

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 - Open Session

6 Tuesday, 14 July 2009

7 The hearing starts at 9.33 a.m.

8 COURT USHER: All rise. The International Criminal Court is now
9 in session. Please be seated.

10 PRESIDING JUDGE FULFORD: Good morning. Ms. Peduto, please.

11 Mr. Biju-Duval. Should the witness come in or not? Good.

12 Please carry on, Usher.

13 Yes, Mr. Biju-Duval.

14 MR. BIJU-DUVAL (interpretation): I would just like to settle a
15 file management issue here. We need to have an EVD number for a two-page
16 document which was shown to the witness yesterday, but as regards the
17 68-page document which was also shown to the witness yesterday, the
18 Defence does not want to enter this into evidence. So we only need an
19 MFI number, I think.

20 (The witness takes the stand)

21 PRESIDING JUDGE FULFORD: Since it's been raised -- first of all,
22 good morning, Ms. Peduto. Thank you very much for joining us. Let's
23 then deal with those documents in the way that Mr. Biju-Duval has
24 suggested unless Ms. Solano has any contrary observation. She doesn't.
25 So if the Court Officer could give those numbers, please.

1 COURT OFFICER (interpretation): Thank you. The 68-page document
2 already has an MFI number, which was given yesterday. It is MFI-D-00152.
3 As regards the two-page document which has the ERN number
4 DRC-OTP-00206-0220, it shall bear the number EVD-D-01-00082.

5 PRESIDING JUDGE FULFORD: Thank you very much. Before we
6 continue, Mr. Johnson, you were very kindly going to conduct some
7 inquiries overnight. Can I ask how you've got on?

8 MR. JOHNSON: Your Honour, indeed I checked with my colleagues at
9 headquarters, and it would be possible to provide, particularly in
10 private session, the names of staff even if those are not generally
11 available, but with one very important restriction that I apologise I was
12 not aware of yesterday.

13 The important restriction for peacekeeping missions is the
14 following: Where there is the possibility of violence and a danger to
15 safety and security of staff, the UN peacekeeping mission does not
16 disclose the names of staff who are nationals of the country in which the
17 mission is located, nor do they reveal the names of staff who are still
18 serving in that mission theatre. So while it would take some time, I do
19 not know how much time, for MONUC to prepare the list of staff who served
20 in the child protection service during the dates indicated, those -- that
21 list would not include the names of the other interviewers, because as
22 indicated in the witness statement and as I have checked with her, the
23 other interviewers are nationals of the DRC.

24 So with that in mind, I did not forward the request to MONUC,
25 because I wanted to seek your guidance whether it would serve any useful

1 purpose for MONUC to prepare the list, search the list, then go through
2 it to redact nationals of DRC and persons who are still functioning in
3 the theatre, whether that would serve any particular purpose.

4 That is the first point. The second point has to do with the
5 identity of the person interviewed under item 145, and yesterday I was
6 able to review my files and discuss with headquarters, and I was mistaken
7 yesterday in believing that that item was covered by the request for
8 disclosure and for the immunity given for the 68 pages in general. That
9 is not the case, as you may well be aware.

10 For this particular item there was a separate disclosure request
11 and a separate grant of disclosure in November and December of 2008, and
12 for this particular item, for the reasons explained in that
13 correspondence in November, December, the identity of the -- this person,
14 the interviewee, the person interviewed, may be disclosed to the Defence
15 and to the representatives of the victims in unredacted form on condition
16 that this not be revealed to third parties. Therefore, if there's any
17 public discussion in the records or in hearings, a redacted version would
18 have to be used. But in private session, as it was yesterday, the UN has
19 no objection or reservation for this one entry, 145, to references to the
20 identity of the person interviewed.

21 Thank you, your Honour.

22 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Johnson.

23 Mr. Biju-Duval, do you want to reflect on the first matter before
24 responding, or do you want to respond straight away? It's a matter for
25 you.

1 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. Of
2 course there is a difficulty, because the Defence is particularly
3 interested in knowing the identity of the members of the child protection
4 unit staff who are of Congolese nationality. Therefore, the Defence
5 finds itself in an uncomfortable position, because we do not want to
6 delay the testimony of the witness, but we do believe that our request is
7 legitimate, that is, requesting the identity of those individuals. So,
8 your Honour, if I may suggest a potential solution as regards the
9 individuals whose identity can be revealed by the United Nations. We
10 could be given those names even after Madam Peduto's testimony, and if
11 that information led to us raising real issues, we would then request to
12 the Chamber that we be able to hear the witness again. That would be --
13 of course there's a fairly low probability of that occurring.

14 As regards the identity of the individuals of Congolese
15 nationality that the United Nations, if I've understood correctly, does
16 not want to reveal, here we will have the same problem as regards the
17 identity of the children. Either we would have to request a ruling on
18 the part of the Chamber, or we would have to simply take note and draw
19 the relevant conclusions in the follow-up of the proceedings,
20 your Honour.

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

22 (The Trial Chamber confers)

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

24 There clearly isn't an issue with number 145, but can everybody
25 make sure, please, that any reference to that individual is dealt with in

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1 private session.

2 As regards the first issue, Mr. Johnson, we do ask for you to
3 come back, please, with such names as the United Nations is able to hand
4 over, even if it is going to be a truncated list.

5 As regards your general point, Mr. Biju-Duval, if it is the
6 Defence contention that the Chamber has the power to order wider
7 disclosure, either of the individuals that Mr. Johnson dealt with in his
8 first category or of the names of the children who were interviewed,
9 could you please address that point by way of a filing so that we can
10 investigate properly the extent of our powers to make an order against
11 the United Nations for the disclosure of that information. But thank you
12 for your pragmatic proposal, which we enthusiastically adopt.

13 So if you could now, please, carry on with your questioning of
14 Ms. Peduto.

15 MR. BIJU-DUVAL (interpretation): Thank you, your Honour.

16 WITNESS: WITNESS DRC-OTP-WWW-0046 (Resumed)

17 (Witness answered through interpreter)

18 Questioned by Mr. Biju-Duval: (Continued)

19 Q. (Interpretation) Good morning, Madam Peduto.

20 A. Good morning.

21 Q. I would like to deal quickly with the meeting that took place on
22 May 30th, 2003, first of all this morning, meeting that took place with
23 Mr. Thomas Lubanga, and you participated in that meeting, which you
24 mentioned earlier in your testimony.

25 First of all, is it correct, to your knowledge, that Mr. Lubanga

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1 had only been in Bunia since the day before that meeting? Do you have
2 knowledge of that?

3 A. If I did know, I have forgotten.

4 Q. Is it correct to say that the exchange that you have stated that
5 you had with Mr. Lubanga during that meeting took place toward the end of
6 the meeting and when Mr. Lubanga was accompanying his visitors to the
7 door to -- on their way out of the residence?

8 A. Yes, it did indeed take place toward the end of the meeting. We
9 were already standing, yes.

10 Q. Thank you. Is it true that that meeting -- well, that the
11 purpose of that meeting was the arrival in the near future of the
12 international force ARTEMIS?

13 A. That was one of the main issues of the meeting, one of the items
14 amongst others.

15 Q. Thank you. After that meeting, that is, in the weeks that
16 followed or in the months that followed, did you personally attempt to
17 make contact with Mr. Lubanga himself?

18 A. Well, as part of the implementation of the interim mission in
19 Ituri, it was clearly mentioned and all of the parties involved heard
20 that that kind of discussion was to take place through the interim
21 bodies, the interim institutions, in particular CCAG or the prevention
22 and follow-up committee. It was stated very clearly to all of the
23 parties and to all of the individuals involved that that kind of
24 discussion would only take place within the framework of the interim
25 institutions, and it was therefore in that framework that we contacted

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1 the representative of the UPC on several occasions.

2 Q. Were you personally in attendance at the CCAG meetings?

3 A. Not all of them. A number of those meetings, yes.

4 Q. Can you situate in time the meetings of the CCAG which you
5 attended?

6 A. In June and certainly in July, September, and I can't give you
7 the precise dates. If I did not attend all the CCAG meetings, the
8 president -- I don't know what the title of the person who chaired these
9 meetings on behalf of MONUC was, but that person would give the message
10 and they will continue with discussions.

11 Q. How frequently were these meetings held?

12 A. It was decided that the CCAG would be held every fortnight, if I
13 remember well. Some of them were postponed, and there were also ad hoc
14 meetings that were organised as well.

15 Q. Do I understand your evidence well if I assume that between your
16 arrival in Bunia at the end of the month of May, in the second half of
17 the month of May 2003 and the end of the month of August 2003, you
18 attended certain CCAG meetings but not all of them?

19 A. I did not attend a special session of the CCAG in Kinshasa,
20 that's right. In August.

21 Q. Just to make sure things are clear in the transcript, I am
22 interested in the CCAG meetings held in Bunia between your arrival at
23 Bunia at the end of May, that is the second half of May 2003, and the end
24 of the month of August 2003. So I repeat my question just to make things
25 clear: Would I be right to think that during this period you did not

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1 attend all the meetings of the CCAG?

2 A. That is possible.

3 MR. BIJU-DUVAL (interpretation): Just one moment, your Honour.

4 (Defence counsel confer)

5 MR. BIJU-DUVAL (interpretation): Thank you, Ms. Peduto.

6 Your Honour, I don't have any further questions.

7 PRESIDING JUDGE FULFORD: Thank you, Mr. Biju-Duval.

8 (The Trial Chamber confers)

9 PRESIDING JUDGE FULFORD: Sorry for the interruption, Ms. Peduto.

10 Judge Odio Benito, who sits on my right, has some questions for you.

11 JUDGE ODIO BENITO: Thank you, President.

12 Questioned by the Court:

13 JUDGE ODIO BENITO: Madam Peduto, could you please be so kind to
14 assist us, explaining the difference, if any, between the expression
15 "children associated with armed groups" and "child soldiers"? Thank you.

16 A. These two expressions refer to the same reality. The expression
17 "child soldier" is a bit restrictive, because those two words involve --
18 in any case, we prefer to use the expression "child associated with armed
19 groups," which reflects a broader reality with respect to the type of
20 actions, the type of activities, the type of experience and activities
21 that the children have experienced.

22 Now, let me repeat. "Child associated with armed groups," that
23 expression reflects a broader reality than the expression "child
24 soldier." The term "child soldier" is a bit restrictive with respect to
25 the reality on the ground.

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1 When we talk about children associated with armed groups, we are
2 not only talking about children who are combatants, who carry weapons.
3 The idea is to have an expression that covers all the activities carried
4 out by children when they are associated with armed groups, and this
5 involves children who are used as informers, children who are used in
6 logistical activities, used as drivers, as bodyguards, and children who
7 are subjected to sexual abuse by the members of militia groups or armed
8 groups. The term "child associated with armed groups" covers all these
9 activities which are carried out by children within armed groups.

10 JUDGE ODIO BENITO: Thank you. When you talk about children who
11 are subjected to sexual abuse, who were these children, boys and girls,
12 only girls?

13 A. In Ituri, considering the testimony obtained from the children
14 and from other sources, no boys were subjected to sexual violence. This
15 does not mean that it did not happen, but I don't have any knowledge or
16 information to that effect. The victims were young girls.

17 JUDGE ODIO BENITO: Young girls associated with the armed groups,
18 covered by this broad expression?

19 A. That's correct. And we obtained testimonies on all the armed
20 groups that subjected young girls to sexual abuse.

21 Now, most of those who were associated with the UPC were not only
22 used for sexual purposes but also used in combat or in logistical
23 activities.

24 JUDGE ODIO BENITO: Madam, do you know the acronym PMF?

25 A. No.

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1 JUDGE ODIO BENITO: So in your experience, these girls, young
2 girls, associated with the armed groups were child soldiers, as the boys
3 were? They didn't receive any special denomination?

4 A. From the interviews that I conducted with the children, the girls
5 underwent exactly the same type of training. They lived under conditions
6 that were almost similar to the living conditions of the boys. However,
7 some of the children stated that they also were involved in cooking, and
8 we were informed that they used to sleep in a specific area. They did
9 not share the same sleeping area as the other soldiers. And the children
10 often informed us that they had to sleep with the commanders. They had
11 to spend the night with the commanders.

12 JUDGE ODIO BENITO: Thank you. I would like to request your
13 assistance to help me to understand your statement about the way you
14 conducted the interview with these young girls. You said, more or less,
15 because I am reading my notes here, that you didn't interview them in the
16 same way that you did interview the boys, because they, the girls, were
17 very fragile. Am I correct quoting this statement?

