

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elizabeth 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 Monday, 15 February 2010

8 (The hearing starts at 4.02 p.m.)

9 (Open session)

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

12 PRESIDING JUDGE FULFORD: Good afternoon. Maître Mabilille, we fully
13 understand the difficulties that you had earlier today. Thank you for promptly
14 contacting the Court and congratulations, notwithstanding those difficulties, of
15 enabling us to save at least something from the afternoon. Is there anything that
16 we need to deal with before we go into closed session so the witness can come into
17 court?

18 MS MABILLE: (Interpretation) I just wanted to make sure that there would be
19 somebody to assist the witness to read the oath.

20 PRESIDING JUDGE FULFORD: There will be. Thank you. Closed session, please.

21 *(Closed session at 4.03 p.m.) Reclassified as Open session

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

23 PRESIDING JUDGE FULFORD: Witness and interpreter, please.

24 (The witness and the interpreter enter the courtroom)

25 (The witness answers through interpreter)

1 PRESIDING JUDGE FULFORD: Good afternoon, Madam.

2 THE WITNESS: Good afternoon.

3 PRESIDING JUDGE FULFORD: Please do not be nervous. The Judges are here to
4 make sure that you are treated fairly and wholly appropriately and we will do
5 everything we can to make sure that nothing happens during your evidence that will
6 upset you. We will have breaks every 30 minutes but, if at any stage you need an
7 additional break from court, please ask me directly and I am sure we will be able
8 to do so immediately.

9 When you are speaking, can I ask you please to make sure that you keep your
10 voice up so that everything that you say is heard and please do not speak too
11 quickly because everything you say is being interpreted and transcribed.

12 Could you also - and this is slightly artificial - try and make sure that
13 when you are asked a question you leave a very slight pause before you answer
14 because, otherwise, we tend to have two people speaking at the same time which
15 makes life very difficult indeed for the interpreters and the transcribers.

16 In a minute, I am going to ask the gentleman sitting next to you to read out
17 the words of the solemn undertaking which I am going to ask you to repeat. We
18 won't do that quite yet. We've got to move from private into -- from closed into
19 public session first so that the public can hear you take that solemn undertaking.
20 And, as you know, we are going to take every step that we can to make sure that
21 your identity is not known to anyone outside of this courtroom and that will mean
22 on occasions we are going to have to switch from public session to closed session.
23 Don't worry if something is said during public session that shouldn't be, because
24 there is a 30-minute delay on the broadcast of these proceedings, which means that
25 we have got 30 minutes in which to delete from the public record what has been said

1 that in fact should remain private.

2 Public session, please.

3 (Open session at 4.08 p.m.)

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

5 PRESIDING JUDGE FULFORD: So, could you now listen carefully to the words
6 that are read over to you and repeat them out loud.

7 WITNESS: WITNESS WWW-D01-0024 (Sworn)

8 PRESIDING JUDGE FULFORD: That was done perfectly. Thank you very much. And
9 can you try to make sure that you keep your voice up at that level because you were
10 very easy to hear. It was an extremely good way of delivering your evidence.

11 Now, Mr Biju-Duval -- oh, Maître Mabilille? Maître Mabilille, are we going to
12 need the interpreters for any documents in the next -- we are not. Good, thank
13 you.

14 Closed session, please, so the interpreter can leave court.

15 *(Closed session at 4.10 p.m.) Reclassified as Open session

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

17 (The interpreter exits the courtroom)

18 PRESIDING JUDGE FULFORD: Private session, please.

19 *(Private session at 4.11 p.m.) Reclassified as Open session

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

21 PRESIDING JUDGE FULFORD: Yes, Maître Mabilille.

22 Questioned by Ms Mabilille: (Interpretation)

23 Q. Good afternoon, Madam.

24 A. Good afternoon.

25 Q. Maître Mabilille, I would like to introduce myself to you, despite the fact

1 that we have already met in the past. My name is Catherine Mabilille, I am a lawyer,
2 and I shall be putting a number of questions to you for the defence of Thomas
3 Lubanga. Have you heard me and understood me correctly?

4 A. I can hear you, but only very faintly.

5 PRESIDING JUDGE FULFORD: Madam, when I ask you this question, which will be
6 interpreted, can you hear me?

7 THE WITNESS: Yes.

8 PRESIDING JUDGE FULFORD: Good. If at any stage you have difficulty hearing
9 what is being said to you via these earphones, please let me know immediately.

10 Carry on, Maître Mabilille.

11 MS MABILILLE: (Interpretation)

12 Q. Madam Witness, could you please provide us with your full name?

13 A. Yes. My name is (Redacted).

14 Q. Could you tell us your date of birth?

15 A. Yes. I was born on (Redacted).

16 Q. Could you tell us where you were born?

17 A. I was born in (Redacted).

18 Q. Could you specify which is your town of residence today?

19 A. I do not live in town. I live in (Redacted).

20 MS MABILILLE: (Interpretation) Thank you. I would like the witness to be
21 shown a document bearing the number EVD-OTP-00389. This is a photograph.

22 PRESIDING JUDGE FULFORD: Ms Struyven?

23 MS STRUYVEN: Thank you, Mr President. As indicated (microphone not
24 activated) morning, we object to this picture being shown to the witness because we
25 believe that, given the fact that this witness is only going to discuss one

1 particular male child, the Prosecution submits that showing this witness one
2 picture of one male child is suggestive.

