

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito
4 and Judge René Blattmann
5 Situation in the Democratic Republic of the
6 Congo - ICC-01/04-01/06
7 In the case of The Prosecutor v. Thomas Lubanga Dyilo
8 Friday, 5 March 2010
9 (The hearing starts at 9.34 a.m.)
10 *(Closed session) Reclassified as 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. The court officer
14 has an EVD number to correct.
15 THE COURT OFFICER: Thank you, your Honour. Now, with
16 regard to a previous decision, the following number was incorrectly
17 attributed EVD-D01-000112, and the exhibit that is non-redacted
18 DRC-OTP-0160-1790063 bears the same EVD as the redacted version, and
19 this has to do with two pages OTP-00390, with my apologies.
20 (The witness enters the courtroom)
21 PRESIDING JUDGE FULFORD: Public or private, Ms Struyven?
22 MS STRUYVEN: Apart from one question, I think we need to
23 be in private session.
24 PRESIDING JUDGE FULFORD: Private session, please. Good
25 morning, sir.

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

1 THE WITNESS: Good morning.

2 *(Private session at 9.36 a.m.) Reclassified as open session

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

4 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

5 WITNESS: WITNESS WWW-D01-0026 (On former oath)

6 (The witness answers through interpreter)

7 Questioned by Ms Struyven:

8 Q. Mr Witness, yesterday you explained to us that Mbuna was
9 the chef de cabinet. He was the chef de cabinet of Thomas Lubanga;
10 correct?

11 A. Yes, in a way that is true.

12 THE INTERPRETER: Correction from English booth. To my
13 knowledge, that is true.

14 MS STRUYVEN:

15 Q. And yesterday you said that before you went to (Redacted)
16 you went to (Redacted), and you went to (Redacted), and you went to
17 other places; do you remember that?

18 A. I remember.

19 Q. And that was in the context of the mutiny against Wamba
20 Dia Wamba; is that correct?

21 A. Yes, that's right.

22 Q. And the mutineers called themselves the Chui Mobile Force;
23 is that correct?

24 A. Yes.

25 Q. You also explained to us that you worked as -- that you

1 worked for (Redacted). Can

2 you explain to us what your duties were?

3 A. Please repeat your question.

4 Q. You explained to us that when (Redacted)

5 (Redacted), and that was in 2001, that you were stationed with

6 him, or that you worked for him. And my question is: What were your

7 duties at that time when you were working for him?

8 A. I was his body-guard.

9 Q. Now, yesterday you explained to us that Mbuna came to see

10 you and that he only asked you whether you knew where (Redacted) and

11 (Redacted) were, and then Mbuna left. And then shortly after that,

12 you explained to us that the lawyers came to see you and that they

13 had a few questions about (Redacted). Now, my question is: After those

14 two meetings, did Mbuna or the lawyers come to see you again about (Redacted)

15 A. No, they didn't come to see me again, I went to see them,

16 and I just had those two meetings with them, the two meetings that

17 I mentioned.

18 Q. And so on the basis of those two meetings, you decided to

19 come all the way from Ituri to The Hague; is that your testimony?

20 A. Yes.

21 Q. Although, as you explained to us, the meeting with the Defence

22 lawyers was really brief and they didn't really give you much of an

23 explanation. Do you remember having said that?

24 A. Yes.

25 Q. Mr Witness, you requested protective measures because you

1 were afraid of threats from your family, if they would know you testified
2 here. Who in your family are you afraid of?

3 A. No, it's not from my own family. I am not afraid about my
4 coming here. I don't need to be afraid of my family. I asked for
5 protective measures for my trip to come here, but I am not afraid of
6 my family because I am telling the truth; and since I am telling the
7 truth, I don't have a reason to be afraid.

8 Q. Mr Witness, were you ever a member of the MRC?

9 A. Please repeat your question.

10 Q. Were you a member of the MRC that was created in 2005, up
11 until 2006/2007, and of which Mbuna was the spokesperson?

12 A. Well, as I have been asking for two days now, I would like
13 to ask you to provide additional information so I can reply. There
14 were many movements called MRC. There was the MRC of Bemba; there
15 was the MRC of Mathieu Ngudjolo. So I don't know which MRC you are
16 talking about in your question.

17 Q. I am talking about the MRC that was created in 2005 and
18 of which Mbuna was the spokesperson.

19 A. Well, I don't remember. Perhaps you should give me the name
20 of the President of that MRC. In Ituri, there were many parties and
21 many movements. If you give me the name of the leader of that movement,
22 the movement you are talking about, I could think more about this and
23 provide a better answer.

24 Q. The MRC of Ngudjolo, which was regrouping several previous
25 groupements in Ituri.

1 A. Yes.

2 Q. Do you know -- and was Mbuna also the Secretary-General
3 of this movement?

4 A. Yesterday I tried to explain this whole thing about the
5 movements. I said that when it comes to the tasks of a civilian, I
6 couldn't give you an answer. I have no idea. I just know about the
7 soldiers, and I was one of the soldiers.

8 Q. But you would agree that Mbuna had a key position in the
9 MRC that we are talking about; right?

10 A. I don't know what his position was within that movement.
11 As far as I am concerned, I was concerned with military matters, and
12 it wasn't my role to know what the civilians were doing or what the
13 movement was doing as an organisation.

14 Q. But you are able to distinguish persons in key positions
15 and persons that don't have key positions; right?

16 A. I can't know. It's a matter of authority. There were
17 several authorities. I don't know which position he held, what job
18 he held. I've answered several times, and I told you that I was able
19 to answer questions about the military activities, but not about
20 civilian activities.

21 Q. Mr Witness, do you know someone called Papa Cordo?

22 A. No.

23 Q. Do you know someone called just Cordo?

24 A. Listen, I will repeat what I have already said. As far as
25 I am concerned, I don't know about the positions held by others within

1 the movement. I can answer questions having to do with the army, but
2 I can't answer about duties or positions held by civilians within the
3 movement.

4 Q. My question is: Have you ever heard of a person called Cordo?
5 I am not asking you about positions, I am not asking you about duties,
6 I am just asking you, have you ever heard of a person called Cordo?

7 A. I have no idea. Now, ma'am, why are you repeating your
8 question? I told you that I didn't know about all of that. As far
9 as I am concerned, about those activities, the activities. Ask me
10 questions about the army, about the soldiers, and I will reply, because
11 I understand the military aspects.

12 PRESIDING JUDGE FULFORD: Ms Struyven, in fact, page 6, line
13 3, question: Do you know somebody called Papa Cordo? No. And then
14 you asked the same question again just now. Can we please make sure
15 that we don't repeat questions for which there's been a clear answer.
16 Next point, please.

17 MS STRUYVEN:

18 Q. Mr Witness, do you know someone called Pastor Tibasima?

19 A. Pastor Tibasima? I don't know that person.

20 Q. Do you know someone called John or Jean de Dieu (phon)
21 Tinanzabo?

22 A. I know that person.

23 Q. Are you today still in contact with that person?

24 A. Currently, I don't know where the individual is.

25 Q. When did you last meet Tinanzabo?

1 A. I believe that I saw him at the time of the UPC, but today
2 I don't know where he is.

3 Q. You have not seen Tinanzabo after you left UPC; is that
4 your testimony?

5 A. Yes, I haven't seen him since.

6 Q. Although he is a very public figure, participated in
7 different presentations in Ituri long after you left the UPC?

8 A. As far as I'm concerned, you are asking me whether I have
9 seen him or not ever since I left the UPC. It's true. I knew him
10 at the time of the UPC, but after the UPC I did not see him again,
11 and I don't know about his activities, nor do I know where he currently
12 is.

13 Q. Do you know someone called Taigumu Pele?

14 A. Yes.

15 Q. Did you discuss (Redacted) testimony with him?

16 A. That man is a member of the parliament in Kinshasa. I can't
17 meet with him. I've never met him, actually. I live in Ituri and
18 he lives in Kinshasa. I don't see how I could meet with him.

19 Q. But he comes to Ituri from time to time, doesn't he?

20 A. Yes. It's possible that he could come to Ituri. As far
21 as I am concerned, I have never met him.

22 Q. Can you give us the name of your grandfather on your father's
23 side?

24 A. Yes, I can. His name is (Redacted).

25 Q. What is his profession?

1 A. Well, I don't know my grandfather, because when I was born
2 he was no longer in this world.

3 Q. What about your grandfather on your mother's side, what's
4 his name?

5 A. I knew him as -- by the name that he was giving -- given
6 according to our custom, (Redacted) (phon). That's all I knew about
7 his name, about that name.

8 Q. And what was his profession?

9 A. He was a (Redacted).

10 Q. You have an uncle named (Redacted); correct?

11 A. Yes.

12 Q. And (Redacted) was with (Redacted) at the
13 beginning of the (Redacted); correct?

14 A. I think I've already answered that question by telling you
15 that I didn't know about all that. I didn't know about activities
16 that were done by people who were not soldiers. I was concerned with
17 the army. I don't know what my maternal uncle, whether he was a (Redacted)
18 (Redacted). If he had been in the army, I would have known that he -- if
19 he had -- that if he had been part of the army. But I don't know really
20 know about the creation. I don't know anything about the (Redacted)
21 (Redacted).

22 Q. But you do know that when Thomas Lubanga was arrested in
23 2002, and he was sent from Kampala to Kinshasa, (Redacted)
24 (Redacted); right?

25 A. I heard about that and, yes, I knew.

1 Q. And (Redacted) is still today and has always

2 been a very active member of the UPC; correct?

3 A. Well, I believe that I've already answered several times
4 that kind of question. Don't ask me questions about individuals, or
5 private individuals. Ask me questions about myself.

6 Q. Isn't it correct, Mr Witness, that you are -- no, sorry.
7 And have you discussed with (Redacted) testimony?

8 A. No.

9 Q. Mr Witness, yesterday you asked me several times to tell
10 you in which armed group (Redacted) would have been recruited; correct?

11 A. I am awaiting your reply.

12 Q. And you said that you didn't know whether your (Redacted),
13 (Redacted), really had been a member of any movement; correct?

14 A. Yes.

15 Q. Isn't it correct, Mr Witness, that you saw (Redacted) in
16 a demobilisation centre in (Redacted) 2004 and that you asked him to
17 return to (Redacted)?

18 A. I did not fully understand your question, please. Could
19 you repeat it?

20 Q. Isn't it correct, Mr Witness, that you saw (Redacted)
21 around (Redacted) 2004 when he was in a demobilisation centre?

22 A. I am surprised to hear you talk about a demobilisation centre.
23 I told you that I don't know whether he had ever been to a demobilisation
24 centre as a soldier, or as a civilian. I didn't fully understand what
25 you are saying.

1 Q. Isn't it correct, Mr Witness, that you are testifying here
2 today because you want to protect your leader, Thomas Lubanga?

3 A. No, the testimony I am giving is the truth and I am certain
4 that, if you put questions to even a thousand people, they are going
5 to give you the same answers and they are going to tell you the truth.
6 I did not come here before the Court to tell lies. I am here to speak
7 the truth and, when you ask me questions, I know how to answer. I
8 did not come here to tell lies. I came here to tell the truth.

9 Q. Isn't it correct that you and your family are still today
10 very active members of the UPC?

11 A. Well, I have not understood your question. When I talk to
12 you about the UPC, the entire Hema community were members of the UPC,
13 not only my family. The entire community of the Hemas were members
14 of the UPC.

15 Q. Isn't it correct, Mr Witness, that when you and your family
16 heard that (Redacted) and your mother had testified against Thomas
17 Lubanga that you were very upset?

18 A. When you asked me the question of whether (Redacted) gave
19 evidence against Thomas Lubanga, well, that upset me, because he lied.
20 I don't know why he did so. But could you please give me time to ask
21 you questions as well? Is that possible?

22 PRESIDING JUDGE FULFORD: I'm afraid, sir, it isn't. Under
23 the system that we operate it's counsel who ask questions, not witnesses.
24 If there are any matters that concern you afterwards, you will of course
25 be able to raise them with the people that you will see after your

1 testimony is completed.

2 Yes, anything else, Ms Struyven?

3 MS STRUYVEN: I have no further questions, your Honours.

4 PRESIDING JUDGE FULFORD: Thank you very much. Anything
5 else, Mr Biju-Duval?

6 MR BIJU-DUVAL: (Interpretation) A few short questions,
7 your Honour.

8 PRESIDING JUDGE FULFORD: Yes, please proceed then.

9 Questioned by Mr Biju-Duval:

10 Q. Good morning, Witness. I wish to ask you for a few
11 clarifications. While you were being examined by the Prosecutor, you
12 said that (Redacted) attended the (Redacted) primary school and you
13 said, "I even know a teacher who taught him at the (Redacted) school."
14 Could you give us the name of that teacher, please?

15 A. The teacher's name -- well, I know the name. Well, it's
16 been a long time now, but if I remember well I think he was called
17 (Redacted) (phon).

18 Q. Thank you. I think we have difficulties in transcribing
19 that name. Could you repeat the name slowly, please?

20 A. Yes, (Redacted) (phon). The name I remember is (Redacted).

21 Q. Thank you. Another clarification. In response to the
22 Prosecutor's question, you said that at some point (Redacted) was posted
23 to (Redacted) and you said that he was always moving between (Redacted) and
24 (Redacted). He could go to (Redacted) and return to spend the night in (Redacted)
25 My question to you is the following: During that period, where was

1 (Redacted) residence located?

2 A. (Redacted) house was located in (Redacted), in the town
3 of Epo.

4 Q. Just to make this clearer, (Redacted) is located in (Redacted)
5 is that the case?

6 A. Yes, indeed.

7 Q. And during that period, the period when (Redacted) was posted
8 to (Redacted) while his home was located in (Redacted), what were your
9 personal or professional relations with (Redacted)?

