

1 International Criminal Court  
2 Trial Chamber I - Courtroom 2  
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and Judge  
4 René Blattmann  
5 Situation in the Democratic Republic of the Congo - ICC-01/04-01/06  
6 In the case of The Prosecutor v. Thomas Lubanga Dyilo  
7 Tuesday, 16 February 2010  
8 (The hearing starts at 2.32 p.m.)  
9 \*(Private session) Reclassified as Open session  
10 THE COURT USHER: All rise. The International Criminal Court is now in  
11 session. Please be seated.  
12 THE COURT OFFICER: Good afternoon, your Honours. We're in private  
13 session.  
14 PRESIDING JUDGE FULFORD: Good afternoon. Maitre Mabilie, we understand  
15 there's something that you wanted to raise.  
16 MS MABILLE: (Interpretation) Your Honour, yesterday in my examination  
17 at one point I put a question to the witness concerning the place where (Redacted)  
18 lived with his father. And the answer given by the witness was -- they talked about  
19 a (Redacted), which was translated into English as (Redacted).  
20 And this led me to ask another question. I asked him, when did he attend  
21 this (Redacted)? Well, it would appear that what he referred to as "(Redacted)"  
22 is actually the name of a place and not a (Redacted). It's a place. It's  
23 (Redacted). And so on that point, I wish to get clarification from the witness.  
24 Of course, I can do that in the additional examination which I'll be carrying out  
25 soon, but I just wanted to inform the Chamber that I would return

1 to this point in order to get clarification from the witness, because it led to  
2 a misunderstanding as a result of the interpretation of that point.

3 PRESIDING JUDGE FULFORD: Any objections?

4 MS STRUYVEN: No, Mr President. We would prefer, though, that it will  
5 be addressed in re-examination, rather than before our cross-examination.

6 PRESIDING JUDGE FULFORD: What's the basis for that Ms Struyven?

7 MS STRUYVEN: Well, that's just our preference, your Honour.

8 PRESIDING JUDGE FULFORD: Well, Ms Struyven, if a mistake has been made  
9 during what I'm going to call examination-in-chief, it must be better for it to  
10 be rectified before cross-examination takes place so the cross-examination can take  
11 place on a firm and true basis. But thank you for the submission.

12 Give me a moment.

13 (Trial Chamber confers)

14 PRESIDING JUDGE FULFORD: Well, that's granted Maitre Mabilie. We want  
15 to raise the enduring problems over Witness 15 and 16. And without going in detail  
16 into the history, we have reviewed the relevant email communications before sitting  
17 this afternoon, and our proposed solution - which we do not require immediate response  
18 to, but we would wish for a response before the end of the afternoon - is as follows:

19 That the Defence ultimately are entitled to present their witnesses in  
20 the order that they choose, subject, of course, to any final contrary decision by  
21 the Bench; and if they wish to call Witness 15 sooner, rather than later -- or to  
22 have Witness 15 called sooner, rather than later - because that witness forms a  
23 part of the initial group of witnesses - we do not at the moment propose to stand  
24 in the way of that course. It now seems that a definite decision has not been made  
25 as regards Witness 16 or, rather, if there had been a definite decision, the position

1 is now less clear.

2 The Prosecution have indicated that they want to interview Witness 16  
3 before Witness 15 gives evidence, so what we propose is that since the Defence are  
4 going to be in the DRC during the course of part of next week and part of the week  
5 after, that an interview is scheduled with Witness 16 during the course of that  
6 visit so that the Prosecution's interview with the witness can take place in the  
7 DRC in the presence, if the Defence choose, of a representative of the Defence team.  
8 That way Witness 16 will have been seen by the Prosecution before Witness 15 gives  
9 his evidence.

10 Can both sides please reflect on that, and I will ask for your assistance  
11 towards the end of the afternoon.

12 Unless there's anything else, witness, please. We need to be in closed  
13 session. Closed session before the witness is brought in.

14 \*(Closed session at 2.38 p.m.) Reclassified as Open session

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

16 (The witness enters the courtroom)

17 WITNESS: WWW.D01-0024 (On former oath)

18 (The witness answers through interpreter)

19 PRESIDING JUDGE FULFORD: Good afternoon.

20 THE WITNESS: Good afternoon.

21 PRESIDING JUDGE FULFORD: Public session, Maître Mabilille?

22 MS MABILLE: (Interpretation) Private, your Honour.

23 PRESIDING JUDGE FULFORD: Private session, please.

24 \*(Private session at 2.40 p.m.) Reclassified as Open session

25 THE COURT OFFICER: We are in private session, your Honours.

1           PRESIDING JUDGE FULFORD: Yes, Maître Mabilles.

2           Questioned by Ms Mabilles: (Continues)

3   Q.       Good afternoon, Madam Witness.

4   A.       Good afternoon.

5   Q.       I'd like to ask you a small question to get some clarification with respect

6   to the evidence you gave yesterday. Yesterday you talked about (Redacted). Could

7   you please tell us what do you mean by (Redacted)?

8   A.       (Redacted) is the name of a neighbourhood.

9   Q.       Thank you very much.

10          PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

11          Questioned by Ms Struyven:

12   Q.       Good afternoon, Madam Witness. My name is Olivia Struyven and I'm going

13   to ask you a few questions on behalf of the Office of the Prosecutor. Yesterday

14   you explained to us that (Redacted) mother is called (Redacted); is that right?

15   A.       Yes.

16   Q.       And (Redacted) grandmother is called (Redacted); is that right?

17   A.       That's correct.

18   Q.       And (Redacted) had a husband called (Redacted); is that right?

19   A.       Yes.

20   Q.       But (Redacted) died a long time ago; correct?

21   A.       (Redacted) died a long time ago in (Redacted).

22   Q.       And you are related to (Redacted); is that correct?

23   A.       Yes, (Redacted) is like an older brother within the family.

24   Q.       Do you know the last name of (Redacted), the second name of (Redacted)?

25   A.       No, I do not know his other name.

1 Q. Is it correct that you and (Redacted) do not have the same mother?

2 A. (Redacted) has his own parents, different from my own parents.

3 Q. Is it correct that you only have the same grandfather as (Redacted)?

4 A. You know, in Congo, we have very large families. Within a family you  
5 can have ten children and in other families you could have 20 children, so we have  
6 large families.

7 Q. Thank you for that clarification. But is it correct that you do not have  
8 the same mother or father as (Redacted)?

9 A. That's correct.

10 Q. So you're not really the sister of (Redacted); is that correct?

11 A. Within the family I would say that I am his sister.

12 Q. Now yesterday, you indicated to us that you don't know any other name  
13 of (Redacted). Do you know how he was called as a child, (Redacted), that means?

14 A. Yes.

15 Q. How was he called as a child?

16 A. (Redacted).

17 Q. Do you know any other name or nickname for (Redacted)?

18 A. I knew him by this name only; that is, the name (Redacted).

19 Q. Now, Madam Witness, I'm going to try to understand your whereabouts and  
20 the whereabouts of (Redacted). If I understand it correctly, you said that (Redacted)  
21 was born in (Redacted); is that correct?

