

Trial Hearing
Witness: DRC-D01-WWWW-0036

(Open Session)

ICC-01/04-01/06

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of the Prosecutor v. Thomas Lubanga Dyilo - ICC-01/04-01/06
5 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and Judge René Blattmann
6 Trial Hearing
7 Monday, 18 April 2011
8 (The hearing starts in open session at 2.02 p.m.)
9 THE COURT USHER: All rise. The International Criminal Court is now in session.
10 Please be seated.
11 THE COURT OFFICER: Good morning, your Honours, Madam -- Mr President, I'm
12 sorry. We are in open session.
13 WITNESS: DRC-D01-WWWW-0036 (On former oath)
14 (The witness speaks Swahili)
15 (The witness appears via videolink)
16 PRESIDING JUDGE FULFORD: Good afternoon. Good afternoon, sir.
17 THE WITNESS: (No interpretation)
18 PRESIDING JUDGE FULFORD: Yes, Ms Samson.
19 MS SAMSON: Thank you, Mr President.
20 QUESTIONED BY MS SAMSON: (Continuing)
21 Q. Good afternoon, sir.
22 A. Good afternoon.
23 MS SAMSON: Mr President, I'll continue and hopefully the transcript will catch up.
24 PRESIDING JUDGE FULFORD: Yes. I think you can continue, Ms Samson. Thank
25 you.

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1 MS SAMSON:

2 Q. Last week you told the Court that in 2007 you heard that some children in your
3 neighbourhood had gone to Beni. You heard about the trip to Beni after these people
4 returned from Beni; is that right?

5 A. Yes.

6 Q. I just want to be certain for the transcript that my question and your answer are
7 captured. It's right, isn't it, that you heard about the trip to Beni after the people had
8 returned from Beni?

9 A. I heard about it when they returned.

10 Q. You were not in Beni yourself; correct?

11 A. No, I was not in Beni, and I have never been to Beni. I do not know the town; I
12 have only heard mention of this town.

13 Q. Your knowledge of what took place in Beni comes entirely from other people; that's
14 right, isn't it?

15 A. Yes, it was other people who talked to me about it, and amongst these people who
16 talked to me about these events some of them are still there in their homes.

17 Q. The first person who talked to you about the trip to Beni was (Redacted), wasn't it?

18 A. No, it was not (Redacted). I think I was clear about this: I gave you three items of
19 information to indicate that I knew about the trip to Beni. First of all, I received a report
20 from the parents of (Redacted). What I mean is, his father and his mother.

21 Q. Sir, I'm sorry for interrupting you, I'll be making a request of the Chamber that we
22 move into private session for the continuation of your answer and for a redaction, please,
23 to page 2, line 25 and page 3, line -- actually, on page 3 I don't see the word that I actually
24 heard, the name that I actually heard, your Honour.

25 PRESIDING JUDGE FULFORD: Right. Private session, please, and a redaction as

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1 Ms Samson says to page 2, line 25. And I assume you don't need a redaction to page 3,
2 line 4?

3 MS SAMSON: Not unless the corrected transcript accurately reflects what the witness
4 said, because he did refer to the name.

5 PRESIDING JUDGE FULFORD: Right. It's highly likely to do so, so a redaction please
6 that stretches from line 25, page 2 through to line 3 -- the end of line 4. Good.

7 Ms Samson, you're going to have to assist the witness pick up from where he was, please.

8 *(Private session at 2.10 p.m.) Reclassified as Open session

9 THE COURT OFFICER: We are in private session, Mr President.

10 MS SAMSON:

11 Q. Sir - once again, apologies for the interruption - just to be clear in my question, it
12 was: Didn't you first hear of the trip to Beni from (Redacted), not (Redacted)?

13 A. Yes. As I explained, it was the parents of this child who came to talk to me after
14 they quarrelled; they came to see me because I am the head of the avenue, they came to
15 seek advice, to seek my opinion. That's the first case.

16 The second case was (Redacted) who informed me about it. He went to Beni and
17 then returned. He was with his son. Both of them came to see me, to talk about it, in
18 the neighbourhood. The third case was a report that I received about Beni from Joseph,
19 who is also referred to as Jeff.

