

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and Judge
4 René Blattmann
5 Situation in the Democratic Republic of the Congo - ICC-01/04-01/06
6 In the case of The Prosecutor v. Thomas Lubanga Dyilo
7 Wednesday, 17 February 2010
8 (The hearing starts at 2.30 p.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 THE COURT OFFICER: Good afternoon, your Honours. We are in closed
13 session.
14 PRESIDING JUDGE FULFORD: Maître Mabilie, I am sure that you have been
15 told that the interpretation, or rather the transcript, problem that arose last
16 night has not been resolved, as I understand it. Indeed I am sure that you know
17 that, because I understand that you are proposing that you will clarify the matter
18 directly with the witness, rather than waiting for the transcript to be perfected.
19 We are very grateful to you for taking that approach, because otherwise it would
20 mean inevitably delaying this witness. So, we express our thanks to you for taking
21 that stance.
22 Anything else before the witness comes in, please? No. Witness, please.
23 (The witness enters the courtroom)
24 PRESIDING JUDGE FULFORD: Private session, please.
25 *(Private session at 2.34 p.m.) Reclassified as Open session

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

2 WITNESS: WITNESS WWW-D01-0024 (On former oath)

3 (The witness answers through interpreter)

4 PRESIDING JUDGE FULFORD: Good afternoon, Madam. Yes, Maître Mabilie.

5 THE WITNESS: Good afternoon.

6 Questioned by Ms Mabilie: (Continued)

7 Q. Good afternoon, Madam Witness.

8 A. Good afternoon.

9 Q. Yesterday, you said in response to questions put to you by the Office
10 of the Prosecutor a certain number of things and it might be that I might have you
11 repeat what you said yesterday and I apologise for that, but I would like to clarify
12 with you, once again, this information that you have already spoken about, notably
13 yesterday afternoon. Have you understood me correctly?

14 A. Yes.

15 Q. Might I insist that when you respond that you speak very slowly, so that
16 the interpretation can be done in the best possible manner. I know that this is
17 difficult, but could we try and proceed very slowly. Yesterday, you told us that
18 (Redacted) had come to drink (Redacted). Do you
19 remember having talked to us about this?

20 A. Yes.

21 Q. Where did you (Redacted)?

22 A. (Redacted).

23 Q. You told us that a soldier came whilst you were in the company of (Redacted).
24 Do you remember having told us that?

25 A. No, that is not correct. (Redacted), and this soldier

1 (Redacted). When (Redacted) left, this soldier started putting questions to me on
2 the subject of (Redacted) child.

3 Q. Could you tell us which questions were put to you? Could you explain
4 this to us?

5 A. Yes. When (Redacted) went home this soldier put this question to me, "Does
6 (Redacted) communicate with you here?", and I put the question to him, "Well, which
7 (Redacted)?" He said, "Well, the (Redacted) who was here," and I said, "Well, I
8 don't know who you are." So he said to me, "Ma'am, how could you have forgotten
9 him? He was a (Redacted) here. Back in the days of President Kabila, he left for
10 military training in Equateur, and since that time, he has never returned."

11 THE INTERPRETER: The Swahili interpreter asks the witness to repeat.

12 MS MABILLE: (Interpretation)

13 Q. Madam Witness, I apologise. You need to -- I shall tell you quite where
14 you need to repeat from but, please, I know that it is complicated and difficult
15 because when one speaks, one does not realise the speed at which one is speaking,
16 but it is essential for us now to be able to have a precise response from you.

17 A. This is the way I speak.

18 Q. I repeat once again: What is it that the soldiers asked you?

19 A. They were not soldiers. It was one soldier. He put this question to me,
20 when (Redacted) had already left, he said: "Mother (Redacted), do you have any
21 contact with (Redacted)?" And I said, "Well, which (Redacted) are you referring
22 to?" And he said, "(Redacted)." I remained quiet, because he said that he had
23 seen (Redacted) in (Redacted) and that (Redacted) was alive and that he is well.

24 Q. Had you heard that (Redacted) was in (Redacted) before this soldier told
25 you so?

1 A. No, I did not know where (Redacted) was to be found because every time
2 I would ask (Redacted), his grandmother, that question, she would say this to me:
3 "Don't worry about the lives of young men. If a young man becomes an adult, he is
4 free to go where he wants." So I did not know where (Redacted) was to be found.

5 Q. Did that soldier ask you anything else or anything in particular, or say
6 anything further to you?

7 A. He said the following, that he would go home to (Redacted) and that he
8 would return and come and see me, and that we would then be able to write a letter
9 that he would deliver.

10 Q. A letter that he could deliver to whom? Who would be the recipient of
11 this letter?

12 A. That we would give him a letter and that he would hand the letter over
13 to (Redacted), in view of the fact that he was going to (Redacted).

14 Q. What did you do once you had seen this soldier?

15 A. He left and I stayed behind. This was on a Monday. I went to (Redacted)
16 on the Saturday. I went to see (Redacted) in the village in order to put the question
17 to her, because I thought that (Redacted) did not know where (Redacted) was to be
18 found. I asked (Redacted). I said to (Redacted), "A soldier whom I don't know came to
19 see me and he said that he had seen (Redacted) in (Redacted). He said that if we did not
20 have the means of entering into contact with him by telephone, he -- we could write a letter
21 that he would deliver to (Redacted)," and he said that we should go inside the house -- she
22 said we should go inside the house. (Redacted) said to me that she did not want to give
23 out any information about (Redacted) because the whites had come in order to register the
24 child soldiers. (Redacted) registered (Redacted) and (Redacted), but I shouldn't give this
25 information to the soldier because it was a secret in view of the fact that he had

1 already entered into contact with (Redacted) told him the following. (Redacted)
2 spoke to his mother and (Redacted) said that he would take a present to his mother,
3 and subsequently (Redacted) telephoned. He said that he was supposed to go receive
4 training in (Redacted). With the money he would earn, he would buy furniture for
5 his house, and after his second trip, he would send them some things. But then I
6 was asked not to disclose this information. To date, I have never seen that soldier
7 again, and I have not gone back to (Redacted) again. In view of the fact that it
8 is a secret and I have revealed it to you, please protect me since I have revealed
9 a secret to you.

10 Q. You talked about the fact that (Redacted) and (Redacted) were enlisted.
11 Who was it who undertook this enlistment?

12 A. (Redacted) said -- or (Redacted) said that some white people had come
13 to register or enlist the child soldiers, and that (Redacted) was the one who went
14 to register them. But I do not know any more information because he asked me not
15 to -- because she asked me not to tell this information to the soldier and not to
16 speak to him again, given that she was already in contact with (Redacted). I did
17 not give this information. I thought that, at the outset, she did not know where
18 (Redacted) was but then, when she asked me to keep the secret, that is what I did.

19 Q. Yesterday, you said that a person had registered these two children. Could
20 you once again give us the name of the individual who accompanied the children so
21 that they'd be registered?

22 THE INTERPRETER: Correction from the English booth. The word
23 "enlistment" should be replaced by the word "registration" in the previous sentences.

24 THE WITNESS: It was (Redacted), the brother of his mother.

25 Q. In order to be clear, (Redacted) is one of the daughters of (Redacted)

1 and (Redacted), is that not correct?

2 A. Yes. In fact, it is the second child.

3 Q. Madam Witness, do you know where it was that they were registered as child
4 soldiers?

5 A. I live in (Redacted), and I went to put the question to (Redacted) mother
6 and it was she who gave me that information. She just told me that she was living
7 behind the (Redacted). I did not know (Redacted) and, what is more, I did not really
8 follow what was going on or conduct investigations in order to find out what was
9 happening.

10 Q. Do you know why it was that these children were registered?

11 PRESIDING JUDGE FULFORD: Pause for a moment. Don't answer the question
12 for a moment, Madam.

13 Yes, Ms Struyven.

14 MS STRUYVEN: Thank you, Mr. President. I think the witness made it very
15 clear that she does not know anything about this story and that she just heard from
16 (Redacted) what (Redacted) told her. So, I think it's inappropriate to continue
17 asking questions about the same thing.

18 PRESIDING JUDGE FULFORD: Yes, I think in a sense that's right, isn't
19 it, Maître Mabilille, that the witness is not really able to help on this issue? But
20 do you have a contrary interpretation?

