

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 - Open Session Tuesday, 5 May 2009
6 Judge Fulford presiding.
7 The hearing starts at 9.33 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. Can I welcome everyone
11 back to the court.
12 Ms. Samson, if I can address you first, please. We are now, as I
13 understand it, turning to Witness 12.
14 MS. SAMSON: That's correct, your Honour.
15 PRESIDING JUDGE FULFORD: Good. Are there any protective
16 measures in relation to the witness that we need to be aware of?
17 MS. SAMSON: Your Honour, the protective measures are only those
18 that have been previously authorised by the Chamber, which include voice
19 and face distortion and the use of a pseudonym during his testimony.
20 PRESIDING JUDGE FULFORD: So before the witness comes in we will
21 need to reconfigure the court so as to effectively protect his identity
22 as regards the public.
23 MS. SAMSON: Yes, your Honour.
24 PRESIDING JUDGE FULFORD: Thank you. Issue two, Ms. Samson, is
25 originally, as we understand it, there was a proposal to introduce via

1 the witness a reasonably substantial number of documents. Again, as we
2 understand it, the Prosecution's attitude towards this has changed fairly
3 substantially. At the point at which I was last aware of the e-mail
4 exchanges, there was still a question mark over one or two documents
5 which you were reflecting on. What's the final result of your
6 reflections, Ms. Samson?

7 MS. SAMSON: In terms of the documents that the Prosecution was
8 reflecting upon, there was indeed one document that was left unattended
9 as of, say, early yesterday afternoon. It was one document for which the
10 Defence had raised an objection to the admissibility of the document.
11 The Prosecution wrote by way of an e-mail later in the afternoon to the
12 Defence to indicate -- and to the Trial Chamber to indicate that indeed
13 the Prosecution did not intend to tender the document through this
14 witness any longer.

15 PRESIDING JUDGE FULFORD: So does that mean that as regards that
16 particular tranche of documents, there are now no outstanding issues?

17 MS. SAMSON: That's correct, your Honour.

18 PRESIDING JUDGE FULFORD: Good. Point three, the 54(3)(E) documents of
19 which there are 24 but in reality 12. First question, Ms. Samson, is why
20 is it that this has arisen so late?

21 MS. SAMSON: Thank you, Your Honour. Indeed in relation to three
22 of the 12 documents, the Prosecution had made an early request for a
23 lifting of restrictions which request was denied at the very end of 2005.
24 The materials in the Prosecution's possession, the totality had been
25 reviewed over the course of the years until the trial commenced. At the

1 end of 2008, the Prosecution undertook an audit of the 54(3)(E) documents
2 in its position to determine whether or not the original reviewer
3 recommendation for disclosure was still appropriate. That audit covered
4 approximately 800 documents, of which these 12 came up for re-review, and
5 the lifting requests were recent in the case of three documents and sent
6 afresh. In the case of nine documents in early 2009, the lifting of
7 restrictions approval, as the Chamber is now aware, was communicated to
8 the Prosecution later in the year, and subsequently the application for
9 the protective measures was made by the Prosecution.

10 PRESIDING JUDGE FULFORD: Ms. Samson, we obviously unequivocally
11 approve the procedure whereby there is a review of earlier decisions that
12 have been made as regards disclosure. We would wish to emphasise how
13 from our perspective important it is that that function is carried out by
14 the Office of the Prosecutor. It is, perhaps, unfortunate that the
15 timing of this has meant that this has all happened very close to the
16 commencement of this witness's evidence.

17 Thank you for the explanation. We thank all those who have made
18 filings in relation to their contribution on the issue. For reasons that
19 we will very shortly elaborate in due course, what we propose is this,
20 indeed what we order is this: That during the course of today and as
21 early as possible today, the 12 documents in non-redacted form should be
22 disclosed to the Defence, and we will -- and we approve the various
23 protective measures that have been sought by the United Nations, which
24 are very much in accordance with other protective measures that we have
25 ordered in relation to other documents and other individuals. So that is

1 our decision, the reasons for which we will give later.

2 For the future, Ms. Samson, it would be helpful with filings of
3 this kind if an explanation for the delay could be included within the
4 filing. I imagine my question of this morning has not come as a great
5 surprise to you, and it would have been helpful to have known the reasons
6 in advance.

7 Good. Are there any other matters that need to be resolved
8 before the next witness is called?

9 MS. SAMSON: No, your Honour.

10 PRESIDING JUDGE FULFORD: Thank you. Mr. Biju-Duval.

11 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. Just
12 one concern. As the Judges of the Chamber do understand, the Defence has
13 not been aware of the content of these 12 documents, and if one relies on
14 the filing introduced by the Prosecution, it seems that the 12 documents
15 are relevant to the witness we are going to hear today. So I just wanted
16 to indicate to the Chamber that we might, and I say might, be calling for
17 extra time, a minimum of extra time in order to re-examine the documents
18 before we cross-examine the witness.

19 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, you had absolutely
20 appropriately anticipated what I was about to say to you. We obviously
21 can't ask you at this moment to indicate your position because you
22 haven't seen the documents. You're only going to be in a position to
23 make any application if one is necessary after you've read them, and we
24 want at this moment to make it clear that if having read the documents on
25 submission from you there are good grounds for an adjournment prior to

1 your questioning of this witness, then that will have to happen, but
2 could you please read the documents first, reflect on them with your lay
3 client, and return to the Chamber, if necessary, on the issue in due
4 course, but of course before the commencement of your questioning. Thank
5 you very much.

6 Mr. Walley.

7 MR. WALLEYN (interpretation): Your Honour, we have filed an
8 application to be able to ask questions to the witness and there has been
9 no objection on the part of the Defence. So in abidance with your ruling
10 in this respect, these documents, we would like to have them communicated
11 to us since these documents might be useful for the questions we might
12 want to ask this witness.

13 PRESIDING JUDGE FULFORD: Thank you, Mr. Walley.

14 Any observation, Ms. Samson?

15 MS. SAMSON: No, your Honour. That's acceptable to the
16 Prosecution and the United Nations has indicated that's acceptable as
17 well in so far as the same order is applicable to the Legal
18 Representatives as it is to the Prosecution and Defence in terms of the
19 subsequent use of those documents.

20 PRESIDING JUDGE FULFORD: Thank you. In the absence of any
21 submissions from the Defence, those who have applied to question shall be
22 provided with the documents. I think, Mr. Walley, strictly speaking
23 we've yet to rule on your application. So this may involve an element of
24 putting the cart before the horse, but I think given the stage that we've
25 reached in the proceedings, it would be convenient and sensible if you're

1 provided with the documents now and we will address in due course your
2 application to pose questions to this witness.

3 MR. WALLEYN: Thank you, Mr. President.

4 PRESIDING JUDGE FULFORD: Thank you, Mr. Walley.

5 Good. We'll remain on the Bench, but could the court please be
6 reconfigured so that the witness can be brought in to commence his
7 testimony.

8 *(Closed session at 9.44 a.m.) Reclassified as Open session

9 COURT OFFICER: Closed session.

10 (The witness entered court)

11 PRESIDING JUDGE FULFORD: Good morning, sir.

12 THE WITNESS (interpretation): Good morning.

13 PRESIDING JUDGE FULFORD: This has been explained to you before,
14 but I just want to reassure you at the commencement of your evidence that
15 we are going to do everything humanly possible to make sure that your
16 identity as regards anyone outside of this courtroom is protected. As
17 you will have been told, this will include you being screened from the
18 public gallery. On the live television feed that goes out to the public,
19 your face will be obscured, and we will be using a pseudonym and not
20 referring in open session to anything that will reveal your identity.

21 If things are said during the course of public session
22 accidentally that might involve revealing who you are, the potential
23 damage is very greatly limited, because the live feed has a 30-minute
24 delay on it, and we are able to remove from it anything that may cause
25 you potential harm.

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Procedural Matters

Page 7

1 Please be understanding of the fact that we are going to have to
2 move from private into public session on occasion so as to make sure that
3 only those things that should be revealed to the public are revealed to
4 the public. So it's a slightly cumbersome and rather artificial process.
5 And I'm about to give the very first demonstration of that by asking that
6 we go into public session so that the witness can take the solemn
7 undertaking.

8 (Open session at 9.48 a.m.)

9 COURT OFFICER: Open session.

10 PRESIDING JUDGE FULFORD: Sir, I think there is a card in front
11 of you. Could you please read aloud the words on the card which
12 constitute your solemn undertaking before the beginning of your evidence.

13 THE WITNESS (interpretation): I solemnly declare that I will say
14 the truth, the whole truth, and nothing but the truth.

15 WITNESS: WITNESS DRC-OTP-WWW-0012.

16 (Witness answered through interpreter)

17 PRESIDING JUDGE FULFORD: Thank you very much.

18 Now, Ms. Samson, you're to question Witness 12 first. I
19 anticipate that your very first questions need to be in private session;
20 is that right?

21 MS. SAMSON: Yes, your Honour. Thank you.

22 PRESIDING JUDGE FULFORD: Good. Private session then, please.

23 *(Private session at 9.49 a.m.) Reclassified as Open session

24 COURT OFFICER: Private session.

25 PRESIDING JUDGE FULFORD: Thank you. Ms. Samson.

Questioned by Ms. Samson

1 MS. SAMSON: Thank you, Your Honour.

2 Questioned by Ms. Samson:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. We were introduced briefly about a week ago, but I will repeat
6 for you now that my name is Nicole Samson, and today I will be asking you
7 some questions on behalf of the Office of the Prosecutor. In the course
8 of my questioning, if there is something that you don't understand or you
9 would like me to repeat, please feel free to say so and I will attempt to
10 rephrase the question. Would that be okay?

11 A. Yes, perfectly.

12 Q. Thank you. Because we are being interpreted today, I will try to
13 include or introduce a pause after you have given an answer and before I
14 ask the next question. So I would ask if you could also be mindful of
15 introducing pauses after I have asked a question and before you start to
16 answer and to speak slowly and loudly into the microphone to assist the
17 interpreters in their work.

18 Do you have any questions about that?

19 A. No.

20 Q. Sir, I will start by asking you a few questions about your
21 identity and your background. Could you please state your full name.

22 A. Yes. My name is (Redacted). I was born in (Redacted),
23 in the RDC, in (Redacted).

24 PRESIDING JUDGE FULFORD: I think we need to pause for a moment.

25 On the screen the French transcript has -- includes the date(Redacted) rather

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 9

1 than (Redacted), and it's completely missed out the month and the day,
2 (Redacted). Now, that evidence was delivered slowly, and it is not a
3 reassuring commencement to -- or, rather, recommencement to this trial.

4 Right. Ms. Samson, I want you to ask the question again, please,
5 and I want to see how this comes up in the French transcript.

6 MS. SAMSON:

7 Q. Sir, could you please repeat your month and year of birth.

8 A. I was born on the (Redacted), in the
9 Democratic Republic of Congo, in the east of the country.

10 Q. And, sir, just to confirm, (Redacted) is not in Ituri; is that
11 correct?

12 A. No. It is in the province (Redacted).

13 PRESIDING JUDGE FULFORD: Ask the next question, Ms. Samson. I'm
14 sorry, Ms. Samson. One of the oddities seems to be that the very last
15 line may not appear on the screen before the next line is to be entered,
16 so don't always -- it's quite understandable that you pause, but don't.
17 If nearly all of it seems to be there, move on.

18 MS. SAMSON: I will do so. Thank you for the clarification.

19 Q. Sir, I'm going to go through your educational and employment
20 history next. Is it correct that in (Redacted) you received a diploma from
21 (Redacted)?

22 A. Yes. I had first received my state diploma in (Redacted)
23 and then I received a diploma (Redacted)
24 from the (Redacted).

25 Q. And in (Redacted) is it correct that you received a diploma in (Redacted)

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 10

1 (Redacted)

2 A. Yes. I received a diploma (Redacted)

3 (Redacted) indeed.

4 Q. And since completing your studies in (Redacted), is it correct that you

5 worked (Redacted)

6 (Redacted)?

7 A. Yes, I worked (Redacted) during all that time, yes.

8 Q. And in your work (Redacted) you resided in various

9 localities in the Democratic Republic of Congo, including (Redacted),

10 (Redacted); is that correct?

11 A. Yes. Yes, but in other places as well. I was also in

12 (Redacted), and in other parts of the

13 country (Redacted).

14 Q. And is it correct that you resided in Bunia (Redacted)

15 (Redacted)?

16 A. Yes, indeed. (Redacted). I went to Bunia during the war,

17 and I stayed there between (Redacted), and then I went back (Redacted)

18 (Redacted), and I came back in (Redacted)

19 (Redacted).

20 Q. And still in your employment history is it correct that in at

21 least (Redacted) you worked (Redacted)

22 (Redacted)

23 A. Yes. I worked as (Redacted)

24 (Redacted).

25 Q. Also in terms of your employment or activities, you were the

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 11

1 (Redacted)of (Redacted); is that correct?

2 A. Yes. Since (Redacted) for the parti pour

3 l'unite et la sauvegarde de l'integrite du Congo. That was called PUSIC.

4 Q. Who was the leader of PUSIC?

5 A. The leaders of PUSIC when we started were Chief Kahwa Panga

6 Mandro, and he was then replaced by Kisémbé Bitamara.

7 Q. Thank you. And when did the PUSIC begin operating?

8 A. PUSIC started its activities at the end of 2002, approximately.

9 PRESIDING JUDGE FULFORD: Ms. Samson, can we pause a moment?

10 Mr. Biju-Duval, you're watching the screen obviously very
11 carefully. You're also able to hear what the witness is saying in
12 French. In your estimation, how are we doing?

13 MR. BIJU-DUVAL (interpretation): Well, things are a bit hedgy.
14 I think that the transcript was hesitant on a number of words uttered by
15 the witness. I shall give you one example. On line 5, 5 or 6, on this
16 page we have on screen, there is one word that is not understandable, for
17 example.

18 PRESIDING JUDGE FULFORD: I think it doesn't exist,
19 yes. Mr. Biju-Duval, what I'm going to ask someone from your team to do,
20 given that certainly some new procedures have been put in place which
21 we're going to include in an oral decision to be handed down hopefully
22 this week, what we're going to ask you to do today is if you can, to make
23 a note of the most obvious examples of those mistakes as they appear in
24 the realtime transcript and then to carry out at least a spot check to
25 see whether you're satisfied with the rectification that takes place when

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 12

1 the, as it were, the approved final edited version is distributed,
2 because mistakes made now should be comprehensively picked up in the
3 review process, and it would be very helpful to know what your view is
4 tomorrow as to how satisfactory that has been today. Is that something
5 that someone in your team could do to assist us today, Mr. Biju-Duval?
6 And I think Maitre Mabilille wants a word.

7 MS. MABILLE (interpretation): Your Honour, if I may, could we
8 have a few minutes, because I would like to try and use the new Transcend
9 to do this job, so I need to confer with my colleague for a minute so
10 that we can implement this method. It won't be long.

11 PRESIDING JUDGE FULFORD: Certainly.

12 (The Trial Chamber confers)

13 PRESIDING JUDGE FULFORD: And, Mr. Biju-Duval, to make sure
14 there's no confusion to what I've just said, we're not expecting those
15 corrections to be made now. What I was referring to was the edited
16 transcript which is distributed later once a check has been made, but we
17 need to know whether the mistakes are being adequately caught from this
18 point in time onwards.

19 Thank you for your help.

20 Sorry to have intervened, Ms. Samson, but we want to try to make
21 sure that from here on the historical problems with transcription are
22 resolved.

23 My apologies, sir.

24 Please continue.

25 MS. SAMSON: Thank you, Your Honour.

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 13

1 Q. Sir, in your role (Redacted) of PUSIC, could you
2 describe generally what your duties were?

3 A. I was in charge mainly of (Redacted),
4 and (Redacted)
5 (Redacted)
6 (Redacted).

7 Q. So, sir, from time to time you came into contact with members of
8 other groups in Ituri. Is that what you've just said?

9 A. Yes, on many occasions, because we had organised what we call
10 consultation groups with all the armed groups in Ituri, and every other
11 month we met all together to discuss the problems relating to peace in
12 Ituri, and sometime -- sometimes we convened extraordinary meetings
13 through MONUC, and we had to be involved. And there were also private
14 meetings that we could organise amongst ourselves so that we could solve
15 some problems that we were concerned with before we went to MONUC to talk
16 about it, and this is why on many occasions we have been in touch with
17 the members of other parties involved in the conflict in Ituri.

18 Q. And, sir, before you joined PUSIC (Redacted), were you involved in
19 any other political groups in Ituri?

20 A. Yes. Before I joined PUSIC, I was not really involved in any particular
21 group in Ituri. (Redacted)
22 (Redacted)

23 (Redacted), but I did not belong to any specific party that
24 was in Ituri before I became a member of PUSIC.

25 Q. Thank you, sir.

Questioned by Ms. Samson

1 MS. SAMSON: Your Honour, if it's an appropriate moment, we could
2 go into open session.

3 PRESIDING JUDGE FULFORD: Excellent. Public session, please.

4 (Open session at 10.09 a.m.)

