

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Closed Session)
Questioned by Ms. Mabilille (Continued)

Page 1

1 International Criminal Court
2 Trial Chamber I
3 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
4 Case against Thomas Lubanga Dyilo
5 Hearing - *Closed Session Reclassified as Open session
6 Friday, 20 March 2009
7 The hearing starts at 9.00 a.m.
8 COURT USHER: All rise. International Criminal Court is now in
9 session. Please be seated.
10 PRESIDING JUDGE FULFORD: Good morning. Witness, please.
11 (The witness takes the stand)
12 WITNESS: WITNESS DRC-OTP-WWW-0294 (Resumed)
13 (Witness answered through interpreter)
14 (Mr. Lubanga entered court)
15 PRESIDING JUDGE FULFORD: Please have a seat, Mr. Lubanga.
16 Good morning.
17 THE WITNESS (interpretation): (No interpretation)
18 PRESIDING JUDGE FULFORD: Private session, please.
19 *(Private session at 9.02 a.m.) Reclassified as Open session
20 PRESIDING JUDGE FULFORD: Yes, Maitre Mabilille.
21 Questioned by Ms. Mabilille: (Continued)
22 Q. (Interpretation) Good morning, Witness.
23 A. Good morning.
24 Q. We're in public session.
25 MS. MABILILLE (interpretation): My questions are public.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 2

1 PRESIDING JUDGE FULFORD: Public session then please.

2 MS. MABILLE (interpretation):

3 Q. Witness --

4 (Open session at 9.03 a.m.)

5 COURT OFFICER: Open session.

6 MS. MABILLE (interpretation):

7 Q. Witness, yesterday when we left last night we were talking about
8 when you were at Nyankunde camp, and I was asking you about your military
9 training, and you informed us that in Nyankunde you didn't undergo any
10 military training, and that having regard to, in a broader sense, the
11 three groups you were a soldier in, you didn't receive any military
12 training except the two days of military training in Mandro.

13 Is what I have just summarised correct?

14 A. Yes, that's correct.

15 Q. I will now ask you a question on the following: From Nyankunde
16 you went to Sota; correct?

17 A. Yes, correct.

18 Q. Do you recall approximately how much time you spent in Sota?

19 A. I don't remember how long I spent in Sota. I don't remember how
20 long I spent in Sota.

21 Q. Do you think that it was closer to one month, six months, or just
22 a few days? I'm just trying to get a general idea.

23 A. I didn't spend six months. As regards the time I spent there, it
24 wasn't six months.

25 Q. Thank you, Witness. Afterwards, when you left Sota, you said you

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 3

1 went to Bunia and then to Rwabisengo; is that correct?

2 A. That's correct.

3 Q. You stated that in Rwabisengo you imparted military training.

4 You gave the recruits military training; correct?

5 A. Yes, correct. I did not train the recruits. There were Ugandan
6 trainers there. During the breaks I was given a weapon to teach the
7 recruits how to assemble and disassemble the weapon.

8 Q. And how many people did you give this training to?

9 A. I can't remember the number of recruits. There were many of
10 them. I taught the children. Children and adults were there. I was
11 given a weapon. The Ugandans gave me a weapon that belonged to
12 Commander Pepe. I disassembled the weapon. Everyone at the training
13 camp didn't necessarily have the authorisation to have or hold a weapon.

14 Q. But to assemble and disassemble a weapon, wasn't that something
15 you do when you're in military training?

16 A. Could you please ask your question again? I haven't understood
17 correctly.

18 Q. Sorry. It wasn't very clear. I believe that I understood you
19 gave military training during breaks and that -- and you did -- gave this
20 training. You taught people how to assemble and disassemble weapons.
21 You taught the recruits that. That's what I understood.

22 A. Yes, correct. But that doesn't mean that my work consisted in
23 doing that. I was given a weapon, and I was said -- told, whilst the
24 adults were resting, to take the weapon and show the recruits how to
25 assemble and disassemble a weapon.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 4

1 Q. And what did you do the rest of the time?

2 A. I was just there. The work involved carrying food. I was often
3 sent to carry food on a bicycle.

4 Q. Can I therefore conclude on this -- about this that your
5 statement to the Court was that you gave training in Uganda to recruits,
6 whereas you didn't actually undergo any military training yourself and
7 that if my calculation is correct, you at the time were aged between
8 9 and 10. Is that correct? Is that your evidence?

9 A. Nine or 10 years, no. I was approximately 10 or 11 years old.

10 Q. Very well. Afterwards you went to Mandro military camp; correct?

11 A. Yes, that's correct. I went there.

12 Q. You mentioned you spent approximately one month in Mandro and
13 underwent two days of training there; correct?

14 A. That's correct. I said that I couldn't say exactly how much time
15 I spent there. I think you didn't understand me correctly. I didn't say
16 one month, I said approximately one month.

17 Q. Yes. That's what you said. You said approximately one month.
18 So that's correct. You did give that additional detail.

19 Now, you also said that you left Mandro camp when the camp
20 leaders were on their way to Commander Pepe's funeral. Do you remember
21 saying that?

22 A. Yes, I remember saying that.

23 Q. Do you have any inkling of the date or at least year in which
24 Commander Pepe died?

25 A. I have no idea on what date it was.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 5

1 Q. If I were to suggest to you that Commander

2 Pepe died on April 2001, does that remind you of anything?

3 A. Yes, it could be in 2001. Yes, it's in 2001.

4 Q. Thank you, Witness. You then say that you fled Mandro camp to go
5 to Bunia; correct?

6 A. Yes, correct.

7 Q. You also say that you arrived in Bunia shortly before
8 Commander Claude's death; is that correct?

9 A. Yes, correct.

10 Q. Witness, are we talking here about Commander Claude Kiza?

11 A. I don't know his full name. I only know his name as Claude.

12 Q. Was he a commander whom a lot of people knew?

13 A. I don't know if all knew him, but I know that in Bunia almost
14 everybody knew him.

15 Q. And how did you know Commander Claude was dead, because in your
16 statement you say that this is an event that you have a clear memory of.

17 A. Yes. I remember Commander Claude died, because I heard so from
18 other people. I didn't see him. And after that there were
19 confrontations.

20 Q. How long -- do you remember how long it was before Claude's death
21 when you arrived in Bunia?

22 A. Are you asking me for the hour or the date?

23 Q. Neither the hour or the date. What I want to know is whether you
24 remember approximately when you arrived in Bunia. Was it approximately
25 when you found out that Commander Claude was dead?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 6

1 A. When I arrived in Bunia, I stayed there. I can't remember how
2 long I spent, because I didn't count the days. So I can't remember.

3 Q. I'm sorry. Maybe my question wasn't very clear, so I'd like to
4 repeat it. I just want to know when you arrived in Bunia, do you
5 remember whether -- or practically when you arrived in Bunia whether you
6 were told about Commander Claude's death? Because in your statement you
7 mention -- just a second, please.

8 MS. MABILILLE (interpretation): Sorry. Court Officer, could we
9 please give this document to the witness.

10 Q. Witness, could you please take your statement, the statement you
11 made to the Office of the Prosecutor, and I'm looking now at
12 tab number 1, paragraph 54. I will read. You state, Witness:

13 "I fled from Bunia with six other recruits. We arrived shortly
14 before the Commander Claude from the APC died."

15 At the time you said shortly before the APC commander died. So I
16 would like to know, concerning this short period, whether you know today
17 how long that short period was, one week, one month, two months? That's
18 my question. Do you remember how long it was?

19 A. I don't remember. I don't remember if it was one week or two
20 months. No, not two months. I -- I don't remember. But it -- he didn't
21 die the day we arrived. He died when we arrived...we were already there.

22 Q. Very well. If I were to suggest that Commander Claude died on
23 the 18th of April, 2002, is that -- does that correspond to what you
24 remember? Is that something -- a date that would be likely?

25 A. I can't confirm, because I can't remember the day, because at the

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 7

1 time I didn't count the days.

2 Q. Very well. I understand. In your statement you mention that you
3 left Mandro immediately after Pepe's death and that you arrived in Bunia
4 at the time, or just before or just after Claude's death. That's what
5 you put in your statement.

6 But both people died within a year of each other. So I would like
7 to know what type of activity you carried out during that year.

8 A. Well, I wouldn't know what to answer to that. When I arrived in
9 Bunia, I stayed there. We stayed there. We hid. And at one stage, we
10 were informed that all those who fled military service would be taken
11 back. They would be whipped, and they would be sent back to military
12 service.

13 Q. I have a last question I'd like to ask you on this. You
14 mentioned and gave further information in your statement about the fact
15 that you arrived in Bunia before Lopondeo was taken from power. Do you
16 remember at what stage, at what time, Lopondeo are was chased out of
17 power?

18 A. Yes, I remember. I don't know how long it was after Claude's
19 death, but Lopondeo was chased out. There was a battle. I don't remember
20 if it was after two days, but it was during that upheaval that Lopondeo
21 fled after the battle.

22 Q. But during that time the town was split in two. If I was to
23 suggest that Lopondeo was chased out of Bunia in August 2002, does that
24 seem accurate?

25 A. I can't remember the dates. About the days, the dates, I can't

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 8

1 remember.

2 Q. Thank you, Witness. I would now like to move on to your role as
3 a bodyguard, and as we are in public session, I will say escort for
4 Commander A, but you know what I'm talking about; correct?

5 A. Yes, I'll understand.

6 Q. You told us that at that time you went to the UPC camp, to office
7 number 2; correct?

8 A. Correct.

9 Q. And you also told us that that was right after Loponde was chased
10 out of Bunia; correct?

11 A. I would like to say the following: I can't give you information
12 about the dates. I recounted the events as they occurred, but I can't
13 give you the dates.

14 Q. Yes. I know it's difficult, and actually, it's very difficult
15 for anyone to date an event. I'm not talking about the date here;
16 I'm actually talking about the event.

17 So, you went to the office, and it's just after -- you went to
18 office number 2, and that was just after Loponde was chased out of Bunia;
19 correct? I'm talking about the event itself, not the dates. So did you
20 go to office number 2 just after Loponde was chased out of Bunia?
21 That's what I'm trying to establish.

22 A. When I arrived there, Loponde was already chased out. When I
23 arrived in Bunia, Loponde wasn't in Bunia any more.

24 Q. Thank you very much. Could you explain to us what office
25 number 2 is?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 9

1 A. I don't know what office number 2 does, but as far as I know,
2 it's somewhere where they carry out administration, people who work for
3 the administration. Officers, officers who don't ever partake in the
4 battle. So somebody from office number 2 doesn't ever fight. That's
5 what I know.

6 Q. I apologise. Witness, how did you know about the existence of
7 office 2? How did you know that there was such a thing as an office 2?

8 A. Well, actually, when I arrived there that office wasn't called
9 office 2. It's only subsequently that office 2 was established on site.
10 Somebody was there who was appointed as G2.

