

1 International Criminal Court

2 Trial Chamber I

3 Situation in the Democratic Republic of Congo - ICC-01/04-01/06

4 Case against Thomas Lubanga Dyilo

5 Hearing - Open Session

6 Monday, 13 July 2009

7 The hearing start at 9.31 a.m.

8 COURT USHER: All rise. The International Criminal Court is now
9 in session. Please be seated.

10 PRESIDING JUDGE FULFORD: Good morning. Hereafter, if there is
11 to be any disturbance of any kind to the Judges' papers on the bench, we
12 are to be informed in advance so that we can secure our papers, which are
13 not in future to be touched by anyone else at this court, be they members
14 of the Registry or security. Never again should my files be removed from
15 the bench in front of me without my express leave to that effect. There
16 are my own personal notes inside these documents, together with material
17 that may be highly sensitive, and it is quite unacceptable that anybody
18 should seek to remove them from the bench without having received my
19 authority or the authority of either of the Judges who sit with me.

20 Are we ready for the witness, Ms. Solano?

21 MS. SOLANO: Your Honour, I believe we are.

22 PRESIDING JUDGE FULFORD: Good. Witness, please.

23 (The witness takes the stand)

24 WITNESS: WITNESS DRC-OTP-WWW-0046

25 (Witness answered through interpreter)

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2 PRESIDING JUDGE FULFORD: Good morning, Ms. Peduto.

3 THE WITNESS (interpretation): Good morning.

4 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

5 Questioned by Mr. Biju-Duval: (Continued)

6 Q. (Interpretation) Good morning, Madam Peduto.

7 A. Good morning.

8 Q. I would like to briefly go back to the MONUC system in Ituri
9 between April and June of 2003 that we began to discuss last week. In
10 order for things to be without any ambiguity, I would like to be clear
11 that I do not consider you as representing MONUC here, but given your
12 position, you can bear witness to what you observed at the time.

13 You told us that according to your recollection, between April
14 and June of 2003 there were several hundreds of MONUC soldiers in Bunia.
15 If I was to suggest that there was a battalion composed of 700 soldiers,
16 would that be in keeping with what you remember?

17 A. It's totally possible.

18 Q. If I were to put to you that that battalion had approximately
19 12 tanks, would that be in keeping with what you remember?

20 A. It's possible.

21 Q. If I were to suggest that in addition to these tanks the
22 battalion had some 12 armoured vehicles, does that -- would that be in
23 keeping with what you remember?

24 A. Well, as regards the exact number of vehicles, there were some
25 deployed at the airport, others in the centre of town, so it's possible.

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1 Q. Thank you. You have indicated, unless I'm mistaken, that you
2 arrived in Bunia to settle there between the 15th and the
3 25th of May, 2003; is that correct?

4 A. Yes, that's correct.

5 Q. Were you informed of the events that had taken place just after
6 the departure of the Ugandan troops at the very beginning of the month of
7 May 2003?

8 A. Yes. Those events were investigated by myself and by my human
9 rights colleagues at the end of May, early June.

10 Q. Is it correct that before the return to Bunia of the UPC and the
11 FPLC, the UPC military, is it true that Bunia, right after the departure
12 of the Ugandan troops, that is May 6th, 2003, that the Lendu fighters
13 took over Bunia?

14 A. That's correct.

15 Q. Is it correct that at that point in time massacres took place in
16 Bunia, and in particular in the neighbourhood of Mudzipela, and to give
17 another example, in the parish of Nyakasanza.

18 A. Yes, that's correct. Fighting took place between the UPC and the
19 Lendu fighters. You mentioned the two places, in Mudzipela and
20 Nyakasanza, but throughout the town of Bunia there were civilian victims
21 because both sides committed crimes against the civilians.

22 Q. Is it correct that the -- I beg your pardon. I'm going to use a
23 different word. Is it true that the soldiers, the UPC soldiers, only
24 intervened later on, at a second stage, after the initial massacres
25 committed by the Lendu fighters right after the departure of the Ugandan

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1 forces?

2 A. According to what I remember, the greatest number of civilian
3 victims were the result of the Lendu fighters after the departure of the
4 Ugandan fighters, and then afterwards civilians were also the victim of
5 the UPC forces afterwards, generally speaking.

6 THE INTERPRETER: Your Honour, would you be so kind to ask the
7 witness to slow down just a bit and not to overlap.

8 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, I'm going to interrupt
9 you. I'm sorry for doing so. I've had a request from the interpreters,
10 a twofold request. Firstly, could Ms. Peduto please make sure that she
11 doesn't speak too quickly. We're already encountering difficulties.

12 And secondly, Mr. Biju-Duval, it is absolutely critical that
13 there is a pause between speakers. There's been an element of overlap
14 this morning which is making the work of the interpreters and the
15 stenographers particularly difficult. So could you please both bear
16 those requirements in mind.

17 MR. BIJU-DUVAL (interpretation): Your Honour, yes, I will be
18 mindful of that.

19 Q. Is it correct that General Diallo, who was the chief commander of
20 MONUC, was present during those events that took place in Bunia?

21 A. I cannot confirm that at all. I don't remember.

22 Q. Do you have knowledge of the fact that civilians were massacred,
23 had been massacred, just a few metres from the MONUC positions during the
24 massacres that occurred early in May of 2003?

25 A. There were deaths in the centre of town near where the MONUC

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1 office was situated, but I wouldn't say a few metres, that's too precise,
2 but in the centre of town, yes.

3 Q. Is it correct, according to your knowledge, that no military
4 intervention was implemented by MONUC in order to attempt to protect the
5 population which was massacred outside, outside of the MONUC positions?

6 A. To my knowledge, there was no preventive intervention against the
7 armed groups in order to prevent them from committing the crimes against
8 civilian populations. However, the protection provided by the MONUC
9 soldiers to the thousands of people who were grouped around our
10 headquarters in the centre of town, around what became MONUC's logistic
11 base, there was a military -- well, the purpose was to protect these
12 people, and the soldiers intervened in order to protect these
13 individuals, in order to enable the protection of these individuals.

14 Q. Do I understand you correctly that you're talking about ensuring
15 the protection of the population inside of the guarded perimeter, the
16 perimeter guarded by MONUC? Is that what you meant?

17 A. Well, the perimeter guarded by MONUC was extended given the very
18 large number of individuals who came to seek protection.

19 Q. Thank you. During these events, was there any initiative on the
20 part of the special interim administration created as part of the CPI?

21 A. Could you be more precise as to the kind of intervention you're
22 referring to?

23 Q. Well, I'm referring to the events early May 2003, the massacres
24 that took place following the departure of the Ugandan troops, that is,
25 massacres in Bunia, and I am asking you about the attitude at the time,

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1 and what I mean by that, decisions that were taken or initiatives that
2 were decided by the interim administration, as it's called, in Ituri.

3 Now, did that exist? That was the first question.

4 A. Yes. Certain points were appointed to positions even though most
5 of them did not come to Bunia. As far as I can recollect, some of the
6 persons who were appointed to positions in the interim administration did
7 not come to the Bunia, yes, but, persons were appointed.

8 Q. So I go back to my initial question. Now, did the persons who
9 were appointed, did those persons take decisions or do anything at all
10 with respect to the events that occurred at the time?

11 A. I think my colleagues in charge of political affairs would be
12 better able to answer these questions, especially as they were the
13 persons who had working relations with the interim administration.

14 Well, I don't remember anything relating to the protection of
15 children at the time. I know that we met persons who were in charge of
16 child protection matters in the month of June. I know that the persons
17 in the interim administration went to the various camps to try to see
18 about living -- living conditions in those areas, the daily living
19 conditions of persons who had sought refuge in the camps, the camps in
20 the centre of town or the camps on the way to the airport, but I really
21 can't give you clearer details than that.

22 Q. Now, the general facts you are giving with respect to these
23 events concern the month of June and the following months; is that
24 correct?

25 A. That is correct. However, I am not best placed to tell you what

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1 happened with respect to the interim administration.

2 Q. Did you have any knowledge of a massacre committed in the village
3 of Drodro at the beginning of the month of April 2003?

4 A. Yes. I was part of the mission that conducted an investigation
5 into that massacre.

6 Q. Is it correct that this massacre was essentially directed at the
7 civilian population of the Hema community?

8 A. The victims we counted in majority were members of the Hema
9 community.

10 Q. According to your recollection, on the date of those massacres,
11 the MONUC battalion we talked about, was that battalion already present
12 or hadn't it arrived yet?

13 A. It was not in Drodro, no, certainly not.

14 Q. Was it in Bunia?

15 A. Certain elements were deployed, I think, but that was right at
16 the beginning, at the very beginning.

17 Q. Did you hear about any initiatives taken by MONUC with respect to
18 those massacres, that is, apart from the mission of inquiry which
19 conducted the investigation?

20 A. We heard about a lot of massacres committed in Ituri at the time.
21 I don't think that there was any deployment of troops at the time in
22 Drodro in particular.

23 Q. Last week you talked about the commission for the pacification of
24 Ituri. Is it correct that those massacres occurred when that commission
25 started its activities?

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1 A. Yes, or a few days prior to that. It was during the same period
2 or a few days prior to that.

3 Q. Thank you. I would now like to -- or let me put the last
4 question to you on this particular subject.

5 Now, with respect to the protection or ensuring the security of
6 persons in Ituri, can we say that the first operation that was conducted
7 with some efficiency was the operation of the multinational force
8 ARTEMIS, which intervened in the middle of June 2003?

9 A. Well, with your permission, I would like to say that the
10 thousands of persons who sought refuge in the premises of MONUC felt that
11 its presence saved their lives. Now, if you're talking about a
12 large-scale military operation with the mandate to intervene and use
13 force, which was a mandate beyond MONUC at the time, then I would say
14 yes.

15 The civilian population in Bunia at the time, if I can give more
16 details, were really terrorised. We heard reports of criminal acts
17 perpetrated every day, rapes, killings, disappearances, tortures, in the
18 month of May and June. And I don't think that the UPC participated
19 actively in the -- in the pacification of the situation at the time. I
20 think General Kisémbé made an intervention over Radio Candip in the month
21 of May. He ordered those who had sought refuge in MONUC premises to
22 leave the camp. He expressly threatened them, saying that he would
23 consider them as enemies if they did not obey his instruction. And
24 during that radio interview, he also stated that the armed wing of the
25 UPC would take all necessary measures to force them to leave the camps if

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1 they did not obey that instruction.

2 So the protection was made possible thanks to the presence of
3 MONUC, and I think that was effective protection. Of course, it may not
4 have been done on a large scale, but it was effective all the same.

5 Q. Did you personally hear this radio interview?

6 A. No. This was reported to us by our colleagues in charge of
7 public information, and we discussed these facts during our daily
8 meetings, and it was also mentioned in a special report drafted within
9 MONUC.

10 Q. To your knowledge, what language was used by Commander Kisémbó?

11 A. I don't think it was in French that he made his interview.

12 Q. A short while ago you talked about the mandate of MONUC in the
13 month of May 2003. Now, why did they have difficulty with this mandate
14 with respect to the protection of the civilian population?

15 A. Contrary to chapter 7 on the basis of which the Ituri Brigade
16 intervened in September, the troops which accepted to contribute to the
17 peacekeeping mission in Congo did not have a mandate to carry out
18 pre-emptive military intervention against armed groups suspected of
19 wishing to commit criminal acts.

20 MONUC is an observation mission. The troops did not have a
21 mandate to get involved in military operations except when they have to
22 defend themselves or to defend the facilities and the staff of the UN.

23 Q. Should I understand from that that this mandate did not authorise
24 the UN forces to intervene outside their positions in order to protect
25 through military means the civilian population? Can we summarise that

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1 difficulty in those terms?

