

1 International Criminal Court

2 Trial Chamber I - Courtroom 1

3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and

4 Judge René Blattman

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

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

7 Friday, 22 January 2010

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

9 *(Closed session) Reclassified as Open session.

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

12 PRESIDING JUDGE FULFORD: Public session, please.

13 (Open session at 9.32 a.m.)

14 PRESIDING JUDGE FULFORD: And Mr Lubanga in court, please.

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

16 (The accused enters the courtroom)

17 PRESIDING JUDGE FULFORD: We have received an application for additional
18 questions to be put by the Defence to Victims 270 and 225. At the moment no basis
19 for the application has been provided, and it is suggested that if the Bench
20 requires justification for the application that there should be an ex parte
21 hearing. Maître Mabilille, we need your assistance, please, as to why the
22 justification for this request needs to be put ex parte, given that of course we
23 would instruct that anything you said in court in public should not be communicated
24 to either 270 or 225, thereby alerting them to the matters that you seek to raise.
25 In those circumstances, why cannot this issue be dealt with in public without the

1 Court having to lose the substantial amount of time that attends inevitably on
2 going into ex parte sessions?

3 MS MABILLE: (Interpretation) Your Honour, unless I'm mistaken, we did not
4 ask for an ex parte. We asked for a closed session hearing and we said that we
5 would not be opposed to the legal representatives being present once -- as long as
6 there's no contact with the witnesses who have already testified. So we did not
7 request an ex parte. We asked for a hearing, a closed hearing.

8 PRESIDING JUDGE FULFORD: You're right, Maître Mabilille. The actual word was
9 "closed session", certainly as it's been interpreted or translated for my benefit.
10 Now, I just want to understand what the, just in a sentence or two, what the
11 difficulty is in conducting this publicly.

12 MS MABILLE: (Interpretation) Our concern, your Honour, is that if we
13 indicate to the Chamber in public the various aspects that we would like to show to
14 the witness, and if that were to be done publicly, we are wondering whether the
15 witnesses who are currently within the premises of the Court might not be able --
16 couldn't have access to that information. Unless I'm mistaken, the witnesses who
17 have testified can contact people around them, and in that particular case the
18 information could be provided to them before we cross-examine them.

19 PRESIDING JUDGE FULFORD: Thank you.

20 (The Trial Chamber confers)

21 PRESIDING JUDGE FULFORD: Maître Mabilille, we're of the view you're right.
22 The witnesses have finished their evidence and, strictly speaking, there is nothing
23 to stop them from watching a broadcast of these proceedings over the Internet and,
24 accordingly, they could learn what it is that you wish to raise and we are
25 unanimously of the view that that's a reasonable concern.

1 Now, this clearly needs to be dealt with during the course of the morning.
2 I'm conscious that the witness is standing outside court, ready to go to proceed
3 with his evidence, and so what we will do is we will have, as it were, one session
4 now with the witness and we will then turn to this issue when he goes off for his
5 first break, if that is acceptable to everyone. And I see general nods of
6 approval. Good.

7 Closed session, please. Witness, please. Thank you, Mr Lubanga.

8 (The accused exits the courtroom)

9 *(Closed session at 9.39 a.m.) Reclassified as Open session.

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

11 (Witness A/0229/06 enters the courtroom)

12 PRESIDING JUDGE FULFORD: Ms Struyven, public or ...?

13 MS STRUYVEN: (No interpretation)

14 PRESIDING JUDGE FULFORD: Public session, please. Thank you.

15 Good morning, sir.

16 THE WITNESS: Good morning.

17 THE COURT OFFICER: We are in open session, your Honour.

18 (Open session at 9.40 a.m.)

19 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

20 WITNESS: Witness A/0229/06 (Resumed)

21 (The witness answers through interpreter)

22 Questioned by Ms Struyven: (Interpretation) (Continued)

23 Q. Good morning, Mr Witness.

24 A. Good morning.

25 Q. I have some additional questions to finish this series of questions.

1 Yesterday you talked about disciplinary measures that were enforced within the
2 camp. In particular, you described that you might have been put -- you were
3 sometimes put into a hole. Could you describe the hole?

4 A. They punished us by putting us in those holes, and you had to remain
5 standing.

6 Q. Was there anything in particular about these holes you can tell us?

7 A. They were square holes and they put people in there, people who were to be
8 punished.

9 Q. Thank you. Yesterday you also talked about the battle in Bunia, and you
10 said that you had to point out the enemy to your fellow soldiers. What happened
11 once the UPC soldiers found the enemy?

12 A. I didn't really understand the question.

13 Q. Yesterday you talked about the battle in Bunia, and you explained that you
14 had to show the other soldiers, the UPC soldiers, where the enemy was. My question
15 is: Once the UPC soldiers saw and found the enemy, what happened with the enemy?

16 A. Once the enemy was found he was seized and they asked him where the
17 tunnels were, where other enemies were to be found.

18 Q. And then what was done with the enemy, if anything was done with the
19 enemy?

20 A. Once the enemy was trapped, and once he had shown the tunnels that they
21 were looking for, he was shot.

22 Q. Did you see that yourself?

23 A. Yes, I saw that during the battle.

24 Q. Thank you. Yesterday you talked about child soldiers and you explained
25 that the child soldiers only were given SMGs. My first question is: What kind of

1 weapons were given to the adult soldiers?

2 A. Some adults were given SMGs as well.

3 Q. Were they given other weapons?

4 A. So they had to analyse whether other adults could be given other types of
5 weapons.

6 Q. Mr Witness, do you know why the children soldiers were only given SMGs?

7 A. Yes. Because they weren't strong enough to use other weapons.

8 Q. Mr Witness, yesterday you talked about child soldiers and you also used
9 the term "kadogo". Among all the child soldiers and the kadogo that you saw in the
10 UPC, could you tell us, in your opinion, what age was the youngest one, the
11 youngest one that you saw?

12 A. I couldn't tell you because the way I was then I couldn't determine the
13 age of a particular person.

14 Q. I still have a series of questions and this has to do with your escaping
15 from the army. You said that you ran away and you had to leave all your
16 possessions behind. So, my question is -- no, pardon me, let me rephrase. You
17 explained that you had fled and you had left all your possessions behind so that no
18 one would recognise you. Was it allowed to flee or to leave the UPC?

19 A. We fled because the battle was spinning out of control. We couldn't take
20 it any more.

21 Q. The fact that the word "flee" or "fleeing" was used, was it allowed to
22 just leave the UPC, or not?

23 A. We fled because no longer could we face the battle. We said that we were
24 going to die, die for nothing, so we decided to flee.

25 Q. I'll ask the question differently. Did you know what would happen if the

1 UPC found soldiers who tried to flee?

2 A. I don't know what would happen to a soldier who had fled from battle.

3 Q. Thank you very much, Mr Witness.

4 Your Honour, I have no further questions.

5 PRESIDING JUDGE FULFORD: Thank you very much, Ms Struyven.

6 Maître Mabilille, you may have some documents during the course of your
7 questioning that you want to show the witness. Because of a -- because of the
8 internal arrangements, we have agreed that the interpreter who will assist with
9 reading will usually be located upstairs in the booth. Now, he or she can come
10 down very quickly as and when you have documents to put. But if it's possible to
11 deal with, as it were, a section of documents at a time, that would be of
12 assistance simply to save the interpreter from having to run up and down stairs.
13 You must, of course, follow your own course, but if you could bear that in mind so
14 that we can proceed in a reasonably smooth fashion, that would be helpful. Thank
15 you very much.

16 MS MABILLE: (Interpretation) Your Honour, I will begin with a number of
17 documents, so perhaps the interpreter could come down now.

18 PRESIDING JUDGE FULFORD: Certainly. Interpreter, please down to court.
19 Public session, Maître Mabilille, or private session?

20 MS MABILLE: (Interpretation) Open session to begin, and I specify that the
21 documents that we will be using should not be displayed on the monitors.

22 PRESIDING JUDGE FULFORD: Thank you. Just for a moment we need to go into
23 closed session. Closed session, please.

24 *(Closed session at 9.54 a.m.) Reclassified as Open session.

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

1 PRESIDING JUDGE FULFORD: While this is happening, I want to explain. The
2 interpreters have asked that they come in and out of court in closed session so
3 that their identities are not revealed publicly, and it seems to us that's a
4 reasonable request. So the interpreter into court, please.

5 (The interpreter enters the courtroom)

6 PRESIDING JUDGE FULFORD: Public session, please.

7 (Open session at 9.55 a.m.)

8 PRESIDING JUDGE FULFORD: Do have a seat, sir.

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

10 PRESIDING JUDGE FULFORD: Thank you very much. I think there are some copies
11 for the Bench and for the witness and the interpreter.

12 Yes, Maître Mabilille.

13 Questioned by Ms Mabilille: (Interpretation)

14 Q. Good morning, Mr Witness, I am Catherine Mabilille. I am a lawyer, and I
15 will be asking you a number of questions to defend Mr Thomas Lubanga. Can you hear
16 me? Do you understand me?

17 A. I follow what you're saying.

18 Q. Mr Witness, I am going to show you a small document with three tabs that
19 are numbered 1, 2 and 3. Don't be worried; I'm not going to ask you to read this
20 document. When I refer to this document I will read out what is found in this
21 document. I will read it out in a loud voice. But, to begin, I'm just going to
22 ask you, if you could, to look, just look at tab 3. And I'm going to tell you what
23 that document is about. It is a form that is used to request permission to take
24 part in proceedings before the International Criminal Court, and this form was
25 prepared, and you filled out the form, providing information. And I would like you

1 to look at page 15 of this form. Page 15. And at the bottom of this form you can
2 see that it was established on 19/09/2006, and it was signed by you. Do you see on
3 this form your signature, Mr Witness?

