

1 International Criminal Court

2 Trial Chamber I

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

4 Case against Thomas Lubanga Dyilo

5 Hearing - \*Closed Session - Reclassified as open session

6 Friday, 3 April 2009

7 The hearing starts at 9.00 a.m.

8 COURT USHER: All rise. The International Criminal Court is now  
9 in session. Please be seated.

10 PRESIDING JUDGE FULFORD: Good morning, Ms. Struyven. If I could  
11 address the bar through you just so everyone knows what is in our minds  
12 in relation to today. Mr. Desalliers has indicated that he's only going  
13 to be an hour with this witness, which means that we will have concluded  
14 this particular area of evidence rather quicker than we had anticipated.  
15 We gave some consideration last night to seeing whether next week's  
16 expert could be brought forward and called today, but for a number of  
17 reasons which I needn't go into that is not convenient.

18 So it is with a heavy heart that I have to announce that on this  
19 Friday, which happens to be a particularly beautiful Friday, we will only  
20 do one other piece of work after this evidence is concluded, which won't  
21 concern anyone apart from the Defence, I'm afraid, in that we have  
22 outstanding an oral decision in relation to a matter that Maitre Mabilille  
23 raised with us a few days ago, and once the court has been reconfigured,  
24 we will deliver that ruling, but apart from that, unless there are any  
25 other matters that the parties or the participants wish to raise, that

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1 will conclude today's work.

2 Good. Witness, please.

3 (The witness takes the stand)

4 WITNESS: WITNESS DRC-OTP-WWW-0002 (Resumed)

5 (Witness answered through interpreter)

6 PRESIDING JUDGE FULFORD: Good morning, sir.

7 THE WITNESS: Yes. Good morning.

8 PRESIDING JUDGE FULFORD: Public session, please.

9 (Open session at 9.05 a.m.)

10 COURT OFFICER: Open session.

11 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

12 Questioned by Mr. Desalliers:

13 Q. (Interpretation) Good morning, sir.

14 A. Good morning.

15 Q. My name is Marc Desalliers. I am a lawyer, and I'm going to ask  
16 you certain questions this morning on behalf of the Defence team of  
17 Mr. Thomas Lubanga.

18 First of all, I would like to ask you a question relating to the  
19 first video that was projected, that was shown to you. It is a video in  
20 which we saw Mr. Kahwa speaking to the troops. Do you remember that  
21 video?

22 A. Yes.

23 Q. You located that video in time, in the month of January 2003, or  
24 before the month of January 2003, because Chief Kahwa had left the UPC.  
25 Is that what you said?

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1 A. Yes. Chief Kahwa had left the UPC.

2 Q. If I suggest to you that Chief Kahwa left the UPC in the month of  
3 November 2002, do you think that is correct?

4 A. Well, with regard to what I can tell you concerning that video,  
5 the person in military uniform talking with Chief Kahwa, at that time  
6 Chief Kahwa was the minister of defence of the people. He was speaking  
7 to the people who were wearing uniforms. I told you that, and you  
8 understood. I told you about Chief Kahwa and about his role in the  
9 movement.

10 Q. My question is limited to the time Chief Kahwa left the UPC. You  
11 dated that event in the month of January. My question has nothing to do  
12 with the role of Chief Kahwa. I am talking about the time he left the  
13 UPC, and I am suggesting to you that instead of the month of  
14 January 2003, would it be possible to say that it was, rather, in the  
15 month of November 2002? Do you think that is possible?

16 A. That may be possible. That may be possible. But in the video I  
17 know that Chief Kahwa, just after the departure of the UPC, Chief Kahwa  
18 was no longer in the UPC. I remember that from the time the UPC started  
19 controlling the town of Bunia, even at the time President Lubanga was in  
20 Kinshasa, Chief Kahwa was in the UPC.

21 Q. Very well. Thank you. Now I'm going to ask you questions  
22 relating to the third video that was shown to you in which we saw  
23 Mr. Kasangaki speaking to a group of people in Shari. Do you remember  
24 that video?

25 A. Very well. I remember that video.

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Page 4

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 MR. DESALLIERS (interpretation): Your Honour, I have a question

7 to ask the witness in closed session.

8 PRESIDING JUDGE FULFORD: Private session, please.

9 \*(Private session at 9.10 a.m.) Reclassified as open session

10 COURT OFFICER: Private session.

11 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

12 MR. DESALLIERS (interpretation):

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

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25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 A. Well, I can tell you I left on foot. You have to know that on  
4 the 6th of May when the Ugandan army left the town of Bunia the UPC had  
5 already returned. There was the UPC attack. They were fighting against  
6 the FRP, the Lendu fighters. You understand, sir. And there was no  
7 one who was to stay in the town. No one should have stayed because of  
8 the war. The UPC left. There were people for the UPC. There were  
9 others against them. There were even the Hema who were for the UPC, and  
10 there were the Hema who were against as well. So I can provide you with  
11 more information.

12 During this period of time when the UPC left many people were  
13 sleeping at the airport. The Bunia airport was where a lot of people  
14 had gone for security reasons, because of the Ugandan army. When the  
15 Ugandan army wanted to leave, everyone said, "No, we're not going to  
16 stay. We'll all die here," because there were the Lendu fighters and the  
17 UPC was there too. So everyone was leaving. Who is going to stay in  
18 town? If you want more information, well, there were more people on the  
19 road following the Ugandans because they thought that the Ugandan army  
20 was the savior.

21 (Redacted)

22 (Redacted)

23 Q. Very well.

24 MR. DESALLIERS (interpretation): I think we can move into open  
25 session for my following questions, your Honour.

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1 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Desalliers.

