

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and Judge

4 René Blattmann

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 Wednesday, 10 February 2010

8 (The hearing starts at 9.30 a.m.)

9 (Open Session)

10 THE COURT USHER: All rise. The International Criminal Court is now in
11 session. Please be seated.

12 PRESIDING JUDGE FULFORD: Good morning, Maître Mabilille.

13 MSMABILLE: (Interpretation) Your Honour, yesterday evening we received,
14 some time between 5 and 5.30 p.m., 60 pages of an interview that was done by the
15 OTP on 21 January, an interview that directly deals with the intermediary 321.

16 This interview also --

17 PRESIDING JUDGE FULFORD: It may be because my head is still full of cold,
18 can anybody remind me, I mean, we are in public session obviously, you cannot give
19 the name. Right. Could somebody in your team write the name down of that intermediary
20 please and pass it to the court officer.

21 Please continue, Maître Mabilille.

22 MS MABILLE: (Interpretation) And the OTP is asking this intermediary
23 some questions about the various child soldiers, in particular the one, the one
24 who is linked to the previous witness, and we didn't have the information and also
25 ask questions about the witness we are currently hearing from. Let me reclarify.

1 This document has to do with the very first witness that we heard, and
2 that has to do with the child soldiers, and also the witness that we are currently
3 hearing from.

4 Your Honour, we ask the Chamber and we sent a document on Friday regarding
5 the problems with disclosure, and these disclosure problems are becoming absolutely
6 unmanageable for us.

7 Yesterday, we met with the OTP because it was necessary to meet with them
8 and ask them how we could deal with these problems, and I think today the situation
9 is serious enough that we need the assistance of the Chamber because we cannot work
10 on documents that are provided to us after the fact, when our own witnesses have
11 already come to testify.

12 We have to settle this problem. We have to find a way of working together,
13 a modus operandi that will be satisfactory to all parties. We realise that the
14 OTP has major constraints and we are not disputing that, but at 5.30 in the evening
15 we cannot get 60 pages of an interview that was done on 21 and 22 January with extremely
16 important information, and I would say this is one aspect. And the other aspects,
17 we would really like to discuss them with the Chamber and the OTP as quickly as
18 possible because, for the upcoming witnesses, there really will be some difficulties.
19 There you have your Honour. This is what I wanted to say this morning.

20 PRESIDING JUDGE FULFORD: Can we rewind, slightly, Maître Mabilie, not
21 least because the English transcript seems to have gone to sleep.

22 This interview of 60 pages conducted 21-22 -- I am now told that the machine
23 of the English court reporters is not working at all hence no English transcript.
24 Now we cannot continue under those circumstances because there needs to be a verbatim
25 record of what is said. I have to say the number of occasions when transcripts

1 get frozen and the proceedings are interrupted because of technological problems
2 is on occasion extremely irritating.

3 We will rise until this is remedied.

4 THE COURT USHER: All rise.

5 (Recess taken at 9.37 a.m.)

6 (Upon resuming at 9.50 a.m.)

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

8 PRESIDING JUDGE FULFORD: So, Maître Mabilie, there has been an interview
9 at the end of January with Mbusa - sorry, can that please be redacted. Thank you - with
10 this intermediary. What, in a sentence or two, was the subject matter of that
11 interview?

12 MS MABILLE: (Interpretation) The OTP investigator asked him for some
13 information about the five child soldiers that he had presented to the OTP. I beg
14 your pardon.

15 Furthermore, of course, Claude Ndjango, who was not -- who was not a witness
16 of the OTP and also, furthermore -- and also more information about 287 -- 297.
17 Would you like the name? No.

18 I just wanted to specify one point. The OTP came to see me while we suspended
19 and they told me that this interview of the 21st and then 22nd was disclosed in
20 the form of a cassette, and when we had the first interview that was done with the
21 intermediary, we thought that the cassette was the first interview and we did not
22 realise that it was the second. So, to be honest, with regard to the OTP, yesterday
23 we got the transcript, but we had been disclosed cassettes which we did not look
24 at because we were quite sure that it was the first. So, the information that I
25 provided was partially incorrect, and I absolutely would like to clear up the record

1 for that point. All the same, we really have to talk about these disclosure issues
2 because it is too complicated for us to work in this manner.

3 PRESIDING JUDGE FULFORD: Does the interview of 21/22 January have an
4 impact on the evidence of the witness that we are currently listening to, or an
5 impact potentially on the evidence of the other witnesses you have called thus far?

6 MS MABILLE: (Interpretation) Regarding Claude Ndjango, since
7 Marc Desalliers is responsible for that aspect, I would like him to respond. And
8 as for the first witness, it is the same situation: Mr Desalliers is in charge
9 of that part of our defence, so Mr Desalliers will reply.

10 MR DESALLIERS: (Interpretation) Yes, your Honour, to be quite frank,
11 I really can't answer with absolute certainty because we just received the disclosure
12 yesterday and I have not been able to analyse it to see if there is any true impact.
13 It would surprise me, it would be surprising, if we were -- would have to recall
14 the first witness to seek additional clarification regarding evidence, but with
15 regard to the current witness, what we would suggest to the Chamber is to indicate
16 at the end of the cross-examination because perhaps in the interval -- in the meantime,
17 we may have the opportunity to analyse matters and, at the end of the questioning,
18 we will be able to indicate to the Chamber whether we will need time or whether
19 we will need to ask questions with regard to these new elements. For the time being,
20 I really can't answer your question with absolute certainty.

21 PRESIDING JUDGE FULFORD: Ms Samson, we have used the short adjournment
22 just now and, indeed, yesterday afternoon, early on, to discuss some of these matters
23 between ourselves and we are, without having made any firm conclusions of any kind,
24 at the moment of a preliminary view that we need at this point in time to stand
25 back for a moment and to look at the position in relation to intermediaries and

1 to devise a strategy that will ensure that this whole issue is dealt with fairly
2 to both sides, Prosecution and Defence.

3 When we much earlier in the case had to consider the position of
4 intermediaries and, in particular, in relation to disclosure, our position at that
5 stage - and I hope I summarise it very generally correctly by saying that it was,
6 in the view of the Judges at that point in time, purely a matter of conjecture.
7 It was an unsubstantiated theory that intermediaries had in some way misbehaved
8 in the preparation and presentation of evidence before this Court.

9 I think it is fair to say that we have moved on from there, in the sense
10 that there is now evidence before the Chamber that that is the position. I want
11 to underline very, very firmly that the Judges have not even begun to reach conclusions
12 on that evidence, of course, but it is evidence and it is, following Maître Mabilille's
13 opening speech, a clearly important ingredient of the Defence case. She has indicated
14 in no uncertain terms that it is of such importance that after the first 16 Defence
15 witnesses have given evidence, the Defence will be inviting the Court - putting
16 this in an Anglo-Saxon way - to stay the proceedings as an abuse of the process.

17 Now, against that background, I think we need to look again at the issue
18 of disclosure as regards material coming from, and relevant to, the various
19 intermediaries who have been involved in this case. And there are two particular
20 aspects of this. In fact, I think three. First, we need to know what the Prosecution
21 strategy now is in relation to intermediaries. Are you at this point in time
22 considering, as it appears you have with one intermediary, interviewing all of those
23 who have been involved with the appearance before this Court of certain alleged
24 former child soldiers? Because, if that is going to be your strategy, we will need
25 to consider whether or not that has an impact on when Defence witnesses are called,

1 because it is clearly potentially going to be unsatisfactory to have Defence witnesses
2 moving through this Court with their evidence being peppered by disclosure from
3 the Prosecution as interviews take place with intermediaries. This obviously doesn't
4 involve just the single intermediary who was interviewed on 21 and 22 January. This
5 involves potentially, I would have thought, other intermediaries.