4 A. Yes, I see.

5 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

6 MS STRUYVEN: (Interpretation) I beg your pardon. I believe it's tab 2, not
7 tab -- not the other tab. We seem to be referring to tab 2 on our side.

8 PRESIDING JUDGE FULFORD: Yes. I am assisted by the fact that tab 3 only has
9 12 pages, so we couldn't be looking at a page 15. There's a problem with your
10 tabs, I'm afraid, Maître Mabilille. I'm going to hand back my copy to you, and could
11 you identify, please, which tab you're looking at? Could my copy please be given
12 to counsel.

13 MS MABILLE: (Interpretation) I'm sorry, Mr President, I had a small error
14 in my own document. My colleague was correct. So the document I was referring to
15 was in tab 2; that is the standard formula for the application for participation
16 before the International Criminal Court.

17 PRESIDING JUDGE FULFORD: Maître Mabilille, I'm going to give you your copy
18 back. I'm going to keep my copy, which is what the other Judges have, and can we
19 refer to your tab 2 as tab -- your tab 3 as tab 2, please, in future because,
20 otherwise, I think there's going to be chaos.

21 MS MABILLE: (Interpretation) Mr President, the interpreters would like to
22 have three copies of the document. The documents are in e-Court. I do not know
23 whether we have three additional copies for the interpreters, so I do not know
24 whether I have to stop here for a while for this issue to be resolved.

25 PRESIDING JUDGE FULFORD: Right. A new rule. As of today, when counsel are

1 going to be distributing documents around the body of the Court, there must be
2 three additional copies that can go upstairs. We've been here before, and I'd
3 assume that good sense would have ensured that this would now happen as a matter of
4 course. But that is now a rule to be followed.

5 Now, can we bring up these documents on the screen upstairs for the
6 interpreters, or is that going to pose a problem?

7 Right. Maître Mabilille, what we're going to do, I think, is -- are there
8 three copies?

9 MS MASSIDDA: Yes, your Honour, we can do it with only one copy for the three
10 teams. Thank you.

11 PRESIDING JUDGE FULFORD: Well, Ms Massidda, that is exceedingly generous of
12 you. Thank you very much indeed. Could those please be taken upstairs. Thank
13 you. Usher --

14 MS MABILLE: (Interpretation) We have just been told that we need four
15 copies, actually.

16 PRESIDING JUDGE FULFORD: We're going to rise. This is going to be sorted
17 out. I want the tabs in the right order, please. I want the right people to have
18 the right documents. We're going to hand all of them back and we will sit once the
19 documents are in a proper order.

20 Closed session, please.

21 *(Closed session at 10.04 a.m.) Reclassified as Open session.

22 (The accused exits the courtroom)

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

24 PRESIDING JUDGE FULFORD: Thank you. Sir, I'm sorry to interrupt your
25 evidence.

1 (The witness stands down)

2 PRESIDING JUDGE FULFORD: Can we have a message, please, when we're ready?

3 THE COURT OFFICER: All rise.

4 (Recess taken at 10.05 a.m.)

5 (Upon resuming at 10.19 a.m.)

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

7 PRESIDING JUDGE FULFORD: Witness and the interpreter, please.

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

9 (The witness and the interpreter enter the courtroom)

10 PRESIDING JUDGE FULFORD: Public session, please.

11 (Open session at 10.21 a.m.)

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

13 PRESIDING JUDGE FULFORD: Yes, Maître Mabilille.

14 MS MABILLE: (Interpretation)

15 Q. Mr Witness, let us come back to what I was telling you a short while ago.
16 I am going to refer you to the various documents that you signed in order for you
17 to appear before the ICC. The first document is the form for application to
18 participate in the proceedings, and this is in tab 2. I would like to refer you to
19 page 15, and that is page 15 out of 17. Are you there yet, Mr Witness? We can see
20 that it is dated 19 September 2006. Can you recognise your own signature on this
21 document?

22 A. Yes, it is indeed my signature.

23 Q. Do you remember having given information that made it possible to draw up
24 this document?

25 A. I did not quite understand your question.

1 Q. You did sign this document. The information included in this document
2 which you have signed, I would like to know whether that information is correct.

3 A. The information is correct.

4 Q. Thank you, Mr Witness. Now, let us move on to tab 3. It is a document in
5 which you provided additional information in relation to your application for
6 participation, and I would like to refer you to page 12 of 12. And that is the
7 last page of the document. Do you recognise your signature at the bottom of that
8 page?

9 A. Yes, it is indeed my signature.

10 Q. Do you confirm that the information provided in this additional statement
11 is correct?

12 A. Yes, that information is correct.

13 Q. Thank you, Mr Witness. Now, let us move to tab 1. And, Mr Witness, this
14 is your statement dated 7 August 2009, and I would like to ask you the same
15 question: Do you recognise your signature on this document? And it is on page 3.
16 Mr Witness, I am referring you to page 3, and I would like to know whether you can
17 recognise your signature on that document.

18 A. The signature above is mine.

19 Q. Thank you, Mr Witness. Do you remember whether the information that you
20 gave in that statement is correct?

21 A. It is correct.

22 Q. Thank you, Witness.

23 Can we have numbers for those documents, MFI numbers?

24 THE COURT OFFICER: Your Honours, tab 1, which is ICC-01/04/06/2132,
25 Confidential Annex C, would be assigned MFI-D-00168; tab 2, which is

1 ICC-01/04/06/222, Annex 76, would be assigned MFI-D-00169; and tab 3, which is
2 ICC-01/04/06/224, Annex 2, Confidential, would be assigned MFI-D-00170.

3 PRESIDING JUDGE FULFORD: Thank you. Yes, Maître Mabilles.

4 MS MABILLE: (Interpretation) My initial questions will be in closed
5 session, Mr President.

6 PRESIDING JUDGE FULFORD: Private session, please.

7 *(Private session at 10.29 a.m.) Reclassified as Open session.

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

9 Questioned by Ms Mabilles: (Interpretation)

10 Q. Mr Witness, please tell us the name of your father.

11 A. My father's name is (Redacted).

12 Q. Can you tell us the name of your mother?

13 A. My mother's name is (Redacted).

14 Q. Mr Witness, for purposes of the translation, can you once again, very
15 slowly, tell us the surname of your father?

16 A. My father's name is (Redacted).

17 Q. Mr Witness, have you brothers and sisters?

18 A. Yes, I have one sister.

19 Q. You have only one sister?

20 A. I have only one.

21 Q. May I rephrase my question. Did you have other brothers, or sisters?

22 A. I have only one sister.

23 Q. Were you the oldest one in your family?

24 A. That's right.

25 Q. Could you specify what is the name of your sister and do you know how old

1 she is?

2 A. Her name is (Redacted).

3 Q. Could you tell us how old she is, approximately?

4 A. For the time being I couldn't tell you her age because we do not live
5 under the same roof.

6 Q. But I conclude from what you told us earlier that she is younger than you.

7 A. Yes, she is younger than I am.

8 Q. Mr Witness, are you sure that you don't have a sister by the name of
9 (Redacted)?

10 A. No, I don't.

11 Q. Don't you have a brother by the name of (Redacted)?

12 A. No, I don't. I don't -- I no longer have a brother. I don't have a
13 brother.

14 Q. Don't you have another brother called (Redacted)?

15 A. No, not at all.

16 Q. You mentioned to the Court that you went back to your village and at that
17 time you met your little sister. Is this the sister you mentioned at the beginning
18 of the questions that I was asking of you?

19 A. Yes, my younger sister whose name is (Redacted).

20 Q. Whom is she living with at the current time?

21 A. Well, she lives in the family of (Redacted).

22 Q. Thank you. Do you have an uncle - maternal uncle - (Redacted)
23 (Redacted)?

24 A. Could you repeat your question?

25 Q. Of course. I would like to know if you have a maternal uncle who

1 apparently is currently living in (Redacted).

2 A. No, I don't.

3 Q. Mr Witness, now I'm going to ask you some questions about your education.

4 You said before this Court that you had been at the (Redacted) in 2003; is that
5 correct?

6 A. Yes.

7 Q. Could you explain to us what school year were you in when you left for the
8 army?

9 A. I was in the second year of secondary school.

10 Q. Thank you, Mr Witness. Yesterday you said before this Court that you were
11 taken by the soldiers during the exam period at the end of the school year; is that
12 correct?

13 A. Yes, that's true.

14 Q. What -- generally speaking, what month do exams end at the end of the
15 school year in the Congo?

16 THE INTERPRETER: The interpreter did not -- the interpreter did not hear the
17 reply.

18 MS MABILLE: (Interpretation)

19 Q. Mr Witness, would you be so kind as to repeat your answer because the
20 interpreter says that he did not hear your answer?

21 A. In the Congo, the year end exams, the school ends in -- the school year
22 ends in June.

23 Q. Yesterday, when you said to us that you were finishing your exams at the
24 end of the school year, does that mean that it was in June?

25 A. Could you repeat your question?

1 Q. Yesterday you told us that -- that you had been taken by the soldiers at
2 the time when you were doing your exams at the end of the school year, so I am
3 asking you was that in the month of June?

4 A. No, it was in April.

5 Q. Mr Witness, when did you do your first year of secondary school?

6 A. When I was 12 years old.

7 Q. Did you finish?

8 A. Yes, and (Redacted).

9 Q. Mr Witness, I would like to show you my first document and this document
10 bears the reference number DRC-D01-003-2498. Could a copy of this document be
11 provided? This is a document that comes from the Ministry of National Education,
12 primary and secondary education as well as vocational training.