18 A. That's correct. The first girls I interviewed, well, the content
19 of their testimony led me to believe that it would be more appropriate
20 for the section to interview them in a more private area. In general,
21 the interviews that are conducted with children were done either in the
22 offices of MONUC or in other structures outside the office, and I felt
23 that it would be more appropriate to interview the young girls in an
24 environment which was more familiar to them and with minimum number of
25 witnesses. And the fact that the children went to MONUC exposed them,

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1 and certain young girls came, and we proposed to interview them in
2 different areas, in different places. That is why I asked other
3 colleagues of Congolese nationality, female colleagues, to carry out
4 these interviews, at a certain point in time to take over and conduct
5 these interviews, because the idea was we wanted to avoid having too many
6 people around, because when I conducted the interviews I needed an
7 interpreter so I preferred them to have to talk to somebody directly and
8 in other circumstances which will not expose them or make them feel
9 vulnerable.

10 JUDGE ODIO BENITO: Thank you, madam. To the best of your
11 knowledge, were there specific programmes for these young girls to be
12 demobilised and reintegrated, specific programmes for them, or did these
13 programmes follow a general pattern?

14 A. At the very beginning, that is, in May and June, we tried to look
15 for partners who would provide special care to these young girls. In
16 Bunia there was a transitory care structure which was set up specially
17 for these girls where they were provided special care, because many of
18 them were pregnant or had children, and virtually all of them had been
19 subjected to sexual abuse, sexual violence, and so there was a special
20 structure operating in the town of Bunia for them, and this programme was
21 extended to the whole of Ituri.

22 I don't know what happened after 2004, but there were certain
23 partners who did not have other structures, similar structures in the
24 rest of Ituri. So in the second quarter of 2003, this was operational,
25 these structures were operational in Bunia.

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1 JUDGE ODIO BENITO: Thank you very much, Madam Peduto.

2 Thank you, your Honour.

3 PRESIDING JUDGE FULFORD: Ms. Peduto, just before some questions
4 are put by Judge Blattmann, returning to one matter that was raised by
5 Judge Odio Benito, the acronym PMF, and forgive me murdering the French
6 language, but I think it stands for "Personnel Militaire Feminin." Does
7 that ring any bells?

8 A. Yes.

9 PRESIDING JUDGE FULFORD: So that is an expression that you've
10 heard of before.

11 A. An expression which I heard about and which was not very much
12 used in Ituri. I've heard about it in other contexts, of course.

13 PRESIDING JUDGE FULFORD: As I said, Judge Blattmann has now got
14 a question or two.

15 JUDGE BLATTMANN: Thank you, Mr. President.

16 (Interpretation) Good morning, madam.

17 (In English) In your statement you have referred in detail to
18 your professional activities after your arrival in Bunia. You described
19 extensively your dealing with different kind of information, the reports
20 you prepared addressing, among other issues, context and armed groups.
21 You also referred to the reports prepared by military observers and
22 information received by other sources. You also mentioned your
23 participation, your active participation, in investigations.

24 Now, against this background, I would like to ask you whether
25 there was, in your understanding, any Ugandan or Rwandan intervention or

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1 involvement or presence in the Ituri conflict after June 2003.

2 A. That's a relatively difficult question. I did know about certain
3 allegations as to the continued presence and support given by those two
4 countries to certain armed groups that were different at different times.

5 I think I could be pretty certain as regards Uganda, because the
6 child protection section did manage to document the fact that children
7 were trained in Uganda after June 2003. As regards Rwandan support, I
8 wouldn't presume to say yes or no as I don't have any direct experience
9 to back this. There was certainly allegations constantly as regards
10 those two countries.

11 JUDGE BLATTMANN: Thank you very much.

12 PRESIDING JUDGE FULFORD: Thank you.

13 Ms. Solano, any re-examination? Yes.

14 MS. SOLANO: Thank you, your Honours.

15 Further Questioned by Ms. Solano:

16 Q. Good morning, Ms. Peduto. You said that apart from the 687 cases
17 of children associated with armed groups which you documented, you had
18 conducted interviews with other children which had not been documented.
19 Were there specific periods of time during which you did not document
20 your interviews with children?

21 A. Yes. There were interviews that were not formal during, for
22 instance, the missions that we had outside Bunia. I had the opportunity
23 to talk to children at check-points or in the military camps at moments
24 when it was not advisable or appropriate to take notes. So those were
25 encounters or meetings that I didn't consign to paper.

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1 There were other opportunities when I spoke to children when
2 there was so much to do, so many cases of violence that I had to follow
3 up on and I didn't necessarily take the time to note it all down in
4 written form.

5 I don't understand why the July 2004 Mandro interview's not been
6 noted down, but perhaps one of the reasons is to do with the fact that I
7 didn't constantly update my documents.

8 I had conversations with children who were associated with armed
9 groups in the camps at moments when note-taking would not have been
10 appropriate.

11 So, yes, obviously I didn't note down all of the interviews I had
12 with all of the children. Certainly not when it came to discussions I
13 had in the military camps.

14 Q. I want to follow up on some of the information you just provided.
15 You mentioned check-points. The check-points at which you encountered
16 children, can you tell us what groups had set up these check-points,
17 please?

18 A. In 2003, 2004, all of the armed groups. I moved around all of
19 the zones under the control of the different armed groups, and
20 check-points was -- well, the existence of check-points was common
21 practice to exert control over the zones, over the territory, and the
22 children were perfectly visible, and some of the check-points were
23 totally in the hands of children.

24 PRESIDING JUDGE FULFORD: Mr. Biju-Duval.

25 MR. BIJU-DUVAL (interpretation): Yes, your Honour. I feel that

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1 it is not appropriate claiming that it's a follow-up question to have the
2 witness broach a totally new matter that has not been raised in the
3 course of the cross-examination nor during the questions put by the
4 Judges. As a result, I would ask that such questions be avoided.

5 PRESIDING JUDGE FULFORD: Ms. Solano, I was trying to remember
6 what the substantive questions were that were put by Mr. Biju-Duval on
7 that subject to justify your question. I think the fact that a witness
8 may mention something in -- purely in passing isn't of itself a
9 justification for then opening up the issue substantively during the
10 course of re-examination.

11 Now, what do you suggest is the position on this?

12 MS. SOLANO: Your Honour, in my submission the Defence explored
13 in the witness's cross-examination the cases that the witness had
14 documented and had not documented, and I am trying to follow up on -- on
15 that issue.

16 PRESIDING JUDGE FULFORD: I'm sorry, Ms. Solano, I don't -- I
17 don't understand that. The cases documented and not documented is one
18 thing, but the existence of check-points is entirely separate, isn't it?
19 I don't see how the two are related. It may be I'm being slow,
20 Ms. Solano, but what's the connection between the two.

21 MS. SOLANO: Your Honour, if I understood the witness properly,
22 the children she came across at check-points are part of the children
23 whose cases she did not document.

24 PRESIDING JUDGE FULFORD: But then moving on to investigate who
25 had control over the check-points is -- is opening up a completely new

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1 front, isn't it, Ms. Solano?

2 MS. SOLANO: I can move on, your Honour.

3 PRESIDING JUDGE FULFORD: Thank you.

4 MS. SOLANO:

5 Q. Are you able to estimate the -- generally the number of children
6 that you interviewed whose cases you did not document?

7 A. It would be overly presumptuous on my part to give you a figure.
8 I had interviews with dozens of children every month. I regularly went
9 out of Bunia, went to the displaced persons' camps, went into different
10 districts in Bunia where there were combatants, UPC and FNI combatants,
11 but I really can't give you a figure. I mean, in July in Mandro there
12 were 40, but then there were dozens every month. They were not, strictly
13 speaking, interviews. They were discussions.

14 Q. July of what year, please?

15 A. Sorry. At the Mandro camp it was July 2004 when I interviewed
16 those children.

17 Q. Ms. Peduto, the Defence asked you a question about what you had
18 said in paragraph 168 of your statement. In that paragraph, the portion
19 that the Defence referred to says that, I quote:

20 "I can confirm that MONUC managed to document 687 cases of child
21 recruitment in Ituri between June 2003 and June 2004."

22 You, in your answer to the Defence's question, you said that --
23 and I quote from page 24 of the English version of transcript 208 from
24 line 3, you said:

25 "I think that out of these 687 cases, the 687 cases include the

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1 children of Rwampara. So in that case, it will not be related to
2 March 2003."

3 The French version of the transcript captured your answer a
4 little bit differently. The French version, at page 20, lines 23 and 24
5 of the draft French transcript, captured you as having said, and I'll
6 read it out in French:

7 "(Interpretation) I don't think that out of the 687 that that
8 included the children from Rwampara. It would have been March 2003,
9 rather."

10 (In English) Could you please clarify what the situation is what
11 regards to the children of Rwampara and the 687 cases that you referred
12 to in your statement.

13 A. Yes. I'd like to correct this. The documented cases in
14 March 2003 are included in the 687 cases.

15 Q. Does that mean, therefore, that the cases you managed to document
16 were cases of interviews conducted as early as March 2003?

17 A. Yes, it does mean that.

18 Q. You said that for some of the 687 cases which you documented, the
19 information, the individual stories, reached you through your NGO
20 partners. Did you, nonetheless, have direct knowledge of some or all of
21 the cases that were referred to you by your NGO partners or not?

22 A. I'm not too sure that I've really understood your question, but
23 some of the children that were taken care of by the protection
24 organisations were documented by the MONUC, either beforehand or
25 subsequently.

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1 I don't know whether that answers your question.

2 Q. I'll try to clarify my question. You explained yesterday that
3 from the 687 cases you had not yourself interviewed all the children.
4 What I would like to know is whether despite the fact that you did not
5 collect the notes that went -- that constitute the documentation you had
6 contact with some of these children or not.

7 A. Yes, of course, to the extent that I or my colleagues regularly
8 went to those structures, and we had contacts with the children, yes. It
9 wasn't systematic. The MONUC was not able to carry out monitoring or a
10 verification of what was happening in the centres. These were
11 cooperative visits. We had working meetings, and in that context we
12 actually went physically to those structures.

13 Q. My colleague from the Defence asked you about the period of time
14 in which you interviewed the children whose cases you documented, the
15 687 children. What I would like to ask you is whether regardless of the
16 dates on which the interviews were conducted, whether you can state
17 generally what was the time period during which the children you
18 interviewed had been in the armed groups.

19 A. All of them or just the UPC?

20 Q. The UPC, please.

21 A. Excuse me. I can perhaps give you a general answer that will
22 cover pretty well everybody.

23 The child who -- or whose recruitment went furthest back in time,
24 that went back to 1999. Some children told us -- one child told us that
25 he'd been in Laurent Kabila's troops. That was an exception. He was the

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1 child who was recruited first. And then there were cases of children who
2 had been in the APC, the RCD-ML troops, and then the FLC. Some had also
3 been recruited by the RCD-N before joining other armed groups that were
4 then in Ituri, be it the UPC, the FAPC, the PUSIC, and others. We had
5 one child who first of all joined the FNI before going over to the UPC.

6 The majority of the cases that I documented, the vast majority of
7 them, were children who were recruited in 2002. 2001, 2002, 2003.

8 PRESIDING JUDGE FULFORD: Ms. Solano, that's the second question
9 that you've asked in a row which is so general in its nature that the
10 answer has provided us with really very little of assistance. I think
11 either you must be putting questions which are going to be directed with
12 sufficient specificity to mean it's going to be of assistance to us, or
13 really don't put the questions at all; but such general, roaming answers
14 aren't going to really increase our knowledge or understanding of this
15 case.

16 MS. SOLANO: I'm guided, your Honour. I was trying to avoid
17 leading the witness, but I'll bear your indications in mind.

18 Q. Madam, I want to ask you some questions about the chronologies
19 which Maitre Biju-Duval asked you about yesterday.

20 First of all, are you aware of the date on which Governor Molondo
21 Lompondo was ousted from Bunia?

22 A. I did know. I don't really remember anymore. It was end of
23 July, early August. I'd have to look at my notes to give you a more
24 precise answer.

25 Q. Is the date of this event a date that was included in the

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1 chronologies that you consulted at the time of your interviews with the
2 children?

3 A. His departure from Ituri, no, I don't think so. The takeover of
4 Bunia by the UPC, yes, but I did know that it was something that everyone
5 knew, but I can't say more than that.

6 Q. Yesterday when my colleague from the Defence asked you whether
7 the chronologies you had relied on were eventually to be found in
8 UN reports you confirmed that, and you referred to, and I quote: "The
9 report on human rights violations between 2002 and 2003," which you said
10 is a public MONUC report.

11 The Defence then asked you to look at a document included in
12 tab 13 of your binder, which is the 12th special report from the
13 Secretary-General on the work of MONUC, dated 18 October 2002.

14 My question to you is: Are you referred to the human -- to the
15 report on human rights violations between 2002 and 2003, did you have in
16 mind the report that the Defence showed you, or did you have in mind a
17 different report?

18 A. No. It's not at all the report under tab 13. I was referring to
19 a report produced by MONUC on human rights and human rights violations
20 which occurred in 2003 in Ituri -- 2002 and 2003 in Ituri.

21 Q. At the time of your interviews with the children, were you able
22 to consult the working drafts of the chronology which was -- which then
23 became part of the report?

