

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Presiding Judge Adrian Fulford, Judge Elizabeth 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, 28 January 2010

8 (The hearing starts at 2.30 p.m.)

9 (Closed session at 2.30 p.m.)

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13 *(Open session)

14 PRESIDING JUDGE FULFORD: Thank you. Good afternoon.

15 We've had an email application from the Defence requesting effectively an
16 adjournment for a week in the near future so that certain work can be undertaken.
17 Inevitably, because this involves questions of Defence strategy and their
18 investigations, there is very little, if anything, that the Chamber is able to
19 reveal to the Prosecution or the participating victims because the Defence are
20 entitled, so long as we consider it to be reasonable, to keep their strategy to
21 themselves.

22 We have requested justification for our purposes for the request and we
23 are satisfied that, in principle, the request is reasonable. However, this will be
24 subject to the Chamber being content with the particular period that is going to be
25 requested, and we wish to stress to the Defence that we really do not want, if

1 possible, to have two weeks being affected by this. And the proposal that
2 we have made via email is that the break should begin at the end or towards the end
3 of one week, with the following week then being cleared so that we can sit on the
4 next Monday. You will need to get back to us because we understand there are
5 arrangements that need to be considered, but will you please communicate with
6 Ms Guhr and let us know as soon as possible as to what is realistic. Good.

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10 (Open session at 4.20 p.m.)

11 THE COURT OFFICER: We are in public session, your Honours.

12 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

13 MR SACHDEVA: Thank you, Mr President.

14 Q. Witness, we spoke about the conversation you had with the son and you said
15 that in this conversation, and I quote, "I asked him to return home because there
16 were chores to carry out at home. I was asked to carry out some work but I wanted
17 the son to do his work because I had other work to do." And my question is this:
18 Was that the extent of your conversation?

19 A. I have already answered that question. It is not because I am a witness
20 that I can tell you every conversation I had with the members of my family. We had
21 many a discussion within the family, and I am somewhat surprised and I do not
22 understand how I can broach such a subject with the court. It may be that he will
23 tell me that this is why I came here to testify, to tell you such things, but I
24 told you that I talked to him in the same way that any father might talk to his
25 son.

1 And you asked me to tell you when it was that we had a conversation. I
2 responded by saying that it is difficult for me to tell you the date or the period
3 during which we had a discussion because I did not know that this question was
4 going to be put to me. So I'm not in a position to be able to answer this
5 question.

6 PRESIDING JUDGE FULFORD: Mr Sachdeva, page 17, line 24, and in that area
7 of the transcript, you deal with the conversation. The witness responded as to
8 what he remembered. It sets out what was spoken about and there's then an exchange
9 between you as to whether or not more details can be given. Now, we've now had a
10 break and we've gone right back to where we were before the adjournment. I'm
11 really, I'm afraid with more forcefulness, going to be encouraging you please to
12 move on to a new subject.

13 MR SACHDEVA: I'm guided, Mr President.

14 Q. You said that on one occasion your, or the son's younger brother, your
15 little son, had said to you that -- Mr President, perhaps this is better done in
16 private session for clarity for the witness.

17 PRESIDING JUDGE FULFORD: Certainly. Private session, please.

18 (Public session at 4.25 p.m.)

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18 (Open session at 4.33 p.m.)

19 THE COURT OFFICER: We are in public session, your Honours.

20 PRESIDING JUDGE FULFORD: Yes.

21 MR SACHDEVA:

22 Q. The second time the son came home to take some clothes, where was your wife?

23 A. She was at the market.

24 Q. And where were you?

1 A. I was at work.

2 Q. And what work do you do?

3 (Expunged)

4 MR SACHDEVA: Mr President, perhaps for this question with your leave can
5 we move into private session?

6 PRESIDING JUDGE FULFORD: Private session, please.

7 (Private session at 4.34 p.m.)

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17 (Open session at 4.36 p.m.)

18 THE COURT OFFICER: We are in public session, your Honours.

19 MR SACHDEVA:

20 Q. When the son left your house in 2007, as you said, when was the next time
21 you saw him?

22 PRESIDING JUDGE FULFORD: Just before you answer that, yes, Mr Desalliers.

23 MR DESALLIERS: (Interpretation) Your Honour, I'm sorry to interrupt, but
24 I think that the witness has answered this question several times. He said that
25 his son left and that he never saw him again. Unless I'm mistaken, he has said

1 this several times. Now, the question of my learned friend is -- it's as if he
2 completely ignores the answers that are being given by the witness.

