

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elisabeth Odio Benito and Judge

4 René Blattmann

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

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

7 Tuesday, 19 January 2010

8 (The hearing starts at 2.10 p.m.)

9 THE COURT USHER: All rise.

10 *(Closed session) Reclassified as open session

11 THE COURT USHER: The International Criminal Court is now in session. Please

12 be seated.

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

14 PRESIDING JUDGE FULFORD: Good afternoon. Before the witness comes in, there

15 has been a filing from the Defence on the subject matter of questions by the Bench. We

16 need to set a timetable for responses.

17 Ms Samson, you are in the driving seat for the Prosecution, from where you are

18 sitting. This is, in a sense, a relatively contained and straightforward matter. Would

19 it be an unreasonable request to ask for submissions by the Prosecution for 4 p.m. on

20 Friday of this week?

21 MS SAMSON: May I have one moment, your Honour?

22 PRESIDING JUDGE FULFORD: I am going to put a similar question to the

23 representatives of victims. So if you could discuss this between yourselves, please.

24 MS SAMSON: Thank you for the indulgence. Four p.m. by Friday is fine for the

25 Prosecution.

1 PRESIDING JUDGE FULFORD: Mr. Walley.

2 MR WALLEYN: Mr President, I, as also with the other representatives and
3 especially OPCV, our proposal is Monday.

4 PRESIDING JUDGE FULFORD: Monday, 4 p.m., it is. You can have the same indulgence,
5 Ms Samson. Thank you very much.

6 MR WALLEYN: Thank you, Mr President.

7 PRESIDING JUDGE FULFORD: Maître Mabilie, in a sense, this is one of those issues
8 where, instead of it being something of a contest between the parties, it is much more
9 a question, arguably, of those who are interested simply stating their point of view.
10 Now, we are not going to stop you from putting in a reply, but we do wonder whether on
11 this issue it is necessary for the Defence to exercise its right of replying to whatever
12 the submissions are from the Prosecution and the representatives of victims, and we would
13 be grateful for your submissions now, on whether you are going to want to exercise that
14 right or, whether, given that this affects, from the way that the application is drafted,
15 the way in which your witnesses will be questioned, whether it would be preferable for
16 the Chamber to move straight to a decision on the matter.

17 MS MABILLE: (Interpretation) Just one moment, if you don't mind, your Honour.

18 PRESIDING JUDGE FULFORD: Of course.

19 MS MABILLE: (Interpretation) Your Honour, could we have the filings and the
20 Defence will commit to immediately telling you whether we will not reply, and if we plan
21 to provide a reply, we will do that within the 24 hours following the documents filed
22 by the Prosecutor and the legal representatives of the victims? Could that be a solution?

23 PRESIDING JUDGE FULFORD: Certainly, Maître Mabilie. It's 4 p.m. Monday for
24 the filings of the Prosecution and the victims, so, can you please inform the Chamber,
25 one way or the other, by noon on Tuesday, whether or not there is to be a filing? And,

1 if there is, then we will say 10 a.m. on Wednesday morning for any Defence reply. Unless
2 there is anything else, we will return then to the evidence of the witness.

3 Good. Witness, please.

4 (The witness enters the courtroom)

5 WITNESS: A/0225/06 (Resumed)

6 (The witness answers through interpreter)

7 PRESIDING JUDGE FULFORD: Welcome back, sir.

8 Mr Desalliers, public or private?

9 MR DESALLIERS: (Interpretation) Open, your Honour.

10 PRESIDING JUDGE FULFORD: Public session, please.

11 (Open session)

12 (The accused enters the courtroom)

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

14 PRESIDING JUDGE FULFORD: Sir, again, if at any stage you need a break, please

15 do not hesitate to ask, and just to let you know that in about 40 minutes we will have

16 a break anyway. But if you need one before then, don't hesitate to ask.

17 Yes, Mr Desalliers.

18 QUESTIONED BY MR DESALLIERS: (Interpretation) (Continued)

19 Q. Good afternoon, sir. Can you hear me?

20 PRESIDING JUDGE FULFORD: Sir, I am going to ask whether you can hear me speaking.

21 THE WITNESS: Yes, I can hear you.

22 PRESIDING JUDGE FULFORD: And are you feeling all right?

23 THE WITNESS: Yes. I feel --

24 THE INTERPRETER: Inaudible.

25 PRESIDING JUDGE FULFORD: Good. I am sorry to have to state this again, as we

1 did on a couple of occasions last week, but it's important that you keep your voice up
2 so that the microphone is able to detect what you say, so that we have a good record
3 of your evidence.

4 Yes, Mr Desalliers.

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

6 Q. Mr Witness, when we left off last week you said that the second camp where you
7 found yourself had been attacked three times by the FNI and that you took part in those
8 three battles; do you remember that?

9 A. Yes, I remember.

10 Q. You mentioned that during one of these battles you were wounded. Your cheek
11 was wounded and underneath your left eye by a piece of shrapnel; do you remember that
12 as well?

13 A. (No audible reply)

14 Q. Could you repeat your answer? I don't believe it was heard. Would you like
15 me to ask you the question again?

16 A. Yes, indeed, if you could ask it again.

17 Q. Very well. You mentioned last week that during one of these three attacks on
18 the second camp, you were wounded. Your cheek was wounded and underneath your left eye
19 by a piece of shrapnel; do you remember saying that?

20 A. Yes, I remember.

21 Q. Thank you. Now, other than those wounds, those injuries that occurred after
22 a bomb went off at the second camp and the bullet wound to the calf in Bogoro, did you
23 suffer any other injuries during fighting when you were in the army?

24 A. Yes.

25 Q. Could you tell us about these injuries?

1 A. My calf.

2 Q. Are you referring to the bullet wound that you had at the battle of Bogoro,
3 the injury to your calf?

4 A. Yes, that's what I'm talking about.

5 Q. Very well. Other than that injury and the shrapnel, did you suffer any other
6 injuries during fighting?

7 A. The other injury that I sustained, they weren't injuries outside. They were
8 injuries inside.

9 Q. I see. So no other physical injury?

10 A. I said that I suffered injuries. If you say "physical", well, the injuries
11 that I sustained inside, are not injuries. When I got the injuries, it means they are
12 injuries. There are physical injuries, be they interior or external. They are injuries.