2 Open session, please.

3 (Open session at 9.31 a.m.)

4 COURT OFFICER (interpretation): Open session.

5 MR. DESALLIERS (interpretation):

6 Q. In the course of your testimony, if I have understood you  
7 correctly, you said that the UPC had not participated in the work of the  
8 Ituri Pacification Commission. Have I correctly understood your  
9 testimony?

10 A. Yes.

11 Q. Sir, at no point in time did you see UPC representative there?

12 A. No. When everyone was signing the cessation of hostilities,  
13 because there were these forms, you'd write down FRPI, PUSIC, the ICD.  
14 What else was there? FPDC, something like that. All the parties who  
15 were there, they'd been noted down. But I didn't see anything that had  
16 to do with the UPC.

17 Q. Do you know Mr. John Tinanzabo?

18 A. Very well.

19 Q. Could you tell us who he is, briefly, or who he was at the time?

20 A. John Tinanzabo, he was designated as the Secretary-General in  
21 charge of pacification within the UPC.

22 Q. So your testimony is that you didn't see Mr. Tinanzabo during the  
23 proceedings of the Ituri Pacification Commission?

24 A. During the proceedings of the IPC I didn't see Tinanzabo. I saw Tinanzabo  
25 later on. I saw him later on. Towards the end of 2003. That's when I saw him

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1           again.           Q.    Do you know Mr. Adubango Biri?

2           A.    Adubango Biri? No, no, I don't remember that name.  If I saw his  
3   image, maybe I'd recognise him.

4           Q.    Very well.  That's not a problem.  Do you know Mr. Zekomi Jalum?

5           A.    Jalum.  Jalum, yes.  He was an Alur, Jalum.

6           Q.    Was this a representative of the UPC?

7           A.    Yes, Jalum was in the UPC.  He was a Secretary-General in the UPC.

8           -Because, in the UPC, ministers were referred to as "secretary-general  
9   in charge of ---" .  That's how it worked.

10          Q.    So if I have understood your testimony correctly, you didn't see  
11   Mr. Jalum in the course of the work of the IPC.

12          A.    Jalum.  I don't remember whether I saw him.  I don't remember.

13          Q.    I have the same questions concerning Mr. Mateso Eustache.  Did  
14   you know him, did you see him, and if so, did you see him when the IPC  
15   was carrying out its work?

16          A.    Mateso Eustache, I know him very well.  Very well.

17          Q.    Is it true that he was also a UPC representative?

18          A.    Yes.  Mateso was an advisor to the Presidency, to the  
19   Lubanga Presidency.  He worked in Kilo-Moto, the gold mining company.  
20   He still works with that company, Kilo-Moto.

21          Q.    So you didn't see him while the IPC was performing its work?

22          A.    Well, Mateso, I don't know whether he fled when some people left  
23   the town of Bunia.  I can't remember whether he was fleeing or whether he  
24   was in Bunia.  I don't remember.  It was a long time ago.  But I know  
25   Mateso Eustache very well.

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1 Q. But my question concerned the work of the IPC exclusively. Do  
2 you or do you not remember having seen him involved in IPC work? Was  
3 he representing the UPC while the IPC was carrying out its work?

4 A. Let me try and remember. I remember the day when the IPC  
5 session opened. In the hall there were a number of representatives from  
6 various groups. After having signed the cessation of hostilities, there  
7 was the official opening, the official opening. Perhaps Mateso was  
8 inside. There were some who were UPC members, but I don't remember  
9 whether he was representing the UPC there, because everyone was there.  
10 Perhaps it's necessary to see the images, review the images.

11 Everyone was in the hall. After this opening ceremony, we left,  
12 we went to explode the UPC mines, the mines that had been taken by the  
13 Ugandan army from the UPC.

14 Q. I understand your answer, sir. You don't remember. That's your  
15 answer, isn't it?

16 A. Okay. I don't remember.

17 MR. DESALLIERS (interpretation): Your Honour, I think it would be good  
18 to go back into private session for my next question.

19 PRESIDING JUDGE FULFORD: Entirely understood, Mr. Desalliers. Private session  
20 please. \*(Private session at 9.39 a.m.) Reclassified as open session

21 COURT OFFICER: Private session.

22 MR. DESALLIERS (interpretation):

23 Q. I'll now put a few questions to you that concern the last video  
24 that was shown. Unfortunately, I don't have the number that was  
25 allocated to the last video shown yesterday. I'm no longer sure whether

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1 it had a number. Perhaps an MFI or EVD number.

2 COURT OFFICER: (interpretation): The last number of the video was an EVD

3 number, and then it was changed into an MFI number, and then

4 it was changed back into an EVD number, and if I'm not mistaken,

5 it was EVD-OTP-00416.

6 MR. DESALLIERS (interpretation): To help you find your bearings, sir, I'm

7 referring to the video in which you could see the return of Mr.

8 Lubanga to Bunia I was filmed at the airport. Do you remember the video?

9 A. Yes.

10 Q. I'd like to clarify certain matters, because I didn't fully

11 understand them when you were testifying. I'm referring to the part

12 where we can see Mr. Lubanga getting off the plane. Were you present at

13 the time?

14 A. Yes, I was.

15 (Redacted)

16 A. I was present. I was with my friend. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 Q. You said that you were there and at the HQ. On that day, did you

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1 hear a speech given by Mr. Lubanga?

2 A. In the video you see people welcoming him. People are very happy  
3 that he returned. We went to the headquarters. I remember he did make a  
4 brief speech. Very short, if I remember correctly. That was a long time  
5 ago. And then the delegation continued on.

