

Open session

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1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elizabeth

4 Odio Benito and Judge René Blattman

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 Wednesday, March 3, 2010

9 (The hearing starts at 9.30 a.m.)

10 THE COURT USHER: All rise. The International

11 Criminal Court is now in session. Please be seated.

12 (Open session)

13 PRESIDING JUDGE FULFORD: Good morning.

14 Mr Biju-Duval, we wanted to sit now, although we understand

15 there is going to be a delay with your next witness so that the

16 time isn't wasted and so that we can take stock as to the

17 various matters that are going to need to be resolved during the

18 course of this week and possibly early next week.

19 The first question that I have of you, please, is

20 whether you at the moment have any information as to when

21 Defence Witness 26 is likely to be ready to commence his

22 evidence.

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

24 with regard to Witness 26 to our knowledge, to date, he is

25 meeting with the counsel who has been ascribed to him under Rule

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

,

Open session

2

1 74 and we have received information from the VWU saying that he
2 would be available to testify at approximately 10 a.m., but this
3 is only the interview that he is having with counsel which is
4 actually delaying matters.

5 PRESIDING JUDGE FULFORD: Very helpful. Thank you
6 very much indeed. In relation to this witness, there has been a
7 request for what I am going to describe as the usual protective
8 measures. Ms Struyven, are there any objections on the part of
9 the Prosecution to those requested measures?

10 MS STRUYVEN: No, Mr President, there are none.

11 PRESIDING JUDGE FULFORD: Does anyone else, apart from
12 the Defence, have any observations? No. Then, Mr Biju-Duval,
13 for the reasons indicated in the application those measures are
14 granted. We make the same indication that we have with other
15 Defence witnesses to the representatives of victims that of
16 course care must be taken in relation to confidential
17 information given in court.

18 Can everybody please bear in mind with this witness
19 that he will require assistance in relation to reading and the
20 court officer, please, should make sure that there is a Swahili
21 interpreter available to assist him as and when he takes the
22 oath.

23 Now, Ms Struyven, there have been indications given to
24 the Chamber that the witness has some additional information
25 which he wishes to give. We do not know what that additional

Open session

3

1 information is and I think Mr Biju-Duval does not know what that
2 additional information is.

3 The policy that the Chamber has followed thus far is
4 that when a witness has said that he or she wishes to say
5 something in addition to the matters set out in their witness
6 statement, or in their earlier testimony, we have simply
7 provided them with the opportunity to tell us about those
8 matters which seem to them to be of importance. Do you wish to
9 dissuade us from following that approach with this witness and
10 do communicate with your colleagues for a moment, if you wish
11 to.

12 MS STRUYVEN: Thank you, Mr President. We have no
13 objections to that. However, if of course information comes out
14 that needs to be further assessed, we would ask for a break
15 after that.

16 PRESIDING JUDGE FULFORD: Mr Biju-Duval, then at an
17 appropriate stage in Witness 26's evidence, in answer to your
18 questions, can you make it clear to him that you are aware that
19 there are some additional matters that he wishes to speak about
20 and that the moment has been reached when he should do so, so
21 that it comes out as part of your examination at your
22 invitation. Good.

23 Now, there is an issue, Ms Struyven, as I understand
24 it, in relation to the evidence of Defence witness 5 and
25 admissibility. There have been some issues raised, I think,

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

,

Open session

4

1 with the Chamber via email. Are there any additional matters
2 that the Prosecution wish to put before us on that topic, if I
3 have identified the right witness? No, no, wait, Ms Massidda.
4 I'd asked Ms Struyven a question.

5 MS STRUYVEN: Thank you, Mr President. Everything
6 that we intended to say is in the email, of course, in short
7 version.

8 PRESIDING JUDGE FULFORD: Good. Thank you very much.
9 Was there anything else on this that the Defence wish to
10 observe?

11 MR BIJU-DUVAL: (Interpretation) The Defence does not
12 have any additional comments to make. It would seem quite
13 legitimate that witness number 5 should be able to express
14 himself on the subject or matters that were announced.

15 PRESIDING JUDGE FULFORD: Now, Ms Massidda.

16 MS MASSIDDA: Thank you, your Honour. Witness D-5 is
17 one of the witnesses for whom the Defence has identified that
18 the personal interest of several of my clients are affected.
19 Now, I'm unaware of any exchange of email between the
20 Prosecution, the Defence and the Chamber on this issue, so I
21 would appreciate if the email could be forwarded to me
22 immediately. Thank you very much.

23 PRESIDING JUDGE FULFORD: Any difficulties with that,
24 Ms Struyven?

25 MS STRUYVEN: Not at all, Mr President.

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

,

Open session

5

1 PRESIDING JUDGE FULFORD: Do you object to Ms Massidda
2 seeing the email exchange on admissibility, Mr Biju-Duval?

3 MR BIJU-DUVAL: (Interpretation) No objection, of
4 course.

5 PRESIDING JUDGE FULFORD: Will you transmit the
6 entirety of the email correspondence to Ms Massidda at the
7 earlier possible convenience and, of course, Ms Massidda, we
8 will give you the opportunity of dealing with it if there are
9 matters about which you wish to advance submissions.

10 How long, Mr Biju-Duval, with a fair wind, do you
11 anticipate Witness 26 will take?

12 MR BIJU-DUVAL: (Interpretation) I believe that this
13 witness will be quite brief with regards to the examination in
14 chief. Of course, it is always very difficult to assess such
15 things. Two hours might possibly suffice, maybe not.

16 PRESIDING JUDGE FULFORD: Ms Struyven, I know it is
17 impossible, not least because there is going to be new
18 information of which you are unaware, but on the basis of what
19 you currently know, how long do you anticipate being in
20 questioning?

21 MS STRUYVEN: Mr President, we think that we will be
22 -- we will need two or three hours at this stage.

23 PRESIDING JUDGE FULFORD: Good. That is very helpful.
24 Thank you. So, there is a high likelihood that the evidence of
25 Witness 26 will go into tomorrow. Yes. It looks as though

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

,

Open session

6

1 there may then be a break until Friday; am I right,

2 Mr Biju-Duval? The next witness will then not be ready to

3 commence until Friday morning?

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

5 Logistical problems have arisen which the Chamber is aware of, I

6 believe, which means that we must put off the examination of the

7 following witness until Friday.

8 PRESIDING JUDGE FULFORD: Thank you. Well, can I then

9 ask everyone, between now and the beginning of Witness 26's

10 evidence, to reflect on whether there are issues which could

11 conveniently be dealt with tomorrow once Witness 26 has

12 completed his evidence? We are going to have some time, and it

13 would be a shame to waste it if there are outstanding issues

14 which require counsel's submissions and which are going to need

15 our ruling. So, don't do it now, but could you, as it were, put

16 your heads together, please, and if there is a list of issues

17 that could usefully occupy our time, please let us know either

18 at 10 o'clock or when we take the midday break.

19 Now, is there anything that anyone else wishes to

20 raise now before we commence Witness 26 as and when he is ready?

21 No? Thank you all very much indeed. We will sit again whenever

22 the message comes through from the Victims and Witnesses Unit

23 that the witness is ready to commence his evidence. Thank you

24 very much.

25 (Recess taken at 9.42 a.m.)

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

WITNESS: WITNESS WWW-DO1-0026 (Closed and open session)
Questioned by Mr. Biju-Duval

7

1 (Upon resuming at 10.15 a.m.)

2 *(Closed session) Reclassified as open session

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

4 PRESIDING JUDGE FULFORD: Ms Struyven, just quickly
5 before the witness comes in, was there any inspiration as to how
6 we can best use tomorrow if there is some additional time, or
7 not?

