

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford,

4 Judge Elizabeth Odio Benito and Judge René Blattmann

5 Situation in the Democratic Republic of the Congo -

6 ICC-01/04-01/06

7 In the case of The Prosecutor v. Thomas Lubanga Dyilo

8 Tuesday, 18 May 2010

9 (The hearing starts at 2.45 p.m.)

10 *(Closed session) Reclassified as open session

11 (In the absence of the accused)

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

13 PRESIDING JUDGE FULFORD: Witness, please.

14 Ms Samson.

15 MS SAMSON: I've made a request just now that the interpreter

16 be brought back so I can finish a certain line of questions, and I
17 think that's being done.

18 PRESIDING JUDGE FULFORD: The interpreter as well, please.

19 (The witness enters the courtroom)

20 (The interpreter enters the courtroom)

21 PRESIDING JUDGE FULFORD: Public, Ms Samson?

22 MS SAMSON: Yes, thank you, initially.

23 PRESIDING JUDGE FULFORD: We just need the interpreter.

24 Good. Mr Lubanga can come in. Thank you.

25 (The accused enters the courtroom)

1 PRESIDING JUDGE FULFORD: Public session, please.

2 (Open session at 2.48 p.m.)

3 THE COURT OFFICER: We are in open session, Mr President.

4 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

5 MS SAMSON: Thank you. Could the witness please be provided
6 with the binder that he had before the break.

7 Q. And if you could please turn to the document we were looking
8 at before the break, which is at tab 1. It's the document that was
9 assigned the EVD number 00563.

10 Before the break, Mr Witness, we had been looking at the
11 names of the persons present during the interview. Is it correct that
12 your uncle was present for one day of the interview and that the other
13 days you were by yourself with the investigators and interpreter?

14 A. Yes. On the days when we had a discussion with Mr Serge
15 in the absence of my uncle, well, there were such days, and, on the
16 other hand, we also had discussions at which my uncle was present.

17 Q. And if I could ask you, please, to turn to page 3 of your
18 statement.

19 And, Mr President, I think it's correct that the document
20 is still not being broadcast publicly, it still remains a confidential
21 document.

22 PRESIDING JUDGE FULFORD: Absolutely. Unless and until you
23 say so, Ms Samson, all of these documents should not be shown publicly.

24 MS SAMSON: Thank you. Could I ask the witness, please,
25 to, with the assistance of the interpreter, read paragraph 6 of the

1 statement. Quietly, to yourselves.

2 THE INTERPRETER: Yes.

3 PRESIDING JUDGE FULFORD: Interpreter, could you check,
4 please, whether the witness is happy to read it for himself, or whether
5 he would prefer you to read it over quietly for him while the two of
6 you sit side-by-side.

7 THE WITNESS: I would like the interpreter to read out to
8 me.

9 PRESIDING JUDGE FULFORD: Sir, could you please do so,
10 quietly, to the witness. That therefore is paragraph 6 of the statement,
11 please.

12 Now, I think there's a breakdown in communication. Let me
13 say it again. Mr Interpreter, can I ask you, please, quietly, to read
14 over paragraph 6 to the witness while you're sitting next to him so
15 that he can understand what is in that paragraph.

16 THE WITNESS: I have understood but could you please read
17 it over again? I have understood.

18 PRESIDING JUDGE FULFORD: Right. Ms Samson.

19 MS SAMSON: Thank you.

20 Q. Do you remember that the investigators explained to you
21 what's in paragraph 6, namely, that there is a section of the Court
22 that deals with victims, and that those who participate as victims
23 may receive reparations?

24 A. Yes. Some explanations were given to me, to that end. The
25 people I met on that day gave me such explanations.

1 Q. And, if I could ask you, please, to turn to page 10 of the
2 statement. Do you remember that you agreed that the information you
3 gave the investigators was true, to your knowledge and recollection?

4 A. Could you please repeat your question? I did not fully
5 understand it.

6 Q. Yes, of course. If you look at page 10 of your statement,
7 and I will read out the first line in French, it says, "This statement
8 has been read out to me in French and in Swahili and it is accurate,
9 to the best of my knowledge, and as far as I can recall." And, if
10 you look on the page below this statement, is that your signature?

11 A. Yes. That is, indeed, my signature. I signed it with my
12 own hand on this paper.

13 Q. And the date, is that also a date that you wrote with your
14 own hand, 03/12/2007?

15 A. Yes. I do agree and I do acknowledge that I personally took
16 a pen and I wrote this date. I do acknowledge that this is my writing.

17 Q. And if I could ask you now to turn to page 9 of your statement.
18 And I would like you to turn your attention to paragraph 46, which
19 reads -- and I will read it in French, "I have received no threats,
20 no promises, nor any incitations that could have had an influence on
21 my replies."

22 Do you remember agreeing to that when you signed your
23 statement?

24 A. Yes, I recognise that I have signed all the statements that
25 are written. No one forced me to make such statements. They asked

1 me whether I was in agreement, in agreement to give testimony, and
2 they said, "You are free to testify or not. No one is forcing you."
3 They told me that I was not obliged to make this statement. I was
4 not forced to do so. They also told me that it was something I could
5 do of my own free will, that I could do as I wished.

6 Q. Do you remember during the interview at the investigators
7 that they asked you if you would agree to have X-rays taken?