3 PRESIDING JUDGE FULFORD: And which email are you referring to, Ms Struyven?

4 MS STRUYVEN: Mr President, it was sent this morning. I think my colleague
5 is going to look at what time this email was sent.

6 PRESIDING JUDGE FULFORD: Let's deal with it directly. How on earth do you
7 suggest the Defence should proceed, Ms Struyven, in these circumstances?

8 MS STRUYVEN: Thank you, Mr President. The Prosecution believes that, in
9 this particular case, because the family link between the witness and the other
10 witness is not so direct, the Prosecution believes that different pictures of
11 different children should be shown to this witness and she should be asked to pick
12 which child is indeed the child she's testifying about.

13 PRESIDING JUDGE FULFORD: When were you aware that the Defence were intending
14 to show this photograph to this witness?

15 MS STRUYVEN: If I am not mistaken, your Honours, it was last week, on
16 Tuesday.

17 PRESIDING JUDGE FULFORD: You realise, don't you, just how impractical it is
18 what you are suggesting, given that the witness is now in the witness box and you
19 are now or via your email this morning, which I haven't seen, for the first time
20 effectively suggesting that some form of Identification parade should take place,
21 with the witness in court having just taken the oath?

22 MS STRUYVEN: That is correct, your Honour. Alternatively, we would suggest
23 that the witness first establishes exactly the relationship she has with the child
24 and that it can be re-evaluated at that point in time whether or not showing this
25 picture to this witness would be suggestive.

1 PRESIDING JUDGE FULFORD: Thank you. Maître Mabilles, would you object to
2 asking some preliminary questions first about the nature of the relationship before
3 showing the photograph?

4 MS MABILLE: (Interpretation) Mr President, firstly, I received an email
5 from the Office of the Prosecutor stating that they did not want me to use these
6 photographs in a leading manner, so I concluded there from that I was going to ask
7 in a non-leading manner of the witness whether she knew this individual or not. So
8 I had not understood that the Office of the Prosecutor was minded that I should not
9 use this photograph and, what is more, I find it even more leading to attempt to
10 establish a link and then show a photograph, or the photograph, because the witness
11 can then think to themselves that I am showing them the photograph of the
12 individual whose parental or kinship I have established, so I don't really
13 understand the position of the Office of the Prosecutor.

14 (The Trial Chamber confers)

15 PRESIDING JUDGE FULFORD: Not least because this has been raised so late,
16 posing very substantial difficulties if the course that Ms Struyven has suggested
17 were to be followed, we refuse the suggestion that Maître Mabilles should not show
18 the photograph. Additionally, we don't see any advantage in questions being asked
19 in relation to identity and familial or other links prior to the photograph being
20 shown, because the essence of the issue is whether the person in the photograph is
21 a particular individual, and at some stage the photograph needs to be shown to the
22 witness.

23 So, Maître Mabilles, you can proceed as you had originally intended. Can
24 copies please be given to the Bench and shown to the witness.

25 MS MABILLE: (Interpretation)

1 Q. Madam Witness, could you please look at this photograph that we have just
2 given to you and could you tell us whether you recognise this individual?

3 A. Yes, I do recognise this young man.

4 PRESIDING JUDGE FULFORD: Yes, please continue. The translation was very
5 slow in coming, Maître Mabilille, because when you started your next question, in
6 fact, we hadn't heard the answer from the preceding one. So, now please continue.
7 Thank you.

8 MS MABILLE: (Interpretation)

9 Q. Madam Witness, could you provide us with the name of this individual?

10 A. His name is (Redacted).

11 Q. Do you know whether he has any other names?

12 A. The only name I know for him is (Redacted).

13 Q. Is (Redacted) a member of your family?

14 A. Yes.

15 Q. Could you explain to us what the family ties are between you and (Redacted)?

16 A. (Redacted).

17 Q. Could you please tell us the name of (Redacted) mother?

18 A. His mother's name is (Redacted).

19 THE INTERPRETER: Correction; (Redacted).

20 MS MABILLE: (Interpretation)

21 Q. Do you know the name of (Redacted) father?

22 A. Yes.

23 Q. Could you please give us this name?

24 A. I know his name is (Redacted). I know his name is (Redacted), but it was
25 transformed into (Redacted).

1 Q. Madam Witness, do you know where (Redacted) lives today?

2 A. Yes.

3 Q. Could you please give us this information?

4 A. (Redacted).

5 Q. Do you often see her?

6 A. We are (Redacted). We often meet each other.

7 Q. When did you see her for the last time?

8 A. The last time I saw her was (Redacted)

9 (Redacted). We were also together on the 13th.

10 Q. Thank you. What is the name of (Redacted) maternal grandfather?

11 A. Her name is (Redacted).

12 Q. We might have misunderstood each other. I was asking you the name of the
13 grandfather, the maternal grandfather of (Redacted).

14 A. His grandmother or his grandfather? His grandfather is called (Redacted).

15 Q. You told us that the grandmother was called (Redacted), the grandfather
16 was called (Redacted). Could you tell us how many children they had together?

17 A. You ...[witness' answer is inaudible] with (Redacted)?

18 Q. I would like to know how many children (Redacted) and (Redacted) had together.

19 A. (Redacted) and (Redacted) had eight children.

20 THE INTERPRETER: The Swahili booth says could the witness please be asked to
21 repeat the number of children. Swahili booth; could the witness please be asked to
22 repeat the number of children.

23 MS MABILLE: (Interpretation)

24 Q. Could you please repeat the number of children, speaking slowly so that
25 the interpreters have the time to interpret and for the transcript to be taken.

