

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 31 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
with confidential Prosecution and Defence only annex
**Prosecution's communication of originals of incriminatory evidence disclosed
to the Defence on 29 January 2008**

The Office of the Prosecutor
Mr Luis Moreno-Ocampo, Prosecutor
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Ms Catherine Mabilie
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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

Submission of electronic copies of incriminatory evidence

1. The Prosecution herewith submits electronic versions of 21 items disclosed to the Defence as incriminating evidence on 29 January 2008. The items disclosed to the Defence on 29 January 2008 are listed in the annex "List of disclosed materials".¹

Submission of originals of disclosed evidence

2. In compliance with the Trial Chamber's 9 November 2007 "Decision Regarding the Timing and Manner of Disclosure and the Date of Trial",² the Prosecution also files 18 items of evidence in their original form with the Registry.

¹ The List of disclosed materials is attached as Confidential Prosecution and Defence Only – Annex. In respect of items 2 to 6 and 9 to 21, the Prosecution draws the Trial Chamber's attention to the fact that they relate to the Prosecution's submission at ICC-01/04-01/06-956-Conf-Anx, at para 6. The Prosecution also refers to its 30 January 2008 filing, ICC-01/04-01/06-1143-Conf-Exp.

² ICC-01/04-01/06-1019, para 22.

3. The Prosecution informs the Trial Chamber that one item had previously been filed with the Registry in its original form.³

Items for which no physical originals are being filed

4. The Prosecution informs the Trial Chamber that two items have been disclosed to the Defence in redacted form.⁴ Consequently,⁵ the originals thereof have not been filed with the Registry.

Items disclosed to the Defence in redacted form

5. The Prosecution also informs the Chamber that the two items for which no originals are being filed are expert reports on the forensic examination of two Prosecution witnesses⁶ whose identity has not yet been revealed to the Defence, and who have been referred to the Victims and Witnesses

³ The document concerned is DRC-OTP-0127-0074. Reference is made to the "Prosecution's communication of originals of incriminatory evidence disclosed to the Defence on 5 December 2007", ICC-01/04-01/06-1066-Arx1.

⁴ They bear the ERNs DRC-OTP-0182-0432 and DRC-OTP-0182-0438.

⁵ Reference is made to the "Prosecution's communication of originals of incriminatory evidence disclosed to the Defence pursuant to the order of the Trial Chamber of 9 November 2007", ICC-01/04-01/06-1054, para 9.

⁶ The Prosecution refers to its submissions in the 10 December 2007 "Prosecution's Application for Extension of Time Limit for Disclosure", ICC-01/04-01/06-1073, paras 23-26, at which it informed the Trial Chamber that it was in the process of finalising the collection of evidence of the age of some of its witnesses.

Unit ("VWU") for protection. The Prosecution informs the Chamber, furthermore, that these two witnesses' statements and accompanying documents were disclosed to the Defence in redacted form.⁷

6. The Prosecution notes that with respect to the statements and accompanying documents of witnesses who have been referred to the VWU, the Chamber held on 13 December 2007 and on 18 January 2008 that they may *"be served by way of redactions, summaries, or, where indicated in the filing, by withholding certain items of evidence, but only until 31 January 2008."*⁸ The Prosecution notes, finally, that the 31 January 2008 deadline is now suspended.⁹

7. Bearing in mind these general instructions issued by the Trial Chamber, the Prosecution disclosed the two reports on the forensic examination of two Prosecution witnesses with redactions pursuant to Rule 81(4). These redactions are limited to the mention of the names of the witnesses concerned in each of the reports. The Prosecution submits that these

⁷ The statements were disclosed on 17 December 2007 and are part of the items listed in the Annex to the "Prosecution's communication of originals of incriminatory evidence disclosed to the Defence on 17 December 2007", namely in ICC-01/04-01/06-1096-Anx.

⁸ See the transcript of the hearing of 13 December 2007, ICC-01/04-01/06-T-65-ENG ET WT, page 10, lines 12-21, and the transcript of the hearing of 18 January 2008, ICC-01/04-01/06-T-71-ENG ET WT, page 5, lines 9-14.

⁹ "Decision suspending the deadline for final disclosure", ICC-01/04-01/06-1141, para 4.

redactions were necessary in order to uphold the principle underpinning the Chamber's general instructions, namely, that the Prosecution should not reveal to the Defence the identity of those witnesses who have been referred to the VWU for protection until appropriate measures have been put in place by the Court.

8. The Prosecution submits, finally, that like other redactions made pursuant to the Trial Chamber's general guidance, these redactions are intended to be of a temporary nature only.



Luis Moreno-Ocampo
Prosecutor

Dated this 31st day of January 2008

At The Hague, The Netherlands