

1 International Criminal Court

2 Trial Chamber I - Courtroom 2

3 Presiding Judge Adrian Fulford, Judge Elizabeth 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, 2 February 2010

8 (The hearing starts at 9.31 p.m.)

9 (Open session at 9.31 a.m.)

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

12 PRESIDING JUDGE FULFORD: Good morning. Maître Mabilles?

13 MS MABILLE: (Interpretation) Your Honour, yesterday we sent an email to
14 the Chamber stating that we received in a disclosure package last Thursday two
15 investigators' notes, notes which we found to be very important for the testimony
16 of witnesses 003 and 004, and we found that these notes refer to the period of
17 2008.

18 The question that immediately came to mind for us was: Why were these
19 investigators' notes disclosed to us in time? We felt that this put the Defence in
20 a situation where we could not ask the witnesses who are coming today or next week
21 to give us explanations on a certain number of events which were related in these
22 investigators' notes. For the Defence team, the Prosecutor has the statutory
23 obligation of disclosing elements pursuant to Rule 77 and on exculpatory evidence
24 and so we are wondering why this disclosure was done late. This has put us in a
25 difficult situation.

1 The very first consequence of this situation is that we would like to tell
2 the Chamber that we need additional time. We have to meet our witnesses and give
3 them this information and get from them certain explanations. However, we have
4 decided not to request this additional time from the Chamber not because we deem
5 this unimportant but, rather, because we think that the witnesses are already here
6 in The Hague and as such we cannot ask for an adjournment. This would be
7 unrealistic at this juncture.

8 However, we would very certainly like to request the Chamber to remind the
9 Prosecutor of his or her disclosure obligations, and we would like an order to be
10 issued to that effect. We have already -- if we informed the OTP right from 9
11 August providing them with our list of witnesses that we wanted to get all the
12 material which was available to the OTP, material related to these witnesses. We
13 believe that this is a statutory obligation of the Prosecutor, and I would like to
14 say that the Defence considers that in these material we had about 30,000 pages,
15 and we had to look at all these documents. But here, we're talking about documents
16 which are of great relevance to the testimony which we are supposed to hear today.
17 Those are the observations which we wanted to make, your Honour, at the beginning
18 of this hearing today.

19 PRESIDING JUDGE FULFORD: Thank you very much, Maître Mabilie. Ms Samson,
20 this is in a sense, your witness, as I understand it. Now, it may be, in order for
21 the explanation which we're going to request of you we will need to go into private
22 session, but I'll leave you to give an indication if that's necessary.

23 What I want briefly to point out at the outset is that, as we understand
24 it, you have been aware of the identities of witnesses 3 and 4 - that's Defence
25 witnesses 3 and 4 - since 26 August of last year. The documents that were only

1 served on the Defence during the course of last week, which are investigators'
2 reports, the material in those documents has clearly been in the possession of the
3 Prosecution for a very long period of time indeed; going back, at the very least,
4 to the early part of last year.

5 Now, our view is that the material contained in those reports is not only
6 self-evidently disclosable under Rule 77, but it is also self-evidently of
7 significance as regards these two witnesses who the Defence are about to call.
8 Now, in those circumstances, we need a full explanation from the Prosecution as to
9 why it has taken so long for the Office of the Prosecutor to fulfil its disclosure
10 obligations as regards these documents.

11 MS SAMSON: Mr President, I will be happy to provide the information that
12 I can in public session, without referring specifically to any sensitive
13 information.

14 The Office of the Prosecutor maintains a record, a record of contacts it
15 has with all of its witnesses, which is primarily a record of daily management and
16 security issues. It is not a record intended to incorporate substantive issues.
17 It is an internal track tracking of our witnesses and of their daily concerns, such
18 as we're able to obtain from them, until such time as they may become witnesses
19 under the protection of the Victims and Witnesses Unit.

20 In this particular case, the Defence request was provided to the
21 Prosecution at the end of August. Thereafter, the Prosecution used the names that
22 had been provided in the Defence summary documents and conducted automated searches
23 of the witnesses - the totality of the Defence witnesses.

24 Closer to the time when the Prosecution was focussing on the preparation
25 of the Defence case, the Prosecution made certain connections between the names

1 that the Defence had provided in relation to the two witnesses to come, Defence
2 witnesses 3 and 4, and names that they had furnished to the Office of the
3 Prosecutor which were different. The difference in the names affected the searches
4 that the Prosecution had conducted in relation to these witnesses, such that
5 certain materials - not only these two documents, but certain expense receipts -
6 were discovered more recently.

7 The Prosecution undertook to review the database that I alluded to
8 earlier, which recorded certain contacts of a management nature with the witnesses,
9 and it did so admittedly more recently than 29 August. As a result of the review
10 we determined that information there contained in that record ought to be put into
11 a format that is disclosable, and we also learned that was there actually one
12 investigator's note that had already been created and stored in a different
13 document storage area which we immediately retrieved and disclosed.

14 Perhaps the Chamber has more pointed or directed questions in relation to
15 the explanations that I have just provided?

16 PRESIDING JUDGE FULFORD: Well, Ms Samson, the -- isn't the problem this:
17 that there has been over the last few weeks - indeed, I think it's months - very
18 real issues as regards Witness 297, who was at one stage a Prosecution witness,
19 then fell off the Prosecution's list and then suddenly became an individual
20 apparently of great interest to the Prosecution because we've had to deal with a
21 number of requests by the Prosecution for permission to speak with that witness, so
22 the whole issue of 297 and his relationship with Witness 3, possibly with Witness
23 4, has been apparently high on the Prosecution's radar, yet notwithstanding that
24 these two documents, which are potentially highly revealing of what has been
25 happening between Witness 3 and 297, were not disclosed?

1 Now, I'm going to ask you a direct question. When did counsel first
2 appreciate that these two investigators' notes were relevant to the apparently
3 important history as regards Witness 297, on the one hand, and Defence witnesses 3
4 and/or 4 on the other?

5 MS SAMSON: Your Honour, in relation to the document entitled
6 "Investigator's note", the other document is an investigator's report, counsel
7 became aware of the existence of that report either over the holiday period, or
8 early in January, because it was referenced or referred to in the investigation
9 record management system. Counsel made enquiries with the relevant investigator,
10 to determine whether or not that actually existed, and in January was provided with
11 reference to this note. Thereafter, it was disclosed.

12 In relation to the database, although counsel was aware that this database
13 existed, counsel did not go back to look at the database until December,
14 thereabouts, and then determined that there were significant references to both
15 Defence witnesses 3 and 4, including information that ought to have been disclosed.
16 Discussions ensued within the Office of the Prosecutor as to the format in which
17 these internal management records ought to be disclosed and, thereafter, a form was
18 agreed upon and the information was disclosed.

19 PRESIDING JUDGE FULFORD: Well, thank you, Ms Samson. Even on that
20 history it is clear, therefore, that since approximately the Christmas break the
21 Prosecution has been alive to in a general sense this material, and here we are at
22 the beginning of February with the Defence only having received this material
23 towards the middle of last week.

24 Additionally, as I pointed out a few moments ago, as of the end of August
25 of last year the Prosecution was aware of the identities of these two Defence

1 witnesses and that brings both a benefit and an obligation to the Prosecution: the
2 benefit because it gives you an opportunity to research them; the obligation in
3 that it then puts you on notice of particular areas where you must refocus as
4 regards your disclosure obligations.

5 Now, Ms Samson, our view is that this disclosure has been made markedly
6 too late. This should have happened at the very least in late December, if not
7 substantially earlier once the identities of these two witnesses were revealed to
8 you.

9 We request you, please, to review how disclosure is approached where you
10 have the names of the witnesses, so you know who they are, so as to ensure that we
11 are not placed in this position again in the future. I see you nod. I take that
12 as an assent. Thank you very much for your assistance.

13 (The Trial Chamber confers)

14 PRESIDING JUDGE FULFORD: Maître Mabilie, we are very grateful to you for
15 the stance that you a little bit earlier this morning indicated to us. It
16 undoubtedly reflects what you will understand to be the Chamber's desire to lose as
17 little time as possible, given the delays historically that we have already
18 experienced. However, that said, we wish to make clear that this is very much your
19 choice. If at this point in time you wish to have the opportunity of discussing
20 this recently disclosed material, which you should have had as we have just
21 indicated in your possession a significant time ago, with Witness 3 before he is
22 called, we will give you that opportunity. The witness familiarisation rules will
23 be waived and you will -- and you, if you wish for it, will be given the
24 opportunity to discuss these substantive matters with him.

25 We're not encouraging you to take that course because it will inevitably

1 lead to a delay, but we are making it clear that this is your choice, and if you
2 make the request it will be granted.

3 Now, you may wish to discuss it with your team and Mr Lubanga for a
4 moment.

5 (Defence counsel confer)

6 MS MABILLE: (Interpretation) Your Honour, I won't hide it from you that
7 we have taken the decision of not requesting for an adjournment. We think that at
8 this juncture if we do that it is going to rather upset our witness, rather than
9 help him, and so we have taken the decision not to request for adjournment.

10 I would like to add that we are going to send a note to that effect to the
11 Chamber, because this disclosure obligation does not arise only for this witness;
12 it also arises for the previous witness. And I would like the Defence -- well, we
13 would like to send a note to the Chamber to further explain this problem because it
14 does not only have to do with the two documents I talked about; it is a general
15 problem. And I am proposing that we will give you a written submission on these
16 problems subsequently.

17 PRESIDING JUDGE FULFORD: Thank you very much, Maître Mabilille. Witness,
18 please, and we'll need an interpreter down to help with giving the oath.

19 Maître Mabilille?

20 MS MABILLE: (Interpretation) I beg your pardon, your Honour; just one
21 short clarification.

22 We are going to talk about Witness 297, and I wish to get a direction from
23 the Chamber. Witness 297 is a witness who was withdrawn from the list of
24 Prosecution witnesses.

