

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio

4 Benito and Judge René Blattmann

5 Situation in the Democratic Republic of the Congo -

6 ICC-01/04-01/06

7 In the case of The Prosecutor v. Thomas Lubanga Dyilo

8 Wednesday, 19 May 2010

9 (The hearing recommences at 2.45 p.m. from Courtroom

10 2)

11 *(Closed session) Reclassified as open session

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

13 PRESIDING JUDGE FULFORD: Good afternoon. Witness,

14 please.

15 (The witness enters the courtroom)

16 PRESIDING JUDGE FULFORD: Public, Mr Biju-Duval?

17 MR BIJU-DUVAL: (Interpretation) One very brief

18 question in private -- in closed session and then after that I

19 think we could go into an open session.

20 PRESIDING JUDGE FULFORD: Private session, please.

21 *(Private session at 2.46 p.m.) Reclassified as open session

22 (The accused enters the courtroom)

23 THE COURT OFFICER: We are in private session,

24 Mr President.

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

Case No.: ICC-01/04-01/06

1 WITNESS: WWW-OTP-0297

2 (The witness answers through interpreter)

3 QUESTIONED BY MR BIJU-DUVAL (Continuing):

4 (Interpretation)

5 Q. Good afternoon, witness.

6 A. Good afternoon.

7 Q. To begin I would just like to ask for one piece of
8 additional information from you. Amongst your brothers, is
9 there a brother by the name of (Redacted)

10 A. Yes, I have a brother whose name is (Redacted).

11 Q. Have you sisters?

12 A. I have just one sister; her name is (Redacted). I have
13 another sister, a half-sister, from my mother's aunt.

14 THE INTERPRETER: The Swahili interpreter did not hear
15 the name of the half-sister.

16 MR BIJU-DUVAL: (Interpretation)

17 Q. Could you repeat the name of your half-sister, which
18 the interpreter did not hear?

19 A. The name of my half-sister is (Redacted).

20 She is the daughter of my maternal aunt.

21 Q. Does she have any other names?

22 A. That is the only name that I'm aware of.

23 Q. Thank you. Now, before we go back into open session,
24 I would like -- I would like to say -- I would like to quote the
25 name -- mention the site of (Redacted). I believe that the OTP did

1 not want the name of that place to be mentioned in open session.
2 Now, I think we can do so in open session, and I would like to
3 put the matter before the Chamber.

4 PRESIDING JUDGE FULFORD: Ms Samson?

5 MS SAMSON: Your Honour, I don't recall ever making a
6 submission that (Redacted) ought not to be elicited in public
7 session. (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted). But throughout his testimony in public session the
11 witness has made references to (Redacted) in different contexts.

12 PRESIDING JUDGE FULFORD: So, in short, no problems
13 with (Redacted) in public session. Thank you very much.

14 Public session, please, and don't worry about (Redacted),
15 Mr Biju-Duval. Thank you.

16 (Open session at 2.50 p.m.)

17 THE COURT OFFICER: We are in open session,
18 Mr President.

19 PRESIDING JUDGE FULFORD: Thank you.

20 MR BIJU-DUVAL: (Interpretation)

21 Q. Witness, yesterday and the day before that you
22 explained that the UPC soldiers had come to take you forcibly
23 from your school in Katoto, and that they took you to Katoto
24 from where you were then -- and then after that from that place
25 you escaped, before you returned to Katoto somewhat later. My

1 question is as follows: Is it correct that when you were met by
2 the investigators from the Prosecutor in November and December
3 in 2007, you did not speak to them about that event?

4 A. I would like some more information about what I
5 allegedly said to them. I remember that when I met with them I
6 told them that I was from Katoto and that I had been taken,
7 forcibly taken, abducted from Katoto and everything that I told
8 them had to do with Katoto, so I would like to ask you to
9 explain to me. Please explain very carefully to me. Did I tell
10 them a different version of -- in comparison to what I'm now
11 telling you?

12 Q. Did you say to the OTP investigators in the year 2007
13 that you had been abducted from the Katoto school?

14 A. Yes, I told the investigators about the circumstances
15 in which I had been abducted while I was at school. The first
16 time I got away after two days. The second time it was when
17 fighting occurred in Katoto, and after the fighting I fled to
18 Centrale, where I spent one night. The next day, towards the
19 evening, I returned to Katoto and the third day I was abducted
20 another time. I was not the only one abducted; a group of us
21 were abducted, and we were taken to Nizi.

22 Q. Thank you. When you were reread your statement from
23 2007, with a translation going along with it, did you see that
24 the statement does not indicate anywhere anything about this
25 abduction from the school?

1 A. I haven't really understood your question. Could you
2 ask it again so that I could understand better?

3 PRESIDING JUDGE FULFORD: Mr Biju-Duval, this runs the
4 risk, I think, of becoming something of a memory test for the
5 witness with him being asked if he now remembers not the event
6 but whether he mentioned it to a particular person who
7 interviewed him and whether or not that then found its way into
8 a written statement, and I think there is a real element of
9 artificiality in this. You know whether or not it's in his
10 statement and I think you can put your questions building on
11 that, rather than asking the witness whether he remembers seeing
12 it in the statement. Could you go, as it were, quicker to the
13 more important issue, rather than asking this witness to
14 undertake that exercise in memory.

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

16 Q. Witness, you have just reminded us of the
17 circumstances of your abduction, and I would submit to you -- I
18 would show you an extract of the discussion that you had with
19 some lawyers from the Defence. I would like to make reference
20 to one particular passage, document 228 at tab 7, page 0080.

