

1 International Criminal Court
2 Trial Chamber I - Courtroom 1
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito and
4 Judge René Blattman
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, 18 February 2010
8 (The hearing starts at 2.30 p.m.)
9 *(Closed session) Reclassified as Open session
10 THE COURT USHER: All rise. The International Criminal Court is now in
11 session. Please be seated.
12 THE COURT OFFICER: Good afternoon, your Honours. We are in closed
13 session.
14 PRESIDING JUDGE FULFORD: Good afternoon. Mr Desalliers or Mr Biju-Duval,
15 can you just remind me, after we've completed the evidence of this witness, is the
16 next witness ready to give evidence if time is available on Monday and Tuesday of
17 next?
18 MR BIJU-DUVAL: (Interpretation) Your Honour, considering the
19 uncertainty relating to the date when this current testimony will be completed,
20 the decision was taken not to bring to The Hague the next witness, because if we
21 do that right now then that witness may have to wait here for too long before giving
22 testimony. And so the next witness is not available.
23 PRESIDING JUDGE FULFORD: I thought that was the case. It's just I received
24 some information a few minutes ago that tended to indicate that the next witness
25 was in fact here, but I think that was based on old information. As far as you

1 understand, the next witness is going to be brought in time for us to hear him or
2 her after you return following your investigations in the DRC. Right. Good. That's
3 absolutely clear.

4 The Prosecution filed on 26 January a request for non-disclosure of
5 information in witness-related expenses. As I understand it, you've received
6 disclosure of the material, but in a redacted form. The deadline for response will
7 be 5 March. I suspect given this touches on intermediaries, as I understand it,
8 this is something that we really ought to get on with. Can I ask whether you are
9 proposing to respond to that filing by the Prosecution?

10 MR BIJU-DUVAL: (Interpretation) Yes, your Honour, we intend to respond,
11 and we could respond very, very soon.

12 PRESIDING JUDGE FULFORD: Close of play tomorrow?

13 MR BIJU-DUVAL: (Interpretation) That's right, your Honour.

14 PRESIDING JUDGE FULFORD: Finally, Mr Biju-Duval, have we satisfactorily
15 resolved the suggestion that the Chamber made as regards the interview with Witness
16 16?

17 MR BIJU-DUVAL: (Interpretation) One moment, your Honour.

18 (Pause in proceedings)

19 I apologise, your Honour. We agree with the proposal made by the Chamber;
20 namely, that Witness 16 will come to give testimony after Witness 26 -- well, with
21 this additional information that Witness 16 has informed us that he did not give
22 his consent to any prior interview with the OTP.

23 PRESIDING JUDGE FULFORD: I think our rule has been that these interviews
24 are dependent on the consent of the individual witness; and do I take it from that,
25 Mr Biju-Duval, that your information from Witness 16 is, that he refuses to participate

1 in such an interview with a representative of the OTP?

2 MR BIJU-DUVAL: Yes. The situation currently is that Witness 16 is
3 refusing to have any prior interview with the OTP.

4 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

5 MR SACHDEVA: Thank you, Mr President. I just wanted to clarify with my
6 learned colleagues that, indeed, Witness 16 will come after Witness 26 because the
7 Prosecution had not been informed of that schedule. And the reason why I enquire
8 is that if we can't interview Witness 16, then our submission would be that at the
9 very least his testimony should occur prior to the testimony of Witness 15.

10 PRESIDING JUDGE FULFORD: Right. I'm reluctant to turn this into a debate
11 with counsel talking to each other across the floor of the Court. Perhaps during
12 the course of the break this afternoon, the two of you could put your heads together
13 and see if a satisfactory arrangement can be reached.

14 Mr. Sachdeva, no pressure, but bearing in mind what's just been said about
15 the next witness and to see whether there are other administrative things that we
16 need to deal with this afternoon, approximately how long do you think you're going
17 to be in your questioning of the current witness?

18 MR SACHDEVA: Mr President, I will most certainly complete it today. I
19 shan't imagine it's more than an hour.

20 PRESIDING JUDGE FULFORD: Thank you. Ms Massidda?

21 MS MASSIDDA: (Interpretation) Thank you, your Honour. Depending on the
22 questioning of the Prosecution I might not have questions for this witness. If
23 I will have, it will be I think not more than 15, 20 minutes. Thank you.