25 (The witness enters the courtroom)

1 MS MABILLE: (Interpretation) Can we mention his name or her name
2 publicly, because we know that even though he has been withdrawn from the list of
3 Prosecution witnesses he is under the protection programme of the court. That is
4 my concern here.

5 MS SAMSON: Mr President, the Prosecution's view is that the name of the
6 individual ought not to be elicited in public session. The individual is indeed in
7 the court's protection program. There are structures in place to ensure that the
8 people within his new and current locale and entourage are not aware that he
9 participated or cooperated with the Court in any way. Notwithstanding that he no
10 longer is a -- ceased to be a Prosecution witness the Prosecution proposes that
11 that information in the first instance be dealt with in private session.
12 Thereafter, parties can either refer to this individual as 297 or in some other
13 appropriate form in the public parts of the proceeding.

14 PRESIDING JUDGE FULFORD: Thank you very much, Ms Samson. Is that
15 acceptable, Maître Mabilille?

16 MS MABILLE: (Interpretation) Yes, I will do with that, your Honour.

17 PRESIDING JUDGE FULFORD: Thank you. We are then for a moment going to go
18 into closed session so the interpreter can come in, and once the interpreter is in
19 court, we will then go back into public session, so there will only be a very short
20 hiatus. Closed session, please.

21 *(Closed session at 9.57 a.m.) Reclassified as Open session.

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

23 PRESIDING JUDGE FULFORD: All right. Interpreter, please.

24 (The interpreter enters the courtroom)

25 PRESIDING JUDGE FULFORD: All right. We now need to go into private -- we

1 need to go into public session but with the blinds behind the witness and the
2 interpreter remaining down.

3 (Open session at 9.58 a.m.)

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

5 PRESIDING JUDGE FULFORD: Good morning, sir.

6 THE WITNESS: (Interpretation) Good morning.

7 PRESIDING JUDGE FULFORD: Please do not be nervous about anything that is
8 going to be happening during the course of your evidence. Although there are a lot
9 of people in the courtroom with a number of lawyers who will be asking you
10 questions, the judges will ensure that the questions that are put to you are
11 straightforward, readily understandable and clear, and that you are treated wholly
12 fairly.

13 During the course of your evidence we will try as much as possible to
14 remain in public session so that the public generally, and including those who are
15 watching these proceedings on the internet, are able to hear your evidence, but
16 there will be occasions when we will need to go into private session so as to
17 protect the identities of particular individuals who need to be safeguarded against
18 possible recriminations if their identity becomes known. So please excuse us if,
19 from time to time, there is a slight pause while we move from public into private
20 session and back again.

21 Can I ask you, most particularly, to make sure that you do not speak too
22 quietly because it's critical that everything you say is picked up on the
23 microphone in front of you, and please ensure that you do not speak too quickly
24 because if witnesses talk at a fast rate and, moreover, if they talk when other
25 people are speaking, then what is said, I'm afraid is lost and your evidence will

1 suffer as a result. So please speak slowly and make sure that the person who's
2 asking you questions has finished their question before you come back with an
3 answer.

4 Now, the first thing that's going to happen is that we're going to ask you
5 to take the solemn undertaking with the assistance of the interpreter who's sitting
6 next to you. He will read out a few words at a time from the card in front of him
7 and could you please simply repeat what he says out loud so we can all hear what
8 you say. Thank you.

9 WITNESS: WITNESS DRC-D01-0003 (Sworn)

10 (The witness answers through interpreter)

11 PRESIDING JUDGE FULFORD: Right. Sir, I'm going to ask you, you fully
12 understood the words that were both read out which you repeated; is that right?

13 THE WITNESS: Yes, I have understood correctly, Mr President.

14 PRESIDING JUDGE FULFORD: All right. Good. Thank you very much. We'll
15 now go into closed session so the interpreter can withdraw unless, Maître Mabilille,
16 there are some documents that you are going to be introducing in the very near
17 future. No. Closed session, please.

18 *(Closed session at 10.03 a.m.) Reclassified as Open session.

19 PRESIDING JUDGE FULFORD: Thank you for your assistance, sir. You can
20 withdraw now.

21 (The interpreter stands down)

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

23 PRESIDING JUDGE FULFORD: Public session, please.

24 (Open session at 10.04 a.m.)

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

1 PRESIDING JUDGE FULFORD: Yes, Maître Mabilille.

2 Questioned by Ms Mabilille: (Interpretation)

3 Q. Good morning, Witness.

4 THE INTERPRETER: No time for the witness to respond.

5 THE WITNESS: Good morning.

6 MS MABILLE: (Interpretation)

7 Q. We have already met previously, but I'd like to introduce myself again.

8 My name is Catherine Mabilille and I am a lawyer, and I shall be putting a number of

9 questions to you for the defence of Thomas Lubanga. Have you heard what I just

10 said?

11 A. I have followed you well.

12 Q. Thank you. Could you please start by indicating your full name?

13 A. My name is Maki Dhera Joseph.

14 Q. What is your date of birth?

15 A. I was born in 1972, on 24 November.

16 THE INTERPRETER: Correction from the Swahili booth: 1962, 24 November.

17 MS MABILLE: (Interpretation)

18 Q. Could you tell us where you were born?

19 A. Yes, I shall explain that to you. I was born in Sabo (phon) in the Congo.

20 THE INTERPRETER: In Shabunda, correction from the Swahili booth, in the

21 Congo.

22 THE WITNESS: And then I went to live in my village in Bunia.

23 MS MABILLE: (Interpretation)

24 Q. Mr Witness, you told us that your name was Maki Dhera Joseph. Do you have

25 a nickname?

1 A. My name is also Jafula.

2 MS MABILLE: (Interpretation) Thank you. Mr President, I believe that for
3 a few moments we might go into closed session for a few questions.

4 PRESIDING JUDGE FULFORD: Private session, please.

5 *(Private session at 10.07 a.m.) Reclassified as Open session.

6 THE INTERPRETER: Message from the English booth, Mr Interpreter --
7 Mr President, could there please be a pause observed between question and answer
8 session for the interpretation and court reporting? Thank you.

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

10 PRESIDING JUDGE FULFORD: Maître Mabilille, you are coming in too quickly
11 after the witness's answer. Can you -- it's slightly artificial, but impose an
12 element of self-discipline and leave a gap between your next question and the
13 witness's last answer. Thank you. Please proceed.

14 MS MABILLE: (Interpretation)

15 Q. Mr Witness, do you know an individual by the name of (Redacted)

16 A. Yes, I do know (Redacted). I know him very well.

17 Q. Could you give us his full name?

18 A. Indeed, I can.

19 Q. Could you please give us those names?

20 A. His name is (Redacted) and then he has a nickname (Redacted).

21 Q. What connection do you have to this individual, Mr Witness?

22 A. Which individual?

23 Q. We are talking about (Redacted). What connection do you have with this
24 individual?

25 A. Very well. (Redacted)

1 (Redacted).

2 Q. So, he is a (Redacted)?

3 A. Yes, he is a (Redacted).

4 Q. Could you please tell us again (Redacted) on the maternal
5 side?

6 A. His mother is the (Redacted).

7 Q. And on the paternal side?

8 A. His father is my (Redacted)

9 (Redacted).

10 Q. Could you give us the name of his mother?

11 A. His mother's name is (Redacted).

12 Q. Could you give us his father's name?

13 A. His father's name is (Redacted).

14 Q. Could you tell us where his mother is living today?

15 A. His mother is living in (Redacted), in (Redacted).

16 Q. So, his mother is alive?

17 A. She was alive and well when I left her.

18 Q. One last question. You said that the name of his father is (Redacted).

19 Does he have any other names, the father?

20 A. He has a nickname.

21 Q. Could you please provide us with his nickname?

22 A. He is also called (Redacted).

23 Q. Can you tell us how old (Redacted) is?

24 A. I would not want to lie here. I need to tell the truth. He was born -- I
25 can't tell you precisely when he was born, but he is approximately 19 years of age;

1 at the most, 20 years of age.

2 Q. What are all the names, or nicknames, that you know for (Redacted)?

3 A. (No interpretation)

4 Q. Could you tell us what the names, or nicknames, for (Redacted) are that
5 you are aware of?

6 A. The truth be told, he gave himself the name of (Redacted). He was not
7 baptised. He was a Protestant. His name is (Redacted) and his name is also
8 (Redacted) at the local sports facility, or (Redacted).

9 Q. Could you tell us in which context (Redacted) used the first name (Redacted)?

10 A. Please forgive me. There are people who give themselves the name that
11 they like. I do not know where he was baptised, but his name was merely (Redacted).
12 I only knew him by the name (Redacted) that he had given himself.

13 Q. How long have you known (Redacted) for?

14 A. (Redacted)

15 (Redacted)

16 Q. Where was he living, or where was he born?

17 A. He was born in (Redacted). He was born at the communal hospital in
18 (Redacted), in (Redacted).

19 Q. And who was he living with when he was born?

20 A. Could you please repeat your question?

21 Q. I was asking you who he lived with after his birth; (Redacted) that is?

22 A. He was living there (Redacted). He was there with
23 his mother and his father, living with his parents.

24 Q. And where were you living, Mr Witness, when (Redacted) came into the world?

25 A. (Redacted). I knew his father well, and

1 his mother, (Redacted). We are of approximately the same age, his parents and
2 myself.

3 Q. Mr Witness, since the birth of (Redacted), have there been periods
4 (Redacted)?

5 A. (Redacted). It
6 might have been that I went to work here and there momentarily, but (Redacted)
7 (Redacted).

8 Q. Mr Witness, do you know where (Redacted) went to school?

9 A. Yes, I do.

10 Q. Could you tell us?

11 A. He went to school in (Redacted), in (Redacted) at the primary school in
12 (Redacted) Primary School. Yes, (Redacted) Primary School. He did not undertake
13 any further studies because of the war.

14 Q. Mr Witness, can you tell us how long he studied for, until what class?

15 A. As I have just said, he went to school until the third year of primary
16 school. He was successful at the end of that year, and then he had to stop due to
17 the disturbances.