21 MS MABILLE: (Interpretation) She says that she does not know who
22 registered them. I apologise, one moment, please.

23 The question that I had put was, in which institution these children had
24 been registered as child soldiers, and she said she did not know. The question
25 I'm putting to her now is whether she knew why it was that the family had gone to

1 register them as child soldiers. It would seem to me that this is not one and the
2 same question.

3 PRESIDING JUDGE FULFORD: Well, it's right that the question that you
4 put a little earlier was who was it who undertook the enlistment, and the witness
5 said, "I do not know any more information." And you are now therefore specifically
6 asking why it was.

7 Now, Ms Struyven, if you suggest that Maître Mabilie has covered the issue of why,
8 can you take me to the relevant part of the transcript because I can't see it for
9 myself, immediately.

10 MS STRUYVEN: Thank you, Mr President. It's true that she didn't cover
11 explicitly the question why, but she did say that she did not know (Redacted), that
12 she did not really follow what was going on, she did not conduct investigations -- no,
13 and that's why she was going to (Redacted) to find out what was happening.

14 In addition, Mr President, and maybe I should have mentioned that earlier
15 as well, I think that we're now going far beyond the actual clarification that was -- in
16 addition -- So, I will finish my first sentence. So, in addition, I believe that
17 we're going far beyond the actual clarification; and thirdly, we believe that this
18 question is speculative, in the sense that we're asking this person why -- who is
19 not aware of what was going on, who was not in (Redacted) - and she confirmed that - we
20 are asking her why something may have happened.

21 PRESIDING JUDGE FULFORD: Well, Maître Mabilie, I think that we need to
22 have clearly in mind that the witness is generally indicating a lack of involvement
23 with, and knowledge of, these issues. Now, against that background, is it really
24 going to assist us, given that general indication from her, that she has a lack
25 of knowledge of these issues? Is it really going to assist us in pursuing this

1 matter?

2 MS MABILLE: (Interpretation) I would just very much like to put to her
3 the last question, notably: Do you know why members of your family registered these
4 child soldiers as such? Whether she knows it or not. That is the only question
5 that I'd like to put to her.

6 PRESIDING JUDGE FULFORD: Right. Given that "why" has not been covered
7 so far, very much against the background of the general lack of knowledge that the
8 witness has indicated, you may pursue that simple point.

9 MS MABILLE: (Interpretation) For things to be crystal clear, in fact,
10 this comes back to the issue that she allegedly said this yesterday. I wanted to
11 underscore that point.

12 Q. Madam Witness, do you know why your family allegedly registered (Redacted)
13 and (Redacted) as child soldiers? Do you know the reason underlying this action?

14 A. I do not know because they were not soldiers and I lived (Redacted) km
15 away. So I went to ask the question because I did not have that information.

16 Q. You told us yesterday that (Redacted) had never been a child soldier.
17 Do you know whether (Redacted) had been a child soldier?

18 A. I live in (Redacted) and they live in (Redacted). I do not know (Redacted).

19 THE INTERPRETER: The Swahili interpreter did not hear the second part
20 of the witness's answer.

21 MS MABILLE: (Interpretation)

22 Q. Madam Witness, I only have two further, small questions to put to you,
23 and we need to remain -- we need to carry on at a slow pace in order for there not
24 to be any interpretation issues. Madam Witness, when you talk of (Redacted), are
25 you speaking about the (Redacted) who had a child with (Redacted) by the name of (Redacted)?

1 A. Yes.

2 Q. I have a last question to put to you. You said yesterday that you had
3 gone to Kinshasa and that in Kinshasa you had fallen ill. Could you tell us why
4 it was that you went to Kinshasa?

5 A. When I was talking to you, Dieudonné went to pick me up in order to take
6 me to Kinshasa.

7 Q. Do you remember when you went to Kinshasa?

8 A. I arrived in Kinshasa on (Redacted).

9 Q. Of which year, Madam Witness?

10 A. (Redacted).

11 Q. And could you tell us what you did in Kinshasa, why you went there? Would
12 you like me to put the question to you again, Madam Witness?

13 A. I did not go to Kinshasa alone; Kinshasa came to me.

14 THE INTERPRETER: It was Dieudonné who came to see me, corrects the Swahili
15 interpreter.

16 THE WITNESS: I was there. And he said, your journey is nigh, and this
17 was on a (Redacted). And he said that Madam (Redacted) had arrived, and they went
18 to pick me up -- or they came to pick me up in the vehicle. That was Dieudonné
19 in the company of two other people, a driver and a third individual.

20 We arrived in Bunia and we met (Redacted). (Redacted) explained to me
21 how the journey would be completed from Kinshasa, showing me a book, and also showed
22 me how my journey would be completed from there to Europe. And then I went back
23 to (Redacted). He said that I would have to choose the journey day. And I said
24 that -- well, I was told that I would not spend very long there. And they said,
25 from this (Redacted) to next (Redacted), and I would then be free.

1 I arrived in Bunia on the (Redacted). On the (Redacted), we talked to
2 them. And subsequently, they then sent a young person to see me. I wanted to go
3 back to (Redacted) on the (Redacted), but they said no, you have to travel on the
4 (Redacted). And that is how I left for Kinshasa. I did not go to Kinshasa to conduct
5 my own business; you were the ones who made me travel to Kinshasa.

6 MS MABILLE: (Interpretation) That's the re-examination, your Honour.

7 PRESIDING JUDGE FULFORD: Madam, although it's taken much longer than
8 we expected, that now brings your evidence to its conclusion.

9 We - the Judges - want to thank you for having taken the time and trouble
10 to come and give evidence at this court. In order for us to be put in the best
11 possible position to establish the truth, it is necessary that witnesses such as
12 yourself are prepared to make the sacrifice which you have made to come and give
13 evidence.

14 You, therefore, leave this Court with our sincere thanks for your assistance
15 and you are now free to return home.

16 Closed session, please, and could the usher assist the witness back to
17 the waiting room.

18 THE WITNESS: (No interpretation)

19 THE INTERPRETER: The Swahili interpreter states that he did not hear
20 what the witness said.

21 *(Closed session at 3.03 p.m.) Reclassified as Open session

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

23 (The witness is excused)

24 PRESIDING JUDGE FULFORD: A certain amount of rearrangement of the
25 furniture. We now turn, as I understand it, to Witness 12. I'm told that I omitted

1 formally yesterday to indicate that not only will the witness's image be scrambled
2 on the screen, in fact his image be scrambled on the screen, but his voice will
3 be scrambled over the audio as well. The arrangements for that have been put in
4 place, but I need to announce the magic words indicating that that is going to happen.

5 On an earlier occasion, and not long ago, in relation to Witness 24 on
6 11 February - and for everyone's reference, it's transcript 245, page 2, lines 1
7 to 12 - we made certain observations which I'm not going to repeat, encouraging
8 those who represent participating victims in this case to be sensible and cautious
9 as to the information that they disseminate outside of this courtroom, bearing in
10 mind that there are certain confidential issues which are going to be raised and
11 that this witness has been afforded protection because there are real concerns as
12 to his security.

13 As we said then, and I emphasise again, we do not seek to stand between
14 counsel and their clients; but that said, appropriate caution and mature decisions
15 should be taken as to what information needs to be relayed outside of this courtroom.

16 Maître Mabilie, is there anything else that needs to be dealt with before
17 Witness 12 comes in?

18 MS MABILLE: (Interpretation) The first thing I would like to say to the
19 Chamber is, that the witness who just left said something which does not -- or which
20 was not interpreted.

21 PRESIDING JUDGE FULFORD: It's absolutely true, Maître Mabilie, she did.
22 I assumed that she was responding to my thanks for her attendance at this court.
23 And I had it in mind that if anybody wished to, the tape could be listened to hereafter
24 in case something of significance was said. Now, do you have instructions from
25 Mr Lubanga that some vital piece of information was imparted in her closing remarks

1 before she left?

2 MS MABILLE: (Interpretation) She allegedly said, "Protect me, because
3 my life will be at risk in this case."

4 PRESIDING JUDGE FULFORD: Thank you. I want that remark brought
5 immediately to the attention of the Victims and Witnesses Unit and for there to
6 be a discussion with the witness as soon as is reasonably possible so that her security
7 concerns can be addressed in advance of her return to the DRC. Anything else, Maître
8 Mabilille?

