

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elisabeth Odio Benito and

4 Judge 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 Tuesday, 9 February 2010

8 (The hearing starts at 9.32 p.m.)

9 (Open session)

10 (The accused present in the courtroom)

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

13 PRESIDING JUDGE FULFORD: Good morning. Ms Samson, a rumour reached us that
14 there may be an application from the Prosecution. I see you nod. Yes.

15 MS SAMSON: Yes, your Honour, that's correct. The Prosecution's requesting a
16 brief adjournment following the examination-in-chief of the witness to come. The
17 grounds for the application are that the Defence has, indeed, provided the
18 Prosecution with additional information that the witness is expected to testify to,
19 and it was provided yesterday evening, after 6 p.m.

20 The Prosecution is certainly grateful for the additional information, but
21 would kindly request time following this witness's examination-in-chief to fully
22 prepare. And in order -- let me start that again.

23 The amount of time that the Prosecution is requesting is simply the duration
24 of today. So that the witness is expected to testify for five hours, according to
25 his schedule - it may be less than that - and the Prosecution requests the

1 remainder of the day, if that would be permissible to the Chamber, to consider what
2 the witness has said and then commence the cross examination tomorrow morning.

3 PRESIDING JUDGE FULFORD: Well, Ms Samson, my voice is in the process of
4 giving out, so you may fortuitously be able to take advantage of that as well as
5 the application that you've just made. We'll see where we get to, but we're likely
6 to be sympathetic. Thank you very much.

7 MS SAMSON: Thank you.

8 PRESIDING JUDGE FULFORD: Good. I understand that the next witness will need
9 some assistance with the oath, so we will need to go into closed session in a
10 moment so that he can be brought down.

11 An issue that is linked to this, Mr Desalliers, when I was looking at the
12 email that was helpfully sent, I think by Ms Buteau, alerting us to this issue, I'm
13 not sure whether the Prosecution and any relevant representatives of victims were
14 copied in to the communication, and there was a moment yesterday when Ms Samson was
15 introducing documents when it occurred to me that with the previous witness as well
16 she in fact may not have received the communication indicating that the witness
17 potentially has reading difficulties.

18 Now, it may be that I've misunderstood the names that are Cc'd on the email,
19 but can we ensure in future, we needn't have a post-mortem on this now, but can we
20 ensure in future that it's not only the Chamber and the Victims and Witnesses Unit
21 that are told but the Prosecution and any relevant representatives of victims are
22 informed as well to make sure that we don't put witnesses in the embarrassing
23 position of being asked to read documents when in fact they're unable to do so.

24 MR DESALLIERS: (Interpretation) Very well, Mr President.

25 PRESIDING JUDGE FULFORD: Anything else before the witness comes in? No.

1 And I take it, therefore, Mr Desalliers, I take it therefore, Mr Desalliers, that
2 there are no other protective measures as far as the giving of evidence is
3 concerned that is sought for this witness?

4 MR DESALLIERS: (Interpretation) No, Mr President.

5 PRESIDING JUDGE FULFORD: Closed session, please, and can the interpreter
6 come into court, and can the witness also be brought.

7 *(Closed session at 9.37 a.m.) Reclassified as Open session

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

9 (The witness and the interpreter enter the courtroom)

10 PRESIDING JUDGE FULFORD: Public session, please.

11 (Open session at 9.38 a.m.)

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

13 PRESIDING JUDGE FULFORD: Good morning.

14 THE WITNESS: (Interpretation) Good morning.

15 PRESIDING JUDGE FULFORD: I am going to ask you to try not to be nervous or
16 worried about the evidence that you're going to give and the time that you're going
17 to spend in court. Defence counsel, Mr Desalliers, Maître Mabilie and others,
18 together with the Judges, will make sure that you are treated wholly appropriately,
19 so don't be worried. If at any stage there's anything that you don't understand,
20 please say so straightaway, and although we will have lots of adjournments during
21 your evidence, if at any stage you need to leave court, you only have to ask me and
22 we will adjourn immediately.

23 Can I ask you, please, to make sure that you keep your voice up. Don't speak
24 too quietly because, if you do, we won't hear what you say. And can you also try
25 not to speak too quickly because everything you are saying is being interpreted and

1 it is being recorded by some stenographers.

2 Now, in a moment, I'm going to ask you to take the solemn undertaking, and
3 what will happen is that the gentleman sitting next to you will read out a few
4 words from a card, and every time he pauses I'm going to ask you to repeat what he
5 has just said, and that way you will take your solemn undertaking to tell the
6 truth. Good.

7 Then, with the interpreter's assistance, can the witness please have the
8 card, if he doesn't already have it, and can you make sure, usher, that the right
9 card is in front of the witness. And taking a few words at a time then, sir, can
10 you read it out so that the witness can hear what you say and then repeat it?

11 WITNESS: WITNESS WWW-D01-0004 (Sworn)

12 (The witness answers through interpreter)

13 PRESIDING JUDGE FULFORD: That was done excellently. Thank you both very
14 much indeed. Now, Mr Desalliers, do we need the interpreter for your early
15 questions or not?

16 MR DESALLIERS: (Interpretation) No, Mr President.

17 PRESIDING JUDGE FULFORD: Thank you, sir, for your assistance. We'll now go
18 into closed session so the interpreter can leave. Thank you. Closed session,
19 please.

20 *(Closed session at 9.41 a.m.) Reclassified as Open session

21 (The interpreter exits the courtroom)

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

23 PRESIDING JUDGE FULFORD: All right. Public session, please.

24 (Open session at 9.42 a.m.)