3 PRESIDING JUDGE FULFORD: Page 16, Mr Sachdeva, lines 1 to 5:

4 "On another occasion I called. He did not come and his little brother
5 told me that he had gone to the house during the day, but then he left again and
6 since then he never came back."

7 Now, this has been dealt with.

8 MR SACHDEVA: Mr President, I do have a response to my learned friend and
9 I submit I would like to do it with the absence of the witness. I understand it is
10 not efficient, but there is a very valid reason in my submission why I ask that
11 question.

12 PRESIDING JUDGE FULFORD: Well, I'm not going to take up time with having
13 the witness coming in and out of court. If, notwithstanding that answer already
14 given by the witness, you wish to ask the question again, I rely on you,
15 Mr Sachdeva, to have a very good sustainable reason for doing so, which no doubt
16 will be revealed in the question you are about to ask.

17 MR SACHDEVA:

18 Q. Sir, can I ask you to confirm that, when the son left your house in 2007
19 and went to his aunt's house and then other places, you never saw him again?

20 A. Yes.

21 Q. When questioned by my learned friend yesterday he put to you the following
22 question, and I quote, "Could you tell us when you last -- when you saw your son
23 for the last time?", and your answer is as follows, "It was during the second trip
24 in the year 2007. I don't remember the exact date." Now, what is the correct
25 answer? Did you see him after he left, or not?

1 A. I think that he made two trips. If you followed me correctly since
2 yesterday, well, the first trip he -- he did the first trip, as I explained, he
3 started his work and then he went to Beni as I said yesterday. From Beni he came
4 back, and upon his return he stayed with his maternal aunt. After that, he
5 continued his rebellious ways and he -- his life of hiding. The second time he was
6 never seen, not even by family members. That is what I answered yesterday.

7 PRESIDING JUDGE FULFORD: Could I have a page reference, Mr Sachdeva, for
8 yesterday?

9 MR SACHDEVA: Certainly, Mr President. It is page 42 and the lines are 12
10 to -- well, 11 and 12.

11 PRESIDING JUDGE FULFORD: If I might ask - really this is for all
12 counsel - when quotations are put to witnesses, things they've said on earlier
13 occasions, although it may not be necessary to put the transcript to the witness,
14 could a number be given, please, so that everybody can find the right page. Thank
15 you. Please carry on.

16 MR SACHDEVA: Thank you, Mr President.

17 Q. So, Witness, is your answer then that you did see the son after he left
18 the first time?

19 PRESIDING JUDGE FULFORD: Mr Sachdeva, I'm sorry. I think the witness has
20 just said that, "The second time he was never seen, not even by family members.
21 That is what I answered yesterday." Now, when the witness has just said that, a
22 question from you, "So ... is your answer then that you did see the son after he
23 left the first time?", the question simply doesn't follow from the answer. The
24 answer is to exactly the opposite effect.

25 MR SACHDEVA: Mr President, I wanted to get clarification on the initial

1 answer and -- well, perhaps I'll move on.

2 Q. Yesterday, sir, you -- Mr President, may we move into private session,
3 with your leave?

4 PRESIDING JUDGE FULFORD: Certainly. Private session, please.

5 (Private session at 4.44 p.m.)

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15 (Open session at 4.54 p.m.)

16 THE COURT OFFICER: We are in public session, your Honours.

17 PRESIDING JUDGE FULFORD: Thank you.

18 MR SACHDEVA:

19 Q. I take it, then, that the son's uncle had no problem with going with him,

20 accompanying him to Beni; is that right?

21 A. No, he did not refuse.

22 Q. You speak about a badge. What do you know about this badge?

23 A. The macaron, the badge, is like a small identity card that people use in the

24 Congo, particularly employees; they wear it around their neck to show that they

25 work somewhere.

1 Q. Were you told precisely what they had gone to Beni for?

2 A. I think I answered that question. I said this: They went so that he
3 would be confirmed in his job and to receive the badge. You have asked the
4 question what the badge is and I told you that it is a little identity card for
5 employees.