24 PRESIDING JUDGE FULFORD: Very kind. Excellent. Right. Since that's
25 the case, can I ask everyone as the afternoon unfolds to make sure that we have

1 dealt with today all of the matters that need to take place before the Defence go
2 on their mission to the DRC? I'm also thinking out loud. No, I think it's going
3 to be impossible to rearrange dates now. Good. I was talking to myself for a change.

4 Right. Witness, please. Yes, Mr Desalliers. Sorry, before that
5 happens.

6 MR DESALLIERS: (Interpretation) I apologise, your Honour. I wish to
7 give one detail. Yesterday I showed two photographs. I asked for a reference for
8 the first photograph and I forgot to ask for a reference for the second photograph.
9 It bore the reference 0138-0005. And I would like a reference to be given to that
10 document.

11 THE COURT OFFICER: The one-page coloured photograph under that ID number,
12 your Honours, would be assigned EVD-D01-00110, marked as confidential.

13 PRESIDING JUDGE FULFORD: Thank you very much. Witness, please.

14 (The witness enters the courtroom)

15 WITNESS: WITNESS WWW-D01-0024 (On former oath)

16 (The witness answers through interpreter)

17 PRESIDING JUDGE FULFORD: Good afternoon, sir.

18 THE WITNESS: Good afternoon.

19 PRESIDING JUDGE FULFORD: Private or public?

20 MR SACHDEVA: Private, Mr President.

21 PRESIDING JUDGE FULFORD: Private session, please.

22 *(Private session at 2.40 p.m.) Reclassified as Open session

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

24 PRESIDING JUDGE FULFORD: Yes, Mr Sachdeva.

25 MR SACHDEVA: Thank you, Mr President.

1 Questioned by Mr Sachdeva:

2 Q. Good afternoon, sir. We have met before but I just want to introduce
3 myself again. My name is Manoj Sachdeva and I'm a member of the Prosecution team
4 and I'm going to be asking you some questions today. Yesterday, you told us that
5 you live in (Redacted). And I take it that you have lived
6 there for at least of the last five years.

7 A. Yes.

8 Q. And is my understanding correct that you live there with your two wives,
9 (Redacted) and (Redacted)?

10 A. Yes.

11 Q. And you have children, don't you?

12 A. Yes.

13 Q. How many children do you have?

14 A. I have (Redacted) children.

15 Q. And in the (Redacted) neighbourhood are -- do relatives or family members
16 of your wives, do they also live close to you?

17 A. Yes.

18 Q. And in addition to the relatives or the family members of your wives,
19 do you have other neighbours close to you?

20 A. Yes.

21 Q. You're a Hema, aren't you?

22 A. Yes.

23 Q. And it's right that there are other Hema, persons of Hema ethnicity, living
24 in your neighbourhood?

25 A. Yes, there are Hemas there.

1 Q. Now, before you met with the lawyers from the Defence, you met somebody
2 called Durene ... Dieudonné Mbuna, didn't you?

3 A. Yes.

4 Q. And is my understanding correct that this meeting, the first meeting,
5 took place sometime in late summer 2009?

6 A. I have forgotten the date of the meeting.

7 Q. I understand, sir. It's difficult to remember dates and times, isn't
8 it?

9 A. I have forgotten.

10 Q. You said that you had joined the UPC as a soldier, so I take it then you
11 knew that Mr Mbuna was one of the founding members of the UPC; isn't that so?

12 A. Yes.

13 Q. In addition to Dieudonné Mbuna coming to see you, it's right, isn't it,
14 that (Redacted) also came
15 with Mbuna?

16 A. Yes. However, these gentlemen arrived. He was (Redacted).
17 (Redacted).

18 Q. And (Redacted), is (Redacted)
19 (Redacted) in Bunia; is that right?

20 A. Yes. He belongs to the (Redacted). These are people who
21 (Redacted), and my father had moved and he went back to (Redacted). However, when
22 the events started, he deemed it right to abandon (Redacted), because (Redacted)
23 got involved in activities which my father did not like.

24 Q. (Redacted), he's also Hema, isn't he?

25 A. Yes.

1 Q. So, in addition to Dieudonné Mbuna and (Redacted), it's also right, isn't
2 it, that an MP, a member (Redacted), by the name of (Redacted)
3 (Redacted) also came and visited you?