8 MS STRUYVEN: No, we don't have any suggestions,
9 Mr President.

10 PRESIDING JUDGE FULFORD: Any inspiration,
11 Mr Biju-Duval?

12 MR BIJU-DUVAL: (Interpretation) I have a few ideas,
13 your Honour, for the time being, three areas, and others could
14 be added to that. The issue of translation and a question - a
15 new matter - namely, the recording in Swahili, unaltered
16 Swahili, of the hearings.

17 Second point, the eternal issue of disclosure. And my
18 third point, the pending issue of common witnesses and
19 information regarding common witnesses.

20 Fourth point -- and this is something that I will
21 touch upon very briefly, and probably it will seem to be a bit
22 of a mystery, but the issue of originals of school records. We
23 have received information yesterday that has led to a
24 difficulty, and we will speak of that later. But there you have
25 it, your Honour, the four matters that we could have a look at

WITNESS: WITNESS WWW-DO1-0026 (Closed and open session)
Questioned by Mr. Biju-Duval

8

1 tomorrow.

2 PRESIDING JUDGE FULFORD: For common witnesses,
3 Mr Biju-Duval, do you mean common witnesses between the two
4 trials?

5 MR BIJU-DUVAL: (Interpretation) Yes, your Honour. I
6 was imprecise. And, in particular, and quite particularly,
7 Witness 157.

8 PRESIDING JUDGE FULFORD: That is extremely helpful,
9 and if we have time, we will look at those areas tomorrow.

10 When we come to translation and disclosure, can I ask
11 counsel not to use that opportunity simply to scratch at old
12 wounds, but instead, to look at matters afresh. So rather than
13 asking us to rule on matters on which we have already ruled, to
14 take us to new areas that will benefit from renewed attention.

15 Good. Very helpful, Mr Biju-Duval. Thank you very
16 much. Ms Massidda, anything from you?

17 MS MASSIDDA: Thank you, your Honour. I would like to
18 request the Chamber for an ex parte hearing following the
19 submission by the Registry filed yesterday evening. Thank you.

20 PRESIDING JUDGE FULFORD: Well, Ms Massidda, you know
21 the cost of ex parte hearings. The cost of ex parte hearings is
22 very, very great, because we lose usually half a day. Now,
23 can't you respond initially in writing, and then we make a
24 decision and the Judges can make a decision as to whether or not
25 we need to have oral submissions, as well?

WITNESS: WITNESS WWW-DO1-0026 (Closed and open session)
Questioned by Mr. Biju-Duval

9

1 MS MASSIDDA: We can, your Honour. This was not the
2 issue. I thought that it was just simply, since everybody's
3 here, to have a short hearing of the matter. But we can, of
4 course, put in writing our submission.

5 PRESIDING JUDGE FULFORD: I'm afraid there's no such
6 thing as a short ex parte hearing. They just don't exist.
7 Well, reflect, please, with your brother and sister counsel. If
8 it is absolutely necessary for an ex parte, of course, we are
9 not going to close the door, but if it's possible to deal with
10 your common views by way either of email or a filing that, in
11 fact, saves a substantial amount of time.

12 MS MASSIDDA: I can on my side, for the OPCV team,
13 provide the Chamber with an email on the issues that are of
14 concern. Thank you.

15 PRESIDING JUDGE FULFORD: Good. Thank you very much
16 indeed, and please discuss the matter with the others over the
17 next adjournment. Thank you.

18 Right. Witness 26, please. Oh, no, just wait a
19 moment. Yes?

20 MR MULAMBA: (Interpretation) Your Honour, something
21 about testimony by video, an issue we'd like to touch upon
22 tomorrow, because we made a request regarding Witness 14.

23 PRESIDING JUDGE FULFORD: You are absolutely right,
24 Mr Mulamba. That's something which we have yet finally to
25 resolve. A report was requested from the Victims and Witness

WITNESS: WITNESS WWW-DO1-0026 (Closed and open session)
Questioned by Mr. Biju-Duval

10

1 Unit, which we now have, and that would be a suitable item to be
2 dealt with. I think we have had in all of the submissions. Are
3 you simply asking us to rule on it, or are there additional
4 matters that you want to bring to our attention?

5 MR MULAMBA: (Interpretation) There are a few matters
6 I'd like to draw to your attention.

7 PRESIDING JUDGE FULFORD: Well, we will ask you to do
8 that tomorrow afternoon then, please. Thank you very much.
9 Thank you, Mr Mulamba.

10 Witness 26, please.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE FULFORD: Good morning.

13 THE WITNESS: Good morning.

14 PRESIDING JUDGE FULFORD: Before you start your
15 evidence, just a few words from the Judges. First of all, and I
16 know this may be difficult, but first of all please do not be
17 worried about anything connected with giving evidence. The
18 Judges are here to protect you and, as you know, counsel who
19 have called you, Mr Biju-Duval, is also in court today to ensure
20 that anything that is of concern to him is brought immediately
21 to our attention. So, don't worry.

22 Can I ask you, please, to make sure that you keep your
23 voice up so that everything you say is caught by the microphone
24 in front of you and please do not speak too quickly, because
25 everything you say is being interpreted and is being recorded by

WITNESS: WITNESS WWW-DO1-0026 (Closed and open session)
Questioned by Mr. Biju-Duval

11

1 some stenographers.

2 Your identity is going to be protected as regards the
3 general public. Although these proceedings are broadcast, your
4 face and your voice will be distorted, and your name and the
5 names of those who are close to you will be kept from the
6 general public.

7 If for some reason something is said in open session
8 which shouldn't be, again, don't worry because there is a
9 half-an-hour delay which gives us the opportunity to rectify any
10 mistakes.

11 Now, please don't do anything quite yet, but in a
12 moment when the blinds are gone up, with the assistance of the
13 interpreter, I am going to ask you to read out the solemn
14 undertaking which is on a card in front of you. What will
15 happen is that the interpreter will read out a few words which I
16 am then going to ask you to repeat and he will do that all the
17 way through the very short solemn undertaking.

18 So, pause for a moment until I ask you to start.

19 Can we go into public session, please.

20 (Open session at 10.26 a.m.)

21 THE COURT OFFICER: Open session.

22 PRESIDING JUDGE FULFORD: Yes. Then, with the
23 assistance of the interpreter, could you please read out the
24 solemn undertaking. So, listen carefully to what the
25 interpreter says and simply repeat the words that he speaks.

WITNESS: WITNESS WWW-DO1-0026 (Open and closed session)
Questioned by Mr. Biju-Duval

12

1 WITNESS: WITNESS WWW-DO1-0026 (Sworn)

2 (The witness answers through interpreter)

3 PRESIDING JUDGE FULFORD: Excellent. Thank you very
4 much.

5 Now, Mr Biju-Duval, in your first questions, are we
6 going to need the assistance of the interpreter, or not?

7 MR BIJU-DUVAL: (Interpretation) No, your Honour.

8 PRESIDING JUDGE FULFORD: And I imagine you are going
9 to want to start your first questions in closed session, are you
10 -- in private session, are you not? Yes.

11 All right. We need to go into closed session, first
12 of all, and we will then go into private session for the
13 beginning of the witness's examination. Closed session, please.