8 A. Yes, I gave my consent for those X-rays to be taken.

9 Q. And at a later point in time did you, in fact, have the
10 X-rays taken of your wrist and your jaw?

11 A. Yes, that was done when I arrived in (Redacted).

12 PRESIDING JUDGE FULFORD: Sir, you're doing extremely well
13 but can I ask you, if it's possible, to speak slightly louder because
14 some of what you're saying is proving difficult to hear in the
15 interpretation booths. So you needn't shout, but if you could speak
16 just in a slightly louder voice, please.

17 Sorry to interrupt, Ms Samson.

18 MS SAMSON:

19 Q. And do you remember that you went to have these X-rays taken
20 with an investigator from the ICC?

21 A. Yes, I gave my consent, in principal, to have the X-rays
22 taken. I was in agreement. I agreed to being examined.

23 MS SAMSON: Mr President, with your leave, my last series
24 of questions may have to be done in private session.

25 PRESIDING JUDGE FULFORD: Certainly, Ms Samson. Private

1 session, please.

2 *(Private session at 3.05 p.m.) Reclassified as open session

3 THE COURT OFFICER: We are in private session, Mr President.

4 PRESIDING JUDGE FULFORD: Yes.

5 MS SAMSON:

6 Q. Did you -- let me start again. After you left Beni, where
7 did you go?

8 A. When I left Beni, I went to Kisangani. I spent one week
9 in Kisangani. After, I arrived in (Redacted). Currently, I'm living
10 in (Redacted).

11 Q. But before you went to Kisangani, did you go back to (Redacted),
12 where your family lives?

13 A. Yes. Before I got to Kisangani, we were in Beni, during
14 the meetings with the investigators. After those meetings we went
15 back home to Bunia. When my trip was scheduled to go to Kinshasa,
16 I took the vehicle from Bunia to Beni. I spent one week in Beni and,
17 after, I got to Kisangani, and I spent one week in Kisangani. After
18 Kisangani, I went to Kinshasa. (Redacted)

19 (Redacted)

20 Q. And when you went back to Bunia, you mentioned yesterday
21 that some of your colleagues told Mr Cordo about you giving testimony.
22 Is that what happened when you got back to Bunia?

23 A. Yes. That happened when I was travelling between Beni and
24 Bunia, I was going back and forth between the two towns. I met friends
25 and we were supposed to all give testimony to the investigators. They

1 refused to testify, and they were the ones who went to explain that.
2 They gave explanations to Cordo about what had happened between me
3 and the investigators, and it was from that time on that Cordo knew
4 that I wanted to get away and I wanted to go testify. He received
5 that information from my friends, who had gone to give him that
6 information. They had gone back.

7 Q. Do you know if Mr Cordo or others spoke to your uncle,
8 (Redacted) about meeting the investigators in Beni?

9 A. Yes. Those people went to follow my uncle about the fact
10 that he had gone with me to Beni. Those were the children that we
11 were travelling with in the same vehicle. The children from the
12 neighbourhood, they were the ones who left and told Cordo. They said
13 to him that it was my uncle who had come along with me for these
14 arrangements. They followed my uncle and asked him to tell them what
15 I had told the investigators, because I was supposed to hide some
16 information from Cordo. They came to get my uncle to take him to the
17 house of Cordo so that explanations could be given to him, particularly
18 about the information that I myself refused to give to Cordo.

19 Q. Did you tell anybody from the ICC about Cordo, or others,
20 trying to meet with you or your uncle when you got back to Bunia?

21 A. Ma'am, could you ask your question again? I haven't really
22 understood it.

23 Q. Yes. When Cordo or others were trying to meet, or did, in
24 fact, meet with you or your uncle about what you told the investigators
25 in Beni, did you tell the ICC investigators about that?

1 A. You want to know whether I informed the investigators about
2 the threats that I may have received from Cordo regarding my testimony?
3 Yes, I explained that to Mr Serge. I also gave explanations to (Redacted)
4 because (Redacted) was the person who would contact me the most often
5 about the various pieces of information from Mr Serge. At that time
6 I gave information to (Redacted) and to (Redacted) about the threats
7 that I was receiving. Yes, I did tell them about what was going on.

8 Q. And it was after you spoke to the ICC people that you moved
9 to Kisangani and to (Redacted) is that right?

10 A. Yes. After that, when they received that information, they
11 said to themselves that it wasn't preferable for me to remain in Bunia
12 because myself, I wanted to stay in Bunia, but when I saw that my safety
13 was not very good, I decided to go to (Redacted)

14 Q. And your uncle (Redacted) went with you to (Redacted)

15 A. Yes. When we arrived in (Redacted) we spent one month. After
16 one month we decided that there was no longer any problem in Bunia,
17 and we often thought of our family, who was there. We said to Mr Serge
18 that we wanted to go to Bunia, get our respective families and go back
19 to (Redacted). All that information was provided to me by Mr Serge.
20 And he said to me that I was asked or -- any particular questions,
21 I should reply in that manner. And I said, "Well, if that were possible,
22 I would remain in (Redacted) and he would go down and fetch my family."