6 MR SACHDEVA: Mr President, for these questions may I ask to move into
7 private session?

8 PRESIDING JUDGE FULFORD: Certainly.

9 (Private session at 4.57 p.m.)

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1 (Open session at 5.00 p.m.)

2 THE COURT OFFICER: We are in public session, your Honours.

3 PRESIDING JUDGE FULFORD: Thank you.

4 MR SACHDEVA:

5 Q. And who did he say that the son was to be hired by?

6 (Expunged) it was the employers of an NGO, but I do not know the
7 officials of that NGO. That is the information which I received.

8 Q. Do you know the name of the NGO?

9 A. No, I do not know.

10 MR DESALLIERS: (Interpretation) I beg your pardon, your Honour. The
11 witness has just said he did not know the name of the organisation, and my learned
12 colleague asked him immediately afterwards whether he knew the name of the
13 organisation. Once more I think -- I object to the fact that he's ignoring the
14 answers given by the witness.

15 PRESIDING JUDGE FULFORD: I think out of fairness to Mr Sachdeva, the
16 English translation was that he didn't know the officials of the NGO, and I have to
17 say I was immediately expecting Mr Sachdeva then to ask the follow-up question: Do
18 you know the name of the NGO. We now have the complete answer. He knows neither
19 the names of the officials, nor the NGO, but thank you for the -- I understand the
20 intervention, Mr Desalliers.

21 MR DESALLIERS: (Interpretation) Please excuse me.

22 PRESIDING JUDGE FULFORD: Not at all. Not at all. I think it may have
23 been something lost in translation. Yes, Mr Sachdeva, please continue.

24 MR SACHDEVA: Thank you, Mr President.

25 Q. The uncle never told you that your son, the son was being questioned about

1 his time in the army as a child soldier?

2 A. No, this is what he told me. When they went to Beni, the child was taken
3 to another office and the child never told him about what was discussed in that
4 office. When they returned from the second trip, when they reached Kisangani, when
5 they were abandoned in the hotel for a period of one week, they called the person
6 who made the trip with them and the person told them that, "You can no longer
7 return to Ituri, because you will not be safe there." So he was surprised, they
8 were surprised and later on they were then taken to Kinshasa.

9 Once they reached Kinshasa, after a period of about three days his uncle
10 was invited to an office and there he met two individuals, a white man and an
11 African. The individuals asked him whether he knew about the child having carried
12 out military service. He was surprised and then he tried to return. He asked them
13 whether he could return with the boy and he was told that, if he had to return, he
14 would return alone because the boy would not return with him. He called the boy
15 and asked him to return with him and the boy said, "I cannot return. I still have
16 things to do here." That is the explanation he gave us.

17 Q. The uncle never told you that he had been explained thoroughly as to the
18 reasons why the son was to be -- was to meet the people in the first trip in Beni
19 and that he had consented to? He never told you that?

20 A. I said that, when they were in Beni, the secret was hidden from them.
21 When they reached Kinshasa, they did not go together to the office. They went
22 separately. And when he put the question to the boy, he, the boy, did not give --
23 tell him the truth about what was done in the office, and I think I have already
24 answered this question.

25 Q. The uncle never told you that for at least some part of the meeting that

1 he was present with the son -- with your son? He never told you that?

2 A. No, they were never together, from what he told me.

3 THE INTERPRETER: The Swahili interpreter corrects: According to what he
4 told me.

5 MR SACHDEVA:

6 Q. Does the uncle have an elder brother?

7 A. I beg your pardon, I didn't fully understand your question.

8 Q. I just want to know whether the uncle that went with your son, does he
9 have an older brother?

10 A. Right from yesterday I told you that he is the oldest in the family.
11 Today I still repeated that he was the oldest member of the family. Maybe you wish
12 to know whether he has younger brothers? Is that your question?

13 Q. Perhaps there's a misunderstanding here. I was asking about the uncle.
14 Does the uncle have an elder brother?

15 A. I have already answered this question. This is what I said, "He is the
16 eldest member of the family." That means that there is no other person who is
17 older than him, or who was born before him.

18 PRESIDING JUDGE FULFORD: I think that is absolutely definitive,
19 Mr Sachdeva. He's now given that answer at least twice.