1 So, please, once again provide us with how many children there were, one-by-one.

2 Thank you.

3 A. The first was called (Redacted), or is called (Redacted); the second is called
4 (Redacted); the third, (Redacted); the fourth, (Redacted); the fifth, the deceased (Redacted);
5 the sixth is called (Redacted); the seventh is called (Redacted); and the eight, (Redacted).

6 Q. Could you tell us whether (Redacted), the first child, is a girl or a boy?

7 A. It's a girl.

8 Q. Is (Redacted) a boy or a girl, or rather, (Redacted)?

9 A. (Redacted) is female as well.

10 Q. The same applies to (Redacted)? What about (Redacted)?

11 A. (Redacted) is also a girl.

12 Q. And (Redacted)?

13 A. (Redacted) is a boy.

14 Q. (Redacted)?

15 A. (Redacted) is male, but he is already deceased and he died a long time ago.

16 Q. And (Redacted)?

17 A. (Redacted) is female. She is (Redacted) mother.

18 Q. (Redacted)?

19 A. No. After (Redacted) you have (Redacted).

20 Q. Is (Redacted) male or female?

21 A. (Redacted) is female as well.

22 Q. (Redacted)?

23 A. (Redacted) is the last, and he is male.

24 Q. Could you now tell us what the family tie is that exists between you,
25 (Redacted) and (Redacted)?

1 A. I would say (Redacted) is my big brother in the family. (Redacted) is the
2 wife of this big brother.

3 THE INTERPRETER: She is my sister-in-law, corrects the Swahili interpreter.

4 MS MABILLE: (Interpretation)

5 Q. So, witness, (Redacted) has an uncle who is called (Redacted); is that the case?

6 A. Yes, that's correct, but he is already deceased.

7 Q. Could you tell us where (Redacted) was born?

8 A. (Redacted) was born in (Redacted).

9 Q. Do you know whether he was born in the hospital or at home? Could you
10 provide us with clarification on that point?

11 A. He was born in a maternity clinic, and in that locality there are several
12 clinics, and I don't know in which of them he was born.

13 Q. Do you know (Redacted) year of birth?

14 A. He was born in 1990, between 1990 and 1999.

15 THE INTERPRETER: Swahili interpreter corrects. Between 1990 and 1991.

16 MS MABILLE: (Interpretation)

17 Q. Who was he living with when he was a baby, when he was just born, do you
18 know?

19 A. He lived with his mother, with (Redacted), the mother of (Redacted), and
20 with (Redacted) as well.

21 PRESIDING JUDGE FULFORD: Maître Mabilille, we have promised the witness a
22 break every 30 minutes, so if you could find a convenient moment, please. Okay.

23 Madam, we promised you a break every 30 minutes, and I will try and be loyal
24 to that, so we will have a ten-minute break now. Thank you very much. Closed
25 session, please.

1 *(Closed session at 4.37 p.m.) Reclassified as Open session

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

3 (The witness stands down)

4 PRESIDING JUDGE FULFORD: Mr. Diakiese, are you holding the brief, as it
5 were, for Mr Walley in his absence?

6 MR DIAKIESE: (Interpretation) That's right, your Honour.

7 PRESIDING JUDGE FULFORD: Good. Mr Diakiese, on Thursday the Chamber
8 received a communication from Mr Walley, particularly outlining its concern that
9 very late in the day the Prosecution had realised that you have an additional
10 interest potentially in the evidence of this witness.

11 One of the matters raised in the communication was that you seemingly sought
12 the authority of the Chamber to communicate with at least one of your clients in
13 the DRC. Now, I want to ask you whether, in fact, we've understood that correctly;
14 not least because it may be a failing of memory on my part, but I hadn't been aware
15 that we had sought in any way to impede you as a representative of victims from
16 talking with your lay clients as and when necessary.

17 But is there some kind of authority which you seek from us now in relation to
18 talking to at least one victim in the DRC who is relevant to the evidence being
19 given by this witness?

20 MR DIAKIESE: (Interpretation) Thank you, your Honour. In fact, the
21 question of the examination of Witness 24 was notified to us by the Defence when
22 the Defence received certain information disclosed by the OTP, and so we had a
23 procedural difficulty - a major one - with respect to the issue of confidentiality
24 and the security or safety of the witness.

25 So together with the Defence, we felt that in an abundance of caution we

1 should undertake to refrain from contacting the victim we represent immediately if
2 issues concerning that witness are not formally raised in the course of this
3 examination by the Defence; and that if that were to be the case, we would have to
4 contact the Chamber in order to prepare his -- that victim's defence, because this
5 has to do with the questions that we will have to put to the witness concerning the
6 interests of our client.

7 That is the stage we are at, at the moment. Well, unless the Defence counsel
8 has other relevant information to provide, that is all I wish to bring to the
9 attention of the Bench, your Honour.

10 PRESIDING JUDGE FULFORD: So, am I right in understanding that there's
11 nothing that we have to determine now; instead, you want to see what the witness
12 says. And depending on what is said, you may be then raising an issue with us as
13 regards communication with that individual back in the DRC?

14 MR DIAKIESE: Yes, your Honour. It being understood that if questions
15 concerning our client are posed during the examination of the witness, we may avail
16 ourselves of that right.