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

1 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

2 Questioned by Mr Desalliers: (Interpretation)

3 Q. Good morning.

4 A. Good morning.

5 Q. We have already had the opportunity to meet, but I would like to introduce
6 myself again. My name is Marc Desalliers, I am a lawyer and I shall be putting to
7 you today a number of questions for the Defence of Mr Thomas Lubanga. Could you
8 please give us your full name?

9 A. My name is Claude Ndjango Nyeke.

10 Q. And how old are you today?

11 A. I am 20 years of age.

12 Q. Could you please tell us where you were born?

13 A. I was born in Mongbwalu.

14 MR DESALLIERS: (Interpretation) Mr President, I must go into closed session
15 or private session for a number of questions, please.

16 PRESIDING JUDGE FULFORD: Private session, please.

17 *(Private session at 9.44 a.m.) Reclassified as Open session

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

19 PRESIDING JUDGE FULFORD: Yes.

20 MR DESALLIERS: (Interpretation)

21 Q. Do you know an individual by the name of (Redacted)?

22 A. Yes, I do know that individual.

23 Q. Are you in a position to tell us what year you met (Redacted) in?

24 A. I met him in the year 2008.

25 Q. And at that time when you met him can you tell us what activity you were

1 involved in?

2 A. At the time I cultivated crops and I also worked in a (Redacted).

3 Q. Where did you meet (Redacted) for the first time?

4 A. I met him for the first time in my village, Simbiliabo.

5 Q. Simbiliabo, is that a neighbourhood of Bunia?

6 A. Yes.

7 Q. To your knowledge, at that time, notably the time when you met (Redacted),
8 can you tell us who he was working for?

9 A. When he came to our place, (Redacted) found us at a roundabout. We wanted
10 to get into a vehicle with a view to going (Redacted). He called me and I walked
11 towards him and he asked me the question as to whom amongst us had been a child
12 soldier. I refused and I asked him to address the question to the other children
13 who were in our company. He called another person and that other person also
14 refused. At a later stage he returned and on the next day he came to us again and
15 he found us in that same location. He said, "I need young people. However, the
16 problem is as follows: In view of the fact that you are here, if you accept that
17 you were an child soldier, I shall register you and present you, and there are
18 individuals who will help you by giving you something, because they have not yet
19 found any child soldiers". We asked him the question, asking him where we were
20 going and he said, "We're going to go into town, to Bunia." We accepted and he
21 took our names down and he said, "Although you are from Simbiliabo do not say that
22 you are one of the young people from that locality."

23 He then asked me to register me under the name of Byarwanga, and to say that
24 I hailed from Lopa, which is what I did. To another young individual he asked him
25 to say that he hailed from Barriere, and another person from Nizi, so this was the

1 person who arranged or determined what people's names were originally. He then
2 asked us to go into town without stating when and we accepted.

3 He told us that we would receive assistance. If we accepted to say that we
4 were child soldiers we would then be able to follow training in mechanics or in
5 carpentry or in masonry, whatever we wanted to do. So we accepted and we knew that
6 this was a form of assistance. And we left. We arrived at his place and he told
7 us what the problem at hand was. He said that an official would come and that this
8 official would speak to us, and that if this official asked us whether we were
9 child soldiers, we had to say yes, and that we had to say that Thomas Lubanga was
10 the person who had forcibly enlisted us within the army and that in such a manner
11 we would receive assistance. This official came, but there was no office available
12 and all the interviews were conducted in a vehicle. (Redacted) came to see us, and
13 (Redacted) showed us into his house and that is where we started the training. He
14 said to us, "Young people, do not be afraid. Say that you were forcibly enlisted
15 and you will receive a lot of money. You mustn't refuse. If you refuse, you will
16 miss an opportunity. It is a way of earning money. You have to accept everything
17 and say that it was Thomas Lubanga who forcibly enlisted you in the army as child
18 soldiers," and we accepted. In total, we were eight individuals, approximately
19 eight individuals. However, we did not all arrive at the same time. There were
20 some who had arrived before us. Four people had arrived before us.

21 When we arrived we saw (Redacted), and (Redacted) intercepted one of us and
22 then he phoned (Redacted) and he asked him to come with a young child, a young man,
23 and then he was taken in a vehicle and they drove around the town. They went to
24 the MONUC, they went to the airport, and every time that they stopped, the person
25 was interviewed. The person was asked, "were you a child soldier?" And he would

1 reply, "yes." "Were you enlisted by Thomas Lubanga?" And the person would answer,
2 "yes," as it had been arranged. Then he (Redacted) would ask us for our names and he
3 would record them. And he would ask (Redacted) to take the child to take the
4 young child back and bring another into the vehicle, and so it continued. We all
5 went through this experience. Subsequently, (Redacted) then gave us a certain sum of
6 money for transport; I forget how much it was. It was for transport. However,
7 (Redacted) was the one who put this money in his pocket. Even if we were given 10 francs, it
8 was (Redacted) who put it in his pocket. We put up with this situation and we stayed
9 there. We spent approximately a week there and it was the same situation that continued.
10 (Redacted) approached us again and he came to find me. I was in the company
11 of my brother, my grandmother, and a young girl. There was also another brother of
12 mine, a teacher. (Redacted) addressed us and said that there had been a change of
13 plan. "The people who were supposed to help you," he said, "have claimed that you
14 will not receive assistance here, but that you will receive it in Beni." And in
15 hearing that, I doubted -- I started to doubt. I wondered whether I would go there
16 alone or whether I would be in the company of somebody else. He said that a family
17 member had to accompany me, either an elder brother or another family member. I
18 said that I did not have a member of my family who could go with me, and he said,
19 "Well, isn't it true that this person is your brother? Can't he go with you?" And
20 I said, "No, he is a teacher, and he cannot interrupt his activities. And what I
21 do is my business. He is a teacher." The latter therefore refused to accompany
22 me. So, (Redacted) left once again and he left me behind. He said, "We shall
23 examine your case subsequently. Let's look for someone else". And he went to see
24 somebody else, a young child by the name of (Redacted), and I believe that he had
25 been given another name. I forget now. He went to see (Redacted) - and he said,

1 "Listen, you must make that journey and go get your share in Beni the next day."