13 Q. Thank you. Mr Witness, if I were to suggest to you that the UPC army never
14 was attacked at the second camp by the FNI, would that lead you to change what you have
15 said before the Court?

16 A. I beg your pardon?

17 Q. I would put it to you, I put it to you -- do you understand that when I say
18 "*suggérer*" that I put it to you? Let me rephrase my question. If I say to you -- if
19 I talked to you about the possibility that the UPC army was never attacked by the FNI
20 at the second camp, do you think that is possible?

21 A. I still do not understand.

22 PRESIDING JUDGE FULFORD: Mr Desalliers, I am going to interrupt. I think the
23 rather formal procedure that certainly works when questioning bankers and financiers
24 and others of formally putting your case may work with witnesses of that kind. I think
25 for others, who are completely unused to trial proceedings of this nature, it is actually

1 quite a difficult concept to understand and to know what the appropriate response is.
2 If I may politely suggest, I think a more direct form of questioning is better than going
3 through the slightly more baroque style of putting your case.

4 MR DESALLIERS: (Interpretation) Thank you, your Honour. I will do what I can
5 to try to make my suggestions more easier to digest, so to speak, although they are important.
6 I will reformulate my questions as much as possible. I will do all I can to simplify
7 them as much as I can, your Honour.

8 PRESIDING JUDGE FULFORD: I want to make it clear, Mr Desalliers. I'm not trying
9 to stop you. It's a question of style.

10 MR DESALLIERS: (Interpretation) Thank you. That may require a bit of an
11 adjustment on my part and you will have to forgive me.

12 Q. Mr Witness, is it possible that the UPC - the UPC army - was never attacked
13 at the second camp by the FNI? Did you understand my question, Mr Witness?

14 A. All these questions seem to be hard to answer.

15 Q. Very well, I'll put it a different way. Are you quite sure that the FNI attacked
16 the second camp?

17 A. I'm very sure of everything I said. I said at the beginning that I'm very sure
18 of what I'm saying and what I'm saying now.

19 Q. Very well, thank you. You explained to us last week that you took part in fighting
20 in Bogoro and that you were based in the second camp. My question is as follows. Now,
21 the group of soldiers with whom you were, that you were with, did they travel from the
22 second camp in Bogoro -- to Bogoro?

23 THE INTERPRETER: Answer -- no answer, the interpreter corrects.

24 MR DESALLIERS: (Interpretation)

25 Q. The second camp in Bogoro, "yes" or "no", did you travel from the second camp

1 to Bogoro?

2 A. Yes, yes, we did that trip.

3 Q. How did you travel?

4 A. By foot.

5 Q. How many individuals were there in the group of soldier -- of soldiers that
6 you were part of? How many individuals were in that group?

7 A. You are asking the total number of soldiers? All the soldiers?

8 Q. Indeed. The total number of soldiers who left to go from the second camp to
9 Bogoro, in your company that is?

10 A. It was not up to us mere soldiers to know how many soldiers there were. There
11 were officials in charge of counting the number of soldiers present. I did not know how
12 many we were. There were many of us.

13 Q. So, Mr Witness, I am not requesting that you provide a precise number. I am
14 asking for your assessment. According to you, how many individuals were there? Were
15 there 50 people? Were there 20? Were there 100? Were there 500? More? Fewer? Could
16 you tell us approximately how many individuals there were?

17 A. I want to be precise with regard to the number of soldiers, but it is difficult
18 for me to answer something that I do not know, or to provide an estimation. We were numerous.
19 There were more than 100 of us.

20 Q. Thank you. And how long did you have to walk in order to reach Bogoro?

21 A. I do not know precisely how far we went, but I believe it took us more than
22 a week-and-a-half.

23 Q. To make sure I have understood you correctly, what you are saying is that the
24 group of soldiers of which you were part, from the second camp that is, you took a
25 week-and-a-half to get to Bogoro; is that correct? I just want to be sure that I have

1 understood you correctly. You, as part of an armed group, walked for a week-and-a-half;
2 is that correct?

3 A. Yes.

4 Q. Could you explain our journey to -- could you explain your journey to us; where
5 you went on the way?

6 A. I was following the others. I do not know what our itinerary was, with reference
7 to all the names of the villages. I do not know.

8 Q. Did you walk along the road, or through the bush?

9 A. We walked along the road on some occasions, but sometimes we did not walk along
10 the road.

11 Q. Do you remember having gone through a large town?

12 A. There was no town there. There is no town there. There were only villages.

13 Q. Thank you. Last week you explained to us that you went to Bogoro. You did not
14 know at the time that you were going to Bogoro, but what you did know was that you were
15 going to fight, did you not?

16 A. Yes. We -- we chanced upon soldiers upon our itinerary. We met up with other
17 soldiers who joined our ranks and then we would continue on our way.

18 Q. Could you tell us why your group did not make that journey in a vehicle, rather
19 than on foot?

20 A. I don't know the reason why.

21 Q. Very well. Could you explain to us what precisely your duties were with regard
22 to the fighting in Bogoro?

23 A. Sometimes I would transport ammunition and then I would start to carry containers
24 in which we would prepare food.

25 Q. Very well, let's commence with the ammunition. When you were transporting

1 ammunition, could you tell us precisely what it was that you were transporting?

2 A. These were green crates. They were green crates containing --

3 THE INTERPRETER: Inaudible.

4 THE WITNESS: Those crates contained -- I cannot remember the term.

5 MR DESALLIERS: (Interpretation)

6 Q. Were they bullets for rifles? Was it ammunition? Was it weapons?

7 A. It wasn't weapons. They were kupiga msasi.

8 Q. The word that you just uttered was in Swahili, Mr Witness?

9 MR DESALLIERS: (Interpretation) Mr President, I would request a moment, please,
10 in order to confer.

11 Q. So the word that you just uttered, does this word mean bullets for rifles?

12 A. When you say rifle bullets, well, I don't always understand. What one puts
13 into magazines and that is what one uses to fire and then this is used to attack an individual,
14 it hits a person and then the person dies. So, I might say grains.

