

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito
4 and Judge René Blattmann

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

7 In the case of The Prosecutor v. Thomas Lubanga Dyilo
8 Thursday, 4 March 2010

9 (The hearing starts at 3.00 p.m.)

10 *(Closed session) Reclassified as open session

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

12 PRESIDING JUDGE FULFORD: Everyone should know that we
13 received a request during the luncheon adjournment for the witness
14 to speak with the lawyer who has been advising witnesses on the issue
15 of self-incrimination, and we authorised a telephone call for those
16 purposes, which we understand has taken place.

17 Outstanding since this morning is Mr Biju-Duval's objection
18 to the Prosecution asking Witness 26 about the (Redacted) (phon) attack
19 and the allegation that the witness burned houses of civilians during
20 the attack and captured various individuals. Mr Biju-Duval's first
21 objection was that the witness had clearly stated that he wasn't involved
22 in the attack and Mr Biju-Duval argued that in light of that answer
23 Ms Struyven should desist from pursuing the matter.

24 The short answer to that objection is that the Prosecution
25 are not bound by the answer given by the witness and counsel is entitled,

1 so long as the questions are reasonable and proportionate, to pursue
2 the issue.

3 Mr Biju-Duval's second objection was that this is a subject
4 which the witness had not referred to during his initial examination.
5 It is said that it has nothing to do with his credibility and it has
6 no relevance to the charges. The short answer to that objection is
7 that, as Ms Struyven has argued, there is a real possibility that
8 this issue will go to the witness's credibility. He has indicated
9 that he was not involved in that attack because he was ill, yet
10 Ms Struyven indicates there is positive evidence in the possession
11 of the Prosecution that indicates to the contrary and that indeed
12 he was involved.

13 If the Prosecution is able to establish that he has not
14 told the truth about this issue, that is a piece of evidence that
15 may impact on the witness's credibility. Accordingly, for that reason,
16 again, within the limits of what is reasonable and fair, we consider
17 that this issue should be pursued.

18 By way of a post script we should add that although an issue
19 has arisen ex tempore as regards the Prosecution's obligation to
20 disclose all the material in their possession in relation to a witness
21 who is called by the Defence, the short answer to that point as regards
22 this application is that the Prosecution has, on the basis of the
23 material that we've been provided with by Ms Struyven, served a
24 significant body of evidence on the Defence that demonstrates that
25 this witness was involved in the attack on (Redacted) (phon). We have

1 counsel's undertaking that that is the position, which we accept,
2 and accordingly, no disclosure issue arises or, rather, a failure
3 of disclosure by the Prosecution in relation to this application.
4 Accordingly, Ms Struyven, you may ask, you may continue to ask questions
5 on this subject.

6 Before the witness comes in, Ms Struyven, are you still
7 seeking to rely on information that you received from the Victims
8 and Witnesses Unit?

9 MS STRUYVEN: Yes, Mr President.

10 PRESIDING JUDGE FULFORD: Well, we need to investigate this
11 then. You can understand, I'm sure, that there are some, what I'm
12 going to describe as policy reasons why it may be undesirable for
13 counsel, during the course of questioning in a case, to rely on matters
14 which have been disclosed within the course of the work of the Victims
15 and Witnesses Unit. The objection being that one wishes to ensure
16 that there is maximum frankness and disclosure in the conversations
17 that take place with the Victims and Witnesses Unit and that that
18 necessary degree of frankness may be undermined if there's a risk
19 that what is said in conversation with officials from the VWU is going
20 to be used during the course of cross-examination in the case.

21 Now, the first question then is: How do you get around that
22 possible objection, and second, how is it that you are in possession
23 of things that were said by Witness(Redacted) in the context of her
24 dealings with the unit?

25 MS STRUYVEN: May I discuss this briefly with my colleagues,

1 your Honours?

2 PRESIDING JUDGE FULFORD: You may.

3 (Prosecution counsel confer)

4 MS STRUYVEN: Thank you, Mr President. On the last point,
5 from time to time the Victims and Witnesses Unit indeed communicates
6 information about certain witnesses. And in this particular case
7 indeed the Office of the Prosecutor received an email on the subject
8 of Witness (Redacted). In respect of the --

9 PRESIDING JUDGE FULFORD: What was the context though? I'm
10 sorry to interrupt you, Ms Struyven, but why were you being provided
11 with this information? What was the purpose of it?

12 MS STRUYVEN: It was a security-related issue, your Honours.

13 PRESIDING JUDGE FULFORD: And so you were being provided
14 with information about what (Redacted) had said because there was
15 a security issue for (Redacted). Now, Ms Struyven, I would ask you
16 and members of your team to reflect on this, because there could be
17 said that if you're being given information in order to enhance the
18 security of one of your witnesses for the better protection of that
19 individual that one needs to be very careful indeed about then utilising
20 that information for the purposes of cross-examining another witness
21 in the case. Now, do take your time. You may want to reflect on this.