22 A. Yes.

23 Q. And after he was born you gave your house to his grandmother (Redacted)  
24 and his mother (Redacted); is that correct?

25 A. Yes. And even right up to the time when (Redacted) became pregnant she was

1 living with me in my home, and even during the -- during Kabila's war she was living  
2 with me. Later on (Redacted) left, or rather, when (Redacted) father and mother  
3 separated --

4 THE INTERPRETER: The Swahili interpreter would like the witness to speak  
5 more slowly, please.

6 PRESIDING JUDGE FULFORD: Madam, can I ask you to slow down slightly in  
7 the way that you're speaking. You are speaking quite quickly and it's proving very  
8 difficult for the interpreters. So if you could slow down, please, thank you.

9 Yes. Ms Struyven.

10 MS STRUYVEN:

11 Q. Madam Witness, I'm just going to ask you these questions and I would -- if  
12 you can, if you could just answer these questions with "yes" or "no" or "I don't  
13 know." So my first question is: Is it correct to say that after (Redacted) was  
14 born you gave your house to his grandmother (Redacted), and to his mother (Redacted);  
15 is that correct?

16 A. Yes. Even when (Redacted) mother was pregnant with him, she was living  
17 in my house.

18 PRESIDING JUDGE FULFORD: Now, Ms Struyven, I'm not at all enthusiastic  
19 about a question that begins by telling the witness that they're limited to saying  
20 "yes" or "no." It may be that it's easy for a witness to answer a question yes  
21 or no. It may be that the answer is infinitely more complicated or sophisticated  
22 than yes or no, so it's an artificial restriction that should not be imposed by  
23 counsel. Thank you.

24 MS STRUYVEN:

25 Q. So if I understand it correctly, after (Redacted) was born, he lived with

1 his grandmother (Redacted) and his mother (Redacted) in (Redacted); is that correct?

2 A. It is (Redacted) mother, (Redacted), who is the grandmother of (Redacted).

3 Q. That's correct. So if -- after (Redacted) was born, he lived with his  
4 grandmother (Redacted) and with his mother (Redacted) in (Redacted); is that correct?

5 A. Yes.

6 Q. And then when (Redacted) was still very little his mother, (Redacted),  
7 got married to someone else; is that correct?

8 A. Yes, she got married to someone else, (Redacted).

9 Q. And (Redacted) moved out of the house and she couldn't take (Redacted)  
10 with her because (Redacted) was from a different husband; is that correct?

11 A. Yes.

12 Q. And so from the moment (Redacted) left the house, it was the grandmother  
13 of (Redacted), who is called (Redacted), who took care of (Redacted); is that correct?

14 A. That's correct.

15 Q. And after a while, but before (Redacted) went to school, (Redacted) and  
16 his grandmother (Redacted) they moved from (Redacted) to (Redacted); is that correct?

17 A. Yes.

18 Q. And they went to live in (Redacted); is that correct?

19 A. (No interpretation)

20 Q. Could you repeat that, please?

21 THE INTERPRETER: The Swahili interpreter cannot hear the witness's  
22 answer.

23 MS STRUYVEN:

24 Q. I'm sorry, could you repeat that again, please?

25 A. You wish to know whether (Redacted) lived with his mother, (Redacted)? Could

1 you please rephrase your question?

2 Q. No problem. What I said was that after a while, but before (Redacted)  
3 went to school, (Redacted) and his grandmother, (Redacted), they moved from (Redacted)  
4 and they went to (Redacted) to (Redacted); is that correct?

5 A. That's correct.

6 Q. And that is where they continued living; is that correct?

7 A. Yes.

8 Q. Now I'm going to try to understand your whereabouts. So you lived with  
9 (Redacted) and his mother, (Redacted), and his grandmother, (Redacted), after  
10 (Redacted) was born in (Redacted); is that correct?

11 A. Yes.

12 Q. And when (Redacted) was two or three months old, you left (Redacted) and  
13 you went to live in (Redacted); is that correct?

14 A. Yes.

15 Q. And so you stayed in (Redacted) for more or less seven years; is that right?

16 A. Yes.

17 Q. And then there was the (Redacted) war; is that correct?

18 A. When the (Redacted) war broke out, I was in (Redacted). (Redacted) mother  
19 was in (Redacted).

20 Q. And around that period you went from (Redacted) to (Redacted); is that correct?

21 A. I left (Redacted) to go to (Redacted) and that was at the beginning of the  
22 Lendu war in (Redacted) and (Redacted). There were people who fled and I left (Redacted)  
23 to go to (Redacted) and I stayed there with my mother.

24 Q. Thank you for that clarification. And is it right that (Redacted) is a  
25 neighbourhood approximately (Redacted) kilometres outside of (Redacted), on the road to



1 (Redacted)?

2 A. Yes.

3 Q. And is it correct that after having spent six or seven months in (Redacted)  
4 you returned to (Redacted), where you still live today?

5 A. Yes.

6 Q. And that when you returned to (Redacted) was living in the (Redacted)  
7 (Redacted); is that correct?

8 A. Yes, he lived with his grandmother.

9 Q. So would it be fair to say that, apart from the first two or three months  
10 after (Redacted) was born, you actually never lived in the same house as (Redacted)?

11 A. That is correct.

12 Q. Now, Madam Witness, last week you explained us a bit more about the Lendu  
13 war. Would you agree that the Lendu war took place in 2002 and 2003?

14 A. It was before 2002 and 2003. However, in (Redacted) there was fighting  
15 in the year 2002 and that is when a lot of people were killed, including my father.

16 Q. Do you remember that during the war there was a battle in Bunia during  
17 which the UPC chased away Molondo Loondo? Do you remember that?

18 A. I was in (Redacted) when this incident occurred with Loondo.

19 Q. And do you remember that afterwards there was another battle in Bunia,  
20 during which the UPC was chased out of Bunia by the Ugandans and the Lendus? Do  
21 you remember that?

22 A. Yes, I was still living in (Redacted).

23 Q. And do you remember that at some point the Ugandans left Ituri? Do you  
24 remember that?

25 A. I would ask you to put your question again. I have not quite grasped

1 it.

2 Q. That's no problem. Maybe my question wasn't very clear. Do you remember  
3 that, after the battle during which the Ugandans and the Lendus would have chased  
4 UPC out of Bunia, a few months later the Ugandans left Ituri? Do you remember that?

5 A. All of this happened whilst I was in (Redacted).

6 Q. And do you also remember the moment when the French soldiers came to Bunia  
7 and there was a lot of white people in Bunia?

8 A. When the French airplane landed in (Redacted), I was in (Redacted).  
9 Subsequently, I fled to (Redacted).

10 Q. So, would you agree that during this Lendu war there was a lot of attacks  
11 in and around Bunia?

12 A. I would ask you to put your question again, please.

13 Q. No problem. Would you agree that in that period, during all these events  
14 there were a lot of attacks in and around Bunia?

15 A. There was fighting here and there. For example there might be clashes  
16 in Mudzipela, without that reaching any other neighbourhoods. Clashes could occur  
17 from Kolomani up to Mudzipela. So, these were clashes that occurred here and there  
18 and at that time I was still in (Redacted).

