 20 as well as that of (Redacted), Claude Ndjango Arab (phon) with the competent services  
 21 of the International Criminal Court, that is, the ICC, for reasons of this argument  
 22 that have led to various disputes with them. I also hereby attest to request the  
 23 organisation, that is, the ICC, to ensure my return to Bunia in Ituri. I also undertake  
 24 to give up any financial claims of the ICC with respect to the relocation of (Redacted).  
 25 (Redacted) I also acknowledge having renounced any temporary

1 financial support, as discussed previously and as granted by the Office of the  
 2 Prosecutor of the ICC. I solemnly undertake to observe in all circumstances the -- to  
 3 observe confidentiality with respect to everything I have heard or know about the  
 4 collaboration of (Redacted), with the ICC. Lastly, I hereby  
 5 consent that in case of non-respect of this commitment, the ICC could take legal -- any  
 6 legal action deemed necessary against me. Done at Kinshasa on Thursday, 29 May  
 7 2008. Signed (Redacted).

8 MS SAMSON:

9 Q. Sir, have you understood the interpretation of the document?

10 A. I have fully understood it.

11 Q. Is this the document that you say (Redacted) asked you to sign?

12 A. Yes. Otherwise, I would not have been able to return home, because there  
 13 was no understanding between us. No compromise between us.

14 Q. It's right, isn't it, sir, that the document is saying that if you breach  
 15 the confidentiality and disclose to persons in and around Bunia that (Redacted)  
 16 (Redacted) had been cooperating with the ICC, that the Court could take whatever  
 17 necessary legal action there may be against you? Is that right?

18 A. Yes, they did say that. Patience has its limits. But put yourself in my  
 19 place. If you are standing in the midst of fire and everywhere you turn, you find  
 20 fire, and there's no compromise between the two of us, what do you do? I was made -- I  
 21 was forced to sign the letter. They said that if I didn't sign it, I wasn't going  
 22 to leave. So I finally had to accept to sign it.

23 Q. Sir, if I suggest to you that (Redacted) name is (Redacted)  
 24 (phon), does that sound right to you?

25 A. I only know the name (Redacted) I don't know his other names. We only

1 referred to him as (Redacted) that's the only name I know. And with respect to  
2 (Redacted), the only name I know (Redacted). There was another individual called  
3 (Redacted). That's the one who took me to hospital. I don't know others. Those  
4 are the persons I collaborated with.

5 Q. If I could ask you, please, to turn to tab 32 in your binder.

6 PRESIDING JUDGE FULFORD: En route, Ms Samson, some numbers, please. I  
7 think EVD numbers for both of the documents referred to in this file today, please.

8 THE COURT OFFICER: Tab 1, your Honours, document dated 1 December 2007  
9 which is in tab 1, with the reference DRC-OTP-0180-0151. It's a one-page document.  
10 It will be assigned EVD-OTP-00525. The next document, which is a two-page document  
11 dated 29 May 2008 will be assigned EVD-OTP-00526.

12 PRESIDING JUDGE FULFORD: Thank you. Ms Samson, how do you find the  
13 temperature in this courtroom?

14 MS SAMSON: I'm very warm.

15 PRESIDING JUDGE FULFORD: Yes. Can we see if the sauna effect can be reduced,  
16 please? Thank you. Right. Right. Please proceed, Ms Samson.

17 MS SAMSON: Thank you.

18 Q. Tab 32 of the binder, please. And the ERN of this document is  
19 DRC-OTP-0205-0043. Sir, taking a look at this document, is that your signature  
20 at the bottom?

21 A. Yes, that is my signature.

22 Q. And the date of the document, you'll agree is 12 May 2008?

23 PRESIDING JUDGE FULFORD: Now remember, Ms Samson, if you're going to  
24 put something like that, it's going to need to be read out. So I think we can all  
25 see the date, so let's move to the substance, shall we?



1 MS SAMSON: Yes. Thank you. And I would ask the interpreter, please,  
2 to read - this time it's in English - and to interpret the word -- the writing under  
3 the description in the centre of the document, please.