10 A. Well, with respect to type of relations that I had with
11 (Redacted), I would like to say that, first of all, we lived together.
12 I was younger than him by a few years, but we were also friends. We
13 were together all the time. Now, with respect to the (Indiscernible)
14 relationship, I was a member of the movement he belonged to and that's
15 what I can say in a nutshell about the type of relations that existed
16 between us.

17 Q. Thank you. I would like to ask you another question.
18 Yesterday, in response to the Prosecutor's questions, you stated that
19 you were aware of the fact that (Redacted) had come to give testimony
20 before the Court. The question I have for you is the following: When
21 you met the Defence lawyers, did they tell you clearly that (Redacted)
22 came to give evidence before the Court, or did you understand this
23 on your own, that he had come to give evidence, because the lawyers
24 had put certain questions to you?

25 A. I believe that yesterday I tried to talk about this. With

1 respect to (Redacted) I said that they came and they showed me a
2 photograph and they asked me who was in the photograph and I said the
3 person in the photograph was (Redacted).

4 Next they asked me about his activities, and I told them
5 that he was in school; that he was attending school. They asked me
6 whether he had ever served as a soldier and I said, "No." And I said
7 that, (Redacted)
8 (Redacted) and that (Redacted) had never been a soldier.

9 Next, they explained to me that (Redacted) had claimed that
10 he was a soldier, that he had served as a soldier, recruited forcibly.
11 I said, "No", and that to the best of my knowledge he was not a soldier,
12 and even yesterday I stated the same thing.

13 MR BIJU-DUVAL: (Interpretation) Thank you, Witness. I
14 have no further questions, your Honour.

15 PRESIDING JUDGE FULFORD: Thank you very much, indeed,
16 Mr Biju-Duval. Public session, please.

17 (Open session at 10.13 a.m.)

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

19 PRESIDING JUDGE FULFORD: Sir, I want to thank you for your
20 attendance before us to give evidence over the last few days. We are
21 acutely conscious that this has involved a real element of sacrifice
22 on your part and possibly some real difficulty.

23 In order for the Judges to be able to deliver justice in
24 this case and to assist us in the search for the truth, it is necessary
25 that witnesses such as yourself come to The Hague to give evidence

1 and to tell us your account of what occurred during relevant times.

2 Therefore, you leave us now with our profound thanks for your assistance.

3 Closed session, please, so the witness can withdraw.

4 *(Closed session at 10.14 a.m.) Reclassified as open session

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

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

7 (The witness is excused)

8 PRESIDING JUDGE FULFORD: Public session, please.

9 (Open session at 10.15 a.m.)

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

11 PRESIDING JUDGE FULFORD: Mr Biju-Duval, shall we go down
12 your list in order? The first was a concern over translations and
13 you, by way of email, helpfully brought to our attention a particular
14 request that you made on 29 January to receive audiotapes, and I think
15 particularly audiotapes of evidence given in Swahili.

16 However, unfortunately, because of a technical problem, the
17 tapes without voice distortion were not available. And as I understand
18 it, therefore, certainly for two days, 27 and 28 January, you have
19 received tapes which only include the voice distorted rather than the
20 clear evidence.

21 Now, is there anything else, apart from to express regret
22 that that has happened, that you want to say to us on the issue?

23 MR BIJU-DUVAL: (Interpretation) Thank you, your Honour.
24 There is the problem which you have mentioned, but there is also another
25 general problem relating to transcription; that is, to court reporting

1 and translations. The Chamber knows our concerns about this.

2 We have had meetings, we have had an exchange between the
3 translation and court reporting sections, in order to try to provide
4 solutions. We would like to inform the Chamber that the main concern
5 we have is that apparently the concerns we have are not shared by the
6 translation and the court reporting sections. What I mean by that
7 is, is that we in the Defence team identified serious court reporting
8 and translation problems.

9 It would appear that the translation and court reporting
10 sections, for their part, are not aware of these difficulties. And
11 so it's -- it becomes extremely difficult to solve the problem,
12 especially when the unit which is supposed to provide the solution
13 disputes the existence of the problem. We believe -- I beg your pardon;
14 I wish to reformulate what I am saying.

15 We do not want to have any polemics with the translation
16 and court reporting sections with respect to the competence of their
17 staff. We don't want to get involved in that argument. We could reason,
18 however, on the assumption that the interpreters are doing an excellent
19 job. What I mean by that is that they are doing their level best under
20 the circumstances, and we could also act on the assumption that these
21 interpreters are the best in the world.

22 However, the fact remains that even the best interpreters
23 in the world cannot - cannot - provide to the Court an interpretation
24 which comes up to -- or which meets the demands, or the demands of
25 a trial.

1 Since the translation and court reporting section wishes
2 us to provide examples, we are going to give such examples. And we
3 have already done so. We believe that we have to look for a solution
4 in the interest of all parties. And we would like to continue reflecting
5 about this, together with the Chamber and the Protection Unit such
6 that we -- so that the quality, quality control will be done on the
7 transcripts, because there are problems. Sometimes there's
8 uncertainty as to the meaning which is expressed. Sometimes there
9 are omissions of certain passages in the testimony of witnesses. We
10 believe that these problems are inevitable, especially when the witness
11 is speaking fast. But, again, we believe that we have to look for
12 a solution to this problem.

13 Quality control has to be done; that is, an individual could
14 be designated to carry out quality control. We cannot carry on in
15 these -- or under these conditions, because this is going to prejudice
16 or to jeopardise the quality of testimonies given in Court.

17 I have nothing to add to that, your Honour. You have just
18 highlighted a difficulty, the difficulty of this process, and it's
19 unbelievable, because we are talking about a disappearance of the clear
20 voice recording of witness testimonies, and this means that it's going
21 to be difficult to do quality control. And I really don't know what
22 I can say further on this. That's what we have to say to the Chamber
23 on that subject matter, your Honour.

24 PRESIDING JUDGE FULFORD: Right. Three things,
25 Mr Biju-Duval. The first is that, as I recall it, the earlier problems

1 that we had in relation to interpretation and translation was very
2 effectively addressed by the wholesale review which took place of the
3 disputed transcripts. And certainly the Chamber has received no
4 further complaints in relation to the general integrity of those
5 transcripts which were the subject of earlier criticism. I think that
6 needs to be noted.

7 Now, if there are -- and this takes me to the second point.
8 If there are now fresh and new complaints, then the suggestion that
9 you've made is undoubtedly a sensible one that you should identify,
10 at the very least, good examples of what you say is going wrong and,
11 if there is no satisfactory resolution as far as you are concerned
12 during the course of private discussions with the relevant section,
13 then we must receive a report analysing the complaints that you make
14 so that we are then in a position to reach a proper judgment on what
15 should be done for the future.

16 So, good examples, good representative examples, please,
17 from you, with a report to us if your discussions with the unit - and
18 obviously taking place sooner, rather than later - fail to produce
19 a satisfactory point.

20 Now, the third point, Mr Biju-Duval, and I think all counsel
21 must bear this in mind, is that there are some difficulties that are
22 simply not going to be rectified if they are not addressed while the
23 witness is in the witness box in front of us. If the witness speaks
24 hurriedly or gives a name of a person or a place in a voice that isn't
25 easily detected, then nobody can correct that. That is the

1 responsibility of counsel, to stop the witness and to take him or her
2 back and to get them to give the evidence again slower so that there
3 is a proper record of what is said.

4 And so this isn't just a question of the responsibility of
5 those who are ably assisting us in interpretation and translation.
6 This is also the responsibility of the lawyers. And the Bench is not
7 going to interrupt. It is for counsel to identify those names which
8 are important and which need to be properly recorded. So, I want to
9 stress that.

10 Right. That, I think, deals with that issue. Your second
11 point was disclosure. What are the particular difficulties you want
12 to bring to our attention?

13 MR BIJU-DUVAL: (Interpretation) Thank you, your Honour.
14 With respect to disclosure, the Defence has already informed the Chamber
15 in detail of certain difficulties we encounter. The first problem
16 is that of late disclosure. What I mean is disclosures made by the
17 OTP, especially the disclosures done recently concerning Prosecution
18 witnesses and Defence witnesses.

19 I cannot go into the details about such disclosures because
20 that will take too much time, but I wish to give the Chamber one example,
21 and I would like to invite the Chamber to look at two documents,
22 DRC-OPT-01400074, and DRC-OTP-0140-0158. I will discuss these
23 documents, but you don't need to have any worries about confidentiality.

24 PRESIDING JUDGE FULFORD: Forgive me a moment,
25 Mr Biju-Duval. We don't happen to have those in our back pocket, I'm

1 afraid. Do you have copies of them?

2 MR BIJU-DUVAL: (Interpretation) I believe, Mr President,
3 we have two copies for the Bench. We only have three in total. One
4 moment, please.

5 PRESIDING JUDGE FULFORD: Let's carry on, Mr Biju-Duval.

6 MR BIJU-DUVAL: (Interpretation) I apologise,
7 Mr President. These two documents were disclosed on 26 February; that
8 is, Friday, 26 February 2010. These two documents refer to three
9 Prosecution witnesses, Witness 294, Witness 293 and Witness 31. And
10 with a certain margin of uncertainty, they might make reference to
11 Defence Witness 26 who has just testified.

12 These documents stem from the organisation activities
13 conducted with Witness 31. These documents are in the possession of
14 the Office of the Prosecutor and have been since the month of December
15 2005. I don't think I need to say any more.

16 These documents obviously should have been disclosed before
17 the testimony of the three Prosecution witnesses who we have heard.

18 PRESIDING JUDGE FULFORD: Forgive me, Mr Biju-Duval.
19 You've had an opportunity of studying these documents and forming your
20 own view as to the evidential helpfulness to the Defence of them. We
21 have not analysed them.

22 Now, what is -- what is it about these documents that you
23 say means that they should have been disclosed either under the Statute
24 or under Rule 77?

25 MR BIJU-DUVAL: (Interpretation) They should have been

1 disclosed at least under Rule 77 with regard to these three Prosecution
2 witnesses whom I have named.

3 PRESIDING JUDGE FULFORD: In a sentence, what is it about
4 them that is of assistance to the preparation of the Defence case?
5 At the moment, we have just been handed photocopies of exercise books.
6 Now, what is the material that would have been of use to you which
7 you have been denied? We need to understand, Mr Biju-Duval, why it
8 is you are saying that you have been prejudiced because you haven't
9 received these earlier.

10 MR BIJU-DUVAL: (Interpretation) Had we had these
11 documents, we would have been able to question far more precisely the
12 witnesses with regard to their allegations concerning demobilisation.
13 And also with respect to the question of being reunited with their
14 families, and we could also have tested their statements on the subject.

15 PRESIDING JUDGE FULFORD: Now, Mr Biju-Duval, forgive me
16 for interrupting. It may be that for these particular two documents
17 relating to the three witnesses, we will form a decision one way or
18 the other as to whether or not the Prosecution has been in breach of
19 its obligations.

20 What I think would be far more useful for us is if you could
21 provide us really, and again, sooner, rather than later, with a schedule
22 setting out the documents that you say have been served inexcusably
23 late with a short comment column on the right-hand side summarising
24 what you say is the prejudice that the Defence has experienced as a
25 result of late service.

1 Now, it needn't be a doctoral thesis, but just a short summary
2 so that we can understand the point that you are making about late
3 service. I think otherwise, Mr Biju-Duval, we are not really going
4 to be able to do justice either to the point you're making or no doubt
5 what we are about to hear, which is a stout resistance by the Prosecution
6 to the allegation that they have done this late.

7 Would you be able to provide us with a schedule of that sort,
8 for instance, by Tuesday evening of next week?

9 MR BIJU-DUVAL: (Interpretation) I have just been told that
10 it is entirely possible, yes, Mr President. But --

11 PRESIDING JUDGE FULFORD: Please carry on.

12 MR BIJU-DUVAL: (Interpretation) Thank you. Still with
13 regard to disclosure, there is another point which has become
14 particularly present and it became so yesterday.

15 Now, during the cross-examination conducted by the
16 Prosecution yesterday and the day before yesterday, it gave the Defence
17 the impression that, the distinct impression, that the Prosecution
18 was in the possession of information and possibly documents concerning
19 Witness 26 that they were using during their cross-examination.

20 Now, these -- this information might be exact or not; that
21 doesn't really matter. But the question at hand is, whether the
22 Prosecution has, yes or no, the obligation to transmit to the Defence
23 this information and the documents that they are using as the basis
24 of their cross-examination, but that they are not actually using.

25 PRESIDING JUDGE FULFORD: Forgive me interrupting. This

1 is, I think, a very important issue, Mr Biju-Duval, whether or not
2 the Prosecution are under an obligation to disclose everything that
3 they might use during cross-examination in advance. There is obviously
4 the regulation that I referred to yesterday, which requires them to
5 give three-days' notice of certain evidence that -- because it needs
6 to be submitted to the Registry. But above and beyond that, whether
7 or not they can play their cards close to their chest, or whether they
8 have to provide you really with everything that they may use.

9 I think this will be better dealt with by speedy submissions.
10 This obviously relates to witnesses who are coming and you need a very
11 early answer. Would it be unfair to ask for the same deadline, you
12 can do it by email and not by formal filing, but 4.00 p.m. on Tuesday
13 of next week summarising your position on this and citing any authority
14 or statutory or regulatory provisions that you wish ?

15 Would that be acceptable, Mr Biju-Duval?

16 MR BIJU-DUVAL: (Interpretation) Indeed, Mr President.

17 PRESIDING JUDGE FULFORD: Thank you very much. Anything
18 else on disclosure?

19 MR BIJU-DUVAL: (Interpretation) Nothing else with regard
20 to disclosure.

21 PRESIDING JUDGE FULFORD: I will ask you to pause for a moment.
22 Are you in the driving seat on this, Mr Sachdeva? Yes. If we were
23 to give you, then, until Thursday evening at 4.00 p.m. to put in a
24 written response by email to the Defence disclosure point, you can
25 start thinking about it now, you can anticipate it, is that acceptable?