23 Q. Did you and (Redacted) return to Bunia?

24 A. Yes. When Mr Serge saw that I didn't want to remain alone
25 in (Redacted), he asked (Redacted) to take members of my family,

1 the members of my family. And he said that it would be better for
2 me in (Redacted), to stay with (Redacted) and wait for my family. When
3 my family would return, we would all go back to (Redacted). When we
4 got to (Redacted), I got angry. I told them that I wanted to go as
5 far as Bunia and get the members of my family. That is why I went
6 as far as Bunia.

7 Q. And after staying in Bunia for some time, did you return
8 to (Redacted)

9 A. Yes, I spent one month in Bunia, but I spent the night in
10 the bush. I did not spend the night in the house because each night
11 Cordo would arrive with (Redacted), who is the leader of the
12 neighbourhood, as well as (Redacted). And (Redacted) would come as
13 well, and (Redacted) had lost his child. Those were the people who
14 would come, and they would knock at the door of our house, and my parents
15 were not happy and they asked me to leave the house.

16 PRESIDING JUDGE FULFORD: Ms Samson, I think we've moved
17 away from the documents now, haven't we?

18 MS SAMSON: Yes.

19 PRESIDING JUDGE FULFORD: We have an interpreter imprisoned
20 next to the witness.

21 MS SAMSON: He can be set free.

22 PRESIDING JUDGE FULFORD: Can he be set free?

23 MS SAMSON: Yes.

24 PRESIDING JUDGE FULFORD: Thank you very much. Closed
25 session, please.

1 *(Closed session at 3.19 p.m.) Reclassified as open session

2 (The interpreter exits the courtroom)

3 PRESIDING JUDGE FULFORD: Yes, thank you, interpreter. If
4 you could ...

5 THE COURT OFFICER: We are in closed session, Mr President.

6 PRESIDING JUDGE FULFORD: Private session, please.

7 *(Private session at 3.20 p.m.) Reclassified as open session

8 THE COURT OFFICER: We are in private session, Mr President.

9 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

10 MS SAMSON:

11 Q. You indicated that a person named (Redacted) would, with others,
12 go to your parents' house. Is (Redacted) also known as (Redacted) (phon)?

13 A. Yes, (Redacted). But we were in the habit of calling him
14 (Redacted) in the neighbourhood, and his other name is (Redacted)

15 Q. Do you know why Cordo, (Redacted)
16 were going to visit your parents?

17 A. Yes. The reason they came to my parents' home is that when
18 we were already in Beni with my uncle, my father would go to the lake
19 in (Redacted), and when he came back he saw what had happened in our
20 neighbourhood, and he had to explain to him that I had to leave to
21 go give testimony. He grew angry and said I should no longer come
22 back to his home because I wanted to get him involved in all kinds
23 of dangerous matters, as well as the family. He said that there was
24 a risk we could all end up being burnt alive in the house. He said
25 we had to keep - he said that he would have to see to it that I would

1 not go back into the house.

2 In the presence of Cordo he threw me out of the house and
3 he said that he should no longer come and fetch me at the house, because
4 he was throwing me out in front of them, in front of Cordo and his
5 pals. And he said that if Cordo and his pals wanted to speak to me,
6 they had only to go find me somewhere else. He said that he did not
7 want to see me because of all these misadventures that I wanted to
8 get him involved in.

9 Q. When you went back to (Redacted), you went back this time
10 with your cousin (Redacted); is that right?

11 A. Yes. At that time (Redacted) was not feeling very
12 comfortable, and since Cordo had already come to get him to ask for
13 explanations, I wasn't there at that time and he was afraid. And he
14 explained to Mr Serge that I had to --

15 THE INTERPRETER: Unclear.

16 THE WITNESS: Cordo explained many things to him, so he
17 decided that we had to leave. Me and (Redacted), we left together.
18 And then after that he followed us. Six months later he came and found
19 us in (Redacted).

20 MS SAMSON:

21 Q. Do you know if (Redacted) was feeling uncomfortable in Bunia
22 when he decided to go to (Redacted) with you?

23 A. Yes. At that time, he wasn't feeling well, nor was I. He
24 came to give testimony himself, saying that those were the
25 circumstances - that he had come back into the service - and some other

1 people had explained as well how it came to be that they had given
2 information to the investigators about the work that had been done.
3 And each person at that time was sleeping separately.

4 Q. Did (Redacted) have to explain to Cordo and those people
5 what had happened when he met investigators in Beni?

6 A. Yes. That day, when I was there, when (Redacted)
7 explained everything, he said to my friends who were there that
8 we had to lie to Cordo by saying that he wasn't there. He just
9 explained -- investigator asked us to provide information, but we had
10 refused to go before the Judges. So that the Judges could hear that
11 for themselves. So he explained that to Cordo that day. And me, myself,
12 I was seated on the ground.

13 Q. Did (Redacted) explain to you why he had to lie to Cordo?

14 A. No. (Redacted) said the truth, in actual fact. He
15 explained what the investigators had said to us, but he said that we
16 were not in agreement with this idea of giving information to The Hague
17 before the Judges, so that the Judges themselves could hear the
18 information. That is the only thing that (Redacted) said before Cordo
19 and his friends. Cordo and his friends asked me why I had refused
20 to give the same explanation as the one provided by (Redacted)
21 Why had I not done the same thing?

