

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito
4 and Judge René Blattmann
5 Situation in the Democratic Republic of the
6 Congo - ICC-01/04-01/06
7 In the case of The Prosecutor v. Thomas Lubanga Dyilo
8 Tuesday, March 16 2010
9 (The hearing starts at 11.05 a.m.)
10 *(Closed session) Reclassified as Open session
11 THE COURT USHER: All rise. Please be seated.
12 THE COURT OFFICER: Good morning, your Honours. We are in
13 closed session.
14 PRESIDING JUDGE FULFORD: Good morning. I want to apologise
15 to the representatives of the Prosecution and the legal representatives
16 for the fact that I think it wasn't until this morning that you learned
17 that there was an ex parte hearing today. We, in fact, sent out the
18 message last night, but I am told it was too late for it to be picked
19 up. But we tried to communicate with everyone to say that there was
20 going to be an ex parte, but it seems as though the message didn't
21 get through. But, nonetheless, apologies for the inconvenience.
22 Witness, please.
23 (The witness enters the courtroom)
24 WITNESS: WWW-D01-0005 (On former oath)
25 (The witness answers through interpreter)

1 PRESIDING JUDGE FULFORD: Private session, please.

2 Good morning, Madam.

3 *(Private session at 11.07 a.m.) Reclassified as Open session

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

5 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

6 QUESTIONED BY MS STRUYVEN:

7 Q. Madam Witness, yesterday you explained to us that you met
8 Mbuna in a house with a UPC soldier called (Redacted) and you said that you
9 didn't know Mbuna before you met him that day. And you explained to
10 us that Mbuna asked you if you went to the (Redacted) centre and you said
11 "Yes," and then Mbuna asked you if you had served in the military and
12 you said "No." And you explained to us that Mbuna asked you to testify.
13 Do you remember that?

14 A. Yes, I remember that.

15 Q. And you agreed to testify; correct?

16 A. Yes.

17 Q. Now, in whose trial were you supposed to come and testify?

18 A. I was not --

19 THE INTERPRETER: Inaudible.

20 THE WITNESS: -- which trial I would be.

21 THE INTERPRETER: The witness in the Swahili booth wishes
22 to point out -- pardon me, the interpreter in the Swahili booth wishes
23 to point out that the witness is speaking very lowly, very quietly.

24 MS STRUYVEN:

25 Q. Madam Witness, could you repeat that and talk a little bit

1 harder?

2 A. Please repeat the question and I will also repeat my answer.

3 Q. My question was, did Mbuna tell you in which trial you were
4 to come and testify?

5 A. No --

6 THE INTERPRETER: Inaudible.

7 THE WITNESS: -- he told me to wait and that the lawyers
8 would meet with me and then I would be asked some questions.

9 THE INTERPRETER: Message from the English booth: Most
10 unfortunately, we are having some technical difficulties.

11 PRESIDING JUDGE FULFORD: Right. Can the court officer
12 please find out what the technical difficulties are.

13 THE INTERPRETER: Some crackling from the Swahili booth
14 which makes it very difficult to hear the Swahili into French
15 interpretation.

16 PRESIDING JUDGE FULFORD: Right. I am told we can try again.
17 Carry on, please, Ms Struyven.

18 MS STRUYVEN:

19 Q. So Mbuna didn't tell you in which trial you were to come
20 and testify; is that correct?

21 A. Yes.

22 Q. So, a total stranger comes to you, asks you to testify and
23 you agree to that without knowing in which case you are supposed to
24 testify? Is that your testimony?

25 A. I don't understand the question, the Swahili that was used.

1 Could you repeat the question slowly so that I understand it.

2 PRESIDING JUDGE FULFORD: I think, Ms Struyven, the
3 question actually is just to emphasise answers that have already been
4 given. I think it is more of a rhetorical flourish, rather than a
5 necessary question, so could you move on.

6 MS STRUYVEN:

7 Q. Madam Witness, did Mbuna during that first meeting mention
8 (Redacted)?

9 A. Yes, she spoke to me of (Redacted). Someone spoke to
10 me of (Redacted). I was asked if (Redacted) had been a soldier, or
11 not.

12 Q. Madam Witness, I am asking you questions about your first
13 meeting with Mbuna, and my first question is: Did Mbuna mention (Redacted)
14 to you?

15 A. I've forgotten somewhat. I know that he spoke of (Redacted).

16 Q. And what did he say about (Redacted)?

17 A. He asked me if (Redacted) had been a soldier and, if so, whether
18 she had been in the (Redacted) centre, and I said, yes, she had.

19 Q. Did he mention anything else about (Redacted)?

20 A. I no longer remember.

21 Q. Did he mention anything about the ICC in relation to (Redacted)?

22 A. Yes, he said that he had business with the people from here,
23 that there were people who were seeking help from him and that the
24 ICC was looking for witnesses concerning the situation of people like
25 (Redacted).

1 THE INTERPRETER: The Swahili interpreter did not hear what
2 the witness said.

3 THE WITNESS: He said that the ICC was in the process of
4 looking for individuals like (Redacted).

5 MS STRUYVEN:

6 Q. Did he mention that (Redacted) was going to come and testify
7 before the ICC?

8 A. No.

9 Q. Did he show you a picture of (Redacted)?

10 A. No.

11 Q. Did he show you any other documents?

12 A. Yes.

13 Q. Which documents did he show you?

14 A. I know that --

15 THE INTERPRETER: Inaudible.

16 THE WITNESS: -- but I've forgotten what kind of document
17 it was.

18 PRESIDING JUDGE FULFORD: Can you pause for a moment,
19 Ms Struyven.

20 (Trial Chamber confers)

21 PRESIDING JUDGE FULFORD: I think this is becoming
22 unsatisfactory. There are on a number of occasions -- there is, on
23 a number of occasions, a crackling noise which is clearly periodically
24 preventing proper interpretation taking place. From where I am sitting,
25 the witness is speaking in a broadly consistently appropriate level

1 voice, but it is not being picked up at some stage through the
2 interpretation, and this is not satisfactory because too much is being
3 lost. I am afraid we are going to have to rise so this can be properly
4 dealt with.