17 PRESIDING JUDGE FULFORD: I am relieved, Mr Diakiese. I thought this was all
18 dependent on what was said in the witness box, but I wanted to make sure that by
19 remaining silent we were not impeding you from undertaking researches in the DRC
20 which otherwise you would have been putting in hand, but I am reassured that this
21 is all dependent on what the witness says. Thank you very much indeed and I must
22 apologise to the Prosecution for having accused them of late disclosure when in
23 fact the complaint was levelled at the Defence.

24 Good, we will sit again at 5 to 5.

25 (Recess taken at 4.46 p.m.)

1 (Upon resuming at 4.56 p.m.)

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

3 PRESIDING JUDGE FULFORD: Witness, please.

4 (The witness enters the courtroom)

5 PRESIDING JUDGE FULFORD: Public or private, Maître Mabilille? Private?

6 Private session, please.

7 *(Private session at 4.57 p.m.) Reclassified as Open session

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

9 PRESIDING JUDGE FULFORD: Yes, Maître Mabilille.

10 MS MABILILLE: (Interpretation)

11 Q. Madam Witness, before the adjournment I asked you the following question:

12 Just after he was born, that is after he left the clinic as a baby, who did

13 (Redacted) live with?

14 A. He lived with his mother and grandmother, who is the mother of (Redacted).

15 Q. I beg your pardon, let me read what I have here on screen, just to make

16 sure that it is what you said. Our understanding is that you said he was living

17 with his mother and the grandmother of (Redacted). Is that what you said?

18 A. No. His mother is (Redacted), so he was living with (Redacted) mother,

19 (Redacted), who is (Redacted) grandmother.

20 Q. Could you please tell us where he was living; in what place?

21 A. They lived in (Redacted), at my residence; myself, mother and (Redacted).

22 Q. Do we understand you correctly when you say that you were living with

23 (Redacted) mother, (Redacted) grandmother, all together? Is that correct? Is that

24 what you mean to say?

25 A. Yes, indeed.

1 Q. Could you tell us precisely until when you lived together in (Redacted);
2 until what point in time?

3 A. Before (Redacted) was born we were all living together, but two or three
4 months after (Redacted) birth I left to (Redacted).

5 Q. Could you tell us how long you stayed in (Redacted)?

6 A. I stayed in (Redacted) for (Redacted) years. However, during those (Redacted)
7 years, during Laurent Kabila's war, (Redacted) mother and (Redacted) came to
8 (Redacted). At the time of their arrival, (Redacted) had already married somebody else.

9 Q. You stayed in (Redacted) for (Redacted) years. Can you recall which years
10 that was? Can you remember when you arrived in (Redacted), or do you recall the
11 year in which you left (Redacted)?

12 A. I have not studied a great deal. I cannot tell you which year I left
13 (Redacted) in, in order to go to (Redacted).

14 Q. During those (Redacted) years that you spent living in (Redacted), where
15 did (Redacted) live himself, if you know?

16 A. When I was in (Redacted).
17 Besides, (Redacted) had married and settled (Redacted)
18 let's say at a distance of less than (Redacted) away.

19 Q. So (Redacted) lived (Redacted) away from where you were living in
20 (Redacted)? Have I understood you correctly?

21 A. No, that is not the case. From (Redacted) to (Redacted), through the
22 bush, there is a distance of (Redacted) kilometres and, by road the distance is
23 (Redacted) kilometers, I went to their house every week, every (Redacted).

24 Q. I apologise, but things are still not very clear: When you went to
25 (Redacted) remained with his mother and grandmother in a village (Redacted)

1 kilometres away from (Redacted); is that what you have just said?

2 A. No, they remained in (Redacted). It was while there that (Redacted) got
3 married and went to live (Redacted) away from my house, there in (Redacted). I was
4 living in (Redacted). Now, between (Redacted), there is a shortcut of a distance of
5 (Redacted) kilometres. By road, the distance is (Redacted) kilometres. I went to
6 their house every (Redacted) --

7 THE INTERPRETER: Rather, correction from the Swahili booth, there is a
8 distance of (Redacted) kilometres between those two locations but when you take the
9 shortcut you can cover this distance of (Redacted) kilometres.

10 MS MABILLE: (Interpretation)

11 Q. You say that (Redacted) married. Did (Redacted) leave with (Redacted)?

12 A. No, he stayed with his grandmother (Redacted), or (Redacted).

13 Q. Could you tell us why it is that he did not leave with his mother? Do you
14 know?

15 A. Well, in our culture, when you go and get married elsewhere, you do not
16 leave in the company of a child that you had from another marriage.

17 Q. So, (Redacted) from that date on never lived with his mother, did he?

18 A. Yes, you are right in so saying. He remained, quite simply, with his
19 grandmother.

20 Q. When his mother left to get married, (Redacted) remained with his
21 grandmother. Now, where did they stay? Where did they remain, in what location?

22 A. Right there in (Redacted). (Redacted) had married in (Redacted).

23 Q. And during those years when you were in (Redacted), did you visit
24 (Redacted) and his grandmother?

25 A. Yes.

1 PRESIDING JUDGE FULFORD: Yes, Ms Struyven?

2 MS STRUYVEN: Excuse me, Mr President. That, I think, was a very leading
3 question. It suggests the answer in the question, or at least it suggests a
4 certain activity taking place between both persons.

5 PRESIDING JUDGE FULFORD: Well, Ms Struyven, I don't want to be difficult,
6 but how would you formulate a question which establishes whether or not there was
7 contact with (Redacted) and his grandmother without in some way raising the subject?