18 Q. Mr Witness, I'm going to suggest to you that from now on you do not give
19 us the name of (Redacted) - but when I refer to (Redacted) I shall talk of "the
20 boy" - for us to be able to return to open session. Have you understood me
21 correctly? This means that when I speak of (Redacted) I'm talking of "the boy";
22 and when you answer me, you will attempt to answer by mentioning "the boy." Can we
23 try to proceed in such a manner, Mr Witness?

24 A. I have understood you correctly, but why do you want to hide (Redacted)
25 name? We are talking in public here. Why do you want to hide his name?

1 PRESIDING JUDGE FULFORD: Sir, the judges are going to ask you to follow
2 the indication just given by Maitre Mabilille. Our decision has been that certainly,
3 for the time being, (Redacted) identity should be protected from the public. And
4 we will ask you, please, to abide by that ruling that we've made. If it becomes
5 appropriate to take a different approach in due course, then obviously we'll
6 reconsider the matter. Good.

7 So following those instructions, public session, Maitre Mabilille?

8 (Open session at 10.25 a.m.)

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

10 PRESIDING JUDGE FULFORD: Yes.

11 MS MABILLE: (Interpretation)

12 Q. Mr Witness, do you know an individual by the name of (Redacted)?

13 A. Yes, I know (Redacted) only too well.

14 PRESIDING JUDGE FULFORD: Yes, Ms Samson.

15 MS SAMSON: Excuse me for the interruption, your Honour, but this raises a
16 second point of private versus public session. In the Prosecution's submission,
17 knowing somewhat what the evidence of the witness will be in relation to this
18 witness, the prosecution has concerns precisely for the reasons the Chamber
19 mentioned earlier in relation to the other individual, that there may be negative
20 repercussions on a person who is -- against whom allegations are made that are not
21 yet founded. It may affect his security as well as his current professional
22 commitments.

23 And the Prosecution's request is, that a similar process be followed in
24 relation to this individual; that being, that perhaps certain information about
25 identity could be elicited in private session, following which we can thereafter

1 refer to him by way of a pseudonym.

2 PRESIDING JUDGE FULFORD: And you suggest?

3 MS SAMSON: Might it be too complicated to use the witness's code, which
4 is 321?

5 PRESIDING JUDGE FULFORD: Well, think about it for a moment, all right?
6 But we need to find a description that will point this witness clearly in the right
7 direction. Maître Mabilille, given those security concerns have been raised, do you
8 have any proposal? Do you have any objections to following the proposal just made
9 by Ms Samson?

10 (Defence counsel confer)

11 MS MABILLE: (Interpretation) Mr President, the Defence team is wondering
12 about this notion of protection with regard notably to the intermediary of the OTP.
13 Yesterday we talked about our resource person, and we identified a number of
14 individuals.

15 I find it difficult to grasp today that the questions that we are going to
16 be putting with regard to this individual might put them at risk. I believe that
17 the OTP should provide us with an explanation as to how precisely the fact of
18 mentioning this individual and ascertaining the work undertaken by this person
19 might pose them at an immediate risk. So whatever the case may be, we are going to
20 be in closed session, therefore, with practically all our witnesses and throughout
21 all the hearings if we -- that is the direct consequence of this position of the
22 OTP.

23 PRESIDING JUDGE FULFORD: A little bit more assistance, please, Ms Samson.

24 MS SAMSON: Yes, your Honour. This particular witness had, in the early
25 stages of the trial, been granted protected measures by the Chamber by way of

1 redactions to his identity given the fact that he had alerted the Office of the
2 Prosecutor to certain threats that he claims to have received directly related to
3 the assistance he provided to the Office of the Prosecutor.

4 During a certain point in the testimony of one of the witnesses, his name
5 did emerge in private session; and the Prosecutor, thereafter, identified his name
6 in relation to these witnesses to the Defence under the understanding at the time
7 that, given that the information was elicited in private session with respect to
8 that child witness, that it wasn't going to be publicly disseminated.

9 The individual is someone who has in the past worked in the field of
10 demobilisation - without going into specifics - and any allegations made against
11 him could have a double effect of increasing threats that he indicated to us in
12 2008 he had received, and may also jeopardize his professional work given that they
13 are -- these allegations are to date unfounded, and the Office of the Prosecutor
14 will be denying them. Well, I could provide perhaps more specific information, but
15 it would require a private session.

16 PRESIDING JUDGE FULFORD: Thus far, therefore, we have withheld this name
17 from the public.

18 MS SAMSON: From my recollection, your Honour, at this point in time
19 references to any activities or relationship between this individual and any
20 witnesses who have come, thus far, to testify has been elicited in private session.
21 I would like to check that to be absolutely certain that I'm representing it
22 correctly; but given that the relationship of the individual to the protected
23 witnesses who have identified the protected witnesses, it was elicited in private
24 session.

25 PRESIDING JUDGE FULFORD: Thank you.

1 (The Trial Chamber confers)

2 PRESIDING JUDGE FULFORD: Ms Samson, Maître Mabilie, we're going to
3 approach this in the first instance cautiously. Given the concerns expressed by
4 the prosecution that, at face value, mean that there are potential implications not
5 only for the sole individual, but also for others who he has been dealing with, it
6 seems to us this needs to be fully researched before we make a decision that this
7 should be publicly disseminated. Therefore, for the time being, this individual's
8 name should not be mentioned publicly.

9 Ms Samson, will you please provide us, after we've risen today, with the
10 various references to which you alluded earlier where this has been dealt with
11 before? Can you also provide us with a summary of your concerns set out in full,
12 because you've indicated there are other matters that you would have wished to have
13 alluded to in private session if we had taken that opportunity. And we will,
14 following receipt of that information, then make a decision as to whether or not
15 this needs to continue to be protected.

16 We will, therefore, need a redaction order for certain things that have
17 been said thus far, and I want to indicate to members of the public gallery who
18 will have heard this that the name you have heard is not to be disseminated to
19 anyone outside of the public gallery. This is now protected material which is not
20 to be disseminated really beyond your notebook, which is not to be shown to anyone.
21 Thank you.

22 Now, so long as a pseudonym is used, Ms Samson, is that sufficient?

23 MS SAMSON: Yes. Thank you very much, your Honour.

24 PRESIDING JUDGE FULFORD: And what pseudonym do you proposal?

25 MS SAMSON: We've been discussing, would "the social worker" be

1 appropriate, or is that too complicated?

2 PRESIDING JUDGE FULFORD: Right. Thank you. Maître Mabilille, the request
3 then is made that instead of using the individual's name, he should be referred to
4 as "the social worker." Thank you. Let's proceed.

5 MS MABILLE: (Interpretation) Your Honour, just one small observation. I
6 am going to review with this witness several intermediaries. Consequently, I'm
7 afraid I may end up creating a lot of confusion for the witness because if I start
8 with the first person, and I refer to him as the social worker, then I will have to
9 look for other pseudonyms for the other persons whom we are going to refer to, and
10 I think this is going to be very complicated for the witness, and I am afraid we
11 may just have to go into closed session.

12 PRESIDING JUDGE FULFORD: How many individuals, approximately, are going
13 to come into that category, Maître Mabilille.

14 MS MABILLE: (Interpretation) At least three.

15 PRESIDING JUDGE FULFORD: Right. Let's see how we do with the first one
16 and we'll address the second intermediary in due course when we reach him or her.
17 So let's remain in public session and we'll refer to this individual by the name of
18 the social worker.

19 MS MABILLE: (Interpretation)

20 Q. Witness, I would like you to confirm that you have fully understood that
21 the person whose name I mentioned a short while ago, well, I will not use that name
22 again. I am going to use the pseudonym or the expression "social worker."
23 Witness, if you hear me talk of social worker, will you know who I am referring to?

24 PRESIDING JUDGE FULFORD: Right. I want this to be absolutely clear. Can
25 we go into private session, please, for a moment.

1 *(Private session at 10.38 a.m.) Reclassified as Open session.

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

3 PRESIDING JUDGE FULFORD: Right. Maître Mabilille, can you give the
4 explanation, please, to the witness in private session using the name.

5 MS MABILILLE: (Interpretation)

6 Q. Witness, I asked you a first question and I wanted you -- I asked you
7 whether you knew somebody by the name of (Redacted). Do you remember that I asked
8 you that question?

9 A. Yes, I remember.

10 Q. We are not going to mention that person's name again. Henceforth, we are
11 going to use the expression "social worker" every time we refer to (Redacted). I
12 will no longer use the name (Redacted). Every time I put a question to you I will
13 refer to the social worker instead of (Redacted). Have you fully understood?

14 A. I have understood you well.

15 PRESIDING JUDGE FULFORD: Thank you, Maître Mabilille, and of course
16 (Redacted) we're referring to as the boy. Good. Public session, please.

17 (Open session at 10.40 a.m.)

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

19 PRESIDING JUDGE FULFORD: Yes, Maître Mabilille.

20 MS MABILILLE: (Interpretation)

21 Q. Witness, I will return to my first question. And the question was: Do
22 you know someone whom I will refer to as a social worker?

23 A. Yes, I know that person.

24 Q. Could you tell me when you heard mention of this person for the very first
25 time?

1 A. It was a long time ago. I heard this name a long time ago. We were in
2 the same town but I heard mention of him a long time ago.

3 Q. Do you remember the very first person who talked to you about this social
4 worker?

5 A. Yes, I remember.

6 Q. Could you tell us who that person was?

7 A. Are you referring to the individual who talked to me about the social
8 worker?

9 Q. That's right, your witness. The question is: Who is the very first
10 person who talked to you about the social worker?

11 A. I think you should understand me well here. You know, when you use his
12 real name, it was easier for me to answer your questions. Now you are using the
13 expression "social worker" and this is not making things easy for me. I would like
14 you to fully understand my testimony.

15 PRESIDING JUDGE FULFORD: Private session, please.

16 *(Private session at 10.43 a.m.) Reclassified as Open session.