5 COURT OFFICER: Open session.

6 PRESIDING JUDGE FULFORD: Yes, Ms. Samson.

7 MS. SAMSON:

8 Q. Sir, would I like to ask you some questions about the political
9 climate in Ituri between 2002 and 2003, and I would start by asking you
10 if you've ever heard of the UPC.

11 A. Yes, I had heard of the UPC at its very beginning on many
12 occasions.

13 Q. Can you tell us what UPC stands for?

14 A. Union des Patriotes Congolais. Patriots Union in Congo. That's
15 what UPC meant.

16 Q. Do you know when the UPC was first created?

17 A. On the documents, the documents that were presented by UPC, UPC
18 must have been created on the 15th of September, 2002, but as far as I
19 know, they started, actually, their activities in September 2002 --
20 sorry. I said before 15th of September 2000, but as far as I know, they
21 started working in September 2002. It is at that time that UPC had taken the
22 control of Bunia, but before that the movement already existed, but I do
23 not believe that it was a political movement at the time. It was a
24 military organisation up until then. So they started in 2000.

25 Q. Sir, since you've mentioned a document, I would like to show you

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 15

1 a document.

2 MS. SAMSON: And, your Honour, I have prepared some binders, as
3 has become the custom, which I have for the Chamber and for the witness.

4 PRESIDING JUDGE FULFORD: Thank you very much, and obviously
5 there's been notification to the Defence.

6 MS. SAMSON: Yes.

7 PRESIDING JUDGE FULFORD: Thank you. Thank you for preparing
8 them, and could they please be distributed by our usher.

9 MS. SAMSON:

10 Q. Sir, if I could ask you to turn to the first tab and the second
11 tab, but initially the first tab of the document. You can see a document
12 entitled "UPC Programme." Have you seen this -- have you seen this
13 document before?

14 A. Yes, I had seen it.

15 Q. And when did you see it?

16 A. Well, I received this document from (Redacted), who
17 was a member of the -- involved in the mobilisation of UPC, and if I'm
18 not mistaken, that was in 2004 that I first saw the document.

19 PRESIDING JUDGE FULFORD: (Microphone not activated)

20 MS. SAMSON: No, there's no reason.

21 PRESIDING JUDGE FULFORD: (Microphone not activated). I failed
22 to press the red button. Let me summarise what I've just said. This
23 document needs to be given an EVD number. It needs to be put up on the
24 screen so the public can see it, and can we please in future ensure that
25 when a document is first introduced before questions are asked about it

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 16

1 if it's appropriate to make it public that that happen straight away. So
2 could you identify the document, please, numerically so the Court Officer
3 can find it on the system.

4 MS. SAMSON: Yes, your Honour. The document entitled "Union des
5 Patriotes Congolais, UPC programme," can be found at DRC-OTP-0106-0169.

6 COURT OFFICER: This document already bears an evidence number
7 which is EVD-OTP-00027.

8 PRESIDING JUDGE FULFORD: Good. Please proceed, Ms. Samson.

9 MS. SAMSON: Thank you.

10 Q. And, sir, as far as you came to know, what was the purpose of
11 this document?

12 A. The purpose was the programme that UPC wished to have as a party,
13 as a political party, as a movement, so it -- one always presents the
14 statutes and then the bylaws, and I think this is the programme that it
15 set for itself.

16 Q. And if I could ask you to turn to the very last page of the
17 document, page 9.

18 MS. SAMSON: And for the Court, the ERN of that number is -- of
19 that page is DRC-OTP-0106-0177.

20 If I could ask for the document to -- to scroll down a bit
21 further on the document. Thank you.

22 Q. And so, sir, here does the date 15 September 2000 accord with
23 your recollection or knowledge of when the UPC was first created as you
24 mentioned?

25 A. Yes. That's what I said in the beginning. UPC had a past. The

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 17

1 past of UPC traces back to a mutiny. Young people, the young Hema
2 people, were part of it and they rebelled against the oppression of --
3 well, they accused Professor Wamba dia Wamba that he did not assist them
4 when there were conflicts with the Lendus. Initially, they were
5 supported by the Ugandan army which facilitated the UPC ... no, the young Hema
6 youths so as to protect them from the Lendus. But when Professor Wamba
7 arrived in Ituri, he banned the intervention of the Ugandans. So these young
8 people had rebelled and set themselves up to create what they called a truly
9 mobile force, and after they went for military training given in Uganda, that
10 is how -- Mr. Thomas had become their spokesman. I believe that that
11 happened in September 2000. That's when they came back from their
12 training because they went over for training in July. So when they came
13 back Thomas had become the spokesman, and I think they set that date as
14 the date the UPC was established.
15 But at that time I remember, I was there, that UPC was not operating as a
16 special party because they were still members of the RCD-Goma and the RCD-
17 K/ML of Mbusa Nyamwisi, and they began to be a separate party when they took
18 control over the city of Bunia. And if my memory is right, I think
19 on the 3rd of September they had meetings and Thomas Lubanga was chosen
20 as president of the UPC at that particular point in time; 3rd of
21 September, 2002.

22 Q. Thank you, sir. I will be going over parts of that history with
23 you in more detail shortly, but turning back to this initial document
24 at tab 1 that you have before you, here we have Mr. Thomas Lubanga
25 signing as president in September 2000. Does that accord with what you

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 18

1 know of it, or is it more what you've described now, which is that
2 Mr. Lubanga was named in 2000 but subsequently became the operating
3 president a bit later? Could you clarify that, please?
4 A. I believe that Lubanga was not the only one. Indeed, all --
5 practically the entire political/ military party that had emerged in
6 Ituri tended to delay the date of inception. Why was that? Because at
7 the time, what was being prepared was the conference in South Africa for
8 the inter-Congolese dialogue, and lots of the groups -- well, the plan
9 was to annex them so that they could go there. So it was a habit for the
10 entire party to even set out a programme that people hadn't read and they
11 would pre-date things or backdate things. All that wasn't checked. And
12 personally, I remember that the statutes of my party, PUSIC, well, I did
13 it myself. I brought them there, and they signed. Nobody read them
14 to approve or not approve them. Everyone simply signed them. And the same
15 applied to all armed groups. Well, these groups hadn't existed as political
16 parties at that particular time since Lubanga later on in 2001 was appointed
17 vice-minister in the organisation of Bemba's FLC. He was vice-minister in
18 that organisation and he was presented there not as a partner of Bemba who
19 had two partners: Mbusa Nyamwisi, who had some troops, and also Tibasima, who
20 represented troops that Thomas was going to inherit later on. At that
21 particular point he was only vice-minister. He wasn't president of a party at
22 that time. He was a member of a party. And we cannot say that the party
23 actually existed and developed all on its own.
24 No, that is not the case.
25 Q. In fact, sir, if I recall that you said a few moments ago, you

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 19

1 indicated that the UPC was first a military party and then later a
2 political party. Could you explain that further?

3 A. Yes. Those who started the UPC were military men. They were
4 military people, and they began with a rebellion. They needed to
5 organise themselves so as to defend themselves. And I remember speaking
6 with those who did this, who began this, General Tchaligonza, and
7 Kasangaki, and Chief Kahwa Panga Mandro, and Bosco Ntaganda who were a
8 part. Floribert Kisembo. All these people were among those who first
9 began to fight against the Ugandan troops, and Chief Kahwa went to see
10 the president, Museveni, to ask whether there was any possibility of
11 providing military training to the young Hemas. That is why the Hemas
12 went for military training in Uganda, in Kyakwanzi, and I
13 personally was able to visit them in Rwabisengo when
14 they were being trained militarily over there.

15 And at that particular time, when they came back from training,
16 military training, that is when Thomas Lubanga had become their
17 spokesperson for these youths who had been involved in the mutiny. They
18 became organised amongst themselves and later on, later on when Thomas
19 Lubanga was allowed to leave Kinshasa, when he came back, the Hemas took
20 control of Bunia, well, they became organised and that, if I remember, was on
21 the 3rd of September, 2002, and they appointed people for various positions.
22 In particular, Thomas Lubanga was appointed president of the party, but prior
23 to that, as I already said, it didn't function as a political party.

24 Q. Thank you, sir. As you described the
25 military origins of the

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 20

1 UPC, could you tell us when the -- the beginning of the UPC military
2 structure as you describe it took place, what year?
3 A. This structure began in the year 2000. Since -- if my memory is
4 right, it was in the month of June that the young Hemas left to go and
5 get training in Uganda. It was in the month of June, and they returned
6 in August and September. That's when they came back from training.
7 Apart from those who were supposed to become commanders, and they
8 remained in training for six months approximately, and they did this in
9 Jinja in Uganda. But those who had come back before, well, they were
10 still -- are military people and took part with the APC soldiers to topple
11 Mr. Wamba Dia Wamba in November 2002, and those youths who at that time were
12 of course under the guidance of Tibasima, together with the Nande military
13 men who supported Mbusa Nyamwisi, they got rid of Wamba in the month of
14 November 2002 -- or, rather, 2000. He fled and at that point in time the
15 RCD/K-ML was simply an organisation under the direction of Tibasima who was
16 like the leader of all the Hema militia members and later became members of
17 the UPC; and Tibasima was taking care of them. But Uganda took this UPC group
18 - pardon me, the RCD-K/ML group, and joined it with another group, the Bemba
19 group, the MLC group, and that became the front du liberation du Congo, and
20 together they were starting in the beginning of 2001, and Thomas was part of
21 this new organisation that was just created. That lasted one year, and when he
22 returned, Mbusa Nyamwisi appointed him minister for defence, but at that time
23 he was not yet -- well, the UPC wasn't working on its own. It began working
24 on its own as a party in Ituri when the RCD-K/ML had already left Ituri, but
25 the military group had begun with the military people themselves, those who

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 21

1 were combatants and those who had gone into training in Uganda.

2 Q. Thank you for that, sir. I'd like to go through some of that
3 information a bit more slowly. So going back to the 2000 period, you've
4 indicated that some commanders went for training in Jinja. Were these
5 commanders part of the military group that you described earlier which was
6 led by Bosco Ntaganda, floribert Kisembo, et cetera?

7 A. Yes. Among the young Hemas, there were those who were already in
8 the army before the conflict occurred between the Lendu and the Hema.
9 Kisembo Floribert, for instance, he was an army person. Bagonza was an
10 army person. Tchaligonza was a member of the army, and
11 all these people were joined by Bosco Ntaganda, and Bosco Ntaganda was an
12 army man, but he was a Tutsi who had come with Professor Wamba from
13 Kisangani and they arrived in Bunia at that time.

14 Kisembo Floribert began to help and to work with Bosco Ntaganda, and Bosco
15 at that time had killed two people at Bunia. Because Wamba wanted to arrest
16 him he fled, he went into the bush and joined up with Chui Mobile Force, which
17 was the name it had at that time. That group was being pursued by the
18 Ugandan army, the UPDF, and it is at that time that Chief Kahwa and other
19 traditional chiefs asked for help from the Ugandans and asked them whether
20 they could enrol their children in military training. But the commanders that
21 I mentioned stayed, after having trained the

22 young people who were there, getting training in Kyakwanzi and others in
23 Rwabisengo, but some remained who were to become Hema commanders later on.
24 They indeed became commanders of the UPC Army later on. Apart from those I
25 already mentioned, others joined after their training in Jinja in Uganda.

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 22

1 Q. How many people approximately, to your knowledge, undertook this
2 training in Uganda?

3 A. Chief Kahwa talked to me about 750.

4 Q. And did the 750 soldiers belong to any
5 particular ethnic group?

6 A. Yes. They were all Hemas. You have to understand that this was
7 an ethnic conflict, and to save themselves everyone had to become soldiers
8 and get military training. The Hema at the beginning were supported by
9 the Ugandan army until Lotsove became governor of the province. She
10 was a Hema and I remember that she organised a meeting to try to bring
11 together the Hemas and the Lendu, but that didn't really last. So a little
12 bit later, when Wamba arrived, he started refusing the help of Uganda to the
13 Hema. The Lendus then started using bladed weapons, I mean axes, machetes,
14 arrows, and that's how the Hema found themselves looking for some form of
15 military training, because that was the way to save themselves. There were
16 only Hema; but later, the Lendu were also trained, but this time with Mbusa
17 Nyamwisi. The RCD-K/ML was the one who gave them that training. That's their
18 version. And it means that by that time there were two armed groups in
19 Ituri. But those who went off to Uganda were only Hemas.

20 Q. And how was it that these 750 soldiers who were being trained in Uganda
21 were chosen? How did they become part of the group that went to Uganda?

22 A. We asked all the parents to make a contribution, and parents would give
23 up their children to go to that training. I remember once there was a South
24 Hema chief who was having a discussion with us at a meeting with Chief Kahwa,
25 and he needed people in order to secure his community in Boga, and

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 23

1 Chief Kahwa told him, "I told you to send your young people for training,
.2 you didn't want to, you wanted to keep your people, but we sent people and
.3 now we are protected." Each traditional chief and the parents would give
.4 their children so that they could
5 go for training.

6 . What was the age-range of the soldiers who went to train,
.7 to your knowledge?

8 A. Well, the age I wouldn't know, but I remember that one time we
9 went to get the children who were in Kyakwanzi because I think the human
10 rights organisation had attacked Uganda, and we were supposed to bring
11 them back home, and a lot of them were really small young children, and
12 Uganda had been ordered to send them back, and I remember accompanying
13 those children back. We couldn't tell exactly how old they were, but
14 some were minors and some were adults. At any age
15 they were allowed to join the army.

16 Q. And, sir, you mentioned that once these soldiers returned in or
17 about September 2000 that Thomas Lubanga had a role in relation to these
18 soldiers. Could you please explain what that role was?

19 A. When the soldiers came home from Uganda, Thomas hadn't got a political
20 position yet. He'd come as a -- as only a spokesperson for the children, but
21 he wasn't actively involved since at that time, the person who was in
22 charge of those children was Tibasima Jean, Jean Tibasima. It
23 wasn't Thomas Lubanga who was in charge.

24 Q. And do you know what Thomas Lubanga did as the spokesperson for
25 these soldiers?

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 24

1 A. No, I'm not sure what he did as such.

2 Q. Sir, do you know what Thomas Lubanga did before becoming the
3 spokesperson?

4 A. In his professional activities, I -- I wasn't in Ituri at the
5 time, but Chief Kahwa and General Tchaligonza told me about this. He was
6 in -- he was a tradesman in Bunia, and he sold -- he was actually on the
7 market delivering and selling beans on the Bunia market, but I hadn't seen
8 him at that time. I've been told this by his colleagues.

9 Q. Sir, do you have any knowledge as to how Mr. Lubanga came -- went
10 from trading beans at the Bunia market to becoming the spokesperson and
11 later having a political career?

12 A. Chief Kahwa told me that among the entire group he was the one who'd
13 studied. He'd been a student of psychology at the university and could
14 express himself well, he thought things through. The others weren't so
15 educated, and they needed someone who could speak on their behalf. Since all
16 the young Hemas needed to flee during this period, and after the military
17 training, they chose Thomas as their spokesperson because he was much more
18 intellectual than the others. That's what they themselves told me; Chief
19 Kahwa and General Tchaligonza as well talked to me about this.

20 PRESIDING JUDGE FULFORD: Ms. Samson, there's been a number of
21 references, I think, to Thomas alone, without an accompanying name. I
22 think that calls for some clarification.

23 MS. SAMSON: Yes. Thank you, Your Honour. That is correct.

24 Q. Sir, if I may, in your evidence so far today, when you have
25 referred to Thomas, could you please indicate the full name of the

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 25

1 individual you were referring to?

2 A. Thank you.

3 Q. Sir, I'll ask it again in case I wasn't clear. In your testimony
4 so far this morning, when you have referred to a person named Thomas,
5 could you please tell the Court what the last name of that individual is?

6 A. Thomas is Thomas Lubanga.

7 Q. Thank you, sir, for that clarification. And, sir, one last
8 question on this area. To your knowledge, was it difficult for people to
9 accept Mr. Lubanga as someone on the political scene given that he didn't
10 have previous political experience?

11 A. The political role in a political and military organisation is something
12 with which none of us had had experience. When we were young we had not had
13 any experience with politics. I think that political experience is something
14 you acquire as you go along while you're doing things. We had no reason to
15 refuse Thomas Lubanga, because we were within an ethnical organisation, and
16 ethnicity came first. We needed someone who could speak for the ethnic
17 group, and it wasn't a problem of a particular political organisation with
18 other ethnic groups, other people, within which you need to defend
19 an ideology. That was not the case. This was an ethnical organisation, and as
20 an ethnical organisation, soldiers at the time were valued more because they
21 were able to defend the population. And a person who could take on that role
22 automatically become the president, the leader, as we were organizing
23 matters, even without having any particular political experience.

24 Q. Thank you. And just to be clear, what ethnic group was

25 Mr. Lubanga speaking on behalf of?

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 26

1 A. He was speaking in the name of the Hema.

2 Q. And following being a spokesperson, you had indicated that Mr. Lubanga
3 held a political position within one of the groups in Ituri.

