

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford,

4 Judge Elizabeth Odio 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, 17 March 2010

9 (The hearing starts at 9.32 a.m.)

10 (Open session)

11 THE COURT USHER: All rise. The International Criminal
12 Court is now in session. Please be seated.

13 PRESIDING JUDGE FULFORD: Good morning. Ms Samson, I'm
14 afraid you're in the driving seat today. I'm conscious of the well-worn
15 adage that one shouldn't shoot the messenger, but you will no doubt
16 have read the interview given two days ago by someone of the name of
17 Beatrice Le Fraper Du Hellen, who is indicated in the interview as
18 being the head of the Jurisdiction, Complementarity and Cooperation
19 Division of the Office of the Prosecutor.

20 There are a number of matters that I want your assistance
21 on in relation to that interview. The first is, that a theme throughout
22 the interview - and let me quote - is that "the intermediaries are
23 very committed persons, very supportive of international justice. We
24 are very careful about who we choose as intermediaries." That's on
25 the first page.

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

1 On the bottom of that page, we find "they are fantastic
2 and committed persons."

3 Over on page 2, complaint is made by Ms Le Fraper Du Hellen
4 about allegations by the Defence which are unfounded about committed
5 people who really care about international justice and child soldiers.

6 So, not an off-the-cuff remark but a theme of the interview,
7 presumably on the basis of firm and substantial evidence, that the
8 intermediaries are very committed persons who are very supportive of
9 international justice.

10 I am unaware of any evidence that has been served by the
11 Prosecution in line with those very clear and unequivocal indications.
12 The Office of the Prosecutor, under Rule 77, has a clear obligation
13 to disclose to the Defence all material that is relevant to the
14 preparation of its defence.

15 The integrity of the intermediaries and their role is now
16 a critical ingredient of this trial, given the way that the defence
17 is argued. And subject to any observations that you wish to make,
18 we intend to impose an obligation on the Prosecution by 4 p.m. on Friday
19 to serve all of the evidence on which those clear assertions were founded
20 by Ms Le Fraper Du Hellen. That is point one.

21 Point two is a question: To ask whether you accept the
22 proposition that given that the Prosecutor, through his spokesperson,
23 is suggesting in the clearest terms what he considers the kind of people
24 were who acted as intermediaries that that is an issue - that is an
25 assertion - that we should take into consideration when reflecting

1 on the extent to which the identities the intermediaries should be
2 disclosed to the Defence in this case.

3 If it is being alleged by the Prosecution that these are
4 very committed people who are very supportive of international justice,
5 surely that is a relevant factor for us to bear in mind in this trial
6 and, more importantly, to have that issue properly tested before us
7 to see whether or not that suggestion is justifiable.

8 And so I will need -- we will need, please, in a moment,
9 your assistance as to the impact of those statements by Ms Le Fraper
10 Du Hellen on that vexed issue which we have to consider.

11 The next issue I wish to have your assistance on is this.
12 I think the Rome Statute unamended still leaves the Bench in the position
13 of deciding on what facts are or are not proven in this case. If I
14 am wrong in that, I would like your guidance, please, but there are
15 two observations by Ms Le Fraper Du Hellen which seem to indicate that
16 the Prosecutor is of the view that it is for him to determine what
17 facts are proven.

18 On page 2 in the first answer, in dealing with what is said
19 to be the Defence arguments as to intermediaries and intermediaries
20 being a problem, the following was said, "They haven't proven that.
21 They have made allegations." That's the first example.

22 Far more seriously, bottom of page 2, top of page 3, we are
23 told that the Prosecutor is a very accurate and fair prosecutor. We
24 are told that whatever the Defence case has, it was built by Mr
25 Moreno-Ocampo based on exonerating evidence, and I understand the

1 Defence entirely; it's their last chance. But then we find this:
2 "But nothing is going to happen. Mr Lubanga is going away for a long
3 time."

4 My question to you is, since when has it been for the Prosecutor
5 or his representative to determine what the result of this trial is
6 going to be and, should the accused be convicted, whether or not he
7 is going to receive a short, an intermediate or a long sentence? And
8 do you think it is appropriate for the Prosecutor, midway through the
9 trial, through his representative, to be telling the public and the
10 Judges what the result is going to be of the trial over which we are
11 presiding?

12 Finally, in her concluding remarks, Ms Beatrice Le Fraper
13 Du Hellen, in praising the witnesses called by the Prosecution - which,
14 in itself, is a questionable thing to do for an independent Prosecutor
15 who is supposed to be fairly and impartially presenting the
16 evidence - then alleges against the accused that he has been making
17 signs to the audience, he is smiling, he is doing a lot of body language
18 and, through his actions, he is being -- behaving in a way, and I quote
19 again, "that is very terrifying for the children."

20 That allegation has never been put to us. To the contrary,
21 the allegation has been that people sitting in the public gallery have
22 been making gestures intimidating to the accused.

23 Now, I want to know from the Prosecution prosecuting this
24 case as to whether, in fact, you are alleging that that is how Mr Lubanga
25 has been behaving, and if you are alleging it, why it has never been

1 raised for our consideration. And if it is being alleged, I want to
2 see copies, please, of the videos in which the Prosecutor himself
3 is alleging that this has occurred; and I want your comments on whether
4 you accept that this is a direct imputation on the Judges as to how
5 we have been conducting this case. Because if it is to be suggested
6 that we have been allowing the accused, through his actions, to terrify
7 Prosecution witnesses, that is to allege that the three of us have
8 not been discharging our functions properly.

9 Now, from you who are prosecuting the case, rather than acting
10 as a spokesperson for the Prosecutor himself, is that allegation being
11 made and, if so, on what foundation?

12 Generally speaking, and finally, Ms Samson, you might like
13 to remind Ms Beatrice Le Fraper Du Hellen that a very considerable
14 time ago, when we were considering the whole issue of witness summaries
15 and what was to be published in the press, I gave a very firm indication
16 that the Judges did not expect to see satellite litigation in the press
17 with the issues which we are considering being the subject of some
18 kind of debate, with commentators on one or both sides seeking to litigate
19 the issues in this trial in a different forum. It was expressed by
20 us then that this is an inappropriate activity, particularly for the
21 Prosecutor to undertake, and you may like to remind this individual
22 of our views on that subject.

23 Now, it's a rather a lot to think about, Ms Samson. Do you
24 want to deal with it now or do you want time?

25 MS SAMSON: With your leave, your Honour, the Prosecution

1 would like some time to deal with the issues that the Chamber has raised.

2 We were aware of the issue by virtue of the email the Defence
3 had provided yesterday evening, but now that the Chamber has clearly
4 provided its questions for the Prosecution, if we could have a bit
5 of time - either now with the team or later in the day, as the Chamber
6 sees fit - for the various responses that the Chamber requests.

7 PRESIDING JUDGE FULFORD: Thank you, Ms Samson. This is
8 not going to lead to loss of court time. You can deal with it in due
9 course. But I'm sure the message -- well, I hope the message has been
10 received that we are extremely disturbed about this. Thank you.

11 Now, Mr Desalliers, we understand there was some -- ah,
12 Mr Sachdeva.

13 MR SACHDEVA: Mr President, I apologise. If I may, just
14 one point. In respect to the impending decision on disclosure on some
15 of the intermediaries the Prosecution uses, I would like to make a
16 very brief application.

17 As articulated in our filing, this decision has grave
18 consequences in terms of the potential safety of our intermediaries,
19 their families, the organisations they work for, in addition to making
20 it even more difficult for the Prosecutor to perform his duties in
21 the field investigating conflict areas.

22 The Prosecution sees this as an even more acute situation,
23 in light of the fact that there are only allegations against two
24 intermediaries, unsubstantiated allegations against two
25 intermediaries, and that I believe over fifty per cent of the witnesses

1 that we have called were not introduced to us by intermediaries.

2 In that regard, the Prosecution would seek leave to file
3 a proposal by Monday wherein the Chamber's concerns, we believe, will
4 be addressed. We respectfully ask that you would allow the Prosecution
5 to file its proposal by Monday. We believe it would take into account
6 the concerns of the Chamber, it would safeguard the rights of the accused
7 and, indeed, safeguard the ability of the Prosecution to perform its
8 investigative duties, not just in the DRC but in the other conflict
9 areas and, ultimately, protect the intermediaries against whom really
10 there are no allegations, in our submission.

11 We also submit that, in any event, if disclosure were to
12 be ordered, the measures that would have to be put into place, possible
13 relocation, dealings with the Victims and Witnesses Unit, would
14 not -- would mean that the disclosure could not take place in the very
15 near future. Processes would have to be in place and arrangements
16 would have to be made. And in that light, we make this application.
17 May it please the Court.

18 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva. Thank you. We,
19 of course, are acutely conscious, as was indicated yesterday, that
20 if the names of intermediaries are disclosed, that there are inevitable
21 consequences in terms of security and protection. We are wholly alive
22 to that, and that is something that is one of the pre-eminent
23 considerations.

24 We are also aware of the fact that this isn't a situation
25 where one rule applies to all. And one of the reasons that you haven't

1 had an oral decision from us on this point yet is that each intermediary
2 needs to be looked at very carefully to see what the state of the
3 evidence is in relation to that individual, because although the case
4 in relation to intermediaries has been developed for some of them,
5 arguably it hasn't been developed for all, and we need to look at that
6 carefully.

7 Given the importance of the issue and the need for the Chamber
8 to make a decision that takes into account all of the relevant factors,
9 you can have time, but not until Monday. You can have until 4 p.m.
10 on Friday, because we must issue this at the latest at the beginning
11 of next week and the Judges will need to have the weekend to reflect
12 on your submissions.

13 So, 4 p.m. Friday, Mr Sachdeva.

14 MR SACHDEVA: Thank you, Mr President.

15 PRESIDING JUDGE FULFORD: Now, does that conclude the
16 procedurally issues for the Prosecution? It does.

17 Mr Desalliers or Maître Mabilie, was there anything else?

18 MS MABILLE: (Interpretation) Well, just to say that we
19 also intend to give additional submissions on the problem of
20 intermediaries. That is after the evidence of Witness 16. Can the
21 Chamber give us up to 4 p.m. Friday to put in additional submissions
22 on the problem of intermediaries?

23 PRESIDING JUDGE FULFORD: Yes, certainly, Maître Mabilie,
24 if you wish to join in this issue which has been raised by the Defence,
25 of course you can. Four p.m. Friday, yes, no difficulty at all.

1 MS MABILLE: (Interpretation) I beg your pardon. I would
2 like to say something else on the first point you raised this morning.
3 We have nothing to say about that.

4 I have to say something about the witness who is going to
5 appear today. We would perhaps like, and we would like to apologise
6 in advance, and depending on the cross-examination, we would like to
7 have a small period of time to prepare our own re-examination. Maybe
8 we may not make use of that time, but it all depends on the
9 cross-examination that the Prosecution is going to make of Witness
10 15, but I wanted to bring this to the attention of the Chamber in advance.
11 Thank you very much.

12 PRESIDING JUDGE FULFORD: Thank you, Maître Mabilille. We
13 will resolve that issue as and when the moment arrives, but thank you
14 for early warning of it.

15 Can I have the assistance of the Bar, please, as to the status
16 of this witness? Was he protected? I don't recall now.

17 MS SAMSON: Indeed, your Honour, he was protected previously,
18 and as we understand it from the Victims and Witnesses Unit, that
19 protection will continue for him, which means he has the usual measures:
20 voice and face distortion, and the use of a pseudonym.

21 PRESIDING JUDGE FULFORD: Good. And you are ready to
22 commence questioning, Ms Samson?

23 MS SAMSON: Yes.

24 PRESIDING JUDGE FULFORD: Good. Closed session, please,
25 and witness.

1 *(Closed session at 9.53 a.m.) Reclassified as open session

2 THE COURT OFFICER: We are in closed session.

3 PRESIDING JUDGE FULFORD: Ms Samson, just before he comes
4 in, do you remember if this witnesses need reading assistance? Because
5 I'm going to ask him to take the oath again.