6 Now, if the Prosecution -- so it would be useful to know what the Prosecution
7 strategy is in relation to this and, if the Prosecution isn't intending to go back
8 to the intermediaries, it may be we will be requiring the Prosecution to provide
9 us with an explanation as to why not. And I will come back to that point in a moment.

10 The second issue is we will require from the Prosecution a discrete and
11 cast-iron guarantee that you and your team are wholly satisfied that there has now
12 been, given this development in the case following the commencement of the Defence
13 evidence, a complete review of all of the materials that are relevant to intermediaries
14 so that you are satisfied that you have effected your disclosure obligations. For
15 the reasons that I set out a little while ago, it seems to us that we have moved
16 on somewhat in this case and the position is now not the same as it was earlier
17 on and we need reassurance that the Prosecution has completely satisfied its disclosure
18 obligations.

19 There is then a third issue, which if this hadn't arisen this morning
20 we would probably have waited until later to raise, but we will raise it now. It
21 seems as though the -- put very simplistically, the landscape that we are going
22 to be confronted with is as follows: on the one hand, a group of Prosecution witnesses
23 who will say that they were child soldiers, or were associated with them, and that
24 they came into contact through the Court via intermediaries. On the other hand,
25 there is going to be a group of witnesses who will say that, for one reason or another,

1 the Prosecution's witnesses that I have just referred to were not child soldiers;
2 indeed, in some instances were not the people who they have claimed they were. And
3 they will say that the intermediaries have played a corrupting role in the case
4 and have either instigated or assisted in having false evidence set out before us.

5 In due course, if matters remain there, the Judges will be asked to make
6 a decision on those two competing accounts: the Prosecution witnesses and what
7 we are told is going to be the Defence evidence. We obviously don't know whether
8 the Defence case will, in fact, appear as Maître Mabilie has indicated. Maybe,
9 after these witnesses, we will hear no more. One doesn't know. But we have been
10 told what is to come and certainly, at the beginning of it, the witnesses have broadly
11 fitted in with the description provided by Maître Mabilie at the beginning.

12 Lurking, therefore, as an issue, or as individuals, are the intermediaries.
13 Are we going to hear from them? And, if we are, when? And can the Prosecution - or
14 is the Prosecution, going to be inviting us to draw certain conclusions on the basis
15 of its evidence, inviting us to reject the Defence testimony without having heard
16 from the very people who are said to have been the corrupting influence as regards
17 a significant element of the Prosecution case?

18 We are of the view that it would be of assistance to us now, or in the
19 near future, to have some assistance from the Prosecution as to how you are proposing
20 to deal with the landscape that I have just described, because we have got to make
21 plans in relation to when evidence is going to be heard, we have got to assess what
22 is fair both for the Defence and for the Prosecution, and there may be disclosure
23 issues that arise if in fact the Prosecution are proposing to call the intermediaries,
24 because if you are intending to call the intermediaries, then you will presumably
25 be intending to take statements from them and, if you are intending to take statements

1 from them, it may be that those statements ought to be disclosed to the Defence.
2 Now, when that disclosure fairly needs to take place, whether it is before or after
3 the Defence witnesses, is something that we will have to investigate.

4 Now, I am sorry that has taken rather a long time and it raises a number
5 of issues that I imagine you will probably want to reflect on, so I am -- I mean,
6 you can respond now if you wish. I am certainly not expecting you to, but I think
7 Maître Mabilie has, as it were, press a trigger on a number of issues that we now
8 need to look at carefully for the benefit of everyone involved in this case.

9 MS SAMSON: Mr President, some of the issues that your Honour and the
10 Chamber has been -- have been discussing are certainly issues that the Office of
11 the Prosecutor have been discussing as well and, in relation to the strategy that
12 we have taken thus far with the -- those intermediaries who assisted with the child
13 soldier witnesses in particular, there are in the main two intermediaries. To date
14 the name of one of those intermediaries has been disclosed; it is the intermediary
15 321 who we have been discussing. The second intermediary's name is currently not
16 disclosed to the Defence.

17 As and when allegations against any of the Prosecution intermediaries
18 have been raised, very specific allegations, the Prosecution has gone back and
19 interviewed those intermediaries. To date there have been two such cases. The
20 first is the intermediary relating to witness 15 from the Prosecution, and the second
21 is the intermediary that we have been discussing over the last few days. Both of
22 those interviews have been disclosed to the Defence and, as we were discussing this
23 morning, the second interview of witness 321 was disclosed five days after it took
24 place, on 26 January, in audio form, and now the transcript has been disclosed as
25 well.

1 The intermediary whose name has not been disclosed and who is associated
2 with the children who appeared in this case so far, given that there have been no
3 specific allegations made against him to date, the Prosecution will review its current
4 strategy, if I may use that term, not to disclose that person's name, not to interview
5 that person again. And we are currently assessing all of the intermediaries, as
6 the Chamber is aware, so we will keep that in mind. And in relation to that intermediary,
7 I do seek leave of the Chamber to come back to you later on any particular strategy
8 decisions for that person --

9 PRESIDING JUDGE FULFORD: Forgive me interrupting, Ms Samson, since you
10 are on that point. An element of this that clearly now also arises for consideration
11 is whether or not there should be greater disclosure of the identities of the
12 intermediaries, and that's greater disclosure, in the first instance, to the Defence,
13 of course, but secondly, whether there continues to be justification for withholding
14 their identities from the public. If this is now, as it appears to be developing,
15 a critical part of the Defence case, it is arguably undesirable for this all to
16 be taking place behind closed doors, because the names of the intermediaries cannot
17 be mentioned, and it is unfair on the witnesses to ask them to give their evidence
18 referring to the intermediaries by pseudonyms, because, as we have seen, it is not
19 a comfortable way to give evidence.

20 I am sorry to load this on you, but additionally, if there is a question,
21 say, over the integrity of one, two or three significant intermediaries, there may
22 be an argument that a point is potentially reached when the whole involvement of
23 intermediaries has actually become a live issue in the case, and that it is not
24 sufficient just to sit back to see whether there has been a specific allegation
25 against a specific intermediary, but instead, because questions have been raised,

1 as it were, to an extent, across the board, one really needs to look at the global
2 involvement of intermediaries in the case. And let me politely put you on notice
3 that once we receive the information which we have asked for from you this evening,
4 we are likely to be coming back to the Prosecution on Thursday asking for your detailed
5 assistance on this very point.

6 So to give you early warning of that, Ms Samson. But I have interrupted
7 you. If there is anything else you want to say, please do so.

8 MS SAMSON: Yes, thank you. In fact, these types of issues are those that
9 we will be discussing internally as well, when I was discussing earlier the one
10 intermediary who has thus far not been directly affected. We recognise that there
11 are a number of points on the disclosure side, there are points on the security
12 side, and then it is ultimately a test of balance and fairness, and we fully expected
13 that the Chamber would be asking us for further assistance on these points. Thank
14 you for the notice in relation to the other intermediaries.

15 I think it is a connected point. Perhaps we dealt with it already in
16 relation to disclosure. That's certainly an issue that we need to address. The
17 extent of disclosure in relation to intermediaries is currently relatively limited
18 where it comes to the ones whose names have not been disclosed to the Defence, and
19 that's something that we have to reassess and look through the materials themselves.
20 As I understand it, we'll be addressing it, in any event, with the Chamber.

