

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/06
Date: 21 October 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

**Redacted Registry report on the implementation of ICC-01/04-01/06-2766
With public redacted annexes**

Source: The Registrar

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

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Trial Chamber II
Mr Ghislain Mabanga Monga Mabanga

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

NOTING the "Decision on the request by DRC-DOI-WWWW-0019 for special protective measures relating to his asylum application" (the "4 July Decision") issued by Trial Chamber I (the "Chamber") on 4 July 2011;¹

NOTING the "Registry transmission of information in relation to the "Decision on the request by DRC-D01-WWWW-0019 for special protective measures relating to his asylum application"(ICC-01/04-01/06-2766-Conf)" (the "Registry Transmission") submitted by the Registrar on 22 July 2011;²

NOTING Articles 68 and 87 to 93 of the Rome Statute, Regulation 24*bis* of the Regulations of the Court.

CONSIDERING that in the 4 July Decision, the Chamber ordered the Registry to, inter alia, "liaise with the Congolese authorities, prior to any return of defence Witness 19 to the DRC, in order to determine the extent of, and to implement, any protective measures that the Registry considers necessary", and to file a report on these issues on 29 July 2011;³

CONSIDERING that in the Registry Transmission, the Registry informed the Trial Chamber that a report on the consultation with the DRC authorities regarding the possible protective measures with regard to Witness 19 would be submitted before 5 August 2011;

¹ ICC-01/04-01/06-2766-Conf.

² ICC-01/04-01/06-2776-Conf.

³ ICC-01/04-01/06-2766-Conf, at p. 39, para. 89 (c).

CONSIDERING that in the public decision of Trial Chamber II, issued on 22 June 2011, Trial Chamber II ordered the Registry to “urgently dispatch a cooperation request to the DRC in order to put in place the protective measures detailed in paragraph 41 and to report back before 5 July 2011, indicating if and how soon the measures will be ready to be put in place; and INVITES the DRC to enter into contact with the Registry in order to arrange the provision of technical or logistical assistance, as provided in paragraph 43.”⁴

CONSIDERING that, therefore, the Registry undertook a mission to the DRC from 26 July until 29 July in order to consult with the DRC authorities on the protective measures for the detained witnesses in the cases before Trial Chamber I and Trial Chamber II;

CONSIDERING that in order to ensure equality of treatment of Witness 19 and the three detained witnesses in the case currently before Trial Chamber II, the protective measures discussed in relation to Witness 19 include the protective measures outlined by Trial Chamber II in its decision of 22 June 2011,⁵ namely:

- The witnesses shall be detained in a detention centre which, in terms of infrastructure and population, is most conducive to offering maximum protection. The VWU is instructed to consult with the DRC authorities to identify whether this is the CPRK Kinshasa, the Ndolo prison, or any other detention centre where the witnesses can be legally detained.
- If the witnesses are transported or transferred to another location, the VWU must be informed in advance.

⁴ ICC-01/04-01/07-3033, p. 20.

⁵ ICC-01/04-01/07-3023, p. 17, para. 41.

- The detained witnesses shall be held under conditions which protect them from possible aggression by co-detainees. However, this should not lead to their permanent isolation.
- The detained witnesses shall be held under conditions which protect them from possible aggression by co-detainees. However, this should not lead to their permanent isolation.
- There shall be permanent surveillance of the security of the detained witnesses by guards who are specifically selected and trained for this purpose in close consultation between the Congolese prison authorities and the VWU. These guards must be reachable at all times by the VWU.
- A member of the VWU must be able to visit each detained witness twice per week and must be allowed to speak with them confidentially.
- When the detained witnesses are to be tried, an observer of the Court must be allowed to attend the proceedings. The Registry must thus be informed in advance of the date and location of any legal proceedings involving one of the detained witnesses.