2 A. Yes, even though I don't have a clear recollection of the details
3 of their mandate, but I think it's possible that you can sum it up in
4 those terms.

5 Q. Is it correct that the mandate changed from the month of
6 September?

7 A. From the 15th of September, the date on which the brigade of
8 Ituri took over after the departure of the multinational force.

9 Q. And what was this change? What was this new mandate?

10 A. The brigade -- the Ituri Brigade started acting under the
11 provisions of chapter 7 of the United Nations.

12 Q. In concrete terms, what does that mean? What were the new
13 intervention options?

14 A. The brigade had the authorisation to use force to protect the
15 civilian population, and not only for its own protection or the
16 protection of the staff and facilities of the United Nations.

17 Q. Is it correct that MONUC as such was present in Congo and Ituri
18 since 1999?

19 A. That's correct. And to my knowledge, it was the first time that
20 MONUC was authorised to act under chapter 7 in a given part of the
21 Republic of the Congo -- Democratic Republic of the Congo.

22 Q. Can you -- I beg your pardon. Let me rephrase that.

23 To your knowledge, why did they have to wait until the
24 15th of September, 2003, to give MONUC this option of military
25 intervention in order to protect the civilian population?

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1 A. I think the reasons can be given to you by the Security Council.
2 I cannot give you an answer to that. One of the explanations which made
3 sense at the time and which was given by the troops contributing to the
4 MONUC initiative was that countries were not ready to deploy men or
5 troops, especially when this entailed greater risk to their soldiers.
6 And we lost a certain number of men, a significant number of men, in
7 Ituri. I can't give you -- tell you anything more than that.

8 Q. Thank you. I'd now like to move on to what was at the very heart
9 of your work. In other words, the question of protection of children in
10 Bunia and Ituri. You stated to the Chamber that in the light of the
11 context, particularly the security-related aspects of that context, an
12 approach had been devised in conjunction with the partner NGOs, those
13 NGOs that were partners of MONUC.

14 You stated that those partner NGOs had to bring the children
15 concerned to MONUC and that MONUC was responsible for disarmament of
16 those children and that you, you personally, in charge of the protection
17 of children, you carried out interviews. After these interviews, the
18 children were then, when necessary, sent to different transit centres.

19 Have I correctly summarised the situation as regards this
20 mission, and if so, on the basis of that I will put subsequent questions.

21 A. Let me just clarify that there was nothing written in terms of a
22 partnership. There were agreements on cooperation with certain
23 structures, although not with all of them, and in that context MONUC had
24 agreed to deal with the issue of disarmament when the people in charge of
25 the children submitted the request to them. It wasn't anything that was

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1 done systematically. There were a number of children that went to
2 transit camps without going through the disarmament phase organised by
3 MONUC for reasons that it's not up to us to assess.

4 Anyhow, there was nothing that was signed, nothing black and
5 white. We were talking also about an agreement on the need to make
6 certain transit centres or certain structures secure where there were
7 MONUC soldiers, troops, nearby so as to cope with any security incident
8 that might be reported to them. And we were also involved in the case of
9 evacuation from Bunia so that the children covered by those structures
10 could be taken out of the town and protected by MONUC.

11 Q. Thank you. You stated to the Chamber that the interviews that
12 you had with the children who arrived at MONUC, well, you stated what was
13 the purpose of those interviews. You said, and I quote: "So that to a
14 certain extent I could verify that they were children who had been taken
15 out of armed groups. I then referred them to transit centres."

16 Am I correct in understanding that one of the purposes of those
17 interviews was so that you could make sure that those children were
18 indeed children who had been involved previously with armed groups,
19 children associated with armed groups?

20 A. Yes, indeed, but I also came up against children who had nothing
21 to do with armed groups, children who had been displaced, children who
22 had lost their parents.

23 Q. To be more specific, how did you deal with things if it
24 transpired from these interviews that the child was not from an armed
25 group, had not been associated with an armed group? If that happened,

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1 what was the decision taken?

2 A. We had to assess the needs as expressed by the child. I had
3 discussions with children who had been the victim of sexual violence on
4 the part of armed groups or on the part of civilians. Those children
5 were referred to the medical structures, first and foremost to those
6 medical structures, and then to structures likely to provide them with
7 psychological care, structures that could accompany them in the medium
8 and long term. When we came up against children who were displaced
9 persons or had been separated from their family, then we referred to --
10 them to organisations that had specific programmes for such children.
11 MONUC also sometimes facilitated the repatriation of certain children to
12 family structures, sending them to family structures that had been
13 identified by partners. In other words, finding people in Beni, Goma, or
14 Mahagi. There were different responses, in other words, depending on the
15 specific problem or issues raised by the child.

16 Q. So as to facilitate our understanding, let me ask whether we can
17 take the case of a child who has not alleged that he or she has been the
18 subject of any specific violence but quite simply goes along to MONUC and
19 requests assistance, and that is a child who has not been associated with
20 any armed group in any way.

21 You say that there were structures that were available. What
22 were those structures?

23 A. The existence of those structures changed over time. If we're
24 talking about the period of May, June, July, we had partners working in
25 the area of child protection in general, some working specifically for

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1 unaccompanied children, others more specifically for street children.
2 There were units set up to allow children to go along and talk so that
3 people could listen to them in the camps for displaced persons.
4 Psychosocial help was offered to some children who needed it at that
5 particular time. And then there were more and more structures that
6 developed as of July, and different responses and reactions emerged.

7 Q. If as a result of the interview it turned out that it was a child
8 who was associated with an armed group, you said that he or she was then
9 sent to a -- a CTO, a transit camp. Do we understand from that that
10 those CTOs were specifically reserved for children who had been
11 associated with an armed group?

12 A. The CTOs, and more specifically the transit structures, were
13 reserved -- well, had been set up to cope with the needs of children who
14 had been associated with armed groups. Nonetheless, I think it is
15 important for me to point out that those children who did not wish to go
16 to a CTO did not go to a CTO. The children were perfectly entitled to
17 make the choice themselves either to go to such a structure or to go back
18 to their friends or their family or anywhere else. MONUC never forced a
19 child to go anywhere.

20 I think that there were other transit structures, not CTOs but
21 other transit structures that took care of vulnerable children who had
22 not necessarily been associated with armed groups, but they were not
23 CTOs.

24 Q. So I understand from what you are stating that the CTOs were
25 reserved for those children who had been associated with an armed groups.

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1 A. In theory, that is indeed correct.

2 Q. You referred to the activities of those CTOs, saying that they
3 took care of the children and were responsible for their reintegration.
4 Could you tell us more specifically what were the care measures that were
5 taken while the child was present at the CTO, and furthermore, what were
6 the measures to prepare a child for reintegration?

7 A. The centres took care of the children and taking care of their
8 basic needs, provided them with food, with civilian clothing. They
9 organised activities, games. They organised an educational programme for
10 them, sports as well. I think we could summarise the care measures in
11 this way.

12 As for the reintegration measures, to the extent possible the
13 centres tried to re-establish family links as quickly as possible, even
14 though it didn't come about as quickly as they liked because very often
15 the parents had been displaced or they were in areas that were not
16 accessible because of the security and safety difficulties meant that the
17 NGOs and the partner organisations couldn't go to certain areas to look
18 for the parents. Reintegration of the children was prepared also through
19 all of the daily activities carried out by the centres.

20 It was important that the children were removed from the military
21 context in which they had been used up until then, and put to an end to
22 the habits they might have acquired during their time of association with
23 the armed groups. The idea was to offer to the children activities that
24 are appropriate for children. In other words, learning how to play,
25 learning them how to have social relations that are not necessarily based

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1 on violence or on a chain of command, teaching children how to live in a
2 group, and try to give them back a state of mind and a mode of
3 functioning that would make it possible for them then to go back to their
4 families.

5 And there's something I didn't mention. For some of the children
6 there was concern about their psychological state of health. They had
7 often been traumatised as a result of what they'd lived through, and the
8 people working the camps, the social workers, focussed more on certain
9 children like this.

10 Excuse me. I've just thought of something else. When I'm
11 talking about finding family links, trying to find the families, the
12 different structures tried to make sure then that the parents came to the
13 centres to see their children, and once it was possible according to the
14 change in the security situation, allow the children to spend a few days
15 with their families and then come back to the CTOs, gradually to
16 re-establish links with their community. In other words, we made sure
17 that before children were sent back to their village, their community,
18 that the whole environment there was willing to accept them without there
19 being any specific danger or risk of the child being ostracised.

20 Q. Thank you. I'd like to come back quickly to the care measures
21 that were taken. Were any initiatives taken to put the children back
22 into school, in other words, to send them physically to a school?

23 A. To begin with, no. Lessons were provided to the children within
24 the structures by these transit camps. In 2003, I don't think the
25 children -- any of the children were sent to a school. Later, for some

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1 of them who were at a day care centre, yes, it did happen. Some did go
2 to school in Bunia. But in 2003, I don't think that at that particular
3 time any of the children were sent to schools.

4 Q. If I understand you correctly, you're saying probably not in
5 2003, but what about 2004? Would it have been the case then?

6 A. Well, in 2004 as regards the children who were in CTOs, a
7 majority of those children were not in Bunia. Some of them had spent
8 several years within the armed groups and forces, and so they had to
9 be -- they had to benefit from remedial classes so that they be able to
10 go back to school as such.

11 The children who went to day care centres, some of them were able
12 to continue going to school, but I don't think it was the majority of the
13 children. Some of them who came to the day care centres participated in
14 certain activities which were organised at those centres while being with
15 their families and continuing to go to school.

16 In 2004 -- I don't remember for 2004.

17 THE INTERPRETER: The interpreter corrects: At the very
18 beginning it was 2003, not 2004.

19 THE WITNESS (interpretation): In 2004, according to what I
20 remember, some of the children stayed with foster families, and they were
21 able to go to school in regular schools, but as regards the CTOs, I don't
22 remember.

23 MR. BIJU-DUVAL (interpretation):

24 Q. Let's talk about the foster families where the children were
25 placed, that is, the children from the CTOs. I see you nodding or

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1 shaking your head.

2 A. Not necessarily. Children were placed with foster families
3 without necessarily going through a CTO. It was a different form of care
4 that was provided.

5 Q. Well, my question is as follows: As regards the return to school
6 of the children, if I understood you correctly, the children who were
7 placed with foster families were re-enrolled in schools. Who paid for
8 the fees of the schooling?

9 A. We had talks with the representatives of the central government
10 in Kinshasa in the middle of 2003 regarding those children and their
11 schooling, and it had been decided at national level that those children
12 would be exempted. Well, that's perhaps not the word that was used, but
13 that they would not have to pay for their schooling and that it would be
14 paid for by the state. And we requested, in particular, that the central
15 government indeed pay the teachers and the costs of the schooling of
16 those children. I also remember that some of the organisations which had
17 taken care of these children in some cases bore the costs of the
18 schooling.

19 Q. As regards the children who were taken care of in the CTOs, I
20 imagine that they received medical care when they needed it.

21 A. Yes, indeed.

22 Q. When they left the CTOs, did the medical care come to a halt or
23 was it maintained in a different manner?

24 A. When the children were reintegrated into their families, it was
25 the families that took care of their children, but at the same time the

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1 social workers continued following the children once they were
2 reintegrated. I would imagine that if there had been a need for
3 long-term medical care, the children in the very structures where they
4 had been followed would have taken care of the cost, but I don't have any
5 particular example in mind, but that was part of how the follow-up was
6 provided to these children, that is to ensure that their basic needs,
7 that is medical needs, their security, et cetera, that their basic needs
8 were taken care of.

9 Q. Could you give us approximately the average duration of a child's
10 stay in a CTO, or give us a range that is between a minimum and a maximum
11 duration of time?

