

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 Wednesday, 4 March 2009

7 (Mr. Lubanga entered court)

8 The hearing starts 3.43 p.m.

9 COURT USHER: All rise. Please be seated.

10 PRESIDING JUDGE FULFORD: Ms. Solano, yesterday Mr. Desalliers

11 asked the present witness, Witness 11, about his application to

12 participate as a victim in these proceedings. And should anyone be

13 interested, the relevant section begins at the end of page 41 of the

14 transcript yesterday.

15 The witness confirmed that this was his application in the sense

16 that he recognised his signature. And we find that at page 44, line 22.

17 The next question from Mr. Desalliers was this -- or, rather, to

18 the effect of who helped him fill in the form? And at that point, you rose

19 to your feet. And we're all aware that the issue was essentially

20 adjourned.

21 Now, although some wider issues have been raised that we're going

22 to need to deal with the Prosecution ex parte -- deal with the

23 Prosecution ex parte tomorrow, in order to try to end this witness's

24 evidence today, there is a discrete issue on which I need your assistance.

25 There are three questions that Mr. Desalliers wishes to ask the

1 witness without seeking to ask him to reveal the identity of the person
2 who helped to fill in the form if there was such a person.

3 Question one is: How did Witness 11 come into contact with the
4 person who helped him fill in the form?

5 Question two is, the extent of the help that was provided. And I
6 would imagine encompassed in that is the nature of the help that was
7 provided. And then really related to it is generally the assistance that
8 was provided by that individual.

9 Now, do you have any objections to those questions being asked so
10 long as they are put on the basis that the witness is told that he is not
11 to give the name of the person who provided that assistance?

12 MS. SOLANO: We don't have any objections, Mr. President.

13 PRESIDING JUDGE FULFORD: Right. Ms. Massidda?

14 MS. MASSIDDA: We have no objection, your Honour.

15 PRESIDING JUDGE FULFORD: Thank you. There's your answer, Mr. Desalliers.
16 You can ask those questions.

17 Witness, please.

18 While the witness is being brought, if all goes to plan, we will
19 not begin the evidence -- please carry on. Oh, yes. Thank you.

20 Mr. Lubanga to leave court. I'm sorry. I sometimes forget.

21 (Mr. Lubanga withdrew)

22 PRESIDING JUDGE FULFORD: If all goes to plan, Witness 10 will commence
23 evidence tomorrow morning. She is, I understand it -- and putting
24 to one side all the other protective measures, has a preference for giving
25 evidence in mornings rather than the afternoons, although she's prepared

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1 to give evidence in the afternoon. There is an ex parte hearing that
2 we'll need to have with the Prosecution, which I anticipate will last
3 somewhere between 20 minutes and half an hour, and we plan to hold that
4 towards the end of tomorrow afternoon so as to alleviate the amount of
5 time that the witness is in the witness box during the afternoons. So
6 I'm putting you on notice that there will be an ex parte with you
7 tomorrow afternoon. And so you know the subject matter, Ms. Samson's
8 e-mail to us of yesterday will give you some assistance.

9 MS. SOLANO: Thank you, Mr. President. We take note of that.

10 (The witness takes the stand)

11 PRESIDING JUDGE FULFORD: Sorry to keep you waiting. I hope this
12 will be the last time.

13 Now -- yes, indeed. Mr. Lubanga, please.

14 (Mr. Lubanga entered court)

15 PRESIDING JUDGE FULFORD: Mr. Desalliers, public or private?

16 MR. DESALLIERS (interpretation): I believe it is preferable to
17 begin in closed session, your Honour.

18 PRESIDING JUDGE FULFORD: Good. Blinds up, please, so we're in
19 private session.

20 *(Private session) Reclassified as open session

21 COURT OFFICER: Private session.

22 PRESIDING JUDGE FULFORD: There will be a reward for whoever fits
23 this court with quicker blinds.

24 Yes, Mr. Desalliers.

25 MR. DESALLIERS (interpretation): Thank you, your Honour.

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Questioned by Mr. Desalliers (Continued)

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1 Q. Patrick, you remember the first day, or perhaps it was yesterday,
2 I asked you questions. And when we looked at the binder that you have
3 before you, the documents that are contained in that binder, there were
4 two documents relating to your application to participate as a victim
5 before the International Criminal Court. Do you recall having seen those
6 two documents in the binder?