5 Madam, I am sorry to interrupt your evidence after you have
6 only been here for quarter-of-an-hour, but we cannot continue having
7 your evidence not being interpreted properly.

8 Closed session, please.

9 *(Closed session at 11.19 a.m.) Reclassified as Open session

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

11 PRESIDING JUDGE FULFORD: Thank you, usher.

12 (The witness stands down)

13 PRESIDING JUDGE FULFORD: Right. Can somebody from IT,
14 please, very quickly find out what it is that is causing the intermittent
15 crackling noise and rectify it? We will sit as soon as this has been
16 dealt with.

17 THE COURT USHER: All rise.

18 (Recess taken at 11.20 a.m.)

19 (Upon resuming at 11.35 a.m.)

20 *(Closed session) Reclassified as Open session

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

22 PRESIDING JUDGE FULFORD: Well, there's a gremlin in the
23 machinery which can't be found, and apparently it's now working better.
24 Witness, please.

25 (Pause in proceedings)

1 PRESIDING JUDGE FULFORD: The baby is now being fed. We
2 will wait just outside the door until the witness is ready again to
3 join us.

4 (Recess taken at 11.40 a.m.)

5 (Upon resuming at 11.43 a.m.)(

6 *(Closed session) Reclassified as Open session

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

8 PRESIDING JUDGE FULFORD: Witness, please.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FULFORD: Private session, please.

11 *(Private session at 11.44 a.m.) Reclassified as Open session

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

13 PRESIDING JUDGE FULFORD: Yes, Ms Struyven.

14 MS STRUYVEN:

15 Q. Madam Witness, before the break you said that Mbuna showed
16 you documents. To whom were these documents related?

17 A. He showed me a document related to (Redacted).

18 Q. And did you read that document?

19 A. No, I didn't read it.

20 Q. So he showed you a document, but you didn't read it? Is
21 that how I have to understand it?

22 A. I did not read the document in question. However, he
23 explained to me what it was. That's it. He explained to me a little
24 bit what the document was all about.

25 Q. So what did he explain you?

1 A. Well, with respect to the document, he told me that there
2 was a problem in The Netherlands; a problem related to victims. That's
3 what he told me.

4 Q. What was the problem related to victims?

5 A. He said that the victims had claimed to have been soldiers,
6 so he wanted to know whether or not these victims had, indeed, served
7 as soldiers.

8 Q. And what was the problem that he referred to?

9 A. Could you please repeat your question?

10 Q. You said that --

11 PRESIDING JUDGE FULFORD: No, no. Wait a moment, please,
12 Ms Struyven. Yes, Maître Mabilille.

13 MS MABILLE: (Interpretation) Well, if my understanding
14 of the transcript is correct, I think this question was asked in exactly
15 the same terms a short while ago, and I think my learned colleague
16 is, therefore, asking the same question twice.

17 PRESIDING JUDGE FULFORD: Well, Ms Struyven has asked the
18 question over the last few lines twice because she didn't get a
19 satisfactory answer first time round. But do you say this has been
20 dealt with on an earlier occasion, Maître Mabilille?

21 MS MABILLE: (Interpretation) I said, your Honour, that
22 the question was exactly the same as the question she asked earlier.

23 PRESIDING JUDGE FULFORD: Thank you very much. Now,
24 Ms Struyven, if you look at the English, page 8, line 4, you will see
25 that you put the question "What was the problem related to victims?",

1 and an answer was then given. Maître Mabilille's point is that you are
2 now asking exactly the same question again, given that an answer has
3 been provided. Isn't this repetitive? Good. Move on then, please.

4 MS STRUYVEN:

5 Q. And what else did Mbuna say about these victims who claimed
6 to have been soldiers?

7 A. He added that the victims had said that they had been raped
8 and he asked me questions about that particular point.

9 Q. What did he ask you about the rapes?

10 A. I beg your pardon?

11 Q. You explained --

12 A. Other questions?

13 Q. You explained that Mbuna said that victims said they were
14 raped and you explained to us that Mbuna asked you questions about
15 that. So my question is: What did he ask you about that?

16 A. I do not remember that any longer.

17 Q. Earlier you said that Mbuna asked you questions about (Redacted).
18 Did you explain at that point in time that you had lived with (Redacted)?

19 A. Yes, I told him about that.

20 Q. Now, you said that afterwards you met the Defence lawyers.
21 My first question is: Did you meet Mbuna again after that first meeting,
22 but before you met the Defence lawyers?

23 A. (No interpretation)

24 PRESIDING JUDGE FULFORD: The witness's answer has not been
25 interpreted into English. The witness gave an answer and could the

1 Swahili booth please give that answer.

2 THE INTERPRETER: No.

3 PRESIDING JUDGE FULFORD: No. Right. There we are.

4 Please carry on, Ms Struyven.

5 MS STRUYVEN:

6 Q. Did you meet anyone else in that period? So after the first
7 meeting with Mbuna, but before you met the Defence lawyers, did you
8 meet anyone else about this issue?

9 A. No, I met Mr Mbuna and I spoke to him. Later on, he made
10 me meet the lawyers. I did not meet any other people apart from those
11 ones I spoke about.

12 Q. When did you meet the lawyers for the first time?

13 A. We met for the first time, but we did not discuss for long.
14 Afterwards, I returned home. Later on we had a second meeting.

15 Q. And the first time you met the Defence lawyers, in which
16 year was that?

17 A. If my memory is correct, I think it was in the year 2008,
18 if my memory is correct.

19 Q. Do you remember if your oldest child was -- if you were
20 already pregnant of your oldest -- youngest child?

21 A. No, I was not yet pregnant.

22 Q. And so the first time you met with the Defence lawyers how
23 long did you meet, more or less?

24 A. After that meeting, I met no one else.

25 Q. My first question is: The first time you met the Defence

1 lawyers how long more or less did you meet?