6 Q. Yes. And----

7 PRESIDING JUDGE FULFORD: Mr. Desalliers, I'm afraid you've fallen into  
8 the error that we all fall into. You're coming in too quickly. The French  
9 transcribers have sent a message on the transcript that their job has  
10 become intolerable. A good lesson is to make sure you turn off your  
11 microphone each time. You've -- certainly in the last few minutes you  
12 haven't been doing so, and can we build in a pause, please. Thank you  
13 very much.

14 MR. DESALLIERS (interpretation): Very well, your Honour.

15 Q. Clearly, sir, I'm not asking that you provide a summary of the  
16 speech given. I would like simply to know whether you saw Mr. Lubanga  
17 speak to the crowds or not. Do you remember seeing him speak on  
18 microphone?

19 A. Yes. I was there. Secretary-General Daniel Litsha began to speak  
20 first. I don't remember the other speeches. (Redacted)

21 (Redacted)

22 (Redacted)

23 MR. DESALLIERS (interpretation): Mr. President, I crave the  
24 indulgence of the Office of the Prosecutor. They have a considerable  
25 infrastructure. I believe they can show part of the video which extends

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1 beyond the excerpt which had been actually shown. The time markers are  
2 23:12 to 32:01. That is approximately nine minutes of video. Is it  
3 possible to show that?

4 COURT OFFICER (interpretation): You are talking about  
5 EVD-OTP-00416; is that not correct?

6 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

7 MS. STRUYVEN: Your Honour, we've asked the witness yesterday on this video  
8 whether he was present for the whole event and he said no. Now, we've  
9 now tried to identify whether or not he was there during speeches of  
10 Mr. Lubanga but this video contains several speeches. So it's not by  
11 identifying the fact or by confirming the fact that the witness was there  
12 during a speech that we have established that he was there during this  
13 speech.

14 PRESIDING JUDGE FULFORD: I don't understand the point,  
15 Ms. Struyven. What are you --

16 MS. STRUYVEN: So I think we would have to establish first with  
17 the witness whether he was there for that particular speech.

18 PRESIDING JUDGE FULFORD: Right. So are you taking an  
19 admissibility point?

20 MS. STRUYVEN: Well, I think if we're going to hand -- well I'm not  
21 sure if we're going to apply the same principles, but if --

22 PRESIDING JUDGE FULFORD: No, no, not asking for argument at the  
23 moment, Ms. Struyven. I just want to know what the point is. And are  
24 you saying that we should lay down some evidential foundations before the  
25 section is shown? So this isn't a mechanical issue. This is an

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1 evidential issue, an admissibility issue.

2 MS. STRUYVEN: Can I ...

3 (Prosecution counsel confer)

4 MS. STRUYVEN: I'm sorry, your Honours. We're going to  
5 withdraw -- we're going to withdraw our objection.

6 PRESIDING JUDGE FULFORD: I thought you might. Thank you.

7 Right. Can the technician find the relevant part. Is that  
8 convenient, sir? It is.

9 COURT OFFICER (interpretation): The number allocated to this  
10 excerpt of the video is MFI-00111, MFI-D-00111.

11 PRESIDING JUDGE FULFORD: Mr. Desalliers.

12 MR. DESALLIERS (interpretation): I forgot to mention,  
13 your Honour, that it's very possible that we will need interpretation for  
14 the video. If my memory serves me correctly, the text was in Swahili.

15 PRESIDING JUDGE FULFORD: Thank you. Could I suggest this: That  
16 we do our best while it is being shown. If there are problems in -- in  
17 audibility, perhaps if there are problems in speed of delivery, those --  
18 and errors as a result feature in the transcript, I'm sure they can be  
19 corrected before the final version is published. Would that be  
20 convenient, Mr. Desalliers?

21 MR. DESALLIERS (interpretation): That's not a problem,  
22 your Honour. My last comment, if you'll allow: I believe that we are in  
23 closed -- rather, private session. May I make a suggestion? For the  
24 length of the video to be shown, could we return to public session and  
25 then might I put my questions in a closed session?

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1                   PRESIDING JUDGE FULFORD: Certainly. I was going to ask whether  
2       this could be shown publicly.

3                   Now, have we found the right bit? We have. Thank you.

4                   Can we therefore go into public session, please.

5                   (Open session at 9.49 a.m.)

6                   PRESIDING JUDGE FULFORD: And this, therefore, should be  
7       broadcast over the airways, and sir, could you now play it, please.  
8       Thank you.

9                   (Video-clip played)

10                  THE INTERPRETER (voiceover): Good morning, children of Ituri.  
11       Good morning, everyone. Good morning.

12                  The crowd responds, Good morning.

13                  Before I make my speech, before I make my speech, before I say a  
14       few words, I have a request. I would ask everyone here to observe a  
15       moment of silence, one minute of silence, because of the events which  
16       have happened here, the events during which so many of our brothers have  
17       been lost. Can I ask you to respect a minute of silence.

18       Thank you. Children of Ituri, the joy that we feel in our hearts is so  
19       much that we are lost for words. You all know what circumstances existed  
20       when we left this place. All of you were told, all of you were told what  
21       path we took and of the place we were taken to. It is thanks to God that  
22       we've been able to find one another. This is a real joy, isn't it?

23       Yes, responds the crowd. As concerns our other brothers who left with us,  
24       it is thanks to our brother Avochi and the FRP and all the Iturians  
25       who are greeting you here. Do you receive their greetings?