11 Q. I'll ask my question again. I was asking you how, when you were
12 in Bunia, how you found out that there was such a thing as an office
13 which maybe wasn't called office 2, but how did you know that such a
14 place existed, and in which circumstances did you go there?

15 A. You want me to explain to you how I went there? I don't really
16 understand your question.

17 I went over there when I found out that those who would be arrested would
18 be whipped. So I went close to that house. There were several soldiers
19 there. I stayed there, and afterwards I followed (Redacted).

20 Q. Well, that I understand. I understand what you're saying, but
21 that wasn't my question. My question was how --

22 PRESIDING JUDGE FULFORD: Can I interrupt you Maitre Mabilille? I'm very
23 sorry. Yes, Ms. Struyven.

24 MS. STRUYVEN: Thank you, your Honours. It's just for a
25 redaction of that name.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 10

1 PRESIDING JUDGE FULFORD: Certainly.

2 Please proceed, Maitre Mabilie.

3 MS. MABILLE (interpretation):

4 Q. No, I'm just trying to understand, Witness. How did you find out
5 that this office existed? I'm talking here about your knowledge of the
6 existence of such an office. That's my question.

7 A. I knew about it, because the G2 was there. That's where he
8 worked. That's where he lived. And I knew that we called that place
9 office 2.

10 Q. So were you aware that this office existed because you knew the
11 G2? Is that how you found out that this office existed?

12 A. We all knew it. We called that place office 2, and the G2
13 worked there.

14 Q. Could you give us the name of the G2?

15 A. His name is Lobho.

16 Q. How did you get to know this person?

17 A. When I worked in that movement, the G2 was Lobho. That's how
18 I knew. Lobho was the G2 of office 2.

19 Q. But you say that you met him at the time, so we're talking here
20 about the period in which Lopondo was chased out of Bunia and when the UPC
21 took control of Bunia. That's the period we're talking about, isn't it?

22 A. Yes.

23 Q. When we arrived -- you arrived in office 2, was Commander A in
24 Bunia or not?

25 A. When I arrived there, I didn't know where he was, because at one

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 11

1 stage he was in Uganda, and thereafter I heard that he had come back and
2 that he was here and that he had been posted in EPO. I followed him there.

3 Q. I'm trying to understand. You arrived in office number 2, and
4 you say that the reason why you went to the office was because you were
5 afraid of being whipped.

6 When you arrived in that office, what did you ask for exactly?
7 Please be careful. Don't state the name of the commander. You should
8 refer to him as Commander A. What did you ask of the persons who were in
9 the office? Do you remember the persons who were in the office at that
10 time?

11 A. Now, let me go back. When I talk about office number 2, I --
12 it's because I want to remind you of the places I went to. At the time,
13 it was not called office number 2. There were soldiers there. That's
14 what I would like you to know. It was later on that that place was
15 referred to as office number 2, but at the time the soldiers were living
16 there and all around that place.

17 Q. Thank you for that clarification. So you arrived at that place,
18 and were there many people in that office, and who is the person you met
19 at the time?

20 A. There were several soldiers. I arrived there. There was a
21 soldier whose name I will not mention. There were several soldiers, and
22 I knew some of them, and there were others whom I did not know. So I
23 arrived there. I introduced myself. I said I was a soldier. I left --
24 or I abandoned military service, and I lied that I was working somewhere.
25 I told them that I had abandoned military service but I would like to

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 12

1 join the army again. There were people there who knew me, because before
2 that there were some soldiers who had seen me, soldiers with whom I was
3 in Uganda. They, too, were there. They knew that what I was saying was
4 true.

5 Q. Very well. And what did you request from them or ask them at the
6 time?

7 A. I asked nothing of them, because everyone was attending to his or
8 her tasks. I was not the only one. There were several people there,
9 because all the people who returned voluntarily would go to that place,
10 and they would remain there, and so you stayed there until you were
11 assigned. If one day you were asked to do something, you just go ahead
12 and do it.

13 Q. And so your testimony is that you remained in that office, but
14 can you tell us for how long did you stay in that office?

15 A. I don't remember how much time I spent there, but it could have
16 been about one month. I don't remember very well.

17 Q. And the soldiers, did they assign you to any particular duties?

18 A. No. No. They did not assign me to any particular duties, and
19 they did not give me a weapon. So I was just strolling around, and I
20 will go back to spend the night. They did not give me any particular
21 duties.

22 Q. During that time you would return home, and you will come back
23 during the day. Is that what you are saying, or have I understood you
24 well?

25 A. To which home?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 13

1 Q. I don't know. Maybe I didn't understand you well. You said you
2 would go back. So I felt that maybe you will go back to some place rather
3 than spending time permanently at that office, which at the time was not
4 called office number 2.

5 A. I would stroll around. I would attend to my own business. I
6 could go strolling around with other colleagues, and we would go back
7 there.

8 Q. And at that time what were you expecting? Were you waiting to be
9 assigned to some particular duties, or what were you expecting?

10 A. I was waiting for the programme, whether we were going to go back
11 to Mandro or whether we were going to go elsewhere. There were chiefs
12 who would come, and they would take soldiers. I thought I would be made
13 to go back to Mandro, because many of the soldiers who were there, if you
14 come and you introduce yourself and you say you were a soldier, you would
15 be made to go back to Mwanga. That is what I was expecting.

16 Q. From what time did you know that Commander A had returned?

17 A. After a few days we heard from the others that Commander A had
18 returned, and I followed him.

19 Q. How were you able or how did you follow Commander A?

20 A. When he returned, I met him. I learned that he had returned and
21 that he was in a bar. I went to that place. I arrived there, I greeted
22 him, and he told me to follow him. I followed him to EPO.

23 Q. Are you telling us that a soldier could choose the place of his
24 or her assignment?

25 A. No. No. No one had that freedom of choice. At that time, there

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 14

1 was order but everyone had his or her way of escaping, so I chose the
2 place I wanted to go to and that is where I went to, but people were not
3 free to go to wherever they wanted to. That was not authorised.

4 Q. Thank you. I will now like to talk about the battle of Songolo.
5 You said you participated in combat in Songolo. I understood that two
6 battles were waged in Songolo and that you participated in the second
7 battle. Is that correct?

8 A. Yes, that is correct. However, as far as I know, there was only
9 one combat. I participated in only one combat.

10 Q. Yes. You stated that you participated in only one combat, but it
11 would appear that there were two combats.

12 A. Yes. There was another battle that took place earlier. I don't
13 know when, but that is what I heard from the soldiers.

14 Q. Thank you. Now, your testimony before this Court yesterday was
15 that Commander A fled during the battle with a heavy weapon, abandoning
16 you on the battlefield, and that the UPC soldiers pursued him in order to
17 try to kill him. Is that your testimony on this point?

18 A. This is what I said -- let me repeat what I said. I said we went
19 to combat, and he remained in a vehicle. When the fighting intensified,
20 he sent us to go there and then he tried to flee. When he fled, we, too,
21 fled, and we discovered that he had already run away. And at that time,
22 there was a platoon commander who said that, "If you meet him you should
23 kill him because it's because of him that we have lost the battle."

24 Q. Commander A ran away with a heavy weapon. That's what you said
25 yesterday; is that correct?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 15

1 THE INTERPRETER: The interpreter did not hear the witness's
2 answer.

3 MS. MABILILLE (interpretation):

4 Q. I think, Witness -- I think we should try to make an effort here.
5 You should wait for me to finish my question, and you should wait for
6 some time before answering so that the interpreters can hear both of us.
7 I will rephrase my question.

8 Did Commander A run away with a heavy weapon? I think that's
9 what I understood from your testimony yesterday. Is that what you said?

10 A. Yes, that is what I stated.

11 Q. Thank you. After the battle of Songolo, Commander A remained a
12 commander of the UPC, however, and you still continued serving as his
13 bodyguard; is that correct?

14 A. Yes. I was still his bodyguard.

15 Q. Thank you. Now, with regard to the battle of Zumbe, you said
16 that you participated in a combat in Zumbe. How -- for how long?
17 When -- for how long did this combat occur, that is, after the battle of
18 Songolo, approximately?

19 A. I don't have an idea about dates, but I think it wasn't long
20 afterwards. What I would like to tell you is that the battle of Zumbe
21 did not take place any more because we fell into an ambush as we were
22 heading there.

23 Q. I understood that. What I did not understand is whether it was
24 you who defeated the enemy, or the enemy that defeated you? Can you give
25 us some clarification on that point?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 16

1 A. Yes. We won -- or we defeated the enemy.

2 Q. Very well.

3 (Defence counsel confer)

4 MS. MABILILLE (interpretation):

5 Q. Thank you. We will now move on to your escape along the road to
6 Komanda. You said you followed Commander A because he had been
7 transferred to Komanda; is that correct?

8 A. This is what I said -- I don't think you understood me well.
9 This is what I said: When the commander was transferred to Komanda, I
10 looked for ways of escaping because I did not want to go to Komanda
11 because that was a combat region. And since he ran away on that day
12 during the battle, I abandoned. I ran away.

13 PRESIDING JUDGE FULFORD: Pause a moment
14 please. Ms. Struyven.

15 MS. STRUYVEN: Thank you, your Honours. I was just going to say
16 that the witness actually yesterday did not say he went to Komanda. He
17 said instead that he stayed in Bunia.

18 MS. MABILILLE (interpretation): That is correct. I am sorry, but
19 my question was a bit long, and I was going to go to the time when he
20 fled the UPC, and really, I agree that I should have been more precise in
21 my phrasing of the question.

22 Q. So it was at the time Commander A was transferred to Komanda that
23 you fled from the UPC. That was the time. You mentioned -- I'm

24 (Redacted)

25 (Redacted)

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 17

1 A. That's true, but I did not say that I abandoned the UPC at that
2 time.

3 MS. MABILLE (interpretation): Just one minute.

4 (Defence counsel confer)

5 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

6 MS. STRUYVEN: Thank you. Thank you, your Honours. There's two
7 things. The first thing is that I think he wants to deal with this
8 portion in closed session as he -- or private session as he indicated
9 yesterday; and the second thing is he did not say he fled UPC. He
10 clarified himself yesterday, saying that he tried to but that he was
11 caught.

12 PRESIDING JUDGE FULFORD: He's been consistent on that,
13 Ms. Struyven. Both yesterday and today he said exactly the same thing on
14 that point. That's quite right.

15 Now, you're suggesting, Ms. Struyven, are you that the witness wishes to
16 deal with this portion of evidence in private session?

17 MS. STRUYVEN: If I recall correctly, yes, your Honour, that is
18 what he said yesterday.

19 PRESIDING JUDGE FULFORD: All right. We'll move into private
20 session then, please. Thank you.

21 *(Private session at 9.48 a.m.) Reclassified as Open session

22 COURT OFFICER: Private session.

23 PRESIDING JUDGE FULFORD: Yes.

24 MS. MABILLE (interpretation):

25 Q. Well, the question I would like to put to you very precisely is

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilille (Continued)

Page 18

1 whether Commander A (Redacted) you decided to flee or on the
2 same day you decided not to follow him. Let's put it that way. Was it
3 on the same day?

