

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito
4 and Judge René Blattmann
5 Situation in the Democratic Republic of the
6 Congo - ICC-01/04-01/06
7 In the case of The Prosecutor v. Thomas Lubanga Dyilo
8 Wednesday, 19 May, 2010
9 (The hearing starts at 11.02 a.m.)
10 *(Closed session) Reclassified as open session
11 (In the absence of the accused)
12 THE COURT USHER: All rise. The International Criminal
13 Court is now in session. Please be seated.
14 (The witness enters the courtroom)
15 WITNESS: Witness WW-OTP-0297 (On former oath)
16 (The witness answers through interpreter)
17 PRESIDING JUDGE FULFORD: Private or public, Mr Biju-Duval?
18 MR BIJU-DUVAL: (Interpretation) We can start in open
19 session, Mr President.
20 PRESIDING JUDGE FULFORD: Thank you very much,
21 Mr Biju-Duval.
22 (The accused enters the courtroom)
23 PRESIDING JUDGE FULFORD: Thank you, Mr Lubanga. Public
24 session, please.
25 Good morning, sir.

Case No.: ICC-01/04-01/06

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1 THE WITNESS: Good morning.

2 (Open session at 11.03 a.m.)

3 PRESIDING JUDGE FULFORD: Two things. The first,
4 Mr Biju-Duval, is that the experience of yesterday was that, kind though
5 it was for the interpreter to join the witness, in fact, what happened
6 was that he did very little because the relevant passages were read
7 out loud into the transcript, and so there was no need during the course
8 of yesterday for separate interpretation quietly by the interpreter.
9 And so, unless there are going to be particularly long passages which
10 you are going to be putting to the witness, I think it is better if
11 he is directed to the passage with the assistance of the usher, but
12 you then read over to him the parts that you particularly want him
13 to focus on. That's point one.

14 Point two is, is it possible to move the curtain on the
15 left-hand side backwards slightly so Ms Samson doesn't have to sit
16 in a rather odd position in the court? The right-hand curtain needs
17 to remain where it is, but can the left-hand curtain separately be
18 pulled back? I doubt very much whether the technology is up to it,
19 but let us make the inquiry.

20 THE COURT OFFICER: We are in open session, Mr President,
21 since 11.03, but apparently there is a problem with this blind. I'm
22 doing everything in order to fix it.

23 PRESIDING JUDGE FULFORD: Right. Well, two things,
24 therefore, for the technicians. Can they see whether they can move
25 one curtain and fix the blind on the other side and, if necessary,

1 somebody can come into court, quietly while we're in session, to move
2 it back if it can be done manually. Sorry, Ms Samson. Doing the best
3 we can.

4 Yes, Mr Biyu-Duval.

5 MR BIJU-DUVAL: Thank you, Mr President.

6 QUESTIONED BY MR BIJU-DUVAL (Interpretation)

7 Q. Good morning, witness.

8 A. Good morning.

9 Q. Yesterday Madam Prosecutor read to you paragraph 6 of the
10 statement that you signed at the end of 2007, and this paragraph indicated
11 that you might be able to obtain reparation in the context of the
12 proceedings instituted before the International Criminal Court, and
13 you confirmed that this had indeed been well explained to you.

14 My question is as follows: Was it explained to you, in a
15 more precise matter, that you might be able to obtain money if Mr Thomas
16 Lubanga was convicted?

17 A. I have followed your question closely. On the day that I
18 met with the investigators, they said the following to me: Notably,
19 that my testimony was very important and that it was important that
20 I deliver my testimony before the appropriate individuals. And they
21 said that what I had just testified to before them, well, it was important
22 that I testify to the same effect before the Judges. They said that
23 everything that I had explained to them could be of use to the Judges.
24 They could -- this could help or assist the Judges in rendering justice,
25 and they said that my statements would help the Judges to render justice.

1 This is what was said to me.

2 They went on to add that, were I to accept to cooperate with
3 them, the Judges would know how about -- how to go about helping me.
4 And they said that were I to accept to come to testify before the Judges,
5 they would know how to help me. That is all that they told me.

6 Q. I thank you. Mr Witness, I shall now quote from what you
7 said to the Defence lawyers in December 2009. And as was the case
8 yesterday, I am referring to the transcript of the recordings of the
9 interviews.

10 And for the record, I would indicate that this is to be found
11 at document DRC-OTP-0228-0122, and this document is to be found at
12 tab 10 of the file. I am referring to pages 126 and 127 thereof.

13 I shall provide you with a brief quote. I quote as follows:
14 "Question: You told us that (Redacted) explained that he or they, that
15 is, he and other people, were going to help you. Answer: Yes.
16 Question: What type of help did they explain or promise that you would
17 receive? Answer: He said that were we to testify against Thomas and
18 were he to be convicted, found guilty, we would receive money. Question:
19 Who said this to you? Answer: (Redacted) and even Papa Serge. (Redacted)
20 and Papa Serge. Question: And did he tell you how much money was
21 involved? Answer: He did not give us a precise figure."

22 My question is follows: Do you remember having told us this?

23 A. Yes, I can confirm that I am the person who told you -- or
24 that you have just read to us. I was explaining to you the way in which
25 (Redacted) had told me this. He told me that I should go and say

1 everything I had lived through to (Redacted), and then it would be up
2 to (Redacted), to decide where he would send me. He advised me to explain
3 everything to (Redacted).

4 At the outset I refused this proposal. I do not want to
5 say this to you because it is -- it concerns me. Everything that I
6 had, I told (Redacted) even the information that I hid from (Redacted).
7 And (Redacted) knew where he was going to take me. When I met him I
8 explained everything to him. So he took me to Mr Serge, to whom I spoke,
9 and I explained everything to him. I told him the whole story in the
10 same way as I had explained it to (Redacted). Mr Serge said to me,
11 "Well, it's a good thing that you have told me all of this. I should
12 now ask you whether you accept to go and testify before the Judges.
13 Everything that you will say before the Judges will enable the Judges
14 to register -- or to render justice." And then they will be able to
15 help me if I go -- if I cooperate and accept to testify before the
16 Judges. Yes, that is what I told you, indeed.

