

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

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

Date: 30 January 2008

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

Decision suspending deadline for final disclosure

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. On 25 January 2008, the Registrar filed a confidential *ex parte* "Victims and Witnesses Unit report on the status of referrals" available to the Office of the Prosecutor ("prosecution") only.¹ The report informed the Trial Chamber that, *inter alia*, decisions on the applications for participation of a number of witnesses in the protection program, and implementation, if any, of protective measures, would be delayed beyond 31 January 2008.² The prosecution responded to the Victims and Witnesses Unit's report on 29 January 2008.³
2. In addition, the Chamber is seised of applications filed by the prosecution for the non-disclosure of information and the redaction of material to be disclosed to the defence which are still pending.⁴
3. In its Decision on disclosure and date of trial issued on 9 November 2007, the Chamber ordered the prosecution to serve the entirety of its evidence by 16.00 on 14 December 2007.⁵ The Chamber also ruled that the defence and the victims' representatives would be given 12 weeks to prepare for trial, and set the trial date for 31 March 2008.⁶ Following the filing by the prosecution of a number of applications for the non-disclosure of information, the disclosure of

¹ ICC-01/04-01/06-1131-Conf-Exp The Chamber refers to the contents of some documents filed on a confidential and *ex parte* basis to the extent necessary for the purposes of this Decision and in a general manner which does not undermine the material protected.

² *Ibid*, paragraph 7.

³ ICC-01/04-01/06-1138-Conf-Exp.

⁴ Prosecution's Application for lifting of redactions, non-disclosure of information and disclosure of summary evidence, 12 December 2007 (notified on 13 December 2007), ICC-01/04-01/06-1081 with confidential *ex parte* prosecution only annexes; Prosecution's Application for non-disclosure of information on the basis of Article 54(3)(f), 21 December 2008, ICC-01/04-01/06-1102, with confidential prosecution and defence annexes and confidential *ex parte* prosecution only annexes, and defence response filed on 10 January 2008, ICC-01/04-01/06-1112, Prosecution's Submission of statements pursuant to *ex parte* hearing on 10 January 2008, 14 January 2008, ICC-01/04-01/06-1115-Conf-Exp and ICC-01/04-01/06-1116-Conf-Exp with confidential *ex parte* prosecution only annexes; Prosecution's Application for authorisation to disclose and rely on incriminating evidence for which Article 54(3)(e) restrictions have been lifted, 24 January 2008, ICC-01/04-01/06-1129-Conf (the deadline for the filing of a response by the defence to this application has not expired yet); Prosecution's submission of information on certain individuals pursuant to the *ex parte* Order of the Trial Chamber of 18 January 2008, 25 January 2008, ICC-01/04-01/06-1132-Conf-Exp.

⁵ ICC-01/04-01/06-1019, paragraph 25; see also paragraphs 27-28.

⁶ *Ibid*, paragraph 29.

evidence in summary form, for redactions, and for the lifting of redactions,⁷ the Chamber convened hearings to deal with the issues raised and specific requests,⁸ and issued oral and written decisions.⁹ In an oral decision delivered on 13 December 2007, the Trial Chamber ruled that the prosecution could withhold certain items of evidence concerning witnesses who had been referred to the Victims and Witnesses Unit until 31 January 2008. It was expected that any security measure or other protective measure would be implemented by that stage.¹⁰ Additionally, by an oral decision on 18 January 2008, the prosecution was, *inter alia*, ordered to file additional material to assist the Chamber in its consideration of the issues raised.¹¹

4. The issues raised in the documents referred to above relate to, and impact on, the 31 January 2008 deadline for final disclosure to the defence. Until these issues are resolved, the 31 January deadline is suspended. As some of the