4 A. Yes, it was on the same day. (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)

9 Q. Very well. Thank you. I would now like to talk to you about
10 your role at the residence of Thomas Lubanga.

11 MS. MABILILE (interpretation): I think that we can return to open
12 session for this point.

13 PRESIDING JUDGE FULFORD: That's absolutely right,
14 Maitre Mabilille.

15 Open session, please.
16 (Open session at 9.50 a.m.)

17 COURT OFFICER: Open session.

18 MS. MABILILE (interpretation):

19 Q. You said you were assigned to guard duty at the residence of Thomas
20 Lubanga. Do you remember having said that?

21 A. You misunderstood me. I was sent. It was not like I was selected today
22 to go and carry out guard duty. I was sent. We were told, "You, you and
23 you are to go to the residence of the president, because there are certain
24 soldiers who have left that place to go on a certain mission." And I
25 obeyed orders. I went there.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 19

1 Q. That is what I understood. When I said were you assigned to the
2 residence of Thomas Lubanga, what I'm asking is were you asked to go
3 there.

4 Now, did this happen after (Redacted) ?

5 A. Yes, it was after (Redacted).

6 Q. And was this before the battle of Bunia waged against the
7 Ugandans?

8 A. Yes, it was before.

9 Q. You mentioned in your testimony that you remained there for about
10 one week. Is that correct?

11 A. Yes, that is true. It wasn't exactly a week, but about a week.

12 Q. I will take your statement, Witness, and I'll read paragraph 109.
13 In that paragraph it is written:

14 "I received my weapon back once more before being sent to the
15 residence of Thomas Lubanga, which is located on the road of the Dogu
16 bridge within a saw -- within the premises of a sawmill."

17 PRESIDING JUDGE FULFORD: Slow down Maitre Mabilille, slow down.
18 And can we make sure that the witness has got the right paragraph, please.

19 Please carry on.

20 MS. MABILILLE (interpretation):

21 Q. In this paragraph you state the following:

22 "I received my weapon back before being sent to the residence of
23 Thomas Lubanga, which is located on the road leading towards Dogu
24 bridge within the premises of a sawmill."

25 And I will carry on one more sentence:

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 20

1 "I had to guard his residence for a few days only to replace a
2 soldier who had accompanied Bosco who had gone somewhere."

3 I will stop my reading here, and I would like to know from you
4 whether what you said yesterday before the Court, that you had never seen
5 Thomas Lubanga, is correct?

6 A. To see him face to face, no, I've never seen him, but I have seen
7 him go by. That's what I said, because I have to say what I can defend.
8 I have never seen him face to face.

9 Q. Under what other conditions did you see Thomas Lubanga?

10 A. Each time when he went by, he would be in a vehicle and I would
11 see him from a distance. We were not his bodyguards. I was carrying out
12 other duties. I saw him again when we went to Mandro. We were sent to
13 go and deposit weapons. We went to Mandro. We got out of the vehicle,
14 and I was standing near the car, and I saw many people who were standing
15 some distance off, and I asked the following question: "Who are those
16 chiefs who are standing over there?" And one soldier told me, "That is
17 the president and other persons." So I saw him from a distance, and I
18 cannot confirm whether it was him or not, but from what my colleague told
19 me, I think it was him, but I cannot confirm that it was him who was
20 there.

21 Q. When you were at the residence of Thomas Lubanga guarding his
22 house, you did not see him at the time. Is that your statement?

23 A. No, I did not see him. He was not there. I don't know where he
24 was at the time, but to tell you the truth, I did not see him. I did
25 not -- I did not know where he was. Maybe he was at another residence or

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilille (Continued)

Page 21

1 elsewhere, or maybe he was out of Bunia, I don't know.

2 Q. Thank you. I've last question to ask you on that period. Did I
3 understand you well that when you were guarding his residence you were
4 living within the enclosure of the residence of Mr. Lubanga, a building
5 with bedrooms that could be used by persons who were serving as his
6 guards? Is that what you said yesterday?

7 A. Yes, that is what I said.

8 Q. Thank you. I will now talk to you about the battle of Bunia. I
9 am sorry to talk about the problem of dates once more, but do you have an
10 idea of the year? When you talk about the great battle of Bunia, do you
11 know the time or the year when that battle broke out?

12 A. Yes, I know the year.

13 Q. Can you tell us?

14 A. The battle of Bunia occurred in 2003.

15 Q. Do you remember in which unit -- in which military unit you were
16 serving at the time the battle of Bunia broke out?

17 A. I was serving within the unit of the UPC.

18 MS. MABILILLE (interpretation): I would like to ask a question in
19 closed session, please.

20 PRESIDING JUDGE FULFORD: Certainly. Private session
21 please.

22 *(Private session at 9.58 a.m.) Reclassified as Open session

23 COURT OFFICER: Private session.

24 PRESIDING JUDGE FULFORD: Yes.

25 MS. MABILILLE (interpretation):

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 22

1 Q. You were assigned to a particular unit during the battle of
2 Bunia, weren't you?

3 A. Which unit are you talking about? Are you talking about the
4 battalion as a unit of the army? I don't understand. Can you explain
5 this clearly to me in Swahili?

6 Q. In Swahili I cannot, but I will try to do so in French. In which
7 battalion were you serving at the time of the battle of Bunia?

8 A. Yes. I was serving in the battalion -- no, let me start with the
9 platoon. I was in a platoon which was commanded by (Redacted). Now, with
10 respect to the battalion --

11 THE INTERPRETER: The interpreter would like -- the interpreter
12 states that he did not understand the second part of the witness's
13 answer.

14 MS. MABILLE (interpretation):

15 Q. Witness, can you please repeat what you just said, because the
16 interpreter did not hear you.

17 A. I was saying that I was in a platoon under the orders of (Redacted),
18 the battalion in the company of someone what's name I don't know, and it
19 was in the battalion of (Redacted).

20 Q. Your commander's name, then -- or the commander who was with you
21 for that battle was indeed (Redacted); is that correct?

22 A. I said (Redacted). I didn't say what you said.

23 Q. Fine. Did you see him during the battle?

24 A. We were divided up into groups. On that day we were together,
25 and in the evening, the evening before, he divided us up into groups. He

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 23

1 went, and I stayed with my platoon, and I was fighting in my platoon. He
2 was commanding the battle. He had his Motorola, and he was commanding
3 the battle. He was in communication with the company. He was
4 communicating with OC, and OC then communicating with the platoon I was
5 with.

6 Q. So you saw him the evening before. That's what you're saying to
7 us?

8 A. We were together the whole time, the morning. Everybody was
9 within his company.

10 Q. Thank you. Where exactly did you fight during the battle of
11 Bunia?

12 A. (Redacted)
13 (Redacted). There were people, other people who were fighting around
14 (Redacted). There were others fighting towards (Redacted). And as for me, we were
15 all over the place. Where the bullets were flying past, that's where we
16 were. We wanted to occupy (Redacted). We took (Redacted), and we took
17 the road towards (Redacted) to fight. There were others who were
18 fighting there. I don't know how people were positioned.

19 Q. Do you remember what time the fighting started in that precise
20 location where you were?

21 A. In my position there wasn't any fighting, but we saw the Ugandans
22 going past on vehicles, and we were shooting at them. We advanced to the
23 (Redacted), and it was at (Redacted) that there was fighting. It
24 was round about 9.00.

25 Q. Do you know around what time the fighting that you were involved

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 24

1 in ceased?

2 A. I don't know, but when we advanced, well, we stopped at a certain
3 point and we ran away because (Redacted) had a Motorola, and he heard the
4 Ugandans saying that all civilians had to come out. The battle is over.
5 The UPDF is now in control of the city. That's what we heard.

6 Q. Fine. You said that you ran away in the course of that battle,
7 after the battle, first of all going to (Redacted) and then (Redacted); is that
8 correct?

9 A. That is correct.

10 Q. How did you go there? How did you go from (Redacted)? How did you
11 leave Bunia after the fighting, and how did you get to (Redacted) and then
12 to (Redacted)?

13 A. There was fighting everywhere. There were fighters all over the
14 place with roadblocks and barricades. We took the road towards (Redacted),
15 and we went through to (Redacted). And there were the fighters who were
16 shouting. They were wearing civilian clothes. They were armed with
17 machetes, and you just shot at them and continued.

18 Q. My question was quite simply to know whether you went by car from
19 Bunia to (Redacted), or were you on foot? It was your mode
20 of transport that I wanted to know about. How?

21 A. We were on foot. We were not in a vehicle.

22 Q. Fine. I'd now like to put a question to you concerning
23 enlistment into the PUSIC. Do you know how long you remained within the
24 PUSIC, roughly?

25 A. I wasn't in the PUSIC for very long. I don't remember, but I

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilille (Continued)

Page 25

1 know it wasn't for very long. I think maybe it was a month and a half.
2 But then a certain time we came back to Bunia, but I wasn't in the PUSIC
3 very long.

4 MS. MABILLE (interpretation): Excuse me, are we in closed or
5 public session at the moment?

6 COURT OFFICER (interpretation): We are in private session.

7 MS. MABILLE (interpretation): I am sorry. Public session, please.

8 PRESIDING JUDGE FULFORD: Public then please.

9 (Open session at 10.08 a.m.)

10 COURT OFFICER: Open session.

11 MS. MABILLE (interpretation):

12 Q. Did you stay in the PUSIC until the battle between the French and
13 the UPC?

14 A. The battle between the UPC and the French occurred, and at that
15 time I was no longer in the UPC nor in the PUSIC. I wasn't in military
16 service any more. When I came back, when I left, I remained in Bunia and
17 there was this battle against the French.

18 Q. Thank you. We're now going to talk about your return to Bunia,
19 and I'd like to put the following question to you: When you came back to
20 Bunia, you say that you met one of your friends who was in the UPC, and
21 that you followed him. Is that correct?

22 A. Yes, I followed him.

23 Q. You also said he took you to a house where there were other
24 people hiding. They were hiding there with their weapons. Is that
25 correct?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 26

1 A. Yes, that is correct. Let me explain to you. Yesterday, you
2 referred to a name that I had never mentioned, and you said, "It was my
3 uncle." The place (Redacted)
4 (Redacted) and he had his weapon. There were young
5 people as well who had weapons. Other than that, I'd never mentioned his
6 name. You mentioned his name yesterday, and that's what I wanted to
7 explain to you.

8 Q. Have I understood correctly from what you're saying --

9 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

10 MS. STRUYVEN: Thank you, Mr. President. Just to see if he's
11 going to refer to names such as the name of his uncle, whether we should
12 go back into private session.

13 PRESIDING JUDGE FULFORD: Thank you. Are you going to go into
14 names, Maitre Mabilille?

15 MS. MABILILLE (interpretation): No, I wasn't going to mention any
16 names in the questions I intended to put. No, that was not my intention.