19 Q. Is it correct that at some point you fled to (Redacted) while you were  
20 in (Redacted)?

21 A. Yes, I believe that was in the year 2002. However, at that point in time  
22 the Lendu did not come to (Redacted). The Ugandans shelled them and that was the  
23 time at which I fled and I left my relatives behind me in (Redacted). I went  
24 to (Redacted), to (Redacted), where I spent two weeks,  
25 and it was at that moment in time that I heard over the radio that the Lendu had

1 entered (Redacted), they killed my father and they looted my house and the others  
2 fled.

3 I had trouble at the time and, when the Ugandans went to pick up their troops who  
4 had remained in Congo, (Redacted)  
5 (Redacted)

6 THE INTERPRETER: Interpretation was cut short from the Swahili booth.

7 Correction: (Redacted) correction from the English booth: (Redacted)  
8 (Redacted)

9 MS STRUYVEN:

10 Q. And during that time period sometimes you would have to flee into the  
11 bush; is that correct?

12 A. Yes, that happened on a frequent basis. We would spend nights in the  
13 bush and we might come home the next day and then go back to the bush again. When  
14 the French came, we had the opportunity to return to our homes in order to spend  
15 nights there.

16 Q. And while all of this was happening, you didn't know, did you, whether  
17 or not (Redacted) and (Redacted) were alive; is that correct?

18 A. (Redacted) is (Redacted) kilometres away from (Redacted). In (Redacted), people  
19 find out what is happening in (Redacted) that same day and vice versa. We would ask  
20 our families to find out whether or not there were problems or whether there were survivors  
21 or people who died. That was how we could know who was still alive and who was not.

22 Q. That's true. But during this period you said last week that you were  
23 afraid that they would be dead; isn't that correct?

24 A. Who? Could you please put your question again.

25 Q. During this -- these events and this war that was going on, you did not

1 know if (Redacted) and (Redacted) were still alive; isn't that correct?

2 A. During the war when the Ngiti and the Lendu killed people in the (Redacted)  
3 (Redacted), well, in (Redacted) we were told that no one remained, and when things  
4 calmed down somewhat, we thought that (Redacted) and (Redacted) were no longer alive.  
5 However, when we left, we discovered that they were alive, and living in (Redacted).  
6 They told us that their houses had not come under attack.

7 Q. And isn't it correct that you only realised that they were alive when  
8 peace had returned to Ituri and the French had come?

9 A. Not at all. Not at all. Even if war was raging, people could walk around.  
10 The town of Bunia was divided in two. There was the UPC to the south and the NFI -- or  
11 FNI to the north, and sometimes we could go in a vehicle, and there was a possibility  
12 to assist certain individuals.

13 Q. But isn't it correct that you only saw (Redacted) and (Redacted) after  
14 the war?

15 A. Not at all. Whilst the war was raging, I was in (Redacted) and we might  
16 meet each other when I was on my way to (Redacted). I also met them in the market  
17 sometimes. They were family members. We have an extended family in (Redacted).

18 Q. So when did you meet them in the market? Can you explain that to us?

19 A. In fact, I can't give you months or years because I wasn't paying attention  
20 to that. But often we realised that these are close family members.

21 Q. Now, when you met (Redacted) and (Redacted), where were you living?

22 A. Even in (Redacted) I was in their company. When I went back to (Redacted),  
23 I met them again. And (Redacted), sometimes when she was in (Redacted), would come  
24 and visit us in (Redacted). There were also some of her children who were there  
25 who could help her.

1           PRESIDING JUDGE FULFORD: Ms Struyven, I've got to give the witness a  
2 break. Is that inconvenient to you?

3           MS STRUYVEN: Not at all, Mr President.

4           PRESIDING JUDGE FULFORD: Thank you very much.

5           Madam, as promised, we'll now have a break, and we'll look forward to  
6 seeing you again at half-past 3. Closed session, please.

7           \*(Closed session at 3.15 p.m.) Reclassified as Open session

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

9           (The witness stands down)

10          PRESIDING JUDGE FULFORD: Mr Desalliers, the recent email from you on  
11 the subject of photographs, are you able to discuss that in front of the Prosecution  
12 and the participating victims or not?

13          MR DESALLIERS: (Interpretation) Mr President, this is an issue that we  
14 would only like to broach on an ex parte basis.

15          PRESIDING JUDGE FULFORD: Well, we're going to try and avoid that,  
16 Mr Desalliers, in this sense: We would like to know precisely what use you propose  
17 to make of the photographs, a very detailed explanation as to what is going to happen  
18 with them.

19          MR DESALLIERS: (Interpretation) No problem, Mr President.

20          PRESIDING JUDGE FULFORD: We'll sit again at half-past 3.

21          THE COURT USHER: All rise.

22          (Recess taken at 3.17 p.m.)

23          (Upon resuming at 3.30 p.m.)

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

25          PRESIDING JUDGE FULFORD: Maitre Mabille?

1 MS MABILLE: (Interpretation) Your Honour, I did not wish to interrupt  
2 my learned colleague when she was doing her examination of the witness, because  
3 I felt that it would be difficult for the witness if I interrupted. However, we  
4 have a difficulty which I tried to address in advance with the OTP; and that is,  
5 the use that the Prosecutor can make of the declarations -- or rather, of the statements  
6 or the interview reports -- the reports of the interview which were conducted with  
7 our witness prior to her testimony in court.

8 I raised this difficulty with my learned colleagues of the OTP. I thought  
9 we had addressed the problem; but when I heard my learned colleague, I thought -- or  
10 I had the impression that the problem has not been solved.

11 On two occasions she asked the witness questions, saying last week you  
12 said so-and-so. I think that is confronting the witness with what she said in the  
13 course of her interview. I did not interrupt; whereas, one or two of the pieces  
14 of information which she claims that the witness provided are not true.

15 I disagree with her formulation of the questions, because I also attended  
16 that interview. We are in a situation where the judges cannot arbitrate between  
17 the OTP and the Defence counsel, because there is -- there was no recording. We  
18 all took notes, and so we have to depend on the good will of both parties. And  
19 so in that situation, we cannot ask the Bench to arbitrate.

20 My understanding was that the position of the OTP was that we were not  
21 going to use that information, or if we used that information we should not use  
22 it to confront the witness; but rather, to ask an open question on the subject.  
23 And so right now we have this difficulty, and I think we have to address this difficulty  
24 now because most of our witnesses accepted the principle of meeting the Prosecutor  
25 before giving their testimony.

1           And so we have to come up with a modus operandi to ensure that we do not  
2   ask questions in a way that would be upsetting to the witness. And that is why  
3   I want to bring this to the attention of the Bench. Thank you, your Honour, for  
4   giving me this opportunity to bring this problem to your attention.

5           PRESIDING JUDGE FULFORD: Well, Ms Struyven, I don't have the exact words  
6   in front of me, but I recall vividly that the Chamber has indicated in writing that  
7   we were concerned that these meetings should not end up with being the source of  
8   in-court disagreements between the Prosecution and the Defence as to what was said  
9   during them.

