

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 25 September 2007

TRIAL CHAMBER I

Before: Judge Adrian Fulford, Presiding
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 *v.* THOMAS LUBANGA DYILO**

Public

The Trial Chamber's Agenda for the Hearing on Monday 1st October 2007

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
Mr Jean-Marie Biju-Duval

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

1. In order to facilitate the preparation for the hearing on 1 October of the Office of the Prosecutor (“prosecution”) and the defence (the “parties”), and of the participants in the proceedings, the Trial Chamber issues this agenda. The Trial Chamber informs the parties and participants that the hearing will commence at 9.30 and may extend into 2 October 2007.
2. The following subjects were set out in the “Order setting out schedule for submissions and hearings regarding the subjects that require early determination” issued on 5 September 2007:¹

A. The date of the trial.

The earliest date by which the parties shall be ready for the trial to commence, the volume of evidence to be relied upon by the prosecution and the anticipated number of witnesses to be called by them during the trial.

B. The languages to be used in the proceedings.

Whether interpretation into languages other than English and French will be required for some or all of the proceedings.

C. The timing and the manner of disclosure of the evidence the prosecution seek to rely on to the other party, any participants, and to the Chamber, and all other disclosure issues.

D. An e-court protocol.

Whether the “Technical Protocol for the Submission of Evidence, Material and Witness Information in Electronic Version for Their Presentation During the

¹ ICC-01/04-01/06-947.

*Confirmation Hearing*² should be adopted, or amended, for use in the trial proceedings.

3. The Trial Chamber indicated orally at the hearing on 4 September 2007 that the issue of *ex parte* proceedings would be discussed on 1 October.³ The following subject is therefore added to the agenda:

E. The procedures to be adopted for *ex parte* proceedings

*The Chamber considered the issue in its ex parte under seal "Decision on the prosecution's filing entitled 'Prosecution's provision of information to the Trial Chamber' filed on 3 September 2007"*⁴ issued on 18 September 2007. A confidential under seal redacted version of the decision was made available to the defence on 24 September 2007.⁵ A public redacted version of the decision will be issued in due course. The defence and the participants have not had an opportunity to be heard on this issue and this will be afforded to them.

In light of the Appeals Chamber's "Judgment on the Prosecutor's appeal against the decision of Pre-Trial I entitled 'Decision establishing general principles governing applications to restrict disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence'",⁶ the matters for consideration are:

- *the extent of the obligation to notify the other party or participants of any ex parte application or filing; and*
- *the extent of the obligation to set out the legal basis of the filing.*

² See "Submission of a new version of the e-court protocol prepared jointly by the Office of the Prosecutor, the defence and the Registry" dated 20 July 2006, ICC-01/04-01/06-201, and "Final decision on the e-court protocol for the provision of evidence, material, and witness information in electronic version for their presentation during the confirmation hearing" dated 28 August 2006, ICC-01/04-01/06-360.

³ Transcript of 4 September 2007 hearing, ICC-01/04-01/06-T-50, page 6.

⁴ ICC-01/04-01/06-955-US-Exp.

⁵ ICC-01/04-01/06-959-US.

⁶ ICC-01/04-01/06-568.

4. The Trial Chamber hereby lists one additional issue to be dealt with at the hearing on 1 October 2007, which has emerged as a matter of urgency : The implementation of the reporting system between the Registrar and the Trial Chamber in accordance with Rule 89 and Regulation of the Court 86(5).
5. The Trial Chamber is exceptionally listing this issue for consideration in open court because this is the first trial before the ICC, and in the particular circumstances submissions are sought from the parties and participants to ensure that the procedures adopted are fair and appropriate.
6. The parties and participants are not asked to file written submissions on this topic in advance of the hearing; instead, the bench will seek oral submissions that primarily address the issues set out below.
7. A number of issues arise which the parties and participants will be asked to make submissions on, as set out below.

F. The implementation of the reporting system between the Registrar and the Trial Chamber in accordance with Rule 89 and Regulation of the Court 86(5)

i. The nature of the Registry's involvement

- a. *Regulation of the Court 86(5) does not stipulate that the reports prepared by the Registrar are to be disclosed to the prosecution and to the defence : Should the reports be disclosed to the prosecution and the defence, and if so in which form (redacted or not)?*

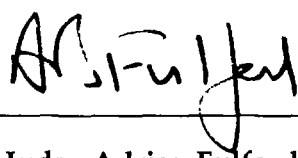
- b. *If they are to be disclosed, should the prosecution and the defence have an opportunity to reply?*
- c. *To what extent, if at all, should the Registrar as the author of the reports carry out an "overview", a "review" or a "summary" of the information set out in the reports? Should the Registrar set out in a "factual", non-judgmental way whether the criteria which will be adopted in due course by the Trial Chamber has been addressed?*
- d. *To what extent, if at all, should the Registrar express any "preliminary view" on the merits of the applications?*
- e. *How should the Registrar fulfil his obligations under Regulation 86(5) (and in particular how should he "endeavour to present one report ...") ?*
- f. *Should the Registrar highlight issues that appear to arise from the applications for the Chamber's consideration?*

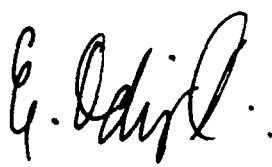
ii. Representation

To what extent should communications between the Registry and the Chamber on the subject of legal representation for victims (i.e. on the overall number of representatives) be disclosed to the parties, and, if so, should it be the subject of submissions?

- 8. It is for the Registrar to determine who should appear on 1 October 2007. The Chamber may be assisted, in particular, by submissions from a representative of the Victims' Participation and Reparation Section.

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



Judge Adrian Fulford

Judge Elizabeth Odio Benito

Judge René Blattmann

Dated this 25 September 2007

At The Hague, The Netherlands