8 MS STRUYVEN: I think -- thank you, Mr President. I think one could ask when
9 the two persons saw each other, or if -- first of all, if the persons saw each
10 other during this period, and then as a second question, when they saw each other,
11 rather than suggesting that they actually did see each other.

12 PRESIDING JUDGE FULFORD: All right. Thank you. Maître Mabilille, I don't
13 think you suggested the answer, but nonetheless, given the sensitivities on this,
14 can you lay the groundwork, as neutrally as possible, please, with issues of this
15 kind. It's, in a sense, to your advantage, because it means that we will then not
16 have to filter out the possible impact of the questions.

17 MS MABILILLE: (Interpretation)

18 Q. Madam Witness, during that period did you have any contact with (Redacted)
19 and his grandmother, yes or no?

20 A. Yes, we were living in the (Redacted), and (Redacted) for that matter. How
21 could I not have seen them? I absolutely had to go to their place because my entire
22 family were all living in (Redacted).

23 Q. And did you come into frequent contact on, say, a daily basis, a monthly
24 basis? I am attempting to ascertain when it was that you met them; how frequent it
25 was.

1 A. I went to see them once or twice per month, because the (Redacted) is
2 located in (Redacted)... from (Redacted)....

3 Q. I would like to clarify one point with you. You said at an earlier stage
4 that you had left to go and live in (Redacted) for a period of (Redacted) years.
5 Do you remember having told me that?

6 A. Yes.

7 Q. Upon leaving (Redacted), where did you go and settle?

8 A. Upon leaving (Redacted), well, this was at the beginning of the war. We
9 were told that people were fleeing from (Redacted). Moreover, during that war,
10 people died in (Redacted). That is when my younger brother... my uncle told me:
11 "(Redacted), you have to leave (Redacted) because it is very close, and people from
12 there are beginning to arrive here. Go to (Redacted) because things are calmer
13 there". Later on, my younger brother arrived from (Redacted) He came to see me and
14 said to me: "You have to leave (Redacted) because this war is not a joke. Since
15 displaced persons from (Redacted) have already arrived here, it will not be long
16 before we hear that people from (Redacted) have also arrived at (Redacted)". It was
17 then that I went to (Redacted), to the (Redacted) locality, to a place known as
18 (Redacted), in (Redacted). It is not within the town of Bunia; it is on the outskirts.

19 Q. I apologise for putting this question to you, because you said that you
20 did not really know in terms of years. However, do you recall which year it was
21 you fled with a view to going to (Redacted)?

22 A. I do not know. However, the war had not yet reached our area. War was
23 raging in the north, but I could not tell you the precise year.

24 Q. So you spent (Redacted) years in (Redacted) and you left (Redacted) with a
25 view to going to (Redacted). How long did you stay in (Redacted)?

1 A. I stayed there for a number of days, but while I was in (Redacted), I used
2 to go to (Redacted) where I could earn money. I prepared "(Redacted)" which I went
3 to sell on Mondays, and then I would go back to (Redacted) on Tuesday. So I stayed
4 there for six to seven months and I returned home to (Redacted).

5 Q. During that time, that is to say, the time during which you were in
6 (Redacted), where did (Redacted) and his grandmother live, if you know?

7 A. They had already gone back to (Redacted), to the (Redacted) neighbourhood.

8 Q. And when you yourself left (Redacted) in order to go to (Redacted), did
9 you meet them at that moment in time?

10 A. Yes, because in (Redacted) I visited them in the (Redacted) neighbourhood
11 where they were living; it wasn't far from where I lived.

12 Q. You told us that (Redacted) was born in (Redacted). Do you know
13 approximately how long he lived in (Redacted) for?

14 A. You see, I haven't studied. I can't provide you with an estimation in
15 terms of years, but when his mother left, he was a child who was abandoned. He had
16 -- he was approximately two or three years of age.

17 Q. So, (Redacted) left (Redacted). After having lived in (Redacted), where
18 did he go and live subsequently?

19 A. He lived in (Redacted), with his grandmother, (Redacted).

20 Q. Do you know approximately how old (Redacted) was when he left (Redacted)?

21 A. I can't say.

22 Q. (Redacted) lived in (Redacted) and then he went to live in (Redacted) with
23 his grandmother. To your knowledge, did he live in any other locations?

24 A. (Redacted) was in (Redacted), and then he started school and he did the
25 first and second grade in primary school in (Redacted). Subsequently, his grandmother

1 decided that he needed to know the members of his family. And so when the time came
2 for him to start the third grade, she sent him to (Redacted), the neighbourhood
3 where his father and his father's family lived.

4 Q. Could you tell us which locality or area this was?

5 A. It is a neighbourhood known as (Redacted), because that was (Redacted)
6 (Redacted). I don't know anything else about it because I have never gone to that
7 neighbourhood in (Redacted).

8 Q. I had asked you whether you knew the name of the location where his father
9 resided and where (Redacted) went to (Redacted), the name of the town, if you
10 know it.

11 A. No. It is a neighbourhood called (Redacted) which is located on the
12 outskirts of (Redacted), but that entire (Redacted) neighbourhood is part of (Redacted).
13 There are other neighbourhoods such as (Redacted) and (Redacted); that one is
14 called (Redacted), but it's still within (Redacted).

15 THE INTERPRETER: Correction from the Swahili booth. The (Redacted) neighbourhood.

16 MS MABILLE: (Interpretation)

17 Q. You told us that (Redacted) had completed his first and second grade in
18 primary school. Do you know where that school was located and where he completed
19 his first and secondary grade -- secondary levels, first and second grades?