20 Q. You convened a meeting of the population on your avenue regarding the trip to
21 Beni; correct?

22 A. No, I do not agree with that statement. We tried to discourage such things. I told
23 the parents of the child -- of the children to be careful because there were people who
24 were coming to tell them lies, so I tried to raise the awareness of the population in order to
25 discourage them against such actions. I told them it was not (Redacted) that was

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1 coming to look for the children; I told them that these were people who were coming in in
2 an improper manner.

3 THE INTERPRETER: The Swahili booth would like to explain that they are hearing
4 telephone noises, the ringing of a telephone, and it's interrupting with their
5 understanding of what the witness is saying.

6 PRESIDING JUDGE FULFORD: Court officer in the DRC, can you please make sure that
7 there are no telephones ringing your end that are going to interrupt the interpreter's
8 understanding of what's being said by the witness, please.

9 THE DRC COURT OFFICER: Your Honour, at the moment, I'm unable to receive any
10 English translation. I have tried to contact the technicians to see if they can sort it out.

11 PRESIDING JUDGE FULFORD: You can hear what I say, though? Yes, Mr Desalliers.

12 MR DESALLIERS: (Interpretation) I would like to bring to the attention of the
13 Chamber a problem which I think is a translation problem. In the French version, we
14 heard that he told the population that the people who were coming were not (Redacted)
15 (Redacted); and in the English version, I can read "I told them that it was (Redacted)
16 I think the witness rather said that he informed the population that the people who were
17 coming were not (Redacted).

18 PRESIDING JUDGE FULFORD: Now, do we have translation on the other end?

19 THE DRC COURT OFFICER: Indeed, your Honour.

20 PRESIDING JUDGE FULFORD: Right. Good. Thank you. Ms Samson, bearing in
21 mind what Mr Desalliers has said, I think that needs clarification. Thank you.

22 MS SAMSON:

23 Q. Did you tell persons from your avenue that the individual who had come to speak
24 to the children was a representative of (Redacted) or was not a representative of
25 (Redacted)

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1 A. I do not fully understand your question. Could you make it clearer? I would like
2 to understand the question you are putting to me so that I can provide you with an
3 adequate answer.

4 Q. Did you say earlier today that the people who were coming to your neighbourhood
5 were from (Redacted) or were not from (Redacted)?

6 A. That person was not an employee of (Redacted), and his name was (Redacted).
7 And the only person who had information on (Redacted) was Joseph, also known as Jeff.
8 It was through Jeff that (Redacted) established contacts with people in my
9 neighbourhood -- in our neighbourhood.

10 Q. At one of your meetings with the other avenue chiefs, you told them, didn't you,
11 about what you heard regarding Beni and about (Redacted) role?

12 A. Yes.

13 Q. And at that time, didn't you tell the avenue chiefs that you had already met with the
14 people of your avenue in order to discuss the same matter with them?

15 A. Here is my answer: With respect to the game that (Redacted) and Joseph - alias
16 Jeff - were playing, I solved that problem. In fact, we regretted that state of things; this
17 was because they came to meet the members of the population, but they shielded the truth
18 from them, because these children were not child soldiers and everyone knew this
19 gentleman.

20 I told the heads, or the chiefs of the avenues, to be careful with these things that were
21 happening and that the things that were happening in our avenue should not happen all
22 over the town. The population had to understand what was happening and everyone
23 had to be prudent; hence, we held a meeting on that subject, and no one was happy with
24 the way things had gone or were going.

25 Q. And my question is that when you say the population had to understand what was

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1 happening, you were the person who told them what was happening; isn't that right?

2 You spoke to the people on your street about the trip to Beni?

3 A. No, that's not how things went. There were certain people who were victims of the
4 situation and who realised that the results of these actions were not good; such people
5 started saying that we should be careful. They said we have been called and asked to
6 bring our children, and it was Jeff and (Redacted) who called us. They came to see us
7 and they said that parents who were poor should have their children registered with an
8 NGO which was going to take care of them to ensure that they do not become street
9 children. That is what they said.

10 However, they had thought that it was the NGO called (Redacted) but, finally, they
11 realised that this was just a trick, and the parents understood that they had to be careful so
12 that their children will not become manipulated and to ensure that the future of their
13 children is guaranteed.