20 MR SACHDEVA: Indeed, Mr President, yes.

21 Q. We spoke about -- Mr President, may I ask leave to move into private
22 session?

23 PRESIDING JUDGE FULFORD: Private session.

24 (Private session at 5.11 p.m.)

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15 (Open session at 5.29 p.m.)

16 THE COURT OFFICER: We are in open session, your Honours.

17 MR SACHDEVA:

18 Q. You said that you saw someone coming, someone who came to you when you
19 were leaving work. Who was that person?

20 A. There are other things that I can tell you in addition to that. This
21 person came -- well, we hadn't reached that point yet. This was a day, during the
22 daytime, during the afternoon I was not at work, I was on leave, and he left the
23 field in the company of my mother. We saw the father-in-law come, call the mother,
24 and he said that there was somebody who needed her, and we asked who it was. And
25 this gentleman did not know who it was. So the mother left, and shortly afterwards

1 I decided to go out and leave and ascertain who was seeking her, or looking for
2 her. We arrived home, we met a gentleman, we had a discussion with that individual
3 and he recounted his story, and then he said that he had come to find the parents
4 of this young man with a view to gleaning an important piece of information from
5 them that people had heard recounted in this family. He started talking and he
6 reassured the wife and asked her not to worry, because her child was alive and was
7 studying well, et cetera. And he said that there were people helping him to study
8 and who wished to meet the wife - my wife - so that they could see him.

9 Subsequently we prepared coffee, she prayed and then we left, or she left,
10 and upon leaving he said to my wife that he -- she had to come to town in order to
11 meet with these people in their office where they worked. Upon reaching home I
12 said to my wife that it was not a good thing to get involved in such matters that
13 she had no control over, and my wife said to me that she would go and see these
14 individuals with a view to reassuring herself that this was true.

15 And when she left, she arrived in the town and she met the individual who
16 had called her. This person was seated at a distance and said to her that, "The
17 people who are looking for you are in this car." My wife arrived there and she was
18 told that, in order for the child to be able to study properly, the whites who are
19 helping him would like her to sign a letter written in that place and that they
20 would help the child to study and bring him back.

21 When the mother heard that piece of information, she signed the papers and
22 then she came home and told me. And I said to her, "Well, there is a danger with
23 regard to what you signed", and afterwards a short time later we saw the
24 consequences thereof. This is when the trouble began and this continues. I
25 believe you are following me only too well.

1 Q. Do you know roughly when this took place?

2 A. Yes, this happened in the year 2008. If I am not greatly mistaken, it
3 might have been in the month of May or June.

4 Q. You said that, "This is when the trouble began." What type of trouble?

5 A. Could you put the question to me once again? I did not quite grasp it.

6 Q. Let me start by asking you this. The area that you live in, that is known
7 to be a Hema area; isn't that right?

8 A. Which period are you referring to?

9 Q. I'm referring to the period -- well, presently? The place where you live
10 (Expunged)

11 (Expunged) I did not

12 specify the locality, or the neighbourhood, and the ethnicity is of no importance.

13 However, if you are putting this question to me with regard to the period I spent
14 there, I can answer that question.

15 PRESIDING JUDGE FULFORD: Just a moment, Mr Sachdeva. Mr Desalliers?

16 MR DESALLIERS: (Interpretation) I apologise, Mr President. If we broach
17 questions as to the residence of the witness, well, we are in open session. I
18 believe it would be more prudent to return to private session.

19 PRESIDING JUDGE FULFORD: Yes, I'm afraid we spent acres of time in
20 private session when probably we should have been in public session this afternoon,
21 but we've now hit an area where we definitely should be in private session.

22 Private session, please.

23 (Private session at 5.39 p.m.)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 5.42 p.m.)

22 THE COURT OFFICER: We are in public session, your Honours.

23 PRESIDING JUDGE FULFORD: Thank you.

24 MR SACHDEVA: Mr President, may I ask what time do we close today, with

25 your leave?

1 PRESIDING JUDGE FULFORD: Is that an invitation, Mr Sachdeva?

2 MR SACHDEVA: It is, yes.

3 PRESIDING JUDGE FULFORD: One of the qualities we're supposed to have is
4 that of mercy, Mr Sachdeva, and I will show it on this occasion.