15 Q. Is this what comes out of the rifle when one fires?

16 A. Indeed.

17 Q. For us to understand correctly, could you describe this crate to us: how many
18 bullets it contains; how large it is? Could you describe it to us? Could you describe
19 it to us in your very own words?

20 A. The crates were rectangular in shape and green in colour. And on that subject,
21 the ones that I was familiar with - the green crates - were metallic. They were iron
22 and they were green in colour.

23 Q. And could you tell us how many bullets there were in every crate?

24 A. I do not know how many bullets each crate contained.

25 Q. And how many crates were you able to transport at one time?

1 A. These crates were sometimes interconnected or joined. Sometimes three were
2 to be carried or transported behind me, and then I would carry two in my hands and they
3 were tied together.

4 Q. Was all of this very heavy, Mr Witness?

5 A. You can just imagine that, at my age -- well, some people would transport this
6 kind of thing. I also transported these things, but it was very heavy for me. I forced
7 myself to transport these things, but it was heavy.

8 Q. So what you are telling us today is, that you transported this equipment for
9 approximately one-and-a-half weeks on your journey to Bogoro; is that correct?

10 A. Yes. Once -- or on occasion, were I to find myself feeling tired on the way,
11 then I would ask somebody who was transporting the food containers that they take what
12 I was carrying in order for us to exchange our loads.

13 Q. However, last week you told us that you were not physically strong enough in
14 order to handle an SMG, did you not?

15 A. Yes.

16 Q. So that we understand you correctly, was the SMG heavier or lighter than the
17 crates that you transported?

18 A. When making reference to this weapon specifically, I wasn't saying that it was
19 heavy to transport; but what I said was, that when I fired, then I would feel -- I would
20 be thrown back. So the weapon would thrust me forward. That's what I said.

21 Q. Very well. Thank you. Did the fighting commence from the time that you arrived
22 in Bogoro?

23 A. It was at 5 o'clock in the morning.

24 Q. So, did the fighting commence at 5 o'clock in the morning?

25 A. It was in the morning when the cocks were singing, or the cockerels.

1 Q. At 5 o'clock in the morning, was it the battle that commenced or was that the
2 point at which you arrived?

3 A. I heard gunshot.

4 Q. So I should understand that the battle commenced at 5 a.m., should I?

5 A. Yes.

6 Q. And at what time did you arrive in Bogoro?

7 A. We weren't quite where the fighting was happening. We had not spent the night
8 in Bogoro, but I believe that we had travelled a further hour, and it was dark. It was
9 5.00 in the morning, and that is when we started hearing shooting. So, I did not know
10 where we had spent the night, whether it was in Bogoro or not.

11 Q. I shall try and understand you a little bit better by putting further questions
12 to you with regard to your explanation. When you heard the gunshot, were you moving or
13 were you in your camp?

14 A. We were on the move. We thought that we were not alone. We were not the only
15 group. The others were on the other side. And when I try and locate precisely where
16 we were, well, I can say that the others were on the other side. We were not together.

17 Q. Are you talking about other soldiers from the UPC?

18 A. Yes.

19 Q. And were the other soldiers located closer to the lake or closer to Bunia?

20 A. With reference to the lake, it was in the opposite direction, so that was on
21 the other side.

22 Q. And where precisely were you?

23 A. With reference to?

24 Q. With reference to Bogoro and the lake.

25 A. We were here; they were there. And we could see the lake there.

1 THE INTERPRETER: Indicates the witness with his hand.

2 MR DESALLIERS: (Interpretation)

3 Q. Very well. And where was the enemy?

4 A. We did not know where the enemy was, but we had heard gunshot; and we had been
5 asked to lie on our stomachs. And I was still disturbed; I did not know what had happened
6 or what was happening, and that's when we started fighting.

7 MR DESALLIERS: (Interpretation) Mr President, I would like to have note that
8 I might have to explain the witness' gestures with regard to location. So, I would say
9 that I do understand the gestures made by the witness. He was showing -- or pointing
10 his two hands forward with a view to providing the situation of the two groups of the
11 UPC. And then he was indicating the other direction with regard to the lake, the position
12 of the lake; if I have understood the witness' explanations correctly.

13 PRESIDING JUDGE FULFORD: You are quite correct, Mr Desalliers. It's very
14 difficult to describe physical gestures for the transcript. And if anything critical
15 turns on this, of course the relevant part of the tape can be watched again. Thank you.

16 MR DESALLIERS: (Interpretation) Thank you.

17 Q. We just touched upon the question of the enemy, Mr Witness. With the first
18 gunshot, you said that you could not see them. At what moment in time did you manage
19 to see the enemy?

20 A. I merely saw the enemies' corpses. I saw the ones who had died; I did not see
21 any living members of the opposition.

22 Q. Could you explain to us what the enemy was wearing?

23 A. The enemy was wearing jeans.

24 Q. And what else? What other items of clothing?

25 A. He was wearing Max jeans.

1 Q. The fighting started at 5.00 a.m. and went on until when, to your knowledge?

2 A. It lasted the entire day.

3 Q. Did it continue into the night?

4 A. No. However, the shots did not cease.

5 Q. What do you mean by that?

6 A. I could still hear gunfire during the night, but it wasn't the same as during
7 the day.

8 Q. Do you mean that there was less gunfire?

9 A. Yes.

10 Q. Mr Witness, is it possible that the fighting in Bogoro occurred on 24 February
11 2003?

12 A. Could you repeat your question, please?

13 Q. Yes. I'm putting a date to you, Mr Witness, with regard to the battle of Bogoro.
14 Is it possible that this battle occurred on 24 February 2003?

15 MSSAMSON: Mr President, I submit the Prosecution is permitted to make objections
16 during the cross-examination of this witness. We observe only that the witness has indicated
17 that dates are very difficult for him. It strikes the Prosecution as unlikely that the
18 witness will be unable to provide much assistance to the Court on this question.

19 PRESIDING JUDGE FULFORD: Thank you, Ms. Samson. Mr Desalliers, I'm extremely
20 reluctant to intervene with counsel's questioning, but I think there have been two areas
21 this afternoon. One is, how many bullets in a box; and the other, a precise date of this
22 kind, which I think are unlikely to produce useful answers. Remembering now back to 24
23 February 2003 is going to be a formidably difficult task for anyone, I think, whatever
24 you were doing. Now, I'm not going to stop you, but I'm not sure whether it's wise or
25 helpful.