7 A. Yes, I saw them.

8 Q. In those documents, there's a person or persons, in the plural,
9 who helped you prepare those documents. I'm going to ask you some
10 questions, but I must tell you that it's important that you not state the
11 name of any persons. You may answer my questions without giving the name
12 of this person or those persons. Is that clear?

13 A. Yes.

14 Q. Perhaps we can begin by clarifying one point. And I'm not
15 referring to your Legal Representatives or to your lawyers. Aside from
16 your lawyers, and aside from the interpreter who may have been present,
17 was there one person or more than one persons who helped you prepare your
18 documents; that is, the application for participation as a victim? Did
19 someone help you?

20 A. Yes, I was helped by someone.

21 Q. How did you come into contact with that person?

22 A. The contact with that person -- well, before I met with the OTP's
23 investigators, I met those persons because we worked with them at (Redacted)
24 (Redacted). It was through those -- or, rather, that person that I then
25 came in contact with the OTP.

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1 Q. Okay. I understand. So it was that person who put you in
2 contact with the OTP. But how did you come into contact personally with
3 that person in the first instance?

4 A. I met that person when I was at the office (Redacted).

5 Q. Can you tell us -- can you tell us how that person helped you
6 prepare your various documents, the applications to participate as a
7 victim? How did they help you?

8 A. Well, you see, for those documents, there were questions that were
9 put to me and I answered the questions. And I answered the questions
10 where I had knowledge. And in the cases where I didn't know anything, I
11 didn't give an answer.

12 Q. To be absolutely clear, we're referring here to the documents
13 related to your application to participate as a victim and not your
14 statement given to the OTP; is that correct?

15 A. Yes.

16 Q. In more general terms, generally speaking, can you tell us how
17 that person helped you in any other procedures or anything else related
18 to what you have told us here? Did that person give you any other form
19 of assistance other than helping you fill out the application for
20 participation form?

21 A. No. No. They didn't provide any other form of assistance. They
22 showed me the documents so I could fill them out, and they asked me --
23 they asked me questions so that I could respond to those questions to
24 fill in the document.

25 Q. Thank you very much, Patrick. I would like to now discuss the

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1 question of your demobilisation.

2 MR. DESALLIERS (interpretation): And I believe we're still in
3 private session, your Honour. I would also like to put these questions
4 in private session.

5 Q. You have stated that you left the Army in March 2003; is that
6 correct?

7 A. Yes.

8 Q. Then you went to a demobilisation centre.

9 A. Yes.

10 Q. Where was that exactly?

11 A. The centre was in Bunia.

12 Q. Was it (Redacted)

13 A. Yes.

14 Q. Do you know what the date was when you went to the demobilisation
15 centre?

16 A. I don't remember.

17 Q. How long was it after you left the armed forces?

18 A. I don't remember the exact date. You know, when I left the Army,
19 I stayed for a while and then they came to get me and I went to the
20 centre.

21 Q. Do you remember at least whether it was during the year 2003 or
22 2004? Do you remember which year it was of the two, or maybe it was
23 2005? Do you remember the year? Do you remember at least the year when
24 you went to the demobilisation centre?

25 A. No, I don't remember. I don't remember the year, but I know I

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1 spent one year there at the centre.

2 Q. Did you go to any other demobilisation centres than (Redacted) or
3 was that the only one you went to?

4 A. What other centre?

5 Q. I don't know. Did you go only to (Redacted) or did you go to
6 another demobilisation centre?

7 A. I only went to the (Redacted).

8 Q. How did you come into contact with that centre? How did it take
9 place? Describe the first contact you had with the people (Redacted).

10 A. Well, you see, my contact with the people (Redacted) occurred as
11 follows: They sent an investigator to find children who had left the
12 armed forces. They came to where I lived, and I accepted to go with
13 them. And I talked to them, and I told them about what I had lived
14 through in the Army. And they gave me the necessary information to be
15 demobilised.