9 MS MABILLE: (Interpretation) I apologise. A second small problem. We
10 tried to address this problem with the OTP in vain. We need the opinion of the
11 Chamber, and I think that this is a bit of an emergency. We'll take -- we'll need
12 about five or ten minutes to explain this problem to you. I don't know if this
13 is the right moment, but - with the leave of the Bench - I would like to say that
14 it is not related to Witness 12. It relates to the activities which we have to
15 carry out very, very soon.

16 PRESIDING JUDGE FULFORD: Right. Now, Maître Mabilille, is this something
17 which you would suggest needs to be dealt with ex parte?

18 MS MABILLE: (Interpretation) No, your Honour. I think this can be
19 handled in open session, for once.

20 PRESIDING JUDGE FULFORD: Well, it will make a refreshing change, Maître
21 Mabilille. Let us reveal ourselves to the public again, then, please.

22 (Open session at 3.10 p.m.)

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

24 PRESIDING JUDGE FULFORD: Yes, Maître Mabilille.

25 MR BIJU-DUVAL: (Interpretation) Your Honour, the situation is as follows.

1 There are, that is between the Lubanga case and the Katanga case, certain
2 witnesses -- certain common witnesses. These are witnesses 1, 5, 7, 12, 002 and
3 30. About ten days ago, the Defence contacted the Office of the Prosecutor and
4 to find out from them whether the OTP had any problem with the fact that the Defence
5 team in the Lubanga case and the Defence team, or the Defence teams, in the Katanga
6 and Ngudjolo case, that these Defence teams discuss together on these common witnesses;
7 that is to share information with each other, information relating to these common
8 witnesses, witnesses whose identities are known to the respective Defence teams.
9 Late this morning the OTP informed us of its objection; objection to any discussion
10 or information sharing between the Defence teams about these common witnesses. That
11 is the situation.

12 Now, I would like to make a few observations. First observation: We think
13 that this objection is un-understandable. Why do I say so? There are two types
14 of information. There was information that was collected by the Defence teams
15 themselves, and it is the Defence teams that should be able to appreciate the
16 confidentiality of such information and so the problem does not arise with that
17 information. There is another category of information and that is information that
18 was forwarded or transmitted by the Office of the Prosecutor about these common
19 witnesses; transmitted to the Lubanga Defence team and to the Katanga and Ngudjolo
20 Defence teams.

21 By definition, therefore, we can conclude that the two Defence teams,
22 or rather the three Defence teams, received the same information because, if that
23 were not the case, then we could believe that the OTP retained certain information
24 from certain Defence teams. We do not want to imagine that that was the case and,
25 since we do not want to imagine that this is what happened, the objection of the

1 OTP to us is hard to understand. That is the first observation.

2 Now, second and last observation I would like to make is that the Defence
3 has to exchange or share information about these witnesses. We have -- it is our
4 right and we need to do so. We think that it is useful, and therefore necessary,
5 for the Defence teams to share the results of their investigations. There is nothing
6 against that, I think this will only help in the establishment of the truth and
7 I think that it is important for the Defence team of Lubanga -- it is important
8 for us to get this information as soon as possible for reasons which are well-known
9 to the Chamber; reasons which I would not like to go into now. That is why, your
10 Honour, the Defence team is forced to bring this matter to your attention.

11 PRESIDING JUDGE FULFORD: Thank you very much, Mr Biju-Duval. Who is
12 fielding this for the Prosecution? Yes, Ms Samson.

13 MS SAMSON: Thank you, Mr President. In fact, it is indeed the case that
14 the Prosecution teams in both this case, as well as the case of Katanga and Ngudjolo,
15 are opposing the requests of the various Defence teams to communicate and exchange
16 information amongst themselves.

17 The primary reason is that the flow of information as between the two
18 accused in the Katanga case, as well as between the accused persons in both separate
19 cases, has been restricted by the Chambers. Trial Chamber II has issued orders
20 restricting information between the accused persons and by the accused persons and
21 Defence teams to persons outside of the courtroom in some instance, even as I understand
22 it in respect of their own resource persons, and for reasons that this Chamber is
23 also familiar there have been legitimate reasons for certain information to be
24 transmitted as relevant in this case, but not transmitted in the other case for
25 reasons of witness security and protection.

1 By that I am referring, somewhat obliquely, to differing disclosures as
2 between the two cases either because of redactions that are in place to protect
3 certain persons as against certain accused persons, or because certain materials
4 are simply not relevant to one case or the other case. So, if I may address the
5 Defence's concern, it is not the case that every item of evidence or every document
6 that the Office of the Prosecutor has collected has equal relevance across the two
7 cases.

8 The Prosecution does not currently see how it could be possible to exchange
9 information, even setting the documents aside, in such a way that would not violate
10 the principle of the orders restricting communications. The information is known
11 to the Defence teams and it's possible that in the course of their exchanges that
12 information that is otherwise protected in one case is revealed - not intentionally,
13 but revealed - in the other case.

14 And both Chambers, in the Prosecution's submission, Trial Chamber I and
15 Trial Chamber II, have carefully considered different disclosures for reasons of
16 security. Trial Chamber II in particular has been seized of quite serious allegations
17 and information in relation to the flow of information, both within the purview
18 of the accused persons and beyond. It is for this reason that the Prosecution is
19 restrict -- is opposing the conversations and the communications that the Defence
20 is requesting.

21 PRESIDING JUDGE FULFORD: Ms Samson, can I just test some aspects of this.
22 First of all, as a matter of general principle, counsel in parallel teams should
23 be allowed to speak with each other and not only would it be a denial of the right
24 to free speech and free association, but arguably it may be an impediment to the
25 preparation of their respective cases if a Chamber were to seek to stop two Defence

1 teams from speaking with each other. Would you agree, first of all, with that general
2 proposition?

3 MSSAMSON: The general proposition holds true. The difficulty, of course,
4 is simply that there is no way to manage the flow of information as between the
5 two teams, in our respectful submission.

6 PRESIDING JUDGE FULFORD: That is what I want to come to. Now, each team
7 should be -- has to be aware of the restrictions that have been imposed on it, as
8 regards what it is entitled to disclose. In Trial Chamber II, presumably,
9 restrictions have been imposed by Judge Cotte and his colleagues of which Mr Hooper
10 and other counsel in that case will be aware of. Similarly, if there are disclosure
11 restrictions currently in force as regards Maître Mabilie and her team, they are
12 aware of their disclosure -- of those disclosure restrictions.

13 Now, so long as those restrictions are flawlessly upheld by responsible
14 counsel - so long as that happens - how can we stop conversations on topics which
15 are not covered by disclosure restrictions?

16 MS SAMSON: The sole difficulty, your Honour, is that, while each team
17 is aware of orders imposed on themselves, there will be a flow of communication
18 to their clients. There is no means of monitoring the communications that take
19 place thereafter as between the clients. And one practical impediment is that it
20 is not necessarily the case that the Defence teams are aware of the differing redactions,
21 differing disclosures, as between the various cases, which is why in the Prosecution's
22 view the concern is that unwittingly - certainly not intentionally, but
23 unwittingly - information may be shared as between the teams, thereafter getting
24 to the accused persons, and there are certain individuals whose identities have
25 been protected differently because of their close affiliation or association with

1 a particular accused person.

2 The suggestion is certainly not that the Defence teams themselves would
3 be in breach of any of the orders that are outstanding. It is simply that it may
4 not be as clear as your Honour has described in terms of how the communication may
5 be exchanged.

6 PRESIDING JUDGE FULFORD: Ms Samson, I know that your team is obviously
7 under a lot of pressure at the moment. You have an enormous amount of work to do,
8 because we are now into the Defence case, and that in every trial increases the
9 pressure on Prosecuting counsel because you usually overnight have to prepare for
10 the next day's work.

11 However, I don't immediately have to mind, with witnesses, 1, 5, 7 et
12 cetera, what the current restrictions are as regards this Chamber for the disclosure
13 of information, as it were, outside of these four walls. It would be extremely
14 helpful to know whether it's tight and confined, or whether it is complicated and
15 extensive.

16 Could somebody overnight provide us not with a huge, full schedule, but
17 with a workable guide to the categories and the detail of the material that are
18 currently covered by restrictions on disclosure, which in your submission would
19 pose problems for the Defence if they were to speak with Mr Hooper, et al.

20 MS SAMSON: Yes, your Honour, we have commenced that review and we will
21 be in a position to provide it to your Honours tomorrow. Is that appropriate?