17 PRESIDING JUDGE FULFORD: Proceed then.

18 MS. MABILILLE (interpretation):

19 Q. I'm not going to refer to the name of the person you have just
20 mentioned, Witness. I just want to ask you the following: It was in the
21 house of that uncle, and I will not mention his name, that you remained
22 for a certain length of time. Is that correct, or have I misunderstood
23 you?

24 A. No, it wasn't his house. All of the soldiers were living in that
25 house, but it wasn't his house. He didn't have a house.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilille (Continued)

Page 27

1 Q. Okay. So it was a house where soldiers could come. And where
2 was that house to be found?

3 A. That house was at the CPS, close to the CPS.

4 Q. Was it in the town of Bunia?

5 A. Yes, it was in the town of Bunia, on the road to Lembabo.

6 Q. Very well. I'd like us to turn to your statement. One moment,
7 please. Witness, I'm going read something to you. Could you turn to
8 paragraph 127 of your statement, please.

9 PRESIDING JUDGE FULFORD: Can the usher please go and assist.

10 MS. MABILILLE (interpretation):

11 Q. "I arrived at Bunia at the time when school was due to restart.
12 I wanted to go back to school. In the street a UPC soldier who was a
13 friend," and I'm not going to give you the name, "saw me and said that
14 either I should go with him or he would denounce me. I was scared, and I
15 followed him towards the road to Centrale, and we joined up with Kisémbó
16 and the other soldiers."

17 Now, I'm trying to understand. Was the house on the road to
18 Centrale or was it in Bunia?

19 A. I said the house was in Bunia and not on the road to Centrale.
20 We left Bunia, and we went to (Redacted), towards Centrale, but the house
21 was in Bunia.

22 Q. Fine. So afterwards when you meet that friend, you go off with
23 Kisémbó and the soldiers having spent some time in the house, or is that
24 not how things were? Could you clarify that?

25 A. Let me explain. Who was behind the battle? It was Kisémbó. It

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 28

1 was his battle. I didn't go with Kisémbó. The idea was that Kisémbó would
2 take part in the battle, and I knew that I would be fighting under the
3 orders of the Chief of Staff. We were not with him together. We were all
4 soldiers, we had weapons, and we went to meet up with Kisémbó.

5 Q. Yesterday, you said that you did not fight against the French; is
6 that correct?

7 A. That is correct. I did not fight in the battle against the
8 French. I didn't reach the point -- the place where the war broke out.

9 Q. Could I ask you to read together with me paragraph 129 and
10 paragraph 130 of your statement. I shall read it slowly.

11 Have you found those two paragraphs, Witness? There's no
12 problem?

13 "The next day I and," and I don't mention the name, "fought
14 against the French and the Congolese police of the PIR, the Rapid
15 Intervention Police. I said to my friend that we shouldn't be fighting
16 because we were young and we should be at school. His answer was no,
17 he'd given up his studies, had done for a long time, and at his age he
18 could no longer go back to primary school."

19 My question is very simple. Did you fight against the French or
20 not?

21 A. That was my statement, but I think I made a mistake. I didn't
22 fight against the French. I did not fight. In reality, I did not fight
23 against the French. There was fighting, but I did not take part. I
24 shot, but I didn't shoot anyone. There was a group that went to the
25 front with the chief who was in charge, but I was in another group and we

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by Ms. Mabilie (Continued)

Page 29

1 didn't fight. If I said that, I made a mistake.

2 Q. Thank you, Witness. Could I also read out to you paragraph 130:

3 "The war against the French occurred outside Bunia, after the
4 village of Centrale. I do not recall exactly where. We were with
5 Kisémbu. I shot my rifle during that battle, and," and I won't refer to
6 the name, "did as well. There were a number of deaths. I don't know who
7 was victorious in the battle because I ran away and I went back to
8 Bunia."

9 A. Yes. I'd like to explain this mention of Kisémbu. If I mention
10 him, it's because he was in charge of the battle. Even if I didn't see
11 him, I knew it was him and that's why I keep mentioning his name. In
12 reality, we shot our weapons off, but the ones involved in the fighting
13 were other soldiers. And we went back the next day with (Redacted) and the
14 other person.

15 Q. Now, let's try to get things clear once and for good.
16 Paragraph 130 is not really accurate.

17 A. Part of it is true. When it says that I shot at those people,
18 that's not true. I didn't shoot at the French. I didn't fight against
19 the French in that way. I think I made a mistake.

20 Q. Thank you, Witness. You have just said that you were with (Redacted)
21 at that time.

22 A. (Redacted).

23 PRESIDING JUDGE FULFORD: Yes, Ms. Struyven.

24 MS. STRUYVEN: It's again for a redaction, your Honours.

25 PRESIDING JUDGE FULFORD: Certainly. Yes. I've said yes,

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 30

1 Ms. Struyven.

2 Yes, Maitre Mabilie.

3 MS. MABILLE (interpretation): I'd like to ask for a
4 clarification from the witness. I think that should be in private
5 session if you don't mind, your Honour.

6 PRESIDING JUDGE FULFORD: Private session.

7 *(Private session at 10.21 a.m.) Reclassified as Open session

8 COURT OFFICER (interpretation): Private session.

9 MS. MABILLE (interpretation):

10 Q. Witness, unless it is a mistake in the interpretation, which can,
11 of course, occur, it would seem that you, on page 35, line 13 in the
12 French, and I read it to you:

13 "We went back the next day with (Redacted) and the other person."

14 Witness, it's not written in your statement, that is, what you
15 have just said to us in answer to the questions that I was putting about
16 Bunia. You said, and I refer to what we have on our screen but you do
17 not see, that you said that you returned with (Redacted) and the
18 other person.

19 I want to know whether you can confirm that.

20 A. No, not (Redacted). I made a mistake in saying (Redacted). That was my
21 mistake. It was (Redacted). I will refer to (Redacted) elsewhere, but in
22 this case it was (Redacted).

23 Q. Thank you, Witness.

24 MS. MABILLE (interpretation): I think we should remain in closed
25 session as I shall be moving on to the problems of demobilisation.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 31

1 Q. Witness, to begin with in talking about your demobilisation, you
2 said that there was a lady that you met, (Redacted). Was
3 this (Redacted)?

4 A. I'm sorry, I didn't know her full name.

5 Q. No problem. Who is the person who put you in contact with
6 (Redacted)?

7 A. There was somebody who informed us, who told us that (Redacted)
8 was helping former soldiers, helping them go back to school. We went to
9 see somebody, I don't know, (Redacted)
10 (Redacted). We went there and there was a man. It was that man who sent
11 us to (Redacted).

12 Q. Do you remember who that individual was, the person who sent you
13 to (Redacted)?

14 A. Yes, I do remember him, but I can't remember his name. I think
15 he worked (Redacted). I'm not sure.

16 Q. Sorry, you said what? He worked where?

17 A. He was at (Redacted) because there were people working with
18 (Redacted) there. There were also children there, but that day I didn't see
19 any children. So it was that individual who told us where to go. He
20 gave that information to (Redacted) with whom I had gone.

21 Q. So you were with (Redacted) when you went to meet (Redacted).

22 A. Yes, I was with (Redacted).

23 Q. Did you say to (Redacted) that (Redacted) was your brother?

24 A. Yes, I told her he was my brother. That's what we said. We said
25 we were brothers.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Closed Session)
Questioned by Ms. Mabilille (Continued)

Page 32

1 Q. Can you explain to us why it was that you said that he was your
2 brother?

3 A. I said he was my brother because we'd agreed that that's what we
4 would say. There are places that we went to where there were people we
5 didn't get on with because of the disagreements between the northern Hema
6 and the southern Hema. That's why we said we were brothers. I was
7 frightened. I wanted people to understand that there were two of us and
8 that -- that would mean that maybe they would be scared of us. So it was
9 a means of protection.

10 Q. I understand that you felt that it would be easier if there were
11 two of you than if you were on your own, but why was it necessary to lie
12 and to say that (Redacted) was your brother? In what way did this protect
13 you?

14 A. I don't really know how to answer. I don't have an answer.
15 That's what we said.

16 PRESIDING JUDGE FULFORD: Would that be a convenient
17 moment to have the midmorning break, Maitre Mabilille.

18 MS. MABILILLE (interpretation): Yes, we could.

19 PRESIDING JUDGE FULFORD: Good. We'll have a break now for half
20 an hour. Can we go, please, into closed session, and if Mr. Lubanga
21 would kindly leave court.

22 *(Closed session at 10.29 a.m.) Reclassified as Open session

23 COURT OFFICER (interpretation): Closed session.

25 (Mr. Lubanga withdrew)

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilille (Continued)

Page 33

1 (The witness stands down)

2 PRESIDING JUDGE FULFORD: 11.00.

3 Recess taken at 10.29 a.m.

4 On resuming at 11.00 a.m.

5 COURT USHER: All rise. Please be seated.

6 PRESIDING JUDGE FULFORD: Witness, please.

7 (The witness takes the stand)

8 (Mr. Lubanga entered court)

9 PRESIDING JUDGE FULFORD: I forget, Maitre Mabilille. Are we in
10 public or private session?

11 MS. MABILILLE: Private session, Mr. President.

12 PRESIDING JUDGE FULFORD: Thank you, Mr. Lubanga.

13 *(Private session at 11.02 a.m.) Reclassified as Open session

14 COURT OFFICER: Private session.

15 PRESIDING JUDGE FULFORD: Yes, Maitre Mabilille.

16 MS. MABILILLE (interpretation):

17 Q. Witness, before the break I was asking you some questions about
18 the conditions in which you were demobilised. I was asking you more
19 specifically how you had been put in touch with (Redacted) from
20 (Redacted), and I was also asking you why you lied when you came with (Redacted),
21 saying he was your brother, and I would like to ask you whether or not
22 you gave a different age to (Redacted) than the age you gave this court.

23 A. Yes.

24 Q. Can you say why you lied about that event to (Redacted)
25 (Redacted)?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 34

1 A. I don't know how to answer you. (Redacted) suggested I do so. I
2 don't know why he did so, but that's why we lied about it.

3 Q. What was your relation to (Redacted) exactly?

4 A. I met (Redacted) in that house. I think (Redacted) part of my extended
5 family.

6 Q. Could you give us further details? When you say he's part of
7 your wider family, does that mean that he is one of your father's,
8 mother's, aunt's relations?

9 A. He is part of my mother's family.

10 Q. When you say you met him in a house, what house are you talking
11 about, Witness?

12 A. We met in a house that was occupied by soldiers. We were in that
13 house together with (Redacted) and other people.

14 Q. And at that time did you know that (Redacted) was part of your wider
15 family, as you've just said?

16 A. Yes, I knew so. I knew that (Redacted) was a member of my family.

17 Q. You told us that afterwards (Redacted) took you to the
18 (Redacted). Is that correct?

19 A. Correct. She said that she was going to talk to the person who
20 had sent us to see her. So we went to see that person, and she told us
21 to go back home, and later on we were brought to the centre.