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

18 PRESIDING JUDGE FULFORD: We will now use the name, sir. Yes, Maître
19 Mabilille.

20 MS MABILLE: (Interpretation)

21 Q. Witness, when did you hear of Mr (Redacted) for the very first time? Do
22 you remember?

23 A. It was a long time ago. I do not remember well. (Redacted) arrived in
24 our area about five years ago. He came to recruit children. You want me to say
25 things -- well, halfway, to give you half truths, but I will give of you the whole

1 truth. He came to recruit children in our region. He took children from the
2 streets and at the junction. He said that the children were going to (Redacted)
3 and he took the children away. I would like that to be on the record. I would
4 like that to be very clear. I would not want us to -- I would not want to give you
5 half truths.

6 Q. You said he came to recruit children. Could you tell us what
7 Mr (Redacted) said to the children precisely?

8 A. When he came to see the children I was not there, but I heard what he told
9 them. Certain fathers signed documents. He told the children that there was an
10 NGO that was going to help them because they have dropped out of school. There was
11 an NGO, a non-governmental organisation, which provides assistance to children and
12 this NGO was going to teach them or help them to get apprenticeship in mechanics,
13 motor mechanics, and they could also learn any other trades or attend school. That
14 is what he told the children.

15 Q. Do you know who Mr (Redacted) was working for?

16 A. With respect to his employment, I only know that he worked for an NGO, and
17 he came to recruit children. It was when I went to Beni, when a child called me to
18 accompany him to Beni, that I learned the truth.

19 Q. But Witness, this first information about (Redacted), who provided you
20 with this information?

21 A. It was a child who gave me this information.

22 Q. Do you know who that child is, Mr Witness?

23 A. It was my child.

24 Q. Do you mean to say your son?

25 A. That's right.

1 Q. Mr Witness, can you tell us something about the origin of Mr (Redacted)

2 A. I do not know. However, he lived in the town and we knew that he was
3 working for an NGO called (Redacted) and he came to recruit children in the town.

4 Q. Maybe my question was not very clear. Do you know Mr (Redacted) country,
5 the country he came from, his country of origin?

6 A. No, I do not know. However, I know that he was Congolese and he was a
7 native son of Beni. He came from the region of (Redacted).

8 Q. Have you ever heard of Mr (Redacted) subsequently and, if so, under what
9 circumstances?

10 A. Could you repeat, please?

11 Q. Have you heard about Mr (Redacted) after that point in time and --

12 A. No.

13 MS MABILLE: (Interpretation) Could you give us one moment, your Honour?

14 Q. Did you have any relations or any relationship with Mr (Redacted) later on
15 and, if so, could you tell us about such a relationship?

16 A. A relationship between (Redacted) and I, is that what you're saying?

17 Q. Did you meet (Redacted) during that period and, if so, when precisely?

18 A. Since I left that area -- in fact, I left with (Redacted). He was
19 threatened in Bunia and we left to get out to Beni. We boarded a plane in Beni in
20 order to go to (Redacted). I left him in (Redacted) and I went to Kinshasa
21 (Redacted). (Redacted) remained in (Redacted) and to this day I think he is in
22 (Redacted). However, when I returned there I was not able to find him again.

23 Q. Could you tell us the conditions under which you went to Beni with
24 Mr (Redacted)?

25 A. Yes, I can.

1 Q. Who organised the trip, sir?

2 A. It was thanks to (Redacted) that we were able to organise the trip. He
3 called us first, he told us that the authorities wanted to speak to us in Kinshasa.
4 He said, "We are going to Kinshasa. Do you want to come along?", and we said,
5 "Yes", we wanted to go along. And so he said, "Let's go." And he said that he was
6 not going to stay behind. Since we were going to Kinshasa, we thought that he too
7 was going to Kinshasa. We did not know that he was going to stop in (Redacted). So
8 we went to Beni with (Redacted), we spent the night there and the next day we went
9 to Kisangani. We arrived there on a Thursday. We stayed at the (Redacted) Hotel. On
10 Sunday, we left the town. We left (Redacted) behind and from that day up to today I
11 have never seen (Redacted) again. We arrived in Kinshasa to do what we had gone
12 there to do and then we returned to Bunia, and (Redacted) later on returned to
13 Kinshasa and I went to Kinshasa to visit him. That's what I can say you -- tell
14 you in summary and, if you want to record what I've said, feel free to do so.

15 Q. Witness, I would like to repeat what you just told us in order to get some
16 clarification. Do you remember the very first trip you made, do you remember when
17 that trip was made?

18 A. We went to Beni on two occasions. Maybe you should ask your question in
19 relation to that so that I will know exactly what trip you are talking about.

20 Q. Witness, we are talking about the very first trip. Could you tell us who
21 accompanied you to Beni? Who travelled with you to Beni?

22 A. For the first trip, I went with (Redacted). In fact, I was with two
23 children. (Redacted). So
24 we went to Beni, we were somewhere close to a valley and I met certain elders who
25 put questions to me. They told us that, "If you do not speak well there, you may

1 have problems with the authorities." They said that the children had to say that
2 they were child soldiers and that the children were told that, if they accepted to
3 be child soldiers, then their lives would be made better. They said they were
4 going to give them houses and their lives were better, and so I was encouraged. I
5 felt encouraged.

6 I went to Beni and the question was put to me; they asked me whether my
7 child was a child -- or had been a child soldier. I said, "Yes." Everything had
8 been planned beforehand, so I accepted. I agreed that (Redacted) had been a child
9 soldier and the child was told that he had to claim that his mother had died during
10 the war. I said that the child was mine, whether the child was actually the son of
11 (Redacted). It was a plan that we had made. We were told that we were going -- we
12 should tell them these stories and our lives would be made better, and indeed when
13 we arrived to there our lives changed. We started eating well and we felt good in
14 our bodies and those were the conditions we lived under. The child was treated by
15 MSF and the authorities gave me money. They gave me money to pay my transport to
16 Kinshasa. And I told them what was wrong with the child. The child was suffering
17 from meningitis. However, since the child had already agreed to do everything that
18 he had been asked to do, it was difficult for us to backtrack. We
19 were asked to go along with the child. (Redacted).

20 (Redacted)

21 THE INTERPRETER: The Swahili interpreter would like to say that the
22 witness is speaking very fast and the interpreters cannot keep up.

23 MS MABILLE: (Interpretation)

24 Q. Witness, could you --

25 PRESIDING JUDGE FULFORD: No, no. Thank you, Maître Mabilille. Sir, you've

1 been doing very well so far, but in your last answer you started speaking very
2 quickly and that makes life very difficult for the Swahili and the other
3 interpreters and the stenographers, who are making a record of your evidence. It's
4 not your fault, it's completely understandable --

5 THE WITNESS: (No interpretation)

6 PRESIDING JUDGE FULFORD: No, no, no. But we would ask you, after we've
7 had a break now, to try if you can to remember not to speak too quickly.

8 We're going to have half an hour's break now. Thank you for your
9 assistance. If you can go with the usher straightaway, we'll look forward to
10 seeing you again at half past 11. Thank you very much.

11 (The witness exits the courtroom)

12 PRESIDING JUDGE FULFORD: Ms Samson -- oh, public session, please. No, we
13 are in private session.

14 (Open session at 11.01 a.m.)

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

16 PRESIDING JUDGE FULFORD: Thank you. Ms Samson, over the course of the
17 last part of this morning's hearing my legal officer has been doing some extremely
18 useful work looking to see what the history is of the mentions of this particular
19 name in public session, and it looks as though a decision in fact has been made
20 that it was a fruitless enterprise to try to keep the name concealed. I've asked
21 Ms Gillet to distribute immediately to you and Maître Mabilille that material so that
22 you can study it over the break because, if the reality is that we should be in
23 public session, then we need to make that decision quickly.

24 Having received the information if you then need more time to think about
25 it, have a message sent out to the Judges, because it's important that we get this

1 right and this information, if it is possible to have it heard publicly, should be
2 heard publicly. So, I don't want to do this in a rush. Digest it. If you can
3 respond at half past 11, all well and good. If you need more time, let us know.

4 MS SAMSON: Thank you.

5 PRESIDING JUDGE FULFORD: Good. Half past 11, unless we hear otherwise.

6 THE COURT USHER: All rise.

7 (Recess taken at 11.03 a.m.)

8 (Upon resuming at 11.45 a.m.)

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

10 PRESIDING JUDGE FULFORD: Now, Ms Samson, have you had a sufficient
11 opportunity to reflect on whether the application to withhold this name is in fact
12 appropriately made?

13 MS SAMSON: Thank you, your Honour. And thank you to the Bench for the
14 indulgence of the extra time to review the material. Indeed, the Prosecution
15 maintains the request that it had earlier set out in relation to this particular
16 individual. Upon review of the references that were very helpfully provided to us
17 in which his name was mentioned all of them but for one are exchanges that took
18 place in private session or during an ex parte hearing.

19 There is only one exception, and that is transcript T-171 with Witness 24
20 where he was asked very generally if he knows a person by this name who worked in
21 NGOs and supposedly worked with the demobilisation of child soldiers. The witness
22 really didn't have helpful information and so the inquiry continued to another
23 area. In the Prosecution's submission that is of a general nature, it doesn't
24 reflect any cooperation with the Court, and that one public exchange did not in any
25 way endanger the witness.

1 However, much as we have done with the witnesses who have come to speak
2 about the person's involvement with them, whereas that -- where that was done in
3 private session, we would request that it continue to be done in private session,
4 both to protect the individual who will now be exposed by virtue of his cooperation
5 with the Court and, secondly, to protect the witnesses who are still afforded
6 protection and whom he helped. I hope that wasn't unnecessarily cumbersome to
7 understand.

8 PRESIDING JUDGE FULFORD: Thank you. Where you find the highlighted quote
9 in the email from Ms Gillet from transcript 161 and your -- and you say we're in a
10 position to advise the Chamber that we agree that it doesn't appear possible any
11 longer to seek redactions to the name you're saying that that must be read in a
12 particular context and that that apparent concession doesn't affect the security
13 concerns which you have today.

