

1 International Criminal Court
2 Trial Chamber I - Courtroom 2
3 Presiding Judge Adrian Fulford,
4 Judge Elizabeth Odio Benito and Judge René Blattman
5 Situation in the Democratic Republic of the
6 Congo - ICC-01/04-01/06
7 In the case of The Prosecutor v. Thomas Lubanga Dyilo
8 Monday, 8 March 2010
9 (The hearing starts at 2.45 p.m.)
10 THE COURT OFFICER: All rise. Please be seated.
11 PRESIDING JUDGE FULFORD: Private session for a moment,
12 please.
13 *(Private session at 2.47 p.m.) Reclassified as Open session.
14 THE COURT OFFICER: We are in private session, your Honours.
15 PRESIDING JUDGE FULFORD: Mr Sachdeva, we've had from the
16 Defence about five past two, which I imagine you've seen, a request
17 for what I'm going to call the routine protective measures for witnesses.
18 Save for one discrete element, which is what, if anything, you can
19 say to (Redacted), do you have any submissions in relation to the voice
20 distortion, face distortion, et cetera?
21 MR SACHDEVA: Thank you, Mr President. Again, the Defence
22 have only afforded subjective reasoning for this application, and the
23 Prosecution makes its standard objection that there should at least
24 be some objective criteria to justify protective measures and a
25 deviation from public testimony.

1 We would add that information about the intermediary is,
2 in any event, in our submission, going to be dealt with in private
3 session, and thus, if the witness has any fears that this information
4 will be publicised, if -- in our submission, if leave is granted, it
5 will not be and, therefore, the balance of the witness's testimony
6 could be conducted in public session.

7 PRESIDING JUDGE FULFORD: Is there going to be much left
8 if his identity is protected and if anything to do with (Redacted) is
9 protected, is there really going to be any very much public testimony
10 that remains? And isn't the issue his face over the internet so that
11 (Redacted) doesn't see him giving evidence?

12 MR SACHDEVA: Your Honours, that is right. It's just that,
13 as I understand it, the Defence have been in contact with the witness,
14 most recently, as I understand it, a couple of weeks ago, and these
15 fears had not been expressed. I understand, of course, when witnesses
16 come here they may at that time feel that protective measures is required.
17 But there are the reasons for our objection, Mr President.

18 PRESIDING JUDGE FULFORD: Thank you very much, Mr Sachdeva.

19 Mr Biju-Duval, how do we get round the problem if something
20 is said by the witness about (Redacted) that really needs to be passed
21 on to that individual so that he can comment on what has been said?
22 If something very much against both the evidence and, in a sense, the
23 interests of that individual are given in the testimony of the next
24 witness, surely the Prosecution have got to have an opportunity of
25 exploring that with (Redacted). And if we impose the ban that you're

1 suggesting, that's going to make it impossible for the Prosecution
2 to deal with these issues with him. I'd encourage you to speak to
3 Maître Mabilille and Mr Desalliers about that.

4 MR BIJU-DUVAL: (Interpretation) Yes, your Honour. The
5 thrust of his evidence relates to his relationships with (Redacted).
6 The question here is about his protection, and we would like his identity
7 to be shielded from the public and from (Redacted). But then the problem
8 you mentioned then comes to mind. I have two observations to make
9 about that: The Prosecutor indeed has the right to go and put questions
10 to the intermediary, that is, (Redacted), on the witness's allegations.
11 The Prosecutor can do so on the basis of objective elements without
12 stating that Witness 16 has come to give testimony. We are going to
13 use documents which could be shown to the intermediary and questions
14 put to him about the documents. The Prosecutor also has the possibility
15 of proceeding with caution without mentioning that Witness 16 has come
16 before the Court to give testimony.

17 Second point: If the Prosecutor has to proceed further,
18 has to look at things in detail and there is need for the fact that
19 the appearance of Witness 16 be revealed and that his testimony should
20 be reviewed, well, if that were to happen, then in that case the Defence
21 would require that VWU should envisage the putting in place of a
22 protection programme for the witness such that if his identity is
23 revealed, then he should be protected with tougher measures than the
24 measures which have been applied hitherto.

25 PRESIDING JUDGE FULFORD: Well, thank you very much, Mr

1 Biju-Duval. If I may say so, I think that's very sensible. In essence,
2 what you're suggesting is take a careful approach, only speak with
3 (Redacted) if it's necessary; and if it is necessary, then protection
4 is going to have to be provided.

5 And I think the net effect of that is, we need to look at
6 the position at the end of the witness's evidence - and I'm sure that
7 Mr Sachdeva will be realistic - and we can then assess whether in light
8 of what has been said there is a need for (Redacted) in the view of the
9 prosecution and in the view of the Court to be told about the witness's
10 evidence. Now, that's very helpful. Thank you very much.

11 Mr. Sachdeva, thank you for your objections. Our view is,
12 given that the witness has expressed understandable concerns about
13 a particular individual whose evidence he is going to be criticising,
14 there is in those circumstances a sufficient identified basis for
15 granting the application. But thank you for your help. Good.