10          And I noted - but remained silent - when I heard the two references that  
11   you made to what the witness had allegedly said last week. It seemed to me at the  
12   time that on both occasions it wasn't, in fact, necessary to include within the  
13   question the fact that the witness had said something to you last week. You could  
14   simply have put it as a question without that reference.

15          Now, do you agree with that principle or do you now submit that the  
16   Prosecution should be entitled to confront the Defence witnesses - that is, as  
17   interviewed - with the contents of what you say was said during the course of those  
18   interviews?

19          MS STRUYVEN: Mr President, is it okay if I discuss it briefly with my  
20   colleagues?

21          (Counsel confer)

22          MS STRUYVEN: Mr President, first of all, the Prosecution agrees that  
23   we could have formulated those two questions differently. As to the general principle,  
24   the Prosecution believes that it is true that the these meetings should not be used -- or  
25   the information of these meetings should not be used to impeach the witnesses.

1           However, the Prosecution believes that if ever crucial points come out  
2 of these meetings, we should -- or try -- we should try to find a mechanism by which  
3 we could actually use the information to somehow confront the witness while testifying  
4 with what the witness said previously.

5           PRESIDING JUDGE FULFORD: Obviously, if during the interviews the witness  
6 says that he's the Secretary-General of the United Nations, and the next week says  
7 that he's an astronaut when he's giving evidence then perhaps, exceptionally, it  
8 may be necessary to put what was said to the witness, but the two times when you  
9 used the contents of last week's interviews were not those situations. There wasn't  
10 even a contradiction in existence. You were simply using it to try to fortify your  
11 question. By referring to what the witness had said you were simply trying to encourage  
12 the witness to agree with your formulation.

13           Now, that's entirely different, Ms Struyven. Right. I think it's clear,  
14 Maître Mabilille. Essentially you're right. If, however, something really  
15 significant arises in terms of a contradiction, then we may have to revisit this.  
16 But the general principle should be that those out-of-court discussions between  
17 the Prosecution and the Defence witnesses are not going to surface during the course  
18 of counsel's questions. Exceptionally, applications can be made to the Bench to  
19 introduce them. Right.

20           While we have you all, Maître Mabilille, are you content for the interview  
21 between the Prosecution and Witness 16 to take place in the DRC during your trip?

22           MS MABILLE: (Interpretation) Your Honour, we have a few concerns which  
23 I can't raise now. Could we respond by mail at the end of this afternoon?

24           PRESIDING JUDGE FULFORD: Absolutely, Maître Mabilille. And if the  
25 Chamber's proposal is not satisfactory, and is going to be difficult to incorporate



1 in your arrangements for that trip, can you please come up with a counter-proposal  
2 which will enable the Prosecution to interview Witness 16 before the evidence of  
3 Witness 15? The Chamber has previously indicated that we can see the force in the  
4 Prosecution wish to interview Witness 16, and we're simply trying to find ways of  
5 facilitating that. So a counter-proposal if ours is no good. Witness, please.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE FULFORD: Private session, please.

8 \*(Private session at 3.42 p.m.) Reclassified as Open session

9 THE COURT OFFICER: We are in private session, your Honours.

10 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

11 MS STRUYVEN:

12 Q. Madam Witness, earlier you said that when Lopondo was chased out of Bunia  
13 you were in (Redacted); is that correct?

14 A. Yes.

15 Q. And is it correct that before you returned to (Redacted) you were in  
16 (Redacted)?

17 A. Yes.

18 Q. And is it correct that it was when you were in (Redacted) that you would  
19 meet (Redacted) and (Redacted) in the market in (Redacted)?

20 A. It might have been at the market or in their home in (Redacted) and it's  
21 not -- it was not very far away.

22 Q. And is it correct that when you then returned to (Redacted)  
23 would come and visit you in your house in (Redacted); is that correct?

24 A. That's correct.

25 Q. And so after that you go (Redacted); is that correct?

1 A. I went (Redacted) in 2002. I did not spend two months there. I returned  
2 to (Redacted) after one month.

3 Q. And could you help us to indicate when you came back (Redacted)? Who  
4 was in control over Bunia when you came back (Redacted)?

5 A. It is difficult for me to know because in (Redacted), where I was living,  
6 fighting occurred once. There were attacks on the environs. In fact, we were fleeing  
7 from fighting in the surrounding localities, whether in (Redacted) or in (Redacted)  
8 (phon). I was in hiding in (Redacted) and so I cannot tell you who was in control  
9 of Bunia at the time. How would I, a village woman, have known that?

10 Q. And is it correct that you saw (Redacted) and his grandmother on 4 April  
11 after peace had returned; is that correct?

12 A. Yes. On 4 April that was the time when it was said that UPC, the UPC  
13 and the whites said that anyone who did not hand in their weapon would be detected  
14 because they were going to do a house-by-house check. That's when I went to (Redacted).  
15 Since all people living in one house were being massacred, the members of a family  
16 could not live together. We lived separately. So I went to see them in (Redacted).  
17 I did not spend the night there. I went to (Redacted) to spend the night.

18 Q. And so when you saw them again, is it correct that there were white people  
19 administering Bunia; is that correct?

20 A. During the time when the white people were administering Bunia, I would  
21 see them. I'm talking about the year 2002, at the time when the government of Congo  
22 was in the hands of the -- or the control of -- the Congo was in the hands of Uganda.  
23 I continued to see them until the Ugandans left. Many white people came; the Blue  
24 Helmets, the Pakistanis and many white people, at the time I was in (Redacted).

25 Q. Thank you very much. Madam Witness, now I'm going to ask you a few other

1 questions. You met with Dieudonné Mbuna; is that correct?

2 A. Could you please ask your question again?

3 Q. You met with a certain person called Dieudonné Mbuna; is that correct?

4 A. Yes.

5 Q. Did you explain Mbuna everything you told us today and yesterday?

6 A. Yes; he asked me questions and I answered his questions.

7 Q. When did you meet Mbuna for the first time? Can you help us with that?

8 A. Well, I don't know the dates or the month, but I think that it must have  
9 been in 2009.

10 Q. Do you remember, more or less, how long ago you met Mbuna?

11 A. It might have been the month of August or September, 2009.

12 Q. Can you tell us where you met Mbuna?

13 A. The first time I met him in (Redacted).

14 MS STRUYVEN: Your Honours, we could go into public session as long as  
15 we don't refer to the village that this witness has just referred to.

16 PRESIDING JUDGE FULFORD: Good. Madam, we're going to try and have part  
17 of your evidence dealt with in open session. Ms Struyven has just mentioned the  
18 name, or a name of a village has just been mentioned. We'll refer to that now as  
19 the village without giving its name. Good. Public session, please.

20 (Open session at 3.52 p.m.)

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

22 PRESIDING JUDGE FULFORD: Yes.

23 MS STRUYVEN:

24 Q. So you explained that the first time he came to your village. Can you  
25 explain to us how he came, by which means of transport he came to your village?