21 PRESIDING JUDGE FULFORD: Just pause a moment so the
22 usher can catch up, Mr Biju-Duval. So tab 7, 0080. Do have
23 seat, usher, as and when you've got a moment.

24 Yes, Mr Biju-Duval, what's the passage?

25 MR BIJU-DUVAL: (Interpretation) Yes, the passage is

1 at line 277 to 284 -- I beg your pardon. Allow me to correct.
2 258 to 284.

3 "Question: Do you remember how it happened when you
4 entered the army? What happened at that particular time? How
5 did that come to be? How did you come to enter the army?

6 Answer: I was taken from the school, when I was at
7 school. Question: Which school? Answer: The name of the
8 school -- the exact name I've forgotten it but it is in Katoto.

9 Question: Could you tell us what happened at that time,
10 according to you, in the school? Answer: They arrived with
11 trucks; two trucks, when they arrived in front of the school
12 gates. They blocked the entrance and started to choose the
13 various people who could go into the army, that they could take
14 with them. Question: And then what happened? Answer: After
15 that they took us to Aru. Question: Where? I beg your pardon.
16 I did not hear. Answer: Aru."

17 My question is as follows: These are statements from
18 December 2009 in which you indicate that the soldiers took you
19 from the school and took you to Aru. Why is it that now,
20 yesterday and the day before that, you are telling us that you
21 were taken to Katoto?

22 A. When I discussed this with you I had forgotten the
23 name of the towns or villages. If I said Aru, it's probably
24 because my memory was not working correctly and I'd forgotten
25 certain details and in the Kinshasa office, in theory, I wasn't

1 informed that you had the intention of interviewing me, so I may
2 have got the name wrong, but the fact is that in Katoto I was
3 taken to Nizi. If I mentioned Aru, it was probably because I
4 was afraid of you. I didn't know if you had come to arrest me
5 or for some other reason. I was afraid.

6 Q. Thank you.

7 A. You're welcome.

8 Q. I would like to come back to the moment in which these
9 soldiers abducted the pupils from the school forcibly. How many
10 classes were there at the Katoto school at that time?

11 A. At the time there were six classes, from year one to
12 the sixth year of primary school. That's what I observed when I
13 went to that school in Katoto.

14 Q. Thank you. And approximately how many students were
15 there per class; in your class, for example?

16 A. This is a difficult question. I'm not a magician and
17 I cannot know the exact number of pupils in a class. If you
18 would like an answer to this question, perhaps you should
19 address the principal of the school. What I observed was that
20 there were many of us, but I would not be able to tell you the
21 exact number of pupils. My role was not to do a head count of
22 pupils. My role was simply to go to school and study. I was
23 not there to count pupils.

24 Q. Thank you. Could you please tell us what the
25 principal's attitude was at that given time, if you can

1 remember?

2 PRESIDING JUDGE FULFORD: That's a
3 nearly-incomprehensible question as it's been translated into
4 English, Mr Biju-Duval. As it comes across in English, "Could
5 you tell us what the principal's attitude was?" Well, attitude
6 to what? One may have an attitude to a large number of things.
7 I don't know whether you specified in French what the subject
8 was but it certainly didn't come across in English. Now, is it
9 to the weather? Or cricket? What's the subject?

10 MR BIJU-DUVAL: (Interpretation)

11 Q. Was the principal of the school present at the time,
12 witness?

13 A. When we were abducted, the principal had not yet
14 arrived at school. There was our teacher and other school
15 teachers there. We had one teacher and she was the one who was
16 present at that time.

17 Q. And when the soldiers abducted the children by force,
18 what did she do? Did she witness these events?

19 A. When we were abducted, those who were there were
20 helpless to intervene. They could do nothing. They said that
21 they -- we were there to study. The soldiers, however, told
22 them --

23 THE INTERPRETER: The Swahili booth is asking the
24 witness to slow down, please.

25 PRESIDING JUDGE FULFORD: Sir, I'm very sorry, I'm

1 going to have to ask you to give that last answer again because
2 you were speaking too quickly for the Swahili interpreters. So,
3 the question that Mr Biju-Duval put to you was: When the
4 soldiers abducted the children by force, what did she do, and
5 did she witness these events? Could you kindly give your answer
6 again to that question?

7 THE WITNESS: Very well.

8 On the day when the soldiers came to abduct us, they
9 explained to the teachers that they were coming to take us away
10 and that this was not a decision that they themselves had taken
11 but, rather, that this decision had been taken by the
12 commanders. These soldiers, therefore, asked the teachers not
13 to get involved in the matter. The soldiers were following the
14 orders from their commanders, and the teachers fell silent and
15 they could only watch what was happening to us without being
16 able to take action.

17 MR BIJU-DUVAL: (Interpretation)

18 Q. Thank you. Do you recall the names of any of the
19 children who were taken away in the same convoy as yourself?

20 PRESIDING JUDGE FULFORD: Just before you answer that
21 question. Ms Samson.

22 MS SAMSON: Thank you. The question was asked in
23 chief and it was done in private session, your Honour. I would
24 request that any names associated with this witness be provided
25 in private session.

1 PRESIDING JUDGE FULFORD: I'm sure Mr Biju-Duval
2 agrees.

3 Sir, before you answer the question in relation to the
4 names, private session, please.

5 *(Private session at 3.09 p.m.) Reclassified as open session

6 THE COURT OFFICER: We are in private session,
7 Mr President.

8 PRESIDING JUDGE FULFORD: So, sir, the question that's
9 asked is if you remember the names of any of the children who
10 were taken away in the same convoy as yourself.