4 PRESIDING JUDGE FULFORD: Now, these are in English. I just want to  
5 make -- sir, I don't want to ask too much of you. This is right, Ms Samson, isn't  
6 it? Yes. Is it fair to ask you to read from English into Swahili?

7 THE INTERPRETER: I can try.

8 PRESIDING JUDGE FULFORD: You can try. All right. If there are any  
9 mistakes, I'm sure it will be picked up by anyone else. Thank you very much indeed,  
10 sir.

11 THE INTERPRETER: I am going to read for you. It is written, "Advance  
12 of a Payment." "Advance of Monthly Allowance."

13 MS SAMSON:

14 Q. And, sir, you signed this document because you had received \$200 for the  
15 monthly allowance; is that right?

16 A. Yes. That was for our sustenance.

17 Q. And the name of the person who prepared this receipt at the top is (Redacted)  
18 (Redacted), and I wonder if you remember if this is the same (Redacted) that you  
19 have been discussing today.

20 A. It's him. He knows my name very well, the name of Maki. He knows that  
21 name.

22 MS SAMSON: Thank you. Your Honour, as a notice to the Chamber, I have  
23 no further documents, if the interpreter is to be let go.

24 PRESIDING JUDGE FULFORD: Yes. Thank you very much for your help, sir.  
25 Very kind.

1 Closed session, please, so the interpreter can leave court. Yes. Thank  
2 you very much, sir. If you could withdraw then. Thank you.

3 (The interpreter exits the courtroom)

4 \*(Closed session at 3.30 p.m.) Reclassified as open session

5 THE COURT OFFICER: We are in closed session, your Honours.

6 PRESIDING JUDGE FULFORD: Are we now going to be public or private, Ms  
7 Samson?

8 MS SAMSON: I believe, your Honour, that we can move into public session,  
9 with your leave.

10 PRESIDING JUDGE FULFORD: Thank you. Public session, please.

11 (Open session at 3.31 p.m.)

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

13 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

14 MS SAMSON: Thank you, your Honour. I believe the last document may require  
15 an EVD number.

16 PRESIDING JUDGE FULFORD: Quite right. EVD number, please.

17 THE COURT OFFICER: Tab 32, your Honours, which is a two-page document  
18 under number DRC-OTP-0205-0043, will be assigned EVD-OTP-00527.

19 MS SAMSON:

20 Q. Is it right, sir, that you and Claude currently live together?

21 A. In Kinshasa, we were together.

22 Q. Yes. But my question is: Do you live together now in Bunia?

23 A. Yes, we are together. We live together in Bunia. We live in the same  
24 neighbourhood.

25 Q. And before coming here, did you discuss any of what it is you're coming

1 to tell us with Claude?

2 A. No. No, we didn't talk about that. It is a public matter. But Claude  
3 and I, we are the same. We grew up together. It's true, they put pressure on us,  
4 and it's true, we had no home. It is thanks to some wise people that we presented  
5 ourselves here and thanks to whom we survived. But we were together. And, furthermore,  
6 Claude was even driven out of his home.

7 Q. Yes. I think you've mentioned that Claude was driven out of his home  
8 by Zambuso; is that right?

9 A. That was before. I'm talking about the present. With regard to Zambuso,  
10 that happened beforehand. For the last time, even his family didn't want him.

11 Q. Who put pressure on you both now?

12 A. You know what? If someone -- someone helped you, and then -- and you betray  
13 him or plot against him, your family puts pressure on you. I was subject to pressure,  
14 even from my distant family. I was in a difficult situation and I sometimes had  
15 to go take refuge in the bush at night. When I was beaten by the cold, I went back  
16 to the house. My wife shunned me. She was afraid because the people wanted to hurt  
17 us. And I must tell you, that what we did was not right, because we sold someone  
18 else's child. We wanted to earn something that we didn't even receive. They gave  
19 us \$200, but that was for food. It wasn't enough money, not even to buy him clothing.  
20 It was not a lot of money.

21 Q. Sir, you say people from your own family wanted to hurt you. Who  
22 specifically from your family wanted to hurt you?