1 MR SACHDEVA: Yes, Mr President.

2 PRESIDING JUDGE FULFORD: Good. Right. So thank you very
3 much, Mr Sachdeva. 4.00 p.m., then, 9 March, for the Defence. 4.00
4 p.m., 11 March, which is Thursday, for the Prosecution.

5 Participating victims, if they wish. No. Well, the
6 opportunity is there. Thursday, 4.00 p.m. Common witnesses?

7 MRBIJU-DUVAL: (Interpretation) Yes. Two comments on the
8 subject of common witnesses between the two cases. There are four:
9 Witness 157, Witness 12, Witness 002 and Witness 30. I shall not come
10 back to the general issue with regard to the right that the Defence
11 should have to speak with the Defence team in the other case with regard
12 to these common witnesses, because it would seem to us that, as one
13 team and the other are both informed of the identity of the witnesses,
14 the main reason for confidentiality does not exist. I shall not hark
15 back upon that.

16 Now, but I would like to draw the attention of the Trial
17 Chamber today to Witness 157. It is specifically urgent with regard
18 to this witness that we talk about this with the Defence team in the
19 Katanga and Ngudjolo case, the reason being, that one of our
20 witnesses - notably, Witness 125 - will testify particularly on this
21 subject of Witness 157 and --

22 PRESIDING JUDGE FULFORD: Well, I'm extremely conscious
23 that it's rude to interrupt counsel, but I think that there may be
24 a short answer to this, and if you would allow me the interruption
25 and then I will, of course, give you the field again, if necessary,

1 if what I am about to say is unhelpful.

2 Ms Samson, you extremely helpfully provided the Chamber with
3 a schedule in relation to the disclosure regimes in this Chamber and
4 in Trial Chamber II. Having looked at that schedule, is it right that,
5 in fact, throughout there has been greater disclosure in this case
6 than there has been in the Katanga case? So, put otherwise, there
7 is no material that has been provided to the Defence team in Katanga
8 that has not been provided to the Defence team in Lubanga?

9 MS SAMSON: Your Honour, I have the schedules here. My
10 recollection was that there were indeed differences in the disclosures,
11 and I am -- for instance, if I --

12 PRESIDING JUDGE FULFORD: No, no, no. There are differences
13 in the disclosure regime but, if we look at the relevant column as
14 I understand it for Katanga and Ngudjolo, we see time and again for
15 Katanga and Ngudjolo that there has been no disclosure, whereas there
16 has been disclosure in Lubanga; meaning that there has been greater
17 disclosure throughout in Lubanga. And so we are not in a situation
18 where things have been disclosed to the Defence in Katanga and Ngudjolo
19 which have not been disclosed to the Defence in Lubanga.

20 Now, that's my point. I hope -- I hope it's clear. If it's
21 not, please tell me and I will try another way, because I think it
22 is an important question.

23 MS SAMSON: Yes, thank you, your Honour. Indeed, I think
24 that is the case in the -- in the sense that greater disclosure has
25 been effected in the Lubanga case. There are some materials in relation

1 to at least one witness I have here where only a few documents, as
2 far as I can see, were not disclosed in this case, but in the main
3 greater disclosure has been effected in Lubanga's case.

4 PRESIDING JUDGE FULFORD: In fact I'm focussing at the moment
5 purely on 157, which is the witness that Mr Biju-Duval is referring
6 to. Now, can you just quickly look at that schedule for yourself and
7 see whether there's any material that has been disclosed to Trial Chamber
8 II which hasn't been disclosed to Trial Chamber I.

9 MS SAMSON: Thank you, your Honour. I have checked and there
10 is not. No documents.

11 PRESIDING JUDGE FULFORD: Thank you. Very helpful.

12 Now, that then is the position, Mr Biju-Duval, that you've
13 in reality received more than the Defence in Katanga and Ngudjolo.
14 There's nothing that they have got that you haven't got for 157. Now,
15 if that's the position, is there anything else for 157 to be said?
16 I am not trying to stop you, but I am not sure what else that we can
17 do in that situation.

18 MR BIJU-DUVAL: (Interpretation) Mr President, the
19 clarification provided by the Prosecution team is wonderful for us.
20 Of course, it does not resolve all the problems at hand. It does not
21 resolve the issue as to whether the two Defence teams have the right
22 to discuss matters together.

23 PRESIDING JUDGE FULFORD: You need a ruling from us on that
24 and I must apologise for us having not given it to you. You are absolutely
25 entitled to it and we undertake to unburden ourselves of our views

1 on that in the very, very near future, Mr Biju-Duval. That's our fault.

2 No one else's.

3 But apart from either giving you permission to talk or not,
4 is there anything else on 157?

5 MR BIJU-DUVAL: (Interpretation) A word, Mr President,
6 with regard to the last rather mysterious issue; that is to say the
7 originals of the school documents.

8 Now, as we mentioned to the Office of the Prosecutor, we
9 recently noted during our investigations out in the field that the
10 originals of certain school documents had been, or allegedly were - I
11 am using a conditional sense here - withdrawn from the school
12 institutions, from some school institutions, in Ituri; notably two
13 institutions. They were taken away, or withdrawn, by investigators
14 from the Office of the Prosecution; notably with regard to Witness
15 157.

16 Now, we are somewhat concerned by this situation, because
17 the originals of the documents are no longer available to us and, as
18 a regard -- as a result, our investigation is up against the difficulty
19 of not being able to verify things. So, I have a request to make to
20 the Trial Chamber. This is a concern that we wanted to raise with
21 you.

22 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

23 MS SAMSON: Mr President, I think the Prosecution can
24 discuss in open session the fact that an investigation was conducted
25 into the originals, given that they were not put in evidence in this

1 case, and under what may commonly be known as an exception to disclosure
2 we have undertaken a forensic analysis of those records which has
3 recently been completed.

4 Our investigative policy is that when original materials
5 are taken from the field, they are sealed for proper chain of custody
6 purposes and that seal is not broken until either they are returned
7 to the headquarters, or sent directly for forensic analysis. In this
8 case the seal was broken by way of forensic analysis and only returned
9 in our possession, as I say, in the last days, or week or so.

10 The process of copying and registering the originals is
11 underway and, certainly when that's completed, the Prosecution has
12 every intention to provide both the reports and the materials to the
13 Defence.

14 PRESIDING JUDGE FULFORD: I'm sure, Ms Samson, that the
15 Prosecution have devised sensible and careful systems to preserve the
16 integrity of the documents. However, those systems must not stand
17 in the way of the Defence being able to look at originals when it is
18 relevant and necessary for them to do so.

19 We need a speedy and practical resolution to this problem.
20 We are going to have a break in a few minutes' time. Can you please
21 discuss the matter with Mr Biju-Duval and find out what it is that
22 he needs in relation to the originals in terms of being able to look
23 at them and work on them. Bear in mind the time frame that he is having
24 to work to, given that we are now in the Defence case, and please will
25 both of you come up with a workable solution as to how this can be

1 dealt with.

2 We won't mention it again ourselves, but you are at liberty
3 to raise the issue again at half past 11 if there's no satisfactory
4 answer.

5 MS SAMSON: Certainly. Thank you.

6 PRESIDING JUDGE FULFORD: Thank you very much, indeed.

7 Now, I had, Mr Biju-Duval, a note of video evidence, but
8 I'm not sure whether that was you, or Mr Mulamba. Was there something
9 on video evidence? No.

10 MR MULAMBA: (Interpretation) Thank you, Mr President.
11 We have read the report provided by the VWU and we have observed that
12 the section was reasoning with regard to threats to security for the
13 entire testimony.

14 Now, the fact that a witness comes to testify in an environment
15 which is heavily under the influence of the UPC will make this individual
16 somewhat -- well, this person can be influenced in a number of manners;
17 notably by pressure exerted on a family level, or on a physical level,
18 or by promises that are made.

19 And another observation that we wanted to make is that the
20 VWU has limited itself to a number of financial constraints, as opposed
21 to judicial restraints, because there is of course the problem of
22 credibility of this testimony and this really stems from the issue
23 of moving the witnesses to the seat of the Court. We thought that
24 in Bunia the witness could come under heavy influence.

25 Now, in the hypothesis that the Trial Chamber were to grant

1 this video-linked testimony, how would the familiarisation be conducted?
2 Would it be conducted by video, or would it be done through the presence
3 of legal representatives, members of the Defence team, or members of
4 VWU? These are the concerns that we had with regard to this subject,
5 Mr President, and I thank you.

6 PRESIDING JUDGE FULFORD: Thank you very much indeed, Mr
7 Mulamba.

8 Now, we are nearly at the break, but before we rise there
9 is -- there are two short issues that can be dealt with. The first
10 is that the Victims and Witnesses Unit has indicated that for new
11 witnesses on the Defence list it believes that it needs the consent
12 of the Chamber to them being added before it can start taking the usual
13 administrative steps to facilitate the presence of the witnesses in
14 The Hague for evidence.

15 Does anyone suggest that the witnesses now added to the
16 Defence witness list should not be there? Yes, Mr Sachdeva.

17 MR SACHDEVA: Mr President, with your leave, could we
18 provide a response after the break?

19 PRESIDING JUDGE FULFORD: Fair to give you time to think
20 about it. Certainly. Half past 11, then, for that.

21 The next witness, as I understand it, has not requested
22 protective measures, but I want to check that that is right.
23 Mr Biju-Duval nods in agreement.

24 Everybody, please, should bear in mind that he will speak
25 Swahili and he will need assistance with any reading, so an interpreter

1 will accompany him at the beginning of his testimony to assist him
2 in taking the solemn undertaking.

3 Is there anything else, Mr Biju-Duval, that we need to bear
4 in mind for the evidence of this witness?

5 MR BIJU-DUVAL: (Interpretation) No, Mr President, but I
6 might like to say two words on the subject of the video link. I would
7 like to make a number of comments on that when the Trial Chamber deems
8 it appropriate.

9 PRESIDING JUDGE FULFORD: We needn't trouble you, thank you
10 very much, certainly at the moment. If we need further assistance,
11 we will ask for it at half past 11. Thank you very much.

12 Good. We will take a break now and sit again at half past
13 11, when there are two short oral decisions that need to be given.
14 So, I am going to ask that the -- that the next witness is ready and
15 available to give evidence from 20 to, please.

16 In fact, in the minute or two before we rise, so that you
17 can have your diaries out to think about this between now and half
18 past 11, the proposal - and I stress this is a proposal only - for
19 Monday is that we will sit for an hour-and-a-half from 9.30 in this
20 trial, from 11.30 to 1 there will be a status conference in the Bemba
21 case and we will sit again in the afternoon, beginning at 2.45. That
22 will be in Courtroom 1.

23 On Tuesday, we sit in this court from 2.30. On Wednesday,
24 we've been given the opportunity of a usual sitting day starting at
25 9.30 in Courtroom 1. In fact, I've just said on Tuesday we'll be sitting

1 in this court. I mean Courtroom 1. This is Courtroom 1 -- excuse
2 me a moment.

3 (Trial Chamber confers)

4 PRESIDING JUDGE FULFORD: Right. I'm glad I said this was
5 provisional. Everything is true for Monday, except Courtroom 2. For
6 Tuesday, starting at 2.30, Courtroom 1. Wednesday, normal court
7 sitting day, starting at 9.30, morning and afternoon, courtroom -- Court
8 Officer? For Wednesday? Courtroom 1. Thank you.

9 Thursday, again, normal court sitting day starting at 9.30;
10 again, Courtroom 1.

11 Not sitting Friday, the 12th.

12 Monday, the 15th --

13 (Trial Chamber confers)

14 PRESIDING JUDGE FULFORD: Monday, the 15th, 9.30 through
15 'til lunchtime, Courtroom 2, and then the same for Tuesday, Wednesday
16 and Thursday. Not sitting Friday.

17 Monday, 22 March, morning starting at 9.30, Courtroom 1,
18 full morning; afternoon starting at 3.00 in Courtroom 2. Then that
19 is repeated Tuesday, the 23rd, Wednesday the 24th and Wednesday the
20 25th. Not sitting on Friday.

21 Then finally, before the recess, there is a question mark
22 over Monday the 29th because that is currently taken for other hearings.
23 If there are no other hearings and if there are no other problems,
24 we may try and secure some sitting on that day. But, at the moment,
25 that aside, it is Tuesday, Wednesday and Thursday, 2.30 commencement,

1 sitting for the afternoon, Courtroom 1.

2 On Monday 5 April, the recess begins, and for various reasons
3 that I have fully investigated and which are fully justified, the Court
4 will not be able to recommence sitting until what I expect will be
5 the morning - but this isn't certain yet - of Wednesday 21 April.

6 I am hoping that a draft agenda for the post-April break,
7 or the post-Easter break, will be available today.

8 Now, if there are any difficulties with that proposed agenda,
9 please bring them to our attention when we sit again at 11.30 -- rather,
10 11.35.

11 THE COURT USHER: All rise.

12 (Recess taken at 11.04 a.m.)

13 (Upon resuming at 11.35 a.m.)

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

15 PRESIDING JUDGE FULFORD: First of all from you, Mr Sachdeva,
16 anything additional on the issue of additional Defence witnesses?

17 MR SACHDEVA: Yes, Mr President. And perhaps it may not
18 be to the convenience of the Chamber, but the Prosecution would like,
19 with your leave, until Monday to provide a fuller response to the
20 application, or at least to the email by the Defence, to add four new
21 witnesses. In our submission, the addition of witnesses from either
22 party requires cogent justification as to why it is being done at this
23 present time, because it necessarily has ramifications on our
24 investigation, on possible investigation by the legal representatives,
25 which could unduly extend the length of this trial. For those reasons

1 the Prosecution would like to examine the summaries -- the limited
2 summaries provided by the Defence very carefully before it responds
3 to whether each of the witnesses should be heard in this trial, may
4 it please the Court.

