

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Presiding Judge Adrian Fulford, Judge Elisabeth Odio Benito and Judge
4 René Blattmann

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

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

7 Thursday, 7 January 2010

8 (The hearing starts at 10.00 a.m.)

9 (Open session)

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

12 PRESIDING JUDGE FULFORD: Well, we welcome everyone back and we wish you all
13 a very happy new year.

14 There are a number of matters that need to be dealt with before Ms Coomaraswamy
15 comes into court. The first is to inform everyone that the decision on Regulation 55
16 will be handed down we hope tomorrow, latest Monday.

17 The second issue relates to Ms Coomaraswamy's speaking notes. The Chamber has
18 invited the next two witnesses to give a short summary of the main points of their evidence
19 when they come into court and after they have been sworn. They have both indicated that
20 they wish to use their own notes - effectively speaking notes, or an aide-memoire - to
21 assist them in that process.

22 Our preliminary view - and I underline the word "preliminary" - is that these
23 prompting notes are not disclosable. We stress by way of a preliminary observation that
24 it is, of course, the evidence of the witness that counts and not the expert's own personal
25 scribbings. However, before we finally make up our mind, any views from the Prosecution,

1 Ms Bensouda? Do consult with Mr Sachdeva.

2 MS BENSOUDA: Mr President, your Honours, the Prosecution does not have any
3 objection to that.

4 PRESIDING JUDGE FULFORD: Thank you very much. Maître Mabilille?

5 MS MABILLE: (Interpretation) We have no observations, Mr President.

6 MS MASSIDDA: No objection, Mr President.

7 PRESIDING JUDGE FULFORD: I am very sorry, Ms Massidda. Did you have -- no,
8 good.

9 The next issue is Ms Coomaraswamy's report. The report of this expert, dated
10 17 March 2008, will form the starting point as it were for her evidence and, as with
11 other experts, it will be part of her testimony.

12 Next, the questioning by participating victims of Ms Coomaraswamy. The Defence
13 have objected to some areas of questioning as proposed by the participating victims for
14 this expert witness as set out in their filing of 6 January 2009 (document 2221).
15 Specifically, the Defence object to questions on the following issues:

16 (i) questions directed at establishing or confirming the conditions in which
17 child soldiers lived in and generally what they experienced;

18 (ii) for those who tried to avoid or helped others to avoid forced recruitment,
19 questions that seek to establish before the Court the legitimacy of their resistance;

20 (iii) questions directed at the factors contributing to the conscription or
21 enlistment of children under the age of 15 years into armed groups; in particular, in
22 the Democratic Republic of the Congo and in Ituri;

23 (iv) questions which address the difficulties encountered by trained child
24 soldiers in reintegrating into their communities; in particular, by girls used for sexual
25 purposes and focusing in this regard again on the Democratic Republic of the Congo;

1 (v) questions that concern the work of the United Nations in combating child
2 recruitment into armed groups and promoting their demobilisation, including particularly
3 in Ituri in 2002 and perhaps earlier.

4 It is useful to remember that on 4 January 2008 the Registrar submitted to the
5 Chamber a request by the Under-Secretary-General and Special Representative of the
6 Secretary-General of the United Nations for Children and Armed Conflict, Ms Coomaraswamy,
7 dated 7 December 2007, in which she requested leave to submit written observations in
8 this case as an *amicus curiae*. The Chamber in its decision of 18 February 2009 (document
9 1175) did not accept that she should deal with all of the matters that she had suggested,
10 but instead asked her to focus on the following two areas pursuant to Rule 113 of the
11 Rules:

12 (a) the definition of "conscripting or enlisting" children and, bearing in mind
13 a child's potential vulnerability, the manner in which any distinction between the two
14 formulations - i.e., conscription or enlistment - should be approached;

15 (b) the interpretation, focusing particularly on the role of girls in armed
16 groups, of the term "using them to participate actively in the hostilities."

17 We underline that the immunity sought by Ms Coomaraswamy relates to those two
18 areas. It is to be noted that on 19 May 2009 the role of Ms Coomaraswamy changed at her
19 request from *amicus* to that of an expert witness (see transcript 176, page 27). However,
20 no request has been received by the Chamber to expand or change the areas that the special
21 representative should deal with. In the Chamber's view, in these circumstances, the areas
22 that Ms Coomaraswamy is to cover in her evidence are to be limited by the Chamber's decision
23 of 18 February 2009 as reflected in her report of 17 March 2008.

24 Principal counsel for the Office of Public Counsel for Victims has identified
25 three areas which she seeks to address by way of questioning:

1 (a) the factors contributing to the conscription and enlistment of children
2 under the age of 15 years into armed groups; in particular, in the DRC and in Ituri;

3 (b) whether and to what extent the utilisation of girls for sexual purposes
4 can be considered as an objective and/or a consequence of their recruitment into armed
5 forces;

6 (c) the difficulties encountered by former child soldiers in reintegrating into
7 their communities; in particular, for girls used for sexual purposes and in particular
8 in the DRC.

9 (a) and (b) have been addressed to a real extent in the report of 17 March 2008
10 by Ms Coomaraswamy and, in our judgment, they both come within the two areas that we
11 have identified as matters that properly should be addressed by this witness; particularly
12 given that the Chamber has expressed an interest in the issue of the vulnerability of
13 child soldiers and the role of girls in armed groups in the context of a true understanding
14 of their use in hostilities. Accordingly, leave is granted for questioning under (a)
15 and (b).

16 (c) is a different matter and, in our judgment, it falls outside the questions
17 which are essentially of a legal nature that we asked Ms Coomaraswamy to address. Therefore,
18 in our judgment the first two areas come within the concerns of some of those represented
19 by the OPCV and questions in this regard are appropriate. However, there should not be
20 unnecessary repetition of material that is already covered in the report or by the questions
21 of other counsel. The application to question under (c) is refused.

22 Ms Bapita and other member of her team wish to question the expert about the
23 conditions in which child soldiers lived. It seems to us this is entirely legitimate
24 within the context of both of the areas that Ms Coomaraswamy is to address; particularly
25 on the issue of vulnerability given that this area is of direct interest to these particular

1 participating victims, or some of them.

2 Again, we stress that there should not be unnecessary repetition of material
3 already dealt with in Ms Coomaraswamy's report, or in questions by other counsel.
4 Additionally, the Chamber agrees with the application to put questions concerning the
5 attempts that may have been made to resist or avoid forced resistance, particularly since
6 this also comes under the general umbrella of vulnerability.

7 Mr Walleyne has identified two areas:

8 (a) the concepts of enlisting, conscripting and participating in armed conflicts
9 as set out in Ms Coomaraswamy's report, as well as in the different documents and analyses
10 undertaken by the United Nations;

11 (b) the work developed generally by the United Nations to fight against the
12 recruitment of children in armed groups and to promote demobilisation especially in Ituri
13 during 2002.

14 We are of the view that (a) clearly comes within the issues that the Chamber
15 has asked Ms Coomaraswamy to address, whilst (b) equally clearly falls wholly outside
16 of the questions. Indeed, it is arguable that (b) is only of marginal relevance to the
17 issues in this case. Accordingly, Mr Walleyne can pursue (a) to the extent that the ground
18 has not been covered by other counsel, but we refuse the application under (b).

19 Passports. At a convenient moment, either today or tomorrow, we intend to return
20 *ex parte* Defence and Registry only to the thorny and extremely important issue of passports.

21 Translation. A problem has arisen as regards a few short sections of transcript
22 110, in that the Defence considered that an important portion had been missed and counsel
23 proposed certain corrections. One section initially could not be heard but, after the
24 Chamber requested that the relevant portion of the transcript was subjected to enhanced
25 sound quality, the Registry now reports that the missing section can be heard. An email

1 will be circulated today setting out the missing and corrected portions. We intend to
2 give the parties and the participants until 4.00 p.m. next Friday to file any observations.
3 If nothing material is raised, the Chamber will order an appropriate amendment to the
4 transcript.

5 That concludes the preliminary matters that the Chamber wished to raise. Tomorrow
6 we will address the issue of the agenda in terms of the rather complex sharing arrangements
7 that will commence towards the end of this month, when there are three trials running
8 concurrently in this building having to share two courtrooms. It is not going to be easy
9 and it is going to require a considerable amount of patience and cooperation from everyone
10 involved. However, I want you each to have a document in which the proposed schedule
11 is set out before we engage in any discussion as to whether the proposal is workable.

12 Now, unless anyone else has anything else to raise, I will ask Ms Coomaraswamy
13 to come into court. I take silence as being a "No," so could the witness please be asked
14 to come in.

15 (The witness enters the courtroom)

16 PRESIDING JUDGE FULFORD: Good morning, Madam.

17 THE WITNESS: Good morning.

18 PRESIDING JUDGE FULFORD: We are very pleased to see you here, notwithstanding
19 the somewhat adverse weather conditions which has made transport for some I know extremely
20 difficult. Before you take the oath as an expert witness, can I for your assistance set
21 out a few ground rules which I will ask you please to bear in mind.

22 As far as the ladies and gentlemen are concerned who sit up in the booths to
23 our left and right, it is of the greatest importance that when you speak you speak no
24 faster than I am talking now. Otherwise, their life becomes very difficult and the quality
25 of the transcript suffers inevitably as a result.

1 Additionally, when a speaker has finished - and in your case this will be when
2 questions have been put - could you please pause briefly before coming in with your answer.
3 Otherwise, there is an element of overlap because the transcript hasn't been completed
4 which means, again, that its quality suffers.

5 THE WITNESS: Okay.

6 PRESIDING JUDGE FULFORD: Good. The next issue is that we have discussed in
7 Court the issue of the notes that you have brought in this morning to help you with your
8 initial presentation which is going to be a summary, as I understand it, of the main
9 conclusions from your report. You had raised the issue as to whether or not your notes
10 are disclosable to the parties and the participants and there has been no objection raised
11 to those notes remaining private to you. So you needn't be concerned that your own private
12 aide-memoire is going to be distributed round the Court.

13 Finally, you will recall that we issued a decision some considerable time ago
14 now in which we asked you to focus particularly on two areas, and I am sure I don't need
15 to repeat them, they were set out in writing and you will no doubt have studied carefully
16 the particular ambit of our interest.

17 Although your status has changed in a formal sense from *amicus curiae* to expert
18 witness, our view is that the area that you should principally focus on are those two
19 areas that we set out in our decision of 18 February 2009 and I just wanted to make that
20 clear and, as a result of that, although some of the participating victims wish to question
21 you on matters which went outside of those two areas, we have this morning prohibited
22 them from doing so.

23 Right. I think you have asked to bring a clock in with you which of course
24 you can use so as to measure the length of time that you speak, but I will now be quiet
25 and hand the floor over to you so that you can supplement your report really in whichever

1 way you think fit before you are questioned by the advocates for the parties and the
2 participants.

3 THE WITNESS: I don't need to take the oath?

4 PRESIDING JUDGE FULFORD: You are quite right, Ms Coomaraswamy. I had forgotten
5 perhaps the most important thing that you have to do, so before you start could, with
6 the assistance of the usher, could you take the oath and thank you for you reminding
7 me of one of my obligations.

8 WITNESS: RADHIKA COOMARASWAMY (Sworn)

9 THE WITNESS: Your Honour, I will be short as you have the *amicus curiae* before
10 you. As you know, my mandate as the Special Representative of the Secretary-General on
11 Children and Armed Conflict is primarily from the General Assembly and in the General
12 Assembly Resolution 5177 they point to the need for this RSG to raise awareness on issues
13 relating to children and armed conflict and to foster international cooperation working
14 with international organisations to further protect children in situations of armed
15 conflict.

16 I am also called upon to become an independent moral voice for these children
17 within the UN and the wider international community. I also have a mandate from the Security
18 Council in its Resolution 1612 which, as you know, sets up a monitoring and reporting
19 mechanism to monitor grave violations against children and to report to a Security Council
20 working group on issues related to that mandate.

21 With regard to this particular case, I would like to note that it is the first
22 case in history at the international level to define the framework of the crime relating
23 to conscripting, enlisting and using children in armed conflict.

24 THE INTERPRETER: Mr President, apologies, messages from the interpreters.
25 Could the witness please slow down in reading her report.

1 THE WITNESS: For this reason, I have filed an *amicus curiae* to bring to the
2 Court's attention our practices and standards in the field so that we can protect children
3 while also having the benefit of a transparent judicial process which ensures the right
4 of defendants while giving justice to victims.

5 PRESIDING JUDGE FULFORD: Ms Coomaraswamy, my apologies for interrupting.
6 Because you are reading from a pre-prepared script, I am afraid it means you are going
7 at a speed which is difficult for the interpreters and transcribers.

8 THE WITNESS: Okay, all right.

9 PRESIDING JUDGE FULFORD: Could you remember the speed at which I was speaking
10 earlier and try approximately to match it.

11 THE WITNESS: All right, thank you.

12 PRESIDING JUDGE FULFORD: Thank you.

13 THE WITNESS: As I was saying, your Honour, for this reason I have filed an
14 *amicus curiae* to bring the Court's attention to the standards and practices in the field
15 so that we can protect children while also having the benefit of a transparent judicial
16 process which ensures the rights of defendants while giving justice to the victims.

17 In this *amicus curiae* our purpose is not to address the elements of this particular
18 case, or the guilt and innocence of particular parties, but to seek to persuade the Court
19 to adopt interpretative principles that protect children in light of the reality on the
20 ground. Because this Court is about to undertake an important precedent, we feel our
21 voice should be heard.

22 PRESIDING JUDGE FULFORD: Still slower, I am afraid. It is still too quick.

23 THE WITNESS: Okay. Let me say that from my own experience the Prosecution and
24 trials of the ICC are followed with great interest in the field. The deterrent effect
25 of these proceedings is already being felt with regard to a large number of armed groups

1 engaging with the United Nations to release children from their ranks and to cease all
2 new recruitment.

3 Before I go on to the specific questions requested by the Chamber, I would just
4 like to make a few preliminary points. I would like to draw the attention of the Court
5 to what we see as the changing nature of conflict in different parts of the world. For
6 example, in the recent African wars of recent origin, we see the following: The proliferation
7 of small arms and the recruitment of large numbers of children, both boys and girls,
8 the youngest in our records is eight years of age in the Kivus in the DRC.

9 Children often have multiple roles in these wars. There is no clear distinction
10 between those on the front line and those in rear bases as they are drawn in traditional
11 armies. It is important that the Court address the issue of how to protect children in
12 such a context of multiple roles. The Zutphen formula, based on the conduct of traditional
13 armies and wars is misplaced in the context of the changing nature of conflict in Africa.

14 We also want to argue that if there is a doubt about a child's age it casts
15 a due diligence duty on the part of the recruiter, whether state or non-state, to verify
16 their age. Child protection partners in the field do this on a regular basis, triangulating
17 indicators, checking with various sources, families, neighbours, community leaders and
18 sometimes church records. Though there are no scientific short fixes to determine a child's
19 age, child protection partners can determine with reasonable certainty the age of these
20 children.