20 A. It was in (Redacted). There were a number of classes there, but I can't
21 give you any more detail.

22 Q. After completing his first and second grade in primary school, you say he
23 went to a (Redacted) with a view to joining his father. Do you know which school
24 year he completed in that location?

25 A. His grandmother told me this. She told me that he was in the third grade,

1 but that he wasn't working hard at school. He stayed in (Redacted) for the third
2 and fourth grades, and he would like to play truant, so he wasn't very hardworking
3 in his studies.

4 Q. And what did (Redacted) do once he left the (Redacted)? Where did he go
5 and live, if you know?

6 A. He stayed with his grandmother in (Redacted).

7 Q. Do you know whether (Redacted) has already lived in (Redacted)?

8 A. No, I do not know.

9 Q. Having left his father's house and once he had come back to live with his
10 grandmother, did (Redacted) live on his own with his grandmother or were there any
11 other people?

12 A. That was the house that (Redacted) had left for his mother, but there were
13 many other tenants in the same compound. There were many people. The house was
14 divided into many rooms.

15 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

16 MS STRUYVEN: Thank you, Mr President. I was just unclear at what point in
17 time he would have referred to leaving his father's house to come back to his
18 grandmother's house. At first sight, I didn't find any reference of that in the
19 transcript.

20 PRESIDING JUDGE FULFORD: Sorry. Are you slightly obliquely suggesting that
21 a question has been put without a proper foundation?

22 MS STRUYVEN: That's correct, your Honour.

23 PRESIDING JUDGE FULFORD: Right. Thank you. The point taken,
24 Maître Mabilille, is that apparently a few questions ago you asked the witness
25 whether he went to a (Redacted) with a view to joining his father, and I think

1 Ms Struyven is complaining that in fact the witness has made no mention of him
2 having a view of joining his father. Can you help us as to where the reference was
3 to that assertion on your part?

4 Well, in fact I may have found the answer myself. I think, Ms Struyven, if
5 you look in the English at page 18, lines 1, 2 and 3 - although it's not exactly
6 the same - the witness said he then went to live in another area where his father
7 lived. I think that's very close to how it was put by Maître Mabilille.

8 MS STRUYVEN: That's correct, your Honour, but I was also referring to the
9 fact that he would have left to go back and return to his grandmother.

10 PRESIDING JUDGE FULFORD: All right. Maître Mabilille, please continue.

11 MS MABILLE: (Interpretation)

12 Q. I asked you -- with reference to (Redacted) went back to live with his
13 grandmother, I asked you whether there were other people living with (Redacted) and
14 (Redacted)?

15 A. There was (Redacted) and (Redacted) living in that house, as well as
16 (Redacted) child, a young girl who was living with them.

17 Q. Could you tell us who this young girl was?

18 A. I do not know the name of this young girl, but it was the child of that
19 lady.

20 PRESIDING JUDGE FULFORD: It's soon going to be time for another -- well, it
21 is time for another break, Maître Mabilille. Would this be convenient or do you want
22 to finish off the point? Okay. Good. Madam, we have had another half-an-hour;
23 it's time for another break. We will see you again in ten minutes. Thank you very
24 much, indeed. Closed session, please.

25 *(Closed session at 5.30 p.m.) Reclassified as Open session

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

2 (The witness stands down)

3 PRESIDING JUDGE FULFORD: Just after 20 to.

4 THE COURT OFFICER: All rise.

5 (Recess taken at 5.30 p.m.)

6 (Upon resuming at 5.41 p.m.)

7 THE COURT USHER: Please be seated.

8 PRESIDING JUDGE FULFORD: Yes. Witness.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FULFORD: Private session, please.

11 *(Private session at 5.42 p.m.) Reclassified as Open session

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

13 PRESIDING JUDGE FULFORD: Yes, Maître Mabilie.

14 MS MABILLE: (Interpretation)

15 Q. Madam Witness, I would like to remind you to speak slowly because we have
16 interpretation problems. Hence, your speed of delivery should be quite slow so
17 that the interpreters will be able to interpret what you are saying well.

18 I am going to show you another document which bears the reference
19 DRC-OTP-0138-0019.

20 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

21 MS STRUYVEN: Thank you, Mr President. This witness has just confirmed that
22 she does not know the name of the person that was living in their house, or in the
23 house of the other person, so we think that in this case it's even less appropriate
24 to actually show a picture to this witness and ask her most probably if this is the
25 person that was living with them.

1 PRESIDING JUDGE FULFORD: Sorry, what the witness has said was that she
2 doesn't know the name. It's not that she has said that there was no one living
3 there or that she wouldn't be able to remember who was living there; she simply
4 says she doesn't know the name of the person. Now, why does that pose a problem
5 with showing a photograph?

6 MS STRUYVEN: Well, your Honour, any photograph could be shown to this
7 witness and she could be asked to confirm any person who has allegedly lived with
8 her at that time period. In the case of the first picture, there was still some
9 sort of a family link between the person on the picture and the witness who is
10 testifying with us today. However, in the second case, that link is not there. As
11 a matter of fact, this witness has confirmed that she does not know the name of the
12 person they were living with, so the Prosecution submits that it's very suggestive
13 to then start showing a picture and basically asking the person to confirm that
14 this is indeed the person that they were living with. We believe that it should be
15 first -- it should first come out of the evidence of this witness that that was
16 indeed the person they were living with, through different means.

