

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/06
Date: 3 December 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 with confidential annexes

**Prosecution's communication of originals of incriminatory evidence disclosed
to the Defence pursuant to the order of the Trial Chamber of 9 November 2007**

The Office of the Prosecutor

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Counsel for the Defence

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Background:

1. On 9 November 2007, in its “Decision Regarding the Timing and Manner of Disclosure and the Date of Trial” (“Trial Chamber’s Order”), the Trial Chamber ordered “that the evidence in its original form shall be filed with the Registry and kept in their vault”¹.
2. On 12 November 2007, the Prosecution filed the “Prosecution’s provision of electronic copies of incriminatory evidence disclosed to the Defence on 9 November 2007”, in which the Prosecution informed the Trial Chamber that it would file the originals of incriminatory evidence disclosed to the Defence by the end of November 2007².

Submission of originals of disclosed evidence:

3. The Prosecution informs the Trial Chamber that it has disclosed to the Defence 377 items of incriminatory nature between the end of the Confirmation Hearing and 9 November 2007³.

¹ ICC-01/04-01/06-1019, para. 22.

² ICC-01/04-01/06-1023, para 3. The efforts to assess a discrepancy in the items concerned by this filing have caused the slight delay.

³ These 377 items were disclosed to the Defence in package 1 (containing 9 incriminating materials disclosed on 21 December 2006), package 2 (containing 25 incriminating materials disclosed on 25 January 2007), package 3 (containing 5 incriminating materials disclosed on 5 February 2007), package 4 (containing 2 incriminating materials disclosed on 20 March 2007), package 5 (containing 3 incriminating materials disclosed on 17 April 2007), package 6 (containing 2 incriminating materials disclosed on 2 May 2007), package 7 (containing 5 incriminating materials disclosed on 21 May 2007), package 8 (containing 7 incriminating materials disclosed on 6 June 2007), package 9 (containing 3 incriminating materials disclosed on 27 June 2007), package 10 (containing 7 incriminating materials disclosed on 18 July 2007),

4. In compliance with the Trial Chamber's Order, the Prosecution herewith submits the originals of 155 incriminatory documents⁴ and 21 audio/video materials which have been disclosed to the Defence since the end of the Confirmation Hearing⁵. In addition, the Prosecution files the originals of 12 audio/video materials which had been disclosed to the Defence during the pre-confirmation stage but which had not been filed with the Registry.⁶

Items for which no physical originals are being filed:

5. The Prosecution informs the Trial Chamber, the Defence and the other participants of the fact that for 203 of the items disclosed between the end of the Confirmation Hearing and 9 November 2007 no original materials have been filed with the Registry.

package 11 (containing 2 incriminating materials disclosed on 21 August 2007), package 12 (containing 22 incriminating materials disclosed on 20 September 2007), package 13 (containing 55 incriminating materials disclosed on 28 September 2007), package 14 (containing 36 incriminating materials disclosed on 11 October 2007), package 15 (containing 9 incriminating materials disclosed on 19 October 2007), package 16 (containing 16 incriminating materials disclosed on 26 October 2007), package 17 (containing 17 incriminating materials disclosed on 26 October 2007), package 18 (containing 114 incriminating materials disclosed on 31 October 2007), package 19 (containing 6 incriminating materials disclosed on 31 October 2007) and package 20 (containing 31 incriminating materials disclosed on 9 November 2007).

⁴ These documents were disclosed to the Defence as incriminating evidence between the end of the Confirmation Hearing and 9 November 2007. See Confidential Annex 1 for the ERNs of these items.

⁵ These audio/video materials were also disclosed to the Defence as incriminating evidence between the end of the Confirmation Hearing and 9 November 2007. See Confidential Annex 2 for the ERNs of these items. This Annex also lists the materials referred to in footnote 6.

⁶ These audio/video materials were disclosed to the Defence as incriminating evidence between July and August 2006. See Confidential Annex 2 for the ERNs of these items.