21 And your Honour's final point in relation to what to do with the
22 evidence - competing evidence - of witnesses when a third party is really at the
23 core of that competing evidence, and we have also reflected on that. It would be
24 our submission - it is today - that certainly we would be wishing to call, for instance,
25 intermediary 321 in order to fully understand the evidence and to permit the Chamber

1 to make an assessment on credibility more easily. And the Prosecution's submission
2 would be that those witnesses - at least 321 and the others who appear - would be
3 called as rebuttal witnesses following the Defence case. Of course, the modalities
4 of that we can discuss in due course.

5 If there is a procedure that the Chamber wishes to impose whereby we notify
6 the Chamber -- the Defence and request the Chamber in advance that certain witnesses
7 come as rebuttal witnesses before the end of the Defence case, that is certainly
8 something that is possible, if it would be of assistance to the Chamber, to the
9 parties and to the Court. But we certainly have been thinking that -- along the
10 same lines; that it will be necessary for certain witnesses to come, in light of
11 the evidence that's coming.

12 PRESIDING JUDGE FULFORD: Thank you, Ms Samson. On that, if there is to
13 be an application after witness 16 that the Chamber should at that point in time
14 make firm factual findings as part of what I am going to describe, unless and until
15 I'm told it's an inappropriate expression, an abuse of the process submission, it
16 may well be that if you are going to be calling rebuttal evidence, you will need
17 to call that evidence at that stage, rather than at the conclusion of the Defence
18 case overall.

19 As regards the taking of witness statements, I can see that's problematic
20 in the sense that I imagine at this point in time there is some useful information
21 that can be gained from the intermediaries. On the other hand, I can see that you
22 would want to wait to see exactly what is said against them before you go out and
23 interview them and -- but it would be useful, nonetheless, in due course to know
24 what your strategy is going to be in relation to that, because with this first
25 intermediary it seems that a piecemeal approach is being adopted in that he has

1 been interviewed in January, and if you are intending to call him, he is, no doubt,
2 going to be interviewed again. So if there is going to be, for instance, a two-stage
3 process in interviews, then it would be useful to know that so that the first statement
4 on each occasion can be disclosed in good time on the Defence before the relevant
5 witnesses are called. If, on the other hand, it's going to be a mopping up exercise
6 at the end, then that also would be useful to know. Good. Thank you very much,
7 Ms Samson.

8 Well, Maître Mabilie, I hope that has addressed the points that you have
9 raised, and it has given us an opportunity of expressing some of the things that's
10 been occurring to us in terms of the administration of the case. We would be keen,
11 I think, now to get on with the evidence of the current witness, because he is obviously
12 waiting to continue to testify. But to give you an opportunity, is there anything
13 else you want to say at this stage, or will you wait until we address this substantively
14 on another occasion?

15 MS MABILLE: (Interpretation) I simply wish to inform the Chamber that
16 we have two other problems which we would like to submit to the Chamber. Not now,
17 because it is important for the witness to continue giving his testimony.

18 PRESIDING JUDGE FULFORD: Well, I leave it to you, Maître Mabilie, to
19 come back to the Chamber, then, at an appropriate stage, so that this is down to
20 your initiative now. At 2.45, unless it proves to be inconvenient because of the
21 particular stage we have reached with this witness, but at the moment we plan at
22 2.45 to have an ex parte hearing with the Registry and at least one of the legal
23 representatives of victims only. Good. Witness, please.

24 MS SAMSON: Excuse me, your Honour. May I request that the interpreter
25 be brought down as well. I have one document that I would like to show the witness

1 fairly early on.

2 PRESIDING JUDGE FULFORD: Straightaway?

3 MS SAMSON: Yes.

4 (The witness enters the courtroom)

5 WITNESS: WITNESS WWW-D01-0004 (On former oath)

6 (The witness answers through interpreter)

7 PRESIDING JUDGE FULFORD: Ms Samson, can you start without the interpreter,
8 or do you want to begin straightaway with the document?

9 MS SAMSON: No, I can start without.

10 PRESIDING JUDGE FULFORD: Good. All right. Good morning. Sorry we've
11 kept you waiting.

12 THE WITNESS: Good morning.

13 PRESIDING JUDGE FULFORD: Yes, Ms Samson. Ms Samson, the interpreter is
14 now here. Closed session, please.

15 *(Closed session at 10.20 a.m.) Reclassified as open session

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

17 (The interpreter enters the courtroom)

18 PRESIDING JUDGE FULFORD: Public session, please. Thank you for coming
19 down, sir.

20 (Open session at 10.21 a.m.)

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

22 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

23 MS SAMSON: Thank you, Mr President.

24 Questioned by Ms Samson:

25 Q. Good morning, Mr Witness. My name is Nicole Samson. I represent the

1 Prosecution and I have some questions for you today. Your name is Claude Ndjango
2 Nyeke; that's right, isn't it?

3 A. Yes.

4 Q. Is it right that you are sometimes also known as Claude Ndjango Arave
5 (phon)?

6 A. The name Arabe was the name given to me by (Redacted). He gave the name
7 of Byaruhanga (Redacted).

8 Q. You travelled under the name Claude Ndjango Arabe, didn't you?

9 A. Yes.

10 Q. I would like to show you one document. If I could ask you, with the help
11 of the interpreter, to please turn to tab 21 of that binder. The reference number
12 of the document is DRC-D01-0003-2207. Can you see the document, Mr Witness?

13 A. Not yet. This is the first time I'm seeing it.

14 Q. Sir, is this a travel document for you under the name Claude Ndjango Arabe,
15 travelling from Kinshasa to Kisangani on 1 August 2008?

16 A. That is the name I used for travel.

17 MS SAMSON: Thank you. I have no further questions on this particular
18 document. Perhaps it requires a number?

19 PRESIDING JUDGE FULFORD: Yes.

20 THE COURT OFFICER: The three-page document, your Honours, under
21 DRC-D01-0032207 would be assigned EVD-OTP-00528. Your Honours, this document in
22 question was not broadcast outside the courtroom. Could counsel please confirm
23 if it needs to be -- if it needs to be under -- as confidentially marked, please?

24 MS SAMSON: Yes. My apologies. This document can be shown publicly.

25 PRESIDING JUDGE FULFORD: Yes. Ms Samson, do we ask the interpreters to

1 stay, are there going to be a series of documents or are you moving onto other matters
2 now?

3 MS SAMSON: I'm moving on to other matters.

4 PRESIDING JUDGE FULFORD: I mean, obviously, we don't want the interpreters
5 to be coming in and out of court all the time. Do I take it from that, that it
6 will be a while before you reach other documents?

7 MS SAMSON: It may not be before the break; however, it won't be immediately.

8 PRESIDING JUDGE FULFORD: Thank you. Thank you for coming down, sir.
9 Closed session, please.

10 *(Closed session at 10.27 a.m.) Reclassified as open session

11 PRESIDING JUDGE FULFORD: Yes. Thank you, usher.

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

13 (The interpreter exits the courtroom)

14 PRESIDING JUDGE FULFORD: Public session, please.

15 (Open session at 10.28 a.m.)

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

17 PRESIDING JUDGE FULFORD: At an earlier stage of these proceedings, Ms
18 Samson, I offered a reward for anybody who could devise a way of getting the blinds
19 in this Court up and down quicker. That offer still stands. Yes. Please continue.

20 MS SAMSON: Thank you.

21 Q. Sir, when you travelled as Claude Ndjango Arabe, did you have to show
22 any identification to prove that was your name?