17 PRESIDING JUDGE FULFORD: Forgive me if I'm wrong, Ms Struyven, but as I
18 remember it, the Prosecution's case was littered with examples of witnesses being
19 shown photographs to see whether the witness could identify particular individuals
20 who had been discussed in evidence. I don't remember there ever having been a
21 suggestion from the Prosecution that its witnesses should undergo a form of
22 identification parade before being shown photographs. Am I right generally in that
23 recollection?

24 MS STRUYVEN: Thank you, Mr President. I think that the Prosecution has
25 mainly showed pictures of the witnesses themselves or, to the parents of the

1 witnesses, pictures or photographs of their children. I think that in that case
2 there is a clear link between the person who is testifying and the person on the
3 picture. However, in this case, there is no such link.

4 PRESIDING JUDGE FULFORD: Ms Struyven, I think there have been many occasions
5 when witnesses were shown either video excerpts or photographs and were asked
6 whether they were able to identify the people in those video extracts or in those
7 photographs. But no matter. What we have is a situation in which the witness has
8 said that (Redacted) and (Redacted) lived in the house and there was a young girl
9 living with them, and what Maître Mabilille, as I understand it, wants to do is to
10 show a photograph to the witness to find out whether or not, put neutrally, that
11 young girl lived with them.

12 Now this is very similar to the objection that you took earlier and,
13 particularly given the timing of the intervention, it is impractical to devise
14 another way of being able to introduce the photograph other than showing it to the
15 witness. And I can't for myself think of any other preliminary questions that
16 could be asked.

17 MS STRUYVEN: Well, Mr President, if you allow me, I can just add that until
18 Tuesday last week, the Defence questioned whether or not this person was a person -
19 and I cannot say -- give too many details in front of the witness - but if I may
20 add until -- and that's why there was a late notification to the legal
21 representatives, because the Defence argued until very recently that they weren't
22 sure who this person was. Now, in that sense, it would even be, as I said already,
23 more suggestive to now put a picture to this witness and ask if indeed this is the
24 picture of the person the witness is talking about.

25 PRESIDING JUDGE FULFORD: How would you propose for Maître Mabilille to deal

1 with it, Ms Struyven? There is the possibility that this person was the girl in
2 the house, the person in the photograph. Now, if she doesn't show the photograph,
3 we can never have an answer to that question. What do you propose she does?

4 MS STRUYVEN: Thank you, Mr President. I do think that, first, this witness
5 could be asked questions about the person itself, like, who she was, her identity,
6 physical features, other information that would allow us to at least get a little
7 bit more certainty about the fact that the two persons are indeed the same person.
8 By putting a photograph of this person right now to her, it kind of immediately --
9 it immediately suggests that this is indeed the person concerned.

10 PRESIDING JUDGE FULFORD: Thank you, Ms Struyven. The witness had indicated
11 that she doesn't know the name of the girl living in the house and, in our view -
12 of course one can always think of possibly fanciful or marginal questions - there
13 is nothing else of substance which the Defence can ask that would reveal whether or
14 not it is -- whether or not this witness is in a position to identify this young
15 girl from the photograph that Maître Mabilille wishes to show to her.

16 Accordingly, Maître Mabilille, you may proceed.

17 MS MABILILLE: (Interpretation) I would like this document which bears the
18 reference DRC-00138-0019, that it be shown to the witness.

19 PRESIDING JUDGE FULFORD: Yes, Maître Mabilille.

20 MS MABILILLE: (No interpretation)

21 THE INTERPRETER: Could the witness turn on her microphone? The English
22 interpreter excuses: The microphone was off. Maître Mabilille asked the question:
23 "Do you recognise the individual in this photograph?"

24 MS MABILILLE: Your Honour, I wish to repeat the question.

25 Q. Madam Witness, do you recognise the individual found in this photograph?

1 A. I do not recognise her.

2 Q. You told us a short while ago that (Redacted) lived in his grandmother's
3 home with a young person whose name you do not remember. Do you know what happened
4 between (Redacted) and that individual? Do you know what happened, if anything,
5 between the two of them?

6 A. Which individual?

7 Q. When (Redacted) returned to his grandmother's home, what did he do at that
8 point in time, do you know?

9 A. When he returned to his grandmother's home, he just did farm work.

10 Q. Do you know whether he's still carrying out that activity today?

11 A. No. I only saw (Redacted) in 2006 and I have not seen him since then.

12 Q. And do you know what happened around 2005/2006? Do you know what activity
13 (Redacted) was carrying out?

14 A. I was living in (Redacted) and they lived in (Redacted). All I know is
15 that he helped his grandmother with her farm work. At that time we still had the
16 disturbances. I used to visit them, but I do not know what he was doing. Since
17 his grandmother was not able to do the farm work alone, I know he was helping her.
18 But I have not seen (Redacted) again since then.

19 Q. Do you know why you have not been able to see him again since that period?

20 A. Well, when I arrived at the village, I asked his mother where he was and
21 she said, "When a boy grows up, you can't keep monitoring his activities."

22 Q. Madam Witness, do you know what has happened to (Redacted) since the year
23 2006? Did his grandmother tell you anything?

24 A. She did not wish to give me any information. Every time I asked her
25 questions about (Redacted), she would ask me, "What do you want me to tell you

1 about (Redacted)?"

2 PRESIDING JUDGE FULFORD: Now, Ms Struyven, you were on your feet.

3 MS STRUYVEN: Thank you, Mr President. It was just to indicate that this
4 question was asked and answered, but it's okay.