6 MS SAMSON: To my knowledge, he does not require reading
7 assistance.

8 PRESIDING JUDGE FULFORD: Very helpful, Ms Samson. Thank
9 you.

10 (The witness enters the courtroom)

11 PRESIDING JUDGE FULFORD: Private session, please. Sorry,
12 public session.

13 (Open session at 9.54 a.m.)

14 PRESIDING JUDGE FULFORD: Good morning, sir. In a moment,
15 but not now, in a moment I am going to ask you to -- I am going to
16 ask you to take the oath again. Can you pause just so the blinds can
17 go up. Thank you.

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

19 PRESIDING JUDGE FULFORD: Thank you. Then, could you please
20 read out the words on the card in front of you out loud so everyone
21 can hear what you say.

22 WITNESS: WWW-OTP-0015: (Sworn)

23 (The witness answers through interpreter)

24 PRESIDING JUDGE FULFORD: Thank you very much. I want to
25 remind you that you have been granted protective measures, which means

1 that your identity will not be known to the members of the public and,
2 indeed, to anybody outside of this courtroom.

3 We may be able to deal with some of your evidence in public
4 session. If we do, and if any mistakes are made in which answers are
5 given by you, or questions are asked which tend to reveal who you are,
6 don't worry, because there is a half-an-hour delay on the broadcast
7 of our proceedings which means that any mistakes can be rectified before
8 the transmission goes out.

9 You are going to be questioned first by Ms Samson for the
10 Prosecution and second I anticipate by Mr Desalliers for the Defence.
11 Can I ask you, please, to listen to their questions carefully and to
12 answer the matters that they ask. Please do not speak too quickly
13 because everything you will say is going to be transcribed and
14 interpreted.

15 And if you can, please remember to allow a short pause before
16 you give an answer so that the interpreters have got an opportunity
17 to complete the question before they start listening to your answer.

18 Ms Samson, do we begin in private or in public session?

19 MS SAMSON: In private, please, your Honour.

20 PRESIDING JUDGE FULFORD: Private session, please.

21 *(Private session at 9.56 a.m.) Reclassified as open session

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

23 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

24 MS SAMSON: Thank you.

25 QUESTIONED BY MS SAMSON:

1 Q. Mr Witness, as the Presiding Judge has just indicated, my
2 name is Nicole Samson and I represent the Prosecution. I have a few
3 questions for you today.

4 Sir, its right, isn't it, that you are North Hema?

5 A. Yes.

6 Q. Your wife is also North Hema?

7 A. Yes.

8 Q. And at the time of the creation of the UPC in or about 2000
9 you were (Redacted)?

10 A. Yes.

11 Q. And the UPC was considered to be your movement in the sense
12 that it was created to protect the Hema people; is that right?

13 A. It was not created to protect the Hemas. The UPC is a
14 political movement; it was not a movement for the Hemas. It was a
15 political party.

16 Q. (Redacted), you would attend rallies in order
17 to motivate young people to join the UPC?

18 A. Yes, we young people tried to raise the awareness of people
19 so that they would join the rallies like we did. We of the UPC had
20 a movement; we protected civilians. We protected the Bahemas. We
21 protected the neighbourhoods. At the beginning it was not the UPC;
22 it became the UPC later on. Later on, we got interested in the political
23 party that is the UPC and the ideology of the UPC.

24 Q. And during this time you yourself spent time at the UPC
25 headquarters?

1 A. I did not spend time there. There were UPC soldiers who
2 were my friends, and I would go to the military headquarters to visit
3 them, but I did not live in the headquarters, I did not live there.
4 I used to stop there, that is, at the headquarters of the UPC just
5 by chance.

6 Q. My question, sir, was not that you lived there but that
7 from time to time you went to the UPC headquarters. I think that's
8 right, isn't it?

9 A. Yes.

10 Q. And the UPC headquarters were at a building called the DAG,
11 D-A-G?

12 A. It was located at the DAG; that is to say the headquarters.
13 At a certain moment in time, recruitment was conducted there and the
14 new recruits were prepared, the ones who were destined for Mandro (phon).

15 THE INTERPRETER: The Swahili interpreter corrects: "the
16 new recruits."

17 MS SAMSON:

18 Q. And just to be certain for the interpretation, the new
19 recruits were destined for Mandro; is that what you said?

20 A. Yes, indeed. These were recruits who came from Bunia and
21 who went to the headquarters with a view to going to Mandro.

22 Q. And you saw these recruits yourself, I take it?

23 A. This was out in the open. Nothing was hidden. Everyone
24 could see this.

25 Q. And some of these recruits were under 15, some were over

1 15; that's right?

2 A. I cannot provide an approximation of the age of the recruits.
3 Generally speaking, they were young. I cannot estimate their age.
4 Amongst the children I was familiar with, I believe that there were
5 two; however, in general, the adults would come from elsewhere. I
6 am not in a position to estimate their age.

7 PRESIDING JUDGE FULFORD: Ms Samson, I don't understand why
8 we are in private session. I think these are all matters that can
9 be dealt with in public.

10 MS SAMSON: Indeed, your Honour, I think that's correct.

11 PRESIDING JUDGE FULFORD: Public session, please.

12 (Open session at 10.03 a.m.)

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

14 PRESIDING JUDGE FULFORD: Yes.

15 MS SAMSON: Thank you.

16 Q. And, sir, some of these recruits who were young, they were
17 also bodyguards?

18 A. At the outset, recruits were recruits and the bodyguards
19 were soldiers who had already received training. The recruits used
20 to sing on the instruction of their trainers. And amongst those
21 children there were two who I knew who were recruits. They were recruits.
22 They were neither soldiers nor bodyguards.

23 Q. And these two recruits, what were their names?

24 A. There was (Redacted) and I think the other was called (Redacted)

25 Q. And (Redacted), they were under 15, weren't they?

1 A. No. They were aged approximately 15 and they were already
2 attending primary school in the sixth year. I believe that there
3 was another individual by the -- of the age of 12 or 13. One might
4 reach the sixth primary school year at the age of 12 or 13 if one had
5 not had to do a year again.

6 MS SAMSON: Mr President, there may be a concern that the
7 two names could identify this particular witness.

8 PRESIDING JUDGE FULFORD: Do you mean the names that you've
9 just referred to in your question?

10 MS SAMSON: In fact, it's the names the witness referred
11 to in his answer.

12 PRESIDING JUDGE FULFORD: You're quite right, first answer,
13 then question. Redactions, please, for both.

14 MS SAMSON: Thank you very much.

15 Q. And, sir, the UPC soldiers that you would see at headquarters,
16 they included soldiers such as Bosco, Kisémbó, Tchali González, Kasangaki,
17 Papy. Did you see these soldiers at the headquarters?

18 A. Well, generally I believe that I am broaching a general
19 question here. I cannot speak in detail to the matter and talk about
20 either Bosco or anyone else. In my statement dated November 2005,
21 there are some things that I said that were only speculation and sometimes
22 there were lies in there. Were I to start going into detail, I might
23 fall into the same area of error. It's better if I am asked a general
24 question so that I do not lapse into the same error.

25 Q. Sir, we're asking you only here to tell the truth based

1 on what you saw and what you heard. I am asking you whether or not
2 it's true that you saw UPC soldiers at the headquarters, including
3 those I mentioned: Bosco, Kisémbó, Tchalignonza, Kasangaki and Papy.
4 Can you answer that, please?

5 A. At that moment in time, Bosco was not living in the
6 headquarters. He was living outside. Kasangaki was living in a private
7 residence, Uzaleuparpio's house. In fact, our soldiers were grouped
8 in just one place, which is not to say that that was the headquarters
9 of the UPC. It is not that they separated as such. The UPC occupied
10 that lower part, Lopondo was living in the upper part. The town was
11 divided into two parts.

12 Q. Sir, did you ever see Bosco at the UPC headquarters?

13 A. I never saw Bosco.

14 Q. Did you ever see Kisémbó at the UPC headquarters?

15 A. I never saw him at the headquarters either.

16 Q. Did you ever see Kasangaki at the UPC headquarters?

17 A. Kasangaki lived at home. I did not have any dealings with
18 Kasangaki myself, nor did I ever see him.

19 Q. Did you ever see Tchalignonza at the UPC headquarters?

20 A. No, I did not see him either. If I say that I never saw
21 him, this means that I never saw him on site. But they lived nearby,
22 at the place I indicated. I didn't used to see them.

23 Q. Did you ever see Papy at the UPC headquarters?

24 A. Yes, I did see Papy Romeo Charlie.

25 Q. Romeo Charlie is his call sign; is that right?

1 A. Yes, indeed, Romeo Charlie is his code name.

2 Q. Did you ever see --

3 THE INTERPRETER: Correction, call sign.

4 Q. Did you ever see Lobho Désiré at the UPC headquarters?

5 A. Yes.

6 Q. You were at the UPC headquarters before and during the attack
7 on Lopondo in Bunia; is that right?

8 A. Yes. In fact, my aunt lived very close to the Lacoste near
9 the headquarters. Some soldiers, boys from Bogoro, would go to her
10 house and we saw each other there with them. But I never went to meet
11 them at their homes. I went there before the Lopondo war and even after
12 the Lopondo war.

13 Q. Were you there during the attack?

14 A. Are you talking about the Lopondo attack? I was not there.
15 Sometimes I was at the Salon Lacoste, and there was an attack that
16 occurred during the day where everyone was panic-stricken, but I was
17 not at the headquarters at the time, no, not at all.

18 Q. And before the Lopondo attack, you were aware of preparations
19 that were taking place; is that right?

20 A. Yes. This is something that everyone was talking about.
21 They were not preparations as such. It was said that if they attacked
22 this time we would fight. That is what everyone was saying.

23 Q. And were you -- you were at the headquarters when some of
24 these preparations were underway?

25 A. No, I was at the Salon Lacoste.

1 Q. Sir, following the period of March 2003 when the UPDF chased
2 the UPC from Bunia, you became a kind of militiaman; is that right?

3 A. Indeed.

4 Q. And in May of 2003, there were attacks again in and around
5 Bunia; is that right?

6 A. Yes.

7 Q. And you moved to different locations in and around Bunia
8 at times with UPC soldiers?

9 A. Yes, I believe that this was at the Centrale.

10 MS SAMSON: Your Honour, I don't actually see the buttons,
11 so I am not sure at the moment if we are still in public session. If
12 we are, I request that we move into private session for a few questions.

13 PRESIDING JUDGE FULFORD: Right. Private session, please,
14 and could the usher move the microphone that is obscuring the red and
15 green light from the view of Ms Samson.

16 *(Private session at 10.14 a.m.) Reclassified as open session

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

18 PRESIDING JUDGE FULFORD: Thank you very much, indeed, sir.
19 It's very helpful. Yes, Ms Samson.

20 MS SAMSON: Yes, Mr President. I can see.

21 Q. Sir, during the attacks in and around Bunia in May of '03,
22 you were with UPC soldiers (Redacted) as well; is that right?

23 A. Yes.

24 Q. You were at times protecting certain areas, bridges; is
25 that right?

1 A. It wasn't protecting as such. I believe I need to be clear
2 on the matter. At the time, (Redacted) (phon) -- we
3 were in Bunia, and then we left after the Ugandans departed, then
4 there was panic and insecurity and we had to leave, the Hema had to
5 leave. We went

6 to Lopa, and subsequently I returned to Centrale. There were many
7 civilians in Centrale. There were children; there were women; there
8 were lots of people there. We needed to regroup and form a large group
9 in order to go to give warnings in Mudzipela and at the two bridges
10 so that the Lendu and the APC would not launch an attack on Centrale.

11 Afterwards, then the Lobhos came from Mamedì, they mounted
12 an attack and we left in their company. That is not to say that I
13 was only protecting the bridges, but I was in the company of the group
14 which they had left to stay in Mudzipela to go down to the Lokorto
15 bridge. That was it.