16 Protective measures then. The witness needs assistance
17 with reading. He will speak Swahili. We will, therefore, need to
18 go into closed session. The witness needs to be brought in and we
19 need an interpreter to help him with the oath.

20 *(Closed session at 2.56 p.m.) Reclassified as Open session.

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

22 PRESIDING JUDGE FULFORD: Witness and interpreter, then,
23 please.

24 (The witness and interpreter enter the courtroom)

25 PRESIDING JUDGE FULFORD: Good afternoon, sir.

1 THE WITNESS: (Interpretation) Good afternoon.

2 PRESIDING JUDGE FULFORD: I'm sorry we've, kept you waiting,
3 but we've had some other things to deal with. There are one or two
4 matters that I must raise before you begin your evidence.

5 You recently asked for some protective measures for the
6 purposes of your evidence, which we have granted. That means that
7 your identity will be concealed from everyone who is not in this courtroom;
8 and although your evidence or parts of it will be broadcast over the
9 internet, your voice will be distorted, your face will be distorted
10 and anything that you say that could identify you will be withheld
11 from the public broadcast.

12 If for some reason something is said during public session
13 that should not have been said, don't worry because there is a 30-minute
14 delay on the broadcast which means that we can remove anything from
15 the broadcast which should not be revealed to the public.

16 Can I ask you, please, not to speak too quickly. It's very
17 important that everything you say is recorded by the stenographers
18 and interpreted by the interpreters. Listen, please, to the questions
19 and keep your voice up so that everything you say is picked up by the
20 microphone.

21 In a moment, in public session, I'm going to ask you to take
22 the solemn undertaking. We'll do that by you repeating the words which
23 will be spoken by the interpreter who sits next to you. So when the
24 time comes, listen carefully to what he says and simply repeat the
25 words that he will read out.

1 Public session, please.

2 (Open session at 3.01 p.m.)

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

4 PRESIDING JUDGE FULFORD: Yes, sir. Then, could you please
5 help the witness take the solemn undertaking.

6 WITNESS: WWW-D01-0016 (Sworn)

7 (The witness answers through interpreter)

8 PRESIDING JUDGE FULFORD: Excellent. Thank you very much.
9 Mr Biju-Duval, do we need the interpreter for the first part of the
10 witness's evidence, or not?

11 MR BIJU-DUVAL: (No interpretation)

12 PRESIDING JUDGE FULFORD: Thank you very much. Closed
13 session, please, so the interpreter can withdraw.

14 THE INTERPRETER: We had a microphone problem. The
15 interpreter understood Mr Biju-Duval said, "No, your Honour, we don't
16 need the interpreter. He can withdraw."

17 PRESIDING JUDGE FULFORD: Thank you. Wait a moment, sir.

18 *(Closed session at 3.03 p.m.) Reclassified as Open session.

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

20 (The interpreter exits the courtroom)

21 PRESIDING JUDGE FULFORD: Private session, please.

22 *(Private session at 3.04 p.m.) Reclassified as open session.

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

24 PRESIDING JUDGE FULFORD: Mr Biju-Duval.

25 QUESTIONED BY MR BIJU-DUVAL:

1 Q. Good afternoon, Witness. We have already introduced
2 ourselves to each other today, but I will introduce myself once more.
3 My name is Jean-Marie Biju-Duval. I am a lawyer, and I am going to
4 put a few questions to you for the Defence of Mr Thomas Lubanga. Have
5 you understood me?

6 A. Yes.

7 THE INTERPRETER: The interpreter would like to say that
8 the witness is speaking far from his microphone and he's not raising
9 his voice.

10 MR BIJU-DUVAL: (Interpretation)

11 Q. Witness, the interpreters say they can't hear you well.
12 Could you please get closer to your microphone?

13 A. Yes.

14 Q. Please try to speak out loud and speak normally, speak clearly
15 and slowly so that what you say can be translated correctly. Witness,
16 could you first of all state your full name before the Court?

17 A. Yes. My name is (Redacted).

18 Q. Do you have any other names?

19 A. No.

20 Q. Could you please state your date of birth?

21 A. Yes. I was born on (Redacted) 1984.

22 Q. Thank you. Could you please tell us your place of birth?

23 A. Yes. I was born at (Redacted) (phon).

24 Q. Could you please repeat that place name - that is, the name
25 of the place where you were born - slowly and clearly so that the

1 interpreters can hear you and so that it can be transcribed in the
2 court record?

3 A. Yes. I was born at (Redacted) (phon).

4 Q. Thank you. Could you please state your father's name?

5 A. Yes. My father is called (Redacted) (phon).

6 Q. And what about your mother's name?

7 A. My mother's name is (Redacted) (phon).

8 Q. Thank you. Could you please tell us about your current
9 professional activities?

10 A. Yes. Currently, I am a (Redacted).

11 Q. In approximate terms, for how long have you been working
12 as a (Redacted)?

13 A. I started carrying out this activity in the year 2000.

14 Q. Thank you. And where were you carrying out this activity?

15 A. I carry out this activity in (Redacted).

16 Q. Thank you. Witness, do you know an individual who goes by
17 the name of (Redacted)?

18 A. Yes.

19 Q. Could you please tell us when you met this person for the
20 first time, if you remember? And could you tell us about the
21 circumstances under which you met that individual?