5 PRESIDING JUDGE FULFORD: Sorry, was your complaint repetition?

6 MS STRUYVEN: Yes, Mr President, but it's fine. I withdraw my request.

7 PRESIDING JUDGE FULFORD: Carry on, Maître Mabilille.

8 MS MABILLE: (Interpretation)

9 Q. Are there other people who told you about what (Redacted) did at that
10 point in time between 2005 and 2006?

11 A. No, not at all.

12 Q. Your Uncle (Redacted) -- well, he's not your uncle; I beg your pardon. Do
13 you know whether (Redacted) has children; do you know that?

14 A. He got a girl pregnant. Her name is (Redacted). And the child is living
15 with (Redacted).

16 Q. Could you give us more information about (Redacted)? Who is she?

17 A. It is difficult for me to give you any particulars about (Redacted). She
18 met (Redacted) and he got her pregnant. It's difficult for me to give you any
19 particulars about (Redacted). All I know is that it was (Redacted) who got her
20 pregnant. Then he abandoned her and went to live with another woman.

21 Q. And at that time who did (Redacted) go to live with?

22 A. She was taken to (Redacted) home, and that is why (Redacted) got angry.

23 Q. Why was it that (Redacted) was annoyed?

24 A. Well, would you keep your children's children forever, and be helping them
25 all the time whereas neither their mothers nor their fathers are taking care of

1 them? It could be annoying if you are already an old person.

2 Q. So what happened precisely with (Redacted)?

3 A. I don't know where it was that she went to live because -- well, I don't
4 quite know where it is that (Redacted) went to live, but (Redacted) had refused to
5 take her in.

6 MS MABILLE: (Interpretation) One moment, please, Mr President.

7 Q. Madam Witness, to your knowledge, was (Redacted) in the army?

8 A. The UPC army? Or the AFNE, the FNE?

9 Q. I am asking you whether he was a member of an armed group, whether it be
10 the FNI or the UPC. I am asking you whether, to your knowledge, he was a member of
11 an armed group.

12 A. He was never a soldier. He -- the one who was in a military service was
13 (Redacted), when the Ugandans had already left. After the Ugandans left, the
14 soldiers started harassing and arresting people. It was then that (Redacted) joined
15 the army. That was after the departure of the Ugandans. He is the elder brother of
16 (Redacted), the fourth child.

17 Q. (Redacted) is (Redacted) uncle; is that not right?

18 A. That is correct.

19 Q. How is it that you know that (Redacted) was never a member of an armed group?

20 A. He's a very close family relative. I went to see his mother and he was
21 there, and he was never a soldier.

22 MS MABILLE: (Interpretation) One more moment, please, Mr President.

23 Q. Madam Witness, to be clear with reference to the interpretation, have you
24 just told us that you would go and visit them? Is that what you said?

25 A. Yes.

1 MS MABILLE: (Interpretation) Mr President, I have finished.

2 PRESIDING JUDGE FULFORD: Ms Struyven, our intention is to sit until about
3 quarter past six or thereabouts. You can -- we're in your hands, you can either
4 start tonight or tomorrow morning.

5 MS STRUYVEN: Tomorrow would be very good, Mr President.

6 PRESIDING JUDGE FULFORD: Then tomorrow morning it will be. Thank you.

7 Madam, thank you very much indeed for your assistance this afternoon. There
8 will be some more questions for you tomorrow, so we will look forward to seeing you
9 again then, and we will be sitting at 2.30 tomorrow afternoon. Thank you very much
10 indeed.

11 Closed session, please.

12 *(Closed session at 6.06 p.m.) Reclassified as Open session

13 PRESIDING JUDGE FULFORD: Yes, thank you, usher, there's no one in the public
14 gallery.

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

16 (The witness stands down)

17 PRESIDING JUDGE FULFORD: Numbers, Maître Mabilille? Have we given any?

18 MS MABILLE: (Interpretation) The one concerning (Redacted) already has a
19 reference. I believe that the second does not.

20 THE COURT OFFICER: The coloured photograph, your Honours, under
21 DRC-OTP-0138-0019 will be assigned EVD-D01-00108. Could counsel please confirm if
22 this needs to be confidential.

23 PRESIDING JUDGE FULFORD: Yes, I'd echo that. I think the practice we've
24 developed so far is when a document or a photograph is put in, particularly if
25 we're in private session, an indication is given as to whether the document needs

1 to be remain private as well as the evidence we're hearing. Now, with the second
2 photograph, Maître Mabilie, is that a private document or a public document?

3 MS MABILLE: (Interpretation) Also confidential, Mr President.

4 PRESIDING JUDGE FULFORD: Thank you. Now, Mr Diakiese, on the basis of the
5 evidence that we've heard so far, and of course it may be that Ms Struyven will
6 raise further issues that will impact on this, but on the basis of the evidence
7 we've heard thus far, is there any application that we need to consider from your
8 team?

9 MR DIAKIESE: (Interpretation) I do not believe so, your Honour.

10 PRESIDING JUDGE FULFORD: That's what I thought. I just wanted to make sure.
11 Thank you very much. We wish you all a pleasant evening, and we will sit again
12 tomorrow at 2.30.

13 (The hearing ends at 6.09 p.m.)

14 RECLASSIFICATION REPORT

15 Pursuant to Trial Chamber I's email instruction dated 5th December 2011, the
16 transcript is reclassified as public after the indicated redactions have been
17 implemented as ordered by the Chamber. All private and closed sessions (*)
18 are now available to the public with the exception of the portions of the
19 transcript that have been redacted.