14 *(Closed session at 10.28 a.m.) Reclassified as open session

15 THE COURT OFFICER: Closed session.

16 PRESIDING JUDGE FULFORD: Yes, with the assistance of
17 the usher, could the interpreter then withdraw, please.

18 (The interpreter exits the courtroom)

19 PRESIDING JUDGE FULFORD: Private session, please.

20 *(Private session at 10.29 a.m.) Reclassified as open session

21 THE COURT OFFICER: Private session.

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

23 MR BIJU-DUVAL: Thank you, your Honour.

24 Questioned by Mr Biju-Duval:

25 Q. Good morning, Witness.

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

13

1 A. Good morning.

2 Q. We have already introduced ourself to each to the
3 other, but I will do so again. My name is
4 Jean-Marie Biju-Duval, I am a lawyer, and I will be putting some
5 questions to you for the defence of Mr Thomas Lubanga. Have you
6 understood me clearly?

7 A. Yes.

8 Q. I will make one specific recommendation for you: If
9 you have to mention somebody's name, could you please speak
10 clearly and slowly so that the name is well understood and heard
11 by the interpreters?

12 A. My name is (Redacted)

13 Q. Thank you. You have just given us your name. Is that
14 your full name, or do you have other names?

15 A. That is the name I have, the name I just gave you.

16 Q. Apart from your name, do you have a nickname? Do you
17 have a nickname by which people call you?

18 A. Yes.

19 Q. Could you please tell us what that nickname is?

20 A. My nickname is (Redacted)

21 Q. Thank you. Could you please tell us your father's
22 name?

23 A. (Redacted)

24 Q. Could you please tell us your mother's name?

25 A. (Redacted)

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

14

1 Q. Is it (Redacted) Did I hear you correctly?

2 A. (Redacted)

3 Q. Do you know your mother's other names?

4 A. I also know her traditional name which is (Redacted)

5 Q. Now with regards to your father, could you please
6 restate his name because it's not been well recorded in the
7 transcript. Could you say his name slowly so that it can be
8 heard by the court reporters, please.

9 A. I did not fully understand your question.

10 Q. I apologise. I am talking about your father's name.
11 You gave your father's name, but the interpreters had
12 difficulties hearing you. Could you please repeat very slowly
13 your father's name?

14 A. (Redacted)

15 Q. Do you know your father's other names?

16 A. Yes.

17 Q. Could you please tell us?

18 A. Yes. (Redacted)

19 Q. Could you please tell us your place of birth?

20 A. Yes, I was born on (Redacted) 1980.

21 Q. And where were you born?

22 A. In (Redacted)

23 Q. Are you married?

24 A. Yes.

25 Q. Could you please state your wife's name?

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

15

1 A. Yes, (Redacted)

2 Q. Do you have children?

3 A. Yes.

4 Q. How many?

5 A. (Redacted)

6 Q. Did your mother have other children, apart from you?

7 A. Yes.

8 Q. Did she have all these children with the same man, or
9 with different husbands?

10 A. With another husband.

11 Q. With regards to the other children, other children
12 borne by your mother, could you please give us their names and,
13 if you know, their years of birth?

14 A. I can give you the names, but I do not know their
15 years of birth.

16 Q. Could you give us their names and, if possible, in
17 their orders of birth, starting with the oldest, right down to
18 the youngest?

19 A. Yes. The first is (Redacted).

20 Q. And what do you think his age is today?

21 A. I do not know.

22 Q. That's not a problem. Could you continue with the
23 names of the other children, please?

24 A. Yes, the second is (Redacted)

25 Q. Thank you. Are there any other children?

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

16

1 A. (Redacted)

2 Q. Thank you. Are there any other children?

3 A. There is a girl.

4 Q. And what's her name?

5 A. (Redacted)

6 MR BIJU-DUVAL: Thank you. Your Honour, I would like
7 to show a photograph to the witness. It's the photograph of an
8 individual, and I would like the witness to tell me whether he
9 recognises the individual in the photograph. I have copies of
10 the photograph here with me.

11 THE COURT OFFICER: (Interpretation) Mr Biju-Duval,
12 if the document is in Ringtail, can you give us the reference,
13 please?

14 MR BIJU-DUVAL: (Interpretation) That's right. It is
15 DRC-OTP-0208-0132.

16 PRESIDING JUDGE FULFORD: And this is presumably not
17 to be shown publicly; is that right, Mr Biju-Duval?

18 MR BIJU-DUVAL: (Interpretation) The document is
19 confidential.

20 PRESIDING JUDGE FULFORD: Good. Can that be shown to
21 the witness, please. And if there are copies for the Bench,
22 that would be helpful. Thank you.

23 MR BIJU-DUVAL: (Interpretation)

24 Q. Witness, do you know the individual on that
25 photograph?

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

17

1 A. Yes.

2 Q. And who is he?

3 A. It's my brother.

4 Q. Which of your brothers? Could you give us his name?

5 A. He is (Redacted)

6 MR BIJU-DUVAL: (Interpretation) Your Honour, I think
7 we should give an EVD reference to this document.

8 PRESIDING JUDGE FULFORD: I think that sounds right,
9 Mr Biju-Duval. Reference number, please.

10 THE COURT OFFICER: (Interpretation) The document is
11 filed with the reference EVD-D01-00111.

12 MR BIJU-DUVAL: (Interpretation)

13 Q. You talked about your brother, (Redacted). Do you
14 know his other names?

15 A. Yes.

16 Q. Could you please tell us?

17 A. Yes. (Redacted)

18 Q. Thank you. In your opinion, how old is he today?

19 A. I cannot give you an estimate of his age.

20 Q. Thank you. When you were a child, before you became
21 an adult, who were you living with?

22 A. I did not fully understand your question.

23 Q. That's not a problem. I will rephrase it. When you
24 were a child, before you came of age, before you became an
25 adult, which relative of yours were you living with?

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

18

1 A. I lived with my father. Later on I lived with uncles,
2 and then I lived for a while with my brothers. Later on I went
3 into military service.

4 Q. You said that you lived for a while with your
5 brothers. Are you talking about all your brothers or some of
6 them?

7 A. I lived with all my brothers.

8 Q. Could you tell us where you lived, in which locality,
9 with all your brothers?

10 A. Yes. It was in (Redacted), as well as in Uganda.

11 Q. You said that after living with your brothers you went
12 into military service. Do you remember when this was? Do you
13 remember the date, the year? If you could help us situate this
14 event in time.

15 A. I remember the year, but I do not remember the date.

16 Q. Could you please tell us the year then?

17 A. It was in 1997.

18 Q. Thank you. To your knowledge, your brother, (Redacted),
19 (Redacted) could you tell us whether he attended a school, or
20 various schools?

21 A. Yes.

22 Q. Do you know the schools he attended?

23 A. Yes.

24 Q. Could you tell us about these schools, please?

25 A. Yes. He attended school in (Redacted) and in

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

19

1 (Redacted)

2 Q. How do you know that he attended those schools? How
3 do you know that he attended the schools you mentioned?

4 A. During the holidays he would come and we used to meet
5 each other.

6 Q. Do you know the period - do you know the years -
7 during which he attended these schools? Could you give us
8 precise information on that; that is, if you know?

9 A. I know, but I cannot remember the years. I know he
10 attended primary school in (Redacted). It was an (Redacted) school.
11 Later on he went to (Redacted) to continue his primary school
12 education. After that, the fighting broke out and they went to
13 Uganda. When the fighting came to an end, he returned from
14 Uganda and he attended the (Redacted)

15 Q. Thank you. When he was attending primary school in
16 (Redacted), was it during the time when you lived together, or
17 at the time when you were living separately or separated from
18 (Redacted)

19 A. (Redacted)

20 Q. You talked about a school in (Redacted), a school that
21 (Redacted) attended. At the time he attended the school in
22 (Redacted) did you have any contact with him? Were you living
23 together, or you were living separated from each other?