11 THE WITNESS: Yes. I can only remember one name of a
12 pupil from my class. His name was (Redacted). That's the only
13 name that I can remember. Nevertheless, other pupils were taken
14 away with me, but I have forgotten their names. I can only
15 remember the name of (Redacted) because I used to play with him,
16 and that's why I cannot forget his name.

17 PRESIDING JUDGE FULFORD: Thank you. Yes,
18 Mr Biju-Duval.

19 MR BIJU-DUVAL: (Interpretation) Your Honour, I think
20 that we could go back to open session.

21 PRESIDING JUDGE FULFORD: Public session, please.

22 (Open session at 3.11 p.m.)

23 THE COURT OFFICER: We are in open session,
24 Mr President.

25 MR BIJU-DUVAL: (Interpretation)

1 Q. Witness, you stated that this forced abduction took
2 place at a time when the UPC had the control of Bunia, and you
3 indicated that this was in 2002. I would like to refer you --
4 or, rather, I shall be referring to a paragraph of your
5 statement from 2007, which has the number -- the EVD number
6 00163 under tab number 1, paragraph 11.

7 PRESIDING JUDGE FULFORD: While that's being found,
8 court officer, if there isn't one, could we have an EVD number,
9 please, for the document under tab 7.

10 THE COURT OFFICER: Yes, Mr President. Document under
11 tab 7, DRC-OTP-0228-0072 will be referenced as EVD-D01-00148.
12 Thank you.

13 PRESIDING JUDGE FULFORD: Right. So tab 1, paragraph
14 11. The usher has got it open at the right page, Mr Biju-Duval.

15 MR BIJU-DUVAL: (Interpretation)

16 Q. I shall quote this paragraph, and I start, "I do not
17 remember the exact date, but I had heard that at that time it
18 was Lopondo who managed Bunia, who was in control of Bunia."

19 My question is the following: Was this when Lopondo
20 was in control of Bunia, or was this after Lopondo had fled and
21 when the UPC came in?

22 A. When Lopondo was in control of Bunia, this was the
23 period prior to the UPC's arrival. The UPC came afterwards. At
24 a given point in time, the UPC fought with Lopondo. And I had
25 not yet commenced that work. And Lopondo himself had controlled

1 Bunia prior to the UPC's involvement. UPC took control of Bunia
2 after Lopondo.

3 Q. I am to understand, then, that in 2007 what you had
4 said to the investigators was incorrect and that it was, in
5 fact, after Lopondo had fled; is that correct?

6 A. I shall explain the situation clearly to you. When
7 Lompondo was in control of Bunia, the UPC had not yet entered
8 Bunia, and the UPC had been created afterwards. The UPC came in
9 at a later point in time. Lopondo had been there first. The
10 UPC had come in secondly and Lopondo had been there firstly.
11 That was how the situation was.

12 Q. Thank you. The day before yesterday, when you
13 explained in -- I'm sorry.

14 I do think, your Honour, that perhaps we should go
15 into private -- closed session for this question, your Honour.

16 PRESIDING JUDGE FULFORD: Private session, please.

17 *(Private session at 3.18 a.m.) Reclassified as open session

18 THE COURT OFFICER: We are in private session,
19 Mr President.

20 PRESIDING JUDGE FULFORD: Yes.

21 MR BIJU-DUVAL: (Interpretation)

22 Q. The day before yesterday, you explained that your
23 younger brother had been killed by the Lendu in the (Redacted)
24 attack. You stated that this younger brother of yours was
25 called (Redacted). I would ask you, please, to refer to

1 paragraph 14 of your 2007 statement, which is under tab number
2 1. In paragraph 14, you say that it was not your brother
3 (Redacted) who was killed, but rather your younger brother named
4 (Redacted). So could you please tell us which brother was killed
5 at that point in time?

6 A. The person who was killed was my younger brother. His
7 name is (Redacted), and I have already explained this to you.
8 You are making me go back. It was (Redacted) who was killed.

9 Q. Thank you. I should like to ask you some questions
10 regarding the moments just after the (Redacted) attack by the
11 Lendu. You stated that you were hiding and that then you escaped
12 to Centrale, and that that very night you went back to (Redacted). I
13 would like you to tell us what you did at that point then, when you
14 got back to (Redacted). Where did you go once you arrived in
15 (Redacted) and what had you done? What did you do that evening?

16 A. When I returned to (Redacted), it was in the afternoon
17 between 4 p.m. and 5 p.m. That was the time at which I returned
18 to (Redacted). At night, I slept next to a military camp; and I
19 was not alone, I was with other members of the community, and I
20 slept among the others next to a military camp which was located
21 in (Redacted) The soldiers, as for them, were inside the camp,
22 but members of the civilian community spent the night outside
23 the military camp.

24 Q. Thank you. That night, once you were back in (Redacted)
25 before going to sleep near the military camp, did you go back to

1 your home, your house?

2 A. The house had already been burned by that time.

3 Q. Did you go to your neighbour's house?

4 A. I don't know where you are going with your questions.

5 At that time, all the houses had been burned down, including my
6 neighbours' houses; they had been burned as well, so how could I
7 go to my neighbour's house? I told you I was with other members
8 of the community, and all of us slept outside the military camp.
9 And I think you are trying to confuse me. You are confusing me
10 and mixing up things, and I don't know if perhaps you should ask
11 Thomas Lubanga himself.