23 A. The reason as to why I used this name, well, when I went to Beni, (Redacted)
24 had asked me to use the name Byaruhanga and that I add another name to it, and that
25 is how I came to use the name Arabe. That is the name that I used when I went to

1 Beni. So I said that my name was Byaruhanga, but when I went to Kinshasa after
2 my return from Beni, I used the name Ndjango Nyeke. Those are the names that I
3 used.

4 MS SAMSON: Your Honour, I see that we may need a redaction on page 3,
5 line 7 of the English transcript.

6 PRESIDING JUDGE FULFORD: Is it the Prosecution's position that you still
7 firmly seek to protect that name from public dissemination, Ms Samson?

8 MS SAMSON: It certainly is today, your Honour. If the Prosecution
9 revisits it, given the Chamber's earlier views on the subject --

10 PRESIDING JUDGE FULFORD: Well, I am going to interrupt you there. I
11 raised -- we raised questions earlier, and it must be very firmly understood, very
12 clearly understood that I was raising issues, not expressing views.

13 MS SAMSON: Fair enough. That's my word, your Honour, not yours. But
14 in view of the questions and concerns, or questions raised by the Chamber, we will
15 revisit the issue in relation to this intermediary, but certain security issues
16 would need to be dealt with in advance for him, which it is not possible to do today.

17 PRESIDING JUDGE FULFORD: Redaction, please, for that mention. Shall we
18 remain in public session or go into private session?

19 MS SAMSON: We can, I believe, remain in public session, your Honour.

20 PRESIDING JUDGE FULFORD: Certainly. It is preferable we do so. Please
21 continue.

22 MS SAMSON: Thank you.

23 Q. Sir, my question really was, when you had to travel - and we saw the document
24 just now - as Claude Ndjango Arabe, did you use any identity documents to prove
25 that that was your name?

1 A. I would say the following: The document bearing this name was the student's
2 card that was given to me for my trip to Kinshasa. I had no other document bearing
3 that name.

4 Q. And it is right, isn't it, that sometimes you used the name Claude Ndjango
5 Maki?

6 A. The name Claude Ndjango Maki, well, I only know that I used the name
7 Byaruhanga Ndjango. Only that name.

8 Q. And what is your date of birth?

9 A. When we were with (Redacted) told me that I had to produce my age, and
10 that is why I came to say that I was 15 years of age. However, at that time, I
11 was 18. I stated that I was 15 years old. And in calculating things, it was very
12 difficult for me to ascertain my date of birth. But today, I am 20 years of age.
13 I was born in the year 1990. I was born on 13 June.

14 Q. What is your father's name?

15 A. My father's name is Moise Nyeke.

16 Q. And your mother's name, please?

17 A. My mother is already deceased. Her name was Jeanne. Others would call
18 her Jeanne Akiki.

19 Q. And you live now in the Simbiliabo neighbourhood, is that right, of Bunia?

20 A. That is correct.

21 Q. You live in the name neighbourhood as Joseph Maki?

22 A. Yes, we live in the same neighbourhood. However, we live at a certain
23 distance from each other, because he lives in a place called Simbiliabo, but he
24 lives in Oba (phon) in the Yalala neighbourhood, or in the Avenue Yalala, but it
25 is in the same neighbourhood.

1 Q. Do you see Joseph Maki from time to time?

2 A. Yes, we do see each other. We do see each other.

3 Q. You know, don't you, that Joseph Maki came here to testify?

4 A. Yes, I do know that.

5 Q. Did you talk to him before coming about any of the things you are telling
6 us today and yesterday?

7 A. What exactly are you seeking to know, what he said? I'm sorry, can you
8 please repeat your question.

9 Q. Before you came here yesterday, did you discuss with Joseph Maki what
10 you're saying today? Did you discuss it before you came?

11 A. I am not in a position to be able to speak with him and, due to the fact
12 that I am here now, I do not know where he is to be found. He arrived under his
13 own steam, as did I, so I do not know where he is to be found.

14 Q. I don't mean today, sir, or yesterday, but prior to coming to Holland
15 in the period before you arrived, when you were both in the same neighbourhood,
16 did you have any discussions with him about what you are telling the Court now?

17 A. I have never met Maki, Joseph here in The Netherlands. However, in Kinshasa
18 we did meet, but not here.

19 Q. When you met in Kinshasa, did you discuss with him any of these matters
20 you are telling the Court about now?

21 A. No. He had his statement to make and I had mine. I did not know what
22 he was going to say, nor did he know what I was going to say.

23 Q. When did you meet him in Kinshasa? Was it just before coming to Holland?

24 A. Yes.

25 MS SAMSON: Mr President, may I request private session for one or two

1 questions?

2 PRESIDING JUDGE FULFORD: Certainly. Private session, please.

3 *(Private session at 10.41 a.m.) Reclassified as open session

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

5 MS SAMSON:

6 Q. Did you see (Redacted) while you were in Kinshasa?

7 A. No, when I was in Kinshasa I did not see (Redacted). What is more, I
8 do not know where he lives.

9 Q. Are you very certain of that?

10 A. No, I never met (Redacted) in Kinshasa. I do not even know whether (Redacted)
11 is in Kinshasa, or whether he is here.

12 MSSAMSON: With your leave, your Honour, we can go back into public session.

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

14 (Open session at 10.43 a.m.)

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

16 MS SAMSON:

17 Q. Yesterday you told the Court that during the war you were a child; is
18 that right? Can you hear me?

19 A. Are you putting that question to me?

20 Q. Yes. You said yesterday that you were a child during the war; is that
21 right?

22 A. Yes, that's true. I wasn't really a tiny child, because somebody of the
23 age of 13 or 14 can be called a child. I have grown up since then and I got married,
24 so I can now say that I am an adult.

25 Q. Yes, now you are an --

1 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers?

2 MR DESALLIERS: (Interpretation) I am sorry to interrupt. I am
3 interrupting for a technical reason. It would seem that there is a bit of interference
4 on the Swahili channel, so it might be nice to ask the witness whether he can hear
5 things correctly because it would seem that there is a lot of background noise in
6 Swahili, on the Swahili channel, so it might make matters difficult for the witness.

7 PRESIDING JUDGE FULFORD: Sir, can I ask you whether you are able to hear
8 clearly what is being said to you via your headphones?

9 THE WITNESS: Yes, I can hear only too well.

10 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

11 MS SAMSON: Thank you.

12 Q. Were you in Bunia during the war?

13 A. Yes, I was in Bunia during the war. However, at the beginning of the
14 war I was in Mongbwalu. We fled the war and we went to our village, known as Lonio,
15 and in Lonio the war broke out and we fled once more to Bunia, which is where we
16 are living today.

17 Q. And you said that you saw the war, didn't you?

18 A. Yes, that is true.

19 Q. And if you were born in 1990, in 2002 you were 12; is that right?

20 A. Yes, that is true.

21 Q. And yesterday you told us that there were children - not you, of course - but
22 there were children who were enrolled as child soldiers because they had nothing
23 to do, they were just street kids. That's right, isn't it?