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1 Yes, says the crowd.

2 You also have greetings from our brother Tinanzabo Jean de Dieu, who says  
3 says hello to all of the Congolese of Ituri. Do you receive that greeting?

4 Yes, says the crowd.

5 You also have the greetings of old man Ibrahim Bamaraki. Do you receive  
6 his greetings?

7 Yes, says the crowd.

8 Also receive the greetings of Ndukute, of our enemies who used to divid  
9 us, who shed blood. And for us too, in the place where we were, that unit of  
10 the Congolese people, that unity of the people of Ituri was so very strong  
11 right up to last night when we separated from our brothers at the airport?

12 Now, what does that mean in practice? I will tell you what it means,  
13 dear brothers and sisters. These times are not the time for us, brothers  
14 and sisters of Ituri, brothers and sisters of the Congo, the recommence the  
15 slaughter which was initiated by people from I don't know where. Yes,  
16 says the crowd. It is really highly regrettable that certain persons who  
17 identify us find that if there is a problem, people should go and report  
18 it to Kinshasa. This is shameful. Yes, it very shameful, says the  
19 crowd. Mbusa is a bastard.

20 He has stolen our cows, shouts the crowd.

21 For now, what I can tell you as leader is that, with respect  
22 to the work that the government is conducting, that is to say,  
23 talking about the massacres in Ituri and restoring peace  
24 in Ituri, the proceedings have already been initiated by His  
25 Excellency, minister of human rights. Mr. Ntumba Luaba. And the work

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1 has been moving in the right direction up to now. But there is  
2 something that I need to tell you. This is the information I need  
3 to give you. There is no magic solution to be expected from Kinshasa.  
4 All the officials of Kinshasa, the only thing that they can do is to  
5 help us so that we can find our humanity, the meaning of humanity,  
6 that we discover fraternity, that we're able to discover the importance  
7 of our neighbour's life, the meaning of what it is to be a human being  
8 created by God. The people who massacred us yesterday, and who continue  
9 to do so today, do you think they too will not die tomorrow? Yes, says the  
10 crowd, they will die. And so, of what use is it to massacre, to kill our  
11 fellow man? These are the reasons why I ask. I ask that if you want us  
12 to be respected, if you want us -- if you want you, me, us, to be respected  
13 in the international community, then we must act in the spirit of peace.  
14 Let us build peace amongst ourselves, whether you are Hema, whether you  
15 are a Lulu, Lendu or Bira, it doesn't matter what ethnic group  
16 you're from. The people who have come here have begun to divide us  
17 saying, "This person is Mulendu, this person is Mubira, this person is a  
18 Mululu." No, we grew up here. We didn't know from what ethnic group our  
19 neighbours were. And yet, today when I stand before you, you are told,  
20 "No, this person is a Hema." From that point on, what was important, what  
21 should have helped us build our lives has fallen by the side because  
22 I am being identified as a Hema, right?  
23 Yes, says the crowd. If a person from the Lendu group stands up  
24 and speaks, people say, "No. No, that one is a Mulendu. Even if he had  
25 good ideas to help the country, he would be ignored, right?"

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1 Yes, says the crowd.

2 I think we have to unite. We have to work together. That's what we must  
3 do. However, we are not going to tolerate that people continue to massacre  
4 other people on our territory in Ituri. Each person has a right to life.  
5 Each person has the right to life.

6 The people who came here with the idea of committing massacres  
7 need to know that those times are past and that it's in no one's interest  
8 to act this way.

9 Hence, I have a request. We have very little time. We have a work  
10 programme which will help everyone. This is what I ask of you: Let us  
11 leave here today and go into other territories.

12 PRESIDING JUDGE FULFORD: Yes.  
13 terminate that. Thank you very much indeed.

14 And so now back into private session, Mr. Desalliers?

15 MR. DESALLIERS (interpretation): Yes, please.

16 \*(Private session at 9.58 a.m.) Reclassified as open session

17 COURT OFFICER: Private session.

18 PRESIDING JUDGE FULFORD: Yes.

19 MR. DESALLIERS (interpretation):

20 Q. Did you recognise this scene?

21 A. Yes.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Witness: Witness DRC-OTP-WWW-0002 (Resumed) (Private Session)  
Questioned by Mr. Desalliers

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1 (Redacted)

2 MR. DESALLIERS (interpretation): Just a moment, your Honour,  
3 please.

4 Thank you, Witness. I don't have any more questions, your  
5 Honour.

6 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Desalliers.  
7 Only one matter I wanted to raise was -- it may be that the names are  
8 sufficiently clear, but I want to make sure they are. (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 MR. DESALLIERS (interpretation): Thank you, your Honour. As I  
18 wasn't looking at the transcript, I didn't take note of the fact that  
19 that had happened, so thank you for mentioning it. I think for clarity's  
20 sake, that it would be a good idea to ask the witness to write out or  
21 spell the names.

22 Q. So, Witness, could you please spell the names?

23 A. Yes.

24 (Redacted)

25 (Redacted)

Witness: Witness DRC-OTP-WWW-0002 (Resumed) (Private Session)  
Questioned by Mr. Desalliers

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1 (Redacted)

2 (Redacted)

3 PRESIDING JUDGE FULFORD: Can we -- can we supply the witness  
4 with a piece of paper just so they can be written down and we've got a,  
5 as it were, as good a record as we can get as to exactly how the spelling  
6 works. If you could write those down, sir, I would be grateful.