22 MS STRUYVEN: Thank you, Mr President.

23 (Counsel confer)

24 MS STRUYVEN: Thank you, Mr President. As indicated, the
25 Prosecution receives this type of information routinely in respect

1 of its -- in respect of the Prosecution witnesses. We do also understand
2 that there is implications in respect of disclosure and in respect
3 of the transfer of that type of information to the Office of the
4 Prosecutor. Therefore, in this particular case, we will withdraw our
5 request to address the issue with the present witness. However, we
6 cannot exclude that in future circumstances, in future situations,
7 we may renew a different or a similar type of request in respect of
8 a different witness.

9 PRESIDING JUDGE FULFORD: The law of estoppel will not apply,
10 Ms Struyven. All right. Good. Witness, please.

11 (The witness enters the courtroom)

12 PRESIDING JUDGE FULFORD: Public or private?

13 MS STRUYVEN: Private session, your Honours.

14 PRESIDING JUDGE FULFORD: Good afternoon, sir. Private
15 session, please.

16 *(Private session at 3.17 p.m.) Reclassified as open session

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

18 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

19 MS STRUYVEN:

20 Q. Good afternoon, Mr Witness. Now, before the break I asked
21 you whether you had participated in the (Redacted) battle and you
22 said you were ill at that time. Now, isn't it correct that you took
23 around 30 civilians - women and children - and you brought them to
24 the (Redacted) camp?

25 A. I don't know what to say, because I told you that I wasn't

1 at the (Redacted) operation. However, I could tell you that it was
2 the brigade that led the operation, our brigade, but I don't know
3 what happened during that event.

4 THE INTERPRETER: Correction, at that place.

5 MS STRUYVEN:

6 Q. Isn't it correct that you communicated through radio with
7 (Redacted), or in other words (Redacted), about the civilians that
8 you had captured?

9 A. I think that I wasn't with (Redacted), that brigade. I don't
10 even know him.

11 Q. If I would tell you that I have a copy of that intercept,
12 in which you as (Redacted) are communicating about the civilians,
13 would that change your testimony?

14 A. I told you that that brigade belonged to me. It was a brigade
15 that existed, but -- so, when I was with that brigade I don't know.
16 I don't know, because I told you that I was ill. But I was in contact,
17 but I don't know what happened because I was ill at that time.

18 Q. Could it be that you communicated with (Redacted), instead
19 of (Redacted)?

20 A. I think that the question you asked about the abbreviations
21 that you use, in my brigade it didn't exist. (Redacted),
22 we didn't have those abbreviations in the brigade.

23 Q. Isn't it correct that later that night, when those civilians
24 were brought back to the (Redacted) camp, they were all killed?

25 A. I have no idea, because I wasn't there. The road of (Redacted),

1 I know that road, but I can't tell you because I wasn't there.

2 Q. And weren't you promoted after this battle to replace
3 (Redacted)

4 A. So, in any event, those people weren't in my brigade. Briefly,
5 (Redacted) was not in my brigade. I know (Redacted)

6 (Redacted), and I could also tell you his abbreviation was
7 (Redacted). It wasn't (Redacted). Those people were not members
8 of my brigade.

9 Q. Is it your testimony that you do not know any (Redacted)
10 (Redacted)?

11 A. There are so many (Redacted). I don't know which (Redacted)
12 you are talking about. Which (Redacted) would you like to know about?
13 There are so many of them.

14 Q. Did you not at some point live with someone called (Redacted),
15 (Redacted)

16 A. So, if you want to ask me questions, you have to ask a specific
17 question. -But if you don't go straight to the point, there's a great
18 deal of confusion. You'll have to be specific about which (Redacted)
19 you mean.

20 Q. The question is the following: Did you ever live with a
21 military soldier called (Redacted)? A. You repeat the same question.
22 I don't know how to reply. There are many people called (Redacted).
23 You have to specify which (Redacted) you are talking about.

24 PRESIDING JUDGE FULFORD: Well, I think the question is
25 relatively straightforward, sir. Did you, while (Redacted)

1 (Redacted), live with a (Redacted) - who
2 was called (Redacted)

3 THE WITNESS: I understood the question. I told you there
4 were many (Redacted). Please specify about this (Redacted), or -- so
5 that I can properly understand, and that will help me answer.

6 PRESIDING JUDGE FULFORD: Can you give any greater
7 specificity, Ms Struyven?

8 MS STRUYVEN:

9 Q. Did you live with a (Redacted) in (Redacted) in 2004 or
10 2005; in that period?

11 A. So, maybe I understand now. in the Hema community there
12 were many (Redacted). I would like to know which (Redacted), because
13 we had so many (Redacted)

14 Q. Now, before the (Redacted) attack, there was also an
15 important attack on (Redacted) 2002. Did you participate in that attack?

16 A. Thank you for the question. Perhaps you may be leading me
17 into making a mistake, because when you ask a question, well, I have
18 to know. I have to properly understand. Now, you want to know about
19 (Redacted) and I didn't even understand the first question about
20 (Redacted) so perhaps I could try to reply about (Redacted)

21 Q. That's okay. We're now moving on to (Redacted). Did you,
22 or did you not, participate in the attack - it was quite an important
23 attack - on (Redacted) in (Redacted) 2002?

