



COALITION FOR THE
INTERNATIONAL CRIMINAL COURT

LUBANGA
INFORMAL WEEKLY SUMMARY
1 - 5 NOVEMBER 2010



Situation Case	Democratic Republic of Congo 01/04-01/06 The Prosecutor vs. Thomas Lubanga Dyilo	(UPC) and <i>the Forces patriotiques pour la libération du Congo</i> (FPLC); Alleged former Commander-in-Chief of the FPLC, since September 2002 and at least until the end of 2003; Alleged president of the UPC.
Hearing Chamber	Trial Proceedings Trial Chamber I: Presiding Judge Fulford, Judge Odio Benito and Judge Blattmann	Alleged crimes: <u>Thomas Lubanga Dyilo</u> is allegedly responsible, as co-perpetrator, of 3 war crimes
Parties	OTP: Ms. Bensouda, Mr. Sachdeva, Ms. Samson, Ms. Struyven and team; Defense: Ms. Mabile, Mr. Desalliers, Mr. Biju-Duval and team	
Participants	103 victims represented by Legal Representatives of Victims and OPCV	<ul style="list-style-type: none">• Enlisting and conscripting of children under the age of 15 years into the FPLC and using them to participate actively in hostilities in the context of an international armed conflict from early September 2002 to 2 June 2003 (punishable under article 8(2)(b)(xxvi) of the Rome Statute);• Enlisting and conscripting children under the age of 15 years into the FPLC and using them to participate actively in hostilities in the context of an armed conflict not of an international character from 2 June 2003 to 13 August 2003 (punishable under article 8(2)(e)(vii) of the Rome Statute).
Start of Trial	26 January 2009 Beginning of Defense case: 27.01.2010	

Thomas Lubanga Dyilo: born in 1960 in Djiba, Ituri district, Eastern Province; National of the DR C; Alleged founder of *Union des Patriotes Congolais*

Most of the week consisted of the interrogation by the Defence of Intermediary 321 in private session. A few issues regarding **disclosure of information** were touched upon during the week, and a status conference on the question of **OTP policy on disclosure** was held on Friday.

1 November 2010 - Defence Counsel Maître Mabile raised before the Court the issue of disclosure of information regarding Intermediary 143 dated from before March 2007; Interrogation of Intermediary 321 was carried out in private session.

The Court addressed a few issues of administrative and procedural nature. Defence Counsel Catherine Mabile informed the Court that they still had received no element on **Intermediary 143** dated prior to March 2007. Prosecution countered that they were reviewing material prior to 2007, but that all that could be disclosed has been. Following a question by Judge Fulford, Prosecution also declared that in relation with Intermediary 321, all information had been disclosed.

The Court moved into private session for the interrogation of Intermediary 321 for the rest of the day.

This is a very informal summary. Please note we were unable to verify the spelling of some of the persons and locations mentioned. Please do not forward without prior consent from CICC staff.

2 November - Interrogation of Intermediary 321 continued in private session all day. A brief return to public session around midday discussed the issue of timing.

The interrogation of Intermediary 321 continued in private session all day. Judge Fulford apologized to the public, but mentioned that a redacted transcript of 321's interrogation would be made public as soon as possible.

During a brief return to public session, the **Court addressed problems of timing** regarding the filing of submissions, and encouraged the Parties to file all submissions at least a week before Christmas break. Prosecution also informed the Court that logistic difficulties would cause a **delay in P38's testimony**, which would not take place before 12 November at the earliest. Judge Fulford called on the Prosecution to raise the issue at the highest levels to do all that is possible to expedite matters.

3 November - The Court quickly addressed two issues in public session, before the interrogation of Intermediary 321 continued in private session all day.

Prosecution raised two issues before the Court:

- The **protective measures for Witness 356** that still needed to be ruled upon: the Judges agreed to them orally at the Hearing;
- Sending a **single judge to interrogate a Witness apparently located in the Middle East**, instead of having the Witness brought here (Witness was not identified). Judge Fulford approved of the idea, and asked for a written submission.

Interrogation of Intermediary 321 then resumed in private session.

4 November - Last day of the interrogation of Intermediary 321 in private session. Court addressed several issues in public session afterwards.

Interrogation of Intermediary 321 continued in private session for most of the day.

Once over, several issues were raised before the Court:

- Judge asked for a redacted transcript of the interrogation of Intermediary 321 to be made public as soon as possible. Prosecution will revert on Monday;
- Defence Counsel Catherine Mabile stated that the Defence was still **not satisfied on disclosure of information** regarding the abuse of process. Judge Fulford asked that the Defence file a written submission by next week on the problems so that Prosecution could comprehensively present its case on the matter.
- The Chambers made a ruling regarding Witness 555, which the Defence contends that he lied about his role in the army. While Witness 555 will not be called in for testimony, the Court decided that the threshold for disclosure has been crossed.

5 November - Status conference: questions addressed essentially pertained to **disclosure issues**.

- 1) **The disclosure of an Investigators' Note raising "major questions" about the credibility of Witness P31.** Investigators' Note was only disclosed to the Defence this month.

This is a very informal summary. Please note we were unable to verify the spelling of some of the persons and locations mentioned. Please do not forward without prior consent from CICC staff.

- Prosecution explained that the Note was purely internal and was submitted prior to a more thorough assessment of P31's credibility;
- Judge Fulford, understanding that this was "*a deliberate decision not to disclose*", stated that the Court had to think about the Prosecution's approach to what constitutes disclosable documents, and that it was not up to the OTP to decide which documents were important enough to be disclosed and which weren't. He requested that OTP file a complete document explaining the OTP's framework policy concerning disclosure, encouraging the OTP to refer to Trial Chamber I's previous decisions and Appeals Chamber's jurisprudence.

2) Regarding Defence's submission for disclosure regarding P31

- Defence filed a submission for the disclosure of certain information regarding P31's links. Prosecution claimed that those links were known for a long time to the Defence and to the Chamber, and that no further disclosure was considered necessary when P31 first testified in Court.
- The Judges decided that the decision on this matters depends on their eventual decision on whether the OTP has complied or not with its disclosure obligations, and that the **Defence's submission is adjourned** until the overall issue of OTP disclosure is ruled upon.

This is a very informal summary. Please note we were unable to verify the spelling of some of the persons and locations mentioned. Please do not forward without prior consent from CICC staff.

This is a very informal summary. Please note we were unable to verify the spelling of some of the persons and locations mentioned. Please do not forward without prior consent from CICC staff.