12 Q. That night, did you find any members of your family?

13 A. No, that night I did not find any members of my
14 family. The only person that I saw was my uncle on my mother's
15 side. That is the only person that I was able to see.

16 Q. Could you please tell us his name?

17 THE INTERPRETER: The Swahili booth would like to say
18 that the name was stated, but the interpreter did not catch the
19 name. He has just repeated it.

20 THE WITNESS: The name is (Redacted) (phon).

21 MR BIJU-DUVAL: (Interpretation) Thank you.

22 Q. I should now like to ask you a question about your
23 mother. Your mother, is she currently alive?

24 A. Judging by what you say, you are mocking the very body
25 of my mother. I have already told you that my mother, my

1 biological mother died on the day of the battle. And you are
2 taking me back to that event in my mind. Are you really mocking
3 the very death of my mother?

4 Q. Witness, it is not at all my intention to shock you
5 with these questions, but I do want to submit some of your
6 statements to you so that you can see why I'm asking you these
7 questions.

8 I would like to quote an extract of the interviews
9 that were held between you and the OTP and interviews held in my
10 presence last week. I, therefore, shall refer to the document
11 -- I'm sorry. One moment, please. We need to find the
12 document; it is not in the folder, as I thought. It has been
13 added once we received the transcript on Monday morning. I am
14 referring, therefore, to DRC-OTP-0228-0179 under tab 4 in the
15 folder that you have just received, and I shall refer to page 8
16 of that document, line 279 to 304.

17 PRESIDING JUDGE FULFORD: Pause for a moment, Mr
18 Biju-Duval, so the usher can catch up. Tab 4, page 8, line 279.

19 Now, Mr Biju-Duval, I'm not for a moment going to seek
20 to stop you, but I -- we rely on you, of course, to have a good
21 and solid basis for asking questions on such an obviously
22 sensitive and potentially upsetting subject. I'm sure that you
23 will say to us that there is a good reason for it, but I just
24 want to emphasize that we trust counsel to make sound decisions
25 on issues such as this. Now, page 8, line 279. What's the

1 point, Mr Biju-Duval?

2 MR BIJU-DUVAL: (Interpretation) I would like to read
3 this excerpt out, and I would like to put a question to the
4 witness in order to ascertain whether the person he is referring
5 to is, indeed, his mother.

6 PRESIDING JUDGE FULFORD: Yes, certainly.

7 MR BIJU-DUVAL: (Interpretation) Mr President, the
8 questions are in English, as are the answers. Now, I shall do
9 as much as I can to read this text in an understandable manner.

10 PRESIDING JUDGE FULFORD: Your English is far better
11 than my French, Mr Biju-Duval. So, please continue.

12 MR BIJU-DUVAL: (Interpretation)

13 Q. So I quote, this is an answer given by the witness.

14 No. I'm sorry. I apologise. I am reading from line 268.

15 (In English) "When (Redacted) asked you the question on behalf
16 of (indiscernible). Answer: When he came I was sleeping but I
17 talked to my mother that somebody called (Redacted) will come to
18 look for me and, if he comes, just try to wake up me. When he
19 came my mother opened the door for him and my mother went to my
20 room and wake me up. Question: And the three of you had this
21 discussion with (Redacted), you and your mother as well?

22 Answer: No, he took me outside and we talked, me and him.

23 Question: Outside of your house? Answer: Yes. Question: Do
24 you know if he, (Redacted), introduced himself to your mother
25 when he came into your house and knocked on your door? Answer:

1 Yes. Question: He presented himself? Answer: I am -- I know
2 it may be a delicate matter, but can you tell me..."

3 (Interpretation) Question, end of quote. (Speaks English)

4 "Question: It may be a delicate matter but can you tell me the
5 name of your mother? Answer: (Redacted) (Interpretation)

6 Mr Witness, my question is as follows: Last week during this very
7 interview you described a visit on the part of (Redacted) to your
8 residence, and you stated that your mother was present, (Redacted) The
9 quotation from the statement that I have just read to you, is this
10 true? Is it true that your mother, (Redacted), was indeed present
11 during the visit on the part of (Redacted) to your house?

12 A. Well, I understand what you're saying, but I'd like to
13 put a question to you, just the one: My mother is deceased, the
14 one who brought me into this world. My father married two
15 sisters, and my mother's sister is the wife of my father. So
16 what am I supposed to call her? The person to whom I refer to
17 as (Redacted) was indeed present, and she is the sister of my
18 mother. She was present when (Redacted) came to see me at home,
19 and she talked to (Redacted). She is the wife of my father, so
20 my father's wife is my mother's sister, so what should I call
21 her in order to be able to assist you in the matter?

22 Q. I understand your explanation; notably, that
23 (Redacted) is allegedly not the lady who brought you into this
24 world; is that correct?

25 A. Yes. (Redacted) is my mother -- well, I call her my

1 mother because she is my mother's sister and they were born of
2 the same mother and father. My father had children with both
3 these ladies and this is why I call her my mother.

4 Q. I thank you. You will remember that when we met in
5 Kinshasa in December of 2009 I put questions to you also on the
6 subject of your mother, and you made a number of statements to
7 me that I would like to put before you once again. This is to
8 be found under tab 6 in the file before you, document 0228-0052
9 and this is to be found at page 65 thereof.

10 PRESIDING JUDGE FULFORD: All right. Just before we
11 leave the last document, could it be given an EVD number,
12 please. So an EVD number for the last document, please.