24 A. Thank you for your question. I would like to point one thing
25 out to you. Well, you see, all these questions that you have just

1 asked me, I believe that before I reply I would like to tell you the
2 truth. I can't answer a question that I haven't understood, because
3 when you ask me, you ask me things, but a hundred witnesses will come
4 and answer. But I can't reply if I haven't understood the question,
5 so I have no way of answering the question.

6 PRESIDING JUDGE FULFORD: Try again, Ms Struyven.

7 MS STRUYVEN:

8 Q. You must have heard -- being in the UPC, you must have heard
9 about the (Redacted) attack in (Redacted) 2002; is that correct? Did
10 you hear about that attack?

11 A. Before I answer, you must realise that Ituri had battles
12 in many villages where I was. I never heard of that one, but for example,
13 well, you mentioned (Redacted). I don't -- I didn't know what that
14 date was, what date. You'll have to specify the date for that attack
15 on (Redacted).

16 Q. The attack on (Redacted) took place on (Redacted) 2002.

17 A. Well, I cannot answer this question because I was not
18 operations commander. You should put that question to the operations
19 commander. I have already answered the questions that concern me.
20 I was in (Redacted) and in (Redacted). I cannot give you any answers
21 on (Redacted), because I don't know anything about that.

22 PRESIDING JUDGE FULFORD: Well, I think that's clear,
23 Ms Struyven. The witness is denying knowing anything about it and
24 clearly included in that is in any suggestion that he was present
25 during it. So I -- that is, I think, a firm basis on which you can

1 proceed.

2 MS STRUYVEN: Thank you, your Honour. May I ask one more
3 question?

4 PRESIDING JUDGE FULFORD: Go ahead.

5 MS STRUYVEN:

6 Q. Mr Witness, wasn't the (Redacted) attack led and executed
7 by (Redacted)

8 A. Well, to answer your question, I think I told you that I
9 was in (Redacted) I was in (Redacted). So, if you don't give me precise
10 information relating to (Redacted), then I don't know how I will answer
11 your question.

12 Q. Thank you. And so after you were stationed in (Redacted)
13 you came back to (Redacted) and you -- and there was the battle in
14 Bunia during which the Ugandans chased out the UPC. Do you remember that?

15 A. Yes, I remember that very well.

16 Q. And you fled -- after losing the battle you fled to (Redacted);
17 correct?

18 A. I cannot say because I was not in (Redacted). I took another
19 road. I did not go through (Redacted).

20 Q. And you then moved on to (Redacted); is that correct?

21 A. That's right, that's correct.

22 Q. And you stayed there for a year, is that correct, more or
23 a less?

24 A. I told you yesterday I don't think I spent up to a year
25 there. I think I spent a few months. Yes, indeed, a few months.

1 MS STRUYVEN: Your Honours, I'm planning to move into a
2 different area, but the Prosecution would like to request to play
3 the radio intercept on which the call sign of the witness is spelled
4 out several times.

5 PRESIDING JUDGE FULFORD: Is it said that this witness can
6 be heard speaking during the course of that intercept, Ms Struyven?

7 MS STRUYVEN: In the Prosecution's submissions, yes,
8 however, I have to add to that that the intercept is not -- it's not
9 very clear. Like, it's a radio communication between (Redacted)
10 or (Redacted). The call sign is clearly audible, in the submission
11 of the Prosecution.

12 PRESIDING JUDGE FULFORD: Your case is that this radio
13 intercept involves somebody using this witness's call sign, speaking,
14 and you suggest that that is this witness.

15 MS STRUYVEN: Well, your Honour, the witness already
16 confirmed earlier on that his call sign was (Redacted). He confirmed
17 that he was in the area and, indeed, we have the -- the intercept
18 is an communication between (Redacted) and (Redacted).

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

20 MR BIJU-DUVAL: (Interpretation): Thank you, your Honour.
21 We were informed of this intention to use this material at 2.50 p.m.
22 today. We have that recording, and it's true that we've had it for
23 quite some time. Nothing in the recording made us to believe that
24 it has anything to do with the witness who is currently being examined.
25 And ten minutes to this afternoon's hearing, the Prosecutor informed

1 us of her intention to use this recording in the examination of the
2 witness, and we do not think that this is appropriate. I fully
3 understand that the Prosecutor could say, yes, we discovered only
4 very recently that the witness could be concerned by this recording
5 and that is the reason why this information, or this material, was
6 disclosed only 10 minutes prior to the holding of this afternoon's
7 hearing. But that is not true. That's not true because on 18 February
8 this year the Prosecutor sent us an investigator's note that made
9 mention of (Redacted), and we did not know that this was the witness.
10 And it made allusion to this recording.

11 This means that, by 18 February latest, the Prosecutor
12 clearly had the intention of using this recording in the examination
13 of this witness, and we do not think it's proper that this information
14 should be communicated to us 10 minutes prior to the holding of this
15 hearing.

16 PRESIDING JUDGE FULFORD: A careful answer, please,
17 Ms Struyven. When did it first occur to a member of your team that
18 this recording may potentially form part of the materials to be used
19 during the examination of this witness?