2 A. The meeting did not last for long; not even up to five minutes.

3 Q. Just maybe another question before I move on: How long,
4 more or less, did the meeting, the first meeting with Mbuna, last for?

5 A. Stay with Mbuna where?

6 Q. I will continue to ask you questions about the Defence lawyers
7 in a minute but, before I do, I have one more question about your first
8 meeting with Mbuna and that question is: Can you tell us, more or
9 less, how long the first meeting with Mbuna lasted?

10 A. When I met him the first time he introduced me to the lawyers.
11 After that we never met again. A lot of time passed. Before my second
12 meeting with the lawyers he told me to get ready and that he would
13 come to pick me up and drive me to the lawyers because they were going
14 to be arriving soon.

15 Q. No, but earlier you testified that you first met Mbuna with
16 this UPC soldier called (Redacted) and he asked you a series of questions.
17 And my first question is: How long, more or less, did that first meeting
18 with Mbuna last?

19 A. The meeting lasted for about one hour. It lasted a while.

20 Q. Thank you for that clarification. So, now we are at the
21 first meeting with the Defence lawyers and you say that that meeting
22 lasted for more or less five minutes. Did the Defence lawyers ask
23 you questions about (Redacted) during that first meeting?

24 A. No. On that first occasion, no questions were put to me
25 on that subject.

1 Q. And then if I understand you correctly, you had another
2 short meeting with Mbuna, who came to inform you that the Defence lawyers
3 wanted to see you again; is that correct?

4 A. Yes, that's right. Because the first time I didn't explain
5 the facts properly. We did not have a good discussion.

6 PRESIDING JUDGE FULFORD: Yes, Maître Mabilie.

7 MS MABILLE: (Interpretation) Your Honour, I didn't speak
8 before, but the Defence is wondering about the relevance of questions
9 from the OTP, the questions currently being put to the witness. No
10 question regarding substance has been asked. We've only heard
11 questions regarding our work methods, the work methods of our resource
12 person, and those of the Defence counsel who are leading investigations.
13 So I am wondering what is the relevance of these questions and what
14 arguments will be advanced by the OTP on the basis of these questions.
15 So those are my observations at this particular point in the proceedings.

16 PRESIDING JUDGE FULFORD: Thank you, Maître Mabilie. If
17 Ms Struyven doesn't wish to address various issues of substance, as
18 you perceive them, that's really a matter for her as to what she considers
19 needs to be addressed from the Prosecution's perspective.

20 As regards what happened with the meetings with you and
21 your -- the meetings between the witness and members of your team,
22 I suspect that Ms Struyven is interested in the way in which the witness's
23 account as given to us now evolved. But I shall wait to hear from
24 Ms Struyven on that. In a sentence, the reason for investigating this?

25 MS STRUYVEN: That's correct, your Honours. And there's

1 also an issue of substance that was put to our witnesses and the timing
2 of the questions being asked in 2008/2009.

3 PRESIDING JUDGE FULFORD: Thank you for the intervention,
4 Maître Mabilie. You can continue, Ms Struyven. Thank you.

5 MS STRUYVEN:

6 Q. So when Mbuna came to pick you up to meet the Defence lawyers
7 again, did you discuss any substance with Mbuna, or did you talk straight
8 to the lawyers?

9 A. I just spoke to the lawyers.

10 Q. And was this your only meeting? So, the second meeting with
11 the lawyers, was this your last meeting with the lawyers?

12 A. No. It was then that I spoke with the lawyers.

13 Q. Okay. So I will now ask you questions about that second
14 meeting with the lawyers. Can you tell us, more or less, how long
15 that meeting lasted?

16 A. In terms of minutes, I could say ten minutes. The meeting
17 did not last for a long time. It is difficult, you know, to determine
18 how long a meeting may take, but that meeting did not take more than
19 ten minutes.

20 Q. And did the Defence lawyers ask you questions about (Redacted)?

21 A. Yes.

22 Q. And did they explain to you why they were asking questions
23 about (Redacted)?

24 A. No, they didn't tell me why they were asking those questions.

25 Q. Did they tell you anything about (Redacted) testifying before

1 the ICC?

2 A. No. No.

3 Q. After these meetings, did you discuss the issue with anyone
4 else in Ituri?

5 A. After what? After which event? After which discussion or
6 event? I don't really understand.

7 Q. So after your second meeting with the Defence lawyers where
8 you discussed your relationship with (Redacted) and the issue of (Redacted)
9 and other issues probably, did you talk about this with anyone else
10 before coming here to testify?

11 A. No.

12 Q. So if I understand you correctly, Mbuna didn't tell you
13 that (Redacted) testified before this Court, and the lawyers didn't tell
14 you that (Redacted) testified before this Court, and you didn't discuss
15 the issue with anyone else; is that correct?

16 A. I'm not quite following you.

17 Q. You explained to us that Mbuna didn't tell you anything
18 about (Redacted) testifying before this Court, and you told us that the
19 Defence lawyers didn't tell you that (Redacted) testified before this
20 Court. Maybe I will ask you another question.

21 PRESIDING JUDGE FULFORD: Well, Ms Struyven, in fact, given
22 the answers that the witness has given, you really don't need to put
23 this kind of compendious follow-up question asking her to repeat what
24 she's already said. So can we move on to something new, please.

25 MS STRUYVEN: I do have one additional question on that.

1 PRESIDING JUDGE FULFORD: Certainly. As long as it's new,
2 Ms Struyven, not a repetition, yes.

3 MS STRUYVEN:

4 Q. So my question to you, Madam Witness, is: Why did you ask
5 for protective measures to come and testify before this Court if you
6 didn't know whose testimony you were coming to contradict?