1 A. Are you talking about Dieudonné?

2 Q. Yes, I am. But I also want to ask if Defence is comfortable in mentioning  
3 this name in public session or not.

4 PRESIDING JUDGE FULFORD: Well, I think now we've established who we're  
5 talking about. See how we go, Ms Struyven. It may be we will have to return into  
6 private session. But I think the name - the first name - that's just been given  
7 is probably in itself not going to cause a problem, but the Defence will email the  
8 Court Officer if it needs to be redacted.

9 Good. So, if you could continue.

10 MS STRUYVEN:

11 Q. Yes, my question was how this person -- by which means of transport this  
12 person came to your house?

13 A. I don't know what means of transport he used.

14 Q. When he came to see you was he alone, or was he with someone else?

15 A. He was alone.

16 Q. Did he explain to you what his job was?

17 A. He did not tell me.

18 Q. Did you know him before you met him at your house?

19 A. No, I did not know him.

20 Q. During that first visit, did he show you a picture?

21 A. No, he did not show me a picture.

22 Q. When he visited you the first time, did he also talk to other members  
23 of your family?

24 A. No.

25 Q. And do you remember, more or less, how long he visited you during that

1 first meeting?

2 A. No, we did not meet for long. We met for a very short time. We didn't  
3 even meet for up to one hour. It must have been about 30 to 35 minutes.

4 THE INTERPRETER: Correction, 30 or 25 minutes.

5 MS STRUYVEN:

6 Q. Earlier, you referred to a first visit. Did you meet him again afterwards?

7 A. Yes, we met on two occasions.

8 Q. And on the second occasion was he alone, or was he with someone else?

9 A. He was still alone. On that day I saw him come on his motorcycle. I saw  
10 his red motorcycle. He hid his motorcycle some distance away.

11 Q. And during that second visit, did he show you a picture during the second  
12 visit?

13 A. He did not show me any picture.

14 Q. And do you remember, more or less, how long that second meeting lasted?

15 A. Our meetings did not last for long. The first time he asked me questions.  
16 He asked me whether I knew (Redacted). I asked him which (Redacted) he was talking  
17 about. He answered, "His first name is (Redacted)". I tried to remember and I told  
18 him that in my house, or in my home, I have a child called (Redacted). He said,  
19 "No, the other (Redacted) is already a grown up person." And then I remembered  
20 that (Redacted) husband's first wife, had a child called (Redacted), and (Redacted)  
21 also had a child called (Redacted) from before she was married. So, I asked myself which  
22 (Redacted) he was talking about. The man went away. I went with (Redacted) mother to (Redacted)  
23 and I knew that (Redacted), the son of (Redacted), was supposed to be living in (Redacted)  
24 at the time, because his grandmother, that is, (Redacted) mother's elder sister, was someone  
25 who had lived in (Redacted) for a very long time - since my school days. I went there

1 and I saw (Redacted), the son of (Redacted), who was in school, and so I said to  
2 myself that he must have been talking about (Redacted), the son of (Redacted).

3 Q. Was he talking about the son that was in -- the (Redacted) that was in  
4 (Redacted), or the (Redacted) that was in school?

5 A. I'm the one who's trying to ascertain which (Redacted) we're talking about,  
6 or I was trying to find which (Redacted) they were talking about, because there  
7 were two of them. I thought that it was (Redacted), the son of (Redacted). I knew  
8 that he had been living for a long time - since I was still in the third grade of  
9 primary school - with the elder sister of (Redacted) mother in (Redacted). So I had to  
10 ascertain which (Redacted) we were talking about in order to give him an appropriate answer.

11 PRESIDING JUDGE FULFORD: We're going to need redactions and we need to  
12 go into private session, please.

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

14 THE COURT OFFICER: We are in private session, your Honours.

15 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

16 MS STRUYVEN:

17 Q. And was there a point in time when you met the lawyers of the Defence  
18 team?

19 A. In fact, Dieudonné told me that I should wait a while and it took quite  
20 some time. He told me that I would be interviewed. As for (Redacted), I had already  
21 heard a soldier say... Well, you say that I speak very fast. I'm sorry. I (Redacted)  
22 (Redacted), and (Redacted) had come to drink (Redacted).

23 The soldier in question also came and he asked me, "Is she (Redacted)?" I said yes.  
24 He added, "Well, I saw (Redacted) son in (Redacted)." And I said, "Which one?" He  
25 said, "(Redacted)". And then he asked me if we had a contact telephone number for

1 him and I said, "No." I asked him, "Is it true what you're saying?" He said, "Yes,  
2 it's true". This was on a Monday and (Redacted)  
3 (Redacted), and then I also did that on Thursday and Friday.

4 I then went to (Redacted) and I met with (Redacted), before my meeting  
5 with Mbuna. So I asked (Redacted), "I have been asking you questions about (Redacted),  
6 but I do not have a correct answer to the question. Somebody, a soldier who had  
7 done military service during the Laurent Kabila era, said to me that he had met  
8 (Redacted) in (Redacted) and that he was a soldier." And when I put that question  
9 to her she said, "No, no, let's go inside the house," which we did. And, in fact,  
10 she told me she did not want to talk to me about it, because (Redacted) had become  
11 a bad boy and his mother, (Redacted), had enlisted him as a child soldier, him and  
12 (Redacted). She asked me not to explain these things to the soldier or to say that  
13 (Redacted) mother was in contact with him. (Redacted) had told them that they would  
14 be given gifts. So he asked his mother which present she wanted him to bring her.  
15 And she also told me that (Redacted) had talked to his mother one week previously,  
16 he told her that he had just finished training in (Redacted) and that the money  
17 he had received could be used to buy household items. I had already heard that.  
18 Diedonné Mbuna asked me whether I knew this fact and I explained to him what I knew.  
19 Well, I'm sorry I'm speaking a little bit too fast. It's just the way I talk.

20 Q. Just the first question, did Dieudonné tell you that (Redacted) was in  
21 (Redacted)? Is that correct?

22 A. When Dieudonné was asking me questions, I already knew that because his  
23 grandmother and a soldier had told me this and I told Dieudonné what I knew.

24 Q. What soldier are you referring to? Can you explain that to us, who you  
25 mean?

1 A. I do not know his name. You know, there were people who came to (Redacted)  
2 (Redacted). This individual recognised me, but I did not recognise them. You know  
3 that there are people who come (Redacted) in great numbers, and they asked me to  
4 give him -- he asked me to give him a telephone number, but I did not answer. And  
5 that is why I wanted to go to (Redacted) grandmother, with a view to obtaining precise  
6 information on the subject, and this is how (Redacted) grandmother asked me not  
7 to say anything about (Redacted); to say that (Redacted) in (Redacted) and that  
8 he is a soldier. So, I did not go back to (Redacted) after that and I never saw  
9 that soldier - that gentleman - again.

10 Q. Madam Witness, do I understand you correctly that a soldier came to see  
11 you to ask you questions about (Redacted)? Is that how I -- what you meant?

12 A. Yes, that is when I was (Redacted). That is the place (Redacted). That's  
13 the place he came to.

14 Q. And was this a UPC soldier?

15 A. No, that was during the Laurent Kabila war. Many children had joined  
16 the ranks and they had been trained in the Equateur Province.