23 A. I'm telling you even my big brother put pressure on me -- big brothers  
24 put pressure on me. They asked why I was doing such things, and it was necessary  
25 to put pressure on me. Many people put pressure on me. I had nobody I could confide

1 in. I was told that I was selling people, or I was taking money to betray people.  
2 They had had enough of us.

3 Q. You say that your big brother and others put pressure on you to say such  
4 things. What did they want you to say? Can you help us with that?

5 A. One must understand, I can't tell them my secret. If I want to plot against  
6 him, I can't say it, I have to keep it to myself. But they didn't know why I had  
7 left to go to Beni, but they later learned that myself and others, we had betrayed  
8 Thomas to sell him. That's what they said. From that moment on, nobody wanted  
9 anything to do with me, and the children. At least the children were not seen,  
10 they had moved. But I who stayed there - I suffered. I was subject to pressure.  
11 I couldn't go back to my farming.

12 Q. Sir, are people putting pressure on you to say that the children were  
13 not in the UPC?

14 A. They didn't know; those people didn't know. The children had grown up  
15 under their noses. In fact, the child was at (Redacted) school but the school -- pardon  
16 me, the child had never been a child soldier. When did he join the army?

17 Q. You said, sir, that you spoke to some wise men to ask them for forgiveness.  
18 What are the names of these wise men?

19 A. I went to see the village chief, the chief of the avenue, who is called  
20 Mateso, and I asked him for forgiveness. I said to him that they had put pressure  
21 on me and I apologised. I have sinned. I went to see Chief Ndasi and Chief Nembe  
22 (phon) and Chief Kamuhanda. I had been to see Mateso beforehand.

23 Q. And do you know the full names of -- the full name of Mateso?

24 A. His name is Mateso Lona (phon).

25 Q. Do you know the full name of Nembe?

1 A. We called him Nembe. That's the only name I know for him.

2 Q. Do you know the full name of Komanda?

3 A. He's Kamuhanda Atenyi (phon).

4 Q. Do you know if these people were members or supporters of the UPC?

5 A. I beg your pardon? Those people were independent. The leaders do not  
6 get involved in politics. When the chief comes one does not get involved in politics.  
7 When you are a chief you don't get involved; you don't have a political allegiance.

8 Q. Sir, who approached you to be a witness for the Defence?

9 A. Very well, that's an interesting question you ask of me. When I went  
10 to see the chiefs, I went myself to see the chiefs. Chief Lona Natan (phon) introduced  
11 me to the other authorities of the UPC. They held me back and said "Someone like  
12 him wants to help us, do not hurt him". I was willing to go and testify and I told  
13 them, "When the defence is going to call its witnesses, call on me, I will give  
14 my testimony. I will say everything that I saw." I was kept there. They gave me  
15 water to drink, nothing else.

16 Q. Who were the authorities of the UPC that you met?

17 A. I beg your pardon?

18 Q. You said that Chief Lona introduced you to authorities of the UPC. Could  
19 you give me their names, please?

20 A. There was a man, Earnest, but I forget his name. If I remember it, I  
21 will give it to you. He's still there. There was another fellow, the secretary  
22 of the UPC. He -- his name was John Tinazabo, he's a Mubira. And he said "If you  
23 hurt this man, that will be a bad thing. I went before John Tinanzabo (phon) and  
24 this man, who had been the mayor, but I've forgotten his name. When I arrived before  
25 them, they said there was no problem and they said, "When the lawyers come here,

1 we will introduce you to these lawyers, but you mustn't go around the town very  
2 much. You must stay here. We will come and get you when it's time for the interviews."  
3 And they did come and get me and introduced me to the lawyers. I explained myself.  
4 I told them "It's true that I had made a mistake, but children make mistakes and  
5 they are forgiven". And then I explained myself and that is why I am here before  
6 you today.

7 Q. You mentioned at this meeting that you were only given water to drink.  
8 How long did this meeting last?

9 A. What meeting are you talking about? I don't understand what meeting you're  
10 talking about.

11 Q. Let me be clear: You said there was a meeting with Earnest, with the  
12 secretary of the UPC, John Tinazabo, with another man whose name you don't remember,  
13 and you said they only gave you water to drink. I'd like to know: How long did  
14 you meet with them?