7 A. I asked for protective measures because my husband is a
8 (Redacted). My husband belongs to the (Redacted)
9 (Redacted). A (Redacted) vehicle came to get me to take
10 me to the airport, at that point I went to (Redacted). When I was in
11 (Redacted), my husband phoned me and said to me, "No one knows that have
12 gone to (Redacted), but the (Redacted)
13 are asking me... saying that my spouse is going to testify in The Hague.
14 Under what circumstances is she going to The Hague?" And I said -- and
15 I said, "No, she's gone to (Redacted) to visit my relatives. She's not
16 gone to The Hague." My husband was surprised at these questions. He
17 told them that I was still at home and I would be leaving the following
18 week. He told them that I wasn't going to be going to The Hague. "What
19 would she be going to The Hague for?", my husband said to them. He
20 was surprised and he asked me, "Why is it that people know?" And that
21 frightened me a lot.

22 But before I got here, I told no one, and no one knows that
23 I'm here, except for the lawyers. The lawyers asked me to come, but
24 they didn't even give me the date of my arrival. That date was kept
25 confidential. You know, it's difficult to hide such information from

1 someone living under the same roof. Also, he knew this information
2 because he is a (Redacted). I was afraid. That
3 is why I asked for protective measures.

4 Q. What things frightened you?

5 A. There are many people who are afraid to come here since -- when
6 you learn that someone has arrived here and people start to talk about
7 it, certain persons are not happy and that can lead to problems for
8 the person who has come here to give testimony.

9 Q. Who is causing these problems for people that testify here?

10 A. There's no way of knowing. You can't know which people might
11 be causing you trouble.

12 Q. Are you talking about people from Bunia who cause trouble?

13 A. People from my birth place or my place of residence. People
14 would be asking questions. "How did she get there? What trial is she
15 going to be testifying at? About which person? Why is she testifying?"
16 All that sort of thing. All these things can create trouble.

17 Q. But people in Bunia know that there is a trial here in The
18 Hague against Thomas Lubanga; isn't that correct?

19 A. Exactly. People are aware of that.

20 Q. And those people don't like it when someone testifies against
21 Thomas Lubanga, correct?

22 A. Yes. Some people don't appreciate it that others come to
23 testify here at a trial. Other people don't think there's any problem
24 with that. That's how the world works. There are good people and
25 bad people.

1 MS STRUYVEN: May I have a moment, your Honours?

2 (Counsel confer)

3 MS STRUYVEN:

4 Q. And it is the people who don't appreciate that people testify
5 here in The Hague, those are the one who can create trouble; isn't
6 that correct?

7 A. Yes, that's right. But you can't know who they are. You
8 can't know what other people are thinking within their inner heart,
9 within themselves.

10 Q. Thank you. I still have a few questions on other issues.
11 Madam Witness, you have another child, correct?

12 A. Yes.

13 Q. And that child is of a (Redacted)?

14 A. My elder son who is (Redacted) years old.

15 Q. Is the last name of that (Redacted)?

16 THE INTERPRETER: Inaudible.

17 A. Exactly.

18 MS STRUYVEN:

19 Q. Can you explain to us where you met (Redacted)?

20 A. We met because -- because we were neighbours. He was working
21 below my place of residence.

22 Q. Do you remember, more or less, how old (Redacted)
23 was when you got pregnant?

24 A. You're talking about his age? You're asking me whether I
25 remember how old he was? I believe that he was born -- he was born

1 in (Redacted) and we met in the year (Redacted), and so he was born in (Redacted).

2 Q. And so when you were pregnant of his child you were (Redacted);
3 is that correct?

4 A. Yes.

5 Q. And you explained to us yesterday that at some point you
6 separated. Did you separate before you gave birth, or after you gave
7 birth?

8 A. When I was pregnant, he left. He was no longer there. And
9 I gave birth and he had already gone at that -- by that point.

10 Q. Now, yesterday you explained to us that you grew up in the
11 (Redacted) neighbourhood; right?

12 A. Yes.

13 Q. And you now live in the (Redacted) neighbourhood?

14 A. Yes.

15 Q. Did you always live in Bunia, or did you also live somewhere
16 else in Ituri?

17 A. I've always lived in Bunia.

18 Q. Did you often travel outside of Bunia, or did you stay in
19 Bunia?

20 A. No. From time to time I would travel, when my grandmother
21 died and I went to (Redacted) and I stayed there for a week only.

22 Q. And when did your grandmother die?

23 A. It was a long time ago, several years ago, at the time
24 I was (Redacted) years old.

25 MS STRUYVEN:

1 Q. Now, you mentioned that you grew up in the (Redacted)
2 neighbourhood. That is where your father resides; correct?

3 A. Yes.

4 Q. And he has always been living there, right?

5 A. He's still there right now.

6 Q. And your father's flat is quite close to the flat where
7 (Redacted) and (Redacted) and (Redacted) were living, right?

8 A. (Redacted) and (Redacted) lived in (Redacted), with their friend,
9 and then we lived together.

10 Q. But so when you were living together, you were living in
11 the same neighbourhood as where your father lives, right?

12 A. No, it was a bit higher up at another place, but I must
13 say that it was the same neighbourhood indeed.

14 Q. When you were living with (Redacted) and (Redacted) in that flat,
15 could you explain to us who was paying the rent?

16 A. We didn't have to pay the rent. It was a house that they
17 let us live in.

18 Q. Who let you live in that house?

19 A. It was a young man who was a trader who had a shop and he
20 had been in that house, but he let us live in it at that time.

21 Q. And was that man linked to the UPC?

22 A. I don't know.

23 Q. Wasn't that the reason why he let (Redacted) and (Redacted) and
24 (Redacted) live in that house, because they had been UPC soldiers?

25 A. No, that's not true. He abandoned me in that house. I was

1 living with (Redacted) and then (Redacted) joined us. It was my residence
2 with (Redacted).

3 PRESIDING JUDGE FULFORD: Yes, Maître Mabilie.

4 MS MABILLE: (Interpretation) No, it's too late, but she
5 says "I don't know" and then she's asked a question that she can't
6 answer and then she says, "I don't know."

7 PRESIDING JUDGE FULFORD: Thank you, Maître Mabilie. I
8 think, in fairness, there was an answer provided that does advance
9 the matter somewhat.

