

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elisabeth Odio Benito and

4 Judge René Blattmann

5 Situation in the Democratic Republic of the Congo - ICC-01/04-01/06

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

7 Friday, 15 January 2010

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

9 \*(Closed session) Reclassified as open session

10 THE COURT USHER: All rise. The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE FULFORD: Good morning. Witness, please.

13 (The witness enters the courtroom)

14 (The accused enters the courtroom)

15 PRESIDING JUDGE FULFORD: Good morning, sir.

16 THE WITNESS: (Interpretation) Yes, good morning.

17 PRESIDING JUDGE FULFORD: Public or private session, Ms. Samson?

18 MS SAMSON: Public initially.

19 PRESIDING JUDGE FULFORD: Public? Public session, please.

20 (Open session at 9.35 a.m.)

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

22 PRESIDING JUDGE FULFORD: Mr Witness, you did extremely well yesterday. Can

23 I encourage you to continue giving evidence really in exactly the same way. Please make

24 sure you keep your voice up so that everything you said is heard by us in court and by

25 the interpreters and stenographers up in the booths above us and if, at any stage, you

1 want a break, please ask for one, and anyway, we will have a break in about an hour's  
2 time, so you won't be asked to sit and give evidence for too long.

3 Yes, Ms Samson.

4 MS SAMSON: Thank you, Mr President.

5 WITNESS: A/0225/06 (Witness answers through interpreter)

6 Questioned by Ms Samson: (Continued)

7 Q. Mr Witness, yesterday you were telling the Court about the day of your enlistment.  
8 And when Mr Keta asked you for the day and the date, you said that it was in the month  
9 of March, in the year 2003. At the end of the hearing yesterday, you clarified for the  
10 Court that you were enlisted in February, during the examination period, in the year  
11 2002. Are you able to clarify for the Court whether you were enlisted in the year 2002  
12 or in the year 2003?

13 A. When I spoke of 2002, I was talking of the school year; that is to say, the  
14 2002/2003 year.

15 Q. And so the year in which the two soldiers came to take you, was that in 2002  
16 or in 2003?

17 A. Are you asking me this about the school year, or the actual year itself?

18 Q. I'm asking about the actual year itself.

19 A. Yes. If we are talking about a civilian year, then it is the year 2003, but  
20 the school year was 2002 to 2003.

21 Q. Thank you. And on that day that you were taken by the two soldiers, you said  
22 that they had weapons. Are you able to say what kind of weapons they had?

23 A. These were arms that could be carried. I don't really understand the question  
24 with reference to the type of weapons.

25 Q. That's okay. Thank you very much, Mr Witness, for your answer.

1 MS SAMSON: Mr President, may we go into private session for one question?

2 PRESIDING JUDGE FULFORD: Private session, please.

3 \*(Private session at 9.39 a.m.) Reclassified as open session

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

5 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

6 MS SAMSON:

7 Q. Mr Witness, yesterday you indicated that one of the two soldiers who took you  
8 was named (Redacted). Do you know to which ethnic group (Redacted) belongs?

9 A. Yes, I do. (Redacted) is an (Redacted), generally speaking, which bears witness  
10 that he belonged to a certain ethnicity. So, well, in view of the fact that he spoke  
11 (Redacted), then I said that he was a member of the (Redacted) ethnic group.

12 MS SAMSON: Mr President, I have one more area to ask questions of the witness  
13 in private session, if I may ask for the Chamber's indulgence.

14 Q. Mr Witness, yesterday you discussed the place that the two soldiers took you  
15 to and you said that, upon arriving at this place, you went into prison. Who put you  
16 in this prison?

17 A. It was they who -- well, I was in prison. It was they who put me there, and  
18 the other soldiers were there, such as the Likili, were there to applaud.

19 Q. And when you say it was they who put you there, who specifically are you referring  
20 to?

21 A. What I meant was (Redacted).

22 MS SAMSON: Thank you, Mr President. If it suits the Bench, we could go into  
23 public session.

24 PRESIDING JUDGE FULFORD: Public session, please.

25 (Open session at 9.41 a.m.)

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

2 PRESIDING JUDGE FULFORD: Yes.

3 MS SAMSON:

4 Q. Mr Witness, were you told why you were being put into the prison?

5 A. I did not know.

6 Q. You said yesterday that you found soldiers there. Were the soldiers who were  
7 in the prison with you about your age, or were they older than you, or were they younger  
8 than you? Could you tell?

9 A. In the prison I came across soldiers of various ages, of various age groups.  
10 There were also children and there were adults, adult soldiers.

11 Q. And these children that you mentioned, were you able to see or tell if they  
12 were about the same age as you, or were they a little bit older than you, or a little  
13 bit younger than you?

14 A. At that moment in time I was younger still.

15 Q. And of the people that you refer to as being children in the prison, do you  
16 remember approximately how many children there were?

17 A. I do not know specifically how many there were in the prison but there were  
18 more than 15, approximately.

19 Q. Were there more than 15 people in total or more than 15 children; could you  
20 clarify that?

21 A. That is the total number.

22 Q. And do you think you would be able to help us understand, of the 15, how many  
23 of those people were children?

24 A. Myself included, there were six children. I found five of them there and, with  
25 myself, there were six of us.

1 Q. Were those children boys and girls?

2 A. Amongst those youngsters, there was one girl.

3 Q. Did you speak to any of those children when you were in the prison?

4 A. Thee did not say anything to -- anything to me, except that they were up against  
5 me. And when I entered, I was beaten. Well, the adults beat me. But the children asked  
6 me why I was there, and I also returned the question. I explained to them why I was there  
7 and they explained their presence to me.

8 Q. And why did they say they were there?

9 A. Some of them told me that they had been requested to transport baggages, baggage,  
10 and go to the camp with those baggage, with those baggages, but rather than releasing  
11 them, they were put in prison. And these were child soldiers; they were not new recruits.  
12 Amongst those children there were some who were already soldiers.

13 Q. And why did you tell them you were there?

14 A. I told them that I did not know why I was there; that's what I told them.

15 Q. Yesterday you mentioned that you came out of the prison the following day. And  
16 when you came out of the prison, what did you do?

17 A. We were not very far away. At the camp we weren't very far away from my house  
18 and family so, we were all let out of the camp. We were all outside of the camp. And  
19 then (Redacted) came and said, "Remain calm, young boy." And I asked him why he could  
20 not let me go home, and he said, "No, stay here." And then one of the commanders of the  
21 UPC came, and he took a boy, a soldier, and he said, "Go with him." And he said to me  
22 that I should go and show them where the houses are where people have money, where people  
23 are rich in the villages. So, I was in the company of two boys, and I was pushed. I  
24 left. And I showed them a house where they took goats from, and then we went back to  
25 the camp.

1 MS SAMSON: Your Honour, permission to ask one question in private session,  
2 please.

3 PRESIDING JUDGE FULFORD: Private session.

4 \*(Private session at 9.50 a.m.) Reclassified as open session

5 THE COURT USHER: We are in private session, your Honours.

6 PRESIDING JUDGE FULFORD: Yes.

7 MS SAMSON:

8 Q. You mentioned that a UPC commander came and took a boy and asked you to go with  
9 him. Do you remember the name of that commander?

10 A. I, to date, I do not recall his name.

11 MS SAMSON: Thank you very much, Mr President.

12 PRESIDING JUDGE FULFORD: You are thanking me for what, Ms Samson?

13 MS SAMSON: For having permitted me the private session.

14 PRESIDING JUDGE FULFORD: Fine.

15 MS SAMSON: And now I don't require it any longer.

16 PRESIDING JUDGE FULFORD: Good. I wasn't sure if you were thanking me for that  
17 or for your examination, which was now complete.

18 Public session, please.

19 (Open session at 9.51 a.m.)

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

21 PRESIDING JUDGE FULFORD: Yes.

22 MS SAMSON:

23 Q. Mr Witness, were you asked to do any other tasks while you were at this first  
24 camp?

25 A. Yes.

1 Q. What other tasks were you asked to do?

2 A. They said that I knew where rich people were to be found in the villages, and  
3 they would use me all the time in order to go and get hashish. And sometimes we would  
4 go with them in order to go and find young girls, because I knew beautiful girls, and  
5 they asked me to go and find those beautiful girls, and we went with them.

6 Q. And did you find any beautiful girls?

7 A. Of course.

8 Q. And what did you do with the beautiful girls?

9 A. I don't know. Once we had found the girls -- there were three girls on that  
10 occasion. That day, we took them back to the camp. I don't know where they were taken.  
11 And afterwards, the other commander came back with a girl to the camp, and the two other  
12 girls went off with soldiers. I was left in the presence with one soldier in order to  
13 return to the camp, and the two girls went off to an unknown destination; whereas, one  
14 of the girls was taken to the camp.

15 Q. And do you know if these beautiful girls -- the three that you found that day,  
16 and the other girl that another commander came with that you saw, do you know if these  
17 beautiful girls were about your age or were they older than you or younger than you?

18 A. On that occasion, I would say that the girls were older than me; maybe two or  
19 three years older, approximately.

20 Q. Did you ever find beautiful girls on any other days?

21 A. When the news spread in the villages, people were crafty; and when they saw  
22 me go by in the company of soldiers, they saw that I was coming with a group in order  
23 to loot, and people were in the know.

24 Q. Did you ever learn or come to know what had happened to the three beautiful  
25 girls that you had found that day?

1 A. I do not understand you.

2 Q. Did you see those three beautiful girls again?

3 A. I still haven't grasped your question. If you wouldn't mind --

4 Q. Let me ask it a bit differently. Did the commanders who had asked you to find  
5 the beautiful girls, did they ever tell you why they wanted the beautiful girls and what  
6 they wanted them for?

7 A. They did not tell me.

8 Q. I would like to ask you some questions now, Mr Witness, in relation to your -- the  
9 time you spent at the second camp. And yesterday, you said that when you arrived at the  
10 second camp, there were children there, but you didn't know their ages. Although you  
11 might not know their exact ages, are you able to help the Court understand whether the  
12 children you saw at the second camp were your age or older than you or younger than you?

13 A. Some of them were younger than me; others were of the same age; and others were  
14 older than me.

15 Q. And again, yesterday, when you were describing the people at the second camp,  
16 you also made reference to beautiful girls, and you said that the beautiful girls were  
17 treated differently than the boys and the other girls. How were the beautiful girls treated  
18 differently?

19 A. With regard to the girls, well, they were just taught how to handle weapons.  
20 And if you go to the -- to get water in the morning, well, you are flogged if you -- (inaudible).

21 Q. Mr Witness, part of your answer wasn't heard by the interpreters. You said  
22 that the girls were taught to handle weapons and you said that if you go to get water  
23 in the morning, well, you were flogged if something happened. Could you repeat when or  
24 in what circumstances one would be flogged?

25 A. Normally, in the camp there was *chai ya asubui*, the morning tea. So, you see,

1 you are whipped that time. They whipped you if you slept prone. Or you might get 10  
2 or 15 blows. We were whipped. And one stroke of the whip, if you were -- a bad boy would  
3 get 15 lashes, or 16.