12 A. Well, in theory, as I've already stated, the idea was that they
13 not stay longer than three months in a transit centre, but that was not
14 possible for a majority of the cases. The children did stay longer than
15 three months. The majority of the children did. Some of them were able
16 to be reintegrated after one week or a few weeks, but I believe that the
17 vast majority of the children did stay longer than three months, at least
18 in 2003.

19 Q. Could you give us an order of magnitude as regards the longest
20 stay of children that you have knowledge of?

21 A. No, I can't give you a general rule. I remember discussing with
22 some of the protection agencies at the end of 2003, because indeed the
23 issue of the long duration of stays was discussed as being -- as not
24 being a solution. In other words, the fact that the children stay a long
25 period of time in these centres was not a solution, and it was not

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1 necessarily beneficial for the children. And so we discussed what we
2 should do with children who couldn't go back to their families either
3 because the families had not been identified or because combat was still
4 ongoing in the regions where they would want to be reintegrated. At one
5 point in time we considered finding foster families outside of Ituri.
6 That never took place, in fact, but we were considering such solutions
7 for some of the children, but I can't give you an order of magnitude or
8 even a duration, a general duration.

9 Q. Now, those children were part of a process of demobilisation, at
10 what point in time during that process were the children given the
11 so-called "demobilisation kit"?

12 A. When the children left the centres, they received the kit, which
13 was a minimum kit. It was not the amount of money that the children
14 expected when they initially went into the armed groups, and it was given
15 to them when they were reintegrated with their families.

16 Q. So it was when they left the centre, which coincided with their
17 reintegration with their family. Is that correct?

18 A. Yes.

19 Q. And what exactly was this kit, this demobilisation kit, composed
20 of?

21 A. It was actually a reintegration kit at that point in time. It
22 wasn't a premium of sorts, a certain amount of money for their
23 demobilisation. In fact, the way the adults and the children saw it was
24 somewhat different. I don't have the exact list in mind. I know that
25 there was clothing, several sets of clothing, basic hygiene materials,

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1 blankets, a cooking kit, I think. Basic things. Quite basic things. A
2 pair of shoes, some notebooks, a few crayons or pencils.

3 Q. Did they receive a sum of money?

4 A. No, absolutely not.

5 Q. I'd like to go back to the interviews that you had with a number
6 of children, and to be perfectly clear, I'm referring to the interviews
7 you had with children, not with other adults that you might have met
8 with.

9 You have told us, unless I'm mistaken, that you had interviews
10 with six children as part of your investigation in Uganda. Is that
11 correct?

12 A. Yes.

13 Q. You have indicated that you met with children in the Rwampara
14 camp.

15 A. That's correct.

16 Q. Have I understood you correctly that you saw 34 children but that
17 you only had interviews with about a dozen? Have I understood the
18 situation correctly?

19 A. During that period I met with 34 children in all in Bunia.
20 Nineteen had been identified in the Rwampara camp, and amongst the 19,
21 12 interviews were carried out.

22 Q. Thank you for that information. You have indicated that as part
23 of the special investigation mission, you went to Mandro. In your
24 statement -- if you would like, you can take a look at it. I'm going to
25 refer to paragraph 83. I'm going to quote from this paragraph, and I

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1 quote:

2 "On March 28th, we went to the military camp in Mandro, still
3 with Commander Alex from the UPC. This is the visit mentioned in
4 paragraph 95 of the final report on the page numbered DRC-OTP-0152-0311.
5 Mandro, the training camp and UPC military camp as such didn't exist
6 anymore. Only some burned houses could be seen. It was obvious that
7 there had been a military camp. Mandro was a strong position of the UPC
8 amongst others, but at the time of our visit, since it had been attacked
9 recently, there was no one there, and we did not find any child
10 soldiers."

11 My question is: Does the drafting of this paragraph correspond
12 to your recollection of what occurred at the time?

13 A. Yes.

14 Q. Thank you. You mentioned during your testimony before the Court
15 the fact that many interviews took place -- or, rather, that you yourself
16 had interviews with a large number of children. Should I understand from
17 that that many of those interviews -- the majority of those interviews
18 took place between the month of June 2003, that is, early June 2003, and
19 the months that followed until June 2004 and beyond? In other words, did
20 the majority of the interviews, the vast majority of the interviews, take
21 place between June of 2003 and June of 2004?

22 A. March 2003 until the end of my stay in Ituri.

23 Q. In March of 2003, there were the interviews of the children from
24 Rwampara. There was -- there were the interviews with the children from
25 Uganda, if you allow me to put it that way.

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1 A. Yes. There were also the children I met in Bunia who were not
2 from the Rwampara camp.

3 Q. In March 2003, your mission lasted for only two weeks; is that
4 correct?

5 A. Approximately, yes.

6 Q. And you went from Uganda -- I see you shaking your head. Well,
7 it was during that mission, then, that you went to Uganda, to the camp
8 where you interviewed the children?

9 A. I went to Uganda from the end of February to the beginning of
10 March. I then returned to Kinshasa, if my recollection is correct,
11 before returning to Bunia at the end of March.

12 Q. Thank you.

13 MR. BIJU-DUVAL (interpretation): One moment, your Honour.

14 PRESIDING JUDGE FULFORD: (Previous translation continues) ...
15 Mr. Biju-Duval.

16 MR. BIJU-DUVAL (interpretation):

17 Q. I would like to turn to paragraph 168 of the statement you made
18 to the investigators in which you state in the third and the fourth
19 lines, and I quote:

20 "I can confirm that in Ituri MONUC succeeded in documenting
21 687 cases of recruitment of children in Ituri from June 2003 to
22 June 2004."

23 And so I would like to ask the question again. During what
24 period did the majority of the interviews -- were the majority of the
25 interviews conducted?

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1 Now, the information you gave to the investigators, can this
2 information help you to fine-tune your testimony?

3 A. Yes. I think that out of these 687 cases, the 687 cases include
4 the children of Rwampara. So in that case, it will not be related to
5 March 2003. Apart from the 687 cases, as I said earlier, a good number
6 of interviews were conducted with children, and these interviews were not
7 documented. So the 687 cases is really just a minimum.

8 Q. Will I be right to think that these interviews constituted the
9 raw material for the database which you used to conduct your analysis and
10 to draft your reports with respect to the issue of child soldiers?

11 A. My reports were largely based on the interviews conducted with
12 the children, the interviews conducted by the child protection section as
13 well as on other information which we collected from other sources, such
14 as the military observers, the brigade, and our colleagues working on
15 human rights issues. So we had other sources at our disposal, especially
16 during the special investigation that was conducted.

17 Just to add one clarification. During the special investigation,
18 questions were usually asked on the composition of the troops that
19 participated in combat. So it was not really about collecting
20 information on the presence of children exclusively from the children
21 themselves, but this was also done from the testimonies of witnesses and
22 victims.

23 PRESIDING JUDGE FULFORD: (Previous translation continues) ...

24 MR. BIJU-DUVAL (interpretation): Yes, your Honour, I think that
25 with the permission of the Bench I think this is an appropriate moment.

1 PRESIDING JUDGE FULFORD: Time to give you a break, Ms. Peduto.
2 Thank you very much. Half past 11.00.

3 Could the usher please accompany Ms. Peduto to the witness
4 waiting-room.

5 (The witness stands down)

6 PRESIDING JUDGE FULFORD: Ms. Solano, while the witness leaves, I
7 think there was outstanding from last week an issue in relation to some
8 video footage that came from an NGO. Do we have an answer to it, and if
9 we do, can it be given in open session?

10 MS. SOLANO: We don't have a substantive answer, your Honour. We
11 have sent our message to the organisation through their lawyers, but we
12 have not yet managed to actually speak with them, and we are calling them
13 back every half an hour this morning with a view to having an estimation
14 of how long the organisation is likely to need in order to provide their
15 views as early as possible.

16 PRESIDING JUDGE FULFORD: The Office of the Prosecutor is not
17 going to be popular with that particular NGO if they're being disturbed
18 every half an hour, but thank you for your efforts, Ms. Solano.

19 In fact, in terms of us completing this witness's evidence, I
20 think it won't matter, will it? It's really an issue relating to the
21 extent to which the evidence is made public rather than the ability to
22 give the evidence in the first place. Is that correct?

23 MS. SOLANO: Your Honour, you're entirely correct, in my
24 submission.

25 PRESIDING JUDGE FULFORD: Thank you very much, Ms. Solano.

1 That's very helpful.

2 Just before we rise, I want to make it clear that the remarks
3 that I made at the beginning in relation to the disturbance to our papers
4 was not in any sense directed at the security officers who would
5 undoubtedly have taken the only sensible step given that a training
6 session was conducted in this court over the weekend without my
7 knowledge, and they clearly in those circumstances had to remove the
8 Judges' papers. So I wish to repeat this is not directed at any security
9 officer who clearly in the circumstances did the only sensible thing.

10 To the extent that my remarks involve criticism, it is that we
11 have not been informed in advance that this was going to happen, or
12 certainly it wasn't brought to my attention so that I could make
13 arrangements to have my papers removed from the Bench, and that, in
14 future, should always happen.

15 We sit again at half past 11.00.

16 COURT USHER: All rise.

17 Recess taken at 11.00 a.m.

18 On resuming at 11.30 a.m.

19 COURT USHER: All rise. Please be seated.

20 PRESIDING JUDGE FULFORD: Thank you very much. Witness, please.

21 (The witness takes the stand)

22 PRESIDING JUDGE FULFORD: Thank you, Ms. Peduto.

23 Mr. Biju-Duval.

24 MR. BIJU-DUVAL (interpretation):

25 Q. Ms. Peduto, last week and this morning you talked about the

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1 registration by MONUC of 687 cases of children associated with armed
2 groups. However, last week you stated that all these 687 registered
3 cases -- or, rather, let me rephrase that. You stated that the 687 cases
4 registered were not all interviewed by the child protection section, and
5 in particular, by yourself. Is that correct?

6 A. That is correct.

7 Q. Now, with respect to the registered cases which were not
8 interviewed by MONUC, how were such cases registered? They were
9 registered on the basis of information provided by who?

10 A. The information came from the organisations that had
11 responsibility over these children, the CTO and the transitory care
12 structures.

13 Q. Now, as far as you can recollect, out of the 687 registered cases
14 in the middle of 2004, as you mentioned, of the 687 registered cases, how
15 many were interviewed by yourself or by your colleague in MONUC who
16 arrived in 2004, the middle of 2004, if I'm not mistaken?

17 A. The colleague arrived before the middle of 2004. I remember
18 167 documented cases. There may have been more, but that is what I do
19 remember.

20 Q. So to conclude on this point, we can say that, approximately, you
21 interviewed approximately 170 cases out of the 687.

22 A. That's correct. Once more, I interviewed children whose notes
23 were not kept in the documents which I have at my disposal.

24 Q. Last week you stated -- you talked about the different methods
25 that you used to ascertain the credibility or the accuracy of the

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1 accounts given to you during such interviews. Would I be right to sum up
2 such methods as follows: First of all, you ask certain precise questions
3 to the child; secondly, you cross-check the account given to you with the
4 chronology given to you by military observers as concerns the events
5 which occurred at the time; and thirdly, sometimes, as you mentioned,
6 sometimes you received information later on from the CTOs or from the
7 foster families, information which made it possible for you to get more
8 clarification.

9 Is that an accurate and complete summary of the precautions you
10 took?

11 A. What you've said is correct. First of all, the children spoke.
12 We did not have any particular questions, direct questions that were put
13 to the child to start the interview. We usually started by allowing the
14 children to talk, to give their account without asking them questions
15 like, "Who recruited you," "Who did this," or "Who did that?" If we put
16 any questions at all, they were questions just to get clarification if
17 the child omitted something which we deemed important, such as
18 information on their families. So the children usually started by giving
19 their own account.