21 Your Honour, I will move now to the specific questions asked by the Chamber.
22 The first question was to focus on the definition of conscripting and enlisting children,
23 bearing in mind a child's potential vulnerability, the manner in which any distinction
24 between the two formulations should be approached. The second question is the
25 interpretation, focusing specifically on the role of girls in the armed forces and of

1 the term using them to participate actively in hostilities.

2 With regard to the distinction between conscripting and enlisting - excuse me,
3 your Honour, let me just get some water.

4 PRESIDING JUDGE FULFORD: Ms Coomaraswamy, I am fearfully sorry, but you are
5 slightly gaining momentum again.

6 THE WITNESS: Again.

7 PRESIDING JUDGE FULFORD: But please forgive my tedious interruptions on this.

8 THE WITNESS: That is fine, sir. The written commentary of the Rome conference
9 distinguishes between conscription and enlistment by saying conscription is compulsory
10 entry and enlistment entails a voluntary act of enrolling. We urge caution in approaching
11 this distinction in the context of children and in the context of the changing nature
12 of warfare.

13 In this light, there are certain relevant issues which the Court may consider.
14 It is clear that in terms of this crime before you, voluntary has nothing to do with
15 consent, and that consent cannot be and should not be a defence. Though there is some
16 debate about children between the ages of 16 and 18, and their ability to give consent,
17 it is absolutely agreed universally that children under 15 years cannot reasonably give
18 consent to their own abuse and exploitation.

19 In some jurisdictions this age limit and prescription of consent has been set
20 firmly for other crimes. For example, in cases of statutory rape, there is strict liability
21 especially in common law countries for these countries, for these victims who are under
22 18 years of age. According to psychologists who have spoken to us children, those under
23 18 years and certainly those under 15 years, have an underdeveloped notion of death.
24 The lack of the concept of death makes them fearless in battle, often thinking of it
25 as a game and rushing straight into the line of fire. For this reason as well it is particularly

1 abusive to utilise children. The latest sad manifestation of this is the cruel use of
2 young children, especially in their teens, as suicide bombers in places like Afghanistan.

3 I am aware of studies also undertaken by child psychologists who are argue -- I
4 believe reasonably that children under 15 have not developed their faculty for moral
5 reasoning sufficiently to make such important decisions about their lives. They very
6 much argue that though there is indeed a variance among individuals this capacity is
7 most fully developed by the age of 18 years of age.

8 Our experiences in the field suggest that children are captives of their
9 communities, sometimes enticed by what they see as glamorous role models and they may
10 enroll but not fully understand what it means. Many have spoken to me of their
11 disillusionment and shock at what actually happens both to others and to them. Most just
12 want to return to their homes.

13 Many children with whom I have spoken who voluntarily joined armed groups are
14 most often chaste by circumstances. I have heard so many stories of children who have
15 run away from armed groups who told me that they felt they had no choice but to join
16 an armed groups in order to feed themselves due to dire poverty or because they were
17 maltreated by family members.

18 With regard to the distinction between enlistment and conscription, we argue
19 that this must be approached cautiously, and it should be a case-by-case determination
20 based on the actual circumstances surrounding enlistment and the circumstances relating
21 to the separation of the child from family or community.

22 In fact, many child protection partners in the field find this distinction to
23 be legally irrelevant and practically superficial in the context of children.

24 Children often join just a matter of pure survival. A boy our office encountered
25 in Sierra Leone, who had been with the RUF forces, there recounted to us that the RUF

1 came to his village in the north east of Sierra Leone and asked for volunteers from the
 2 community. He and his parents had heard that those who refused were tortured or worse
 3 or made to kill their own family members. This happened in the neighbouring village earlier.
 4 The boy and his parents decided it was best for him to go voluntarily because he was
 5 branded as an enemy if not, and he and his family would be killed. Though a tough choice
 6 was made, and the child went with the group, this can hardly be construed as a free consent
 7 by a child; it was a choice of survival alone.

8 Children in ethnically motivated wars may be urged by parents or community members
 9 to join even though they may not have the moral reasoning or capacity to weigh their
 10 own decision. My office knows of cases of children of Congolese Tutsi extraction whose
 11 parents did not openly oppose their children's participation in the fighting forces in
 12 the DRC. We have met with young boys perhaps 14 or 15 years of age who were encouraged
 13 by their community leaders to defend their people and to fight in the DRC against government
 14 forces. However, when we inquired further, we found that these armed groups in effect
 15 ran the refugee or IDP camps where these families were living and that any resistance
 16 would result in danger or ostracism of them and their families.

17 PRESIDING JUDGE FULFORD: Ms Coomaraswamy, slow down please. It is too quick.

18 THE WITNESS: Sorry.

19 PRESIDING JUDGE FULFORD: Take some pauses along the way.

20 THE WITNESS: Where these families were living and that any resistance would
 21 result in danger or ostracism of them and their families from the protection of their
 22 camp or community.

23 I would like to point out to the Court, your Honour, that the optional protocol
 24 to the convention on the rights of the child with regard to the recruitment and use of
 25 children in armed conflict does not make any distinction between conscription and enlistment

1 of children and their use in hostilities. The proscription applies equally to both that
2 no party should under any circumstances recruit persons until the age of 18 years of
3 age.

4 I move on, your Honour, to the discussion on using them to participate actively
5 in hostilities. Again, we ask that the Court use a case-by-case approach that fully
6 understands and reflects the nature of the actual conflict in question. The Zutphen text
7 and the bright-line rule with regard to using children are based on the experience of
8 traditional warfare and only goes partway in encompassing the realities of the changing
9 nature of war.

10 However, the new warfare in African conflicts is much broader in its reach than
11 the Zutphen text takes into account. Firstly and primarily, large numbers of girls are
12 being recruited in these new armed conflicts. Girls play multiple roles, sometimes
13 involving conflict -- combat, scouting and portering, but also including and being forced
14 into sexual slavery or bush wives.

15 I can tell you of -- the case of two girls who I know and who work closely with
16 our office: Grace Okello (phon), who was abducted by the LRA in northern Uganda from
17 her childhood. She was taken, she was trained as a combatant, she was forced to fight,
18 but she was also a sex slave and a bush wife. Finally she made her escape.

19 Or Eva, a young girl I met in the DRC, who on her way to school at the age of
20 12 was -- was taken in by the FDLR and kept in a situation of forced nudity. Most of
21 the time she was a domestic aid and a sex slave, but once in a while she did go scouting
22 and did do porter work. So, that is why we would like to point to the multiple roles
23 of these girls and the need to protect them in every context.

24 We feel any international framework for children associated with armed groups
25 that provides first either for the protection of these children from recruitment and

1 use during wartime, their vindication in terms of accountability mechanisms for those
2 who commit the crime of recruiting and using children, or any framework for their care
3 and assistance once they are released or escape from these armed groups, that this framework
4 must include girls like Grace and Eva. This is the message I bring to you from the field.

5 Already, field-based documents appreciate that these children must be protected
6 within the framework of the recruitment and use of child soldiers.

7 THE INTERPRETER: Apologies to interrupt. Could the speaker please slow down,
8 Mr President.

9 THE WITNESS: Yes, I heard that.

10 PRESIDING JUDGE FULFORD: Ms Coomaraswamy, you must pay attention to this, please.
11 I am afraid I am going to be slightly sterner now. It really does make the lives of those
12 who assist us very difficult if people speak too quickly, so please just take a break
13 as you go along.

14 THE WITNESS: Okay. Let me repeat again that any framework for the protection
15 of children and recruitment and use during wartime, any framework for the accountability
16 of those who do recruiting, any framework for the care and assistance of children must
17 include girls like Grace and Eva. This is the message from the field.

18 Already, field-based documents appreciate that these children are protected
19 within these frameworks. The UN policy on disarmament, demobilisation and reintegration,
20 the IDDR standards, the Paris principles of 2007 dealing with children associated with
21 armed groups and also the holdings of the Sierra Leone Court, moving beyond the Zutphen
22 text to include children whose labour or support gives effect and helps maintain operations
23 in conflict.

24 Your Honour, it is important that your rulings protect all affected children
25 and do not ignore the central abuse perpetrated against girls during their association

1 with armed groups after they have been recruited or enlisted, regardless of whether or
 2 not they mostly engaged in direct combat functions during conflict. And finally to give
 3 these girls justice for the whole panoply of abuse suffered when they are taken and used
 4 by armed groups; girls whose futures at the age of 12, 13 and 14 years of age are sadly
 5 warped by their horrible experiences.

6 In stating this, let me say clearly that conscripting, enlisting and using children
 7 in conflict does not automatically make the child a combatant in terms of IHL. The Court
 8 should see children as a special category, creating a framework that protects their
 9 vulnerability while respecting the rights of the Defendant and the justice claims of
 10 the victims.

11 Finally, your Honour, let me state how important the work of the ICC is to every
 12 one of us who works in the field. The willingness on the part of the Court to prosecute
 13 these cases has sent many armed groups to us - the United Nations - willing to negotiate
 14 action plans for the release of children; most recently yesterday in Nepal where the
 15 release of 3,000 children is about to begin today. We found your work to be so important
 16 and that is why we have sought to reflect the experiences of the child protection partners
 17 of the United Nations in the field and the child victims we attend to across the globe
 18 in our intervention here.

19 Thank you, your Honour.

20 PRESIDING JUDGE FULFORD: Thank you very much, Ms Coomaraswamy. Ms Bensouda.

21 MS BENSOUDA: Thank you, Mr President.

22 Questioned by Ms Bensouda:

23 Q. I have a few questions now in view of your comprehensive presentation of your
 24 report. May I refer you to your paragraph 5 of the report. Specifically you said that
 25 "... the Court should recognise that enlistment, recruitment and use of children under

1 the age of 15 is a highly predictable consequence of a purpose or plan to recruit minors ..."

2 Why do you say this? Why is it a highly predictable consequence?

3 PRESIDING JUDGE FULFORD: Don't answer for a moment, Ms Coomaraswamy.

4 Mr Biju-Duval.

5 MR BIJU-DUVAL: (Interpretation) Yes, thank you, Mr President. I am sorry to
6 interrupt the hearing, but the Court has clearly reminded us of the two subject areas
7 as to which Ms Coomaraswamy has been invited to talk and I believe that we are moving
8 away quite distinctly from this in view of the fact that the question asked is not with
9 regard to the definition of conscription or enlistment, or to the participation of children
10 in hostilities, but rather to the causes and to the alleged existence of a recruitment
11 plan. This is a new subject area, which it has not been retained by the Trial Chamber,
12 and this is why I am wondering whether this question is acceptable.

13 PRESIDING JUDGE FULFORD: In a sense, Mr Biju-Duval, there is not exactly a
14 problem, but an issue to which we alluded in the ruling we gave earlier that there has
15 been in a way a development in Ms Coomaraswamy's position in that she began as an *amicus*
16 and it was as an *amicus* that we gave the ruling which we did now some considerable time
17 ago.

18 The two questions that we identified then led to the report, which is now before
19 the Chamber as part of Ms Coomaraswamy's evidence, and no one until this point of time
20 has objected to the contents of the report. I think it is fair to say that, given the
21 approach that we took with other expert witnesses, it was predictable that the report
22 should become part of Ms Coomaraswamy's evidence. She is now here as a witness, rather
23 than as an **amicus curiae*, and as I understand Ms Bensouda she is really asking
24 Ms Coomaraswamy to elaborate on matters that are set out in the report in relation to
25 which there has been no objection.

1 Now, so long as the questions remain focused on the areas dealt with in the
2 report and do not go substantively beyond them, would you be content with that approach?
3 Do discuss the matters with your colleagues.

4 Yes, Mr Biju-Duval.

5 MR BIJU-DUVAL: (Interpretation) Yes, Mr President. It would seem to us that
6 it is legitimate still today to emphasise the matters covered by the *amicus curiae* and
7 expert which have moved away from the strict framework imposed by the Trial Chamber.
8 This is the fundamental underlying reason to my objection and I believe that that objection
9 is still legitimate today. We would like to uphold this objection and we are in the Chamber's
10 hands on this point.

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

12 (The Trial Chamber confers)

13 PRESIDING JUDGE FULFORD: First of all, I need to say that - and I am grateful
14 to the legal adviser to the division for having brought this to my attention - I think
15 at line 8 of this page I referred inadvertently to Ms Coomaraswamy no longer being an
16 expert. I of course meant no longer being an *amicus* and I would ask, please, that in
17 due course the transcript is varied to reflect that verbal error on my part.

18 In relation to the objection taken by Mr Biju-Duval, which we wholly understand
19 given the terms of our original decision which has been described in our earlier oral
20 ruling this morning, we nonetheless are of the view that given that Ms Coomaraswamy is
21 now an expert witness, rather than an *amicus* making submissions, that it is appropriate
22 for her to deal with all of the matters which have been canvassed in her report which
23 we consider generally to have relevance to the issues in this case.

24 We have attempted to circumscribe the questioning by participating victims to
25 the extent that they had sought to go beyond the framework of that report. We ask counsel

1 to approach the matter with some care, however, in that the notification which the Defence
 2 have received is essentially the matters in Ms Coomaraswamy's report and it is -- there
 3 is the real possibility that there could be unfairness if counsel seek to raise wholly
 4 new areas not covered by the report. And so, so long as the report is really the guiding
 5 document, if counsel wish to ask questions developing on those points, but remaining
 6 within that framework, that is legitimate.

7 So please continue, Ms Bensouda. You may want to put the question again.

8 MS BENSOUDA: Thank you, Mr President:

9 Q. Ms Coomaraswamy, I want to refer you to your paragraph 5 of the report, specifically
 10 citing from the last -- from the first line where you said that "... the Court should
 11 recognise that enlistment, recruitment and use of children under the age of 15 is highly
 12 predictable ..." -- "... is a highly predictable consequence of a purpose or plan to
 13 recruit minors." Why do you say this?

14 A. Your Honour, this comes from our experience in some of the African wars, in
 15 Liberia, Sierra Leone, in Congo, where I think we can say quite clearly that if there
 16 is a plan to recruit minors then minors under 15 have been recruited. Though the majority
 17 may still be in the 16 to 18 range of children, a large number of children under 15 in
 18 these wars have been recruited.

19 Q. And, Madam, if I may just remind you to again speak slowly and after my question
 20 just take a pause before you answer. I am again referring to another paragraph, paragraph
 21 6 in your report, when you discuss the high level of recruitment of children "... due
 22 to the nature of some contemporary armed conflicts." What is it about contemporary nature
 23 of armed conflict that render children vulnerable to recruitment?

24 A. Your Honour, there are different areas of the world where there is changing
 25 nature of conflict and that different reality has to be taken into consideration. The

1 changing nature of conflict in Africa is different to the changing nature of conflict
2 in Afghanistan, but for this purpose I will focus in on Africa itself.

3 The issue has been, since the 1980s, a proliferation of small arms has allowed
4 for more young people to be recruited into armed groups, so we see a large number of
5 young people in these wars being recruited into armed groups. We also know that a large
6 number of girls have been recruited into the groups, as I said, to play multiple roles.

7 This reality is what prompted the United Nations in 1996 to ask Graça Machel
8 to head a study on the impact of armed conflict on children and which directly led to
9 the setting up of my office, so this is what I would like to point out about the African
10 war.