20 MS STRUYVEN: Your Honours, it's very difficult to indicate
21 exactly when we were aware that (Redacted) (phon) was indeed (Redacted),
22 was present where this witness was indeed present, was moving indeed
23 where this witness was moving around. Bits and pieces of information
24 were given to us by the Defence, as I indicated earlier, as late as
25 last Friday. We believe that the remedy --

1 PRESIDING JUDGE FULFORD: Ms Struyven, I'm sorry, I'm going
2 to interrupt you. That's not the point. The point is, when did it
3 come into the mind of a member of your team that this was something,
4 a recording that may be useful to include in the materials for this
5 witness? There must have come a moment of realisation that this
6 recording and this witness are to be linked.

7 MS STRUYVEN: Well, Mr President, that was indeed at the
8 time that we prepared the investigator's note on 18 February. After
9 the analysis was done, on 18 February we prepared an investigator's
10 note and we disclosed that note to the Defence. That's indeed the
11 point in time that we finished the analysis.

12 (The Trial Chamber confers)

13 PRESIDING JUDGE FULFORD: Ms Struyven, the regulations of
14 the Registry by Regulation 52.2 indicates that, for the purposes of
15 presentation, participants shall provide to the court officer the
16 evidence that they intend to use at a hearing at least three full
17 working days before the scheduled hearing, and although it's right
18 that on occasion we have waived that absolute minimum requirement,
19 in all of our disclosure decisions the philosophy underlying them
20 is that there is to be adequate notice, both for the purposes of the
21 court officer but also for other counsel appearing in the case. And
22 if this was -- if the introduction of this material was a live possibility
23 as long ago as 18 February, alerting the Defence ten minutes before
24 we sat this afternoon is simply too late. So, we refuse permission
25 to rely on this material.

1 Everybody really must bear in mind that there is a duty
2 to give adequate notice, not least to stop these proceedings being
3 constantly peppered by objections which are inevitably otherwise going
4 to be made.

5 So, please continue with another subject. And are we going
6 to be in private or public session?

7 MS STRUYVEN: We can go into public session, your Honours.

8 PRESIDING JUDGE FULFORD: Thank you very much, Ms Struyven.
9 Public session, please.

10 (Open session at 3.43 a.m.)

11 THE COURT OFFICER: We're in open session.

12 MS STRUYVEN:

13 Q. Mr Witness, before I address another area, I have one last
14 question. Would you agree that cell phones were only available in
15 Bunia and in the Ituri region as of March 2003, meaning as of the
16 moment that was there this battle against the Ugandans?

17 A. I do not fully understand. Indeed, I don't know what you
18 are intending to get from me through your question. Could you please
19 rephrase it?

20 Q. Would you agree that mobile phones were only workable in
21 Ituri as of March 2003, or, in other words, as of the battle between
22 the UPC and the Ugandans?

23 A. Well, I have difficulties understanding the terminology
24 you use. You are referring to a mobile phone. Can you tell me what
25 a mobile phone is?

1 Q. Well, I'll start again. In that period soldiers would
2 communicate with each other by satellite phones. Do you agree with
3 that?

4 PRESIDING JUDGE FULFORD: Sorry, in what period?

5 MS STRUYVEN:

6 Q. In the period that you were a soldier, would you agree that
7 soldiers were communicating through satellite phones?

8 A. It's not for me to know whether or not satellite phones
9 were used. Personally, I didn't have any; that's the reason why.

10 Q. Thank you. Now, Mr Witness, you met the lawyers of the
11 Defence in Congo, correct?

12 THE INTERPRETER: The Swahili interpreter did not
13 understand. Could you please repeat?

14 MS STRUYVEN:

15 Q. The question was, you met the lawyers of the Defence of
16 Thomas Lubanga in Congo; is that correct?

17 A. That's correct.

18 Q. When did you first meet them?

19 A. To answer your question, I would like to tell you that I
20 did not take note of the date or the time; I had my private activities
21 to take care of. And I, indeed, met the lawyers and I returned to
22 my activities. They came, they asked me questions and I answered their
23 questions, and they went away and I carried on with my activities.

24 Q. Do you know if it's a year ago, two years ago, three years
25 ago?

1 A. I cannot give you any specific information on that. You
2 can only give precise information about something you've taken time
3 to think about. But I told you they came once, I met them, they asked
4 me a few questions, and they went away and I returned to my activities.
5 I did not take time to take note of the date or the time; and for
6 that reason, I cannot remember that particular piece of information
7 and so I cannot give you more precise information.

8 Q. Did you explain to the lawyers your relationship with
9 (Redacted)

10 MS STRUYVEN: I need a redaction for that, your Honours.

11 A. Could you please repeat your question?

12 PRESIDING JUDGE FULFORD: Private session, please.

13 *(Private session at 3.51 p.m.) Reclassified as open session

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

15 MS STRUYVEN:

16 Q. Mr Witness, did you explain to the lawyers your relationship
17 with (Redacted)

18 A. Well, you are asking me a question about the lawyers who
19 came to see me. Well, they did not ask me any questions about (Redacted),
20 if my recollection is right.

21 Q. So you didn't explain to them your relationship with (Redacted)

22 A. As regards my relationship with (Redacted), I told you yesterday,
23 I said that I was with him within the framework of our work, our duties.
24 And so my relationship with him is professional. I don't know whether
25 you mean that I had a family tie or family ties with (Redacted) or that

1 type of relationship. Well, I don't think it's very clear to me what
2 you are saying.