13 Could we give a reference number to this particular document? Your Honour,
14 this document is not in the -- it's not in the files that we just provided earlier.
15 Could copies be provided to the Judges? We have copies for everyone but not for
16 the interpreters, but we will make sure to provide them the next time.

17 PRESIDING JUDGE FULFORD: Thank you, Maître Mabilille.

18 MS MABILLE: (Interpretation) The document is on the e-Court system, if the
19 interpreters wish to view them, and I would like to make sure that the witness has
20 a hard copy.

21 THE INTERPRETER: Message from the English booth. We do have hard copies of
22 this document in each booth.

23 MS MABILLE: (Interpretation)

24 Q. Mr Witness, this is a report card, and I think you can see at the top and
25 to the right that the name here is (Redacted), so it would appear that this is your

1 name. At the top, we see the class and we see that this is first year. We also
2 see that this document is for the 2005/2006 school year.

3 PRESIDING JUDGE FULFORD: Maître Mabilille, may I suggest we take this
4 reasonably slowly to make sure that the witness either through reading it himself,
5 or with the assistance of the interpreter, really is able to see -- has seen what
6 you are identifying. So I think you'll need an answer, please, from the witness at
7 each stage, to make sure that he is following the points that you are putting.

8 MS MABILLE: (Interpretation) Thank you, your Honour.

9 Q. Mr Witness, if you look at the top and to the right of this document, can
10 you confirm that we do see the words (Redacted)? Do you see those words on this
11 document? Do you see "first year" indicated for the class? This is the third line
12 after your name. Do you see "class first year"?

13 A. Yes.

14 Q. Do you also see, Mr Witness, that there is an indication a little bit
15 lower, "année scolaire," school year, 2005/2006? Do you see that date?

16 A. Yes, I do.

17 Q. Mr Witness, do you think that this report card corresponds to the studies
18 that you undertook in 2005 and 2006 at (Redacted)? Correction: (Redacted)

19 (Redacted)

20 A. I did the first year of my secondary education in the year 2003 in the --
21 (Redacted).

22 Q. Mr Witness, I would like to show you a second document.

23 PRESIDING JUDGE FULFORD: We are just going to give this first document a
24 number, Maître Mabilille.

25 THE COURT OFFICER: And that would be assigned, your Honours MFI-D-00171.

1 PRESIDING JUDGE FULFORD: Good. Second document. To be distributed, Maître
2 Mabilille? Usher, could you help, please?

3 MS MABILLE: (Interpretation) During the distribution of the documents I
4 will provide the number of this document: DRC-D01-003-2499. DRC-D01-003-2499.

5 Q. Mr Witness, if you look at this document, at the top you see "Palmarès de
6 Proclamation," honour roll 2005/2006, (Redacted). And do you -- did
7 you see these three things that I have just read out?

8 THE INTERPRETER: Answer inaudible.

9 MS MABILLE:

10 Q. We also see after these three elements, we see "class first year". Do you
11 see that, Mr Witness?

12 A. Yes, of course.

13 Q. Then, Mr Witness, I'd like to move to the line with a number, (Redacted).
14 Do you see that line numbered (Redacted)?

15 A. Yes, I do.

16 Q. At that line we see (Redacted). Do you see
17 that, Mr Witness?

18 A. Yes, I see that.

19 Q. Might that match the schooling that you did at the (Redacted)
20 (Redacted) in first year, in the year 2005/2006?

21 A. The first year of secondary school I did (Redacted) in 2003.

22 Q. Mr Witness, you said to us earlier that you had been abducted in 2003 and
23 that you were in the second year of secondary school. Do you remember telling us
24 that?

25 A. Yes, I told you that.

1 Q. How could you have been in the first year in 2003, which is what you just
2 told us, first year of secondary school, and say that you did the first year of
3 your secondary education in 2003? Is that not what you said?

4 A. Yes, that's it.

5 Q. Mr Witness, now you are saying two things that are difficult to
6 understand. First of all, you are saying that you did your first year of secondary
7 school in 2003 but you are also saying that you were abducted in 2003, when you
8 were in the second year of secondary school. I'm trying to understand, what year
9 were you in at the time of your abduction?

10 A. When I was stopped, I was in the second year of secondary school.

11 PRESIDING JUDGE FULFORD: At about 11 o'clock, I must fulfil my statutory
12 obligation to the stenographers and interpreters of giving them a break. I don't
13 know whether you've finished this particular point on this document, but can you
14 find a moment convenient to yourself so that we can pause, please.

15 MS MABILLE: (Interpretation) Your Honour, I've finished with this point and
16 I was to move on to another one so I think, yes, we could have our break if the
17 Court is of the same mind.

18 PRESIDING JUDGE FULFORD: I'm sorry to interrupt your flow. We'll take a
19 half-an-hour break, sir. Thank you very much for your help so far this morning and
20 we look forward to seeing you again at half past 11.

21 Closed session, please.

22 *(Closed session at 10.59 a.m.) Reclassified as Open session.

23 (The accused exits the courtroom)

24 THE COURT OFFICER: We are in closed session, your Honour.

25 PRESIDING JUDGE FULFORD: Yes, thank you, usher.

1 (The witness stands down)

2 PRESIDING JUDGE FULFORD: Variation on what I've just said. We'll take the
3 break now for the benefit of the stenographers and the interpreters, but at half
4 past 11 we will consider the application in relation to further questions to the
5 two participating victims. So can the witness please be told he may not be
6 needed -- well, he will not be needed immediately, it's more likely it will be
7 closer to 12 o'clock. Thank you very much. We'll rise now until half past 11.

8 THE COURT USHER: All rise.

9 (Recess taken at 11.00 a.m.)

10 (Upon resuming at 11.30 a.m.)

11 *(Private session) Reclassified as Open session.

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

13 PRESIDING JUDGE FULFORD: Yes, Maitre Mabilille, we're in private session, so
14 if you could outline the matter shortly to us, please.

15 MS MABILILLE: (Interpretation) The problem is as follows. We have received
16 some documents and we would like to confront the last two witnesses, as well as the
17 present witness, with those documents. The Chamber may wish to know why we did not
18 have those materials before, and my answer would be that we carried out additional
19 investigations and following the testimony of 270, which compelled us to carry out
20 those additional investigations. So, we did not have those documents before. We
21 were able to do our work only after hearing 270, and it is only for that reason
22 that we have those documents now. We do not have them physically right now, but we
23 will have them in the late afternoon to show the witnesses. It seems to us
24 important to show those documents to the witnesses because I am fully aware that
25 the Chamber may think that we can make our pleading, our -- we can make our case

1 later, but to us it seems important that the witnesses be confronted with that
2 evidence.

3 PRESIDING JUDGE FULFORD: Maitre Mabilie, are you able to help us as to what
4 the issue is that the documents go to? At the moment all we know from your
5 submissions is that there are some documents that you want to put to the witnesses.
6 We have no idea as to their importance, significance, or anything else, which may
7 be important in terms of being able to assess the merits of this application.

8 MS MABILLE: (Interpretation) Basically, this is material evidence to the
9 effect that the parents of those two children are still alive.

10 PRESIDING JUDGE FULFORD: Well, that tells us the area, Maitre Mabilie. It
11 could have been anything until you gave that piece of assistance. Thank you.

12 Ms Samson.

13 MS SAMSON: Mr President, the Prosecution's position is, of course, that it
14 is up to the Chamber to evaluate the foundation and basis upon which the Defence is
15 moving to re-examine these witnesses. The principles that we -- the Prosecution
16 would like to provide to the Chamber, if it can be of assistance, is that at least
17 Witness 225 had expressed, in our view, some evident difficulties in dealing with
18 the subject matter of his family, and so to the extent that any questions on the
19 existence, or not, of parents will be considered by the Chamber to be a sufficient
20 basis for recalling the witness, but those wit -- that those questions be limited
21 to the -- to Witness 270.

22 The additional point that we can add is that both witnesses were asked quite
23 extensively a number of questions on these topics. We recognise that they're here
24 and that if these materials are in fact providing a proper basis to the Court, then
25 ...

1 PRESIDING JUDGE FULFORD: Just by way of argument, as it were, I suppose it
2 could be said that the point has been made, the suggestion's been made, and the
3 witness has replied. From what I understand from Maitre Mabilille, the purpose of
4 this is, notwithstanding those answers on that subject, to confront the witness
5 with further material, presumably to see whether the witness will change his mind
6 and say, "Well, actually, my mother's still alive," having seen that information.
7 I mean, that must be, in essence, unless Maitre Mabilille or Mr Desalliers tell me
8 I'm wrong, is what is going to happen: "Witness, please look at this document.
9 Now you've seen this document, will you please accept that your mother is still
10 alive?"

11 All right, Ms Samson, you'd say we've got to make up our mind as to whether
12 it's reasonable to put the witness through that again, given that this has been
13 already been canvassed.

14 MS SAMSON: Yes. Yes, that's the point. It may be the Chamber ought to
15 review the material in advance of this decision to decide whether the basis is
16 sufficiently made and the Chamber -- the Prosecution urges the Chamber to consider
17 the delicate well-being of Witness 225 in that determination.

18 PRESIDING JUDGE FULFORD: Mr Keta.

19 MR KETA: (Interpretation) Thank you very much, Mr President. With regard to
20 225, I would oppose his having to be recalled because of the trauma related to his
21 parents.

22 With regard to 270, I think he can be called back because I could also
23 examine him on some of the elements that are raised by the Defence. Thank you.