16 THE INTERPRETER: The Swahili interpreter did not hear the
17 last sentence provided by the witness.

18 MS SAMSON:

19 Q. Sir, because of the interpretation, I'll ask you, please,
20 when you are giving longer answers, to go slowly and to pause. The
21 interpreters had difficulty understanding the last part of your answer.

22 You indicated that afterwards, Lobho came and you were in
23 their company. You were protecting yourself, and you were in the
24 company of a group which helped you stay in Mudzipela. If you said
25 something after that, the interpreters didn't catch it. Could you

1 please repeat it.

2 A. I was saying that we had formed what I could call a brigade,
3 because I am no expert on the subject. I was a member of the group
4 that remained in Mudzipela, and we advanced towards the ISP bridge.
5 And those -- the ones who came from (Redacted) were in front and we
6 were at the rear.

7 Q. And at some point did Kisémbó order you to bring munitions
8 to various positions?

9 A. I believe that this was just one position. It was the
10 (Redacted) position.

11 Q. And you had been at the UPC headquarters that day and then
12 you brought the munitions to (Redacted); is that right?

13 A. Yes, indeed.

14 Q. Did you receive the order when you were at the UPC
15 headquarters?

16 A. We had a vehicle and a driver, and this is why we were asked
17 to bring ammunition in the vehicle. We took it to the post where
18 (Redacted) - was a commander, a post commander. I believe it
19 was the (Redacted).

20 Q. Yes. And were you at the UPC headquarters when you received
21 the order to bring the munitions to (Redacted)?

22 A. Yes, indeed. We were at the -- the NBK headquarters, and
23 there is where Loondo was staying at the time.

24 THE INTERPRETER: The Swahili corrects: Kisémbó, rather.

25 MS SAMSON:

1 Q. And the NBK headquarters, does that stand for New Bank
2 Kinshasa, or does it stand for something else?

3 A. This was a building that was now housing the -- that used
4 to house the New Bank of Kinshasa. However, during the rebellion in
5 Ituri, this building was occupied by soldiers.

6 Q. Sir, do you remember that in October 2005 you met ICC
7 investigator Nicolas Sebire in Kampala?

8 A. Yes.

9 Q. And do you remember that some weeks later in November 2005,
10 you met Nicolas Sebire again, along with another investigator named
11 Sabina Zanetta?

12 A. Yes, I do remember. I met them in Bunia. However, in Uganda,
13 I had met with Sebire and an interpreter.

14 Q. And both Sebire and Zanetta had introduced themselves as
15 ICC investigators?

16 A. Exactly.

17 MS SAMSON: Mr President, with your leave, perhaps we can
18 move into public session.

19 PRESIDING JUDGE FULFORD: Public session, please.

20 (Open session at 10.21 a.m.)

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

22 PRESIDING JUDGE FULFORD: Thank you.

23 MS SAMSON:

24 Q. Sir, I won't make reference to the locations where you were
25 anymore or to the names of the individual investigators. It's right,

1 isn't it, that the investigator you met with explained to you what
2 the ICC was?

3 A. At the outset, I met an investigator who talked to me about
4 the ICC. He told me that he was an investigator from the ICC. However,
5 previously, I did not know that this individual was an investigator
6 for the ICC.

7 Q. Sir, I will repeat the question so that it's clear. When
8 you met with the investigators, he explained to you what the ICC was,
9 that the ICC was a criminal court investigating and prosecuting very
10 serious crimes. That was explained to you, wasn't it?

11 A. When I met with the investigator, he told me that he was
12 an investigator for the International Criminal Court and that he was
13 seeking information. This surprised me because the person who took
14 me to the investigators did not tell me that we were going to meet
15 investigators. When I arrived, the investigator introduced himself
16 then asked me if I was willing to help. I refused on two occasions.

17 Subsequently, we went out to the balcony; the person who
18 took me there, who was - I think - a collaborator... I don't quite know
19 how to call him. He spoke to me in Lingala because the interpreter
20 was -- spoke Swahili and he asked me to simply say what he had told
21 me. But the investigator himself said to me - when I was with him -
22 he told me that he was working for the International Criminal Court.

23 Q. It's right, sir, isn't it, that you speak and read French?

24 A. I speak French, but I don't speak English very well; I
25 understand a little.

1 Q. Thank you for that; I actually wasn't asking about your
2 English competency. It's correct, isn't it, that you speak and read
3 French?

4 A. Yes.

5 Q. And when you spoke with the investigator, you were both
6 able to communicate in French?

7 A. Yes.

8 Q. And you attended the interview voluntarily?

9 A. Well, listen, before I went to the interview, why was
10 it that I was so motivated to meet this investigator? Because when
11 I arrived there, I did not quite know what position to adopt because
12 I had been told that I was going to do one thing but instead it was
13 something else that I saw. And when I arrived, this individual started
14 to put pressure on me to say what he said because he was afraid that
15 he would be thought of as a joker if I refused. So I was obliged to
16 act as the person wanted. That does not mean that I left in the knowledge
17 that I was going to meet investigators.

18 As for the second interview, I knew that I was going to meet
19 investigators. At the first interview, I went, but I didn't know whether
20 I was going to meet investigators or people bringing weapons or for
21 something else still. It was the person who took me to see the
22 investigators who knew.

23 MS SAMSON: Your Honour, with your permission, may we go
24 into private session for several questions?

25 PRESIDING JUDGE FULFORD: Certainly. Private session,

1 please.

2 *(Private session at 10.26 a.m.) Reclassified as open session

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

4 MS SAMSON:

5 Q. Sir, when you were in Kampala, you've just indicated you
6 met with Nicolas Sebire and an interpreter; is that right?

7 A. Yes.

8 Q. And then following that meeting, some weeks later you met
9 with Nicolas Sebire again in Bunia; that's right?

10 A. Yes, indeed.

11 Q. And with the one day in Kampala and the six days in Bunia,
12 you met with Nicolas Sebire over a period of seven days; is that right?

13 A. Yes. I met Sebire after six days. Well, you should know
14 why I went there. I did not get up spontaneously and say to myself
15 "I am going to see the investigator". It is true, I met the investigator,
16 but who was it who called me? Who was it who took me to see the
17 investigator? You need to understand that.

18 Q. And in Bunia, you met with Nicolas Sebire and for one day
19 you met with Sabina Zanetta, that's right, isn't it?

20 A. (No interpretation)

21 PRESIDING JUDGE FULFORD: We need an interpretation, please.

22 I think the witness agreed with the proposition put by Ms Samson.

23 English interpreters, can we please have the witness's last answer?

24 THE INTERPRETER: Message from the English booth, Mr

25 President. We -- he just received, rather belatedly, the answer. The

1 answer is, "yes."

2 PRESIDING JUDGE FULFORD: Thank you. Please carry on, Ms
3 Samson.

4 MS SAMSON: Thank you.

5 Q. And during these meetings, the only people present were
6 yourself and the investigators, and one day there was an interpreter;
7 am I right?

8 A. There was no interpreter. I spoke to the investigator and
9 to Zanetta. However, Zanetta was not there for the entirety of the
10 interview. Zanetta was there at the beginning and at the end; however,
11 we were with the investigator, without an interpreter present.

12 Q. So, in Bunia you met with Nicolas Sebire, occasionally Sabina
13 Zanetta, and yourself, and these were the only three people who attended
14 the interview in Bunia; is that right?

15 A. Two individuals. There were three people in total,
16 two individuals and myself. Three individuals in total.

17 Q. Yes. And to be clear, the three individuals in total who
18 were in the interview was yourself, Nicolas Sebire and Sabina Zanetta?

19 A. Exactly.

20 Q. And do you remember that Nicolas Sebire asked you to tell
21 the truth?

22 A. No. It was after the interview. She asked me that question
23 then.

24 Q. Forgive me, but I didn't quite understand. After the
25 interview, Nicolas Sebire asked you to tell the truth; is that what

1 you are saying?

2 A. It was at the end of the interview, while Sebire was taking
3 me back in the car, that he spoke to me on this subject. It wasn't
4 even a question. He told me that he wanted me to tell the truth. Because
5 they had 100% trust in the person who brought me to them. They were
6 not worried about that person. But they didn't ask questions because
7 it was someone who was working with them who had put me in contact
8 with them. And they thought that they couldn't put -- they thought
9 that they wouldn't be put in contact with people who were
10 ill-intentioned.

11 PRESIDING JUDGE FULFORD: Ms Samson, are we in private
12 session because of Sebire?

13 MS SAMSON: Yes. But, in fact, your Honour, I think now
14 that we've clarified almost everything in this area - I just won't
15 mention the investigator's name again - and we can move into public
16 session. Thank you.

17 PRESIDING JUDGE FULFORD: Good. Public session, please.

18 (Open session at 10.32 a.m.)

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

20 MS SAMSON:

21 Q. So, sir, did I understand from your answer that the
22 investigator at the end of the interview when you were signing this
23 statement asked you to confirm that you had told the truth; is that
24 right?

25 A. I don't recall that. I was not told that. I was just asked

1 if I was going to tell the truth to the Court, and I said, "yes." I
2 was told when we were in the -- I was told that when we were in the
3 car, when they were taking me back, not when I was signing the document.

4 Q. And, so, sir, you confirm that a written statement was taken
5 and that you signed the statement?

6 A. That's right.

7 Q. And you read the statement to confirm that it was accurate
8 before you signed it?

9 A. No, I didn't read the statement. The person who took me
10 to the investigator gave me kind of a briefing. He said to me to say
11 that I cannot read so that he would read instead of me; I have to pretend
12 that I couldn't read or claim that I had problems with my vision.

13 Q. Well, let's take a look at the statement together. I have
14 it for you.

15 PRESIDING JUDGE FULFORD: Yes. Copy, please, for the
16 witness. And Ms Samson, will you be taking this from the French version
17 or the English translation that was very helpfully provided to us?

18 MS SAMSON: Your Honour, from the French version, because
19 I would like to put it to the witness who --

20 PRESIDING JUDGE FULFORD: In his own --

21 MS SAMSON: -- I believe can read --

22 PRESIDING JUDGE FULFORD: Yes. Certainly. Absolutely.

23 Ms Samson, forgive me for interrupting. The Judges have
24 copies of this. Don't worry about us. All we need is a copy -- I
25 don't know whether you were worrying about us - perhaps not - but we

1 only need a copy for the witness. Surely, somebody must have a spare
2 copy.

3 MS SAMSON: Indeed, your Honour, I have a spare copy for
4 the witness. I had provided copies to --

5 PRESIDING JUDGE FULFORD: Don't worry. We brought our own
6 already to the Bench.

7 MS SAMSON: Okay. Thank you very much, your Honour.

8 PRESIDING JUDGE FULFORD: Good. Court clerk, can you please
9 give a copy of this statement to the witness? Thank you. Right. Where
10 are we going, Ms Samson, in the statement?

11 MS SAMSON: Thank you, your Honour. I believe the statement
12 that I am referring to at the moment is at tab 1. The statement should
13 remain confidential, please, your Honour, and not displayed on the
14 public display system.

15 PRESIDING JUDGE FULFORD: Fine. Right. If there are
16 copies -- if we can work from the same copies, usher, can we have those,
17 please? Thank you. Right. So tab 1, the witness has that. Do you
18 want him to identify his signature, or anything like that?

19 MS SAMSON: Indeed.

20 Q. Sir, if you could look at the bottom right-hand corner of
21 this statement, is that your signature?

22 A. Yes.

23 MS. SAMSON: And for the Court record, the registration
24 number of this document is DRC-OTP-0127-0074.

25 Q. And, sir, is it your signature that appears as well on the

1 bottom right-hand corner of each of the pages of the statement?

2 A. Yes.

3 Q. And if we stick to the very last page of the statement,
4 you will see the words in French "attestation du temoin." Is that
5 your signature there as well?