4 Could you please tell us which group and what position Mr. Lubanga held?

5 A. After Professor Wamba was expelled from Ituri in November 2000, in
6 January, as I said, we organised the Front for the Liberation of Congo, the
7 FLC, which was led by Jean-Pierre Bemba. That group had its headquarters in
8 Gbadolite, and in its organisation Thomas Lubanga was appointed vice-
9 minister. I think it was for social affairs. So he was appointed vice-
10 minister in this organisation, the FLC. But when the FLC was then broken up,
11 they went back home and Jean-Pierre Bemba went back to Gbadolite with his men
12 and the Hema soldiers who had also left for Gbadolite came back. Then Thomas
13 Lubanga was appointed Minister of Defence by Mbusa Nyamwisi in the RCD-K/ML.

14 Q. Thank you. And, sir, during this period of time, the 2000 period
15 we discussed, July, August, September, following -- to your knowledge
16 what was the relationship between Mr. Lubanga and the military personnel
17 that you had described earlier such as Mr. Kisémbu, Mr. Bosco Ntaganda,
18 and Mr. Kahwa?

19 A. When they came back -- well, during their military training phase -
20 well, after that they came back, but the commander didn't come back
21 directly. The soldiers who came back before in September, well, those were
22 organised by Tibasima, John Tibasima, and this man was vice-president of the
23 RCD-K/ML. All these soldiers, as I said, a little after Wamba's departure,
24 all these Hema soldiers were sent to Gbadolite. They didn't work in Ituri at
25 that time, they all left, except for ... even the commanders coming back from

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 27

1 Jinja in January also left for Gbadolite. Only Tchaligonza remained back in
2 Ituri but the others and the soldiers had left. They only came back when
3 there was a split in the FLC. So Thomas didn't have time to look after those
4 soldiers who they were not there. They had left, and he was working with the
5 president of the MLC party at that time, Jean-Pierre Bemba.

6 Q. And did these soldiers who had left Bunia ever return to Bunia?

7 A. Yes, because when things didn't work out as they hoped, the --
8 Bemba's soldiers went back to Gbadolite, and those soldiers who had
9 gone to Gbadolite, amongst which the Hema's, came back too. They came
10 back and at that time they found that Thomas Lubanga had already been
11 appointed Minister of Defence. They even had to come back on foot to Bunia.

12 Q. Sir, could you help us with when that was? What was
13 the date of their return or the year?

14 A. I think they split -- they had the split. FLC split in November 2001, or
15 the end of December, and the -- and Jean-Pierre Bemba's soldiers came back in
16 December and January. At that time, Bemba had put a governor in place, a
17 governor and a general And immediately, when they were asked to move together
18 with the soldiers, and another person was appointed by John Tibasima,
19 Professor Ruhigwa. And the military still hadn't come back. They started to
20 come back around the month of February and March 2002. That's when they
21 started to arrive back to Bunia, if I remember correctly. And by February or
22 March 2002, the soliders had already returned. And when they returned, they
23 found that Thomas Lubanga was already Minister of Defence,
24 appointed by Mbusa Nyamwisi.

25 Q. And what did these soldiers do when they returned? Where did they go?

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 28

1 A. When they returned, in principle the military were supposed to join the
2 ranks of the APC, i.e., the group of Mbusa Nyamwisi, but Mbusa Nyamwisi had
3 refused to have them join the rank and file of his army. General Tchaligonza
4 had explained all of this to me since he in person went to stay with Thomas
5 Lubanga. So these soldiers stayed in Bunia since they were from the
6 population of Bunia. They were staying at home They had no
7 military camp. They would stay at home. And it's at that time that they
8 started preparing a rebellion, a mutiny, a rebellion against the
9 RCD-K/ML, who would not incorporate them in their ranks.

10 Q. And to your knowledge at that time, what was the relationship
11 like between Mbusa Nyamwisi and Mr. Lubanga, both within the RCD-K/ML?

12 A. First of all, there was some tension between Tibasima, who
13 represented the Hema, and Mbusa Nyamwisi who had troops which were in
14 majority Nande. So there was some tension between those two.
15 Kiseembo Bitamara, who had later become president of PUSIC and worked as
16 private secretary for Tibasima before that, had told me that Mbusa
17 Nyamwisi wanted to separate Tibasima from Thomas Lubanga because he
18 didn't want Tibasima to have control over the Hema soldiers since he had a
19 political responsibility and they were going to be opposed to one another.
20 So that's why he created a division between the two, and he named Thomas
21 Lubanga Minister of Defence so that he would control these soldiers
22 instead of them being controlled by Tibasima. And that's what happened.

23 Lubanga remained in control of these soldiers, and he organised
24 the army, but things didn't work out, because Lubanga had suggested
25 appointing Bosco Ntaganda as Chief of Defence Staff, but Mbusa

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 29

1 had refused that. Thomas Lubanga had appointed some commanders of Mbusa
2 Nyamwisi inside Ituri, to positions inside Ituri. Not in Bunia but
3 elsewhere inland, but they refused to leave. And it's at that time
4 when these commanders refused to go where they were appointed to and did
5 not accept the orders that were given to them by Thomas, that is when the
6 Hema soldiers who had joined Thomas Lubanga rebelled against
7 Mbusa's soldiers.

8 In April of 2002, Kiza, Claude Kiza, was assassinated. Claude
9 Kiza was Mbusa's chief personal bodyguard, and he was assassinated in
10 Bunia. And that's when the rebellion started between the Nande soldiers
11 and the Hema soldiers. It's at that time that things started. So the
12 relations between Mbusa and Thomas Lubanga were strained during that
13 period of time.

14 Q. And what happened following the death of Claude Kiza? Well,
15 first of all, who was Claude Kiza?

16 A. Claude Kiza was -- I don't know how to explain, but he was like
17 the chief of Mbusa's personal guards. But at the time, he was the
18 bodyguard of the governor put
19 in place by Mbusa. His name
20 was Molondo, and had replaced Professor Ruhigwa. So Claude Kiza was
21 like the person in charge of the bodyguards of Mbusa Nyamwisi.

22 Q. And do you have any information as to why Mr. Kiza was
23 assassinated or by whom?

24 A. I don't know whether this can be done in closed session.

25 PRESIDING JUDGE FULFORD: It certainly can. Private session,

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 30

1 please.
2 (French on English channel)
3 *(Private session at 10.58 a.m.) Reclassified as Open session
4 COURT OFFICER: Private session.
5 PRESIDING JUDGE FULFORD: Yes, sir, if you could give your
6 answer, then, to Ms. Samson's question.
7 THE WITNESS (interpretation): Yes. When I spoke to (Redacted), he
8 had told me that (Redacted) to assassinate Kiza.
9 He was on duty. (Redacted). He
10 was there with other Hema soldiers. But
11 when Claude Kiza's car passed by, the soldiers (Redacted)
12 (Redacted). They had the feeling this was provocation, because there
13 was already some tension between the Hema soldiers and the Nandesoldiers And
14 Kiza, as a Nande, drove by, right next to Thomas Lubanga's office. So the
15 soldiers (Redacted)
16 (Redacted) and that's how he was shot, and he died.
17 (Redacted).
18 MS. SAMSON:
19 Q. Thank you for that, sir.
20 PRESIDING JUDGE FULFORD: Pick a moment.
21 MS. SAMSON: Yes, your Honour. I have no follow-up questions
22 that would require closed session on this matter, so if it's an
23 appropriate moment.
24 PRESIDING JUDGE FULFORD: Good. Thank you very much. Can we
25 then, please, go into closed session so that the witness can withdraw,

1 and we'll a half-an-hour break.

2 *(Closed session at 11.01 a.m.) Reclassified as Open session

3 COURT OFFICER: Closed session.

4 (The witness stands down)

5 PRESIDING JUDGE FULFORD: That's fine. Thank you very much.

6 Ms. Samson, for the most understandable reasons, witnesses give
7 evidence in different ways, some of the answers provided by this witness
8 have been quite long. I'm always very reluctant to interrupt because
9 experience has demonstrated certainly to me that, generally speaking,
10 witnesses are best left to give evidence in the way that they feel most
11 comfortable with. There can be problems, though, and over the break if
12 you've got a few minutes could I ask you just as an example to look at
13 pages 20 and 21 of the witness's evidence, which, because I'm making my
14 own note as we go along, I have found parts of it really almost
15 impossible to make sense of.

16 Now, you have been, quite correctly, going back over parts and
17 saying to the witness, "Well, now I'd like to break that down," but that
18 has then tended to produce another long answer, and so the process of
19 clarification is only partial.

20 Now, for some of this background material it probably doesn't
21 matter hugely, but as counsel conducting the examination, can I urge you
22 to make sure that those areas that are important are clarified before
23 this process is complete, because otherwise when we come to look at this
24 later, there is going to be a very real problem at interpreting what it
25 was the witness was really trying to say, and that can leave -- lead, as

1 you'll note, and manifold problems. So I'm not being critical. I'm
2 making an observation. But if we don't deal with the main issues now,
3 we're storing up difficulties for later.

4 MS. SAMSON: Thank you very much, your Honour. I'll be very
5 mindful of that going forward.

6 PRESIDING JUDGE FULFORD: Thank you very much. But can I make it
7 clear I'm not inviting you to constantly be, as it were, interrupting the
8 witness or punctuating his evidence with further questions. I think it
9 is a matter of looking at what he's said, and then on the main issues
10 taking him back, perhaps at that stage getting him to be a bit more
11 succinct and clarify.

12 Good. We'll sit again at 25 to 12.00. Thank you very much.

13 COURT USHER: All rise.

14 Recess taken at 11.04 a.m.

15 On resuming at 11.37 a.m.

16 COURT USHER: All rise. Please be seated.

17 PRESIDING JUDGE FULFORD: Witness, please.

18 (The witness takes the stand)

19 PRESIDING JUDGE FULFORD: Thank you very much, sir.

20 Are we still in private session, Ms. Samson?

21 MS. SAMSON: No, your Honour, public session, please.

22 PRESIDING JUDGE FULFORD: Public session. Public session, then,
23 please.

24 (Open session at 11.39 a.m.)

25 COURT OFFICER: Open session.

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 33

1 PRESIDING JUDGE FULFORD: Yes, Ms. Samson.

2 MS. SAMSON: Thank you, Your Honour.

3 Q. Sir, before we continue moving forward in your evidence, I would
4 like to go back to one area of your testimony this morning just for some
5 additional clarification on the chronology and on several details that
6 you gave. You have given us a lot of very helpful information, and I
7 would like to break it down a little bit more so that we all understand
8 it well. And the portion of your testimony I'd like to go over is again
9 the period of the mutiny of the -- within the APC of these Hema soldiers,
10 and taking you at the beginning, you had indicated this morning that this
11 mutiny took place in or around June or July 2000. Is that -- is that
12 correct, that you told us this morning?

13 A. The mutiny started slightly before. It started in June and July,
14 and that's when they went on training. They had rebelled, and right
15 after Professor Wamba arrived in Bunia, in Ituri, they rebelled because he
16 couldn't help them. And I remember they had started entering into conflict
17 with the Ugandan army, and they ended up going off for military training in
18 June or July in Uganda. But before then they would just do their own training
19 alone in the bush.

20 Q. And you had mentioned that the training took place in Uganda, and
21 you mentioned Jinja. Did training take place anywhere else in Uganda, to
22 your knowledge?

23 A. The training did not take place in Jinja but in Kyakwanzi. After
24 that training, only the officers, the military
25 officers, went to undergo training in Jinja. And that training

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 34

1 took six months, whereas the training in Kyakwanzi took two to three months.

2 Q. And when the soldiers who were trained in Kyakwanzi came

3 back after approximately two months, where did they go?

4 A. Those soldiers were the ones who returned to Bunia, and they joined
5 the RCD-K/ML group of soldiers, but this time under the direction of
6 Tibasima. It was Tibasima who politically supported them in Uganda, and
7 since he was the vice-president of the RCD-K/ML, all of those people were
8 placed there. But by the time they had arrived, the conflict had started
9 between Professor Wamba Dia Wamba and his two deputies. There was his
10 Hema deputy, Tibasima, and his Nande deputy, Mbusa Nyamwisi. And since he
11 was in conflict with both of them, the two used their
12 respective militiamen, put them together and fought
13 against Professor Wamba. And that is why he decided
14 to flee and leave Bunia in November 2000.

15 Immediately these soldiers stayed with the
16 RCD-K/ML soldiers. The others were not really soldiers because they were
17 staying with their families. It was difficult to understand which people
18 were soldiers in Ituri and who weren't, because the others, nearly the people
19 at home, even parents had undergone military training, and at any time they
20 could have arms in their homes. There was no military camp they could stay
21 at. They could go out and fight. But those who had agreed to be
22 soldiers were part of the RCD-K/ML.

23 Q. Thank you. And just one clarification. You indicated that when
24 the first group of soldiers came back after their two months of training
25 they joined the RCD, and at the time what was the name of the armed

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 35

1 branch of the RCD?

2 A. The armed branch was called APC.

3 Q. Thank you. And when you were describing the conflict that later

4 arose within the RCD between Mr. Wamba Dia Wamba, Mr. Tibasima, and

5 Mr. Mbusa Nyamwisi, which one of those three men ultimately left the group?

6 A. To try and be more or less clear, the conflict between these people had

7 arisen on the point of the management of the province. The two people ...

8 Tibasima, who at the time had created an organisation, had created some kind

9 of company which allowed them to import products to Ituri without paying

10 customs duties. On the other hand, Mbusa had also created some other company

11 to allow -- to import products without paying the Nande customs, and Tibasima

12 and Professor Wamba did not agree to that. They were opposed to that. The

13 two also did not agree with the professor because he was opposed to

14 something that they had already started, because he had come to join them

15 there. They had started the conflict and they no longer wanted Professor

16 Wamba to be there with them. So when the two groups were merged, the Hema

17 soldiers who had come from training, and the Nande soldiers who were already

18 soldiers but who had come with Mbusa Nyamwisi, when they joined forces they

19 attacked Professor Wamba. Professor Wamba was almost taken hostage. For two

20 days he could not leave. His bodyguards were fighting around his house until

21 Uganda sent a plane for him, obliging Professor Wamba to leave. And so, in

22 November on the 4th, I think, he was escorted in a tank with all of his

23 people, all of those who were loyal to him, and they went. And the governor

24 he had put in place at the time, Uringi-Pa-Dolo, they all went to Uganda.

25 They stayed or they actually were quartered in a hotel called

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 36

1 the Silver Spring in Uganda; that's where they stayed. And at that point,
2 Tibasima and Mbusa stayed to manage their respective businesses. But they
3 did not stay long, because Uganda changed its position and asked all of those
4 people, including Jean-Pierre Bemba, to merge their troops and to form just
5 one group, and that is why these soldiers all found themselves together.

6 Q. Thank you. And so approximately November 2000 Professor Wamba
7 leaves the RCD and Mr. Mbusa Nyamwisi and Mr. Tibasima, do they then take
8 charge of the RCD?

9 A. Yes. The K/ML, because you had RCD-Goma, and you had RCD-K/ML. It RCD-
10 K/ML was the one that Professor Wamba created. "K" stood for Kisangani.

11 Q. And the name of the RCD under the leadership of Mr. Tibasima and
12 Mr. Mbusa Nyamwisi was what?

13 A. It was RCD, Liberation Movement.

14 Q. And, sir, is it correct from what you've just told us that the
15 APC military after the departure of Mr. Wamba Dia Wamba was largely
16 comprised of Hema military and Nande military? Is that what you just
17 told us?

18 A. Yes.

19 Q. And to your knowledge at what date was this next movement
20 created, the one that you had mentioned with the Bemba group known as the
21 MLC?

22 A. The MLC, I don't really know exactly ... exactly when it was created.

23 Q. Sorry sir, I think my question was
24 unclear. You had indicated in your evidence thus far that the RCD-ML led
25 by Mr. Tibasima and Mr. Mbusa joined with another group, which was the

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 37

1 Bemba group known as the MLC. I was wondering if you could help us as to
2 when those two groups joined and whether or not they had a new name.

3 A. Yes. The MLC was in existence as an independent group, but it
4 depended on the Ugandan government. The RCD-K/ML was also an independent
5 group that also depended on Uganda. They formed a common front; they merged
6 their two groups. Even though they hadn't really dissolved their respective
7 groups, they created the Front de liberation du Congo, the FLC. And that's
8 when they came together within the FLC. The FLC had ... the RCD-K/ML also
9 had the MLC with Jean-Pierre Bemba at its head, and that was in January 2001,
10 January 2001.

11 Q. And, sir, at this point what was happening with the Hema military
12 who had been trained in Uganda in 2000?

13 A. As I said, this military group -- when they merged both groups,
14 they also merged their administrative entities. President Bemba,
15 Jean-Pierre Bemba, was like the head of the FLC, and he had appointed a
16 new governor in Bunia. But he also had taken other people who were in Bunia
17 and taken them to Gbadolite which was his headquarters. He also took some
18 soldiers from the MLC who came from Beni Butembo, the stronghold of the
19 Nande. He took them to Gbadolite including the Hema soldiers who had just
20 been trained in Uganda. They joined the others and together they all went to
21 Uganda -- no, sorry, to Gbadolite. And these soldiers, and more specifically
22 the Hema, came back late because they were under the command of Floribert
23 Kisembo. They went to the Central African Republic. They came back late, and
24 that is why they reached Bunia late, as events were already unfolding, and
25 already there was some kind of separation between them.