5 Yes, sir, thank you very much indeed for your help this afternoon. I'm
6 very sorry that your evidence won't be completed today, and that I fear means that
7 it won't be completed this week because we're not able to sit tomorrow. We,
8 therefore, look forward very much to seeing you again at half past 9 on Monday
9 morning and we hope that, notwithstanding the circumstances, you're able to have a
10 pleasant weekend.

11 Thank you very much. Closed session, please.

12 (Closed session at 5.44 p.m.)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Open session at 5.45 p.m.)

17 THE COURT OFFICER: We are in public session, your Honours.

18 PRESIDING JUDGE FULFORD: A number of administrative things before we
19 rise. First of all - and I'm extremely grateful to Judge Odio Benito for reminding
20 me of this - next week, for the two days that we are sitting next week, we are in
21 Courtroom 2, not this courtroom, and so we are going to have to contract somewhat.

22 So everybody has the greatest warning, without finally fixing it, the
23 current suggestion is that to give the Defence the adjournment they've requested
24 the Court will not sit on Wednesday 24 February, or Thursday the 25th, and we are
25 in any event not sitting on the 26th. We will not sit on Monday the 1st, or

1 Tuesday the 2nd, but will sit again on Wednesday the 3rd and we may well therefore
2 sit effectively full days, but in different courtrooms, on the Thursday and the
3 Friday. At the moment we're not sitting on Friday morning because of court
4 maintenance, but it -- but I will suggest that that maintenance period is moved to
5 either Monday or Tuesday so that we have Friday morning available to us as well.

6 Now, I don't require a response now, but if anybody has any difficulties
7 with those proposed dates for what I'm going to describe as the Defence
8 adjournment, you have until 4 p.m. tomorrow to send an email to the legal adviser
9 to the division. No emails by then and I'm afraid you will be forever out of time.

10 Mr Walley, yesterday just after midday you sent an email indicating that
11 some documents which had been disclosed to you were then taken back. Has that
12 issue been sensibly resolved between counsel, or is there still an outstanding
13 problem?

14 MR WALLEYN: Mr President, thank you. It is not really a question because
15 it was not that important to have those documents, but my question was that if
16 there is a decision from the Chamber concerning that kind of matters, I think it
17 would be normal that legal representatives are informed, not just informally by the
18 Defence but also formally to know what exactly has been decided.

19 PRESIDING JUDGE FULFORD: Thank you very much. Thank you, Mr Walley. As
20 a matter of general principle, if disclosure has been effected, so if in this
21 instance either the Prosecution or the legal representatives of victims have had
22 documents provided to them, we would not expect for those documents then to be
23 required to be returned to the party who has distributed them. If there's to be
24 disclosure, there should be disclosure. Not disclosure for a moment that is then
25 brought to an end an hour or two later. And if there is to be a suggestion that

1 disclosure is going to be time-limited, it will need to be raised with the Bench in
2 advance of disclosure being effected in the first place. So if there's to be
3 conditional disclosure, time-limited disclosure, there's going to have to be an
4 application to us first before the documents are handed over.

5 Now, I don't want to waste time on this. I think that's the general
6 principle, unless somebody wishes now to contradict it. No. I didn't think we
7 would.

8 Finally, and again, this is just for everyone's assistance, on the week of
9 8 February, unless I'm mistaken, I think the Court calendar has the Chamber sitting
10 five days. Now, maybe it's been amended but if it hasn't, the likelihood is that
11 we're not going to be sitting on Friday the 12th, but there will be a formal
12 notification to the parties if there hasn't already been to that effect, unless we
13 receive any contrary submissions in the next 24 hours.

14 Thank you all very much. We wish you a pleasant weekend, unless there are
15 any other matters anybody wishes to raise? No. We sit again on Monday morning.

16 THE COURT USHER: All rise.

17 (The hearing ends at 5.52 p.m.)

18 CORRECTION REPORT

19 The following modification has been made into the transcript:

20 * Page 17 lines 8-11:

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 RECLASSIFICATION REPORT

5 *Pursuant to Trial Chamber I's instructions dated 28 January 2010, the excerpt of
6 the transcript Page 1 line 13 to Page 2 line 6 is reclassified from Closed Session
7 to Open Session.