



COALITION FOR THE
INTERNATIONAL CRIMINAL COURT

LUBANGA
INFORMAL WEEKLY SUMMARY
05 - 09 JULY 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. Mabilie, 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*

The week started with the testimony of Intermediary 321 on 5 and 6 July. On 7 July, the Chamber ordered the immediate 'limited disclosure' of the identity of Intermediary 143 to the Defence in order for the Defence to be able to properly prepare its cross-examination of Intermediary 321. Importantly, **on 8 July 2010, the Chamber decided to stay the proceedings of the case with immediate effect**. The Chamber argued that the OTP had failed to disclose the identity of intermediary 143.

05 July 2010

The Examination-in-Chief of Intermediary 321 by the OTP, which had started the week before, continued and was completed.

Mr. Sachdeva, OTP, questioned Intermediary 321 mostly in closed session. In public session the intermediary (under protective measures of voice and face distortion) stated that

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.

- he never bribed former child soldiers or their parents to give false testimony before the Court or to OTP investigators
- he never told children to lie about their names or dates of birth
- he only gave money to the children and their parents to enable them to pay for their transportation when the children were interviewed
- that the families of the children received USD 10 before the child was to be examined by the investigators
- he never discussed the topics dealt with during the examinations with the investigators, children or parents

06 July 2010

The Cross-examination of **Intermediary 321** by the Defense started but was stayed

Mr. Desalliers, Defence, questioned the intermediary on a certain child (whose name is confidential) with which the intermediary had worked. The intermediary stated that

- he worked for an NGO that helped former child soldiers leave military service and re-unite with their families
- the child who was formerly a child soldier had suffered a great deal during his military service within the UPC and, therefore, deserted. To receive help, the child went to MONUC which later handed him over to 'CTO' where the intermediary worked.
- upon arrival the child was suffering from several illnesses
- the child was clearly under 15 years of age and had worked under the direct command of accused Thomas Lubanga for some time
- the child told him that one of his duties was to guard a weapons-drop off point
- he heard from the child that Mr. Lubanga told the UPC soldiers that, if a deserter was captured, he/she would be "killed, grilled and eaten".
- as part of his demobilization process the child was later re-united with his father, step-mother and several half-brothers. His mother had died during the Ituri War. At home the child had fights with his younger half-brothers - a fact that, at least at the start, impacted negatively on the child's return.
- the child later received training as a mechanic
- he is sure the child told him a correct and true story

Procedural issues

- The Defence of accused **Mr. Katanga** applied to Trial Chamber I (Lubanga) for access to transcripts from Intermediary 321 regarding statements concerning Witnesses 157, 267 and 31. Neither the OTP nor the Defense had objections as long as only relevant issues were provided to Mr. Katanga's Defence team.
- Furthermore, the Defence declared it would apply to Trial Chamber II (Katanga and Ngudjolo Chui) to receive transcripts of Witnesses 157 and 41 for their consideration.

07 July 2010

The Chamber dealt with questions of disclosure in relation to intermediary 143. (No witness testified)

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In the morning, the Trial Chamber ordered the immediate "limited disclosure" (meaning disclosure only to the Defense team present in Court, the accused and one Defense team member based in DRC) of the identity of intermediary 143 to the Defense team in order for the Defense to be able to properly prepare for the cross-examination of intermediary 321.

-The Defense expressed agreement concerning the limitations of the disclosure.

-The OTP informed the Chamber that intermediary 143 has considered and accepted the protective measures but requested delayed implementation for unknown reasons.

In the afternoon, the OTP made an application asking the Chamber to re-consider its decision in that the disclosure of the identity of intermediary 143 shall be postponed, until protective measures be put in place. That is to guarantee the security of the intermediary who "risks to be killed" in Ituri due to the "reality on the ground". Furthermore, Mr. Sachdeva, OTP, proposed that Mr. Biju-Duval, Defense, should divide his part of the Defenses' examination of the current witness, intermediary 321, into two stages. Those issues relating to intermediary 143 should be dealt with after the security measures had been implemented.

Mr. Biju-Duval from the Defence rejected the OTP's proposal arguing it would not be possible for him to do that. The issues he wishes to examine intermediary 321 about are all related to intermediary 143 and, therefore, not dividable.

Following this discussion, the Chamber rejected the OTP's application arguing that the security of intermediary 143 was not at risk due to the limitations of the disclosure and that the Defense cannot be ordered to divide its examination. Again, the Chamber ordered disclosure of the information.

08 July 2010

The Chamber ruled to stay the trial proceedings with immediate effect.

The Chamber explained its decision with the abuse of process by the OTP which has failed to disclose the identity of intermediary 143 to the Defense. Judge Fulford stated that the Chamber would deal with any application for leave to appeal. On 15 July a hearing would be held on the detention of Mr. Lubanga. Furthermore, the Chamber indicated that a formal warning against Mr. Moreno-Ocampo and Ms. Bensouda, OTP, would be issued for breaching the Court's orders.

(Note: a transcript of the hearing can be consulted at the Court's website:
<http://www.icc-cpi.int/NR/exeres/77DFF646-A513-47FC-9451-7C9A4995E638.htm>)