4 Q. And yesterday you said that you were punished at the camp. What were you punished  
5 for? What did you do?

6 A. Yes. I was punished one day. My commander, he left; he left, and I didn't know  
7 where he went. He went travelling somewhere, and his woman remained. And usually, there  
8 was a woman. If the commander travelled, the bodyguard would be left with the wife of  
9 the commander. And the other bodyguard -- another person would go with the commander.

10 So the woman -- I remember I was very uneasy, because I was feeling pain in  
11 my chest. I got up late and I was whipped. And the wife said, "Little Yuka." And I  
12 left. And the wife said to me, take the jerrican and go and get water from the river - it  
13 was a 20 litre jerrican - and I went to the river. And I didn't carry it -- I could carry  
14 it full of water. She asked me to carry this 20 litre jerrican, and she asked me to take  
15 it to the house.

16 And I drew the water, and I had to really work hard to carry this jerrican full  
17 of water. And we -- I got there, and the jerrican fell. When it fell, I -- I grabbed  
18 it again. I lifted it up, and it was -- you see, there was a hole in the bottom of it  
19 after. I carried it by hand, and I brought the water back to the woman.

20 And she said, "Well, the jerrican has been damaged," and the water was leaking  
21 out. And she said, "This isn't possible." And so the woman slapped me. I was sulking  
22 still, and I said I didn't do it on purpose. And she said, "You mustn't say that to me."  
23 And so the bodyguard, her bodyguard, he had a bruise. And he hit me, too, with the butt  
24 of a rifle.

25 And when I cried, he asked me not to cry. He -- he took -- he brought out a

1 knife from his pocket, and he stabbed it right beside my eye, right here, and he cut  
2 me here. And the bodyguard said he was going to do like a tattoo on the other side here,  
3 so he grabbed me by the testicles and he pulled me that way, and he pulled me until I  
4 was hurt in that place.

5 MSSAMSON: Your Honour, for the record, I just note that in the early descriptions,  
6 the witness was indicating a place "here" and he was motioning with his right hand to  
7 the area where he was stabbed, being his left eye.

8 PRESIDING JUDGE FULFORD: Yes.

9 MS SAMSON: Subsequently, there was a second indication where he was told that  
10 he might have a tattoo on his face, in which case he was motioning to the other side  
11 of his face with his right hand to the right eye area.

12 PRESIDING JUDGE FULFORD: I think that's right, and I see Mr Desalliers nods  
13 in agreement. Thank you.

14 MS SAMSON: Mr President, might I ask one question in private session, please.

15 PRESIDING JUDGE FULFORD: Private session.

16 \*(Private session at 10.07 a.m.) Reclassified as open session

17 MS SAMSON:

18 Q. Mr Witness, you mentioned --

19 PRESIDING JUDGE FULFORD: Too quick, Ms. Samson.

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

21 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

22 MS SAMSON: Thank you.

23 Q. Mr Witness, you mentioned the words "my commander." What was your commander's  
24 name?

25 A. In that case, my commander -- the commander that I was given to, I was told

1 to follow him. (Redacted)

2 Q. Is this the man you described yesterday known as (Redacted)

3 or is this a different man?

4 A. Some people called him (Redacted), and the others called him (Redacted)

5 Q. And do you recall the name of the bodyguard who hit you?

6 A. It was a difficult name; I didn't remember it. I don't remember it now.

7 MS SAMSON: Thank you, Mr President. Public session, if that is suitable.

8 PRESIDING JUDGE FULFORD: Public session, please.

9 (Open session at 10.09 a.m.)

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

11 PRESIDING JUDGE FULFORD: Yes.

12 MS SAMSON:

13 Q. Yesterday, Mr Witness, you were describing another type of punishment which  
14 you called "target," involving shooting a person next to a tree. Did you ever see anybody  
15 punished in that way?

16 A. Yes. Yes, I saw that.

17 Q. Do you know whether the people who were punished in that way were your age,  
18 or older than you or younger than you?

19 A. In the camp, we didn't take account of age. Everyone was punished.

20 Q. And without giving us names, who gave that kind of punishment? Was it a commander,  
21 soldier or another type of person?

22 A. The commander was not allowed to inflict target as a punishment; only a major.  
23 Only the major could authorise such a punishment.

24 Q. Was it the major who then, himself, shot at the person or did he ask somebody  
25 else to do that?

1 A. It wasn't the major himself.

2 Q. Who would he ask to do that? Not names but, rather, did he ask commanders or  
3 other soldiers?

4 A. He asked the other soldiers normally to shoot, if a person -- five soldiers.

5 Q. Were you ever asked to do that?

6 A. I was never asked.

7 Q. At this second camp you spoke yesterday about having followed military training.

8 You described getting up in the morning, going to the river, and then you said that you

9 would undertake some other kinds of training. Could you give the Court some examples

10 of the other kinds of training that you did?

11 A. Could you repeat the question?

12 Q. Yes. Today you told the Court that girls were taught how to handle weapons.

13 Were you ever taught how to handle weapons?

14 A. We were taught.

15 Q. Could you explain a bit more what you were taught to do with the weapons?

16 A. Shoot.

17 Q. What kind of weapon were you using in training?

18 A. Myself, I was taught to handle an SMG.

19 Q. Were you ever taught to handle any other types of weapons?

20 A. They showed us but, personally, I didn't -- I didn't learn. We were shown the

21 other kinds of weapons and they showed us how. They just showed us but we didn't get

22 to try because I was unable to touch. I was able to shoot but for some weapons they just

23 showed me. They just showed me the SMG.

24 Q. Did they explain why you were unable to touch certain weapons?

25 A. Indeed. We, they showed the children how to use the small weapons. When they

1 saw that you were a bit older, and bigger, and could handle, for instance, a rocket launcher,  
2 they would show you and teach you how to shoot that. So we saw -- so they saw whether  
3 the person would be able to shoot a particular weapon and they would give you such a  
4 weapon to fire.

5 Q. Were you ever given a weapon of your own or not?

6 A. Myself, I didn't have a weapon of my own.

7 Q. You said yesterday that during the war you were a transporter, transporting  
8 boxes containing weapons; how often did you transport weapons?

9 A. That was during the war; during the war.

10 MS SAMSON: Mr President, may I ask one question in private session?

11 PRESIDING JUDGE FULFORD: Private session.

12 \*(Private session at 10.18 a.m.) Reclassified as open session

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

14 PRESIDING JUDGE FULFORD: Yes.

15 MS SAMSON:

16 Q. Who would order you to transport weapons?

17 A. It was the commander.

18 Q. What was his name?

19 A. (Redacted)

20 MS SAMSON: Thank you, your Honour. No further questions in private session.

21 PRESIDING JUDGE FULFORD: Public session, please.

22 (Open session at 10.18 a.m.)

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

24 PRESIDING JUDGE FULFORD: Yes.

25 MS SAMSON:

1 Q. Mr Witness, yesterday we were discussing a battle in Bogoro, and you indicated  
2 that you did not have a weapon during that battle. Did you have any other duties during  
3 that battle?

4 A. Yes. I had a task.

5 Q. What was your task?

6 A. Carry munition, ammunition.

7 Q. Were there other soldiers with you during that battle who were about your age?

8 A. Could you -- yes, there were.

9 Q. What were they doing?

10 A. Some carried -- some carried -- some carried the ammunition while others carried  
11 containers in which we could prepare.

12 Q. And during the same battle you told the Court yesterday that "Even the friends  
13 we were with, they were dead." Were these friends, to your knowledge, your age or were  
14 they older than you or younger than you?

15 A. We -- some were older, some were my age and some were younger than me.

16 MS SAMSON: Mr President, may I have your permission to go into private session  
17 for one question?

18 PRESIDING JUDGE FULFORD: Private session.

19 \*(Private session at 10.22 a.m.) Reclassified as open session

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

21 PRESIDING JUDGE FULFORD: Yes.

22 MS SAMSON:

23 Q. Mr Witness, did you have the same commander for this battle or another commander  
24 or indeed no commander? Who was your commander for this battle?

25 A. I ask for a break.

1           PRESIDING JUDGE FULFORD: Most certainly. Thank you, Mr Lubanga. We will sit  
2 again in public session in just a moment but, if Lubanga could leave, just so the witness  
3 could go. Private session, please. Rather, closed session, sorry. Closed session.

4           (The accused exits the courtroom)

5           \*(Closed session at 10.23 a.m.) Reclassified as open session

6           (The witness stands down)

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

8           PRESIDING JUDGE FULFORD: Yes, thank you, usher. We will sit with the witness  
9 again at 11 o'clock. Thank you.

10          Public session, please. Mr Lubanga, back into Court, please. Thank you.

11          (The accused enters the courtroom)

12          (Open session at 10.24 a.m.)

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

14          PRESIDING JUDGE FULFORD: Not meant critically but how much longer, Ms Samson?

15          MS SAMSON: I will be very brief, your Honour. I have only three or four questions  
16 remaining.

17          PRESIDING JUDGE FULFORD: That's very helpful. I know it's rather like asking  
18 the length of a piece of string, Mr Desalliers, but approximately?

19          MR DESALLIERS: (Interpretation) Yes, your Honour. It is very difficult to  
20 assess but I must tell the Chamber that I expect a cross-examination that will be relatively  
21 long. So I think it would be likely that the examination will not end today. I will  
22 do all I can to shorten it as much as possible but we do have many questions to ask of  
23 the witness.

24          PRESIDING JUDGE FULFORD: I am only asking from the point of view of planning  
25 of other testimony. That means that there's a real possibility that we will need certainly

1 part of Tuesday afternoon for the completion of this witness's evidence.

2 MR DESALLIERS: (Interpretation) One thing seems for sure; I'll need the whole  
3 day and, depending on how the witness answers, it may spill over into next Tuesday.

4 PRESIDING JUDGE FULFORD: Well, if that's the case, if the next witness is waiting  
5 at Court today, then that witness can be stood down. It is simply too unlikely that we  
6 will be reaching that witness.

7 Next, any views on the calendar? Ms Samson?

8 MS SAMSON: No observations, Mr President, thank you.

9 PRESIDING JUDGE FULFORD: Maître Mabilille.

10 MS MABILLE: (Interpretation) Your Honour, first of all we know full well that  
11 this is a difficult exercise. Our observations, and this is difficult to speak about  
12 the private interests of the Defence, but we would like, insofar as possible, truly to  
13 sit four days a week and not five. It may seem a bit surrealistic to the Chamber, but  
14 Mr Biju-Duval and I are supposed to be part-time on this case, and one day per week in  
15 our own offices seems necessary.

16 Insofar as possible, we would like to sit four days a week, looking at the planning.  
17 Some weeks apparently we will be starting Monday at 9.30 and finish Friday at 7 p.m.  
18 This schedule seems very difficult to us and one last point I draw the Chamber's attention  
19 to, a problem that may be more crucial to the OTP than to us, but getting transcripts  
20 when you end at 7 p.m. in the evening, that means that we receive them at a time when  
21 it is difficult for us to use them.

