

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : English

No.: ICC-01/04-01/06
Date: 29 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 *v.* THOMAS LUBANGA DYILO**

Public

**Prosecution's application for variation of time limits for disclosure of
expert witnesses' evidence**

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 Mabille
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

Background

1. On 5 September 2007 the Trial Chamber issued its "Order setting out schedule for submissions and hearings regarding the subjects that require early determination",¹ requesting submissions on the procedures to be adopted for instructing expert witnesses.² On 12 September 2007, the Prosecution filed its "Prosecution's submissions regarding the subjects that require early determination: procedures to be adopted for instructing expert witnesses, witness familiarization and witness proofing".³ On 30 October 2007, the Trial Chamber convened a hearing at which it heard oral submissions regarding the testimony of expert witnesses.⁴
2. On 10 December 2007, the Prosecution filed the "Prosecution's Application for Extension of Time Limit for Disclosure",⁵ making the Chamber aware of the fact that an application for extension of the deadline to disclose the evidence to be taken from expert witnesses might become necessary depending on how the matter evolved."
3. Also on 10 December 2007, the Trial Chamber rendered its "Decision on the procedures to be adopted for instructing expert witnesses",⁶ in which the Trial Chamber ordered the parties to, *inter alia*, seek to instruct a joint expert

¹ ICC-01/04-01/06-947.

² ICC-01/04-01/06-947, page 2, item 3(F).

³ ICC-01/04-01/06-952.

⁴ Transcript of the hearing on 30 October 2007, ICC-01/04-01/06-T-58-ENG, pp 29-49.

⁵ ICC-01/04-01/06-1073.

⁶ ICC-01/04-01/06-1073, para 45..

⁷ ICC-01/04-01/06-1069.

on any relevant issue.⁸ On 13 December 2007, the Chamber delivered an oral decision ("13 December 2007 Oral Decision") and held that "expert evidence must be served by 29 February 2008".⁹

4. At a hearing on 13 February 2008, the Trial Chamber informed the parties and participants that the date of 31 March 2008 no longer appears to be a feasible date for the start of the trial. The Trial Chamber indicated that 9 or 16 June 2008 appear to be feasible dates for the commencement of the trial.¹⁰

Application for variation of time limit for disclosure

5. To date, the Prosecution's has not sought to instruct expert witnesses with the Defence.
6. The Trial Chamber had already ruled, in its 13 December 2007 Oral Decision, on the date by which disclosure of expert evidence should take place.¹¹ In that Decision, the deadline for disclosure had been set for one month prior to the commencement of the trial on 31 March 2008.
7. The Prosecution now seeks a variation of the time limit for disclosure of evidence from expert witnesses until one month prior to the commencement of trial. The Prosecution submits that this variation would make the deadline on disclosure of evidence from expert witnesses

⁸ ICC-01/04-01/06-1069, page 10, section E(i).

⁹ Transcript of the hearing on 13 December 2007, ICC-01-04-01-06-T-65-ENG ET, p 16, lines 2-3.

¹⁰ Transcript of the hearing on 13 February 2008, ICC-01-04-01-06-T-75-ENG ET, p 4, lines 11-13. See also 20 February 2008 "Decision on agreements between the parties", ICC-01/04-01/06-1179, para. 11.

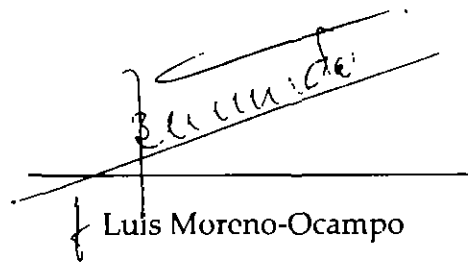
¹¹ Reference is made to paragraph 3, above.

consistent with the Trial Chamber's reasoning when it set the initial disclosure deadline of 29 February 2008 in its 13 December 2007 Oral Decision.

8. The Prosecution submits that this variation causes no prejudice to the Accused. Disclosure of evidence from expert witnesses one month prior to trial would afford the Defence the same amount of time available for preparation that it had been afforded in the Chamber's 13 December 2007 Oral Decision.

Request

9. Accordingly, and pursuant to Regulation 35 of the Regulations of the Court, the Prosecution requests the Trial Chamber to grant an extension to the time limit for disclosure of evidence from expert witnesses until one month prior to the date for which the Trial Chamber schedules the commencement of the trial.



Luis Moreno-Ocampo
Prosecutor

Dated this 29th day of February 2008

At The Hague, The Netherlands