24 A. Well, personally, I was doing my job, but we
25 maintained contact because our entire family was based in (Redacted)

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

20

1 at that point in time.

2 Q. Could you tell us for the benefit of the Court where
3 (Redacted) is situated, approximately?

4 A. I can do so. (Redacted) is located near (Redacted).
5 However, I do not know the distance. I know it is close to the
6 border with Uganda.

7 THE INTERPRETER: The Swahili interpreter says the
8 witness has mentioned a name which he could not catch.

9 MR BIJU-DUVAL: (Interpretation) Thank you for that
10 information.

11 Q. The interpreter said he did not hear the last name -
12 place name - you mentioned. Could you please repeat it?

13 A. I said that I do not know the number of kilometres
14 separating from (Redacted) from (Redacted), but I know that (Redacted)
15 is located in Ituri near the border with Uganda, and there we have a
16 locality called (Redacted) which is situated very close to (Redacted)

17 Q. When your brother, (Redacted), was in (Redacted), who
18 did he live with?

19 A. He lived with our mother and his father.

20 Q. And during that period, did you have any contact with
21 your mother and with your brothers and sisters?

22 A. Yes.

23 Q. Could you please explain to us, tell us about the kind
24 of contact you had with them?

25 A. At some point we went to Uganda for training. And when

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr. Biju-Duval

21

1 I returned and then left for Uganda, they were in (Redacted) but
2 they did not remain in (Redacted) for a long time because after
3 a while, because of the intense war, they left (Redacted) and
4 went to Uganda. And we lived there together.

5 Q. Thank you. Could you be more specific as to the
6 locality they went to in Uganda; that is if you know?

7 A. Yes, I know. And I went there recently. The place is
8 called Rwabisengo.

9 Q. For how long did they stay in Uganda, or up to what
10 point in time did they stay in Uganda, if you can remember?

11 A. I think that his parents, his brothers and his sisters
12 are still living in Uganda.

13 Q. When your mother and your brothers and sisters left
14 for Uganda and whilst they were in Uganda, were you in contact
15 with them, or did you not have any contact with them whatsoever?

16 A. From time to time I would cross the border and I would
17 stay with them for a week, sometimes for months, so I was in
18 contact with them, yes.

19 PRESIDING JUDGE FULFORD: Mr Biju-Duval, although we
20 haven't been in court for very long today, I've nonetheless got
21 to give the interpreters and the stenographers a break because
22 they've been a captive audience. Would now be a convenient
23 moment for you?

24 MR BIJU-DUVAL: (Interpretation) Yes, indeed,
25 Mr President.

WITNESS: WITNESS WWW-DO1-0026 (Closed session)
Questioned by Mr Biju-Duval

22

1 PRESIDING JUDGE FULFORD: Sir, during the course of
2 your evidence we need to have breaks, partly for your benefit
3 but also partly for the staff who are helping us at this Court
4 and particularly those who are -- who have the onerous task of
5 interpreting and writing everything down everything that's said.
6 So we are going to have another -- we are going to have a break
7 now, and we will look forward to seeing you in half-an-hour's
8 time at 25 to 12.

9 Closed session, please, so the witness can withdraw.

10 *(Closed session at 11.02 a.m.) Reclassified as open session

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

13 (The witness stands down)

14 PRESIDING JUDGE FULFORD: Over the break,
15 Mr Biju-Duval, could you reflect on whether it might be possible
16 for at least some of this evidence to be given in public
17 session? Obviously, you've had to establish the identity of
18 various family members. Now you've done that and you're dealing
19 generally with where people have been living, it may be possible
20 for some of that to be given in public session without
21 mentioning individuals' names. It is very much a matter for
22 your judgement because you know what the next question is that
23 you going to ask and what the witness's likely response is going
24 to be, but if you could just think about that, and you needn't
25 respond now, but we would encourage you to move into public

WITNESS: WITNESS WWW-DO1-0026 (Closed session)
Questioned by Mr Biju-Duval

23

1 session if you feel that that's realistically possible.

2 MR BIJU-DUVAL: (Interpretation) Yes, Mr President.
3 I might be putting a suggestion to the Chamber, notably to
4 suggest to the witness that when I talk about (Redacted), I use
5 the expression "your brother", and we shall then see whether it
6 is possible to proceed in such a manner in open session.

7 PRESIDING JUDGE FULFORD: Absolutely. I think
8 sometimes formulas like that have worked and sometimes they
9 haven't, but we could certainly try that with this witness and
10 see whether he's comfortable with it. Thank you very much.

11 Twenty-five to 12.

12 (Recess taken at 11.04 a.m.)

13 (Upon resuming at 11.36 a.m.) *(Closed session)

14 Reclassified as open session

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

16 PRESIDING JUDGE FULFORD: Witness, please.

17 (The witness enters the courtroom)

18 PRESIDING JUDGE FULFORD: Public or private, Mr Biju-Duval?

19 MR BIJU-DUVAL: (Interpretation) I would suggest that
20 we conduct the experiment that I suggested before we took the
21 break; I shall put this to the witness.

22 PRESIDING JUDGE FULFORD: Would you like to explain to
23 him then and then we will see where we go.

24 MR BIJU-DUVAL: (Interpretation)

25 Q. Good morning, Witness.

WITNESS: WITNESS WWW-DO1-0026 (Closed session)
Questioned by Mr Biju-Duval

24

1 THE INTERPRETER: The Swahili interpreters says the
2 witness's microphone is not on. It is now on.

3 MR BIJU-DUVAL: (Interpretation)

4 Q. Mr Witness, I shall make a recommendation to you. We
5 shall now be moving into open session and of course no
6 indication should be given in public which would enable to
7 identify you, nor should there be any indication which would
8 enable people to identify people specifically by their name,
9 that is to say the members of your family. Have you understood
10 me correctly?

11 A. Yes.

12 Q. I put a number of questions to you at an earlier stage
13 on the subject of your brother, (Redacted); do you remember?

14 A. Yes.

15 Q. I would suggest the following to you: When I speak
16 about (Redacted) I shall say "your brother." Have you
17 understood me?

18 A. Yes.

19 Q. And when you wish to speak about (Redacted) you shall
20 say "my brother." Are you in agreement with that?

21 A. Yes.

22 Q. Thank you. So we shall move into open session, but do
23 not worry. As Mr President recalled earlier, if there is a
24 mistake made it can be immediately corrected without there being
25 any problem.

WITNESS: WITNESS WWW-DO1-0026 (Open session)
Questioned by Mr Biju-Duval

25

1 PRESIDING JUDGE FULFORD: Thank you very much,
2 Mr Biju-Duval. Public session, please.

3 (Open session at 11.40 a.m.)

4 THE COURT OFFICER: We are in open session.

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

6 MR BIJU-DUVAL: (Interpretation) Thank you,
7 Mr President.

8 Q. Mr Witness, before we took the break, you told us that
9 your mother and her children had fled to Rwabisengo in Uganda;
10 is that correct?

11 A. Yes.

12 Q. I would like a point of clarification. Did your
13 brother also flee to Rwabisengo at the same time as his mother
14 and other brothers, did they flee together to Rwabisengo?

15 A. Yes.

16 Q. Thank you. To your knowledge, at any given moment in
17 time at a later stage, did your brother return to Ituri?

18 A. Yes.

19 Q. And did part of his family remain behind in Uganda?

20 A. Yes.

21 Q. To your knowledge, which members of your brother's
22 families, family, are the ones who remained behind in Uganda,
23 without giving any names, that is? I apologise. I shall put
24 the question to you in another manner; more directly: Did your
25 brother's father remain in Uganda?