22 Q. Was Cordo and -- were Cordo and his friends asking you why
23 you had agreed to come to speak to Judges?

24 A. Yes. They asked us to do that, and they said to us that
25 we had to stop coming and explaining what had happened in Ituri and

1 the situation that we had experienced. They said to us, that we
2 shouldn't try to come and explain all of that to the Judges.

3 After, Cordo himself said that I should leave, if necessary.
4 And when I got here before the Judges, I should tell them that I had
5 never been a child soldier. And I was supposed to say that I had been
6 bribed to come and lie about Thomas Lubanga. So before I left Bunia,
7 I was supposed to do that. Cordo himself knew well that I was going - he
8 fully knew that I was going to be leaving.

9 And he called me before -- in front of people, and he said
10 to me that if I were to come here, I should come and say that I had
11 taken a bribe; I had been paid off; that I had never been a child soldier;
12 I had never borne a weapon; and that I was just a member of the civilian
13 population. And I was supposed to explain that I knew nothing about
14 the various locations, and that I had not left my home. I was supposed
15 to come and explain, give that version of the facts that had been put
16 to me and give that version to the Judges.

17 Q. So, you explained that Cordo told you you had to say you
18 had taken a bribe - or had been paid off - to give testimony. Is that
19 true, did you receive a bribe to come here and tell your story to the
20 Judges?

21 A. I would like to explain the following to you, and this is
22 the truth: Nobody gave me any money in order to come and testify here.
23 All that I was given was travel costs - or travel expenses - and clothes
24 were bought for me. My plane ticket was paid for, my plane ticket
25 from Beni to Kisangani, and from (Redacted), and from (Redacted)

1 to here. I was also given some food, in addition.

2 I spent some time with them, and that is why my travel expenses
3 were covered. And it was under such circumstances that I can say that
4 money was given to me or that I was paid for, in some respect. However,
5 this was not a sum of money that I was given with a view to coming
6 here to testify, as such.

7 Q. Do you know a person named (Redacted)

8 A. Yes, I do know (Redacted). His mother is the mother of my
9 father. They are sisters. So, in fact, she is a member of my family.
10 And he was part of the -- of Commander Kisémbé's troops, operating
11 in Barrière. Subsequently, he fled, but I do not know the circumstances
12 of his flight. He returned to Bunia, and I saw him. He arrived carrying
13 a firearm, which he then hid. I do not know whether it is still in
14 hiding, this firearm, or whether he gave it back to the relevant official.
15 I'm just telling you what I know about (Redacted)

16 MS SAMSON: Thank you very much, Mr Witness, for answering
17 my questions. Your Honour, I have no further questions.

18 PRESIDING JUDGE FULFORD: Thank you very much, Ms Samson.
19 That was very clear. Maître Mabilille? Mr Biju-Duval, we will do ten
20 minutes - if that's all right - to commence, and then we will take
21 the mid-afternoon break. Thank you very much.

22 MR BIJU-DUVAL: (Interpretation) Thank you,
23 Mr President.

24 QUESTIONED BY MR BIJU-DUVAL: (Interpretation)

25 Q. Good afternoon, witness.

1 A. Good afternoon, counsel.

2 Q. My name is Jean-Marie Biju-Duval. We have met previously - I
3 am a lawyer - and I shall now be putting a number of questions to you
4 for the Defence of Mr Thomas Lubanga.

5 A. Very well.

6 Q. And whilst putting these questions to you, I shall be
7 referring to a number of documents. I shall, therefore, be handing
8 to you a file containing these documents.

9 A. Very well.

10 PRESIDING JUDGE FULFORD: Two questions, if I may,
11 Mr Biju-Duval. First of all, are we going to be starting with the
12 documents; because if we are, we are going to need someone to assist
13 the witness. And second, do we need to be in closed -- in private
14 session?

15 MR BIJU-DUVAL: (Interpretation) Mr President, I believe
16 that we shall be needing the interpreter's assistance quite regularly
17 during my series of questioning -- of questions. Immediately, I don't
18 believe that this is necessary; I think that we might be able to start
19 putting questions before we take the break without the assistance of
20 the interpreter. However, in closed session.

21 PRESIDING JUDGE FULFORD: Fine. We will remain in private
22 session, and then we'll start with the documents after the break, then.
23 Thank you very much.

24 MR BIJU-DUVAL: (Interpretation)

25 Q. Mr Witness, I am seeking clarification on a number of points.

1 First and foremost, with regard to your names, my question is as follows:
2 In your neighbourhood, did you have a nickname? Were you known by
3 any nickname or were you called by any nickname?

4 A. Yes. With the exception of (Redacted) -- well, in addition
5 to that, I'm also called (Redacted)

6 Q. Thank you.

7 A. Very well.

8 Q. Witness, you told us yesterday and today that your family
9 was in (Redacted). If I were to provide you with the address, the
10 following address, (Redacted) (phon), does that correspond to your
11 family's address?

12 A. I shall explain things to you with regard to my parents'
13 address. If you leave (Redacted), and you go through (Redacted), we
14 live in (Redacted); that is to say, in the (Redacted) neighbourhood.

15 Q. Thank you very much.

16 A. Very well.

17 Q. Could you please clarify once again or provide clarification
18 with regard to the names of your brothers and sisters? I understood
19 that that you had one or a few brothers and you also had half-brothers.
20 Could you please tell us the names of all of these brothers and sisters,
21 or half-brothers and sisters?