6 A. Yes.

7 Q. And if we stick to the very last page, I will read out the
8 "attestation du temoin" in French. It says --

9 MS SAMSON: Actually, your Honour, may we go into private
10 session for this particular passage?

11 PRESIDING JUDGE FULFORD: Private session, please.

12 *(Private session at 10.38 a.m.) Reclassified as open session

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

14 MS SAMSON:

15 Q. So, sir, I will read out your witness attestation which
16 says, in French, (Interpretation): "I, the person who has signed below,
17 (Redacted), hereby state on my honour and conscience that the
18 information found in the statement which I have re-read personally
19 are a correct reflection of my hearing on 3 October 2005 and from 8
20 to 13 November 2005. I have made this statement of my own free will,
21 and I have been informed that this statement could be used for legal
22 proceedings before the International Criminal Court and that I may
23 be called to give testimony in public before the Court."

24 (In English) Sir, do you remember having read and signed
25 that particular passage?

1 A. I've already told you that I did not personally read that
2 statement. It was read to me. And when a statement is wanted, you
3 can't remember all the sentences from the statement. You can't remember
4 all the points that were raised within the statement. I was just re-read
5 this statement, and I signed it.

6 Q. If you were indeed re-read this statement, surely you had
7 time as it was being re-read to make any corrections you thought were
8 necessary, isn't that right?

9 A. The statement was read to me, and I was told that I could
10 stop reading -- stop the reading if I realised that something was there
11 that I had not said. So the statement was read to me. I had already
12 been told what was going to happen and that, at the end of the interview,
13 the statement would be read to me if I refused to read it and that
14 I just had to sign it, and that's what happened.

15 PRESIDING JUDGE FULFORD: Ms Samson, I think this can be
16 dealt with in open session, can't it?

17 MS SAMSON: It can. Thank you very much.

18 PRESIDING JUDGE FULFORD: Public, please.

19 (Open session at 10.41 a.m.)

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

21 MS SAMSON:

22 Q. And, sir, what you have told the Court is that some of this
23 statement is true, some of this statement is not true; is that right?

24 A. I said that in that statement there is truth and lies. He
25 changed a few things. I said, for example, that I had been somewhere,

1 in one particular place, and I hadn't been there, that I had seen certain
2 things that I hadn't seen. Such was the briefing I received before
3 the interview.

4 Q. For instance, sir, you spent some time detailing with the
5 investigator that you had been at the Mandro training camp, but you
6 had never been there; is that right?

7 A. I never took part in military training given by the UPC.

8 Q. Well, in fact, sir, you never said you had taken part in
9 military training. You had told the investigators that you had been
10 at the Mandro training camp, but that's a lie; isn't that right?

11 A. I didn't say that I was at the camp. I said that was in -- I
12 was in Mandro. I didn't say that I was at the camp, the Mandro camp.
13 Mandro is my village of origin, and I often go there. But even if
14 I know where the camp is, I never was there for any reason because
15 I just knew that my friends there could influence me to undergo military
16 training.

17 Q. Why don't we take a look at your statement, the same statement
18 I had referred to you -- referred to earlier, at tab 1 of the documents
19 in front of you. If I could ask you to turn to page 7, starting from
20 paragraphs 43 all the way to paragraphs 57. Can you let us know if
21 this is -- these are the details you provided the investigator in relation
22 to your time at Mandro?

23 A. Last year, when I did the second interview here, I was clear.
24 I said that the statement was false. In the statement, there are some
25 things that are true and other things that are twisted around, but

1 I explained to the investigator that I never did military training.

2 I told the investigator that he had asked me in June or July, I think --

3 Q. Sir, my question to you now is, can you please take a look
4 at paragraphs 43 through to 57 and let the Court know whether these
5 paragraphs capture the details about you having been in Mandro, which
6 were lies?

7 A. I see them here.

8 Q. Well, let's take a look then at paragraph 44, which I will
9 read out in French: (Interpretation) "When we arrived in Mandro, we
10 settled on a hill just above the village. There was nothing on this
11 hill. Shortly thereafter, Kahwa joined up with our group with his
12 soldiers and all the volunteers whom he had been able to recruit. Kahwa
13 had brought many volunteers with him, and there had to be several hundred
14 of us. Once we were all there, we began to build some huts for shelter."

15 (In English) You are not discussing the Mandro town here,
16 are you?

17 A. I think that I'm clearer on this point. I'm saying that
18 someone said to me that my words had been turned around, and that's
19 what they had said. It was Biyanga (phon). The people who had fought
20 at the UPC were certain members of my family and friends and they told
21 me what happened. And it doesn't mean that I know about everything
22 that happened at the UPC, but here those -- these are things that I
23 heard about, and my language was twisted around by the person who took
24 me to see the investigators -- I was never at the Mandro camp. I never
25 was a soldier. And I think I explained that last year. I explained

1 that to you last year.

2 Q. By yourself with the investigator, when you gave the
3 investigator these details which you say are not correct?

4 A. Each time I met the investigators, I had an intermediary
5 who came to see me at the hotel every morning and he would tell me
6 everything I had to say. Although he told me everything I was supposed
7 to say, he was not the one who went before the investigators. In actual
8 fact, he gave me the general idea and I was allowed to add a few details.

9 I can also add -- I could also add other ideas. I would
10 meet with the intermediaries and investigators each morning.

11 Q. Sir, I understood you to say that you had friends who had
12 been in Mandro and who told you about Mandro. Did you make a mistake
13 when you said that?

14 A. I said this: Some things were told to me by my friends at
15 home. Other things were told to me within my family. Some boys in
16 my family were soldiers and they told stories, and I listened to them.
17 When the intermediary threw out an idea, [barely audible], well I heard
18 that, but it wasn't... He said, "No, you have to say this, say that you
19 were there." So there were general statements. Such a
20 statement -- it's difficult for me to explain. The general statement
21 came from the intermediary.

22 MS SAMSON: Your Honour, may we go into private session,
23 please, for a few questions?

24 PRESIDING JUDGE FULFORD: Private session.

25 *(Private session at 10.50 a.m.) Reclassified as open session

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

2 MS SAMSON:

3 Q. Sir, it's correct, isn't it, that shortly after you met
4 with the investigators in Bunia, you told the Office of the Prosecutor
5 that you had been threatened?

6 A. Yes, I received threats, because I'm from the Hema ethnic
7 group, and sometimes I am even threatened by members of my own family.
8 These are threats -- well, the relatives were worried because -- because
9 I had become a person who brought conflict. People said that I had
10 made a mistake. And I had taken witnesses to the Prosecutor. If I
11 hadn't done that, I wouldn't have received such threats at that level.

12 Q. Had you told people that you had, yourself, met with
13 investigators of the Office of the Prosecutor?

14 A. How was I to tell them that? Your intermediaries introduced
15 you to people who did analyses in relation to my contact with these
16 intermediaries. On seeing me with the intermediary -- he also had other
17 intermediaries -- he came straight to the conclusion that I was a witness
18 and I was making statements. But he wanted to save his skin. So the
19 intermediary led me down the wrong path and he wanted to save his own
20 skin. That's what happened. Right at the beginning, when I began
21 to see the intermediary regularly, that's when the difficulties began,
22 not today.

23 Q. Sir, you told the Office of the Prosecutor that four men,
24 (Redacted)
25 (Redacted) threatened you. Was that true or was that a lie?

1 A. Yes, that's true. There was (Redacted) (phon). (Redacted)
2 was looking for me, we had business... We had our own internal conflicts,
3 and he took advantage of that situation perhaps to look for me... perhaps
4 he had no money... perhaps he thought I had money. There was a risk
5 it would turn out badly. That's why I asked -- I spoke to (Redacted)
6 (Redacted) spoke to the Court, because he is the one who was in contact
7 with the Court. I explained the whole situation to him; I told him
8 that I could not go to Bunia at that time. And finally, I was obliged
9 to go to Bunia.

10 Q. Sir, I understood that you were already in Bunia at this
11 time.

12 A. Oh, yes, I was in Bunia at that time.

13 Q. And this person (Redacted)

14 A. (Redacted)

15 Q. And as a result of your communication of this threat, the
16 Office of the Prosecutor relocated you temporarily in (Redacted)
17 2005.

18 A. Yes.

19 Q. And after that, you met with representatives of the Victims
20 and Witnesses Unit; is that right?

21 A. Yes, absolutely.

22 Q. And then in (Redacted) 2006 you and your family were relocated
23 one more time within the Court's protection programme? Just "yes"
24 or "no," but please don't tell us where you are actually residing.

25 A. Where I lived? I didn't really understand the question.

1 Q. Without telling us where you are currently residing, can
2 you please tell us if it's correct that the Court relocated you into
3 its protection programme in (Redacted) 2006?

4 A. Yes.

5 MS SAMSON: Mr President, with your leave, we could go back
6 into public session.

7 PRESIDING JUDGE FULFORD: Thank you, Ms Samson. We will
8 take a break at 11, so you've got three or four minutes left.

9 MS SAMSON:

10 Q. Sir, in May 2006, it's right, isn't it, that you met again
11 with the investigator from the ICC?

12 A. Yes, in May 2006.

13 PRESIDING JUDGE FULFORD: Pause for a moment. If I didn't
14 say so expressly, I had meant that for us to be in public session.
15 I'm sorry. I thought that was clear.

16 (Open session at 10.57 a.m.)

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

18 PRESIDING JUDGE FULFORD: Yes, Ms Samson. Sorry.

19 MS SAMSON: Thank you.

20 Q. And you met with the investigator for two days; is that
21 right?

22 A. Yes.

23 Q. Your interviews lasted just under 12 hours during those
24 two days; is that right?

25 A. That's right.

1 Q. And during the -- this interview, only yourself and the
2 investigator were present?

3 A. No.

4 THE WITNESS: Your Honour, we could go into closed session,
5 please.

6 PRESIDING JUDGE FULFORD: Certainly. I think --

7 THE WITNESS: I have a point that I want to clear up.

8 PRESIDING JUDGE FULFORD: It's, I'm sure, a reasonable
9 request. Closed session, please. I'm sorry. I meant private. I
10 meant private.

11 *(Private session at 10.58 a.m.) Reclassified as open session

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

13 PRESIDING JUDGE FULFORD: Thank you.

14 THE WITNESS: In 2005, I did not go do the interview with
15 the investigator alone. The investigator called me in Kinshasa and
16 said to me that they were looking for someone who would be like... someone
17 they were to cooperate with (Redacted) and who they were to contact
18 perhaps for other cases or even in relation (Redacted). So, I brought
19 that person to the investigator, and they took advantage of the
20 opportunity to give -- have another interview with me. I wasn't alone.
21 There was (Redacted) (phon) with me.

22 MS SAMSON:

23 Q. Thank you for the clarification, sir, but I am referring
24 to your meeting with Nicolas Sebire and the second statement that you
25 signed from those two days. The questions that were asked of you and

1 the answers that you gave - and ultimately the statement that you
2 signed - that was done between you and the investigator; that's right,
3 isn't it?

4 A. Perhaps I didn't really understand your question properly.
5 In the statement -- well, I signed it before the investigator, but
6 I didn't leave alone.

7 PRESIDING JUDGE FULFORD: Can we find a convenient moment,
8 Ms Samson?

9 MS SAMSON: Yes, your Honour. This is convenient.

10 PRESIDING JUDGE FULFORD: Good. If it is, thank you very
11 much. Sir, lots of questions. Fair - only fair on you, and to the
12 transcribers and interpreters - for us to have a break. We will meet
13 again in half-an-hour.

14 Closed session, please, so the witness can withdraw. Usher,
15 can you please take the witness back to the witness waiting room, once
16 the blinds are down.

17 *(Closed session at 11.00 a.m.) Reclassified as open session

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

19 (The witness stands down)

20 PRESIDING JUDGE FULFORD: Ms Samson, after the break, we'd
21 be grateful for an indication from you as to when you will be able
22 to deal with the matters I raised first thing this morning.

23 MS SAMSON: Certainly, your Honour.

24 PRESIDING JUDGE FULFORD: Thank you very much.

25 Half-past-11.

1 THE COURT OFFICER: All rise.

2 (Recess taken at 11.01 a.m.)