20 Q. As regards verification of the accuracy of the accounts given,
21 that is, cross-checking against the chronology established by MONUC,
22 would I be right to think that it simply entailed verifying accuracy,
23 accuracy of the account, that is, cross-checking it against the
24 information established officially by MONUC?

25 A. Yes, indeed. The notes taken corresponded to what the children

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1 said, but, for instance, a child might say that he'd been involved in the
2 battle of Komanda and gave the date of July 2003. The notes were taken
3 immediately according to what was said. I didn't change the date that
4 was given by the children, because I knew that it was wrong or
5 inaccurate.

6 The stories told by the children were then revised and checked
7 against the chronology that was available, provided to us by the MONUC.

8 Q. The information about the events, the chronology of the events,
9 you said that it was information established by the military observers.
10 Can we say in general terms that the information concerning the
11 chronology of events was the information that came step by step to the
12 United Nations and at the end of the day was to be found in the
13 UN reports?

14 A. Yes, indeed. And perhaps I should clarify the way in which this
15 chronology was developed. It wasn't just information that was made
16 available by our military observers and by our political section. It was
17 also information that we got in the course of special investigations.

18 I think one of the chronological foundations that we used is
19 annexed to the report that's available to the Court. It's a chronology
20 of events that was gradually produced, and the information came to the
21 MONUC. It referred to the report on human rights violations between 2002
22 and 2003. It's a -- if I'm not mistaken, it's a public MONUC report.

23 Q. Thank you. I would ask you to refer to the document that's in
24 tab 13 of the binder which has been made available to you by the Office
25 of the Prosecutor. This is a report by the Secretary-General of the

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1 United Nations, and it concerns the -- MONUC's operations in the Congo.

2 I'd like to draw your attention to paragraph 15, paragraph 15 of this

3 report, which is just below "Situation in the North-east," as a subtitle.

4 Could you please read, more specifically, lines four to eight.

5 I don't want to torture the English language by reading it out to

6 you, but can we agree that in this paragraph the capture of Bunia by the

7 UPC on the 10th of July, 2002, that's when the governor fled, that is,

8 the governor of the RCD.

9 A. In July 2002 it refers to serious fighting between the UPC and

10 the RCD-ML, which led to Bunia falling into the hands of the militia. I

11 don't think the fact that it fell into the hands of the militia is

12 necessarily referring to the 10th of July in particular. I think it's

13 referring to a whole process rather than talking about the capture of the

14 town, but perhaps the sentence is ambiguous.

15 Q. So this is open to interpretation, in which case I shall try to

16 quote the sentence specifically, and I quote:

17 "(In English) On 10 July 2002, following intense fighting between

18 UPC and RCD-ML troops in the centre of the city, the governor and RCD-ML

19 authorities fled to Beni, leaving Bunia in the hands of the militia."

20 (Interpretation) Let us set aside the question of the reliability

21 of the chronology that you have available, and let us turn to a specific

22 example. In two of the reports which were submitted to you last week by

23 the Office of the Prosecutor, you quote the story of a child who claims

24 to have been abducted by Mr. Thomas Lubanga himself. I am referring here

25 to the report entitled "Children Associated with Armed Groups in the

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1 Military Conflict of February 2004" --

2 THE INTERPRETER: Interpreter's correction: In the Ituri
3 conflict.

4 MR. BIJU-DUVAL (interpretation):

5 Q. -- which is OTP-00024 and I'm also referring to the final report
6 of the MONUC on the special investigations carried out in January and
7 March 2003 under number EVD-OTP-0480.

8 These reports, if you would like to consult them, are to be found
9 first of all in tab 11 of the binder, and the passage in question is on
10 page 5 out of 18. And in the second case, the second report is at
11 tab 10, and the passage in question is paragraph 88.

12 In these two excerpts we're dealing with the narrative of a child
13 who allegedly was captured in Mongbwalu, on the road, captured by
14 President Thomas Lubanga and six other UPC members, and this was in
15 February 2003.

16 Do you see to what I'm referring? You have found the part of the
17 report?

18 A. Yes, indeed I have.

19 Q. So in this narrative reference is made to a significant event,
20 because apparently it is something done by President Thomas Lubanga
21 himself.

22 Did you try to carry out a specific investigation into this event
23 in the light of its special and particularly important character,
24 particularly from the point of view of the research you were carrying
25 out?

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1 A. No, not specifically. This narrative was given to me by a child
2 during a special mission carried out in Bunia in March, and at that time
3 the question of children associated with armed groups -- well, shall we
4 say the children recruited by armed groups all -- well, they were seen as
5 being equally important. The fact that a child said that he was
6 recruited by Lubanga or by Mr. Kisembo or whoever, shall we say that it
7 wasn't one of my main concerns. In that context, what was important for
8 us was to find solutions for those children. I would say that the point
9 of the documentation, with all due respect for the Court, was not to be
10 used in a testimony before the International Criminal Court, a court of
11 justice. What was important was to hear from the children and understand
12 what had happened, what was their story, what events had led to them
13 being associated with the armed groups.

14 With hindsight, I would say, yes, I should have sought other
15 information, but we had different priorities at the time. We wanted to
16 find solutions for the children, to see how we could get them out of
17 these groups as quickly as possible and bring them back into a protective
18 environment. We were carrying out an investigation mission on massacres
19 and hundreds of people who had died in the preceding weeks and months.

20 This child was sent to school. He was from a soldier's family.
21 He'd been brought up in an environment in which his father had been in
22 the regular army. That child told me a story that struck me as being
23 perfectly credible. What is more, he was accompanied by other children
24 with other soldiers in the same vehicle. He was a child who had grown up
25 in Bunia, he lived in Bunia, and there was nothing in what he told me

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1 that caused me to question his credibility.

2 Once again, we were not, and here I return to all of the
3 interviews that I had with children in 2003, 2004, I was never looking
4 for specific information about a given member of the UPC or any other
5 body. The children were quite simply telling me their stories and there
6 were no direct questions that were put to the children to find out
7 whether they had been in touch with Mr. Lubanga, Mr. Kisembo, or
8 Mr. Bosco. We just let them tell their story, And they gave us names of
9 commanders, the names of people who recruited them, the names of people
10 who trained them, the names of the commanders under whose orders they'd
11 fought, and this struck me as being a credible story. So there you have
12 it.

13 Q. One more matter on this point, the last one. It might strike you
14 as being an artificial or formal question, but it's one I have to put
15 anyhow.

16 If I were to suggest to you that Thomas Lubanga was never in
17 Mongbwalu in that period, February 2003, would that lead you to
18 re-examine your position as regards the credibility of the narrative?

19 A. As I said, the narrative was not subject to a specific
20 investigation, even a posteriori. I said that the dates given by the
21 children -- well, when they said February 2003, it could have been late
22 January or early March. The dates given by the children -- well, in some
23 cases the children might give very accurate and correct dates, but in
24 other cases they were less accurate, shall we say.

25 I do not know where Thomas Lubanga was in February 2003. I don't

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1 know whether he travelled down that road on at that day or during that
2 period.

3 Q. On the previous occasions when you spoke to the Court, you
4 said -- and indeed you did so again today, you said that there were
5 notes, notebooks, and perhaps other documents that you would tell us
6 about in which, at the time, you noted down the narrative of the
7 children.

8 So my first question is as follows: Could you -- could you
9 recapitulate for us the documents in which the notes of these interviews
10 are to be found? I understood that they were handwritten notes, and then
11 these initial notes were reworked in different documentary forms, so
12 perhaps you could run through the different documents that the
13 information received was entered into.

14 A. The interviews with the children were presented in note form in
15 notebooks and then typed into a Word format document. Then a summary was
16 prepared, a systematic summary, in an Excel table form, in a spreadsheet.

17 During our investigations, we dealt with our notes in a rather
18 special way inasmuch as the investigators, the people who were part of
19 the investigative mission, those people would take their notes either in
20 handwritten form or in electronic form at the end of the day, and then
21 the person in charge of the investigation team would compile all of that.

22 At other times when security, such as in May/June 2003, for
23 security reasons some of the information was included in daily reports
24 which were sent to Kinshasa, but I didn't necessarily keep all of those
25 notes because sometimes the reports were read out over the telephone when

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1 we didn't have an Internet connection, or they might have been kept by
2 other of my colleagues and therefore were not necessarily included in the
3 documents that I referred to.

4 Q. Let us refer to the last category of documents you've just
5 mentioned, that is, the reports. Unless I'm mistaken, you indicated that
6 the first weekly report dates back to 2002, week 20; is that correct?

7 A. It was 2003 for the reports from Bunia.

8 Q. Thank you. So it is week 20 of 2003. Were you supposed to
9 publish a weekly report, and did you actually do that until the end of
10 your stay in Bunia?

11 A. Yes, starting with week 20 in Ituri, along with the daily reports
12 which were sent on along with my human rights colleague, and there were
13 other ad hoc reports that could be sent in if a particular incident had
14 occurred.

15 Q. Thank you. I'd like to refer to the three first categories of
16 documents that you mentioned, that is, the handwritten notes, the Word
17 document, and the Excel spreadsheet, and my question is as follows: Did
18 you have those documents when you were interviewed by the investigators
19 of the Office of the Prosecutor in 2006?

20 A. Yes.

21 Q. Did you give those documents, either an original or a copy, to
22 the investigators of the Office of the Prosecutor either at the time of
23 your interview or at some later point in time or at any point in time?

24 A. Absolutely not, and it -- they in fact indicated that they did
25 not want to see them.

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1 Q. Well, did I understand you correctly that you said that the
2 investigators of the Office of the Prosecutor stated precisely that they
3 did not want to see said documents? Have I understood you correctly?

4 A. Yes, that's correct. Well, they explained that the exchange of
5 documents between the United Nations and the OTP had to follow a certain
6 procedure. I wanted to show them an Excel spreadsheet to facilitate
7 their understanding, but they stated clearly that they did not want to
8 look at it.

9 Q. Thank you. I would like to show you a document, which is a
10 68-page document -- in fact, 69 pages. No, it is 68 pages. A 68-page
11 document -- well, let me show it to you.

12 MR. BIJU-DUVAL (interpretation): For the Court, the reference
13 number, the ERN, is DRC-OTP-0208-0284.

14 Your Honour, it's almost too late, but not quite. We need to go
15 into private session for the questions that I'm going to put in a moment,
16 given -- and I want to say this, I want to say this in public session, in
17 open session, given the United Nations requirements, we need to go into
18 private session.

19 PRESIDING JUDGE FULFORD: Private session, please. And I assume,
20 Mr. Biju-Duval, this document should not be displayed publicly.

21 MR. BIJU-DUVAL (interpretation): To be perfectly clear, this
22 document -- well, the United Nations forbade the use, the public use, of
23 this document, and therefore, it must not be broadcast on the screen.

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

25 *(Private session at 12.08 p.m.) Reclassified as Open session

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1 PRESIDING JUDGE FULFORD: Ms. Solano, I think you wanted to say
2 something.

3 MS. SOLANO: Thank you, your Honour, just a small comment that
4 there was a request for protective measures made for this document and
5 your Honours granted it.

6 PRESIDING JUDGE FULFORD: Yes. Ms. Solano, I wasn't going to
7 cross swords with Mr. Biju-Duval as to whether or not "forbade" was the
8 appropriate word to use, but thank you for the intervention.

9 Right. We're in private session, Mr. Biju-Duval, so where do we
10 go from here?

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
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12 Something to occupy you, Mr. Sachdeva, over the adjournment, is
13 what we do with the bar table documents. The Court Officer has asked
14 whether we simply apply an EVD number to each of them effectively now or
15 whether there is some more elaborate mechanism of introduction that
16 you've been considering which we haven't so far discussed.