22 A. My brothers, whose names I know, are (Redacted).

23 There is also (Redacted).

24 Q. You talked to us of a brother by the name of (Redacted)
25 who was deceased. Did you not mention his name because he is deceased;

1 is that correct?

2 A. That is correct. I did not give his name here because he
3 is deceased.

4 Q. I thank you. For everything to be very clear, I shall put
5 my question again. Could you please give us the names of your brothers
6 and sisters, or your half-brothers and sisters; that is to say, those
7 who are still alive and those who are deceased.

8 A. Those who are still alive and who were born of the same
9 mother as myself are (Redacted). (Redacted) has a different mother;
10 notably, the sister of my mother, because my father had a child with
11 his wife's sister. I have another brother, who is deceased, whose
12 name was (Redacted). However, this was the child of my maternal aunt.

13 Q. I thank you.

14 A. You're welcome.

15 Q. I'm sorry to be putting this question to you, but could
16 you please tell us how, precisely, (Redacted) died?

17 A. (Redacted) died at (Redacted). At the time I was in his
18 company, and we were in a restaurant in (Redacted). The Lendu passed
19 by, and we hid. They didn't see us. He was trembling and he was afraid,
20 and he left our hiding place and he was wandering around, trying to
21 find somewhere to hide. They saw him and they killed him, and when
22 they killed him I saw it happening. I saw them kill him.

23 PRESIDING JUDGE FULFORD: Mr Biju-Duval, would that be a
24 convenient moment?

25 MR BIJU-DUVAL: (Interpretation) Indeed, Mr President.

1 PRESIDING JUDGE FULFORD: Sir, we are giving you a break
2 now. Thank you very much again for your assistance. We'll see you
3 again - thank you, Mr Lubanga - at 4.00.

4 Closed session, please.

5 *(Closed session at 3.46 p.m.) Reclassified as open session

6 THE WITNESS: Thank you.

7 (The accused exits the courtroom)

8 PRESIDING JUDGE FULFORD: Yes, usher. Thank you.

9 (The witness stands down)

10 (The interpreter exits the courtroom)

11 THE COURT OFFICER: We are in closed session, Mr President.

12 PRESIDING JUDGE FULFORD: 4 o'clock.

13 THE COURT USHER: All rise.

14 (Recess taken at 3.47 p.m.)

15 (Upon resuming at 4.01 p.m.)

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

17 PRESIDING JUDGE FULFORD: Witness, please.

18 (The witness enters the courtroom)

19 (The interpreter enters the courtroom)

20 PRESIDING JUDGE FULFORD: Yes. Private session, please.

21 Mr Lubanga, thank you.

22 (The accused enters the courtroom)

23 *(Private session at 4.03 p.m.) Reclassified as open session

24 THE COURT OFFICER: We are in private session, Mr President.

25 PRESIDING JUDGE FULFORD: Mr Biju-Duval, we are somewhat

1 rationed as regards Swahili interpreters, so if it's -- fortunately,
2 there's only three-quarters of an hour left. But if it's possible,
3 as it were, to deal with the documents so we can then release the
4 interpreter, that would be useful, but it's not absolutely necessary.
5 If you need to intersperse them with other questions, then so be it.
6 But I just make the observation if it's possible to use the interpreter
7 and then release him back to his other duties, but I am not going to
8 put artificial constraints on you. Thank you. If you could proceed.

9 MR BIJU-DUVAL: (Interpretation) Thank you, your Honour.

10 Q. Mr Witness, I wish to get a clarification from you with
11 respect to what you said just before the break. You talked about your
12 brother (Redacted) who died at (Redacted), and you said, "I was with
13 him in a restaurant in (Redacted), and at that time the Lendus came.
14 We hid. They did not see us. He was afraid. He was trembling. He went
15 out. He fell on the road and was trying to hide. The Lendus saw him
16 and they killed him." Well, I wish to get a clarification from you.

17 Could you please look at the document, the first document
18 in the binder, on the top one. It is a document that you are already
19 familiar with because this is your statement, the statement you gave
20 in the year 2006 -- 2007. I would like you to turn to paragraph 14
21 of that statement, with the assistance of the interpreter, and I think
22 you will find a Swahili version under the French version, the French
23 language version. That is, paragraph 14 on page 4; that's the paragraph
24 I am alluding to.

25 In this paragraph in your statement you say, and I quote,

1 "As the Lendu fighters were coming close to our hiding place, (Redacted)
2 was afraid and he stepped out of the hiding place. I saw the Lendus
3 take him away, and later on I did not see (Redacted) again."

4 Just to get a clarification from you, was it to this event
5 that you were alluding when you were describing the circumstances under
6 which your brother (Redacted) was killed?

7 A. Yes. Of course, you will understand that I was describing
8 how (Redacted) died. (Redacted) died before my own eyes, and I have
9 never seen him again from the day he was killed. He died because he
10 was afraid. He was trembling. He left our hiding place, the place
11 where he and I were hiding, and he was moving about on the road. It
12 was at that point in time that he was killed, and up to this day I
13 have never seen him again.