3 (Upon resuming at 11.30 a.m.)

4 *(Closed session) Reclassified as open session

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

6 PRESIDING JUDGE FULFORD: When do you think you will be ready,
7 Ms Samson?

8 MS SAMSON: Thank you, your Honour. The Prosecution can
9 provide a response in writing - should that be an appropriate channel
10 for the Chamber - by Friday, if that's agreeable.

11 PRESIDING JUDGE FULFORD: Do you mean by the close of play
12 on Friday?

13 MS SAMSON: Yes, your Honour.

14 PRESIDING JUDGE FULFORD: Yes. All right.

15 MS SAMSON: Thank you.

16 PRESIDING JUDGE FULFORD: 4 o'clock Friday. Thank you.
17 Witness, please.

18 (The witness enters the courtroom)

19 PRESIDING JUDGE FULFORD: Private or public, Ms Samson?

20 MS SAMSON: Public, your Honour.

21 PRESIDING JUDGE FULFORD: Public, please.

22 (Open session at 11.33 a.m.)

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

24 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

25 MS SAMSON: Thank you.

1 Q. Sir, before the break we were discussing your second
2 interview with the investigator from the ICC, and do you recall that
3 a written statement was taken of that interview?

4 A. I do remember that.

5 Q. If I could ask you, please, to turn to the folder of documents
6 that should still be in front of you and turn to tab 2.

7 MS SAMSON: The registration number for the Court is
8 DRC-OTP-0155-0070. And, your Honour, I believe there may be one
9 administrative matter in relation to the last document.

10 PRESIDING JUDGE FULFORD: Yes. I think the number either
11 needs to be given or read out in relation to the last document under
12 the last tab that was referred to.

13 THE COURT OFFICER: Tab one, your Honours, which is
14 identified as DRC-OTP-0127-0074 has been attributed a number at the
15 pre-trial stage of the hearing, which is EVD-OTP-00319 and will be
16 marked as confidential.

17 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

18 MS SAMSON: Thank you. And also for the court officer, this
19 second document is confidential as well and should not be displayed
20 on the public screens.

21 PRESIDING JUDGE FULFORD: Certainly.

22 MS SAMSON: Thank you.

23 Q. Sir, do you recognise your signature on the bottom right-hand
24 corner of this statement?

25 A. Yes.

1 Q. And you also signed each of the pages of this statement,
2 also on the bottom right-hand corner of each page?

3 A. Yes.

4 Q. And once again, if I could ask you to turn to the very last
5 page, you will see in French "attestation du temoin" and you signed
6 and dated that page?

7 A. Yes.

8 Q. And sir, the contents of this interview are true?

9 A. For each statement, it's the same witness acknowledgment.
10 That's how it is, exactly. And each time they read and we signed.
11 After that, the true statement is the audio one I made. These are indeed
12 my words in all honesty, and it's what I myself heard... especially the
13 audio.

14 Q. Yes. And, in fact, the content - so the information that
15 you provided to the investigator during this interview - is accurate
16 and true? You weren't lying during this statement, I understood that
17 to be your evidence; is that right?

18 A. I am talking about the audio statement. I transmitted what
19 I heard. I believe that I said what I heard. I think that's how it
20 is.

21 Q. Sir, during the interview, the investigator asked you
22 questions and you gave answers over two days, over 12 hours; that's
23 right, isn't it?

24 A. Yes, indeed.

25 Q. And unlike the first interview where you say that some of

1 the information you gave to the investigator was true and some was
2 not true, the information you gave the investigator during the second
3 interview was true; isn't that right?

4 A. This is what I have to say: Apart from the information which
5 is at the top of my statement and the questions they asked me relating
6 to my previous statements. They asked me to give them certain details
7 on my previous statements. That, and what is written at the top of
8 the statement, is not correct. However, here there are certain accurate
9 statements made at the end of the questions that were put to me. But
10 I would like to insist on the audio recording, because I myself have
11 listened to the recording.

12 Q. So, sir, is it correct then that other than your name, the
13 content of this second statement was, indeed, true at the time that
14 you gave the information to the investigator?

15 A. This is what I said about the statement: They referred to
16 certain details of my statement of 2005. They asked me to give them
17 certain particulars, perhaps I might have done some speculation with
18 respect to my previous statements. I was obliged to keep to the same
19 statements I made previously to avoid instilling doubt in the
20 investigator's mind. That was it. Generally, from the audio, most of
21 the statements were true.

22 Q. And, sir, you were given an opportunity during the second
23 interview to re-read the statement that you gave after your first
24 interview in order to make any corrections; that's right?

25 A. That's true.

1 Q. And you said that you maintain all the information contained
2 in the first statement, with the exception of your father's employment;
3 that's right?

4 A. Yes.

5 Q. And in the course of the second interview - which is captured
6 in your statement - the investigator asked you to listen to an audio
7 cassette; do you remember that?

8 A. Yes.

9 Q. And you listened to the tape, the audio cassette, and you
10 indicated that it appeared to you to record an attack in the area of
11 Mongbwalu by the UPC?

12 A. Yes.

13 Q. And you said that you thought it was the UPC, in part because
14 you recognised the voices of some of the UPC officers?

15 A. Yes.

16 Q. And you also thought it was an attack by the UPC because
17 of the way in which orders were given; is that right?

18 A. Yes.

19 MS SAMSON: Your Honour --

20 PRESIDING JUDGE FULFORD: Yes. Unless anybody is asking
21 me to -- asking us to rise, can we manage without the transcript, the
22 French transcript just for a moment, and see whether we can get it
23 fixed? If it turns out to be a long-term problem, then we will rise.
24 Yes, please carry on, Ms Samson.

25 MS SAMSON: Thank you, your Honour. With the leave of the

1 Chamber, may we go into private session for just two or three questions?

2 PRESIDING JUDGE FULFORD: Private session, please?

3 *(Private session at 11.43 a.m.) Reclassified as open session

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

5 MS SAMSON:

6 Q. Is it right, sir, that you were in this region of Mongbwalu,
7 Kobu after the attacked was launched by the UPC?

8 A. No, I was not in Mongbwalu, nor in Kobu. I only heard certain
9 things from my friends as I had stated.

10 Q. Were you in Bunia at the time of this attack?

11 A. I was in Bunia because that was the place where I was studying.

12 Q. And in this second -

13 MS SAMSON: Excuse me, your Honour. With your leave, we
14 could go back into public session.

15 PRESIDING JUDGE FULFORD: Public session, please.

16 (Open session at 11.46 a.m.)

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

18 MS SAMSON:

19 Q. And, sir, during this second statement, you provided further
20 details about child soldiers at the UPC headquarters, didn't you?

21 A. Yes.

22 Q. You said that you remember there had been a number of Kadogos
23 at the headquarter, including those who were under 15, and that you
24 could recognise them because they were small and their weapons were
25 too large for them?

1 A. I said this about the two children whom I saw. It is true,
2 that there were young people there, but I'm not in a position to tell
3 their ages. When I talk about age, I was referring to the two that
4 I knew personally.

5 Q. In the second statement you don't refer to the two that
6 you knew personally, do you?

7 A. I do not fully understand your question. You talk about
8 the headquarters of AG or are you talking about headquarters where
9 the recruits were located? I think you should repeat your question
10 or you should go back to the previous question, because I did not fully
11 understand what you said.

12 Q. Why don't we do it this way: Let's take a look at what you
13 told the investigators in paragraph 10 of your second statement, the
14 one that's at tab 2 of the binder in front of you. Paragraph 10, for
15 your reference, is on page 3. And let me read what you told the
16 investigators, paragraph 10, and I will start from the third line down.
17 I will read in French:

18 (Interpretation) "Among those who worked there, I do
19 remember that there were a certain number of Kadogos. I did not know
20 many of them. Most of them came from the bush; and for that reason,
21 I did not know them.

22 "Those I saw at headquarters were under the age of 18; there
23 were also some who were under the age of 15. It was easy to recognise
24 them because they were all small and the weapons they bore were a lot
25 bigger than they were. Some of these Kadogos worked as bodyguards

1 for Kisembo, Bosco, Kasangaki, and for most of the military commanders
2 of the UPC in general."

3 That's what you told the investigators, isn't it?

4 A. Yes, indeed, that's exactly what I said.

5 Q. And that was true, because that's what you saw?

6 A. Yes, it's true. I did not fully understand your question
7 at the start.

8 Q. Sir, in relation to the information that you gave to the
9 Office of the Prosecutor that you say was not true, I want to ask you
10 some questions about that. The investigators did not ask you to lie
11 to them, did they?

12 A. Where? Well, in response to your question, this is what
13 I have to say: The investigator did not tell me officially. If the
14 investigator had drawn my attention right from the start, from the
15 first day, that it was like this or like that, if you say this, it
16 might have such consequence... but he did not explain it to me.
17 However, I told you that it was whilst I was in Bunia and whilst I
18 was with the investigator in the car that he told me that everything
19 I stated had to be true. That was all he said to me. But he did not
20 draw my attention to what was going to happen later. Because when I
21 refused to speak to the investigators, they should have explained at
22 the outset how things could happen. I mean, I'm not stupid and wouldn't
23 go and talk. I could have refused and called (Redacted) first to speak
24 to him about it.

25 MS SAMSON: Your Honour, we are in public session. I don't

1 really know what name the witness is referring to, but it may be wise
2 to redact it.

3 PRESIDING JUDGE FULFORD: Yes. For the time being, can we
4 please have a redaction to that name? Thank you.

5 MS SAMSON:

6 Q. Sir, the answer -- if you could focus on my question: The
7 investigators did not ask you to lie to them, did they?

8 A. However, they did not tell me anything, how would I have
9 known? The problem is that they did not tell me not to lie to them.
10 They had complete trust in the person who brought me to them. The level
11 of lying... and everything that happened... the investigator was naive,
12 he didn't know everything that was going on.

13 Q. And the investigators didn't influence you or pay you to
14 give them information?

15 A. Let me explain all of that to you. The investigators did
16 not influence me in any manner. They did not give me any money or
17 any inducements or make any promises. Now, here is the problem: I
18 knew right from the start what was happening; however, the investigator
19 did not know what was happening, so he never influenced me by giving
20 me money or making any promises in return for information from me.
21 It never happened.

22 Q. When you did receive money from the Court, it was for your
23 expenses such as food or transportation; is that right?

24 A. All the money that the investigators gave me was for my
25 transportation, phone costs and feeding; it was not remuneration or

1 a salary.

2 Q. And you signed receipts each time you received money for
3 these expenses?

4 A. Yes, that's what always happened.

5 Q. And after you were temporarily relocated by the Office of
6 the Prosecutor because of the threats you had told us about, you received
7 a monthly allowance for your living expenses; is that right?

8 A. Yes.

9 THE WITNESS: Your Honour, please, I would like us to go
10 into private session, because I wish to make a certain clarification.

11 PRESIDING JUDGE FULFORD: Certainly. Private session,
12 please.

13 *(Private session at 11.55 a.m.) Reclassified as open session

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

15 THE WITNESS: This is what I have to say with respect to
16 any money I received from the Court or the Office of the Prosecutor
17 in Kinshasa. Yes, I signed to receive money. For example, they said
18 it was \$12 for my accommodation. However, the person who gave me
19 accommodation, the person receiving the money only received 10 dollars.
20 But I signed that I had received 12 dollars.

21 I maintain my statement on that point. I don't want to
22 talk at length because I cannot really explain anything with respect
23 to that sum of money for which I signed a receipt. I signed that I
24 had received money, but with respect to my accommodation, medication,
25 and other expenses, I had to sign that I had received a certain amount

1 of money, but I did not receive the money in its entirety. Even for
2 my accommodation, I had to sign that I had received \$12 for my
3 accommodation, but the person in question actually received \$9, for
4 example.