10 Yes, Ms Struyven.

11 MS STRUYVEN:

12 Q. Now, while (Redacted) was living in that house, you referred
13 to (Redacted), yourself and (Redacted). Was there anyone else who lived
14 in that house - in that flat - while (Redacted) was living there?

15 A. There was (Redacted) and myself, (Redacted) and (Redacted). There
16 were four of us living in the house and no one else.

17 Q. Thank you for that. Now, you explained to us that after
18 you lived in that flat you all went to (Redacted) right?

19 A. No, when we left that place we went to a place called
20 (Redacted) or (Redacted) and the centre had not yet been (Redacted).
21 (Redacted). And after leaving the centre,
22 called (Redacted) or (Redacted) --

23 THE INTERPRETER: As the witness said.

24 THE WITNESS: -- we went to the (Redacted) centre.

25 MS STRUYVEN:

1 Q. Do you remember how old you were when you went to the (Redacted)
2 centre?

3 A. It was in 2005.

4 Q. But do you remember how old you were when you went to that
5 centre?

6 A. I may have been 19 years old.

7 Q. And isn't it correct that while you were at (Redacted) centre
8 you met (Redacted) for the first time; correct?

9 A. No, I knew (Redacted) before that - well before that - before the
10 programme offered by (Redacted) began in Bunia. I knew her well before
11 the (Redacted) project.

12 Q. Where did you meet (Redacted) for the first time?

13 A. We saw each other all the time. It was not the first time
14 we met. On the father's side, we have a family link.

15 Q. Madam Witness, where is your father from?

16 A. He is from (Redacted).

17 Q. Where is (Redacted)?

18 A. It is in the (Redacted) territory.

19 Q. And where are (Redacted)'s parents from?

20 A. Her parents also are from (Redacted).

21 Q. So can you explain to us where you met (Redacted) for the first
22 time, if it wasn't at (Redacted)?

23 A. Her parents live in (Redacted) and we are in the town. We
24 are (Redacted) and
25 see each other. I saw her parents. I went often to her parents' home.

1 PRESIDING JUDGE FULFORD: Ms Struvyen, I think the witness
2 is saying that there's a family link and they live in the same area.
3 I mean do you really need to press it for a date, or a particular time?

4 MS STRUYVEN: I will leave it for now, your Honours. I may
5 need to come back to it later on the basis of additional information
6 that we have.

7 Q. So in any event, Madam Witness, you explained that then
8 you and the other girls went to (Redacted); correct?

9 A. That's right.

10 Q. And you said that at (Redacted) they didn't check whether you
11 had been a child soldier; right?

12 A. We were asked that question.

13 Q. But yesterday you said that nobody verified if you had been
14 a child soldier. So did they, or did they not, verify that you had
15 been a child soldier?

16 A. Everyone who came was asked the question of whether or not
17 they had done military service. And if the person said "yes," no
18 double-checking was made to ascertain whether this was true or false.
19 If the question was put to you and you answered in the affirmative,
20 then they didn't take any trouble to double-check, to verify, they
21 simply accepted your answer. That is why I said that and no verification
22 was done.

23 Q. Isn't it correct, Madam Witness, that (Redacted) was also taking
24 care of young women who were simply associated with armed groups in
25 Ituri?

1 A. Could you please repeat your question?

2 Q. Isn't it correct that, apart from taking care of child
3 soldiers, (Redacted) at the time was also taking care of young women who
4 had been associated with armed groups; such as, for example, women
5 who had children of soldiers from armed groups?

6 A. I'm not in a position to know. I know absolutely nothing
7 about it.

8 Q. Isn't it correct that (Redacted) took care of you because you
9 were 16 at the time, your husband had abandoned you and you had a
10 small child?

11 A. No.

12 Q. And so you explained to us that you then lied to a person
13 from MONUC; right?

14 A. Yes, indeed. Yes.

15 Q. And MONUC at the time was a very important organisation
16 in the region; they brought peace to the region, but you had no problems
17 lying to such an organisation; correct?

18 A. At that time, my ideas were not very clear.

19 Q. Madam Witness, you explained to us (Redacted)'s age; correct?

20 A. I told you that she had informed me that she was born in
21 1985.

22 Q. But you didn't see that date on any document, did you?

23 A. No. Whilst we were together, each person would give her
24 age, and that's what she told me.

25 Q. But did she tell you her age or did she give you her birthday,

1 her birth year?

2 A. I am not in a position to know. I don't know whether she
3 gave her age or her year of birth. I cannot -- well, I'm not in a
4 position to know that.

5 Q. Thank you, Madam Witness.

6 MS STRUYVEN: Your Honours, I have no further questions?

7 PRESIDING JUDGE FULFORD: Thank you very much, indeed. Ms
8 Bapita, given the questions put by Ms Struyven, is your question still
9 a live one or not?

10 MS BAPITA: (Interpretation) Yes, your Honour.

11 PRESIDING JUDGE FULFORD: Then, please put it.

12 MS BAPITA: (Interpretation) Thank you.

13 QUESTIONED BY MS BAPITA:

14 Q. Witness, good morning.

15 A. Good morning.

16 Q. My name is Karen Bapita. I am a lawyer for victims. I have
17 two small questions to put to you for verification purposes, mainly
18 in relation to (Redacted). Could you tell us -- or could you confirm whether
19 you have never lived in the same house with (Redacted)?

20 A. Never.

21 Q. Could you tell us the avenue and the neighbourhood in which
22 (Redacted) lived?

23 A. (Redacted) lived in the (Redacted) neighbourhood and her father
24 lived in the (Redacted) neighbourhood. Her father and her mother lived
25 in two different neighbourhoods. Her father lived in town and her

1 mother lived in (Redacted) neighbourhood.

2 MS BAPITA: The interpreter spoke in a low voice and I did
3 not hear what he said.

4 PRESIDING JUDGE FULFORD: Right. It came across in the
5 English very clearly, Ms Bapita. In French or in Swahili, are you
6 asking for it, Ms Bapita?

7 MS BAPITA: (Interpretation) I did not hear the French
8 interpretation, your Honour.

9 PRESIDING JUDGE FULFORD: I ask the French interpreter then,
10 please, to read back the answer just given by the witness.