15 A. Well, it wasn't really about being given water to drink, but when I went  
16 in they gave me a warning, but we didn't stay together for 30 minutes. They spoke  
17 to me and I spoke to them too. We understood each other. They said to me not to  
18 travel anywhere. They said to me "If you leave, you won't have been serious". And  
19 I waited for them. The lawyers arrived, and the day people came to get me, they  
20 found me and introduced me to the lawyers and the lawyers asked me to explain what  
21 I had to say, what I had on my heart, and so I spoke to the lawyers and I explained  
22 everything.

23 Q. Were these two separate meetings, first with the UPC people and then with  
24 the lawyers? Or was it all one meeting taking place on the same day?

25 A. No. First of all, I met with the chiefs and the chief introduced me to

1 the authorities of the UPC and the lawyers were to come later. And at that time  
2 they said, "When the lawyers come, we will come and get you and we will introduce  
3 you to the lawyers." And when the lawyers arrived, indeed, they called me and I  
4 explained what I had to tell them.

5 Q. Did you meet somebody named Dieudonné Mbuna?

6 A. Yes, that's the name I had forgotten.

7 Q. So Dieudonné Mbuna was at the meeting with the UPC; is that right?

8 A. We were together when we met the authorities of the UPC.

9 Q. And where was it that you met these authorities? Was it at your home  
10 or was it somewhere else?

11 A. I went to their office.

12 Q. Did you already know who these people were? Had you met them before that  
13 day?

14 A. No. I told you that I left with the chief of the avenue. He's the one  
15 who took me and I went to the authorities. I didn't know them before that. It  
16 was when I met them that I saw them and made their acquaintance. They didn't ask  
17 me many questions and I didn't tell them any secrets. I was waiting to speak to  
18 the lawyers. What I am telling you here is what I also told the lawyers. I said  
19 to myself that I would speak to the people in charge of the trial.

20 Q. And did you meet the lawyers once, or more than once?

21 A. I met the lawyer just once, and I said everything that I had on my conscience.  
22 I'm a man; I'm a human being. I spoke openly.

23 Q. Approximately how long did your meeting with the lawyers last?

24 A. I didn't really pay attention to how long the discussion lasted but I  
25 was asked questions and I answered. The discussion was recorded and at the end

1 of the discussion I went back home.

2 Q. And you told the lawyers everything that you told the Court today and  
3 last week; is that right?

4 A. I explained everything to them, everything. I hid nothing from them,  
5 nothing at all.

6 Q. Was Claude Ndjango with you when you met with either the UPC group or  
7 the lawyers?

8 A. Each person said what they had seen. I was alone and Claude was alone  
9 as well when he was heard.

10 Q. Did the UPC people offer you any money to come testify?

11 A. You have to -- they categorically said no. Personally, I asked for money,  
12 and they said, "No, we do not deal with lies. We are looking for the truth." And  
13 they said to me, "If you want money, well, you must leave. Don't force" -- they  
14 said that they were not thieves and they were not trying to buy my testimony with  
15 money. "If you do not wish to give testimony, you must leave."

16 Q. So, sir, since November 2007, approximately two and a half years, you  
17 never told the OTP that you had been lying; is that right?

18 A. I said nothing of such -- of any -- like -- anything like that.

19 Q. And you met the UPC once for approximately 30 minutes; is that right?

20 A. Yes.

21 Q. And you met the lawyers once as well; is that right?

22 A. Yes. But the second time they found me at the chief of the avenue. They  
23 had met me beforehand, they didn't need me. The chief was asked what was happening  
24 and he said that it was people who had come to testify. But, personally, I only  
25 spoke to them once.



1 Q. That's fine. But after these two meetings, once with the UPC and once  
2 with the lawyers, you were ready to deny that the two kids had been in the UPC.  
3 That's right, isn't it?

4 A. Yes. I denied everything.

5 Q. Since meeting with the UPC and meeting with the Defence, now you're ready  
6 to reveal the truth. That's what you want this Court to accept.