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 38

1 Q. And you mentioned, sir, that Mr. Lubanga had a role in this new
2 organisation. Could you please describe what his role was, to your
3 knowledge?

4 A. In which organisation?

5 Q. In your earlier testimony this morning you had discussed the FLC,
6 and you had indicated that it was started at the beginning of 2001 and
7 that Mr. Lubanga was part of this new organisation.

8 A. Yes. He was vice-minister. I cannot really recall which
9 ministry. I think it was social affairs, something like that.

10 Q. And to your knowledge, sir, did Mr. Lubanga have a role in
11 sending any of the troops with Mr. Bemba to Gbadolite in Central African
12 Republic?

13 A. No. I know nothing about that, and I don't think it was even under
14 his jurisdiction or responsibility.

15 PRESIDING JUDGE FULFORD: In fact, the answer -- but could I
16 understand the nature of the objection, Mr. Bijou-Duval, for the future?
17 I think, in fact, no harm was done, Mr. Bijou-Duval, but you were on your
18 feet, and could you just in a sentence explain what it was you were going
19 to raise?

20 MR. BIJU-DUVAL (interpretation): Yes. The question that was
21 asked was a leading question and an inappropriate one, and the answer,
22 therefore, erased the prejudice, the potential prejudice.

23 PRESIDING JUDGE FULFORD: Arguably it had a tendency, Ms. Samson.

24 MS. SAMSON: Thank you, Your Honour.

25 PRESIDING JUDGE FULFORD: In fact the transcript at line 10

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 39

1 should read "it had a tendency," not "you." I was referring to the
2 question, not -- not Ms. Samson. Please proceed, Ms. Samson.

3 MS. SAMSON: Thank you.

4 Q. And thank you, sir, for the clarifications on that chronology.
5 It's very helpful.

6 Sir, at the time that we broke this morning you were discussing
7 the death of a man called Claude Kiza, and I would like you to explain to
8 the Court what happened following the death of Claude Kiza in April 2002.
9 A. After the death of Claude Kiza, the Ugandan army intervened. The Ugandan
10 army was supposed to protect people from the fallout that was expected in the
11 city, i.e., the open conflict between the Nande soldiers and the Hema
12 soldiers. Tchaligonza who was the general who was with Mr. Thomas Lubanga
13 told me that a special tank had been sent to where they were to protect
14 them, and that's why in the end there was no fighting. Nothing
15 happened at that particular moment because of the
16 Ugandans' intervention.

17 But afterwards, the Ugandans convened both groups in Uganda, in
18 Kasese to discuss this issue, and it was in Kasese that the Ugandans asked --
19 they said, well, this is an incident. It's now history. You can forget
20 about it. And they asked both groups to co-exist. They asked that the Hemas
21 remain in Bunia and that the Nandes go back to Beni. That was
22 the consequence, the conclusion after the death of Kiza. And by
23 separating the two groups there was no longer a danger of conflict between
24 Hemas and Nandes within the military. However, not all of them had really
25 moved. After the decision by Uganda some just left Bunia, but

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 40

1 they stayed on the other side of Komanda. They were still present. However,
2 there was no immediate consequence and no open conflict between Hemas and
3 Lendus because of the death of Claude Kiza.

4 Only immediately after, in June, when the Ugandans convened
5 another meeting in Uganda, Mr. Lubanga was arrested by the Ugandans.
6 It was two months after the death of Kiza.

7 Q. Thank you, sir. And just one follow-up question on that in
8 relation to the Nande. You mention that they were from Beni. Is it
9 correct that that's not in Ituri?

10 A. Beni. They came from Beni and Butembo more specifically. It is
11 in North Kivu, not in Ituri.

12 Q. And to your knowledge, what was the reason for a conflict between
13 the Hema soldiers and the Nande soldiers?

14 A. I think that the conflict was not so much at the level of the troops but
15 rather at the level of the leaders. The conflict was at the level of John
16 Tibasima and Mbusa Nyamwisi. It was a problem with the management of the
17 territories that had been occupied. That was all. And this issue filtered
18 down to the troops that they were leading.

19 Q. Could you describe the continued relationship after the summer
20 2002 between Mr. Tibasima and Mr. Mbusa Nyamwisi within the RCD?

21 A. Both had no problems, apparently. They were still co-existing together,
22 since Uganda was still intervening, and Uganda was still insisting that they
23 both work together, even though they did not like one another. But they
24 had to work together, and that was imposed by Uganda.

25 The problem of this conflict had dragged on because of material

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 41

1 issues. On the one hand you had Hema traders, because in Ituri the major
2 traders were Hema, and on the other hand you had the Nande traders. At
3 the beginning, the Nande traders used to import all the products in Ituri.
4 All the basic goods came from Beni, from Butembo, and were brought
5 by Nande traders, and the Hema traders did not like that. They wanted to be
6 the main traders. And Tibasima had
7 facilitated this since he created a sort of organisation that they called,
8 if I'm not mistaken, Trinity, and this organisation allowed all the Hema
9 traders to pool their money and import things without paying customs duties.
10 On the other hand, the Nande traders also imported products
11 without paying customs duties and gave money to the party. So basically
12 each group wanted to have what the other group had, and that's what
13 created the tensions. But they could not really split up, because each one
14 of them had to pay some money to the leaders of the Ugandan soldiers. So they
15 all were protected by Uganda, both Tibasima and Mbusa Nyamwisi. So they could
16 not split up even though they had different interests and different opinions.

17 Q. And, sir, you had mentioned earlier this morning that by 3
18 September 2002 you had mentioned the UPC started functioning officially,
19 and I would like for you to please, if you can, explain to the Court how
20 it came about that the UPC started functioning officially.

21 A. From a political point of view, I would say -- I said that
22 Mr. Lubanga had been arrested by the Ugandan army in June 2002. He was
23 transferred to Kinshasa with nine other people.
24 So ten of them left. At that time, the Congolese
25 minister for human rights, Professor Ntumba

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 42

1 Luaba with the Ituri community in Kinshasa started organizing meetings
2 for a reconciliation of Ituri, and that's when they thought about going and
3 sharing their experience in Kinshasa, and Professor Ntumba Luaba went back to
4 Bunia with Mr. Thomas Lubanga. Unless I'm mistaken, I think it was on
5 the 25th of July that they came back from Kinshasa 2002.

6 Lubanga convinced Professor to go see the military
7 formation that was in Mandro. That was the group that was under the
8 leadership of Chief Kahwa Panga Mandro. Ntumba Luaba arrived there,
9 and Chief Kahwa took him as a hostage. And since the Ugandans ... this was
10 on the 26th of July. On the 27th, Uganda sent a
11 delegation to ask Chief Kahwa to release the professor, but Chief Kahwa
12 gave a condition. He said that the nine other people that had been
13 sent with Thomas Lubanga should be released. These people were released
14 on the 31st of July, 2002, and on the 1st of September, the professor was
15 released. He left for Kinshasa on the 1st of September. And it's at
16 that point in time that the UPC started organizing itself and organizing
17 itself around Mr. Thomas Lubanga.

18 Q. Sir, at the time that Mr. Lubanga returned to Bunia, which group
19 was in control of Bunia?

20 A. When Mr. Lubanga returned, there were the Ugandan soldiers there.
21 The Ugandan soldiers were there together with the APC soldiers, the
22 RCD-K/ML soldiers as well. They were there. And of course the
23 Hema soldiers were also there. They had come back from Gbadolite. So
24 they were there too. And it was during that period, in the month of
25 August, when Lubanga had already come back.

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 43

1 In the month of August -- no, he wasn't there yet. In the month
2 of August -- it was either the 6th or 7th of August that the groups of Hema
3 soldiers attacked the residence of Colonel
4 Molondo, who was the governor at the time, and they began to fight among
5 themselves, and they got support from the Ugandan army. Molondo
6 fled and left Bunia in the hands of the Hema soldiers and
7 the UPC, one might say. And that is why when Mr. Thomas Lubanga
8 returned, when he came back, he found that the city was already
9 in the hands of his fellow Hema.

10 Q. Sir, just one point of clarification. You had mentioned that on
11 the 6th or 7th of August was when the Hema military attacked the
12 residence of Molondo, and you indicated that at that time Mr. Lubanga was
13 not yet back in Bunia. Could you clarify for us the dates that you think
14 Mr. Lubanga returned to Bunia?

15 A. Yes. I was talking about before the 25th or 26th of June. It wasn't
16 July, actually. It was August, the 25th of August. Not the 25th of June. I
17 had made a mistake. The actual date was the 25th of August.

18 That is when he came back.

19 Q. Thank you. And where were you at this time? Excuse me. Excuse me, I can
20 clarify. Where were you at the time the Molondo residence was
21 attacked, which city?

22 A. I was at Bunia when they were attacked. I was in Bunia at that time.

23 Q. And, sir, did you know at the time or did you come to know how it
24 was that the Molondo residence was attacked, who organised the attack,
25 how it took place?

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 44

1 A. No, I didn't know that. I wasn't aware of that. First of all,
2 because I wasn't interested in the political activities at
3 that time. (Redacted). That was all I was doing when
4 the conflict began. But I learnt from the organisation later on what
5 happened, when I became a member of the same group with
6 General Tchaligonza who had directed the battle, and he was the one who
7 explained to me how he went about this, but at the time, I wasn't myself
8 involved in those activities.

9 Q. Sir, did you come to know how it was that the Hema militia
10 received weapons for the attack?

11 A. The weapons they received, well, Chief Kahwa was the one who explained
12 all that to me. When he became president -- president of my party, he
13 complained about the situation of the UPC. He complained, saying that UPC
14 was not grateful, in spite of the fact that he had helped them to get
15 weapons. He explained that he had gone to get weapons, negotiate for
16 weapons. The weapons that were given to the Hema in Kigali. And the weapons
17 arrived. They were always dropped by Antonov aircraft, particularly in
18 Mandro, Chief Kahwa's stronghold. That's how they got weapons. This
19 happened at the end of July. He himself said that he had left to go to
20 Rwanda. And that when he saw that Thomas Lubanga had been arrested he
21 immediately understood that the Ugandans wouldn't support him any longer. He
22 had betrayed them. So they had changed partners, and they were thinking that
23 they would go to Rwanda. Chief Kahwa went to Rwanda to negotiate for the
24 weapons. They let them have the weapons. The weapons did indeed come at the
25 end of July. That's what Chief Kahwa told me.

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 45

1 PRESIDING JUDGE FULFORD: Ms. Samson, the Court Officer has very
2 sensibly asked whether some of the last answer requires redactions.

3 MS. SAMSON: Yes, your Honour. There are redactions that we
4 would submit ought to be made to the names of the individuals who
5 provided information to the witness, as well as to the reference that one
6 of the individuals was a member of the same party.

7 PRESIDING JUDGE FULFORD: Can I ask the Court Officer whether
8 that gives sufficient guidance. Good. Yes. Then let that happen.
9 Thank you.

10 MS. SAMSON: Thank you very much, your Honour.

11 Q. And, sir, did you come to know which individuals were involved
12 militarily at the leadership level? You mentioned one individual. Any
13 others in respect of the group that attacked the Molondo residence?

14 A. No. He didn't explain that to me, and I didn't ask for details
15 about the people who were with him, but General Tchaligonza had told me
16 that he himself had led the battle, but I didn't
17 ask him who was with him.

18 Q. And, sir, what -- what did these individuals, you had mentioned
19 Chief Kahwa and Mr. Tchaligonza, what ultimately became of them after
20 September of 2002?

21 A. I'm not sure I understood your question.

22 Q. I think it wasn't very clear. Let me ask it again. I would like
23 to know, to your knowledge, the groups of Hema militiamen that attacked
24 Governor Molondo's residence. What did they do in September 2002? Where
25 did they go?

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 46

1 A. September 2002. Well, I think on the 3rd of September when
2 Mr. Thomas Lubanga had already come back, they set up their government,
3 and Chief Kahwa was appointed minister for defence of the UPC. Other
4 people received different positions and duties, Chief of Staff, deputy Chief
5 of Staff. At that time, Bosco Ntaganda had been appointed Chief of Staff of
6 the UPC, but Floribert Kisembo told me that the other one had rejected the
7 offer and preferred to be the deputy in charge of military operations, and
8 that is why he himself was appointed as Chief of Staff. Other people got a
9 lot of military responsibilities too. Of course, civilian responsibilities
10 were also allocated as ministers; for instance, I remember that Professor
11 Dhetchuvi was put in charge of foreign affairs. He was Minister
12 for Foreign Affairs, and that is how things went on. At that time, there
13 was also Mrs. Adele Lotsove. She was appointed as Minister for the
14 Economy and Finance, and at the time she was still in Kampala and she
15 came back to run things and take up her duties.

16 Now, all these people had shared out the management of the
17 territory or the territories that they had just occupied in Ituri at
18 the time.

19 Q. And to your knowledge, sir, what was the predominant ethnic
20 composition of the UPC?

21 A. When we talk about the UPC, automatically everybody recognises
22 that we're talking about the Hemas. Now, of course, on paper there have
23 been many names of people who had
24 responsibilities in various areas, but most of the people that led this
25 movement belonged to the Hema ethnic group.

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 47

1 I remember just two people who were not Hemas and who really did
2 get somewhere in the movement. John Tinanzabo, who worked as
3 Secretary-General for some time, and also
4 Professor Akobi, who once worked as deputy at the UPC. But the
5 military organisation played a far greater
6 role than the political organisation, and that is why it's difficult to
7 understand exactly how many ... who was predominant and who was not, because
8 practically all the members of the UPC were Hemas.

9 Q. Sir, I would like -- excuse me. I would like to take you to
10 another document. This is the document at tab 2 of your binder.

11 MS. SAMSON: And for the Court, the document is at
12 DRC-OTP-0014-0140.

13 COURT OFFICER: Sorry, could you repeat the number please.

14 MS. SAMSON: Certainly the number is DRC-OTP-0014-0140.

15 COURT OFFICER: This document already bears an evidence number
16 which is EVD-OTP-00093. Is the document public? Can it be broadcast
17 outside as well?

18 MS. SAMSON: Yes.

19 COURT OFFICER: Thank you.

20 MS. SAMSON:

21 Q. Sir, are you familiar with this document?

22 A. Yes. I've already seen it, indeed.

23 Q. And could you explain to the Court what the document is?

24 A. I believe these are the statutes for the UPC.

25 Q. And, sir, if I could ask you to turn to the second-to-last page,

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 48

1 which is page 11.

2 MS. SAMSON: And for the court officer, the ERN ends in 0150.

3 Q. And also turning on to the next page, page 12. I would like to
4 know if the names of the founding and co-founding members corresponds to
5 your knowledge of the members of the UPC.

6 A. As I already told you, I wasn't a member of the UPC, and I am not in
7 a position to tell you who was a member or not since there were a lot of
8 people involved. The entire community was eligible to become a member,
9 at least as far as I know. As a political party, we were asked when you
10 set up an organisation, you couldn't simply take people only from your own
11 province or people from your own ethnic group. That was not legal, and
12 that is why on many occasions I remember that the names of people were
13 recorded even if they actually were not active, but they were asked to join.
14 All the people I see here, well, I don't remember having met up with them
15 during the political discussions we had. I took part in all the meetings we
16 had and with the UPC, but I don't remember meeting all of these people. I do
17 remember some of them, Litsha Daniel, for instance. Adriko, I remember him
18 too, and other people. I don't know the others; I have never seen them. So
19 I couldn't say who was not a founding or co-founding member.

20 There were relatives, there were some traders. There were intellectual
21 leaders who contributed to the inception of
22 the UPC but really, I don't know them.

23 I know the ones I met up during political discussions. I
24 know those people. But I don't know the others.

25 Q. Thank you, sir, that's fine. In what context did you come to see

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 49

1 the UPC statutes?

2 A. There were two contexts. The first one is when I wanted to draft
3 our own statutes for our party. I looked at the UPC statutes. I
4 wanted to see how they had done it.

5 Q. Thank you. Excuse me, sir.

6 MS. SAMSON: It may be prudent to deal with this area in closed
7 session. I only have one or two questions.

8 PRESIDING JUDGE FULFORD: I wholly understand, Ms. Samson.
9 Private session, please.

10 *(Private session at 12.32 p.m.) Reclassified as Open session

11 COURT OFFICER: Private session.

12 PRESIDING JUDGE FULFORD: Yes, Ms. Samson.

13 MS. SAMSON: Thank you, Your Honour.

14 Q. I'm sorry, sir, for having cut you off, I just wanted to ensure that
15 you could give your answer in closed session, and I was asking you the
16 context in which you came to see the UPC statutes.