22 PRESIDING JUDGE FULFORD: So long as that's convenient for you, Ms Samson.
23 Do you want to speak to the rest of your team for a moment to see whether it is,
24 or you may know already?

25 MS SAMSON: To the extent that we could have an extension of that, because

1 it's a cross-team project, we would be grateful. Friday?

2 PRESIDING JUDGE FULFORD: Say that again?

3 MS SAMSON: Would Friday be acceptable to the Chamber?

4 PRESIDING JUDGE FULFORD: Yes, we are sitting on the first two days of
5 next week, aren't we? Yes. Unless I see Mr Biju-Duval rising rapidly to his feet,
6 we will say Friday for that document.

7 I mean obviously material protected by Trial Chamber II is for Trial Chamber
8 II, but it may be advantageous if Mr Macdonald could, at a convenient moment, alert
9 Judge Cotte to the fact that at the moment the approach that we are taking is to
10 have a practical look at what is involved and whether or not we agree with your
11 submission that the problems in reality would be insuperable in terms of knowing
12 what can be said and what can't be said.

13 MS SAMSON: Yes, your Honour.

14 (The Trial Chamber confers)

15 PRESIDING JUDGE FULFORD: Very helpful. Thank you, Ms Samson. We will
16 look forward to receiving that information on Friday and then, once we've got the
17 information, we will then make our decision.

18 Content, Mr Biju-Duval?

19 MR BIJU-DUVAL: (Interpretation) Yes, indeed, your Honour. I just wish
20 to give additional information. I wish to inform the Chamber that to the best of
21 our knowledge my learned colleague, David Hooper, contacted Trial Chamber II and
22 informed them or made the same requests, and I think that request is going to be
23 considered by Trial Chamber II. So, the same request was filed by Mr Katanga's
24 Defence team.

25 PRESIDING JUDGE FULFORD: Do you know perchance when Trial Chamber II

1 is proposing to deal with that, Mr Biju-Duval? I understand they've had a difficulty
2 today which has meant that they haven't sat.

3 MS MABILLE: (Interpretation) I beg your pardon. I wish to state that
4 David Hooper filed that application ten days ago; in other words, we filed the
5 applications at the same time. David Hooper did not inform the Chamber of the problem
6 because we only received the reply from the OTP today. So, we have only been dealing
7 with the OTP and we did not intend to inform the Chamber of the problem. It is
8 the response from the OTP which we received today which has made us to bring this
9 difficulty to the attention of the Bench.

10 PRESIDING JUDGE FULFORD: Thank you very much. Therefore, I think we are
11 ready for Witness 12. And can we go into closed session, please, so he can be brought
12 in. Just before we do, does he need an interpreter to help him with the oath? I
13 think he does, doesn't he? Mr Desalliers.

14 MRDESALLIERS: (Interpretation) To the best of our knowledge, the witness
15 does not need assistance in reading, to the best of our knowledge.

16 PRESIDING JUDGE FULFORD: Just before he's brought in, could the usher
17 please confirm with him, or someone confirm with him, that he is going to be able
18 to read the oath, to save him embarrassment.

19 Closed session, please.

20 *(Closed session at 3.28 p.m.) Reclassified as Open session

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

22 (The witness enters the courtroom)

23 PRESIDING JUDGE FULFORD: Welcome, sir, and I'm very sorry we've kept
24 you waiting. You will have been told that the Chamber has granted protective measures,
25 which means that your identity will be withheld from the public outside of this

1 room. Therefore, although part of your evidence will be broadcast over the internet
2 and will be available publicly, your voice will be distorted, as will your image
3 on the screen, and any confidential parts of your evidence will be withheld from
4 any transcript.

5 Can I ask you, please, to be very careful when answering the questions
6 from counsel. Concentrate on what they say, answer their questions, and when you
7 do answer their questions, please do not speak too quickly because everything you're
8 saying is being written down and interpreted, and if you speak too fast, then that
9 operation becomes extremely difficult.

10 In order to protect you, we will move from public session into private
11 session, depending on what evidence you're giving. If something is said in public
12 session that may have a tendency to reveal your identity, don't worry, because there's
13 a half-an-hour delay on any broadcast of your evidence and so any mistake that's
14 been made in public session can easily be rectified. Now, in a moment we are going
15 to go into public session and when we do I am going to ask you to read out the words
16 of the solemn undertaking, which I hope the usher has either given you or will give
17 you in a moment. So, please remain silent for the time being until I ask you to
18 read out the words.

19 Public session, please.

20 (Open session at 3.33 p.m.)

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

22 PRESIDING JUDGE FULFORD: Yes, sir, could you please read out the words
23 from the card in front of you out loud, so everyone can hear.

24 WITNESS: WWW-D01-0012 (Sworn)

25 (The witness answers through interpreter)

1 PRESIDING JUDGE FULFORD: Thank you very much. That was extremely well
2 done in terms of volume and not speaking too quickly. So can I ask you to keep
3 your voice up at that volume and to try not to speak any quicker than that.

4 Now, Mr Desalliers, I imagine we are going to have to start in private
5 session, are we not? Private session, then, please.

6 *(Private session at 3.34 p.m.) Reclassified as Open session

7 THE COURT OFFICER: Private session, your Honours.

8 PRESIDING JUDGE FULFORD: And Mr Desalliers, can you keep an eye on trying
9 to enable us to be in public session, if possible. I understand from the nature
10 of this kind of evidence, given that it's dealing with identities of individuals,
11 it may be difficult, but if there are sections that can be dealt with publicly,
12 then we really must keep that in mind.

13 Please proceed.

14 MR. DESALLIERS: (Interpretation) Thank you, your Honour.

15 Questioned by Mr. Desalliers: (Interpretation)

16 Q. Good morning, Witness.

17 A. Good day.

18 Q. We have already met but I would like to introduce myself once again. My
19 name is Marc Desalliers. I'm a lawyer, and I'm going to be asking you questions
20 today for the defence of Mr Thomas Lubanga. Can you hear me well?

21 A. Yes, I can hear you fine.

22 Q. Could you please tell us your full name?

23 A. Yes. My name (Redacted).

24 Q. Could I please ask you to be so kind as to spell out your name, "(Redacted)"?

25 A. Yes. I would spell it (Redacted).

- 1 Q. I beg your pardon.
- 2 Your Honour, I see it's come on the screen.
- 3 I would like to repeat once again, to be certain that I have understood.
- 4 Is it (Redacted)?
- 5 A. No. (Redacted).
- 6 Q. Fine. That means it's (Redacted), as in (Redacted)?
- 7 A. Yes.
- 8 Q. Thank you. Could you tell us your date of birth, please?
- 9 A. I was born on (Redacted).
- 10 Q. Where were you born?
- 11 A. I was born in the town of (Redacted).
- 12 Q. Could you give us the actual name of your father?
- 13 A. My father's name is (Redacted).
- 14 Q. Thank you. Are those all of the names of your father? Does he have any
- 15 other name?
- 16 A. Yes. Well, in fact, he has another name, but it's a name that we use
- 17 out of respect: We call him (Redacted).
- 18 Q. Thank you. Is he your biological father?
- 19 A. Yes.
- 20 Q. Did you live with your biological father from your birth?
- 21 A. Yes.
- 22 Q. What is your mother's name?
- 23 A. My mother's name is (Redacted).
- 24 Q. May I repeat, (Redacted)
- 25 A. No, it's not like that that it's written.

1 Q. Could you pronounce her name very slowly, so that the court reporters
2 can hear it clearly?

3 A. Yes. The first letter is K, then (Redacted).

4 Q. And the other name, is it (Redacted), is that spelt correctly?

5 A. No. The spelling is (Redacted).

6 Q. Thank you very much. Does your mother have any other name?

7 A. Yes. In our family, if a woman is married -- well, when a woman is married,
8 she receives another name, and my mother's name is (Redacted).

9 Q. Is there a first name or a name of baptism?

10 A. Yes. Her baptism name is (Redacted).

11 PRESIDING JUDGE FULFORD: Mr Desalliers, it's obviously ultimately,
12 entirely up to you, but where there are a lot of names, some of which may be important,
13 given that this witness clearly can read, you may want to ask him to write some
14 of them down so that we are certain as to the spelling of them. It's only a thought.

