

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 14 November 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 *v.* THOMAS LUBANGA DYILO**

Public

Order scheduling a hearing

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

Office of Public Counsel for Victims

Ms Paolina Massidda

1. The Trial Chamber shall consider at a hearing on 29 November 2007 the following issues:

A. Live broadcast of audiovisual recording of hearings within the ICC

2. On 16 October 2007, the Registrar filed confidentially an "Information and request from the Registrar concerning the live broadcast of audiovisual recording of hearings within the ICC" ("Registrar's request").¹ The Registrar requested the Trial Chamber to:

- 1) Allow the Registry to notify the present confidential document to the legal representatives of victims who currently participate in the proceedings;
- 2) advise as to whether such access should be awarded at all beyond the courtroom itself;
- 3) in the affirmative:
 - a. indicate what policy, if any, should be applied in order to ensure that the staff members use this live broadcast responsibly;
 - b. allow the Registry to research a suitable technical solution, and
 - c. order the termination of the live broadcast as currently provided until a suitable solution is devised.²

3. On 18 October 2007, the Trial Chamber issued an "Instruction to the Registrar on access to the broadcast of the closed hearing on 19 October 2007"³ which limited the live broadcast of that specific hearing as an interim measure.

4. On 2 November 2007, the Office of the Prosecutor ("prosecution") responded to the Registrar's request,⁴ requesting that live broadcasting beyond the courtroom continue, and that a technical solution be investigated.⁵ The

¹ ICC-01/04-01/06-984-Conf

² *Ibid.*, page 3

³ ICC-01/04-01/06-989-Conf

⁴ Prosecution's response to the "Information and requests from the Registrar concerning the live broadcast of audiovisual recording of hearing within the ICC", ICC-01/04-01/06-1012-Conf.

⁵ *Ibid.*, para 11 page 6.

prosecution submitted that a detailed consideration of the overall system is required.⁶ Although the prosecution filed its response confidentially, it submitted that there was no reason for the Registrar's request to be filed confidentially and it did not oppose a reclassification of the request and its response thereto.⁷

5. The time limit for the filing of responses in accordance with Regulation of the Court 34(b) expired on 6 November 2007. The defence did not file a response.

B. Request of the Office of Public Counsel for Victims to access documents in the case record

6. On 18 October 2007, the Office of Public Counsel for Victims filed a "Request of the OPCV to access documents in the case record related to applicants a/0004/06 to a/0008/06, a/0019/06, a/0020/06, a/0022/06 to a/0024/06, a/0026/06, a/0027/06, a/0029/06, a/0030/06, a/0033/06, a/0035/06, a/0036/06, a/0039/06 to a/0041/06, a/0043/06, a/0046/06 to a/0052/06, a/0072/06 to a/0080/06 and a/0110/06" ("Office of Public Counsel for Victims' request")⁸ in which it requested the Chamber:

- a) to grant the Principal Counsel full access to the index of the case record and consequently to order the Registry to notify the Principal Counsel of a copy of the said index;
- b) to reserve the Principal Counsel the right to submit proposals regarding the disclosure of documents and/or materials after she has had the opportunity to examine the index of the record of the case, if she considers it necessary for the fulfillment of her mandate on behalf of the applicants;
- c) to order the Registry to notify the documents listed in paragraph 10 of this request to the Principal Counsel, in the portions related to the applicants represented by her; and

⁶ *Ibid*, para 6

⁷ *Ibid*, footnote 9.

⁸ ICC-01/04-01/06-987

- d) to order the Registry to notify the unredacted version of the decision confirming the charges and the annex attached thereon to the Principal Counsel. In the alternative, to order the Registry to notify the Principal Counsel of the unredacted version of the decision confirming the charges and the annex thereon information not related to the applicants represented by her.

7. The defence filed on 24 October 2007 a response to the Office of Public Counsel for Victims' request,⁹ which opposed it on the ground that Rule 131(2) of the Rules of Procedure and Evidence only grants access to the case record to victims (and their representatives) who were given the right to participate and not to victim applicants.¹⁰

8. The prosecution filed a response to the request on 8 November 2007.¹¹ The prosecution requested the Trial Chamber:

- (i) to deny OPCV's request to be granted access to the index of the case record, (ii) to decide further requests for access to documents by the OPCV on a case by case basis, (iii) to order the Registry to notify the three documents explicitly listed by the OPCV, and (iv) to reject OPCV's request for notification of the confidential version of the Decision Confirming the Charges in full or in redacted form.¹²

9. The legal representatives of the victims did not file any submissions on the Office of Public Counsel for Victims' request.

⁹ Réponse de la Défense à la "Request of the OPCV to access documents in the case record related to applicants a/0004/06 to a/0008/06, a/0019/06, a/0020/06, a/0022/06 to a/0024/06, a/0026/06, a/0027/06, a/0029/06, a/0030/06, a/0033/06, a/0035/06, a/0036/06, a/0039/06 to a/0041/06, a/0043/06, a/0046/06 to a/0052/06, a/0072/06 to a/0080/06 and a/0110/06", ICC-01/04-01/06-1003.