13 THE COURT OFFICER: Yes, Mr President. The last
14 document will have the following reference: EVD-D01-00149.

15 PRESIDING JUDGE FULFORD: And Mr Biju-Duval, when you
16 say tab 6, you mean tab 6 of the green folder? No. Tab 6 of
17 the other folder. Right. The usher has that. He was -- no,
18 it's -- usher, it's tab 6 of the binder. Good. Yes,
19 Mr Biju-Duval, please continue.

20 MR BIJU-DUVAL: (Interpretation)

21 Q. Before reading the quotation out to you, could you
22 please tell us the name of the lady, your mother, notably, your
23 biological mother, the lady who brought you into this world?

24 A. Her name was (Redacted)

25 Q. Thank you.

1 MR BIJU-DUVAL: (Interpretation) With the leave of
2 the Trial Chamber I shall quote from the document I've just
3 indicated, page 0064 to 0065.

4 PRESIDING JUDGE FULFORD: Can we be in public session
5 for this, Mr Biju-Duval, please?

6 MR BIJU-DUVAL: (Interpretation) I would like this to
7 be the case, indeed, but I believe that two names will be
8 quoted.

9 PRESIDING JUDGE FULFORD: We'll remain in private
10 session then. Thank you.

11 MR BIJU-DUVAL: (Interpretation)

12 Q. From line 412 I quote: "Question: I repeat the name
13 (Redacted) Answer: I do not know that person. Question: Do
14 you know your mother's name? Answer: My mother's name is
15 (Redacted) Question: I'm sorry, I did not quite hear that.
16 Could you please -- Answer: My mother's name is

17 (Redacted). Question: And do you know her other name?
18 Answer: I only know her by this name, the name (Redacted)

19 And I am going to be putting a question to the
20 protection -- witness protection section, but if this does pose
21 a problem in terms of security I believe that you will indicate
22 that fact. The question that I would like to put is the
23 following: Do you know where she is to be found currently?

24 Question: Who? Answer: Who? Question: Who? Your mother.

25 Answer: My mother, (Redacted). Question: I did not quite

1 understand the answer. Answer: My mother, (Redacted). Question:
2 Do you know what she is doing at the present time? Answer: She
3 was sick of late. Now she is well again and she is back home?"

4 Now, before putting a question to you, I would also
5 like to -- I would also like to consult tab 8, page -- I
6 apologise, one moment, please. Page 68 and 69, lines -- this is
7 under tab 6. This is lines 565 under tab 6, that is.

8 "Question: With regard to your family I'm going to be
9 putting a question to you again on the subject of your mother
10 whom you talked to us about. When you say that it was your
11 mother, that she is your birth mother notably, that she is your
12 biological mother, is this one and the same person who plays the
13 role of your mother or is it somebody else? I would like to be
14 sure. Answer: This is the person who brought me into the
15 world."

16 So, Mr Witness, you will understand that I am seeking
17 to ascertain whether your birth mother is still alive or
18 whether, as you say today, she was killed in (Redacted) on that
19 evening.

20 A. Everything that you have just said -- I said that my
21 mother was in (Redacted) I did not want to say this on that day
22 because I was afraid of you. My mother was already deceased and
23 had been dead for quite some time. Now, on that day when I said
24 all of this to you it was because I was afraid of you. Now, had
25 the office in Kinshasa told you that you had come to do a job,

1 your job, I could have given you all the information. Now, as
2 they told me that you were going to come and speak to me, they
3 didn't actually explain anything to me as such. This was the
4 very first time that I was meeting with you, and everything that
5 I stated then was because I was afraid of you. My birth mother
6 is already deceased.

7 Q. I do understand your explanation, Mr Witness.
8 However, I would like to understand things a little better;
9 notably, why it is that you thought that in saying your mother
10 was still alive, you were protecting yourself with somebody or
11 something.

12 A. Everything you've just said, well, I do not believe
13 that I fully understood the message. Would you please repeat
14 what you just said?

15 Q. I have understood that, according to what you said in
16 December of 2009 in Kinshasa, your mother was alive, that is,
17 your birth mother. And you said this because you were afraid.
18 That is the explanation that you are giving us today. However,
19 why were you afraid to tell us that your mother was dead? Was
20 there any particular reason for this? Did you want to protect
21 yourself from something? I'm trying to understand things a
22 little better.

23 A. The reason why I made this statement to you telling
24 you that my mother was still alive is because the office in
25 Kinshasa told me that Thomas Lubanga's lawyers would be coming

1 to meet me, and I took fright. I was afraid of telling them
2 that my mother was already dead. That is the only reason why I
3 was afraid.

4 PRESIDING JUDGE FULFORD: Mr Biju-Duval, I think we'll
5 give the witness a break now at this stage. Thank you very
6 much.

7 Thank you, sir. A lot of evidence this afternoon.
8 We'll give you a short break now.

9 Thank you, Mr Lubanga.

10 Closed session, please, and we'll sit again just after
11 five past 4.

12 (The accused exits the courtroom)

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

14 *(Closed session at 3.52 p.m.) Reclassified as open session

15 THE COURT OFFICER: We are in closed session,
16 Mr President.

17 PRESIDING JUDGE FULFORD: Five past 4.00.

18 THE COURT OFFICER: All rise.

19 (Recess taken at 3.52 p.m.)

20 (Upon resuming at 4.06 p.m.)

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

22 PRESIDING JUDGE FULFORD: Witness, please. Private
23 session. And while the witness is coming in, the court officer
24 is going to give an EVD number.