22 A. I do not remember the date, but I remember the month as
23 well as the year. It was between 2004 and 2005, in Bunia.

24 Q. Thank you. Witness, have you at any moment whatsoever ever
25 met the investigators from the Office of the Prosecutor of the

1 International Criminal Court?

2 A. Yes.

3 Q. How did you get into contact with these investigators of
4 the Prosecutor of the International Criminal Court?

5 A. I met those investigators through (Redacted). He is the
6 one who placed me in contact with the investigators.

7 Q. Could you please tell us approximately the year in which
8 you met the investigators from the OTP of the International Criminal
9 Court?

10 A. It was in 2005 or in 2006.

11 Q. Thank you. Before meeting the investigators of the
12 International Criminal Court, did you have any contact or any meetings
13 with (Redacted)?

14 A. I might have met him in the year 2004 or at the beginning
15 of the year 2005, around the month of March. Well, this happened a
16 long time ago and I may have forgotten, but I believe that I met him
17 around that period.

18 Q. And what happened when you met with (Redacted) before
19 you met with the OTP investigators?

20 A. Before I met with (Redacted) -- I met with him in a bistro.
21 He was not alone. His friend was with him. And during these meetings
22 we got to know each other, and so that is how it came to be that we
23 started to talk about this matter. And then we changed the place of
24 the meeting and we met in an office of one of his friends. There were
25 three of us and the three of us talked, would talk about this subject.

1 Q. Now, according to the translation, you said that (Redacted)
2 (Redacted) was with his father. Have I understood you correctly?

3 A. No. It wasn't his father; it was his friend. It wasn't
4 his father.

5 Q. Thank you.

6 MR BIJU-DUVAL: (Interpretation) Your Honour, I think we
7 could attempt to go into open session using a pseudonym for the
8 intermediary. I would make that suggestion of the witness.

9 Q. Witness, remain calm. Everything that has to do with your
10 identity will be absolutely confidential, but I would like to make
11 a proposal to you. In public, we must not utter the name of (Redacted)
12 (Redacted). Do you understand what I am suggesting?

13 A. Yes.

14 Q. So I would suggest the following: When I wish to speak of
15 (Redacted) I will say -- I will say "Mr X". Do you understand?

16 A. Yes.

17 Q. And you, when you wish to speak of (Redacted), you will
18 speak of "Mr X". Do you agree?

19 A. Yes.

20 PRESIDING JUDGE FULFORD: Excellent. Public session,
21 please.

22 (Open session at 3.19 p.m.)

23 THE COURT OFFICER: Excuse me. We are in open session, your
24 Honours.

25 MR BIJU-DUVAL: (Interpretation)

1 Q. A few moments ago you were speaking about a meeting with
2 Mr X and friends before meeting with the OTP investigators, and you
3 said that you were talking about a number of subjects or topics. Now,
4 what subjects were you talking about during these meetings? Could
5 you explain that to us?

6 A. Yes. During our meeting with Mr X, he said to me that he
7 was working with the ICC and so he called me and we talked. He said
8 to me that he needed someone to say something about Mr Thomas Lubanga
9 and so that is what we meticulously planned during the meetings, to
10 tell lies. And after a half day of discussion, he took me to meet
11 with the OTP investigators. And from that point, well, I met the people
12 from the OTP and they took me to the city of Kampala, and Mr X was
13 with me.

14 Q. Thank you. One moment, if the Court would be so kind. Just
15 to make one thing clear, Witness: In the translation we heard that
16 after half a day you went to see the OTP investigators; is that correct?
17 Was it half a day, or did you say something different?

18 A. No, it was after months. It was some months later that I
19 met with the OTP investigators.

20 Q. Thank you. You mentioned some meetings to plan to tell lies.
21 What lies were you planning? What lies were you supposed to be planning
22 with (Redacted)?

23 PRESIDING JUDGE FULFORD: A short redaction, please. Don't
24 worry, Mr Biju-Duval, we all do it. Can you put the question again,
25 using "Mr X".

1 MR BIJU-DUVAL: (Interpretation) Yes, I see.

2 Q. You see, Witness, I made a mistake. I'll ask the question
3 again: You mentioned meetings to plan some lies, meetings with Mr X.
4 Could you explain to us what kind of lies had to be planned with Mr X?

5 A. Well, the lie that we had to plan was to say that he had
6 recorded -- pardon me, he had enrolled children in the army and that
7 I myself was amongst those children, and that I had seen those children
8 and that I was there and I had seen those children. And, furthermore,
9 that there had been young girls who had children, so that is what we
10 planned with him. There was Mr X and a friend of his who is now deceased.

11 MR BIJU-DUVAL: (Interpretation) Your Honour, perhaps we
12 could go into closed session for a moment so that the witness could
13 provide the identity of this friend.

14 PRESIDING JUDGE FULFORD: Certainly. Private session,
15 please.

16 *(Private session at 3.25 p.m.) Reclassified as Open session.