1 MR DESALLIERS: (Interpretation) Mr President, the witness must understand that
2 I am not trying to force an answer or a date out of him; but in view of the fact that
3 he did make mention of the fact that dates were difficult for him, it would seem to me
4 appropriate to suggest this to him in order to assist him and if he does not remember,
5 of course. But I do understand your intervention, Mr President, and I am explaining to
6 you the reason why I put this suggestion to him. I'm putting this suggestion to the witness,
7 but I'm keeping in mind, Mr President, the remarks that you've just made on dates.

8 PRESIDING JUDGE FULFORD: The problem Mr Desalliers is, that a question "Is
9 it possible that this battle occurred on 24 February 2003," well, you could very easily
10 secure the answer "yes" on the basis that anything almost is possible without actually
11 providing us with any useful information. I can imagine that possibly some generals may
12 actually remember the date of the battle, but I think most other people simply wouldn't
13 have that kind of precision. But look, let's not take up time on this. I'm making the
14 observation that this is unlikely to provide answers that are going to be hugely useful.
15 Carry on if you wish, but I make the observation.

16 MR DESALLIERS: (Interpretation) Thank you, Mr President. Maybe I should
17 rephrase in order to facilitate matters.

18 Q. Mr Witness, I am going to ask my question once again: Last week, you told us
19 that you remember having been abducted in February 2003. Is it possible that the battle
20 in Bogoro took place at the end or towards the end of February 2003, in your opinion?

21 A. Today we are in 2010. It would be impossible for me to say whether it was at
22 the end or at the beginning. Well, that question seems to be difficult to me and I cannot
23 give you an answer, except it is an erroneous one.

24 Q. Very well. Thank you. Please, tell us at what specific point in time that you
25 were hit by a bullet on the calf?

1 A. It was the following day. On the day that the fighting started I was not injured.
2 The following day, when the fighting had started being difficult for us, we were being
3 asked to advance and we found it difficult. Three people had been killed next to me.
4 Someone had been hit by a bullet here and all his brains were out. I was afraid of that.
5 Another person was shot here and I was afraid and we were still being asked to advance.
6 We were asked to lie on our stomachs and then to move forward. I would have wanted to
7 stand up, to move. There was a dead body next to me and I passed on the other side of
8 the dead body, and when I was raising my leg I was hit by a bullet.

9 Q. So this was the day after?

10 A. Yes.

11 Q. At what time of the day?

12 A. The time?

13 Q. Was it during the morning period? Was it in the afternoon or in the evening?

14 A. At that time everything was confused or confusing. I didn't know the position
15 of the sun.

16 Q. But it was during the day; it wasn't at night, was it?

17 A. The fighting took place during the day and the following day, so it was the
18 following day, during the day. Everything looked confusing. I did not know at what time
19 of the day it happened.

20 Q. Very well. Thank you. After being hit by the bullet what precisely did you
21 do?

22 A. I also thought I was dead. I was lying down there and I was left there while
23 the others advanced. It was not possible for me to advance or retreat, so I just lay
24 down there, and I knew that if they found out that I was alive I would be asked to advance
25 and to follow the others, so, next to me there was a person, and I took some of his blood

1 and rubbed on my body and I was lying down next to that dead body.

2 Q. Am I to understand that you slept at that place?

3 A. The whole night.

4 Q. Very well. So you slept the whole night?

5 A. No, no. You said that I slept. No. I was lying down there. It was still during
6 the day; it was not yet night.

7 Q. Very well. Mr Witness, I simply want to understand you. Take the time necessary.
8 You were injured and based on what you said "I slept there with blood on my body"?

9 A. Please. I'm not feeling too well. I would like to have a rest.

10 PRESIDING JUDGE FULFORD: Certainly. I am trying to find a convenient time for
11 us to have a break. We will break off now for half-an-hour and sit again at 20 to 4.
12 Thank you very much.

13 Yes, can we go into closed session, please.

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

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

16 (The accused exits the courtroom)

17 PRESIDING JUDGE FULFORD: Yes, usher.

18 (The witness stands down)

19 PRESIDING JUDGE FULFORD: Mr Desalliers, I don't know whether it matters but,
20 if you look back at the transcript, I think the suggestion of sleeping came from you.
21 The witness had said that he had been lying down next to the dead body. That is certainly
22 how it is in the English transcript, and then he agreed that something had taken the
23 whole night, and then you then, as it were, developed on that exchange by suggesting
24 that he slept the whole night.

25 Now, I think my legal officer is just saying something to me. Could you come

1 up. Thank you. Right. I am being corrected by my legal officer. It has lying down in
2 English but it was sleeping in French. So it's a non-point.

3 Before we rise, in case I forget, sittings for the rest of this week, next week
4 and the week after. We are sitting normally on Thursday and Friday of this week, starting
5 at 9.30 in the morning. On Monday of next week there is a normal day, 9.30 commencement.
6 Tuesday, Wednesday and Thursday we have a 2.30 afternoon start, but we will not be sitting
7 beyond 6 p.m.

8 (The accused enters the courtroom)

9 PRESIDING JUDGE FULFORD: On Friday the Court isn't sitting and, on the following
10 week, that is the week of 1 February, on Monday and Tuesday, we are sitting in the morning
11 but we will start at 9.30 going through until 1.30 with breaks. And then Wednesday, Thursday
12 and Friday, the Chamber is unable to sit.

13 We shall sit again at a quarter to 4. Thank you.

14 THE COURT USHER: All rise.

15 (Recess taken at 3.13 p.m.)

16 (Upon resuming at 3.47 p.m.)

17 *(Closed session) Reclassified as open session

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

19 PRESIDING JUDGE FULFORD: Witness, please.

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

21 (The witness enters the courtroom)

22 (The accused enters the courtroom)

23 PRESIDING JUDGE FULFORD: Public session, please.

24 (Open session at 3.48 p.m.)

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

1 PRESIDING JUDGE FULFORD: The English transcript seems to have died, but carry
2 on for the time being, Mr Desalliers, and we'll see what happens. Thank you.