24 A. Yes, that's true.

25 Q. You said that they were called to be child soldiers and then they agreed.

1 That's right, isn't it?

2 A. Yes, that is correct.

3 Q. Do you know who called them to be child soldiers?

4 A. To be enlisted as a child soldier, well, people were not forced to become
5 child soldiers. There were street urchins who somehow could not get used to such
6 living conditions; well, they saw their age-mates who were soldiers and who wore
7 uniforms and carried guns and, as a result, they went to enlist, and anyone who
8 came was welcomed. I could not say that it was Thomas who went through the town
9 in order to ask the children to become child soldiers. The enlistment was not done
10 in that manner. It was the children themselves who wanted of their own volition
11 to become child soldiers, whereas there were other children who were studying well.
12 But then they saw other children of their age and they saw them standing at roadblocks
13 requesting for money from people returning from the market. Sometimes these students
14 were themselves subjected to the same treatment at the roadblocks and beaten when
15 they said they had no money. This revolted the children who then went to enlist
16 saying that they would profit more from enlistment than from studies. However, it
17 cannot be said that Thomas went through the town requesting that children became
18 child soldiers.

19 Q. Right. And some of these children who enlisted themselves, they enlisted
20 into the UPC. That's right, isn't it?

21 A. Yes, that is correct.

22 Q. And since you knew of this, I assume therefore that some of these children
23 were enlisting from your neighbourhood; is that right?

24 A. Yes, that is correct.

25 Q. And some of these street kids who had enlisted in the UPC were about your

1 age, 12 or so; is that right?

2 A. Yes, there were some who were of 12 years or maybe 14 or even 15 years
3 of age, or more.

4 Q. You didn't personally know, though, every one of those children who had
5 agreed to be a child soldier, did you?

6 A. That is correct.

7 Q. Do you know Thomas Lubanga personally?

8 A. Yes, I do know him.

9 Q. Can you tell us how you know him? Do you have a family relationship with
10 him? Is he your friend?

11 A. No, he is not a friend, nor is he a member of my family. During the war -- well,
12 it was because of the war that Thomas became somebody very important, because
13 previously he would sell beans at the warehouse. He was a tradesman. He used to
14 sell beans and people would come to him with a view to buying beans in Thomas Lubanga's
15 warehouse. That is how I came to know him. He is not a member of my family, no.

16 Q. Would you say you know him well?

17 A. Were I to say that I knew him well, well, I did know his beans warehouse.
18 I wouldn't say that he is a familiar person to me, or that he is a friend, no. I
19 was like any other customer who went to buy from his warehouse. At that moment
20 in time, my aunt on the paternal side would go and buy beans from his warehouse
21 and would tell me who owned the various warehouses. He was well-known amongst other
22 tradesmen, those who traded in beans, and there were other women too who did the
23 same work.

24 Q. And you say that because of the war Thomas became somebody very important.
25 He became the President of the UPC. That's right, isn't it?

1 A. Well, I would hear his name. He was part of a team.

2 Q. Did you meet Thomas Lubanga during the war?

3 A. When the war broke out, I never met him. I never met him, because at
4 that moment in time he lived with the Fatakis. That was where he lived.

5 Q. So, sir, you agree that child soldiers were enlisted in the UPC and you
6 agree that you didn't know them all personally. You agree -- you agree with that,
7 I think?

8 A. Yes, I do agree with that children were enlisted, but it was not he who
9 came to recruit the children. On occasion, children would find that life was hard
10 or that other children were ill-treating them and they would decide to leave. Other
11 children did not have any parents; they did not have a mother or a father, and they
12 would decide to leave. But it was not he who came to forcibly recruit children
13 from their homes. Some children have claimed that they were forcibly recruited or
14 even recruited by his soldiers. It was not even his soldiers who came to recruit
15 children forcibly, it was virtually on a voluntary basis. And we were told that
16 there were soldiers, but it was not he who came to forcibly recruit.

17 Q. If you didn't see Mr Lubanga during the war, you don't really know, do
18 you, whether or not he recruited children into the UPC?

19 A. Well, let me tell you why I should know. During the war, we could hear
20 that he came to Bunia, that he went back to Fataki; but with regard to trading camps,
21 where training took place, people would come through our village and there were
22 even people who left Simbiliabo. It wasn't that the training took place in Fataki.
23 The training took place in Mandro. And people came from everywhere, heading to Mandro.

24 THE INTERPRETER: The training took place in Mandro. Correction from the
25 Swahili booth.

1 PRESIDING JUDGE FULFORD: Ms Samson, although we have had a very
2 interrupted morning, the interpreters and stenographers have been imprisoned in
3 their booths, and so at a convenient moment for you we're going to have the take
4 the mid-morning break, I am afraid.

5 MS SAMSON: I understand. It's a convenient moment. Thank you.

6 PRESIDING JUDGE FULFORD: Thank you very much. Sir, I am sorry to interrupt
7 your evidence again, but we must give the relevant court officials a break for
8 half-an-hour and also give you some time to have some refreshment. We will see
9 you again, please, at half-past-11. Thank you very much. Usher, can you help the
10 witness back to the waiting room, please.

11 (The witness stands down)

12 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

13 MR DESALLIERS: (Interpretation) Thank you, your Honour. One point that
14 I think is important to bring to the Chamber's attention before the break, on page
15 28 of the French transcript, line 9, my friend asked a question about children who
16 had been enrolled -- who had enrolled and there was mention made of 12 years of
17 age. And the answer, "Yes. There were some who were 12, 14 or 15," But apparently,
18 the answer provided by the witness was, "They weren't 12. They were 14 or 15."

19 Given the importance of that point for the cross-examination of my learned
20 friend, and just to make sure we are all on the right page here, so to speak, could
21 that specific point be checked to make sure what the witness actually said. And
22 I have the reference for the English transcript, page 18, line 25.

23 PRESIDING JUDGE FULFORD: Thank you very much. Before we sit again, even
24 if this means a slight delay, can the interpreters please put their heads together
25 and provide the Chamber - via Mr Desalliers - with a definitive version of what

1 the witness said on this subject, please, because it's clearly important before
2 Ms Samson entirely leaves this point.

3 Mr Desalliers, while I have you, for the next witness, there has been an application
4 for the non-participating legal representatives of victims to leave the Court. A
5 very particular reason has been given by the next witness for the proposed protective
6 measures. I am not going to repeat in open court what those -- what the particular
7 reason is, but we will require assistance as to whether there is anything that indicates
8 that there is a material risk that non-participating victims are likely to be in
9 a position to provide information to the very particular category of people that
10 this witness is worried about.

11 And we will need -- if this application is to be maintained in relation
12 to this witness and the legal representatives, we are going to need further assistance
13 from you to see whether there is a proper evidential foundation for the application.

14 MR DESALLIERS: (Interpretation) Yes. We would suggest that we reply
15 to the question by way of email, if that is appropriate in your view.

16 PRESIDING JUDGE FULFORD: Entirely. 25 to.

17 THE COURT USHER: All rise.

18 (Recess taken at 11.05 a.m.)

19 (Upon resuming at 11.38 a.m.)

20 (Open session)

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

22 PRESIDING JUDGE FULFORD: Have you received an answer, Mr Desalliers?

23 MR DESALLIERS: (Interpretation) No, Your Honour.

24 PRESIDING JUDGE FULFORD: What do you want us to do, Ms Samson?

25 MS SAMSON: I am content to proceed for the moment, your Honour; and when

1 the interpreters have finalised their review, they can let us know.

2 PRESIDING JUDGE FULFORD: Certainly. But this really should be resolved
3 before you complete your questioning so that you are not long-footed.

4 Witness, please.

5 (The witness enters the courtroom)

6 PRESIDING JUDGE FULFORD: Thank you very much, sir. Yes, Ms Samson.

7 MS SAMSON: Thank you, your Honour.

8 Q. Sir, before the break you had said that with regard to training camps
9 people came through your village, there were even people who left Simbiliabo and
10 the training took place in Mandro. Did some of the street kids who had enrolled
11 in the UPC voluntarily go to train at Mandro?

