Cour Pénale Internationale

International Criminal Court

Original : **English**

No.: **ICC-01/04-01/06**
Date: **31 January 2008**

TRIAL CHAMBER I

Before: **Judge Adrian Fulford, Presiding Judge**
Judge Elizabeth Odio Benito
Judge René Blattmann

Registrar: **Mr Bruno Cathala**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. THOMAS LUBANGA DYILO

Public with confidential annex

Victims and Witnesses Unit recommendations on psycho-social in-court assistance

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The Registrar of the International Criminal Court (the Court);

NOTING the status conference held in open session on 10 January 2008[1];

NOTING the "Decision on various issues related to witnesses' testimony during trial" of 29 January 2008[2];

NOTING Article 43(6) and 68(1) and (4) of the Rome Statute, Rules 16 to 19 and 88 of the Rules of Procedure and Evidence, Regulation 23 *bis*, 41 and 44 of the Regulations of the Court, Regulations 79 and 83 of the Regulations of the Registry;

CONSIDERING that the Presiding Judge held that "there will be some situations [...] [where] there should be a psychologist present", that this "person is going to be provided by the Court and by the Registrar in particular" and that it should be ensured "well in advance of the trial that [a] sufficient pool of people such as psychologists who can be called on to accompanying witnesses where that is as appropriate" is in place and "all necessary steps have been taken well in advance of the trial"[3];

CONSIDERING that the Presiding Judge further held that such a pool was not "necessarily limited to psychologists" and that there "may be others who it might be appropriate to accompanying witnesses in court and can look after their needs immediately before and immediately after they've give their evidence who are going to be provided by the Registrar"[4];

[1] ICC-01/04-01/06-T-69-ENG.
[2] ICC-01/04-01/06-1140.
[3] ICC-01/04-01/06-T-69-ENG, p. 16.
[4] ICC-01/04-01/06-T-69-ENG, p. 16.

CONSIDERING that the Trial Chamber held in the decision of 29 January 2008 that such a list of experts should include "professionals with diverse relevant expertise, including *inter alia,* psychologists"[5];

CONSIDERING that the Registry has commenced to "take all necessary steps to secure fair gender representation [and that] the list [reflects] the language and cultural background of the witnesses that it is anticipated will be called during the trial of Mr Thomas Lubanga Dyilo"[6];

CONSIDERING that the Presiding Judge requested proposals in this regard by 31 January 2008[7] and that in the decision of 29 January 2008 the Trial Chamber ordered that the Victims and Witness Unit shall file by 31 January 2008 an interim report on the steps it has taken to create a list of professionals able to assist witness[8];

SUBMITS its recommendations on psycho-social in-court support to facilitate testimony of vulnerable witnesses and its current list of professionals able to assist witnesses.

[5] ICC-01/04-01/06-1140, para. 39.
[6] ICC-01/04-01/06-1140, para. 39.
[7] ICC-01/04-01/06-T-69-ENG, p. 17.
[8] ICC-01/04-01/06-1140, para. 44(ii).

1) General remarks

1. The Victims and Witnesses Unit has implemented policies and procedures to support witnesses to testify in a manner that minimises the risk of suffering further trauma.[9] In particular, the Victims and Witnesses Unit implemented a support programme in order to provide psychological and social assistance during a witness's stay at the location of the trial for the purposes of testimony[10]

2. The recommendation at hand focuses on the support structure during the legal proceedings, *i.e.* immediately before, during and immediately after a witness's testimony in court.

3. The Victims and Witnesses Unit notes that the list of in-court assistants as submitted in this filing differs from the list of experts held by the Registrar under Regulation 44 of the Regulations of the Court. Furthermore, the Victims and Witnesses Unit clarifies that this report does not relate to the functions of the Staff Welfare Officer who provides support services to the staff of the Court.

2) Recommended support system

4. The parties will alert the Victims and Witnesses Unit if they call a particularly vulnerable witness as early as possible and at the latest in the service request. If necessary, the parties can consult with the Victims and Witnesses Unit on this matter. The Victims and Witnesses Unit will pay special attention to any indications suggesting particular vulnerability when interacting with a witness.

5. On a case by case basis, the Victims and Witnesses Unit assesses appropriate actions to be taken in order to support vulnerable witnesses in consultation with the party calling the witness. This early needs assessment will be

[9] Regulation 79(1) of the Regulations of the Registry.
[10] Regulation 83(1) of the Regulations of the Registry.

reviewed on a regular basis in order to tailor the services provided accordingly.