11 THE INTERPRETER: Apologies for interrupting from the English booth. We believe
12 the interference is coming from the fact that the witness is holding, or wearing, her
13 headset around her neck. We believe this is the origin of the interference. Thank you.

14 PRESIDING JUDGE FULFORD: Right. Usher, could you see whether there is something
15 that can be done about the interference. Oh, have we rectified it?

16 MS BENSOUDA:

17 Q. Madam, in your response just now you talked about the proliferation of small
18 arms. What is it about it that encourages children to be recruited?

19 A. Well, according to child protection partners, it takes a child about 45 minutes
20 to master an AK-47 and therefore it is something they can use. Where weapons were heavier
21 and where things were of different order in terms of traditional warfare, this was not
22 the case. And also not only in terms of the actual size of the weapon, but also the
23 proliferation of these weapons. A large number of these weapons being available has allowed
24 for children to be recruited.

25 Q. Thank you. You also in your report -- and I am referring here to your paragraph

1 13. You talked about a visit - a recent visit - to the DRC. I would want you to tell
 2 the Chamber about this visit, when was it, if possible? Where? What was the purpose
 3 of the visit to the DRC and for how long?

4 A. Thank you. I visited the DRC on two occasions, one in 2008 and one in 2009.
 5 In both cases I went to the eastern province, I visited Bukavu, Bunia and Goma, where
 6 UNICEF and child protection partners introduced me to former -- children who were former
 7 child soldiers and also to the protection partners on the ground so that I could be made
 8 familiar with some of the issues and concerns in the DRC. So, this was really a visit
 9 to familiarise myself with regards to issues in the DRC and to ensure that the conclusions
 10 and recommendations of the security council working group on children and armed conflict
 11 was also being carried out in these areas.

12 Q. Thank you, Madam. In your experience from these field visits, I mean example
 13 of which you have just given us, what are the main methods of mobilisation or recruitment
 14 of child soldiers from your experience?

15 A. Well, I think we have of course the traditional method of abduction. A lot
 16 of children are abducted into the armed forces. That is one way. Secondly, in ethnic
 17 wars children are persuaded by parents and maybe even communities to join these armed
 18 groups. Often the children have absolutely no idea of what this entails and the consequences
 19 that will occur to them. We also have situations of extreme poverty, where children because
 20 they are orphans or because they have no other protector often go into armed groups.
 21 So, these are the three kind of categories which I would say: the abduction; the persuasion
 22 by community elders; and, thirdly, poverty that drives children sometimes into the armed
 23 groups.

24 Q. Thank you. Both in your report and in your presentation this morning, you also
 25 talked about the militia leaders being glamorous role models for these children. Can

1 you elaborate on this?

2 A. Well, when we talked to some of the children who you would put under the term
3 "voluntary enlisted", many of them told us that they joined because they found the lifestyle
4 to be glamorous; people wearing sunglasses and carrying guns and wielding power. Of course
5 it might be that there is no other option in some areas, maybe there are so many armed
6 groups that that is the only form of masculine expression that exists, but many children
7 do go to the groups for succour because they feel that these are glamorous role models.

8 But let me say if I can what I meant in the earlier question, that these children
9 join these armed groups, or want to join armed groups, but we have found that it is up
10 to the group leaders to decide whether to accept them, or not accept them, and that is
11 where accountability lies. We feel it is very important, even though they may be glamorous,
12 even though children may be enticed, that it is important to respect international law
13 and that the children not be accepted into the armed group.

14 Q. Thank you. You have also talked about the visits that you have made which you
15 just mentioned now. In all the countries that you have visited in the course of your
16 work, where did you find the highest number of children under 15 recruited, or enlisted?

17 A. I wouldn't like to name one country, because that would require that I had done
18 that empirical work before I came here, but I would argue that in countries such as Sierra
19 Leone, such as the Congo, also in the Sudan, in these three countries that come to mind
20 at the moment children under 15 have been recruited in large numbers.

21 Q. Thank you. How were you able to tell that they were under 15, their age?

22 A. Well when I go to the field, of course, I am supported by UNICEF and child protection
23 partners, so UNICEF and the child protection partners are the ones who introduce me to
24 these children. I have enquired from them, "What is your strategy for trying to determine
25 age?", and this is what we call the triangulation of indicators. Basically we check from

1 three different sources at least, whether it is family -- if there is doubt about the
2 child's age, if the child is saying an age that is different, we check with families,
3 neighbours, religious institutions, sometimes even church records, to determine the age
4 of the child.

5 Q. Thank you, Madam. You also said in your presentation that children have this
6 underdeveloped sense of fearlessness in battle. Can you elaborate on that, please?

7 A. Well, this is a factor that has been really pointed out by child psychologists
8 that children do not really understand the concept of death and that when they are in
9 battle they go into battle thinking it is like a game, without understanding the real
10 consequences. Now, some groups around the world exploit this and often it is the children
11 that are sent first like cannon fodder for the first attack, because they will run straight
12 into the line of fire without flinching. So this is one of the factors that for example
13 was pointed out in the Liberation Tigers in Sri Lanka, and in some other areas, that
14 the children brigade went in first.

15 Q. You say this is one of the factors. Are there any others in addition to this?

16 A. Factors?

17 Q. You said this is one of the factors that make children --

18 A. Yes, there are other factors. Children are also -- accept a subordinate role
19 very -- they take orders. They will do exactly what they are told. They rarely will
20 have the moral discernment to know whether something is right or wrong. If their leaders
21 do it, they will follow. So therefore it is much easier to let them follow orders and
22 obey and, therefore, with regard to the death concept as well they will go straight into
23 battle.

24 Q. Thank you. Again, I refer to your paragraph 14 where you talk about Laurent
25 and the impact of ethnic tribal wars. How does this affect the recruitment of children?

1 A. Ethnic tribal laws are more complicated to some extent than political wars
2 sometimes, because there the community often feels threatened and therefore there is
3 a lot of pressure on the children from the family and the community sometimes to join,
4 though we know of many parents who try to hide their children and not let them join.
5 So it is not that everyone wants that, but there is so much pressure for children and
6 everybody - women, children, everyone - to join in the defence of the ethnic group and,
7 therefore, there is also this notion of romantic death for children which is played on
8 by recruiters. In ethnic and religious wars there is a sense that dying for the community,
9 or the religious community, there is some notion of romantic death, or some benefits
10 in heaven, which also children are easily exploited by those kinds of imageries of romantic
11 death and heroic death. They -- and so those are some of the things that ethnic and tribal
12 wars and religious wars, which we are finding more and more in other parts of the world,
13 have an implication for children.

14 Q. Thank you. In your paragraph 16 you talked about Mary. Do you remember what
15 age Mary was?

16 A. My sense was Mary was -- when she was actually picked up was around 14, if I
17 was not mistaken, and she was waylaid and forced to go into the camp and was sexually
18 abused.

19 Q. Still on paragraph 14 you talked about "Many 'volunteer' recruits soon become
20 disillusioned, but are able to leave ..." -- "... are not able to leave due to the fear
21 of being killed." Can you explain what you mean?

22 A. Well, in many groups of course children, or any people who have actually escaped,
23 are then -- actually, Joseph Kony of the LRA does this most. They are brought back and
24 then killed in front of the children to be -- to put fear into them that, if anyone runs
25 away, this is what will happen. It depends on the group and the practice, but in many

1 cases that is the extreme, but there is a lot of fear put in the children that if they
2 leave that there would be punitive measures taken against them.

3 MS BENSOUDA: Thank you. Mr President, no further questions.

4 PRESIDING JUDGE FULFORD: I am grateful to you, Ms Bensouda. Thank you very
5 much indeed. Now, from participating victims who is going first? Ms Massidda.

6 MS MASSIDDA: Thank you, your Honour.

7 Questioned by Ms Massidda:

8 Q. Ms Coomaraswamy, good morning. My name is Paolina Massidda and I am the principal
9 counsel of the Office of Public Counsel for Victims. We met briefly yesterday. I represent
10 a group of victims participating in this trial.

11 PRESIDING JUDGE FULFORD: Ms Massidda, forgive me interrupting. I am aware from
12 a conversation earlier that your eyes are causing you some discomfort this morning. If
13 you wish to wear glasses that are darkened, you of course have our permission to do so
14 if that would make it easier for you.

15 MS MASSIDDA: I thank you, your Honour, for your kindness, but I don't think
16 that it is appropriate. Thank you very much.

17 Q. I have a few questions on two different areas that you cover in your report.
18 The first part of my intervention will be on factors contributing to the recruitment
19 of children into armed groups. I am not going to focus on factors that you already explained
20 yourself in your introduction and then following some questions by the Office of the
21 Prosecutor. You focus essentially on the vulnerability of children as a factor, as I
22 understand it, contributing to the recruitment of children. However, in your report,
23 paragraphs 5, 7 and 13, it seems to me that you are also referring to other factors which
24 may contribute to the recruitment of children. So, I would like specifically to know
25 from your experience which social, economical and cultural factors do contribute to the

1 recruitment of children into armed groups?

2 A. Well, if I was to look at it in a comprehensive way, I would say of course that
3 first we must always realise that children join armed groups because, as I said, they
4 are abducted. There is no choice. There is nothing. They are walking home from school.
5 They are just taken and taken into the camp. That happens in a large number of cases
6 and we must not forget that.

7 The second type of -- then there are those who come to the armed groups and
8 these are for a different host of reasons. We have the most vulnerable in the society,
9 children such as orphans and others, who because there is nowhere to go and the only
10 group functioning is an armed group sometimes join the armed groups.

11 Then we have sometimes issues of discrimination, or revenge, in which children
12 because they belong to a particular group have been attacked or their families have been
13 attacked so they join the armed groups, but also usually not because they have done this
14 from major freewill choice, but because of the pressure that often comes to them from
15 the community itself and from the parents themselves.

16 And then we also have children who have suffered abuse in the home and who therefore
17 join because they are running away. In Nepal we found this often with girls. Running
18 away from situations in the home, abuse in the home, they go to the armed groups.

19 Then there are recruitment in schools, where a group -- where often armed groups
20 go into a school, give lectures and then recruit them again with notions of a romantic
21 future. This happens all over the world.

22 So these are some of the reasons, but what I want to point out is that what
23 is crucial here is the decision of the leaders of the armed groups whether to recruit
24 or not recruit children. We have found that where that decision is made not to recruit,
25 children to some extent or after the action plans for example that we have entered into

1 with many groups around the world where they have released children to us, after that
2 there is no recruitment of children. So, despite all these conditions that may lead to
3 children being enrolled, we cannot get away from the actual decision of the leaders to
4 recruit and that I think is why many of us push for accountability.

5 Q. Thank you, Madam. Now, you have just said to the Court that you had two visits
6 in the Democratic Republic of the Congo in 2008 and 2009. Are you able to tell us if
7 there are specific factors, specifically for Democratic Republic of the Congo and if
8 you can Ituri region, which contribute to the recruitment of children into armed groups?

9 A. Well, let me say that my intervention here is to try and truly influence policy
10 at an interpretive level, but if I may explore your question I would say that in the
11 Democratic Republic of Congo the classic case of what we call the African war, the pattern
12 of the African war, unfolds itself in the eastern province; the proliferation of arms,
13 the recruitment of girls, ethnic and tribal wars, wars in the periphery of the country
14 and not in the centre, these factors that have been identified as what are common to
15 the changing nature of conflict in African wars, and the close link to the exploitation
16 of minerals and resources which is another aspect of what we call the African wars. All
17 these factors exist in the Congo and therefore it is the classic case in some ways of
18 the changing nature of conflict in Africa.

19 Q. Thank you. Now, coming to another factor, paragraph 10 of your report. You
20 made an assertion in relation to consent of a child. I quote, "The fieldwork of our office
21 makes apparent the invalidity of a child's consent to any of the three crimes of child
22 soldiering." Could you please elaborate on this assertion? What I am interested in is
23 specifically why and how the circumstances in the field lead you to draw this conclusion?

24 A. Well, this is based on our interviews with former child soldiers, both by myself
25 and by my officers in my office, UNICEF, who we work very closely with, and there is

1 no doubt that when we actually meet the children when they have been released or when
2 they have escaped that there is a clear pattern that when they join the armed groups
3 they are completely unaware of what it entails, what it was for, the notion that they
4 gave consent knowing the full circumstances of what they were getting into, informed
5 consent as we would call it in other parts of the world, that just does not exist for
6 the vast majority of these children and they join these armed groups because of pressure
7 because they find themselves there, or because they have been abducted. Rarely have they
8 joined understanding what it means, what death means, what fighting means and therefore
9 their vulnerability is quite extensive and extraordinary, and it is heartbreaking for
10 anyone who meets them.

11 Q. Thank you. Paragraph 11 of your report, I quote second sentence "Recruitment
12 is *per se* against the best interests of a child." Could you please again elaborate a
13 little bit further on this? This is my first part of a question. The second part of
14 a question: In relation to this assertion does a distinction need to be drawn between
15 boys and girls when dealing with this sentence?

16 A. Well, let me say that recruitment is *per se* against the best interests of a
17 child. You have to only meet child soldiers, former child soldiers, to come to that
18 conclusion. It doesn't have to be any legal exploration. As you know, our office has
19 a network of former child soldiers who we work with, who have become well-known artists
20 or they have become students doing their PhDs who have done well with their life. Now
21 even they, who have had the resilience to struggle and to come up, if you talk to them
22 about their time in this armed group, all to a person would tell you how horrible it
23 was and how it went against their education, against their livelihood, against their -- and
24 how they had to have some kind of psychosocial support, whether even if it is not traditional
25 western medicine, but at least through family healing and through religious people, they

1 will all tell you that; even the ones who have survived and who are very resilient. And
2 what is interesting is one of them, Mr Ishmael Beah, says that actually when he was first
3 taken out he was - by UNICEF - he was so in this mindset, so brainwashed, that he actually
4 resisted it because he felt that this was the only way he was a soldier, and they were
5 taking us away, the civilians, but it was only after a month and he realised what terrible
6 things have happened to him that none of that needed to have happened to him that he
7 actually then emerged whole and could study again and could go back to school and now
8 he has written, as you know, this award-winning book. So I think it is very important
9 to realise that it is *per se*. I have not met one child soldier, even the ones who have
10 survived and done so well, who will say for a moment that their experience as a child
11 soldier was in any way positive.

12 Q. And, Madam, this fact that you have just addressing with the Court, the fact
13 that because of the experience actually the person you mentioned was resisting the fact
14 of coming out from the armed forces is something that is usual in your experience?

15 A. It is usual; it is usual in our experience. In fact, because that is all they
16 know, they are so frightened of what the future holds. Recently I was in Nepal and I
17 had a long discussion with the former child soldiers in Nepal, and they have so many
18 fears as to what will happen to them that they say, "Well, can't we just be soldiers,
19 because that is what we know?" and it is only after you speak to them and show them that
20 there are other options and that there can be available to them that they begin to even
21 think of ways. So you can't judge just right after they are released. If you interview
22 them there, they are very uncertain about the future, but when they have had over 20
23 years to look back and they think of that experience, and if you talk to any of these
24 people in this network of child soldiers they will all tell you how they realise that
25 they just lost their childhood and they lost a lot of opportunities and they will describe

1 to you in graphic detail.