7 While that's happening, Mr. Desalliers, certainly on the English  
8 transcript there is a similar problem in relation to some of the names  
9 that you put to the witness. Now, it may be that in due course it will  
10 all be sorted out and we'll have a perfect record, but I'm just bringing  
11 to your attention that at the moment it's less than clear. So it's up to  
12 you as to whether or not this is dealt with now or whether we deal with  
13 it later, but I'm bringing it to your attention.

14 MR. DESALLIERS (interpretation): Thank you, your Honour. If  
15 it's the full names that I gave with regard to the CPI, IPC, I think we  
16 just need to give the names in writing to the court reporters. We  
17 don't have to do that before the Court.

18 PRESIDING JUDGE FULFORD: Apparently this is in hand. The last  
19 point I raised, Mr. Desalliers, is in hand. The Court Officer tells me  
20 that he's dealing with it.

21 MR. DESALLIERS (interpretation):

22 Q. So, Witness, there's one name written. Could you please write  
23 both of them, the names of both people. Thank you.

24 A. Yes.

25 PRESIDING JUDGE FULFORD: While that's happening, Mr. Desalliers,

Witness: Witness DRC-OTP-WWW-0002 (Resumed) (Private Session)  
Questioned by Mr. Desalliers

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1 Judge Blattmann has kindly informed me that, in fact, the problem is not  
2 only in the English transcript. It's in the French transcript as well.  
3 So not so much for now, but can we really very much keep this in mind in  
4 future, that once the witnesses are gone, we're going to lose the  
5 opportunity of finding out exactly who was being spoken about. Good.  
6 Thank you.

7 An EVD number for this piece of paper, please.

8 COURT OFFICER: The number for this handwritten note shall be  
9 MFI-D-00112.

10 PRESIDING JUDGE FULFORD: Right. Thank you. Any -- none? Thank  
11 you.

12 (The Trial Chamber confers)

13 PRESIDING JUDGE FULFORD: Sir, that concludes your testimony.

14 Oh, can we go into public session, please.

15 (Open session at 10.04 a.m.)

16 COURT OFFICER: Open session.

17 PRESIDING JUDGE FULFORD: Sir, that concludes your testimony. I  
18 want to say in as fulsome a way as I can that this court is extremely  
19 grateful to you for the time and trouble that you've taken to come and  
20 give evidence before us. We are acutely aware that it can be extremely  
21 difficult for people to come to Holland from the Democratic Republic of  
22 the Congo to give evidence. Not only are there issues relating to  
23 personal inconvenience, but there can be real problems for the personal  
24 security of those who make this journey. This court can only function  
25 with the cooperation of people such as yourself, and we are acutely

1       aware, as I say, of the potential sacrifice or the real sacrifice that  
2       you've made. So you leave here now able to return home with our sincere  
3       thanks.

4                Could we go, please, into closed session so the usher can help  
5       the witness from the court.

6                Thank you, sir.

7                \*(Closed session at 10.06 a.m.) Reclassified as open session

8                COURT OFFICER: Closed session.

9                (The witness withdrew)

10               PRESIDING JUDGE FULFORD: That, therefore, Ms. Struyven, I think  
11       brings to an end what we can do this week as far as us sitting in -- in  
12       general session. Are there any other matters that you wish to bring to  
13       our attention? No.

14               MS. STRUYVEN: No, your Honour.

15               PRESIDING JUDGE FULFORD: Thank you very much for your  
16       assistance, and we will therefore sit again as usual in -- in trial  
17       session on Tuesday of next week at 9.30, as usual.

18               Maitre Mabilille, can I ask, would it cause you inconvenience if we  
19       sit at 11.00 to deal with the ex parte issue that requires a ruling from  
20       us?

21               MS. MABILLE (interpretation): No problem, your Honour. May I  
22       ask the Chamber a question, a small one, now?

23               PRESIDING JUDGE FULFORD: You certainly may. Is it a private or  
24       a public question, Maitre Mabilille, because there is a public matter that  
25       I've got to ask of you anyway before we -- before we part.

1 MS. MABILLE (interpretation): Well, I would have liked the  
2 Chamber's leave to respond to the Prosecutor's filing on transcript and  
3 interpretation problems orally, because I only have one observation I  
4 would like to make, and I would have liked to avoid having to make a  
5 filing, and I just had one observation I wanted to make to the Chamber on  
6 this issue.

7 PRESIDING JUDGE FULFORD: I'm sure there's no difficulty with  
8 that at all, Maitre Mabilille.

9 Can we go into public session, please.

10 MS. SAMSON: Your Honour, forgive me for the interruption. I  
11 believe that the filing was done by the Registry in a confidential  
12 classification. That's the only point that I raise in respect to a  
13 response in public session.

14 PRESIDING JUDGE FULFORD: You're quite right. It was. I'm not  
15 sure whether the classification was at all justified, in fact, but I  
16 think since --

17 (Open session at 10.09 a.m.)

18 PRESIDING JUDGE FULFORD: Can we ...

19 \*(Private session at 10.09 a.m.) Reclassified as open session

20 COURT OFFICER: Private session.

21 PRESIDING JUDGE FULFORD: Private session then, please. Private  
22 session. Right.

23 Maitre Mabilille, what's your observation then?

24 MS. MABILLE (interpretation): The filing of the Office of the  
25 Prosecutor reflects the discussions we had with Marc Dubuisson on these

1 transcript problems, so I only have one point I would like to add to what  
2 was written by the Office of the Prosecutor, and that is that the Defence  
3 had requested the Registry to make use of the period in which we do not  
4 have any hearings to review the transcripts of the first witnesses.  
5 Marc Dubuisson had indicated that that would be very difficult, because  
6 it required a lot of work. However, the Defence would really like this  
7 revision to take place, because we are very concerned still about the  
8 translation problems between the English and the French, and we would  
9 like to avoid a situation in which we have to discuss the French and  
10 English version in the closing arguments. And so this revision is  
11 something we believe is very important and should be done.

