

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 7 April 2014

THE APPEALS CHAMBER

Before: Judge Erkki Kourula, Presiding Judge
Judge Sang-Hyun Song
Judge Sanji Mmasenono Monageng
Judge Anita Ušacka
Judge Ekaterina Trendafilova

SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO

**IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Confidential, EX PARTE, only available to the Prosecution
with Confidential, EX PARTE, only available to the Prosecution Annexes 1 and 2**

Provision of Report on Intermediaries

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

Ms Fatou Bensouda

Mr James Stewart

Ms Helen Brady

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman Von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. In compliance with the Appeals Chamber's order of 3 April 2014,¹ the Prosecution hereby files its "Report on Intermediaries" as Annex 1.
2. The Report and its annex (setting out the material Mr Harmon used to prepare his report), is filed confidential and *ex parte* pursuant to Rule 81(1). Mr Harmon, at the request of the Prosecution, prepared the Report in connection with the Prosecution's examination of whether to commence an investigation into the three intermediaries. Mr Harmon confined his review and report to information in the OTP's possession (including judgments and decisions, evidence, transcripts of testimonies, trial exhibits, and internal reports, memos and emails evidence already collected by the Prosecution), and conducted no additional investigations.² The Prosecution has already disclosed all information Mr Harmon relied upon which may fall within the scope of Article 67(2) or Rule 77,³ and the report and its annex do not contain further disclosable material. Nor are Mr Harmon's evaluations and assessments disclosable under Article 67(2) or Rule 77. As Trial Chamber I in this case stated, "the evaluations or assessments of [the Prosecution's] investigators are not ordinarily disclosable; instead, it is the information and material that led to any relevant evaluations or assessments that, depending on the circumstances, should be provided to the defence under Article 67(2) of the Statute or Rule 77 of the Rules."⁴

¹ ICC-01/04-01/06-3076-Conf A5 A6.

² ICC-01/04-01/06-3069-Conf A5 A6, para.10.

³ ICC-01/04-01/06-3069-Conf A5 A6, para.20.

⁴ ICC-01/04-01/06-2656-Red, para.16; see also para.17 defining the scope of internal work product under Rule 81(1).



Fatou Bensouda, Prosecutor

Dated this 7th April 2014

At The Hague, The Netherlands