17 A. As I was saying at first, (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted). That was one of the reasons.

21 The second reason was that I had been given the statutes by
22 (Redacted), who himself was in conflict with the UPC. So

23 he brought me the statutes because he wanted to talk to me and show me
24 that everything that they had been given in the statutes was not being
25 applied, and that's when I got to see them.

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 50

1 Q. Thank you, sir. In terms of the discussion that you held on the
2 statutes and what was and what was not being applied in the UPC, could
3 you elaborate, please?

4 A. I'm not quite sure what details I could provide. Could you -- maybe if
5 you point to one item of the statute and ask me a question about it, I could
6 easily answer, rather than commenting on every part of the statute. So why
7 don't you pinpoint an article and ask
8 a question, and I'll tell you what I think.

9 Q. Yes. Sir, if I ask you to turn, please, to the second page of
10 the statute. Under Section 3, Article 5 sets out a number of UPC
11 objectives. Did you have any discussions in respect of this Article with
12 (Redacted)?

13 A. Yes, we did discuss those.

14 Q. Do you recall what you discussed? What subject you touched on?
15 A. Yes. Well, I asked (Redacted) himself to first give me some comments on the
16 statutes, and he gave his comment, upon my request, which I had asked him to
17 provide in writing. He wrote to explain to me what he thought about the UPC
18 and what they'd been doing all that time. We discussed item 2 a lot, "to
19 combat dictatorship, nepotism, kleptocracy, corruption, intolerance,
20 exclusion, et cetera," and I was very worried about intolerance. I myself
21 thought that the UPC wasn't very tolerant of others, and particularly not
22 tolerant of people who were not from Ituri, and they were giving
23 outsiders a hard time to live in -- in Bunia. I still remember two friends
24 who had fled the city. (Redacted), who had a hospital ... they went to
25 immunise the ... In fact, it was a programme of an

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 51

1 international organisation that was based in Bunia. I'm sorry if I can't
2 remember the name, but I'll find it. They had asked us to go and
3 vaccinate all the children against polio and other diseases. So they
4 went there and vaccinated both the Lendu children and the other children.
5 These two men, (Redacted), had trouble entering, they
6 fled the city because the Hema thought that these people had left to give
7 assistance to their enemies, and the two of them fled the city. They had
8 been informed by (Redacted) (phoen) who was in charge of (Redacted) for
9 the UPC, as well as (Redacted). He said to him, " Watch
10 out, tomorrow you will no longer be alive." So they ran away. (Redacted)
11 (Redacted). So this shows that there was no tolerance and
12 that they wouldn't tolerate outsiders. In practice, it was difficult.

13 PRESIDING JUDGE FULFORD: Do we still need to be in private
14 session, Ms. Samson?

15 MS. SAMSON: Your Honour, technically for that last answer, no,
16 but what I would like to do now is that the witness has indicated that in
17 his discussion with (Redacted) wrote down some of his thoughts
18 at the same time in a notebook belonging to the witness.

19 PRESIDING JUDGE FULFORD: Yes.

20 MS. SAMSON: And it may be wise for at least to establish the
21 foundation for that document in closed session, and then having it
22 displayed without a connection to the witness.

23 PRESIDING JUDGE FULFORD: Yes. Yes. Do that, but as soon as
24 possible if we could return to open session. Thank you.

25 MS. SAMSON: Thank you.

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 52

1 Q. Sir, following on what you have just told us, I would ask you,
2 please, to turn in your binder to tab 5, and there you will see a
3 document which, for the Court Officer, has an ERN of DRC-OTP-0106-0030.

4 COURT OFFICER: This document will bear the number EVD-OTP-00418.
5 And is it confidential, sorry?

6 MS. SAMSON: It is until I can establish what the document is,
7 but the page I would like to show at the moment we can return into open
8 session can be publicly broadcast.

9 COURT OFFICER: Okay.

10 MS. SAMSON:

11 Q. Sir, do you recognise this document?

12 A. Yes. It was written by (Redacted) wrote this document.

13 Q. Did (Redacted) write all of the document?

14 A. This one? No, not the whole document, but his handwriting is
15 apparent. Everywhere where it's his handwriting, he is the one who
16 drafted it; I think I can recognise his handwriting. He wrote all this part.
17 He commented on the UPC's situation. I don't know at which page.

18 Q. Which page are you looking at, sir?

19 A. I'm on page 0035.

20 Q. Yes. Thank you. And, sir, this looks like a notebook, but I
21 wonder if you know who owned the notebook.

22 A. The notebook, it was mine; I had given it to him. And he wrote what
23 he thought in my notebook. I think that I gave the original notebook
24 when I had my interview.

25 Q. Yes. Thank you. Now, I would indeed like to focus on page

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 53

1 DRC-OTP-0106-0035.

2 MS. SAMSON: And I believe, your Honour, if it's appropriate we
3 can go into open session for that.

4 PRESIDING JUDGE FULFORD: Open session, please.

5 (Open session at 12.44 p.m.)

6 COURT OFFICER: Open session. Just a little correction for the
7 record. The previous document shall bear the evidence number
8 EVD-OTP-00417.

9 MS. SAMSON:

10 Q. Sir, one question without indicating the author of the note.
11 Could you tell us when the note was created approximately?

12 A. I think it was in 2004 that the note was written. In those days Professor
13 Ruhigwa was there. He had just been appointed deputy administrator of the
14 Ituri area by the Ituri Pacification Commission. So that was the context in
15 which I met the gentleman who'd written the document and who wanted to meet
16 Professor Ruhigwa. Professor Ruhigwa had become a member of the movement
17 that I belonged to, and [the gentleman] wanted some help from the professor
18 to solve the problem of his brother. His brother was supposed to be the head
19 of the community or something like that in their village, and the UPC had
20 barred him from becoming the chief.

21 So in our conversations, he'd started to be critical of what was
22 going on in the movement, and he was in charge of propaganda. So I asked
23 him whether he could put all that in writing, and I
24 explained that it was because I was going to discuss his ideas with
25 Professor Ruhigwa and Chief Kahwa. So he wrote down a programme;

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 54

1 according to him, he thought not. He said, "I can also help you by giving you
2 an idea of how you can create your propaganda elsewhere. So this is the
3 context of this draft.

4 Q. Thank you, sir. And again without the detail as to who is the author of
5 these notes, did you discuss any of these seven points in particular?

6 A. Yes, because we'd already had a talk about all these points, and
7 I was asking for something more specific. He gave some details, and
8 despite the details that he gave, I also knew since I had had some political
9 discussion with friends. So we knew what was working out and what was not
10 working out. Actually, his first point was true. The UPC had in fact taken
11 the Hema community hostage, and if anyone had any minor problem with the UPC,
12 well, he had a problem with nearly the whole community directly. I remember,
13 for example, Floribert Kisembo, who was chief of staff, leaving the UPC.

14 When he left, he almost got burnt at the stake in the Bunia market. At any
15 rate, his car was set on fire, he was almost battered to death, people ran
16 after him. Why? Because he'd had a problem with the UPC. And I also remember

17 Ngona. When we had the Pacification

18 Commission he wasn't in the UPC. He came along with a new party. But
19 he told me that twice he had a death commando running after
20 him who wanted to shoot him, twice. Fortunately, he had a weapon and he
21 got away. The Hema groups within the UPC tried to kill him twice and he
22 managed to get away.

23 There have been many examples of this. I remember as well Bebwu, who was
24 a Colonel who was in Shari. He was mugged at the Bunia market, and if there
25 hadn't been some French Artemis soldiers who came and got us ... We went to

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 55

1 talk to Kisembo at the time, and he reassured us that they would release them
2 and that there would not be any problem. Each time you had a problem with the
3 UPC, it automatically became a problem for all the Hema, and that is why
4 (Redacted) was right when he said that the population was really taken hostage.

5 Q. Thank you, sir. And within the same point, point 2, there is a
6 note, and I'm translating, that: "The UPC assures the Hema population
7 of -- of security, but unfortunately it's just the opposite. Massacre
8 and pillaging in all the village under its control."

9 In your experience or in your discussion, did this strike you as
10 an accurate description of events?

11 A. Yes. But everybody -- everybody, even the Hema, were victims of the other
12 Hema. Actually, everybody was responsible for their own security and
13 safety. You couldn't say anything against the UPC. If you said anything
14 against the UPC, it was finished for you. You could be sure
15 that you were no longer safe.

16 There was Thomas Savo, who had chased the UPC from his village. Yet Savo
17 was one of the founding partners who truly supported the UPC, but his
18 younger brother in Bule, who had a farm ... he had chased the entire UPC away
19 from his farm even though the UPC were supposed to protect him. He had set up
20 his own militia, because wherever the UPC went they demanded ransoms from the
21 people. They took everything that people had, including cattle. It was
22 very difficult. You couldn't actually get through their territory. Even they
23 had to flee. So you couldn't say that the security of the Hema was really
24 assured. Perhaps against the Lendu, but in social life,
25 no, they were even

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 56

1 afraid of their own brothers.

2 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, will tell me if I've
3 misunderstood his disquiet, Ms. Samson, but I suspect that the objection
4 is that by reading out a particular section of the note there is an
5 argument that what is written there has a tendency to suggest the answer,
6 to suggest this witness's own testimony. Can I -- yes. I think -- is
7 that right, Mr. Biju-Duval?

8 MR. BIJU-DUVAL (interpretation): Yes, absolutely, your Honour.
9 I can accept the witness being asked to testify to the fact that the
10 author of the notes wrote something in this notebook, that's not a
11 problem, but as you stressed, the way the question is asked mustn't be an
12 indirect manner of asking a leading question about some other fact, and
13 in this particular case the question was about safety.

14 PRESIDING JUDGE FULFORD: I don't want to make this
15 over-artificial, Ms. Samson, but it may be more desirable if you were to,
16 certainly in the first instance, to ask the witness, as it were, himself
17 to give evidence about the subject matter. Having done that, you can
18 then establish with him whether the entry is or is not, in fact, a fair
19 reflection of the event, but do you understand what I mean? To receive
20 the witness's own account of it before taking him to a passage which
21 might be said to suggest the answer.

22 MS. SAMSON: I do understand. Thank you very much. Now, I will
23 be mindful of that going forward.

24 Q. Sir, in terms of the other items that are identified in the note,
25 could you describe if there were any other particular points that were

Witness: Witness DRC-OTP-WWW-0012 (Closed Session)
Questioned by Ms. Samson

Page 57

1 discussed that you have a recollection of?

2 MS. SAMSON: Perhaps the translation didn't reach the witness.

3 THE WITNESS (interpretation): There's no translation.

4 PRESIDING JUDGE FULFORD: Could we start that section again,
5 please, Ms. Samson. Thank you.

6 MS. SAMSON: Yes.

7 Q. Sir, I was wondering as to the other points that are listed in
8 the document, whether you have a specific recollection of the discussions
9 that you held on any of the -- on any of these other points.

10 PRESIDING JUDGE FULFORD: Right. There appears to be a
11 difficulty with the witness's headphones.

12 Well, Ms. Samson, it's three minutes to 1.00. I think since
13 there has been a problem, we'll break now and that can be rectified.

14 We will sit again, then, at 2.45. Thank you all very much.

15 I'm sorry, we've had a three-week break. I'm forgetting myself.

16 Closed session, please.

17 *(Closed session at 12.57 p.m.) Reclassified as Open session

18 COURT OFFICER: Closed session.

19 PRESIDING JUDGE FULFORD: Yes. Can the witness please withdraw.

20 (The witness stands down)

21 PRESIDING JUDGE FULFORD: Yes. We'll rise.

22 Luncheon recess taken at 12.59 p.m.

23 On resuming at 2.48 p.m.

24 COURT USHER: All rise. Please be seated.

25 PRESIDING JUDGE FULFORD: Yes. Witness, please. Thank you.

Questioned by Ms. Samson

1 (The witness takes the stand)

2 PRESIDING JUDGE FULFORD: I think we're in public session, aren't
3 we Ms. Samson?

4 MS. SAMSON: Yes, your Honour.

5 PRESIDING JUDGE FULFORD: Yes. Good afternoon, sir.
6 Public session, please.

7 (Open session at 2.48 p.m.)

8 COURT OFFICER: Open session.

9 PRESIDING JUDGE FULFORD: Yes, Ms. Samson.

10 MS. SAMSON: Thank you, Your Honour.

11 Q. Sir, before the lunch break we were looking at the document at
12 tab 5 of the binder before you, and in particular at page -- the sixth
13 page of that document, which is -- ends in the ERN 0035. And, sir, I see
14 that you have the correct page open before you, and my question is
15 whether or not you recall having had a discussion, with the individual
16 you mentioned during the closed session, with respect to points 5 and 7
17 on this document.

18 A. As for item number 5, it is true that the UPC wanted no other
19 political or military movement in the region, and I remember when we were
20 (Redacted)

21 (Redacted). And Mr. Thomas Lubanga joined us. He arrived a bit
22 late, and he said, "I don't see with who I might have dealings here,"
23 because he thought that all members present were members of the UPC. So
24 he asked every person one by one, the senior people, "Who is
25 part of the UPC?" I remember he asked Kisembo Bitamara, "But you

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 59

1 are my minister of transport and communications. I sent you on a
2 mission, and now you're going to give me the report here?" And I
3 remember him asking Jerome Kakwavu, "But you are a sector
4 commander. I sent you to Aru. Where is your report?" He did the same
5 thing with every single representative who was there, and he said,
6 "I can't discuss matters with people here."
7 The government had already prepared a text that we had to amend in order to
8 continue the process of re-engagement for pacification in Ituri. Mr. Thomas
9 Lubanga had read the document and refused. He said, "I don't agree
10 with this." He made changes to the whole document and removed some
11 parts. He said, "I cannot sign this document until it is amended," and the
12 President of the Republic, Mr. Kabila, was forced to
13 accept the amendments. So the document had been redrafted and finally he
14 signed it. But what I wanted to say is that he really didn't find that
15 he could talk with the other people.
16 A bit later, (Redacted) we met
17 again with him in another meeting. (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted) talked with Thomas Lubanga, and he
22 said, "I don't think this is a meeting I should be attending. This is
23 not my level. You should be dealing with --- the
24 Kinshasa government should be dealing with me as an independent state."
25 The following day we met again to say good-bye to (Redacted)

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 60

1 who had arrived, and in the meeting he was there with
2 my two colleagues, and he said, "No, we should create our own republic, the
3 Independent Republic of Ituri". So -- but he could only do that with
4 himself.

5 I think that those objectives of the UPC and
6 the objectives defended by Lubanga were not the same. And if you will
7 allow me, Your Honour, and with your agreement I would like to dwell on
8 two particular aspects.

9 PRESIDING JUDGE FULFORD: Certainly.

10 THE WITNESS (interpretation): Thank you. I think that in the
11 course of discussions people have confused the objectives of
12 the UPC and those pursued by Lubanga himself. And these two sets of
13 objectives created many conflicts when we had meetings or
14 discussions. At times we couldn't find a compromise, because
15 Mr. Thomas Lubanga knew what he was doing, whereas the community wanted
16 something else. It is true that when the UPC was set up, we had to ensure
17 the security of the community, in particular the Hema
18 community. So one way or another, they had troops who had really took
19 their duties seriously, and at the time their enemies, I think, were the
20 Lendu. So they would fight the Lendu. But strangely enough, the people
21 they would fight, Lubanga would provide weapons to the
22 Lendu and he would provide them with weapons, and with these weapons men
23 would be fighting their own brothers. And this is
24 something that came as a surprise to some members of his own community.