14 Q. Last week you mentioned to the Court - and for the Court's reference, the section
15 was in Transcript 350 of the English transcript, page 55, lines 9 to 12 - that you had the
16 courage to raise awareness of the inhabitants of your avenue to ensure that they did not
17 allow anybody to become registered children of the neighbourhood on the pretext that
18 they were going to be sent to school. My question from that is: Isn't it right that you
19 met with your avenue to discuss this issue in relation to the trip to Beni?

20 A. I think I was clear in my answers, my answers to the questions asked by the
21 Chamber. I have already sworn to speak the truth, because I did not come here to talk
22 about things that did not happen in my town, and I would like to enable your Chamber,
23 to enable the Court, to hear about what happened.

24 This is what happened: The parents themselves came to see me and they said, "Chief, are
25 you aware of what's happening?" They said that people, certain people were having

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1 their children registered and these same people who were doing that came and they
2 informed me that there was somebody by the name of (Redacted) who was registering the
3 children. And they told me that if you are not aware of what is happening, try to ask
4 around, because this man says that he's going to give money, money to those who are
5 going to carry out this activity.

6 They told me, "You can speak to the population and try to know more about this
7 Mr (Redacted), and try to get this gentleman to meet you when he returns. Try to find
8 out why he is registering the children. We have to bring this to your attention." And it
9 is true that this is my responsibility. I am the chief to -- and I am chief to defend the
10 community against anything bad that could happen, anything which is against the law.

11 Q. Isn't it true that you used your influence to warn the people on your avenue that
12 they should deny that children had been child soldiers in the UPC?

13 A. I don't think I am in a position to answer that question. I think I was very clear in
14 my answers, in all explanations which I have given to you. First of all, with respect to
15 the UPC, if you are talking about the army, well, to join the army you had to do this on a
16 voluntary basis. I did not see any children from my army -- sorry, from my avenue
17 going to join the army. I did not see that. If there was someone else who saw that, well,
18 God created many people and each person has his or her own pair of eyes to see.
19 I would say this: If there were people who served in the army in my avenue, well, I can
20 give you an example of such -- examples of such people, and these people know
21 themselves, and there were no children amongst such people. And I have said on
22 several occasions that I am speaking the truth and I am here to edify the Court.
23 Why don't you come down to the field? Come to my avenue and ask around within
24 community to know about what happened and, by so doing, you'll be able to ascertain
25 whether I am speaking the truth or whether I am lying. My testimony will be repeated

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1 or can be repeated to you by any child you meet because I am not telling you anything
2 which is contrary to the truth as I know it.

3 Q. You spoke to the UPC authorities about the Beni trip, didn't you?

4 A. I am in charge of administration. The army is not my area of focus. I am an
5 administrator and I was not designated to serve in the army; that is not a vocation that
6 God chose for me. And I am not someone who goes, moves into domains that do not
7 concern me. My role is limited to my neighbourhood. I submit reports to the head of
8 the neighbourhood and I also submit reports to the head of the chief of the city.

9 Q. You spoke to UPC authorities about the trip to Beni. Could you please focus on
10 that and answer that question?

11 A. I reject your question. I am surprised that we are not able to understand one
12 another.

13 PRESIDING JUDGE FULFORD: I think that's a "no," Ms Samson. Mr Desalliers, you
14 rose.

15 MR DESALLIERS: (Interpretation) I'm sorry, your Honour. Just to point out that it
16 might be better for it to be really a question and -- rather than a statement, because it
17 really wasn't a question that was put, your Honour.

18 PRESIDING JUDGE FULFORD: Fortunately, the witness fully understood it was a
19 question, Mr Desalliers, and treated it as such. Please carry on, Ms Samson, but I think
20 you've exhausted that topic.

21 MS SAMSON:

22 Q. You recall meeting with Joseph. Do you recall meeting with Joseph and other
23 avenue chiefs?

24 A. Yes. I met -- I met Joseph several times over the course of more than two months,
25 but it wasn't on another avenue; rather -- well, he didn't stay -- he didn't live on our

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1 avenue at that time; he lived in Nizi.