22 I do understand that with the new schedule it will be more of a penalty for  
23 the OTP than for us, so there you have it. These are my observations.

24 MR WALLEYN: I have no observations, your Honour.

25 MR KETA: (Interpretation) No observations, your Honour.

1           PRESIDING JUDGE FULFORD: Thank you very much.

2           Maître Mabilille, the schedule will be published, broadly, in its current form  
3 but, and there is a substantial but, the two points that you have made are ones that  
4 the Bench is sympathetic with. And in particular, whether or not a four rather than a  
5 five day week is preferable and whether 7 o'clock, for a number of reasons, is a sensible  
6 proposition.

7           At the beginning of each week the Chamber will give directions as to what is  
8 going to happen in the following week, so you will have, I hope, sufficient warning of  
9 adjustments that take into account the kind of matter that you have raised. And so do  
10 not have a heavy heart if you see the schedule published broadly in its current form  
11 because there will be appropriate adjustments to take into account what you have raised.

12           If giving a week's warning of the actual agenda is not going to be long enough,  
13 can you please have a message sent to me through to me by legal officer; but at the moment,  
14 what I am proposing is on a Monday to indicate what the Chamber has with finality in  
15 mind for the following week. So you will have at least seven days notice of alleviations  
16 in the schedule.

17           Special measures for 229, any objections to what is proposed?

18           MS SAMSON: None. Thank you.

19           PRESIDING JUDGE FULFORD: Maître Mabilille?

20           MS MABILLE: (Interpretation) No objections, your Honour.

21           PRESIDING JUDGE FULFORD: Thank you very much. We have been requested by the  
22 Defence to order disclosure of those victims' applications where 270 was the individual  
23 who acted for the individual victim applicants.

24           Maître Mabilille has stressed that she doesn't seek in that disclosure to have  
25 revealed necessarily the name of the individual victim applicants. Her interest, as I

1 understand it, is the extent to which 270 has acted; and additionally, whether there  
2 is some other information on the form which may be of assistance to the Defence which  
3 doesn't reveal identity.

4 Now, we need to establish how we are going to deal with this. I would imagine  
5 that the Victims & Witnesses Unit may have an interest, and I imagine that the VPRS may  
6 also be interested in this issue.

7 Now, are there any proposals? Should this be dealt with at the beginning of  
8 next week or some stage next week during the course of a hearing? Are there to be written  
9 observations? Can we have some assistance, please.

10 MSSAMSON: Mr President, the Prosecution will not be filing written observations  
11 on the point. Our position is, that we do not have any objection to disclosure as requested  
12 by the Defence. Our only observation, although disclosure doesn't in this case affect  
13 the Prosecution, is that any dissemination of lesser redacted versions of victim application  
14 forms perhaps ought to be done by the VPRS through the regular filing channels. But as  
15 I understand it, that's perhaps something that Mr Keta and the Chamber will develop further,  
16 in due course.

17 PRESIDING JUDGE FULFORD: Now, I am looking towards the victims' benches. Any  
18 thoughts? No. All right. Mr Keta?

19 MR KETA: Interpretation) Yes. Thank you for giving me the floor, your Honour.  
20 Yes. I would go in the same direction with regards to this sensitive issue. It's very  
21 essential that the VPRS and VWU be associated with this. That's what I wanted to say.

22 PRESIDING JUDGE FULFORD: Well, unless Maître Mabilie has any objections, I  
23 think therefore what we will say is, that on Thursday morning next week, as the first  
24 issue to be discussed in Court, will be this issue of disclosure, and all those who are  
25 interested in the point should attend. And I suspect that means somebody, please, from

1 the VPRS and \*the Head of the Victims and Witnesses Unit. Thank you.

2 Now, there is one ex parte hearing that needs to take place in relation to contact  
3 with witnesses. How urgent is this, Maître Mabilles? In other words, given that we are  
4 Friday today, and we are not sitting until Tuesday afternoon of next week, is this something  
5 that should be worked into the agenda today?

6 MS MABILLE: Your Honour, I think that for the planning reasons, I would like  
7 to turn to the Office of the Prosecutor. I think that we have to have this ex parte hearing  
8 today.

9 PRESIDING JUDGE FULFORD: What's your view, Mr Sachdeva?

10 MR SACHDEVA: Indeed, Mr President, we would like to have that hearing as soon  
11 as possible since it pertains to the number of days the Defence witnesses are in The  
12 Hague, to permit us to interview them, for those witnesses we want to interview prior  
13 to their taking the stand. And we wanted to inquiry with ... with the Defence and with  
14 the Victims & Witnesses Unit precisely how long that period can be, whether it's five  
15 days or ten days, perhaps.

16 PRESIDING JUDGE FULFORD: Right. Well, Mr Sachdeva, if there needs to be an  
17 ex parte hearing on this, then it will have to be today. You will understand our reluctance  
18 at this point in time, because not only is there whatever length of time that's taken  
19 up by the ex parte hearing, there is the inevitable half-an-hour that's then lost thereafter  
20 because of the need to reconfigure the equipment.

21 And so effectively an hour disappears when we are mid-evidence with a witness  
22 who - if we are not careful - will not only go beyond today, he will also go beyond Tuesday;  
23 and then have to wait until Thursday of next week before he completes his evidence.

24 Now, over the break that we are about to have, I am going to ask you, please,  
25 to have a full and frank discussion with Maître Mabilles to see whether a formula can

1 be agreed between the two of you that the Bench - if it agrees it's right - can sanction.  
2 Is there really such disagreement that requires an ex parte hearing today? In a moment,  
3 Mr Walley. In a moment.

4 MR SACHDEVA: Mr President, in fact, of course if this can be resolved without  
5 the need for an ex parte hearing, we will be happy to do that. I understand the concerns  
6 your Honours have raised. And we have had discussions with the Defence; it's an issue  
7 that we are concerned with. But I would ask counsel, if she wanted to add -- my learned  
8 friend, if she wanted to add anything to that.

9 MS MABILLE: (Interpretation) Your Honour, I don't think that there is a real  
10 difficulty with the Office of the Prosecutor. I think that there is a problem -- well,  
11 a problem that can be resolved with the VWU. And it's more this three-part involvement.  
12 But I would just wants to mention one particular point, because this will make it possible  
13 for the Chamber to understand what our concern is.

14 Today, we have to take up contact with our own witnesses to be able to ask them  
15 if they would accept to meet the Office of the Prosecutor. We, therefore, have a -- need  
16 to have a discussion in that regard. And the VWU, with whom we have had discussions with  
17 regard to this problem, says that in the decisions that you have issued, these were decisions  
18 with regards to familiarisation and that these personal contacts which should be undertaken  
19 were not provided for currently. That's the first problem.

20 The second problem is, that if there's a discussion -- and here, I don't want  
21 to go into this publicly, but there is another issue with regards to the time that is  
22 necessary, and the practical arrangements that would be necessary if these witnesses  
23 are to be re-examined, to be able to do that. So I don't think that we have a fundamental  
24 problem with the Office of the Prosecutor; and if we had been able to resolve it without  
25 it, we would have tried to do so, because we totally understand the constraints that

1 you are subject to.

2 PRESIDING JUDGE FULFORD: Right. What I am going to propose is this: Can the  
3 Prosecution and the Defence over the adjournment identify what -- if there is broad agreement  
4 or a joint proposal, identify exactly what it is that you are both suggesting should  
5 occur. And could that, please, please be set out for us very shortly during the course  
6 of the morning in an email so we know what the position is.

7 Similarly, could we, please, have in writing - it doesn't have to be by way  
8 of a filing - an email from either VWU or any interested victims as to what their position  
9 is in relation to this issue. And it may be that once we have had those observations  
10 and submissions in writing, we can then resolve the issue without the need for an ex  
11 parte hearing.

12 Now, that's what I propose. Does anybody wish to gainsay that suggestion? Right.  
13 Mr Walley.

14 MR WALLEYN: Just, Mr President, that I am suggesting that if an ex parte is  
15 necessary, to fix it at the end of the day so that the participants not concerned by  
16 this hearing can be liberated and not have to wait for hypothetical rest of the proceedings.

17 PRESIDING JUDGE FULFORD: You would like to go home, Mr Walley?

18 MR WALLEYN: Indeed, Mr President.

19 PRESIDING JUDGE FULFORD: That is entirely understandable. So would we. Right.  
20 We shall do everything we can to avoid an ex parte hearing, whilst nonetheless doing  
21 full justice to the point. But if that could please be done, we may be able to avoid  
22 it. We shall sit again at a quarter-past 11.

23 (Recess taken at 10.44 a.m.)

24 (Upon resuming at 11.16 a.m.)

25 \*(Closed session) Reclassified as open session

1 THE USHER: All rise. Please be seated.

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

3 PRESIDING JUDGE FULFORD: Witness, please.

4 (The witness enters the room)

5 PRESIDING JUDGE FULFORD: Yes, officer.

6 Public session, please.

7 (Open session at 11.17 a.m.)

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

9 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

10 MS SAMSON: Thank you.

11 Q. Mr. Witness, before the break, we were discussing the battle of Bogoro, and  
12 could you please tell the Court whether you were wearing civilian or military clothes  
13 during the battle?

14 A. I was wearing military clothing.

15 Q. You mentioned the other soldiers who were in the battle. Were there any girl  
16 soldiers in the battle, or only boy soldiers?

17 THE INTERPRETER: Answer inaudible.

18 MS SAMSON:

19 Q. Mr. Witness, could you repeat your answer, please.

20 A. We were a mixture.

21 Q. Thank you. And of the girls who were in the battle with you, were they your  
22 age, or older than you, or younger than you?

23 A. Amongst the girls?

24 Q. Yes, amongst the girls.

25 A. Some of them were older than me; some of them were the same size as me; and

1 some were younger than me.

2 Q. And what were these girls doing during the battle?

3 A. Some of the girls were handling weapons; some of the girls were transporting  
4 ammunition; and others would scream whenever there was bombing.

5 MS SAMSON: Mr President, at the time of the break we were in private session.  
6 I had one question which was not answered. I seek leave to go back to private session  
7 for that.

8 PRESIDING JUDGE FULFORD: Certainly. Private session.

9 \*(Private session at 11.21 a.m.) Reclassified as open session

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

11 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

12 MS SAMSON:

13 Q. Mr. Witness, for the battle of Bogoro, who was your commander?

14 A. We were under the same commander. I was under the same commander.

15 Q. Could you repeat his name for the Court, please.

16 A. (Redacted)

17 MS SAMSON: Thank you, Mr President. I have no further questions.

18 PRESIDING JUDGE FULFORD: Thank you very much. Mr Desalliers. Thank you very  
19 much, Ms Samson.

20 Questioned by Mr Desalliers: (Interpretation)

21 Q. Good morning, Witness.

22 A. Good morning.

23 Q. My name is Marc Desalliers. I am a lawyer, and I shall be putting a number  
24 of questions to you for the defence of Mr Thomas Lubanga.