4 A. Yes.

5 Q. And you know that Mr (Redacted) was or is an (Redacted),
6 (Redacted), don't you?

7 A. All I know is that he is a member (Redacted) who lives in (Redacted).

8 Q. And you know that, as you were a member of the UPC, you know that at that
9 time in 2002, 2003, (Redacted) was the (Redacted)
10 (Redacted) in the UPC, wasn't he?

11 A. I know him very well.

12 Q. And do you know that he did have that position in the UPC when you were
13 in the UPC?

14 A. At that time he was (Redacted).

15 Q. Is it also right that, in addition to Mbuna, (Redacted) and (Redacted),
16 two soldiers also came and visited you?

17 A. No, I did not see any other soldiers.

18 Q. Weren't there persons who had been soldiers in the UPC, weren't they also
19 present with Mr Mbuna and the (Redacted) and (Redacted)?

20 A. Those soldiers who were with me were young people who were working with
21 me. They saw (Redacted) and came to greet him. They had not come for me.

22 Q. And the soldiers that were with you, were they former UPC soldiers?

23 A. Yes.

24 Q. This meeting, or this visit, (Redacted), by Mr Mbuna, (Redacted), it
25 took place at your house, didn't it?

1 A. Yes.

2 Q. They all came together in a four-by-four car, didn't they?

3 A. Yes.

4 Q. They came during the day, did they not?

5 A. Yes, they came during the day.

6 Q. Your family was at home at that time?

7 A. The members of my family are at home all the time.

8 Q. I assume that your neighbours must have seen what was taking place that
9 day; is that right?

10 A. I don't know. My neighbours could see visitors coming to my place, but
11 they would not know what is happening or what is being said.

12 Q. Of course, but I take it that they were able to see the car coming to
13 your house and they were able to see the persons visiting you; isn't that right?

14 A. I live alongside the road. Vehicles go by all the time and stop there.
15 They didn't know what it was all about.

16 PRESIDING JUDGE FULFORD: Mr Sachdeva, these are names that we're going
17 to have to protect, am I right in so concluding?

18 MR SACHDEVA: Mr President, I had given some thought as to whether this
19 can be conducted in open session. However, given the witness's current protected
20 status and the fact that neighbours and perhaps other persons may have seen these
21 particular people, my fear was that it could identify the witness.

22 PRESIDING JUDGE FULFORD: No, thank you. All right.

23 MR SACHDEVA:

24 Q. This visit, was this the only visit? Was there another visit after this?

25 A. They came once and I went and I had a discussion with them.

1 THE INTERPRETER: And later on I discussed with the lawyers. Correction
2 from the Swahili booth, that is.

3 MR SACHDEVA:

4 Q. I take it that it's not every day that you receive (Redacted),
5 (Redacted); isn't that right?

6 A. I did not fully understand your question.

7 Q. That's fine. I'll reformulate the question. It's right, is it not, that
8 it's not every day that you have a visit from an (Redacted)?

9 A. Well, they can come. They could come, because his residence is in (Redacted)
10 and he is someone who speaks the same language with me, so it's something that could
11 happen.

12 Q. But this was the first time that he came to see you, wasn't it?

13 A. I have always been with him. Even earlier when he was (Redacted)
14 (Redacted), I was with him all the time.

15 Q. You must have found it uncomfortable that Mr Mbuna and Mr (Redacted) and
16 (Redacted) had come to see you in your house that day?

17 A. No, I was not uncomfortable. I could not be uncomfortable, because these
18 were people whom I knew.

19 Q. Yesterday you said that a (Redacted) of yours knew about you coming here
20 to testify. How was it that he knew about this?

21 A. My (Redacted) found out because before I go on any trip I talk to my wife
22 about it. And since (Redacted)

23 And since I do not get along with him, he become friendly with my wife, and so my
24 wife told him about this.

25 MRSACHDEVA: Mr President, might I have one second? Mr President, that's

1 the cross-examination.

2 PRESIDING JUDGE FULFORD: I think that's your best estimate so far,
3 Mr Sachdeva. Thank you.

4 MS MASSIDDA: Thank you, Mr President. We have no further question for
5 the witness.

6 PRESIDING JUDGE FULFORD: Thank you very much, Ms Massidda. Anything by
7 way of re-examination?

8 MR DESALLIERS: (Interpretation) I would like to ask one brief question
9 to make something more precise.

10 Questioned by Mr Desalliers:

11 Q. Good afternoon, witness.

12 PRESIDING JUDGE FULFORD: In public or private session, Mr Desalliers?

13 MR DESALLIERS: (Interpretation) Private session, your Honour. I beg
14 your pardon, I was waiting for the private session.