5 PRESIDING JUDGE FULFORD: Do you want to ask anything arising
6 out of that, Ms Samson, or not?

7 MS SAMSON: No.

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

10 (Open session at 12.00 p.m.)

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

12 MS SAMSON:

13 Q. So, sir, from October 2005 up until you arrived at the Court
14 here in June 2009, you didn't tell anybody from the Court, either from
15 the Office of the Prosecutor or from any of the protection sections,
16 that you had lied during the course of your first statement; is that
17 right?

18 A. Your question is an excellent one and I would like to answer
19 so that everyone will understand why, for a period of three years,
20 I was protected but did not manage to tell the Prosecutor or inform
21 the Court about what happened. Let me be clear here. If I did not
22 inform the Prosecutor, it is because I was protecting myself, to lie
23 low. I don't know if it's because I am black... Because you feel that
24 someone is putting pressure on you, they threaten you by force solely
25 because you refused a decision. That is why in the year 2006 I asked

1 the investigator interviewing me for a lawyer but I was told that I
2 was not entitled to a lawyer. I asked again in 2007 to have a lawyer
3 and they refused. I couldn't talk about these kinds of things without
4 the presence of a lawyer. Then... with regard to my safety primarily,
5 they were going to stop protecting me and I was going to be staying indoors.

6 And then I brought you witnesses, but no documents were ever
7 given to me with respect to the procedure that had to be followed to
8 recruit or bring witnesses with respect to my safety. I wasn't bringing
9 witnesses for any sort of remuneration from the Prosecutor, but so
10 that the truth can be established. However, if we continue -- if we
11 continued in that manner, I ran the risk of ending up indoors. I have
12 to say it openly because things happen... because what was said to me
13 by protection continued to affect me and all because I refused a simple
14 decision, you will note some over-zealousness. At that time, in 2006,
15 I should have given more information about this to the Prosecutor.

16 Q. Sir, let's recap this. You met the ICC investigator in 2005.
17 You didn't tell him that you were not telling him the truth in 2005.
18 You didn't tell anything -- anyone that you weren't telling the truth
19 in 2006, not in 2007, not in 2008, not until June 2009. Can you please
20 confirm that for me?

21 A. Put yourself in my position. My situation was difficult.
22 Had I said the truth, I would have had problems with (Redacted)
23 does not work alone, he works with people. I'm telling you really that
24 I did not have the chance to tell you things as I would have wanted.
25 I will tell you everything. I was between a rock and a hard place.

1 If I had dared tell (Redacted) that I was going to tell the truth to
2 the investigators and that I was going to be frank with them, I would
3 have been threatened. Recently I was coming from Kinshasa, I put a
4 witness in contact with the investigators. Afterwards, (Redacted)
5 threatened me, he said that that was not my job and I should not interfere.
6 I was receiving threats to the point that I said to myself that, for
7 these people, even at the price of 200 dollars, my head was not so
8 dear, they could see me off without any kind of investigation to follow.
9 (Redacted) was not alone, I was receiving threats constantly. The best
10 place where I could speak about this situation was here in the Netherlands
11 in 2006. Here I could speak clearly because I had no threats or worries.

12 THE INTERPRETER: The Swahili interpreter requests that the
13 witness slow down because he's going very fast indeed.

14 PRESIDING JUDGE FULFORD: Sir, can you slow down slightly,
15 please. You're speaking too fast for the interpreters.

16 THE WITNESS: This is what I was saying. I was not able
17 to tell you this whilst I was in the Congo. In Congo, I have to be
18 careful in order to protect my life and that of my children and my
19 wife. If I had said everything, that would have been accusing people;
20 they were paid, I knew, they would have lost their jobs. You have to
21 know that he was not acting alone, other people were involved. And
22 I found myself more or less alone. The best place for me to explain
23 my situation to the investigators or to the Office of the Prosecutor
24 is here in The Netherlands.

25 Q. Sir, you're not aware that anybody else told lies to the

1 Office of the Prosecutor, are you?

2 A. I'm not in a position to answer that question. Last year
3 they asked me [inaudible] refused to answer the question; I don't know
4 why. However, now, I believe that I can. You know, this is a very
5 delicate issue. I might have been able to answer this before. However,
6 I do not believe that this is of much import.

7 MS SAMSON: Your Honour, may we go into private session
8 for a series of questions?

9 PRESIDING JUDGE FULFORD: Certainly.

10 *(Private session at 12.05 p.m.) Reclassified as open session

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

12 MS SAMSON:

13 Q. Sir, you did not provide any documents to the Office of
14 the Prosecutor with the name (Redacted), did you?

15 A. I did not have any documents at that time to certify that
16 my name was (Redacted). With -- I simply asked them to go to
17 the school that I was going to at the time in order to meet members
18 of my family. However, there is a document with protection, bearing
19 the name (Redacted), a document they gave me in Kinshasa.

20 THE INTERPRETER: Inaudible.

21 THE WITNESS: I have never spoken about a document.

22 THE INTERPRETER: Mr President, message from the English
23 booth. Could the witness, please, be requested to observe a pause
24 between question and answer session because it's making life difficult
25 for the interpreters. Thank you.

1 PRESIDING JUDGE FULFORD: Sir, I'm sorry to have to intervene
2 again, and I know it's difficult because you'll want to speak naturally,
3 but it's very important that you don't speak too quickly - and you
4 are being better at that now - but you also build in a pause between
5 Ms Samson's question and your answer because the interpreters need
6 an opportunity to complete the question before they turn to listening
7 to your answer.

8 Do we need to remain in private session, Ms Samson?

9 MS SAMSON: Yes, your Honour.

10 PRESIDING JUDGE FULFORD: Certainly. Please continue.

11 MS SAMSON: Thank you.

12 Q. Sir, when you met with the OTP investigators in June of
13 2009, you refused to have your photo taken so that it could be shown
14 to your family; isn't that right?

15 A. Yes, I did refuse. And I refused because I had somebody
16 advising me, sitting next to me and, as a result, I refused because
17 I did not see the importance of having my photograph taken. Because
18 I asked them, "You already have my photograph?", you can show it and
19 ask questions without my knowledge, that can be done. This is clear.
20 I can't hide in Bunia. I grew up there. I lived there. And there
21 we have it. Let me draw your attention to this: When I recruited the
22 last witness, I gave my real name because it was difficult to give
23 the name of (Redacted) which he didn't know. I gave the real name
24 of (Redacted) because my name is (Redacted). It is a very clear name.
25 Somebody might call me (Redacted). Sometimes I am called (Redacted).

1 Q. And, sir, with the photograph that the Office of the
2 Prosecutor does have of you, you refused, didn't you, that we show
3 it to your grandparents to confirm your identity?

4 A. I told them that my grandparents have the right to refuse
5 to answer. Now, when you ask my grandparents a question, they know
6 that I came here to the Netherlands, that I came to accuse Lubanga.
7 You might need to ask certain independent individuals with a view to
8 shedding light on the matter. It might be that my parents would have
9 sought to protect me; they might have refused as a result. Why would
10 they have confirmed this question?

11 Maybe you should put this question to somebody else, somebody who
12 knew me, somebody who was amongst the students or amongst the teaching
13 staff.

14 Q. But the answer to my question, sir, is yes, you refused
15 that we show photographs to members of your family, particularly to
16 your grandparents?

17 A. I refused. I did indeed explain. He asked me why. I am
18 now explaining the matter. He asked me why I refused and I explained
19 to them why I was refusing. That's what I just said.

20 Q. And you told us that your parents live in Bunia but you
21 don't know where.

22 A. Yes, indeed. That is true.

23 Q. Sir, your wife is (Redacted), isn't
24 she?

25 A. That is what I heard, yes.

1 Q. Well, you know, don't you, that she refers to (Redacted)
2 (Redacted)?

3 A. Yes, as a mark of respect, she calls him "papa." You know,
4 somebody who is your elder, in an African context, you call them "papa."

5 Q. You know, don't you, that (Redacted) used
6 to live with your wife's family?

7 A. Yes.

8 Q. You know that there's a (Redacted)
9 (Redacted)?

10 A. What do you mean, blood relationship? It's difficult to
11 talk about blood relationships, because if I had brought it up, it
12 would mean that he is her own father, but that is not the case. Where
13 I'm from, even if we have family links, maybe three or four generations
14 back, we still call each other "papa." But when we talk about family
15 blood relationships, we're referring to the biological father.

16 Q. (Redacted), where some of your family
17 lives?

18 A. Yes.

19 Q. And (Redacted); is that
20 right?

21 A. Yes, indeed, they contacted my family.

22 Q. And you told the Office of the Prosecutor that after you
23 testified in June 2009 people called your family (Redacted)?

24 A. Yes. They said I was going to accuse Lubanga, so of course
25 it is normal that they would ask them if they knew what I was doing.

1 This is not something that was done secretly. Most of the witnesses
2 go through the situation. If you are known, they know your father,
3 or your family.

4 Q. You testified in closed session in June 2009?

5 A. Yes.

6 Q. And not only your family but people in Bunia know that you
7 testified?

8 A. They also know that I came to testify for the second time.
9 It is entirely normal that everyone has this information. However,
10 they do not know the contents of my testimony but they do know where
11 I am at this moment in time and what I have come to do.

12 Q. Did you tell your family and the Hema community in Bunia
13 that you're here?

14 A. How can I say that? I cannot inform them.

15 Q. And, sir, your (Redacted) have told you they
16 don't want you to become or to get into conflict with the Hema community?

17 A. This is what they said to me: They did not want me to put
18 them in a situation of conflict because they know that I am not a soldier.
19 So what was I going to testify against Lubanga? That is the reason
20 why they put me questions, they put questions to me, well, they phoned
21 me but they did not find me. Because it seems that (Redacted) (phon.),
22 whom I presented to the investigators, was the one who gave clear and
23 reliable information that I had left (Redacted) to go to Kampala, that
24 I went to meet investigators, that I am a witness, and all that. And
25 he also provided clear information on my situation and, previously,

1 they were doubting unless -- until it was confirmed that I was in The
2 Netherlands.

3 Q. And sir, it's right isn't it, that you have felt direct
4 and indirect pressure because (Redacted) has contacted your
5 family?

6 A. It would be too much to say that I came under direct or
7 indirect question, but the question, the pressure that I am under
8 currently, no, I didn't really come under any direct pressure from
9 (Redacted), rather from my own family, because my own family can see
10 the gravity of this situation. (Redacted)

11 (Redacted). But I have no pressure. It is my community, the Hema
12 Banywagi community, that is following this closely, and (Redacted)
13 (Redacted) cannot exert any pressure at all upon me. I am a Hema.

14 Q. And the UPC is quite special in the northern Hema community,
15 isn't it?

16 A. For the northern Hema community, the UPC is very important.
17 Because the UPC, well, for all the Hema, the UPC -- it is the reason
18 why most of the or half of the Hema exist. I do not know whether the
19 Hema would still exist without the UPC. One has to hark back to 1998/1991
20 until 2001. We have to see what the Hema community actually underwent.
21 It feels close to the UPC for good reason because there are families
22 who still have two or three members, thanks to the UPC. There is this
23 feeling that the soldiers paid the price in order to save the three
24 or four surviving members of a family.

25 MS SAMSON: One moment, your Honour, if I may ask for the

1 Court's indulgence.

2 Q. Sir, earlier we had discussed the threats that you had
3 received shortly after the interview with investigators in Bunia.
4 Isn't it right that you had information that a certain person, who
5 you name as (Redacted) had told people you met with ICC investigators?

6 A. Yes, (Redacted) did confirm. It is true that we saw (Redacted)
7 in Kampala then (Redacted) so he drew the conclusions
8 or he came to a conclusion, because I do not know (Redacted). He wanted
9 to save himself so he denounced me. He said that I was going to go
10 and accuse somebody and he denied the fact.

