

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 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***

Confidential

Order on the application from DRC-D01-WWWW-0019 of 1 June 2011

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 Massida

The Office of Public Counsel for the Defence

States Representatives

Kingdom of the Netherlands

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

Mr Ghislain Mabanga Monga Mabanga

Trial Chamber I ("Trial Chamber" or "Chamber") of the International Criminal Court ("Court" or "ICC"), in the case of *The Prosecutor v. Thomas Lubanga Dyilo* ("Lubanga case"), delivers the following Order regarding witness DRC-D01-WWWW-0019 ("defence Witness 19") of 1 June 2011:

1. Defence Witness 19 has been detained during criminal proceedings in the Democratic Republic of the Congo ("DRC") and, on the request of counsel for the accused and with the cooperation by the DRC authorities, he gave evidence in person in the *Lubanga* case on 30 March, 31 March, 1 April and 4 – 7 April 2011. At the end of his testimony, defence Witness 19 expressed the following concerns about his security on return to the DRC:¹

So what I am raising is an issue that is also linked to my protection as a witness, because I did not feel sufficiently protected when I arrived, first of all. And now when I go home, I'm starting to wonder to what extent the International Criminal Court will be able to protect me. That is a real concern. Above all, because in this case here the -- the players in the tragic history of Ituri all belong to the great presidential family, the ones we call the alliance of a presidential majority. All of them. All of them. They are in power. And we are in the run-up to elections in my country. I don't know what it's going to be like. So my biggest concern has to do with my protection and protecting my family as well.

2. The defence subsequently raised security concerns relating to defence Witness 19 in the course of an *ex parte* hearing with the Chamber, during which the Chamber instructed the defence to set out its concerns in writing to the Registry, and providing a copy to the Chamber.²

¹ Transcript of hearing on 7 April 2011, ICC-01/04-01/06-T-346-ENG ET WT, page 63, lines 1 – 11.

² Transcript of hearing on 10 May 2011, ICC-01/04-01/06-T-353-CONF-EXP-ENG ET, page 7, lines 12 – 15.

3. The Chamber was informed that following a request by defence Witness 19 and the defence, duty counsel had been assigned to provide him with legal assistance with respect to issues arising from his evidence before the Chamber.³ The defence counsel suggested that the particular circumstances appeared to render it inappropriate for them to act on behalf of defence Witness 19 in this regard,⁴ and it was indicated to the Chamber that duty counsel would henceforth be dealing with the security concerns.
4. On 31 May 2011, the Registry informed the Chamber that the return of defence Witness 19 to the DRC, which had been delayed, was scheduled to take place at the earliest feasible opportunity.⁵ It also asked whether the restrictions on contact and communication between defence Witness 19 and others, as previously ordered by the Chamber, were to continue.⁶
5. Given that the evidence in the *Lubanga* case concluded on 20 May 2011, the Chamber held that its order restricting communication and contact between defence Witness 19 and others, as issued in the context of the *Lubanga* trial proceedings, was lifted.⁷
6. On 1 June 2011, duty counsel for defence Witness 19 submitted an application describing the witness's security concerns and requesting

³ Email communication from the Registry to the Chamber to the Trial Division of 23, 25 and 31 May 2011.

⁴ Email communication from the defence to the Registry of 24 May 2011.

⁵ Implementation of Presidency Decision ICC-01/04-01/07-2971-Conf-Exp, 31 May 2011, IC-01/04-01/06-2742-Conf-Exp.

⁶ Implementation of Presidency Decision ICC-01/04-01/07-2971-Conf-Exp, 31 May 2011, IC-01/04-01/06-2742-Conf-Exp, paragraph 3.

⁷ Email communication from the Chamber to the Registry on 31 May 2011.

special protective measures, including a stay on his removal to the DRC. Counsel, *inter alia*, requests the Chamber to acknowledge his decision to pursue asylum proceedings before the courts of the Kingdom of the Netherlands and to issue a number of orders to facilitate this procedure.⁸

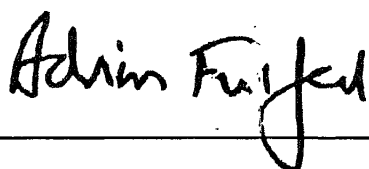
7. In view of defence Witness 19's application:

- the Registry is directed to stay the removal of defence Witness 19 to the DRC until further order from the Chamber;
- the Office of the Prosecutor and the defence are to file submissions on (1) whether the evidence reveals any risks to defence Witness 19's safety and physical and psychological well-being if he is returned to the DRC, and (2) whether defence Witness should be allowed to pursue an asylum request, by 4 pm on Tuesday, 7 June 2011;
- the Registry is instructed to file submissions on the issues (1) and (2) set out above by 4 pm on Tuesday, 7 June 2011;
- the VWU is directed to file a report on whether defence Witness 19 faces risks to his safety and physical and psychological well-being if he is returned to the DRC, and if so whether there are any measures that can be implemented to remove any identified risk by 4 pm on Tuesday, 7 June 2011; and

⁸ Requête tendant à l'obtention des mesures de protection spéciales au profit du témoin DRC-D01-WWWW-0019, 1 June 2011, ICC-01/04-01/06-2745-Conf with 11 confidential annexes.

- the Dutch government is respectfully invited to make any submissions it considers apposite by 4 pm on Tuesday, 7 June 2011.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 3 June 2011

At The Hague, The Netherlands