2 The child refused, saying that he had nobody to accompany him. (Redacted) insisted
3 and the child refused, so (Redacted) then went somewhere else. And seven people
4 refused to leave; only one accepted.

5 We are in the habit of calling him (Redacted), but I do not know what name he
6 was registered under. (Redacted) initially tried to refuse but then (Redacted)
7 accepted. Why was that? Because he was the only individual amongst us who had
8 been a child soldier. He was the only person who had been a child soldier of our
9 group. So, he accepted. However, before leaving, it was said that somebody needed
10 to accompany him and somebody -- and he had to receive \$10, and that one of the two
11 people had to be given a cell phone. We had to go to the -- they had to go to the
12 MONUC parking area and then go to Beni, and once arrived in Beni, at a roundabout,
13 they would be called and then they would come in a vehicle to take them to the
14 hotel. So, (Redacted) accepted to leave and he did.

15 So, the seven of us talked to each other and we thought that we should wait
16 until (Redacted) returned in order to make an decision as to whether we would go or
17 not. We awaited (Redacted) return, one, two, three, four days, and he did not come.
18 On the fourth day, somebody else came. So, (Redacted) phoned us, he had returned.
19 We did not know what he had been told. He said, "Listen, do not be frightened.
20 Everything went well." However, when (Redacted) was there, he met people in an
21 office and he was shown a document, a document where a sketch had been made showing
22 the Judges, other individuals and Thomas Lubanga. And on that very sketch the
23 individual Thomas Lubanga was drawn in red. I think that represented blood. However,
24 the other people who were represented on that sketch were black or blue in colour.
25 Now, when (Redacted) returned, another individual left. (Redacted) said, "Do not be

1 afraid and try to do a good interview." However, (Redacted), in the interim,
2 refused to go to the Netherlands. He said, "I cannot go there." And somebody else
3 left after (Redacted) returned. So, that individual left and, upon arriving at that
4 location, the same thing happened to them, notably, this document, this sketch, was
5 put before him and he was asked whether he would accept to go and testify in the
6 Netherlands, because any individual to whom that question was to be put would doubt
7 to a certain degree. He was asked whether he would accept to go and testify in the
8 Netherlands, to say that Thomas Lubanga had forcibly enlisted him, or them. And a
9 person to whom this option was put, if he refused, then the telephone was taken
10 back and that person was sent home the next day and paid the sum of 20 or 30
11 dollars, and so on. My turn came next. But I didn't have anybody to go with me.

12 However, there was a gentleman from our village whose child had left. This
13 child had left in the company of another individual. This gentleman came to see my
14 grandmother, because I do not live with my father. He came to see my grandmother
15 and said, "Listen, your child should go to Beni, but I do believe that it is a bad
16 place." He accepted. He said, "Even my son is there. So, rather than somebody
17 else accompany him, please allow that I accompany him, and I shall see everything
18 that goes on there. I wish to hear what the child would say." When we left --
19 rather, before we left, (Redacted) came to see me and he had a cell phone with him,
20 and he gave to the gentleman he was supposed to accompany me by the name of
21 Sumbuso, but there was another person -- other people call him Dudu, but his real
22 name is Sumbuso. This individual was given \$10 and I was given 10 francs.

23 THE INTERPRETER: Rather, correction from the Swahili booth, "I did not
24 receive any money."

25 THE WITNESS: We left at approximately 4 a.m. and at 6 o'clock we were at the

1 MONUC office, and we got into the vehicle at approximately 7 o'clock. We then
2 left. We got to Beni at 12.00. When we got to the roundabout there in Beni, this
3 gentleman who had accompanied me didn't know how to use this cell phone. So I took
4 it and I called, and they came and got us. But, as we were waiting, as we were
5 waiting for them, someone came and he said, "Do you see that vehicle coming up?
6 That's the vehicle that we were in when we had those talks with them. You see the
7 gentleman who is standing beside the -- by the roundabout? That's (Redacted)." We
8 went to the vehicle. We opened the door and (Redacted) was inside, and then we
9 went to the hotel. We were told that if we wanted to have a shower, we could do
10 so. If we wanted to eat, we could ask for food and it would be provided. So, we
11 had our breakfast there and we had our other meals there, lunch and dinner. So, we
12 accepted and stayed there. And when I got there, the others -- for the first day.
13 The others, when they arrived, well, that was the next day; that's when their
14 process was to begin. I got there at 12.00 and I stayed. At 3.00 or 4.00 they
15 came to get me, and so then we went to their offices.