7 A. Yes. I have repented and today I am saying the truth. Ever since the  
8 beginning of my testimony, I've been saying the truth. I made a mistake and I am  
9 here to correct my mistake, and that is what I have been explaining to you ever  
10 since the beginning of my testimony.

11 Q. And now there should be no more pressure; isn't that right?

12 A. No.

13 Q. No, that's not right? No, there'll be no more pressure; is that what  
14 you're saying?

15 A. Yes. I think that when I leave this place, there will no longer be any  
16 pressure on me. I will continue working as a farmer, farm my land, and I will no  
17 longer be subject to pressure and I will feel at ease. I will have no worries.

18 MS SAMSON: Your Honour, thank you. I have no further questions.

19 PRESIDING JUDGE FULFORD: Thank you very much, Ms Samson. Yes, Maître  
20 Mabilille.

21 MS MABILLE: (Interpretation) I'm very sorry, your Honour, but I think  
22 we'll have to remind the interpreter -- or bring back the interpreter because I  
23 would like to show a document to the witness. I apologise to the OTP because I  
24 did not inform them. Now, this document is in your binder, and I didn't know that  
25 you were not going to use it. This is a document that has the reference number -- the

1 document found in your binder under tab 4 -- 3.

2 PRESIDING JUDGE FULFORD: Well, Maître Mabilles, it clearly doesn't take  
3 the prosecution by surprise, and if you raise anything in it that Ms Samson wishes  
4 to ask questions about, I'm sure there can be some leeway on that.

5 All right. Closed session, please. And could we ask the interpreter to  
6 be so kind as to come back into court, please. Thank you.

7 \*(Closed session at 3.57 p.m.) Reclassified as open session

8 THE COURT OFFICER: We are in closed session, your Honours.

9 (The interpreter enters the courtroom)

10 PRESIDING JUDGE FULFORD: Public or private, Maître Mabilles?

11 MS MABILLE: (Interpretation) Closed session, your Honour.

12 PRESIDING JUDGE FULFORD: Thank you. Private session, please.

13 \*(Private session at 3.58 p.m.) Reclassified as open session

14 THE COURT OFFICER: We are in private session, your Honours.

15 Questioned by Ms Mabilles: (Interpretation)

16 Q. Witness, could you please go to tab 3. And I will give the reference  
17 number of the document, DRC-OTP-0184-0043. And interpreter, would you be so kind  
18 as to read the content of this document. But before, I would like to point out  
19 to the witness that at the top of this document we see the seal of the International  
20 Criminal Court, and to the right we read "The Office of the Prosecutor." And I  
21 would like the witness to look at the date that I am reading out now, 18 January 2008,  
22 in Kinshasa. And, finally, his name is here, Joseph Maki, and his signature is  
23 here. And I would like you to be so kind as to read to the witness the content  
24 of this document.

25 THE INTERPRETER: I don't have the document in French.

1           PRESIDING JUDGE FULFORD: Ms Samson.

2           MS SAMSON: Just one comment. Perhaps I didn't quite understand Maître  
3 Mabilille at the beginning. I'm not sure how this arises from my cross-examination.

4           PRESIDING JUDGE FULFORD: It doesn't, Ms Samson. I think Maître Mabilille  
5 has frankly accepted that this was something that she expected would be dealt with,  
6 it having been in your file. You haven't dealt with it and she was asking leave,  
7 therefore, to put a question on it. And I made the observation that since this  
8 clearly wasn't going to be taking you by surprise, if you've got anything that you  
9 wish to ask after Maître Mabilille has asked her questions, you'll be entitled to  
10 do so.

11          MS SAMSON: My apologies. I understand.

12          PRESIDING JUDGE FULFORD: Now, how do we get around the fact that it's  
13 not in French? Yes, that it's in English and not in French. It needs to be read  
14 out in English so that it can be interpreted into French and then into Swahili,  
15 I think. I suspect that Mr Desalliers is going to have to give us the benefit of  
16 his superb Canadian English. Happy to do that, Mr Desalliers? Right. So you needn't  
17 worry about this, sir, Mr Interpreter. This can just go straight through the system  
18 as normal. If Mr Desalliers would just read it out in English, please.