2 MS MASSIDDA: Your Honour, I am confident I can close my questioning in the
3 next five minutes.

4 PRESIDING JUDGE FULFORD: Let's do so before we take the break, Ms Massidda,
5 but thank you for having an eye on the clock.

6 MS MASSIDDA: Thank you.

7 Q. Two more questions, Madam Witness. The first one, in your experience, can,
8 and to what extent the use of girls for sexual purposes be considered as an objective
9 and/or a consequence of their recruitment into armed forces?

10 A. I think the way we have to look at these conflicts is to not accept the distinctions
11 that we normally take for granted so in the sense that the role -- the children -- there
12 is not one objective when a child is recruited. They are forced to play multiple roles.
13 They will play a role where they will be combatants one minute. They may be, especially
14 girls, sex slaves another minute. They may be scouts. They may be do others. It is
15 a different notion of an armed group. Though some are mainly combatants, others may be
16 mainly sex slaves, but they have been all been recruited and enlisted into this group,
17 but those who are sex slaves will also at some point do some military work. So I think
18 the blurring of these lines, that is why we are arguing for a case-by-case determination
19 and an attention to the facts. That is all we are asking so that the rules that are made
20 will be such that depending on different parts of the world, and the realities we face,
21 that the legal rules will help us interpret those realities as well.

22 Q. Thank you. My last question is in relation to paragraph 23 of your report which
23 you just summarised also in my previous question and your answer: Which forms of sexual
24 exploitation do girls and boys suffer when integrated into armed groups?

25 A. Well, there are so many cases of -- first they suffer rape. This happens to

1 girls on a regular basis. Then they suffer forced marriage. They are often given as
2 bush wives. Then some of them, such as Eva who I met in the DRC, was just kept in the
3 camp, in the FDLR camp in a state of forced nudity. She had to be just nude whilst she
4 is in the camp. Then there are others who -- there would be sexual harassment also. So,
5 there is a whole host of sexual activities that do take place in some of these armed
6 groups, and at the same time some of the girls that I met in Sierra Leone would -- would
7 have this and then the next minute they are sent in to combat, to fight, and then they
8 come back and it is -- I think for girls of particularly horrendous experience, especially
9 when they are abducted and they go into the conflict in that way.

10 MS MASSIDDA: Thank you, Madam Coomaraswamy. This ends my questioning, your
11 Honour. Thank you.

12 PRESIDING JUDGE FULFORD: We are indebted to you, Ms Massidda. Ms Coomaraswamy,
13 we are going to take a break now, partly for us but principally for the transcribers
14 and the interpreters. We will sit again in half an hour's time, which should be just
15 after 12 o'clock. Could you go now, please, with the usher who I hope will lead you to
16 somewhere where you can have some tea or coffee.

17 THE WITNESS: Thank you.

18 (The witness stands down)

19 PRESIDING JUDGE FULFORD: Just after 12 o'clock.

20 THE COURT OFFICER: All rise.

21 (Recess taken at 11.30 a.m.)

22 (Upon resuming at 12.00 p.m.)

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

24 PRESIDING JUDGE FULFORD: Ms Coomaraswamy, please.

25 (The witness enters the courtroom)

1 PRESIDING JUDGE FULFORD: Thank you very much, Ms Coomaraswamy. Who is going
2 next, Mr Walley?

3 Questioned by Mr Walley:

4 MR WALLEYN: Thank you, Mr President.

5 Q. Madam, my name is Luc Walley. I am representing a group of victims, as you
6 know. I have two, maybe three questions for you. The first one, I would focus on the
7 relation -- on the confrontation between child and recruiter. You said in your report
8 that there is a high risk that when recruiting youngsters in general, even without focusing
9 on children under 15, that there is a high risk that children under 15 will be recruited.
10 And you've told us this morning that there is a duty of due diligence from the side of
11 the recruiter. Could you explain more how do you see that duty and how practically what
12 could be the legal attitude of a recruiter, confronting with a boy or girl that could
13 be under 15 but that could also be over 15, is there a burden on the child? And particularly,
14 if he wants to resist his recruitment or his -- can he -- is it sufficient for the child
15 to pretend he is under 15 or is it -- should he prove that he is under 15, or is the
16 burden on the side of the recruiter in case of doubt to verify and to look for evidence
17 about the exact age? Could you explain that to us?

18 A. Yes. Well, this is not even a theoretical issue because what we believe is
19 that when children come, and if there is a doubt about their age, there is a duty of
20 due diligence to check into their background, their family and friends, neighbours,
21 religious that -- and what we know from our own experience -- I was recently in southern
22 Sudan. We entered into action plan with the SPLA for the release of children. Now they
23 have children coming because in southern Sudan there is a large number of orphans, children
24 coming to their sites, so now what they do is they immediately call UNICEF or a child
25 protection partner or a child protection of -- of southern Sudan who then come to the

1 centre and then take care of the child. Or if they have doubts, they refer the child.
2 So once the decision is made that you are not going to recruit children, then you begin
3 to engage with other child protection partners and others, hand the children over, you
4 know, and that, but you don't just send the children out into the streets. That is what
5 we argue in our action plans, which are very specific. As the UN, we enter into action
6 plans with these groups to release children to us, and then we have a certain obligation
7 in responding to the children as well.

8 And we have now negotiated quite a few around the world, helped a lot by some
9 of the fear of the ICC Prosecutions, et cetera. A lot of these action plans have been
10 agreed to. And in that, now we are seeing the post-action plan, where children are going
11 to these groups, and we are seeing how these groups have responded by handing the children
12 over to UNICEF or to child protection actors, and telling them take them from us. So
13 in that sense, there is a duty to verify the age. If in doubt, or if the person is a
14 child, to hand them over to child protection or other people in the community, if they
15 exist.

16 Q. Do you consider that if such recommendations are not followed, if there is a
17 random recruitment of every young boy or girl that can carry a gun, without any control
18 on the age can be considered as recruiting children under the age of 15?

19 A. Well, I think if -- if children are recruited and they happen to be under the
20 age of 15, yes, I think that can be considered to be recruiting under the age of 15.

21 Q. I had a second question, Mr President, concerning the time frame of the crime
22 of enlistment or conscription. Do you consider that conscription occurs only the very
23 day that the child is taken and put in a truck, for instance, to be brought to a camp
24 or that this continues as long as the situation continues, training, et cetera; in particular,
25 for the higher-ranked people who discover that, may be a simple soldier recruited a youngster

1 or a child under the age of 15, if it's discovered after one month or two months, is
 2 there still a duty to intervene, or can you consider that the recruitment is only the
 3 day and not the day you discover the situation? Do you understand what I mean?

4 A. Well, in the sense that what we believe that when children are recruited, it's
 5 usually that they are taken away to some camp, but this is not always the case, such
 6 as in the Philippine through the MILF, they come from their houses and are trained. So
 7 they -- it doesn't necessarily mean that they have to be taken away from the camp. But
 8 once they begin training and/or they are taken to a place, the moment begins. But I think
 9 the question you asked is that I think what we feel -- when we enter into action plans
 10 with these groups, the first thing we ask them is to send directives in these action
 11 plans to all their commanders that they will not recruit children. So this is something
 12 we urge the parties to do. Secondly, we urge them to take action against those in their
 13 group who do recruit children so that it creates -- it sends a strong message.

14 Now recently in Nepal, we were negotiating with the Maoist, and they initially
 15 didn't want to have this notion of punishing those who they -- their subordinates who
 16 recruit children, but we insisted and they finally agreed, that they would be obligated
 17 to take action against their subordinates who recruit. So in these action plans that
 18 we model with groups now, or who recruit children, we have both these elements in them,
 19 obligating them. And these action plans are signed by the United Nations and the group,
 20 and sometimes the government, if it's concerned, and then they give us -- maybe a contractual
 21 obligation at least that they -- that they give these directives that children not be
 22 recruited, and that they take action against those who -- who violate that directive.

23 PRESIDING JUDGE FULFORD: Mr Walley, if I can help. Ms Coomaraswamy, I think
 24 that the particular objective that Mr Walley had in mind is whether recruiting - enlistment,
 25 conscription - is a continuing offence or whether it is only --

1 THE WITNESS: Oh, yes, of course.

2 PRESIDING JUDGE FULFORD: -- as it were, committed on the day when the enlistment
3 or the conscription takes place.

4 THE WITNESS: Oh, yes. I'm sorry I didn't answer that.

5 PRESIDING JUDGE FULFORD: No, Don't worry. Don't worry, but I think that's what
6 Mr Walleyne was asking.

7 THE WITNESS: Well, let me say that it is a continuing offence, and we even
8 monitor it to even when they become adults. We continue to say that the recruitment offence
9 exists not only while they are children, but while they are into adults. So that is very
10 clear.

11 And, for example, the reason Maoists discharged in Nepal, a lot of these children
12 are now adults, but they are being treated as recruited under the offence of recruitment
13 from a young age.

14 PRESIDING JUDGE FULFORD: The French has frozen. We are going to try and thaw
15 it.

16 MS MASSIDDA: The English too, your Honour.

17 MR WALLEYN: There is a problem --

18 PRESIDING JUDGE FULFORD: You are quite right.

19 MR WALLEYN: -- with the transcription.

20 PRESIDING JUDGE FULFORD: Carry on, though, for the time being. The English
21 has frozen too. It's no doubt symbolic of the weather outside. Carry on for the time
22 being, Mr Walleyne, and we will see if they can catch up.

23 MR WALLEYN: Just a last question, Mr President, which is linked also to this
24 time aspect.

25 Q. In your report, you mentioned -- we spoke already about that a girl, Mary, in

1 paragraph 16 of your report when you say that in the beginning she was recruited as a
 2 domestic aid and sexually abused, but later on she was also joining in attacks on villages.
 3 So there is a development in her practical situation, but do you consider that you can
 4 say that there is recruitment only the day she touches a gun, or is she recruited from
 5 the very first day, even in the -- if in the beginning she is not yet participating in?

6 A. Well, that's why we are arguing strongly that, look, when girl children are
 7 abducted or enlisted or enrolled, even as sexual slaves, that it be regarded as enlistment
 8 or conscription from the day they entered the camp, because they play -- they will play
 9 multiple roles in those camps. And I don't think we -- it would just be impossible on
 10 these days she is a combatant and on these days she is a domestic aid and on these -- it
 11 just can't be done. So we will have to just treat it the moment they are conscripted
 12 under age, enlisted under age, that it is enlistment and conscription.

13 MR WALLEYN: Thank you very much. I have no other questions, Mr President.

14 PRESIDING JUDGE FULFORD: Thank you very much, Mr Walley. Can I ask whether
 15 on your screens someone is remotely reconnecting? Yes, I see some nods from the back
 16 of the Court. Good. Right.

17 Mr Keta, any questions?

18 MR KETA: (Interpretation) Thank you very much for giving me this opportunity.

19 Questioned by Mr Keta:

20 Q. My name is Joseph Keta. I am a lawyer representing a certain number of victims
 21 participating in the case. I have one question which is in two parts.

22 This morning you said that your objective was to help the Court adopt the principle
 23 of protecting children in the field, and I am referring here to paragraph 5 of your report
 24 where you talk about the plan to recruit minors.

25 I would like to say that in the DRC, and in Ituri in particular, this plan existed

1 because when children in a primary school who are less than 15 years are forcefully taken
 2 away, this is actually the concretisation of this plan. My question is this happened
 3 in certain schools in the DRC and in Ituri. Not only were children taken away, but the
 4 schools were destroyed. In your report, when you talk about protection, what are the
 5 concrete measures? Because you have said that you have partners in the field, so what
 6 are the concrete measures taken in the case of those children abducted forcibly from
 7 their schools and who are no longer in school now and who do not know what to do?

8 Secondly --

9 PRESIDING JUDGE FULFORD: In turn, Mr Keta, but before we take the first question,
 10 Mr Biju-Duval?

11 MR BIJU-DUVAL: (Interpretation) Yes, Mr President. In the first question,
 12 there is actually testimony. It is an answer which is not actually a question. And there
 13 is -- it is a question that is not in the area that was retained by the Chamber. So,
 14 this is -- these are two reasons for objecting to this question.

15 PRESIDING JUDGE FULFORD: Mr Keta, can I ask you, please, to be careful when
 16 you ask questions not to give evidence yourself. Your reference to what happened in certain
 17 schools in the DRC was not really put as a question, but was an assertion of fact which
 18 is inappropriate for counsel to make.

19 Now, I think the question is in the last few lines of what you've put and it
 20 relates to the concrete measures taken by Ms Coomaraswamy's partners in the field in
 21 relation to children forcibly abducted from the schools. Now I think, Mr Keta, that that
 22 was actually part of the area of questioning which we have prohibited. I think the actions
 23 taken by Ms Coomaraswamy and her team really fall outside the proper ambit of our investigation
 24 in this case. I'm sure it's important and highly relevant in other contexts, but it is
 25 not hugely relevant for us. So could I ask you, please, to move on to your second question.

1 MR KETA: (Interpretation) Much obliged, Mr President. Maybe, if given the
2 opportunity, I would explain my question by asking a question relating to the recruitment
3 of minors particularly in schools? Maybe she can tell us something general about that?

4 PRESIDING JUDGE FULFORD: Yes, certainly, Mr Keta.

5 THE WITNESS: Well, yes, schools are often recruiting grounds for children.
6 This is true for many armed groups around the world. Not only in Africa, in Asia, in
7 Latin America, groups go into schools and recruit children and sometimes just abduct
8 them. Sometimes they appeal to their sentiments, but sometimes they abduct them. So,
9 schools are often a recruiting ground.

10 And one of the things our child protection partners try to do on the ground
11 is to negotiate with all the parties to make schools into safe zones. That is one of
12 the preventive things we try to do in different conflicts to say, "You can have the conflict,
13 but let the schools be safe zones." So, that's one of the negotiations we have with armed
14 groups.

15 Secondly, when groups take -- take children from the schools, we do try to get
16 them back through negotiations of action plans for their release, and this is done, they
17 are made aware of the international rules and regulations of Security Council Resolution
18 1612 and the kind of procedures, and we try to negotiate the release of these children
19 through action plans. We have been fortunate in some cases to be able to do so.

20 But basically I suppose the protection response is threefold: One is to prevent
21 by trying to make schools safe zones; the second is to get the release and maybe accountability
22 for those actions; and the third is to respond to the specific needs of the children.
23 What assistance do we have to give for them to get back to normal? So, that's really
24 the framework of our response.

25 Q. Thank you. And I will move on to my second question and it concerns paragraph

1 13, in which you state that a large number of children - particularly orphans - join
2 armed groups to survive and to have something to live on. I would like you to elaborate
3 on what happens concretely on the ground to prevent children from joining armed groups,
4 because I believe there are structures on the ground that try to reintegrate children,
5 but what is being done or what can be done on the ground to actually prevent those children
6 from joining up?