25 PRESIDING JUDGE FULFORD: And Mr Desalliers, before you go on, can we move back

1 into public session or should we remain in private session?

2 MR DESALLIERS: (Interpretation) We may commence in open session, Mr President.

3 PRESIDING JUDGE FULFORD: Public session, please.

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

5 (Open session at 11.23 a.m.)

6 MR DESALLIERS: (Interpretation)

7 Q. I would first like to indicate to you that if you have not quite grasped my  
8 question, or if you have misunderstood my question, please do not hesitate to tell me,  
9 and then I will repeat the question in order to make sure that you have understood it.

10 A. Very well.

11 Q. First of all, I shall be showing a number of documents to you. These are your  
12 documents with regard to your participation as a victim before the International Criminal  
13 Court.

14 Mr President, might we give a hard copy of these documents to the witness, please?  
15 I also have copies for the Chamber and copies for my learned friends.

16 PRESIDING JUDGE FULFORD: Absolutely, Mr Desalliers. I presume notice has been  
17 given that these documents were to be relied on.

18 MR DESALLIERS: (Interpretation) Yes, Mr President. These are, quite simply,  
19 documents that pertain to the participation of the witness, and these are the only documents  
20 that we shall be using during the examination, but we have informed everybody as to the  
21 fact that we would be using them.

22 PRESIDING JUDGE FULFORD: Good. And there are -- we've established that there  
23 are no reading difficulties; is that right, Mr Desalliers?

24 MR DESALLIERS: (Interpretation) To my understanding, there are no  
25 difficulties.

1               PRESIDING JUDGE FULFORD: Then let them be distributed. Thank you very much.

2       Thank you, Ms Michels.

3               THE INTERPRETER: Message from the English booth, Mr President. Could counsel  
4       and the witness please be reminded to observe a pause for the purposes of interpretation  
5       and court reporting. Thank you.

6               PRESIDING JUDGE FULFORD: While those are being distributed, Mr Desalliers,  
7       Mr Witness, can I remind you both, please, to try to build in a pause at the end of one  
8       person speaking before another comes in. I don't know whether you heard, there's just  
9       been a request from the booth upstairs that we don't have overlapping speakers, so a  
10      pause, please. Thank you.

11              Yes, Mr Desalliers.

12              MR DESALLIERS: (Interpretation) Yes, one point of clarification with regard  
13      to the documents before I identify them. They should not be shown to the public. Therefore,  
14      the questions that I shall be putting with regard to these documents initially do not  
15      have a bearing upon the identity of the witness, but they should not be shown on the  
16      screen.

17      Q.       Mr Witness, I have given you some documents that are identified under tabs 1,  
18      2 and 3. I shall be moving forward chronologically and I would like, first of all, to  
19      draw your attention to tab 2.

20              Could one please help the witness to find tab 2?

21              THE INTERPRETER: Message from the interpreters again, apologies. We do not  
22      have these documents.

23              MR DESALLIERS: (Interpretation)

24      Q.       Mr Witness, you have before you a document titled -- entitled "Standard request  
25      for participation before the International Criminal Court." Do you see this document?

1 A. Yes, I do.

2 Q. I would ask you to leaf through this document and tell me whether you recognise  
3 this document as being your request for participation as a victim. Please take time to  
4 look at it and then I will ask you whether you recognise it and whether you remember  
5 it.

6 I can see you turning the pages a little further forward in the document. I'm  
7 just asking you to look at tab 2. Do you recognise your request for participation as  
8 a victim before the International Criminal Court?

9 A. Yes, I do recognise this document.

10 Q. I would draw your attention to page 15 of the document. If you could please  
11 consult page 15 of the document. Can you see the top right-hand corner of page 15? Do  
12 you recognise your signature there?

13 A. Yes, I do.

14 Q. And you also signed all the pages of this document at the bottom of the page,  
15 in the rectangle, did you not?

16 A. Yes.

17 Q. Did this form reiterate your version of the events as they unfolded at the time  
18 when you gave the information? Do you agree with what has been taken down in this form?

19 A. I do not understand you.

20 Q. Very well, Mr Witness, I shall rephrase. When you signed this document, you  
21 appended your signature to the end of the document and you appended your signature at  
22 the bottom of all the pages of the document. Was this with a view to saying that you  
23 were in agreement with what was said in the document?

24 A. Yes.

25 Q. Thank you. Now, I would request that you consult tab 3, the next document.

1 At the top of the page you have the number 1/13. Can you see that in the top right-hand  
2 corner of the page?

3 A. Yes, I can see this.

4 Q. Very well. I would now request that you turn the pages until the penultimate  
5 page of the document where 12 of 13 is written; that is to say the penultimate page of  
6 the document, please.

7 As you see in the top right-hand corner of the document you have 12/13. Mr Witness,  
8 is this additional information that you provided with regard to your request for  
9 participation as a victim before the International Criminal Court?

10 A. Yes.

11 PRESIDING JUDGE FULFORD: Now, Mr Desalliers, I'd like to allocate some EVD  
12 numbers, please. Tab 2. I'm proposing that we give both tab 2 and tab 3 an EVD number.  
13 At the moment tab 2 only has an MFI number but it seems to me, given that these are going  
14 to be the subject of questioning, in reality, they both need EVD numbers. Do you agree  
15 with that?

16 MR DESALLIERS: (Interpretation) In fact, Mr President, the document at tab  
17 2 did indeed receive the MFI number yesterday; it was MFI-D00164. However, at this juncture  
18 what we would request is that the three documents that I shall be putting to the witness  
19 retain an MFI number, and were the need to arise, we would operate in the same manner  
20 as the Office of the Prosecutor; that is to say, that were the need to arise that these  
21 documents be admitted or tendered into evidence under an EVD number, we will do this  
22 at a later stage. So, for the time being, I would like these documents to merely retain  
23 an MFI number, if possible.

24 PRESIDING JUDGE FULFORD: Let us then give tab 1 and tab 3 an MFI number, please.

25 THE COURT OFFICER: Tab 1, your Honours, which is ICC-01/0406-2132 Annex D

1 confidential would be assigned MFI-D-00166. And tab 3, your Honours, which is  
2 ICC-01/04/06-224 Annex 1 confidential would be assigned MFI-D-00167. And I understand  
3 tab 2 which is ICC-01/04/06-2222 Annex 11 confidential should be identified as  
4 MFI-D01-00165.

5 PRESIDING JUDGE FULFORD: On the form I've got it's down as 164, not 165. Is  
6 it 165? It's 165. All right. That was a typographical area.

7 Sorry to interrupt you, Mr Desalliers. On you go.

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

9 Q. So, Mr Witness, you have recognised this document. I would like you to please  
10 consult the last page of the document; that is to say 13 of 13. Is this your signature  
11 in the bottom left-hand corner?

12 A. Yes.

13 Q. So you were in agreement with all that was written or contained in this document  
14 of two pages?

15 A. Yes.

16 Q. Finally, I would like to show you the first document in the booklet I have provided  
17 you with under tab 1. For the record, for identification, this is proceedings  
18 2132-Conf-Annex D; that is a six-page document.

19 I apologise, this document has indeed received an MFI number, 166; is that correct?

20 THE COURT OFFICER: That is correct.

21 MR DESALLIERS: (Interpretation) Thank you.

22 Q. Mr Witness, would you be so kind as to consult page 2 of this document. You  
23 can see at the top of the page it is written "Statement."

24 A. Yes.

25 Q. Do you recognise your statement that you gave in conjunction with your

1 participation as a victim before this Court? You gave this on 8 August 2009; is that  
2 correct?

3 A. Yes.

4 Q. If you consult page 6 of the document, at the last page, under tab 1, do you  
5 recognise your signature?

6 A. Yes, I do.

7 Q. So you were in agreement with everything contained in the document?

8 A. Yes.

9 Q. Thank you.

10 MR DESALLIERS: (Interpretation) Mr President, with your leave, I would need  
11 to put a question to the witness in closed session.

12 PRESIDING JUDGE FULFORD: Private session, please.

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

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

15 MR DESALLIERS: (Interpretation)

16 Q. Mr Witness, I shall now be putting a number of questions to you on the subject  
17 of your studies. Could you please tell us which school you attend, which primary school  
18 you attended?

19 A. I completed my primary school studies at (Redacted) school.

20 Q. Thank you.

21 Mr President, we may move into open session again, please.

22 PRESIDING JUDGE FULFORD: Public session, please.

23 (Open session at 11.44 a.m.)

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

25 PRESIDING JUDGE FULFORD: Yes.

1 MR DESALLIERS: (Interpretation)

2 Q. Mr Witness, I shall be putting other questions to you with regard to your primary  
3 school studies, and I would request that you no longer mention the name of the primary  
4 school that you attended. Could you please tell us at what age you entered primary school,  
5 the first year of primary school?

6 A. I started primary school -- I don't know.

7 Q. Am I to understand that you don't remember? Take your time. Think of it carefully.  
8 Do you remember the age that you were at when you began your first year of primary school?

9 A. Yes, I remember.

10 Q. Could you tell us, please.

11 A. I wasn't four. Well, I was -- I had reached the age of four.

12 Q. So you were not quite four when you began primary school?

13 PRESIDING JUDGE FULFORD: Well, the witness started off saying, "I wasn't four."  
14 But then said he had reached the age of four, so I think you must be careful with this,  
15 Mr Desalliers. Certainly, as it's been interpreted for us, the end of the answer indicated  
16 that he had, so your question isn't a fair reflection of what he said.

17 THE INTERPRETER: A message from the English booth: While interpreting the first  
18 answer, it was very unclear.

19 MR DESALLIERS: (Interpretation) I will ask again because I don't want any  
20 ambiguity about this point. I will ask again, and I'll give him an opportunity to give  
21 us the age he was when he began going to school.

22 Q. Mr Witness, I think there's some ambiguity here regarding your answer. When  
23 you entered the first year of primary school, the year you began, the first year, how  
24 old were you?

25 A. I was three-and-a-half. I hadn't reached four. I was three-and-a-half.

1 Three-and-a-half.

2 Q. Thank you. Did you do all your primary education at the same school?

3 A. Yes.

4 Q. Did you skip a year or two when you were in primary school?

5 A. When my parents sent me, they sent me, and I was very smart. And I did repeat  
6 some classes until I got my certificate.

7 Q. Very well. So you never skipped a year or moved ahead a year? So did you have  
8 a normal course? You went from one -- the first year to the sixth, normally?

9 A. "Normal"? I don't understand.

10 Q. You started in first year, and then you did your second year, your third year,  
11 your fourth year, your fifth year and your sixth year of primary school in the usual  
12 order?

13 A. I still don't understand anything.

14 Q. Thank you for reminding me. I'll try to be clearer. Did you jump over a school  
15 year or not do, or did you do every year one after another?