12 That's the only observation I have to make, and concerning the  
13 rest, we share agree with the content of the filing that was given by the  
14 Prosecution. Thank you, Your Honour.

15 PRESIDING JUDGE FULFORD: Maitre Mabilille, could someone from your  
16 team supply the legal advisor to the division of just the numbers of the  
17 witnesses who, in your view, should be the subject of the kind of check  
18 that you've outlined so that there is certainty as to which witnesses you  
19 believe -- well, in relation to whom the transcript should be reviewed?

20 MS. MABILLE (interpretation): Well, I think I will consult the  
21 Office of the Prosecutor, because they have more resources than we do,  
22 and I think they're further advanced in the work than we are. We'll see  
23 what we can do on our side. I'm not sure, however, we will be able to do  
24 or to give any further information. Actually, our position is the  
25 following: We think that all the information should be reviewed from the

1 beginning for all of the witnesses. That's our position, but we will try  
2 to come up with a proposal on this.

3 PRESIDING JUDGE FULFORD: Yes, Ms. Samson.

4 MS. SAMSON: Thank you, your Honour. I just have one comment to  
5 add to the Defence's comment which is that during this meeting with the  
6 Registry between the Prosecution and the Defence and the Registry, the  
7 Prosecution had agreed to provide some comparative analysis of the French  
8 and English transcripts for a number of witnesses that have testified so  
9 far. We started with the provision of this comparative review for  
10 Witness 41, and we've since provided it for Witness 38, Witness 213,  
11 Witness 7, and Witness 8, and we're in the process of finalising the  
12 review for Witness 11, and I believe there's one other witness. And that  
13 was as far as we had undertaken to assist the Registry in terms of this  
14 comparative review, at least between the French and English transcript.  
15 We'll have further discussions with the Defence and perhaps the Registry  
16 if there are additional assistance that the Prosecution could provide in  
17 that respect but we didn't anticipate at that we would undertake that  
18 complete review on behalf of the Registry. We only had offered to do it  
19 for a select number of witnesses in order to assist them in the  
20 preparation over the three-week break and the review of those witnesses  
21 who had testified so far.

22 PRESIDING JUDGE FULFORD: What exactly do you mean by comparative  
23 review, Ms. Samson? What -- a little bit more detail as to what that  
24 actually entails.

25 MS. SAMSON: Yes, your Honour. What we had done was we reviewed

1 the French transcript of witness testimony against the English transcript  
2 of witness testimony and we prepared charts identifying where in the  
3 transcript there appeared to be a discrepancy between the English and the  
4 French transcript. We provided those charts to the Registry as well as  
5 to the Defence team. And in some cases the discrepancies are not  
6 significant. In some cases they are more substantial. And so we just  
7 sought to literally review the two transcripts one against the other and  
8 find where they do not correspond in order to assist the Registry and  
9 then going over those areas by way of accessing the recording of the  
10 testimony, if necessary, or by whatever means they feel is appropriate at  
11 their disposal where we've actually caught a difference in the two, in  
12 the two transcripts.

13 PRESIDING JUDGE FULFORD: I'm acutely conscious of the fact that  
14 there are finite resources for this, but would it be an unreasonable  
15 suggestion that that task should be undertaken for all of the witnesses  
16 who have given evidence to date?

17 MS. SAMSON: Your Honour, we're certainly open to doing it, I  
18 think. I can consult to ensure that that's the case to give you an  
19 answer right now. It is certainly extraordinarily time-consuming to  
20 undertake that work, and I did some of it myself and I otherwise have  
21 asked other members of the team to prepare it, but I can assure the  
22 Chamber that it takes a very long time to prepare that type of review.

23 PRESIDING JUDGE FULFORD: Self-evidently this is going to be  
24 hugely labour intensive, however, it would be highly undesirable for us  
25 to be confronted during closing submissions with competing versions on

1 important issues in French and English as to what the witness or  
2 witnesses have said. It would be extremely time-consuming at that stage  
3 for the Chamber to have to embark upon the process of working out what is  
4 the true record.

5 Right. Ms. Samson, extremely helpful. Anything else on this?

6 MS. SAMSON: Yes. If your Honour would like me to consult now in  
7 terms of giving you a definitive answer, I think it's currently in our  
8 interest as well as in the Court's interest for us to provide the  
9 comparisons that you have requested we do.

10 PRESIDING JUDGE FULFORD: I would like this to be done in a  
11 considered way, please, rather than a rushed decision. We would  
12 encourage it, but we're not putting any undue pressure on you,  
13 Ms. Samson, for the reasons that I expressed earlier. Could you perhaps  
14 during the course of the day send an e-mail to the legal advisor to the  
15 division.

16 MS. SAMSON: Yes. Thank you, your Honour. I will do so.

17 PRESIDING JUDGE FULFORD: Thank you very much.

18 MS. SAMSON: And if I may ask to revise our earlier submission,  
19 that there is one minor point I would like to raise. It's possible to do  
20 it in public, a question I have to put to the Chamber.