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

4 Q. Mr Witness, before the break you were talking about the time when you received
5 a bullet in the calf during the fighting in Bogoro. At that time, I thought I understood
6 from your answer that you had slept. Could you specify whether, "Yes" or "No", you slept
7 at the place where you fell after you were hit by a bullet?

8 A. I had said that there was no way of going back or go forward, so -- so I was
9 there.

10 Q. Now, when I said "sleep", do you understand what I mean?

11 A. You mean that I spent the night there?

12 Q. No, that's not my question. What I'm trying to understand, when you say that
13 you were hit by a bullet, from that time on did you remain awake or did you fall asleep?
14 This is what I would like to understand.

15 A. Could you rephrase your question?

16 Q. Certainly. When you were hit by a bullet in the calf, at that time did you
17 fall or did you remain standing?

18 A. I wasn't standing.

19 Q. You were already on the ground?

20 A. I had lain down that time on my stomach.

21 Q. Very well. My question was right after the bullet hit you in the calf, did
22 you fall asleep, or did you remain awake?

23 A. I don't understand.

24 PRESIDING JUDGE FULFORD: Yes, Mr Keta.

25 MR KETA: (Interpretation) Thank you, your Honour. I think that the witness

1 must be having some problems because of his level of French. I think there's a communication
2 problem. When he says "coucher ventralement" and "dormir", I think the level of French
3 makes things complicated and I think on the Defence side they have to ask questions in
4 a clear manner and in an easy to understand French.

5 PRESIDING JUDGE FULFORD: Right. Mr Keta, the submission is helpful. Thank
6 you very much. How would you suggest formulating the question, "Did you go to sleep?"?

7 MR KETA: (Interpretation) I would rather say being on the -- lying down.
8 "Endormir" means that you drift off to sleep. "Coucher" means that you might be lying
9 down and perhaps being -- you may be lying down on the ground.

10 PRESIDING JUDGE FULFORD: That's not helpful, Mr Keta. What Mr Desalliers is
11 particularly trying to identify is whether or not the witness went to sleep, rather than
12 whether he was lying down, and there's a significant difference between the two.

13 Well, Mr Desalliers, one more go and then I think we're going to have to move
14 on to something else.

15 MR DESALLIERS: (Interpretation) Thank you, your Honour. And I must say that
16 at this stage the remarks by my learned friend are far from being reassuring, because
17 they lead to the issue of the level of French of the witness. Is it sufficient to understand
18 the questions and reply to them adequately? The witness expressed his preference to give
19 testimony in French, but perhaps, your Honour, I don't know whether this is the right
20 moment, but we really have some serious questions about this point.

21 PRESIDING JUDGE FULFORD: Not now, Mr Desalliers. We've done very well in French
22 up until this point in time and, although we've met a slight impediment at the moment,
23 there is nothing on a general basis to indicate that the witness can't deal with the
24 questions in French. Quite the opposite has been the case, that the witness has answered
25 questions in a wholly logical and comprehensible way up until this point in time.

1 So have another go and, whatever is the result, I think we should then move
2 on, please.

3 MR DESALLIERS: (Interpretation)

4 Q. Mr Witness, do you know what the word "dormir" means, "to sleep"? Did you
5 understand my question, Mr. Witness?

6 A. Yes.

7 Q. Do you know what the word "dormir" means?

8 A. "Dormir"? It means to drift off to sleep.

9 Q. So when you were hit by the bullet, did you let yourself be taken away by sleep,
10 drift off into slumber?

11 A. Where I fell -- where I fell -- well, first, why did I fall? It was the bullet.
12 I was injured. I felt the pain. Secondly, I knew I was in danger. So, I don't know -- unless
13 it was magic, but it wasn't sleep. It was more the danger.

14 Q. I understand that your answer is, quite simply, "no."

15 PRESIDING JUDGE FULFORD: Might I suggest moving on, Mr Desalliers? Come back
16 to this in due course, perhaps another time, if necessary, but I think I'd move on to
17 another subject.

18 MR DESALLIERS: (Interpretation) Very well, Mr. President.

19 Q. So, once you were hit by the bullet, what did you do?

20 A. I was there for some time.

21 Q. Do you remember how long you remained in that place lying down?

22 A. I do not know how long. The fighting continued, and people were not -- there
23 weren't really any people where I was. I was amongst the corpses, and that was when I
24 then got up and went off in another direction. I did not know.

25 Q. So if I understand you correctly, you remained at that location, awaiting that

1 the fighting came to an end?

2 A. I did not know whether the fighting had come to an end or not, but I was waiting
3 for further gunfire; and, in the meantime, the positions of the soldiers had changed.
4 There wasn't anyone alive next to me. I had remained amongst the corpses, and it was
5 at that moment in time that I decided to go elsewhere.

6 Q. So, at the moment in time when you left, was your wound bleeding or not?

7 A. It was producing a lot of blood. And when I had moved away from that place
8 where I had been lying down, I came upon the corpses of soldiers, and I tore up some
9 of their clothing in order to bandage my wound. And then I continued on my way, with
10 difficulty, but I got back on the road. I continued on my way.

11 Q. Very well. Could you tell us the first location you went to once you had got
12 to your feet again and left that place? Where did you go first?

13 A. On that occasion, I did not know where I was, because on that day in the afternoon,
14 when I had come to that place and when I discovered that I was far afield from where
15 the fighting was taking place, well, I found a piece of wood and I moved forward with
16 that piece of wood. And when I heard gunfire, then I would go into hiding. And I continued
17 on my way until -- well, the lake was not very far away. And subsequently, I was told
18 that the place where I was, was (Redacted)

19 Q. So, you walked from the place where the fighting was occurring to (Redacted)
20 is that correct?

21 A. That is correct.

22 Q. Did you walk along the road?

23 A. I do not know whether it was along the road or along a path. I didn't know
24 where I was going. I was walking.

25 Q. Very well. I understand that you did not know where you were going, but were

1 you walking along a road, or not?

2 I shall put the question to you in another manner, Mr. Witness. The itinerary
3 that you took in order to go to (Redacted), was it passable for cars or motor bikes?

4 A. If either vehicles or motor bikes got through there, it would have been with
5 difficulty. I saw the road, wandering in various directions.