24 PRESIDING JUDGE FULFORD: Thank you, Mr Keta.

25 MS MABILILLE: (Interpretation) Mr President, I would like to tell the

1 Prosecutor and the victims as well as the Chamber that from the very beginning in
2 this case we tried to tackle problems in a very delicate manner. It is not our
3 intention in fact, when we talk about confronting the witness, we have reflected on
4 the most appropriate manner to do this, but it also seems to us difficult to avoid
5 placing the witness in a position to tell us something, particularly if he might
6 not have told us the truth at one point. That is what the Defence is trying to do
7 and I will tell the Chamber that we are trying to do what we have done from the
8 very beginning, that is, to avoid direct confrontation and just try to bring the
9 witness to try to reflect on what he has already testified upon.

10 (The Trial Chamber confers)

11 MS MABILLE: (Interpretation) Mr President, just one small point. We forgot
12 to bring in the accused.

13 PRESIDING JUDGE FULFORD: I'm very sorry, Maître Mabilille. My fault.
14 Mr Lubanga, please.

15 (The accused enters the courtroom)

16 PRESIDING JUDGE FULFORD: Mr Lubanga, I owe you an apology. We came in and I
17 invited Maître Mabilille to make her submissions and I'd forgotten, as I usually do,
18 to nod to the officer at the back of the court that you should be brought in. So
19 I'm afraid we've heard your counsel's submissions without the benefit of your
20 presence. I'm extremely sorry for that and I will encourage Maître Mabilille over
21 the course of the luncheon adjournment to show you a copy of the transcript. All I
22 can say is that as usual she has magnificently and succinctly made all the points
23 to us.

24 Maître Mabilille, we're going to take this in stages. The Bench would like to
25 see the material that you wish to put to the witnesses before we finally make up

1 our minds and, secondly, we are of the view that with both witnesses, but
2 particularly with 225, he needs to be told that it is hoped to put a few additional
3 questions to him, and he needs to be told that the general subject matter is going
4 to be concerning his parents to make sure that he is prepared to come to give
5 evidence. This in our view should be done by the Victims and Witnesses Unit and of
6 course should be done in as neutral but as encouraging a way as possible so as not
7 to, as it were, persuade him not to give evidence, in a sense, hopefully to provide
8 an answer that he is prepared to do so.

9 But ultimately, of course, this must be a matter for him as to whether or not
10 he's prepared to come back into court to answer further questions. Now, that is
11 what we are proposing. Before we finally set it in concrete, is there anything you
12 would wish to say on the proposal?

13 MS MABILLE: (Interpretation) No, I do not have anything to add, except that
14 as soon as we have the documents we will forward them to the Chamber. Since life
15 is marvelous and simple, the communication issues are not very good this time, so
16 we cannot be sure, but as soon as we have the documents, we will forward them to
17 you.

18 PRESIDING JUDGE FULFORD: The position then is this: The witnesses, unless
19 they insist otherwise, should be asked to remain in The Hague until this has been
20 resolved at the beginning of next week. Witness 225, in particular, although both
21 witnesses should be asked, Witness 225 in particular should be informed that there
22 are to be a few questions put to him, or it is hoped to put a few questions to him
23 on the subject of his parents, and he is to be requested to indicate whether or not
24 he is prepared to come back into court to give evidence. Obviously, the Victims
25 and Witnesses Unit will be careful in asking that question not in any way to frame

1 the question in such a way as to dissuade him from doing so. And the Bench will
2 finally rule on this matter as soon as we've seen the material which is, in
3 reality, likely to be on Monday of next week.

4 My apologies to you again, Mr Lubanga. You should have been in court.

5 Closed session, please. Witness.

6 *(Closed session at 11.48 a.m.) Reclassified as Open session.

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

8 (The accused exits the courtroom)

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FULFORD: Private session, please.

11 *(Private session at 11.50 a.m.) Reclassified as Open session.

12 (The accused enters the courtroom)

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

14 PRESIDING JUDGE FULFORD: Welcome back, sir. Sorry to keep you waiting.

15 Maître Mabilille, do we still need to be in private session?

16 MS MABILLE: (Interpretation) Yes, I think we have to stay in private
17 session. I'm sorry, Mr President, but is it possible - because I think it is
18 necessary for me to be able to see the witness - can the curtain be shifted a
19 little bit?

20 PRESIDING JUDGE FULFORD: Either that or if the witness could move slightly
21 to his right? Is that better.

22 MS MABILLE: (Interpretation) Yes.

23 PRESIDING JUDGE FULFORD: Just before you commence, we need a number for the
24 last document, please.

25 THE COURT OFFICER: Your Honour, the document under DRC-D01-003-2499 would be

1 assigned MFI-D00172.

2 PRESIDING JUDGE FULFORD: Yes, Maître Mabilille.

3 MS MABILLE: (Interpretation)

4 Q. Mr Witness, I have two further questions to ask you on your education.
5 Can you tell this Court in which school year you were in the course of the year
6 2005/2006?

7 A. I beg your pardon? I have not quite understood you.

8 Q. Can you tell me in which year of your education you were during the
9 2005/2006 year?

10 A. In 2006 I was 16 years old.

11 Q. Mr Witness, I was not asking you about your age. My question was: Were
12 you attending school and, if so, in what year were you?

13 A. In 2006 I was in my third year.

14 Q. And in which year you were in 2006/2007?

15 A. I did not attend school in 2006/2007.

16 Q. Mr Witness, would you be kind enough to refer to tab 2, that is your
17 application for participation in the proceedings before the International Criminal
18 Court. On page 4, that is 4 out of 17, Mr Witness, this document was prepared on
19 19 September 2006, and I would like to refer you to what is indicated at the top of
20 the page. It shows your profession. Can you see that, Mr Witness?

21 A. Yes.

22 Q. Can you go down to "Others", where the box has been ticked, and I will
23 read what is written there: "(Redacted)".

24 Can you see that?

25 A. Yes.

1 Q. Is the information correct?

2 A. Yes, it is correct.

3 Q. Mr Witness, I would like to discuss with you now the second camp where you
4 were, that is the Bule camp, and when we go into open session I will refer to that
5 camp as the second camp and I'm going to ask you a certain number of questions
6 concerning that second camp. Have you understood me?

7 A. Yes.

8 MS MABILLE: (Interpretation) We can move on to open session, Mr President.

9 PRESIDING JUDGE FULFORD: Thank you, Maître Mabilille. Public session, please.
10 (Open session at 11.58 a.m.)

11 MS MABILLE: (Interpretation)

12 Q. Mr Witness, could you please describe this camp to us?

13 A. That camp was built --

14 THE INTERPRETER: The Lingala interpreter says he did not hear the last part
15 of the witness's answer.

16 MS MABILLE: (Interpretation)

17 Q. Mr Witness, the interpreter did not hear the last part of your answer and
18 so I am going to ask the question again. Can you please describe this camp to us?

19 A. This camp was built with straws.

20 Q. Thank you. Were there many straw houses in the camp?

21 A. Yes, there were several houses.

22 Q. Was the camp larger than camp number 1, where you were?

23 A. It was not very big.

24 Q. Was it by the side of a river?

25 A. No.

1 Q. Did you see a river at a bit of a distance, or did you not see a river at
2 all alongside this camp?

3 A. There was not a river beside the camp.

4 Q. Thank you. Do you know how far, approximately, the camp was from the
5 village of Bule?

6 A. No, I couldn't tell you.

7 MS MABILLE: (Interpretation) Your Honour, I think we'll have to go back into
8 closed session.

9 PRESIDING JUDGE FULFORD: Private session, please.

10 *(Private session at 12.03 p.m.) Reclassified as Open session.

11 MS MABILLE: (Interpretation)

12 Q. Mr Witness, you told us yesterday --

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

14 PRESIDING JUDGE FULFORD: Yes, Maître Mabilie.

15 MS MABILLE: (Interpretation)

16 Q. Yesterday you told us that the name of the commander of that camp was
17 (Redacted); is that correct?

18 A. Yes, that is correct.

19 Q. Are you quite sure of that, Mr Witness?

20 A. Yes, it is true.

21 Q. What was the name of your trainer, or trainers?

22 A. At that time I didn't know their names.

23 Q. Thank you. Yesterday you spoke about Kisémbó, the Chief of Staff. Do you
24 remember speaking about Mr Kisémbó, who was the Chief of Staff of the UPC?

25 A. Yes, him.

1 Q. Was he based at the Bule camp?

2 A. No, he was not based there.

3 Q. Did he leave with you from the Bule camp to go attack Bunia?

4 A. He arrived after.

5 Q. Now, when you say that he arrived after, he arrived in Bule after that, or
6 did he arrive -- could you tell us exactly when, or in greater detail?

7 A. He arrived after in Bunia.

8 Q. So, during the attack on Bunia you saw him?

9 A. During the battle he arrived then, or after we stopped at Kobu.

10 Q. Do you mean that you did not take part in the battle at Bunia?

11 A. Yes, I took part in that battle.

12 Q. I beg your pardon, Mr Witness. I must have misunderstood. I thought that
13 you had told us that you were stopped at Kobu -- that you stopped at Kobu and that
14 you had fought at Bunia?

15 A. During the battle at Bunia, Kabunia (phon) fell. We went to Kogu (phon),
16 heading towards Mongbwalu.

17 Q. Let me go back to that question about Kisémbó. Did you see -- did you see
18 with your own eyes Mr Kisémbó at any time?

19 A. During the battle in Bunia, we arrived in Bunia before Kisémbó and the
20 others got there.

21 Q. But you learned that Kisémbó had arrived, or did you see him?

22 A. My friends arrived and then Kisémbó informed -- they told me that Kisémbó
23 had arrived in Bunia.

24 MS MABILLE: (Interpretation) Your Honour, I think we can now go into open
25 session.

1 PRESIDING JUDGE FULFORD: Public session, please.

2 (Open session at 12.09 p.m.)

