

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 19 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

**Prosecution's Provision of Witness Statements and Request to Disclose Summary
Evidence further to the "Prosecution's Request for Application for Lifting of
Redactions and Non-Disclosure of Information" filed 12 December 2007**

The Office of the Prosecutor

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

Legal Representatives of the Victims

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

Mr Luc Walley
Mr Franck Mulenda
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Counsel for the Defence

Ms Catherine Mabilie
M Jean-Marie Biju-Duval

Background

1. On 12 December 2007, the Prosecution filed the "Prosecution's Request for Application for Lifting of Redactions and Non-Disclosure of Information" concerning seventeen trial witnesses (the 12 December 2007 filing).¹
2. In the 12 December 2007 filing, the Prosecution sought, among other things, the temporary disclosure of summary evidence in relation to a number of witnesses. In such cases, the Prosecution provided the Trial Chamber with the proposed summaries and the underlying statements in order for the Trial Chamber to assess the accuracy of the proposed summaries, as necessary.
3. On 18 December 2007, the Trial Chamber rendered its "Order on the prosecution's applications for the lifting of redactions, the non-disclosure of summary evidence and disclosure of summary evidence", which dealt, among other filings, with the 12 December 2007 filing.² In its decision, the Trial Chamber ordered the Prosecution to file the evidence for which the Prosecution was seeking non-disclosure in a redacted or summarized form and authorized the non-disclosure of certain documents, all on a temporary basis and pending the Chamber's decision on the application.³

Present Filing

4. The present application concerns two witnesses referenced in the 12 December 2007 filing for which a request to temporarily disclose summaries was made. In the case of one of these two witnesses, the proposed summary of evidence was filed with the Trial Chamber along with one of two statements given by the

¹ ICC-01/04-01/06-1087.

² ICC-01/04-01/06-1097.

³ *Ibid.*, page 10. A hearing on these applications will take place between 9-11 January 2008.

witness.⁴ On page 44 of Annex 75 to the 12 December 2007 filing, the Prosecution indicated that the second statement from this witness was being finalized and would be filed by the Prosecution at a later time.

5. The second of the two witnesses was also included as one of the seventeen witnesses concerned by the 12 December 2007 filing.⁵ The Prosecution informed the Trial Chamber that this witness' statement had been relied upon during the confirmation hearing in summarized form, as authorized by the Pre-Trial Chamber.⁶
6. The Prosecution, however, inadvertently omitted to include the proposed summary⁷, the two statements and the transcript of the interview of the witness in the annexes to the 12 December 2007 filing.⁸
7. With the present filing, the Prosecution attaches five 'Confidential – *Ex Parte* Prosecution Only' annexes containing the second statement of one witness and the two statements of a second witness along with the proposed summary of the evidence of this witness.

⁴ Confidential, *Ex Parte – Prosecution Only*, Annex 53 (proposed summary evidence) and Annex 54 (first witness statement).

⁵ See footnotes 8 and 11 of the 12 December 2007 filing.

⁶ See footnote 8 and 9 of the 12 December 2007 filing. The summary evidence for this witness was authorized in the 'First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81', 15 September 2006, ICC-01/04-01/06-437 + Conf Exp Annex 1'; and 'Decision concerning the Prosecution Proposed Summary Evidence', 4 October 2006, ICC-01/04-01/06-515-Conf Exp.

⁷ The Prosecution notes that the proposed summary is not identical to the summary as authorized by the Pre-Trial Chamber as it has been expanded to include new evidence obtained during the witness' second interview in November 2007.

⁸ The Prosecution noticed this omission only on 18 December 2007. The Prosecution notes that the summary of this witness' evidence was disclosed to the Defence on 17 December 2007.

***Ex Parte* Filing**

8. The Prosecution submits that the classification of the annexes to the present filing as *Confidential - Ex Parte - Prosecution Only* is necessary.⁹ The present filing seeks relief on the basis of provisions on protective measures, in particular under Article 68(5). The Prosecution submits that the information discussed, including names of witnesses, must be treated confidentially and cannot be disclosed to the Defence in advance of the implementation of protective measures.¹⁰ To do so would run afoul of the Court's obligation under Article 68(1) to protect these individuals and their families.

9. 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 the specifics of the information that needs to be addressed. The Prosecution submits that no alternative procedures exist to deal with this filing.

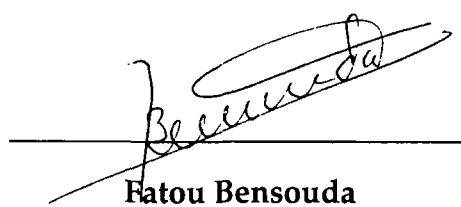
⁹ Decision on the procedures to be adopted for *ex parte* proceedings, 7 December 2007, ICC-01/04-01/06-1058 at para. 12. On 6 December 2007, the Trial Chamber determined that *ex parte* procedures are only to be used exceptionally when other procedures are not available. The Court must ensure that the use of the *ex parte* procedure is proportionate given the potential prejudice to the Accused.

¹⁰ See the Decision of the Appeals Chamber, "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence", ICC-01/04-01/06-568, 13 October 2006 at paras. 37, 65-67.

Order Requested

10. Based on the foregoing, and to the extent necessary, the Prosecution repeats its request for the Trial Chamber to:

- (i) authorize the temporary disclosure of summary evidence under Article 68(5) in relation to the evidence of these two witnesses, as requested in the 12 December 2007 filing.



Fatou Bensouda
Deputy Prosecutor

Dated this 19th day of December 2007
At The Hague, The Netherlands