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr Biju-Duval

26

1 A. Yes.

2 Q. Thank you. When your brother returned to Ituri, do
3 you know where he settled? I would not like you to provide me
4 with a specific address but a general indication as to the town
5 he settled in?

6 A. Kasenyi and Bunia.

7 Q. Thank you. To your knowledge, when your brother
8 returned to Kasenyi and Bunia, did he attend school? I would
9 ask you not to provide us with the name of the school, if you
10 know the name, but merely tell us whether he did, yes or no,
11 attend school?

12 A. He did go to school.

13 Q. Thank you.

14 MR BIJU-DUVAL: (Interpretation) Mr President, might
15 we move for a few seconds to private session for the witness to
16 provide us with the name of the school?

17 PRESIDING JUDGE FULFORD: Absolutely, Mr Biju-Duval,
18 private session, please.

19 *(Private session at 11.45 a.m.) Reclassified as open session

20 THE COURT OFFICER: We are in private session.

21 PRESIDING JUDGE FULFORD: I think the green light had
22 come on in time, Mr Biju-Duval, but I will obviously ask the
23 court officer to check that the witness's answer was given in
24 private rather than public session. Good. Anything else in
25 private session?

WITNESS: WITNESS WWW-DO1-0026 (Open and private session)
Questioned by Mr Biju-Duval

27

1 MR BIJU-DUVAL: (Interpretation) I'm afraid that the
2 witness's answer has not been given. I might put the question
3 to him again.

4 PRESIDING JUDGE FULFORD: Please.

5 MR BIJU-DUVAL: (Interpretation)

6 Q. I do apologise, Mr Witness. There are a number of
7 technical difficulties. Could you provide us with the name of
8 the school which you already mentioned but could you please
9 repeat it for us? Thank you.

10 A. Institute (Redacted). The (Redacted) Institute.

11 Q. Thank you. So, Mr President, I believe that we might
12 move back into open session. I am still following the same
13 modus operandi.

14 PRESIDING JUDGE FULFORD: Public session, please.
15 (Open session at 11.47 a.m.)

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

18 PRESIDING JUDGE FULFORD: Well, I'm looking at the
19 light which -- it is the right way around. It's
20 counter-intuitive. We are in public session, yes,
21 Mr Biju-Duval.

22 MR BIJU-DUVAL: (Interpretation)

23 Q. I would like a point of clarification upon this period
24 when your brother returned to Ituri, to Kasenyi and Bunia, and
25 when he attended school. During that period were you in contact

WITNESS: WITNESS WWW-DO1-0026 (Open and private session)
Questioned by Mr Biju-Duval

28

1 with him?

2 A. Yes, we did meet.

3 Q. Could you quite simply specify whether these meetings
4 were interspersed or whether they were frequent, whether you met
5 on a frequent basis or not and under what circumstances you
6 would meet, for what reasons? Could you give us a few details
7 on this subject, please?

8 A. Yes, I can. We did not meet all the time, but he
9 would come to my home in order to fetch some money, in order to
10 pay for his school fees.

11 Q. Thank you. Mr President, I am obliged to go into
12 closed session with a view to examining a document.

13 PRESIDING JUDGE FULFORD: No difficulty at all.
14 Private session, please.

15 *(Private session at 11.50 a.m.) Reclassified as open session

16 THE COURT OFFICER: We are in private session.

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

18 MR BIJU-DUVAL: (Interpretation) Yes. I would like
19 to put a photograph before the witness with a view to asking him
20 whether he recognises the individuals in this photograph. This
21 document bears reference DRC-OTP -- I apologise, I am going to
22 give the EVD reference, OTP-00390. Could we please hand a hard
23 copy of this document to the witness and I have copies at the
24 disposal of the Bench and the parties and participants. This is
25 a document which should of course not be shown to the public.

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr Biju-Duval

29

1 Q. Witness, do you recognise the individuals in this
2 photograph?

3 A. Yes, I do know them.

4 Q. Could you provide us with their names, starting with
5 the individual seated to the left of the photograph and then the
6 person seated in the centre and the person seated to the right?

7 A. Yes. The first individual is (Redacted)
8 (Redacted).

9 Q. Thank you. And the person seated to the middle?

10 A. He is the (Redacted)

11 Q. Thank you. And the individual seated to the right who
12 is holding a mobile telephone?

13 A. Yes, I do know that individual, but I have forgotten
14 his name. It is a lieutenant of the Ugandan army, a
15 sub-lieutenant from the Ugandan army.

16 Q. Were you already familiar with this photograph before
17 seeing it here in the hearing?

18 A. This photograph (Redacted) and was taken when I was in
19 Uganda and I am surprised to see it here before me.

20 Q. You say that this photograph (Redacted). Do you know
21 who took the photograph?

22 A. Yes. This photograph was taken in (Redacted) locality
23 in Uganda whilst we were following training for (Redacted)
24 (Redacted).

25 Q. Thank you. You say that this was at the location

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr Biju-Duval

30

1 where training was given to (Redacted). Who was
2 training those (Redacted)? Who were the
3 trainers?

4 A. Ugandan instructors were providing the training.

5 PRESIDING JUDGE FULFORD: Mr Biju-Duval, if we have
6 finished with the photograph I think it needs an additional EVD
7 number which the court officer will now give to it.

8 THE COURT OFFICER: (Interpretation) EVD-OTP-00390
9 had been attributed to the redacted version of the photograph.
10 I shall give you a new EVD number for the non-redacted version.

11 PRESIDING JUDGE FULFORD: Ms Struyven?

12 MS STRUYVEN: Excuse me, Mr President. Maybe just to
13 indicate that the redaction concerned the name of the brother.
14 I'm not sure, because we had a conversation on the
15 confidentiality levels of the EVD numbers, I am not sure if this
16 would mean that the EVD number would now get -- or a
17 non-redacted version would now get an EVD number but if it does
18 then we would prefer the new EVD number has to be of a
19 photograph that is redacted with -- or where the name of the
20 brother is redacted. I am not very clear. No.

21 PRESIDING JUDGE FULFORD: I don't think allocating an
22 EVD number is going to remove the protection that has been given
23 to the brother's name, Ms Struyven. If your concern is that
24 this will suddenly mean that a name previously protected is now
25 going to be published the answer is, as I understand it, you

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr Biju-Duval

31

1 have no need to worry.

2 MS STRUYVEN: Okay, because that was indeed the
3 conversations we had with Court Management on the
4 confidentiality levels of our documents but if indeed there is
5 no concern of his name being not protected then I have no
6 concerns.

7 PRESIDING JUDGE FULFORD: Well, can I ask the court
8 officer to confirm that giving it an EVD number is not going to
9 alter the level of protection provided to that individual.

10 THE COURT OFFICER: Absolutely not. This document is
11 classified confidential and it shall bear the EVD number as
12 follows: EVD-D01-00112 and I thank you, Mr President.

13 PRESIDING JUDGE FULFORD: Good. Sorry to interrupt
14 you, Mr Biju-Duval. Do we need to stay in closed session or can
15 we now go back into public session?

16 MR BIJU-DUVAL: (Interpretation) I believe that we
17 shall need to remain in private session for a number of
18 questions around this photograph. The closed session is
19 necessary because this photograph has been commented upon by a
20 Prosecution witness.

21 PRESIDING JUDGE FULFORD: Certainly.

22 MR BIJU-DUVAL: (Interpretation)

23 Q. With regard to the individuals in this photograph, you
24 spoke to us of a Ugandan officer and two individuals, (Redacted)
25 (Redacted). Now, (Redacted), what

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr Biju-Duval

32

1 were their activities and what were they doing at the time
2 when the photograph was taken in Uganda, at that location?