14 MS SAMSON: That's right. The discussion at transcript 161, which was
15 from our research an ex parte hearing with the Victims and Witnesses Unit discussed
16 redactions that were put in place to a document in which this witness was named
17 because he was present. Given that Witness 298 had actually indicated in the
18 course of his testimony in private session who the people were who were present
19 during that meeting, the Prosecution could no longer seek to maintain the redaction
20 to this individual's name in that document. It had become moot in relation -- the
21 redaction had become moot in relation to that one document and so the Prosecution
22 provided to the Defence references in that document and in any other affected
23 document where this person's name was mentioned. That did not mean that in a
24 context such as this one that the type of information that is anticipated to be
25 elicited would be done in open session. Your Honour, that's the submission.

1 PRESIDING JUDGE FULFORD: All right. All right, Ms Samson. Well, we'll
2 continue as we are for the moment, but I want please for you to nonetheless supply
3 us with the document that I requested earlier. Thank you very much.

4 Yes. Can we have the witness, please. I now can't see the lights at all.
5 They need to be in a position so that not only the witness, but counsel and the
6 judges can see them. In a moment, once that's done, we need the witness. And
7 also, can I please have somebody to come and fix my screen? But let's not delay
8 it. Let's have the witness in, and somebody from IT, please. Witness, please.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FULFORD: Thank you very much indeed, sir. Can you please
11 remember to keep it so that you do not speak too quickly.

12 Private session, please.

13 *(Private session at 11.51 a.m.) Reclassified as Open session.

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

15 PRESIDING JUDGE FULFORD: Yes, Maitre Mabilille.

16 MS MABILLE: (Interpretation)

17 Q. Mr Witness, I would like to put a number of questions to you again, and I
18 would like to do so in a certain chronological order. We shall start again with
19 the first journey to Beni, and I would request of you to tell us who - before this
20 first trip to Beni - you met with in order to organize this trip?

21 A. Are you asking me this question with regard to the journey to Beni or the
22 journey to Bunia?

23 Q. I am asking you, what happened or what was done in Bunia for the journey
24 to Beni to be undertaken? Who did you meet with a view to organising this trip?
25 Could you please, therefore, revisit this period before the first journey to Beni?

1 A. Very well. It is the young man whose name you do not want me to give you
2 here, who came to see us and with whom we organised the trip to Beni.

3 PRESIDING JUDGE FULFORD: It's all right. You can now mention the name,
4 sir. We've gone into private session. Are you referring to (Redacted)?

5 THE WITNESS: No. It is (Redacted) and the father of (Redacted) who
6 organised my journey, and the father of (Redacted). But in view of the fact that
7 I've just been told that I'm going too fast, I shall repeat myself.

8 I'm talking about the father of (Redacted) who left with his son to town;
9 that is, (Redacted). They left with (Redacted). (Redacted) and his son. And they
10 gave money to the father of (Redacted), 10 dollars were given in order for them to
11 be able to survive in town. So it is (Redacted) father, not me.

12 And (Redacted) father took the money for himself and went to drink. He got drunk.
13 (Redacted) and (Redacted) went to town, but when they asked where the father was,
14 they said that he was not there. They said that we should not put a stop to our
15 trip, but they said that in view of the fact that my son is not here, how can I
16 leave? And they said, no, your son will find someone else who will accompany him.
17 And I asked (Redacted), what am I going to do in Beni? To which he said, when you
18 go to Beni, you must say that the child agreed that he was a child soldier, and you
19 must say that the child's mother is deceased. With a view to getting money, you
20 need to use all the means at your disposal. That's what he told me.

21 However, his father had already put money in his pocket and he was drunk. We left
22 in the company of (Redacted). We went to town, and we were given money to pay the
23 bus ticket. And at 4 a.m. we awoke, and I went to town in the company of the
24 others. And we got on the bus - we put the children on first - and we then arrived
25 in Beni. I would not say that the people in Beni were nasty; they were white men

1 who put questions to me. And what I told them is a lie, and I ask for forgiveness.
2 I was asked to repeat those things, but it was a lie. I was asked to lie by saying
3 that the child's mother had deceased during the war, the war in Katoto. And I said
4 at that moment in time that I had left the child at the MSF hospital, and that was
5 true. The child was indeed in hospital.

6 I was given the money for the bus, and I went home. And I was asked to
7 return on Saturday. I left. I arrived. And I told his father, "You see the
8 situation that you have put me in. I left with a child, who is not mine. Had he
9 been mine, I would have managed in another way; but if you say that the child must
10 leave, well, then he must." After three days, I returned to Beni, and I repeated
11 the same story that I had told on the first occasion, but it was a lie. I merely
12 wanted to have some money.

13 I was told that if the authorities call me to go to Lubumbashi, Kinshasa
14 or Tanzania, that I would have to go. And I said that I would indeed go and that I
15 was not afraid of doing so. The truth be told, I returned to Bunia, but the
16 children who had left, who were nine in number -- nine children had been recruited
17 and they left for Beni. And four of them were afraid to leave. Three left for
18 Kinshasa, but the two others were afraid. And in view of the fact that no one had
19 asked me to go elsewhere, I returned to Bunia. And I was wondering whether I
20 should leave that town, the town of Bunia. I shall stop now. Do you have any
21 further questions to put to me, please do.

22 MS MABILLE: (Interpretation)

23 Q. Witness, when did you discuss or talk with (Redacted)? Was it before your
24 trip to Beni? You said that it was the father of (Redacted) who was supposed to
25 have accompanied him, but that he had had too much to drink and so he was not able

1 to accompany the boy, and that it was rather you who accompanied the boy. What I
2 would like to know from you is, when did you talk with (Redacted); that is, before
3 this first trip to Beni?

4 A. Yes. A short while ago I was talking about the first trip to Beni. It was
5 at that moment in time that I discussed with (Redacted). I just told you what
6 (Redacted) told me and the subject of our discussion. That was the day that I
7 first met (Redacted).

8 Q. Do you remember when this contact was established; that is, this first
9 contact with Mr (Redacted)

10 A. Please, you have to forgive me. I have forgotten the date. This happened
11 about four or five years ago, so I have forgotten the date, and you really should
12 understand that. If I had put all of this in writing, I would be able to remember
13 the date, but that was not the case. You have the habit of recording things, and
14 you have documents that you usually consult. You can make use of such documents in
15 order to obtain the date, but I have forgotten that date.

16 Q. I know that it's very difficult to remember dates - even we sometimes make
17 mistakes about dates - but could you tell us approximately the year when these
18 things happened, when these events took place?

19 A. I told you that this happened four or five years ago. Try to do the
20 calculation yourself. I am not able to do so. I told you about our journey plan,
21 and it was at the time that we were making this journey plan that we met. However,
22 I do not remember the year when we left.

23 Q. Thank you. Witness, do you know what (Redacted) said to (Redacted) before
24 that first trip to Beni?

25 A. Before leaving, I had to know what was to be done. (Redacted) told me

1 what I had to say about the child. And if he hadn't told me, I would not have
2 left. I would not have known what I was going to say when I went to Beni.

3 Q. The question I'm putting to you is, whether you knew what (Redacted) told
4 (Redacted)? Did you witness a discussion between (Redacted) and (Redacted)?

5 A. (Redacted) did not have any secrets. When he arrived at the family, he
6 explained to everyone. He talked about money. He told them that they would be
7 given money. He said that the child had to claim to have served as a child soldier
8 in order to get money. He went all over the town recruiting children, and he would
9 tell you what you had to say. He told the children to claim that they had served
10 as child soldiers, but I knew that the child had never been a child soldier.

11 However, since he had already planned things and there was money involved in the
12 entire process, he induced us to leave. He encouraged us to leave and we left.

13 Q. When you arrived at Beni - and here I am referring to the first trip - who
14 did you meet?

15 A. There were some white people. I met them. There were two Africans as
16 well, but I did not know these people. I was serving as the devil's advocate, so
17 to speak. I knew that what I was doing was sinful, but as I have just stated here,
18 I think that my sin is expiated.

19 Q. Could you tell us who you discussed with? You talked about three white
20 persons and two black people. Did you hold any discussion with these people?

21 A. Yes, we had a discussion. A certain (Redacted) told me what I
22 had to say.

23 THE INTERPRETER: The Swahili interpreter did not hear the last -- the end
24 of the witness's answer. Could the witness repeat?

25 MS MABILLE: (Interpretation)

1 Q. Excuse me, Witness. Could you please hold off for a while, because the
2 Swahili interpreter has not heard your reply. Could you -- I asked you a question
3 and in answer you talked about three white people and two black people. Did you
4 have a discussion with these people? That's the question I asked you. And you
5 said, "Yes, we had a discussion. A certain (Redacted) told me what I had to
6 say," and at that point the interpreters could not hear the rest of your answer.
7 Could you please repeat your answer.

8 A. Very well. I was in Beni and I met three white people and two black
9 people. There was a certain (Redacted), a certain Michelle or Mikhail and another
10 one called (Redacted). They were -- there was one French individual and one
11 Palestinian. Maybe I've forgotten their nationalities. There was another one who
12 was called Serge, who came in later. I did not meet him on the first trip. There
13 was also a lady by the name of (Redacted) and she followed the entire discussion.
14 At that point in time, these other individuals were not there. There was also
15 (Redacted); that is the person who transported him in -- transported us in his
16 vehicle. (Redacted) was in (Redacted).

17 Q. Thank you for that information. Could you tell us the questions that were
18 put to you at that point in time when you met these individuals?

19 A. They asked me questions. When we arrived, we started working. There was
20 things we have to do in order to verify or establish the truth. It was me who
21 distorted the truth. We distorted the truth. We had agreed on what had to be said.
22 I was asked if the child had served as a child soldier and I said, yes, he had.
23 You know, it's money that made us give some of this information. They asked me
24 questions and I answered, but then I was acting like the devil's advocate. This
25 was because I had accepted the fact certain questions were put to me and I answered

1 those questions as I had been advised, but all of what I was saying was untrue.
2 They were lies.