3 Q. My question is, did you tell Defence lawyers that you had
4 a relationship with (Redacted), be it professional or family relationship?

5 A. Well, to answer your question, I told you right from the
6 start - if I remember correctly - I asked you to give me more specific
7 information when you are putting questions to me so that I can answer
8 your questions. You have asked me a question about my relations with
9 this individual, but you have not indicated whether you want me to
10 say whether I had family ties with him or a professional relationship
11 with this individual. That is why I am asking you to be a bit more
12 precise in your questions.

13 Q. Did you or did you not tell the lawyers that you were the
14 deputy of (Redacted)

15 A. You are precise this time, just as I asked you to be. I
16 told you that I was (Redacted) deputy, and that is correct. As I am
17 sitting here, you can go and ask other people. You can go to
18 (Redacted) - or in any locality - and you ask these questions to the
19 people who are there, and they will give you the same answer. Yes,
20 indeed, I was (Redacted) deputy.

21 Q. That is not my question, Mr Witness. My question is, when
22 you met the Defence lawyers in Congo, did you or did you not tell
23 them that you were (Redacted)

24 A. I have already given you an answer. The lawyers did not
25 ask me questions about (Redacted). That was not the objective of their

1 visit. I think I have already answered your question.

2 PRESIDING JUDGE FULFORD: We'll proceed, Ms Struyven, on
3 the basis that the answer is "no."

4 MS STRUYVEN:

5 Q. You also met Dieudonné Mbuna; is that correct?

6 A. Yes, that's correct.

7 Q. And when did you meet him for the first time?

8 A. I don't have any details to give on Mbuna and about the
9 time I met him, but I did indeed meet him even if I can't give you
10 any specific information about that encounter.

11 Q. Did you know Mbuna before you met him?

12 A. Yes.

13 Q. How did you know him?

14 A. Mbuna is a native of Ituri, like myself. We used to meet
15 each other -- used to meet each other in town.

16 Q. In what context did you used to meet each other?

17 A. I do not fully understand what you wish to find out. Are
18 you referring to an earlier period or are you referring to a more
19 recent period? I don't know what time period your question is alluding
20 to and I don't know the circumstances you are referring to.

21 Q. Well, let's start from the beginning, then. When did you
22 meet Mbuna for the first time? So when did you get to know Mbuna?

23 A. I knew Mbuna when I was a member of the UPC.

24 Q. And what was Mbuna doing in the UPC?

25 A. I merely knew that Mbuna was the secretary of the UPC.

1 Q. Did he have other functions in the UPC?

2 A. I am not in a position to know that; I was a soldier, and
3 I could not be sure of the functions of civilians.

4 Q. Was he the secretary -- the national secretary in charge
5 of the follow-up of military matters?

6 A. As I have already told you, when I met Mbuna for the first
7 time, he was a civilian and I was a soldier. I heard other people
8 talking about him as a directeur de cabinet. I do not know, therefore,
9 whether he was in charge of military affairs or other. I do not know.

10 Q. If I suggest to you that afterwards he became the Minister
11 of Defence of the UPC, would that refresh your memory?

12 A. Well, listen, my role was not to take care of Mbuna or other
13 people. You're putting questions to me on the subject of Mbuna, but
14 I am not in a position to furnish you with the details you are seeking.
15 I was a soldier and I did my work as a soldier. I did not try to find
16 out what Mbuna or the others were up to.

17 Q. Now, when did Mbuna come to talk to you about (Redacted)
18 and your mother?

19 A. I will answer, but without providing much in the way of
20 detail. I know that Mbuna arrived, he came to see me, and he put questions
21 to me on the subject of (Redacted) and my mother. However, I do no
22 longer recall the date at which he came to see me on that subject.

23 Q. Do you know if it's a year ago or two years ago or three
24 years ago?

25 A. Really, I do not have any detail to provide you with. I

1 could not provide you with a precise answer with regard to the date
2 or the number of years that have passed. I know at what time in the
3 past my mother and brother left. Mbuna did come and put questions
4 to me on that subject. However, I cannot provide you with any further
5 details as to the period in time when Mbuna came to see me and asked
6 me those questions.

7 Q. Did Mbuna explain to you how he found you, how he knew that
8 you were related to (Redacted) or your mother?

9 A. I have not quite grasped your question. Could you please
10 repeat it?

11 Q. I'll explain it the other way around. (Redacted)
12 never referred to you or to your name. So my question is: Do
13 you know how Mbuna knew that you were related to them?

14 A. I do not know how Mbuna came to know this. As I have already
15 explained to you, I lived with my maternal uncles in the (Redacted)
16 region and (Redacted) also lived in (Redacted). I do not know how
17 it came about Mbuna knew how we were related but in view of the fact
18 that we all hail from the same region of Ituri it is possible that
19 Mbuna came by this information in one way or another.

20 Q. What did Mbuna explain to you in respect of (Redacted) and
21 your mother (Redacted)

22 A. To my knowledge, Mbuna did not tell me anything with regard
23 to my mother. He did not say anything.

24 Q. And what did he say in respect of your brother (Redacted)

25 A. I believe I can help you. I met the Defence lawyers when

1 they came to put questions to me and they asked me where (Redacted)
2 was to be found. I told them that to date I did not know where (Redacted)
3 was to be found.