16 Once we got to their office, we were greeted nicely and I think I met
17 Mr. Serge, as well as Michael and another person. I forget that person's name. It
18 was a lady. I remember the names of Michael and Jean -- and Serge, pardon me. So
19 we went there. We were greeted nicely. We were given sweet drinks and, before any
20 discussions, we were shown the same document and we were told, "Look at this
21 document. Do you agree to go to the Netherlands?" That was the first question
22 that they asked of me. And I said, "To do what?" And they said, "You have to go
23 say that Thomas Lubanga was the one who enrolled you in the army." I thought about
24 it, and the gentleman who was with me said, "No, you mustn't respond. I will
25 answer for you." And the gentleman said it's difficult for him to go, and they --

1 he -- and why? And they said, "Well, there's a problem. On this sketch, you see
2 this person here, this is a judge," another -- this other person, but the people
3 that were represented in red -- well, you see, that person in red was Thomas
4 Lubanga.

5 I looked at the situation. I said, "Well, that's terrible." I was just
6 trying to imagine myself there. And I said myself, this is going to take me very
7 far away. But, you see, there was this person who had agreed to go; and those who
8 had agreed to go kept a cell phone. And I think amongst them, there was
9 (Redacted), but we were -- we were in the habit of calling him (Redacted), and he's
10 also known as (Redacted).

11 The second person who agreed was (Redacted), but I think here he's called
12 (Redacted). These are people that we grew up with. But (Redacted) and (Redacted),
13 none of them had been soldiers. The ones who had agreed to go, went; and when
14 these people saw that I was refusing to go, they asked me to give them the cell
15 phone and said that on a certain date I was to return home. I returned the phone to
16 them. And I think they gave me \$40.

17 And I went back home. And once I got back home -- I think I was the last
18 person to leave among the -- amongst the group of eight people, those who went to
19 Beni, I think there were six of us who went to Beni. Six. But those who agreed
20 and said that they had been child soldiers, I think there were two of them. They
21 were from my village. I know them. There was (Redacted). Tiba is his school
22 name, but he also goes by (Redacted). And there was (Redacted), and he's from my
23 family, actually. We could call each other (Redacted). I think (Redacted) was never
24 a child soldier. He was a street child. He never did anything. However,
25 (Redacted) did agree. At that time, each person minded his or her own business.

1 I thought about things. And when I got home -- well, I stayed in the
2 village. And some young people in the village were saying, "Well, are you the one
3 who went and testified against Thomas Lubanga? Were you a child soldier?" And
4 since I was back in the village, I said to myself, I was going to have a problem.
5 And I got myself in a difficult situation. And I said to myself, where am I to go?

6 And the young people said, "Go testify against Thomas Lubanga and you're
7 going to be saying lies. You're going to say you're a child soldier." And I said
8 to Mr (Redacted) -- or rather, I called (Redacted), using someone else's phone. I
9 had his phone number in my mind. I used that number and I said, "Listen, things
10 aren't working well for me here. People suspect me. They think that I am one of
11 the people who will be going to testify against Thomas Lubanga."

12 And I asked him, "Where are you going to put me?" And he said, "That's not
13 my problem. You didn't want to agree to say that you had been a child soldier."
14 When I left Beni to go back home, (Redacted) and the other had already left to go
15 to Kinshasa. And they asked me -- well, I asked (Redacted) and (Redacted), did
16 they arrive here. And apparently, that had come, but then they had left again.

17 (Redacted), when he arrived there, he called me. He said, "Ndjango, you know
18 I'm in Kinshasa." And I asked him, "What are you there for?" And he said to me,
19 "We agreed; but you, you were wrong not to agree." So I said to him, "Ah, so
20 that's the situation! There is no problem. Everyone is accusing me, saying I have
21 agreed to testify against Thomas Lubanga." I didn't know what to do.

22 In Kinshasa, the people who had left had to go back to the village. So
23 (Redacted) went back to the village, and (Redacted) was the one who called (Redacted)
24 to explain to him what was going on with me. And he accepted that I should go to
25 Kinshasa. And actually, I was -- he asked me to go to Kinshasa. (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted). And we spent one month, two, three, four,

11 five months, six months. On the seventh month I had some problems with this

12 gentleman --

13 THE WITNESS: It was a problem that had to do with football matches. We were

14 supporting two different teams. When my team won, I started teasing him. And this

15 gentleman was not really very happy, and he looked for something to hit me with.

16 He didn't find anything. He looked for some stones, but did not find any. Finally,

17 he took a knife and he chased me with a knife. (Redacted) witnessed the scene and

18 was not at all happy about it. He said, "How can you attack this young guy with a

19 knife?" And (Redacted) called (Redacted) and said to him, "(Redacted), there's a

20 problem here. Why? This gentleman is causing a lot of problems for us." "This

21 gentleman is not my father," he declared. "My father is very far away." So I was

22 asked, "Why are you saying this?" And I said, "No, that's not my father. My

23 father is far away. You're giving me money to eat, but the man is taking this

24 money." And this gentleman, (Redacted) was his name -- and I was told if it -- he's not

25 your -- they asked me if he was my father, and I said no. "Where is your father?" they asked,

1 and I explained that he was in Simbiliabo and that he was ill. In actual fact he
2 wasn't ill. It was a lie. He accepted and the gentleman was taken back to the
3 village. He returned and later on....

4 THE INTERPRETER: Could -- a message from the Swahili booth. Could the
5 witness be reminded to speak slowly?

6 PRESIDING JUDGE FULFORD: You're doing extremely well delivering your account
7 very, very clearly, but can you slow down just slightly, because the interpreters
8 are starting, quite understandably, to struggle, as am I. But if you could please
9 continue slightly slower.