7 A. I think the whole --

8 PRESIDING JUDGE FULFORD: I'm sorry, Ms Coomaraswamy. Mr Biju-Duval, I
9 understand the point. In due course the Chamber will very carefully separate out what
10 is relevant from what is irrelevant and, rather than interrupting counsel in every question,
11 unless you have strenuous objections, I think it would be better to let this run. But
12 I undertake and reassure you that we will separate, as I say, the relevant from the irrelevant.

13 Yes, Ms Coomaraswamy, please answer.

14 THE WITNESS: Well, I -- well, I think what the structures on the ground to
15 prevent children from being recruited, as you know the approach of the United Nations
16 is to try, if we can, to strengthen the community where these things occur. That is through
17 community protection systems, through developing safe zones for children in these
18 communities, to try and work with armed actors to make certain areas of the community
19 where children are inaccessible.

20 So there are certain things, but working with community leaders really to develop
21 community systems of protection is the response of the United Nations. It is not always
22 possible. If the situation is of terrific conflict, where community structures do not
23 exist and that the only functioning body is the armed group, then children find that
24 that is the only place they can go.

25 But where communities exist, we try and strengthen places where orphans can

1 go, where children can be kept safe, in education and in other places, and develop the
 2 community's capacity to resist the recruitment. But we do not always succeed, because
 3 in some situations of conflict the conflict is so polarising that the armed group sometimes
 4 is the only functioning institution in the place.

5 MR KETA: (Interpretation) Thank you, Mr President. I have no further
 6 questions.

7 PRESIDING JUDGE FULFORD: Thank you very much indeed, Mr Keta. We are grateful
 8 to you. Mr Biju-Duval?

9 MR BIJU-DUVAL: (Interpretation) Thank you, Mr President.

10 Questioned by Mr Biju-Duval:

11 Q. Good morning, Madam Coomaraswamy. The Defence has read your report with keen
 12 attention and has also listened to your testimony and, in due course, we will be able
 13 to discuss and comment on the report more specifically. But I would like to seize the
 14 opportunity of your presence here to ask you to elaborate on certain points from the
 15 perspective which is the only one that always deserves to be defended; that is the point
 16 of view of the rights of children.

17 I am setting aside certain aspects and I will add that there is no doubt that
 18 it is criminal in any case where there is cohesion and so the use of child soldiers is
 19 understood to be terrible in any situation, but I would like you to elaborate on a specific
 20 crime; that is the crime of enlistment as understood from the statute that is in the
 21 sense of voluntary enlistment.

22 I believe that you mentioned certain elements regarding that issue, but my first
 23 question is as follows. When a child of 13, 14, 15, 16 or even 17 years has a family
 24 that has been threatened with extermination, and even his or her village or community,
 25 can we believe that that person can have the right to take up arms in order to defend

1 him or herself and their loved ones or those close to them? That is my first question.

2 A. This is in the context of joining an armed group, or they are being attacked?
3 The argument of self-defence works if the child is being attacked and he takes up a gun
4 to defend himself, but if the issue is whether he will -- joining an armed group and
5 a leader of the armed group takes him into the group, that's a different question.

6 Q. I actually wanted to go stage-by-stage. The first hypothesis is that of a child
7 who is faced with a threat of extermination; that is for him or her, their family, or
8 even the community. Does that child have a right to take up arms in order to face up
9 to that threat?

10 A. The question of using the words the "right to take up arms" of children I'd
11 rather not frame it in that sense, But if a child is being attacked and in self-defence
12 he takes a gun and shoots the person who is attacking him I will grant that; that that
13 self-defence is absolutely essential. But if there are going to be intermediaries of
14 family and community in this equation, then I feel it's the duty of the family and the
15 community to keep their children safe.

16 Q. To examine the legal issues concretely, let us take the hypothesis where his
17 brother, sister or parents are threatened with an attack. Do you think that this child
18 of 13, 14 or 17 years has a right to take up a weapon and defend his or her people?

19 A. Well, I don't -- I think this notion of endowing children with these kinds of
20 a right to take is, I think, something we have to discuss. Let me just say that what
21 my sense is that if the community is being threatened, and especially in some place like
22 the Congo, where there is a proliferation of child protection organisations, et cetera,
23 you give your children to those who can protect them.

24 Q. When the child, the child I took as an example, finds himself up against a situation
25 of total lack of organisation such as you have suggested, what happens precisely?

1 A. Well, first, there are very few places in the world where there is no lack -- where
2 there is a lack of such organisation, especially in conflict zones, where the United
3 Nations is present and others are present. So, therefore, that's one thing I would like
4 to say. If there is no such organisation, I still feel that it is the duty of the community
5 and the family to not use children in combat, even if threatened.

6 Q. Let us adopt the hypothesis this -- that this child, whom I am taking as an
7 example, this child or his family or part of his family, massacred before the eyes of
8 the blue helmets of the United Nations who remained passive in the situation, what do
9 you believe would be the mindset of this child with regard to the situation that he finds
10 himself in?

11 A. I think children respond to massacres in very different ways. Some do have
12 feelings of revenge. Some have feelings of despair. Some want to run away. I think
13 that we should not -- what -- what they actually do -- want to do is one thing, but it
14 is another thing for adults to exploit those feelings and to use them in combat, when
15 we know that they suffer such terrible consequences in combat, especially children under
16 15. And we are not even talking about 16 or 18 year olds, we are talking about children
17 under 15.

18 Q. This child who I was taking as a concrete example, do you recognise his right
19 to seek refuge in a military camp when there are no other protective provisions in place?

20 A. Of course he should find refuge wherever he can, but he should not be used in
21 combat.

22 Q. In response to a question by my learned friend Maître Walleyne a few moments
23 ago, you examined the situation of a child below or above the age of 15, whose age was
24 uncertain, a child who was seeking to join a military group, you deemed and indicated
25 that the relevant military official would have to ascertain the age of this child and

1 not accept him or her if they were younger than 15 years of age. You also indicated that,
 2 of course, one should not throw the children out into the streets, and you said that
 3 UNICEF played a capital role in this process of refusing to recruit or demobilisation.
 4 So my question is as follows: When a child comes with a view to seeking refuge, or when
 5 a child seeks refuge in a military camp, and that there is no UNICEF at hand, and that
 6 there are no other organisations present in order to take him under their wing, what
 7 should be done? What is the duty of the soldiers accepting this child? Should they,
 8 therefore, send the child out of the camp? Run the risk of this child becoming a victim
 9 of a massacre? Or should they integrate him within the camp? Where does the duty lie
 10 here?

11 A. Well, I think this answer I can give from example from southern Sudan, which
 12 is that when children do come and seek refuge, that then child protection partners are
 13 alerted and the children are handed over. Now, I do not believe that knowing the enormous
 14 United Nations operation, especially in the Congo, that there is an area where these -- there
 15 is no access to child protection partners. In most of these conflicts the world - especially
 16 where there are United Nations missions - there is access. And in fact, there is constant
 17 contact often between international organisations and armed groups. So in that context,
 18 I think, especially where there are United Nations missions, and child protection officers,
 19 United Nations missions specifically tasked for this, that we feel it is important that
 20 children be handed over when they can be. And I think there has been constant consciousness
 21 raising among these groups by these UN child protection actors that that is the right
 22 thing to do.

23 Q. In your report and in the explanations you have provided you took on this hypothesis
 24 of children seeking refuge, of children who were trying to avoid massacre, and that they
 25 were then incorporated within military groups. A child who saw his village pillaged,

1 who saw his family die, can one not say that he has a very specific idea of what war
2 actually is?

3 A. I think that children when they see -- when they see violence, it's not necessarily
4 that they understand what it means when it applies to them or what exactly means the
5 consequences of that. And I think whatever they feel when they feel -- when a massacre
6 takes place, or any kind of violence against their family, they will have natural emotions.
7 Our argument is that none of those emotions should be exploited by adults and that these
8 children should not be put in danger.

9 MR BIJU-DUVAL: I thank you, Madam Coomaraswamy. I have no further questions,
10 Mr President.

11 PRESIDING JUDGE FULFORD: Thank you very much, indeed, Mr Biju-Duval. Ms
12 Coomaraswamy, I say to you in your particular capacity what I have said to all other
13 witnesses in this case, that this Court is only able to function through the cooperation
14 of people such as yourself and other witnesses who are prepared to give of their time
15 to come to this Court to give evidence to help us in the search for the truth.

16 We are privileged to have the benefit of your very extensive experience, and
17 you leave us with our profound gratitude for the contribution that you have made to this
18 case. Thank you very much, indeed.

19 THE WITNESS: Thank you, your Honour.

20 PRESIDING JUDGE FULFORD: If you would now go with the usher, you are free to
21 leave.

22 THE WITNESS: Thank you.

23 (The witness is excused)

24 PRESIDING JUDGE FULFORD: We are going to slightly amend the agenda distributed
25 yesterday in terms of time. Now we have finished Ms Coomaraswamy's evidence slightly

1 earlier than I had anticipated. We will rise now for lunch and sit again at -- and we
2 will sit again at quarter-past 2.00 to deal with the expert on names and there is an -- some
3 outstanding applications by victims to question which we will be dealt with at quarter-past
4 2.00. Ms Massidda?

5 MS MASSIDDA: Sorry, your Honour, but we were informed yesterday by the Victims
6 and Witnesses Unit that the familiarisation process for the next witness will start at
7 2 o'clock, I think, which means that actually the Court is meeting -- we will start at
8 2.30 for the information of the Chamber. Thank you.

9 PRESIDING JUDGE FULFORD: That's very helpful, Ms Massidda. I was unaware of
10 those arrangements. So we will sit again at 2.30. Will that be convenient? No? Still
11 too early?

12 MR DESALLIERS: Mr President, excuse me. There have been courtesy meetings
13 arranged at 2.30 and 2.45.

14 PRESIDING JUDGE FULFORD: Well, is there anything that can be done about this,
15 because it.

16 Effectively means that the afternoon is going to disappear. Can -- can these
17 be brought forward? Right. We will try and sit at 2.15. The court officer will now
18 see whether we can rearrange the courtesy meetings to fit in with that timetable. If
19 it's impossible, we will sit at whatever is the earliest possible time which, again,
20 will be communicated by the court officer.

21 So can you all make sure that you look at your emails within the next half hour?
22 So 2.15 or as soon as we can thereafter. Thank you very much.

23 THE COURT USHER: All rise.

24 (Luncheon recess taken at 12.45 p.m.)

25 (Upon resuming at 2.45 p.m.)

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

2 PRESIDING JUDGE FULFORD: The Chamber on 3 July 2009 received, via filing 2024,
3 the report of -- Mr Kambayi Bwatshia's report on names and other social conventions in
4 the DRC, which was prepared on the basis of instructions to which the parties and participants
5 contributed. In essence, this expert witness has dealt with the use of names in the DRC
6 and other issues under the following headings:

7 (a) an individual's civil status and registration with relevant offices;

8 (b) names;

9 (c) family;

10 (d) dates of birth.

11 Mr Walleyne has pointed out that the Defence has asked questions of at least
12 one victim whom he represents (A/002/06) about his last name and the last names of other
13 individuals. Ms Bapita points out that it is possible that in the DRC there is a lack
14 of awareness of the need to declare an individual's date of birth within a particular
15 time frame.

16 Further, she suggests that some parents choose fanciful names in violation of
17 a suggested principle that names should come from the national patrimony. Further, she
18 raises the question that names are not viewed as fixed or immutable. Ms Bapita additionally
19 raises the possible role of the family structure in identifying names and that for children
20 born out of marriage their names may depend on the name of the person who "receives"
21 them. Finally, there is a suggestion that looting and other forms of civil disorder may
22 lead to a loss of formal records.

23 The Defence remind the Chamber of the need to consider these applications on
24 a case-by-case basis and that the personal interests of the individual victims must be
25 engaged. Generally, it is suggested on behalf of the accused that insufficient material

1 has been provided to permit participation on the part of these two teams of participating
2 victims through questioning this witness.

3 A general point that has been made, or at the least foreshadowed by the Defence
4 potentially of wide application, is that the Chamber cannot have confidence that at least
5 some of the former child soldiers who have testified are truly the people they claim
6 to be, or were children at the time of the relevant events.

7 A potentially important issue is how the Chamber should approach the issue of
8 the use of names within the DRC; for instance whether this is a fixed and exact process,
9 or one that contains a real element of fluidity. Equally significant are the processes
10 by which dates of birth are recorded and the accuracy of the records, or assessments,
11 that are provided as to an individual's age.

12 In due course, these issues are highly likely to have real significance for
13 at least some of the victims represented by Mr Walleyne and Ms Bapita. It is unnecessary
14 to identify each of them in this decision, because the questioning will be generic in
15 form and, therefore, it is sufficient that at least some of their lay clients are affected
16 by these issues.

17 The questions raised are, in our judgment, all relevant to the investigation
18 of this general area of the case, and the applications by these two teams of victims'
19 representatives are accordingly granted.

20 Now, during the middle of the luncheon adjournment the Chamber received in French
21 a further report from the next witness which runs to some 35 pages. We do not pretend
22 that we have had the time or the opportunity, and certainly as far as I am concerned
23 the ability, to read and digest this report. We do not intend to adjourn the evidence
24 of this witness so that it can be digested both by the Bench and the parties and the
25 participants, and so accordingly on a preliminary view we are reluctant to have this

1 additional document introduced at this late stage. However, we are of course open to
2 any submissions by either the parties, or the participants.

3 In reality, is there anyone who at this stage says that the Bench should introduce
4 into evidence this report that was circulated during lunch? Mr Walleyne?

5 MR WALLEYN: Your Honour, we would suggest that we wait until tomorrow
6 before -- well, until the end of the witness's testimony before we come to a decision
7 on that report. We have not had the time to read it either, so it's difficult for us
8 to say whether it is an important item of evidence or not because we really haven't had
9 time to review the report.

10 PRESIDING JUDGE FULFORD: But, Mr Walleyne, that's exactly the point. How this
11 witness is going to give his evidence is part dependent on whether or not the material
12 contained within this report is going to form a part of his evidence. So we need to make
13 the decision now and our view is, kind though it is of him to provide us with this additional
14 material, it is simply too late. It's very difficult to conduct efficient court proceedings
15 if documents of this length and weight are to be handed in moments before the witness
16 comes through the door of the Court.

17 Now, does anybody else wish to make any other submissions on this document?
18 No? Witness, please.

19 (The witness enters the courtroom)

20 PRESIDING JUDGE FULFORD: Good afternoon, sir.

21 THE WITNESS: (Interpretation) Good afternoon, your Honour.

22 PRESIDING JUDGE FULFORD: Thank you very much indeed for your attendance at
23 this Court this afternoon. We are very grateful to you for the assistance that you've
24 provided to us thus far and for your kind offer to give evidence about the areas that
25 we have asked you to address.

1 Before you begin your evidence, can I set out a few ground rules for your assistance
2 and to help the rest of us in Court. The first is, as you will now be hearing, that everything
3 that's said is being simultaneously interpreted. In addition, transcripts are being
4 provided contemporaneously in both French and English.

5 In the result, it is critical that all of us when speaking in Court speak no
6 faster than the speed with which I am talking now. So can I ask you, please, to make
7 sure that you don't go at a rate which is going to make the lives of the ladies and gentlemen
8 * who sit in the booths above us really difficult.