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

4 PRESIDING JUDGE FULFORD: Yes.

5 MS MABILLE: (Interpretation)

6 Q. Mr Witness, you say that you were enrolled in April 2003. Could you tell
7 us in greater detail how much time did you spend in the UPC?

8 A. I spent three months in the UPC.

9 Q. Could we go back to what you told us yesterday. Is it true that you
10 stayed five days in a first camp?

11 A. Yes, that's true.

12 Q. Yesterday you told us that after that you travelled for two days to get to
13 the second camp; is that true?

14 A. Yes.

15 Q. Then apparently you spent one week undergoing training at the second camp;
16 is that so?

17 A. Yes.

18 Q. After that week of training you left to fight in Bunia; is that so?

19 A. Yes, that's right.

20 Q. Now, on the first day of your arrival in Bunia you said that you had
21 spied; is that correct?

22 A. Yes, that is correct.

23 Q. And you said that to get to Bunia it took you four days; is that correct?

24 A. Yes, that is true.

25 Q. Then, Mr Witness, you told us that the battle in Bunia apparently lasted

1 for one day and that apparently you stayed in Bunia for one week; is that correct?

2 A. Yes, that is correct.

3 Q. And then you left Bunia and it took you two days to get to Mongbwalu; is
4 that correct as well?

5 A. Yes.

6 Q. Now, you travelled to Mongbwalu by foot, did you not?

7 A. Yes, we went by foot.

8 Q. And you spent two days in Mongbwalu before the battle; is that not so?

9 A. Yes.

10 Q. You fled on the first day of the battle in Mongbwalu; is that correct?

11 A. Yes.

12 Q. Could I ask you to turn to tab 3. Page 12 of 12, and this is your
13 additional statement and in this additional statement you wrote --

14 PRESIDING JUDGE FULFORD: Just pause a moment, Maître Mabilille, while the
15 interpreter, with the assistance of the usher, finds the right page. All right.
16 Could you carefully identify the section that your reading from, please, Maître
17 Mabilille, so that we ensure that the interpreter and the witness are following this.

18 MS MABILILLE: (Interpretation)

19 Q. I will start reading from line number 8, and the sentence begins with the
20 words "Les miliciens," "The militiamen." I will now read.

21 "Thomas Lubanga's UPC militiamen then took me to the Bule training camp where
22 I spent three months. Did you see what you declared? I would like to ask you the
23 following question: The training at the Bule camp, did it last for one week or
24 three months?

25 A. No, the training there was one week.

1 Q. Am I to conclude that when you made this additional statement, that of the
2 11th of the 6th month of 2008, that that was incorrect?

3 A. That's true.

4 Q. Thank you. Mr Witness, yesterday you talked about the Bunia battle and
5 you also talked about the Mongbwalu battle. Did you take part in other battles?

6 A. No, I did not take part in other battles.

7 Q. Mr Witness, when you left for the fighting in Bunia did you have a weapon?

8 A. Yes, I did have a weapon.

9 Q. When you left to go fight in Mongbwalu, did have you a weapon?

10 A. Yes, I had a weapon.

11 Q. Mr Witness, I would like us to move to tab 3, page 12 of 12, and I will do
12 the same thing. I'll count the lines to indicate exactly which spot I'm quoting
13 from. I'm at line 12 and I'll begin with the word "ensuite" at the end of the
14 line. Is there any problem? Can you see where I am? "Then I took part in
15 hostilities in Kobu in the beginning of 2003." Mr Witness, did you take part in
16 hostilities in Kobu at the beginning of 2003?

17 A. No, in Kobu we did not fight.

18 Q. Does that mean, Mr Witness, that the additional statement regarding this
19 aspect is incorrect?

20 A. No, it's true.

21 THE INTERPRETER: Correction, yes, it's true. Correction from the Lingala
22 booth.

23 MS MABILLE:

24 Q. Now could we move to the written statement of the witness, tab 1. This is
25 the transcript of the interview and I will ask you to turn to page 3, and I am

1 looking at the second paragraph. The first paragraph is relatively long and the
2 second one is shorter, and I'm referring you to the second line. "With my weapon,
3 I killed two enemies in a fight at Plito fighting against the Lendu combatants." I
4 beg your pardon. "Against the combatants, the Lendu combatants, who had come from
5 Mbau." Mr Witness, did you take part in fighting in Plito?

6 A. Plito is close to Mongbwalu, and that attack did occur there.

7 Q. Am I to conclude that you fought in Plito?

8 A. We started in Mongbwalu and then we were three kilometres away and the
9 attack began --

10 THE INTERPRETER: Correction by interpreter. The attack began and continued
11 in --

12 MS MABILLE: (Interpretation)

13 Q. So where did you begin, in Plito or in Mongbwalu?

14 A. We began in Mongbwalu.

15 Q. And then apparently you fought in Plito?

16 A. We began in Mongbwalu and, since there were many of them, we were nearly
17 defeated and that's why we went down towards Plito.

18 Q. Mr Witness, you said that during the battle in Bunia you were fighting
19 against the FNI. Now, during that battle was it the FNI that controlled the town?

20 A. Yes, the town was in the hands of the FNI combatants.

21 Q. Do you have an idea - an approximate idea - of the date; the date on which
22 those battles -- that battle occurred?

23 A. It was in May.

24 Q. Now, did I understand correctly from your testimony that it was the chief
25 of military staff, Commander Kitembo, who directed that attack?

1 A. Could you please repeat the question?

2 Q. Who was the leader of the attack in which you were involved at Bunia?

3 A. I did not know who was the commander at that time.

4 Q. You took part in that battle, but you did not know the commander who was
5 leading the armed forces?

6 A. Yes, I did not know.

7 Q. And your unit commander --

8 A. Can you please repeat?

9 Q. You said that you travelled from Bule to Bunia, where the attack took
10 place. Now, my question is who was your leader; that is the leader of your own
11 unit?

12 PRESIDING JUDGE FULFORD: Just before you answer. Ms Struyven.

13 MS STRUYVEN: (Interpretation) Mr President, I'm sorry to intervene, but I
14 think that issue was dealt with in private session.

15 PRESIDING JUDGE FULFORD: Thank you. We may need a redaction. We'll wait to
16 see whether we receive an email from Mr Keta, but nonetheless thank you for the
17 caution.

18 Sir, the question therefore is who was the leader of your unit when you
19 travelled from Bule to Bunia, where the attack took place. Do you now remember?

20 Do you want to put the question again, Maître Mabilille?

21 MS MABILLE: (Interpretation)

22 Q. Mr Witness, I wanted to know who was your commander. Who was the person
23 who issued orders to you? Who told you what you had to do?

24 A. My commander was (Redacted).

25 MS MABILLE: (Interpretation) Mr President, I think we could go into closed

1 session for a few questions.

2 PRESIDING JUDGE FULFORD: Private session. And just before we do, so that
3 you know, you're not going to have to give evidence for very much longer this
4 morning. We're going to break off in just over five minutes.

5 Yes, private session, please.

6 *(Private session at 12.35 p.m.) Reclassified as Open session.

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

8 PRESIDING JUDGE FULFORD: Yes.

9 MS MABILLE: (Interpretation)

10 Q. Mr Witness, yesterday you gave us the names of four commanders during the
11 Bunia battle. I'm sorry if my pronunciation is not quite correct, but the names
12 were (Redacted). Do you remember telling us that yesterday?

13 A. Yesterday I said that those were the UPC commanders.

14 Q. Where was Commander (Redacted) based?

15 A. He was based in Koti, in Mahagi.

16 Q. Are you certain that he was a UPC commander?

17 A. Yes.

18 Q. Did you know Commander (Redacted) other name?

19 A. No, I did not know him by any other name.

20 Q. You also mentioned Commander (Redacted). If I tell you that in April 2003
21 Commander Manu was the Chief of Staff of the FAPC of Jerome Kakwavu, do you think
22 that could have been possible?

23 A. No, I deny that.

24 Q. While talking about the fighting in Bunia, you said that you started the
25 attack at 6 a.m. and that at 10 a.m. you took a little rest. Do you remember

1 telling us that?

2 A. Can you please repeat your question?

3 Q. Yesterday, when you were talking about the fighting in Bunia, you told us
4 that you started the attack at 6 a.m. and that you took a brief rest at 10 a.m. Do
5 you remember telling us that?

6 A. Yes, that was my testimony yesterday.

7 Q. Are you telling us that you took a short rest in the middle of the
8 fighting in Bunia?

9 A. It was a very serious battle. We were tired and we had to retreat briefly
10 in order to rest a little bit. That is what happened.

11 Q. Yesterday afternoon you told us that you had been injured by a bullet in
12 your foot. You also told us that the wound was not treated. Do you remember that?

13 A. Yes, I do remember.

14 Q. Can you tell us where specifically you were injured in your leg?

15 A. On my calf.

16 Q. So this was an injury to your calf. Was it your left or right calf?

17 A. (Redacted).

18 PRESIDING JUDGE FULFORD: Maitre Mabilille, if you're moving on to another
19 subject -- you're staying with this subject? All right. If you'd like to finish
20 off this subject then, certainly.

21 MS MABILLE: (Interpretation) Yes, indeed, Mr President.

22 Q. Now, could you look at tab 1, page 2, paragraph 4, which begins with, "I
23 also received ..." It is line 12 from the top. And I will read, "I was also hit
24 by a bullet (Redacted) during the battle of Bunia. I was treated with (Redacted)
25 (Redacted)

1 (Redacted)." Mr Witness, do you recognise that you gave that information in
2 your statement?