16 Q. So the initial contact you had was that they went to get you where you
17 lived; is that correct?

18 A. Yes.

19 Q. And do you know how they found you, how they knew about what you
20 had experienced?

21 A. Well, you know, someone comes and asks you a question. They say,
22 for example, "Do you know anyone in the neighbourhood who left the armed
23 forces? Do you know someone?" And if you say, "I did," then they ask
24 you questions. And you say, "Well, why are you looking for these
25 people?" And they say, "Well, we're looking for them for this or that

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1 reason."

2 Q. What else did they tell you that first day when they came to your
3 place?

4 A. Well, when they came to where I was, they asked me to go with
5 them to their office so that I could meet the person in charge.

6 Q. And that's what you did?

7 A. Yes. We talked with the person in charge.

8 Q. Who was that person in charge?

9 A. I don't remember his name, but it was someone who worked at the
10 office of (Redacted).

11 MR. DESALLIERS (interpretation): Your Honour, I have the
12 impression that I'm walking on a very fine wire, because I know how the
13 witness answered to the previous question, that it was someone (Redacted).
14 This is something that I did not know. I anticipated asking questions to
15 the witness regarding the individuals who were in contact with him at
16 (Redacted) I do not want to go beyond the limits set for me by the
17 Chamber. May I ask you at this point for guidance?

18 PRESIDING JUDGE FULFORD: Is there any problem in Mr. Desalliers
19 asking questions about who the witness spoke with (Redacted), Ms. Solano?

20 MS. SOLANO: Mr. President, can I have a moment?

21 PRESIDING JUDGE FULFORD: You certainly can.

22 (Prosecution counsel confer)

23 MS. SOLANO: Thank you for your indulgence, Mr. President. So
24 long as the witness is not asked or led to reveal the name of the
25 intermediary who helped him complete the victim participation form, we

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1 have no objection to my colleague continuing with his questioning.

2 PRESIDING JUDGE FULFORD: Thank you very much. There you are,
3 Mr. Desalliers. Make sure you keep away from the name of the
4 intermediary who helped fill in the form and you can ask about (Redacted).

5 MR. DESALLIERS (interpretation): Thank you.

6 Q. Therefore, you have mentioned that you've forgotten the name of
7 the person in charge (Redacted) but do you remember the name of any
8 other individuals who worked (Redacted)?

9 A. I know the name of one person that I was with (Redacted), and he
10 put me in contact with the -- the OTP investigators.

11 PRESIDING JUDGE FULFORD: Just pause for a moment. Yes, Ms. Massidda.

12 MS. MASSIDDA: Thank you, your Honour. That's the person that
13 the witness should not --

14 PRESIDING JUDGE FULFORD: Right.

15 MS. MASSIDDA: Thank you.

16 PRESIDING JUDGE FULFORD: I'm afraid that's an end of it,
17 Mr. Desalliers. Valiantly tried, but I think we'd better move on to
18 another point. Thank you very much.

19 MR. DESALLIERS (interpretation):

20 Q. Can you explain, please, how the process of demobilisation took
21 place, your own demobilisation?

22 A. The first thing that happened to distract us or keep us occupied
23 was to play football, to keep our minds off of the things that we had
24 lived through, to help us forget them. And then we went back to school.

25 Q. So how long did you stay in that centre?

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1 A. I spent a year at the centre.

2 Q. Did you live at the demobilisation centre or did you live at home
3 during that period, during that one-year period?

4 A. Well, the people from the centre put me in a foster home.

5 Q. When they came to your house, when they contacted you to see --
6 to find out whether there were people who had been in the army, did you
7 yourself tell that person that you had already been in the army?

8 A. Yes.

9 Q. Did they ask you to prove in any way that you had been part of an
10 armed group?

11 A. Yes. They asked me the question to confirm whether I had been in
12 an armed group, and I mentioned a number of things that are mentioned in
13 those documents.

14 Q. Did they ask you to show a weapon or any part of a uniform or any
15 military equipment to prove that you had belonged to an armed group?

16 A. No. When I met those individuals they asked me whether I had any
17 military equipment that I could provide, and I said that I had nothing
18 that I could give them. The only thing was my presence, the fact that I
19 stated that I had belonged to the armed forces.

20 Q. When you entered the demobilisation centre, were you given what's
21 called a "kit"?

22 A. Perhaps there's another word you can use. I don't understand the
23 word "kit."

24 Q. Well, a set of clothes, food, other items that they may have
25 given you when you entered the demobilisation centre. Were you given

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1 anything, any objects? Were you given any objects when you entered the
2 demobilisation centre?