9 The second related point to this is that, whenever a speaker finishes talking,
10 it is critical that there is a short pause so that the interpretation can conclude. Otherwise,
11 we have an overlap in speakers which again makes life very difficult indeed for those
12 who are interpreting and transcribing your evidence.

13 You have kindly indicated that you would be prepared to give a short introduction
14 at the beginning of your evidence which essentially summarises the main points of your
15 report as provided to the Chamber. We invite you to take that course, and we simply want
16 to indicate to you at this stage that any personal notes that you have to assist you
17 in that exercise we consider to be private and personal notes of your own and they will
18 not be distributed around the parties and the participants.

19 During the lunch hour today, the judges and counsel were provided with an additional
20 report, which is dated "Kinshasa December 2009", which was prepared both by yourself
21 and another individual. We are extremely grateful to you for taking the time and trouble
22 to provide that additional material to us. However the difficulty is that, given that
23 we only received it a very short time before you came into court, no one has had the
24 opportunity properly to read and digest that material.

25 Accordingly, the decision of the judges has been that we will not take that

1 additional material into account and we ask you, please, to confine your central observations
2 to the matters that you set out in your original report provided to the Chamber some
3 months ago. We, of course, mean no disrespect to you in that conclusion. It is simply
4 a matter of courtroom efficiency in that, in order to take this additional material into
5 account, we would have had to have the opportunity of considering it and reading it and
6 digesting it.

7 Could the usher please assist the witness now to take the solemn undertaking.

8 WITNESS: KAMBAYI BWATSHIA (Sworn)

9 (Witness answers through interpreter)

10 PRESIDING JUDGE FULFORD: So with the reminder that I have just given you about
11 not speaking too quickly, can I ask you then to give your short general overview of the
12 main conclusions which you have reached in your report. Thank you very much indeed, sir.

13 THE WITNESS: (Interpretation) Your Honour, allow me to begin the presentation
14 of our report by thanking you immensely for the fact that you chose to -- you chose us
15 as experts for this Court.

16 Your Honour, I think you will remember that on 30 June 2009 we were very pleased
17 to send to this Court a report; a report regarding the names and other social conventions
18 in the Democratic Republic of the Congo. We drafted this report, your Honour, carefully
19 following your instructions, instructions that bear the reference numbers ICC-01/04/06
20 dated 5 June 2009, and my testimony will focus on a number of points. Following a short
21 introduction insofar as possible, and based on our related expertise, we will respond
22 on a point-by-point basis to the questions posed on the following topics: Civil status
23 and registration with relevant offices; names in and of themselves; family; and date
24 of birth.

25 I trust, your Honour, that this document will be additional, complementary and

1 we apologise for the delay. We thought that this document would be useful for the Court
2 to better understand our initial report. These two documents set out in general terms
3 the whole issue of identity names within the Democratic Republic of the Congo. The second
4 report rounds out a number of points taken up in the first one and, in particular, it
5 provides illustrations, examples, and is -- the report has been provided for information
6 purposes. It was prepared at our research centre, the research centre on mentalities
7 in Eugemonia, and I can tell you, your Honour -- well, I can quote, actually, a matter.
8 I thank you.

9 Now, with regard to the report itself, after reviewing your instructions we
10 and a number of friends thought about these instructions and thought it would be perhaps
11 appropriate to entitle the report "*Problematique Du Port Du Nom Idenditaire*", et cetera,
12 which has been translated as the issue of names used to identify citizens in the DRC.
13 We would point out that we are speaking that --

14 PRESIDING JUDGE FULFORD: I am going to interrupt you, I am afraid. I fear that
15 for once in this case I don't think I've made myself clear and I must repeat what I said
16 a few moments ago.

17 We are indebted to you for having taken the time and trouble to produce the
18 second report to which you have just referred. The problem is that it has been provided
19 to us too late. In order for the parties and the participants to be able to deal with
20 it during your evidence, they would need to have had advanced notice so that they could
21 digest it, research it and formulate questions on it.

22 Accordingly we will not be taking the second report into account and, as far
23 as your evidence before us today is concerned, we would be grateful if you would focus
24 really exclusively on the first report that you prepared; a very full and comprehensive
25 report dated 30 June 2009.

1 Now I'm sorry if that deflects you from the course that you had intended to take, but
2 out of fairness to this accused I am afraid that that is the course that we must adopt.

3 Now, you have provided us with, as I say, a very full report dated 30 June 2009.
4 Are there any, as it were, general summarising observations that you would wish to make
5 arising out of that report now, or would you prefer counsel to go straight to questions
6 on it, given that we will of course bear in mind everything that you have set out in
7 that first report?

8 So, the choice is yours. You can either now quickly provide a summary of it,
9 or we can move straight to questioning by counsel. Which would you prefer?

10 THE WITNESS: (Interpretation) I would like to say, your Honour, that I perfectly
11 agree with your first remark having to do with the second report. I entirely agree and
12 I will not speak of it.

13 You are quite right, as for the first report, I think that you have -- you are
14 also correct, because that report was already sent. And to respond point-by-point -- well,
15 the answers are found point-by-point and I think it's best to give a brief introduction
16 and possibly we could move directly to the questions after that.

17 As for -- I may have to go back to a few details. If you don't mind proceeding
18 in that manner, your Honour, I could give a brief introduction, your Honour.

19 In Central Africa, and particularly speaking in the Democratic Republic of the
20 Congo, denotes and specifies a person's inner character and the intimate reality of a
21 person. It encapsulates and represents a person's ontological structure, by placing him
22 or her within the dynamics which determine his or her dialectical relationship with the
23 other being forces in the universe.

24 A name situates a person, vis-à-vis himself or herself. An individual discovers
25 his or her individuality, or personality, through his or her name. A name puts an individual

1 in a vertical and horizontal dialogic relationship with others: Vertically in relation
 2 to his or her ancestors and offspring, or descendants; horizontally in relation to his
 3 social peer group and the surrounding cosmic world.

4 In a word, a name reveals the being-to-the-world of the Muntu. The name is
 5 given at birth and reflects the place, circumstances, events, or significant moments
 6 in the life of the person -- pardon me, in the life of the family. The name sums up,
 7 or rather condenses and expresses what the person is or has become, what he or she aspires
 8 to become, or achieve.

9 At the relationship level, it often represents the being - the person - whilst
 10 opening himself or herself up to himself or herself and to others, or further still energises
 11 and propels him or her towards a specific ideal.

12 I would conclude my introduction by saying that a name is a major symbol of
 13 a person's life. It is a symbol, because it is rooted in the enduring constellations
 14 of life, emotion and the cosmos. The name is also a symbol because it denotes the permanence
 15 of the being who bears it and which would tend to suggest that it - the symbol - never
 16 dies, but only mutates, and this is something shared by all of the peoples of the Democratic
 17 Republic of the Congo.

18 Your Honour, I am sure you have read this and you have heard my brief introduction.
 19 I await your instructions and I am ready to answer your questions. Thank you very much.

20 PRESIDING JUDGE FULFORD: That was extremely clear and very helpful. Thank you
 21 very much, sir. Ms Samson?

22 MS SAMSON: Thank you, your Honour.

23 Questioned by Ms Samson:

24 Q. Good afternoon, Mr Kambayi. We have met previously and, as you know, I am Nicole
 25 Samson and I represent the Office of the Prosecutor. I have some questions today to ask

1 you on your report and may I confirm that you have a copy of your report in front of
2 you?

3 A. Yes.

4 Q. I will start my questions with the civil status and registry office heading
5 and I will proceed according with the layout of your report thereafter. So commencing
6 with your report, starting on page 1 of the French version, you have indicated under
7 your point A that, "In the Democratic Republic of the Congo, civil status is established
8 by declaration made by the person concerned at the civil status registry." My question
9 for you is who is the person concerned who typically registers a birth?

10 A. It's very easy to answer that question by placing your question within a much
11 broader context. The intéressé, the person in question, is a person who has been suggested
12 by the civil status registry, who has an office and who is deemed to be competent to
13 do this work. This is the person who does the act, who -- now, how this person was recruited
14 to administer or to carry out such a procedure I could not tell you, but I could just
15 say that often it is within a context of friendship, sometimes one of competency, of
16 studies, if you see what I am driving at. I think that I have answered your question.

17 Q. In fact, I was interested in knowing from the child's side. Who from the child's
18 family, or entourage, typically registers a birth with the registry office?

19 A. It is easy to answer that question. In most cases, it is the parents themselves
20 who go to declare their child in the civil status registry. And let me split this answer
21 into two. If the parents are not able to read or write then maybe the uncle or the aunt
22 will be responsible and even if the civil status officer wants the father to be present,
23 it will be that father who gives the name to the child and then he will state the date
24 and place of birth. So, you have the possibility of uncertainty right here.

25 Q. When you say you have the possibility for uncertainty, could you clarify what

1 you mean by that?

2 A. When I talk about uncertainty, I am referring, as I said a short while ago,
3 to the fact that a person who has to register the child -- that is, if that person is
4 educated, he or she probably lives in a large city in Kinshasa or in the rural areas
5 or other towns; but we are talking about a territory of over 2 million square kilometres.

6 The schools were scattered all over the country during the colonial period and
7 have actually deteriorated. So when you take into account the place of birth of the child
8 and the lack of education of the parents, as well as the entire family, you will see
9 that it is difficult.

10 Let me also add that the Bantu languages in our country are languages that have
11 been codified. They were codified by the colonial masters. And so the pronunciation
12 of certain names or vowels becomes difficult. This means that the name that is proposed
13 or given to the Civil Status Registry, which is authentically pronounced by the parent,
14 may be transcribed phonologically wrongly. For example, the "wa" or "wu" sound can be
15 written with an "OU" or a "VV". And when it is pronounced, it may be pronounced "wu"
16 or "wa".

17 Usually at the end of the names in French, you have very distinct syllables.
18 In French, you can say Kabayi. But in the local area, people can say Kabayi very, very
19 easily. So that is why I am saying that there could be confusion in this area.

20 Q. So, Professor, based on your last answer, am I correct in saying that the
21 uncertainty you were referring to is in relation to the recording of names in the Registry?

22 A. The context is actually very complex. Let me begin by emphasising the fact
23 that the person who is registering the child most frequently has difficulties. And in
24 addition to these difficulties, there is also a lack of comprehension due to the manner
25 of the pronunciation and transcription of the name. So there is on the one hand the person

1 who pronounces the name and the one who writes it down. And this is not just a problem
 2 of today, it was even more complicated with the colonial masters. And the Belgians, for
 3 example, with all due respect to them, when they wrote down the name Webeluka, if he
 4 is Walun, he will write Vebeluka, because somewhere along the line the "W" becomes a
 5 "V".

6 My name is Kambayi, for example; but when I was born, the person who registered
 7 me - because my father was not there, he had gone hunting - he said Kambayi. And then
 8 the priest who wrote the name down said Kambali. So on my baptism card, the name is Kambali.
 9 And when I wanted to get married, the priest asked for the baptism card; and when that
 10 card was produced, the priest said, yes, you were baptized on this day at that time,
 11 but your name is not Kambayi, it is Kambali. So you can see the difficulties that can
 12 arise at this point.

13 Q. In your opinion, Mr Kambayi, are such differences a common occurrence or not;
 14 and by that, I mean differences between a person's name and the name that is spelt out
 15 or recorded in a civil registry.

16 A. This is very important to point out: It is not as systematic as that. As I
 17 have pointed out in my report, in a context of civilisation and in which people have
 18 been educated and in the western manner, the problems do not arise. The younger generations
 19 do not have any difficulty in declaring their children as appropriate, because the
 20 dissemination of the law - and particularly the family code - is quite broad-based today
 21 in the Democratic Republic of the Congo.

22 But when you go into the rural areas and the backwaters, it becomes difficult.
 23 And the rural areas in the DRC are far more populated than the capital or the capitals
 24 of the provinces. So the difficulties assist.

25 Q. Taking the rural areas as an example, in particular rural areas in and around

1 Ituri, how common is it for people to register their children at birth?

2 A. Let me begin by saying that with regard to Ituri, before that region experienced
3 conflicts, the practice in the area of the registration of names in Ituri was similar
4 to that in the other regions of the Democratic Republic of the Congo, because it was
5 the same law, the same universities, the same intellectual levels, the same rural areas.

6 But after the outbreak of war, there were difficulties, because most of the
7 inhabitants fled the region and sought refuge elsewhere; for example, in Uganda, Congo
8 Brazzaville and in other countries. Some of them even went to the east of the country.
9 So it became very difficult.

10 And in that context, most of the Civil Status Registry offices in the communes,
11 in the rural areas disappeared. So when you consider that there were already difficulties
12 during peacetime, the difficulties during the war simply came to add to those. And what
13 happened in Ituri can happen anywhere in Congo, or in Africa, because the collateral
14 effects of war remain the same.

15 Q. And you touched upon, Professor, the issue of names registered in the civil
16 registry. In your experience, are -- is a person's full name registered? Are all names
17 included in a registry or not?

18 A. Far from it, unfortunately. Well, unfortunately, but also fortunately. Why
19 am I saying this? As I stated in my introduction, throughout the DRC, and in Africa in
20 general, names are almost esoteric or mysterious. The names symbolise the individuality
21 of people. And it is possible that sometimes when someone goes to register his child,
22 he will give the birth name. He will say, for example, my name is Malumba (phon) and
23 my child is called Molumba (phon). Whereas, when the child was still in his mother's
24 womb, the name was Kibula (phon), for example. But since this is an esoteric name that
25 conceals the deepest realities of the family, he decides to give the child a birth name,

1 because -- be it the name of a friend, a name of a relative or something else, or somebody
2 else.

3 But when this card is taken from the registry office, it is not surprising that
4 after my parents would have registered me in a rural area when I was young, I would have
5 become now an adult and a citizen. And at the current time in our history, the previous
6 regime decided to implement the policy of authenticity; that is, the adoption of local
7 names. It was after that that people reverted to their various names, including the name
8 that they had when they were still in their mother's womb, the name that they were given
9 at birth and the names that were given depending on their various circumstances.

10 So it is not surprising to note that several individuals, such as myself, bear
11 many names. And these are all my names, and I accept them as such. It becomes complicated
12 when the Civil Status Registry wants a single name. I would have said my name is Kambayi,
13 and I can also say that my name is Kambayi Bwatshia. But if my mother refers to me, she
14 can use several names. And sometimes I may be referred to as Makuna (phon), which means
15 mountain, or I can be referred to as "mash" (phon) or "walk" (phon). All those are names.

16 Q. I do want to get into the issue of names and their uses, as you have described.
17 But for the moment, I would like to stick with some questions on the civil registry.
18 And to follow up with part of your last answer, could you please indicate to the Court
19 how important the written tradition is in rural societies, rural areas such as Ituri?
20 Is the written tradition important? How important is it?

21 A. It is important given that you are specifically referring to Ituri. I would
22 like to tell the Court is -- or rather, that what happened in Ituri during peacetime
23 is not really different from what could have been happening elsewhere in the Democratic
24 Republic of the Congo. But today, Ituri is in a state of war, and what is happening there
25 could also happen in all the other areas of the country.