10 THE WITNESS: Yes. And then I stayed for a month only at that place. I was
11 tired of staying in Kinshasa and I wanted to return home although I had doubts. In
12 the village, there were problems there as well, and I thought about it. And I said
13 to myself, "if I go back, what am I going to do? What am I going to do?" The
14 others, the other gentlemen, had indeed been soldiers. However, those of us who
15 were part of the group that had gone to Beni did not get along too well. And those
16 who had come from elsewhere, I believe, were able to go to Simbiliabo, Kasenyi,
17 Tchomia and other places where their families were. But I had nowhere to go, so I
18 stayed in Kinshasa. The difficulty arose when it was time to go back home.

19 I had already spent eight months. What did they say? They informed Claude of
20 the situation and that he had to proceed step by step. They then asked me to return
21 to the village. (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted). Myself, I was taken back home, and I went back home, or back to

1 the house. But when I went back, people continued to say the same things.

2 Some people worked for the UPC, and they were at the office, and they heard
3 what had happened and how the children had gone to Beni and to Kinshasa, and then
4 told lies about Thomas Lubanga. And they decided to meet with these young people,
5 these youths. They wanted to know whether it was true that these children had been
6 child soldiers or not. That's all they wanted to know. And when they started to
7 hear rumours in the town that children had gone to tell lies about Thomas Lubanga,
8 my father came and he said no, that's not true. You are taking things the way they
9 aren't. You're twisting things. You have to go slowly. You have to know how
10 these children left. And the circumstances were different and they left in
11 different ways with their own personal conscience. Some received the Holy Spirit
12 and were changed in that manner. But others proceeded straight ahead, once they had
13 made their decision. So he called me and also called the person with whom I had
14 quarreled. We met and he called me by my name: "Claude." And I said, "Yes."
15 "Where were you a child soldier?" And I didn't know what to say, how to answer.
16 And he said, "Listen, I have no ill will. I just want to know where you were a
17 child soldier. I want some explanations." And I said to this man simply, "You
18 see, it's because of the money. Jesus was sold for money, to get money. Jesus was
19 sold for money." When we were told that we were going to be given a lot of money,
20 even if we -- they didn't explain the amount, but we went. And you see me back,
21 and if you see me back, it's because I refused to go there. And amongst all the
22 children who left from here, I am the one who came back because I refused to go to
23 Holland to tell lies, and they understood that I was right. And this man asked us,
24 "You're there with Mr (Redacted) ?" And he spoke. He said, "If Thomas Lubanga's
25 lawyer or the lawyers of -- come from London to talk to you -- pardon me,

1 correction by interpreter -- come from Holland to talk to you and they ask you
2 about being a child soldier, will you meet with them?" And I said "Yes," and I
3 agreed to meet with these lawyers. "And if they come today, will you meet with
4 them?" And I said, "Yes." I wasn't a child soldier. I said that I was a child
5 soldier because I wanted to get money, and I was told that my life would change and
6 that's why I agreed. And then they spoke about the trade I've always wanted to
7 practice: motor mechanics. I knew that studying to become a mechanic required a lot
8 of money. I did not have the means, although I wanted to practice this profession
9 all the same.

10 And furthermore, I was going to learn that trade free, and so that's why I
11 agreed to say that I had been a child soldier. The lawyers of Thomas Lubanga
12 arrived from Bunia and they asked if we would meet with them. And (Redacted) and I
13 went to see them. And they began to ask us questions. They said, "Which one
14 of you was a child soldier? Who was a soldier amongst you all?" And where did you
15 do your military service? And I said, "The facts are as follows: We were offered
16 money to say that we had been child soldiers, and we did so." And they said to us,
17 "Agree that you were child soldiers." But we had not, in fact, been child
18 soldiers. Amongst us, however, there were some tough-hearted fellows who agreed
19 that they had been child soldiers and continue to say so today. During those two
20 years, they never returned to the village. They exist: (Redacted) and (Redacted). When
21 the lawyers arrived, I explained to them that I was not a child soldier; neither
22 were those who were with me. The only one amongst us who had been a child soldier
23 was (Redacted). But he refused to come here because he knew that no one had come and
24 forced him become a soldier. It was his choice. Other children said that they had
25 done military service. That is true, but no one said that Thomas had come to take a

1 child and put him in the army, to recruit him into the army. That was not the case.
2 Children were in a situation of armed conflict. It was war time and it was not
3 Thomas who started the war against anyone. The war was between the Lendu and the
4 Hema and the Ngiti, and people from these tribes had been involved in the war and
5 it wasn't Thomas who had done all that. He wasn't the one -- he didn't come and
6 recruit children and give them weapons to go and fight . That was not the case.
7 During the war, a child could see the enemy kill his mother, his father and his
8 entire family. So he would no longer have anywhere to go and he would become a
9 street urchin. What else could he do? The child would have to enroll and become a
10 soldier, might as well die there. That is how the child would become a soldier. He
11 would realize that he had no family, no job. He would say to himself, "instead of
12 such a situation, I prefer to endure the suffering of being a soldier. If I
13 succeed, so much the better. If I die, too bad." That is how the child would become
14 a soldier of his own volition, because he had no family. The other children who
15 had these difficulties were very tough children, impossible children. They stole
16 things from people. But when they heard about being a soldier, they decided to
17 enlist. But Thomas Lubanga didn't come and ask a child to enter the army. The
18 children agreed to go and be enrolled in the army. As far as we were concerned, we
19 agreed to say that we had been child soldiers, but that wasn't true. They had
20 offered us money.