6 Q. Bogoro is a town which is perched high, as if it were in a mountain. Would
7 that seem correct to you?

8 A. We were not interested to ascertain whether Bogoro was perched up high or not.
9 It is on a level plane -- or whether it was on a level plane or not, I did not know that
10 fact. Our only mission was to fight. What happened in Bogoro, well, I don't know most
11 of the details; because when we got there, before we started to fight, we got there in
12 a state of inebriation, and everyone was inebriated.

13 I did know that I had been hit by a bullet. Everyone had been on the move.
14 And I know that I saw the surface of a river that I recognised, and I moved in the direction
15 of the river, towards this lake. So, with regard to the events that unfolded in Bogoro,
16 I was not a master of the situation. I did not know. I was drunk. And I had smoked
17 cannabis. I had received a bullet wound; and we were told that if we extracted the powder
18 from the bullet that we received, then we had nothing to fear. And we would receive drink,
19 and I was inebriated. I did not know what was happening. I did know that I had been
20 wounded.

21 Q. Very well. We shall return to this point, Mr. Witness, but for now I would
22 like us to talk about the itinerary from Bogoro to the lake. When you leave Bogoro with
23 a view to going to the lake or to (Redacted), is the terrain flat or is it mountainous?

24 A. It was not mountainous. It was flat.

25 Q. Very well. And once you arrive (Redacted) or close to (Redacted) should I understand

1 that you then immersed yourself in water.

2 A. There were villages there. I wanted to leave. I saw many houses and I wanted
3 to leave in the company of other people. I took fright and so I went to the river with
4 a view to immersing myself, going underwater.

5 Q. Is there anything you would like to add, Mr Witness? Or have you finished with
6 your answer?

7 A. I know that I was in the water, in the river.

8 Q. In order to make sure that we understand each other correctly, was this the
9 water of Lac Albert?

10 A. Identifying it in such a manner, I do not know whether this was the water of
11 Lake Albert or whether it was just puddles. It was not too far from the lake itself.

12 Q. Very well. How long did you remain in the water?

13 A. I spent a night there and then the whole of the subsequent day. So I spent
14 one night there in the water and then, on the next day, I saw people because people were
15 moving around, around (Redacted), even in canoes. I saw two people come from far afield.
16 They were on the river. And that was when I picked myself up to have a look. And when
17 I was in the river, if I just listened to the noise -- well, if there wasn't any noise,
18 I would lift my head out of the water and I was outside of the water and then I saw two
19 people approaching in a canoe. And I said to myself, "Well, I mustn't stay here. Even
20 if I am killed, I must ask those individuals whether they can assist me." And I then
21 asked them, and they did not leave me behind. They took me with them.

22 Q. Were these individuals people that you knew?

23 A. I did not know them. They asked me to explain how I came to be there so that
24 they could help me. I showed them my wounds and, luckily, one of them heard me, or listened
25 to me, because I did not know how to speak Lingala very well at the time or Swahili,

1 and sometimes I would mix up Alur, Lingala and Swahili. And they said to me "Well, where
2 do you hail from?" And I said I am Alur. And they could also speak Alur. I did not
3 know whether he, this individual, was an Alur or not or whether he was from, or whether
4 they were from another tribe, and not Alur. But they said that they had come to seek
5 food.

6 Q. And it was only once you had started speaking to them that you understood that
7 they spoke Alur?

8 A. I'm sorry?

9 Q. Did you speak here -- did you hear them speak Alur during your first conversation
10 with them?

11 A. I had not really followed what language they were speaking at a distance, but
12 when I was close to them, well, you know, Alurs can identify another Alur. And if a Lendu
13 speaks Swahili, you know that that person is a Lendu. If a Gegere speaks Swahili you
14 can say, well, no, that person is a Gegere. But if an Alur speaks Swahili you can understand
15 that that person is not from another tribe but an Alur. So this is how I also managed
16 to listen to them. But I did not want to put the question to them initially. They -- and
17 they were the ones who said they might be Alur.

18 Q. So they took you with them; and where did they take you? Where did they take
19 you to?

20 A. They took me home with them.

21 Q. And where was that?

22 MS SAMSON: Excuse me, your Honour. According to my notes this information was
23 elicited in private session initially in the examination of this witness.

24 PRESIDING JUDGE FULFORD: That's very well-spotted, Ms Samson. Thank you very
25 much. That's extremely helpful. Private session, please.

1 *(Private session at 4.19 p.m.) Reclassified as open session

2 THE COURT OFFICER: We're in private session, your Honours.

3 PRESIDING JUDGE FULFORD: Can you put the question again, please, Mr Desalliers.

4 MR DESALLIERS: (Interpretation)

5 Q. Yes, I shall put the question to you again, Mr Witness. These individuals did
6 not leave you there. You said that they took you with them. And my question -- well,
7 you also made mention of the fact that they took you home with them, and where was that?

8 A. That was in (Redacted)

9 Q. (Redacted)

10 A. (Redacted)

11 Q. Could you please repeat your answer? It has not been transcribed, Mr Witness.
12 My question was: Are (Redacted) two different places?

13 A. (Redacted)

14 Q. So the precise location that they took you to is, the first place they took
15 you to is (Redacted) is that correct? Did you understand my question, Mr Witness, or
16 would you rather I repeated it?

17 A. Yes, please repeat.

18 Q. I would like to know the name of the first localit  they took you to, and I
19 understood from your response that (Redacted).

20 Did they take directly to the localit  of (Redacted)? Did they take you directly there
21 from the place where they found you?

22 A. From the place where they found me, they took me with them, and we -- there
23 were villages where we spent the night. Before arriving in (Redacted), we didn't go directly
24 (Redacted). It took us two days to get there, and we slept on the way. It took us two
25 days to get to (Redacted).

1 PRESIDING JUDGE FULFORD: Mr Desalliers, we're going to give the witness a
2 10-minute break at this stage and also to see whether the equipment and particularly
3 the English transcript can recover from its current non-functioning state. Thank you
4 very much, Mr Lubanga.