3 A. Yes, that was in my statement.

4 Q. Can you tell us how you travelled from Bunia to Kobu?

5 A. After the battle of Bunia, in fact, I was injured in the leg during the
6 battle in Bunia, and then we went to Kobu. (Redacted)

7 (Redacted).

8 MS MABILLE: (Interpretation) I am compelled to pursue with a further few
9 questions, but if you think we have to break now, then I will have to stop.

10 PRESIDING JUDGE FULFORD: I'd like to, Maitre Mabilille. A lot of matters have
11 been put perfectly properly to the witness and I want to make sure the proceedings
12 remain fair for him.

13 Thank you very much for your help sir, this morning. We look forward to
14 seeing you again this afternoon. We'll sit again at 2:30.

15 Closed session, please.

16 *(Closed session at 12:47 p.m.) Reclassified as Open session.

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

18 (The accused exits the courtroom)

19 (The witness stands down)

20 PRESIDING JUDGE FULFORD: 2:30.

21 THE COURT USHER: All rise.

22 (Recess taken at 12:48 p.m.)

23 (Upon resuming at 2.30 p.m.)

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

25 PRESIDING JUDGE FULFORD: Ms Struyven, before we continue, there is something

1 we should address straightaway. We are grateful to the parties and the
2 participants for having supplied the Chamber with the suggestions as to the
3 arrangements for the discussions with the Defence witnesses.

4 We've obviously reflected on this and we are intending to hand down an oral
5 ruling on it. It suddenly occurred to us, before coming into Court, that there is
6 a measure of urgency about this because this is the last witness prior to the
7 commencement of the Defence case, and the question that I have is whether you need
8 our ruling this afternoon?

9 MS SAMSON: If I may, your Honour, address the Court. The matter is indeed
10 an urgent one, as the Chamber has identified. However, the first witnesses
11 affected by the order the Chamber will hand down are the second and third witnesses
12 in the Defence case, not appearing Monday, perhaps appearing Tuesday and, to my
13 knowledge, not yet in The Hague. All that to say that Monday could be an
14 appropriate day for an order of the Bench, if it's suitable.

15 PRESIDING JUDGE FULFORD: Ms. Samson, that is music to our ears because we
16 have the oral ruling here, but it needs just a little bit more discussion between
17 the three of us in terms of the very, very fine detail, which would take five or
18 ten minutes now, but it is going to take a good 20, 25 minutes to read out, and I
19 am conscious that this witness is midway through his evidence. So if we were to
20 unburden ourselves of this at 9.30 on Monday morning, given that you are the party
21 that has sought to interview the witnesses, would that be satisfactory?

22 MS SAMSON: We see no inconvenience in that. Thank you.

23 PRESIDING JUDGE FULFORD: Thank you. Anyone else wish to contribute on this
24 issue? And this is purely about the time of delivery. Nothing else, Mr Walley?
25 Yes, Maître Mabille?

1 MS MABILLE: (Interpretation) No, this is on another matter I wanted to say
2 something to the Chamber, and this has to do with timing. Of course, I expected to
3 have about three-quarters of an hour's worth of questioning, and I think I told the
4 Chamber that I will have to stop then. And Monday morning I think I'll have about
5 a quarter of an hour's worth of questions to finish cross-examination. I'm
6 mentioning this because I think you're trying to find a few moments of time.

7 PRESIDING JUDGE FULFORD: I am sorry, Maître Mabilille. Are you saying that
8 you can only ask questions for 45 minutes this afternoon, and then we're going to
9 have to adjourn until Monday? Maybe I'm misunderstanding what you are putting to
10 us.

11 MS MABILLE: (Interpretation) That is what we wrote this morning in the
12 document in which we mentioned the close session. That is what we indicated that
13 the Defence was expecting a number of documents, and thus --

14 PRESIDING JUDGE FULFORD: What I hadn't appreciated was that the questioning
15 extended to all three. I had been focusing on the two who we have heard thus far.
16 But I take it - and this is, no doubt, my mistake - that, actually, this applies to
17 all three witnesses, and if your application is successful, you would wish to put
18 further questions on the basis of those documents to all three on Monday; is that
19 right?

20 MS MABILLE: (Interpretation) Exactly, your Honour. I am sorry. I thought
21 it was clear that it was for the three witnesses, and we talked about two witnesses
22 this morning because it was a matter of asking for them -- for the ability to
23 re-examine them. But, indeed, we are expecting or wanting to ask the three
24 witnesses about these matters and confronting them with the evidence.

25 PRESIDING JUDGE FULFORD: With this, and you do not anticipate that it is

1 going to lead to delays, we will deliver our oral ruling on the discussions first
2 thing on Monday morning. But I do need reassurance that there are no anticipated
3 delays that will follow from it being delivered then. I don't see that it will do,
4 because none of the witnesses are currently in The Hague, so I cannot see how it
5 can impact if we let you know first thing on Monday. Right. Good. Maître
6 Mabilille?

7 MS MABILLE: (Interpretation) Pardon me, your Honour, but Caroline reminded
8 me that there is a problem, a rather pressing one, and if you allow, she will speak
9 to this.

10 PRESIDING JUDGE FULFORD: Right. This is taking longer than I thought.
11 Mr Lubanga in Court, please. Thank you.

12 (The accused enters the courtroom)

13 PRESIDING JUDGE FULFORD: Yes.

14 MS BUTEAU: Thank you, your Honours. Now, we had expected that the
15 familiarisation and the meeting with the Prosecution with that witness would be
16 scheduled for Monday, so there may be some delays. And we also have to think of
17 the courtesy meeting as well.

18 PRESIDING JUDGE FULFORD: Ms Buteau, at the moment the witness isn't here,
19 and so the earliest, as I understand it, that a meeting, a discussion with the
20 witness could take place is on Monday. So, as long as at 9.30 you know what our
21 decision is in relation to how the meeting should be conducted, doesn't that
22 provide you with enough time or not?

23 MS BUTEAU: Yes, I believe so, but the VWU told me yesterday that they needed
24 an order from the Court to suspend. Otherwise, the familiarisation session would
25 be at 10.00 or 10.30 on Monday morning.

1 PRESIDING JUDGE FULFORD: That's the very beginning of the familiarisation
2 process; is that right?

3 MS BUTEAU: It's a matter of the courtesy meetings amongst the parties and
4 the victim and familiarisation in the courtroom, which will be taking place during
5 the morning break, I believe.

6 PRESIDING JUDGE FULFORD: Thank you.

7 THE INTERPRETER: Correction by interpreter. The noon-hour break.

8 PRESIDING JUDGE FULFORD: Thank you very much, Ms Buteau. We will see how
9 long Maître Mabilille takes this afternoon. It may be there will be enough time
10 left, but I suspect not. The message should go to the Victims and Witness Unit
11 that they should continue with their arrangements for the familiarisation exercise
12 at 10.00 or 10.30 on Monday morning, whatever it is they have in mind, because that
13 will be consistent with the decision which we are going to hand down. So there
14 will be no inconsistency between having that part of the process at that time and
15 any discussions thereafter. But thank you for alerting me to the problem.

16 Witness, please. Thank you, Mr Lubanga.

17 (The accused exits the courtroom)

18 PRESIDING JUDGE FULFORD: Yes, private session, please.

19 *(Private session at 2.42 p.m.) Reclassified as Open session.

20 (The witness enters the courtroom)

21 (The accused enters the courtroom)

22 PRESIDING JUDGE FULFORD: Thank you, Mr Lubanga. Good afternoon, sir.

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

24 PRESIDING JUDGE FULFORD: Maître Mabilille?

25 MS MABILILLE: (Interpretation)

1 Q. Good afternoon, Mr Witness. We had to break off earlier as we were
2 talking about your injury, your injury to the (Redacted). Now, you confirmed that
3 you received that injury in Bunia. You said that you took your participation form,
4 and this is tab 2, page 11 of 17. Page 11 of 17. And in this document we see, at
5 the top of the page, Section E, information regarding damages, losses or harm
6 suffered. And it is recorded here, Mr Witness, under this heading, and it says
7 "please describe the damages, losses or harm suffered and please provide a brief
8 description thereof." Then in brackets we see the following: "Physical injuries,
9 psychological suffering and anguish, loss of possession or damage to a possession."

10 Mr Witness, under this heading you wrote the following, and I am reading what
11 we see here: "Drop in level of schooling, pain in the chest, physical and
12 psychological torture, drugs, witchcraft, deafening noises from automatic weapons
13 and sophisticated automatic weapons." Now, you have seen these things here in
14 this -- recorded on this form?

15 A. Yes, I see them.

16 Q. My question is a simple one: Why did you not say anything about your
17 injury to the (Redacted)?

18 A. I don't have an answer for you.

19 Q. Mr Witness, you told us that your injury was not cared for in Bunia, and I
20 would like to know how you managed to walk from Bunia to Kobu.

21 THE INTERPRETER: The Lingala booth does not hear what the witness has just
22 said. The Lingala interpreter reports that he did not hear the answer from the
23 witness.

24 MS MABILLE: (Interpretation)

25 Q. Mr Witness, the interpreter did not hear your answer. Could you repeat

1 it, or would you like me to repeat my own question?

2 A. I said that to walk I forced myself and I managed to get to Mongbwalu.

3 Q. And did you receive care, treatment?

4 A. My friends prepared a medication for me using plants that they had found
5 in the bush, so they provided this care so I was able to walk to Mongbwalu.

6 Q. Thank you, Mr Witness. Yesterday you said that at one particular point
7 during the battle in Mongbwalu, you realised that the situation was terrible and
8 that you were unable to face it, so you went into a house where you found two of
9 your friends. This is what you stated yesterday. Do you remember telling that to
10 us?

