

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 15 August 2007

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio Benito
Judge René Blattmann

Registrar: Mr Bruno Cathala

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR vs. THOMAS LUBANGA DYILO**

Public with Confidential Annexes

Prosecution's Response to the "Réponse de la Défense à l'invitation de la Chambre de Première Instance à présenter des conclusions sur des questions devant être tranchées à un stade précoce de la procédure"

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Ekkehard Withopf, Senior Trial Lawyer

Counsel for the Defence

Ms Catherine Mabilie
Ms Véronique Pandanzyla
Mr Marc Desalliers

Legal Representatives of Victims

a/0001/06 to a/0003/06 and a/0105/06

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

Background:

1. On 29 March 2007, the Prosecution filed the "Prosecution's Submission in Anticipation of a Status Conference"¹ (29 March 2007 Submission). In the 29 March 2007 Submission, the Prosecution raised a number of upcoming pre-trial and trial matters that in the Prosecution's view merit early consideration by the Trial Chamber.² These matters included the instruction of expert witnesses, disclosure, the use of the E-Court Protocol, proofing of witnesses, protection of victims and witnesses and the outcome of the Confirmation Hearing.³
2. On 18 July 2007, the Trial Chamber issued the "Request for submissions on the subjects that require early determination"⁴ (Request). In the Request, the Trial Chamber identified a number of subjects that require early determination, including the date of the trial, the languages to be used in the proceedings, aspects of disclosure, the use of the E-Court Protocol, the role of victims in the proceedings in the period leading up to the commencement of the trial, the procedures to be adopted for instruction of expert witnesses, the approach to be adopted to witness familiarisation and witness proofing, the status before the Trial Chamber of the evidence heard by the Pre-Trial Chamber, and the status of the decisions of the Pre-Trial Chamber in trial proceedings.⁵ In addition, the Trial Chamber established a detailed schedule for the filing of submissions and hearings between 17 August and 17 October 2007.⁶

¹ Prosecution's Submission in Anticipation of a Status Conference, public redacted version, 29 March 2007.

² See Submission, at para. 5.

³ See Submission, at paras. 8 to 12 (expert witnesses), 13 to 16 (disclosure), 17 to 21 (E-Court protocol), 22 to 25 (Proofing of witnesses), 26 to 30 (Protection of victims and witnesses) and 31 to 32 (Outcome of the Confirmation Hearing).

⁴ Request for submissions on the subjects that require early determination, public, 18 July 2007.

⁵ See Request, at paras. 6 to 8.

⁶ *Ibid.*

3. In the Request, the Trial Chamber “strongly encourage[d] the parties to consult and to achieve consensus between themselves on the proposals as framed or on any alternatives they may agree upon.”⁷
4. On 27 July 2007, the Trial Chamber by its “Filing on the record of the case of communication on the length of hearings scheduled by Trial Chamber I in September and October 2007”⁸ (27 July 2007 Filing) informed the Participants about its preliminary assessment that the hearings scheduled for 4, 11 and 25 September and 11 October 2007 may each last for more than one day.⁹
5. On 7 August 2007, the Defence filed the “Réponse de la Défense à l’invitation de la Chambre de Première Instance à présenter des conclusions sur des questions devant être tranchées à un stade précoce de la procédure”¹⁰ (Defence 7 August 2007 Filing). In the Defence 7 August 2007 Filing, the Defence requested a delay of two months to the schedule as established by the Trial Chamber in order to have sufficient time to familiarise itself with the file.¹¹

Communication between the Prosecution and the Defence:

6. Following the Request, and in order to initiate the process of consultation, on 19 July 2007 the Prosecution sent an e-mail message to the Defence exploring a possible schedule for exchanges. Upon agreement on the schedule and the scope

⁷ See Request, at para. 2.

⁸ Filing on the record of the case of communication on the length of hearings scheduled by Trial Chamber I in September and October 2007, public, 27 July 2007.

⁹ See 27 July 2007 Filing. The Prosecution notes the discrepancy between the date of the hearing as scheduled in the Request (11 October 2007) and the date of the hearing as indicated in the 27 July 2007 Filing (11 October 2007).

¹⁰ “Réponse de la Défense à l’invitation de la Chambre de Première Instance à présenter des conclusions sur des questions devant être tranchées à un stade précoce de la procédure”, public, 7 August 2007.