16 A. Normally.

17 Q. Thank you.

18 MR. DESALLIERS: Your Honour, I have a few questions to ask in closed session.

19 PRESIDING JUDGE FULFORD: (Microphone not activated) ... absolutely right.  
20 We're not. Close the session please. I'm forgetting what "red" and what "green" means,  
21 Mr Desalliers. It's counter-intuitive, to an extent.

22 \*(Private session at 11:51 a.m.) Reclassified as open session

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

24 PRESIDING JUDGE FULFORD: Thank you very much.

25 MR. DESALLIERS: (Interpretation)

1 Q. Mr. Witness, you told us yesterday that you did your high school at the (Redacted)  
2 (Redacted). But what you said was that you were at the (Redacted)  
3 (Redacted) in 2003; is that correct?

4 A. I beg your pardon?

5 Q. In 2003, were you indeed at the (Redacted)?

6 A. Yes, I was there.

7 Q. Did you go to other secondary schools other than (Redacted)  
8 (Redacted)?

9 A. I always was there.

10 Q. You did mention that your complete name is (Redacted); is that  
11 correct?

12 A. Sometimes there's a mix-up. Sometimes I start with the first -- my first name.

13 Q. So the order of the names may change, but it's still the three -- the same three  
14 names?

15 A. (Inaudible)

16 Q. Were you always registered by those three specific names at school?

17 A. Yes.

18 Q. In particular -- particularly for the (Redacted), you were  
19 registered as (Redacted) or in some different order, but under those three names?

20 A. Yes.

21 MR DESALLIERS: (Interpretation) We can go into open session, your Honour.

22 PRESIDING JUDGE FULFORD: Certainly, Mr Desalliers. And midday, in  
23 five-minutes' time, we'd like to give the witness a ten-minute break. So if you could  
24 bear that in mind. Thank you.

1 (Open session at 11.53 a.m.)

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

3 PRESIDING JUDGE FULFORD: Thank you.

4 MR DESALLIERS: (Interpretation)

5 Q. In which year did you begin your first year of secondary school?

6 A. 2001.

7 Q. At the secondary school level, did you have to repeat years?

8 A. I didn't have to repeat a year.

9 MR DESALLIERS: (Interpretation) Your Honour, I'm about to turn to another  
10 matter. It might be the right time to have our break.

11 PRESIDING JUDGE FULFORD: Thank you, Mr Desalliers. Yes.

12 Sir, these are, I suspect, quite difficult questions having to remember back  
13 how old you were at particular times and which years they happened, and I don't want  
14 this to overload you. So we're going to give you a break now and we'll sit again at ten-past  
15 12.

16 Closed session, please.

17 \*(Closed session at 11.56 a.m.) Reclassified as open session

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

19 (The witness stands down)

20 PRESIDING JUDGE FULFORD: Ten past.

21 (Recess taken at 11.57 a.m.)

22 (Upon resuming at 12.11 a.m.)

23 \*(Closed session) Reclassified as open session

24 THE USHER: All rise. Please be seated.

25 PRESIDING JUDGE FULFORD: Mr Desalliers, we asked Ms. Michels to have a word

1 with the witness over the break, just to see how things are and how he's doing. The message  
2 that's come back is generally good. One request, though, to you, and I know this is difficult,  
3 but in framing your questions, could you think a little bit less of the language of perhaps  
4 Simone de Beauvoir and a little bit more the language of Tintin, short questions with  
5 straightforward words in them, without complicated subphrases or subclauses? I'm not  
6 suggesting that you have been, but he has said that he finds some of the questions difficult  
7 to follow because French spoken in Quebec, I suppose, is slightly different from French  
8 spoken in the Congo. So just a suggestion. Thank you.

9 Witness, please.

10 (The witness enters courtroom)

11 PRESIDING JUDGE FULFORD: Public session, please.

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

13 (Open session at 12.14 p.m.)

14 PRESIDING JUDGE FULFORD: Sir, you're -- sorry to repeat it. You are doing very  
15 well. We understand that obviously with questions about dates and ages, particularly  
16 if they're some years ago, you're going to need to take time to think about them. Don't  
17 be at all embarrassed about needing to think about when things happened and, obviously,  
18 do your best and answer the questions if you can, but if you can't remember any dates,  
19 of course you'll say so. But take all the time you need to answer Mr Desalliers' questions.  
20 These issues are important, and we're grateful to you for your assistance. But don't  
21 feel any embarrassment.

22 Yes, Mr Desalliers.

23 MR DESALLIERS: (Interpretation)

24 Q. Mr. Witness, how much time were you in the army for in total? How much time  
25 have you spent in the army?

1 A. I spent several months.

2 Q. Can you tell us approximately how many months?

3 A. I know that I went home in 2005.

4 Q. You said you went back home in 2005. Does that mean that you were enlisted  
5 in 2003 and that you left the army in 2005?

6 A. No. No, I went back and the -- I went to live somewhere else in 2005.

7 Q. Thank you. What's now of interest to me is that when you left the army, do  
8 you remember -- perhaps you remember the month or the date when you left the army?

9 A. The month and the date, I don't remember.

10 Q. Do you remember, when you left the army, if it was during the school year or  
11 if it was during the summer holidays? Can you remember that?

12 A. The -- what do you mean by "the summer holiday"? I don't understand.

13 Q. In the Congo, the schools finish every year at the end of the month of June;  
14 is that correct?

15 A. At the end of the -- or 2 July.

16 Q. So, did you leave the army before or after 2 July?

17 A. I don't remember because I have certain problems.

18 Q. I'm going to read an extract of the statement that you gave in the month of  
19 August and which is to be found on page 2. So, I'm going to read a sentence which is  
20 at the end of paragraph 4. The last sentence spoke about the time that you were enlisted,  
21 and I'm going to quote: "At that time I was at the third secondary in the science school,  
22 in the scientific section." So, my question is as follows: Can you confirm that at the  
23 time you were enlisted, you were in the third secondary year in the scientific section?

24 A. Yes.

25 MR DESALLIERS: (Interpretation) Your Honour, I have a clarification to ask

1 for in closed session.

2 PRESIDING JUDGE FULFORD: Private session, please.

3 \*(Private session at 12.22 p.m.) Reclassified as open session

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

5 MR DESALLIERS: (Interpretation)

6 Q. Witness, I'm going to ask you questions relating to the two camps which you  
7 mentioned. I just want to clarify that when I refer to the first camp, I mean by that  
8 (Redacted), and by the second camp, that means the (Redacted). Do we understand each  
9 other in that regard?

10 A. Yes.

11 MR DESALLIERS: (Interpretation) Thank you, your Honour. We can now go to open  
12 session.

13 PRESIDING JUDGE FULFORD: Public session, please.

14 (Open session at 12.23 a.m.)

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

16 PRESIDING JUDGE FULFORD: Thank you.

17 MR DESALLIERS: (Interpretation)

18 Q. You said yesterday that the soldiers that you met, the two soldiers that you  
19 had met and who enlisted you, these two soldiers asked nothing to you, they didn't tell  
20 you anything with regards to the journey between your residence and the first camp. Am  
21 I summarising well what you said?

22 A. If you could ask the question again.

23 Q. I just want to confirm, the two soldiers that you met close to your home and  
24 who took you to the first camp, these soldiers, they asked nothing of you and they didn't  
25 order you to do something?

1 A. Yes.

2 Q. Have I also understood well that they had pulled you by force to the first camp?

3 A. You have understood that.

4 Q. Is that what you said?

5 A. Please, could you repeat? I don't understand.

6 Q. Certainly. The two soldiers that you met close to your home, did they drag  
7 you by force or take you by force to the first camp?

8 A. Yes, they did take me there by force.

9 Q. I'm going to read another part of your statement, which is part 1 from last -- tab  
10 1. I think it's from August. Paragraph 4, and I quote, "I was afraid and I let them  
11 take me. They seized me around the waist and they made me transport heavy cases of ammunition  
12 to the transit camp." And I won't say that name. That's the end of the quote. So, I  
13 would like to know, Witness, why did you say in August in your written statement that  
14 they asked you to transport cases or crates of ammunition?

15 A. They seized me and, when I wanted to run away, the other said to me that if  
16 I fled, I would be killed. So, (Redacted) gave the crate. It wasn't a crate  
17 or, rather, it was a charger of a weapon, and so they asked me to transport that, and  
18 I went with that. They accompanied me there.

19 Q. So what we see in your written statement, "transported heavy cases or crates  
20 of ammunition", that's not completely correct, then?

21 A. It is correct.

22 Q. I just want to understand. Is it a magazine or was it a crate of ammunition?

23 A. It's difficult for me. I didn't have any strength at that time. It was heavy  
24 for me. It wasn't just the load, but they normally carry these things and they put them  
25 everywhere. So I don't know. There's something else. There were other things, too.

1 Q. Thank you. Did you go by foot to the first camp?

2 A. On foot.

3 Q. And how much time did you have to walk for to get to the camp?

4 A. I said that it wasn't so far from where I was living.

5 Q. Well, can you tell us how much time you had to walk for in order to get there?

6 A. You know that that event -- well, certain things are difficult, I have difficulties  
7 in answering, because it took place seven years ago. So sometimes it's difficult for  
8 me to answer the questions.

9 Q. Very good. Thank you. You indicated with regards to the first camp that there  
10 was a prison there and that this prison was a house of straw. Can you -- is that what  
11 you said to the Court?

12 A. Yes.

13 Q. Can you give us a description? Can you describe this prison to us in more detail?

14 A. Yes. The prison was built in the middle of the camp. It was surrounded by houses.  
15 The prison was in the middle of the camp. Before building this prison, there was a hole  
16 with rooms there and it was in the form of tombs.

17 Q. Just so I can understand this well, can you say these holes that were in the  
18 forms of graves or tombs, were they within the prison or not?

19 A. The holes were within side it. So these -- it was on top of these holes that  
20 the house was built.

21 Q. Thank you. Can you tell us by what means you went from the first camp to the  
22 second camp? Was it by foot or was it by vehicle?

23 A. It was on foot.

24 Q. And you were accompanied by how many people to go there?

25 A. Several persons, but I don't remember the exact number.

1 MR DESALLIERS: (Interpretation) Your Honour, I have a question to ask in closed  
2 session.

3 PRESIDING JUDGE FULFORD: Private session, please.

4 \*(Private session at 12.33 a.m.) Reclassified as open session

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

6 PRESIDING JUDGE FULFORD: Thank you.

7 MR DESALLIERS: (Interpretation)

8 Q. Do you remember the name of the persons who accompanied you on foot from the  
9 first to the second camp?

10 A. Yes. Yes. It was with -- first of all, at the moment we left (Redacted)  
11 was there. We went with them. (Redacted) was still there when we left. And when we arrived  
12 at the second camp, I -- I didn't see them. It's as if they went back to the first camp.  
13 I don't know.

14 Q. But the commanders who you have just mentioned did walk with you from the first  
15 camp to the second camp, is that what you're telling me?