5 PRESIDING JUDGE FULFORD: And what's the timeline that
6 you're proposing for analysis and, if you wish to, submissions to us
7 on the issue?

8 MR SACHDEVA: Tuesday, close of business, Mr President.

9 PRESIDING JUDGE FULFORD: Tuesday, close of business. This
10 can be done by way of email to the legal adviser to the division, but
11 you must make sure that all relevant individuals are copied into that
12 email.

13 MR SACHDEVA: Indeed, Mr President.

14 PRESIDING JUDGE FULFORD: Thank you very much.
15 Mr Biju-Duval?

16 MR BIJU-DUVAL: (Interpretation) I beg your pardon, your
17 Honour. On this matter of adding additional Defence witnesses, the
18 Defence has a major concern, which is the protection of these witnesses.
19 They will be protected witnesses --

20 PRESIDING JUDGE FULFORD: Can I interrupt for a moment. One
21 issue -- one thing I was about to canvass, Mr Biju-Duval - and I'm
22 sorry for interrupting you again today - is giving an indication now,
23 without prejudice to the submissions that we're going to hear, that
24 the Victims and Witness Unit should commence all necessary preliminary
25 steps in relation to the additional witnesses. But I emphasise that

1 would be without prejudice to Mr Sachdeva's submission, if there is
2 one, that the witnesses shouldn't be called, thereby protecting the
3 four witnesses to the extent that's necessary until there's been a
4 final determination of the issue. Now, would that be sufficient for
5 your purposes?

6 MR BIJU-DUVAL: (Interpretation) In very practical terms,
7 your Honour, we believe that it is absolutely necessary to ensure that
8 no information regarding these witnesses is disclosed to the legal
9 representatives of victims in the immediate term, and I insist no
10 information regarding their identity, nor the nature of their testimony,
11 should be provided to the legal representatives. Those disclosures
12 will be done in accordance with the usual procedures and rules of the
13 Court. But for the time being it is absolutely necessary that no
14 information of any nature be provided to the legal representatives
15 of victims.

16 PRESIDING JUDGE FULFORD: I'm going to turn to the legal
17 representatives in a moment, but can you help me with this, Mr Biju-Duval?
18 As I recall the position, the obligation on you is to identify those
19 participating victims who are potentially affected by the evidence
20 and, where that is the case, to provide the names of the witnesses
21 to the legal representatives. Now, are you suggesting that that
22 principle should not apply to these proposed four additional witnesses?

23 MR BIJU-DUVAL: (Interpretation) No, your Honour, that
24 principle must apply, but it must apply within the seven-day framework
25 that is provided for by the Chamber in its ruling.

1 We will disclose that information, if necessary, if the
2 victims are involved within the timeframe called for by the Chamber.
3 The disclosures will be done, but in accordance with the timeframes.
4 But for the time being, we are not yet at that particular stage, and
5 for the time being, it is absolutely essential to ensure that there
6 is complete confidentiality regarding these witnesses.

7 PRESIDING JUDGE FULFORD: Ms Massidda, we understand that
8 you have concerns about this, and I don't want in any way to cut you
9 short on the point. But if there are going to be submissions that,
10 based on the existing jurisprudence of the Chamber, non-disclosure
11 of the names of the witnesses at this point in time is an impermissible
12 stance by the Defence, I think it would be preferable to have this
13 set out shortly in writing, rather than trying to resolve this now,
14 with a witness outside court who is waiting to commence his evidence.

15 Now, again, I don't want to cut you short, Ms Massidda, but
16 would that be an acceptable way of proceeding?

17 MS MASSIDDA: Thank you, Your Honour. We have no problem
18 in providing the Chamber with short written submissions, just a matter
19 of one paragraph, I think, not more than ten lines probably. Thank
20 you.

21 PRESIDING JUDGE FULFORD: Right. Email, please, legal
22 adviser to the division, 4 p.m. Monday.

23 MS MASSIDDA: Absolutely fine with us. Thank you very much.

24 PRESIDING JUDGE FULFORD: And please make sure that
25 everybody is copied who should be on that.

1 MS MASSIDDA: Thank you.

2 PRESIDING JUDGE FULFORD: Thank you very much. If it
3 requires a response, Mr Biju-Duval, 4 p.m. Wednesday. And again, an
4 email to the legal adviser to the division; is that acceptable? Good.

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

6 PRESIDING JUDGE FULFORD: This is the -- we needn't trouble
7 you, Mr Biju-Duval, in relation to the video link.

8 This is the Chamber's oral ruling on the proposal that Defence
9 Witness 14 should give evidence via a television link.

10 The Defence requests document 2197, 27 November 2009, that
11 Witness 14 gives her evidence via a television link from an appropriate
12 location in Ituri, in line with the Chamber's decision on 29 January
13 2008, document 1140.

14 The Defence submits that the witness, who it believes is
15 extremely vulnerable, would suffer considerable prejudice and harm
16 as a result of the displacement that will be necessary to enable her
17 to testify in person before the Court.

18 The witness is in her mid-40s and lives in a rural area some
19 four or five hours from Bunia. It is said that she lives in conditions
20 of extreme poverty. She has almost never travelled before, and has
21 never used, it is said, the most basic appliances of daily life. When
22 the witness went to Bunia for the first time in connection with these
23 proceedings, it was clear to those who were observing her that the
24 journey was very arduous and difficult for her. The Defence submits
25 that a trip to The Hague, which will entail a prior two-week stay in

1 Kinshasa to obtain a passport, would constitute an excessively
2 traumatic experience for the witness in a strange environment. The
3 Defence submits that this proposal is a legitimate exception to the
4 usual principle that witnesses should appear in person before the Court.

5 Finally, the Defence emphasises that the witness will give
6 evidence about a narrow range of issues. She is allegedly the spouse
7 of a witness who has given evidence for the Prosecution, and that she
8 is the biological mother of another Prosecution witness. This is
9 important evidence, given the account of the latter of those two
10 Prosecution witnesses, that he is sure that his mother is dead. She
11 will say, we are informed, that that witness lived with her until he
12 was three years old, and she has met him after the war in Ituri.

13 The legal representatives responded to this request (see
14 document 2276) on 29 January 2010. The representatives submit that,
15 pursuant to Article 69(2) of the Statute, witnesses are usually heard
16 in person and that the use of a television link is an exception. They
17 refer to certain jurisprudence from the ICTR.

18 Under Rule 67(3) of the Rules of Procedure and Evidence,
19 "The Chamber shall ensure that the venue chosen for the conduct of
20 the audio- or video-link testimony is conducive to the giving of truthful
21 and open testimony and to the safety, physical and psychological
22 well-being, dignity and privacy of the witness."

23 The legal representatives accept that by Rule 88(1) of the
24 Rules of Procedure and Evidence the Chamber may, "After having consulted
25 with the Victims and Witnesses Unit, as appropriate ... taking into

1 account the views of the victim or witness, order special measures
2 such as, but not limited to, measures to facilitate the testimony of
3 a traumatised victim or witness, a child, an elderly person or a victim
4 of sexual violence."

5 However, the representatives observe that the request has
6 been made by the Defence, and not by the witness herself, and it is
7 suggested that there is a lack of evidence as regards the matters that
8 are said to be relevant to the application. The legal representatives
9 suggest that supporters of the accused may influence the evidence of
10 this witness, and that if her testimony is given from Bunia, fewer
11 safeguards will be in place than if the witness gave evidence in The
12 Hague.

13 Mr Mulamba has stressed this latter problem, particularly
14 in short oral submissions before us today. He described the risk,
15 in his words, of the witness coming under heavy influence. Generally,
16 it is suggested that many of the potential problems for the witness
17 are shared by other witnesses in this case, although it is accepted
18 that aspects of the proposed trip may be traumatic for this individual.

19 The witness was seen recently, on 13 February 2010, by
20 representatives of the Victims and Witnesses Unit. As is set out in
21 the unit's report, the witness has not refused to come to The Hague.
22 Indeed, she has expressed some curiosity in this regard. We wish to
23 stress that the Chamber is acutely conscious of the need always to
24 take into account the views of the individual concerned in a wholly
25 non-patronising way. However, that said, in the estimation of the

1 unit, giving evidence at the seat of the Court would involve a significant
2 period of time for this individual away from her home, both during
3 the preparatory trip to Kinshasa, and later when she would need to
4 travel to Europe. She has a three-year-old child who would need to
5 accompany her, and there is also the position of other family members
6 to consider. It is anticipated that the process of preparing her for
7 the trip would take between four to six weeks, and there is, in the
8 estimation of the unit, a real uncertainty as to how she would respond
9 to the demands of this exercise. It is suggested that the experience
10 will be onerous for her and the demands that will be placed on the
11 Victims and Witnesses Unit will be disproportionate. Further, with
12 this witness the Victims and Witness Unit is clear that the option
13 of using a television link will better protect her psychological
14 well-being and dignity.

15 In the judgment of the Bench, the provisions of Rule 88(1)
16 of the Rules of Procedure and Evidence are met. Given her personal
17 circumstances, and particularly bearing in mind the assessment of the
18 unit, remote testimony will facilitate her evidence and, under Rule
19 67(3), the Registry will be able to ensure that her evidence is given
20 in circumstances that are conducive to her providing truthful and open
21 testimony in circumstances which afford her with protection.

22 The Chamber is persuaded that for this witness the two trips,
23 first to Kinshasa and then to Europe, will be unduly onerous and
24 potentially traumatising. Given her particular personal
25 circumstances, therefore, the risk of adverse consequences are simply

1 too great. Against this, the ambit of her evidence is limited, and
2 it should be possible to question her adequately and fairly via a
3 television link.

4 The Victims and Witness Unit must propose acceptable
5 modalities for the process of witness familiarisation, which we
6 anticipate, although we do not rule, should take place itself via a
7 television link. For these reasons, this application by the Defence
8 is granted.

9 We need to briefly go into private session, please, but I
10 will reassure the members of the public that we will only be in private
11 session for a very short period of time.

12 Private session, please.

13 *(Private session at 11.58 a.m.) Reclassified as open session

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

15 PRESIDING JUDGE FULFORD: Ms Samson, we are about to give
16 a very short ruling in relation to Witness 00006. I had intended in
17 private session to refer not only to her number, but also to her name.
18 Is there any difficulty in doing that in private session?

19 MS SAMSON: No, your Honour.

20 PRESIDING JUDGE FULFORD: Right. There have been so many
21 different orders in relation to protective measures, it's difficult
22 to keep them all in mind. Thank you.

23 This is a draft. This is an oral ruling on the position
24 of Witness 00006, otherwise known, or in reality known as (Redacted)
25 (phon). By way of history, (Redacted) was referred to in the document

1 containing the charges. However, on 2 May 2008 (document 1302) the
2 Prosecution indicated it would not lead any evidence at trial in respect
3 of this individual. She is currently a victim who has been recognised
4 by the Chamber, and she is represented by counsel in this case.
5 Defence Witness (Redacted), we are told, will say that she lived with
6 (Redacted) and moreover, it will be alleged that the latter did not
7 at any time serve in the army.

8 The Prosecution and principal counsel for the OPCV resists
9 the Defence asking Defence Witness (Redacted) any questions about her
10 position. It is suggested that (Redacted) is irrelevant to this trial
11 because she has not given evidence. No questions were directed to
12 Witness 10, challenging the suggestion that (Redacted) was a member
13 of the UPC, and it is suggested that her recruitment into and use by
14 the UPC is not a matter in issue in this trial.

15 The Chamber observes that (Redacted) lived at a relevant
16 address during events material to these charges. Indeed, there is
17 evidence that she lived with other participating victims, some of whom
18 have been witnesses in this trial. She is a participating victim;
19 and the Defence has an undoubted interest in her position and whether
20 or not, for instance, she should properly be participating in this
21 case on account of her recruitment into the army.

22 For these reasons, in our judgment, the Defence is entitled
23 to ask questions about her position and particularly whether she was
24 in the army, even though she has not been called to give evidence and
25 notwithstanding the fact that other witnesses who might have had

1 evidence about her position were not questioned on her position. The
2 Chamber is of the view that this is necessary applying the provisions
3 of Article 69(3) of the Rome Statute. The Defence has been labouring
4 under considerable difficulties, and it is unsurprising that not every
5 detail of this kind was dealt with during the evidence of earlier
6 witnesses.

7 That concludes that ruling. Now, is there anything else
8 that we need to deal with prior to the calling of the witness? No.
9 Good. Then we will need to go into closed session so that the interpreter
10 can come into court, please.

11 *(Closed session at 12.02 p.m.) Reclassified as open session

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

13 (The witness and interpreter enter the courtroom)

14 PRESIDING JUDGE FULFORD: Right. We now need to go into
15 public session, but in such a way that will preserve and protect the
16 identity of the interpreter.

17 (Open session at 12.04 p.m.)

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

19 PRESIDING JUDGE FULFORD: Good morning, sir. I am very
20 sorry we've --

21 THE WITNESS: Good morning.

22 PRESIDING JUDGE FULFORD: You're about to start your
23 evidence. Can I encourage you, please - although, I know it will be
24 difficult - not to be nervous. The Judges are here to ensure that
25 you are treated properly, and counsel for the Defence who have called

1 you to give evidence will also - I am sure - intervene very rapidly
2 if they believe that something is happening that is improper or in
3 any way unfair to you.

4 Please ensure that you do not speak too fast. Everything
5 you say is being taken down by stenographers and interpreted from Swahili
6 into French and then into English. Please keep your voice up so that
7 everything you say is picked up on the microphone in front of you;
8 and listen very carefully to the questions, focus on them and try,
9 of course, to answer them in your own way.