24 A. I beg your pardon, would you repeat the question, please?

25 Q. Certainly. You explained to the Defence that when you

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1 interviewed the children, you were able to consult chronologies that were
2 developed by MONUC and that were a work in progress. You also said to
3 the Defence that one such chronology became part of the MONUC report on
4 the human rights violations in Ituri in 2002 and 2003.

5 What I ask you now is whether you were able to consult in your
6 work the working draft of the chronology which eventually became part of
7 the MONUC report on the events in Ituri in 2002 and 2003.

8 A. Yes.

9 Q. Ma'am, can I ask you to turn to tab 12 of the binder that's on
10 your desk, please.

11 MS. SOLANO: And, your Honours, for the record, this is document
12 DRC-OTP-0074-0422 but it appears that it is not on the witness's desk.
13 That's -- if it's not on --

14 Q. Do you have it?

15 MS. SOLANO: Thank you. I just want to show to the witness page
16 57 of that report.

17 PRESIDING JUDGE FULFORD: Before that happens, Mr. Biju-Duval.

18 MR. BIJU-DUVAL (interpretation): Well, I don't know what
19 question is going to be put to the witness, but this document has not
20 been used at all by the Defence during its cross-examination.

21 MS. SOLANO: Your Honour, that's correct. If it's a problem,
22 I'll do without the document. However, my submission is that the Defence
23 asked a question to the witness, she made explicit reference to the
24 chronology included at the end of this particular report and that it
25 would assist the Chamber if she's permitted to look at it.

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1 PRESIDING JUDGE FULFORD: And apart from looking at it,
2 Ms. Solano, what do you want the witness to do?

3 MS. SOLANO: Your Honour, I want her to turn to page 57, where
4 the dates of the ousting of Governor Molondo Lompondo is recorded in the
5 chronology.

6 PRESIDING JUDGE FULFORD: Well, so all you -- all you want her to
7 do is to look at a date which on some previous occasion she's looked at
8 for the purpose of arriving at an overall chronology in her own mind; is
9 that right?

10 MS. SOLANO: Your Honour, I just want her to confirm whether or
11 not that's one date she had seen in the chronologies which she worked
12 with at the time.

13 PRESIDING JUDGE FULFORD: Anything else, Ms. Solano?

14 MS. SOLANO: Your Honour, only that the reason I'm doing this is
15 because the Defence raised, in my understanding, a question about the
16 date of this event and took the witness to a document on which the date
17 for the event is stated, and so I want to give the opportunity to the
18 witness to look at the document she had in mind.

19 PRESIDING JUDGE FULFORD: Thank you. Anything else,
20 Mr. Biju-Duval?

21 MR. BIJU-DUVAL (interpretation): Yes, your Honour. This might
22 bring in more confusion, it would seem to me, because I think that the
23 document that my colleague wants to show the witness dates July 2004. In
24 other words, a date which is fairly far away from the point in time where
25 the witness was interviewing, and therefore we cannot know today whether

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1 the chronology appended to that report actually existed at the point in
2 time when Madam Peduto was interviewing, carrying out the interviews that
3 we've been discussing.

4 MS. SOLANO: Thank you for your indulgence, your Honour. I just
5 wanted to point out that the report that the Defence showed to Ms. Peduto
6 is dated October 2002, which is -- which in fact precedes the date on
7 which Ms. Peduto conducted many of her interviews, and that in fact, in
8 relation to the chronology included in the report that I'm trying to show
9 her, this is a report which the witness has already explained she
10 contributed to. Admittedly she only contributed to chapter 5 dealing
11 with child soldiers, but this is a report in the production of which she
12 was involved and, in my submission, that is an indication that in fact
13 the chronology that was part of this report as well is more likely to
14 have been a chronology which the witness consulted at the time of her
15 interviews than the chronology included in a report dated October 2002
16 when, by and large, the witness had not begun documenting individual
17 cases.

18 (The Trial Chamber confers)

19 PRESIDING JUDGE FULFORD: Well, for the limited purpose,
20 Ms. Solano, of seeing whether this is the relevant document in terms of
21 establishing what was relied on by Ms. Peduto at the time when the
22 chronology was established, for that limited purpose you may put the
23 document at the page you've indicated to her.

24 MS. SOLANO: Thank you, your Honours. For the record, this is --

25 PRESIDING JUDGE FULFORD: Please wait. Something else has been

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1 raised.

2 (Trial Chamber and Court Officer confer)

3 PRESIDING JUDGE FULFORD: Please continue, Ms. Peduto --

4 Ms. Solano.

5 MS. SOLANO: Thank you, your Honour.

6 Q. Ms. Peduto, I believe you have in front of you a page numbered
7 740478, and there are some dates on that page. Can I ask you to please
8 turn your attention to the fifth date from the bottom, 9 August 2002, and
9 read that entry and then let me know whether the information contained in
10 that entry is information that you were aware of at the time that you
11 conducted the interviews and whether the date that features in that
12 chronology is the date that would have appeared in the chronologies that
13 you in fact consulted.

14 PRESIDING JUDGE FULFORD: And if you don't know, could you please
15 make that clear as well.

16 THE WITNESS (interpretation): No. It -- it was the chronology
17 that I had and that was prepared while we were working in Ituri. No,
18 there's no problem.

19 MS. SOLANO:

20 Q. Madam, you have referred several times throughout your evidence
21 to the acronym CCAG. Can you please explain what this acronym means.

22 A. It was the armed group coordination committee. In French,
23 "Comite de Concertation des Groupes Armes," or something like that.

24 MS. SOLANO: I have a few remaining questions, your Honours, that
25 arise out of the legal representatives' questions.

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1 Q. First, Ms. Peduto, you referred in your answers to my colleagues
2 the legal representatives to children being forced to go fetch food
3 outside the camp and children having to dig holes to sleep in. What
4 group or groups did the children that you were referring to belong to?

5 A. Children who served under the UPC and the FAPC mentioned that
6 they had had to dig holes to sleep in. As regards the children who
7 stated that they had to go outside the camp to find food, I believe it
8 was only -- well, there were children from the UPC who mentioned that.
9 I'm trying to remember if children from other groups stated that as well.
10 I don't remember anymore.

11 Q. When you said that the children had had to fetch food, can you
12 explain what you meant by that?

13 A. Well, they had to go to loot, to loot the local civilian
14 population to feed themselves. In other words, they had to steal.

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

16 MR. BIJU-DUVAL (interpretation): Your Honour, it seems to me
17 that here counsel is dealing with a matter that was not at all discussed
18 by the Defence during cross-examination, nor in any of the Judges'
19 questions.

20 PRESIDING JUDGE FULFORD: Yes. I think what Ms. Solano is
21 seeking to do is to deal with matters dealt with by the representatives
22 of the victims, Mr. Biju-Duval. Now, are you suggesting there's a --
23 there should be a prohibition on re-examination of the questions put by
24 counsel for victims. I think that will be the first time we've heard
25 that suggestion, but do you wish to pursue it, Mr. Biju-Duval?

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1 MR. BIJU-DUVAL (interpretation): Your Honour, that is a very
2 fascinating matter that perhaps the Chamber will have to rule on, but I
3 will not pursue it at this point, your Honour.

4 PRESIDING JUDGE FULFORD: Thank you very much. If it's something
5 you'd wish to -- wish us to consider in due course, Mr. Biju-Duval, could
6 you put in a very short written filing.

7 For the time being, Ms. Solano, you can continue.

8 MS. SOLANO: Thank you, your Honour.

9 Q. What was -- if you recall, what was the age range of the UPC
10 children who had to go loot the local civilian population to feed
11 themselves?

12 A. Well, there's no particular age group. It was a situation, a
13 fact of life that children of various ages spoke about. I can't give you
14 a precise age group.

15 PRESIDING JUDGE FULFORD: Please continue, Ms. Solano.

16 MS. SOLANO: Thank you, your Honour.

17 Q. Ms. Peduto, when you said the children had to dig holes to sleep
18 in, what did you mean?

19 A. Well -- well, they had to dig holes, which meant that they were
20 protected, and they had no other place to spend the night. They didn't
21 have any huts or houses or any other roof above their heads, so they
22 slept that way. That's it.

23 Q. Madam, in your answers to the legal representatives you spoke
24 about one girl who sustained an involuntary abortion, or at least that is
25 the way in which it has been captured by the English transcript. Can I

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1 ask you please to clarify whether the case you had in mind was the case
2 of a miscarriage or an abortion carried out against her will?

3 A. Well, there were several girls who spoke about cases of
4 abortions. One girl mentioned a case of abortion because she did not
5 know the identity of the father of the unborn child. The other said that
6 the father had died. Another mentioned bad treatment.

7 I'd have to take a second look at my notes to be able to say more
8 about that.

9 Q. You mentioned one or two children who said that their colleagues
10 had been assassinated after having tried to escape after having refused
11 to go into combat. You said that one of executions had been carried out
12 by Commander Bosco, according to what you were told, and that the child
13 who told you this had been an eyewitness to this incident.

14 Do you recall what the age of the child who witnessed this
15 execution was?

16 A. I have it in my notes here if you can grant me leave to consult
17 them.

18 PRESIDING JUDGE FULFORD: Please do, Ms. Peduto.

19 THE WITNESS (interpretation): The child was aged -- or the young
20 person was aged 17 at the time of the interview, and for the other one I
21 mentioned the child was aged 13 at the time of the interview.

22 MS. SOLANO:

23 Q. Do you recall the ages of the persons who were executed in front
24 of these two young persons?

25 A. Yes, I have more details. I even found a third case. I don't

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1 know if I can mention that now. However, for the two which I -- whom I
2 mentioned the last time, one was aged 24, and there was another one aged
3 16.

4 Do you want me to talk about the third case or not?

5 Q. What was the -- if you recall, what was the date of the interview
6 of the 17-year-old child, and if you recall, what was the date on which
7 the execution took place?

8 A. The date of the interview was March 2003. The killing took place
9 at the time of the operation in Komanda. I will have to look at my
10 notes, but it must have been in autumn 2002.

11 Q. Thank you.

12 PRESIDING JUDGE FULFORD: Do consult your notes if you want,
13 Ms. Peduto, and you've indicated that there's a third case that you could
14 deal with. Since Ms. Solano has raised the issue, we'd better have the
15 complete picture, please.

16 THE WITNESS (interpretation): The third case was reported by a
17 young girl aged 15 whom we interviewed at the end of 2003, who was
18 recruited in the first half of 2002. She told us that one of her friends
19 who escaped from the UPC was killed on the pretext that she did not obey
20 the orders of the president. This child who was killed was aged 14. She
21 was a young girl.

22 MS. SOLANO:

23 Q. Thank you. Madam, in relation to your 30 May 2003 meeting with
24 Thomas Lubanga as part of the MONUC delegation, you said to one of the
25 legal representatives that Mr. Lubanga did not give any indication of

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1 being willing to cooperate. You then compared his attitude to that of
2 other groups which you said were willing to cooperate.

3 In this context, you mentioned the Mai-Mai from North Kivu and
4 the RCD-ML. You also mentioned a third group which the English
5 transcript captured as FPLC, and which the French transcript captured as
6 FAPC. Can I ask you to clarify which of these two groups you referred to
7 as an example of a group that had been willing to cooperate with MONUC in
8 child protection related matters?

9 A. The FAPC, and I'm talking about the willingness shown not only in
10 the actions carried out but the expression, the way the groups showed a
11 certain goodwill to cooperate.

12 Q. Thank you, Ms. Peduto.

13 MS. SOLANO: Your Honour, I have no further questions, just a
14 request of a correction to the transcript, transcript 207, which at
15 page 58, line 8, is missing the break indicating the passing from the
16 beginning of the witness's -- to the beginning of the witness's answer,
17 and as a result of that absence, the transcript now shows
18 Maitre Bijou-Duval as saying that he was a member of the UN, which I think
19 was not the case.

20 PRESIDING JUDGE FULFORD: I think Mr. Bijou-Duval would probably
21 agree with that. I don't think you're a member of the United Nations,
22 are you, Mr. Bijou-Duval?

23 Thank you, Ms. Solano.

24 Anything by way of further questions, Mr. Bijou-Duval? Any
25 further questions?

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1 MR. BIJU-DUVAL (interpretation): No, your Honour.

2 PRESIDING JUDGE FULFORD: Thank you. Thank you very much indeed.

3 Ms. Peduto, no one during the course of your lengthy testimony
4 has questioned the importance of your work, which is clearly carried out
5 in circumstances of considerable difficulty and hardship. You have now
6 given evidence in this case twice, and the Judges of this court wish to
7 express our thanks for your contribution to our search for the truth in
8 this trial. It is of huge importance that all relevant witnesses,
9 whomsoever they are, come before us to testify if they have material
10 evidence to give. You therefore leave us now with the sincere thanks of
11 this Court.

12 Mr. Johnson, on a slightly lighter note, as some, I think, argue
13 with nuclear weapons, I suspect your presence here has acted as something
14 of a deterrent effect on the opposing parties, and in the event, we have
15 only had to call infrequently on your assistance, but nonetheless, you
16 have clearly played a very valuable role as regards the evidence of
17 Ms. Peduto, and you also leave us with our sincere thanks.