3 A. When I entered the centre, they took care of us totally. Even our
4 schooling was taken care of in the centre. We were provided with food.

5 Q. Thank you very much. Patrick, do you know someone of the name
6 (Redacted)?

7 A. Yes, I know him.

8 Q. How do you know him?

9 A. I know him because he was one of the persons in charge (Redacted)
10 (Redacted)

11 Q. Earlier you mentioned someone who was the person in charge of the
12 centre. Was it this person who was in charge of the centre, (Redacted)
13 (Redacted)?

14 A. Well, to give you a correct answer, I need to say the following:
15 (Redacted) was a group of white people who opened an organisation, and I
16 know that that individual, if he was -- I know that he had a high rank in
17 (Redacted), but I don't know if he was the director.

18 Q. Patrick, were you taken in by (Redacted) Did he welcome you?

19 A. Well, at his house, you mean?

20 Q. Well, at his house or in a house that he was in charge of, that
21 was under his authority.

22 A. Well, I met (Redacted). When we went to (Redacted) centre, he
23 worked there, and that's when I got to know him.

24 Q. Do you know someone of the name (Redacted)?

25 A. I don't remember that name.

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1 Q. Do you know someone of the name (Redacted)?

2 A. (Redacted) is it someone who worked in the office, you mean, or
3 another -- another person?

4 Q. Another person.

5 A. Yes, I know that person.

6 Q. What is the full name of that person?

7 A. I don't know the complete name. I know the name (Redacted).

8 Q. And how do you know that person?

9 A. We met in Bunia. Wherever we went -- well, I think this person
10 was also a victim.

11 Q. You mean in this case?

12 A. Yes. According to what I know, that person is also part of the
13 ICC programme.

14 Q. Have you ever lived with that person?

15 A. What do you mean "live with"?

16 Q. I mean, live under the same roof, in the same house.

17 A. Yes.

18 Q. At what point in time?

19 A. Is it important for me to mention the place and the time when we
20 were together?

21 Q. The place, no. I simply want to know, at what point in time did
22 you live with this person?

23 A. When we were admitted into the ICC programme.

24 Q. And for how long did you cohabit?

25 A. I lived with her from 2006 up to now. We still live together.

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1 Q. Do you know someone by the name of (Redacted)?

2 A. Yes, I know the person.

3 Q. Can you give us his full name?

4 A. The name I know -- I know the name (Redacted). However -- well, you
5 know in every family you have two names, but I don't know his family
6 name. I think -- I know the name (Redacted)

7 Q. (Redacted)

8 A. (Redacted)

9 Q. Can you write down the name (Redacted)

10 A. Yes.

11 Q. Do you want to spell it or write it down?

12 A. I wish to write it down.

13 PRESIDING JUDGE FULFORD: A Piece of paper and a pencil to the witness
14 please and can we give this a number.

15 COURT OFFICER: The document which denotes the handwritten notes of the
16 witness will bear the number MFI-D-00068.

17 PRESIDING JUDGE FULFORD: Yes. Mr. Desalliers, please continue.

18 MR. DESALLIERS (interpretation):

19 Q. Patrick, did you know this person (Redacted) under the same
20 conditions or circumstances as (Redacted)

21 A. Yes.

22 Q. Is it correct that you have also been living with this person since 2006?

23 A. Yes.

24 Q. Do you know someone by the name of (Redacted)

25 A. Yes, I know him.

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1 Q. Can you give us his full name?

2 A. I know his name. It is (Redacted)

3 Q. I would like to ask you to carry out the same exercise as for the
4 previous person, please.

5 MR. DESALLIERS (interpretation): Can a piece -- or a sheet of
6 paper be given to the witness, please?

7 COURT OFFICER: The document containing the handwritten notes of
8 the witness will bear the number MFI-D-00069.

9 PRESIDING JUDGE FULFORD: Yes, Mr. Desalliers.

10 MR. DESALLIERS (interpretation):

11 Q. So this person, (Redacted) as well as (Redacted)
12 you met them during your demobilisation and you lived with these persons?