21 PRESIDING JUDGE FULFORD: Now?

22 MS. SAMSON: If it's appropriate, yes.

23 PRESIDING JUDGE FULFORD: Certainly.

24 MS. SAMSON: Well, I'll advise the Chamber what it is and then  
25 you can determine if it should be done in public. It's simply a question

1 in response -- in respect of the witness who is coming next week, the  
2 trauma expert. Given that the witness, as I understand it, is expected  
3 to be here on Monday, and given the Chamber's decision previously on  
4 contact between the parties and an expert in terms of whether or not it  
5 violates the principles of proofing, and the previous decision of the  
6 Chamber was that, in fact, with expert witnesses they're different and so  
7 proofing is not an issue, however given that this is a court expert, the  
8 Prosecution is wishing to clarify with the Chamber whether or not the  
9 parties have access to this witness in the same way as they would an  
10 expert that they were calling themselves should the need arise.

11 PRESIDING JUDGE FULFORD: Thank you. I think we will deal with  
12 that subject in a moment in open session but thank you for raising it,  
13 Ms. Samson. Maitre Mabilie -- oh Ms. Massidda, I'm sorry.

14 MS. MASSIDDA: Thank you very much.

15 PRESIDING JUDGE FULFORD: You're just out of my vision, I'm afraid.

16 MS. MASSIDDA: Thank you very much, your Honour. Simply, the  
17 legal representative are in agreement with both the Prosecution's  
18 submissions in relation to translation and also with the Defence. We  
19 check normally each day the English and French transcripts and actually  
20 there is an issue --

21 PRESIDING JUDGE FULFORD: Yes.

22 MS. MASSIDDA: -- that is arising. This is the first point.

23 The second one, the legal representative were not informed of any  
24 meeting between the Prosecution, the Defence, and the director of the  
25 Division of Court Services in the matter. Now, of course, this is a

1 matter which is of interest also for the Legal Representatives. So if in  
2 the future this could also be taken care of, we would be grateful. Thank  
3 you very much.

4 PRESIDING JUDGE FULFORD: I would have thought, Ms. Massidda, on  
5 issues such as this which are of general interest to all of those  
6 participating in the trial, and it's not limited to the parties, that the  
7 participants ought to be informed so that they can be involved in these  
8 discussions, that this really is not something that is limited to the  
9 parties only.

10 Maitre Mabilille, would you take exception to us making inquiries  
11 in an informal way of the Registry as to exactly what is involved in the  
12 procedure that you have proposed? We are, for the reasons that I've just  
13 outlined, sympathetic to the suggestion that any existing problems have  
14 got to be rectified, but before we make any kind of decision as to how  
15 this is done if we decide it should be done, I do think we need to  
16 understand what the resource and financial implications are so that we  
17 don't bankrupt the court in the process, because it may be there will be  
18 a range of options that can -- only one of which needs to be followed,  
19 and I think we need to look at the cost implications of the various  
20 alternatives which present themselves.

21 Do you mind if we make those inquiries, as it were, informally?

22 MS. MABILLE (interpretation): No objection, your Honour.

23 PRESIDING JUDGE FULFORD: Thank you very much indeed.

24 Can we, therefore, now go into public session.

25 (Open session at 10.21 a.m.)

1 COURT OFFICER: Open session.

2 (The Trial Chamber confers)

3 PRESIDING JUDGE FULFORD: We're now in open session. Ms. Samson  
4 has helpfully raised the issue as to whether or not it is appropriate for  
5 the parties, and I imagine any interested participants, to speak with the  
6 court's expert, Ms. Schaur, who is to give evidence on Tuesday and  
7 Wednesday of next week. I assume from the question, Ms. Samson, that you  
8 would like to have that opportunity should you wish to avail yourself of  
9 it.

10 MS. SAMSON: Your Honour, we are considering whether or not we  
11 would need to avail ourselves of that opportunity and for that reason we  
12 would like to know in advance if it would be a possibility.

13 PRESIDING JUDGE FULFORD: Any observations, Maitre Mabilille?

14 MS. MABILILLE (interpretation): No observation, your Honour.

15 PRESIDING JUDGE FULFORD: I imagine, Ms. Massidda, if I can  
16 address participating victims through you, that you would wish to have at  
17 least the possibility of availing yourself of that opportunity if the  
18 pre-conditions for questioning the witness are going to be surmounted.

19 MS. MASSIDDA: That's correct. And it is a joint position. We  
20 have discussed this amongst the legal representative teams yesterday.

21 PRESIDING JUDGE FULFORD: Thank you. The short answer,  
22 Ms. Samson, is yes. There is no 'property' in this witness, although she  
23 is being called by the Court, and you may speak to her jointly with the  
24 Defence and any interested participants or alone. It's really a matter  
25 entirely for you as to what course you take if you choose to avail

1       yourself of the opportunity.

2               Maitre Mabilille, I indicated yesterday that in the gentlest way I  
3       was going to inquire of you as to what the timetable looks like, please,  
4       for the next few months. Given that we're now somewhere between, I  
5       think, a half and two-thirds of the way through the Prosecution evidence,  
6       and given, I think, the estimate is that the Prosecution evidence at the  
7       rate we've been going will conclude sometime in June, we do believe that  
8       it is now not unreasonable to ask for your general guidance as to what is  
9       likely to happen over the next few months.

10              MS. MABILLE (interpretation): Your Honour, the Defence is, of  
11       course, going to answer your question, but I would like to take a few  
12       precautions.

13              As you said, we have tried to take into consideration what we  
14       have already done. That is, we tell ourselves that we are almost at --  
15       in the middle of the examination of the Prosecution team, and so we have  
16       the same amount of time to go, and I feel that what we are going to do  
17       during the second half will be of the same nature as what we did in the  
18       first half. As I said, this is mere speculation, because we have to wait  
19       to get the evidence in its entirety in order to look at the points that  
20       we are going to dwell on scrupulously and call witnesses on those  
21       particular points. That is the first observation.