11 Q. And you are speaking about (Redacted) who had denounced you?

12 A. Yes, that is correct.

13 MS SAMSON: Mr President, thank you. I have no further
14 questions.

15 PRESIDING JUDGE FULFORD: Thank you very much, Ms Samson.
16 Very clear.

17 Yes, Mr Desalliers.

18 QUESTIONED BY MR DESALLIERS:

19 MR DESALLIERS: (Interpretation) Mr President, as we
20 announced at the beginning, as an exceptional measure we would like
21 to have a little bit of time in order to continue the preparation of
22 our cross-examination with regard to a number of elements, and
23 especially a very new element with regard to the interpretation of
24 important details that were mentioned by the witness. We would like
25 to have the opportunity to discuss these details with Mr Lubanga.

1 PRESIDING JUDGE FULFORD: A moment. Mr Desalliers, we are
2 of the view that you've had a long time to prepare for this witness.
3 It's right that some new material may have been supplied as a result
4 of Ms Samson's questions this morning, but part of counsel's role is
5 to be able to respond quickly to evidence as it unfolds in the case.

6 We've got half-an-hour, just over half-an-hour left this
7 morning. Our view is you should make a start today and you will then
8 have the rest of the afternoon to prepare the, as it were, whatever
9 is outstanding of your questioning for tomorrow.

10 So, unless that's going to cause you the very greatest
11 difficulty, we would ask you to start now, please.

12 MR DESALLIERS: (Interpretation) Mr President, I can
13 indeed commence now but I believe that one of the consequences is that
14 some of the facts covered by my learned friend might be delayed in
15 terms of chronology, but I believe I can start my cross-examination.

16 PRESIDING JUDGE FULFORD: Thank you, Mr Desalliers.
17 Private or public?

18 MR DESALLIERS: (Interpretation) Private session to start
19 with.

20 PRESIDING JUDGE FULFORD: Thank you. Please continue, then.
21 Ms Samson?

22 MS SAMSON: I'm terribly sorry, your Honour. I just, prior
23 to the commencement of my friend's cross-examination, I neglected to
24 permit the court officer to give an EVD number to the second statement.

25 PRESIDING JUDGE FULFORD: Right. Please.

1 THE COURT OFFICER: For the purposes of the record, your
2 Honours, tab 2 which is identified with DRC-OTP-0155-0070 has been
3 assigned an EVD number in the pre-trial proceedings and the EVD number
4 is EVD-0TP-00320 and will be marked as confidential.

5 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

6 MS SAMSON: Thank you for the indulgence and I do apologise.

7 Your Honour, as was the process that the Chamber had
8 authorised for the previous witness's statements getting an evidence
9 number, the two previous statements in this case for this witness have
10 received numbers. There is a third which I didn't refer to but which
11 is an integral component to understanding the first two, and our
12 submission is that although I didn't directly show it to the witness
13 I did make reference to it and with the Court's indulgence perhaps
14 it should also get an EVD number at some stage.

15 PRESIDING JUDGE FULFORD: Yes. Presumably this would be
16 on the basis that we would need to exercise the same care that we've
17 indicated in relation to other statements in a broadly similar situation,
18 that we would only be looking at them for the appropriate purposes,
19 and namely, I would have thought, with this witness for, as it were,
20 the coherence and the evolution of his account, rather than necessarily
21 the truth or otherwise of the facts which are asserted within the
22 statement; is that right?

23 MS SAMSON: That's right, your Honour.

24 PRESIDING JUDGE FULFORD: On that basis, any objections,
25 Mr Desalliers?

1 MR DESALLIERS: (Interpretation) No, Mr President.

2 PRESIDING JUDGE FULFORD: Thank you. EVD number, please,
3 for tab 3. There are four tabs in fact, Ms Samson.

4 MS SAMSON: Yes, the fourth tab I did not make reference
5 to and so I am referring to tab 3, which is the June 2009 interview
6 of the witness. The registration number is DRC-OTP-0213-0023.

7 PRESIDING JUDGE FULFORD: Please.

8 THE COURT OFFICER: That, your Honours, will be assigned
9 EVD-OTP-00553, and marked as confidential.

10 PRESIDING JUDGE FULFORD: Can you find a convenient moment,
11 Mr Desalliers, at 1 o'clock. Thank you.

12 MR DESALLIERS: (Interpretation)

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. I would like to introduce myself once again. My name is
16 Marc Desalliers. I am a lawyer and I shall be putting questions to
17 you today on behalf of the defence of Mr Thomas Lubanga. I would request,
18 I think this comment has already been made to you on a number of occasions,
19 I know it's difficult but I would ask you to speak slowly so that
20 everything be interpreted correctly, and I thank you for that. You
21 made reference this morning to an individual by the name of (Redacted)
22 was it (Redacted) who acted as an intermediary to introduce you to
23 the Office of the Prosecutor?

24 A. Yes, that was indeed the individual.

25 Q. And this person is called (Redacted), is he not?

1 A. Yes.

2 Q. Could you explain to us how you met (Redacted)

3 A. I met him through (Redacted). I did not know him. I believe
4 that this was in Kampala in the year 2005. Yes, 2005 it was. I met
5 (Redacted) in Kampala and he told me that he was staying in such-and-such
6 a hotel. I was taken by surprise to see (Redacted) in Kampala. I
7 asked him what he was doing here. He said that he was at a hotel.
8 We met up in the evening and I met him with (Redacted) and a girl. I
9 don't know whether it was his mistress or his girlfriend, I really
10 don't know. However, they were nearby and I talked to (Redacted).
11 (Redacted). He knew that there was a conflict between
12 us and the soldiers. There was UPC -- there was conflict between us.
13 He knew this. And I asked him questions about (Redacted). And he
14 said no, the situation is not good. He said the Pakistanis are
15 imprisoning soldiers. There is pillaging going on. So we talked about
16 the situation in Ituri at the time, and then a short time later I
17 said, "Well, what are you doing here in Kampala?" And he said, well,
18 he didn't really say what he was doing in Kampala.

19 So, we had something to eat. We went -- they went into a room.
20 He went into a room. (Redacted) went into a room with a girl.
21 (Redacted) was in another room and I put the question to him in order to --

22 Q. I have a message from the interpreters who are saying that
23 it's going a little bit fast for them. I would ask you to slow down,
24 please. I know it's a constraint. I do thank you for that.

25 A. Fine. Going back to our conversation with (Redacted) that -- it

1 was one evening, and I asked him a question about this girl with (Redacted),
2 and he said that she was his girlfriend, or his mistress, and I wasn't
3 interested in that. And I said, "What are you doing here?" And he
4 said, "Well, I just came here." He didn't want to give me any answers.
5 He was trying to evade my questions.

6 That evening, (Redacted) were there, and I was there with
7 them in that room; and I think they were with (Redacted) and I went
8 to my own room to go to bed. And the next morning, as usual, we got
9 up and we went into town, and then I went to look for (Redacted) (phon)
10 and -- well, he had already had left. And in the evening, when I came
11 back, I didn't find him.

12 One afternoon, he wasn't there, and the next day, (Redacted)
13 came back and he was really drunk, and the next day he was drunk,
14 and I said to him, "Well, where have you come from?" And I was -- he
15 told me, well, we spent the evening in a bar and I think it was 3 or
16 4 in the morning. I was getting ready to go into town as usual --

17 THE INTERPRETER: Message from the English booth. The
18 French court reporters are having difficulty keeping up and we will
19 have to, I am afraid, interrupt the witness again.

20 THE WITNESS: So I went to the hotel to see (Redacted)
21 said to me that, well, to say that he had a headache and (Redacted) was
22 worried. He said "I have to go to where you are sleeping." And I said,
23 "No, there's a problem." And he said, "What problem?" He was really
24 very worried and I said, "You shouldn't be too worried because (Redacted)
25 has been drinking. He's drunk. And that's why he didn't come to see

1 you," and he said, "Oh, my God, he's still been drinking." And then
2 he was really annoyed. He said, "Where are you going now" -- I said
3 to him that I was going into town, and he said, "What are you going
4 to be doing exactly?" He said, "What are you up to?" I laughed. And
5 he asked me, "Weren't you a soldier, by any chance? I was wondering,"
6 and he said to me there was a "co-op", I will explain to you. "Co-op"
7 is a contraction of co-operation. And then I said -- well, we went
8 to his room and he said, he said to come back at 2 in the afternoon.

9 No, I beg your pardon. He retracts, no, he was alone in
10 his room, and he said to me, he gave me a newspaper, a journal, rather,
11 on double sheet, where there was talk about weapons and ammunitions,
12 an arsenal from Rumbeka (phon) going to Bunia by way of Uganda. And
13 I said to myself, "Oh, that would be a good scheme," and that perhaps
14 I should take care of transferring these things. For me it was really
15 a matter of a job and not begging, because they were going to pay me
16 for my services, so I read the journal that was provided to me and
17 he asked me to come back at 2 in the afternoon. So we set an appointment
18 for 2 in the afternoon and we took a taxi at that time and we found
19 ourselves at the hotel. And I found a white man there. He had already
20 given me a briefing in the room and that if we were going to meet a
21 certain white man who would introduce himself, that I should say that
22 I was (Redacted) and he said, "What's your name?" I answered, (Redacted)
23 And then he heard (Redacted) calling me, and he knew... he had heard well.
24 Because later, I saw (Redacted) with a woman, and that was the former
25 (Redacted) (phon.). (Redacted). The lady knows me well,

1 because we went to the same church, and we knew each other's families.
2 (Redacted) said, "Well, now your name is (Redacted) From now on you
3 shall go by the name of (Redacted). I said, "Why, why? Are you trying
4 to get weapons?" And he said, "You are a young fellow, you cannot
5 understand these things." I said okay.

6 At 4 in the after -- at 2 in the afternoon I came back and
7 I didn't realise I was going to be meeting with some investigators.
8 I thought it was going to be a normal job, a normal scheme, and I wasn't -- I
9 wasn't going to be asking for money from a white man. But I thought
10 that I was going to be working and I was going to be earning some money.

11 Well, at 2 in the afternoon, we went to see the investigator
12 and he didn't tell me it was an investigator. He said it was a white
13 man, and there was an interpreter as well, also a white man who was
14 speaking Swahili. When I looked, there was a microphone, a camera,
15 and I began to wonder, and the language used by (Redacted), it came
16 into my head. I said, well, there was a certain -- there was something
17 going on and he said, "I am Nicolas Sebire. I am an investigator from
18 the ICC." That concerned me. And I said to myself, (Redacted) has
19 put myself into -- has put me into an impossible spot." I said, "I
20 can't help you". Twice. Because you see there was a live microphone
21 in front of me. If you listen to the recordings again you will hear
22 the wording I used. And then someone came in through the door and the
23 investigator said, "We have to go to the balcony" -- we -- he drew
24 the curtains and he spoke to his visitor.

25 Now, (Redacted) the Swahili interpreter was beside us, but

1 (Redacted) couldn't speak in Swahili. He said to me in Lingala, "why
2 are you doing that? Just say what I said. You are not the beginning
3 or the end." So, something to motivate me. And it was a bit odd and
4 I said, well, I was very brief. I said very little, when I faced the
5 investigator. It didn't last long. I went out and he left -- he
6 remained with (Redacted) in a room, speaking with (Redacted). And then
7 we took a taxi. (Redacted) asked them to give me money for the phone -- well,
8 it was between 300 and 400 -- well, a credit for the phone -- and for
9 transportation.

10 (Redacted) said that you have to pass yourself off as someone
11 who has just come in from the bush and dress in very old clothes. And
12 then I said to (Redacted), "Give me the number of the investigator first,"
13 but I made a mistake. I forgot to ask for the number of the investigator.
14 (Redacted) said, "That's not your job. If they're looking for me he'll
15 call me." I said okay, and so he gave me \$100, and I thought it all
16 over and, in my mind, I said to myself, in any event it was a bit odd,
17 because (Redacted) was -- maybe it was about money, you know. He might
18 have had other motives.

