

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Presiding Judge Adrian Fulford, Judge Elisabeth Odio Benito and
4 Judge René Blattman
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 Thursday, 21 January 2010
8 (The hearing starts at 9.30 a.m.)
9 *(Closed session) Reclassified as Open session
10 THE COURT USHER: All rise. The International Criminal Court is now in
11 session. Please be seated.
12 PRESIDING JUDGE FULFORD: Good morning. Witness, please.
13 THE COURT OFFICER: Good morning, your Honours. We are in a closed session.
14 (The witness enters the courtroom)
15 WITNESS: Witness A/225/06 (Resumed)
16 (The witness answers through interpreter)
17 PRESIDING JUDGE FULFORD: Good morning, sir.
18 THE WITNESS: Good morning.
19 (The accused enters the courtroom)
20 PRESIDING JUDGE FULFORD: Thank you, Mr Lubanga.
21 (Open session at 9.36 a.m.)
22 THE COURT OFFICER: We are in open session, your Honours.
23 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.
24 MR DESALLIERS: (Interpretation) Thank you, Mr President. I'm going to
25 refer to one of the documents that was shown to the witness for the purpose of my

1 first few questions. So, if we are in open session, then the documents should not
2 be shown outside of the room.

3 Questioned By Mr Desalliers: (Continued)

4 Q. Good morning, Mr Witness.

5 A. Good morning.

6 Q. Mr Witness, we were talking about the injuries you sustained during the
7 fighting. For the upcoming questions, I would like you to look at the document
8 that was handed over to you, and I would like you to refer to tab 3. Page 13 of
9 tab 3.

10 PRESIDING JUDGE FULFORD: Now, Mr Desalliers, is that for the last page
11 of tab 3?

12 MR DESALLIERS: (No interpretation)

13 PRESIDING JUDGE FULFORD: Yes, exactly. It's sadly confusing, because
14 there are two lots of pagination: There's 10 of 10 and 13 of 13. We've been fine
15 so far, but just to be clear. So, it's using the pagination top right-hand corner,
16 last page of tab 3. Good. Sorry to interrupt, Mr Desalliers.

17 MR DESALLIERS: (Interpretation) Thank you, Mr President.

18 Q. Now, Mr Witness, I'm going to read out an excerpt from this page which
19 is from your additional corrected statement, for the purpose of your participation
20 as a victim at the ICC. Now, point 3: "After accelerated training, we went to
21 fight in Bogoro where the fighting was really bloody. The bullet grazed my eyelid,
22 and in order to treat the wound, I applied some leaves on the wound," and in brackets,
23 "(medicinal plant)."

24 I will stop here for now, and my question to you is as follows: Mr Witness,
25 during the Bogoro fighting, were you injured on your eyelid or in the calf?

1 A. During the Bogoro fighting, I was injured in the calf. The injury to
2 my eyelid was not very serious, but it disturbed me, but I had that injury.

3 Q. Can you explain to us how precisely you came to be injured on the eyelid
4 in Bogoro?

5 A. This was after I had heard the gunfire. There was a shell which exploded,
6 and when it exploded, some people were killed. I was a bit further away from those
7 people who sustained the full force of the shell. After that explosion, there was -- I
8 was hit by shrapnel, and that is how come I was injured.

9 Q. But, Mr Witness, in your additional statement you said that a bullet grazed
10 your eyelid. Was this a bullet or a shell?

11 A. The bullet is different from a bomb or a shell?

12 Q. Mr Witness, did you just say that -- is a bullet different from a bomb?

13 A. Yes.

14 Q. Mr Witness, can you distinguish between bullets from a rifle and bombs
15 or shells?

16 A. When I talk about bullets or bombs, I am referring to rifles and weapons.

17 Q. Very well, let us begin with a bomb. What do you mean when you talk about
18 a bomb?

19 A. A bomb can be thrown and it does not hit just one person, but three or
20 four people at the same time, and the bullet can hit just one person or two. That
21 matter is quite complicated.

22 Q. Mr Witness, would a bullet be shot through or with a rifle? Mr Witness,
23 I will ask my question once again. In 2007 in your additional statement when you
24 said the bullet grazed the eyelid, when you are talking about the bullet was this
25 something that exploded close to you, or something that was fired from a rifle?

1 PRESIDING JUDGE FULFORD: Mr Desalliers, forgive me interrupting. If you
2 look back -- and I'm sorry, I'm having to do this from the English, but if you look
3 back at page 3, line 5, there the witness said, really, I think unequivocally:

4 "It was a shell that exploded. Some people were killed. I was a bit further
5 away from those people who sustained the full force of the shell. After the explosion,
6 I was hit by shrapnel."

7 Now, unless I'm mistaken - unless I am mistaken - I think that is a very
8 clear description of having been injured by a bomb, rather than by a bullet, and
9 I'm not sure whether there's particular usefulness, given that clear answer, in
10 taking the witness back to the point again to ask him again whether he was hit by
11 a bomb or a bullet. And I'm concerned that, if we do this too often, we may encounter
12 difficulties in relation to completing this evidence.

13 Now, again, I'm not stopping you, take your own course, but I think the
14 witness's evidence today is clear on this and you, of course, have the opportunity
15 of being able to make a point later in relation to any contradiction between his
16 evidence and his account. Thank you.

17 MR DESALLIERS: (Interpretation) Very well, Mr President. I will move
18 on to the next question.

19 Q. Mr Witness, after your additional statement of 2007, you gave a written
20 statement on what happened to you and that is in tab 1 of the document given to
21 you. So, this was your statement of last August. In that statement you talk about
22 being injured in the calf for the first time, but you did not mention the injury
23 to your eyelid. So, why is it that in your statement of August you did not mention
24 the injury to your eyelid during the fighting in Bogoro?

25 A. I had talked about all those injuries.

1 Q. So, what you are telling us today is that you mentioned them?

2 A. Yes.

3 Q. In the course of your testimony, you told us of a type of weapon that
4 was there in the second camp. You said it was a NATO rifle, do you remember?

5 A. Yes.

6 Q. Were there many of those NATO rifles in the second camp?

7 A. Yes.

8 Q. My question was to find out whether there were many of such weapons there,
9 or not many of them.

10 A. There were many of them.

11 Q. If I tell you that there were no NATO rifles in the UPC army, would that
12 change your mind regarding what you have just said?

13 A. What are you saying?

14 Q. If I put it to you that there were no NATO rifles in the UPC army, would
15 that change anything regarding what you have just told us?

16 A. I have said that there were NATO rifles in the UPC army.

17 Q. Very well. I will read out to you a short excerpt of your statement of
18 last August, which is in tab 1, page 2, third paragraph, and I quote:

19 "I speak and read French, Swahili, Alur, which is my mother tongue, and
20 Lingala, which I can speak but which I cannot read well. This is a language that
21 we learned while in the army."

22 Mr Witness, from what is included in your statement, are we to understand
23 that prior to your joining the army you did not speak Lingala?

24 A. In our region, Lingala is not spoken. Only Alur is spoken.

25 Q. Very well. So everything you know about Lingala you learned while in

1 the army; is that correct?

2 A. What I said is that, even when I was not in the army, if I was told "Boni",
3 I would answer, but if the person continued it would be difficult. I knew very
4 little Lingala, greetings for example, but I could not speak it very well. If somebody
5 said "Boni", I would answer, but I wouldn't be able to follow up what could be said
6 next.

7 Q. After having been in the army, were you able to speak Lingala better?

8 A. I would say that in the camp the Lingala language was recommended because
9 they did not want us to speak our mother tongues, or any other language than Lingala.
10 So, we started trying to speak and we spoke the language with the others. I already
11 had a notion of Lingala and I was able to speak and I could not speak very well,
12 but at least I would be understood.

13 Q. Are we to understand from your testimony that the soldiers in the first
14 and second camps spoke Lingala amongst themselves?

15 A. Generally they spoke Lingala, even though some of them could not speak
16 very well, but they made an effort to speak. Sometimes, very infrequently, I would
17 hear them speaking their own languages.

18 MS SAMSON: Thank you, Mr President. Just a clarification. It is not
19 clear, to me at least, which camp we are discussing. I don't believe the witness
20 has indicated it was the first camp, or the second camp, or both camps.

21 PRESIDING JUDGE FULFORD: Thank you, Ms Samson.

22 You may want to clarify that, Mr Desalliers.

23 MR DESALLIERS: (Interpretation)

24 Q. Mr Witness, what you have just told us, was this happening in the first
25 camp, or the second camp, or both?

1 A. When I was asked to speak Lingala and we were told that Lingala was the
2 recommended language, this was in the second camp.

3 Q. And which language was spoken between the soldiers and their commanders?

4 A. I beg your pardon?

5 Q. Let us stay with the second camp. My question concerns the second camp.
6 When the soldiers spoke with their commanders, which language did they use?

7 A. They spoke in Lingala.

8 Q. If I were to tell you, Mr Witness, that the language spoken within the
9 UPC army was Swahili and not Lingala, would that change anything about what you
10 have just told us?

11 A. Could you please repeat?

12 Q. Mr Witness, you are sure that the language spoken by the soldiers in the
13 second camp was Lingala. Are you very sure of that?

14 A. I am not sure. It was a recommended language. Pardon me, I am sure, because
15 it was a recommended language.

16 PRESIDING JUDGE FULFORD: Mr Desalliers, if I may very gently suggest
17 that I think the second formulation is much better than the first. So rather than
18 "I put it to you," asking whether the witness is sure I think is probably more productive.

19 MR DESALLIERS: (Interpretation) Very well, your Honour.

20 Q. Mr Witness, you told us about --

21 MR DESALLIERS: (Interpretation) Well, your Honour, I think we will have
22 to go into closed session for the next question.

23 PRESIDING JUDGE FULFORD: Yes, absolutely, but before we do that in both
24 the English and the French transcripts there is no record of the answer to your
25 very last question. Now, I think the witness did answer it and you heard the answer,

1 Mr Desalliers, because you gave some kind of concurring expression. Do you now
2 recall what the witness's answer was?

3 MR DESALLIERS: (Interpretation) Yes, I think I have a partial answer
4 here and I do believe that the word missing was -- on the French version the word
5 was "Lingala". To be sure of that, I will ask the witness.

6 Q. Mr Witness, I'm sorry to have to go back to an earlier point. Now, when
7 I asked you if you were sure that it was Lingala that was spoken you said, "I am
8 sure because ..." Did you say it was Lingala?

9 A. Yes, I said that Lingala was recommended, but the soldiers amongst
10 themselves secretly would speak, some of them -- some of us spoke Gegere and I heard
11 others speaking Swahili, but if we were together in a group, if we were together,
12 we spoke Lingala.