16 A. I'm sorry?

17 Q. The commanders who you've just mentioned, did they walk with you from the first  
18 camp to the second camp?

19 A. Yes.

20 MR DESALLIERS: (Interpretation) Your Honour, we can now return to open session.

21 PRESIDING JUDGE FULFORD: Thank you, Mr Desalliers. Public session, please.

22 (Open session at 12.35 a.m.)

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

24 PRESIDING JUDGE FULFORD: Yes.

25 MR DESALLIERS: (Interpretation)

1 Q. Could you please tell us how much time you had to walk for from the first camp  
2 to the second camp?

3 A. Two days.

4 Q. The second camp, could you describe how many people were there? How many people  
5 were in the second camp?

6 A. I don't know that precisely.

7 Q. Obviously, I'm not asking you for an exact figure, but were there 50? 20? 500?  
8 Could you give us your -- your idea on that?

9 A. We were numerous.

10 Q. Were there more people in the first camp or in the second camp?

11 A. Because -- I can't say, because sometimes the soldiers -- some of them left  
12 and some came back. Some of them came and went to other camps. So I don't know if we  
13 were more -- if there were more people in the first or in the second camp, or in the  
14 second camp than in the first camp. That I can't tell you.

15 Q. Very well. Can you tell us with regards to the second camp if it was a military  
16 camp or was it a training camp, in your opinion?

17 A. I would say that it was where I was trained. So for me, it was a training camp,  
18 because I also saw other people being trained there. And I said that it was that, the  
19 training camp. It was that were trained -- there that they trained the soldiers.

20 Q. So the other persons who were with you, you were all people who were following  
21 training or instructors; would that be correct?

22 A. Your question isn't clear. I don't understand.

23 Q. Okay. Were there only recruits in the camp or were there also soldiers who  
24 were trained?

25 A. There I found trained soldiers and cadets as well. We called them

1 cadets - "*aspirants*" in French - because they -- they didn't have weapons. They had  
2 sticks at that time. Some of them were still undergoing training.

3 Q. So which group was the most numerous? Was it trained soldiers or were it soldiers  
4 being trained, or people being trained?

5 A. People being trained were not numerous. And the soldiers -- the cadets were  
6 numerous, but the new recruits weren't. The number of soldiers was higher than the others.

7 MR DESALLIERS: (Interpretation) Your Honour, can I just ask for a second to  
8 consult Counsel Mabilille?

9 PRESIDING JUDGE FULFORD: Absolutely.

10 (Defence counsel confer)

11 MR DESALLIERS: (Interpretation) Thank you. I have some questions to ask in  
12 closed session, with your permission, your Honour.

13 PRESIDING JUDGE FULFORD: Private session, please.

14 \*(Private session at 12.41 p.m.) Reclassified as open session

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

16 PRESIDING JUDGE FULFORD: Thank you.

17 MR DESALLIERS: (Interpretation)

18 Q. Could you describe to us the second camp, please? Could you describe the second  
19 camp?

20 A. (Microphone not activated) ... it's a description of the -- we were in the  
21 bush in the second camp and we arrived at night in the camp. So we were in the bush,  
22 in the forest, a type of forest. That is where we were trained. I didn't see houses;  
23 I only saw paths. So we entered via these paths. That's it.

24 Q. I understand you arrived at the camp at night, but, Mr. Witness, you spent some  
25 time in this camp, didn't you?

1 A. Yes.

2 Q. So, please, could you give us a description of the camp?

3 A. The camp was the same. It was surrounded by holes made. It was surrounded by  
4 holes. The centre of the camp, it was the prison in this camp.

5 Q. Have I understood your testimony, the camp was situated in a place where there  
6 was a forest?

7 A. I didn't say "the forest." I said it was -- we were in the bush. It wasn't  
8 a forest, but it was in the bush.

9 Q. Could you tell us what distance or how far away this second camp was from (Redacted)?

10 A. I'm sorry?

11 Q. Do you know the (Redacted)?

12 A. I do not know the (Redacted)

13 Q. Very well.

14 MR DESALLIERS: (Interpretation) Mr. President, I believe that we can go back  
15 into open session.

16 PRESIDING JUDGE FULFORD: Open session, please.

17 (Open session at 12.45 p.m.)

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

19 MR DESALLIERS: (Interpretation)

20 Q. Yesterday you made mention of the fact that when you were in the second camp,  
21 you were forced to go into the river in the morning. Do you remember that?

22 A. Yes.

23 Q. How far away from the camp was this river located?

24 A. I do not know the exact distance, but it wasn't that far afield.

25 Q. You went there every morning, did you not?

1 A. Yes.

2 Q. Did you go there on foot?

3 A. Yes.

4 PRESIDING JUDGE FULFORD: Mr Desalliers, absolutely not your fault, of course,  
5 you have a lot of questions to ask, and counsel and judges are used to lots of questions.  
6 Witnesses aren't. And I think we've reached a point where that's probably enough for  
7 this morning. So, we're going to break off now for the witness's benefit. Thank you.

8 Sir, I think we'll break now, give you a period to rest over lunch and have  
9 something to eat. We'll look forward to seeing you again at 2.30, half past 2.00.

10 Closed session, please.

11 \*(Closed session at 12.48 p.m.) Reclassified as open session

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

13 (The witness stands down)

14 PRESIDING JUDGE FULFORD: 2.30.

15 (Luncheon recess taken at 12.49 p.m.)

16 (Upon resuming at 2.31 p.m.)

17 \*(Closed session) Reclassified as open session

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

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

20 PRESIDING JUDGE FULFORD: Witness, please.

21 We shall rise a couple of minutes before 4 o'clock this afternoon.

22 (The witness enters the courtroom)

23 PRESIDING JUDGE FULFORD: Mr Lubanga, please.

24 (The accused enters the courtroom)

25 PRESIDING JUDGE FULFORD: Public session, please.

1 (Open session at 2.32 p.m.)

2 THE COURT OFFICER: Open session, your Honour.

3 PRESIDING JUDGE FULFORD: Thank you, Mr Lubanga.

4 MR DESALLIERS: (Interpretation)

5 Q. Good afternoon, again, Witness.

6 A. Good afternoon.

7 Q. Before we resume where we left off, I would like to come back to a number of  
8 indications you gave us this morning; notably, when you were at the first camp, you mentioned  
9 the fact, if I understood you correctly, that you were asked to leave the camp and to  
10 accompany people outside of the camp with a view to showing them houses belonging to  
11 people who were rich and also with a view to finding beautiful girls. Is that what you  
12 said this morning?

13 A. Yes.

14 Q. Can you tell us how many times they asked you to leave the camp with a view  
15 to undertaking these tasks?

16 A. We left on two occasions.

17 Q. So the first time was to do what, precisely?

18 A. The aim was the same. We would go -- well, the first aim was to go and find  
19 places where people were rich. We left and we found two goats, and then we went back  
20 to the camp.

21 Q. And on the second occasion, what was requested of you?

22 A. They said that in view of the fact that I knew the surroundings better, we could  
23 once again go and find beautiful girls, but I dared to refuse. And then -- well, you -- then  
24 they said to me, "Well, you know, so let's go." And we left.

25 Q. Thank you. With regard to the residences of people who had money, were you

1 asked to accompany people because you knew who had money?

2 A. I did not know. What is more, I did not take people to my village, but I took  
3 people to neighbouring villages.

4 MR DESALLIERS: (Interpretation) Mr President, I believe for the following  
5 questions I would need to go into closed session.

6 PRESIDING JUDGE FULFORD: Private session, please.

7 \*(Private session at 2.37 p.m.) Reclassified as open session

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

9 PRESIDING JUDGE FULFORD: Yes.

10 MR DESALLIERS: (Interpretation)

11 Q. Which village did you go to with a view to finding houses belonging to people  
12 with money?

13 A. We went to (Redacted)

14 Q. Did I understand (Redacted) correctly? Is that right, Mr Witness?

15 THE INTERPRETER: Inaudible.

16 MR DESALLIERS: (Interpretation)

17 Q. Is this a village that you know?

18 A. Yes.

19 Q. So did you know who the people were in those villages or in that village who  
20 had money?

21 A. I would like the question to be put to me again.

22 Q. Of course. You went to the village of (Redacted) with a view to identifying  
23 houses belonging to people with money. Did you know who had money and who did not (Redacted)?

24 A. I took them there. I did not know who had money or not. I took them around  
25 (Redacted). Houses with sheet metal roofs --

1 THE INTERPRETER: Inaudible.

2 A. -- and then they would say, well, this is a sheet metal roofed house. Something  
3 can be found here. And if we didn't find anything, then we would go on our way.

4 Q. Very well. Thank you. However, with regard to the girls, they insisted that  
5 you accompany them, because you knew girls. Did I understand you correctly?

6 A. I beg your pardon?

7 Q. The people in the first camp asked you to accompany them on the occasion of  
8 your second outing because you knew where the girls were to be found that they were looking  
9 for; is that what you said?

10 A. Could you clarify that?

11 Q. Yes, I shall put my question somewhat differently, Mr Witness.

12 PRESIDING JUDGE FULFORD: I think you should, Mr Desalliers. If you reflect  
13 on your question, I do think it's conceptually quite difficult to follow. And can you  
14 try - I know it's difficult - but can you try to keep the points and the concepts really  
15 very short and straightforward.

16 MR DESALLIERS: (Interpretation) Yes, Mr President. I thank you.

17 Q. Mr Witness, I shall put my questions to you differently. When you went to look  
18 for girls, which village did you go to?

19 A. Girls? We went in the direction of --

20 THE INTERPRETER: Inaudible.

21 MR DESALLIERS: (Interpretation)

22 Q. Could you please repeat the name of the village? (Redacted)

23 A. (Redacted) is not a village. It is a *collectivité*. So I do not know the name  
24 of the village specifically.

25 Q. And which village is this located close to?

1 A. I said that I was in --

2 THE INTERPRETER: Inaudible.

3 A. (Redacted) is another *collectivité*.

4 Q. For me to understand correctly, Mr Witness, this is another *collectivité* from  
5 the one that you lived in?

6 A. Yes.

7 Q. So did you, yes or no, know that place?

8 A. I did not know that place.

9 Q. Could you, therefore, explain the reason why the soldiers or the people in the  
10 camp asked you to accompany them?

11 A. With regard to the second outing, they asked me, or they accompanied me.

12 Q. Did you understand my question, Mr Witness, or would you like me to repeat?

13 A. I did not understand.

14 Q. Very well. I shall put another question to you. The girls that you went to  
15 get, did you know them?

16 A. No.

17 Q. Very well. You told us that you were put in prison in the first camp. How long  
18 did you stay in prison?

19 A. Twenty-four hours.

20 PRESIDING JUDGE FULFORD: Mr Desalliers, I think we can be in public session  
21 for this, can't we?

22 MR DESALLIERS: (Interpretation) Yes, indeed, Mr President.

23 (Open session at 2.47 p.m.)