22 Q. When you were sent to the (Redacted), were you still with
23 (Redacted)?

24 A. Yes. I continued to stay with (Redacted), and even until the time
25 of (Redacted) I was with (Redacted).

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 35

1 Q. Where was the (Redacted) located?

2 A. The (Redacted).

3 Q. Did you stay there for a while? What did you do in that
4 centre?

5 A. We went to that centre to eat, and we went back to where we
6 slept, because we didn't sleep in the (Redacted)
7 (Redacted). When the centre was moved (Redacted), we had no
8 means any more of finding food, and we weren't soldiers any more. So
9 what did we do? We left with the others to go to the (Redacted).

10 Q. If I understand your evidence correctly, you went to (Redacted),
11 which was a place where you were given food. Did you carry out any other
12 activities in (Redacted)?

13 A. When the (Redacted) was at (Redacted),
14 we didn't have any other activities. At one stage I was signed up in a
15 school, and then we went to (Redacted). (Redacted).
16 It was a -- (Redacted). And at the same time we
17 went to school.

18 Q. I would just like to come back to when you were saying that
19 the -- when (Redacted) was (Redacted), did you meet
20 any specific person in (Redacted)? Who -- who took you in (Redacted)?

21 A. I've forgotten the man's name. Oh, no. It was (Redacted),
22 yes.

23 Q. When (Redacted) received you at (Redacted), did you tell
24 him everything that had happened to you when you were in the army?

25 A. We stayed, but I don't remember what I told him. Later on when

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 36

1 we were in (Redacted), we gave explanations to the people who appeared and
2 wanted information, but before we talked to those people the supervisors
3 called us to tell us what we had to tell them. That's what they told us.

4 Q. Sorry, can you explain what you mean by "the supervisors told us
5 to say this -- told us to say specific things"? What does that mean
6 exactly?

7 A. What I mean to say is that when we were supposed to meet people,
8 the supervisors told us if they say, "Have you killed?" No, you didn't
9 kill. If they ask, "Did you participate in battles, say no." So that's
10 what I mean. They told us what to say, what things to say.

11 Q. Who were those supervisors?

12 A. I don't know their identity, actually. I've forgotten some of
13 their names. I know that (Redacted).

14 Q. When you arrived in (Redacted), did you also tell, let's say,
15 (Redacted), as that's what you just said,--- also say that (Redacted) was your
16 brother to (Redacted)?

17 A. We didn't change the story. We stayed there. It's later on that
18 I saw my mother, and that's when I changed my story. I said something
19 different, and that was when I saw my mother.

20 Q. You knew from the outset that (Redacted) wasn't your brother. From
21 the outset you knew this.

22 A. Yes, I knew (Redacted) wasn't my brother.

23 Q. So when you say that you changed your story when you saw your
24 mother, what are you talking about exactly?

25 A. I used to say that, but when I saw my mother again I felt better,

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 37

1 and I left (Redacted). He went one way, I went the other, and I changed the
2 story when I saw my mother. And I told this to (Redacted); when the
3 investigators came I said -- I didn't tell them that (Redacted) was my
4 brother.

5 Q. I understand from your evidence that you said to (Redacted)
6 that (Redacted) was your brother, and you also said so to (Redacted), and that
7 it was only subsequently you explained he wasn't your brother. Is that
8 what you're saying just now?

9 A. Yes, that's what I'm telling you now.

10 Q. And what did you say about age? Did you say the same thing
11 to (Redacted), or did you change
12 that line at one stage?

13 A. It's when I saw my mother that I gave a different date of birth.
14 It's when I saw my mother.

15 Q. And last point on (Redacted). Was (Redacted) older or younger than you?

16 A. He was older than me.

17 Q. Yesterday, if I understood correctly, you said that you left
18 (Redacted), and I quote you, "for financial reasons." What does that
19 mean exactly?

20 A. I didn't leave (Redacted) for financial or other reasons. It's
21 (Redacted) that told (Redacted) and myself to leave. I was waiting
22 to be reunited with my family. They said that they were going to put us
23 in foster families. So they asked me where my family was, and I said I
24 didn't know where my family was, and they said, Well, we -- they found
25 out that my mother was still alive. And I said, "Well, if that's the

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 38

1 case, then you have to take me to my mother." And then subsequently they
2 also reunited other people with their families.

3 At one stage we were given exercise books and pens, and they even paid
4 for our school fees. I was in the first year. They paid the school fees
5 for one term, and they asked us to leave. And when we left, we went into
6 the former house we used to live in, and we were asked, "Why are you
7 coming here?" And we answered, "Well, we were sent to go and live here."
8 And they answered they didn't have any money, and they didn't have the
9 money any more to take care of us.

10 Q. Which (Redacted) did you go to afterwards when you left (Redacted)
11 (Redacted)?

12 A. When I left (Redacted), sometime later I didn't have the
13 opportunity to go to school. Nobody was there to pay my school fees.
14 That's why I went to look for (Redacted). (Redacted) said, "Let's go and
15 see (Redacted) to tell her about our problem." We didn't manage to
16 see her, and then afterwards we found out that there was (Redacted)
17 (Redacted). He received and
18 promised he would look into our case.

19 One person told (Redacted) to go to that centre, and (Redacted) asked me
20 to go, and that's why we went to see that (Redacted) and told him about our
21 problem. We told him that we didn't have a family and that we didn't
22 have the way -- any way to pay our school fees but we wanted to go to
23 school. And we asked him to help us study, and he accepted to take us in
24 and pay our school fees.

25 We stayed there, and sometime later he called us. But before

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 39

1 that we told him we were at (Redacted) and that we couldn't be
2 reunited with our families. We told him we were alone, that we didn't
3 have a family and that we didn't have any food to eat. He was given
4 assistance by (Redacted), and we were put in foster families, and I was put
5 in a foster family with a woman. And I told (Redacted) that my mother
6 had been found, and so (Redacted) wanted first to meet my mother, and my
7 mother came, we talked, and then she left again.

8 Later on, my mother was told that they would send her son. So I
9 was sent from the foster family to my mother in (Redacted).

10 Q. Thank you, Witness, for those answers. I have to come back to a
11 number of points you've just mentioned. I'd like to come back to what
12 you stated yesterday.

13 You said that you left (Redacted). You talked at that stage
14 about a guardian that gave you money and whom you ate with. Do you
15 remember saying that?

16 A. The guardian I was talking to you about was the head of (Redacted).
17 There wasn't a guardian.

18 Q. Well, actually, what I was asking you is about what you said
19 yesterday, whether this guardian was the person from (Redacted)
20 organisation. So do you know what (Redacted) stands for?

21 A. Yes, I know.

22 Q. Can you tell us?

23 A. (Redacted)
24 (Redacted).

25 Q. Thank you. Do you remember the name of the guardian?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 40

1 A. Yes.

2 Q. Can you tell us what it was?

3 A. (Redacted).

4 Q. During the whole events you've described were you still with (Redacted)?

5 A. No. After the reunification everybody went their own way. We
6 were separated. I wasn't with him any more.

7 Q. Sorry, I wasn't very clear. I was talking about before the -- you
8 were reunited. So during the whole of the demobilisation
9 were you with (Redacted)?

10 A. When (Redacted) showed me the place, everybody minded their own
11 business. He went his way and I went mine.

12 Q. Thank you. Are there any other of your family members that went
13 through (Redacted) centre?

14 A. Family?

15 Q. I'm asking you whether any other members of your
16 family, other than (Redacted)?

17 A. No. Other than (Redacted), there were some of my -- members of my
18 family that came. But there was only (Redacted), and as regards other
19 members of my family, no. It was only (Redacted) that I considered as a member
20 of my family. I beg your pardon, when we arrived at the centre there was
21 somebody who worked with (Redacted), and that person was a member of my
22 family. We knew each other. He also was related to us, and it would appear
23 that (Redacted) was in contact with the centre through that person.

24 Q. Could you tell us that person's name, who is part of your
25 extended family, from what I have understood?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 41

1 A. (Redacted).

2 Q. Who put you in touch? I understood that (Redacted) put you in
3 touch with (Redacted). Who then subsequently put you in touch with
4 (Redacted) organisation?

5 A. I know it was (Redacted).

6 Q. And do you know how (Redacted) knew that organisation? Do you
7 have any idea?

8 A. Yes, I have some idea. There was a person working there and we
9 went to visit that person in his home, in (Redacted) home. We arrived at
10 his residence and he gave us that information.

11 Q. Sorry, I'd like to come back to the question I had asked you
12 earlier on. You gave us the name of a person. I wrote (Redacted) down.
13 Can I spell it to make sure I'm -- to make sure I have the right
14 spelling? If I spell it (Redacted), is that correct? Do you
15 think -- could you please write that down on a piece of paper?

16 A. I can write it on a piece of paper. It's not (Redacted).

17 PRESIDING JUDGE FULFORD: Yes. Could the witness please be given a
18 piece of paper and it needs to be made clear. Sir,
19 could you write down, as it were, your understanding of the name rather
20 than what counsel has just spelt out to you. So your understanding of
21 the name, please.

22 COURT OFFICER: The handwritten note of the witness shall carry
23 the number MFI-D-00087.

24 THE WITNESS (interpretation): You want me to write down the
25 other -- the other names of the person I know?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilille (Continued)

Page 42

1 MS. MABILLE (interpretation):

2 Q. Yes, please. That person's full identity. Thank you, Witness.

3 PRESIDING JUDGE FULFORD: Yes, could I see it, please, and I'll
4 just read it out so as to save time. Thank you.

5 First name (Redacted). Could you show
6 that to Maitre Mabilille, please.

7 Yes, Maitre Mabilille.

8 MS. MABILLE (interpretation):

9 Q. Do you remember how long you spent in (Redacted) centre?

10 A. I can't remember. I know I stayed there, and then we were sent
11 home, and I lived in several places. I lived with (Redacted) and
12 elsewhere too.

13 Q. With regards to the person whose name you have just given us, you
14 said that that was somebody who was also part of your family. Do you
15 know if it was -- if they were part of your father's or mother's family?

16 A. My father's family. I don't know how to explain. He was from my
17 father's clan.

18 Q. Thank you. During the whole demobilisation process and among all
19 the people you met and who helped you, was there anybody called (Redacted)?

20 A. Yes. Yes.

21 Q. Could you tell us at what stage you saw that person and met them?

22 A. (Redacted) worked with (Redacted) -- oh, no. I knew him in the
23 following circumstances: When we went to play football, he would come.

24 He came with (Redacted) staff. That's how I got to know him.

25 There were four centres. He worked with (Redacted), and that's how I met

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 43

1 him.

2 Q. Was he working for (Redacted), or was he working for
3 (Redacted), or maybe you don't know?

4 A. I don't know where he worked exactly. Sometimes I saw him carry
5 a bag on which was written (Redacted) but I don't know exactly
6 for whom he worked.