25 THE COURT OFFICER: Yes, Mr President. The document

1 under tab 6 referenced DRC-OTP-0228-0052 will be referenced as
2 EVD-D01-00150. Thank you.

3 (The witness enters the courtroom)

4 PRESIDING JUDGE FULFORD: Private session, please.

5 *(Private session at 4.08 p.m.) Reclassified as open session

6 (The accused enters the courtroom)

7 THE COURT OFFICER: We are in private session,

8 Mr President.

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

10 MR BIJU-DUVAL: (Interpretation)

11 Q. Witness, could you tell us when you learned about the
12 death of your mother?

13 A. My mother died during the war in 2002. It was before
14 2002. It was between June and July, that was when my mother
15 died.

16 Q. And yourself, you -- when did you understand that she
17 had died?

18 A. She died when the Lendu attacked. She wanted to run
19 away.

20 Q. Now, the evening of the attack, once you had come back
21 to (Redacted), was that when you learned that your mother had
22 died, or did you learn that later?

23 A. I learned about her death after the war; that was when
24 I learned that my mother was dead. It was at the end of the
25 battle. The witness -- the neighbours explained the

1 circumstances of her death to me.

2 MR BIJU-DUVAL: If I could just have a moment, your
3 Honour.

4 (Counsel confer)

5 MR BIJU-DUVAL: (Interpretation)

6 Q. Was it after -- the day after the battle, or the very
7 evening of the battle or later after your enrolment in the UPC?

8 A. It was the day that I found myself in Centrale. The
9 people who had fled, who had arrived in Centrale, those were the
10 ones who told me the information, that piece of news that my
11 mother had died.

12 Q. When you were heard by the investigators in the year
13 2007, you said - and that is paragraph 20 I am referring to - and
14 I quote, "When we arrived in (Redacted), I went home. And at that
15 time, I found -- and it was at that time I found the body of my
16 mother at the neighbour's house." So did you learn about this in
17 Centrale or when you went back to (Redacted) in the evening?

18 A. I received that information in (Redacted), and I went
19 back the same day in the evening. And it's true, I found that
20 my -- I learned that my mother had died.

21 Q. Thank you. I would like to show you a photograph that
22 is found at tab 14 of the large black binder that you have - and
23 this is DRC-D01-0003-2593 - and I would just like to ask you the
24 following question: Do you recognise this person?

25 A. I know this person. That is the sister of my mother.

1 THE INTERPRETER: Could we ask the witness to repeat,
2 says the Swahili interpreter.

3 PRESIDING JUDGE FULFORD: Sir, you said that the
4 person in the photograph is the sister of your mother. I think
5 you said something else. If you did, could you repeat it,
6 please? So did you say anything in addition to her being the
7 sister of your mother?

8 THE WITNESS: The photograph that I was just shown,
9 yes, I recognise the person. It is the little sister of my
10 mother. She was the sister of my mother. And further -- and
11 currently, she is the wife of my father.

12 MR BIJU-DUVAL: (Interpretation)

13 Q. Do you know her name?

14 A. Her name is (Redacted).

15 Q. Thank you. You explained that the evening of the
16 attack in (Redacted), when you came back from Centrale, a
17 gathering had been organised, a meeting. You explained that
18 soldiers and the neighbourhood chief of the (Redacted)
19 neighbourhood had gone amongst the local people and had called
20 everyone to this gathering that was to be held the next day. Do
21 you remember the name of the leader of the (Redacted) neighbourhood?

22 A. I've forgotten the name of the neighbourhood leader,
23 the leader of the (Redacted) neighbourhood, but I know his name.
24 I knew his name. That was a very long time ago. I've forgotten
25 his name.

1 Q. Could you refer to paragraph 23 of your 2007
2 statement, which is found at tab 1? I beg your pardon. Before
3 we go on, I think we should have an EVD number attributed to the
4 photograph that was just shown the witness.

5 THE COURT OFFICER: The photo under tab 14,
6 DRC-D01-0003-2593, will be referenced as EVD-D01-00151.

7 MR BIJU-DUVAL: (Interpretation)

8 Q. I am making reference to your 2007 statement,
9 EVD-OTP-00543, and I am interested particularly in paragraph 23,
10 which I will read out. I'll read out the first sentence, and I
11 quote, "The evening, the village chief, whose name was
12 (Redacted) called all the civilians who had taken refuge beside
13 the camp and he called them to a meeting that was to be held the
14 next day."

15 Now, is that the name of the (Redacted) neighbourhood
16 chief, witness?

17 A. Yes. Yes, it is -- it is his name. It really is his
18 name.

19 Q. But Witness, last Monday you explained to us that the
20 (Redacted) neighbourhood leader was (Redacted) and that he was
21 the one who called these meetings in (Redacted). Are you not
22 mixing up (Redacted)

23 A. No. (Redacted) remains (Redacted) and (Redacted) remains
24 (Redacted).

25 Q. But (Redacted) is the chief of the (Redacted)

1 neighbourhood, as you said on Monday; is that correct?

2 A. Yes. The chief, (Redacted) is also
3 called (Redacted). And the chief in (Redacted), his name was
4 (Redacted). But for the other one, I only know him by the name of
5 (Redacted), but the leader of the neighbourhood was (Redacted).

6 Q. Very well. I'd now like for us to go back to this
7 gathering, this meeting that was held in (Redacted), and
8 apparently it was held the morning after in (Redacted).