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

25 PRESIDING JUDGE FULFORD: Yes.

1 MR DESALLIERS: (Interpretation)

2 Q. So you remained in the prison for 24 hours. How long did you stay in the second  
3 camp in total? So how long before leaving for the second camp did you stay in the first  
4 camp?

5 A. In the first camp -- I'm sorry, what are you asking me? How much time I spent  
6 in the first camp?

7 Q. Yes, that's right.

8 A. I do not remember.

9 Q. Thank you. I would now like to come back to another point which was discussed  
10 this morning. When you left from the first camp to go to the second camp, you indicated  
11 that you went on foot. Could you tell us where you went on the way?

12 A. Are you asking me the village?

13 Q. Yes. Did you go through villages or towns?

14 A. We went through villages.

15 Q. Do you know which ones?

16 A. There was nobody to tell me where we were and where we were going. I did not  
17 know.

18 Q. Did you go along the road or did you go through the bush?

19 A. We went by road. It wasn't a big road; it was a road that was not passable  
20 for vehicles.

21 Q. Thank you. Now I will come back to the point that we left off at the break,  
22 when we were talking about the river at the second camp where you were forced to enter  
23 the river every day. You told us that you would go to the river on foot; is that correct?

24 A. Yes.

25 Q. How long did you need to walk to get to the river?

1 A. I did not have a watch on that occasion.

2 Q. I am asking you for your assessment of the time. Was it five minutes? Five  
3 hours? One hour? In approximate terms, how long did it take to go to the river every  
4 day?

5 A. Approximately 12 minutes.

6 Q. Thank you. Could you please briefly describe this river to us? Was it a sizable  
7 river, or was it a small river?

8 A. It was not a large river.

9 Q. Thank you. Yesterday you mentioned that the commander of the second camp was  
10 known by the name of "Major"; is that correct?

11 A. Yes.

12 Q. Could you tell us without giving us any names - please do not give us any names - but  
13 can you tell us what the other commanders were called?

14 A. Afande.

15 Q. So have I understood you correctly, you said Fuande (phon)?

16 A. No, it's not Fuande, but Afande.

17 Q. Afande, I'm sorry. And what does this word mean?

18 A. I do not know the meaning of this word. Well, I heard the word, and then I  
19 started to say Afande. Afande.

20 Q. Very well. It was in the second camp that you received your military training,  
21 was it not?

22 A. Yes.

23 Q. How long did your training last?

24 A. It was difficult for us to say in the camp whether the day was Wednesday or  
25 Sunday. We didn't go to school. We didn't even have a calendar. So, it was difficult

1 for us to know in terms of time. We were there like animals.

2 Q. Once again, Mr Witness, I reassure you, I am not asking you for a specific number  
3 of days here, but could you possibly give us an indication of whether it was a number  
4 of weeks, a number of months, a number of days?

5 A. It was a number of weeks.

6 Q. Thank you. You mentioned that the weapon which you had received handling training  
7 in was an SMG; is that correct?

8 A. Yes, that's right. And also, the NATO. That's what they called it, the "NATO".

9 Q. The "NATO"?

10 A. Yes.

11 Q. Could you explain to us what that was?

12 A. It is also a weapon.

13 Q. But what kind of weapon was it?

14 A. It was a simple weapon.

15 Q. Was it a firearm? Do you understand my question, Mr Witness? I can put it to  
16 you differently, if you like. Was it a weapon that shot bullets?

17 A. Yes. Yes. It was called a NATO because a NATO is -- well, you know, the sound  
18 that is produced by this weapon differs from that of other weapons. It was a weapon used  
19 to signal an event, for example.

20 Q. Very well. And apart from the SMG and the NATO, were you trained in the handling  
21 of any other weapons, any other weapons of any sort?

22 A. I was trained how to shoot with a NATO and an SMG.

23 MR DESALLIERS: (Interpretation) Apologies. One moment, Mr President.

24

25 Q. Mr Witness, I shall read an excerpt of the document that I showed to you under

1 tab 3. Do you still have that document before you?

2 A. The document is here.

3 Q. Could you please go to the very last page of that document. Are you on page 13?

4 I will quote a passage from the second paragraph. "I was transferred to the ..." And

5 this gives the name of the second camp, training camp, "... where we took accelerated

6 military training for a few weeks handling guns, swords and knives." And I will end the

7 quote at that point.

8 In 2007 when you mentioned that you were learning how to handle swords, could

9 you explain in greater detail what that was all about?

10 A. The handling of swords, we were in the habit of taking a branch - a branch - and

11 let's say -- and you would throw your sword, and it would -- we would throw them against

12 the -- the trunk of a tree. And each time, we were learned -- we were taught how to handle

13 that, as if the tree were the enemy.

14 Q. Could you describe these swords?

15 A. It was a knife with two blades, double-bladed. Double-edged.

16 Q. Have you finished your description, Mr Witness?

17 A. It was a knife, a double-edged knife.

18 Q. Could you tell us how long these swords were?

19 A. The sword -- those swords were of different lengths.

20 Q. Perhaps you could show us how long the longest swords were. Perhaps you could

21 use your arms or your hands to show us, to show us the length of these swords. Were that

22 that long? That long? Do you know?

23 PRESIDING JUDGE FULFORD: Your estimate, Mr. Desalliers?

24 MR DESALLIERS: (Interpretation) I would say 42 centimetres, between 30 and

25 40 centimetres, your Honour.

1               PRESIDING JUDGE FULFORD: 42, I think, is a little precise. 30 and 40, anyone  
2 disagree with that? No. So be it.

3               MR DESALLIERS: (Interpretation)

4 Q.           Mr Witness, was there a difference between the daggers and the swords?

5 A.           They were all knives (inaudible).

6 Q.           Once the training was over, did they give the soldiers in the UPC swords or  
7 daggers after the end of the training?

8 A.           I didn't see that.

9 Q.           But yourself, at one point you finished your military training when you were  
10 at the second camp.

11 A.           Ended my military training? I was wrong. If I said that I had ended that training,  
12 I would have been -- would have been able to do what all soldiers could do. I know how  
13 to shoot, but when I shoot -- I know how to handle the swords, but I don't know -- I  
14 didn't refuse, but with all that, I would say that I didn't finish the training. I didn't  
15 finish the military training.

16 Q.           So, am I correct that you've said that throughout your entire time within the  
17 UPC you were undergoing military training? Is that what we are to gather from your testimony,  
18 that you never ended your military training?

19 A.           I beg your pardon? I didn't understand the question.

20 Q.           You are right. I will ask it in a different way. You were in the UPC army for  
21 a period of time. And I believe, from what you've said, that you didn't finish your military  
22 training. Is that a proper summary of the situation? Is that a correct summary?

23 A.           I would say that I didn't finish the military training, because I didn't finish.  
24 We left and -- we left to go and fight.

25               MR. DESALLIERS: (Interpretation) Thank you very much.

1           PRESIDING JUDGE FULFORD: We are going to give the witness a ten-minute break.

2   Thank you. We will sit again just after 20-past 3. Thank you very much, Mr Lubanga.

3           (The accused exits the courtroom)

4           PRESIDING JUDGE FULFORD: Closed session, please.

5           \*(Closed session at 3.08 p.m.) Reclassified as open session

6           PRESIDING JUDGE FULFORD: Yes. Thank you.

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

8           (The witness stands down)

9           PRESIDING JUDGE FULFORD: Just over ten minutes.

10          THE COURT OFFICER: All rise.

11          (Recess taken at 3.09 p.m.)

12          (Upon resuming at 3.22 p.m.)

13          \*(Closed session) Reclassified as open session

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

15          PRESIDING JUDGE FULFORD: Witness, please.

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

17          (The witness enters the courtroom)

18          (The accused enters the courtroom)

19          PRESIDING JUDGE FULFORD: Public session, please.

20          (Open session at 3.23 p.m.)

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

22          PRESIDING JUDGE FULFORD: Yes, Mr Desalliers.

23          MR DESALLIERS: (Interpretation)

24   Q.          Mr Witness, you said that you took part in fighting in Bogoro when you were

25   in the UPC army. Did you take part in other combat?

1 A. Yes. I took part in --

2 THE INTERPRETER: Inaudible.

3 A. -- and in Bogoro. In the camp and in Bogoro.

4 Q. We'll talk about Bogoro. Could you tell us about that fighting that you took  
5 part in at the camp?

6 A. Could you rephrase your question? I didn't understand.

7 Q. Now, was I correct when I understood that you said that you took part in fighting  
8 at the camp? Did I get that right?

9 A. Not always.

10 Q. I will ask you the question: I wanted to know whether you took part in other  
11 fighting, other battles than the one in Bogoro. I'm sorry. No doubt I misunderstood  
12 your answer. Yes or no, did you take part in other fighting, fighting other than Bogoro?

13 A. It was in Bogoro and in the camp. That's what -- that's where we fought.

14 Q. When you say "in the camp," are you talking about the second camp?

15 A. I am talking about the second camp.

16 Q. And when was that?

17 A. It was in the morning.

18 Q. And you arrived -- how long had it been that you were in that camp? How long  
19 had you been in that camp for before the fight?

20 A. I don't know. I don't know how much time I had spent there.

21 Q. What did you do during that fighting?

22 A. During that fighting they gave me a weapon, and I took the weapon. And when  
23 I was supposed to shoot it I handled it, and I -- they took the weapon away from me and  
24 they gave it to another person, and I was a transporter. I was carrying ammunition.

25 Q. Who attacked whom during that battle?

- 1 A. I said that we were at the camp.
- 2 Q. So were you attacked when you were at the camp?
- 3 A. Yes.
- 4 Q. By whom?
- 5 A. Our enemies arrived.
- 6 THE INTERPRETER: Correction by interpreter. Our enemies were the FNI.
- 7 MR DESALLIERS: (Interpretation)
- 8 Q. During that fighting in the camp, were you wounded?
- 9 THE INTERPRETER: Inaudible.
- 10 MR DESALLIERS: (Interpretation)
- 11 Q. What happened to you?
- 12 A. It was the bursting of the bombs.
- 13 Q. So you were hit by part of a bomb? Where were you hit?
- 14 A. There are scars here. Here. And here, too.
- 15 PRESIDING JUDGE FULFORD: Could you describe, please, Mr Desalliers, where the
- 16 witness has just pointed.
- 17 MR DESALLIERS: (Interpretation) Yes. The witness just pointed with his left
- 18 hand to the bottom of his left cheek and just below his left eye.
- 19 Q. How long did that fighting in the camp last for?
- 20 A. Sometimes it would be three hours. Sometimes it would be four hours. Sometimes
- 21 it would be several hours. Sometimes even a day.
- 22 Q. Am I to understand that there was more than one battle?
- 23 A. In the camp, yes. Three times -- we were attacked three times in the camp.
- 24 Q. And was it always by the same group?
- 25 A. Yes.