18 By an extraordinary coincidence of timing, we have now reached
19 the moment when ordinarily we would have a break. Half an hour is needed
20 so that the machinery can be reconfigured so that we can return to the
21 evidence of Witness 116, but there's one final matter that I wish to
22 observe before we leave the bench.

23 Yesterday I complained in somewhat fulsome terms of the fact that
24 our papers, without our permission, had been interfered with over the
25 course of last weekend. It may have been felt that this was an

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1 unnecessary observation on my part.

2 During the course of this morning when the file that was going to
3 be put to the witness was looked at, it was discovered that that was one
4 of the files which had been on the Bench. It was my file, and it had my
5 own handwritten notes on some of the pages. This is completely
6 unacceptable, and it must be understood henceforth that if anybody
7 touches any of the Judges' papers in any circumstances without our
8 express content that is likely to be treated as a contempt of court. It
9 must simply never happen again.

10 We will sit again at 25 to 12.00, once Ms. Peduto has been shown,
11 please, back to the witness waiting-room.

12 (The witness withdrew)

13 COURT OFFICER: All rise.

14 Recess taken at 11.03 a.m.

15 On resuming at 11.36 a.m.

16 *(Closed Session at 11.36 a.m.) Reclassified as Open session

17 COURT USHER: All rise. Please be seated.

18 PRESIDING JUDGE FULFORD: Witness, please.

19 (The witness takes the stand)

20 WITNESS: WITNESS DRC-OTP-WWW-0116 (Resumed)

21 (Witness answered through interpreter)

22 PRESIDING JUDGE FULFORD: Yes. Private or public session?

23 MR. BIJU-DUVAL (interpretation): Private session to start,
24 your Honour.

25 PRESIDING JUDGE FULFORD: Private session, please.

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1 *(Private session at 11.38 a.m.) Reclassified as Open session

2 COURT OFFICER: Private session.

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

4 MR. BIJU-DUVAL (interpretation): Thank you, your Honour.

5 Questioned by Mr. Biju-Duval: (Continued)

6 Q. (Interpretation) Good morning, Witness. Did I understand your
7 testimony well that before you arrived in Bunia in (Redacted), you were
8 (Redacted)?

9 A. That's correct.

10 THE INTERPRETER: The witness's microphone is not on,
11 your Honour.

12 MR. BIJU-DUVAL (interpretation):

13 Q. Did you remain (Redacted)
14 (Redacted)?

15 A. Yes. (Redacted),
16 indeed.

17 Q. If I understood you well, you remained (Redacted)
18 (Redacted)

19 (Redacted). Is that your testimony with
20 respect to that point?

21 A. Yes. I remained (Redacted)
22 (Redacted), to be precise.

23 Q. And as of that date (Redacted)
24 (Redacted); is that correct?

25 A. Yes, indeed.

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1 Q. When you were (Redacted)
2 (Redacted), or to be more precise, when (Redacted)
3 requested you, requested (Redacted)
4 (Redacted), at that point in time what
5 other projects was your organisation in charge of (Redacted)?

6 A. At that time, the organisation had a project (Redacted)
7 (Redacted). It was a project that had to do
8 with protection as well. The organisation was also in charge of another
9 project carried out (Redacted), a project which had to do with the
10 monitoring of non-accompanied children who were placed in foster
11 families, children for whom tracing or the family search had not yet been
12 carried out. So these were the children who had come (Redacted), some
13 of them who had not yet been reunified with their families because all
14 the conditions had not been met for such reunification to take place.

15 Q. From the geographical standpoint, these projects covered what
16 regions?

17 A. The projects covered the region of (Redacted) for the most part,
18 and it also extended (Redacted). However, that part of the territory was
19 covered by organisations which had an extra-territorial mandate. In
20 other words, they could act beyond Congolese borders.

21 Q. And did you continue to manage these projects, to implement them
22 in parallel with the project that had to do with the children sent
23 (Redacted)?

24 A. Yes. We had a team that remained on site (Redacted), because it was
25 not the whole organisation that left to go and work in Ituri. A certain

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1 number of units were selected on the basis of their capability, their
2 competence, and their know-how to work in Bunia.

3 Q. You stated that you and your team arrived in Bunia in (Redacted)
4 and that you left Bunia in (Redacted). During that period from (Redacted)
5 to (Redacted), as far as you are concerned, did you in particular remain in
6 Bunia, or did it happen that you would leave Bunia sometimes?

7 A. My job made it obligatory for me to stay in Bunia. However,
8 since communication was not easy, that is, communication with our donors,
9 and given the -- the growing political involvement with respect to the
10 protection of children's rights in that part of the country, from time to
11 time I had to go on mission (Redacted) to meet humanitarian stakeholders
12 who were in charge of child protection.

13 I would like to say that child protection as a programme, as a
14 project, was not carried out on a large scale yet, that is, in such a way
15 that we could have international stakeholders (Redacted) who
16 could carry out such activities. (Redacted)
17 (Redacted)
18 (Redacted).

19 Q. Between (Redacted), how many times did you have to
20 go (Redacted)?

21 A. I cannot tell you how many times that happened, but it was very
22 often. I returned (Redacted) very often, but these were
23 very short trips, trips of about three or four days, and I would return
24 to Bunia which was the base.

25 Q. As far as you in particular are concerned, did you go to the

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1 centre of (Redacted) where the children were in (Redacted)?

2 A. Yes, I went to that centre, and I spent four days there.

3 Q. As regards the new employment for which you were recruited in
4 (Redacted), could you very briefly describe the job that was
5 entrusted to you?

6 A. This work involved -- well, let me first of all make something
7 clear. The fact of having serious concerns in terms of the protection of
8 children and children's rights in the east of the country, which is what
9 we reported in the context of the different rebellions that were
10 monitored, people who were using child soldiers, as a result of that
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)

18 So briefly, that is the project that I was involved in, (Redacted)
19 (Redacted).

20 Q. (Redacted). Did your mandate concern primarily
21 (Redacted)?

22 A. My mandate concerned the east of the Congo. The east went
23 from -- when you're talking about the geographical division of the Congo
24 in the context of (Redacted)
25 (Redacted). Ituri was

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1 one of the districts of that eastern province, (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted).

6 Q. During your testimony before the Court, you stressed the fact
7 that a significant part of the information that you gathered came from
8 children. (Redacted)
9 (Redacted).

10 My question is as follows: Where did the interviews with those
11 children take place?

12 A. The interviews with the children were, first of all, in
13 (Redacted), and then
14 they were held along the way when the children were going back to their
15 families in Bunia in a transit centre that we set up for that purpose,
16 and this was an infrastructure of the state, of an office that dealt with
17 social affairs. And then there were discussions organised in the
18 offices, in the field offices where we had open access to the children so
19 as to keep contacts with them during the process of family reunion.
20 There were also interviews, discussions in the homes of the children's
21 families. Our teams would then go for the follow-up part of the
22 reintegration programme, and most of the interviews were held in the
23 places where children were going through vocational training, for those
24 that were involved in vocational training.

25 Q. Who carried out these interviews with the children?

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1 A. In (Redacted) we had a team, and the principle was followed when
2 you're talking about work with children, is to have two interviewers with
3 one child for an interview so that the questions and answers are
4 adequately balanced when we bring all of the material together.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 Q. I'm now going to put some questions to you about what the
9 children allegedly said (Redacted). I'm going to put the questions in open
10 session. I think that's going to be possible. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 MR. BIJU-DUVAL (interpretation): I think we can try to put a
15 number of questions in open session.

16 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.
17 Let's do so.

18 Sir, if any answer in your view needs wholly or in part to be
19 given in private session, you merely have to indicate and we'll
20 immediately go into private session.

21 Public session, please.

22 (Open session at 11.57 a.m.)

23 COURT OFFICER (interpretation): Public session.

24 MR. BIJU-DUVAL (interpretation):

25 Q. During your testimony on the 3rd of July, you said the following,

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1 and I quote:

2 "There are children, some children, who said, 'I was contacted in
3 person by somebody who came to see me and who told me I could go and
4 learn how to defend myself against the enemy,' and that's how it was that
5 young people were organised. But nearly all who answered that question
6 said that they were called to the airport to board a plane, and they went
7 to the airport. They waited there for one or two days, then a plane
8 arrived. They boarded the plane and they left."

9 So that is the event that occurred, you say, in the summer of
10 2000, and in which 700 people, 700 young people, were sent to Uganda.

11 I have just recalled what you stated as regards the declarations
12 of the children that you met. Should I take it from this that the
13 children explained (Redacted) that during the summer of 2000, July and
14 August, 700 young people were allegedly recruited to follow training,
15 military training, in Uganda, that they went to Bunia airport and from
16 there they were transferred to Uganda? (Redacted)
17 (Redacted)

18 A. Let me clarify something, please, with your indulgence.

19 I'd like to come back to what you, your Honour, said last time.
20 You asked me to go straight to the heart of the matter, to be concise and
21 brief in giving my answers, because sometimes it took a long time to
22 answer your questions.

23 I fear that I'm going to have to say to the Bench that for me to
24 be sure that I can respect the oath that I took on Friday, that I'm going
25 to have to come back again and go over some of the explanations. I'll

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1 try and keep it as brief as possible. I'd like to put things back in the
2 context, the context that we're dealing with here, because otherwise I
3 fear that I might come up with overly concise elements that are not
4 necessarily going to contribute to your understanding of the events, and
5 you won't understand why it is I'm before you today.

6 PRESIDING JUDGE FULFORD: Don't feel constrained, and if a long
7 answer is needed, then please provide it. So if you could then deal with
8 Mr. Biju-Duval's question in relation to the children who were
9 transferred to Uganda.

10 THE WITNESS (interpretation): Thank you, your Honour.

11 Okay. To be specific, you asked me whether that is what the
12 children said (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Open Session)
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1 PRESIDING JUDGE FULFORD: I'm told, sir, that your answers are
2 proving a little bit quick for the interpreters. Could you try and build
3 in some pauses. Thank you.

4 MR. BIJU-DUVAL (interpretation): If I may, I'd like to remind
5 the witness that this is a public session, so please take care as regards
6 the matters that we raised.

7 PRESIDING JUDGE FULFORD: That's an important warning. Thank
8 you, Mr. Biju-Duval.

9 THE WITNESS (interpretation): So I was saying that that person
10 caused (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 MR. BIJU-DUVAL (interpretation):

24 Q. You're referring to a specific person who (Redacted)

25 (Redacted). Could you tell us who that person was?

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1 A. I could in closed session, if possible.

2 PRESIDING JUDGE FULFORD: Private session, please.

3 *(Private session at 12.07 p.m.) Reclassified as Open session

4 COURT OFFICER: Private session.

5 PRESIDING JUDGE FULFORD: Yes. Yes, sir, the name of the person?

6 THE WITNESS (interpretation): (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, you'll remember to go
15 back into public session as soon as we can.

16 MR. BIJU-DUVAL (interpretation): I think we can go back into
17 public session.

18 PRESIDING JUDGE FULFORD: Thank you. I wasn't sure whether you
19 had some supplementary questions on that.

20 Public session, please.

21 MR. BIJU-DUVAL (interpretation): I am going to ask what was said
22 by that individual, but I think it is possible to do it in public
23 session.

24 PRESIDING JUDGE FULFORD: Put the question, Mr. Biju-Duval, and
25 we'll see whether the witness is able to answer it in public session or

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1 not.

2 COURT OFFICER (interpretation): Open session.

3 (Open session at 12.10 p.m.)

4 MR. BIJU-DUVAL (interpretation):

5 Q. Could you tell the Court according to your recollection what
6 those persons told you as regards the event, that is, the transfer of
7 children over the summer of 2000. What did they tell you? How did they
8 explain the events to you?

9 A. The event was explained by the fact that there was severe tension
10 between two ethnic groups, the Lendu and the Hema, and that the two
11 ethnic groups were both preparing to attack the other. And as part of
12 the offensive prepared by the Hema, there was a warlord, someone in
13 charge of a militia, a politician, who had deported children from Bunia
14 to a military camp in Uganda to undergo military training, and therefore,
15 UNICEF and the United Nations humanitarian agencies were already aware of
16 that, and other local Ugandan NGOs also had information about that event,
17 and they knew that amongst the group of people there were children, and
18 that's why they contacted UNICEF in Uganda. (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 That's in brief the information I received from them.

25 Q. Thank you. I've understood the information given to you by those

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1 two individuals. I'd like to come back now to the information that
2 (Redacted). Did that information correspond to the
3 summary that I made earlier and that you indicated, basically, in your
4 witness testimony on July 3rd?

5 A. Indeed. The comparison of the various reports on the interviews,
6 that is, from the various (Redacted)
7 (Redacted) --

8 MR. BIJU-DUVAL (interpretation): Do we need to go into private
9 session, perhaps, if we aren't already, for this answer?