12 A. Well, each person left voluntarily. If you wanted to leave and go for
13 the training, you left.

14 Q. I understand that. I just wanted to confirm that, indeed, some of those
15 street kids that you had talked to us about earlier also left to go for training;
16 can you confirm that that is true?

17 A. This is how the situation was. When the child wanted to leave -- and
18 it wasn't just children; there were adults, too. Some did their work; and at the
19 end of their work, some might talk about what happened. Some came back and told
20 us what happened in the training camp, but it wasn't said that people were taken
21 forcibly to go have training. The training was voluntary. People who wanted to
22 enrol, enrolled voluntarily. Others left; and once they got to the training camp,
23 they would not be able to adapt and they would come back home. They gave up. Because
24 the work depends on your talent. If you don't have the talent, you won't succeed
25 in the profession. And some might have died. So that's what the situation was.

1 Q. Did you know of any of the commanders of the Mandro camp?

2 A. I wasn't able to see a commander with my own eyes, but according to what
3 we were told -- we were told about some, but I never saw a commander with my own
4 eyes.

5 Q. You said that your mother died. I am sorry to hear that. Did she die
6 during the war?

7 A. Yes, she died during the war, but she wasn't killed by the soldiers. It's
8 not as if it was the UPC soldiers who killed her, or others. Actually, during that
9 war -- well, it was a war amongst all the ethnic groups. And myself, as I am here
10 today, I know that those who killed my mother were Balendu.

11 Q. Thank you for explaining that to us; I'm sure it was a bit difficult.
12 After your mother died, did you live with your father?

13 A. My father was very far away from me. He had travelled. Well, when the
14 house was attacked by the enemy, we were at home, so I had heard noise. I went
15 to the bedroom and I hid underneath the bed with my little brothers, but my mother
16 and the little child stayed. They were hit, and they killed my mother and the little
17 girl. They went into the house. [inaudible] They searched everywhere. They didn't
18 see people and they left after that.

19 Q. Can you continue? Is it okay to continue, sir, or would you like a short
20 break? I am sure if you would like a break, the Chamber will permit that.

21 A. I can keep on going. I can keep on going. I will keep on going.

22 Q. Okay. But should you require a break, just let us know. After the incident
23 that you were describing with your mother, did you thereafter live with your father
24 or did you say that your father had travelled and was far away?

25 A. We came together. And after, father left. He left for a week. And then

1 after that, the war broke out. In the absence of my father --

2 Q. I am sorry, sir. We didn't hear the last part of your answer. In the
3 absence of your father, what did you do?

4 A. My father wasn't there. Father wasn't there.

5 Q. So your mother wasn't there and your father wasn't there. What did you
6 do?

7 A. Well, when my mother died, when we were attacked in the house. My mother
8 and the baby were killed and we were hiding under the bed, and they said that they
9 had to burn down the house. Others said, "No, there's no people in the house. Mustn't
10 burn it down." Other suggested that it be burnt down. Others said, "No. Let's
11 go and find others."

12 In fact, the whole village was in flames, and we left. And when we -- when
13 the men went elsewhere, we left with my three brothers, and we went into the forest.
14 Once we got into the forest, we got into the bush at around 10 in the morning. We
15 stayed there, and we heard the gunfire in the village and others continued to burn
16 down the houses. We carried on advancing into the bush and eventually we met up
17 with other people, but we saw refugees who were fleeing and we got mixed in with
18 them.

19 I learned that our village of origin was Lonio. That was the name of
20 my village. And it all happened in Mongwalo, but from Mongwalo to Lonio I was with
21 the children, and it was difficult because I had the children with me, and
22 transportation was difficult to get. There were no vehicles moving about during
23 the war. And we met a woman who had two children. I told her my problem, and she
24 said there's no problem. She said, we are going to stay together; but the way I
25 was, I continued my trip until Katoto.

1 And if -- I said to myself that if I got to Katoto with her, that will
2 be close to my village and I will be able to get back to my village. The body of
3 my mother was in the house. No one had buried her. The corpse had remained there.
4 And after, it took us a week to get to Katoto. There was no food to eat. Someone
5 had to help you with a little bit of food. It was tough. You had to be tough.
6 And we got to Katoto with this woman we had met along the way.

7 Once we got to Katoto, we spent the night in her home, and we got there
8 on Monday. We spent Monday, Tuesday and Wednesday. That was the market day in
9 Katoto. And on the market day, I left my young brothers at home, and I went to
10 the road used by the people from my village to go the market. And I saw a few people,
11 and I said to them that we had no -- nothing. Nothing to eat. And that we were
12 coming from [inaudible]. I had just met them, and it was a pleasure. It was joyous
13 to have met them.

14 And they gave us a bit of money, a 1,000 Congolese Francs. And I took
15 the 1,000 Congolese Franc to buy some sugarcane and some doughnuts, and we ate.
16 And when we had to leave, we left. And once we got to the village, once back to
17 the village we learned that our father had also fled, and he had been seen at the
18 Katoto market; that is, we heard directly from the people who had remained behind.
19 We waited for our father. He did not come back. He did not come back the next
20 day either. An entire week went by and he did not come back. I did not know where
21 my father was.

22 And when I got to the village, I went to my grandfather's house and to
23 the house of my aunt, and they took us under their wing. They took good care of
24 us. And my father came back. I told them everything that had happened. And my
25 father did not know what to tell us. We stayed there. After that, I began to get

1 used to things. I was offered a bit of money, and I started to do a bit of trading.
2 I did a bit of trading with that money until -- at one point, when I think about
3 things, I really get confused. I still remember what my mother had told me, and
4 as for the time -- well, you know, my mother's -- a mother is very important, as
5 is a father.

6 PRESIDING JUDGE FULFORD: Right. We are going to take a break now. Usher,
7 can you immediately escort the witness to the witness waiting room, please. Thank
8 you.

9 (The witness stands down)

10 PRESIDING JUDGE FULFORD: Absolutely no criticism, Ms Samson.

11 THE INTERPRETER: Your Honour?

12 PRESIDING JUDGE FULFORD: I am sorry. Somebody has just spoken to me over
13 the headphones.

14 THE INTERPRETER: Mistake from the English booth.

15 PRESIDING JUDGE FULFORD: Ms Samson, absolutely no criticism of you at
16 all. You have your duty to do. You're satisfied, I assume, on the -- given the
17 case of the Prosecution as regards this witness, that it is necessary to explore
18 the position, particularly as regards his deceased mother. Now, you must understand
19 I'm not seeking to stop you. I just want to make sure that with what is undoubtedly
20 upsetting material we absolutely need to go there. That's all.

21 MS SAMSON: I understand, Your Honour. I had not intended for the witness
22 to provide the full account of what had happened to his mother. There was an allegation
23 that the intermediary is telling witnesses to indicate that certain family members
24 are deceased, and I wanted to understand that with this witness, in fact, information
25 he provided to the office was correct, and that was what I was intending to do.

1 I don't need to explore that much more. I only also wanted to know with
2 whom he had been living afterwards, and I can focus in on that issue with the witness
3 now, but I certainly don't intend to take him any further into the details of family
4 tragedies.

5 PRESIDING JUDGE FULFORD: Entirely understood, Ms Samson. I want to stress,
6 this does not involve any element of criticism of you. Can I just make this observation,
7 which I hope will help:

8 We've tended to adopt the position that with witnesses who are probably
9 unused to speaking in a very formulaic question-and-answer way, that it is better - if
10 they want to - to let them, as it were, express themselves in their own -- in their
11 own fashion without constantly being interrupted by Judges or counsel who wish
12 everything to be split up into very neat little sections.