1 Secondly, there is the importance of the oral tradition. Let me point out that
 2 the Congolese people are educated, but that education goes hand-in-hand with oral tradition.
 3 The Congolese children are educated in a language that is not theirs, so -- in a cultural
 4 mirror that does not belong to them, so there is already a bias, a distortion of the
 5 culture. So people follow a sort of parallel education.

6 There is an oral tradition, which is an authentic tradition because it is derived
 7 from the area, from the cultural context of the individual, but there is another aspect
 8 which is actually superimposed on the first method, so -- this is derived from the colonial
 9 masters. So today the difficulty that arises for everybody in the Democratic Republic
 10 of the Congo is, that on the one hand people wish to remain in their oral tradition;
 11 but on the other hand, people consider themselves as civilised within the context of
 12 universal civilisation. So they do not wish to continue living within the context of
 13 their oral tradition; otherwise, they will be cut off from the rest of the world.

14 Q. Does a person who is registering a child in a civil office or registering another
 15 milestone in that person's life require proof of the identity of the person? Put another
 16 way, does a person arriving at a registry office need to prove his or her identity or
 17 can the person provide a name without providing proof of identity?

18 A. It is quite easy to answer that question. When you look at the circumstances
 19 as we explained in our introduction - that is, the circumstances under which the registration
 20 takes place - the person who goes to register a child or a young person in the Civil
 21 Status Registry -- well, sometimes the civil status officer would ask that person what
 22 proves that this is your child?

23 The child is examined -- the child is looked at. Maybe the neighbours testify.
 24 And the mother can also say, well, this is my child. So you cannot say outright that
 25 there is documentary evidence that is provided. Everything is done in a haphazard manner

1 within a context of confusion because of the effects of colonisation, because of the
2 effects of the war and the effects of what I can refer to as lack of culture.

3 Q. You have indicated, sir, that documentary evidence is not always provided. If
4 I could provide you with an example, if a person were to arrive at a registry office
5 without proof of identity of a child they wished to register, and that person who wishes
6 to register the child is illiterate, how is the name recorded? How is the spelling arrived
7 at?

8 A. This is a good question insofar as I have not yet underscored the fact that
9 everything depends firstly on the level of education of the parents or the people who
10 come to do the registration. And secondly, on the date and place of birth.

11 What makes it even more complicated is that the parents do not have any evidence,
12 except maybe in the large cities. For example, Lubumbashi. When you go to Mbuji-Mayi,
13 for example. And in Ituri, even today, there are certain people who are willing to receive
14 you and to carry out the registration. But in most cases, in the most remote areas, it
15 is the strongest, the most influential uncle or aunt, the person who is wealthiest who
16 imposes the name.

17 You could have a child, for example, who does not have parents. The mother
18 would have been able to give him a name. And if the elder children are all dead, for
19 example, the name of the child can be withdrawn, because they would say, look, this name
20 brought us misfortune and our child will no longer bear this particular name. So you
21 have to understand all those aspects if you really want to understand the Muntus in
22 general -- or, rather, in general and the Congolese people in particular.

23 Q. Yes. But in the example I just gave you of an illiterate person who is registering
24 the name of a child in a registry office, how is the spelling of a child's name determined?
25 Who determines how to spell the name that somebody has pronounced?

1 A. I am sorry, because I did not quite focus on that answer. Once again, it is
2 difficult to spell the name. I spoke about that in my introduction. The person writing
3 down the name will write it down in French. The letters will be pronounced in French.
4 But the person who is answering, if they are illiterate, in which language are they going
5 to speak their name? For example, the sound "na," because you have people in Congo known
6 as Ngalula, and that type of pronunciation is nasal and you will practically never find
7 it in French.

8 And when it comes time for transcription to facilitate that name, you will here
9 "nga," "Ngalula," but that is the same person. So you will hear the name Ngalula; whereas,
10 the person is actually known as Ngalula. And even if that name is well pronounced, the
11 "la" at the end is very well pronounced in French; whereas, in the local language, that
12 last syllable is not really completely pronounced.

13 I can tell you another similar word, "malula". Ngalula and Malula are similar
14 in pronunciation. I can say my name is Malula, and the other will say my name is Ngalula,
15 and this refers to the same person. So it becomes come complicated. So the illiterate
16 person is going to say the name that he knows in the village, and the person writing
17 will try to write what he understood in French. Everything is complicated.

18 Q. And following on from that, using in addition the example that you provided,
19 Professor, in relation to the misspelling in your own documents, in general, are such
20 differences or discrepancies ever corrected?

21 A. You are talking about the errors in my document. Are you referring to my own
22 document or the documents that are produced by the parents?

23 Q. I was referring to documents that get generated to prove the identity of an
24 individual. Should the document bear a misspelling of some type, such as the one that
25 you alerted the Chamber to earlier today? Are such discrepancies generally corrected

1 or do they remain misspellings on the registered documents?

2 A. I can tell you very sincerely that those errors are not corrected. And in the
3 event that they are corrected, the person doing so is sufficiently equipped to correct
4 those names. I gave you the example of Kambayi and Kambali. I went and corrected the
5 name. And most of our educated friends correct their names. But if that is not done,
6 it remains as before.

7 I could be referred to as Kambali (phon), but I am Kambayi, and those two names
8 refer to the same person. And so this complicates matters for the people responsible
9 for transcribing or spelling the name and most of the time those corrections are not
10 made because people do not attach great importance to it. But today, since that there
11 is order that is being established, you have couples, young people who are more and more
12 educated in our country and who attach great importance to this. Less recently there
13 was a campaign to register children in Kinshasa, which is easier. In Lubumbashi, Bushmai
14 (phon) and other areas where there is no war I can tell you that it is going to be very
15 difficult to take into account such confusion. The names are left as they are, given
16 the situation of the country.

17 Q. On page 4 of your report, Professor, under point F, you discuss enrolment in
18 schools. My question is what proof of spelling of a name must a person provide when they
19 are registering somebody in school, if any?

20 A. Once again, as indicated previously, the enrolment of a child in a school is
21 undertaken in a very civil -- in a very similar manner to that undertaken in a civil
22 registry, and also in the case of baptism or marriage. Once again in towns, in the large
23 towns such as Kinshasa, things run quite smoothly because we have people who are educated
24 who believe that it is important to declare a citizen. So those who have learned how
25 to read and write and who are conscious of such matters, they read that one becomes a

1 Congolese citizen because one has been registered, because one has an identity card and
 2 one is identified as a Congolese and names such as the name of a passport are incorporated
 3 into Congolese documents.

4 Now, if my father does not know how to read or write and if the father does
 5 not take into account the fact that a father might take his son or daughter to school
 6 and register them, then one asks somebody else to go and register the child in school,
 7 for example a grandfather or a grandmother or another relative in the village, and the
 8 registration might occur in Ituri, or Bushmai, or in the lower Congo, and it is the person
 9 that I have delegated who will then go and register the child in the school. He will
 10 give the name and, if he is not educated, then he will provide the name that the parent
 11 or relative has given.

12 And what document will be produced? Well there won't be any document, but one
 13 will be happy that the child has been registered. Money is then paid and you are told
 14 that the child starts school on 6 September, for example, and then the list will continue.
 15 It is difficult for somebody who is of a written civilisation, who comes from a civilisation
 16 who respects the written word -- it is difficult to understand this difficulty and this
 17 difficulty throws us, whether we be from an oral tradition or a written tradition, into
 18 an awful dichotomy. The DRC is making a lot of effort in order to enter this civilisation
 19 of exchange, that of a written civilisation notably, so we find ourselves in this two-speed
 20 situation that I was describing, notably the written right which goes hand-in-hand with
 21 the customary right, and it is very difficult to codify all of this.

22 Q. Taking the example that you just used yourself, Professor, of an illiterate
 23 grandparent, or other relative, enrolling a child in school and providing a name orally
 24 to a school official, in your experience are there ever any errors or misspellings in
 25 recording that name by the school official in the circumstance I just described?

1 A. Indeed, yes, errors do occur and I repeat these errors are down to a lack of
 2 education, to errors of pronunciation, they are down to the competence of the individual
 3 who is writing the name. Yes, there are certainly mistakes, but one does not find such
 4 errors in large centres. But the individual concerned, once he has grown up and gone
 5 to school and he sees that his name has been misspelt, then that very individual will
 6 go to the civil status registry and request that his name be corrected. He will request
 7 of the university, or the school, administration that they correct his name and the illiterate
 8 father will say, "Well, yes, I did not pay any attention. The name of my child is not
 9 Kambali, but Kambayi", for example. And sometimes it is not Kambai with an "i", but it
 10 is Kambayi with a "yi", because Kambai is not the equivalent of Kambayi. Kambai does
 11 not mean anything in this language. Kambayi means "Go and tell them that ...", et cetera.
 12 So, if you write my name with an "i" it means nothing. If you read -- if you write it
 13 with a "yi", then it takes on meaning. And the same applies for the rest of the Congo,
 14 including the Ituri.

15 Q. In your answer, Professor, you have indicated that in a large centre an individual
 16 may correct an error on a school register. In smaller centres, or rural centres, is it
 17 possible in your experience that such errors remain uncorrected?

18 A. It is indeed possible, because we should reiterate that people are aiming to
 19 survive and, if a person needs to go out into the field in the morning and run their
 20 business, or go and find fruits and vegetables, or market these products, and when he
 21 is told that it is important to register their child then they are going to say, "Well,
 22 no, it's not important. It is important for us to put food on our table first and then
 23 we will see." So in most major centres, or in most literate families, things seem to
 24 be simple. However, in areas that have been at war for lengthy periods of time things
 25 are more difficult.

1 Q. And in the school registration process, if a person is registering his or her
2 child or family member, is a person -- is a person's full name used when they are registered?
3 Is it some variation of that name? Could you help us with that?

4 A. Western civilisation, that is to say the colonising civilisation, has told us
5 that we need to be brief. We need to be concise. So, when I go to register my child,
6 I am within the context of the modern society. I won't say western. For example, I gave
7 the name of Unyon because I want it to be short, but the full name would be Unyon Pewu.
8 Unyon Pewu is a name from the Aluurs culture. This name means, "Mind your own business
9 and do not put your nose in my affairs." That is what Unyon Pewu means. Now, if you
10 give somebody a name and say "Unyon", well, then you've really spoilt that name. So the
11 full name is often not given, because it is lengthy and one is not sure that the person
12 who is transcribing it is going to pronounce it properly. The name Unyon is qualified
13 or described as a Sudanese language, so when that person says "Unyon Pewu" and when they
14 say "Chiento", well, how are we going to write such a name down? Chiento, you see? So,
15 there are still difficulties which arise and I must say that efforts have been made over
16 time for this to be codified and for legislation to be drafted on the matter.

17 Q. Turning now to point G of your report, which is page 4, you were responding
18 here to a question from the Chamber in relation to confirmation by a government official
19 of a person's identity and you indicate in the first line that the law provides for such
20 verification. I would like to understand that and know whether or not in practice such
21 verification is always carried out, or not?

22 A. The law as practised in a modern society, or modernistic society, where everyone
23 understands the importance of the law, then, yes, this is something that can be verified.
24 However, if a certain population understands the law as being something that puts them
25 out, or something that is secondary, and if somebody does not realise why he is being

1 punished for something, well, the law does provide for such verification in the example
2 of a marriage, as I said, but also requires that banns be published. They are published
3 in the church, they are published in the civil status registry and there is even a time
4 limit ascribed to this.

5 Now, anybody who knows of any facts that may be of an impediment to this union
6 can then declare this and, if this is the case, then the clan or friends will arrange
7 matters because we -- people can get married according to a certain number of agreements.
8 Of course, once again we are up against a dichotomy, a dialectical situation which is
9 difficult. The law does exist, but we need to use it, we need to apply it and I believe
10 that this also occurs in civilisations that are as young as ours.

11 Q. Taking as an example the illustration you made earlier, which was that a person
12 arrives at a civil office to register an infant just born and that person does not have
13 any document, any proof of the child's status, name or birth. Will the register, or the
14 registering official, accept what the person tells them about the name and birth of the
15 child?

16 A. With difficulty and maybe without any difficulty, if I can express myself as
17 such. He would not accept it, because the name that he is bringing from his village expresses
18 the image that one wants to prefer upon the child. The image is part of the intimate
19 side of the child's existence and, even if one is illiterate, the child represents an
20 extreme form of richness. So the name represents an entire hierarchy in terms of ancestry
21 and, when the civil status registrar does not understand anything of what we are telling
22 him, because it might be the case he might say "What?", "Well, then I shall give him
23 this name", and then this name is given to this child. Especially in the more remote
24 areas this is often the case, but once again this is part of experience, but we must
25 see this in the context of efforts being made by the authorities to remedy the situation.

1 PRESIDING JUDGE FULFORD: Ms Samson, can I ask you to be careful not to go over
2 the same ground twice. I think on page 59 we really covered this issue in almost identical
3 form.

4 MS SAMSON: Yes, your Honour, I will be mindful of doing that.

5 Q. Sir, I would like to turn now to the related topic of the names that are used
6 and given to persons in the Democratic Republic of Congo, in particular in Ituri. In
7 general, how many names can a person have?

8 A. It would be very difficult for me to tell you how many names a person can have
9 because a person from a Bantu tradition, in giving a name to their child, tells a whole
10 story. In a modern civilisation, most are Christians, he might be called Ochento (phon)
11 Pierre, for example, in Ituri. Pierre Ochento. And if he was a Moruba, writing this
12 down he would write W-U-T-S-H-E-N-T-O. The "che" sound becomes T-S-H. However, an Alur
13 in Ituri, for an Alur, the "che" sound might simply be a C. Sometimes it's pronounced
14 as "che", but it can also be pronounced as "S", you see. All this to say that nothing
15 is particular to the Kasai in Ituri. There are some particularities which can be put
16 down to the environment but the civilisation and culture are shared by the various groups
17 in the DRC.

18 Q. And if we go back to the example that you yourself gave, which is of your own
19 name, which you had started to describe to the Court earlier in your testimony, could
20 you tell the Court, please, what your full name is?