10 PRESIDING JUDGE FULFORD: If we're going to develop the point,
11 Mr. Biju-Duval, yes. I'm not sure whether the witness has -- has really
12 finished his answer, because if he has, it's either a question of a
13 redaction or not rather than going into private session, I think. So I
14 think if we remain in public session, see what your next question is, and
15 then make a decision.

16 MR. BIJU-DUVAL (interpretation): I beg your pardon. I
17 interrupted the witness because I was concerned about the matter of
18 private or public session, but perhaps the OTP has an opinion as well.
19 It might be preferable that the witness complete his answer in private
20 session.

21 PRESIDING JUDGE FULFORD: Let's not take up more time on this.
22 Private session, please.

23 *(Private session at 12.15 p.m.) Reclassified as Open session

24 COURT OFFICER: Private session.

25 PRESIDING JUDGE FULFORD: Was there anything else you were going

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1 to say on the point, sir?

2 THE WITNESS (interpretation): Well, I was hesitating as to
3 whether or not I should continue, because I was worried about giving
4 information that needed to be given in private session.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted) Some of

10 the children were contacted by a gentleman who was a kind of
11 intermediary. He would go around to see the families to contact the
12 children. Others were contacted by their parents saying, "Well, you can
13 go and you'll come back." Others, again, heard from their friends that
14 there was a movement and that they could get training to learn how to
15 defend themselves from their enemies, and so the child would say, "I
16 followed my friend because my friend convinced me to go." Others, again,
17 said it was their parents who said, "Yes, you have to go because you have
18 to defend us, and you have to accept to go and learn how to fight."

19 In the end, all of them who were there recognised
20 Mr. Thomas Lubanga as being their leader, the person who sent them, and
21 they said -- they even said, the vast majority said, that he was with
22 them there, he spoke to them, and that they spent three days of training
23 together.

24 (Redacted)

25 MR. BIJU-DUVAL (interpretation):

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1 Q. Should I then take it from what you've said that the children
2 were contacted in various ways, that they were informed that military
3 training was going to be organised in Uganda and that it was under those
4 conditions that they then went to the airport to be transferred to
5 Uganda? Is that a correct summary of what you have stated as being what
6 the children told you?

7 A. Yes, that's exactly the case. The only point I'd like to make is
8 that a portion of the children -- some of the children went to the
9 airport, others stayed in a plot of land in town where they spent the
10 night before they were transferred to the airport, because they hadn't
11 had time. In other words, they thought the children would be able to go
12 there and leave right away, but in fact, some of them had to wait three
13 or four days before they were actually transferred.

14 MR. BIJU-DUVAL (interpretation): I believe we can go back into
15 public session, your Honour.

16 PRESIDING JUDGE FULFORD: Public session, please.

17 (Open session at 12.19 p.m.)

18 COURT OFFICER (interpretation): Public session.

19 MR. BIJU-DUVAL (interpretation):

20 Q. You have mentioned the name of Wamba Dia Wamba. Is it correct
21 that in July, August of the year 2000, he was in power in Bunia, in
22 Ituri?

23 A. I cannot confirm that he was in power. What I said and what I
24 stated, the explanation I gave yesterday, was that this gentleman was at
25 the head of a rebellion and that he had just undergone a defeat. He was

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1 part of a wing, and they'd lost at Kisangani, and he was going to be
2 taken by aeroplane by those who supported him to Bunia to try to have his
3 own headquarters in Bunia. I cannot say, however, that he was in power,
4 that he actually held power in Bunia.

5 Q. Do you have any idea of the role that he played, if he did play a
6 role, in the events that we are discussing?

7 A. Well, to say he played a role, I wouldn't go so far as to say he
8 played a role. What I can say is that he was one of the major players
9 which put the Ituri region into a situation of crisis. He added to the
10 confusion which existed already.

11 Q. Thank you. If I may, I'd like to ask you to focus on the precise
12 events I'm referring to and not respond in general.

13 You also mentioned the name of Mbusa Nyamwisi. What was his
14 function at the time in Bunia?

15 A. At the time, he also came as one of the followers of
16 Mr. Wamba Dia Wamba. He was a member of the RCD wing, and very rapidly I
17 think he didn't really play any major role other than he was also
18 preparing a dissident wing, in other words, a second wing of the
19 dissident wing itself.

20 Q. Do you know -- or, rather, does the name John Tibasima mean
21 anything to you?

22 A. Yes. The name of John Tibasima is a name I know. He was in
23 Bunia. He was one of the political players in Bunia at the time, one of
24 the figures in Bunia.

25 Q. Do you have precise knowledge of what his actual function was at

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1 the time?

2 A. No, not really. I know he was in charge of a function, but I
3 don't remember exactly what it was. I did meet him as part of our work,
4 but I don't remember exactly today what his function was at the time, but
5 he was an important figure at the time in Bunia, yes.

6 Q. As regards the event, that is, the transfer of 700 people from
7 Bunia to Uganda, do you know what the role of the Ugandan authorities was
8 in Bunia and in Kampala?

9 A. I learned about it from the individuals who witnessed the
10 transfer I -- that the charters -- the charter planes that took the
11 children were Ugandan planes. They weren't -- they were cargo planes, I
12 believe. And it would seem that at the time Mr. Thomas was very much in
13 contact with the Ugandan military authorities on site, and they therefore
14 gave him the necessary military logistics support to make this transfer
15 possible, on the one hand. And secondly, since it was the Ugandan
16 authorities who took in the children in the Tchankwanzi camp, they also
17 provided support, that is, technical military support to deal with these
18 700 individuals.

19 Q. Amongst the 700 individuals, you stated that 163 or 165 were
20 children under the age of 18, according to those that you were able to
21 identify. You've spoken about minors. Can you indicate where the adults
22 were from amongst the 700 individuals, that is, the vast majority?

23 A. I would like to say the following before I answer your question:
24 It was not a response as such. I'm summarising (Redacted)
25 (Redacted) and also the opinions, the conclusions of the other humanitarian

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1 agencies that were following these events, because these events took
2 place over several days.

3 The majority of the children, I can say this, out of the
4 162 children that (Redacted) repatriated with OIM, there were -- there
5 was a number of Lendus.

6 THE INTERPRETER: The interpreter did not hear the number.

7 THE WITNESS (interpretation): Some of them were what we call
8 Hema north and some of them Hema south, but out of the 700 individuals it
9 would seem that they were from the same ethnic group as Mr. Thomas
10 Lubanga.

11 THE INTERPRETER: The interpreter did not catch the number of
12 Lendus. Only one Lendu perhaps?

13 PRESIDING JUDGE FULFORD: Mr. Biju-Duval, in the English
14 something was lost in translation in relation to the number of Lendus.
15 You may want to clarify that.

16 THE WITNESS (interpretation): Of the 162 children, there was
17 only one Lendu child, one.

18 PRESIDING JUDGE FULFORD: Thank you very much, sir.

19 MR. BIJU-DUVAL (interpretation):

20 Q. My question did not relate to the children but to the others,
21 that is, the adults, the remainder of the 700. According to your
22 understanding, were these adults recruited in the same way as the minors
23 in the months of July, August, 2000? Is that correct?

24 A. This is what we understood. As I said, I believe last week, out
25 of the 162, 165 children that came out of the Kiryandongo camp, there

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1 were a few adults who in fact presented themselves as being children
2 because they did not want to continue the military training. But to
3 answer your question, the entire group had been recruited in the same
4 way. This is something that (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)

24 Q. Do you remember the name or the acronym of the RCD party which
25 was in Bunia in July and August 2000? That is the army of the party.

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1 A. That would be difficult. Maybe the FAC. That's possible. It
2 may have been called the FAC.

3 Q. Whatever its name, did that army play any role at all in that
4 event, that is, the transfer of these 700 persons, minors and adults,
5 from -- or to Uganda?

6 A. According to the information we obtained from the various sources
7 I mentioned, no. I was not informed of any such involvement by that army
8 in that event, no.

9 Q. Does the same thing apply to the commanders of that army or
10 certain commanders of that army?

11 A. Yes, although I am not aware. I am not aware of that army's
12 involvement, so I cannot provide an answer to this second question. I
13 don't think so.

14 Q. This event of July, August 2000 was independent of the events
15 that affected the army of the RCD at the time. Is that your testimony?

16 A. I don't know. Can you allow me to concentrate on the content of
17 the word "independent"? When you talk about independent, it means that
18 there may not be any relationship between them. The officers of that
19 army may not have been active in what happened. Independent in the sense
20 that their presence in that context was like a catalyst, a catalyst, a
21 political or military catalyst that facilitated the occurrence of this
22 event. In any case, I think we have to agree on what we mean by that.

23 However, personally from my analysis and understanding of the
24 situation at the time, the presence of the various forces in the region
25 was one of the elements that triggered this event which affected the

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1 165 persons who were supposed to have been children.

2 Q. If I put it to you that the 700 persons who were sent to Uganda
3 were soldiers of the RCD who had mutinied and the army known as the APC,
4 would that lead you to amend your testimony (Redacted)
5 (Redacted)

6 A. I do not think so. I think that would rather lead me to give you
7 more clarification with respect to this concept of mutineers. The
8 mutineers were persons who supported key figures of Ituri in order to
9 reject the presence of non-natives, non-natives on -- playing a role in
10 the local political -- on the local political scene. Those mutineers
11 included a commander. These events occurred after the killing of a Hema
12 commander who was an ally of Mr. Wamba Dia Wamba. Those who saw in the
13 killing of that gentleman a threat or a strong message of aggression
14 against the Hema community understood that they had to separate
15 themselves from Mr. Wamba Dia Wamba and establish a force that will act
16 as a military and political force on the ground, and that is why they
17 developed this concept of mutineers who allegedly left Bunia to move on
18 to the other side in Uganda.

19 Q. You agree, therefore, that this was -- or these were mutineers,
20 mutineers from the APC; is that correct?

21 A. I wouldn't say that, sir. I wouldn't state that. I don't agree
22 with that, because according to my understanding of the events, that is
23 not what we can say about this particular case in point.

24 Q. I would like to return to one of my previous questions. Do you
25 have any idea at all of the role played by John Tibasima in the mutiny?

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1 A. May I take a moment and give an explanation? I will try to be as
2 slow as possible so that the stenographers can keep up with me.

3 I said a short while ago, sir, that the context of Ituri with the
4 arrival of the rebel movement of Mr. Wamba Dia Wamba, which had lost the
5 battle of Kisangani, that rebel group arrived in Ituri and they were not
6 welcomed at all. First of all, because they had been defeated in
7 Kisangani by the RCD Goma movement. Secondly, because that rebel
8 movement did not have roots on the spot.

9 The rebel movement tried to establish a base, and they tried to
10 play the local forces against each other, that is, the Lendus and the
11 Hemas. When Mr. Wamba Dia Wamba contacted the Lendus, many Lendus came
12 towards him, and the Hemas then considered Wamba Dia Wamba as a threat to
13 their survival. So Wamba Dia Wamba tried to play them against each
14 other. He put within his group persons who were supposed to establish
15 the ethnic balance, so to speak. It was at that time that
16 Mr. John Tibasima then became someone who could lend weight to what was
17 considered the new political dispensation, that is, representing the
18 south Hemas. That is why he created a momentary alliance with
19 Mr. Wamba Dia Wamba. And I would like you to look at what was done by
20 the Ugandan army which was supporting him at the time.

21 In any case, there was a conflict between Wamba Dia Wamba and
22 Mr. John Tibasima. I had a discussion with him personally, and at one
23 point in time he was someone who believed that Wamba Dia Wamba was going
24 to establish his base there and that he had a serious project, but he
25 ended up being disappointed and so he withdrew from the political scene.

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1 That's what I can say in response to your question.

2 Q. Is it correct, to your knowledge, that Mr. John Tibasima went to
3 the Tchankwanzi camp and spent some time there with the mutineers who had
4 been sent to that camp?

5 PRESIDING JUDGE FULFORD: Just before you answer, we've had to
6 make quite a lot of redactions to your evidence because some of your
7 public answers have in fact involved details that have tended to reveal
8 who you are, and I'm being told that the technicians are having
9 difficulties processing the number of redactions that we've made, so
10 while we're in public session could you take extra special care to make
11 sure that you don't say anything that will reveal who you are. I think
12 the question that Mr. Biju-Duval has just put to you doesn't raise any
13 risk of you dealing with matters that go to your identity, but when
14 you're dealing with Mr. Tibasima's visit to the camp, if that happened,
15 can you steer well clear of things that reveal your identity.

16 THE WITNESS (interpretation): Yes. To my knowledge, no. The
17 discussions I had with him and the persons who were with him, from those
18 discussions I can say I did not have any knowledge of his visit to that
19 site. Even from the children I didn't get such information.

20 MR. BIJU-DUVAL (interpretation):

21 Q. Thank you. Do you know the person called Chief Kahwa? Can you
22 answer very briefly?

23 A. Yes, I know that person.

24 Q. Is it true that Chief Kahwa participated in the training or part
25 of the military training provided to the 700 persons sent to Tchankwanzi?