19          MR DESALLIERS: "Affidavit of Joseph Maki. I, Joseph Maki, was informed  
20 on 18 January 2008 by John Birum (phon), an investigator representing the Office  
21 of the Prosecutor of the International Criminal Court in the Lubanga case, that  
22 the Office of the Prosecutor wishes to take the following bone X-rays for forensic  
23 purposes, namely, to determine the age of (Redacted), who is my son.  
24 I explicitly consent to the X-ray examinations as described below, provided that  
25 necessary precautions to protect (Redacted) from unnecessary exposure

1 to radiation are secured. Point 1: Hand and wrist. Point 2: Mandible or  
2 orthopantomogram; the teeth, particularly the molars or back teeth. I hereby also  
3 consent that a member of the Office of the Prosecutor is present together with (Redacted)  
4 (Redacted) during the taking of the X-ray examinations. Signed this 18th day of  
5 January 2008 in Kinshasa. Name: Joseph Maki. Subscribed before John Birum (phon)  
6 this 18th day of January 2008 in Kinshasa."

7 PRESIDING JUDGE FULFORD: Thank you very much, Mr Desalliers. Yes, Maître  
8 Mabilille.

9 MS MABILLE: (Interpretation)

10 Q. Witness, do you remember having signed this document?

11 A. Yes, I remember very well.

12 Q. The Office of the Prosecutor, therefore, knew your identity as Joseph  
13 Maki. The date of 18 January 2008, they knew that your name was Joseph Maki at  
14 that date? I repeat, Joseph Maki.

15 A. Yes, it's true. That's true. That's right.

16 MS MABILLE: (Interpretation) That's all, your Honour.

17 PRESIDING JUDGE FULFORD: Now, Ms Samson, fairness demands that if there's  
18 anything you wish to ask in relation to this document, please do so.

19 MS SAMSON: Thank you for the opportunity, but I have no questions.

20 PRESIDING JUDGE FULFORD: That, therefore, concludes your examination,  
21 Maître Mabilille?

22 MS MABILLE: (Interpretation) I omitted to ask for a number for the  
23 document we've just referred to.

24 PRESIDING JUDGE FULFORD: Yes.

25 THE COURT OFFICER: The one-page document, your Honours, dated 18 January

1 2008 under DRC-OTP-0184-0043 will be assigned EVD-D01-00107.

2 PRESIDING JUDGE FULFORD: Thank you very much. Sir, Judge Blattmann has  
3 just got a question or two for you.

4 JUDGE BLATTMAN: Thank you very much. Good afternoon, Mr Witness.

5 THE WITNESS: Good afternoon.

6 PRESIDING JUDGE FULFORD: Closed session.

7 JUDGE BLATTMAN: Let's remain in closed session. I would like to ask you  
8 something regarding (Redacted); and that is, when Maître Mabilie was putting some  
9 questions to you, when you were responding to Maître Mabilie, you told her that  
10 you knew that Mr(Redacted) was working for the Government of Congo. You said that  
11 he was Congolese and he was a native son (Redacted). Now, my question is: How did  
12 you know that he was working for the Government of Congo; and if you knew, in what  
13 capacity he was working for the government of Congo? So it's just these two questions.

14 THE WITNESS: Thank you. Yes, I must answer. I thought it was someone  
15 from the ICC, because every Congolese has this power to work. I thought it was  
16 someone from ICC. It was afterwards that I heard the news that he worked at (Redacted).  
17 So he was meeting with people from the ICC because he was recruiting children.

18 JUDGE BLATTMAN: So is it clear that you don't know if he was working  
19 for the Government of Congo, you just supposed; is that correct?

20 THE WITNESS: Yes, it's true. I thought he worked for the ICC.

21 JUDGE BLATTMAN: Now, did you think he worked for the ICC or did you -- or  
22 were you thinking that he worked for the Government of Congo? I just have this -- this  
23 issue not so clear. So did you ever think that he was working, or did you know  
24 if he was working for the Government of Congo? Thank you.