11 THE INTERPRETER: (Redacted) lived in (Redacted) neighbourhood and
12 her father lived in the (Redacted) neighbourhood. Her father and mother
13 lived in two different neighbourhoods; her father lived (Redacted)
14 neighbourhood and her mother lived (Redacted).

15 MS BAPITA: (Interpretation)

16 Q. Madam Witness, could you tell us whether (Redacted) was alone
17 or with other girls in the place where she was living?

18 A. (Redacted) lived with the brother of her father because, indeed,
19 her two parents lived separately. She had always lived with a member
20 of her father's family.

21 Q. Do you know her father's name?

22 A. No. Well, I may know the name of the place where her father's
23 brother lived. That place was called (Redacted).

24 THE INTERPRETER: The Swahili interpreter did not hear that
25 individual's name.

1 MS BAPITA: (Interpretation)

2 Q. You said you had family relations. Do you know her father's
3 name?

4 A. I said there were family ties, because we all come from
5 (Redacted). We come from (Redacted) and (Redacted) family is also from (Redacted).
6 That is what I said, that we had family ties on my father's side.

7 Q. Madam Witness, if I remember well, yesterday you said you
8 are a native of (Redacted), that you come from (Redacted); is that correct?

9 A. Yes.

10 Q. And today you said a short while ago that your father came
11 from (Redacted); is that correct?

12 A. (Redacted) is an ethnic group, and (Redacted) is a territory which
13 is inhabited by the (Redacted). If you look at the map, you will find
14 (Redacted) on the map.

15 Q. Thank you. My very last question relates to (Redacted).
16 Yesterday you mentioned a certain number of young girls who were together
17 with you in (Redacted). I would like to know, of these young girls, which
18 of them were former child soldiers. I will read out their names and
19 you will tell us whether each of -- well, the person whose name is
20 read was a child soldier or a civilian. Is that okay with you?

21 A. Yes, indeed.

22 Q. You talked about (Redacted), was she a child soldier?

23 A. No, she has never been a child soldier.

24 Q. You talked about (Redacted), was she a child soldier or not?

25 A. With respect to Mave, I don't have any specific information

1 to give.

2 Q. You talked about (Redacted), was she a child soldier or not?

3 A. Yes, she was a child soldier.

4 Q. You talked about (Redacted), was she a child soldier or not?

5 THE INTERPRETER: I think counsel should mark a pause between
6 witness and answer.

7 THE WITNESS: It's not (Redacted). The name is (Redacted). No. No.

8 MS BAPITA: (Interpretation)

9 Q. You talked about (Redacted).

10 A. (Redacted)?

11 Q. Yes.

12 A. I think you did not hear me well. The name is (Redacted), not
13 (Redacted)

14 Q. Was she a child soldier or not?

15 A. Yes, she was a child soldier.

16 Q. (Redacted)?

17 A. No.

18 Q. (Redacted)?

19 A. Yes.

20 Q. (Redacted)?

21 A. Yes.

22 Q. (Redacted)?

23 A. Yes. Well, the name is (Redacted). (Redacted) is the first
24 name and (Redacted) is the family name.

25 PRESIDING JUDGE FULFORD: Remember to build in a pause

1 between the answer and your next question, particularly with these
2 kind of rapid-fire questions. It's very difficult for the interpreters
3 to keep up, but I suspect you're close to the end of the list.

4 MS BAPITA: (Interpretation) Thank you, your Honour.

5 Q. And (Redacted) (phon)?

6 A. (Redacted) (phon)?

7 Q. (Redacted).

8 A. No.

9 Q. (Redacted)?

10 A. You have already mentioned the name of (Redacted). Are you
11 talking about a second (Redacted)?

12 Q. On my list I have two (Redacted) I have (Redacted) and (Redacted)
13 (Redacted)

14 A. There is (Redacted). Give me a moment to try to refresh
15 my memory.

16 Q. (Redacted)?

17 A. No.

18 Q. (Redacted)?

19 A. Yes.

20 Q. (Redacted)?

21 A. Yes. Well, (Redacted) and (Redacted) are one and the same person.
22 (Redacted) name was changed to (Redacted).

23 Q. (Redacted)?

24 A. Yes.

25 Q. (Redacted)?

1 A. Yes.

2 Q. (Redacted)? Apparently there were two (Redacted)?

3 A. Yes, indeed, there were two (Redacted).

4 Q. And (Redacted)?

5 A. Yes.

6 Q. Can we say that (Redacted) as transit centre, received child
7 soldiers but that there were certain children who lied and claimed
8 to be child soldiers and got registered?

9 A. Yes.

10 Q. Thank you, Madam Witness. And that concludes my
11 questioning.

12 A. Thank you.

13 PRESIDING JUDGE FULFORD: Thank you, Ms Bapita. Clear as
14 ever. Anything else, Maître Mabilille?

15 MR SUPRUN: Your Honour, I wish to say that the OPCV also
16 filed an application to put questions to this witness. But since all
17 the areas have been covered by the OTP, we have no further questions.

18 PRESIDING JUDGE FULFORD: Thank you for making that clear.
19 Maître Mabilille.

20 MS MABILLE: (Interpretation) Three short questions.

21 QUESTIONED BY MS MABILLE:

22 Q. First question: You told us a short while ago that you
23 requested for protective measures because (Redacted) were asking
24 questions about you or, rather, to your husband. Who were these (Redacted)
25 (Redacted) working for, if you know?

1 A. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted), it was another vehicle. And no

6 one knew that I was going to come here or to go to (Redacted). And up

7 to that point no one had asked me where I had gone. But when an ICC

8 vehicle took me to the airport, I was surprised that they knew this

9 information. So I told myself that it was (Redacted)

10 (Redacted) who revealed this information to them. That is why these

11 women asked my husband where I had gone to.