17 Q. I thank you. So if I understand you correctly, today you
18 are saying that you were never told that you would be able to obtain
19 money if Thomas Lubanga were to be convicted; is that correct?

20 A. I would request that you repeat your question because I
21 did not understand what you just said to me.

22 Q. For everything to be clear, your testimony today is that
23 neither (Redacted) nor anybody from the investigators of the Prosecutor
24 said to you that you would be able to obtain money if Thomas Lubanga
25 were to be convicted. Is that what you were telling us?

1 A. I see that you are making me take steps backwards. I have
2 already explained to you the reasons why I said that. When I saw (Redacted)
3 I explained everything to him. He told me that it was a good thing
4 to go and testify before the Judges, to go and repeat everything that
5 I had said to him to the Judges because this would enable the Judges
6 to administer justice.

7 And were I to accept to -- were I to accept to testify before
8 the Judges -- because I was not forced to do so. It had to be of my
9 own volition. I had the choice to either accept or refuse. He said
10 that were I to accept to go and testify before the Judges, the Judges
11 would be able to help me. No, he did not say to me that were I to
12 come to testify before the Judges -- he explained this to me. He
13 confirmed to me that were I to come to testify, the Judges would be
14 the ones to help me, not him. That's what he said.

15 Q. Very well. I would like to now request for clarification
16 with regard to your enlistment in the UPC. Yesterday and the previous
17 day you explained to the Trial Chamber - if I can summarise what you
18 said - that firstly soldiers from the UPC took you from your school,
19 that they took you away to (Redacted) to a football pitch there.

20 You say that on the second day you fled, and that you then
21 returned to (Redacted). And that a week later, there was an attack
22 by the Lendus; and that Kitembo and his men organised a meeting and
23 took you along. Does what I say correctly summarise what you explained
24 to the Trial Chamber?

25 A. Yes.

1 Q. I would just like a point of clarification.

2 PRESIDING JUDGE FULFORD: Just before you do, Mr Biju-Duval.

3 Yes, Ms Samson?

4 MS SAMSON: Sorry. Before counsel intervened, I'd
5 understood the witness was continuing to answer.

6 PRESIDING JUDGE FULFORD: I think that's right. Mr
7 Biju-Duval, could you be careful with this? I think the principle
8 that we've applied is, that when a witness says "yes", but then appears
9 to be indicating that he or she wishes to go on to add something, that
10 permission is -- that we automatically give permission for that to
11 happen. You came in very quickly with your next question, which I
12 think cut the witness off.

13 So let me ask the witness directly: Sir, was there anything
14 that you wished to add to the last answer you gave, when Mr Biju-Duval
15 summarised the position ending with the meeting that you went to, having
16 returned to (Redacted) Was there anything else you wanted to say?

17 THE WITNESS: Yes. I wanted to add something to what he
18 had just said with regard to my testimony yesterday and the day before.
19 It is true that the first time I was at school, and they came to take
20 me. I did not leave of my own volition. Well, I was not alone, there
21 were a number of us; notably, my fellow school. We were taken to the
22 football pitch (Redacted) which is very near to the military camp.
23 I spent two days there and then I fled.

24 A week later, a week after my -- after I fled, (Redacted) came under
25 attack. I, then -- the day after the fighting in (Redacted), I was

1 in Centrale, where I spent the night. The next night we fled, myself
2 and the civilian population. We then returned to (Redacted). And on
3 that evening, the population was gathered together. And some arrived
4 at nighttime; others had spent the night in the bush, and they returned
5 in the morning. We were all called to a gathering, and I was then
6 introduced during the meeting. I was taken to training in Nizi.

7 PRESIDING JUDGE FULFORD: Sorry to interrupt you, Mr
8 Biju-Duval. Please continue.

9 MR BIJU-DUVAL: (Interpretation) I should have let the
10 witness express himself, Mr President, because he was indeed providing
11 us with a point of clarification that I was seeking.

12 Q. Witness, you told us - I believe it was the day before
13 yesterday - that you were born in (Redacted), but that you had lived
14 in (Redacted). And you went on to add that, since the fighting in
15 (Redacted) your family had settled in (Redacted). My question is as
16 follows: When you talk about the clashes in (Redacted) after which
17 your family went to live in (Redacted) are these the clashes subsequent
18 to which you were enlisted in the UPC?

19 A. Yes. I was born in (Redacted) however, I only lived for
20 six years in (Redacted). Then I left for (Redacted). I pursued my studies
21 in (Redacted). And when (Redacted) came under attack, after the fighting
22 had ended my parents returned to (Redacted). This does not mean that
23 during the war my parents left to (Redacted) rather, it is after the
24 fighting ended that my parents and myself went to (Redacted). It was
25 after the fighting, because throughout the fighting we were in (Redacted).

1 Q. I thank you. When you say that your family went to (Redacted)
2 after the fighting had ended, could you be more specific with regard
3 to the period in question? Was it before you were enlisted? Was it
4 at the same time? Was it subsequently, after the time that you spent
5 in the army?

6 A. It was after that time. It was after I had entered the ranks;
7 that's when I went to (Redacted). What is more, when I went to (Redacted),
8 I was no longer a soldier. So, no, it was not beforehand; it was after
9 the fighting that we went to (Redacted).

10 Q. I thank you.

11 A. You're welcome.

12 Q. You told us that you pursued your studies in (Redacted) and
13 you also indicated that when you were enlisted in the army, you were
14 in the second year of primary school. You said that you had just spent
15 three months studying in the second year of primary school. My question
16 is as follows: To the best of your knowledge, how old were you at
17 that time when you were attending the second year of primary school
18 in (Redacted)

19 A. At that time, I was 11 years of age, or maybe 10, because -- of
20 course this was a long time ago, and I might have forgotten. To the
21 best of my knowledge, I was between 10 and 11 years of age.

22 Q. I thank you. Would you be in a position to tell us why it
23 was that you knew that at the time you were aged between 10 and 11,
24 how were you aware of the fact at that time?

25 A. At that time, I was in the habit of asking my parents the

1 question, my age, and at that time they told me that I was between
2 10 and 11 years of age. It wasn't me who decided about that age. I
3 am saying this in light of the explanations that my parents gave me,
4 which I remembered. However, I no longer know whether it was 10 years
5 or 11 years of age.