13 Q. Very well, thank you.

14 PRESIDING JUDGE FULFORD: Private session, please.

15 *(Private session at 10.03 a.m.) Reclassified as Open session

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

17 PRESIDING JUDGE FULFORD: Thank you.

18 MR DESALLIERS: (Interpretation)

19 Q. During your testimony, Mr Witness, you talked about a commander by the
20 name of (Redacted). Now did I correctly understand that he was based in (Redacted)
21 (Redacted)

22 A. Do you mean that (Redacted)?

23 Q. I'm asking you the question, Mr Witness. Which camp was he based at,
24 (Redacted)

25 A. (Redacted) I didn't know which camp in particular, but he was with -- it

1 was with him that we when to (Redacted). And after a few days, when we arrived, then

2 I didn't see him in the camp. He came later and then he left again.

3 Q. So do you know where he was based?

4 A. I don't know.

5 Q. You told us that (Redacted) spoke the (Redacted) language; is that not

6 so?

7 A. Yes.

8 Q. And you're quite sure that he spoke (Redacted)?

9 A. It was the language that he spoke to me in. He spoke to me in the (Redacted)

10 language.

11 Q. Thank you. Did I understand properly -- did I understand your testimony

12 properly -- did you indeed testify that (Redacted) was the commander of the

13 (Redacted) camp?

14 A. Yes. I know that (Redacted) was the commander there because I saw him there.

15 Well, the others called him "commander," so I knew that he was the commander.

16 Q. Very well. Thank you.

17 PRESIDING JUDGE FULFORD: You'll remember to take us out of private session

18 as soon as possible, Mr Desalliers.

19 MR DESALLIERS: (Interpretation) I fear that we will have to remain in

20 closed session for the rest of the cross-examination, your Honour.

21 PRESIDING JUDGE FULFORD: Thank you for the indication.

22 MR DESALLIERS: (Interpretation)

23 Q. Mr Witness, you said that -- well, I'll ask you a question. (Redacted)

24 (Redacted), he is indeed (Redacted) ?

25 A. Yes, he's my (Redacted).

1 Q. So, does he know your family well?

2 A. Yes.

3 Q. Was he also your guardian, (Redacted)?

4 A. Yes.

5 Q. As of what time did he become your guardian?

6 A. He interceded when I was chased away. He took me under his wing. He gave
7 me advice. He told me not to go elsewhere, and he told me to go back to school.
8 He told me that first. He gave me advice; he defended me. When people wanted to
9 chase me away, he defended me and that's when I knew that he was my guardian.

10 Q. Who was chasing you away?

11 A. The people in the village were chasing me away, saying that it was because
12 of me that the parents were dead. So they were saying I was responsible for the
13 death of my parents. So, the neighbours -- some of the neighbours, up until now,
14 don't want to see me.

15 Q. (Redacted), I suppose you know him well -- you knew him well before you
16 went into the army?

17 A. I know him well.

18 Q. You know him well now, but did you know him well before you went into
19 the army?

20 A. (Inaudible) (Redacted), he was the head teacher at the institute,
21 the (Redacted).

22 Q. Could you explain to us, when you met up with (Redacted) again after you
23 left the army?

24 A. I don't understand.

25 Q. When you left the army, you went back to your locality where you came

1 from, and at one point you saw (Redacted) again for the first time. Could you explain
2 to me how that happened, and when?

3 A. I don't know what to say, how to answer, because I don't understand.

4 Q. Do you remember, Mr Witness, the first time you saw (Redacted) again when
5 you left the army? Do you understand my question, Mr Witness?

6 A. I still don't understand.

7 Q. When you went into the army, you couldn't see your family, is that not
8 so?

9 A. Yes.

10 Q. Once you left the army, you were able to see some family members again,
11 were you not? Cousins, uncles, aunts?

12 A. Some. Some, up until now I haven't seen. So, I can't really say the time
13 that I saw them. It was -- it's not that I didn't want to see them, but they don't
14 want to see me.

15 Q. Very well. Now, my question is, when you left the army, you saw (Redacted)
16 (Redacted) for the first time after a certain period of time, is that not so?

17 A. Ever since I had come back from the army, yes, I had seen him.

18 Q. Very well. So, the first time you saw him once you got out of the army,
19 when was that? At what time? Was it as soon as you arrived? A month later? One year
20 later? When did you see (Redacted)?

21 Mr Witness, I would just add one item, and that might help you answer.
22 I'm not asking you for the number of hours or days. I would like to know approximately
23 how long was it after your leaving the army? Weeks, months, years? How much time
24 had gone by before you saw (Redacted) again for the first time?

25 A. For the first time? For the first time? When I left, it was then that

1 the people who had taken me had wanted me to go, wanted me to go away.

2 PRESIDING JUDGE FULFORD: Mr Desalliers, I'm not sure whether this is
3 going to produce a useful answer. You've now tried the topic from a number of different
4 approaches. Can I ask you to reflect carefully on whether it's worth pursuing it
5 still further? Again, I'm not stopping you, but I think a careful judgment is required.

6 MR DESALLIERS: (Interpretation) Very well. I will limit myself to one
7 additional question on this matter.

8 Q. So, when you saw (Redacted), could you just tell us where you were? Where
9 did you see (Redacted) for the first time after you left the army?

10 A. After I left -- first if -- I had seen him (Redacted), and at that point
11 he didn't see me.

12 Q. So you saw him, but he didn't see you; is that your answer?

13 A. Yes. Yes. I saw him. He was going by.

14 Q. Very well. Thank you. Do you know a person by the name of (Redacted)?

15 A. I know him.

16 Q. When you enrolled, were you going to the same school as him at that time?

17 A. He was also at our institute, like --

18 Q. Were you in the same class?

19 A. With (Redacted) was in second year.

20 Q. While you were in the army, did you see him, (Redacted)?

21 A. While -- while I was in the army?

22 Q. Yes, that's right.

23 A. While I was in the army, I didn't see him. I saw (Redacted) and the others
24 who were with me in that case -- in that camp.

25 Q. While you were in the army, did you hear of (Redacted)?

1 A. In the army, (Redacted) -- in the army that time, I didn't hear
2 of (Redacted), because in the army there were some people who had taken army names.

3 Q. Very well. Thank you.

4 PRESIDING JUDGE FULFORD: Mr Desalliers, as that brings you to the end
5 of the topic, I think we'll have a break now for the witness. And there's something
6 that I -- that we need to deal with shortly which doesn't involve the witness in
7 any event. Thank you very much, indeed.

8 Sir, we're going to have a break now, and we'll see you a little bit later
9 this morning, probably at 11 o'clock. Thank you very much. Thank you, Mr Lubanga;
10 but if you could remain just outside the door, because I'll invite you back in a
11 moment.

12 Closed session, please.

13 (The accused exits the courtroom)

14 *(Closed session at 10.22 a.m.) Reclassified as Open session

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

16 (The witness stands down)

17 PRESIDING JUDGE FULFORD: Public session, please.

18 (Open session at 10.23 a.m.)

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

20 (Mr. Waltenburg and Ms. Schon enter courtroom)

21 PRESIDING JUDGE FULFORD: Thank you very much for attending. Two short
22 matters that need to be dealt with. The first is there has been an issue as regards
23 a correction to transcript T-110. Having listened to a section identified by the
24 Defence, on equipment that enabled an enhanced version to be heard, the Defence

1 proposed a new passage really based on what the interpreters could hear. A deadline
2 was set of Friday, 15 January for any submissions on the proposal, none have been
3 received and we therefore authorise the change to transcript 110 as proposed by
4 the Registry and I think effectively as endorsed by the Defence.

5 The next issue concerns 270 and whether or not suitably redacted information
6 can be provided to the Defence as to the occasions when he has assisted applications
7 to participate. I think, in addition to the occasions, what is sought are the
8 application forms suitably redacted so as to make the applicants and any intermediaries
9 anonymous. Now, if that approach is taken, can I ask whether on behalf of the Victims
10 and Witnesses Unit there is any objection to this material being provided to the
11 accused?

12 MR WALTENBURG: Mr President, your Honours, I think we would need to consult
13 with the protection officer, possibly in consultation with the legal representative,
14 to see the specifics of the case before we can give a final position on that.

15 PRESIDING JUDGE FULFORD: Certainly. How long would you require,
16 Mr Waltenburg, to conduct that enquiry?

17 MR WALTENBURG: I would say, if the legal representative is available
18 to meet with us today, we could fairly quickly get an overview of the material.
19 How soon would you need our reply?

20 PRESIDING JUDGE FULFORD: Monday, 4 p.m.

21 MR WALTENBURG: Yes.

22 PRESIDING JUDGE FULFORD: Good, thank you very much. And we ask, indeed
23 encourage, the relevant legal representatives to cooperate, please, so that this
24 issue can be resolved quickly. Sorry to have brought you all this way for that
25 issue, but we're trying to resolve this without the need for an ex parte hearing

1 and I think it may be possible to deal with it by way of agreement, rather than
2 having to leave public session.

3 Thank you. I imagine in those circumstances, Maître Mabilie, you would
4 not wish to intervene at this stage, but only later if there are going to be difficulties?

5 MS MABILLE: (Interpretation) Absolutely, your Honour.

6 PRESIDING JUDGE FULFORD: Mr Waltenburg, I'm sorry -- just a moment. We
7 may be able to deal with something else now. Just give me a moment.

8 (The Trial Chamber confers)

9 PRESIDING JUDGE FULFORD: There is an issue, Mr Waltenburg. I'm not sure
10 whether -- well, I imagine you are fully aware of this in fact. There is an issue
11 in relation to the modalities of the Prosecution meetings with Defence witnesses
12 in The Hague and there is a suggestion that those meetings should take place in
13 the absence of the Victims and Witnesses Unit. Now, I think it's right to say that
14 the approach of the Bench thus far generally to meetings of this kind is that the
15 Victims and Witnesses Unit should facilitate the meetings and should be present.
16 If you're in a position to deal with the issue, do you have any submissions on that
17 proposal?

18 MR WALTENBURG: Yes, Mr President, your Honours. In fact, that's what
19 we thought we were coming into court to deal with. We have discussed it internally
20 in the Victims and Witnesses Unit this morning. If we understand the proposal
21 correct -- correctly, it would be that the witness arrives, the next day there would
22 be a consent meeting between the witness and the calling party and, if consent is
23 given, then the day after that the meeting with the Prosecution and the calling
24 party and the witness in question would take place and the proposal is without the
25 presence of the Victims and Witnesses Unit.