13 Because we generally take that approach, that is not to stop
14 you - particularly in an area like this - from gently and politely interrupting
15 the witness, and saying, as it were, cutting him short because he's dealt with the
16 point that you wanted to raise; and thereby, really saving him from going into a
17 long account which is, as a result, going to be upsetting for him. So in the right
18 circumstances, please interrupt, and cut it short really for his benefit as much
19 as anything else.

20 MS SAMSON: Thank you. I will.

21 PRESIDING JUDGE FULFORD: Thank you. And can the court officer, please,
22 make sure that somebody from the VWS unit - whether it's the psychologist or one
23 of the other workers - has a discussion now with the witness to make sure that he
24 feels comfortable about continuing in a few minutes' time. Thank you.

25 We are going to rise now until we are told that the witness is happy to

1 continue. Before we do, there has been an email exchange over the last 24 hours
2 indicating that at one stage there were some objections to documents that you were
3 proposing to use, Ms Samson. Are those still live issues or have they been resolved
4 following the exchange of emails?

5 MS SAMSON: Well, we haven't had a further exchange on the objections
6 from the Defence. At this stage, I don't intend to use -- perhaps none of them,
7 possibly only one to date; although, I hadn't communicated that to my colleagues.
8 Certainly I will alert the Chamber to the one document, and we will have a discussion
9 about it at the appropriate time, but I will be very limited in the number of documents.

10 PRESIDING JUDGE FULFORD: All right.

11 MSSAMSON: -- I will put to the witness. I didn't understand until recently
12 that he has reading difficulties.

13 PRESIDING JUDGE FULFORD: Fine. Good. But if -- obviously, if there are
14 some outstanding matters on which we are going to have to rule, it's useful to know
15 in advance so that we can think about it. Thank you very much.

16 Well, we will wait until we are told by the court officer that the witness
17 is happy to proceed.

18 THE COURT USHER: All rise.

19 (Recess taken at 12.05 p.m. Upon resuming at 12.35 p.m.)

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

21 PRESIDING JUDGE FULFORD: Thank you all. The witness has seen the
22 psychologist and is happy to continue, and the psychologist thinks that that is
23 appropriate. So in a second we will ask him to come back into court.
24 I want to thank the interpreters for having prepared a short summary or - in fact,
25 I think it's more than a summary - an explanation of what was said that's

1 been committed to writing and either has been or will be provided to counsel.

2 And Mr Lubanga has asked if he can listen to the relevant portion in Swahili
3 on court-provided equipment. We consider that is appropriate and that should happen
4 over the luncheon adjournment, please.

5 Good. Witness, please.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE FULFORD: Thank you, usher. Yes, Ms Samson.

8 MS SAMSON: Thank you, Mr President.

9 Q. Sir, you are a Hema; is that right?

10 A. Yes.

11 Q. And you told the Court it was the Balendu who attacked your house; that's
12 right?

13 A. That is true.

14 Q. You've already told the Court that this was an ethnic war, wasn't it?

15 A. That is correct.

16 Q. You fled with your brothers to Katoto; that's right?

17 A. That is correct.

18 Q. Katoto was safe, a safe place for you to be; is that right?

19 A. That is correct.

20 Q. You must have been angry at the Balendu for attacking your home, weren't
21 you?

22 A. Well, previously I was angry, but now today I am not because we are now
23 all and one. We are united.

24 Q. At the time, though, sir, you must have been very angry about what the
25 Balendu did to your family?

1 A. Yes, but anybody would have been angry, because a mother and a father
2 are different. You know, a mother takes care of the children more than a father
3 does. A mother can do many things that a father cannot for his child. That is what
4 accounts for this anger.

5 Q. When you were in Katoto did you meet UPC soldiers?

6 A. When I arrived in Katoto there were UPC soldiers there.

7 Q. These soldiers spoke to you, didn't they?

8 A. Well, it was difficult at that moment in time to speak to the soldiers,
9 because I had many problems at that time and it was difficult for me to speak to
10 the soldiers. We stayed with the UPC group for only two days. In fact, we arrived
11 on the first day, we spent the night there and the following day there. On the
12 third day at approximately 4 p.m. we left and went somewhere else.

13 Q. The soldiers that you saw in Katoto, did they ask you to carry anything
14 for them?

15 A. No, no soldier asked me to do such a thing.

16 Q. After you left Katoto, you say that you lived in your grandfather's house.
17 Where did your grandfather's -- where did your grandfather live?

18 A. My grandfather lived in Lonio.

19 Q. How long did you stay at your grandfather's house?

20 A. I spent a time there. Upon my arrival, I saw that there were some goats
21 there and I started to tend them. There were also cows - approximately 800 cows - which
22 I also tended. We spent quite some time there; many a month. However, there was
23 another day when the Balendu attacked and we fled without the goats and the cows.
24 We all left. There was no way for us to flee with the animals during war time.
25 We fled in the company of the families and we went to Mandro to spend the night.

1 The Balendu arrived at approximately midnight in the village. We noted
2 that they were arriving, because they came with flashlights. In fact, in that village
3 it was not very frequent for people to see people walking around with flashlights.
4 It was soldiers or enemies who walked around with flashlights. This is how we came
5 to flee, out of fear, leaving our cattle in their pens and our goats at home. We
6 fled for two hours approximately, we arrived in Mandro at night-time and there were
7 many other people who had fled there. It was very difficult to find any accommodation.
8 We did our best and we finally found a house to rent and we stayed there. And then
9 finally the Balendu entered the village. They attacked. They set fire to the houses
10 and they also set goats alight. Other property was also burnt and if you succeeded
11 in saving any clothes, they would only be the clothes you were standing up in.

12 We arrived in Mandro and we rested, and we remained in Mandro for two
13 months. The Balendu returned to Mandro once again and they came to Mandro. We
14 travelled and we left. We fled towards Bunia. Upon arriving in Bunia, we remained
15 there for approximately five months. Once again they attacked Bunia and they arrived
16 in the company of Ugandans and Ngiti. There were many ethnic groups present; a
17 mixture.

18 In Bunia, all the people present had fled. In fact, at that moment in
19 time in Bunia the situation was such that people were running helter-skelter, to
20 the extent that a Lendu could flee to the Hemas. It was every man for himself. The
21 ethnic groups were all mixed up to the extent that a Hema could end up among the
22 Lendus. It was only later on that a person could realize that he had been fleeing
23 in the company of an ethnic group that was not his/her own. Finally, we went back
24 to Katoto [inaudible] - and upon arriving there we spent quite some time. The Lendu
25 had captured Bunia and settled there and it was no longer possible to go back to

1 Bunia. It was difficult to get hold of any soap, any oil, any salt, because it
2 was Bunia that provided us with such resources. The UPC soldiers entered Bunia
3 and found the Lendus there. They fought for one day, for two days. There was inequality
4 of arms between the two forces. Finally, the UPC beat the Lendu and Bunia was freed,
5 and when Bunia was freed the soldiers said that the villagers had to go back to
6 their own villages because now there would be security. And this is when people
7 started to go home gradually, one after the other, and we also went home. Once
8 we got home, well, we have been in Bunia ever since, up until today.