¹⁰ *Ibid*, page 2

¹¹ Prosecution response to the "Request of the OPCV to access documents in the case record related to applicants a/0004/06 to a/0008/06, a/0019/06, a/0020/06, a/0022/06 to a/0024/06, a/0026/06, a/0027/06, a/0029/06, a/0030/06, a/0033/06, a/0035/06, a/0036/06, a/0039/06 to a/0041/06, a/0043/06, a/0046/06 to a/0052/06, a/0072/06 to a/0080/06 and a/0110/06", ICC-01/04-01/06-1017

¹² *Ibid*, para. 8.

C. Simultaneous LiveNote transcript in French

10. On 24 October 2007 the defence filed a “Requête de la Défense aux fins d’obtention des transcriptions d’audience en simultané en langue française”, (“defence’s request”)¹³ in which it requested the Chamber to order the Registry to provide simultaneous French transcripts during the hearings before the Chamber.
11. This same issue was raised by the legal representatives of the victims at the hearing on 1 October 2007.¹⁴
12. Following an order of the Trial Chamber,¹⁵ the Registry filed on 8 November 2007 the “Registrar’s Submission on the Issue of Provision of Real Time French Transcripts at Hearings”,¹⁶ in which it stated that although it is still exploring avenues alternative to LiveNote, it is to date technically impossible to provide for simultaneous French transcripts. The Registry informed the Chamber of its intention to provide the parties and participants with a draft version of the French transcript no later than two hours after each hearing.¹⁷
13. On the same date, the prosecution filed a response to the defence’s request,¹⁸ supporting it.

¹³ ICC-01/04-01/06-999. See also transcript of hearing on 1 October 2007, ICC-01/04-01/06-T-52-ENG, pages 8-9.

¹⁴ ICC-01/04-01/06-T-52-ENG, pages 7-8.

¹⁵ Order requesting the Registrar to file submissions on the issue of the simultaneous provision of LiveNote in French, 1 November 2007, ICC-01/04-01/06-1011.

¹⁶ ICC-01/04-01/06-1018.

¹⁷ *Ibid*, pages 3-4

¹⁸ Prosecution’s response to the “Requête de la Défense aux fins d’obtention des transcriptions d’audience en simultané en langue française”, ICC-01/04-01/06-1016.

D. Prosecution's application for directions on the lifting of redactions and for non-disclosure of information

14. On 31 October 2007, the prosecution filed a "Prosecution's Application for Direction on the Lifting of Redactions and for Non-Disclosure of Information" ("prosecution's application").¹⁹ This submission was filed publicly together with "confidential, *ex parte*, prosecution only attachments". In its application, the prosecution requested the Trial Chamber to:

determine whether an application to lift previously authorized redactions is necessary and if so, to lift certain redactions, and to authorize the non-disclosure of information in accordance with Articles 54(3)(f), 64(6)(a), 61(11), 64(6)(c), 64(7), 68 and Rules 81(2) and 81(4) as set out in the proposed redactions to witness statements, attached.²⁰

15. Pursuant to Regulation 34(b) of the Regulations of the Court, the defence and participants may file any written response to the application until 21 November 2007.

E. Protective measures for victims' applicants

16. It has emerged during the Trial Chamber's consideration of related issues²¹ that there is a lack of agreement as to whether the Victims and Witnesses Unit has responsibility for the safety and well-being of victims who have applied to participate in the trial during the period whilst their applications are pending. Considering the Court's responsibility to witnesses and victims as provided for in Article 68 of the Statute, it is important that the Chamber hears full submissions on the issue to enable a meaningful fulfilment of the Court's mandate. In particular, the Chamber would benefit from hearing oral submissions on the interpretation of the phrase "victims who appear before

¹⁹ ICC-01/04-01/06-1008

²⁰ *Ibid.*, para. 23

²¹ Transcript of hearing on 19 October, ICC-01/04-01/06-T-56-CONF-ENG.

the Court” found in Article 43(6) of the Statute, which established a Victims and Witnesses Unit within the Registry and set out its responsibilities.

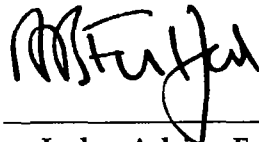
Order of the Trial Chamber

17. In order to fully explore with the parties, participants and Registry the issues set out above which require prompt determination, the Trial Chamber hereby schedules a public hearing on Thursday 29 November 2007 at 10.00.
18. If necessary, the Trial Chamber will hold an *ex parte*, prosecution only closed hearing in the afternoon of the same day in order to deal with the prosecution’s application.
19. It is for the Registrar to determine who should appear at this hearing. The Trial Chamber may be assisted, in particular, by submissions from representatives of the Division of Court Services, and including from the Victims and Witnesses Unit.
20. The Trial Chamber hereby orders the Registrar to reclassify as public the Registrar’s request of 16 October 2007²² as well as the prosecution’s response thereto,²³ and to notify these filings to the representatives of victims a/0001/06 to a/0003/06 and a/0105/06, who are currently participating in the proceedings.

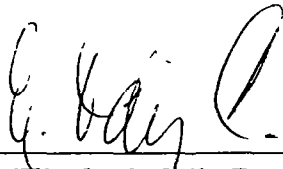
²² ICC-01/04-01/06-984-Conf

²³ ICC-01/04-01/06-1012-Conf

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito



Judge René Blattmann

Dated this 14 November 2007

At The Hague, The Netherlands