3 A. In Uganda, that was a place where there was a course
4 given (Redacted), and (Redacted). I
5 was like his assistant. When he wasn't there, I represented him
6 and, when the photograph was taken, the (Redacted)
7 (Redacted), and explained to me that he had gone to take that
8 course (Redacted) in Uganda.

9 Q. You mentioned training that you yourself took in
10 Uganda. Was that the same training?

11 A. No.

12 Q. Could you tell us when you yourself was -- when you
13 yourself were undergoing training in Uganda; do you remember
14 which year it was?

15 A. Yes, I remember.

16 Q. Could you tell us that year, please?

17 A. It was in 2001. In the year 2000.

18 THE INTERPRETER: Corrects the Swahili/French
19 interpreter.

20 MR BIJU-DUVAL: (Interpretation)

21 Q. Thank you. During this time, when you were undergoing
22 training in Uganda, was this the period of time when your mother
23 and her children also fled to Uganda?

24 A. Well, when we went to Uganda, we left them in (Redacted)
25 but, after our departure, some time after our departure the

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr Biju-Duval

33

1 troubles worsened in (Redacted) and they had to leave (Redacted)
2 and go to Uganda.

3 PRESIDING JUDGE FULFORD: Ms Struyven, I think you
4 were on your feet.

5 MS STRUYVEN: Thank you, Mr President. Just to
6 indicate that this is a sensitive issue and that the question as
7 asked by my colleague was, in our opinion, very leading.

8 PRESIDING JUDGE FULFORD: Thank you. Can you exercise
9 some care in this area, Mr Biju-Duval. Thank you very much.

10 MR BIJU-DUVAL: (Interpretation)

11 Q. I'm going to ask you a question, and first, I will
12 give you a particular point in time as a reference point, and
13 this will not be leading. My question is as follows: After the
14 fall, after the departure of Opondo (phon) from Bunia, after
15 that event, what were you doing?

16 A. When Lompondo was in Bunia, within the APC, I was also
17 a member of the APC and then, after that, we were assigned to
18 the (Redacted)

19 Q. Thank you. My question had to do with the period of
20 time after Lompondo was driven out of Bunia. What were you
21 doing then, after Lompondo was driven out of Bunia?

22 A. When Lompondo was driven out of Bunia, we went to the
23 Mandro centre (Redacted)

24 Q. Thank you. Could you be more specific. You said you
25 went to the Mandro centre to (Redacted); what

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr Biju-Duval

34

1 kind of (Redacted) were you giving?

2 A. Actually, it was (Redacted)

3 Q. Thank you. And was (Redacted)

4 within an army, within a particular army or group?

5 A. It was the -- within the UPC.

6 Q. Thank you. I would like to briefly return to

7 (Redacted). Now, you said that he has passed away; is that not
8 so?

9 A. Yes.

10 Q. Might you be able to remember the date he died or, in
11 approximate terms, the approximate date when he died, even if
12 you can't be entirely specific?

13 A. I couldn't give you a specific time as to the year but
14 it is possible that it might have been at the very beginning of
15 the UPC party.

16 Q. Thank you. Was it after Molondo was driven out of
17 Bunia?

18 THE INTERPRETER: Correction by interpreter.
19 Lompondo.

20 THE WITNESS: Yes.

21 MR BIJU-DUVAL: (Interpretation)

22 Q. Thank you. Could you very briefly tell us how he died
23 or under what circumstances he died, if you know?

24 A. Yes. (Redacted)

25 Q. Thank you. Is there a family tie between your family

WITNESS: WITNESS WWW-DO1-0026 (Private session)
Questioned by Mr Biju-Duval

35

1 and (Redacted) from your family? Has he some kind of link to
2 your family?

3 A. Yes, he's someone from the family but not the close
4 family. He is from my brother's family, the extended family.

5 Q. Now, is this on your father's side of the family or on
6 your mother's side of the family?

7 A. On the father's -- on my father's side of the family.

8 Q. Now, were there any contacts between (Redacted) and
9 your family?

10 A. No. Rather, I was the one who was living with
11 (Redacted)

12 Q. Thank you.

13 MR BIJU-DUVAL: (Interpretation) Your Honour, I think
14 we could go into open session. I would point out that I will be
15 making reference to the UPC. I won't ask questions about the
16 duties that the witness held within the UPC. I will remain very
17 general in my questioning and, Witness, if you don't provide
18 specific information about your duties within the UPC we can go
19 into open session.

20 PRESIDING JUDGE FULFORD: See how we get on,
21 Mr Biju-Duval, but obviously if there are matters that need to
22 be expanded on, don't hesitate to ask for us to go into private
23 session.

24 Public session, please.

25 (Open session at 12.14 p.m.)

(Open session)

36

1 THE WITNESS: I have no questions.

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

4 PRESIDING JUDGE FULFORD: Yes.

5 MR BIJU-DUVAL: (Interpretation)

6 Q. Witness, you said that you were in the UPC. Could you
7 tell us until when? How long did you remain within the UPC?

8 A. I remained in the UPC until the year 2003.

9 Q. Could you be more specific about the year 2003? Could
10 you tell us when in the year 2003 you left the UPC or, if you
11 don't remember the date, could you tell us upon what occasion
12 you left the UPC?

13 A. Yes. I left the UPC when there was fighting between
14 Uganda and the UPC in Bunia, we went to Mongbwalu, and from
15 Mongbwalu, I met up with the FAPC of Jerome.

16 Q. Thank you. And how long did you remain within the
17 FAPC of Jerome?

18 A. I did one year, within the FAPC.

19 Q. Thank you. Now, during this entire period of time
20 during which you were a soldier within the UPC and then within
21 the FAPC, during that entire period, did you have contact with
22 your mother and your brothers and sisters?

23 A. Yes.

24 Q. Could you provide us with more information about these
25 contacts, where you had contact with them? At what time? Upon

(Open session)

37

1 what occasion? Under what circumstances, that kind of thing?
2 Yes, your Honour, now, before the witness replies I think it
3 might be prudent to go into closed session.

4 PRESIDING JUDGE FULFORD: Private session, please,
5 before the witness answers the question.

6 MR BIJU-DUVAL: (Interpretation)

7 Q. Witness, we are in --

8 *(Private session at 12.18 p.m.) Reclassified as open session

9 THE COURT OFFICER: One moment, please. We are in
10 private session.

11 PRESIDING JUDGE FULFORD: Yes.

12 MR BIJU-DUVAL: (Interpretation)

13 Q. Witness, we are in closed session, so don't be
14 worried. Now, can you give us more information about how, or
15 the circumstances, the places where you were in contact with
16 your mother, your brothers and your sisters?

17 A. When I was part of the FAPC of Jerome, later I left
18 and then I went to Kampala and from Kampala I went back to
19 (Redacted), to my mother's home and to my brother's home. And
20 then after that I got married, in the presence of my mother and
21 my brothers, so that was when we met one another.

22 Q. Thank you. Now, while you were a soldier within the
23 UPC and the FAPC, to your knowledge what was your brother (Redacted)
24 (Redacted) doing? What was he doing, to the best of your
25 knowledge?

(Open session)

38

1 A. He was at home. He was with his sister in Uganda, in
2 (Redacted), and that is where I left him. When I left -- well,
3 I went from Jerome's place, I went to Uganda, I got married and I
4 left my wife with my mother and my brothers, including (Redacted)
5 and I went back to (Redacted) when the PUSIC movement began.

6 Q. Thank you. To your knowledge, was your brother (Redacted)
7 (Redacted) a soldier with an armed group at any particular time
8 of his life, to the best of your knowledge?