19 So he came; he gave me \$100. There were two people who were
20 sharing the money. I didn't see them, but I knew they were people
21 from Ituri, they were perhaps from the (Redacted) tribe, and they tried
22 to motivate me, to get me to say -- they said to me, "Well, there's
23 all kinds of ways to make money". It was a bit funny, in any event.
24 I went back to the room and then I went to the reception and I found a
25 police officer and I asked them. I asked him, "I'm looking for a white man,

1 who I saw the last time." And he said, "No, they left in the morning.
2 They took a flight. They've gone." And I had \$100 in my pocket, so
3 I came back. And (Redacted) called me on the phone and after a few
4 weeks he said, "Come, come," and so I did, and when I went back to
5 the hotel I found the former wife of (Redacted). And the woman asked
6 me, "How are things? How are things with you?" And she was acting
7 like a mother to me and, you know, she went to the same church as my
8 mother. She knew me very well. I greeted her. I wasn't very
9 interested. I didn't want to pry into someone's private life. And
10 I went with this lady to a store and we went window shopping. We bought
11 some articles of clothing and then we went back.

12 And (Redacted) asked me to come back the next morning. And
13 the next morning, he had already left for Bunia. So I sat myself down
14 [inaudible]. After some weeks, (Redacted) called me. And, you see,
15 I had my number (Redacted) called me and he said, "The investigator's
16 looking for you." And I said, "Why is he looking for me?" And he
17 said, "The investigator needs you so come immediately, before the end
18 of the month." And he put a lot of pressure on me. He said, "I don't
19 have any documents". I didn't have an ID card, because we used the
20 voter's card as an ID card in Congo. I said to him that I didn't have
21 an ID card to get there. And I told him I had other problems, there
22 were difficulties with other fellows, and it would be difficult for
23 me to go there, and so he said, "OK. I'll arrange it. You'll manage.
24 You'll come first of all."

25 So, I was supposed to go to Bunia and I said to (Redacted) I said the

1 truth - I can't carry on with this business. Otherwise I will give
2 my story about what I myself have seen concerning the UPC." And (Redacted)
3 said, "You mustn't say that. Do you know how many people are in the
4 same situation? You can't do that." He put me up in a hotel called
5 a (Redacted) So, I waited for the investigator. The same evening,
6 the investigator called and (Redacted) said that I was supposed to
7 say that the weapons had already crossed the border. So I said what
8 he told me, I wrote, I took notes. So he told me that the weapons would
9 take this route, and I was to explain that to the investigator.

10 Now, when I explained, (Redacted) was right beside me. Right
11 beside me. And when I came back, the investigator said that I had
12 to explain to someone in charge, someone -- (Redacted). Once
13 we arrived there, it was in the evening. (Redacted) abandoned me there.
14 It was a bit late, around midnight or one in the morning. (Redacted)
15 came to the hotel and he told me, "We are going to leave." And he
16 told me what I had to say, that I should say that weapons had arrived.

17 You know, today, it's very difficult for me to remember
18 because he said a lot of things. I can't remember all of what he told
19 me. Well, (Redacted) left. And I went to the (Redacted) and
20 I met (Redacted), if I am not mistaken, and someone who spoke Tanzanian
21 Swahili. And I explained, I told them what (Redacted) had said, but
22 they understood that it was a lie. They said they had been patrolling
23 the region and they hadn't seen any weapons come in. They found that
24 my information was false.

25 So, I went back to the hotel. They accompanied me to the

1 hotel without (Redacted). And in the morning, he came and he asked
2 me, "So you were not able to convince those people. You should be
3 able to convince them." And I said, "Okay."

4 And because (Redacted) spoke too much, I realized that his
5 motivation was not only money. I am preparing to write a book in which
6 I will say what (Redacted) exact motivation was and what he wanted.
7 (Redacted) gave me an exercise book, and I saw the names of people
8 in that exercise book and their statements. I was a bit shocked because
9 I am a Hema and he was giving a false account. It was really bad.
10 I read it and I asked him, "Do you want to leave this exercise book
11 with me?" He said, "No." I said, "Let me have this book so I can
12 refresh my memory." He said, "No, I cannot leave this book with you."
13 He said, "When the investigator or the white man arrives, you should
14 say about 20 tonnes of weapons had entered the territory." In fact,
15 I have forgotten some of the things he told me because while he was
16 talking, I was taking notes.

17 The investigator arrived and he called me, and he said
18 "Tomorrow I will be in Bunia and we will meet. You will take the car
19 and we will meet (Redacted). From there we will go to
20 (Redacted) (phon). (Redacted) came and he said the investigators were
21 around. He said, "Do not panic." (Redacted) thought I was naive. He
22 thought I was a simpleton, but I was no fool. He said, "Do this, do
23 that, and you are going to earn money." He said, "You should say your
24 child is very sick." Well, it's not in my habit to go complaining, but
25 he said I should go complaining to get money. And I told (Redacted), "All

1 of these things you are telling me, do you think it's normal?" He said,
2 "No, no, no. There are many people who are doing the same thing." And
3 I told him, "Look, listen. Fine, I will meet the investigator."

4 I met the investigator. The first day, he showed me
5 photographs, lots of photographs. I knew many people from the UPC.
6 I knew the members from the UPC, but then, some of them, there may
7 have been some people who had family ties with me. I saw many people
8 that I recognised. There was also (Redacted). (Redacted) is from my
9 mother's family. I also saw many other relatives. I knew the majority
10 of the people in the photographs.

11 The investigator started asking me questions. So, my
12 statement in Kampala contains the questions he asked me. He asked
13 me to give him -- to tell him my story. For that, I had to refer to
14 (Redacted) story. He wanted me to say that I had undergone military
15 training in (Redacted). He said I had to talk about (Redacted) whereas,
16 (Redacted) had already died. And in this way, they would have no
17 evidence. I had to mention a school in (Redacted) whereas, I had never
18 studied in (Redacted). I had to provide information, information such
19 that there will be no trace of me that will be discoverable.

20 When I returned to the hotel, the investigator gave me money.
21 I told (Redacted) I did not need money but (Redacted) told me that
22 they were going to give me money. I told him, "I do not need any money,"
23 and I didn't need it, and I gave the money over to (Redacted). I was
24 given \$900, if my memory is correct, and I paid for my hotel expenses
25 with a certain amount and I had some money left over with me.

1 So, things went on in that manner up to a certain point.
2 And I told (Redacted), "Look, (Redacted), this is a bit too much. I
3 have to tell the investigators what's going on." I was at the hotel
4 in Kinshasa in the city centre, and I realized that the Prosecutor's
5 protection programme... and I also have some money, but I am sure that
6 this thing is going to turn against me some day. (Redacted) threatened
7 me so much that I ended up alone, on my own. If I explain all these
8 things to the Prosecutor, I will be dropped from the protection programme.
9 And that will create conflict between me and (Redacted) and I will
10 be in a difficult situation, I will be almost isolated, in the desert.
11 (Redacted) continued seriously harassing me until I understood that
12 it was my life that was at stake.

13 We discussed with (Redacted) and he said, "You are going
14 to say the following. You should tell them your name, do not forget
15 what you had stated." Today I have documents, documents indicating
16 that my name is (Redacted), these are ministerial documents from the
17 Congo. So I got these documents. This was to convince me that I will
18 have no problems at all.

19 I was asked to bring a witness. I brought a boy. But I
20 could foresee that there were going to be problems later on. I did
21 not bring the witness because I wanted to get money. My sole concern
22 was to have the truth established. So, I brought the first witness
23 and I explained to the witness as follows. I told him, "I am not going
24 to give you any money." Because the witness asked me whether he was
25 going to get something in return, and I said, "No. All you have to

1 do is to tell what you saw, what you witnessed." So I brought the
2 first witness.

3 The second day -- or, the last day, when I was returning
4 from Kinshasa, I put the witness in contact with the investigator.
5 Because they were constantly giving me phone credits so that I would
6 look for these people for them. And today, I am suffering all the
7 consequences, the consequences of having recruited these people. No
8 document was given to me to indicate to me how I was going to recruit
9 these witnesses. I just recruited them, just like that.

10 So, (Redacted) or, rather, the OTP investigator, asked
11 (Redacted) to put him in contact with the witness. And (Redacted) had
12 a discussion with me, and he ended up by saying the following: "That
13 is not your role. It is not your role to recruit witnesses." And
14 he told me that if I put myself in this situation, I would risk losing
15 my life. In fact, after recruiting this witness, I left Kinshasa for
16 the Netherlands. I am not just giving an excuse that's untrue. I arrived
17 here in 2006. Instead of treating us as human beings, and respecting
18 the dignity of individuals... you have to see how they started treating
19 us. You only had to challenge one protection decision and those in
20 charge of protection would start saying... I wondered whether I was
21 a slave or if it was because I am black that they used such language
22 with me... They went so far as to say, "If you refuse to go, you will
23 either return to your country or ...". I quote, in French: (interpretation)
24 "people like you, with your stories, do you think that you can be accepted
25 in any place whatsoever to live?" So I couldn't tell them all of that

1 otherwise they would repatriate me and would not agree to providing
2 me with a lawyer. I cannot invent stories.

3 THE INTERPRETER: Could the witness be asked to speak more
4 slowly, your Honour? Request from the Swahili booth.

5 PRESIDING JUDGE FULFORD: Sir, you are giving a very, very
6 long reply. It's obviously important that you provide us with this
7 information, but it is putting the interpreters under very great strain
8 because there's really no pause and you are speaking quite quickly.
9 Now, I am sorry to have interrupted you. Please carry on for another
10 five minutes or so, but please remember to speak slowly.

11 THE WITNESS: Very well. I was called to give testimony.
12 I had the time when I could explain everything to the Prosecutor.
13 I wanted to explain everything to the Prosecutor because I know many
14 things that happened. With your leave, I could give you the full account
15 in a book. I could tell you everything that happened, what was done
16 by (Redacted) and the others. (Redacted) had his motives. Personally,
17 I had my own motives. Maybe I could put all of that in writing, later
18 on. Those, therefore, are the circumstances under which I got to know
19 (Redacted).

20 PRESIDING JUDGE FULFORD: Thank you very much, sir. I don't
21 think at the moment there's going to be any need for you to put those
22 things down in writing because I suspect that, when we reconvene tomorrow,
23 Mr Desalliers will be asking you detailed questions on various aspects
24 of this so that anything you've missed out will be covered by
25 Mr Desalliers taking you to different aspects of it and different

1 relevant times. So we will break off there. Thank you very much for
2 your assistance so far this morning.

3 We will sit again tomorrow at, I think it is half-past-9
4 again in the morning. I see the usher nod. Yes. Closed session,
5 please, so the witness can withdraw.

6 *(Closed session at 12.57 p.m.) Reclassified as open session

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

8 (The witness stands down)

9 PRESIDING JUDGE FULFORD: Ms Samson, it will have been, I
10 am sure abundantly clear from what we said this morning, that there
11 are a number of important elements of what was said in the interview
12 two days ago in relation to which the Chamber has concerns, and over
13 which we disagree.

14 For instance, will was an additional assertion which I didn't
15 refer to that the Prosecution fulfilled all of its disclosure
16 obligations in a timely fashion. We have issued decisions on that
17 which do not support that suggestion.

18 Now, we are grateful to you for the indication that by 4
19 p.m. on Friday we will have something in writing, but in case that
20 submission equally contains assertions, propositions with which we do
21 not agree, an appropriate member of your team should be present in
22 court at 9.30 on Monday morning so that we can address, if necessary,
23 any elements of your response with which we are unhappy.

24 MS SAMSON: Of course, your Honour.

25 PRESIDING JUDGE FULFORD: Thank you very much. Good. 9.30

1 tomorrow morning, please.

2 THE COURT USHER: All rise.

3 (The hearing ends at 1.00 p.m.)

4 RECLASSIFICATION REPORT

5 Pursuant to Trial Chamber I's email instruction dated 2nd November
6 2011, the transcript is reclassified as public after the indicated
7 redactions have been implemented as ordered by the Chamber. All private
8 and closed sessions (*) are now available to the public with the exception
9 of the portions the transcript that have been redacted.