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

18 MR BIJU-DUVAL: (Interpretation)

19 Q. Witness, do you know the name of this friend who has died,
20 the person you just mentioned, the friend of Mr X?

21 A. Yes. His name was (Redacted) (phon).

22 Q. And what did he do for a living, if you know?

23 A. He worked at the (Redacted). I don't know what he did there
24 at the (Redacted). However, he did have an important job there.

25 MR BIJU-DUVAL: (Interpretation) Thank you.

1 Your Honour, I think that we can go back into open session
2 with the same procedures.

3 PRESIDING JUDGE FULFORD: Public session, please.

4 (Open session at 3.27 p.m.)

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

6 MR BIJU-DUVAL: (Interpretation)

7 Q. Witness, a few moments ago you said that Mr X had asked
8 you to tell lies and amongst these various lies he apparently asked
9 you to say that you yourself had been enrolled as a child. Now, did
10 Mr X ask you anything else about the lies that you were supposed to
11 say; anything else about yourself or your own activities as an enlisted
12 child?

13 A. Yes. Well, actually he made me the source of these lies.
14 He knew that .. I was Gegere and that I would be familiar with these
15 events and that I was capable of telling how we had fled, how we had
16 run away. He manipulated me and he had me play the leading role in
17 these lies. We were planning the lies together, and I was the one
18 who was going to tell them. He had information and I didn't know how
19 he had obtained it. And I was the one who was supposed to go and tell
20 all that. In actual fact, we were always together, we slept in the
21 same place and we did everything together.

22 Q. Thank you. Perhaps could you speak somewhat more slowly
23 so that the interpretation can be done properly. Thank you.

24 A. Yes, he prepared me to play the leading role when it came
25 to these lies. Although the two of us made up what I was to say to

1 the investigators. We talked to each other, and if I was unaware of
2 some details, he would get that information and and give me explanations
3 about them. I told the investigators what had already been written
4 in advance. That is what happened.

5 Q. Thank you. Now, you said that he told you what you had to
6 say to the investigators. Now you, personally, what were you asked
7 to say to the investigators about yourself?

8 A. Well, as far as I was concerned, he said to me that I had
9 to tell the investigators that I had been a soldier. Since I knew
10 some soldiers, I went to the investigators as someone who had been
11 in the army. So, there you have it. That is the lie that had been
12 planned regarding me.

13 Q. Yes or no, at any time were you a soldier within an armed
14 group, you personally? In actual fact, at any time were you a soldier
15 in an armed group, yes or no?

16 A. Not at all.

17 Q. Could you tell us what you were doing in 2002 and 2003?

18 A. Yes. Yes, I can tell you that. In 2002 and in 2003, that
19 was during the war. We were going about here and there, and after
20 we would return home. And my work at the time was -- well, I was a
21 (Redacted). And at one particular point we took refuge in Uganda and
22 upon my return I remained working as a (Redacted).

23 Q. Thank you. You just told us in a general way about the lies
24 that they wanted you to say about you, yourself. Were you asked to
25 say falsehoods about other people?

1 A. I don't really understand your question.

2 PRESIDING JUDGE FULFORD: Before you put it again, Mr
3 Biju-Duval. Yes, Mr Sachdeva.

4 MR SACHDEVA: Mr President, I just feel that my learned
5 colleague should tread very carefully in this subject matter.

6 PRESIDING JUDGE FULFORD: Yes. I entirely understand the
7 concern, Mr Sachdeva. It can be difficult to introduce the topic
8 without an element of leading, but you're right. If you can find as
9 neutral a way, Mr Biju-Duval, of putting the question again.

10 MR BIJU-DUVAL: (Interpretation)

11 Q. Now, the instructions -- I beg your pardon. Allow me to
12 rephrase my question. Were you told something about what you were
13 to say about other people?

14 A. You're speaking about other people; I don't quite understand.
15 Who are you talking about? I'm not following you. Are you talking
16 about companions or friends?

17 Q. Generally speaking, are you talking about people who were
18 in the army?

19 A. Yes.

20 Q. And what was asked of you in this regard?

21 A. There was a plan. While we spoke of all that, some names
22 were written down of army members who were in the rebellion, who had
23 fought. If I were asked questions about a battle that had occurred
24 in a particular village, I was supposed to give the names of certain
25 people who were in the army, in no particular order. We were getting

1 ready in this fashion.

2 Q. Do you know those names?

3 A. I don't remember those names now.

4 Q. But at the time of these planning meetings, did you personally
5 know those names, or you didn't know those names?

6 A. I didn't know all the names. They wrote things down on paper
7 and some names were mentioned or put on paper, and I had to read those
8 names there.

9 Q. Thank you. Now, you have told us that you were asked to
10 tell lies to the investigators, but why did you agree to meet with
11 the investigators to tell them lies? Why? What was your aim?

12 A. Well, at that time he had money. He would buy me drinks
13 and he encouraged me to take action. He would give me a bit of money
14 and I agreed to lie. So that is how those things came to be.