2 Q. After this trip to Beni, do you remember meeting with Joseph and with the chief of
3 Uba 1?

4 A. Yes.

5 Q. Do you remember meeting with Joseph and the avenue chief, Chief Ndasi, Chief
6 Kamuhandi and Chief Nembe.

7 A. Yes. I did meet them today, actually.

8 Q. Right now I'm asking about a meeting that took place in or about December 2007.

9 Do you remember having met with Joseph to discuss the Beni trip in the presence of Chief
10 Ndasi, Chief Kamuhandi and Chief Nembe.

11 A. Yes. I told you that often I meet them and each Thursday we have a meeting and
12 that is an opportunity for us to meet one another.

13 Q. Are you saying that you met Joseph this Thursday?

14 A. No, that's not right. I told you that I met Joseph before he left our avenue. After
15 he had an argument with (Redacted) and was arrested by the police, he went -- he
16 went to live in Nizi. However, we meet other avenue chiefs every Thursday each week
17 to look into the situation that prevails within our town.

18 Q. Could I ask you to focus your attention on the period December 2007. In
19 December 2007, do you remember meeting with Joseph in the presence of Chief Nembe,
20 Chief Kamuhandi and Chief Ndasi.

21 A. I was clear in my explanations. I told the Chamber that I meet Ndasi, Nembe and
22 the others regularly and during the meeting -- during the meetings that we hold. As for
23 Joseph, he is one of the kids in the neighbourhood who is always moving about the
24 neighbourhood and, furthermore, he's a person who drinks alcohol, but I don't drink
25 alcohol. He has his home and he moves about the neighbourhood often. He's a free

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1 man. As for December 2007, I'm telling you that I saw him with the other people that
2 you mentioned.

3 Q. When you saw him with the other people that I mentioned, in December 2007, the
4 purpose of the meeting was to bring him to a UPC office, wasn't it?

5 A. No. We talked to one another at the administrative offices of our neighbourhood,
6 and that's all. So I don't know whether later they went to the office of the UPC. I don't
7 know whether Joseph went there to meet with the authorities of the UPC. I don't know
8 about that.

9 Q. You don't remember taking Joseph to the UPC office and introducing him there to
10 John Tinanzabo, Dieudonné Mbuno and a man named Ernest?

11 A. No, I never gave a report to the UPC about what was happening in my
12 neighbourhood. In our neighbourhood, it's not just the UPC; that's not the only political
13 party. There's the MLC, the PPRD and many other parties. I don't know the acronyms
14 for those other parties. Now, if it were a matter of giving a report to someone, why
15 wouldn't I give those reports to other people, other parties? So there's a question, there's
16 a question for you.

17 Q. At the moment, sir, I'm not discussing your reports to the UPC; I'm discussing
18 whether or not you took Joseph to the UPC office so that he could meet with UPC
19 authorities John Tinanzabo, Dieudonné Mbuna and a man named Ernest. Now, did you
20 take him to the UPC office or not?

21 A. No, no.

22 Q. You must be aware as head of your street, or your avenue, that Mr Cordo and
23 Dieudonné Mbuna regularly met with Ndjango and his family about the trip to Beni?

24 A. I've already answered that question. I said that I had no answer to your question,
25 because I don't know about the activities of the political parties; I don't know what's going

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1 on in other political parties. What I knew had to do with the UPC. I don't know the
2 secrets of the various political parties that are operating in our neighbourhood and, what's
3 more, I am not very familiar with Mbuna. So what kind of cooperation would there have
4 been between him and I?

5 As for Cordo and Guillaume, those are members of my community. When, for example,
6 there's a bereavement in our neighbourhood we help one another. As for Solongo, we all
7 help one another. When there's a hold-up, we defend the victims together. So that's the
8 answer -- that's the answer to your question.

9 Q. Isn't it true that the real purpose of your meetings with Joseph - or (Redacted)
10 family - was to put pressure on them to deny that (Redacted), Django, (Redacted) and
11 others had been child soldiers in the UPC?

12 A. No, that's not right. I've repeated several times what happens in our
13 neighbourhood. I have the impression that we -- that this is like we're actors in a play,
14 and I think it would be good if the Chamber were to go into the field so that they could
15 understand what is going on in our neighbourhood and to really become emersed in the
16 reality within the Simbiliabo neighbourhood, in the town of Bunia in general.
17 Instead of asking me such questions, you really have to experience the reality in the field.
18 I am answering you in relation to what I experienced every day. Personally, I can't
19 answer a question that I don't know all the ins and outs about.
20 I made an oath to tell the truth. It's possible that I might get things wrong - I'm a human
21 being - but I do know everything that is going on in the Simbiliabo neighbourhood,
22 Avenue Lopidi 1, but I would suggest that the Chamber should come down to our part of
23 the world, and find out what is going on and what the community is experiencing in our
24 neighbourhood. Otherwise, I think -- I have the impression that this -- really, this is
25 pointless, that all of this is pointless.