14 Q. Thank you.

15 THE INTERPRETER: Can Mr Biju-Duval turn on his microphone?
16 The interpreters can't hear him. English booth cannot hear what
17 Mr Biju-Duval is saying. We apologise.

18 MR BIJU-DUVAL: (Interpretation)

19 Q. Yesterday and today you informed the Court -- you described
20 to the Court how (Redacted) put you in contact with (Redacted). You
21 also described how (Redacted) and (Redacted) put you in contact with
22 the investigators of the International Criminal Court, the white people
23 whose names you gave; Nekane, Serge and (Redacted). The question I
24 have for you is the following: During your meetings with (Redacted)
25 did (Redacted) ask you to say certain things in particular to the investigators

1 with respect to your enrolment into the UPC?

2 A. Yes, I have understood you fully. This is what (Redacted)
3 told me: He asked me to go and see (Redacted) and to explain everything
4 to him, to give him my full testimony, and that it would be up to (Redacted)
5 himself to appreciate whether my testimony could be taken and sent
6 to the authorities that had sent him. The persons who had sent (Redacted)
7 were looking for child soldiers like myself; and if (Redacted) was
8 pleased with my testimony, he would take me to the investigators.

9 Q. Thank you. You explained to the Chamber -- you described
10 to the Chamber your enlistment into the UPC army. You talked about
11 the first enlistment, the second enlistment. And the question I have
12 for you is the following: Did (Redacted) give you any guidance, any
13 advice or make any recommendations about what you had to say on the
14 manner in which you were enlisted? Was it forcibly or were you enlisted
15 voluntarily?

16 A. Very well. I have fully understood your question. (Redacted)
17 did not send me to go and tell the investigators that I was enlisted
18 voluntarily into the army or that I was enlisted forcibly. No. Those
19 are explanations I gave on my own initiative to the investigators.
20 I described to them how I was abducted from school.
21 And I was already used to military service. It often happened that
22 I would join the army; and afterwards, I will flee from military service.
23 These explanations were not given to me by (Redacted) that I should
24 give them to the investigators. (Redacted) did not ask me to tell the
25 investigators that I was forcibly enlisted into the army or

1 that I was enlisted voluntarily.

2 The only thing (Redacted) told me was, that I should speak
3 the truth, the whole truth, and explain my experiences in the army
4 and tell them about the things I had done in the army. There you have
5 it.

6 PRESIDING JUDGE FULFORD: Mr Biju-Duval, now that we've left
7 the - at least for the time being - the witness's relatives, can we
8 not now be in open session?

9 THE INTERPRETER: The English booth could not hear what
10 Mr Biju-Duval was saying. I think there's a mix-up in the channels.

11 PRESIDING JUDGE FULFORD: I think Mr Biju-Duval was
12 agreeing to public session. Public session, please.

13 (Open session at 4.15 p.m.)

14 THE COURT OFFICER: We are in open session, Mr President.

15 PRESIDING JUDGE FULFORD: Yes.

16 MR BIJU-DUVAL: (Interpretation) Thank you.

17 Q. Witness, I will now ask you to turn to the document under
18 tab 9. Witness, do you remember having met the lawyers of Mr Lubanga
19 in the month of December 2009 in Kinshasa? Do you remember that?

20 A. Yes, I do remember having met them.

21 Q. You do remember that questions were put to you and that
22 your discussion with them was recorded; is that correct?

23 A. Yes.

24 Q. The document I am alluding to is a transcript of the audio
25 recording of that discussion. Have you understood me?

1 A. I have fully understood you.

2 MR BIJU-DUVAL: For the record, I'm referring to the
3 document -- I base the reference DRC-OTP-0228-0098. And I would like
4 the witness to turn to page 0228 and 0117 and the subsequent pages.
5 I am giving this reference, your Honour, so that everyone could turn
6 to the appropriate page, but I would like to suggest that I will read
7 this excerpt out and after that I will put my question to the witness.

8 PRESIDING JUDGE FULFORD: Certainly, Mr Biju-Duval.

9 MR BIJU-DUVAL: (Interpretation)

10 Q. Witness, I am going to read out an excerpt of this discussion,
11 and after that I will put a question to you. And I quote: "Question:
12 'And what did (Redacted) tell you? Did he explain to you why he came
13 to look for you and did he explain to you what you were expected to
14 do?'" "Answer: 'Well, he told me that I had to go and see (Redacted).
15 He was the one who was to introduce me to the white people. And he
16 told me that if I told the white people that I had been enlisted
17 voluntarily, they would send me away.'"

18 "Question: 'Did he tell you anything else?'" "Answer:
19 'He told me that they were going to help me, and that I could no longer
20 return to Bunia.'"

21 "Question: 'They said they were going to help you. What
22 did that mean? What type of assistance were they going to give you?
23 What assistance was proposed to you? How were they going to help you?
24 What did they explain to you?'" "Answer: 'Well, he told me that if
25 I go before the Judges where Papa Thomas is in detention, I should

1 say that I was forcibly recruited; because if people learn or hear
2 in Bunia that I have given evidence against Papa Thomas, it would be
3 risky to my life. And in that case, I would not be able to return
4 to Bunia.'" "

5 "Question: 'And so what are you going to tell the
6 investigators? What are you going to tell (Redacted) and the others?'" "

7 "Answer: 'He said that if I meet the investigators and they put
8 questions to me asking me how I was enlisted, I should tell them that
9 I was forcibly enlisted. If I said that, they would take me away with
10 them.'"