15 MR DESALLIERS: (Interpretation) Yes, your Honour.

16 THE WITNESS: I didn't understand that question.

17 MR DESALLIERS: (Interpretation)

18 Q. That wasn't a question for you, Witness; it was a question for myself,
19 in fact.

20 A. Fine. Thank you very much.

21 Q. When you were born, was your mother married to (Redacted)?

22 A. I didn't understand your question.

23 Q. You gave us your mother's name, your father's name; and my question is:
24 When you were born, were they already married?

25 A. Before I was born, they were married; and then I was born.

1 Q. Thank you. Throughout the period when you lived with your parents, was
2 your mother married to another person?

3 A. No.

4 Q. And do you have brothers and sisters?

5 A. Yes.

6 Q. Are you the eldest of the family? Is that correct?

7 A. Yes, I'm the eldest of the family.

8 Q. Could you give us the name of your next sibling?

9 A. The second child is a girl; her name is (Redacted).

10 Q. (Redacted), you said? Could you spell (Redacted) for us?

11 A. Yes. It's (Redacted). And the second name is (Redacted).

12 Q. I'd like to just make one point very clear, because we are going to be
13 speaking about other names. Is it easier for you to spell names or to write them
14 down on a piece of paper? Which is easier for you? Are you comfortable spelling
15 out the names out loud or would you prefer that they be written on a piece of paper?

16 A. I'm comfortable with spelling the names whenever you need me to do so.

17 Q. Thank you very much. So the name is (Redacted). And then who comes next
18 in the family?

19 A. After (Redacted), there is another girl. Her name is (Redacted).

20 Q. Could you spell (Redacted) for us, please?

21 A. "(Redacted)" -- well, (Redacted) is spelt (Redacted).

22 Q. But could you spell (Redacted), please?

23 A. (Redacted) is spelt (Redacted).

24 Q. Thank you. And then who is next?

25 A. There's (Redacted).

1 THE INTERPRETER: Mugisa. Correction on the part of the interpreter.
2 Mugisa.
3 MR DESALLIERS:
4 Q. Could you spell the name?
5 A. (Redacted) is spelt (Redacted). And (Redacted) is spelt (Redacted).
6 Q. Is that a girl or a boy?
7 A. It's a girl.
8 Q. Could you give us the name of the next child in the family?
9 A. After (Redacted), there is a boy whose name is (Redacted).
10 Q. If you would be so kind as to spell that name, please.
11 A. It is spelt as follows: (Redacted). (Redacted) is spelt as follows:
12 (Redacted).
13 Q. And then the next child?
14 A. And then there's the youngest; his name is (Redacted).
15 PRESIDING JUDGE FULFORD: When we get to the end of the family tree,
16 Mr Desalliers, we will have a break.
17 MR DESALLIERS: (Interpretation) Very well, your Honour.
18 Q. So the name was (Redacted). Did you mention another name?
19 A. (Redacted) is his first name.
20 Q. Fine. (Redacted). That's okay. Could you spell the two other names,
21 "(Redacted)" and "(Redacted)," please?
22 A. (Redacted) is spelt as follows: (Redacted). (Redacted) is spelt
23 (Redacted).
24 Q. Thank you. I'd like to just come back for a moment to the name (Redacted)
25 (Redacted). You mentioned the name (Redacted). Could you just respell that name, (Redacted),

1 please?

2 A. (Redacted).

3 MR DESALLIERS: (Interpretation) Thank you very much, your Honour.

4 Perhaps it's time.

5 PRESIDING JUDGE FULFORD: Sir, every so often we have to give the
6 interpreters and the transcribers - to say nothing of ourselves - a break during
7 the course of the evidence, and we've been sitting now for an hour-and-a-half. So
8 we are going to take a half-an-hour break now and we look forward to seeing you
9 again at half-past 4.

10 Closed session, please.

11 *(Closed session at 3.55 p.m.) Reclassified as Open session

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

13 (The witness stands down)

14 PRESIDING JUDGE FULFORD: Half-past 4.

15 THE COURT USHER: All rise.

16 (Recess taken at 3.57 p.m.)

17 ***

18 (Upon resuming at 4.30 p.m.)

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

20 PRESIDING JUDGE FULFORD: Witness, please.

21 Ms Samson, while the witness is coming into court, I think a refinement
22 on what I said earlier is that we actually really need to know what is known by
23 Trial Chamber I and can't be known by Trial Chamber II and what is known by Trial Chamber
24 II and can't be known by Trial Chamber I. That's the real issue,
25 I think.

1 (The witness enters the courtroom)

2 MS SAMSON: We will bear that in mind, your Honour, in preparation of
3 the materials for the Chamber.

4 PRESIDING JUDGE FULFORD: Private session, please.

5 *(Private session at 4.32 p.m.) Reclassified as Open session

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

7 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

8 MR DESALLIERS: (Interpretation)

9 Q. Mr Witness, I shall now be putting before you a document which is a photograph.
10 I have hard copies. If they -- if one could please be given to the witness and
11 copies to others, parties and participants, present. I will give the ERN number
12 reference: DRC-OTP-0138-0025. So, Mr Witness, you have the photograph before
13 you.

14 THE INTERPRETER: The witness's microphone is not on.

15 MR DESALLIERS: (Interpretation)

16 Q. I apologise, Mr Witness. I put a question to you but your microphone
17 was not on. So you do have the photograph before you, do you not?

18 A. Yes.

19 Q. Do you recognise the individual on this photograph?

20 A. Yes.

21 Q. Could you tell us who it is?

22 A. This is our younger (Redacted) by the name of (Redacted).

23 MR DESALLIERS: (Interpretation) I note that the witness is having problems
24 with his headset. Is it adjusted? Could we maybe check whether adjustments could
25 be made to his headset for him not to be in difficulty with his headset?

1 PRESIDING JUDGE FULFORD: Sir, can I ask you directly: Is your headset
2 uncomfortable?

3 THE WITNESS: Yes, indeed. I do have a problem with my headset, which
4 has a tendency to fall down.

5 PRESIDING JUDGE FULFORD: Right. Usher, can you see whether by plugging
6 in a different headset which may be smaller, or are they all the -- is it all
7 one-size-fits-all? I mean, there is some adjustment, but I assume the adjustment
8 is at its lowest point.

9 Well, I think, Mr Desalliers, we are just going to have to do the best
10 we can for this afternoon. They are one-size headsets, and I think the witness
11 is just going to have to either hold them in position or not move his head too much,
12 unless you've got any other bright ideas for solving the problem.

13 MR DESALLIERS: (Interpretation) I believe that we have found a smaller
14 model, Mr President. We might try this one.

15 PRESIDING JUDGE FULFORD: Well, all right, let's see if that's smaller.
16 Right. Well done, Ms Buteau. Thank you very much indeed. Is there any
17 headset available for counsel? Yes, there is. Thank you very much.

18 Right, carry on, Mr Desalliers.

19 MR DESALLIERS: (Interpretation)

20 Q. Thank you. So, Mr Witness, we shall return to the question. You say that
21 the person in the photograph before you is your (Redacted); is that correct?

22 A. I can't hear anything.

23 PRESIDING JUDGE FULFORD: Can you hear me now, sir?

24 THE WITNESS: (No interpretation)

25 PRESIDING JUDGE FULFORD. Good. Try again.

1 THE WITNESS: Now everything is fine.

2 MR DESALLIERS: (Interpretation)

3 Q. So I repeat, Witness, the photograph before you represents your (Redacted)
4 (Redacted); is that correct?

5 A. Yes.

6 Q. I shall now show another document to you, another photograph. If we could
7 please have this distributed. I am sorry, I forgot to request a reference number
8 for the preceding document.

9 THE COURT OFFICER: Your Honours, the coloured photograph under
10 DRC-OTP-0138-0025 will be assigned EVD-D01-00109 as "confidential."

11 PRESIDING JUDGE FULFORD: Right. So the next photograph, please.

12 MR DESALLIERS: (Interpretation) The following photograph bears the
13 reference number DRC-OTP-0138-0005.

14 Q. Mr Witness, you have the photograph before you, do you not?

15 A. Yes.

16 Q. Do you recognise the person in the photograph?

17 A. Yes. It is my (Redacted), who is called (Redacted).

18 Q. Thank you. So I have no further questions with regard to these two
19 photographs I have shown to you. However, I would like a point of clarification:
20 (Redacted), do you know that person by any other name or names?

21 A. No, that is the only name that was used.

22 Q. And (Redacted), do you know him by any other names apart
23 from these three?

24 A. No, these are the only names that I know him by.

25 Q. Do all your brothers and sisters whom you have just named, were they all

1 born of the same mother and the same father?