1 Q. So three battles in the second camp and one battle in Bogoro. Did you participate  
2 in other battles?

3 A. No, if I said it was in the camp and in Bogoro.

4 Q. And in how many battles did you participate in in Bogoro?

5 A. Once in Bogoro.

6 PRESIDING JUDGE FULFORD: Mr Desalliers, sorry to interrupt you. An issue has  
7 arisen in relation to the use publicly of the word "Bogoro." I think there have been  
8 a number of references to that location without objection and without redaction publicly,  
9 but I need to ensure that this is truly the position and that it is not being suggested  
10 that this needs to be redacted whenever it's mentioned. Does anyone have any submissions  
11 on this location?

12 MR KETA: (Interpretation) With your permission, your Honour, I think we can  
13 redact the role of the witness in the Bogoro battle.

14 PRESIDING JUDGE FULFORD: What's the problem, Mr Keta? I imagine there were  
15 quite a large number of people involved in the Bogoro battle. Are you actually suggesting  
16 that by saying that he was present that that is going to reveal who he is? Isn't that  
17 rather farfetched?

18 MR KETA: (Interpretation) I think that he can be recognised certainly, because  
19 there are a lot of other children - such as he is - who participated in this battle and  
20 who reside and who can be identified.

21 PRESIDING JUDGE FULFORD: Thank you. Ms Samson.

22 MS SAMSON: Your Honour, if I am not mistaken, in my questioning this morning  
23 I referred to these issues in public session, to the extent that that is helpful.

24 PRESIDING JUDGE FULFORD: I'm sorry. Forgive for interrupting. So Bogoro is  
25 now in the public domain?

1 MS SAMSON: Yes, to my understanding, in addition to the role of the witness  
2 in that attack.

3 PRESIDING JUDGE FULFORD: Absolutely.

4 MS SAMSON: I was not aware at the time that that was a matter that needed to  
5 be redacted, and I was trying to be quite careful.

6 PRESIDING JUDGE FULFORD: Absolutely. Thank you. There is no point in trying  
7 to under do history; and in any event, the chances of this witness being identified simply  
8 by reference to the fact that he, amongst many others, took part in that battle is really  
9 farfetched and I don't see there is any potential harm done to him. Please continue,  
10 Mr Desalliers.

11 MR DESALLIERS: (Interpretation)

12 Q. So you explained -- did you say something, Witness?

13 A. I am tired.

14 PRESIDING JUDGE FULFORD: Fully understood, sir. Something else has arisen.  
15 Closed session, please. Thank you, Mr Lubanga. Don't go too far, because we've got to  
16 deal with something in open court, but if you could step outside for a moment. Thank  
17 you.

18 (The accused exits the courtroom)

19 PRESIDING JUDGE FULFORD: Closed session quickly, please. Thank you, Usher.

20 \*(Closed session at 3.38 p.m.) Reclassified as open session

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

22 PRESIDING JUDGE FULFORD: Yes. That's all right now. Yes. That's fine.

23 (The witness stands down)

24 PRESIDING JUDGE FULFORD: Please. Thank you. Public session, please.

25 (The accused enters the courtroom)

1 (Open session at 3.38 p.m.)

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

3 PRESIDING JUDGE FULFORD: Maître Mabilille, Ms Samson, Mr Keta, an issue has arisen  
4 that needs to be dealt with this afternoon.

5 You will recall that we ordered that 270, who has just given evidence, 225,  
6 who is currently in the witness box, and 229 needed to be separated and only reunited - as  
7 it were - once their respective testimonies are complete.

8 The Victims & Witnesses Unit now realise, of course, that the current witness  
9 won't finish his testimony today, and they have made an assessment of what they perceive  
10 to be his emotional difficulties. And they would exceptionally in this situation seek  
11 to arrange some kind of contact between 270 and the present witness over the weekend.  
12 And, in fact, there is going to be now three days before the witness will be recommencing  
13 his evidence. And they believe that some kind of contact between 270 - who is, of course,  
14 as he already said, his tutor - and 225 would positively be beneficial for his well being.

15 Two alternatives have been suggested: One is that they are housed jointly.  
16 Or a lesser step is that there are social meetings which, of course, could be supervised  
17 by an official from the Victims and Witnesses Unit who could remind them that at no stage  
18 are they to discuss the evidence that either has been given or is to be given.

19 Submissions, please. And do have a discussion about this, if you wish to, first  
20 of all.

21 (Counsel confer)

22 MS MABILILLE: (Interpretation) Your Honour, ladies and gentlemen, I think that  
23 it puts the Defence in an almost detestable position because we are confronted with a  
24 human situation, which we are obviously sensitive to, and I would say it's very disagreeable  
25 for us but, at the same time, I have to tell the Chamber that we haven't been able to

1 cross-examine the witness with regards to the elements that we don't want him to communicate  
2 with his guardian or tutor about.

3 Now, if we had known this in advance, perhaps we could have changed the order  
4 of our cross-examination. But today I am -- really have to take a position which I feel  
5 is, as a Defence position, which basically is to say that we have an absolute need for  
6 these three people not to speak to each other.

7 Now, the position of the team, the alternative, that a person from the VWU would  
8 enable a contact and take part in this meeting, and it be said that these people cannot  
9 talk about their testimony, but that would need the person from the VWU to speak the  
10 languages of these witnesses and that the person could ensure that no facts or element  
11 which is going to be, or which has been raised in the cross-examination of the witness,  
12 can be restated to the other witnesses. Nothing said by 270.

13 So I don't know if we -- on principle, I would say I don't want there to be  
14 contact and, as an alternative, I would say that if there is contact then it has to be  
15 under strict control, that no information can be transmitted between the different  
16 witnesses.

17 Furthermore, I would have to ask the question, as we have seen, that the first  
18 witness today -- should these contact be made with this second witness, which has not  
19 started being cross-examined at all. So these are the comments that I wanted to make.

20 PRESIDING JUDGE FULFORD: Mr Keta, I imagine your position would be that you  
21 would wish us to be sympathetic to the application. For the moment, you can either just  
22 say "yes" or "no" to that.

23 MR KETA: (Interpretation) Thank you, your Honour. Certainly, I would like  
24 to meet my client. I have already taken the stage of the VWU.

25 PRESIDING JUDGE FULFORD: That most certainly isn't going to happen. Of all

1 the things that may occur over this weekend, a meeting between the witness midway through  
2 his evidence and his counsel is not going to take place. At the moment, all we are discussing  
3 is the possibility, for humanitarian reasons, of there being a meeting between, at the  
4 moment, 270 and the witness who is currently in the witness box. We are not discussing  
5 any other possibilities.

6 Now, I would imagine you would support, on humanitarian grounds, a meeting of  
7 that kind; is that right?

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

9 PRESIDING JUDGE FULFORD: The position of the Prosecution, Ms Samson?

10 MS SAMSON: Very briefly, your Honour. The Prosecution is also in favour of  
11 a brief meeting should it be favourable to the well-being of the victim in the conditions  
12 that the VWU has indicated would be in place.

13 PRESIDING JUDGE FULFORD: Thank you very much. Now, Maître Mabilille, I'm afraid  
14 problems very often don't come singly but come in pairs. It's not only a meeting between  
15 270 and the present witness, but it has also been requested that there is a meeting between  
16 270 and 229, who hasn't yet commenced his evidence.

17 The difference potentially is that we have had brought to our attention very  
18 particular emotional difficulties which exist for 225. And although there is a  
19 recommendation that there is a separate social meeting between 229 and 270 - although  
20 that's requested - the message that we received very recently from the Victims and Witnesses  
21 Unit does not include specific reference to there being, as it were, real emotional -- there  
22 being a real emotional foundation that justifies that step.

23 To short-circuit the matter, should we take your submission as being, first,  
24 you would oppose it. Second, if it has to take place, there needs to be a real and good  
25 reason for it. And if it takes place, it should be very carefully supervised and monitored?

1 MS MABILLE: (Interpretation) I think that's what I said to your Honour. With  
2 regards to the principle, we are opposed to it. And alternatively, if the Chamber should  
3 so decide, we would ask that it be done under supervision, reminding the witness 270  
4 that he should not speak about the substance of the case or the testimony with the two  
5 other witnesses.

6 PRESIDING JUDGE FULFORD: Thank you very much.

7 (The Trial Chamber confers)

8 PRESIDING JUDGE FULFORD: An application has been made by the Victims and  
9 Witnesses Unit that there should be, for the assistance of the present witness, at the  
10 very least a social meeting between himself and the previous witness, who is said to  
11 have been his tutor, Witness 270.

12 The reason, so it is suggested, is that the present witness has emotional  
13 difficulties and he is now confronted with a three-day gap before he recommences his  
14 evidence.

15 In normal circumstances, and consistently with the order that we originally  
16 handed down, the Chamber would not permit meetings of this kind between witnesses whose  
17 evidence is potentially overlapping when there is a risk, unless there are tight controls,  
18 that there could be some kind of adverse influence over the present witness.

19 We are, however, persuaded - not least because what we have seen in Court - that  
20 some measure of social exchange is necessary for the well-being of this witness. And  
21 accordingly, we are prepared to permit one or more social meetings between 270 and 225,  
22 but only if the Victims and Witnesses Unit are prepared to be present throughout. That  
23 is the first condition.

24 The second is that they have told both 270 and 225 that they are not to discuss  
25 the evidence that has been given or is to be given.

1           And third, that if either they are unable to hear or understand what is being  
2   said, or if the discussion turns to the evidence in this case, they are prepared to bring  
3   the meeting to an end.

4           Only in those circumstances are we prepared to sanction a social meeting or  
5   meetings between the two of them over the next three days. Therefore, this is going to  
6   need the cooperation of not only the Victims and Witnesses Unit, but also 270 and 225,  
7   who are going to have to recognise that they must speak in a language which can be understood  
8   by the representative of the Victims and Witnesses Unit who is present; they must speak  
9   loudly enough so that they can be heard and that they must not discuss the evidence that  
10   has been given or will be given in this case.

11           As regards the meeting, a proposed meeting or meetings between 270 and 229,  
12   at the moment there is insufficient basis provided to justify the meeting. However, it  
13   may be that the Victims and Witnesses Unit has assessed on emotional grounds that this  
14   is necessary but they haven't communicated this fact to the Chamber. If they have made  
15   or do make that objective assessment then exactly the same conditions will apply to any  
16   meeting between 270 and 229. But we stress: We will only sanction a meeting between  
17   them if, in the judgment of the VWU, this is objectively necessary on the basis of their  
18   assessment as being something which should be implemented given emotional or other similar  
19   difficulties.

20           Thank you all very much. We will meet again on Tuesday afternoon, I think at  
21   2.00 p.m.

22           THE COURT OFFICER: All rise.

23           (The hearing ends at 3.56 p.m.)

24   RECLASSIFICATION REPORT

25   Pursuant to Trial Chamber I's email instruction dated 24th January

1 2012, the transcript is reclassified as public after the indicated  
2 redactions have been implemented as ordered by the Chamber. All private  
3 and closed sessions (\*) are now available to the public with the exception  
4 of the portions of the transcript that have been redacted.

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