21 Now, we met. We spoke with the lawyers of Thomas Lubanga and they asked us
22 whether we were willing to go to Holland to explain the circumstances in which we
23 had agreed to say that we had been child soldiers. And since I hadn't been a child
24 soldier I said, "Yes, I agree. I agree. I will go to Holland and I will explain
25 my truth. I will give my version of the facts and God will hear my version and

1 decide whether it is true or false, even there in Holland." I thought about things
2 and I agreed to lie, and that was a great sin, even before God.

3 For example, if a glass drops and you -- even though you didn't touch it and
4 the glass breaks, will you say that you did touch it and it did fall, and you
5 hadn't done that? Someone might have forced you to do such a thing or agree to
6 such a thing. Is it right to do that? And when we were in Beni, if I had agreed to
7 lie, and to say that I had been recruited by Thomas Lubanga, I would be telling a
8 lot of lies in my testimony, it would be really a lot of lies. Even those who came
9 before me here, they told lies. (Redacted), for example, he came here, I
10 believe, before me. His mother is crying. His mother is crying. The child left
11 two years ago and she hasn't seen this child, and she doesn't know whether he will
12 come back. There is even no way. If (Redacted) returns to Bunia now, I am
13 wondering whether his family will talk about the lies he told; it was like the
14 devil's temptation. Just like Jesus's temptation by Satan, who asked him to change
15 stones into bread. As far as I am concerned I do not see what Thomas Lubanga did
16 that was bad.

17 However, other people are coming here to tell you just anything. I was
18 there, I witnessed the war. If I had wanted to become a soldier, I would have
19 become one; my mother had died and I was angry. But what stopped me from becoming a
20 soldier? I gave it some thought and I told myself that I could die in the process.
21 I did not do it. I grew up. I am married and I'm living well with my wife. And if
22 anyone tells you that Thomas Lubanga came to force anybody's child to become a
23 child soldier, then let me tell you that I do not agree. Thomas Lubanga never came
24 to say, "You or you go and fight, take up a gun." I never saw that.

25 It is because a lot of things have been said about Thomas Lubanga everywhere

1 and so people have heard things about him and we did accept to say the things we
2 were asked to say. That's all. I think I have given you sufficient explanation,
3 and if the Judges have any questions to put to me, they can ask them. I will stop
4 here and wait for your questions.

5 PRESIDING JUDGE FULFORD: Well, as I said earlier, that was extremely clear.
6 Thank you very much.

7 Mr Desalliers, what I propose we do is this, if I can speak: A considerable
8 amount of material has now been given and rather than you launching into further
9 questions now, making us go over the ground all over again, it may be helpful if we
10 have the break now so that you can digest what the witness has said, and make your
11 choices as to what areas you wish to ask further questions on. Otherwise, there's
12 a real risk of unnecessary repetition.

13 Good. We're going to take a break for half-an-hour now and we'll see you
14 again at 5 past 11:00. Usher.

15 (The witness exits the courtroom)

16 THE COURT USHER: All rise.

17 (Recess taken at 10.33 a.m.)

18 (Upon resuming at 11.05 a.m.)

19 *(Private session continues) Reclassified as Open session

20 (The accused present in the courtroom)

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

22 (The witness enters the courtroom)

23 PRESIDING JUDGE FULFORD: Anything else, Mr Desalliers?

24 MR DESALLIERS: (Interpretation)

25 Q. Sir, I am going to ask you a few questions so that you give us

1 clarifications on the account that you just gave us this morning. You talked about
2 someone by the name of (Redacted). Do you know the organisation he worked for?

3 A. I do not know.

4 Q. Could you please speak into the microphone so that we can hear all your
5 answers. Thank you. You explained to us that at one moment you went to the home
6 of Mr (Redacted); do you remember that?

7 A. Yes, I do remember that.

8 Q. At that time were you alone with Mr (Redacted) or you were with other
9 young people?

10 A. We were with other young persons; there were four of us in number.

11 Q. At that time did Mr (Redacted) know whether or not you had served as child
12 soldiers?

13 A. Before I went to his home, before I met the other young persons, he called
14 me and he asked me, "Have you never served as a child soldier?" I said, "No." I
15 said I had never served as a child soldier.

16 Q. Very well. I will now turn to the time when you went to his home with
17 other young persons. Did the other youths know whether or not they had been child
18 soldiers?

19 A. Know about what? Could you please rephrase your question? I did not
20 fully understand it.

21 Q. The other young persons who were with you, who went with you to (Redacted)
22 home, did (Redacted) know whether or not these youths had, indeed, served as child
23 soldiers?

24 A. Well, (Redacted) knew very well that these children had never served as
25 child soldiers because he was the one who had proposed a plan for us to accept that

1 we had served as child soldiers. He said that we were going to earn money if we
2 agreed that we had been child soldiers. That was what he explained, and we agreed
3 to his plan. I don't know whether he was paid to contact us. After hearing his
4 explanations, we agreed.

5 Q. Could you please tell us who the other youths were; that is, the youths
6 who accompanied you to Mr (Redacted) home?

7 A. There was myself, that is, Ndjango; there was (Redacted) and
8 (Redacted). So we were four in number.

9 Q. Could you tell us, since you said Mr (Redacted) had asked you to agree
10 that you had served as child soldiers, could you tell us all the things that Mr
11 (Redacted) asked you to say?

12 A. Well, let me tell you what he asked us to say again. He said, "If you are
13 asked whether you served as child soldiers you should say 'yes' you served as a
14 child soldier. You, for example, you are aged 18." He said we should claim that
15 we were aged 14, if, for example, we were aged 18. And he said, "If you are asked
16 where you did your training, you should say that you were trained in Mandro (phon)
17 or that you were trained in Katoto. You must only mention a place where you know
18 there had been a training centre."