4 Q. So is it your testimony that you met the Defence lawyers
5 before Mbuna came to see you about (Redacted)

6 A. Please repeat your question; I'm sorry.

7 Q. Who came to see you first about (Redacted) and your mother;
8 was it the Defence lawyers or was it Mbuna?

9 A. No, I believe that it was Mbuna who asked me where my mother
10 and (Redacted) were to be found, and I answered saying that I did
11 not know. So it was Mbuna who was the first to ask me a question on
12 the subject of my mother and my brother, and I answered him, as I
13 just said, by telling him that I did not know where they were to be found.

14 Q. Did Mbuna explain to you why he wanted to find (Redacted)
15 and your mother?

16 A. No, he did not explain to me why it was that he wanted this
17 information. However, when he put the question to me and I answered
18 by saying that I did not know where those people were to be found,
19 a short time later I met the Defence lawyers, and they put a number
20 of photographs before me where (Redacted) and other people appeared,
21 and they asked me whether it was (Redacted) or not, and I said yes,
22 I do know him, he is my brother. They asked me whether I knew where
23 he was to be found, and I said, no, I do not know where he is.

24 They asked me the following question: Has your brother also
25 done his military service? And I said that of all my brothers, born

1 of the same mother and father, I am the only person to have joined
2 the army. We are five brothers of the same mother and of these five
3 brothers I am the only soldier. No other brother of mine has been
4 a soldier. I'm talking about my brothers from the same mother.

5 Q. So if I understand you correctly, Mbuna never asked you
6 questions about (Redacted) or your mother, apart from the one question
7 that was if you knew where they were. Is that your testimony?

8 A. I do not really grasp what you are saying. I am repeating
9 myself. I first met Mbuna and the question he put to me was with respect
10 to my mother and my brother. They -- he wanted to know where they
11 were, and I said that I did not know. And then he left. Subsequently,
12 he told me that he wanted to come and see me at my home, and when
13 he arrived he was in the company of members of the Defence team from
14 the ICC, and he showed me some photographs. Upon showing me these
15 photographs he asked me the following question: Do you know these
16 individuals in the photograph? I answered saying that I did know them.

17 He asked me, or they asked me who the people were, and I
18 said this person is my brother. Then they asked me the following
19 question: Where is your younger brother to be found? And I said that
20 I did not know where he was. They asked the following question: Your
21 brother here, was he a soldier? And I said no, he has never been a
22 soldier. Of all my brothers, of whom we are five, I am the only brother
23 to have joined the ranks of the army and to have been a soldier, and
24 I believe that this answer should suffice.

25 Q. Did they explain to you that (Redacted) had testified here?

1 A. They did not really give me much in the way of an explanation.
2 They put questions to me which I answered. I'm talking about the second
3 meeting here. On that occasion they asked me whether I had heard that
4 (Redacted) had come to testify before the ICC, and that he had said
5 that he had been forced to join the army. I answered by saying, if
6 you want to understand correctly, that of all my brothers I am the
7 only one to have joined the army.

8 Those people said that he had testified, but I told them
9 that I did not know which movement or which armed group he had been
10 forced to join, because I knew that I had been a member of a movement
11 and a member of the army, but they did not provide me with those details.

12 Q. And when they asked you if you had heard that (Redacted)
13 had come to testify here in the ICC, what was your answer to that?

14 A. Very well. I said that when they gave me this information,
15 well, I asked them a question, and amongst the movements that were
16 fighting in Ituri in the -- it was the RCD, it was the APC, it was
17 the MLC. There was also the UPC, and these were the movements that
18 were fighting in Ituri. So I do not know with reference to which movement
19 he testified, or which movement he belonged to, because those four
20 movements were movements that I was a member of. I do not know which
21 armed group he was a member of, and I do not know what he testified
22 to, and he has never told me which movement he was a member of, and
23 what his testimony was.

24 Q. So your testimony is today that you did not know that (Redacted)
25 testified against Thomas Lubanga; is that your testimony?

1 A. You know, to say that (Redacted) testified against Thomas
2 Lubanga, well, this is what incited me to come to testify before this
3 Court. I wanted to -- I would like to know when it was that (Redacted)
4 was forcibly enlisted, where he was trained and who trained him.

5 Q. What do you mean by the fact that he testified against Thomas
6 Lubanga incited you to come and testify here?

7 A. Well, what I wanted to say was that he is against Thomas
8 Lubanga. I wanted to say the truth. And I would also -- well, when
9 you put questions to me, I think that I am telling you the truth and
10 precise information is required. It shouldn't -- I do not know whether
11 he said that he was enlisted in the army, in the movement, or where
12 he was trained, but I was told that he testified to the effect that
13 he was a member of the UPC and that he was forcibly enlisted.