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1 PRESIDING JUDGE FULFORD: Ms Samson, although the witness gave a long answer to
2 that question, I think at the beginning there was a clear denial of the suggestion you made
3 and we will certainly treat it in that way.

4 MS SAMSON: Thank you, your Honour. I won't go over that again.

5 Q. And you also told the Court last week that those who went to Beni told you they did
6 not want to get involved in politics. And for the Chamber's reference, that's Transcript
7 350 of the English transcript, page 56, lines 8 to 9.

8 In fact, isn't it you and others who told the persons who went to Beni, such as Joseph and
9 Ndjango, that they should not get involved in politics?

10 A. I'll respond to your question with great joy. There are some people who went to
11 Beni, and I would suggest to the Chamber that they should call them and ask them to give
12 testimony, those people who went to Beni; in particular, (Redacted), his son (Redacted)
13 (phon), as well as (Redacted) who was representing (Redacted).

14 There was also another young man by the name of Ndjango, and there was also
15 Vincent - a fellow by the name of (Redacted) - the son of (Redacted), who is deceased.
16 All of them went to Beni and then they disappeared. Later, they told us what had
17 happened in Beni; and when they went there, they thought that they were going to receive
18 some assistance to fight against something, an anti-poverty measure.

19 And when they got there, they were asked to state that they had been child soldiers.

20 And they came back from Beni and there was an alert in our neighbourhood. They came
21 back with telephones, but those portable phones were stolen from them.

22 THE INTERPRETER: The Swahili interpreter points out that the witness is speaking too
23 quickly. The interpreter from the Swahili booth is telling us that the witness is speaking
24 too quickly.

25 PRESIDING JUDGE FULFORD: Sir, I'm going to interrupt you. Sir, I'm afraid you're

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1 speaking too quickly and your answers are tending to get too long. Ms Samson asked
2 you what was a relatively short question, which was whether or not you were giving
3 particular advice. Now, could you try and focus on the matters that she puts to you, and
4 answer them in a way that's slow, and try and focus if you can on the particular issue that
5 she's raised.

6 Now, Ms Samson, I've interrupted the witness. We lost part of his answer anyway, so I
7 think you must, looking back at the answer he's provided, you must put such part of the
8 question again, if you wish to. And, sir, I'm going to repeat: Can you please try and
9 speak relatively slowly and focus very carefully on the particular issue that Ms Samson
10 raises.

11 THE INTERPRETER: Many thanks from the interpreters.

12 MS SAMSON:

13 Q. Isn't it true --

14 A. Thank you.

15 Q. Isn't it true that you and others told Ndjango and Joseph not to get into politics and
16 that this was a warning to them to deny that persons had served as child soldiers in the
17 UPC?

18 A. I've been clear in my answer. Joseph realised that there was a person who was
19 deceiving him, saying that he had received money. And he came to tell me, he said,
20 "Chief, I disappeared. I went missing. I ducked out the back door." And he was
21 aware of the fact that those children never were part of an armed group that operated in
22 our town. That is something that was happening in broad daylight and everyone knew
23 about it.