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1 A. Yes.

2 Q. In April 2001 -- or to be more precise, from the time that UNICEF
3 and various organisations, international organisations, I mean, revealed
4 information about the transfer of these mutineers and the presence of
5 165 children amongst them, is it correct to say that this situation, that
6 is, the presence of minors within that group of soldiers, is it correct
7 that that situation was presented as a crime in Ituri and elsewhere by
8 international organisations?

9 A. Yes. Indeed, yes. And this situation was so reported on that at
10 the time the Special Secretariat for Children Affected by Armed Conflicts
11 was created, if I remember well. And during that period, we were visited
12 by Mr. Olara Otunnu who was the very first Under-Secretary-General in
13 charge of those matters who was sent to the region. Yes. That event was
14 reported as a serious violation of the rights of children.

15 Q. Under those conditions, don't you think it's unlikely that
16 Mr. Lubanga himself -- that Mr. Lubanga himself claimed to have
17 participated in that operation? Don't you think you need to review your
18 memory, or indeed your testimony, with respect to the fact that
19 Mr. Thomas Lubanga allegedly told you himself that he participated in the
20 recruitment and the sending of the children concerned to Uganda?

21 PRESIDING JUDGE FULFORD: Just a moment. I wonder,
22 Mr. Biju-Duval, whether the answer to that question is -- is likely to be
23 one that should be given in private session given the suggestion that
24 something -- yes.

25 Private session, please.

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1 *(Private session at 12.50 p.m.) Reclassified as Open session
2 COURT OFFICER: Private session.
3 PRESIDING JUDGE FULFORD: Do you remember the question, sir?
4 You're -- yes. Good. Thank you.
5 THE WITNESS (interpretation): Yes.
6 PRESIDING JUDGE FULFORD: Thank you.
7 THE WITNESS (interpretation): Yes. Sir, let me go back in time
8 to explain that when in the context of that mandate, that new mandate,
9 aside from the fact that (Redacted)
10 (Redacted), if you like, to do with the Ituri context, that
11 meant that (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted), and among those community leaders there were
16 all of the individuals you referred to.
17 Thomas Lubanga, first of all, as the administrative -- or the
18 person in charge of the administrative aspects of the -- what we could
19 call the ministry dealing with children's affairs at the time, in other
20 words, youth and sport. And then (Redacted) John Tibasima, who was
21 one of the local leaders. (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

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1 Mr. Thomas as the person in charge of the structure, the state body, if
2 you like, that was responsible for activities pertaining to youth and
3 sport, and that covered also the humanitarian stakeholders, (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted), but I
9 cannot say that he had no interest in revealing (Redacted) his
10 responsibility as regards the recruiting of children, certainly as
11 regards to their being dispatched to (Redacted).

12 (Redacted). And
13 when the children came back, he said several times over that they were
14 his children. So I don't see why he was talking about it given that he
15 knew full well that he had plenty of information as to the legal
16 implications of his acts. (Redacted)
17 (Redacted)

18 MR. BIJU-DUVAL (interpretation):

19 Q. Could you specify the date (Redacted)
20 (Redacted).

21 A. With Mr. Thomas.

22 Q. And Mr. Tibasima and so on.

23 A. It was between (Redacted)

24 (Redacted)

25 (Redacted). He was well known,

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1 but I cannot recall his name.

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. Thank you. One last question before we adjourn. As far as you

25 know, is it correct to say -- sorry. Is it correct to say, as far as you

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1 know, that Mr. John Tibasima allegedly brought back from the (Redacted)
2 camp (Redacted) soldiers as his personal guard?

3 A. I cannot say. I don't know what sort of thing he did along those
4 lines. I just don't know.

5 MR. BIJU-DUVAL (interpretation): Thank you, your Honour.

6 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Biju-Duval.
7 We'll break off now, then, and sit at 2.45.

8 Mr. Biju-Duval, while it's in my mind and to indicate that we
9 haven't overlooked it, some time ago Maitre Mabilille raised with us the
10 issue of the area just outside the court door and the facilities that are
11 available for you to see the accused when we're not sitting.

12 We have raised this with the chief of general services, and there
13 is no doubt but that it is accepted that the arrangements need to be
14 improved and will be improved. However, as I'm sure you can understand,
15 these things take time. New -- a new configuration of the space has got
16 to be worked out, contractors then have to be employed, and then
17 arrangements have to be made for the works to be undertaken.

18 I certainly intend to make representations this week to the
19 effect that the break that's about to take place would be the most
20 obvious time for carrying out those works. When we reach the end of
21 September, it's going to be extremely difficult to carry out those works
22 and have two cases sitting at the same time. So it's in hand to the
23 extent that we have influence over building projects within the ARC.

24 Thank you all very much. Can we go into closed session, please,
25 so the witness can withdraw.

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Procedural Matters

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1 *(Closed session at 1.01 p.m.) Reclassified as Open session
2 COURT OFFICER: Closed session.
3 PRESIDING JUDGE FULFORD: Yes. Could the usher please accompany
4 the witness.
5 (The witness stands down)
6 PRESIDING JUDGE FULFORD: 2.45.
7 COURT USHER: All rise.
8 Luncheon recess taken at 1.02 p.m.
9 On resuming at 2.45 p.m.
10 COURT USHER: All rise. Please be seated.
11 PRESIDING JUDGE FULFORD: Witness, please.
12 (The witness takes the stand)
13 PRESIDING JUDGE FULFORD: Public session, please.
14 (Open session at 2.46 p.m.)
15 COURT OFFICER: Public session.
16 PRESIDING JUDGE FULFORD: Yes, Mr. Bijou-Duval.
17 MR. BIJU-DUVAL (interpretation): Thank you, your Honour. I'm
18 going to put some questions on the last point that was raised by the
19 witness. If I'm not mistaken, that was in private session. So I think
20 we'll have to come back to private session.
21 PRESIDING JUDGE FULFORD: Certainly. Private session, please.
22 *(Private session at 2.47 p.m.) Reclassified as Open session
23 COURT OFFICER: Private session.
24 MR. BIJU-DUVAL (interpretation):
25 Q. Good afternoon, Witness. Just before we adjourned, you were

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1 talking about (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 but it doesn't appear on the transcript, so I would ask you to shed light
6 on the matter as to which year it was. Was it (Redacted)?

7 A. Yes, indeed it was, although later consultations continued with
8 various parties.

9 Q. Thank you. As regards (Redacted)
10 (Redacted) to prepare your
11 settling in Bunia?

12 A. No, because we didn't have to negotiate any authorisation to set
13 up shop, if I can put it in so many terms, but it was in the context of
14 one of the parts of our programme which focussed on public education
15 concerning children's rights, particularly the right to protection
16 against recruiting and being used in armed forces or armed groups, and in
17 that context we were focusing on the community leaders who had been
18 identified as being influential figures and who could easily pass on our
19 message to the members of their community.

20 Q. In any case, (Redacted)
21 (Redacted) is that correct?

22 A. I cannot say that (Redacted), no. No. No.
23 I'm certain of that. It was after we set up in Bunia, but I would like
24 to add, Counsel, that when I refer to setting up our premises, I'd like
25 to -- I'd like you to understand that between the point in time when we

Witness: Witness DRC-OTP-WWW-0116 (Resumed) (Private Session)
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1 actually set up our offices and actually began doing our work there was a
2 lapse of time, and we began during that period being able to leave Bunia.
3 And as I have said, the ICRC staff had been assassinated on the road to
4 Fataki, and therefore at that time looking for the families of the
5 children outside of Bunia was not possible, (Redacted)
6 (Redacted).

7 Q. You have always stated clearly that your arrival in Bunia
8 (Redacted). Do we agree on that date?

9 A. Well, perhaps I could ask for a bit of flexibility as regards the
10 term "arrival." Well, we didn't arrive and leave as such. I don't think
11 it was (Redacted), the appropriate date for our arrival. In fact, our
12 arrival should be situated when we were (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)

16 Q. You indicated in paragraph 23 of your statement, the statement
17 you gave to the investigators, and you stated: "I arrived in Bunia
18 (Redacted)." This is what we're talking about; is that
19 correct?

20 A. Yes, that's correct, but inasmuch as possible, I would like you
21 to consider that the word "arrival" isn't really the point in time when I
22 arrived the first time in Bunia, but it was at that time that we --
23 (Redacted)
24 (Redacted). So I could even consider that this was an error
25 to state it this way as it's written in my statement.

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1 Q. A few moments ago you confirmed that there had been (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)

5 A. I don't recall very well. If you're talking about (Redacted)
6 (Redacted) I mentioned
7 earlier, but in formal terms I can confirm that (Redacted)
8 (Redacted), if my memory serves me well.

9 Q. (Redacted) Mr. Thomas Lubanga,
10 among others?

11 A. Yes, indeed. (Redacted) to begin dealing with the
12 issues, yes, indeed.

13 Q. Witness, I would like to refer now to paragraph 89 of your
14 statement. I believe you have a copy of the statement on the table in
15 front of you. This is page 16 of your statement, paragraph 89.

16 I would like to read out the first sentence of this paragraph:
17 (Redacted)
18 (Redacted)
19 (Redacted)

20 Witness, if I were to suggest to you that (Redacted)
21 (Redacted)
22 never actually took place, would that lead you to modifying your
23 testimony?

24 A. No, I don't think so. I'm not going to go back and say that
25 (Redacted). As I said a moment ago, I would admit that there might be

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1 an error in the date that I mentioned earlier. You must understand that
2 my statement dates back to 2007, and those were events that had taken
3 place five years prior to that time, and after those events I've gone
4 through many other traumatic events, and more and more traumatic, for
5 that matter, and therefore I will not come back on my statement and
6 (Redacted), no.

7 Q. You have mentioned (Redacted)
8 (Redacted) with Mr. Lubanga. I'd like to refer now to paragraph 91 of
9 your statement, and I'd like to quote the first five lines of your
10 statement, paragraph 91, and I quote:

11 "After (Redacted), Lubanga (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)

16 My question is the following: Today do you remember the name of
17 the Lendu (Redacted)

18 A. No, I do not remember his name, (Redacted)
19 (Redacted)
20 (Redacted), but I don't remember his name.

21 Q. If I were to suggest the name (Redacted)
22 (Redacted), would that enable you to recollect something?

23 A. Yes. It could be that name, yes, (Redacted).

24 MR. BIJU-DUVAL (interpretation): Your Honour, I would like to
25 attempt to continue in public session. I will be asking some questions

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1 about (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted), I believe we can do that in open session, your Honour.

5 PRESIDING JUDGE FULFORD: It's certainly worth the endeavour,

6 Mr. Biju-Duval.

7 Public session, please.

8 (Open session at 3.02 p.m.)

9 COURT OFFICER (interpretation): Open session.

10 PRESIDING JUDGE FULFORD: Yes.

11 MR. BIJU-DUVAL (interpretation):

12 Q. Last week you indicated that children had told you about
13 night-time training in -- out in the plain where they had participated
14 in -- or, rather, some children -- some children had participated in this
15 training. Do you remember that?

16 A. Yes. Yes, I remember that.

17 Q. This information, the information given by those children, was it
18 given to you in Bunia?

19 A. Yes, in Bunia.

20 Q. Were they children from Bunia?

21 A. Yes, they were children from Bunia. In particular, one of them
22 that I remember was from Mudzipela.

23 Q. I'd like to refer now, as regards that matter, to paragraph 62 of
24 your statement. I would like to read out the first few lines of this
25 paragraph and then I will ask you a few questions. Of course we mustn't

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1 broadcast this document publicly, but the paragraph itself does not
2 contain -- well, at least according to myself it does not contain any
3 confidential information, and I quote:

4 "Other young people told us that they had to go to a military
5 training site during the night in the Kasenyi plain that is on the road
6 between Bunia and Mandro. They would stay until 5.00 in the morning, and
7 then they would go back to where they lived. They would go back and
8 forth every night. The children said that their instructors were brought
9 in by helicopter and that they had brought with them weapons and
10 ammunition. The children said that the instructors were from Rwanda and
11 that they did this training -- they provided this training on behalf of
12 the UPC."

13 My question is the following: Does this paragraph refer to the
14 information that we were discussing just before I read it out?

15 A. Yes, indeed.

16 Q. According to this paragraph of your statement and according to
17 your testimony, the children told you that they would go to the Kasenyi
18 plain at a place on the road between Bunia and Mandro. Now, according to
19 you is this Kasenyi plain on the road between Bunia and Mandro?

20 A. There's an area, a plain called -- well, rather, a road that
21 makes a detour, but there's also a road that goes right through the
22 Mandro plain that goes to the village called Mandro, and it was there in
23 that plain area that the children said that they had participated
24 regularly in training as we described it here.