9 Now, you told us on Monday last that the day of that
10 gathering you did not see Commander Abelanga. Now, I would like
11 to ask you to refer to paragraph 25 of your statement, EVD
12 number 000-OTP-0063 -- 563. And I'll quote the first sentence:
13 "During the meeting, the military chiefs Kisembo and Abelanga
14 spoke, as well as a number of soldiers who reported to Kisembo
15 such as Bahati and Patrick."

16 I would also like to make reference to paragraph 29 of
17 that same document further down on the page, and I quote. I'll
18 specify that this is the same meeting or gathering that you're
19 speaking of in the statement, and I quote, "After that, Abelanga
20 spoke. He was the chief of staff. He said that he was the
21 chief in Mandro and that was where people were trained. He said
22 that if we were going to be entrained, we would be trained
23 there."

24 So, what was the exact situation? Was Abelanga
25 present at that meeting and spoke? Or did you not see him?

1 I think we can go into open session when it comes to
2 this particular matter.

3 PRESIDING JUDGE FULFORD: Let's have the answer first,
4 Mr Biju-Duval.

5 So, sir, was Abelanga there at the meeting and did he
6 speak, or did you not see him?

7 THE WITNESS: That day I was in (Redacted) and
8 Abelanga wasn't there. At that time Abelanga was in Mandro.
9 When I arrived in Mandro, that's when I saw Abelanga, but that
10 day I saw Kisembo, Patrick and Bosco. Those were the only ones
11 I saw. I saw Abelanga in Mandro when he was giving instructions
12 to the children.

13 PRESIDING JUDGE FULFORD: Yes, public session, please.
14 (Open session at 4.28 p.m.)

15 THE COURT OFFICER: We are in open session,
16 Mr President.

17 MR BIJU-DUVAL: (Interpretation)

18 Q. Witness, I would like to turn to the matter of the
19 meetings with Mr Mbusa when you were still a soldier. You told
20 us that the first time you met Mbusa was at a checkpoint in
21 Katoto in the year 2002. And the second time you saw him was
22 one month later, at the same place, and you specified telling us
23 that when you had these various meetings with Mbusa, that was in
24 the year 2002 and that you were still in military service. Am I
25 to understand that that -- so, well before the French arrived in

1 Bunia. So, it was well before the French arrived in Bunia?

2 A. In terms of what you're saying, I would like to say
3 that when I met Mbusa it was when he was traveling on a UNICEF
4 vehicle, distributing food to the people when I saw him for the
5 first time. That was in Katoto. And Mbusa was going about with
6 the UNICEF employees, and I saw him when he was on a -- aboard a
7 UNICEF vehicle. And I was at a roadblock where I was supposed
8 to check passersby and vehicles to see what people were carrying
9 in the vehicles. That was at the very beginning. So it was the
10 -- that was the first time I saw Mbusa.

11 Q. Am I to understand, then, that this was prior to the
12 French taking control of Bunia and arriving in Bunia?

13 A. When the French arrived in Bunia --

14 THE INTERPRETER: Can the witness please repeat what
15 he just said? The Swahili interpreter did not catch what he
16 said.

17 PRESIDING JUDGE FULFORD: Sir, forgive me
18 interrupting. I'm afraid the Swahili interpreters are not able
19 to hear your answer. You're speaking a little too quietly. So
20 I'm going to have to ask you to go back to the question, which
21 was whether this was prior to the French taking control of, and
22 arriving in, Bunia. Could you possibly give the answer again,
23 please.

24 THE WITNESS: Yes. When I met Mbusa, it was at the
25 time when I was in the UPC. And when the French arrived in

1 Bunia, well, as concerns the exact date or the month, the exact
2 month when they arrived, I cannot tell you because I don't
3 recall the exact date, but I did hear that the French had
4 arrived in Bunia.

5 At that point in time, I was living in Katoto or in
6 Mandro. But I saw Mbusa before the arrival of the French in
7 Bunia. (Redacted)
8 (Redacted). It was, therefore, before the arrival of the French.

9 MR BIJU-DUVAL: (Interpretation)

10 Q. Thank you. You stated to us that the second time you
11 spoke with Mbusa was at the point in which you had requested
12 authorisation from your commander to take time off because you
13 were ill. Do you recall that?

14 PRESIDING JUDGE FULFORD: Yes, Ms Samson -- just pause
15 a moment, will you? Ms Samson, yes?

16 MS SAMSON: Thank you. Your Honour, in counsel's last
17 question, he referred to the first and second time that the
18 witness met Mr Mbusa as being at checkpoints. And now the
19 question is, the second time you met Mbusa you had authorisation
20 from your commander. I don't want the question to be confusing,
21 because I don't think the question accurately reflects counsel's
22 earlier question or the witness's evidence.

23 PRESIDING JUDGE FULFORD: I'm sorry, Ms Samson, I'm
24 not entirely following this. What do you say the question
25 should have in it in order to make it accurate?

1 MS SAMSON: I don't think that we're referring to the
2 second time the witness met Mr Mbusa. The first two times they
3 met, as counsel's earlier question indicated, were at
4 checkpoints. This is not the second time, as far as I'm aware,
5 that the witness met Mr Mbusa.

6 PRESIDING JUDGE FULFORD: Do you agree with that,
7 Mr Biju-Duval?

8 MR BIJU-DUVAL: (Interpretation) I'm going simply to
9 tell you I'm talking about transcript 287, page 6, line 3 in the
10 French version. "The second time that I spoke with Mbusa was at
11 the time when I had asked for leave from my commander. And I
12 said to him, I him ill, et cetera. So I fooled my commander,
13 and he gave me leave to return home." That was the quote to
14 which I was referring, your Honour.