14 You know, I do not understand very well. The members of
15 the Defence team did not have the time to tell us precisely that my
16 brother had been forcibly enlisted within one movement, or another,
17 and that this -- and it was to this effect that he testified before
18 the Court; notably, that Thomas forcibly enlisted him in a movement.
19 I didn't really understand whether it was Thomas who recruited him,
20 or whether it was that he chanced upon him as a soldier already, or
21 whether he enlisted him as a child. I really didn't understand, so
22 I wanted to ascertain this information before the Court.

23 MS STRUYVEN: Your Honours, may I have a moment?

24 (Counsel confer)

25 MS STRUYVEN:

1 Q. So, your testimony is that you're here to ascertain -- I'm
2 sorry, I'll start again. So, your testimony is that you did not know
3 which group (Redacted) would have been a member of; correct?

4 A. This is very important. It might help me. I told you that
5 it was said that he was a member of the UPC and that he was forcibly
6 enlisted. I would like you to tell me who it was who forcibly enlisted
7 him and where he was trained, so that I can provide you with explanations,
8 because I cannot provide you with any clarification unless you explain
9 things to me clearly.

10 Now, with regard to this question, I was witness to the
11 effect - and the entire population could testify to the effect - that
12 (Redacted) was never a soldier. If I am not mistaken, in Ituri there
13 was fighting and everyone said that he was a soldier. However, I really
14 do not know, however, whether my brother really was a member of any
15 movement at all. I do not know any armed group that he might have
16 been a member of.

17 Q. You said that in Ituri everyone said that he was a soldier.
18 Who said that he was a soldier?

19 A. You have not really understood. I said that in Ituri -- well,
20 I told you that there were four groups, and amongst these four groups,
21 the last group of which is the UPC, I put the question to you that
22 (Redacted) allegedly said that he was forcibly recruited by Thomas.
23 So, I would like to ask you, if I remember correctly, in the UPC there
24 was training that was imparted in two locations. And to answer you,
25 I would be able to answer you, I would like you to give me information

1 as to who recruited him and who -- and where he was trained.

2 Q. Who told you that (Redacted) was recruited by Thomas forcibly?

3 A. You put the very same question to me yourself. You said
4 that -- well, you asked me whether I knew that Thomas had recruited
5 him forcibly and I said that I had heard it said, but I would like
6 you to give me further clarification on the matter.

7 Q. My question is quite simple. Who told you that Thomas
8 recruited (Redacted) forcibly?

9 PRESIDING JUDGE FULFORD: Yes, Mr Biju-Duval?

10 MR BIJU-DUVAL: (Interpretation) I'm sorry to interrupt,
11 but I find it difficult to locate precisely the excerpt from the
12 transcript. What appears in the transcript is that the witness said
13 that "... (Redacted) allegedly said that he was forcibly enlisted ..."
14 I do not know whether this is the passage, or excerpt, that Madam
15 Prosecutor is referring to?

16 PRESIDING JUDGE FULFORD: Ms Struyven, put it slightly
17 differently. "Were you told that Lubanga forcibly recruited (Redacted)
18 and, if so, by whom?", all right?

19 MS STRUYVEN: Thank you, Mr President.

20 Q. Mr Witness, were you told Lubanga forcibly recruited
21 (Redacted) and, if so, by whom?

22 A. If my memory serves me correctly, I asked you, when a
23 photograph was put to me, and I was asked whether (Redacted) had been
24 a soldier. I told you that he had not been a soldier and at a later
25 stage a question was put to me and I was told that (Redacted) had been

1 forcibly recruited. And I asked you which movement we were talking
2 about. I was told that he went to the court and that he had said that
3 he had been forcibly recruited by Thomas Lubanga whilst he was still
4 a child. I do not know whether this was within the ranks of the UPC
5 movement.

6 Now, had (Redacted) been forcibly recruited, I would like
7 to know who it was who recruited him, which movement and where he
8 was trained, in which location he received his training, because I
9 do know that -- I do know where the UPC trained their recruits. So,
10 when somebody goes to undergo military training, he has friends that
11 he will meet during the training and it might be that he could say
12 that he had met a number of people, or made some friends, during that
13 training. He might have said something about these friends that he'd
14 met during this military training period.

15 Q. Mr Witness, do I understand you correctly that before
16 testifying here, yesterday and today, you did not know that (Redacted)
17 had said he was forcibly recruited by Thomas? Is that how I understand
18 your testimony?

19 PRESIDING JUDGE FULFORD: No, I don't think that's the
20 witness's last answer at all, Ms Struyven. If you look at the English
21 version, page 29, about line 2, isn't it clear that the witness is
22 saying that he was told that there had been forcible recruitment by
23 Thomas Lubanga whilst he was still a child? Now, that's in relation
24 to historic conversation, not in relation to something he has learnt
25 during his testimony at this Court.

1 MS STRUYVEN: Your Honours, I'm absolutely not -- I'm not
2 sure that I'm -- the only reason why I believe that it may be that
3 he meant that he only learned about it here is that he referred to
4 a question that I put to him. So -- because at page 20 -- but I may
5 be completely wrong on this, but at page 28, lines 24 and 25 --

6 PRESIDING JUDGE FULFORD: No, but the later answer, the one
7 I've just pointed you to, Ms Struyven, it seems to me that that is
8 a clear indication that there was an earlier conversation, top of
9 page 29, in which the witness was informed that there had been forcible
10 recruitment. Now, that's nothing to do -- anything to do with being
11 here and his testimony here. That's on an earlier occasion. Line
12 2, "I was told that he went to the court and that he had said that
13 he had been forcibly recruited by Thomas Lubanga whilst he was a child."

