



COALITION FOR THE
INTERNATIONAL CRIMINAL COURT

LUBANGA
INFORMAL WEEKLY SUMMARY
8 - 12 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. Mabille, Mr. Desalliers, Mr. Biju-Duval and team	<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).
Participants	103 victims represented by Legal Representatives of Victims and OPCV	
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*

Intermediary 316 gave testimony for the duration of the whole week. Questions pertained to the **relationship between the intermediary and the OTP**, especially on its financial aspects.

8 November 2010 - Intermediary 316 sworn-in; Questioning carried out in private session.

After a submission made in private session by the Prosecution, **Intermediary 316 was sworn in.**

Before letting the OTP begin its questioning of Intermediary 316, Presiding Judge Fulford asked that they "try" to get some **evidence in public session**, after last week's successive private sessions. The Prosecution assured the Bench that they had planned for it, but that the first part must be carried out in private session.

The rest of the day was spent in private session.

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9 November - The Court orders the Prosecution to make public a redacted transcript of the interrogation of Intermediary 321; Intermediary 316 defends himself against accusations of misconduct.

Prosecution will, at the Judges' request, produce a redacted transcript of last week's interrogation of Intermediary 321 in a few days.

The hearing regularly switched from long moments of private sessions to short parts of public session during the rest of the day.

A few elements that did transpire from the short public sessions:

- **Intermediary 316 is accused by a former child-soldier**, in the hearings called Mr. X., that testified for the Defence earlier in the proceedings of **pressuring him to testify against Mr. Lubanga**;
- Questions were asked pertaining to Intermediary 316 and Mr. X...'s relationship;
- The Prosecution showed Intermediary 316 a series of documents, including incriminating documents, and asked him to comment on them;
- Intermediary 316 was very straightforward in his defence, denying the accusations and offering to be subjected to different types of scientific tests, including fingerprints, DNA and handwriting analysis to prove his innocence.

10 November - Defence cross-examines Intermediary 316, asking questions about his **financial relationship with the Court and the situation in Bunia**.

The morning was entirely spent in private session. After lunch break, the **Defence started questioning Intermediary 316 in public session**, with some brief interruptions in private session.

The first part of this afternoon's questioning related to the **Intermediary's financial relationship with the OTP**, and whether he was paid for his missions prior to his official contract. There was some misunderstandings between the Intermediary and the Defence Counsel surrounding the words "salaire", "rémunération", "indemnisation", etc., which were the object of much back and forth.

Second part of the interrogation was about **the situation in Bunia in 2005** - the city was then divided in several parts between the UPC, the FNI and MONUC.

11 November - Cross-examination of Intermediary 316 by the Defence continues; Questions pertaining to Intermediary 316's relationship and nature of his work with the OTP; the Defence raises before the Judges the sudden modification of visiting arrangements with their client: Judges order a written explanation from the Registry.

Cross-examination of Intermediary 316 by the Defence continues, mostly in private session, but a few elements did transpire to the public, notably with questions pertaining to **Intermediary 316's cooperation with the OTP**:

- **Contract with the OTP**: the duration and nature of his relationship with the OTP was discussed.
- **Reimbursement**: several receipts were presented to the witness. He indicated that they were payments in arrears for services rendered.
- **Tasks**: the witness' tasks had been clearly defined: he was in charge of liaison. During the entire period of his cooperation with the Court - officially and unofficially - he had never introduced unknown individuals to the OTP.

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However, he had served as a facilitator in bringing the OTP into contact with individuals who were already known to the OTP.

Procedural matters.

In between the witness' testimony several issues came up:

- Defence Counsel Catherine Mabilie expressed her concern about the fact that the Defence team had no further access to their client after the hearings. She did not understand why their visits had been cancelled by the Registry. Presiding Judge Fulford requested a written explanation about the Registry's change of earlier approved arrangements. The Chamber further stressed that it needs to be approached by the Registry beforehand.

12 November - Intermediary 316's interrogation by the Defence Team continues, on his relationship with Mr. X. and the **financial indemnities obtained from the OTP**. Intermediary 316 continued to defend himself and to claim his innocence.

The proceedings were carried out mostly in private sessions, especially during the morning. The Defence Team questioned Intermediary 316 about the Memorandum of Understanding between the OTP and the Intermediary, and especially the payments that followed. Moreover, the relationship between the witness and Mr. X. was also the subject of the Defence's questions.

The OTP made an exceptional request to add a new witness to the list of those brought before the Court: Witness 598. Witness 598 would be willing to come on 29 Nov. 2010. The aim of the OTP was to dissipate the defense allegations against Witness 555 (Witness 598 could corroborate his story).

Among different elements that Witness 598 has in his possession, Witness 598 created a foundation that taught ex-UPC child soldiers and had in his power the school records in which it was proved that Witness 555 was part of this school and thus there are reasons to believe that he was in the army and was an ex-UPC child soldier.

The Court decided that it made no sense to call Witness 598 since the OTP seeks to support the testimony by Witness 555 whereas Witness 555 will not be considered a witness. The proceedings went on private session so the final decision on this topic was not made public.

The Defense Team interrogated Intermediary 316, followed by the OTP. The witness claimed he did not give false testimony before the Court or provide made-up stories to the Prosecution in relation with Mr. X or Mr. Y. He claimed that he had not deliberately identified any witness for the ICC on his own initiative, which he considered a proof of his innocence.

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