25 THE WITNESS: I knew he worked for the ICC. When I met him, he worked

1 for the ICC. When he came, he said to us that he was working for the ICC. He was  
 2 recruiting children in order to brainwash them, and those children spent a whole  
 3 week in a centre. So I thought he was with the ICC. However, he had other arrangements;  
 4 he presented these children to the agents of the ICC, and that's why he had so much  
 5 success.

6 PRESIDING JUDGE FULFORD: Sir, that brings your evidence to a close. Thank  
 7 you very much, indeed, for your assistance, for having travelled a very long way  
 8 to give evidence before us. And no doubt, it has in one way or another been difficult  
 9 for you. This Court could only function if people like yourself are prepared to  
 10 give of your time to come to Holland to participate in these proceedings, and we  
 11 are extremely grateful to you.

12 Maître Mabilie, we're now quarter-past 4. We're due to rise at half-past  
 13 4 afternoon. Do you want to start your next witness now or first thing tomorrow  
 14 morning?

15 MS MABILLE: (Interpretation) It would seem wiser to begin tomorrow  
 16 morning, your Honour.

17 PRESIDING JUDGE FULFORD: Thank you. Yes, thank you very much, indeed,  
 18 sir. If you could go now, please, with the usher. We'll go into closed session  
 19 for a moment so the interpreter can withdraw. And thank you, interpreter, for  
 20 your assistance.

21 \*(Closed session at 4.13 p.m.) Reclassified as open session

22 THE COURT OFFICER: We are in closed session, your Honours.

23 (The witness is excused)

24 (The interpreter exits the courtroom)

25 PRESIDING JUDGE FULFORD: Maître Mabilie, we might as well use the

1 opportunity now to deal with your issue in relation to disclosure; and if so, in  
2 public session. Public session, please.

3 (Open session at 4.14 p.m.)

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

5 MS MABILLE: (Interpretation) If I may make one comment, do you mean a  
6 disclosure regarding what my colleague Nicole Samson stated on Tuesday last or do  
7 you mean the issue related to disclosure that we mentioned in an email that we sent  
8 to the Chamber on Friday evening?

9 PRESIDING JUDGE FULFORD: I was referring back to the matter that you  
10 raised earlier today, when you said there was something that you wanted to bring  
11 to our attention, and I think it was relating to the point made by Ms Samson.

12 MSMABILLE: (Interpretation) On this matter, I would like to state before  
13 the Chamber that we feel that the criticism presented by the OTP regarding  
14 disclosure - in particular, as regards Witness 003 - we found these comments quite  
15 surprising. And I would like to make three points before the Chamber on this matter:

16 First of all, Witness 003 and 004 are perfectly well known to the Office  
17 of the Prosecutor. I could even say that they probably know them better than the  
18 Defence can possibly know them, because they spent numerous months with a number  
19 of intermediaries and representatives of the OTP.

20 When my colleague from the OTP stated critically that we had presented  
21 a testimony of five lines -- or rather, a witness summary of five lines, where we  
22 mentioned very clearly that this witness was going to be coming in order to report,  
23 first of all, on his contacts with Witness 270. And secondly, that he was going  
24 to attempt to explain to the Chamber what exactly is the process of elaborating  
25 false testimony. This was the information that we had given to the OTP. My colleague

1 has stated that we put the OTP in a difficult situation because they were unable  
2 to anticipate what such a witness would be saying on the basis as -- of the information  
3 that I have just given you.

4 I find this position quite surprising on the part of the OTP because,  
5 as regards the first point - that is, the using of an intermediary, 321 - the OTP  
6 transferred to us in preparation of that witness a document of several pages that  
7 shows clearly that the OTP had investigated on intermediary 321 and had disclosed  
8 exactly one week before the testimony of that witness this very same document.

9 That gives rise to other questions. In other words, this intermediary  
10 testified in October 2009; whereas, the information which was very important for  
11 us was only given to us for 003. So the first point is, the actual process of how  
12 false testimony is elaborated cannot be unknown to the OTP because the information  
13 was disclosed for that particular witness.

