

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/06
Date: 13 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 vs. THOMAS LUBANGA DYILO**

Public formatted and redacted version

URGENT

**Prosecution's Application for Non-Disclosure of Information on the Basis of Article
54(3)(f)**

The Office of the Prosecutor

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Ms Fatou Bensouda, Deputy Prosecutor
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Counsel for the Defence

Ms Catherine Mabilie
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Legal Representatives of the Victims

a/00001/06 to 1/00003/06 and 1/0105/06

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Background

1. On 9 November 2007, the Trial Chamber issued the 'Decision Regarding the Timing and Manner of Disclosure and the Date of Trial'¹ in which it held, *inter alia*, that the Prosecution must disclose its incriminatory material, by 14 December 2007.² Should redactions be necessary to the documents, the Prosecution must explain and justify each redaction to the bench.³

Scope of Present Application

2. In this framework, the Prosecution submits its explanation and justification in respect of four videos it has disclosed to the defence⁴ in distorted and/or redacted form, and for which the distortions and/or redactions have not been previously authorised. The Prosecution requests the authorization of the non-disclosure of the relevant portions on the basis of Article 54(3)(f).

Videos concerned

3. The first video, DRC-OTP-0155-0004, was disclosed with the following minutes distorted or redacted:
 - minutes 00.31.27 to 00.34.25; 00.34.33 to 00.34.42; and 01.03.48 to 01.05.04 : video and voice distortion;
 - minutes 00.34.26 to 00.34.33: redaction; and
 - minutes 00.34.42 to 00.57.28; and 01.05.05 to 01.36.11: voice distortion.

¹ ICC-01/04-01/06-1019.

² *Ibid.*, paragraph 25.

³ *Ibid.*, paragraph 27.

⁴ More specifically DRC-OTP-0155-0004 was disclosed on 31 October 2007 and on 30 November 2007; DRC-OTP-1001-0012 was disclosed on 31 October 2007; DRC-OTP-1001-0014 was disclosed on 31 October 2007; and DRC-OTP-1002-0006 was disclosed on 26 October 2007.

4. The minutes concerned, namely minutes 00.31.27 to 01.36.11 visualise scenes of Bunia filmed on 3 May 2003, 6 May 2003 and 8 May 2003.
5. The scenes are commented upon by REDACTED, REDACTED, who is not a Prosecution witness. REDACTED is visible between minutes 00.31.27 to 00.34.25; 00.34.33 to 00.34.42; and 01.03.48 to 01.05.04. While visible, he addresses the viewer, stating that armed groups are still operating in Bunia. He explains that since he was threatened, he lives somewhere hidden. REDACTED clarifies that if he would not hide, he would be dead by now. Consequently, and in order to protect REDACTED, the Prosecution has disclosed the portions with video and voice distortion.
6. In addition, between minutes 00.34.26 and 00.34.33, REDACTED presents himself, giving his full name. For the reasons mentioned above, the Prosecution has disclosed the portion in a redacted format.⁵
7. Finally, between minutes 00.34.42 to 00.57.28 and 01.05.05 to 01.36.11, REDACTED comments upon the different scenes. Since his voice maybe recognised, and for the same reasons as mentioned above, the Prosecution has disclosed the portions with voice distortion.
8. The second and third videos, DRC-OTP-1001-0012 and DRC-OTP-1001-0014, were disclosed with the following scenes distorted or redacted:

DRC-OTP-1001-0012

- minutes 01.49.04 to 01.49.10; and 01.49.58 to 02.07.00: video distortion;
- minutes 01.49.10 to 01.49.58: redaction; and

DRC-OTP-1001-0014

⁵ In the present context, the Prosecution means by a 'redacted format' that it has completely covered the view of the video for the relevant minutes or seconds by replacing them with the view of a black background on which the wording 'redacted' is indicated. In addition the audio stream is removed and silent audio is added.

- minutes 00.00.32 to 00.25.15: video distortion.

9. The minutes concerned, namely 01.49.04 to 02.07.00 of video DRC-OTP-1001-0012 and 00.00.00 to 00.25.15 of video DRC-OTP-1001-0014 visualise an interview of a Lendu family by Sam Kiley taken on 6 June 2003. The interview was taken in the framework of the documentary 'Congo's Killing Fields', available under DRC-OTP-0148-0302⁶, and which was broadcasted by Channel 4 on 17 August 2003. Videos DRC-OTP-1001-0012 and DRC-OTP-1001-0014 display the full non-edited material filmed for the documentary.
10. During the interview, the Lendu family comments upon the events that happened in Bunia in May 2003. They explain how UPC militia came into their house and took Lendu civilians with them, some of which were killed. Sam Kiley states that they are the first 'Lendus' that were willing to speak up in front of the camera, and that they would be killed by the 'Hema' if it would be known that they are taking publicly.
11. Between minutes 01.49.04 and 01.49.10; and 01.49.58 and 02.07.00 of DRC-OTP-1001-0012 and minutes 00.00.32 and 00.25.15 of DRC-OTP-1001-0014, the Lendu family is visible. These views were edited out of the broadcasted documentary mentioned above. Consequently, and in order to protect the family, the Prosecution has disclosed the portions with video and voice distortion.
12. In addition, between minutes 00.00.32 and 00.25.15, the family presents itself in front of the camera, and their names are mentioned. For the same reasons, the Prosecution has disclosed the portion in a redacted format.⁷

⁶ This video has been disclosed to the defence on 21 July 2006, 28 July 2006 and 7 November 2006.