12 THE INTERPRETER: The Swahili interpreter would like the
13 witness to speak slowly.

14 THE WITNESS: (No interpretation)

15 MS MABILLE: (Interpretation)

16 Q. The last part of your answer is not transcribed. I will
17 read the end of your answer so you can complete it. And you said that,

18 "No one knew that I was going -- that up to that point no one asked
19 me where I had gone. At one point when an ICC vehicle took me away,
20 people started asking me questions. And I was surprised, why." Now,
21 what follows was not translated.

22 PRESIDING JUDGE FULFORD: Do you remember the rest of your
23 answer? It may be difficult now. We heard, up until the point at
24 which the ICC vehicle took you away and people started asking you
25 questions. Do you remember now what you added a few moments ago after

1 that?

2 THE WITNESS: It wasn't a (Redacted)

3 (Redacted) that usually was shuttling between two places that took me.

4 It was an (Redacted) car with a driver in civilian clothing. And

5 when I went to (Redacted) for the first time, nobody knew about it, even

6 when I got back. However, when the ICC vehicle with (Redacted) written

7 on it drove me to the airport, the information that I was going to

8 the ICC was known. Since (Redacted)

9 (Redacted) what I was going to

10 do at the ICC and what trial I was going to give evidence in. My husband

11 was surprised and he told them that I was at home, that I had not gone

12 anywhere and that I had no trip planned to go there. He asked them

13 where they had got that information from. They told him "We know

14 everything that goes on around here. You don't know anything yourself?

15 You are living with a woman and you don't know that she has gone to

16 the ICC?". Well, my husband knew about this but he did not say anything.

17 He was surprised at the fact that these women were asking him questions

18 about me.

19 MS MABILLE: (Interpretation) I'm through, your Honour.

20 PRESIDING JUDGE FULFORD: Madam, that now completes your

21 evidence and it simply remains for me, on behalf of the other Judges,

22 to thank you for having come a very long way with your extremely young

23 child, in circumstances that have no doubt been difficult and

24 inconvenient for you to give evidence at this Court, to help us in

25 our search for the truth in relation to this case.

1 This Court can only function if people such as yourself are
2 prepared to give of your time and, as I've just said, put yourselves
3 to considerable inconvenience to come to give evidence. So you leave
4 now with our sincere thanks.

5 Closed session, please.

6 *(Closed session at 12.54 p.m.) Reclassified as Open session

7 THE WITNESS: Thank you.

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

9 (The witness is excused)

10 PRESIDING JUDGE FULFORD: Now, Ms Samson, we need your
11 assistance, please, on the question that I put to you yesterday.

12 MS SAMSON: Thank you, Mr President. Was that the question
13 in relation to the intermediary? The update that the Prosecution can
14 provide to the Chamber at this point is that a team will be on mission
15 this week and the indication is that we will hopefully be in a position
16 to speak to the intermediary towards the end of the week or early next
17 week, and it's our intention to canvas the intermediary's views in
18 relation to disclosure and protective measures that may be needed.

19 If indeed the individual does not express strong concerns,
20 which we don't expect, but should that be the case, then the disclosure
21 could proceed more quickly. However, should there be a necessity for
22 a referral then that will take place.

23 If a referral is made, it is unlikely that any measures will
24 be put in place prior to the Court recess at the beginning of April
25 and, lastly, the Prosecution is inquiring with the Chamber whether

1 or not a written decision will be forthcoming on the issue.

2 PRESIDING JUDGE FULFORD: A number of things arise from that,
3 Ms Samson. Firstly, does it really need for a team to go on mission
4 to find an answer to this given that -- well, first, I'm sure you must
5 have anticipated that this was a possibility and, second, you indicated
6 yesterday, I think, that a preliminary assessment had been undertaken
7 in any event. Can't we deal with this in the first instance by telephone
8 with the individual?

9 MS SAMSON: In fact, there was a mission already planned
10 to deal with other issues and, in the Prosecution's view, it would
11 be best to be able to speak face-to-face with the intermediary. So
12 the mission is one that's ongoing, and time is being found within the
13 mission plan to meet with the individual, and in our view that's the
14 best way forward.

15 PRESIDING JUDGE FULFORD: This is somebody, Ms Samson, who
16 has been working with the Court for some considerable time. It's not
17 a complete stranger who has suddenly been confronted with a question
18 which is a bolt of lightning out of a clear blue sky. Surely, given
19 the experience of this individual and his involvement with the Court,
20 it would be possible at least to have a preliminary discussion with
21 him by telephone, to be followed up, if necessary, by a face-to-face
22 meeting in the field.

23 I mean, are you really at the moment going to insist on there
24 being a face-to-face meeting without any preliminary indication being
25 given first of all by telephone?

1 MS SAMSON: Your Honour, that is the position. A number
2 of issues will need to be canvassed with this particular individual,
3 including whether or not relocation is feasible and, if it is, where.
4 The individual is not only employed by the Court, to our understanding,
5 so there are other issues that will need to be canvassed in terms of
6 his other employment, and it may take a little bit of time in the course
7 of that meeting to be able to understand precisely what his position
8 is.

9 In addition, the man has family and we have to understand
10 precisely which individuals of the family may be affected, whether
11 or not they have schooling or other employment as well.

12 PRESIDING JUDGE FULFORD: Given that this is an issue that
13 the Chamber has sign-posted so vividly, Ms Samson, a little while ago,
14 I think I speak for all three of us when I say we are surprised that you
15 are not more advanced in your understanding as to what will be necessary
16 if the Chamber were to order the disclosure of the identities of at
17 least some of the intermediaries.

18 MS SAMSON: Your Honour, I believe the matter was left at
19 the status conference, if I'm not mistaken, or on the 9th of October
20 in which case -- pardon me the 14th of October, at which time the
21 Victims and Witnesses Unit had been apprised of the situation and they
22 had expressed their views on the potential impact of relocation on
23 this particular individual.

24 At that time the Victims and Witnesses Unit had indicated
25 that they would be conducting a preliminary assessment but the

1 Prosecution has not to date been updated on whether or not that assessment
2 has been completed. The Prosecution was in -- hoping to be able to
3 liaise with the Victims and Witnesses Unit this week to understand
4 where they are on the issue.

