

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 June 2010

TRIAL CHAMBER I

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

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

Public

**Order on disclosure of information on intermediaries and witnesses contained in
Annexes to filing ICC-01/04-01/06-2466 to the legal representatives of victims**

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo
Ms Fatou Bensouda

Counsel for the Defence

Ms Catherine Mabilie
Mr Jean-Marie Biju Duval

Legal Representatives of the Victims

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu
Mr Joseph Keta Orwinyo
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Paul Kabongo Tshibangu
Mr Hervé Diakiese

Unrepresented Victims

Legal Representatives of the Applicants

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 12 May 2010 the Chamber issued its Decision on Intermediaries in which it, *inter alia*, ordered the Office of the Prosecutor ("prosecution") to:¹

ii) Disclose confidentially (by way of a filing) to the defence a short account of the professional backgrounds of intermediaries 143 (REDACTED), 316 (REDACTED) and 321 (REDACTED), REDACTED.

[...]

v) Provide a schedule confidentially (by way of a filing) to the defence setting out the known contacts between the 23 intermediaries, between the intermediaries and the witnesses, and between the witnesses. This should indicate, *inter alia*, the dates of meetings, the names of those present and the location.

2. The prosecution complied with this order in the "Prosecution's communication of information on intermediaries and witnesses pursuant to Trial Chamber's Order of 12 May 2010" of 7 June 2010, to which it attached two confidential (prosecution and defence only) annexes setting out the relevant information.² The prosecution indicates that the level of confidentiality of the annexes follows the Chamber's order to the Prosecution to disclose this information to the defence only, and the annexes contain confidential information not available to the public.³

3. Principal counsel of the Office of Public Counsel for Victims ("OPCV") on 8 June 2010 informed the Chamber that she had been notified of the filing but not the annexes. She received the confidential version of the Decision on Intermediaries and she is, therefore, aware of the identities of intermediaries 316 and 321. She submits that in the circumstances, the information contained

¹ Decision on Intermediaries, 12 May 2010, ICC-01/04-01/06-2434-Conf-Exp, paragraph 150. A corrigendum was issued on 27 May 2010, ICC-01/04-01/06-2434-Conf-Exp-Corr. Redacted public and confidential versions were issued on 20 May 2010 (ICC-01/04-01/06-2434-Conf-Red; corrigendum of 27 May, ICC-01/04-01/06-2434-Conf-Red-Corr) and 31 May 2010 (ICC-01/04-01/06-2434-Red2) respectively.

² Prosecution's communication of information on intermediaries and witnesses pursuant to Trial Chamber's Order of 12 May 2010, 7 June 2010, ICC-01/04-01/06-2466 with confidential annexes A and B.

³ ICC-01/04-01/06-2466, paragraph 3.

in Annex A is disclosable. As regards Annex B, Principal counsel submits that it clearly contains information relevant to intermediary 31, who is directly linked to the victims she represents. Intermediary 31 gave evidence earlier in the trial, and the legal representatives of participating victims are aware of his identity. Accordingly, Principal Counsel seeks notification of the entirety of Annex A, and those parts of Annex B that concern intermediary 31.⁴

4. The Chamber, in its previous decision of 18 January 2008 on access by victims to the record of the proceedings, observed:⁵

105. As a general rule, the Trial Chamber considers that Rule 131(2) of the Rules provides participating victims the right to consult the record of the proceedings, including the index, subject to any restrictions concerning confidentiality and the protection of national security information.

106. Due to the fact that confidential filings within the record often contain sensitive information related to national security, protection of witnesses and victims, and the prosecution's investigations, the presumption will be that the legal representatives of victims shall have access only to public filings. However, if confidential filings are of material relevance to the personal interests of participating victims, consideration shall be given to providing this information to the relevant victim or victims, so long as it will not breach other protective measures that need to remain in place.

To this the Chamber later added:⁶

31. However, the Decision on victims' participation does provide a mechanism whereby the victims who have been given the right to participate may be provided with "any materials within the possession of the prosecution that are relevant to the personal interests of the victims". The mechanism for the provision of this information shall operate, in the first instance, between the relevant victim's legal representative and the prosecution. The relevant victim's legal representative shall identify, first, the victim's personal interest and, second, the nature of the information that may be within the evidence in the possession of the prosecution which is material to the preparation of the victim's participation during a particular phase of the proceedings, (e.g. material relating to involvement in particular events at a given time or location). This will enable the prosecution to identify whether material in its possession is relevant.

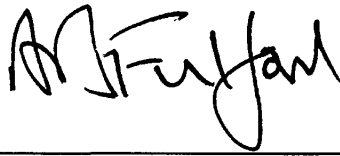
⁴ Email communication to the Trial Chamber through the Legal Advisor to the Trial Division on 8 June 2010.

⁵ Decision on victims' participation, 18 January 2010, ICC-01/04-01/06-1119, paragraphs 105 and 106.

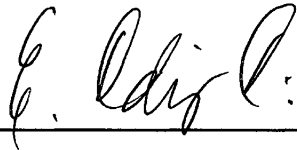
⁶ Decision on the legal representative's request for clarification of the Trial Chamber's 18 January 2008 "Decision on victims' participation", 2 June 2008, ICC-01/04-01/06-1368, paragraph 31 [footnote omitted].

5. Applying these principles, although the participating legal representatives are aware of the identities of intermediaries 316 and 321, Annex A includes details that are of a highly confidential nature which could endanger one or more individuals if they became known publicly. The participating victims have already received sufficient general information relating to the material covered in Annex A, and bearing in mind the Chamber's obligations to protect those at risk on account of the activities of the Court it is unnecessary to order disclosure of Annex A to the legal representatives.
6. The prosecution is to disclose information within Annex B (filing ICC-01/04-01/06-2466) to those legal representatives of victims whose interests are engaged by the relevant material, subject to redactions that are necessary to protect confidential or other protected information, as soon as it is possible to prepare the material for notification.

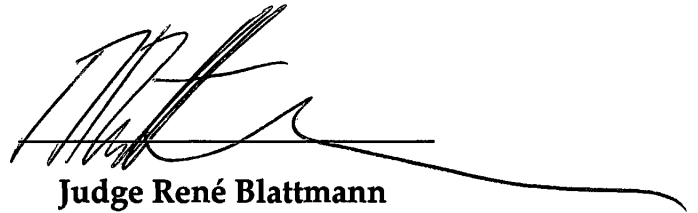
Done in both English and French, the English version being authoritative.



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Dated this 9 June 2010

At The Hague, The Netherlands