25 Q. You're referring to the Kasenyi plain? Is that it?

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1 A. Well, Kasenyi is a village. I'm sure you know that, it's on the
2 banks of the lake, and to get there there's two roads. There's one way
3 that goes through the village of Mandro, and you go along a grassy plain
4 area with some trees, in fact a very large plain area, but you can also
5 take the road and go over a hilly area and then go down towards the
6 banks, but here we're referring to the plain area, the flat area, the
7 rather large grassy plain area which is between Mandro and Kasenyi. I
8 was repeating here what the children had told us.

9 Q. So the plain, according to you, is between Mandro and Kasenyi?

10 A. Well, geographically speaking, I cannot certify that that is the
11 case, but based on what I was told, and I myself did take this road to a
12 town that is connected to Kasenyi. I know that there is a plain before
13 you get to Mandro. There's a very large grassy plain, savannah area,
14 which could very well be the area that the children referred to.

15 Q. On that date is it correct that the region was under the control
16 of the Ugandans?

17 A. As of that date, I can say that it was the Ugandans who held the
18 reins of power. That is, they held the invisible reins of power. I can
19 say that.

20 Q. The Ugandan army was present; is that correct?

21 A. Yes. They were present, yes.

22 Q. According to your statement, the children claimed that Ugandan --
23 or, rather, Rwandan instructors were brought in by helicopter to that
24 place, to that training place. Is that what the children told you?

25 A. They did not say that the instructors were flown in by helicopter

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1 every night. They simply informed us that the instructors who provided
2 them with their training were flown in. We wanted to know how they
3 arrived there. They told us that the instructors came by helicopter.
4 That is all we heard from them. But not every evening, not every night.

5 Q. And did you find this likely, that during the time when the
6 Ugandan army, which had helicopters and which had control of the region,
7 did you find that this was likely that the Rwandan army would fly in
8 instructors between Mandro and Kasenyi? Do you find that likely?

9 A. Yes, I find that very likely, considering the political and
10 military interplay that took place within that context. That is
11 perfectly likely. You must have heard, maybe not from me but from
12 others, that there were Rwandan soldiers within that environment at that
13 point in time.

14 Q. According to your statement, the children claimed to, I quote,
15 "to go back and forth every night," that is, making these trips between
16 Bunia and a training place which was located near Mandro or between
17 Mandro and Kasenyi, if I understood your evidence well.

18 A. In the plain, in the plain which was reserved for that purpose,
19 yes. They went there back and forth, and they themselves confirmed this.
20 These were makeshift training camps. That is, they would operate at
21 night, and in the morning they -- this camp will be dismantled, so to
22 speak.

23 Q. By what means did the children go to this place of training?

24 A. Apparently the volunteers, including these young persons who
25 talked about these events, went there on foot.

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1 Q. And were you able to estimate the number of hours needed to go
2 from Bunia to that training place?

3 A. Well, having covered that same distance once or twice with a
4 small vehicle, a four-wheel-drive vehicle, I think that someone who takes
5 shortcuts would require about two hours to get to the place. Not more
6 than two hours at least.

7 Q. Thank you. You indicated yesterday that --

8 MR. BIJU-DUVAL (interpretation): I beg your pardon. I think
9 we'll have to go back into private session, your Honour.

10 PRESIDING JUDGE FULFORD: Private session, please.

11 *(Private session at 3.16 p.m.) Reclassified as Open session

12 COURT OFFICER: Private session.

13 PRESIDING JUDGE FULFORD: Yes.

14 MR. BIJU-DUVAL (interpretation):

15 Q. You stated yesterday that (Redacted)
16 (Redacted) a certain (Redacted) whom you introduced as the minister
17 of defence, that is, the UPC minister of defence or Mr. Lubanga's
18 minister of defence, and (Redacted)
19 (Redacted).

20 I would like you to turn to paragraph 105 of your statement,
21 which I am going to quote. I am going quote some of these statements and
22 I quote:

23 "When the UPC was in power, it was difficult to have access to
24 Lubanga, but I remember that (Redacted) tried to contact him with --
25 in order to have him demobilise young soldiers. (Redacted) went on

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1 mission to Bunia shortly after the departure of Lompondo to discuss this
2 matter with Lubanga. Mr. Lubanga was not available -- or, rather he was
3 not there on site, and (Redacted), a close aide of
4 Mr. Lubanga. (Redacted)
5 said without any conviction that the children needed to have a programme
6 within the framework of demobilisation, that it was necessary for them to
7 have something to do in order to ensure their future."

8 Does this relate to the same meeting you talked about yesterday?

9 A. Yes, it's the same meeting I talked about yesterday, the meeting
10 with (Redacted).

11 Q. So it took place after the departure of Lompondo and the seizure
12 of power by the UPC; is that correct?

13 A. Yes, indeed.

14 Q. And according to you, (Redacted) was the UPC's minister of
15 defence; is that correct?

16 A. Yes. When the UPC took control of the town, he himself was
17 already one of the close aides of Mr. Lubanga, and at that time he was in
18 charge of defence.

19 Q. If I suggest to you that (Redacted) was a member of RCD-K/ML,
20 that he did not maintain any contact with Mr. Lubanga after the month of
21 March 2002, and lastly, that (Redacted) has never worked with
22 Mr. Thomas Lubanga in Bunia, would that make you amend your evidence?

23 A. I do not think so. I don't think I can amend my testimony.

24 Q. You mentioned a campaign --

25 MR. BIJU-DUVAL (interpretation): Your Honour, maybe we should

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1 move into open session.

2 PRESIDING JUDGE FULFORD: Open session, please.

3 (Open session at 3.22 p.m.)

4 COURT OFFICER (interpretation): Open session.

5 MR. BIJU-DUVAL (interpretation):

6 Q. You have mentioned a campaign that was conducted by Mr. Lubanga
7 allegedly in the northern part of Ituri, in the region of Fataki, in the
8 second half of the year 2001, and you described that campaign as an
9 important campaign which was well reported on and which led to
10 recruitments, recruitments for Thomas Lubanga.

11 If I were to suggest to you that Mr. Thomas Lubanga -- first of
12 all, I would like you to clarify, if that is possible, to tell us
13 precisely the period when that campaign took place.

14 A. I said last week that the campaign must have taken place between
15 the months of May 2002 and November -- sorry, May 2001 and November 2001.
16 The second half of the year 2001; that's right.

17 Q. If I suggest to you that Mr. Lubanga was absent from Ituri from
18 July to December 2001, would that make you change your testimony?

19 A. I don't think I can change my testimony, because we heard a lot
20 of testimonies about his trip to that part of the district, and we even
21 noted that there were some young people who returned and who had been in
22 the compound where he was supposed to have been working. So I don't
23 think I can change my testimony, because the evidence I had at my
24 disposal at the time from the various sources, including children and
25 some parents, indicated that he was present and referred to the trip he

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1 made to that part of the country during that period.

2 Q. If I suggest to you that in the course of the year 2001

3 Mr. Thomas Lubanga went to the northern part of the country, to Mahagi

4 and Aru, only at the beginning of the month of February 2001, will that

5 make you change your testimony?

6 A. No, I don't think so, because we're not talking about Mahagi and

7 Aru. In my statement I talked about Fataki. I talked about the locality

8 of Fataki where (Redacted)

9 (Redacted) at the time he made his trip to that part
10 of the country.

11 Q. You indicated that after your departure --

12 MR. BIJU-DUVAL (interpretation): I beg your pardon, your Honour.

13 I think we'll have to go back into private session.

14 PRESIDING JUDGE FULFORD: Private session, please.

15 *(Private session at 3.27 p.m.) Reclassified as Open session

16 COURT OFFICER: Private session.

17 MR. BIJU-DUVAL (interpretation):

18 Q. You stated that after your departure from Bunia, (Redacted)

19 (Redacted), and you stated that you were

20 able to, in spite of everything, to monitor the events in Ituri because

21 reports were sent to you; is that correct?

22 A. Yes. (Redacted)

23 (Redacted). That was the indeed the case.

24 Q. Those reports you talked about, to whom were they sent, were they

25 addressed?

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1 A. These reports were addressed to (Redacted),
2 first and foremost, and there were others which were sent to child
3 protection agencies that were interested in the matter, and there were
4 certain organisations which were monitoring very closely the evolution of
5 the political situation in Ituri.

6 Q. According to your knowledge, were those reports archived? Are
7 they still available?

8 A. The issue of Ituri had become so sensitive, very radioactive, if
9 I may use that term, such that all the information (Redacted)
10 (Redacted), and the archives of such
11 information were kept (Redacted).

12 Q. You're talking about (Redacted)?

13 A. Yes, because all of the instructions that were sent to me
14 whether -- any sensitive information to do with Ituri and everything
15 happening there should be sent (Redacted) to be processed in the context
16 of pleas and things such as that.

17 Q. You said that you were sent a photo on which you could see a
18 child wearing a uniform. Who sent you that photo?

19 A. One of the colleagues in the organisation from (Redacted) who
20 was still working in Bunia. And let me say - in fact I said this
21 yesterday - it was before (Redacted)
22 (Redacted). It was a photo that came from in the field and it was sent by
23 (Redacted).

24 Q. We're in private session. Could you give me the name of that
25 person?

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1 A. Yes. That person -- well, there were the two people who were
2 present at the time, (Redacted).

3 Q. And which of them sent you the photo?

4 A. I would say (Redacted)
5 (Redacted).

6 Q. What was the date when the photo was sent to you?

7 A. I cannot tell you exactly what date it was. Admittedly there was
8 the date on the back of the photo, if I'm not mistaken, but I can't
9 recall that date now. What I can say is that I could say that it was
10 after the month of May 2002. Yes, May 2002.

11 Q. You say that on the photo there was a child wearing a uniform.
12 Do you recall the colour of the uniform?

13 A. Yes. It was just one colour, khaki, sort of militia uniform. It
14 wasn't camouflage, but it was a green khaki colour as is commonly worn in
15 the army.

16 Q. To be certain that I've understood your description, you're
17 saying it's a uniform of a single green colour, military green. Thank
18 you.

19 Could you refer to paragraph 100 of your written statement. I'm
20 going to read out the first two sentences --

21 MR. BIJU-DUVAL (interpretation): Yes, your Honour. I think we
22 can go into open session.

23 PRESIDING JUDGE FULFORD: Open session, please.

24 (Open session at 3.35 p.m.)

25 COURT OFFICER (interpretation): Public session.

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1 MR. BIJU-DUVAL (interpretation):

2 Q. I quote the first two sentences:

3 "While I was in Bunia in 2001 and 2002, I had prepared a
4 bibliography on Lubanga. He had studied at the seminary in Fataki, and
5 then he studied history at the Institut Superieur Pedagogique (ISP) of
6 Bunia."

7 My first question, this is for clarification, instead of
8 "bibliography," should it not be "biography"?

9 A. Yes, indeed.

10 Q. My second question is as follows: How do you know that
11 Mr. Lubanga had studied history at the ISP in Bunia?

12 A. I got that information from a source that was close to the
13 humanitarian staff and had been in Bunia well before I was and, as far as
14 I knew, was extremely well informed about Mr. Thomas.

15 Q. Did that source make it possible for you to obtain further
16 information about Mr. Lubanga or in general about the situation in Bunia
17 and Ituri?

18 A. No, I don't think so. That person was not a main source for me
19 but for the other people I knew who were interested in the situation in
20 Bunia. The reason I consulted that person was quite simply to find out
21 about personal details, the personal biography concerning the individual
22 himself, nothing to do with his activities, and when I consulted that
23 person, it was in my personal capacity.

24 Q. If I were to put it to you that Mr. Thomas Lubanga never studied
25 at the Bunia Institut Superieur Pedagogique, would that cause you to

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1 revise the -- your perception of the credibility of the source.

2 A. Yes, indeed. If that is the case, then certainly. But that
3 wouldn't necessarily call into question all of the credibility of the
4 source or the full credibility of the source, but as regards that aspect,
5 yes, I could revise my position.

6 MR. BIJU-DUVAL (interpretation): I beg your indulgence for a few
7 moments, please.

8 PRESIDING JUDGE FULFORD: Yes, of course, Mr. Biju-Duval.

9 (Defence counsel confer)

10 MR. BIJU-DUVAL (interpretation): I have no more questions, your
11 Honour.

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

13 How long, Ms. Struyven? Oh -- yes, do answer that. In fact,
14 there's a question or two from Judge Blattmann, but how long will you be
15 since I've asked the question?

16 MS. STRUYVEN: We have no further questions.

17 PRESIDING JUDGE FULFORD: You have no further questions.
18 Certainly. Right.

19 Judge Odio Benito I think has a -- yes.

20 JUDGE ODIO BENITO: Thank you, your Honour.

21 Questioned by the Court:

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 JUDGE ODIO BENITO: Thank you. To the best of your recollection,
8 how many girls were among the 165 or 67 children that were trained in
9 Uganda?

10 A. There were two girls who came back, just two.

11 JUDGE ODIO BENITO: Two who came back. That means that there
12 were more that went and never came back? Is that what you mean?