13 A. I have just said here that all the persons I mentioned here, I
14 met them under the ICC programme, not during the demobilisation.

15 Q. I apologise. So (Redacted) -- I didn't understand
16 you wel -- you met them under the ICC programme. You did not know them
17 before, before that?

18 A. Before that, I knew (Redacted).

19 Q. How did you come to know (Redacted)?

20 A. We met at the (Redacted).

21 Q. Is it -- does the same apply to (Redacted)?

22 THE INTERPRETER: The answer was inaudible.

23 MR. DESALLIERS (interpretation):

24 Q. Do you know someone by the name of (Redacted)

25 A. No.

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1 Q. Do you know someone by the name of (Redacted)?

2 A. Yes, I know him.

3 Q. What is his full name?

4 A. His full name was (Redacted). I don't know any other names
5 apart from those two.

6 Q. So all the names, apart from (Redacted), since you say you didn't --
7 you don't know (Redacted), you knew these persons and you lived with them;
8 is that correct? That you live with them now; is that correct?

9 A. Yes.

10 Q. I would like to ask the same question for (Redacted). Does (Redacted)
11 live with you?

12 A. Live with us how?

13 Q. Do you live together in the same house?

14 A. No.

15 Q. Is it only (Redacted) who doesn't live with you?

16 A. There are three of us living together in the house: (Redacted)
17 (Redacted) and myself. (Redacted) and (Redacted) do not live with us.

18 Q. Have they ever lived with you?

19 A. Yes.

20 Q. Very well. First of all, I apologise. Maybe you mentioned this
21 and I didn't hear, but I thought they were living -- living with you and
22 they're still living with you. So (Redacted) doesn't live with you any
23 more, but she lived with you up to what time?

24 A. She lived with us during the whole time. I don't know if I
25 should mention the name of the place. That is up to the time -- up to

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1 the place where we now live, and we are now separated.

2 Q. I won't like you to mention the name of any places. Just mention
3 dates or periods. So up to what period?

4 PRESIDING JUDGE FULFORD: Mr. Desalliers, not only is this dangerous, but to
.5 an extent it's repetitive. The witness said in answer to a question from you
.6 only a moment ago in relation to (Redacted) that they'd lived together from
7 2006 up until now. So you are now going over ground that you've already
.8 covered in relation to her. I really think you must go over the ground
9 once, but not repeat it, please.

10 MR. DESALLIERS (interpretation): I apologise, your Honour. My
11 intention was not to repeat. I thought I understood that they no longer
12 lived together; whereas, I had understood that they now live together.
13 Well, it's okay. I apologise. I did not understand well.

14 PRESIDING JUDGE FULFORD: Yes, Ms. Solano.

15 MS. SOLANO: Mr. President, I only mean to try to assist. I do
16 think my colleague Mr. Desalliers's understanding of what the witness
17 said is correct.

18 PRESIDING JUDGE FULFORD: Ms. Solano, what I'm trying to prevent
19 is the witness revealing where he is living now and the present
20 arrangements. What Mr. Desalliers has established is that from 2006
21 until now, in inverted commas, until very recently he's lived with
22 (Redacted). It seems to me that, from what I understand the purpose is of
23 Mr. Desalliers's questions, he's really covered the relevant ground;
24 namely, that there has been close and considerable contact between the
25 two of them for a considerable period of time. Now, I think the precise

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1 living arrangements as of the last few days or weeks is almost
2 undoubtedly going to be irrelevant. So that's why I intervened. But
3 thank you for standing up.

4 Yes, Mr. Desalliers, what's the next point?

5 MR. DESALLIERS (interpretation): With your permission, just give
6 me a few moments, your Honour.

7 (Defence counsel confer)

8 MR. DESALLIERS (interpretation): Your Honour, I have no more
9 questions.

10 PRESIDING JUDGE FULFORD: Thank you. Ms. Solano?

11 MS. SOLANO: Thank you, Mr. President. I only have two
12 questions.

13 PRESIDING JUDGE FULFORD: That sounds very economical,
14 Ms. Solano. Excellent. Yes, your two questions are then, please?