5 (The accused exits the courtroom)

6 PRESIDING JUDGE FULFORD: Closed session, please.

7 *(Closed session at 4.24 p.m.) Reclassified as open session

8 PRESIDING JUDGE FULFORD: We'll sit again at 20 to.

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

10 (The witness stands down)

11 (Recess taken at 4.24 p.m.)

12 (Upon resuming at 4.42 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 witness enters the courtroom)

17 (The accused enters the courtroom)

18 PRESIDING JUDGE FULFORD: Public session, please. Private session. Private
19 session.

20 *(Private session at 4.43 p.m.) Reclassified as open session

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

22 PRESIDING JUDGE FULFORD: Mr Desalliers, can we move back into public session?
23 I think we have -- we went into private session because of some names, on Ms Samson's
24 sensible suggestion.

25 MR DESALLIERS: (Interpretation) Mr President, I still have a few questions

1 on the itinerary of the witness. However, when this point was discussed last week, I
2 said that in my opinion what could be the subject of questions in closed session would
3 be the place of residence of the witness at the time, but his itinerary could be discussed
4 in open session. I am reiterating that proposal to the Chamber, but I'm still continuing
5 with that line of questioning.

6 PRESIDING JUDGE FULFORD: Any observations? You wouldn't object to us going
7 into public session in those circumstances, Ms Samson?

8 MS SAMSON: No. No, your Honour, thank you.

9 PRESIDING JUDGE FULFORD: Well, anything to say, Mr Keta?

10 MR KETA: (Interpretation) As far as I am concerned, Mr President, if we have
11 to talk about all the villages that the witness travelled through then I would hope that
12 we will stay in private session.

13 PRESIDING JUDGE FULFORD: Well, Mr Keta, I do find it difficult to see how
14 describing those villages or giving their names is going to identify this
15 individual, but to save time we'll remain in private session while we deal with this
16 part of the itinerary.

17 Please carry on, Mr Desalliers.

18 MR DESALLIERS: (Interpretation)

19 Q. Mr Witness, before the break you told us that you did not travel directly from
20 the place where those people took you to (Redacted), but that you spent nights in certain
21 villages. Let us go point by point, Mr Witness, from the time that they found you in
22 the water. What is the first place that you went to after that?

23 A. The first place at which we spent the night together?

24 Q. Mr Witness, that is not necessarily my question. My question is not where you
25 spent the first night, but the first location to which you went, irrespective of whether

1 you spent the night there or not.

2 A. With them in their home.

3 Q. To be certain that we understand each other, where did they live?

4 A. (Redacted)

5 Q. But I thought you told us that you did not go directly (Redacted), so what is
6 what here, Mr Witness? Did you go directly to (Redacted) to these people's home, or did
7 you go somewhere else before that?

8 A. We left (Redacted). From (Redacted) we spent a night in a village - I was not
9 told the name of that village - and then we passed through (Redacted).

10 Q. Very well, let us begin with (Redacted). How did you get there?

11 A. I said -- you mean the means of transportation?

12 Q. Yes, how did you move from that place?

13 A. From (Redacted) to begin with they had their canoe. When we reached the place
14 where we spent the night, they had an engine that they installed under their canoe and
15 so we continued through (Redacted).

16 Q. Am I to understand that you travelled always in the canoe with those people?

17 A. Until we got to their home.

18 Q. Since you passed through (Redacted) to begin with, can you tell us for how long
19 you stayed in (Redacted)? Did you understand my question, Witness? Let me ask you the
20 question once again, just to be sure that you have understood me. When those two people
21 took you in their canoe to (Redacted) I would like to know where you stayed there and
22 for how long before you left again.

23 A. When they took me, they told me to stay back with one person, and the other
24 person went to the village to fetch something; I do not know exactly what. But he came
25 back and -- and I saw a bag of salt in the canoe. They had placed four bags of salt there.

1 I do not know how long we stayed there, but we left on the same day, in the afternoon.

2 Q. Very well. Thank you. And then you went to a village whose name you do not
3 know, or no longer remember. How long did it take you to reach that village?

4 A. During that afternoon when we left that location, somewhere along the way I
5 fell asleep because I had spent a few days without sleeping. I became sleepy and they
6 asked me to sleep. So we arrived at night. I do not even know at what time at night.
7 They left their canoe near the lake and we went to sleep and then, in the morning, we
8 continued on our way.

9 Q. Was that village far away from (Redacted)

10 A. I do not know.

11 Q. Very well. And did you spend a single night in that village before continuing
12 your journey in the canoe?

13 A. I beg your pardon?

14 Q. The village whose name you do not know, did you spend only one night there?

15 A. Yes. They woke me up and we went and slept and, very early in the morning,
16 we woke up again and continued on our way.

17 Q. And then you went (Redacted). For how long did you travel before reaching there?

18 A. I no longer remember.

19 Q. Did you spend the night (Redacted)?

20 A. No. There were two other people (Redacted) who accompanied us. These people
21 were also in the canoe with us and we travelled with them right up to (Redacted).

22 Q. Very well. And after your arrival in (Redacted), how long did you stay there?

23 A. I was at their home in (Redacted). When my foot, my leg, started giving me trouble,
24 I started crying, and they told me that they were -- that I was disturbing them, so they
25 bore with me for that evening but, the following day, they gave me a small sum of money,

1 (Redacted), and they said, "Young man, you are going to leave now." And they
2 showed me the way, which I took to go home.

3 Q. Very well. So you spent a single night (Redacted). They gave you some money
4 and you went home the very next day; is that correct?

5 A. I spent the night with them and it was the following day, around afternoon,
6 that they gave me the money and asked me to leave. I was accompanied by people, transporters.
7 They told me that they will go with them; they are going to show you the way. When I
8 left with them, they took a different direction and said that they were returning to
9 (Redacted) (phon). But I had to return to my village which was in the opposite direction.
10 They simply showed the road that I had to take and they went in a different direction;
11 that is how it happened.

12 Q. And from (Redacted) to your village, did you travel on foot?

13 A. Yes, on foot.

14 Q. And how long did you have to walk for to get there?

15 A. Two days.

16 Q. I'm going to -- well, actually, I have some documents to show the witness. I
17 don't know whether, your Honour, given the time, whether it would be a good moment to
18 begin with these documents.