RESPECTFULLY TRANSMITS for the attention of the Chamber the report below:

A. Context

1. [REDACTED]

2. [REDACTED]

B. Report on the Detention related issues

B.1. Identification of detention centre most conducive to offering maximum protection

3. During the visit of [REDACTED], it is apparent that the [REDACTED] will be most conducive to offering maximum protection. [REDACTED]

4. Stated by the Prison director of [REDACTED] that he has not experienced serious security incidents in the past, it is, however, the opinion of the Registry, acknowledged by [REDACTED] representatives during a meeting on 28 July 2011, that detention at [REDACTED], is not as watertight as it could be in terms of security and protection as there is easy access to the different wings [REDACTED] by other detained persons and family members visiting. Moreover, at [REDACTED], visits to the detained persons are held in a special room, under constant supervision, not allowing physical contact between the detained persons and the visitor. [REDACTED], visits are allowed for three days a week, from 09.00 hours until 15.00 hours for 15 minutes maximum per visitor, while dropping off of food (to supplement the food prepared by the prison) is possible every day.

5. Furthermore, at [REDACTED], it is possible to accommodate the detained witnesses in a special wing [REDACTED] of the [REDACTED] were access control can be monitored at all times. [REDACTED]. The sanitary compartment of this specific wing is in perfect condition.

6. [REDACTED].

7. In order to avoid segregation and isolation of the detained witnesses, it is possible, in cooperation with the DRC authorities who could request the cooperation of [REDACTED], to carefully select detained persons who will be accommodated on the

same wing. Together with the permanent access control (see above – paragraph 4), [REDACTED].

8. On the [REDACTED] premises, there is a [REDACTED] office supervising and monitoring the daily management of the prison. All of the prison security guards at [REDACTED] have been trained by [REDACTED]. This training focused on, inter alia, minimum security standards, Human rights, Detention Rules and Regulations. An overview of the training package provided by [REDACTED] is attached as annex 1 Confidential ex-parte Registry only to this present document. It is the aim of the Registry to try to complete and complement, in cooperation with [REDACTED] provided they give their consent, this training package for future reference.

9. In terms of health and social well fare at the [REDACTED], there is an office dedicated to facilitate contacts between detained persons and their relatives, not residing in Kinshasa or close by. Equally, as in [REDACTED], there is a Medical Officer on site for first aid to the detained persons. This Medical Officer is shared by [REDACTED]. In case of serious health issues, the detainees are brought to a hospital in [REDACTED] and remain under security supervision whilst being treated.

10. With regards to the issue of jurisdiction, it has been confirmed by the DRC authorities and the [REDACTED]. The only threshold for detention at [REDACTED] is the fact whether the alleged crimes committed fall under the [REDACTED] or not, regardless of the status of the actor.

11. It is the view of the Registry, that the protective measures suggested by Trial Chamber II are more easily implementable at the [REDACTED] given its specific set-up, organization and population. [REDACTED].

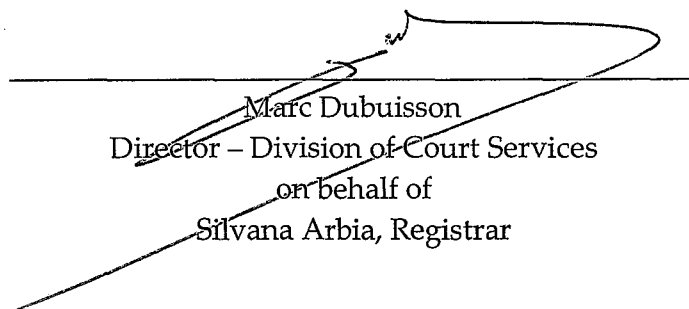
B.2. Monitoring of detained persons

12. With regards to monitoring of Witness 19 as well as the other detained witnesses, the Registry has established a good working relation with the relevant DRC authorities as such allowing for the proper implementation. It would be possible for the VWU representatives to visit the [REDACTED] at regular intervals in order to monitor the well being of the detained persons and react in a timely manner should the situation so demand.

B.3. Costs related to the detention of the detained witnesses

13. As supplementary information, the Registry attaches, as Confidential annex 2 to this present document, the cost incurred, until 30 June 2011, in relation to the detention of the current detained witnesses at the ICC Detention Centre in Scheveningen.

SUBMITS the present submission as *Confidential* in accordance with the confidentiality level currently afforded to this matter by the Chamber.



Marc Dubuisson
Director – Division of Court Services
on behalf of
Silvana Arbia, Registrar

Dated this 21 October 2011

At The Hague, the Netherlands