15 Q. Who gave you money?

16 A. It was Mr X.

17 Q. Did he tell you anything else? Did he promise anything else
18 as well?

19 A. He didn't promise me anything else. Except that he told
20 me that I was going to leave Bunia and that I was going to go to the
21 country of the white people. That's what he told me.

22 PRESIDING JUDGE FULFORD: Mr Sachdeva.

23 MR SACHDEVA: Mr President, I would have stopped at "Did
24 he tell you anything else?" To introduce the word "promise" in that
25 question, in my submission, was leading on this topic.

1 PRESIDING JUDGE FULFORD: Well, Mr Sachdeva, I understand
2 why this is sensitive, but we must not be oversensitive in relation
3 to these things. Be careful, Mr Biju-Duval, but please carry on in
4 a moment.

5 I think, given it's quite stuffy in here, we might have a
6 ten-minute break in a minute. Is this a natural point in proceedings
7 or -- it is. Good. So we're going to give you a slight break now
8 in the middle of your evidence this afternoon. We'll sit again at
9 five to four. Closed session, please.

10 THE WITNESS: No problem.

11 *(Closed session at 3.43 p.m.)Reclassified as Open session.

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

13 (The witness stands down)

14 PRESIDING JUDGE FULFORD: Five to four.

15 THE COURT OFFICER: All rise.

16 (Recess taken at 3.44 p.m.)

17 (Upon resuming at 3.56 p.m.)

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

19 PRESIDING JUDGE FULFORD: Witness, please. Oh, before the
20 witness comes in, Mr Biju-Duval.

21 MR BIJU-DUVAL: (Interpretation) Mr President, we would
22 immediately like to attempt to shed light on what we believe to be a
23 serious problem of interpretation. I wanted to have leave granted
24 by the Chamber that we re-read to the witness an extract of the transcript
25 and ask him whether this is indeed what he said to us.

1 PRESIDING JUDGE FULFORD: Yes. I had observed, I think on
2 two occasions earlier this afternoon, that a message from your client
3 to you enabled you to put a question that then in fact completely rewrote
4 a significant part of what had been said. I think a father became
5 a friend, and there was another similar example. Certainly, if you
6 want to read out a section to ask the witness whether that is truly
7 his evidence, you're fully entitled to do so.

8 Witness, please.

9 (The witness enters the courtroom)

10 PRESIDING JUDGE FULFORD: Public session, please.

11 (Open session at 3.58 p.m.)

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

13 PRESIDING JUDGE FULFORD: Yes, Mr Biju-Duval.

14 MR BIJU-DUVAL: (Interpretation)

15 Q. Good afternoon, Mr Witness. Before putting further
16 questions to you, I would like to assure myself that what you said
17 before the break was interpreted correctly. I would like to check
18 this with one of your responses. This is page 17 of the French
19 transcript and, for the English version, it is on page 14, lines 11,
20 et cetera. So, Mr Witness, I shall ask you to listen very carefully
21 to what I'm going to read to you. Listen carefully, and then you shall
22 tell us whether this is indeed what you said before the break. Have
23 you understood me correctly?

24 A. Yes.

25 Q. The question that I was putting to you was, I quote, "Did

1 Mr X ask you anything else with regard to the lies that you were supposed
2 to say concerning yourself and your activities as an enlisted child?"
3 And I shall read to you the interpretation that was provided of your
4 response. I read, I quote, "Yes. In fact, he made me the source of
5 the lies, and he said to me that because I was Gegere I should say
6 how we were running, how we were fleeing, and I was to become a sort
7 of ringleader. And with regard to this lie, I was supposed to tell
8 the others how they were to lie, and they knew what was to be said.
9 He knew what was to be said and he planned everything with me, and
10 we were in a place where we stayed the night. We were part of a group
11 that slept together and that planned everything together."

12 Could you tell us whether this interpretation corresponds
13 to what you explained to us? Were you indeed a ringleader for liars,
14 or a ringleader of the liars?

15 A. No, that is not what I said. I think that it's because my
16 Swahili is complicated. I said that when we were together, with a
17 view to planning our lies, I was supposed to be the one who would tell
18 the lies. I was, therefore, supposed to tell the lies to those who
19 were supposed to hear them.

20 So it was not that I was the ringleader of those who were going
21 to lie or that there were people whom we would sleep together with.
22 The two of us would talk together, him and me, or three of us would.
23 I was the person who was due to tell what we had said as a group. I
24 was supposed to report the lies to the investigators, alone. So
25 it was not a situation where I was a ringleader. I believe that it

1 was not interpreted correctly.

2 Q. Thank you very much. I shall read to you another
3 interpretation. I would like you to listen attentively and tell us
4 whether the interpretation corresponds to what you meant to say. "I
5 was prepared as a ringleader of a group of individuals who was due
6 to lie. We were organised in groups of two or ... and we planned what
7 was to be said to the investigators, but I didn't know anything about
8 this. And he said that if I did not know anything, I should come and
9 then he would tell me what to say, and we would then go and see the
10 investigators. If one of us did not know what to say, then the other
11 and me, as a ringleader, I would then provide the additional information
12 in order to concoct the lie."