7 Q. Were you at any moment at the centre of (Redacted)?

8 A. No, I have never been at that centre.

9 Q. Apart from meeting (Redacted) on a football field, did you ever
10 meet him at any other time, and did he ever help you in your efforts?

11 A. Yes, but what efforts are you talking about? What type of
12 efforts?

13 Q. What I mean is that in the demobilisation process, we find out
14 you were at (Redacted) and then you moved on to (Redacted). It's all
15 of these that I refer to as your efforts.

16 I would like to know what was (Redacted) role in all this? Did
17 he help you in any way at all?

18 A. At one point (Redacted) helped me when (Redacted) left. I stayed
19 with (Redacted). Sometimes I went to his house. I spent the night there. He
20 will give me money, and I will go elsewhere. Yes, he helped me.

21 And even one day (Redacted) called me. I had his telephone
22 number. Sometimes I would call him. So he called me, and he said that
23 if I had a problem I could contact (Redacted).

24 Q. If I understand well, (Redacted) from time to time would give you a
25 bit of money, and you could also sleep in his home. Is that correct?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 44

1 A. Yes. In -- at their place, not in his house.

2 Q. When you say in "their place," please can you clarify, because I
3 understood that you meant his house.

4 A. He did not have a house belonging to him. I would go to their
5 place. Well, it was their place, and there were many people there.

6 Q. Thank you. When did you go to (Redacted)?

7 A. I thought I had already given you an answer to that.

8 Q. I'm trying to -- well, I apologise if I am getting you to repeat
9 things. I had the feeling you went to (Redacted) first and then you moved
10 on to (Redacted), and then later on you went to (Redacted). Is that
11 correct?

12 A. (Redacted) worked in collaboration with (Redacted). When (Redacted)
13 intervened, I was with (Redacted), and all efforts at reunification
14 with my family were carried out by (Redacted), and at that time I was with
15 the (Redacted).

16 Q. I'm just trying to understand you well. (Redacted) was another
17 organisation different from the centre of (Redacted). So I am putting
18 a precise question to you. Was (Redacted) in a premises located elsewhere
19 and were you at that place at any given moment in time? Because we have
20 found in the documents that you were issued a reunification certificate,
21 and what I'm trying to understand is when were you there. Was it after
22 your stay at (Redacted) place?

23 A. I don't know what time you're talking about. We went to the
24 office. People came to the centre where we spent the day, where we
25 studied. The employees of (Redacted) came. Of course I knew where their

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilille (Continued)

Page 45

1 office was. I think I went there before my reunification. I was -- I
2 went to an (Redacted).

3 Q. Last question on this point. Did (Redacted) also provide you
with

4 food, or did they pay for a certain number of things for you, or that was
5 not part of their duties?

6 A. As far as I know, (Redacted) gave us clothes. I ate at the centre,
7 but I did not know where the food came from. It's true that (Redacted) paid
8 our school fees, and (Redacted) also provided us with exercise books and
9 pens.

10 Q. Very well. Thank you very much, Witness.

11 MS. MABILILLE (interpretation): Just one minute.

12 (Defence counsel confer)

13 MS. MABILILLE (interpretation):

14 Q. Witness, I would now like us to discuss your meeting again with
15 your mother. According to your testimony, you were separated from your
16 mother in the year 2000. Is that correct?

17 A. That is correct.

18 Q. And according to your testimony, you saw her again only in 2004;
19 is that correct?

20 A. Yes. I saw her again in 2004.

21 Q. Is it correct that you did not see her, therefore, for four
22 years?

23 A. I hadn't seen her since 2000.

24 Q. During the time, the period you did not see her, did you get any
25 information, any news about her?

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 46

1 A. To tell you the truth, what I am telling you, I'm saying it
2 today. I did not get any news about her, but sometimes I heard people
3 talk about her, but it wasn't very clear information, I must tell you.

4 Q. How did you hear any news about her during this period of
5 absence?

6 A. When she was not where?

7 Q. I was asking you how did you come to hear about her? Who gave
8 you news or information about her?

9 A. I can't remember the person who was giving me all this
10 information. For example, one day when -- when I was with my commander -
11 he had just returned from Uganda to Bunia - I met a big brother of mine
12 whose name I am not going to mention, and he told me, "You have joined
13 the army, whereas I had told you not to do so." And so I answered back
14 and I told him, "Where did you want me to go to?" And he said, "Don't
15 you have any news about my mother?" And so that gave me the idea that my
16 mother was still alive. But when I was at the centre, I did not want to
17 say that I had any knowledge of the existence of my mother, because if I
18 gave such information, I would not have had a means of survival. I
19 wanted the centre to help me.

20 Q. Should I understand from your testimony that you hid information
21 about the existence of your mother because you felt that the centre would
22 not help you if your mother was still there? Is that what you're trying
23 to tell us?

24 A. No, that is not the case. I did not give that information,
25 because I did not see her. I did not talk for long with my brother. He

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilie (Continued)

Page 47

1 went -- he went back. He went away. I knew that he was somebody who
2 lied very easily. That is why I did not give much importance, attach
3 much importance to what he said. And when I was in military service, my
4 brother did not want to have any discussions with me.

5 Q. When did you see your mother again for the first time? Can you
6 try to remember when?

7 A. It was in 2004.

8 Q. Where was she living at the time?

9 A. You mean when she came to see me?

10 Q. That is, when you saw her again for the first time after your
11 separation.

12 A. She was in (Redacted). When she came to see me, she was living in
13 (Redacted).

14 Q. Do you know for how long she had been living in (Redacted) when
15 she came to see you, before coming to see you?

16 A. She came after my departure from (Redacted), but I cannot know when.
17 I left (Redacted), and later on she came and settled there. Excuse me.
18 She told me that -- excuse me. I have forgotten.

19 Q. Your mother came to see you, and at the time she was living in
20 (Redacted). Where did you meet her? The first time you saw her again,
21 where did you see her, in which place?

22 A. The first time I saw her again was -- I don't remember. Yes. It
23 was at the residence where we were -- where we were as a large group, at
24 a certain moment before I was placed with a foster family. I saw the
25 gentleman I talked about, (Redacted), and my mother came to the home of

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Questioned by Ms. Mabilille (Continued)

Page 48

1 (Redacted). She spent the night at my uncle's place at a place called
2 (Redacted).

3 Q. Can I therefore say that you saw her in Bunia, not in (Redacted)?
4 That is the first time you saw her again?

5 A. No, it was not in (Redacted). It was in Bunia.

6 Q. And at that time why did you not decide or make up your mind to
7 go and live with her in (Redacted)?

8 A. I was in school. I could not take the decision to abandon my
9 schooling. She asked me to go with her and I said no. And I told her,
10 "If you -- that you can help me by giving me money." And she said she
11 did not have money. And I said, "I have someone who is paying my school
12 fees, and so I cannot drop out of school." And (Redacted) also
13 promised to reunite me with my family, and so the centre had to take me
14 all the way to my family.

15 Q. When your mother returned to (Redacted), did she return with your
16 brothers and sisters? Do you know anything about that?

17 A. Yes. She went -- when I went to (Redacted), there I found my
18 sister. She was with my sister, my younger sister. There were other
19 people as well who were living with her.

20 Q. And today she still lives in (Redacted)?

21 A. Elsewhere.

22 Q. Thank you.

23 (Defence counsel confer)

24 MS. MABILILLE (interpretation): Your Honour, that is the end of my
25 cross-examination.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by the Court

Page 49

1 PRESIDING JUDGE FULFORD: Thank you,
2 Maitre Mabilie.

3 Public session, please.

4 (Open session at 11.50 a.m.)

5 COURT OFFICER: Open session.

6 PRESIDING JUDGE FULFORD: Sir, the Judge just sitting to my
7 right, Judge Odio Benito, has got a few questions for you. Yes.

8 JUDGE ODIO BENITO: Thank you.

9 Questioned by the Court:

10 JUDGE ODIO BENITO: Good morning, sir. How are you?

11 A. Good morning.

12 JUDGE ODIO BENITO: How are you?

13 A. Very well.

14 JUDGE ODIO BENITO: Sir, did anyone ever explain to you or to the
15 young people, boys and girls, in the camps why you had to fight against
16 the Lendus, the Ngitis and other groups?

17 A. Excuse me, I did not understand your question well.

18 JUDGE ODIO BENITO: I'm sorry. The question is about if any
19 person, any adult person, explained to you yourself, or to your
20 colleagues, when you were in the camp why you had to fight in this war
21 against the Lendus or other ethnic groups.

22 A. Once more, I do not fully understand the question. I don't know
23 if you want me to tell you if there was someone who explained to us why
24 we were fighting against these groups.

25 JUDGE ODIO BENITO: Thank you, sir. Exactly. That's the

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Questioned by the Court

Page 50

1 question, if you knew why you were fighting against those groups.

2 A. First of all, as far as I know, I knew that we were fighting
3 against the Lendus and the Ngitis, because even before I was born there
4 were conflicts between the two groups, and I knew that I was fighting
5 against the Lendus and Ngitis. That is what I knew. And I had been
6 hearing for a long time, from my childhood, that there was this problem.

7 Excuse me. Later on, I heard that there were plans which
8 entailed our combatting from Komanda right up to Beni. And I was a
9 soldier, and we had to keep on advancing right up to I don't know where.

10 JUDGE ODIO BENITO: Thank you. Did anyone ever, by chance,
11 explain to you what would happen to you if the UPC group was defeated in
12 the war?

13 A. If the UPC lost the war?

14 JUDGE ODIO BENITO: Yes. Did anyone explain to you what could
15 happen to you?

16 A. I did not witness any defeat of the UPC. It was difficult for
17 the UPC to be difficult -- to be defeated, but nobody told us what would
18 happen. However, later on the circumstances changed, and I don't know
19 what happened.

20 JUDGE ODIO BENITO: Did anyone ever explain to you what might be
21 your future and your country, Democratic Republic of Congo, future in the
22 hypothesis of the UPC succeeded in the war?

23 A. Our superiors tried to boost our morale through songs. We would
24 sing, saying that we would fight all the way until we capture Kinshasa,
25 but no military leader informed us of what was going to happen. It was

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Open Session)
Further Questioned by Ms. Struyven

Page 51

1 just a matter of boosting troop morale. But personally, I didn't hear
2 anyone say that something was going to happen if we advanced right up to
3 Kinshasa. I knew only -- the only thing I knew was that we were going to
4 be paid, but nobody told us anything in that regard.

5 JUDGE ODIO BENITO: Thank you. Thank you very much indeed, sir.
6 Very kind of you.

7 PRESIDING JUDGE FULFORD: Any further questions, Ms. Struyven?

8 MS. STRUYVEN: Yes, your Honour. We have just two more
9 questions.

10 Further Questioned by Ms. Struyven:

11 Q. Mr. Witness, I just have two more questions for you. The first
12 question is that today you explained to us the battle of -- or the battle
13 that took place in Bunia against the Ugandans in which the Ugandans
14 chased away the UPC, and you explained to us that the evening before the
15 battle you were divided into groups. Can you explain to us what happened
16 the evening before the battle just so that we fully understand what
17 happened?