10 If at any stage you need a break, just ask me directly and
11 I am sure we will be able to facilitate that very quickly, indeed.
12 So you know, we are starting your evidence now just after five-past
13 12.00, and the first natural break that we will have today is at 1.00
14 when the Chamber rises for lunch.

15 In a moment, I am going to ask you to take the solemn
16 undertaking. What will happen is that the interpreter who is sitting
17 next to you will read out a few words to you at a time, and would you
18 please out loud repeat what he says to you. Good.

19 Then with the assistance of the interpreter, please take
20 the solemn undertaking.

21 WITNESS: WWW-D01-0006 (Sworn)

22 (The witness answers through interpreter)

23 PRESIDING JUDGE FULFORD: Now, that was excellently done.
24 Your voice was up at a good level and you were not speaking too quickly.
25 So if you manage to give the rest of your evidence in that way, you

1 will certainly make me a very happy judge.

2 Now, we're going to have to go into closed session for a
3 moment so the interpreter can withdraw, so that his identity remains
4 protected, and we will then return to public session for your evidence.

5 So closed session for a moment, please.

6 *(Closed session at 12.08 p.m.) Reclassified as open session

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

8 (The interpreter exits the courtroom)

9 PRESIDING JUDGE FULFORD: Yes. Good. Thank you very much.

10 Thank you for your assistance, sir. Public session, please.

11 (Open session at 12.09 p.m.)

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

13 PRESIDING JUDGE FULFORD: Court officer, we are in public
14 session and the blinds are down. We need the blinds up, please.

15 Mr Biju-Duval, one potential irritant is that if there are
16 confidential documents that you need to show the witness, we may have
17 to lower the blinds immediately behind him so that they cannot be seen
18 by people sitting in the public gallery. Could you please bear that
19 in mind, and I now hand the floor as it were over to you. Thank you
20 very much.

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

22 Questioned by Mr Biju-Duval (Interpretation):

23 Q. Good morning, Witness. We have already met each other, but
24 I will introduce myself once more. My name is Jean-Marie Biju-Duval.
25 I am a lawyer, and I am now going to ask you a few questions for the

1 Defence of Mr Thomas Lubanga. Have you fully understood me?

2 A. I have understood you clearly.

3 Q. Thank you. Witness, could you please state your full name?

4 A. Yes. My name is Bakanova Asimwe Tresor.

5 Q. Thank you. Do you have other names?

6 A. Those are the only names I bear.

7 Q. Do you have any other first name?

8 A. What type of first name are you talking about?

9 Q. Apart from the names you have given, do you have a baptismal
10 name?

11 A. Yes.

12 Q. Could you please tell us?

13 A. My baptismal name is David.

14 Q. Could you please state your father's name?

15 A. Yes. My father is called Bakanova Gerard.

16 Q. Does he have any other names, apart from those two?

17 A. He has no other names.

18 Q. Thank you. Could you please now state the names of your
19 mother?

20 A. Yes. My mother is called Adyeri Beatrice.

21 Q. Thank you. Could you please repeat your mother's first name,
22 and do so slowly so that it can be well-transcribed?

23 A. Adyeri.

24 Q. Thank you very much. Could you please tell us where you
25 were born; that is, your place of birth?

1 A. I was born in Bunia.

2 Q. Could you tell us your date of birth; that is, if you know
3 it?

4 A. I was born on 18 April 1985.

5 Q. Are you married?

6 A. Yes, I am married.

7 Q. Could you please state your wife's name?

8 A. Honorine Ngabusi.

9 Q. Thank you. Do you have any children?

10 A. I have one child.

11 MR BIJU-DUVAL: (Interpretation) Thank you. Your Honour,
12 I have reached a stage in my questioning where I would like to ask
13 for us to go into private session unfortunately, because I have
14 confidential documents to show to the witness and I have a few
15 confidential questions to put to him.

16 PRESIDING JUDGE FULFORD: Certainly, Mr Biju-Duval.
17 Obviously if we can keep the period that we are in private session
18 for as short as possible, but private session, please, and could the
19 curtains behind the witness please be lowered. Thank you.

20 *(Private session at 12.16 p.m.) Reclassified as open session

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

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

23 MR BIJU-DUVAL: (Interpretation) Thank you, your Honour.
24 I would like to show the witness a photograph, the photograph of a
25 certain individual, and I would like him to tell me whether he recognises

1 the person. I have copies of the photograph here for the witness,
2 for the Bench and for the various parties. Could you please show these
3 photographs to the witness without letting the public see?

4 THE COURT OFFICER: Could you give us the ERN numbers so
5 that we can call it up from the court system?

6 MR BIJU-DUVAL: (Interpretation) Yes, the document bears
7 the reference DRC-OTP-0138-0014.

8 PRESIDING JUDGE FULFORD: Can I ask that we are confident
9 that, if this is going to be shown on the screen in front of the witness,
10 that the screen cannot be seen by people sitting in the public gallery
11 on either side?

12 Yes. Have we finished giving the numbering then for this
13 and, if so, please continue, Mr Biju-Duval.

14 MR BIJU-DUVAL: (Interpretation) Thank you, your Honour.
15 I don't think the witness has received a hard copy of the document
16 yet.

17 Q. Mr Witness, look at that photograph very carefully and tell
18 us whether or not you recognise the individual in it?

19 A. I recognise this individual.

20 Q. Could you tell us who that individual is? Could you give
21 us his name, or her name, if you know?

22 A. Her name is (Redacted).

23 Q. Do you know whether she bears any other names?

24 A. I do not know any other names.

25 MR BIJU-DUVAL: (Interpretation) Thank you. I would like

1 this document to be filed into the record with an EVD number.

2 PRESIDING JUDGE FULFORD: Yes.

3 THE COURT OFFICER: (Interpretation) The document is filed
4 in the record as EVD-D01-00112.

5 MR BIJU-DUVAL: (Interpretation) Your Honour, in order for
6 us to be able to proceed in open session I would like to make a suggestion
7 to the Bench and to the witness. During my examination-in-chief, my
8 questions will focus essentially on this person. I would like to
9 suggest that we agree on a pseudonym for the person who has just been
10 identified by the witness. We could call her "Madam X", such that
11 the witness will be able to speak about this individual. Of course,
12 from time to time this precaution may not be enough to protect
13 confidentiality and so for that reason we may from time to time have
14 to go back into private session.

15 Q. Mr Witness --

16 A. Yes.

17 Q. -- I am going to propose to you the following. Do not mention
18 publicly the name of (Redacted). Have you understood me?

19 A. Yes.

20 Q. If I make any reference to "Mrs X", or "Madam X", then you
21 should understand that I am talking about (Redacted). Have you
22 understood me?

23 A. I have understood you clearly.

24 Q. And if you wish to talk about (Redacted), you too should
25 refer to her as "Mrs X", or "Madam X". Have you understood that?

1 A. I have fully understood.

2 PRESIDING JUDGE FULFORD: Don't worry. If a mistake is made
3 there is a half-an-hour delay on the public broadcast of these
4 proceedings, so certainly anyone who is watching the trial over the
5 web will be prevented from hearing anything that is said accidentally.

6 Good. Bearing all that in mind, public session then, please,
7 and could the curtains be raised behind the witness.

8 (Open session at 12.23 p.m.)

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

10 PRESIDING JUDGE FULFORD: Yes. And can the photograph
11 please, of Madam X be taken away from the Bench. Thank you.

12 Yes, Mr Biju-Duval.

13 MR BIJU-DUVAL: (Interpretation)

14 Q. Mr Witness, with respect to Madam X, could you please tell
15 us when you met her for the first time?

16 A. I met her for the first time in Mahagi, where we were living.
17 Afterwards we then moved on to Bunia.

18 Q. Could you situate in time the moment when you met her in
19 Mahagi? At what particular point in time? During what period did
20 you meet her? If you cannot remember, can you give us an approximate
21 point in time; the time you met her?

22 A. I met her in Mahagi, when we were fighting in Mahagi. She
23 joined our group and those who had come from the APC joined the UPC
24 then.

25 Q. Thank you. You said that, "We fought a battle in Mahagi."

1 Who waged the battle? Which group are you talking about? Which were
2 the different groups that were involved in the battle?

3 A. In Mahagi, our troops went to Bunia and they were stationed
4 in Mahagi.

5 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

6 MS SAMSON: Thank you, Mr President. I'm rising on the
7 basis that the summaries provided had initially indicated that this
8 witness may have belonged to the APC, or the FPLC. The amended summary
9 provided on 15 February this year actually specifically and
10 deliberately removes the references to him having been in these groups
11 and, accordingly, the Prosecution is put in a very difficult position
12 having now assumed that the deliberate removal meant that he was never
13 in these groups. It may be a complaint that the Prosecution is repeating
14 many times, but the summaries are given for a reason and it makes it
15 too difficult to prepare for unanticipated evidence if they are
16 materially incorrect, or omit material information.

17 PRESIDING JUDGE FULFORD: Thank you very much.

18 Mr Biju-Duval, any response to that in terms of a change in the content
19 of the witness summary?

20 MR BIJU-DUVAL: (Interpretation) Your Honour, it was
21 perfectly clear to us that the witness was a member of the UPC. We
22 have never tried to hide this fact.

23 MS SAMSON: I could be of some assistance, your Honour, if
24 required?

25 PRESIDING JUDGE FULFORD: Yes, can I interrupt both of you.

1 I'm just looking again at the translation that I've got of the amended
2 summary, which as I understand it at the beginning indicates that it
3 was Witness 10 who was a member of the APC. Right, I understand. And
4 so your complaint is not only that witness, but also this witness being
5 a member of the APC.

6 MS SAMSON: Indeed, your Honour. The Prosecution bases it's
7 preparation on the summaries as provided. I can concede that the very
8 first version of this summary, which was three or four lines, said
9 that this witness and Witness 10 were in the APC and in the FPLC.

10 Further information was given on two separate occasions,
11 following which an amended summary was provided which I understood
12 contained the definitive position of this witness's evidence as of
13 15 February, in which case his being a member of these two groups was
14 deliberately removed.

15 PRESIDING JUDGE FULFORD: All right.

16 MS SAMSON: I must say that I believe the Chamber is aware
17 I am put in an extremely difficult position in being able to deal with
18 this witness's evidence at the moment.

19 PRESIDING JUDGE FULFORD: Ms Samson, it would be completely
20 artificial if we were somehow to try to shoehorn this witness's evidence
21 into a container which is comprised of the amended summary that had
22 been provided. It would be an absurd exercise to say that he simply
23 couldn't give evidence about certain things because it wasn't in Edition
24 2.

25 We will, though, look at your position and any additional

1 time that you need at the end of Mr Biju-Duval's examination.

2 MS SAMSON: Thank you very much, your Honour.

3 PRESIDING JUDGE FULFORD: Thank you for the intervention.

4 Please continue, Mr Biju-Duval.

5 MR BIJU-DUVAL: (Interpretation)

6 Q. Mr Witness, you spoke of a battle waged in Mahagi. What
7 were you doing at that very moment in time yourself? Where were you
8 and what were you doing?

9 A. I was a soldier.

10 Q. And which group were you a soldier in?

11 A. I was in the UPC.

12 Q. I would like to shed light immediately on one of your comments
13 a few moments ago. It might be that there was a problem with the
14 interpretation. You said that there had been fighting. Or did you
15 say that there was not any fighting?

16 A. We arrived at Mahagi and there wasn't any fighting, and
17 we returned to Bunia. There was a group that remained behind in Mahagi
18 and then subsequently there was fighting, and at that moment in time
19 Madam X was taken to Bunia. When we went, we became two groups and
20 then one group left and another group remained behind in this location.

21 Q. You say that you met Madam X in Mahagi?

22 A. Yes.

23 Q. What was she doing in Mahagi?

24 A. She was a soldier.

25 Q. And which group was she a soldier in?

1 A. In the APC.

2 Q. With regard to this encounter between yourself and Madam
3 X in Mahagi, did it take place before or after Lompondo was chased
4 out of Bunia?

5 A. I'm sorry, please repeat your question.

6 Q. I shall put another question to you: To your knowledge,
7 just before you met Madam X, where was Madam X to be found?

8 A. Before I met her?

9 Q. Yes, before you met her for the first time.

10 A. We met each other in Mahagi for the first time. I had not
11 met her previously and, subsequently, we went back to Bunia.

12 Q. Thank you. You say that Madam X was a member of the APC.
13 What were her activities within the APC? Was she a soldier?

14 A. Are you talking about the UPC or the APC?

15 Q. I'm talking about the APC. You told us that Madam X was
16 a member of the APC.

17 PRESIDING JUDGE FULFORD: Don't answer the question for a
18 moment.

19 Ms Samson.

20 MS SAMSON: Your Honour, this is a very sensitive area for
21 the Prosecution and, in our submission, this question leads directly
22 to an answer and we would prefer - in fact, we request - that the Defence
23 be reminded that leading questions are not to be permitted.

24 PRESIDING JUDGE FULFORD: Well, Mr Biju-Duval, I think on
25 a sensitive area you could have asked that question more neutrally,

1 to establish from the witness what the role, if any, was of Madam X
2 rather than suggesting one out of a number of possibilities. So, on
3 areas such as this, could you proceed, please, with particular caution?
4 And I am sure that you will be aware of the areas which are of particular
5 concern to the Prosecution. So, question again, please, in a more
6 neutral way.

7 MR BIJU-DUVAL: (Interpretation) Yes, Mr President.

8 Q. Witness, could you please tell us precisely what the APC
9 is?

10 A. The APC is an armed group which was created before the UPC.

11 Q. And what was Madam X's role or involvement within the APC?

12 A. She was a soldier.

13 Q. Could you please provide us with additional information
14 as to the circumstances of this meeting between yourself and Madam
15 X in Mahagi?