24 MS SAMSON: Your Honour, may I ask the Court's indulgence for one moment.

25 THE INTERPRETER: Correction from the English booth. In the last reply, the witness

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- 1 said that there was a person who had deceived him saying that he would receive money.
- 2 PRESIDING JUDGE FULFORD: Yes, Ms Samson.
- 3 MS SAMSON: May I have one moment, your Honour.
- 4 (Pause in proceedings)
- 5 Thank you very much for the indulgence. I have no further questions.
- 6 PRESIDING JUDGE FULFORD: Thank you. Do you have any questions, Mr Diakese?
- 7 MR DIAKESE: (Interpretation) No, your Honour.
- 8 PRESIDING JUDGE FULFORD: Thank you very much. Anything further,
- 9 Mr Desalliers and, if so, how long?
- 10 MR DESALLIERS: (Interpretation) Two minor questions, very quickly, your Honour.
- 11 PRESIDING JUDGE FULFORD: Certainly. Thank you very much. In private or in
- 12 public, Mr Desalliers?
- 13 MR DESALLIERS: (Interpretation) I will verify that point with my team, your Honour.
- 14 In open session, your Honour.
- 15 PRESIDING JUDGE FULFORD: Please.
- 16 (Open session at 3.00 p.m.)
- 17 THE COURT OFFICER: We are in open session, Mr President.
- 18 QUESTIONED BY MR DESALLIERS: (Interpretation)
- 19 Q. Good afternoon, sir.
- 20 A. Good afternoon.
- 21 Q. I'd like just one clarification in connection with the questions that were put to you by
- 22 the Prosecution. At one point mention was made of Guillaume Lodji, also known as
- 23 Cordo. When you met the delegation of the Prosecution in December 2010, in Bunia at
- 24 the Prosecution's office, were questions put to you concerning this person?
- 25 A. Yes, questions were put to me concerning Guillaume Lodji. Most specifically, I was

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1 asked who he was, where he lived and what his profession was; and I provided an answer
2 to each of these questions. I was also asked whether I had had any form of cooperation
3 with him of any nature and I said I had never collaborated with him. He was a member
4 of the community that I administer. He had his work, I had mine. That is the answer I
5 gave on that opportunity.
6 Thereafter, I was asked other questions concerning the events that unfolded in the
7 neighbourhood, concerning the children who had been recruited to go to Beni. And I
8 was asked whether Cordo was aware of these events. My answer was that what had
9 happened in the neighbourhood was known to Cordo, but I did say I did not know what
10 his reaction was. I said that he should be called to come and answer because he was
11 there, he was married, he has children. I said that and I was asked to confirm that.
12 And I was asked further what he had done in connection with these events, and my
13 answer was, "Well, I just didn't know what his role was. I had no idea what his action
14 had been in connection with those events." I also said in connection with the political
15 parties that in my neighbourhood there are many political bodies -- parties, and I do not
16 know the role played by each of them. This is what I said.
17 I was further asked questions on the demobilisation of children and I was asked
18 specifically whether Cordo had taken part in the demobilisation of children. I said that
19 he worked at the CSA, and that the Congolese government had asked that all the military
20 men be demobilised. And I think I will stop here.

21 Q. Thank you very much, sir.

22 MR DESALLIERS: (Interpretation) Your Honour, in the course of my
23 examination-in-chief there were two documents in connection with which I had not asked
24 for a reference EVD, this is in number 7 of our file, and I do not believe an EVD reference
25 number had been given to it. I'll give you the number again: DRC-201-003-5965.

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- 1 THE COURT OFFICER: Yes, Mr President. The document as referenced by Counsel
2 will be attributed reference EVD-D01-01100 and will be marked as public, unless
3 otherwise instructed.
- 4 PRESIDING JUDGE FULFORD: Now, I think there was a further outstanding EVD
5 number, is that right or was that the one?
- 6 THE COURT OFFICER: That's the one, Mr President.
- 7 PRESIDING JUDGE FULFORD: Good. Thank you very much. A moment, please.
8 (Trial Chamber confers)
9 Yes.
- 10 MR DESALLIERS: (Interpretation) I do apologise, your Honour. The last point is that
11 file number 1 is the draft from the witness; the original is in the Chamber. With the
12 permission of this Chamber, sir, can it be given back to the witness once we are through
13 considering it?
- 14 PRESIDING JUDGE FULFORD: We have an extremely good photocopy, I think,
15 Ms Samson. Can you think of any sustainable reason why this shouldn't be returned to
16 the witness?
- 17 MS SAMSON: No, Mr President, the photocopy is sufficient.
- 18 PRESIDING JUDGE FULFORD: Thank you very much. Now, anything else for this
19 witness, Mr Desalliers.
- 20 MR DESALLIERS: (Interpretation) No, sir. Thank you very much indeed.
- 21 PRESIDING JUDGE FULFORD: Sir, that now brings your evidence to a close, and I want
22 to extend the thanks of the Judges before you leave for the assistance that you have
23 provided to us. We are very much aware of the inconvenience that will have been
24 involved to you in giving evidence and, possibly, the existence of an element of danger for
25 you resulting from your cooperation with the Court.