5 PRESIDING JUDGE FULFORD: Right. Well, it's probably best
6 not to express any more preliminary views at this stage; but the position
7 therefore is, for this individual an answer hopefully by the end of
8 the week. If protective measures are requested, you're saying the
9 other side of Easter. We'll have to reflect on that and, if necessary,
10 engage the Victims And Witnesses Unit directly, given, certainly, the
11 latter time scale may have a significant impact on the smooth running
12 on this trial.

13 In relation to your last request, Ms Samson, you will, of
14 course, receive our reasons and our decision. They will be in written
15 form, but it may be in transcript form as a result of an oral ruling.
16 But one way or another, you will have something which will enable you
17 to understand our reasons and our final position.

18 MS SAMSON: Thank you. Mr President, if I may also make
19 a request on behalf of the Prosecution in relation to a different matter.
20 The Defence in the Katanga case, in particular the Defence of Mr Katanga,
21 made a request within that case to Trial Chamber II seeking to have
22 disclosure of the testimony of certain witnesses who testified in this
23 case for one of three reasons: Either because a witness is related
24 to a witness who will also be appearing in the Katanga case. In this
25 case I'm speaking of Defence Witness 25, whose evidence related to

1 Prosecution Witness 157.

2 PRESIDING JUDGE FULFORD: Will you forgive my rudeness, Ms
3 Samson? Was this contained in a written filing recently by Mr Hooper?

4 MS SAMSON: Indeed, it was, your Honour.

5 PRESIDING JUDGE FULFORD: Right. Which I think, although
6 not directed -- directed at us, was notified to us; is that correct?
7 I have read or, rather, skim read a very recently application from
8 Mr Hooper for disclosure of material from this Chamber, which was
9 brought to my attention, I think, because we were one of those notified.

10 MS SAMSON: It may be, your Honour. To be truthful, I don't
11 have notification on the filing itself as to which Chambers were notified,
12 but it may be. It may well be so.

13 PRESIDING JUDGE FULFORD: Well, can we skip the description
14 of what's in it? Is your request to us that we should attend to the
15 issue being raised by Mr Hooper?

16 MS SAMSON: Well, your Honour, I wanted to raise it with
17 the Chamber in the event the Chamber wasn't aware, and also to seek
18 a variation of measures under Regulation 42. As I understand it, the
19 Prosecution team in the Katanga case is orally making that type of
20 request to Trial Chamber II. What they are seeking is that whatever
21 protective measures - closed session, private session - have been
22 applied to the witness testimonies in this case be equally applied
23 in that case. Once that is granted, then, in line with our previous
24 procedures, we would revert to this Chamber and seek authorisation
25 of the Chamber to then disclose the information to the Katanga Defence

1 teams under the same conditions.

2 The only last point that I wish to raise is that, of the
3 witnesses that the Defence team are interested in having the testimony
4 of are the victims who testified in this case. That may raise a question
5 as to their identities being provided to the Katanga and Ngudjolo Defence
6 teams. The Prosecution's not in a position to comment on that. From
7 our perspective, there are no difficulties. The legal representative
8 may have an opinion on the point.

9 PRESIDING JUDGE FULFORD: Ms Samson, this has got to be done
10 in a structured and coordinated way. If that request is being made
11 of -- or those requests are being made of Trial Chamber II, they need,
12 in some proper way, to be brought to our attention. It shouldn't simply
13 be that we be notified of something that's happening in another Chamber.
14 We need an application of some sort solidly before us.

15 Might I suggest that over this afternoon you and other members
16 of your team reflect on this and see if you can condense the request
17 that's actually being made of us, be it by the Prosecution, or if it's
18 got to be from Mr Hooper, by suggesting to him that he follows this
19 course, that something is sent to us even, in the first instance, in
20 email form, so that we've got it in black and white to consider. I
21 think otherwise it's going to be too general and too vague.

22 MS SAMSON: Certainly.

23 PRESIDING JUDGE FULFORD: Thank you. Very helpful.

24 Now, Maître Mabilille, we completed the last witness's evidence
25 without the disclosure exercise that we have in mind being completed.

1 I think the reality is you will, I'm afraid, have to wait to see what
2 is in the disclosure as and when it's provided, and you'll need to
3 come back to us if there are any consequences in relation to the evidence
4 that's just been given. And, if necessary, if further evidence is
5 needed from the witness who's just completed her evidence, then we
6 will have to reflect on the most convenient way of dealing with that.

7 What I think we'd all be reluctant to do is to ask her to
8 linger in The Hague, given her family responsibilities. And I think
9 if further evidence is needed, we'll simply have to cross that bridge
10 if we're placed on one side of it. Is that convenient -- well, in
11 the circumstances, is that convenient to you?

12 MS MABILLE: (Interpretation) I think it is too difficult
13 to ask her to remain, and so we will try to find the proper practical
14 arrangements at a later date so that additional information can be
15 sought, if necessary, your Honour.

16 PRESIDING JUDGE FULFORD: We will hear the -- we'll start
17 the evidence of Witness 15 at half-past-9 tomorrow morning. Yes, Mr.
18 Mulamba.

19 MR MULAMBA: (Interpretation) Yes, your Honour. This is
20 regarding yesterday's oral ruling regarding Witness 298, whom we
21 represent. We would like to ask disclosure regarding this person,
22 whom we represent. And the unredacted exhibit -- we wish that an
23 unredacted exhibit be disclosed to us.

24 PRESIDING JUDGE FULFORD: We'll reflect on that. Thank you
25 very much, indeed. Half past nine tomorrow morning.

1 THE COURT USHER: All rise.

2 (The hearing ends at 1.09 p.m.)

3 RECLASSIFICATION REPORT

4 Pursuant to Trial Chamber I's email instruction dated 15th March 2012,
5 the transcript is reclassified as public after redactions have been
6 implemented as ordered by the Chamber. All private and closed sessions
7 (*) are now available to the public with the exception of the portions
8 of the transcript that have been redacted.