11 A. Yes, I remember.

12 Q. Did you choose that house at random?

13 A. I went into that house because outside the battle was intense.

14 Q. But did you go into the house to protect yourself but you were not
15 familiar with that house?

16 A. I entered that house to take shelter so I would not be hit by the bullets,
17 and that's how I found my two friends who were in that house.

18 Q. But were your two friends there because they were also taking refuge
19 there?

20 A. That's right.

21 Q. Mr Witness, I would like to ask you whether you're sure that the battle
22 did occur in Mongbwalu.

23 A. Yes, I'm sure of that.

24 Q. Mr Witness, so that is your testimony today, that the UPC fought in
25 Mongbwalu after April 2003?

1 A. If you could repeat your question?

2 Q. My question is as follows: Is your testimony that the UPC fought in
3 Mongbwalu after April 2003?

4 A. Yes, that's right.

5 Q. You told us yesterday that after fleeing you got to Ariwara, where you
6 abandoned all your possessions so that you would not be recognised. So you left
7 behind your military clothing?

8 A. Yes, that's right. I left my military clothing there.

9 Q. Did you replace them with some other pieces of clothing?

10 A. I had some pants with me.

11 Q. And where did you find these other pieces of clothing?

12 A. I had them. I had them on, with me.

13 Q. Mr Witness, you mentioned some time in the Bule camp starting in April
14 2003, when you were in the UPC army; you remember that?

15 A. I'm following you. I stayed in Bule. Well, I'm following you.

16 Q. I don't know whether it is a matter of interpretation. I will ask my
17 question differently. I think we agree that you did tell us that you were in the
18 Bule camp as of April 2003.

19 A. Yes, that's right.

20 Q. Mr Witness, if I were to say to you that the UPC no longer had a military
21 presence at the Bule camp after mid-March 2003, would that change what you have
22 come and told us before this Court?

23 A. I didn't really understand the question very well.

24 Q. I am saying to you that the UPC was no longer in charge of the Bule camp,
25 not after the middle of March 2003, and so I'm asking you whether that information

1 changes your testimony before this Court.

2 PRESIDING JUDGE FULFORD: Maître Mabilille, I'm not happy about this, and can I
3 explain why? I can't say exactly what the question was in French, but as it has
4 been translated into English, it is -- it includes two apparent, as it were,
5 certain statements on your part. First of all, that you are saying that the UPC
6 was no longer in charge of the Bule camp, therefore giving the impression that that
7 is an established fact and then going on to say that you have given information to
8 the witness and asking him whether that information changes his testimony.

9 Now, that has the appearance of you being in a position to give definite
10 information, in a sense, evidence, and then putting the witness in the position of
11 having to give a response to the evidence that you have seemingly just provided to
12 him. And I really don't think it's fair. You can make suggestions, but there is a
13 big difference, Maître Mabilille, between making suggestions, putting something as a
14 possibility, on the one hand, and seeming to give evidence to make definite firm
15 propositions on the other.

16 As I've already observed with Mr Desalliers, I have to say that I think, with
17 the current witnesses, it is probably more desirable to be asking the witness as to
18 whether or not he's sure, or whether there is room for doubt, whether there may be
19 uncertainty, rather than going through the rather more baroque procedure of making
20 formal suggestions, which is a technique which does work with some witnesses but
21 which is not terribly satisfactory with others.

22 I'm sorry if I've taken up a bit of time, but I'm not surprised at the
23 witness's apparent inability easily to answer your question.

24 MS MABILLE: (Interpretation) I understand, Mr President. I was simply
25 trying to avoid using the phraseology, "I am putting it to you," that maybe my

1 efforts were counter-productive.

2 Q. Mr Witness, is it possible that the UPC was no longer responsible for Bule
3 camp since mid-March 2003?

4 A. I cannot give you an answer to that question.

5 Q. Did the villages (Redacted), are those villages inside the territory of
6 (Redacted)?

7 A. Yes, they are in (Redacted).

8 PRESIDING JUDGE FULFORD: Redaction? No.

9 MS MABILLE: (Interpretation) It's the transcript, it's frozen.

10 PRESIDING JUDGE FULFORD: The Court equipment doesn't seem to have recovered
11 from the adverse weather conditions. Right. Do you need it, Maître Mabilille, in
12 order to continue, or are you happy for it to catch up?

13 MS MABILLE: (Interpretation) Well, I think we can proceed.

14 Q. Mr Witness, if I tell you that the (Redacted) area -- I am sorry, just a
15 moment. Let me repeat. Mr Witness, is it possible that the (Redacted) area was
16 under the control of the FAPC of Jerome Kakwavu ever since the end of February
17 2003? A. I do not know.

18 Q. Mr Witness, you told this Court that just before the attack in Bunia, you
19 had been asked to do some spying at the airport. Do you remember telling this
20 Court that?

21 A. Yes, I do recall.

22 Q. Mr Witness, who was in control of the Bunia airport at that time?

23 A. Could you please repeat the question?

24 Q. You testified that you had been asked to carry out some reconnaissance and
25 to spy at the airport. So my question to you is as follows: Who was in control of

1 the airport at the time that you carried out your spying mission?

2 A. On that point I would say that when I was sent, I do not know whether it
3 was the Nandes who were control of the airport.

4 Q. Mr Witness, do you know which armed group was occupying the airport?

5 A. I cannot tell you which armed group was in control of that airport. I did
6 not have any information as to who we were fighting against.

7 Q. With regard to the airport, since you were there, were there any soldiers
8 in military uniform present? In other words, what did you see at the airport when
9 you went there to carry out your spying mission?

10 A. When I went there, I saw soldiers in uniform. There were others dressed
11 in civilian clothing.

12 Q. And the people that you saw at the airport dressed in military uniform,
13 were you able to identify them? Were you able to identify the armed group to which
14 they belonged?

15 A. It was difficult to know.

16 Q. Did you report the information that you gathered to a commander?

17 A. Yes, I went and gave that information to Commander (Redacted), who in turn
18 briefed the other soldiers.

19 Q. Do you know whether the information that you provided made it possible for
20 an attack to be launched, for example?

21 A. We went to Bunia to capture the town and, given that I was sent out to
22 spy, I returned and told them how the situation was like and they believed me.

23 Q. Do you know whether they attacked the airport?

24 A. Yes, they attacked the airport.

25 Q. Mr Witness, is it possible that the Bunia airport had been under the

1 control of MONUC since May 2003?

2 A. You see, we went and fought. We took over control of the town and settled
3 there.

4 Q. Mr Witness, I would like to show you a document in tab 3, page 3 of 12.
5 This is a document that I'm going to read. Your name appears at the top left,
6 (Redacted), and then there is a registration number and then your position. It is
7 indicated in this document that you were a student in Form 2, Section A. Then you
8 have the place and date of birth, 17/05/88, and then (Redacted). It is also
9 indicated that this document was issued on 2 July 2007. Can you begin by
10 confirming to us whether the signature on this document at the bottom left is your
11 signature? It is under the heading "Signature of the student."

12 A. Yes, it is indeed my signature.

13 Q. Can you tell us how you were able to obtain that document, which was
14 annexed to your application to participate as a victim before the International
15 Criminal Court?

16 A. Could you please repeat?

17 Q. How were you able to obtain this document, which you appended to your
18 application for participation as a victim before the International Criminal Court?

19 A. I think this is indeed my document.

20 Q. I'm sorry, Mr Witness. My question to you is to know how you came about
21 this document. Did you follow a particular procedure for this document to be
22 issued to you? Where did you go? So, my question is how did you obtain this
23 document?

24 A. I do not have an answer for you.

25 Q. In this document, Mr Witness, it is indicated that you were in (Redacted)

1 (Redacted) and that you were in the fifth year. Were you really in the fifth year
2 in 2007?

3 A. No.

4 Q. In that case, let me ask you the question once again. How were you able
5 to obtain this document and why is it that the document states that you were in the
6 fifth year in 2007?

7 A. I know that this document is indeed my document, but I was not in the
8 fifth year.

9 Q. Mr Witness, did someone help you to obtain that document?

10 A. I do not have an answer to that question.

11 Q. Is it that you do not know, or you simply do not want to answer?

12 A. I just said that I do not have an answer to that question.

13 Q. Mr Witness, did someone help you to prepare your testimony before this
14 Court?

15 A. I discussed it with my guardian and also with Maître Keta.

16 Q. Did your guardian tell you to say one thing, or the other? Did he give
17 you advice? Did he assist you to prepare this testimony?

18 A. No, he did not help me.

19 Q. Is it possible that your guardian might have helped you to obtain the
20 student's ID card that we have just looked at?

21 A. I did not understand your question.

22 Q. I'm asking you whether your guardian might have helped you to obtain the
23 student ID card that we have just seen?

24 A. No, he did not help me.

25 Q. What is the name of your guardian?

1 A. His name is (Redacted).

2 Q. Thank you. What is your relationship with that person? He is your
3 guardian, of course, but does he have any other relationship with you?

4 A. Yes, he is a cousin of mine.

5 Q. Does this mean that your guardian knows all the members of your family?

6 A. Can you please kindly repeat?

7 Q. You have told us that your guardian was a cousin of yours, so my question
8 to you is as follows. Does your guardian know your family?

9 A. Yes, he knows my family.

10 Q. Can you please tell us at what point (Redacted) became your guardian?

11 A. When I came back from the war I did not find any member of my family
12 except my kid sister, and my sister was living in (Redacted) house, and this is how
13 come (Redacted) himself came and found me and then took me to his home.

14 Q. Do you remember the date or the time at which this happened?

15 A. I no longer remember the period because when I returned from the war I was
16 confused in my mind, and I cannot remember when it was.