17 Q. And did this soldier come to train (Redacted)?

18 A. No, this individual came. There was a lot of fighting. He wanted to find  
19 out whether his family or parents were alive. He did not hail from (Redacted).  
20 He came in (Redacted), a location somewhat far afield from (Redacted). He came  
21 (Redacted). He recognised me, but I did not recognise him, because young people  
22 can easily recognize elderly people. I myself am starting to get old.

23 Q. Okay. I'm going to ask you about questions about Dieudonné. So you  
24 explained to us that you met him twice. And did there come a point in time when  
25 you met the lawyers?



1 A. I have answered that question. When I --

2 THE INTERPRETER: The Swahili interpreter apologises because he did not  
3 hear the full response from the witness.

4 PRESIDING JUDGE FULFORD: Madam, I'm afraid you gave that last answer  
5 extremely quickly. Could you, slightly slower, answer the question as to whether  
6 or not there came a time when you met with the lawyers.

7 THE WITNESS: That is correct.

8 MS STRUYVEN:

9 Q. And was Mbuna there when you met with the lawyers?

10 A. Yes, he was there.

11 Q. And did he interpret your conversation with the lawyers?

12 A. Yes.

13 Q. And did Mbuna or the lawyers, did they write down the answers to your  
14 questions? Did they take notes of that?

15 A. Well, listen, I do not have a very faithful memory.

16 Q. Do you remember if they had a computer with them, like the one in front  
17 of you?

18 A. All that I was able to note was a photograph. I was asked to look at  
19 the photographs and to say whether I recognised (Redacted).

20 PRESIDING JUDGE FULFORD: We're going to give the witness a break now,  
21 Ms. Struyven. Thank you very much.

22 Madam, we're going to take another break now and we'll look forward to  
23 seeing you again at half-past 4.

24 Closed session, please.

25 \*(Closed session at 4.13 p.m.) Reclassified as Open session

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

2 (The witness stands down)

3 PRESIDING JUDGE FULFORD: Public session, please.

4 (Open session at 4.14 p.m.)

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

6 PRESIDING JUDGE FULFORD: Now, Ms Struyven, where are we going with the  
7 pair of questions in which you've asked the witness, first of all, whether the  
8 lawyers - presumably Maitre Mabilie and her team - whether they wrote down the answers  
9 to the questions and whether they had a computer with them? How is investigating  
10 that point going to assist us in this trial?

11 MS STRUYVEN: Mr President, we're just trying to establish exactly how  
12 these meetings took place, given discrepancies that there are between the summary  
13 that we were given by the Defence and what this witness has testified. We think  
14 it is very important to establish exactly how these meetings took place, also taking  
15 into account what the previous Defence witnesses have said about these meetings.

16 PRESIDING JUDGE FULFORD: Ms Struyven, let's not beat about the bush.  
17 In order to do that, you would need to ask the witness to set out in full what it  
18 was that she said to the lawyers during the course of those meetings, which is an  
19 area, so far in this trial, I think, not trodden on by anyone on either side. Simply  
20 establishing whether or not somebody took some notes or had a computer is really  
21 not going to improve matters at all because you don't know what the notes are or  
22 what went on the computer.

23 Now, I'm going to ask the question again. Not in general terms, where,  
24 in real terms, are we going with the line of questioning which has begun with the  
25 pair of questions: Did the lawyers take notes and did the lawyers have a computer?

1 Have we now reached the end of it, or are you intending to go further with this  
2 line of questioning?

3 MS STRUYVEN: No, your Honour, I do want to ask an additional question  
4 about the picture, though, the picture that was shown to the witness. But on the  
5 notes, I'm not --

6 PRESIDING JUDGE FULFORD: That's something else altogether. All right.  
7 Thank you. That's the end of it.

8 Given that's the end of it, Maitre Mabilie, is there anything you want  
9 to say.

10 MSMABILLE: (Interpretation) Yes, Mr President. I would like the Chamber  
11 to consult page 30, line 8 of the French transcript, unfortunately, and on this  
12 page 30, line 8, there are two names mentioned. And if you look in the English  
13 transcript - I believe that this is an important point to raise - I am given the  
14 English, which is page 22, line 5, the second name is omitted in the English transcript.  
15 I'm saying this because I shall most probably in my re-direct have to quote that  
16 detail and it might put us in a difficult position.

17 PRESIDING JUDGE FULFORD: Well, I'm going to ask the parties to consult  
18 with each other over the adjournment to see whether there's agreement as to whether  
19 or not the second name was in fact mentioned by the witness. It may be, if there's  
20 not agreement, that the interpreters/transcribers may be able to provide some  
21 assistance in the next ten minutes on that very limited issue. And I'm glad to  
22 see, Maître Mabilie, that one can record the same session in English rather shorter  
23 than one records it in French.

24 We shall sit again, if we can, if this issue is sorted out, at half-past  
25 4.

1 THE COURT USHER: All rise.

2 (Recess taken at 4.19 p.m.)

3 (Upon resuming at 4.33 p.m.)

4 (Open session)

5 COURT USHER: All rise. Please be seated.

6 PRESIDING JUDGE FULFORD: Closed session, please. Maître Mabilille. Yes,  
7 no, not closed session. Remain where we are. Maître Mabilille?

8 MS MABILILLE: (Interpretation) Your Honour, I apologise for intervening  
9 again. During the break, we were able to double-check with Mr Lubanga, and we found  
10 that from page 27 there are very serious interpretation problems, and I find it  
11 difficult to do a redirect, which is based on a transcript which has this number  
12 of difficulties.

13 May we request the Chamber - I have discussed this with the OTP and with  
14 Paolina - may we request the Chamber that, after the Prosecutor and the legal  
15 representatives complete their examination, we should adjourn and re-read the entire  
16 transcript; that is, double cross-checking interpretation of the transcript. And  
17 after that, we can all intervene on the information contained in the transcripts.  
18 I would like to inform the Chamber that our client has said this witness is very  
19 clear. There shouldn't be any difficulties; well, apart from the fact that she  
20 speaks fast, but he says her answers have been very clear. And what we have on  
21 this last page is not clear or not very clear.

22 PRESIDING JUDGE FULFORD: Well, Maître Mabilille, there's no question of  
23 asking you to conduct re-examination if there is a material possibility that there  
24 are more than minimal problems with the transcript; it simply wouldn't be fair.  
25 Therefore, you will not be required to conduct your - what I am going to call

1 re-examination as a form of shorthand this afternoon - and if as a result of checking  
2 overnight there are changes which put Ms Struyven at a disadvantage, she will have  
3 the opportunity of asking additional, as it were, linked questions before  
4 re-examination.

5 And I am sure that Maître Massidda will contribute to this exercise. Closed  
6 session, please.

7 \*(Closed session at 4.37 p.m.) Reclassified as Open session

8 PRESIDING JUDGE FULFORD: Witness, please.

9 THE COURT USHER: We are in closed session, your Honours.

10 (The witness enters the courtroom)

11 PRESIDING JUDGE FULFORD: Private session, please.

12 \*(Private session at 4.38 p.m.) Reclassified as Open session

13 THE COURT USHER: We are in private session, your Honours.

14 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

15 MS STRUYVEN:

16 Q. Madam witness, we ended with you explaining to the Court that when you  
17 met the lawyers you were shown pictures. Was it one picture or more pictures?