9 A. No.

10 Q. How can you say that he was not a soldier?

11 A. As far as I know, well, he is my brother. If he had
12 been a soldier, I would have known and I would have left him at
13 -- when I left the home in (Redacted), he was not a military
14 person, a soldier. He was a civilian.

15 Q. Thank you. To your knowledge -- now, your brother,
16 (Redacted), did he work at any particular time for (Redacted)

17 A. No, as I told you, I worked for (Redacted) for a
18 while, and I think furthermore that, if you asked the question
19 of other people, they can tell you that I was the one who lived
20 with (Redacted) when I was still a child. He was in Uganda, and
21 he never worked for (Redacted)

22 Q. Thank you. Just an additional point. Could you tell
23 us exactly what the military duties of (Redacted) were within
24 the UPC?

25 A. (Redacted) within the ARCD he was a (Redacted),

(Open session)

39

1 and within the UPC he was a (Redacted)

2 (Redacted)

3 MR BIJU-DUVAL: (Interpretation) Thank you. If the
4 Bench could be so kind for a second time?

5 (Defence counsel confer)

6 MR BIJU-DUVAL: (Interpretation)

7 Q. I beg your pardon, I will ask you a question that may
8 appear to be somewhat strange to you. You see, the transcript
9 was inaccurate. When you worked for (Redacted), you were an
10 adult, is that not so?

11 A. Yes.

12 Q. And how old was your brother (Redacted) when you were
13 (Redacted) assistant, in approximate terms? Was he very young?
14 Could you give us some idea of how old he was?

15 A. I didn't really understand your question, because I
16 don't understand the period of time that you are referring to.
17 When I was (Redacted) I lived with (Redacted) until his death.

18 Q. I beg your pardon. I apologise. I was mixed up. I
19 will ask my question again. Now, when you worked with (Redacted)
20 up until the time of his death -- I beg your pardon, once again
21 I will rephrase my question. When (Redacted) died, to the best
22 of your recollection how old was your brother (Redacted), in
23 approximate terms?

24 A. I couldn't give you his age. He was in Uganda.

25 Q. Thank you. Could you tell us when you saw your

(Open session)

40

1 brother (Redacted) for the last time; under what

2 circumstances?

3 A. I saw him as we were going to (Redacted) and in (Redacted)

4 (phon), and that is where my mother and he saw each other. That

5 was in 2006, I believe. We met in (Redacted). And also, when he

6 was studying in (Redacted), I brought him -- I provided him with

7 some assistance. He was at school in (Redacted).

8 Q. Thank you. And since then do you know what has become

9 of him, he and your mother? What has become of him and your

10 mother?

11 A. I have had no news.

12 Q. Thank you. I only have one more question to ask you.

13 You said to the Protection Unit that you have information - new

14 information - that you would like to provide. Now, I don't know

15 what information that is. Would you like to express this

16 information right now?

17 A. Yes, I can give you that information. The new

18 information that I have is that I learned that (Redacted) had

19 stated that he was a soldier within the UPC and that he had been

20 forcibly enrolled, and that's what I didn't understand.

21 I didn't understand how he could have been a soldier. He

22 is my brother, I know that he never was a soldier and I was

23 surprised to find his photograph here and I don't know under

24 what circumstances it came to be that his photographs were here.

25 And I tell -- I am telling you truthfully. Perhaps you won't

(Open session)

41

1 believe what I am telling you, but I would like to ask the Judges
2 to give me a person to work with... As I told you, (Redacted)
3 was never a soldier. For the first time, I met with lawyers who
4 didn't tell me the truth. They asked me questions, without
5 telling me that (Redacted) had come here and claimed he was a
6 soldier, and here I learned that (Redacted) had stated that he
7 had been a soldier and he had been forcibly enlisted. I didn't
8 know what military group that was all about, so that is the
9 matter that I wanted to put to you.

10 MR BIJU-DUVAL: (Interpretation) Thank you. Your
11 Honour, I have no further questions.

12 PRESIDING JUDGE FULFORD: Ms Struyven?

13 MS STRUYVEN: Mr President, we would like to ask for
14 an additional time to digest and to assess the information that
15 has been given to us, so we are seeking an adjournment.

16 PRESIDING JUDGE FULFORD: If we were to rise now and
17 then sit again this afternoon, is that going to give you long
18 enough, Ms Struyven?

19 MS STRUYVEN: If it would be possible, your Honours,
20 we would prefer to start tomorrow morning, if it's possible. I
21 could add to that, that in that case we would really try to make
22 it quite concise, the cross-examination.

23 PRESIDING JUDGE FULFORD: To what extent, just in
24 headline form, do you say you've been really put in a position
25 today of having to deal with completely unexpected information?

(Open session)

42

1 MS STRUYVEN: Your Honours, I think that -- well,
2 first of all, the movements of this witness have been -- we were
3 unaware of where he was, at what times, with whom, in which
4 countries. Under whom he was working was only notified to us on
5 Friday after 5.30. In addition to that, there has been
6 information about him working with the accused. So we would
7 like to have an opportunity to further investigate that
8 information.

9 (Trial Chamber Confers)

10 PRESIDING JUDGE FULFORD: Ms Struyven, one of the
11 aspects to the Prosecution not receiving a substantial amount of
12 advance information is that, obviously, in the right
13 circumstances it is then appropriate for you to be given time so
14 that you can, as it were, marshal your thoughts and prepare, as
15 it were, a proper cross-examination, rather than one which
16 you've had to compile at haste, which isn't necessarily going to
17 be most satisfactory to you or, indeed, the Chamber. So we are
18 sympathetic to this request.

19 We fortunately have a little bit of time in hand,
20 anyway, because tomorrow is a somewhat difficult day. So can I
21 make clear we are not setting a precedent by this. This is not
22 a green light for similar applications to be made routinely for
23 every witness. But on this occasion, for this witness - and
24 bearing in mind that we do have a little bit of flexibility in
25 relation to time for this particular witness - you can commence

(Open session)

43

1 your questions tomorrow. And let me just remind myself of when
2 that will be. Yes, it's at 9.30.

3 Mr Biju-Duval, can we use this opportunity to
4 encourage the Defence to keep under review the quantity of
5 information that is given to the Prosecution and the timing of
6 it. We are not being critical, but it is really to everyone's
7 advantage to have the maximum amount of information distributed
8 as early as possible so as to save the loss of time, because the
9 Bench has decided that it is appropriate to give the Prosecution
10 a certain amount of preparation time. So I am not asking you to
11 respond. I am just encouraging you to reflect on this with
12 Maître Mabilie so that we really do waste as little time as
13 possible. Thank you.

14 I think, given you are going to be preparing,
15 Ms Struyven, we won't try and deal with the four issues
16 identified by Mr Biju-Duval earlier today. We'll give you the
17 afternoon and we will use such time as we have tomorrow - once
18 you've finished your questioning and if there are any questions
19 from anyone else - we'll use the time tomorrow to deal with
20 those issues.

21 Anything else which anyone else wishes to raise? Yes,
22 Ms Samson.

23 MS SAMSON: Thank you, Mr President. Perhaps, once
24 the witness withdraws, with your leave, the Prosecution has a
25 request of the Chamber.

(Open session)

44

1 PRESIDING JUDGE FULFORD: Private session, please.

2 Closed session, sorry.

3 *(Closed session at 12.37 p.m.) Reclassified as open session

4 THE COURT OFFICER: We are in closed session, your

5 Honours.

6 (The witness stands down)

7 PRESIDING JUDGE FULFORD: Public, Ms Samson?

8 MS SAMSON: Yes, your Honour.

9 PRESIDING JUDGE FULFORD: Public session, please.

10 (Open session at 12.38 p.m.)

