

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 7 July 2010

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***

**Confidential
Urgent**

**Prosecution's Urgent Provision of Further Information Following Consultation
with the VWU, to Supplement the Request for Variation of the Time-Limit or Stay**

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

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Legal Representatives of Victims

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Mr Franck Mulenda

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Legal Representatives of Applicants

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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States Representatives

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Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecution submitted an urgent request regarding this matter earlier this afternoon.
2. Following that submission, the Prosecution informed VWU of the Chamber's order. VWU advised that, in its appraisal, disclosure of the identity of Intermediary 143 – even though just to the Defence and the defence resource person, and under the embargo against use of the identity for investigative purposes – does not change its previous assessment regarding the security situation of 143 if his identity is disclosed. Accordingly, it determined that the Chamber's order requires it to implement interim measures.
3. VWU stated that it would send someone immediately to advise Intermediary 143 of the Order and discuss available interim measures that can be implemented on an urgent basis to enhance his current level of protection.
4. The Prosecution impressed upon VWU the need for immediate action in light of the Chamber's order and in furtherance of the Prosecution's own effort and desire to comply with the Chamber's instructions without jeopardizing the safety of the Intermediary and his family. In a second conversation at approximately 17:50, the VWU declined to provide additional details.
5. The Prosecution is continuing and will continue to offer to liaise with the VWU on this to effect the fastest possible resolution.
6. The Prosecution is sensitive to its obligation to comply with the Chamber's instructions. However, it also has an independent statutory obligation to protect persons put at risk on account of the Prosecution's actions. It should

not comply, or be asked to comply, with an Order that may require it to violate its separate statutory obligation by subjecting the person to a foreseeable risk. The Prosecutor accordingly has made a determination that the Prosecution would rather face adverse consequences in its litigation than expose a person to risk on account of prior interaction with this Office. This is not a challenge to the authority of the Chamber, it is instead a reflection of the Prosecution's own legal duty under the Statute.

7. The Appeals Chamber has twice spoken on the responsibility of the Prosecution. "[T]he Prosecutor undoubtedly is responsible under the Statute to ensure that appropriate measures are taken to protect the safety of victims and witnesses. At the same time, article 43(6) of the Statute and rules 16 to 19 of the Rules of Procedure and Evidence envisage the VWU as a unit with specific expertise in protection matters, which has a responsibility, inter alia, to provide protective measures and to take particular care of the interests of the individuals who require protection."¹ "The Prosecutor has the [...] express power either to take necessary measures or to request that necessary measures be taken to ensure the protection of individuals who are at risk."²
8. Accordingly, the Prosecution is itself torn between competing obligations and is endeavoring to resolve the dilemma by obtaining an expeditious response from the VWU, to make sure that measures are in place that will protect all interests in this proceeding.

¹ *Prosecutor v. Katanga and Ngudjolo*, "Judgment on the appeal of the Prosecutor against the "Decision on Evidentiary Scope of the Confirmation Hearing, Preventative Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules" of Pre-Trial Chamber I", [ICC-01/04-01/07-776](#), 26 November 2008, para. 80.

² *Prosecutor v. Katanga and Ngudjolo*, "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", [ICC-01/04-01/07-475](#), 13 May 2008, para. 47. See also para. 44, stating that Article 54(3)(f) "demonstrates an intention that protection should, in principle, be available to anyone put at risk by the investigations of the Prosecutor".

9. It is impossible at this point to provide any firm information to the Chamber as to how long it will take for VWU to implement the necessary measures. The Prosecution will provide all possible cooperation with VWU in an effort to ensure that these measures are done expeditiously.
10. The Prosecution considers that the assessment of VWU constitutes further evidence of good cause that warrants a limited amendment of the order. Based on this information, the Prosecution thus supplements its previous request for a variation of the time limit requiring disclosure of the identity of the Intermediary. As soon as the Prosecution has a reasonable indication of when the emergency interim protective measures can be put in place, it will inform the Chamber, so the Chamber can schedule disclosure of the identity to the Defence.



Luis Moreno-Ocampo
Prosecutor

Dated this 7th of July 2010
At The Hague, The Netherlands