1 As you may recall from previous submissions on the matter and submissions
2 before the other Chamber also, the position of the Victims and Witnesses Unit is
3 that there is not a strict necessity for the VWU to be present at such meetings
4 unless there is an exceptional case with a particularly vulnerable witness. So,
5 with that particular part of the proposal we don't see any major problems. We would
6 still be in a position to logistically facilitate the consent meeting, but we also
7 do have a few very practical suggestions and if you find it opportune I can put
8 them forward right now.

9 So concretely our proposal would be that when the witness arrives we will
10 receive the witness, as we always do, provide the witness with a welcome briefing
11 and inform the witness that the following day, in this case the Defence, will meet
12 the witness in order to seek its consent on this meeting. The next day the Defence
13 will meet with the witness, seek its consent. Again, I will -- the Defence has
14 not indicated whether they would wish us to be present or not during the consent
15 meeting, but logically following from their proposal that we wouldn't be present
16 during the interview itself perhaps they wouldn't feel the necessity for us to be
17 present during the consent meeting either.

18 And then if the witness provides his consent, then the meeting could in
19 principle take place. We could facilitate. The only thing is there is a practical
20 side of that, and that is the experience with Witness 15 was that the VWU facilities
21 are not particularly suitable for an interview. We saw it with a number of people
22 taking place, the proposal to have stenographers and other technical personnel
23 available. I think we would need to look at whether there is a more suitable interview
24 venue than the VWU witness waiting rooms. So, that's one practical element that
25 we should look at.

1 The other practical element is in terms of the timing. The suggestion
2 by the Defence is that such a meeting should take place after the end of a hearing
3 and would take a maximum of three hours, but that possibly would bring us to 8 o'clock
4 in the evening for a witness. So I would say we would need to see that on a case-by-case
5 basis and perhaps the calling party and the Prosecution could play a role in that
6 to assess is the witness too tired to proceed or not, because it will be a lengthy
7 day for all concerned.

8 Now, one -- so those are really -- that's our point of view as far as
9 the practicalities are concerned. Now, more on the principled issue about such
10 a meeting taking place before the witness giving testimony. We had earlier raised
11 the concern that it could potentially lead to some confusion with the witness. It
12 is challenging enough to explain to a witness, to fully make the witness understand
13 the nature of proceedings, just according to the procedure that we have now. Adding
14 this additional element could introduce an additional element that would definitely
15 require a good thorough explanation.

16 So concretely what we suggest for that purpose is, as I said, VWU will
17 explain upon arrival to the witness that this would take place, if the decision
18 is made, but we would also say that there is -- there would clearly be a need for
19 both the calling party during the consent meeting to clearly explain to the witness
20 the purpose of this additional interview and, again if the witness gives its consent,
21 when the interview then actually takes place a clear requirement on behalf of both
22 of the parties to again make it very, very clear to the witness what this is all
23 about.

24 And again the modalities of this to be discussed, but it could be in the
25 terms of actually a script that may be reviewed by the Chamber for -- and, of course,

1 we could also have a look to see whether we feel that this gives a good, clear explanation
2 to the witnesses of what is about to happen.

3 Of course if the decision is made that these interviews will indeed take
4 place, it also raises the question are courtesy meetings then still necessary because
5 in effect the witness would have met both of the parties at least. Our initial
6 view would then be that then a courtesy meeting is probably no longer required.

7 Now, a last point, which is really also of the principle nature, is how
8 does this type -- these type of interviews, how do they square with the Chamber's
9 order on familiarisation and non-proofing, or non-contact between the parties and
10 the witness? We noted that the Defence suggested that, in effect, the order of
11 non-proofing would only come into effect the moment after the interview had taken
12 place. What we would suggest is that the principle be maintained that familiarisation
13 does begin from the moment the witness arrives in The Netherlands, that there is
14 a temporary lifting on the order of non-proofing for the purposes of the consent
15 being sought and the interview taking place and then the ban is effectively maintained
16 from after that as well and then the normal familiarisation procedure begins after
17 that. And the reason why we're saying that is that we believe it is a more manageable
18 approach to maintain that the principle of non-contact goes into effect from the
19 moment that the witness arrives here in The Netherlands.

20 Let me consult with my colleague whether there is anything else. No,
21 I have received the blessings from the associate legal officer, Ms Christine Schon.
22 So, those were our initial thoughts on the matter.

23 PRESIDING JUDGE FULFORD: Ms Samson, focusing on the three hours and
24 stenographers being present and there being records and the suggestion that is emerging
25 that Prosecution, Defence and where relevant representatives of the victims should

1 also be present, this seems to be developing from a meeting in which a few questions
2 of clarification so that lines of enquiry can be developed is to take place into
3 a full-scale deposition taking event, with the witness being taken through his or
4 her evidence once outside of court, with all of this equipment and all of these
5 people being present without the Judges, prior to the witness coming into court
6 and going over it all over again. And speaking entirely for myself - and I stress
7 that, because it hasn't been the subject of discussion between us - this really
8 isn't what I had in mind at all when leave was given for there to be pre-meetings.

9 Now, this is going to need very careful consideration, isn't it, because
10 this is -- this runs the risk of introducing a whole new layer of evidence which
11 the Bench is going to be asked to consider when we make our decision, very possibly
12 with lines of cross-examination being developed in court founded on what the witness
13 has said a few hours before outside of court? And there is a real question as to
14 whether this is in the interests of justice for there to be this two stage process.

15 MSSAMSON: Thank you, Mr President. It does indeed appear as if the process
16 has become something larger than was intended initially. However, from the
17 Prosecution's perspective, that is not in effect going to be the case. We will
18 be meeting with these witnesses, if they should consent, and appropriate recording
19 of that meeting must take place in the presence of the Defence and the Prosecution,
20 at the very least, who are entitled to be present.

21 The --

22 PRESIDING JUDGE FULFORD: I am sorry to interrupt. You've asked -- the
23 Prosecution have asked, or has indicated, the meetings won't take longer than three
24 hours. I mean this is a very long period of time to be asking a few questions of
25 clarification, or asking for matters of detail, to allow you to conduct final

1 investigations before you conduct your questioning.

2 MS SAMSON: In fact, the three hours is set out as a maximum time. At
3 this point it's not anticipated that it would take that long and in our discussions
4 with the Defence we haven't indicated that it would be that long, but in order to
5 bypass initial introductory issues and any technical difficulties that do take place
6 during the recording of any type of communication with the witness we have tried
7 to have a maximum time that could take into account all eventualities.

8 But the Prosecution's position has never been that it would take a full
9 three hours to interview some of these witnesses, for whom we have only a few
10 clarification questions. So if it can be of any assurance to the Bench, from the
11 Prosecution's position it is not -- these interviews are not intended to take hours
12 and hours, nor are they intended to be confrontational out of court cross-examinations
13 of the witnesses. They are indeed intended to be clarification meetings so that
14 we can prepare our cross-examinations more effectively given that the summaries
15 are not comprehensive or detailed, although we understand the Bench's position that
16 they're helpful.

17 PRESIDING JUDGE FULFORD: Thank you. Anything, Maître Mabilille?

18 MS MABILLE: (Interpretation) Mr President, one first observation. I
19 apologise. Obtaining the consent of the witness and then putting that problem to
20 him, we do not want the VWU, but the Defence, to speak to the witness about this.
21 I would tell the Trial Chamber that we find ourselves in somewhat a delicate situation
22 with reference to our witnesses, because a decision had not been handed down on
23 this subject and, therefore, with regard to a number of witnesses who are coming
24 here we have never broached the subject of them being heard by the Prosecutor before
25 they testify.

1 So, we would wish that the Chamber accept that we first speak to the witnesses
2 of this possibility. I believe that this is part of a duty that we have to fulfil
3 with regard to the witnesses. For a number of reasons, practical and other, we
4 were not able to inform them of this, and I believe that with regard to the work
5 that we have done with them this basic information needs to be given to them. Also,
6 to tell them that we had not spoken to this effect to them before because there
7 had not been any decision to the effect. So we, the Defence, had not realised the
8 repercussions of the decision that had taken -- that had been taken and we did not
9 realise that the Prosecution wished to meet with all of our witnesses.

10 So, with regard to this request for consent, we would like to obtain it,
11 of course. We take the commitment that we will only speak of this element of consent,
12 but we would wish that the witnesses who met with these -- the counsel who met with
13 these witnesses be the ones to broach the item of consent.

14 Now, secondly, Mr. President, with regard to the duration of these -- these
15 interviews, negotiation was somewhat difficult with regard to the time, and we were
16 of the opinion that the time was to be reduced. We do not have much time at hand,
17 and we thought that the -- or we hoped that the Office of the Prosecutor would be
18 vigilant on this subject and that we would come to an agreement together and that
19 this duration would be a maximum duration of time.

20 Now, with regard to one of the concerns raised by VWU, we are four counsel.
21 We cannot be everywhere. We can't be in the courtroom and also assisting or being
22 present in these interviews. But in view of the new calendar, we will be sitting
23 alternately, so we might be able to use the mornings where we are not sitting in
24 order to be present and avoid over-lengthy days as a result. But there are my
25 observations, in a nutshell.

1 MS MASSIDDA: Can I, your Honour? Thank you, your Honour. I'm sorry to
2 intervene late but we are aware as legal representative of the extent of the agreement
3 only now, so we are learning at the hearing about the kind of agreement and modalities
4 for the contacts between the Defence and Prosecution with the first witnesses.

5 We have two issues for the Chamber. The first one concern, I've heard
6 that the Prosecution intend to record the meetings with the Defence witnesses. Now,
7 at this point in time all the legal representative teams have received from the
8 Defence disclosure of the summary of evidence and eventually also material related
9 to Defence witnesses which are directly linked with victims that we represent. So
10 we have already this kind of material. Now, the problem that we think it's necessary
11 to settle is what about the recording of the meetings for the Defence witnesses
12 for whom the Defence has recognised that the personal interest of victims are affected?
13 And, in our submission, this recording should be communicated to the concerned legal
14 representatives.

15 The second issue that we would like to raise briefly is the presence of
16 the concerned legal representative during the meetings between the Defence witness
17 and the Prosecution only for the Defence witnesses concerned by the personal interest
18 of each of our client.

19 Finally, in relation to the possibility just mentioned by the Victims
20 and Witnesses Unit of a possibility that the courtesy meeting will not be necessary,
21 since there is no plan for the presence of a legal representative during the meetings
22 at this point of time, if a legal representative is authorised to question a Defence
23 witness, we submit that the same courtesy meeting as it was provided for the Prosecution
24 meeting -- sorry, for the Prosecution witness should also be in place for the Defence
25 witness when a legal representative is authorised to question. Thank you.