17 Don't answer this now. I don't want to take up time on it. But
18 can you reflect on and perhaps talk with the Court Officer as to the best
19 means of securing EVD numbers for these documents and whether you propose
20 to say a single word about any of them until your closing address to the
21 Chamber whenever that is going to be.

22 MR. SACHDEVA: I will, Mr. President.

23 PRESIDING JUDGE FULFORD: Thank you very much.

24 We will sit again as and when we receive notification from
25 Mr. Johnson.

Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
Procedural Matters

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1 COURT OFFICER: All rise.
2 Recess taken at 12.30 p.m.
3 On resuming at 12.41 p.m.
4 COURT USHER: All rise. Please be seated.
5 PRESIDING JUDGE FULFORD: Witness, please, and private session.
6 (The witness takes the stand)
7 PRESIDING JUDGE FULFORD: Yes, Mr. Johnson.
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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
Questioned by Mr. Biju-Duval (Continued)

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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
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Witness: Witness DRC-OTP-WWW-0046 (Resumed) (Private Session)
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21 PRESIDING JUDGE FULFORD: Well, we shall be looking forward to
22 seeing you tomorrow morning at half past 9.00 so you can return to the
23 subject then, Mr. Johnson, if you wish.

24 Mr. Biju-Duval, would that be a convenient moment for you?

25 MR. BIJU-DUVAL (interpretation): Yes, your Honour, but I have

1 almost finished my cross-examination. If we could go on for another
2 30 minutes, I could finish probably.

3 PRESIDING JUDGE FULFORD: That's good of you to indicate. In
4 fact, there are some questions pending from both of my judicial
5 colleagues. I suspect Ms. Solano, and she has indicated is the case,
6 will have some questions as well. I think we would not save anything,
7 ultimately, because we're expecting Witness 116 back at quarter to 3.00.
8 So -- but thank you for the indication.

9 Ms. Peduto, I'm sorry, but tomorrow morning. Thank you for your
10 patience.

11 Good. As far as the witness is concerned, then, half past 9.00
12 tomorrow morning. We, of course, will sit again at 2.45.

13 Could Ms. Peduto please now be accompanied by the usher to the
14 witness waiting-room.

15 (The witness stands down)

16 PRESIDING JUDGE FULFORD: So two things overnight, then,
17 Mr. Johnson, if you will: The list of names and whether there's anything
18 else that you would wish to say in relation to the security position of
19 the person at entry 145. Thank you very much.

20 We'll sit again at 2.45.

21 COURT USHER: All rise.

22 Luncheon recess taken at 1.05 p.m.

23 On resuming at 2.49 p.m.

24 COURT USHER: All rise. Please be seated.

25 PRESIDING JUDGE FULFORD: I'm sorry we've kept you all waiting.

1 Something came up.

2 Ms. Struyven, anything to prevent the witness from coming into
3 court?

4 MS. STRUYVEN: No, Mr. President.

5 PRESIDING JUDGE FULFORD: Good. Thank you very much. Before he
6 does, any thoughts on the bar table documents, Mr. Sachdeva?

7 MR. SACHDEVA: Yes, Mr. President. Thank you. Actually, I
8 discussed it with the Court Officer and my learned friend from the
9 Defence, and it is my understanding there are documents that already have
10 EVD numbers either from the Confirmation Hearing or from the trial, and
11 those that do not, the Prosecution would suggest that they be given
12 individually an EVD number.

13 PRESIDING JUDGE FULFORD: Right.

14 MR. SACHDEVA: And any argument as to weight will be undertaken
15 at those submissions.

16 PRESIDING JUDGE FULFORD: Fine. So we're not going to have you,
17 as it were, solemnly handing each of them in from the bar table,
18 Mr. Sachdeva. It will simply be done automatically, and that's a course
19 I would commend, but I just wanted to make sure that there were no other
20 formalities that in your view needed to be gone through.

21 MR. SACHDEVA: In the Prosecution's view, no, Mr. President.

22 PRESIDING JUDGE FULFORD: Good. Fine. Let it -- let that be the
23 course that we follow. Thank you.

24 Then we'll need to bring the witness in, and I think we need to
25 go into closed session in order to do so. Closed session, please.

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Closed Session)
Questioned by Ms. Struyven (Continued)

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1 *(Closed session at 2.51 p.m.) Reclassified as Open session

2 COURT OFFICER: Closed session.

3 WITNESS: WITNESS DRC-OTP-WWW-0116 (Resumed)

4 (Witness answered through interpreter)

5 PRESIDING JUDGE FULFORD: Good afternoon, sir, and welcome back.

6 THE WITNESS (interpretation): Good afternoon.

7 PRESIDING JUDGE FULFORD: (Previous translation continues) ...

8 your evidence, and can I remind you that you are still bound by the oath
9 which you took some many days ago now.

10 Are we in private or public session, Ms. Struyven?

11 MS. STRUYVEN (interpretation): Your Honour, I have -- I will be
12 putting a number of questions in private session, and then the remainder
13 will be in open session.

14 PRESIDING JUDGE FULFORD: Yes, certainly. Private session,
15 please.

16 *(Private session at 2.53 p.m.) Reclassified as Open session

17 COURT OFFICER: Private session.

18 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

19 Questioned by Ms. Struyven: (Continued)

20 Q. (Interpretation) Witness, I would like to begin by asking you a
21 few questions about what you said last week, and then I shall go on to a
22 new topic, and I'd like to remind you once again that you need to make a
23 pause between your response and the end of my question.

24 Last week you explained that after your departure in (Redacted) 2002,
25 (Redacted) continued its activities but in a more limited scale. You

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Private Session)
Questioned by Ms. Struyven (Continued)

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1 explained that the situation had become more and more difficult.

2 Do you know, more or less, until what time (Redacted)

3 continued its activities in Bunia?

4 A. Yes. I can say that when the Ituri conference took place in

5 April of the following year, that is, 2003, there was (Redacted)

6 (Redacted) who was still on site and (Redacted)

7 (Redacted). So I can state formally that in April of 2003,

8 they were still on site, because (Redacted)

9 (Redacted)

10 Q. Do you know whether between the point in time when you left in

11 (Redacted) 2002 and April 2003, do you know whether there were other

12 members of (Redacted) who left Bunia?

13 A. Yes, indeed. Most of the personnel -- there were at least

14 (Redacted) staff members who left Bunia, and one returned regularly to

15 provide supervision.

16 Q. Do you know why the (Redacted) who were still on site

17 left Bunia before April 2003?

18 A. Yes. It was clear, more and more clear that our presence was no

19 longer desired, and given the physical threats that had been made to us,

20 all of us, the whole team, had received threats, and myself in

21 particular. Throughout that period (Redacted)

22 and we all left. Initially we all left and then later since we received

23 (Redacted)

24 so we reduced our presence considerably, and at that point there was one

25 person there all the time and was there -- and was supervised by another

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Private Session)
Questioned by Ms. Struyven (Continued)

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1 person who was the number-one person in charge of the organisation. This
2 is after I had left, therefore.

3 Q. To be absolutely certain I've understood you, after you left in
4 (Redacted), did I understand you correctly that there were still people on
5 site, that is, in Bunia, and if I've understood you correctly, when did
6 those (Redacted) people leave Bunia?

7 A. Well, I let the whole team leave. Once we received precise
8 threats against our organisation I let everyone go, and one person stayed
9 who took refuge. Well, that's perhaps not the right term, but we found a
10 solution to have a sort of have a discreet presence (Redacted)
11 (Redacted), and the rest of us left the house that
12 we had been living in. We emptied it out. And when we left there was a
13 period of time that went by, and since by contract we had to provide
14 information and continue the project follow-up, we kept that person, and
15 then we moved the offices of the project and that person went to stay
16 there and continued to manage the project from there.

17 THE INTERPRETER: With something that was inaudible.

18 MS. STRUYVEN (interpretation):

19 Q. After your departure in (Redacted) 2002, (Redacted) have
20 contacts with Mr. Lubanga or not?

21 A. After the (Redacted), yes, there were contacts when -- as
22 regards the recruitment of children that had been observed and also
23 children who had been re-recruited. At the time contacts were taken, but
24 it did not lead to results because Mr. Thomas refused to meet with the
25 representatives. (Redacted)

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Private Session)
Questioned by Ms. Struyven (Continued)

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1 (Redacted). (Redacted). We put
2 it in our report to show to our partners that we were attempting to
3 negotiate the demobilisation and leaving of children but that we were not
4 able to obtain a favourable response.

5 In addition, the person who was minister of defence at the time,
6 Mr. Thomas's minister of defence, that is, Mr. Didier Mandey, he had
7 received -- (Redacted), and he
8 told them that our project was not in favour of children. He said we had
9 done nothing. It was the same thing I said last week. And he told us
10 that he was taking responsibility for these matters and that we should
11 not come to ask for the demobilisation or the liberation of children
12 because we were not able to meet the needs of their problems.

13 PRESIDING JUDGE FULFORD: Sir, during your longer answers, can I
14 ask you, please, to make sure that you don't speak too quickly and that
15 you build in short gaps in what you say. If there's a long piece of
16 evidence given by you without breaks, it makes life very difficult indeed
17 for those who are assisting us. So could you please bear that in mind.

18 And, Ms. Struyven, can you please keep an eye on this.

19 MS. STRUYVEN (interpretation): Yes, your Honour.

20 Q. You have explained to us that (Redacted) had gone to
21 see someone working with Mr. Lubanga regarding demobilisation. Do you
22 know when that meeting took place approximately?

23 A. The meeting took place during the second half of 2002, before
24 December for sure. Before December 2002, because in the month of
25 December 2002, there were many problems. We were not able to work in a

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Private Session)
Questioned by Ms. Struyven (Continued)

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1 continuous and stable fashion, but I'm absolutely certain it was during
2 the second half of 2002.

3 Q. Do you know whether at that time Mr. Lubanga was already in
4 Bunia?

5 A. He was in Bunia. He was in Bunia because he worked with
6 Mr. Didier in the same office. It was the main office of the party.

7 Q. Witness, last week you explained that after your departure in
8 (Redacted) of 2002, you continued to follow the activities of (Redacted).
9 Were you able to follow those activities or any other activities on site
10 and, if so, until when?

11 A. Let me state one thing. When I left Bunia because of the
12 threats, in fact, I went back (Redacted)
13 (Redacted)
14 (Redacted), and we were already
15 involved in the process, and they asked us to negotiate -- well, no.
16 That's not really the right term. We didn't have the ability or the
17 mandate to negotiate. We were asked to take in, take charge of a number
18 of children, because a number of -- another rebellion had led to the
19 liberation -- (Redacted)
20 (Redacted). And my assistant took over from me, and when I came back I
21 was informed of what had happened because (Redacted)
22 (Redacted). But after (Redacted) 2002, I no longer had the
23 same status. I had accepted another job, and I continued as a charge de
24 programme (Redacted)
25 and therefore, I continued being very closely informed of what was taking

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Private Session)
Questioned by Ms. Struyven (Continued)

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1 place because it was part of my responsibilities.

2 MS. STRUYVEN (interpretation): Your Honour, I believe we can go
3 into open session, with your permission.

4 PRESIDING JUDGE FULFORD: Thank you, Ms. Struyven.

5 Open session, please.

6 (Open session at 3.06 p.m.)

7 COURT OFFICER: Open session.

8 MS. STRUYVEN (interpretation):

9 Q. Witness, you explained last week that after May 2002, the
10 recruitment of child soldiers by the UPC continued, and you explained
11 that the recruitment methods were the same as before May 2002. Do you
12 know until when the recruitment of children by the UPC continued?