15 Q. Witness, I would like to just make one point clear. Following the questions
16 that my good friend from the Office of the Prosecutor asked you, the soldiers who
17 came to see you, there was a question about that and I would like to ask a question
18 because I have the impression that something was lost in translation. Do you believe
19 that these soldiers had come to see you for the same reason as the (Redacted)
20 (Redacted), or was it for a different reason?

21 A. They were my friends. They were soldiers. We worked together. We lived
22 in the same neighbourhood. But they also knew (Redacted), like Dieudonné who was
23 our secretary, and (Redacted), who is our (Redacted) as well. And when they saw
24 that (Redacted) were coming to see me they came and they greeted them, but they
25 were not there for any other purpose.

1 MR DESALLIERS: (Interpretation) Thank you very much. I have no further
2 questions.

3 PRESIDING JUDGE FULFORD: Sir, on behalf of the Court, I want to thank
4 you for -- public session, please.

5 (Open session at 3.04 p.m.)

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

7 PRESIDING JUDGE FULFORD: Sir, on behalf of the Court, I want to thank
8 you for having taken the time and trouble to give evidence before us during this
9 trial. In order for the Bench to be put in the best possible position for us to
10 determine the truth in this case, if we can, it is critical that people such as
11 yourself are prepared to come the very long way from the Democratic Republic of
12 Congo to give evidence. We are acutely aware that this is likely to have caused
13 you considerable personal inconvenience, to put it at its lowest, and therefore
14 you leave this Court with our profound thanks for your assistance.

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

16 *(Closed session at 3.05 p.m.) Reclassified as Open session

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

18 (The witness is excused)

19 PRESIDING JUDGE FULFORD: Public session, please.

20 (Open session at 3.06 p.m.)

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

22 PRESIDING JUDGE FULFORD: Mr Biju-Duval, we are very concerned that, if
23 possible - particularly since there is now some time this afternoon - that a meeting
24 should take place effectively immediately between the Defence and representatives
25 of the Victims and Witnesses Unit so that we can resolve today an issue that is

1 outstanding, which I'm not going to go into, but regards -- but relates to a particular
2 element of the researches that you wish to carry out during your visit to the DRC
3 next week.

4 There has been some very recent email traffic in relation to this; and
5 even if you're not unaware of what the subject is, I suspect that counsel sitting
6 a little bit to your right is.

7 The Judges will be available a little bit later this afternoon if this
8 cannot be resolved satisfactorily; and it may be that you're going to need an order
9 from us, in any event. So can I ask you, please, not to leave it until midnight,
10 but can you over the next half-an-hour or so see whether the meeting can take place
11 with the Victims and Witnesses Unit, for a message then to be sent to us and, if
12 necessary, we will sit ex parte to resolve the matter?

13 For the sake of my health, I'd better find out from my colleagues what
14 the cut-off point is in relation to our sitting this afternoon.

15 (Trial Chamber confers)

16 You have until 5.00. At five o'clock we will walk into court; one minute
17 past 5.00, we won't. So can you have this set up by then, please? Thank you.

18 Now, is there anything else that needs to be resolved in court before
19 we sit again after the Defence have had this opportunity to go to the DRC to conduct
20 critical research? No. Right. Therefore, we will probably sit this afternoon,
21 but send us a message if, in fact, there's nothing that needs to be resolved. If
22 we sit again, it will be ex parte, Defence only. Otherwise, we look forward to
23 seeing everyone at 9.30 on Wednesday, 3 March. Thank you all very much. We'll
24 rise.

25 THE COURT USHER: All rise.

1 (The hearing ends at 3.10 p.m.)

2 RECLASSIFICATION REPORT

3 Pursuant to Trial Chamber I's email instruction dated 5th December 2011, the
4 transcript is reclassified as public after the indicated redactions have been
5 implemented as ordered by the Chamber. All private and closed sessions (*)
6 are now available to the public with the exception of the portions of the
7 transcript that have been redacted.