2 A. Yes.

3 Q. Can you tell us where your parents live?

4 A. My parents currently live -- well, they are working as (Redacted) in a
5 place called (Redacted).

6 Q. And what do you mean by (Redacted)?

7 A. Well, they are (Redacted).

8 Q. You told us that the name of your mother is (Redacted);
9 is that correct?

10 A. Yes.

11 Q. Do you also have an aunt by the name of (Redacted)?

12 A. No.

13 Q. Do you know an individual by the name of (Redacted)?

14 A. That is my mother's name.

15 Q. Sir, I would like a point of clarification with reference to your mother's
16 name. Is it "(Redacted)" or "(Redacted)"?

17 A. Her name is "(Redacted)." It might be that her name was spelt or misspelt,
18 but her name is (Redacted).

19 Q. I thank you. Could you please tell us if you are married?

20 A. Yes, I am married, and have been for quite some time.

21 Q. Can you tell us who you are married to?

22 A. I have two wives.

23 Q. Could you give us the name of your first wife?

24 A. (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 THE INTERPRETER: (Redacted) corrects the Swahili interpreter.

5 MR DESALLIERS: (Interpretation)

6 Q. So I shall repeat the name in order to make sure I have understood you
7 correctly. (Redacted); is that right?

8 A. No. The name is spelt as follows: (Redacted).

9 Q. And how do you spell (Redacted)?

10 A. (Redacted).

11 Q. Thank you. Could you please give us the name of the (Redacted)

12 (Redacted) and who was the previous husband of Madam (Redacted)?

13 A. His name was (Redacted).

14 Q. And did he have a first name?

15 A. Yes, his name was (Redacted) (phon). This was a form of respect within
16 our custom.

17 Q. And how old were you when you first got married?

18 A. I would say that I was (Redacted) years of age.

19 Q. So do I understand you correctly that you were married a second time
20 subsequently and that you have another wife?

21 A. Yes.

22 Q. Could you please give us her name?

23 A. My second wife is called (Redacted).

24 THE INTERPRETER: The Swahili interpreter did not hear the rest of the
25 witness's answer. Could he please be asked to repeat?

1 MR DESALLIERS: (Interpretation)

2 Q. So her name is (Redacted). Could you please spell the other name that
3 you gave us?

4 A. Yes. (Redacted).

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

6 A. (Redacted). Well, this is a name in my father's family. In fact, he is
7 my paternal uncle. He is the younger brother of my father; the one who comes after
8 my father.

9 Q. And is he still alive today?

10 A. Yes.

11 Q. Do you know an individual by the name of (Redacted)?

12 A. (Redacted) is my first wife, who was also called (Redacted). Out of respect,
13 we are also in the habit of calling her by other names, but her name
14 is (Redacted).

15 Q. So, do I understand correctly that (Redacted) is a name that she bore
16 before you were married?

17 THE INTERPRETER: Correction from the English booth: "(Redacted) was the
18 name that she had before she was married?

19 THE WITNESS: Yes, this is a name that she was given. Everyone has a form
20 of respect. And she could be called (Redacted). This was within our custom,
21 a name.

22 MR DESALLIERS: (Interpretation)

23 Q. Do you know an individual by the name of (Redacted)?

24 A. Yes. This is my elder brother who is deceased (Redacted).

25 His name was (Redacted). However, his name is not (Redacted).

1 Q. Very well, thank you. And do you know a name, or a person by the name
2 of (Redacted)?

3 A. No, I do not know (Redacted), but (Redacted) is the name of my mother.
4 That is one of my mother's names. I do not know the name (Redacted).

5 Q. Thank you. You told us that you were born in the year (Redacted) in (Redacted).
6 Until what age did you live in (Redacted)?

7 A. I left (Redacted) when I was (Redacted) years old. There was fighting
8 between the Hema and the Ngiti. That was in the year (Redacted), and that is when
9 I left (Redacted) in order to go to (Redacted) localité.

10 Q. Do we understand correctly that you were living with your parents in (Redacted)?

11 A. Yes.

12 Q. And in (Redacted), did you also live in that location with your parents?

13 A. Yes.

14 THE INTERPRETER: Mr President, message from the English interpreter.

15 The Swahili booth did not -- the Swahili booth is just saying that they cannot hear
16 the witness and previously their answer, which was "Yes", was not interpreted.

17 PRESIDING JUDGE FULFORD: The witness is going to have to speak up,
18 Mr Desalliers. There are some answers that are not being heard by the Swahili booth.

19 MR DESALLIERS: (Interpretation)

20 Q. I apologise, Mr Witness. The last two answers were not heard by the
21 interpreters. I shall come back somewhat in order to allow you the opportunity
22 to provide a response. I had asked you whether you were living with your parents
23 in (Redacted), and your answer to that was?

24 A. I lived there with my parents.

25 THE INTERPRETER: The Swahili interpreter would like to indicate that

1 they are not receiving sound in the booth. They cannot hear anything, whether it
2 be the question from counsel or the witness's answer.

3 MR DESALLIERS: (Interpretation) Mr President, it would seem that it is
4 more a technical issue than that of a response.

5 PRESIDING JUDGE FULFORD: We are going to rise for a moment so that this
6 can be remedied. Closed session, please.

7 *(Closed session at 5.00 p.m.) Reclassified as Open session

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

9 (The witness stands down)

10 PRESIDING JUDGE FULFORD: Good. Could we be told when this has been sorted
11 out for sure, please. Thank you.

12 (Recess taken at 5.01 p.m.)

13 (Upon resuming at 5.13 p.m.)

14 THE COURT USHER: Please be seated.

15 PRESIDING JUDGE FULFORD: Witness, please, and we will try again.

16 (The witness enters the courtroom)

17 PRESIDING JUDGE FULFORD: Private session, please.

18 *(Private session at 5.14 p.m.) Reclassified as Open session

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

20 PRESIDING JUDGE FULFORD: Sir, can you hear me now over the headphones?

21 THE WITNESS: Yes.

22 PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

23 MR DESALLIERS: (Interpretation)

24 Q. Sir, I apologise. I asked you the same question twice and you answered
25 well, but, for technical reasons, your answer was not recorded. So I am going to

1 put the question to you again. While you were living in (Redacted), up to the age
2 of (Redacted), were you living with your parents?

3 THE INTERPRETER: Well, the English booth apologises. We cannot hear the
4 Swahili booth. Interpretation: Yes, I was living with my parents.

5 MR DESALLIERS: (Interpretation)

6 Q. And when you went to live in (Redacted), were you living with your parents
7 as well?

8 A. Yes, I lived with my parents as well.

9 Q. And up to when - up to what point in time - did you live in (Redacted)?

10 A. I lived in (Redacted) -- well, I have forgotten the day and the date. In
11 any case, I lived in (Redacted) right up to the day I got married.

12 Q. So you lived in (Redacted) up to the age of 18; is that correct?

13 A. I lived there up to above the age of 18, because I got married there and
14 had children. Afterwards, I left (Redacted), around the year 19 - well, it might
15 have been in 1990... in fact, it was after the Laurent Kabila war. That is when
16 we moved to (Redacted).

17 Q. So it was after your second marriage?

18 A. Yes.

19 PRESIDING JUDGE FULFORD: Mr Sachdeva.

20 MR SACHDEVA: Mr President, I haven't risen up until now, but those
21 questions are slightly leading and, in my submission, this area of the witness's
22 testimony is fundamental.

23 PRESIDING JUDGE FULFORD: Could you exercise particular caution now,
24 Mr Desalliers, please. Thank you very much. Thank you, Mr Sachdeva.