13 A. Well, could you perhaps be more precise in your question? Until
14 when? What period of time are you referring to?

15 Q. Well, we're talking about May 2002. You said that after the
16 month of May, 2002, the recruitment continued. And do you know, let's
17 say up to 2004. I'm not really interested in the period after 2004, but
18 could you tell us how long the recruitment continued after the month of
19 May 2002?

20 A. Well, I can say that recruitment continued over and beyond 2003.
21 I would say end of 2003. And as far as I'm concerned, since I was no
22 longer in the zone, in that zone in 2004, that is, in the eastern part of
23 the DRC, I would not -- I would express reservations as regards
24 confirming that such recruitment continued after my departure in 2004.
25 But as regards the period between May of 2002 and before I left in 2004,

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Open Session)
Questioned by Ms. Struyven (Continued)

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1 I received information through the organisation that was employing me,
2 and later on I was involved with information within the agency where I
3 was working. And in this agency, as part of my own mandate within that
4 agency, I went to Bunia to attend coordination meetings as part of the
5 child demobilisation process, and in those meetings it was very clearly
6 stated that the recruitment process on the part of the armed group of
7 Mr. Thomas Lubanga was a real issue, a real problem for the various
8 agencies. So it had not stopped, at least until I was in Bunia at the
9 Ituri conference in April 2003.

10 Q. Well, let's take the period between May of 2002 until April 2003.
11 You've explained that you received information about recruitment. Did
12 you receive information regarding the age of the children who were
13 recruited by the UPC?

14 A. The information I received, well, I think I talked about it last
15 week. When I was still in the civil society of Congo, I talked about a
16 case of children who were under the age of 15, and I gave you all the
17 details in my statement.

18 Now, after I went to the other place I talked about, I was in
19 charge of demobilisation of other child soldiers. I received
20 information, the situation reports of my colleagues who were on the
21 field, and the situation report of the person supervising him to the
22 effect that there were still recruitment of children under the age of 15.
23 There was recruitment of children under the age of 15, and we even
24 collected evidence. Pictures were sent to us, pictures which I forwarded
25 to our partner, two photographs. The first photograph of a very young

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Open Session)
Questioned by Ms. Struyven (Continued)

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1 child standing within the premises of the party of Mr. Thomas Lubanga,
2 and another one of two young children who, when the movement took control
3 of the town, they were standing in front of a shop that had been
4 destroyed or something like that. That photograph was circulating around
5 the place, and we sent it to our partner to use it to carry out advocacy
6 within the area where it was carrying out its activities with the armed
7 groups.

8 Q. Now, on these two pictures, first of all, do you know when these
9 photographs were taken?

10 A. The first photograph which I received, I will say it dates back
11 to May 2002 and August 2002, and I am convinced of that. The other
12 photograph dates back to August 2002. Because these were photographs
13 which came to confirm what was being said about the danger faced by
14 children in Ituri, and this was like evidence to prove that indeed there
15 were children concerned. All the more so at the time -- all the more so,
16 because at the time there was rumour. There was information which came
17 from the field about children of primary school age who were also
18 enlisted into the armed groups of the UPC. So the photographs were like
19 evidence, like proof of this.

20 Q. I'm going to ask you questions about that. As regards the
21 photographs, do you have an idea of the age of the children who were in
22 the photographs?

23 A. The first photograph was quite obvious. It was obvious on the
24 first photograph that this was a child of about 15. It was a small
25 child. He even looked ridiculous in his uniform, and the weapon he was

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Open Session)
Questioned by Ms. Struyven (Continued)

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1 carrying, it was really ridiculous. He was a child of about 15. Of
2 course I acknowledge that I could not determine the child's age on the
3 basis of a simple photograph. It's true that there's need to conduct an
4 interview to determine that. However, as someone who works in the domain
5 of child protection and care given to children under that situation, it
6 was evident that this was a young child. And again, this photograph was
7 sent as proof to show a child of primary school age who was, like others,
8 involved in conflict.

9 Q. You talked about children of primary school age who at that time
10 were recruited, if I understood you well, by the UPC. Could you help us
11 by telling us what you mean by the primary school age? And secondly, at
12 what period were these children recruited?

13 A. From the interviews we conducted with the children and given the
14 manner in which we work with the children in order to document them, a
15 child who completes the sixth year of primary school is aged 12 at most.
16 If he had problems with his schooling or started school late, he could
17 complete his sixth year at the age of 15 but that is rare. Now, this can
18 happen that because of -- well, this can happen because of a conflict,
19 and if a child is living in area which has been destabilised because such
20 conflict. But in general terms, a child who completes the sixth year of
21 primary school in my country is aged on average between 12 and 14, and in
22 exceptional circumstances the child will be aged 15.

23 Now, with respect to these children, what period are we talking
24 about? These children -- well, this happened between the period May and
25 October 2003. That's what I said.

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Open Session)
Questioned by Ms. Struyven (Continued)

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1 Q. Just one more clarification I would like to get on you -- get
2 from you. Now, as concerns the age of the children in the photographs,
3 you say that they were of primary school age, and at the same time you
4 say that they were aged 15. Is that what you were saying with respect to
5 these children in the photograph?

6 A. Well, to give you more clarification, I would like to say that
7 visibly when I saw those photographs, and even the persons who sent these
8 photographs to me, that is, my colleagues, they were convinced that these
9 were children under the age of 15.

10 As concerns the age, the primary school age, I do confirm that on
11 average in my country children who complete the sixth year of primary
12 school are expected to have started schooling at the age of four or five.
13 Now, plus the six years of schooling, if the child did not repeat a
14 class, the child could complete at the age of 12, 13, or 14 years, or
15 maximum 15 years.

16 Q. I would like to move on to the last topic, and this is
17 demobilisation. You explained to us that (Redacted) -- I beg your
18 pardon. You said at that there were discussions on demobilisation with
19 the members of the UPC especially. Now, if we take the period
20 September 2002 right up to October 2002 -- sorry, 2004 --

21 THE INTERPRETER: Interpreter's correction: 2003.

22 MS. STRUYVEN (interpretation):

23 Q. Did you have any information concerning initiatives taken by the
24 UPC to demobilise child soldiers, that is, between September 2002 and
25 October 2003?

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Open Session)
Questioned by Ms. Struyven (Continued)

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1 A. Are you talking about the period between September 2002 and
2 October 2003?

3 Q. That is correct.

4 A. Between September 2002 and October 2003, I was already outside
5 the civil society organisation, so I can tell you since I was informed on
6 a regular basis that I do not remember having been informed of any
7 initiative taken by the UPC to that effect, all the more so because (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted). That's the first thing.

12 Secondly, in the month of March or April -- well, I beg your
13 pardon. My memory may not be very clear there because these things
14 happened a long time ago.

15 Can we go into private session, please?

16 MS. STRUYVEN (interpretation): With your permission, your
17 Honour, can we go into private session?

18 PRESIDING JUDGE FULFORD: We can, Ms. Struyven. Can you please
19 make sure that you don't start speaking while the interpreters are still
20 completing their interpretation of the witness's evidence.

21 Yes, private session. And I think -- I assume from a look that
22 you cast behind you that some redactions are being sought; is that right?

23 MS. STRUYVEN: That is correct. I myself made -- mentioned
24 the --

25 PRESIDING JUDGE FULFORD: I know. No need to repeat it. Yes.

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Private Session)
Questioned by Ms. Struyven (Continued)

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1 Thank you.

2 *(Private session at 3.21 p.m.) Reclassified as Open session

3 COURT OFFICER: Private session.

4 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

5 MS. STRUYVEN (interpretation):

6 Q. Yes, Witness.

7 A. I would like to add that between September and the rest of the
8 year 2002, I did not hear any mention of the demobilisation of children
9 in the UPC group. The following year, in the month of March and April,
10 (Redacted)
11 (Redacted)
12 (Redacted). This structure wished to meet us, to meet
13 the humanitarian stakeholders and the civil society to discuss on
14 demobilisation in the Congo, the Congo which at the time was destabilised
15 by war.
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted).

21 The result was that all these armed groups went to Kinshasa. The
22 country was not yet reunified, but they went with the child protection
23 unit of MONUC, and they went to attend this meeting which lasted for
24 three days with the donors of the World Bank. At that time we wanted to
25 establish contact with the UPC, and all the humanitarian structures were

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1 in agreement that we could not contact the UPC. We could not even
2 approach them because it was dangerous. No one within the UPC was
3 sensitive to the issue of child demobilisation. That's the second point.

4 Third point, (Redacted)

5 (Redacted)

6 (Redacted), who at the time was (Redacted)

7 (Redacted), and at that time the UPC was not present at that meeting, at
8 the conference of Ituri. Well, I may be mistaken, that is possible, but
9 I can state here that they were not in attendance, and that is one of the
10 reasons why the international organisations did not contact them, because
11 they could not contact them with regard to the demobilisation of
12 children.

13 Next point, (Redacted).

14 (Redacted) certain organisations

15 that were involved in DDR, and there were serious difficulties with
16 respect to contacting the UPC to discuss child demobilisation issues.

17 (Redacted). (Redacted)

18 (Redacted). We had workers who were prepared to take charge of the
19 children, but everyone within that coordination was in agreement that it
20 was difficult to approach and convince the UPC to release children
21 unconditionally from the armed groups.

22 Q. I have a few points of clarification. That conference which was
23 held in April 2003, was it held in Bunia or am I mistaken?

24 A. The conference indeed took place in Bunia.

25 Q. Just to be sure, when you say that the UPC was not receptive, or

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1 that the organisations could not approach the UPC, can you throw more
2 light on that?

3 A. Yes. If I can go back to give you one small detail. (Redacted)

4 (Redacted)

5 (Redacted), that the Ituri conference was held in

6 April or the beginning of May. I can't remember the date clearly, but

7 that time it took place in Bunia. It was a big conference.

8 Now, just to give you some clarification -- you wanted me to give
9 you some clarification?

10 Q. Yes. Several times you alluded to the fact that the
11 organisations, the humanitarian organisations, could not contact the UPC.

12 Now, I don't want to cite what you said because I can't repeat
13 the exact words you used, but can you explain to us what you mean by
14 that?

15 A. Yes. I said that the UPC was not receptive to the issues of the
16 demobilisation of children. Now, with the indulgence of the Bench, I
17 will explain the process as it obtained at the time.

18 The civil society NGOs, be they national or international, could
19 not contact the armed groups without passing through MONUC, which had the
20 political and military mandate to contact the armed groups and prepare
21 the territory, prepare the ground, so that under conditions of cessation
22 of conflict, the issues of child protection can then be discussed with
23 these armed groups.

24 Now once -- so long as these issues of pacification, cease-fire
25 and others could not be addressed by MONUC, then the issues of DDR for

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1 the children could not be raised. That's the first point.

2 Second point, at that time, and here I'm talking about what I
3 heard and the points we discussed on with child protection workers in
4 Bunia, at that time there were initiatives taken by NGOs, NGOs that
5 approached the UPC through purely bilateral relations to ask them to
6 release the children. There were a few cases, a few cases, appointments
7 that were made which were not respected, and then the organisations would
8 try to reorganise to meet them again.

9 In any case, an initiative that was planned and accepted as part
10 of the DDR programme, the national DDR programme that we had defined and
11 which was open to everyone, to all armed groups and to all stakeholders
12 involved in the DDR, be they the donors, the stakeholders or the armed
13 groups, or the government, we did not have any such commitment. Well, as
14 far as I can remember, right up to the month of October 2003, (Redacted)
15 (Redacted), I was not informed of any -- any formal or solemn commitment
16 taken at the time to release children from the UPC.

17 Q. Thank you.

18 MS. STRUYVEN (interpretation): Your Honour, I have one more
19 document remaining that I would like to show to the witness. We could do
20 it in open session, even though the document cannot be disclosed to the
21 public, and it will last perhaps a couple of minutes, no more than that.