25 (Redacted)

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 61

1 (Redacted)
2 (Redacted). All three were
3 Hema, as well as another another friend who was Hema. They were all Hema
4 (Redacted). We discussed matters together, and they actually highlighted this
5 particular aspect of things, and I know that the problem is a very sensitive
6 issue. But I think it is better for us to understand what it's about.
7 Mr. Lubanga would receive weapons from Rwanda. The weapons would arrive
8 sometimes at an airport. It could have been in Mongbwalu or elsewhere. Some
9 of the weapons belonged to the UPC and some were given to the driver. The
10 driver would leave the weapons in the bush. He left the truck behind, and
11 the Lendu would come and pick them up, when no one was there. And these people
12 who transported the weapons told some Hema wise men. In particular, I'm
13 talking about (Redacted), who was a Hema wise man and (Redacted). They
14 could understand why they did things like that. That was one time. Another
15 time, there was the war between the Hema and the Lendu. They had really
16 gained ground. They pushed back, and wanted to take Kpandroma. They had come
17 to 12 kilometres away from Kpandroma, and at the 12 kilometer mark, the
18 operations commander received the orders from Lubanga to stop the fighting
19 and not to take Kpandroma. So the wise man said, "But why did we fight?
20 We've lost lives in the fighting. And now that we're 12 kilometres away from
21 the city we want to take and we can't do so anymore. Kpandroma was the
22 general headquarters of the Lendu, but he had put an end to the fighting,
23 which was normal. And that's what they did. But later on we understood the
24 problem. In Ituri there were rebels from Uganda who
25 were supported by the UPC, and there

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 62

1 was a colonel by the name of Colonel Muzora, and this colonel was to
2 receive weapons through Thomas Lubanga. The major part of the weapons
3 that Mr. Thomas Lubanga had left behind in the bush were meant for Muzora.
4 Once (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted) the Ugandans had discovered
8 that in Kpandroma there were rebels from Uganda. So they shelled Kpandroma,
9 and then the Lendu woke up suddenly, and one of their leaders by the name of
10 Gorille arrested 12 of them. He took them back to Uganda and handed them over
11 to the Ugandan government, and the Ugandan government gave him a four-wheel
12 drive, a Toyota four-wheel drive. The others fled. They stayed in the UPC
13 camp. So we started investigating to try and find out where they were,
14 because these people for us were dangerous. The word
15 got around that there had a chance of talking to
16 (Redacted)
17 (Redacted), and I said, "But why did you agree to take foreign rebels who have
18 come and started to fight our people?" And he said, "Well, I'm sorry. I had
19 heard this rumour, like you did.19 And I confronted my president, Mr.
20 Lubanga, I asked him whether this was true or not." Because the driver who
21 had brought Muzora over from Mongbwalu to the bush had delivered the
22 information to (Redacted) asked
23 the president, and he said, "No, that's not so. I don't know about any such
24 thing. I have never seen a rebel from Uganda. I have nothing to do with these
25 Ugandan rebels, sorry." But (Redacted) told me that he was surprised. On

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 63

1 March the 6th, when the Ugandan army chased them from Bunia, they fled. The
2 leaders, Secretary-General Litsha, President Thomas Lubanga, and Adele
3 Lotsove --

4 MS. SAMSON:

5 Q. Excuse me sir. Thank you. I just have a few questions to ask you about
6 some of what you've told us just now.

7 PRESIDING JUDGE FULFORD: Just before you do, Ms. Samson, sorry
8 to interrupt you. There are a number of things that have been said,
9 really starting at page 58, which may have a tendency to identify the
10 witness. I've been my own mind trying to see whether there are discrete
11 redactions that can be made or whether, in fact, entire passages need to
12 go because they show a particular position or a level of involvement on
13 the part of this witness that in themselves could be revealing, and I
14 wonder whether certainly for the time being we ought to redact from
15 page -- from the beginning of page 58 onwards and now go into closed
16 session -- or, rather, private session.

17 MS. SAMSON: Yes. Thank you, Your Honour. We had also been making notes of
18 certain discrete areas that we thought could be the subject of discrete
19 redactions, but it may be more prudent for us to be able to proceed as your
20 Honour is suggesting and then allow us in the fullness of
21 time to assess precisely what can be made public.

22 PRESIDING JUDGE FULFORD: Can we do that, but I'm afraid when we rise at the
23 end of the day I'm going to ask you to look again through page 58 through to
24 page 62, line 8, to see whether all of that needs to be -- needs to remain
25 permanently redacted or whether in the edited transcript we can simply

Questioned by Ms. Samson

1 implement limited redactions.

2 MS. SAMSON: I will do so, your Honour.

3 PRESIDING JUDGE FULFORD: Good. Private session, please.

4 *(Private session at 3.06 p.m.) Reclassified as Open session

5 COURT OFFICER: Private session.

6 MS. SAMSON: Thank you.

7 Q. Sir, you had mentioned at one stage in your testimony just now that Rwanda
8 had been supplying weapons to the UPC. Was that -- you had mentioned earlier
9 this morning that Rwanda had provided weapons to Chef Kahwa before the attack
10 on Molondo's residence in August 2002, and I was hoping you could clarify
11 whether when you indicated that Rwanda was providing weapons,
12 again if you meant after September 2002 or before.

13 A. After, Chef Kahwa no longer ..., because once Lubanga had returned, he had
14 visited Kigali as well, and he remained in charge. He started ordering
15 weapons, and he stayed in touch with Kigali, and in December, at the end of
16 December 2002, with his whole team, they went to Kigali to sign an agreement,
17 a partnership agreement with the RCD-Goma which was supported by Kigali. And
18 I think that was on the 7th of January, 2003. But the weapons after Chief
19 Kahwa ... because Chief Kahwa later on
20 left UPC since he explained that his duties as a
21 Minister of Defence were still carried out by Thomas Lubanga
22 himself, and therefore he had nothing left to do. That was one of the
23 reasons. Another reason is that the Luanda conference that had brought
24 together the Democratic Republic of the Congo, Rwanda, and Uganda for peace
25 in Ituri had asked for the creation of the Ituri Pacification Commission on

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 65

1 the 22nd of November, and this commission was refused by Mr. Thomas Lubanga.
2 He had opposed the organization of this commission, and this is when the
3 Ugandans decided to take some delegations to Arua to discuss with these
4 delegates. Arua is right at the border between Aru in the Congo and Uganda.
5 So they had to discuss over there these issues, and they did not come to a
6 compromise. Mr. Thomas Lubanga said that if the Pacification Commission had
7 to be created, it had to be created around him as a leader because he was the
8 President, he should lead the Commission, and they did not need the Congolese
9 government or the United Nations to do that. And this is when Uganda started
10 another process. So to come back to your question, let me say that the
11 weapons were still arriving. Weapons were also still coming via Thomas
12 Lubanga, and there was somebody who was doing the liaison. I can't remember
13 the name. Beiza, someone called Baiza, who was a private secretary of Mr.
14 Lubanga, and he was in charge of liaising for the weapons negotiations, and
15 Chief Kahwa had already been set aside at the time. And another reason was
16 that Chief Kahwa said that he was frightened. When he saw that the weapons
17 included some mines, anti-personnel mines, and anti-tank mines, and I
18 remember that we burned these mines. When the Ituri Pacification Commission
19 started, we blew up over 500 mines in Bunia. He said it was dangerous, and
20 why fight with the Lenu using ...

21 PRESIDING JUDGE FULFORD: Sir, will you forgive me? I'm -- I'm going to
22 interrupt you now. The detail of the information you're providing us with is
23 undoubtedly extremely interesting, and it may be relevant to the particular
24 charges that we're considering as regards this accused, and I'm grateful to
25 you for the very full assistance that you're providing the Court. However, I

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 66

1 think it's becoming important that I ask you to make sure that you focus
2 on the particular questions that counsel ask you. I'm troubled that
3 otherwise we're going to asking you to be with us for a very long time.

4 Ms. Samson's question was simply asking you to clarify whether
5 Rwanda was providing weapons after September 2002 or before, and so I
6 think that is an example of how, in fact, a relatively short answer would
7 probably have dealt with it. Please forgive me if I seem rude by
8 intervening, but I think it is important that we focus on the particular
9 matters that counsel have raised.

10 So, Ms. Samson, as it were, back to you.

11 MS. SAMSON: Thank you very much.

12 Q. Sir, I wanted to go back again to an earlier answer you had given
13 in respect of the document, the handwritten document, in front of you,
14 and you had answered in respect to point 5 that Mr. Lubanga's objectives
15 had -- were separate from the objectives of the UPC and the community,
16 and could you please briefly explain what the difference was between
17 Mr. Lubanga's objective and the objective of the UPC or the community as
18 you refer to it?

19 A. Yes. That's what I was elaborating on. I'm sorry I went into so much
20 detail in what I said, but Mr. Thomas Lubanga wanted to become the
21 president of a state with the help of Rwanda. The Hema community needed
22 some protection, needed safety and security against the other ethnic
23 group that was living alongside them, and both went together, in my
24 opinion, and I think that Thomas Lubanga really manipulated his own
25 community to reach his own objectives, but they did not know what his

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 67

1 objectives were.

2 Q. Thank you. And now, sir, point 7 in the document in front of
3 you, the handwritten documents. Could you please explain to the Court
4 whether you discussed point 7 (Redacted).

5 A. In fact, there was nothing to discuss (Redacted). I remember that when
6 international forces, the Pakistanis arrived in Ituri, UPC was opposed to
7 their arrival, and I recall that Artemis, the French forces, when they
8 arrived UPC was also opposed to their arrival, and even the whole population,
9 the whole community went to provoke them. I recall (Redacted)
10 (Redacted) regarding the arrival of international forces, Mr. Lubanga
11 refused. Even before we had the consultation of armed forces in Kinshasa he
12 had drafted a document. He called everybody. He convened everybody to a
13 meeting (Redacted), and he gave

14 us a document that he had drafted. When we read it, we amended it because
15 it said we do not need international aid. We do not need external forces to
16 come and help us. We do not need people being appointed by Kinshasa. And
17 that's when we said no, (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 Mr. Thomas Lubanga did not sign because we insisted

23 that international community, the government

24 from Kinshasa and the national police come and help us. So he did

25 not sign the document. He gave it to his secretary, Mr. Jean Tinanzabo,

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 68

1 to sign. So when we realized that it was Mr. Jean that had
2 signed and not him, we just tore up the documents and binned it. And when
3 MONUC turned to us, we said, "Well, no, we have not found a compromise.
4 We have to start all over again, from scratch."

5 So there was nothing to discuss (Redacted), because we saw
6 firsthand that they were opposed to international forces. They knew, and
7 we had told them that these people were coming to fight, to help Lendus,
8 and they were told that these people were coming here to -- to harm them.

9 So that's what we experienced. I don't know if today there is a
10 solution, but -- or there has been a solution, but the community
11 swallowed it.

12 Q. Thank you sir and I have only one further question in relation to
13 what you had told us just now in relation to this document. It's that
14 you have indicated that Mr. Lubanga really manipulated his own community
15 to reach his own objective, and I wonder if you could briefly explain how
16 he manipulated his community.

17 A. The whole of the Hema community with -- all that Mr. Lubanga was
18 doing was for the community. In February - I believe it was on the 24th
19 of February, 2003 - Mandro was invaded by the Lendu and Ngiti forces.
20 The Hemas believed that UPC had to go and liberate
21 them and fight against these groups who had disturbed the population,
22 the Hema population, but that was not the case, and yet that's what the
23 Hemas were expecting. We told them that they had to fight for that, but
24 strangely enough they decided to fight against UPDF.

25 (Redacted) a Lendu chief, Manu, and (Redacted)

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 69

1 Kisembo Floribert, and he went to apologise to Colonel Chimboa
2 from Uganda for the attack against his troops, and on
3 that day he said, "I had been given orders. It's not my fault. I had
4 received two orders. On the one hand, I knew that we had to do what the
5 community wanted. We had to take over the town that we had lost, Bogoro,
6 and we had to attack Zombe as well to teach them a lesson because of they had
7 done to our population. Unfortunately, I was ordered to attack you."
8 And that is how General Kisembo Floribert came to apologise to the Ugandan
9 Colonel Chimboa in presence of Manu and Kisembo, Bitamara and Litsha, who
10 was present as well. So when that community who wanted peace, none of the
11 Hemas wanted war because in the field when they were fighting indeed the
12 Lendus, without weapons, were much stronger. They were much stronger,
13 because they attacked them with everything. Unfortunately, they did not have
14 many weapons, not as many as the Hemas.
15 So a lot of these people lost their lives. A lot of people died while
16 defending the community, and they were convinced that they were fighting
17 for a just cause, but there was no reason for them to fight
18 really. Quite the contrary. In fact, the weapons they were
19 receiving just helped to defend another nation ... other nations. They
20 worked with that for other nations, but there was no war between them. These
21 were sporadic attacks, actually. Sometimes when Lendus were hungry, they
22 just would organise one operation to steal a few cows and that was it.
23 The others were fighting to take over some land and dig for gold, et
24 cetera. The community was convinced that
25 these people were bad and they had to be

Witness: Witness DRC-OTP-WWWW-0012 (Private Session)
Questioned by Ms. Samson

Page 70

1 attacked and they had to be fought, but they were not strong. In
2 fact, in reality Lendus were much stronger.
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted) So really, the whole population, if we tell them that you have to
7 be careful with MONUC, they are going to harm you, they would just rebel,
8 without knowing why. And sometimes they
9 threw stones at the tanks. Sometimes they incited
10 people to senseless violence. Sometimes you couldn't go to the
11 market if you were not a Hema, or even if you were a Hema if you spoke
12 against UPC that could be dangerous. And the population was always doing
13 that until Kisembo Floribert converted and he surrendered to MONUC. He went
14 to MONUC and he explained everything he was doing, all the manoeuvres that
15 they were carrying out to manipulate the population and how crimes were
16 organised, and MONUC arrested a number of leaders that were
17 ordering these crimes, and that's how MONUC tamed Kisembo Floribert and he
18 stayed on the sidelines. But the population did not understand why they
19 had to act in this way. It was a manipulation of the population.
20 Q. Thank you, sir. Just one question to which I think the answer is
21 very easy, just a date. You mentioned that the UPDF had been attacked.
22 Could you just tell me on what day, to your knowledge, the UPDF was
23 attacked?
24 A. It was on the 6th of March, 2003.
25 Q. And who attacked the UPDF?

Questioned by Ms. Samson

1 A. It was the UPC that attacked the UPDF, the Ugandan army.

2 Q. Where did the attack take place?

3 A. It began at Dele. Dele is the last city when you leave Bunia,

4 when you go towards Lake Albert.

5 Q. Was the UPC successful in that attack?

6 A. Yes, but unfortunately a colonel of the UPC had already become a traitor.

7 He betrayed the UPC beforehand. On the 6th of March we weren't there but we

8 had met him in President Museveni's office. The colonel of the UPC went to

9 explain that, "Tomorrow you will be attacked," but he didn't know where the

10 attack was going to come from. He thought it would begin in the airport,

11 where the tanks were, but in fact it began in Dele on the slope. The

12 misfortune for the UPC, was that Bogoro was still under the control of the

13 Lendus, and when the Lendus heard firing, they went over to help the UPDF,

14 and that is how the UPC lost. But according to Kisémbó Floribert, who was

15 the UPC's Chief of Defence Staff, Rwanda had promised them that if they were

16 able to withstand the UPDF for two hours they would get reinforcements. But

17 after two hours they got nothing at all and that is why the leaders began to

18 flee. Everybody fled, and part of the UPDF turned and all the Hema commanders

19 from the South went over to the other side. They joined the UPDF, and the

20 Hema people from the North, from Thomas Lubanga's tribe, remained with them

21 and they fled into the bush, whereas the others went over to the UPDF side

22 and that's how they left the city.

23 PRESIDING JUDGE FULFORD: I think we need to go back

24 into public session. Open session, please.

25 (Open session at 3.27 p.m.)

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 72

1 COURT OFFICER: Open session.

2 MS. SAMSON:

3 Q. Sir, this morning you had made reference to the fact that Mr. Lubanga was
4 the president of the UPC. To your knowledge was Mr. Lubanga ever referred to
5 by any other name or title by the military of the UPC?

6 A. No.

7 Q. And earlier you mentioned that Mr. Daniel Litsha was a member of
8 the UPC. Did he remain in the UPC?

9 A. Well, with the others, they left. I think it was on the 22nd.
10 The 22nd of November, 2003, they left.

11 Q. Who left at that time along with Mr. Litsha?

12 A. What did you say?

13 Q. Excuse me, sir. You mentioned that they left at the same time as
14 Mr. Litsha, and I wonder if you could please tell us who else left at the
15 same time.

16 A. Ngona, Mr. Ngona had left, and Kisembo Floribert from the same
17 party --

18 THE INTERPRETER: Or, rather, interpreter's correction also left.

19 THE WITNESS (interpretation): -- Litsha Daniel, and later on
20 they got support from Mrs. Lotsove and Professor Dhetchuvi as well.

21 MS. SAMSON:

22 Q. Thank you. Did you get to know why Mr. Litsha left the UPC?

23 A. Not only Litsha left. Many people who were important, prominent people
24 in the party who we used to see at meetings also left when they realized
25 what -- that their objectives,

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 73

1 their goals, were different. They left, they fled. Lokana left. They
2 understood that what they were doing was not right. Lolo Lapi, who was also
3 a minister --- minister for the environment, I think --- had left, And of
4 this groups, Kahwa had left. All those who formed the new structure with
5 whom we could discussions matters. The prominent political figures we used
6 to meet with. Only Tinanzabo remained. I had met him in Kinshasa, and he had
7 told me that he, too, was about leave.
8 Q. Sir, I'm turning now to a different area, and I would like to know or have
9 you tell the Court whether in your time in Ituri, in Bunia
10 you came to see child soldiers in armed groups.
11 A. Yes, there were children. One I personally met. I went -- I think it
12 was the month of July 2003. There were child soldiers in our organisation
13 who had been shot during an attack, and these children, we were supposed to
14 be taking them to the hospitals in Uganda. Chief Kahwa was not there, and as
15 (Redacted). I went to
16 a military hospital, (Redacted), and when I got there I found other UPC child
17 soldiers. They had been injured eight months previous in the Songololo war.
18 One of them had lost his leg. (Redacted) was his name, and I started;
19 they complained. Because these were Hemas and the group that we had, the
20 PUSIC, were also for the Hemas, but we were Hemas from the south, whereas the
21 others were Hemas from the north, but since all of them were Hema, we found
22 only that we could help them. That is how we proceeded with all these
23 children who had been injured and were in the hospital. I think that we had
24 some of their records that must have been in the files that we
25 found there during the war.