22              So I am working on the assumption that we have already done some  
23       work, and I hope that we are going to have almost the same volume of work  
24       in the second half as we had in the first half with respect to  
25       Prosecution evidence.

1               Secondly, I would like to say that I have not yet contacted the  
2       Victims and Witnesses Unit. Consequently, I don't have sufficient  
3       information, because, well, I must acknowledge that I didn't have enough  
4       time for that, that is, to discuss with them. It is about the time they  
5       will need our list of witnesses, when they are going to need that list  
6       and how much time in advance we need to take into consideration with  
7       respect to that list.

8               That said, very reasonably and today, and I'm saying this with a  
9       lot of reservation, we think it is necessary for us to have a time limit  
10      of three months, that is, between the time that the Prosecution is going  
11      to end its case and the time that we are going to begin to call our  
12      witnesses.

13              I would like to add that we are also concerned that we should  
14      speed up things and gain time, like all the other parties, but that said,  
15      we think that if we do not prepare well in advance we are going to lose  
16      more time. So that is why I think it would be reasonable for us to take  
17      enough time to be as efficient as possible so that the Defence case will  
18      be presented under the best possible conditions.

19              Those are my observations for now. I would like to be more  
20      precise, but it's difficult at this juncture, your Honour.

21              PRESIDING JUDGE FULFORD: Thank you very much, Maitre Mabilille.

22              (The Trial Chamber confers)

23              PRESIDING JUDGE FULFORD: Maitre Mabilille, it will come, I'm sure,  
24      as no surprise to you that the Judges have been reflecting on these  
25      matters over the last few days and weeks, and our -- our preliminary view

1 is this: That if, as is as anticipated, the Prosecution case concludes  
2 in -- somewhere between late June and mid-July, you would have no need to  
3 persuade us to delay the opening of the Defence case until the beginning  
4 of September. No further justification would be required. However, if  
5 in the fullness of time the Defence position is that you cannot start to  
6 call evidence until some stage later than the beginning of September,  
7 then we will require a written application from you, if necessary it can  
8 be made ex parte in the first instance, setting out any difficulties that  
9 you've had and the reasons why you require a longer period of time from  
10 that.

11 So I want to make it clear we're not closing the door to the  
12 general indication that you've given, but we are indicating the point at  
13 which you will need to justify the request. So no need to justify  
14 anything up until the 1st of September. From then on, we will require a  
15 written explanation, please.

16 Secondly, as regards the Victims and Witnesses Unit, you are  
17 going to be as conscious as the Judges of the difficulties that can arise  
18 if applications for protective measures are made too late, and if you  
19 have, as we hope, by now identified at least some of the witnesses who  
20 you are likely to call, although of course we recognise that no final  
21 decision will be made until, in all probability, the end of the  
22 Prosecution evidence, but if you have identified witnesses who you're  
23 likely to call, we would urge you in the strongest possible terms to  
24 commence your negotiations with the Victims and Witness Unit. It would  
25 be a tragedy if there were to be a second significant delay in this case

1 simply because referrals to the Victims and Witness Unit have been made  
2 too late.

3 Now, I well understand that you and your team have been  
4 hard-pressed. You've had a substantial amount to do, and it is difficult  
5 to, as it were, cover all eventualities, but I think at this stage - now  
6 we're in early April - this is something which is starting to emerge  
7 rather rapidly as a high priority, if I may say so. But we thank you for  
8 that indication. It is useful, and I hope our remarks give you some  
9 indication as to our present views.

10 I imagine, Ms. Struyven, at the moment the Prosecution are  
11 neutral on these issues. Ms. Samson.

12 MS. SAMSON: Yes. There is only one point we wish to make, your Honour,  
13 which is simply that under Rule 79 of the Rules of Evidence and Procedure  
14 Evidence the Prosecution has a right to have notice of the case that the  
15 Defence wishes to bring in terms of the names of witnesses and  
16 documentary evidence sufficiently in advance to allow us time to prepare.  
17 So that would have to be built into the time table as well.

18 PRESIDING JUDGE FULFORD: And I seem to recall, Ms. Samson, that  
19 we have addressed this issue expressly in at least one of our written  
20 decisions.

21 MS. SAMSON: That's correct.

22 PRESIDING JUDGE FULFORD: Right. Some gentle communications  
23 between Prosecution and Defence, please, on this issue, and if there are  
24 enduring difficulties, please raise the matter with us again sooner  
25 rather than later, Ms. Samson, because this may be an area in which there

1 needs to be an element of clarity so as to make sure that we don't have  
2 unwarranted delay a little bit later this year.

3 MS. SAMSON: We will do so. Thank you.

4 PRESIDING JUDGE FULFORD: Thank you very much.

5 We will sit again at a quarter past 11.00. It shouldn't take  
6 long. We have a relatively brief oral decision to deliver ex parte  
7 Defence only. Otherwise, we wish you all a good weekend, and we will  
8 meet again at 9.30 on Tuesday of next week.

9 We'll rise.

10 COURT USHER: All rise.

11 The hearing ends at 10.35 a.m.

12 RECLASSIFICATION REPORT

13 Pursuant to Trial Chamber I's email instruction dated 9<sup>th</sup> November 2011,  
14 the transcript is reclassified as public after the indicated redactions  
15 have been implemented as ordered by the Chamber. All private and closed  
16 sessions (\*) are now available to the public with the exception of the  
17 portions the transcript that have been redacted.

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