¹¹ See Defence 7 August 2007 Filing, at page 5.

of the initial exchange between the Parties, the Prosecution comprehensively addressed the following issues by e-mail message of 27 July 2007:¹² The date of the trial, the languages to be used in the proceedings, the timing and manner of disclosure of the evidence and the use of the E-Court Protocol. The Defence responded by e-mail message of 3 August 2007,¹³ indicating that it would request the Trial Chamber to delay the schedule as established in the Request for two months. After the Defence had filed the Defence 7 August 2007 Filing, the Prosecution replied to the Defence 3 August 2007 message by e-mail of 13 August 2007,¹⁴ to advise the Defence that it would request the Trial Chamber to maintain the current schedule pending further discussion during the 4 September 2007 Court hearing, and to outline the reasons for its position.

Prosecution's observations on the Defence 7 August 2007 Filing:

The subjects as detailed in the Request under paragraphs 6.A, 6.B., 6.C., 6.D., 7.E., 7.G., 8.H. and 8.I.

7. Pending further discussion during the hearing on 4 September 2007, in respect of the subjects as detailed in the Request under paragraphs 6.A, 6.B., 6.C., 6.D., 7.E., 7.G., 8.H. and 8.I., the Prosecution opposes the request of the Defence to delay the schedule that the Trial Chamber has established in its Request for two months.
8. In the Prosecution's view, the reasons put forward by the Defence do not warrant a delay for the following two main reasons:

¹² Attached as confidential – Annex 1.

¹³ Attached as confidential – Annex 2.

¹⁴ Attached as – confidential – Annex 3.

- (i) The subjects the Trial Chamber has identified as requiring early determination are predominately of a procedural nature, thus they do not require an in-depth knowledge of each and every substantive aspect of the case.
 - (ii) Most of the subjects are closely related to the preparation of the trial. They require early determination in order to allow the Participants to properly prepare for trial. Accordingly, granting the Defence's request would unavoidably result in a significant delay of the commencement of the trial.
9. To the extent that some of the subjects as identified by the Trial Chamber require a more solid understanding of the substantive aspects of the case, the Prosecution submits that the current agenda is sufficiently generous to provide the Defence with adequate time to familiarise itself with the files to the extent necessary to make meaningful submissions on those matters. Indeed, it appears that the Trial Chamber in determining the schedule took this consideration into account and scheduled certain matters, including the status before the Trial Chamber of the evidence heard by the Pre-Trial Chamber (subject 8.H.) and the status of the decisions of the Pre-Trial Chamber in trial proceedings (subject 8. I.) towards the end of the schedule.

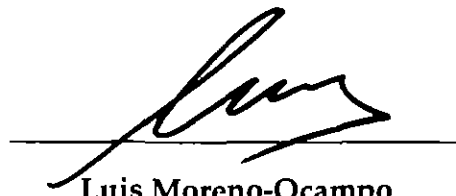
The subject as detailed in the Request under paragraph 7.F.

10. To the extent that the Defence requests to delay the submission on the subject on "[T]he procedures to be adopted for instruction of expert witnesses" (subject 7.F.) - currently scheduled for 31 August 2007 (written submissions) and 25 September

2007 (hearing) - the Prosecution agrees with the Defence that this matter requires additional time for the Defence to make a determination.¹⁵ Accordingly, the Prosecution does not oppose the re-scheduling of this subject and proposes its inclusion in the list of subjects that are scheduled to be addressed on 21 September 2007 (submissions) and in October 2007 (hearing) respectively.

Suggested further subjects that in the Prosecution's view require early determination:

11. The Prosecution suggests adding to the list of subjects that require early determination the following two issues: (i) the place of the trial, and (ii) the manner in which evidence shall be submitted (Article 64 (8) (b) and Rule 140). The Prosecution proposes to discuss the first subject at the occasion of the hearing on 25 September 2007 and to address the second subject during the hearing that is scheduled for October 2007.



Luis Moreno-Ocampo
Prosecutor

Dated this 15th day of August 2007
At The Hague, The Netherlands

¹⁵ The Prosecution recalls its submission in its 29 March 2007 Submission (at para. 9) on the matters it anticipates to be covered by experts.