13 Now, does that also correspond to what you said, in particular,
14 with respect to the element of ringleader?

15 A. I believe that we are not understanding each other correctly.
16 I did not say that I was a leader of anything at all of those who were
17 lying; I was speaking about things that have to do me; I was speaking
18 on my own behalf, about the person with whom I was speaking. We were
19 two individuals. I said that I was speaking to the person who I was
20 having a discussion with. To be specific, I'm talking about Mr X here.
21 There were two of us talking, so I was not the leader of the liars.
22 There were two of us having a conversation; he and myself. But I would
23 go see the investigators on my own, so I was not the leader of the
24 liars.

25 Q. I thank you very much for that clarification. Before the

1 break you told us that you were given names. Could you tell us precisely
2 who it was who gave you names?

3 A. I did not say that I was given names; it depended on the
4 questions that were put to me. He asked me whether I had prepared
5 and was ready to say certain names. I said yes, but I cannot provide
6 you with these names because it was planned at that moment in time,
7 and I did not know some of the names. Even now, I cannot give them
8 to you because I have forgotten them. That's what I meant.

9 Q. Thank you. You indicated before the break that you were
10 asked to say that there were young girls who had children. Could you
11 clarify this point and tell us what you meant by this? What is it
12 precisely that you were asked to say on that subject?

13 A. I do not believe that we broached that subject. I did not
14 provide any answer on that issue. I said that they had prepped me
15 to lie and he told me that I was supposed to say that I had seen young
16 children being enlisted in the army. So I talked about children; I
17 talked about young girls. This was a form of preparation. However,
18 I have not yet been asked questions on that subject. So I do not have
19 an answer to your question.

20 Q. Thank you. With respect to these young children, were you
21 asked to say anything in particular?

22 A. Yes. Whilst we were preparing, that is to say he and I,
23 we were talking together. We were planning as one would for a war.
24 I was supposed to say that I had seen young children and girls who
25 were in the army and that the young girls had given birth to children

1 whilst they were in the army. So, I was supposed to say that I had
2 seen young children enlisted, children from my family and others, people
3 whom I knew who were children and who had been enlisted in the army.
4 That is what we were saying to each other whilst he was prepping me.

5 Q. Thank you. You indicated that Mr X put you in contact with
6 the investigators of the Office of the Prosecutor. According to your
7 understanding, what were the relations between Mr X and the
8 investigators? What was his job, according to your understanding?

9 A. I have no opinion on the matter, unless I had seen for myself
10 precisely what he did. He had his own knowledge. He had his own
11 contacts and relations, and I cannot ascertain what he was doing, or
12 what there was in his room.

13 Q. Thank you. Could you please tell us where your initial
14 encounter with the investigators of the Office of the Prosecutor of
15 the International Criminal Court, where these -- where this meeting
16 occurred?

17 A. If my memory serves me correctly, it was in Bunia, near
18 the MONUC headquarters. There was a restaurant called the Hellenic,
19 and it was in that restaurant where I was in the company of Mr X. That
20 is where the two of us met for the first time.

21 Q. And did anything particular happen on the occasion of that
22 first encounter?

23 A. There was nothing out of the ordinary. Rather, it was on
24 that day that we met for the first time. We did not talk. I think that
25 we arrived there and we had had a drink with Mr X. We sat down. He

1 greeted me. And if my memory serves me correctly, they introduced
2 themselves. What is more, when I met him he was drunk. And then
3 afterwards I went out and it was raining and I went home. I do not
4 believe that we had a discussion there (not interpreted).

5 THE INTERPRETER: The Swahili interpreter would like to
6 indicate that he did not hear the last part of the witness's response.

7 MR BIJU-DUVAL: (Interpretation)

8 Q. I'm sorry, Mr Witness. The interpreter tells us that he
9 did not hear the end of your response. Would you mind repeating it?

10 A. Very well. In the last part of my answer I said that on
11 that day we arrived and I met the investigators. We greeted each other
12 and we were drinking. And then I left the investigators in the company
13 of Mr X at that location. We were not the only ones there because
14 there was also Mr X's wife. So I left, leaving them behind, and I
15 went on my way. That was the last part of my answer.

16 THE INTERPRETER: Interpreter corrects: There was the wife
17 of Mr X there.

18 MR BIJU-DUVAL: (Interpretation) Thank you. The answer is
19 complete now.

20 Q. Could you give us the names or the name of the investigator
21 or the investigators of the OTP that you met at that time?

22 MR BIJU-DUVAL: (Interpretation) Your Honour, maybe it
23 would be cautious for us to go into private session before the witness
24 gives his answer.

25 PRESIDING JUDGE FULFORD: Yes, I agree. Private session

1 then for a moment, please.

2 *(Private session at 4.16 p.m.) Reclassified as Open session.

3 THE COURT OFFICER: We're in private session, your Honours.

4 MR BIJU-DUVAL: (Interpretation)

5 Q. I will repeat my question. I understand that at the first
6 meeting there was Mr X, his wife, yourself, and one or several
7 investigators of the OTP at the Hellenic Hotel. Do you know the names
8 of the investigators?