1 PRESIDING JUDGE FULFORD: Thank you very much, Ms Massidda. This is
2 obviously a delicate and important matter which we're going to take time to consider,
3 so that there will be no extemporary decision now. Thank you all very much for
4 your contributions. We'll take the mid-morning break now.

5 Yes, Maître Mabilille.

6 MS MABILLE: (Interpretation) I apologise, Mr. President, I just had a
7 small thought to share that I forgot. The courtesy meeting, I believe that it should
8 be held because it is the counsel who will examine and cross-examine the witness
9 who should be present at this meeting, and this might not be the same counsel who
10 was present at the interview. So, it would seem to me that the courtesy stage should
11 be maintained in this situation.

12 PRESIDING JUDGE FULFORD: Thank you all very much. 20 past 11:00.

13 THE COURT USHER: All rise.

14 (Recess taken at 10.50 a.m.)

15 (Upon resuming at 11.21 a.m.)

16 *(Closed session) Reclassified as Open session

17 THE COURT OFFICER: All rise. Please be seated.

18 PRESIDING JUDGE FULFORD: Witness, please.

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

20 (The witness enters the courtroom)

21 (The accused enters the courtroom)

22 PRESIDING JUDGE FULFORD: Private session, please.

23 *(Private session at 11.22 a.m.) Reclassified as Open session

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

25 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

1 MR DESALLIERS: (Interpretation)

2 Q. Mr Witness, do you have members of your family living in (Redacted),
3 (Redacted)

4 A. Members of my family?

5 Q. Yes, are there any members of your family who live at that location?

6 A. Yes.

7 Q. Can you tell us who they are?

8 A. In the past, there were descendants of the family (Redacted). There are
9 some of them who live (Redacted).

10 Q. (Redacted), is it -- is he your father?

11 A. Yes, that is his name. There are others who also bear that name.

12 Q. Now, who are those members of your family who currently live at that location?

13 A. I know about the family members who live there, but I do not know
14 when -- whether they still live there, but in the past my uncles lived there.

15 Q. Do you know whether you still have any members of your family living there
16 today?

17 A. Members of my family? I am asking the question whether you are talking
18 about the members of my family?

19 MS SAMSON: I understood the witness to have answered that question. He
20 said "I do not know whether they still live there" at lines 20 to 21 of page 23.

21 PRESIDING JUDGE FULFORD: Well, Mr Desalliers?

22 MR DESALLIERS: (Interpretation) The answer I have is not necessarily
23 very clear. My initial question was, "Do you have members of your family living
24 there?", and the answer was, "Yes."

25 PRESIDING JUDGE FULFORD: Try again, then.

1 MR DESALLIERS: (Interpretation)

2 Q. I am talking of members of your family, Mr Witness, either uncles, aunts,
3 cousins. Are there any members of your family at all currently living at that place?

4 A. At this time I cannot tell you specifically. I am not living with that
5 family. The descendants (Redacted), we do not have any contacts currently. Ever
6 since I was at (Redacted) we do not even speak with their children.

7 I do not ask where they live, but I know that we were (Redacted) when my parents were
8 there with the other uncles.

9 Q. Thank you. Did your father work in the inspectorate for secondary and
10 professional education (Redacted)?

11 A. My father -- my father was not working in (Redacted).

12 Q. If I say PESP subdivision -- or rather, EPSP subdivision, does that ring
13 a bell?

14 A. I know that my father was a farmer, and when he came back from the fields,
15 (Redacted). And I didn't know that he worked elsewhere.

16 Q. Mr Witness, I am sorry to touch upon such a sorrowful topic, but could
17 you tell us whether you've already spoken about the death of your mother with your
18 guardian, (Redacted)?

19 A. I beg your pardon?

20 Q. Have you spoken to (Redacted), your guardian, about the death of your mother?

21 A. Yes. It wasn't just him to whom I had told. I had talked at the (Redacted)
22 (Redacted) about that, and we were asked to go. There was also someone else who was
23 asked to take part, and I told them and they knew as well.

24 Q. Thank you. I would like to touch upon another matter that was mentioned
25 earlier today; namely, (Redacted). I have a question about the statement

1 that you provided in August last. And could you move to tab 1, please, and look
2 at page 2.

3 PRESIDING JUDGE FULFORD: Yes, Mr Keta.

4 MR KETA: (Interpretation) Thank you, your Honour. I think that we should
5 redact the name of (Redacted)
6 (Redacted)

7 PRESIDING JUDGE FULFORD: If you look at the green light on the Bench
8 in front of the witness, you will see that we are in private session, Mr Keta.

9 Yes, Mr Desalliers, please carry on.

10 MR DESALLIERS: (Interpretation)

11 Q. Mr Witness, I would like to quote a passage from your statement. I will
12 read it out and then I will ask you a few questions. I quote the very last paragraph
13 on page 2: "From the (Redacted) transit camp, they took me to the training centre
14 (Redacted). The militiamen convinced us that we should not run away or else we would
15 be killed. Often they used (Redacted), who was (Redacted), as a trick, a strategy,
16 to convince us to join up. (Redacted) said that we could earn easy money and we would
17 be happy within the military service of the UPC. He showed us his motorcycle, his
18 wife and his nice house as a proof of his statements. And all of that was meant
19 to lure us in."

20 So my first question, Mr Witness, is: The wife and the house of
21 (Redacted) were located where exactly?

22 A. In the first camp, well, the other soldiers stayed in the camp, in the
23 little houses, or the huts. Some commanders lived in houses that were there
24 surrounding the camp. The house -- houses, *maisons* made out of brick with sheet
25 metal roofs. They were not their houses.

1 Q. Am I to understand from what you just said that (Redacted)'s house
2 was in the first camp, in the (Redacted) camp?

3 A. Yes.

4 Q. Thank you. And you mentioned in your statement, which I just quoted,
5 that (Redacted) was (Redacted). So, do you still maintain that (Redacted)
6 was (Redacted)?

7 A. Because he spoke to me in that language, in the (Redacted) language. The name,
8 it's an (Redacted) name.

9 Q. Thank you.

10 MR DESALLIERS: (Interpretation) Mr President, I just to -- would like
11 to ask you just one moment so that I could consult with my colleague.

12 (Defence counsel confer)

13 Thank you, Mr Witness. I have no other questions, your Honour.

14 PRESIDING JUDGE FULFORD: Mr Keta, we are not encouraging it, but is there
15 anything pressing that you wish to ask finally by way of re-examination?

16 MR KETA: (Interpretation) Yes, your Honour.

17 PRESIDING JUDGE FULFORD: In private or in public, Mr Keta?

18 MR KETA: (Interpretation) In private session, please, because I will
19 be mentioning some names.

20 PRESIDING JUDGE FULFORD: All right. You will bear in mind the length
21 of time your client has been in the witness box already, but please proceed.

22 We will remain in private session for the time being.

23 MR KETA: (Interpretation) Yes, your Honour. There are two small
24 questions to get some details.

25 Questioned by Keta: (Interpretation)

1 Q. Now, good morning, Mr. Witness.

2 A. Good morning.

3 Q. I am going to ask you some questions about the (Redacted) camp, and the second
4 question will have to do with Commander (Redacted).

5 Now, during your testimony yesterday, you talked to us about (Redacted)
6 is that a town or a village?

7 A. (Redacted) I had refused when -- when they -- it's -- it's a village. That's
8 what I said.

9 Q. Thank you. You also talked to us and you said that the camp was in the
10 bush. Now, between -- how -- what distance was it between the actual camp and the
11 village of (Redacted)?

12 I will put the question differently. Was it far away?

13 A. It wasn't far away. It wasn't too far away.

14 Q. Thank you. And when there was the fighting (Redacted), was it in the camp
15 or in the village? Could you give us some more information about that?

16 A. The fighting, sometimes we were attacked when we were in the camp. When
17 we were in the camp that time, we were in holes, holes dug in the ground. And since
18 we were in these holes in the ground, there was no way to resist. We couldn't move
19 for -- if we saw that the enemy were going back, we would come out and we would
20 chase them.

21 Q. Thank you. I am going to ask you this question about Commander (Redacted).
22 Now, during your testimony you said that he was the one who interceded. What words
23 did he say to you in (Redacted)? Could you give us a French translation of what he said
24 to you?

25 A. I don't understand your question.

1 Q. You said that -- you said that two people intercepted you, including (Redacted),
2 and they spoke to you in (Redacted). Could you tell us exactly what they said, exactly
3 what words they said?

4 PRESIDING JUDGE FULFORD: Just before you answer. Mr Desalliers?

5 MR DESALLIERS: (Interpretation) sorry to interrupt, your Honour, but I
6 don't think he said that he was spoken to in (Redacted) It may have been -- it was
7 a while back, but I don't think that he said that. My memory -- if my memory serves
8 me well, I don't think he said that he had been intercepted and that they spoke
9 to him in (Redacted).

10 PRESIDING JUDGE FULFORD: Right. Well, two stages, Mr Keta. Can you
11 establish what the language was and then, having done so, what was said, please.
12 So, two questions, rather than one.

13 MR KETA: (Interpretation)

14 Q. First of all, the people who interceded or -- what language did they speak
15 to you in?

16 A. It wasn't in (Redacted). It was -- it was in Swahili.

17 Q. And you identified these people who interceded?

18 A. I didn't identify them. They were talking each -- they weren't talking
19 one after another; they were talking together. They intimidated me. And they said
20 to me that I had to -- to come to -- to go with them.

21 MR KETA: (Interpretation) Your Honour, I have no further questions.

22 PRESIDING JUDGE FULFORD: Thank you, Mr Keta.

23 Public session, please.

24 (Open session at 11.43 a.m.)

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

1 PRESIDING JUDGE FULFORD: The Judges want to thank you profoundly for
2 the contribution that you have made to this trial. This is something that we have
3 said to all witnesses, and you are no exception. Giving evidence is not easy,
4 particularly when you have had to deal with some issues which undoubtedly will have
5 been difficult for you. You have been extremely patient, and I imagine that the
6 process has taken far longer than you anticipated it was going to last.

7 Mr Keta will advise you in due course as to what other role you and he
8 will be playing in this trial in order to advance your interests, but you leave
9 here now at the conclusion of your evidence with our thanks.

10 Closed session, please.

11 (The accused exits the courtroom)

12 *(Closed session at 11.45 a.m.) Reclassified as Open session

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

14 PRESIDING JUDGE FULFORD: Usher, you needn't wait until the very last
15 blind comes down. There is no one upstairs. Thank you.

16 Sir, we are very grateful. Your evidence is completed now and if you
17 would very kindly go with the usher, please. Thank you very much.

18 (The witness is excused)

19 PRESIDING JUDGE FULFORD: Public session, please.

20 (Open session at 11.46 a.m.)