6 Q. Thank you.

7 A. You're welcome.

8 Q. Could you tell us the name of the school in (Redacted) that
9 you went to when you did your second year of primary school?

10 PRESIDING JUDGE FULFORD: Ms Samson?

11 MS SAMSON: Although yesterday the witness didn't recall
12 the name, this was elicited in private session along with other aspects
13 of the questioning that's being done right now. But certainly this
14 one was.

15 PRESIDING JUDGE FULFORD: Yes. And I think it's
16 potentially -- private session, please. Thank you, Ms Samson.

17 *(Private session at 11.32 a.m.) Reclassified as open session

18 THE WITNESS: The primary school in question, well, I've
19 forgotten the name of that school. All I know is that the school was
20 very close to (Redacted) is a village very close to (Redacted).

21 I've forgotten the name of that school.

22 MR BIJU-DUVAL: (Interpretation)

23 Q. Thank you. Do you remember the name of the principal of
24 the school, or the name of the teacher, one of the teachers?

25 A. I've forgotten all the names.

1 Q. Thank you.

2 A. You're welcome.

3 Q. You said that after the enlistment, that you were in the
4 second year of primary school, and then you stopped your schooling.
5 My question is as follows: Did you resume your schooling after you
6 left the army, the UPC?

7 A. I stopped my schooling when I was abducted. It wasn't of
8 my own free will. I did not stop my schooling of my own volition.
9 Later, after the war, I resumed my schooling. And it was in the year
10 2004, during that year I tried to resume my schooling.

11 PRESIDING JUDGE FULFORD: Mr Biju-Duval, once we've left
12 identifying information, could we return to public session. I think
13 we're on the cusp at the moment in that the witness is referring to
14 schooling, which may in turn involve referring to names of schools
15 which should remain protected. But could you bear it in mind, please,
16 because you'll know where your questions are going.

17 MRBIJU-DUVAL: (Interpretation) Yes, your Honour. I have
18 to acknowledge I was a bit troubled by some of the testimony and the
19 nature of the hearing.

20 Q. Thank you, witness. Could you tell us which school you went
21 to when you resumed your schooling?

22 A. The name of the school I attended after resuming schooling
23 is (Redacted), and that was after the war.

24 Q. Thank you. Could you tell us what level you resumed your
25 schooling at, what grade?

1 A. I resumed my schooling at the first level of primary school.
2 That was the decision of my parents, who thought that I had forgotten
3 everything, I had forgotten everything I had learned earlier, and so
4 that is why they decided I would resume my schooling starting with
5 the first year.

6 Q. Thank you. Now, if I've understood you correctly, you
7 resumed with the first year and the second year at the (Redacted) school;
8 is that correct?

9 A. Yes, that's right. That is correct.

10 Q. And then you went on to the third year?

11 A. I went to the second year. I didn't skip a year after the
12 first. After the first year I went to the second year.

13 Q. Thank you. And after the second year?

14 A. I went into the third year at a school in (Redacted) and
15 (Redacted) was teaching at that school. So I attended that school.

16 Q. Thank you. You told us that you resumed your schooling at
17 the (Redacted) school after the war, after you had left the UPC. Now,
18 was that when -- was it during that period of time your family moved
19 to (Redacted)

20 A. It was after the war. That is when we moved to (Redacted)
21 because we were afraid, afraid to remain in (Redacted); that is why
22 we moved to (Redacted)

23 Q. Thank you. And was that when you resumed your schooling
24 at the first and second year at the school in (Redacted) Have I understood
25 you correctly?

1 A. Yes.

2 Q. Now, the (Redacted) school, is that school located in
3 (Redacted)

4 A. No. The (Redacted) school is to be found in the (Redacted)
5 neighbourhood. It is a neighbourhood that is found very far away from
6 the (Redacted) neighbourhood.

7 Q. Is that school approximately 200 metres from the (Redacted)
8 (Redacted)

9 A. I'm not used to measuring distances with a tape measure.
10 All I know is that from that school to the (Redacted) you could walk
11 that distance in seven minutes, five or six minutes, but I must
12 acknowledge I'm not really used to measuring distances with a tape
13 measure.

14 Q. Thank you. Now, is the (Redacted) school also called the
15 (Redacted)

16 A. Yes. It is a complex, an educational complex called the
17 (Redacted)

18 Q. Thank you. Now, is it correct that within this school complex
19 in the same location one finds the (Redacted) and the -- and
20 the (Redacted)

21 A. I've forgotten all those names. All I know is that the school
22 complex is -- was called at the time (Redacted).

23 Q. Thank you.

24 MR BIJU-DUVAL: (Interpretation) If I could ask leave of
25 the Chamber once again for a moment. Your Honour, I wish to inform

1 the Chamber of the way we wish to proceed. I expect that I will be
2 submitting to the witness a suggestion. Now, to be loyal to the witness
3 and so that he can provide full explanations, I would like to show
4 him a document, and I'm well aware that the witness did not write it
5 and probably has never seen it. But the document contains information
6 that I would like to put to the witness, and I think it would be fairest
7 to the witness to see what I'm basing my questions on. So I would
8 like to submit this document to him and actually, the very original
9 of the document, and I would like to ensure that the Chamber is in
10 agreement with that approach.

11 PRESIDING JUDGE FULFORD: Mr Biju-Duval, we can ask the usher
12 to sit next to the witness so that the particular line or lines of
13 the documents that you want -- that you are basing your questions on
14 can be pointed out to him, but I think it is going to be absolutely
15 critical that you, as it were, read out the names or the entries or
16 whatever it is that you are relying on for the purposes of your questions.

17 So let's do it both ways: Document in front of the witness
18 with the usher's assistance, but you giving a sufficiently full
19 explanation of what you say is written there and what the document
20 is.

21 So usher, could you go and sit next to the witness please.
22 Mr Biju-Duval will give you some documents, no doubt. Thank you very
23 much. Do we have these, Mr Biju-Duval?