15 MS. SOLANO: We can go into public session; Mr. President.

16 PRESIDING JUDGE FULFORD: Public session, please.

17 (Open session)

18 COURT OFFICER: Open session.

19 PRESIDING JUDGE FULFORD: Yes, Ms. Solano.

20 MS. SOLANO: Thank you.

21 Further Questioned by Ms. Solano:

22 Q. Good afternoon, Patrick.

23 THE INTERPRETER: The interpreter didn't hear the witness's
24 answer.

25 MS. SOLANO:

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1 Q. Patrick, can you please speak into the microphone?

2 A. Yes.

3 Q. Thank you. Patrick, you were asked by the Defence this morning whether,
4 when the UPC soldiers took you, you had accepted to board the truck. Do you
5 remember speaking about that this morning?

6 A. I'm sorry, I didn't understand.

7 Q. I'll try to make it a little clearer. This morning the Defence
8 asked you a question. They asked you whether you accepted to get on the
9 truck with the UPC soldiers, and you answered, and I quote:

10 "When they came to get us in" -- I won't mention the place.

11 "When they came to get us in ... and they took us in a vehicle, we didn't
12 really receive any order from them, but they had weapons. And we got into
13 the vehicle."

14 My question --

15 A. Yes, that's what I said.

16 Q. My question to you now is this: Before you got onto the truck,
17 were you armed?

18 A. To answer your question, when we were standing at the place where
19 we were taken, we had nothing on us. Before they arrived, we were not
20 soldiers. When they took us, they took us to go and receive military
21 training. And we had no military equipment on us.

22 Q. Good. Thank you. You were also asked earlier today by the
23 Defence whether, after your military training, you had been assigned to a
24 unit in the UPC. Do you remember that?

25 A. Which unit of the UPC?

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1 Q. Patrick, I'm just repeating to you what the Defence asked you
2 this morning. They asked you whether after your training was completed,
3 you had been assigned to a military unit or a group in the UPC. And you
4 said, No. And then the Defence asked you whether you knew the number of
5 soldiers in a section, in a brigade and in a battalion. And in all of
6 those cases, your answer was, No. You said that you did not know.

7 Do you remember all of that?

8 A. Yes, I remember.

9 Q. My question to you is this: While you were in military training
10 in the UPC, were you taught about the military structure of the UPC?

11 A. Yes. When we reached Bule, we underwent all the training that a
12 soldier is expected to undergo. They taught us; because at the beginning,
13 we didn't know anything about military service. So they taught us about
14 how a soldier should behave and how to wield or use a weapon.

15 Q. Did they teach you about how the soldiers were organised in
16 groups or otherwise?

17 A. Well, excuse me. When you talk about military structure or the
18 composition of military groups or the number of battalions or the various
19 categories, that is something that you can learn when you undergo military
20 training. But we went for training directly, and we immediately went into
21 the practical aspects. We started learning military tactics and they
22 taught us how to shoot.

23 MS. SOLANO: Mr. President, may I have your leave to ask one
24 further question?

25 PRESIDING JUDGE FULFORD: Yes. Certainly.

1 MS. SOLANO: No further questions, Mr. President.

2 PRESIDING JUDGE FULFORD: Thank you very much, indeed, Ms. Solano. I
3 can't imagine there's anything further. No.
4 Sir, that brings your evidence to an end. We are deeply
5 appreciative of the fact that you have travelled a very long way in order
6 to assist this court. We well understand that this will have been a
7 difficult process for you. You have been brought many miles overseas,
8 and you have had to spend a number of days in this courtroom being asked
9 some, on occasion, very difficult questions. This court could not
10 function without the cooperation of people such as yourself, and you
11 leave here with the sincere thanks of the Judges of this court for the
12 assistance that you have provided us with. So would you please now go
13 with the usher with our thanks, and we wish you a safe journey home.
14 Thank you very much.

15 Can we go into closed session, please, and would Mr. Lubanga be
16 so kind as to leave court?

17 (Mr. Lubanga withdrew)

18 *(Closed session) Reclassified as open session

19 COURT OFFICER: Closed session.

20 (The witness withdrew)

21 PRESIDING JUDGE FULFORD: I'm afraid, Ms. Massidda, we're not
22 going to be able to deal with the protective measures for the next
23 witness until tomorrow morning. The Judges have a commitment this
24 afternoon, which I'm afraid we can't avoid. So unless there's anything
25 else that needs detain us now, we will sit again at half past 9.00

1 tomorrow morning. The first issue will be the protective measures for
2 the next witness. And so the witness need not be brought down straight
3 away, but should remain in the waiting-room.