9 Q. And during this period of war that you are describing you were not in
10 school, were you?

11 A. I was at school but it wasn't really possible to study properly during
12 the war. Sometimes we would study for a month, for example, and then a short time
13 later -- well, you have to remember that people tell lies. People would come and
14 say, "Oh, I can see the enemy coming" and then of course you run away and everyone
15 will go home. Were you to be under the shower at the time, you might flee without
16 even grabbing your clothes, and you might find yourself in the toilet and you would
17 also make your own way. There were often interruptions. One might be able to study
18 and then one would be interrupted. I studied until the fourth year. And during
19 that fourth year I studied for a certain duration until I interrupted my studies.
20 When I was in the -- when I was moving from the second to the third grade, I was
21 not in the right frame of mind to carry on. At the time I had separated from them
22 and from my grandparents, and I went to mine gold. We went to Mongbwalu and we
23 mined gold there. We also went via Ituri and we mined for gold, and after the Ituri,
24 we carried on mining for gold. And before coming here, I was supposed to go and
25 work in a gold mine but, in view of the fact that I had accepted to come here, the

1 people who had to bring me arrived at my home without prior notice and I came along.
2 However, this does not mean that.....

3 There was one young boy with whom I worked, who fled with my money. We
4 were told that we were going to come here to testify and we waited for that moment
5 in vain. They suddenly came on a Thursday, and we had to leave on the Sunday. All
6 of a sudden it happened. They found me without any money. They did not even give
7 any money which I could deposit into my account which my wife could use to buy food
8 in my absence. However, I came here. And I was told that my wife is sick and that
9 she does not have any money with which to seek treatment. However, I am managing
10 to get through this.

11 Q. When you were moving from place to place during the war, were you with
12 your family?

13 A. Yes, when we went mining for gold. When you go to mine for gold, it is
14 not because your father, your mother or your family is there. It is a personal
15 decision. Well, you don't go because you know anyone there. You find or you hear
16 that there is gold to be mined in a certain area, and you come together as members
17 of a team and you work together. It may happen that you don't find anything on
18 site. You might work even for a year or more. You might work for a year without
19 being able to make even ten francs. I believe that nobody else could have gained
20 access to those holes or mines that we entered. They are 85 or 90 metres in depth.

21 THE INTERPRETER: Inaudible.

22 MS SAMSON:

23 Q. Sorry to interrupt you. I was asking about the time during the war when
24 you were moving to Katoto. You were with your brothers and you went to Bunia and
25 stayed with your grandfather, and then you left and moved back to Katoto, if I understood

1 you correctly, and finally to Bunia. When you were moving to those other places,
2 were you with your grandparents, your siblings, your friends? Who were you with?

3 A. I was in the company of my grandparents. However, they forbade me to
4 go to those different places, but I stood up to them. They said that I had not -- I
5 was not yet old enough to go to such places, but in view of the fact that my friends
6 went to those places, I also decided to go there.

7 Q. Could you just give us the names of such places that you're describing?

8 A. Where I was working?

9 Q. No, but let me see if I can understand what you were saying. Were you
10 saying that your grandparents didn't want you to go work with your friends mining
11 gold?

12 A. Yes, yes, that's right.

13 Q. I understand. Earlier, you said that you had moved at one point to Mandro,
14 and when I asked you if you knew of any of the commanders at Mandro, you said you
15 didn't see them but you heard of them. Which commanders did you hear were at training,
16 training camp in Mandro?

17 A. It is the ears that one listens with and the mouth that one speaks with
18 and eyes that one sees with. I heard this with my very own ears. There was Commander
19 Mugisa, Commander Abelanga; there was Commander Kitembo.

20 Q. Can you remember any of the other commanders, or are those the two that
21 you remember hearing about?

22 A. I only remember those three.

23 Q. Sir, do you remember two commanders or three commanders?

24 A. Commander Kitembo, Commander Mugisa and Abelanga, those are the three
25 commanders. There weren't two, there were three.

1 Q. Yes. Did you hear what those three commanders asked people to do at the
2 training camp?

3 A. I believe that they merely trained them. I have never been in a training
4 camp myself, so I cannot know. I heard that people went to the training camp but
5 I did not know what they did there. I heard speak of training camps only, but I
6 never went there myself.

7 Q. So you didn't hear what type of training people did? You didn't hear
8 about any examples of the type of training people did; is that right?

9 A. There are -- there were many kinds of training: karate, games with a
10 ball, different kinds of training, but what -- the training that they did there
11 was military training. That's the kind of training they had there.

12 Q. Did you hear what kind of military training they did, what kind of exercises
13 they did?

14 A. I don't know because I never saw that with my own eyes when they did the
15 training. I only saw the people who had just finished work, who were now wearing
16 uniforms and bearing weapons. That's what I saw but I never was at the training
17 camps. I never saw these things myself.

18 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

19 MR DESALLIERS: (Interpretation) I believe that the last remark from the
20 witness is opening up a particular matter. And I have the French transcript here,
21 page 51, line 10, "And I never was in a training camp. I know nothing; I couldn't
22 know." So continuing to push with these questions about what went on in the training
23 camp, that is pushing the witness into speculating. He said he didn't know, and
24 the last statement he made confirms this.

25 PRESIDING JUDGE FULFORD: Well, I suspect, Mr Desalliers, in light of

1 the last two answers that the witness has given on this subject, that Ms. Samson
2 is unlikely to be taking it very much further.

3 We are now one o'clock. We need to adjourn. Thank you for the intervention.

4 Sir, thank you very much for your assistance this morning, and we look
5 forward to seeing you again this afternoon at 2.45. Usher, if you could accompany
6 the witness, please, back to the witness waiting room.

7 (The witness stands down)

8 PRESIDING JUDGE FULFORD: While I remember, for the next witness, she
9 will also be requiring assistance with reading, so can counsel please bear that
10 in mind. She is also going to need frequent breaks, and I will try and sort out
11 over lunch with the Victims and Witnesses Unit the best way by which she can communicate
12 her needs in this regard so that it causes her the minimum amount of embarrassment.
13 But can you please all bear that in mind, that there are those particular requirements
14 in relation to the way in which she will be giving her evidence.

15 Now, Ms Samson, I think you were half on your feet.

16 MS SAMSON: I was, your Honour, only to inquire whether it's this afternoon
17 there is an ex parte hearing or whether it's another day.

18 PRESIDING JUDGE FULFORD: Thank you. I was going to deal with that finally
19 before we rise.

20 How long, Ms. Samson, roughly?

21 MS SAMSON: I think I will certainly be the hour-and-a-half that we would
22 have left, or two hours if we were to have a full afternoon session, yes.

23 PRESIDING JUDGE FULFORD: I think that the matter that we need to consider
24 ex parte is sufficiently important to mean that we should not, as it were, put it
25 over until tomorrow so that you can, as it were, complete with certainty your

1 questioning this afternoon because there may then be further questions from
2 Mr Desalliers.

3 Therefore, at 2.45, we will deal with the ex parte. I anticipate that
4 is likely to last between 15 and 30 minutes. We are then going to need 15 minutes
5 to reconfigure the machinery, so nobody -- so the earliest that those not involved
6 with the ex parte need to be here is half past 3. We cannot conceivably reach you
7 before then, so you are, at it were, liberated until then.

8 So, for the rest of us, 2.45. Thank you.

9 THE COURT USHER: All rise.

10 (Luncheon recess taken at 1.06 p.m.)

11 CORRECTION REPORT

12 Please note that this transcript has been revised and corrected by the
13 Court Translation and Interpretation Section.

14 Due to a large amount of corrections to be brought to the transcript,
15 these have been implemented directly into the transcript.

16 RECLASSIFICATION REPORT

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

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