18 A. There was several pictures that were shown to me. I was asked to identify  
19 a certain individual.

20 PRESIDING JUDGE FULFORD: Public or private for this, Ms Struyven?

21 MS STRUYVEN: I think it's safer to stay in private session, your Honours.

22 PRESIDING JUDGE FULFORD: All right.

23 MS STRUYVEN:

24 Q. Who was on these pictures?

25 A. They showed me pictures and asked me to identify (Redacted). They showed

1 me several pictures and, when I saw him, I pointed him out to them.

2 Q. And the pictures that they showed you, were they all pictures of (Redacted)?

3 A. They were pictures of various people, and I identified (Redacted).

4 Q. How long did that meeting with lawyers last for?

5 A. I do not know. Besides, I did not have a watch.

6 Q. But could you help us by saying it was an hour, or two hours, or three  
7 hours, or half a day, or an entire day, or two days?

8 A. No, I am not able to. In any case, the meeting did not last for up to  
9 two hours; it lasted for about 50 minutes to one hour.

10 Q. And after this meeting with the lawyers, did you meet Mbuna again?

11 A. No.

12 Q. Did you meet anyone else from that team, apart from the lawyers or apart  
13 from Mbuna?

14 A. No.

15 Q. During these meetings with Mbuna, were you offered any money to testify?

16 A. They did not offer me any money, not even a franc.

17 Q. Were you offered any medical care in order to testify?

18 A. Could you please rephrase your question?

19 Q. Were you offered help in respect of medical problems before you came here  
20 to The Hague?

21 A. No. No one made such a promise to me.

22 Q. But you did go to the hospital shortly before you arrived in The Hague;  
23 isn't that correct?

24 A. Yes. I was very ill when I reached Kinshasa; that was on the 21st. I  
25 fell ill, very ill, and I was taken to hospital. I did not pay. I don't know how

1 the hospital bills were paid.

2 Q. So someone paid the hospital bills, but you do not know who paid the hospital  
3 bills; is that correct?

4 A. I was taken to hospital. That's it. And I was given medical care and  
5 medication. An x-ray was done twice, and tests were done on me twice. I received  
6 appropriate care and actually that was what allowed me to be here. But I don't know  
7 what happened subsequently. I don't know who paid the bills.

8 MS STRUYVEN: Your Honour, I have no further questions for this witness.  
9 However, we would, indeed, like to examine the transcripts on the parts that were  
10 unclear and to see if ever we need to come back to a few issues tomorrow. In addition,  
11 the Prosecution also would like to make an independent submission in respect of  
12 the summaries, but that has not -- that does not have to happen in front of the  
13 witness.

14 PRESIDING JUDGE FULFORD: Well, Ms Struyven, in relation to the first,  
15 I have already made it perfectly clear that you have got the opportunity tomorrow.  
16 There was really no need to say that.

17 Now, have there been any applications to question this witness? Yes.

18 MS MASSIDDA: There was an application, your Honour. However, I have no  
19 question at this point in time. Thank you.

20 PRESIDING JUDGE FULFORD: Thank you very much. Right. If that, therefore,  
21 completes the questions, apart from Maître Mabilille's re-examination, I'm afraid  
22 that means we have got to adjourn at this moment.

23 Madam, I am extremely sorry about this. I had expected that your evidence  
24 would be completed today so that you wouldn't have to come back again to this courtroom  
25 to give evidence, but there have, so I'm told, been some problems with the

1 interpretation of some of your evidence at an earlier stage today and, as a result,  
2 Maître Mabilie, the lawyer who called you to give evidence, has asked if she can  
3 put off her questions until tomorrow afternoon, when there will have been an  
4 opportunity to check the accuracy of the transcript.

5 That means - and I suspect you won't be asked to be here for long - that  
6 means that you will need to come back tomorrow at 2.30 p.m. But unless something  
7 extraordinary happens, I think I can pretty much guarantee that tomorrow will be  
8 the last day that we will need to ask you to return. Thank you very much.

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

10 \*(Closed session at 4.49 p.m.) Reclassified as Open session

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

12 (The witness stands down)

13 PRESIDING JUDGE FULFORD: Now, Mr Sachdeva, we've received your  
14 application, or rather, your opposition to the proposed protective measures for  
15 the next witness. Before I ask you whether there is anything else that you wish  
16 to add to what was set out in your email, it's perhaps worth bearing in mind that  
17 out of the 28 witnesses called by the Prosecution, 22 of them were granted general  
18 protective measures, and by the time we finish the Prosecution's evidence, only  
19 two non-expert witnesses had testified publicly, and many of your protected witnesses  
20 had the benefit of the Court's protection programme.

21 Now, against that background, is there anything that you wish to add to  
22 your recent email objecting to the proposals made in relation to Witness 12?

23 MR SACHDEVA: Thank you, Mr President. If I may, just one point. I take  
24 your Honour's point with respect to the numbers but, in our submission, it's not  
25 a question of a numbers game. For every witness, as far as I can recall, which



1 was granted protection -- protective measures, the Prosecution provided cogent  
2 objective and subjective justification for those measures. And the Prosecution's  
3 submission in this instance is that it may be that there are objective reasons,  
4 there are justifiable fears that the witness has, and perhaps at the end of the  
5 day protective measures will be granted. But at this stage, all we have is, from  
6 what we can gather, an objective -- subjective fear from the witness to be given  
7 protective measures because he fears reprisals from his family. In our submission,  
8 that does not go far enough.

9 PRESIDING JUDGE FULFORD: Well, I don't want to prolong this unnecessarily,  
10 Mr Sachdeva, but let's just think it through.

11 This witness has said that he is coming to give evidence which will include  
12 suggesting that two previous witnesses before this Court - (Redacted)  
13 (Redacted) - are liars. And he says that because he is going to be  
14 giving that evidence, calling into question the very essence of what they have said,  
15 that he fears that there may be reprisals once or if that gets known.

16 Now, what additional objective justification could there be? Do we need  
17 to wait until there have been reprisals before we grant protective measures? What  
18 intervening event do you say does there needs to occur before it would be justified  
19 to grant this application?

20 MR SACHDEVA: Well, Mr President, perhaps there may have been indications  
21 that should this witness come to say what he is intending to say, there will be  
22 reprisals. There may have been some evidence on that part.

23 PRESIDING JUDGE FULFORD: But if they don't know, then how could there  
24 have been indications? As I understand it, the whole point of this exercise is  
25 to stop them from knowing, and the risk of reprisals is going to be triggered if

1 they know.

2 MR SACHDEVA: Of course, I am not aware as to the extent of knowledge  
3 that (Redacted) have. It may be that (Redacted) know that he has left the place  
4 of residence for a particular reason, and that they do not know that he is coming  
5 here precisely to testify. And upon that, there may have been some indications  
6 that he would be in danger. That could be a possibility, in my submission.