24 MR BIJU-DUVAL: (Interpretation) Yes, your Honour. The
25 document is found at tab 15, tab 15 in the binder, and the number is

1 DRC-D01-0003-3309.

2 PRESIDING JUDGE FULFORD: The usher's got time to find tab 15.

3 And I think, usher, the document you've got there is the whole of tab - not
4 19, sorry - tab 15. 15.

5 Now, Mr Biju-Duval, so the witness can know, what do you
6 say this document is? What is it behind tab 15?

7 MR BIJU-DUVAL: (Interpretation) This is a document
8 entitled Palmarès de fin d'année, so a year-end class list with results
9 for a particular school year, '96/'97. And this document comes from
10 the (Redacted) and --

11 PRESIDING JUDGE FULFORD: All right. So that's what the
12 document contains. And what page do you want the witness to look at?

13 MR BIJU-DUVAL: (Interpretation) Well, just to make things
14 easier in terms of handling the document, we have placed a little blue
15 tab on the original to indicate the actual page that the witness needs
16 to refer to. And for the requirements of the Court, this is
17 DRC-D01-0003-3315, 3315.

18 PRESIDING JUDGE FULFORD:

19 That's -- we're doing swimmingly well so far, Mr Biju-Duval.
20 That's fine. Now, on 3315 where should the usher's finger go?

21 MR BIJU-DUVAL: (Interpretation) First of all, at the top
22 of the page we see "annual class list", and it's specified that this
23 is the second year. Can the witness see this?

24 PRESIDING JUDGE FULFORD: Yes, the usher's just pointed it
25 out, Mr Biju-Duval, so there's no problem with that.

1 MR BIJU-DUVAL: (Interpretation)

2 Q. Witness, could you refer to entry (Redacted), a few lines
3 before the very bottom of the page? Now, do you see at this entry,
4 entry (Redacted), the name (Redacted)

5 PRESIDING JUDGE FULFORD: Right. You've told him what's
6 there and it's been pointed out, Mr Biju-Duval. So the next question
7 or the next observation is?

8 MR BIJU-DUVAL: (Interpretation) If you don't mind one or
9 two additional elements of information before I actually ask my
10 question.

11 PRESIDING JUDGE FULFORD: Right. So we ought to remember,
12 then, for that page for class two for this particular year, at entry
13 (Redacted) there is an entry which says (Redacted) Right. Where do
14 we go to next?

15 MR BIJU-DUVAL: (Interpretation)

16 Q. Witness, now, above that entry, entry (Redacted), do you see
17 something that says "ayant echoué," "failed"? I believe you've seen --

18 PRESIDING JUDGE FULFORD: That's been pointed out, yes, the
19 usher's just indicated.

20 MR BIJU-DUVAL: (Interpretation)

21 Q. Two questions, witness. Is it correct -- well, first of
22 all, my first question. Is it correct that during the -- the (Redacted)
23 school year you were registered in the second year of primary school
24 at the (Redacted)

25 A. I've understood your question. I resumed my schooling at

1 the (Redacted) in 2002. You are showing me this document. Actually,
2 it's Cordo who came to see my parents, and he suggested to them that
3 a request be made of the school principal to falsify the document.
4 But in actual fact, I resumed my schooling in 2002, and I did the first
5 and second year in (Redacted). And initially -- in 2002 I was at the
6 (Redacted) school.

7 With regard to the document that you're showing here, it
8 is false. It is not in -- it wasn't in (Redacted) that I went to that
9 school. Mr Cordo came to see my parents and suggested to them that
10 they go see -- that someone goes to the principal to have the document
11 falsified. And that -- he's certainly capable of that; he is the brother
12 of Mr Lubanga. And the principal of the school could do that. The
13 document that you've shown, I do not recognise it. It was not in '97.
14 I did not go to that school in that year. It was not that year when
15 I resumed my schooling. I resumed my schooling in (Redacted), and
16 I started the first year at the (Redacted)

17 It is true that the name found on this document is my name,
18 but everything in the document is just tricks that were concocted.
19 I started my schooling in 2002. The original was hidden, and this -- if
20 you show me a document from the (Redacted) school, I would recognise
21 it and I would agree with what was on this document.

22 Q. Thank you. Now, you have just told us that you resumed school
23 in 2002. Did you resume your schooling at the beginning of the 2002
24 school year, in the middle or at the end? Could you explain that to
25 us?

1 A. In 2004 I resumed my schooling. I was talking about 2002,
2 but that was a mistake on my part. It was, rather, in 2004. That's
3 when I resumed my schooling, starting from scratch.

4 Q. Thank you.

5 A. You're welcome.

6 Q. Could you look at the first page of this document?

7 PRESIDING JUDGE FULFORD: Do you mean the cover,
8 Mr Biju-Duval?

9 MR BIJU-DUVAL: (Interpretation) Yes, the cover page, your
10 Honour.

11 PRESIDING JUDGE FULFORD: Thank you. He's got that in front
12 of him.

13 MR BIJU-DUVAL: (Interpretation)

14 Q. Here we can see (Redacted) (phon)
15 and then (Redacted). Is it correct that this school -- well, some
16 school pupils called it (Redacted) because the school belongs to the
17 (Redacted). Do you know about that?

18 A. Yes, I understand what you are saying and I concede that.
19 The school was called (Redacted) because it
20 belonged to the (Redacted) (phon), and so that is true what you are
21 saying. (Redacted).

22 Q. Thank you.

23 MR BIJU-DUVAL: (Interpretation) Your Honour --

24 PRESIDING JUDGE FULFORD: Are we finished with that document
25 now, Mr Biju-Duval?

1 MR BIJU-DUVAL: (Interpretation) Yes, your Honour.

2 PRESIDING JUDGE FULFORD: Thank you. EVD number for it,
3 please.

4 THE COURT OFFICER: Yes, Mr President. The document under
5 tab 15, reference DRC-D01-0003-3309 will now bear the reference
6 EVD-D01-00144.

7 PRESIDING JUDGE FULFORD: Now, you were going to say
8 something, Mr Biju-Duval. It's just I'd like to give the witness a
9 break, if we're going to now move on to another document. Would this
10 be a convenient time, or is there something that you'd like to finish
11 off in relation to this subject before we take a break?