16 A. I do not have any details to provide you with. Why is that?
17 Because when they were in Mahagi, well, we arrived there as well and
18 then we went back to Bunia. They arrived in a lorry, and then they
19 were taken back to Mandro, with a view to completing some ideological
20 training in Mandro.

21 Q. Thank you. Subsequently, did you have any contact or
22 relations with Madam X? When did you see her for the second time,
23 if you remember?

24 A. I was in her company when the French drove us out of the
25 town of Bunia and we left together.

1 Q. Had you seen her again prior to that event?

2 A. Could you please put your question again?

3 Q. You said, "I was in her company when the French drove us
4 out of the town of Bunia and we left together." Before that moment
5 in time, had you had any contact with her? Had you seen her?

6 A. Yes, indeed, I had seen her. We met in town whilst performing
7 our duties. She was at the staff headquarters and we met on that
8 occasion.

9 Q. Thank you. When you say, "I was in her company when the
10 French drove us out of the town of Bunia," when you say, "I was in
11 her company," what precisely does that mean?

12 A. (Redacted)

13 (Redacted).

14 MR BIJU-DUVAL: (Interpretation) Mr President, that it
15 would be a good idea to move into private session on a temporary basis.

16 PRESIDING JUDGE FULFORD: Private session, please.

17 *(Private session at 12.42 p.m.) Reclassified as open session

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

19 MR BIJU-DUVAL: (Interpretation)

20 Q. Were you (Redacted)

21 (Redacted)?

22 A. (Redacted).

23 Q. Do you remember when it was that you started (Redacted),
24 and when you stopped (Redacted)?

25 A. I might be mistaken with respect to the date, but (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted).

4 Q. (Redacted)

5 A. (Redacted). Our camp was in (Redacted)

6 (Redacted).

7 Q. Thank you. Could you tell us when you stopped (Redacted)

8 (Redacted)?

9 A. I might be mistaken with regard to the dates, but when she
10 left the camp (Redacted)

11 (Redacted). But I have forgotten everything with respect to dates.

12 I'm not able to recall.

13 Q. During this period (Redacted), what were
14 her activities?

15 A. She was still a soldier and so was I.

16 Q. You say that she returned to Bunia. Why was that? Why was
17 that that she went to Bunia, to your knowledge?

18 A. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted).

2 Q. Thank you. I am going to make the same recommendation to
3 you once again. Please try not to speak too fast so that the interpreters
4 are able to follow you properly, please.

5 I was told that your last answer was very difficult to follow
6 indeed. So with the authorisation of the Trial Chamber, I would like
7 to be able to put this question again.

8 So, my question to you was: Why was it that she left for
9 Bunia again? And I would ask you to please express yourself calmly
10 and slowly. I know it isn't an easy thing to do. Thank you.

11 A. (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted).

22 Q. Thank you. Do you know where (Redacted) lived in Bunia
23 when she returned there?

24 A. Yes.

25 Q. Could you provide us with that information?

1 A. A group of young women were living in (Redacted). This is
2 the name of a building. They were living in a room. This was a group
3 of women who were living in (Redacted).

4 Q. Do you know the (Redacted) building?

5 A. Yes. (Redacted) is to be found down the hill from (Redacted).
6 That's to say, (Redacted) is actually on the ground floor, and (Redacted)
7 occupies the upper levels. In fact, it is one and the same building.

8 Q. Thank you. Once (Redacted) had gone to Bunia, you told
9 us -- I am sorry, I shall put my question again. Did you meet her
10 again after she had gone to Bunia?

11 A. No. They subsequently lived a rather hidden existence; they
12 were hiding.

13 MR BIJU-DUVAL: (Interpretation) One moment of indulgence,
14 please.

15 Q. When did you see (Redacted) for the last time?

16 A. The last time that I met her was the day that she (Redacted)
17 (Redacted). We had gone to get some

18 money because we were being demobilised. When I arrived she called
19 me and she said that the Lord had given her (Redacted). She asked me
20 some money in order to buy sugar, and I gave her some money and then
21 I left. And on the very same day I returned and (Redacted).

22 Subsequently, we would meet, and the (Redacted). But at

23 a certain moment in time she disappeared, and I asked her friends
24 and they said that she'd gone to (Redacted). I tried to find her telephone
25 number, but I was not able to.

1 PRESIDING JUDGE FULFORD: You will remember that we are still
2 in private session, Mr Biju-Duval. I am not saying that we shouldn't
3 be, but if you can just be conscious of the need to return to public
4 session as soon as we can.

5 MR BIJU-DUVAL: (Interpretation) Yes, Mr President. We
6 might attempt using the phrase "Madam X."

7 Q. Now, Mr Witness, I'm going to be using the expression "Madam
8 X," and so should you; will you not? Have you understood me?

9 A. Very well.

10 PRESIDING JUDGE FULFORD: Public session, please.

11 (Open session at 12.55 p.m.)

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

13 MR BIJU-DUVAL: (Interpretation)

14 Q. Mr Witness, you have just told us the circumstances under
15 which you saw Madam X for the last time. Would you be able to provide
16 us with an approximate date for this time when you saw her last?

17 A. You know, I cannot recall dates. I am a human being and
18 I can be mistaken, but I believe it was in the year 2005, because it
19 was during that year that we went to get our money at the CONADER.

20 Q. Thank you. Between that moment in time when you saw her
21 last, that is to say, more or less in the year 2005, and the time when
22 she left for Bunia or when she returned to Bunia, did you meet her
23 or did you have any contact with her during that time?

24 A. I would like to ask you to repeat your question. I have
25 not quite grasped it.

1 PRESIDING JUDGE FULFORD: It was a very difficult question,
2 Mr Biju-Duval. Ms Samson?

3 MS SAMSON: I hadn't grasped the question myself --

4 PRESIDING JUDGE FULFORD: Yes.

5 MS SAMSON: -- and I just wanted to understand it better.

6 PRESIDING JUDGE FULFORD: I think the problem,
7 Mr Biju-Duval, is the witness is saying that he last saw her in 2005.
8 I then don't understand a question that says -- that poses the possibility
9 that between that date, when Madam X left for Bunia, that they may
10 have met, because he's saying, as I understand it, that they last met
11 in 2005. Now, if you mean that the departure for Bunia may have been
12 before 2005, when they last met, then that may make a little bit more
13 sense. But it makes it sound as though you are trying to tempt the
14 witness into saying that he's seen Madam X more recently than 2005.
15 So can you reformulate the question, and then we'll rise for lunch
16 once the witness has given an answer.

17 MR BIJU-DUVAL: (Interpretation) Yes. I apologise,
18 Mr President. I did not express myself properly. I shall try and
19 put the question again in a simple and clear manner.

20 Q. You explained to us that at a certain moment in time Madam X
21 left Mahagi and went back to Bunia; did she not? And you have just
22 told us that in 2005 you saw her for the last time. Now, between those
23 two moments in time --

24 A. I said that the last time I saw her was when she was at
25 the hospital, and that was in 2005, so that was the last time I saw

1 her.

2 Q. And before this last meeting had you met her in Bunia?

3 A. Yes, I would meet her in Bunia on a regular basis, whether
4 it be on the marketplace or elsewhere - we would speak together - and
5 we had good relations.

6 PRESIDING JUDGE FULFORD: Ms Samson.

7 MS SAMSON: Thank you, Mr President. It was simply, again,
8 I didn't understand the question. Clearly, the witness has seen
9 the -- Madam X before 2005. We have covered that ground, quite a number
10 of questions; and perhaps it's necessary to be more specific in the
11 question - not having compound questions - and directing the witness
12 in a non-leading manner to the area in a way that's understandable.

13 PRESIDING JUDGE FULFORD: Well, Mr Biju-Duval will have an
14 hour-and-a-half to reflect on that, Ms Samson. Thank you very much.
15 We will rise now for lunch. Usher, can you please accompany the witness
16 back into the witness room. Thank you for your assistance, sir. We
17 look forward to seeing you again in an hour-and-a-half's time.

18 (The witness stands down)

19 PRESIDING JUDGE FULFORD: 2.30.

20 THE COURT OFFICER: All rise.

21 (Luncheon recess taken at 1.02 p.m.)

22 (Upon resuming at 2.30 p.m.)

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

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

25 PRESIDING JUDGE FULFORD: Good afternoon. Witness,

1 please.

2 (The witness enters the courtroom)

3 PRESIDING JUDGE FULFORD: Good afternoon. Yes,

4 Mr Biju-Duval. And remember we're in public session.

5 THE WITNESS: Good afternoon.

6 MR BIJU-DUVAL: (Interpretation) Your Honour.

7 Q. Witness, I am going to continue with my questioning using
8 the pseudonym of Madam X. Do you agree? And yourself, you should
9 use that same name, Madam X; is that not so?

10 A. Yes.

11 Q. And please speak slowly so that the interpreters can
12 translate what you are saying properly and correctly. Witness, you
13 told us that when you met Madam X for the first time she was in the
14 APC. Do you know how long had she been in the APC, at the time you
15 met her in Magi -- Mahagi?

16 A. Yes.

17 Q. Can you tell us what you know about Madam X?

18 A. Yes. You want me to start speaking?

19 Q. Yes. Could you tell us whether you know how long Madam X
20 had been in the APC when you met her for the first time in Mahagi?

21 A. She had been with the APC for a long time. We were together
22 and she explained to me how she had had her training in Rwampara and
23 her superior was in Rwampara and that was Commander Pepe. Pepe was
24 the one who was the commander of the training centre and that's what
25 she told me. She told me that she had been with the APC for a long

1 time and she had had her military training in Rwampara.

2 Q. Thank you. Did she tell you how she had been recruited into
3 the APC; under what circumstances?

4 A. We were in the same house, you see? It was possible for
5 me to know about her, because a man and his wife talk to each other.
6 She said that she was under the orders of Commander Pepe, who was the
7 head of the training centre, so that's what she told me when we were
8 living together.

9 Q. Thank you. Do you have any idea of the year, for instance?
10 The year in which she did her military training in Rwampara?

11 A. Well, regarding Rwampara, when Commander Pepe was there
12 that might have been in 1999, unless I am mistaken. I think you realise
13 that I have forgotten the dates, but I wasn't at Rwampara.

14 Q. Thank you. Now, you have been speaking of a commander,
15 Commander Pepe. Is he alive, or dead, today?

16 A. He is dead.

17 Q. Do you know under what circumstances he died? How did he
18 die?

19 A. We learned that he died in Beni.

20 Q. Are you able to give us a date; a date for his death? Are
21 you able to give the year of his death, if you remember that?

22 A. I can't remember. Those events occurred when I was in the
23 army.

24 THE INTERPRETER: Rather, before I entered the army.

25 Correction from the witness. Correction from the interpreter in the

1 Swahili booth.

2 MR BIJU-DUVAL: (Interpretation)

3 Q. Did Madam X tell you about any particular events in her
4 life when she was in the APC?

5 A. Yes.

6 MR BIJU-DUVAL: (Interpretation) Your Honour, I think it
7 might be a good idea to go into closed session before the witness
8 continues with his answer.

9 PRESIDING JUDGE FULFORD: Private session, please.

10 *(Private session at 2.40 p.m.) Reclassified as open session

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

12 PRESIDING JUDGE FULFORD: Yes, put the question again,
13 please, Mr Biju-Duval.

14 MR BIJU-DUVAL: (Interpretation)

15 Q. I will ask the same question again: Did Madam X tell you
16 about certain events in particular that occurred during her life, during
17 the period of time she was in the APC?

18 A. Yes.

19 Q. And what were those events?

20 A. Basically, essentially, she told me that one day we were
21 together at the camp and I found her crying. She was with -- she was
22 crying because Chief Bulangwa (phon) had beaten her and I found her
23 at the camp and she was crying, and I asked her why she was crying
24 and she took her weapon and she wanted to kill herself, but we took -- I
25 took the weapon away from her. She was angry.

1 In the evening when we went to bed I asked her what had happened,
2 what happened? Why did you fight with your leader? And she said the
3 leader was drunk and he wanted to hit her with a stick and she said
4 that the chief - the leader - had done something to her in Rwampara
5 because he had tried to assault her dignity, and I asked her, "What
6 did he do?" And she fell silent. I asked her, "Well, what did he
7 do? What did he do?" And she replied, saying, "He raped me." And
8 after that he hit her with a stick and when she remembered what had
9 happened between her and her chief, she wanted to kill herself.

10 I said to her that she should calm down, but she said to
11 me but when she remembered what the chief had -- the leader had done
12 to her at the centre she could no longer get along with the leader,
13 and she said that if her leader did the same thing again it was going
14 to be a matter of life, or death, between her and the leader.

15 So there you have it. That's what she said. That's
16 basically what I can tell you and what she told me in confidence, when
17 I was speaking (Redacted)
18 (Redacted).

19 MR BIJU-DUVAL: (Interpretation) Thank you. Your Honour,
20 I think we can go back into open session.

21 PRESIDING JUDGE FULFORD: Excellent, Mr Biju-Duval.
22 Public session, please.

23 (Open session at 2.45 p.m.)

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

25 MR BIJU-DUVAL: (Interpretation)

1 Q. Now, that event that occurred between Madam X and Bulangwa
2 in Rwampara, Madam X was a member of which group?

3 A. At that time she was at the Rwampara centre, where the APC
4 headquarters was.

5 Q. Thank you. Regarding Commander Pepe, what armed group did
6 he belong to?

7 A. You're talking about Commander Pepe? Well, he was part of
8 the Wamba Dia Wamba's group and then after that he joined -- he rejoined
9 the APC with some others.