21 A. I would like to say the following: In the Bantu culture, generally speaking,
22 and in cultures in central Africa, particularly, and most particularly in the cultures
23 of the DRC, we have two names, two last names. There is the name which is ascribed to
24 an ancestor by the parents for a varied specific reason. There is the name given to the
25 child before its birth, notably the womb name, and when the child comes into the world

1 a neighbour might say, "Well, we are such good friends, then maybe you should give my
2 name to the child" and the child will bear another name so the child has been born. He
3 is baptised as Peter. He has two names but he is Pierre. However, if they want him to
4 have a name of a courageous hunter, then he will also have that name. Now returning to
5 my name, the name Bwatshia means that night will come to an end or that night has ended.
6 That is the womb name. It means, well, this individual is the person who is going to
7 incorporate or represent the meaning that night has come to an end in the sense that
8 he is a messenger, he is bearing a message. Now, meanwhile, the father of my friend,
9 of my friend, said you should go and tell them that the night has ended and give him
10 the name Bwatshia, so my name was then defined as Kambayi Bwatshia and was confined to
11 two names. I am a Christian, and when I was a child, my father said, "Well, why not call
12 him Jean? Kambayi Jean Bwatshia. However, my godfather in Kinshasa was called Joseph,
13 and he said, "Well, this child should also be called Joseph" and my uncle said, "Well,
14 you know, why not?" And when I was growing up I thought to myself, well, what is this
15 Jean Joseph name when I did find that the name Richard was wonderful. I then said my
16 name was John Richard, and finally I thought that this was rather too long-winded, but
17 in view of the fact that my mother, when she wanted to praise me, she said, "Well, if
18 we consider that Bwatshia means that day is breaking, well, why not also add the name
19 Bwila, that is, that night is falling, so we will have that opposition. So I can say
20 that my name is Bwatshia Bwila, and when my aunt sees me, she says, "Bwatshia, oh, my
21 Bwatshia Bwila", and that is me. However, the name Kambayi is a word that signifies to
22 go, or walk, so people will know that I am a Wendu, which means I am a person who walks.
23 In the lower Congo you have this idea. Kambayi Jean Bwatshia Luendu Bwila Luendu, well,
24 one announces the daybreak and the other announces nightfall. The name Njuka (phon) means
25 stand up and leave. And I am proud, not because I bear this name on my civil status documents,

1 but because when I call my daughter, Bwenejetu Lukakandu (phon) these are names and,
 2 from time to time, I might do so. However, these days I do not do that because there
 3 have been inroads into modern civilisation. However, my name is Bwatshia, I am Lendu,
 4 so the problem that we are up against, notably the civil registration problem, is quite
 5 difficult when one is trying to authenticate the identity of an individual.

6 Q. You've just described to us various names that are ascribed to you. Can you
 7 use your names, Professor, differently, in different contexts?

8 A. No. The other names were given for the pleasure of the parents involved. As
 9 I said in my introduction, the relatives decided that I should have these names. However,
 10 today, I cannot bear these names. I, my name is Kambayi Bwatshia Jean. I am no longer
 11 Richard because on my baptism card I was born in a maternity and my name was declared
 12 as Kambayi Bwatshia, and I was baptised. I was then given the name Jean. These other
 13 names are not fanciful names as such but they give an idea of my culture. I cannot, however,
 14 just come out of them. I keep with the names that have been registered on my documentation.
 15 You can see how costly this undertaking is because one has to change one's name all the
 16 time. One might have a different name for primary school, secondary school, for a marriage
 17 certificate. When one goes to university, and if one were to go and study at the university
 18 of Utrecht one might have another name and then when marrying, the same would occur.
 19 What an imbroglio.

20 Q. And, sir, can different people know you under different names?

21 A. No. Only the members of the inner family know me by these other names. I am
 22 known as citizen Kambayi Bwatshia. That is all there is to it. Only very close members.
 23 Members of the close inner family may use these other names, and that custom is fading
 24 away. My grandparents are no longer alive. My parents are not alive any longer either,
 25 so fewer and fewer people know me by these names. A woman may not like a particular name,

1 so she may refuse to call her husband by a particular name.

2 Q. For example, sir, could your colleagues know you under a name that is different
3 to the name that your family uses to refer to you?

4 A. No, my colleagues know me by my usual name. How should I put this? They know
5 my past and they know me by my ordinary name and I am proud to bear that name. That is
6 my name. The other names are in my head, in the head of my father and my mother, and
7 I am not entitled to change those others names. Those are done with. My everyday names,
8 my names from the time of my birth to the time of my death, I don't change those names
9 unless I have some specific reason but why would I do so? No.

10 Q. And can a person be given names, nicknames, for instance, by in fact colleagues
11 or by other friends in relation to sporting activities or other activities?

12 A. Absolutely. That is common. Yes, I may be a very good football player and so
13 I am given a name. Zidane, for example, and if at high school I am a good football player,
14 I will be called by that name and I am called Zidane. Once I go to the national team,
15 I am well-known by that name, and it may not be any surprise that I may one day bear
16 some kind of identity card with that name, so people are given those names but I stress,
17 this is all rather fanciful. For example, the name, a name of an animal, someone who
18 is strong, in the family, they will decide we will call this person leopard and to glorify
19 the person we will say Kuyabayi (phon). The leopard man, a real virile, strong man, or
20 perhaps he will become a lion, Nye (phon), Tamwe (phon), you see. When the child is born
21 the parents may have been unemployed, short of money. One might remember those times
22 and choose a name or, for example, the child is born with his hand on his cheek, or he
23 was born with his hand outstretched towards his mother, and so he will be called the
24 Kwela (phon), the person who gives. So there are names like that. The nicknames, there
25 are nicknames. Mostly, they are fanciful names from childhood, and usually such names

1 are not to be found on official cards.

2 Q. And, sir, you touch on your -- upon in your report at page 11, point R, the
3 issue of respect names. How are respect names given or assigned to a person?

4 A. I would like to tell you that those names are of great importance in the culture
5 of central Africa, and it's much the same thing everywhere. Someone who is rich, for
6 example, and who usually donates or gives, may be called the man who always has an open
7 hand. Luboko Bete Bete (phon). Someone who is very charitable. He easily gives money.
8 He has an open hand, the soft hand. He is respected because he is rich, because he is
9 strong. One might say, speak of him as Mobali, that just means man, but he will be called
10 Mobali. Mobali, to say that he is virile, he is a real man. This is a real authentic
11 man, out of respect, because the person -- if I will take the case of the Judge, he may
12 become Zuzi (phon), the Judge, Zuzi, because of his beauty. For example, it will be said
13 that he is Tikoko (phon). What does that mean? It means the beautiful creature, so I
14 state that someone may have a name because of his qualities, or out of respect, but also
15 to really delve into the matter I would say that a woman who has given birth to twins
16 will be called Mama Mapasa (phon). It means mother of twins. Mama just means mother,
17 but she will be proud to bear that name because she gave birth to twins. Someone who
18 gives birth to a special child will be called Moa (phon). There is another term in French,
19 techno name. A techno name. For example, in Flemish, well, we will say van der, Van
20 der Buik, Van der Forest, dinned, so you see, so the techno name will be Muameg (phon),
21 the child of, the mother of, the de, is the van, do you see? It's a techno name to say
22 someone can take that name. Someone can really take that name, and yet he does not lose
23 the name, his real name which is found on the identity papers but, rather, in ordinary
24 day-to-day life, he is called Tata Mapasa (phon). The teachers will call him by that
25 name but it will not necessarily be found on his documents. These are respect names.

1 A teacher might call him Manogashin (phon) and I am proud to hear that name, but all
 2 those who teach will use that, and that is a name for female teachers. Someone might
 3 be called Chi, if he is very cultured.

4 Q. Do respect names ever designate a particular ethnicity or ethnic group?

5 A. Absolutely, all names. All names given amongst the Bantu in the DRC in particular,
 6 all the names, I said this in my introduction. The name identifies, the name leads someone
 7 within the family. The person bears the name and it means he belongs to a large tribal
 8 group but when you delve into the matter you will also find that he is called Kambayi
 9 Bwatshia so he must be from that group. Ah, yes, that is easy. Someone, a child who
 10 has followed after another. For example, he will be called Londa (phon), the one who
 11 follows after. So you see, you are quite right, that name does exist. It exists. Why
 12 not?

13 Q. Are you familiar with any respect names that are associated with, for instance,
 14 the Hema group?

15 A. If you don't mind, could I consult my report to answer your question? I did
 16 write that.

17 PRESIDING JUDGE FULFORD: Most certainly. Please look at your report.

18 THE WITNESS: I can? Fine, thank you. Would you mind repeating your question.

19 MS SAMSON:

20 Q. Certainly. I wonder whether you know of any respect names that are typically
 21 given to people of the Hema ethnic group?

22 A. If you don't mind, I will just try to find my spot in this document. For example,
 23 and I will give you a few examples; I have several. Someone, for example, in the northern
 24 group, in the Salil (phon) group or Hema, Mogissa (phon), Mogissa means blessing, a blessing,
 25 grace, Frasia (phon), Monguja Beru (phon), God provides for you, God sees you, or God-given.

1 Monguja. God created me. God the creator. Another case, Lero (phon), that name speaks
 2 to the divine light. Another name, ask of God, and there are other names I can provide.
 3 Dolo, this is a kind of monkey. These are descriptive or opposite words. Another example
 4 Pa Dolo. Purity of -- this is a name that is given to the descendants of a particular
 5 ancestor. Such names exist and my centre has done research on this. Jean Moreau, a name
 6 given to a particular man who is light-skinned in the Congo. Pau (phon), for example,
 7 this is a particular kind of bird whose plumage is of different colours and some of
 8 the plumes are like the sun. This evokes pride and beauty.

9 Q. Thank you. On the issue of respect names as such, would a respect name assigned
 10 to a person always be included in their official documents?

11 A. As we explained, it all depends. It all depends on the person who bears that
 12 name. Will a person take the time to go in and declare all that and have the changes
 13 made? Does the person have the education or the particular personality to do that?
 14 Does -- if the person -- the person may make those changes but often, these names have
 15 been given under those circumstances, and they are not of great importance to, in terms
 16 of the citizenship of that person or the name that one finds on an identity card or within
 17 a civil registry.

18 Q. On page 9 of your report, under point M, you were asked questions in relation
 19 to names shared among family members, and my question is whether in Ituri, in particular,
 20 whether it is sometimes the case, always the case, or never the case, that every child
 21 bears the name of his or her father?

22 A. In Ituri, in the DRC, there are two systems. There is a matriarchal system
 23 and a patriarchal one, and there is a certain discipline that one does not find elsewhere.
 24 That is my own experience. Parents in Ituri really attach a lot of importance to the
 25 name of the father and the father is of great importance. When he gave the name, for

1 example, Unyon, Unyon Pewu, which means don't cross swords with me or, Ajika (phon),
 2 the boy who seems to be the last one in the family, that name is given, but you may hear
 3 the same name in another family. For example, a boy who has been born but the mother
 4 is no longer alive. Uchek (phon) is another example, so the child was born in a time of
 5 famine, Apitye (phon), or the name expresses the regret that the child has been born
 6 during this time of famine, so one may find another boy in another family bearing the
 7 same name because that other child was born in the same circumstances, so my answer would
 8 be yes. I would like to add that these are cultural registers. In our culture we have
 9 cultural registers that are quite rich within which we find a certain inventiveness,
 10 and these are registers which we fully exploit when we give names. In the modern, western
 11 world of today, one speaks of a forest, and many names that have to do, that include
 12 forest, or glory, Jean La Grau (phon), Pierre La Grau, we have a very rich heritage that
 13 we draw from for these circumstance names, as I said earlier.

14 Q. If you take the case of a family with three children, is it possible that in
 15 a rural setting, such as a rural setting in Ituri, that the three children would not
 16 bear the last name of their father?

17 A. Yes, that could happen. It could happen that each child bears a different name,
 18 but -- but they would be recognised as the children of the same father. So, yes, that
 19 could occur. Often, it is -- that happens, a child who comes -- why would the child not
 20 bear the name of the father? Why would my daughter not bear the name of my mother, or
 21 the benefactress? So people in Africa are extremely imaginative.

22 Q. And you have described in some detail the names and the number of names that
 23 one person may have throughout his or her lifetime. In your experience, Professor, do
 24 children always know all the names of their parents? Do they know some of the names?

25 A. It would be very difficult for a child to know all the names of a parent. As

1 I just said, these names are often very esoteric. You might ask a child: What is your
2 father's name, and he will answer, but he might have a more detailed name or amplified
3 name. These days, unless the child was taught these mysteries, these names are not a
4 concern for children, to know the name of -- all the names of their parents. It would
5 be very difficult. And furthermore, given a war, the father may have left for a long
6 time, or he may have left forever, and the mother will change her name. So, absolutely.

7 Q. Professor, I would like to turn now to section C of your report on the family.
8 It starts at page 12, point T.

9 A. Yes.

10 Q. And my question to you is: Who, in your experience, forms part of the family
11 unit? In particular, in Ituri.

12 A. In Ituri, as is the case elsewhere, but particularly in that district, there
13 aren't a lot of specific rules. There are two kinds of family. A family may be etched
14 in a certain way. And the word "family" is understood in a certain way in the large cities;
15 but when it comes to our languages, family -- even the word "family" or the word "clan"
16 or expanded family, extended family, we find such words odd. Today's civilisation, with
17 the simplification of morality with the church and social issues and the westernisation
18 of our societies, we have the first-degree family, which is made up of the father, the
19 mother and the children. That is the family which is emerging as the more important one.

20 But, my goodness, you would be surprised to see in the final analysis a person
21 who -- a person in the African society might be seen as being selfish if he defines his
22 family so narrowly, because really, a family -- we speak of the second-degree family,
23 mother, father, children, uncle, aunt, the older brother of my aunt, all these people
24 are members of my society -- of my family, rather, within society. That is what we mean.

25 And so, sometimes it's hard to determine the links, because the children are

1 taken care of. When the father dies, well, the uncle takes over responsibility for the
2 child or a grandfather. We respect. We very much respect the members of the family,
3 particularly people who are older, people who are older than our parents or of the same
4 age as our parents. So we tend to see a family as the second degree, the broader family.
5 So I think there is a problem here, an existential problem, a different way of seeing
6 things. The law is something that stems from modern society, and then we have our culture
7 which is very much rooted in -- within mankind.

8 PRESIDING JUDGE FULFORD: We are about to run out of time and tape, Ms Samson.
9 And if that's convenient to you, we will break off tonight.

10 Sir, I am afraid that for partly technical, partly humanitarian reasons, having
11 sat for two hours this afternoon, we cannot go on any further tonight. We will recommence
12 your evidence, if it's convenient with you, at half past 9.00 tomorrow, and I am reasonably
13 confident that you should have concluded your evidence tomorrow morning. Thank you very
14 much for your assistance this evening. Could you please now go with the usher? Thank
15 you very much.

16 THE WITNESS: I remain at your disposal.

17 PRESIDING JUDGE FULFORD: Thank you.

18 (The witness stands down)

19 PRESIDING JUDGE FULFORD: While the witness is withdrawing, I just want to observe
20 a number of things. First of all, we don't have a curriculum vitae for Ms Coomaraswamy.
21 Some requests were made of her office for a curriculum vitae, and none has been forthcoming.
22 I've instructed that this should be pursued so that there is a formal document setting
23 out her qualifications and experience.

24 Next, there seems to us to be no reason why the applications by participating
25 victims to question either of these witnesses should be filed confidentially. And I see

1 the legal representatives of victims agreeing. Therefore, we order their reclassification.
2 The reports of each witness should be given an EVD number, and I think that applies to
3 these two witnesses and to Mr Garreton.

4 Finally, at page 48 line 15 of today's hearing, I am recorded as having made
5 some reference to the members of the jury. If I said that, it was a question of very
6 old habit on my part. I, in fact, don't recollect having done so, and the three words
7 "of the jury" should be deleted, please, from the transcript when it is perfected.

8 Thank you all very much. We will meet again at half past 9.00 tomorrow morning.

9 THE COURT USHER: All rise.

10 (The hearing ends at 4.44 p.m.)