11 The question I have for you is the following: Does -- what
12 I just read out, does it tally with the explanations that (Redacted)
13 gave you?

14 A. I do recognise this excerpt which you have just read out.
15 On that day I gave you this information, and it is not because I am
16 sitting here in the courtroom that I am going to contradict what I
17 said. Well, I do understand that you are Mr Lubanga's lawyer. On
18 that day, I was afraid, and that is why I said (Redacted) had asked
19 me to come and tell the Judges that I had been forcibly enlisted into
20 the army. However, (Redacted), to tell the truth, did not say that.

21 At the Kinshasa office, he said the following -- since I
22 had to meet Lubanga's lawyers, I was afraid that I was going to be
23 arrested. That is the reason why I gave you this information. Today,
24 I will not say that I never made these statements. What you have just
25 read out is, indeed, the statements I gave to you. But why did I make

1 these statements? I made these statements because I was afraid.

2 The office in Kinshasa -- or the people working in the office
3 in Kinshasa did not explain to me the circumstances under which you
4 were coming to meet me. That is why I was afraid, and I provided you
5 with the information which you have just read out.

6 PRESIDING JUDGE FULFORD: I am sorry, Mr Biju-Duval. I am
7 going to ask the parties to liaise with the court officer over redactions,
8 because in the last -- the quotation you read out, there were one or
9 two names that I suspect shouldn't be public, Mr Biju-Duval. But don't
10 worry. Continue. But could the parties please liaise with the court
11 officer in relation to redactions?

12 Can I make an inquiry of the interpreters as to whether - if
13 we only sit for another quarter-of-an-hour - the Swahili booth will
14 be all right with their colleague being in court rather than upstairs?
15 Yes. I see a vigorous nod of assent. Thank you very much, indeed.

16 Please continue, Mr Biju-Duval.

17 MR BIJU-DUVAL: (Interpretation) Thank you, your Honour.

18 Q. Mr Witness, I am going to read out another excerpt of this
19 transcript, and afterwards I will put to you another question. The
20 excerpt is found in the same document, this time on page 0228-0119.
21 I am going to read this short excerpt, and after that I will ask you
22 a question. I quote: "Question: You say that (Redacted) asked you to
23 tell the investigators that you had been forcibly enlisted. Does that
24 mean that (Redacted) asked you to tell lies? Answer: Yes. Yes, indeed, because
25 he said if I gave the true version of things, stating that I was

1 voluntarily enlisted, the white people would send me away, because
2 the white people were looking for people who were forcibly enlisted".

3 The question I have for you is the following: You have just
4 informed us that you lied to the Defence lawyers when you said that
5 (Redacted) had asked you to make these statements. You have informed
6 us that this was because you were afraid; is that correct?

7 A. Yes. I gave you certain explanations with respect to what
8 you've just read out. Before I met with you, the people working in
9 the Kinshasa office told me that you were going to come and meet me,
10 and I asked them questions about the circumstances under which you
11 were coming to see me. And they did not explain to me whether or not
12 you were coming with good intentions or bad intentions. I was simply
13 informed that I had to meet the lawyers of Mr Lubanga. At that point
14 in time I used to hear that (Redacted) and (Redacted) were preparing
15 to come and give testimony before the court here and so, I was afraid.
16 That is the reason why I told you that it was (Redacted) who had asked
17 me to come and give or make these statements, and that the investigators
18 came to see me and that they promised to give me money. (Redacted)
19 simply asked me. He simply told me that I was going to meet (Redacted)
20 and that it was (Redacted) who was going to put me in contact with you.
21 So it was not (Redacted) who sent me before I met (Redacted) who sent me
22 to say that I had been forcibly enlisted or that I was going to receive
23 any sums of money. No, (Redacted) didn't tell me anything of the sort.
24 (Redacted) put me in contact with (Redacted) that's all.

25 As for what I explained to you in Kinshasa and what you just

1 read out here about that, I was afraid because I heard that you were
2 lawyers for Mr Lubanga, and so I was afraid. What you have just read
3 out, that's what I explained to you, and it's true. And I did that
4 why? Because I was afraid.

5 Q. Thank you. I've understood your explanation. Now,
6 yesterday and today you have explained to the Chamber that Cordo, the
7 wise men in your neighbourhood, the UPC soldiers, were criticising
8 you because you wanted to come here and testify and say that you had
9 been a child soldier in the UPC; is that correct?

10 A. Yes, that is correct, what you're saying. It was Mr Cordo
11 who asked me why I wanted to come and testify before the Judges against
12 Mr Thomas Lubanga.

13 Q. And so that is why you were afraid; is that not so? Because
14 certain people did not want you to come and give testimony to
15 saying -- saying that you had been a child soldier in the UPC. Is
16 that why you were afraid? That's why you were afraid; is it not?

17 A. Yes, that is why I was afraid. And furthermore, the mothers
18 of Cordo and Thomas Lubanga are sisters. And I was brought before
19 some people -- well, it was a meeting that had been organised. And
20 the people there at that meeting -- I was confronted with the various
21 participants -- by the participants at that meeting, and so that is
22 why I was afraid. And what's more, some soldiers who had left service
23 were at a meeting with Cordo, (Redacted)

24 (phon), and they called me. There were many people, and really,
25 that really scared me.