18 A. Before that battle, we were on standby. We were requested to
19 take up our positions again. And even the commanders who were out
20 strolling around were asked to get back to the camp and take up their
21 positions, and on that same night, they took up their positions again.
22 The Chief of Staff convened us to an assembly, and he said everyone had
23 to remain there on site to wait for an attack against the Ugandans the
24 next day. All the commanders who had gone away returned, and we all
25 stayed there on the spot.

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Private Session)
Further Questioned by Ms. Struyven

Page 52

1 Q. Thank you very much for that clarification. And then I have a
2 second question: Do you know the ethnicity of (Redacted)?

3 MS. STRUYVEN: Your Honours, that has to be redacted. I'm sorry
4 for that.

5 PRESIDING JUDGE FULFORD: Redaction, please.

6 MS. MABILLE (interpretation):

7 Q. Sorry -- sorry, Mr. Witness. I'm going to refer to your friend,
8 the friend that you demobilised with or that you were with during your
9 period of demobilisation. Do you know his ethnicity?

10 A. Who are you talking about? Are you talking about the person I
11 referred to as my brother or --

12 MS. STRUYVEN: Exactly, but it will be
13 easier if we do this in closed session, I think -- private session.

14 PRESIDING JUDGE FULFORD: Private session, please.

15 *(Private session at 12.00 p.m.) Reclassified as Open session

16 COURT OFFICER: Private session.

17 PRESIDING JUDGE FULFORD: Yes.

18 MS. STRUYVEN:

19 Q. Mr. Witness, sorry for that. We're now in private session so the
20 public doesn't hear us. Indeed, you referred to (Redacted). And so
21 do you know his ethnicity?

22 A. He's a south Hema.

23 Q. Thank you very much.

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

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

Witness: Witness DRC-OTP-WWW-0294 (Resumed) (Closed Session)
Procedural Matters

Page 53

1 Sir, that finally brings your evidence to an end. Before you leave us, I
2 want to thank you most sincerely for the assistance that you have
3 provided this court. We are acutely conscious of the fact that this will
4 have been a difficult experience for you and that you have travelled a
5 very long way and that there has therefore been some not inconsiderable
6 sacrifice on your part. This court could not function without the
7 assistance of people like you, and therefore when you now leave, you do
8 so with the very great thanks of the Judges of this court. Thank you
9 very much indeed.

10 The witness, therefore, can now withdraw. Can we go into closed
11 session, and could Mr. Lubanga please, just for a moment, step outside.

12 (Mr. Lubanga withdrew)

13 *(Closed session at 12.02 p.m.) Reclassified as Open session

14 COURT OFFICER: Closed session.

15 PRESIDING JUDGE FULFORD: Thank you very much. Yes, Witness.

16 (The witness withdrew)

17 PRESIDING JUDGE FULFORD: Mr. Lubanga back into court, please.

18 (Mr. Lubanga entered court)

19 PRESIDING JUDGE FULFORD: And private session, please.

20 *(Private session at 12.04 p.m.) Reclassified as Open session

21 COURT OFFICER: Private session.

22 PRESIDING JUDGE FULFORD: Mr. Sachdeva, Witness 43 is here ready
23 and able to give evidence. Subject to resolving any issues over
24 protective measures, is there any reason why we shouldn't commence with
25 his testimony?

1 MR. SACHDEVA: Thank you, Mr. President. Indeed we have been
2 informed yesterday, orally in fact by the Victims and Witnesses Unit,
3 that Witness 43 is now to testify prior to Witness 293 for reasons -- the
4 reason is that 293 came in this morning. The Prosecution is ready to
5 proceed, and the fact that these witnesses are comparatively light, it's
6 not a problem for the Prosecution. However, I would note that the
7 schedule had been communicated to the Victims and Witnesses Unit over a
8 week ago, and the notice of this change last night is, to say the least,
9 mildly frustrating. Nevertheless, we are ready to proceed.

10 Secondly, we have also been informed that Witness 43 has asked
11 the VWU or suggested to the VWU that he would require protective measures
12 in the tune of voice distortion, face distortion and his identity be
13 expunged from record -- from the open record. We have asked the
14 Victims and Witnesses Unit to provide bases for this application. We
15 understand that the witness is a public official in the DRC and that he
16 most probably has legitimate concerns as to his security upon association
17 with the court and upon testimony with the court. However, we are
18 awaiting more information from the Victims and Witnesses Unit to -- to
19 make the application.

20 I have discussed these issues with the Defence, and I understand
21 the Defence have some comments they would like to state in court as well,
22 but I leave it up to the Defence. But having said that, we are ready to
23 proceed with Witness 43, and in principle we would have no -- we would
24 have no objection to the protective measures being granted should it make
25 the witness more comfortable to provide testimony.

1 PRESIDING JUDGE FULFORD: Thank you. As a general observation,
2 and I would ask that these remarks are communicated back to the
3 Victims and Witnesses Unit, and I'm going to impose a responsibility on
4 you, Mr. Sachdeva, to do so, that it is of high importance that there is
5 close liaison during the calling of Prosecution witnesses for there to be
6 the closest cooperation between the Office of the Prosecutor and the
7 Victims and Witnesses Unit and a maximum exchange of information to
8 ensure that any small changes to the order of witnesses is communicated
9 to you at the earliest possible stage. I well understand that the
10 Victims and Witnesses Unit have a difficult job and fine-tuning the order
11 of witnesses is not an easy matter, but it is of high importance that the
12 Prosecution and the Defence know if there are going to be changes to the
13 expected order. So I would ask, please, that there is -- that the
14 Victims and Witnesses Unit have these remarks of mine brought to their
15 attention by you today, Mr. Sachdeva, please.

16 MR. SACHDEVA: Certainly, Mr. President.

17 PRESIDING JUDGE FULFORD: Thank you very much.

18 Right. Maitre Mabilille, Witness 43?

19 MS. MABILLE (interpretation): Sorry, your Honour, but before we
20 talk about Witness 43, I'd like to say something about the witness that
21 we were to have heard today. We heard that that was going to be the next
22 witness, because we've been working on the basis of the fact that the
23 witness linked to this particular witness would come immediately
24 afterwards, and we have prepared ourselves for that cross-examination
25 immediately afterwards, because we were told that that was what would

1 happen.

2 There's another thing that I have difficulty understanding. We
3 had a familiarisation session with the witness some days
4 back - I can't remember exactly when - so that witness was in The Hague.
5 So I have difficulty understanding today why it is that we're being told
6 that the witness has only just arrived, whereas in fact we met that
7 witness in person just a few days back.

8 PRESIDING JUDGE FULFORD: Thank you. Mr. Sachdeva, I was told
9 that the witness was arriving on a plane this morning, that she -- and
10 the reason for that, so Maitre Mabilille knows, is that she has other
11 parental responsibilities, and it was felt undesirable to bring her
12 unnecessarily early. And I want to stress that I was consulted on this
13 and gave a general indication that we ought to try to minimise the amount
14 of time that she spends waiting to give evidence in The Hague because she
15 has responsibility for other children, but can you resolve this conundrum
16 that Maitre Mabilille believes her team have already met her, yet as I
17 understood her she was supposed to be in the DRC. What's the answer to
18 this?

19 MR. SACHDEVA: Mr. President, indeed that's the information we
20 have that she flew in this morning, but I understand she was here before
21 that, and we also met the witness.

22 PRESIDING JUDGE FULFORD: When?

23 MR. SACHDEVA: I would imagine it's around the same time the
24 Defence met the witness.

25 PRESIDING JUDGE FULFORD: That doesn't help me, Mr. Sachdeva.

1 When's that?

2 MR. SACHDEVA: No, I understand that. I think it's about two
3 weeks ago or a week and a half ago.

4 PRESIDING JUDGE FULFORD: Well, it may be that she's been in
5 The Hague and has since returned to the DRC, that -- yes, and I see that
6 that's indicated.

7 The very clear information I've had, Maitre Mabilille, is,
8 regardless of whether she has already been in the DRC, that up until this
9 morning, or yesterday, she was -- she was in the DRC, flying in this
10 morning, and it was considered that it would be, for understandable
11 reasons, wholly unfair on her to bring her straight from the airport and
12 to ask her to come and give evidence in court, because she's likely not
13 to be in a state where she would want to give evidence.

14 So the position we're in is that, as I understand it, Witness 43
15 is considered to be a relatively short witness. Witness -- the last
16 witness's mother is not in a position to give evidence today, and rather
17 than waste the whole of the rest of the day, we would prefer to progress,
18 if we can, with Witness 43, but please make representations on it if that
19 is not an acceptable proposition.

20 MS. MABILILLE (interpretation): Your Honour, I don't want to cause
21 any difficulties to the Chamber, but let me say that we would like to
22 cross-examine this person and also keep the witness who is here so that
23 if it were to be necessary, we could ask him to come back. There is no
24 major objection to having Witness 43, but I'd like to stick to what I
25 requested some days back, which was when we thought that both members of

1 the family were present in The Hague, in other words, that there be no
2 contact between the two members of that family. If I had known that the
3 person was not there, then I would not have made that request.

4 This incident is such that it forces me to say that we really
5 must be informed as quickly as possible of this sort of element, because
6 today we are prepared to cross-examine that witness, and we learn now at
7 quarter past 12.00 there's a change in the order of appearance of
8 witnesses, and I find this situation -- and even on the basis of the work
9 we're carrying out vis-a-vis this witness, the one we've seen today, I
10 have to say that I find this situation most unsatisfactory.

11 We have no objection to having Witness 43 now. My colleague
12 Mr. Biju-Duval has a number of comments he would like to make.

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

14 MR. BIJU-DUVAL (interpretation): Yes, your Honour. We've only
15 just heard that we'll be hearing Witness 43. Fine. Ms. Mabelle has said
16 what had to be said as regards the difficulties that puts us in.

17 As regards the protection measures that have been requested today, if
18 I've understood correctly, by Witness 43, the Defence doesn't see
19 the need for them. I think that the Prosecutor would agree that this
20 witness has already in public and on several occasions made testimony,
21 giving his name, and this has been done to different organisations.
22 Thus the substance of the testimony for this Witness 43 has already
23 been given in other forms. It's been made public in other contexts, in
24 the context of interviews and so on.

25 The Chamber is aware of the function of this witness, of his

1 position. Clearly this is not a witness who would be specifically
2 vulnerable for whatever reason, so that means that there is no need to
3 call into question the fact that these hearings are public. And I would
4 say that if this principle of a public hearing were not to be respected
5 for this witness, then the Defence would have great difficulty imagining
6 in which cases it ever would be, and that is why Defence, although we're
7 concerned obviously with the safety of this witness, feels that in the
8 circumstances these measures, protection measures, which by definition
9 are exceptional, are not justified.