Witness: Witness DRC-OTP-WWWW-0012 (Private Session)
Questioned by Ms. Samson

Page 74

1 There were many other child soldiers. In fact, the majority were children.
2 When we took over Bunia again on the 12th of May, 2002, the children at the
3 front were child soldiers. The child soldiers came with them. Some were
4 there. In fact, this was a practice that practically every armed group used.
5 There was not a single armed group that did not use child soldiers. They all
6 had them.

7 Q. Thank you, sir.

8 MS. SAMSON: Your Honour, there is a redaction request. I'm
9 following LiveNote at the moment, which I think may not be the
10 appropriate tool if everyone is following Transcend, but it would be page
11 72, line 13 at least.

12 PRESIDING JUDGE FULFORD: Yes, the implementation of the
13 protocol.

14 MS. SAMSON: Yes.

15 PRESIDING JUDGE FULFORD: And the witness's role in that.

16 MS. SAMSON: Yes.

17 PRESIDING JUDGE FULFORD: Is that the extent of it?

18 MS. SAMSON: Yes, at the moment.

19 PRESIDING JUDGE FULFORD: Thank you. It's already in hand.

20 MS. SAMSON: Thank you very much.

21 PRESIDING JUDGE FULFORD: But you're right to raise it,
22 Ms. Samson, because sometimes the Court Officer, myself, the other Judges
23 may notice, but you must bring these to our attention. Thank you.

24 MS. SAMSON: Thank you.

25 Q. Thank you, sir. And you were mentioning when we took over Bunia

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 75

1 again on 12 May 2002, and I just wanted to confirm that that's the
2 correct year in which you took over Bunia again. Could you please
3 confirm if it was 2002 or 2003?

4 A. It was 2003, 2003, since when -- when UPC had been driven away by the
5 UPDF with the help of the Lendu, they went into the bush, and when they
6 came back on the 12th of May 2003. That's when they took over the city.
7 Not all of it,. Half of the city to the north was occupied by
8 the Lendus, and to the south the Hemas had remained. So the city was
9 divided into two, and the Congolese minister for human rights, Mr. Ntumba
10 Luaba had arrived, and he brought together the two commanders, the Hema
11 commander and the Lendu commander, to the MONUC. They were asked to
12 implement a cease-fire; they were told to stop fighting so as to find a
13 compromise. After that, we went on to sign the reinstallation agreement in
14 Dar Es Salaam with the president.

15 PRESIDING JUDGE FULFORD: Sorry to interrupt, Ms. Samson. A
16 little while ago, you asked a question in relation to child soldiers and
17 whether the witness saw child soldiers in armed groups, and the witness
18 gave a very clear answer. It's a matter for you, but you may wish to
19 establish what the witness means in terms of the age-range when he's
20 talking about child soldiers.

21 MS. SAMSON: Yes. Thank you, Your Honour.

22 Q. Sir, when you're discussing and describing the child soldiers
23 that you saw in armed groups in Ituri, could you please assist the Court
24 by indicating, to the extent you can, what was the age-range of the
25 children in these armed groups?

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 76

1 A. There were many of them, even under 15.

2 Q. And, sir, did you come to know how it was that these children
3 were recruited and became part of soldiering in armed groups?

4 A. Well, I don't think you have ever taken part in inter-ethnic wars. B
5 but if it happens to you, you will soon understand that absolutely everybody,
6 including relatives, mothers, fathers, are involved in the war, and it is
7 under those circumstances that child soldiers joined the armed groups. Child
8 soldiers were compelled to become part of these groups, learn to handle
9 weapons to protect themselves and their own children. These are the
10 circumstances when this type of thing arises. Once at the Kampala conference
11 a journalist had asked Chief Kahwa if he had child soldiers, and he answered,
12 "I do have child soldiers, but I do not want to hand them over to you because
13 when I do, you don't do anything to look after them. You do nothing, and then
14 they came back and become child soldiers once again." So he knew that the
15 child soldiers were there. These are young children, and they join because
16 they have to protect themselves. There was never any support for these child
17 soldiers, and when they leave they always come back to become child soldiers.
18 There were child soldiers in all the armed groups.

19 Q. And, sir, you had mentioned that during the battle for Bunia on
20 the 12th of May, 2002, you had mentioned that the children were at the
21 front lines. The children at front lines were child soldiers, and
22 could you clarify again which group these child soldiers belonged to?

23 A. When we took over the city of Bunia again and separated it into
24 two, the soldiers of the UPC came in from the bush. They came back, and
25 they drove out the Lendu. The Lendus crossed the MONUC [zone]; they took

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 77

.1 them as far as Dele. They came back in from Dele and began to loot the city,
2 but during that time they had grouped together in the MONUC [zone], and all
3 of us officials were held at the MONUC for purposes of protection. Nearly
4 the whole population, the professors and everybody, were within the MONUC
5 [zone] apart from the Hemas that were still in their houses. But the others
6 were really in the MONUC [zone]. And when they reached there, I personally
7 remember a tiny child this high, and he had a weapon, and I saw it even start
8 to move. I myself had a telephone. He saw me with my telephone, I was
9 outside, and he said to me, "Give me that phone." A tiny child. I don't
10 even know that he was 12 years old. They were in [the area]. There were
11 also young girls, little girls too, that were everywhere. When
12 they entered the city, they were there.

13 Q. And, sir, just so I'm absolutely clear, these young boys
14 and these young girls, when they entered the city, which
15 group did they belong to?

16 A. UPC.

17 Q. And, sir, in your last answer you indicate that you personally
18 remember a very tiny child this high, and I just wanted to indicate for
19 the record that you were making a motion with your -- with your hand as
20 you're sitting, about the height of your -- just around your shoulder
21 height, I think.

22 A. No. He was slightly taller, probably this height. So really small.
23 If I was standing, he wouldn't even reach my shoulders. This little kid was
24 this tall. And he's the one who asked for my phone.

25 PRESIDING JUDGE FULFORD: For the sake of the record, Ms. Samson,

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 78

1 so that this is caught really for all time, from where I'm sitting the
2 witness's hand is coming a little bit above the top of the computer
3 screen in front of him. It's somewhere between there and the top of his
4 head. So that can be measured in due course. Thank you.

5 MS. SAMSON: Thank you very much.

6 Q. And, sir, this child that you mention, how was he dressed?

7 A. Ordinary clothes with a cotton fabric around him like the Muslims
8 wear around their shoulder and crossing in front of their body
9 diagonally.

10 Q. And was this child armed?

11 A. Yes, he was. He was holding a Kalashnikov.

12 Q. And, sir, within your own group or the knowledge you obtained
13 within other groups, do you have any knowledge as to how the military
14 command viewed these child soldiers within each group?

15 A. Could you repeat the question, please?

16 Q. Yes. In your experience and knowledge, did you come to know how
17 the leadership, either military or political, within these groups who had
18 child soldiers, how they viewed the use of child soldiers?

19 A. On the 1st of June, 2003 -- well, first, the 31st of May there was an
20 attack at Tchomia with many massacres. And then the same day after the
21 assailants left we grouped -- we rounded up all the children and took them to
22 military training because the children were convinced that if they couldn't
23 do that, the next attack would be fatal for them, and the children came. I
24 think I took a lot of photos of these children, little children. Some were
25 very young and had to drag the weapon along the ground. But they came

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 79

1 because they had just been through a massacre. They'd seen that everyone in
2 the hospital had had their throat slit. So immediately we thought that they
3 needed some military training. So many, many children came to get trained,
4 and what started there was then finished in Uganda. So they did about one or
5 two weeks there and then moved on to finish the course in Uganda for maybe
6 another two months. Then they came back home. So although they were very
7 young, they got good military training.

8 Q. And, sir, these children that were trained that you're speaking
9 of in end of May, beginning of June 2003, could you clarify which group
10 or groups they belonged to?

11 A. The children I am talking of, and I am referring to what I saw
12 while I was in PUSIC, those children were Hemas.

13 Q. Thank you, sir.

14 MS. SAMSON: Your Honour, I may not need to raise it, but we may
15 require a redaction in page 78, line 9.

16 PRESIDING JUDGE FULFORD: Right to raise it. I missed that one.
17 Yes. A redaction then for that line, please.

18 MS. SAMSON: Thank you, Your Honour.

19 Q. And, sir, coming back to the small child that you're referring to
20 earlier, how did you come to know that that child was a member of the
21 UPC?

22 A. How did I know? Well, since I was there, I even took photos when they
23 came in. I was at MONUC, they stopped at MONUC, and that's when I was able
24 to take a few photos when they arrived. I knew the commander. I had met the
25 commander two days before. The UPC soldiers wanted to shoot the plane down

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 80

1 that was carrying minister Ntumba Luaba. Only one engine was hit, and the
2 plane fortunately landed in Kampala. It was supposed to come back after
3 three days, and MONUC came to ask us all, all the people in charge of the
4 armed groups, to go negotiate with the commanders who were near the airport
5 and tell them to leave that area, not to ...otherwise they would be attacked,
6 so they had to leave the airfield clear. And that was why we went there with
7 a colonel from MONUC, Colonel Volo. So we went in their tanks and met the
8 UPC commander, had this discussion with them. I had a Hema colleagu with me,
9 and he chatted with them in their dialect. In the end he agreed to do
10 everything he could so they would pull back by a kilometre. But after, as we
11 started to talk Swahili so that the MONUC commander would hear nothing in
12 French, that's when he said, "This evening we're going to attack the city,
13 but don't tell anyone." And in fact, that evening, that night, that is when
14 they started to attack the city. And I knew because we were there and we'd
15 had this conversation.

16 Q. Thank you, sir. Sir, did any organisations, in your knowledge, in
17 Ituri speak to armed groups about the demobilisation of child soldiers?

18 A. Yes, every time. MONUC had an organisation to discuss those problems.
19 In the Pacification Commission for Ituri we had a section that was dealing
20 with these problems about -- of child soldiers. It's what we called the
21 Observatory of Human Rights, and (Redacted)
22 (Redacted). The Observatory invited speakers from MONUC to speak to us,
23 since we represented the armed groups. It was with all the representatives of
24 the other groups, and we were supposed to convey the message to our
25 respective groups. It's true, we knew that we should not use child soldiers.

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 81

1 We knew about the problem. I remember, with my experience, when the child
2 soldiers were trained in Uganda, there were human rights people who came
3 because somebody had revealed where our training centre was. We went there
4 and hid them all. We took them out of there because we knew that it was
5 suspicious, it wasn't right. All the armed groups knew
6 it shouldn't be done, but it was still done.

7 Q. Thank you, sir. I'm just going to check with the Bench on redaction.
8 Yes. Thank you. And, sir, you have indicated that MONUC had an organisation to
9 discuss those problems in the Pacification Commission for Ituri. Could
10 you just please give the Court the date of that Ituri Pacification
11 Commission?

12 A. The Ituri Pacification Commission was a process, and it was a process
13 that had started right when we signed the cease-fire agreements between the
14 armed groups and the commitment for pacification in the region. That was the
15 18th of March, 2003. The Pacification Commission finished its job in April.
16 I think it was around the 16th of April when it concluded. And after that
17 there were four organisations that stemmed from it: The interim assembly
18 of Ituri, the administration, the armed forces consultation groups, and
19 the human rights observatory. And this last one, the Observatory for Human
20 Rights, included MONUC experts who came from time to time. The meetings were
21 either twice a week or once every two weeks. They were supposed to come by
22 and convey their message and what should be done to respect human rights in
23 our respective groups. All the groups were represented.

24 Q. Sir, to your knowledge did organisations, MONUC or otherwise,
25 communicate demobilisation of child soldier issues to armed groups before

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 82

1 March and April 2003?

2 A. No. We hadn't met before. We didn't even know they existed.

3 Q. Are you aware what the response was of the armed groups to the
4 discussions held with MONUC on the issue of child soldier demobilisation?

5 A. The first meetings that we'd had did not focus on demobilisation, because
6 there weren't any follow-up measures for demobilisation. However, by the
7 fourth meeting -- I'm talking about consultation meetings. By the end of
8 August, beginning of September 2003, we heard about the demobilisation and
9 social reintegration program. And they said they would send experts to carry
10 out these plans, and that is when we started to be more sure. By that time
11 they knew we had children, but we couldn't demobilize them because we didn't
12 know what to do with them. We could have demobilised them, but then where
13 would they be placed? They said they would be providing support and
14 assistance, that they would build schools -- however, no schools were built.
15 So that is why the children were waiting. But when the demobilisation
16 programme began, tpeople were supposed to first hand over their weapons, and
17 that is what happened. But I don't think the UPC soldiers gave up their
18 weapons, because the only ones who wanted to do so had their eyes put out.
19 Q. And, sir, in the April/March -- March/April period that you described
20 earlier in which some of these discussions on child soldiers issues were
21 held, could you clarify then what issues were discussed in
22 respect of children and armed groups?

23 A. It wasn't a topic for formal lectures. It was discussed by those who
24 represented armed groups in such meetings, in the assembly, might have been
25 30 or so that one could trace back. The MONUC experts were there. There

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 83

1 were also people from Medecins sans Frontieres one time, from Save the
2 Children one time. I remember them coming to talk to us to about these
3 Problems and to say that we shouldn't use children, and that it was a serious
4 problem. We'd been through it. That's what we went through during that time.
5 So everyone ... we understood that it was against the rules and people didn't
6 want that, but as I said, we didn't know what to do with those children.

7 Q. And at the time of these meetings that you were holding, were
8 representatives of all armed groups present, including the UPC?

9 A. UPC had serious problems, because when we signed the cease-fire and we
10 signed the Ituri Pacification Agreements, UPC was not represented as a party,
11 but when the minister of human rights arrived, UPC signed those documents. Not
12 officially but unofficially. A representative of UPC called Eustache signed
13 the documents. Of course, there was Mr. Tinanzabo, John, who started to
14 came along with us to the meetings, and he's the one, because at that time
15 Thomas Lubanga wasn't there. He'd fled to Rwanda and was still there. And
16 the time we had to go to Dar Es Salaam, Tinanzabo went with the MONUC
17 official to Kigali, where they 17 picked up Thomas Lubanga and brought
18 him to Dar Es Salaam. But strangely, before he arrived -- you have to
19 remember that we'd only been to see and we weren't sure if he would agree to
20 come. Mr. Eustache signed as minister of the environment for UPC, replacing
21 [him] as the representative of the UPC. He was received as the UPC
22 representative who would sign the documents. But when Mr. Thomas
23 Lubanga found him there, automatically he threw him out of the party,
24 because he said that he had not authorized anyone to represent the UPC or to
25 sign documents. So the gentleman couldn't even come to meetings any more.

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 84

1 When he came back to Bunia, he was expelled from UPC, and I think he's still
2 in that situation.

3 Q. Thank you, sir. I'd like to move now to the area of the peace agreements
4 that you have been describing intermittently during the course
5 of your testimony today.

6 MS. SAMSON: Your Honour, may I ask the first question in closed session?

7 PRESIDING JUDGE FULFORD: Private session, please.

8 *(Private session at 4.01 p.m.) Reclassified as Open session

9 COURT OFFICER: Private session.

10 PRESIDING JUDGE FULFORD: Yes, Ms. Samson.

11 MS. SAMSON: Thank you.

12 Q. Sir, you mentioned earlier today that you returned to Bunia (Redacted)
13 (Redacted). Could you

14 tell the Court approximately the date on which you returned to Bunia?

15 A. Actually, we were supposed to return to Bunia, (Redacted),
16 (Redacted). The airplane -- well, the Government of Kinshasa had
17 mobilised a plane to take all of the representatives (Redacted), and
18 almost all of us were there. But that day there was a problem with the
19 plane, and we left on the (Redacted)
20 (Redacted)
21 (Redacted)

22 MS. SAMSON: Your Honour, I would like to ask some additional
23 questions on (Redacted)
24 (Redacted)

25 PRESIDING JUDGE FULFORD: Are you saying that that needs to

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 85

1 happen in private session, Ms. Samson? (Redacted)

2 (Redacted), then I would have thought that they probably do need to be
3 asked in private session, don't they.

4 MS. SAMSON: I think to be absolutely sure that we're not
5 redacting subsequently it does make sense to continue in closed session.

6 PRESIDING JUDGE FULFORD: Yes. Can we keep an eye on it, though,
7 and move back into public session as quickly as possible. Thank you.

8 MS. SAMSON: Yes, your Honour.

9 Q. Sir, upon your return, what did you do?

10 A. You mean in Bunia?

11 Q. Yes.

12 A. When we returned, when we arrived in Bunia, first of all the vision
13 that Uganda had wasn't the same as the vision of the MONUC. Uganda had
14 regrouped (Redacted) the government had sent
15 emissaries with whom we had had discussions, and we thought that when we
16 would arrive in Bunia we would only start discussing amongst ourselves, but
17 oddly enough we found that there was an existing international platform that
18 had been set up, and MONUC already had a well-defined programme which it
19 handed over to us. When we arrived, we carried out preparatory work for the
20 commission. And every group had given two delegates who were supposed to
21 take part in the preparatory sessions so they would know which topics we were
22 going to deal with. And in the meantime, we also had radio shows and
23 television shows featuring discussions and reconciliation amongst the
24 different ethnic groups. There were discussions, questions asked, complaints
25 made amongst ourselves, and all of this was broadcast on TV. So we spent a

Witness: Witness DRC-OTP-WWW-0012 (Private Session)
Questioned by Ms. Samson

Page 86

1 lot of time before the conference in such
2 meetings;; on the one hand there
3 was one group which would prepare what was going to be said during the
4 meetings, and another group had political discussions about what had
5 happened, and people could ask for forgiveness and
6 apologise, on the radio and on TV.