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

22 (The accused enters the courtroom)

23 PRESIDING JUDGE FULFORD: A decision is needed on the Prosecution's 15
24 December 2009 application, document 2212, for a variation of protected measures.
25 We are acutely conscious that this is a confidential ex parte Prosecution only matter.

1 For the reasons given in the application, and applying the approach set out in the
2 Chamber's decision of 18 November 2009, document 2190, paragraphs 26 and 27, we
3 uphold the disclosure regime in this trial as regards document DRC-OTP-0087-0211.

4 In reaching that conclusion, we consider that the reasons that we have
5 already set out on 13 December 2007, transcript 66, page 325, still apply. We ask
6 that those reasons are brought to the attention of Trial Chamber II, although
7 ultimately it is for Trial Chamber II to decide whether or not additional disclosure
8 is appropriate in the Katanga and Ngudjolo trial.

9 We need now to deal with the protective measures suggested for the next
10 witness, 229. What is proposed is essentially in line with the measures for the
11 last witness, but with one very important additional feature and it is that he is
12 not asked to read any text during the course of his evidence. If there are passages
13 within documents that counsel wish the witness to focus on, then there will be reading
14 assistance provided in the form of a Lingala interpreter who will sit close to the
15 witness when he is giving his evidence.

16 Are there any submissions by anyone in relation to these proposals?

17 MS MABILLE: (Interpretation) Just to mention, your Honour, that the
18 position of the Defence is the same for this witness as for the previous one. I
19 suppose that it is not necessary to say any more; that is we will have to ask a
20 number of questions about his identity, his parents and other aspects.

21 PRESIDING JUDGE FULFORD: We understand that, Maître Mabilille. And, of
22 course, you will use the sensitivity in the questions that are asked that you have
23 demonstrated historically during this trial.

24 I want to ask the court officer whether there are any additional seating
25 arrangements that need to be provided for the area where the witness is going to

1 be sitting if there is going to be an assistant and an interpreter, as it were,
2 sitting alongside him.

3 Just while some slight modifications are made, we are going to rise just
4 briefly. Please don't go very far.

5 THE COURT USHER: All rise.

6 (Recess taken at 11.53 a.m.)

7 (Upon resuming at 12.02 p.m.)

8 *(Closed session) Reclassified as Open session

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

10 PRESIDING JUDGE FULFORD: Witness, please.

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

12 (Witness A/0229/06 enters the courtroom)

13 (The accused enters the courtroom)

14 PRESIDING JUDGE FULFORD: Good morning, sir. Can you hear me?

15 THE WITNESS: Yes.

16 PRESIDING JUDGE FULFORD: Good. Excellent. Now, as you know, in a few
17 moments' time, your evidence will begin after you've taken the solemn undertaking.
18 Can I ask you, please, try not to be nervous. The Judges are here to ensure that
19 you are treated properly and that nothing unfair or unreasonable happens during
20 the course of your evidence.

21 Listen carefully to the questions and answer them to the best of your
22 ability. Can I ask you, please, not to speak too quickly. And if you can, to leave
23 a slight pause before you answer so that the people who are taking a record of your
24 evidence are able to get everything down. But the most important thing is, don't
25 be nervous when giving evidence.

1 Sir, we are very grateful to you for coming to help with the interpretation
2 of this witness's evidence. And in a moment, I am going to ask you to assist the
3 witness in taking the solemn undertaking. You will need to read this out for him,
4 possibly in sections, so that he can then repeat what you have said. And I hope
5 that the usher has provided the interpreter with the words that need to be used.

6 Your function, sir, will be today in relation to documents of this kind.
7 If there are things that need to be read out - or rather, read to the witness - then
8 that will be the job that we ask you to fulfil. Good.

9 Let us go, please, into public session so that the witness in a moment
10 can take the solemn undertaking.

11 (Open session at 12.07 p.m.)

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

13 PRESIDING JUDGE FULFORD: All right. I am now going to ask the interpreter
14 to read over the words of the solemn undertaking, perhaps breaking it up into portions
15 so that the witness can repeat what is said.

16 WITNESS: A/229/06 (Sworn)

17 (The witness answers through interpretation)

18 PRESIDING JUDGE FULFORD: Well done. That was excellently fulfilled.
19 Thank you very much. Now, in questioning and in giving answers, it is going to
20 be critical that no one speaks too quickly and that there is a real gap built in
21 between answers and questions, and questions and answers. So, can everybody, please,
22 have that absolutely in mind; otherwise, we are not going to have interpretation
23 or a proper transcript.

24 Now, Mr Keta, I imagine your first questions will be in closed session -- or
25 rather, private session. Is that right?

1 MR KETA: (Interpretation) Indeed, Mr President.

2 PRESIDING JUDGE FULFORD: Private session, please.

3 *(Private session at 12.09 p.m.) Reclassified as Open session

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

5 PRESIDING JUDGE FULFORD: Yes, Mr Keta.

6 MR KETA: (Interpretation) Thank you, Mr President, for allowing me to
7 address the Court.

8 Questioned by Mr Keta: (Interpretation)

9 Q. Good afternoon, Mr Witness.

10 A. Good afternoon.

11 Q. My name is Joseph Keta Orwinyo, and I am a lawyer representing your interests
12 before this Court. I shall be putting a number of questions to you with regard
13 to your situation. First and foremost, I would like for you to provide us with
14 your first names and surname, or family name.

15 A. My name is (Redacted).

16 Q. Could you give us your date of birth?

17 A. I was born on (Redacted).

18 Q. And where were you born?

19 A. I was born (Redacted).

20 Q. How old were you at the time of the events examined before the Court?

21 A. I beg your pardon?

22 Q. How old were you at the time of the events referred to the Court?

23 THE INTERPRETER: The Lingala interpreter did not hear the response given
24 by the witness.

25 MR KETA: (Interpretation)

1 Q. In the year 2003, how old were you?

2 A. I was 13 years of age in the year 2003.

3 Q. And what were you doing in that year?

4 A. I was a pupil.

5 Q. Where precisely were you a pupil?

6 A. I was a pupil at the (Redacted).

7 Q. In the period or during the period of 2003, can you recall what happened
8 in your life?

9 A. I was a pupil at the (Redacted), and this was during the examination
10 period. It was in the month of April 2003.

11 Q. Could you tell us what happened in April 2003?

12 A. In the year 2003, I was a pupil at the (Redacted). I lived
13 in (Redacted), and that was where I conducted my studies. This was during the examination
14 period at the end of the school year. When I had finished my examinations -- we
15 were told by our teachers that once we had finished our examinations, we were to
16 go home immediately. And upon finishing my exam, I was on the way home, and at
17 the entry to (Redacted) I came upon the militiamen of Thomas Lubanga.

18 MR KETA: (Interpretation) Mr President, I believe that we can move into
19 open session.

20 PRESIDING JUDGE FULFORD: Thank you very much, Mr Keta.

21 Public session, please.

22 (Open session at 12.16 p.m.)

23 MR KETA: (Interpretation) You may continue, Mr Witness.

24 PRESIDING JUDGE FULFORD: Yes, Mr Keta.

25 MR KETA: (Interpretation)

1 Q. Could you please continue with your account?

2 A. When I chanced upon these militiamen, it was at the entry to (Redacted) and
3 they asked me to move back. I reacted by asking them, "To go where?" And they
4 said to me, "Little boy, move back and we shall go together." We went away -- or
5 we left together. We took another direction, the direction of Sana. And upon
6 arriving in Sana, we remained there for some time.

7 We then continued on our way, but it took us some time to reach our destination.
8 And this was when I asked the question, "Where are you taking me? I was going home
9 from school. I haven't reached my house yet." They asked me to continue in their
10 company. They gave me a bag, and we continued on our way.

11 Upon arriving at a location called * Nzaa, we went through * Nzaa and
12 we carried on. We arrived in Mai. And in Mai, we did not come to a halt. We carried
13 on. We went until we reached -- we carried on until we reached Nioka. Upon arriving
14 in Nioka, we carried on and we took a path through the bushes. We then left the
15 main road behind us and took a path. We continued until we reached their camp.
16 This camp is located ten kilometres away from Nioka village. We remained there.
17 We spent the night there.

18 And I asked the question why they had taken me there? They told me that
19 I should not carry on putting questions to them. We spent a second night in that
20 location, and we spent a third and a fourth night, and a fifth. And after five
21 days, we left in the direction of Bule. We went towards Bule. We travelled for
22 two days. And upon reaching Bule, we stopped and we spent the night there. On
23 the next day, they asked us to start training. I was very concerned. They asked
24 me why it was that I was sad? And I said -- well, I didn't answer. They gave me
25 some cannabis. They told me that the cannabis would do away with my concerns which

1 were gaining ground. I refused.

2 On the next day, we started training. It was not training in the true
3 sense of the word. We spent an entire week training. This training involved the
4 dismantling of a weapon and the putting together of a weapon. After a week of training,
5 I was told that I was not suited or apt; and they told me that they were going to
6 attack Bunia. Once again, they gave us some drugs with a view to giving us the
7 courage to affront, or confront, or stand up to or withstand the attack in Bunia.

8 When we went there, we set off in the direction of the bush, and we walked
9 for four days before reaching Bunia. Before attacking Bunia, all of my friends
10 remained hidden in the bush. The commanders overseeing us requested that the
11 kadogos -- that is to say "we," the kadogos -- go and assess the situation before
12 attacking Bunia.

13 We abandoned everything. We donned civilian attire and we went into Bunia.
14 We went as far as the market. Upon arriving at the market, we were given the sum
15 of 500 Francs in order to sell peanuts. We divided into groups; everyone went in
16 a separate direction. I was asked to go and spy on the camps with a view to ascertaining
17 the activities conducted there.

18 We spent the entire day assessing the situation, after which we returned
19 to meet our friends. Upon our return, I explained everything that I had seen, and
20 we started our attack at 6 o'clock. We started firing until 10 o'clock. At 10
21 o'clock, we rested for awhile. And after this time of rest, we once again began
22 shooting. We shot until 3.00 p.m., a time at which we managed to take over the
23 town of Bunia.

24 When Bunia fell into our hands, it was a great source of joy. During
25 the battle of Bunia, I received a blow. We remained in Bunia for one week, after

1 which we left, but we kept one group in Bunia. We went as far as Kobu, where the
2 food we received was very bad and I got diarrhoea for at least three days. I received
3 treatment at (Redacted).

4 After this, we went as far as Mongwalu. Once we arrived in Mongwalu,
5 we met up with our friends, because we had divided up. When we went to Bunia, another
6 group had gone to Mongwalu. When we got to Mongwalu, we were able to enter that
7 place easily. Once we got to Mongwalu, we set up camp for two days.