Victims and Witnesses Unit support assistance

6. The Victims and Witnesses Unit support section attends to the psycho-social and physical wellbeing and the practical needs of witnesses during their stay at the location of testimony.

7. The services include, *inter alia,* the provision of support services 24 hours a day, seven days a week during the stay of the witnesses. The Victims and Witnesses Unit support staff provide a welcome briefing and conduct the courtroom familiarisation and also provide a variety of practical support services. They will also ensure that witnesses arrive in a timely manner at all appointments and court appearances.

8. On the day of testimony, the support assistants will attend to the witness in the witness waiting rooms located in the premises of the Victims and Witnesses Unit. They will wait for the witness to return from the courtroom in breaks and after testimony to assist and support the witness where necessary. The support assistants attend to the emotional and physical needs of the witness. This may include, *inter alia,* talking about the experiences of the witness while testifying, monitoring the emotional status of the witness before and after testimony. The support assistants refrain from discussing any matters relating to the substance of the evidence with the witness. The Victims and Witnesses Unit would like to note the importance of establishing a relationship of trust between the witness and the support staff.

In-court assistance to facilitate testimony of vulnerable witnesses

9. Upon motion or request pursuant to Rule 88(1) of the Rules of Procedure and Evidence, in-court support assistance could be provided to the witnesses. The persons providing this support (in-court assistants) could accompany the

witnesses into the courtroom, stay in the court room and/or sit next to the witness while the witness gives evidence in the trial proceedings upon authorization of the Chamber.

10. Such physical presence of the in-court assistant serves to increase a sense of emotional security of the witness, but also allows for monitoring any unduly significant reactions of the witness to the proceedings and noting any undue distress and causes. Where necessary, the in-court assistant could bring such undue reactions to the attention of the Trial Chamber

Accompanying support person

11. Regulation 91 of the Regulations of the Registry provides for the possibility of an accompanying support person, such as a family member, legal guardian or another person who holds the trust of the witness. An accompanying support person will be in a position to assist the witness in addition to the support services already in place by the Victims and Witnesses Unit.

3) Recommendations regarding the implementation of in-court support

Necessary profile of in-court assistant

12. The Victims and Witnesses Unit recommends that in-court assistants should be experienced in crisis intervention and have diagnostic skills to detect symptoms of distress or other severe psychological or physical reactions during testimony. The professional background of such in court assistants could thus be such of clinical psychologists, psycho-therapist and psychiatrists or any professional with practical experience in dealing with vulnerable groups. Experience and understanding the cultural background of the witness would be of great importance.

13. The Victims and Witnesses Unit has qualified staff who fulfill those requirements and has also identified a number of professionals who would be suitable to fulfill the task of in-court supporters.

14. The Victims and Witnesses Unit will assess on a case-by-case basis the individual needs of every witness. This need assessment could allow the Victims and Witnesses Unit to recommend to the Trial Chamber the appropriate person to conduct the in-court assistance taking into consideration the witness's view.

Guidelines for in-court assistance

15. The in-court assistant could bring to the attention of the Chamber any signs of undue reaction. The Victims and Witnesses Unit is further mindful to avoid any impression of inappropriate influence on the witness by the in-court assistant. At the same time, it might be necessary for the witness to communicate to the in-court assistant. In order to instruct an in-court assistant appropriately, the Victims and Witnesses Unit respectfully seeks instruction by the Trial Chamber as to how such communication between the in-court assistant and the Trial Chamber, or where deemed applicable between the in-court assistant and the parties and participants, and the in-court assistant and the witness respectively during the legal proceedings should take place.

4) Annex

16. The Victims and Witnesses Unit annexed to this filing the current list of professionals identified to provide the in-court assistants. The Victims and Witnesses Unit is aware of the need to continuously maintain and update this list in order to meet the needs of the trial, its possible locations and any new development that might evolve.

SUBMITS

17. In Annex 1 to this filing a list of professionals identified to provide the in-court assistants.

REQUESTS

18. The Chamber to provide guidance regarding the communication between the in-court assistant and the Chamber and where deemed applicable between the In-court assistant and the parties and participants to the proceedings.

On behalf of the Registrar
Marc Dubuisson
Director of the Division of Court Services

Dated this 31 January 2008

At The Hague, The Netherlands