14 The other aspect that my colleague has mentioned was that she could not  
15 imagine the link between Witness 270 and Claude Ndjango. Again, I would state that  
16 when she disclosed documents in preparation of the cross-examination, she submitted  
17 two types of documents, one being receipts of money, proving that Joel -- Joseph  
18 Maki had received money. And for Witness 27 -- 267 --

19 THE INTERPRETER: Counsel corrects herself.

20 MS MABILLE: (Interpretation) 267. So this -- and Claude Ndjango.

21 So this shows clearly that she had known of the relationship between the  
22 two, and that the consent signed by the latter regarding 267, and that it was difficult  
23 to accept that she not be able to anticipate such matters, because all of the documents  
24 that she gave to us, that she disclosed to us established the link between these  
25 two persons.



1           Now, we do not want to go into polemics of the Defence; we want to be  
2 practical. We have prepared a very brief summary because the testimony was to start  
3 6 October. And as soon as we established our list of witnesses we sent in, we disclosed  
4 what we thought was going to be the very heart of the testimony. The summary was  
5 meant to express the main elements.

6           Now, we are not against the idea of going back over our initial summary  
7 and perhaps adding additional facts that we may have in order to help the OTP. The  
8 Defence does absolutely not have the intention of surprising the OTP or acting in  
9 any unfair fashion. From the very start, in our various cross-examinations, we  
10 have always stated clearly what our position is; and, therefore, we're not going  
11 to change our attitude. We will attempt to give all of the necessary information  
12 to enable the OTP to carry out its investigations.

13           And let me conclude in saying that the disclosure that we are making now  
14 shows clearly that the OTP knows exactly what the witnesses are coming to testify,  
15 and indeed, quite clearly, we can see that the OTP has been informed of what we  
16 intend to present. That is what I wanted to say on this slight difference, shall  
17 I say.

18           PRESIDING JUDGE FULFORD: Thank you, Maître Mabilie.

19           Ms Samson, I would discourage a response. I think Maître Mabilie is  
20 indicating that there either has been or there is going to be some additional disclosure  
21 to the Prosecution to enable effective preparation on your part prior to witnesses  
22 being called. And that really reflects the invitation that I made to Maître Mabilie,  
23 I think it was on Tuesday of last week. As regards the rights and wrongs of Witness  
24 3, I don't think it's going to improve the lives of any of us to go now into an  
25 extensive post-mortem on whether or not you were aware of the various matters that

1 he was going to raise. So I'm not absolutely going to tell you not to but I'm going  
2 to discourage you from doing so.

3 MS SAMSON: Thank you, your Honour. The only point that I will address  
4 now is the suggestion that the Office of the Prosecutor knew precisely what this  
5 witness was going to say. In my view, I wish I had those powers, I do not, and  
6 it was quite difficult for me to make a link between this witness and a Prosecution  
7 witness who he has testified about.

8 And the only other point I'd make is that while I personally could make  
9 certain links between witnesses, that does not negate the notice requirement for  
10 fairness reasons to understand what the witness is actually going to say. And I  
11 understood that the Chamber understood that point so I don't have to take it any  
12 further.

13 PRESIDING JUDGE FULFORD: Thank you both very much. Maître Mabilie, we're  
14 grateful to you for having taken the time and trouble to reconsider disclosure for  
15 the witnesses to come and it will, I think ultimately, be in your client's best  
16 interest because it will avoid what may otherwise be inevitable adjournments in  
17 the trial so that the Prosecution can go out and make their proper investigations.

18 Thank you all very much. I'm afraid therefore we're going to have to  
19 meet here again at 9.30 tomorrow morning.

20 THE COURT USHER: All rise.

21 (The hearing ends at 4.24 p.m.)

22 CORRECTION REPORT

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

1                   CORRECTION REPORT

2   The following correction has been made to the English transcript:

3   \* Page 1, line 10

4   "WITNESS: DRC-D01-002 (On former oath)"

5   Is corrected by

6   "WITNESS: DRC-D01-0003 (On former oath)"

7                   RECLASSIFICATION REPORT

8   Pursuant to Trial Chamber I's email instruction dated 4th November 2011, the transcript  
9   is reclassified as public after the indicated redactions have been implemented as  
10   ordered by the Chamber. All private and closed sessions (\*) are now available to  
11   the public with the exception of the portions of the transcript that have been redacted.

12