12 MR BIJU-DUVAL: (Interpretation) Just a clarification of
13 a procedural nature. The original -- we cannot have the original placed
14 on the case file. What we would like to do is have it put on the case
15 file with an EVD number, that is, a copy of the document that was inspected
16 by all parties.

17 PRESIDING JUDGE FULFORD: Absolutely, Mr Biju-Duval.
18 That's going to commence by the document being passed to the Bench
19 now, please, by the usher. Thank you very much. Ms Samson, have you
20 seen this document in its original form?

21 MS SAMSON: I did, your Honour, very briefly.

22 PRESIDING JUDGE FULFORD: All right. Well, you'll have
23 another opportunity now when we rise, and if you need more time with
24 it before it's -- well, I don't know what's going to happen to it,
25 but before whatever is going to happen to it happens to it, let us

1 know if you need more time with it.

2 MS SAMSON: Thank you.

3 PRESIDING JUDGE FULFORD: What do you propose happens to
4 this, Mr Biju-Duval? If the original's not going to be placed on the
5 Court record, what's its fate?

6 MR BIJU-DUVAL: (Interpretation) We think that very soon
7 it will be examined by another witness, the next witness to appear,
8 who would like -- and this witness would like to have it. This is
9 an official document which was borrowed from the schools and must be
10 returned to them.

11 PRESIDING JUDGE FULFORD: Certainly, Mr Biju-Duval.
12 Before these documents as it were leave your custody -- obviously they
13 can be shown to other witnesses, and I presume it's the next witness
14 who's probably brought it with him, but before they leave your custody,
15 can you raise the issue again with the Chamber, because if it's
16 necessary -- it may not be, if it's necessary for us to explore the
17 suggestion that one or more documents are forgeries, it may be desirable
18 for us to look at that before they disappear back to the DRC.

19 So for the documents that have been introduced, particularly
20 those that come into that category, we're going to need to consider
21 them again before they leave The Hague.

22 MR BIJU-DUVAL: (Interpretation) Very well, your Honour.

23 PRESIDING JUDGE FULFORD: We'll take a quarter-of-an-hour
24 break. Thank you very much, indeed, sir. We'll sit again at 20-past.
25 Thank you, Mr Lubanga.

1 (The accused exits the courtroom)

2 PRESIDING JUDGE FULFORD: Closed session, please.

3 *(Closed session at 12.03 p.m.) Reclassified as open session

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

5 (The witness stands down)

6 (The interpreter exits the courtroom)

7 THE COURT OFFICER: And just for the record of the case,
8 we were in private session since 11.32 until 12.03. Thank you.

9 PRESIDING JUDGE FULFORD: 20-past.

10 THE COURT OFFICER: All rise.

11 (Recess taken at 12.04 p.m.)

12 (Upon resuming at 12.21 p.m.)

13 *(Closed session) Reclassified as open session

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

15 (The witness enters the courtroom)

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

17 Mr Lubanga, please. Thank you.

18 (The accused enters the courtroom)

19 PRESIDING JUDGE FULFORD: Usher, I think you're about to
20 be given a blue book.

21 *(Private session at 12.22 p.m.) Reclassified as open session

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

23 PRESIDING JUDGE FULFORD: Thank you. Yes, please have a
24 seat, usher. Ms Samson, I'm afraid the curtains have to move in a
25 synchronised fashion; they do not have independent movement. So you're

1 going to have to sit at the end of the desk, I'm afraid. And the blind
2 at the right-hand side has a burned-out motor, so we're partly obscured
3 from the public. Right.

4 Mr Biju-Duval, where are we going now?

5 MR BIJU-DUVAL: (Interpretation) Yes, your Honour. I
6 would like to continue along the same lines as before we broke with
7 a new document. This new document is under tab 18 which is
8 DRC-D01-0003-3908. This document has the title (Redacted)
9 (Redacted) but I'm afraid that the copy is very dark and you cannot
10 read the first page. So if you want to see that title your Honours
11 will have to look at the original.

12 PRESIDING JUDGE FULFORD: Mr Biju-Duval, we'll take it from
13 you for the time being. I'm sure you're right.

14 MR BIJU-DUVAL: (Interpretation) What I would like to
15 happen is for the witness to turn to the indicated page under that
16 tab, which is page 3936. And I can see that the photocopy makes it
17 very difficult to see the identifying number on the page. It's the
18 entry that I would like the witness to look at, is entry (Redacted),
19 which is in the left hand column.

20 THE WITNESS: Yes, I have just seen it.

21 MR BIJU-DUVAL: (Interpretation)

22 Q. Witness, at this entry (Redacted), in the right-hand column
23 where it says "Name and first name" can you see (Redacted) Name and
24 post-name?

25 PRESIDING JUDGE FULFORD: Yes, there's been pointed out,

1 Mr Biju-Duval. The witness has been shown that there's an entry 443/97
2 with (Redacted). Right. And where to next?

3 MR BIJU-DUVAL: (Interpretation)

4 Q. In the next column, where it says "Names of the father,"
5 can you see (Redacted) written? In the next column you have "Name
6 of the mother" and you have (Redacted) written. In the following column,
7 which says "Date and place of birth," can you see "Bunia '86"? In
8 the following column where it says "Origin," can you see (Redacted)

9 In the following column where it says "Scholastic documents,"
10 you can see "Bull II," two being written in Roman numerals. Under
11 the column "Address," can you see (Redacted) In the following column
12 where it says "Date of entry," date d'entre in French, 6/11, or 10,
13 it is unclear, '97. In the following column, "Previous class" or
14 "Previous level" can you see the Roman numerals (ii)? In the following
15 column, where it says "territoire" in French, territory, can you see
16 (Redacted) And finally, in the column where it says "Religion", I think
17 I am able to read "Prot," P-R-O-T, probably for "Protestant"?

18 PRESIDING JUDGE FULFORD: Those have all been read out by
19 you and pointed out to the witness. There's quite a lot of information
20 there, so I think you need to gather it together into an appropriate
21 question that the witness is able to focus on without putting too much
22 information together at one time.

23 MR BIJU-DUVAL: (Interpretation)

24 Q. Mr Witness, would it be correct to say that you entered
25 the primary school in (Redacted) at the beginning of the school year

1 of 1997 and that you came from the (Redacted) primary school?

