

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/04-01/06

Date: 10 June 2009

TRIAL CHAMBER I

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

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

**Public Document with
Confidential Annexes 1 and 2**

**Prosecution's provision of information on conditions to testimony of witness
DRC-OTP-WWWW-0046 and Request to permit the participation of a
representative of the United Nations in the witness' familiarisation process**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Counsel for the Defence

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Mr Jean-Marie Biju-Duval

Legal Representatives of Victims

Legal Representatives of Applicants

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Mr Franck Mulenda

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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Ms Paolina Massidda

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REGISTRY

Registrar

Defence Support Section

Ms Silvana Arbia

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. In response to a Prosecution request, the United Nations consents to allow UN witness DRC-OTP-WWWW-0046 to testify at trial, subject to conditions. The Prosecution transmits to the Chamber the relevant letters in which the United Nations explains its consent and conditions.
2. The Prosecution requests an order giving effect to these conditions, including an order authorising the presence of a United Nations representative in the courtroom during the witness's testimony. The Pre-Trial Chamber allowed a representative of the United Nations to be present during the confirmation hearing. This request seeks exactly the same procedure at the trial. Finally, the Prosecution conveys the United Nations' request that the Court permit the representative of the United Nations to be also present during witness DRC-OTP-WWWW-0046's familiarisation process.

United Nations' consent to the testimony of witness DRC-OTP-WWWW-0046 and request that a representative of the United Nations be present during the witness familiarisation process

3. Witness DRC-OTP-WWWW-0046 is an official of the United Nations and a former Child Protection Advisor for MONUC. The witness's appearance at trial requires the consent of the United Nations in accordance with Article 16(1) of the ICC-UN Relationship Agreement¹ and Article 12 of the Memorandum of Understanding between the UN and the Court concerning cooperation between MONUC and the Court.²

¹ ICC-01/04-01/06-1267-Anx1.

² ICC-01/04-01/06-1267-Anx2.

4. The United Nations consents to the testimony of witness DRC-OTP-WWWW-0046 and waives the witness's immunity from legal process to the extent necessary to permit her to testify freely at trial. Pursuant to the UN's consent, the witness may be asked, and may be required by the Trial Chamber to answer, questions concerning the elements of the crimes with which the Accused is charged, as well as any facts and circumstances that in the Trial Chamber's opinion may be relevant to his criminal responsibility or that may mitigate his guilt.

5. The United Nations' consent to witness DRC-OTP-WWWW-0046's testimony is subject to the terms set out fully by the letters from the Under-Secretary-General for Legal Affairs, The Legal Counsel of the United Nations, dated 2 February 2009. The Prosecution transmits these letters to the Chamber as Confidential Annexes 1 and 2. In particular, the United Nations requires that a representative of the United Nations be present during the witness's oral testimony and that he/she be permitted, with the consent of the Trial Chamber, to consult with and be consulted by the witness during the course of the witness' testimony. It also requests that the representative be permitted to make submissions to the Trial Chamber that the witness not be required to answer a question or supply certain information, disclosure of which would endanger the safety or security of persons, prejudice the security or proper conduct of UN operations or activities, or breach an obligation of confidentiality which it is incumbent upon the UN to respect.³

6. The condition proposed is consistent with the Rome Statute and the procedure permitted by Pre-Trial Chamber for the confirmation hearing.⁴ In particular, Article 64(6)(c) authorizes the Chamber to "[p]rovide for the

³ Confidential Annex 2, page 2, first full paragraph.

⁴ See the Pre-Trial Chamber's 20 October 2006 decision, ICC-01/04-01/06-602-Conf, and the Prosecution's application, ICC-01/04-01/06-529-Conf-Exp-Anx, for the terms that governed the participation of the representative of the United Nations in the testimony of witness DRC-OTP-WWWW-0046 during the confirmation hearing.

protection of confidential information”. And it is consistent with the terms of Article 16(2) of the ICC-UN Relationship Agreement, according to which “[t]he Secretary-General shall be authorized by the Court to appoint a representative of the United Nations to assist any official of the United Nations who appears as a witness before the Court.”

7. The United Nations has also asked the Prosecution to request the Trial Chamber on its behalf that the representative be permitted to be present throughout the witness’s familiarisation process, subject to any limitations the Trial Chamber deems necessary. The Prosecution submits that the process for the familiarisation of victim-witnesses whose representatives also were permitted to be present during familiarisation could be applicable here.⁵ That is, the representative would be allowed to silently observe the process and have access to the materials but would not discuss the evidence with the witness during the familiarisation process. The representative would also take part in the process to familiarise the witness with the courtroom.
8. The United Nations is of the view that its representative’s presence would be beneficial in terms of the assistance to be later provided to the witness during her testimony. It would also enable the United Nations to become familiar, through its representative, with the process of familiarisation before this Court, which might be relevant in cases of other United Nations officials who might be called as witnesses in this or other cases.
9. The Prosecution submits that the United Nations’ representative’s presence during the familiarisation process would not interfere with the review of the evidence by the witness.

⁵ See ICC-01/04-01/06-1351, para. 39, and ICC-01/04-01/06-T-104-ENG ET, pages 26-27.

Relief requested

10. The Prosecution requests an order from the Trial Chamber giving effect to the conditions set out in the United Nations' letter of 2 February 2009 attached as Confidential Annex 2.
11. The Prosecution requests that the Chamber authorise the presence of a representative of the United Nations during witness DRC-OTP-WWWW-0046's familiarisation process.



Luis Moreno-Ocampo
Prosecutor

Dated this 10th day of June 2009
At The Hague, The Netherlands