10 Q. Thank you. Do you know whether he was part of another group
11 after?

12 A. When he died, he was still a member of the APC.

13 Q. Thank you. In your opinion, how old is Madam X? I know
14 it is difficult to determine one -- a person's age, but can you tell
15 us whether she was -- whether she was the same age as you, older than
16 you, younger than you?

17 A. We are about the same age. I might be one year older than
18 her.

19 MR BIJU-DUVAL: (Interpretation) Thank you. If the Court
20 would be so kind, one moment please.

21 No further questions, your Honour.

22 PRESIDING JUDGE FULFORD: Thank you very much,
23 Mr Biju-Duval.

24 Yes, Ms Samson.

25 MS SAMSON: Thank you, your Honour. Mr President, with your

1 leave, the Prosecution is proposing asking a few exploratory questions
2 of this witness in relation to his membership in the UPC, information
3 which we didn't have until now, following -- the request is to have
4 the rest of the day to finalise preparation and commence the
5 cross-examination in the main on Monday morning. I expect I'll have
6 questions for perhaps 15 or 20 minutes today.

7 PRESIDING JUDGE FULFORD: Well, Ms Samson, can we just
8 explore this slightly. We entirely understand that it seems, although
9 I haven't studied the two documents to compare them, that there was
10 a difference between version 1 and version 2 of the witness's summary,
11 but having been alerted in the first summary to the possibility of
12 membership of a particular group, even though that may have disappeared
13 in the second, wouldn't you, in a sense, out of caution if nothing
14 else, have investigated the possible development in evidence of
15 membership of that group? If it had appeared once, it might come up
16 again.

17 MS SAMSON: Of course, your Honour, it was always a
18 possibility, but it concretised only when the witness arrived to give
19 his testimony. The Prosecution's submission in relation to these
20 summaries goes a bit broader than the submission today, in that it
21 really contain the information that is definitive at a point in time
22 to the extent possible, not seeking to restrict the ambit of the witness's
23 evidence in any way, but in the main, on material points, the principle
24 must be that the information that's provided two weeks prior to the
25 person arriving ought to be complete at that moment. And we reiterate

1 the request to have -- to explore this part of the evidence for a part
2 of the day today and continue on Monday.

3 PRESIDING JUDGE FULFORD: Well, Ms Samson, it's absolutely
4 clear from the decisions that we have handed down, as it is clear in
5 the Rome Statute framework, there are real limitations on the extent
6 to which the Chamber can force the Defence to disclose the full detail
7 of what witnesses are going to say in advance. I know you put it as
8 a principle, but in fact the principle is that the Chamber must only
9 order that which is properly within our powers and we have decided,
10 certainly for the purposes of this trial, that there are limitations.

11 Now, if the result of that is that the Prosecution must do
12 the best they can with the summaries in advance and otherwise sensibly
13 extemporise, as is the case in many jurisdictions, in relation to such
14 matters as hadn't been flagged up in advance, isn't that a fair
15 expectation of you as counsel conducting questioning for the
16 Prosecution?

17 MS SAMSON: Your Honour, there is no doubt that we are
18 intended to be flexible and to adapt ourselves to the testimony of
19 the witnesses. The issue that the Prosecution has is that when the
20 material facts aren't provided, it becomes very difficult to estimate
21 what has now become two, possibly three, alternative scenarios. In
22 fact, the very first summary indicated this person -- this witness
23 had been in the APC. Now we find that he wasn't. So I would have
24 had to prepare a cross-examination on the basis that he was in the
25 APC, followed by a cross-examination on the basis that was in the FPLC,

1 finally a cross-examination on the basis that he was never in an armed
2 group and, at some point, it becomes very burdensome on the Prosecution
3 to anticipate every possible line of enquiry.

4 PRESIDING JUDGE FULFORD: Just -- I am not going to ask you
5 to reveal in any fine detail what you are going to do, but so that
6 we can understand what kind of work you now need to undertake, can
7 you give us just in broad outline the sort of investigations you would
8 now wish to conduct before, in your submission, properly being able
9 to question this witness?

10 MS SAMSON: Your Honour, I seek leave to ask the witness
11 additional questions in relation to his membership in the UPC; when
12 he may have joined; with whom he may have been at various times, in
13 order to understand his movements. Unfortunately, that really hasn't
14 been elicited in any degree of detail through the examination-in-chief
15 so I must elicit some of those details now in order to then offset
16 his new account with the information that the Prosecution suggests
17 is actually what happened.

18 PRESIDING JUDGE FULFORD: Aside from membership, are there
19 any other substantive areas that you can cover with the witness this
20 afternoon; those that were sufficiently flagged up in advance?

21 MS SAMSON: Yes. Yes, your Honour. I would like to also
22 explore with the witness his current circumstances and his -- the
23 trajectory by which he became a witness. I can explore that with the
24 witness today. These are the areas that I feel I could cover today.

25 (Trial Chamber confers)

1 PRESIDING JUDGE FULFORD: Ms Samson, we are really very
2 worried about this, particularly bearing in mind with what happened
3 with the last witness where effectively we were in exactly the same
4 position, with Ms Struyven making an almost identical application
5 effectively for an overnight adjournment before commencing questioning.
6 If this is repeated with every witness, the delays to this trial are
7 going to be simply unacceptable - completely unacceptable.

8 Now, on this, probably - although nothing ever is
9 final - probably, last occasion, we will grant the indulgence, but
10 I am afraid there are really two things that you have got to have in
11 mind as a team: one, you must investigate not only that which is
12 contained within the summary, but also you must explore the
13 possibilities as sensibly they seem to you of matters that may come
14 up during the course of the evidence of witnesses who are to be called
15 and, secondly, I am afraid you must have in mind counsel's obligation
16 to be able to cross-examine on material about which you have not had
17 prior information. I am afraid it is part of the job of being an advocate
18 that you are able at short notice to deal with difficult issues that
19 arise during the course of a witness's testimony. And we are not going
20 to be able to provide the Prosecution with the indulgence with each
21 witness of an overnight adjournment before questioning begins.

22 Now, as I say, I am not going to say this is absolutely final
23 for all witnesses - the door always remains, to an extent, open - but
24 we are not going to be as sympathetic in future.

25 MS SAMSON: Thank you, Mr President.

1 PRESIDING JUDGE FULFORD: Right. So, go as far as you can
2 this afternoon, please.

3 Questioned by Ms Samson:

4 Q. Good afternoon, Mr Witness. My name is Nicole Samson and
5 I'll be asking you some questions today and Monday on behalf of the
6 Prosecution. Sir, you've told us today that you were a soldier in
7 the UPC. Could you tell us when you joined the UPC?

8 A. I joined the UPC in 2002, towards the end of May.

9 Q. Did you receive any training in the UPC?

10 A. Yes, I had military training within the UPC.

11 Q. Where were you trained?

12 A. In Mandro.

13 Q. Who were your trainers?

14 A. We had trainers. They were commanders and they provided
15 the training.

16 Q. Do you remember their names?

17 A. Yes.

18 Q. Could you tell us what their names were?

19 A. There was Mugisa Muleke (phon); there was Americain Baguma,
20 Christian. There were many of them, but those were the ones who were
21 the main trainers. Would you like me to continue?

22 Q. Do you have the names of other trainers as well?

23 A. Yes, I mentioned Christian, Baguma, Mugisa, Bahati, Asimwe.
24 There was also Binadere (phon).

25 Q. Following your training, what was your role in the UPC?

1 A. I was a bodyguard; a bodyguard for somebody.

2 Q. Who was the commander that -- or who was the person that
3 you were a bodyguard of?

4 A. First of all, I served as bodyguard of Baguma, who was
5 nicknamed American; next I was bodyguard of Binadere; and later on
6 I served as the bodyguard of Bosco.

7 Q. Do you remember when you were bodyguard of Bosco;
8 approximately what date?

9 A. When my commander died, I started guarding Bosco; I think
10 it must have been 2003. After the French chased us out, I was Bosco's
11 bodyguard, and even when he was serving in the army staff.

12 Q. So, were you Bosco's bodyguard after the French chased you
13 out only, or are you saying that you were also his bodyguard before
14 that?

15 A. I worked for him before the French chased us out. I was
16 guarding our commander. After the French chased us out, I served as
17 his bodyguard.

18 Q. So, both before and after the French chased the UPC out
19 you were Bosco's bodyguard. Do I have that right?

20 A. Bosco had various bodyguards. Some of the bodyguards were
21 working for a part of the army staff stationed somewhere in town and
22 others were working with him.

23 THE INTERPRETER: The Swahili interpreter would like to
24 mention that he did not hear the last part of the witness's answer.

25 PRESIDING JUDGE FULFORD: Could we have that repeated then,

1 please, Ms Samson.

2 MS SAMSON:

3 Q. Sir, a part of your last answer wasn't interpreted, it wasn't
4 heard or understood by the interpreters, so I am asking you again,
5 please. Is it correct that both before the French were chased out
6 and after the French - pardon me - before the French chased the UPC
7 out and after you were Bosco's bodyguard; is that right?

8 A. This is what I said: I served as Bosco's bodyguard. Well,
9 Bosco had several areas where his soldiers were stationed. At that
10 time I was not his bodyguard. I was working as a bodyguard for one
11 of his brothers who has -- who died and who was called Binadere. It
12 was after the French chased us out that I joined his bodyguards.

13 Q. Did you participate in any battles with the UPC?

14 A. Well, you know, a soldier cannot participate in all combat.
15 There are certain battles to which you may be deployed and others to
16 which you may not be deployed.

17 Q. Were you deployed to any battles while you were in the UPC?

18 A. I answered your question saying that a soldier cannot serve
19 on all fronts. A soldier cannot take part in all battles.

20 Q. Did you take part in any battles, in even one battle, with
21 the UPC?

22 A. What battle are you talking about? Could you please give
23 me some clarification and let me know what specific battle you are
24 referring to?

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

1 MR BIJU-DUVAL: (Interpretation) I have certain
2 difficulty with the expression "any battles," the manner in which it
3 is going to be translated. I think the witness has difficulties
4 understanding exactly what question is being put to him.

5 PRESIDING JUDGE FULFORD: Well, I think what Ms Samson is
6 trying to find out is whether there was ever a battle on any occasion,
7 anywhere, that the witness participated in.

8 So, sir, you're being asked whether you have ever fought
9 in a battle and, if you have, to tell Ms Samson approximately when
10 those battles took place and where they were.

11 Is that right, Ms Samson?

12 MS SAMSON: Exactly right.

13 PRESIDING JUDGE FULFORD: Good. So, if you could just tell
14 us, sir, in your own words, any battle -- about any battles that you
15 participated in.

16 THE WITNESS: Well, you know, there were several battles,
17 and we suffered, especially when we were in the training centre. We
18 were beaten on three occasions. Lopondo even burnt down houses during
19 the battle of Mandro, and we were defeated on three occasions.

20 MS SAMSON:

21 Q. Did you yourself participate in these three battles that
22 you are talking about?

23 A. Are you talking about the battles in Mandro? Yes, I took
24 part in the battle of Mandro.

25 Q. You mentioned Lopondo. Did you take part in a battle

1 involving Lopondo when he was chased out?

2 A. Are you talking about Lopondo? No, I did not take part.
3 I was not there.

4 Q. So, sir, so far you've participated in one battle at Mandro.
5 Do you know when that battle was -- took place?

6 A. It was around the year 2002. Well, you know, I have
7 difficulties remembering months and years. I have poor recollection
8 of such facts.

9 Q. Was this the first battle you had participated in on behalf
10 of the UPC?

11 A. Yes, it was the first battle in which I participated.

12 Q. Did you participate in any battles after this Mandro battle?

13 A. Yes, I took part in the battle of Libi; that is when we
14 went to Libi.

15 THE INTERPRETER: The Swahili interpreter corrects. That
16 is when we went to Nyoko.

17 MS SAMSON:

18 Q. Were you in any battles after the battle of Nyoko?

19 A. Several battles took place. I also participated in the
20 battle against the Ugandans.

21 Q. Do you recall approximately when that battle was?

22 A. Well, I do not have any recollection of the dates and the
23 years in question.

24 Q. After the battle with the Ugandans, were there any more
25 battles that you fought in?

1 A. Yes.

2 Q. What was the next one after the Ugandan battle?

3 A. I participated in fighting against the FNI.

4 Q. Where was that?

5 A. The FNI attacked several villages, including Katoto, and
6 while they were in the town we tried to fight them in order to regain
7 control of the town.

8 Q. After Katoto, any more battles?

9 A. The most intense fighting was against the FNI that occupied
10 the town. Later on the French came and they seized control of the
11 town.

12 Q. Do you mean in Bunia?

13 A. Yes, indeed.

14 Q. During these battles between Mandro and a battle in Bunia,
15 were you with your commanders Baguma then Binadere?

16 A. Baguma was already dead.

17 THE INTERPRETER: Or rather, it was Binadere who was already
18 dead. The Swahili interpreter corrects.

19 MS SAMSON:

20 Q. Am I to understand that Binadere died before the Mandro
21 battle?

22 A. Binadere died after the battle of Mandro. We had fought
23 in Mandro and he died after that battle in Mandro.

24 Q. Was the battle in Bunia the last battle that you fought
25 in with the UPC?

1 A. Do you want to know about the last battle we waged against
2 the FNI?

3 Q. After the battle in Bunia - before the French chased the
4 UPC out of Bunia - did you participate in any other battles with the
5 UPC?

6 A. No, I did not participate in any other battle.

7 Q. During these battles, were you with one commander?

8 A. Could you please rephrase your question?

9 Q. After Binadere died and then you participated in a series
10 of battles, who was your commander?

11 A. My commander was somebody who was a member of Bosco's staff.
12 His name was Gasana (phon).

13 Q. Sir, I am going to ask you to repeat that name again slowly
14 so we can capture it accurately in the transcript. Could you do that,
15 please?