2 A. I have followed what you've just said. However, I shall
3 tell the truth about these documents. With regard to my studies, no,
4 I shall not say that I did not pursue my studies. I did manage to
5 study at (Redacted) after the fighting in (Redacted) I started my first
6 year again at that school. I also completed my second year. With
7 regard to the documents that I have before me, yes, this is indeed
8 my name. These are also the names of my parents. However, some of
9 the information does not tally. The correct information has not been
10 brought to this document. We are not talking about 1997, no. It is
11 in fact in 2004 that I started my studies here.

12 Q. I thank you. This document provides your date of birth as
13 1986. Would it be correct to say that you were ten years of age, and
14 in the second year of study, in the year 1996?

15 A. As I explained it -- as I explained to you at the outset
16 before you provided me with these documents, well, I gave you information
17 with regard to my studies. I started studying there at a time when
18 I was between 10 and 11 years of age. What has been consigned here
19 is with a view to causing problems. This is not the year during which
20 I studied in (Redacted), no, this is not true. I started my studies
21 in 2004 and I started in (Redacted). No, I did not say that I had
22 not studied at (Redacted).

23 I believe that the information contained in this document
24 has been tampered with. I provided information at the time when
25 Mr Serge was putting the question to me, where he was attempting to

1 ascertain which school I had studied at, and I answered by saying
2 (Redacted) and I said -- and I went on to say that I had started my studies
3 in (Redacted). This information was given to Cordo whilst I was studying.
4 I wanted to give these reports to Cordo but he refused to take them.

5 Now, if this information that has been consigned here was
6 provided by Cordo, I do not know whether this is true or not. I started
7 studying in (Redacted) in 2004.

8 Q. I thank you. Would it be true to say that you studied in
9 (Redacted)

10 A. Yes, that is correct. I studied at the third year -- I
11 started my third year there. I started studying at that school in
12 the third year, third year of primary school at (Redacted) school.

13 THE INTERPRETER: Correction from the interpreter: (Redacted)
14 school.

15 MR BIJU-DUVAL: (Interpretation)

16 Q. And with regard to this third year of primary school, which
17 year was that in, to the best of your recollection?

18 A. I started my third year of primary school in the year 2005
19 at (Redacted) school.

20 Q. And you pursued your studies until when?

21 A. I studied at (Redacted) and then I went to study the fourth
22 year of school at the (Redacted). That was in the year 2006. And
23 it was at that moment in time that I abandoned my studies. I did not
24 finish my studies. I abandoned them midway.

25 PRESIDING JUDGE FULFORD: Have we finished with that

1 document, Mr Biju-Duval?

2 MR BIJU-DUVAL: (Interpretation) Yes, Mr President.

3 PRESIDING JUDGE FULFORD: Excellent. EVD number, please.

4 And, usher, thank you very much for your assistance. That was very
5 helpful. Could you give the original back to Mr Biju-Duval.

6 Ms Samson, same applies to this document, if you wish to
7 have time with it.

8 THE COURT OFFICER: Yes, Mr President, the document under
9 reference DRC-D01-0003-3908 will be attributed the reference
10 EVD-D01-00145.

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

12 MR BIJU-DUVAL: (Interpretation)

13 Q. When you say that you resumed your third year of primary
14 studies at (Redacted) school in the year 2004, was that the -- to complete
15 your school year 2004 to 2005?

16 A. If my memory serves me correctly, that was in the year 2005
17 that I was at (Redacted). That is the year that I commenced my studies
18 in (Redacted)

19 Q. I thank you.

20 PRESIDING JUDGE FULFORD: Ms Samson, I'm sorry, the problem
21 is that once the question has started over the airwaves, it can cause
22 chaos if I intervene because I see counsel on their feet. But is there
23 anything you wish to raise at this point?

24 MS SAMSON: I think it's been rectified that the question
25 was erroneous.

1 PRESIDING JUDGE FULFORD: Exactly. In fact, it often works
2 out that way, the witness himself corrects the question. But you were
3 quite right to intervene.

4 Yes, Mr Biju-Duval, please continue.

5 MR BIJU-DUVAL: (Interpretation)

6 Q. Witness, could you please consult tab 16 of the file?

7 Maybe the usher could help the witness consult the document.
8 And this document bears the number DRC-D01-0003-2608. This is a copy
9 of a document bearing the title "Palmares deuxième trimestre," "School
10 year 1999-00" and which bears the title of Third Year Class List,
11 (Redacted). Primary school in (Redacted). (Redacted) primary
12 school.

13 Witness, I would request that you consult entry number 28
14 of this document.

15 PRESIDING JUDGE FULFORD: Mr Biju-Duval.

16 MR BIJU-DUVAL: (Interpretation)

17 Q. Under the title "Percentage of dropouts, 39 per cent," we
18 can see the entry and the name (Redacted). My question is as follows:
19 Would it be true to say that during the school year of 1999 to the
20 year 2000, you were at (Redacted) primary school, in the third year
21 of primary school?

22 THE INTERPRETER: Correction from the interpreter:
23 Replace "dropout" with the word "failures".

24 THE WITNESS: I have understood correctly what you have just
25 said to me, but I have already furnished explanations on this subject.

1 In the year 2004, I was studying in (Redacted). I started
2 the year again.

3 When I was studying in (Redacted), my parents said that I must
4 already have forgotten what I had learned, and that's why they asked
5 me to start the year again in (Redacted) at the year 2004. That's
6 why I started at the outset; that is to say, in the first year. I
7 was number 16 in the class. In the second year of primary, I was said
8 to be number 6, and that's when I left.

9 I believe that the documents that you have have been tampered,
10 and I believe that Cordo must be behind this. In (Redacted) I studied
11 there in the year 2004. I started the first year again. I was then
12 placed 16 in the class. In the second year, I was placed sixth in
13 the class and then, and only then, did I leave for (Redacted).

14 Q. I thank you. I have finished with this document.

15 PRESIDING JUDGE FULFORD: (Overlapping microphones)
16 Should the usher stay there? Are we moving on to others? Yes, we
17 are. Good. Stay there, please, usher. Thank you.