17 Q. I simply wanted to know when you returned from the war? Did you
18 immediately go to live with your guardian?

19 A. Yes, that is correct.

20 Q. You have just told this Court that you did not find any member of your
21 family. Now, let me ask you this: Are there any members of your family living in
22 the village known as (Redacted), in the direction of the locality of (Redacted),
23 near Lake Albert.

24 A. I do not have any family members living there.

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

1 Q. Mr Witness, at the beginning of your testimony you told us this morning
2 that you could not tell me the age of your younger sister because you did not live
3 under the same roof; do you remember telling us that this morning?

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

5 Q. But you just said that your (Redacted), that you went to live with him,
6 (Redacted), who had also taken in your little sister. You just told us that; is
7 that correct?

8 A. I said that my little sister was living with
9 (Redacted).

10 Q. Is that your testimony today? That you do not live with your little
11 sister, and that you never lived with your little sister; is that what we are to
12 gather?

13 A. I don't live in the same place with my little sister.

14 Q. One last point on this matter: You said that (Redacted) was your cousin.
15 Could you try to be more specific? What kind of cousin is he? Is he a cousin on
16 your mother's side, your father's side?

17 A. He is a cousin on my mother's side.

18 Q. Exactly what do you mean by "cousin"; could you tell us? Mr Witness, I
19 would like to know is your mother -- well, did your mother have a link with
20 (Redacted)? A. They are from the same family.

21 MS MABILLE: (Interpretation) Your Honour, I would like to break off at this
22 point.

23 PRESIDING JUDGE FULFORD: Thank you, Maître Mabilie.

24 Sir, I indicated yesterday that I had a hope that your evidence would be
25 finished today. I regret that although you are very, very close to the end of your

1 evidence, there is one final outstanding matter that Maître Mabilille may wish to ask
2 you about on Monday morning, and whether or not she asks you any more questions,
3 then it may be that Mr Keta will have a few final questions for you.

4 So I am sorry this is going to be hanging over you for the weekend, but I
5 think I can realistically guarantee that by the time we reach late morning on
6 Monday your evidence will be finished, unless something very unfortunate
7 intervenes. So thank you for your help. I hope you have a good weekend and we
8 look forward to seeing you on Monday morning.

9 Thank you very much, Mr Lubanga. Closed session please.

10 (The accused exits the courtroom)

11 *(Closed session at 3.37 p.m.) Reclassified as Open session.

12 (The witness stands down)

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

14 PRESIDING JUDGE FULFORD: Public session please, and Mr Lubanga back in
15 Court.

16 (Public session at 3.38 p.m.)

17 (The accused enters the courtroom)

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

19 PRESIDING JUDGE FULFORD: Maître Mabilille, we are now very, very close to the
20 end of this witness's evidence and apart from the one outstanding matter which may
21 or may not be raised by you, as I understand it, your questioning is complete.

22 In those circumstances would you object to the witness now being able to
23 socialise, as it were, in a rather more normal way with the other two witnesses,
24 given that he can't possibly anticipate the matter that you may wish to raise on
25 Monday morning?

1 MS MABILLE: (Interpretation) Just a moment, if you don't mind, your Honour.
 2 Your Honour, the idea that we have is that as long as the VWU has not
 3 informed the witness of the reason why we wish to see him again, I think that we do
 4 not have a concern about this idea that these people would have an opportunity to
 5 socialise.

6 However, once, or if that information is provided, we would prefer that no
 7 contact be held amongst the three witnesses.

8 PRESIDING JUDGE FULFORD: I can give you some reassurance then in that
 9 regard. In fact, for reasons I needn't trouble you with, we've issued an
 10 unequivocal instruction that the other two witnesses are not to be told over the
 11 weekend that they may be recalled. So, at the moment, they have no idea that they
 12 are going to be recalled and it is only this witness who thinks there is one
 13 outstanding issue. So it's very difficult to anticipate that there could possibly
 14 be any conversation between the three of them which will be detrimental to the
 15 point you wish to raise.

16 Thank you very much.

17 Yes, I am grateful to the court officer. The last exchange should be
 18 redacted. I have forgotten that we are in public session. That is quite right.
 19 Thank you very much, court officer. It's late on a Friday.

20 Right. The indication that we've just given can be implemented. There we
 21 are. Right, Mr Walley.

22 MR WALLEY: (Interpretation) Thank you, your Honour. We do have one point
 23 to raise from the legal representatives. There are several issues, because we are
 24 dealing with a series of decisions that were taken, and not yet implemented. I am
 25 speaking of the obligations of the Defence and partly the OTP to forward certain

1 information to us regarding the witness that we will be hearing from next week.

2 On the one hand we have a decision in a particular format, and a redacted
3 version going back to 20 January, saying that seven days before the hearing of the
4 first witness normally we should receive the list of witnesses, and I would report
5 to the Court that we did receive a list but, for the most part, it is a rather
6 incomplete list. We only have witness numbers, no names, with the exception of
7 witnesses who are related to victim witnesses, who have dual status.

8 Secondly, several decisions have reiterated that at least three days before
9 the production of a document all documents that will be used during the hearing of
10 a witness must be disclosed to the legal representatives as well. From the OTP we
11 did receive a list of documents that will be used in cross-examination next week
12 but, unfortunately, they are just reference numbers and in actual fact we don't
13 have true access.

14 Apparently two documents are accessible, but, since this morning, the e-Court
15 system has not been working. Apparently IT is working on that but all this to say
16 that we do not have access to these documents for which we received reference
17 numbers from the OTP.

18 As for the Defence, despite very clear requests from us, and despite
19 decisions taken, they have refused to disclose the documents that will be used as
20 well as other information having to do with witnesses who will be heard.

21 Now, this puts us in a rather difficult position with the hearing of the
22 first witness scheduled for Monday, and this is an observation, well, a request
23 that was made by the Defence, and we will respond next week. But, in the meantime,
24 it is by no means ruled out that the witnesses will have declared certain matters
25 that relate to our interests, that is to say, the interests of our clients, the

1 victims. And we will have to respond without initially asking for leave, the leave
2 that we usually should request seven days in advance.

3 If you don't mind, your Honour, we can provide those reference numbers to the
4 decisions that I've spoken of. Thank you.

5 PRESIDING JUDGE FULFORD: Thank you very much, Mr Walley. Please tell me if
6 I am wrong but, as I understand it, part of the problem in this regard lies in a
7 disagreement between the representatives of victims and the Defence as to the
8 opportunities which should be afforded to victims to question Defence witnesses;
9 that the stance of the accused, and it may be that I am putting this too crudely,
10 but as I understand it is, that it is only victims who are mentioned by Defence
11 witnesses who should have leave to question the accused's witnesses.

12 Now, if that is a correct description of the Defence position, this is
13 something that we are proposing to deal with at the very beginning of next week.
14 I'm sorry that, if I am right in describing this as being the real issue at hand,
15 then I apologise for the fact that this hasn't been resolved already. Maybe you
16 wanted to say something else?

17 MR WALLEYN: There is another matter. Well, I won't try to truly explain the
18 position of the Defence. I will allow my learned friends to do so. Probably there
19 is a link. But we have the impression that we are just asking for the enforcement
20 of decisions that were already taken regarding the disclosure of documents.

21 As for the opportunity to examine Defence witnesses and the infamous concept
22 of interests that the Defence wishes to interpret differently, during the course of
23 next week we will responding to the application filed. If the Chamber wishes to
24 set some kind of deadline for us, we are quite willing to meet that deadline.

25 PRESIDING JUDGE FULFORD: Maître Mabilie, wholly irrespective of an issue as

1 to which victims should be allowed to question Defence witnesses, and I hope I've
2 reasonably described what I understand to be the stance adopted by the Defence on
3 this issue, have you, in fact, fully disclosed to the representatives of victims
4 the documents that they are entitled to in advance of your testimony commencing?

5 MS MABILLE: (Interpretation) Well, really, I would say that it is somewhat
6 unpleasant to have this debate with my learned friend on nearly 4 o'clock on a
7 Friday afternoon. He said something about a decision made by your Chamber, and
8 there was this request, a normal. He made reference to your ruling of 19 November
9 and we make reference to your oral ruling, oral ruling, of 9 December 2009 and so,
10 to respond --

11 PRESIDING JUDGE FULFORD: Please forgive me. I think I can detect from how
12 you've begun what the answer needs to be on this.

13 After we have risen this afternoon, because in any event we have got to rise
14 shortly before 4, I am going to ask that the Defence advocates and the
15 representatives of victims see whether they can resolve between themselves -- well,
16 Mr Walley, you are not going to get a ruling from us within six minutes. Raising
17 this now is not a helpful time.

18 We have been in this position on a number of occasions now, where there is a
19 dispute as to what documents should go to the victims. We are going to ask you,
20 please, to try materially to sort this out between you. If there is no resolution
21 we will deal with this early on Monday and, if necessary, the representatives of
22 the victims will be given an opportunity to consider the material to which they are
23 entitled before they are obliged to ask questions. So we will protect your
24 position next week Mr Walley, if we need to, if sensible arrangements can't be
25 reached this afternoon, and I am troubled that we are once again back in the

1 position of having to rule in relation to the material which is entitled to go to
2 the advocates representing victims. We've ruled, I think, on a number of
3 occasions, really quite clearly on this issue, and it is troubling that we are here
4 again so, ladies and gentlemen, will you please have a sensible discussion after we
5 have risen.

6 Right. Anything else? No. Good. Thank you all very much. Apart from
7 that, we wish you all a very pleasant weekend.

8 9.30 Monday morning.

9 THE COURT USHER: All rise.

10 (The hearing ends at 3.52 p.m.)

11 RECLASSIFICATION REPORT

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