25 MR DESALLIERS: (Interpretation)

- 1 Q. So when you went to live in (Redacted), who were you living with?
- 2 A. I lived with my family; that is, with my wives and my children.
- 3 Q. And for how long did you live in (Redacted)?
- 4 A. I would say we lived there right up to the start of the conflict between
- 5 the ethnic groups. That was when we left (Redacted) to go back to (Redacted).
- 6 Q. Do you remember the year; the year you left (Redacted) to go to (Redacted)?
- 7 A. I beg your pardon. When you talk about years I have very poor recollection
- 8 of the events. I do remember the events but I cannot remember the years when those
- 9 events took place. I do not have any recollection of that.
- 10 Q. Do you remember your age at the time?
- 11 A. I have just told you that I have a very poor recollection of those years.
- 12 Q. Verywell. Thankyou. Couldyou tellus whereyou lived at the time (Redacted)
- 13 was born?
- 14 A. We were living at (Redacted).
- 15 Q. And could you tell us where you were living at the time (Redacted) was born?
- 16 A. He was born when we were living -- at the time we were living at (Redacted).
- 17 Q. Do you know the age difference between you and (Redacted)?
- 18 A. I could have an idea. My mother gave birth to (Redacted) and after that
- 19 she paused for a while. Later on she gave birth to (Redacted). If I remember
- 20 correctly, (Redacted) was born between 1986 and 1987.
- 21 Q. And do you know the year; the year during which (Redacted) was born?
- 22 A. There isn't a great difference in age. I would say there is a two-year
- 23 difference between the two.
- 24 Q. And when you left (Redacted) to go and live with your family - that is,
- 25 your own family, your wives and your children, I mean - where were (Redacted)

1 living?

2 A. At that point in time, they were living in (Redacted). They went to (Redacted)
3 when my father went for (Redacted). And so the two children went to study in a
4 Primary School in (Redacted).

5 Q. Do you remember the name of that school?

6 A. It was at the (Redacted) Primary School.

7 Q. Could you tell us where your father went to for his (Redacted)?

8 A. He underwent the training in the (Redacted) neighbourhood, which is in
9 the locality of (Redacted). The school was called (Redacted).

10 Q. And the (Redacted) neighbourhood is found in which town?

11 A. In the (Redacted).

12 Q. And where was your mother residing at that point in time?

13 A. My mother and my father were together. They were undergoing the (Redacted)
14 (Redacted) together.

15 Q. Could you tell us how far (Redacted) is from (Redacted)?

16 A. The distance between (Redacted) and (Redacted) would be about (Redacted)
17 kilometres. It's not very long.

18 Q. And could you tell us the approximate distance between (Redacted)?

19 A. The distance between (Redacted) is about (Redacted) kilometres maximum.

20 Q. When you left the home of your parents to go and live with your wives
21 and your children, could you tell us how often did you see your parents and your
22 brothers?

23 A. At that time, we could meet once a week. I used to go and visit them,
24 and they would come and visit us. For example, on Saturdays or Sundays - that is,
25 the weekend - we could see each other regularly.

1 MR DESALLIERS: (Interpretation) Your Honour, could I have a moment?

2 (Pause in proceedings)

3 Q. While you were in (Redacted), could you tell us what your profession was?

4 A. At the time, (Redacted). In our culture, when you get married your father
5 gives you some property. At the time, I had responsibility, as I was a (Redacted).
6 I also engaged in other types of activities, but my main activity was (Redacted),
7 (Redacted).

8 Q. Correct me if I am mistaken, did you indeed state that after (Redacted)
9 you went to live in (Redacted)?

10 A. If I went to (Redacted), it was not because I really wanted to. It was
11 because of the war between the ethnic groups. All my property had been looted,
12 and so we moved to (Redacted) as war-displaced persons.

13 Q. So where precisely did you settle in (Redacted)?

14 A. I settled in the (Redacted) neighbourhood, in the (Redacted) locality. There
15 is a neighbourhood there called (Redacted). A road goes through this neighbourhood

16 Q. Do I understand correctly that (Redacted) is a neighbourhood of (Redacted)?

17 A. Yes.

18 Q. From the point in time when you arrived in (Redacted), what was your job?
19 What did you do?

20 A. During the war, my property was looted; and so I went into the military
21 service. That's what I did.

22 Q. Do you remember -- and, of course, I remember that you said you weren't
23 certain about the dates, but do you remember -- and if you don't, just say so. Do
24 you remember when you became a soldier?

25 A. In fact, truth be told, I don't remember what year it was, but if someone

1 can help me or someone who has been in Bunia, I believe I went into the army before
2 Mr Lopondo was chased out; three years before -- three months before.

3 Q. What military group did you join?

4 A. Our party was called UPC.

5 Q. Do you remember until when you were a soldier in the UPC?

6 A. I continued being a soldier until the French military arrived and
7 demobilised us.

8 Q. So when the French military came and you were demobilised, what did you
9 do afterwards?

10 A. When the French soldiers came, we had our weapons still. I had a commander
11 myself (Redacted), and I had a difference of opinion with him
12 about some trivial matters. And I ran away and I went (Redacted).

13 Q. Could you explain briefly, exactly what you did in the army, your job?

14 A. When I joined the army, I was the boss's bodyguard.

15 Q. Can you tell us the name of the persons for whom you were a bodyguard?

16 A. In the beginning, when we chased away Lopondo, I was the bodyguard for
17 Commander (Redacted).

18 Q. And then?

19 A. And then when (Redacted), he abandoned me
20 after -- he let me go after a battle in (Redacted); and he left me with a different
21 commander, whose name was (Redacted) (phon). And he, (Redacted), was known in the
22 army under the name (Redacted). That was his code name.

23 Q. Did you work for any other commanders?

24 A. Toward the end when we left (Redacted), I returned to (Redacted); and
25 the last commander I worked for was named (Redacted) (phon).

1 Q. You've mentioned (Redacted). Could you tell us the various different
2 places where you worked when you were a soldier?

3 A. From (Redacted) we were sent to (Redacted) to clear out the road between
4 (Redacted). And then from (Redacted), we went to (Redacted). We had a camp in
5 (Redacted). And from (Redacted), we stopped in a village in (Redacted) (phon) and
6 there we had a military camp.

7 Q. So those were the main places where you worked?

8 A. Well, myself, it was the last place where I was appointed; but then I
9 was redeployed to (Redacted), and I was under the orders --

10 THE INTERPRETER: Unfortunately, the Swahili interpreter did not hear
11 the name of the commander.

12 MR DESALLIERS: (Interpretation)

13 Q. Could you please repeat the name of your last commander in (Redacted)?

14 A. It was Commander (Redacted).

15 Q. Thank you. During the period when you were in the army, could you tell
16 us where (Redacted) and (Redacted) were?

17 A. Well, I left (Redacted). They were in school during my military
18 service but, you know, (Redacted) there was disorder and some schools functioned,
19 others didn't. I believe they stayed (Redacted) for one or two years.

20 Q. During the period when you were in the army, did you have contacts with
21 (Redacted) and (Redacted)?

22 A. At that time I had no contact with my family, whether it was my own children,
23 my wives; we were doing our job.

24 Q. Have you already spoken about your work as a soldier with (Redacted),
25 (Redacted)?

1 A. We met at a certain point; I spoke to them about it. When I came back
2 from (Redacted), and I met them in (Redacted) on certain occasions.

3 Q. Do you mean after you left the army?

4 A. No.

5 Q. To be absolutely certain that I have understood you correctly, you saw
6 (Redacted) when you went back to (Redacted), but you were still in the army; is
7 that correct?

8 A. Our party was still active, and we were still working, so when I went
9 back to (Redacted) from (Redacted). I went there to meet with the local people.

10 Q. I would like to know whether at that point in time, or afterwards, you
11 had an opportunity to speak with (Redacted), about your job
12 in the army?

13 A. Well, you know perfectly well, all of the members of my family knew I
14 was a soldier, because sometimes when I went home I had my uniform on and I had
15 my weapon.

16 Q. So, you have just stated that all of the members of your family knew you
17 were a soldier, but I am asking specifically about (Redacted) and (Redacted). Did
18 they know that you were in the army; yes or not, to your knowledge?

19 A. Well, I don't know whether they were soldiers. When I left for the army
20 they were not in the army and when I came back no one told me they had been in the
21 army, so I have no information about whether or not they had been in the army.

22 Q. In the various places where you -- when you were a soldier, you gave us
23 the names a moment ago, in those various different places did you ever hear about
24 (Redacted) and (Redacted)?

25 A. Not at all.

1 Q. (Redacted)

2 A. (Redacted)

3 (Redacted) and

4 during the war, when things became difficult, I asked my father to come and (Redacted).

5 He came with a brother-in-law and (Redacted), but

6 they didn't stay long because the war broke out again and they went to (Redacted).

7 Q. At that precise point in time when they came, was this before or after
8 you went to (Redacted)?

9 A. We went to fight in (Redacted). They had (Redacted). We ran into one
10 other along the way - they had been to (Redacted). And, when I asked them what the
11 situation was I was told that the fighting was intense and that they had fled to
12 (Redacted), where they (Redacted).

