

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original : English

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

Date: 14 February 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 vs. THOMAS LUBANGA DYILO**

Public

With Confidential, *Ex Parte*

Prosecution Only – Attachment A and Confidential, *Ex Parte*

Prosecution Only Annexes

Prosecution's Application for Redactions pursuant to Rule 81(2)

The 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
Mr Marc Desalliers
Ms Caroline Buteau

Legal Representatives of the Victims

a/0001/06 to 1/0003/06 and a/0105/06

Mr Luc Walley
Mr Franck Mulenda
Ms Carine Bapita Buyangandu

Background

1. On 4 December 2007, the Trial Chamber rendered a decision orally that the Prosecution must apply to the Trial Chamber for authorization to maintain redactions that had previously been authorized on the basis of Rule 81(2). In contrast, the Prosecution is not required to request leave to lift a previously authorized redaction on the basis of Rule 81(2); however, the Trial Chamber must be notified of each redaction that is lifted in this manner.¹
2. On 7 December 2007, the Prosecution applied, *inter alia*, for non-disclosure of information pursuant to Rule 81(2), among other provisions, and for authorization to disclose summary evidence.²

Scope of Present Application

3. The present application concerns the signed statement of one witness. On 12 February 2008, the Trial Chamber ordered disclosure of this witness' evidence by 15 February 2008, as agreed by the Prosecution.
4. In its 7 December 2007 filing, the Prosecution sought to disclose a summary of this witness statement.³ This request was granted by the Chamber in its oral decision on 13 December 2007.⁴ Accordingly, a summary of the statement was disclosed to the Defence rather than the statement itself, on a temporary basis.

¹ Transcript, ICC-01-04-01-06-T-62-ENG, 4 December 2007 at page 21, lines 19-25 and page 22, lines 1-11.

² ICC-01/04-01/06-1067 and Confidential, *ex parte* Annexes.

³ ICC-01/04-01/06-1067 and Confidential, *ex parte* Annexes, at pages 8-9 of Conf-Exp Annex 107.

⁴ Transcript, ICC-01-04-01-06-T-65-ENG, 13 December 2007, pages 12-13, lines 18-25 and 1-14.

5. Further to the Chamber's order to disclose the statement on 15 February 2008, the Prosecution seeks redactions to paragraphs 19 and 20 of this statement pursuant to Rule 81(2).
6. In order to comply with the Chamber's order rendered orally on 12 February 2007 for disclosure of this evidence, the Prosecution submits that it will proceed to disclose the statement with the requested redactions on 15 February 2008, pending a decision of the Chamber on this issue. Should the Chamber determine that the redactions are not justified, the Prosecution will re-disclose the statement immediately following such a decision in accordance with the Chamber's decision on the issue.
7. The Prosecution confirms that the proposed Rule 81(2) redactions contained in the attached witness statement do not seek to redact information that must be disclosed as either potentially exonerating information under Rule 67(2) or that must be provided for inspection as material to the Defence under Rule 77.
8. The Prosecution further confirms that the information contained in the proposed Rule 81(2) redactions is not relevant to the Prosecution's case or to its current information of the Defence's case.

Ex Parte Filing

9. The Prosecution submits that the classification of the annexes to the present filing as *Confidential-Ex Parte – Prosecution Only* is necessary.⁵ The Statute provides that applications pursuant to Rule 81(2) "shall be heard on an *ex parte* basis". This

⁵ 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.

application is made further to Rule 81(2) and accordingly the Prosecution submits that an *ex parte* classification is justified.

10. 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 request.

Order Requested

11. Based on the foregoing, the Prosecution requests the Trial Chamber to authorize the non-disclosure of information in accordance with Rule 81(2) to two paragraphs of one witness statement.



Luis Moreno-Ocampo
Prosecutor

Dated this 14th day of February 2008
At The Hague, The Netherlands