7 PRESIDING JUDGE FULFORD: Thank you very much, Mr Sachdeva.

8 (Trial Chamber confers)

9 PRESIDING JUDGE FULFORD: Maître Mabilille, I take it that on the information  
10 that you have - so from everything that you know - (Redacted) that Witness  
11 12 is afraid of are unaware that he is coming to this Court to give this evidence;  
12 is that right?

13 MS MABILLE: (Interpretation) Marc Desalliers will say something about  
14 this witness, because he is the person who is going to do the examination-in-chief,  
15 your Honour.

16 MRDESALLIERS: (Interpretation) Your Honour, to the best of our knowledge,  
17 the fact that Witness 12 is going to come to give testimony here in The Hague is  
18 not something that is not known (Redacted)  
19 (Redacted)

20 (Redacted) that they came to give this testimony. And so I would  
21 like to say that I would like to inform the Chamber of our understanding of the  
22 position of the OTP with respect to (Redacted).

23 My learned colleagues will correct me if I am wrong, but I would like  
24 to say that there is no denying that witnesses 7 and 8 are relatives, siblings from  
25 the same parents, (Redacted)

1 (Redacted)

2 (Redacted). This is additional information which we should take into  
3 consideration.

4 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

5 MR SACHDEVA: Thank you, Mr President. I just wanted to clarify one point  
6 from my learned friend, and that is that the Prosecution does accept that witnesses  
7 7 and 8 are brothers and that's it.

8 PRESIDING JUDGE FULFORD: We entirely agree with Mr Sachdeva that this  
9 is not just a question of numbers, and that the fact that 22 of the 28 Prosecution  
10 witnesses were granted general protective measures is not determinative in any sense  
11 of this issue. However, the fact that only two non-expert witnesses during the  
12 Prosecution's evidence testified publicly demonstrates well the extent of the  
13 security problems which exist for many witnesses in this trial, given the prevailing  
14 circumstances in the Democratic Republic of the Congo.

15 For Witness 12, (Redacted)

16 (Redacted)

17 (Redacted). He says that, under those circumstances, there  
18 is an appreciable risk that he will face recriminations when he returns to the DRC  
19 once that is known.

20 We consider that fear to be understandable, prima facie credible and  
21 certainly sufficient at this stage to grant the general protective measures that  
22 we granted to so many of the Prosecution witnesses. Accordingly, his face will  
23 be distorted and his identity will be kept from the public at large.

24 Now, is there anything else that we can usefully do this afternoon?

25 Ms Struyven?

1 MS STRUYVEN: Thank you, Mr President. As indicated, the Prosecution  
2 would like to make an additional submission on the summaries of the Defence. We've  
3 raised this issue in relation to Defence Witness 3, on 2 February, and we raised  
4 this issue again in respect of Witness 4 on 9 February.

5 Now, in relation to the witness who has just testified, she has  
6 indicated -- well, I will start again. In relation to the witness who has just  
7 testified, the summary that was given to us by the Defence indicated four things:  
8 The first thing was that she would have been the aunt of the mother of (Redacted),  
9 so she would have been the sister of the grandfather of (Redacted); the second thing  
10 that that summary indicated was that they had been living together for several years;  
11 the third thing that that summary indicated was that he would be in a position to  
12 testify about the schooling of (Redacted); and the last thing in that summary indicated  
13 that he was testifying about his military past.

14 As we have established with this witness, this witness was not at all  
15 the sister of the grandfather of (Redacted) and, therefore, this witness was not at  
16 all the paternal aunt of the mother of (Redacted), as was indicated in the summary.

17 Secondly, as we established also today, this witness was not living with  
18 the witness with (Redacted) for several years. Instead, this witness was living  
19 with (Redacted) for maybe two or three months right after he was born.

20 Thirdly, it appeared from the testimony of this witness that he -- or  
21 she was not at all in a position to give details about his schooling.

22 So, the Prosecution is now faced with a situation where not only are these  
23 summaries brief, and we believe incomplete, but in addition are the summaries simply  
24 inaccurate?

25 Now, that makes it very difficult for us to conduct proper investigations.

1 We have -- in respect of this witness we have conducted investigations, but of course  
2 we have conducted investigations in relation to the persons that were living with  
3 (Redacted) for a long time that would have known where he went to school, or that  
4 would have been a direct family member, and so of course these investigations yielded  
5 no results.

6 So, the Prosecution would like or seeks an order from this Chamber to  
7 order the Defence to not only provide more complete and further summaries in respect  
8 of all future witnesses, but in addition that the Defence verify that the information  
9 that is in the summaries is accurate so that we can properly prepare not only for  
10 our cross-examinations, but that we can also conduct proper investigations.

11 PRESIDING JUDGE FULFORD: Thank you, Ms Struyven. When you take a witness  
12 statement from a witness - and many witness statements were taken from Prosecution  
13 witnesses - there was no obligation to go out and to check the contents of each  
14 and every thing that was said by that individual. Of course, it makes good sense  
15 and it's good trial practice if that is done to the extent that is realistic, but  
16 it is not an obligation, Ms Struyven.

17 Here, the Defence have put in a summary. If there are major inaccuracies,  
18 well, that is going to be a point - possibly a strong point - that the Prosecution  
19 can rely on in demonstrating that the witness has not told the truth. You will  
20 be able to compare and contrast what was set out in the summary by the lawyers who  
21 spoke with the witness and how that has not been borne out in the evidence that's  
22 been given by the witness.

23 Additionally, you are aware of the limitations within the Rome Statute  
24 framework as regards the obligations of the Defence to provide disclosure of the  
25 evidence that they are going to call during the course of the trial. We have visited

1 this on a number of occasions and we have handed down at least one written decision  
2 in which we have set out very, very clearly what the extent of the Defence obligations  
3 is.

4 We have also asked the Defence, as a matter of courtesy and politeness,  
5 if they think there are additional matters that would help you in your researches,  
6 to set those out now before these witnesses give their evidence.

7 Now, all of that has been dealt with, Ms Struyven. And, as I say, if  
8 you find that there are contradictions, then in due course you will no doubt make  
9 a good deal of that, perfectly legitimately, during the course of your closing address  
10 to this Chamber when it comes to considering the accuracy and the reliability of  
11 the witnesses called by the Defence.

12 But we really must not be asked serially to go over issues which we have  
13 definitively set out the position as regards the obligations of the Defence, and  
14 there is nothing new in what you have outlined to us this afternoon. Thank you  
15 for your submission, nonetheless.

16 MS STRUYVEN: Thank you, Mr President.

17 PRESIDING JUDGE FULFORD: Anything else from anyone else? Good.  
18 Half-past 2 tomorrow afternoon.

19 THE COURT USHER: All rise.

20 (The hearing ends at 5.06 p.m.)

21 RECLASSIFICATION REPORT

22 Pursuant to Trial Chamber I's email instruction dated 5th December 2011, the  
23 transcript is reclassified as public after the indicated redactions have been  
24 implemented as ordered by the Chamber. All private and closed sessions (\*)  
25 are now available to the public with the exception of the portions of the

1 transcript that have been redacted.