14 MS STRUYVEN: I'm very sorry, your Honours. I'm referring
15 to four lines up, where the witness says -- so, at page 28, lines
16 22, 23, 24 and 25, where he starts this answer. And again I may be
17 wrong, I may be misinterpreting this, but I had the impression that
18 he started saying that he was asked with a photograph, "... or the
19 photograph was put to me and I was asked whether (Redacted) had been
20 a soldier. I told you ...", so that would be me, "... that he had
21 not been a soldier." And at a later stage a question was put to him
22 again "... and I was told that (Redacted)--

23 PRESIDING JUDGE FULFORD: All right, Ms Struyven. Do it
24 again, but this is becoming incredibly convoluted. One more time.

25 MS STRUYVEN:

1 Q. Mr Witness, the question is quite -- well, I'll ask the
2 question again.

3 Can you tell us when you heard that (Redacted) had been forcibly
4 recruited by Thomas? Was it here in The Hague? Was it back in Congo?
5 Was it when you met the Defence lawyers? Was it before that, or was
6 it after that? Can you help us with that?

7 A. I think I've already answered. I told you that when the
8 lawyers came, they asked me the first time and they showed me a photograph
9 and they said to me, "Do you know this person?" And I answered by
10 saying, Yes, it's my brother." So -- and they asked me, "Do you know
11 where he is right now?" And I said, "No." And then they asked me,
12 "Was your brother ever a soldier?" And I said to them that he had
13 never been a soldier, because of all our brothers -- there were five
14 of us, four boys and one girl, and of all these children, I was the
15 only one who was a soldier. And they said to me, "In the UPC movement
16 or any movement, was he forcibly enlisted or not?" And I told them,
17 "I have no idea. I don't know the other movements. I don't know whether
18 he was forcibly enlisted." But I -- I asked them to give me more
19 information, and there you have it. Well, I have no additional
20 information as to whether or not he was in another movement.

21 MS STRUYVEN: Your Honour, just a point of clarification:
22 Do we have a break at 4.30 or not?

23 PRESIDING JUDGE FULFORD: Let me check with the court officer.
24 In fact, I think we're supposed to stop at 4.30. Yes, we do have a
25 break, but a rather terminable one, Ms Struyven. No, no need to sit

1 down. Are you finished? Are you nearly finished? What's the
2 position?

3 MS STRUYVEN: We're nearly finished, your Honours.

4 PRESIDING JUDGE FULFORD: Right. Mr Biju-Duval, are you
5 likely to have much by way of further questioning once Ms Struyven
6 has concluded?

7 MR BIJU-DUVAL: (Interpretation) One or two questions, your
8 Honour.

9 PRESIDING JUDGE FULFORD: If we sit for another quarter of
10 an hour or 20 minutes, is that going to be acceptable or not? Can
11 the court officer find out, please?

12 MS STRUYVEN: Your Honours, I'm sorry, but I think I may
13 have more than 20 minutes.

14 PRESIDING JUDGE FULFORD: All right. Well, it's not what
15 you just said, Ms Struyven. All right. Well, if you've got more than
16 that, more than 20 minutes, we'll have to rise now then.

17 Sir, I'm very sorry, I'd hoped that your evidence would
18 have been concluded this afternoon, but it looks as though it's not
19 going to happen. I am hopeful that we won't keep you for very long
20 tomorrow morning. And we look forward to seeing you again at 9.30.
21 Thank you very much.

22 Closed session, please.

23 *(Closed session at 4.37 p.m.) Reclassified as open session

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

25 PRESIDING JUDGE FULFORD: Yes. Can the witness withdraw,

1 please?

2 (The witness stands down)

3 PRESIDING JUDGE FULFORD: Regarding tomorrow,
4 Mr Biju-Duval, are you -- as far as you're aware, are we ready to
5 start the next witness?

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

7 PRESIDING JUDGE FULFORD: Very helpful. Thank you. I
8 would imagine that everyone would encourage us to deal with the
9 outstanding matters that we canvassed the other day prior to the
10 commencement of that witness's evidence; is that right? You had your
11 four points, Mr Biju-Duval.

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

13 PRESIDING JUDGE FULFORD: Right. Then what we will do is
14 complete the evidence of this witness, but before we commence the
15 evidence of the next witness, we will deal with those outstanding
16 issues that have been highlighted for us. And there are one or two
17 short oral rulings that we need to give, in any event.

18 Also tomorrow we will try and indicate the timetable for
19 the next few weeks, because there have been one or two small proposed
20 changes.

21 We wish you all a pleasant evening.

22 (The hearing ends at 4.39 p.m.)

23 RECLASSIFICATION REPORT

24 Pursuant to Trial Chamber I's email instruction dated 15th December
25 2011, the transcript is reclassified as public after the indicated

1 redactions have been implemented as ordered by the Chamber. All private
2 and closed sessions (*) are now available to the public with the
3 exception of the portions the transcript that have been redacted.

4