13 Q. Could you tell us until when (Redacted) and (Redacted), lived
14 (Redacted)?

15 A. Well, as regards their lives, you know, when I was in the army I knew
16 that they were still in (Redacted) with (Redacted), but when I got to (Redacted)
17 I had a fight with my commander and I went (Redacted). Then I don't know what happened
18 to them in their lives, but when I got back (Redacted) in 2005, or 2006, they were
19 no longer (Redacted). They had gone to study in (Redacted). I don't know how they
20 went there.

21 Q. You mentioned your leaving for (Redacted) for a certain period of time.
22 Do you remember when or do you remember any events related to your leaving (Redacted)?

23 A. No, it was a war situation at the time. When we were home, or even on
24 the way to (Redacted) or (Redacted), we would always run into enemies. In (Redacted),
25 people were fighting all the time.

1 Q. But do you remember how long it was after your demobilisation that you
2 went to (Redacted)?

3 A. I know that I went to (Redacted). It was during a lull in the town of
4 Bunia. It was when the French came to Bunia. They were disarming people and I
5 think that at that time there was no disorder any more in Bunia.

6 Q. When did you personally see (Redacted) and (Redacted), for the
7 last time?

8 A. I saw them when I came from (Redacted). As soon as I got back from (Redacted),
9 well, I spent almost one year in (Redacted) and then the French arrived.

10 Q. So when you came back (Redacted) did you see (Redacted) and
11 (Redacted), or not?

12 A. When I came back from (Redacted) I didn't see them any more, and I asked
13 the question, I asked about them, and I was told that they had gone to study in (Redacted).

14 Q. Thank you. So, Witness, you have answered a number of questions and you
15 have made a number of statements before this Court. Can you tell us whether anyone - any
16 persons - have put pressure on you in order for you to come here before the Court
17 to say these things?

18 A. I beg your pardon, I am afraid I haven't understood your question.

19 PRESIDING JUDGE FULFORD: I think this one question can be in public session,
20 Mr Desalliers.

21 (Open session at 5.50 p.m.)

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

23 PRESIDING JUDGE FULFORD: Yes. Yes, Mr Desalliers. Do you want to ask
24 the question?

25 MR DESALLIERS: (Interpretation)

1 Q. Witness, I am going to ask that question again. Did you undergo any pressure
2 or have you received any threats from anyone in order for you to come and tell what
3 you have told us here today before this Court?

4 THE INTERPRETER: The English booth did not hear the response.

5 MR DESALLIERS: (Interpretation)

6 Q. My question is: Have you come of your own will to testify before this
7 Court?

8 A. Yes, I have done this of my own will. I have been told to come and say
9 what I lived through and I have told the truth and, since I know these events very
10 well, I decided to come here and say the truth.

11 PRESIDING JUDGE FULFORD: Just while Mr Desalliers and Maître Mabilie
12 are conferring, in the English transcript, page 40, line 24, the witness in fact
13 did give a clearly audible answer. When the perfected transcript is prepared, could
14 that answer please be listened to separately and included in the transcript. Yes,
15 Mr Desalliers.

16 THE INTERPRETER: Message from the English booth, Mr President. We do
17 have the interpretation of that answer. We can provide you with it now, if you
18 wish?

19 PRESIDING JUDGE FULFORD: Why don't you give it to us now. Thank you very
20 much.

21 THE INTERPRETER: The answer would be: Answer: I am sorry, do you want
22 to know whether these threats came from my family or elsewhere?

23 PRESIDING JUDGE FULFORD: Mr Desalliers, if I can help, you asked a question:
24 "Witness, I am going to ask that question again. Did you undergo any pressure or
25 have you received any threats from anyone in order for you to come and tell what

1 you've told us here today?" The witness then gave a response which was not heard
2 by the English booth; and in fact, the answer kindly given by the interpreters was
3 the answer to that question. Anything else?

4 MR DESALLIERS: (Interpretation) Yes, your Honour.

5 Q. Did anyone - any people - promise you anything, or money, in exchange
6 for your testimony here before the Court?

7 A. No. No one gave me any promises of money. I would just like to say, that
8 I was helped for my transportation from (Redacted) to come here because it's very difficult.

9 Q. Fine. Thank you. Could you tell us if anyone tried to discourage you
10 or to dissuade you from coming to testify here before the Court?

11 A. Well, in my family, some people told me not to come because perhaps those
12 children were led astray, and if I come and testify and say something different,
13 maybe those children will be arrested.

14 MR DESALLIERS: (Interpretation) Could we go into closed session, your
15 Honour, for a few questions?

16 PRESIDING JUDGE FULFORD: We can. Private session, please.

17 *(Private session at 5.56 p.m.) Reclassified as Open session

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

19 MR DESALLIERS: (Interpretation)

20 Q. When you say the words "those children," who are you referring to?

21 A. The children that I know are (Redacted), who are no longer (Redacted)
22 and who are still studying.

23 Q. Can you tell us which members of your family tried to discourage you from
24 coming here to testify?

25 A. I have family members; (Redacted), in fact. I don't really have a good

1 relationship with them. One is in prison in (Redacted) because he was one of the
2 people who were found guilty (Redacted). These are dangerous
3 people. One of them is in the forest, and I am afraid to go back because of that
4 one, because he is often used in the family because of his strength.

5 MR DESALLIERS: (Interpretation) One moment, your Honour.

6 (Pause in proceedings)

7 I have no further questions, your Honour.

8 PRESIDING JUDGE FULFORD: Mr Sachdeva, you will be relieved to know that
9 we are not going to call on you tonight, unless you are -- no. We are not going
10 to call on you tonight, actually. So you are not going to be given the choice.

11 Sir, you've been in the witness box quite a long time now today, and we
12 are going to adjourn now for the evening. Thank you very much indeed for your
13 assistance so far, and we will look forward to seeing you at 2.30 tomorrow afternoon.

14 Closed session, please. And usher, can you help the witness to withdraw?
15 There is no one in the public gallery.

16 *(Closed session at 6.00 p.m.) Reclassified as Open session

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

18 (The witness stands down)

19 PRESIDING JUDGE FULFORD: Mr Sachdeva, a point of assistance, please.
20 We had a communication on 15 February - a couple of days ago - outlining some
21 objections -- or rather, two objections to some material that you might have wished
22 to use. They fall into very different categories: One, a logbook of communications
23 attributed to the UPC; and the other, the application to participate of Witness
24 (Redacted), who is (Redacted).

25 I want to emphasise, speaking entirely for myself, I can see that with

1 the logbook there is an argument that that is not entirely dissimilar to the kind
2 of court record that the Defence have deployed when questioning your witnesses;
3 that it's a third party's record which has entries in. And as I remember it, the
4 Defence counsel gave the witnesses an opportunity to comment on entries, which
5 seemingly related either to themselves or people they knew, to see whether they
6 had any observation. So that's just a comment, no more.

7 However, the application to participate by someone else altogether, well,
8 that I think tends to come within a category of evidence that we've already expressed
9 a view on. Now, are they both pursued, and is there anything else you'd like to
10 say about them if they are?

11 MR SACHDEVA: Yes, Mr President. Thank you. With respect to the logbook,
12 at this stage, I put it on there to prepare for any eventuality; but at this stage,
13 I don't intend to use it. The victim application form was placed on the list because
14 within that form therein is contained what we say to be a demobilisation certificate
15 with respect to (Redacted). That certificate has been extracted and a separate
16 document has been produced which has been --

17 PRESIDING JUDGE FULFORD: So you are not seeking to put Witness 8's account;
18 you are seeking to put a document that relates to Witness 8. Right.

19 MR SACHDEVA: Indeed.

20 PRESIDING JUDGE FULFORD: Thank you. So Mr Desalliers, you don't have
21 to worry about the logbook at the moment. Now that Mr Sachdeva has explained helpfully
22 the limited part of the application to participate that he wishes to rely on, is
23 there any objection to him using that material?

24 MR DESALLIERS: (Interpretation) As for the certificate of
25 demobilisation, the Defence has no objection for that being used in the

1 cross-examination, Mr President.

2 PRESIDING JUDGE FULFORD: It seems as though you are all in a hurry to
3 get home. We will meet again at 2.30 tomorrow. Thank you very much.

4 THE COURT USHER: All rise.

5 (The hearing ends at 6.05 p.m.)

6 RECLASSIFICATION REPORT

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