1 PRESIDING JUDGE FULFORD: I think some of the names that
2 are coming out are potential problematic; is that right, Ms Samson?

3 MS SAMSON: Yes, I think that's correct, your Honour.

4 PRESIDING JUDGE FULFORD: Thank you. Could proposed
5 redactions please be indicated to the court officer, and can we move
6 into private session, please.

7 *(Private session at 4.34 p.m.) Reclassified as open session

8 THE COURT OFFICER: We are in private session, Mr President.

9 PRESIDING JUDGE FULFORD: Thank you, Mr Biju-Duval. I am
10 sorry to interrupt.

11 MR BIJU-DUVAL: (Interpretation)

12 Q. Witness, when the lawyers for Thomas Lubanga asked you some
13 questions in 2009, you replied saying that you had been enrolled in
14 the UPC and that you had, indeed, been a child soldier in the UPC army;
15 is that not so?

16 A. Yes. Personally, I wanted to say that.

17 Q. But now, if it is true that you were afraid, why didn't
18 you tell Thomas Lubanga's lawyers, (Redacted) asked me to say that
19 I had been a child soldier, whereas that is not true"? Why did you
20 try to protect yourself in that manner?

21 A. I haven't really grasped your question. If you could ask
22 it again, I will understand better.

23 Q. Witness, is it correct that you were not afraid to say to
24 the lawyers of Thomas Lubanga that you had been a child soldier with
25 the UPC soldiers?

1 A. The reason why I made that statement was that I was afraid.
2 Since 2007 until 2010, well, you see, that's the first time -- it was
3 the first time that I heard that I met the lawyers of Mr Thomas Lubanga.
4 That's why I told you (Redacted) had asked me to tell the investigators
5 that I had been forcibly enlisted. And I was supposed -- I had to
6 come and say that here before the Judges, that I had been forcibly
7 enlisted. However, it wasn't (Redacted) who asked me to say so. When
8 I saw you, I was afraid and I gave the name of (Redacted) saying that
9 he was the one who had sent me to tell, or to make these statements
10 to the investigators.

11 THE INTERPRETER: Microphone, please. Problem with
12 microphones. The interpreter in the English booth is very sorry.

13 MR BIJU-DUVAL: (Interpretation)

14 Q. I will ask my question again. Is it true that you were not
15 afraid to say to the lawyers of Mr Lubanga that you had been a soldier,
16 a child soldier, in the UPC?

17 A. I am clearly explaining to you that when I met you there
18 was another lawyer, a woman, who was with you. There were two of you.
19 I was afraid, because when I saw you coming to come and talk with me,
20 I was -- I grew frightened, but not because I'm before this hearing.
21 I'm not going to deny what I said to you. I said that because it was
22 the first time that I'd met you, and it was the first time that you
23 had met me, and that is why I was afraid and I gave those statements.

24 Q. Thank you.

25 PRESIDING JUDGE FULFORD: Mr Biju-Duval, I'm not sure where

1 you are going now. We've only got two or three minutes left. I don't
2 want to interrupt your flow, but if that would be an appropriate moment.

3 MR BIJU-DUVAL: (Interpretation) I will finish with that
4 point, and then we can break off.

5 PRESIDING JUDGE FULFORD: Thank you very much, indeed,
6 Mr Biju-Duval.

7 Sir, thank you very much for your assistance this afternoon.
8 We look forward to seeing you again at half-past 9 tomorrow morning.

9 Mr Biju-Duval, I know it's extremely difficult to tell, but
10 do you anticipate concluding your questioning tomorrow?

11 MR BIJU-DUVAL: (Interpretation) That is my objective,
12 your Honour. I do hope so.

13 PRESIDING JUDGE FULFORD: A very laudable objective,
14 Mr Biju-Duval. Thank you, yes.

15 Thank you, Mr Lubanga.

16 (The accused exits the courtroom)

17 PRESIDING JUDGE FULFORD: Any objections, Maître Mabilie,
18 to the questions? In fact, there are now three applications to question
19 victim -- ah, Witness 29.

20 MS MABILLE: (Interpretation) No objections, your Honour.
21 The school records are related to some of the victims represented by
22 the legal representatives and, as such, I don't see why we would have
23 any objection to the request to question the witness.

24 PRESIDING JUDGE FULFORD: Very helpful. Thank you very much.
25 Closed session, please.

1 *(Closed session at 4.42 p.m.) Reclassified as open session
2 THE COURT OFFICER: We are in closed session, Mr President.
3 (The witness stands down)
4 (The interpreter exits the courtroom)
5 PRESIDING JUDGE FULFORD: Half-past-9 tomorrow morning.
6 Different courtroom.
7 THE COURT USHER: All rise.
8 (The hearing ends at 4.44 p.m.)

9 RECLASSIFICATION REPORT

10 Pursuant to Trial Chamber I's email instruction dated 2nd December
11 2011, the transcript is reclassified as public after the indicated
12 redactions have been implemented as ordered by the Chamber. All private
13 and closed sessions (*) are now available to the public with the exception
14 of the portions the transcript that have been redacted.