Trial Hearing
Witness: DRC-D01-WWWW-0036

(Open Session)

ICC-01/04-01/06

1 In order for the Judges to be able to find the truth in this case, it is critical that witnesses
2 for both the Prosecution, and the Defence and on behalf of participating victims are
3 prepared to come and testify before us. It's an indispensable part of the process.
4 Therefore, you can leave now with our sincere thanks for your assistance and cooperation.
5 (The witness is excused)

6 PRESIDING JUDGE FULFORD: Court officer -- court officer in the DRC, I want to thank
7 you for your assistance. I think you're now able to return to Holland. Thank you very
8 much.

9 THE DRC COURT OFFICER: Thank you, your Honour.

10 PRESIDING JUDGE FULFORD: We can terminate the connection.

11 There are a few matters of housekeeping that we need to address. The first is that
12 Witness 19, at the close of his testimony, raised a number of issues but a particular focus
13 of his concern was that he was filmed during the period when he was being taken to the
14 aircraft prior to coming to Holland.

15 He suggests that this demonstrates that the ICC was unable properly to protect him, and
16 to ensure that his dignity and self-respect was upheld. We require a report from the
17 relevant official in the Registry as to what occurred so that we can have a full
18 understanding of the extent to which the events described by the witness have been
19 accurately relayed to us, coupled with any comments that it is felt appropriate to give on
20 the particular complaints that were raised by the witness.

21 Unless reasons are given for a greater period of time, that report should please be with us
22 three weeks from today at 4 p.m. We will then make a decision as to whether somebody
23 from the Registry should write to Witness 19 or whether the Chamber will write directly.
24 Ms Samson, on Friday there was a request for nondisclosure of information in six
25 documents. It's very late in the case to be applying for nondisclosure of information. Is

1 there any particular reason why this application is being made so late?

2 MS SAMSON: Your Honour, I believe that this application related to materials that have
3 been transmitted to the Defence already but in redacted form, and there may have been a
4 delay on our part in terms of communicating the request or making the request to the
5 Chamber from the date of disclosure until now. I can only apologise for the delay.

6 PRESIDING JUDGE FULFORD: Thank you, Ms Samson. We will obviously have to
7 rule on that request. If as a part of our decision we order that there should be further
8 disclosure of information to the accused, the fact that the timetable that we have set for
9 closing statements has been set does not act as any bar to the Defence raising the issue
10 with us if it is considered that there are consequences that need to be addressed
11 evidentially following any order of disclosure that we make.

12 In addition, we are aware that as a result of other decisions that we have taken, within the
13 next few days or weeks, there may be some very limited additional disclosure to the
14 Defence. Exactly the same point applies.

15 If following that disclosure there are matters that the Defence wishes to raise there is no
16 prohibition at all on you doing so, and if there are consequences then we will need to
17 address them.

18 Ms Samson, I want to turn now, briefly, to a document which has been known as
19 Document 89. Does that, that in itself doesn't ring sufficient bells?

20 MS SAMSON: It doesn't. May I have one moment, please?

21 PRESIDING JUDGE FULFORD: There is a 54 (3)(e) document that came up recently.

22 MS SAMSON: Yes, your Honour, I'm aware of the document.

23 PRESIDING JUDGE FULFORD: Right. In the -- this document is being considered by
24 us on a, I think on a number of occasions, certainly more than once, and as a result of the
25 recent stance taken by the information provider, a small amount of additional material has

1 now been furnished to the Defence. Are you confident that notwithstanding what
2 appear to be extensive redactions that, nonetheless, the full extent of any exculpatory or
3 Rule 77 material has now been disclosed to the accused?

4 MS SAMSON: Your Honour, just to clarify the Chamber's question: The Chamber's
5 question is separated from the recent disclosure as it related to Witness 37 but, more
6 broadly, is there any information that is currently redacted within the document that may
7 be disclosable under Article 67(2) or Rule 77?