9 A. I have no recollection of that. It's difficult to remember
10 their names. However, I do remember that I met a gentleman and a lady.
11 I do not know their names. I have no recollection of their names.

12 Q. Thank you very much. That's no problem at all.

13 PRESIDING JUDGE FULFORD: Back into public session,
14 Mr Biju-Duval?

15 MR BIJU-DUVAL: (Interpretation) Yes, your Honour.

16 PRESIDING JUDGE FULFORD: Yes. Public session, please.
17 (Open session at 4.18 p.m.)

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

19 MR BIJU-DUVAL: (Interpretation)

20 Q. Witness, after that initial contact at the Hotel Hellenic,
21 did you meet the investigators of the Prosecutor of the International
22 Criminal Court?

23 A. I did not know that they were investigators. I would like
24 to clarify that this meeting took place at night. It wasn't during
25 the day, if my memory is correct. When we arrived there I had been

1 drinking and I was with Mr X at that location where we were drinking
2 together, downstairs. And then we went upstairs. I left them there;
3 I did not talk to them. During that initial encounter I did not know
4 that these people were investigators, because it was the first time
5 I saw them. I wasn't aware of that.

6 Q. Thank you very much. I wish to make your -- or to have a
7 greater clarification of your answer. My question to you is whether
8 you met the investigators of the Prosecutor after your meeting at the
9 Hellenic Hotel. Did you meet them after that initial contact at the
10 Hellenic Hotel? Was there another or a subsequent meeting with them?

11 A. Yes. It was no longer in Bunia. When I met those people
12 I did not know that they were investigators. A few days later Mr X
13 came to see me, and he said that the individuals who were with us the
14 other day wished to meet me elsewhere, not in Bunia. That is when
15 he told me who those people were. So this was after the meeting at
16 the Hellenic Hotel. The next day after that meeting at the Hellenic
17 Hotel. I do not know if those people were still there or whether they
18 had already left. That meeting took place later on elsewhere, not in
19 Bunia.

20 Q. Thank you. You said that the meeting took place later on
21 and not in Bunia. Could you please tell us where the meeting took
22 place?

23 A. Very well. After that meeting we met again in Kampala.

24 Q. Thank you. Could you tell us the individuals you met in
25 Kampala?

1 A. I no longer remember their names.

2 Q. Do you remember whether the individuals were men or women?

3 A. There were women and a man.

4 Q. Do you remember how many people, how many persons there
5 were during that meeting?

6 A. There were five persons. Five.

7 Q. Thank you. Do you remember how these individuals introduced
8 themselves when they met you? How did they introduce themselves?

9 A. They introduced themselves as the investigators of the ICC.
10 You know, it was the very first time for me to hear that name. It
11 was a certain individual who was with me who gave me more information.

12 Q. Thank you. When you made the trip to Kampala, were you alone
13 or with someone?

14 A. I was not alone. I went together with Mr X and his wife.

15 Q. Thank you. For how long did you stay in Kampala,
16 approximately?

17 A. I spent about two weeks in Kampala.

18 Q. Thank you. Who paid for the trip?

19 A. I do not know. I travelled with Mr X, so I suppose that
20 he is the person who paid for the trip.

21 Q. Thank you. During the two weeks you spent in Kampala with
22 the investigators of the International Criminal Court, how were your
23 interviews with the investigators organised? I am going to ask you
24 a question which is rather simpler. What did you do during your meetings
25 with the investigators of the OTP?

1 A. I have not understood your question. You are talking about
2 the meetings I had with the officials of the OTP? I did not fully
3 understand that question.

4 Q. I beg your pardon. There is no problem at all. I will
5 rephrase the question again. During the two weeks you spent in Kampala,
6 what happened? What did you do with the investigators from the OTP?

7 A. Do you want me to give you a detailed answer? Well, when
8 we arrived at Kampala, we were lodged in a hotel together with Mr X
9 and his wife. We were lodged in the same hotel. Before we met the
10 investigators, I spent about two or three days, if my recollection
11 is correct, before meeting them therefore.

12 We discussed again on the subject matter I had been prepped
13 on in Bunia in order to plan the lies. We discussed on that subject
14 matter again prior to our meeting with the investigators, and that
15 is what we discussed on with the investigators. However, we tried
16 to hold a discussion prior to my meeting with the investigators.

17 Q. Thank you. From the time your interview started with the
18 investigators of the OTP, from that point in time, in the subsequent
19 days, therefore, what was Mr X doing?

20 A. Mr X had the responsibility of taking me to the investigators,
21 together with a driver; and he would come to pick me up and take me
22 back to the hotel, then he would ask me what we discussed and if there
23 was anything that had been asked of me that had not been discussed
24 as part of our plan and whether the interview was going as we had planned.
25 And he would give me a little money (not interpreted).