8 The next day the Lendu fighters, who had come from Mbau arrived. They
9 arrived in Mbau and they stayed there for three days without us knowing. When they
10 arrived, they started to shoot. At that time we were well aware that they were
11 not just shooting randomly, or in great bursts. That's how the battle began. It
12 started at 9 a.m. and the shooting continued. The battle continued until 4 p.m.
13 The battle went on.

14 At that point I realised that the situation was terrible and that I wasn't
15 able to deal with it, and that is how it came to be that I decided to go into a
16 house and there I met two of my friends. When we met each other I said to them,
17 "Let us flee." One of them, (Redacted), was crying. He was tired; tired of the battle.
18 He couldn't move forward any longer. He wanted to kill himself. I said to him,
19 "No, let's go," and I took him by the hand.

20 We went out and we went to Plito. When we arrived in Plito, that was
21 about 6 in the evening. At 6 p.m., we went out and we went into the bush. We got
22 to Beju. We were around Beju and that is right beside the spot where we were. There
23 we said to ourselves that we mustn't stay there, that we had to move on, and we
24 continued as far as Ariwara.

25 We were five kilometres away from Ariwara and we said to ourselves that

1 we could rest. We started to think and I said, "Let's leave all we have here so
2 that they won't recognise us; so people won't recognise us as fighters." So we
3 left all our possessions - all our possessions - and we hit the road.

4 And then a vehicle coming from Ariwara drew close to us. When that vehicle
5 arrived we realised that the person on it spoke our language, and they had a flat
6 tyre at that point. We begged them. We begged them to look at us and see what
7 state we were in and we asked them to take us with them. They agreed.

8 We got into the vehicle and (Redacted)

9 (Redacted)

10 (Redacted). When we arrived, I went into the house and I found no one there. I
11 said to myself, "What can I do?", and at that point neighbours met me and when they
12 saw me they started to cry. At that point I asked them, "Where is mother?", and
13 they said to me then, "Come. Sit down."

14 And then I met my little sister. And she said to me that she had learned
15 that militia men of the FNI had come there and brought out our parents and they
16 started to ask them for money, but they didn't have any. When they asked for the
17 money, they said -- and they said that they didn't have any, they took them and
18 took them away and even today I don't know where they are. I don't know if they
19 are still alive, or not. I think that I will stop here.

20 PRESIDING JUDGE FULFORD: Sir, you have done extremely well. Would you
21 like a break now, or are you happy to go on?

22 THE WITNESS: Yes.

23 PRESIDING JUDGE FULFORD: Right, good.

24 THE WITNESS: Excuse me.

25 PRESIDING JUDGE FULFORD: That's perfectly understandable. We shall

1 break for lunch now. Closed session, please. Thank you, Mr Lubanga.

2 (The accused exits the courtroom)

3 *(Closed session at 12.41 p.m.) Reclassified as Open session

4 PRESIDING JUDGE FULFORD: Yes, thank you, usher.

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

6 (The witness stands down)

7 PRESIDING JUDGE FULFORD: Thank you all very much. We will sit again at
8 half past 2.

9 (Luncheon recess at 12.42 p.m.)

10 (Upon resuming at 2.30 p.m.)

11 *(Closed session) Reclassified as Open session

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

13 PRESIDING JUDGE FULFORD: Witness, please.

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

15 (The witness enters the courtroom)

16 (The accused enters the courtroom)

17 PRESIDING JUDGE FULFORD: Thank you, Mr Lubanga.

18 Sir, are you happy to continue?

19 THE WITNESS: Yes, I am ready to continue.

20 PRESIDING JUDGE FULFORD: Could you just pause for a moment then, please.

21 Public session.

22 THE WITNESS: So I saw that mother wasn't there.

23 (Open session at 2.33 p.m.)

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

25 PRESIDING JUDGE FULFORD: Thank you very much, indeed, sir. You were about

1 to tell us that you'd seen that your mother wasn't there.

2 THE WITNESS: Yes, of course, I found that mother was not there. My little
3 girl -- my little sister that told me that the FNI militiamen had come and taken
4 mother, and taken her, and they had asked for money; but since they didn't have
5 money -- and because they didn't have money, they were taken hostage. They were
6 taken away. And since that time, we have never learned where they are. And when
7 she told me that I didn't have any family there, and since I didn't have any family
8 there, (Redacted) took care of me and brought me to his home. That's what
9 happened.

10 MR KETA: (Interpretation)

11 Q. Good afternoon, Mr Witness.

12 A. Good afternoon, Maître Keta.

13 Q. In your testimony, you told us that along the way to the school the soldiers
14 took you. Were you alone?

15 A. Yes, I was alone.

16 Q. Now, what group -- what armed group did these soldiers belong to?

17 A. They were militiamen of Thomas Lubanga.

18 Q. How could you know that they were the soldiers reporting to Thomas Lubanga?

19 A. Well, it was because of what they were wearing.

20 Q. Could you describe what they were wearing, their attire?

21 A. They were wearing camouflage clothing.

22 Q. This morning you said that they took you to the camp, a camp that was
23 10 kilometres away from where you were. Can you give us the name of that camp?

24 A. No, I don't know the name of the camp, because we didn't spend a lot of
25 time there.

1 Q. Once you had gotten to the camp, you said that you had these exercises
2 to do. Were there some girls amongst the group?

3 A. Yes, there were also girls in these camps.

4 Q. What age might these girls have been, approximately?

5 A. I couldn't estimate their age.

6 Q. Mr Witness, what happened to you during the exercises or the training,
7 if you were unable to do an exercise?

8 A. The exercise -- when they asked you to do an exercise, they gave you a
9 weapon. They showed you how to disassemble it; and if you were able to disassemble
10 it, that was the -- but if you weren't able to disassemble it, that was when you
11 had a problem.

12 Q. And if you were unable to disassemble the weapon, what might have happened
13 to you?

14 A. We were whipped. We were whipped immediately after.

15 Q. Mr Witness, still speaking of the camp, you told us about the meals that
16 were prepared. What kind of meals did you have when you were in the camp?

17 A. Yes. It was common food, beans with corn, but it was the way that they
18 prepared the food that was bad.

19 Q. Who prepared these meals?

20 A. S-quatre because that was -- people took turns preparing the food, but
21 it was S4.

22 Q. Still speaking of the camp, Mr Witness, were there disciplinary rules?

23 A. Yes, we had disciplinary rules.

24 Q. Could you describe a few of these rules to me?

25 A. Well, what I know is as follows: First of all, we had to respect the

1 commanders.

2 Q. How many commanders did you have in the camp?

3 A. In the camp, in that case, we just had one commander.

4 Q. Could you tell us his name?

5 A. (Redacted).

6 Q. And what would happen when you did not obey the orders of the commander?

7 A. If you did not obey the orders, you would be whipped or you would be put
8 in prison. That's how things were.

9 Q. You just said something about being put in prison. Could you tell us
10 what the imprisonment was like? What did it consist of?

11 A. Well, what happened - if you didn't respect the rules - you might be thrown
12 into water or into a hole. You might be tied up.

13 Q. And you, yourself, were you subject to these forms of punishment?

14 A. No, not me.

15 Q. You talked about the UPC soldiers. Do you know the name of their leader?

16 A. Their leader?

17 Q. Yes.

18 A. The only leader that I know of is Thomas Lubanga.

19 Q. Mr Witness, I'd like to move on to your presence in Bunia. You said that
20 once you were there, you were used as a scout, a forward scout, so to speak. Were
21 there other children with you?

22 A. Yes. When we were given the mission to go spy on Bunia, we were sent
23 out. Some were sent to the market; some of us went into the town. (Redacted)
24 (Redacted)

25 Q. Which camp are you speaking of, Mr Witness?

1 A. The camp was at the airport.

2 Q. You also described your itinerary after Bunia, and then Kobu and then
3 Mongbwalu. You had other friends with you along the way. And what were their names
4 in Mongbwalu?

5 A. Are you talking about the friends that we fought with, and when I went
6 into the house and I found them in the house? (Redacted), those were the
7 people.

8 MR KETA: (Interpretation) We would like to know if it is possible to
9 quote the names of certain children who took part. I could -- perhaps we could
10 go into closed session.

11 PRESIDING JUDGE FULFORD: Private session. And it may be some portions
12 recently given will need to be redacted. Yes. Private session, please.

13 *(Private session at 2.45 p.m.) Reclassified as Open session

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

15 PRESIDING JUDGE FULFORD: Yes, Mr Keta.

16 MR KETA: (Interpretation)

17 Q. You spoke of Mongbwalu and you met other friends. Could you give the
18 names of those friends?

19 A. Yes. I met those friends at the house, (Redacted) were their names.

20 Q. Mr Witness, in the various battles at Mbau, what was your role during
21 that fighting? Did they give you a weapon?

22 A. No, we didn't fight there. We did not wage war. What happened there,
23 well, you see, the Lendu came and they found us there.

24 Q. Thank you for that information, but --

25 PRESIDING JUDGE FULFORD: Do we still need to be in private session - given

1 the names have now been dealt with - or are you going on to deal with more names?

2 MRKETA: (Interpretation) No. I think we can go into open session because
3 there's no other --

4 PRESIDING JUDGE FULFORD: Thank you. Public session, please.

5 (Open session at 2.47 p.m.)

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

7 PRESIDING JUDGE FULFORD: Yes, Mr Keta.

8 MR KETA: (Interpretation)

9 Q. Mr Witness, when you decided to run away, was it from Mbau?

10 A. No, it was from Mongbwalu.

11 Q. Were you afraid to flee, to run away?

12 A. Yes, we were afraid, because -- we couldn't face the attack, so we were
13 afraid.

14 Q. And what would have -- what would the punishment have been if you had
15 been caught after trying to run away?

16 A. For example, during that fighting, the commander wasn't there. We were
17 sent out in groups. We were sent out in various groups, different groups.

18 Q. Now, during the fighting, were you injured, Mr Witness?

19 A. No, I was injured during the attack on Bunia.

20 Q. Could you describe the exact circumstances surrounding that injury?

21 A. No. It was during the attack on Bunia that I was injured. After the attack,
22 it was a bullet that had been lost, and it came from far and it hit me in the foot.

23 Q. Did you receive appropriate care after you were shot in the foot?

24 A. No, I didn't get any care.

25 Q. Mr Witness, I have a series of three questions. Three final questions,

1 your Honour. Now, what are the consequences of your time doing military service
2 within the UPC?