8 PRESIDING JUDGE FULFORD: It's just that for somebody who hasn't seen the entirety
9 of the document, notwithstanding the fact that additional material has now been provided,
10 there is undoubtedly a question mark as to the areas blanked out and all I'm seeking to do
11 publicly, and most particularly in the presence of the accused, is to seek the Prosecution's
12 reassurance that you are now happy that everything that's exculpatory or comes within
13 Rule 77 is now within the possession of the accused, notwithstanding the existence of
14 Article 54(3)(e) agreements?

15 MS SAMSON: Thank you for the clarification. Yes, your Honour, the Prosecution has
16 reviewed this document and has raised with the information provider any information
17 contained within it that in our assessment met disclosure obligations towards the accused
18 and, in our submission, where that information was disclosable we have had -- we've been
19 able to disclose it to the Defence. The document still has redactions to it but the
20 disclosable information, in our assessment, has been disclosed.

21 PRESIDING JUDGE FULFORD: Thank you very much. It follows, then, that we should
22 place formally on the record that on Wednesday, 13 April, at 11 minutes past 9 in the
23 morning, the Prosecution sent an email to the Chamber requesting protective measures
24 for a document that related to Defence Witness 37 that had been obtained pursuant to
25 Article 54(3)(e) of the Statute prior to its disclosure to the Defence.

1 A legal officer, acting on the instructions of the Judges, one of the legal officers within
2 Chambers, informed the Prosecution orally before the hearing that the Chamber, having
3 fully considered the matter, granted the same protective measures in relation to this
4 document that have previously been granted for similar Article 54(3)(e) documents.
5 Once the Prosecution had received that order, the document in question was provided to
6 the Defence prior to the beginning of the hearing on 13 April.
7 The protective measures that were granted have been summarised by Ms Samson in her
8 email to the Chamber of 11 minutes past 9, on 13 April 2011, and that description of the
9 protective measures is a summary of the measures that were originally raised and
10 approved by the legal counsel to the United Nations in her letter to the Prosecutor dated 6
11 April 2009.
12 Ordinarily, at this stage of the proceedings, it would be incumbent on the Judges, under
13 Rule 141(1) to announce that the evidence in the case is closed. However, there is an
14 outstanding issue in relation to Witness 5.
15 Without giving any guarantees, the Chamber is hopeful that that issue will be resolved
16 over the next two days, one way or the other. If there is to be further evidence, clearly
17 Rule 141 will be dealt with at that point in time. If there is to be no further evidence
18 there will be a written order from the Chamber indicating that the evidence in the case has
19 closed.
20 As we say, any order of that kind is subject to the entitlement of the Defence to revert to
21 the Chamber if there are any consequences following any disclosure which takes place
22 over the next few days or weeks.
23 Either way, whatever our decision on Witness 5, the schedule laid down by the Chamber,
24 as regards closing statements, applies. So the clock, as it were, has started ticking, and
25 nothing save for an earthquake will stop it.

1 Now, before we rise, is there anything that anybody wishes to raise? Ms Samson, no?

2 Maître Mabilie?

3 MS MABILLE: (Interpretation) Just one second, if I may, sir. Your Honour, indeed,
4 the Defence is not asking for an earthquake so as to radically change our schedule. This
5 being said, sir, if the decision on 005 were to be taken by the Chamber along certain lines
6 this may reopen for the Defence, in our opinion, the right to be able to itself call
7 afterwards, in the course of the further hearings, further evidence to be considered so this
8 is subject to your consideration of this request, sir.

9 PRESIDING JUDGE FULFORD: I think one thing I can say with confidence, Maître
10 Mabilie, is that if we were to take a course which allowed the Prosecution at this stage to
11 introduce evidence by way of rebuttal you would then be entitled, if you wished, to apply
12 to call further evidence to carry out further investigations if necessary to address that.
13 Whether or not we granted that request is of course another matter but you would most
14 certainly be entitled to make that request.

15 Good. Thank you all very much. We shall rise.

16 THE COURT USHER: All rise.

17 (The hearing ends at 3.25 p.m.)

18 RECLASSIFICATION REPORT

19 Pursuant to Trial Chamber I's email instruction dated 7th December 2011, the
20 transcript is reclassified as public after the indicated redactions have been
21 implemented as ordered by the Chamber. All private and closed sessions (*) are now
22 available to the public with the exception of the portions of the transcript that have
23 been redacted.

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