19 And if you were asked whether you fought during the war you should just say
20 that you fought on a battle field. You should talk about the battle field where
21 you know that combat took place, any place that comes to mind. For example, I said
22 that I had fought in Lonyo (phon) and in Mandro, and that I also fought in Katoto,
23 but they were all lies.

24 Q. Are there other things that he asked you to say?

25 A. Yes, there were other things that we had to say, but that's what he had

1 told us. And, finally, he said that we could - on the basis of these facts - tell
2 lies. He said, "I may tell you certain things and you will not be able to retain
3 all of what I am going to tell you so you should try to do your best to see how you
4 can lie yourselves. You see, when it comes to lying, you can be asked to lie right
5 now, but if a while later someone asks you to repeat the lie, you will not be able
6 to because you were lying. For example, there are certain lies that I told at that
7 time, which I could not repeat here, because at that time you just had to say
8 whatever came to your mind.

9 Q. Thank you. You talked about a young person by the name of (Redacted),
10 if I understood you well.

11 A. (Redacted). It is (Redacted).

12 Q. So this individual, (Redacted), as you said, was indeed a child soldier.
13 Do you know the story that (Redacted) had to tell?

14 A. Well, I do not know what (Redacted) had to say. We were recruited
15 individually. For example, when I arrived here, I came to an office here. I
16 entered the office; I was well-received in that office. However, there, there was
17 no office. They were using a vehicle as their office. Does that exist? It
18 doesn't -- that doesn't happen. You cannot hold a discussion in a vehicle. So as
19 far as Goddi is concerned I don't know what I can say.

20 Q. My question had to do with what Mr (Redacted) asked (Redacted) to say. Do
21 you know what Mr (Redacted) asked (Redacted) to say?

22 A. I cannot talk about the discussion that took place between (Redacted) and
23 (Redacted) because (Redacted) arrived in the first group. On the day they met, we
24 were not there. (Redacted), for example, had a discussion on a particular day, and
25 we came on the following day. Finally, the whole group was brought together, and we were

1 eight in number, and each person had his or her own account. Sometimes they would come and
2 they would take about four persons and they would hold a -- discussions with those
3 for about three or four days. And later on, they would take another group of four
4 persons. We were in our own group and (Redacted) and others were in their own group.

5 I don't know about the discussion he had with (Redacted), so each person kept
6 his own secret, of course.

7 Q. You talked about a meeting that took place in a vehicle. Did you have
8 that meeting with an individual by the name of (Redacted); is that what you said?

9 A. Yes.

10 Q. Do you know who this individual, (Redacted), worked for?

11 A. He did not tell us. He arrived. And on the day he came we had a
12 discussion. And he did not tell us the organisation he worked for. He simply
13 asked us whether we were child soldiers, and we said we were. He took us
14 individually, and each person had a discussion with him, and he took down notes.
15 He would go ahead, stop and take notes, but he did not tell us about the
16 organisation or for which organisation he worked.

17 Q. Do you know his full name or just his first name?

18 A. I know only one name; that is, (Redacted). I do not know his other names.

19 Q. Could you tell us whether this individual was a black person or a white
20 person?

21 A. (Redacted) is a black person.

22 Q. Now, this individual, (Redacted), did you give him the same account that
23 was -- that (Redacted) told you to say?

24 A. I merely recounted to (Redacted) what (Redacted) had said. Indeed, when it
25 was your turn to go, just before you left, he was supposed to repeat the account to

1 you so that you would keep it in mind. I remembered the account for a while after. And
2 even when I met (Redacted) and we had a discussion in the vehicle, the account was still
3 fresh in my mind. Later on I returned home. I spent about two, three or four
4 days, and I started forgetting. That is because lies are difficult to retain.

5 Q. Thank you.

6 MR DESALLIERS: (Interpretation) Your Honour, I think we should go into
7 public session for a few questions.

8 PRESIDING JUDGE FULFORD: Public session.

9 (Open session at 11.22 a.m.)

10 THE COURT USHER: We are in public session, your Honours.

11 MR DESALLIERS: (Interpretation)

12 Q. A short while ago you talked about an individual who accompanied you to
13 Beni, an individual by the name of Dudu.

14 A. Yes.

15 Q. Did that individual meet the same persons that you met in Beni?

16 A. Yes, we met these individuals together. He accompanied them to their
17 various homes, because when they came to take us to the hotel, I left with them.

18 Q. Did Dudu know that you had never served as a child soldier?

19 A. He knew that very well.

20 Q. Could you tell us what Dudu told the individuals you met in Dudu with
21 respect to that fact?

22 THE INTERPRETER: That you met in Beni. Correction of the interpreter.

23 A. Dudu did not say in his own words that I was not a child soldier. Why
24 didn't he do that? He was expecting me to be the one to give the account. But
25 since he had broken me, it was difficult for me to say or to agree than I was a

1 child soldier. When Papa Serge said "let the child talk," the old man replied,
2 "Well, he hasn't got much to say. You should direct all questions to me. You see,
3 your [Swahili unclear] say that the child was a child soldier." Many of the
4 children you met have never tried this work, and instead of letting the gentleman
5 complete what he was saying, he would interrupt us. He was asked to allow the
6 children to speak for themselves. And when I started talking, the gentleman
7 stopped me from talking, So there was some confusion between them. And so you
8 found that there was no agreement between them, and it was not possible for me to
9 say that I was not a child soldier.