18 EVD number, please.

19 THE COURT OFFICER: Yes, Mr President. The document under
20 tab 16, DRC-D01-0003-2608 will be referenced as EVD-D01-00146.

21 PRESIDING JUDGE FULFORD: Thank you.

22 MRBIJU-DUVAL: (Interpretation) I would like for a further
23 document in its original form be shown to the witness and that we proceed
24 in the same manner as before.

25 PRESIDING JUDGE FULFORD: Thank you, Mr Biju-Duval. Usher

1 is just coming. So, which tab are we?

2 MR BIJU-DUVAL: (Interpretation) We are at tab 17. The
3 document bears the number DRC-D01-0003-3250. This is a document from
4 the (Redacted)-approved school, that is, (Redacted) primary school,
5 (Redacted), Bunia, and the document is entitled "Annual class list
6 for the year 2000/2001". This is what the cover page states. I would
7 like the witness to go to the place indicated, and for us this would
8 be page 3255. Here we have written, "School year 2000/2001, third
9 year class" and the yearly class list. I would like the witness to
10 please consult entry number (Redacted), where the name (Redacted)
11 figures, and I would like him to consult, please, the entry --

12 PRESIDING JUDGE FULFORD: All those have been pointed out,
13 Mr Biju-Duval.

14 MR BIJU-DUVAL: (Interpretation) -- the non-ranked entry.
15 I thank you, Mr President.

16 Q. Mr Witness, upon examining this document, does this not
17 cause you to return to your testimony; notably, is it correct to say
18 that you were in third year of primary school at (Redacted) in the
19 year 2000/2001?

20 A. I can see the documents that you are referring to, and I
21 can even see the entries. This is not true. That was not the year
22 that I started my studies. I believe that at (Redacted) Cordo is a
23 well-known figure. I believe that he went to the school and provided
24 explanations on my person.

25 And I believe that these individuals are capable of tampering

1 with the information and falsifying it, because I studied my first
2 and second years of primary school at that school.

3 Here I can see that my name is written, but I do not recognise
4 the period mentioned, because at that moment in time -- or at that
5 school I only studied in the year 2002; notably, my first and second
6 year. And the third year, I went to (Redacted). After (Redacted) I
7 went to study at (Redacted) (phon). That is all I have to say.

8 PRESIDING JUDGE FULFORD: EVD number, please.

9 THE COURT OFFICER: Yes, Mr President. The document under
10 tab 17 referenced DRC-D01-0003-3250 will be now referenced as
11 EVD-D01-00147. Thank you.

12 PRESIDING JUDGE FULFORD: Thank you very much. Yes, Mr
13 Biju-Duval.

14 MR BIJU-DUVAL: (Interpretation) I thank you. So I shall
15 not make reference immediately -- well, I think that over the next
16 ten minutes or so I shall not be referring to this document.

17 PRESIDING JUDGE FULFORD: Right. So we're moving away from
18 documents for the next ten minutes, or so. Usher, thank you very much
19 for your assistance. You can go back to where you usually sit. And
20 was there an original to be returned to Mr Biju-Duval? I think there
21 is. Thank you very much.

22 Yes, Mr Biju-Duval. Please continue.

23 MR BIJU-DUVAL: (Interpretation) I thank you.

24 Q. Mr Witness, I would like to now broach the issue of your
25 kidnap -- or kidnapping at the school when you were forcibly removed.

1 You explained that soldiers came to get you at the school, and you
2 said that you were taken by force to (Redacted) where -- or whence
3 you fled on the first or second day. My question is as follows: Why
4 is it that --

5 MR BIJU-DUVAL: (Interpretation) Mr President, I believe
6 that we might attempt to go into open session.

7 PRESIDING JUDGE FULFORD: Yes. Absolutely, Mr Biju-Duval.
8 I just wonder, since you're really moving onto a new topic - and there
9 are one or two administrative matters that we need to address before
10 lunch - whether this may, in fact, be a convenient moment, if that's
11 acceptable to you.

12 MR BIJU-DUVAL: Absolument.

13 PRESIDING JUDGE FULFORD: Good. Thank you very much, indeed.
14 Sir, thank you very much, indeed, for your assistance this morning.
15 We look forward to seeing you again this afternoon at 2.45. Can we
16 for a moment go into closed session, please, so the witness can withdraw?
17 Mr Lubanga, if you could withdraw for a moment, but I'll ask you to
18 come back as soon as the witness has left court. Thank you very much.

19 (The accused exits the courtroom)

20 PRESIDING JUDGE FULFORD: Yes. The public gallery is empty.
21 Thank you, usher.

22 *(Closed session at 12.52 p.m.) Reclassified as open session

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

24 (The witness stands down)

25 PRESIDING JUDGE FULFORD: Public session, please. And

1 Mr Lubanga back into court, please.

2 (The accused enters the courtroom)

3 (Open session at 12.53 p.m.)

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

5 PRESIDING JUDGE FULFORD: Mr Biju-Duval, we do not wish to
6 be thought that we're putting any pressure on you - and indeed we are
7 not putting any pressure on you - but it would be useful to know
8 approximately how much longer you think you'll be in questioning the
9 witness, because as you know tomorrow is a -- is the beginning of a
10 longer break for various unavoidable reasons; and if we don't finish
11 the witness's evidence today, it means he will have to wait until Monday
12 of next week.

13 Now, it may be that that is the result that we're simply
14 going to have to live with, but it would be quite useful to know how
15 long you think you're going to be.

16 MR BIJU-DUVAL: (Interpretation) Mr President, I really
17 wanted to finish by this evening. I believe unfortunately, however,
18 that this is not a reasonable assessment of the situation.

19 PRESIDING JUDGE FULFORD: Right. Totally understood, and
20 so be it. And I imagine, Ms Samson, you may have some questions that
21 you would want to ask anyway, given the documents that have been
22 introduced and the matters that are being explored.

23 MS SAMSON: Yes. Thank you, your Honour. I would make that
24 request.

25 PRESIDING JUDGE FULFORD: Yes. Right. Thank you. Over

1 the -- well, if not necessarily over the luncheon adjournment, at some
2 convenient stage the witness is going to have to be told by the Victims
3 and Witnesses Unit that I'm afraid he will almost inevitably be asked
4 to remain in The Hague until early next week, but I think that information
5 needs to be communicated to him, together with our apologies for the
6 fact that he is going to have to stay here for longer than he probably
7 thought was going to be the case.