3 A. Well, it wasn't my -- I wasn't -- I didn't enrol of my own volition.

4 Q. Mr Witness.

5 A. Yes?

6 Q. Are you satisfied with the time that you spent within the UPC armed group?

7 A. No, not at all.

8 Q. Since you're not happy, what would you like for today and for the future
9 for yourself?

10 A. Well, what I'm asking for is for help in resuming my education.

11 Q. Now, when you say that you're not satisfied with the time that you spent
12 within the UPC, why is that so?

13 A. No, I'm not happy. Why? Because they found me and I was a school child
14 and I did not want to become a soldier. It was not of my volition.

15 Q. Mr Witness, what do you expect from this trial? This is my last question.

16 A. Could you please repeat the question?

17 Q. By taking part in this trial, what do you expect of the Court?

18 A. Well, I don't have an answer.

19 MR KETA: (Interpretation) I thank you, Mr Witness.

20 I have concluded, your Honour.

21 PRESIDING JUDGE FULFORD: Ms Struyven.

22 MS STRUYVEN: (Interpretation) Thank you, your Honour.

23 Questioned by Ms Struyven: (Interpretation)

24 Q. Good afternoon, Mr Witness. I am Olivia --

25 A. Good afternoon.

1 Q. Olivia Struyven, and I represent the Office of the Prosecutor, and I'm
2 going to ask you a few additional questions about the events that occurred in 2003.
3 You explained that you were recruited while you were along the way, on the path,
4 by your house. Do you remember how many of Thomas Lubanga's militiamen took you?

5 A. I don't know the specific number.

6 Q. Do you remember whether they were armed or not?

7 A. Well, they had their own weapons.

8 Q. You explained to the Court that they told you that, "Little fellow, we
9 are going off together." Do you remember then whether they asked you your age?

10 A. No, they didn't ask me my age.

11 MS STRUYVEN: (Interpretation) Your Honour, I have two questions for
12 private session, with your leave.

13 PRESIDING JUDGE FULFORD: Private session, please.

14 *(Private session at 2.56 p.m.) Reclassified as Open session

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

16 MS STRUYVEN: (Interpretation)

17 Q. Mr Witness, do you remember the names or a few names of the militiamen
18 who recruited you at that time?

19 A. No, I can't remember their names at that time.

20 Q. At that time did you know what ethnic group they belonged to?

21 A. No, I couldn't know that.

22 MS STRUYVEN: (Interpretation) Your Honour, we can go back into open
23 session.

24 PRESIDING JUDGE FULFORD: Public session, please.

25 (Open session at 2.57 p.m.)

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

2 MS STRUYVEN: (Interpretation)

3 Q. Mr Witness, you explained that after you were taken to a first camp that
4 was a few kilometres away from Nioka, and I'd like to ask you just a few questions
5 about this first camp. Once you got there, were you asked your age, or not?

6 A. When we arrived there, I was not asked questions about my age.

7 Q. Once you were there, did you see other recruits?

8 A. I didn't really understand the question.

9 Q. I'm sorry, I will rephrase my question. Now, you were staying in the
10 first camp. Other than you, were there other recruits?

11 A. No. Well, I may have noticed other recruits only once we were enrolled
12 along the way and I met them once I was there.

13 Q. So, do I understand you correctly that when you were walking from the
14 place where you were recruited to the first camp in Nioka, there were other recruitments
15 that occurred?

16 A. No. When I was stopped, we went off together. There was only myself.
17 There were no other recruits.

18 Q. And when you arrived at the first camp, was it still merely yourself in
19 the company of the militiamen or had other recruits joined your party in the interim?

20 A. When I arrived there, indeed, I only found those who were already there
21 at that place. I did not come across anybody else.

22 Q. Now, with regard to the individuals that you saw at that location, I know
23 that you have already indicated that it is difficult to provide an idea of their
24 age, but could you tell us whether you thought they were younger than you, older
25 than you, or of your age?

1 A. Well, some of them were of the same age as myself. Others were older.

2 Q. This might be a rather more difficult question as well, but would you
3 be in a position to tell us approximately how many recruits were of your age in
4 that first camp?

5 A. I would not be able to say because I just arrived on that day. I would
6 not be able to say how many people of the same age as myself were there.

7 Q. No problem. You explained to us that subsequently you transferred or
8 you went to a second military camp, notably, in Bule, and I should put the same
9 questions to you. Did you see any other recruits once you had arrived in Bule?

10 A. Yes, I did find some there who were undergoing training.

11 Q. And the recruits that you saw in Bule, can you tell us whether they were
12 younger, older, or of the same age as yourself?

13 A. I do not know.

14 Q. You explained that in Bule camp you were told how to disassemble and assemble
15 weapons. Do you know what kind of weapon was used in order to show you how to do
16 this?

17 A. The child soldiers were merely given SMGs.

18 Q. You are referring to child soldiers. Once again, this is a difficult
19 question, but do you know approximately how many child soldiers were in the camp
20 at the time?

21 A. No, I do not know how many they were.

22 Q. You talked about exercises conducted with weapons. Were there any other
23 types of exercises undertaken in this camp that you were involved in?

24 A. Yes. This was at the training centre. This is where we underwent training.

25 Q. In your own words, could you describe to us the training or exercises,

1 or provide us with examples thereof?

2 A. The example I might provide is, that you were given a weapon; you were
3 shown how to disassemble it, and you do the same thing. You dismantle it just as
4 you have been shown how to.

5 Q. And with the exception of these exercises involving weapons, were there
6 any other exercises without weapons?

7 A. There were other exercises.

8 Q. Could you give us examples of other exercises?

9 A. Other exercises involved running. And whilst running, you might be
10 requested to go into the water, and you might be asked to perform somersaults in
11 the water.

12 Q. Did all the recruits in the camp take part in these exercises, whether
13 they be physical exercises or exercises involving weapons?

14 A. The new recruits were asked to run.

15 Q. And were they asked to do anything else, apart from run?

16 A. No, I do not know what else they did.

17 Q. You said that there were also girls in the camp. Did the girls take part
18 in the training, "yes" or "no"?

19 A. Once they had entered the ranks -- well, what was done there everyone
20 has to do.

21 Q. And with reference to the age of the recruits, was a difference made between
22 the age groups as regards conducting the various exercises? Did everyone perform
23 the same exercises?

24 A. Everyone performed the same exercises.

25 Q. You explained that when there were problems - or when you did not perform

1 an exercise satisfactorily - that there were disciplinary measures. I'm going to
2 put a question which is similar to one I have already put. Were the disciplinary
3 measures the same for all recruits or was a distinction made between younger, older
4 recruits and boy and girl recruits?

5 A. Only those individuals who did not respect orders were punished.

6 Q. I understand.

7 MS STRUYVEN: Mr President, with your leave, I have a question that I
8 might like to put in private session?

9 PRESIDING JUDGE FULFORD: Private session, please.

10 *(Private session at 3.13 p.m.) Reclassified as Open session

11 THE COURT OFFICER: We are in private sessions, your Honours.

12 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

13 MS STRUYVEN: (Interpretation) Thank you, Mr President.

14 Q. Mr Witness, with regard to the disciplinary measures, who enforced them?

15 A. Punishment was meted out by the individual in charge of a specific exercise.

16 Q. Do you remember the name of the individual in charge of such-and-such
17 an exercise?

18 A. No, I do not know. This was the first time that I went to that place.

19 MS STRUYVEN: (Interpretation) Mr President, we may go back into open
20 session now.

21 PRESIDING JUDGE FULFORD: Good, Ms Struyven. At some stage, we are going
22 to give the witness a break. A few questions? Many questions? What's outstanding?

23 MS STRUYVEN: (Interpretation) Mr President, I do have a number of
24 outstanding questions, but this might be a good time to take the break.

25 PRESIDING JUDGE FULFORD: We'll go for another five minutes and rise just

1 before 25 past. Open session or closed session?

2 MS STRUYVEN: (No interpretation)

3 PRESIDING JUDGE FULFORD: Public session, please.

4 MS STRUYVEN: (Interpretation) Public session, please.

5 (Open session at 3:16 p.m.)

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

7 MS STRUYVEN: (Interpretation)

8 Q. Mr Witness, whilst you were in the camp, did you hear any singing?

9 A. No, I did not.

10 Q. When you went into the camp, what were you wearing in terms of clothing?

11 A. Upon our arrival in the camp, I merely had the clothes that I was wearing
12 at the time when I was stopped.

13 Q. You explained at an earlier stage that when you fled you left your clothes
14 behind so that you would not be recognized. Were you given a uniform at any stage
15 in time? Is that how I should understand you?

16 A. I left military clothing behind.

17 Q. So if I understand you correctly, at a certain moment in time you were
18 given a uniform; is that correct?

19 A. Indeed, we were given a military uniform.

20 Q. Was the uniform of the correct size?

21 A. No, the trousers did not fit me.

22 Q. Could you describe the uniform that you were given to us?

23 A. The uniform I was given was a military uniform.

24 Q. Do you remember its colour, the colour of the uniform?

25 A. This was military fatigues.

1 Q. I have a point of clarification. When you say that the trousers were
2 not to your liking - I think that's the expression precisely that you used in French - can
3 you explain to us precisely why that was?

4 A. I did not grasp the question.

5 Q. I asked you whether the uniform was of the correct size. And if I'm not
6 mistaken, you answered, saying that the uniform did not suit you or -- my question
7 to you is: What precisely was wrong with the trousers?

8 PRESIDING JUDGE FULFORD: As translated, Ms Struyven, in English it is
9 that the trousers didn't fit him. Now, I don't know whether that was what was said
10 in French. I think we've got an answer to the question, haven't we.

11 THE INTERPRETER: Message from the English booth, Mr President: The
12 witness said "*convenir*", which can be interpreted either as "to suit", "to be to
13 somebody's liking", or "to fit". There are a number of synonyms in play.

14 PRESIDING JUDGE FULFORD: Good. The range of possibilities is almost
15 inexhaustible for this, Ms Struyven, for this. One more time, but then I think
16 we must move on.

17 MS STRUYVEN: (Interpretation)

18 Q. Was -- or were the trousers too small or too large, Mr Witness?

19 THE INTERPRETER: The interpreter did not hear the interpretation from
20 the Lingala booth. Apologies. Could it be repeated, please?

21 PRESIDING JUDGE FULFORD: Could the Lingala booth please repeat the answer?
22 Can the English booth please give the answer?

23 THE INTERPRETER: Explanation from the English booth, Mr President. We
24 have to go from one channel to the other, hence the slight problem. So, could the
25 question and the answer please be repeated? Apologies.