10 And so at the end they said, "Well, you have to go back." They did not tell
11 us that we were going to go back. They asked us to give back their telephones.
12 And I had a telephone on me, so I gave the telephone back to them and we went back.
13 However, Mr Dudu knew very well that I was not a child soldier, and he knew very
14 well that his own son had never served as a child soldier.

15 MR DESALLIERS: (Interpretation) Just one moment, your Honour.

16 Q. I would like to return to one point which you mentioned, just to ensure
17 that a translation was well done. Did you mention someone referred to as "old
18 Dudu?" You said many children whom you saw had never served in the army. Is that
19 what you said a short while ago?

20 A. Yes.

21 Q. I will now put a few questions to you about your stay in Kinshasa. You
22 did say that you spent a few months in Kinshasa. Could you tell us, during that
23 entire period what were you doing precisely?

24 A. Well, when I reached Kinshasa, I was considered as a member of (Redacted)'
25 family. I was considered as a member of (Redacted)' family. (Redacted) himself said,

1 "No, this child whom you see here is my kid brother." When he returned from Beni,
2 in the village people did not understand him very well, because he had deceived
3 them, telling them that I had been imprisoned. That was a lie which he told.

4 When they arrived, they brought back very little money to get me out of
5 prison, and later on they made me run away from there. And from there they took me
6 and they brought me to Kinshasa. When I reached Kinshasa, I did not spend eight
7 months. I do remember that before returning to the village they told me -- well,
8 they did not mention any names. They said they were going to send somebody to
9 Bunia to find out how things were in Bunia, to find out about the situation in
10 Bunia. If the situation was bad, they were going to tell us. And if the situation
11 was good, then I could return home. I don't know which of them went there.

12 Finally, they asked me to return home, and they said, "Once you return to the
13 village, do not say that you had gone to Kinshasa." I was not supposed to tell
14 anyone that I had been to Kinshasa. I had to say that I was in another village,
15 not my village. So I asked them, "Which village should I mention?" And so I
16 thought it wise to say that I had been to Walu. So when I returned home, I found
17 that there was less tension; many people asked me where I was coming from. There
18 were some people who knew that I had gone to Kinshasa, but for those who didn't
19 know, I lied to them that I had gone to Walu. And they believed me. But there were
20 a few people who did know that I had gone to Kinshasa. That's how things went.
21 That's the way -- that's how I spent that period there.

22 Q. However, in Kinshasa itself, when you were there, could you briefly
23 describe to us what your activities were in Kinshasa?

24 A. When we arrived in Kinshasa, they promised that they would give us some
25 work. They asked me what I wanted to do in the way of work, and I told them that I

1 would like to be a mechanic. I consider it to be God's destiny. And they said,
2 "Well, if you want to get involved in mechanics, well, fine. We shall register you
3 as a student in mechanics." And (Redacted) had also said that he wanted to be a
4 mechanic. The old man in whose company we had arrived was a driver, had been a
5 driver previously.

6 We spent a month without being registered in any school, and we spent two,
7 three further months there, and nobody had been registered at school at all
8 anywhere. We were just there doing nothing. And the work that had been promised
9 to me, I had not been given. All that we did was wash, sleep all day and at
10 nighttime. That's what we did day in, day out. I had no work, and they hadn't
11 even registered us with the school. They didn't even tell us how we might repair
12 vehicles or how we might undertake some carpentry.

13 We spent all day sleeping, and at nighttime we slept as well. And we were
14 told not to worry. We were just in the compound. We couldn't even move about. We
15 didn't even know the town with a view to going and walking around. We just closed
16 the door, and sometimes we used a padlock. And were you to go wherever you wanted
17 to, you would then come back a year later and still find us in that very same
18 compound, closed in.

19 MR DESALLIERS: (Interpretation) Mr President, could we please go into
20 private session for my next questions.

21 PRESIDING JUDGE FULFORD: Please.

22 *(Private session at 11.35 a.m.) Reclassified as Open session

23 THE COURT USHER: We are in private session, your Honours.

24 MR DESALLIERS: (Interpretation)

25 Q. Could you tell us the names of the individuals who took care of you in

1 Kinshasa?

2 A. Yes, indeed. There were three such individuals. There was (Redacted),
3 there was (Redacted) and (Redacted). Those are the three people who took care of us.

4 Q. Is that the very same (Redacted) whom you had met in Beni?

5 A. Yes, this is the individual who arrived in Bunia, where we met him, and we
6 subsequently met him in Beni, and then, finally, in Kinshasa.

7 Q. And the individual by the name of (Redacted), do you know whether he has
8 any other names?

9 A. No. We only knew him by that first name.

10 Q. And does the same apply for (Redacted)?

11 A. No. I only know him by the name of (Redacted).

12 Q. And do you know who (Redacted) and (Redacted) worked for?

13 A. No, I do not know. I knew that these people had been tasked to make sure
14 that we were well taken care of, that we had the correct food, but I did not know
15 who they worked for.

16 MR DESALLIERS: (Interpretation) One moment, please, Mr President.

17 (Defence counsel confer)

18 Thank you very much, sir. I have no further questions.

19 PRESIDING JUDGE FULFORD: Well, for your benefit, for mine, tomorrow. 9.30
20 is all I am going to say.

21 Can the witness please leave Court? Thank you. Thank you very much, sir.

22 (The witness stands down)

23 THE COURT USHER: All rise.

24 (The hearing ends at 11.40 a.m.)

25 CORRECTION REPORT

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

5 RECLASSIFICATION REPORT

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