19 PRESIDING JUDGE FULFORD: We'd had in mind quarter past 5, Mr Desalliers, if
20 that's not inconvenient with you.

21 MR DESALLIERS: (Interpretation) That's fine.

22 PRESIDING JUDGE FULFORD: And so long as the documents aren't shown publicly,
23 can we do this in public session?

24 MR DESALLIERS: (Interpretation) Well, it has to go -- it has to do with the
25 itinerary. If we do that in private, I think --

1 PRESIDING JUDGE FULFORD: Yes. So some documents to distribute. Assistance
2 of the usher, please.

3 MR DESALLIERS: (Interpretation) They're the same documents as those that were
4 provided last week, and I believe the witness already has such documents, these documents
5 at hand.

6 PRESIDING JUDGE FULFORD: If you could just help find the right page. There
7 is a bundle. Oh, right, those are the three. Fine. I think -- can we see whether they -- they
8 are. Good.

9 MR DESALLIERS: (Interpretation)

10 Q. Mr Witness, I'm going to read out an excerpt from your additional statement,
11 and that is found at tab 3, at the very last page, page 13 of 13. And I'm going to quote
12 a short passage at point 4, and I quote, "As for my desertion I fled by way of (Redacted)
13 where I got a job for a few days before I went down to (Redacted) (phon),
14 (Redacted) I went up to" - and I'm not going to say this
15 name - "my village of birth."

16 Mr Witness, when you mentioned in your additional statement of the year 2008,
17 unless I'm mistaken, no, 2007, that you had got a job for a few days in (Redacted) what
18 did you mean by that?

19 A. Well, by that I meant -- here I said that, from (Redacted) from where I had
20 fled when I went down to (Redacted), I found -- I found people who were to take me to
21 (Redacted). Those people, they didn't look at my wound. I worked for them and I also
22 prepared some things there. I did everything so that they wouldn't leave me. I worked
23 for them. That's what I meant by that.

24 Q. So with what you're saying here, when I read the passage here, am I to understand
25 that you got a job there for a few days in (Redacted)?

- 1 A. I don't understand.
- 2 Q. Simply my question is, yes or no, did you have a job (Redacted) for a few days?
- 3 A. Whether I had a job or work? Or the word I used was "job." I worked for them,
- 4 not for money, really, but so that they would take me with them and then we would go.
- 5 Q. But when you say a job, you mean a -- some form of employment?
- 6 A. Yes.
- 7 Q. What was your job?
- 8 A. They let me cook.
- 9 Q. Prepare what? Or cook what?
- 10 A. They put fish on the fire and they asked me to go get water. It wasn't so far
- 11 away. So I went off to draw water for that. And they took a bath and then we left.
- 12 Q. And where did you go to draw water?
- 13 A. At (Redacted) (phon).
- 14 Q. Just to situate us, is (Redacted), was that during the part of the trip when
- 15 you were travelling by canoe?
- 16 A. It's not really a place. It's not the name of a place; it's where you get water
- 17 from the tap.
- 18 Q. I will ask my question in a different way, Mr Witness. When you did that work
- 19 for them, what town was that in?
- 20 A. It wasn't a town; there was a village there.
- 21 Q. Which village then?
- 22 A. I was told that it was (Redacted).
- 23 Q. Thank you. Mr Witness, earlier in your testimony, and also last week, mention
- 24 was made of a wound, a bullet wound sustained during the battle in Bogoro. I would like
- 25 to ask you if you could go to tab 2 of our documents. Tab 2, page 11, please. Are you

1 there?

2 A. Yes.

3 Q. It has to do with your request for participation, the first document that you
4 filled out, to take part as a victim in the proceedings before the International Criminal
5 Court. And on page 11, part E, this has to do with the injuries or the harm that you
6 suffered. Now, point 1, it says, "A delay in education and low spirits." Could you explain
7 to us why you made no mention of your -- this other injury? Why did you not speak of
8 the wound when you filled out this initial request to participate?

9 A. You know, a young person who starts with madness, imagine by way of madness
10 this -- my youth, which I began, you see, with my madness. I'm saying the word "madness"
11 because sometimes I forget. With the intelligence I have, I can't -- I can forget. I
12 speak of -- if you speak of wounds, now if you read point 1 here.

13 Q. Mr Witness, what I would like to know is just, "Yes" or "No", did you mention
14 these injuries?

15 A. Yes.

16 Q. You mentioned them at that time, 2006?

17 A. Mention them, how?

18 Q. You can read, can't you, Mr Witness? You can read? I read to you the things
19 that are found here in the section that has to do with injuries and, since there's no
20 mention here in this form that you filled out in 2006, no mention of an injury to the
21 calf for example, I'm just asking you why -- why in 2006 did you not speak of this injury
22 to the calf?

23 PRESIDING JUDGE FULFORD: Mr Desalliers, I think we'll leave it there for today.
24 We've obviously got the point that there's no apparent reference to it in the form. Of
25 course, it's entirely open to you to press the point as to why -- as to whether or not

1 the witness had mentioned it and, if you wish to pick up on that on Thursday morning,
2 you're entirely free to do so.

3 Good. Thank you very much indeed, sir. I'm sorry your evidence is taking a
4 little bit of time, but I'm sure you'll understand that the various lawyers have got
5 various questions that they wish to put to you perfectly properly. I'm afraid we're not
6 sitting tomorrow, because we've got some other judicial business to deal with, and we
7 look forward to seeing you again at half past 9 on Thursday morning.

8 Good. Thank you very much, Mr Lubanga.

9 (The accused exits the courtroom)

10 PRESIDING JUDGE FULFORD: Closed session, please.

11 *(Closed session at 5.15 p.m.) Reclassified as open session

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

13 (The witness stands down)

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

15 PRESIDING JUDGE FULFORD: Yes, that's fine now. Thank you. Half past nine on
16 Thursday.

17 (The hearing ends at 5.16 p.m.)

18 RECLASSIFICATION REPORT

19 Pursuant to Trial Chamber I's email instruction dated 24th January
20 2012, the transcript is reclassified as public after the indicated
21 redactions have been implemented as ordered by the Chamber. All private
22 and closed sessions (*) are now available to the public with the exception
23 of the portions of the transcript that have been redacted.

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25