3 Q. Witness, how much time did you spend in Beni at that time?

4 A. I spent about two days in Beni. We discussed on the first day and on the
5 second day there wasn't much to do. They asked me questions but sometimes the
6 questioning didn't even take an hour. They let us go again. They didn't force us to
7 tell lies or the truth, it was as if we misled them.

8 Q. Were you alone or in the company of (Redacted); that is at the time when
9 you had these discussions?

10 A. We were always together with (Redacted), but sometimes we could call
11 (Redacted) and he would leave and I would stay behind, but when I left, (Redacted)
12 had to stay behind. That's why I'm saying to you that if you had brought (redacted)
13 here, he'd be in your hands, he can corroborate whatever I said. That's it.

14 Q. Who paid your fare for the trip to Beni?

15 A. It was (Redacted) who provided us with money. There was also a certain
16 (Redacted) who gave us money.

17 Q. Can you tell us who (Redacted) was?

18 A. I think it's somebody -- he's somebody from your office. He was driving
19 an ICC vehicle - a Nissan - He invited us into the vehicle, which also served as an
20 office, and we would talk. After our discussions we would go our separate ways.

21 Q. Could you tell us of the persons you met, whom of them -- which of them
22 knew that you were lying?

23 A. Many of them knew that I was lying. Every Congolese national who was
24 there knew that I was lying. It was a plan that we had agreed on and we were told
25 to say whatever we said.

1 Q. Let's take (Redacted), for example. Did he know that you were lying?

2 A. He knew. He must have known.

3 Q. A short while ago you said that all the Congolese nationals knew. Of the
4 people you just mentioned, which of them were Congolese?

5 A. As I have just told you, (Redacted) was Congolese and (Redacted) as well
6 was Congolese. I say they knew. Why do I say so? I say so, because he took a
7 telephone while we were in Kinshasa - I'm talking about (Redacted) here - and he
8 took the phone to (Redacted) mother. Alain gave the telephone to (Redacted)
9 mother. I was discussing with (Redacted) mother using that telephone, so he knew.
10 The reason why the telephone was taken away from (Redacted) mother is that his
11 father is a major alcoholic. He had problems with (Redacted) mother, which led to
12 the State, the chief of the neighbourhood, removing the telephone from her
13 possession. This telephone is still in the hands of the chief of the neighbourhood.
14 I said to him, "this telephone belongs to the State; take good care of it and
15 (Redacted) will retrieve it." Why would (Redacted) not have known that? Moreover,
16 they had said that (Redacted) mother was dead. So how can one explain the fact that
17 she is still alive?

18 Q. With respect to (Redacted), did you have a discussion with him at any
19 moment whatsoever?

20 A. (Redacted) was very severe. He was arrogant. The only serious person
21 with whom I could discuss was (Redacted). (Redacted) behaved like a soldier, so I
22 did not discuss at length with him and I didn't want to share my secrets with him.

23 Q. We have just talked about this first trip to Beni and you said you spent
24 two days there in Beni. What did you do afterwards?

25 A. I returned to Bunia.

1 Q. For how long did you stay in Bunia, approximately?

2 A. I spent about four to five months in Bunia before making the trip to
3 Kinshasa.

4 Q. Could you tell us what (Redacted) did during this entire time that you
5 spent in Bunia?

6 A. (Redacted). Could you please rephrase
7 your question?

8 Q. You have answered. My question was, "What did (Redacted) do during the
9 entire time that you returned and spent in Bunia?", and you answered saying that he
10 (Redacted) during the entire time; is that correct?

11 A. Yes, (Redacted). You know, (Redacted), his job entailed (Redacted)
12 (Redacted).

13 Q. When did you go to Bunia again and where were you heading to?

14 A. Your question is a bit confusing, I find. Can you please -- could you
15 please rephrase it?

16 Q. You told us that you spent a few months in Bunia and afterwards you left
17 again, and my question to you is: Where did you go to? Can you explain to us the
18 circumstances under which you left again?

19 A. From Bunia I went to Kinshasa. Our plane stopped over in Beni and we
20 boarded the plane in Beni. The person who provided me with all information was
21 (Redacted). He is the one who told me that I was requested for in Kinshasa. He
22 said that -- he was not with me in Beni but he said I should go to Kinshasa. We
23 boarded a bus and we spent the night in a (Redacted) hotel in Beni. The next day
24 we left and we travelled to Kisangani where we spent about three days. We arrived
25 on a Thursday and we left again on Sunday to go to Kinshasa. We left (Redacted) in

1 Kisangani, and to this day I have never seen him again. I don't know whether he's
2 still in Kisangani or not. That was the last time I saw (Redacted) and we didn't
3 -- we didn't even call each other by phone.

4 I went to Kinshasa and I spent three months there and I was lodged in the
5 (Redacted) Hotel. I fell ill for about two weeks and I was provided with
6 appropriate care. After three months I rebelled and I said, "I am sitting here
7 eating alone and my family is starving. I think I have to go back to Bunia." And
8 (Redacted) asked me, "How do you -- how are you going to return to Bunia? In Bunia
9 nobody knows who you are." You know, this is a plan that we concocted together.

10 I work on a farm which is located 60 kilometres out of Bunia, so I told
11 him I was going to tell the people that I was in my farm in Walu; (phon) that's
12 what I told (Redacted) and (Redacted) showed regret and he asked me, "Don't you
13 think you are going to have problems?" And I said, "No. I am going to tell the
14 people that I was in my farm." So we returned to Bunia, transiting through Beni.
15 When we arrived there I said that I didn't want to continue suffering, and the
16 child said, "If you want to stay, then I will go." That's what (Redacted) told me.
17 He added, I am going to go with my colleague. And I told the child that I was not
18 in agreement. The child left with one of his friends and they went to Beni. Once
19 they arrived there, the child telephoned me to say that he was in Kinshasa. At
20 that time or, rather, the child said he was no longer in a hotel, that he was with
21 a certain family.

22 THE INTERPRETER: The Swahili interpreter would like to say that the
23 witness is speaking very fast and the interpreters cannot keep up.

24 PRESIDING JUDGE FULFORD: Sir, I'm going to interrupt you and I apologise.
25 You started to speed up again. Can you keep the speed down, please. Thank you

1 very much.

2 THE WITNESS: (Interpretation) I am going to slow down. But if you ask
3 questions which are too open-ended, then I am going to get a bit long-winded in my
4 answers.

5 PRESIDING JUDGE FULFORD: There's a censure for you, Maître Mabilie. It
6 may be helpful to keep the questions focused.

7 MS MABILLE: (Interpretation)

8 Q. Witness, we are going to discuss your journey to Kinshasa. Could you tell
9 us: My first question is who paid for your trip to Kinshasa?

10 A. I am going to answer your question. You know, when you are given a ticket
11 you don't know who buys the ticket. The first time it was (Redacted) who brought us
12 the ticket and I boarded a plane in Beni without knowing who had bought the ticket.

13 Q. Who did you make this trip with, that is, from Beni to Kinshasa?

14 A. Are you talking about the first time, about the first trip? Well, fine.
15 We left with (Redacted) but we left him behind in Kisangani, and (Redacted) and I
16 continued on our way and we were received at Ngili Airport by (Redacted) who went
17 and lodged us in (Redacted) Hotel. I think I have already provided you with that
18 information.

19 Q. During that first trip who did you see?

20 A. In Kinshasa?

21 Q. I am referring or I am talking about the trip to Kinshasa.

22 A. When I went to Kinshasa for the first time I did not discuss with anyone.
23 It was like a holiday, like a vacation. At some point I fell ill and I was
24 hospitalised. It was the second time that I met some white persons. I have
25 forgotten their names, and as -- I cannot provide you with those names, as a

1 result.

2 Q. I beg your pardon, witness. I'm referring to your first trip to Kinshasa.
3 Who did you travel with for that first trip?

4 A. During the first trip, for the first trip I was with (Redacted). I was -- we were
5 accompanied by (Redacted). I saw no other person. (Redacted) brought us tickets.
6 Everything was in order and he bought our bus tickets. In Beni we were lodged in
7 the (Redacted) Hotel. The next morning I boarded a plane. And on board there were
8 three of us and we landed in Kisangani, and there in Kisangani we left (Redacted),
9 and up to this day, as I speak, I don't know where he is. I mean (Redacted).

10 Q. Well, we have understood that correctly. When you arrived in Kinshasa you
11 say that on the occasion of this first journey you did not see anybody from the
12 Court. Is that what I understood correctly from your testimony?

13 A. Yes, that is what I said.

14 PRESIDING JUDGE FULFORD: Though we're leaving (Redacted) behind, might we
15 venture into open session?

16 MS MABILLE: (Interpretation) I don't quite know whether we should go from
17 (Redacted) to (Redacted)" ask him to talk about it in such terms. I think it's
18 difficult for him. Unfortunately, I shall remain in closed session because I'm
19 going to be obliged to mention (Redacted) quite a lot.

20 PRESIDING JUDGE FULFORD: We'll remain where we are. Thank you.

21 MS MABILLE: (Interpretation)

22 Q. Who did the individuals that you met in Kinshasa work for, do you know?

23 A. I do not know, but I believed that they were employees of the
24 International Criminal Court, your peers.

25 PRESIDING JUDGE FULFORD: Yes.

1 MS SAMSON: I rise just on a point of clarification. I believe that the
2 witness had said that on this trip he didn't meet anybody. I think he did say
3 earlier that on the second trip he had met white persons. But I don't know at this
4 point in time which -- to which persons Maître Mabilille's question was aimed at
5 because the question was: Did you meet anybody on your first trip? No. Who did
6 the people you meet with work for?