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

11 Mr. Sachdeva, before you say whatever it is you were rising to
12 your feet to set out, is it right that this witness, as Mr. Biju-Duval
13 has just said, has publicly already, as it were, put on record the
14 matters about which he's being asked to testify before this court?

15 MR. SACHDEVA: Mr. President, might I have one moment?

16 (Prosecution counsel confer)

17 MR. SACHDEVA: Thank you for the indulgence of the Court,
18 Mr. President. Our understanding is that the witness has made public
19 pronouncements about a particular incident, detention with the UPC --
20 detention by the UPC, but nothing in public has been mentioned about his
21 association with the International Criminal Court. And it is -- it is,
22 as I understand it, correct that there is information in a public report,
23 but the witness's identity is not contained in that public report. And
24 that his complaints were made in judicial proceedings.

25 PRESIDING JUDGE FULFORD: Sorry, his complaints were made in

1 judicial proceedings. You're going to have to be more specific.

2 MR. SACHDEVA: In respect to his detention.

3 PRESIDING JUDGE FULFORD: Right. So he's discussed -- he's on --
4 he's known as being somebody who has spoken "publicly" about his
5 detention with the UPC, but there is at the moment no public record of
6 him cooperating with the court.

7 MR. SACHDEVA: That's correct, Mr. President.

8 PRESIDING JUDGE FULFORD: Can you help us as to -- if he's been
9 prepared to speak about the event, what do the Prosecution say about his
10 position being made materially worse because he talks about that event
11 within the context of proceedings before this court? If he's already
12 spoken about them in judicial proceedings, what's the difference speaking
13 them -- about them in these judicial proceedings?

14 MR. SACHDEVA: Mr. President, I -- again we haven't received the basis
15 yet from the Victims and Witnesses Unit for me to be able to accurately
16 answer that question. However, I would -- I would suggest that a person
17 of his stature, supposedly a neutral person, a judge, his association
18 with a particular party, with the court, upon giving testimony might, in
19 our submission, raise more risks when he was to return to the DRC.

20 PRESIDING JUDGE FULFORD: Thank you.

21 (The Trial Chamber confers)

22 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I'm going to address the
23 bar through you.

24 As this Chamber has made, I think, by now abundantly clear to all
25 those participating, we deprecate any unnecessary waste of court time.

1 It is in our view of absolute cardinal importance that this trial of this
2 accused proceeds efficiently, at the greatest possible speed that's
3 consistent with a fair trial.

4 That said, we are not prepared to engage upon an investigation of
5 the very important issue of whether or not this witness should be
6 protected vis-a-vis the public in the sense of having his identity
7 completely concealed without a proper report before us, with the
8 opportunity for both Prosecution and Defence to make informed decisions
9 on that report. We want to stress that if it is at all possible, we must
10 not be put in this position again during the course of this trial and
11 that for both witnesses who are intended to give evidence within a
12 particular order and those who are being used as "back-up" witnesses,
13 these issues must have been canvassed in advance.

14 Now, as I understand it, the Victims and Witnesses Unit were in
15 fact waiting for the OTP's representations as regards this witness,
16 Mr. Sachdeva, but I do not now wish to investigate the rights and wrongs
17 of that. It may be there's been some misunderstanding, and I see
18 Ms. Bensouda very forcefully shaking her head. Whoever carries the
19 responsibility for this, can we please make sure we are not put in this
20 position again, and so we need to have, for a significant number of
21 witnesses, as it were, going down the list, the proposals as regards
22 protective measures set out in writing so the parties can comment on them
23 if they wish in writing and so we can make a proper informed decision.

24 If we attempt now to have this, as it were, sorted out rapidly in
25 writing, that is going to take, in our view, too long today to leave any

1 useful -- sufficiently useful time left to commence this witness's
2 evidence. We've also borne in mind what Maitre Mabilie has said about
3 the desirability of these two particular witnesses, 293 and 294, one
4 following the other, as speedily as they can, and that is another matter
5 which has been factored in by us into our consideration as to what we
6 should do.

7 Therefore, we are going to adjourn Witness 43's evidence. We are
8 going to adjourn today for the weekend. We will proceed on Tuesday
9 morning at 9.30 with the last witness's mother, and hopefully we will
10 then be able to hear Witness 43's evidence after she has completed her
11 testimony.

12 There is an outstanding issue which relates to any questioning by
13 Mr. Diakiese of Witness 43. At the moment, Mr. Diakiese is -- or the
14 victim or victims on whom -- on behalf of whom he wishes to cross-examine
15 or ask questions are anonymous vis-a-vis the Defence.

16 Mr. Diakiese, we want a written submission, please, from you to
17 be filed with the court by 4.30 on Monday as to why you should be
18 permitted to ask questions of Witness 43 on behalf of one or more
19 anonymous victims. And in putting in your submissions, could you please
20 make reference to the observations that we have made generally about the
21 likely reluctance on the part of the Bench to permit, as I recall it,
22 questioning on behalf of victims who are anonymous as far as the Defence
23 is concerned.

24 Now, Mr. Sachdeva.

25 MR. SACHDEVA: Thank you, Mr. President. If you'll allow me.

1 Firstly, the Prosecution is entirely in agreement that the trial must be
2 undertaken as speedily as possible, and in fact that is the reason why we
3 applied for the next two witnesses to be -- to have their evidence
4 admitted pursuant to Rule 68. In other words, it expedites the process.
5 And in fact, as the Chamber is aware, we have withdrawn witnesses that we
6 feel contain evidence that is repetitive and that has already or will be
7 heard in this case --

8 PRESIDING JUDGE FULFORD: Mr. Sachdeva, I wasn't addressing these
9 remarks to the Prosecution and you needn't go into a rehearsal of the
10 Prosecution's desire also to see this trial move speedily. We take that
11 as a given, Mr. Sachdeva, and needn't be justified. Now what is the
12 substantive point you wish to make?

13 MR. SACHDEVA: The other point, Mr. President, if I may, is that
14 with respect to our communication with the Defence, we only knew of the
15 change in order as of yesterday by the Victims and Witnesses Unit, and
16 upon that information we relayed it to the Defence. I just want to put
17 on record that the Defence and the Prosecution regularly communicate
18 changes of witness order and other issues that are important for the
19 Defence, and I just want to make that clear that whenever we have
20 information, that's provided to the Defence so that everyone can make
21 their arrangements as speedily as possible.

22 PRESIDING JUDGE FULFORD: That's good. There needs to be at the
23 very least a tripartite system of communication set up between the
24 Victims and Witnesses Unit, the Prosecution, and the Defence, and indeed,
25 in fact, this is a four-sided position because participating victims must

1 know as well and the Chamber must at all times be kept informed, but any
2 proposed changes must be immediately communicated to all those involved.
3 I had assumed that this was happening, and it is regrettable that it
4 isn't, and I'm not attributing blame, Mr. Sachdeva, but it is regrettable
5 that it hasn't.

6 Now, I think you wanted to say something else.

7 MR. SACHDEVA: Mr. President, just one last thing if I may. The
8 Prosecution also intends to make applications upon sufficient basis and
9 with respect to -- with respect to Witness 43, it is indeed correct that
10 there had been --

11 PRESIDING JUDGE FULFORD: Sorry, I didn't hear. Applications
12 upon sufficient basis.

13 MR. SACHDEVA: Correct, Mr. President.

14 PRESIDING JUDGE FULFORD: What does that mean?

15 MR. SACHDEVA: It's in relation to Witness 43. We had in the
16 past referred this witness to the Victims and Witnesses Unit --

17 PRESIDING JUDGE FULFORD: Oh, I see.

18 MR. SACHDEVA: -- for protection within the ICC PP and it was
19 rejected. And therefore, upon that basis, we had not been made aware of
20 any change in the situation and it is for that reason that hitherto we
21 had not made an application, and it is only upon the witness coming to
22 The Hague where information was communicated to the Victims and Witnesses
23 Unit that protective measures would be -- he would prefer to have
24 protective measures, and upon that information we make this application.

25 PRESIDING JUDGE FULFORD: That's very helpful to know. Can you

1 please, using the free time you're now going to have this afternoon,
2 Mr. Sachdeva, have a conversation with the Victims and Witnesses Unit to
3 establish a procedure that hereafter can be followed for witnesses who
4 are outside of the protection programme so that if there are to be
5 requests for protective measures coming from the witnesses, those are
6 identified well in advance and communicated to all those who are
7 interested so that there can be a properly timed resolution of any
8 suggestions are made. What we want to avoid in future is witnesses
9 arriving in The Hague and everyone being told for the first time that
10 they want a number of protective measures in relation to which the kind
11 of objections we've had outlined this morning are raised. So could you
12 please talk to Mr. Vaatainen about this.

13 MR. SACHDEVA: We will, Mr. President, and thank you.

14 PRESIDING JUDGE FULFORD: Thank you very much indeed. And I'd
15 ask you to report back on this at a convenient time on Tuesday, please.

16 MR. SACHDEVA: Yes, Mr. President.

17 PRESIDING JUDGE FULFORD: Maitre Mabilie, on the issue of
18 communication between 293 and 294, as I recall it in a more or less
19 analogous situation, the Court has permitted a supervised social visit
20 between parent and child with both involved having been given the
21 clearest instruction that there is to be no discussion in relation to the
22 evidence that has been given and is to be given. Would you have any
23 objection, so long as it is a witness -- a visit that is supervised and
24 so long as those instructions are given, would you have any objection to
25 293 and 294 meeting, given that we are now about to have a

1 three-and-a-half-day gap?

2 MS. MABILLE (interpretation): No. That is a practical solution
3 that we think is a reasonable one, it being made clear that the person
4 attending such an interview must be familiar with the language that might
5 be used by the two members of that family. That is the main element that
6 could then guarantee to us that there wouldn't be any passing of
7 information concerning the testimony. Thank you, your Honour.

8 PRESIDING JUDGE FULFORD: Yes. I think that's a -- that's a
9 wholly reasonable request, whether it's Lingala or Swahili, if a social
10 visit is to take place, we will ensure that there is someone who is
11 present who speaks the appropriate language. And if the conversation
12 appears to be turning towards matters of evidence, the instruction that
13 will be given is that steps should be taken to bring the meeting to a
14 close.

15 Any other matters that anybody wishes to raise? No.

16 Thank you all very much for your attendance and your assistance.

17 We will sit again at half past 9.00 on Tuesday morning of next week.

18 COURT USHER: All rise.

19 The hearing ends at 12.33 p.m.

20 RECLASSIFICATION REPORT

21 Pursuant to Trial Chamber I's emails instruction dated 2nd November 2011 and
22 15th March 2012, the transcript is reclassified as public after the indicated
23 redactions have been implemented as ordered by the Chamber. All private and
24 closed sessions (*) are now available to the public with the exception of the
25 portions of the transcript that have been redacted.