13 A. According to the information that (Redacted)
14 that was also confirmed by UNICEF Uganda and World Vision Uganda at that
15 time as well, the visit to the Tchankwanzi camp was an event that had
16 been forced. The military authorities did not agree to the humanitarian
17 teams entering the camp, and the -- they had to force the visit, and it
18 would seem, according to the information we received, because we were in
19 Kampala, that some children remained, and all of the girls were not
20 returned. In other words, some remained in the camp. They did not come
21 back.

22 (Redacted)

23 (Redacted) there were other girls who stayed in the Tchankwanzi camp, who
24 did not have the opportunity to get out because they were hidden.

25 JUDGE ODIO BENITO: Thank you, sir. Thank you very much.

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1 PRESIDING JUDGE FULFORD: Judge Blattmann has some questions as
2 well, sir.

3 JUDGE BLATTMANN: Thank you, Mr. President.

4 I just have one question, and that is you have referred in your
5 statement in open court that the Ugandan army was present in Ituri and
6 that it was the Ugandan who held the reins of power at a certain date.
7 Now, you have also referred to instructions and training of children --
8 of child soldiers in Uganda.

9 Now, according -- my question is: According to your experience
10 and to your appreciation of what was happening on the ground, I would
11 like to ask you whether there was, in your understanding, any Ugandan or
12 Rwandan intervention, involvement, or presence in the Ituri conflict
13 after June 2003.

14 I know that you moved afterwards, but I would like to know if you
15 could maybe answer it -- answer that question.

16 A. Yes, your Honour. I think that there was, indeed, a Rwandan
17 presence. That was perfectly logical, because -- if I might have a
18 couple of minutes, I can give you an explanation of this.

19 Thomas Lubanga himself said to me how often he had Rwandan
20 contacts who were very interested, expressed great interest in Ituri. He
21 told me that himself. He said, (Redacted), it all depends on me. If today I
22 want, all the Ugandans will leave because I could establish an alliance
23 with the Rwandans. But I haven't done so to date because I feel that I
24 bear historic responsibility."

25 These are his words, "historic responsibility" not to import

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1 problems into Ituri.

2 Afterwards, (Redacted) that indeed there were
3 military instructors who were Rwandans who were in charge, we were then
4 informed that there was an instructor, Mr. Bosco Ntaganda, he was an
5 instructor who was there with another group, a few other Rwandans who
6 spoke Kinyarwanda, (Redacted) and they were in
7 charge of training at that time.

8 So if I take a look at the way in which events developed after
9 the attack of Lomondo against the camp, the camp that existed at the
10 time, Lomondo dismantled the camp and then there was a reaction on the
11 part of UPC which, with the assistance of the Rwandans, ousted Lomondo
12 from Bunia, and they created an alliance which meant that the UPC and MLC
13 got rid of the government right -- right through to Beni. That was in
14 December 2002, I think. So according to my analysis and on the basis of
15 what I saw then and afterwards, I think that it was possible that there
16 was such a presence in that context. The Rwandan presence was there.
17 They were cohabiting, if you like, with the Ugandans.

18 JUDGE BLATTMANN: Just to clarify, I'm talking about after -- I'm
19 talking about 2003. So it would be after June 2003; is that correct?

20 A. Yes. Yes, after June 2003. It was clear once things had changed
21 in Bunia and the UPC was present, there was clearly a presence. That was
22 manifest.

23 JUDGE BLATTMANN: No more questions. Thank you, Mr. President.

24 PRESIDING JUDGE FULFORD: Anything further, Mr. Biju-Duval?

25 MR. BIJU-DUVAL (interpretation): No, your Honour.

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1 PRESIDING JUDGE FULFORD: Sir, as with the last witness, no one
2 in this court has doubted the importance of the work that you undertake.
3 You have come a very long way to give evidence before us at considerable
4 inconvenience to yourself, not least because your evidence has been
5 disrupted to a very great degree because we have had to fit in other work
6 during the course of your testimony.

7 We are conscious of both the inconvenience to you and the
8 personal factors that may have weighed on your mind when you made the
9 decision whether or not to come and cooperate with the International
10 Criminal Court. In order for us to function, we need the assistance of
11 all those who have relevant testimony to give so that we can engage in
12 the search for the truth which is necessary during the course of this and
13 all other criminal trials, and so for those reasons you leave here now
14 with our sincere thanks for your cooperation and attendance as a witness.

15 Closed session, please, so the witness can withdraw.

16 *(Closed session at 3.50 p.m.) Reclassified as Open session

17 COURT OFFICER: Closed session.

18 PRESIDING JUDGE FULFORD: Yes, Usher. Could you, please.

19 THE WITNESS (interpretation): Thank you very much. Thank you,
20 your Honour. I would also like to take this opportunity to thank you on
21 behalf of my organisation. We have appreciated your flexibility and your
22 understanding enabling me to meet my professional commitments last week.
23 So thank you on their behalf as well.

24 (The witness withdrew)

25 PRESIDING JUDGE FULFORD: Public session, please.

1 (Open session at 3.52 p.m.)

2 COURT OFFICER (interpretation): Open session.

3 PRESIDING JUDGE FULFORD: I notice, Ms. Bensouda, you've moved to
4 the front row. Is it because you have something to say at this stage?

5 MS. BENSOUDA: Thank you, Mr. President. Just to say that with
6 this last witness, this is the end of the oral presentation of evidence
7 for the Prosecution, and probably to just add that we wish to retain the
8 ability to make written submissions for the pending documentary evidence.

9 PRESIDING JUDGE FULFORD: Does it amount to any more,
10 Ms. Bensouda, than the right, in an appropriate way, for you to explain
11 how the Prosecution argues its case in relation to the written material
12 that has been introduced from the bar table?

13 MS. BENSOUDA: Yes, Mr. President. There are some pending, I
14 believe, NGO documents and some video material which have still some of
15 them yet to be decided by the Chamber, I believe, but also for the
16 Prosecution to make written applications to submit them.

17 PRESIDING JUDGE FULFORD: Thank you, Ms. Bensouda. I'd -- maybe
18 I'm in error. I thought we dealt with all of the applications currently
19 before us, although we were aware that there may be some additional
20 applications from the Prosecution. Now, if we've overlooked some,
21 Ms. Bensouda, we need to know that, because otherwise they'll fall
22 through the cracks in the floorboards.

23 MS. BENSOUDA: In fact, Mr. President, there will be new
24 applications.

25 PRESIDING JUDGE FULFORD: Well, we'll address those as and when

1 we receive them, Ms. Bensouda. Thank you very much indeed.

2 MS. BENSOUDA: Thank you.

3 PRESIDING JUDGE FULFORD: That's very helpful.

4 You're looking anxious, Mr. Biju-Duval.

5 MR. BIJU-DUVAL (interpretation): Well, "anxious" is not the
6 word, your Honour. It couldn't be the word "anxious," no, but I'm
7 surprised, because I believe I understood that the OTP wants to enter
8 into evidence new evidence. I think I understood that the presentation
9 of their evidence is not actually concluded today, and that is contrary
10 to what we had been told. And I think this is going to raise issues,
11 because at the point in time when the OTP closes its case, we have to
12 have a very clear idea of that point in time so that the Defence can
13 adjust both its thinking and also its investigations of the case.
14 Therefore, the position of the Defence on that matter today is that we
15 have an objection to new evidence or new submissions regarding new
16 evidence be allowed before the Chamber, your Honour. Thank you.

17 PRESIDING JUDGE FULFORD: I think we need some clarity on this,
18 Ms. Bensouda. What's the area of documentation, and what's the
19 time-frame that we're talking about?

20 MS. BENSOUDA: Mr. President, Manoj will provide an answer.

21 PRESIDING JUDGE FULFORD: Yes, certainly. Yes, Mr. Sachdeva.

22 MR. SACHDEVA: Thank you, Mr. President. As was alluded to, it
23 relates to some NGO reports, perhaps some video materials that have
24 already been communicated to the Defence and disclosed to the Defence,
25 and that upon reflection of the evidence given by the last two witnesses

1 in particular, it may -- it may be deemed necessary for the Prosecution
2 to make those submissions and tender those documents into evidence from
3 the bar table given the answers that have been given by the last two
4 witnesses in particular.

5 PRESIDING JUDGE FULFORD: Well, you're obviously going to have to
6 do this by way of written application, then. By when will you be making
7 those applications, Mr. Sachdeva?

8 MR. SACHDEVA: Mr. President, we would, with respect, ask by the
9 beginning of the -- when the recess is completed. In other words, from
10 the 10th to the 14th of August, but we can, of course, file those
11 submissions earlier if required.

12 (The Trial Chamber confers)

13 PRESIDING JUDGE FULFORD: Friday, 4.00 p.m., and no later,
14 Mr. Sachdeva.

15 MR. SACHDEVA: Yes, Mr. President. May I add one more point,
16 Mr. President? Your Honours may recall that during the testimony of the
17 forensic expert in relation to bones there was an issue that arose in
18 respect to the dates of the X-rays that were taken, and pursuant to that
19 issue, the Prosecution have had discussions with the Defence and have
20 furnished on the Defence various materials that we would submit establish
21 that the dates -- that the X-rays were taken on a particular date.

22 Now, we are in discussions with the Defence to -- to assess
23 whether the Defence would be in agreement with them. That is still
24 continuing. If not, in light of the evidence that your Honours must
25 determine, the Prosecution may have to make an application, an

1 exceptional application to have those documents admitted from the bar
2 table.

3 PRESIDING JUDGE FULFORD: This is too speculative. If it becomes
4 necessary, it needs to be the subject of a separate application,
5 Mr. Sachdeva. You'll understand our -- our concern that the Defence
6 knows with precision the case that it's going to have to meet before they
7 embark upon this last stage of Defence preparation. If, however, there
8 is some exceptional reason for introducing Prosecution evidence
9 hereafter, of course we'll consider it and rule on it in due course.

10 MR. SACHDEVA: Yes, Mr. President. Thank you very much.

11 PRESIDING JUDGE FULFORD: Thank you very much indeed.

12 We need to say a word which slightly amends the order that we
13 gave as regards what will happen over the vacation and only to this
14 extent: There may be a number of decisions which are issued during the
15 course of the vacation. However, time will remain suspended, and so in
16 fact this will had been of advantage to the parties and the participants,
17 because it will give you longer to consider them than you would otherwise
18 have had. So we do not see that this will cause any material
19 inconvenience. Quite the reverse, it is of potential advantage.

20 Next, there needs to be reliable, cast-iron contact details for
21 each of the teams during the course of the vacation and during the weeks
22 after the vacation, because for reasons that will soon become apparent,
23 there may, and I stress it's only may, there may be a need to revisit the
24 autumn schedule.

25 Now, are there any other issues that anybody wishes to raise

1 before we rise?

2 MR. SACHDEVA: If I may, Mr. President, your Honours had asked
3 the Prosecution to return to your Honours about an interview concerning
4 Witness 38 in respect of the connection with Witness 38 and Witness 316,
5 and your Honours had asked me to inform you whether it would take longer
6 than a month, and I would just like to inform the Court that at this
7 stage the witness is under the care of the Victims and Witnesses Unit.
8 We have attempted to ask the Victims and Witnesses Unit to establish
9 contact with the witness so that arrangements can be made for an
10 interview. As yet we doesn't have any further information.

11 I would just say that as soon as we do receive information, that
12 information will be provided to your Honours and to the Defence so that
13 the Defence can determine whether they can indeed be present for the
14 interview.

15 What the Prosecution can say is what we said earlier, and that is
16 once the interview does take place, it will be conducted by the same
17 investigator that conducted the previous interviews. It will be video
18 recorded, and there will be no one else involved in this case currently
19 and also before who will participate.

20 PRESIDING JUDGE FULFORD: Can you liaise closely, please,
21 Mr. Sachdeva, with both with an appropriate representative from the
22 Defence and with the legal advisor to the division or whoever is
23 substituting for her.

24 MR. SACHDEVA: We will, Mr. President.

25 PRESIDING JUDGE FULFORD: Thank you very much indeed.

1 Anything from the Defence, Mr. Biju-Duval?

2 MR. BIJU-DUVAL (interpretation): No, your Honour, nothing.

3 PRESIDING JUDGE FULFORD: I cast my eyes towards the victims'
4 representatives.

5 MS. MASSIDDA: Nothing on our side, your Honour. Thank you.

6 PRESIDING JUDGE FULFORD: Thank you.

7 Well, we wish all the advocates a pleasant vacation. Thank you
8 very much.

9 We'll rise now.

10 COURT USHER: All rise.

11 The hearing ends at 4.05 p.m.

12 RECLASSIFICATION REPORT

13 Pursuant to Trial Chamber I's emails instructions dated 5th and 7th December
14 2011, the transcript is reclassified as public after the indicated
15 redactions have been implemented as ordered by the Chamber. All private
16 and closed sessions (*) are now available to the public with the
17 exception of the portions of the transcript that have been redacted.

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