7 Now, when we started the
8 commission per se, the programme had
9 been set by MONUC, so we followed the agenda all the way to the end.
10 In the commission there were something like 12 to 18 ethnic groups which
11 were represented, and every single one of them, every single tribe was
12 represented, as well as the armed groups. The armed groups which were in
13 that location were entitled three representatives for each group, and
14 this is what we did.

15 Q. Thank you, sir. When you mention the commission, do you mean the
16 Ituri Pacification Commission?

17 A. Yes, the Ituri Pacification Commission.

18 Q. Thank you, sir. Prior to describing the Ituri Pacification
19 Commission conferences, I wanted to discuss an earlier agreement with
20 you, and it may be helpful if we turn to the document and I could ask a
21 few questions to you on the basis of the document.

22 MS. SAMSON: I think, your Honour, we can go into public
23 session --

24 PRESIDING JUDGE FULFORD: I was just about to ask the question,
25 Ms. Samson. I think we'll take a risk on this, because we can redact

Witness: Witness DRC-OTP-WWW-0012 (Open Session)

Page 87

Questioned by Ms. Samson

1 afterwards if necessary.

2 Open session, please.

3 (Open session at 4.08 p.m.)

4 COURT OFFICER: Open session.

5 PRESIDING JUDGE FULFORD: Yes.

6 MS. SAMSON: Thank you.

7 Q. As I mentioned a moment ago, I would like you to take a look at

8 the document at tab 3 of your binder, which is at DRC-OTP-0107-0198.

9 COURT OFFICER: This document will have the evidence number

10 EVD-OTP-00418. Is it public? Okay.

11 MS. SAMSON: Yes.

12 COURT OFFICER: Thank you.

13 MS. SAMSON:

14 Q. Sir, do you recognise this document?

15 A. (Redacted)

16 Q. (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Witness: Witness DRC-OTP-WWW-0012 (Open Session)

Page 88

Questioned by Ms. Samson

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 PRESIDING JUDGE FULFORD: Thank you very much. That's extremely
10 helpful and explains it. So could we redact, please, from line 11 through
11 to page 87, line 4 for the time being. It may be that part of that can
12 be reinstituted later -- reinstated later.

13 Yes, Ms. Samson. Please continue.

14 MS. SAMSON: Thank you, Your Honour.

15 Q. Sir, could you please briefly indicate what this document is.

16 A. *(Translation done during editing)* Yes. When we had finished the Ituri
17 Pacification Conference, we had established a document that we could sign
18 together, that is to say, the groups that were involved primarily in the
19 conflicts. We all agreed that we should cease hostilities and as well, we
20 also agreed to respect human rights. That was basically the substance
21 of the document.

22 PRESIDING JUDGE FULFORD: Pause a moment, Ms. Samson.

23 THE INTERPRETER: Sorry, sir. Can you hear me now?

24 PRESIDING JUDGE FULFORD: Can ... now? I think the transcript
25 was operating but there was nothing that could be heard.

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 89

1 THE INTERPRETER: The interpreter apologises.

2 PRESIDING JUDGE FULFORD: Don't worry, these things happen. In
3 fact, there is a section missing from the English transcript which will
4 need to be rectified in the edited version. Please continue, Ms. Samson.

5 MS. SAMSON:

6 Q. Thank you, sir. If I could ask you to turn, please, to pages 4 and 5 of
7 this document. I would just like to confirm the date, which is the 18th of
8 March, 2003. Does that accord with your recollection of the
9 date for this agreement?

10 A. Yes.

11 Q. And, sir, on these two pages there are various signatures of armed groups
12 who signed the cease-fire agreement. I wonder if you could tell the Court
13 whether there was anybody signing on behalf of the UPC.

14 A. No.

15 Q. Do you know why there was no representatives of the UPC to sign
16 this agreement?

17 A. Because the UPC officially was not represented. It was assumed that the
18 UPC had left. We had ... Since I was also in a Hema group, the leaders wanted
19 the UPC to be represented so that it would have some influence when power was
20 going to be divided up, because when there were Hema from the south --- and I
21 was part of the movement --- and Hema from the north, whereas on the other
22 side there were the Lendu and the Bindi, they also preferred that the others
23 be there, but they refused; there was no one there. So the leaders were not
24 there. They had fled apart from some people like Eustache, like Tinanzabo,
25 who were around. Because Tinanzabo is not Hema, he is Bira. I don't know

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 90

1 about Eustache. They were around, and they attended some meetings but
2 incognito because they were afraid of the -- of the retaliation from the FNI
3 who were in control overall, with the UPDF. That's why they wouldn't come.

4 Q. Thank you, sir.

5 MS. SAMSON: Your Honour, I would now like to turn to a document for which
6 the witness has given an indication that may require
7 more -- more closed session discussions.

8 PRESIDING JUDGE FULFORD: So is the request for us to go into
9 private session?

10 MS. SAMSON: Badly put, but that is the request.

11 PRESIDING JUDGE FULFORD: Right. Private session, please.

12 *(Private session at 4.16 p.m.) Reclassified as Open session

13 COURT OFFICER: Private session.

14 MS. SAMSON:

15 Q. Sir, could I please ask you to turn to tab 4 of your binder,
16 which is document DRC-OTP-0107-0324.

17 COURT OFFICER: This document already bears an evidence number
18 which is EVD-OTP-00210.

19 MS. SAMSON: Thank you.

20 Q. Sir, are you familiar with this document?

21 A. Yes.

22 Q. It is entitled (Redacted)

23 (Redacted) for the record, and could you please explain

24 what this document is?

25 (Redacted)

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 91

1 (Redacted) the war started again in Ituri, particularly in

2 Bunia It was quite difficult at the time. And MONUC, since the government

3 preferred that we commit again, and in order to commit once more, this time

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. Thank you, sir. And if you could please turn to page 3 of this document.

9 (Redacted)

10 (Redacted)

11 Q. And, sir, at the very bottom of page 3, for the UPC do you

12 recognise Mr. Lubanga's signature?

13 A. Yes, yes. (Redacted)

14 Q. How did it come about that the UPC and Mr. Lubanga participated

15 in this meeting for pacification?

16 A. Yes. At this meeting, as I have already explained, Mr. Thomas Lubanga was

17 not present. He was already in Kigali when we started the pacification

18 process in Ituri. However, (Redacted)

19 MONUC preferred that the UPC be represented as well. Therefore, the chief of

20 MONUC knew where Thomas Lubanga was --- but we only knew that he had left for

21 Rwanda--- but the leader of MONUC knew his whereabouts. So he left Bunia with

22 Tinanzabo, and they went to get Mr. Thomas Lubanga. (Redacted)

23 (Redacted) so this is how Mr. Thomas Lubanga, with Mr.

24 Tinanzabo and -- well, he was with somebody else. I can't remember his name.

25 It was his head of security, and that is how he came to sign these documents

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 92

1 there. Initially he had refused, because he thought that ... we already had
2 another working document but he refused to sign that document, and therefore
3 (Redacted), i.e., this one, and Mr. Thomas Lubanga agreed to
4 sign this document.

5 Q. Sir, do you recall what was changed in this document that was signed?

6 A. Well, I don't remember exactly. (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. And is the date of (Redacted), which is at the top of page 3,
10 is that the -- indeed the date on which the document was signed?

11 A. Yes, it is. That is the precise date.

12 Q. Thank you, sir.

13 MS. SAMSON: Your Honour, I have one final area of questioning
14 which should be brief, but I believe it can be done in open session.

15 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Samson.

16 Open session then, please.

17 MS. SAMSON:

18 Q. Sir, I would like to ask you a few questions about the Ituri
19 Pacification Commission.

20 PRESIDING JUDGE FULFORD: Too quick, Ms. Samson, too quick.

21 (Open session at 4.23 p.m.)

22 COURT OFFICER: Open session.

23 PRESIDING JUDGE FULFORD: Yes, Ms. Samson.

24 MS. SAMSON: Thank you.

25 Q. Sir, I would like to ask you a few questions about the Ituri

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 93

1 Pacification Commission. Did the UPC participate in the

2 Ituri Pacification Commission?

3 A. No.

4 Q. Do you --

5 A. Officially, no.

6 Q. Do you know why?

7 A. I already explained that officially not there, supposedly they had
8 already left. But as I told you, they had a lot of members, influential
9 members, even though their names didn't appear on the list they were
10 nonetheless part of the commission. Such as Professor Pilo, he was there.
11 Professor Ruhigwa at the time. So, all these people did take part within
12 their community as Hemas, but not as members of UPC. But they were there, as
13 was Dhejju Maruka who was also a member of UPC and was to become president of
14 the human rights Observatory. There were a lot of people who actually took
15 part, but in the Tribal and ethnic context, framework, not as representatives
16 of their party.

17 Q. Thank you. And, sir, do you recall when or which time period it
18 was first decided to hold the Ituri Pacification Commission?

19 A. Yes. But it was in the Luanda agreements, and this goes back to the
20 initial preamble. The Luanda agreement set out that the Ituri Pacification
21 Commission was to take place, and that was already in September 2002. The
22 commission was to start up on the 22nd of November, but
23 the conference didn't actually take place.

24 Q. Do you have any knowledge as to why it took so many months to get
25 the Ituri Pacification Commission started?

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 94

1 A. Yes. Already at the time Ituri was almost nearly all under the control
2 of UPC, and Thomas Lubanga was -- didn't agree to the organisation of the
3 commission with other people being in charge of the commission. What he
4 wanted was the commission to be organised, and he was supposed to sponsor it,
5 and that didn't go down well with MONUC or the Kinshasa government or Uganda.
6 He was asked to review his position. In the meantime, he had sent out a
7 delegation which was to negotiate with the Lendus. The decision did not hold,
8 and so when they returned the Lendus went to Uganda and met with Chief Kahwa,
9 who was already negotiating with Uganda. They set up another movement which
10 was called FIPI. That movement tried to bring together the Lendus and the
11 Hemas to prepare the Pacification Commission, and that was in January 2003.
12 On the 10th of February, the 10th of February, 2003, the president of the
13 republic, Mr. Kabila, together with the president of Tanzania and president
14 Museveni met in Dar Es Salaam and they invited the leaders of the Lendu, the
15 Alur, and the Hema communities, who were in Kampala, in particular Chief
16 Kahwa, the Honourable Unechan(???), and Mr. Ndjabu Floribert. They were asked
17 to meet with Thomas Lubanga in Dar Es Salaam to discuss the organisation of
18 the Pacification Commission, and that happened on the 10th of February. They
19 were in Dar Es Salaam to discuss this problem. They met with Thomas Lubanga,
20 but Thomas Lubanga refused to talk to Chief Kahwa. He said, "I cannot talk to
21 Chief Kahwa, I don't know him. If it's like that, I'm not talking." And so
22 the others refused too. From that starting point, we had already found a
23 platform around which we could discuss these matters. Then, because Lubanga
24 was not in agreement, the meeting was unsuccessful and everybody went home.
25 At that point in time Uganda began to use other resources. Lubanga was asked

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 95

1 back to Uganda, (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted) and Uganda had said, "Yes, we want to leave

6 the territory but before we do that you have to have people to take care of

7 matters in the interim, and that is why Lubanga was invited. The day he was

8 expected was the day that he had attacked the UPDF, and so it was no longer

9 possible for all these people to meet. That's why it took so long. But if he

10 hadn't attacked the UPDF, that could have continued for longer. But Thank

11 God, since he had attacked and the UPDF had been able get rid of them, we

12 took advantage of this situation to begin pacification.

13 PRESIDING JUDGE FULFORD: Ms. Samson, do you need the reference to

14 what -- to the fact that the witness was in a position to be told

15 something by President Museveni on the 6th of March redacted?

16 MS. SAMSON: Yes. Yes, please, your Honour.

17 PRESIDING JUDGE FULFORD: So in the English it's really line -- line 16 and

18. Well, in fact, line 17, the two words "told us," it's really all that needs

19 to go. I think it's -- it's the witness being in a position to hear it from

20 President Museveni rather than the fact President Museveni said it.

21 MS. SAMSON: Yes.

22 PRESIDING JUDGE FULFORD: All right. Thank you. Anything else, Ms. Samson?

23 MS. SAMSON: Your Honour, I don't know if this is an appropriate time to

24 request a break. I think we may have another 15 minutes.

25 PRESIDING JUDGE FULFORD: We do.

Witness: Witness DRC-OTP-WWW-0012 (Open Session)
Questioned by Ms. Samson

Page 96

1 MS. SAMSON: I don't have a lot left, but if it's possible, I would
2 appreciate having the time to review what has been said today to determine
3 whether or not there are areas that might need clarification and then to have
4 an opportunity tomorrow morning, very briefly, perhaps, to ask one or two
5 follow-up questions, but in the main I have completed the examination.

6 PRESIDING JUDGE FULFORD: Thank you.

7 (The Trial Chamber confers)

8 PRESIDING JUDGE FULFORD: Ms. Samson, certainly. I think the nature of
9 the evidence is such that it would be positively helpful for the Court if you
10 could review what has been said today and seek further clarification, if it's
11 appropriate, on any areas that strike you as potentially benefiting from it.
12 Thank you very much. Mr. Walley, you have applied, unresisted, to ask some
13 questions of a financial kind. That is filing 1815. For the reasons set out
14 in the filing, we grant your application. It's, I think, unaffected by any
15 further questions that Ms. Samson may ask tomorrow. Do you mind dealing with
16 those matters now.

17 MR. WALLEY (interpretation): Your Honour, actually, we had ... Mr. Mulamba
18 was actually the person who was going to begin that examination and we had
19 planned to do that tomorrow. Now, of course, if the Chamber so desires we
20 could begin today, but I do believe that it might be more appropriate if we
21 did that tomorrow, because there is a series of questions that could take a
22 little more than 15 minutes, I think. So perhaps we start tomorrow morning.

23 But of course we are perfectly willing to begin today if you so desire.

24 PRESIDING JUDGE FULFORD: Well, Mr. Walley, I don't want to
25 embarrass you. For today it's the first day back. We'll say yes, but

Questioned by Ms. Samson

1 can everyone please bear in mind in future that we do expect the days to
2 be filled rather than sitting late or rising early because counsel have a
3 mild preference for commencing their questions at another time.

4 So, no, Mr. Walley, you've made the application. It's granted,
5 you can -- not you, but these questions can be put tomorrow, but can we
6 in future make sure that everyone is ready and is able to start straight
7 away.

8 MR. WALLEYN (interpretation): Yes, of course.

9 PRESIDING JUDGE FULFORD: Thank you very much.

10 Sir, I'm very sorry that your evidence hasn't concluded today.
11 I'm sure you will understand why. You've provide the Court with a
12 substantial amount of information for which we are genuinely very
13 grateful, and there are obviously going to be some supplementary
14 questions from both the Prosecution and the Defence and indeed a few
15 questions from the participating victims. So we're going to break off
16 now for the day. We look forward to seeing you tomorrow morning at half
17 past 9.00, and once again thank you for your assistance so far.

18 Can we go, please, into closed session so that the witness can
19 withdraw. Thank you very much.

20 *(Closed session at 4.35 p.m.) Reclassified as Open session

21 COURT OFFICER: Closed session.

22 (The witness stands down)

23 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I am acutely conscious
24 that in a way it's unfair to ask you the question because I would
25 imagine you've had very little, if any, time to consider the documents,

1 but I'm going to risk it, because if there is going to be an application
2 for more time before you question this witness, we will need to put in
3 place arrangements for other witnesses, if possible, to be present
4 tomorrow.

5 Have you even a preliminary view yet as to whether or not you're
6 going to be able to commence your questioning tomorrow?

7 MR. BIJU-DUVAL (interpretation): Just one moment, if you will,
8 your Honour.

9 Your Honour, I think that the time that we are given this evening
10 will be enough for us to be in a position to cross-examine.

11 PRESIDING JUDGE FULFORD: Well, as ever, Mr. Biju-Duval, very
12 helpful and reasonable stance. Thank you very much.

13 We will sit tomorrow, then, at half past 9.00. Thank you very
14 much.

15 COURT USHER: All rise.

16 The hearing ends at 4.38 p.m.

17 RECLASSIFICATION REPORT

18 Pursuant to Trial Chamber I's email instruction dated 8 December 2011, the
19 transcript is reclassified as public after the indicated redactions have been
20 implemented as ordered by the Chamber. All private and closed sessions (*)
21 are now available to the public with the exception of the portions of the
22 transcript that have been redacted.

23

24

25