1 PRESIDING JUDGE FULFORD: Right. We're going to do this after the break.

2 I'm going to take a break now.

3 Thank you very much, sir. We're going to take a break now, and we'll
4 sit again at 20 to.

5 Thank you, Mr Lubanga.

6 Private session, please.

7 (The accused exits the courtroom)

8 *(Private session at 3:24 p.m.) Reclassified as Open session

9 PRESIDING JUDGE FULFORD: And, Ms Struyven, you will reflect on whether
10 we really need to know whether the trousers were too large or too small.

11 THE COURT OFFICER: We're in closed session, your Honours.

12 (The witness stands down)

13 (Recess taken at 3.24 p.m.)

14 (Upon resuming at 3.40 p.m.)

15 *(Closed session) Reclassified as Open session

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

17 PRESIDING JUDGE FULFORD: Witness, please.

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

19 (The witness enters the courtroom)

20 PRESIDING JUDGE FULFORD: Public session, please.

21 (Open session at 3.43 p.m.)

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

23 (The accused enters the courtroom)

24 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

25 MS STRUYVEN: (Interpretation) Thank you, Mr President. With regard to

1 the trousers, it is in the French transcript and so I will no longer ask the question.

2 Q. Mr Witness, apart from the uniform, did you receive any other thing?

3 A. No.

4 Q. If I understood you well, later on you travelled to Bunia where the attack

5 took place. I would now like to ask you a few questions concerning that attack.

6 You stated that you were asked to spy in the camp at the airport and that the attack

7 started after that, the following morning, if I am not mistaken. Now, before the

8 attack, were you told what was going to happen?

9 A. I did not quite understand your question.

10 Q. I am sorry, I am going to try to rephrase. You told us, if I am not mistaken,

11 that the attack on Bunia started at around 6 a.m. My question is as follows. Before

12 the attack took place, were you told what was going to happen?

13 A. I was not told anything.

14 Q. Were you told who you were going to fight against?

15 A. I did not know whom we were going to fight against, because that was the

16 first time that I was taking part in fighting in Bunia.

17 Q. During the battle, did you come to understand the people against whom

18 you were fighting?

19 A. To my knowledge, we were fighting against the FNI.

20 Q. Were you given any instructions relating to the battle?

21 A. No, we were not given any instructions.

22 Q. Can you briefly describe to us how the battle was conducted?

23 A. Can you please repeat your question?

24 Q. I am sorry. Perhaps the question was a bit too general. Can you tell

25 us what role you played during the attack?

1 A. During the Bunia attack, I was a scout. I was the one who indicated the
2 positions of our enemies.

3 Q. Were you alone to perform that task, or were there other soldiers doing
4 the same thing?

5 A. There were others, but we were split up into various groups.

6 Q. To whom did you point out the positions of the enemy?

7 A. The information I provided was in -- in fact, that happened in Bunia.

8 Q. Do you remember the person or people you gave the information to?

9 A. I gave that information to my soldiers - my fellow soldiers.

10 Q. Do you remember whether those fellow soldiers of yours were in the same
11 age group as you, or were they younger or older than you?

12 A. Some of them were older than me, while others were of the same age as
13 me.

14 Q. In relation to those who were the same age as you, did they carry weapons
15 or not?

16 A. They were armed.

17 Q. I am sorry for repeating the same questions over and over again, but were
18 they wearing uniforms or not?

19 A. All of us were wearing military uniforms.

20 Q. Thank you. Now, during that battle did you see or observe any UPC soldiers
21 killed?

22 A. Yes, some of them were killed.

23 Q. Were there any soldiers of your age who were amongst those that were killed?

24 A. Yes.

25 Q. During that battle in Bunia, apart from yourself, did you see any other

1 soldiers who were injured?

2 A. Some soldiers were killed, while others were wounded just like me.

3 Q. You testified that some of the soldiers who were killed were of your age.

4 Now, talking about those who were injured, can you tell us whether they were the
5 same age as you, or whether they were older or younger?

6 A. You had both adults and children.

7 MS STRUYVEN: (Interpretation) Mr President, I would need to put some
8 questions in private session, with your leave.

9 PRESIDING JUDGE FULFORD: Private session, please.

10 *(Private session at 3.55 p.m.) Reclassified as Open session

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

12 PRESIDING JUDGE FULFORD: Yes.

13 MS STRUYVEN: (Interpretation)

14 Q. Mr Witness, during the attack in Bunia, did you see any UPC commanders?

15 A. Yes, I saw them.

16 Q. Do you remember the names of those UPC commanders?

17 A. Yes, I know their names.

18 Q. Can you tell us their names? For the time being the people in the public,
19 or rather, the public is unable to hear you.

20 A. There was (Redacted). Those were the ones that I
21 saw.

22 Q. Do you remember -- that is, the people in your group to whom you showed
23 the enemy positions, do you remember who was the leader or commander of that group?

24 A. It was (Redacted).

25 Q. Do you know what role (Redacted) was playing in the UPC army?

1 A. He was the (Redacted).

2 Q. You talked about Thomas Lubanga this afternoon when you said that it was
3 Thomas Lubanga's soldiers who abducted you. Did you see Thomas Lubanga at that
4 time in Bunia or not?

5 A. I did not see him.

6 Q. You mentioned the names of several commanders. Do you know how those
7 commanders communicated amongst themselves?

8 A. No, I do not know.

9 MS STRUYVEN: (Interpretation) Mr President, I think we can revert to
10 open session now.

11 PRESIDING JUDGE FULFORD: Yes, Ms Struyven. Public session, please.

12 (Open session at 4.00 p.m.)

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

14 PRESIDING JUDGE FULFORD: Yes.

15 MS STRUYVEN: (Interpretation)

16 Q. Mr Witness, you stated that after the Bunia battle you travelled to
17 Mongbwalu and, if I understood you well, there was another attack in Mongbwalu against
18 the Lendus from Mbau. I am going to ask you questions that are similar to those
19 I put to you concerning the attack in Bunia. My first question is as follows: While
20 you were in Mongbwalu, were you told what was going to happen during the attack?

21 A. I didn't understand the question.

22 Q. I think that my question was not very clear. Before the attack that happened
23 in Mongbwalu, did you receive instructions?

24 A. No, only in Bunia. That was the -- that was where that occurred.

25 Q. Could you explain to us your own role during the attack in Mongbwalu?

1 A. In Mongbwalu, I was responsible for carrying the crates of ammunition -- the
2 crate, singular, of ammunition.

3 Q. As for the UPC, on that side did you see UPC soldiers taking part in the
4 battle using their weapons during the fighting?

5 A. I did not understand.

6 Q. My question was not very clear. Did you see soldiers from the UPC using
7 their weapons during the battle?

8 THE INTERPRETER: The interpreter did not understand -- did not quite
9 hear the answer of the witness.

10 MS STRUYVEN: (Interpretation)

11 Q. Mr Witness, could you repeat, was it "Yes" or "No"?

12 A. I agree.

13 Q. Amongst the UPC soldiers whom you saw taking part in the battle in Mongbwalu,
14 could you tell us whether they were younger than you, the same age as you or older
15 than you?

16 A. Within the UPC army, everyone was together. If you take into
17 consideration -- if you don't take into consideration the age of the older ones
18 and the younger ones, well, they were all sent to battle.

19 MS STRUYVEN: (Interpretation) Your Honour, I have two questions for
20 private session, with your leave.

21 PRESIDING JUDGE FULFORD: Private session, please.

22 *(Private session at 4.05 p.m.) Reclassified as Open session

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

24 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

25 MS STRUYVEN: (Interpretation)

1 Q. Mr Witness, do you remember the names of commanders who were present during
2 the attack in Mongbwalu?

3 A. Yes, I remember.

4 Q. Could you give us the names?

5 A. Yes, I can give you the names. (Redacted)

6 MS STRUYVEN: (Interpretation) Your Honour, we can go back into open
7 session.

8 PRESIDING JUDGE FULFORD: Yes. Public session, please.

9 (Open session at 4.06 p.m.)

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

11 MS STRUYVEN: (Interpretation)

12 Q. Mr Witness, you talked about cannabis this afternoon. My first question
13 is, without giving the names, could you clarify who gave people cannabis?

14 A. I don't know how to put it, who gave the cannabis, but someone came to
15 distribute the cannabis and there were times where I was asked to do that.

16 Q. Could you explain whom was given the cannabis?

17 A. I couldn't tell you.

18 Q. Perhaps my question wasn't very clear, but I wanted to ask you did all
19 the soldiers get it, or specific soldiers?

20 A. There were soldiers who refused to take the cannabis, or to smoke the
21 cannabis.

22 Q. A few moments ago you explained that there was really no distinctions
23 regarding age. In the case of the cannabis, was it given to the girls and the boys
24 no matter what their age, or not?

25 A. The cannabis was given to people who were lacking in courage; if someone

1 was very worried.

2 Q. Did it ever happen that someone refused to take the cannabis?

3 A. Some people refused.

4 Q. And what happened when people refused?

5 A. The people who refused to take the cannabis were released from military
6 service.

7 PRESIDING JUDGE FULFORD: Ms Struyven, in order to allow the --

8 THE INTERPRETER: Correction by interpreter. They were used to military
9 service.

10 PRESIDING JUDGE FULFORD: In order to allow a telephone interview to take
11 place at 5 o'clock, we have got to release the Court by 4.15 so that the equipment
12 can be reconfigured. So, I don't know whether you are very close to the end of
13 this subject. If you've finished, or if you've just got one or two more questions,
14 please finish it now; otherwise, we will adjourn until tomorrow morning.

15 MS STRUYVEN: (Interpretation) I have finished with this topic; and I
16 might have a few questions tomorrow, but very few in number.

17 PRESIDING JUDGE FULFORD: That is extremely useful to know. Thank you
18 very much, indeed. Thank you very much for your help, sir. I hope, but can't guarantee,
19 I hope that your evidence will be finished tomorrow; but, of course, the Defence
20 must be given a fair opportunity to ask you questions. Have a good rest, and we
21 look forward to seeing you at 9.30 tomorrow morning. Thank you very much, Mr Lubanga.

22 (The accused exits the courtroom)

23 PRESIDING JUDGE FULFORD: Yes. Closed session, please.

24 *(Closed session at 4.12 p.m.) Reclassified as Open session

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

1 PRESIDING JUDGE FULFORD: Yes. Thank you, usher.

2 (The witness stands down)

3 PRESIDING JUDGE FULFORD: Thank you all very much. We meet again at 9.30
4 tomorrow morning.

5 (The hearing ends at 4.15 p.m.)

6 RECLASSIFICATION REPORT

7 Pursuant to Trial Chamber I's email instruction dated 25th January 2012,
8 the transcript is Reclassified as public after the indicated redactions
9 have been implemented as ordered by the Chamber. All private and closed
10 sessions (*) are now available to the public with the exception of the
11 portions of the transcript that have been redacted.