

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : English

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

Date: 6 June 2011

**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 the implementation of decision ICC-01/04-01/06-2586-Conf-Exp**

**Decision/Order/Judgment 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

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**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**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod Jacome

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**Other**

1. On 14 October 2010, Trial Chamber I ("Chamber") issued its "Decision on the disclosure of information from victims' application forms (a/0225/06, a/0229/06 and a/0270/07).<sup>1</sup>
2. The Chamber ordered the Registry to contact some of the individuals affected by the redactions in the victims' application forms in order to obtain their views on disclosure of their identities to the defence.<sup>2</sup>
3. On 6 April 2011, the Registry transmitted lesser redacted versions of the applications to the parties and to Mr Keta (legal representative of the victims concerned by these applications) having contacted some of these individuals.<sup>3</sup>
4. However, the identities of four individuals (a/0236/06, a/0221/06, a/0230/06 and a/0224/06) remained redacted, as the Registry had been unable to obtain their views, as ordered by the Chamber.
5. On 24 May 2011, the Registry informed the Chamber that, despite the efforts of the Victims Participation and Reparation Section ("VPRS"), the views of these individuals as to disclosure of their identities to the defence had not been obtained.<sup>4</sup>
6. On 25 May 2011, the Chamber asked the defence to indicate whether it sought any further order from the Chamber as regards disclosure of these

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<sup>1</sup> Decision on the disclosure of information from victims' application forms (a/0225/06, a/0229/06 and a/0270/07), 14 October 2010, ICC-01/04-01/06-2586-Conf-Exp. A Confidential Redacted version was issued on 24 February 2011 (notified on 25 February 2011), ICC-01/04-01/06-2586-Red.

<sup>2</sup> ICC-01/04-01/06-2586-Red, paragraph 51.

<sup>3</sup> Transmission to the parties and Mr Joseph Keta Orwinyo of a lesser redacted version of applications (a/0225/06, a/0229/06 and a/0270/07) in accordance with Decision ICC-01/04-01/06-2586-Conf-Exp, 6 April 2011 (notified on 7 April 2011), ICC-01/04-01/06-2721.

<sup>4</sup> Email communication from the Registry to the Chamber through the Legal Officer to the Trial Division on 24 May 2011.

individuals' identities given the evidence in the present case is closed, or if it agreed that the Registry should cease their enquiries.<sup>5</sup>

7. By way of email, the defence submitted that it is essential that the identities are disclosed, notwithstanding the conclusion of the evidence. The defence thus requests that the Registry is required to continue with its attempts to locate these four individuals.<sup>6</sup>
8. The Chamber has considered the potential risk that disclosure of these identities to the defence could pose to the relevant individuals. However, whilst the safety and security of victims is a central responsibility of the Court, the Chamber must also safeguard the fundamental guarantee of a fair trial.<sup>7</sup>
9. Having considered the merits of the original defence application for disclosure of information from the victims' application forms, and in light of the matters set out above, disclosure of the identities of these four individuals to the accused remains necessary for the preparation of the defence and it should occur without further delay.<sup>8</sup>
10. The Chamber hereby orders that the names of these four individuals are immediately disclosed to the parties. This is to be effected in a way that makes clear where on the application forms of a/0225/06, a/0229/06 and a/0270/07 the four names are individually to be found, whether or not this involves providing a further version of the application forms.

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<sup>5</sup> Email communication from the Chamber to the defence through the Legal Officer to the Trial Division on 25 May 2011.

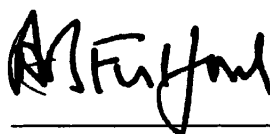
<sup>6</sup> Email communication from the defence to the Chamber through the Legal Officer to the Trial Division on 26 May 2011.

<sup>7</sup> Decision on victims' participation, 18 January 2008, ICC-01/04-01/06-1119, paragraph 131.

<sup>8</sup> The Appeals Chamber has previously approved the approach of the Trial Chamber in requiring certain safeguards when permitting victims to tender and examine evidence, including compliance with disclosure orders. Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, ICC-01/04-01/06-1432, paragraph 104.

11. In order to safeguard the security of the four individuals concerned, the parties shall not disclose their names to anyone outside their teams without prior authorisation of the Chamber.<sup>9</sup>
12. The Chamber further instructs the Registry to transmit to the parties and Mr Keta the email communication with the Chamber on 24 May 2011, as the Chamber considers that the information contained therein may be material to the preparation of the defence during the closing stages of the proceedings.
13. The Registry is no longer obliged to contact a/0236/06, a/0221/06, a/0230/06 and a/0224/06.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 6 June 2011

At The Hague, The Netherlands

<sup>9</sup> Transcript of hearing on 7 July 2010, ICC-01/04-01/06-T-311-CONF-ENG ET, page 11, lines 13 – 23; Transcript of hearing on 7 July 2010, ICC-01/04-01/06-T-312ENG ET, page 20, lines 11 – 18.