1 THE INTERPRETER: The Swahili interpreter would like to say
2 that the witness is a bit too fast.

3 MR BIJU-DUVAL: (Interpretation) Thank you.

4 Q. The interpreter has said that he has difficulties following
5 you because you concluded your response very rapidly.

6 What did Mr X tell you on those occasions when you discussed
7 with him in Kampala?

8 A. Mr X and I were in Kampala. We took a boat. We spent about
9 two or three days on the way; we discussed what we had discussed earlier
10 in Bunia. In the evenings, we would discuss; and in the mornings,
11 I would go and discuss the same thing there. Because as I said, we
12 were lodged in the same hotel. We were together in the restaurant.
13 And every morning, he would take me and we kept discussing on the same
14 subject matter whilst we were in Kampala.

15 Q. And what was the subject matter of your discussion?

16 A. We discussed about the lies that we had planned.

17 Q. Was Mr X present during the interviews; that is, during
18 the interviews when the investigators put questions to you?

19 A. No. He never attended the interviews.

20 Q. Thank you. Do you remember the topics on which the
21 investigators put questions to you?

22 A. Well, you must understand that I cannot remember everything.
23 I could remember one or two things, but you should understand that
24 this happened a long time ago, a very long time ago.

25 Q. If you remember one or two things, as you say, could you

1 tell us what they are?

2 A. Very well. I remember, for example, that they asked me who
3 were the child soldiers that I had seen? And they asked me in what
4 capacity I served in the army? Those are the questions I remember,
5 the only questions I remember, because as I said this happened a very
6 long time ago.

7 Q. And when they asked you the capacity in which you served
8 in the army, do you remember the answer you gave them to that question?

9 A. Well, you must understand that it's difficult for me to
10 remember. It happened several years ago.

11 Q. Thank you. You informed us that you had never served as
12 a soldier. How then could you tell them about your activities in the
13 army? How was it possible for you to lie to them on that subject matter?

14 A. Well, this was something that we had planned well and the
15 ideas were not only mine; we had planned this together with Mr X, and
16 I was to tell the story. That is what we did.

17 Q. Thank you. Do you know whether -- amongst the investigators
18 who questioned you, do you know whether there was any of them who knew
19 that you were lying? Did you have any idea or an inkling of that?

20 A. I'm not in a position to know.

21 Q. Thank you. To the best of your knowledge, did Mr X ask or
22 propose to other individuals other than yourself to lie to the
23 investigators of the International Criminal Court?

24 PRESIDING JUDGE FULFORD: Don't answer that a second.

25 MR SACHDEVA: Leading, Mr President.

1 PRESIDING JUDGE FULFORD: Well, it's very difficult,
2 Mr Sachdeva. If you don't ask the question, you're not going to get
3 an answer, and you've got to introduce the topic.

4 The leading question would be along the lines of: Mr X
5 proposed to other people that they -- or proposed other people who
6 should be telling lies, et cetera, et cetera.

7 This is simply asking whether the topic was introduced in
8 relation to others, and I'm not sure whether in reality Mr Biju-Duval
9 could ask the question without introducing the notion of others.

10 MR SACHDEVA: Mr President, of course, I can
11 anticipate -- or try anticipate where my learned colleague is going;
12 and given the summary that my learned colleague has furnished, in my
13 submission there are other ways to approach this particular subject
14 matter, and that is why I rose with respect to the leading.

15 Of course, I can't -- I can't go anything further than that
16 in the presence of the witness; but given the summary, there are other
17 mechanisms to undertake to try and arrive at this subject matter.

18 PRESIDING JUDGE FULFORD: Well, thank you for the
19 intervention, Mr Sachdeva, but I'm afraid I'm not with you on this.
20 Mr Biju-Duval, could you put the question again, please. And then
21 we'll close for the day.

22 MR BIJU-DUVAL: (Interpretation) Thank you, your Honour.

23 Q. I will repeat my question. To the best of your knowledge,
24 did Mr X request other individuals, apart from yourself, to go and
25 tell lies to the investigators of the International Criminal Court?

1 A. I am ready to answer your question. However, I would like
2 to talk about this tomorrow because I am tired. With your leave, I
3 would like to answer this question tomorrow.

4 PRESIDING JUDGE FULFORD: Certainly. Allright. Tomorrow
5 morning we're not sitting, so we recommence at 2.30 in the afternoon.

6 Obviously, I must ask you, particularly in light of the fact
7 that we're dealing with some sensitive material at the moment, not
8 to discuss your evidence with anyone overnight, particularly given
9 that questions like this are, as it were, awaiting an answer tomorrow.

10 Good. Closed session, please, so the witness can withdraw.

11 *(Closed session at 4.43 p.m.) Reclassified as Open session.

12 THE COURT OFFICER: We're in closed session, your Honours.

13 PRESIDING JUDGE FULFORD: Good news. We're in Courtroom
14 1 tomorrow afternoon. 2.30.

15 THE COURT OFFICER: All rise.

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

17 RECLASSIFICATION REPORT

18 Pursuant to Trial Chamber I's email instruction dated 25th January
19 2012, the transcript is Reclassified as public after the indicated
20 redactions have been implemented as ordered by the Chamber. All private
21 and closed sessions (*) are now available to the public with the exception
22 of the portions of the transcript that have been redacted.