22 PRESIDING JUDGE FULFORD: Thank you, Ms. Struyven.

23 Public session, but can we ensure that the document isn't
24 revealed publicly.

25 (Open session at 3.32 p.m.)

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1 COURT OFFICER: Open session.

2 MS. STRUYVEN (interpretation): Your Honour, by your leave I

3 would like to show a document to the witness. It is document

4 DRC-OTP-0174-0051. And I have seven copies this time.

5 PRESIDING JUDGE FULFORD: Can we have a document immediately

6 handed across to the Defence, please, so that Mr. Biju-Duval can reassure

7 himself that this is a document of which he is aware.

8 Don't worry, Mr. Biju-Duval. You'll have an opportunity to look

9 at it before Ms. Struyven goes any further.

10 And can we distribute it to everyone except for the witness at

11 the moment.

12 Happy, Mr. Biju-Duval?

13 MR. BIJU-DUVAL (interpretation): Yes and no, your Honour. Yes

14 because I am familiar with this document, but I object to this document

15 be put to the witness and being used during his testimony.

16 PRESIDING JUDGE FULFORD: Just pause a moment. Do you want to

17 make your submissions in the presence of the witness or in the absence of

18 the witness?

19 MR. BIJU-DUVAL (interpretation): It would be better perhaps in

20 his absence, your Honour.

21 PRESIDING JUDGE FULFORD: Certainly. Sir, would you indulge us

22 for a moment. I'm going to have to ask you with the usher's assistance

23 once we've gone into closed session to step outside the court so we can

24 discuss a document.

25 Closed session, please.

1 Just remain seated for a moment.

2 *(Closed session at 3.34 p.m.) Reclassified as Open session

3 COURT OFFICER: Closed session.

4 PRESIDING JUDGE FULFORD: Yes. If the usher could please
5 accompany the witness to the room just outside the court.

6 (The witness stands down)

7 MR. BIJU-DUVAL (interpretation): Your Honour, I did not say
8 beforehand that we intended to object to use being made of this document,
9 because we thought it was obvious that this was not a document that was
10 separate from the statement, but it was very much part and parcel of the
11 statements gathered by the investigators in the course of their
12 investigations in October 2007. This is document signed by the witness
13 on the 11th of October, 2007, which was the last day of his interviews
14 with the OTP investigators, and it's a document in which the witness
15 provides explanations to the investigators. These are written
16 explanations which are given to the investigators and that the
17 investigators append in an annex to the record of his statement.

18 It strikes me as being clear that this is part of the written
19 statement that was provided and not a separate document. And as we're
20 talking about a statement, prior statement, it should go through this
21 same procedural channels and be dealt with in the same way.

22 PRESIDING JUDGE FULFORD: So, Mr. Biju-Duval, this is -- is this
23 clearly by the looks of the date is not something compiled by the witness
24 contemporaneously with the events that we're concerned with in this case.
25 This is an ex post facto statement provided by the witness to the

1 investigators of the Office of the Prosecutor.

2 Good. Well, we'll see what Ms. Struyven's justification is for
3 seeking to introduce one of the witness's statements when that course is
4 opposed.

5 How do you argue this, Ms. Struyven?

6 MS. STRUYVEN: Thank you, Mr. President. Maybe one important
7 clarification, I think. This document was referred to in a paragraph of
8 the witness's statement that was admitted by the Defence into evidence.

9 PRESIDING JUDGE FULFORD: All right. Don't be over-pedantic,
10 Ms. Struyven. What's the substantive justification for putting this in
11 rather than the fact that it might have escaped Mr. Biju-Duval's
12 attention that this was referred to in a paragraph of a witness statement
13 that's been admitted?

14 Now, let's not rely on mistakes, Ms. Struyven, but let's have a
15 substantive justification.

16 MS. STRUYVEN: Mr. President, we fully agree that this document
17 was not established contemporaneously. What we intended to do was have
18 the witness confirm that he drafted the document and have him confirm
19 that what he said in 2007, as far as he remembers, is an accurate
20 reflection of what happened before. There are certain portions that were
21 confirmed, of course, in oral testimony, during the witness's testimony.
22 There is portions that I didn't address because they were going slightly
23 to the context of the conflict.

24 PRESIDING JUDGE FULFORD: Thank you very much.

25 (The Trial Chamber confers)

1 PRESIDING JUDGE FULFORD: Ms. Struyven, in our view it's clear
2 that in agreeing that portions of the witness's statements could be
3 received in evidence, the Defence were not intending for this separate
4 document, which we have been told is referred to in one of the agreed
5 passages, being admitted.

6 In our view, this document, although it may be slightly different
7 in form, falls clearly into the category of statements compiled during
8 the course of the investigation which were not contemporaneous with the
9 events that we're investigating, and ordinarily with live witnesses,
10 without agreement, we would not expect them to be introduced. Therefore,
11 in our judgement there are no reasons which have been identified by the
12 Prosecution for taking an exceptional course with this particular
13 document, and we therefore are against you in your attempt to put it to
14 the witness.

15 MS. STRUYVEN: Thank you, Mr. President. We then have no more
16 further questions for this witness, but I -- I assume he will be brought
17 back into the courtroom.

18 PRESIDING JUDGE FULFORD: Thank you very much.
19 Witness, please.

20 Mr. Lubanga.

21 MR. LUBANGA DYILO (interpretation): Your Honour, I beg your
22 indulgence. I would like to see my lawyer for two minutes before the
23 beginning of the cross-examination. Thank you.

24 PRESIDING JUDGE FULFORD: Most assuredly, Mr. Lubanga. Of course
25 that indulgence will be given to you in just a moment.

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1 (The witness takes the stand)

2 PRESIDING JUDGE FULFORD: Sir, we've just resolved the issue that
3 Ms. Struyven had raised in relation to a last document, and in fact
4 the -- the questions of the Prosecution are now at an end, and the next
5 stage is questions being put to you by Mr. Biju-Duval, who represents the
6 accused. However, we are going to give Mr. Biju-Duval an opportunity to
7 have a discussion briefly with his lay-client, and so I'm sorry to have
8 brought you back into court only to ask you almost immediately to leave
9 again. Please accept what may appear to be total silliness on our part.

10 Mr. Biju-Duval, could you go and have a quick word with
11 Mr. Lubanga to gain some idea as to how long you think you and he are
12 going to need? So could you for a moment go and have a word with him.

13 MR. BIJU-DUVAL (interpretation): Thank you, your Honour.

14 (Defence counsel and Mr. Lubanga confer)

15 MR. BIJU-DUVAL (interpretation): Would the Bench accord us
16 15 minutes' interview?

17 PRESIDING JUDGE FULFORD: Of course, Mr. Biju-Duval. If you need
18 longer, have a message sent through.

19 Well, we'll sit again at 4.00 unless we hear otherwise.

20 Can the usher please accompany the witness to the witness
21 waiting-room.

22 (The witness stands down)

23 PRESIDING JUDGE FULFORD: 4.00.

24 COURT OFFICER: All rise.

25 Recess taken at 3.44 p.m.

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1 On resuming at 4.09 p.m.

2 COURT USHER: All rise. Please be seated.

3 PRESIDING JUDGE FULFORD: Witness, please.

4 (The witness takes the stand)

5 PRESIDING JUDGE FULFORD: Thank you for your patience.

6 Public or private, Mr. Biju-Duval?

7 MR. BIJU-DUVAL (interpretation): Private session, your Honour.

8 PRESIDING JUDGE FULFORD: Private session, please.

9 *(Private session at 4.10 p.m.) Reclassified as Open session

10 COURT OFFICER: Private session.

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

12 Questioned by Mr. Biju-Duval:

13 Q. (Interpretation) Good afternoon. My name is Jean-Marie

14 Biju-Duval. I'm a lawyer, and I'm going to be asking you some questions
15 on behalf of the Defence of Mr. Thomas Lubanga.

16 First of all, I would like to give to you a copy of your
17 statement, statement made before the investigators. You may leave the
18 document on the table. We shall come back to it as we go along during my
19 cross-examination.

20 I would like to begin by asking you some questions regarding --
21 or, rather, as regards directly (Redacted), in particular
22 as regards the children (Redacted), and that is why I felt that it
23 was preferable to remain in private session.

24 You have indicated that you arrived to carry out this project in
25 (Redacted), in Bunia. You also indicated that the

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1 information that had been given to you regarding the children (Redacted)
2 (Redacted).

3 Could you tell the Court -- could you tell us precisely what
4 (Redacted)
5 (Redacted) in particular about the date.

6 A. In fact, I would like to state that (Redacted) did not inform us as
7 such as to how the children were transferred. That was not the purpose
8 of the memorandum of our agreement. (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted). That was the title of the project.

12 How did it come about that (Redacted) informed us, well, that there
13 was a group of (Redacted), in fact there were children
14 and young people who -- well, (Redacted)
15 (Redacted). I don't really have a
16 mandate to speak on behalf of the (Redacted) so I apologise
17 for mentioning that organisation, but there had been massive deportations
18 of children (Redacted), and we followed up on this information and
19 discovered that there were children amongst those people. And the -- in
20 fact, (Redacted) at the time did not allow a proper visit to
21 the camp, and (Redacted)
22 (Redacted) joined together in order to demand that the children be released,
23 the children that were in that camp, and that -- when (Redacted) was informed
24 that the children were going to be released, they looked for a partner.
25 Given the tensions that existed, that is when they contacted us.

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1 I hope I've answered your question.

2 Q. Well, my question was, in fact, what information did (Redacted)
3 (Redacted)? You were (Redacted), if I'm not
4 mistaken, of that organisation, so what information did they transmit to
5 you regarding the initial event? You've spoken about the deportation of
6 children.

7 A. It was this exactly: In Ituri there was a warlord who had
8 mobilised people, young people, and in that group there were children.
9 He sent them to the (Redacted) for military training. Apparently
10 he wanted to set up an army. And from (Redacted),
11 information got into the RCD -- DRC, and we went to take care of these
12 children and return them to their families, reunite them with their
13 families, and organised their reintegration into the community. That was
14 the message that we received.

15 Q. You indicated that according to the information from (Redacted),
16 the young people who had been sent to (Redacted) and which arrived at the
17 training camp in (Redacted) and that they stayed
18 three months until (Redacted). Was that the information you received
19 from (Redacted)? Is that correct?

20 A. Our intervention took place, the negotiations began a few months
21 before the actual return of the children. If you would be patient,
22 perhaps -- perhaps there's some problems with the dates in my statement.

23 In the month of (Redacted), if we were in contact with (Redacted) in
24 (Redacted), we began discussing in (Redacted), the children came back
25 in (Redacted). It could only have been in (Redacted) of the previous year that

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1 the children had been sent to (Redacted), so I have no problem backtracking
2 to give that bit of information. It was in (Redacted), during the
3 previous (Redacted) that the children were sent to (Redacted),
4 and we were contacted to go take care of them just a few months later.
5 So (Redacted). They spent more than three
6 months, and then they had time to come back. They came back to Bunia in
7 (Redacted). The last of them came back in (Redacted).

8 I may having -- I may be having a memory lapse. I -- but I
9 believe that's the case.

10 Q. When your organisation arrived in Bunia in (Redacted), where were
11 the children?

12 A. Our organisation organised a first mission to take stock of the
13 situation in (Redacted) and then another one again in (Redacted). And an
14 unfortunate event took place in Bunia, because at the beginning of that
15 year there were ICRC agents who were assassinated in Bunia. That's
16 extremely important, because (Redacted)
17 (Redacted). The actual family reuniting was to be
18 carried out by the ICRC, which was considered as a neutral organisation
19 and which was able to come and go in the region without much risk.