7 PRESIDING JUDGE FULFORD: Thank you, Ms Samson. Hold on a minute, please.
8 Yes, I mean, you're right Ms Samson, in the sense that the witness said, this is
9 the English transcript, page 38, line 3, that on the first trip he didn't discuss
10 matters with anyone. He met with some white people on the second occasion whose
11 names he's forgotten. And then Maître Mabilille came in with a question: Who did
12 the individuals that you meet in Kinshasa work for? Right. I think we do need
13 some clarification, Maître Mabilille, please. Thank you. Yes, Maître Mabilille, if
14 you could continue and clarify the matter, please.

15 MS MABILILLE: (Interpretation)

16 Q. Mr Witness, let us take your first journey to Kinshasa. Did you meet any
17 people on the occasion of that first journey?

18 A. No, I did not meet anybody on that first trip. I was in the company of
19 (Redacted) and his colleagues. I did not meet any other people in Kinshasa. I
20 remained there for three months without meeting anybody. I fell ill and I received
21 assistance. However, on the occasion of the second tour, it is true that I did
22 meet with some individuals.

23 Q. So let us clarify this: You say that on the occasion of the first trip
24 you did not meet anybody, but at the same time you say that you met (Redacted) and
25 his colleagues. Could we know who (Redacted) colleagues are? Do you remember who

1 they were? Do you remember their names?

2 A. I know one of his colleagues. In fact, it was (Redacted) who provided us
3 with assistance. He was the one who gave us money. You asked me the question as
4 to whether I had met any people. I was in the company of (Redacted) and one of his
5 colleagues whose name was (Redacted). However, it was on the occasion of the
6 second journey that I met people. You will forgive me because it is true that I
7 did meet (Redacted) on the first journey. He works for the ICC and he was driving
8 a vehicle from the ICC.

9 Q. And on the occasion of the first journey you met nobody else with the
10 exception of (Redacted) and his colleagues. However, did (Redacted) meet any
11 people from the court on the occasion of this first journey?

12 A. He left me at the hotel at a certain moment in time when I was sick, and
13 he left in the company of people from the ICC. He had an X-ray and on his return
14 he told me what had happened. That is what I know about the first journey.

15 Q. And what did he tell you upon his return?

16 A. He told me that he had been asked to pass an X-ray. For the first time,
17 permission was requested; but on the second occasion, he was examined -- or he had
18 an X-ray in order to ascertain whether he had an illness.

19 Q. Witness, may we now move on to your second journey to Kinshasa? And I
20 would like to ask you whether -- or I would like to ask you how long or how much
21 time expired between the first and the second journey?

22 A. Please put the question to me in an explicit manner, and then I can answer
23 you, because I have not forgotten, and I can furnish you with an explanation.

24 Q. How long did you stay in Bunia before you went back to Kinshasa or left
25 for Kinshasa again?

1 A. Two months.

2 Q. And how was this second journey to Kinshasa organised? Who contacted you
3 with a view to requesting that you take a trip to Kinshasa once again?

4 A. I had a telephone, and one day I went into town because I had been asked
5 to go there in order to pick up a plane ticket from (Redacted), a young man. And
6 then I had to go to Beni. So I picked up a ticket. It was, in fact, a bus ticket,
7 and I was told that I was then going to receive a plane ticket. I left for Beni by
8 bus, and in Beni the authorities gave me a plane ticket. Their names are here.
9 They are the ones who gave me the plane ticket.

10 Q. When you talk of authorities or officials, could you provide us with a
11 name?

12 A. Very well, I shall. The person who gave me a ticket is called Serge.
13 Serge is not Congolese; I believe that he hails from Senegal, because he introduces
14 himself saying that he is from such-and-such a country, so they gave me a plane
15 ticket. It was Serge who gave me the plane ticket. I spent a night in a hotel,
16 and then on the next day I took the CETRACA plane to go to Kisangani.
17 And in Kisangani, I met another individual by the name of (Redacted). He is not
18 Congolese either. He paid my hotel room at the (Redacted) Hotel in Kisangani, and
19 I stayed there for three days. And on the Sunday, I went to Kinshasa, and I was
20 welcomed by (Redacted) who took me to on a luxury hotel in the (Redacted) commune.
21 I spent an entire week there without seeing my children who were in Kinshasa, my
22 two children notably. I spent an entire week without seeing those two children. I
23 was in a hotel, and they had been put up in (Redacted) commune; whereas, as I was
24 in (Redacted) commune. Please, carry on putting questions to me.

25 Q. You have just spoken to us of your two children. Could you specify which

1 children you are referring to?

2 A. In fact, I'm talking about the children from my neighbourhood. (Redacted)
3 (Redacted), but the other had left in the company of that other
4 child. His name is Claude Ndjango. So those are the two children who were in my
5 company in Kinshasa.

6 Q. How did you know this second child, and could you give us his full
7 identity?

8 A. It is difficult for me to provide you with an explanation on this subject.
9 The child left in the company of his friend, and they went to Kinshasa. And I was
10 asked whether I was the one who would send the child to Kinshasa or not. (Redacted)
11 (Redacted)
12 (Redacted). Two months later, I said that I needed to return to Bunia.

13 Q. What was the name of this third boy?

14 A. Yes. Are you talking about the second or the third boy? The second boy
15 is known by the name of Ndjango, Ndjango Nyeke.

16 Q. Unless I misunderstood you, you said that (Redacted)
17 (Redacted), so I was trying to find out who the third was.

18 A. No. You misunderstood me. (Redacted)
19 (Redacted).

20 Q. So if I understand you correctly, (Redacted)
21 (Redacted). Have I understood you correctly?

22 A. Yes, that is correct.

23 Q. How long did you stay in that house?

24 A. I stayed there for two months.

25 Q. Who did you meet during that period of two months?

1 A. I met white gentlemen on one occasion, and they asked me whether I was
2 going to cooperate with them. I refused by saying, no, that I could not work with
3 them, and they left me. They asked the child whether he was going to work with
4 them, and he accepted. I told them that I wanted to go home to Bunia.

5 There was a discussion between myself and these gentlemen, and then they
6 paid a plane ticket for me to go home. And they asked me, now that you are going
7 home, who will be in charge of you? And I said, that's my problem. And they
8 carried on saying, if you betray us -- and they wrote a letter saying that if I
9 betrayed them, I would be put in prison.

10 I decided to go home. And I signed that document in order to say that
11 were I to betray them, I would be put in prison, and this is how they put me on a
12 plane to return to Bunia. What I'm telling you here is, not that I'm betraying
13 them; I am telling you the truth. Today I am here in The Hague.

14 However, I was not supposed to come here to The Hague. I came here of my
15 own volition because back home in my village I do not feel comfortable. I lead a
16 difficult life, and nobody knows that I am here except my wife. And, you know,
17 women do not have secrets for each other.

18 And I had problems with members of my family, because they believed that I
19 had betrayed somebody. So I am running a risk, there was even a risk they would
20 kill me, you know; it is a risk to take on both sides. It is as if I were between
21 a pillar and a post, or a rock and a hard place. If I move to one side, I am hit.
22 So I came here to tell you everything that happened.

23 Q. Witness, when you say that you -- when you told the white men that you
24 wanted to go home - that's what you told us - and when you say that the child
25 decided to stay, when you speak of the "child," who were you talking about?

1 A. Are you still asking me questions about Kinshasa?

2 Q. Yes, I am asking you a question about Kinshasa. You told us at an earlier
3 stage that you had told the white men that you wanted to go home. You said that
4 they had put the question to the child, and that the child had decided to stay.
5 Now I am asking you, which child you are referring to, because we talked about two
6 children with regard to this journey to Kinshasa. I would like to know who you
7 were alluding to.

8 A. I believe that we are talking about (Redacted). The other child did not
9 have a problem. This boy was of no concern to me. He had come with us without
10 asking my opinion. The person who was of concern to me was (Redacted). He was the
11 one who refused.

12 Q. And during those two months when you remained in Kinshasa in the company
13 of (Redacted), what did (Redacted) do during that period?

14 A. We weren't doing anything, whether it be (Redacted), myself or the other
15 child. We would sit around and we would go and get water to wash. All we did was
16 rest and eat. So, it was a quiet life.

17 Q. Who gave you money?

18 A. (Redacted).

19 Q. Do you remember how much money you received?

20 A. Per day, well, I was given \$15 a day for the first journey. We were given
21 money for five days and, after five days, we were given a further sum of money.
22 The hotel and meals were paid for by them. On the occasion of the second journey,
23 we were given \$10 a day. That is to say that the three of us received \$30 dollars;
24 i.e., \$10 a day.

25 Q. With regard to Ndjango, do you know whether Ndjango was a child soldier?

1 A. I am not a child. You know that in our neighbourhood there were nine
2 children (Redacted), in fact. Amongst the nine children, none of
3 them have been child soldiers. This is what I'm telling you. It is true that we
4 did make up stories because of the money, but it is true that no child had been a
5 child soldier.

6 Q. In Kinshasa, did you talk about this with Ndjango?

7 A. I apologise. I had nothing to talk to Ndjango about. They were children.
8 I left them in Kinshasa, both the children, and what is more one week later we sent
9 (Redacted) to Bunia.

10 Q. You talked to us about nine children who were in your neighbourhood. Do
11 you recall the names of those nine children?

12 A. These were the children from my neighbourhood. I know them very well and
13 I also know them by name. It might be that I forget some of the names, but I know
14 all of these children.

15 Q. Could you endeavour to provide us with the names of those children, or the
16 names you recall?

17 A. Yes, indeed. Firstly there is (Redacted), Ndjango, (Redacted) and
18 there was also (Redacted)
19 (Redacted). There is also a child from the (Redacted) tribe, whose name I forget,
20 and also a child by the name of (Redacted) and also (Redacted).

21 MS SAMSON: Thank you, Mr President. Mr President, I have read this
22 summary of five lines many times, but I don't see any reference in it that this
23 witness is going to be discussing the next witness to come, or anybody else; in
24 particular any of the witnesses who have already testified on behalf of the
25 Prosecution. I fear that we're going down that path and I must admit that, from

1 the Prosecution's perspective, notice ought to have been given of this type of
2 testimony.