15 PRESIDING JUDGE FULFORD: Is there a problem with
16 that, Ms Samson?

17 MS SAMSON: Well, it just may be that counsel's
18 earlier question was he met Mbusa at a checkpoint, and then he
19 met him again at a checkpoint a month later. So that would be
20 one time -- time one and time two, but I do read this as well in
21 the transcript.

22 PRESIDING JUDGE FULFORD: All right. We're talking
23 about the second meeting with Mr Mbusa, and this is the occasion
24 when - according to the evidence given I think yesterday - he'd
25 asked for leave from his commander saying he was will. This was

1 something of a subterfuge. He fooled his commander and got
2 leave to go home. Now, against that background, what's your
3 question, Mr Biju-Duval?

4 MR BIJU-DUVAL: (Interpretation)

5 Q. Yes. Witness, you stated just after that statement,
6 and I quote, that you were under the orders of Bosco, and I
7 quote you, "I was under the orders of Bosco," end of statement.
8 So my question is as follows: From that point on, where you had
9 ceased working for Kisembo and started working for Bosco, did
10 you remain under Bosco's orders up until your departure from the
11 UPC, up until you escaped?

12 A. Yes. Up until the time I deserted, I was always under
13 Bosco's orders. And that was in Dele.

14 Q. Thank you. And was it in Dele that you left the UPC
15 definitively?

16 A. Yes, I stopped working for the UPC for good when I was
17 at the Dele camp. So I left from the Dele camp.

18 Q. Thank you. And when you left the UPC at the Dele
19 camp, did you ask leave of someone? How did this happen
20 exactly?

21 A. At the time when I left my military service in Dele, I
22 did not ask permission to leave; I escaped. Indeed, I had
23 requested permission and said that I was going out briefly, but
24 then I left and I didn't come back.

25 Q. You said that you had requested permission and you

1 were going to -- you were going to wash your clothing, and then
2 you left and you were going to do your washing, and you didn't
3 come back; is that correct?

4 A. As concerns this request, I had put it to the person
5 who was a commander -- second-in-command to Bosco, and that
6 person said that I had to ask permission to leave.

7 Q. Do you recall his name?

8 A. The name of this commander who was the sub-lieutenant
9 of Bosco does not come to mind now. I cannot remember it.
10 Nonetheless, he had a nickname of "the American". I do not know
11 his real name. We called him the American commander.

12 PRESIDING JUDGE FULFORD: Mr Biju-Duval, the time is
13 about to run out, I'm afraid. Is that a reasonable moment to
14 break?

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

16 PRESIDING JUDGE FULFORD: Sir, I am extremely sorry,
17 but for reasons outside of my control, we're not going to be
18 able to continue with your evidence until Monday of next week at
19 9.30. I greatly regret that this means you're going to have to
20 stay in The Netherlands for longer than you had expected, and
21 you have the sincere apologies of the Judges for the fact that
22 we are detaining you in that way. We are very grateful to you
23 for your assistance. So we'll sit on this case again at 9.30 on
24 Monday.

25 Mr Lubanga, could you just remain for a moment,

1 please? Thank you.

2 Maître Mabilille, we are obviously going to have to
3 receive detailed information as to the arrangements for the two
4 intermediaries and the Prosecution investigator who are coming
5 to give evidence. There will undoubtedly be travel arrangements
6 in relation to two of those individuals, and who knows there may
7 be security assessments that have to be made as well.

8 So at present, I think it's very difficult to
9 establish a firm agenda as to precisely when the different
10 outstanding parts of the abuse of process application will be
11 dealt with. However, one area of this which we do invite you to
12 reflect on very carefully between now and Monday morning is the
13 suggested length of time that you are indicating for writing
14 submissions.

15 You have flagged up for us back in January the fact
16 that this is an application that you intend to make -- or
17 rather, intended to make. And we would have expected that
18 whilst the weeks and months have been going by, the draft of
19 this application would have been an ongoing process; and as the
20 evidence has evolved, so the final work would have come closer
21 to completion.

22 Now, undoubtedly, you should be given some time, some
23 little time to make the final adjustments to the evidence of the
24 last witnesses. But at the moment, we are going to require some
25 powerful persuasion - given you've known this application is

1 going to be made - that three weeks or anything near to
2 three weeks is a reasonable request.

3 The delay that that will cause to the proceedings,
4 given that there will then no doubt be a Prosecution application
5 for a similar length of time for a response, is really a very
6 serious one. So I don't ask for a response now, particularly
7 since I anticipate the tapes are about to run out, but we do ask
8 you to think carefully as to whether you are seriously applying
9 for a three-week adjournment with nothing happening in the case
10 while submissions are formulated.

11 Closed session, please. Yes. Thank you, Mr Lubanga.

12 (The accused exits the courtroom)

13 *(Closed session at 4.46 p.m.) Reclassified as open session

14 THE COURT OFFICER: We are in closed session,
15 Mr President.

16 PRESIDING JUDGE FULFORD: Yes. Witness withdraw,
17 please.

18 (The witness stands down)

19 PRESIDING JUDGE FULFORD: Thank you all very much,
20 indeed. Half-past-9 on Monday.

21 THE COURT OFFICER: All rise.

22 (The hearing ends at 4.47 p.m.)

23 RECLASSIFICATION REPORT

24 Pursuant to Trial Chamber I's email instruction dated 2nd
25 December 2011, the transcript is reclassified as public after

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