⁷ Prosecution's Application for direction on the lifting of redactions and for non-disclosure of information, 31 October 2007, ICC-01/04-01/06-1008 with confidential *ex parte* prosecution only annexes; Prosecution's Application for lifting of redactions, non-disclosure of information and disclosure of summary evidence, 7 December 2007, ICC-01/04-01/06-1067 with confidential *ex parte* prosecution only attachment A and annexes; Prosecution's request to schedule a hearing on disclosure, 10 December 2007, ICC-01/04-01/06-1068; Prosecution's Application for extension of time-limit for disclosure, 10 December 2007, ICC-01/04-01/06-1072-Conf-Exp and ICC-01/04-01/06-1073 and defence response filed on 11 December 2007 (notified on 12 December 2007), ICC-01/04-01/06-1076; Prosecution's Application for non-disclosure of information on the basis of Article 54(3)(f), 13 December 2007, ICC-01/04-01/06-1085-Conf-Exp and ICC-01/04-01/06-1086; Prosecution's Application for lifting of redactions and non-disclosure of information, 13 December 2007 (notified on 14 December 2007), ICC-01/04-01/06-1087 with confidential *ex parte* prosecution only annexes; Prosecution's Request to extend the time-limit for disclosure, 14 December 2007, ICC-01/04-01/06-1093; Prosecution's Provision of witness statements and request to disclose summary evidence further to the 'Prosecution's request for Application for lifting of redactions, non-disclosure of information' filed 12 December 2007, 19 December 2007, ICC-01/04-01/06-1098 with confidential *ex parte* prosecution only annexes; Prosecution's explanatory note to the defence vis-à-vis four videos, 18 January 2008, ICC-01/04-01/06-1120-Conf and ICC-01/04-01/06-1121-Conf-Exp. See also defence response filed on 4 January 2008, ICC-01/04-01/06-1104. See also Registrar's observations on the disclosure of evidence, 12 December 2007, ICC-01/04-01/06-1082-Conf, and Defence response to the Registrar's submission filed on 3 January 2008, ICC-01/04-01/06-1103-Conf-Corr.

⁸ Order scheduling a hearing, 10 December 2007, ICC-01/04-01/06-1071; transcripts of hearings on 11 December 2007, ICC-01/04-01/06-T-63-ENG and ICC-01/04-01/06-T-64-CONF-EXP-ENG; transcripts of hearings on 10 January 2008, ICC-01/04-01/06-T-69-ENG, and ICC-01/04-01/06-T-70-EXP-ENG.

⁹ Order scheduling a hearing to deliver an oral decision, 12 December 2007, ICC-01/04-01/06-1077; transcripts of hearings on 13 December 2007, ICC-01/04-01/06-T-65-ENG and ICC-01/04-01/06-T-66-EXP-ENG; Order on "Prosecution's request to extend the time limit for disclosure", 17 December 2007, ICC-01/04-01/06-1095; Order on prosecution's applications for the lifting of redactions, non-disclosure of information and disclosure of summary evidence, 18 December 2007, ICC-01/04-01/06-1097; Order scheduling a hearing to deliver an oral decision, 17 January 2008, ICC-01/04-01/06-1118; transcripts of hearings on 18 January 2008, ICC-01/04-01/06-T-71-ENG and ICC-01/04-01/06-T-72-CONF-EXP-ENG. The defence filed a request for leave to appeal parts of the oral decision delivered on 18 January 2008 on 28 January 2008, ICC-01/04-01/06-1134.

¹⁰ Transcript of hearing on 13 December 2007, ICC-01/04-01/06-T-65-ENG, pages 10-11.

¹¹ ICC-01/04-01/06-T-72-CONF-EXP-ENG, pages 2, 9-10.

issues need to be dealt with *inter partes*, the Trial Chamber hereby schedules a public hearing on 12 February 2008 (to be continued on 13 February as necessary) to hear submissions on the implications of the suspension of the deadline for final disclosure on preparation for trial (and the date for trial). In addition, an *ex parte* hearing with the prosecution and Victims and Witnesses Unit to deal with some of the private aspects of the issues may be convened on those dates as necessary.

Judge René Blattmann was consulted but is unavailable to sign the Decision as he is away from the seat of the Court on the day of signature.

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



Judge Adrian Fulford



Judge Elizabeth Odio Benito

Judge René Blattmann

Dated this 30 January 2008

At The Hague, The Netherlands