4 Something urgent, Mr. Biju-Duval, reasonably? Yes. All right.

5 Should the defendant come in then, please? Defendant in court.

6 Open? Closed session? Mr. Biju-Duval, how long?

7 MR. BIJU-DUVAL (interpretation): Public session, your Honour.

8 PRESIDING JUDGE FULFORD: Thank you.

9 (Mr. Lubanga entered court)

10 (Open session)

11 COURT OFFICER: Open session.

12 PRESIDING JUDGE FULFORD: Yes, Mr. Biju-Duval.

13 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. It's
14 about a question which was submitted to the Office of the Prosecutor
15 yesterday evening. We received the answer in the afternoon. And since
16 there is no consensus, we would like submit this question to the Bench.
17 It concerns the witness who will appear tomorrow. I don't know if the
18 Bench would like me to submit this question now. It relates to a
19 document which directly concerns the witness, a document which was sent
20 to the Defence on the 16th of January. It is an excerpt of a MONUC
21 report.

22 In order for the Bench to fully understand what I'm saying, I
23 would like to propose that a copy of the document should be submitted to
24 the Bench.

25 PRESIDING JUDGE FULFORD: Yes, please.

1 MR. BIJU-DUVAL (interpretation): The Bench already knows this
2 document. The Chamber has already issued a decision on this document.
3 And the Chamber has gauged the importance of this document, because it is
4 exculpatory material, which can undermine the credibility of evidence;
5 that is, the potential testimony of the next witness. And so we think
6 it's essential for the Defence to use this document when the witness is
7 giving his or her testimony.

8 There is a difficulty with respect to the use of this document.
9 Why? Because we do not know -- we do not know absolutely the
10 circumstances under which the information contained in this document,
11 which seems to be the statements of the witness, we do not know the
12 circumstances under which this information was collected; that is, we do
13 not know who collected the information. We do not know where the
14 information was collected and the context or the organisation within
15 which this information was collected.

16 This situation places us in difficulty with respect to using this
17 document which we find essential for examining the witness.
18 Our request is to obtain additional information; and if possible, if
19 possible, that the document in its entirety should be disclosed, because
20 what we have as of now is only an excerpt. So this is the Defence
21 request; namely, that we should use this document in its entirety during
22 the testimony of the next witness.

23 PRESIDING JUDGE FULFORD: Very clear as ever, Mr. Biju-Duval.
24 Thank you. The ex parte that was going to occur towards the end of
25 yesterday afternoon will now take place at 9.30 tomorrow morning. We

1 shall deal with this issue with the Prosecution and the other issue that
2 I indicated earlier. In all likelihood, therefore, we will not be ready
3 to sit with everyone else until at the earliest 10.00 tomorrow morning,
4 and it's likely to be slightly after that. I'm about to be handed a
5 note.

6 (Trial Chamber and Legal Advisor confer)

7 PRESIDING JUDGE FULFORD: So could everyone be available, please,
8 from 10.00 onwards, but be patient with us because it may well be it's
9 not before a quarter or half past 10.00 before we can return into open
10 session.

11 The legal advisor to the division has very helpfully asked me,
12 Mr. Biju-Duval, to inquire of you for the reference number, please, of
13 the decision relevant to this document. Could you -- could you give us
14 the reference number, please?

15 MR. BIJU-DUVAL (interpretation): Just one minute, your Honour.
16 Let me ask my colleagues.

17 It is an oral decision of the Chamber of the 16th of January, 2009, which
18 follows, if I'm not mistaken, a request of 5 January 2009, filing number 15--
19 That is, it's a Prosecution request, filing number 1569.

20 PRESIDING JUDGE FULFORD: Thank you very much. Yes, Ms. Solano.

21 MS. SOLANO: If I could add, it's transcript 1519

22 PRESIDING JUDGE FULFORD: Ex parte, half past 9.00 tomorrow
23 morning. Thank you all very much indeed.

24 COURT USHER: All rise.

25 The hearing ends at 4.44 p.m.

1 RECLASSIFICATION REPORT

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

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