20 When four agents of the ICRC were assassinated on the road to
21 Fataki, (Redacted)
22 (Redacted). (Redacted)
23 (Redacted). But the children were still in (Redacted).
24 Well, actually, they had left the camp and they were in (Redacted). It
25 was an orientation camp (Redacted),

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1 which was opened up -- (Redacted), and they kept
2 the children and took care of them (Redacted)
3 (Redacted).

4 Q. Earlier on, and in paragraph 27 of your statement to the
5 investigators, you indicated that you were supposed to begin working in
6 Ituri (Redacted), and you said, "We had to wait in order for the
7 security situation to improve," and now you're talking about visits in
8 (Redacted). So what exactly was the situation?

9 A. Yes, indeed. We were visiting -- well, there was a whole work
10 plan that we had prepared, as I stated a week ago. The situation was
11 really radioactive in Ituri between the various communities, and
12 generally speaking, the situation was very unstable. We were not able to
13 go set up in an area that we were not familiar with, so we had to have an
14 initial (Redacted), to take stock of the situation, and
15 (Redacted)
16 (Redacted), because no one really knew what was going to happen in
17 Ituri. We didn't know if there wasn't going to be inter-ethnic
18 confrontation at the time, and that's why we sent an initial mission to
19 take stock of the situation.

20 Q. Were you contacted (Redacted)
21 (Redacted) before or after?

22 A. I think we were contacted before but on a very confidential
23 basis, and it wasn't actually (Redacted). Well, let me answer very clearly.
24 In fact, (Redacted) did not contact us directly, but the person in charge
25 of (Redacted) who worked very, very closely,

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1 hand-in-hand, (Redacted), because all of this was managed
2 from (Redacted), that person contacted us confidentially and (Redacted)
3 (Redacted) before the children left the camp, and they asked us if
4 we were interested, and we responded in the affirmative.

5 Q. These contacts took place at a time when (Redacted)
6 (Redacted)?

7 A. Yes, indeed. Yes.

8 Q. Had they already organised visits in the camp (Redacted)?

9 A. No. It was a military camp, and therefore they couldn't have
10 access to it anyway, but through (Redacted) and from various
11 sources of information from (Redacted)
12 (Redacted) was informed of the presence of those children in that camp, but
13 they hadn't visited it yet. They were still negotiating, and we were to
14 learn afterwards that those negotiations had been very lengthy and
15 difficult.

16 Q. You have stated just a few moments ago that the sending of young
17 people, including children, (Redacted), that this took place during the
18 previous (Redacted); is that
19 correct?

20 A. That's correct.

21 Q. Have I understood you correctly that you meant (Redacted)
22 (Redacted)?

23 A. Well, it was the (Redacted)
24 (Redacted)
25 (Redacted)

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1 Q. At that time you and (Redacted), were based in
2 Bunia -- or, rather, (Redacted); is that correct?

3 A. That's correct.

4 Q. You mentioned the name of Mr. Thomas Lubanga with respect to the
5 recruitment of these children (Redacted). Do you
6 know what the functions exercised by Mr. Thomas Lubanga were at that
7 point in time, that is, if he had any functions at all?

8 A. At that time, at the time when the children were sent (Redacted),
9 I don't know what the functions of Mr. Thomas Lubanga were. I did not
10 know about that.

11 Q. Do you know the organisation which had the administrative and
12 political power, which wielded administrative and political power in
13 Bunia, in Ituri, at the time?

14 A. At the time when the children were sent (Redacted) I was not in
15 Bunia. I did not know, because I was not in Bunia at the time.

16 Q. I fully understand that you were not there. However, would you
17 be able to answer that question today?

18 A. Today I can answer by saying that there were disturbances. As I
19 said a short while ago, there was an unstable situation, a situation of
20 tension between the various ethnic communities, and there was this
21 propensity to have military militias for protection. I can answer that
22 question now, because I got the information later on that there were
23 various governments that succeeded each other in Bunia. There was the
24 RCD of Professor Wamba which was chased out of Kisangani and which was
25 transported or brought to Bunia by the Ugandans. Later on, there was a

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1 division, a wing which was created which requested that Professor Wamba
2 should be sent to Uganda, and so the movement remained in the hands of
3 Mr. Mbusa, which then became the RCD-K/ML. And after that there was the
4 MLC which came to take over. So it was in this atmosphere, it was within
5 these course of events that certain movements started emerging, and there
6 were these attempts for groups to organise themselves militarily.

7 That is my own analysis of the situation.

8 Q. I have fully understood that you had some knowledge of ethnic
9 tension, certain movements within the area, but in (Redacted),
10 who was heading the movement that wielded power in Bunia?

11 A. In (Redacted), I can say today, and I may be mistaken,
12 that there was no power in place as such in Bunia, because (Redacted),
13 after the conflict between Rwandans and Ugandans in Kisangani, the
14 movement of Wamba was transferred to Bunia and left in Bunia, and those
15 who were managing Bunia at the time in reality was a Ugandan contingent
16 which had come to support the different rebel movements that were trying
17 to get a firm hold or a foothold in Bunia.

18 However, I was not far from the region at the time, because I was
19 interested in child protection within the region, and in Bunia there was
20 no established power as such. Maybe there was one, but as far as I can
21 remember, I do not think there was one. Of course, this happened eight
22 or nine years ago, and I may be mistaken, and I would like to crave your
23 indulgence for that, but I am convinced that there was no power as such
24 in Bunia at the time.

25 Q. As regards the recruitment and the sending of the (Redacted) young

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1 persons (Redacted), you have described that event as recruitment carried
2 out by a militia leader, recruitment of young persons, and that militia
3 leader decided to send these young people to undergo military training
4 (Redacted). Is that what you're saying?

5 A. Yes, that's right, but let me give one clarification on that
6 point. I said earlier that the information which I shared with the Court
7 in my statement and in my evidence now is information which I obtained
8 from various sources. However, most of that information was shared with
9 us confidentially, was shared with the children every time we tried to
10 identify and document them in order to ensure their family reunification,
11 and later on when -- in the monitoring which we conducted once they had
12 been reunified with their families.

13 Q. Thank you.

14 MR. BIJU-DUVAL (interpretation): Your Honour, I noticed that we
15 should have gone into open session for the past ten minutes already. I
16 think we can continue with the cross-examination in open session.

17 PRESIDING JUDGE FULFORD: Public session, please.

18 (Open session at 4.40 p.m.)

19 COURT OFFICER (interpretation): Open session.

20 MR. BIJU-DUVAL (interpretation):

21 Q. Sir, without directly referring to your job or to your project, I
22 would like you to be more precise with respect to what you understood
23 about the circumstances under which these children, these young persons,
24 were recruited and the reasons why they were sent to Uganda.

25 Do you have precise information to tell us on that, or you have

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1 said everything with respect to that subject?

2 A. Well, with regard to clarification that can be given relating to
3 the conditions under which these children were sent, I would like to say
4 that there was tension, ethnic tension, which stemmed from the fact that
5 at one point in time there was excessive militarisation and the fact that
6 certain people had plans within that area, and the community of
7 Mr. Thomas, which apparently felt threatened, wished to raise an army
8 through him, and so he sent this group of children to Uganda for military
9 training.

10 (Redacted)

11 (Redacted)

12 (Redacted) "We went to learn how to defend ourselves against the enemy,"
13 and that is what the children said. And from my understanding, after my
14 analysis I understood that it was their way of raising an army, an army
15 that was going to defend the interests of an ethnic group, an ethnic
16 group of which Mr. Thomas is a member.

17 That was my understanding of the situation at the time.

18 Q. One last question on this point. Do you have clarifications to
19 give on the manner in which this was carried out, that is, the
20 recruitment by a militia leader, on the one hand, and the relationship
21 between such recruitment and the powers of -- the powers of the regime or
22 the services on the spot, the official services on the spot?

23 THE INTERPRETER: The witness says he did not understand the
24 question. Could you please rephrase it.

25 PRESIDING JUDGE FULFORD: Do you want to rephrase it tomorrow

1 morning, Mr. Biju-Duval?

2 MR. BIJU-DUVAL (interpretation): No problem, your Honour.

3 PRESIDING JUDGE FULFORD: Sir, I'm afraid it's an uncertain start
4 time for you tomorrow. There's another witness whose evidence shouldn't
5 take very long who we need to conclude first, so I'm going to ask you,
6 please, to be available from 10.00 onwards tomorrow morning. The Chamber
7 will sit at half past 9.00.

8 Closed session, please, so the witness can withdraw with the
9 usher's assistance.

10 *(Closed session at 4.45 p.m.) Reclassified as Open session

11 COURT OFFICER: Closed session.

12 PRESIDING JUDGE FULFORD: Yes. The witness can withdraw now.

13 Thank you.

14 (The witness stands down)

15 PRESIDING JUDGE FULFORD: Ms. Samson.

16 MS. SAMSON: Sorry, your Honour. Perhaps you had something else
17 to say. Just very briefly and very quickly. We -- the Prosecution
18 wanted to raise -- to alert the Chamber to the fact that there will be a
19 filing filed tomorrow morning by the Prosecution team in the Katanga and
20 Ngudjolo case to this Chamber. It's an application under Regulation 42
21 to vary certain protective measures, and in this case it's redactions
22 that have been applied and authorised to statements disclosed in this
23 case, disclosed as Rule 77 and Article 67(2) because they are Prosecution
24 witnesses in that case.

25 The Prosecution team has been requested or instructed by the

1 Trial Chamber II to seek the authorisation from this Trial Chamber to
2 make the variations that will be quite explicitly set out for your
3 Honours in the filing that arrives tomorrow morning.

4 PRESIDING JUDGE FULFORD: If nothing else, to secure consistency
5 of orders between the Chambers, I assume, Ms. Samson.

6 MS. SAMSON: Yes, indeed. I am advised, however, your Honour,
7 that not all of the redactions that are being proposed or sought by the
8 Prosecution in the Katanga case are the same as the redactions that were
9 indeed authorised before this Chamber for reasons that will be set out in
10 the filing. In some cases it's absolute consistency; in other cases it's
11 seeking permission with reasoning as to why other forms of protection are
12 still available.

13 PRESIDING JUDGE FULFORD: What's the time-scale for an answer
14 from us?

15 MS. SAMSON: Regrettably, I'm not aware. I know that the
16 Prosecution team in Katanga is certainly aware of the time restrictions
17 that this Chamber has imposed in terms of responding to filings. If it
18 would be appropriate, I could provide the Chamber with that information
19 by way of an e-mail.

20 PRESIDING JUDGE FULFORD: We definitely need to know tomorrow
21 morning what the deadline is, please, for us insofar as anyone can impose
22 a deadline on us, which I doubt, but a notional deadline, Ms. Samson. I
23 mean, obviously the Judges can be in touch with each other during the
24 vacation so that won't necessarily cause a problem.

25 Ms. Massidda, we'll have run out of tape. I'm reluctant to build

1 up submissions when it's not being recorded. Can this wait until
2 tomorrow morning? All right, Ms. Massidda.

3 MS. MASSIDDA: Thank you, your Honour. If a filing from the
4 Prosecution team in Katanga will refer to one of the OPCV client, the
5 office would like to file a submission. Thank you.

6 PRESIDING JUDGE FULFORD: Certainly. We'll bear that in mind
7 tomorrow morning. Thank you for the warning.

8 Half past 9.00.

9 COURT USHER: All rise.

10 The hearing ends at 4.48 p.m.

11 RECLASSIFICATION REPORT

12 Pursuant to Trial Chamber I's emails instruction dated 5th and 7th
13 December 2011, the transcript is reclassified as public after the indicated
14 redactions have been implemented as ordered by the Chamber.
15 All private and closed sessions (*) are now available to the public with the
16 exception of the portions of the transcript that have been redacted.