6. 91 items⁷ were collected by the Prosecution in electronic format. Thus, the Prosecution is not in possession of physical originals of these materials. For these materials, the Prosecution instead files the original CDs which contained these documents at the time of registration.
7. For an additional 103 items⁸ the Prosecution is not filing originals because, at the time of registration, these were stored in containers which are also the repository of materials which have not been disclosed⁹ or which have not been disclosed as incriminating evidence¹⁰. The filing of the originals of the undisclosed materials might require redactions or the consent of their providers. The filing of the originals of the materials which have not been disclosed as incriminating evidence would require the Prosecution to relinquish possession of items which are not incriminating evidence, and which it has a responsibility to retain, store and secure¹¹ so long as they

⁷ See Confidential Annex 3 for the ERNs of these items. The ERNs appear in the column titled “Doc ID (disclosed items)”. This Annex lists 91 materials disclosed between the end of the Confirmation Hearing and 9 November 2007. In addition, it lists 32 items disclosed during the pre-confirmation stage.

⁸ See Confidential Annex 4 for the ERNs of these items. This Annex lists 103 materials disclosed between the end of the Confirmation Hearing and 9 November 2007. In addition, it lists 132 materials disclosed during the pre-confirmation stage. One item in the list was disclosed both during the pre-confirmation stage and between the end of the Confirmation Hearing and 9 November 2007. Electronic copies of all of these materials have been filed previously.

⁹ For example, DRC-OTP-0074-0167, DRC-OTP-0074-0215 and DRC-OTP-0074-0422, which appear as items 1-3 in Annex 4, are electronic documents contained in a CD which has a total of 10 items in it. The additional 7 items have not been disclosed.

¹⁰ For example, DRC-OTP-0131-0144, which appears as item 121 in Annex 4, is an electronic document contained in a CD which also contains DRC-OTP-0128-0194. DRC-OTP-0128-0194 has been disclosed as potentially exculpatory evidence only.

¹¹ Reference is made to Rule 10 of the Rules of Procedure and Evidence.

are not to be filed with the Registry pursuant to Regulation 53(3) of the Regulations of the Registry.

8. The originals of 7 materials¹² which have been disclosed to the Defence in redacted form are not being filed with the Registry. Print copies of the redacted versions of these materials are filed in their place.¹³ Where these materials contain redactions made pursuant to Article 54(3)(e) of the Rome Statute, the Prosecution lacks authorisation from their providers to make available their unredacted versions.

9. The Prosecution submits that in the case of documents for which redactions have been authorised by the Chambers¹⁴ or for which no such authorisation is required¹⁵, the unredacted originals of the evidence should not be filed because they are not part of the record of the case, in the sense that they are not evidence which the Prosecution can rely on at trial.

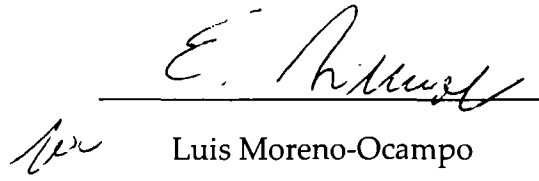
¹² See Confidential Annex 5 for the ERNs of these items. This Annex lists 7 materials disclosed between the end of the Confirmation Hearing and 9 November 2007. The Annex also lists 27 materials disclosed during the pre-confirmation stage.

¹³ The Prosecution files print copies of the redacted versions of DRC-OTP-0038-0159, DRC-OTP-0038-0161, DRC-OTP-0172-0245 and DRC-OTP-0172-0250. The print copies of the redacted versions of all other items listed in the annex, or electronic versions in the case of audio/video materials, have been filed previously.

¹⁴ Reference is made to Rule 81(2) and (4).

¹⁵ Reference is made to Rule 81(1).

10. The Prosecution undertakes to file in the record of the case the originals of the evidence for which redactions are lifted as soon as practicable.


Luis Moreno-Ocampo
Prosecutor

Dated this 3rd day of December 2007

At The Hague, The Netherlands