⁷ See footnote 5 above.

13. The fourth video, DRC-OTP-1002-0006, was disclosed with the following scenes distorted:
- minutes 00.52.33 to 01.53.52; 01.54.30 to 01.54.32; 01.54.50 to 01.55-23; 01.55.46 to 01.55.56; and 01.56.09 to 01.56.15: voice distortion; and
 - minutes 01.53.52 to 01.54.03: video and voice distortion.
14. The minutes concerned, namely minutes 00.52.33 to 01.56.15 visualise an interview of an unidentified person by Sam Kiley taken on 18 or 19 June 2003. The interview was also taken in the framework of the documentary 'Congo's Killing Fields'.⁸ The video displays the full non-edited material filmed for the documentary.
15. The person interviewed explains the conflict in Ituri in detail, including the involvement of Uganda and Rwanda. In addition, he states that he saw Thomas LUBANGA himself retrieving arms and ammunition from Rwanda.
16. Between minutes 00.52.33 to 01.53.52; 01.54.30 to 01.54.32; 01.54.50 to 01.55-23; 01.55.46 to 01.55.56; and 01.56.09 to 01.56.15, the voice of the interviewed person can be heard. In the broadcasted documentary, only a small portion of the interview was shown with an English translation covering the voice of the interviewed person. In order to protect the interviewed person, the Prosecution has disclosed the portions with voice distortions.
17. In addition, between minutes 01.53.52 to 01.54.03, the witness is visible. In the broadcasted documentary, this part of the interview was shown with video distortion. For the same reasons, the Prosecution has disclosed the portion with video and voice distortions.

⁸ See footnote 6.

Legal basis

18. The Prosecution submits that the proposed distortions and/or redactions should be authorised under Article 54(3)(f).
19. The Prosecution believes that in the case at hand, the only way to protect the third parties involved, with whom the Prosecution has no contact or does not know the whereabouts of, is by redacting their identity. These redactions are the only viable manner for the Prosecution of carrying out its mandate to "[t]ake necessary measures, or request that necessary measures be taken, to ensure ... the protection of any person".
20. In line with the Trials Chamber oral decision dated 13 December 2007⁹, the Prosecution submits that the redacted portions are irrelevant¹⁰ to the accusations that Thomas LUBANGA faces, and neither tends to undermine the prosecution case on the charges confirmed by the Pre-Trial Chamber, nor gives any support for the defence case, namely that the accused is innocent of the charges.

Order Requested

21. Based on the foregoing, the Prosecution requests the Trial Chamber to authorize the non-disclosure of information in accordance with Article 54(3)(f) to the videos DRC-OTP-0155-0004; DRC-OTP-1001-0012; DRC-OTP-1001-0014; and DRC-OTP-1002-0006, and more specifically, in relation to the above-listed minutes.

⁹ ICC-01-04-01-06-T-65-ENG [13 December 2007 Realtime], page 3, line 3.

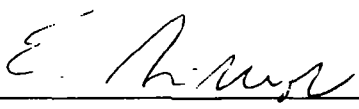
¹⁰ Despite the distortion, the Defence will be able to assess the content of the respective sequences.

Ex Parte Filing

22. The Prosecution submits that in addition to the present filing it has filed a *Confidential- Ex Parte - Prosecution Only* filing.¹¹

23. The Prosecution submits that REDACTED viewable in DRC-OTP-0155-0004 must be treated confidentially and cannot be disclosed to the Defence. To do so would run afoul of the Court's obligation under Article 54(3)(f) to protect the individual concerned.

24. The rights of the Accused are maintained to the extent that he has been made aware of the filing and its legal basis, but cannot be privy to some of the specifics of the information that needs to be addressed. The Prosecution submits that no alternative procedures exist to deal with this request.



Luis Moreno-Ocampo
Prosecutor

Dated this 13th day of December 2007
 At The Hague, The Netherlands

¹¹ Decision on the procedures to be adopted for *ex parte* proceedings, 7 December 2007, ICC-01/04-01/06-1058 at para. 12. On 6 December 2007, the Trial Chamber determined that *ex parte* procedures are only to be used exceptionally when other procedures are not available. The Court must ensure that the use of the *ex parte* procedure is proportionate given the potential prejudice to the Accused.