8 Maître Mabilille, have you made any progress with what is
9 suggested either jointly or solely by you in relation to the next two
10 or three or four weeks?

11 MS MABILLE: (Interpretation) Mr President, as we
12 indicated to the Trial Chamber previously, we intend to file an
13 application. However, before doing so, I would like to indicate to
14 the Trial Chamber that we have a number of things to do beforehand;
15 notably, we have already filed an application with a view to tendering
16 a number of documents. We require a decision on the matter before
17 we move on. I'm sorry to say it in such a manner.

18 However, we also intend to file a second application in order
19 to request that the Trial Chamber accept that a number of documents
20 to be tendered in such a matter -- in such a manner, but we are waiting
21 because this is -- this concerns the re-interviewing of witnesses by
22 the Office of the Prosecutor, and this has been disclosed to us only
23 in video format.

24 We require the documents, and we would like to ask whether
25 we can tender these documents, but we are blocked because we do not

1 have access to these documents for the time being. That's my first
2 observation.

3 My second observation would be, that we have reduced the
4 scope of our request with regard to the transcripts; and, notably,
5 the fact that they be reviewed and that we have a copy of those transcripts.
6 We have talked to Marc Dubuisson about this and we have requested the
7 bare minimum. However, we have not yet received an answer in regard
8 to the time that it will require to bring those corrections, because
9 these are factual elements that we would like to bring to our application
10 and we would like to start on a common basis in this regard.

11 Now, having said that, the Defence will go as fast as it
12 possibly can in order to file its application. And for the time being,
13 we believe that a time frame -- well, yes, the third element I suppose
14 it is obvious, but maybe I should say it even so. This would be after
15 the testimony of the intermediaries.

16 Now, we will be filing our application for abuse of process
17 after the testimony of the intermediaries. However, once we have
18 received the transcript, of course, and -- or so from the investigator
19 in charge, the Defence will attempt to work upstream and we shall try
20 and request a very brief time frame from the Trial Chamber. And we
21 were thinking that the normal timeframe of 21 days would apply, but
22 we will try and be even faster than that. That is really what we are
23 working with.

24 PRESIDING JUDGE FULFORD: Thank you very much,
25 Maître Mabilie. If I understand that correctly then, what is being

1 proposed is that the evidence is heard on this issue - which effectively
2 is Witness 29, two intermediaries and one investigator - and that once
3 that evidence has been heard and any outstanding applications to the
4 Chamber - for instance, for the introduction of material from the Bar
5 table have been resolved - the Defence would then seek 21 days in order
6 to file the abuse request.

7 Well, Maître Mabilie, I'm going to discuss this with my
8 colleagues over lunch. The net effect of 21 days would mean that
9 the -- that the case will move very much closer to the summer recess.
10 But we will ponder this over the luncheon adjournment.

11 Is there anything that you would want to say at this stage
12 either Ms Samson or Mr Sachdeva on what's just been outlined by
13 Maître Mabilie? Yes, Mr Sachdeva.

14 MRSACHDEVA: Mr President, just with respect to the calling
15 of the intermediaries, I understand that the schedule of my learned
16 friend has just said is right. However, we are in the process of
17 determining whether we need to interview the intermediaries in order
18 to put precisely the allegations that have now been ventilated in Court,
19 and that had not been done beforehand. That may just add a bit more
20 time to the process.

21 PRESIDING JUDGE FULFORD: Or it may mean that people have
22 got to move very speedily, Mr Sachdeva. Two possible avenues. And
23 if there are going to be interviews, I imagine there will need to be
24 exchanges between the Prosecution and the Defence as to the modalities
25 of those interviews; for instance, whether the Defence and/or others

1 should be present or whether it should be Prosecution alone. Bearing
2 in mind previous applications, I imagine this may be a source of
3 controversy.

4 MR SACHDEVA: Yes. Perhaps, Mr President. Although, the
5 previous interviews that have been conducted have been conducted solely
6 by the Prosecution. And we see no reason to depart from that. But,
7 yes, it would necessitate discussions at the first instance.

8 PRESIDING JUDGE FULFORD: I think it would be sensible not
9 to make assumptions in relation to that, and that there should be full
10 and frank discussion at the Bar with the matter being brought to our
11 attention if there's disagreement, Mr Sachdeva.

12 MR SACHDEVA: Certainly.

13 PRESIDING JUDGE FULFORD: It would be useful to know possibly
14 this afternoon, if you're able to provide an estimate, as to how long
15 you estimate it would take to interview the two intermediaries if a
16 decision is made that they should be interviewed in advance. So, as
17 it were, the shortest realistic deadline that you would anticipate
18 is applicable.

19 MR SACHDEVA: Certainly, we can do that.

20 PRESIDING JUDGE FULFORD: Maître Mabilille?

21 MS MABILILLE: (Interpretation) I beg your pardon but this
22 is on another matter, but the Defence is wondering about Witness 29.
23 Now, would the Chamber like, and we will inspect the originals for
24 the -- with the legal reps and the OTP. Now, would the Judges like
25 us to table the originals even before the hearing, before 29 comes?

1 I know it's a great deal of material but we're asking this question,
2 we're putting this matter before the Chamber.

3 PRESIDING JUDGE FULFORD: Maître Mabilille, we do not require
4 the originals in advance but, obviously, the exercise that's taken
5 place today in open court is useful. It is of benefit to us at some
6 stage during the evidence to see the originals, given particularly
7 the kind of answers that have been provided by the last witness; that
8 is helpful. But we don't need them in advance.

9 Thank you all very much. I think we're back in Court 1 at
10 2.45.

11 THE COURT USHER: All rise.

12 (The hearing ends at 1.05 p.m.)

13 RECLASSIFICATION REPORT

14 Pursuant to Trial Chamber I's email instruction dated 2nd December
15 2011, the transcript is reclassified as public after the indicated
16 redactions have been implemented as ordered by the Chamber. All private
17 and closed sessions (*) are now available to the public with the exception
18 of the portions the transcript that have been redacted.

19