

1 International Criminal Court
2 Trial Chamber I - Courtroom I
3 Presiding Judge Adrian Fulford, Judge Elizabeth Odio Benito, and
4 Judge Rene Blattmann
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
6 In the case of the Prosecutor versus Thomas Lubanga Dyilo
7 Status Conference
8 Wednesday, 23 February 2011
9 The hearing starts at 2.31 p.m.
10 (Open session)
11 COURT USHER: All rise. The International Criminal Court is now
12 in session. Please be seated.
13 PRESIDING JUDGE FULFORD: Good afternoon. In light of the
14 decision that we handed down a little earlier today, the Chamber would
15 like to set a timetable this afternoon for the recommencement of the
16 trial, but before we embark upon that process, does anybody wish to
17 advance submissions that we should be doing something else instead?
18 Maitre Mabilie.
19 MS. MABILLE: (Interpretation) I believe the Chamber knows that
20 we had a very short time period to analyse the decision that has been
21 handed down, and I'd like to inform the Chamber that we were not able to
22 discuss with our client, and given the possible appeal, we are not in a
23 position right now to see whether we are going to request leave to
24 appeal. That is what I can say at this point.
25 PRESIDING JUDGE FULFORD: That's understood, Maitre Mabilie.

1 Obviously, you will want to reflect on whether or not you follow that
2 course, but notwithstanding that, would you object to us at least
3 provisionally using a few minutes this afternoon to put in place,
4 tentatively, the arrangements for the first witnesses? That will be done
5 without prejudice, wholly without prejudice, to you exercising your
6 appeal rights.

7 (Defence counsel confer)

8 MS. MABILLE: (Interpretation) The reason that we are
9 hesitating, your Honour, is because we have the intention of reassessing
10 the number of witnesses that we wish to call before this Court. That is
11 why we are hesitating. It's not about the principle itself of drawing up
12 a schedule, but if you ask us when the first witness on our list can
13 come, then we would need to reflect on the basis of the decision that has
14 just been handed down and depending on the way that we see the next
15 witnesses being called. That is why I was hesitating a little bit.

16 PRESIDING JUDGE FULFORD: If steps were taken today, it is
17 possible that the visa or visas for the first one or two witnesses could
18 be granted so as to enable the commencement of any additional evidence by
19 or on the 7th of March, which is just over a week away.

20 What would be useful, Maitre Mabilie, without putting undue
21 pressure on you, is if within your team, as quickly as you can, you can
22 reflect on obviously first of all what your position is in relation to
23 any appeal, but secondly, depending on your conclusion on that first
24 issue, whether there are witnesses that you can identify immediately that
25 you are definitely going to call, and if there are witnesses in that

1 category, to make arrangements with the VWU to see whether they can be
2 brought to this court to commence their evidence beginning on Monday, the
3 7th of March.

4 Now, I suspect it's going to be unhelpful to ask you to answer
5 that question or those questions now in court this afternoon, but I think
6 we are going to ask you to reflect on this overnight and to communicate
7 tomorrow, if possible, with the legal advisor to the Chamber as to
8 whether at least provisional steps can be taken to see whether the Court
9 can resume its activities beginning on Monday, March the 7th.

10 Now, if for good reason that's impossible, you will, of course,
11 tell us, but let us see if we can put arrangements in place which, of
12 course, can be varied if it becomes necessary to do so.

13 Is that acceptable?

14 (Defence counsel confer).

15 MS. MABILLE: (Interpretation) We are reasonable, Mr. President.
16 If the Chamber agrees, we will respond on Friday and not tomorrow. We
17 really need to meet and discuss with the client, and our team is not
18 complete. I would like to have the opinion of the members of the team
19 who are not present right now.

20 PRESIDING JUDGE FULFORD: Any objections to that course of
21 action, Mr. Sachdeva?

22 MR. SACHDEVA: None, Mr. President.

23 PRESIDING JUDGE FULFORD: Maitre Mabilille, we have looked at a
24 list that I shudder to observe was given to us a year ago in February of
25 2010 as regards the ten witnesses who were identified as potentially

1 forming your evidence should this part of the case ever be arrived at. A
2 large number of those witnesses, should you still intend to call all or
3 some of them, already have passports, and one of them, and this is
4 Witness 27, is -- was then resident in a country outside of the DRC, in a
5 place that certainly prima facie would indicate should not lead to
6 difficulties in securing a visa. I don't want to say more in open court
7 for obvious reasons.

8 It would therefore seem that some of those witnesses, with some
9 hard work and cooperation from the VWU, ought to be in a position to come
10 to this country relatively quickly to give evidence.

11 Defence Witness 8 had, a year ago, not obtained permission from
12 his or her employer to travel to give evidence. If you still intend to
13 call that individual, consideration will need to be given as to whether
14 or not a videolink is going to be necessary.

15 Therefore, could you reflect, please, on all of these matters and
16 come back to us by 4.00 p.m. on Friday of this week by e-mail to the
17 legal advisor to the division. Thank you very much.

18 Anything else, Mr. Sachdeva?

19 MR. SACHDEVA: Mr. President, if I may, just a few issues that
20 could impact upon the schedule.

21 Firstly, pursuant to the Chamber's decisions 1372 and 2192, we
22 have put in a request to the Defence to arrange for pre-testimony
23 interviews of some of the Defence witnesses in order to focus our
24 cross-examination, if indeed they are still to be called, and that could
25 obviously have an impact on the schedule. Whether it -- whether it be

1 done in The Hague or even in the field, that's to be decided.

2 Secondly, I raise the issue that if it is intended that the
3 accused testifies, and if indeed that's the case, it could be one of the
4 first few witnesses, then we would ask for sufficient notice to be given
5 to everyone concerned so that we could arrange for that.

6 Thank you, Mr. President.

7 PRESIDING JUDGE FULFORD: His name hasn't appeared on any of the
8 lists so far, Mr. Sachdeva.

9 MR. SACHDEVA: That's right.

10 PRESIDING JUDGE FULFORD: Thank you very much.

11 Anything else from you, Maitre Mabilie?

12 MS. MABILLE: (Interpretation) No, your Honour.

13 PRESIDING JUDGE FULFORD: We would like to issue the decision
14 handed down today in an appropriate public form as quickly as possible,
15 and we propose that the parties and participants should have submitted
16 their observations on what needs to be redacted by 4.00 p.m. on Tuesday,
17 the 1st of March. We would ask you, please, to liaise with each other
18 and try to achieve agreement on what should go in and what should go out.
19 So please do this by way of a joint communication rather than separate
20 communications.

21 We are aware that disagreement has emerged in relation to another
22 decision recently, and we ask the parties to meet to try to resolve those
23 differences to avoid the Chamber having to resolve disagreements as to
24 what should be redacted from public decisions. It seems to us that that
25 course should normally be unnecessary. The parties should be able to

1 agree the final form of the public version of our decisions. So would
2 you please meet and discuss that. If you need the number of that
3 decision, one of the legal officers will give it to you after we've
4 risen.

5 We thank the VWU for your attendance. I'm sorry that in the
6 event we haven't needed to call on you.

7 We will adjourn now, and we will wait to hear from the Defence on
8 Friday, and we will make appropriate decisions thereafter.

9 Thank you all very much.

10 COURT USHER: All rise.

11 The hearing ends at 2.45 p.m.

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