16 A. Gasana.

17 Q. Thank you. When you joined the UPC in or about May, end
18 of May 2002, who were the leaders of the UPC?

19 A. We knew that Chief Kahwa was the supreme commander and his
20 deputy was Bosco.

21 Q. Can you name any of the other superior leaders of the UPC
22 at that time, along with Kahwa and Bosco?

23 A. Our commander, to the best of our knowledge, was Chief Kahwa.
24 Under him, you had Bosco and Kitembo. Those were the most or the highest
25 ranking commanders in the military structure.

1 Q. Are you able to help the Court understand how long you stayed
2 in the UPC after the French chased the UPC out of Bunia?

3 A. I have just told you, that I joined the UPC in the year
4 2002. I went to the demobilisation centre in the year 2004. You can
5 calculate the difference for yourself. I think I was demobilised
6 between 2004 and 2005.

7 Q. So to be clear, you left the UPC in 2004 or 2005; is that
8 right?

9 A. Yes.

10 Q. Sir, you are Hema; is that right?

11 A. Yes.

12 Q. Are you Hema North, Gegere?

13 A. (No interpretation)

14 Q. I imagine you had family members in the UPC?

15 A. Nobody.

16 Q. No brothers, uncles or cousins in the UPC; is that right?

17 A. One of my maternal uncles was a member of the UPC and he
18 died in combat.

19 Q. What was his name?

20 A. His name was Boro (phon).

21 Q. You said you grew up in Bunia; is that right?

22 A. Yes.

23 Q. In what neighbourhood were you living when you grew up?

24 A. Dessa (phon).

25 Q. Can you help us understand what part of Bunia Dessa is in?

1 Is it the north part or the south part?

2 A. Dessa is located near the market.

3 Q. Sir, is it your evidence that after the French was chased
4 out and you moved to Centrale, that you stayed in Centrale until you
5 demobilised?

6 A. (No interpretation)

7 PRESIDING JUDGE FULFORD: I think the witness gave an answer,
8 which I think was "Yes," but it wasn't interpreted. Could the answer
9 please be given to the last question?

10 THE INTERPRETER: The English booth did not hear any
11 interpretation from the Swahili booth, your Honour.

12 PRESIDING JUDGE FULFORD: Swahili booth, could you please
13 give again the last answer from the witness.

14 THE INTERPRETER: That's correct.

15 MS SAMSON:

16 Q. Were you based during that time at Camp Muhito, or at Bosco's
17 residence or somewhere else?

18 A. Bosco's residence is located near Camp Muhito, and there
19 was a forest near that camp. We could spend the night in the camp,
20 or we could ensure the protection of the commander in his home.

21 Q. Camp Muhito was a UPC camp?

22 A. Yes.

23 Q. Sir, by my calculation, when you joined the UPC you were
24 16; is that right?

25 A. I was born in 1985, yes.

1 Q. I think you might have been 17. It's my error. Does that
2 seem -- would you agree with that, you were 17?

3 A. If I was born in 1985, it follows therefore that your
4 calculation is correct.

5 Q. And, sir, can you tell us what made you join the UPC?

6 A. I was in Centrale, because I have some family members in
7 Centrale.

8 Q. Yes. But why did you join the UPC? Was there a particular
9 reason?

10 A. I joined the UPC because I could no longer stay at home.
11 There was fighting everywhere. People were being killed. You could
12 spend the night here today, and if fighting broke out you had to flee.
13 So this situation forced me to join the UPC.

14 Q. Were there Hema people being killed?

15 A. Yes. It was a war between ethnic groups. Our tribe was
16 being persecuted; our people were being killed. We did not know where
17 to go to hide, and so we had to defend ourselves. We had to protect
18 our families. That is why we had to join a military group.

19 Q. Sir, what is your current employment?

20 A. I am a taxi driver.

21 Q. And you are currently residing in Mudzipela in Bunia; is
22 that right?

23 A. Could you please repeat your question?

24 Q. You are currently living in Mudzipela in Bunia; is that
25 right?

1 A. Yes.

2 Q. Is it in Mudzipela that you are a taxi driver?

3 A. I am a taxi driver in the town.

4 Q. In the town of Bunia; is that right?

5 A. Yes.

6 Q. And do you still -- are you still in touch with your colleagues
7 from the UPC?

8 A. Who do you mean exactly?

9 Q. Anyone? Are you in touch with anyone from the UPC?

10 A. We are in longer in contact with each other. Because everyone
11 is going about their own business, we are no longer in contact.

12 Q. And, sir, who contacted you to become a witness for the
13 Defence?

14 A. I met somebody who provided me with some explanation. This
15 is Mr Mbuna I am referring to.

16 Q. Did you know Mr Mbuna previously?

17 A. This was somebody who hailed from our village. He was a
18 wise man from our village, so I knew him as such.

19 Q. Which village are you referring to? Is it Dessa or another
20 village?

21 A. I knew him because he worked at the ISP. This is a university
22 institution located in Mudzipela, and that is where I came to know
23 him.

24 Q. You didn't know of him before then when you were in the
25 UPC given that --

1 A. (Overlapping speakers) No, I did not know him.

2 Q. So, when did he come -- when did you meet him?

3 A. He came to see me in 2007, if my memory serves me correctly.
4 I believe it was in the year 2007. I was a taxi driver at the time
5 and he called me and told me that some lawyers wanted to meet with
6 me. I took fright, but I went with him, and he gave me some information
7 on the subject.

8 Q. Did he call you on the telephone?

9 A. No, I was walking along and he had parked his car and he
10 called out to me. He told me what he had to tell me.

11 Q. Other than asking if you wanted to meet with lawyers, what
12 else did he have to tell you?

13 A. No, I didn't tell him anything. I told him that I was going
14 to think it over. He asked me for my telephone number and he said
15 that when he was in the presence of these lawyers he would call me,
16 and that is how I came to give him my telephone number.

17 Q. So, if I understand correctly, someone you claim not to
18 know arrives at your place of employment, asks you to meet with lawyers,
19 doesn't give you any further information; is that your evidence?

20 PRESIDING JUDGE FULFORD: Pause for a moment, sir. Yes,
21 Mr Biju-Duval?

22 MR BIJU-DUVAL: (Interpretation) Unless I am mistaken, the
23 witness said that he knew Mr Mbuna, because he had met him at the ISP
24 and by virtue of the fact that he hailed from his village. So, of
25 course, that is, I believe, what the witness said.

1 MS SAMSON: Yes, your Honour, I think that may be correct.

2 PRESIDING JUDGE FULFORD: Can you put the question on a
3 slightly firmer basis, Ms Samson, that is if you want to pursue it.

4 MS SAMSON: Thank you. I do. I do:

5 Q. The question remains the same, Mr Witness. Mr Mbuna comes
6 to your place of employment, asks you to meet with lawyers and doesn't
7 tell you why? Is that what you are saying?

8 A. No, he asked me whether I could meet him because there were
9 lawyers who wanted to speak to me and I ended up accepting.

10 Q. You didn't find it strange that he wanted to bring you to
11 lawyers without knowing why?

12 A. Yes, I was taken aback. Initially I refused, and I was
13 frightened, but in view of the fact that he is an elder from the village,
14 I had to show him respect. So I did meet with him. I was somewhat
15 frightened, but when he spoke to me I understood the situation because
16 it was something I knew about, and I thought, well, yes, I know about
17 this and I didn't have an issue with it.

18 Q. So he did tell you what the meeting with the lawyers was
19 about?

20 A. He called me, and when he called me he said that when we
21 would meet he would then tell me what the lawyers would say and, when
22 I met with the lawyers, they said, or they asked me whether I knew
23 a photograph, and I said that, yes, I knew the individual in the
24 photograph.

25 Q. But, sir, my question really is: Before you met with the

1 lawyers, if I understood your evidence, Mr Mbuna explained to you why
2 you were meeting the lawyers; is that right?

3 A. No, no. He quite simply told me that the lawyers wanted
4 to meet with me and I asked him why, to which he responded that when
5 he would call me I would have to go. I went and the lawyers put questions
6 to me and there were interpreters present for interpretation into
7 Swahili.

8 Q. And, sir, when you spoke to these lawyers - the lawyers - I
9 am sure you told them you had been in the UPC?

10 A. Yes, I told them that I was a soldier with the UPC and I
11 told them when I had joined the UPC.

12 Q. You didn't clarify that subsequently to say that you in
13 fact had made a mistake and you were never in the UPC, did you?

14 A. Please put your question again.

15 PRESIDING JUDGE FULFORD: Yes, it had -- it had two negatives
16 in it and a request for clarification. Not easy, Ms Samson.

17 MS SAMSON:

18 Q. Sir, at any time did you tell them that you had made a mistake
19 in what you earlier told them and that in fact you were not in the
20 UPC?

21 A. I do not understand this question very well. When they
22 contacted me, it's because they knew that I had lived with Madam X,
23 and that meant that I had been a soldier.

24 Q. And you always confirmed with them, I take it, that you
25 had been a soldier; is that right?

1 A. Of course I was a soldier.

2 Q. Did the lawyers tell you, or Mbuna tell you, how they knew
3 you knew Madam X?

4 A. They asked me whether I knew Madam X and I said "Yes, I
5 do".

6 MS SAMSON: May I ask for the Bench's indulgence for a moment?
7 (Prosecution counsel confer)

8 MS SAMSON: With the Chamber's indulgence, at this point
9 I would seek the adjournment of the cross-examination until Monday
10 morning, with your leave.

11 PRESIDING JUDGE FULFORD: Well, in fairness to you,
12 Ms Samson, hardly any time is going to be wasted by this because we
13 are very close to the time that we would have risen this afternoon
14 anyway, so if I was slightly censorious earlier I hope that ameliorates
15 at least to an extent. Thank you very much indeed.

16 Sir, we have really reached the end of the afternoon I am
17 afraid for today. It means that your evidence won't be completed until
18 some time I anticipate on Monday morning. We look forward to seeing
19 you again then at 9.30 in Courtroom 1. Thank you very much for your
20 assistance so far today. Usher, can you please accompany the witness
21 back to the witness waiting room.

22 (The witness is excused)

23 PRESIDING JUDGE FULFORD: Just before Mr Biju-Duval
24 addresses the Bench, we need to emphasise that for the four proposed
25 Defence witnesses who have recently been added to the Defence list,

1 the Victims and Witness Unit should proceed as if the Defence application
2 has been granted on a precautionary basis, but we wish to stress to
3 everyone that this, in fact, does in no way indicate how we are going
4 to rule on the matter. We wish to preserve the position by making
5 this order, not in any way to prejudge our eventual decision. So,
6 the Victims and Witness Unit are now ordered to start putting into
7 place all of the steps that they would ordinarily put in place for
8 new witnesses.

9 Right. Mr Biju-Duval, you have five minutes, at most.

10 MR BIJU-DUVAL: (Interpretation) Thank you, Mr President.
11 I have two points to raise.

12 I would like to revisit the issue of the summary with regard
13 to the witness we are hearing today, not with a view to entering into
14 polemics, but to underline that, indeed, something has happened which
15 meant that a piece of information disappeared which had been previously
16 notified.

17 Now, the Defence never wanted to dissimulate any information,
18 notably that the witness had been a member of the UPC, and it was while
19 we were improving the summary that, unfortunately, a piece of
20 information, for reasons that I find difficulty explaining, fell by
21 the wayside. So I would like to apologise for this, and I would like
22 it to be very clear that it was never the intention of the Defence
23 to dissimulate the fact that the witness was a member of the UPC. I
24 wanted to say this, because it seems to be taking or having an implication
25 on the questioning, or the leading of the evidence today.

1 Now, secondly, a completely different matter with regard to Witness
2 16.

3 PRESIDING JUDGE FULFORD: Just before you do, do we take
4 it then, Mr Biju-Duval, so Ms Samson knows this for the weekend, that
5 any apparent change, therefore, in that context was a result - and
6 I am going to describe it this way - of counsel's error, rather than
7 because the witness changed his account, leading to you putting in
8 a different version to reflect that change? And I see you nod. Fine.
9 And I am sure Ms Samson accepts that from you.

10 Witness 16, then?

11 MR BIJU-DUVAL: (Interpretation) Witness 16 could
12 commence his testimony. We believe that he could commence on Monday
13 afternoon, at the earliest. It would be reasonable to plan it in such
14 a manner. For the time being, a familiarisation meeting has been
15 planned for Monday morning at 7 a.m., ahead of the fact that he would
16 be testifying at 9 a.m. on Monday morning. And the VWU requires the
17 authorisation of the Chamber in order to modify or amend the time of
18 this meeting and, for example, to move it to the lunch hour. And I
19 wanted to seize the Trial Chamber of this rather concrete issue.

20 PRESIDING JUDGE FULFORD: Well, we have an hour-and-a-half
21 session on Monday morning, at least part of which is going to be occupied
22 by further questions from Ms Samson, I imagine?

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

24 PRESIDING JUDGE FULFORD: Yes. Then we move into the Bemba
25 status conference at half-past-11. So if you want to arrange with

1 the VWU for the familiarisation process to be put at a slightly more
2 civilised hour, Mr Biju-Duval, we're not going to stand in your way,
3 so long as the witness is ready to commence for the afternoon session
4 beginning at 2.45.

5 MR BIJU-DUVAL: (Interpretation) Thank you,
6 Mr President.

7 PRESIDING JUDGE FULFORD: Anything else, ladies and
8 gentlemen? No. Well, we hope you all have a pleasant weekend.
9 (The hearing ends at 3.52 p.m.)

10 RECLASSIFICATION REPORT

11 Pursuant to Trial Chamber I's email instruction dated 15th December
12 2011, the transcript is reclassified as public after the indicated
13 redactions have been implemented as ordered by the Chamber. All private
14 and closed sessions (*) are now available to the public with the exception
15 of the portions the transcript that have been redacted.