11 THE COURT OFFICER: We are in open session, your

12 Honour.

13 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

14 MS SAMSON: Thank you, Mr President. The Prosecution
15 seeks leave of the Chamber to have a brief meeting with Defence
16 Witness 6 prior to his anticipated testimony on Friday. The
17 witness is not one of the witnesses that the Prosecution had
18 previously requested a meeting with, and the Prosecution made
19 the request only yesterday morning to the Defence.

20 We understand now that for logistical reasons the
21 witness has not yet arrived in The Hague, and courtesy meetings
22 have been scheduled for tomorrow afternoon. It's indeed the
23 case that the witness will likely commence his evidence on
24 Friday, meaning that, indeed, he will have only one evening as
25 between this meeting and testimony.

(Open session)

45

1 The Prosecution in that circumstance waives its
2 earlier request that there be a gap between brief meetings and
3 testimony. In our submission, these meetings have proven very
4 helpful to the Prosecution in streamlining and focussing its
5 cross-examinations, given that the summaries provided by the
6 Defence are, for reasons the Chamber knows, not always entirely
7 -- they are summaries, so they don't have all of the information
8 that the witness gives.

9 PRESIDING JUDGE FULFORD: How do we -- forgive me
10 interrupting. We well understand the benefits, Ms Samson, and I
11 am not being rude to cut you short. Practicalities for this, if
12 we could turn straight to that, at the moment we are due to be
13 sitting at 9.30. Is it going to be possible to arrange this in
14 such a way as not to lose yet more time?

15 MS SAMSON: Our submission, your Honour, is that the
16 meeting take place for no longer than 30 to 40 minutes tomorrow
17 evening. As had previously been arranged as between counsel and
18 the Bench, these meetings take place after sitting hours. And
19 should the witness consent - of course, it is up to the witness
20 - then the meeting could take place tomorrow evening for a brief
21 period of time, and we would then commence his examination as
22 scheduled on Friday.

23 PRESIDING JUDGE FULFORD: Any difficulties?

24 MR BIJU-DUVAL: (Interpretation) Yes, your Honour.
25 Very briefly, the first thing I would say is that there is the

(Open session)

46

1 risk that this request is no longer an exceptional request; it's
2 becoming a regular feature, and we do not think that this
3 tallies with our understanding of proceedings.

4 Secondly, this request should have been filed long ago
5 so that the Defence can contact the witness, explain to him or
6 her that such a meeting could take place and request his or her
7 consent. This request is being filed two days before the
8 witness's testimony. The Chamber knows that giving testimony
9 here is something difficult, which the witness should prepare to
10 go through.

11 We feel that we should not worsen things for the
12 witness by organising a meeting on the eve of the day he or she
13 is going to start giving testimony. Today we do not know
14 whether the witness is going to give consent, and the witness
15 has not been given prior notice of this. In our submission,
16 this manner of doing things is not satisfactory. And the
17 prejudice that this could cause to the witness is a lot more
18 than any benefits which could accrue to the Prosecutor from the
19 process.

20 It would have been easier for the OTP to tell us about
21 a month ago that we would like to meet with Witness 6. This was
22 not done. Today the situation is different. The testimony will
23 be given in a few day's time, and we think that it's not proper.
24 It's not proper that the witness should be subjected to such a
25 trial once more on the eve of the day he is going to give

(Open session)

47

1 testimony.

2 PRESIDING JUDGE FULFORD: Is there any particular
3 reason, Ms Samson, as to why you've had a change of heart in
4 relation to this, as it were, why there was an original approach
5 and there's now a new approach?

6 MS SAMSON: Mr President, we've delved further into
7 the summaries. There have been several versions of this
8 witness's summary that have been provided to the Prosecution. I
9 think we are at the third version currently. And upon further
10 review and given the fact that witnesses have generally expanded
11 fairly considerably on their evidence, the Prosecution feels it
12 would be better positioned to cross-examine the witness had it
13 had some insight into certain of the changes in the summaries,
14 certain of his movements, certain of his -- certain of his
15 affiliations with the witness he's here to talk about.

16 At this point the Prosecution is simply asking the
17 Defence to see if the witness consents. Thus far we have only
18 met with two witnesses. To the Prosecution's view, there have
19 been no untoward effects. The witnesses have thereafter given
20 testimony freely and fully. The -- in our submission, the
21 exercise can only assist.

22 (Trial Chamber confers)

23 PRESIDING JUDGE FULFORD: Ms Samson, we have a -- a
24 residual concern of some strength that there are potentially
25 real problems if, very shortly before witnesses are due to give

(Open session)

48

1 evidence, the night before when, really, they should be resting
2 and preparing themselves for the exercise, they are in fact
3 having to give parts of their account. This is really
4 undesirable.

5 We take it from you that there have been a number of
6 different versions of this witness's summary. We are prepared
7 in those exceptional circumstances to agree to this, so long as
8 of course the Defence have put the proposal to the witness and
9 he has given his consent. So long as that happens and he
10 is knowing full well what you are expecting of him, is prepared
11 to do it, then on this occasion, yes.

12 We indicate this is not to be seen as a green light to
13 repeat applications of this kind. We will look at each of them
14 very carefully on their merits. And it will need something,
15 like new information of the kind that you have just indicated
16 for us to give serious consideration to an application of this
17 kind, because it could be very stressful for the witness.

18 So, yes, on this occasion, against that background,
19 and subject to the consent being given the witness having spoken
20 to Defence counsel. Thank you very much.

21 MS SAMSON: Thank you very much.

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

23 MR BIJU-DUVAL: (Interpretation) Thank you, your
24 Honour. Could the Chamber give me leave to talk about the
25 summaries? Could I take an opportunity to say something about

(Open session)

49

1 Defence summaries, and this is a recurrent issue?

2 The Chamber understands that the Defence was able to
3 meet this witness for only a few hours. You must understand
4 that as a general rule Defence witnesses speak at greater length
5 before the Chamber than they do to Defence lawyers.

6 We have different investigative circumstances than the
7 OTP. We were not able to record statements. We were not able
8 to prepare statements that are verified and double-checked by
9 witnesses.

10 This is to say, that the Defence is always in a
11 situation of uncertainty, and we would not like that inaccurate
12 information resulting from misunderstandings be communicated to
13 the Chamber or disclosed to the Prosecution. And so, we have to
14 prepare concise summaries which are limited to what we think the
15 witness is going to say with certainty. That's the difficulty
16 we have.

17 And so, when the Defence tries to give additional
18 information in order to facilitate the work of all parties, that
19 such additional information should not be used as an argument by
20 the Prosecutor to criticise the defence. I wish to draw this
21 difficulty -- draw the attention of the Bench to these
22 difficulties experienced by the Defence team.

23 PRESIDING JUDGE FULFORD: Thank you very much,
24 Mr Biju-Duval. You will have noticed that the Bench has trodden
25 very carefully in this area. And in some of our decisions, both

(Open session)

50

1 written and oral, we have indicated that we understand the
2 difficulties under which you are and have been working. And it
3 is fully recognised that you have not got in this regard the
4 same resources available to you as the Prosecution.

5 Thank you, nonetheless, for the explanation, and we
6 will certainly bear it in mind when reflecting on Ms Samson's
7 submission. Thank you very much. Good.

8 We will sit tomorrow then at 9.30 in the morning.
9 Thank you all for your assistance.

10 THE COURT USHER: All rise.

11 (The hearing ends at 12.51 p.m.)

12 RECLASSIFICATION REPORT

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

19