3 PRESIDING JUDGE FULFORD: (Microphone not activated) Ms Samson, while
4 this evidence has been unfolding, I have been conscious --

5 THE INTERPRETER: Microphone, please, Mr President.

6 PRESIDING JUDGE FULFORD: While this evidence has been unfolding, I've
7 been conscious of the fact that you need an opportunity to consider this material
8 that -- I mean, in fact, given the adjournment over the next few days, you are
9 going to have an opportunity to prepare for questioning in any event. If there's
10 an issue in relation to witnesses who've already given evidence, then clearly we're
11 going to have to address that at some stage.

12 Now, we need to be clear as to whether what you are really saying is that
13 this evidence shouldn't be permitted at all because, if that is your position, then
14 we're obviously going to have to confront that submission before Maître Mabilie
15 goes any further.

16 MS SAMSON: To be clear, your Honour, that is not the point. The
17 Prosecution is not indicating that that type of information ought not be elicited
18 if it is in fact information the witness has. The complaint really is that it's a
19 serious allegation, there are others that are being made against people with whom
20 we work and notice ought to have been given in fairness I think to myself and to
21 the team. It's very difficult to prepare. It's just very difficult. So, it falls
22 perhaps nicely that there is going to be a break in which -- of several days in
23 which I can do that, but time and again should the summaries be insufficient we
24 will be rising to make the point that we may need more time to deal with the
25 information that's elicited.

1 PRESIDING JUDGE FULFORD: Well, Ms Samson, you needn't rise time and again
2 to tell us that you need a greater opportunity -- a reasonable opportunity to
3 prepare. The Bench fully understands the point.

4 Now this has arisen fairly starkly with this witness, we will at an
5 appropriate moment review with Maître Mabilille the quality and the quantity of the
6 information that's been provided given that, if there are to be substantive areas
7 of which you have not received any warning, then the downside for the Defence may
8 be that the evidence of their witnesses is going to be constantly peppered with
9 applications by you to adjourn so that you have adequate time to prepare
10 questioning. And, regardless of what the strict position may be in law as regards
11 disclosure, it may be in Mr Lubanga's own interests to provide you with more
12 information in advance so that you can properly prepare for cross-examination, or
13 questioning, without having to ask for an adjournment.

14 Point well made, Ms Samson. You are going to have an adjournment over the
15 next two or three days anyway, but we will address this substantively with
16 Maître Mabilille at a convenient moment in the near future. Thank you very much.

17 MS SAMSON: Thank you very much.

18 PRESIDING JUDGE FULFORD: No need for a response now, Maître Mabilille, but
19 we will come back to this subject in due course and you have heard what I have just
20 said. We will need to address I think the adequacy of disclosure, really as much
21 in your interests as that of the Prosecution. So, please continue.

22 MS MABILILLE: (Interpretation)

23 Q. Witness, you just talked about nine children from your neighbourhood. Do
24 you know a young person whom you mentioned by the name of (Redacted)

25 A. Yes, I know him only too well. That's why he was one of the first I

1 mentioned to you. However, he was not with me in Kinshasa, but I know him very
2 well. I even know his mother. I think his father is deceased, but his mother is
3 still alive. His father died before the war.

4 Q. Do you know this boy's full name?

5 A. Well, we were living in the same neighbourhood (Redacted). How
6 wouldn't I know him? (Redacted)
7 (Redacted). So, I'm sorry, I know him
8 very well.

9 Q. I wanted to know -- wanted you to tell us whether you know his full name?

10 A. (Redacted) name? We know him as (Redacted). We call him (Redacted). I
11 know (Redacted), who is his uncle. We are the same people. (Redacted). That's
12 all I can tell you.

13 Q. I will now return to the time when you told the employees of the Court
14 that you wished to leave. Did you give them the reason why you wanted to return to
15 Bunia?

16 A. From Kinshasa? Yes, I was there in Kinshasa. I had children in Bunia and
17 I hadn't received any information. I wasn't doing anything. I was being provided
18 with money. I could have been doing something else, so I really wanted to return
19 home.

20 Q. Did you at some point tell the employees of the Court that (Redacted) was
21 not a child soldier?

22 A. No, I did not. I did not tell them that. I said he was a soldier, well,
23 because we were interested in the money; we Congolese people don't like each other.
24 We were there for the money. If you ask me to sell my mother for money, I won't
25 hesitate to.

1 Q. Witness, under what name did you present yourself - did you introduce
2 yourself - to the officials of the Court? What identifying information did you
3 give them about yourself?

4 A. I gave them my name, Maki Joseph Dhera. And the first time they gave me a
5 different name, (Redacted), but that was a falsehood perpetrated by them. It was
6 something concocted by (Redacted). This other name was given to me by (Redacted).

7 Q. Now, this other name that (Redacted) gave you, was it the name of someone
8 you knew?

9 A. About my real name: (Redacted)
10 (Redacted). The name that was recorded was (Redacted). When I arrived, I was asked
11 to use the name of (Redacted) who had come before me. He took the money and went
12 off to get drunk. That is how they gave me that name. I think that we understand
13 each other.

14 Q. Do you know someone who bears that name?

15 A. (Redacted)

16 (Redacted)

17 Q. (Redacted)

18 A. Yes.

19 Q. When you were provided with air tickets and you had to travel, under what
20 name did you travel?

21 A. From Beni I used the name Maki Joseph, because I showed my voter's card at
22 the time of purchase of my ticket and the name was written somewhere. I beg your
23 pardon. Could you please rephrase your question?

24 Q. You answered my question now. I just wanted to know under what
25 identification you travelled, that is, the name which was used to issue your air

1 ticket and your answer was that the name on the air ticket was Joseph Maki.

2 PRESIDING JUDGE FULFORD: Maître Mabilille, can you have in mind that we'll
3 be rising at between now and quarter past 1, so could you choose a moment
4 convenient to yourself, please.

5 MS MABILILLE: (Interpretation)

6 Q. Witness, those you referred to as the authorities or the officials from
7 the OTP, did they ask you to show documents proving your identity?

8 A. There were certain individuals whose names I do not know. I showed my
9 identification to these individuals, that is, my voter's card, and it was from this
10 voter's card that they could get my name and my date of birth. There was only one
11 person who used the name (Redacted) and that was (Redacted) who was in Kisangani.
12 He was the one who took charge of the first file. I think he was of Zambian
13 nationality. By the way, in Kinshasa I was almost imprisoned because of that other
14 name, but when they saw my first name Joseph they released me.

15 Q. Who knew that you were using a false name, false identification; that is,
16 amongst the various persons that you met? And let me make my question clearer.
17 Did (Redacted) know that you were using a false identity?

18 A. Yes, he was indeed the person who dragged me into this whole thing. He
19 knew. We had reached an agreement with (Redacted). Whereas my name is Joseph Maki,
20 he knew that very well. He knew my identity well. (Redacted) knew my identity.

21 Q. Did (Redacted) know that you were using a false identity?

22 A. (Redacted) knows me as Maki Joseph.

23 Q. What about (Redacted); did he know that you were using a false identity?

24 A. He knew that very well. Why do I say so? It was like a game in which he
25 participated. I told you that he took a telephone, (Redacted) took a telephone and

1 he went to town, and he looked for the mother of (Redacted) and gave her the
2 telephone so that she could talk to her son. So it was a game in which he
3 participated; you ought to know that. He knew that very well. You know, we
4 Congolese, we really don't like each other. (Redacted) knew this very well.

5 MS MABILLE: (Interpretation) That's the examination, your Honour.

6 PRESIDING JUDGE FULFORD: I imagine for this morning, rather than in full,
7 Maître Mabilille. Yes.

8 Sir, thank you very much for your assistance today. I'm afraid we have to
9 adjourn now for various administrative reasons, and I greatly regret the fact that
10 the Chamber is not going to be able to sit on this case again until Monday of next
11 week at 9.30. That means you have got a long wait for which you have our profound
12 apologies. We look forward to seeing you at half past 9 when you will recommence
13 your evidence on Monday of next week. In fact, it won't be in this courtroom; it's
14 going to be in a larger courtroom downstairs. Good. Thank you very much. If you
15 could now go with the usher, we'll see you on Monday.

16 (The witness stands down)

17 PRESIDING JUDGE FULFORD: Public session, please.

18 (Open session at 1.14 p.m.)

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

20 PRESIDING JUDGE FULFORD: Maître Mabilille, I don't require a response from
21 you now, and you'll obviously need to think about the matter that was raised by
22 Ms Samson, but I'm sure you can appreciate, from a practical point of view, it
23 would be extremely difficult if not in reality impossible for counsel to commence
24 questioning on the basis of the detail of the evidence given by this witness if he
25 or she had not been provided with some advance notice of what was to come.

1 Evidence of this kind, I'm sure you will accept from your own experience,
2 requires an element of reflection and preparation and possibly investigation before
3 counsel can deal with it adequately by way of questioning. Now, I would ask you,
4 please, to think about this between now and Monday, and it may be, at the moment
5 the Chamber makes no orders at all, it may be that in any event we would make none.
6 But it may be that you come to the view that on a wholly voluntary basis for the
7 witnesses to come, particularly those in this category, it may be desirable for
8 there to be a realistic element of additional disclosure to the Prosecution in
9 advance so that they are not going to be put in the position that Ms Samson was
10 describing earlier of needing to request an adjournment every time questioning from
11 you has finished so that they can prepare for their questioning. If that were to
12 happen it would undoubtedly lengthen this trial dreadfully, so please reflect on
13 that. Thank you very much.

14 Before we rise this afternoon, anything else before Monday morning? No.
15 Thank you all very much for your attendance. We meet again at half past 9 on
16 Monday morning.

17 THE COURT USHER: All rise.

18 (The hearing ends at 1.17 p.m.)

19 RECLASSIFICATION REPORT

20 Pursuant to Trial Chamber I's email instruction dated 10th November 2011, the
21 transcript is reclassified as public after the indicated redactions have been
22 implemented as ordered by the Chamber. All private and closed sessions (*) are now
23 available to the public with the exception of the portions of the transcript that
24 have been redacted.